



# OSB Newsletter

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## A Word from the Superintendent of Bankruptcy

**After a well deserved retirement** of the *Insolvency Bulletin* in December 2000, its successor, the *OSB Newsletter* was launched in October 2002 and contained a reader survey seeking your comments on our first issue. Your feedback is very important to us. I would like to share with you the main comments. Though the ratings were very positive, many comments warrant further consideration.

Firstly, many requested more articles like the one by our Economic Analysis Section. These types of articles will be a regular feature in every issue of the Newsletter. In fact, the current issue contains an article on *Insolvency by Age Group*.

There were also requests to have the phone numbers of the OSB offices. You will find inside this issue an easily detachable list for your convenience.

There was also a suggestion that the summaries of the Decisions in Professional Conduct Matters be more timely. We agree. The Policy on Publicizing Professional Conduct Matters states that we must send a summary of every decision to all trustees and that we post complete decisions on our Website. This issue contains summaries of all decisions that were either not published in the *Insolvency Bulletin* or in the first issue of the *OSB Newsletter*. All future issues of the Newsletter will contain summaries of recent (no more than 4 months old) decisions in these matters.

The most popular suggestion (almost 2/3 of respondents) was to have summaries of recent decisions in insolvency matters. While we cannot, of course, publish summaries of all decisions, we will try to publish summaries of those concerning matters of general interest. If you have decisions that you feel

should be summarized and published, please send them to the Newsletter Coordinator for consideration for the next issue.

Many other suggestions were made and we will attempt to incorporate them in future issues of the Newsletter.

The coming year will be a very busy one for the OSB as we continue to implement e-filing and prepare for the Parliamentary Review slated for February. The OSB will continue to inform readers of important developments.

Allow me to take this opportunity to wish all our readers the very best in 2003.

## PITF Report Released

**The Final Report** of the Personal Insolvency Task Force was released and mailed to everyone on our distribution list. If you wish to get a copy, contact the Newsletter Coordinator, Vivian Cousineau. She can be reached by regular mail at 301 Elgin Street, 2<sup>nd</sup> 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](mailto:cousineau.vivian@ic.gc.ca)

## OSB Management Advisory Board

In the Spring of 1998, the OSB set up a Management Advisory Board (Board), one of several initiatives it undertook upon becoming a Special Operating Agency. The Board's mandate is to provide external advice to the Superintendent and to the Department on the management of the Office of the Superintendent of Bankruptcy.

In particular, the Board:

- reviews and comments on the annual OSB Business Plan;
- evaluates the financial and business performance of the OSB against their Business Plan;
- reviews the costs and revenues and comments on the Office's recommendations to maintain financial self-sufficiency;
- assesses the OSB's longer term business strategies for dealing with major issues; and
- advises the OSB on ways of improving public awareness and the development of appropriate relationships with the insolvency community.

While the Board does not get involved in the day to day running of the OSB, nor does it get involved in the OSB's statutory functions, it has, since its inception, provided crucial advice on matters such as the E-filing initiative, client surveys, fees, future direction, etc.

The Board is structured to achieve an effective balance between clients, other stakeholders, business professionals and academics. To ensure adequate representation from these groups, Board members and the Chairman are chosen from the private sector.

The current Board members are as follows:

### Jean-Claude Delorme

Chairman  
Corporate Director and Consultant

### Francine Bastien

Vice President  
Media and Public Affairs  
GGA Communications

### Andrea Boudreau Ouellet

Assistant Dean  
Law Faculty  
University of Moncton

### George Boynton

Former Chairman  
Organizing Committee, World Computer Congress

### Jean-Yves Fortin

Lawyer and Partner  
Brouillette Charpentier Fortin

### Diana Graham

Senior Vice-President  
Retail and Small Business Credit — CIBC  
Canadian Bankers' Association Representative

### Yanik Harnois

Consultant and Academic  
Human Resources' Specialist

### David Howden

Director  
Electronic Service Delivery Implementation  
Integrated Service Delivery Division  
Ministry of Consumer and Business Services  
of Ontario

### Joan Huzar

President  
Consumer Council of Canada

### Uwe Manski

Trustee in Bankruptcy  
BDO Dunwoody  
Insolvency Institute of Canada Representative

### Susan Robinson-Burns

Lawyer  
Miles Davison McCarthy McNiven LLP

### Bob Sanderson

Trustee in Bankruptcy  
KPMG

### Peter Wedlake

Trustee in Bankruptcy  
Green Haley Wedlake  
CAIRP Representative



## Parliamentary Review

**The Standing Senate Committee** on Banking Trade and Commerce chaired by Senator Leo Kolber has been tasked with reviewing the operations and administration of the BIA and the CCAA. The committee should begin its review of the BIA and CCAA in February 2003 with its report, we are being told, expected in June 2003. Industry Canada has produced a report entitled "Report on the Operation and Administration of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act" to assist the committee in its deliberations. A copy of this report has been sent to everyone on our mailing list. The report outlines the key commercial and consumer issues as well as administrative policy issues following consultation sessions with stakeholders in 2001 and 2002, and the National Insolvency Forum meetings in 1999. It should be emphasized that this report does not make recommendations to the Senate Committee as to which specific changes should be made, rather it presents the pros and cons for alternative solutions of each issue.

Interested parties are encouraged to make submissions to the Senate Committee for its consideration by sending them to:

Mr. Denis Robert  
Committee Clerk  
The Senate Committees and Private Legislation  
Directorate  
Chambers Building  
40 Elgin Street, 10<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0A4

Two major submissions to the committee that have been received to date are the report by the Joint Task Force on Business Insolvency Law Reform of the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals and the report of the Personal Insolvency Task Force (PITF). The Joint Task Force report is available from the Web site of the Insolvency Institute ([www.insolvency.ca](http://www.insolvency.ca)) and the PITF report has been sent to all newsletter readers. This report is also available from the OSB Web site ([www.osb-bsf.ic.gc.ca](http://www.osb-bsf.ic.gc.ca)).

Three of the key recommendations of the Joint Task Force relate to interim financing under the CCAA, the treatment of executory contracts and whether the CCAA and BIA should remain as separate statutes.

