



OSB Newsletter

A word from the Superintendent of Bankruptcy

After many years, the *Insolvency Bulletin* has been retired and replaced by a more reader friendly and concise newsletter. With the *OSB Newsletter*, we will be bringing you the latest news, developments and analysis from the OSB as it becomes available while the information is still news.

This change took place after careful consideration and review. The creation of the *OSB Newsletter* supports the OSB's commitment to providing more effective and timely means of communicating with the insolvency community, the public as well as our own staff. Past subscriber surveys and on-going reader feedback indicated that subscribers would welcome a more "news-oriented" newsletter that provided them with more timely, current news from the OSB.

Our newsletter will highlight key issues of interest that directly impact on the insolvency community. It will provide quick summaries of some of the new documents on our Web site as well as updates on various initiatives undertaken by the OSB and insolvency stakeholders.

We look forward to receiving your ongoing feedback. We are committed to having a product that is informative, easier to read and continues to provide added value for our readers. The newsletter will be mailed to all stakeholders on our mailing list. As well, it will be available on our Web site (<http://osb-bsf.gc.ca>). It will be published regularly as news develop. Each issue will be numbered sequentially and prefixed with the year of publication (for example: 2002-1, 2002-2, 2003-3, 2003-4, 2003-5, 2003-6, 2004-7, 2004-8...).

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I would like to express my sincere appreciation for the interest that readers have shown in the *Insolvency Bulletin* over the years. I look forward to continuing our commitment to communicate timely and resourceful information on bankruptcy and insolvency issues and developments.

The Trustee Survey

The OSB recently did a survey of the trustee community. Three hundred and seventy three trustees responded (58%) and over 200 written comments were provided. We would like to thank all of those who took the time to respond. Your feedback is very valuable to us. We would also like to take this opportunity to let you know what the next steps are:

- publication of the results: these are now available on our Web site (<http://osb-bsf.gc.ca>);
- discuss them with the Executive Board of the CAIRP: this was done in June;

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- come up with an action plan to address some of the issues and concerns raised in the comments;
- publish the action plan.

We do not have a timetable for these last 2 steps but have already started working on the third item. We will use the *OSB Newsletter* to keep you updated on developments.

The Report of the Personal Insolvency Task Force (PITF)

In the Fall in 2000, a Task Force was struck to put forward a report on issues regarding personal insolvency in view of the Parliamentary Review of the *Bankruptcy and Insolvency Act* (BIA). The PITF was comprised of 23 members from various stakeholders groups: 3 credit granting community representatives, 4 consumer credit counsellors, 7 trustees, 3 academics, 5 judicial/legal representatives and of course, the Chairman, Mr. Yoine Goldstein. We would like to take this opportunity to thank the members for having so generously donated their time and efforts to this initiative and especially Mr. Goldstein for taking on the difficult task of a chairmanship and for the industrial amount of his own time which he spent attending meetings, dealing with issues and finalizing the report. The report will be issued shortly and will be available on the OSB Web site (<http://osb-bsf.gc.ca>). The report will be mailed to everyone on our mailing list. If you received this newsletter, you should receive the Report. If you do not receive your copy of the Report, you will be able to request one by calling the OSB Headquarters at (613) 941-1000, by sending a fax at (613) 946-9205 or by sending an e-mail to cousineau.vivian@ic.gc.ca

Registrars' Conferences – March 2002

The OSB hosted two Registrars' Conferences this past March. The French session was held in Bécancour (Quebec) on March 11th and 12th and the English session in Ottawa on March 14th and 15th. Over 40 Registrars and 3 judges were able to participate. The first day was spent discussing the structure of the OSB, some of its programs and

the Parliamentary Review of the BIA. *The Canadian Association of Insolvency and Restructuring Professionals* (CAIRP) graciously hosted a dinner on the first evening. Ms. Guylaine Houle and Mr. Bill Courage were in attendance to present some of the Association's priorities for the upcoming year. The second day consisted of panel discussions on Taxation and Discharge of Bankrupts. Master Murray Ferron, who recently retired from the Ontario Bankruptcy Court after a much distinguished career, prepared a paper on each topic. Overall, the feedback was very positive and there were requests for more such conferences. Though we do not have a date set for the next one, we will try to have it coincide with developments in the Parliamentary Review of the BIA.

