

Federal Court



Cour fédérale

Date: 20110818

Docket: T-68-09

Citation: 2011 FC 1003

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, August 18, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

NICOLE (NORA) HÉROLD

Plaintiff

and

**HER MAJESTY IN RIGHT OF CANADA ET AL
CANADA REVENUE AGENCY (CRA) AND
THE PARTIES TO THE OFFENCES:
EMPLOYMENT INSURANCE (EI),
HUMAN RESOURCES AND SOCIAL
DEVELOPMENT CANADA (HRSDC)
SUDBURY TAXATION CENTRE**

Defendants

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Nicole (Nora) Hérold (the plaintiff) claims that the defendants have been making unlawful deductions from her wages, pension and unemployment benefits since 1999. She seeks \$600,000 for injury and punitive damages. The defendants submit that they are entitled to deduct these amounts because the plaintiff defaulted on her student loans. Accordingly, they ask the Court to order the plaintiff to pay them \$9,509.28, which amount represents the balance of the student loans in principal and interest.

[2] For the reasons that follow, the Court dismisses the plaintiff's main action and allows the defendants' counterclaim.

[3] This case raises three issues:

- a) **Did the plaintiff repay the student loans made to her under the *Canada Student Loan Act*?**
- b) **Could the defendants recover the monies owing to them by way of set-off against the wages, pension and other amounts due to the plaintiff?**
- c) **Is the defendants' counterclaim statute barred?**

II. Factual background

[4] The chronology of events is as follows:

- Between the months of May and November 1987, the plaintiff entered into a certain number of guaranteed Canada Student Loan agreements with the Bank of Montréal in Vancouver, for an amount totalling \$5,355.
- On June 4, 1989, the guaranteed student loans were transferred to the Bank of Nova Scotia, in Burnaby, British Columbia.
- On August 31, 1989, the plaintiff ceased to be a full-time student at Simon Fraser University. The interest on her student loans became payable on the first day of the seventh month following the month in which she lost her full-time student status (March 1, 1990), at a fixed rate of 10.5% per annum, or \$82.68 per month (see subsection 10(1) of the *Canada Student Loan Regulations*, in the Appendix).
- On February 10, 1990, the plaintiff signed an agreement with the Bank of Nova Scotia consolidating all of her loans. Among other things, this agreement set the repayment terms.
- On March 1, 1990, the plaintiff began making the required monthly payments, which reduced the balance owing on her consolidated loan to \$4,665 in principal and interest.
- On September 5, 1991, the plaintiff went back to school full time and sent the Bank a confirmation of registration, which entitled her to interest-free periods. At that time, the balance owing on the loan was \$4,665.
- On October 18, 1991, the plaintiff took out another guaranteed Canada Student Loans with the Bank, this time for \$3,000.

- On September 8, 1992, the plaintiff signed another confirmation of registration as a full-time student.
- On November 2, 1992, the plaintiff took out another guaranteed Canada Student Loan with the Bank, this time for \$1,785.
- On January 4, 1993, the plaintiff took out another guaranteed Canada Student Loan with the Bank, this time for \$1,785.
- On May 3, 1993, the plaintiff took out another guaranteed Canada Student Loan with the Bank, this time for \$1,785.
- On September 8, 1993, the plaintiff took out another guaranteed Canada Student Loan with the Bank, this time for \$1,785.
- On January 4, 1994, the plaintiff signed another confirmation of registration as a full-time student
- On January 31, 1994, the plaintiff took out another guaranteed Canada Student Loan with the Bank, this time for \$1,785.
- At the end of April 1994, the plaintiff ceased to be a full-time student. The total amount of her new loans was \$11,925.
- Under the *Canada Student Loans Act*, RSC 1985, c S-3 (the Act), subsection 4(3) applies to the consolidated loans from her first period of studies, from 1987 to 1990. Subsection 4(1) applies to the loans made between October 18, 1991, and May 3, 1993.

Subsection 4(2) applies to the loans made between September 8, 1993, and January 31, 1994.

- Under section 14 of the *Canada Student Loans Regulations* (the Regulations), interest at the fixed rate of 9.375% began accruing on the first day of the seventh month following the month in which the plaintiff ceased to be a full-time student (see the Appendix). On the date the loans were consolidated, the plaintiff could either pay this interest or add it to the balance of her loan. Since she failed to pay the interest accrued during that period, the Bank added it to the balance of her loan as of November 1, 1994.
- The Bank also prepared a consolidation agreement in accordance with the Act, which requires that all student loans be consolidated within six months from the date the plaintiff ceased to be a full-time student. Despite having undertaken to sign this consolidation agreement under section 9 of the Regulations, the plaintiff did not sign it.
- The plaintiff was required to start repaying her loan as of November 1, 1994.
- Between November 1, 1994, and October 31, 1996, the plaintiff applied for and was granted six special interest-free periods, except for the period from February 1, 1996, to July 31, 1996.
- On March 10, 1997, the applicant had still not repaid her loan or the accrued interest. The Bank sent her a formal demand for repayment of all amounts owed to it in principal and interest. The plaintiff did not respond to this demand.
- On May 28, 1997, under sections 7 and 7.1 of the Act and section 28 of the Regulations, the Bank made a claim for loss to the Canadian government.

- On February 25, 1998, the Crown paid the Bank the a total amount of \$18,306.58, comprising \$16,742.50 in unpaid principal, \$1,556.68 in accrued interest and \$7.70 in fees. Under section 30 of the Regulations, the Crown then became subrogated in and to all rights of the Bank, and the outstanding guaranteed loan thereby became a debt owed to the Crown. This debt was then managed by the federal Department of Human Resources and Social Development (the Department).
- The Department retained the services of a collections agency. Between May 26, 1998, and July 27, 1998, the plaintiff made three voluntary payments of \$10.00 each. The defendants credited \$30.00 against the interest owed by the plaintiff.
- Between April 9, 1999, and August 14, 2008, under subsection 164(2) of the *Income Tax Act* (see Appendix), the Canada Revenue Agency effected a set-off and deducted \$8,149 in principal and interest from the plaintiff's guaranteed Canada Student Loan debt.
- A note in the Department's accounting system states that between May 15, 2000, and October 15, 2000, a total of \$984.00 was credited to the plaintiff's account (type 140 – non-voluntary payments).
- In June 2004, it was found that the plaintiff had received an Employment Insurance overpayment of approximately \$1,991.00. The plaintiff did not appeal that decision and voluntarily repaid the overpayment by cheque payable to the order of the Receiver General for Canada dated July 9, 2004.
- Over the course of the years 2004 and 2005, the plaintiff received several letters regarding her debt from the defendants, more specifically, from the Department. These

letters refer alternately to a student loan debt and an Employment Insurance overpayment debt but consistently demand repayment of an amount then totalling \$21,118.34. Three different seizure codes appear on the plaintiff's pay stubs, although all of these are in fact set-off transactions under subsection 155(1) of the *Financial Administration Act*.

- Between April 6, 2005, and September 30, 2008, the accounting system (DARS) of the Department, one of the defendants, shows that a total amount of \$16,343.46 was credited to the plaintiff's account (type 190 – payments from other sources).
- In June 2008, it was discovered that the plaintiff had received an Employment Insurance overpayment of \$383.00. The plaintiff did not appeal that decision and repaid the overpayment on August 19, 2008, by cheque payable to the order of the Receiver General for Canada.
- On January 14, 2009, the plaintiff brought her action in this Court. According to the defendants, the plaintiff still owes \$9,182.45 in principal plus \$326.83 in interest at a fixed rate of 9.375% per annum, which explains the total of \$9,509.28 sought in the counterclaim filed on February 13, 2009. Interest continues to accrue at \$2.36 a day.

III. RELEVANT LEGISLATION

[5] The statutory provisions applicable in this case are reproduced in the Appendix to this judgment.

IV. Analysis

a) Does the plaintiff owe the Crown the sums claimed?

[6] The plaintiff testified at the hearing. She stated that she had repaid in full all of her loan, as evidenced by three documents she filed, namely, three excerpts from her Bank of Nova Scotia account statements: one partial statement dated December 30; a second one dated February 1, 1994; and a third covering the period from January 1 to December 9, 1994, at Appendix 5, Appendix 3 and Appendix 4, respectively, of her affidavit dated April 21, 2011.

