

IN THE SUPREME COURT OF NOVA SCOTIA  
IN BANKRUPTCY AND INSOLVENCY

**Citation:** Cordeau (Re), 2012 NSSC 280

**Date:** July 24, 2012

**Docket:** B 29436

**Registry:** Halifax

District of Nova Scotia  
Division No. 1 - Halifax  
Court No. 29436  
Estate No. 51-745739

**In the Matter of the Bankruptcy of Charlene Mary Cordeau**

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DECISION

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**Registrar:** Richard W. Cregan, Q.C.

**Heard:** June 22, 2012

**Counsel:** Kelly Peck, representing the Department of Justice  
Canada

Charlene Cordeau, representing herself

- [1] This is the application of Charlene Mary Cordeau for relief under Subsection 178(1.1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (*BIA*), with respect to her student loans.
- [2] Ms. Cordeau began her studies at the Victoria General Hospital School of Nursing in September 1992. She graduated on June 23, 1994. To finance her education she obtained a Canada Student Loan from the Royal Bank of Canada for \$7,853.31. The present outstanding balance is close to \$12,000.00. The loan has been administered by the Canada Revenue Agency (CRA). It opposes this application. Its Counsel takes the position that Ms. Cordeau does not and will not continue to experience financial difficulty to such an extent that she will never be able to pay the outstanding balance.
- [3] She began repayment of the loan in November 1994. Some interest relief had been obtained. She made an assignment in bankruptcy on June 28, 2004. Charles Wackett & Associates was her trustee. The total unsecured debt including the student loan was \$30,151.53. She paid the required surplus income and received an automatic discharge on June 16, 2006.

- [4] She did not receive any indication that her student loan debt was not discharged by her bankruptcy until March 26, 2012, when she received a Notice of Assessment from the CRA showing that her refund for 2011 taxes of \$2,036.62 had been applied against her student loan debt.
- [5] On April 3, 2012 she contacted the Investigation Unit of the Canada Student Loan Program. She expressed objection to the taking of her income tax return. She had understood that the loan had been discharged by her bankruptcy. The Investigation Unit referred to Subsection 178(1)(g) of the *BIA*. It prescribed that a student loan would not be discharged unless, when the assignment was made, ten years has passed since one “ceased to be a full or part time student”. She and presumably her trustee had assumed that she had ceased being a full time student on the date of her graduation, June 23, 1994.
- [6] It has been established that the date in question is not the date of graduation or the last day of classes, rather the date must be as determined under the *Canada Student Loan Act* or the *Canada Financial Assistance Act* or any similar provincial legislation. For this date one must look to the Certificate

of Eligibility issued at the time the loan was granted. In Ms. Cordeau's Certificate the Period of Study-End Date is August 1994. The Canada Student Loan Regulation, SOR /93-392, made it clear that in Ms. Cordeau's situation the date she ceased to be a full time student is the last day of August 1994. Her assignment was made 64 days short of ten years. This analysis is confirmed in *Pyke, Re*, 2005 NSSC 33. I must therefore find that her student loan debt survives her discharge in bankruptcy.

[7] I must now consider whether she is entitled to relief under Subsection 178(1.1). Her good faith is admitted, so the remaining question is whether the requirements in Paragraph (b) of this Subsection are met. I quote this paragraph:

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] Ms. Cordeau is a registered nurse with Capital Health in Halifax. She has worked continuously there since her graduation except for two pregnancy leaves and several short-term illness leaves.

[9] Her gross income last year was about \$58,000. During this time she held the position of charge nurse. She is in a common-law relationship with Charles Albert Robson. Mr. Robson works for the Department of National Defense doing technical work on naval ships. His income last year was in excess of \$80,000. This amount is reflective of extensive overtime, as he was working on submarines. This work is finished. He now works in a shop with little opportunity for overtime. His expected income in the future will be significantly less.

[10] They live with their children in a home owned by her valued at approximately \$225,000. It is fully financed. She has no meaningful equity in it.

[11] She has a daughter Samantha who is 26 and lives with them. She makes a small contribution to the family expenses. She has a minimum wage job. She needs her mother's help and guidance.

