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Protecting the Integrity of the Insolvency System
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INSOLVENCY BULLETIN

Issued by the Office of the Superintendent of Bankruptcy, Industry Canada.

The objective of the *Insolvency Bulletin* is to promote communication and strengthen ties between the Office of the Superintendent of Bankruptcy and insolvency professionals. The Insolvency Bulletin is a free publication which is published three times a year; it is also available in the OSB Web site (**osb-bsf.ic.gc.ca**). The Bulletin is aimed particularly at trustees, jurists, registrars, accountants, credit managers and to those with a general interest in bankruptcy and insolvency.

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Message from the Superintendent

This issue covers several topics, some of which I would like to comment on.

CURRENT OSB PROJECTS

Included in this bulletin is Directive 11R dealing with surplus income, as well as the new Forms 65, 79 and 82 that deal respectively with the individual bankrupt's monthly family income and expense statement, the statement of affairs for a non-business bankruptcy, and the report on the bankrupt's application for discharge. The changes made to these forms are based on extensive consultations with various stakeholders in the insolvency community and with the Joint Committee on Bankruptcy.

You will recall that the National Insolvency Forum proposed a series of measures designed to make the Canadian insolvency system more efficient. One of these proposals focussed on changing Form 79 so that individual bankrupts' financial statements provide their creditors with more complete information on the bankrupts' personal and financial situations.

To facilitate the use of the new forms, the OSB organised information sessions in different parts of the country for the trustees and their personnel. These meetings addressed various issues raised by participants as part of the overall effort to ensure uniform national application.

Also, Form 31 dealing with proof of claim will soon be revised to make it easier for both creditors and trustees to use.

The OSB hopes that the revised layout of these forms and directives will meet the expectations of creditors and other stakeholders. All these documents are available on the OSB Web site at **osb-bsf.ic.gc.ca**

PAY EQUITY

As I mentioned in the previous issue, the OSB has been working with the CIPA to develop a uniform national policy on handling income from pay equity settlements. Various approaches were considered to find a solution that was both consistent with the legislation and acceptable to the parties concerned. However, proposals to date have proven to be unsatisfactory. Nonetheless, this issue remains a priority for the OSB and new developments are expected shortly.

RECENT DEVELOPMENTS CONCERNING HEATING EXPENSES AND DEMUTUALIZATION

Several queries have been received as to how to deal with the heating expense allocation. Since the basic question is very relevant at this time, the OSB and the CIPA have adopted a joint position, which is outlined in this issue.

In another development, I had mentioned in the previous issue that the OSB was considering intervening in an appeal that a trustee had lodged against a provincial court's decision concerning demutualization. The appeal has now been heard with the result that the court rejected the appeal of the registrar's decision. This issue contains a summary of the overall question and the OSB's current position on demutualization in the wake of this judgement.

NEW LEGISLATION

Various bills to amend the *Bankruptcy and Insolvency Act* are currently being studied or have recently been approved. Please refer to the "New Legislation" section to learn about how these changes might affect you.

SUCCESSFUL TRUSTEE LICENCE CANDIDATES

This year, 32 candidates were successful in obtaining or being offered their trustee licence. Six of the candidates were restricted to commercial bankruptcies and proposals, and another nine candidates were restricted to consumer bankruptcies and proposals. These restrictions will not automatically expire on a given date. Trustees holding a licence that is subject to restrictions are

required to make a specific application to have the restrictions lifted. This issue of the Bulletin contains a list of this year's successful candidates, as well as the success and failure statistics for our various offices across Canada.

TRUSTEE LICENSING SERVICES ON-LINE

All information on how to obtain a trustee licence, what is required to practise as a trustee, and how to change a licence that has already been issued can now be accessed at the OSB Web site, **osb-bsf.ic.gc.ca** The site also covers several other topics and provides another way of contacting the OSB. This initiative is part of the Canadian government's "On-line" program to improve client services and make the federal government more efficient and accessible. I sincerely hope you will consult and use this new service.

ELECTRONIC FILING INITIATIVE

There are major risks involved in implementing any electronic business system, but the OSB is convinced that if its on-line initiative is successful, it will benefit all insolvency stakeholders. Although the OSB's negotiations with a private consortium to provide all OSB services on-line have ended without a viable agreement, other solutions are available and we are currently studying them. The "Electronic Filing Initiative" section provides readers with an update. As you will read, the OSB is pursuing its efforts to introduce this system and is convinced that it will be very useful.

PERSONAL INSOLVENCY TASK FORCE ESTABLISHED

A Personal Insolvency Task Force (PITF) has been established to review the personal bankruptcy provisions of the *Bankruptcy and Insolvency Act*. Starting from scratch, this group will explore alternative models of consumer insolvency processes to address perceived weaknesses in our Canadian insolvency system. The PITF will review consumer and creditor expectations while factoring in the general public interest. It will also identify desirable legislative changes to the Canadian insolvency system. At the end of the review process, the Task Force will issue a comprehensive report as part of the overall BIA Review in 2002. For your reference, this issue of the Bulletin contains the PITF's terms of reference. Also, as the work progresses, the minutes of task force meetings and a summary of the main issues dealt with will be posted on the OSB Web site. We would very much appreciate that everyone interested in providing the task force with a written submission on these issues gets in touch with Chantal Quesnel by e-mail at **quesnel.chantal@ic.gc.ca**, by phone at (613) 941-8926 or by fax at (613) 941-2862.

THE OSB ON-LINE

The OSB is in favour of electronic distribution of insolvency related documents and information. Recent tests have shown that we can contact almost 90% of licensed trustees by e-mail. E-mail will therefore be the OSB's preferred means of communication in the future. Not only can we contact most trustees by e-mail, the almost instantaneous sending and receiving of paperless electronic messages yields real savings in time and money.

I invite readers to take note of the electronic mail results on directives and forms. You may also notice that this way of providing communication constitutes a cost-effective alternative and is more efficient compared with the traditional way of communicating.

I therefore encourage all the various stakeholders in the insolvency field to be in regular electronic contact with the OSB either through e-mail or by consulting the OSB Web site at **osb-bsf.ic.gc.ca** (Remember everything can be done in either official language.) In conclusion, I hope that Bulletin readers and Web site users will tell us how they feel about all these developments. Naturally, any suggestions for improving our Web site's content and layout will always be welcome.

CANADA
Province of Ontario
Industry Canada
Office of the Superintendent of Bankruptcy

DISCIPLINE ORDER
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*

In the matter of David Isaac Guttman
Formerly a holder of a trustee licence for Manitoba
Presently a holder of a trustee licence for Ontario

WHEREAS David Isaac Guttman is a licenced trustee in the City of Toronto, Province of Ontario;

WHEREAS, the said David Isaac Guttman formerly held a trustee's licence for the Province of Manitoba and as such operated an office in the City of Winnipeg, Province of Manitoba;

WHEREAS the Senior Discipline Analyst to the Office of the Superintendent of Bankruptcy pursuant to the general delegation received by the said Senior Discipline Analyst for the application of subsection 14.02(1) of the *Bankruptcy and Insolvency Act (*BIA*),* has submitted a Report to the Superintendent of Bankruptcy on the administration of the said David Isaac Guttman while he operated as a trustee in bankruptcy in the City of Winnipeg, Province of Manitoba;

WHEREAS the Report submitted by the Senior Discipline Analyst identifies a number of deficiencies and wrongdoings on the part of David Isaac Guttman which undermine the integrity of bankruptcy and insolvency system and more specifically identify the following:

- improperly diverted to his personal bank accounts, funds payable out of estate to the accounting firm to which he belonged at the time;
- drawing unauthorized fees contrary to Rule 64.4(1);
- failing to properly verify Statement of Affairs;
- failing to realize and improper Realization of Assets;
- failing to report in a timely manner on bankrupts' discharges as per S. 170 of the BIA;

WHEREAS the said David Isaac Guttman has not accepted any assignments under his trustee licence, nor acted as a designated trustee on any new bankruptcy estates since May 1995, and has submitted certain other mitigating evidence that has a bearing on the nature of this Order;

WHEREAS pursuant to subsection 14.02(1) of the BIA, the Senior Discipline Analyst has sent to David Isaac Guttman a copy of the said Report with the recommendation included therein;

WHEREAS a conference call was held with the parties on September 11, 2000;

WHEREAS during the conference call, Mr. Guttman confirmed that he had no estates under his supervision and that he had ceased to act as Trustee pursuant to the BIA;

WHEREAS Mr. Guttman indicated he had no plan nor desire to accept any new appointment as a Trustee in the future;

WHEREAS Mr. Guttman further stated that if so required he would not seek the renewal of his trustee licence for year 2001; AND

WHEREAS, David Isaac Guttman, trustee, was afforded a full opportunity for a Hearing and has elected not to be heard further under subsection 14.02 (1) of the BIA.

ORDER:

I, the Superintendent of Bankruptcy, pursuant to the statutory powers provided to me, by virtue of subsections 13.2(5) and 14.01(1) of the BIA, hereby order as follows:

That the trustee licence of David Isaac Guttman, Toronto, Ontario, be cancelled 10 days after the issuance of this order.

Ottawa, November 30th, 2000

The Superintendent of Bankruptcy
Marc Mayrand

(Corrected, 20.12.2000)

BANKRUPTCY AND INSOLVENCY ACT
RE: THE CASE OF GUY LOSLIER, CA,
HOLDER OF A TRUSTEE LICENCE

PRELIMINARY DECISION

I. INTRODUCTION

Licensed trustee Guy Loslier has submitted two objections against the imposition of any disciplinary measures in connection with his role in the mismanagement of the property and business of H. Sénécal Transport inc. and 2331-0899 Québec inc. during 1986 and 1987. His two objections are as follows:

1. Because of the amendments made in 1992 to the *Bankruptcy Act*, R.S.C., 1985, c. B-3, the Deputy Superintendent of Bankruptcy's report on incidents that took place prior to 1992 has no legal basis and is inadmissible.

2. Since key documents have been destroyed and a key witness is not available, this has deprived Mr. Loslier of full answer and defence.

After reviewing each objection in relation to relevant legislation and regulations, I have concluded that both objections should be rejected.

II. THE FACTS

In 1985, a transport company, H. Sénécal Transport inc. [Sénécal Transport] requested assistance from Ionnis Mavrikakis to help the company deal with its financial difficulties. Mavrikakis, who claimed to be a consultant specializing in companies struggling financially, was quickly able to take effective control of Sénécal Transport's assets and business.

During the next two years, Mavrikakis engineered a series of transactions that resulted in the complete stripping of all the company's assets. He persuaded company owner Henriot Sénécal to create a new company, 2331-0899 Québec inc. [2331 Québec] and to transfer all Sénécal Transport's assets to the new company. Mavrikakis then provoked the bankruptcy of 2331 Québec. The physical and monetary assets of both companies were thereby put out of their creditors' reach and were transferred into companies controlled by Mavrikakis.

During 1986 and 1987, while these fraudulent activities were going on, Mavrikakis made use of Guy Loslier's services in three capacities:

(i) as the representative of Seymour D. Steinman, the designated fiduciary representative of one of Sénécal Transport's debts (even though Mr. Steinman had, in fact, resigned from this function at the time Mr. Loslier claimed to be acting as his representative);

(ii) as the interim receiver of 2331 Québec, after this company was placed under the *Bankruptcy Act* on April 23, 1987; and

(iii) as a bankruptcy trustee in the "2331 Québec" bankruptcy.

Later, in a judgement confirmed by the Court of Appeal, Judge Barbeau of the Superior Court stated that Guy Loslier's negligence in carrying out the above-mentioned duties allowed Mavrikakis to deprive Sénécal Transport and its creditors of what they had an absolute legal right to.[1] The judgement notes that, in acting on behalf of Mavrikakis, Guy Loslier had put himself in a conflict-of-interest situation, since he was both a bankruptcy trustee and the acting receiver for 2331 Québec; his behaviour was culpable both because he did nothing and he was in a conflict of interest.

1. *2331-0899 Québec inc. v. Guy Loslier*, J.E. 90-404 (Sup. Ct.), confirmed by [1996] R.R.A. 308 (C.A.)

In 1997, after the judgement from the Court of Appeal, Guy Loslier was informed that his case had been submitted to the Disciplinary Committee.

In November 1998, Michel Leduc, a Deputy Superintendent of Bankruptcy, produced a report describing the actions for which Guy Loslier had been found civilly responsible and recommended that his trustee licence be suspended for three years.

Mr. Loslier has repeatedly objected that the disciplinary process should be stopped.

III. ANALYSIS OF GUY LOSLIER'S OBJECTIONS

III(A) FIRST OBJECTION: ALLEGED INADMISSIBILITY OF THE DEPUTY SUPERINTENDENT'S REPORT

Guy Loslier claims that, at the time when the Deputy Superintendent produced his report, a new disciplinary system was in place, and this did not allow the Deputy Superintendent to discipline conduct that had taken place during a time when the former system was in effect. It is easier to understand this objection by referring to the statutory provisions it is based on.

III(A)(i) Overview of the relevant statutory provisions

Before a legislative amendment was adopted in 1992, the authority of the Superintendent of Bankruptcy [the "Superintendent"] to deal with any case of misconduct by bankruptcy trustees was described in section 7 of the *Bankruptcy Act*. Under this section, the Superintendent only had the authority to investigate the matter and make a report to the Minister of Consumer and Corporate Affairs [the Minister]. On the other hand, another provision, subsection 14(2), stipulated that the power to suspend or cancel a trustee's licence was the Minister's prerogative.

In 1992, the *Bankruptcy Act* was amended and renamed the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended by S.C. 1992, c. 27 [the Act]. The above-mentioned powers were amended and, whereas they had previously been assigned to two jurisdictional authorities, they were now placed in the hands of a single public servant — namely, the Superintendent, who, according to subsection 14.01(1) of the new act, is now responsible for both investigations and discipline. The disciplinary power conferred by the Act includes the authority to cancel or suspend a trustee's licence.

