



Industry Canada / Industrie Canada

Insolvency

2ND & 3RD QUARTER 1998
VOLUME 18, NUMBER TWO & THREE

Canada

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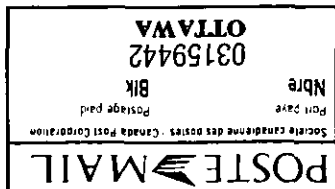
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INSOLVENCY BULLETIN

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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 Insolvency Bulletin is a free publication which is published four times a year. 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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Message from the Superintendent

RECENT AMENDMENTS TO THE *BANKRUPTCY AND INSOLVENCY ACT*

Following the coming into force of Phase II of the amendments to the *Bankruptcy and Insolvency Act* (BIA) on April 30, 1998, I am pleased to announce that the implementation of the amendments contained in Bill C-5 is now completed. The implementation period for these amendments was a success and the comments received from stakeholders pertaining to the new Rules and Forms were very helpful indeed. Please note, however, that in my letter to stakeholders dated April 21, 1998, pertaining to the coming into force of the Rules and Forms, we mention that some forms were not issued in September nor in April. These Forms are still marked as being under review due to the fact that many were considered very useful in practice, though not required by the BIA.

I would also like to take advantage of this opportunity to thank all those within the insolvency community who attended the information sessions held in September '97 and April '98. The sessions were well attended and the comments made by participants were very helpful in finalizing the preparations for implementation.

We will now begin a careful examination of how the new amendments are being received and applied within the insolvency community and interpreted by the courts with a view to the next five year review of the BIA in 2002. In this regard, we urge you to continue providing us with your comments and suggestions.

THE OSB AS A "SPECIAL OPERATING AGENCY"

Recently, the OSB has obtained Treasury Board approval to become a "Special Operating Agency" (SOA). The OSB is confident that the SOA's

focus on increased accountability for results, in exchange for certain flexibilities and authorities, will permit the OSB to develop a distinct, business-like culture with a strong, shared focus on client needs and innovative approaches. Further, we are confident that SOA status will provide the tools necessary for the OSB to increase the quality and effectiveness of its regulatory services despite rising volumes

As a result of this newly acquired status, the OSB has undertaken to establish a Management Advisory Board (MAB) to provide an independent external advice on overall management practices. For your information, a list of the Board members is found on the next page.

This year, the MAB has met in June and in October. It has already provided valuable comments regarding the OSB five year Business plan that will soon be submitted to the Treasury Board. At its next meeting in February the MAB will consider the funding options for the OSB and review the progress of the consultation that is being launched with this issue of the Bulletin

In particular, the MAB will:

- review and comment on the annual OSB Business Plan;
- evaluate the financial and business performance of the OSB against the Business Plan;
- review the costs and revenues and comment on the Office's recommendations to maintain financial self-sufficiency;
- assess the OSB's longer term business strategies for dealing with major issues; and

-
- advise the OSB on ways of improving public awareness and the development of appropriate relationships with the insolvency community.

Finally, you will have no doubt noticed a dramatic change in presentation for the *Insolvency Bulletin* in the first issue of 1998. In addition to being less expensive to reproduce and more professional in appearance, the Bulletin now carries the corporate colours and logo of the OSB under its Special Operating Agency status.

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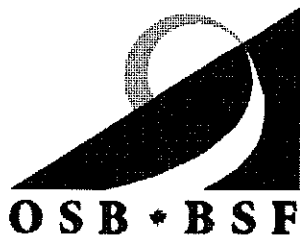
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Office of the Superintendent of Bankruptcy

Steve Stimpson

Director - Business and Financial Services

Office of the Superintendent of Bankruptcy



Meeting the Challenge

A Discussion Paper on Funding Options

for the

**Office of the Superintendent
of Bankruptcy**

Canada

Meeting the Challenge
**A Discussion Paper on Funding Options for the
Office of the Superintendent of Bankruptcy**

EXECUTIVE SUMMARY

This discussion paper asks stakeholders and clients of the bankruptcy and insolvency system for their views about how best to move the Office of the Superintendent of Bankruptcy (OSB) toward full cost recovery.

The Challenge

The OSB approaches the 21st century with the challenge of how best to ensure compliance with the *Bankruptcy and Insolvency Act*, an activity that is both crucial to protecting the integrity of the system and important to clients and stakeholders.

To address this challenge, the OSB realizes that it must ensure that its financial house is in order. In other words, it must close the gap between what it costs to provide services and the revenue generated by those services. To do so, the OSB must not only increase revenues but also strive to become more efficient. The gap between costs and revenues is eroding the OSB's capacity to carry out compliance activities as it is forced to divert resources to handle the administrative demands associated with expanding bankruptcy volumes.

The First Steps

Among the steps the OSB has taken to lower its costs and develop a more business-like approach are these:

1. The OSB has become a Special Operating Agency, resulting in more authority and flexibility to meet clients' needs, added transparency in its activities and greater accountability for results.
2. Activities have been costed and business processes analysed and re-engineered to identify where efficiency gains, cost reductions or alternative delivery are possible.
3. A private sector service provider is being sought to deliver some services, to enable the OSB to alleviate the effects of fluctuating workloads and make it easier for the OSB to concentrate on its core business.
4. The OSB has shifted its emphasis from file monitoring to trustee monitoring to achieve compliance goals more cost-effectively.

With the cost side of the funding equation well in hand, the OSB must now deal with the revenue side.

The Next Step

The OSB's ability to deliver its mandate is under pressure from an expanding workload (up by 52% from 1994 to 1997), new statutory responsibilities and rising expectations on the part of clients, stakeholders and legislators. One result has been a growing gap between the full cost of operating the OSB – estimated at \$22.5 million in 1998–99 — and the revenue generated by the fees and levies paid by clients using OSB services (about \$16 million). If left unaddressed, this current shortfall of roughly \$6.5 million is expected to increase as workload, salary settlements and other operating expense rise.

Appropriations from Parliament now cover the shortfall. But government policy is moving toward a “user pay” philosophy — the view that services of benefit to a distinct, identifiable clientele (such as users of the bankruptcy system) should be paid for by that group, and not by taxpayers in general. The OSB, therefore, has a responsibility to move toward recovering the cost of its services from users.

The Consultative Process

Clients and stakeholders now have an opportunity to be part of the decision-making process in the OSB's efforts to move to full cost recovery. The “Meeting the Challenge” discussion paper describes the OSB's services, its current financial situation, the cost-reduction and efficiency improvements it has made to date, and 15 funding options that could close the cost–revenue gap. By commenting on these options and offering their own alternatives, clients and stakeholders can help shape the OSB of the future.

It must be emphasized that the funding alternatives presented are genuine options: they do not represent OSB or government policy, nor does the OSB favour one choice over the others. Clients and stakeholders can comment on the options presented, discuss whether one or several in combination is feasible, or offer their own alternatives.

Based on client and stakeholder input, the OSB will:

1. analyse the preferred options that emerge from this first round of regulatory consultations;
2. project their impact on the financial and administrative situation of the OSB; and
3. develop draft recommendations for regulatory change.

Those who comment in the first round will have a further opportunity to comment on these regulatory proposals. The consultation process will culminate in recommendations to the minister for new fee regulations, which the OSB hopes to have in place by the fall of 1999.

The Funding Options

For each of the four main streams of revenues, the OSB has identified a number of funding options. The full paper describes each of the fifteen options, discusses the advantages and disadvantages, and estimates the additional revenues it is expected to generate. In summary, the fifteen options are:

Registration Fee and Levy Options

- Option 1 Increase the levy payable on summary administrations (most consumer bankruptcies are in this category) from 5% to 10% of dividends.
- Option 2 Increase the levy payable on summary administrations to 100% of the first \$200 of dividends, with no levy on subsequent dividends.
- Option 3 Lower the levy on bankruptcies to 2.25%, but calculate it on total realizable assets in the estate, instead of on dividends paid.
- Option 4 Lower the levy to 0.5–1% of dividends, but impose it on all assets in the estate, including those realized by secured creditors.
- Option 5 Increase the registration fee on summary administrations (most consumer bankruptcies) from \$50 to \$100.
- Option 6 Increase the registration fee for all bankruptcies by 65%. The fee for a summary administration or consumer proposal would rise from \$50 to \$82.50, for an ordinary administration or commercial proposal from \$150 to \$247.50, and for a receivership from \$70 to \$115.50.
- Option 7 Replace the current registration fee structure with a flat fee of \$100 for all types of bankruptcies and proposals.

Trustee Licence Options

- Option 8 Increase the annual renewal fee to maintain a bankruptcy trustee licence by 50%, 100% or 200%.
- Option 9 Establish a sliding scale for trustee licence fees, based on the volume and type of estates administered by the trustee in the previous year.
- Option 10 Impose a surcharge on trustee licence fees based on the cost of discipline and conservatory measures undertaken by the OSB in the previous year.

-
- Option 11 In addition to increasing the cost of applying for a licence from \$300 to \$400, introduce administrative fees for such things as late payment, licence activation and change of licence status
- Option 12 Require trustees to post a performance bond or maintain an insurance policy of \$1 million, with the OSB as beneficiary, to be forfeited in the event of a serious disciplinary action, such as a conservatory measure.
- Option 13 Require the creation of an indemnity fund to be used to pay for trustee discipline costs and conservatory measures.

Information Services Options

- Option 14 Develop and sell new information products and services, and charge for existing services currently being provided for free.

Other Administrative Options

- Option 15 Set new fees for existing services or introduce services for which fees would be charged, for example, for:
- a) change in the filing status of an estate;
 - b) mediation services;
 - c) training and conferences;
 - d) late charges;
 - e) processing claims against trust accounts;
 - f) non-statutory services provided by senior bankruptcy officers; and
 - g) other administrative services.

Analysis of Feedback

The feedback received will be used to weigh each revenue option against a set of user fee principles. The principles are:

- equity: those that benefit from a service should pay for it. Further, when benefits from a service accrue to the entire community, all participants should pay their fair share of the costs;
- simplicity: fees should not be unnecessarily complex;
- public good: fees should support public policy objectives, such as accessibility to the system, debtor rehabilitation and timely return of assets to productive use;

-
- value: fees should reflect the cost of providing the service; and
 - flexibility: the fee structure should be flexible enough to provide the OSB with the financial stability required to respond to future marketplace and client needs.

Conclusion

As the agency whose activities underpin the integrity and fairness of the bankruptcy system, the OSB has a clear responsibility to manage in a way that protects its capacity to be an effective marketplace regulator. Cost reductions and process re-engineering have brought the OSB part of the way toward financial self-sufficiency, and planned efficiency measures (such as e-filing and the use of a private-sector service provider) will result in additional savings of approximately 20% over the next five years. The time has come to take the final step in securing a sustainable bankruptcy and insolvency system — moving to a new revenue structure which will ensure full cost recovery.

The OSB invites clients and stakeholders to contribute to formulating the policies that will take the OSB into the next century by commenting on the options in this discussion paper and/or offering their own suggestions about how best to finance OSB services in the future. In providing your comments, you may wish to recommend a package of options containing several of the options.

To make your views known, please forward your written comments to the following address by no later than January 22, 1999:

Superintendent of Bankruptcy
365 Laurier Avenue West
8th Floor
Ottawa, Ontario
K1A 0C8

or by fax at: (613) 941-2862

or by e-mail: osb-bsf@ic.gc.ca

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A NOTE FROM THE SUPERINTENDENT

As a new millennium approaches, the Office of the Superintendent of Bankruptcy (OSB) is striving to refocus its energies and resources on becoming a model regulator and service provider. To achieve this vision in the eyes of clients and stakeholders, the OSB must be able to:

- deliver on client expectations of high levels of debtor and trustee compliance in the bankruptcy and insolvency system; and
- do so in an efficient and business-like manner.

The process of renewal has begun at the OSB. We are placing more emphasis on compliance as we seek a private sector service provider to deliver many of the OSB's non-core activities; we are looking for new operational efficiencies and compliance strategies through re-engineering; we are offering more services electronically; and we have adopted a more client-oriented business framework by becoming a Special Operating Agency.

One important element has yet to be put into place, however: a funding framework to link the cost of delivering client services with fees charged — in other words, cost recovery.

This paper discusses the importance of the OSB's role in protecting the integrity of the bankruptcy and insolvency system and how the OSB's capacity to carry out its core compliance activities is eroded when resources are diverted to handle expanding bankruptcy volumes. It explains how the OSB has made services more cost-effective to reduce the current gap between costs and revenues, and the strategic importance of the next step in this process, a move to full revenue dependency.

Finally, the paper outlines 15 funding alternatives and asks for input on which strategies or options should be used to move the OSB toward cost recovery. The revenue generation options are presented in summary form to focus discussion on the *direction* the OSB should take rather than on the mechanics of change.

It is my hope that this paper will generate the discussions with clients and stakeholders needed to develop concrete recommendations on revenue generation. With a new framework in place, I am confident that the OSB will be better equipped to meet clients' needs as we enter the twenty-first century.

Marc Mayrand
Superintendent of Bankruptcy

INTRODUCTION

The Office of the Superintendent of Bankruptcy (OSB) has seen significant changes in the past few years, amendments to the *Bankruptcy Insolvency Act* in both 1992 and 1997, the rise of volumes to historic highs, acquiring a new status as a Special Operating Agency, experiencing budget reductions as a result of Program Review, and introducing reforms to make the agency more efficient and business-like.

But the bankruptcy system is under pressure. Fluctuating workloads, decreased funding and rising compliance costs have resulted in a challenge for the OSB: how best to ensure the OSB can fulfill its compliance mandate in the coming years.

One answer is to stabilize its financial framework, that is, move away from taxpayer funding to become fully dependent on client fees and revenue. To do so, the OSB must:

- reduce the gap between what it costs to provide services and the revenue available to fund them; and
- find new ways or approaches to ensuring compliance.

This situation coincides with a government policy commitment, enunciated in *Building a More Innovative Economy* and other documents, to the user pay philosophy, based on the view that services that benefit a distinct, identifiable clientele should be paid for mainly by that group. The services of the OSB have been recognized as an area where “user pay” should apply.

As detailed in this paper, the OSB has taken several important steps toward meeting the challenge. Yet the revenue gap persists, and the ability of the OSB to remain an effective marketplace regulator is threatened. The time has come to take the final step toward securing a sustainable bankruptcy and insolvency system — a move to full cost recovery.

Just how this should be done remains to be decided, and the OSB is committed to making clients and stakeholders* an integral part of the decision-making process. The purpose of this discussion paper is to explain the current situation of the OSB and to seek feedback about funding options for the future. At the end of the paper is information on how clients and stakeholders can communicate their views on the options presented and offer their own alternatives.

*In this paper we use the term ‘clients’ to refer to debtors, creditors involved in the bankruptcy and insolvency system, and users of bankruptcy information. ‘Stakeholders’ refers to the trustee community, Industry Canada and the Canadian public at large.

