

# Student Loans Past, Present and Future

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# History of Student Loans and Insolvency

- **Prior to 1997:** Student loans were treated as ordinary debts and enjoyed no special status and were treated as ordinary unsecured debts
- **Reforms in 1997:** s. 178(1)(g) amended to BIA to makes student loans dischargeable after **2 years** from when the debtor stopped being a student (full- or part-time), giving time to re-enter the workforce and show repayment capacity. Addition of s. 178(1.1) to provide a release of government student loans on application to court.
- **Amendments in 1998:** In **1997**, initially a 2 year waiting period; in **1998**, it was amended to 10 years and finally 7 years in **2005**.
- **1997, Hardship Provision:** s. 178(1.1) allows early discharge if the debtor acted in good faith and faces undue hardship subject to judicial discretion. Amended to 5 years.

# History of Student Loans and Insolvency

- **SL have been subject to various parliamentary debates and committees on finding equitable and treatment of SLs**
- In 2003, Standing Senate Committee on Banking, Trade and Commerce, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*
- *Now the waiting period is 7 years from when a debtor "ceases" to be a student; and 5 years to apply for hardship under s. 178(1.1)*

# Definition of "Student" for the purpose of BIA 178(1)(g)

In *Piekut*, the SCC emphasized that a return to **any form of post-secondary education**, even part-time reset the 7-year period, in order to give full effect to the purpose, context and . The ruling recognized that a student doesn't need to be receiving loans or studying full-time to be considered a "student" under the BIA.

The seven-year period in section 178(1)(g)(ii) runs from the latest date the bankrupt ceased to be a full or part time student, irrespective of whether the student loans financed the studies associated with the latest date a bankrupt ceased to be a student under the applicable federal or provincial legislation

# "Last Day of Study" Interpretations

**Multiple day:** Several dates on which the bankrupt ceased to be a student, corresponding to the end dates of the bankrupt's various programs of study and loans

**Single day approach:** Only **one date** on which the bankrupt ceased to be a student, that is, the last date the bankrupt ceased to be a student before the date of bankruptcy. Each return to studies resets the timeline.

But previously divided provincial approaches to the "last day of study"

- B.C and Quebec follow single day approach
- Newfoundland and Labrador and Ontario, Nova Scotia, Saskatchewan and New Brunswick adopted multiple day

# Case Highlights

**Zutter (Re) , 2022 BCSC 1233**

**s.178(1.1) BIA "Good Faith" and "Financial Hardship"**

## **Tougher path to loan forgiveness**

Strict standard and burden on Debtor, they must show good faith repayment efforts and ongoing financial hardship

- Consistent and genuine repayment efforts
- Hardship must be **well documented** and show sustained objective inability to repay
- Vague claims or passive RAP use likely to fail, must show sacrifice and repayment priority
- Prioritizing other debts over student loans can justify denial unless clear justification is provided

# Case Highlights

## **Burgess (Re) 2020 BCSC 1550**

**s.172 BIA, discharge applicant with private student loans**

### **No Special Treatment for Private Student Loans**

- Treated as a regular unsecured creditor, not given preferential treatment

### **Future Payment and Earning Potential a Strong Factor on discharge**

- Court assessed usual discharge factors and possible future income as MD
- No clear evidence that prospective earnings as an MD would materialize; court ordered 6-month suspension to allow Trustee to monitor income

# Insolvency Practitioners

Providing reliable advice to student loan debtors during the assessment stage

- Last Day of Studies – the debtor should obtain this date directly from NSLSC so they know when the clock starts
- Advise student of consequences of returning to studies during the bankruptcy or proposal period
- Advise if student loan debts are eligible for automatic discharge or forgiveness in a proposal based on the last day of studies.
- Advise of SL collection practices, reporting debtor as in default or collections as soon as discharged if they do not maintain payments during the insolvency process.
- If SL is not eligible for automatic forgiveness, should debtor apply for RAP prior to filing?



# Insolvency Practitioners

- After completion of a bankruptcy or proposal if Student Loan is not forgiven
  - Advise to make payment arrangements immediately
  - Apply for RAP, RAP-D, or to recapitalize the student loans, if eligible
  - Apply to Pacific Leaders Loan Forgiveness Program (if employee of Province of BC).
  - Provide self-representation package for application for student loan forgiveness
  - Refer to legal counsel

# True or False

Repayment Assistance Plan (RAP) is available for a period of 1 year before a student loan debtor has to reapply for RAP.

# True or False

Student loan debtors with a severe permanent disability may be eligible to have their student loan debt cancelled.

# True or False

Students who apply for forgiveness of their student loans under the good faith or hardship applications, will have a higher likelihood of success if they have previously taken advantage of the RAP for relief from their student loan payments.

# True or False

Students who are currently enrolled in studies when they file bankruptcy will not be eligible for further student loan funding through StudentAid BC until they are discharged from bankruptcy for 2 years.

# True or False

When applying for student loan forgiveness under Hardship branch of s. 178(1.1), the court will look at the debtor's payment ability. The court will use solely use the Surplus income Guidelines under the BIA (Directive 11R2) to determine payment ability.

# Poll: Should the LIT assist debtor with SL forgiveness application?

1. Yes, it is LIT's duty to assist debtor to get discharged from provable claims in bankruptcy or proposal
2. No, there is no benefit to the general body of unsecured creditors
3. No, it is a conflict of interest

# Post-Piekut: Clarifying the "last day of study"

- **Majority: Single-Date Approach:** The Court accepted the idea that only one "last day of studies" applies. The 7-year rule resets each time a person returns to school and is tied to student status.
- **Minority/dissent: articulated a Conditional Bar on Discharge:** Student loans are only discharged in bankruptcy or a consumer proposal if the debtor has ceased to be a student for a continuous period of 7 years before filing. Emphasized fresh start principal.
- **Returning to School Resets the Clock:** If the debtor returns to studies that are eligible for a student loan, the clock restarts from the new study end date

Piekut v. Canada (National Revenue), 2025 SCC 13



# Post Piekut- The Future of Student Loans

- Student Loan authorities benefit from automatic enforceability of claims under s. 178(g), aligning with the OSB policy position by removing the need for a separate judicial determination each time
- Court also confirmed consumer proposals appl to SL: "*Under s. 66.4(1), all provisions of the [BIA](#) (except Division I of Part III, which deals with proposals not specific to consumers) apply to consumer proposals “in so far as they are applicable” and “with such modifications as the circumstances require” (para 33, Piekut).*
- Represents a narrowing of the fresh start principle and SL borrowers are will be encouraged to use RAP, RAP-D, Revision of Terms and other mechanisms for student loan relief and s. 178(1.1)