



# Insolvency

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## BULLETIN

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## INSOLVENCY BULLETIN

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# Message from the Superintendent

In the previous issue of the *Insolvency Bulletin*, I told you about the projects that the OSB intends to pursue in 2000. I would now like to tell you about two new projects the OSB is starting. The first involves a new way of communicating through the sections listed in the *Insolvency Bulletin*, and the second deals with a new way for trustees to pay their annual licence fees. I would also like to give you a brief report on the meeting of the International Association of Insolvency Regulators that took place in Ottawa recently, and, lastly, tell you about the OSB's position on a number of issues. So, I would encourage you to look over the special sections that follow and become acquainted with the information they contain.

## INSOLVENCY BULLETIN

You will notice that three distinct sections in this issue deal with special topics, namely: Compliance and Discipline; Policy and Regulatory Affairs; and E-commerce. From now on, these subjects will be covered on a regular basis, since they are very timely and are likely to be of great interest to the different stakeholders in the insolvency community. In addition, these innovations will also help the Bulletin fulfil its role as both a communication tool and a means of strengthening links between the OSB and the insolvency community.

## RENEWING TRUSTEE LICENCES

I have already mentioned that the OSB respects the government's commitment to making the best possible use of electronic procedures. Now that licence fees are being billed electronically, this issue contains an announcement of new arrangements on how to renew licence fees. However, invoices will still be sent by regular mail to all trustees that do not have an electronic address. This initiative is just one of several that reflect our total commitment to developing ways of delivering our services electronically.

## ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INSOLVENCY REGULATORS

Canada belongs to the 14-member International Association of Insolvency Regulators (*Association internationale des organismes de réglementation en insolvabilité*). The Association holds annual meetings and, this year, it was Ottawa's turn to be host. The meeting took place in Ottawa on May 16–17, when we were pleased to welcome representatives from Finland, the United Kingdom, Jersey, Malaysia, Singapore, India, Thailand, Australia, New Zealand and the United States. In addition, several countries, including China, Lesotho and Ireland, attended as observers.

Such meetings allow for useful discussion between delegates on the many issues affecting government's role in the insolvency process. In addition to hearing member countries' annual reports, this year's meeting also discussed a number of important themes, such as the role the Association might play in setting up efficient insolvency systems in other countries, the World Bank's insolvency-related role in Asia, and a comparison of the various roles played by regulators in the insolvency process.

The Association is currently creating a Web site giving access to information on each of its member countries, as well as a set of information on various insolvency systems and a list of contacts. Canada will manage the Web site on the Association's behalf.

Next year, the Association's annual meeting will take place in London, at the same time as the insolvency conference.

## HANDLING GOODS AND SERVICES TAX CREDIT AND PAY EQUITY PAYMENTS

A recent development has seen courts starting to look at what happens to additional revenue deriving from GST credits and how trustees handle pay equity payments. However, the

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various judgements handed down have not been consistent. This has led to an undesirable regional disparity that is inconsistent with the principle of a uniform national insolvency system. To rectify this situation, it has become necessary to apply a standard rule in all our regional offices.

As described in this issue, the OSB has developed a joint position with the CIPA on how to handle GST credits received during a bankruptcy administration. I encourage Bulletin readers to take careful note of it.

After consulting the various parties concerned, we will take the same approach with regard to payments made under the pay equity agreement.

### **DEMUTUALIZATION**

**C**ertain insurance companies have taken steps to convert from being mutual insurance companies to being share capital insurance companies. This process can affect a bankruptcy file, particularly in terms of the effective date of eligibility to receive proceeds from the conversion.

The Alberta Court of Queen's Bench has ruled that the date policy holders ratify the conversion as the date when the proceeds are realized, rather than the date of the public notice, as proposed by both the OSB and the CIPA. The OSB is currently considering whether to intervene in the appeal the trustee concerned has lodged.

### **THE SUPREME COURT WILL HEAR THE BERTHELETTE CASE**

**I**n what is now commonly called the Berthelette case, the Manitoba Court of Appeal has ruled that voluntary payments made by a debtor after release from bankruptcy do not constitute assets in the original bankruptcy.

Both the trustee concerned and the CIPA have asked the Supreme Court of Canada for permission to appeal this decision. This request was accepted on May 25. The appeal will probably be heard during the winter 2001 session. In the meantime, the OSB will continue to make its objections known.

**INTERIM ORDER AGAINST  
PLASKETT AND ASSOCIATES LIMITED, A FORMER TRUSTEE  
AND  
RALPH GORDON PLASKETT, A FORMER LICENSED TRUSTEE**

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**DECISION**

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**CANADA**

**PROVINCE OF ONTARIO**

**INDUSTRY CANADA**

**OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY**

**IN THE MATTER OF:**

**PLASKETT AND ASSOCIATES LIMITED,  
A FORMER TRUSTEE,  
AND  
RALPH GORDON PLASKETT,  
A FORMER LICENSED TRUSTEE**

---

**INTERIM ORDER**

**WHEREAS** a discipline hearing was held on March 23rd, 2000, regarding the conduct of trustees Ralph Gordon Plaskett and Plaskett & Associates Limited;

**WHEREAS** the report of Senior Analyst Evan DeBoice was introduced as evidence of the conduct of the said trustees (Exhibit 1);

**WHEREAS** the trustees did not file any response to the discipline report nor to the monitoring or the audit reports in support of it;

**WHEREAS** the trustees received notice of the discipline hearing (Exhibit II) on February 23rd, 2000, as evidenced by the delivery confirmation issued by Canada Post (Exhibit II);

**WHEREAS** the trustees did not file any written representations in advance of this hearing;

**WHEREAS** the trustees did not appear at the hearing;

**WHEREAS** Ms. Deborah Jazey, the guardian of the estates formerly under the administration of the trustees, reported at the hearing on the progress of her administration and indicated that the said administration, while progressing well, would require an additional 4 months to complete the administration of some 350 files;

**WHEREAS** there is a high probability that an outstanding amount will be left owed by the former trustees to various estates after taxation;

**WHEREAS** it might be appropriate to issue a restitution order once the outstanding amount will be determined;

**WHEREAS** Mr. Evan DeBoice the Senior Analyst indicated a supplementary report regarding financial deficiencies in the estates previously administered by the trustees would be forthcoming;

**THEREFORE**, it is hereby ordered that:

- a status report detailing the amounts outstanding owed to the estates as well as the guardianship costs, be filed no later than July 22nd, 2000;
- a copy of such a report be sent to the former trustees no later than July 22nd, 2000;
- Plaskett & Associates Limited and Ralph Gordon Plaskett file their comments, if any, in response to the supplementary report no later than August 8, 2000; and
- this hearing is adjourned *sine die*.

Ottawa, March 28th, 2000

The Superintendent of Bankruptcy  
Marc Mayrand



ORDER ON THE TEMPORARY LIMITATION  
OF THE LICENCE OF JOHN LUKCA, TRUSTEE

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DECISION

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**IN THE MATTER OF:**

**JOHN LUKCA,  
HOLDER OF AN INDIVIDUAL TRUSTEE LICENCE  
FOR THE PROVINCE OF QUEBEC,**

**AND**

**J. LUKCA & ASSOCIÉS INC.,  
HOLDER OF A CORPORATE TRUSTEE LICENCE  
FOR THE SAID PROVINCE**

---

**ORDER**

**WHEREAS** John Lukca, trustee, obtained a trustee licence on February 6, 1989;

**WHEREAS** J. Lukca & Associés inc., trustee obtained a corporate licence on November 1, 1994;

**WHEREAS** a monitoring visit in March 1996 disclosed legal and administrative deficiencies;

**WHEREAS** a general audit of the office of the trustee J. Lukca & Associés inc. was carried out in November 1996 as a result of this monitoring report and confirmed the said legal and administrative deficiencies;

**WHEREAS** when the disciplinary report of October 30, 1998 was filed the trustee J. Lukca & Associés inc. had corrected several of these deficiencies, but not all;

**WHEREAS** the trustee J. Lukca & Associés inc. took steps to correct these various deficiencies, including the hiring of experience personnel;

**WHEREAS** a monitoring visit made in December 1999 concluded that the administration of the trustee J. Lukca & Associés inc. appeared to be satisfactory in the files examined;

**WHEREAS** a complaint was filed in the bankruptcy of Hervé Dupas, namely that the trustee John Lukca, who was then employed by another corporate trustee, had failed to perform his statutory duties by not checking the bankrupt's statement of affairs;

**WHEREAS** in his administration of the bankruptcy file of Hervé Dupas, the trustee John Lukca did not check the bankrupt's statement of affairs as required by Section 19(3) of the Act, although he had all the documents necessary to do this in his possession;

**WHEREAS** the report and its appendices indicated that there were several legal and administrative deficiencies in the operation of the office of the trustee J. Lukca & Associésinc., which now appear to have been corrected or are being corrected;

**WHEREAS** the trustee John Lukca and the Senior Analyst/Disciplinary Affairs, have agreed to submit the following recommendation to the undersigned;

**WHEREAS** the said recommendation appears fair and reasonable and not contrary to the public interest and there is no reason to alter it;

**FOR THESE REASONS**, I the undersigned Jean-Claude Demers, attorney, in my capacity as a delegate of the Superintendent of Bankruptcy (s. 14.01(2) of the Act) and pursuant to the powers conferred on me by the superintendent in accordance with Section 14.01(1) of the Act;

**SUSPEND** the licence of the trustee John Lukca for a period of 75 days commencing on May 2, 2000.

**SIGNED** at Aylmer, Quebec, May 2, 2000

Jean-Claude Demers, Q.C.

ORDER ON THE TEMPORARY LIMITATION  
OF THE LICENCE OF DAVID G. KANESTER, TRUSTEE  
AND DAVID G. KANESTER & ASSOCIATES INC., CORPORATE TRUSTEE

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DECISION

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**IN THE MATTER OF:**

**DAVID G. KANESTER  
HOLDER OF A TRUSTEE LICENCE  
FOR BRITISH COLUMBIA,**

**AND**

**DAVID G. KANESTER & ASSOCIATES INC. ,  
HOLDER OF A CORPORATE TRUSTEE LICENCE  
FOR BRITISH COLUMBIA**

**TRUSTEE AND CORPORATE TRUSTEE  
LIMITATION ORDER ISSUED UNDER THE  
BANKRUPTCY AND INSOLVENCY ACT**

**WHEREAS** David G. Kanester, trustee and David G. Kanester & Associates Inc., corporate trustee operate an office in the City of Burnaby, British Columbia;

**WHEREAS** the Senior Analyst/Disciplinary Affairs to the Office of the Superintendent of Bankruptcy has submitted a report (the “Report”) on the administration of David G. Kanester, trustee and David G. Kanester & Associates Inc., corporate trustee, collectively as the “Trustee”, pursuant to the general delegation received regarding the application of Subsection 14.02(1) of the *Bankruptcy and Insolvency Act*;

**WHEREAS** the Report identifies a number of irregularities and deficiencies of an administrative nature (and no conduct involving moral turpitude) in respect of the Trustees’ administration of estates during the period covered by the Report, based on an audit commenced in or about May, 1996 such as:

**1) *deficiencies in the propriety of costs and drawing of fees in***

- i) two ordinary estates where a total of \$3,680.87 in fees have been withdrawn without inspector or court approval contrary to Subsection 25(1.3) of the Act and one summary estate where the Statement of Receipts and Disbursements has not been signed by the inspectors contrary to Rule 64.1 (now Rule 62);
- ii) one summary estate where \$1,300.00 was deposited in the wrong estate contrary to Section 25(1) of the Act;
- iii) one summary estate where \$716.90 was drawn in fees and disbursements and in another summary estate, auction and legal costs in the amount of \$899.94 were drawn contrary to Rule 115 (now Rule 128) and in one ordinary estate, \$498.29 was paid as a disbursement outside the proper cost of administration of the estate; and

- iv) 64 estates where administrative errors such as errors in the timing of drawing of fees were noted (for example, counselling fees being drawn prior to counselling being actually completed) and \$10.00 court fees were shown as paid as a disbursement.

**2) *failure to verify the statement of affairs in***

-5 estates where insufficient investigation was done into or insufficient documentation existed in the Trustee’s files to confirm the steps taken to investigate the disposition of or potential equity in relation to certain assets, contrary to Subsection 19(3) of the Act;

**3) *inadequate identification and realization of assets in***

-three estates where there was failure to adequately document steps taken to: a) identify the ownership of a vehicle b) realize on an insurance refund and c) realize on surplus income, contrary to Subsection 16(3) of the Act and Directive 22;

**4) *improper review of bankrupt’s discharge in 5 estates where***

-in two cases, the Section 170 reports were not signed by the inspectors, in two other cases, the discharge certificates reflected the incorrect dates and in one case, there was failure to report the non attendance of the bankrupt at the creditor’s meeting in the Section 170 report;

**5) *administrative deficiencies in the process of admitting proofs of claim, where***

-in three estates there was inadequate documentation in the Trustee’s files to support the decision to allow certain proofs of claim, contrary to Sections 108 and 135 of the Act and Directive 14R and in two estates, the timeliness of distribution of dividends was an issue, contrary to Sections 148 and 151 of the Act;

**6) *acting in conflict of interest situations in***

-one estate where the Trustee acted for a secured creditor without being appointed as agent contrary to Subsection 13.3(2) of the Act and Directive 15R and by paying the secured creditor an amount greater than their claim without

deducting the levy contrary to Section 147 of the Act;

7) *inadequate service to creditors in*

- i) two ordinary estates where there was failure to advertise the bankruptcy contrary to Subsection 102(4) of the Act while in another estate no written preliminary report was in the Trustee's file, contrary to Directive 32; and
- ii) in one estate, the minutes of the creditors' meeting did not properly record a motion made on the appointment of the inspectors, contrary to Subsection 116(2) of the Act, and in another, the minutes of the creditors' meeting did not list the documents tabled at the meeting.

