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# *Meeting the Challenge*

**A Discussion Paper on Funding Options**

**for the**

**Office of the Superintendent**

**of Bankruptcy**

**Canada**

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

**EXECUTIVE SUMMARY**

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

**The Challenge**

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

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

**The First Steps**

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

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

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

### **The Next Step**

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

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

### **The Consultative Process**

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

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

Based on client and stakeholder input, the OSB will:

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

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

### **The Funding Options**

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

#### *Registration Fee and Levy Options*

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

#### *Trustee Licence Options*

- Option 8     Increase the annual renewal fee to maintain a bankruptcy trustee licence by 50%, 100% or 200%.
- Option 9     Establish a sliding scale for trustee licence fees, based on the volume and type of estates administered by the trustee in the previous year.
- Option 10    Impose a surcharge on trustee licence fees based on the cost of discipline and conservatory measures undertaken by the OSB in the previous year.
- Option 11    In addition to increasing the cost of applying for a licence from \$300 to \$400, introduce administrative fees for such things as late payment, licence activation

## Executive Summary

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and change of licence status.

**Option 12** Require trustees to post a performance bond or maintain an insurance policy of \$1 million, with the OSB as beneficiary, to be forfeited in the event of a serious disciplinary action, such as a conservatory measure.

**Option 13** Require the creation of an indemnity fund to be used to pay for trustee discipline costs and conservatory measures.

### *Information Services Options*

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

### *Other Administrative Options*

**Option 15** Set new fees for existing services or introduce services for which fees would be charged, for example, for:

- a) change in the filing status of an estate;
- b) mediation services;
- c) training and conferences;
- d) late charges;
- e) processing claims against trust accounts;
- f) non-statutory services provided by senior bankruptcy officers; and
- g) other administrative services.

## **Analysis of Feedback**

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

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

- flexibility: the fee structure should be flexible enough to provide the OSB with the financial stability required to respond to future marketplace and client needs.

*Conclusion*

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

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

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

**Superintendent of Bankruptcy  
365 Laurier Avenue West  
8<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0C8**

**or by fax: (613) 941-2862**

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# CONTENTS

A Note from the Superintendent .....	1
Introduction .....	2
<b>Section I — The Value and Services of the OSB .....</b>	<b>4</b>
The Value of the OSB .....	4
Services Provided .....	4
Service Results .....	5
Current Funding Structure .....	5
<b>Section II — The Case for Full Cost Recovery .....</b>	<b>6</b>
Pressures on Capacity .....	6
File Volumes and Workloads .....	6
Declining Resources for Compliance .....	8
Rising Enforcement Costs .....	8
Increased Legislative and Regulatory Demands .....	9
Increasing Demand for Services .....	9
The Need for Full Cost Recovery .....	9
<b>Section III — The Current Financial Position of the OSB .....</b>	<b>10</b>
Revenues .....	10
How the OSB Spends .....	12
The Gap Between Costs and Revenues .....	14
<b>Section IV — Making the OSB More Business-like and Efficient .....</b>	<b>15</b>
How the OSB Has Responded .....	15
<b>Section V — Funding Options .....</b>	<b>17</b>
Registration Fee versus the Levy .....	17
Options for Increasing Revenues .....	18
Maintaining Professional Standards .....	21
Information Services .....	24
Other New Services and Fees .....	25
<b>Conclusion .....</b>	<b>27</b>
A Commitment to Full Cost Recovery .....	27
Client and Stakeholder Input .....	28
Next Steps .....	28
<b>Appendix A — Background on the OSB .....</b>	<b>30</b>
<b>Appendix B — Summary of Funding Options .....</b>	<b>34</b>

## A NOTE FROM THE SUPERINTENDENT

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

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

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

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

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

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

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

Marc Mayrand  
Superintendent of Bankruptcy



## INTRODUCTION

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

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

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

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

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

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

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

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

The paper is divided into five sections:

