



# OSB *Newsletter*

## A Word from the Superintendent of Bankruptcy

**Spring 2003** saw a great deal of activity on many fronts in the field of insolvency. There was the 2<sup>nd</sup> National Registrars' Conference held in Montreal at the end of March, the progress made on electronic filing, the parliamentary review and so on. The Registrars' Conference brought together about 50 registrars from all over the country. They used the occasion to share different perspectives on issues of common interest, particularly debtor discharge, taxation and hearing procedures.

In terms of electronic filing, work has continued apace, and the launch of phase 1.1 should be completed by the time you read this Newsletter. This new phase will enable users to proceed with open summary administration files electronically and to electronically process statements of receipts and disbursements.

Meanwhile, the parliamentary review got underway before the Senate Committee on Banking, Trade and Commerce with the appearance of Industry Canada representatives on May 7, followed the next day by representatives of the Insolvency Institute of Canada (IIC) and the Canadian Association of Insolvency and Restructuring Professionals (CAIRP). A number of witnesses have testified since then of the need to amend the Bankruptcy and Insolvency Act as well as the Companies' Creditors Arrangement Act (CCAA). I invite you to learn more about the parliamentary review by visiting the OSB Website and the relevant hyperlinks you will find there.

Unfortunately, a minority of careless trustees continues to take up too large a portion of OSB resources and to undermine the reputation and integrity of our bankruptcy system in the eyes of many creditors and debtors who are victimized by their negligence, and sometimes even their misappropriation of funds.

It has now been almost four years since the OSB finalized a risk-based compliance strategy aimed at

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reducing cases of undue aging of files and deficiencies in the handling of trust funds, and improving the general administration of files for the benefit of creditors and debtors. Important progress has been made, but not enough to check the excessive costs associated with professional conduct matters and the serious harm experienced by debtors and creditors. More than 9,640 files are currently subject to various forms of conservatory measures. It appears that unless we resort to firm appropriate action, we will have to resign ourselves to continue incurring exorbitant costs for a minority of trustees who demonstrate negligence and/or contempt for the most elementary rules governing their fiduciary role.

The OSB cannot remain indifferent to such a situation, which, if not dealt with quickly, will lead to an escalation of expenses and protective measures for which all stakeholders will have to absorb the costs. That is why over the next few weeks the OSB will be launching the first wave of an **"Initiative for the Orderly and Timely Administration of Insolvency Estates" (IOTA)**.

The first wave of this initiative will be aimed at ensuring that trustees whose files open for more than three years exceed 15% of their summary administration inventory and 60% of their ordinary administration inventory reduce those numbers to 10% or less for summary administrations and 40% or less for ordinary administrations within one year of receiving a formal

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letter to that effect. Targeted trustees will also be asked to submit a credible closing plan within two weeks and to demonstrate regular progress throughout the year, or face measures aimed at safeguarding estates.

And those whose handling of banking funds is in serious non-compliance with the Act and the applicable Directives will be asked to comply immediately and to submit a reconciliation of their trust accounts as proof within fifteen days. If they fail to provide a satisfactory reconciliation, they will be required to pay for an independent audit of their trust accounts within 30 days, and will not be allowed to make any new filings until a reconciliation deemed acceptable by OSB audit services has been produced.

We shall never lose sight that these measures, and others currently being contemplated, are intended to ensure greater diligence in the administration of insolvency estates and to quickly reduce the number of situations in which the Superintendent has to exercise control measures. They are also meant to minimize the costs of such measures so that they don't have, once again, to be absorbed by all stakeholders.

The OSB will continue to work in cooperation with CAIRP in order to identify other ways to tighten the requirements for operating under a trustee licence. Our goal is to eliminate situations in which the OSB assumes responsibility for estates that do not have sufficient funds available to ensure the complete administration of the files and full payment of dividends owing to creditors.

I received a number of supportive comments during my recent tour of CAIRP seminars, leading me to believe that the vast majority of trustees support our efforts to ensure the integrity of our system and improve the general public's perception of the profession.

I am hoping to report on our initiative's progress at CAIRP's annual meeting in August. We will also be reporting on developments on this front in the next issues of the Newsletter.