**WHEREAS** pursuant to Subsection 14.02(1) of the Act, the Senior Analyst, Disciplinary Affairs to the Office of the Superintendent of Bankruptcy has sent to the Trustee, a written notice of the powers and the reasons therefor recommended;

**WHEREAS** the Trustee was afforded a reasonable opportunity for a hearing and has elected not to be heard under Subsection 14.02(1) of the Act, and has accepted the recommendations in the Report;

I, Superintendent of Bankruptcy, pursuant to Subsection 14.01(1) of the Act, hereby order as follows:

The licences of the trustee David G. Kanester and the corporate trustee David G. Kanester & Associates Inc. shall be subject to the following conditions and limitations:

- A) both trustee licences be limited for a period of 4 months from accepting and filing appointments under the Act;
- B) that, during the 4 month period of limitation, an external licensed trustee acceptable to the Office of the Superintendent of Bankruptcy reviews all open corporate administrations and files involving proposals under the Act and a ten percent sample of the other existing open files of the Trustee, to determine if they have been properly administered and which files can be closed. Upon such determination, the Trustee

will forthwith correct any administrative deficiencies and take the necessary steps to close those files where the administration has been completed;

- C) at the end of the 4 month period described in (A), both trustee licences be limited for a subsequent period of 2 months to accept and file only summary estates;
- D) after the 4 month period of restriction mentioned in paragraph (A) above has expired, an external licensed trustee acceptable to the Office of the Superintendent of Bankruptcy shall review for a further period of 8 months all new filings of the trustees within one month of their filing dates to identify potential problems in the administration of these estates. In the event of any disagreement regarding an issue, the matter should immediately be referred to the Division Assistant Superintendent, British Columbia and Yukon, for resolution;
- E) at the end of the 8 month period mentioned in paragraph (D) above, the external licensed trustee acceptable to the Office of the Superintendent of Bankruptcy shall submit a general report on any concerns noted in the administrations and the steps taken by the trustees to remedy these concerns, and, if improvements in the Trustee's administration of estates has been observed, attesting the same;
- F) the Trustee has the responsibility to find an external licensed trustee acceptable to the Office of the Superintendent of Bankruptcy and he is also exclusively responsible to pay to that licensed trustee the cost and fees involved in relation to the work described in paragraphs (B), (D) and (E) above;
- G) upon the expiration of the 8 month period mentioned in paragraph (E) above, a special audit will be performed by the Office of the Superintendent of Bankruptcy within a 24 month period following the expiration of the period mentioned in paragraph (E), to determine if the trustees have corrected the deficiencies noted in this discipline report; this audit will be performed without prejudice of any other audit that may be warranted by circumstances at any time; and

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H) upon the failure of the trustees to comply with the conditions and limitations to which the licences are subject pursuant to paragraphs (A), (B), (C) and (D) above, the trustees shall be in default pursuant to paragraph 13.2(5)(b) of the Act.

This limitation order comes into effect on May 1<sup>st</sup>, 2000.

**SIGNED** in Ottawa, Ontario, this 28<sup>th</sup> day of April 2000

Marc Mayrand  
Superintendent of Bankruptcy

CONSERVATORY MEASURES TAKEN AGAINST STEPHEN WATKINS,  
TRUSTEE, RICHARD WILSON, TRUSTEE AND WATKINS, WILSON &  
ASSOCIATES INC., CORPORATE TRUSTEE

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**DIRECTIONS**

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**CANADA  
PROVINCE OF ONTARIO**

**IN THE MATTER OF:**

**STEPHEN WATKINS, TRUSTEE,**

**AND**

**RICHARD WILSON, TRUSTEE,**

**AND**

**WATKINS, WILSON & ASSOCIATES INC.,  
CORPORATE TRUSTEE, OF THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO**

**DIRECTIONS OF THE SUPERINTENDENT OF BANKRUPTCY  
TO THE BANK OF NOVA SCOTIA**

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

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## DIRECTIONS FOR CONSERVATORY MEASURES

**WHEREAS** the Superintendent of Bankruptcy may exercise the powers described in subsection 14.03(1) of the *Bankruptcy and Insolvency Act* (the “Act”) where “a trustee becomes insolvent” (paragraph 14.03(2)(e));

**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));

**THEREFORE**, I, Marc Mayrand, Superintendent of Bankruptcy, for the protection of the bankruptcy and proposal estates administered by Stephen Watkins, Trustee, Richard Wilson, Trustee and Watkins, Wilson & Associates Inc. direct:

the Bank of Nova Scotia, located at 859, Eglinton Ave West, Toronto, Ontario, M6C 2B9:

- i) to consider, as of the date of receipt of these directions, any one of Marie-Josée Sicard, Fred McGuire, Maria Wong or Eric Hackman, as mandatory co-signatories with Stephen Watkins, Trustee, or Richard Wilson, Trustee over the funds deposited to the credit of the bankruptcy and proposal estates administered by Watkins, Wilson & Associates Inc., Corporate Trustee;
- ii) not to make any payment, debit or transfer out of the money deposited to the credit of the bankruptcy and proposal estates administered by Watkins, Wilson & Associates Inc., Corporate Trustee, by means of bill of exchange, cheque, automatic withdrawal, transfer or any other

instrument after March 10, 2000 without the countersignature of any one of Marie-Josée Sicard, Fred McGuire, Maria Wong or Eric Hackman;

- 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 Marie-Josée Sicard, Fred McGuire, Maria Wong or Eric Hackman;
- iv) to send forthwith the list of all trust bank accounts and trust funds related to the bankruptcy and proposal estates administered by Watkins, Wilson & Associates Inc., Corporate Trustee to, David Stewart, Assistant Superintendent, Toronto, Office of the Superintendent of Bankruptcy, 600-25, St. Clair Avenue East, Toronto, Ontario, M4T 1M2;

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 March 10, 2000.

Marc Mayrand  
Superintendent of Bankruptcy



CONSERVATORY MEASURES TAKEN AGAINST  
WATKINS, WILSON & ASSOCIATES INC., CORPORATE TRUSTEE

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DIRECTIONS

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**CANADA  
PROVINCE OF ONTARIO,  
PROVINCE OF BRITISH COLUMBIA AND YUKON TERRITORY**

**IN THE MATTER OF:**

**WATKINS, WILSON & ASSOCIATES INC.,  
CORPORATE TRUSTEE IN THE PROVINCES OF ONTARIO AND  
BRITISH COLUMBIA AND YUKON TERRITORY**

**DIRECTIONS OF THE SUPERINTENDENT OF BANKRUPTCY  
TO THE OFFICIAL RECEIVERS OF THE PROVINCES OF ONTARIO  
AND BRITISH COLUMBIA AND YUKON TERRITORY**

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

---

**DIRECTIONS FOR CONSERVATORY MEASURES**

**WHEREAS** the Superintendent of Bankruptcy may exercise the powers described in subsection 14.03(1) of the *Bankruptcy and Insolvency Act* (the “Act”) where “a trustee becomes insolvent”; (paragraph 14.03(2)(e))

**WHEREAS** the Superintendent of Bankruptcy may, for the protection of an estate “where action in respect of a trustee is being taken under subsection 13.2(5) or 14.01(1), direct the official receiver not to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made”; (paragraph 14.03(1)(d))

**THEREFORE**, I, Marc Mayrand, Superintendent of Bankruptcy, for the protection of the bankruptcy and proposal estates administered by Watkins, Wilson & Associates Inc. direct:

the official receivers in the Provinces of Ontario and British Columbia and Yukon Territory not to appoint Watkins, Wilson & Associates Inc. in respect of any new estates after March 10, 2000 until a decision in respect of the trustee is made under subsection 13.2(5) or 14.01(1) of the Act;

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 March 10, 2000.

Marc Mayrand  
Superintendent of Bankruptcy

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## TRUSTEE LICENSING DIRECTIVE

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In response to the 1997 *Bankruptcy and Insolvency Act* amendments, as well as to feedback resulting from our ongoing stakeholder consultations, the Office of the Superintendent of Bankruptcy (OSB) is issuing the attached *Trustee Licensing Directive* (Directive No. 13), which replaces a 1989 licensing policy and related rules and directives and gathers them into one document.

It provides the trustee community and the public at large with a document that addresses the various requirements to apply for and obtain a bankruptcy trustee license. It incorporates the National Insolvency Qualification Program (NIQP) into the formal licensing process.

Furthermore, it lists the various requirements and standards for current license holders for maintaining their trustee license.

The release of Directive No. 13 clearly demonstrates the priorities of the OSB in protecting the integrity

of the insolvency process and ensuring the highest professional, operational and educational standards within the trustee community.

In general, creditors and debtors will benefit from this new directive as it will result in higher, more rigorous national qualification standards for trustees. Furthermore, the expansion of the territory where trustees can practice will provide easier access to the insolvency system, at lower cost for creditors, especially in smaller communities and remote areas.

And finally, this directive reflects our commitment to protect the integrity of our insolvency system and to serve the insolvency community as a model regulator.

The *Trustee Licensing Directive* is available on our Web site at (<http://osb-bsf.ic.gc.ca>).

If you have any additional questions or comments, please do not hesitate to contact our office nearest you.

# DIRECTIVE No. 13

## TRUSTEE LICENSING

**ISSUED: MARCH 31, 2000**

This Directive replaces the *Trustee Licensing Policy* previously issued on July 1, 1989, as well as the Directive on Inactive Trustees (Directive 28R).

### Definitions

1. For the purposes of this Directive, all terms defined or described in the *Bankruptcy and Insolvency Act* and its *General Rules* shall apply.

2. Subject to section 1, the following definitions apply:

“Act” means the Bankruptcy and Insolvency Act; (« Loi »)

“applicant” means a person who applies for a trustee licence under the *Act*; (« demandeur »)

“Division Assistant Superintendent” (“DAS”) means the person responsible for the administration of the Division Office of the Superintendent of Bankruptcy; (« surintendant adjoint de division »)

“licence” means a licence issued by the Superintendent of Bankruptcy, pursuant to the *Act*; (« licence »)

“professional engagement” means any bankruptcy or insolvency matter in respect of which a trustee is appointed or designated to act in that capacity pursuant to the *Act*; (« activité professionnelle »)

“resident office” means the principal place of business from which the trustee normally practices; (« bureau principal »)

“state of insolvency” means being bankrupt, having filed a notice of intention or a proposal under this *Act* or being subject to any similar proceedings under federal, provincial or foreign legislation. (« état d’insolvabilité »)

### Authority

3. Paragraph 5(4)(d) of the *Act* authorizes the Superintendent to issue directives governing the criteria to be applied, in determining whether a trustee licence is to be issued to a person, and governing the qualifications and activities of trustees.

### Purpose

4. This Directive specifies the criteria and qualifications required to obtain and to maintain a trustee licence.

## PART I

### CRITERIA TO OBTAIN A TRUSTEE LICENCE

### Authority

5. Paragraph 5(3)(a) of the *Act* authorizes the Superintendent to receive applications for licences to act as trustees and to issue licences to persons whose applications have been approved.

6. Subsection 13(2) of the *Act* provides that the Superintendent, after such investigation as considered necessary concerning an applicant, and having regard to the criteria referred to in this Directive, may issue a licence to the applicant.

7. Section 13.1 of the *Act* provides that the Superintendent may issue a licence subject to conditions and limitations.

### A. TRUSTEE LICENCE – INDIVIDUAL

#### Application

8. The application by an individual for a trustee licence shall be made in Form 2 contained in Appendix “B”.

#### Prerequisite Qualifications

9. An individual who wishes to apply for a licence must meet the following prerequisites:

- (a) not be an insolvent person and not have been in a state of insolvency within five (5) years preceding the date of the application;
- (b) possess a Canadian university degree or its equivalent, or hold a relevant professional designation recognized in Canada or have a minimum of five (5) years relevant work experience;
- (c) have successfully completed
  - i) the *National Insolvency Qualification Program*; and
  - ii) the *National Insolvency Examination*, as described in the licensing process set out in Appendix “A”; and
- (d) have successfully completed the *Insolvency Counsellor’s Qualification Course*, as established by the Superintendent of Bankruptcy;
- (e) be in good standing with, and not subject to any current disciplinary action by any professional organization of which the applicant is a member.

