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INSOLVENCY BULLETIN

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

The objective of the *Insolvency Bulletin* is to promote communication and strengthen ties between the Office of the Superintendent of Bankruptcy and insolvency professionals. The *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

The year 2000 is shaping up to be a very busy one for the OSB and it looks like we will be facing a considerable number of challenges. On the one hand, the projects we started in 1999 will carry on normally; on the other, new business initiatives are already being planned. I would like to take this opportunity to update you on the overall situation of the initiatives which are currently underway, as well as the main items we will be dealing with in the months ahead.

NATIONAL INSOLVENCY FORUM

Last spring, the OSB organized a series of meetings as part of the National Insolvency Forum. This event proved to be a tremendous success — more than 300 participants attended the six meetings held in cities across Canada. The Forum was designed as part of an overall consultative process to allow the various stakeholders to express their concerns and explore ways of making insolvency procedures more efficient and effective. As a result of these meetings, a total of 283 suggestions on various aspects of insolvency were submitted.

A national report containing a compilation of the various suggestions grouped by theme is enclosed with this issue.

OSB STAFF CHANGES

During 1999, there were some major senior management changes at OSB headquarters. Heads were named for a number of the OSB's decisional sections.

Accordingly, I am pleased to announce that Alain Lafontaine has been appointed as Deputy Superintendent, Programs, Standards and Regulatory Affairs, Ginette Trahan has been appointed as Deputy Superintendent of Operations and Gene Assad has been appointed as the OSB's Litigation Coordinator.

Mr. Lafontaine is a member of the Quebec Bar since 1986. After three years in private practice,

Mr. Lafontaine joined the Department of Justice as a Legal Advisor and held the position of Coordinator, Aboriginal Law, Civil Litigation and Real Property (Quebec) Section. As an attorney for the Department of Justice, Mr. Lafontaine has represented the Crown in litigation relating to administrative law, civil liability and aboriginal law. He has also represented the OSB in numerous litigation files. In his appointment as Deputy Superintendent, Programs, Standards and Regulatory Affairs, Mr. Lafontaine will be responsible, in particular, for trustee discipline, regulatory affairs, the trustee licensing process (issuance and maintenance of licences) and legal matters.

Over the last 10 years, Ms. Trahan has acquired extensive experience in various functions both at headquarters and with the regional offices. Her new duties include: overall management of operations; reviewing compliance programs; and preparing the Operations Section for installation of new information technology systems.

Mr. Assad worked for more than 10 years as the Attorney General's Prosecutor in Quebec before becoming Director General of Special Investigations with the Canadian Security Intelligence Service. Since 1994, he has been the Attorney General's Prosecutor with the Competition and Consumer Law Division. Mr. Assad will be responsible for the effective coordination of all OSB legal services, both litigious and non-litigious.

SERVICE PROVIDER INITIATIVE (SPI)

Over the last few months, the OSB has commenced negotiations with a provider who is capable of meeting the specific requirements for the implementation of the SPI. The initial deadline for concluding such an agreement with this provider was the end of 1999. A number of additional concerns have delayed the conclusion of this agreement. The OSB is however confident that an agreement will be concluded in the near future.

In order to bring this final part of the negotiating process to completion, François Gouin was appointed as Special Advisor to the Superintendent. Mr. Gouin will act as intermediary between the various stakeholders, the OSB, and the service provider. He will oversee the negotiations, which are already under way. He has vast experience in the insolvency field, having been a bankruptcy trustee since 1980 and partner and insolvency professional with KPMG in Montreal.

I refer our readers to the progress report published in this Bulletin. The report explains the work which has been done to date as well as the steps that will be taken.

TRUSTEE COMPLIANCE STRATEGY

One of the goals in pursuing the SPI, as I have already mentioned elsewhere, is to enable the OSB to focus its existing resources on tasks and activities that are more directly linked to its mandate, particularly those arising from its status as a marketplace regulator. In this regard, the OSB has developed an integrated Trustee Compliance Strategy. However, this Strategy will have to be implemented in a way that allows for uniform assessment of trustee performance across the country in order to maintain existing high standards in bankruptcy estate administration. The OSB fully intends to prevent, detect and eliminate all non-compliance.

This initiative has already been implemented in OSB regional offices. It will be fully operational nationwide as of April 2000, after all the information collected has been entered into a new database designed to produce a report on overall trustee performance.

FUNDING MECHANISMS

The previous issue of the *Insolvency Bulletin* (4th quarter 1998 and 1st and 2nd quarters 1999) contained feedback from various clients and stakeholders on the *Meeting the Challenge* discussion paper that dealt with proposed funding mechanisms. Interested parties were then invited to take part in a further round of consultations to submit a final set of recommendations. As a result of this additional input, we now have a better

understanding of the various stakeholder concerns and expectations. The OSB very much appreciates these additional suggestions and plans to analyze them in depth before presenting its final recommendations. The OSB expects to publish its final recommendations in the *Canada Gazette* late this spring. This will be another opportunity for interested parties to express their views on changes to bankruptcy regulations.

INTERNATIONAL ASSOCIATION OF INSOLVENCY REGULATORS (IAIR)

You will recall that Canada is a member country of the 13-member IAIR. Each year, the Association holds an annual general meeting in one of the member countries. The purpose of the AGM is to enable member countries to share viewpoints on insolvency matters within their respective jurisdictions. I am happy to inform you that Canada will be hosting the IAIR's AGM this year, in mid-May in Ottawa.

CONNECTING CANADIANS

One of Industry Canada's main goals is to encourage electronic connectivity and thereby make Canada, especially through the Internet, the most "connected" country in the world. The OSB shares this commitment and plans to use its Web site as a tool to improve its client services. Consequently, over the next few months, the OSB will be publishing on the Web various works and reports that are likely to interest its readers.

- The OSB Web site will be expanded to include future issues of the *Insolvency Bulletin*, as well as issues from volumes 17, 18 and 19.
- The national report and the various regional reports stemming from the NIF will also be available on the OSB Web site.
- The Web site will also feature the final funding recommendations the OSB proposes to adopt.

I encourage all our readers to make frequent use of this communication tool. We would also like to receive your comments and suggestions on how to make best use of it.

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 Michel Leduc, being a Senior Analyst/Disciplinary Affairs in the Montreal 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 Michel Leduc (the Senior Analyst) of Montreal-Nord, Quebec 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 Senior Analyst considers necessary to preserve the books, records, 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 September 1998.