[7] The plaintiff submits that these documents prove that the student loans made by the Government of Canada and the Government of British Columbia have been repaid in full. She relies on the remark “new” appearing immediately next to two entries: one for \$16,742.30 and another for \$12,108.00. The same remark “new” appears dated November 1, 1994. The plaintiff submits that these are two sham loans that she never agreed to (Hearing Transcript, page 56).

[8] Furthermore, on the same statement, there are two entries showing balances of zero, one next to an amount of \$12,108.00 on November 1, 1994, and another next to an amount of \$13,020.35 on the same date. According to the plaintiff, these last two entries support her position to the effect that all her student loans, be they loans from the province of British Columbia or loans entered into under the Government of Canada’s guaranteed student loan program, have been paid back.

[9] She also relies on two monthly statements from her account at the Bank of Nova Scotia. Balances of zero appear on these statements, again with the remark “new”, next an amount of \$12,108.00, which according to the plaintiff establishes once again that she paid back the student loans taken out with the province.

[10] The plaintiff also called as a witness a Bank of Nova Scotia representative, Ms. Kennedy, who contradicted the plaintiff’s statements (Hearing Transcript, pages 19, 23, 26, 30 and 35). Ms. Kennedy explained that the remark “new” was in fact simply due to the consolidation of the plaintiff’s loans. According to this witness, the Bank had to consolidate the loans when the plaintiff ceased to be a full-time student.

[11] Furthermore, Mr. Vananburg, witness for the defendants, stated that the Department conducts a detailed audit of all student loans before reimbursing the Bank, and the plaintiff’s case was no exception. According to him, the plaintiff still owed a total of \$16,742.50 in 1998, when the Government of Canada became subrogated in the Bank’s rights.

[12] On a balance of probabilities, the evidence in the record favours the defendants’ version, since two witnesses clearly stated that the student loans entered into by the plaintiff under the federal program had not been repaid in 1997 (Hearing Transcript, page 186).

[13] Moreover, as Ms. Kennedy, representative of the Bank of Nova Scotia, explained, the entries on which the plaintiff relies to assert that she no longer owed the Bank anything are clear. These entries in fact prove that the student loans were consolidated in accordance with the terms

of the guaranteed loan program and that on November 1 they were consolidated, not paid back (Hearing Transcript, page 18). As for the plaintiff's claim that the subrogation could not be valid because she had not signed the consolidation agreements, the Court rejects this argument, considering the testimony of Mr. Vananburg. (see Hearing Transcript, pages 182 to 184 and 192 to 194). Moreover, there is evidence in the record, namely section 9 of the Regulations made pursuant to the Act, which provides that a consolidation agreement is valid even if the borrower refuses to sign it.

[14] Considering these testimonies, the Court finds that the plaintiff did not repay the student loans entered into under the Canada Student Loans Program.

b) Could the defendants recover the monies owing to them by way of set-off against the wages and other amounts due to the plaintiff?

[15] The legislation is clear on this: subsection 155(1) of the *Financial Administration Act* provides that the appropriate Minister responsible for collecting a debt may effect a set-off against any sum of money that may be due or payable to the debtor by Her Majesty in right of Canada. Subsection 164(2) of the *Income Tax Act* also allows set-offs against any tax refund or repayment payable to a taxpayer.

[16] In the plaintiff's case, the two provisions referred to above allow the defendants to recover the monies owed to them directly from amounts owing to the plaintiff, be they wages, income tax refunds or benefits under the plaintiff's pension plan, which plan is related to wages.

[17] In the circumstances, the Crown may effect a set-off against any amount it owes to the plaintiff.

[18] In the case at bar, the defendants have relied on these statutory provisions repeatedly over the years. The evidence in the record shows that the defendants have indeed deducted several sums owed to the plaintiff.

[19] Of course the plaintiff claims that these amounts were withheld unlawfully. She refers the Court to section 12.2 of the Treasury Board of Canada Secretariat's policy on the recovery of amounts due to the Crown.

[20] This policy does not apply here because the case at bar deals with a liquid and payable claim, an unpaid student loan, not a claim for damage to Crown property for which an employee is liable. Section 12.2 covers the latter case, not the plaintiff's situation.

c) Is the defendants' counterclaim statute barred ?

[21] For the reasons that follow, the Court finds that the defendants' counterclaim is not statute barred.

[22] The defendants rely on Ontario's *Limitations Act*. This is incorrect. It is, rather, British Columbia's legislation that applies in the case at bar because it governs student loans entered

into in British Columbia. The agreement giving rise to this dispute was in fact entered into in British Columbia.

[23] The applicable limitation period derives from section 19.2 of the *Canada Student Loans Act*, RSC 1985, c S-23, in force December 31, 2002. It provides that no action or proceedings shall be taken to recover money owing under a guaranteed student loan more than six years after the limitation period that applied before the coming into force of this section started to run.

[24] The subrogated party cannot enjoy more rights than the original holder, in this case, the Bank. The Bank's claim has been due and payable since November 1, 1994, the date the loans were consolidated. In this case, the interest-free periods between November 1, 1994, and the date of subrogation did not interrupt the limitation period, which in this case began running the moment the plaintiff lost her full-time student status (see *Canada (Attorney General) v Simpson*, 26 OR (3d) 317 at para 6 [*Simpson*]).

[25] However, subsection 3 of section 19.2 states that the day of the most recent acknowledgment of a borrower's liability in respect of the debt is deemed to be the day on which the limitation period started to run if the acknowledgment was made before the coming into force of this section.

[26] Over the years, the plaintiff made several written requests to the defendants, as well as to ministers and members of Parliament. Counsel for the defendants submits that some of those

requests constitute acknowledgements of debt that interrupt the limitation period and that, in any event, subsection 4 still allows the Crown to effect a set-off.

[27] The rule is clear: set-off cannot be effected against a debt after the limitation period has expired.

[28] What, then, is the day of the most recent acknowledgment of the debt by the plaintiff? In *Simpson*, cited above, Justice Charron reminds us that the case law has clearly defined what constitutes an acknowledgment of debt. She relied on the decision of the House of Lords in *Spencer v Hemmerle*, 1922 2 AC 507. In that decision, it is stated that where an acknowledgment of debt is “coupled with other expressions, such as a promise to pay at a future time or on condition or an absolute refusal to pay, it is for the Court to say whether those other expressions are sufficient to qualify or negative the implied promise to pay”.

[29] The defendants filed more than 267 documents to establish the existence, subrogation and acknowledgment of the debt.

[30] In the Court’s opinion, the correspondence between the plaintiff and the defendants regarding the amounts deducted from her wages and, subsequently, her pension cannot constitute valid acknowledgments of debt since the plaintiff did not consent to these deductions. Therefore, even though she filed budgets to reduce the percentage of the deductions from 30 to 15%, in our view, those documents cannot be used against her. Clearly, the plaintiff found herself in a

position which, on its face, left her with no choice. Moreover, on several occasions, she reasserted her position that she did not owe this money.

[31] And what of this ample correspondence between her and the ministers and members of Parliament? Until 2002, the plaintiff acknowledged her student loan debt but asked the government to forgive the accrued interest. Indeed, the Minister of Finance announced changes to the Canada Student Loans Program in 1999. Under this program, the federal government may forgive the interest accrued on certain student loans, under certain conditions. However, since the plaintiff was in default on her loan, she was not eligible for this new program. All of her numerous requests to ministers Martin, Stewart, Volpe, Graham, Marchesi and Stronach were turned down (see Defendants' Record, tabs 79, 87, 88, 95, 114, 121, 164, 174, 178, 180, 183, 189, 205, 207 and 216).

[32] It is clear that in all of her correspondence from 2004 on, the plaintiff refused to acknowledge the validity of the defendants' claim (see Defendants' Record, tabs 191, 204, 215, 216, 218, 219, 220, 221 and 230).

[33] The defendants' counterclaim is dated February 13, 2009. The time to recover the plaintiff's debt is limited to six years under section 19.2 of the Act, which in the present case refers us to British Columbia's *Limitation Act*, since that is where the student loan was entered into.

[34] The cause of action, namely, the loan and the plaintiff's failure to begin making repayments to the Bank, took place in British Columbia. Therefore, British Columbia's *Limitations Act* applies in this case, pursuant to subsection 19.2(3) of the Act.. According to subsection 3(5) of the *Limitation Act* (see Appendix), the applicable limitation period in this case expires six years after the date on which the cause of action arose.

[35] The validity of the defendants' counterclaim in this case directly depends on the date of the plaintiff's most recent acknowledgment of the debt. Thus, February 13, 2003, becomes a pivotal date.