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## DID YOU KNOW?

- The average length of a summary file (Trustee discharge) is 29 months whereas the median is 24 months.
- On a national scale, the percentage of summary files remaining open more than three years is 10.38%.

Division Offices	Open summary files	Percentage > 3 yrs
Vancouver	24,124	6.7%
Edmonton	13,584	7.6%
Calgary	9,142	4.5%
Winnipeg	12,091	6.0%
London	16,606	11.2%
Hamilton	18,405	13.8%
Toronto	36,546	17.0%
Ottawa	13,894	7.7%
Montreal	35,517	11.9%
Quebec	10,669	5.6%
Halifax	16,454	5.3%

- The OSB sent out some 102,128 letters of comment in 2002-2003.
- As of June 24, 2003, over 9,640 files were subject to conservatory measures.
- As of March 31, 2003, the inventory of open files in Canada was assessed at 277,752 administered by 838 trustees grouped into 215 corporations.
- In 2002, 100,800 files were closed including 82,500 summary and 5,300 ordinary.
- Some 95 trustees have an inventory of files where over 15% of summary files and 60% of ordinary files have been open for at least three years.
- To bring the inventory of files older than three years under the respective targets of 10% for summary files and 40% for ordinary files, trustees will need to close some 8,164 summary files and 1,484 ordinary files over the next 12 months.

## Insolvency in Canada in 2002

### Overview

In 2002, the number of insolvency cases filed with the OSB dropped by 1.0%. This drop reflected the Canadian economy's excellent performance during the year. Last year, Canada's GDP growth was the highest of all G7 countries and the national labour market experienced its highest percentage growth since 1987.

During 2002, the total number of consumer insolvencies dropped by 0.1%. Consumer bankruptcies decreased by 1.5% and consumer proposals increased by 7.8%. It thus seems that consumers are increasingly opting for the proposal route as an alternative to bankruptcy. In 1993, the first year after introduction of the proposal option, this category only represented 3.4% of consumer insolvencies. Since then, its share has increased every year to a level of 16.3% in 2002.

The number of business insolvencies dropped by 7.6% in 2002. Business bankruptcies decreased by 9.0%, while the number of proposals by businesses that attempted to continue operating remained virtually unchanged.

Last year, slightly more than one insolvent business out of four was a corporation. During the last 15 years, the percentage of corporations in business insolvencies has varied between 25% and 30%. Last year, the drop in the number of business insolvencies was relatively greater for corporations (-9.9%) than for individual businesses (-6.8%).

### Insolvency in Canada's six major regions in 2002

There was a mixed pattern of insolvency in Canada's six major regions in 2002. During the year, the number of insolvencies declined in the Atlantic and Quebec regions, but increased in the four others.