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

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

## SECTION I

### THE VALUE AND SERVICES OF THE OSB

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

#### The Value of the OSB

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

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

#### Services Provided

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

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

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

### Service Results

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

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

### The OSB's 10 Key Service Areas

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

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

### Current Funding Structure

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

## SECTION II

### THE CASE FOR FULL COST RECOVERY

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

#### **Pressures on Capacity**

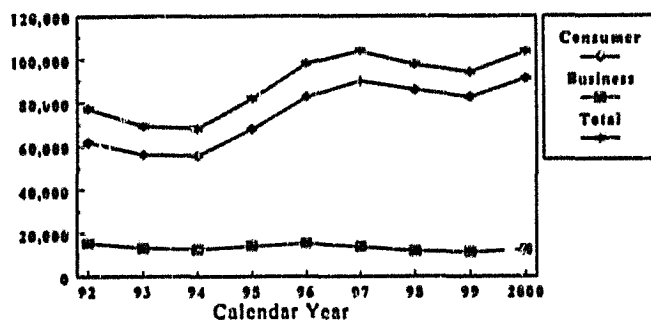
Clients and stakeholders have indicated clearly that trustee and debtor compliance are their principal concerns, and the OSB is therefore seeking to become a model regulator by reorganizing and streamlining to focus resources on core compliance activities. Despite these efforts, several key issues or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

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

#### *File Volumes and Workloads*

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

Figure 1 - Volumes



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

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

Table 1  
Volume of Bankruptcies

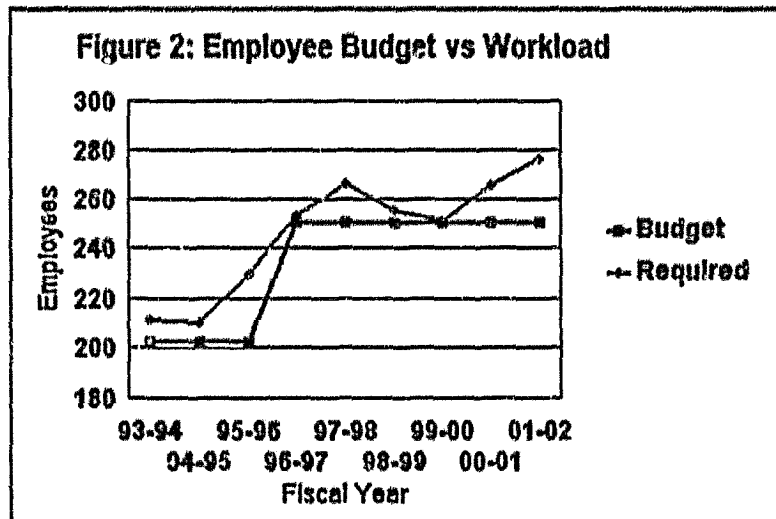
	1994		1995		1996		1997	
	Volume	% change	Volume	% change	Volume	% change	Volume	% change
Consumer bankruptcies	53,802	-1.2	65,432	21.6	79,631	21.7	85,297	7.1
Commercial bankruptcies	11,810	-5.7	13,258	12.3	14,229	7.3	12,200	-14.3
Consumer proposals	1,851	3.3	2,419	30.7	3,113	28.7	4,737	52.2
Commercial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

## Section II - The Case for Full Cost Recovery

### Declining Resources for Compliance

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

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



### Rising Enforcement Costs

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

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

### Increased Legislative and Regulatory Demands

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

*Increasing Demand for Services*

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

**The Need for Full Cost Recovery**

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

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

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

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



### SECTION III

## THE CURRENT FINANCIAL POSITION OF THE OSB

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

#### Revenues

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

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

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

**Table 2**  
**Revenue Totals and Percentage Change by Fiscal Year**

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

**Table 3**  
**Revenue by Type**

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

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

*Superintendent's Levy*

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

*Registration Fees*

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

### Section III — The Current Financial Position of the OSB

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#### Information Products

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

#### Trustee Licence Fees

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

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

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

#### How the OSB Spends

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

Section III — The Current Financial Position of the OSB

**Table 5**  
**Estimated Cost of Providing Services**

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

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

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

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

**Table 6**  
**Costs and Revenues by Process, 1996**

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

### The Gap Between Costs and Revenues

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

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

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

## SECTION IV

### MAKING THE OSB MORE BUSINESS-LIKE AND EFFICIENT

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

#### **How the OSB has Responded**

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

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

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

#### Section IV — Making the OSB More Business-like and Efficient

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- begun to re-engineer its compliance frameworks, to find more preventive and cost-effective strategies for ensuring debtor and trustee compliance.