**Specific Qualifications**

10. An applicant who meets the prerequisite qualifications must satisfy the reputation and suitability requirements as described below.

**i) Reputation**

11. The applicant shall
- (a) be of good character and reputation; and
  - (b) satisfy the Superintendent that the issuance of a licence will not impair public confidence in the insolvency process.
12. Without limiting section 11, an applicant who has been convicted of an indictable offence must satisfy the Superintendent that a pardon has been granted and that the conviction was not related to an offence of a commercial or economic nature.
13. Without limiting section 11, an applicant who has been found guilty of professional misconduct must satisfy the Superintendent that such misconduct was not of a commercial or economic nature. Where the misconduct is not of a commercial or economic nature, the applicant must show that the

misconduct is not likely to impair the public confidence in the applicant or in the bankruptcy and insolvency system in general.

**ii) Suitability**

14. The suitability of a candidate to become a trustee is evaluated by a Board of Examination that will consider the skills of the applicant.
15. The applicant shall demonstrate before the Board:
- (a) the ability to administer professional engagements;
  - (b) the ability to apply related legislation and jurisprudence;
  - (c) appropriate experience and a good understanding of business and consumer matters;
  - (d) good judgement in the administration of professional engagements; and
  - (e) a high standard of business ethics and professionalism.

**Limit**

16. An applicant is limited to three (3) appearances before the Board of Examination, over a period of ten (10) years from the date of enrolment in the *National Insolvency Qualification Program*, as described in the licensing process set out in Appendix “A”.

**Conditions**

17. A licence is issued
- (a) subject to the condition that the trustee continue to meet the requirements and qualifications of this Directive at all times; and
  - (b) subject to any other conditions that the Superintendent considers appropriate.

**Limitations**

18. A licence may be limited to
- (a) corporate bankruptcies and corporate proposals;
  - (b) consumer bankruptcies and consumer proposals;

or be subject to any other limitations that the Superintendent considers appropriate taking into account the Board of Examination's evaluation and the professional environment in which the applicant will operate.

19. For the purposes of this Directive only, where a trustee licence is limited to consumer bankruptcies pursuant to subsection 18(b) of the Directive, a "consumer bankruptcy" means a bankruptcy in which an individual has, directly or indirectly, no business liabilities.

20. Where a bankruptcy does not constitute a "consumer bankruptcy" as defined in section 19 of this Directive and is not a corporate bankruptcy, such an estate may only be administered by a trustee holding a licence without limitations.

## **B. TRUSTEE LICENCE - CORPORATE**

### **Application**

21. The application for a corporate trustee licence shall be made in Form 3 contained in Appendix "C".

### **Pre-approval of Name**

22. A person who wishes to apply for a corporate trustee licence must

- (a) obtain the pre-approval of the Superintendent for the proposed corporate trustee name; and
- (b) obtain the approval of the appropriate federal or provincial regulatory body regarding the proposed corporate name.

### **Corporate Requirements**

23. The name of a corporate trustee must consist of one of the following:

- (a) the name of one or more individual trustees;
- (b) a name derived from the name of an accounting firm; or
- (c) a combination of (a) and (b); provided that the Superintendent is satisfied that the public will not be prejudiced or misled.

24. The corporate trustee shall restrict its business to the duties and responsibilities of a trustee licensed

pursuant to the *Act* and to other related functions such as those of a liquidator, a receiver, an interim receiver, a receiver/manager, an agent for a secured creditor, or a consultant in insolvency matters.

25. A majority of the directors and a majority of the officers of a corporate trustee shall be licensed trustees.

26. A corporate trustee shall be a private or closed company as defined in the applicable legislation.

27. A trustee may, with the pre-approval of the Superintendent, be a shareholder or a financial backer of more than one corporate trustee provided that:

- (a) the corporate trustees do not operate in the same district;
- (b) the trustee satisfies the Superintendent that there is no conflict of interest; and
- (c) the trustee respects any other conditions and limitations that the Superintendent considers appropriate.

28. Notwithstanding section 27, a trustee may, with the pre-approval of the Superintendent, be a shareholder or a financial backer of more than one corporate trustee in the same district, for a limited period of time, in order to retire from practice as a trustee.

### **Issuance of Licence**

29. A licence is issued

- (a) subject to the condition that the corporate trustee continue to meet the requirements and qualifications of this Directive at all times; and
- (b) subject to any other conditions and limitations that the Superintendent considers appropriate.

## **PART II**

### **CONDITIONS TO PRACTICE**

#### **General Requirements**

30. In order to perform professional engagements, the trustee must

- (a) be solvent at all times;
- (b) have financial resources sufficient to warrant confidence in the ability to properly administer professional engagements;
- (c) have adequate facilities to perform his professional engagements ; and
- (d) have adequate professional liability insurance and either adequate employee dishonesty (also known as fidelity) insurance, a bond or other suitable financial arrangements.

### **Corporate Representation**

31. Except in extraordinary circumstances, a corporate trustee must, at all times and in each district for which it holds a licence, operate through an individual trustee.

32. Extraordinary circumstances include the situation where the corporate trustee is left with no individual trustee in a given district due, notably, to death, sickness or resignation of an individual trustee. Under these circumstances, the corporate trustee must obtain an authorization from the Superintendent to maintain its operation in the given district.

### **Designated Trustee**

33. A corporate trustee shall, for each professional engagement, designate an individual trustee who shall also be responsible for the administration of that engagement.

34. The designation of an individual trustee shall not relieve the corporate trustee of its ethical responsibility under any professional engagement it has accepted.

35. An individual trustee designated pursuant to section 33 shall not accept professional engagements under the individual trustee’s personal name.

### **Incompatible Occupation**

36. An individual trustee shall not act as a trustee if that trustee practices an incompatible occupation.

37. “Incompatible occupation” includes, notably, a collection agent, a bailiff, a trade association representative, an employee of the Office of the

Superintendent of Bankruptcy (“OSB”), a lawyer, and a notary in the province of Québec, as well as any other occupation, business or profession which may be in conflict with the duties and responsibilities of a trustee.

38. Notwithstanding section 37, an employee of the OSB acting pursuant to sections 14.03 or 29 of the Act may act as a trustee.

39. The trustee who is a member of a professional body regulating an incompatible occupation must satisfy the Superintendent that the trustee does not practice that occupation or profession.

### **Geographical Jurisdiction**

40. A licence is issued for the bankruptcy district or part thereof in which the trustee maintains a resident office.

41. The Superintendent may, upon written request, transfer the licence of an individual trustee to another district or part thereof, provided the trustee satisfies the Superintendent that the trustee has sufficient knowledge of the relevant legislation which applies in that district.

42. The Superintendent may, upon written request, extend the licence of an individual trustee to another district or part thereof, provided the trustee satisfies the Superintendent that:

- (a) the trustee has sufficient knowledge of the relevant legislation which applies in that district;
- (b) that this extension will not adversely affect the performance of professional engagements.

43. Where an individual trustee has made a request to the Superintendent to transfer or extend the licence to one or more districts, the Superintendent may require that the trustee appear before a Board of Examination.

44. Notwithstanding, section 43, the individual trustee who requests that his licence be transferred from a Common Law province to a Civil Law province or *vice versa*, will be required to appear before a Board of Examination.

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## PART III

### MAINTENANCE OF A TRUSTEE LICENCE

#### Notification of Changes

45. Subject to section 48, the following changes require the approval of the Superintendent and shall be contained in a written request for such approval prior to the effective date of the proposed change:

- (a) a change of district or of the resident office of the trustee;
- (b) a change of firm for which the individual trustee practices;
- (c) a change in the corporate structure or trustee name;
- (d) the reactivation or reinstatement of a trustee licence;
- (e) a merger of two or more corporate trustees.

46. Any other change in the information supplied by the trustee under this Directive shall be communicated to the Superintendent, in writing, at the latest within five (5) days of such a change.

#### Corporate Name

47. A corporate trustee shall operate and do business only under the name in which it is licensed.

48. Any change to the corporate name shall be pre-approved by the Superintendent before the approval of the appropriate federal or provincial regulatory body is requested.

## PART IV

### TRUSTEE STATUS

49. An individual trustee may be active or inactive.

#### Applicable Factors

50. The following factors are taken into consideration in determining whether a trustee is an active or inactive trustee:

- (a) activity in the day-to-day administration of professional engagements;

- (b) a supervisory role or control in an insolvency practice;

- (c) the length of time of inactivity;

- (d) the inventory of open estates in the trustee's personal name or in the trustee's name on behalf of a corporate trustee.

#### Active Trustee

51. An active trustee is a trustee who may accept professional engagements, either in the trustee's personal name or for a corporate trustee: the trustee is responsible for the administration of these professional engagements.

52. The trustee must obtain the pre-approval of the Superintendent before that trustee can begin accepting professional engagements.

#### Inactive Trustee

53. An inactive trustee is a trustee who does not carry out the functions of a trustee and who does not perform any duties in relation to supervision, receivership or liquidation work, look-see, consultation or research in insolvency matters. For example, a trustee who has gone back to school for a period of time or left the profession.

54. Upon being formally notified by the Superintendent that the trustee is inactive, the trustee shall not accept any professional engagements; nor shall that trustee carry out any functions that are exclusively reserved for a trustee appointed under a professional engagement.

55. An inactive trustee must pay the prescribed annual fees.

56. In order to reactivate a licence, an inactive trustee must satisfy the Superintendent that the technical knowledge and the skills required to act as a trustee have been maintained.

57. Where the trustee has been inactive for more than five (5) years and wishes to reactivate the licence, the trustee will be required to appear before a Board of Examiners.



## Honorary Trustee

58. The Superintendent may issue an honorary trustee licence to an individual trustee, acknowledging past service, where the trustee meets the following criteria:

- (a) the trustee has been an active trustee for a minimum period of thirty (30) years;
- (b) the trustee has attained the age of fifty-five (55);
- (c) the trustee has retired from active insolvency practice;
- (d) the trustee is not responsible for any professional engagements;

and, at the discretion of the Superintendent,

- (e) the trustee is generally recognized by peers as having made a significant contribution to the insolvency community.

59. An honorary trustee shall not accept any professional engagements and will not be subject to any fees.

## PART V

### REINSTATING A TRUSTEE LICENCE

#### Reinstating a Trustee Licence

60. In order to reinstate a licence which has ceased to be valid, in accordance with sub-section 13.2(3) of the *Act*, the trustee must satisfy the Superintendent that the reinstatement of the licence will not impair public confidence in the bankruptcy and insolvency system.

## PART VI

### GENERAL PROVISIONS

#### Temporary Absence

61. In the event of a temporary absence (e.g. illness, maternity leave, vacation) during which the trustee is unable to perform normal trustee duties, arrangements may be made with the DAS to allow another trustee to carry out the required duties.

#### Transitional Measures

62. Paragraph 9(b) and sub-paragraph 9(c)i) do not apply to applicants who have successfully completed the *National Insolvency Examination* held in 1998 or in a previous year.

63. Paragraph 9(b) and sub-paragraph 9(c)i) do not apply to applicants who failed the *National Insolvency Examination* held in 1997 or in a previous year, but successfully completed it in 1998, 1999 or 2000.

64. Paragraph 9(d) does not apply to licences issued in 1998 or in a previous year.

65. A corporate trustee may continue to use a name approved by the Superintendent prior to the date of coming into force of this Directive.

#### Compliance and Enforcement

66. Failure to comply with any provision of this Directive constitutes an offence under the Act, and in accordance with subsection 13.2(5) of the Act may, among others, result in the cancellation or the suspension of a licence, as well as, the application of a disciplinary process and conservatory measures including a direction to the official receiver not to appoint the trustee to any new estates.

The Superintendent of Bankruptcy  
Marc Mayrand

# APPENDIX “A”

## LICENSING PROCESS

This appendix provides detailed information on the licensing process.

### A. PROCESS REGARDING THE ISSUANCE OF AN INDIVIDUAL TRUSTEE LICENCE

1. In order to obtain an individual trustee licence, a person shall meet the pre-requisite qualifications as set out in section 9 of the Directive.

#### Professional Designation

2. Examples of relevant professional designations are those relating to accounting, law, business administration, management and finance.

#### Insolvency Counsellor’s Qualification Course

3. The successful completion of the *Insolvency Counsellor’s Qualification Course* is required in order for an individual to qualify to conduct counselling under the BIA. It is also a pre-requisite qualification that must be met by an individual who wishes to apply for a trustee licence, as set out in paragraph 9(d) of the Directive.

4. This course provides individuals with the basic skills and knowledge required for delivering counselling to insolvent consumers. The course is intended to ensure that individual debtors will receive professional counselling from qualified people who can assist them in adopting more responsible practices in their financial matters.

#### National Insolvency Qualification Program

5. By Memorandum of Understanding (“MOU”), the Superintendent of Bankruptcy and the Canadian Insolvency Practitioners Association (“CIPA”) have established the *National Insolvency Qualification Program* (“NIQP”) as a common qualification system for providers of insolvency and business-recovery services in Canada.

6. The NIQP is a three (3) year joint education process that consists of a body of knowledge, a Prescribed Course of Study, a tutorial, written examinations, the

*National Insolvency Examination* (“NIE”) and an oral examination before a Board of Examination.