An interim measure was introduced concerning trustees who had received notice prior to 30 November 1992[2] that the Superintendent intended to submit a report to the Minister under section 7 of the *Bankruptcy Act*. If such notice had been given, but no hearing had yet taken place, the Minister's authority under the former subsection 14(2) could have been delegated to any other person except the Superintendent. See the *Act to amend the Bankruptcy Act and to amend the Income Tax Act in consequence thereof*, S.C. 1992, c. 27 [the "*Act to amend the Bankruptcy Act*"].

III(A)(ii) Objection concerning the report's admissibility

Mr. Loslier states that, under the existing circumstances, the Deputy Superintendent's report has no legal validity. Since he did not receive notice, before 30 November 1992, of the intention to submit a report to the Minister, the interim measures were not applicable. Furthermore, Mr. Loslier also states in his reply that if the "Superintendent" had intended to conduct an investigation before that date, he was legally obliged under the transitional procedure to make such an intention known. He argues that in his particular case, the Superintendent did not fulfil this obligation.

Since the transitional procedure was not followed, Mr. Leduc's report was produced on the basis of provisions contained in a pre-1992 version of the Act. Mr. Loslier argues that the Superintendent's powers conferred by subsection 14.01(1) can only be applied to events that occurred after the Act came into effect on 30 November 1992. On the other hand, Mr. Leduc's report deals with professional misconduct that took place in 1986 and 1987. According to Mr. Loslier, applying subsection 14.01(1) to events that took place before its coming into effect would be tantamount to applying it retroactively.

2. Date the new changes came into effect.

Since subsection 14.01(1) has not been not been formulated in a way that contradicts the presumption that it is non-retroactive, the Superintendent's report should not be admissible in this case.

III(A)(iii) Analysis of the first objection

Mr. Loslier basically claims that, after the procedures governing investigations and disciplinary action are amended in the legislation, the new procedures cannot be applied to events that took place before the amendments. The only exception to this "rule" would be in cases where the legislature specifically states that it wants the new procedures to be retroactive.

In my view, this interpretation of Mr. Loslier's is far too broad and is not supported by any relevant legal authority. First, the *Interpretation Act*, R.S.C. 1985, c. I-21, specifically states the opposite rule. Second, Mr. Loslier's objection does not take into account the specific meaning given to retroactivity in precedent-setting court decisions.

Paragraph 44(d)(iii) of the *Interpretation Act* directly contradicts Mr. Loslier's claim, as follows:

44. Where an enactment, in this section called the "former enactment," is repealed and another enactment, in this section called the "new enactment," substituted therefor, ...

(d) the procedure established by the new enactment shall be followed as far as it can be adapted thereto ...

(iii) in a proceeding in relation to matters that have happened before the repeal...

44. En cas d'abrogation et de remplacement, les règles suivantes s'appliquent: [...]

(d) la procédure établie par le nouveau texte doit être suivie, dans la mesure où l'adaptation en est possible: [...]

(iii) dans toute affaire se rapportant à des faits survenus avant l'abrogation.

The purpose of this provision is to provide for continuity in the administration of legal procedures when these are subject to legislative amendment. It obliges those responsible for administering an act to follow the procedure prescribed in the amended act when dealing with situations that occurred before the act was amended.

If paragraph 44(d)(iii) of the *Interpretation Act* is applied to the Deputy Superintendent's recommendations, it is clear that they comply with the applicable version of the act in question. The investigation and disciplinary procedures connected with Mr. Loslier's professional negligence in 1986 and 1987 concern events that took place before the former act was repealed — specifically, sections 7 and 14(2) of the *Bankruptcy Act*. By producing a report and recommending that Mr. Loslier's licence be suspended by the Office of the Superintendent of Bankruptcy, the Deputy Superintendent acted in accordance with "the procedure established by the new enactment," that is, subsection 14.01(1) of the *Bankruptcy and Insolvency Act*. This is why it can be said that the steps taken by the Deputy Superintendent comply with the provisions of the *Interpretation Act* in every respect.

The fact that the Deputy Superintendent acted under due legal authority is sufficient justification to refute this objection.

In fact, even if the *Interpretation Act* did not clearly apply to this case, Mr. Loslier's objection should not be accepted because it does not identify any actual instance of retroactive application of the Act. In numerous cases, the courts have distinguished Acts that are truly retroactive from those that only affect existing situations or acquired rights. This distinction was clarified in a decision of England's Court of Appeal, *West v. Gwynne*,[3] and embodied in many subsequent decisions of the Supreme Court of Canada.[4]

In *West v. Gwynne*, the owner of some premises who had been disadvantaged as a result of the application of a new act argued that applying the new statute to existing leases had the same effect as applying it retroactively. Master of the Rolls Cozens-Hardy

3. [1911] c. 2 (C.A.)
4. *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1977] 1 R.S.C. 271; *AG of Quebec v. Tribunal de l'expropriation* [1986] 1 R.S.C. 732; *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 R.S.C. 880.

expressed the opinion that it is presumed that an act should not have retroactive effect unless the opposite intent is evident in the wording or must be implied.

> *I assent to this general proposition, but I fail to appreciate its application to the present case. "Retrospective operation" is an inaccurate term. Almost every statute affects rights which would have been in existence but for the statute.*

L. J. Buckley agreed:

> *To my mind, the word "retrospective" is inappropriate, and the question is not whether the section is retrospective. Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case.*

When a new provision concerning leases was adopted in 1892, this did not result in legislation with retroactive application simply because it affected existing leases. It was more a question of legislation that affected existing rights, as opposed to a statute with retroactive application.

The principle to be derived from *West v. Gwynne*, as well as from the decisions handed down by the Supreme Court of Canada to the same effect, has been very clearly explained by P.A. Côté[5]:

> *We should therefore distinguish retroactivity and the affecting, in the future, of rights that have been acquired in the past; we have to distinguish between an Act's retroactive effect and its future effect on situations that have originated in the past; we have to distinguish the presumption of an Act's non-retroactivity from the presumption that it preserves acquired rights.*

In other words, all applications of an act to past events do not constitute "retroactive application of the Act." Sometimes, an ordinary act is applied to events that have already taken place or to rights that have already been transferred. This does not imply retroactivity in the sense that the applicable act in this case was something other than it actually was.

If the distinction made in *West v. Gwynne* is accepted, it is easy to see that Mr. Loslier is unjustified and inaccurate in his use of the term "retroactive." When the Deputy Superintendent used the procedure prescribed in subsection 14.01(1) of the *Bankruptcy and Insolvency Act*, he did not claim that the act applicable in 1986 and 1987 was, in fact, the act passed in 1992. That would indeed have constituted retroactive application of legislation. What the Deputy Superintendent actually did was similar to what was maintained in *West v. Gwynne*: he simply applied a new act to a previous situation. The only objection that could be raised in similar circumstances is not based on the presumption of non-retroactivity, but rather on the presumption of preserving acquired rights.

However, it should be made immediately clear that Mr. Loslier cannot complain that the new procedure deprived him of rights acquired under the procedure that was applicable prior to 1992. Under the pre-1992 legislation and specifically according to the provisions of subsection 14(2) of the *Bankruptcy Act*, a trustee who was the subject of an investigation had the right to a hearing in which to reply to the allegations contained in the Superintendent's report. This right is conserved in the post-1992 legislation, and specifically in subsection 14.02(1) of the *Bankruptcy and Insolvency Act*. That is why it is legitimate to assert that Mr. Loslier's acquired rights have not been impinged upon and that there has been no retroactive application of legislation in this case.

Case law and the *Interpretation Act* complement each other. Court decisions suggest that there is no problem of retroactivity when a new provision is applied to events that took place before it was adopted. At the most, it could affect acquired rights, but that situation does not apply in this case. The *Interpretation Act* complements this logical approach by clearly stating that changes to procedures are applicable to events that took place before the changes.

Thus, both the legislation and case law run counter to the position taken by Guy Loslier. The administrative procedure he described does not lack

5. Côté, *supra*, p. 137.

legislative authority. Applying a new procedure to previous incidents does not represent retroactive application of the law.

Finally, let me add a comment in response to an argument put forward by Mr. Loslier in his reply. Quoting subsection 9(2) of the *Act to amend the Bankruptcy Act*, Mr. Loslier claims that the "Superintendent" did not fulfil his obligation before 1992 to give notice that he intended to make a report to the Minister.

In my opinion, subsection 9(2) does not create such an obligation. In fact, subsection 9(2) is only applicable "where" the Superintendent, before the new act comes into force, gives notice of intent to make a report to the Minister. However, there is nothing in the wording of this provision that indicates that the Superintendent was obliged to announce intent to submit a report, even if this was the case before the new act came into effect. The text of the Act states: "*Where, before the coming into force of this section, the Superintendent had communicated in writing to (the licensee) the Superintendent's intention to make a report to the Minister in respect of that licensee...*" **and not** "*the Superintendent shall make known his intention to make a report before the coming into force of this section.*"

In other words, whether or not the Superintendent intended, before 30 November 1992, to investigate and report on Mr. Loslier's conduct, he was not subject to any obligation in this respect before that date.

The first objection is therefore rejected. The transitional procedure was not applicable and did not create any pre-1992 requirement to inform. The applicable act was the one in effect after 1992, that is the *Bankruptcy and Insolvency Act*; and the Deputy Superintendent's application of this act to events that took place prior to 1992 does not constitute retroactive application of an act.

III(B) SECOND OBJECTION: ALLEGED DENIAL OF FULL ANSWER AND DEFENCE

III(B)(i) The objection

Guy Loslier also maintains that, since certain documents and a key witness are not available, the current proceeding should be stopped because he is not in a position to defend himself adequately.

The facts substantiating these allegations are highly debatable. Mr. Loslier states that when the events in question were taking place, his immediate supervisor was Mr. Paul Bertrand, manager of the insolvency section at Mr. Loslier's then-employer, Samson Bélair Deloitte & Touche. Mr. Bertrand died on 27 December 1999 and is described by Mr. Loslier as his most important witness. Mr. Loslier also states that, according to Samson Bélair Deloitte & Touche, the file dealing with the case in question was destroyed following completion of the legal proceedings that took place after the Quebec Court of Appeal's judgement was handed down. Mr. Loslier points out that this file contained everything that he had turned over to the trustee who replaced him in the 2331 Québec bankruptcy and included an agenda and his personal notes.

The Department of Justice prosecutor vigorously contests Mr. Loslier's version of the facts. According to the prosecutor, the bankruptcy trustee for 2331 Québec was not Samson Bélair Deloitte & Touche, but Mr. Loslier personally. If the "file" in question constitutes the complete file on the company, Mr. Loslier was duty-bound to preserve it and hand it over to his successor in 1987, in accordance with section 36 of the *Bankruptcy Act*. As a result, whether the file still exists or was indeed destroyed, Mr. Loslier had failed to fulfil his legal obligation to turn it over to the trustee who succeeded him.

For the purposes of coming to a decision on this question, I will take it for granted that the documents in question have indeed been destroyed.

III(B)(ii) Analysis of the "full answer and defence" objection

III(B)(ii)(a) Principles of fairness in administrative law

Mr. Loslier's objection has been expressed in terms that are not totally consistent with the nature of the current proceeding. He says that he is not able to mount "a full answer and defence," a use of language that calls to mind the rights of an accused in a criminal proceeding — in other words, in the context of someone enjoying the full protection provided by Article 7 of the *Canadian Charter of Rights*

and Freedoms.[6] When Mr. Loslier uses such language, he invokes a level of procedural protection far greater than the level he is entitled to in the context of a disciplinary proceeding in which his life, freedom and safety are not being threatened.

The area of the law in which Mr. Loslier's objection would have a sounder basis is not criminal law, but administrative law. For instance, an objection could be raised on the grounds that the proposed procedure is based on a legal process leading to loss of a professional licence. While it is not appropriate in such circumstances to refer to the right to full answer and defence, someone could still object on the grounds that conducting a hearing in the absence of a key witness or crucial documents constitutes an infringement of the "duty to act fairly," which includes the '*audi alteram partem*' rule.

It is therefore in the context of natural justice or the "duty to act fairly" that the objection based on the absence of certain documents or testimony must be considered.

The ability to submit evidence and generally to "make good use of one's resources"[7] constitutes part of the '*audi alteram partem*' rule. However, like any rule of natural justice, the degree of protection provided by '*audi alteram partem*' is not identical in every case. Justice Dickson stated: "The aspects of the principles of natural justice and fairness, as applied to individual cases, will vary according to the particular circumstances of each case."[8]

Thus, to determine what the duty to act fairly in Mr. Loslier's case requires, it is necessary to examine the nature of this particular proceeding more closely.

III(B)(ii)(a) The requirements of the '*audi alteram partem*' rule in this case

The *Bankruptcy and Insolvency Act* stipulates that the official delegated by the Superintendent must use quasi-judicial means to determine how to proceed in dealing with a report of professional misconduct concerning a trustee. The following comments give some indication as to the degree of fairness envisaged by Parliament.

(i) *The investigating body and the adjudicating body are the same*: Subsection 14.01(1) of the *Bankruptcy and Insolvency Act* states that "Where, after making or causing to be made an investigation into the conduct of a trustee," it appears to the Superintendent (or the Superintendent's delegate) that there has been professional misconduct by a trustee, the Superintendent (or the delegate) may suspend the trustee's licence. This means that the Superintendent (or the delegate) acts as both investigator and adjudicator.

(ii) *Required notice*: In accordance with subsection 14.02(1), the Superintendent shall give notice to the trustee in question that a disciplinary measure, as provided for in section 14.01, might be imposed.

