



Office of the Superintendent
of Bankruptcy Canada

An Agency of
Industry Canada

Bureau du surintendant
des faillites Canada

Un organisme
d'Industrie Canada

The National Insolvency Forum



National

Report

Improving the Effectiveness
and Efficiency of Canada's
Insolvency System while
Ensuring Compliance
with the *Bankruptcy
and Insolvency Act*

Canada



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
du système
d'insolvabilité

A M e s s a g e

from the Superintendent of Bankruptcy

Like most Canadians, the business community looks forward to the beginning of a new century and a new millennium with pride and optimism. The Office of the Superintendent of Bankruptcy (OSB) enters the 21st Century with the continuing challenge of how to best ensure compliance with the *Bankruptcy and Insolvency Act (BIA)*, an activity that is both crucial to protecting the integrity of the system and important to clients and stakeholders alike.

In acknowledging the rapid changes which impact our Canadian economy and recognizing the contribution of an effective insolvency system to Canada's overall competitiveness and stability, the OSB established the National Insolvency Forum (NIF) to assess and evaluate the current state of our insolvency system as well as reach a common understanding of the insolvency process and of each stakeholder's role.

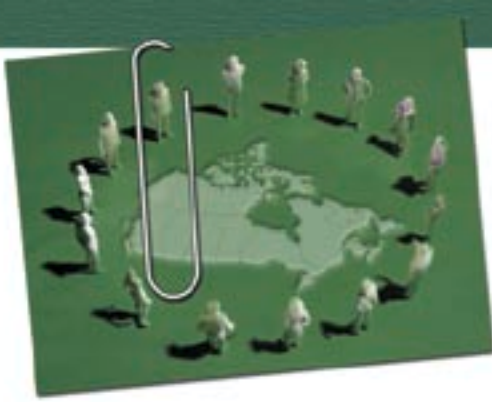
The suggestions and comments made by participants during these conferences have afforded the OSB the necessary perspective to suggest and implement changes, which will ensure that the values of integrity, fairness and efficiency remain the foundation of our insolvency system. Retention of public confidence will remain a priority as the OSB pursues its evolution of becoming a *Special Operating Agency* focused on client needs and innovative approaches for increased quality and effectiveness of its regulatory services.

March 2000



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E x e c u t i v e S u m m a r y

In late spring 1999, the Office of the Superintendent of Bankruptcy (OSB) launched a new form of stakeholder consultation: The National Insolvency Forum (NIF). The NIF consisted of a series of six two-day conferences held in selected cities — Halifax, Montreal, Toronto, Saskatoon, Calgary and Vancouver — during the months of May and June.

The goal was to bring together Canada's insolvency stakeholders and practitioners in order to ascertain **what works, what doesn't work and what improvements can be made** to our insolvency system. Both consumer and commercial representatives were asked to voice their opinions on the strengths and shortcomings of Canada's insolvency system as well as propose alternatives to the existing process in order to streamline it and make it more efficient and cost-effective.

From the numerous suggestions made four themes were articulated and will be used to shape the future direction and orientation of the OSB in pursuing its goal of "*Improving the Effectiveness and Efficiency of Canada's Insolvency System while Ensuring Compliance with the Bankruptcy and Insolvency Act*".

They are as follows:

- ▶ Maintain a Strong Policy and Regulatory Framework;
- ▶ Streamline the Insolvency Process;
- ▶ Enhance Information and Key Services Available to Canadians On-line;
- ▶ Strengthen Partnerships with Stakeholders and Clients Alike.

The OSB adopted, in its Action Plan for the coming year, those suggestions which would enable us to reach concrete results for a direct beneficial impact on the insolvency community, while being consistent with Government and OSB Strategic Objectives. Other criteria such as the feasibility of the suggestion and the resources necessary to implement the suggestion were also considered. As for those suggestions which require a legislative amendment to the *BIA*, the OSB will work closely with the Corporate Governance Branch of Industry Canada to ensure that the suggestions made are passed on and will assist them, if need be, in their implementation.

Committed to results, we will report on our progress regarding these undertakings throughout the year via the OSB web site and various publications.

[Strategies and Tactics]**Maintain a Strong Policy and Regulatory Framework**

- ▶ study benefits of counselling
- ▶ better inform creditors and debtors about mediation
- ▶ survey client satisfaction with quality and timeliness
- ▶ develop Receiver Compliance Program
- ▶ expand debtor information on Form 79
- ▶ strengthen verification of statement of affairs in Directive No. 22
- ▶ evaluate expansion of Name Search Registry
- ▶ develop Guide for Creditors on their rights and obligations
- ▶ evaluate feasibility of Guide for Unpaid Suppliers

[Objectives]

- ▶ improve communication with OSB stakeholders and clients
- ▶ promote and strengthen effective compliance
- ▶ ensure an effective and efficient insolvency process
- ▶ safeguard the integrity of Canada's insolvency system

Streamline the Insolvency Process

- ▶ assess requirement for mandatory meetings of creditors in ordinary administration
- ▶ evaluate alternatives to physical presence at meetings (e.g., videoconferencing)
- ▶ simplify Form 31 which deals with proofs of claim
- ▶ evaluate using a *Notice of Dividend to Creditors* and/or *90-day Interim Report to Creditors*

- ▶ streamline the insolvency process, making it less time-consuming, more cost-efficient and effective
- ▶ introduce flexibility into the process, thereby encouraging participation, while providing sufficiently detailed and timely information to creditors regarding the debtor's assets