7. Individuals will be allowed ten (10) years from the date of enrolment to complete the NIQP, with no more than three (3) attempts at any examination, including the NIE and the oral board examination.

8. Subject to the transitional provisions and exemptions set out in the MOU, enrolment in and successful completion of the NIQP is compulsory for any individual wishing to become a trustee.

#### National Insolvency Examination

9. The NIE is the written final examination that individuals must pass, and is held jointly by the Office of the Superintendent of Bankruptcy (“OSB”) and the CIPA.

10. The purpose of the NIE is to assess the technical knowledge of a person wishing to apply for an individual licence.

11. The NIE is held once per year, at locations and times to be determined by the OSB and the CIPA.

12. The NIE consists of two (2) parts, each one being three (3) hours long. The exam contains questions on bankruptcy and proposals, as well as on receiverships.

13. The examinations are marked by a committee made up of representatives of the OSB and the CIPA.

14. An individual may appeal the examination result, in writing, within thirty (30) days after the date on which the results are sent.

#### Application

15. Applicants who have passed the NIE will receive an invitation to appear before a Board of Examination for the oral examination. The invitation shall include a copy of Form 2 (“Application for a Trustee Licence”) which the applicant shall file with the Superintendent.

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## Investigation

16. Once Form 2 (“Application for a Trustee Licence”) is filed, the Superintendent verifies that the applicant meets the qualifications set out in the Directive.

17. The Superintendent may require an applicant to provide such additional information and sign such authorization for information as the Superintendent deems appropriate.

18. For example, the Superintendent may require that authorization be given to communicate with a professional organization in order to verify the applicant’s good standing.

19. The Superintendent may request an investigation by the Royal Canadian Mounted Police to determine if the applicant has a criminal record. The Superintendent may also take any other investigative measures that are deemed necessary, including but not limited to:

- (a) a bankruptcy search and a credit verification;
- (b) a financial evaluation; and
- (c) a verification of the applicant’s employment history and references.

## Board of Examination

20. The Board of Examination shall consist of a trustee, a lawyer, a DAS and a representative of the Superintendent. The members of the Board may vary from district to district. The trustee examiner is selected by the CIPA and the lawyer examiner is selected by the Superintendent, with consideration given to the following factors:

- (a) that these examiners have a minimum of five (5) years’ relevant practical experience in the insolvency field;
- (b) the opinions of the DAS of the local division office, the National Audit Group of the OSB and the local Registrar, regarding the competence of these examiners; and
- (c) that there is no relationship between the examiner and the applicants which would call into question the impartiality or the fairness of the oral examination process.

21. Various Boards will meet applicants in several locations across Canada over a period of approximately sixty (60) to ninety (90) days every year.

22. The members of each Board shall make a recommendation to the Superintendent for each applicant they have met, based on their personal opinions as to the applicant’s suitability to become a trustee, as demonstrated in the interview.

## Decision of the Superintendent

23. The decision of the Superintendent shall be mailed simultaneously to all applicants.

24. Applicants are entitled, upon request made within thirty (30) days, to receive feedback on their performance, as indicated in the comments of the Board members.

## Review of the Superintendent’s Decision

25. An applicant may ask for a review of the Superintendent’s decision, provided that a written request stating the grounds therefor is made to the Superintendent within thirty days (30) of receiving the decision.

26. An applicant may ask to be heard in person by the Superintendent.

## Licence

### A. Licence Subject to Conditions

27. The following conditions apply to a new license:

- (a) that the newly licensed trustee agrees, for a period of twenty-four (24) months, to practice with, and in the same physical location as, an active established trustee who is acceptable to the Superintendent.
- (b) that where, at any time during those twenty-four (24) months, the newly licensed trustee does not satisfy the requirement set forth in subparagraph (a), the newly licensed trustee is authorized to act only in the following cases:
  - (i) consumer proposals;
  - (ii) summary administration estates ;

- (iii) estates, known as ordinary administration estates, for which the unsecured liabilities, as per the Statement of Affairs, do not exceed \$500,000 and for which the realizable assets as per the Statement of Affairs, after deducting the value of all security interests, do not exceed \$15,000; and
- (iv) all other cases (notice of intention, Division I proposal, Interim Receiver, estates not covered by case (iii) above, etc.), subject to the approval of the DAS and on such terms as the DAS shall determine, considering the performance of the newly licenced trustee.

28. In granting the newly licenced trustee approval to act in the cases described in sub-paragraph 27(b)(iv) of this Appendix, the DAS may require that the newly licenced trustee appoint a sponsor who will provide supervision in the administration of such estates.

29. The Superintendent may also require that the trustee practice under the direct supervision of an established trustee.

30. After the period of time for which the conditions attached to a new licence are imposed, the trustee must, in order to have them removed, request in writing that the Superintendent lift these conditions. The Superintendent may lift, modify or maintain the conditions, depending on the recommendation of the DAS as to the performance of the trustee.

**B. Licence Subject to Limitations**

31. Where the Superintendent offers a licence with limitations pursuant to section 18 of the Directive, the applicant has thirty (30) days to accept the offer.

**B. PROCESS REGARDING THE ISSUANCE OF A CORPORATE TRUSTEE LICENCE**

**Application**

32. Form 3 contained in Appendix “C” is filed after the Superintendent has approved the proposed name of the corporate trustee.

33. The requirements as set out in section 24 (restrictions on the corporation’s business) and section 26 (private or closed company) of the Directive shall be contained in the constituting documents of the corporation.

**C. PROCESS REGARDING THE CONDITIONS TO PRACTICE**

**Inquiry**

34. The Superintendent may, from time to time, conduct an inquiry in order to verify that a trustee continues to meet all requirements and qualifications, as set out in sections 17 and 29 of the Directive.

35. Within such an inquiry, the Superintendent may require that the trustee provide additional information and documentation, such as the trustee’s financial statements. The Superintendent may also conduct any other form of investigation possible under paragraphs 16 to 19 of this Appendix.

**Designated Trustee**

36. An individual trustee who, in accordance with section 33 of the Directive, has been designated by the corporate trustee to be responsible for the administration of a professional engagement, shall acknowledge acceptance of the designation in writing to the DAS.

37. Where the individual trustee designated by the corporate trustee is to be replaced, the corporate trustee shall forthwith notify the DAS of the reason for such replacement and of the name of the newly designated trustee.

**Geographical Jurisdiction**

38. A trustee may offer services from a location other than the resident office. All locations other than the resident office must be authorized by the DAS, in accordance with the provisions of the *Non-Resident Office Directive*.

**D. OTHER GENERAL INFORMATION**

**Clarification of Certain Issues**

39. If any doubt should arise, the trustee or trustee applicant should obtain clarification from the Superintendent, of any issue arising from this Directive, including:

- (a) what constitutes or not an incompatible occupation; and
- (b) what constitutes a state of insolvency.

# INSOLVENCY CIRCULAR No. 3

## EMPLOYMENT INSURANCE

**ISSUED: MARCH 28, 2000**

### **Purpose**

1. The purpose of this Circular is to provide trustees with the document prepared by Human Resources Development Canada “HRDC”, Employment Insurance Branch, entitled: “Subsection 46(1) of the *Employment Insurance Act* and its effects on a trustee acting pursuant to the *Bankruptcy and Insolvency Act*”.

2. This document is the result of discussions among representatives of the Office of the Superintendent of Bankruptcy Canada, the Joint Committee on Bankruptcy, and HRDC.

3. The document provides guidelines respecting the procedure to follow by HRDC and trustees in determining whether overpayments of Employment Insurance benefits are owed to HRDC when individuals produce claims for unpaid salary to a trustee and, where applicable, the procedure to be followed for forwarding that payment to HRDC.

4. In the context of this Circular, for an overpayment of Employment Insurance benefits to exist, the following conditions must be met:

- a trustee or receiver has been appointed to administer the estate;
- there has to be a work stoppage;
- Employment Insurance benefits are claimed from HRDC by the ex-employee;
- the benefits owed to the ex-employee (e.g.: severance pay, vacation pay, salary arrears, etc.) have

to be claimed by the ex-employee in the employer’s insolvent estate; and,

- the trustee declares a dividend regarding this type of claim.

Consequently, the amount of Employment Insurance benefits overpayment which HRDC could claim depends on the amount of the declared dividend. Therefore, HRDC informs us that this amount should not, in any circumstances, be greater than the amount of the dividend payable by the trustee.

5. In addition, we wish to inform practitioners that, pursuant to section 147 of the Bankruptcy and Insolvency Act, the Superintendent’s levy applies before a payment is made to HRDC. Furthermore, the amount that must be reported by the trustee to HRDC in accordance with subsection 5.1(3), is the amount of the dividend after deduction of the Superintendent’s levy.

6. Where it has been determined that an “overpayment” is payable to HRDC, the trustee should communicate by letter with the individuals who have filed claims to inform them of the possibilities that amounts may be deducted from their claim. Examples of letters, appropriate for such circumstances, are attached to this circular for use by trustees at their discretion.

7. For any questions related to the interpretation or the application of this circular, please contact the Regulatory Affairs and Consultations Section of the Office of the Superintendent of Bankruptcy at (613) 941-5719.

The Superintendent of Bankruptcy  
Marc Mayrand

# SUBSECTION 46(1) OF THE EI ACT AND ITS EFFECTS ON A TRUSTEE ACTING PURSUANT TO THE *BANKRUPTCY AND INSOLVENCY ACT*

## 1. INTRODUCTION

Former employees of bankrupt employers quite often file claims for EI benefits. If a settlement is subsequently made for unpaid wages, severance pay or other monies owed to the employee at the time of termination of employment, these earnings may be allocated, for EI purposes, to the period of time before or after termination. This action may result in the creation of an overpayment of EI benefits.

The *Employment Insurance Act*, effective 30 June 1996, clarified provisions with respect to the liability of trustees in bankruptcy. Pursuant to subsection 46(1) of the EI Act (Appendix A) an employer, a trustee in bankruptcy or any other person who becomes liable to pay earnings to claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, shall ascertain whether an amount would be repayable if the earnings were paid to the claimant. If so they shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits.

For the purposes of this document, the term “Trustee” is used as a generic expression, to include any person acting as trustee or receiver, as these are defined pursuant to the *Bankruptcy and Insolvency Act*, and who may have an obligation pursuant to subsection 46(1) of the EI Act.

## 2. PURPOSE

The purpose of this document is to establish guidelines for the application of subsection 46(1) of the EI Act and provide information concerning communications between Human Resources Development Canada (HRDC) and Trustees. It has been prepared for use of trustees and HRDC employees.

## 3. DETERMINATION OF EARNINGS

The Commission, with the approval of the Governor in Council, has the authority to make regulations that specify and clarify what constitutes earnings. Section 35 of the EI Regulation (Appendix A) has been made under that authority. It defines what monies are or are not earnings for benefit purposes.

Generally, earnings are the entire income arising out of any employment, including amounts payable to a claimant in respect of wages, accumulated sick leave credits, vacation pay, wages in lieu of notice, severance pay, bonuses, pecuniary benefits and all other advantages, pecuniary or non-pecuniary that are related to, attached to or arising out of employment.

Earnings are taken into account to determine the amount to be deducted from benefits, to determine an interruption of earnings and the amount of benefits to be repaid to the Commission under certain circumstances by the claimant, the employer or the trustee in bankruptcy.

Amounts payable as dividends concerning unpaid wages claims pursuant to paragraph 136(1)(d) and subsection 136(3) of the *Bankruptcy and Insolvency Act* (Appendix A) inter alia, are considered as earnings arising out of employment under subsection 35(2) of the regulation.

## 4. POLICY

**4.1** To apply Subsection 46(1) it is necessary for the trustees and HRDC to work cooperatively to communicate and share information in order to provide timely service to a common client.

**4.2** Pursuant to subsection 46(1) of the EI Act where a trustee becomes liable to pay earnings to a claimant for a period and has reasons to believe that benefits have been paid to the claimant for that period, the trustee shall ascertain whether EI benefits are repayable to the Receiver General, deduct that

amount from the overall dividend for submission to the Receiver General.

**4.3** In order to ensure an efficient process and timely service, a trustee should initiate contact with the HRDC's Regional Coordinator and provide the necessary information to allow for a determination of whether an allocation of the trustee's payment would create overpayments of benefit against individual claimants.

**4.4** Once advised by the HRDC's Regional Coordinator of the amount of money paid in excess to a claimant, the Trustee must deduct from the payment owed to that claimant an amount equal to the overpayment of EI benefit and remit such an amount to the Receiver General.

## 5. PROCESS

### 5.1 Trustee

- Supply to the HRDC's Regional Coordinator (Appendix B) a list, (if possible on diskette) preferably by Province, on former employees to whom payments are to be made and specifying; to the extent that such information is available:
  - 1) the name of the company involved;
  - 2) the name, the full address/Province and Social Insurance Number of the individual;
  - 3) the **total** amount of gross earnings to be paid as dividends by the trustee, the nature of the payment and the break down of such payment (unpaid wages, bonuses, accumulated sick leave credits, vacation pay, statutory holiday, severance pay, pension, employee's pension contribution, etc.);
  - 4) salary earned during last week worked;
  - 5) the last day worked.