(iii) *Reasonable opportunity for a hearing*: In accordance with subsection 14.02(1), the Superintendent shall afford the trustee "a reasonable opportunity for a hearing" before any disciplinary measure is imposed.

(iv) *The hearing will be conducted in an informal, summary manner*: At the hearing, the Superintendent is not bound by the rules of evidence and shall proceed "as informally and expeditiously as the circumstances and a consideration of fairness permit" [subsection 14.02(2)].

(v) *The superintendent bases his decision, to a great extent, on the investigation report*: Although the trustee concerned is entitled to a hearing, the Superintendent shall base his or her decision, to a great extent, on the investigation carried out by the Superintendent's office [subsection 14.01(1)].

6. *Canadian Charter of Rights and Freedoms*, part 1 of the *Constitution Act*, 1982, consisting of Appendix B of the *Canada Act* 1982 (UK), 1982, ch. 11.
7. *Komo Construction Inc. v. Quebec Labour Relations Board* [1968] S.C.R. 172, p. 175; see also *Coopérants v. Quebec Labour Court* [1991] R.J.Q. 1248 (C.A.)
8. *Martineau v. Matsqui Institution (Disciplinary Board)*, [1980] 1 S.C.R. 602, p. 630; see also G. Pépin and Y. Ouellette, *Principes de contentieux administratifs*, 2nd ed., Cowansville, Yvon Blais, 1982, p. 238: "Le contenu de la règle '*audi alteram partem*' est variable."

These provisions have clearly been formulated with a view to setting up an expeditious, informal process, and, even though this process is not subject to overly rigid procedures, it should still respect the '*audi alteram partem*' rule.

However, it is clear that the protection guaranteed by the procedure stipulated is not as rigorous as those that can be found in other administrative or quasi-judicial bodies. If Parliament had wanted the licence suspension procedure to be more "judicial" in nature, it would not have entrusted the same official with the dual functions of investigation and adjudication in the same matter. On the contrary, Parliament would have required closer adhesion to the rules of evidence and other procedural formalities.

In view of the process described above, the fact of going to arbitration, in the absence of testimony and a file that were not available, would not contravene the duty to act fairly. Although the trustee must be provided "a reasonable opportunity for a hearing," the Superintendent or the Superintendent's delegate base their decision, to a great extent, on the investigation. In this context, the hearing represents an opportunity for the trustee to refute the investigation and provide explanations as to certain of its conclusions. Mr. Loslier could try to exonerate himself orally on the basis of his recollection of what happened, and produce any documentary evidence that he might have kept in his possession in anticipation of litigation. He would have a hearing in which he would not be subject to rules of evidence, such as those relating to hearsay and the most acceptable type of documentary evidence. Within the limits of his credibility, all his statements about what happened in the past would be taken into account. In such circumstances, such a hearing would constitute a fair process, bearing in mind the lack of formal procedure and the particular importance the Superintendent attaches to the investigation report.

Incidentally, it is not clear that the file that was destroyed would be very useful to Mr. Loslier's case. I should point out that, even as early as 1991 at the trial in the Superior Court of Quebec, most of 2331 Québec's records were no longer available.[9] This did not prevent the Superior Court from passing judgement on Mr. Loslier's conduct. Consequently, how could it be argued in such an informal case as this that it would be contrary to the rules of natural justice to proceed, while it was possible to do so in the strict context of the Superior Court?[10]

So far as the death of a key witness is concerned, this aspect of Mr. Loslier's objections has been raised prematurely. Before holding the hearing as such, it is not possible to assess to what extent the testimony from Mr. Loslier's supervisor would have been crucial to an adequate defence. I should point out, however, that the particular relevance of Mr. Bertrand or the firm that employed Mr. Loslier was not mentioned when these issues were being discussed in the Superior Court trial and in the proceeding before the Court of Appeal.

In any event, even if I accepted that Mr. Bertrand's testimony would have been important, the objection that a key witness is not available does not constitute, in itself, an automatic reason for rejecting the proceedings. The real question is to know whether there was an unreasonable delay before going ahead with disciplinary action against Mr. Loslier. In this regard, the fact that an important witness has died must be considered as one factor among many others in deciding whether the individual subject to disciplinary action has suffered prejudice.[11]

9. In his comments on the uncontradicted evidence submitted to him, Judge Barbeau wrote: "The minutes book of the bankrupt company, 2331 Québec cannot be found, and the same goes for the registers and other documents that should be part of the same collection of company records. Witness Sénécal Jr. states that everything was given to Loslier, but trustee Loslier maintains that he never had them...
The debtor, 2331 Québec, had no accounting system to speak of...
10. See, for example, *Henry v. Assoc. des courtiers d'assurances de la Province de Québec*, [1999] R.R.A. 37 (C.A.); Béchard v. Roy, [1974] Sup.Ct. 13, confirmed by [1975] C.A. 509.
11. See Côté v. Désormeaux [1990] R.J.Q. 2476 (C.A.): Whether a delay is reasonable or not depends on the length of the delay, the reasons for the delay, the behaviour of the person accused/charged, and the prejudice suffered.

If Mr. Loslier had wanted to successfully argue that the current proceeding would be unfair without Mr. Bertrand's testimony, he would have had to demonstrate convincingly that the lack of this testimony would seriously prejudice his ability to contradict the investigation's conclusions. Such a burden of proof is not easily removed.[12] Certainly, Mr. Loslier's allegations do not remove this burden. Mr. Loslier's remarks should be taken to mean that Mr. Bertrand's testimony was important, but not essential, since it appears that Mr. Loslier himself had personal knowledge of the events that Mr. Bertrand would have testified about.[13] If Mr. Loslier can testify concerning the same happenings, it is difficult to conclude the proceeding would be unfair without Mr. Bertrand's testimony.

In sum, I also reject the second objection. The unavailability of the file in question does not make the proceeding unfair and it has not been shown that the absence of the late Mr. Bertrand would cause serious harm to Mr. Loslier's ability to contradict the Deputy Superintendent's conclusions.

IV. CONCLUSION

Both objections are rejected. The case will go forward to a hearing.

(Translation)

12. See, for example, *Farrar v. Mcmullen* [1971] 1 OR 709 (C.A.). In this case, the Ontario Court of Appeal refused to reject the action on the grounds of delay, despite the death of the only witness who could testify for the defendant. See also *McGregor and McGregor v. Canada* [1988], 20 F.T.R. 122, p. 124 (F.C.T.D.): The death of a witness can be untimely, but not necessarily prejudicial because "parties in court proceedings have to be prepared for the occasional possibility of such unfortunate circumstances."
13. See page 8 of Mr. Loslier's letter of 5 May 2000 to counsel Jean-Claude Demers, QC.

ORDER ON THE TEMPORARY LIMITATION OF GUY LOSLIER'S TRUSTEE LICENCE

DECISION

WHEREAS Guy Loslier, chartered accountant, holds a bankruptcy trustee licence for the province of Quebec.

WHEREAS the Deputy Superintendent (Programs, Standards and Regulatory Affairs) has submitted for the file, in accordance with the terms of section 14.02(1) of the *Bankruptcy and Insolvency Act*, a report on Guy Loslier's administration of the 2331 0899 Québec inc. proposal, as well as on his actions as acting receiver and bankruptcy trustee for the same corporation.

WHEREAS it was determined in this report that:

a) trustee Guy Loslier did not respect the terms of the order, dated April 29, 1987, appointing him as the interim receiver,

b) trustee Guy Loslier, realizing that he could not comply with the terms of the judgement dated April 29, 1987, did not make a report on the situation to the court, or the creditors, or to the Superintendent of Bankruptcy,

c) trustee Guy Loslier put himself in a conflict of interest by agreeing to act on both the proposal and the debtor's bankruptcy, after having acted as a fiduciary representative,

d) trustee Guy Loslier did not verify the debtor's statement of affairs,

e) trustee Guy Loslier did not collect the debtor's accounts receivable,

f) trustee Guy Loslier did not take possession of the debtor's property,

g) trustee Guy Loslier did not notify the main client that the debtor had submitted a proposal and had subsequently filed for bankruptcy,

h) trustee Guy Loslier did not take conservatory measures to protect the bankrupt debtor's assets, and

i) trustee Guy Loslier did not perform his duties carefully and with due care.

WHEREAS the preliminary defence arguments put forward by trustee Guy Loslier were rejected by the undersigned in a decision handed down in June 2000 and attached herewith as an appendix.

WHEREAS the facts relating to the financial collapse of both H. Sénécal Transport inc. and 2331 Québec inc. have been fully described and analyzed in the Superior Court of Quebec judgement #500-11-001307-871 by the Honourable Judge Barbeau, handed down on January 31, 1990.

WHEREAS the Honourable Judge Barbeau unequivocal as concluded to trustee Loslier's laxity and professional negligence.

WHEREAS these same conclusions were unanimously repeated by the Quebec Court of Appeal in case #500-09-00198-903 in its judgement handed down on February 19, 1996, which severely condemned trustee Loslier for his conduct.

WHEREAS the parties concerned decided to submit a proposed settlement to the undersigned at the time the investigation began, rather than letting the case go forward on its merits.

WHEREAS the facts in this case go as far back as 1985, 1986 and 1987 and that many delays have to be taken into consideration.

I, the undersigned, under these circumstances, accept and adopt the conclusions submitted by the parties, and decide, in my capacity as the Superintendent's delegate under the terms of section 14.01(2) of the

Act and by virtue of the powers vested in me under section 14.01(1) of the Act, to:

LIMIT the licence of trustee Guy Loslier for a period of 18 months, as of October 23, 2000, during which time he will only be able to act on files involving debtor's assets in which the debtor concerned is a private individual.

LIMIT, as well, the licence of trustee Guy Loslier for a period of 18 months, as of October 23, 2000, during which time he will be unable to act as a receiver, according to part XI of the Act, and/or an interim receiver in any files.

Jean-Claude Demers, QC
Delegate for the Superintendent of Bankruptcy

Signed at *Aylmer*, Quebec, on *Nov. 1st, 2000*

(Translation)

CANADA
Province of Ontario
Industry Canada
Office of the Superintendent of Bankruptcy

TRUSTEE AND CORPORATE TRUSTEE LICENCE LIMITATION ORDER ISSUED UNDER THE BANKRUPTCY AND INSOLVENCY ACT

In the matter of Sidney C. Schiff
Holder of a Trustee Licence for Ontario

and

Schiff and Associates Inc.
Successor of Starkman Kraft Inc.
Holder of a Corporate Trustee Licence for Ontario

WHEREAS Sidney C. Schiff, trustee and Schiff and Associates Inc., corporate trustee, operating an office in the City of Toronto, Province of Ontario;

WHEREAS, the Senior Discipline Analyst of the Office of the Superintendent of Bankruptcy pursuant to the general delegation received by the said Senior Discipline Analyst for the application of subsection 14.02(1) of the *Bankruptcy and Insolvency Act* (BIA), has submitted a Report to the Superintendent of Bankruptcy on the administration of the said Sidney C. Schiff, trustee and Starkman Kraft Inc., the predecessor of Schiff and Associates Inc., corporate trustee;

WHEREAS the Report submitted by the Senior Discipline Analyst identifies a number of serious and repeated deficiencies causing as such prejudice to the bankruptcy process on the part of the trustee Sidney C. Schiff in the administration of his files in the following situations:

- withdrawing, without authorization, from the Consolidated Trust Bank Account in October 1993, $10,190.97 contrary to Subsection 25(1.3) of the BIA; and
- withdrawing, without authorization, from various receivership accounts from March 1993 to March 1995 amounts totaling $154,203.05, contrary to the public interest criteria which shall be met at all times by trustees.

WHEREAS the withdrawals in the summary administration estates resulted from the payment of realization costs to third parties;

WHEREAS the Report submitted to the Superintendent of Bankruptcy by the Senior Discipline Analyst indicates that the unauthorized withdrawals in receiverships have never totaled at one time more than the amount due to the trustee by one secured creditor;

WHEREAS by May 26, 1995, all missing trust funds had been restituted;

WHEREAS since the matter emerged the secured creditor has paid the trustee the sum of $143,583.77 for work performed;

WHEREAS in accordance with the Report of the Senior Discipline Analyst to the Superintendent of Bankruptcy, Sidney C. Schiff was acting as the designated individual trustee on behalf of Starkman Kraft Inc., the predecessor of Schiff and Associates Inc., the corporate trustee, pursuant to the provisions of section 10.00 of Part 3 of the Trustee Licensing Policy;

WHEREAS pursuant to paragraph 10.02 of Part 3 of the Trustee Licensing Policy the corporate trustee is responsible for the actions of failures to comply with the BIA, its Rules and the Directives issued by the Superintendent in the files in which Sidney C. Schiff was designated as the individual trustee;

WHEREAS directions for conservatory measures pursuant to Section 14.03 of the BIA have been issued on May 15, 1995, concerning the administration of the trustee and the corporate trustee and since that date, neither the trustee nor the corporate trustee can make a payment out of the money credited to the estate accounts or other deposits or certificates of the trustee or the corporate trustee without the countersignature of an Official Receiver from the Office of the Superintendent of Bankruptcy;

WHEREAS pursuant to Subsection 14.02(1) of the BIA, the Senior Discipline Analyst of the Office of the Superintendent of Bankruptcy has sent Sidney C. Schiff, trustee and Starkman Kraft Inc., corporate trustee, a written notice of the powers and the reasons therefor recommended to the Superintendent of Bankruptcy; AND

WHEREAS Sidney C. Schiff, trustee and Schiff and Associates Inc., corporate trustee, the successor of Starkman Kraft Inc. were afforded a reasonable opportunity for a hearing pursuant to subsection 14.02(1) of the BIA.