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

## SECTION V FUNDING OPTIONS

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

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

### Registration Fee Versus the Levy

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

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

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



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

### Options for Increasing Revenues

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

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

**Table 7**  
**Options for Increasing the Superintendent's Levy**

<p><b>Option 1: Increase the levy on summary administrations (consumer bankruptcies) from 5% to 10%</b></p> <p>A doubling of the levy on the first \$1 million of dividends in summary (consumer) administrations would not double the levy revenues received, because many bankrupt estates pay no dividends to creditors and thus no levy. This proposal would, however, increase levy revenue by an estimated \$3.3 million per year (based on 85,300 consumer files annually).</p>	
<p><i>Advantages:</i> As current increases in file volume are largely in summary administrations, this option should ensure that they, not business bankruptcies, pay the additional cost.</p> <p>Summary administrations would bear a larger proportion of their cost without jeopardizing access to the system.</p> <p>The additional levy would be paid by the creditors of bankrupt estates rather than required of debtors up-front.</p>	<p><i>Disadvantages:</i> A 100% increase is dramatic, in view of the limited dividends paid out in summary administrations.</p>
<p><b>Option 2: Increase the levy on summary administrations to 100% of the first \$200 of dividends</b></p> <p>All of the first \$200 of dividends from bankrupt estates that follow the summary administration route (most consumer bankruptcies) would be paid as a levy. No levy would be paid on subsequent dividends. This option would increase the mean levy on summary administrations from \$37.75 to \$100.86, and increase levy revenue by \$5.4 million.</p>	
<p><i>Advantages:</i> Summary administrations as a group would bear a larger proportion of their cost of supervision without jeopardizing access to the system. Further, this would reduce the number of small payments currently made to creditors, which can be costly to administer.</p>	<p><i>Disadvantages:</i> Creditors of low-asset estates would bear more of the financial burden of the insolvency system, and dividends from these estates would be reduced substantially (to zero in some cases). For example, an estate that currently pays dividends of \$475 (\$500 less a levy of \$25) would yield only \$300 to creditors under this option.</p>
<p><b>Option 3: Lower the levy on bankruptcies to 2.25%, but impose it on total realized assets, rather than on dividends paid</b></p> <p>This option would apply to all types of bankruptcies and would be imposed on total realized assets (i.e., before trustee fees and expenses are paid) rather than on dividends paid to creditors. Because the levy would be based on a much larger dollar value, the rate could be reduced significantly. For example, a levy of 2.25% on total assets realized would produce an estimated additional \$6.2 million in revenue (based on \$708.8 million in realizations in 1997).</p>	

## Section V -- Funding Options

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

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

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

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

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

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

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

**Table 8  
Options for Increasing Registration Fees**

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

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

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

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

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

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

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

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

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

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

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

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

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

### Maintaining Professional Standards

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

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

**Section V -- Funding Options**

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

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

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

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

**Table 9  
Options for Increasing Trustee Licence Fees**

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

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

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

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

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

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

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

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

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

*Advantages:* User of the service would pay.

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

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

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

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

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

## Section V — Funding Options

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

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

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

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

### Information Services

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

Although the OSB could develop new information products and services, it must be remembered that the OSB plans to have a service provider take over responsibility for developing and marketing information products, and to use resulting revenues to deliver registration and other non-compliance related services.

**Option 14: Increase the number of new information products and services**

New information products and services could be developed and fees could be charged for information currently available at no charge. After taking into account the cost of development and marketing, these services are expected to generate at least \$1 million per year in new revenue.

*Advantages:* Considerable potential exists, as the OSB data base contains substantial amounts of information.

*Disadvantages:* Fees could deter businesses or potential investors from using the information to support business decisions.

### Other New Services and Fees

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

**Table 10**  
**Options for New Fees and Services**

<b>Option 15: Establish new fees for existing services and offer new services for which fees would be charged</b>	
<p><b>Option 15a. Charge for a change in filing status</b></p> <p>There is no charge at present for a change from a summary bankruptcy (\$50) to ordinary administration (\$150). Charging the extra \$100 would generate about \$75,000 per year.</p>	<p><i>Advantages:</i> Fairer to others who initially filed ordinary administrations. Recognizes the additional costs involved in supervising ordinary estates.</p> <p><i>Disadvantages:</i> Administrative costs associated with implementation.</p>
<p><b>Option 15b. Establish a new fee for mediation services</b></p> <p>Under the recent BIA amendments, the OSB must carry out a mediation between the parties (creditor, trustee or debtor) on the issue of the amount of disposable income to be paid into the estate. The OSB intends to charge for this service and could charge as much as \$200 per hour, which is the current rate for some types of mediation services.</p>	<p><i>Advantages:</i> As this is a new service, a fee would be justified to cover its costs. Only those using the service would pay. It could encourage creditors to take mediation seriously and not insist on mediation in unwarranted situations.</p> <p><i>Disadvantages:</i> As this is a new service, it may be too early to establish a fee and predict its impact on revenues. Issues of who should pay need to be addressed, particularly in low-asset estates.</p>
<p><b>Option 15c. Charge for OSB training and conference services</b></p> <p>The OSB could charge on a cost recovery basis for training and information sessions and conferences offered to clients and stakeholders.</p>	<p><i>Advantages:</i> Self-funding would promote more of these events.</p> <p><i>Disadvantages:</i> The costs of administration and fee collection. There is also an issue of whether the OSB should be involved or should leave these services to the private sector or trustee associations.</p>
<p><b>Option 15d. Late charges for overdue client and trustee accounts</b></p> <p>The OSB could establish a late charge (instead of interest charges) for handling late payments of name search bills, registration fees or remittance of the levy.</p>	<p><i>Advantages:</i> OSB revenue collection and accounts receivable costs would be recovered. Only delinquent parties would be required to pay.</p> <p><i>Disadvantages:</i> Clients or trustees may prefer to pay interest rather than a late charge, as it would normally be less.</p>



