

Insolvency

# BULLETIN

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Insolvency

# BULLETIN

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# INSOLVENCY BULLETIN

Issued by the  
Office of the Superintendent of Bankruptcy,  
Industry Canada.

The objective of the Insolvency Bulletin is to promote communication and strengthen ties between the Office of the Superintendent of Bankruptcy and insolvency professionals. The Bulletin is aimed particularly at trustees, jurists, registrars, accountants, credit managers and to those with a general interest in bankruptcy and insolvency.

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## **For information:**

Bankruptcy Branch  
Journal Tower South  
365 Laurier Ave. West, 8th Floor  
Ottawa, Ontario  
K1A 0C8

## **Subscriptions and addresses:**

Francine Emery (613) 941-2693

## **Statistics:**

Monique Leclair (613) 941-9054

## **Editor:**

Henri Massue-Monat (613) 941-2697

Fax: (613) 941-2692

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## Recent developments on Bill C-5

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We wish to inform our readers of the latest developments regarding Bill C-5.

The House of Commons Standing Committee on Industry held hearings in June, September and October 1996. The Committee heard sixteen witnesses, in addition to the Department's legal counsel and senior officials. It considered and adopted more than seventy motions of amendment, most of which were technical. The House agreed with those amendments and passed

the Bill on October 23, 1996. At the time this issue went to press, Senate hearings were already underway. In order to obtain a copy of the Bill, as passed by the House of Commons, please contact Canada Communication Group, Publishing, Ottawa, Ontario, K1A 0S9. Phone: (819) 956-4802. Fax: (819) 994-1498. The cost is \$29.00, plus \$5.40 for handling and shipping and G.S.T.

We will keep you informed of any further developments.

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# Directors' Liability

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by Aline Grenon\*

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## 1 Introduction

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Bill C-109, entitled *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act*, was introduced in the House of Commons on November 24, 1995,<sup>1</sup> and reintroduced following the year-end recess as Bill C-5<sup>2</sup>. These Bills were introduced pursuant to section 92 of the transitional provisions contained in a previous amending act, Bill C-22,<sup>3</sup> which came into force on November 30, 1992 and which required a comprehensive review of the provisions and operation of the *Bankruptcy and Insolvency Act*<sup>4</sup> [the "BIA"], to be carried out three years after Bill C-22 came into force. As a result of this review, it became apparent that the BIA required further amendments, and this culminated in Bill C-5. This bill contains a number of provisions dealing with the liability of directors, and in this respect amends both the BIA and the *Companies' Creditors Arrangement Act*<sup>5</sup> [the "CCAA"]<sup>6</sup>.

Subsections 50(12) to (17) are added to the BIA to allow proposals made in respect of corporations to include provisions for the compromise of claims against directors. A new section, 69.31, imposes a stay of

proceedings against directors where a notice of intention has been filed or a proposal made, and section 69.4 has been amended to reflect the addition of section 69.31. Subsections 101(1) to (3) and 101(5), which deal with inquiries into the payment of dividend or redemption of shares within the year preceding the date of bankruptcy and allow the court to give judgment against directors of the corporation in certain circumstances, now allow directors to rely upon a "due diligence" defense. Finally, the CCAA has been amended by adding two sections: section 5.1 allows a compromise or an arrangement made in respect of a debtor company to include in its terms provisions for the compromise of claims against directors of the company; section 11.5 imposes a stay of proceedings against directors. Copies of these amendments are annexed.

In this paper, we will first explain why these amendments were required. We will then review and comment each amendment.

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## 2 *Raison d'être* for the amendments

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In recent years, it has become a trend in both federal and provincial statutes to increase the personal liability

\* Professor in the French Common Law Program of the Faculty of Law, University of Ottawa. The author wishes to thank Benoît Turcotte, a graduate of the program, Philip M. Rimer of Fraser & Beatty and Percy Ostroff, of Goldberg, Shinder, Gardner & Kronick, for their assistance. This article is a slightly amended version of an original paper presented on May 23, 1996 at a joint program of the Canadian Bar Association (Ontario), The County of Carleton Law Association, The Law Society of Upper Canada and the University of Ottawa, Faculty of Law, Common Law Section. The program was entitled: "Current Issues Relating to Businesses in Trouble: Priorities, Directors' Liability and Amendments to the BIA and the CCAA".

1 1st sess., 35th Leg., 1994-1996 (1st reading 24 November 1995 — House of Commons Debates at 16783; 2d reading 28 November 1995 — House of Commons Debates at 16922; died on Order Paper, February 1996).

2 *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act*, 2d sess., 35th Leg., 1996 (1st reading 4 March 1996 — House of Commons Debates at 244).

3 Bill C-22, *An Act to amend the Bankruptcy Act and to amend the Income Tax Act in consequence thereof* (assented to 23 June 1992), enacted as *Bankruptcy and Insolvency Act*, L.C. 1992, c. 27.

4 R.S.C. 1985, c. B-3.

5 R.S.C. 1985, c. C-36.

6 Amendments to Bill C-5 have been carried in the course of its passage through the House of Commons and in this article, references will be made to the relevant amendments.

of directors. To mention a few statutes only, directors can be held responsible for payment of salaries of employees of the corporation,<sup>7</sup> as well as certain sums owed by the corporation pursuant to tax, pension and unemployment insurance provisions,<sup>8</sup> or again for allowing a corporation in a precarious financial situation to pay dividends or redeem shares<sup>9</sup> or for damage to the environment caused by the corporation.<sup>10</sup> Depending upon the importance of the corporation and the nature of the claims, directors can be held personally liable under these statutes for millions of dollars. In addition, the legislation is not uniform. The nature of the liability and defenses vary from statute to statute. Some statutes impose strict liability, while others limit available defenses<sup>11</sup>.

In addition to liability imposed by statute, directors also face liability from claims based on the possible existence of a duty of care or even a fiduciary duty to creditors and investors of the corporation, relating to the accuracy of financial information and the manner in which the corporation is administered.

Faced with potentially huge claims, the concern of corporate directors is understandable, particularly when the corporation begins to experience financial difficulty, but to date, their options have been limited. In order to obtain complete protection, it would be necessary for directors to negotiate releases with each and every creditor who has a potential claim against them. This clearly is an unrealistic option. Insurance is another possibility. Although insurance is available to protect directors, the premiums are high, the coverage is subject to various conditions and exclusions (it is apparently difficult, if not impossible, to obtain protection against liability arising from environmental damage) and policies frequently provide

for large deductibles. Directors have resorted to other strategies such as indemnification agreements from third parties. On occasion, the corporations concerned have set up trust funds to cover this liability and in this regard, the experience of two corporations which relied on this method is instructive.

In an arrangement proposed by Westar Mining Ltd ("Westar")<sup>12</sup> under the CCAA, the corporation set up a \$4,000,000.00 trust fund to cover certain liabilities of directors. This was initially allowed by the court. During the course of the CCAA proceedings, however, the directors became concerned that their liability for severance and termination pay under the *Employment Standards Act* of British Columbia<sup>13</sup> might be much higher. This led to the resignation of six directors. In an attempt to obtain additional protection, the remaining three directors instructed Westar to apply to the court for approval of an indemnification agreement between the corporation and the directors, to be secured by a charge on certain of its assets. Although the court was prepared to approve this agreement, it was not prepared to approve the creation of security to indemnify the directors because creating such security would effectively change the scheme of priorities. The court stated at pages 98-99:

Such claims [for severance pay] otherwise would ... rank after secured and preferred claims, and *pro rata* with the unsecured claims of trade creditors, most notably the bank, which is the largest unsecured creditor by far. Should a plan of reorganization fail, severance and termination pay claims will be secured largely at the expense of the bank.

7 *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 119; *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 131.

8 *Income Tax Act*, R.S.C. 1985, 5th Supp., c. 1, s. 227.1; *Unemployment Insurance Act*, R.S.C. 1985, c. U-1, s. 54; *Canada Pension Plan Act*, R.S.C. 1985, c. C-8, s. 21.1.

9 *Bankruptcy and Insolvency Act*, *supra* note 4, s. 101; *Canada Business Corporations Act*, *supra* note 7, s. 118.

10 *Environmental Protection Act*, R.S.O. 1990, c. E.19, s. 194.

11 A number of articles and papers have dealt extensively with the various statutes which impose such liability and the available defenses. See for example, D.H. Jenkins & R. Scott, "The Effect of Bankruptcy on Directors' and Officers' Liability" (1992) 7:4 N.C./D. Rev. 52; L. Sarna, "Directors, Officers and Bankruptcy" (1993) 10 Nat'l Insolv. Rev. 72; T.M. Dolan, "Directors' and Officers Liability" in *Amendments to the Bankruptcy and Insolvency Act* (Toronto: Insight Press, 1994).

12 *Re Westar Mining Ltd.* (1992), 14 C.B.R. (3d) 95 (B.C.S.C.).

13 S.B.C. 1980, c. 10.

Although the court recognized that the refusal to grant approval could "derail the CCAA process", it nevertheless rejected the order sought on the basis that "its effect would be to secure a group of contingent claims which ... would otherwise be unsecured." The court's refusal led to resignation of the remaining three directors, subsequent bankruptcy of the corporation and further litigation.<sup>14</sup>

In another case, Pacific National Lease Holding Corporation ("Pacific") commenced arrangement proceedings under the CCAA and obtained an *ex parte* court order permitting the creation of a trust fund not to exceed \$1,500,000.00 to protect its directors and officers from potential personal liability under British Columbia employee standards legislation. The order was contested by "various interested parties", presumably creditors, and the court held that to authorize the creation of such a fund would be an unacceptable alteration of the *status quo*. An application for leave to appeal to the British Columbia Court of Appeal was dismissed.<sup>15</sup>

The reaction of directors faced with such difficulties is predictable. They resign *en masse*. A corporation experiencing serious financial problems, which loses its entire board of directors overnight, is clearly not in a position to extricate itself. Even though the corporation might have become financially viable through the use of proposals or compromises under the BIA or CCAA, the vacuum created by the departure of its directors makes such a solution impossible, and the corporation then falls prey to its creditors. This often results in a piece-meal sale of the assets and the end of the corporation as a viable concern. This clearly runs counter to the intention of the 1992 amendments to the BIA which were "designed to encourage insolvent businesses to re-organize their affairs, take responsibility for debt, negotiate with their creditors and continue to employ Canadians".<sup>16</sup> It was with this in mind that amendments relating to directors' liability were included in Bill C-5.

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### 3 The Amendments<sup>17</sup>

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#### 3.1 Provisions for the Compromise of Claims against Directors in the BIA

Subsection 50(13) of the BIA provides that a proposal made in respect of a corporation may include in its terms provisions for the compromise of claims against directors of the corporation relating to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations. Recent compromises under the CCAA have often contained such provisions, but there was uncertainty as to the right to make such provisions in proposals made under the BIA. Subsection 50(13) puts an end to this uncertainty and in this respect is a salutary amendment.

As amended in the House of Commons, the Bill makes it clear that subsection 50(13) will apply only to claims which arose before the commencement of proceedings under the BIA. Despite these amendments, the provisions will presumably apply to claims which arose prior to the commencement of proceeding but which could not be quantified at that time and which even increased subsequently.

Given the large number of potential claims against directors, and the difficulty and expense involved in attempting to determine the existence and scope of such obligations, it will in many cases be impossible to identify these obligations or determine their value, within the time limit allocated to file the proposal. For example, directors may not even be aware that they have incurred liability as a result of environmental damage until well after the proposal has been adopted. In an attempt to deal with this uncertainty, it can be expected that proposals will as a matter of course contain compromises of claims against directors, and that these compromises will be drafted in general terms. In this respect, subsection 50(15) becomes important. This provision gives the courts discretion to declare that a claim against directors

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14 *Re Westar Mining Ltd.* (1992), 14 C.B.R. (3d) 101 (B.C.S.C. in Chambers); (1995), 32 C.B.R. (3d) 145 (B.C.S.C.); (1996) 136 D.L.R. (4th) 564 (B.C.C.A.)

15 *Re Pacific National Lease Holding Corp.* (1992), 15 C.B.R. (3d) 265 (B.C.C.A. in Chambers).

16 Office of the Superintendent of Bankruptcy, (1995) 15:4 *Insolvency Bulletin* at 219.

17 For additional information relating to the amendments, see: Office of the Superintendent of Bankruptcy, (1996) 16:3 *Insolvency Bulletin* at 44-46.



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shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances. The compromise will have to be drafted in such a way as to satisfy the court that it is fair and reasonable to attempt to compromise claims of a general nature which might increase after the adoption of the proposal.

Subsection 50(14)(a) is to the effect that such provisions may not include claims that relate to contractual rights of one or more creditors. It would seem that this provision is intended to apply to claims which arise when a director is party to a contract with a creditor, such as a guarantee, rather than to claims which arise when a director incurs liability as a result of a statutory provision. It appears that this provision was necessary in light of the wording of subsection 50(13) which limits the compromises to claims arising from the "obligations of the corporation where the directors are **by law** liable in their capacity as directors for the payment of such obligations" (emphasis added). This wording could have been interpreted as including liability arising from contract in addition to liability arising from statute.

Subsection 50(14)(b) provides that such compromises may not include claims that are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors. This subsection will be discussed later in more detail.

Certain statutes impose liability not only on directors of corporations but also, for example, on persons with effective control of the corporation or persons who have participated in, assented to or acquiesced in certain activities.<sup>18</sup> It is accordingly possible for a director to incur liability in both capacities. This second head of liability might not be covered by the amendments, given the wording of subsection 50(13) which refers to "the obligations of the corporation where the directors are by law liable **in their capacity as directors** (emphasis added) for the payment of such obligations". In addition, subsection 50(14) is to the effect that claims against directors based on their "wrongful conduct" cannot be compromised. The conduct of directors who are also persons with effective control of the corporation or its relevant activities and who allow the corporation to incur certain liabilities or who have participated in, assented

to or acquiesced in certain activities might well be viewed as wrongful, within the meaning of subsection 50(14). If this occurs, it is possible that the directors will not be able to compromise these claims.