The interim financing recommendation is that in CCAA cases as opposed to Division I Proposals under the BIA, the Act should specifically permit post filing financing subject to the Act providing a list of guidelines for judges to consider whether to grant approval. It is proposed that BIA and CCAA debtors will be able to disclaim executory contracts subject to the right of the counter-parties to have claims for termination damages. As for merging the BIA and CCAA, it is proposed that the two statutes should remain separate but that the key documents in CCAA cases should be filed with the OSB.

Some of the main recommendations of the PITF relate to RRSP's, student loan debts and voluntary agreements to make post-discharge payments. The PITF recommends that RRSP's should not be seizable in bankruptcy provided the plan is converted to a pension plan and any contributions to the plan made within three years of bankruptcy are seizable. Under student loan debts, the recommendation is that BIA should be amended to reduce the length of time before they can be discharged from 10 years to 5 years after the end of studies and that applications to the court for a hardship hearing should be permitted one year after the end of studies. With regard to the voluntary agreements issue, it is recommended that trustees be permitted to enter into voluntary payment agreements post-discharge with debtors who do not have surplus income with a ceiling on the amount being the maximum level of estate receipts possible without generating dividends to creditors.

Following the proposed release of the senate committee's report next June, it is expected that there will be further discussion and consultation followed by an insolvency reform bill hopefully being tabled in parliament in 2004.

## Parliamentary Report Released

**The Report on the Operation** and Administration of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* was released and mailed to everyone on our distribution list. If you wish to get a copy, contact the Newsletter Coordinator, Vivian Cousineau. She can be reached by regular mail at 301 Elgin Street, 2<sup>nd</sup> Floor, Ottawa, Ontario, K2P 2N9, by phone at (613) 941-2694, by fax at (613) 946-9205 or by e-mail at [cousineau.vivian@ic.gc.ca](mailto:cousineau.vivian@ic.gc.ca)

## DID YOU KNOW?

### Letters of Comment

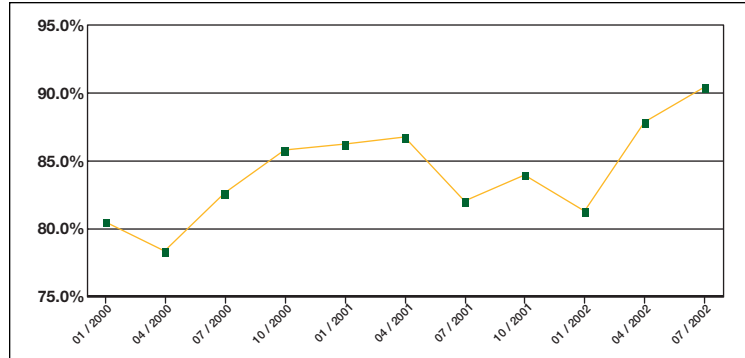
**The Office of the Superintendent of Bankruptcy (OSB)**, in the process of supervising the administration of insolvency estates in Canada, is responsible for reviewing the trustee's statement of receipts and disbursements (SRD) in bankruptcy and proposal files. The SRD is produced by the trustee at the end of the administration and is a summary of all funds realized in the estate and all expenses incurred. Further to this review, the OSB issues a letter of comment which depending on the category of estate will authorize the trustee to finalize the administration and in other cases will enable the trustee to appear in court for the approval of its fees.

In order to ensure an efficient processing of SRDs, the OSB has set for itself an internal objective to review SRDs and provide letters of comment within 21 business days in 90% of the cases. Last year, the OSB reviewed and commented on 95,761 SRDs. In 82% of the cases the letters were issued within 21 days. Information is provided here on our performance since January 2000.

The OSB's performance on this activity is sensitive to a number of factors, including the reception of a very large number of SRDs within a short period of time, staff levels which cannot be increased to deal with sudden surges, and the absence or loss of staff from time to time.

New measures have been introduced in the last two years to improve the turnaround time for letters of comment. As summary bankruptcies make up approximately 90% of all insolvency filings in the typical insolvency year, the measures were focussed on this group of estates.

In September 2000 an automated process for reviewing SRD's in summary bankruptcy files was introduced to reduce the amount of time officers spend in relation to this activity. The process enables the selection of estates according to certain criteria for a computer review instead of a manual review. Files which do not meet the criteria are reviewed manually. Further, to ensure a high level of



**Figure 1**  
**Percentage of cases where the OSB has issued letters of comment within 21 days.**

compliance, a random number of the files meeting the criteria are also manually reviewed. As a result, within the last two years, approximately 33% of summary files were computer reviewed. Based on a recent quality assessment of the process, we have adapted our criteria and hope to be able to reach 50% of the summary files. This should enable further efficiencies and a faster turnaround time for letters of comment on summary files.

The OSB's new e-Filing process will also generate further improvements in the issuance of letters of comment. SRDs submitted electronically by the trustee in files which meet the above mentioned criteria, and are not randomly sampled for manual review, will be computer-reviewed and will have a letter of comment automatically generated and returned to the trustee. As this will eliminate all data entry and manipulation of files by our personnel, it should enable the issuance of the letters of comment within minutes for a large number of summary estates.

It should be re-iterated that the computer review process only applies to summary bankruptcies; all SRDs received in ordinary bankruptcies and both forms of proposals still require a manual review by the OSB at this time.

These changes already made, as well as those to come, will help to ensure a quality level of service for trustees and all participants in the bankruptcy and insolvency system.

## Oral Boards 2002

**We are happy to inform you** that the candidates at the oral board 2002 performed brilliantly, with a success rate of **87.5%**! We are also pleased to note that the success rate has been steadily increasing over the last three years, and is now **21.5%** higher than in 1999. More good news: the results were available a month and a half earlier than in previous years (May 13<sup>th</sup> rather than June 30<sup>th</sup>).

We invite you to look over the results of the 2002 oral examination as well as the statistics we have compiled since 1999. As to the latter, the graphics demonstrate the change in the success rate and the failure rate (full and restricted licences combined), for Canada and by province, from 1999 to 2002.