ORDER:

I, Superintendent of Bankruptcy, pursuant to my statutory powers under subsection 14.01(1) of the BIA, hereby order as follows:

a) The trustee licence of Sidney C. Schiff is limited for a period of 10 months to the administration of estates for which the trustee has been designated as individual trustee prior to December 1, 2000, and during that period of 10 months, the trustee cannot take new assignments nor act as trustee in any other files.

b) The corporate trustee licence of Schiff and Associates Inc. is limited for a period of 10 months from December 1st, 2000, to the administration of estates for which the trustee has been appointed as corporate trustee prior to the said date and during that period of 10 months, the corporate trustee cannot take new assignments nor act as trustee in any other files.

c) The payment of funds held to the credit of the estates administered by the trustee and the corporate trustee shall be made during the period of limitation of 10 months in accordance with directions issued pursuant to paragraph 14.03(1)(c) of the BIA on May 15, 1995 and amended June 22nd, 2000.

d) The directions referred to above should cease to have effect upon the termination of the 10 month limitation period.

Ottawa, November 30th, 2000

The Superintendent of Bankruptcy
Marc Mayrand

(Corrected, 20.12.2000)

MEMORANDUM

Date: October 3rd, 2000

To: All Trustees, OSB Employees, Registrars and Consumer Proposal Administrators

Re: Directives No. 8R2 and 11R, and forms 2, 3, 65, 72, 79 and 82

The purpose of this memo is to inform you that amendments have been made to Directives No. 8R (*Bankruptcy and Insolvency Act Forms*), and No. 11 (*Surplus Income*) and to certain forms.

DIRECTIVE No. 8R2

Directive No. 8R has been revised to take into account amendments made to forms 2, 3, 65, 72, 79 and 82 and the date these changes will come into force. This new Directive bears No. 8R2. The Index of Forms and the Table of Concordance take these changes into account as well.

FORMS 2 AND 3

Forms 2 and 3 derive from Directive No. 13, *Trustee Licensing*, issued on March 31st, 2000.

The revised Forms 2 and 3 come into force on **November 1st, 2000**.

DIRECTIVE No. 11R

Directive No. 11R provides information on how to calculate the portion of the bankrupt's income that is to be paid into the bankrupt's estate, taking the bankrupt's personal and family situation into account.

It is necessary to determine the income and expenses of both the bankrupt and the bankrupt's family unit in order to establish the bankrupt's family-related expenses and financial situation. The bankrupt must disclose the earnings and expenses of each member of the family unit in order to accurately reflect the bankrupt's personal situation. The trustee may question the other members of the family unit to ensure that the information is complete and accurate.

It is therefore necessary for the bankrupt to prepare a statement of monthly income and expenses for both the bankrupt and the bankrupt's family unit, using Form 65, "Monthly Income and Expense Statement of the Bankrupt and the Family Unit and Information (*or* Amended Information) Concerning the Financial Situation of the Individual Bankrupt."

Forms 65, 79 and 82 have been revised accordingly. The monthly statement of income and expenses of the bankrupt and the family unit (Form 65) is now more detailed and, henceforth, is to be attached to the "Statement of Affairs" (Form 79), which now has an improved lay-out. These changes have been implemented in response to suggestions made during the National Insolvency Forum that took place in May and June 1999. The purpose of these changes is to give creditors more information concerning the property and personal situation of debtors.

The revised versions of Forms 65, 79 and 82 come into force on **November 1st, 2000** and should be used for all ongoing files on that date, unless the previous versions of the forms have already been filed.

However, for a 30-day period from the coming into force date of the revised versions of the forms, trustees will have the choice of using either the former versions of Forms 65, 72, 79 and 82 or the revised versions.

*Effective **December 1st, 2000** , only the revised versions of Forms 65, 79 and 82 will be accepted.*

Here is a summary of the changes made:

FORM 65

Forms 65 and 72 have been combined into the new Form 65. As a result, Form 72 has been withdrawn. This amendment simplifies the information contained and allows it to be presented in a more structured manner.

New Form 65 is to be used in all bankruptcy cases, even when there is no surplus income. Trustees are to attach this form to the "Statement of Affairs"

Form 79, at the time the assignment for the benefit of creditors is submitted to the Official Receiver.

When a member of the family unit is not bankrupt, the member's monthly income is to be included in the *family unit's monthly income*, even if the bankrupt is not required to pay an amount under Directive No. 11R, *Surplus Income*. However, it is not necessary to provide a breakdown of the member's monthly income or non-discretionary expenses.

In the case of a joint assignment, each bankrupt's monthly income and non-discretionary expenses must be detailed. A note to this effect appears at the bottom of the form.

Discretionary expenses of the same type are identified by group.

The information requested in lines 12, 13 and 14 is to be provided for all bankrupts regardless of whether there is a monthly amount required to be paid according to Directive No. 11R.

FORM 79

Some questions have been simplified, reorganized or removed, while other questions require more detailed responses.

Thus, more detailed information is required on marital status, which will allow for a better determination of the bankrupt's family obligations and personal situation.

Paragraph D, "Budget Information," has been amended. From now on, Form 65 is to be attached to Form 79 in order to take budget information into account.

FORM 82

Form 82 has been revised to structure its various questions better. In addition, an appendix contains questions relating to surplus income and the recommendation on the bankrupt's discharge.

This appendix is to be completed only in situations where the surplus income provisions and discharge recommendation apply.

To assist with the implementation of the new forms and Directive No. 11R, the division office in your area will be arranging information sessions over the next month for trustees and their staff.

The amended forms are also available on the OSB Web site **osb-bsf.ic.gc.ca**

The Superintendent of Bankruptcy
Marc Mayrand

DIRECTIVE No. 8R2

THE *BANKRUPTCY AND INSOLVENCY ACT* FORMS

Issued: October 3rd, 2000

This Directive amends Directive No. 8R, which came into force on April 30, 1998.

SHORT TITLE

1. Forms Directive

PURPOSE

2. This Directive is issued pursuant to paragraphs 5(4)(c) and 5(4)(e) of the *Bankruptcy and Insolvency Act* (hereinafter the Act), for the purpose of prescribing the form of certain documents required by the Act and the information to be given therein.

BACKGROUND

3. Paragraph 5(4)(e) of the Act states that:

> "The Superintendent may [...] issue directives prescribing the form of any document that is by this Act to be prescribed and the information to be given therein".

4. The purpose of this Directive is to prescribe amendments to Forms 2, 3, 65, 72, 79 and 82 and the date of their coming into force.

SUMMARY

5. Amended Forms 2 and 3 derive from Directive No. 13, *Trustee Licensing*, issued on March 31, 2000.

6. Forms 65, "Income and Expense Statement" and 72, "Information (*or* Amended Information) Concerning the Financial Situation of the Individual Bankrupt", are withdrawn and replaced by a new Form 65, "Monthly Income and Expense Statement of the Bankrupt and the Family Unit and Information (*or* Amended Information) Concerning the Financial Situation of the Individual Bankrupt."

7. Form 79, "Statement of Affairs (Non-Business Bankruptcy"), is replaced by the revised Form 79, "Statement of Affairs (Non-Business Bankruptcy)."

8. Form 82, "Section 170 Report" is replaced by the revised Form 82, "Report of Trustee on Bankrupt's Application for Discharge."

9. Appendix A of this Directive contains the List of Forms and Appendix B provides a Table of Concordance.

COMING INTO FORCE

10. The revised Forms 65, 79 and 82 will come into force on **November 1st, 2000** for all ongoing files on that date, except for situations where the previous versions of the forms have already been filed.

11. However, for a 30-day period, trustees will have the choice of using either the previous Forms 65, 72, 79 and 82 or the revised versions.

12. As of **December 1st, 2000**, only amended Forms 65, 79 and 82 will be accepted, as their use then becomes mandatory.

13. Amended Forms 2 and 3 will come into force on **November 1st, 2000**.

The Superintendent of Bankruptcy
Marc Mayrand

APPENDIX A
INDEX OF FORMS

Form	Description
1	General title for proceedings
2	Application for trustee licence (individual)
3	Application for trustee licence (corporation)
4	Trustee licence
5	Trustee licence (with conditions)
6	Notice to Canada Post Corporation
7	Application of former trustee to pass accounts
8	Affidavit verifying application to pass accounts
9	Notice of former trustee's application to pass accounts
10	Application of trustee for discharge
11	Notice of final dividend and application for discharge of trustee
12	Final statement of receipts and disbursements
13	Trustee's statement of receipts and disbursements (summary administration)
14	Administrator's statement of receipts and disbursements (consumer proposal)
15	Notice of deemed taxation of trustee's accounts and deemed discharge of trustee
16	Certificate of compliance and deemed discharge of trustee or administrator
17	Notice of hearing for taxation of trustee's accounts and discharge of trustee
18	Notice of application for taxation of accounts and discharge of interim receiver
19	Certificate of appointment of trustee
20	Certificate of appointment of trustee
20.1	Certificate of appointment of trustee
21	Assignment for the general benefit of creditors (Corporation or other legal entity)
22	Assignment for the general benefit of creditors (Natural person)
23	Preliminary statement of affairs
24	Notice of examination before the Official Receiver (Corporate bankrupt)
25	Notice of examination before the Official Receiver (Individual bankrupt)
26	Questions to be put to the bankrupt by the Official Receiver
27	Examination of bankrupt by Official Receiver (Non-business)
28	Questions to be put to an officer of the bankrupt corporation, or a designated person, by the Official Receiver
29	Trustee's report on cash-flow statement
30	Report on cash-flow statement by the person making the proposal
31	Proof of Claim

Form	Description
32	Proof of Claim (Securities firm bankruptcies)
33	Notice of intention to make a proposal
34	Report of trustee on non-filing of cash-flow statement or proposal
35	Certificate of assignment
36	Proxy
37	Voting letter
38	Report of trustee on refusal by creditors to approve proposal
39	Certificate of assignment
40	Report of trustee on proposal
40.1	Notice of hearing of application for court approval of proposal
41	Report of trustee on refusal by court to approve proposal
42	Certificate of assignment
43	Notice of default in the performance of a proposal
43.1	Report of trustee on annulment of proposal
43.2	Order Annulling Proposal
44	Certificate of assignment
45	Notice to landlord to disclaim lease by commercial tenant
46	Certificate of full performance of proposal
47	Consumer proposal
48	Report of administrator on consumer proposal
49	Notice to creditors of consumer proposal
50	Notice of meeting of creditors to consider consumer proposal
51	Report of administrator on consumer proposal and conduct of consumer debtor
51.1	Notice of hearing of application for court review of consumer proposal
52	Notice of status of consumer proposal
53	Notice to creditors and report to O.R. on annulment of consumer proposal of a consumer debtor who was not a bankrupt
53.1	Order annulling the consumer proposal of a consumer debtor who was not a bankrupt
54	Report to O.R. on annulment of consumer proposal of a consumer debtor who was a bankrupt
54.1	Order annulling the consumer proposal of a consumer debtor who was a bankrupt
55	Certificate of assignment
56	Notice to creditors and report to O.R. on deemed annulment of consumer proposal
57	Certificate of full performance of consumer proposal
58	Notice of taxation of administrator’s accounts and discharge of administrator
59	Notice of hearing for taxation of administrator’s accounts and discharge of administrator
60	Request for mediation made by trustee

Form	Description
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62	Notice of cancellation of mediation
63	Mediation settlement agreement
64	Notice of non-resolution by mediation
65	Monthly family income and expense statement and information (or amended information) concerning the financial situation of the individual bankrupt
66	Notice to bankrupt of meeting of creditors
67	Notice of bankruptcy and first meeting of creditors
68	Notice of impending automatic discharge of first-time bankrupt
69	Notice of bankruptcy and of impending automatic discharge of first-time bankrupt, and request of a first meeting of creditors
70	Notice of bankruptcy and request of a first meeting of creditors
71	Notice of first meeting of creditors
72	Revoked on November 1st, 2000
73	Notice of bankruptcy and first meeting of creditors in local newspaper
74	Proof of claim (property)
75	Demand for repossession of goods
76	Notice by trustee requiring filing of proof of security
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84	Certificate of discharge
85	Certificate of discharge (conditions met)
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88	Notice of hearing of trustee's report to the court after three years
89	Order of substituted service of petition
90	Notice of substituted service of petition
91	Receiving order
92	Notice of proposal to creditors

APPENDIX B

TABLE OF CONCORDANCE

FORMS

This table indicates the numbering changes of the Forms since the issuance of Directive #8 on September 30, 1997, with reference to the old form numbers.

CODES:

A The Form came into force on September 30, 1997.
B The Form came into force on September 30, 1997, and was revised since.
C The Form comes into force on April 30, 1998.
D The Form is still under review.
E The Form was revoked prior to 1992.
F The Form was revised on November 1st, 2000.
G The Form was revised on November 1st, 2000.
H The Form was revoked on November 1st, 2000.