[36] The Court notes that in all of the documents filed by the defendants, the plaintiff denies the existence of her debt from 2004. However, there are four written documents in the record that warrant closer scrutiny:

- a) The letter dated April 21, 2003, from the plaintiff to one of the defendants, namely, the Department (Defendants' Record, Tab 149). The plaintiff writes, at the beginning of the second paragraph, [TRANSLATION] "It is true that I borrowed money for my post-secondary education. I do not deny that". Further on in that same letter, she offers to pay back her debt, at \$50.00 per month.
- b) Two other written documents, dated June 8, 2003, and November 6, 2003, respectively:

One letter to the Department's Chief, Revenue Accounting, and another to the Minister responsible for the Department, in which the plaintiff acknowledges her debt. In the letter dated June 8, 2003, however, she states, [TRANSLATION] "I disagree with the amounts owed" (see Defendants' Record, Tab 155).

- c) In the letter dated November 6, 2003, to the Honourable Jane Stewart, Minister of Human Resources Development, she repeats her offer under the same conditions she made on April 21, 2003. She also asks the Minister to reduce her debt to zero (see Defendants' Record, Tab 164).

- d) Finally, in a letter dated June 17, 2004, to an assistant of MP Bill Graham, the plaintiff repeats her request: "I see no other solution but to be forgiven". However, she again insists that the Bank's transfer of her file in 1997 was contrary to the regulations then in force (see Defendants' Record, Tab 204).

[37] Nevertheless, paragraph 19.2(6)(b) clearly states that for the purposes of subsections (5) and (7), acknowledgment of liability means acknowledgment of the debt after the coming into force of the 2003 amendments: "a written acknowledgment of the money owing, signed by the borrower or his or her agent or other representative, whether or not a promise to pay can be implied from it and whether or not it contains a refusal to pay".

[38] Considering the wording of paragraph (b), above, there can be no doubt that the written documents in question acknowledge that the debt is due and payable, regardless of whether or

not those documents set conditions. The Act is clear, and the evidence in the record, particularly the written documents referred to above, lead us to conclude that the defendants' counterclaim is not statute barred.

[39] The evidence in the record (see Hearing Transcript, testimony of Ms. Persaud, page 277), establishes that the plaintiff is still indebted to the defendants for a total of \$9,500.17 with interest since June 21, 2011. In the circumstances, the Court notes that the plaintiff still owes the amount claimed by the defendants.

[40] The plaintiff also referred us to case law in support of her position. A close reading of those decisions persuades us that those cases do not apply in the case at bar because the facts and the timeline of events are considerably different. The Court therefore cannot consider this case law.

[41] "An award of costs is not an exact science and is rather a matter of discretion based on good judgment and common sense" (see *Canada (Attorney General) v Chrétien*, 2011 FCA 53 at para 3). Considering the respective means of the parties in this case, the Court finds that each party should pay its own costs.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. It dismisses the main action of the plaintiff.
2. It allows the defendants' counterclaim and orders the plaintiff to pay the defendants the amount of \$9,500.17, with interest at the rate of 9.75%.
3. Each party pays its own costs.

“André F.J. Scott”

Judge

APPENDIX

- The following sections of the *Canada Student Loans Act*, RSC 1985, c S-23, are relevant:

Interest-free period for full-time students

4. (1) Subject to the regulations, no interest is payable by a borrower on a guaranteed student loan made before August 1, 1993 to a full-time student in respect of

(a) any period of studies during which the borrower is a full-time student; or

(b) any subsequent period ending on the last day of the sixth month after the month in which the borrower ceases to be a full-time student.

Idem

(2) Subject to the regulations, no interest is payable by a borrower on a guaranteed student loan made on or after August 1, 1993 to a full-time student in respect of

(a) any period of studies during which the borrower is a full-time student; or

(b) any subsequent period ending on the last day of the month in which the borrower ceases to be a full-time student.

Idem

(3) Notwithstanding subsection (1) but subject to the regulations, where a borrower has ceased to be a full-time student as described in that subsection and thereafter again becomes a full-time student, no interest is payable by the borrower on a guaranteed student loan made and consolidated before August 1,

Exemption de paiement

4. (1) Sous réserve des règlements, les prêts garantis consentis à un étudiant à temps plein avant le 1er août 1993 ne portent pas intérêt pour l'emprunteur durant les périodes suivantes :

a) la période d'études accomplie comme étudiant à temps plein;

b) toute période subséquente se terminant le dernier jour du sixième mois suivant celui où il cesse d'être étudiant à temps plein.

Idem

(2) Sous réserve des règlements, les prêts garantis consentis à compter du 1er août 1993 à un étudiant à temps plein ne portent pas intérêt pour l'emprunteur durant les périodes suivantes :

a) la période d'études accomplie comme étudiant à temps plein;

b) toute période subséquente se terminant le dernier jour du mois où il cesse d'être étudiant à temps plein.

Idem

(3) Par dérogation au paragraphe (1) mais sous réserve des règlements, lorsqu'un emprunteur cesse d'être étudiant à temps plein dans le cas visé à ce paragraphe et redevient par la suite étudiant à temps plein, les prêts garantis consentis et consolidés avant le 1er août 1993 ne portent pas intérêt pour lui durant la période commençant à la

1993 in respect of the period commencing on the prescribed day and ending on the last day of the sixth month after the month in which the borrower again ceases to be a full-time student.

Idem

(4) Notwithstanding subsection (1) but subject to the regulations, where a borrower has ceased to be a full-time student as described in that subsection and thereafter again becomes a full-time student, no interest is payable by the borrower on a guaranteed student loan made before August 1, 1993 and consolidated after that day in respect of the period commencing on the prescribed day and ending on the last day of the month in which the borrower again ceases to be a full-time student.

Guarantee by Minister

7. Subject to this Act and the regulations, the Minister is liable to pay to a lender the amount of any loss sustained by it as a result of a loan made to a qualifying student if

(a) the loan was made pursuant to an application to a lender, signed by the borrower, stating that the borrower has not received any other loan pursuant to the certificate of eligibility referred to in paragraph (b), or pursuant to any other certificate of eligibility relating to the period of studies specified in the certificate of eligibility referred to in paragraph (b), except any such loan the amount of which, when added to the amount of the loan applied for, did not exceed the applicable loan limit set out in section 3 for that period of studies;

date fixée par règlement et se terminant le dernier jour du sixième mois suivant celui où il cesse une nouvelle fois d'être étudiant à temps plein.

Idem

(4) Par dérogation au paragraphe (1) mais sous réserve des règlements, lorsqu'un emprunteur cesse d'être étudiant à temps plein dans le cas visé à ce paragraphe et redevient par la suite étudiant à temps plein, les prêts garantis consentis avant le 1er août 1993 et consolidés après cette date ne portent pas intérêt pour lui durant la période commençant à la date fixée par règlement et se terminant le dernier jour du mois où il cesse une nouvelle fois d'être étudiant à temps plein.

Garantie du ministre

7. Sous réserve des autres dispositions de la présente loi et de ses règlements, le ministre indemnise le prêteur de toute perte occasionnée à celui-ci par un prêt consenti à un étudiant admissible, si les conditions suivantes sont réunies :

a) dans la demande de prêt qu'il a signée, l'emprunteur déclarait n'avoir reçu, aux termes du certificat d'admissibilité visé à l'alinéa b) — ou de quelque autre certificat d'admissibilité ayant trait à la période d'études précisée dans le certificat d'admissibilité visé à l'alinéa b) — aucun autre prêt supérieur à la différence entre le plafond prévu à l'article 3 et le montant du prêt demandé;

(b) the loan was made to a borrower who filed with the lender making the loan a document that purported to be and was accepted by a responsible officer of that lender, in good faith, as a certificate of eligibility issued or caused to be issued by an appropriate authority relating to that borrower for the period of studies specified in that certificate;

(c) the amount of the loan did not exceed the lesser of the amount set out in the certificate of eligibility and the applicable loan limit set out in section 3 for the relevant period of studies;

(d) no fee, service charge or charge of any kind, other than interest calculated in the prescribed manner and on the prescribed amount and not exceeding the prescribed rate, was by the terms of the loan payable in respect of the loan, except as provided in the regulations in any case where the borrower is in default;

(e) the loan was repayable in full by the terms thereof

(i) in the case of a loan made to a full-time student, subject to the regulations, in accordance with practices of the lender in respect of repayment, subject to the right of the borrower to repay at any time all or any part of the principal amount of the loan outstanding at that time and any interest then accrued, and

