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BANKRUPTCY PROGRAM EVALUATION

**RATIONALE, OBJECTIVES AND
PERFORMANCE INDICATORS**

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Consommation
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Consumer and
Corporate Affairs
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BANKRUPTCY PROGRAM EVALUATION

**RATIONALE, OBJECTIVES AND
PERFORMANCE INDICATORS**

**Program Evaluation Division
Corporate Services and Research Branch
Bureau of Policy Coordination
Consumer and Corporate Affairs Canada
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EXECUTIVE SUMMARY

The purpose of this study is to review the rationale of the bankruptcy program, clarify program objectives as needed, and to examine or develop performance indicators where required. This is the first of three studies in bankruptcy proposed by the Program Evaluation Division.

Information for this study was obtained by several means. Bankruptcy Branch files were reviewed at headquarters, a literature review was conducted, and the expertise of Price Waterhouse was engaged to assist the evaluation study team through interviews with Branch personnel and subsequent analysis.

Program rationale was reviewed to provide a basis for putting program objectives in perspective, and it was found to be completely adequate for the purposes of establishing program objectives.

Current objectives focus on the restoration of resources to productive uses, fair and equitable treatment of program clientele, and the prevention of fraud. The underlying concepts of these objectives are valid, sensible, and consistent with the rationale of the program. Through slight rewording each of the current objectives can be clarified and made more precise and measurable (re achievement).

Indicators are proposed in section 4.3 corresponding to program objectives. (Given the similarities between the original and revised objectives, the indicators are equally applicable to both.) The proposed indicators concentrate on quantitative measures with the exception of a clientele survey which would gather qualitative perceptions on fairness and equity. Although more than one indicator is proposed for each objective, qualitative considerations are necessary to interpret indicator results fairly and to ensure appropriate conclusions are drawn.

The workload measure presently in use can be modified to better reflect the tasks of Official Receivers. Some time-consuming activities, such as responding to inquiries, are not currently accounted for. A more comprehensive version of this measure would be more realistic and informative.

Proposed objectives and indicators appear in the table on the following page.

SUMMARY OF PROPOSED PROGRAM OBJECTIVES AND PERFORMANCE INDICATORS

Proposed Program Objective	Proposed Indicator	Comments
1. To facilitate the restoration to more productive uses those resources subject to redistribution under the Bankruptcy Act (see 4.3.2.1)	a) efficiency rate	- construct time series
	b) timeliness	
	i) average time to discharge	- available from BRASS
	ii) % meeting time standards	- requires audit
2. To ensure the fair and equitable treatment of debtors and creditors according to the Act, Rules and Superintendent's Directives (see 4.3.2.2)	a) compliance index	- requires audit
	b) survey of clientele	- qualitative perceptions
3. To detect and deter fraud and abuse in matters pertaining to estates administered under the Bankruptcy Act (see 4.3.2.3)	a) detection rate	- requires audit
	b) # prosecutions	- available
	c) # successful prosecutions	- available
	d) rate of issuance of investigation orders	- available
	e) value of fraud and abuse	- consistency of appraisal essential over time
	- investigated/ prosecuted/ convicted	
<u>Other</u>		
Work Load	Work Units completed with additional components	- Official Receiver quantitative performance
Profile	Trustee (see 4.3.3)	- most available via BRASS

As an alternative to the approach taken to objectives and indicators in sections 4.2 and 4.3, this report also presents a synthesis of current formal and operational objectives which yields revised objectives and intended program impacts. A new set of performance indicators is developed from these alternative objectives. Program management may find this approach useful in meeting their needs, in whole or part.

Trustee profiles could be useful in monitoring trustee performance, both at the aggregate and individual levels. Profiles could include information on the trustee's background, the status of active estates, and various aspects of recent (post 12 month or calendar year) performance. As with most of the indicators developed here, profiles would be sensitive to regional factors and the type of estates normally handled by the trustee (consumer vs. commercial, large vs. medium vs. small asset, etc.).

Management's decision whether to collect information for a particular indicator will be influenced by the availability of required information, collection and analytical costs, and perceptions on the usefulness of the indicator(s) requiring the information. Management might also consider the collection of certain information for the purpose of constructing profiles of consumer bankrupts. While this may not assist Branch operations directly, the availability of such information to interested parties could facilitate socio-economic research with potential spin-off benefits for the Branch in terms of addressing policy issues.

The recommendations of this report are summarized in the following table.

SHORT SUMMARY OF RECOMMENDATIONS

<u>ISSUE</u>	<u>RECOMMENDATION</u>
1. Program Rationale	Accept existing rationale as an appropriate basis for program objectives and activities.
2. First Objective	Reword: "To facilitate the restoration to more productive uses those resources subject to redistribution under the Bankruptcy Act".
3. Second Objective	Clarify: "To assure the fair and equitable treatment of debtors and creditors according to the Act, Rules, and Superintendent's Directives".
4. Third Objective	Expand: "To detect and deter fraud and abuse in matters pertaining to estates administered under the Bankruptcy Act".
5. Other Objectives	None needed, above are sufficient.
6. Performance Indicators	Management to consider usefulness and cost-effectiveness of proposed indicators (see Exhibit 6, p. 30).
7. Trustee Profiles	Consider resource implications and other consequences of producing and making available trustee profiles.
8. Alternative Interpretation	Management to review alternative interpretation of program objectives and performance indicators as presented in 4.4 and determine potential usefulness with or apart from other recommendations.
9. Profile of Bankrupts	Consider collecting and making available, subject to resource limitations, profiles of bankrupts to interested parties to assist the Superintendent in policy making.
10. Further Work	Superintendent and ADM Corporate Affairs to support further evaluation work to address the issues of program activities and alternatives.

1. INTRODUCTION

1.1 Need for a Program Evaluation Study

The Bankruptcy Branch is part of the Bureau of Corporate Affairs at Consumer and Corporate Affairs Canada. The Branch has undergone dramatic changes in terms of management style, priorities and program activities over the past few years. These changes raised many questions and an expressed desire by the Superintendent of Bankruptcy and the Assistant Deputy Minister of Corporate Affairs to examine more closely the Bankruptcy Branch and its activities.

The current work, approved by the Deputy Minister, is based on an earlier Evaluation Assessment Study (May 1987). This report deals with program rationale, objectives and performance indicators.

Given the extent and nature of recent program changes it was hoped that this first study could provide a useful review and clarification of program rationale and objectives followed by a review of existing performance indicators and, where appropriate, propose new or additional indicators.

1.2 Program Profile

The following presents a brief review of the Bankruptcy Branch's organizational structure, its activities, and a description of the bankruptcy process and participants.

1.2.1 Organizational Structure

The Branch is comprised of a head office and 10 district offices. Headquarters office operations are devoted primarily to policy and administrative functions such as information collection and processing. Headquarters is divided into several sections including the National Audit Group, the Joint Committee on Bankruptcy Estate Policy and Practices (JCB), Program Development and Training, and Informatics. Although these sections are centralized on the organizational chart, they are in practice very decentralized drawing heavily upon field staff.

Each district office is headed by a Bankruptcy Administrator working with a group of Official Receivers and clerical support staff. The Administrators report directly to the Deputy Superintendent.