We would like to thank the following people for sitting on the boards:

Mr. Denis Gilbert  
Office of the Superintendent of Bankruptcy

Mr. Fabien Tremblay  
Tremblay & Compagnie Syndics et Gestionnaires Ltée

Mr. François Valin  
Kronstrom Desjardins

Mr. Claude Le Duc  
Office of the Superintendent of Bankruptcy

Mrs. France Pigeon  
Primeau, Proulx, Pigeon & Associés Inc.

Mr. Alain N. Tardif  
McCarthy Tétrault

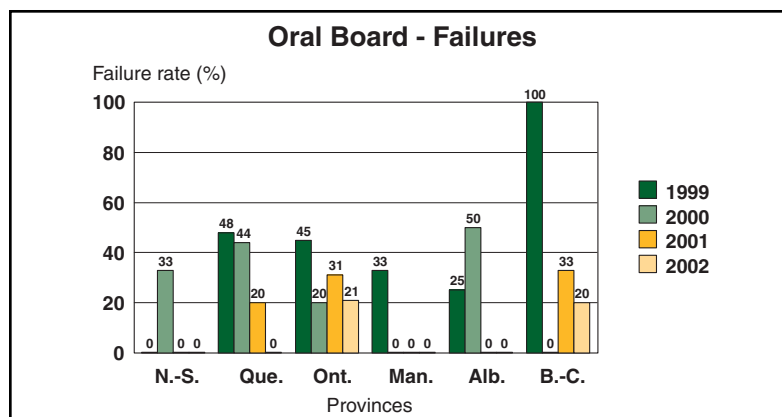
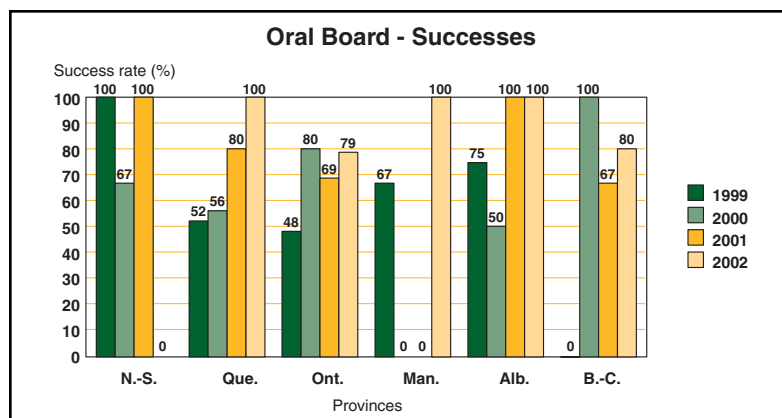
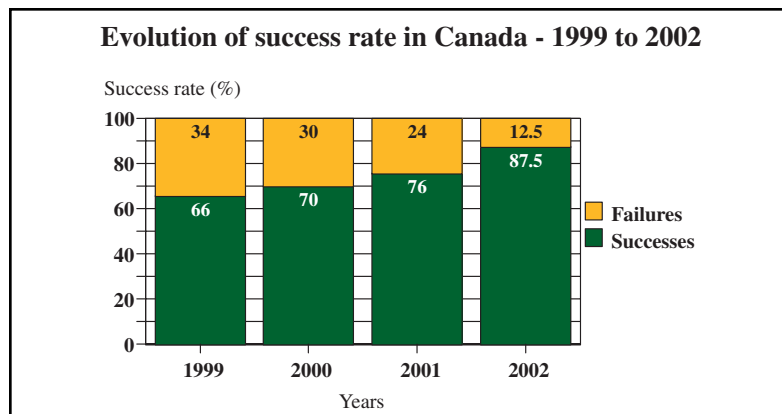
Mr. John Everett  
Office of the Superintendent of Bankruptcy

Mr. Chester Szypula  
BDO Dunwoody Limited

Mrs. Catherine Francis  
Minden Gross Grafstin & Greenstein LLP

Mr. Daniel Weisz, C.A.  
Mintz & Partners Limited

Mr. Rob Van Kessel  
Lawrence Stevenson



Mr. Bill Millar  
Office of the Superintendent of Bankruptcy

Mr. Russell James McGill, C.A.  
BDO Dunwoody Limited

Mr. Alan Brown  
McCarthy Tétrault

Mrs. Kate Maj  
Office of the Superintendent of Bankruptcy

Mr. George Lomas, B., FCA  
Young, Parkyn, McNab Inc.

Mr. Clive Llewellyn  
Fleming, Kambeitz

We would like to extend our special thanks to Mr. Yves Pigeon for his many years of sitting on the Boards and contributing greatly to the process.

| Cities<br>Villes | Candidates<br>Candidats | Licence              |                       |                               |                 |  |
|------------------|-------------------------|----------------------|-----------------------|-------------------------------|-----------------|--|
|                  |                         | Full (%)<br>Complète | Limited<br>Restreinte |                               | No (%)<br>Non   |  |
|                  |                         |                      | Cons. (%)             | Corp./ Personne<br>morale (%) |                 |  |
| Montréal         | 8                       | 3 (37.5)             | 1 (12.5)              | 4 (50)                        |                 |  |
| Québec           | 3                       | 2 (67)               | 1 (33)                |                               |                 |  |
| Ottawa           | 3                       | 3 (100)              |                       |                               |                 |  |
| Toronto          | 13                      | 9 (69)               | 1 (8)                 |                               | 3 (23)          |  |
| London           | 2                       |                      |                       | 1 (50)                        | 1 (50)          |  |
| Hamilton         | 1                       | 1 (100)              |                       |                               |                 |  |
| Winnipeg         | 2                       | 1 (50)               | 1 (50)                |                               |                 |  |
| Calgary          | 1                       |                      | 1 (100)               |                               |                 |  |
| Edmonton         | 2                       | 2 (100)              |                       |                               |                 |  |
| Vancouver        | 5                       | 3 (60)               | 1 (20)                |                               | 1 (20)          |  |
| <b>Total</b>     | <b>40 (100)</b>         | <b>24 (60)</b>       | <b>6 (15)</b>         | <b>5 (12.5)</b>               | <b>5 (12.5)</b> |  |
|                  | <b>40 (100)</b>         | <b>35 (87.5)</b>     |                       |                               | <b>5 (12.5)</b> |  |