1 Division I and II consumer proposals.

2 Division I corporate proposals and Division I and II individual business proposals.

3 The term "individual business" refers to unincorporated businesses, as opposed to corporations.

Table 1: Insolvency in Canada, 2001–2002

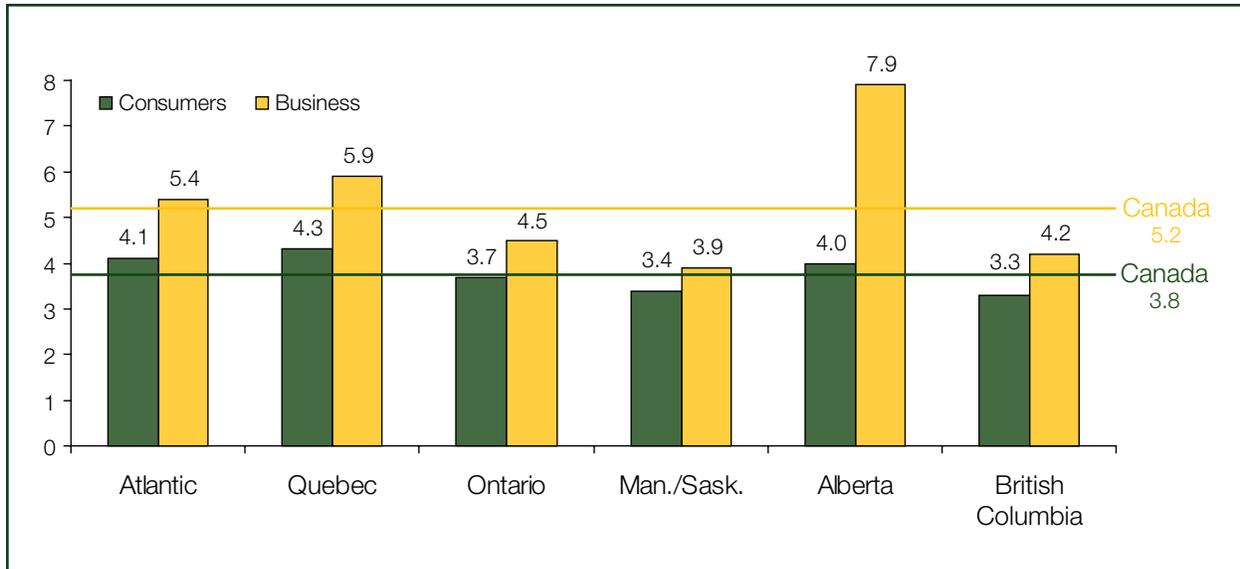
	2001	2002	Change (%)
Total	105,853	104,798	-1.0%
Consumers	93,556	93,439	-0.1%
Bankruptcies	79,453	78,232	-1.5%
Proposals <sup>1</sup>	14,103	15,207	7.8%
Businesses	12,297	11,359	-7.6%
Bankruptcies	10,405	9,472	-9.0%
Proposals <sup>2</sup>	1,892	1,887	-0.2%
Corporations	3,290	2,963	-9.9%
Individual businesses <sup>3</sup>	9,007	8,396	-6.8%

Table 2: Insolvency by region, 2001–2002

	2001	2002	Change (%)
Atlantic			
Total	8,711	8,431	-3.2%
Consumer	7,852	7,714	-1.8%
Business	859	717	-16.5%
Quebec			
Total	32,108	28,400	-11.5%
Consumer	28,547	25,482	-10.7%
Business	3,561	2,918	-18.0%
Ontario			
Total	35,954	37,924	5.5%
Consumer	32,089	34,467	7.4%
Business	3,865	3,457	-10.5%
Manitoba/Saskatchewan			
Total	6,109	6,186	1.3%
Consumer	5,308	5,521	4.0%
Business	801	665	-16.9%
Alberta			
Total	11,154	11,795	5.7%
Consumer	9,228	9,513	3.1%
Business	1,926	2,282	18.5%
British Columbia			
Total	11,817	12,062	2.1%
Consumer	10,524	10,730	2.0%
Business	1,293	1,332	3.1%

**Figure 1**

**Number of consumer insolvencies per thousand residents 18 years of age and over and number of business insolvencies per thousand businesses, Canada and regions, 2002**



Last year, there were 11.5% fewer insolvencies in Quebec. On the other hand, the highest increases occurred in Alberta and Ontario at 5.7% and 5.5% respectively. In the section below, we will attempt to identify the factors that could explain the changes observed in these three provinces.

In Quebec, there was a substantial drop in both consumer insolvency (-10.7%) and business insolvency (-18.0%). Part of the reason for the reduction in consumer insolvency may be the strong labour market. Over the last two years, the pace of job creation has been faster in Quebec than in Canada as a whole. On the other hand, there has been no change in Quebecers' debt-equity ratio<sup>4</sup> since 1999, whereas in Canada as a whole this ratio has risen 1.6%. Despite the significant drop in consumer insolvency in Quebec, this was still the region that posted the highest number of insolvencies per thousand residents 18 years of age and over in 2002 (see Figure 1).

<sup>4</sup> Total of all mortgage and consumer credit divided by the disposable personal income of this province's residents.  
Source: *Mouvement Desjardins*

<sup>5</sup> Total of all mortgage and consumer credit granted by chartered banks in Ontario divided by the disposable personal income of this province's residents.