The Branch maintains a complement of about 140 person-years (less than one-third at headquarters) and has a budget of about \$8.1M.

1.2.2 Activities

Branch activities concentrate on the following areas: collection and dissemination of bankruptcy information, trustees, supervision of estates, and policy/support functions.

The Branch collects detailed information on each estate through documents submitted by the bankrupt, the trustee, and the Official Receiver (OR). This information is generated in the field and compiled at headquarters. Summary statistics are produced and distributed to interested parties. Information is also given in response to general inquiries from the public and specific inquiries from parties to an estate. The former often involves receivership and other insolvency issues apart from bankruptcy proper. The provision of such information is a major service role for the Branch and has a substantial impact on Branch resources.

The first phase of a major informatics initiative to computerize the estate data base has recently been completed. Implementation of the Bankruptcy Registration Administration Support System (BRASS) began in early 1986. Refinements are currently under development. It is expected that the new system will improve both productivity and accessibility to estate information.

Trustee competence and the quality of estate administration are promoted through training seminars and the issuance of Superintendent's Directives which clarify the Superintendent's position on various issues and outline his expectations for trustee conduct and performance. Actual trustee performance is monitored by Official Receivers through the Supervision of Estate Administration (SEA) program. Trustees are licensed by the Minister on the advice of the Superintendent. Licences are subject to annual renewal. The Superintendent may advise that a licence not be renewed (or granted for the first time). The Minister may, upon investigation, suspend or cancel a trustee licence. Trustee conduct is also monitored by the National Audit Group (NAG) which keeps the Superintendent informed of its findings.

Section 5(3) of the Act assigns certain duties to the Superintendent with respect to the supervision of estate administration without limiting his authority in that area. Policy development is therefore very important as the Branch strives to balance the usual objectives of service and control within resource constraints.

The Branch also undertakes the usual administrative and management support functions.

1.2.3 Process and Participants

The bankruptcy process can be likened to an economic funeral with the trustee as pall-bearer and Official Receiver as undertaker for the marginals of the financial credit market. The basic process is identical for both consumer and commercial estates although the latter are normally more complicated with more creditors involved. Very simple consumer estates may be processed through the somewhat abbreviated summary administration procedures in lieu of ordinary administration requirements. Summary statistics for the period 1983-1986 appear in Exhibit 1.

An insolvent debtor may file for bankruptcy voluntarily or may be petitioned into bankruptcy by a creditor. The debtor must owe at least \$1000 and insolvency usually means an inability to pay debt obligations as they normally become due.

The process begins for the debtor with the filing of a Statement of Affairs with an Official Receiver (OR). This is usually prepared with the assistance of a trustee in bankruptcy selected by the debtor. Once registered by the OR, the debtor becomes a bankrupt and remains so until granted a discharge by a Court in Bankruptcy, or makes a proposal under the Bankruptcy Act.

EXHIBIT 1

Bankruptcies and Proposals in Canada 1983-1986

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
<u>Estates</u>				
Bankruptcies				
1) Consumer	26,822	22,022	19,752	21,765
2) Business	10,260	9,578	8,663	8,502
Proposals	470	389	402	543
TOTAL	37,552	32,989	28,817	30,810
<u>Financial (\$Ms)</u>				
Assets	1,106.6	1,044.6	898.7	958.7
Liabilities	3,993.9	4,063.2	3,365.9	3,207.4
Deficiency	2,887.3	3,018.6	2,467.2	3,248.8

Source: Annual Statistical Summary 1983, 1984, 1985, and 1986; Office of the Superintendent of Bankruptcy.

The trustee is bound by the Act to see a bankrupt through to discharge once the trustee agrees to handle the estate. The creditors can replace a trustee if they so desire, but this is not common. It is the responsibility of the trustee to literally escort the bankrupt through the process while meeting the challenge of representing and balancing the conflicting interests of both the bankrupt and the unsecured creditors.

The fact that the process is trustee driven accounts for the importance attached to the supervision of estate administration. The Official Receiver is assigned a group of trustees to work with, and reports to the Court on their handling of each estate during the process (if needed) and upon discharge. Trustees are responsible for collecting and liquidating the bankrupt's assets, then distributing the proceeds among the creditors according to the Act. On the administrative side, trustees must prepare and submit certain documents, keep appropriate records and accounts, and report to the Court on the conduct of the bankrupt in order to apply for discharge (both the bankrupt and trustee are ultimately discharged, with the proviso that a bankrupt corporation must have satisfied the claims of its creditors in full). Trustees are represented nationally by the Canadian Insolvency Association which has close ties to the Branch.

The Official Receiver (OR) is an officer of the court who acts on behalf of the Superintendent to ensure that his standards for estate administration are met. The duties of an OR may be generalized as follows: receipt and review of trustee generated documents; fix bond; respond to inquiries; prepare documents; receive, review and take action on (if warranted) complaints concerning an estate; review and submit a letter of comment on the quality of the administration of each estate; and recommend issuance of investigation orders or intervention by the Superintendent when warranted. It should also be recognized that an OR may also play the role of social worker when confronted with a distraught bankrupt who allows financial failure to distort his perspectives on other aspects of his life.

The Supervision of Estate Administration (SEA) program relies on the OR to assure the quality of estate administration. Each OR is assigned a group of trustees to deal with. Where a particular problem is identified, the OR works with the trustee involved to correct it.

Bankruptcy Administrators and clerical support staff assist the ORs in their duties, although with less frequent and intimate contact with trustees and bankrupts. The Superintendent issues Directives after considering the advice offered by the Joint Committee on Bankruptcy and any other relevant persons or groups.

In fact, the SEA program is a response to the requirement in the Act that the Superintendent undertake the supervision of estate administration. The Superintendent is also responsible for policy and making recommendations to the Minister with respect to trustee licensing.

There are two important legal aspects to the bankruptcy process. A number of courts nation-wide have been designated Courts in Bankruptcy. In large part the bankruptcy proceedings here are handled by registrars, however, contentious items demand the attention of a judge.

The other important legal-oriented participant is the RCMP. The Bankruptcy Branch, on the basis of its own research, may submit an Investigation Order to the RCMP which then determines whether the matter can be pursued. Prosecutions brought under the Bankruptcy Act are underwritten by the Branch. Fraud may also be investigated, however, and prosecutions sought under the Criminal Code at no cost to the Branch.

2. SCOPE OF STUDY

Three sequential projects were proposed in the May, 1987 Evaluation Assessment Study for the Bankruptcy Sub-activity. This study addresses program rationale, objectives and performance indicators and is intended to lay the groundwork for any subsequent work which may be approved. The primary focus in this study is on objectives clarification and the development of performance indicators. Amendments to the Bankruptcy Act have been developed and discussed in Cabinet. For this reason, the study team has tried to ensure that the analysis has been broad enough to encompass possible additional activities on the part of the Branch.

3. METHODOLOGY

This study is based on information drawn from several sources: a review of program files, a literature review examining the bankruptcy process in Canada and other countries (U.S. and U.K.), and consultations with Branch personnel at headquarters and in district offices. A total of twenty-one interviews were conducted, largely with Bankruptcy Administrators and Official Receivers across the country. Fifteen interviews were held in-person, the remainder by telephone. A list of interviewees and the interview guide are included in Annexes A and B, respectively.

