

COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N° : 500-09-011829-025
(500-06-000074-985)

DATE : 27 JANVIER 2004

**CORAM: LES HONORABLES MARC BEAUREGARD J.C.A.
MELVIN L. ROTHMAN J.C.A.
ANDRÉ FORGET J.C.A.**

HARRY DIKRANIAN
APPELANT - demandeur

c.

PROCUREURE GÉNÉRALE DU QUÉBEC
INTIMÉE - défenderesse

ARRÊT

[1] LA COUR; -Statuant sur l'appel d'un jugement rendu le 13 décembre 2001 par la Cour supérieure, district de Montréal (l'honorable Pierre Jomet), qui a rejeté les procédures en recours collectif intentées par l'appelant;

[2] Après avoir étudié le dossier, entendu les parties et délibéré;

[3] Pour les motifs ci-joints du juge Forget auxquels souscrit le juge Beauregard:

REJETTE l'appel, avec dépens.

[4] Pour les motifs ci-joints, le juge Rothman aurait accueilli l'appel avec dépens, infirmé le jugement dont appel et accordé la demande en recours collectif.



MARC BEAUREGARD J.C.A.



MELVIN L. ROTHMAN J.C.A.



ANDRÉ FORGET J.C.A.

Me Guy St-Germain et Me Leon Greenberg
STERNTHAL KATZNELSON MONTIGNY, S.E.N.C.
Avocats de l'appelant

Me Mario Normandin
BERNARD ROY
Avocat de l'intimée

Date d'audience : 25 NOVEMBRE 2003

REASONS OF ROTHMAN, J.A.

[5] This is an appeal from a judgment of the Superior Court dismissing appellant's class action against the Attorney General of Quebec for the recovery of excess interest paid on student loans.

[6] From 1992 to 1996, Appellant was a full time university student, resident in Quebec, who received student loans totalling \$26,765 under the financial assistance programs provided for in the *Act Respecting Financial Assistance for Education Expenses* (R.S.Q. c. A-13.3).

[7] Appellant contends, in substance, that he was compelled to pay an amount of interest of \$308.53 on his student loans covering a period for which he was exempt from the payment of interest both under the terms of his loan contract and under the provisions of the *Financial Assistance for Education Act* in force at the time the loans were made. He alleges that other student borrowers under the Act were similarly obliged to pay interest covering periods that were to be exempt from interest under the Act in force at the time their loans were incurred, and that their recourses for the reimbursement of excess interest paid raised similar issues.

[8] Appellant was authorized by the Superior Court to bring class action proceedings on his own behalf as well as on behalf of a group of student borrowers whose recourses raised similar issues:

"All students who on June 30, 1997 had obtained one or more student loans after signing a Loan Certificate issued by the Direction générale de l'aide financière aux étudiants, and who did not obtain other student loans after June 30, 1997, and completed or abandoned their studies after June 30, 1997, " and

"All students who on June 30, 1997 had obtained one or more student loans after signing a Loan Certificate issued by the Direction générale de l'aide financière aux étudiants and who did not obtain other student loans after April 30, 1998, and completed or abandoned their studies after April 30, 1998."

** * **

THE FACTS

[9] From 1992 to 1996, appellant applied for and received student loans totalling \$26,765. On the approval of his loan application, appellant would receive a loan certificate from the Department of Education which he would present to a financial

institution which would disburse the loan, the repayment of which was guaranteed by the Government of Quebec.

[10] The loan certificate issued by the Department was signed by the student and an authorized representative of the financial institution and it effectively became the loan contract between the parties:

The contract is signed in accordance with the prescriptions of the Act respecting financial assistance for students (R.S.Q., c. A-13.3), the Regulation thereunder (A-13.3, r.1) and the prescriptions of the Loan Guaranty Program for the Purchase of a Microcomputer, if applicable.

[11] As to the payment of interest by the student, the certificate provided:

5. The student is exempt from payment of interest on the principal loaned by the financial institution, under the Act respecting financial assistance for students, for the exemption period defined in section 23 of the Act, which is cited in clause 10 of this contract.

[12] Clause 10 of the certificate defined the interest exemption period as follows:

10. Exemption period "means the period beginning on the date on which the borrower obtains a first loan or on which he becomes a full-time student again after having ceased to be so, and ending
 - 1) on 1 April, for a borrower who completes or abandons his full-time studies during or at the end of the preceding summer trimester;
 - 2) on 1 August, for a borrower who completes or abandons his full-time studies during or at the end of the preceding autumn trimester;
 - 3) on 1 January, for a borrower who completes or abandons his full-time studies during or at the end of the preceding winter trimester" (R.S.Q., c. A-13.3, s. 23).

