IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation: Field-Currie (Re), 2010 NSSC 41

Date: February 4, 2010
Docket: B 32729
Registry: Halifax

District of Nova Scotia
Division No. 03 - Sydney
Court No. 32729
Estate No. 51-084705

In the Matter of the Consumer Proposal of Catherine Field-Currie

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D E C I S I O N

Registrar: Richard W. Cregan, Q.C.

Heard: January 14, 2010

Counsel: Darren Morgan representing Catherine Field-Currie

[1] This is an application by Catherine Field-Currie for an order under Subsection 178(1.1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (*BIA*) directing that Paragraph 178 (1)(g) does not apply to her outstanding student loans

[2] On March 27, 2000 Ms. Field-Currie filed a Consumer Proposal under the *BIA*. She successfully completed it on March 4, 2005 and received a Certificate of Full Performance dated April 13, 2005. The proposal was administered by the Government of Nova Scotia through the Department of Service Nova Scotia and Municipal Relations Debtor Assistance. She made this proposal because she was advised by the debt counsellor that it would be an effective way of satisfying her outstanding student loans. After completing the proposal she learned that this advice was not correct. The balances owing on her student loans remain outstanding.

[3] Ms. Field-Currie received her education at St. Francis Xavier University, the University of St. Anne and the University of Maine between the years 1988 and 1997. The loans, administered by Human Resources Development Canada and various banks originally totalled about $39,000. The present

balance is approximately this amount.

[4] After obtaining her degree in 1997 she was able to find some work as a substitute teacher. This was followed by term appointments. She acquired permanent employment as a teacher with the Cape Breton Victoria Regional School Board during the school year 2001 - 2002. She continues to be a teacher with this board. She married Blair Currie in 2005. He has a supervisory position with the Cape Breton Regional Municipality. They have two young children. They bought a home in 2005 which is financed with a mortgage, the balance of which is approximately $106,000. It has monthly payments of $850.

[5] She and her husband have net monthly employment incomes of $4,265.33 and $3,300.45, respectively, for a total of $7,565.78. Their total monthly nondiscretionary expenses are $1,097.50. This is mostly day care. Their available monthly income then is $6,468.28. Their discretionary expenses are $4,716.13. This leaves a surplus of $1,752.15.

[6] Their expenses are very modest. They could without justifying criticism be

spending more. Considering that they have two children and considering the financial contingencies of family life, their surplus is really much less. As their children grow older their expenses will increase. They are presumably at or near the top of their earning capacity.

[7] Subsection 178(1.1) requires that before I can grant relief from student loan debts I must be satisfied that:

> (a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; 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 debt.

[8] It gives me two options, one to refuse relief, the other to discharge the indebtedness in its entirety. There is no middle ground.

[9] I am satisfied that Ms. Field-Currie has acted with good faith. She had applied for interest relief. She had a significant debt. It is understandable in the early years when she did not have permanent employment she was unable to service it. She sought the advice of a debt counsellor provided by the provincial government, having had a judgment entered against her. She

followed this advice with a proposal, thinking it would discharge this debt. This proposal was fully performed in 2005, but then she learned it was ineffective against the student loans. That year she married. Now she has two children.

[10] More difficult for me is whether she would be able to pay the debt. She and her husband together have a good income according to the standards of many people. They might well be able to set aside and pay each year to the credit of these loans a significant sum of money say $3000 to $5000. This would encroach on their lifestyle, more particularly on what they can do for their children. But with interest continuing to accrue the discharge of the debt would take ten or more years.

[11] These debts date back 13 years. She made her proposal in 2000, and completed it in 2005 and was no further ahead. Another five years have passed. There is a principle underlying the *BIA* that except in special circumstances one should not be subject to the penalties of bankruptcy for a long period of time. These debts are now 13 years old. Any reasonable repayment scheme that is not going to prejudice the reasonably frugal

lifestyle they have could well take another 10 years. To expect them to pay in a shorter period say five years would be a continuation of financial difficulty which has prevented her from paying the loans. Any period longer would be too long. It would also protract the burden of these loans in a manner inconsistent with the overall objectives of the *BIA*.

[12] It is useful to analyze the situation by reference to the Superintendent's Standards under Directive No. 11R2 - Surplus Income. I understand she has surplus income of about $800 per month. Before the amendments to the *BIA* were proclaimed, it would be normal for someone in Ms. Field-Currie's circumstances to be required to pay surplus income for fifteen months. This would require total payments of about $12,000. This was an option open to her from 2007. Now with the amendments she would be required to pay surplus over 21 months.

[13] If I could compromise the debt, I would have no difficulty in requiring her to pay a significant portion of the debt, say half of it. This, however, is not open to me. Also, I note that none of the creditors appeared at the hearing to oppose this application.

[14] Considering the factors mentioned above in their totality, I am satisfied that Ms. Field-Currie also meets the second test.

[15] She is entitled to an order that Paragraph 178 (1)(g) does not apply to her outstanding student loans.

R.

Halifax, Nova Scotia
February 4, 2010