Nonetheless, it is not so easy to explain the drop in business insolvency in Quebec. The drop noted in 2002 (-18.0%) follows a series of consecutive drops dating from 1996. Over the last six years, business insolvency has decreased an average of 11.8% per year in Quebec. While this reduction is apparent for both individual businesses (-15.5%) and corporations (-8.2%), it seems that it cannot entirely be explained in terms of macroeconomic indicators. For example, besides 2002, GDP growth in this province since 1996 has been slower than in Canada as a whole. Thus, other microeconomic factors, such as the effect of favourable business taxation and certain industrial policies including assistance to start new businesses, have no doubt played a major role in this decrease.

In Ontario, the 5.5% increase in overall insolvency reflects the combined effect of a 7.4% rise in consumer insolvency and a 10.5% decline in business insolvency. The performance of the labour market in Ontario in recent years may be one of the reasons for the rise in consumer insolvency. The pace of job creation was below 2.0% in both 2001 and 2002, compared with a rate of more than 3.0% from 1998 to 2000. Another noteworthy phenomenon in Ontario is the rise in the debt-equity ratio<sup>5</sup>. From 1999 to 2002, the debt-equity ratio rose by 19.6% in Ontario, compared with a rise of only 1.6% for Canada as a whole.

The 10.5% drop in business insolvency in Ontario basically reflects the growth in GDP and exports that has been observed since the last quarter of 2001.

In Alberta, there was a 5.7% rise in insolvency in 2002. This increase took place in both consumer (3.1%) and business (18.5%) insolvencies. The only other province that recorded an overall increase in insolvency in 2002 was British Columbia. However, this increase was considerably less than in Alberta.

The Alberta economy in 2002 was characterized by two noteworthy economic developments. The first was the liquidation of livestock herds because of drought and the second was the drop in oil rigs utilization capacity to 44%. Such a low rate (the lowest since 1992) could be a direct result of the economic slowdown in the United States. As the Alberta economy is primarily resource-based, these two developments undoubtedly had a significant impact on the labour market and the financial viability of certain businesses. Consequently, they may largely explain the rise in both consumer and business insolvency in this province in 2002.

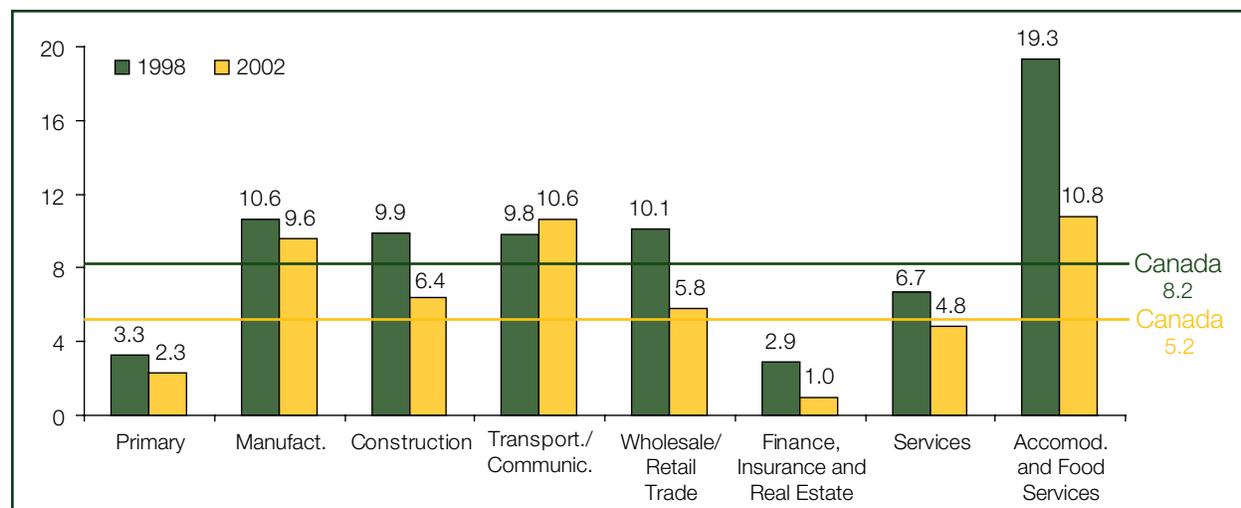
### Insolvency in Canada's major economic sectors in 2002