### 5.2 HRDC

To facilitate contact and continuing communication with a trustee, the initial point of contact will be the Regional Office which covers the territory where the trustee is located.

### 5.2.1 Regional Coordinator

- acknowledges receipt of the list supplied by the trustee;
- utilizes the Social Insurance Number to determine the existence of a benefit claim at the time of or after the bankruptcy;
- quickly identifies those with no claims and then shares this list immediately with the trustee;
- initiates discussions with the trustee to allow the determination of an acceptable time frame for completion of the process and also the frequency and method of communication of information;
- ensures that the Human Resources Center of Canada (HRCC) reviews and assesses each file to determine if an overpayment is to be created by the payment of earnings by the trustee;
- ensures that the HRCC enters proper information to create the bankruptcy overpayment to allow recovery through the trustee;
- ensures that the HRCC notifies the claimant of the earnings decision rendered based on the information received by the trustee and advises the claimant that the trustee will deduct from any dividend payment the amount of overpayment which is payable to the Receiver General;
- provides the trustee with a list giving solely the amount of overpayment arising from a dividend.

### 5.3 Trustee

- shall deduct the amount of overpayment from the overall dividend for each individual and remit via the Regional Coordinator a cheque to the Receiver General, preferably a cheque for each province, if there is more than one concerned;
- attach to the cheque the list indicating the claimants, including SIN's for which a repayment applies.

### 5.4 Regional Coordinator

- will ensure that monies received from the trustee cover all overpayments to be recouped, or if that is not the case, will perform the appropriate reconciliation in cooperation with the trustee. The

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monies will have to be claimant's **account** as repayment of an overpayment of benefits, according to Subsection 46(1) of the EI Act;

- will also transfer the amount of monies owing, i.e. the list and the cheque received from the trustee, to Regional Financial Services, for deposit.

**NOTE:**

This document has been developed by representatives from HRDC, trustees and the Office of the Superintendent of Bankruptcy. This policy shall not be modified except by Insurance, at National Headquarters.

Julie Zahoruk Tanner  
Director, Benefit Entitlement



**APPENDIX A**  
**RELEVANT LEGISLATION**  
**EI ACT AND REGULATIONS**

**Return of benefits by employer or other person**

46.(1) If under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to a claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, the employer or other person shall ascertain whether an amount would be repayable under section 45 if the earnings were paid to the claimant and if so shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits.

**Determination of earnings for benefits purposes**

35.(1) The definitions in this subsection apply in this section.

“employment” means

- (a) any employment, whether insurable, not insurable or excluded employment, under any express or implied contract of service or other contract of employment,
  - (i) whether or not services are or will be provided by a claimant to any other person, and
  - (ii) whether or not income received by the claimant is from a person other than the person to whom services are or will be provided;
- (b) any self-employment, whether on the claimant’s own account or in partnership or co-adventure; and
- (c) the tenure of an office as defined in subsection 2(1) of the Canada Pension Plan. (employ)

“income” means any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in bankruptcy. (revenue)

“pension” means a retirement pension

- (a) arising out of employment or out of service in any armed forces or in a police force;
- (b) under the Canada Pension Plan; or
- (c) under a provincial pension plan. (pension)

(2) Subject to the other provisions of this section, the earnings to be taken into account for the purpose of determining whether an interruption of earnings has occurred and the amount to be deducted from benefits payable under section 19 or subsection 21(3), 22(5) or 23(3) of the Act, and for the purposes of sections 45 and 46 of the Act, are the entire income of a claimant arising out of any employment, including:

- (a) amounts payable to a claimant in respect of wages, benefits or other remuneration from the proceeds realized from the property of a bankrupt employer;
- (b) worker’s compensation payments received or to be received by a claimant, other than a lump sum or pension paid in full and final settlement of a claim made for workers’ compensation payments;
- (c) payments a claimant has received or, on application, is entitled to receive under
  - (i) a group wage-loss indemnity plan,
  - (ii) a paid sick, maternity or adoption leave plan, or
  - (iii) a leave plan providing payment in respect of the care of a child or children referred to in subsection 23(1) of the Act;

- (d) Notwithstanding paragraph (7)(b) but subject to subsection (3), the payments a claimant has received or, on application, is entitled to receive from a motor vehicle accident insurance plan provided under a provincial law in respect of the actual or presumed loss of income from employment due to injury, if the benefits paid or payable under the Act are not taken into account in determining the amount that the claimant receives or is entitled to receive from the plan;
- (e) the moneys paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension; and
- (f) where the benefits paid or payable under the Act are not taken into account in determining the amount that a claimant receives or is entitled to receive pursuant to a provincial law in respect of an actual or presumed loss of income from employment, the indemnity payments the claimant has received or, on application, is entitled to receive pursuant to that provincial law by reason of the fact that the claimant has ceased to work for the reason that continuation of work entailed physical dangers for
- (i) the claimant,
  - (ii) the claimant's unborn child, or
  - (iii) the child the claimant is breast-feeding.
- (3) Where, subsequent to the week in which an injury referred to in paragraph (2)(d) occurs, a claimant has accumulated the number of hours of insurable employment required by section 7 or 7.1 of the Act, the payments referred to in that paragraph shall not be taken into account as earnings.
- (4) Notwithstanding subsection (2), the payments a claimant has received or, on application, is entitled to receive under a group sickness or disability wage-loss indemnity plan or a workers' compensation plan are not earnings to be taken into account for the purpose of subsection 14(2).
- (5) Notwithstanding subsection (2), the moneys referred to in paragraph (2)(e) are not earnings to be taken into account for the purposes of section 14.

- (6) Notwithstanding subsection (2), the earnings referred to in subsection 36(9) are not earnings to be taken into account for the purposes of section 14.
- (7) That portion of the income of a claimant that is derived from any of the following sources does not constitute earnings for the purposes referred to in subsection (2):
- (a) disability pension or a lump sum or pension paid in full and final settlement of a claim made for workers' compensation payments;
  - (b) payments under a sickness or disability wage-loss indemnity plan that is not a group plan;
  - (c) relief grants in cash or in kind;
  - (d) retroactive increases in wages or salary;
  - (e) the moneys referred to in paragraph (2)(e), if the number of hours of insurable employment required by section 7 or 7.1 of the Act for the establishment of the benefit period of the claimant was accumulated after the date on which those moneys became payable and during the period in respect of which the claimant received those moneys; and
  - (f) employment income excluded as income pursuant to subsection 6(16) of the Income Tax Act.
- (8) For the purposes of paragraphs (2)(c) and (7)(b), a sickness or disability wage-loss indemnity plan is not a group plan if it is a plan that
- (a) is not related to a group of persons who are all employed by the same employer;
  - (b) is not financed in whole or in part by an employer
  - (c) is voluntarily purchased by the person participating in the plan;
  - (d) is completely portable;
  - (e) provides constant benefits while permitting deductions for income from other sources, where applicable; and
  - (f) has rates of premium that do not depend on the experience of a group referred to in paragraph (a).

(9) For the purposes of subsection (8), “portable”, in respect of a plan referred to in that subsection, means that the benefits to which an employee covered by the plan is entitled and the rate of premium that the employee is required to pay while employed by an employer will remain equivalent if the employee becomes employed by any other employer within the same occupation.

(10) For the purposes of paragraph (2), “income” includes

(a) in the case of claimant who is not self-employed, that amount of the claimant’s income remaining after deducting

- (i) expenses incurred by the claimant for the direct purpose of earning that income, and
- (ii) the value of any consideration supplied by the claimant; and

(b) in the case of a claimant who is self-employed in farming, 15 per cent of the claimant’s gross income from

- (i) farming transactions, and
- (ii) any farming subsidies the claimant receives under any federal or provincial program;

(c) in the case of a claimant who is self-employed in employment other than farming, the amount of the gross income from employment remaining after deducting the operating expenses, other than capital expenditures, incurred therein; and

(d) in the case of any claimant, the value of board, living quarters and other benefits received by the claimant from or on behalf of the claimant’s employer in respect of the claimant’s employment.

(11) Subject to subsection (12), the value of the benefits referred to in paragraph (10)(d) shall be the amount fixed by agreement between the claimant and the claimant’s employer and shall be an amount that is reasonable in the circumstances.

(12) Where the claimant and the employer do not agree on the value of the benefits referred to in paragraph (10)(d), or where the value fixed for those

benefits by agreement between the claimant and the claimant’s employer is not reasonable in the circumstances, the value shall be determined by the Commission based on the monetary value of the benefits.

(13) The value of living quarters referred to in paragraph (10)(d) includes the value of any heat, light, telephone or other benefits included with the living quarters.

(14) Where the value of living quarters is determined by the Commission, it shall be computed on the rental value of similar living quarters in the same vicinity or district.

(15) Where the remuneration of a claimant is not pecuniary or is only partly pecuniary and all or part of the non-pecuniary remuneration consists of any consideration other than living quarters and board furnished by the employer, the value of that consideration shall be included in determining the claimant’s income.

(16) For the purposes of this section, living quarters means rooms or any other living accommodation.

## **Act Respecting Bankruptcy and Insolvency**

### **Scheme of Distribution**

136.(1)d) wages, salaries, commissions or compensation of any clerk, servant, travelling salesman, labourer or workman for services rendered during the six months immediately preceding the bankruptcy to the extent of two thousand dollars in each case, together with, in the case of a travelling salesman, disbursements properly incurred by that salesman in and about the bankrupt’s business, to the extent of an additional one thousand dollars in each case, during the same period, and for the purposes of this paragraph commissions payable when goods are shipped, delivered or paid for, if shipped, delivered or paid for within the six-month period, shall be deemed to have been earned therein;

136.(3) “Balance of claim” A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due him.

## APPENDIX B

### LIST OF CONTACTS - REGIONAL COORDINATORS

---

Audrey Somerville  
Alberta and Northwest Territories  
(780) 495-6955

Marie Bannisterb  
British Columbia and Yukon Territory  
(604) 666-2216

Arlene Forsyth  
Manitoba  
(204) 983-3869

Gerry Leblanc  
New Brunswick  
(506) 851-6823

Tom Snow  
Newfoundland  
(709) 772-4001

Brenda Corbett  
Nova Scotia  
(902) 426-7718

Rick Cathrae  
Ontario  
(613) 969-3396

Penelope Player  
Prince Edward Island  
(902) 566-7672

Colette Bélanger  
Quebec  
(514) 283-6355

Gord Cowie  
Saskatchewan  
(306) 780-5932

# PROJECT

TO ALL EMPLOYEES OF : \_\_\_\_\_ C/O \_\_\_\_\_

\_\_\_\_\_ 20\_\_

Sir/Madam :

Re: In the matter of the bankruptcy of \_\_\_\_\_ c/o \_\_\_\_\_

On \_\_\_\_\_, the bankruptcy inspectors authorized the payment of an interim dividend to the preferred ( or ordinary ) creditors. However, the bankruptcy trustee must verify whether Employment Insurance benefits in the name of former employees of the bankrupt should be reimbursed to the Receiver General for Canada.

In order to do this, we have recently contacted the Employment Insurance Regional Office to determine whether there are benefits to be repaid by the employees, and if so, in what amount.

We will communicate with the employees again once we have obtained the requested information from the Employment Insurance Office. This normally takes about 45 days.

Sincerely,

# PROJECT

TO ALL EMPLOYEES OF : \_\_\_\_\_ C/O \_\_\_\_\_

\_\_\_\_\_ 20\_\_

Sir/Madam :

Re: In the matter of the bankruptcy of \_\_\_\_\_ c/o \_\_\_\_\_

Pursuant to our letter of \_\_\_\_\_ concerning the payment of a dividend to preferred creditors, we wish to confirm that we have been informed by the Employment Insurance Office as to the amount to be reimbursed to the Receiver General for Canada.

You will therefore find attached a cheque representing the dividend owing to you, with deductions having been made for Employment Insurance to be reimbursed to the Receiver General for Canada and the levy payable to the Superintendent of Bankruptcy.

Sincerely,

# GOVERNMENT OF CANADA DELIVERS ON PROMISE TO PROTECT CONSUMER PRIVACY

OTTAWA, April 13, 2000 — John Manley, Minister of Industry, today welcomed the passage into law of Bill C-6, the Personal Information Protection and Electronic Documents Act, which has received Royal Assent. It is expected that the privacy provisions of the Act will come into force on January 1, 2001.

“By enacting this legislation, the government has put in place a critical element of Canada’s Electronic Commerce Strategy and meets the government’s commitments announced by the Prime Minister in October 1998,” said Minister Manley. “The new law provides the privacy protection that is the foundation of electronic commerce, moving Canada to the forefront of the global digital economy.”

The Personal Information Protection and Electronic Documents Act will protect the personal information of individuals when it enters the commercial sphere in Canada. It will help to build trust in electronic commerce with its assurance of protection for personal information in digital form. It creates a level playing field for business with clear, predictable rules for all. The Act’s privacy provisions are based on CSA International’s Model Code for the Protection of Personal Information, developed and recognized by both business and consumers as a standard for privacy protection.