Marc Mayrand
Superintendent of Bankruptcy

ORDER ON THE TEMPORARY LIMITATION
OF THE LICENCE OF NOUBAR BOYADJIAN, TRUSTEE

DECISION

WHEREAS Noubar Boyadjian holds a trustee licence for the province of Quebec;

WHEREAS Litwin Boyadjian Inc. holds a corporate trustee licence for the province of Quebec;

WHEREAS the Senior Analyst/Disciplinary Affairs filed a report with the undersigned on the subject of the management of trustee Noubar Boyadjian and the firm Litwin Boyadjian Inc. as concerns the administration of the bankruptcy of Le Culottier International Inc., the latter having assigned its property on March 5, 1992 as is evident from the Superior Court file bearing the number 400-11-000087-923, all of the above in compliance with the delegation under subsection 14.02(1) of the Bankruptcy and Insolvency Act;

WHEREAS the said report notes certain administrative deficiencies;

WHEREAS Noubar Boyadjian and Litwin Boyadjian Inc. dispute the contents of said report;

WHEREAS the Senior Analyst/Disciplinary Affairs forwarded to Noubar Boyadjian and Litwin Boyadjian Inc. written notice of and reasons for the recommendation to the Superintendent of Bankruptcy;

WHEREAS pursuant to subsection 14.02(1) of the *Bankruptcy and Insolvency Act*, Noubar Boyadjian and Litwin Boyadjian Inc., trustees, were offered a reasonable opportunity for a hearing and chose not to have one;

WHEREAS Noubar Boyadjian and Litwin Boyadjian Inc., on the one hand, and the Senior Analyst/ Disciplinary Affairs, on the other hand, have agreed to the recommendation described in the conclusions to this order;

WHEREAS in accordance with that understanding, Noubar Boyadjian and Litwin Boyadjian Inc. have agreed not to dispute the following deficiencies in the administration of the bankruptcy file of Le Culottier International Inc.:

- a) the trustee paid expenses to a third party by reimbursing travel expenses, without having supporting documentation in his file;
- b) the trustee neglected to maintain in the file:
 - i) documentation pertaining to the mandate by virtue of which he acted for a secured creditor, and the written authorization of the latter to collect his interim draw;
 - ii) the accounting relating to the exercising of the mandate by virtue of which he acted for a secured creditor.

WHEREAS the situation concerning the payment of expenses mentioned above was corrected through restitution to the estate of the amounts in question for distribution to the creditors;

WHEREAS the trustees cooperated in good faith with the disciplinary investigation;

Therefore, as Superintendent of Bankruptcy and by virtue of the powers vested in me pursuant to subsection 14.01(1) of the *Bankruptcy and Insolvency Act*:

Restrict for a period of one month commencing on this day, the licence of trustee Noubar

Boyadjian, during which time he may act only on summary administration files.

Marc Mayrand
Superintendent

Signed at Montreal, Quebec, this 30th day of November, 1999

ORDER ON THE TEMPORARY LIMITATION OF
THE LICENCE OF RON McMAHON, TRUSTEE

DECISION

IN THE MATTER OF

THE BANKRUPTCY AND INSOLVENCY ACT (R.S.C. 1985)

AND

IN THE MATTER OF SMYTHE McMAHON INC. HOLDER OF
A CORPORATE TRUSTEE LICENCE

AND

IN THE MATTER OF RON McMAHON HOLDER OF A TRUSTEE
LICENCE

BEFORE: THE HONOURABLE - W.J. WALLACE, Q.C. C. ARB.

COUNSEL: Marcel Gauvreau for the Department of Justice
H.C. Ritchie Clark, Q.C. for Ron McMahon
D. Pangman for Smythe McMahon Inc.

ATTENDEES: B.H. Millar–District Assistant Superintendent
Evan DeBoice–Senior Advisor
H. Feischl–Creditor
Ron McMahon–Trustee

AWARD

INTRODUCTION

On October 28, 1998, the Superintendent of Bankruptcy delegated to the undersigned certain of the section 14.01, 14.02 and 14.03 powers, duties and functions of the Superintendent pursuant to the subsection 14.01(2) of the *Bankruptcy and Insolvency Act* (R.S.C. 1985 C.B-3)

Pursuant to a pre-hearing conference with counsel, at which the date and place of this hearing was fixed, the hearing was held on the 25th and 26th days of January, 1999 in the presence of counsel and the attendees noted above.

PRELIMINARY OBJECTION

Mr. Clark, counsel at this hearing for the trustee Ronald McMahon, made the following preliminary submission; that the trustees, upon receiving the Senior Advisor's report, including his recommendations that specific conditions and limitations be placed upon the licences of the trustees, elected to waive any further hearing should the Senior Advisor's recommendations be implemented as stated in the report. Mr. Clark submitted that, in these circumstances, if I, upon hearing the evidence, contemplate exercising powers under section 14.01 other than those recommended in the report of the Senior Advisor, I should give the trustees notice of such intention, pursuant to section 14.02 and permit the trustees and their counsel to present evidence and make further submissions on the issue of such contemplated recommendations.

I ruled that "as the Superintendent's delegate, I have the power and indeed the responsibility to exercise any one of the three powers that are set forth in section 14.01(1)(d)(e) and (f). However, I will not exercise powers that extend beyond those contained in subparagraph 14.01(1)(e) without giving the parties hereto full opportunity to make any representations, call any evidence, make any submissions that they wish respecting the decision to rule otherwise than in accordance with subparagraph (e)."

EVIDENCE

The report of the Senior Advisor dated July 20, 1998, (together with 15 appendages) was filed as Exhibit 2.

Mr. DeBoice, a very experienced officer with the Office of the Superintendent of Bankruptcy, gave evidence respecting his report.

It appears that the first involvement of the Office of the Superintendent was a general audit report of the Corporate Trustee by one Mr. Parker (May 31, 1991) which is attachment 1 to Exhibit 2. The conclusion of Mr. Parker was that the "Trustee's performance was that less than satisfactory in a number of areas". [page 20]

Mr. Walmsley in June, 1993, prepared another audit report arising out of a complaint against the Corporate Trustee regarding the estate of Chastan Ventures Ltd. and Charles Tanner. Mr. Walmsley concluded that "the trustee had been remiss in his application of sound estate administrative practices."

As a result of these audits, the Senior Advisor was directed to investigate the administrative procedures of the corporate trustee and the trustee.