(ii) in the case of a loan made to a part-time student, within a period of not more than two years after

b) l'emprunteur avait remis au prêteur un document censé être, et accepté à ce titre de bonne foi par un responsable de l'organisme prêteur, un certificat d'admissibilité délivré par ou pour une autorité compétente pour la période d'études en cause;

c) le montant du prêt ne dépassait pas le montant indiqué dans le certificat d'admissibilité ou, s'il est inférieur, le plafond prévu à l'article 3;

d) les seuls frais afférents au prêt — exception faite des frais prévus par règlement en cas de défaut — étaient le montant de l'intérêt calculé de la façon prévue par règlement sur le montant prévu par règlement et égal ou inférieur au taux prévu par règlement ou déterminé de la façon prévue par règlement;

e) le contrat de prêt prévoyait le remboursement intégral :

(i) s'agissant d'un prêt destiné à un étudiant à temps plein, sous réserve des règlements, en conformité avec les pratiques du prêteur en matière de remboursement, le remboursement, en tout ou en partie, du principal impayé, ainsi que de l'intérêt couru, restant toutefois possible avant l'échéance,

(ii) s'agissant d'un prêt destiné à un étudiant à temps partiel, dans un délai maximal de deux ans à compter de la

the loan was made, subject to the right of the borrower to repay at any time all or any part of the principal amount of the loan outstanding at that time and any interest then accrued; and

date où le prêt a été consenti, le remboursement, en tout ou en partie, du principal impayé, ainsi que de l'intérêt couru, restant toutefois possible avant l'échéance;

(f) the loan was made in accordance with an agreement in prescribed form between the borrower and the lender making the loan, containing

f) le contrat de prêt, établi en la forme déterminée par le ministre, contenait :

(i) in the case of a loan made to a full-time student, provisions respecting payment of the principal amount of the loan and interest thereon by the borrower as described in sections 4 and 5, and such other provisions as may be prescribed, or

(i) s'agissant d'un prêt destiné à un étudiant à temps plein, les dispositions prévues aux articles 4 et 5, et les dispositions réglementaires,

(ii) in the case of a loan made to a part-time student, such provisions as may be prescribed.

(ii) s'agissant d'un prêt destiné à un étudiant à temps partiel, les dispositions réglementaires.

Limitation period

19.1 (1) Subject to this section and section 19.2, no action or proceedings shall be taken to recover money owing under a guaranteed student loan more than six years after the day on which the money becomes due and payable.

Prescription

19.1 (1) Sous réserve des autres dispositions du présent article et de l'article 19.2, toute poursuite visant le recouvrement d'une créance relative à un prêt garanti se prescrit par six ans à compter de la date à laquelle la créance devient exigible.

Deduction and set-off

(2) Money owing under a guaranteed student loan may be recovered at any time by way of deduction from or set-off against any sum of money that may be due or payable by Her Majesty in right of Canada to the borrower or the estate or succession of the borrower.

Compensation et déduction

(2) Le recouvrement, par voie de compensation ou de déduction, du montant d'une créance exigible relative à un prêt garanti peut être effectué en tout temps sur toute somme à payer par Sa Majesté du chef du Canada à

l'emprunteur ou à sa succession.

Acknowledgment of liability

(3) If a borrower's liability for money owing under a guaranteed student loan is acknowledged in accordance with subsection (4), the time during which the limitation period has run before the acknowledgment does not count in the calculation of that period.

Types of acknowledgments

(4) An acknowledgment of liability means

(a) a written promise to pay the money owing, signed by the borrower or his or her agent or other representative;

(b) a written acknowledgment of the money owing, signed by the borrower or his or her agent or other representative, whether or not a promise to pay can be implied from it and whether or not it contains a refusal to pay;

(c) a part payment by the borrower or his or her agent or other representative of any money owing; or

(d) any acknowledgment of the money owing made by the borrower, his or her agent or other representative or the trustee or administrator in the course of proceedings under the *Bankruptcy and Insolvency Act* or any other legislation dealing with the payment of debts.

Reconnaissance de responsabilité

(3) Si, conformément au paragraphe (4), il est reconnu que l'emprunteur est responsable d'une créance exigible relative à un prêt garanti, la période courue avant cette reconnaissance ne compte pas dans le calcul du délai de prescription.

Types de reconnaissance de responsabilité

(4) Constituent une reconnaissance de responsabilité :

a) la promesse écrite de payer la créance exigible, signée par l'emprunteur, son mandataire ou autre représentant;

b) la reconnaissance écrite de l'exigibilité de la créance, signée par l'emprunteur, son mandataire ou autre représentant, que celle-ci contienne ou non une promesse implicite de payer ou une déclaration de refus de paiement;

c) le paiement, même partiel, de la créance exigible par l'emprunteur, son mandataire ou autre représentant;

d) la reconnaissance par l'emprunteur, son mandataire, son représentant, le syndic ou l'administrateur de l'exigibilité de la créance, dans le cadre de mesures prises conformément à la *Loi sur la faillite et l'insolvabilité* ou dans le cadre de toute autre loi relative au paiement de dettes.

Acknowledgment after expiry of limitation period

(5) If a borrower's liability for money owing under a guaranteed student loan is acknowledged in accordance with subsection (4) after the expiry of the limitation period in respect of the loan, an action or proceedings to recover the money may, subject to subsections (3) and (6), be brought within six years after the date of the acknowledgment.

Limitation period suspended

(6) The running of a limitation period in respect of a guaranteed student loan is suspended during any period in which it is prohibited to commence or continue an action or other proceedings against the borrower to recover money owing under the loan.

Enforcement proceedings

(7) This section does not apply in respect of an action or proceedings relating to the execution, renewal or enforcement of a judgment.

- 2003, c. 15, s. 13.

Application

19.2 (1) This section applies only in respect of the recovery of money that became due and payable under a guaranteed student loan before the coming into force of this section.

Limitation period

(2) Subject to this section, no action or proceedings shall be taken to recover money owing under a guaranteed student loan more than six years after the day on which the

Reconnaissance de responsabilité après l'expiration du délai de prescription

(5) Si, après l'expiration du délai de prescription, il est reconnu, conformément au paragraphe (4), qu'un emprunteur est responsable d'une créance exigible relative à un prêt garanti, des poursuites en recouvrement visant cette créance peuvent être intentées, sous réserve des paragraphes (3) et (6), dans les six ans suivant la date de la reconnaissance de responsabilité.

Suspension du délai de prescription

(6) La prescription ne court pas pendant la période au cours de laquelle il est interdit d'intenter ou de continuer contre un emprunteur des poursuites en recouvrement d'une créance exigible relative à un prêt garanti.

Mise en œuvre de décisions judiciaires

(7) Le présent article ne s'applique pas à des poursuites relatives à l'exécution, la mise en œuvre ou le renouvellement d'une décision judiciaire.

- 2003, ch. 15, art. 13.

Application

19.2 (1) Le présent article s'applique à l'égard de poursuites en recouvrement d'une créance relative à un prêt garanti qui est exigible avant l'entrée en vigueur du présent article.

Prescription

(2) Sous réserve des dispositions du présent article, toute poursuite visant le recouvrement d'une créance exigible relative à un prêt garanti se prescrit par

limitation period that applied before the coming into force of this section started to run.

six ans à compter de la date à laquelle le délai de prescription applicable antérieurement à l'entrée en vigueur du présent article a commencé à courir.

Prior acknowledgments

Reconnaissance de responsabilité antérieure

(3) For the purposes of subsection (2), the day of the most recent acknowledgment of a borrower's liability in respect of money owing under a guaranteed student loan is deemed to be the day on which the limitation period started to run if

(3) Pour l'application du paragraphe (2), le délai de prescription commence à courir à partir de la date de la dernière reconnaissance de responsabilité qui a été exprimée avant l'entrée en vigueur du présent article si, selon le droit en vigueur à ce moment, le temps couru avant une telle reconnaissance de responsabilité n'entraîne pas dans le calcul de ce délai.

(a) the acknowledgment was made before the coming into force of this section; and

(b) under the law applicable at the time of the acknowledgment, the time during which the limitation period ran before the acknowledgment did not count in the calculation of that period.

Deduction and set-off

Compensation et déduction

(4) Money owing under a guaranteed student loan may be recovered at any time by way of deduction from or set-off against any sum of money that may be due or payable by Her Majesty in right of Canada to the borrower or the estate or succession of the borrower.

