

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

JASMIN SIMPSON

Applicant

and

**THE ATTORNEY GENERAL FOR HER MAJESTY THE QUEEN IN RIGHT OF
CANADA (REPRESENTING THE MINISTER OF HUMAN RESOURCES AND SKILLS
DEVELOPMENT) and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF ONTARIO (AS REPRESENTED BY THE MINISTER OF TRAINING, COLLEGES,
AND UNIVERSITIES)**

Respondents

**FACTUM OF THE RESPONDENT,
THE ATTORNEY GENERAL OF CANADA**

October 21, 2019

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PART I – OVERVIEW	1
PART II – FACTUAL BACKGROUND.....	3
A. The Canada Student Loans Program.....	3
1) Principles underlying the CSLP	3
2) Legislative framework and federal-provincial agreements.....	4
3) The Canada Student Loan Life-Cycle	5
B. The applicant’s student loan history	14
C. Expert evidence on the impact of student debt on PSE participation by students with disabilities.....	18
1) The issues concerning PSE access and barriers are varied and complex	19
2) Expert evidence does not establish that students with disabilities generally take longer or graduate with more debt on average than non-disabled students	19
3) The evidence does not establish that costs associated with PSE deter students with disabilities from participating in PSE	28
4) Equalization of student loan debt for students with disabilities would likely be ineffective.....	33
5) The remaining opinion affidavits filed by the applicant are of limited assistance ...	33
PART III – ISSUES.....	35
PART IV – LAW AND ARGUMENT	35
A. The CSLP does not limit the applicant’s section 15(1) rights	35
1) The CSLP does not deny a benefit or impose a burden on the basis of disability....	36
2) The CSLP does not draw a distinction between the applicant and others.....	39
3) Any distinction is not discriminatory	51
B. Any limitation is justified under section 1	54
1) The CSLP serves a pressing and substantial objective	55
2) Any limitation is proportionate to the objectives of the CSLP	56
C. The appropriate remedy is a suspended declaration	58
PART V – ORDER SOUGHT	60

PART I – OVERVIEW

1. The Canada Student Loans Program (“CSLP”) provides needs-based financial assistance to thousands of eligible Canadian students every year. The Program enables students to access post-secondary education (“PSE”) in situations where they might otherwise be unable to afford it. In addition to grants and loans, the CSLP provides repayment assistance for borrowers who experience financial difficulty repaying their loans, and loan forgiveness for borrowers who will never be able to repay their student loans due to a severe permanent disability. The CSLP also recognizes that students with disabilities may face unique barriers in accessing PSE. For this reason, the CSLP provides enhanced supports for students with permanent disabilities, including non-repayable grants and repayment assistance greater than what is available to students without disabilities.

2. The applicant, who is a person with a disability, availed herself of the diverse benefits offered by the CSLP in order to attend the foreign university of her choice, and to complete two degrees. The applicant’s ability to access PSE enabled her to secure a job in her chosen field – social work. In total, she received \$288,831 in non-repayable benefits (consisting of \$240,846 in grants and bursaries and \$47,985 from the Ontario Disability Support Program) and \$76,550 in repayable loans from the governments of Ontario and Canada. Since completing her studies, the applicant has also availed herself of various forms of loan repayment assistance, whereby Canada and Ontario contributed to paying down her loans, further reducing her overall student debt. As of July 22, 2019, Canada and Ontario have contributed a total of \$24,259.33 towards the principal and interest on her loans.

3. The CSLP does not limit the applicant’s rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms* (“Charter”). The applicant contends that the CSLP limits her s. 15(1)

rights because it does not limit the total loans received by students with disabilities and provide additional non-repayable assistance for any amounts incurred in excess of this limit. This claim is beyond the ambit of s. 15 as these are not benefits provided by law to anyone, disabled or otherwise. In essence, the applicant asks this court to recognize a positive right to a particular form of financial assistance.

4. The CSLP does not draw a distinction between the applicant and others. The program offers targeted, tailored assistance to all eligible students, including students with disabilities. It does not generate adverse effects for students with disabilities. The evidence establishes that the enhanced benefits provided to students with disabilities enables them to pursue PSE, and results in them having an overall debt burden similar to their non-disabled peers.

5. If the CSLP is found to distinguish based on an enumerated ground, such a distinction is not discriminatory. The evidence establishes that for both the applicant and students with disabilities generally, the CSLP promotes PSE participation. The CSLP offers a robust support for these students to meet their unique financial needs at each stage of the loan life-cycle.

6. Finally, should the Court determine that the laws governing the CSLP limit the applicant's s. 15(1) rights, any limitation is justified under s. 1 of the Charter. The CSLP provides an opportunity for students to pursue PSE where they might otherwise be unable to afford it. Canada has reasonably structured the program to offer both front-end assistance in the form of non-repayable grants and repayable loans, and significant repayment assistance to borrowers who need it. The system, which offers enhanced supports to students with disabilities, falls within a range of reasonable policy options. Its salutary effects – which include providing student financial assistance enabling hundreds of thousands of students, including those with disabilities, to pursue PSE every year – outweigh any deleterious effects.

PART II – FACTUAL BACKGROUND

A. THE CANADA STUDENT LOANS PROGRAM

1) Principles underlying the CSLP

7. Canada has been assisting students with the costs of PSE since 1918, when it first authorized loans to disabled veterans resuming their studies following war service.¹ The CSLP was established in 1964, creating a system whereby banks and credit unions loaned money to students based on financial need, and Canada guaranteed those loans. Since its inception, the CSLP has been premised on the notion that PSE costs should be shared between the student, their family and government.²

8. The provision of student financial assistance is also based on a recognition that:

- a) a highly educated workforce promotes Canada's economic growth;
- b) government assistance is key to keeping PSE accessible to all;
- c) the cost of PSE is substantial and higher than many students and families can afford unaided; and
- d) PSE graduates realize several benefits, including higher incomes and lower unemployment rates.³

9. CSLP grants and loans assist students who lack financial resources or for whom financing PSE would represent an unmanageable financial burden, to afford PSE. While students are generally required to repay loans received, these loans provide access that the student might not otherwise enjoy. As such, the CSLP represents an opportunity that enhances access to PSE.⁴

¹ Affidavit of Atiq Rahman, affirmed November 14, 2016, para 4 [Application Record ("AR"), Vol Q, Tab AA, p 6637] ("Rahman Affidavit")

² Rahman Affidavit, para 4 [Vol Q, Tab AA, p 6637]

³ Rahman Affidavit, para 5 [Vol Q, Tab AA, p 6638]

⁴ Affidavit of Ross Finnie, affirmed December 22, 2014, paras 45-46 [AR, Vol O, Tab AA, p 6114] (emphasis in the original) ("Finnie Affidavit"); see also Transcript of the Cross-Examination of Alex Usher, February 2-23 2017, QQ 219-220 [AR, Vol R, Tab AA, pp 7220-7221] ("Usher Cross-Examination Transcript")

10. Loans represent only part of the overall CSLP. The CSLP provides several non-repayable grants, and includes measures to assist borrowers who are having difficulty meeting their loan repayment obligations. Several of these measures are specifically designed to address the unique financial needs of students with disabilities. Eligibility for each of these benefits is based on financial need, and among eligible students, the amount of each benefit generally increases the greater the student's financial need. In short, all parts of the CSLP process are "structured in a way as to provide assistance to those *who* need it, *when* they need it."⁵

2) Legislative framework and federal-provincial agreements

11. Loans issued on or after August 1, 1995, are governed by the *Canada Student Financial Assistance Act* ("Act") and the *Canada Student Financial Assistance Regulations* ("Regulations").⁶ The Act originally created a risk-shared system whereby banks and other financial institutions provided loans and assumed the responsibility for servicing them, and Canada paid the financial institutions a risk premium of 5% of the face value of each loan to compensate the lender for the risk of default.⁷ However, in August 2000, the Act was amended such that the risk-shared loan program was replaced by a direct-loan program whereby the Minister of Employment, Workforce Development and Labour (formerly the Minister of Human Resources Development) enters into loan agreements directly with the students.⁸

12. The Act and Regulations provide for cooperation between the federal and provincial or territorial governments in the administration of student loans.⁹ In participating provinces and

⁵ Finnie Affidavit, para 57 [AR, Vol O, Tab AA, p 6118]

⁶ *Canada Student Financial Assistance Act*, SC 1994, c 28 ("Act"); *Canada Student Financial Assistance Regulations*, SOR/95-329, s 2(2) "participating province" ("Regulations")

⁷ Affidavit of Rosaline Frith, sworn on December 6, 2007, para 18 [AR, Vol J, Tab AA, p 4378] ("Frith Affidavit")

⁸ Rahman Affidavit, paras 25-26 [AR, Vol Q, Tab AA, p 6647]; Act, s 6.1

⁹ Rahman Affidavit, paras 31-36 [AR, Vol Q, Tab AA, pp 6649-6650]; Act, ss 3-4

territories, student financial assistance is funded jointly between the two levels of government. Canada is responsible for covering up to 60% of the financial need of the student, and the province or territory is responsible for the remaining portion.¹⁰ In May 1999, Canada and Ontario signed the Harmonization Agreement, and in July 2001, they signed an Integration Agreement.¹¹ Together, these agreements provide for a “unified” loan product and streamlined administration of the federal and provincial student financial assistance programs.¹²

3) The Canada Student Loan Life-Cycle

13. There are five basic stages in the CSLP financial assistance process: a) application; b) disbursement and in-study period; c) end of study and grace period; d) repayment; and e) debt discharges, write-offs and loan forgiveness.¹³ The CSLP provides a robust support system for students with permanent disabilities that includes measures at each stage to address their unique needs.¹⁴ These needs include the potential for taking a reduced course load and/or additional years, and the need for special equipment.

a) Application

14. In Ontario, students seeking financial assistance must submit an application to the Ontario Student Assistance Program (“OSAP”). This application is reviewed by OSAP staff to

¹⁰ Rahman Affidavit, para 31 [AR, Vol Q, Tab AA, p 6649]; Affidavit of Jasmin Simpson, sworn December 21, 2006, at Exhibit 2, “Canada-Ontario Harmonization Agreement, s 4.5 (“Simpson 2006 Affidavit”) [AR, Vol B, p 632]

¹¹ Rahman Affidavit, paras 33-34 (The Harmonization Agreement has since been amended in 2001, 2010 and 2016, and the Integration was replaced in 2008 and amended in 2010); Agreed Statement of Facts between Jasmin Simpson and Both Respondents, para 3, Exhibits 5C, 5D (“Agreed Statement of Facts”) [AR, Vol A, Tab 5, pp 47, 62-107]

¹² Rahman Affidavit, paras 32-34, 36 [AR, Vol Q, Tab AA, pp 6649-6650]; Affidavit of Richard Jackson, sworn December 6, 2007, para 6 [AR, Vol K, Tab BB, p 4733] (“Jackson Affidavit”)

¹³ Rahman Affidavit, para 39 [AR, Vol Q, Tab AA, p 6651]

¹⁴ Supplementary Affidavit of Marc LeBrun, affirmed June 4, 2014, para 9 [AR, Vol M, Tab AA, p 5328] (“LeBrun 2014 Affidavit”); Frith Affidavit, paras 46-47 [AR, Vol J, Tab AA, pp 4390-4391]; Finnie Affidavit, paras 49, 55 [AR, Vol O, Tab AA, pp 6115-6117]

determine if the student is eligible for federal and provincial financial assistance.¹⁵ To qualify for financial assistance, the student must (1) be a Canadian citizen, permanent resident, or protected person under the *Immigration and Refugee Protection Act*, (2) be enrolled in a designated educational institution, and (3) have demonstrated financial need.¹⁶

15. To determine whether a student has financial need, OSAP conducts a needs assessment that compares the student's financial resources to their PSE-related expenses. The particular resources considered vary depending on the student's living situation and family status. Students pursuing PSE within four years of leaving high school are in most cases considered dependent on their parents, and parental resources are accordingly taken into account in these cases.¹⁷ However, students with permanent disabilities who require more than the usual number of years to complete high school may be deemed independent in fewer than four years. This may result in the student being assessed as having greater financial need, and in the student being eligible for federal grants and loans where they might otherwise have been ineligible.¹⁸

16. The expenses considered in this assessment consist of education expenses, living costs, and other costs that are assessed on a case-by-case basis.¹⁹ For students with permanent disabilities, exceptional costs associated with their disability are considered.²⁰ In all cases, a

¹⁵ Rahman Affidavit, para 40 [AR, Vol Q, Tab AA, p 6652]; Act, s 12(1)

¹⁶ Act, ss 2(1), "qualifying student", 12(1); Rahman Affidavit, para 41 [AR Vol Q, Tab AA, p 6652]

¹⁷ Rahman Affidavit, para 43 [AR, Vol Q, Tab AA, p 6653]; Regulations, s 2(1)(b) ("family income")

¹⁸ Rahman Affidavit, para 44 [AR, Vol Q, Tab AA, p 6653]

¹⁹ Rahman Affidavit, para 46 [AR, Vol Q, Tab AA, p 6654]; *Ontario Study Grant Plan*, RRO 1990 Reg 775, s 1(1), "Financial resources", "education costs"; *Ontario Student Loans Made August 1, 2001 to July 31, 2017*, O Reg 268/01, ss 10-13 ("O Reg, 2001 to 2017")

²⁰ Rahman Affidavit, para 47 [AR, Vol Q, Tab AA, p 6654]; O Reg, 2001 to 2017, ss 11(4)

financial needs assessment is conducted annually. A student may therefore be eligible for financial assistance for some years but not others.²¹

b) Disbursement and the in-study period

i) Loans

17. Prior to 2005, full-time students with demonstrated financial need could receive up to \$165 per week in federal loans and \$110 per week in loans from Ontario.²² In 2005, this was increased to up to \$210 per week in federal loans and \$140 per week²³ in loans from Ontario, for a total of up to \$11,900 for a typical 34-week school year. Full-time students are ordinarily eligible to receive financial assistance for up to 340 weeks. However, full-time students with permanent disabilities may receive financial assistance for up to 520 weeks, which amounts to three additional years of funding.²⁴

18. A student is considered full-time if they are enrolled in at least 60% of a full course load, and considered part-time if they are enrolled in 20-59% of a full course load.²⁵ However, a student with a permanent disability enrolled in 40-59% of a full course load may elect to be treated as a full-time student, which makes them eligible for grant and loan amounts associated with full-time status.²⁶ During the in-study period, students are not required to make loan payments and no interest accrues on their loans.²⁷

²¹ Finnie Affidavit, para 52 [AR, Vol O, Tab AA, p 6116]; Act, s 12(1); Regulations, s 2(1), “period of studies”

²² Regulations, s 10 (as at May 31, 2005)

²³ This amount was increased again to \$160 in 2016; see Supplementary Affidavit of Noah Morris, sworn on October 4 2016, para 6 [AR, Vol P, Tab BB, p 6567] (“Morris 2016 Affidavit”)

²⁴ Rahman Affidavit, para 53 [AR, Vol Q, Tab AA, p 6656]; Regulations, ss 8(1)(c), 15(1)(j)

²⁵ Regulations, s 2(1) “full-time student”, “part-time student”

²⁶ Rahman Affidavit, para 54 [AR, Vol Q, Tab AA, p 6656]; Regulations, s 2(1), “full-time student”, “part-time student”

²⁷ Act, ss 7(1), 8

ii) Grants available to all students

19. Before loans are disbursed to eligible students, students are first assessed to determine whether they are eligible for one or more non-repayable needs-based grants. During the applicant's enrolment, some of the federal grants available to full-time students were:

Canada Access Grant for Students from Low-Income Families: From 2005 to 2009, this grant provided eligible full-time students from low-income families up to \$2,000 per loan year, based on financial need.²⁸ This grant was increased to up to \$3,000 per loan year in 2016.