The paper is divided into five sections:

- The first defines the value of the OSB in Canada's bankruptcy and insolvency system and describes the services clients receive from the OSB.
- Section II explains why it is necessary for the OSB to achieve full cost recovery.
- The current financial position of the OSB is set out in Section III.
- Section IV demonstrates how the OSB has gone about reducing operating costs and becoming more business-like.
- A range of possible funding options for the future is explored in Section V.

The paper also includes two appendices: Appendix A provides background on the role, responsibilities and fee structure of the OSB and the nature of its Special Operating Agency status; and Appendix B is a table summarizing the funding options described in Section V and their revenue-generating potential.

SECTION I

THE VALUE AND SERVICES OF THE OSB

Why do we need an agency like the OSB? What value does it bring to the bankruptcy and insolvency system, and what services are clients and stakeholders receiving for the fees they pay?

The Value of the OSB

The OSB is a Special Operating Agency of Industry Canada, with responsibility for protecting the integrity and fairness of the bankruptcy and insolvency system. The role of the insolvency system is to provide a fair and effective system for restoring assets to productive use while providing a framework for debtor rehabilitation, a deterrent to fraud, and a public record of estates. These functions are carried out jointly by private sector practitioners (licensed trustees, consumer proposal administrators, receivers), the provincial bankruptcy courts and the OSB.

The mandate of the OSB, set out in the *Bankruptcy and Insolvency Act* (BIA), is to "supervise the administration of all estates and matters to which this Act applies." By protecting the integrity of the Canadian bankruptcy and insolvency system, the OSB helps foster and maintain investor and lender confidence in the Canadian marketplace.

Services Provided

The OSB's general mandate translates into three broad areas of responsibility:

- It ensures **compliance** with the provisions of the *Bankruptcy and Insolvency Act* by supervising the bankruptcy and insolvency processes, and by licensing, monitoring and disciplining trustees in bankruptcy.
- It maintains a sound **policy and legislative framework** to meet changing client, economic and societal needs.
- It provides the **information infrastructure** required by the BIA, including registration of bankruptcies, proposals and receiverships and maintenance of an accessible public record of insolvencies. In addition, for the benefit of the credit granting sector and the public, the OSB gathers and releases monthly bankruptcy and insolvency statistics, and its name search information service handles more than 120,000 inquiries yearly.

In 1997–98, the OSB dealt with 105,000 bankruptcies, proposals and receiverships. For a list of the OSB’s 10 key service areas, see the sidebar; for more detail see Appendix A.

Service Results

In providing services to clients and stakeholders, the OSB seeks to achieve the following key results:

- a level of debtor and trustee compliance with the BIA that meets the needs and expectations of clients and stakeholders;
- an administrative infrastructure for maintaining the public record, registering trustees and disseminating information that is relevant, efficient, uniform and timely; and
- a policy and regulatory framework that is current and reflects legislative, client and stakeholder needs.

The OSB’s 10 Key Service Areas

- To ensure debtor compliance
- To ensure trustees are competent
- To ensure trustees comply with the *Bankruptcy and Insolvency Act*, regulations and directives
- To ensure information is readily available from the trustee on specific bankruptcies and proposals
- To ensure that information is available on the bankruptcy process and the bankrupt’s rights within the system
- To ensure debtors are informed of alternatives to bankruptcy
- To ensure debtors have access to financial counselling to help avoid future insolvency
- To ensure estate administration is complete and thorough and estates are closed in a timely manner
- To ensure the efficiency of the system
- To ensure professional, accurate and impartial information is available

The OSB conducted surveys in August 1997 to determine which system attributes were important to clients, as well as where it should focus its efforts. Compliance by debtors and trustees was the attribute identified by respondents as most important to them.

Current Funding Structure

The OSB is funded through a combination of fees and levies paid by clients and appropriations (monies voted by Parliament from general tax revenues). Fees and levies are forecast to produce revenues of about \$16 million in 1998–99. This will cover part of the cost of running the OSB, estimated at \$22.5 million for the same fiscal year. The rest is covered by appropriations. The OSB’s financial situation is discussed further in the next two sections.

SECTION II

THE CASE FOR FULL COST RECOVERY

Given that the OSB has a valuable role in protecting the integrity of the bankruptcy and insolvency system, what is precipitating the OSB's move to full cost recovery at this time?

Pressures on Capacity

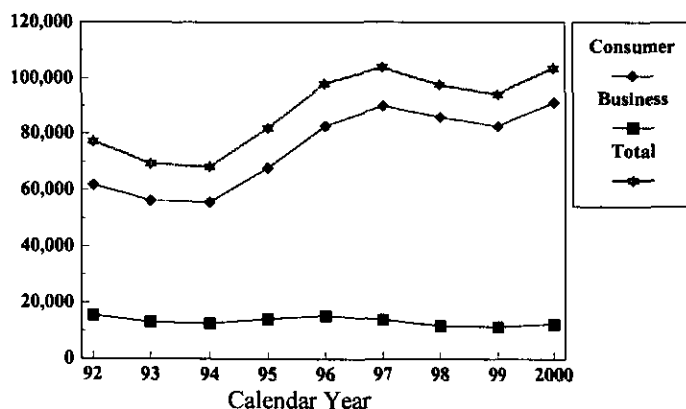
Clients and stakeholders have indicated clearly that trustee and debtor compliance are their principal concerns, and the OSB is therefore seeking to become a model regulator by reorganizing and streamlining to focus resources on core compliance activities. Despite these efforts, several key issues or pressures are affecting the OSB's ability to assure the level of compliance being sought by clients:

- Notwithstanding periodic fluctuations, filing volumes and workloads are expected to keep rising.
- As volumes increase, more of OSB's fixed budget goes to registration and other administrative costs, leaving less for compliance.
- Enforcement costs are escalating.
- Legislative and regulatory demands are increasing.
- The demand from clients for information services is rising.

File Volumes and Workloads

Demographic shifts and changes in lending and employment conditions have contributed to sustaining an upward trend in personal bankruptcies over the past 25 years (see Figure 1). There is little to suggest that the underlying conditions will change in the longer term. Although the OSB is forecasting a temporary decline (of between 4 and 6%) in filing volumes in the next 18 to 24 months, historical trend information supports a return to yearly increases of 8.9% to 10% after that.

Figure 1 - Volumes



Notes: Total bankruptcies and include (1) no bankruptcies; (2) at roughly 5% of the bankruptcy volume; and (3) an 8.9% increase in consumer filings.

includes proposals. Forecasts growth in business proposals to remain

Table 1 shows how the rising number of bankruptcy and proposal filings has resulted in a 52% increase in the OSB workload in the past three years (from 68,209 in 1994 to 103,883 in 1997).

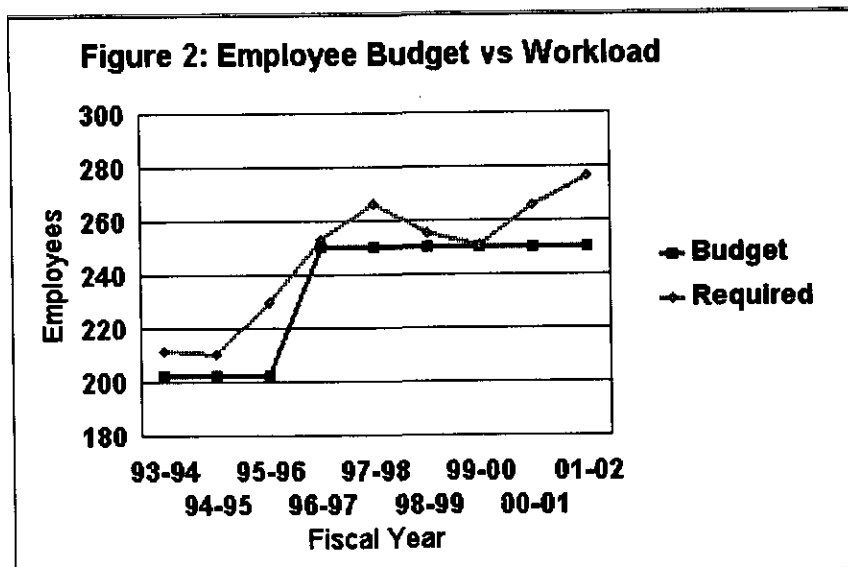
**Table 1
Volume of Bankruptcies**

	1994		1995		1996		1997	
	Volume	% change	Volume	% change	Volume	% change	Volume	% change
Consumer bankruptcies	53,802	-1.2	65,432	21.6	79,631	21.7	85,297	7.1
Commercial bankruptcies	11,810	-5.7	13,258	12.3	14,229	7.3	12,200	-14.3
Consumer proposals	1,851	3.3	2,419	30.7	3,113	28.7	4,737	52.2
Commercial proposals	743	43.4	838	12.8	1,136	35.6	1,649	45.2
Receiverships	1,539	-1.5	1,432	-7.0	1,668	16.5	1,335	-20.0
Total Bankruptcy Volumes	69,745	-1.6	83,379	19.5	99,777	19.7	105,218	5.4

Declining Resources for Compliance

As volumes increase, so does the chance for non-compliance or fraud. At the same time, the administrative workload (over which the OSB has no control, as the process is set out in the BIA) also expands. With a fixed funding structure (as at present, with some revenue from fees and levies and the rest from appropriations), an increase in the 'process' workload draws resources away from compliance activities, thereby making the system potentially more vulnerable to fraud.

Figure 2 details the gap between the OSB's current budget for staff and the staff levels required to meet legislated requirements and maintain a consistent amount of compliance over the next four years.



Rising Enforcement Costs

The costs associated with enforcing compliance by trustees and debtors are rising. Trustee discipline actions, investigations and guardianship actions (where the OSB removes the files of a trustee and ensures their administration) are increasing in both frequency and cost. For example, the OSB spent \$625,000 on unplanned guardianship actions in 1995–96 and \$934,000 in 1996–97 and spent \$1.14 million in 1997–98.

In addition, the cost and complexity of investigative actions are rising as the RCMP looks increasingly to the OSB to bear the cost of forensic accountants and other investigative and prosecutorial activities.

Increased Legislative and Regulatory Demands

Since the OSB's mandate is statutory, costs are influenced by legislative and regulatory change, and changes have often affected the OSB's ability to fund compliance activities. For example, recent amendments to the BIA (Chapter 12) were implemented in 1997–98; new regulations and directives, client and trustee training and information sessions, and new internal policies, procedures and computer support packages were prepared to accommodate these legislative changes, with no additional funding to pay for them. As regulatory support costs rise, there is often less funding available for compliance activities.

Increasing Demand for Services

Clients are seeking more and better electronic services and better access to information products and services. For example, clients now have access the name search service, via the Internet, 24 hours a day, 7 days a week. New information services require capital investment and alternative service delivery mechanisms, such as use of private sector service providers, and must be funded from the same budget that funds core compliance activities.

The Need for Full Cost Recovery

Like other departments, Industry Canada saw reductions in its operating budgets as a result of the government's Program Review. Consistent with government policy, Industry Canada is looking to ensure that its services that benefit all taxpayers are funded by appropriations, while those that benefit a distinct, identifiable client base, such as users of the bankruptcy system, are paid for entirely by users.

As outlined in Section I, the current full cost of providing OSB services to clients is estimated at \$22.5 million in 1998–99. Clients pay part of the cost through fees and levies (estimated at \$16 million in 1998–99), while roughly \$6.5 million currently comes from appropriations.

As discussed in the next section, revenues are currently insufficient to cover the level of services and compliance activity associated with current and forecast future workloads (see in particular Table 4).

The OSB is therefore seeking to recover the full cost of services through user fees and to take control of its entire budget, including accommodation, depreciation and corporate overhead costs (now funded through appropriations). This will offer better control of the budget amount devoted to compliance activities.

SECTION III

THE CURRENT FINANCIAL POSITION OF THE OSB

This section examines the current financial situation of the OSB — the revenues and current costs of providing services and the gap between them.

Revenues

In 1997–98 the OSB generated \$16.8 million in revenues from four sources: the Superintendent’s levy, registration fees, name search fees and the trustee licence fee.

A combination of registration fees and the Superintendent’s levy funds the supervision of bankruptcies, proposals and receiverships. Trustee licence fees fund the cost of operating the trustee licence section of the OSB, while information fees, such as the name search fee, fund information services and products for bankruptcy information users. (For more information, see Appendix A.)

Tables 2 and 3 show the percentage change in revenues over the past five years and total revenues and their composition over the past five years.

Table 2
Revenue Totals and Percentage Change by Fiscal Year

	Total revenues (millions \$)	Percentage change from previous year
1993–94	13.6	66.1
1994–95	13.9	2.2
1995–96	15.3	10.1
1996–97	16.6	8.5
1997–98	16.8	1.0

Table 3
Revenue by Type

	1994-95		1995-96		1996-97		1997-98	
	\$ million	% of total	\$ million	% of total	\$ million	% of total	\$ million	% of total
Superintendent's levy	8.8	63.3	9.3	60.8	9.9	59.6	9.9	58.9
Registration fees	4.0	28.8	4.9	32	5.4	32.5	5.6	33.3
Trustee licences	0.4	2.9	0.4	2.6	0.4	2.4	0.4	2.4
Information services	0.7	5.0	0.7	4.6	0.9	5.4	0.9	5.4
Total	13.9	100	15.3	100	16.6	100	16.8	100

In examining OSB's revenue sources, the following trends are apparent:

Superintendent's Levy

- Although the levy is the largest revenue generator, it has been declining steadily as a percentage of total revenues (see Table 3).
- The average levy received on a summary administration file (the vast majority of files are in this category) dropped by 27% over the past three years — from \$52.67 in 1995 to \$44.55 in 1996 and \$38.33 in 1997. The amount of time that files remain open is also increasing; this is significant because the levy is paid only after the file is closed.
- Revenues from the levy are forecast to decline by \$100,000 in 1998-99 and by a further \$200,000 in 1999-2000, mostly because of declines in volume.

Registration Fees

- The number of business bankruptcies fell by 14% in 1997, and further declines are expected in both consumer and business filings over the next 18 months. In addition, recent changes in the bankruptcy and insolvency rules will result in more summary administrations being filed, at a fee of \$50.00 instead of the \$150.00 fee for ordinary administrations. These two factors will result in a decline of \$700,000 in registration fee revenues in 1998-99, and a further \$300,000 decline in 1999-2000.

Information Products

- As the OSB improves the availability and marketing of its information products on the Internet, revenues are forecast to increase by \$200,000 in 1998-99 and by a further \$250,000 in 1999-2000.

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Trustee Licence Fees

Forecasts call for licence revenues to remain unchanged under the existing fee structure.

