COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Piekut v. Canada (Minister of National Revenue),* 2023 BCCA 181

Date: 20230419
Docket: CA47755

Between:

Izabela Piekut

Appellant

And

His Majesty the King in Right of Canada as represented by the Minister of National Revenue

Respondent

And

His Majesty the King in Right of the Province of British Columbia as represented by the Minister of Finance

Intervener

Before: The Honourable Mr. Justice Willcock
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated September 7, 2021 (*Piekut (Re)*, 2021 BCSC 1883, Vancouver Docket B190403).

Oral Reasons for Judgment

Counsel for the Appellant:	C.G. Reedman F. Merritt-Neill
Counsel for the Respondent:	O.J. Kowarsky P.Y. Yeh
Counsel for the Intervener:	S. Davis L.F. de Lima
Place and Date of Hearing:	Vancouver, British Columbia April 19, 2023
Place and Date of Judgment:	Vancouver, British Columbia April 19, 2023

Summary:

This appeal involves the statutory interpretation of a provision of the Bankruptcy and Insolvency Act that is specific to government student loans. The appellant seeks to set aside a ruling that she continues to be bound by government student loans even though more than seven years have passed since monies were disbursed under those loans. Held: Appeal dismissed. The chambers judge correctly interpreted and applied the impugned provision. The seven-year period runs from the last date on which the bankrupt ceased to be a full- or part-time student.

[1] **DEWITT-VAN OOSTEN J.A.**: The sole issue in this appeal is the interpretation of a provision of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, that denies release from government student loans if the bankruptcy occurred within seven years of the date that the bankrupt ceased to be a full- or part-time student.

[2] A Supreme Court chambers judge held that the seven-year timeline runs from the latest date that the bankrupt ceased to be a full- or part-time student, even if those educational studies were not financed through government student loans.

[3] The appellant, Izabela Piekut, says this is not the correct interpretation, asks that the Court set aside the Supreme Court order, and declare that she is released from all debt and interest owed pursuant to her government student loans.

Background

[4] The background to the appeal can be briefly stated.

[5] Between September 1987 and October 1994, Ms. Piekut obtained a series of student loans through a federal government program. She graduated with a degree from the University of Calgary in 1994.

[6] In 1995, Ms. Piekut obtained a teaching diploma from the University of Calgary.

[7] Ms. Piekut obtained two further student loans through a federal government program in 2002 and 2003. She earned a masters degree from the University of British Columbia in 2003.

[8] In 2008, Ms. Piekut enrolled in self-funded studies at the University of British Columbia on a part-time basis. In 2009, she earned a second masters degree.

[9] In October 2013, Ms. Piekut made a consumer proposal under the *Bankruptcy and Insolvency Act*. A certificate of full performance of that proposal was granted in December 2017.

[10] In June 2019, Ms. Piekut applied to the British Columbia Supreme Court for a declaration that, by operation of law, she had been released from all debt and interest associated with her government student loans.

[11] As at February 2020, those loans amounted to approximately $28,561.

[12] The Supreme Court application was dismissed and Ms. Piekut appeals from the dismissal.

Issue on Appeal

[13] There is only one issue on appeal, namely, the correct interpretation of s. 178(1)(g)(ii) of the *Bankruptcy and Insolvency Act*:

> 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 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 …
>
> [Emphasis added.]

[14] The parties agree that this issue raises a pure question of law and the standard of review is therefore correctness: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.

Discussion

[15] Applying an earlier decision by the British Columbia Supreme Court, *Mallory (Re)*, 2015 BCSC 5 [*Mallory*], the chambers judge held that the seven-year period prescribed by s. 178(1)(g)(ii) ran from the latest date that Ms. Piekut ceased to be a full- or part-time student. That was in 2009.

[16] The parties agree that s. 178(1) of the *Bankruptcy and Insolvency Act* applies to the filing of a consumer proposal. Ms. Piekut filed her proposal in 2013, four years after ceasing to be a student. The chambers judge found that she did not meet the criteria for release of "any debt or obligation in respect of a loan" made under the *Canada Student Loans Act*, R.S.C. 1985, c. S-23 or the *Canada Student Financial Assistance Act*, S.C. 1994, c. 28. The consumer proposal was filed within seven years of 2009.