## Professional Conduct Matters

In accordance with the *Policy on Publicizing Professional Conduct Matters*, we 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, 2<sup>nd</sup> 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](mailto:cousineau.vivian@ic.gc.ca)

## Decision on the Professional Conduct of Trustee Peter Wolkove

Further to a complaint and an investigation conducted by the Office of the Superintendent of Bankruptcy into the conduct of trustee Peter Wolkove in the administration of the bankruptcies of 2329-6288

Québec inc. and Can Am Up Tac Ltée, the delegate of the Superintendent of Bankruptcy, the Honourable Benjamin J. Greenberg, rendered his decision with regard to the licence of bankruptcy trustee Peter Wolkove, on September 28, 2001.

The report was prepared pursuant to an investigation conducted by the Office of the Superintendent of Bankruptcy into the bankruptcies of 2329-6288 Québec Inc., in which Mr. Wolkove had not acted as trustee, and that of Can Am Up Tac Ltée, in which he had acted as trustee.

On June 14, 2001, the delegate has rendered a preliminary decision in which he concluded that he did not have jurisdiction to hear and rule on the complaint concerning 2329-6288 Québec Inc., given that the French version of section 5(3)(e) of the Act limits the jurisdiction of the Superintendent to investigate or have investigated the conduct of a licensed trustee, to matters where the licensed trustee acted as a trustee, receiver or interim receiver under the Act. He points out that whereas the English version only implicitly imposes that limitation, it is explicitly decreed in the French version of that provision.

However, the delegate concluded that the complaint brought against the trustee to the effect that he was in a conflict of interest in the bankruptcy of Can Am Up Tac, was founded.



On September 28, 2001 in his decision with regard to the sanction, the delegate indicated that it is a serious offence for a trustee to be in a conflict of interest. He also indicated that even if the trustee is no longer practising and his professional conduct had always been appropriate, the fact that he was in a conflict of interest is so serious that it warrants more than a reprimand or a purely symbolic sanction.

The delegate therefore ordered, on September 28, 2001, that the licence of trustee Peter Wolkove be suspended for 3 months, during which period Mr. Peter Wolkove could not be appointed under the Bankruptcy and Insolvency Act nor act in any matter within the purview of said Act.

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

## **Decision on the Professional Conduct of Trustee Jean-Pierre Chatigny**

**The Superintendent of Bankruptcy's delegate,** Me. Roger Tassé, Q.C., rendered his decision on the licence of bankruptcy trustee Jean-Pierre Chatigny, on February 18, 2002. Mr. Tassé had previously stated his conclusions as to the facts of the case, on September 7<sup>th</sup>, 2001 after considering the evidence and the representations submitted to him at the hearing conducted on June 20 and 21, 2001.

The report prepared pursuant to an investigation conducted by the Office of the Superintendent indicated serious deficiencies in the administration of the bankruptcy of Ms. Gisèle Mercier, particularly with regard to the disclosure and realization of the undivided half interest in a building.

Me. Tassé found that there were serious deficiencies, which he enumerated as follows in his decision on the sanction rendered on February 18, 2002:

- while on the one hand, it was not proved that the trustee had advised or encouraged Ms. Mercier not to include her interest in the building located at 528 Geneviève Street in her Statement of Affairs, as claimed by Senior Analyst, Sylvie Laperrière, my analysis of the evidence did lead me to conclude that the trustee had simply chosen not to include it on the statement that he himself prepared, and in so doing, he did not fulfil his obligations as bankruptcy trustee, contrary to section 13.5 of the Act and Rule 45;

- reports and other statutory documents prepared by the trustee were inaccurate in that they did not mention the debtor's interest in the building located at 528 Geneviève Street;
- the trustee did not perform his duty to adequately verify in a timely manner the value of Ms. Mercier's asset;
- the trustee provided incomplete and inaccurate information to the Office of the Superintendent;
- the trustee showed a lack of due care in carrying out his functions by not following up after his registration on the building and by unduly delaying to react to a settlement offer;
- the trustee, in indicating in a letter to the debtor that she had concealed the fact that she owned an undivided half interest, made a statement that he knew to be false and inaccurate.

After examining the facts recounted in his decision of September 7, 2001 and considering the representations made by the various parties, the delegate, Me. Tassé, reached the conclusion that a suspension of three (3) months was justified under the circumstances.

He therefore decided, on February 18, 2002, that the licence of trustee Jean-Pierre Chatigny would be suspended for a period of three (3) months, during which time he may not act as bankruptcy trustee, nor accept any mandate under the Bankruptcy and Insolvency Act, either in his own name or under the name of a corporate trustee.

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

## **Decision on the Professional Conduct of Trustee Ronald J. McMahon**

**The Superintendent of Bankruptcy,** Mr. Marc Mayrand, rendered his decision with regard to the licence of trustee Ronald J. McMahon, of the city of Vancouver, Province of British Columbia, on January 18, 2002.

A report prepared subsequent to an investigation conducted by the Office of the Superintendent of Bankruptcy alleged serious deficiencies with respect to the administration of a receivership, including breaches of the Code of Ethics for Trustees.

The report alleged the following deficiencies on the part of the trustee:

- the trustee had improperly drawn funds in the amount of \$50,000.00 US from a trust account for the purpose of completing a personal investment for himself and an associate;
- the trustee had failed to maintain accurate records of this transaction;
- the trustee had commingled third party funds with trust funds, thus jeopardizing the character of the trust;
- the trustee had used trust funds for his personal benefit.

A hearing regarding the allegations in the report was conducted on February 28, March 1 and March 2, 2001.

After considering the report, and hearing the representations of both parties, the Superintendent of Bankruptcy issued his decision on this matter on January 18, 2002, ordering that the licence of the trustee be suspended for a period of two months, commencing on January 25, 2002.