Enhance Information and Key Services Available to Canadians On-line

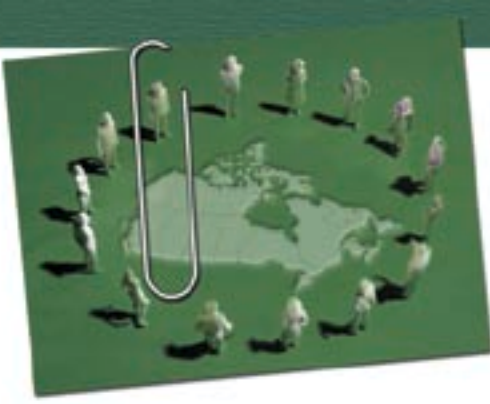
- ▶ allow electronic filing of proofs of claim
- ▶ improve OSB Web site
- ▶ increase OSB's capability to offer on-line services

- ▶ develop a strategy that will plan for and facilitate a movement toward greater electronic access to information on insolvency matters and transactional services
- ▶ maximize the use of information relating to insolvency matters within the insolvency community
- ▶ improve the information management system regarding compliance
- ▶ allow a greater participation by creditors in bankruptcy

Strengthen Partnerships With Stakeholders and Clients Alike

- ▶ work with creditors and credit rating agencies to resolve how to distinguish filing for a proposal from filing for bankruptcy
- ▶ develop a financial management educational program for consumers

- ▶ strengthen existing partnerships or foster new ones with stakeholders from the insolvency community in a participatory management framework



I n t r o d u c t i o n

Sizing Up Our Situation

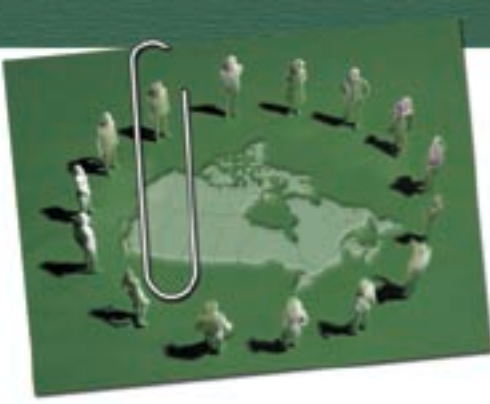


The *Bankruptcy and Insolvency Act (BIA)* and *Companies' Creditors Arrangement Act (CCAA)*, the main federal insolvency statutes for which Industry Canada is responsible, have been through two major revisions within the past seven years.

In February 1997, the Office of the Superintendent of Bankruptcy (OSB) received approval from Treasury Board to become a provisional *Special Operating Agency* and to use the transitional period to adjust to its new status by focusing on increased accountability for results.

Committed to increase the effectiveness and efficiency of its services, the OSB undertook in 1999 a series of round-table discussions, through the establishment of the National Insolvency Forum (NIF), to size up the existing insolvency process and ascertain its strengths and shortcomings as well as explore ways to streamline the existing process. A summary of each round-table discussion was published in the fall of 1999, all of which are available by consulting our Web site at <http://osb-bsf.ic.gc.ca>

This report exemplifies the OSB's management philosophy of working together with the insolvency community to foster a business-like culture with a strong, shared focus on client needs and innovative approaches, all of which are intended to protect the integrity of Canada's insolvency system.



[Part 1]

Assessing and Evaluating Canada's

Insolvency System

Where We Have Come From

The National Insolvency Forum Objectives and Goals

Using traditional questions, such as what works and what doesn't work in the *BIA*, the OSB sought the opinions of practitioners and stakeholders and engaged their participation in round-table discussions.

Our goal was to provide a public platform for stakeholders to share their concerns and better understand the diverse range of issues surrounding the insolvency process. These round-table discussions were intended to reflect the state of Canada's insolvency process and signal to the insolvency community that the OSB is committed to on-going consultation and improvement.

The OSB is committed to improve the effectiveness and efficiency of Canada's insolvency system while ensuring compliance with the *Bankruptcy and Insolvency Act*.

More specifically, participants were invited to identify where our insolvency system is fulfilling its goals and objectives and where it is not and examine the various steps in the insolvency process in order to ascertain where the system can be streamlined, thereby making it more effective and less time-consuming. Participants were also asked to identify solutions and improvements that can be implemented throughout the insolvency community.

Our goals and objectives were as follows:

- ▶ Assess the current state of Canada's insolvency system
- ▶ Evaluate its efficiency and effectiveness
- ▶ Reach a common understanding of the insolvency process and of each stakeholder's role

The Methodology

At an early stage in the process, the OSB realized that, in order for these consultations to be successful in focusing on the operational aspects of the Insolvency System, it was imperative that participants possess a high degree of practical, everyday hands-on experience. Six (6) cities were selected to participate in this initiative: Halifax, Montreal, Toronto, Saskatoon, Calgary and Vancouver. Approximately three hundred (300) participants, comprising both consumer and commercial representatives, were asked to submit discussion papers setting out the issues which they felt warranted consideration. During a series of two-day conferences held in May and June of 1999, participants were also asked to voice their views and concerns regarding the existing insolvency process.

As the OSB pursues its permanent status as a Special Operating Agency focused on increased accountability for results, it is necessary that it assess the existing insolvency system in light of internal and external factors which are likely to influence its evolution. If the OSB is to succeed in its endeavors, an evaluation of the existing insolvency system is fundamental.

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The Need to Assess a Changing Environment

The mission statement of the OSB is to *maintain investor and lender confidence in the Canadian marketplace by protecting the integrity of the bankruptcy and insolvency system*. The OSB has therefore a public policy role in ensuring that the overall system (i.e., the trustee community, the courts and the OSB) works in harmony to maintain the bankruptcy and insolvency system in Canada.