Old Form #	Form # Sept. 97	Form # Apr. 98	Code
1-4	1	1	B
5	—	—	D
5.1	2	2	F
5.2	3	3	F
5.3	4	4	C
—	5	5	C
6	—	—	D
7	—	—	D
8	10	9	C
9	8	7	C
10	9	8	C
11	—	—	D
12	7	88	C
13	—	—	D
14	6	6	C
15	11	10	C
15.1	17	16	C
16	—	—	E
17	—	—	D
18	—	—	D

Old Form #	Form # Sept. 97	Form # Apr. 98	Code
19	—	—	D
20	—	—	D
21	—	—	D
22	—	—	D
23	19	89	C
24	20	90	C
25	—	—	D
26	—	—	D
27	—	—	D
28	22	91	C
29	—	—	D
29.1	21	18	C
30	25	21	C
30A	26	22	C
31	—	—	D
32	27	23	C
33	23	19	C
—	24	20	B
—	—	20.1	C
34	—	—	D

Old Form #	Form # Sept. 97	Form # Apr. 98	Code
35	—	—	D
35.1	52	47	C
35.2	53	48	C
36	36	92	A
36.1	54	49	A
36.2	55	50	A
37	—	—	D
38	40	37	C
39	—	—	D
40	43	40.1	C
40.1	56	51.1	C
41	41	38	C
42	44	40	C
42.1	35	33	C
42.2	31	29	C
42.3	32	30	C
42.4	37	34	C
42.5	38	35	B
42.6	57	51	A
42.7	58	52	A
43	42	39	B
44	—	—	D
45	—	—	D
46	45	41	C
47	46	42	B
47.1	47	43	C
—	—	43.1	C
48	48	43.2	C
48.1	59	53.1	A
—	60	54.1	A
48.2			
48.3	61	53	B
—	62	54	B
—	63	55	B
48.4			
48.5	64	56	C
49	49	44	B
49.1	50	45	A
49.2	51	46	C
49.3	65	57	C
50	—	—	D
50.1	79	76	C
51	72	67	C
—	74	69	B
—	—	70	C
—	—	71	C
—	75	72	H
52	71	66	C
53	—	—	D
54	—	—	D
55	76	73	C
56	—	—	D
57	—	—	D
58	—	—	E
59	39	36	C
60	—	—	D
61	33	31	B
—	34	32	A
62	—	—	D
63	77	74	C
63.1	78	75	C
64	80	77	B
65	—	—	D
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—	14	13	C
—	15	14	C
67	—	—	D
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68.2	66	58	B
69	18	17	C
69.1	67	59	C
—	68	60	C
—	69	61	C
—	—	62	C
—	70	63	C
—	—	64	C
—	—	65	G

Old Form #	Form # Sept. 97	Form # Apr. 98	Code
70	—	—	E
71	—	—	E
72	—	25	C
73	—	24	C
74	81	78	C
74A	82	79	G
75	28	26	C
75A	29	27	C
76	30	28	C
77	—	—	D
78	—	—	D
79	—	—	D
80	—	—	D
81	—	—	D
82	—	—	D
83	—	—	D
84	—	—	D
85	—	—	D
86	—	—	D
87	—	—	D
88	—	—	D
89	—	—	D
90	—	—	D
91	—	—	D
92	—	—	D
93	—	—	D
94	—	—	D
95	84	81	A
95.1	—	68	C
95.2	83	80	C
96	85	82	G
97	86	83	C
97.1	87	84	C
—	88	85	C
98	—	—	D
99	—	—	D
100	—	—	D
101	—	—	D
102	—	—	D
103	—	—	D
104	—	—	D
105	—	—	D
106	—	—	D
107	—	—	D
108	—	—	D
109	—	—	E
110	—	—	E
111	—	—	E
112	—	—	D
113	—	—	D
114	—	—	D
115	89	86	A
116	90	87	C

DIRECTIVE No. 11R

SURPLUS INCOME

Issue: October 3rd, 2000

This Directive replaces Directive No. 11, which came into force April 30th, 1998.

This Directive comes into force on November 1st, 2000.

INTERPRETATION

1. In this Directive,

"Act" means the *Bankruptcy and Insolvency Act*;

"Superintendent's standards" refers to the table set out in Appendix A of this Directive.

PURPOSE

2. The purpose of this Directive, issued pursuant to paragraph 5(4)(c) and section 68 of the Act, is to assist the trustee in determining equitably and consistently the portion of the bankrupt's income that should be paid into the bankrupt's estate.

SECTIONS OF THE ACT CONCERNED

Sections 68 and 170.1.

BACKGROUND

3. Subsection 68(3) of the Act states:

"The trustee shall

(a) having regard to the applicable standards established under subsection (1), and to the personal and family situation of the bankrupt, fix the amount that the bankrupt is required to pay to the estate of the bankrupt;

(b) inform the official receiver in writing of the amount fixed under paragraph (a); and

(c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay."

FAMILY UNIT

4. In determining the bankrupt's personal and family situation, it is necessary to establish the earnings and expenses of both the bankrupt and the bankrupt's family unit. The bankrupt must disclose the earnings and expenses of each member of the family unit. As well, the trustee may question each member of the family unit as to their earnings and expenses.

5. For the purposes of this Directive, the bankrupt's family unit includes, in addition to the bankrupt, any persons who reside in the same household and who benefit from either the expenses incurred or income earned by the bankrupt, or who contribute to such expenses or earnings. A person who does not reside in the same household shall be considered as a member of the family unit if the person benefits from, or participates in, the bankrupt's income or expenses.

CALCULATION

6. (1) In order to apply the Superintendent's standards (Appendix A), the bankrupt shall first complete the income and expense statement of the family unit, including the bankrupt, in Form 65 entitled "Monthly Income and Expense Statement of the Bankrupt and the Family Unit and Information (or Amended Information) Concerning the Financial Situation of the Individual Bankrupt."

6. (2) The family unit's total monthly income shall be determined by subtracting from the total of all its members' monthly incomes the following amounts, as applicable:

(a) in the case of a salaried employee, minimum statutory remittances (income tax, pension and employment insurance deductions) and other mandatory deductions paid; or

(b) in the case of a person who is self-employed, business expenses and deductions as permitted by the Income Tax Act or similar

provincial legislation, minimum statutory remittances and instalment tax payments.

6. (3) The family unit's available monthly income is determined by subtracting from the family unit's total monthly income the monthly non-discretionary expenses applicable to the personal and family situations of both the bankrupt and the bankrupt's family unit:

(a) child support payments;

(b) spousal support payments;

(c) child care expenses;

(d) expenses associated with a medical condition;

(e) court-imposed fines or penalties that are in process of being paid;

(f) expenses permitted by the *Income Tax Act* (or similar provincial legislation) that are a condition of employment; or

(g) any other debt where a stay of proceedings has been lifted by the court, and a recourse authorized.

6. (4) The trustee shall verify the accuracy of the income and expense statement submitted by the bankrupt by requiring that the bankrupt provide:

(a) proof of payments made pursuant to subsections (2) and (3) above;

(b) proof of income.

7. (1) The trustee determines the bankrupt's total monthly surplus income by subtracting from the family unit's available monthly income the amount which, according to the standards, corresponds to the number of persons in the family unit, as set out in Appendix A.

7. (2)*(a)* Where the bankrupt's total monthly surplus income is equal to or greater than $100 and less than $1,000, 50% of the amount determined in subsection (1) shall be required from the bankrupt;

(b) Where the bankrupt's total monthly surplus income is equal to or greater than $1,000, at least 50%, but no more than 75% of the amount determined in subsection (1), shall be required from the bankrupt.

FAMILY SITUATION ADJUSTMENT

8. The amount that the bankrupt is required to pay to the bankrupt's estate shall be adjusted to the same percentage as the bankrupt's portion of the family unit's available monthly income.

9. For the purposes of this Directive and subsection 68(3) of the Act, when the trustee has determined the amount the bankrupt is required to pay to the bankrupt's estate, the trustee shall inform the Official Receiver of that amount, in Form 65 entitled "Monthly Income and Expense Statement of the Bankrupt and the Family Unit and Information (*or* Amended Information) Concerning the Financial Situation of the Individual Bankrupt."

EXAMPLE (FAMILY UNIT OF 2)

Bankrupt's available monthly income:	**$1,800**
Other family unit member's available monthly income:	**1,000**
Family unit's available monthly income:	**$2,800**
Total monthly surplus income, as per Appendix A:	**$888**
Bankrupt's portion of the family unit's monthly income (1,800 ÷ 2,800 = 64.3 %)	
Payment required from bankrupt, as per paragraph 7(2)(a) of the Directive [(888 x 64.3 %) x 50 % = 285.49]	**$285**

10. Where a person considered to be a member of the family unit as defined in section 5, who is not a bankrupt, refuses or neglects to divulge his or her family income and expenses, for the purposes of subsection 7(1), this person is deemed not to be a member of the family unit. The trustee shall describe these circumstances in Form 65 entitled "Monthly Income and Expense Statement of the Bankrupt and the Family Unit and Information (*or* Amended Information) Concerning the Financial Situation of the Individual Bankrupt" and in Form 82 entitled "Report of Trustee on Bankrupt's Application for Discharge."

Irregular Income

11. When a bankrupt's income is irregular (e.g., sale commissions or seasonal employment), the amount that the bankrupt is required to pay to the bankrupt's estate may be deferred until the time of preparation of Form 82 entitled "Report of Trustee on Bankrupt's Application for Discharge," if necessary. At that time, the average income for the period of bankruptcy would be considered for the purpose of determining the amount that the bankrupt is required to pay to the bankrupt's estate and a conditional discharge shall be recommended by the trustee for the total amount, if this has not already been paid.

12. The trustee shall comment on this situation when dealing with surplus income in Form 82 entitled "Report of Trustee on Bankrupt's Application for Discharge."

Example

An individual with no regular income, but an occasional sales commission, files an assignment in bankruptcy. During the eighth month of bankruptcy, the bankrupt receives three commissions in the amount of $6,000, $4,000 and $8,000 for a total of $18,000. The monthly average during the nine month period of bankruptcy would be $2,000, and the total monthly surplus income determination would be made retroactively with a recommendation for a conditional discharge being made in the amount of the determined surplus.

Discontinuation of payments

13. The payments which the bankrupt is required to make to the bankrupt's estate shall cease upon the discharge of the bankrupt, or as otherwise ordered by the court.

The Superintendent of Bankruptcy
Marc Mayrand

APPENDIX A

SUPERINTENDENT'S STANDARDS – 2000

Total Monthly Surplus Income (Section 68)

PERSONS	S	FAMILY UNIT'S AVAILABLE MONTHLY INCOME														
		1629	1729	1829	2029	2229	2429	2629	2829	3029	3229	3429	3629	3829	4029	4229
1	1529	100	200	300	500	700	900	1100	1500	1700	1900	2100	2300	2500	2700	2700
2	1912	0	0	0	117	317	517	717	917	1117	1317	1517	1717	1917	2117	2317
3	2377	0	0	0	0	0	0	252	452	652	852	1052	1252	1452	1652	1852
4	2878	0	0	0	0	0	0	0	0	151	351	551	751	951	1151	1351
5	3217	0	0	0	0	0	0	0	0	0	0	212	412	612	812	1012
6	3556	0	0	0	0	0	0	0	0	0	0	0	0	273	473	673
7	3895	0	0	0	0	0	0	0	0	0	0	0	0	0	134	334

The Superintendent's Standards ("S") are derived from information provided by Statistics Canada. The standards consist of the 1998 base established by Statistics Canada, plus a 2.6% adjustment based on the 1999 Consumer Price Index and a 1.8% adjustment representing the Superintendent's projection for the 2000 Consumer Price Index.

The amounts shown above represent the bankrupt's total monthly surplus income that is in excess of the standards that form the basis for calculating surplus income payments.

FORM 2
Application for Trustee Licence (Individual)
(Subsection 13(1) of the Act)

GENERAL INFORMATION

Family Name _____ Given Name(s) _____ Date of Birth _____ / ____ / _____ (year / month / day)

Other Previous Legal Names or Aliases

_____

Business Address

_____

_____

_____

Telephone No. _____

Fax No. _____

E-mail address _____

Home Address

_____

_____

_____

Telephone No. _____

Fax No. _____

Current Employer

_____

Employment Began _____ / ____ / _____ (year / month / day)

Professional organization(s) of which I am currently a member (if any) _____

_____

_____

_____

Bankruptcy District(s) for which Licence is requested _____

PREREQUISITE QUALIFICATIONS

Formal education (degrees, professional designations, year of conferment, post-secondary institutions) and relevant work experience. Please provide a curriculum vitae.

_____

_____

_____

_____

_____

FORM 2 — *Continued*

DECLARATION REGARDING PREREQUISITE QUALIFICATIONS

I hereby declare that:

(a) I have not, at any time within the 5 years preceding the date of this application, personally been in a *state of insolvency*[1];

(b) I have successfully completed the BIA Insolvency Counsellor's Qualification Course;

(c) I have successfully completed the National Insolvency Qualification Program;

(d) As a member or former member of a professional organization, I am in good standing with, and am not subject to any current disciplinary action by that organization.

SPECIFIC QUALIFICATIONS

If you are a member of a professional organization, do you intend to retain your membership in that organization when you begin to practice as a trustee?

☐ Yes ☐ No

(If yes, and if such membership entitles you to practice a profession that is an incompatible occupation[2]*, you are required to satisfy the Superintendent that you will be a non-practising member of the organization. Please refer to sections 36 to 39 of the Directive.)*

DECLARATION RELATING TO THE APPLICANT'S REPUTATION

I hereby declare that:

(a) I have no criminal record;

(b) I have never been a bankrupt;

(c) I have never been a principal shareholder, a director or an officer of a bankrupt corporation;

(d) As a member or former member of a professional organization, I have not previously been found guilty of professional misconduct of an ethical, commercial or economic nature;

except as indicated hereafter (please provide documentation):_____

1. "State of insolvency" means being bankrupt, having filed a notice of intention or a proposal under the BIA, or being subject to any similar proceedings under federal, provincial or foreign legislation.
2. "Incompatible occupation" includes, notably, a collection agent, a bailiff, a trade association representative, an employee of the Office of the Superintendent of Bankruptcy ("OSB"), a lawyer and a notary in the province of Québec, as well as any other occupation, business or profession which may be in conflict with the duties and responsibilities of a trustee.

FORM 2 — *Continued*

UNDERTAKING OF APPLICANT REGARDING CONDITIONS IMPOSED ON NEW LICENCES

If a trustee licence is granted by the Superintendent of Bankruptcy, I accept that it be subject to the following conditions:

(a) that I will, for a period of twenty-four (24) months, practice with, and in the same physical location as, an active established trustee who is acceptable to the Superintendent.