The trustee has applied to the Federal Court for a Judicial Review of the decision of the Superintendent of Bankruptcy.

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

## **Instructions for Conservatory Measures Imposed on Bankruptcy Trustees Pfeiffer & Pfeiffer Inc. and Sydney H. Pfeiffer**

**In the context of an investigation** into the professional conduct of corporate trustee Pfeiffer & Pfeiffer Inc. and individual trustee Sydney H. Pfeiffer, on July 5 and 27, August 13 and September 17, 2002 the Office of the Superintendent of Bankruptcy imposed measures to protect the assets of bankruptcy and insolvency estates administered by these trustees. An audit of the trustees' operations revealed serious irregularities in their administration of bankruptcy and insolvency files, thereby necessitating conservatory measures to protect the assets under the trustees' control.

The first measures, imposed by the Deputy Superintendent, Programs, Standards and Regulatory Affairs of the Office of the Superintendent of Bankruptcy, were addressed to the Official Receiver, who was instructed on July 5, 2002 to not appoint trustees Pfeiffer & Pfeiffer Inc. or Sydney H. Pfeiffer to administer any new estates. Other measures were addressed to the financial institutions with which the trustees do business, enjoining them not to honour cheques or any other means of payment against bankruptcy and insolvency estate accounts, unless they had previously been countersigned by individuals mandated for that purpose by the Deputy Superintendent.

Following imposition of these measures, however, the Office of the Superintendent of Bankruptcy uncovered other irregularities involving the trustees' banking operations. The trustees had supplied the Office of the Superintendent of Bankruptcy with information they knew to be false and incomplete as well as falsified documents dealing with the nature of their trust accounts and the monies deposited therein. As a result, on July 24, 2002 the Deputy Superintendent instructed the Official Receiver to take possession and control of the assets and files of estates administered by the trustees and to place them with Samson Bélair/Deloitte & Touche Inc., the appointed guardian. The Deputy Superintendent instructed Samson Bélair/Deloitte & Touche Inc., trustee, to continue the administration of these assets and files, in its capacity as agent of the Superintendent of Bankruptcy, in accordance with the duties and responsibilities incumbent on trustees in bankruptcy according to the Act.

On August 13, 2002 after learning that the trustees continued to effect banking transactions with estate monies in an account at the Bank of Montreal, the Senior Analyst, Disciplinary Affairs issued measures enjoining that financial institution to not honour cheques or other means of payment on bankruptcy or insolvency estate bank accounts unless they were previously countersigned by representatives of the firm Samson Bélair/Deloitte & Touche Inc. The Senior Analyst, Disciplinary Affairs, also issued measures enjoining Samson Bélair/Deloitte & Touche Inc., as agent of the Office of the Superintendent of Bankruptcy, to take all the necessary steps to complete the administration of the estates for which the trustees had already received their discharge.

On September 17, 2002 the Deputy Superintendent also issued measures addressed to Canada Post



Corporation to have mail addressed to the trustees forwarded to Samson Bélair/Deloitte & Touche Inc.

All of these conservatory measures remain in effect until further notice or until a decision is rendered under section 14.01 of the Act.

The text of the instructions for conservatory measures can be consulted on our Web site at the following address: <http://osb-bsf.gc.ca>

## Decision on the Professional Conduct of Trustee Guy Loslier

**Following irregularities** noted by the Senior Bankruptcy Analyst (official receiver) and the investigation conducted by the Office of the Superintendent of Bankruptcy, the delegate of the Superintendent of Bankruptcy, the Honourable Lawrence A. Poitras, Q.C., rendered his decision with regard to the licence of bankruptcy trustee Guy Loslier, on September 12, 2002 .

The report prepared following the investigation indicated that the trustee had not proceeded with an equitable distribution of interest generated in a consolidated trust account for summary administrations and had improperly used trust funds to pay banking fees. The report also indicated that all of the money in question had subsequently been reimbursed.

The report noted the following offences:

- the trustee, Guy Loslier, did not maintain in good order a consolidated trust account for summary administrations and an accounting system providing for equitable monthly distribution to each estate account of all interest generated by the consolidated trust account, thereby contravening Directive #1 of the Superintendent of Bankruptcy (replaced by Directive #5 on November 17, 1994);
- the trustee, Guy Loslier, did not distribute to the respective estate files interest totalling \$6,156.83 accumulated in his consolidated trust account for summary administrations, thereby contravening Directive #1 of the Superintendent of Bankruptcy (replaced by Directive #5 on November 17, 1994);
- the trustee, Guy Loslier, did not remit to the Superintendent as undistributed funds all interest generated in his consolidated trust account for

summary administrations that had not been allocated to any of the individual estate accounts, thereby contravening Directive #5 of the Superintendent of Bankruptcy;

- the trustee, Guy Loslier, on June 20, 1995, improperly remitted to Samson Bélair/Deloitte & Touche Inc. the amount of \$5 018.90 from his consolidated trust account for summary administrations, thereby contravening Section 25 of the Act;
- the trustee, Guy Loslier, on June 20, 1995, did not sign himself the cheque in the amount of \$5,018.90 that was withdrawn from his consolidated trust account for summary administrations, thereby contravening Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Guy Loslier, improperly used interest income from his consolidated trust account for summary administrations to pay banking fees totalling \$1,137.93, thereby contravening Directive #5 of the Superintendent of Bankruptcy.

An agreement was reached between the trustee and the Office of the Superintendent that called for the trustee's licence to be suspended for a period of three (3) weeks. The Superintendent's delegate agreed with the joint recommendation of the parties and rendered a decision accordingly.

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

## Decision on the Professional Conduct of Trustee Paul Rainville.

**Further to irregularities** discovered by the Senior Bankruptcy Analyst (Official Receiver) and to the investigation conducted by the Office of the Superintendent of Bankruptcy, the delegate of the Superintendent of Bankruptcy, the Honourable Lawrence A. Poitras Q.C., rendered his decision with regard to the licence of bankruptcy trustee Paul Rainville, on February 14, 2002.