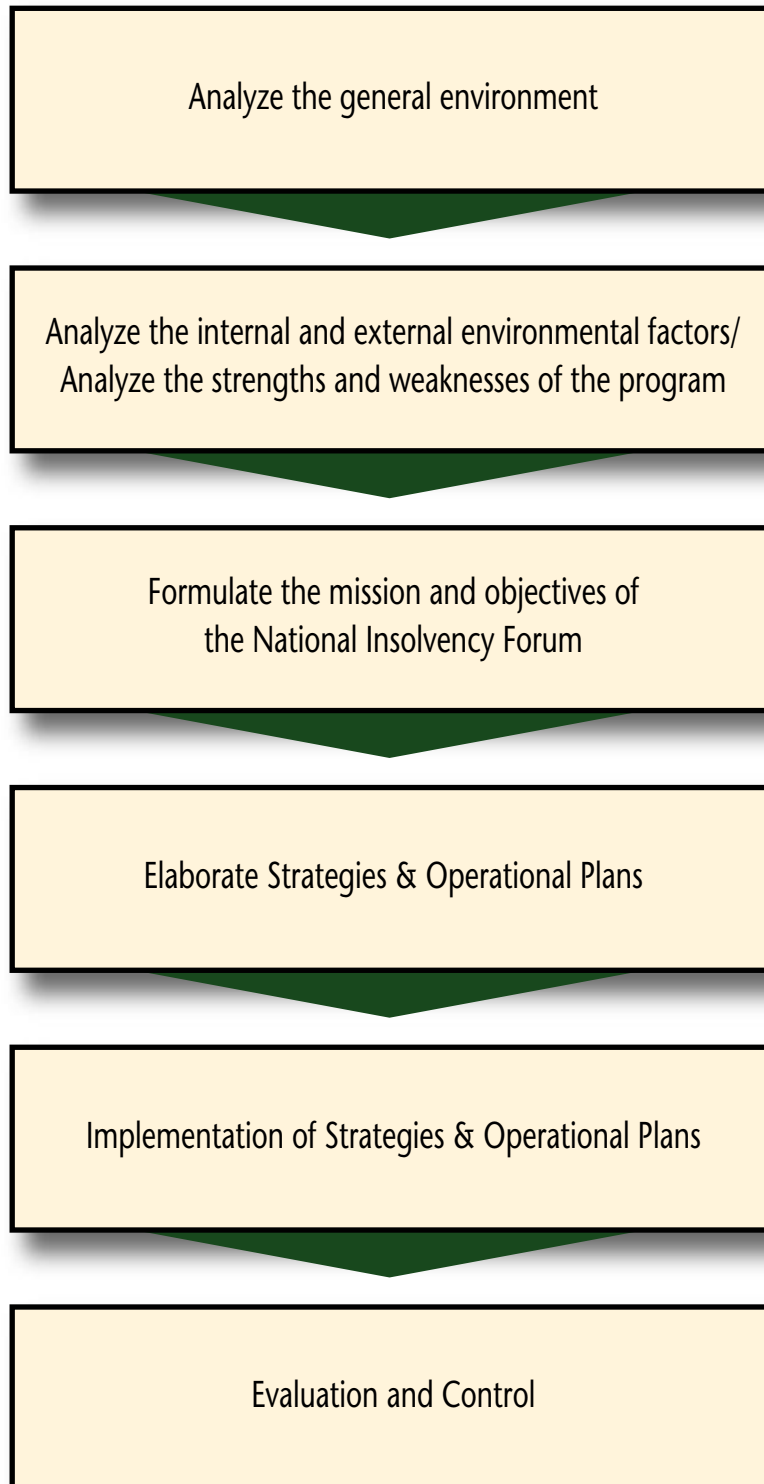
Information on performance is required for good management and effective governance. Knowing how efficiently Canada's insolvency process is working is increasingly essential to managing today's public sector. Moreover, this assessment provides timely and useful information as the OSB embarks on its final step of moving from a jointly funded organization, from Government appropriations and the revenues it receives from its fees and levy, to a full cost-recovery Agency.

It is therefore important that the OSB

- ▶ **Effectively assess** client needs and expectations;
- ▶ **Develop** and **incorporate** cost-effective client-driven strategies in our planning process;
- ▶ **Meet** client expectations, **achieve** positive client perception, and **ensure accountability** to our clients;
- ▶ **Conduct** surveys to measure the quality of our services and **enhance** organizational responsiveness to clients;
- ▶ **Foster** a client-focus culture in our organization;
- ▶ **Implement** valuable human resource practices to ensure successful delivery of client-driven services.

Finally, the need to assess the effectiveness and efficiency of our insolvency system at this point in time is further justified as the OSB prepares to report back to Parliament on the 1997 legislative revisions and envisages its permanent status as a *Special Operating Agency*.