(b) that where, at any time during those twenty-four (24) months, I do not meet the requirement set forth in paragraph (a), I will be authorized to act only in the following cases:

(i) consumer proposals;

(ii) estates under the summary administration provisions of the Act;

(iii) estates, known as ordinary administration estates, for which the unsecured liabilities, as per the Statement of Affairs, do not exceed $500,000 and for which the realizable assets as per the Statement of Affairs, after deducting the value of all security interests, do not exceed $15,000; and

(iv) all other cases (notice of intention, Division I proposal, Interim Receiver, estates not covered by case (iii) above, etc.) , subject to the approval of the Division Assistant Superintendent (DAS) and on such terms as the DAS shall determine, considering my performance.

These conditions will not necessarily restrict me to any specific employer and any transfer or change of employment assuring similar or better circumstances would be acceptable. I will inform you in advance of any such change.

I also accept that these conditions may, upon written request, be reviewed after the period of twenty-four (24) months. They will thus either be removed, modified or maintained.

If other conditions are to apply, I will be so notified by the Superintendent, prior to the granting of the licence, for my approval.

AUTHORIZATION

I understand that my application for a trustee licence is subject to an investigation, and that a verification by the Royal Canadian Mounted Police (RCMP) will be conducted with regard to criminal records, ongoing or completed investigations and arrest warrants, as well as with regard to my background. I hereby authorize and give consent to the RCMP or other police forces to release personal information and make full disclosure to the Office of the Superintendent of Bankruptcy, as provided by the Privacy Act.

DECLARATION AND SIGNATURE

I, the undersigned, do solemnly declare that I am the applicant named in this application and that the information set out in this application and in the attached documents is, to the best of my knowledge and belief, true, correct and complete in all respects, and that I agree to respect the conditions contained in this form, if the Superintendent issues me a licence.

Dated at _____, this _____day of _____

_____

Applicant

APPLICATION FOR A TRUSTEE LICENCE

BREAKDOWN OF AREA OF EXPERIENCE IN INSOLVENCY MATTERS

Name of Applicant:_____ Firm: _____

The applicant for a trustee licence hereunder indicates an estimate of the amount of time worked during the periods indicated, in the various fields indicated. The breakdown is to be shown **as a percentage (%) of the overall time** during the year.

	Consumer Bankruptcies	Consumer Proposals	Commercial Bankruptcies	Commercial Proposals	Interim Receiverships	Receiverships, Agency, Look-see, Secured Creditors, CCAA	Other work not directly related to insolvency work (audit, tax, accounting, forensic)
Previous Year							
During _____ (*year*)							
During _____ (*year*)							
During _____ (*year*)							

I, the undersigned applicant for a trustee licence, hereby attest that the above information faithfully reflects my experience in insolvency and other fields during the periods shown above.

_____

Signature of Applicant

Date: _____

I, the undersigned, a trustee of the firm where the above applicant trustee is presently employed or associated, hereby attest that the information provided by the applicant trustee, for the period of time with this firm, faithfully reflects the extent of his/her experience in the insolvency and other fields.

_____

Signature of Trustee

_____

Trustee's name in block letters

Date: _____

FORM 2 — *Concluded*

THE FOLLOWING MUST ALSO BE PROVIDED WITH THIS APPLICATION

Please fill out this page and return with your application. If any items are not checked off, please indicate the reason for such information being excluded and the date at which it will be provided.

☐ 1 A copy of the applicant's certificate of completion of the Insolvency Counsellor's Qualification Course.

☐ 2 A curriculum vitae containing the applicant's academic background and a list of employment positions held during the last ten (10) years with a brief description of duties.

☐ 3 A detailed description of experience in bankruptcy administration (see attached table).

☐ 4 A recent photograph of the applicant (approx. 5 cm X 3.5 cm).

☐ 5 A cheque for $300 payable to the Receiver General of Canada.

Where the applicant intends to practice either with a trustee firm (i.e. partnership or corporate licence), or as an employee of another trustee:

☐ 6 A supporting letter in which the employer or a partner undertakes to provide the necessary resources (work facilities, equipment and personnel) that will be required by the applicant for the execution of his/her duties as a trustee, as well as insurance coverage (professional liability insurance and employee dishonesty (fidelity) insurance).

In all other cases (in order to obtain authorization to begin accepting professional engagements):

☐ 7 A personal balance sheet.

☐ 8 Details of necessary resources (work facilities, equipment and personnel) that will be at the applicant's disposal in the execution of his/her duties as a trustee, and of banking arrangements.

☐ 9 Evidence of insurance coverage for the applicant (professional liability insurance and employee dishonesty (fidelity) insurance).

FORM 3
Application for Trustee Licence (Corporation)
(Subsection 13(1) of the Act)

GENERAL INFORMATION

Name of Corporation (pre-approved by the Superintendent)

_____

Address of Head Office

_____

_____

_____

Tel. No. _____

Fax No. _____

E-mail address: _____

Incorporated
☐ under Federal law
☐ under provincial law (*Which province(s)*? _____

Other province(s) in which the corporation is registered: _____

Date of Incorporation _____/ _____/_____
year month day

Bankruptcy District(s) for which Licence is requested: _____

DECLARATION

I, the undersigned, do solemnly declare that I am authorized to submit the present application on behalf of the corporation named herein and that the information set out in this application and in the attached documents is, to the best of my knowledge and belief, true, correct and complete in all respects.

Dated at _____, this _____ day of _____.

_____
Applicant, on behalf of the Corporation

FORM 3 — *Concluded*

THE FOLLOWING MUST ALSO BE PROVIDED WITH THIS APPLICATION

Please fill out this page and return with your application. If any items are not checked off, please indicate the reason for such information being excluded and the date at which it will be provided.

☐ 1 The original or a certified true copy of the constituting documents (letters patent, certificate of incorporation, memorandum or articles of association and other pertinent documentation).

☐ 2 The address of the head office and of every other office or place of business from which the corporate trustee intends to provide bankruptcy services.

☐ 3 The personal balance sheet of the firm's managing trustee (as of the date of the application).

☐ 4 The name, residential address and occupation of each shareholder and each person having a direct or indirect proprietary interest in the corporation (including beneficial owner, where applicable).

☐ 5 The number of shares (or proportion of total shares) and the classes of shares held by each shareholder in the corporation.

☐ 6 A list indicating every trustee who is simultaneously a shareholder (or financial backer) of this corporation and of any other corporate trustee[1] and all relevant details (i.e. names of those corporate trustees, and the district(s) in which they operate).

☐ 7 The name, residential address and occupation of each director and of each officer of the corporation.

☐ 8 The name and business address of every licensed trustee who will practice in an office or place of business of the corporate trustee.

☐ 9 Evidence of insurance coverage (professional liability insurance and employee dishonesty (fidelity) insurance).

☐ 10 A cheque for $300 made out to the order of the Receiver General of Canada.

A copy of the following information must **also** *be sent to your local Division Assistant Superintendent (DAS):*

☐ 11 Details of necessary resources (work facilities, equipment and personnel) available for each office at which the corporate trustee intends to provide bankruptcy services, as well as details of banking arrangements.

☐ 12 Where the trustee responsible for the administration of estates is being replaced, a letter indicating which trustee is assuming responsibility for these estates, and the signature of that trustee confirming his/her acceptance of the transfer.

1. Section 27 of the Directive reads as follows: "A trustee may, with the pre-approval of the Superintendent, be a shareholder or a financial backer of more than one corporate trustee provided that:
   (a) the corporate trustees do not operate in the same district;
   (b) the trustee satisfies the Superintendent that there is no conflict of interest; and
   (c) the trustee respects any other conditions and limitations that the Superintendent considers appropriate."

   Section 28 of the Directive reads as follows: "Notwithstanding section 27, a trustee may, with the pre-approval of the Superintendent, be a shareholder or a financial backer of more than one corporate trustee in the same district, for a limited period of time, in order to retire from practice as a trustee."

FORM 65

Monthly Income and Expense Statement of the Bankrupt and the Family Unit and Information (or Amended Information) Concerning the Financial Situation of the Individual Bankrupt

(Section 68 and Subsection 102(3) of the Act and Rule 105(4))

(TITLE FORM 1)

The information concerning the monthly income and expense statement of the bankrupt and the family unit, the financial situation of the bankrupt and the bankrupt's obligation to make payments required under section 68 of the Act to the estate of the bankrupt are as follows:

MONTHLY INCOME	Bankrupt	Other members of the family unit	Total
Net employment income	_____		
Net pension/Annuities	_____		
Net child support	_____		
Net spousal support	_____		
Net employment insurance benefits	_____		
Net social assistance	_____		
Self-employment income			
Gross _____ Net	_____		
Other net income	_____		
(*Provide details* _____)			
TOTAL MONTHLY INCOME	$_____(1)	$_____(2)*	
TOTAL MONTHLY INCOME OF THE FAMILY UNIT ((1) + (2))			➤$_____(3)
MONTHLY NON-DISCRETIONARY EXPENSES			
Child support payments	_____		
Spousal support payments	_____		
Child care	_____		
Medical condition expenses	_____		
Fines/Penalties imposed by the court	_____		
Expenses as a condition of employment	_____		
Debts where stay has been lifted	_____		
Other expenses	_____		
(*Provide details* _____)			
TOTAL MONTHLY NON-DISCRETIONARY EXPENSES	$_____(4)	$_____(5)	
TOTAL MONTHLY NON-DISCRETIONARY EXPENSES OF THE FAMILY UNIT ((4) + (5))			➤$_____(6)
AVAILABLE MONTHLY INCOME OF THE BANKRUPT ((1) – (4))	$_____(7)		
AVAILABLE MONTHLY INCOME OF THE FAMILY UNIT ((3) – (6))			➤$_____(8)
BANKRUPT'S PORTION OF THE AVAILABLE MONTHLY FAMILY UNIT INCOME ((7) / (8) X 100))			➤%_____(9)

* Where one or more members of the family unit have refused to divulge this information, please provide details as required by section 10 of Directive 11R.

FORM 65 — *Concluded*

MONTHLY DISCRETIONARY EXPENSES (*Family unit*):

Housing expenses
- Rent/Mortgage . . . . . _____
- Property taxes/Condo fees . . . . . _____
- Heating/Gas/Oil . . . . . _____
- Telephone . . . . . _____
- Cable . . . . . _____
- Hydro . . . . . _____
- Water . . . . . _____
- Furniture . . . . . _____
- Other . . . . . _____

Personal expenses
- Smoking . . . . . _____
- Alcohol . . . . . _____
- Dining/Lunches/Restaurants . . . . . _____
- Entertainment/Sports . . . . . _____
- Gifts/Charitable donations . . . . . _____
- Allowances . . . . . _____
- Other . . . . . _____

Non-recoverable Medical expenses
- Prescriptions . . . . . _____
- Dental . . . . . _____
- Other . . . . . _____

Living expenses
- Food/Grocery . . . . . _____
- Laundry/Dry cleaning . . . . . _____
- Grooming/Toiletries . . . . . _____
- Clothing . . . . . _____
- Other . . . . . _____

Transportation expenses
- Car lease/Payments . . . . . _____
- Repair/ Maintenance/Gas . . . . . _____
- Public transportation . . . . . _____
- Other . . . . . _____

Insurance expenses
- Vehicle . . . . . _____
- House . . . . . _____
- Furniture/Contents . . . . . _____
- Life insurance . . . . . _____
- Other . . . . . _____

Payments
- To the estate . . . . . _____
- To secured creditor (*Other than mortgage and vehicle*) . . . . . _____
- Other . . . . . _____

TOTAL MONTHLY DISCRETIONARY EXPENSES (FAMILY UNIT) . . . . . – $_____ (10)

MONTHLY SURPLUS OR (DEFICIT) FAMILY UNIT ((8) – (10)) . . . . . = $_____ (11)

Information (*or* Amended Information) Concerning the Financial Situation of the Individual Bankrupt

Payments to the estate as per agreement

Number of persons in household family unit, including bankrupt: _____

Total amount bankrupt has agreed to pay monthly . . . . . _____ (12)

Amount bankrupt has agreed to pay monthly to repurchase assets (*provide details*)_____ . . . . . _____ (13)

Residual amount paid into the estate ((12) – (13)) . . . . . _____ (14)

Payments required by the Directive on Surplus Income

Monthly amount required by the Directive on Surplus Income based on percentage established on line (9) . . . . . _____ (15)

Difference between amounts at lines (14) and (15) . . . . . _____ (16)

Other applicable comments: (*If amount at line (14) is less than amount at line (15), explain why the required payments are not being made*:_____)

Amendment or material change: (*If the information relates to a material change or an amendment, provide details*:_____)

Dated at _____, this _____ day of _____ _____.

_____ Trustee

_____ Bankrupt

Note: In a joint assignment, only one form is required and each bankrupt's monthly income and non-discretionary expenses have to be explained in detail.