The number of business insolvencies dropped in six of the eight main sectors of economic activity in Canada in 2002. The biggest drops were noted in the category of accommodation and food/beverage services (-20.1%) and in wholesale/retail trade (-15.2%). The two sectors that posted a higher number of

**Table 3: Insolvencies in Canada's major economic sectors, 2001-2002**

Economic sectors	2001	2002	Change (%)
Primary	590	512	-13.2%
Manufacturing	1,132	1,053	-7.0%
Construction	1,613	1,594	-1.2%
Transportation and communications	1,372	1,220	-11.0%
Wholesale/retail trade	2,716	2,302	-15.2%
Finance, insurance and real estate	316	323	2.0%
Services	3,069	3,165	3.1%
Accommodation and food/beverage services	1,489	1,190	-20.1%
Total	12,297	11,359	-7.6%

**Figure 2**  
Number of business insolvencies per thousand businesses by economic sector



insolvencies in 2002 were finance, insurance and real estate combined (2.0%) and services combined (3.1%). Generally speaking, all the sectors experiencing fewer insolvencies also showed higher profit margins. Inversely, the finance, insurance and real estate sector experienced narrower profit margins for the second year in a row.

The accommodation and food/beverage services sector posted the highest number of insolvencies per thousand businesses in 2002, whereas the lowest rate was in the finance sector. Since 1998, the biggest improvement has been noted in the accommodation, finance and wholesale/retail trade sectors. Over the last five years, only the transportation and communications sector has experienced an increase in the number of insolvencies per thousand businesses.

### Conclusion

During 2002, there was an overall drop in the number of insolvency cases submitted to the OSB. However, this situation was not the same for each region. The eastern provinces (Atlantic and Quebec) saw a reduction in both consumer and business insolvencies, whereas the western provinces (Alberta and British Columbia) witnessed an increase in both categories. The central provinces (Ontario, Manitoba and Saskatchewan) experienced an increase in consumer insolvency and a decrease in business insolvency. In terms of the country's main economic sectors, six out of eight experienced a drop in the number of insolvencies.

## Parliamentary Review

**The hearings** of the Standing Senate Committee on Banking Trade and Commerce began May 7<sup>th</sup>.

To assist the Committee, Industry Canada produced a report entitled "Report on the Operation and Administration of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*". The report is divided into three parts: Administrative Policy Issues, Commercial Issues, and Consumer Issues. The following is a summary of the major areas covered in each of the parts.

### Administrative Policy Issues

The OSB has identified seven areas of concern involving the administration of the insolvency system as a whole:

- the high volume of files, particularly in consumer bankruptcies, which shows no sign of abating;
- access to the insolvency system, which is increasingly difficult for low-asset low-income debtors;
- debtor compliance, which is difficult to ensure given the rising caseload, increasing complexity of cases and scarcity of resources;
- regulatory supervision, which is not provided for at all in the CCAA;
- regulatory supervision of receiverships under current BIA rules;
- funding of OSB operations, which is made difficult by statutory and administrative constraints; and
- new technology, whose adoption is being impeded by BIA restrictions.

### Commercial Issues

The commercial issues can be broadly grouped into three categories. The first category includes the most contentious issues — those that continue to evoke views very much opposed to one another and not easily resolved. The most controversial are wage-earner and pension protection; debtor-in-possession financing; unpaid suppliers' rights; and the adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvencies.

The second category represents the issues where despite significant differences among stakeholders, it appears that these differences are not insurmountable and can likely be resolved through technical amendments. Issues in this category are the extent to which the exercise of contractual rights should be constrained in insolvencies; integration of the BIA and CCAA; directors' liability; sanctions for director and officer conduct detrimental to creditors; and transfers at undervalue and preferences.

The third category contains those issues that through the consultation process received general support for a specific course of action. They include securities firm

bankruptcies; limiting access to the Winding-up and Restructuring Act for insolvency purposes to insolvent financial institutions; the financial market issue about whether securities commissions and exchanges should be exempt from BIA and CCAA stays; and protection for trustees against personal liability as successor employers.