Canada Study Grant for Students with Dependants: Prior to 2009, this grant provided eligible students with dependants up to \$3,120 for full-time students and up to \$1,920 for part-time students, per loan year, based on financial need.²⁹

20. Since the time of the applicant's enrolment, the Canada Student Grants have been amended to add new grants, adapt old grants, and increase grant amounts, to better meet the needs of Canadian students. The list of current grants available to full-time students includes:

Canada Student Grant for Full-time Students: This grant came into effect in 2017 and provides eligible full-time students from low-income families with up to \$375 per month of study, to a maximum of \$3,000 for an eight-month study period and \$4,500 for a twelve-month study period, based on financial need.³⁰

Canada Student Grant for Full-Time Students with Dependants: In 2009, this grant, together with the Canada Student Grant for Part-Time Students with Dependants, replaced the former Canada Study Grant for Students with Dependants. The current grants provide eligible full-time students up to \$200 per month of study for each dependant, based on financial need.³¹

iii) Additional grants available to students with permanent disabilities

21. In addition to the non-repayable grants available to all students, the CSLP offers non-repayable grants to students with permanent disabilities. From 2002 to 2005, the CSLP offered the Canada Study Grant for High Needs Students with Permanent Disabilities. This grant was replaced in 2005 by the Canada Access Grant for Students with Permanent Disabilities. Both

²⁸ Regulations, s 40.02 (as at July 31, 2009)

²⁹ Regulations, ss 38.1-38.2 (as at July 31, 2009)

³⁰ Regulations, s 40.02

³¹ Rahman Affidavit, para 65 [AR, Vol Q, Tab AA, p 6660]; Regulations, s 38.1

benefits provided eligible full-time and part-time students with permanent disabilities with up to \$2,000 per loan year, based on financial need.³² These grants were replaced in 2009 by the Canada Student Grant for Students with Permanent Disabilities, which remains in place today. This grant provides eligible full-time and part-time students with a permanent disabilities a fixed amount of \$2,000 a year.³³

22. Throughout the applicant's enrolment, the CSLP also provided the Canada Study Grant for Accommodation of Students with Permanent Disabilities.³⁴ This grant originally provided eligible full-time or part-time students with a permanent disability up to \$5,000 per loan year based on financial need, to assist with exceptional, education-related costs incurred due to disability.³⁵ This maximum amount was increased to \$8,000 in 2002.³⁶ In 2009, this grant was replaced by the Canada Student Grant for Services and Equipment for Students with Permanent Disabilities, which also provided up to \$8,000 per loan year to help defray disability-related expenses.³⁷ As of August 1, 2019, students can now receive up to \$20,000 through this grant.³⁸

c) End of study and grace period

23. A student who completes or withdraws from their studies is not required to make payments towards their federal student loan principal or interest for six months following their completion or withdrawal from studies. Although interest currently accrues during this six-month period, as of November 1, 2019, interest will no longer accrue during this time.³⁹

³² Regulations, s 40.01 (as at July 31, 2009)

³³ Rahman Affidavit, para 68 [AR, Vol Q, Tab AA, p 6661]; Regulations, s 40.01

³⁴ Until 2005 this grant operated under the title Canada Study Grant for a Student with a Permanent Disability.

³⁵ Regulations, s 34 (as at July 31, 2009)

³⁶ Regulations, s 34(3) (as at July 1, 2002)

³⁷ Affidavit of Marc LeBrun, sworn on February 2 2012, para 58 [AR, Vol L, Tab DD, p 5223] ("LeBrun 2012 Affidavit"); Rahman Affidavit, para 71 [AR, Vol Q, Tab AA, p 6663]; Regulations, s 34

³⁸ Agreed Statement of Facts, para 10 [AR, Vol A, Tab 5, pp 48-49]

³⁹ Rahman Affidavit, para 77 [AR, Vol Q, Tab AA, p 6665]; Regulations, s 8 [effective November 1, 2019]; Agreed Statement of Facts, para 10 [AR, Vol A, Tab 5, pp 48-49]

24. If a student returns to their studies before this six-month grace period expires, Canada will pay the interest accrued during this time. However, if a student returns to their studies after six months, the student will be responsible for paying the interest that accrued while they were out of school. If this student returns after six months and pays the interest that accrued on their loans up to the day before returning, they will once again benefit from the in-study interest subsidy and repayment obligations will cease.⁴⁰

25. Students who withdraw early from a period of studies for which financial assistance has already been advanced may also be subject to an “overaward.” In these cases, eligibility for financial assistance is reassessed. If the loan amount provided exceeds the student’s recalculated entitlement by more than \$250, the overaward is deducted from subsequent loan disbursements issued when the student returns to school. Additionally, any excess federal grant amounts are converted to loans.⁴¹

26. The CSLP amended its overaward policy in 2004. Under the amended policy, if a student from Ontario withdraws from studies for serious medical reasons, Ontario may decide that the overawarded federal funding amount should not be deducted from future disbursements, and that it should instead be included in the principal repayable upon consolidation.⁴² In addition, subject to Governor-in-Council approval, the CSLP will offer interest-free, payment-free leave for up to three six-month periods, to borrowers requiring a leave from their studies for parental or medical reasons beginning in 2020-21.⁴³

⁴⁰ Rahman Affidavit, paras 78-81 [AR, Vol Q, Tab AA, pp 6665-6]; Regulations, ss 7(1)(b), 12.2(1)(d)

⁴¹ Rahman Affidavit, paras 81-83 [AR, Vol Q, Tab AA, pp 6666-7]; Regulations, s 40.04; Act, s 12(2)

⁴² Affidavit of Cynthia Carraro, sworn on December 6, 2007, para 16 [AR, Vol K, Tab AA, p 4736] (“Carraro Affidavit”)

⁴³ Agreed Statement of Facts, para 10 [AR, Vol A, Tab 5, pp 48-49]

d) Consolidation of the loan and Repayment

27. Consolidation of a student loan occurs at the end of the six-month grace period.⁴⁴

Following consolidation, the borrower is required to make monthly payments in accordance with the terms and conditions of their student loan agreement.⁴⁵ Borrowers are ordinarily required to pay off their loans within 10 years from the time the borrower leaves school.⁴⁶

28. The CSLP has numerous measures to help students experiencing difficulty meeting their financial obligations during the repayment period. At the time of the applicant's enrolment, there were four forms of repayment assistance available under the CSLP:

Interest Relief (IR): The Interest Relief program helped borrowers meet their repayment obligations if they were temporarily unable to make payments towards their federal student loans due to low income. Eligible borrowers were not required to make any principal or interest payments for a six-month period, for a maximum of five periods (30 months). Interest accrued during this time was paid by Canada.⁴⁷

Extended Interest Relief (EIR): If a borrower required more than five periods of IR, they could apply for Extended Interest Relief, which provided up to 24 months of additional interest relief within five years of the borrower leaving their studies.⁴⁸

Debt Reduction in Repayment (DRR): If after exhausting both IR and EIR, a borrower was still experiencing financial hardship, the borrower could apply for DRR. This program lowered the loan principal and reduced the borrower's monthly loan payment to an amount deemed affordable based on family income.⁴⁹

Revision of Terms (ROT): A borrower may apply to renegotiate their loan agreement to extend their repayment period up to a total of 15 years. Extending the repayment period reduces the monthly payment that the borrower is required to pay. The Revision of Terms measure is still available today.⁵⁰

In 2007, the CSLP reviewed its repayment assistance programs to more effectively meet the needs of borrowers. This review resulted in the introduction of the current Repayment

⁴⁴ Rahman Affidavit, paras 79, 87 [AR, Vol Q, Tab AA, pp 6665, 6668]; Regulations, ss 8, 12.6, 17

⁴⁵ Rahman Affidavit, para 87 [AR, Vol Q, Tab AA, p 6668]; O Reg 268/01 s 31; RRO 1990, Reg 774 s 9(4)

⁴⁶ Frith Affidavit, para 55 [AR, Vol J, Tab AA, p 4394]

⁴⁷ Regulations, ss 19-20(2) (as at July 31, 2009)

⁴⁸ Regulations, s 20(2.01) (as at July 31, 2009)

⁴⁹ Regulations, s 42.1 (as at July 31, 2009)

⁵⁰ Rahman Affidavit, para 100 [AR, Vol Q, Tab AA, p 6673]

Assistance Plan (“RAP”) and Repayment Assistance Plan for Borrowers with Permanent Disabilities (“RAP-PD”), the latter which specifically targets the needs of permanently disabled individuals like the applicant.

29. The RAP is divided into two stages. The first stage is designed to address the needs of borrowers experiencing temporary financial difficulties.⁵¹ At this stage, an eligible borrower can apply to have their monthly payment reduced to an affordable amount for a six-month period, to a maximum of 60 months. This affordable payment is determined based on family size and student loan debt of both the borrower and their spouse. The affordable payment will not exceed 20% of the borrower’s gross family income and can be as little as \$0 per month.⁵² During the RAP period, any additional principal payments are deferred and Canada pays any monthly interest over and above the borrower’s affordable payment.⁵³

30. The second stage of RAP begins after an eligible borrower completes the first stage, or has been in repayment for more than 10 years. This stage provides longer-term assistance to borrowers facing persistent financial difficulties.⁵⁴ At this stage, eligible borrowers will continue to make their affordable payment and Canada continues to pay any monthly interest over and above this affordable amount. Canada also pays any additional principal payments that would have been due under the ordinary terms of the loan agreement, and so that the loan is repaid in full within 15 years.⁵⁵ In circumstances where the borrower’s monthly affordable payment is \$0, both the principal and the interest on the loan are fully paid by Canada.⁵⁶

⁵¹ Rahman Affidavit, paras 96-97 [AR, Vol Q, Tab AA, p 6672]

⁵² Rahman Affidavit, paras 96-97 [AR, Vol Q, Tab AA, p 6672]

⁵³ Regulations, s 19(2)(a); Rahman Affidavit, para 96 [AR, Vol Q, Tab AA, p 6672]

⁵⁴ Rahman Affidavit, para 97 [AR, Vol Q, Tab AA, p 6672]

⁵⁵ Regulations, ss 20-20.1

⁵⁶ Regulations, s 20(2)(i); Rahman Affidavit, para 97 [AR, Vol Q, Tab AA, p 6672]

31. RAP-PD provides additional repayment assistance to borrowers with permanent disabilities that is similar to stage two of the RAP process.⁵⁷ During periods when the borrower is approved for RAP-PD, Canada pays the entire portion of the monthly loan payment that is greater than 20% of the borrower's family income, including both interest and principal. In determining the borrower's affordable monthly loan payment, living costs associated with the permanent disability are also taken into account. Furthermore, the loans are paid off over 10 years, as compared to the 15-year period under the regular RAP program.⁵⁸

e) Debt discharges, write-offs, and loan forgiveness

32. The final stage of a loan life-cycle occurs when the loan is either entirely repaid, discharged, written-off, or forgiven. Borrowers who have declared bankruptcy can have their student debt discharged seven years after their end-of-study date, or five years after this date in the case of financial hardship.⁵⁹ Under the *Financial Administration Act*, debts to the Crown, including student debt, can be written-off if deemed to be non-collectable.⁶⁰

33. In addition, students with disabilities may be eligible for the Severe Permanent Disability Benefit ("SPDB"), if the borrower demonstrates that they are unable, and never will be able, to repay their federal student loans due to a severe permanent disability.⁶¹ Borrowers eligible for this benefit will have their federal student loan obligations completely forgiven, but will no longer be eligible to receive any further grants or loans under the CSLP.⁶²

⁵⁷ Rahman Affidavit, para 102; Regulations, s 20(1)(b)(i)

⁵⁸ Regulations 20(1)(b), 20(3)(a)(i), 20(3)(b)(i); Rahman Affidavit, para 102 [AR, Vol Q, Tab AA, p 6674]

⁵⁹ Rahman Affidavit, para 111 [AR, Vol Q, Tab AA, pp 6679]; Regulations, s 16(3)(c); *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, at s 178(1)(g), 178(1.1)

⁶⁰ Rahman Affidavit, para 112 [AR, Vol Q, Tab AA, p 6679]; RSC 1985, c F-11 at s 25(1), 66

⁶¹ Rahman Affidavit, paras 106-108 [AR, Vol Q, Tab AA, pp 6676-7]; Act, s 11

⁶² Act, s 11; Regulations, s 2(1) "severe permanent disability"

B. THE APPLICANT'S STUDENT LOAN HISTORY

34. The applicant enrolled as a student at Gallaudet University ("Gallaudet") in Washington, D.C., in 1999. The evidence establishes that she applied to Gallaudet and another university in the United States because they offered a unique learning environment in American Sign Language ("ASL").⁶³ While the applicant argues that Gallaudet provided the ideal learning environment for her, deaf students regularly attend Canadian post-secondary institutions, where ASL interpretation services are provided at no cost to the student.⁶⁴

35. The applicant earned both a Bachelor and Masters of Social Work from Gallaudet. She completed the BSW, ordinarily a four-year degree, in five years. She completed the MSW, ordinarily a two-year degree at Gallaudet, in three years, ultimately graduating in 2008.⁶⁵

36. Throughout her time at Gallaudet, the applicant received financial assistance from CSLP. The CSLP provided her with \$5,610 in a repayable risk-shared loan for the 1999-2000 school year and \$5,280 in repayable direct loans for the 2000-2001 school year.⁶⁶ From 1999-2001, the applicant also received \$7,260 in student loans from Ontario.⁶⁷ From 2001-2008, the applicant received \$58,400 in Canada-Ontario integrated direct student loans (consisting of \$32,640 from Canada and \$25,760 from Ontario), for a total of \$76,550⁶⁸ in repayable financial assistance from Canada and Ontario from 1999-2008.⁶⁹ In addition, she received \$288,831 in

⁶³ Transcript to the Cross-examination of Jasmin Simpson, November 17, 2016, QQ 98-113 [AR, Vol R, Tab CC, pp 7375-7378]

⁶⁴ Affidavit of Donna Wall, sworn January 31, 2012, paras 106-107 [AR, Vol L, Tab AA, p 5507] ("Wall Affidavit")

⁶⁵ Supplementary Affidavit of Jasmin Simpson, sworn August 5, 2010, paras 1-2 [AR, Vol G, Tab BB, pp 3179-3180] ("Simpson 2010 Affidavit")

⁶⁶ Rahman Affidavit, para 120 [AR Vol Q, Tab AA, p 6681]

⁶⁷ Rahman Affidavit, para 121 [AR Vol Q, Tab AA, p 6681]; Jackson Affidavit, Tab M [AR, Vol K, Tab BB, p 4945]

⁶⁸ The federal portion amounting to \$43,530, and the provincial amounting to \$33,020.