Table 4
Summary of OSB Revenue Forecasts (under existing fee structures)

	1998-99		1999-2000	
	\$ Forecast	\$ Change	\$ Forecast	\$ Change
Superintendent's levy	9,700,000	-100,000	9,500,000	-200,000
Registration fees	4,900,000	-700,000	4,600,000	-300,000
Information products	1,000,000	200,000	1,250,000	250,000
Trustee licences	410,000	0	410,000	0
Total	16,010,000	-600,000	15,760,000	-250,000

How the OSB Spends

In 1994, the OSB developed a costing model and examined in detail the costs for each of its 10 client services. In addition to identifying all direct salary, operating and capital costs for each service, the costing model also identified other expenses being incurred but not charged to the OSB budget. They included lease costs, departmental common services (finance, administration, human resources), depreciation, cost of capital, and employee benefits and insurances. Using this costing model, Table 5 sets out the estimated full cost of providing services in 1996.

Table 5
Estimated Cost of Providing Services

Service Type	Direct Cost (\$000)	Costs incurred but not charged to the OSB (\$000)*	Full Cost (\$,000)
Consumer bankruptcy, summary	8,812.6	3,114.8	11,927.4
Consumer bankruptcy, ordinary	383.9	135.7	519.6
Business bankruptcy, summary	1,040.7	367.8	1,408.5
Business bankruptcy, ordinary	1,238.3	437.7	1,676.0
Division I proposal	436.1	154.1	590.2
Division II proposal	241.1	85.2	326.3
Receivership	77.0	27.2	104.2
Complaints	346.4	122.4	468.8
Maintenance of professional standards	3,565.9	1,260.4	4,826.3
Information services	264.7	93.6	358.3
Total	16,406.7	5,798.9	22,205.6

*Costs currently incurred but not charged to the OSB include Industry Canada overhead, lease costs, depreciation, employee benefits and insurance, etc.

In addition to the cost analysis, each form of bankruptcy, proposal or receivership was mapped to determine the time and resources required to complete each step in the process. This costing information allows the OSB to determine the resources needed to handle a given volume of filings and to identify unit costs for each service.

Using this costing method, Table 6 details costs and revenue flow for each process in 1996. This table does not include the cost of complaints, maintenance of trustee professional standards, or information products, as they are less amenable to process mapping.

Table 6
Costs and Revenues by Process, 1996

	Total cost (\$000s)	File Volume	Unit Cost (\$)	Registration Fee (\$)	Average Levy (\$)	% of Cost Recovered
Consumer bankruptcy, summary	11,927.4	76,981	155	50	46	62
Consumer bankruptcy, ordinary	519.6	2,554	203	150	462	301
Business bankruptcy, summary	1,408.5	8,521	165	50	46	58
Business bankruptcy, ordinary	1,676.0	5,604	299	150	462	205
Division I proposal	590.2	1,136	520	150	2,829	573
Division II (consumer) proposal	326.3	3,113	105	50	190	228
Receivership	104.2	1,615	65	70	NA	108

The Gap Between Costs and Revenues

The current gap between the full cost of providing OSB services (estimated at \$22.5 million in 1998–99) and revenues (\$16 million) is approximately \$6.5 million.

The analysis of costs, revenues and unit costs reveals that the OSB must deal with two significant funding issues as it moves to full cost recovery:

- The greatest shortfall between costs and revenues occurs with consumer and business summary bankruptcies. This is also the area with the greatest number of files and the greatest potential for continued growth.
- The cost of maintaining professional standards in the trustee community (monitoring, audits, licensing and discipline) far exceeds the revenues generated; even devoting a portion of levy revenues to this activity would not cover the shortfall.

SECTION IV

MAKING THE OSB MORE BUSINESS-LIKE AND EFFICIENT

If the OSB is to become self-financing, both revenues and costs will have to be part of the new funding equation. What has the OSB done to reduce its costs and become operationally more efficient and business-like?

How the OSB has Responded

The OSB has rethought its business framework and restructured itself to ensure it can fulfil its statutory responsibilities with high-quality services that meet client needs and expectations.

The OSB has actively sought ways to reduce costs and rationalize processes. It has focused on becoming more business-like to achieve greater program effectiveness, increase cost efficiencies, and improve the quality of its services. Specifically, over the past few years, the OSB has:

- begun the process of seeking a private sector service provider to deliver insolvency information services and the electronic registration of bankruptcy proceedings, and to handle their 'front-end' paperwork;
- adopted enhanced business principles in its operations, through such initiatives as:
 - a Management Advisory Board to seek independent business advice and expertise from the private sector,
 - a quality assurance review of all district offices,
 - the move to Special Operating Agency status to foster a more client-oriented and accountable business framework, and
 - a new performance measurement system, which will enable the OSB to share information with clients;
- mapped its processes and costed its operations to achieve a better understanding of unit costs and service lines;
- introduced trustee monitoring and intervention programs, with the aim of shifting much of its emphasis from estate/file monitoring to trustee monitoring;
- made significant investments to upgrade its information technology and use of the Internet;

-
- continued to map and re-engineer processes, such as the low-asset, low-issue consumer bankruptcy process, to make them more cost-effective; and
 - begun to re-engineer its compliance frameworks, to find more preventive and cost-effective strategies for ensuring debtor and trustee compliance.

Taken together, it is forecast that these initiatives will reduce OSB's unit costs of supervising bankruptcies and proposals by roughly 20% over the coming five year planning period despite rising workloads, and increasing costs such as government salary settlements. This five year plan will help to ensure that the cost side of the funding equation contributes as much as possible to achieving our goal of self-financing.

SECTION V FUNDING OPTIONS

This section provides an overview of 15 funding options. They are summarized so as to focus discussion on the directions the OSB should take in moving to full cost recovery, rather than the mechanics. To meet the objective of full cost recovery, one revenue generation option, two or more options in combination, or a range of options might be feasible, or readers may wish to recommend other options not described here.

These are preliminary options — none has yet been selected for use by the OSB. They are set out here with the aim of soliciting opinion and commentary from the bankruptcy and insolvency community, to assist the OSB and its chief executive officer in charting a future course of action.

Registration Fee Versus the Levy

The vast majority of the OSB’s compliance and administrative activities are funded through a combination of registration fees and the Superintendent’s levy. The issue of whether a front-end fee (such as the registration fee) is preferable to a fee paid on closing (i.e., the levy) is a key issue in determining how cost recovery should be structured.

Notwithstanding the advantages and disadvantages set out below, readers may wish to consider a combination of registration fees and a levy.

Registration Fee	
Advantages	Disadvantages
<p>Registration fees can be linked more easily to the cost of services.</p> <p>They generate revenue before most tasks have to be carried out and therefore provide operating capital throughout the course of a bankruptcy or insolvency.</p> <p>They are a more predictable revenue source, in that they are less affected by factors outside the OSB’s control, such as changes in tax law and demographic shifts.</p> <p>Registration fee revenue is easier to forecast, because trends in the number of bankruptcies are more predictable than the amount of dividends that will be paid.</p>	<p>Increased reliance on registration fees, which have to be paid at the beginning of the process, may limit the access of low-income debtors to the bankruptcy and insolvency system. This could ultimately hinder the return of assets to the marketplace, hamper debtor rehabilitation, and contribute to social ills.</p>

Superintendent's Levy	
Advantages	Disadvantages
<p>Relying on the Superintendent's levy means that the bulk of the cost of services is paid by estates that can afford to pay (i.e., ordinary administrations and Division I proposals). This gives lower-asset estates access to the insolvency system.</p> <p>Because the levy is based on the amount of dividend distributed to creditors, there is an incentive for the OSB to ensure that maximum dividends are realized.</p>	<p>The levy is paid at the end of the bankruptcy process and bears little relation to the cost of services. Low-asset bankruptcies often require just as much in the way of supervision and complaint resolution services as much larger estates. There is also the underlying question of whether larger estates should be subsidizing smaller bankruptcies.</p> <p>Because payment of the levy is affected by several external factors, many of which lie outside the OSB's control, a situation could arise where the OSB workload is increasing yet dividends and levy amounts are declining. This could occur, for example, if the number of lower-income debtors rose while the number of business bankruptcies fell.</p> <p>The unpredictable nature of levy revenues and the delay in receiving them make resource management difficult.</p>

Options for Increasing Revenues

Seven options for increasing revenues from a levy and/or registration fee are described in the next two tables.

In most of the options, the focus is on consumer bankruptcies (mostly summary administrations), as this is where volume is increasing and where the greatest shortfall between costs and revenues exists. Again, a combination of options, consisting of a blend of levy and registration fees, may be possible.

Table 7

Options for Increasing the Superintendent's Levy

Option 1: Increase the levy on summary administrations (consumer bankruptcies) from 5% to 10%

A doubling of the levy on the first \$1 million of dividends in summary (consumer) administrations would not double the levy revenues received, because many bankrupt estates pay no dividends to creditors and thus no levy. This proposal would, however, increase levy revenue by an estimated \$3.3 million per year (based on 85,300 consumer files annually).

Advantages: As current increases in file volume are largely in summary administrations, this option should ensure that they, not business bankruptcies, pay the additional cost.

Disadvantages: A 100% increase is dramatic, in view of the limited dividends paid out in summary administrations.

Summary administrations would bear a larger proportion of their cost without jeopardizing access to the system.

The additional levy would be paid by the creditors of bankrupt estates rather than required of debtors up-front.

Option 2: Increase the levy on summary administrations to 100% of the first \$200 of dividends

All of the first \$200 of dividends from bankrupt estates that follow the summary administration route (most consumer bankruptcies) would be paid as a levy. No levy would be paid on subsequent dividends. This option would increase the mean levy on summary administrations from \$37.75 to \$100.86, and increase levy revenue by \$5.4 million.

Advantages: Summary administrations as a group would bear a larger proportion of their cost of supervision without jeopardizing access to the system. Further, this would reduce the number of small payments currently made to creditors, which can be costly to administer.

Disadvantages: Creditors of low-asset estates would bear more of the financial burden of the insolvency system, and dividends from these estates would be reduced substantially (to zero in some cases). For example, an estate that currently pays dividends of \$475 (\$500 less a levy of \$25) would yield only \$300 to creditors under this option.

Option 3: Lower the levy on bankruptcies to 2.25%, but impose it on total realized assets, rather than on dividends paid

This option would apply to all types of bankruptcies and would be imposed on total realized assets (i.e., before trustee fees and expenses are paid) rather than on dividends paid to creditors. Because the levy would be based on a much larger dollar value, the rate could be reduced significantly. For example, a levy of 2.25% on total assets realized would produce an estimated additional \$6.2 million in revenue (based on \$708.8 million in realizations in 1997).

Advantages: This option would ensure that all estates pay some levy, even estates that, in the past, had sufficient assets to pay only trustee fees and expenses.

A full 30% of all bankruptcies currently pay no levy because no dividends are paid to creditors. This approach could also act as an incentive for the trustee to search for greater assets in the estate.

Disadvantages: Access to the system by low-income debtors could be jeopardized, as they would be incapable of paying both the new levy and the trustee fee from the limited assets in the estate. Further, this option would likely require a change to the *Bankruptcy and Insolvency Act*.

Option 4: Lower the levy but impose it on all assets realized by secured creditors that use the services of a trustee under the *Bankruptcy and Insolvency Act*

In some cases, secured creditors realize their security 'outside' the bankruptcy, that is, the trustee assumes the dual role of trustee and receiver, and no proof of claim is officially submitted by the secured creditor as part of the bankruptcy. Secured creditors in this situation have generally not been paying the levy, although this point has been subject to various legal cases. If a 0.5% to 1% levy were established to include these assets, it would easily generate the additional levy revenue needed to bridge a \$6–7 million revenue shortfall. Exact calculations on the effects of this option have yet to be done.

Advantages: This option would lower the levy paid by unsecured creditors significantly and would improve the fairness of the insolvency system, as it can be argued that secured creditors who seize assets outside bankruptcy proceedings now receive indirect benefits from a fair and equitable insolvency system but do not pay any of its administrative costs.

Disadvantages: This option would reduce returns to secured creditors, who may not need or want the protection offered by the BIA.

**Table 8
Options for Increasing Registration Fees**

Option 5: Increase the registration fee for summary administrations to \$100

With the expected continuing increase in the volume of consumer bankruptcies in future years, an increase in the registration fee for summary administrations from \$50 to \$100 would generate additional revenues estimated at up to \$4 million per year (based on 85,300 summaries per year).

Advantages: This option would align the registration fee more closely with the cost of services provided in summary administrations and would thus improve fairness in the funding of the insolvency system.

Disadvantages: Could reduce accessibility of the system in cases of low-income, low-asset consumer bankruptcies.

Option 6: Increase the registration fee for all services by 65%

To generate additional revenues of \$4–5 million, all registration fees would have to increase by about 65%. The registration fee for summary administrations and consumer proposals would increase from \$50 to \$82.50; for ordinary administrations and commercial proposals, from \$150 to \$247.50; and for receiverships, from \$70 to \$115.50.

Advantages: Would have less impact on accessibility of the insolvency system for low-income, low-asset consumer bankruptcies, because the registration fee would increase less than under Option 5. Revenues would be received at the time of registration and would thus be a more dependable source of revenue.

Disadvantages: Current subsidization of consumer bankruptcies by other types of insolvency proceedings would continue.

Option 7: Charge a flat registration fee of \$100 for all types of bankruptcies and proposals

Based on 105,000 bankruptcies and proposals, this option would generate \$10.5 million per year, an increase of \$5.5 million in registration fees over the current level.

Advantages: The fee would recognize that in many respects OSB supervision costs are not affected by the type of bankruptcy or insolvency and that in some cases a low-asset consumer estate can require as much supervision as a business estate.

Disadvantages: This increase represents a doubling of the current fee for consumer/summary estates and could affect access to the system by low-income debtors.

Further, it does not recognize that there are some differences in how estates are supervised. For example, more meetings and creditor and debtor examinations are conducted in business/ordinary administrations.

Maintaining Professional Standards

The OSB licenses, monitors, audits, investigates and disciplines trustees to maintain their professional standards. These activities are funded partly by trustee licence fees (currently \$300 for an initial application and \$400 for the annual renewal fee) and partly through the Superintendent's levy.

The cost of licensing and maintaining professional standards far exceeds revenue from licence fees; even when a portion of the levy is devoted to this activity, revenues fall short of costs. In 1996–97, for example, trustee licence revenue amounted to about \$410,600, but more than \$3 million was spent on conservatory measures, trustee discipline, special audits, and investigation above and beyond normal compliance activities. This is a substantial, unplanned expense for an organization with annual revenues of \$16.8 million.

It may be appropriate to continue funding this activity in part through the levy, as supervision of trustees is integral to the integrity of the bankruptcy system. A distinction could be drawn, however, between the cost of routine monitoring and expenses incurred as a result of non-compliance or fraud in specific cases.