### **Consumer Issues**

The consumer issues have also been grouped according to the degree of consensus among stakeholders. The first, and most contentious group, includes the federal exemptions issue and whether Registered Retirement Savings Plans (RRSPs) should be exempt.

The second group is made up of those issues for which a reasonable consensus exists in principle, subject to working out appropriate technical details. This group encompasses reaffirmation agreements; the streamlining of summary administration bankruptcies; the exemption of Registered Education Savings Plans (RESPs); the enforcement of security on a bankrupt's household property; and mandatory counselling.

The final group includes those issues for which a high degree of consensus emerged, and for which little or no opposition was displayed during consultations. These issues are consumer liens, growth in consumer bankruptcies, student loans, and wage assignments.

Readers are urged to read the complete Industry Canada Report which has been distributed to everyone on our mailing list to get the benefit of the full discussion of all of these issues.

## **Professional Conduct Matters**

**In accordance with** the *Policy on Publicizing Professional Conduct Matters*, we publish as they become available, summaries of decisions on licensing matters. Of course, such decisions are not substitutes for the actual decisions and those interested in learning more about the decisions in this area should consult the full text on our Web site (<http://osb-bsf.gc.ca>) under the heading "Trustees" and the sub-heading "Licensing and Professional Conduct".

Any questions regarding the publication of these decisions should be addressed to the Clerk of the Hearing Record Registry, Vivian Cousineau. She can

be reached by regular mail at 301 Elgin Street, 2<sup>nd</sup> Floor, Ottawa, Ontario, K2P 2N9, by phone at (613) 941-2694, by fax (613) 946-9205 or by e-mail at [cousineau.vivian@ic.gc.ca](mailto:cousineau.vivian@ic.gc.ca)

## **Decision on the Professional Conduct of Individual Trustee, Robert Rusinek, and Corporate Trustee, Robert Rusinek & Associates Inc.**

**On December 19th, 2002**, in Toronto, Ontario, the delegate of the Superintendent of Bankruptcy, the Honorable Fred Kaufman, rendered his decision concerning the trustee licences of Robert Rusinek and Robert Rusinek & Associates Inc.

Following an investigation made by the Office of the Superintendent of Bankruptcy, a report on the administration of the trustees was produced. The investigation revealed that Robert Rusinek had committed a number of breaches and infractions, and in particular:

- The trustee withdrew \$43,841.38 in fees, prior to the filing of the final statement of receipts and disbursements to the Superintendent of Bankruptcy, thereby an unauthorized withdrawal of fees.
- The trustee prematurely sent the taxation notice pertaining to his accounts and to his discharge to creditors, before having received the Official Receiver's letters of comment.
- The trustee paid the bank service charges pertaining to his consolidated trust account with the interest generated by that account, for a total of \$2,065.
- The trustee used a single consolidated trust account for both the summary files and consumer proposals.

Since January 1, 2002, the trustee licence of Mr. Robert Rusinek is no longer in effect due to non-renewal on his part. According to sub-section 14.01(1.1) of the Bankruptcy and Insolvency Act, the decisions related to licensing also apply to past trustees for the acts that would have been committed while they acted in that capacity. Since the trustee in question did not admit to the allegations reported against him, and provided no defence, the delegate of the Superintendent of Bankruptcy has rendered the following decision:

- Robert Rusinek & Associates Inc., corporate trustee, must pay \$10,000 to the Office of the Superintendent of Bankruptcy as reimbursement of the costs of the investigation into the professional conduct of the corporate trustee.
- The licence of Robert Rusinek is cancelled.
- The amount must be reimbursed within 20 days of date of this decision.

## **Decision on the Professional Conduct of Individual Trustees, Gérald Robitaille and Raymond Marcoux, and Corporate trustee, Gérald Robitaille & Associés Ltée**

**The delegate of the Superintendent of Bankruptcy**, the Honorable Lawrence A. Poitras, rendered a decision on April 14, 2003, pertaining to the professional conduct of the trustees, Gérald Robitaille and Raymond Marcoux, and of the corporate trustee, Gérald Robitaille et Associés Inc.

