SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Wood (Re)*, 2020 NSSC 24

Date: 20200117
Docket: No. 43722
Registry: Halifax
Estate Number: 51-2337802

In the Matter of: The bankruptcy of Brittany Elizabeth Wood

Judge: Raffi A. Balmanoukian, Registrar

Heard: January 10, 2020, in Halifax, Nova Scotia

Counsel: Brittany Elizabeth Wood, on her own behalf

Balmanoukian, Registrar:

[1] Ms. Wood declared bankruptcy in April, 2017. She was discharged in January, 2018. Her student loans, a little under half her total unsecured debt, were undischarged pursuant to s. 178(1)(g) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA"). She now seeks to have those loans, incurred between 2011 and 2013, discharged pursuant to s. 178(1.1) *BIA*.

[2] I do not have Ms. Wood's specific age; she is a young adult.

[3] Ms. Wood's current income consists of EI ($826 biweekly net, or roughly $1790 per month), Child Tax Benefit ($518.91), and ordered child support of $508.54. I say "ordered" as it is currently slightly in arrears; on the one hand, collection efforts are uncertain; on the other, Ms. Wood testified that the ordered amount is below what she believes her child's father would be called upon to pay if what she understands to be his current income was considered afresh.

[4] She is currently expecting her second child in June 2020, and "hopes" to receive both an increased CTB (in an amount not in evidence or readily determinable at present) and support from this child's father (also indeterminate). Although her current CTB for one child may go down because, in her words, "they

reassess it in the summer and I made good money last year," that will be affected positively by the birth of her second child. She correctly asserted that "they [the government] usually give a bit more for younger children."

[5] The result is considerable uncertainty about Ms. Wood's short and medium-term income and expenses. At present, assuming that the child support that is in arrears is brought current, she has a monthly budgetary surplus of around $400; if it is unpaid, there is a small deficit.

[6] Ms. Wood's EI will run out. She left her prior job and is awaiting the outcome of what is apparently a human rights complaint, which if successful will presumably have positive financial consequences for her. In the meantime, she indicated that she will work at an available job to "get her hours in" so as – in her explicit motivation - to qualify for EI maternity leave.

[7] As for the loans themselves, Ms. Wood indicated that she had made no payments and "never really focused on" what her minimum payments would now be. She estimated them at $350 per month for the combined federal and provincial loans.

[8] She said there "hasn't been much" communication with the student loan authorities. As she is "pretty on the ball" with "knowing what her rights are,"

including repayment assistance, she is "pretty sure that [she] didn't pay a dime more than [she] had to to the Trustee." For that reason, the principal contact that she can recall with the student loan authorities is a mysterious credit of $565.83 in August 2019. This either may be a mistake, or a dividend from her estate.

[9] Against this background, I turn to the applicable law. Section 178(1.1) *BIA*, the so-called "hardship" provision, has been considered by this Court on several occasions.

[10] I will reiterate my summary, and cross-citations, in *Re Theriault*, 2019 NSSC 300:

> [2] As I have outlined the statutory regime in several other cases (including *Re Hughes*, 2018 NSSC 189; *Re Simon*, 2018 NSSC 332; *Re Sullivan*, 2018 NSSC 334; and *Re McCrossin*, 2019 NSSC 71), I will do so only perfunctorily here. That section allows (but does not require) me to discharge a student loan if I am satisfied that
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> 1. The loan is older than five years after the cessation of study (in a program to which the loan relates; going back to school in a different enrolment, after having ceased study, at least *without* another student loan, does not "reset the clock:" *Re McNutt*, 2008 NSSC 466. I mention this as an aside as I have seen this arise on several occasions; it is not necessary for me to opine at this juncture whether I agree with *McNutt* insofar as it pertains to successive non-contiguous programs *with* successive student loans, although the weight of authority so suggests);
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> 2. The proper parties have received notice of the application;
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> 3. The applicant has acted in good faith with respect to the loan (s. 178(1.1)(a));
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> 4. The applicant faces, *and will continue to face*, financial difficulty "to such an extent that the bankrupt will be unable to pay the debt" (s. 178(1.1)(b)); and

> 5. There is no juristic reason for the Court to decline to exercise its discretion in favour of discharging the applicable loan.
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> [3] I have also weighed in on the "special nature" of student loans and that they are not "just another unsecured debt," whether dischargeable under s. 178(1) or not: *Re Handspiker*, 2018 NSSC 333; *Re Crocker*, 2019 NSSC 121. [italics in original]

[11] It is trite but necessary to reiterate, as well, that 178(1.1) gives me a binary, and only a binary, choice – I can discharge the loan, or not (or adjourn or refuse with leave to re-apply). I have no jurisdiction to modify the loan or its terms.

[12] In this instance, I have no hesitation – none - in finding that Ms. Wood has failed both the good faith and temporal financial difficulty tests. And if I am wrong, I would not exercise my discretion in favour of discharging the loan.

[13] Her current and immediate future financial circumstances are, to say the least, fluid; to say the most, she has the current and anticipated capability of servicing the loan, acting reasonably. At least this is so based on the amount she "estimates" would be the minimum monthly payment, which is the closest thing to evidence I have before me. She appears to have made no effort to divert any part of her "pretty good money" from 2019 towards addressing the loan, which had previously requalified for interest-abatement repayment assistance.

[14] That inability to provide an accurate estimate of the minimum payment, or to pay it, takes me to the "good faith" test. Again, I have discussed this facet of

178(1.1) in several cases, for current purposes most germanely in *Re Simon*, 2018 NSSC 332.

[15] Ms. Wood has had little communication – that is to say, effort – with the student loan authorities. She "never really focused" on what her payment would be, or her ability to address it. She left the repeated and distinct, unmistakable message with the Court that she would do the minimum she had to do and "not a dime" more. Not what she should do or could do. Indeed, this message extended beyond even the student loan context to other elements of the public purse, indicating that her return to the workforce would be motivated by and bracketed by EI eligibility.

[16] I do not need to find "bad faith," although if I did have to this would probably be such a case; all I need to find is that the applicant, with the civil burden upon her, *has not proven good faith*. I so find.

[17] I also do not find that the applicant has demonstrated, to the required civil standard, a current and future inability to service the loan. I have already discussed the variables; while one may look at the fact her current child support is in arrears, it is only by a month (the father having in fact previously overpaid) and may actually go up.

[18] Finally, if I am wrong on these points, I would not exercise my discretion in the applicant's favour. She may be very "on the ball" about her rights, but demonstrably less so about her public responsibilities.

[19] Against all of this, I have not disregarded the fact that the course of study embarked upon by Ms. Wood has not served her professionally, aside from a short stint in job placement. While use of the course of study is an important factor in a s. 178(1.1) analysis, it is not the only factor and in this case is considerably outweighed by the other facts at bar. As I said in *McCrossin, supra*, and cited with apparent approval in *Re Morrison*, 2019 ABQB 757, in many if not most cases, some factors will weigh in favour of the applicant, others against, and others not apply at all – resulting in an exercise of "I know it when I see it."

[20] In this case, I do not see merit in the applicant's case in either branch of 178(1.1), and if I did see it or if I am wrong, I would not exercise my discretion in her favour.

[21] The application is dismissed and the loans at issue remain payable in accordance with their terms.

Balmanoukian, R.