[12] Her younger son Andrew has ADHD (attention deficit hyperactivity disorder) and a language based learning disability. He will be continuing his

education at Bridgeway Academy, which has programs for children with learning disabilities, for four years. There will be extra expenses and he will have to be driven daily from home in Sackville to the school in Dartmouth. This will put some constraints on the shifts that Ms. Cordeau will be able to work at the hospital.

- [13] Her older son Ryan has ADD (attention deficit disorder) and a language-based learning disability. He is enrolled in a special education program in the public schools.
  
- [14] Mr. Robson has three children, Olivia aged 12, Brandon aged 13, and Alex aged 15, whose custody he shares with their mother. They are with him and Ms. Cordeau half the time. He has another daughter who is with her mother full time. Alex and Olivia have significant physical and psychological disorders.
  
- [15] Ms. Cordeau owes her lawyer \$4,000 and is being pressed for payment. Mr. Robson owes his lawyer over \$11,000.

[16] Counsel for the Department of Justice made an assessment of the family income and determined on the information presented regarding current income that Ms. Cordeau has a monthly surplus income of \$215. Counsel also made a projection that assuming the current interest rate, if \$217 is paid monthly for six years, the student loan debt will be discharged. In some of my previous decisions I have suggested that being able to discharge a student loan with surplus income over five years indicates that one does not meet the test in Subsection 178(1)(b) and should not be granted relief. However, in Ms. Cordeau's situation it is not quite that simple.

[17] Her Statement of Income and Expenses shows a monthly total income of \$6,006, broken down as follows:

Ms. Cordeau's net income	\$3210
Support payment received by Ms. Cordeau	691
Samantha's contribution	400
Mr. Robson's net income	3295
Mr. Robson's support payments	<u>(1590)</u>
	\$6006

Their expenses total \$6082. Considering that they live in Sackville and she and Mr. Robson work in Halifax, one child has to be taken to school in Dartmouth, and the parental challenges they have, the expenses are

reasonable.

[18] There are many contingencies. Their income is not certain. For example, she may not be able to continue as a charge nurse because of shift timing conflicting with the need to take Andrew to school. Mr. Robson's income has an overtime component which is not certain. The more significant issue is that with the complexity of their situation it is inevitable that unanticipated expenses will arise. Responsibility for their children is going to continue for many years with considerable emotional and financial cost. Their income with wage settlements may increase from time to time, but there is little doubt but that it will be met with increases in expenses.

[19] The Superintendent's Standards are binding on Trustees in setting surplus to be paid as a condition of discharge. They are a useful guide for the Courts, particularly in Student Loan applications, but that is all they are. There may be good reason not to follow them. I think there is in the present application. Ms. Cordeau and her family are in a tight situation. She and Mr. Robson have parental responsibilities, emotional and financial, of complexity far beyond the normal and they need all the money they can earn to fulfill their



responsibilities for the next several years. I am satisfied that a fair assessment of their situation supports a finding that Ms. Cordeau has and will continue to experience financial difficulty to such an extent that she will be unable to pay the student loan debt.

[20] Ms. Cordeau would not be before the Court at this time, if her assignment had been made 64 days later. The debt would have been discharged. At the time a submission might have been made that she pay into her estate something to reflect the moral issues which have surrounded student loans. Whether the court would have accepted such a submission, one can only speculate, but most likely any amount ordered would be less than what is now claimed. I hope that the current practice of trustees in reviewing their client's affairs is to exercise great care in this regard.

[21] Ms. Cordeau made her assignment in June 2004. Any action on this loan was thereby stayed until her trustee was discharged in March 2009. She received no notice or suggestion that the loans were outstanding until she received her notice of assessment on March 26, 2012.

[22] There was a period of almost 8 years during which she, based on what was represented to her, thought the debt had been discharged. Counsel explained that nothing could be done to assert the claim until the trustee was discharged in March 2009. This is so, but then three years further passed before Ms. Cordeau received her notice of assessment bringing to her attention this debt. I suggest that, if such claims are to be pursued, it should be done promptly and statements should be issued at least annually.

[23] Ms. Cordeau is entitled to the relief sought.

R.

Halifax, Nova Scotia  
July 24, 2012