While subsection 50(13) clearly attempts to limit the liability of directors in the event a proposal is made by the corporation, there remains a possibility of claims being made subsequently against directors because of subsection 50(16), which stipulates that section 122 of the BIA applies, "with such modifications as the circumstances require, in respect of claims against directors compromised under a proposal of a debtor corporation". Subsection 122(1) of the BIA provides that claims of creditors under a proposal are, in the event the corporation subsequently becomes bankrupt, provable in bankruptcy for the full amount of the claims, less dividends paid pursuant to the proposal. Given the wording of subsection 50(16), it is clear that the right to claim against directors will once again arise in the event the proposal is unsuccessful. The spectre of renewed personal liability will no doubt encourage directors to use every effort to ensure the success of the proposal.

Finally, subsection 50(17) provides that the court, "on application made at any time after a proposal is filed, may determine the classes of claims of claimants against directors and the class into which any particular claimant's claim falls". No guidance is given with respect to the criteria to be applied by the court in this respect, presumably because the court is to be unfettered in making this determination. It can be anticipated that the courts will rely on their previous experience in establishing criteria under the CCAA and the BIA to determine the classes. Subsection 50(17) could give rise to conflict between the different classes of creditors. At the very least, it can be anticipated that there will be a class of secured and a class of unsecured creditors. Conflict could arise if the effect of the compromise of directors' claims is to confer upon the class of unsecured creditors an advantage over secured creditors. The *Westar Mining* decision<sup>19</sup> is instructive in this respect. Proposals will have to be drafted with this possibility in mind.

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18 For example, *Construction Lien Act*, R.S.O. 1990, c. C.30, s. 13; *Income Tax Act*, R.S.O. 1990, c. I.2, s. 43.

19 *Supra* note 12.

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### 3.2 Provisions for the Compromise of Claims against Directors in the CCAA

Subsections 5.1(1), (2) and (3) of the CCAA are to all intents and purposes identical to subsections 50(13), (14) and (15) of the BIA and the comments in the previous section of this paper are also relevant to the CCAA amendments.<sup>20</sup> Although the CCAA contains no provision equivalent to subsection 50(16) of the BIA, nothing seems to turn on this since if a compromise or arrangement made under the CCAA is unsuccessful, it is clear that the creditors will be able to pursue their claims against the directors. As stated earlier, the spectre of renewed personal liability will no doubt prove to be an incentive to directors to ensure that the arrangement is successful.

### 3.3 Stay of Proceedings against Directors

Subsection 69.31(1) of the BIA provides that where a notice of intention to make a proposal has been filed or a proposal has been made by an insolvent corporation, no person may commence or continue any action against a director of the corporation on any claim against directors relating to obligations of the corporation where directors are under any law liable in their capacity as directors for the payment of such obligations, until the proposal, if one has been filed, is approved by the court or the corporation becomes bankrupt.

This provision is a logical extension of subsection 50(13). Once it becomes possible to compromise claims against directors in a proposal, a stay of proceedings relating to such claims is to be expected once the proposal is made or the notice of intention is filed. The stay of proceedings will provide a period of relative calm during which directors can go about the business of restructuring the corporation without the need to contest actions commenced against them in their personal capacity. Subsection 69.31(1) applies whether or not the proposal contains a compromise of claims against directors. However, as stated above, it is to be expected that in time, proposals will as a matter of course contain such compromises.

Section 11.5 of the CCAA, which is new, is to the same effect.

The possibility exists that a creditor might be able to bypass these provisions by commencing or continuing an action against a person other than a director (for example a solvent corporate shareholder, an affiliate or even an insurance company) which has agreed to indemnify or insure the director. Indemnity agreements and insurance policies will have to be carefully reviewed with this possibility in mind.

As amended in the House, the Bill makes it clear that subsections in the BIA and the CCAA which prevent persons from commencing or continuing actions against directors of insolvent corporations apply only in cases in which the claims arose before the proposal was filed.

### 3.4 Claims Arising from Payments of Dividends, Redemption or Purchase of Shares

Subsections 101(1) and (2) of the BIA are to the effect that, where a bankrupt corporation has, within twelve months preceding its bankruptcy, "paid a dividend ... or redeemed or purchased for cancellation any of the shares of the capital stock of the corporation", a court may give judgment against the directors of the corporation if the court finds that a) the transaction occurred at a time when the corporation was insolvent or the transaction rendered the corporation insolvent, and b) the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent.

Pursuant to subsection 101(5), the onus of proof lies with the directors. It is up to them to prove either:

- a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent, or
- b) that they had reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or that the transaction would not render the corporation insolvent.<sup>21</sup>

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<sup>20</sup> A proposal to amend subsection 5.1(1) of the CCAA to make it clear that it applies only to claims arising before the commencement of proceedings under the CCAA has been carried.

<sup>21</sup> This reflects the amendments brought to this section.

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Subsection 101(2.1), which is new, provides directors with the opportunity to demonstrate that they acted with due diligence. The court is required to consider whether the directors acted as prudent and diligent persons would have acted in the same circumstances and whether the directors in good faith relied on a) financial or other statements of the corporation represented to the directors as fairly reflecting the financial condition of the corporation; or b) a report relating to the corporation's affairs prepared pursuant to a contract with the corporation by a person whose profession gives credibility to the statements made in the report.

Although it is not clear, given the wording of subsections 50(13) and (14), whether or not directors could attempt in a proposal to compromise claims against them arising from section 101 of the BIA, this is highly unlikely since subsection 101(1) makes it clear that such claims are to be made by a trustee. Creditors could only rely on this section in the event that the trustee in bankruptcy refused to take proceedings.<sup>22</sup> In addition, the wording of subsection 101(2) is such that the conduct of the directors in such circumstances could be categorized as being wrongful and accordingly, subsection 50(14) would prevent the compromise of such claims. The court also has a discretion under subsection 50(15) to declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances. Given the nature of the transactions described in section 101, it appears highly unlikely that a court would exercise its discretion in favour of such a compromise.

Finally, the actual version of section 101 contains a subsection to the effect that a judgment rendered pursuant to subsection 101(2) shall not be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the transaction and had thereby been exonerated from liability and this subsection remains to all intents and purposes unchanged. This existing subsec-

tion, together with new subsection 2.1, should provide directors with some degree of comfort.

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#### 4 Constitutionality of the Amendments

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Earlier in this paper, the *raison d'être* of the amendments relating to directors' liability was described. The amendments, specifically subsections 50(13) to (17) are an attempt to prevent the mass resignation of directors from corporations which are experiencing financial difficulty. A corporation which loses its entire board of directors is clearly not in a position to extricate itself from its difficulties and this runs counter to the intention of the 1992 amendments to the BIA which, as stated earlier, were designed to encourage insolvent businesses to re-organize their affairs, take responsibility for debt, negotiate with their creditors and continue to employ Canadians.<sup>23</sup> Given their purpose, the amendments appear at first glance to be constitutional. There exists jurisprudence which declares federal bankruptcy and insolvency provisions to be within the federal power granted by subsection 91(21) of the *Constitution Act, 1867* in cases where the aim of these provisions is to avoid bankruptcy, by allowing an insolvent person to make an arrangement or "composition".<sup>24</sup> On the other hand, the effect of the amendments is to prevent creditors from pursuing claims, which often arise as a result of valid provincial legislation, against presumably solvent directors. In due course, the Supreme Court of Canada may well be called upon to determine the constitutional validity of these amendments.

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#### 5 Conclusion

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The amendments allowing the compromise of claims against directors are not a panacea. They will not eliminate altogether the personal liability of directors. In any event, it is not desirable that they do so, since there are circumstances in which directors should incur personal liability, and subsection 50(14) recognizes this. How-

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22 Section 38 BIA.

23 *Supra* note 16.

24 *Reference re Companies' Creditors Arrangement Act*, [1934] S.R.R. 659; *British Columbia (A.G.) v. Canada (A.G.)*, [1937] A.C. 391 in which Lord Thankerton, who rendered the unanimous decision of the Privy Council, stated at p. 403: "... it cannot be maintained that legislative provision as to compositions, by which bankruptcy is avoided, but which assumes insolvency, is not properly within the sphere of bankruptcy legislation".

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ever, amendments allowing the compromise of claims against directors are needed, and it is hoped that these amendments will provide adequate protection to directors, so that they will remain at the helms of insolvent corporations in an attempt to steer them to safety by way of proposals under the BIA or arrangements under the CCAA. Without doubt, the possibility of eliminating their

personal liability will constitute an incentive to corporate directors not to abandon ship and to ensure that corporations submit carefully drafted, fair and reasonable proposals or arrangements which will be acceptable to creditors and to the court.

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## ANNEX

### Extracts from Bill C-5 Relating to the Bankruptcy and Insolvency Act

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#### *Claims against directors — compromise*

50(13) A proposal made in respect of a corporation may include in its terms provision for the compromise of claims against directors of the corporation that arose before the commencement of proceedings under this Act and that relate to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations.

#### *Exception*

(14) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors arising from contracts with one or more directors; or

(b) are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

#### *Powers of court*

(15) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

#### *Application of other provisions*

(16) Subsection 62(2) and section 122 apply, with such modifications as the circumstances require, in respect of claims against directors compromised under a proposal of a debtor corporation.

#### *Determination of classes of claims*

(17) The court, on application made at any time after a proposal is filed, may determine the classes of claims of claimants against directors and the class into which any particular claimant's claim falls.

\* \* \*

65. (1) Section 69.4 of the Act is replaced by the following:

#### *Stay of proceedings — directors*

69.31 (1) Where a notice of intention under subsection 50.4(1) has been filed or a proposal has been made by an insolvent corporation, no person may commence or continue any action against a director of the corporation on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the corporation where directors are under any law liable in their capacity as directors for the payment of such obligations, until the proposal, if one has been filed, is approved by the court or the corporation becomes bankrupt.

#### *Exception*

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the corporation's obligations or an action seeking injunctive relief against a director in relation to the corporation.

#### *Court may declare that stays, etc., cease*

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

\* \* \*

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**82. (1) Subsections 101(1) to (3) of the Act are replaced by the following:**

*Inquiry into dividends and redemptions of shares*

101. (1) Where a corporation that is bankrupt has paid a dividend, other than a stock dividend, or redeemed or purchased for cancellation any of the shares of the capital stock of the corporation within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, the court may, on the application of the trustee, inquire into the transaction to ascertain whether it occurred at a time when the corporation was insolvent or whether it rendered the corporation insolvent.

*Judgment against directors*

(2) Where a transaction referred to in subsection (1) has occurred, the court may give judgment to the trustee against the directors of the corporation, jointly and severally, in the amount of the dividend or redemption or purchase price, with interest thereon, that has not been paid to the corporation where the court finds that

(a) the transaction occurred at a time when the corporation was insolvent or the transaction rendered the corporation insolvent; and

(b) the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent.

*Criteria*

(2.1) In making a determination under paragraph (2)(b), the court shall consider whether the directors acted as prudent and diligent persons would have acted in the same circumstances and whether the directors in good faith relied on

(a) financial or other statements of the corporation represented to them by officers of the corporation or the auditor of the corporation, as the case may be, or by written reports of the auditor to fairly reflect the financial condition of the corporation; or

(b) a report relating to the corporation's affairs prepared pursuant to a contract with the corporation by a lawyer, notary, accountant, engineer, ap-

praiser or other person whose profession gave credibility to the statements made in the report.

*Judgment against shareholders*

(2.2) Where a transaction referred to in subsection (1) has occurred and the court makes a finding referred to in paragraph (2)(a), the court may give judgment to the trustee against a shareholder who is related to one or more directors or to the corporation or who is a director not liable by reason of paragraph (2)(b) or subsection (3), in the amount of the dividend or redemption or purchase price referred to in subsection (1) and the interest thereon, that was received by the shareholder and not repaid to the corporation.

*Directors exonerated by law*

(3) A judgment pursuant to subsection (2) shall not be entered against or be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the payment of the dividend or the redemption or purchase for cancellation of the shares of the capital stock of the corporation and had thereby exonerated himself or herself under that law from any liability therefor.

**(2) Subsection 101(5) of the Act is replaced by the following:**

*Onus of proof — directors*

(5) For the purposes of subsection (2), the onus of proving

(a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent, or

(b) that the directors had reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or that the transaction would not render the corporation insolvent

lies on the directors.

*Onus of proof — shareholder*

(6) For the purposes of subsection (2.2), the onus of proving that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent lies on the shareholder.

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## Extracts from Bill C-5 relating to the Companies' Creditors Arrangement Act

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**122. The Act is amended by adding the following after section 5:**

*Claims against directors — compromise*

**5.1 (1)** A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

*Exception*

(2) A provision for the compromise of claims against directors may not include claims that

- (a) relate to contractual rights of one or more creditors; or
- (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

*Powers of court*

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the

compromise would not be fair and reasonable in the circumstances.

\* \* \*

*Stay of proceedings — directors*

**11.5 (1)** An order made under section 11 may provide that no person may commence or continue any action against a director of the debtor company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company where directors are under any law liable in their capacity as directors for the payment of such obligations, until a compromise or arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

*Exception*

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

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# Amendments to the Bankruptcy and Insolvency Rules\*

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HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of Industry, pursuant to subsection 209(1) and section 214<sup>1</sup> of the Bankruptcy and Insolvency Act<sup>2</sup>, is pleased hereby to amend the Bankruptcy and Insolvency Rules<sup>3</sup>, C.R.C., c. 368, in accordance with the schedule hereto.

## SCHEDULE

**1. Subsection 115(1.2)<sup>4</sup> of the *Bankruptcy and Insolvency Rules* is replaced by the following:**

(1.2) A trustee in a summary administration may claim, in addition to the amount for fees and disbursements to which the trustee is entitled by virtue of subsection (1),

(a) the costs of counselling referred to in subsection 117(2);

(b) the fees for filing an assignment referred to in paragraph 118(a); and

(c) the fees payable to the registrar in summary administration bankruptcies pursuant to paragraph 1(a) of Part II of Schedule I.

