

**IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY**

Citation: Roach (Re), 2008 NSSC 15

Date: January 21, 2008

Docket: B-31473

Registry: Halifax

District of Nova Scotia
Division No.03 - Sydney
Court No. 31473
Estate No. 51-103836

**IN THE MATTER OF THE CONSUMER PROPOSAL OF
NANCY JOAN ROACH**

D E C I S I O N

Registrar: Richard W. Cregan, Q.C.

Heard: January 11, 2008

Present: Rita E. Anderson representing the Trustee,
PricewaterhouseCoopers Inc.

Nancy Joan Roach, the bankrupt, representing herself.

- [1] This is an application by Nancy Joan Roach for relief under Section 178 (1.1) of the *Bankruptcy and Insolvency Act*, 1985, c. B-3, the “BIA”.
- [2] Ms. Roach filed a consumer proposal on July 8, 2002 and was granted a Certificate of Full Performance on September 20, 2007.
- [3] She had taken a course in Business/Office Computer Applications at CompuCollege which she completed on January 17, 1997. From that date she had ceased to be either a full or part-time student. In the course of these studies she borrowed money under student loan programs which at the time of her proposal totalled approximately \$15,000.00.
- [4] Section 66.28(2) of the BIA provides that an accepted consumer proposal “does not release the consumer debtor from the debts and liabilities referred to in Section 178, unless the creditor assents thereto”. Student loans are referred to in Paragraph (1) (g) thereof. The creditors in question did not provide such consent. As a result Ms. Roach remains burdened with these outstanding loans. This application is not opposed.

[5] First I must determine whether Section 178(1.1) is available to her. It provides relief to a bankrupt with outstanding student loans after ten years subsequent to having ceased being a full or part-time student.

[6] A “bankrupt” is defined in Section 2 as follows:

“bankrupt” means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person.

[7] This does not describe Ms. Roach. Therefore my immediate reaction was that, as Ms. Roach is not a bankrupt by this definition, the remedy is not available to her. I was fortified in this by the decision of Sills J. of the Ontario Superior Court of Justice, in *Canada (Attorney General) v. Snopko*, [2004] O.J. No. 562, who in dealing with this question said in Paragraph 9:

The inapplicability of s. 178 to a non-bankrupt means that in the case at bar, the remedy of a bankrupt under s. 178(1.1) is not available to the defendant herein unless she makes an assignment in bankruptcy, files a further consumer proposal to deal at least partially with the student loan and create an automatic stay, and upon the conclusion and discharge of the trustee of the proposal then makes an application under s.178(1.1).

[8] However, I looked further and found that Registrar Herauf, now Mr. Justice

Herauf, of the Saskatchewan Court of Queen's Bench in *Cardwell (Re)* [2006] S.J. No. 205, 2006 SKQB 164, found a different approach to this problem.

[9] In Paragraph 27 he notes the following Subsections.

66(1) All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

66.4(1) All the provisions of this Act, except Division I of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to consumer proposals.

[10] He comments on two appellate court decisions as follows in Paragraph 29 and 30:

In *Hancor Inc. V. Systemes de Drainage Modernes Inc.* (1995), 37 C.B.R. (3d) 117 (Fed. C.A.), the Federal Court of Appeal was critical of the wording of subsection 66(1), but indicated that 'all the provisions of the Act apply to Proposals in so far as is possible.' The courts should 'participate in a process of intelligent harmonization and adaptation' of the rules applicable to bankruptcy with the rules applicable to Proposals.

In *Re Perrette Inc.* (1998), 2 C.B.R. (4th) 165 (Que. C.A.); leave to appeal to S.C.C. refused (1998), 235 N.R. 398 (note), the Quebec Court of Appeal held that it is important to standardize rules applicable to bankruptcies with rules applicable to proposals. The words 'with such modifications as the circumstances require' mean that the provisions relating to bankruptcies are to be applied to subsections 50 to 65.3 by making the necessary terminological changes to other provisions.

and after further discussion concludes in Paragraph 37:

It follows that the plain meaning of the words in subsections 66(1) and 66.4(1) is that the provisions in subsection 178(1.1) of the *Act* are to apply to Proposals and Consumer Proposals ‘with such modifications as the circumstances require.’ Accordingly, while the language of subsection 178 (1.1) of the *Act* speaks of ‘a bankrupt’ applying for relief from student loans debt, the provision can be modified in circumstances involving non-bankrupt Proposal and Consumer Proposal debtors, by replacing the word ‘bankrupt’ with the words ‘debtor or consumer debtor with an accepted and approved Proposal or Consumer Proposal under Division I or Division II of the *Act*.’

[11] I quite agree with his conclusion and am satisfied that Ms. Roach is able to make use of Subsection 178(1.1).

[12] Ms. Roach is a cashier in a convenience store. She is the single mother of a 16 year old daughter. She is not currently using her education in her work. Her monthly income is \$2080, an amount below the Superintendent’s Standards for a family of two. It is not likely that she can significantly improve her situation in the foreseeable future.

[13] It has not been suggested to me that she has been acting other than in good faith regarding her obligations. Her resources now and in the foreseeable

future will be such that she will be unable to pay her student loans.

[14] She is entitled to an order under Section 178(1.1).

R.

Halifax, Nova Scotia
January 21, 2008