DID YOU KNOW?

Insolvency Name Search

In January 1998, the OSB launched the Name Search Service on its Web site. Before then, users could only get a search done by using the call center. Now they can either use the call center or do their search on-line. In fact, since its inception, the Web searches have steadily increased. The following are some statistics on the Name Search Service:

Year	TYPE OF ACCESS	
	Call Center	Searches from Web site
1998	147,206	61,012
1999	120,024	144,166
2000	110,146	241,023
2001	81,422	311,586

You can do a search by calling (613) 941-2863 or by fax (613) 941-9490. Our service standard is 48 hours for a reply. For instant results, you can do a search from the OSB Web site at <http://osb-bsf.gc.ca> go to the Quick Links and select Insolvency Name Search. There is an \$8 fee for each search. Should you have any questions regarding this service, please contact Monique Leclair at (613) 941-9054.

A glance at the Evolution of Personal Insolvency in Canada

This article identifies certain factors that may serve to explain the evolution of personal insolvency in Canada since the early 70s. To this end, we analysed changes in the number of insolvency¹ cases per thousand Canadians aged 18 and over.

If the number of insolvency cases per thousand Canadians had remained constant since the early 70s, this would indicate that any change in the number of insolvent Canadians would be uniquely a result of changes in the size of the population aged 18 and over. But in reality, the number of cases went from 0.2 in 1971 to 3.9 in 2001 (see Figure 1). Thus, factors other than population growth have contributed to the increase in the number of cases in Canada.

The rate of indebtedness² of Canadians is also presented in Figure 1. A review of this figure suggests a close relationship between the change in the number of insolvency cases and the rate of indebtedness. Beginning in the mid-80s, one can observe faster growth in the number of insolvency cases. This change coincides with the start of sustained growth in the level of personal indebtedness in Canada. In 2001, the level of indebtedness was practically equal to Canadians' disposable income, and was equal to slightly less than

twice the level in 1985. This suggests that a greater propensity toward indebtedness had played a significant role in the increase in personal insolvency in Canada.

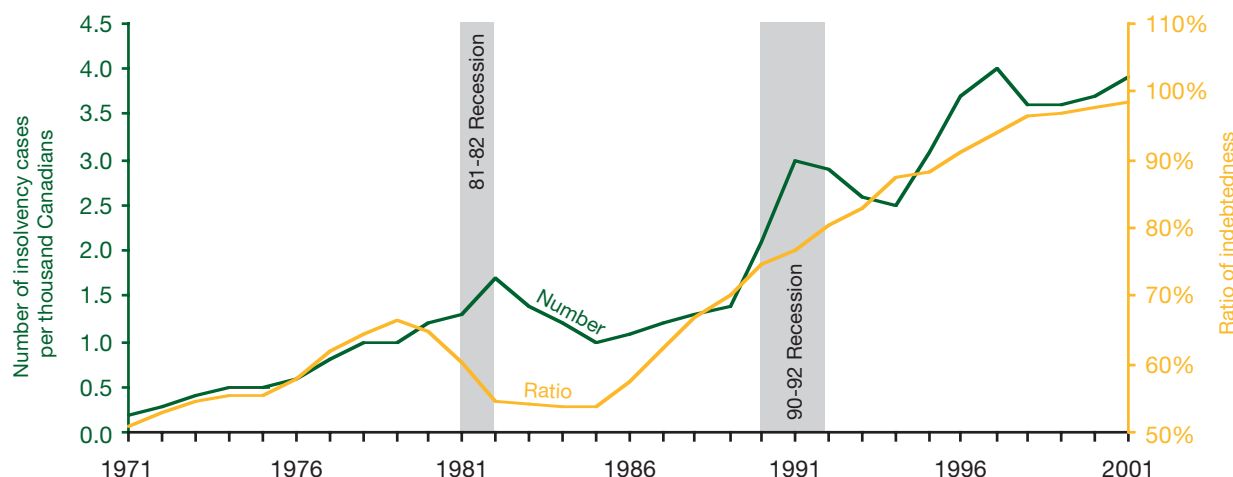
Figure 1 also shows that the recessions³ of the early 80s and 90s provoked rapid growth in the number of insolvency cases. Renewal of economic activity following these two recessions had a negative impact on this growth. It therefore appears that these economic recessions had only a temporary effect on personal insolvency.

