Treatment of Student Loans in Insolvency Proceedings

Presented by:

Braden Burritt (Grant Thornton Limited),

Matthew Prieur and Philip Vandekerkhove (Miles Davison LLP)

Student Loans in the Context of Insolvency Proceedings

Insolvency Proceedings Filed by Consumers – 2024 DATA

	Volume			% Change		12-Month Period Ending		
	January 2024	December 2023	January 2023	Dec. 2023 to Jan. 2024	Jan. 2023 to Jan. 2024	01-31-2024	01-31-2023	% Change
Canada	10,788	9,040	8,735	19.3	23.5	125,286	102,353	22.4
Bankruptcies	2,193	1,860	1,859	17.9	18.0	26,550	24,677	7.6
Proposals	8,595	7,180	6,876	19.7	25.0	98,736	77,676	27.1

- **Source**: "Insolvency Statistics – January 2024" (March 17, 2025), online: *Government of Canada* <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/statistics-and-research/insolvency-statistics-january-2024#t1>

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	January 2025	December 2024	January 2024	Dec. 2024 to Jan. 2025	Jan. 2024 to Jan. 2025	01-31-2025	01-31-2024	% Change
Canada	11,620	9,686	11,547	20.0	0.6	143,556	130,524	10.0
Bankruptcies	2,545	2,293	2,818	11.0	-9.7	33,538	30,614	9.6
Proposals	9,075	7,393	8,729	22.8	4.0	110,018	99,910	10.1

- **Source**: "Insolvency Statistics in Canada – January 2025" (April 1, 2025), online: *Government of Canada* <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/statistics-and-research/insolvency-statistics-canada-january-2025>

Student Loans in the Context of Insolvency Proceedings

- The median total assets for debtors in 2021 was $11,424 and the median total liabilities was $45,770, for a net difference of $34,346.
- The most frequent liability category was credit card debt.
- Loans were another frequent liability…Of these, bank loans were the most frequent… The second most frequent were finance company loans… **Third were student loans, with 14% of debtors and a median debt of $11,000…**

- **Source**: "Canadian Consumer Debtor Profile - 2021" (July 24, 2022), online: *Government of Canada* <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/statistics-and-research/canadian-consumer-debtor-profile-2021>

***Bankruptcy and Insolvency Act, Sections* 178(1)(g) and 178(1)(g.1)**

Debts not released by order of discharge

178(1) An order of discharge does not release the bankrupt from

(g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students…

(g.1) any debt or obligation in respect of a loan made under the *Apprentice Act*…

where the date of bankruptcy of the bankrupt occurred…

(i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or

(ii) within **seven years** after the date on which the bankrupt ceased to be a full- or part-time student.

***Bankruptcy and Insolvency Act, Section* 178(1.1)**

Court may order non-application of subsection (1)

178(1.1) At any time after **five years after** the day on which a bankrupt who has a debt referred to in paragraph (1)(g) or (g.1) ceases to be a full- or part-time student or an eligible apprentice, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

Survey #1

Are you currently working on paying off some form of student loans?

a) Yes
b) No

Student Loans Issue #1 - Voting

- In a consumer proposal - tendency to vote against but fail to call a meeting of creditors
- Why?
  - Clauses indicating that the 178 debts will be discharged
  - Unsubstantiated - legal opinion indicating that they should vote against all proposals
- If they do vote - want minimum 30-35% recovery
- Importance of changing banking – difficult to get them to stop payments, typically won't return money without significant pressure

The Single-Date Approach

Single-Date Approach	**Quebec** **British Columbia**	**These provinces follow that the date to use is when the bankrupt ceased to be a full-time student regardless of when they obtained student loans.** **In these "piggy backing" provinces, all of the bankrupt's student loan debt survives simply because one of the loans was obtained within seven years prior to the assignment.** **For example, if an individual takes out student loans to fund an undergraduate degree, enters the workforce and later returns to pursue a self-funded masters degree, the "clock" resets on the student loans used to fund the undergraduate degree.**