The Senior Advisor, as a result of his review of the audit reports and information received from the Official Receiver's office (Appendix 5, 6 and 7 to Exhibit 2) identified a "number of serious and often repeated, deficiencies in the trustee's administration of the estates." He declared such deficiencies to be the following:

- (a) failure of the trustee to control the bankrupt's assets;
- (b) unauthorized draw of shares;
- (c) failure to report to the Superintendent when required;
- (d) inadequate reporting to creditors on preliminary administration;
- (e) deficiencies in holding creditor's meetings.

It should be noted that the conduct of both the trustee and the corporate trustee respecting the administration of the estates did not involve misappropriation of funds or other acts of moral turpitude.

The particulars of the deficiencies are carefully examined and analyzed in detail in the Senior Advisor's report (Ex. 2). At this hearing Mr. DeBoice

was examined under oath respecting the allegations and conclusions contained in his report.

The complaints reviewed by the Senior Advisor generally relate to four files, the first being Munchies' estate (1984) concerning a restaurant business reported on by Mr. Parker; the second relates to the Chastan estate (1990) reported on in Mr. Walmsley's audit; the third is the Edelweiss Deli estate (1993) reported on by the Official Receiver, the fourth is the Woodrich Homes estate (1994) reported on by the Official Receiver's office. Smythe McMahon Inc. had, at the time of the Senior Advisor's report, approximately 900 active files for which it was responsible as administrator.

SANCTIONS

The Senior Advisor recommended the following sanctions:

- (A) The licence of the trustee Ron McMahon be limited for a period of six months to the administration of estates for which the trustee has been designated as individual trustee and during that limitation period of six months, the trustee cannot take new assignments for act as trustee in any other files.
- (B) The licence of the corporate trustee Smythe McMahon Inc. be limited for a period of six weeks in Bankruptcy Division No. 3, British Columbia, to the administration of estates for which the corporate trustee has been appointed as corporate trustee and during that limitation period of six weeks, the corporate trustee cannot take new assignments nor act as corporate trustee in any other files in Bankruptcy Division No. 3, British Columbia.

I am assisted in the conduct of this review by the evidence of the Senior Advisor and by the frank admission of counsel on behalf of Mr. McMahon acknowledging Mr. McMahon's mal-administration of the estates reviewed by the Senior Advisor.

In deciding upon the recommended sanctions the Senior Advisor took into account the size of the estates involved; the sanctions imposed in comparable recorded cases; the deterrent effect of the sanctions upon the trustee personally and upon the corporate trustee; the remedial effect of confining

the trustee's activities for the next six months to pre-existing estate files (presumably in the hope that the trustee would take advantage of the six month limitation to this practice and the opportunity thus afforded the trustee to remedy the deficiencies in the administration of the files); the agreement of the trustee to reimburse the Chastan estate for a loss resulting from mal-administration in the sum of \$8,000.00, and, the possible prejudicial effect upon creditors of increased administrative costs being visited upon the estates by the imposition of other forms of sanctions.

In my opinion the Senior Advisor took into account and applied the appropriate principles when recommending the sanctions which he did in this matter.

I must however note for the record that Mr. Feischl submitted that this was an appropriate case for the imposition of a restitution order requiring the trustee to make restitution to the Chastan estate of such money as the estate has been deprived of as a consequence of the trustees' mal-administration.

I reject Mr. Feischl's submission on the ground that there is no evidence before me that would support such a sanction. I deal with this matter in greater detail later in this award.

MR. PANGMAN'S SUBMISSIONS

Mr. Pangman asserted that because this is a complaint which is essentially against Mr. McMahon (who was at all times the owner and managing partner of the corporate trustee) involving mal-administration from an individual point of view rather than complaints attributable to the organization as a whole, it is not appropriate to impose sanctions against the corporate trustee. Further, Mr. Pangman submitted that a restriction upon the license of the corporate trustee to take on new assignments in Bankruptcy Division No. 3 for a period of six weeks would mean that some 50 files which would otherwise be opened may not be opened. This would have the effect of directly impacting some 10 individuals employed by the corporate trustee as a consequence of the loss of revenue and the loss of goodwill which may extend beyond the time of the restriction. Secondly Mr. Pangman makes the point that the conduct complained of was not attributable to a deficiency in the corporate organization as a

whole but rather was attributable to individual mal-administration. Thirdly Mr. Pangman asserts that the Trustee Licensing Policy [Exhibit 3] creates a system of shared responsibility of the trustees, rather than vicarious responsibility of the corporate trustee for the negligent acts of the personal trustee, and that I should consider separately whether the complaints are attributable to the individual trustee or whether they are attributable to the corporate organization and impose sanctions accordingly. Mr. Pangman points out that the Senior Advisor, in confining the limitation to the corporate trustee's activities to Vancouver and Surrey and in refusing to impose sanctions against the organization's activities on Vancouver Island, was applying an appropriate principle based on culpability which was equally applicable to the separate estates processed in Vancouver and Surrey, by trustees other than Ron McMahon and who were not guilty of mal-administration. He asserts that this distinction is particularly appropriate where the trustee is the owner and managing partner of the corporate trustee and hence responsible for the corporate organization in so far as it relates to the files in question. In summation Mr. Pangman stated that the issue which should be considered is, whether the nature of the complaints are managerial in substance or individual in substance and, where the individual trustee is the managing partner of the firm and the substance of the complaints is personal, mal-administration by that trustee, sanctions should not be imposed on the corporate trustee.

RESPONSE TO MR. PANGMAN'S SUBMISSION

The Trustee Licensing Policy Part 3, provides in part:

“Section 10.01 . . . a corporate trustee shall for each appointment, designate an individual trustee who shall *also be responsible* for its administration.

Section 10.02. The designation of an individual trustee shall not relieve the corporate trustee of its responsibilities under any appointment.”

It should be noted that under the Policy a corporation does not absolve itself of its responsibility for the proper administration of estates pursuant to the

Bankruptcy Act by appointing an individual trustee. That responsibility is neither diminished nor released by the appointment of an individual trustee. It continues as a joint responsibility of both the corporation and the individual trustee. Particularly is this so where the individual trustee whose administration is being questioned is the managing partner and controlling officer of the corporation.

I concede my conclusion of the joint responsibility of the corporate trustee and individual trustee does give rise to a logical inconsistency in recommending different sanctions for the corporation and for the trustee. However in the present case where the individual trustee acted as owner and managing partner of the corporate trustee as well as the trustee whose mal-administration of the particular estates constituted the misconduct with which we are here concerned, there may be a factual basis for distinguishing to some degree the sanctions imposed on the corporate trustee, with their broader consequences upon the business lives of others whose conduct is not in question. I am prepared to consider this to be a unique factual circumstance and not depart from the recommendations of the Senior Advisor.

