



Discharge of Student Loan Debt on Bankruptcy

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Upon discharge from bankruptcy or after successfully completing obligations under a proposal, most of one's pre-bankruptcy debts are released. However, section 178(1) of the *Bankruptcy and Insolvency Act* sets out several types of debts that are not discharged, which includes government-provided student loans.

Section 178(1)(g) states:

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;

Thus, student loans debts are not discharged if a student ceased to be a full time student less than 7 years prior to the date of the bankruptcy. If a student has ceased to be a full time student in 2004, and files for bankruptcy today, the loans are discharged. If, however, a student ceases to be a full time student in 2009, and files for bankruptcy today, the loans will not be released unless the student can convince the Court that the loans ought to be released.

On a motion to discharge student loan debt prior to the lapse of the 7 year period, an individual can turn to section 178(1.1) of the *BIA*. That section states that a person can bring an application seeking that subsection (1) does not apply. To be successful, the debtor must show that he or she has acted in good faith with respect to their student loans and that the debtor has and will continue to experience financial difficulty to such an extent that the debtor will be unable to pay the debt.

1) Good faith

In the case of *Re Giera*, Deputy Registrar Mills followed previous case law that took into account the following factors to determine whether a debtor has acted in good faith:

- whether the money was used for the purpose loaned and if the education was completed;
- whether the Bankrupt is deriving economic benefit from the education;

- whether there were any reasonable efforts to repay the loans; and
- whether there was any effort by the Bankrupt to take advantage of interest relief or remission options offered by the lenders.

2) **Hardship**

If a debtor is able to satisfy the Court of the above factors, he or she must also be able to show that they have no real prospect of being able to repay the loans. In this regard, a Court will look to the specific financial circumstances of the individual. If that individual can show that there is some surplus in his or her income, a Court will likely conclude that the debtor can repay the debt and will not order a discharge of the loans (as was the case in *Re Giera*).

Unfortunately, those looking to have their student loans discharged prior to the 7 year period are often caught in a Catch-22. If they wish to retain a lawyer, this type of motion can run a client's costs into the thousands of dollars, depending on what is required for the motion (i.e. cross examinations on affidavits). Great care should be taken before undertaking this motion to make sure that the client is not put through additional hardship.

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