The Multiple-Date Approach

Multiple Date Approach	**Saskatchewan** **New Brunswick** **Nova Scotia** **Newfoundland and Labrador** **Ontario** **Alberta**	**These provinces say that the date to use is when they ceased to be a full-time student for the degree in which the student loans were received.** **In these provinces, student loan debts incurred with respect to programs of study that ceased more than seven years prior to the date of assignment were released upon the bankrupt's discharge from bankruptcy.** **For example, if an individual takes out student loans to fund an undergraduate degree, enters the workforce and later returns to pursue a self-funded masters degree, the "clock" does not reset on the student loans used to fund the undergraduate degree.**

Alberta case favouring the Multiple Date Approach: *Financial Collection Agencies Ltd. v. Onyschuk*, 2002 ABQB 221

Endorsed in *Hildebrand (Re)*, 2010 SKQB 321 at para 31

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

Facts

- Izabela Piekut was a student from 1987 through 2009, taking intermittent breaks from education between 1995-2002 and 2003-2006. These breaks from schooling took place between separate degrees. She received student loans for all programs other than the 2003-2006 program.
- Periods of Note:
  - 1987 through 2003 – She received federal student loans for this study period.
  - 2006 through 2009 – She funded the program herself and did not receive student loans.

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

Timeline

1987

Student Loan Funding begins

2003

Student Loan funding ends

END DATE 1

2006

Program begins without student loan funding

2009

Program ends

END DATE 2

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

Facts (continued)

- October 2013 – Piekut made a Consumer Proposal.
- December 2017 – She is granted a certificate of full performance.
- A dispute arises as to whether Piekut's government student loans were discharged upon completion of the Consumer Proposal.
- June 2019 – Piekut applies for a declaration that she "ceased to be a full- or part-time student" under section 178(1)(g) in 2003 (end date 1) as opposed to 2009 (end date 2).
  - If end date 1 – 2013 CP was made after the 7-year period.
  - If end date 2 – 2013 CP was made before the 7-year period elapsed.

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

Lower Court Decisions

- June 2019 – Chambers Judge - Piekut's application to discharge her student loan debt is dismissed.
  - Judge bound by Supreme Court of British Columbia's decision to implement the single-date approach in BC.
- April 2023 – BC Court of Appeal – Appeal dismissed.
  - The British Columbia Court of Appeal followed the same reasoning set out in *Mallory*, the original BC case confirming the single-date approach.

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

Policy Objectives

- [26] The *BIA* has two main purposes: to equitably distribute a bankrupt's assets among their creditors and to financially rehabilitate the bankrupt… A bankrupt's financial rehabilitation involves allowing an honest but unfortunate debtor to obtain a discharge of their debts and giving them a "fresh start"…
- [28] The non-dischargeable claims in s. 178(1) "recognize that the fresh start policy of bankruptcy law must yield to certain overriding social policy objectives that require that certain claims be protected against the discharge"….
- [78-80] In September 1997, Parliament amended the *BIA*… such that the debtor could not be released… if the date of the bankruptcy occurred before or within two years of when the debtor ceased to be a full- or part-time student… in 1998, Parliament… (extended) the time periods for both non-dischargeability and hardship applications to 10 years… in 2005, Parliament adopted the current versions… reducing the time periods for non-dischargeability under s. 178(1)(g)(ii) to seven years and for hardship applications under s. 178(1.1) to five years.

Not Your Typical Loan

- [36] …borrowers receive student loans based on financial need rather than commercial lending criteria, such as the borrower's credit risk or future ability to repay the loan.
- [37] …a borrower generally does not accrue interest on, and is not required to repay, their student loans until they cease to be a student.

Survey #2

What do you think is an appropriate time limit under section 178(1)(g) and 178(1)(g.1) of the *BIA*?

a) 2 years
b) 7 years
c) 10 years
d) 20 years
e) Till death do you part!