MR. FEISCHL'S CLAIM RE CHASTAN ESTATE

1. First Meeting

Mr. Feischl alleges that the trustee was never affirmed at the first creditors meeting. This was denied by the trustee. The allegation has been reviewed, by Mr. Justice Skipp in the Supreme Court of British Columbia who dismissed the Feischl claim and concluded that on the evidence one must presume there was a vote and that no opposition was recorded. It is clear that the trustee failed to have the minutes of the meeting properly and adequately record how the affirmation was affected. In my view had the trustee complied with this basic and important obligation considerable distress and time could have been avoided and innuendoes of conflict of interest negated.

Mr. Feischl with respect to the Tanner Estate submits that, here again, there was a dispute surrounding the trustee's appointment resulting from the different positions adopted by Mr. Feischl who

objected to the appointment and Mr. Russell who supported it. The trustee remained in office since he was not replaced by special resolution, Mr. Feischl having insufficient votes to pass such a resolution. The trustee's decision not to apply to the Court to resolve his appointment in view of the size and nature of the estate, was reasonable in the circumstances. Pursuant to Section 14.06(1) a trustee who has accepted an appointment remains as trustee until discharged or another trustee is appointed.

In October, 1990 Mr. Feischl applied to the Supreme Court of British Columbia to remove the trustee. Mr. Justice Skipp refused the application, finding that the trustee was validly appointed and that there was no cause for removing him. That decision has not been reversed on appeal.

On September 9, 1993 Mr. Feischl applied to the Supreme Court of British Columbia for leave to prosecute proceedings against Smythe McMahon Inc. and Ronald McMahon. These proposed proceedings were set forth in an extensive statement of the claim (37 paragraphs) which detailed the alleged misconduct of the corporations's trustee and the personal trustee in relation to the administration of the Chastan Estate, Mr. Feischl claimed damages for such misconduct. The proposed claims included

those which have been advanced by Mr. Feischl at this hearing.

Mr. Justice Meredith analyzed the claims and in dismissing the motion held that:

“I have come to the conclusion that the proposed plaintiffs could not succeed under any circumstances in the claims made against the trustees in this action.”

No appeal is taken from that decision.

There is insufficient evidence before me on this hearing that would cause me to reach a different conclusion from that expressed by Mr. Justice Meredith.

CONCLUSION

For the reasons stated, I confirm the recommendations of the Senior Advisor and sanction thereby imposed upon the corporate trustee, Smythe McMahon Inc. and upon the Trustee Ron McMahon which sanctions shall commence upon the 1st day of March, 1999.

Date: February 18, 1999

W.J. Wallace, Q.C. Arb.

CONSERVATORY MEASURES
TAKEN AGAINST
DAVID G. ANDERSON, TRUSTEE

DIRECTIONS

CANADA

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF:

DAVID G. ANDERSON, TRUSTEE

DIRECTIONS OF THE DEPUTY SUPERINTENDENT (PROGRAMS,
STANDARDS AND REGULATORY AFFAIRS)

TO THE ROYAL BANK OF CANADA

ISSUED IN ACCORDANCE WITH SECTION 14.03 OF THE
BANKRUPTCY AND INSOLVENCY ACT

BANKRUPTCY AND INSOLVENCY ACT

IN THE MATTER OF DAVID G. ANDERSON, TRUSTEE OF THE CITY
OF WHISTLER IN THE PROVINCE OF BRITISH COLUMBIA

DIRECTIONS FOR CONSERVATORY MEASURES

WHEREAS the Deputy Superintendent (Programs, Standards and Regulatory Affairs) may exercise the powers described in subsection 14.03(1) of the *Bankruptcy and Insolvency Act* (the “Act”) where “the Superintendent makes or causes to be made any investigation pursuant to paragraph 5(3)(e)”;

(paragraph 14.03(2)(b))

WHEREAS the Superintendent of Bankruptcy may, for the protection of an estate “direct a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction”;

(paragraph 14.03(1)(c))

WHEREAS the Superintendent of Bankruptcy has delegated by written instrument to the Deputy Superintendent (Program, Standards and Regulatory Affairs) the powers, duties and functions of the Superintendent set out in subsection 14.03(1) of the Act with respect to the circumstances described in paragraphs 14.03(2) a), b) and d); (Schedule “A”)

THEREFORE,

I, Alain Lafontaine, Deputy Superintendent (Programs, Standards and Regulatory Affairs), for the protection of the bankruptcy and proposal estates administered by David G. Anderson, Trustee direct:

the Royal Bank of Canada, located at Suite 101 – 4000 Whistler Way, Whistler, B.C.:

- i) to consider, as of the date of receipt of these directions, any one of David Hoyt, William D. Millar or Lynda Vogt as mandatory co-signatorie with David G. Anderson, Trustee, over the funds deposited to the credit of the bankruptcy and proposal estates administered by David G. Anderson, Trustee;
- ii) not to make any payment, debit or transfer out of the money deposited to the credit of the bankruptcy and proposal estates

adminstrated by David G. Anderson, Trustee, by means of bill of exchange, cheque, automatic withdrawal, transfer or any other instrument after December 15, 1999 without the counter-signature of any one of David Hoyt, William D. Millar or Lynda Vogt;

- iii) not to pay, regarding those estate accounts or other deposits or certificates of deposit, any bill of exchange, cheque or any other instrument issued prior to the reception of these directions but presented for payment after the reception of these directions without the countersignature of any one of David Hoyt, William D. Millar or Lynda Vogt;
- iv) to send forthwith the list of all trust bank accounts and trust funds related to the bankruptcy and proposal estates administrated by David G. Anderson, Trustee, to William D. Millar, Assistant Superintendent, British Columbia and Yukon, Office of the Superintendent of Bankruptcy, 1900 – 300 West-Georgia Street, Vancouver, B.C. V6B 6E1;

These instructions are coming into force immediately and will remain valid until further written notice.

Pursuant to subsection 14.03(3)(b) and 14.03(4) of the Act, a direction given pursuant to subsection 14.03(1) is binding on all persons to whom it is given and a person who complies with such direction is not liable for any act done only to comply with the direction.

SIGNED, in Ottawa, Ontario, on December 15, 1999

ALAIN LAFONTAINE
Deputy Superintendent
Programs, Standards and Regulatory Affairs

Note: Identical directions for conservatory measures were addressed to the Toronto Dominion Bank located at Whistler’s Market Place, 138-4370 Lorimer Road, Whistler, B.C., to the Spruce Credit Union, located at 879 Victoria , Prince George, B.C. and to the Hong Kong Bank of Canada, located at 885 West Georgia Street, Vancouver, B.C.

