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EVALUATION ASSESSMENT STUDY  
BANKRUPTCY SUBACTIVITY



Consommation  
et Corporations  
Canada

Consumer and  
Corporate Affairs  
Canada

May 1987

EVALUATION ASSESSMENT STUDY  
BANKRUPTCY SUBACTIVITY

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PROGRAM EVALUATION DIVISION  
BUREAU OF POLICY COORDINATION  
CONSUMER AND CORPORATE AFFAIRS CANADA

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EVALUATION ASSESSMENT STUDY  
BANKRUPTCY SUBACTIVITY

1. Purpose of this Report

The purpose of this report is to present an assessment study for the evaluation of the Bankruptcy subactivity. Based on findings of the evaluation assessment study, issues of concern to management are identified and grouped according to possible evaluation studies. A recommended plan for evaluating the Bankruptcy subactivity is proposed along with detailed Terms of Reference.

The general objective of the possible evaluation studies is to:

- o provide management with information which will enable it to better plan, monitor and control the work of the Bankruptcy subactivity as well as to better allocate its resources;
- o identify cost-effective improvements and alternatives to current program activities for consideration by management.

It is worth noting that the assessment study team was favourably impressed by the scope and quality of program initiatives launched during the past two years and currently underway. The timing of the proposed evaluation work should guarantee that useful findings and recommendations can be readily incorporated into the evolving Bankruptcy program.

2. Approval Required

Senior Management is requested to approve the recommended plan and Terms of Reference.

3. Proposed Evaluation Study

Three evaluation studies have been identified in the evaluation assessment study: two addressing management needs for improved information to assess future program impacts and effects and resource allocation priorities, and the third supportive of current ongoing legislative and policy review of the Bankruptcy area. (These are described in Section 6 below as Studies 1, 2, and 3 respectively).

Given its immediate usefulness for management, it is proposed that initially the following evaluation study be undertaken:

Rationale, Objectives and Indicators Study (Study 1). A study to examine the rationale for current bankruptcy activities; assess the merits and limitations of current subactivity objectives and indicators; and identify improvements to objectives and indicators.

In the view of the evaluation assessment team, Study 2 on Program Activities and Alternatives would also provide useful information for program management. However, it is proposed that a decision on the start-up of this second study in the Bankruptcy area be deferred until completion of Study 1 and its review by senior management. This recommendation stems from the possibility that current review of legislation and policy ongoing in the Bankruptcy area may affect certain aspects of the work for Study 2.

#### 4. Methodology Employed in the Assessment Study

In preparing this assessment study, it was necessary to develop a good understanding of the rationale for the components of the Bankruptcy subactivity; identify the key activities, outputs and objectives of the program; determine the nature of the environment within which the program operates; and identify issues of interest to program management. The primary sources of information were program documents, academic literature and existing consultant studies and interviews with program managers and staff.

The evaluation assessment team undertook the following tasks in preparing the evaluation assessment study:

- o reviewed program documents including operational plans, work plans, audits, training materials and so on;
- o reviewed Bankruptcy program files;
- o reviewed relevant academic literature and existing consultant reports;
- o attended a special training seminar on bankruptcy and related insolvency topics;
- o held interviews with subactivity managers and staff;
- o consulted the working group responsible for legislative review and policy development;
- o prepared draft logic charts showing the relationship among program activities, outputs and objectives;
- o prepared a program profile and list of issues;
- o held consultations with subactivity management on the draft assessment study.

## 5. Program Profile

The Bankruptcy Act of 1949 was designed to equitably resolve the interests and claims of insolvent debtors, unsecured creditors, and the general public. The Act aims to relieve the bankrupt of his debt burden and return him to economic life in a rehabilitated state. Protection is afforded to unsecured creditors in order to maintain their, and the public's confidence in the integrity of the financial credit system.

Objectives of the bankruptcy program are, in summary, to:

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

The participants in the bankruptcy process and their responsibilities are described here briefly. More detail on the program is included in the **Appendix**.

The Bankruptcy subactivity is divided into headquarters and field components. In 1985/86, the subactivity included 143 person-years with 31 person-years at headquarters and 114 person-years distributed among 10 district offices. The budgetary allocation for 1986/87 was about \$6.6M with \$4.8M for salaries and \$1.8M for O&M expenses.