Additional revenue could be generated by increasing trustee licence fees. With only 800 active licensed trustees, however, the potential for substantial additional revenue is limited.

Licence fees are of course passed on to debtors and bankrupt estates through the fees trustees charge for their services. Increasing licence fees would thus increase the cost of insolvency. This in turn could reduce access to the insolvency system for low-income debtors and low-asset estates and increase the difficulty of finding affordable trustee services.

The four options identified to increase the funds available for maintaining professional standards are set out in Table 9.

Table 9
Options for Increasing Trustee Licence Fees

Option 8: Increase trustee licence annual renewal fees across the board	
The annual renewal fee could be increased from its current level of \$400. The initial application fee would remain unchanged at \$300. A 50% increase in the renewal fee would generate an additional \$200,000; a 100% increase would generate an additional \$400,000; and a 200% increase would generate \$800,000 in new revenues.	
<i>Advantages:</i> As trustees handle an average of 131 cases per year (105,000 filings divided by 800 active trustees), even a doubling of the fee would add only \$3.05 to the cost of each administration.	<i>Disadvantages:</i> A major increase in the fee could be considered severe. An across-the-board approach does not recognize workload differences between consumer and business bankruptcies, nor does it distinguish between a small, low-volume trustee and a large, high-volume corporate trustee.
Option 9: Base trustee licence fees on the number and type of bankruptcies and proposals administered by the trustee in the previous year	
Trustees would be charged a renewal fee based on the volume and type of estates administered in the previous year. High-volume and/or business bankruptcy trustees would pay a higher fee than low-volume or consumer bankruptcy trustees. Fee structures would be established such that total annual licence fee revenues increased by at least \$400,000.	

Advantages: Fee schedule would be fairer, as it would be a function of the number of cases administered. Higher-volume trustees likely consume more OSB resources than low-volume or consumer trustees and should therefore pay a greater portion of the cost of maintaining professional standards.

Disadvantages: Whether higher-volume trustees or commercial trustees require more discipline, audit, investigation or conservatory measures to protect professional standards has yet to be documented or demonstrated.

Option 10: Impose a surcharge on trustee licence fees based on the cost of discipline and conservatory measures in the previous year

The actual cost of OSB discipline and conservatory measures in the previous year would be used to calculate a surcharge on all trustees, paid at the time of the annual renewal along with the yearly licence fee.

Advantages: Fee would be clearly tied to the level of activity above and beyond normal monitoring and audit functions needed to maintain professional standards. Would provide an incentive for the trustee community as a whole to improve professional conduct.

Disadvantages: Licence costs could vary greatly from year to year, depending on the number of potential infractions identified and the discipline and conservatory measures required. Unpredictability in the amount of the licence fee could impose a financial hardship on some trustees. An across-the-board surcharge could be considered unfair by compliant trustees.

Option 11: Increase the cost of applying for a trustee licence and charge user fees for services now provided to trustees at no additional charge

In addition to increasing the licence application fee from \$300 to \$400, the following charges would be introduced:

- application for individual to practise in their own name, \$150
- application to extend a transfer of a licence to another district, \$150
- list of trustees, \$15
- appeal to Superintendent as unsuccessful candidate at an oral board, \$100
- licence activation charge, \$150
- change of licence status, \$200
- application for Ad Hoc Board, \$250

Estimated revenue from proposed new fees: \$30,000

Advantages: User of the service would pay.

Disadvantages: The administrative cost of charging numerous fees to a relative small client group would be high.

Option 12: Maintain trustee licence fees at the current level but require trustees to post a performance bond or insurance policy of \$1 million

A performance bond or insurance policy, with the OSB as beneficiary, would be used to pay the costs of any discipline and conservatory measures required with respect to estates administered by the trustee. Alternatively, a bond could be deposited with the OSB for each file registered, to be returned on satisfactory closure.

Advantages: Would offset the high cost (currently about \$1,000,000 per year) of conservatory measures and discourage non-compliance with the *Bankruptcy and Insolvency Act*.

Disadvantages: The cost of securing a bond or insurance policy, especially for lower-volume trustees, could be a hardship. In addition, increased effort would be required to administer such a system and to produce the level of proof that would be required before performance bond funds could be confiscated. System would likely result in more litigation by trustees disputing OSB findings and confiscation of performance bonds.

Option 13: Require the creation of an indemnity fund by the Canadian Insolvency Practitioners Association, or through the Office of the Superintendent of Bankruptcy, to be used to pay for trustee discipline actions and conservatory measures

An indemnity fund would be created to provide funding to cover the cost of discipline actions and conservatory measures (and to reimburse creditors for funds missing. The indemnity fund could be administered by the Canadian Insolvency Practitioners Association or the Office of the Superintendent of Bankruptcy. Different options are available to pay for the indemnity fund, including: contributions from trustees; interest earned on trust funds; or contributions from the estates based on (a) a flat fee per estate and/or a percentage of dividends, or (b) a flat fee per estate and/or a percentage of assets realized.

Advantages: An indemnity fund could cover the cost of discipline actions and conservatory measures but could, at the same time, cover some creditor losses following a misappropriation by a trustee. Fees would be established by the administrators of the funds and could be flexible. The fund would enable better control on the timing of a payment than a bond or an insurance policy would. Depending on what the fund would cover, it could generate savings on other insurance policies or bonds which are currently paid for by trustees or estates. It would cover all types of estates; it would increase confidence in the system; and it would provide for the insolvency system and the trustees a mechanism similar to those in place in other industries or professions.

Disadvantages: It is a major change for the trustee community and the creditors. An indemnity fund would require administrative structure (setting up of rules, administration of the fund, establishment of indemnification procedures). Some legal issues would have to be resolved for the power to impose contributions.

Information Services

The OSB offers a name search of its database to confirm the insolvency status of individuals or businesses. The fee for this service, established in 1992, is \$8.00 per request. In 1997-98, name search requests generated revenues of \$900,000. The actual cost of providing this service was closer to \$360,000.

Although the OSB could develop new information products and services, it must be remembered that the OSB plans to have a service provider take over responsibility for developing and

marketing information products, and to use resulting revenues to deliver registration and other non-compliance related services.

<p>Option 14: Increase the number of new information products and services</p> <p>New information products and services could be developed and fees could be charged for information currently available at no charge. After taking into account the cost of development and marketing, these services are expected to generate at least \$1 million per year in new revenue.</p>	
<p><i>Advantages:</i> Considerable potential exists, as the OSB data base contains substantial amounts of information.</p>	<p><i>Disadvantages:</i> Fees could deter businesses or potential investors from using the information to support business decisions.</p>

Other New Services and Fees

The OSB provides several services at no charge. Following the user-pay principle, fees based on the full cost of these services are being proposed. Table 10 lists the services and proposed fee structure.

Table 10
Options for New Fees and Services

<p>Option 15: Establish new fees for existing services and offer new services for which fees would be charged</p>	
<p>Option 15a. Charge for a change in filing status</p> <p>There is no charge at present for a change from a summary bankruptcy (\$50) to ordinary administration (\$150). Charging the extra \$100 would generate about \$75,000 per year.</p>	<p><i>Advantages:</i> Fairer to others who initially filed ordinary administrations. Recognizes the additional costs involved in supervising ordinary estates.</p> <p><i>Disadvantages:</i> Administrative costs associated with implementation.</p>
<p>Option 15b. Establish a new fee for mediation services</p> <p>Under the recent BIA amendments, the OSB must carry out a mediation between the parties (creditor, trustee or debtor) on the issue of the amount of disposable income to be paid into the estate. The OSB intends to charge for this service and could charge as much as \$200 per hour, which is the current rate for some types of mediation services.</p>	<p><i>Advantages:</i> As this is a new service, a fee would be justified to cover its costs. Only those using the service would pay. It could encourage creditors to take mediation seriously and not insist on mediation in unwarranted situations.</p> <p><i>Disadvantages:</i> As this is a new service, it may be too early to establish a fee and predict its impact on revenues. Issues of who should pay need to be addressed, particularly in low-asset estates.</p>

<p>Option 15c. Charge for OSB training and conference services</p> <p>The OSB could charge on a cost recovery basis for training and information sessions and conferences offered to clients and stakeholders.</p>	<p><i>Advantages:</i> Self-funding would promote more of these events.</p> <p><i>Disadvantages:</i> The costs of administration and fee collection. There is also an issue of whether the OSB should be involved or should leave these services to the private sector or trustee associations.</p>
<p>Option 15d. Late charges for overdue client and trustee accounts</p> <p>The OSB could establish a late charge (instead of interest charges) for handling late payments of name search bills, registration fees or remittance of the levy.</p>	<p><i>Advantages:</i> OSB revenue collection and accounts receivable costs would be recovered. Only delinquent parties would be required to pay.</p> <p><i>Disadvantages:</i> Clients or trustees may prefer to pay interest rather than a late charge, as it would normally be less.</p>
<p>Option 15e. A new fee for processing claims against trust accounts</p> <p>The OSB maintains unclaimed dividends and undistributed assets in trust for claim at a later date by the rightful creditor. All claims are examined in detail for validity before funds are released. There is currently no charge for this service, which cost the OSB between \$50,000 and \$60,000 per year. This option would see fees established for each claim submitted.</p>	<p><i>Advantages:</i> Users of the service would pay directly. Also, had this service been provided by the trustee, there would have been a charge for it.</p> <p><i>Disadvantages:</i> Issue of whether it is fair to charge for the release of a creditor's own funds, given that the government can earn interest on the trust fund.</p>
<p>Option 15f. Establish fees for non-statutory services provided by senior bankruptcy officers</p> <p>Fees could be established for OSB officers to provide consultative services, training or information services to clients or trustees. Fees would be on a cost-recovery basis and charged at an hourly rate.</p>	<p><i>Advantages:</i> Additional services could be offered by the OSB at no cost to its compliance activities</p> <p><i>Disadvantages:</i> Limited OSB resources should be applied first to core compliance work, not to optional services.</p>
<p>Option 15g. Other administrative fees</p> <p>The OSB could charge for such things as rental of boardrooms for meetings of creditors, the Insolvency Bulletin or other publications, photocopies or computer runs, setting up new name search accounts, or providing copies of various mailing lists.</p>	<p><i>Advantages:</i> New fees would cover the cost of these services and encourage the OSB to operate in a more business-like manner.</p> <p><i>Disadvantages:</i> Cost of administering a large number of small charges could be prohibitive.</p>

CONCLUSION

Changes made so far by the OSB (Special Operating Agency status, service provider initiative, process efficiencies, cost reductions) have laid the foundation for ensuring that the agency will be in a position to protect the integrity of the bankruptcy and insolvency system well into the next century. But one important component has yet to be put in place. The system will not be sustainable until revenues are sufficient to cover the full cost of efficiently carrying out the OSB's statutory responsibilities and providing services.

This is not the case now. Fluctuating bankruptcy volumes and costs are straining the system. Even after initial cost reductions and efficiency improvements, a shortfall of \$6.5 million in the current fiscal year. Further, if left unchecked, it is expected that fluctuating volumes and revenues, rising workloads due to changes in legislation and growing operations expenses will increase the gap over the coming five year planning period. This situation threatens the capacity of the OSB to remain an effective regulatory force.

Moreover, unless a solution can be found, the shortfall means that fewer resources will be available for essential enforcement of compliance with bankruptcy laws and regulations. If left unremedied, this could lead to an erosion of investor confidence in the bankruptcy system and, ultimately, in the Canadian marketplace.

With no indication that the volume of bankruptcies — in particular, consumer bankruptcies — will decline in the longer term, and with compliance a key concern among clients and stakeholders, the situation must clearly be dealt with now.

A Commitment to Full Cost Recovery

The government has adopted the user pay philosophy, on the grounds that it is unfair to ask taxpayers at large to fund services of benefit mainly to a narrow segment of the population. Services provided by the OSB were identified as suitable candidates for user pay in the government-wide program review process. The OSB thus has a responsibility to ensure that users of its services pay their fair share of the cost of providing those benefits.

The OSB is therefore committed to moving toward full cost recovery for its operations. Seeking advice on how that should be done is the purpose of this paper.

Client and Stakeholder Input

This document gives clients and stakeholders the information they need to begin discussions with the OSB about how best to finance the OSB of the future.

The OSB is open-minded about the means to achieve self-financing. The proposals presented in this paper are genuine options; the OSB has not adopted a position on them, nor does it favour one alternative over the others. To help assess the options, the OSB is seeking the views of clients and stakeholders — those who use the system, work within it, already help to pay for it, and know it best.

Next Steps

Please make your opinions known to the OSB in writing by January 22, 1999. Comments and briefs should be addressed to:

**Superintendent of Bankruptcy
365 Laurier Avenue West, 8th Floor
Ottawa, ON K1A 0C8**

or by fax at: (613) 941-2862

or by e-mail: osb-bsf@ic.gc.ca

Please remember that you can recommend more than one revenue option and/or suggest other options which are not included in this paper. Also, please note that the OSB will also be conducting a limited number of hearings for organizations that wish to make presentations. When making a submission to the Superintendent, please indicate if you would like the opportunity to make a presentation later in January.

Analysis of Client and Stakeholder Input

The input and feedback received will be used to weigh each of the 15 revenue options against a set of user fee principles. The principles are:

- equity: those that benefit from a service should pay for it
- fair share: when the benefits of a service accrue to the entire community, all participants should pay their fair share of the costs;
- simplicity: fees should not be unnecessarily complex;
- public good: fees should support public policy objectives, such as accessibility to the system, debtor rehabilitation and timely return of assets to productive use.

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- value: fees should reflect the cost of providing the service;
 - flexibility: the fee structure should be flexible enough to permit the OSB to respond to future marketplace and client needs.
 - transparency: the rationale, or conceptual basis, for the fee should be evident to clients and stakeholders

Once each option has been analysed against the above principles, the OSB will formulate concrete proposals for consideration by clients and stakeholders. Everyone who submits written comments on this paper will be notified about these proposals and have a further opportunity for input. This in turn will form the basis of recommendations to the Minister on how to amend the *Bankruptcy and Insolvency Act* regulations and/or the *Industry Canada Act* regulations. The OSB aims to complete this process during the fall of 1998, so as to have new fee regulations in place in 1999.

The OSB needs to hear from its clients and stakeholders if it is to establish a funding structure that is fair and can ensure the sustainability of the Canadian bankruptcy and insolvency system. This is your opportunity to contribute to the policies that will take the OSB into the 21st century.

APPENDIX A

BACKGROUND ON THE OSB

Role and Responsibilities

The Office of the Superintendent of Bankruptcy is a Special Operating Agency of Industry Canada. Its role is to protect the integrity and fairness of the bankruptcy and insolvency system. OSB activities provide a framework for debtor rehabilitation, deter fraud in the administration of estates, and ensure a public record of bankruptcy and insolvency proceedings is maintained. The OSB is led by the Superintendent of Bankruptcy, who discharges a wide range of statutory responsibilities under the *Bankruptcy and Insolvency Act* (BIA).