(4) Le recouvrement, par voie de compensation ou de déduction, du montant d'une créance exigible relative à un prêt garanti peut être effectué en tout temps sur toute somme à payer par Sa Majesté du chef du Canada à l'emprunteur ou à sa succession.

Acknowledgment of liability

Reconnaissance de responsabilité

(5) If, on or after the day on which this section comes into force, a borrower's liability for money owing under a guaranteed student loan is acknowledged in accordance with subsection (6), the time during which the limitation period has run before the acknowledgment does not count in the calculation of that period.

(5) Si, à l'entrée en vigueur du présent article ou par la suite, il est reconnu conformément au paragraphe (6) que l'emprunteur est responsable d'une créance exigible relative à un prêt garanti, la période courue avant cette reconnaissance ne compte pas dans le calcul du délai de prescription.

Types of acknowledgments

(6) For the purposes of subsections (5) and (7), an acknowledgment of liability means

(a) a written promise to pay the money owing, signed by the borrower or his or her agent or other representative;

(b) a written acknowledgment of the money owing, signed by the borrower or his or her agent or other representative, whether or not a promise to pay can be implied from it and whether or not it contains a refusal to pay;

(c) a part payment by the borrower or his or her agent or other representative of any money owing; or

(d) any acknowledgment of the money owing made by the borrower, his or her agent or other representative or the trustee or administrator in the course of proceedings under the *Bankruptcy and Insolvency Act* or any other legislation dealing with the payment of debts.

Acknowledgment after expiry of limitation period

(7) If, after the expiry of the limitation period in respect of a guaranteed student loan — including any limitation period that expired before the coming into force of this section — and on or after the day on which this section comes into force, a borrower's liability for money owing under the loan is acknowledged in accordance with subsection (6), an action or proceedings to recover the money may, subject

Types de reconnaissance de responsabilité

(6) Constituent une reconnaissance de responsabilité pour l'application des paragraphes (5) et (7) :

a) la promesse écrite de payer la créance exigible, signée par l'emprunteur, son mandataire ou autre représentant;

b) la reconnaissance écrite de l'exigibilité de la créance, signée par l'emprunteur, son mandataire ou autre représentant, que celle-ci contienne ou non une promesse implicite de payer ou une déclaration de refus de paiement;

c) le paiement, même partiel, de la créance exigible par l'emprunteur, son mandataire ou autre représentant;

d) la reconnaissance par l'emprunteur, son mandataire, son représentant, le syndic ou l'administrateur de l'exigibilité de la créance, dans le cadre de mesures prises conformément à la *Loi sur la faillite et l'insolvabilité* ou dans le cadre de toute autre loi relative au paiement de dettes.

Reconnaissance de responsabilité après l'expiration du délai de prescription

(7) Si, à l'entrée en vigueur du présent article ou par la suite, il est reconnu, conformément au paragraphe (6), après l'expiration du délai de prescription visé au paragraphe (2) ou après l'expiration du délai de prescription applicable antérieurement à l'entrée en vigueur du présent article, qu'un emprunteur est responsable d'une créance exigible

to subsections (5) and (8), be brought within six years after the date of the acknowledgment.

relative à un prêt garanti, des poursuites en recouvrement visant cette créance peuvent être intentées, sous réserve des paragraphes (5) et (8), dans les six ans suivant la date de la reconnaissance de responsabilité.

Limitation period suspended

(8) The running of a limitation period in respect of a guaranteed student loan is, commencing on the day on which this section comes into force, suspended during any period in which it is prohibited to commence or continue an action or other proceedings against the borrower to recover money owing under the loan.

Statutory bar

(9) Subject to subsection (7), if the limitation period in respect of a guaranteed student loan expired before the coming into force of this section, no action or proceeding shall be taken to recover money owing under the loan.

Enforcement proceedings

(10) This section does not apply in respect of an action or proceedings relating to the execution, renewal or enforcement of a judgment.

- The following sections of the *Canada Student Loans Regulations*, SOR/93-392, are relevant:

7. (1) Subject to subsection (2), the borrower of a full-time guaranteed loan shall, before the first day of the seventh month after the month in which the borrower ceases to be a full-time student, enter into a consolidated guaranteed student loan agreement with the lender to which the borrower is indebted.

7. (1) Sous réserve du paragraphe (2), l'emprunteur à qui un prêt garanti à temps plein a été consenti doit, avant le premier jour du septième mois suivant celui où il cesse d'être étudiant à temps plein, conclure un contrat de prêt garanti consolidé avec le prêteur à qui il est redevable.

(2) Where a borrower who has entered into a consolidated guaranteed student loan agreement again becomes a full-time student and the borrower's obligations are

(2) Lorsque l'emprunteur ayant conclu un contrat de prêt garanti consolidé redevient étudiant à temps plein et que ses

suspended in accordance with subsection 3(3), the borrower shall, whether or not an additional full-time guaranteed loan is made to the borrower, before the first day of the seventh month after the month in which the borrower again ceases to be a full-time student, enter into a new consolidated guaranteed student loan agreement with the lender in place of the former consolidated guaranteed student loan agreement.

(3) A consolidated guaranteed student loan agreement entered into in accordance with subsection (1) or (2) shall set out, in accordance with section 8, the principal amount of the loan and the period and frequency of the payments to be made to discharge that amount and the interest thereon calculated at the rate determined in accordance with sections 14 and 15 or sections 16.2 to 16.4, as the case may be.

(4) Repayment provisions included in a consolidated guaranteed student loan agreement entered into in accordance with subsection (1) or (2) shall be consistent with the lender's standard practices in relation to unsecured consumer loans and shall take into account the borrower's capacity to pay installments as they become due.

9. (1) Subject to subsection (8), the outstanding principal and any accrued interest in respect of a guaranteed student loan become payable

(a) where the borrower fails to enter into a consolidated guaranteed student loan agreement in accordance with subsection 7(1) or (2) and the borrower does not fulfil the requirements of subsection 3(1)

obligations sont suspendues en application du paragraphe 3(3), il doit, avant le premier jour du septième mois suivant celui où il cesse de nouveau d'être étudiant à temps plein, qu'un nouveau prêt garanti à temps plein lui ait été consenti ou non, conclure avec le prêteur un nouveau contrat de prêt garanti consolidé en remplacement du contrat précédent.

(3) Le contrat de prêt garanti consolidé conclu aux termes des paragraphes (1) ou (2) doit indiquer, conformément à l'article 8, le principal du prêt ainsi que la fréquence et la durée des paiements à effectuer pour acquitter ce montant et les intérêts y afférents calculés au taux déterminé conformément aux articles 14 et 15 ou aux articles 16.2 à 16.4, selon le cas.

(4) Les dispositions relatives au remboursement stipulées dans le contrat de prêt garanti consolidé conclu aux termes des paragraphes (1) ou (2) doivent être conformes aux pratiques habituelles du prêteur à l'égard des prêts à la consommation non garantis et tenir compte de la capacité de l'emprunteur d'effectuer les paiements au fur et à mesure de leur échéance.

9. (1) Sous réserve du paragraphe (8), le principal impayé et les intérêts courus d'un prêt garanti deviennent exigibles :

a) lorsque l'emprunteur omet de conclure un contrat de prêt garanti consolidé conformément aux paragraphes 7(1) ou (2) et qu'il ne remplit pas les conditions prévues au paragraphe 3(1) avant qu'un jugement

before a judgment is obtained against the borrower and such that the confirmed period on the confirmation of enrolment referred to in paragraph 3(1)(a) begins on or before the last day of the six-month period after the month in which the borrower ceased to be a full-time student, on the day following the last day of that six-month period;

soit rendu contre lui et de telle sorte que la période confirmée indiquée sur la confirmation d'inscription visée à l'alinéa 3(1)a débute au plus tard le jour où expire la période de six mois suivant le mois où il a cessé d'être étudiant à temps plein, le lendemain du jour d'expiration de cette période;

10. (1) A borrower who has been the subject of a measure taken in accordance with subsection 9(3), (4) or (5) is entitled to an interest-free period or repayment assistance under section 19 or 20 of the Canada Student Financial Assistance Regulations if, on or after the earlier of the day referred to in paragraph 9(1)(a), (b) or (i) and the day on which the measure was taken,

10. (1) L'emprunteur qui a fait l'objet d'une mesure prévue aux paragraphes 9(3), (4) ou (5) a le droit de bénéficier d'une période d'exemption d'intérêts ou de toute aide au remboursement visée aux articles 19 ou 20 du Règlement fédéral sur l'aide financière aux étudiants si, depuis le jour visé aux alinéas 9(1)a, b) ou i) ou, s'il est antérieur, le jour où cette mesure a été prise :