The role of headquarters personnel is largely concerned with policy development and administration with an emphasis on supervision of field activities. Operations at headquarters have been divided into a number of sections. The most pertinent of these for the purposes of the evaluation study are the National Audit Group, the Joint Committee on Bankruptcy Estate Policy and Practices, the Supervision of Estate Administration Program, Program Development and Training, Trustee Licensing and Informatics.

The National Audit Group audits trustees to assure that they meet the standards of performance set by the Superintendent. The Joint Committee on Bankruptcy Estate Policy and Practices is composed of representatives of the Canadian Insolvency Association and the Bankruptcy Branch. The Committee was formed to recommend policy and practices guidelines to the Superintendent. The Program Development and Training section is responsible for the development of national training programs, overseeing provision of written guidelines for specific programs, program implementation, and the provision of training sessions and professional

development seminars for Official Receivers (ORs). The Supervision of Estate Administration Program assures that estates are administered in a fair and equitable manner. The Licensing Group is responsible for the putting in place of the Department's policy concerning trustee licensing. Information Group is concerned not only with information dissemination internally and to outside constituencies but is developing a comprehensive management operations support and services role.

A substantial burden of responsibility for program implementation falls to the field offices. Each district office is headed by an Administrator (reporting to the Deputy Superintendent) who oversees the activities of a group of Official Receivers and clerical support staff.

The Official Receivers play a key role in the bankruptcy process, being sufficiently involved to assure an awareness of how each individual estate is being handled but not interfering with the trustee (who is a member of the private sector) except when necessary. Trustees are trained and examined by the Bankruptcy Branch and are licensed (and may be delicensed) by the Minister of CCAC on the recommendation of the Superintendent of Bankruptcy. The trustee holds a challenging position in which the interests of both the bankrupt and the creditors must be reconciled in a fair manner. The ORs are involved in the implementation of the Supervision of Estate Administration program. Trustee interests are represented by the Canadian Insolvency Association which has very close ties to the Bankruptcy Branch.

Legal aspects of bankruptcy are dealt with by designated bankruptcy courts. Contentious matters are turned over to a bankruptcy judge. Investigations of serious deviations from the law are referred by the Superintendent to the RCMP, who proceed with investigations and lay charges as evidence permits. The Department of Justice is responsible for prosecutions.

For purposes of this evaluation assessment study, the key "work elements" of the Bankruptcy program have been grouped as follows:

- o bankruptcy estate processing;
- o verification and enforcement of trustee compliance;
- o verification and enforcement of debtors compliance;
- o bankruptcy information;
- o complaints and enquiries handling;
- o administration and policy development.

The structure of the Bankruptcy subactivity is shown in Exhibit 1. For each "work element", the relevant activities and outputs are shown. The outputs, in turn, are listed to their impacts and effects.

## 6. Evaluation Studies and Issues

This assessment study has identified three distinct areas where program evaluation can serve a useful role. Each of the three possible evaluation studies addresses specific issues which would provide information for ongoing program management, resource allocation and planning purposes, and for legislative and policy review respectively. (For convenience, the word "program" is often used as a synonym for the Bankruptcy sub-activity.) The rationale and key issues for each study are as follows:

### a) Study One - Rationale, Objectives and Indicators

The following issues would be addressed:

