

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: Herve (Re), 2008 NSSC 216

Date: July 7, 2008

Docket: B 31951

Registry: Halifax

District of Nova Scotia
Division No. 3 - Sydney
Court No. 31951
Estate No. 51-095527

**IN THE MATTER OF THE PROPOSAL OF
WILLIAM BLAIR HERVE**

DECISION

Registrar: Richard W. Cregan, Q.C.

Heard: June 26, 2008

Present: Mark Zinck representing the bankrupt, William Blair
Herve

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

Dwight Rudderham representing The Attorney General
of Canada, on behalf of Her Majesty the Queen

- [1] The Applicant, William Blair Herve, asks for an order under Subsection 178(1.1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (*BIA*) that Subsection 178(1)(g) does not apply to his outstanding student loan debt. The application is opposed by the Attorney General of Canada.

- [2] In the course of the hearing counsel for the Attorney General advised that it does not question Mr. Herve's good faith with respect to the loan. Accordingly, I shall only review what I find to be evidence respecting the other requirement under this subsection, namely whether his financial difficulty is so extensive that he will be unable to pay his liabilities under the loan.

- [3] Mr. Herve filed a Consumer Proposal on July 25, 2001, which requires him to pay \$300 per month. It was successfully completed. He received a Certificate of Full Performance in October 2006.

- [4] His student loan debt including interest is now approximately \$20,000.

- [5] He commenced his university education at St. Francis Xavier University in

September 1989, and graduated with a Bachelor of Science in Physical Education in May, 1997. Interspersed with these studies was time spent as a labourer with the Nova Scotia Department of Highways and courses at the University College of Cape Breton.

- [6] Since September 1997 he has been employed as a physical education teacher with We'koqma'q First Nation Elementary School in Whycobah which is located on Highway 104, approximately 125 km from Sydney. In the first year his salary was approximately \$24,000. His gross annual salary is presently \$50,874. He is now at the top of the pay scale for his position.
- [7] In 2001 he married Beverley Herve. They now have two children, a daughter born in September 2004 and a son born in November 2006.
- [8] His wife has a job share position with Aliant in Sydney. She works every second week. She looks after the children during the weeks off. This position is permanent. Presently, there is no opportunity to return to full time work with Aliant. Her present annual salary is \$16,272.

- [9] He says he does not have the ability to pay his student loan debt. The family expenses exhaust the family income. He has no credit, nor does his wife whose credit cards now have maximum balances. He worries about what would happen in emergencies, such as repairs for his car which he drives to work each day, a 250 km round trip.
- [10] They bought their present home in May 2003, for \$122,500. It was completely financed by a mortgage with the Royal Bank. They had looked for a less expensive home but could not find one in good condition. The less expensive homes on the market required extensive work. Neither of them have skills in this area. The monthly mortgage payment is \$730. Taxes are another \$175, heating another \$125.
- [11] They live in Sydney rather than near his school. Mrs. Herve works in Sydney. It is a better place to bring up their children.
- [12] They have two cars, one to serve as backup so that he can be confident he will be able to drive to school each day. Driving 250 km per school day is a substantial expense, but I do not see any reasonable alternative. I doubt that

there would be comparable work for Mrs. Herve in Whycobah.

- [13] There are a number of credit cards in Mrs. Herve's name which require minimum monthly payments in total of about \$1000.
- [14] I do not think there is anything extravagant about their life style.
- [15] The expenses for their children are substantial. They have day care during the week Mrs. Herve works. This will continue for several years. As children grow their reasonable requirements expand.
- [16] They might be able, if they could pay off their credit card debts and maintain an even more frugal life style find some surplus to pay toward the student loan debt, but I cannot see that it would reduce it very much over the foreseeable future.
- [17] The *BIA* allows me only to make a finding that Mr. Herve "has and will continue to experience financial difficulty to such an extent that (he) ... will be unable to pay the liabilities under the loan." The debt in effect can either

be cancelled or affirmed. No middle ground is available.

[18] I think that allowing him a reasonably frugal family lifestyle, which is what he has, will not permit him to pay his liabilities for this loan.

[19] Using the Superintendent's Standards he may have a monthly surplus of about \$170. It would take many years for him to contribute enough to significantly reduce this liability.

[20] If I refuse this application, Mr. Herve will have to consider bankruptcy to eliminate this liability.

[21] I am satisfied that Mr. Herve does not have the resources to discharge this liability now, nor in the next several years.

[22] He is entitled to relief under Subsection 178(1.1) of the BIA.

[23] If costs are sought I shall hear counsel.

R.

Halifax, Nova Scotia
July 7, 2008