Following a complaint made by a lawyer representing five non-secured creditors in the matter of the bankruptcy of 3087-6346 Inc. (named Sonerco), the Senior Disciplinary Analyst of the Office of the Superintendent of Bankruptcy began an investigation. A disciplinary report relating to the conduct of the interested parties was prepared and dated July 4, 2002.

The delegate of the Superintendent relied on the infractions, listed below, taken from the disciplinary report to render his decision.

- The trustee, Mr. Robitaille, did not participate in the preparation of the proposal and any of the pertinent negotiations.
- The trustees signed incomplete reports on cash flow statements.
- The trustees delegated illegally to one of their employees the task of conducting the inquiries, analyses, and discussions concerning the information provided by management in support of probable assumptions and evaluations of the relevance of hypothetical assumptions.
- The trustee, Mr. Robitaille, did not take possession of the bank balances within a reasonable time after the bankruptcy of the debtor.
- The trustee, Mr. Robitaille, performed an irregular inventory following the bankruptcy of the debtor.
- The trustee, Mr. Robitaille, produced an erroneous and incomplete statement of affairs.
- The trustee, Mr. Marcoux, issued an incomplete written preliminary report.
- The trustees, without the inspectors' approval, entered into an agreement for management and custody of assets with a creditor.
- The trustees did not review with the inspectors the consideration arranged in the agreement for management and custody assets.
- The trustees did not read the legal opinion carefully as this would have enabled them to see the inaccuracy regarding the date when a security was given to a creditor in question.
- The trustee, Mr. Robitaille, did not admit in his written objection to the motion to quash the bankruptcy that it was wrong to say that the hypothec was granted to the creditor in question, over a year before the bankruptcy of the debtor.
- The trustee, Mr. Robitaille, did not act with care and diligence in his analysis of reviewable transactions and preferential payments.
- The trustee, Mr. Robitaille, did not inform the inspectors within a reasonable time, about the motion to quash the bankruptcy, and did not obtain their authorization to retain counsel to represent the corporate trustee at the motion.
- The trustee, Mr. Robitaille, did not preform his duties with care and due diligence by not notifying the inspectors that the judge had taken under advisement the application to suspend the bankruptcy proceeding.
- The trustee, Mr. Robitaille, did not obtain the inspectors' authorization to appeal several judgments.
- The trustee, Mr. Robitaille, did not within a reasonable time inform the inspectors of his removal and did not convene the inspectors in order to give them a final accounting of his administration of the file.

- The trustee, Mr. Robitaille failed to deposit in the estate's trust account monies received as fees during the notice of intention and the bankruptcy.
- The trustee, Mr. Robitaille, made payments of disbursements by cheques, which were not drawn from the estate account.
- The trustee, Mr. Robitaille, failed to indicate at the meeting of the inspectors of approving his fees as well as in the statement of receipts and disbursements all the monies received and disbursed as well as all fees claimed by the corporate trustee during the period of the notice of intention.
- The trustee, Mr. Robitaille, did not submit a final statement of receipts and disbursements to the inspectors, and did not immediately submit the corporate trustee's accounts to the Courts.

The hearing took place in the city of Quebec, where the trustees main office is located, between the 17<sup>th</sup> and the 21<sup>st</sup> of March 2002. The trustees, the Senior Disciplinary Analyst, and the five creditors had the opportunity to make representations during the hearing.

Following the hearing, the delegate of the Superintendent of Bankruptcy, suspended the licence of trustee Gérald Robitaille for a period of six months, starting May 1<sup>st</sup>, 2003. The licence of trustee Raymond Marcoux was restricted for a period of one month and a half starting May 1<sup>st</sup>, 2003, where he may only act as trustee in summary administration files. Failure to observe the conditions and restrictions in this order will constitute an offense pursuant to para.13.2(5)(b) of the Act.

## **Decision on the Professional Conduct of Individual Trustee, Todd Sheriff, and Corporate Trustee, Segal & Partners Inc. – 09/03/2002**

**The Superintendent of Bankruptcy**, Marc Mayrand, rendered his decision on the responsibility of the trustees in bankruptcy, Todd Sheriff and Segal & Partners Inc., of the City of Toronto, Ontario, on September 3, 2002.