The new law will work to encourage on-line connectedness of Canadians — to each other, to business and to the federal government. Consumers and

business will be able to conduct their on-line transactions with the confidence that privacy protection measures are in place and that they will be overseen by the Privacy Commissioner.

“Canadians have repeatedly asked for privacy protection and businesses increasingly realize that it is a competitive advantage in the new information economy,” said Minister Manley. “This Act is an example of the Government of Canada’s commitment to protect the privacy of Canadian consumers.”

The new law also provides a way to adapt existing federal statutes and regulations to be compatible with an electronic environment. The Act provides for the use of electronic forms and electronic payments as alternatives to existing paper-based methods of dealing with government. By providing for the electronic option of doing business with federal government, this new law takes Canada from reliance on paper and encourages the use and recognition of electronic documents and signatures.

Additional information on the Personal Information Protection and Electronic Documents Act is available on Industry Canada’s e-commerce Web site <http://e-com.ic.gc.ca>

For more information, please contact:

Jennifer Sloan  
Press Secretary  
Office of the Minister of Industry  
(613) 995-9001

## Consumer Proposals as a Proportion of Total Personal Filings

Consumer debtors have been able to file consumer proposals since November 1992, but have they been taking advantage of this option? To answer this question, here is a graph showing the proportion of individuals filing consumer proposals.

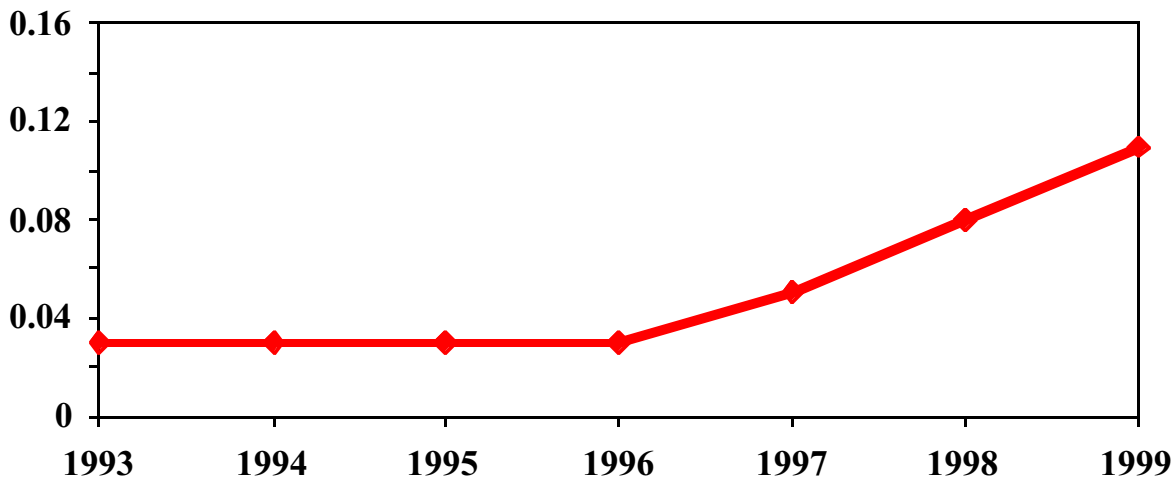
To obtain this proportion, we have divided the number of consumer proposals by the total number of personal filings, and multiplied the result by 100 to give the rate per 100 individuals.

For the first four years of this system, consumer proposals remained stable at 3% of all personal filings. However, in 1997, amendments were made to the *Bankruptcy and Insolvency Act*. Since then, the proportion of consumer proposals has increased steadily, reaching 11% of personal filings in 1999.

Nova Scotia is the only province that has maintained a higher proportion of consumer proposals than the Canadian average over the entire period studied. In Ontario, the provincial percentage is similar to the national figure, except in 1999 when it reached 15%. After a slow beginning, Quebec came up to the national average in 1999. The percentage for some provinces is clearly lower than the national average, whereas other provinces regularly exceed it. That is why all the graphs do not use the same vertical-axis scale.

If you have any questions on the proportion of individuals filing consumer proposals or if you would like to receive more explanation about the graphs, please feel free to contact Luc Asselin at (613) 941-2608 or by e-mail at [asselin.luc@ic.gc.ca](mailto:asselin.luc@ic.gc.ca).