Responsibilities under the BIA are carried out jointly with some 800 licensed private sector trustees, 43 administrators of consumer proposals, and 76 provincial bankruptcy courts.

The OSB employs about 250 people, working in 14 offices across Canada and at headquarters in Ottawa. Its clientele consists of the 105,000 consumer and commercial debtors and more than 1 million creditors involved in bankruptcy and insolvency proceedings each year (an average of 12 creditors per consumer file and 51 per business file).

The OSB's activities and services are based on 10 key responsibilities:

- ***To ensure debtor compliance***, the OSB reviews the statement of affairs; may chair the first meeting of creditors and/or examine the bankrupt under oath; supervises estate administration; responds to complaints; may intervene in the discharge process; and works with the RCMP to investigate and resolve serious infractions.
- ***To ensure trustees are competent***, the OSB licenses trustees; participates in their professional development and the training of potential trustees; provides documentation and information sessions; and oversees trustee performance.
- ***To ensure trustees comply with the BIA, regulations and directives***, the OSB promotes compliance; monitors trustees; reviews all documents filed by the trustee, including statements of receipts and disbursements (including trustee expenses); may intervene in the discharge process; conducts audits; and investigates possible fraud, holds discipline hearings and may suspend or remove a licence and/or initiate an RCMP investigation.

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- ***To ensure information is readily available from the trustee on specific bankruptcies and proposals***, the OSB enforces rules and directives for trustee performance in this area and responds to creditor complaints.
 - ***To ensure that information is available on the bankruptcy process and the bankrupt's rights within the system***, the OSB responds to enquiries and complaints; publishes information in hard copy and on its Web site; and may chair the first meeting of creditors to ensure all parties are aware of their rights and responsibilities.
 - ***To ensure debtors are informed of alternatives to bankruptcy***, the OSB requires that trustees advise debtors of the alternatives to bankruptcy before filing. The OSB monitors trustee documents to ensure compliance. In addition, the OSB publishes a booklet entitled "Dealing with Debt."
 - ***To ensure debtors have access to financial counselling to help avoid future insolvency***, the OSB monitors to ensure that debtors have access to counselling by qualified BIA counsellors.
 - ***To ensure estate administration is complete and thorough and estates are closed in a timely manner***, the OSB registers the estate and monitors all legal proceedings to ensure completeness and timeliness and to detect possible noncompliance with the act; it responds to complaints; it monitors the number of open estates and takes action to ensure they are closed within the time frames specified in the act and rules.
 - ***To ensure the efficiency of the system***, the OSB monitors and maintains the rules, directives, insolvency circulars and administrative policies that underpin the bankruptcy and insolvency system to ensure they are current, cost-effective and relevant to client needs.
 - ***To ensure professional, accurate and impartial information is available***, the OSB maintains 15 offices across Canada. Employees undergo extensive training to obtain the designation of Official Receiver and are available to respond to all client complaints and enquiries in both official languages.

Special Operating Agency Status

To lay the foundation for change, the OSB became a provisional Special Operating Agency (SOA) of the federal government in February 1997. An SOA is an alternative mechanism for delivering government services. SOA status provides increased authority and flexibility to deviate from government-wide rules to deliver client services, provided the agency meets specific, measurable results agreed to in advance.

As an SOA, the OSB can seek the flexibility and authority needed to respond to client needs in the most efficient and cost-effective way, for example, by delivering some of its non-compliance activities through a private sector service provider and expanding its sale of information products on the Internet. SOA status should enable the OSB to operate in a more business-like way, with the freedom to adopt private sector practices where appropriate.

The OSB will also become more transparent in its activities and answerable to its clients. As an example, the OSB will publish its performance measures and an annual report so that clients and the government can review its performance record.

A Management Advisory Board of clients, stakeholders and business leaders will provide business advice and guidance to the Superintendent of Bankruptcy in his capacity as the chief executive officer of the new Special Operating Agency. It will advise on such issues as the OSB's business plan and strategies, its performance from a business perspective, and its communications efforts.

As a Special Operating Agency, the OSB's business and revenue plans, balance sheet, financial statements, and other financials will all be available to the public in a transparent manner. Thus, the bankruptcy community will be able to determine whether the OSB's fee structures and resulting revenues remain reasonable.

OSB Fees

- The **Superintendent's levy** is paid as a percentage of dividends distributed at the close of a bankruptcy. It is the OSB's largest revenue source and represents roughly 59% of total revenues.
- **Registration fees** are charged when the bankruptcy, proposal or receivership is registered. Registration fee revenues are therefore tied to volumes and are the OSB's second largest revenue source, accounting for 33.3% of total revenue in 1997-98.
- The OSB charges an initial fee to register a **trustee licence** and an annual fee to renew a trustee licence.
- Finally, the OSB charges a fee for each **information** inquiry, such as when people use the name search system to determine the status of current and past bankrupts.

The following rate structure is currently in effect:

Registration Fees

Bankruptcy (summary administration)	\$ 50
Bankruptcy (ordinary administration)	\$150
Consumer proposal	\$ 50
Commercial proposal	\$150
Receivership	\$ 70

The *Superintendent's levy* is a percentage of all payments made by the trustee to creditors:

5%	on the first \$1 million
1.25%	on the next \$1 million
0.25%	on amounts in excess of \$2 million

Over the past five years (1992 to 1996) average levies paid have been as follows:

Summary administration	\$ 53.40
Ordinary administration	\$ 346.00
Division I proposal	\$2,124.00
Division II proposal	\$ 193.00

APPENDIX B SUMMARY OF FUNDING OPTIONS

Funding Option	Revenue Potential
Superintendent's Levy Increases	
1. Increase the levy on summary administrations from 5% to 10%	\$3.3 million
2. Increase the levy on summary administrations to 100% of the first \$200 of dividends	\$5.4 million
3. Lower the levy to 2.25%, but impose it on total realizable assets (before trustee fees) rather than dividends paid	\$6.2 million
4. Lower the levy to 1 or 0.5%, but impose it on all realizable assets including all assets realized by secured creditors using a trustee under the BIA	\$6-7 million
Registration Fee Increases	
5. Increase the registration fee on summary administrations to \$100	\$4 million
6. Increase the registration fee for all services by 65%	\$4-5 million
7. Charge a flat \$100 registration fee for all types of bankruptcies and proposals	\$5.5 million
Trustee License Fee Increases	
8. Increase trustee annual renewal fees	\$200,000-800,000
9. Increase trustee licence fees and base them on the number of bankruptcies and proposals handled by the trustee in the previous year	\$400,000+
10. Impose a surcharge on trustee licence fees based on the cost of discipline and conservatory measures in the previous year	\$1 million+

11.	Increase the cost of applying for a trustee licence and charge user fees for services supplied	\$30,000
12.	Maintain trustee licence fees at current level but require trustees to post a performance bond or insurance policy of \$1 million	\$1–2 million in reduced costs
13.	Require the creation of an indemnity fund or bonding system for its membership to be used to pay for trustee discipline actions including conservatory actions	\$1–2 million in reduced costs
14.	Fees for new and existing information services	\$1 million+
15.	Fees for non-statutory services	\$1 million+
	(a) charge for change of filing status	\$75,000
	(b) new fee for mediation services	\$500,000
	(c) new fees for training and conferences	\$10,000+
	(d) late charge for overdue accounts	\$2–5,000
	(e) new fee for processing claims against trust accounts	\$30–40,000
	(f) fees for non-statutory services provided by a senior bankruptcy officer	\$1–10,000
	(g) other administrative fees	\$1–5,000

Service Provider Initiative

The Office of the Superintendent of Bankruptcy has issued, through Public Works and Government Services Canada, a Request for Proposal (RFP) to engage a private sector service provider. A summary of the information contained in the RFP is provided below. The RFP uses a non-traditional procurement process known as Benefit Driven Procurement or Common Purpose Procurement in which vendors provide proposals to deliver on benefits desired by the client, rather than a quote against a detailed specification. The winning vendor then enters into a detailed contract with the client.

Much of the work of the service provider will be concerned with internal matters in the Office of the Superintendent and be transparent to stakeholders and clients. However, some of the initiatives that lead to efficiency gains for the insolvency system at large will require wide consultation before implementation.

You may contact John Armstrong at (613) 941-2605 or armstrong.john@ic.gc.ca for additional information

Copies of the RFP may be obtained through the Government Electronic Tendering Service (GETS) provided by MERX, Telephone 1-800-964-6379, Internet Address: [HTTP://www.merx.cebra.com](http://www.merx.cebra.com)

THE NEED FOR A SERVICE PROVIDER

The Office of the Superintendent of Bankruptcy (OSB) has a long term strategy to link electronically the stakeholders in the insolvency community and the primary users of the services, and to increase efficiency and improve services through the use of electronic commerce. The OSB has a shorter term objective to reduce costs and increase revenues to achieve full cost recovery while continuing to meet its statutory mandate to maintain the integrity of the insolvency system in Canada. As a result of re-engineering activities, the OSB has made a detailed examination of insolvency processes and related products and services that have the potential to be delivered more efficiently by a private sector service provider and therefore allow the OSB staff to concen-

trate on their core work as regulators. While some projects are already underway in the OSB, a lack of sufficient resources to meet the business, financial and technological demands to sustain the required progress necessitates a different approach.

Consequently, the OSB is seeking to select a vendor with the financial viability, business capacity and technical capability to assume the role of a private sector service provider to the OSB, stakeholders and clients to define, design and develop timely, innovative and quality business and technology solutions to support the long term strategy and short term objective.

Although the business of bankruptcy follows a relatively standard set of processes, which are well suited to automation, the OSB, has insufficient financial and human resources to develop and implement the technical infrastructure required to support the transformation. A private sector service provider will provide the technical resources and funding to work towards an electronically linked insolvency community. Beyond technical assistance, certain non-core activities, e.g. bilingual Name Search operations, help-desk management and funds management etc. are all functions which the service provider could deliver.

Initially the service provider would deliver services currently provided by the OSB. For example, the service provider may take on the management of the name search and web site services. However, over time it is anticipated that the service provider could begin delivering a wide range of activities to all insolvency stakeholders. These activities could include other services such as enhanced statistics and electronic transactions between stakeholders and clients.

More specifically, the vendor will be expected to deliver on the following:

- development of a Strategic Technology Plan including the development of a vision, needs analysis and high level implementation plan for the insolvency community with a focus on electronic link-

ages between the stakeholders and major creditors;

- create the infrastructure to facilitate electronic linkages;
- implement electronic registration of bankruptcies between the OSB and trustees;
- administer the operation of the Name Search service, develop new information products, based on insolvency data such as specialized statistics;
- expand the database to include strategic information for policy development;
- develop new electronic applications to support compliance activities;
- administer the operation of a number of non-core activities on behalf of the OSB e.g.: revenue management, including:
 - collection of Superintendents levy
 - collection of registration fees
 - handling of Unclaimed Dividends/ Undistributed Assets
 - fines and court fees

- Name Search fees and billing

- bilingual help-desk operations, including:
 - initially dealing with common/routine inquiries
 - over time, dealing with other aspects of bankruptcy information;
 - web site management
 - webmaster responsibilities for the development and improvement of web site
 - over time, integrate further electronic commerce applications on web site
- over time, develop new value-added transaction services for all insolvency stakeholders.

It must be stressed that the service provider, as an integral part of the *insolvency community*, must deliver its services within the regulatory framework of the Bankruptcy and Insolvency Act and meet established service standards in both official languages. All new services and products that fall within the mandate of the OSB will need to be reviewed and approved by the OSB prior to delivery.

New On-line Insolvency Name Search Service

The Office of the Superintendent of Bankruptcy (O.S.B.) is pleased to introduce a new and easy to use *On-line Insolvency Name Search Service*. This enables users to undertake exhaustive searches of a national insolvency database to determine the status of individuals or corporations under the Bankruptcy and Insolvency Act. This database contains basic estate information on all Bankruptcies and Proposals registered in Canada since 1978 as well as information on all Receiverships registered since January 1993. It also contains information on all petitions. For a nominal fee of \$8, clients can now obtain quick and direct access 24 hours a day, 7 days a week. Our name search service handles an average of 170,000 searches per year. This service is offered in two convenient ways: the new on-line service and our call centre.

This search service will be of interest to banks, trust and finance companies, lawyers and other creditors who often find that they must undertake an extensive credit check of an individual or a corporation. In addition to a traditional credit report, a thorough credit check should always include an insolvency search.

INTERNET INSOLVENCY NAME SEARCH

The new *On-line Insolvency Name Search Service* is always available; eliminating time zone concerns, as clients in western and eastern Canada are no longer constrained by the office hours of our call centre or the different time zones. Also, the user will never have to wait for an operator to become available because the on-line service is always accessible.

To register, interested individuals or firms should access Strategis, Industry Canada's website, before using the O.S.B. Internet Name Search Service. This website is located at <https://strategis.ic.gc.ca> Here, the applicant will be asked to create a Strategis User ID in the language of their choice. It is advised to fill in as many fields as possible. The two most important pieces of information that clients must remember are

their username and password. Keep in mind that both are case sensitive. Clients who are unable to remember their username or password can obtain assistance from the Strategis help desk at 1-800-328-6189. Everyone who undertakes searches at your firm should have a Strategis username.

Once clients have set up their Strategis password and username, the next step is to set up your O.S.B. account. To do so, contact Monique Leclair at (613) 941-9054 to have her link your Strategis username with your new O.S.B. account. Please have one contact per company (i.e. your administrator), however, a firm may have multiple users associated with its account. Once your Strategis username has been linked to your O.S.B. account, you are now connected and ready to use our *On-line Insolvency Name Search Service*, at any time of the day or week. Clients may take advantage of our new credit card module, ideal for one time or low volume users, thereby simplifying your administrative costs. For your convenience, all major credit cards are accepted.

Using the on-line search process is simple because it is very similar to the telephone/fax name search process. Even if you have never used our call centre, all you need to do is log-in to the Strategis site using your Strategis username and password. When you are ready to conduct a name search, log into our website which can be found at <http://osb-bsf.ic.gc.ca>

On-line help screens are available for information should you require assistance on how to do searches.

This service will continue to be free for licensed trustees, in accordance with each trustee's historical usage adjusted annually for changes in filing volumes. All others will be charged \$8 for each group of ten matches, during a given search. A maximum of 100 matches is allowable, therefore it is highly recommended to be as detailed as possible when conducting searches (eg. A search on Wilson, Joseph born

Feb.21, 1961 vs a search on Wilson) At the end of each month an invoice will be sent out to all clients who used the on-line service, unless they have charged the fee to their credit card. Client's account status may be reviewed by selecting the Audit option on the webpage.

To inquire about signing up or setting up an account, or to obtain technical help and assistance contact Monique Leclair at (613) 941-9054.