⁶⁹ Agreed Statement of Facts, para 19 [AR, Vol A, Tab 5, pp 51-52]; Rahman Affidavit, para 118 [AR, Vol Q, Tab AA, p 6681]

non-repayable assistance, consisting of \$9,391 in federal grants, \$231,455 in provincial bursaries and grants and \$47,985 in Ontario Disability Support Program payments.⁷⁰

37. In February 2001, the applicant withdrew from her studies due to illness. Although she was unable to complete the spring semester, Gallaudet billed her for the entire semester, based on its policy that requires international students to pay if withdrawing after the University's withdrawal date, even if the withdrawal is for medical reasons.⁷¹ By contrast, Ontario post-secondary institutions typically provide refunds or a refund appeal mechanism when students withdraw early for medical reasons.⁷² Gallaudet also refused to re-admit the applicant for the fall 2001 semester as her \$12,000 bill from the previous semester remained unpaid. Although the applicant tried to persuade Gallaudet not to bill her for the spring semester, and to re-admit her for the fall semester,⁷³ she did not bring any formal challenge to Gallaudet's policies.⁷⁴

38. At the time of the applicant's withdrawal in February 2001, interest on her CSLP loans began accruing immediately upon withdrawal, although this interest was not payable for six months.⁷⁵ During this period, the applicant received a payment from Ontario in February 2001 as financial assistance for the spring semester.⁷⁶ While she notes that she had to return this

⁷⁰ Rahman Affidavit, para 122 [AR Vol Q, Tab AA, p 6682]

⁷¹ Simpson 2006 Affidavit, paras 23-24 and Exhibits 11-12 [AR, Vol B, pp 613, 699-201]; Rahman Affidavit, para 123 [AR Vol Q, Tab AA, p 6682]

⁷² LeBrun 2012 Affidavit, para 73 [AR, Vol L, Tab DD, p 5226]; Simpson 2006 Affidavit, para 25 [AR, Vol B, p 614]

⁷³ Simpson 2006 Affidavit, paras 26, Tab 13 "Letter from Finklea to Simpson", Tab 16 "Email from Blanchette-McCubin to Simpson" [AR, Vol B, pp 614, 702, 811]

⁷⁴ Simpson Cross-Examination Transcript, Q 141-44, 146, [AR, Vol R, Tab CC, pp 7385-7387]

⁷⁵ Rahman Affidavit, para 77 [AR Vol Q, Tab AA, p 6665]; Act, s 8

⁷⁶ Simpson 2006 Affidavit, paras 23-24 [AR, Vol B, Tab AA, pp 613-614]

provincial amount,⁷⁷ the CSLP does not require the return of federal amounts in these circumstances, and provides that they are deducted from future loan disbursements.⁷⁸

39. In August 2001, the CSLP advised the applicant that she had been pre-screened and pre-qualified for Interest Relief.⁷⁹ Had the applicant sought this relief, Canada would have paid the interest on her loan and the applicant would not have had to pay any principal during this six-month period.⁸⁰ As she ultimately returned to Gallaudet in January 2002, this means that she would not have been required to make any principal payments in connection with her leave from Gallaudet, and Canada would have paid the interest that accrued from August 2001 until the applicant's return to study.⁸¹ However, the applicant did not ultimately apply for this relief.⁸²

40. The applicant's loans entered the repayment stage on September 1, 2001, and she was required to make her first loan payment on September 30, 2001. As she did not make her first payment, her loan went into arrears in October 2001. The applicant began a pre-authorized monthly payment plan on October 26, 2001, with monthly required payments of \$70.69. She followed this plan until she returned to school in January 2002, at which point she was no longer required to make payments and interest stopped accruing.⁸³ In total, the applicant paid \$353.45 toward her loan balance and \$368.35 in interest while on leave.⁸⁴

⁷⁷ Applicant's Factum, para 31; Simpson 2006 Affidavit, para 22 [AR, Vol B, Tab AA, p 613]

⁷⁸ Rahman Affidavit, paras 81-83; Regulations, s 40.04; Act, s 12(2)

⁷⁹ Rahman Affidavit, para 124 [AR, Vol Q, Tab AA, p 6682]

⁸⁰ Rahman Affidavit, paras 91-92, 105; Regulations, ss 19-20 (as at July 31, 2009)

⁸¹ Wall Affidavit, para 117 [AR, Vol L, Tab AA, p 5010]

⁸² Rahman Affidavit, para 124 [AR, Vol Q, Tab AA, p 6682]

⁸³ Rahman Affidavit, paras 125-26 [AR, Vol Q, Tab AA, p 6683]; Act, ss 7(1), 8

⁸⁴ Rahman Affidavit, para 126 [AR Vol Q, Tab AA, p 6683]; Carraro Affidavit, para 21 [AR, Vol K, Tab AA, p 4738]

41. The applicant graduated from Gallaudet in May 2008 and entered the repayment stage on December 1, 2008.⁸⁵ Although the applicant received \$76,550 in federal and provincial loans while in-study, she made several loan payments during this time and received grants from Ontario, which were applied to this loan balance. As a result, her federal and provincial loan balance at consolidation was \$55,684.40.⁸⁶ In November 2008, Ms. Simpson began working full-time at the Canadian Hearing Society as a full-time counsellor with CONNECT counselling services, a position she finds “fulfilling”.⁸⁷

42. The applicant applied for the Interest Relief program immediately upon entering repayment on December 1, 2008. However, her application was denied because her income was too high.⁸⁸ In June 2010, the applicant applied again for repayment assistance, this time, under the new RAP-PD. However, her application was again denied due to her income of \$57,000 per year being too high.⁸⁹

43. Subsequently, the applicant’s needs assessment changed, and she was approved for RAP-PD on both the federal and provincial portions of her loans for a six-month period from December 2011-May 2012. She was then re-approved for RAP-PD for four additional six-month periods from July-December 2016, January-June 2017, July-December 2017, and August 2018-January 2019. Over these five periods of RAP-PD, the applicant made \$4,587.38

⁸⁵ Rahman Affidavit, para 118 [AR Vol Q, Tab AA, p 6681]

⁸⁶ Rahman Affidavit, para 119 [AR Vol Q, Tab AA, p 6681]; Jackson Affidavit, Exhibit M [AR, Vol K, Tab BB, pp 4945-4946]

⁸⁷ Simpson Cross-examination Transcript, QQ 28-42, 70 [AR, Vol R, Tab CC, pp 7357-7359, 7367]

⁸⁸ Agreed Statement of Facts, para 21 [AR, Vol A, Tab 5, p 52]

⁸⁹ Agreed Statement of Facts, para 22 [AR, Vol A, Tab 5, p 52]; see also Supplementary Affidavit of Jasmin Simpson, sworn August 5, 2010, para 14 [AR, Vol G, Tab BB, p 3183]

in affordable payments toward her loan balance, Canada contributed \$18,179.11, and Ontario contributed \$6,080.22.⁹⁰

44. The applicant's loans were scheduled to be repaid in full at the conclusion of the August 2018-January 2019 RAP-PD period. However, in October 2018, the applicant contacted the National Student Loan Service Centre and advised that she could no longer make her affordable payments.⁹¹ She elected to cease RAP-PD as of October 31, 2018, and applied instead for a Revision of Terms ("ROT"). The ROT was signed on February 5, 2019, and extended her repayment obligation over a 52-month term. The applicant's monthly payments under the ROT are \$44 for both the federal and provincial portions of her loans. As of July 2019, her loan balance is \$1,781.87. Her loans are currently scheduled to be paid off in full in 2023.⁹²

C. EXPERT EVIDENCE ON THE IMPACT OF STUDENT DEBT ON PSE PARTICIPATION BY STUDENTS WITH DISABILITIES

45. In addition to the evidence concerning the applicant, the parties filed extensive expert evidence concerning students with disabilities, their experiences in accessing PSE and their debt loads as compared to non-disabled students. This evidence:

- 1) establishes that the issues raised in this application – with respect to access to PSE, and the barriers faced by students with disabilities – are varied and complex;
- 2) does not establish that in general, students with disabilities take longer than non-disabled students to graduate from PSE, nor do they incur more debt than non-disabled students;⁹³
- 3) establishes that financial factors, including perceptions of debt, are not significant determinants of – or barriers to – PSE participation; and
- 4) establishes that the remedies proposed by the applicant would not be fair or result in increased PSE participation by students with disabilities.

⁹⁰ Agreed Statement of Facts, para 23 [AR, Vol A, Tab 5, p 52]

⁹¹ The National Student Loan Service Centre manages the disbursement and repayment of loans for the CSLP as well as several provincial student assistance programs, including OSAP.

⁹² Agreed Statement of Facts, paras 24-27 [AR, Vol A, Tab 5, pp 52-3]

⁹³ See for example Finnie Affidavit, paras 25, 34-44, 65 [AR, Vol O, Tab AA, pp 6107, 6110-6114, 6120]

1) The issues concerning PSE access and barriers are varied and complex

46. While the experts disagreed on a number of issues, they generally agreed that the creation and administration of a student financial assistance program is a complex undertaking.⁹⁴ The financial assistance process has several interrelated stages, including eligibility determination, the disbursement of grants and loans while a student is in study, and repayment assistance following consolidation. At each stage, a financial assistance program must meet the varying needs of borrowers, while also preserving the financial integrity of the program for future students and the taxpayers that fund the financial assistance program.⁹⁵ Similarly, the needs of PSE students, and students with disabilities in particular, are varied, and the evidence establishes that all students follow varied pathways through education.

2) Expert evidence does not establish that students with disabilities generally take longer or graduate with more debt on average than non-disabled students

47. The expert evidence does not establish that in general, students with disabilities take longer than non-disabled students to complete PSE, nor does it establish that in general, they graduate with more debt than students without disabilities. To the contrary, the available evidence – including that of the applicant’s expert, Ms. Furrie – establishes that students with disabilities on the whole graduate with *lower* debt loads than non-disabled students.

⁹⁴ This was noted, for example, in the Transcript of the Cross-examination of Anthony Chambers, February 2-3 2017, QQ 264-286 [AR, Vol U.2, Tab D, pp 9156-9163] (“Chambers Cross-examination Transcript”); Usher Cross-examination Transcript, QQ 127-130 [AR, Volume R, Tab AA, p 7199]; see also Supplementary Affidavit of Dr. Timothy Farmer, sworn July 15 2014, paras 40-42 [AR, Vol N.1, Tab AA, pp 5595-5596]

⁹⁵ Rahman Affidavit, paras 17-19, 17, 35, 41, 50, 61, 95, 106 [AR, Vol Q, Tab AA, pp 6644-6671]

a) The evidence does not establish that students with disabilities generally take longer than non-disabled students

48. The evidence from the applicant and Canada establishes that pathways through PSE for all students are complex and do not follow a uniform pattern.⁹⁶ For disabled and non-disabled students alike, these pathways frequently include switching programs or leaving school and then coming back. While patterns of these behaviours vary as between students with disabilities and non-disabled students, they vary in a variety of often conflicting ways.⁹⁷ The evidence also shows that students do not usually drop out of school because they cannot continue to afford their education.⁹⁸

49. One of the main experts concerning pathways through education and the determinants of PSE participation is Professor Ross Finnie. Professor Finnie is a Full Professor in the Graduate School of Public and International Affairs at the University of Ottawa and Director of the Education Policy Research Initiative. He has worked on issues relating to PSE, and specifically issues of access and barriers to participation, for more than 20 years, and has published several papers and books on this issue, establishing himself as one of Canada's leading researchers concerning PSE issues. Professor Finnie notes that "*all* students, whether possessing disabilities or not, are generally taking longer than the nominally prescribed 'normal' length of time to complete their studies (*e.g.* four years for a standard Bachelors program)."⁹⁹ This "new normal" includes students switching programs, moving institutions, going onto further studies, or switching as between college and university.

⁹⁶ Finnie Affidavit, para 43 [AR, Vol O, Tab AA, pp 6113-4]; see also Usher Cross-examination Transcript, QQ 349-354 [AR, Volume R, Tab AA, p 7255-7257]

⁹⁷ Finnie Affidavit, para 43 [AR, Vol O, Tab AA, pp 6113-4]

⁹⁸ Finnie Affidavit, para 43 [AR, Vol O, Tab AA, pp 6113-4]

⁹⁹ Finnie Affidavit, para 80 (emphasis in the original) [AR, Vol O, Tab AA, p 6124]

50. The applicant's expert in higher education policy, Alex Usher, agreed with this point, providing his opinion in his cross-examination that "nobody actually" completes a degree within the prescribed 'normal' length of time. Rather, he noted that with respect to "time to completion, it's usually the standard period plus a year".¹⁰⁰

51. As all students are "taking longer" to complete PSE, Professor Finnie questions the meaningfulness of the notion of "taking longer" when comparing different groups of students. When comparing the available data on pathways through PSE as between students with disabilities and those without, Professor Finnie concludes that the evidence is quite varied, demonstrating that:

- a) With respect to students at the college level, it is the non-disabled students who may have a more circuitous or otherwise delayed route through to graduation (*i.e.* they take longer);
- b) With respect to students at the university level, overall four-year drop-out rates are about equal for disabled and non-disabled students, both being very low, but there are more disabled students than non-disabled students who are still in school rather than already graduated four years after entering PSE.¹⁰¹
- b) CSLP data do not establish that students with disabilities generally incur more debt**

52. The applicant relies on CSLP's own administrative data to establish that students with disabilities incur more debt than non-disabled students; however, the applicant's analyses are faulty and should be rejected.¹⁰² The CSLP agreed to provide data to the applicant based on specifications provided by one of the applicant's opinion affiants – Ms. Furrie.¹⁰³ Ms. Furrie

¹⁰⁰ Cross-examination of Alex Usher, QQ 402-406 [AR, Vol R, Tab AA, pp 7269-7270]

¹⁰¹ Finnie Affidavit, para 40 [AR, Vol O, Tab AA, pp 6112-3]

¹⁰² This is data retained by the CSLP in the administration of the student loans program.

¹⁰³ Affidavit of Adele Furrie, sworn November 15 2013, para 22 [AR, Vol H, Tab BB, p 3511] ("Furrie 2013 Affidavit")

requested CSLP data from three fiscal years – 2008-09, 2009-10 and 2010-11 – breaking down the amount of CSLP debt of students with and without disabilities at consolidation.¹⁰⁴

53. It is important to note that the CSLP data is collected by CSLP to administer the program – not to collect any particular information about various individuals or groups receiving student loans. As explained above, “consolidation” of a loan is not equivalent to “graduation”. Consolidation of a loan occurs six months after the student leaves PSE for any reason.¹⁰⁵ Length of time to consolidation is not a proxy for the length of time spent in PSE.¹⁰⁶

54. For this reason, the data cannot be used for the purposes sought by the applicant – to draw conclusions about “students with disabilities who take longer to complete PSE because of their disability”. Such a category does not exist within the data. The CSLP data do not provide any information about the length of time any student spent in PSE,¹⁰⁷ whether they completed PSE,¹⁰⁸ how many degrees they took, or any reason for length of study. The data provide no information about what level or how many degrees a student completed before consolidation, nor about whether a student had already previously reached consolidation and re-applied for loans in respect of further studies.