4. FINDINGS, ANALYSIS AND CONCLUSIONS

4.1 Rationale

The rationale of the bankruptcy program is not in question. It is presented here to place the following discussion of program objectives in perspective.

In the context of the overall objectives of a bankruptcy process, there is a strong rationale for the current activities of the Bankruptcy Branch.

The bankruptcy program is comprised of those activities pertaining to bankruptcy and proposals at CCAC. The rationale of the program is to provide the insolvency resolution mechanism prescribed by the Act, and to undertake the supervision of estate administration. With respect to the latter, the Act provides the Superintendent with very broad powers to ensure that his standards for estate administration are met. To this end the Superintendent not only supervises estate administration, but also undertakes the policy review, development and implementation functions needed to maintain the relevance of that supervision in the context of the Act and contemporary circumstances.

4.2 Current Program Objectives

The formal objectives of the bankruptcy program as described in the 1986-87 Estimates (Part III Expenditure Plan) are as follows:

- o to restore to more productive use those resources which have been locked up in an insolvent business;
- o to ensure the fair and equitable treatment of debtors and creditors; and
- o to prevent fraud in insolvent estate administration.

The first objective reflects the original bias of the Bankruptcy Act of 1949 towards commercial insolvencies. Indeed, the 1949 Act did not refer to consumer bankruptcies, and the Branch has had to develop policies for the appropriate treatment of consumer bankruptcies. The first objective is often generalized "(to) restore resources locked up in insolvencies to more productive uses", although it seems unlikely that the assets of a consumer bankrupt would normally be considered to be productive resources in the same sense as are the capital goods and inventory of a firm.

The second current objective is typical in nature for most federal programs. Fairness and equitable treatment, while specialized in this case, are traditional service concepts.

The prevention of fraud is similarly a standard objective of federal programs. This control-oriented objective is particularly important for bankruptcy given the role of risk in the financial credit system and the large amount of money involved in bankruptcy.

4.2.1 Restoration of Resources

The first objective, the restoration of resources to productive uses, was neither widely nor well understood by the Branch personnel interviewed. The trustee effects the actual restoration through the disposition of assets and distribution of proceeds. Physical assets are returned to a normal service life by their new owners (no longer frozen in bankruptcy) and some of the financial resources of the creditors are restored to them. The Branch, however, monitors and supervises the administration of the estate by the trustee and thereby plays a role in restoration. The fact that this role is not immediately obvious to the participants in bankruptcy should not affect the legitimacy of the objective. As an economic objective the restoration of resources to productive uses is the usual consequence of the disposition of assets which is clearly one of the intents of the program.

This objective is both too ambitious and restrictive as written. Actual restoration is supervised but not executed by the program; trustees and bankruptcy courts effect the restoration. The possibility of a consumer bankrupt having potentially productive resources is ignored. The underlying concepts of this objective are valid and it would be enhanced by rewording.

4.2.2 Fair and Equitable Treatment

The second objective of the program is to ensure fair and equitable treatment of debtors and creditors. This is, to some extent, prescribed by the Act. Although the Act ostensibly protects the unsecured creditors, some of these are given priority in the distribution of assets. The existence of statutory preferences limits the ability of the Branch to assure fairness and equitable treatment across groups of unsecured creditors. Within groups, the Branch is not impeded in assuring fairness and equitable treatment.

Debtors and creditors deal primarily with the trustee who must balance their conflicting interests. The Branch assures equity and fairness through the supervision of

estate administration. The Superintendent of Bankruptcy is given broad powers by the Act to undertake the initiatives he feels are necessary to satisfactorily supervise estate administration. A series of Superintendent's Directives has been issued to this end, which advises the trustee community as to the conduct expected of them under various circumstances.

Actual trustee performance is monitored through the Supervision of Estate Administration Program. The SEA program is administered by the Official Receivers and each estate is concluded with a Letter of Comment informing the Court of the Official Receiver's opinion of how the estate was handled.

The extent to which fair and equitable treatment of debtors and creditors can be assured is limited by statutory preferences and the resources available to the Branch.

In general, this objective addresses the issue of service in a reasonable manner and can be considered to be achievable. Dealing specifically with the matter of statutory limitations would help to clarify this objective.

4.2.3 Prevention of Fraud

The third formal program objective is to prevent fraud in insolvent estate administration. This is directed primarily to debtors (i.e. hiding assets) and trustees (e.g. collusion with a debtor or creditor to give preferential treatment). Fraudulent acts may lead to changes under either the Bankruptcy Act or under the Criminal Code.

The term 'prevention' is rather ambitious. The measures implemented to assure the quality of estate administration may reveal fraudulent acts, but deliberate efforts by one participant to defraud others in bankruptcy will always occur. For this reason, it seems more realistic to focus on detection and deterrence instead of prevention.

It is not unusual for a federal program which provides a service to the public to have a complementary control function to minimize program abuse and fraud. Offences and penalties are specified in Part VIII of the Act. These go beyond narrowly-defined fraud but are not identified in this objective. Similarly, the Superintendent specifies certain standards of conduct through the Directives. Conduct contrary to the Directives is not necessarily fraudulent (as much as the Branch may wish to limit such behaviour), but neither is it addressed in the objective.

In addition to the SEA program which can assist in the detection of abuse and fraud, the Branch has a trustee

licensing function which can serve to discourage trustee fraud. (Although the power to issue or revoke a licence lies with the Minister, he generally accepts the advice offered by the Superintendent.)

This is an important objective for program control which would be more realistic and achievable if it were broadened beyond fraud.

4.2.4 Other Objectives

Interviewees were unable to suggest any other suitable objectives for the bankruptcy program. While various suggestions were made, these generally fell within the category of program impacts and it quickly became apparent that the three formal objectives could cover any contingency with the appropriate interpretation.

The Branch has also developed operational objectives apart from the formal program objectives described above. These relate to the three constituent groups of the program - debtors, creditors and the general public - and are discussed in Section 4.4 below.

4.3 Performance Indicators

Performance indicators can be a useful management tool when properly designed and interpreted. Since management remains an art, quantitative indicators can be only part of an appraisal of program performance.

4.3.1 Workload Measurement

The Branch currently uses a measure of workload based on four responsibilities of Official Receivers and calculated as follows:

$$\text{WUC} = \text{Work Units Completed} = 0.1 (\text{Filings}) + 0.4 (\text{Examinations}) + 0.35 (\text{Meetings}) + 0.15 (\text{Letters})$$

where:

- . "Filings" refers to registration of a bankrupt;
- . "Examination" refers to the Official Receiver's examination of a bankrupt;
- . "Meetings" refers to the Official Receiver acting as chairman at the first meeting of creditors; and
- . "Letters" refers to the letter of comment submitted by the Official Receiver upon discharge of the bankrupt with respect to the quality of administration of that estate.

The above measure is useful but has a number of limitations. It considers but four of the Official Receiver's duties and assigns to them a set of weights which would be completely arbitrary if they did not reflect the priorities of senior management. The four activities measured are also difficult to fairly compare between consumer and commercial estates and simple vs. complex estates; these could account for apparent regional disparities. Finally, as a quantitative measure this needs to be interpreted in light of qualitative factors.