(a) the borrower has fulfilled the requirements of section 16 of the Canada Student Financial Assistance Regulations in respect of the borrower's student loans, if any;

a) il s'est conformé aux exigences de l'article 16 du Règlement fédéral sur l'aide financière aux étudiants à l'égard des prêts d'études qui lui ont été consentis, le cas échéant;

(b) an event referred to in paragraph 9(1)(h) or subsection 9(9) has not occurred in respect of the borrower's guaranteed student loans;

b) aucun des événements visés à l'alinéa 9(1)h) et au paragraphe 9(9) n'est survenu à l'égard de ses prêts garantis;

(c) a judgment has not been obtained against the borrower in respect of those loans; and

c) aucun jugement n'a été rendu contre lui à l'égard de ces prêts;

(d) the borrower has, in respect of the guaranteed student loan agreements, paid the interest accrued to a day and fulfilled the terms of a repayment arrangement entered into with the lender or with the Minister, as the case may be, that is no more onerous to the borrower than six consecutive payments

d) il a payé, à l'égard des contrats de prêt garanti, les intérêts courus jusqu'à une date donnée et il s'est conformé aux conditions du plan de remboursement dont il a convenu avec le prêteur ou avec le ministre, selon le cas, lequel ne lui impose pas une charge plus lourde que l'équivalent de six

subsequent to that day that are made in accordance with those agreements.

paiements consécutifs faits après cette date aux termes de ces contrats.

12. (1) A borrower shall attend any meeting called to discuss the borrower's guaranteed student loan, where requested to do so by the lender or Her Majesty or her agents.

12. (1) L'emprunteur est tenu d'assister, à la demande du prêteur, de Sa Majesté ou des agents de celle-ci, à toute réunion convoquée dans le but de discuter du prêt garanti qui lui a été consenti.

(2) A borrower shall authorize the lender to exchange with consumer credit grantors, credit bureaus and credit reporting agencies information in relation to all guaranteed student loans of the borrower, in accordance with any laws applicable to unsecured loans to which the Act does not apply and which are in effect in a province in which the guaranteed student loan agreement is made, or in a province in which a lender to which the loan agreement is assigned is situated.

(2) L'emprunteur doit autoriser le prêteur à échanger avec les fournisseurs de crédit à la consommation, les agences d'évaluation du crédit et les services d'informations financières des renseignements concernant tous ses prêts garantis, conformément aux lois régissant les prêts non garantis auxquels la Loi ne s'applique pas, qui sont en vigueur dans la province où le contrat de prêt garanti est conclu ou dans celle où est situé le prêteur auquel le contrat de prêt est cédé.

14. (1) Whether or not the borrower enters into a consolidated guaranteed student loan agreement pursuant to subsection 7(1) or (2), the annual rate of interest payable by a borrower to a lender on any day on a full-time guaranteed loan to which subsection 4(2) or (4) of the Act applies is the Class "A" rate of interest in effect on that day, and is applicable for the period

14. (1) Que l'emprunteur conclue ou non un contrat de prêt garanti consolidé conformément aux paragraphes 7(1) ou (2), le taux d'intérêt annuel payable par lui au prêteur, à une date donnée, à l'égard d'un prêt garanti à temps plein visé par les paragraphes 4(2) ou (4) de la Loi est le taux d'intérêt de la catégorie « A » en vigueur à cette date et s'applique à la période :

(a) commencing on the first day of the month after the month in which the borrower ceased to be a full-time student, and

a) débutant le premier jour du mois suivant celui où il a cessé d'être étudiant à temps plein;

(b) ending on the earlier of

b) se terminant au premier en date des jours suivants :

(i) the last day of the sixth month after the month in which the borrower ceased to be a full-time student, and

(i) le dernier jour du sixième mois suivant celui où il a cessé d'être étudiant à temps plein,

(ii) the day before the day on which

(ii) le jour précédant celui où il

the borrower enters into a consolidated guaranteed student loan agreement pursuant to subsection 7(1) or (2).

conclut un contrat de prêt garanti consolidé conformément aux paragraphes 7(1) ou (2).

(2) The annual rate of interest payable by a borrower to a lender on any day on a full-time guaranteed loan to which subparagraph (1)(b)(ii) applies, is the rate of interest determined in accordance with subsection 15(1), and is applicable for the period

(2) Le taux d'intérêt annuel payable par l'emprunteur au prêteur, à une date donnée, à l'égard d'un prêt garanti à temps plein visé par le sous-alinéa (1)b(ii) est le taux calculé conformément au paragraphe 15(1) et s'applique à la période :

(a) commencing on the day on which the borrower enters into a consolidated guaranteed student loan agreement pursuant to subsection 7(1) or (2), and

a) débutant le jour où il conclut un contrat de prêt garanti consolidé conformément aux paragraphes 7(1) ou (2);

(b) ending on the last day of the sixth month after the month in which the borrower ceased to be a full-time student.

b) se terminant le dernier jour du sixième mois suivant celui où il a cessé d'être étudiant à temps plein.

(3) Subject to subsection (4), the aggregate amount of the interest accrued pursuant to subsections (1) and (2) shall become payable on the last day of the seventh month after the month in which the borrower ceased to be a full-time student.

(3) Sous réserve du paragraphe (4), le montant total des intérêts courus en application des paragraphes (1) et (2) devient exigible le dernier jour du septième mois suivant celui où l'emprunteur a cessé d'être étudiant à temps plein.

(4) Unless the borrower agrees to pay the aggregate amount of the interest accrued pursuant to subsections (1) and (2) on or before the day specified in subsection (3) together with the borrower's first instalment referred to in paragraph 8(7)(a), that interest shall be added to the principal amount of the full-time guaranteed loan on the first day of the seventh month after the month in which the borrower ceased to be a full-time student, and thereafter shall be treated as prescribed by subsection 15(1).

(4) À moins que l'emprunteur ne consente à en payer la totalité au plus tard le jour visé au paragraphe (3) avec le premier paiement qu'il effectue aux termes de l'alinéa 8(7)a), les intérêts courus en application des paragraphes (1) et (2) sont ajoutés au principal du prêt garanti à temps plein le premier jour du septième mois suivant celui où il a cessé d'être étudiant à temps plein, après quoi ils sont traités conformément au paragraphe 15(1).

(5) Nothing in this section shall be construed as preventing the lender and the borrower from agreeing to an annual rate of

(5) Le présent article n'a pas pour effet d'empêcher le prêteur et l'emprunteur de convenir d'un taux d'intérêt annuel qui est

interest that is lower than the rate prescribed by subsections (1) and (2).

inférieur à celui prescrit aux paragraphes (1) et (2).

28. (1) A claim by a lender against the Minister in respect of the amount of any loss sustained as a result of a guaranteed student loan shall be made

28. (1) Le prêteur qui demande une indemnisation au ministre pour la perte que lui a occasionnée un prêt garanti doit présenter sa demande :

(a) where the rights of a lender against a borrower are terminated pursuant to section 12 of the Act, as soon as evidence of the death or disappearance of the borrower is obtained by the lender;

a) lorsqu'il y a extinction de ses droits à l'encontre de l'emprunteur en vertu de l'article 12 de la Loi, dès qu'il obtient la preuve du décès ou de la disparition de l'emprunteur;

(b) where the rights of the lender against a borrower are terminated pursuant to section 13 of the Act, forthwith on receipt of a notice issued to the lender under paragraph 27(b);

b) lorsqu'il y a extinction de ses droits à l'encontre de l'emprunteur en vertu de l'article 13 de la Loi, dès qu'il reçoit l'avis visé à l'alinéa 27b);

(c) subject to subsections (2) and (3), if the borrower is in default in the payment of an instalment, fails to enter into a consolidated guaranteed student loan agreement as required by subsection 7(1) or (2) or fails to comply with subsection 24(3) of the Canada Student Financial Assistance Regulations, within the period beginning on the day that is three months after the day on which the default or failure began and ending 180 days after the day on which the default or failure began; and

c) sous réserve des paragraphes (2) et (3), lorsqu'il y a défaut de la part de l'emprunteur d'effectuer un paiement, de conclure un contrat de prêt garanti consolidé comme le prévoient les paragraphes 7(1) ou (2) ou de se conformer aux exigences du paragraphe 24(3) du Règlement fédéral sur l'aide financière aux étudiants, au cours de la période commençant le jour qui suit de trois mois le premier jour de défaut et se terminant le cent quatre-vingtième jour suivant le premier jour de défaut;

(d) where the borrower makes a consumer proposal, files an assignment for the benefit of creditors or otherwise becomes subject to the Bankruptcy and Insolvency Act or any regulations made thereunder or any provincial law relating to the orderly payment of debts, within the period beginning on the day on which the consumer proposal is filed or the day on which the borrower files the

d) lorsque l'emprunteur fait une proposition de consommateur, dépose un acte de cession en faveur de ses créanciers ou tombe autrement sous le coup de la Loi sur la faillite et l'insolvabilité ou de ses règlements d'application ou des lois provinciales concernant le paiement méthodique des dettes, au cours de la période commençant le jour du dépôt de la

assignment or otherwise becomes subject to such law, whichever is earliest, and ending 180 days after that day.

proposition de consommateur ou le jour où l'emprunteur dépose l'acte de cession ou tombe autrement sous le coup de ces lois ou règlements, selon le premier en date de ces jours, et se terminant le 180^e jour suivant ce jour.