The rapid growth in the number of insolvency cases in 1996 and 1997 appears to be cyclical in nature. There was, however, no recession at that time, but rather a slowing of economic activity. Factors other than a change in economic activity clearly contributed to this growth. Some elements that may explain this growth episode will be presented in a later article.

Richard Archambault⁴

- ¹ The number of insolvency cases per thousand Canadians corresponds to the ratio between the number of insolvency cases and the population aged 18 and over.
- ² The rate of indebtedness is defined as the total of consumer credit and mortgage loan divided by personal disposable income.
- ³ Period of at least three consecutive quarters with negative GDP growth.
- ⁴ Richard Archambault is the senior economist with the OSB Economic Information and Analysis Group.

Figure 1
Number of insolvency cases per thousand Canadians aged 18 and over and ratio of indebtedness



Professional Conduct Matters

In accordance with the *Policy on Publicizing Professional Conduct Matters*, we will publish as they become available, summaries of decisions on licencing matters. Of course, such decisions are not substitutes for the actual decisions and those interested in learning more about the decisions in this area should consult the full text on our Web site (<http://osb-bsf.gc.ca>) under the heading "Trustees" and the sub-heading "Licencing and Professional Conduct".

Any questions regarding the publication of these decisions should be addressed to the Clerk of the Hearing Record Registry, Vivian Cousineau. She can be reached by regular mail at 301 Elgin Street, 2nd Floor, Ottawa, Ontario, K2P 2N9, by phone at (613) 941-2694, by fax (613) 946-9205 or by e-mail at cousineau.vivian@ic.gc.ca

Decision on the Professional Conduct of Morley B. Miller, trustee

On November 9, 2001, the Superintendent of Bankruptcy rendered his decision affecting the licence of the trustee in bankruptcy Morley B. Miller, trustee of the City of Montreal, Province of Quebec.

Following an investigation by the Office of the Superintendent of Bankruptcy, a report was issued on the administration of Morley B. Miller, trustee. The investigation revealed a number of deficiencies and wrongdoings on the part of Morley B. Miller and more specifically identified the following:

- failure to maintain proper books and records;
- failure to maintain a proper internal control system;
- failure to pay filing fees when they were due;
- in 5 estates, failure to include assets of various types in the statement of affairs and to document adequately the value and the disposition of such assets;
- in 3 estates, failure to maintain proper insurance on his name for all the usable property of the bankrupt;
- in 2 estates, failure to prepare the pre-bankruptcy tax returns;

- in 2 estates, failure to disclose in the 170 Report, information in his possession that debtors had been bankrupt earlier and in one estate failure to disclose all relevant information regarding an RRSP and a loaned vehicle which could justify a Court to refuse an unconditional discharge;
- in one case the trustee issued the debtor's certificate 13 months after the debtor became entitled to automatic discharge and after collecting \$825 subsequent to the date of automatic discharge;
- in one case, after the debtor became automatically discharged by the effect of section 168.1 of the *Bankruptcy and Insolvency Act*, the trustee issued a demand letter for the payment of \$1,169 indicating falsely that if the debtor would be referred as an undischarged bankrupt and that it would cost him more money to get his discharge;
- in 4 estates, failure to properly handle proofs of claims and to document his decision to pay funds to a claimant.

