Public Statement on the Ontario Superior Court Judgment in Chenier v. Attorney General (Student Loan Bankruptcy)

Judgment Released June 30, 2005

On December 6, 2000 a constitutional challenge, supported by the Canadian Federation of Students, was filed against several provisions of the Bankruptcy and Insolvency Act (BIA) as it pertains to student loans borrowers.

In 1997 the federal government changed the BIA to prohibit those with government student loans from declaring bankruptcy for a period of two years after a student ceased full or part-time study. Less than ten months later this prohibition was increased to ten years with no public consultation or supporting research. These changes lumped students in with those convicted of committing fraud along with a very narrow group of other individuals denied the protection of bankruptcy.

These amendments had an immediate and predictable effect on the most economically vulnerable students. In the final year in which students were able to declare bankruptcy the average annual income of those declaring bankruptcy with student debt as the primary debt was $12,000. Our constitutional challenge was aided and supported by several leading experts in bankruptcy law and policy. In particular, Saul Schwartz, Professor of Public Policy at Carleton University, testified as an expert witness. In his work Schwartz outlines the socio-economic reality of those victimized by this law. Schwartz's statistical analysis is an important rebuttal of the stereotyping and misinformation the federal government has used to justify the law. As Schwartz demonstrates, in *The Dark Side of Student Loans: Debt Load, Default, and Bankruptcy* - Osgoode Hall Law Journal, Volume 37, Spring/Summer 1999, those most adversely affected by this law are low-income Canadians who have accrued massive debt to fund their education. Indeed as Schwartz and other experts in bankruptcy law have argued, these changes violate the very spirit of bankruptcy law which is designed to give

the “honest but unfortunate debtor” a second chance.

It was in the face of this patently unjust law that the Federation launched our constitutional challenge. Our legal counsel argued that these provisions of the BIA violated Section 15 of the Canadian Charter of Rights and Freedoms. Section 15 reads as follows:

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Generally, Section 15 affords protection from discrimination on the grounds enumerated above. However, the court has also allowed applicants to argue that certain kinds of discrimination not specifically enumerated should also be protected by Section 15. It was on these grounds that we argued that the prejudicial treatment of student loans borrowers under the BIA violated Section 15. Our legal brief made that case that many student loans borrowers are socially and economically vulnerable and that the federal government relied on stereotyping student loan borrowers to justify these changes. Our challenge was heard in Ontario Superior Court on June 16, 2004 before the Honourable Justice Gordon Sedgwick. On June 30, 2005, after more than twelve months of deliberation, Justice Sedgwick issued his ruling. Regrettably, Justice Sedgwick ruled against our challenge on the basis that student loan borrowers do not constitute a protected social category that should qualify for protection from discrimination under Section 15.

Despite this legal setback, the Canadian Federation of Students remains as dedicated as ever to fighting this unconscionable law at the legal and political level. There is little doubt that our work in preparing this legal challenge and our lobbying work has been instrumental in keeping the human cost of this law in the public eye. Indeed just recently the federal government introduced legislation to reduce the prohibition from ten to seven years. When the proposed legislation

comes up for debate in the House of Commons in the fall, we will vigorously press the case that the law remains a punitive and needless hardship for low-income Canadians.

We would like to thank all of the people who have supported us thus far in the process. We continue to believe that this law is an affront to the principle that all Canadians are equal under the law.

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