[13] Appellant concluded his studies on January 30, 1998, so that his obligation to reimburse the capital of the loans and to pay interest on the loans would normally have begun at the end of the exemption period – on January 1, 1999. Until the end of the exemption period, under Sec. 24 of the Act, the Government was to pay the interest on the loan to the financial institution.

[14] In 1997, the Act was amended reducing the exemption period for the payment of interest by one month.

[15] In 1998, the Act was again amended, reducing once again, the period of exemption during which students were exempt from paying interest while the Government assumed the interest payable to the financial institutions. The 1998 amendment was stipulated under Sec. 13 to be applicable "... aux situations juridiques

en cours lors de leur entrée en vigueur." ("... to juridical situations in progress at the time of their coming into force ...").

[16] Insofar as appellant was concerned, he was required to pay interest on his loans from June 1, 1998, instead of from January 1, 1999, the end of the period of exemption stipulated in his loan certificate. The excess amount paid by appellant in interest was \$308.53.

[17] The loan authorities in the Department of Education refused to reimburse appellant for the interest paid in excess of the amount contemplated in the exemption period. In essence, the Department was of the view that the amendments to the Act were applicable to existing loans concluded prior to the dates of these amendments as well as to future loans.

[18] The trial judge dismissed appellant's action. He was of the view that:

[79] Le programme d'aide financière aux étudiants n'est pas un contrat. C'est un programme social, impersonnel et offert à tous les citoyens qui répondent aux critères sans exceptions. Le programme vise à donner une chance égale à tous de poursuivre des études. C'est la poursuite d'un idéal : l'éducation à tous les niveaux accessibles à tous. Il provient donc d'un processus unilatéral normatif.

[19] The trial judge concluded:

[88] L'article 13 de la *loi de 1997* prévoit que les nouvelles dispositions de la loi seront applicables aux situations juridiques en cours lors de leur entrée en vigueur. Il s'agit d'une disposition législative démontrant que le législateur veut que la loi nouvelle s'applique de façon immédiate à tous les prêts existants ou futurs.

[89] Le tribunal ne voit pas comment il pourrait conclure que les deux nouvelles lois ont créé des situations juridiques distinctes, que l'on se situe avant ou après leur adoption. En l'absence de stipulation contraire, toute loi doit recevoir une application immédiate tant pour les contrats conclus avant qu'après leur entrée en vigueur.

[90] Le tribunal souligne qu'il ne peut y avoir plusieurs modalités de remboursement pour les étudiants terminant leurs études à un même trimestre sans dispositions législatives spécifiques.

[91] L'interprétation que doit favoriser le tribunal en est une conduisant à l'application uniforme d'un régime législatif plutôt qu'à une pluralité de régime.

THE ISSUES

[20] The questions raised in this appeal by appellant are the following:

1. Did the trial judge err in concluding that appellant's obligations under the certificate of loan were not contractual in nature?
2. Did the trial judge err in concluding that the amendments to the Act in 1997 and 1998 were applicable to student loans contracted by appellant and other students prior to the amendments so that they were obliged to pay interest on their loans for periods stipulated in their loan agreements and in the Act to be exempt periods when the loans were contracted?
3. Did the trial judge err in concluding that appellant and other similarly situated student borrowers did not have acquired rights by reason of their contracts signed with the financial institutions prior to the amendments?

** * **

Contractual Nature of Appellant's Obligations

[21] With respect for the opinion of the trial judge, in my view, appellant's obligations under the loan certificate issued by the Department were clearly contractual in nature. While it is true, as the trial judge indicates, that the financial assistance programs created under the Act are worthy social programs designed to encourage equal accessibility to education for all Quebec students, the program of student loans contemplated in the Act did nevertheless impose contractual obligations upon students who obtained these loans, contractual obligations which included conditions as to the repayment of the capital of the loans as well as conditions concerning the payment of interest. One of the conditions in this contract stipulated the period of the loans during which the student was to be exempt from the payment of interest.

[22] The certificate of loan, issued by the Department and signed by the student as well as the financial institution, is in the form of a contract and the clauses setting out the conditions of the loan contain numerous references to "this contract". Any reasonable borrower or lender reading the document would consider himself bound by a contract.

[23] And while it is true that the Department did not itself sign the document, it was the Department that issued it to the student and it was the Department that had stipulated the conditions of repayment of capital and the exempt period for the payment of interest by the student. The Department was, moreover, itself contractually involved in the loan made to the student in that it guaranteed the repayment of the capital of the loan as well as the payment of interest to the financial institution, including the payment of interest for the period during which the student was exempt from interest payment.

[24] In sum, while the programs created under the Act can fairly be characterized as social and educational, the obligations and the rights of students under their loan agreements with the lenders were substantially contractual.