The report prepared pursuant to the investigation revealed that the trustee did not equitably distribute interest earned by his consolidated trust account for summary administration estate files, and had improperly withdrawn funds from this account.

The report noted the following offences:

- the trustee, Paul Rainville, did not maintain in good order a consolidated trust account for summary administrations and an accounting system providing for equitable monthly distribution to each of the individual estate account of all the interest earned by the consolidated trust account, thus contravening Directive #1 of the Superintendent of Bankruptcy (replaced by Directive #5 on November 17, 1994);
- the trustee, Paul Rainville, did not distribute to the respective estate files interest accumulated in the consolidated trust account totalling \$58,946.82, thus contravening Directive #1 of the Superintendent of Bankruptcy (replaced by Directive #5 on November 17, 1994);
- the trustee, Paul Rainville, did not remit to the Superintendent as undistributed assets the sum total of interest earned in the consolidated trust account for summary administrations that had not been apportioned to any of the individual estate accounts, thus contravening Directive #1 of the Superintendent of Bankruptcy (replaced by Directive # 5 on November 17, 1994).
- the trustee, Paul Rainville, illegally withdrew, on September 26, 1988, the sum of \$10,000 from his consolidated trust account for summary administrations, thus contravening section 25 of the Act;
- the trustee, Paul Rainville, illegally withdrew, on April 16, 1990, the sum of \$9,000 from his consolidated trust account for summary administrations, thus contravening section 25 of the Act;
- the trustee, Paul Rainville, illegally remitted, on September 23, 1992, the sum of \$24,450 to Samson Bélair/Deloitte & Touche Inc. from his consolidated trust account for summary administrations, thus contravening section 25 of the Act;
- the trustee, Paul Rainville, did not act in accordance with the laws, regulations and terms applicable to trusts, thus contravening section 48 of the Rules.

An agreement was reached between the trustee and the Office of the Superintendent. The Superintendent's delegate agreed with the common recommendation of the parties and rendered a decision accordingly, on February 14, 2002.

The delegate having taken into consideration that Paul Rainville voluntarily surrendered his trustee

licence, therefore cancelled the said licence. He also ordered Paul Rainville to pay to the Office of the Superintendent of Bankruptcy, as undistributed assets, the amount of \$19,000.00 within thirty (30) days of the signing of the order.

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

## **Decision on the Professional Conduct of Trustee Samson Bélair/Deloitte & Touche Inc.**

**Further to irregularities** detected by the Senior Bankruptcy Analyst (Official Receiver) and to the investigation conducted by the Office of the Superintendent of Bankruptcy, the delegate of the Superintendent of Bankruptcy, the Honourable Lawrence A. Poitras, Q.C., rendered his decision with regard to the licence of bankruptcy trustee Samson Bélair/Deloitte & Touche Inc., on December 18, 2001.

The report and the addenda prepared pursuant to the investigation indicated that the trustee had not maintained a system of internal control for the recording of receipts and disbursements of trust funds, did not equitably distribute interest earned by a consolidated trust account, had improperly attributed banking fees to trust accounts, and had improperly withdrawn funds from a consolidated trust account. They also indicated that the trustee had corrected the situation and reimbursed all of the amounts in question.

The report and the addenda noted the following offences:

- the trustee, Samson Bélair/Deloitte & Touche Inc., did not maintain an internal control system for the recording of receipts and disbursements of trust funds, thus contravening Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Samson Bélair/Deloitte & Touche Inc., did not periodically review and evaluate the internal control system to ensure that it was functioning adequately and was equipped with adequate safeguards, thus contravening Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Samson Bélair/Deloitte & Touche Inc., did not maintain in good order a consolidated trust account for summary administrations and an accounting system providing for equitable monthly

distribution to each of the individual estate accounts of all the interest earned by the consolidated trust bank account, thus contravening Directive #5 of the Superintendent of Bankruptcy;

- the trustee, Samson Bélair/Deloitte & Touche Inc., did not distribute to the respective estate files interest accumulated in the consolidated trust account totalling \$11,693.42, thus contravening Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Samson Bélair/Deloitte & Touche Inc., did not, prior to December 10, 1999, remit to the Superintendent as undistributed assets the sum total of interest earned in the consolidated trust account for summary administrations that had not been apportioned to any of the individual estate accounts for the period February 1994 to April 1997, thus contravening Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Samson Bélair/Deloitte & Touche Inc., illegally withdrew, on March 24, 1994, the sum of \$10,958.51 from the consolidated trust account for summary administrations, thus contravening section 25 of the Act;
- the trustee, Samson Bélair/Deloitte & Touche Inc., in contravention of Directive #5 of the Superintendent of Bankruptcy, on June 20, 1995, received the sum of \$5,018.90 from the consolidated account for trustee Guy Loslier's summary administrations, which sum should have been remitted to the Superintendent as undistributed interest;
- the trustee, Samson Bélair/Deloitte & Touche Inc., cashed, on January 28, 1997, \$3,490.73 from the operating account of Mr. Albert Dionne that should have been remitted to the Superintendent as undistributed funds, thus contravening section 5(5) of the Act and Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Samson Bélair/Deloitte & Touche Inc., debited banking fees from certain trust accounts, thus contravening section 5(5) of the Act and Directive #5 of the Superintendent of Bankruptcy;
- the trustee, Samson Bélair/Deloitte & Touche Inc., did not maintain in interest-bearing accounts funds from the estates of consumer and business bankruptcies or proposals that were deposited in bank accounts, thus contravening section 5(5) of the Act and Directive #5 of the Superintendent of Bankruptcy;

- the trustee, Samson Bélair/Deloitte & Touche Inc., did not administer with due care the money held in certain trust accounts, thus contravening section 13.5 of the Act and section 48 b) of the Rules.

The following factors were considered during the discussions related to the sanction:

- The trustees involved in the illegal administration of the consolidated bank account in trust are not anymore working and/or member of Samson Bélair/Deloitte & Touche Inc.
- The trustee admitted all the facts and reimbursed all the monies.
- The trustee voluntarily disclosed the facts regarding the 8 bank accounts to the OSB.
- The trustee fully collaborated to the investigation.