At a pre-hearing conference held with the Superintendent on October 3, 2001, Morley B. Miller indicated that he did not wish to be heard any further on this matter and did not offer any explanations for the alleged deficiencies in his administration. On November 9, 2001, the Superintendent of Bankruptcy rendered the following decision:

that the trustee licence of Morley B. Miller of Montreal, Quebec, be cancelled 10 days after the issuance of the order.

The text/transcript of the Decision is available on our Web site at: <http://bsf-osb.gc.ca>

Decision on the Professional Conduct of Miller Hersh Inc., corporate trustee

On November 9, 2001, the Superintendent of Bankruptcy rendered on November 9, 2001 his decision affecting the licence of the trustee in bankruptcy Miller Hersh Inc., corporate trustee of the City of Montreal, Province of Quebec.

Following an investigation by the Office of the Superintendent of Bankruptcy (OSB), a report was issued on the administration of Miller Hersh Inc., corporate trustee, and Morley B. Miller, trustee. The OSB's investigation revealed a number of deficiencies

on the part of Morley B. Miller, the designated individual trustee responsible to administer the estates on behalf of the corporate trustee, which includes issues related to the keeping of books and records, internal control, the payment of filing fees, the insurance of certain assets and the trustee's practice of writing cheques payable to the corporate trustee for the small balances left in estate files upon the closing of bank account of those estates.

The Directive on Trustee licensing issued by the Superintendent of Bankruptcy provides that the designation of an individual trustee shall not relieve the corporate trustee of its ethical responsibility under any professional engagement it has accepted.

The disciplinary analyst and the corporate trustee came to an agreement and submitted a draft order which resulted in the following decision announced on November 9, 2001:

effective November 9, 2001, the licence of Miller Hersh Inc., corporate trustee, is restricted to the completion of open files;

the licence of Miller Hersh Inc. will be cancelled as soon as the corporate trustee is discharged of all open files under its administration and in any case no later than February 28, 2002;

no application for a new corporate trustee licence by any person or group of persons related to Miller Hersh Inc. shall be considered for a period of 60 days after the effective cancellation of Miller Hersh Inc. for a trustee licence.

The text/transcript of the Decision is available on our Web site at: <http://bsf-osb.gc.ca>

Decision on the Professional Conduct of Murray Leon Pinsky, trustee, and Wasserman Stotland Bratt Grossbaum & Pinsky Inc., corporate trustee

On September 12, 2001, the Delegate of the Superintendent of Bankruptcy, The Honourable Benjamin J. Greenberg, Q.C., rendered his decision affecting the licence of the trustees in bankruptcy, Murray Leon Pinsky, trustee, and Wasserman Stotland Bratt Grossbaum & Pinsky Inc., corporate trustee of the City of Montreal, Province of Quebec.

Following an investigation by the Office of the Superintendent of Bankruptcy (OSB), a report was issued on the trustees' conduct. The OSB's investigation in the matter of the bankruptcy of R  al Constantineau revealed that:

(a) the trustees acted in a dual capacity, as trustee and agent, without respecting all applicable requirements;

(b) the trustee Murray Leon Pinsky did not carry out his functions in a timely manner and did not act with due care following the judgments rendered on May 21, 1998 by the Honourable Justice Denis L  vesque and on July 9, 1998, by the Honourable Pierrette Rayle, ordering him respectively to remit the rent monies to the petitioners and to keep in trust the proceeds of the sale of a building;

(c) the trustees filed the section 170 report on the application for discharge of Mr. R  al Constantineau without respecting all applicable requirements;

(d) the trustees did not perform their duties in a timely manner and carry out their functions with due care by failing to follow up on the requests made by the inspectors in the resolution on bank debits;

(e) the trustees, following their substitution of November 24, 1998, failed to forthwith pass their accounts before the Court and deliver to the substituted trustee all the property of the estate;

(f) the trustees, on November 26, 1998, withdrew from the estate account, fees of \$185,000, excluding applicable taxes, without the inspectors' authorization;

(g) the trustees failed to request inspectors' authorization at all times and to have the bills of costs for legal services taxed by the Court before paying them;

(h) the trustees submitted to creditors, inspectors, the OSB and the Court, a statement of receipts and disbursements which did not contain a complete account of all moneys received and disbursed;

(i) the trustees did not cooperate fully with representatives of the Superintendent;

(j) the trustees did not apply to the taxing officer, within 30 days after the Superintendent gave a letter of comment, for a date for a taxation hearing and did not diligently provide this hearing date to the representative of the Superintendent of Bankruptcy;

thereby contravening sections of the *Bankruptcy and Insolvency Act*, Rules, Directives and the Code of Ethics for Trustees.