Although the WUC measure was deliberately designed as a narrow measure to evoke a specific reaction to its use, a broadened version with appropriate qualitative consideration could provide a useful benchmark measure for Official Receivers. There are two important facets to this measure. Firstly it provides senior management with basic information and secondly, managers in the field react to the information and their actions are influenced by it. Senior management can therefore affect the mix of field activities by adjusting the Work Units Completed measure to reflect their revised priorities.

In addition, a broader version of the WUC incorporating more duties of Official Receivers could be a useful general measure of OR quantitative performance. Some consideration of quality would also have to be made, of course.

4.3.2 Objectives Achievement Indicators

Indicators pertaining to the achievement of current objectives are presented in Exhibit 2. A series of relevant indicators can be suggested for each of the three current objectives. These are presented for the consideration of program management with the caveat that in some cases certain information may not be presently available and in others it may not be feasible to obtain the required information for cost or other reasons.

Indicators for current program objectives are discussed below.

4.3.2.1 Restoration of Resources

The extent to which the Branch facilitates the restoration of resources through the bankruptcy process is reflected in the efficiency and timeliness of the process.

The efficiency rate could be measured by comparing all costs associated with bankruptcy to the realized assets distributed by trustees to the creditors. Costs would include the operating costs of the Branch, trustee fees and any legal fees.

EXHIBIT 2

Objectives Achievement Indicators

<u>Objective</u>	<u>Indicator</u>
1. Restoration of resources	a) efficiency rate = (all costs of bankruptcy)/(assets distributed) b) timeliness i) average time to discharge ii) index = (estates meeting time standards) x 100/(size of audit sample)
2. Fairness and equity	a) compliance index = (estates complying with Act, Rules and Directives)/(size of audit sample) b) survey of program clientele to provide qualitative perceptions of fairness and equity
3. Fraud and abuse	a) detection rate = (# incidences of fraud and advise via normal supervision of estates)/(# incidences of fraud and abuse detected by intensive audit) b) prosecution rates; prosecutions per 100 estates and per time period c) prosecution success rates; per 100 prosecutions and per time period d) investigation order rates; per 100 estates and per time period e) value of fraud and abuse; \$ per cases investigated, prosecuted and where conviction obtained.

Timeliness is often critical in bankruptcy as in the case, for example, where a trustee must realize on assets including perishable inventory. The time value of money (as per interest rates) is also an important consideration. The Branch does not have complete control over the timing of the process - the trustee and courts are the most active participants in the process. Nevertheless, the Branch does have certain requirements which add to the time the process requires and is also indirectly involved in the trustee's performance through the supervision of estate administration.

The average time from filing to discharge gives an indication of the speed of the bankruptcy process. The average time should not include estates in which debtor conduct or unavoidable circumstances have caused delays. It would be unfair to blame the Branch for causing delays when such delays are justified (e.g. opposing discharge of a dishonest debtor).

In addition to establishing the average time to discharge, an index could be calculated to determine the percentage of estates, drawn from an audit sample, which meet Branch standards for timeliness. Instead of determining the duration of each estate exactly, equally useful results could be had by stratifying the sample e.g. setting five categories of appropriate length and slotting each estate into the appropriate category.

Both indicators of efficiency and timeliness would be best interpreted through comparison with figures for different time periods and by recognizing that cost components and opportunities for asset realization vary by region.

4.3.2.2 Fairness and Equity

Program objectives involving fairness and equity can be assessed according to the degree of compliance with the Act, Rules and Directives, whether perceptions hold that estate administration is fair and equitable.

A compliance rate could be calculated as follows:

$$\% \text{ compliance} = \frac{\text{estates found compliant}}{\text{estates reviewed}}$$

The calculation would be based upon an intensive audit of a sample of estates on which the files had been closed. Such an audit sample could also provide the input for other indicators.

Perceptions on fairness and equity can be obtained through surveys. The most meaningful responses would be

from program clientele and other involved parties (especially former bankrupts, creditors of bankrupt, and trustees). Useful insights and perceptions may also be available from those in the insolvency community who deal on the periphery of bankruptcy (receivership, liquidation) and credit counsellors. Certain limitations of this approach must be considered. Creditors invariably suffer losses because of bankruptcy and may not be objective (the process, however ideal, may be tarnished by association with certain financial injury). Debtors forced into bankruptcy by creditors may have unrealistic perceptions about financial matters generally and may choose to vent their displeasure at the program instead of admitting to poor judgement or accepting pure misfortune. To ensure the quality of results from a survey may require as much or more effort than a direct intense audit of a sample of estates as described above.

4.3.2.3 Fraud and Abuse

The control of fraud and abuse presents a challenge for measurement. It is conceivable that the rate of detection could be measured (number of incidences of fraud/abuse identified in the normal course of estate administration supervision vs. total identified by intensive examination of a comparable sample of estates). The rate of deterrence, while of great interest, would be expensive to measure with an acceptable degree of confidence in the results.

This area is complicated by the multiplicity of participants. The number of prosecutions, for example, is affected by the quality and perseverance of police investigations; the willingness of the Bankruptcy Administrator to sign the investigation order; the ability of ORs and trustees to perceive and act on potentially fraudulent behaviour; the willingness of crown attorneys to prosecute; and the perceptions of potentially fraudulent participants of the risk of being caught. The Branch has only limited control over some of these factors.

In spite of the many difficulties involved in gauging the control of fraud and abuse, some indicators are presented here. These could require very careful interpretation since trends in abuse and fraud could be misleading. (For example, an apparent increase in the level of fraud could result from a genuine increase in fraud or from increased emphasis on detection activities - in which case actual fraud could even be declining.)

Firstly, fraud and abuse (assuming that the control objective is broadened to include abuse) must be clearly defined and measured separately so that any measurement will be consistent and meaningful. Some basic statistics can be

useful: the number of successful prosecutions for fraud brought under the Bankruptcy Act and Criminal Code; the number of successful prosecutions; the rate at which Investigation Orders are being issued (per fixed reporting period); the combined value of moneys and assets involved in fraudulent acts (investigated vs. prosecuted vs. convicted); and the equivalent measures of abuse.

While a schedule of intensive audits of a random sample of estates would provide useful and interesting information, it would be expensive and a post-audit may not uncover carefully concealed acts of fraud. The latter would not affect the consistency of results. It would not likely be useful to launch a one-time blitz as these would be no benchmark for comparison. A continuing series of audits incorporated into the Branch's regular operations would both standardize procedures and the quality of results while allowing comparisons over time to discern trends (preferably at both national and regional levels).

4.3.3 Trustee Profiles

The largest bankruptcy estates are the least likely to involve errors of judgement or fraud or abuse simply because large estates generally involve many creditors who act to protect their interests within the Bankruptcy Act. If the creditors could compare trustees by more than reputation, they could be more inclined to reject the bankrupt's choice and install a trustee of their own choosing. This could be possible if the Branch were to generate trustee profiles through the BRASS informatics system. Such profiles could also assist ORs and Administrators to compare trustees; but such comparisons must be tempered by regional considerations and a tendency to handle small consumer estates vs. large commercial estates, etc.

