

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: McNutt (Re), 2008 NSSC 166

Date: June 3, 2008

Docket: B-31952

Registry: Halifax

District of Nova Scotia
Division No. 03 - Sydney
Court No. 31952
Estate Nos. 51-104077, 51-104078

**IN THE MATTER OF THE BANKRUPTCY OF
TIMOTHY LLOYD MCNUTT AND JENNIFER LYNN MCNUTT**

D E C I S I O N

Registrar: Richard W. Cregan, Q.C.

Heard: May 1, 2008

Present: Michael Connor representing the Trustee,
BDO Dunwoody Goodman Rosen Inc.

Andrea Rizzato representing the bankrupts

- [1] Timothy Lloyd McNutt and Jennifer Lynn McNutt are husband and wife. They have three children, ages four, eight and ten. The youngest child, a son, has been diagnosed with Pervasive Developmental Disorder. Their oldest child, a daughter, suffers from rheumatoid arthritis. They filed a joint Consumer Proposal in 2002 and received Certificates of Full Performance in 2007. They now ask to be relieved of their student loans under Section 178(1.1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (*BIA*).
- [2] Mr. McNutt studied at the Nova Scotia Agricultural College (NSAC) from 1990 to 1994 and again from 1995 to 1997. He obtained a diploma in Biology Laboratory Technology and a diploma in Planet Science - Ornamental Horticulture. These studies were funded through Canada Student Loans and Nova Scotia Student Loans.
- [3] In September 1999 he enrolled in the Microsoft Certified Systems Engineer Program at the Ontario School of Business. He received for this purpose a student loan from the Ontario Student Assistance Program. This school closed within three months of the commencement of classes.

- [4] Mrs. McNutt completed a Bachelor of Arts and Community Studies Program at the University College of Cape Breton in 1995. She also attended the NSAC until June 1997. These studies were funded by Canada and Nova Scotia Student Loans.
- [5] Subsequent to these studies they found employment which provided very modest income.
- [6] In August 2002 Mr. McNutt joined the Canadian Forces. His annual income is now approximately \$57,000.
- [7] Their loans total an amount approaching \$50,000.00.
- [8] They now live at CFB Gagetown in Oromocto, New Brunswick.
- [9] Mrs. McNutt has no source of income. She must attend to her children's care. The oldest and youngest require special attention and expenses. For the foreseeable future it is unlikely she will be able to be employed.

- [10] There is nothing before me to suggest that they have not acted in good faith respecting their loans. Their income in the past has been limited, their loans are substantial, and their family responsibilities are demanding. I am quite satisfied that they have and will continue to experience financial difficulty and will be unable to pay their student loans.
- [11] In *Roach (Re)*, 2008 NSSC 15, I determined that those who have completed Consumer Proposals are entitled to relief from student loans under Section 178(1.1) of the *BIA*.
- [12] I am satisfied that Mrs. McNutt has met the requirements of Section 178(1.1) I so ruled at the hearing. An appropriate order will be made in her favour.
- [13] Mr. McNutt completed his studies at the NSAC in 1997, more than ten years ago. However, his studies at the Ontario School of Business were terminated by the end of 1999, as it had gone out of business. Thus he ceased to be a student less than ten years ago. Apart from the question of from when I am to count the ten years, I am satisfied that he also is entitled

to similar relief.

[14] This question was addressed by Registrar Herauf, as he then was, in *Ledoux*, *Re* (2005) 8 C.B.R. (5th) 225. The bankrupt received student loan financing for studies which ended in 1989. Between 1992 and 2000 she pursued studies in social work financed by her Indian band.

[15] Canada Student Loans submitted that notwithstanding the education it financed was completed in 1989, time should only start to run from 2000 when she completed her last studies. She would have to wait until 2010.

[16] Registrar Herauf noted the decision of Klebuc J. in *Conexus Credit Union v. Schneider Estate* (Trustee of) (2003), 45 C.B.R. (4th) 191 (Sask. Q.B.). The bankrupt here had extended his education with financing from a private lending institution which submitted that the legislation extended to non government student loans. This was rejected. He was able to say that non government student loans are simply not subject to the special provisions of the *BIA*. Accordingly when considering when the debtor ceased to be a student, one should not make reference to studies supported by non

government student loans.

[17] Neither of these cases quite covers the present situation, namely where there is a series of student loans under the Federal Act and a Provincial Act followed by a single loan under the Act of another province.

[18] One must look closely at the actual wording of Section 178 (1)(g):

An order of discharge does not release the bankrupt from

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 ten years after the date on which the bankrupt ceased to be a full- or part-time student

and Section 178(1.1):

At any time after ten years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, 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 loan; 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 liabilities under the loan.

(underlining added.)

- [19] Note that they speak of “loan” in the singular. They seem to be saying that one makes an application under Section 178(1.1) with respect to a loan. There is nothing to suggest that an application must deal with all the outstanding loans together or collectively.
- [20] Registrar Herauf’s decision and Justice Klebuc’s decision each make it clear that time does not start to run again when one returns to studies financed by non government financing facilities.
- [21] On a fair reading of these provisions I do not see that the language demands that time start to run again for earlier loans when one later takes up studies relying on a fresh government loan or at least a loan under another jurisdiction as in the present case. I think this is a logical extension of what Registrar Herauf and Justice Klebuc have determined.
- [22] The student loans under the Federal and Nova Scotia legislation all related to

Mr. McNutt's studies which ceased over ten years ago. He should now have relief for each of them. An order under Section 178(1.1) will be issued in Mr. McNutt's favour with respect to the loans under Federal and Nova Scotia legislation.

[23] This application will be kept open so that he may apply for relief from the loan under the Ontario legislation once the ten year period respecting it has expired.

R.

Halifax, Nova Scotia
June 3, 2008