(2) A lender may make a claim for loss after the period referred to in paragraph (1)(c) but, where it does so, the Minister shall not pay any uncollected earned interest that accrues after that period unless, before the expiration of that period, the lender has requested from the Minister and the Minister has authorized an extension of the time during which the lender is permitted to make a claim for loss.

(2) Le prêteur peut présenter une demande d'indemnisation après la période visée à l'alinéa (1)c); toutefois, le ministre ne paie dans ce cas aucun intérêt non perçu qui court après cette période à moins que, avant la fin de celle-ci, il n'ait accordé au prêteur, sur demande de celui-ci, une prolongation de la période pendant laquelle il peut présenter une demande d'indemnisation.

(3) The maximum extension of a period in respect of which the Minister may make an authorization at one time pursuant to subsection (2) is 180 days.

(3) La prorogation maximale que le ministre peut accorder dans chaque cas aux termes du paragraphe (2) est de 180 jours.

(4) The amount of loss sustained by a lender as a result of a guaranteed student loan shall be determined by calculating the aggregate of

(4) Le montant de la perte du prêteur occasionnée par un prêt garanti est égal à la somme des montants suivants :

(a) the unpaid balance of the principal amount of the loan,

a) le principal impayé du prêt;

(b) the uncollected earned interest on the loan as of

b) le montant non perçu de l'intérêt couru sur le prêt, calculé :

(i) the day of the death of the borrower, where the rights of the lender against the borrower are terminated under subsection 12(1) of the Act,

(i) à la date du décès de l'emprunteur, dans les cas où il y a extinction des droits du prêteur à l'encontre de l'emprunteur en vertu du paragraphe 12(1) de la Loi,

(ii) such day after the death or disappearance of the borrower as the Minister may fix pursuant to subsection 12(2) of the Act, where the rights of the lender against the

(ii) à toute date postérieure au décès ou à la disparition de l'emprunteur que fixe le ministre en vertu du paragraphe 12(2) de la Loi, dans les cas où il y a extinction des droits du

borrower are terminated under that subsection,

(iii) the day that is 20 days after the day on which a notice referred to in section 27 is sent to the lender, where the rights of the lender against the borrower are terminated under section 13 of the Act,

(iv) the day that is 30 days after the beginning of the period referred to in paragraph (1)(d), in the case of a claim made as a result of the circumstances referred to in that paragraph, or

(v) the day that is

(A) where a lender makes a claim for loss after the period referred to in paragraph (1)(c), 180 days after the day on which the borrower is in default in the payment of an instalment or fails to enter into a consolidated guaranteed student loan agreement, or is the day that is the last day of the extension authorized pursuant to subsection (2), and

(B) where a lender makes a claim for loss before the end of the period referred to in paragraph (1)(c), the day on which payment is approved by the Minister,

(c) any uncollected and assessed legal fees and disbursements actually incurred by the lender in relation to litigation concerning the collection or protection of the interests of the Minister, in respect

prêteur à l'encontre de l'emprunteur en vertu de ce paragraphe,

(iii) le vingtième jour suivant la date où l'avis visé à l'article 27 a été envoyé au prêteur, dans les cas où il y a extinction des droits de celui-ci à l'encontre de l'emprunteur en vertu de l'article 13 de la Loi,

(iv) le trentième jour suivant le début de la période mentionnée à l'alinéa (1)d), dans les cas où une demande d'indemnisation est présentée à cause des circonstances visées à cet alinéa,

(v) à la date correspondant :

(A) dans le cas où le prêteur présente une demande d'indemnisation pour perte après la période visée à l'alinéa (1)c), au 180^e jour suivant celui où survient le défaut, de la part de l'emprunteur, d'effectuer un paiement ou de conclure un contrat de prêt garanti consolidé, ou à la date d'expiration de la prorogation accordée en vertu du paragraphe (2),

(B) dans le cas où le prêteur présente une demande d'indemnisation pour perte avant la fin de la période visée à l'alinéa (1)c), au jour où le ministre autorise le versement de l'indemnité;

c) le montant taxé mais non recouvré des honoraires d'avocat et des débours que le prêteur a effectivement supportés dans le cadre d'un litige pour recouvrer

of the loan, but not including legal fees and disbursements incurred for the purposes of obtaining a rectification of a guaranteed student loan agreement, and

(d) other reasonable disbursements actually incurred by the lender in collecting or endeavouring to collect the outstanding loan or in protecting the interests of the Minister.

(e) [Repealed, SOR/95-331, s. 14]

(5) A claim for loss made in accordance with subsection (1) or 28.1(1) must be substantiated by all of the original documentation held by the lender in respect of the loan, including calculations or recalculations requested by the Minister in accordance with subsection 28.1(2), if any. If the claim for loss is not substantiated in that way, the amount calculated under subsection (4) or subsection 28.1(2) may be reduced by an amount equal to the interest accruing on the loan during the period

(a) where the Minister makes a request to the lender for calculations or recalculations in accordance with subsection 28.1(2), beginning on the date of that request and ending on the day on which the Minister receives those calculations or recalculations; and

(b) in any other case, beginning on the day on which the claim for loss was received by the Minister and ending on the day on which the Minister receives the required documents.

30. (1) Notwithstanding subsections 28(2) and (5), where, under the Act or these Regulations, the Minister pays to a lender the amount of loss sustained by the lender as a result of a guaranteed student loan, Her

le prêt impayé ou protéger les intérêts du ministre à cet égard, à l'exclusion des honoraires d'avocat et des débours supportés pour la rectification d'un contrat de prêt garanti;

d) tout montant raisonnable au titre des autres débours que le prêteur a effectivement engagés pour recouvrer ou tenter de recouvrer le prêt impayé ou pour protéger les intérêts du ministre.

e) [Abrogé, DORS/95-331, art. 14]

(5) La demande d'indemnisation présentée selon les paragraphes (1) ou 28.1(1) doit être accompagnée de tous les documents originaux que détient le prêteur au sujet du prêt, y compris le détail des calculs ou des nouveaux calculs demandés par le ministre en application du paragraphe 28.1(2), le cas échéant; sinon le montant calculé conformément aux paragraphes (4) ou 28.1(2) peut être réduit d'un montant égal aux intérêts courus sur le prêt au cours de la période suivante :

a) dans le cas où le ministre a demandé le détail des calculs ou des nouveaux calculs en application du paragraphe 28.1(2), la période débutant le jour de la demande du ministre et se terminant le jour où il reçoit ces calculs;

b) dans tout autre cas, la période débutant le jour où le ministre a reçu la demande d'indemnisation et se terminant le jour où il reçoit les documents requis.

30. (1) Malgré les paragraphes 28(2) et (5), lorsqu'en vertu de la Loi ou du présent règlement le ministre indemnise le prêteur de la perte que lui a occasionnée un prêt garanti, Sa Majesté est subrogée dans tous

Majesty is subrogated in and to all the rights of the lender in respect of the guaranteed student loan and, without limiting the generality of the foregoing, all rights and powers of the lender in respect of

- (a) the guaranteed student loan,
- (b) any judgment obtained by the lender in respect of the loan, and
- (c) any security held by the lender for the repayment of the loan,

are vested in Her Majesty and Her Majesty is entitled to exercise all the rights, powers and privileges that the lender had or may exercise in respect of the loan, judgment or security, including the right to commence or continue any action or proceeding, to execute any release, transfer, sale or assignment, or in any way collect, realize or enforce the loan, judgment or security.