A hearing took place before The Honourable Benjamin J. Greenberg, Q.C. on September 10, 2001 which resulted in the following decision rendered after a settlement was reached between the OSB and the trustees:

effective November 1, 2001, the licence of Murray Leon Pinsky, trustee, be suspended for a period of 6 months during which time the trustee cannot act or represent himself as a trustee in bankruptcy or receiver in any file. Subsequent to this suspension period of 6 months, his licence will be limited as follows: for another period of 6 months during which time he will be supervised by a licensed trustee acceptable to the Office of the Superintendent of Bankruptcy;

effective November 1, 2001, the licence of Wasserman Stotland Bratt Grossbaum & Pinsky Inc., corporate trustee, will be restricted for a period of 3 months to the administration of estates to which it has been appointed as corporate trustee prior to November 1, 2001, during which period of time the corporate trustee cannot be appointed in any matter under the Act.

The text/transcript of the Decision is available on our Web site at: <http://bsf-osb.gc.ca>

Decision on the professional conduct of trustees Henry Sztern and Henry Sztern & Associates Inc.

On August 29, 2001, the delegate of the Superintendent of Bankruptcy, the Honourable Benjamin J. Greenberg, rendered his decision on the licences of the bankruptcy trustees Henry Sztern and Henry Sztern & Associates Inc.

A report prepared pursuant to an investigation conducted by the Office of the Superintendent of Bankruptcy (OSB) alleged serious deficiencies with regard to the trustees' administration of estate trust accounts and a breach of the Code of Ethics for Trustees.

The major allegations of the report included:

- The trustees operated a consolidated bank account (CBA) without the authorization of the Division Assistant Superintendent, contrary to Directive 5.

- Of 155 estates reviewed, the trustees had made 206 unauthorized draws of interim fees and counselling fees totalling \$18,435.
- In 132 of the 155 estates reviewed, the trustees had filed the Section 170 Report late, contrary to Section 168.1 of the Act.
- In the estate of 9020-7804 Quebec Inc., operating as Restaurant Yanelie, the trustee had knowingly sold estate assets to a person related to an employee of the trustee, contrary to Rule 43 of the Code of Ethics for Trustees, formerly Rule 54.39(1)(c).

A hearing regarding the allegations included in the report was conducted on August 29, 2001 and a joint recommendation was put forward by the OSB and the trustees.

After considering the report, and hearing the representations of both parties, Mr. Greenberg accepted the joint recommendation of the OSB and the trustees and made the following order:

effective December 1, 2001, that the licence of Henry Sztern be suspended for a period of 7 months, during which time the trustee cannot act or represent himself as a trustee in bankruptcy in any files;

effective December 1, 2001, that the licence of Henry Sztern and Associates Inc. be restricted for a 2 month period to the administration of estates to which it had been appointed prior to December 1, 2001, during which time the trustee cannot accept any new assignments.

In addition, the trustee and corporate trustee will jointly pay \$15,000 towards costs related to the investigation.

The text/transcript of the Decision is available on our Web site at: <http://bsf-osb.gc.ca>

If you have any questions or comments regarding this Newsletter or suggestions for future ones, please address them to the Newsletter Coordinator, Vivian Cousineau. She can be reached by regular mail at 301 Elgin Street, 2nd Floor, Ottawa, Ontario, K2P 2N9, by phone at (613) 941-2694, by fax (613) 946-9205 or by e-mail at cousineau.vivian@ic.gc.ca