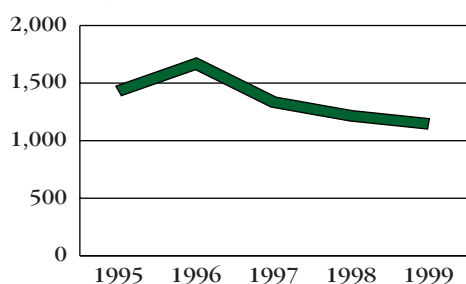
Planning the Assessment



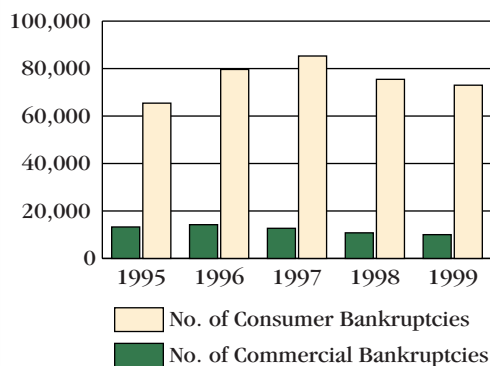
A Changing Environment

The OSB operates in an environment characterized by many forces. The changing economic patterns have resulted in the emergence of new societal forces and trends that directly affect bankruptcies in Canada and consequently the environment within which the OSB must operate. The strategic issues facing the OSB also comprise a host of internal forces with which the OSB must reckon.

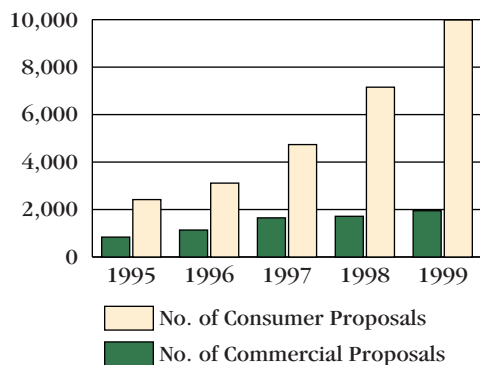
Receiverships in Canada for the period January 1, 1995 to December 31, 1999



Bankruptcies in Canada for the period January 1, 1995 to December 31, 1999



Proposals in Canada for the period January 1, 1995 to December 31, 1999



The Trend in Canadian Insolvency Demographics

In 1996, consumer bankruptcies in Canada rose to 79,631 from 65,432 in 1995. In 1997 these numbers reached a record high of 85,297, yet in 1998, the number of reported consumer bankruptcies decreased by 11.5% to 75,465. In 1999, the number of consumer bankruptcies continued to decline reaching 72,997.

Commercial bankruptcies, for their part, after rising from 13,258 in 1995 to 14,229 in 1996, went to 12,200 in 1997. In 1998, the number of commercial bankruptcies decreased to 10,791, a reduction of 11.5%. In 1999, the number of commercial bankruptcies continued to decline reaching 10,026.

After rising from 838 in 1995, commercial proposals rose from 1,136 in 1996 to 1,649 in 1997 and again in 1998 to 1,715. In 1999, the number of commercial proposals rose to 1,950. At the same time, there has been a greater rate of growth of consumer proposals. In 1995, there were 2,419 consumer proposals in Canada. During the 1996 to 1998 period, consumer proposals increased, rising from 3,113 in 1996 to 4,737 in 1997 and to 7,155 in 1998, an increase of 130% over the period. In 1999, the number of consumer proposals rose to 9,985.

While there has been relative stability in the overall number of insolvency filings, there has been a noticeable change in the mix of insolvency filings over the 1995 to 1999 period. Bankruptcies have been decreasing and proposals have been increasing, leading to an increase in the proportion of total insolvency filings that are proposals.

External and Internal Environmental Factors

A range of external and internal environmental factors affects the priorities and strategies for improvement. They include:

External Environmental Factors

- ▶ Underlying changes in Canadian society and the economy and the growing pool of certain categories of debtors, namely women, have contributed to the changing trends in Canadian Insolvency Demographics;
- ▶ Other contributing factors include the decline in income due to loss of jobs and changes in marital status;
- ▶ The attitude of creditors with respect to bankruptcy and insolvency matters and their role and responsibility regarding “*easy credit*”;
- ▶ The perceived low rate of participation of creditors in insolvency proceedings;
- ▶ The manner in which other government departments and Crown Agencies conduct themselves in insolvency files and how their respective administrative policies impact on insolvency matters;
- ▶ Legislative activity of a fiscal nature, both federal and provincial, which directly impact on insolvency matters. For example, the evolution of provincial legislation with respect to property and civil law;
- ▶ Court decisions and their impact on the interpretation of legislative provisions in the *BIA* (e.g., issues such as post-bankruptcy payments to trustees as remuneration for their professional services).

Internal Environmental Factors

- ▶ The necessity to undertake a structural review as a result of the newly founded status of the OSB as a *Special Operating Agency*;
- ▶ The impact of the gap between costs and revenues on the OSB’s capacity to carry out compliance activity as it is forced to divert resources to handle administrative demands;
- ▶ The OSB’s financial and human resources to integrate as well as continue to contribute to Industry Canada’s vision and objectives while ensuring compliance;
- ▶ The five-year review plan following the 1997 revisions to the *BIA*;
- ▶ The expectations by internal and external stakeholders of the insolvency community of seeing enhanced services in a manner that ensures compliance and improves service delivery;
- ▶ The need and demand by stakeholders and clients for connectivity in order that they may be afforded the use and benefit of emerging technology which meets their expectations (e.g., Service Provider Initiative (SPI) which will electronically link all stakeholders in the insolvency community).

What You Told Us...

The Discussion and Suggestions

When asked about the **effectiveness** and **efficiency** of the existing insolvency system, participants commented that no feedback was provided regarding the value added and/or benefits of certain services afforded to debtors which were implemented during the revisions of 1992 and 1997.

More specifically, on the subject of Counselling Services to debtors, opinions were varied: while many participants agreed that there was some benefit to having counselling sessions, some thought that there should be more flexibility with respect to the timing of the second stage of counselling.