55. For example, a student who reached consolidation after one year could have completed one year of PSE – but could equally have completed any length of study (*e.g.* two years, ten years).¹⁰⁹ Additionally, a student who completes one degree and continues on in PSE to acquire a subsequent degree without exiting the study period for longer than six months would not

¹⁰⁴ Furrie 2013 Affidavit, para 23 [AR, Vol H, Tab BB, p 3511]

¹⁰⁵ Melchers 2012 Affidavit, paras 76-79 [AR, Vol L, Tab CC, pp 5227-8]

¹⁰⁶ Finnie Affidavit, paras 62-68 [AR, Vol O, Tab AA, pp 6219-21]

¹⁰⁷ Transcript of the Cross-examination of Adele Furrie, November 29, 2016, QQ 165-6 [AR, Vol S, Tab FF, p 7860] (“Furrie Cross-examination Transcript”)

¹⁰⁸ Furrie Cross-examination Transcript, QQ 168-175 [AR, Vol S, Tab FF, pp 7861-2]

¹⁰⁹ Furrie Cross-examination Transcript, QQ 165-6 [AR, Vol S, Tab FF, p 7860]

consolidate their loan. In that case, a student could take six years to reach consolidation but have completed two degrees in the ordinary time period required for those degrees. Further, a student included in this data could have previously reached consolidation, and then re-entered studies and then re-consolidated. Ms. Furrie acceded to these limitations of the data in cross-examination.¹¹⁰

56. Ultimately, the only relevant conclusion that can be drawn from this data is that in the three years examined, the average student loan debt at consolidation for students with disabilities was *lower* than for students without disabilities in 2008-09 and 2009-10, and *higher* in 2010-11.¹¹¹

57. Notwithstanding these limitations, Ms. Furrie attempted to draw a range of conclusions about the data. As explained above, the data cannot be used for purposes beyond comparing the CSLP debt levels of the overall populations of students with and without disabilities upon consolidation. Furthermore, the applicant's arguments concerning the CSLP data are not reliable because their affiant, Ms. Furrie, is not an expert in statistical analysis. She possesses no formal education in statistical analysis and the errors in her analysis and conclusions are methodically documented in the affidavits of Professor Melchers, an expert in research methodology and statistics. Particularly on this point:

- a) **Ms. Furrie has no formal education in statistics, let alone a higher-education degree, nor is she generally recognized as an expert in statistics:** Ms. Furrie possesses only a Bachelor of Arts in Economics/Sociology. She possesses no graduate level degrees and has no specialization in the field of statistics, nor has she taught or lectured in the field of statistics in a post-secondary institution.¹¹²

¹¹⁰ Furrie Cross-examination Transcript, QQ 165-6 [AR, Vol S, Tab FF, pp 7860-7862]

¹¹¹ Furrie 2013 Affidavit, para 30, Table 1 [AR Vol H, Tab BB, p 3513]

¹¹² See Furrie Cross-examination Transcript, QQ 18-22, 28 [AR, Vol S, Tab FF, pp 7823-7825]; Furrie 2013 Affidavit, Exhibit 1 "Resume" [AR, Vol H, Tab BB-1, pp 3526-3534]

- b) **Ms. Furrie’s primary expertise is in survey *design*, not *analysis*:** Ms. Furrie cites as experience her career at Statistics Canada. However, she notes that her role was largely in developing and implementing surveys and not in survey analysis.¹¹³
- c) **Ms. Furrie is not a non-partisan expert:** Ms. Furrie acknowledged on cross-examination that she is a disability-rights advocate, and that she has done extensive work advocating for disability rights. This includes sitting on the Board of Directors for ARCH Disability Law Centre and the Social Policy Committee of the Council of Canadians with Disabilities.

58. The evidence on this data from Canada’s expert, Professor Ronald Melchers, should be preferred. Professor Melchers is a recognized expert in research methodology and statistical analysis. His analysis and conclusions with respect to the CSLP data are more reliable because:

- a) **Professor Melchers had an over 30-year career as a professor in statistics and research methodology:** From 1983 to 2017, Melchers was a Professor in the Department of Criminology at the University of Ottawa, where his principal fields of study and teaching included statistics and research methods.¹¹⁴
- b) **Professor Melchers has made significant contributions to the field of research methodology and statistics:** His accomplishments include serving on academic journal editorial boards, providing judicial training on expert evidence and scientific and statistical evidence. Professor Melchers has conducted and published research on measurement methodology and evidence in legal and criminal justice policy.¹¹⁵
- c) **Professor Melchers has relevant higher education degrees:** Professor Melchers holds a Doctorate in Human Resource Economics and an Advanced Studies Diploma in Economics and Sociology of Labour.¹¹⁶

59. Professor Melchers concludes that the CSLP data analyzed by Ms. Furrie do not provide “evidence of any substantial systematic differences in indebtedness between students

¹¹³ Supplementary Affidavit of Adele Furrie, sworn on November 24, 2017, para 6 [AR, Vol I, Tab AA, p 3686] (“Furrie YITS Affidavit”)

¹¹⁴ Supplementary Affidavit of Ronald-Frans Melchers, sworn on August 23 2018, Exhibit A “Curriculum Vitae” [AR, Vol Q, Tab BB-A, p 7165] (“Melchers 2018 Affidavit”)

¹¹⁵ Affidavit of Adele Furrie, sworn on June 3, 2016, paras 6-7 [AR, Vol H, Tab EE, pp 3623-3624]

¹¹⁶ Supplementary Affidavit of Ronald-Frans Melchers, sworn on August 23 2018, Exhibit A “Curriculum Vitae” [AR, Vol Q, Tab BB-A, p 7165] (“Melchers 2018 Affidavit”)

with and without disabilities,” and that her analyses are “based upon a flawed and incomplete analysis of the data ... at times at odds with the actual data presented in its tables.”¹¹⁷

60. The flaws in Ms. Furrie’s work cited by Professor Melchers include:

- a) **Concluding, without any reasonable basis, that differences between students with disabilities and students without disabilities can be attributed solely to disability:** Professor Melchers observes that Ms. Furrie fails to take into account the other many differences between these groups, including differences in programs, institutions, fields of study, *etc.*¹¹⁸
- b) **Neglecting that differences in length of study and indebtedness may also reflect failure to persist (*i.e.* dropping out) in completion of programs of study.**¹¹⁹
- c) **Presenting negligible differences as meaningful, therefore skewing results:** Professor Melchers observes that by using percentages, even where the data sample is very small, Ms. Furrie exaggerates the conclusions in her data.¹²⁰

61. When removing data that improperly skew the results, the CSLP data show that indebtedness is lower on average among students with disabilities than among students without disabilities. On this point, Professor Melchers points out that with the exception of a very small outlier group of individuals (55 students per year) who reach consolidation after 10 years or more, for every other group (those reaching consolidation in nine years or less, a group that includes Ms. Simpson), students without disabilities reached consolidation, on average, with *higher* debt levels than students with disabilities.¹²¹ Ultimately, Professor Melchers concludes that the CSLP data show “no evidence of any material differences between students with and without disabilities in terms of years of study or resulting student loan indebtedness.”¹²²

¹¹⁷ Further Supplementary Affidavit of Ronald-Frans Melchers, sworn September 26, 2016, para 10 [AR, Vol P, Tab AA, p 6534] (“Melchers 2016 Affidavit”)

¹¹⁸ Melchers 2016 Affidavit, para 14 [AR Vol P, Tab AA, p 6535]

¹¹⁹ Melchers 2016 Affidavit, para 15 [AR, Vol P, Tab AA, p 6536]

¹²⁰ Melchers 2016 Affidavit, para 17-18 [AR, Vol P, Tab AA, p 6537]

¹²¹ Melchers 2016 Affidavit, para 22 [AR, Vol P, Tab AA, p 6540]

¹²² Melchers 2016 Affidavit, para 34 [AR, Vol P, Tab AA, p 6547]

c) Analysis of the 2012 Canadian Survey of Disability does not support the applicant's conclusions

62. The applicant also relies on a further affidavit from Ms. Furrie concerning Statistics Canada's 2012 Canadian Survey on Disability ("CSD"). Ms. Furrie examines data from this survey and concludes that "34.4% of PWD-S (persons with disabilities who had their disability while attending school) took longer to achieve their current level of education."¹²³

63. Ms. Furrie's conclusions with respect to the CSD are similarly faulty. After analyzing the underlying data, Professor Melchers concludes that Ms. Furrie's report was "deficient in many aspects and its conclusions not well founded."¹²⁴ Ms. Furrie's analysis:¹²⁵

- a) does not adequately report the limitations of the source data;
- b) does not provide information on the manner in which her estimates were derived or how she accessed the data;
- c) does not name the variables used in her tables, and where named, the variables chosen are inappropriate for comparing persons with and without disabilities; and,
- d) uses interview data that do not support comparative analyses between persons with and without disabilities.

64. As noted by Professor Melchers, one significant problem with Ms. Furrie's conclusions is that they are based on survey data from participants who identified as having a disability while attending school and were asked "because of your condition did it take you longer to achieve your present level of education?" Professor Melchers points out that this question is not useful in assessing whether students with disabilities took longer to complete PSE, let alone whether this led to increased indebtedness. This is because the question does not draw a

¹²³ Supplementary Affidavit of Adele Furrie, sworn on November 24 2017, para 44 [AR, Vol I, Tab BB, p 4152] ("Furrie CSD Affidavit")

¹²⁴ Supplementary Affidavit of Ronald-Frans Melchers, sworn August 23, 2018, para 13 [AR, Vol Q, Tab BB, p 7130] ("Melchers CSD Affidavit")

¹²⁵ Melchers CSD affidavit, para 13 [AR, Vol Q, Tab BB, p 7130]

distinction between post-secondary and other education (high school or below).¹²⁶ This question does not elucidate what, if any, impact taking longer had on student loan eligibility or indebtedness – or which, if any, of the persons in this category had student loans.¹²⁷

65. Professor Melchers also identifies numerous other flaws in Ms. Furrie’s analysis of the CSD data, including that her analysis does not look at other relevant categories considered in the CSD.¹²⁸ While Ms. Furrie purports to draw conclusions concerning whether persons take longer to complete their education due to disability, she does not consider how much longer it took to complete their education as a result of disability.¹²⁹

66. For these reasons, Professor Melchers concludes that Ms. Furrie’s findings based on the CSD data are ultimately “without foundation.”¹³⁰ Given these serious errors and the concerns noted above with respect to Ms. Furrie’s lack of qualifications and expertise for conducting statistical analysis, this evidence should also be disregarded.

d) Alex Usher’s evidence on this issue is not persuasive

67. The applicant also relies on evidence from Alex Usher to demonstrate that students with disabilities *may* graduate with higher debt loads than students without disabilities. This analysis is based on theoretical tables produced by Mr. Usher, which attempt to show that students who graduate after more years of study may accumulate more debt. Mr. Usher’s evidence does not support any meaningful conclusions as his evidence is purely speculative:

- a) **The tables generated by Mr. Usher are hypothetical:** As admitted by Mr. Usher in cross-examination, the data in his tables are purely hypothetical and are not based on actual tuition and/or other actual expenses incurred by students,

¹²⁶ Melchers CSD affidavit, para 48 [AR, Vol Q, Tab BB, p 7154]

¹²⁷ Melchers CSD affidavit, para 49 [AR, Vol Q, Tab BB, p 7154]

¹²⁸ Melchers CSD affidavit, para 54 [AR Vol Q, Tab BB, p 7157]

¹²⁹ Melchers CSD affidavit, para 59 [AR Vol Q, Tab BB, p 7157]

¹³⁰ Melchers CSD affidavit, para 58 [AR, Vol Q, Tab BB, p 7160]

with or without disabilities. Mr. Usher simply calculates the difference between the cost of a hypothetical six-year program versus a hypothetical four-year program.¹³¹

- b) **The calculations do not take into account any other loans / grants / repayment assistance:** Mr. Usher’s calculations exclude consideration of other forms of student aid and repayment assistance, which may impact the ultimate debt burden for a student with disabilities.¹³²
- c) **The calculations do not look at students without disabilities who take longer to complete PSE:** Mr. Usher concludes, based on these theoretical tables, that students with disabilities who take six years to complete a degree would pay more than a student without disabilities who takes four years. However, there is no comparison to students without disabilities who also take longer in these hypothetical figures.

3) **The evidence does not establish that costs associated with PSE deter students with disabilities from participating in PSE**

68. The expert evidence establishes that affordability and debt aversion are not significant barriers to PSE participation. This conclusion applies broadly to students without disabilities, but it is also a reasonable conclusion that can be drawn with respect to students with disabilities.¹³³ As Professor Finnie notes, the social science evidence indicates that the largest driver of PSE participation is cultural – “the family and broader cultural environment in which the youth grows up.”¹³⁴ He notes that the applicant’s hypothesis in this regard – that debt aversion is a deterrent to PSE participation – “is largely inconsistent with the growing body of empirical evidence” that identifies cultural rather than financial factors as being the greatest determinants of PSE participation.¹³⁵

¹³¹ Usher Cross-examination Transcript, QQ 436-437, 440-448 [AR, Vol R, Tab AA, pp 7277-7280]; See also Melchers 2014 Supplementary Affidavit, paras 59-60 [AR, Vol M, Tab CC, p 5560]

¹³² Usher Cross-examination Transcript, Q 470-475 [AR, Vol R, Tab AA, pp 7284-5]

¹³³ See Finnie Affidavit, para 20 [AR, Vol O, Tab AA, p 6106]; see also Exhibits “C”, “D” and “E”

¹³⁴ Finnie Affidavit, para 21 [AR, Vol O, Tab AA, p 6106]

¹³⁵ Finnie Affidavit, para 24-25 [AR, Vol O, Tab AA, p 6107]; see also Exhibits “C”, “D” and “E”

69. Professor Finnie further points to data on PSE persistence (whether or not students complete PSE), which establish that very few students indicate financial reasons as being the key factor in their dropping out of studies.¹³⁶

70. Among students with disabilities in particular, Professor Finnie points to data from Statistics Canada’s longitudinal *Youth in Transitions Survey*, Cohort A,¹³⁷ which he describes as “probably the best dataset available in Canada” for measuring issues related to PSE participation. This dataset addresses a range of issues related to PSE, including the underrepresentation of persons with disabilities. Based on analysis of this data, Professor Finnie concludes that there was a gap in PSE participation between this group and other groups. Professor Finnie goes on to conclude that a “reasonable assessment would be that most of [the gap] does not relate to financial barriers of the type considered in this case.”¹³⁸ Instead, much of the gap could be explained by other factors taken into account in the analysis.¹³⁹

71. He further states that to attribute the gap to financial factors such as financial deterrence – as suggested by the applicant’s expert, Dr. David Lewis – would be “nothing more than unfounded and improbable speculation.”¹⁴⁰ As noted by Professor Finnie, Dr. Lewis’ evidence contains “fundamental errors.”¹⁴¹ Dr. Lewis bases his analysis on increases in tuition fees and not on increased debt levels.¹⁴² As increased tuition rates cannot be equated with increased debt levels, Dr. Lewis’ conclusions on tuition increases are inapplicable to the question of whether the fear of increased debt levels cause a deterrent effect.

¹³⁶ Finnie Affidavit, para 42 [AR, Vol O, Tab AA, p 6113]

¹³⁷ Finnie Affidavit, para 8 [AR, Vol O, Tab AA, p 6102]

¹³⁸ Finnie Affidavit, para 18 [AR, Vol O, Tab AA, p 6105]

¹³⁹ Finnie Affidavit, para 15 [AR, Vol O, Tab AA, p 6104]

¹⁴⁰ Finnie Affidavit, para 19 [AR, Vol O, Tab AA, p 6105]

¹⁴¹ Finnie Affidavit, para 69 [AR, Vol O, Tab AA, p 6121]

¹⁴² Finnie Affidavit, paras 70-71 [AR, Vol O, Tab AA, p 6121]

72. A further “fundamental flaw” in Dr. Lewis’ evidence is his choice of “elasticities,” or response effects to increases in tuition. Dr. Lewis reports a range of elasticity estimates and finds that mature students are more deterred by high tuition fees than other students. He then applies, without explanation, this most extreme estimate of elasticity (that of mature students) to “all disabled students”, even though the great majority of those students are not mature students.¹⁴³ Professor Finnie thus concludes that Dr. Lewis’ estimates “are a gross overstatement to what any reasonable estimate would produce, even based on the numbers he provides.”¹⁴⁴

73. The conclusion that financial factors do not appear to be a greater barrier to PSE entry for students with disabilities is also consistent with evidence provided by Alex Usher. On cross-examination, Mr. Usher agreed that in one of his written works, he and his co-authors cited data from 2002 indicating that most students (66.5% in college and 71.1% in university) were concerned about having sufficient funds to complete education – these numbers were similar for students with disabilities (66.4% in college and 75.8% in university).¹⁴⁵ With respect to students with disabilities, the authors concluded that perceptions of student debt loads for those attending college were “more or less indistinguishable from the general student population”.¹⁴⁶

74. The evidence also demonstrates that PSE participation by students with disabilities is increasing.¹⁴⁷ Data from the 2006 *Participation and Activity Limitations Survey* indicate that, between 2001 and 2006, the percentage of persons with disabilities aged 15-64 with a college

¹⁴³ Finnie Affidavit, paras 73-74 [AR, Vol O, Tab AA, p 6122]

¹⁴⁴ Finnie Affidavit, paras 72-73 [AR, Vol O, Tab AA, p 6122]

¹⁴⁵ Usher Cross-examination Transcript, Exhibit 7 [AR, Vol R, Tab BB, Tab 7, p 7345]

¹⁴⁶ Usher Cross-examination Transcript, Exhibit 8 [AR, Vol R, Tab BB, Tab 8, p 7346]

¹⁴⁷ See Rahman Affidavit, paras 9-10 [AR, Vol Q, Tab AA, pp 6639-6640]; see also Affidavit of Melanie Panitch, sworn June 27 2007, para 6 [AR, Vol F, Tab AA, p 2522] (“Panitch Affidavit”)

degree increased from 16% to 22%, while the percentage with a university degree rose from 8.3% to 11.4%.¹⁴⁸ Between 1999 and 2008, the proportion of the population aged 16-64 with a disability with college or university credentials also increased by 11 percentage points (from 32% to 43%).¹⁴⁹

75. In support of the allegation that financial factors disincentivize PSE participation for students with disabilities, the applicant also introduced a 2010 study by Professor Tony Chambers. Entitled *Assessment of Debt Load and Financial Barriers Affecting Students with Disabilities in Post-Secondary Education*, the report attempted to assess the experiences and impact of student debt and financial barriers for students with disabilities in post-secondary institutions. The report purported to demonstrate a connection between perception of student debt by students with disabilities and their choices related to PSE participation.