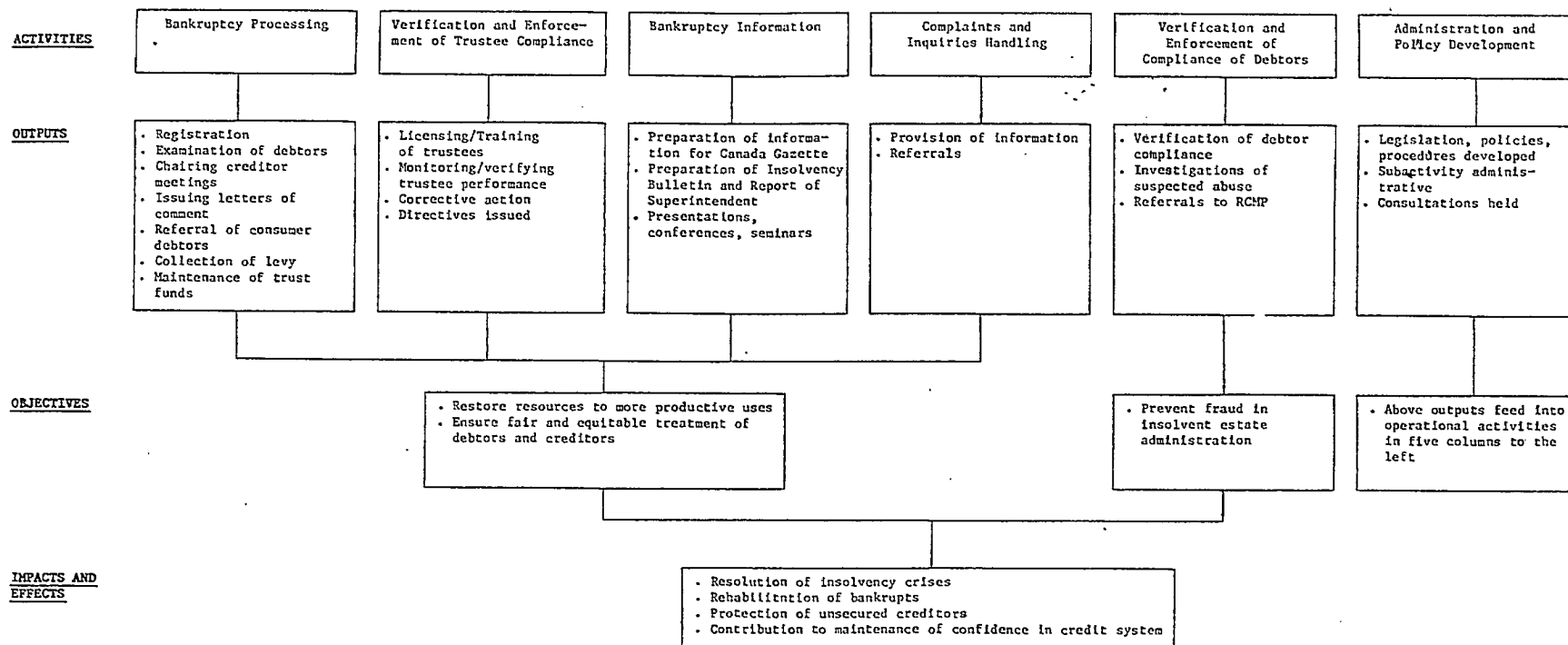
- o assess the extent to which current program activities can be expected to meet program objectives;
- o determine whether or not program objectives are clearly defined, measurable and achievable, and suggest improvements where necessary;
- o determine the extent to which indicators currently used by the program allow management to monitor the achievement of objectives and identify the strengths and weaknesses of the program;
- o identify and develop improved indicators of program achievement where necessary.

This study would provide program management with the framework needed to track results and demonstrate the impact of the program. A variety of methodologies would be employed including literature review, file review, interviews with government officials and, possibly, clients of the program and persons familiar with foreign bankruptcy programs. The assessment study team appreciates the delicate nature of the relationship between the program and its clients. If client interviews are undertaken for this study, they will be done so only with the full cooperation of program management. It is estimated that this study would require 160 person-days of program evaluation staff time and up to \$25,000 for consultant assistance.



# EXHIBIT I

## BANKRUPTCY SUBACTIVITY LOGIC CHART



b) Study Two - Program Activities and Alternatives

The following issues would be addressed:

- o assess the extent to which the program has been successful in meeting its objectives;
- o assess the impact of the program on the number of consumer and business bankruptcies;
- o compare the relative effectiveness of present program activities in achieving program objectives;
- o determine the nature and extent to which program activities complement, overlap or conflict with other relevant federal and provincial programs;
- o identify and assess potential cost-effective improvements and alternatives to current program activities.