TELEPHONE/FAX INSOLVENCY NAME SEARCH SERVICE

An alternative to the on-line search service, for those without Internet access, is our call centre. For service on a name search, call the O.S.B.'s Name Search Call Centre at (613) 941-2863 between 8:00AM and 5:00PM eastern standard time, or fax your request to (613) 941-9490. New clients can easily open an account by calling Monique Leclair at (613) 941-9054.

In order to register, applicants are required to provide their full name of the business, the name of the person who is responsible for the payment of accounts, their complete address, telephone and fax number. Having

this information prepared prior to calling accelerates the registration process. A non-numerical password will be given to every new applicant, along with a unique client number. Clients will be billed once a month for their searches.

Performing a search is easy, either call or fax the name search centre. You must provide your unique client number that was assigned to you, as well as your password. To conduct a search simply supply the operator with information on the individual or company. For example, the legal name of the person or the full legal name of the company, and if available, additional information such as the person's date of birth, or the city where the person resided at the time of the insolvency should be provided.

The combination of the existing telephone/fax service with the new *On-line Insolvency Name Search Service*, now makes it easier than ever to obtain up to date insolvency information. The new *On-line Insolvency Name Search Service* is now at your fingertips...let it work for you.

Delegation

OF CERTAIN OF THE SECTION 14.01, 14.02 AND 14.03 POWERS, DUTIES AND FUNCTIONS OF THE SUPERINTENDENT OF BANKRUPTCY PURSUANT TO SUBSECTION 14.01(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*

WHEREAS subsection 5(2) of the *Bankruptcy and Insolvency Act* (the Act) provides that the Superintendent of Bankruptcy (Superintendent) shall supervise the administration of all estates and matters to which the Act applies;

AND WHEREAS by virtue of sections 13 to 13.2 and sections 14.01 to 14.03 of the Act, the supervisory duties of the Superintendent extend to and include the supervision of the licensing as well as of the conduct of trustees;

AND WHEREAS by virtue of paragraph 5(3)(e) of the Act, the duty to supervise trustees includes the duty to make or cause to be made, as the Superintendent deems expedient, investigations into the conduct of a trustee, whether acting as a trustee, as a receiver or as an interim receiver;

AND WHEREAS after making or causing to be made an investigation into the conduct of a trustee, the Superintendent may, on the terms and subject to the conditions referred to in sections 14.01 and 14.02 of the Act, apply disciplinary sanctions against the licence of a trustee, and, in the circumstances referred to in subsection 14.03(2) of the Act, take conservatory measures for the protection of an estate;

AND WHEREAS Parliament has, in sections 6 and 9 and subsection 14.01(2) of the Act, recognized that the Superintendent may require the assistance of others to effectively perform the statutory functions of that office;

AND WHEREAS in its expression of the potential need for the assistance of others subsection 14.01(2) of the Act provides that the Superintendent may, by written instrument and on such terms and conditions as are specified therein, delegate any or all of the Superintendent's powers, duties and functions under

subsection (1), subsection 13.2(5), (6) or (7) or section 14.02 or 14.03 of the Act;

AND WHEREAS it is expedient for the effective supervision of trustees for the Superintendent to delegate certain of the supervisory powers, duties and functions of that office to experienced, senior members of the staff employed in the Office of the Superintendent;

AND WHEREAS **Ginette Trahan**, being the National Director -Compliance, is an experienced, senior member of the staff employed in the Office of the Superintendent;

AND WHEREAS pursuant to subsection 5(1) of the Act Marc Mayrand of Gloucester, Ontario was, by order of the Governor in Council (P.C. 1997-693, April 26, 1997), appointed Superintendent of Bankruptcy effective May 1, 1997;

NOW THEREFORE pursuant to the authority of subsection 14.01(2) of the Act, I, Marc Mayrand, Superintendent of Bankruptcy, hereby delegate to **Ginette Trahan** (the Delegate) of Hull, Québec the following powers, duties and functions of the Superintendent respecting the supervision of trustees which powers, duties and functions are to be exercised in the circumstances and on the terms and conditions as are prescribed by the enabling provisions of the Act and in accordance with such further terms and conditions as are specified below:

1. the subsection 14.01(1) power to make an investigation into the conduct of a trustee;
2. the subsection 14.02(1) power to form the intention to exercise any of the powers set out in subsection 14.01(1);

3. the subsection 14.02(1) duty to send the trustee written notice of the power that is intended to be exercised and of the reasons for the intended exercise of that power; and,
4. subject to prior consultation with the Deputy Superintendent -Programs, Standards and Regulatory Affairs and in the circumstances where the Superintendent makes or causes to be made an investigation pursuant to paragraph 5(3)(e), the subsection 14.03(1) powers to direct,
 - (a) any person to deal with the property of an estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate,
 - (b) any person to take such steps as the delegate considers necessary to preserve the books, re-

cords, data, including data in electronic form, and documents of the estate,

(c) a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction, and

(d) where action in respect of a trustee is being taken under subsection 14.01(1), the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

THIS DELEGATION is made in writing at the City of Ottawa, Province of Ontario, on the 28th day of May 1998.

Marc Mayrand
Superintendent of Bankruptcy

Delegation

OF CERTAIN OF THE SECTION 14.01, 14.02 AND 14.03 POWERS, DUTIES AND FUNCTIONS OF THE SUPERINTENDENT OF BANKRUPTCY PURSUANT TO SUBSECTION 14.01(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*

WHEREAS subsection 5(2) of the *Bankruptcy and Insolvency Act* (the Act) provides that the Superintendent of Bankruptcy (Superintendent) shall supervise the administration of all estates and matters to which the Act applies;

AND WHEREAS by virtue of sections 13 to 13.2 and sections 14.01 to 14.03 of the Act, the supervisory duties of the Superintendent extend to and include the supervision of the licensing as well as of the conduct of trustees;

AND WHEREAS by virtue of paragraph 5(3)(e) of the Act, the duty to supervise trustees includes the duty to make or cause to be made, as the Superintendent deems expedient, investigations into the conduct of a trustee, whether acting as a trustee, as a receiver or as an interim receiver;

AND WHEREAS after making or causing to be made an investigation into the conduct of a trustee, the Superintendent may, on the terms and subject to the conditions referred to in sections 14.01 and 14.02 of the Act, apply disciplinary sanctions against the licence of a trustee, and, in the circumstances referred to in subsection 14.03(2) of the Act, take conservatory measures for the protection of an estate;

AND WHEREAS Parliament has, in sections 6 and 9 and subsection 14.01(2) of the Act, recognized that the Superintendent may require the assistance of others to effectively perform the statutory functions of that office;

AND WHEREAS in its expression of the potential need for the assistance of others subsection 14.01(2) of the Act provides that the Superintendent may, by written instrument and on such terms and conditions as are specified therein, delegate any or all of the Superintendent's powers, duties and functions under

subsection (1), subsection 13.2(5), (6) or (7) or section 14.02 or 14.03 of the Act;

AND WHEREAS it is expedient for the effective supervision of trustees for the Superintendent to delegate certain of the supervisory powers, duties and functions of that office to experienced, senior members of the staff employed in the Office of the Superintendent;

AND WHEREAS *Sylvie Laperrière*, being a Senior Advisor in the Québec City Office, is an experienced, senior member of the staff employed in the Office of the Superintendent;

AND WHEREAS pursuant to subsection 5(1) of the Act Marc Mayrand of Gloucester, Ontario was, by order of the Governor in Council (P.C. 1997-693, April 26, 1997), appointed Superintendent of Bankruptcy effective May 1, 1997;

NOW THEREFORE pursuant to the authority of subsection 14.01(2) of the Act, I, Marc Mayrand, Superintendent of Bankruptcy, hereby delegate to *Sylvie Laperrière* (the Delegate) of Québec, Québec the following powers, duties and functions of the Superintendent respecting the supervision of trustees which powers, duties and functions are to be exercised in the circumstances and on the terms and conditions as are prescribed by the enabling provisions of the Act and in accordance with such further terms and conditions as are specified below:

1. the subsection 14.01(1) power to make an investigation into the conduct of a trustee;
2. the subsection 14.02(1) power to form the intention to exercise any of the powers set out in subsection 14.01(1);

3. the subsection 14.02(1) duty to send the trustee written notice of the power that is intended to be exercised and of the reasons for the intended exercise of that power; and,
4. subject to prior consultation with the Deputy Superintendent - Programs, Standards and Regulatory Affairs and in the circumstances where the Superintendent makes or causes to be made an investigation pursuant to paragraph 5(3)(e), the subsection 14.03(1) powers to direct,
 - (a) any person to deal with the property of an estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate,
 - (b) any person to take such steps as the delegate considers necessary to preserve the books, re-

cords, data, including data in electronic form, and documents of the estate,

(c) a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction, and

(d) where action in respect of a trustee is being taken under subsection 14.01(1), the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

THIS DELEGATION is made in writing at the City of Ottawa, Province of Ontario, on the 28th day of May 1998.

Marc Mayrand
Superintendent of Bankruptcy

Delegation

OF CERTAIN OF THE SECTION 14.01, 14.02 AND 14.03 POWERS, DUTIES AND FUNCTIONS OF THE SUPERINTENDENT OF BANKRUPTCY PURSUANT TO SUBSECTION 14.01(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*

WHEREAS subsection 5(2) of the *Bankruptcy and Insolvency Act* (the Act) provides that the Superintendent of Bankruptcy (Superintendent) shall supervise the administration of all estates and matters to which the Act applies;

AND WHEREAS by virtue of sections 13 to 13.2 and sections 14.01 to 14.03 of the Act, the supervisory duties of the Superintendent extend to and include the supervision of the licensing as well as of the conduct of trustees;

AND WHEREAS by virtue of paragraph 5(3)(e) of the Act, the duty to supervise trustees includes the duty to make or cause to be made, as the Superintendent deems expedient, investigations into the conduct of a trustee, whether acting as a trustee, as a receiver or as an interim receiver;

AND WHEREAS after making or causing to be made an investigation into the conduct of a trustee, the Superintendent may, on the terms and subject to the conditions referred to in sections 14.01 and 14.02 of the Act, apply disciplinary sanctions against the licence of a trustee, and, in the circumstances referred to in subsection 14.03(2) of the Act, take conservatory measures for the protection of an estate;

AND WHEREAS Parliament has, in sections 6 and 9 and subsection 14.01(2) of the Act, recognized that the Superintendent may require the assistance of others to effectively perform the statutory functions of that office;

AND WHEREAS in its expression of the potential need for the assistance of others subsection 14.01(2) of the Act provides that the Superintendent may, by written instrument and on such terms and conditions as are specified therein, delegate any or all of the Superintendent's powers, duties and functions under

subsection (1), subsection 13.2(5), (6) or (7) or section 14.02 or 14.03 of the Act;

AND WHEREAS it is expedient for the effective supervision of trustees for the Superintendent to delegate certain of the supervisory powers, duties and functions of that office to experienced, senior members of the staff employed in the Office of the Superintendent;

AND WHEREAS Ann Speers, being an Advisor in the Toronto District Office, is an experienced, senior member of the staff employed in the Office of the Superintendent;

AND WHEREAS pursuant to subsection 5(1) of the Act Marc Mayrand of Gloucester, Ontario was, by order of the Governor in Council (P.C. 1997-693, April 26, 1997), appointed Superintendent of Bankruptcy effective May 1, 1997;

NOW THEREFORE pursuant to the authority of subsection 14.01(2) of the Act, I, Marc Mayrand, Superintendent of Bankruptcy, hereby delegate to Ann Speers (the Delegate) of Toronto, Ontario the following powers, duties and functions of the Superintendent respecting the supervision of trustees which powers, duties and functions are to be exercised in the circumstances and on the terms and conditions as are prescribed by the enabling provisions of the Act and in accordance with such further terms and conditions as are specified below:

1. the subsection 14.01(1) power to make an investigation into the conduct of a trustee;
2. the subsection 14.02(1) power to form the intention to exercise any of the powers set out in subsection 14.01(1);

3. the subsection 14.02(1) duty to send the trustee written notice of the power that is intended to be exercised and of the reasons for the intended exercise of that power; and,
4. subject to prior consultation with the Deputy Superintendent -Programs, Standards and Regulatory Affairs and in the circumstances where the Superintendent makes or causes to be made an investigation pursuant to paragraph 5(3)(e), the subsection 14.03(1) powers to direct,
 - (a) any person to deal with the property of an estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate,
 - (b) any person to take such steps as the delegate considers necessary to preserve the books, re-

cords, data, including data in electronic form, and documents of the estate,

(c) a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction, and

(d) where action in respect of a trustee is being taken under subsection 14.01(1), the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

THIS DELEGATION is made in writing at the City of Ottawa, Province of Ontario, on the 28th day of May 1998.

Marc Mayrand
Superintendent of Bankruptcy

Delegation

OF CERTAIN OF THE SECTION 14.01, 14.02 AND 14.03 POWERS, DUTIES AND FUNCTIONS OF THE SUPERINTENDENT OF BANKRUPTCY PURSUANT TO SUBSECTION 14.01(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*

WHEREAS subsection 5(2) of the *Bankruptcy and Insolvency Act* (the Act) provides that the Superintendent of Bankruptcy (Superintendent) shall supervise the administration of all estates and matters to which the Act applies;

AND WHEREAS by virtue of sections 13 to 13.2 and sections 14.01 to 14.03 of the Act, the supervisory duties of the Superintendent extend to and include the supervision of the licensing as well as of the conduct of trustees;

AND WHEREAS by virtue of paragraph 5(3)(e) of the Act, the duty to supervise trustees includes the duty to make or cause to be made, as the Superintendent deems expedient, investigations into the conduct of a trustee, whether acting as a trustee, as a receiver or as an interim receiver;

AND WHEREAS after making or causing to be made an investigation into the conduct of a trustee, the Superintendent may, on the terms and subject to the conditions referred to in sections 14.01 and 14.02 of the Act, apply disciplinary sanctions against the licence of a trustee, and, in the circumstances referred to in subsection 14.03(2) of the Act, take conservatory measures for the protection of an estate;

AND WHEREAS Parliament has, in sections 6 and 9 and subsection 14.01(2) of the Act, recognized that the Superintendent may require the assistance of others to effectively perform the statutory functions of that office;

AND WHEREAS in its expression of the potential need for the assistance of others subsection 14.01(2) of the Act provides that the Superintendent may, by written instrument and on such terms and conditions as are specified therein, delegate any or all of the Superintendent's powers, duties and functions under

subsection (1), subsection 13.2(5), (6) or (7) or section 14.02 or 14.03 of the Act;

AND WHEREAS it is expedient for the effective supervision of trustees for the Superintendent to delegate certain of the supervisory powers, duties and functions of that office to experienced, senior members of the staff employed in the Office of the Superintendent;

AND WHEREAS Michael Luftglass, being the Assistant Superintendent - Audit in the Montreal District Office, is an experienced, senior member of the staff employed in the Office of the Superintendent;

AND WHEREAS pursuant to subsection 5(1) of the Act Marc Mayrand of Gloucester, Ontario was, by order of the Governor in Council (P.C. 1997-693, April 26, 1997), appointed Superintendent of Bankruptcy effective May 1, 1997;

NOW THEREFORE pursuant to the authority of subsection 14.01(2) of the Act, I, Marc Mayrand, Superintendent of Bankruptcy, hereby delegate to Michael Luftglass (the Delegate) of Montréal, Québec the following powers, duties and functions of the Superintendent respecting the supervision of trustees which powers, duties and functions are to be exercised in the circumstances and on the terms and conditions as are prescribed by the enabling provisions of the Act and in accordance with such further terms and conditions as are specified below:

1. the subsection 14.01(1) power to make an investigation into the conduct of a trustee;
2. the subsection 14.02(1) power to form the intention to exercise any of the powers set out in subsection 14.01(1);

3. the subsection 14.02(1) duty to send the trustee written notice of the power that is intended to be exercised and of the reasons for the intended exercise of that power; and,
4. subject to prior consultation with the Deputy Superintendent - Programs, Standards and Regulatory Affairs and in the circumstances where the Superintendent makes or causes to be made an investigation pursuant to paragraph 5(3)(e), the subsection 14.03(1) powers to direct,
 - (a) any person to deal with the property of an estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate,
 - (b) any person to take such steps as the delegate considers necessary to preserve the books, re-

cords, data, including data in electronic form, and documents of the estate,

(c) a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction, and

(d) where action in respect of a trustee is being taken under subsection 14.01(1), the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

THIS DELEGATION is made in writing at the City of Ottawa, Province of Ontario, on the 28th day of May 1998.