All agreed, however, that more information was required as to the usefulness and benefits of counselling sessions, especially in cases of repeat bankruptcies, and it was suggested that a study be conducted in order to ascertain the benefits and value added of counselling services, as well as their short-term and long-term effects on repeat bankruptcies.

On the issue of Mediation, while some participants agreed that the introduction of this process was a positive addition, many were totally unaware of its existence. Those who were familiar with the mediation process agreed that, although it was not necessarily less time-consuming, it did provide creditors and bankrupts with better accessibility and a way to expand their discussions to resolve disputes or disagreements. Moreover, participants recognized that the mediation process provided a

cost-effective way to obtain additional payments without going before the courts and, therefore, suggested that its existence be further promoted and/or publicized.

The issue of Service Standards was briefly discussed and suggestions made as to the timeliness of returning telephone calls; participants suggested that trustees be required to respond to all telephone inquiries within a 24-hour period. Participants further commented on the lengthy time frames surrounding RCMP

Discussion and interaction with the primary stakeholders and users of the insolvency system is an integral component of our assessment and is an excellent means to gauge the efficiency of the process and the quality of products and services provided to our clients.

investigations. As a potential solution to this issue, it was suggested that forensic accountants be hired to conduct the investigation and prepare a report that could then be forwarded to the RCMP for further action.

When asked about ways to **improve** the insolvency process, participants suggested that consideration be given to amending the *BIA* in order to introduce some flexibility to the process of Consumer Proposals and confer upon the trustee the discretion to negotiate alternative arrangements of payment in cases where a debtor fails to comply with the obligations stated in the proposal. As well, it was proposed to increase the existing threshold of \$75,000 so that a greater number of consumer-debtors are afforded this option.

On the issue of Commercial Proposals, it was suggested that trustees take reasonable steps to ensure that a proposal is acceptable prior to it being submitted to creditors in order to preclude debtors from resorting to this option merely to frustrate creditors.

Another area which participants felt required some improvement was that of Statement of Affairs and Realization of Assets. As a general observation, stakeholders reiterated the importance for trustees to exercise more diligence in verifying the statement of affairs. Participants further expressed the view that trustees should be required to substantiate and/or document the realization of assets, or alternatively, resort to the professional services of an appraiser for assets such as real estate.

Moreover, participants suggested that the *BIA* be amended to require trustees to file an amended statement of affairs, which in turn would be forwarded to creditors in cases where additional information and/or materially significant information was obtained regarding the debtor's assets.

Compliance was another area which participants noted required some improvement. Comments were made to the effect that there exists a lack of deterrent mechanisms both for trustees who fail to maintain professional obligations (e.g., verifying the debtor's statement of affairs as per subsection 19(3) of the *BIA*) and debtors who do not comply with their duties and obligations under the *BIA* (e.g., declaring all their assets).

On the subject of Information to Creditors, most participants felt that the current time frame for disseminating information to creditors was problematic. More specifically, creditors felt that they did not have the necessary information, in a timely manner, to enable them to determine whether to participate in the bankruptcy. As a potential remedy to this situation, it was suggested that trustees be required to submit to all creditors a *Notice of Dividend to Creditors* or a *90-day Interim Report* detailing the debtor's assets, thereby enabling creditors to decide whether or not to file a proof of claim.

When questioned about ways to **streamline** the existing process, stakeholders agreed that the OSB should maximize the use of emerging technologies and promote their use as a course of action. To this end it was suggested that creditors be permitted to file their Proof of Claim electronically. Most participants wel-

comed this suggestion and added that the existing form should be revised and simplified and consideration be given to requiring creditors to file a proof of claim only in cases where it was likely that a dividend would be distributed to creditors.

Another time-saving suggestion related to Meetings of Creditors in ordinary administration estates. A number of participants favored such meetings being held only in cases where a certain percentage of creditors requested it, or alternatively, that trustees be vested with the discretion to delay the first meeting of creditors if need be. Other participants, however, cautioned that these meetings afford creditors the opportunity to voice their concerns as well as exchange information, which can sometimes lead to identifying questionable transactions and/or hidden assets. Most stakeholders, however, suggested that alternative means of physically attending creditors' meetings should be introduced into the *BIA*, such as teleconferencing and videoconferencing.

Moreover participants suggested, as a potential solution to the current situation of Discharge Hearings being postponed at the very last minute, that the *BIA* be amended to introduce a *Notice of Intention to Object to the Bankrupt's Discharge*. Participants stated that such an approach would preserve the right of the trustee, the creditors or the Superintendent to oppose a first-time bankrupt's automatic discharge without imposing additional delays to further encumber the judicial system.

Finally, it was proposed that the process for the Taxation of Accounts be streamlined. More specifically, during one forum, participants suggested that the taxation of accounts be dispensed with in three cases, provided that the OSB and inspectors are sufficiently informed, and that no interested party had voiced an objection: (1) for all legal services accounts; (2) for all estates where there are minimal assets and no contentious issues; and (3) in all estates where the trustee's fees do not exceed \$5,000.

Participants made a number of suggestions which can only be carried out by **enhancing our partnerships with other stakeholders** of the insolvency community: the issue of credit rating practices, education and student loans.

On the subject of Credit Rating Practices, most participants expressed dissatisfaction as well as concerns with the current practice of credit rating agencies. Although representatives from credit rating agencies

Measuring client satisfaction and understanding what stakeholders value and need is an integral part of our business-planning process.

explained that the rating is assigned by the creditor and not the agency, participants urged credit rating representatives to change their “way of doing business” in order that the rating assigned reflect the distinction between those debtors who choose to file a proposal and those who opt for bankruptcy. It was stated that the current practice not only acts as a disincentive for debtors to file a proposal rather than bankruptcy, it sends the same message to creditors that the individual seeking credit represents a high risk to creditors. It was therefore proposed that discussion groups comprising representatives from the insolvency community be established in order to examine and propose solutions to this prevalent issue.