STATISTICS

PROVINCE-BY-PROVINCE COMPARISON OF BANKRUPTCY RATES

Tables and graphs that show Canada's province-by-province bankruptcy rates and the rate for the country as a whole are an excellent way to visualize changing bankruptcy patterns. That is why we are presenting consumer and business bankruptcy rates in these formats.

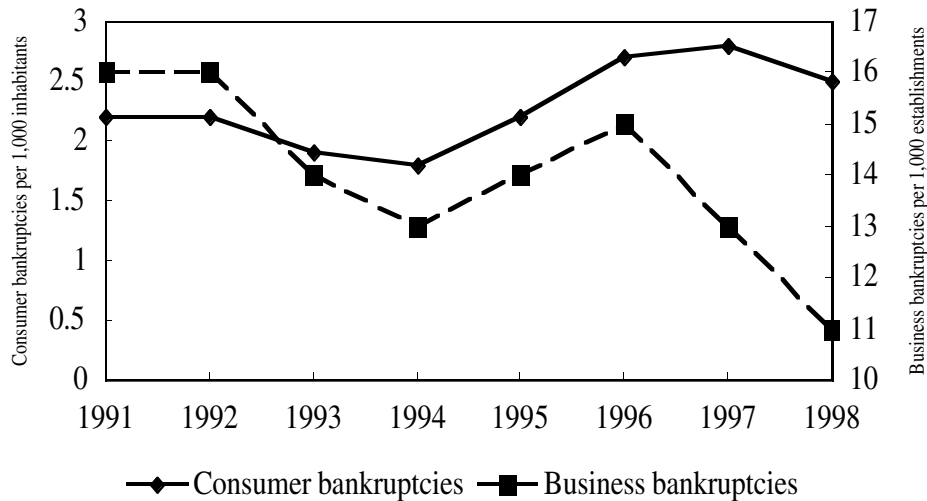
We obtained consumer bankruptcy rates by dividing the total number of registered bankruptcies in each province by the province's population; we then multiplied the result by 1,000 to get a rate per 1,000 inhabitants. The business bankruptcy rate is calculated by dividing the total number of business bankruptcies in a given province by its total number of businesses; this figure is then multiplied by 1,000 to give a rate per 1,000 businesses. We used the same system to calculate consumer and business bankruptcy rates for Canada as a whole.

National and provincial population figures were taken from the census and the projections as published by Statistics Canada. The number of businesses was taken from the Statistics Canada Business Registry.

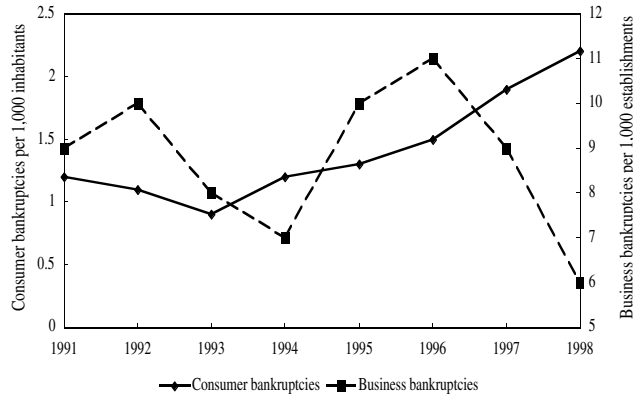
Consumer and business bankruptcy rates by urban centre and by province are available on the OSB Web site: <http://osb-bsf.ic.gc.ca/>. To access these statistics, select "Bankruptcy Statistics," then "Graphic Displays of Bankruptcy Statistics," and then "Annual Bankruptcy Rates by Urban Centres." From there, you can select the province and bankruptcy type that interests you.

We hope you will find this information useful. If you would like further information on bankruptcy rates, please do not hesitate to contact Luc Asselin at (613) 941-2608 or by e-mail at asselin.luc@ic.gc.ca.

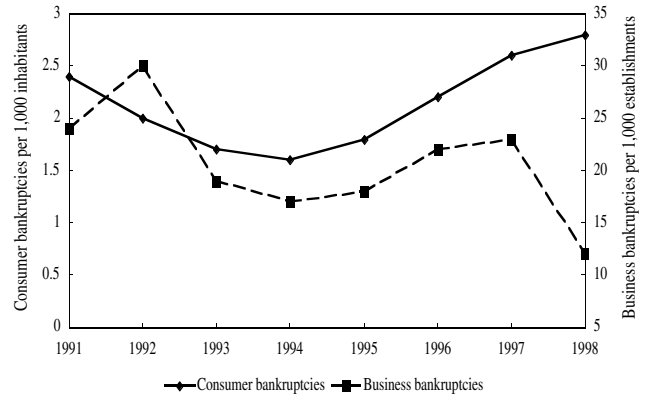
Canada



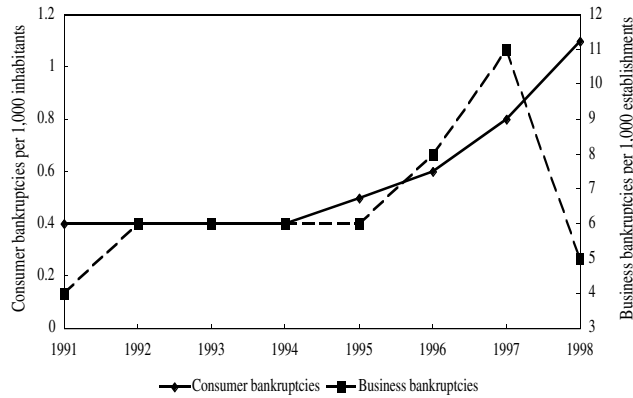
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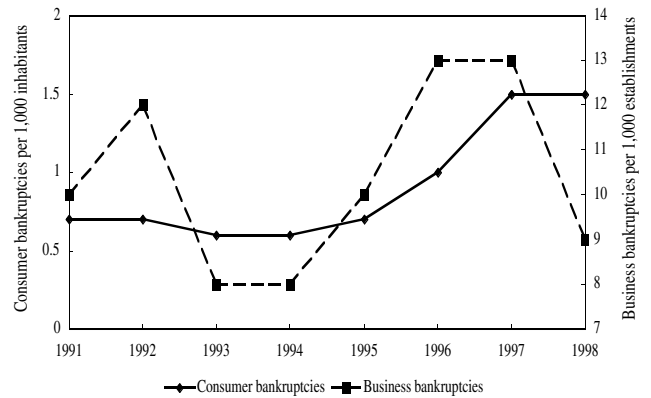
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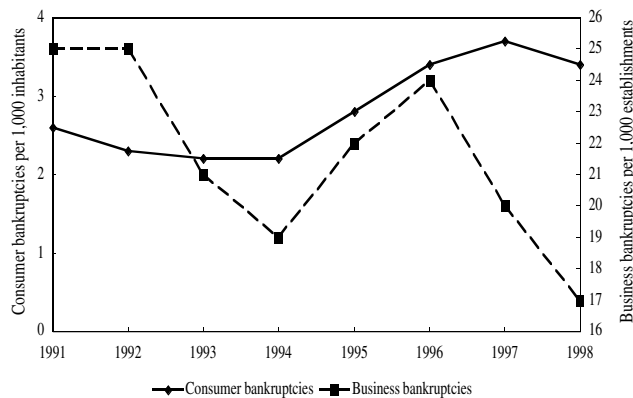
Prince Edward Island