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

Statutory Interpretation: French and English

- When interpreting legislation Courts will read the words in the context of the Act in its entirety.
- The BIA includes the same provisions in French, which provide a narrower meaning than the English version with less/no room for interpretation.
  - The French version of 178(1.1) requires a borrower not have been a student under the applicable law for at least the past five years.
  - 178(1.1) and 178(1)(g) must refer to the same start date. [67]
- The Court decides the less ambiguous French text must govern the start date for both provisions, confirming the single-date approach.

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

Virtues of the Single-Date Approach

- [42] The relevant principles of statutory interpretation are well known. Under the modern principle adopted by this Court, a court considers the words used in legislation "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament"....
- [72] ...the single-date approach does not require reading the word "finally" into s. 178(1)(g)(ii). It simply requires giving the word "ceased" its ordinary meaning, read in context, by looking back from the date of bankruptcy...

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

Virtues of the Single-Date Approach

- [76] The legislative history and parliamentary debates surrounding s.178(1)(g) of the *BIA* show that this provision pursues several mutually supportive purposes or policy goals: (1) to reduce government losses from student loan defaults in bankruptcy; (2) to ensure the sustainability of government student loan programs for future generations of students; and (3) to give borrowers a reasonable opportunity over a continuous period of time to capitalize on all of their education to repay their publicly funded student loans, and thus to deter opportunistic bankruptcies. The single-date approach promotes these purposes better than the multiple-date approach, and hence better reflects the purposes of s. 178(1)(g)(ii). Indeed, the multiple-date approach results in absurdity.
- [83] …"*Parliament's intention was to minimize the losses incurred by governments as a result of bankrupt debtors being released from their student debts*."
- [86] …"*[s]tudents who have received financial assistance from taxpayers owe it to society and to future generations of students to reimburse the loans they have received*."
- [89] …"*We are trying to avoid situations where someone declares bankruptcy simply to get rid of the student loan and then finds a job.*"

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

Downsides of the Multiple-Date Approach

- 178(1)(g) of the *BIA* contemplates "a loan" and "the date" – singular. [65]
  - Reading of 178(1)(g) of the *BIA* in its ordinary sense, without adding words to the provision aligns with the single-date approach. "Ceased" has a finality to it when read in its ordinary sense. [65]
    - The stay of interest and payments on outstanding loans when returning to school is overly burdensome to the creditor. [105]
    - Other remedies are available for debtors suffering financial hardship including 178(1.1) but also repayment assistance programs. [106]

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

Sub-issue: Proving Claims under s. 178(1)(g) of the *BIA*

- Piekut argues that a creditor relying on s. 178(1)(g) of the *BIA* has a burden to obtain a Court Order to confirm their claim survives insolvency proceedings.
  - Argument rejected: student loan claims are easily established without the need for a judicial determination that may be more appropriate in other contexts such as in the case of an allegation of fraud. [117-120]
  - Student Loan creditors need only file a proof of claim to secure their protection under section 178(1)(g) of the *BIA*.

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

Minority Decision: The Balanced Approach

- [128] In my view, neither the single-date nor multiple-date approaches represent the correct interpretation of s.178(1)(g)(ii) of the *BIA*. Instead, I conclude that the correct interpretation reconciles the language with both the purpose of the provision — to require a person to have a meaningful opportunity to repay the loan after they cease to be a student — and the rehabilitative purpose of the *BIA*. It reflects elements of both the single-date and multiple-date approaches and avoids the most absurd results of both.
- [158] …when an individual returns to school as a full- or part-time student *before* seven years have elapsed, the clock will not continue to run, as it does in the multiple-date approach… and a full seven-year period must elapse after the new date that the individual ceased to be a student before the provision no longer applies to those loans.
- [162] By promoting opportunities for economic rehabilitation, the “fresh-start” purpose of the BIA is given effect. An individual may return to schooling after seven years and re-train without sacrificing their ability to avail themselves of the *BIA* in the future. Should that re-training fail to remedy their financial difficulties, they still may alleviate their debt burden by being released from their past student loans, so long as seven continuous non-student years have passed before they returned to school.