On the issue of Education, most participants agreed that young Canadians would benefit from a program designed to encourage sound habits in the proper use and management of credit. The Federal Government was seen as a stakeholder that could act as a facilitator in establishing such a program on a national basis.

Finally, participants commented on the issue of Student Loans. More specifically, they voiced their discontentment with the recent amendment and felt that the government had not consulted adequately prior to increasing the period for which a debtor cannot be discharged from a student loan from two (2) years to ten (10) years. Participants suggested that government ascertain the possibility of introducing a hardship clause which would provide some leniency to debtors with student loans who were experiencing financial hardship. They suggested that the OSB discuss with the appropriate authorities the possibility of further amending section 178 of the *BIA*.

When asked about the **shortcomings** of the *BIA*, participants were quick to refer to section 81.1, which deals with unpaid suppliers. Many stakeholders considered that this provision was virtually ineffective in that it did not afford unpaid suppliers adequate protection. Other participants commented that recent court decisions which interpreted in a restrictive manner the words “same condition” and “identifiable” merely emphasized this lack of appropriate protection.

Another problem was said to be the notices of intention. Participants felt that the stay of proceedings, which takes effect upon the filing of a notice of intention, does not confer any rights to unpaid suppliers permitting them to reclaim unpaid goods delivered to a debtor. Consequently, debtors oftentimes take advantage of the stay of proceedings to liquidate goods and subsequently pay other creditors, particularly those who possess personal guarantees against the principles of a debtor company.

Accordingly, it was suggested that the provisions in the *BIA* which deal with unpaid suppliers be reviewed and amended in order to rectify this issue.

Regarding Receiverships, participants voiced their discontent with the issue of non-compliance with respect to the requirements imposed by Part XI of the *BIA*. A large number of participants argued that the cost of

complying with said provisions was onerous and cumbersome, particularly for smaller estates. On the other hand, unsecured creditors felt that Part XI was of great benefit to them even though they stood to receive very little, if anything, in most receiverships, by arguing that Part XI assured at least a certain measure of openness and the reassurance to creditors, to a certain extent, that their claims were being given some protection. Despite these different points of view, most agreed that more severe penalties should be imposed on those who do not comply with these provisions.

With respect to Asset Rollovers, most participants believed that this issue was one of perception. They reasoned that as long as the best value is obtained for the assets in question, it becomes immaterial if the purchaser also happens to be a shareholder, director or officer of the bankrupt business. The question that did, however, preoccupy some participants was how to ensure that the trustee or the receiver obtains the best possible price for the assets in question. Most participants did agree that mechanisms need to be devised to identify those asset rollovers that are fraudulent. It was, therefore, suggested that the *BIA* be amended to introduce mandatory reporting requirements for asset rollovers undertaken in either a bankruptcy or a receivership. Alternatively, a simpler approach could be to require court approval for all asset rollovers. Participants felt that such improvements would add a much-needed element of openness to the process.



[Part 2]

O u r F u t u r e S t r a t e g i c

O r i e n t a t i o n

Where We Are Headed...

Our Strategic Orientation

The OSB's orientation, key services, management thrusts and mission statement are guided by Industry Canada's mandate and strategic objectives and are also conditioned by the changing external and internal environmental factors discussed above.

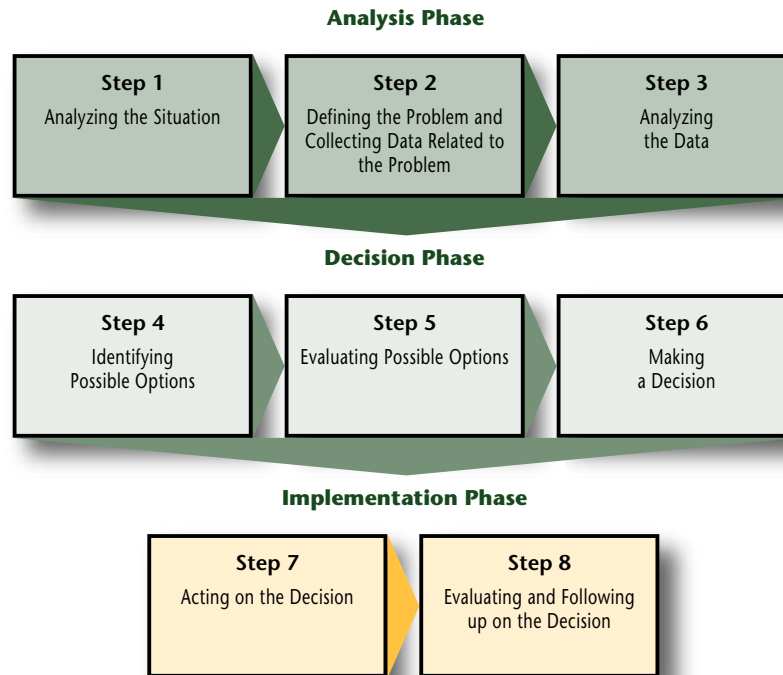
From the numerous suggestions made during the NIF consultations, the OSB adopted those which would enable us to reach immediate results, thus having the most beneficial impact on the insolvency commu-

Identifying, documenting and analyzing the efficiency and effectiveness of outputs generated by the existing insolvency process will assist us to map out our future strategic orientation. In essence, better information leads to better decision-making, improved accountability and better governance.

nity while being consistent with Government and OSB Strategic Objectives. Other criteria such as the feasibility of the suggestion and the resources necessary to implement the suggestion were also considered.