**Section V — Funding Options**

**Option 15e. A new fee for processing claims against trust accounts**

The OSB maintains unclaimed dividends and undistributed assets in trust for claim at a later date by the rightful creditor. All claims are examined in detail for validity before funds are released. There is currently no charge for this service, which cost the OSB between \$50,000 and \$60,000 per year. This option would see fees established for each claim submitted.

*Advantages:* Users of the service would pay directly. Also, had this service been provided by the trustee, there would have been a charge for it.

*Disadvantages:* Issue of whether it is fair to charge for the release of a creditor's own funds, given that the government can earn interest on the trust fund.

**Option 15f. Establish fees for non-statutory services provided by senior bankruptcy officers**

Fees could be established for OSB officers to provide consultative services, training or information services to clients or trustees. Fees would be on a cost-recovery basis and charged at an hourly rate.

*Advantages:* Additional services could be offered by the OSB at no cost to its compliance activities.

*Disadvantages:* Limited OSB resources should be applied first to core compliance work, not to optional services.

**Option 15g. Other administrative fees**

The OSB could charge for such things as rental of boardrooms for meetings of creditors, the Insolvency Bulletin or other publications, photocopies or computer runs, setting up new name search accounts, or providing copies of various mailing lists.

*Advantages:* New fees would cover the cost of these services and encourage the OSB to operate in a more business-like manner.

*Disadvantages:* Cost of administering a large number of small charges could be prohibitive.

## CONCLUSION

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

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

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

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

### **A Commitment to Full Cost Recovery**

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

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

## Conclusion

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### **Client and Stakeholder Input**

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

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

### **Next Steps**

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

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

**or by fax: (613) 941-2862**

**or by E-mail: [osb-bsf@ic.gc.ca](mailto:osb-bsf@ic.gc.ca)**

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

### **Analysis of Client and Stakeholder Input**

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

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

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

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

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

## APPENDIX A

### BACKGROUND ON THE OSB

#### Role and Responsibilities

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

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

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

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

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

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

### **Special Operating Agency Status**

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

## Appendix A

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

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

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

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

### OSB Fees

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

The following rate structure is currently in effect:

*Registration Fees*

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

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

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

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

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



**APPENDIX B**  
**SUMMARY OF FUNDING OPTIONS**

Funding Option	Revenue Potential
<b>Superintendent's Levy Increases</b>	
1. Increase the levy on summary administrations from 5% to 10%	\$3.3 million
2. Increase the levy on summary administrations to 100% of the first \$200 of dividends	\$5.4 million
3. Lower the levy to 2.25%, but impose it on total realizable assets (before trustee fees) rather than dividends paid	\$6.2 million
4. Lower the levy to 1 or 0.5%, but impose it on all realizable assets including all assets realized by secured creditors using a trustee under the BIA	\$6-7 million
<b>Registration Fee Increases</b>	
5. Increase the registration fee on summary administrations to \$100	\$4 million
6. Increase the registration fee for all services by 65%	\$4-5 million
7. Charge a flat \$100 registration fee for all types of bankruptcies and proposals	\$5.5 million
<b>Trustee License Fee Increases</b>	
8. Increase trustee annual renewal fees	\$200,000-300,000
9. Increase trustee licence fees and base them on the number of bankruptcies and proposals handled by the trustee in the previous year	\$400,000+
10. Impose a surcharge on trustee licence fees based on the cost of discipline and conservatory measures in the previous year	\$1 million+

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