A number of items for inclusion in a trustee profile were suggested by Price Waterhouse in their report for this study:

- . Background information
 - . partners;
 - . years experience as a trustee;
 - . human resources of firm/office; and
 - . restrictions on files handled.
- . Summary of current files
 - . number of files open;
 - . listing of the type of files open (consumer, commercial);
 - . industry codes of files open;

- . stage of progress of files open;
- . complaints on files open; and
- . number of creditors preferred and unsecured on file.

Summary of experience (previous year)

- . number of files accepted;
- . average length of time for consumer files to be open;
- . average length of time for commercial files to be open;
- . number and type of exemptions granted;
- . number of statements of receipts and disbursements which were commented upon and the types of comments;
- . inventory of differences between assets as recorded on the Statement of Affairs and receipts reported on the Receipts and Disbursements Statement;
- . inventory of difference between assets and liabilities;
- . inventory of dividends paid out;
- . inventory of trustee fees;
- . administrative costs (trustee);
- . administrative costs (lawyers, judiciary);
- . recovered overhead (trustee);
- . number of complaints;
- . industry codes of files;
- . level of Official Receiver involvement in files (performance index calculated by trustee); and
- . number of bankrupts discharged and type of discharge (deceased, absolute, suspended, conditional, sine die adjourned, refused).

4.4 An Alternative Interpretation

The formal program objectives cited in the Multi Year Operational Plan (MYOP) are discussed in section 4.2 above. The Branch also relies on three operational objectives which are largely similar, although somewhat simpler to measure. This section presents a brief synthesis of both the formal and operational objectives. Program management may find this approach useful and it is included here for their consideration. Revised program objectives and two intended impacts are suggested. These alternatives to current program objectives appear in Exhibit 3.

EXHIBIT 3

CURRENT PROGRAM OBJECTIVES AND ALTERNATIVES

<u>CURRENT OBJECTIVE</u>	<u>COMMENTS</u>
A. FORMAL OBJECTIVES	
1. RESTORE TO PRODUCTIVE USES THOSE RESOURCES LOCKED UP IN AN INSOLVENT BUSINESS.	<p>ANALYSIS:</p> <ul style="list-style-type: none">. restoration of assets effected by trustee via realization. restoration of human resources (i.e. bankrupt) effected by Court via discharge. ignores time element which may be critical for asset realization. ignores possibility of productive consumer assets <p>CONCLUSION:</p> <ul style="list-style-type: none">. Branch has limited, indirect control over restoration and none over ultimate productivity. timing and consumers need to be mentioned. concept important but not an achievable objective <p>RECOMMENDATION:</p> <ul style="list-style-type: none">. reword and adopt as an intended impact <p>"AN INTENDED IMPACT OF THE PROGRAM IS THE TIMELY RESTORATION OF RESOURCES SUBJECT TO ADMINISTRATION UNDER THE BANKRUPTCY ACT"</p>

EXHIBIT 3 (cont'd)

<u>CURRENT OBJECTIVE</u>	<u>COMMENTS</u>
2. ENSURE FAIR AND EQUITABLE TREATMENT OF DEBTORS AND CREDITORS	<u>DEBTORS</u> ANALYSIS: . fairness implies equitable treatment CONCLUSION: . fairness and equity are redundant for debtor RECOMMENDATION: . objective should discuss fairness only (see B1 below) <u>CREDITORS</u> ANALYSIS: . fairness involves trustee efforts to keep creditors informed; reasonable timing of process; consistent and appro- priate conduct towards creditors and due consideration for creditors' interests per Superintendent's standards . equity implies appropriate share of realized assets CONCLUSION: . underlying concepts of service and control are valid and necessary RECOMMENDATION: . objective should reflect fair- ness and equity for unsecured creditors through trustee conduct with respect to their interests (see B1 below)

EXHIBIT 3 (cont'd)

<u>CURRENT OBJECTIVE</u>	<u>COMMENTS</u>
3. PREVENT FRAUD IN INSOLVENT ESTATE ADMINISTRATION	ANALYSIS: <ul style="list-style-type: none">. Bankruptcy Act limited to bankruptcy and proposals. prevention implies Branch control over human behaviour. fraud is narrowly defined in law. ignores abuse CONCLUSION: <ul style="list-style-type: none">. 'prevention' is overly opti- mistic. fraud is overly restrictive. 'insolvent estate administra- tion' is too broad. underlying concepts are valid (program control) and necessary RECOMMENDATION: <ul style="list-style-type: none">. reword (see B3 below)
B. OPERATIONAL OBJECTIVES	
1. ENSURE ACCESS TO RELIEF AND REHABILITA- TION FOR THE INSOLVENT DEBTOR PERMITTING HIS REINTRODUCTION TO THE MARKET IN A VIABLE STATE	ANALYSIS: <ul style="list-style-type: none">. overlaps with A2 above. relief via assigning assets to trustee for benefit of creditors. rehabilitation (financial) by Court via discharge from debts. rehabilitation (personal) by process

EXHIBIT 3 (cont'd)

<u>CURRENT OBJECTIVE</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none">. insolvent debtors who qualify for bankruptcy determined when filing with Official Receiver. reintroduction to market via discharge. viable state depends on exempt assets (provincial law) and trustee (protection of bankrupt's interests)
	CONCLUSION:
	<ul style="list-style-type: none">. a valid and necessary service objective. can be combined with A2 above
	RECOMMENDATION:
	<ul style="list-style-type: none">. reword and add from A2 as follows: "ENSURE ACCESS TO RELIEF AND REHABILITATION FOR INSOLVENT DEBTORS THROUGH A FAIR PROCESS PERMITTING REINTRODUCTION TO THE MARKET IN A VIABLE STATE"
2. PROTECT THE RIGHTS OF UNSECURED CREDITORS AND ENSURE FAIR AND EQUITABLE DISTRIBUTION	ANALYSIS: <ul style="list-style-type: none">. Branch can achieve this through estate administration supervision. overlaps with A2 above. distribution is only one aspect. creditor rights are primarily re. share of realized assets and estate/procedural information. fairness implies speedy/efficient process

EXHIBIT 3 (cont'd)

<u>CURRENT OBJECTIVE</u>	<u>COMMENTS</u>
	CONCLUSION: <ul style="list-style-type: none">. service concepts are valid and necessary. can be combined with A2 above
	RECOMMENDATION: <ul style="list-style-type: none">. reword and add from A2 as follows: "TO PROTECT THE RIGHTS OF UNSECURED CREDITORS AND ENSURE THEIR FAIR AND EQUITABLE TREATMENT PURSUANT TO THE ACT, RULES, AND DIRECTIVES"
3. ENSURE THAT THE GENERAL PUBLIC HAS REASON FOR CONFIDENCE THAT THE INTEGRITY AND RELIABILITY OF THE INSOLVENCY SYSTEM IS MAINTAINED BY PREVENTION OF ABUSES AND APPLICATION OF SANCTIONS WHEN ABUSES DO OCCUR	ANALYSIS: <ul style="list-style-type: none">. insolvency system is more than bankruptcy and proposals; creditors control fate of proposals. prevention implies control. abuse usually means less than fraud. overlaps with A3 above. public confidence is fickle, easily undermined
	CONCLUSION: <ul style="list-style-type: none">. prevention too ambitious. insolvency system is too broad. abuse is too narrow; fraud needs to be identified. public confidence is an intended impact of federal programs generally