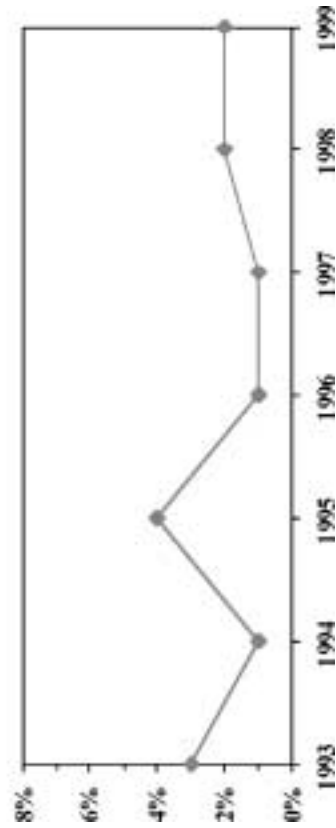
### Canada



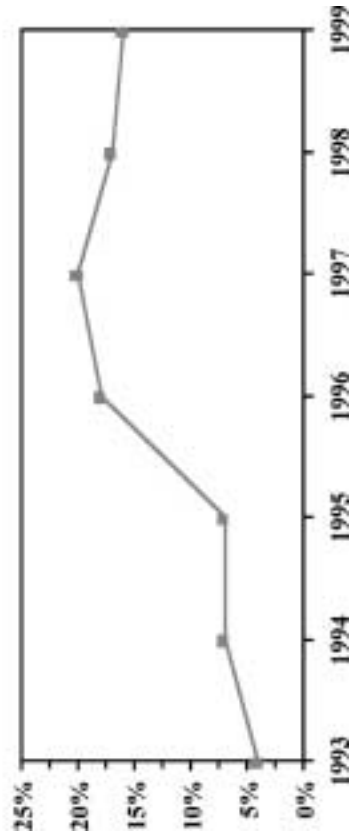


# Consumer Proposals as a Proportion of Total Personal Filings by Province

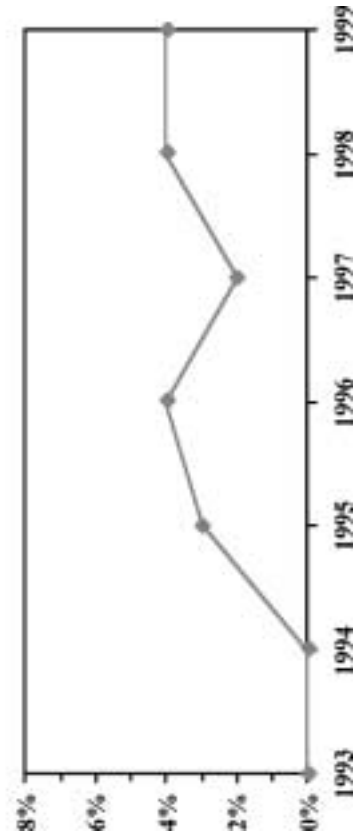
**Newfoundland**



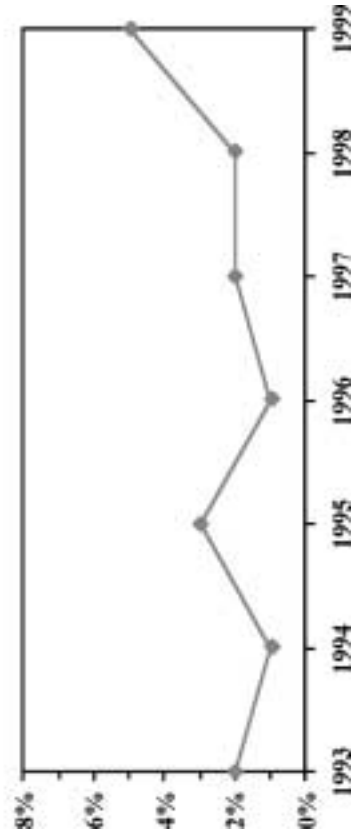
**Nova Scotia**



**Prince Edward Island**

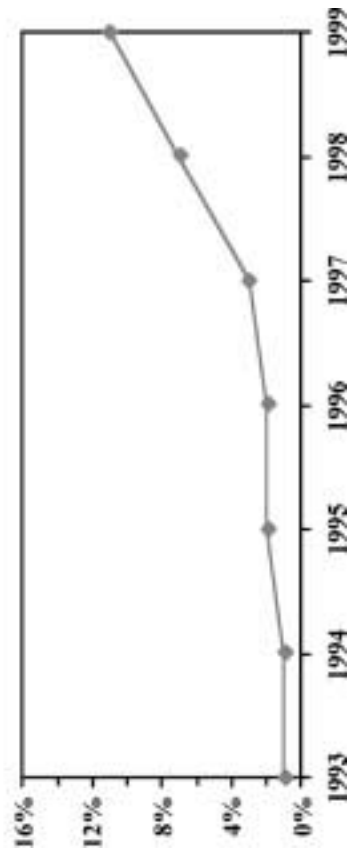


**New Brunswick**

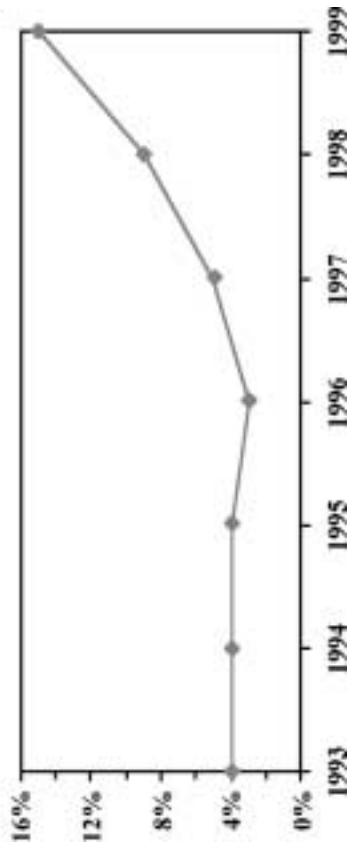


# Consumer Proposals as a Proportion of Total Personal Filings by Province

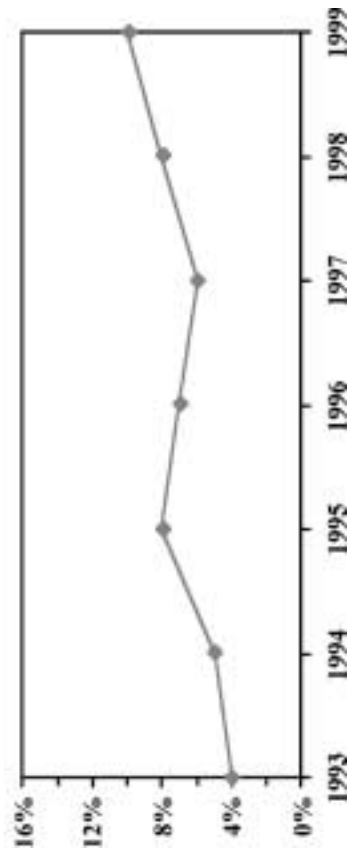
Québec



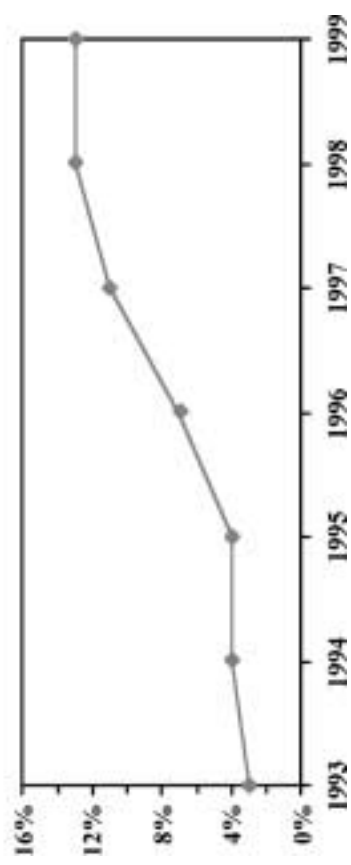
Ontario



Manitoba

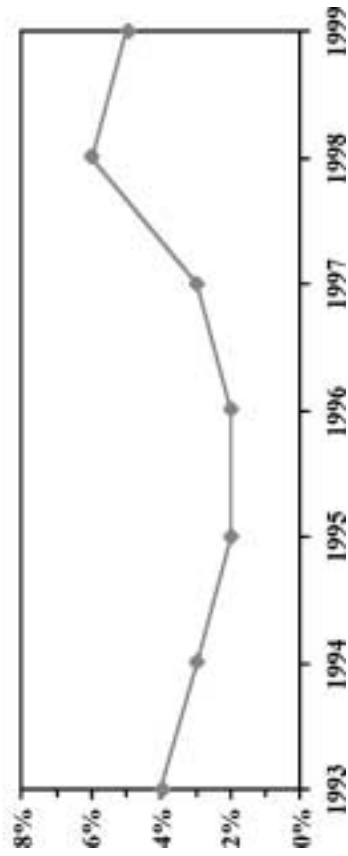


Saskatchewan

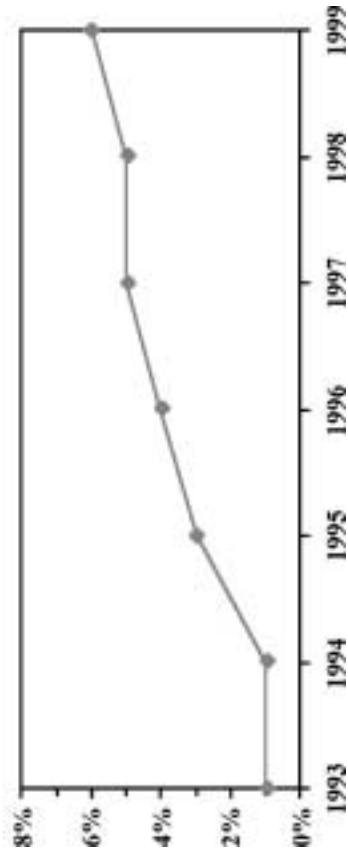


# Consumer Proposals as a Proportion of Total Personal Filings by Province

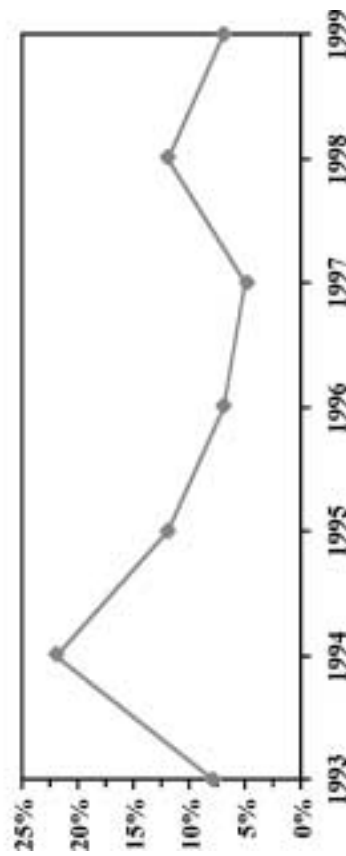
**Alberta**



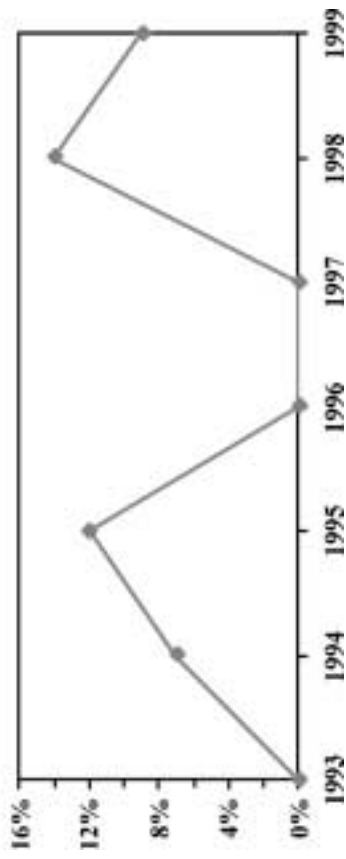
**British Columbia**



**Northwest Territories**



**Yukon Territory**



## Consumer Proposals as a Proportion of Total Personal Filings by Division Office

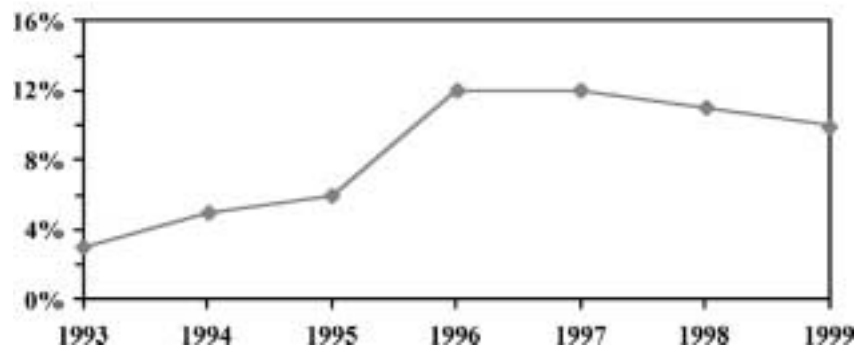
In Canada, bankruptcy proceedings are initiated in any of the 14 divisional offices. This enables us to calculate the proportion of individuals filing consumer proposals on a divisional basis. These figures are included as a complement to the previous graphs showing the percentages for Canada and the provinces.

As with the previous graphs, we have divided the number of consumer proposals by the total number of personal filings, and multiplied this result by 100 to give the rate per 100 individuals.

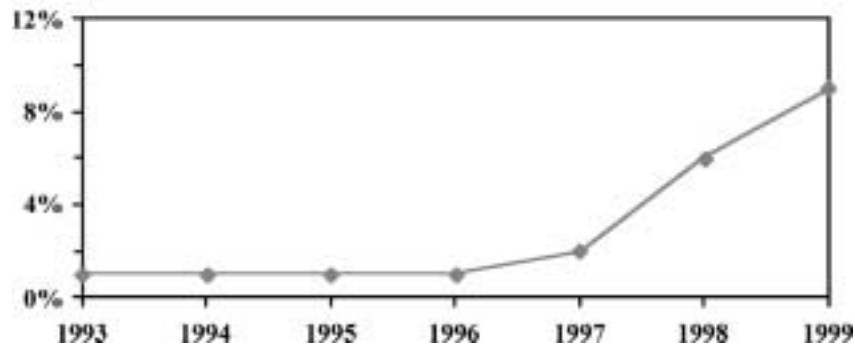
Divisional offices receive filings from various regions as in the following examples: Halifax from anywhere in the Atlantic provinces; Ottawa from western Quebec and eastern Ontario; Winnipeg from Manitoba and western Ontario; Edmonton from the Edmonton region and the Northwest Territories; and Vancouver from British Columbia and the Yukon Territory.

If you have any questions about the proportion of individuals filing consumer proposals or if you would like more explanation about the graphs, please feel free to contact Luc Asselin at (613) 941-2608 or by e-mail at ([asselin.luc@ic.gc.ca](mailto:asselin.luc@ic.gc.ca)).

