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### Bart Sarsh

Bart Sarsh is a lawyer at SimpsonWigle LAW LLP who practices in the areas of bankruptcy/insolvency and commercial litigation. Bart acts for trustees, creditors, debtors, and other stakeholders in the insolvency and restructuring process. He also provides legal opinions on risk management and asset protection strategies to individual and corporate clients. Bart has trial and appellate-level experience, and regularly appears before the Ontario courts.

# Q

### Do I have to repay my student loans if I go bankrupt?

# A

Even if you go bankrupt, you are still, in certain cases, legally obligated to repay your student loans. This comes as a surprise to some people who make an assignment in bankruptcy and then discover, after they have received their discharge from bankruptcy, that the government is chasing them for repayment of their student loans. Note that this only applies to government funded student loans; private student loans without government funding, just like other unsecured debt, is released upon your discharge from bankruptcy.

Section 178(1)(g) of the *Bankruptcy and Insolvency Act* ("BIA") says that you cannot be released from repayment of your student loans in two situations: (1) if you go bankrupt before you stopped being a full – or part-time student; or (2) if you go bankrupt within 7 years from the date on which you stopped being a full – or part-time student.

The 7 year time limit begins to run from the date of termination of your studies, not from the date of bankruptcy. So, if a bankrupt ceases to be a full-time student but subsequently becomes a part-time student, the 7 year time limit does not begin to run until he or she ceases to be a part-time student. Also, the 7 year time limit is to be applied to each student loan individually rather than to the most recent student loan.

In general, there are three factors that determine whether a federal or provincial student loan is released or survives bankruptcy: (1) the date of the bankruptcy; (2) the length of time the student must wait after ceasing to be a full- or part-time student before a bankruptcy discharge order will release the student loan debt; and (3) the date on which the bankrupt ceased to be a student.

But you do not have to wait for 7 years from the date on which you stopped being a full – or part-time student to obtain relief from repaying your student loans. Section 178(1.1) of the BIA allows you to bring an Application in the Bankruptcy Court within 5 years after you stopped being a full – or part-time student and ask the court to order that you are released from the obligation to repay your student loans. This is commonly referred to as a "hardship application."

There are two general factors that the court will consider in determining whether to grant your hardship application: (1) whether you have acted in good faith in acquiring the student loans and (2) whether you have, and will continue to, experience financial difficulty to such an extent that you will be unable to repay your student loans.

Student loans funded by either the federal or provincial government are a unique species of debt compared to other unsecured debts like credit debt or personal loans. Consulting with a lawyer familiar with Canada's bankruptcy laws and with hardship applications is recommended as the rules are technical and impact people in different ways depending on each person's unique circumstances.



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