Marc Mayrand
Superintendent of Bankruptcy

Delegation

OF CERTAIN OF THE SECTION 14.01, 14.02 AND 14.03 POWERS, DUTIES AND FUNCTIONS OF THE SUPERINTENDENT OF BANKRUPTCY PURSUANT TO SUBSECTION 14.01(2) OF THE BANKRUPTCY AND INSOLVENCY ACT

WHEREAS subsection 5(2) of the *Bankruptcy and Insolvency Act* (the Act) provides that the Superintendent of Bankruptcy (Superintendent) shall supervise the administration of all estates and matters to which the Act applies;

AND WHEREAS by virtue of sections 13 to 13.2 and sections 14.01 to 14.03 of the Act, the supervisory duties of the Superintendent extend to and include the supervision of the licensing as well as of the conduct of trustees;

AND WHEREAS by virtue of paragraph 5(3)(e) of the Act, the duty to supervise trustees includes the duty to make or cause to be made, as the Superintendent deems expedient, investigations into the conduct of a trustee, whether acting as a trustee, as a receiver or as an interim receiver;

AND WHEREAS after making or causing to be made an investigation into the conduct of a trustee, the Superintendent may, on the terms and subject to the conditions referred to in sections 14.01 and 14.02 of the Act, apply disciplinary sanctions against the licence of a trustee, and, in the circumstances referred to in subsection 14.03(2) of the Act, take conservatory measures for the protection of an estate;

AND WHEREAS Parliament has, in sections 6 and 9 and subsection 14.01(2) of the Act, recognized that the Superintendent may require the assistance of others to effectively perform the statutory functions of that office;

AND WHEREAS in its expression of the potential need for the assistance of others subsection 14.01(2) of the Act provides that the Superintendent may, by written instrument and on such terms and conditions as are specified therein, delegate any or all of the Superintendent's powers, duties and functions under

subsection (1), subsection 13.2(5), (6) or (7) or section 14.02 or 14.03 of the Act;

AND WHEREAS it is expedient for the effective supervision of trustees for the Superintendent to delegate certain of the supervisory powers, duties and functions of that office to experienced, senior members of the staff employed in the Office of the Superintendent;

AND WHEREAS Evan Deboice, being a Senior Advisor in the Vancouver District Office, is an experienced, senior member of the staff employed in the Office of the Superintendent;

AND WHEREAS pursuant to subsection 5(1) of the Act Marc Mayrand of Gloucester, Ontario was, by order of the Governor in Council (P.C. 1997-693, April 26, 1997), appointed Superintendent of Bankruptcy effective May 1, 1997;

NOW THEREFORE pursuant to the authority of subsection 14.01(2) of the Act, I, Marc Mayrand, Superintendent of Bankruptcy, hereby delegate to Evan Deboice (the Delegate) of Kelowna, British Columbia the following powers, duties and functions of the Superintendent respecting the supervision of trustees which powers, duties and functions are to be exercised in the circumstances and on the terms and conditions as are prescribed by the enabling provisions of the Act and in accordance with such further terms and conditions as are specified below:

1. the subsection 14.01(1) power to make an investigation into the conduct of a trustee;
2. the subsection 14.02(1) power to form the intention to exercise any of the powers set out in subsection 14.01(1);

3. the subsection 14.02(1) duty to send the trustee written notice of the power that is intended to be exercised and of the reasons for the intended exercise of that power; and,
4. subject to prior consultation with the Deputy Superintendent -Programs, Standards and Regulatory Affairs and in the circumstances where the Superintendent makes or causes to be made an investigation pursuant to paragraph 5(3)(e), the subsection 14.03(1) powers to direct,
 - (a) any person to deal with the property of an estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate,
 - (b) any person to take such steps as the delegate considers necessary to preserve the books, re-

ords, data, including data in electronic form, and documents of the estate,

(c) a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction, and

(d) where action in respect of a trustee is being taken under subsection 14.01(1), the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

THIS DELEGATION is made in writing at the City of Ottawa, Province of Ontario, on the 28th day of May 1998.

Marc Mayrand
Superintendent of Bankruptcy

Delegation

OF CERTAIN OF THE SECTION 14.01, 14.02 AND 14.03 POWERS, DUTIES AND FUNCTIONS OF THE SUPERINTENDENT OF BANKRUPTCY PURSUANT TO SUBSECTION 14.01(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*

WHEREAS subsection 5(2) of the *Bankruptcy and Insolvency Act* (the Act) provides that the Superintendent of Bankruptcy (Superintendent) shall supervise the administration of all estates and matters to which the Act applies;

AND WHEREAS by virtue of sections 13 to 13.2 and sections 14.01 to 14.03 of the Act, the supervisory duties of the Superintendent extend to and include the supervision of the licensing as well as of the conduct of trustees;

AND WHEREAS by virtue of paragraph 5(3)(e) of the Act, the duty to supervise trustees includes the duty to make or cause to be made, as the Superintendent deems expedient, investigations into the conduct of a trustee, whether acting as a trustee, as a receiver or as an interim receiver;

AND WHEREAS after making or causing to be made an investigation into the conduct of a trustee, the Superintendent may, on the terms and subject to the conditions referred to in sections 14.01 and 14.02 of the Act, apply disciplinary sanctions against the licence of a trustee, and, in the circumstances referred to in subsection 14.03(2) of the Act, take conservatory measures for the protection of an estate;

AND WHEREAS Parliament has, in sections 6 and 9 and subsection 14.01(2) of the Act, recognized that the Superintendent may require the assistance of others to effectively perform the statutory functions of that office;

AND WHEREAS in its expression of the potential need for the assistance of others subsection 14.01(2) of the Act provides that the Superintendent may, by written instrument and on such terms and conditions as are specified therein, delegate any or all of the Superintendent's powers, duties and functions under

subsection (1), subsection 13.2(5), (6) or (7) or section 14.02 or 14.03 of the Act;

AND WHEREAS it is expedient for the effective supervision of trustees for the Superintendent to delegate certain of the supervisory powers, duties and functions of that office to experienced, senior members of the staff employed in the Office of the Superintendent;

AND WHEREAS **Patricia Alferez**, being a Senior Advisor in the Montréal District Office, is an experienced, senior member of the staff employed in the Office of the Superintendent;

AND WHEREAS pursuant to subsection 5(1) of the Act Marc Mayrand of Gloucester, Ontario was, by order of the Governor in Council (P.C. 1997-693, April 26, 1997), appointed Superintendent of Bankruptcy effective May 1, 1997;

NOW THEREFORE pursuant to the authority of subsection 14.01(2) of the Act, I, Marc Mayrand, Superintendent of Bankruptcy, hereby delegate to **Patricia Alferez** (the Delegate) of Montréal, Québec the following powers, duties and functions of the Superintendent respecting the supervision of trustees which powers, duties and functions are to be exercised in the circumstances and on the terms and conditions as are prescribed by the enabling provisions of the Act and in accordance with such further terms and conditions as are specified below:

1. the subsection 14.01(1) power to make an investigation into the conduct of a trustee;
2. the subsection 14.02(1) power to form the intention to exercise any of the powers set out in subsection 14.01(1);

3. the subsection 14.02(1) duty to send the trustee written notice of the power that is intended to be exercised and of the reasons for the intended exercise of that power; and,
4. subject to prior consultation with the Deputy Superintendent - Programs, Standards and Regulatory Affairs and in the circumstances where the Superintendent makes or causes to be made an investigation pursuant to paragraph 5(3)(e), the subsection 14.03(1) powers to direct,
 - (a) any person to deal with the property of an estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate,
 - (b) any person to take such steps as the delegate considers necessary to preserve the books, re-

cords, data, including data in electronic form, and documents of the estate,

(c) a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction, and

(d) where action in respect of a trustee is being taken under subsection 14.01(1), the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

THIS DELEGATION is made in writing at the City of Ottawa, Province of Ontario, on the 28th day of May 1998.

Marc Mayrand
Superintendent of Bankruptcy

Her Majesty the Queen against Marshall Sone

0062/98 NJ

IN THE ONTARIO COURT (GENERAL DIVISION)

CANADA)	HER MAJESTY THE QUEEN
)	
PROVINCE OF ONTARIO)	against
)	
TORONTO REGION)	MARSHAL SONE

1. MARSHALL SONE stands charged that he during the period from and including the 1st day of March in the year 1989 to and including the 30th day of November in the year 1993, at the Municipality of Metropolitan Toronto, and elsewhere in the Province of Ontario, being a trustee of monies for the benefit of the creditors of the bankruptcy estates administered by Marshall Sone Receiver and Trustee Limited, with intent to defraud and in contravention of his trust, did convert monies, to a use that was not authorized by the trust, contrary to the Criminal Code.

PLEA: GUILTY

VERDICT: GUILTY

SENTENCE: PER MR. JUSTICE HAMILTON: Fine ordered in the amount of \$10,000.00 to be paid in 3 years or 6 months imprisonment in default of payment.

DATE: MAY 25, 1998

THE INSOLVENCY INSTITUTE OF CANADA
L'INSTITUT D'INSOLVABILITÉ DU CANADA

Prize in Insolvency Research

The Insolvency Institute of Canada, a non-profit corporation organized to recognize and promote excellence in the field of insolvency, is pleased to announce the Institute's 1998 *Prize in Insolvency Research*. The *Prize in Insolvency Research* will recognize and reward outstanding research and analysis in the fields of insolvency and creditors' remedies. The winner of the Grand Prize will be invited to present their paper at the Institute's 1999 Annual General Meeting and Conference. The Grand Prize is accompanied by a \$2,000 honorarium. In addition to the Grand Prize, there will be three Silver Medal Prizes with honoraria of \$1,000 each and six Bronze Medal Prizes with honoraria of \$500 each.

Submissions for the *Prize in Insolvency Research* should be on insolvency, creditors' remedies or secured transaction topics and will be judged by a Panel of Members of The Insolvency Institute of Canada. Emphasis will be on comprehensiveness and creativity in analyzing insolvency-related topics. Contributions should be a minimum of 2500 words in length. All submissions will become the property of The Insolvency Institute of Canada and may be selected for inclusion in the Institute's Insolvency Database.

For additional details and entry forms, please contact:

David S. Ward

c/o The Insolvency Institute of Canada

Suite 2100, 40 King Street West, Toronto, Ontario, M5H 3C2

Fax: 416-360-8877, E-mail: dward@casselsbrock.com

Why Are Personal Bankruptcies Rising?

Personal bankruptcies were at record-high levels in Canada, reaching 79 631 in 1996, a 22% increase from 1995. This upward climb was puzzling because Canada was and is still experiencing firm economic growth. Business bankruptcies, for their part, declined by 13% in the first seven months of 1996, while the number of personal bankruptcies rose 12% in the same period.

To better understand this phenomenon, the Office of Consumer Affairs commissioned COMPAS Research and the Centre for Policy and Program Assessment at Carleton University to conduct a study on the causes of insolvency. The researchers polled 1 094 people in all regions of Canada who had approached a bankruptcy trustee during March and April 1997 about protection from their creditors. The last Canadian survey in this area was done 20 years ago, while the last major American study was conducted in 1981. As well as covering new ground, the current study asked the same questions as its predecessors to identify changes over the last two decades.

WHO IS GOING BANKRUPT?

A possible explanation for the rising trend in personal bankruptcies is that over the last 20 years, women, students and self-employed Canadians have been able to accumulate and sustain debt and, consequently, are adding to the pool of potential debtors at risk. While there may be other groups requiring equal consideration, these three were identified to allow comparisons to previous research.

Women form a greater proportion of people in bankruptcy than ever before: 41% today compared to 25% two decades ago. It may be that the increased economic independence of women has contributed to this change in the pool of potential debtors. This is consistent with the greater participation of women in the labour force and the greater access to credit they have as a result. Another factor may be that there are

more single-parent families, many headed by women, than there were 20 years ago.

Students now face larger debt loads than their predecessors. The dollar volume of federal and provincial student loans nearly tripled between 1990 and 1995. In addition, students often face unemployment, underemployment and volatile incomes after graduation, all of which affect their ability to pay down their loans. About 25% of survey respondents reported having student loans and 10% reported student-loan debt as a major event triggering their insolvency. In contrast, less than 1% of people facing bankruptcy 20 years ago had student loans.

Self-employed individuals and those involved with small businesses also form a large proportion of the Canadians who declare personal bankruptcy. Although 10% of the sample reported self-employment as their major source of income at the time of insolvency, almost 25% reported being self-employed in the past five years. The self-employed also had a median level of debt that was 2.5 times greater than that of other respondents (\$50 000 compared to \$20 000).

WHAT TRIGGERED THE INSOLVENCY?

A vast majority of respondents (85%) indicated that there were specific events or debts that triggered their insolvency. By far the largest factor, cited by 25% of respondents, was a decline in income due to the loss of a job. Student loans, marital disruption, credit-card debt, creditor "harassment" and the person's inability to repay loans (resulting from excessive debt service payments) all figured prominently in the list of contributing factors.