EXHIBIT 3 (cont'd)

<u>CURRENT OBJECTIVE</u>	<u>COMMENTS</u>
	<p>. proposals are a non-issue</p> <p>RECOMMENDATION:</p> <p>. reword and add from A3 as follows:</p> <p>"ENSURE THE INTEGRITY OF ESTATES ADMINISTERED PURSUANT TO THE BANKRUPTCY ACT THROUGH THE DETECTION AND DETERRENCE OF FRAUD AND ABUSE AND THE APPLICATION OF SANCTIONS"</p> <p>. reword and adopt as an intended impact:</p> <p>"AN INTENDED IMPACT OF THE PROGRAM IS THAT THE PARTICIPANTS AND PUBLIC HAVE CONFIDENCE IN THE BANKRUPTCY SYSTEM"</p>

The comments in Exhibit 3 address largely the same concepts that are covered in 4.2 above. An exception is debtor rehabilitation which arose out of dissatisfaction with the punitive intent of bankruptcy law in antiquity. The process of bankruptcy is itself rehabilitation, forcing the debtor to face unpaid creditors and coming to formal terms to end insolvency. Financial rehabilitation is achieved when the debtor is discharged from debt obligations. Since the process is prescribed by the Act, Rules and Directives, the Superintendent has considerable opportunity to influence the nature of debtor rehabilitation through the Directives. This falls into the Superintendent's responsibility for policy-making and the lack of discussion of rehabilitation should, therefore, not be considered prejudicial against the treatment of objectives in 4.2 above.

Exhibit 4 illustrates some performance indicators which could be used to measure the achievement of the revised objectives in Exhibit 3. Intended impacts need not be measured.

The revised objectives in Exhibits 3 and 4 could be further simplified, however, to do so could risk putting them out of context which would not be helpful.

EXHIBIT 4

ALTERNATIVE OBJECTIVES AND POSSIBLE INDICATORS

<u>OBJECTIVE</u>	<u>COMMENT (OBJECTIVE)</u>	<u>INDICATORS</u>	<u>COMMENT (INDICATOR)</u>
1. Ensure access to relief and rehabilitation for insolvent debtors through a fair process permitting reintroduction to the market in a viable state.	This debtor-based objective may be derived from the Act - except for rehabilitation which is a policy concept.	<p>A series of indicators can be conceived to deal with various aspects of the objective:</p> <p>1.1 access to bankruptcy... accessibility index =</p> <hr/> <p>(# qualified debtors registered as bankrupts)</p> <hr/> <p>(# qualified debtors who sought access)</p> <p>1.2 debtor relief index =</p> <hr/> <p>(# unconditional discharges)</p> <hr/> <p>(# estates)</p> <p>1.3 rehabilitation</p> <p>1.3a financial rehabilitation index =</p> <hr/> <p>(# discharged bankrupts solvent one year after discharge + # insolvent due to reasons beyond their control one year after discharge)</p> <hr/> <p>(# estates)</p>	<ul style="list-style-type: none"> • qualified debtors meet the requirements of the Act and have no alternative solution to insolvency • numbers could be established through audits and surveys, although costly • financial rehabilitation assumed to be solvency one year after discharge

OBJECTIVE

COMMENT (OBJECTIVE)

INDICATORS

COMMENT (INDICATOR)

2. Protect the rights of unsecured creditors and ensure their fair and equitable treatment pursuant to the Act, Rules and Directives.

Act prescribes creditor status and rights; Act assigns responsibility for estate administration to Superintendent.

A series of indicators can be conceived which pertain to the competence and efficiency of estate administration.

1.3b social rehabilitation
?

. relevance to Branch?

1.4 reintroduction to market ...
bankrupt-to-debtor conversion
index =

. reintroduction = restoration of
credit

(# discharged bankrupts with normal
credit ratings)

(# discharged bankrupts)

1.5 in a viable state ...
viability index =

(# bankrupts solvent upon discharge
plus one month)

(# estates)

2.1 trustee competence index =

. calculated for each trustee
audited

(# trustee errors/deviations
normally detected by Branch)

(# actual trustee deviations/
errors via intensive post-audits)

. allowance must be made in
comparing trustees for regional
variation, type of estates
handled, etc.

2.2 rate of recovery index =

. by trustee

(\$ unsecured dividends)

(# unsecured creditor claims)

. very dependent on type of estates
handled, average size of estates,
regional factors, etc.

OBJECTIVECOMMENT (OBJECTIVE)INDICATORSCOMMENT (INDICATOR)

3. Ensure the integrity of estates administered pursuant to the Bankruptcy Act through the detection and deterrence of fraud and abuse and the application of sanctions.

2.3 costs vs. realization index =
 (\$ trustee fees and disbursements)

 (\$ assets realized)

. by trustee
 . see qualifier in 2.2

2.4 trustee speed index =
 (hours devoted by trustee to
 estate)

 (\$ realized)

. by trustee
 . see qualifier in 2.2

2.5 trustee fee vs. disbursements
 index =
 (\$ trustee fees)

 (\$ trustee disbursements)

. by trustee
 . see qualifier in 2.2

2.6 estate duration index =
 average duration of estates (filing
 to discharge)

. by trustee
 . see qualifier in 2.2

3.1 public confidence index =

?

. bankruptcy is only one part of
 insolvency system and Branch
 cannot assume responsibility for
 the integrity and reliability of
 that system

OBJECTIVE

COMMENT (OBJECTIVE)

INDICATORS

COMMENT (INDICATOR)

3.2 abuse prevention index =

(\$ assets involved in all potential
abuse minus \$ value of abuse
prevented)

(\$ value of all potential abuse)

3.3 sanctions index =

(# charges laid)

(# abuses occurred)

- . this is not easily quantified
- . an expensive research study might produce credible figures, but this is not certain and would have to be regularly repeated
- . denominator difficult to quantify
- . laying of charges depends on RCMP Commercial Crimes unit performance
- . charges and seriousness not homogeneous

5. RECOMMENDATIONS

5.1 Rationale

The Bankruptcy Act exists to address the financial, economic, legal and social consequences of insolvency without other solution. The rationale for the bankruptcy-related activities undertaken by CCAC, i.e. the bankruptcy program, is to address the needs to which the Act responds by providing the process prescribed by the Act and to maintain the integrity of the bankruptcy system (i.e. process and participants) through the supervision of estate administration.

Recommendation 1: It is recommended that the existing program rationale be accepted as consistent with the rationale for the Bankruptcy Act and as providing an appropriate basis for program objectives and activities.

5.2 Objectives

The first of the program's formal objectives is presently stated as:

"To restore to more productive uses those resources which have been locked up in an insolvent business."

Recommendation 2: It is recommended that the first program objective be reworded as follows:

"To facilitate the restoration to more productive uses those resources subject to redistribution under the Bankruptcy Act."

The second objective is presently:

"to ensure the fair and equitable treatment of debtors and creditors."

Recommendation 3: It is recommended that the second program objective be clarified through minor additions as follows:

"To ensure the fair and equitable treatment of debtors and creditors according to the Act, Rules, and Superintendent's Directives."