An agreement was reached between the trustee and the Office of the Superintendent whereby the trustee would pay \$20,000 as reimbursement of the costs of the investigation and make a donation of \$25,000 to a consumer association (Association coopérative d'économie familiale). The Superintendent's delegate approved the joint recommendations of the parties and rendered a decision accordingly, on December 18, 2001.

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

## **Directions for Conservatory Measures Imposed on Bankruptcy Trustees Sam Lévy & Associés Inc. and Sam Lévy**

**In the context of an investigation** into the professional conduct of corporate trustee Sam Lévy & Associés Inc. and individual trustee Samuel S. Lévy, on May 10, 2001 the Office of the Superintendent of Bankruptcy imposed measures to protect the assets of bankruptcy and insolvency estates administered by these trustees.

The preliminary results of the investigation revealed serious and repeated deficiencies in the trustees' administration. As a result, the Deputy Superintendent, Programs, Standards and Regulatory Affairs, concluded that the assets under the trustees' control were at risk and should be protected.

The following conservatory measures were implemented in order to protect the assets under the trustees' control:

- instructions to the official receivers not to appoint the trustees to administer any new estates
- instructions to financial institutions not to honour cheques from the trustees' estate accounts unless those cheques had the prior approval of individuals mandated for this purpose
- instructions to the individuals mandated for this purpose to seize various documents relating to the trustees' estate accounts and to make copies of computer files concerning the trustees' estate accounts

Since then, an investigation report on the trustees' professional conduct was prepared for the Superintendent, who appointed Mr. Fred Kaufman to hear the matter.

All the conservatory measures remain in effect until further notice or until a decision is rendered on the trustees' professional conduct under section 14.01 of the Act.

## Decision on the Professional Conduct of Norman R. D. MacRae

**The Delegate of the Superintendent of Bankruptcy**, the Honourable Fred Kaufman, rendered his decision affecting the licence of the trustee in bankruptcy, Norman R. D. MacRae of the City of Waterloo, Ontario, on February 26, 2001.

Following an investigation by the Office of the Superintendent of Bankruptcy, a report was issued on the administration of Norman R. D. MacRae, trustee. The investigation revealed a number of irregularities to the *Directives of the Superintendent of Bankruptcy* and contravention to the *Code of Ethics for trustees* in respect of the trustee's administration of estates, namely:

- *Signing false or misleading Assessment certificates.*
- In 16 files, the trustee signed the bankrupts' Assessment certificate stating that no amount had been paid by the bankrupts for financial advice

received prior to bankruptcy when this advice had been given by a credit counselling firm owned by his wife and operated by him.

- The trustee further failed to disclose the amounts paid to the credit counselling firm on the bankrupt's Statement of Affairs nor were these amounts deposited in the estate bank trust account.
- These actions are in direct contravention of Rule 36 of the *Code of Ethics for trustees* which deals with the trustee's failure to perform his duties with honesty, integrity and due care and Rule 45 of the *Code of Ethics for trustees* which states that a trustee "shall not sign any document (...) which they know or reasonably know is false or misleading" and Section 6 of *Directive no. 4 of the Superintendent of Bankruptcy* which states that such amount shall be "deposited in the estate bank trust account and declared as an asset in the Statement of Affairs."
- *Selling property of a bankrupt to a person not dealing at arms' length with the trustee.*
- The trustee sold assets from an estate he was administering, to his wife's credit counselling company, contrary to Rule 43(1)(a) of the *Code of Ethics for trustees* which prohibits a trustee to sell property to a person not dealing at arms's length with the trustee.

A hearing took place before the Honourable Fred Kaufman on January 24, 2001 which resulted in the following decision rendered after an agreement was reached between the OSB and the trustee:

Effective March 1, 2001, the licence of Norman R.D. MacRae, trustee, be limited for a period of 4 ½ months to the administration of estates for which the trustee has been designated as an individual trustee prior to March 1, 2001, and during that period of time, the trustee cannot take any new appointments under the Act nor act as trustee in any other files;

That the trustee will attend a course on Professional Ethics approved by the Division Assistant Superintendent, London during the period of restriction;

That the trustee will pay to the OSB costs related to the hearing, in the amount of \$3,000 within 30 days of the date of the order;

Upon the failure of the trustee to comply with the conditions and limitations to which the licence is subject pursuant to the above paragraphs, the trustee shall be in default pursuant to paragraph 13.2(5)(b) of the Act.

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

## Decision on the Professional Conduct of David Gordon Anderson

**The Superintendent of Bankruptcy** rendered his decision affecting the licence of the trustee in bankruptcy, David Gordon Anderson of the City of Whistler, British Columbia, on May 24, 2001.

The hearing was held in Vancouver on January 31 and February 1, 2000, and a further conference call on August 29, 2000.

A first discipline report dated May 10, 1999 followed an audit report dated January 1997 and a monitoring report of August 1998.

A subsequent monitoring of the trustee's operation in November 1999 led to the issuance by the Deputy Superintendent (Programs, Standards and Regulatory Affairs) on December 15, 1999 of conservatory measures on the bank accounts of the trustee at four financial institutions. These conservatory measures restricted the payments, debits, transfers and withdrawals on those trust accounts to only those cosigned by one of three Official Receivers.

Following this subsequent monitoring, a second report was issued on January 20, 2000 on the administration of David Gordon Anderson.

On February 3, 2000, a directive pursuant to section 5(4)(e) of the BIA was issued to give effect to a decision made during the hearing pursuant to subsection 14.01(1)(f) of the BIA requiring David G. Anderson to reconstitute the sum of \$18,057.55 to various estates. The directive provided that no funds out of the trust accounts were to be paid to the trustee on account of fees, and that such funds be used to offset the amount due.

The discipline reports revealed an unusual number of irregularities that touched essentially all aspects of the trustee's administration.