**2. The heading "TARIFF OF COSTS" after the heading "SCHEDULE I" in Schedule I to the Rules is replaced by the following:**

### PART I

#### TARIFF OF COSTS

**3. The headings "FEES OF COURT OFFICERS" and "REGISTRAR" and items 1 to 16 and notes 1 to 4<sup>5</sup> that follow them, as well as the**

**heading "BAILIFF" and items 1 to 3 that follow it, in Schedule I to the Rules are replaced by the following:**

### PART II

#### FEES PAYABLE TO COURT OFFICERS

##### *Fees Payable to the Registrar*

##### Bankruptcy

1. The trustee shall pay the registrar, at the time of the opening of a file or at any later date determined by the registrar,

(a) for all Court services to be rendered to the trustee in a summary administration bankruptcy, a single fee of . . . . . \$ 50

(b) for all Court services to be rendered to the trustee in a bankruptcy other than a summary administration bankruptcy, a single fee of . . . . . \$ 150

2. No fee shall be paid by the trustee where

(a) a summary administration bankruptcy file is caused to be opened by a person other than the trustee and a fee is paid pursuant to paragraph

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\* This amendment to the *Bankruptcy and Insolvency Rules*, bearing number SOR/96-473, came into force on October 24, 1996. It was published in Part II of the *Canada Gazette* on November 13, 1996, on page 3041.

1 S.C. 1992, c. 27, s. 80  
2 S.C. 1992, c. 27, s. 2  
3 SOR/92-579, 1992 *Canada Gazette* Part II, p. 3977  
4 SOR/92-579, 1992 *Canada Gazette* Part II, p. 3977  
5 SOR/78-389, 1978 *Canada Gazette* Part II, p. 2109



4(f) for an opposition to the discharge of the bankrupt; or

(b) the debtor has become bankrupt following a receiving order granted under subsection 43(9) of the Act, has filed an assignment under subsection 50(4.1) of the Act or is deemed to have made an assignment under subsection 50.4(8) or (11), paragraph 57(a) or subsection 61(2) or 63(4) of the Act.

Proposal

3. The trustee or the administrator shall pay the registrar, at the opening of a file or at any later date determined by the registrar,

(a) for all Court services to be rendered to the trustee in a general scheme proposal (Division I of Part III of the Act), a single fee of . . . . . \$150

(b) for all Court services to be rendered to the administrator in a consumer proposal (Division II of Part III of the Act), a single fee of . . . . . \$ 50

Bankruptcy and proposal

4. A person other than the trustee or the administrator shall pay a fee to the registrar for the following services:

(a) a petition for a receiving order . . . . . \$150

(b) a motion for the appointment of an interim receiver . . . . . \$ 50

(c) a motion made under section 248 or 249 of the Act . . . . . \$ 50

(d) a motion for substituted service . . . . . \$ 10

(e) any other motion

(i) in an ordinary bankruptcy or a proposal under Division I of Part III of the Act . . \$ 50

(ii) in a summary bankruptcy or a proposal under Division II of Part III of the Act . . \$ 10

(f) any written dispute or opposition . . . . . \$ 50

(g) taxing a receiver's accounts under subsection 248(2) of the Act . . . . . \$ 50

(h) taxing a solicitor's bill of legal services costs for

(i) a bill of \$500 or more, but not exceeding \$3,000 . . . . . \$ 25

(ii) a bill in excess of \$3,000 . . . . . \$ 50

Other services

5. The fees payable for all other services, including proceedings before the Court of Appeal, name searches and the issuance of a subpoena or a certificate, shall be those in effect within each province or territory.

6. No fee shall be charged for the filing of a document or report by the Official Receiver or the Superintendent of Bankruptcy.

*Fees and Disbursements Payable to the Bailiff*

7. The fees and disbursements payable to the bailiff shall be those in effect within each province or territory.

4. The headings "OFFICIAL RECEIVER" and "SCALE OF TRUSTEE'S DISBURSEMENTS FOR WORK IN OTHER THAN SUMMARY ADMINISTRATION" in Schedule I to the Rules are replaced by the following:

PART III

SCALE OF TRUSTEE'S DISBURSEMENTS FOR WORK IN OTHER THAN SUMMARY ADMINISTRATION

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## Regulatory Impact Analysis Statement

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### *Description*

Section 214 of the *Bankruptcy and Insolvency Act* provides that the fees payable to officers of the court for proceedings related to insolvency matters under the Act shall be established by the *Bankruptcy and Insolvency Rules*. Many of the proceedings are not mandatory procedural steps in estate administration under the Act but are available options which various parties in the process may use depending on the circumstances.

The Registrar's tariff in its original form dates back to the 1949 *Bankruptcy Act*, and was amended once in 1978. The 1978 amendments simplified the application of the tariff by providing the option of a single fee in certain cases.

The current tariff provides that a fee is payable to the court for the filing and consideration of motions, petitions and related proceedings in bankruptcy and proposal matters.

The tariff is inadequate and needs to be updated for several reasons. The tariff has not been amended to keep pace with inflation or rising costs over the years. Currently the fees are low and have been below cost for a lengthy period of time. In addition, because the tariff is incomplete, some provinces rely on their civil tariff instead with the result that there is a lack of certainty as to the applicable amount.

The proposed tariff increasing the fees payable to court officers better reflects the costs involved and increases the likelihood of uniform application across Canada. This option is the most realistic and practical of the options described below.

The proposed tariff increases the fees payable to court officers to better reflect actual costs. For example, the proposed fee for proceedings in summary administrations would increase from \$10 to \$50; for bankruptcies other than summary administrations, the fee would increase from \$50 to \$150. In cases of general scheme (Division I) proposals, the fee would increase from \$20 to \$150; the consumer proposal (Division II) fee would increase from \$20 to \$50. The proposed tariff would keep the single fee structure while adding a scale of fees for various services rendered to persons other than trustees in bankruptcy.

It is also proposed that Rule 115 be modified to provide that the trustee is entitled to be reimbursed for the \$50 Court fee in summary administration bankruptcies.

### *Alternatives*

Alternatives include maintaining the *status quo*, eliminating the tariff, delegating the tariff setting function to the provinces or amending the tariff.

The maintenance of the *status quo* is not an acceptable solution. This would perpetuate a situation where the tariff is not uniformly applied across the country. The tariff dates back to 1949 and its continued use would increase the financial strain on provincial court administration which may jeopardize the future provision and quality of court services.

The elimination of the tariff so that no fees are payable when requesting court services is impractical and not an acceptable solution. In effect, it is necessary to maintain a tariff structure since an adequate level of services invariably involves certain costs to be paid by users. Therefore, eliminating the tariff may jeopardize the availability of services.

A third alternative would be to delegate the tariff setting function to the provinces. This would entail the elimination of the tariff in the *Bankruptcy and Insolvency Rules* to allow each province to set its own tariff. Section 214 of the Act would have to be amended to permit such delegation, and uniformity of fees and possibly services could be reduced.

### *Costs and Benefits*

The proposed tariff will benefit both the providers and users of court services. The provinces have all indicated that the court fees need to be increased to better reflect the costs associated with the service. It will also help to ensure the continued provision of uniform and high quality court services.

The fees will be paid by those who request the court service. Generally, these fees are paid out of estate funds and may result in a reduction of dividends to creditors. Compared with the present tariff which has not been amended since 1978, the increase in court

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fees may appear substantial. However, they are in line with other fees charged for procedures in civil courts.

#### *Consultation*

Notice was given in the *1995 Federal Regulatory Plan*, under Proposal No. IC/95-1-O-L.

During the review of the tariff, the Office of the Superintendent of Bankruptcy consulted with representatives of Registrars and directors of Court Services in each province. Copies of the proposed tariff were provided and comments were obtained in writing and by telephone. The proposed tariff would provide for fees comparable to those of the civil tariff in the provinces. The provinces indicated that they were generally satisfied with the provisions of the proposed tariff.

The Office of the Superintendent also consulted with the trustee, legal, and creditor communities on a regional basis across the country. The reaction was generally favourable. The aforementioned proposed amendment to Rule 115 relating to court fees in sum-

mary administrations was requested by the trustee community during consultations.

#### *Compliance and Enforcement*

The fees payable to court officers will be part of the *Bankruptcy and Insolvency Rules*. Fees will be collected by court officers and it is expected that fees will be paid at the time that documents are filed with the court or at the time that court services are provided. Thus, if the required fee is not paid the court service would not be provided. The provinces will administer the tariff.

#### *Contact Person*

Mr. George Redling, Superintendent of Bankruptcy, Industry Canada, Journal Tower South, 8th Floor, 365 Laurier Avenue West, Ottawa, Ontario K1A 0C8.

Telephone: (613) 941-2691;  
Facsimile: (613) 941-2862;  
Internet: Redling.George@ic.gc.ca.

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## Fees Payable to the Registrar Explanatory Note

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### Section 1(a):

This item applies to summary administrations. It is a single composite fee which applies to all court services rendered to the trustee, but does not cover services rendered to other persons. The amount is paid at the time the file is opened (Rule 82.1), or at any subsequent date as determined by the Registrar.

### Section 1(b):

This item applies to ordinary administrations. It is a single composite fee which applies to all court services rendered to the trustee, but does not cover services rendered to other persons. The amount is paid at the time the file is opened (Rule 82.1), or at any subsequent date as determined by the Registrar.

### Section 2(a):

In all provinces (except Alberta), there is no systematic opening of a Court file in cases of summary administration. The purpose of this section is to prevent the trustee from paying a fee where the triggering proceeding for opening the Court file is an opposition to the discharge of the bankrupt.

### Section 2(b):

The purpose of this section is to prevent the trustee from paying fees for services that have already been paid for by the single composite fee. Indeed, this section refers to various cases where an involuntary bankruptcy is declared, following an event that comes within the scope of a service included into the tariff. Cases of the possible application of two fees are as follows:

- Section 43(9) where a receiving order is made while the sum of \$150 has already been paid by the petitioning creditor (see item 4(a) below).
- Sections 50(4.1), 50.4(8), 50.4(11), 57(a), 62(1) and 63(4) are various cases where a bankruptcy is declared following a Division I proposal that failed, while a sum of \$150 has already been paid by the trustee acting in the proposal (see item 3(a) below).

### Section 3(a):

This item applies to Division I proposals. It includes all court services rendered to the trustee, but does not cover services rendered to other persons. The amount is paid at the time the file is opened, or at any subsequent date as determined by the Registrar.

### Section 3(b):

This item applies to a consumer proposals (Division II). It includes all court services rendered to the trustee, but does not cover services rendered to other persons. The amount is paid at the time the file is opened, or at any subsequent date as determined by the Registrar.

### Section 4 (generally):

The following fees are to be paid for Court services rendered to a person other than the trustee.

#### Section 4(a):

This fee applies where a creditor makes a petition for a receiving order pursuant to section 43 of the Act.

#### Section 4(b):

This fee applies where a creditor or any other person makes a motion for the appointment of an interim receiver pursuant to sections 46, 47 or 47.1 of the Act.

#### Section 4(c):

This fee applies where a person makes a motion under Sections 248 or 249 of the Act (Part XI), with respect to secured creditors and receivers.

#### Section 4(d):

This fee applies where a person makes a motion for substituted service.

#### Section 4(e):

These fees apply where any motion other than those listed above is made by a person other than the trustee. The amount varies depending on whether the administration is summary or ordinary.

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**Section 4(f):**

This fee applies namely where a creditor makes an opposition to the discharge of the bankrupt.

**Section 4(g):**

This fee applies where the accounts of a receiver under Part XI are taxed by the Court.

**Section 4(h):**

This fee applies where a solicitor's bill of costs is taxed by the Court. The amount varies depending on the amount of the bill of costs. This fee reflects a compro-

mise of the fees for solicitors' bills of costs in force in each province.

**Section 5:**

In each province, other Court services are already established by tariff or regulation. Concerning appeals before the Court of Appeal, Rule 51 refers to the proceedings of that court relating to appeals in civil matters.

**Section 6:**

There are cases where the official receiver files documents and reports directly with the Court. This section states that there is no fee where the Official Receiver files any document with the Court.

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# Trustee Licences

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## Newly Licensed Trustees 1996

### **Nova Scotia**

MacNeil, William F.

### **Québec**

Bernier, Roch  
Bourque, Christian  
DiGuglielmo, Gaetano  
Fréchette, Gérard  
Gagnon, Jean  
Gagnon, Ronald P.  
Hafner, Guenter Bill  
Hamel, Denis  
Knafo, Daniel  
LaCasse, Pierre  
Lebel, Jean-François  
Leduc, René C.  
Lemieux, Pierre  
Malo, Robert Michel  
Paré, Michel  
Rosenthal, Martin P.  
Rouileau, Marc Michel

### **Ontario**

Babcock, Benjamin J.  
Bloomfield, Patrick J.  
Borsellino, Stephen J.  
Boulton, Colin David  
Cooke, Mary Ying Su  
Culp, Ralph Allison  
Gordon-Thomas, Leslea  
Grudzinski, Richard M.  
Hessel, Diane Simone  
Ianni, Anthony  
Landau, Howard  
Lee, Douglas Scott  
Lenart, Kathy M.  
Mair, Jonathan  
Martin, Keith Andrew

McCaw, James L.  
McKeown, Clark  
Mingie, Susan L.  
Mullett, T. Dean  
Munro, Craig A.  
Noronha, David J.  
Nyholt, John William  
Pickering, Ben Ross  
Rosen, Brahm Howard  
Rourke, Nancy Diane  
Sholdice, Murray W.  
Sklar, David  
Su, Phong  
Sudano, Rebecca S.  
Walker, Robert Stephen  
Webb, Jeffrey Thomas  
Wynberg, S. Leonard  
Yau, Norma Ilene  
Zaspalis, Tony

### **Manitoba**

Cardinal, Kenneth B.  
Peleck, Steven Peter  
SASKATCHEWAN  
Adams, Marla Lee

### **Alberta**

Clarke, Helen Ann  
Lyons, Sandy Bruce  
Maltais, Mark  
Nykyforuk, Barry Lee  
Stogrin, David Arnold  
Turner, Tammy

### **British Columbia**

Belton, I. Kathryn  
Bunker, Neil Phillips

**Newly Licensed Trustees  
1996  
Statistics**

	Candidates	Licence					
		Full	%	Restricted	%	No	%
1. Canada	95	53	56	10	11	32	33
2. Province							
a) N.S.	1	1	100				
b) N.B.	1					1	100
c) Qué.	25	15	60	2	8	8	32
d) Ont.	52	28	54	6	11	18	35
e) Man.	3	2	67			1	33
f) Sask.	2	1	50			1	50
g) Alb.	8	5	63	1	12	2	25
h) B.C.	3	1	33	1	33	1	33
3. Total	95	53	56	10	11	32	33
4. Restr.				Cons.- 7* Corp.- 3**			

\* Licence restricted to consumer insolvencies only.