The third current program is:

"to prevent fraud in insolvent estate administration."

Recommendation 4: It is recommended that this objective be broadened as follows:

"To detect and deter fraud and abuse in matters pertaining to estates administered under the Bankruptcy Act."

Recommendation 5: It is recommended that no additional objectives are needed.

Current and proposed objectives are summarized in Exhibit 5.

5.3 Performance Indicators

The performance indicators discussed in section 4.3 above rely on various sources of information. These sources include the BRASS informatics system, special audit exercises, and surveys of program clientele. In some cases the information required could be added to that presently collected for the BRASS system. The value of any such indicator must reflect the added administrative burden to Branch staff for collecting and inputting the additional information. Other proposed indicators which call for intensive audits or surveys to collect information must similarly be assessed against the relatively high cost of data collection. The costs of these indicators which rely on audit information could be consolidated if, for example, an intensive sample audit were conducted on a regular cycle.

The values calculated for the indicators must be interpreted appropriately. The cost of interpretation and analysis must be added to the obvious cost of data collection. In a period of considerable strain on Branch and Departmental resources, these costs must be carefully scrutinized to ensure that every indicator used can be reasonably expected to provide good value-for-money.

Recommendation 6: It is recommended that program management review and consider the proposed performance indicators of objectives achievement in Exhibit 6 in light of related costs and benefits.

Trustee profiles could help the Branch not only by alerting ORs to a possible problem, but could make the bankruptcy process more self-policing by giving creditors a much better sense of previous trustee performance leading, ideally, to the replacement of marginal trustees with those having better track records.

EXHIBIT 5
CURRENT AND PROPOSED OBJECTIVES

Current Objective	Comments	Proposed Rewording
1. To restore to more productive uses those resources which have been locked up in an insolvent business.	<ul style="list-style-type: none">. restoration is executed by trustees and courts. limited to commercial estates	To facilitate the restoration to more productive uses those resources subject to redistribution under the Bankruptcy Act.
2. To ensure the fair and equitable treatment of debtors and creditors.	<ul style="list-style-type: none">. can be more specific	To ensure the fair and equitable treatment of debtors and creditors according to the Act, Rules and Superintendent's Directives.
3. To prevent fraud in insolvent estate administration.	<ul style="list-style-type: none">. limited scope for prevention. bankruptcy and proposals only	To detect and deter fraud and abuse in matters pertaining to estates administered under the Bankruptcy Act.

EXHIBIT 6

SUMMARY OF PROPOSED PERFORMANCE INDICATORS

Proposed Program Objective	Proposed Indicator	Comments
1. To facilitate the restoration to more productive uses those resources subject to redistribution under the Bankruptcy Act (see 4.3.2.1)	a) efficiency rate	- construct time series
	b) timeliness	
	i) average time to discharge	- available from BRASS
	ii) % meeting time standards	- requires audit
2. To ensure the fair and equitable treatment of debtors and creditors according to the Act, Rules and Superintendent's Directives (see 4.3.2.2)	a) compliance index	- requires audit
	b) survey of clientele	- qualitative perceptions
3. To detect and deter fraud and abuse in matters pertaining to estates administered under the Bankruptcy Act (see 4.3.2.3)	a) detection rate	- requires audit
	b) # prosecutions	- available
	c) # successful prosecutions	- available
	d) rate of finance of investigation orders	- available
	e) value of fraud and abuse	- consistency of appraisal essential over time
	- investigated/ prosecuted/ convicted	
<u>Other</u>		
Work Load	Work Units completed with additional components	- Official Receiver quantitative performance
Profile	Trustee (see 4.3.3)	- most available via BRASS

Recommendation 7: It is strongly recommended that the Branch assess the resource implications of producing trustee profiles and investigate the possibility of making such information available to stakeholders in the bankruptcy (and proposal) process.

Recommendation 8: It is recommended that program management review the alternative interpretation of program objectives and the performance indicators described in 4.4 and consider whether they may be of use to program management either in conjunction with or apart from the other recommendations presented here.

The policy-making function of the Branch would benefit from socio-economic research pertaining to insolvency. The Branch should be the logical source of information for such research. An outline of type of information needed appears in Annex D.

Recommendation 9: It is recommended that, subject to resource constraints, basic information pertinent to socio-economic study of bankrupts and discharged bankrupts be collected and made available to researchers provided that confidentiality is not compromised and that the Branch be kept aware of the results of such research.

Recommendation 10: To assist the Branch in determining which indicators should be implemented and to address the related issues of current program activities and alternatives, it is recommended that the second program evaluation study proposed be given the support of the Superintendent of Bankruptcy and the ADM of Corporate Affairs before the Deputy Minister.

ANNEX A
INTERVIEWS COMPLETED

Bankruptcy Branch
Interviews Completed

Ottawa

Y. Pigeon - Superintendent of Bankruptcy
W. Clare - Deputy Superintendent
R. Gagnon - Assistant Deputy Minister, Bureau of Corporate Affairs
J.G. Chartrand - B.A.
M. Mayrand - Senior Policy Group Head/Licensing
M. Raymond - Policy Officer

Halifax

M. Salyzyn - Chief of Program Development
R. Twohig - B.A.

Montreal

M. Fortin - B.A.
L. B. Mahoney - Senior Bankruptcy Administrator
S. Laperriere - Bankruptcy Officer

Toronto

R. Killen - Senior Deputy Bankruptcy Administrator
D. McNabb - Senior Bankruptcy Officer
J. Bradley - Senior Officer

Hamilton

D. Stewart - B.A.
J. Abt - Evaluation Officer, National Audit Group
J. Tonner - Senior Bankruptcy Officer

London

E. DeBoice - B.A.
R. Kaplan - Assistant Superintendent, National Audit Group

Edmonton

J. Proctor - Senior Bankruptcy Administrator

Vancouver

J. Sieben - B.A.

ANNEX B
INTERVIEW GUIDE

**BANKRUPTCY EVALUATION
RATIONALE, OBJECTIVES AND INDICATORS
INTERVIEW GUIDE**

I. EXPLANATION OF PURPOSE OF THE STUDY

II. RESPONDENT INFORMATION

Name:

Address:

Phone:

Position:

Completed By:

Date:

Interview Location:

III. BRANCH OBJECTIVES

1. In your view, what are the objectives of the Bankruptcy Branch?

2. The formal objective of the Bankruptcy Branch are to:

- restore resources locked up in insolvencies to more productive uses;
- ensure fair and equitable treatment of debtors and creditors;
- prevent fraud in insolvent estate administration.

(SHOW LIST)

Are there other objectives which the Branch addresses?

3. To what extent can the achievement of these objectives be measured? How? Is any information on achievement currently collected?
 - . restore resources to more productive uses.
 - . ensure fair and equitable treatment.
 - . prevent fraud.

4. Are there other ways of stating the objectives which would increase their clarity and assist in their measurement?
 - . restore resources to more productive uses.
 - . ensure fair and equitable treatment.
 - . prevent fraud.

IV. IMPACTS

1. The activities of the Bankruptcy Branch have impacts over and beyond their effects on objectives achievement. Are any of the following valid impacts of Branch activities. (REFER TO LIST)
 - . rehabilitate bankrupts.