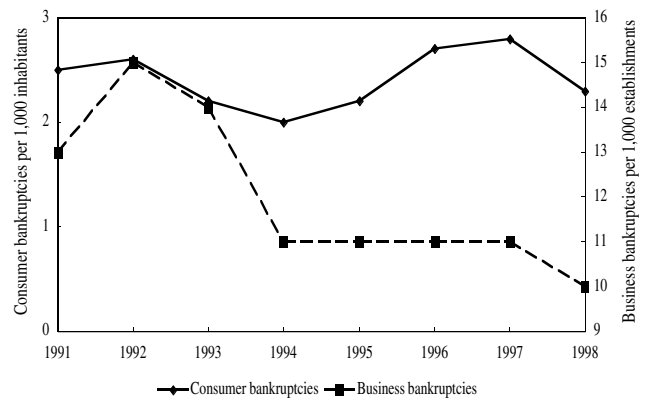
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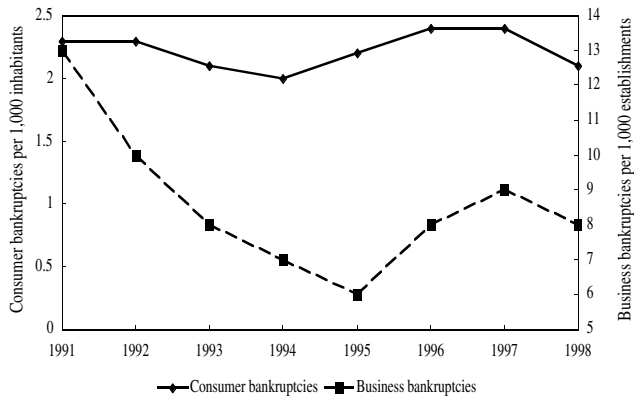
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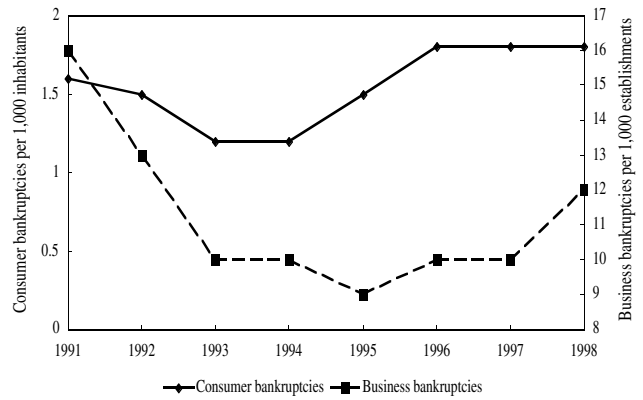
Ontario



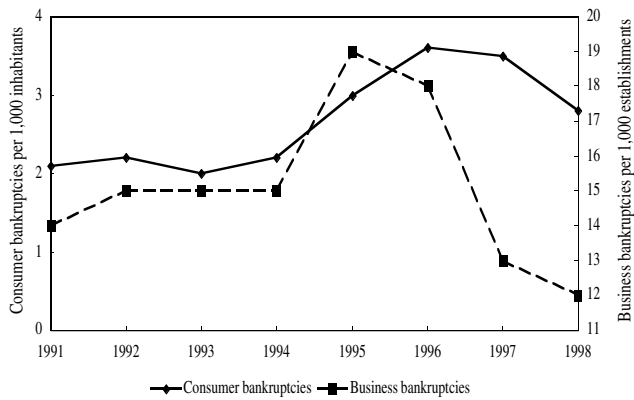
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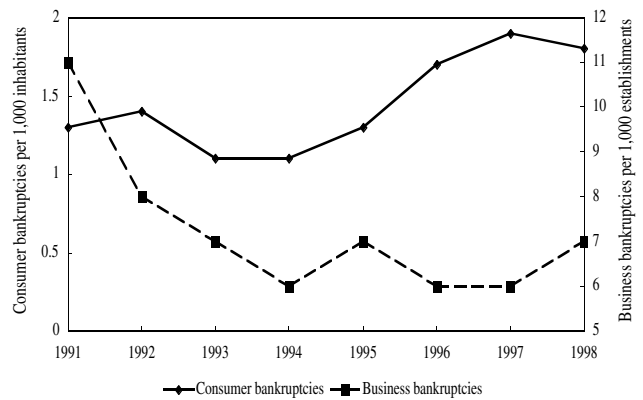
Saskatchewan