It is our belief that the undertakings described below will enable us to pursue our objectives of maintaining a strong policy and regulatory framework for insolvency matters as well as streamline the existing process, where appropriate. These undertakings will also facilitate a movement toward greater electronic access to information on insolvency matters and transactional services.

Decision-Making Process



As a *Special Operating Agency*, the OSB is afforded certain flexibilities and authorities to better manage its programs by focusing on increased accountability for results and better transparency. Our mission is to “*Improve the Effectiveness and Efficiency of Canada’s Insolvency System while Ensuring Compliance with the BIA*”.

Our Strategic Agenda and Commitments

The OSB intends to pursue its undertaking of improving the efficiency of Canada’s insolvency system and measuring its effectiveness under the four (4) themes described below.

A number of undertakings listed below will require preliminary work with respect to fact-gathering and in identifying potential alternatives prior to implementing the most feasible course of action.

Maintain a Strong Policy and Regulatory Framework

Objectives

- ▶ To improve communication with OSB stakeholders and clients.
- ▶ To promote and strengthen effective compliance.
- ▶ To ensure an effective and efficient insolvency process.
- ▶ To safeguard the integrity of Canada’s insolvency system.

Undertakings

Target date

- ▶ Conduct a study on counselling services to ascertain whether these services are achieving their intended benefits and determine whether the system for delivering these services is appropriate and effective. **April 2001**
- ▶ Better inform creditors and debtors regarding the Mediation Process to encourage them to resort to this option to resolve disputes. **April 2000**
- ▶ Conduct a survey to ascertain client satisfaction regarding the quality and timeliness of OSB services, thereby ensuring that the OSB remains accountable to its stakeholders and clients. **November 2000**
- ▶ Develop a Receiver Compliance Program to promote effective compliance with Part XI of the *BIA*, which deals with Receiverships, ascertain among other things the possibility of providing a more cost-effective way of complying with the requirements of Part XI for smaller receiverships and examine the possibility of imposing more severe penalties for non-compliance. **December 2000**
- ▶ Revise Form 79 dealing with the statement of affairs to ensure that creditors are provided with more information regarding the debtor's assets and their value, and develop a list of questions to assist trustees in their examination of the bankrupt's affairs. **May 2000**
- ▶ Develop more rigorous standards regarding verification of the accuracy of the statement of affairs by revising Directive No. 22 on the Realization of Estate Assets to ensure that creditors are provided with more credible information about the debtor's assets. **November 2000**
- ▶ Explore the possibility of amending the Name Search Registry in order to include names of former directors and officers of bankrupt corporations, to assist creditors and lenders in deciding whether to lend funds to individuals who have previously been associated with a commercial bankruptcy. **April 2001**
- ▶ Develop a Guide for Creditors regarding their rights and obligations. **June 2000**
- ▶ Explore the possibility of developing a Guide for Unpaid Suppliers informing them of their rights and obligations and the manner in which they may exercise these rights. **November 2000**

Streamline the Insolvency Process

Objectives

- ▶ To streamline the insolvency process, making it less time-consuming, more cost-efficient and effective.
- ▶ To introduce flexibility to the process, thereby encouraging participation, while providing sufficiently detailed and timely information to creditors regarding the debtor's assets.

Undertakings

Target Date

- ▶ Ascertain whether to revoke the mandatory nature of meetings of creditors for estates under ordinary administration of bankruptcies, thus rendering the existing process more flexible. **November 2000**
- ▶ Examine the feasibility of providing alternative means to physical attendance for meetings of creditors, in order to increase creditor participation in bankruptcy meetings. **July 2000**
- ▶ Revise Form 31, dealing with proofs of claim, in order to simplify it and make it less time-consuming for creditors to fill out. **November 2000**
- ▶ Explore the possibility of introducing a *Notice of Dividend to Creditors* and/or a *90-day Interim Report to Creditors* in order to eliminate unnecessary time spent by creditors in filing a proof of claim where no dividend is likely to be paid. **November 2002**

Enhance Information and Key Services Available to Canadians On-line

Objectives

- ▶ To develop a strategy that will plan for and facilitate a movement toward greater electronic access to information on insolvency matters and transactional services.
- ▶ To maximize the use of information relating to insolvency matters within the insolvency community.
- ▶ To improve the information management system regarding compliance.
- ▶ To allow a greater participation by creditors in bankruptcies.

Undertakings

Target Date

- ▶ All OSB services to be available electronically. **September 2001**
- ▶ Allow creditors to file their proofs of claim electronically and thus benefit from the use of emerging technology. **February 2002**
- ▶ Improve the OSB web site in order to ensure that users are afforded accurate and useful information and services in an efficient, cohesive and user-friendly manner. **February 2002**

Strengthen Partnerships with Stakeholders and Clients Alike

Objectives

- ▶ To strengthen existing partnerships or foster new ones with stakeholders from the insolvency community in a participatory management framework.