[25] I do not wish to suggest, of course, that the *Financial Assistance for Education Expenses Act* did not govern the relationship between the lending banks and the students and the relationship between the Banks and the Government.. Clearly, regard must be had to this statute and the regulations to support any claims whether by the bank or by the government or to determine the liability of a borrowing student (*Rhine v. R. and Prytula v. R.* [1980] 2 S.C.R. 442, 449).

[26] But that being said, once it has been concluded that the contractual rights and obligations of a student borrower and a lender bank satisfy the requirements of the statute and the regulations, we must logically look to the contract concluded and the law that then existed to determine the rights and obligations of the borrowing student.

[27] Unless the subsequent amendments to the law are expressly stipulated to be retroactive or are retroactive by necessary implication, I can see no basis for applying provisions in the amendments in conflict with the rights of the parties under their contract and the law which was applicable when it was concluded (*Gustavson Drilling (1964) Ltd v. M.N.R.* [1997] S.C.R. 271, 279). On signing the contract of loan, the student had no reason to believe that the Government might, by simple legislative amendment, rewrite his contract with the bank and modify his interest obligation. Nor, in the absence of an intention, expressed or tacit, to impair the rights of the student under his loan contract, do I see any basis for interpreting the amendments in a manner that would have that effect.

Retroactivity of 1997 and 1998 Amendments

[28] Appellant's student loans were contracted prior to the amendments to the Act of 1997 and 1998. When appellant obtained his loans, the loan certificate issued by the Department and signed by appellant as well as the financial institution, provided the following conditions regarding exemption from the payment of interest:

5. The student is exempt from payment of interest on the principal loaned by the financial institution, under the Act respecting financial assistance for students, for the exemption period defined in section 23 of the Act, which is cited in clause 10 of this contract.

[...]

10. Exemption period "means the period beginning on the date on which the borrower obtains a first loan or on which he becomes a full-time student again after having ceased to be so, and ending
 - 1) on 1 April, for a borrower who completes or abandons his full-time studies during or at the end of the preceding summer trimester;
 - 2) on 1 August, for a borrower who completes or abandons his full-time studies during or at the end of the preceding autumn trimester;

- 3) on 1 January, for a borrower who completes or abandons his full-time studies during or at the end of the preceding winter trimester" (R.S.Q., c. A-13.3, s. 23).

[29] The contract therefore provided appellant with a very specific period for which he was to be exempt from the payment of any interest on his student loan. Under the ordinary principles of contract, he was entitled to assume, when he signed the loan agreement, that he would have no interest to pay for the exemption period provided in clause 10 of the agreement and he obviously did make that assumption. In appellant's case, the exemption period in clause 10 would have ended on January 1, 1999.

[30] The subsequent amendments of 1997 and 1998, if applicable, would have had the effect of reducing retroactively the interest exemption period provided in appellant's loan agreement.

[31] Respondent contends that although the 1997 and 1998 amendments to the Act came into force subsequently to appellant's loans, these amendments were nevertheless applicable to previously obtained and existing loans.

[32] I certainly have no problem with the proposition that the statute and regulations in this case govern the rights and obligations of the borrowing student and the lending financial institution (*Rhine v. R.* (supra)). But the law that governed the parties when the loans were concluded provided a very specific exemption period for the payment of interest by the student. That provision was incorporated into the contract signed by the student and the Bank.

[33] To require, on the basis of subsequent amendments, that the exemption period be reduced, in my view, offends the basic principle against retroactivity. There is no express provision in the subsequent amendments requiring that the amendments be retroactively applicable to previously concluded loans and I can see no necessary implication that would require this interpretation (Pierre-André Côté, *Interprétation des lois*, 3ième édition, 1999, Les Éditions Thémis, page 138).

[34] Nor can I easily accept that the phrase "... situations juridiques en cours ..." was intended to make the 1997 and 1998 amendments applicable so as to reduce the interest exemption period provided in the previously existing statute and in the contract signed by the borrowing student and the lending bank. In my respectful opinion, once the loan was approved by the Department and the contract of loan was signed by the student and the bank, appellant's obligation to pay interest and his exemption from the payment of interest were not "situations juridiques en cours". They were rights and obligations which were no longer "in progress". They were crystallized, finalized and definitively concluded under the terms and conditions of the contract.

[35] There is no suggestion in the law or the contract that the obligations of the student or the bank as regards the payment of interest by the student or the duration of the exemption period were subject to discussion or change. These were matters

definitively concluded in the contract insofar as appellant and the Bank were concerned. Appellant had no right to demand that the exemption period be extended and the Bank had no right to demand that the exemption be reduced. The Government had no right to demand that its guarantee in favour of the bank be reduced. What "situations juridiques" remained "en cours"? Absolutely none.