FORM 79
Statement of Affairs (Non-Business Bankruptcy)
(Paragraph 158(d) of the Act)

(*Title Form 1***)**

ASSETS					
Type of assets		Description (*Provide details*)	Exempt Property		Estimated Dollar Value
			Yes	No	
1. Cash on hand					
2. Furniture					
3. Personal effects					
4. Cash-surrender value of life insurance policies, RRSPs, etc.					
5. Securities					
6. Real Property	House				
	Cottage				
	Land				
7. Motor vehicle	Automobile				
	Motorcycle				
	Snowmobile				
	Other				
8. Recreational equipment					
9. Estimated tax refund					
10. Other assets					
				TOTAL	

Date

Bankrupt

FORM 79 — *Continued*

LIABILITIES					
Creditor	Address including postal code	Account No.	Amount of debt		
			Unsecured	Secured	Preferred
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
Please add details of pledged assets	TOTAL	Unsecured			
	TOTAL	Secured			
	TOTAL	Preferred			
				TOTAL	

Date

Bankrupt

FORM 79 — *Continued*

INFORMATION RELATING TO THE AFFAIRS OF THE BANKRUPT			
A. PERSONAL DATA			
1. Family name:	Given names:	Date of birth: ____/____/____ YY / MM / DD	
2. Also known as:			
3. Complete address, including postal code:			
4. Marital status: (*Specify month and year of event if it occurred in the last five years*) __ __ Married __ __ Single __ __ Widowed __ __ Separated __ __ Divorced __ __ Common-law partner			
5. Full name of spouse or common-law partner:			
6. Name of present employer:	Occupation (Bankrupt):		
7A. Number of persons in household family unit, including bankrupt:			
7B. Number of persons 17 years of age or less:			
8. Have you operated a business within the last five years?	Yes	No	(If yes) Name, type and period of operation:

B. WITHIN THE 12 MONTHS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:		
9A. Sold or disposed of any of your property?	Yes	No
9B. Made payments in excess of the regular payments to creditors?	Yes	No
9C. Had any property seized by a creditor?	Yes	No

C. WITHIN FIVE YEARS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, WHILE YOU KNEW YOURSELF TO BE INSOLVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:		
10A. Sold or disposed of any property?	Yes	No
10B. Made any gifts to relatives or others in excess of $500?	Yes	No

Date

Bankrupt

FORM 79 — *Concluded*

D. BUDGET INFORMATION: Attach Form 65 to this Form.
11A. Have you ever made a proposal under the Bankruptcy and Insolvency Act? Yes____ No____
11B. Have you been bankrupt before, either in Canada or elsewhere? Yes____ No____ (If you answered Yes, provide the following details for all insolvency proceedings: (a) Filing date and location of the proceedings; (b) Name of trustee or administrator; (c) If applicable, was the proposal successful; (d) Date on which Certificate of Full Performance or Discharge was obtained.) _____ _____ _____
12. Do you expect to receive any sums of money which are not related to your normal income, or any other property within the next 12 months? Yes____ No____
13. If you answered Yes to any of questions 9, 10 and 12, provide details: _____ _____ _____
14. Give reasons for your financial difficulties: _____ _____ _____

I, _____, of the _____ of _____ in the Province of _____, do swear (or solemnly declare) that this statement is, to the best of my knowledge, a full, true and complete statement of my affairs on the _____ day of _____ ____ and fully discloses all property and transactions of every description that is or was in my possession or that may devolve on me in accordance with section 67 of the *Bankruptcy and Insolvency Act*.

SWORN (*or* SOLEMNLY DECLARED)

before me at the _____ of _____ in the Province of _____

this _____ day of _____ _____.

_____ _____

Commissioner of Oaths Bankrupt
for the Province of _____

FORM 82
Report of Trustee on Bankrupt's Application for Discharge
(Subsection 170(1) of the Act)

(*Title Form 1***)**

Date of bankruptcy:		Date of initial bankruptcy event:	
Marital status:			
Type of employment:		Number of persons in household family unit, including bankrupt:	
AMOUNT OF LIABILITIES			
	Secured	Preferred	Unsecured
Declared	$	$	$
Proven	$	$	$
AMOUNT OF ASSETS			
Description	Value as per Statement of Affairs	Amount realized	Estimate of assets to be realized
	$	$	$
TOTAL			
ANTICIPATED RATE OF DIVIDENDS			
Preferred creditors:		Unsecured creditors:	

A: CAUSES OF BANKRUPTCY

1. Provide details of the causes of bankruptcy:

_____

_____

_____

B: INFORMATION CONCERNING THE FINANCIAL SITUATION (*The same method of calculation must be used to establish the available monthly income of the bankrupt and the family unit at date of bankruptcy and at date of this report. Explain any material changes.*)

2. (a) Available monthly income of the bankrupt at date of bankruptcy (*Same amount as line (7) on Form 65*): . . . . . $_____
   (b) Available monthly income of the bankrupt at date of this report: . . . . . $_____

3. (a) Available monthly income of the family unit at date of bankruptcy (*Same amount as line (8) on Form 65*): . . . . . $_____
   (b) Available monthly income of the family unit at date of this report: . . . . . $_____

FORM 82 — *Continued*

C: CONDUCT OF THE BANKRUPT

4. (a) Was the bankrupt required to pay to the estate an amount established by the Directive on Surplus Income? (*If yes, attach Appendix A*) ☐ Yes ☐ No
   (b) Could the bankrupt have made a viable proposal rather than proceeding with bankruptcy? (*If yes, attach Appendix A*) ☐ Yes ☐ No

5. (a) Did the bankrupt fail to perform any of the duties imposed on the bankrupt under the Act? (*If yes, provide details*) ☐ Yes ☐ No
   (b) Can the bankrupt be justly held responsible for any of the facts referred pursuant to section 173 of the Act? (*If yes, provide details*) ☐ Yes ☐ No
   (c) Did the bankrupt commit any offence in connection with the bankruptcy? (*If yes, provide details*) ☐ Yes ☐ No

6. (a) Did the bankrupt ever make a proposal under the Bankruptcy and Insolvency Act? (*If yes, provide details*) ☐ Yes ☐ No
   (b) Has the bankrupt been bankrupt before either in Canada or elsewhere? (*If yes, provide details*) ☐ Yes ☐ No

7. Were inspectors appointed in this estate? (*Provide details if the trustee has reasonable grounds to believe that the inspectors will not approve this report. Attach a copy of the resolution.*) ☐ Yes ☐ No

D: DISCHARGE OF THE BANKRUPT

8. (a) Is it the intention of the trustee to oppose the bankrupt's discharge? (*If yes, provide details*) ☐ Yes ☐ No
   (b) Does the trustee have reasonable grounds to believe that a creditor or the Superintendent will oppose the bankrupt's discharge for a reason other than those set out in section 173(1)(m) or (n) of the Act? (*If yes, provide details*) ☐ Yes ☐ No

9. Did the bankrupt refuse or neglect to receive counselling pursuant to the Directive on Counselling in insolvency matters? (*If yes, provide details*) ☐ Yes ☐ No

10. Are there other facts, matters or circumstances that would justify the Court in refusing an absolute order of discharge? (*If yes, provide details*) ☐ Yes ☐ No

11. Other pertinent information? (*e.g. Exceptional personal circumstances, preferential payments, etc. If yes, provide details*) ☐ Yes ☐ No

Additional details as required

Number	Additional information

Dated at _____, this _____ day of _____, _____.

_____
Trustee

APPENDIX A

A: AMOUNT REQUIRED TO BE PAID MONTHLY BY THE BANKRUPT

Monthly amount required by the Directive on Surplus Income
(*Same amount as line (15) on Form 65*): . . . . . $_____(1)

Amount bankrupt has agreed to pay monthly (*Same amount as line (14) on Form 65*): . . . . $_____(2)

Difference between amounts at lines (1) and (2): . . . . . $_____

Amount bankrupt has agreed to pay monthly to repurchase assets
(*Same amount as line (13) on Form 65, provide details*): . . . . . $_____(3)

Total anticipated payments, lines (2) + (3): . . . . . $_____

B: SURPLUS INCOME

1. Did bankrupt make all required payments pursuant to section 68 of the Act? (*If no, provide details*) ☐ No ☐ Yes
2. Does amount established to be paid correspond with Directive on Surplus Income? (*If no, provide details of any extenuating circumstances that would affect amount to be paid as per Directive*) ☐ No ☐ Yes
3. Was the bankrupt made aware of the possibility of requesting mediation? ☐ No ☐ Yes
4. Any amendment or material changes during period of bankruptcy? (*If yes, provide details*) ☐ Yes ☐ No
5. Was mediation necessary under subsection 68(6) or 68(7) of the Act to determine the amount to be paid by the bankrupt? ☐ Yes ☐ No

C: RECOMMENDATION ON THE BANKRUPT'S DISCHARGE

(*Do not complete this part if:*
- *the bankrupt has previously been a bankrupt;*
- *the discharge of the bankrupt is opposed on grounds other than those mentioned at section 170.1 of the Act; or*
- *the bankrupt has refused or neglected to receive counselling pursuant to the Directive on Counselling in insolvency matters*)

6. Recommendation of the trustee pursuant to section 170.1 of the Act:
   - □ bankrupt to be discharged without conditions; (*Provide justification for unconditional discharge*)
   - □ bankrupt to be discharged subject to conditions (deemed opposition) based on the following grounds under subsection 170.1(2) of the Act; (*Provide details, including amount and period of payments*)
     - □ the bankrupt has not complied with a requirement imposed on the bankrupt under section 68 of the Act;
     - □ the total amount paid to the estate by the bankrupt is disproportionate in relation to the bankrupt's indebtedness and financial resources;
     - □ the bankrupt could have made a viable proposal, but chose to proceed with bankruptcy, rather than make a proposal as the means to resolve the indebtedness;
   - □ bankrupt to be discharged after fulfilling obligations under mediation agreement. (*Provide details, including amount and period of payments.*)
7. Does the trustee have reasonable grounds to believe that the debtor agrees to the conditions recommended by the trustee? ☐ Yes ☐ No
8. Was the bankrupt made aware of the possibility of requesting mediation? ☐ Yes ☐ No

Dated at _____, this _____ day of _____, _____.

_____
Trustee

The Senate of Canada
Bill S-4
Second reading, February 7, 2001

Title:
A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

Summary:
This enactment amends the *Interpretation Act* to recognize Canadian bijuralism and to provide that provincial law relating to property and civil rights applies to federal legislation on a suppletive basis. It also amends that Act to include interpretation rules relating to bijural provisions in federal enactments.

The enactment harmonizes certain provisions of the *Bankruptcy and Insolvency Act* with the civil law of the Province of Quebec, particularly insofar as those provisions relate to the security and trusts law of that province and the jurisdiction of its Superior Court and Court of Appeal.

Statutes of Canada, 2000
Chapter 12 (Bill C-23)
Assented to 29th June, 2000

Title:
An Act to modernize the Statutes of Canada in relation to benefits and obligations

Summary:
A number of federal Acts (including the *Bankruptcy and Insolvency Act*) provide for benefits or obligations that depend on a person's relationship to another individual, including their husband or wife and other family members. Most of those Acts currently provide that the benefits or obligations in relation to a husband or wife also apply in relation to unmarried opposite-sex couples who have been cohabiting in a conjugal relationship for at least one year. Some of those Acts provide for benefits or obligations in relation to certain family members of a person's husband, wife or opposite-sex common-law partner.

This enactment extends benefits and obligations to all couples who have been cohabiting in a conjugal relationship for at least one year, in order to reflect values of tolerance, respect and equality, consistent with the *Canadian Charter of Rights and Freedoms*.

Accordingly, the enactment amends the *Bankruptcy and Insolvency Act* by incorporating new definitions of "common-law partner" and "common-law partnership," as well as another category of "related persons."

The provisions concerning the *Bankruptcy and Insolvency Act* came into force on July 31, 2000.

Statutes of Canada, 2000
Chapter 30 (Bill C-24)
Assented to 20th October, 2000

Title:
An Act to amend the *Excise Tax Act*, a related Act, the *Bankruptcy and Insolvency Act*, the *Budget Implementation Act*, 1997, the *Budget Implementation Act*, 1998, the *Budget Implementation Act*, 1999, the *Canada Pension Plan*, the *Companies' Creditors Arrangement Act*, the *Cultural Property Export and Import Act*, the *Customs Act*, the *Customs Tariff*, the *Employment Insurance Act*, the *Excise Act*, the *Income Tax Act*, the *Tax Court of Canada Act* and the *Unemployment Insurance Act*.

Summary:
In the parts dealing with the application and implementation of the taxation system, this enactment contains amendments to various Acts, particularly the *Bankruptcy and Insolvency Act*, the *Canada Pension Plan*, the *Companies' Creditors Arrangement Act*, the *Employment Insurance Act* (and the previous *Unemployment Insurance Act*), and the *Income Tax Act*, in order to empower the Crown to recover, in bankruptcy cases, all Employment Insurance premiums and Canada Pension Plan contributions.

The same provisions apply to both employer and employee contributions to the Quebec Pension Plan.

These amendments apply as of November 30, 1992, the date on which the amendment made to Section 86 of the *Bankruptcy and Insolvency Act* took effect.

This Act came into force on royal assent.

DEMUTUALIZATION

As you may recall, some of Canada's mutual life insurance companies decided to undergo demutualization. The process of demutualization involves converting a mutual company to a publicly traded stock company. Mutual companies are owned by their participating policyholders, whose ownership rights cannot be traded or sold. A publicly traded stock company is owned by its shareholders, whose shares may be bought or sold. In a demutualization, the participating policyholders become shareholders of a publicly traded stock company. The eligible policyholders exchange their ownership right as members of a mutual company for demutualization benefits (which will usually either be shares that can be kept as an investment or sold, or cash).

Demutualization requires policyholder and government approval.

This raised a question as to the vesting of demutualization benefits after demutualization in a bankruptcy context. In turn, this issue was addressed In The Matter of the Bankruptcy of Tracy Jean Broesky and Wilfred Rodney Broesky (Calgary). The facts of the case were as follows:

Mr. and Mrs. Broesky made voluntary assignments in bankruptcy on September 7, 1997, and at that time they were policyholders.

During the bankruptcy the insurance company announced that it intended to demutualize, resulting in policyholders being entitled to shares if demutualization was approved by the policyholders and the federal government.

The date on which they became entitled to receive shares in the event that the demutualization proposal was implemented was April 2, 1998 ("the eligibility date"). On this date, the Broeskys had not yet been discharged.