Survey #3

Which approach do you like?

a) Single-date approach
b) Multiple-date approach
c) The minority's "balanced" approach

Student Loans Issue #2 - Collections after full performance

- If the student loan is undischargeable pursuant to s. 178 then the debtor will have to make arrangements to make payments after their filing is done
- What about the interest that accrued during the proposal/bankruptcy period?
- Inconsistent approaches - interest accrued and not paid on undischargeable debt during a proposal is due upon full performance in order to bring the loan into good standing vs incorporating accrued interest into the new payments
- This raises some questions – what do you tell the debtor?
- Depending on debtor situation – either encourage Repayment Assistance or have them make interest only payments

Survey #4

How do you treat ongoing student loan payments on the Form 65 (budget)?

a) List the interest payment as an expense
b) List the principal and interest payment as an expense
c) List the interest as a non-discretionary expense
d) List the interest and principal as non-discretionary expense

Hardship Applications: Good Faith Requirement

- *Morrison (Re)*, 2019 ABQB 757:

[37] As the relevant factors indicate, the good faith that must be demonstrated in order for the application to succeed relates to the loan, not the bankrupt's general behaviour during the bankruptcy. These factors are recounted in cases such as ***Re Cusack***, 2014 SKQB 136, which was cited by the Registrar, ***Re Lundrigan***, 2012 NSSC 23 and ***Re Simon***, 2018 NSSC 332, as follows:

> *Whether used for the intended purpose… whether completed the education… whether derived economic benefit… whether made reasonable efforts to repay… whether made use of interest relief or loan remission options… timing of insolvency proceeding… whether student loans form a significant part of the overall indebtedness… whether the applicant had sufficient income to be reasonably expected to make payments on the student loan… lifestyle of the applicant… whether the applicant was at any time disabled from working etc…*

[38] Since the factors have been augmented from time to time by evolving jurisprudence, I consider the list not to be finite and the factors to provide guidance only in establishing whether legal criteria are met or not. Depending on the facts, the factors can cut both ways, that is, support the application or detract from it.

Hardship Applications: Financial Difficulty Requirement

- *Morrison (Re)*, 2019 ABQB 757:

[53] ...The exact requirement as set out in s 178 (1.1) is:

> ... *the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt*.

[54] I take this to mean that, for present and in the foreseeable future, the bankrupt's financial circumstances will not permit the bankrupt to realistically both pay the debt and subsist in a reasonable way. As Registrar Thompson says in ***Re Cusack*** at para 43:

> Many people have to make sacrifices to pay their student loan obligations. Some of these people have to give up their dreams, leave school for a time, forego internships and put their professional careers on hold to meet these obligations. Sometimes paying off student loans will lead to a change in a person's professional course. There are circumstances, however, where making these types of sacrifices will not be sufficient to earn enough income to meet student loan obligations and provide the debtor with the necessities of life.

[55] Thus, in my view, the notion of repayment of student debt may well involve the imposition of some hardship. It is only when the hardship would deprive a person of reasonable subsistence that the "financial difficulty" element of ss 171(1.1)(b) is engaged.

Survey #5

In order to “solve” the issue of student loans being difficult it has been alleged that some LITs are choosing to leave undischargeable student loans off of the debtor’s statement of affairs intentionally.

Do you leave undischargeable student loans OFF the statement of affairs?

a) Yes – I leave them off in bankruptcies only

b) Yes – I leave them off in proposals only

c) No – I always list them

Student Loans Issue #3 – "Excluding" student loans

Why does leaving these off offend the Act?

- Statement of affairs has to be in the prescribed form, verified by affidavit, showing the particulars of the debtor's assets and liabilities
- Prescribed statement of affairs is the same for a consumer proposal and a bankruptcy
- Form 79 guidance from the OSB – "list all liabilities, debts, obligations, and charges owed in whole or in part by the debtor"

Questions?

Thanks for attending!