This study would yield better information for program management for program planning and resource allocation purposes. Methodologies employed would include a survey of program clients and quantitative analysis. This study is estimated to require 120 person-days of program evaluation staff time and \$70,000 for consultant services.

c) Study Three - Impact Assessment of Legislative Proposals

In the course of preparation of the assessment study, it became clear that there was an additional set of issues related to possible legislative proposals. Present policy requires that a Regulatory Impact Analysis Statement (RIAS) be prepared for new or modified legislation or regulations in the regulatory area. In the case of major policy proposals, Departmental policy is that these RIAS be undertaken by those responsible for developing the policy proposals. The following has been identified as a possible study to be carried out by the policy developers in fulfillment of the RIAS policy.

The following issue would be addressed:

- o assess the costs, benefits and impacts of possible legislative proposals including wage earner protection, receivers and secured creditors, commercial reorganizations, consumer bankruptcies and arrangements and preferred claims.

This study would provide useful information for legislative and policy review purposes, including a possible Regulatory Impact Analysis statement. Methodologies used would include literature review, file review, government interviews, survey of program clients and quantitative analysis. This study would require an estimated 150 person-days of program evaluation staff time and \$80,000 for consultant services.

To facilitate comparisons among the three studies, their main features are shown in **Exhibit 2**. The person-day figures refers to the work time of Program Evaluation Division staff. The dollar figures cover costs for outside consultants, surveys and computing time. **Exhibit 3** provides a comparison of methodologies for each study.

#### 7. Recommendation

In terms of information required for management decision making and the anticipated usefulness and value of findings and recommendations compared with costs, it is recommended that Senior Management approve the undertaking of Study 1, on Rationale, Objectives and Indicators for the Bankruptcy program. Furthermore, while Study 2 on Program Activities and Alternatives would provide timely management information on the relative usefulness of various Bankruptcy activities, it is recommended that a decision to undertake this work be deferred until the completion of Study 1 and its review by Senior Management.

Exhibit 2

Evaluation Studies/Main Features and Costs

<u>Study</u>	<u>Cost Estimate</u>	<u>Main Features</u>
Study 1 Rationale, Objectives and Indicators	160 p.-d. \$25 K	<ul style="list-style-type: none"><li>o Focus is on rationale for current activities, assessment of current objectives and indicators and identification of improved performance indicators</li><li>o Provides program management with framework needed to track results and demonstrate impact of program</li><li>o Variety of methodologies including literature review, file review and interviews with government officials, clients and those familiar with foreign bankruptcy program to be used</li><li>o Within narrow range of issues to be examined, would provide results with adequate degree of credibility and reliability</li></ul>

<u>Study</u>	<u>Cost Estimate</u>	<u>Main Features</u>
Study 2 Program Acti- vities and Alternatives	120 p.-d. \$70 K	<ul style="list-style-type: none"><li>o Focus is on objectives achievement, impacts and improvements and alternatives to current program activities</li><li>o Includes identification and assessment of improvements and alternatives in such areas as:<ul style="list-style-type: none"><li>- bankruptcy processing</li><li>- verification and enforcement of trustee compliance</li><li>- bankruptcy information</li><li>- verification and enforcement of compliance of debtors</li><li>- complaints and enquiries handling</li></ul></li><li>o Methodologies employed would include survey of clients and quantitative analysis</li><li>o Would provide results with adequate degree of credibility and reliability</li></ul>

<u>Study</u>	<u>Cost Estimate</u>	<u>Main Features</u>
Study 3 Impact Assessment of Legislative Proposals	150 p.-d. \$80 K	<ul style="list-style-type: none"><li>o This study would be conducted by those responsible for preparing the legislative proposals as required by the RIAS policy</li><li>o Focus is on assessment of costs, benefits and impacts of main legislative proposals being developed for possible amendments to Bankruptcy Act</li><li>o Possible issue areas include:<ul style="list-style-type: none"><li>- wage earner protection</li><li>- receivers and secured creditors</li><li>- commercial reorganizations</li><li>- consumer bankruptcies and arrangements</li><li>- preferred claims</li></ul></li><li>o Methodologies would include literature review, file review, government interviews, survey of program clients and quantitative analysis</li><li>o Would provide information needed to prepare Regulatory Impact Analysis Statement for possible amendments to Bankruptcy Act</li></ul>