### Halifax

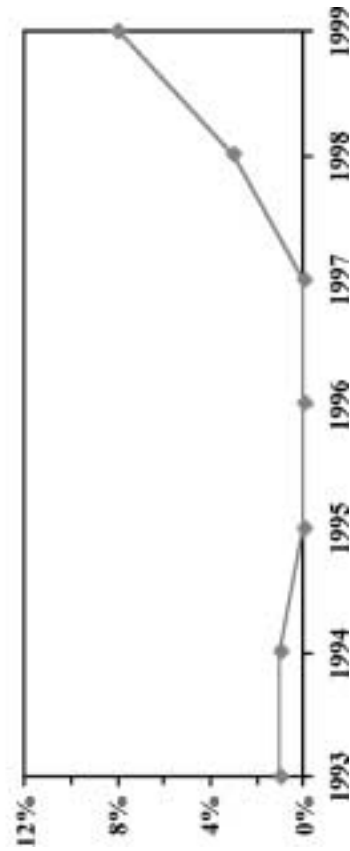


### Québec

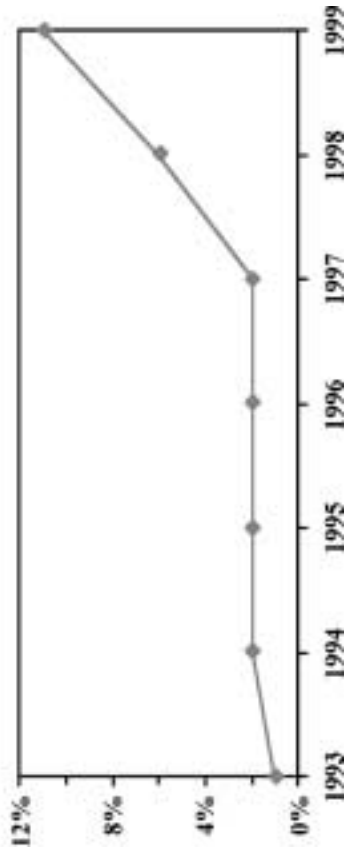


## Consumer Proposals as a Proportion of Total Personal Filings by Division Office

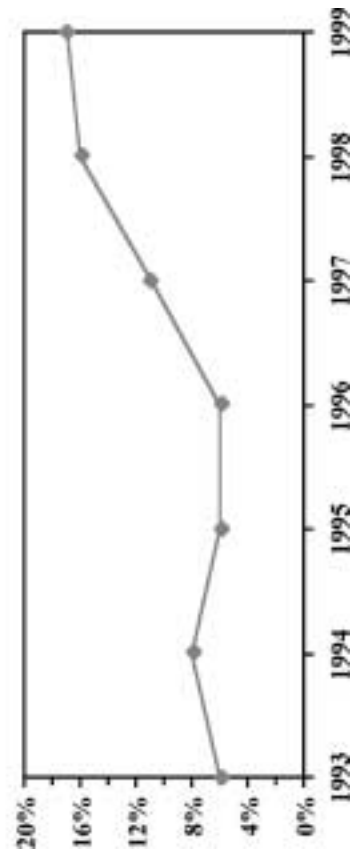
**Sherbrooke**



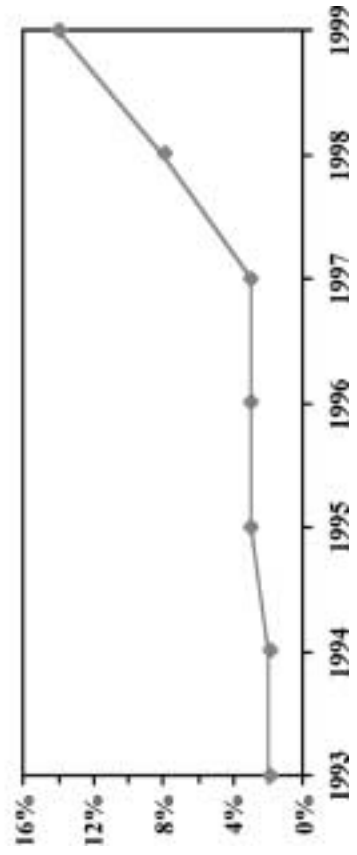
**Montréal**



**Ottawa**

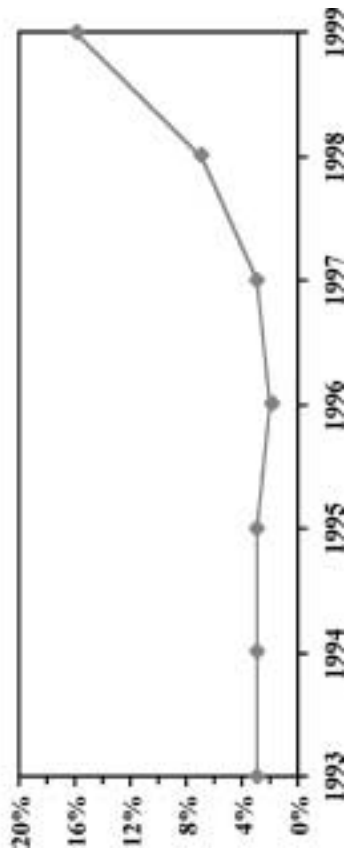


**Toronto**

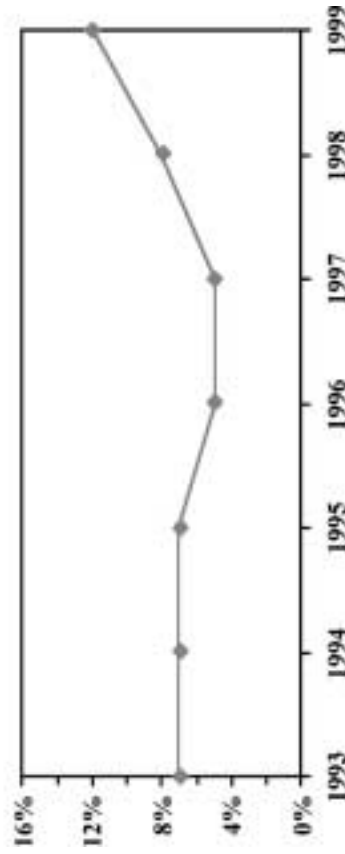


### Consumer Proposals as a Proportion of Total Personal Filings by Division Office

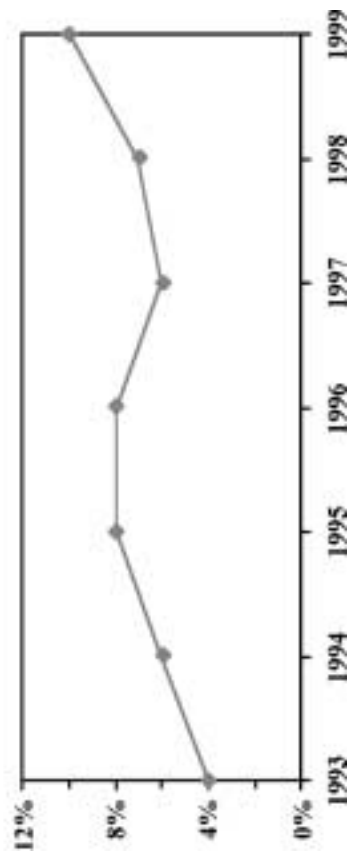
**Hamilton**



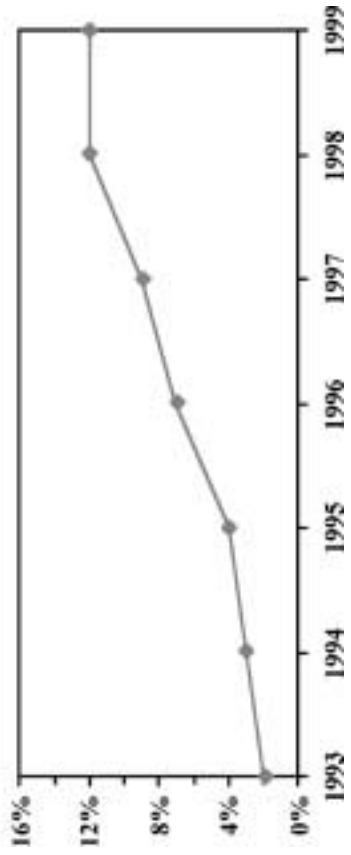
**London**



**Winnipeg**

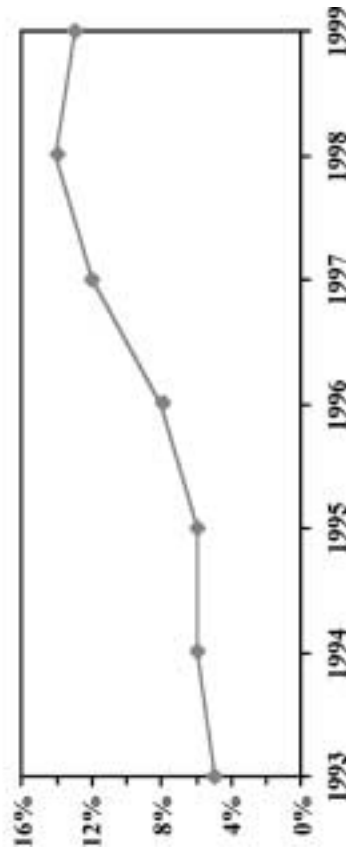


**Regina**

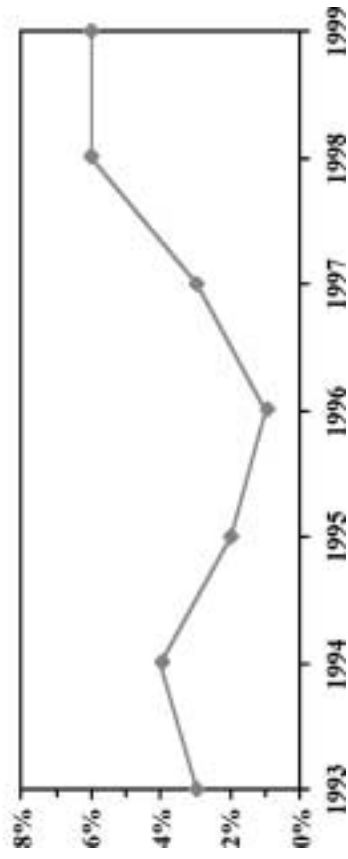


## Consumer Proposals as a Proportion of Total Personal Filings by Division Office

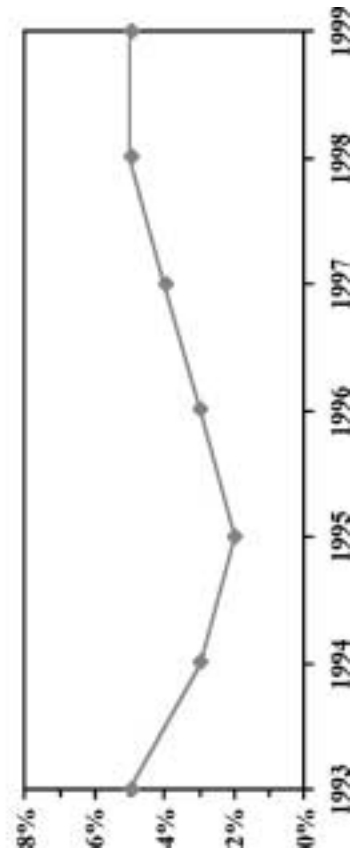
**Saskatoon**



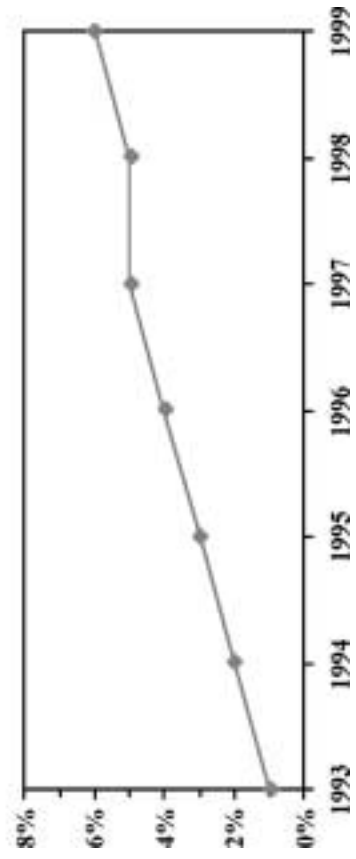
**Edmonton**



**Calgary**



**Vancouver**



# NOTICE

## 2000 NATIONAL INSOLVENCY EXAMINATION

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The Canadian Insolvency Practitioners Association (Association canadienne des professionnels de l'insolvabilité) and the Superintendent of Bankruptcy announce that the 2000 National Insolvency Examination will be held on November 14 and 15, 2000. The tutorial session to support the examination is scheduled for the week of October 1 to October 5, 2000 at NAV CANADA Training Institute, Cornwall, Ontario.

The deadline to register for both is July 21, 2000. Application forms for the examination and the tutorial session are now available.

Candidates will be examined on their knowledge of applicable acts and jurisprudence enacted before January 1, 2000. Therefore, students will not be examined on federal and provincial statutes enacted or amended, or jurisprudence published after January 1, 2000.

For additional information, please contact the Canadian Insolvency Practitioners Association (416) 204-3242.



## GST CREDIT AND TRUSTEE REMUNERATION

On April 30, 1998, Section 59 of the *Bankruptcy and Insolvency Rules* came into effect. We have since noticed a certain lack of uniformity in the manner in which some trustees have interpreted this rule. In fact, some trustees have adopted the position that the exempted portion of the GST cheque, namely the amount to be returned to the bankrupt pursuant to the rule, could be included in the total receipts for the purpose of calculating trustee remuneration.

The Office of the Superintendent of Bankruptcy (OSB) opposed this practice since it was contrary to the intention of the legislator and was prejudicial to creditors. As a result of this opposition by the OSB, a couple of matters found themselves before the courts.

After reviewing and discussing this issue, the OSB and the Canadian Insolvency Practitioners Association (CIPA) agreed to a joint position, with CIPA acquiescing to the position taken by the OSB. Furthermore, Mr. Justice Arthur LeBlanc of the Nova Scotia Supreme Court in the matter of the Bankruptcy of Wanda Johnson indicated from the Bench that he supported the OSB's position and that he would render a written decision along these lines. At the time of writing the present note, no written decision had been obtained.

As such, the correct interpretation of Sections 59 and 128 of the *Bankruptcy and Insolvency Rules* is as follows:

- when a GST credit is subject to seizure because it is necessary to cover the trustee's basic costs of administration, the GST credit can be included in the total receipts in order to calculate the trustee's remuneration;
- when a GST credit is not subject to or exempt from seizure because the realization of assets is sufficient for a dividend to be available to the creditors, **the GST credit is returned to the bankrupt and can not be included in the total receipts in order to calculate the trustee's remuneration;**
- when a portion of the GST credit is subject to seizure because it is necessary to cover the trustee's basic costs of administration, only this portion can be included in the total receipts in order to calculate the trustee's remuneration. **The excess portion must be returned to the bankrupt and can not be included in the total receipts for the calculation of the trustee's remuneration.**

# ADDRESSES OF DIVISION OFFICES OF THE SUPERINTENDENT OF BANKRUPTCY INDUSTRY CANADA

300 West Georgia St.  
Suite 1900  
Vancouver, British Columbia V6B 6E1  
Tel.: (604) 666-5007  
Fax: (604) 666-4610

Standard Life Tower Building  
639 — 5<sup>th</sup> Avenue S.W.  
Suite 510  
Calgary, Alberta T2P 0M9  
Tel.: (403) 292-5607  
Fax: (403) 292-5188

Suite 725, Canada Place  
9700 Jasper Avenue  
Edmonton, Alberta T5J 4C3  
Tel.: (780) 495-2476  
Fax: (780) 495-2466

2002 Victoria Avenue  
Suite 1020  
Regina, Sask. S4P 0R7  
Tel.: (306) 780-5391  
Fax: (306) 780-6947

7<sup>th</sup> Floor  
123 — 2<sup>nd</sup> Avenue South  
Saskatoon, Sask. S7K 7E6  
Tel.: (306) 975-4298  
Fax: (306) 975-5317

400 St. Mary Ave., 4th Floor  
Winnipeg, Manitoba R3C 4K5  
Tel.: (204) 983-3229  
Fax: (204) 983-8904

69 John Street South  
4th Floor  
Hamilton, Ontario L8N 2B9  
Tel.: (905) 572-2847  
Fax: (905) 572-4066

The Federal Building  
451 Talbot Street, Room 303  
London, Ontario N6A 5C9  
Tel.: (519) 645-4034  
Fax: (519) 645-5139

Trebla Building  
473 Albert Street  
2<sup>e</sup> étage  
Ottawa, Ontario K1R 5B4  
Tel.: (613) 995-2994  
Fax: (613) 996-0949

25 St. Clair Avenue East  
6<sup>th</sup> Floor  
Toronto, Ontario M4T 1M2  
Tel.: (416) 973-6486  
Fax: (416) 973-7440

5, Place Ville-Marie  
8<sup>e</sup> étage, pièce 800  
Montréal (Québec) H3B 2G2  
Tel.: (514) 283-6192  
Fax: (514) 283-9795

1141, Route de l'Église  
4<sup>e</sup> étage  
Sainte-Foy (Québec) G1V 3W5  
Tel.: (418) 648-4280  
Fax: (418) 648-4120

2665, rue King Ouest  
Bureau 600  
Sherbrooke (Québec) J1L 1C1  
Tel.: (819) 564-5742  
Fax: (819) 564-4299

Maritime Centre  
1505 Barrington Street  
16<sup>th</sup> Floor  
Halifax, Nova Scotia B3J 3K5  
Tel.: (902) 426-2900  
Fax: (902) 426-7275

## IMPORTANT NOTICE TO BANKRUPTCY TRUSTEES ANNUAL LICENSING FEES

The Office of the Superintendent of Bankruptcy announces that annual licensing fees will be invoiced and renewed electronically beginning in the fall of 2000. Thus, in November 2000, invoices will be sent by electronic mail (E-Mail) only to trustees whose e-mail addresses are known to us, and they will have the option of paying their annual fee by credit card. Receipts will also be transmitted exclusively by e-mail.

Trustees who do not have an e-mail address will receive their invoice, only once, via regular mail. These will be sent out in November 2000. No reminder notices will be issued.

It should be noted that it is the trustee's responsibility to maintain a valid licence and to ensure that we receive payment on time, at the address shown on the invoice. The renewal policy is as follows:

- pursuant to section 13.2 of the *Bankruptcy and Insolvency Act* (BIA), the payment should be **received** on or before December 31 of each year; a trustee whose payment has not been received by that date is considered to be in default;
- a licence ceases to be valid on the failure of the trustee to pay; a trustee who has failed to pay the fees may not undertake any activity as a bankruptcy trustee;

- to reinstate a licence that was cancelled because of failure to pay, the trustee should provide a written explanation and pay the outstanding fees and the prescribed penalty (s.13.2(4) BIA). The Superintendent may wish to, among other things, verify that the trustee is solvent. He may also, depending on the circumstances, refuse to reinstate the licence or reinstate it with any conditions he deems necessary.

Once again, **the date of payment receipt** in the Office of the Superintendent of Bankruptcy (no matter what the date sent) is what determines whether or not a licence is automatically renewed. For more information concerning the electronic renewal of your licence, you may communicate with Henri Massüe-Monat, Assistant Superintendent (Licensing), at:

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

Tel: (613) 941-2697

Fax: (613) 946-2168

E-mail: [osb-bsf\\_licence@ic.gc.ca](mailto:osb-bsf_licence@ic.gc.ca)