76. The study contains fundamental flaws that render it unreliable. As Professor Chambers admitted on cross-examination, the study was spoiled through sample bias. Following the completion of preliminary results of the survey, one of the study's co-authors presented the results at a conference for students with disabilities where she discussed preliminary findings and sought further participants for the study. As noted by another of Canada's experts, Professor Farmer, in doing so, the co-author "irrevocably contaminated the data sample."¹⁵⁰ Professor Farmer explains that this "was tantamount to telling people what the results of the

¹⁴⁸ Rahman Affidavit, paras 9-10 [AR, Vol Q, Tab AA, pp 6639-6640]

¹⁴⁹ Affidavit of Alex Usher, affirmed on October 29, 2013, Exhibit 5, McCloy, U & DeClou, L *Disability in Ontario: Postsecondary education participation rates, student experience and labour market outcomes* (2013) [AR, Vol H, Tab AA, pp 3450-3481] ("Usher Affidavit")

¹⁵⁰ Affidavit of Dr. Timothy Farmer, sworn on February 2012, para 18 [AR, Vol L, Tab BB, p 5140] ("Farmer 2012 Affidavit")

research was and inviting them to confirm those results.”¹⁵¹ On cross-examination, Professor Chambers admitted that his co-author “should not have done this,” because of the potential for contaminating the results of the report.¹⁵²

77. Professor Farmer goes on to identify a number of other problems with the report’s methodology.¹⁵³ However, given the fundamental flaw in the study pointed out above – and admitted by one of the study’s authors – this court should not ascribe any weight to this study.

78. The applicant attempts to discredit the evidence of Professor Farmer, citing certain irregularities that arose during Professor Farmer’s cross-examination and challenging Professor Farmer’s expertise. The irregularities here, which arose following two days of heated cross-examination by the applicant’s counsel,¹⁵⁴ do not affect the overall reliability of Professor Farmer’s opinions. Moreover, the applicant’s challenge to Professor Farmer’s expertise is groundless. Professor Farmer, whose Ph.D. examined the experiences of students with learning disabilities, is on faculty at Concordia University and has two decades of experience working with PSE students with disabilities. Moreover, his main critiques of the Chambers study were, in fact, admitted by Professor Chambers on cross-examination.¹⁵⁵

¹⁵¹ Farmer 2012 Affidavit, para 18 [AR, Vol L, Tab BB, p 5140]

¹⁵² Chambers Cross-examination Transcript, QQ-427-428, 430-435 [AR, Vol U, Tab DD, pp 9188-90]

¹⁵³ See for example, Farmer 2012 Affidavit, paras 6, 10-11, 13, 24-26 and paras 77-90 [AR, Vol L, Tab BB, pp 5135-5139, 5141-5142, 5156-5160]

¹⁵⁴ On the second day of cross-examination, applicant’s counsel asked Professor Farmer, who is visually impaired and required a reader to assist him during cross-examination, to review 23 articles that had been referred to in footnotes in his affidavit, and to then answer a series of five open-ended questions about each article. This led to an adjournment of the cross-examination. Upon resumption, Professor Farmer sought to introduce a further affidavit, which was not admitted into evidence. See Transcript of the Continued Cross-Examination of Timothy Farmer, dated February 3, 2017, QQ 941-950 [AR, Vol U.1, Tab CC, pp 9086-95]

¹⁵⁵ Chambers Cross-examination Transcript, QQ-427-428, 430-435 [AR, Vol U, Tab DD, pp 9188-90]

4) Equalization of student loan debt for students with disabilities would likely be ineffective

79. Professor Finnie’s evidence casts serious doubt on whether the remedy sought by the applicant – equalizing debt between students with and without disabilities – is capable of implementation and, if so, whether it would be effective policy.¹⁵⁶ He states that implementing such a remedy “may be riddled with so many practical problems and inconsistencies as to make its overall effectiveness, and indeed fairness, highly questionable.”¹⁵⁷

80. On this point, he notes that the evidence establishes that students with disabilities in certain cases already accumulate less debt than their non-disabled peers¹⁵⁸ and that *all* students are generally taking longer than the prescribed program length to continue their studies.¹⁵⁹ He also notes conceptual challenges in determining how such a policy could be put into effect. He notes that applying a blanket program of debt relief in the nature requested by the applicant could generate “incentive effects,” as it would effectively reward students who accumulate more debt by providing them additional financial assistance.¹⁶⁰ Ultimately, Professor Finnie concludes that a change in policy of this type would be “not at all that likely to change PSE access patterns for students with disabilities.”¹⁶¹

5) The remaining opinion affidavits filed by the applicant are of limited assistance

81. The remaining opinion affidavits filed by the applicant are of limited assistance as their findings are either not in dispute, or are based on unsupported/inadmissible conclusions:

¹⁵⁶ See Usher Cross-examination Transcript, QQ 189-204 [AR, Vol R, Tab AA, pp 7213-7216] where Mr. Usher expressed doubt about the appropriateness of applying “one-size-fits-all” policies in the area of student financial assistance

¹⁵⁷ Finnie Affidavit, para 78 [AR, Vol O, Tab AA, p 6124]

¹⁵⁸ Finnie Affidavit, para 79 [AR, Vol O, Tab AA, p 6124]

¹⁵⁹ Finnie Affidavit, para 80 [AR, Vol O, Tab AA, p 6124]

¹⁶⁰ Finnie Affidavit, para 88 [AR, Vol O, Tab AA, p 6126]

¹⁶¹ Finnie Affidavit, para 90 [AR, Vol O, Tab AA, p 6126]

- a) **Melanie Panitch:** Professor Panitch is a self-described disability-rights activist and advocate, and is not a neutral expert.¹⁶² Her affidavit notes that PSE participation by persons with disabilities is increasing, and that students with disabilities may face additional costs and barriers to PSE. She concludes that students who enrol in part-time studies for reasons related to disability face higher costs of education. Professor Panitch's evidence on this point is not supported by any persuasive evidence nor has she examined the issue more broadly. As she admitted in cross-examination, she is not an expert in student financial assistance, and her only experience on this issue is from her direct contact with students as a faculty member.¹⁶³ For these reasons, her evidence is of limited assistance.
- b) **Julia Munk:** Ms. Munk is a self-described disability-rights advocate (now lawyer),¹⁶⁴ who has a Bachelor's degree in Equity Studies. She is not neutral and her main relevant experience is derived from working at a university access centre.¹⁶⁵ Her qualifications and admissions are such that she does not meet the requirements of neutrality or expertise required for an expert. Ms. Munk makes a number of broad conclusions regarding students with disabilities that are simply in the nature of unfounded opinion,¹⁶⁶ not supported by any evidence. For these reasons, her evidence should be largely disregarded.
- c) **Frank Smith:** Mr. Smith was the National Coordinator for the National Educational Association of Disabled Students (NEADS), an advocacy organization for students with disabilities.¹⁶⁷ His affidavit attaches a number of government documents related to persons with disabilities and the CSLP (as it existed in 2007). Mr. Smith does not identify as an expert; however, he makes certain conclusions at the end of his affidavit with respect to students with disabilities and the impact of the CSLP. These conclusions should be disregarded. Since Mr. Smith is not an expert nor does he provide evidence in support of his conclusions, these are in the nature of inadmissible opinion evidence.¹⁶⁸
- d) **Gary Malkowski:** Mr. Malkowski is a self-described advocate for deaf individuals, and has specifically advocated for changes to PSE policy for

¹⁶² See Transcript of the Cross-examination of Melanie Panitch, November 22 2016, QQ 68-80 [AR, Vol R, Tab II, pp 7501-7505] ("Panitch Cross-examination Transcript")

¹⁶³ Panitch Cross-examination Transcript, QQ 57-59 [AR Vol R, Tab II, pp 7498-9]

¹⁶⁴ See Transcript of the Cross-examination of Julia Munk, January 13 2017, QQ 20-27 [AR, Vol T, Tab AA p 7925] ("Munk Cross-examination Transcript")

¹⁶⁵ Munk Cross-examination Transcript, Q 15 [AR, Vol T, Tab AA, pp 7924-5]

¹⁶⁶ For example, see Affidavit of Julia Munk, sworn June 20 2017, para 20 [AR, Vol E, Tab AA, p 1844] where she states that "government student loans programs have not, in their foundation, recognized the unique position of students with disabilities, and have therefore implemented a system with perpetuates the financial barriers they face."

¹⁶⁷ Affidavit of Frank Smith, sworn February 28 2007, paras 2-3 [AR, Vol C, Tab AA, p 834]

¹⁶⁸ *R v DD*, 2000 SCC 43, para 49

deaf/deafened/hard of hearing individuals.¹⁶⁹ At the time of his affidavit, he worked at the Canadian Hearing Society, an advocacy organization for deaf, deafened and hard of hearing consumers, which has issued press releases and written letters to media in support of the applicant's case.¹⁷⁰ At his cross-examination, the applicant entered an Acknowledgment of Expert's Duty for Mr. Malkowski. However, Mr. Malkowski should not be accepted as an expert as, among other issues, he does not meet the requirement of neutrality. His affidavit contains a large number of advocacy papers (mainly from the Canadian Hearing Society) with respect to deaf/deafened/hard of hearing students and access to PSE. These are of limited assistance as they represent the positions of an advocacy organization and are not objective evidence.

PART III – ISSUES

82. The issues on this application are: a) does the structure of the CSLP limit the applicant's s. 15(1) Charter rights?; b) if so, is the limitation justified under s. 1?; and c) if not, what is the appropriate remedy?

PART IV – LAW AND ARGUMENT

A. THE CSLP DOES NOT LIMIT THE APPLICANT'S SECTION 15(1) RIGHTS

83. The Supreme Court of Canada has established a two-step test for determining whether legislation or government action limits s. 15(1) rights. The claimant must show (1) that the impugned law or action imposes a burden or denies a benefit on an enumerated or analogous ground, and (2) that the distinction is discriminatory in that it fails to respond to the capacities and needs of the claimant group but instead arbitrarily perpetuates their existing disadvantage.¹⁷¹

84. The applicant has not satisfied either part of this test. First, the applicant has not shown that the impugned law draws a distinction on the basis of disability. The evidence does not establish that students with disabilities incur more debt on average than their non-disabled

¹⁶⁹ See Transcript of the Cross-examination of Gary Malkowski, November 18 2016, QQ 26-35 [AR, Vol R, Tab FF, pp 7441-3] ("Malkowski Cross-examination Transcript")

¹⁷⁰ Malkowski Cross-examination Transcript, Q 130 [AR, Vol R, Tab FF, p 7465]

¹⁷¹ *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, paras 19-20 ("*Taypotat*")

peers. To the extent that those who take longer to graduate may incur more debt, this is not the result of the CSLP but of a PSE cost structure that results in students incurring greater expenses the longer they take to complete a program. For the applicant, it also resulted from Gallaudet's policies that required students to pay full tuition even if they pursued a reduced course load, and refused to refund tuition to foreign students who withdrew for medical reasons. While the applicant alleges that the CSLP has a duty to mitigate these higher costs through additional non-repayable assistance, this would constitute a fundamental transformation of the CSLP.

85. With respect to the second part of the s. 15(1) test, the applicant also has not shown that any distinction is discriminatory. On the contrary, the CSLP includes measures that specifically respond to the unique needs of students with disabilities and promote their access to PSE. While the applicant alleges that the CSLP loan structure adversely impacts students with disabilities or deters them from pursuing PSE, such claims are not made out in the evidence.

1) The CSLP does not deny a benefit or impose a burden on the basis of disability

86. The applicant variously argues that the CSLP discriminates by administering loans on a “per-year” basis,¹⁷² by causing “the increased debt incurred by SWD (longer)”, and by not forgiving loans received by students with disabilities while on medical leave.¹⁷³ However, in reality, the applicant seeks to transform the CSLP into a different program that provides:

- a) grants and loans for students with disabilities up to the minimum program length;
- b) non-repayable student assistance, in the form of grants or loan forgiveness, in respect of any additional funds needed by that student.

87. The problem with the way the applicant has characterized her s. 15(1) argument is that it only goes partway in identifying the true “benefit” or “burden” of the law at issue. Were the

¹⁷² Applicant's Factum, para 119

¹⁷³ Applicant's Factum, para 111 (heading)

government to administer loans on a “per-program” basis for students with disabilities, *i.e.* simply cap the total loans these students would receive, this could in fact leave those students worse off than under the current system, as they would not be provided with sufficient funds to complete their studies. The applicant does not acknowledge that in addition to a “cap” on loans based on program-length, she also seeks the provision of unspecified amounts of non-repayable assistance above and beyond this point. The fundamental defect with this argument is that the requested benefits are not provided by law to any group. The CSLP does not purport to ensure that all grant and loan recipients will receive PSE at a similar cost. It only provides financial assistance in defraying those costs.

88. In this way, the applicant’s claim is similar to other s. 15(1) challenges, such as *Auton v British Columbia*,¹⁷⁴ where the claimants sought a benefit that was not provided to any other group. The petitioners in *Auton* sought funding for a particular form of autism therapy on the basis that it was medically necessary, alleging discrimination based on disability. In dismissing the claim, the Supreme Court held that the scheme did not guarantee funding for all medically necessary services and that s. 15(1) did not require the government to provide any particular service if it was not provided by law to anyone. As McLachlin CJ observed on behalf of the unanimous Court:

[A] legislative choice not to accord a particular benefit absent demonstration of discriminatory purpose, policy or effect ... does not give rise to s. 15(1) review. This Court has repeatedly held that the legislature is under no obligation to create a particular benefit. It is free to target the social programs it wishes to fund as a matter of public policy, provided the benefit itself is not conferred in a discriminatory manner.¹⁷⁵

¹⁷⁴ *Auton (Guardian ad litem of) v British Columbia*, 2004 SCC 78 (“*Auton*”)

¹⁷⁵ *Auton*, para 41

89. The CSLP provides grants and loans that help defray the costs of PSE, but it does not guarantee that expenses incurred by students will be equivalent. In essence, the applicant asks this court to transform the purpose of the CSLP by recognizing a positive right to a financial assistance program for students with disabilities that reduces their PSE costs to the minimum program lengths associated with each program.