EXHIBIT 3

Suggested Methodologies for Each Study

Methodologies	Study 1		Study 2		Study 3	
	<u>p-d</u>	<u>\$000</u>	<u>p-d</u>	<u>\$000</u>	<u>p-d</u>	<u>\$000</u>
Planning & Orientation	5	-	5	-	5	-
Literature Review	20	-	-	-	10	-
File Review	20	-	-	-	10	-
Government Interviews	10	-	-	-	10	5
Expert Opinion	10	10	10	10	-	10
Foreign Interviews	10	-	10	5	10	5
Client Interviews	20	15	-	-	10	10
Survey of Clients	-	-	40	50	30	40
Quantitative Analysis	-	-	10	5	20	10
Data Analysis	30	-	20	-	20	-
Report Writing	30	-	20	-	20	-
Briefings	5	-	5	-	5	-
TOTALS	160	25	120	70	150	80

8. Cost

The recommended evaluation study option will require estimated resources of 160 person-days and require up to \$25,000 for consultant services.

9. Timing

Assuming that the program evaluation begin at the beginning of April 1987, it is anticipated that the work will be completed over a period of about 8 months with the draft final report forwarded to the Deputy Minister by the end of November 1987.

A schedule for the proposed work is attached as **Exhibit 4**.



EXHIBIT 4

Evaluation Study Work Schedule

Study 1

ACTIVITIES	1987								
	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Planning and Orientation Study 1	-----								
Literature Review	-----								
File Review	-----								
Prepare Guides/Schedule Interviews,	-----								
Government Interviews	-----								
Foreign Interviews	-----								
Client Interviews	-----								
Analyse Data	-----								
Draft Study 1	-----								
Consultations on Draft	-----								
Expected Completion Date Study 1	-----  *								

Appendix I

COMPONENT DESCRIPTION

BANKRUPTCY PROGRAM EVALUATION COMPONENT

1. General Description

The bankruptcy system is the means of last resort for addressing an insolvency crisis. An insolvent debtor would normally prefer to reconcile a debt crisis through a co-operative agreement with the creditors. Should this prove impossible, the debtor becomes a bankrupt, either voluntarily or as a result of creditor action.

2. Bankruptcy Process

The actual process for any given bankruptcy estate can vary from a brief and simple sequence of events ending with the discharge of the bankrupt to a very complex and protracted sequence leaving the debtor indefinitely as an undischarged bankrupt. The exact sequence of events depends largely on the flexibility of the creditors involved.

The administrative process of bankruptcy can begin in any of the following ways: the debtor submits a Statement of Affairs and files an assignment (or indenture or bankruptcy statement) with the Official Receiver (OR); the debtor is petitioned into bankruptcy when one or more creditors obtains a Receiving Order from the court; the creditors reject the debtor's proposal under Part 3 of the Act which automatically makes the debtor a bankrupt; or the debtor fails to meet the terms of a proposal accepted by the creditors and they apply to the court for bankruptcy order.

A simple consumer bankruptcy could follow this basic sequence:

- 1) an insolvent debtor decides that his financial crisis can only be resolved through bankruptcy;
- 2) the debtor selects a trustee and prepares a Statement of Affairs;
- 3) an assignment is filed with the OR;
- 4) the OR registers the debtor as a bankrupt;
- 5) the bankrupt submits to an examination by the OR;

- 6) the trustee calls the first meeting of creditors (which is also attended by the OR);
- 7) the trustee identifies, takes control and disposes of the bankrupt's non-exempt assets;
- 8) the trustee files a report with the court concerning the bankrupt's behaviour;
- 9) the OR reviews the estate and submits a letter of comment to the court;
- 10) the bankruptcy court discharges the bankrupt from his debts and he is no longer a bankrupt nor need any further payments be made to former creditors.

For more complicated estates the process can quickly become more involved due mainly to requirements assuring that each participant is acting in good faith and equitable treatment for all concerned.

In commercial bankruptcies creditors will often appoint inspectors to act on their behalf to assure that the proceedings meet with their approval without requiring their (the creditors') constant presence. Apart from this, consumer and commercial bankruptcy proceedings are identical.

