

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: Blanchard (Re), 2010 NSSC 42

Date: February 4, 2010

Docket: B 32731

Registry: Halifax

District of Nova Scotia
Division No. 03 - Sydney
Court No. 32731
Estate No. 51-070051

In the Matter of the Consumer Proposal of Wendy Marie Blanchard

DECISION

Registrar: Richard W. Cregan, Q.C.

Heard: January 14, 2010

Counsel: Darren Morgan representing Wendy Marie Blanchard

- [1] This is an application by Wendy Marie Blanchard 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 February 3, 1998 Ms. Blanchard filed a Consumer Proposal under the *BIA* and received a certificate of Full Performance dated October 18, 2001. 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. Blanchard received her education at the Nova Scotia Teachers' College during the years 1992 to 1996. She graduated in 1996 with a degree in Special Education and has not pursued any formal education since that date. Her education was financed by loans presently administered by Human

Resources Development Canada, Canadian Imperial Bank of Commerce, and the Bank of Nova Scotia. At the time of her proposal in 1998 these loans totalled about \$29,000. They now total about \$49,000.

[4] After graduating she paid what she could on the loans, but it was not sufficient to effectively reduce her indebtedness. Her employment has been in the area of residential care where her income has been quite modest. She has recently obtained a permanent supervisory position with Resicare, an agency providing residential care. She and her husband have a four year old son. They bought a house in 2008. Her husband is a chef.

[5] She and her husband have a net monthly employment income of \$2,606.53 and \$1,407.65 respectively, for a total of \$4,014.18. Their expenses which are reasonable and modest exhaust their income. They are probably at or near the top of their earning capacity.

[6] 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.

[7] I have two options, one to refuse relief, the other to discharge the indebtedness in its entirety. There is no middle ground.

[8] I am satisfied that Ms. Blanchard has acted with good faith. She had a significant debt. It is understandable that in the early years when she did not have permanent employment she was unable to service this debt. She sought the advice of a debt counsellor provided by the provincial government. She followed this advice with a proposal, thinking it would discharge the debt. The proposal was fully performed in 2001, but then she learned it was ineffective against the student loans.

[9] As to ability to pay the debt, I have noted that the family expenses exhaust their income. The loans go back 14 years. They total a very substantial amount with significant interest continuing to accrue. If she were to set aside one or two thousand dollars a year, it would not fully address the interest, let alone the principal.

- [10] According to the Superintendent's Standards under Directive No. 11 R2 - Surplus Income, her monthly surplus income is about \$350. Paying such surplus would take twelve years for her to satisfy just the principal.
- [11] To expect one in Ms. Blanchard's circumstances to be burdened with this debt not just with the fourteen years to date but with at least another twelve years is completely inconsistent with the overall objectives of the *BIA*.
- [12] I am satisfied that Ms. Blanchard will continue to experience financial difficulty to the extent that she will be unable to discharge her student loans.
- [13] She is entitled to an order that Paragraph 178 (1)(g) does not apply to these loans.

R.

Halifax, Nova Scotia
February 4, 2010