Following an investigation by the Senior Disciplinary Analyst of Office of the Superintendent of Bankruptcy,

a report on the administration of Todd Sheriff and Segal & Partners Inc., was issued. The investigation revealed a number of deficiencies pursuant to the Act, its Rules and Directives following the trustees' administration of two proposals, Grayson and Sargent, namely:

- Deficiencies in respect to the investigation of the debtor's property and financial affairs and preparation of the Statement of Affairs in Division II Proposals.
- Failure to assess the debtors pursuant to the BIA and Directive 6R — Assessment of Individual Debtors.
- Failure to execute statutory documents in accordance with the Act and Directive 4 — Delegation of Tasks.
- Failure to comply with requirements to pay issued by the CCRA.
- Solicitation of general proxies, contrary to ss. 202(g) of the Act, in the estate of Grayson.
- Improprieties with respect to fees in consumer proposals.
- Counselling.

A hearing took place between May 27 and June 3<sup>rd</sup>, 2002, before the Superintendent of Bankruptcy, Marc Mayrand.

The Superintendent found that the trustee Sheriff was directly responsible for each of the breach found against the BIA, its Rules and Directives. It was up to the trustees to demonstrate diligence and due care in ensuring that instructions were properly understood by the staff and carried out in a manner consistent with the responsibilities, duties and limitations set out in the BIA, its Rules and Directives. The Superintendent found that there was no such diligence and due care demonstrated by the trustees throughout the administration of the Grayson and Sargent files.

A conference call is to be set up in order to hear the parties' representations on the materiality of the breaches found against the trustees and to receive the parties' arguments as to sanctions that should be imposed on the trustees' licences.

*Note: The decision is subject to a pending Application for judicial review before the Federal Court of Canada.*

## **Decision on the Professional Conduct of Individual Trustee, Todd Sheriff, and Corporate Trustee, Segal & Partners Inc. – 02/12/2003**

**The Superintendent of Bankruptcy**, Marc Mayrand, rendered his decision on February 12, 2003, regarding the Senior Disciplinary Analyst (SDA)'s duty to disclose a report from an other trustee's firm that was in her possession prior to the commencement of the hearing. The first hearing was held between May 27 and June 3<sup>rd</sup>, 2002 in Toronto, Ontario. The second hearing regarding the duty to disclose was held on November 12, 2002, in Toronto, Ontario.

The trustees sought a stay of the proceedings of their professional conduct case, or alternatively, a new hearing. A second hearing was held in order to determine if the findings of the decision of September 3, 2002, should be reconsidered in the light of the fresh evidence.

The Superintendent of Bankruptcy found that the general duty of disclosure provided by the rules of natural justice extends to the SDA when presenting a report explaining why there is a reason to take one or more measures regarding the licence of the trustee, as described in section 14.02 of the BIA.

The Superintendent found that the failure to disclose the other trustee's firm report was a breach of the duty to disclose to the trustees relevant information available to the SDA.

However, the superintendent concluded that the undisclosed report had no bearing on any of the trustees' failures described in the SDA's report which was the object of the hearing leading to the September 3, 2002, decision. Accordingly, the Superintendent found that there was no reasonable possibility that the undisclosed report may have affected the decision of September 3, 2002.

No stay of proceedings, nor new hearing was ordered in this matter.

The Superintendent ordered that both counsels present their submissions on sanctions within 30 days following this decision. If, after these 30 days have expired no submissions are received, the Superintendent will determine the appropriate sanctions.

*Note: The decision is subject to a pending Application for judicial review before the Federal Court of Canada.*

If you have any questions or comments regarding this Newsletter or suggestions for future ones, please address them to the Newsletter Coordinator, Vivian Cousineau. She can be reached by regular mail at 301 Elgin Street, 2<sup>nd</sup> Floor, Ottawa, Ontario, K2P 2N9, by phone at (613) 941-2694, by fax at (613) 946-9205 or by e-mail at [cousineau.vivian@ic.gc.ca](mailto:cousineau.vivian@ic.gc.ca)