\*\* Licence restricted to corporate insolvencies only.

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# Bankruptcy Rates by Major Urban Centre

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Appearing in the following pages of the Insolvency Bulletin are consumer and business bankruptcy rates by major urban centre. The major urban centres listed are those of Statistics Canada. They list two types of major urban centres: census agglomerations and census metropolitan areas. A census agglomeration is the main labour market area of an urban area (the urbanized core) of at least 10,000 population. A census metropolitan area is the main labour market area of an urban area (the urbanized core) of at least 100,000 population.

We calculated the consumer bankruptcy rates by dividing the number of bankruptcies reported in each major urban centre by the population in that major urban centre. For census agglomerations the population was the 1991 census population. For census metropolitan

areas we used the 1991 census population and postcensal estimates for 1992 to 1995. All of the populations used have as their source Statistics Canada.

In order to calculate the business bankruptcy rate we divided the number of bankruptcies reported in each major urban centre by the number of business establishments in that major urban centre. The number of business establishments are those reported by Business Register.

We have also provided the business and consumer bankruptcy rates in graph form for census metropolitan areas. We hope that you find this information useful. Should you require any further assistance with consumer or business bankruptcy rates please do not hesitate to contact Trent Craddock at (613) 941-2858.



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## Business Bankruptcies

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### Bankruptcy Rates by Major Urban Centre Business Bankruptcies per 1,000 Establishments

	1991	1992	1993	1994	1995
<b>NFLD.</b>					
Corner Brook	11	11	7	4	3
Gander	5	7	18	11	40
Grand Falls-Windsor	12	11	14	1	12
Labrador City	0	7	0	3	3
<b>St.-John's</b>	<b>14</b>	<b>16</b>	<b>11</b>	<b>15</b>	<b>17</b>
<b>N.S.</b>					
<b>Halifax</b>	<b>29</b>	<b>41</b>	<b>29</b>	<b>23</b>	<b>24</b>
Kentville	33	28	27	17	19
New Glasgow	17	21	12	17	16
Sydney	29	30	11	13	22
Truro	25	14	18	12	10
<b>P.E.I.</b>					
Charlottetown	5	9	8	12	14
Summerside	5	15	12	11	5
<b>N.B.</b>					
Bathurst	20	33	15	30	26
Campbellton (PQ/NB)	51	74	49	22	53
Edmundston	21	18	11	6	15
Fredericton	9	10	8	10	6
Moncton	18	25	15	14	14
<b>Saint-John</b>	<b>10</b>	<b>13</b>	<b>7</b>	<b>10</b>	<b>13</b>

**Bankruptcy Rates by Major Urban Centre**  
**Business Bankruptcies per 1,000 Establishments**

	1991	1992	1993	1994	1995
<b>Québec</b>					
Alma	42	31	26	35	31
Baie-Comeau	33	59	31	26	38
Cambellton (PQ/NB)	51	74	49	22	53
<b>Chicoutimi-Jonquière</b>	<b>39</b>	<b>36</b>	<b>36</b>	<b>28</b>	<b>35</b>
Cowansville	34	38	10	17	12
Dolbeau	76	53	33	44	47
Drummondville	33	25	26	26	32
Granby	54	47	28	32	38
Hawkesbury (PQ/ON)	21	4	20	12	19
Joliette	12	16	9	20	14
La Tuque	8	21	41	12	22
Lachute	17	26	26	18	18
Magog	31	50	28	26	22
Matane	9	18	18	21	9
<b>Montreal</b>	<b>21</b>	<b>24</b>	<b>22</b>	<b>20</b>	<b>22</b>
<b>Ottawa-Hull (PQ/ON)</b>	<b>28</b>	<b>23</b>	<b>20</b>	<b>19</b>	<b>20</b>
Pembroke (PQ/ON)	16	14	20	6	14
<b>Québec</b>	<b>45</b>	<b>37</b>	<b>35</b>	<b>35</b>	<b>34</b>
Rimouski	19	24	18	4	18
Rivière-du-Loup	58	37	28	32	47
Rouyn-Noranda	33	32	25	24	31
Saint-Georges	50	39	23	24	22
Saint-Hyacinthe	29	22	21	17	17
Saint-Jean-sur-Richelieu	22	22	28	23	33
Saint-Jérôme	18	37	18	21	23
Salaberry-de-Valleyfield	23	32	28	24	38
Sept-îles	17	16	13	15	16
Shawinigan	20	31	23	25	41

**Bankruptcy Rates by Major Urban Centre**  
**Business Bankruptcies per 1,000 Establishments**

	1991	1992	1993	1994	1995
<b>Sherbrooke</b>	<b>50</b>	<b>34</b>	<b>28</b>	<b>22</b>	<b>27</b>
Sorel	8	20	11	16	21
Thetford Mines	36	29	14	24	26
<b>Trois-Rivières</b>	<b>29</b>	<b>36</b>	<b>24</b>	<b>27</b>	<b>32</b>
Val D'or	38	35	26	35	33
Victoriaville	39	49	32	23	36
<b>Ontario</b>					
Barrie	21	31	29	19	15
Belleville	15	24	18	18	21
Brantford	19	25	17	18	20
Brockville	23	18	12	32	21
Chatham	9	15	9	4	10
Cobourg	11	17	22	12	21
Collingwood	5	16	18	12	12
Cornwall	14	14	9	14	12
Elliot Lake	22	32	38	37	37
Guelph	12	8	12	12	10
Haileybury	16	15	30	20	23
<b>Hamilton</b>	<b>16</b>	<b>16</b>	<b>17</b>	<b>15</b>	<b>15</b>
Hawkesbury (PQ/ON)	21	4	20	12	19
Kenora	10	11	15	18	9
Kingston	20	20	12	16	16
Kirkland Lake	25	15	16	19	32
<b>Kitchener</b>	<b>13</b>	<b>19</b>	<b>15</b>	<b>8</b>	<b>10</b>
Leamington	19	28	12	11	17
Lindsay	16	38	35	15	24
<b>London</b>	<b>18</b>	<b>18</b>	<b>17</b>	<b>11</b>	<b>15</b>
Midland	18	19	26	21	15

**Bankruptcy Rates by Major Urban Centre  
Business Bankruptcies per 1,000 Establishments**

	1991	1992	1993	1994	1995
North Bay	17	26	23	23	22
Orillia	15	28	27	16	21
<b>Oshawa</b>	<b>21</b>	<b>32</b>	<b>26</b>	<b>21</b>	<b>18</b>
<b>Ottawa-Hull (PQ/ON)</b>	<b>28</b>	<b>23</b>	<b>20</b>	<b>19</b>	<b>20</b>
Owen Sound	29	28	24	31	20
Pembroke (PQ/ON)	16	14	20	6	14
Peterborough	17	20	27	22	14
Port Hope	6	20	25	29	17
Sarnia-Clearwater	14	16	12	10	16
Sault Ste-Marie	9	5	15	11	4
Simcoe	0	6	8	9	14
<b>St-Catherines/Niagara</b>	<b>10</b>	<b>12</b>	<b>14</b>	<b>14</b>	<b>13</b>
Stratford	3	10	10	7	10
<b>Sudbury</b>	<b>15</b>	<b>11</b>	<b>18</b>	<b>18</b>	<b>15</b>
<b>Thunder Bay</b>	<b>8</b>	<b>7</b>	<b>7</b>	<b>9</b>	<b>9</b>
Tillsonburg	11	16	2	5	15
Timmins	19	15	14	10	10
<b>Toronto</b>	<b>12</b>	<b>14</b>	<b>14</b>	<b>11</b>	<b>10</b>
Wallaceburg	15	5	2	7	8
<b>Windsor</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>5</b>	<b>8</b>
Woodstock	23	15	10	9	12
<b>Manitoba</b>					
Brandon	18	18	18	4	8
Portage la Prairie	6	7	15	7	9
Selkirk	6	16	8	3	10
Thompson	3	6	3	0	5
<b>Winnipeg</b>	<b>18</b>	<b>14</b>	<b>11</b>	<b>10</b>	<b>8</b>

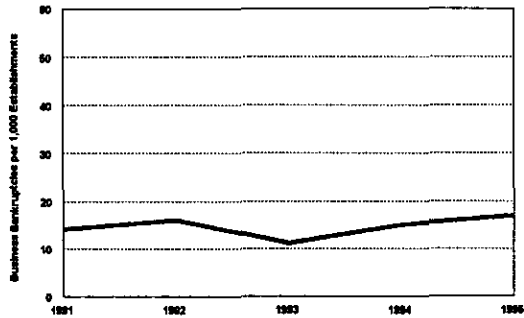
**Bankruptcy Rates by Major Urban Centre  
Business Bankruptcies per 1,000 Establishments**

	1991	1992	1993	1994	1995
<b>Saskatchewan</b>					
Estevan	21	10	12	11	16
Lloydminster (SASK/AB)	6	8	9	6	10
Moose Jaw	27	37	26	23	26
North Battleford	18	11	13	12	6
Prince Albert	38	29	23	11	14
<b>Regina</b>	<b>24</b>	<b>19</b>	<b>13</b>	<b>17</b>	<b>15</b>
<b>Saskatoon</b>	<b>28</b>	<b>23</b>	<b>14</b>	<b>17</b>	<b>17</b>
Swift Current	5	6	12	2	6
Weyburn	14	10	2	4	6
Yorkton	56	59	52	67	31
<b>Alberta</b>					
<b>Calgary</b>	<b>16</b>	<b>19</b>	<b>18</b>	<b>16</b>	<b>20</b>
Camrose	21	6	4	15	12
<b>Edmonton</b>	<b>17</b>	<b>19</b>	<b>19</b>	<b>23</b>	<b>30</b>
Fort McMurray	20	18	20	18	37
Grand Centre	12	19	12	7	19
Grande Prairie	8	13	17	12	16
Lethbridge	22	14	22	21	18
Lloydminster (SASK/AB)	6	8	9	6	10
Medicine Hat	36	34	26	29	26
Red Deer	17	19	24	14	23
Wetaskiwin	9	12	7	23	23
<b>B.C.</b>					
Campbell River	8	10	7	9	9
Chilliwack	11	10	6	6	8
Courtenay	12	10	4	5	8

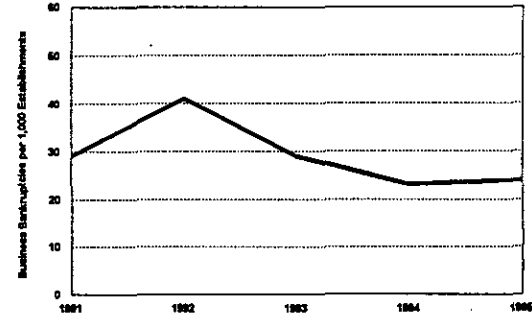
**Bankruptcy Rates by Major Urban Centre**  
**Business Bankruptcies per 1,000 Establishments**

	1991	1992	1993	1994	1995
Cranbrook	6	7	0	2	9
Dawson Creek	14	6	14	3	5
<i>Duncan</i>	5	5	7	8	7
Fort St. John	18	19	7	8	2
Kamloops	16	10	6	9	12
Kelowna	16	12	11	10	13
Kitimat	4	0	4	4	4
<i>Matsqui</i>	15	8	10	8	11
Nanaimo	16	9	6	12	12
Penticton	18	11	6	4	9
Port Alberni	6	7	1	2	3
Powell River	16	12	6	17	10
Prince George	21	10	7	5	6
Prince Rupert	7	8	7	2	5
Quesnel	25	13	6	4	7
Terrace	14	8	9	2	5
<b>Vancouver</b>	<b>10</b>	<b>8</b>	<b>6</b>	<b>6</b>	<b>6</b>
Vernon	21	12	7	11	12
<b>Victoria</b>	<b>9</b>	<b>8</b>	<b>9</b>	<b>6</b>	<b>7</b>
Williams Lake	12	13	14	4	5