### 3. Bankruptcy Activities and Outputs

The Bankruptcy Program undertakes a number of functions, summarized here with their outputs:

<u>Activity</u>	<u>Results/Outputs</u>
1) Trustee training and licensing (HQ)	Control over quality and number of trustees.
2) Monitoring of trustee performance (SEA program). based on #1 above. (Field)	Quality assurance for integrity of bankruptcy system.
3) Collection of various types of information pertaining to the bankrupt and his affairs. (Field and HQ).	Creation of a file for each estate.
4) Production of statistics based on #1 above. (HQ).	Processed information made available to the credit community and interested parties.

<u>Activity</u>	<u>Results/Outputs</u>
5) Policy and Planning work. (HQ).	Maintain appropriateness of system and effectiveness of program.
6) Management and administrative support. (HQ and Field).	Operation of program.
7) Collection of Superintendent's levy. (HQ).	Partial cost recovery.

Although the activities above are described as being based at headquarters or in the field, many key positions at headquarters are held by personnel based in regional offices. This makes the distinction between headquarters and field activities somewhat less important than it might otherwise be.

#### 4. Objectives

The Bankruptcy Act of 1949 was designed to equitably resolve the interests and claims of insolvent debtors, unsecured creditors, and the general public. The Act aims to relieve the bankrupt of his debt burden and return him to economic life in a rehabilitated state. Secured creditors do not require the protection of bankruptcy legislation by virtue of their security and therefore are not protected by the Act. Protection is afforded to unsecured creditors in order to maintain their, and the public's confidence in the integrity of the financial credit system.

Branch training material proclaims the following mission of the Office of the Superintendent (which applies to the Bankruptcy Branch in general): "to ensure that the bankruptcy system operates in an equitable, open and predictable manner, so the legitimate interests of all participants and of the general public are seen to be protected and promoted." This is, in part, the managerial objective of the Superintendent with respect to the bankruptcy program.

The objectives of the bankruptcy program are, in summary, to:

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

## 5. Participants and Responsibilities

The participants in the bankruptcy process and their responsibilities are described here briefly.

The role of headquarters personnel is largely administrative with the emphasis on supervision of field activities and on the receipt of information from the field for generating statistics. A substantial burden of responsibility falls to the field offices. Each is headed by an Administrator (reporting to the Deputy Superintendent) who oversees the activities of a group of Official Receivers (ORs) and clerical support staff.

The ORs play a key role in the bankruptcy process, being sufficiently involved to assure an awareness of how each individual estate is being handled but not interfering with the trustee (who is a member of the private sector) except when necessary. Trustees are trained and examined by the Bankruptcy Branch and are licensed (and may be delicensed) by the Minister of CCAC on the recommendation of the Superintendent of Bankruptcy. The trustee holds a challenging position in which the interests of both the bankrupt and the creditors must be reconciled in a fair manner. The involvement of the OR assures fairness through the Supervision of Estate Administration (SEA) program. Trustee interests are represented by the Canadian Insolvency Association (CIA) which has very close ties to the Bankruptcy Branch.

Legal aspects of bankruptcy are dealt with by designated bankruptcy courts, usually by the registrar. Contentious matters are turned over to a bankruptcy judge. Investigations of serious deviations from the law are referred by the Superintendent to the RCMP, who proceed with prosecution as evidence permits.

## 6. Organizational Structure and Resources

The importance of field operations to CCAC's activities in bankruptcy has been mentioned already. Operations at headquarters have been divided into a number of sections. The most pertinent of these for the purposes of the evaluation study are the National Audit Group (NAG), the Joint Committee on Bankruptcy Estate Policy and Practices (JCB), and Program Development and Training.

NAG audits trustees to assure that they meet the standards of performance set by the Superintendent. Current plans anticipate a greater reliance on the Supervision of Estate

Administration program for some aspects of trustee audits while the focus of NAG be narrowed to financial aspects.

The JCB is composed of representatives of the Canadian Insolvency Association (CIA) and the Bankruptcy Branch. The Committee was formed to recommend policy and practices guidelines to the Superintendent.

The Program Development and Training section is responsible for the development of national training programs, provision of written guidelines for specific programs, program implementation, and the provision of training sessions and professional development seminars for ORs.

The bankruptcy program is implemented nationally through 10 regional offices in: Dartmouth, Montreal, Quebec, Ottawa, Toronto, London, Hamilton, Winnipeg, Calgary and Vancouver. Each of these offices is headed by a Bankruptcy Administrator working with from 3 to 11 Official Receivers and a similar number of support staff (in 1985/86). In addition to the 10 Administrators, there were 55 OR person-years and 49 support staff person-years deployed in the field in 1985/86. Administrators report directly to the Deputy-Superintendent.