90. In addition to not being a benefit provided to anyone under the CSLP, the costs that are incurred are not expenses that result from the CSLP, but from a variety of circumstances and choices including the choice of school and field of study.¹⁷⁶ In the applicant's case, much of the additional costs that she bore were a result of the tuition fees set by Gallaudet. Ms. Simpson was invoiced \$12,000 for her spring 2001 term at Gallaudet. However, tuition in Ontario for a full-time Bachelors degree during the same time period was much less, ranging from about \$3,800-\$6,100 per annum.¹⁷⁷

91. Indeed, the applicant acknowledges at several points in her factum that PSE cost structures and institutional policies are the ultimate reasons why students who take longer pay more for their education.¹⁷⁸ She nevertheless alleges that the CSLP discriminates by failing to equalize debt as between students with disabilities and non-disabled students, and by failing to forgive loans incurred by the applicant for a semester that she was unable to complete.

92. Properly characterized, this is a positive rights claim. The jurisprudence surrounding s. 15(1) of the Charter is settled in that this section does not oblige government to enact specific

¹⁷⁶ The applicant noted on cross-examination, for example, that Gallaudet university required her to pay "double the tuition" because she was an international student. See Simpson Cross-examination Transcript, Q 129 [AR, Vol R, Tab CC, p 7382]

¹⁷⁷ Simpson 2006 Affidavit, para 26 and Tab 14 [AR, Vol B, Tab AA, pp 717, 728-9, 735-40, 748-53, 755, 762, 769-71, 777, 782, 787, 798-9, 805, 808]

¹⁷⁸ Applicant's Factum, paras 2, 30, 38, 55, 58

laws in respect of any class of individual.¹⁷⁹ Courts in Ontario have consistently applied this principle.¹⁸⁰

- a) In *Ferrel v Ontario*, the Court of Appeal for Ontario expressed the view that s. 15(1) did not require the creation of employment equity legislation;¹⁸¹
- b) In *Barbara Schlifer Commemorative Clinic v Canada*, this Court held that s. 15(1) did not require the continuation of the long-gun registry.¹⁸²
- c) In *Tanudjaja v Canada*, this Court granted motions by Canada and Ontario to strike an application that alleged a failure by both governments to provide adequate housing. Lederer J. noted that s. 15(1) prohibits discrimination by government, but has not generally been recognized as imposing positive obligations on government to prevent inequality in society at large.¹⁸³

93. Similarly, *Eldridge* does not assist the applicant. In *Eldridge*, s. 15(1) was found to require interpreters for the deaf so that they could have equal access to benefits provided by law to everyone else – physician-delivered consultation and maternity care under the provincial medicare scheme. By contrast, the applicant’s case is concerned with access to a benefit that the law has not conferred – equalized costs of completing a PSE program.¹⁸⁴

2) **The CSLP does not draw a distinction between the applicant and others**

94. The CSLP does not deny a benefit or impose a burden on the applicant that is offered to or not imposed on others. In addressing the question of distinction, the Supreme Court has emphasized that the s. 15(1) analysis is, by its nature, comparative. While claimants need not

¹⁷⁹ *Ferrel v Ontario* (1998), 42 OR (3d) 97 (CA) (“Ferrel”); see also *Flora v Ontario*, [2008] OJ No 2627 (CA); *Barbara Schlifer Commemorative Clinic v Canada*, 2014 ONSC 5140; *Auton*, paras. 27-28, 41; *Thibaudeau v Canada*, [1995] 2 SCR 627, para 37 (per L’Heureux-Dubé J, dissenting but not on this issue)

¹⁸⁰ See also *Barbara Schlifer Commemorative Clinic v Canada*, 2014 ONSC 5140 at para 86, where this Court held that s. 7 did not require the continuation of the long-gun registry.

¹⁸¹ *Ferrel*, para 44

¹⁸² *Ferrel*, para 86

¹⁸³ *Tanudjaja v Canada*, 2013 ONSC 5410, para 103, aff’d on other grounds 2014 ONCA 852, leave to appeal refused, 2015 SCCA No 39 (“*Tanudjaja* 2013”)

¹⁸⁴ *Eldridge v British Columbia*, [1997] 3 SCR 624, paras 38, 76 (“*Eldridge*”); see also *Cooper v Ontario*, [2009] OJ No 3589 (SCJ)

identify a strict mirror comparator group to establish a distinction, they are required to show that the law denies them a benefit that is offered to others, or imposes a burden on them that is not imposed on others.¹⁸⁵

a) The benefit conferred by law is the provision of grants and loans, which is provided equally to all students

95. In this case, the benefit conferred by law under the CSLP is student financial assistance to help enable all students (disabled and non-disabled) offset the costs associated with PSE.

96. The evidence establishes that, far from being a “one size fits all” program, the CSLP is specifically tailored to the needs of students with disabilities. As outlined above, the CSLP provides enhanced grant and loan eligibility and assistance to students with disabilities – beyond that provided to students without disabilities – in recognition of the unique barriers that may be faced by this group.

97. Indeed, the applicant’s circumstances establish that she received an equal if not greater benefit of the federal student financial assistance program than would have been received by a student without a disability, or by a student who graduated sooner. She received grants and loans throughout her nine years of PSE, enabling her to complete two degrees, and ultimately find a fulfilling job in the field of her choosing.

b) The legislation does not adversely impact the applicant or others with disabilities

98. The applicant claims that this system of benefits limits s. 15(1) rights by imposing an additional burden on her and other students with disabilities. She alleges that students with

¹⁸⁵ *Withler v Canada*, 2011 SCC 12, paras 62-63 (“*Withler*”)

disabilities take longer to complete their education and therefore receive more loans, which results in a higher debt burden than their non-disabled counterparts.

99. Where, as in this case, the s. 15(1) claim is that facially neutral legislation adversely affects the claimant group, the Supreme Court has held that from an evidentiary standpoint, claimants “will have more work to do.”¹⁸⁶ In such cases, the claimant has the onus to adduce statistical or other evidence demonstrating that the legislation disproportionately impacts the claimant group.¹⁸⁷ This evidentiary requirement is not overly onerous, but must “amount to more than a web of instinct.”¹⁸⁸ Evidence that is only tangentially related to the context of the claim will not be sufficient at this stage.¹⁸⁹

100. The CSLP does not adversely impact either the applicant or students with disabilities more generally. As noted above, at every stage of the loan cycle, the CSLP provides expanded eligibility criteria and more generous grants and loans to students with disabilities. These expanded criteria permitted the applicant to receive substantial grants and loans that allowed her to complete two degrees over a nine-year period.

101. Despite this, the applicant claims adverse effects discrimination because she argues that students with disabilities who “take longer” than their prescribed program length will graduate with more debt. But as further discussed below, this argument is incorrect because the cause of any greater debt is not the CSLP – which acts as a funder and money lender – but rather the costs (tuition, cost of living) associated with PSE.

¹⁸⁶ *Withler*, para 64; *Taypotat*, para 21

¹⁸⁷ *Taypotat*, paras 21, 31-33

¹⁸⁸ *Taypotat*, para 34

¹⁸⁹ *Begum v Canada*, 2018 FCA 181, para 80 (“*Begum*”)

102. In any event, the claim regarding higher debt loads for students with disabilities is not supported by the evidence. With respect to the first part of the premise – that students with disabilities take longer to graduate – Canada’s affiants acknowledged that disability may result in some students with disabilities taking longer than the minimum program length of study to complete their education.¹⁹⁰ But the evidence does not establish that students with disabilities in general take longer than non-disabled students. Instead, the evidence establishes that all students – disabled or not – are taking longer to graduate than the minimum program length. Reasons for this include switching programs and leaves of absence for family, financial or other personal reasons.¹⁹¹ While there is evidence that students with disabilities enrolled in college programs graduate sooner on average than their non-disabled peers, overall the evidence showed no statistically significant difference in the length of time that it takes students with disabilities and non-disabled students to graduate.¹⁹²

103. The applicant relies on Ms. Furrie’s evidence to show that students with disabilities take longer to complete their PSE. However, as noted above, the CSLP administrative data used by Ms. Furrie cannot be used to measure length of time in PSE. The data only show the length of time to consolidation, which occurs six months after a student leaves school, not how long the student took to complete their degree.

104. The second part of the premise – that in general, students with disabilities incur more debt – is similarly not established by the evidence. Based on the CSLP administrative data, overall, students with disabilities reach consolidation with *lower* debt on average than their

¹⁹⁰ Rahman Affidavit, paras 11-12, 15 [AR, Vol Q, Tab AA, pp 6641-4]; Finnie Affidavit, paras 40-42 [AR, Vol O, Tab AA, pp 6112-3]

¹⁹¹ Finnie Affidavit, paras 41, 43-44, 80-81 [AR, Vol O, Tab AA, pp 6113-4, 6124]

¹⁹² Finnie Affidavit, paras 40, 66-67 [AR, Vol O, Tab AA, pp 6113, 6120-1]

non-disabled peers.¹⁹³ This is due to many factors, including the provision of grants like the Canada Student Grant for Students with Permanent Disabilities, which provides permanently disabled students with \$2,000 in up-front, non-repayable assistance each year.¹⁹⁴

105. Finally, even if the data established higher debt among students with disabilities generally (which it does not), the applicant’s argument ignores the various repayment mechanisms available under the CSLP. These measures played a significant role in this case. Although the applicant’s income immediately following consolidation was too high to qualify for repayment assistance, she later qualified for and has received \$24,259.33 in federal and provincial repayment assistance.¹⁹⁵ While the applicant now suggests that these “back-end” measures are irrelevant in this case, they are in fact highly relevant to the s. 15(1) analysis.¹⁹⁶

106. In this way, the applicant’s arguments are similar to those rejected in previous s. 15(1) cases involving claims of adverse effects discrimination in respect of other aspects of the CSLP. In *Yashcheshen*, for example, the Saskatchewan Court of Queen’s Bench very recently considered a similar challenge brought by a student with disabilities against provisions of the *Canada Student Financial Assistance Regulations* that prevent students from applying for student loan assistance for three years after declaring bankruptcy. In dismissing the claim, the Court held that in the absence of evidence, the applicant’s arguments amounted to “no more than ... a ‘web of instinct’”, insufficient to make out a limitation of her s. 15(1) rights.¹⁹⁷

¹⁹³ Rahman Affidavit, paras 55-59 [AR, Vol Q, Tab AA, p 6657-8]; LeBrun 2012 Affidavit, paras 47, 79 [AR, Vol L, Tab DD, pp 5220, 5228]; LeBrun 2014 Affidavit, paras 8-9 [AR, Vol M, Tab AA, pp 5327-8]

¹⁹⁴ Rahman Affidavit, para 60 [AR, Vol Q, Tab AA, p 6658]; LeBrun 2014 Affidavit, para 9 [AR, Vol M, Tab AA, p 5328]

¹⁹⁵ Agreed Statement of Facts, para 23 [AR, Vol A, Tab 5, p 52]

¹⁹⁶ *Fraser v Canada*, 2018 FCA 223, paras 49-50, leave to appeal granted 2019 SCCA No 65 (“*Fraser*”)

¹⁹⁷ *Yashcheshen v Canada*, 2019 SKQB 29, para 390. See also *Simser v Canada*, 2004 FCA 414, paras 60-61, 65, 73, 75

c) Any adverse effect is not caused by the CSLP

107. Finally, even if this court were to find that students with disabilities who take longer to graduate have higher debt loads than those who graduate sooner, any adverse effect is not caused by the CSLP. The Supreme Court has held that the existence of disadvantage tied to a prohibited ground is, on its own, insufficient to establish a s. 15(1) infringement. Rather, the claimant must also show that legislation causes or contributes to the disadvantage.¹⁹⁸ This is because s. 15(1) applies to ensure equality in respect of benefits and burdens “of the law.” It is not a guarantee of equality in all aspects of Canadian society.¹⁹⁹

108. At this stage, a claimant must identify the impugned neutral rule and provide evidence that the rule causes or contributes to the alleged disadvantage.²⁰⁰ While historical or sociological disadvantage may inform this analysis, courts must take care to distinguish between the effects of the impugned rule and social circumstances that exist independently of the rule.²⁰¹ Courts have also refused to find a distinction where the disadvantage is not caused or contributed to by legislation but by third-party conduct or circumstances that are unique to the claimant and not shared by class members generally.²⁰²

109. In this case, the applicant has not demonstrated a causal nexus between the CSLP and the alleged disadvantage. While she alleges that her debt is higher than her non-disabled peers some of whom graduate sooner, this is not the result of the CSLP. Rather, this stems from a

¹⁹⁸ *Taypotat*, para 34; *Auton*, para 27

¹⁹⁹ *Auton*, paras 27-29; *Sagen v Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, 2009 BCCA 522, para 54, leave to appeal refused, 2009 SCCA No 459 (“*Sagen*”)

²⁰⁰ *Fraser*, para 46

²⁰¹ *Withler*, para 64; *Symes v Canada*, [1993] 4 SCR 695, para 134 (QL) (“*Symes*”); *Grenon v Canada*, 2016 FCA 4, para 43 (“*Grenon*”); *Begum* 1, para 81; *Tanudjaja* 2013, para 107

²⁰² *Sagen*, paras 63, 66-67; *Miceli-Riggins*, 2013 FCA 158, para 79 (“*Miceli-Riggins*”)

PSE cost structure whereby students incur greater expenses (*e.g.* in respect of tuition, fees and living expenses) the longer they take to complete a program.²⁰³

110. These facts were confirmed in the applicant's own evidence. As Professor Chambers explained, taking more years to complete one's education "leads to extra expenses due to tuition increases, inflation, and living and transportation costs."²⁰⁴ Similarly, Professor Panitch explained that post-secondary institutions typically charge tuition on a per-course basis, but compulsory fees on an annual basis. Living expenses are also consistent regardless of course load, and as a result, students taking a reduced course load and more years to graduate ultimately have higher PSE costs than those who graduate sooner.²⁰⁵

111. In the applicant's case, any greater student debt load at consolidation is also the result of unique circumstances, which include Gallaudet's leave policies and the applicant's decision not to avail herself of the relief measures available under the CSLP during her medical leave. Section 15(1) is not engaged in these circumstances.

112. Gallaudet is a private university in the United States with a per-semester undergraduate international tuition rate of \$12,000 USD.²⁰⁶ This was several times higher than undergraduate tuition at Canadian institutions.²⁰⁷ Unlike some Canadian institutions, Gallaudet does not offer reduced tuition for students pursuing a reduced course load.²⁰⁸ As a result, students who, like

²⁰³ Supplementary Affidavit of Ronald-Frans Melchers, sworn June 9 2014, paras 61-64 [AR, Vol M, Tab CC, pp 5561-2] ("Melchers 2014")

²⁰⁴ Chambers Affidavit, para 11 [AR, Vol G, Tab AA, p 3051]

²⁰⁵ Panitch Affidavit, para 17 [AR, Vol F, Tab AA, p 2525]

²⁰⁶ Simpson 2006 Affidavit, para 26 [AR, Vol B, Tab AA, p 614]

²⁰⁷ See Simpson 2006 Affidavit Tab 14 [AR, Vol B, Tab AA, pp 717, 728-9, 735-40, 748-53, 755, 762, 769-71, 777, 782, 787, 798-9, 805, 808], which lists tuition fees from various Ontario universities for school years between 2002-2007.

²⁰⁸ Usher Affidavit, paras 26-27 [AR, Vol H, Tab AA, p 3322]

the applicant, require a reduced course load and more years to graduate must pay more tuition than their classmates who pursued a full course load and graduated sooner.