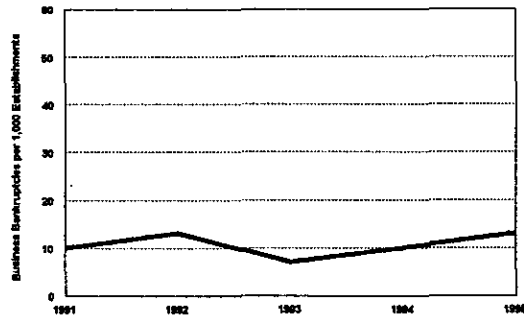
### St. John's Business Bankruptcy Rate



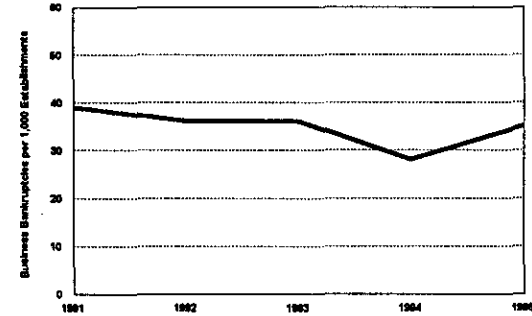
### Halifax Business Bankruptcy Rate

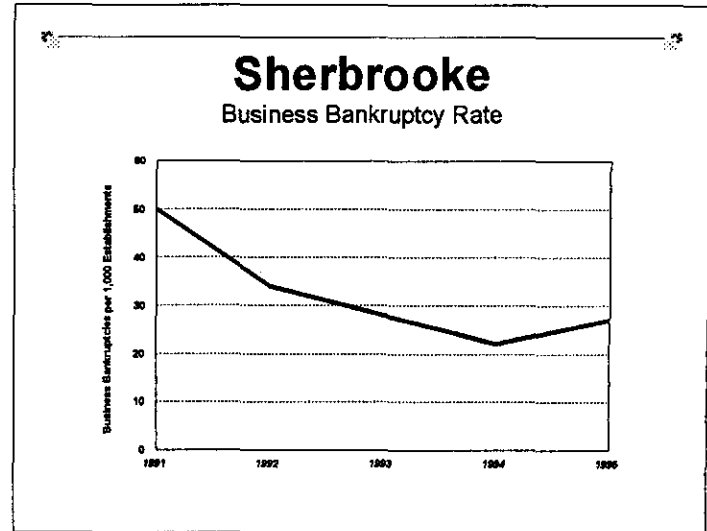
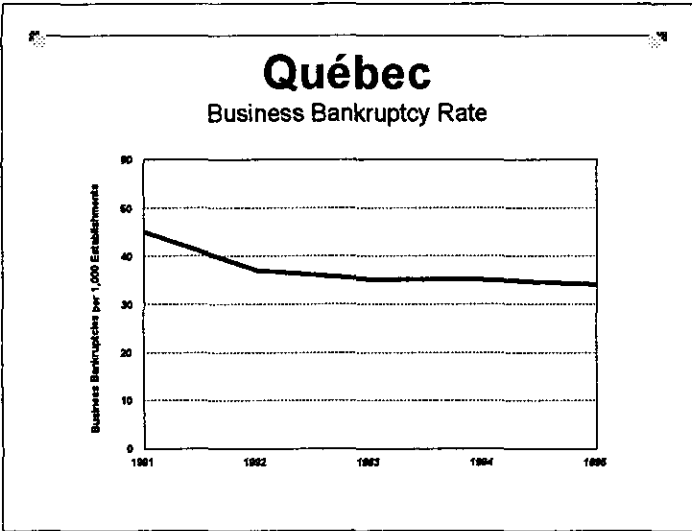
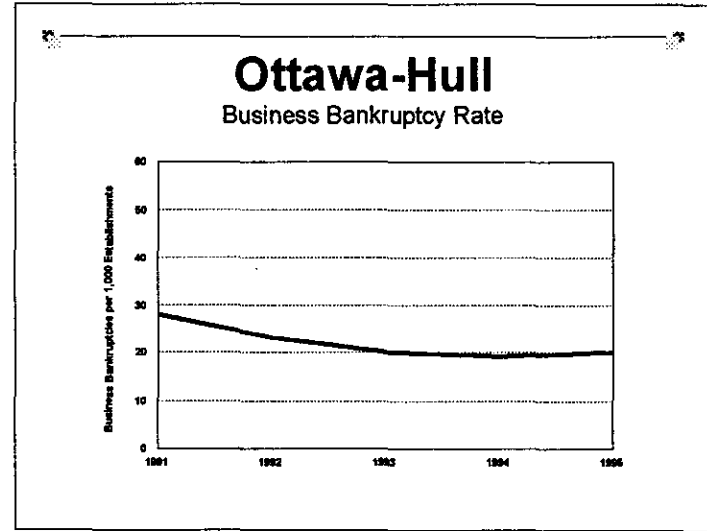
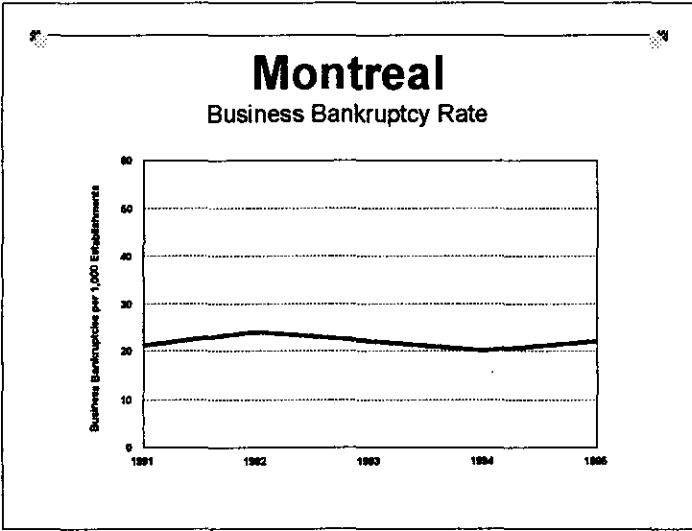


### Saint John Business Bankruptcy Rate



### Chicoutimi-Jonquière Business Bankruptcy Rate

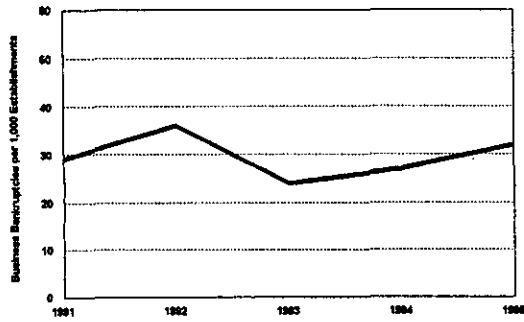






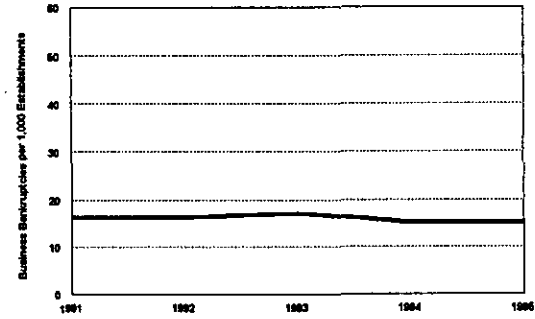
## Trois Rivières

### Business Bankruptcy Rate



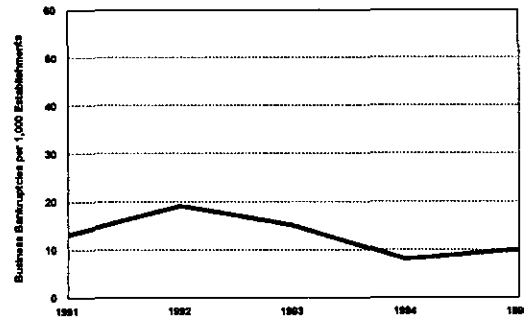
## Hamilton

### Business Bankruptcy Rate



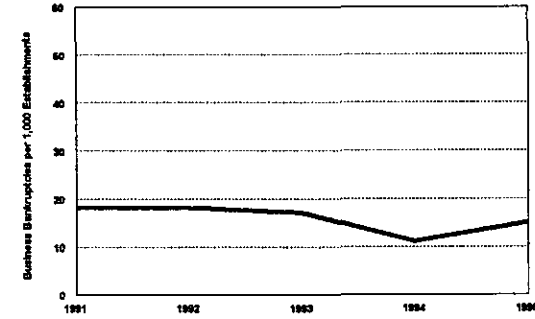
## Kitchener

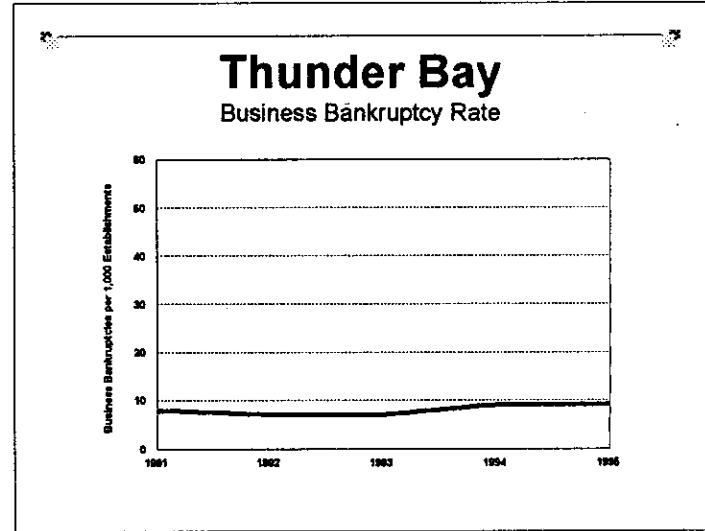
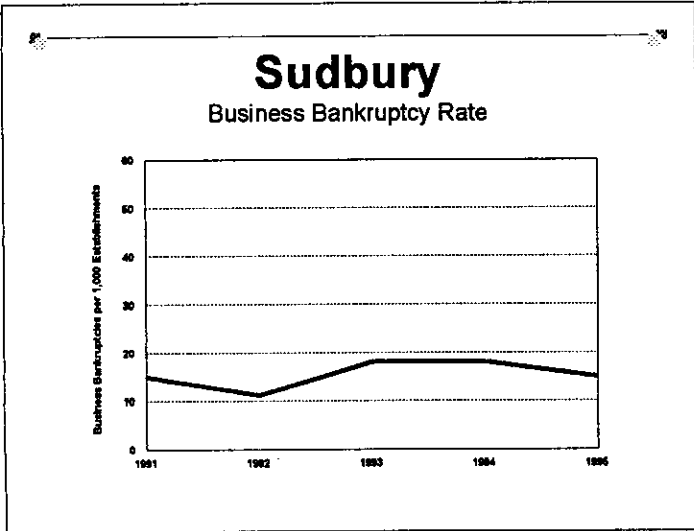
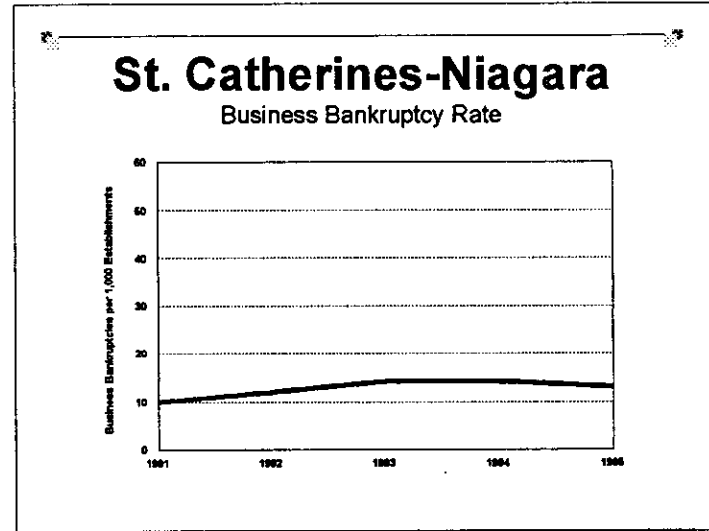
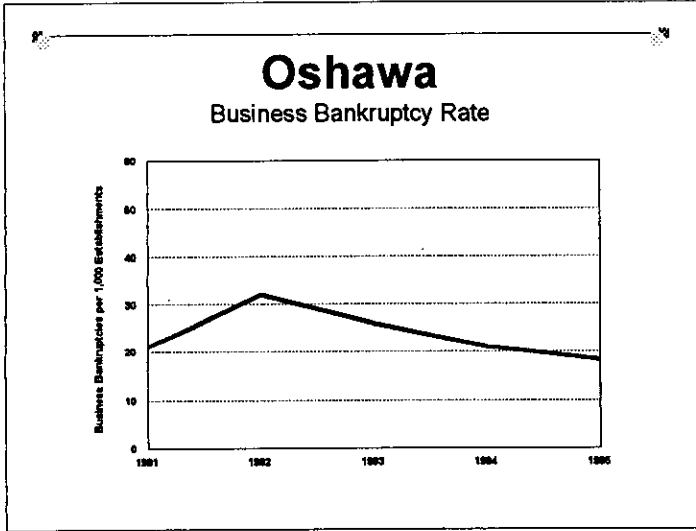
### Business Bankruptcy Rate