There were 11,728 bankruptcies registered in 1975/76 at which time 239 person-years were allocated to the bankruptcy program. Two years later, registrations jumped to 18,534 with a slight reduction in person-years to 236. In 1980/81, registrations climbed to 29,178 while staff resources fell to 175 person-years. By 1982/83 the number of registrations had again risen sharply to 43,108 while the person-years allocation dropped to 153. For 1985/86 the Branch obtained authorization for 140 person-years (111 of these for field operations) to deal with 28,783 bankruptcies.

The ratio of liabilities (as declared by creditors) to realized assets was about four to one. The 35,448 estates handled that year involved \$4B in liabilities and realized \$1.1B in assets. The liability figure is understated as not all creditors make claims in cases of bankruptcy. During the period FY83/84 through FY85/86 about 30% of bankruptcies were commercial estates.

The budgetary allocation being sought for 1986/87 is about \$6.6M. Of this amount \$4.8M is for salaries (\$3.5M in the field), \$1.8M is for O&M (\$623,000 in the field), and \$125,000 for capital (i.e. informatics related) expenditures of which \$107,000 will be spent in the field.

## 7. Performance Indicators

The sharp decline in person-years allocated to the Bankruptcy Branch during the 1975-1983 period was largely based on the performance indicators in use at that time. Those indicators purportedly measured performance in terms of efficiency and effectiveness. Performance measurement has recently re-emerged as a concern in government. The feasibility and design of possible performance indicators for the Bankruptcy Branch is proposed as an evaluation issue.

By 1982, three different reports produced critical commentary on the indicators in use. The Auditor-General's report for the fiscal year ending March 31, 1981 described the indicators as neither valid nor reliable. The Branch's data base was singled out as being inadequate for measuring performance. A contract with Systemhouse Ltd. undertaken by the Branch subsequently produced another report echoing the Auditor-General's findings, as did an internal audit report in 1982. Various indicators have been experimented with since that time.

The performance reporting system presently in use is based on four basic Branch functions, the volume of bankruptcies, and the number of person-years used. The four functions are all Official Receivers' responsibilities: registration of the bankrupt (i.e. opening the file); examining the bankrupt; attending the first meeting of creditors; and issuing letters of comment on estate administration. These four are brought together in a formula to calculate 'work units completed' (WUC):

$$\text{WUC} = 0.2 (\text{Filings}) + 0.4 (\text{Examinations}) + 0.35 (\text{Meetings}) + 0.15 (\text{Letters})$$

The weights are meant to reflect the relative operational importance of each function. If all four tasks were performed for every bankruptcy estate then the work units completed figure would equal the number of estates.

Comparisons between field offices are made by dividing work units completed by the number of filings for each office. This measure of relative compliance is called the operational coverage rate.

The 'performance index' is calculated by multiplying the operational coverage rate by the number of filings per person-year used. In effect, this is equivalent to work units completed per person-year.

These statistics are being produced by the new Bankruptcy Registration and Administration Support System (BRASS) on a trial basis. As is true of BRASS itself, these performance

measures are open to further development. They have not yet been subjected to rigorous or formal review with respect to validity or reliability. It is clear from the preceding description that there are strong subjective elements in these measures, beginning with the assumptions about what are the basic functions of the Branch, what their respective weights should be, and ending with the specification of acceptable results. Quite apart from these technical concerns, the Branch does not presently have performance indicators.

#### 9. External Factors/Conditions Affecting the Program

Changes in financial markets in recent years have had various consequences for the bankruptcy system. These cannot be quantified due to limited bankruptcy statistics and the virtual lack of statistics for other insolvency phenomena. They include: changing economic conditions, attitudes towards various options in insolvency, increases in the relative proportion of secured to unsecured financing, and changes in the nature of personal bankruptcies.