In addition to the immediate triggers for bankruptcy, respondents were also asked to rank important contributing factors. Heading the list were "not enough work" and "too much borrowing or credit-card use," which were seen as important by 53% and 50% of the respondents, respectively.

DID RESPONDENTS HAVE ANY ALTERNATIVE TO BANKRUPTCY?

The survey results suggest that there was little choice for most respondents but to declare bankruptcy to remedy their financial situation.

Many of the respondents had experienced some financial instability or reduction in income as long as two years before filing for bankruptcy. Almost half of the respondents reported receiving either Employment Insurance or Social Assistance in the previous two years (see illustration). The fact that respondents received income from these sources indicates that their income was low or had changed significantly.

In addition to demonstrating that they were eligible for assistance from various government programs, many respondents also failed a key market test. Two thirds of respondents reported applying for credit in the two years prior to bankruptcy. Of those, a full 63% were turned down by would-be creditors.

Given the individual's expected income and current debts, potential creditors had determined that these individuals could not sustain additional debt.

When it did become clear to respondents that they were, indeed, in serious financial difficulty, nearly all (93%) took various actions to try to avoid getting into worse trouble. Two thirds said they reduced their level of spending, one half renegotiated their debts with creditors and 44% consolidated their loans. Approximately one-in-five either took a second job or obtained professional credit counselling. Only 7% indicated that they took no action at all to avoid bankruptcy.

A majority of the respondents (59%) also resorted to other measures to restructure their existing debts. Heading the list by a wide margin was the use of credit cards to pay down other debts (39%). Although this activity can be counterproductive (because of the high interest rates on some credit card balances), many seem to view it as a last-ditch effort to buy time until they can re-establish their income or sell an asset. A sizable proportion of respondents liquidated assets, by either cashing in an RRSP (17%) or selling their home (8%). Others used alternative financing arrangements to fund major assets, including leasing a car (13%) and purchasing something without a down payment (10%).

This evidence suggests that the only option left for many of the respondents to address their financial situation was to declare bankruptcy. Many of the respondents were in unsound financial positions as long as two years before bankruptcy. In addition, almost all made efforts to try and meet their financial obligations, even if those actions were not effective.

WHAT ARE CURRENT ATTITUDES TOWARD BANKRUPTCY?

The survey explored the perceptions people have of bankruptcy. In particular, respondents were asked to comment on the perceived impact of declaring bankruptcy.

- Almost half (46%) believed that bankruptcy is “more acceptable now than it was 10 years ago.”
- Almost half (47%) saw bankruptcy as being “a financial decision like any other.”
- The majority of respondents (57%) agreed with the statement, “Bankruptcy is a way to start over and to overcome past misfortunes.”
- One quarter (26%) of the respondents thought that bankruptcy was a “sign of personal failure,” while 47% believed that “others look down on it.”

Almost three quarters of respondents thought that declaring bankruptcy would have a large effect on their ability to borrow in the future. Only 17% were neutral on this point, while the remaining 8% thought that bankruptcy would not have a large effect. This suggests that people strongly believe that a negative mark will be placed on them by potential creditors following bankruptcy.

For several reasons, it is not possible to draw conclusions about whether changing attitudes could explain some of the increase in the number of personal bankruptcies. First, there is no benchmark against which to identify changes in attitudes towards insolvency, let alone the affects of attitudes on the decision to file for bankruptcy. Second, there was no attempt in the survey to identify the motives of individuals faced with insolvency. Third, contingent factors, such as from whom the individual first heard about bankruptcy, could have a significant impact on an individual's attitude. For example, in this survey, 62% of respondents found out about bankruptcy as an option from “family” or “friends” — presumably people whose opinions the individual respected.

Based on the evidence so far, it is premature to come to any firm conclusions about whether attitudes affect a person's decision to declare bankruptcy.

THE EVIDENCE SO FAR

The causes underlying the current rise in the number of personal bankruptcies require further investigation, but some observations can be drawn from the preliminary survey findings.

First, a portion of the large increase in consumer bankruptcies may be explained by a growing pool of certain kinds of debtors, namely women, students and self-employed Canadians. Greater debt loads among these groups are related to underlying changes in Canadian society and the economy. Many of these developments, greater access to credit in particular, are positive on balance. With them, however, comes an unfortunate consequence — a higher level of personal bankruptcies.

Second, most people who face bankruptcy experience a specific event or debt that triggers the insolvency. Most often, in this survey, that trigger is a decline in income due to the loss of a job.

Student loans, marital disruption and credit-card debt are also common factors.

Third, the vast majority of people surveyed did not have an alternative to bankruptcy. Nearly two thirds of respondents demonstrated that, prior to bankruptcy, they had experienced serious financial difficulties. And, regardless of the reasons for their troubles, more than 9 in 10 took concrete actions to try to avoid bankruptcy.

Fourth, the evidence for changing attitudes as a cause of rising bankruptcy rates is inconclusive. On the one hand, almost 50% of respondents believe that bankruptcy is "more acceptable now than it was 10 years ago." On the other, 47% believed that "others look down on it."

The study is available by visiting the Office of Consumer Affairs Web site (<http://strategis.ic.gc.ca/oca>).

This document and other bulletins are available on Industry Canada's corporate Web site: <http://info.ic.gc.ca>.

For more information, please contact:

Keith Robinson

Tel.: (613) 952-2951

Fax: (613) 952-6927

E-mail: robinson.keith@ic.gc.ca

Business Bankruptcy Study

According to a recent study, firms go bankrupt in Canada primarily because their managers lack the experience, know-how, or vision to run their businesses. It is not for want of sophisticated management techniques: it is the lack of ability to master the basics.

The study entitled - *Failing Concerns: Business Bankruptcy in Canada*, examines the causes and symptoms of corporate bankruptcy and looks at measures that might have prevented a bankruptcy from occurring.

Data came from the Survey on the Characteristics of Bankrupt Firms, conducted from March 1 to August 31, 1996, covering 1,085 companies. It was done with the co-operation of bankruptcy trustees who responded in detail to a questionnaire on the characteristics of bankrupt firms. Given the fact that trustees are assigned by law to each case of bankruptcy, they are closely involved with the failing firm and, as part of their duties, develop detailed knowledge of the situation facing these firms, as well as their management style.

This study is the third in a series on small and medium-sized enterprises conducted by the Micro-economics and Analysis Division of Statistics Canada. The first, *Strategies for Success*, was released on February 18, 1994. The second, *Successful Entrants: Creating the Capacity for Survival and Growth*, was released on May 8, 1997.

This new study confirms that for bankrupt companies as a whole, the most fundamental internal problems are related to poor overall management skills. In particular, these included management's lack of knowledge, lack of vision, and inadequate use of outside advisors.

A second key deficiency occurred in the area of financial management. Seven out of 10 firms failed because of bad financial planning. Three particular problems cropped up regularly: an unbalanced capital structure, an inability to manage working capital, and undercapitalization.

It is sometimes suggested that Canada's financial sector may not do enough to help small young firms to get started. This study found that bankrupt firms did often encounter roadblocks to capital at financial institutions. However, these barriers were almost always associated with Internal management shortcomings. In particular, a large proportion of firms that had a difficult time raising external capital also lacked the know-how to pursue different financing options.

Problems in securing different types of capital were often related. For example, firms that were unable to get capital because of roadblocks at financial institutions were also unable to raise enough resources to pursue various financing options.

BANKRUPTCY COSTS THE ECONOMY BILLIONS OF DOLLARS A YEAR

In 1993, about 3,700 incorporated businesses failed in Canada, with liabilities totaling \$4.1 billion. Much of the money forfeited is owed to Canadian banks, the largest creditors for Canadian businesses. However, Canadians also felt the costs of bankruptcy through the loss of jobs. Half of bankrupt firms had between one and nine employees when they failed.

Between 1992 and 1996, corporate bankruptcies made up only 28% of all business bankruptcies, but they accounted for about 65% of total business liabilities arising from bankruptcy. The average corporate bankruptcy had liabilities of \$1.3 million - five times the average of \$260,000 for non-corporate business bankruptcies.

The number of bankruptcies nearly doubled from 1985 to 1995, while the business population increased only by half. The result has been an increase in the incidence of bankruptcies from 10 failures per 1,000 businesses in 1980, to 14 per 1,000 in 1995.

The services sector recorded the highest increase in business bankruptcies in the early 1990s. At greatest risk of failure were firms in finance, insurance, and real estate, as well as other service industries such as business services and accommodation, food, and

beverages. In 1995, firms in these industries represented the largest number of bankruptcies — 4,610, or 35% of the total.

Small, young firms are most at risk, primarily because their management has not yet built up the experience and knowledge necessary to run a business. Over half the new firms that fail in the first 10 years of life do so within the first 2 years of operation. More than half of younger firms, those less than 5 years old, had a senior manager who had worked as a manager for less than 5 years.

WHY FIRMS FAIL: INTERNAL AND EXTERNAL FACTORS

Many firms in Canada went bankrupt because of external factors beyond their control. The top three external causes of bankruptcy were uniform for all industries — an economic downturn, increases in competition and the loss of key customers.

On the other hand, bankruptcies also occurred because of internal problems, rooted primarily in management shortcomings. The three internal shortcomings most frequently cited involved general management skills, financial planning and management, and marketing capabilities.

The impact on firms when these internal and external factors combined varied with the age of the company. Young firms (those that incorporated in the 1990s) were more likely to report that internal factors played a greater role in bankruptcy than external factors. Older firms reported exactly the opposite.

In the early stages of a firm's life, internal shortcomings are so prevalent that most bankruptcies occurred because of them. As firms mature, many of these internal competencies improve. At this stage, external shocks begin to play a larger role.

Just over half of firms went bankrupt because they did not develop the necessary internal competence to survive an external shock. Bad management skills were generally less of a factor in firms that failed for external reasons. However, managerial shortcomings — lack

of vision, initiative, flexibility and adaptability — compounded external factors.

This study showed that a strong financial structure is critical for all firms, whether for building internal competence or protecting against external shocks. Another critical factor is marketing. Poor pricing policy was the most important marketing problem for firms that failed due to internal reasons.

AVERTING BANKRUPTCY: WHAT CAN BE DONE

As it turns out, the causes of bankruptcy involved such fundamental problems that the majority of bankrupt firms would not have been capable of surviving even if management had taken appropriate actions when the firm began to run into serious difficulties. However, some firms might have been given new life if certain preventative measures had been taken somewhat earlier. First, it is important to raise additional equity. About half of the firms might have been able to avoid bankruptcy had they raised additional capital earlier. An ounce of prevention is indeed worth a pound of cure.

One way to evaluate the financial side of a firm is to look at the extent to which others value it; in particular, how willing they are to invest in the firm. Consequently, the importance of equity to survival becomes self-evident. Managers must be trained in general and financial management so they can demonstrate the worth of the firm by attracting investors.

Second, about four in every ten firms might have avoided failure had they turned to an outside consultant for help in offsetting managerial shortcomings. For about one-third of firms trustees suggested renegotiating with debt holders or suppliers.

The publication *Failing Concerns: Business Bankruptcy in Canada* (61-525-XPE, \$30) is available through Statistics Canada.

For further information on this release, contact John R. Baldwin (613-951-8588), Director, Micro-economics Analysis Division.

Update Re: Exempt Property

Last year, in our 1st trimester 1997 issue, we published a report on the principal exemptions provided by provincial and federal legislation, with regard to the seizure of property (**Property Exempt from Attachment or Seizure**, Vol. 17, No. 1, pp. 21-28). Since then, several important changes have been made to the exemption limits provided in British Columbia's legislation.

The revised entry for British Columbia's **Court Order Enforcement Act** appears below:

BRITISH COLUMBIA

Court Order Enforcement Act, R.S.B.C. 1996, c. 78, sections 71 to 72: amended by the **Miscellaneous Statutes Amendment Act**, 1997, S.B.C. 1997, c.27, sections 1 to 10.

*** The following sections refer to the **Court Order Enforcement Exemption Regulation (B.C. Reg. 28/98)**: Effective May, 1, 1998.

Personal property:

- Section 2 provides exemptions for \$4,000 of household furnishings and appliances, and \$10,000 of tools and other personal property used to earn income from the debtor's occupation, as well as for \$5,000 in value from one motor vehicle (or \$2,000 if the debtor is in debt for family maintenance arrears).

Principal residence:

- Section 3 provides an exemption for equity in the debtor's principal residence up to a value of \$12,000 (if located within the Capital Regional District or the Greater Vancouver Regional District), or \$9,000 (if located elsewhere in the province).

Customized Year 2000 Awareness

WHAT IS THE YEAR 2000 "MILLENNIUM BUG"?

The Year 2000 problem or millennium bug as it is often referred to, originates from software and microchips that use two digits instead of four to represent a calendar year. When the year changes from 1999 to 2000, technology that uses two digits will change from 99 to 00. This could have serious consequences. Computer programs may misinterpret 00 as 1900 and give incorrect data or stop working altogether.

Virtually every business with a microchip could be affected. And it's more than just computers that will have problems - portable daytimers, security systems, phone systems, production equipment, elevators, basic infrastructure services like hydro - these can all be negatively impacted and result in widespread business disruptions on January 1, 2000.

NOT JUST A PROBLEM FOR BIG BUSINESS

Many small and medium size businesses in Canada think that the Year 2000 problem will only affect large companies with complex networks and customized software packages. The reality is, whether you have three PCs or 300, the millennium bug can potentially cripple any business' computer, operating system, software and networks, as well as jeopardize vital links with customers, business partners and suppliers.

YEAR 2000 FIRST STEP

Student Connection Program of Industry Canada and the Canadian Imperial Bank of Commerce have joined forces to help Canadian small and medium size businesses take the important first step towards Year 2000 compliance.

Together, we have developed Year 2000 First Step - a program designed to evaluate your business' unique

Year 2000 challenges and help get you on your way to being "Y2K ready".

GET A CUSTOMIZED YEAR 2000 ASSESSMENT

Give your business a fully customized, hands-on assessment by one of our specially trained university or college students. He/she will go to your workplace, assess your computer system and software, and discuss ways that you can prepare for the Year 2000. Each assessment includes:

- Year 2000 awareness: what the Year 2000 means to your company's technology and business relationships
- Inventory of computer system
- Simple diagnosis of the software and hardware on up to ten (10) PCs
- A review of your business risks
- A detailed report and suggested action plan

Each one-day assessment is \$195, which includes an assessment of software and hardware on up to ten (10) PCs. Each additional assessment is \$15.

As the name implies, Year 2000 First Step is only one of the number of stages a company must go through to prepare its computer systems for the Year 2000. The program will not completely solve all Year 2000 issues, however, it will get you one step closer to Y2K readiness.

For further information please visit the following Web site address: www.scp-ebb.com

You can also call the following number for a complete list of programs offered by the Student Connection Program: 1-888-807-7777.