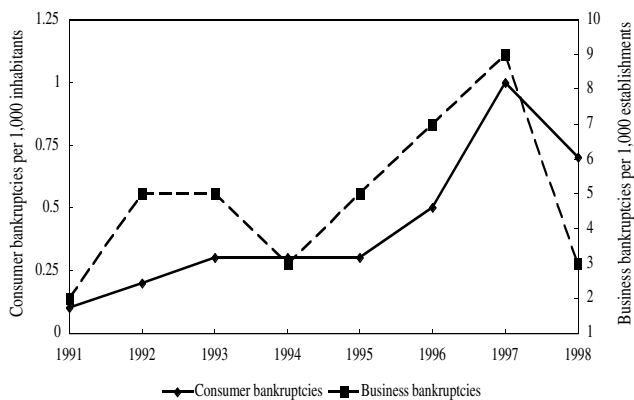
Alberta



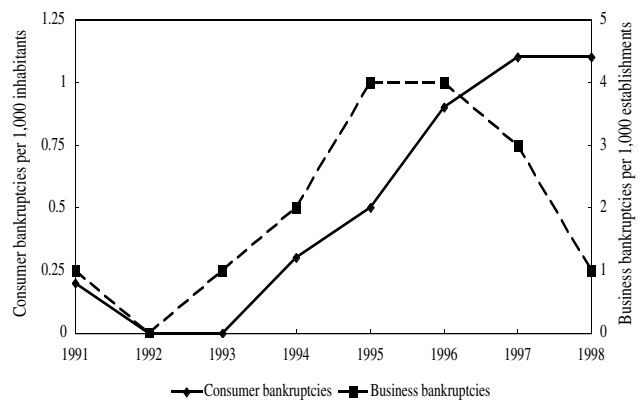
British Columbia



Northwest Territories



Yukon Territory



Consumer Bankruptcy Rate per 1,000 Inhabitants

Province	1991	1992	1993	1994	1995	1996	1997	1998
Newfoundland	1.2	1.1	0.9	1.2	1.3	1.5	1.9	2.2
Nova Scotia	2.4	2	1.7	1.6	1.8	2.2	2.6	2.8
Prince Edward Island	0.4	0.4	0.4	0.4	0.5	0.6	0.8	1.1
New Brunswick	0.7	0.7	0.6	0.6	0.7	1	1.5	1.5
Quebec	2.6	2.3	2.2	2.2	2.8	3.4	3.7	3.4
Ontario	2.5	2.6	2.2	2	2.2	2.7	2.8	2.3
Manitoba	2.3	2.3	2.1	2	2.2	2.4	2.4	2.1
Saskatchewan	1.6	1.5	1.2	1.2	1.5	1.8	1.8	1.8
Alberta	2.1	2.2	2	2.2	3	3.6	3.5	2.8
British Columbia	1.3	1.4	1.1	1.1	1.3	1.7	1.9	1.8
Northwest Territories	0.1	0.2	0.3	0.3	0.3	0.5	1	0.7
Yukon Territory	0.2	0	0	0.3	0.5	0.9	1.1	1.1
Canada	2.2	2.2	1.9	1.8	2.2	2.7	2.8	2.5

Business Bankruptcy Rate per 1,000 Establishments

Province	1991	1992	1993	1994	1995	1996	1997	1998
Newfoundland	9	10	8	7	10	11	9	6
Nova Scotia	24	30	19	17	18	22	23	12
Prince Edward Island	4	6	6	6	6	8	11	5
New Brunswick	10	12	8	8	10	13	13	9
Quebec	25	25	21	19	22	24	20	17
Ontario	13	15	14	11	11	11	11	10
Manitoba	13	10	8	7	6	8	9	8
Saskatchewan	16	13	10	10	9	10	10	12
Alberta	14	15	15	15	19	18	13	12
British Columbia	11	8	7	6	7	6	6	7
Northwest Territories	2	5	5	3	5	7	9	3
Yukon Territory	1	0	1	2	4	4	3	1
Canada	16	16	14	13	14	15	13	11

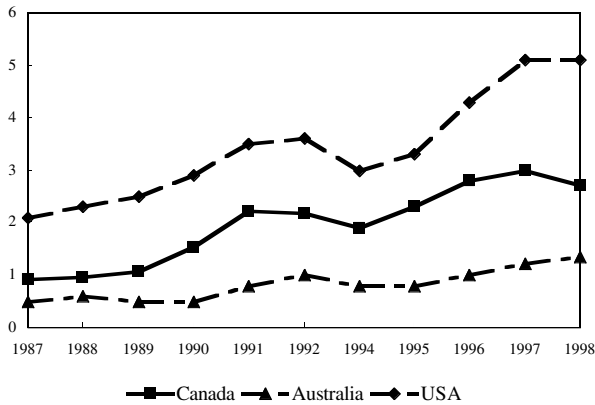
STATISTICS

INTERNATIONAL COMPARISON OF CONSUMER BANKRUPTCY AND PROPOSAL FILING RATES

(Canada, U.S.A. and Australia)

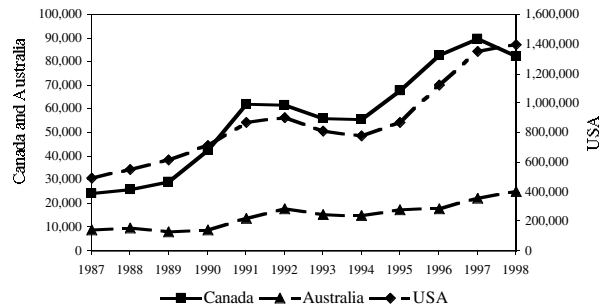
Canadian consumer bankruptcy and proposal filing trends per 1,000 inhabitants were similar to those in Australia and the United States up to 1994. Since then, however, increases have been apparent in both Canada and the United States, whereas the situation in Australia appears to have stabilized.

**Consumer Bankruptcy
and Proposal Filing Rate
(per 1,000 inhabitants)**



In absolute terms, the total number of consumer bankruptcies and proposals registered in the United States is far greater than comparable figures for Canada and Australia. In 1998, for example, the United States registered more than 1.4 million bankruptcies and proposals, compared with 85,000 and 25,000 for Canada and Australia respectively. These differences are clearly due to the United States' much larger population. At the same time, it is interesting to note that the total number of bankruptcies and proposals dropped in Canada between 1997 and 1998, whereas both the United States and Australia showed increases during the same period.

**Consumer Bankruptcies
and Proposals**



Canada: Total number of Section II proposals and consumer bankruptcies.

United States: Total number of non-business bankruptcies registered under Chapters 7, 11 and 13.

Australia: Total annual number of personal bankruptcies and Formal Debt Settlement Arrangements (June–May cycle).

Sources: Office of the Superintendent of Bankruptcy (Canada), Executive Office for U.S. Trustees (United States), and the Insolvency and Trustee Service (Australia).

Service Provider Initiative: Progress Report

The concept of the Service Provider Initiative was first presented to you in our 2nd and 3rd quarter 1998 issue. At that time we provided you with a summary of the information contained in the Request for Proposal (RFP), which the Office of the Superintendent of Bankruptcy (OSB) issued through Public Works and Government Services Canada. The purpose of the RFP was to identify 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. The RFP used a non-traditional procurement process known as Benefit Driven Procurement (BDP) in which vendors provide proposals to deliver on benefits desired by the client, rather than a quote against a detailed specification.

The service provider will create the infrastructure to facilitate electronic linkages between the OSB, trustees, creditors and the courts, and will implement the electronic registration of bankruptcies between the OSB and trustees. They will also administer the operation of a number of non-core activities on behalf of the OSB, such as the name search service, develop new electronic applications to support compliance activities, and develop new value-added services for the insolvency community.