113. While the applicant asserts that Gallaudet was the only university capable of accommodating her as a deaf student, the evidence establishes that 96% of deaf, deafened and hard of hearing Ontario post-secondary students attend in-province college and universities.²⁰⁹ The applicant claims that an Ontario university would have been more expensive once the costs of sign language interpretation services are considered. However, deaf students in Ontario are not required to pay or take loans to pay these costs – rather, these costs are borne by Ontario.²¹⁰

114. The applicant now attempts to attribute these higher costs to the CSLP because she required CSLP loans to pay them. This ignores that PSE costs exist independently of the CSLP, and that students who take longer will generally have higher costs than those who graduate sooner, regardless of whether they are financially eligible for CSLP assistance.²¹¹

115. The applicant likens her case to *Norman v Air Canada*, in which the airline policy of charging fares per seat was found to pose an undue obstacle to the mobility of persons with disabilities requiring more than one seat, contrary to the *Canada Transportation Act*.²¹² But *Norman* was not a Charter case. Further, unlike the airlines in *Norman*, the CSLP is not the cause of – nor does it control – the applicant's higher post-secondary costs. In its role as a lender, it is not the source of any discrimination.

²⁰⁹ Morris 2016 Affidavit, para 45 [AR, Vol P, Tab BB, p 6577]; See also Wall Affidavit, para 107 [AR, Vol L, Tab AA, p 5507]

²¹⁰ Cross-Examination Transcript of Noah Morris, November 29 2016, Q 224 [AR, Vol S, Tab FF, p 7596]

²¹¹ Melchers 2014 Affidavit, para 61 [AR, Vol M, Tab CC, p 5561]

²¹² *Norman (Estate of) v Air Canada and WestJet (2008)*, Decision No 6-AT-A-2008 (Canadian Transportation Agency), paras 202, 909, 913, leave to appeal refused (Order of the Federal Court of Appeal, dated May 6, 2008), leave to appeal refused 2008 SCCA No 322; see also *Canada Transportation Act*, SC 1996, c 10, s 170(1)

116. The applicant's case is more akin to *Simser v Canada*. Mr. Simser received a \$2,000 federal Special Opportunities Grant for Students with Permanent Disabilities to pay for real-time captioning and sign-language interpretation so that he could complete the Law Society of Upper Canada's mandatory bar admission course. When the Canada Revenue Agency deemed the grant taxable income, he appealed and alleged that this treatment infringed his s. 15(1) rights as a person with a disability. In rejecting his appeal, the Federal Court of Appeal found that, while the federal government provided financial assistance, it was under no obligation to educate or accommodate Mr. Simser, and that any duty of accommodation instead rested with the Law Society.²¹³ Similarly in this case, any duty of accommodation rests not with the CSLP, but with post-secondary institutions whose tuition structure results in students paying more if they require more time to graduate.

117. The applicant also notes that "full-time student" is expressly defined in the Regulations to include students with disabilities taking a reduced course load, but alleges that there is no corresponding recognition that these students will require additional periods of study.²¹⁴ This is a mischaracterization. While students are ordinarily eligible for up to 340 weeks of federal financial assistance, those with permanent disabilities are eligible for up to 520 weeks of assistance.²¹⁵ This reflects a clear recognition that students with disabilities pursuing a reduced course load may require financial assistance over a longer period. While those students requiring loans over this longer period will in turn incur more debt, this debt is again not ultimately the result of the CSLP but of the underlying PSE costs that increase if a student takes longer to graduate for any reason.

²¹³ *Simser*, paras 60-61, 65, 73, 75

²¹⁴ Applicant's Factum, para 121

²¹⁵ Regulations, s 15(1)(j),(2); Rahman Affidavit, para 48, 53 [AR, Vol Q, Tab AA, pp 6655-6]

118. In any event, even if these higher costs were somehow attributable to the CSLP, the applicant has not shown that any adverse treatment is based on disability. Students who take longer for any reason will generally have higher PSE costs and require more loans.²¹⁶ The evidence does not establish that students who take longer due to disability are subject to a burden that is not imposed on those who take longer for other reasons.

119. The applicant contends that students with disabilities are more likely than their non-disabled peers to take longer, and are therefore disproportionately affected by the CSLP rules that result in students who take longer incurring more debt. This allegation of a disproportionate impact is insufficient to engage s. 15(1). As the Supreme Court held in *Symes*, courts “must take care to distinguish between effects which are wholly caused, or are contributed to, by an impugned provision, and those social circumstances which exist independently of such a provision.”²¹⁷ The claimant must instead show that the rule subjects group members to qualitatively different treatment on the basis of their membership in the claimant group.²¹⁸

120. In *Grenon v Canada*, the Federal Court of Appeal acknowledged that the inability to deduct child support amounts affected men in greater numbers than women, but found this insufficient to establish a s. 15(1) infringement as men and women affected by the rule were affected in the same manner and any disproportionate impact on men was the result, not of legislation, but of the social reality that men are more likely to have support obligations.²¹⁹ Similarly here, all students who take longer to graduate are affected by the CSLP rules in the

²¹⁶ Melchers 2014 Affidavit, para 61 [AR, Vol M, Tab CC, p 5561]

²¹⁷ *Symes*, para 134

²¹⁸ *Grenon*, paras 34-35, 41

²¹⁹ *Grenon*, paras 40, 45

same manner, and any disproportionate impact on students with disabilities is due, not to the CSLP, but to the social reality that some students with disabilities require longer to graduate.

d) The applicant's medical leave in 2001-02

121. The applicant also relies on the fact she was charged tuition for a spring 2001 semester that she did not complete, and was unable to re-enrol until she paid this tuition. This is again not the result of the CSLP but of Gallaudet University policy that does not permit refunds to international students who withdraw early for any reason, and that requires these students to pay any outstanding balance before re-enrolling.²²⁰ The applicant chose not to bring legal or human rights proceedings against Gallaudet University in respect of this policy.²²¹

122. In addition, the applicant alleges that she was required to “return” provincial government funding received for a portion of the spring 2001 semester, notwithstanding that Gallaudet required her to pay tuition for this period.²²² However, there is no requirement to return federal amounts received for a semester that the student does not complete. These overawards are instead deducted from future loan disbursements.²²³ While the application alleges that students taking leave for disability-related reasons are affected by this rule in greater numbers, the rule applies equally to students who withdraw for any reason and the applicant does not allege that it causes or contributes to the social disadvantage of those who withdraw for disability-related reasons any more than those who withdraw for other reasons.

123. The overaward rules reflect the fact that Canadian post-secondary institutions typically provide refunds when students withdraw early for medical reasons, and that a student receiving

²²⁰ Simpson 2006 Affidavit, Exhibit 11 [AR, Vol B, Tab AA, p 700]

²²¹ Simpson Cross-examination Transcript, Q 140-43, 146 [AR, Vol R, Tab CC, pp 7385-6]

²²² Applicant's Factum, paras 30-31

²²³ Regulations, s 7; Rahman Affidavit, paras 81-82 [AR, Vol Q, Tab AA, pp 6666-7]

a refund has less need for financial assistance.²²⁴ However, the CSLP policy on overawards has evolved since 2001 and was amended in 2004 to provide greater flexibility to students who withdraw for medical reasons. Under the new policy, where students withdraw from studies for serious medical reasons, the overaward amount may, on a case-by-case basis, be added to the principal repayable on completion of the post-secondary program, rather than deducted from the next loan disbursement.²²⁵ This answers the argument that the CSLP overaward rules adversely affect these students and to the extent the applicant seeks a declaration concerning the former policy, this portion of the application is moot.

124. Moreover, the applicant's circumstances here are more a result of her unique circumstances – withdrawing from a foreign university that refused to refund her tuition – than a result of her disability.²²⁶ Students who complete their PSE or who withdraw early for any reason enter repayment six months after the end of their last period of study.²²⁷ As Gallaudet did not allow the applicant to return for the fall 2001 semester, she entered repayment on September 1, 2001.²²⁸ Over the next five months, she states that she was required to pay \$353.45 toward her loan balance and \$368.50 in interest, both of which she paid.²²⁹

125. If these repayment and interest obligations constituted a burden for the applicant, it was open to her to seek interest relief for which she was pre-screened and qualified in August

²²⁴ LeBrun 2012 Affidavit, para 73 [AR, Vol L, Tab DD, p 5227]

²²⁵ Rahman Affidavit, paras 81-82 [AR, Vol Q, Tab AA, pp 6666-7]; Carraro Affidavit, para 16 [AR, Vol K, Tab AA, p 4736]

²²⁶ This is similar to the case in *Miceli-Riggins*, para 79 where the Federal Court of Appeal held that the denial of the applicant's disability benefits was not discriminatory as it was not caused by a legislative provision but rather due to numerous factors relating to the unique circumstances of the applicant.

²²⁷ Rahman Affidavit, para 77 [AR, Vol Q, Tab AA, p 6665]; Act, ss 6-7

²²⁸ Rahman Affidavit, para 125 [AR, Vol Q, Tab AA, p 6682]

²²⁹ Simpson 2006 Affidavit, para 38 [AR, Vol B, Tab AA, p 617]

2001.²³⁰ Had she applied, the applicant would not have had to make any principal payments on her loan while on leave from Gallaudet, and Canada would have paid the interest that accrued from August 2001 until the applicant's return to study.²³¹ Any adverse impact in these circumstances is not attributable to the CSLP but to the applicant's decision not to seek interest relief for which she was eligible.

3) Any distinction is not discriminatory

126. Should this Court determine that the CSLP distinguishes between students with disabilities and their non-disabled peers, any distinction is not discriminatory. Section 15(1) does not prohibit all differential treatment, but only differential treatment that discriminates in that it perpetuates "arbitrary disadvantage" or "widens the gap" between the enumerated or analogous group and others.²³² In conducting this assessment, courts may have regard to specific factors identified in past cases, such as pre-existing stereotyping and prejudice, correspondence with the group's actual circumstances, the ameliorative effects of the legislation, and the nature of the interest affected. However, the Supreme Court has cautioned against the rigid application of these factors, and emphasized that the ultimate focus is on whether the law imposes arbitrary disadvantage.²³³

127. In assessing distinctions in complex social benefits schemes, the Supreme Court has also cautioned against viewing specific features of the scheme in isolation. The impugned

²³⁰ Rahman Affidavit, para 124 [AR, Vol Q, Tab AA, p 6682]; Simpson Cross-examination Transcript, Q 160-161 [AR, Vol R, Tab CC, p 7392]

²³¹ Rahman Affidavit, paras 91-95 [AR, Vol Q, Tab AA, pp 6670-1]; Wall Affidavit, para 117 [AR, Vol L, Tab AA, p 5010]

²³² *Andrews v Law Society (British Columbia)*, [1989] 1 SCR 143, para 46; *Taypotat*, paras 16-20; *Withler*, paras 31, 34; *Quebec v A*, 2013 SCC 5, paras 331-32

²³³ *Withler*, para 66; *Quebec v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, para 28

provision should instead be considered in the context of the broader benefits scheme and the multiplicity of interests that it seeks to balance.²³⁴ Perfect correspondence between the scheme and the needs of the claimant group is not required in these cases, nor must the scheme meet the needs of every group member.²³⁵ Rather, the question in these cases is “whether the lines drawn are generally appropriate,” having regard to the multiplicity of interests that the program intends to balance. Policy goals such as the ameliorative effects on others and the allocation of resources may all be relevant.²³⁶

a) The CSLP does not discriminate against persons with disabilities

128. The CSLP does not “perpetuate arbitrary disadvantage” of students with disabilities. On the contrary, the evidence establishes that the CSLP helped level the playing field for the applicant. The applicant received nine years’ worth of CSLP funding, which enabled her to attend a foreign institution of her choosing and complete two degrees, including a Master’s Degree. This allowed the applicant to secure a job in the field of her choice, one that she indicates she finds fulfilling.²³⁷

129. The vast majority of the applicant’s education costs were in the form of non-repayable grants. She was also eligible for interest relief during her 2001 leave of absence, and since the consolidation of her loan, she has received several periods of repayment assistance under the RAP-PD. Most recently, she renegotiated her loan payments to an amount that was affordable for her. As a result of this repayment assistance, as of July 22, 2019, the applicant has paid \$44,916.97 on her loan and had \$1,781.97 left on her outstanding principal balance.²³⁸ This is

²³⁴ *Withler* paras 38, 66-67; *Fraser*, paras 49-50

²³⁵ *Withler*, para 67; *Gosselin*, para 55; *Miceli-Riggins*, para 56

²³⁶ *Withler*, paras 38, 67

²³⁷ Simpson Cross-examination Transcript, QQ 28-42, 70 [AR, Vol R, Tab CC, pp 7357-7359, 7367]

²³⁸ Agreed Statement of Facts, para 27 [AR, Vol A, Tab 5, p 54]

out of a total of \$389,640.33 in government assistance – including both federal and provincial loans, non-repayable assistance, and repayment assistance – that was provided to her.²³⁹

130. Moreover, the applicant’s arguments on this point ignore the scheme as a whole and the many benefits achieved by the program. The evidence establishes that the CSLP ameliorates, rather than perpetuates, disadvantage for persons with disabilities in society by facilitating the participation of students with disabilities in PSE where they might otherwise not have the financial resources to participate. On this point, the evidence establishes that:

- (a) PSE participation by students with disabilities is increasing;²⁴⁰
- (b) the cost of PSE is not a significant deterrent factor; and,²⁴¹
- (c) based on the CSLP’s administrative data, students with disabilities incur less debt in general than their non-disabled counterparts.²⁴²

b) The CSLP corresponds to the financial needs of students with disabilities

131. The evidence further establishes that, with respect to the applicant and students with disabilities in general, the CSLP corresponds to their needs and capacities. The evidence establishes that the CSLP is needs-based, providing up-front assistance to students who might otherwise be unable to afford PSE. The evidence shows the CSLP is tailored to the specific situation of students with disabilities, providing relaxed eligibility criteria and more generous support in the form of non-repayable assistance, recognizing the barriers faced by this group. Through the life-cycle of the loan, the CSLP is tailored to the needs and circumstances of

²³⁹ Rahman Affidavit, para 118 [AR, Vol Q, Tab AA, p 6681]; Agreed Statement of Facts, para 23 [AR, Vol A, Tab 5, p 53]

²⁴⁰ See Rahman Affidavit, paras 9-10 [AR, Vol Q, Tab AA, pp 6639-6640]; see also Panitch Affidavit, para 6 [AR, Vol F, Tab AA, p 2522]

²⁴¹ See Finnie Affidavit, para 24-25 [AR, Vol O, Tab AA, p 6107]; see also Exhibits “C”, “D” and “E”

²⁴² Finnie Affidavit, para 79 [AR, Vol O, Tab AA, p 6124]; Rahman Affidavit, paras 55-59 [AR, Vol Q, Tab AA, pp 6657-8]; LeBrun 2012 Affidavit, paras 47, 79 [AR, Vol L, Tab DD, pp 5220, 5228]; Furrie 2013 Affidavit, para 30, Table 1 [AR, Vol H, Tab BB, p 3513]

individual loan borrowers. Repayment assistance is available to all borrowers, and there is enhanced repayment assistance for persons with disabilities.

132. The applicant's own circumstances illustrate that she received benefits from the CSLP in a manner that corresponded to her actual needs and capacities. She received grants and loans throughout her studies based on her financial need. When she took leave during her studies, she pre-qualified for interest relief. And following consolidation, when she needed repayment assistance, she was provided with that assistance. The failure to structure the program to further reduce the costs of obtaining a PSE does not limit the applicant's s. 15(1) rights.