(2) Where the Minister pays a claim for loss pursuant to section 7.1 of the Act, the Minister shall be subrogated in and to all the rights of the lender in accordance with subsection (1) to the extent of the amount of the payment made to the lender under that section, including interest accrued and accruing from the applicable day referred to in paragraph 28(4)(b) at the rate of interest determined in accordance with subsection 28.1(4) and the amounts determined in accordance with paragraphs 28(4)(c) and (d).

- The following section of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), is relevant:

Application to other debts

164. (2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become,

les droits du prêteur à l'égard du prêt garanti et, sans que soit limitée la portée générale de ce qui précède, sont dévolus à Sa Majesté tous les droits et pouvoirs du prêteur à l'égard :

- a) du prêt garanti;
- b) de tout jugement qu'il obtient à l'égard du prêt;
- c) de toute garantie qu'il détient pour le remboursement du prêt.

Sa Majesté peut exercer tous les droits, pouvoirs et privilèges du prêteur à l'égard du prêt, du jugement ou de la garantie, y compris le droit d'entreprendre ou de poursuivre toute action ou procédure ou de souscrire toute cession, libération ou vente, et le droit de recouvrer le prêt, de réaliser la garantie ou d'exécuter le jugement par quelque moyen que ce soit.

(2) Lorsque le ministre indemnise le prêteur d'une perte aux termes de l'article 7.1 de la Loi, il est subrogé dans tous les droits du prêteur conformément au paragraphe (1) pour ce qui est du montant versé à celui-ci selon cet article, y compris les intérêts courus et ceux à courir à compter du jour suivant la date applicable visée à l'alinéa 28(4)b), calculés au taux déterminé conformément au paragraphe 28.1(4) et les montants calculés conformément aux alinéas 28(4)c) et d).

Imputation du remboursement

164. (2) Lorsque le contribuable est redevable d'un montant à Sa Majesté du chef du Canada ou du chef d'une province ou est sur le point de l'être, le ministre

liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

peut, au lieu de rembourser un paiement en trop ou une somme en litige, qui pourrait par ailleurs être remboursé en vertu du présent article, imputer la somme à rembourser sur ce dont le contribuable est ainsi redevable et en aviser celui-ci.

- The following section of the *Financial Administration Act*, RSC 1985, c F-11, is relevant:

Deduction and set-off

155. (1) Where any person is indebted to

- (a) Her Majesty in right of Canada, or
- (b) Her Majesty in right of a province on account of taxes payable to any province, and an agreement exists between Canada and the province whereby Canada is authorized to collect the tax on behalf of the province,

the appropriate Minister responsible for the recovery or collection of the amount of the indebtedness may authorize the retention of the amount of the indebtedness by way of deduction from or set-off against any sum of money that may be due or payable by Her Majesty in right of Canada to the person or the estate of that person.

Payments in respect of which Canada has contributed

(2) Where, in the opinion of the Minister of Finance,

- (a) any person is indebted to a province by reason of having received from the province a payment, in respect of which Canada has contributed under any Act, to which that person was not entitled, and
- (b) the province has made reasonable efforts to effect recovery of the amount

Déduction et compensation

155. (1) Le ministre compétent responsable du recouvrement d'une créance soit de Sa Majesté du chef du Canada, soit de Sa Majesté du chef d'une province s'il s'agit d'impôts provinciaux visés par une entente entre le Canada et la province en vertu de laquelle le Canada est autorisé à percevoir les impôts pour le compte de la province, peut autoriser, par voie de déduction ou de compensation, la retenue d'un montant égal à la créance sur toute somme due au débiteur ou à ses héritiers par Sa Majesté du chef du Canada.

Paiements auxquels le Canada a contribué

(2) Le ministre, s'il estime qu'une personne est débitrice d'une province pour avoir reçu de celle-ci, sans y avoir droit, un paiement auquel le Canada a contribué en conformité avec une loi et que la province a fait des efforts raisonnables en vue de recouvrer cette créance, peut exiger la retenue, par voie de déduction ou de compensation, d'un montant égal à la créance sur toute somme due à cette personne par Sa Majesté du chef du Canada; le montant ainsi déduit, moins la partie de ce dernier qui, selon le

of such indebtedness,

the Minister may require the retention of the amount of the indebtedness by way of deduction from or set-off against any sum of money that may be due and payable by Her Majesty in right of Canada to that person, and the amount so deducted, less the portion thereof that in the opinion of the Minister is proportionate to the contribution in respect thereof made by Canada, may be paid to the province out of the Consolidated Revenue Fund.

Recovery of over-payment

(3) The Receiver General may recover any over-payment made out of the Consolidated Revenue Fund on account of salary, wages, pay or pay and allowances out of any sum of money that may be due or payable by Her Majesty in right of Canada to the person to whom the over-payment was made.

Consent of other Minister

(4) No amount may be retained under subsection (1) without the consent of the appropriate Minister under whose responsibility the payment of the sum of money due or payable referred to in that subsection would but for that subsection be made.

- The following sections of the *Limitation Act*, RSBC 1996, c 266, are relevant:

Limitation periods

3 (1) In subsections (4) and (6), “debtor” means a person who owes payment or other performance of an obligation secured, whether or not the person owns or has rights in the collateral.

...

(5) Any other action not specifically provided for in this Act or any other Act may not be brought after the expiration of 6 years after the date on which the right to do so arose.

...

ministre, est proportionnelle à la contribution que le Canada a faite à cet égard, peut être versé à la province sur le Trésor.

Recouvrement

(3) Le receveur général peut recouvrer les paiements en trop faits sur le Trésor à une personne à titre de salaire, de traitements ou d’allocations en retenant un montant égal sur toute somme due à cette personne par Sa Majesté du chef du Canada.

Assentiment du ministre compétent

(4) La retenue d’argent prévue par le paragraphe (1) ne peut être effectuée sans l’assentiment du ministre compétent responsable, en l’absence de ce paragraphe, du paiement de la somme en cause.

Counterclaim or other claim or proceeding

4 (1) If an action to which this or any other Act applies has been commenced, the lapse of time limited for bringing an action is no bar to

- (a) proceedings by counterclaim, including the adding of a new party as a defendant by counterclaim,
- (b) third party proceedings,
- (c) claims by way of set off, or
- (d) adding or substituting a new party as plaintiff or defendant,

under any applicable law, with respect to any claims relating to or connected with the subject matter of the original action.

(2) Subsection (1) does not operate so as to enable one person to make a claim against another person if a claim by that other person

- (a) against the first mentioned person, and
- (b) relating to or connected with the subject matter of the action,

is or will be defeated by pleading a provision of this Act as a defence by the first mentioned person.

...

Effect of confirming a cause of action

5 (1) If, after time has begun to run with respect to a limitation period set by this Act, but before the expiration of the limitation period, a person against whom an action lies confirms the cause of action, the time during which the limitation period runs before the date of the confirmation does not count in the reckoning of the limitation period for the action by a person having the benefit of the confirmation against a person bound by the confirmation.

(2) For the purposes of this section,

- (a) a person confirms a cause of action only if the person
 - (i) acknowledges a cause of action, right or title of another, or
 - (ii) makes a payment in respect of a cause of action, right or title of another,
- (b) an acknowledgment of a judgment or debt has effect
 - (i) whether or not a promise to pay can be implied from it, and
 - (ii) whether or not it is accompanied by a refusal to pay,
- (c) a confirmation of a cause of action to recover interest on principal money operates also as a confirmation of a cause of action to recover the principal money, and
- (d) a confirmation of a cause of action to recover income falling due at any time operates also as a confirmation of a cause of action to recover income falling due at a later time on the same account.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-68-09
STYLE OF CAUSE: Nicole (Nora) Hérold

v

HER MAJESTY IN RIGHT OF CANADA ET AL
CANADA REVENUE AGENCY (CRA) AND
THE PARTIES TO THE OFFENCES:
EMPLOYMENT INSURANCE (EI),
HUMAN RESOURCES AND SOCIAL DEVELOPMENT
CANADA (HRSDC)
SUDBURY TAXATION CENTRE

PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: June 20, 2011
REASONS FOR JUDGMENT: SCOTT J.
DATED: August 18, 2011

APPEARANCES:

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FOR THE PLAINTIFF
(ON HER OWN BEHALF)

Derek Edwards

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

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