In the course of these proceedings, Mr Anderson was repeatedly asked to submit financial statements; at the close of the hearing, he presented some incomplete financial information that did not show clearly that he was solvent. The Superintendent of Bankruptcy concluded that David Gordon Anderson is insolvent. The decision rendered May 24<sup>th</sup> stated:

Whereas Mr. Anderson's trustee licence ceased to be valid upon the failure of the trustee to pay his licence renewal fee for year 2000;

Whereas pursuant to s.s. 14.01(1.1), B.I.A. jurisdiction continues to exist over the conduct of a trustee notwithstanding the fact that the trustee's licence has ceased to be valid;

Whereas Mr. Anderson has not disputed the evidence presented by the Senior Discipline Analyst regarding the administration of the estates under his administration;

Whereas the evidence presented by the Senior Discipline Analyst shows general failure on the part of Mr. Anderson to maintain the standards applicable to the administration of estates under the *Bankruptcy and Insolvency Act*;

Whereas the evidence presented in the course of this proceeding demonstrate that Mr. Anderson is insolvent;

Whereas Mr. Anderson withdrew from trust accounts in excess of \$18,000. without authorization; and  
Whereas Mr. Anderson has failed to reimburse the said outstanding amount upon request;

It is hereby ordered:

- that David Gordon Anderson trustee's licence is definitively and permanently cancelled;
- that the directive issued on February 3<sup>rd</sup>, 2000 is continued until such time that the outstanding amounts owed by David Gordon Anderson are reimbursed to the various estates formerly under his administration;
- that the Senior Analyst consider any additional reasonable actions to recover the amounts owed by David Gordon Anderson to the estates formerly under his administration.

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

## Decision on the Professional Conduct of Trustees Friedman & Friedman Inc. and Harry Bick

**Further to a complaint** and an investigation conducted by the Office of the Superintendent of Bankruptcy into the conduct of corporate trustee Friedman & Friedman Inc. and individual trustee Harry Bick in the administration of the bankruptcy of Pourvoirie J. B. Scott inc., the delegate of the Superintendent of Bankruptcy, the Honourable Fred Kaufman, Q.C., rendered his decision on the licence of those bankruptcy trustees, on April 24, 2002.

The report prepared pursuant to the investigation alleged that both the corporate trustee and the individual trustee had committed offences in the administration of the bankruptcy estate of the Pourvoirie J.B. Scott Inc, namely in that:

- Trustee Friedman & Friedman Inc., acting through Harry Bick, sold the assets of the debtor at a price that was grossly inadequate, even by liquidation standards;
- Trustee Friedman & Friedman Inc., acting through Harry Bick, has knowingly made false and misleading representations by submitting to the creditors, to the inspectors as well as to the Office of the Superintendent of Bankruptcy (OSB) and to

the Court a statement of receipts and disbursements that did not include all the monies collected by the Trustee and that did not provide the full details of the uncollected receipts and on the disbursements;

- Trustee Friedman & Friedman Inc., acting through Harry Bick, failed to collect all monies owed to the estate;
- Trustee Friedman & Friedman Inc. failed to provide the OSB with a supplementary statement of receipts and disbursements after it collected further monies subsequent to the initial statement of receipts and disbursements;
- Trustee Friedman & Friedman Inc. failed to deposit in the estate account all monies collected in the course of their administration of the estate.

The Superintendent's delegate approved an agreement reached between the trustees and the Office of the Superintendent of Bankruptcy, thereby ordering the suspension of Harry Bick's licence for a period of 2 years, beginning April 24, 2002, as well as the reimbursement to the bankruptcy estate, by corporate trustee Friedman & Friedman Inc., of \$6,376.16, which will be distributed to the creditors of Pourvoirie J.B. Scott inc.

The full text of the decision is available on our Web site at: <http://osb-bsf.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, 2<sup>nd</sup> Floor, Ottawa, Ontario, K2P 2N9, by phone at (613) 941-2694, by fax at (613) 946-9205 or by e-mail at [cousineau.vivian@ic.gc.ca](mailto:cousineau.vivian@ic.gc.ca)



## Increase in the Number of Insolvency Cases for All Age Groups in Canada

In the preceding article, we discussed the factors that could have caused the increase in the number of insolvency cases per thousand Canadians aged 18 and over. In this article, we present the evolution of the number of insolvency cases for different age groups between 1987 and 2001. Two conclusions clearly emerge from the following analysis.

First of all, the number of insolvency cases per thousand Canadians has increased for every age group, however, the rate of growth between these age groups has varied widely: the number of insolvency cases for older Canadians rising relatively faster than for their younger counterparts. In 2001, there were 12 times more insolvent Canadians aged 65 and older than in 1987. For this group, the number of cases went from 0.08 in 1987 to 1.07 in 2001. During this same period, the number of insolvency cases for the 15-24 age group doubled, going from 0.86 in 1987 up to 1.80 in 2001.

Secondly, we find that Canadians aged 25 to 44 years old are those who harbour the most insolvency cases per thousands in 1987 and 2001. The number of insolvency cases for the 25-34 years old went from 2.23 in 1987 to 5.98 in 2001. As for the 35-44 age group, the evolution of the number of insolvency cases was similar, rising from 1.90 in 1987 to 6.03 in 2001.

The first conclusion, associated with the aging Canadian population phenomenon, is that it is likely that the face of insolvent Canadians will be getting older over the next decades. Moreover, if the number of insolvency cases for older Canadians keeps increasing at a faster rate than for younger Canadians, we could find that the population of insolvent Canadians is aging faster than the Canadian population as a whole.

**Richard Archambault**

**Number of insolvency cases per thousand Canadiens of different age groups**

| Age group         | 1987 | 2001 | Percentage variation |
|-------------------|------|------|----------------------|
| 18-24 years       | 0.86 | 1.80 | 109%                 |
| 25-34 years       | 2.23 | 5.98 | 168%                 |
| 35-44 years       | 1.90 | 6.03 | 217%                 |
| 45-54 years       | 1.16 | 4.28 | 270%                 |
| 55-64 years       | 0.45 | 2.83 | 535%                 |
| 65 years and over | 0.08 | 1.07 | 1173%                |
| 18 years and over | 1.29 | 4.00 | 210%                 |

Source: Office of the Superintendent of Bankruptcy

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