Undertakings

Target Date

- ▶ Play a pro-active role with creditors and credit rating agencies to examine and propose solutions to the issue of credit rating practices that do not distinguish between those individuals who file a proposal and those who opt to file for bankruptcy. **April 2001**
- ▶ Contribute to educating consumers on the proper use and management of credit by developing a program on budgeting, credit and financial management. **May 2001**

The Next Steps

Relaying the Suggestions

A number of suggestions made by participants require legislative amendments to the *BIA*. Accordingly, the OSB will work in close partnership with the Corporate Governance Directorate of Industry Canada to increase their awareness on the following legislative amendments and offer our support for their implementation. Suggestions include:

- ▶ Introduce a *Notice of Intention to Object to Bankrupt's Discharge*;
- ▶ Introduce a *Notice of Dividend* or a *90-day Interim Report*;
- ▶ Incorporate a hardship clause in paragraph 178(1j) which refers to student loans;
- ▶ Incorporate a provision which deals with Meetings of Creditors, similar to that of subsection 117 (1.1.), which states that an inspector may, if all other inspectors consent, participate in a meeting of inspectors by means of such telephone or other communication facilities as permit all persons participating in the meeting to communicate;
- ▶ Incorporate a provision regarding asset rollovers;
- ▶ Confer upon the trustee the discretion to postpone the first meeting of creditors and/or choose not to hold a meeting at all, in certain circumstances;
- ▶ Permit that proofs of claim be filed electronically;
- ▶ Introduce more severe penalties for non-compliance;
- ▶ Review section 81.1 to afford better protection to unpaid suppliers; and
- ▶ Introduce more severe penalties for those who do not comply with Part XI of the *BIA* which deals with receivership.

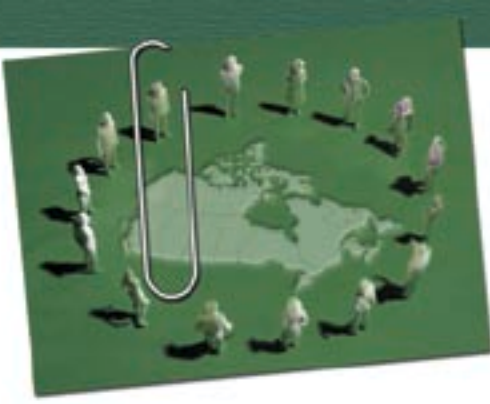
Monitoring Our Progress

With the production of this report and the implementation of the Strategic Orientation, the OSB considers that the measures outlined in this report are an important first step in meeting our challenge to identify those areas in the *BIA* that require improvement in order to enhance the efficiency and effectiveness of the insolvency process while ensuring compliance with the *BIA*.

The OSB is committed to managing for results and taking responsibility for them. We will therefore regularly update our web site as to our progress regarding the NIF Commitments and share our accomplishments regarding these undertakings throughout the year, through various publications including our *Insolvency Bulletin*.

The most important asset of the OSB is the confidence of its stakeholders and clients to whom it is accountable.

If the OSB is to play a pro-active role in society, as it must, fairness and integrity in our insolvency system must be protected.



A F i n a l W o r d



The publication of this report marks the closure of recent OSB consultations through round-table discussions to ascertain the strengths and weaknesses of Canada's insolvency system.

The information gathered and suggestions made during the NIF consultations will be used to shape the future direction and orientation of the OSB. As a *Special Operating Agency*, we remain committed to increase accountability for results and to provide users with the assurance that the values of integrity, fairness and efficiency remain the foundation of our insolvency - system.

It is through this type of on-going discussion that the OSB can ensure that the overall insolvency system is safeguarded. With the continued support and commitment of stakeholders and practitioners of the insolvency community we can work together

“to provide an effective, cost-efficient and uniform national program that will ensure compliance with the Bankruptcy and Insolvency Act, to maintain a sound policy and regulatory base which permits adjustments to the law in response to changing conditions, and to encourage the participation of private-sector stakeholders in order to achieve efficiency in estate administration.”

Results, commitments and expectations must be part of decision-making and accountability for all government initiatives. Results must be publicly visible and performance information against results must be reported and acted on. With this document, the OSB has made clear its commitment to improved performance information and moving towards a culture of managing for results.

These round-table discussions have afforded the OSB valuable insight as to the elements which necessitate improvement in the existing insolvency process thus permitting that appropriate redress mechanisms in our strategic orientation be implemented if need be.

We would therefore like to thank all participants for their input which has been an invaluable component to the success of these consultations.

Strategic Objectives and Alliances

Consult with various stakeholders and practitioners regarding the operational aspects of Canada's insolvency system.

National Insolvency Forum

Assess
the current state of Canada's insolvency system

Evaluate
its efficiency and effectiveness

Reach
a common understanding of the insolvency process and of each stakeholder's role

Maintain investor and lender confidence in the Canadian marketplace by protecting the integrity of the bankruptcy and insolvency system.

Office of the Superintendent of Bankruptcy

Organizational Health
The OSB is recognized by its employees and shareholders as a model public service employer

Financial Performance
The OSB's operations are efficient and fully funded through client user fees

Strategic Management Objectives

Policy & Regulatory Framework
Ensure the insolvency system's framework is responsive to changing client and marketplace needs

Compliance
Ensure the bankruptcy and insolvency system operates in accordance with the framework statutes, regulations, policies and procedures

Quality Client Service & Connectivity
Provide clients and stakeholders with world class, quality services, information products and electronic connectivity capacity

Strategic Objectives (2000-2005)

Help make Canadians more productive and competitive in the global knowledge-based economy.

Industry Canada

Innovation
Improving Canada's innovative performance and the transition to a knowledge-based economy

Connectedness
Making Canada the most connected nation in the world

Marketplace
Building a fair, efficient and competitive marketplace

Investment
Improving Canada's position as a preferred location of domestic and foreign investment

Trade
Working with Canadian companies to increase Canada's share of global trade

Foster a growing economy that will provide quality jobs and a high standard of living for Canadians.