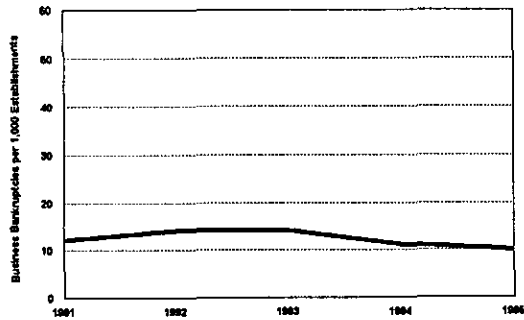
## London

### Business Bankruptcy Rate

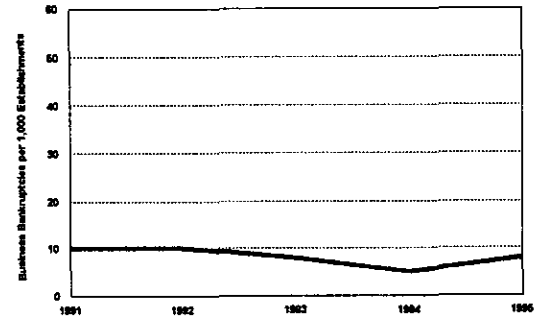




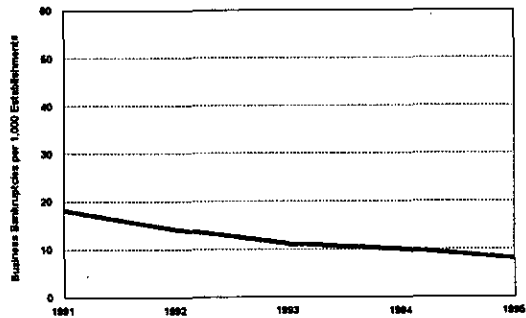
**Toronto**  
Business Bankruptcy Rate



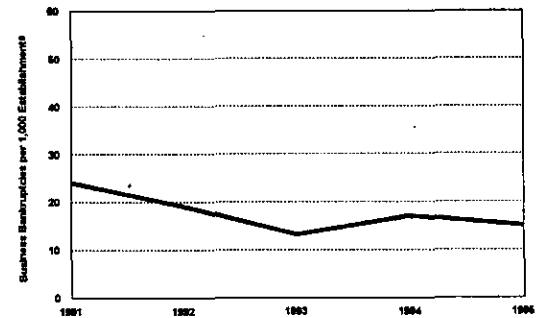
**Windsor**  
Business Bankruptcy Rate

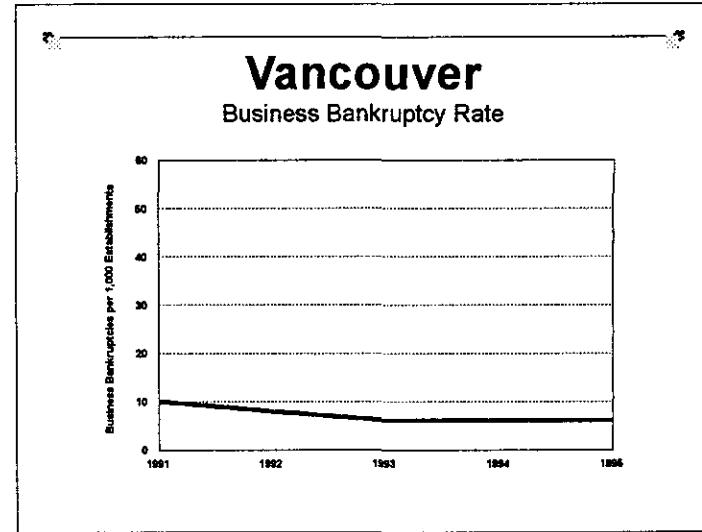
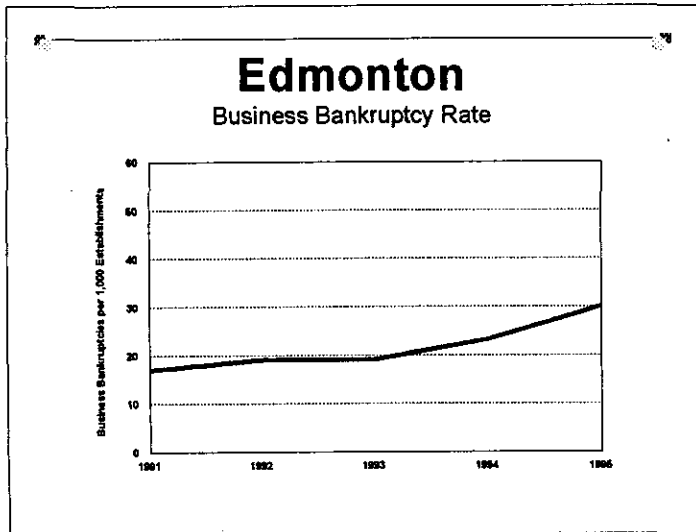
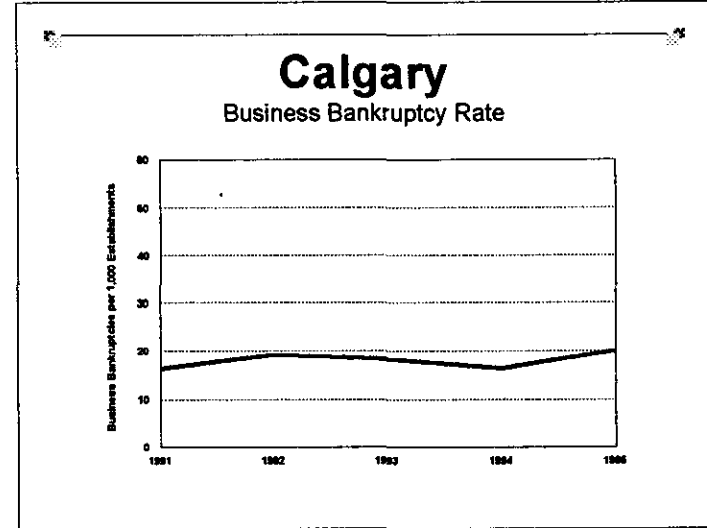
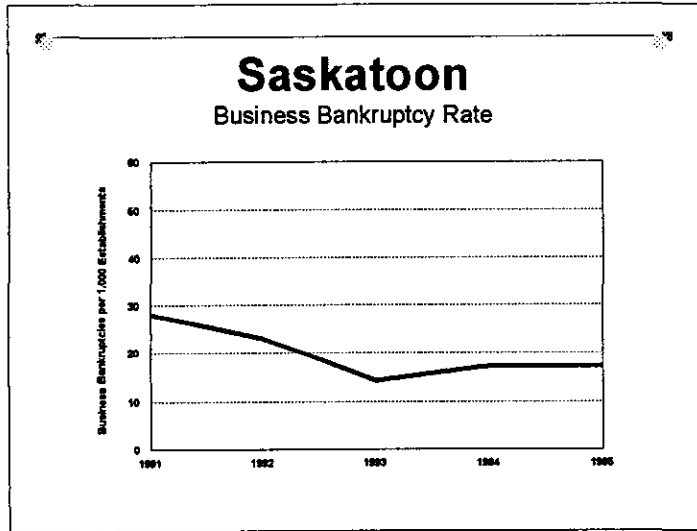


**Winnipeg**  
Business Bankruptcy Rate



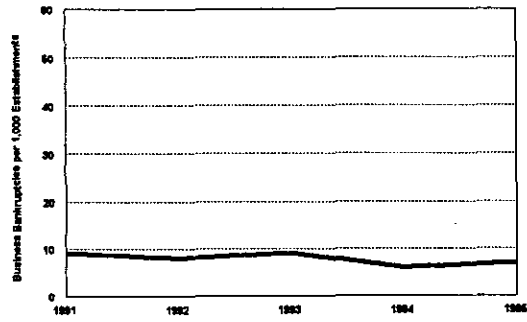
**Regina**  
Business Bankruptcy Rate





# Victoria

## Business Bankruptcy Rate



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## Consumer Bankruptcies

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### Bankruptcy Rates by Major Urban Centre Consumer Bankruptcies per 1,000 Population

	1991	1992	1993	1994	1995
<b>N.F.L.D.</b>					
Corner Brook	1.065	1.273	0.681	1.065	1.273
Gander	3.167	2.714	2.171	1.809	2.895
Grand Falls-Windsor	2.136	2.096	1.661	1.661	1.938
Labrador City	0.702	0.527	1.404	0.702	0.263
<b>St. John's</b>	<b>1.864</b>	<b>1.708</b>	<b>1.422</b>	<b>2.057</b>	<b>2.347</b>
<b>N.S.</b>					
<b>Halifax</b>	<b>3.310</b>	<b>2.538</b>	<b>2.334</b>	<b>2.075</b>	<b>2.290</b>
Kentville	4.527	4.194	4.153	3.738	3.821
New Glasgow	1.629	1.629	1.577	1.836	2.224
Sydney	3.040	2.446	2.420	2.300	3.066
Truro	3.363	3.000	1.909	1.841	1.909
<b>P.E.I.</b>					
Charlottetown	0.626	0.661	0.505	0.626	0.818
Summerside	0.919	0.656	1.116	0.656	0.984
<b>N.B.</b>					
Bathurst	2.046	1.797	2.184	1.548	1.714
Campbellton	1.999	2.206	0.758	1.379	1.034
Edmundston	0.845	0.623	0.890	0.890	0.890
Fredericton	0.501	0.835	0.654	0.598	0.765
Moncton	1.577	1.268	0.976	0.976	1.052
<b>Saint-John</b>	<b>0.784</b>	<b>0.804</b>	<b>0.826</b>	<b>0.688</b>	<b>0.891</b>

**Bankruptcy Rates by Major Urban Centre  
Consumer Bankruptcies per 1,000 Population**

	1991	1992	1993	1994	1995
<b>Québec</b>					
Alma	2.352	1.755	1.755	1.491	1.789
Baie-Comeau	3.351	3.229	2.498	1.950	2.468
Cambellton	28.785	21.682	14.953	12.710	24.299
<b>Chicoutimi-Jonquière</b>	<b>1.854</b>	<b>1.979</b>	<b>1.546</b>	<b>1.705</b>	<b>2.171</b>
Cowansville	3.197	2.638	2.318	2.558	1.839
Dolbeau	2.929	2.995	2.529	3.195	2.596
Drummondville	3.029	2.829	2.247	3.062	3.694
Granby	5.100	4.393	3.754	3.333	3.535
Hawkesbury	5.140	10.279	7.342	2.203	1.468
Joliette	1.572	1.359	1.332	1.706	2.532
La Tuque	1.073	1.149	1.379	1.456	3.142
Lachute	4.604	4.092	4.177	2.131	2.899
Magog	2.448	2.399	2.448	1.958	1.958
Matane	3.096	1.750	2.086	2.356	2.894
<b>Montréal</b>	<b>2.775</b>	<b>2.556</b>	<b>2.469</b>	<b>2.504</b>	<b>3.289</b>
<b>Ottawa-Hull (Québec)</b>	<b>6.471</b>	<b>5.505</b>	<b>4.988</b>	<b>4.569</b>	<b>5.989</b>
Pembroke	2.257	9.029	11.287	2.257	9.029
<b>Québec</b>	<b>3.172</b>	<b>2.634</b>	<b>2.494</b>	<b>2.775</b>	<b>3.623</b>
Rimouski	2.991	3.137	2.614	1.945	2.865
Rivière-du-Loup	3.283	3.752	4.220	3.965	4.945
Rouyn-Noranda	3.924	4.001	3.588	3.278	3.382
Saint-Georges	4.893	4.590	4.200	3.377	4.460
Saint-Hyacinthe	2.371	2.211	1.574	1.474	2.211
Saint-Jean-sur-Richelieu	3.568	3.510	3.773	3.846	4.519
Saint-Jérôme	4.309	3.309	4.155	3.386	5.348
Salaberry-de-Valleyfield	4.343	2.671	2.896	3.195	4.019
Sept-îles	2.017	1.760	1.870	1.467	1.577
Shawinigan	1.865	1.686	1.249	1.605	2.497

**Bankruptcy Rates by Major Urban Centre  
Consumer Bankruptcies per 1,000 Population**

	1991	1992	1993	1994	1995
<b>Sherbrooke</b>	<b>2.522</b>	<b>2.249</b>	<b>1.863</b>	<b>2.031</b>	<b>2.634</b>
Sorel	1.574	1.618	1.423	1.402	1.920
Thetford Mines	2.015	2.543	2.048	2.180	2.840
<b>Trois-Rivières</b>	<b>2.354</b>	<b>1.952</b>	<b>1.586</b>	<b>1.558</b>	<b>1.965</b>
Val D'or	6.325	5.992	4.261	3.229	4.228
Victoriaville	2.712	2.611	2.084	1.858	2.586
<b>Ontario</b>					
Barrie	4.600	5.588	4.763	4.383	4.416
Belleville	3.968	4.211	3.853	3.463	4.558
Brantford	2.266	2.729	2.183	2.121	2.677
Brockville	3.476	2.412	2.853	2.698	3.605
Chatham	2.617	2.457	1.400	1.607	1.584
Cobourg	4.775	5.173	3.250	4.112	3.382
Collingwood	3.258	2.518	2.592	2.592	3.480
Cornwall	4.239	3.063	2.745	2.036	2.185
Elliot Lake	12.700	10.240	6.516	8.378	6.317
Guelph	2.140	2.068	2.068	1.646	2.119
Haileybury	5.536	5.402	2.601	4.268	3.535
<b>Hamilton</b>	<b>2.772</b>	<b>2.583</b>	<b>2.553</b>	<b>2.110</b>	<b>2.684</b>
Hawkesbury	5.564	4.533	2.370	2.473	5.564
Kenora	1.823	2.200	2.703	3.017	2.703
Kingston	3.006	3.072	2.845	2.456	2.764
Kirkland Lake	10.824	10.632	8.238	6.322	4.023
<b>Kitchener</b>	<b>2.311</b>	<b>2.291</b>	<b>1.896</b>	<b>1.908</b>	<b>2.154</b>
Leamington	3.381	3.632	2.626	2.598	2.570
Lindsay	6.080	6.466	6.225	5.742	6.949
<b>London</b>	<b>2.341</b>	<b>2.504</b>	<b>2.137</b>	<b>2.396</b>	<b>3.100</b>
Midland	3.244	4.309	3.443	3.492	3.343