 - . protect preferred and unsecured creditors.

 - . maintain confidence in the credit system.

2. Do the activities of the Bankruptcy Branch have other significant impacts (both positive and negative)?

3. To what extent can the achievement of the impacts be measured? How? Is any information on achievement currently collected?
 - . rehabilitate bankrupts.
 - . protect preferred and unsecured creditors.
 - . maintain confidence in the credit system.

4. Are there other ways of stating the objectives which would increase their clarity and assist in their measurement?
 - . rehabilitate bankrupts.
 - . protect preferred and unsecured creditors.
 - . maintain confidence in the credit system.

V. ACTIVITIES

1. For convenience we would like to discuss Bankruptcy Branch activities in terms of the present responsibility centres (REFER TO LIST).

For your responsibility centre, what are the main activities you undertake?

2. What are the outputs or outcomes of these activities?

3. How are these activities related to the Branch objectives?

4. Given current resources, to what extent can these activities help achieve the program objectives?

5. What factors, if any, limit the effectiveness of these activities?

6. Thinking just of your responsibility centre, what is the objective of your work?

VI. PRIORITY SETTING AND PLANNING

1. How are resources currently allocated to activities within your responsibility centre?

2. How are priorities set within your responsibility centre?

3. How is planning done within your responsibility centre?

4. Can you explain how resources are allocated among responsibility centres? Among district offices?

VII. INDICATORS

1. What indicators are used to monitor the performance of your responsibility centre? (PROMPT: We are particularly interested in how you measure or monitor your activities and your outputs).

2. How is this information used?

3. Are there new or additional indicators needed to monitor performance at the level of your responsibility centre?

(E.g., indicators of:

- . system abuse
- . repeaters
- . value-for-money

4. At the Branch level we are aware of two main indicators "work units completed" and a "performance index" (REFER TO LIST). What do these indicators measure?

- . work units completed.
- . performance index.

5. How do you use these indicators?

- . work units completed.
- . performance index.

6. What are their strengths and weaknesses?

- . work units completed.
- . performance index.

7. Are there new or additional indicators needed to monitor performance at the level of the Branch?

8. The BRASS system generates a number of reports. In what ways are these reports used?

9. Are there additional indicators that could be derived from the data in the BRASS system?

10. Are there other kinds of information you would like to have to assist you in your work?

11. Would it be useful to have profiles of trustees? If yes, what information should be included?

III. BANKRUPTCY AND THE CREDIT SYSTEM

1. Having discussed the activities and objectives of the Bankruptcy Branch, we would like to briefly look at the broader role of Bankruptcy? What is the role of bankruptcy in the credit system?

2. Does this role differ between consumer and commercial estates?

BANKRUPTCY BRANCH**1. Objectives**

- . To restore resources locked up in insolvencies to more productive uses.
- . To ensure fair and equitable treatment of debtors and creditors.
- . To prevent fraud in insolvent estate administration.

2. Impacts

- . Rehabilitate bankrupts.
- . Protect unsecured creditors.
- . Maintain confidence in the credit system.

3. Responsibility Centre

- . Field Operations
- . Joint Committee on Bankruptcy
- . Licensing
- . National Audit Group
- . Program Development and Training
- . Informatics
- . Superintendent
- . Deputy Superintendent
- . Administration

4. Performance Indicators

. Work Units Completed

= 0.1 (Filings) + 0.4 (Examinations)

+ 0.35 (Meetings) + 0.15 (Letters)

. Performance Index

= No. of Work Units Completed

No. of Filings

ANNEX C

Rationale of the Bankruptcy Act

The rationale underlying the Bankruptcy Act is essentially two-fold:

- 1) to provide the legislative basis of a formal structure for the resolution of insolvency where such is needed to establish and protect the rights and obligations of the parties involved; and
- 2) to assure that such an insolvency without other prospect for resolution will be brought to conclusion in an equitable, systematic and predictable manner.

To accomplish this, the Act provides a process for bankruptcies and proposals, and authority for the supervision of estate administration to assure both compliance with the Act and the continuing relevance of associated policy.

In bankruptcy, the bankrupt assigns all assets to the trustee for the general benefit of the unsecured creditors, who generally do not receive the full amounts owing. The bankrupt is relieved of debt obligations (with certain exceptions) upon discharge.

A proposal may be made by an insolvent debtor or a bankrupt to avert or escape bankruptcy. The terms of the proposal centre on a repayment scheme which must be unanimously accepted by the creditors, otherwise bankruptcy is imposed. Assets are not assigned to a trustee under a proposal.

Responsibility for bankruptcy policy is vested in the Superintendent of Bankruptcy who may set standards for estate administration and supervise same so that the dual objectives of service and control are balanced according to his discretion.

From a legal perspective bankruptcy is a means of dealing with the conflict between insolvency and contract law. The insolvent debtor cannot honour the contractual schedule of repayment and the unsecured creditors have not protected themselves by providing for contractual authority to seize debtor assets in case of default. The process protects the debtor from fruitless harassment while dictating a fair distribution of debtor assets among those creditors.

The secured creditor is protected under contract law in that he can seize, under prescribed conditions, his security for his own benefit. This often takes the form of placing

the debtor in receivership which may or may not lead to bankruptcy. However, realization of the security does not always lead to full reimbursement for the secured lender who often must seek further restitution under the Bankruptcy Act.

The economic argument for bankruptcy is that a bankrupt is not making efficient use of resources to meet an economic need and the optimal allocation of resources is more nearly achieved by redistributing those resources to those better placed to make efficient use of them. The issue of equity is addressed through the redistribution of resources (i.e. assets) among the unsecured creditors who are unable to obtain satisfaction by seizing a security. The presence of an orderly process also inspires confidence and, hence, stability in the affected market (here, for financial credit) which contributes, albeit to a diminished extent, to widely espoused macroeconomic goals.

Another economic argument in favour of bankruptcy is that it reduces transaction costs i.e. the costs of a bankruptcy system are less than the costs of preparing contracts which anticipate all contingencies in every case. Creditors often forgo such security provisions because the cost of a more elaborate contract would be disproportionate to the total value of the transaction.

There is a strong and continuing rationale for a bankruptcy system in Canada.

ANNEX D

CONSUMER BANKRUPTCY PROFILE

Recommended information for inclusion in a profile of bankrupts include:

- . Background information
 - demographic information (age, sex, employment, etc.).
- . Debt structure
 - \$ indebtedness;
 - type of creditors.
- . Contributing factors
 - interruption of employment;
 - change in financial responsibilities;
 - divorce/separation/death of spouse;
 - alcoholism;
 - etc.
- . Creditor and Debtor Remedy Experience
 - garnishes;
 - seizures;
 - financial counselling;
 - orderly payment of debt agreement;
 - etc.
- . Follow-up information
 - impact on individual and family;
 - debt structure;
 - status of section 148 debts;
 - rehabilitation services received; and
 - employment history.

Most of this information could be collected on a questionnaire reviewed by the Official Receiver during an examination. The collection of follow-up data would be more costly as it is often difficult to locate individuals for follow-up. The analysis of this profile would also require additional resources.