B. ANY LIMITATION IS JUSTIFIED UNDER SECTION 1

133. Even if the CSLP is held to limit the applicant's s. 15(1) rights, any limitation is justified under s. 1 of the Charter. Applying the *Oakes* test, a limit on Charter rights will be justified if it has a pressing and substantial objective and the means chosen are proportionate to that objective. The means chosen are proportionate if (1) they are rationally connected to the objective, (2) they minimally impair the Charter right in question while still attaining the objective, and (3) there is proportionality between the limit's salutary and deleterious effects.²⁴³

134. The Supreme Court has repeatedly emphasized the need for deference to legislatures at this stage. Where the impugned provisions are part of a "complex regulatory response" to a social problem or engage the "distribution of scarce government resources", a high degree of deference is warranted.²⁴⁴ To be upheld under s. 1, limits need not be perfectly calibrated, but

²⁴³ *Carter v Canada*, 2015 SCC 5, para 94 ("*Carter*")

²⁴⁴ *Canada (AG) v JTI-MacDonald Corp*, 2007 SCC 30, para 43 ("*JTI-MacDonald Corp*"); *McKinney v University of Guelph*, [1990] 3 SCR 229, p 281; *Hutterian Brethren of Wilson Colony v Alberta*, 2009 SCC 37, para 37 ("*Hutterian Brethren*"); *Reference re Remuneration of Judges of the Provincial Court of PEI*, [1997] 3 SCR 3, para 283

only reasonable and demonstrably justified.²⁴⁵ Social problems may also have many possible solutions, the efficacy of which Parliament and the legislatures are best placed to measure.²⁴⁶

1) The CSLP serves a pressing and substantial objective

135. The question at this stage is whether the limit on Charter rights has a pressing and substantial objective.²⁴⁷ Where the claim alleges that legislation is under-inclusive, the court may examine the objective of the scheme as a whole.²⁴⁸ While the court may consider evidence at this stage, it is not an evidentiary contest and the court may resort to logic and reason in determining whether the objective is pressing and substantial.²⁴⁹ A “theoretical objective asserted as pressing and substantial” will generally be sufficient.²⁵⁰

136. It is not disputed that the CSLP serves a pressing and substantial objective. The Act and Regulations serve a number of purposes, including.²⁵¹

- a) to promote accessibility to PSE for students, including students with disabilities, who require financial support to undertake their studies;
- b) to enable Canadians to gain knowledge, skills and qualifications required for successful participation in the economy and society;
- c) to provide needs-based financial aid in the form of grants and loans to supplement the resources available to students, with loans issued on the expectation that the student, with higher expected future earnings, will be able to repay the loan;
- d) to provide fair and equitable access to PSE regardless of province of residence; and
- e) to recognize that some students, including students with disabilities, have increased financial needs and may require more time to complete PSE and thus the CSLP specifically provides enhanced supports to these students.

²⁴⁵ *Hutterian Brethren*, para 37

²⁴⁶ *M v H*, para 78; *McKinney*, p 281; *JTI-MacDonald Corp*, paras 41, 43

²⁴⁷ *RJR-MacDonald Inc v Canada*, [1995] 3 SCR 199, para 143 (“*RJR-MacDonald Inc*”)

²⁴⁸ *Vriend v Alberta*, [1998] 1 SCR 493, paras 109-11

²⁴⁹ *R v Bryan*, 2007 SCC 12, paras 32, 35 (“*Bryan*”)

²⁵⁰ *Harper v Canada*, 2004 SCC 33, para 26; *Bryan*, paras 32, 34

²⁵¹ *Rahman Affidavit*, paras 16-20 [AR, Vol Q, Tab AA, pp 6644-5]

2) **Any limitation is proportionate to the objectives of the CSLP**

a) **The CSLP rules are rationally connected to their objective**

137. The “rational connection” stage is concerned with whether there is a relationship between the infringing measure and the objective. Government is not required to prove that the measure will further the goal, but only that “it is reasonable to suppose that the limit may” do so.²⁵² This burden has been described as “not particularly onerous.”²⁵³

138. The CSLP structure is rationally connected with its objectives. The CSLP provides various forms of financial aid (both front-end and back-end), which enable students to pursue PSE where they might otherwise be unable to afford it. It also expects repayment of loans from these students on the basis that people with post-secondary credentials have higher lifetime earnings than those without PSE, and therefore will be able to repay the loan.²⁵⁴ Those who cannot may qualify for various forms of repayment and interest relief.

b) **The CSLP minimally impairs the rights of students with disabilities**

139. The question at this stage is whether the infringing measure attains its objectives in a manner that impairs Charter rights as little as reasonably possible. The Supreme Court has repeatedly emphasized the importance of deference to legislatures at this stage in matters of complex social policy.²⁵⁵ As McLachlin J (as she then was) observed in *RJR-MacDonald v Canada*, the question for the court is not whether it can locate an alternative, but whether the law in question “falls within a range of reasonable alternatives.”²⁵⁶

²⁵² *Hutterian Brethren*, para 48; see also *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11, para 78

²⁵³ *Little Sisters Book & Art Emporium v Canada*, 2000 SCC 69, para 228

²⁵⁴ Rahman Affidavit, para 18 [AR, Vol Q, Tab AA, pp 6644-5]

²⁵⁵ *JTI-MacDonald Inc*, para 43; *McKinney*, pp 285-86

²⁵⁶ *RJR-MacDonald Inc*, para 160; *Société Radio-Canada c Quebec (Procureur général)*, 2011 SCC 2, para 77

140. In this case, the CSLP falls well within the range of reasonable alternatives for achieving its objectives. The evidence establishes that the CSLP is a tailored program that provides expanded and enhanced eligibility criteria, additional grants and loans, and repayment assistance that responds to the particular needs of students with disabilities. While the applicant seeks a guarantee that students with disabilities will not have to pay more for their PSE than their non-disabled peers, such a program would stretch the CSLP beyond its purposes as outlined in the current legislation and regulations. The evidence in this case also casts serious doubt on whether such a program would be effective or even capable of implementation.²⁵⁷

c) The salutary effects of the CSLP outweigh any deleterious effects

141. The final stage of the s. 1 analysis examines whether the benefits of the infringing measure outweigh its negative impact on Charter rights. Government is not required to prove that an infringing measure will actually produce a benefit, but only that it may produce one.²⁵⁸

142. Here, the salutary effects of the CSLP outweigh any detrimental effects. The evidence establishes that the CSLP has enabled generations of students to pursue PSE who otherwise could not afford to do so. Specifically with respect to persons with disabilities, the CSLP has enabled access to PSE for these students and participation rates have been increasing.²⁵⁹ The evidence does not establish that students with disabilities are, on the whole, detrimentally affected by the CSLP. Notably, on the applicant's own evidence, within the current CSLP, only a very small number of students with disabilities graduate with higher debt loads than their non-disabled peers. And as noted above, costs associated with PSE are not caused by the CSLP.

²⁵⁷ Finnie Affidavit, paras 75-88 [AR, Vol O, Tab AA, pp 6123-6]

²⁵⁸ *Hutterian Brethren*, para 76; see also para 85: "Legislatures can only be asked to impose measures that reason and the evidence suggest will be beneficial. If legislation designed to further the public good were required to await proof positive that the benefits would in fact be realized, few laws would be passed."

²⁵⁹ See Rahman Affidavit, para 9 [AR, Vol Q, Tab AA, pp 6639-40]; Panitch Affidavit, para 6 [AR, Vol F, Tab AA, p 2522]; Usher Affidavit, para 43 [AR, Vol H, Tab AA, pp 3328-9]

C. THE APPROPRIATE REMEDY IS A SUSPENDED DECLARATION

143. Canada submits that the overaward, repayment and interest obligations triggered by the applicant's 2001 medical leave are all constitutionally sound. However, should this Court determine otherwise, no remedy is required. The CSLP overaward policies have been amended such that there is flexibility in cases of withdrawal for serious medical reasons, to recover overawards by adding the amount to the principal to be repaid after the borrower leaves school, rather than by deducting the amount from the next loan disbursement.²⁶⁰ This is a complete answer to the allegations concerning the applicant's medical leave.

144. However, if this court finds any other provisions unconstitutional, Canada agrees with the applicant that the appropriate remedy is to declare those provisions unconstitutional to the extent of their invalidity. Canada requests that this declaration be suspended to allow Canada time to develop new legislation that addresses the constitutional defect, while at the same time continuing to serve other current loan and grant recipients.²⁶¹ Given the complexity of the CSLP regime and potential need to renegotiate agreements with several provincial and territorial governments, Canada requests a suspension of 18 months.

145. While the applicant requests that a declaration be accompanied by a supervisory order or specific direction, neither form of relief is warranted in this case. Supervisory orders are a "remedy of last resort" to be granted only in rare and exceptional cases.²⁶² In *Doucet-Boudreau*, cited by the applicant, these exceptional circumstances included the unique nature of minority language education rights within the Charter, 16 years of delay, and possible bad faith by

²⁶⁰ Carraro Affidavit, para 16 [AR, Vol K, Tab AA, p 4736]

²⁶¹ *Schachter v Canada*, [1992] 2 SCR 679, para 79 ("*Schachter*")

²⁶² *Jodhan v Canada*, 2012 FCA 161, paras 170-71 ("*Jodhan*")

government in fulfilling its established constitutional obligation to provide French-language education facilities.²⁶³ There are no similar circumstances in this case, and the ordinary presumption that government will take all necessary steps to address the unconstitutionality should apply.²⁶⁴ Canada's student loan regime is highly complex, and a supervisory order would take the court "well beyond the limits of its institutional capacity."²⁶⁵

146. The applicant also seeks several forms of s. 24(1) relief, including damages, a declaration that her debt is no longer binding and the return of loans already repaid. This relief is not warranted. The Supreme Court has repeatedly affirmed that the appropriate remedy for unconstitutional legislation is a s. 52(1) declaration, and that rarely will a declaration be coupled with s. 24(1) relief.²⁶⁶ Damages are not available for unconstitutional legislation except in rare cases involving bad faith or abuse of process, neither of which are alleged here.²⁶⁷

147. With respect to the applicant's remaining debt and loans repaid to date, the Supreme Court has held that such retroactive remedies are inappropriate in the social benefits context since a Parliament aware of the constitutional defect may have provided an entirely different scheme or made different budgetary decisions.²⁶⁸ In this case, had Parliament known that establishing the CSLP would give rise to an expensive constitutional obligation to equalize post-secondary costs as between students with disabilities and non-disabled students, it might have set grants and loans at lower levels. The applicant having received the benefit of the

²⁶³ *Doucet-Boudreau v Nova Scotia*, 2003 SCC 62, paras 3-4, 28-29, 38-40, 60-61, 66; *Jodhan*, para 173

²⁶⁴ *Eldridge*, para 96; *Jodhan*, para 172

²⁶⁵ *Tanudjaja v Canada*, 2014 ONCA 852, para 340, affirming *Tanudjaja 2013*

²⁶⁶ *Schachter*, para 89; *Mackin v New Brunswick (Minister of Justice)*, 2002 SCC 13, para 80 ("*Mackin*"); *R v Ferguson*, 2008 SCC 6, paras 59-64

²⁶⁷ *Mackin*, paras 78-81; *Ward v Vancouver (City)*, 2010 SCC 27, paras 39-41

²⁶⁸ *Hislop v Canada*, 2007 SCC 10, paras 92, 101, 103, 108

existing generous scheme, she should not be retroactively also relieved of her obligation to repay her loans received.

PART V – ORDER SOUGHT

148. Canada requests that the application be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 21st day of October, 2019.



Joseph Cheng / Jon Bricker / Elizabeth Koudys

Counsel for the Respondent,
Her Majesty the Queen in Right of Canada

SCHEDULE A – LIST OF AUTHORITIES

- Andrews v Law Society (British Columbia)*, [1989] 1 SCR 143
- Auton (Guardian ad litem of) v British Columbia*, 2004 SCC 78
- Barbara Schlifer Commemorative Clinic v Canada*, 2014 ONSC 5140
- Begum v Canada*, 2018 FCA 181
- Canada v JTI-MacDonald Corp*, 2007 SCC 30
- Carter v Canada*, 2015 SCC 5
- Cooper v Ontario*, [2009] OJ No 3589 (SCJ)
- Doucet-Boudreau v Nova Scotia*, 2003 SCC 62
- Eldridge v British Columbia*, [1997] 3 SCR 624
- Ferrel v Ontario* (1998), 42 OR (3d) 97 (CA)
- Flora v Ontario*, [2008] OJ No 2627 (CA)
- Fraser v Canada*, 2018 FCA 223, leave to appeal granted 2019 SCCA No 65
- Grenon v Canada*, 2016 FCA 4
- Harper v Canada*, 2004 SCC 33
- Hislop v Canada*, 2007 SCC 10
- Hutterian Brethren of Wilson Colony v Alberta*, 2009 SCC 37
- Jodhan v Canada*, 2012 FCA 161
- Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30
- Little Sisters Book & Art Emporium v Canada*, 2000 SCC 69
- Mackin v New Brunswick*, 2002 SCC 13
- McKinney v University of Guelph*, [1990] 3 SCR 229
- Miceli-Riggins*, 2013 FCA 158
- Norman (Estate of) v Air Canada and WestJet (2008)*, Decision No 6-AT-A-2008 (Canadian Transportation Agency), leave to appeal refused (Order of the Federal Court of Appeal, dated May 6, 2008), leave to appeal refused 2008 SCCA No 322
- Quebec v A*, 2013 SCC 5
- Quebec v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17
- R v Bryan*, 2007 SCC 12
- R v DD*, 2000 SCC 43
- R v Ferguson*, 2008 SCC 6

Reference re Remuneration of Judges of the Provincial Court of PEI, [1997] 3 SCR 3

RJR-MacDonald Inc v Canada, [1995] 3 SCR 199

Sagen v Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, 2009 BCCA 522, leave to appeal refused, 2009 SCCA No 459

Schachter v Canada, [1992] 2 SCR 679

Simser v Canada, 2004 FCA 414

Société Radio-Canada c Quebec (Procureur général), 2011 SCC 2

Symes v Canada, [1993] 4 SCR 695

Tanudjaja v Canada, 2013 ONSC 5410, aff'd 2014 ONCA 852, leave to appeal refused, 2015 SCCA No 39

Thibault v Canada, [1995] 2 SCR 627

Vriend v Alberta, [1998] 1 SCR 493

Ward v Vancouver, 2010 SCC 27

Whatcott v Saskatchewan Human Rights Tribunal, 2013 SCC 11

Wignall v Canada, 2003 FC 1280

Withler v Canada, 2011 SCC 12

Yashcheshen v Canada, 2019 SKQB 29

SCHEDULE B – STATUTES AND REGULATIONS

Bankruptcy and Insolvency Act, RSC 1985, c B-3

- s 178(1)(g), 178(1.1)

Canada Student Financial Assistance Act, SC 1994, c 28

- ss 2(1)(“qualifying student”), 3, 4, 6, 6.1, 7, 8, 11, 11.1, 12(1)-(2)

Canada Student Financial Assistance Regulations, SOR/95-329

(version currently in force)

- ss 2(1) (“family income”, “full-time student”, “part-time student”, “severe permanent disability”), 2(2)(“participating province”), 7, 8, 10, 12(1), 12.2, 12.6, 15(1)-(2), 16(3)(c), 17, 19, 19.1, 20, 20.1, 34, 38.1, 38.2, 40.01, 40.02, 40.04

(as at July 31, 2002)

- s 34(3)

(as at May 31, 2005)

- s 10

(as at July 31, 2009)

- ss 19, 20, 34, 38.1, 38.2, 40.01, 40.02, 42.1

Canada Transportation Act, SC 1996, c 10

- s 170(1)

Financial Administration Act, RSC 1985, c F-11

- ss 25(1), 66

Ontario Study Grant Plan, RRO 1990 Reg 775

- ss 1(1)(“education costs”, “financial resources”), 9(3)-(4)

Ontario Student Loans Made August 1, 2001 to July 31, 2017, O Reg 268/01

- ss 10, 11, 12, 13, 31

JASMIN SIMPSON

AND

**THE ATTORNEY GENERAL FOR HER MAJESTY THE
QUEEN IN RIGHT OF CANADA (REPRESENTING THE
MINISTER OF HUMAN RESOURCES AND SKILLS
DEVELOPMENT) and HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO (AS REPRESENTED BY
THE MINISTER OF TRAINING, COLLEGES, AND
UNIVERSITIES)**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

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