Acquired Rights

[36] Appellant contends that the trial judge erred in interpreting the subsequent amendments of 1997 and 1998 as applicable to his loans in a manner that would violate his acquired rights under the contract of loan and under the law, as it existed when the loan was made.

[37] It is a well established principle of Canadian law that a new law should, as a general rule, be interpreted as respecting existing rights (*Spooner Oils Ltd v. Turner Valley Gas Conservation Board* [1933] S.C.R. 629; *Board of Trustees of the Acme Village School District v. Steele-Smith* [1933] S.C.R. 47; Pierre-André Côté, *Interprétation des lois*, 3ième édition, 1999, Les Éditions Thémis, page 211). In the absence of an express or tacit intention of the legislature, a new law will not be read as impairing existing rights.

[38] Insofar as the 1997 amendment was concerned, I can see no provision expressed or tacit from which one might infer that reduction in the exemption period was intended to apply to previously existing loans under existing contracts.

[39] In the 1998 amendment, Sec. 13 provided that the amending provisions would apply to "... situations juridiques en cours lors de leur entrée en vigueur."

[40] While it is true that when the 1998 amendment came into force, appellant had not yet ended the period of exemption provided in his contract, I find it hard to imagine that the Legislature intended, in adopting the 1998 amendment, to change the interest exemption period of a contract of loan that had previously been concluded merely on the basis that the period of exemption had not yet expired.

[41] When appellant undertook the loan, he did so under specific conditions for repayment of capital and payment of interest. There was no suggestion in the certificate of loan issued by the Department or in the contract that these conditions might be changed at any time. Nor is an interest exemption period, by its nature, of a kind that would be subject to periodic change. Appellant had every right to expect that his obligations for the repayment of capital and the payment of interest were those set out in the contract and that these conditions would be respected. Appellant fulfilled his obligations in repaying the loan and paying the interest on the loan under the terms required under his contract.

[42] In the absence of very clear terms in the amending statutes establishing that the Legislature intended to impair appellant's rights under his existing contract, I can see no reason why the Government should not respect the rights and obligations existing under that contract. If that means the payment of interest by the Government for the period of exemption in the contract, so be it. That was the basis on which the certificate was issued and the contract was signed.

[43] I would find it very difficult to interpret the words "... situations juridiques en cours..." as evidence of an intention on the part of the Legislature to vary the terms of a loan contract that was concluded prior to the coming into force of the new law.

[44] In short, I am of the view that appellant did have vested rights under his contract of loan and that the amendments of 1997 and 1998 should not be interpreted in a manner that would impair those rights.

[45] Finally, respondent submits that it would have been inequitable to treat students bound to pay interest on student loans differently merely because their loans had been contracted at different times. Respondent contends it would be more equitable to treat all students with student loans uniformly and subject to the same conditions of repayment of capital and interest. The trial judge was of with same view.

[46] With great respect, I do not think this is a question of treating students uniformly nor even treating all students equitably. It is rather a question of respecting the difference in contractual rights and obligations concluded prior to the amendments. I can see nothing equitable in impairing the contractual rights and obligations that were concluded prior to the amendments on the basis that all students should be treated uniformly in their conditions of loan repayment. There is nothing equitable in treating students less favourably than they were entitled to be treated under their contracts and under the law that was applicable when the contracts were concluded.

[47] I would therefore:

Allow the appeal with costs;

Set aside the judgment rendered in first instance;

Maintain the class action with costs;

Return the dossier to the Superior Court for final judgment and the making of such orders as may be required under Art. 1044 C.C.P. and Arts 1027 C.C.P. et seq.


MELVIN L. ROTHMAN J.C.A.

MOTIFS DU JUGE FORGET

[48] Avec égards pour l'opinion du juge Rothman, je suis d'avis que le jugement de première instance est bien fondé.

[49] Si la relation entre l'étudiant et l'institution financière peut être qualifiée de contractuelle, il n'en va pas de même pour celle entre l'étudiant et l'État dans le cadre de la *Loi sur l'aide financière aux étudiants*¹ qui met en œuvre un programme public pour faciliter l'accès aux études.

[50] Les modifications apportées par les lois de 1996² et 1997³ étaient d'application immédiate et régissaient les prêts en cours.

[51] Je propose de rejeter le pourvoi avec dépens.



ANDRÉ FORGET J.C.A.

¹ L.R.Q., c. A-13.3.

² *Loi modifiant la Loi sur l'aide financière aux étudiants et la Loi sur les collèges d'enseignement général et professionnel*, L.Q. 1996, c-79.

³ *Loi modifiant la Loi sur l'aide financière aux étudiants*, L.Q. 1997, c-90.



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