The recent economic recession was characterized by high interest rates in addition to the usual features of a recessionary period. These unusually high interest rates contributed to an increase of 110% in commercial bankruptcies between 1976 and 1980. This resulted in what the business press called "a veritable liquidation derby" as secured creditors attempted to realize on their securities and bankruptcy trustees sought to liquidate the assets of their estates. The recession reduced both the number of buyers for assets and asset values. Dividends to unsecured creditors in all bankruptcies fell from 6¢ to 3¢ per dollar owed in real terms between 1968 and 1980.

Attitudes changed in the credit community, particularly among insolvency specialists, in response to the rise in the number of bankruptcies. Restructuring became an increasingly attractive alternative to other insolvency action such as liquidation or forced bankruptcy as creditors tried to minimize their losses. Although receiverships need not be registered as are bankruptcies, those working in insolvency management felt that by 1981, if not earlier, receiverships outnumbered commercial bankruptcies and involved more employees.

Commercial loans in Canada were once the exclusive domain of the chartered banks. Recently there has been an influx of foreign banks, trust companies and other financial institutions into the commercial loan market. Security was often



regarded as unnecessary in the past because of the high degree of control exercised by the dominant lending institutions. With a rapid increase in the number of lending institutions and unsettled economic conditions, individual lender control has diminished and taking security has become the rule rather than the exception. The banks have traditionally had access to security through Section 88 of the Bank Act. Now this is often augmented by separate security instruments against all of the debtor's assets. The upshot of the trend to security financing is that fewer and fewer assets of the bankrupt are available for the unsecured creditors. The Bankruptcy Act is perhaps serving, in this sense, a progressively smaller clientele.

The Bankruptcy Branch has noticed significant changes in the nature and composition of personal bankruptcies in recent years. Although there are still considerable numbers of personal bankruptcies involving misfortune, poor financial planning and other traditional causes of personal bankruptcies, other personal bankruptcies represent a potential abuse of the system, for example, repeat bankruptcies by high income earners. The Bankruptcy Branch is undertaking data collection and analysis to determine the extent and implications of this development.

Appendix II

TERMS OF REFERENCE FOR THE  
PROPOSED EVALUATION OPTION

Bankruptcy Evaluation  
Rationale, Objectives and Indicators Study  
Terms of References

1. Background

The Bankruptcy Act of 1949 was designed to equitably resolve the interests and claims of insolvent debtors, unsecured creditors and the general public. The objectives of the bankruptcy program are, in summary, 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.

2. Proposed Evaluation Study

It is proposed that initially an evaluation study dealing with Rationale, Objectives and Indicators be undertaken. A decision on additional evaluation work in the bankruptcy area, including Regulatory Evaluation Issues, will be deferred until completion of the Rationale, Objectives and Indicators Study and its review by senior management.

3. Issues

The study will address the following issues:

- . assess the extent to which current program activities can be expected to meet program objectives;
- . determine whether or not program objectives are clearly defined, measurable and achievable and suggest improvements where necessary;
- . determine the extent to which indicators currently used by the program allow management to monitor the achievement of objectives and identify the strengths and weaknesses of the program;
- . identify and develop improved indicators of program achievement where necessary.

4. Methodology

Information will be gathered primarily through file and literature reviews and interviews with government officials and, possibly, clients of the program and persons familiar with foreign bankruptcy programs. If client interviews are undertaken for this study, they will be done so only with the full cooperation of program management.

5. Resources

It is estimated that this study will require some 160 person-days of program evaluation staff time and up to \$25,000 for consultant contracts.

6. Involvement of the Bankruptcy Branch

The study will require the participation of Bankruptcy Branch personnel, both at headquarters and in the regional offices. Every effort will be made to minimize the requirements on the time of Bankruptcy Branch personnel.

7. Advisory Committee

An Advisory Committee will be established to advise the evaluation study team. The Committee will include representation from the Office of the Superintendent of Bankruptcy, Corporate Services and Research, the Office of the Comptroller General and any other Department of Agency as deemed appropriate by the Chairperson. The Director, Corporate Services and Research, will act as the Chairperson of the Advisory Committee.

8. Timing

The final report of the study will be presented to senior management by November, 1987.

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Evaluation assessment study

**DATE DUE**  
DATE DE RETOUR

DATE DUE	DATE DE RETOUR

CARR MCLEAN

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INDUSTRY CANADA/INDUSTRIE CANADA



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