[17] Ms. Piekut sought to persuade the chambers judge that *Mallory* was incorrectly decided. Relying on authorities from other Canadian jurisdictions which have adopted a different interpretation of the provision, she argued that the words "ceased to be a full- or part-time student" in s. 178(1)(g)(ii) are specific to the disbursement of funds under the loan(s) in question. From her perspective, Parliament intended that there be a "nexus between the date of the advancement of public funds and [the] ceasing date": Appellant's Factum at para. 24.

[18] Applying this interpretation to Ms. Piekut's circumstances would mean that the seven-year period commenced in 2003 at the latest, when she last undertook university studies that were financed by one or more student loans secured through a government program.

[19] Having reviewed the parties' and intervener's factums, the cases referred to, and what I consider to be the unambiguous language of s. 178(1)(g), I am of the view that *Mallory* was correctly decided and the chambers judge properly followed it.

[20] In *Mallory*, Justice Gaul conducted a thorough and careful examination of s. 178(1)(g)(ii), with appropriate reference to both the English and French versions,

as well as the related jurisprudence, and reached a principled interpretive determination that accords with the modern approach to statutory interpretation (*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42), and, importantly, gives meaningful effect to the plain language of the provision, the surrounding text, the overarching purpose of the *Bankruptcy and Insolvency Act*, and the specific objective of s. 178(1)(g).

[21] Justice Gaul's interpretation is consistent with the decision of the Court of Appeal for Quebec in *Québec (Procureur général)* c. *N.P.*, 2011 QCCA 726, in which the Court cited a compelling reason for rejecting the interpretation that has been adopted in other jurisdictions and is advanced by Ms. Piekut on appeal (at para. 45):

> … Imagine a situation where a student obtains a first diploma thanks to government loans, temporarily interrupts [their] studies, resumes [their] studies on a continuous basis, and finally declares bankruptcy shortly after obtaining [their] second degree. The consequence of having more than one possible date when studies end is to enable partially that which the legislator specifically sought to prohibit: opportunistic bankruptcies, declared without [the] student actually having tried to capitalize on their education, and without the Minister having had the opportunity to recover the debt. The legislator cannot have desired such a result.
>
> [Emphasis added.]

[22] For substantially the reasons of Justice Gaul in *Mallory*, I am of the view that the seven-year period prescribed by s. 178(1)(g)(ii) of the *Bankruptcy and Insolvency Act* runs from the latest date on which the bankrupt ceased to be a full- or part-time student within the meaning of the "Act or enactment" that provides for the student loans or guarantees of those loans, irrespective of whether the educational studies associated with that latest date were financed through a federal or provincial student loans program.

[23] There have been decisions subsequent to *Mallory* that adopt a different approach. See, for example, *St. Dennis (Re)*, 2017 ONSC 2417 [*St. Dennis*]. However, I do not find those decisions persuasive. They do not identify an error in principle in the *Mallory* analysis. Instead, I am of the view that those decisions (as well as some of the cases that pre-date *Mallory* and adopt a different approach), do not adequately consider the structure and language of s. 178(1)(g), the differences

between the English and French versions, or the informative effect of s. 178(1.1). *St. Dennis*, in particular, simply reflects a different assessment of the extent to which linking the seven-year timeline to the disbursement of funds under the loan in question will realistically lead to opportunistic bankruptcies: *St. Dennis* at para. 22.

[24] Reasonable minds may disagree about the latter point; however, the fact of disagreement does not cause me to question the correctness of the interpretation brought to bear in *Mallory.* I agree with Justice Gaul that under s. 178(1)(g)(ii), the key question to ask is "when did the bankrupt cease being a student". And, the "time to ask that question is the date when the assignment in bankruptcy was made": at para. 86.

[25] It is important to note that the *Mallory* interpretation does not leave bankrupt individuals without an avenue to be relieved of the financial burdens associated with outstanding government student loans before the expiry of seven years. At the very least, s. 178(1.1) of the *Bankruptcy and Insolvency Act* may be available to them, depending on the circumstances.

Disposition

[26] For the reasons provided, I would dismiss the appeal.

[27] Consistent with the decision below, I would order that the parties bear their own costs in the appeal.

[28] **WILLCOCK J.A.**: I agree.

[29] **HORSMAN J.A.**: I agree.

[30] **WILLCOCK J.A.**: The appeal is dismissed. The parties will bear their own costs.

"The Honourable Madam Justice DeWitt-Van Oosten"