**Bankruptcy Rates by Major Urban Centre  
Consumer Bankruptcies per 1,000 Population**

	1991	1992	1993	1994	1995
North Bay	5.641	5.325	4.251	3.982	5.072
Orillia	3.229	3.082	3.434	2.906	3.552
<b>Oshawa</b>	<b>3.668</b>	<b>4.004</b>	<b>3.759</b>	<b>3.046</b>	<b>3.374</b>
<b>Ottawa-Hull (Ont.)</b>	<b>2.715</b>	<b>2.395</b>	<b>2.017</b>	<b>1.957</b>	<b>2.628</b>
Owen Sound	2.476	3.137	1.882	2.741	5.481
Pembroke	3.126	2.992	2.635	2.010	2.903
Peterborough	3.457	4.110	3.314	3.304	3.284
Port Hope	5.563	5.737	4.433	4.172	3.911
Sarnia-Clearwater	2.083	2.697	1.992	1.889	2.640
Sault Ste-Marie	3.117	2.847	2.741	1.835	2.000
Simcoe	1.094	1.995	1.351	1.802	2.510
<b>St-Catharines/Niagara</b>	<b>2.373</b>	<b>2.231</b>	<b>2.146</b>	<b>2.021</b>	<b>2.063</b>
Stratford	0.867	1.771	1.988	1.952	1.735
<b>Sudbury</b>	<b>4.045</b>	<b>4.397</b>	<b>3.056</b>	<b>3.078</b>	<b>3.577</b>
<b>Thunder Bay</b>	<b>0.891</b>	<b>1.121</b>	<b>1.080</b>	<b>1.041</b>	<b>1.031</b>
Tillsonburg	2.163	1.747	1.414	1.747	1.664
Timmins	5.246	4.930	3.392	3.329	2.465
<b>Toronto</b>	<b>2.797</b>	<b>2.899</b>	<b>2.400</b>	<b>2.092</b>	<b>2.258</b>
Wallaceburg	3.208	2.110	0.929	0.844	0.760
<b>Windsor</b>	<b>1.914</b>	<b>1.662</b>	<b>1.541</b>	<b>1.453</b>	<b>1.740</b>
Woodstock	4.289	3.425	2.893	1.663	3.092
<b>Manitoba</b>					
Brandon	2.826	2.982	3.034	2.878	2.463
Portage la Prairie	2.578	2.806	1.289	1.972	1.896
Selkirk	2.241	2.343	2.853	1.732	2.547
Thompson	1.130	1.662	1.595	0.997	1.130
<b>Winnipeg</b>	<b>3.415</b>	<b>3.323</b>	<b>3.025</b>	<b>2.895</b>	<b>3.266</b>

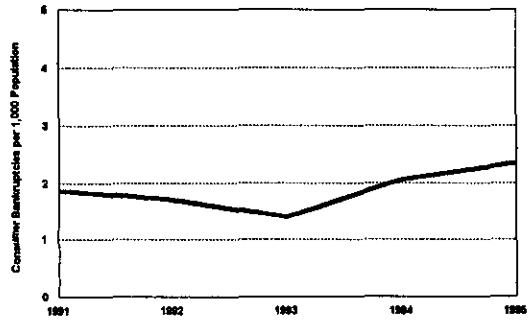
**Bankruptcy Rates by Major Urban Centre  
Consumer Bankruptcies per 1,000 Population**

	1991	1992	1993	1994	1995
<b>Saskatchewan</b>					
Estevan	2.197	1.494	1.055	1.846	1.582
Lloydminster	2.348	2.762	1.657	1.105	1.381
Moose Jaw	2.222	2.166	1.463	1.378	2.700
North Battleford	1.788	1.896	1.246	1.409	1.842
Prince Albert	1.891	1.745	1.503	1.648	2.206
<b>Regina</b>	<b>2.790</b>	<b>2.595</b>	<b>2.015</b>	<b>2.062</b>	<b>2.245</b>
<b>Saskatoon</b>	<b>3.230</b>	<b>2.944</b>	<b>2.350</b>	<b>2.311</b>	<b>2.824</b>
Swift Current	1.620	1.350	1.350	0.742	1.552
Weyburn	0.827	0.724	0.827	0.827	1.757
Yorkton	2.441	2.497	2.330	2.774	2.774
<b>Alberta</b>					
<b>Calgary</b>	<b>3.162</b>	<b>3.483</b>	<b>3.031</b>	<b>3.259</b>	<b>3.905</b>
Camrose	1.267	1.267	1.341	1.341	1.937
<b>Edmonton</b>	<b>2.393</b>	<b>2.369</b>	<b>2.199</b>	<b>2.516</b>	<b>3.901</b>
Fort McMurray	1.931	1.971	1.443	2.215	2.723
Grand Centre	1.896	1.978	1.484	1.195	1.978
Grande Prairie	1.486	1.592	2.335	1.875	3.431
Lethbridge	2.952	2.854	2.968	3.313	4.461
Lloydminster	0.797	1.195	1.195	0.797	1.792
Medicine Hat	3.607	4.271	3.322	3.607	4.461
Red Deer	2.374	2.529	1.909	2.271	2.873
Wetaskiwin	1.693	2.633	0.940	1.599	1.881
<b>B.C.</b>					
Campbell River	1.361	1.620	1.426	1.199	1.717
Chilliwack	1.162	1.527	1.228	0.913	1.095
Courtenay	1.145	1.505	1.213	1.393	1.415

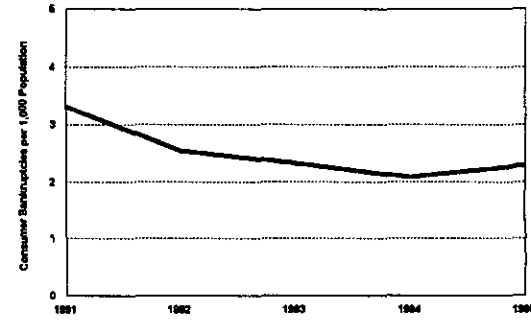
**Bankruptcy Rates by Major Urban Centre  
Consumer Bankruptcies per 1,000 Population**

	1991	1992	1993	1994	1995
Cranbrook	1.702	0.912	0.608	0.790	0.912
Dawson Creek	1.912	1.093	0.911	1.366	1.730
Duncan	0.913	0.949	0.913	1.242	1.899
Fort St. John	2.190	3.038	2.755	2.049	2.684
Kamloops	1.547	2.078	1.621	1.606	2.122
Kelowna	1.431	1.949	1.770	1.994	2.486
Kitimat	0.796	0.885	1.327	0.708	0.973
Matsqui	1.338	1.655	1.294	1.427	1.321
Nanaimo	1.509	1.944	1.224	1.944	2.583
Penticton	0.865	1.242	1.154	0.976	1.531
Port Alberni	0.564	1.241	0.526	0.526	1.015
Powell River	1.678	1.407	1.894	1.137	1.461
Prince George	1.938	2.225	1.680	1.881	1.795
Prince Rupert	1.030	1.409	0.596	0.596	0.759
Quesnel	1.760	2.146	1.502	1.416	1.159
Terrace	0.582	1.005	0.317	0.529	0.635
<b>Vancouver</b>	<b>1.511</b>	<b>1.535</b>	<b>1.258</b>	<b>1.239</b>	<b>1.324</b>
Vernon	1.288	0.831	0.997	1.205	1.641
<b>Victoria</b>	<b>1.427</b>	<b>1.575</b>	<b>1.384</b>	<b>1.632</b>	<b>1.600</b>
Williams Lake	1.499	1.499	0.951	0.951	1.211

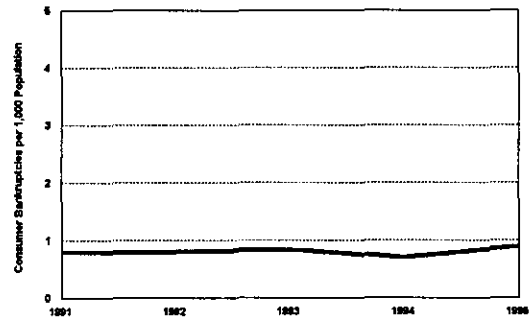
### St. John's Consumer Bankruptcy Rate



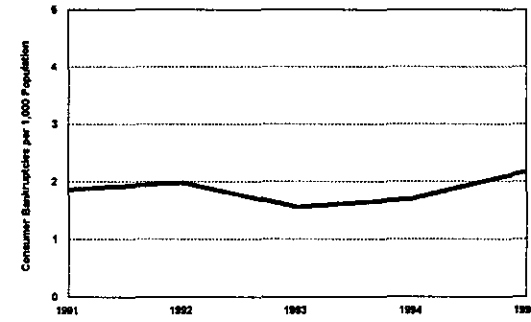
### Halifax Consumer Bankruptcy Rate

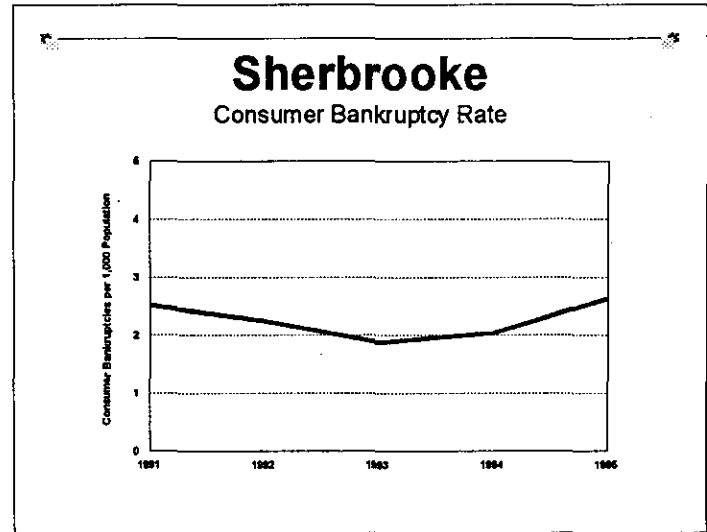
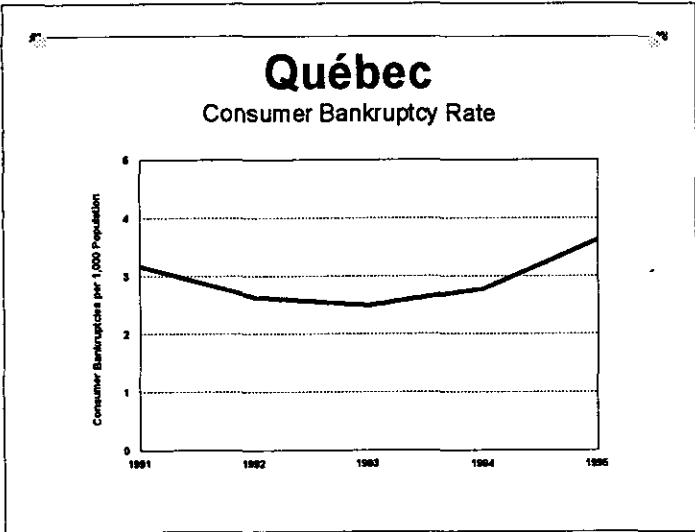
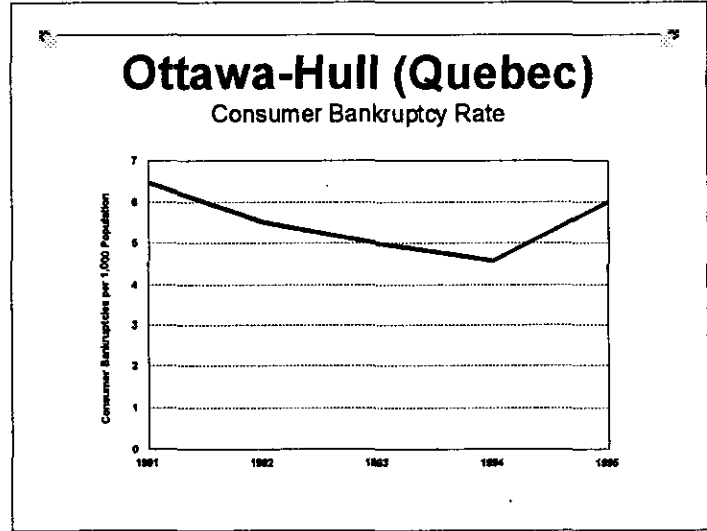
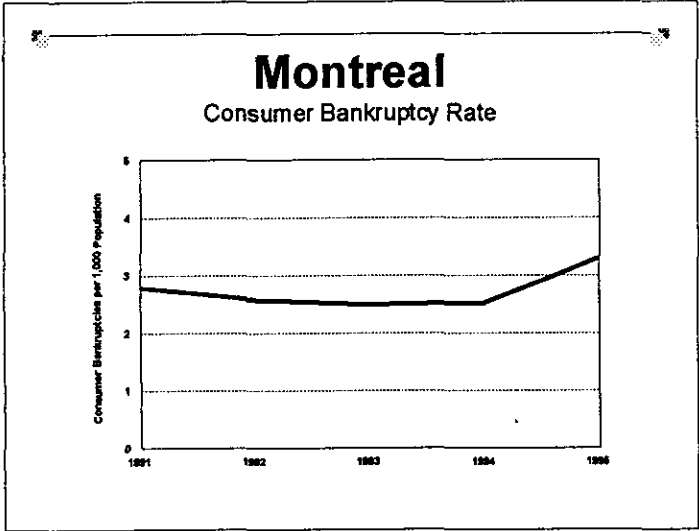


### Saint John Consumer Bankruptcy Rate



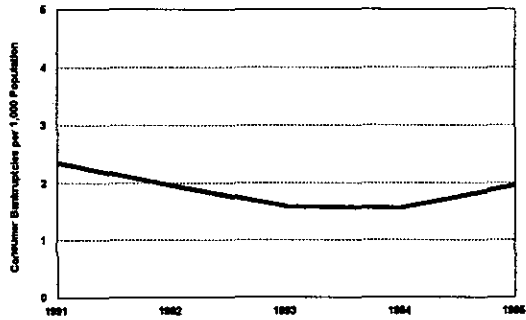
### Chicoutimi-Jonquière Consumer Bankruptcy Rate