As a result of the RFP, the OSB was able to identify three vendors who have the technical capability and financial viability required to deliver on the OSB's strategic objectives. At this stage in the BDP process, the top-ranked vendor has secured the 'right' to negotiate a contract for the delivery of these products and services. Contract negotiations are well underway and are expected to be finalized in the near future.

THE FIRST STEP

Electronic filing is a crucial deliverable of the OSB Service Provider Initiative's 'package' of products and services. As such, the success of e-filing is a major determining factor in the

decision for both the OSB and the service provider to proceed with the initiative under a long-term contract. The parties have decided that further work must be undertaken in order to establish if there is an economically viable basis for the delivery of services through electronic commerce.

The parties have therefore agreed to focus on the development of an e-filing business case, which will subsequently lead to a comprehensive agreement for the whole of the SPI. The e-filing service will provide the ability for formal transactions pursuant to the BIA to be communicated electronically between the OSB, trustees, creditors and courts.

The e-filing business case will define the best solution to provide the e-filing service, and describe how to go about delivering it. It will also determine the market viability in terms of the anticipated transaction volumes, pricing and take-up rate, and will identify the resources required to establish, deliver and operate the e-filing service.

The e-filing business case will focus on and assess the financial and technical requirements for carrying transactions amongst the stakeholders, as well as the financial and technical requirements for allowing stakeholders to connect directly to the e-filing service. Connectivity will result in the elimination of duplicate processes and transaction processing. Finally, the business case will assess the market demand for the service (at various price structures and price points), and the pace of market penetration for various transactions.

THE DECISION

Once the e-filing business case is completed, both the OSB and the service provider will analyze the results, and determine whether they wish to proceed with electronic filing. The OSB's decision will be based on a number of factors, including:

- **Cost Reduction for All Stakeholders**
The OSB does not intend to use the SPI as a means of achieving its savings by downloading costs to other stakeholders. The decision of stakeholders to adopt electronic filing will be based on the solution making good business sense for each stakeholder group. In a competitive marketplace, electronic filing will be accepted only if it offers real cost benefits to the stakeholders. The goal of achieving connectivity is possible when stakeholders are willing participants and the services are online and produce cost savings to each and every stakeholder.
- **Improved Service**
Electronic filing must enable the OSB and stakeholders to provide improved service with online access to better and more complete information.
- **More Efficient Processes and Reduction of Duplication**
Electronic filing must eliminate the need for repeated data entry of the same information by various stakeholders. The system should update both the trustees' internal systems, populate the OSB's IMPACT system, and have the capability to send information to creditors and courts.
- **Improved Consistency/Quality Checks to Reduce Errors**
Electronic filing must standardize filing processes and procedures nationally. Edit and logic checks, and automatic calculations will ensure that forms are complete, and values are accurate and reasonable before data is transmitted. Error reports and/or other data quality reports will be developed to identify problem areas.
- **The System Allows for Electronic Compliance and Strategic Information Applications**
Automatic front-end compliance checks must be designed to ensure data quality, and the system will 'flag' those transactions that are outside pre-established parameters. For example, the system will search for second-time or undischarged bankrupts upon registration, and will flag files that may be considered high risk or contrary to the provisions set out in the BIA. E-filing must also make it economically feasible for the OSB to expand the amount of information it collects, which in turn will enable the collection of

strategic information required for the five-year review of the 1997 amendments to the BIA.

- **No Additional Cost to the Taxpayer**
Electronic filing must be economically feasible and sustainable without being subsidized by the taxpayer. The solution must be able to stand on its own merit from a financial viability point of view. The ability of the OSB to achieve its goal of fiscal self-sufficiency cannot be compromised by the introduction of electronic filing.

THE MILESTONES

- **The E-Filing Business Case**
The project workplan for the e-filing business case will cover three phases: the definition of the business, the design of the business, and the documentation and review of the Business Case.

The main deliverable from Phase I is the development of the Electronic Filing Straw Model. The Model will allow the OSB and the service provider to describe quickly and visually to any prospective customer, user or stakeholder what functions, features, and value the service will offer from their specific perspective.

The main deliverable from Phase II is the Interim Business Design Document. This deliverable will provide detailed analysis of the market survey, cursory analysis of the overall solution design, service and functional specifications, technology architecture, costing, and a preliminary financial assessment.

The final deliverable in this phase is the completed e-Filing Business Case and will include: a financial model over a five-year period, consideration of various business models and billing and pricing structures, risks and mitigating factors.

- **The Organizational / Operational Redesign**
Upon approval of the e-Filing Business case, and once the technology solution is deemed reliable, proven and compatible with OSB and stakeholders' existing systems, the OSB will design more streamlined, flexible and efficient internal workflow processes. This redesign will facilitate the full integration of SPI activities into OSB operations.

- **The Transition**

Once the working relationship has been finalized between the OSB and the Service Provider, SPI will become a fully integrated initiative. There will be a seamless transition of existing services, such as name search, to the service provider, and a merging of new electronic services and re-designed internal workflow processes. Communication and improved services will play a major role in securing stakeholder buy-in of new electronic products and services.

- **The Implementation**

Solutions will be designed and delivered to support the current business process employed by each of the stakeholders, with the flexibility to support their plans for the future.

THE BENEFITS

The OSB is confident that with the proper interface of a service provider, clients and stakeholders will embrace an electronically connected insolvency system. An electronic environment will result in the streamlining of processes and the realization of cost savings through the

reduction of duplication, mailing, handling and storage costs of hard-copy documents, better information and improved timeliness. The OSB will be able to shift resources away from non-core activities to focus on their core regulatory functions. These functions will be enhanced through the introduction of electronic compliance capabilities. Finally, the quality and breadth of information will improve and stakeholders will benefit from the introduction of new value-added insolvency information products and services.

THE TEAM

The Office of the Superintendent of Bankruptcy has retained the services of Mr. François Gouin as the Service Provider Initiative Team Leader. Mr. Gouin brings to the Initiative twenty years of experience and expertise as a bankruptcy trustee. Ms. Ellen Henderson, formerly of the OSB Re-engineering Group, will assume the role of Manager, SPI Operations, and Ms. Kim Burnett, formerly of the OSB Business & Financial Services, will undertake the role of Manager, Business Analysis.

Addresses of Division Offices of the Superintendent of Bankruptcy

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45 Sacré-Cœur Boulevard, Room B-1001
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