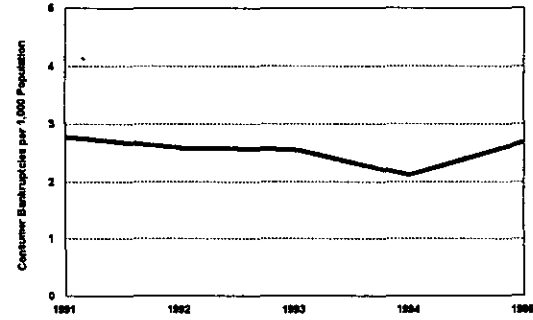
## Trois Rivières

Consumer Bankruptcy Rate



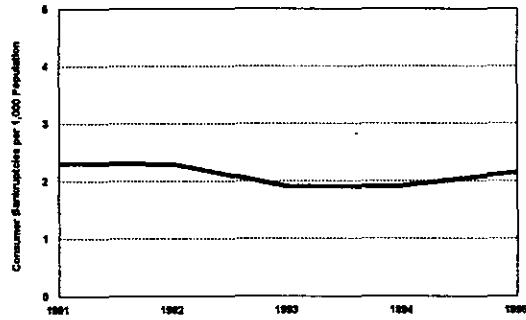
## Hamilton

Consumer Bankruptcy Rate



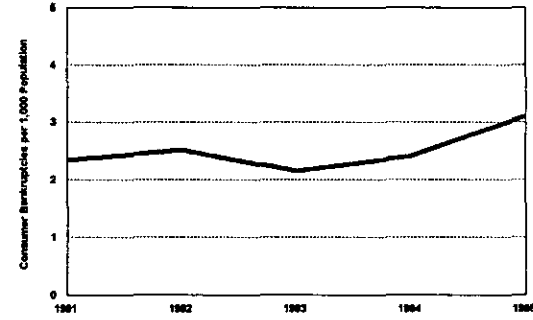
## Kitchener

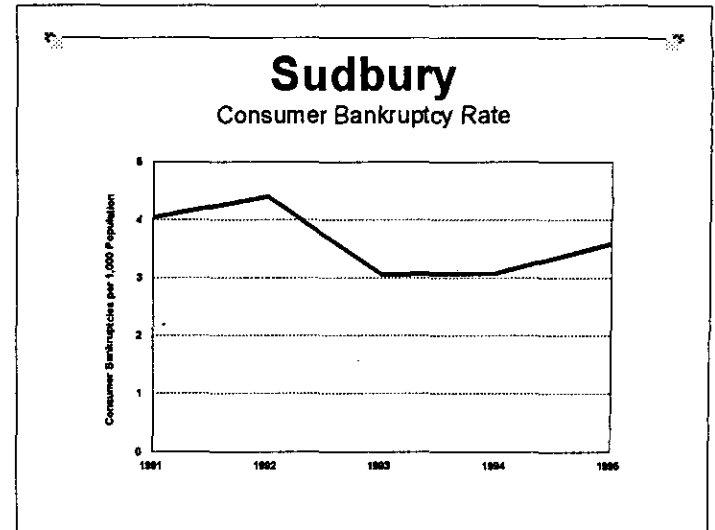
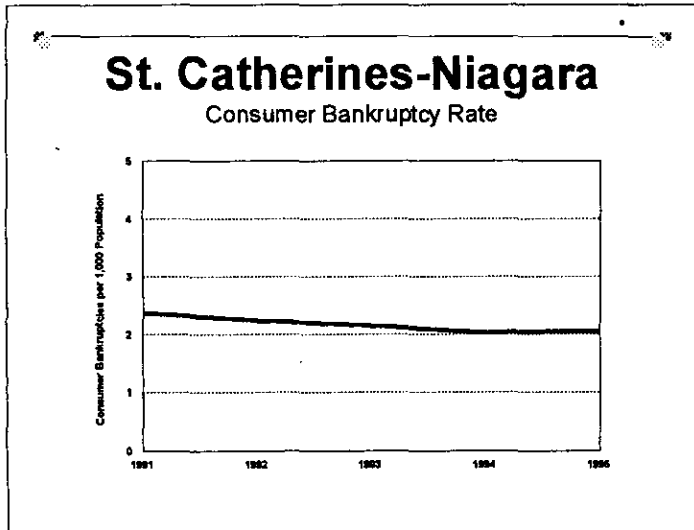
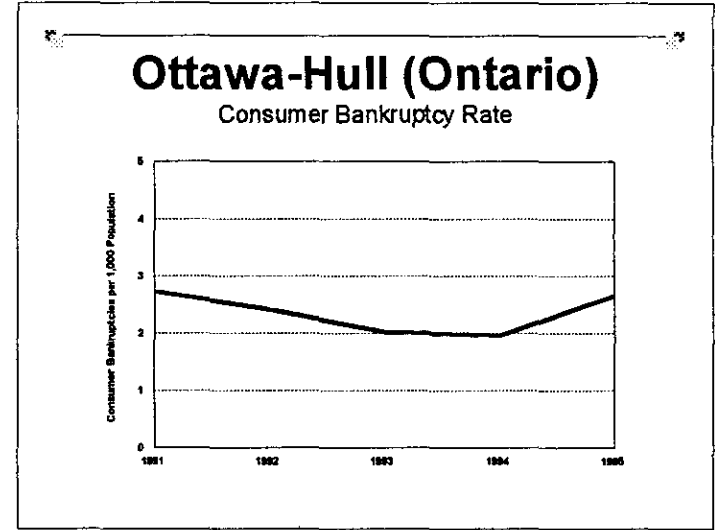
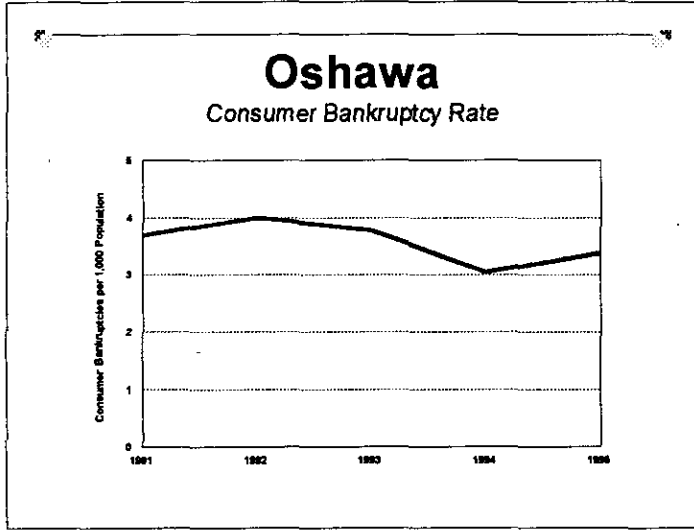
Consumer Bankruptcy Rate



## London

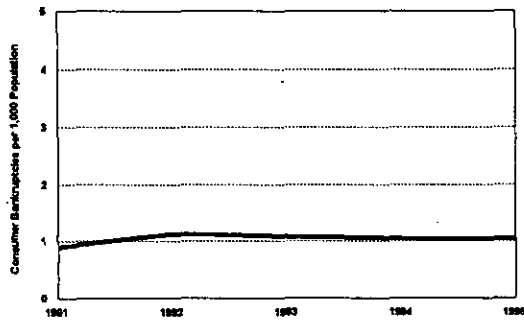
Consumer Bankruptcy Rate





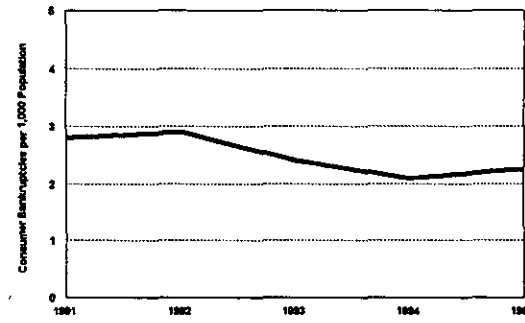
## Thunder Bay

### Consumer Bankruptcy Rate



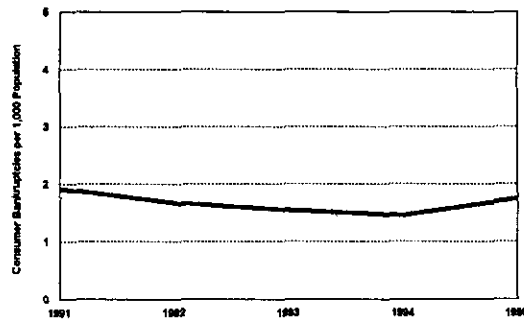
## Toronto

### Consumer Bankruptcy Rate



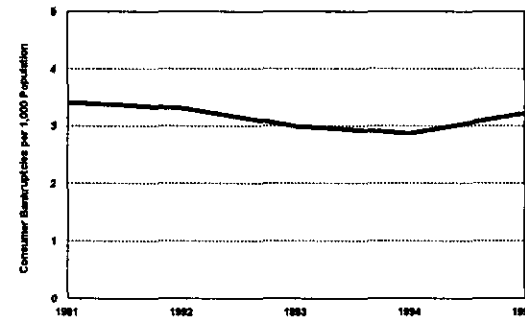
## Windsor

### Consumer Bankruptcy Rate

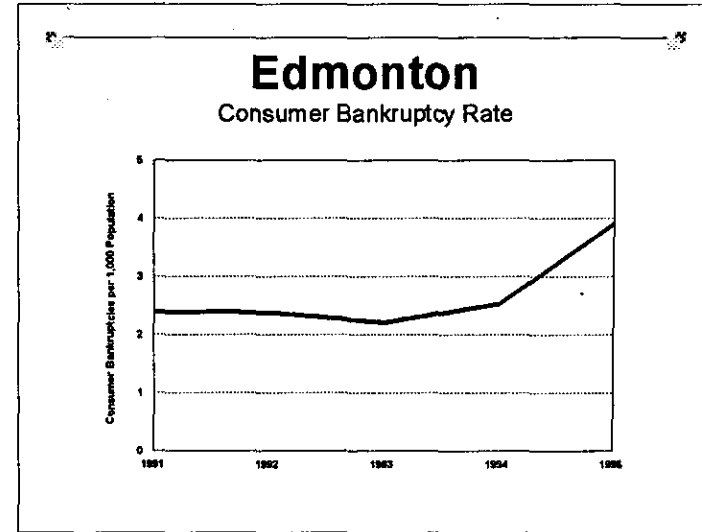
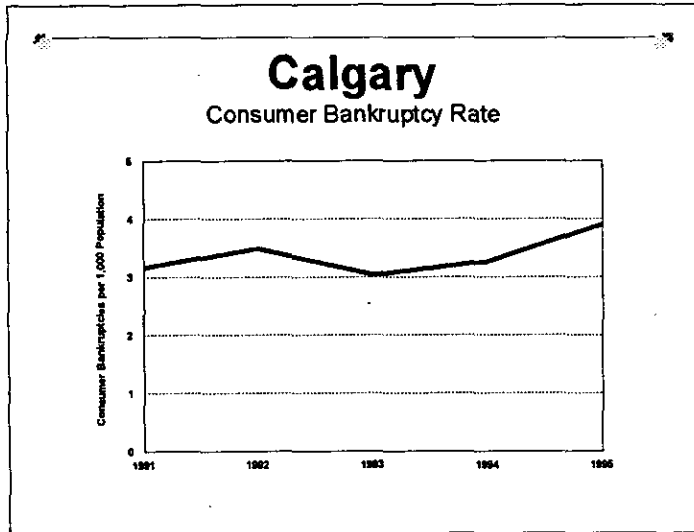
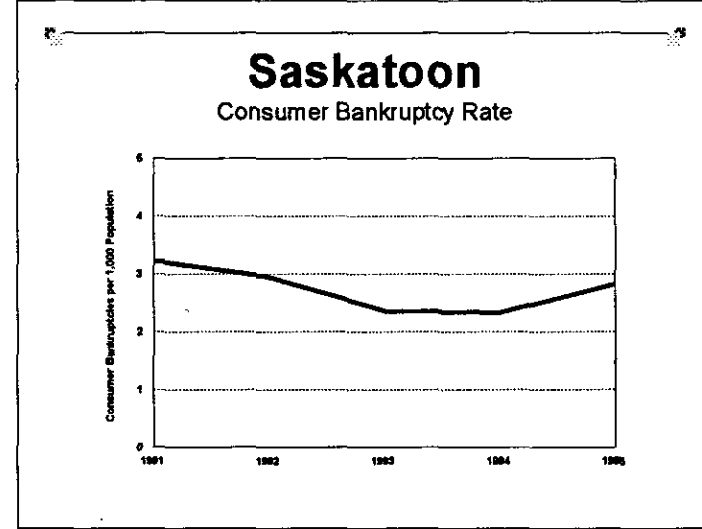
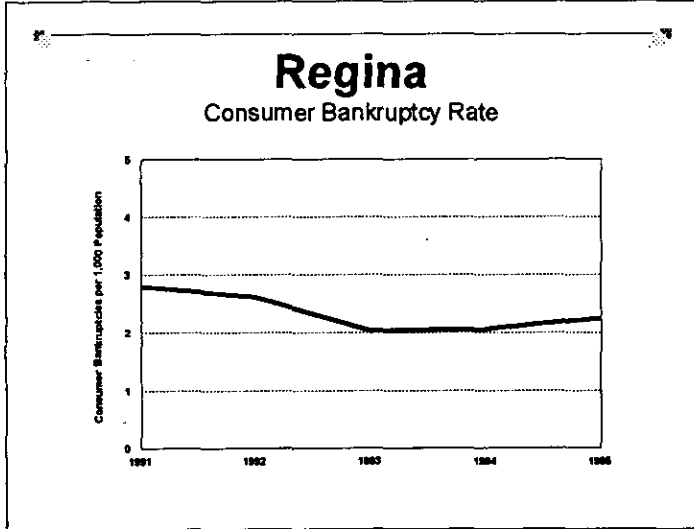


## Winnipeg

### Consumer Bankruptcy Rate

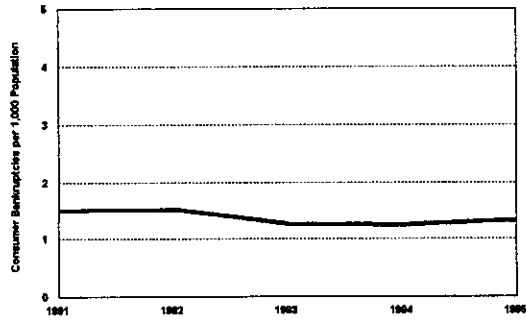






## Vancouver

Consumer Bankruptcy Rate



## Victoria

Consumer Bankruptcy Rate