In June 1998 Mrs. Broesky received an automatic discharge and in September 1998, Mr. Broesky received his absolute discharge.

The special meeting for the policyholders to vote on the demutualization proposal was held on September 16, 1999, at which time it was approved. Government approval was obtained on November 4, 1999.

In the Registrar's view the Broeskys were entitled to keep the shares after demutualization because "the bankrupt's rights vested long after they both received their discharge from bankruptcy" .

The trustee appealed this decision to a judge of the Alberta Queen's Bench and we intervened and supported the trustee's position.

The issue that was raised in the appeal was whether or not the shares, which ultimately issued to the Broeskys, were property of the bankrupts pursuant to paragraph 67(1)(*c*) of the *Bankruptcy and Insolvency Act* (BIA) such that they came within the control of the trustee, and thereby divisible amongst the creditors.

The judge concluded that the shares were not property of the bankrupt pursuant to paragraph 67(1)(c) because all the Broeskys had within the time of the bankruptcy regime was a right to vote, and a chance or possibility to receive shares. That is all they had at the eligibility date of April 2, 1998. In September 1998 they were both absolutely discharged, and in September 1999 the policyholders voted in favor of demutualization with federal approval obtained shortly thereafter. As such, the rights to the shares vested long after the debtors had been discharged and, therefore, the Broeskys were entitled to keep the shares they had received. The appeal from the Registrar's decision was therefore dismissed.

Based on this decision we can conclude that the appropriate date to use in determining when a right to obtain demutualization benefits vests in an individual is the date when demutualization is approved. However, there are two steps to demutualization, policyholder approval and government approval. Unfortunately, neither the judge nor the Registrar identified which of these two dates of approval to

use when determining the time that demutualization benefits vest.

At this stage and after careful consideration it is not the intention of the OSB to pursue this matter any further given the fact that the demutualization of these insurance companies has been completed and that there will be fewer bankruptcy estates where this will be an issue. Furthermore, the OSB's legal counsels advise us that the arguments put forward by counsel for the Broeskys and adopted by the courts, specifically, the finding that the right that arose during bankruptcy was only a right to vote at the policyholders' meeting and that it was not an enforceable right which would allow the Broeskys to receive the shares, would be difficult to reverse on appeal.

If you would like a copy of this decision, cited as *Young Parkin McNab Inc. v. Broesky*, please contact the Office of the Superintendent of Bankruptcy in you area.

SUPERINTENDENT'S STATEMENT ON RELIEF FOR HEATING EXPENSES TAX CREDIT

As you are no doubt already aware, on December 13, 2000, the Minister of Finance, Paul Martin, confirmed the Government's commitment to provide Relief for Heating Expenses (RHE) to eligible families and individuals. As indicated in the October 2000 mini-budget, this one-time payment will be made to individuals and families who are eligible for the goods and services tax (GST) credit for January 2001.

Under this measure:

- married and common-law couples will receive $250;
- single-parent families will receive $250; and
- single individuals without children will receive $125.

The Canada Customs and Revenue Agency (CCRA) is responsible for administering the RHE. The payments, which will be separate from GST credit cheques, began going out to low- and modest-income Canadians on January 31, 2001.

It has become necessary to develop a position on the treatment of the RHE by trustees in bankruptcy cases. Following a meeting of the executive of the Canadian Insolvency Practitioners Association (CIPA) and the Office of the Superintendent of Bankruptcy (OSB) on January 23, 2001, it was jointly decided that the RHE can not be considered part of the assets of the bankruptcy and consequently, must be paid in full to bankrupts. CIPA President Norm Kondo has already sent a message to his members through their chat line to advise them of this position.

The position of the Superintendent of Bankruptcy is based on the following considerations:

- the RHE is intended for the most disadvantaged in society;
- RHE payments are related to beneficiaries' essential needs as provided for in paragraph 67(1)(*b.1*) of the *Bankruptcy and Insolvency Act* (BIA);
- these payments are being made pursuant to the Minister of Finance's October 2000 budget statement, before the enabling legislation has even been passed;
- under the circumstances, it is materially impossible to adopt timely regulations excluding such amount from the property of the bankrupt since the cheques are presently being issued;
- if it were materially possible to do so, the Superintendent would recommend adopting regulations excluding the RHE in its entirety from the property of the bankrupt;
- in order to ensure equal and uniform treatment of the thousands of cheques to bankrupt individuals, the Superintendent should announce a clear position;
- finally, the Superintendent may, pursuant to paragraphs 5(4)(*b*) and (*c*) of the BIA, issue directives to trustees and official receivers with respect to their functions or to facilitate the carrying out of the purposes and provisions of the Act and its Rules.

For these reasons, the above-mentioned position also applies to provincial relief for heating expenses.

Furthermore, the RHE credit is not subject to Section 59 of the *Bankruptcy and Insolvency Rules* and must be refunded to the bankrupt in its entirety, despite the fact that the RHE calculation is based on the eligibility for a GST credit.

For additional information on this matter, please contact the Office of the Superintendent of Bankruptcy in your area.

ELECTRONIC FILING INITIATIVE

Throughout the course of the negotiations, with a potential vendor under the Service Provider Initiative (SPI), it was determined that e-filing was a crucial deliverable of the OSB's SPI 'package' of products and services. As such, the success of e-filing was a major determining factor in the decision for both the OSB and the potential vendor to proceed with the initiative under a long-term contract. The parties had decided that further work had to be undertaken in order to establish if there was an economically viable basis for the delivery of services through electronic commerce.

The parties agreed to focus on the development of an e-filing business case, which would subsequently lead to a comprehensive agreement for the whole of the SPI. The e-filing service would provide the ability for formal transactions pursuant to the BIA to be communicated electronically between the OSB, trustees, creditors and courts. A contract was signed on March 31, 2000.

The e-filing business case would define the best solution to provide the e-filing service and describe how to go about delivering it. It would also determine the market viability in terms of the anticipated transaction volumes, pricing and take-up rate.

We regret to announce that the interim report on the business case clearly demonstrated that the proposed solution would not permit the attainment of the required qualitative and quantitative criteria. The OSB's Management Advisory Board was informed of the results and the Board recommended a closure to the SPI process and encouraged the OSB to explore other options.

The OSB remains strongly committed to the development and implementation of an electronic filing system for bankruptcies. To that effect the OSB is presently preparing a Request for Proposal (RFP) for a systems integrator to develop an e-filing system that will transmit and validate forms under the BIA between trustees and the OSB.

The solutions to the OSB's e-filing concept will have to respect the following conditions:

- The system will have to be compatible with the various technology currently used by the trustees who must be able to retain their insolvency software;
- The internet-enabled system will facilitate the transmission of forms directly to the OSB within a secure environment;
- The system will operate without the assistance of a third party.

In order to ensure that this system is compatible with the various technologies used by the trustees and that the chosen systems integrator takes this into consideration, the OSB felt it necessary to survey practitioners in that respect.

Accordingly, a survey will be circulated amongst trustees to collect information on the type of information systems technology currently used by trustees as well as planned upgrades over the next twelve months. The aggregate results will be used to determine the best approach to take to ensure that trustee systems can easily access the OSB's new e-filing system.

This survey will be conducted at the beginning of March 2001 and although your participation to this survey is sought on a voluntary basis, your response at this stage of the process is necessary in ensuring that we develop a system that supports the entire trustee community. Please give us your input and fill in the short survey when you receive it.

PERSONAL INSOLVENCY TASK FORCE

THE PURPOSE OF THIS PAPER

The purpose of this paper is to establish operating terms of reference for the Personal Insolvency Task Force (PITF).

In addition to the five year review planned for 2002, when the Office of the Superintendent of Bankruptcy (OSB) must report to Parliament on the 1997 Reforms, the single most important event giving rise to this task force is the rapid escalation in the number of personal bankruptcies over the years.

THE FUNDAMENTAL PURPOSE OF BANKRUPTCY LEGISLATION

The fundamental purpose of bankruptcy legislation is and remains that of protecting and maximizing the realization in an insolvent estate by liquidating the debtor's assets and by distributing its proceeds amongst his/her creditors quickly and efficiently. However, in today's society, where consumer debtors have no, or very little, assets to be liquidated the purpose of bankruptcy legislation takes on a new meaning. Personal insolvency and bankruptcy may be viewed more in socio-economic terms rather than strict legal terms.

BACKGROUND

A Little History

The *Constitution Act* of 1867 conferred upon Parliament exclusive jurisdiction to enact laws in relation to "bankruptcy and insolvency". Canada's first insolvency Act, which only applied to traders, was adopted in 1869 and was replaced by a later Act in 1875.

The 1875 Act was widely criticized and repealed in 1880. Between 1880 and 1919, Canada had no general bankruptcy legislation at all. In 1882, the federal government adopted winding up legislation for insolvent trading corporations and other corporate enterprises[1]. The first insolvency Bill was enacted in 1919. The 1919 Act was heavily influenced by the *British Bankruptcy Act 1883,* and its general conceptual structure. In 1949, the 1919 Act was extensively revised. A number of proposals for new revisions were presented by a federal Study Committee in 1970, yet despite the introduction of several bills between 1975 and 1984, the proposals were never adopted.

What's Been Done Thus Far...

The 1992 Amendments

In 1992 a number of important amendments were made to streamline the process by removing from the judicial process the procedure for the handling of discharges for personal bankrupts by introducing the concept of *automatic* discharges for first-time bankrupts where no opposition was made by the trustee, the Superintendent or creditors. These amendments further recognized the need for debtor rehabilitation by introducing the concept of counselling. As well, the amendments afforded insolvent debtors an alternative to bankruptcy by introducing a separate regime for the making of consumer proposals.

The 1997 Amendments

The 1997 amendments were primarily focused on making **high-income** debtors aware of their responsibilities by introducing significant changes to the treatment of consumer bankruptcies. Former section 68 of the *Bankruptcy and Insolvency Act* (BIA) was repealed and replaced with new section 68 which requires **high-income** debtors, between the time of bankruptcy and the time of their discharge, to pay over their surplus income based on standards issued by the Superintendent of Bankruptcy. The concept of compelling high-income debtors to pay over their surplus income to the trustee was intended to provide a way of precluding an automatic discharge of such debtors in cases where they failed to comply with section 68.

1. Houlden & Morawetz, *Bankruptcy Law of Canada*, Third Edition, Carswell, p.1-1

The National Insolvency Forum Report

In May and June 1999, through a series of round table discussions held in six selected cities across Canada, primary stakeholders of the insolvency system were asked to voice their opinions on what works, what doesn't work and how the existing insolvency system could be streamlined to be more efficient and cost-effective. 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 **osb-bsf.ic.gc.ca** Some of the suggestions include:

- improve compliance measures by addressing the lack of deterrent mechanisms for trustees who fail to maintain professional obligations (e.g., verifying the debtor's statement of affairs) and debtors who do not comply with their duties and obligations under the BIA (e.g., declaring all their assets);
- simplify the procedure and requirements for Summary Administration Estates, making them less time-consuming and less expensive to comply with for debtors with few assets and no surplus income;
- incorporate a hardship clause in paragraph 178(1)(*g*) which refers to student loans.

Where We Are Now...

Despite predictions made by government and economists to the effect that a strong economy would translate into a decrease in personal bankruptcies in the late 1990's, the actual rate of consumer bankruptcies in fact peaked in 1997 and has decreased only slightly since[2].

Overall, the number of bankruptcies has been increasing exponentially over the last 35 years. In 1966, business bankruptcies represented the majority of all bankruptcies reported in Canada (i.e., 59.3%), whereas consumer bankruptcies represented 41%. Five years later, in 1971, consumer bankruptcies accounted for 50.5% whereas business bankruptcies accounted for 49.5% of all bankruptcies reported. This trend has continued throughout the 70's, 80's and 90's with consumer bankruptcies reaching an all time high of 87.9% in 1999. Recent statistics reported by the Bank of Canada show that the debt-income-ratio (% total household debt/personal disposable income) was at 99.9% in 1999.

The current profiles of insolvencies reveal that consumer proposals are on the rise, whereas bankruptcies appear to remain stable in spite of the fluctuations in the economy. Statistics show that in 1999, 72,997 Canadians declared bankruptcy; 90% or more of consumer bankrupts declare total assets with less than $10,000, thus qualifying the estate for summary administration; 85% or more have incomes at or below the prescribed low income cost of living at which they are required to make payments to the trustees pursuant to section 68 of the BIA.

PITF'S MANDATE

PITF has been established to review the provisions of the BIA as it pertains to personal bankruptcies. Starting without preconceived notions, PITF will explore alternative models of personal insolvency processes better geared towards addressing the perceived weaknesses of our Canadian insolvency system. In doing so, PITF will also review expectations of both debtors and creditors while factoring in the general public interest.

PITF'S OBJECTIVE

PITF's objective is to formulate recommendations for an alternative insolvency process and/or redress mechanisms to the existing process in order to ensure:

- that Canada's highly privatized bankruptcy system, which was designed for debtors with assets and/or income can nevertheless remain **accessible** to debtors with little or no assets and/or income;
- the appropriateness of low-income debtors paying even a modest fee to obtain a **fresh start** while being subject to the same procedural process as those with high income and/or assets;

2. A number of studies conducted in 1998 and 1999 present various explanations and/or rationales for the rapid escalation in the number of consumer bankruptcies, see *Symposium Consumer Bankruptcies in a Comparative Context*, Osgoode Hall Law Journal, Volume 37, Numbers 1 & 2, Spring & Summer 1999.

- that bench marking is incorporated into the recommendations and that best practices from other countries such as Australia, USA and UK are drawn on to improve the efficiency and effectiveness of Canada's insolvency system.

PITF will also identify the desirable legislative changes to the Canadian insolvency system and recommend appropriate mechanisms to ensure that:

- low-income debtors are discharged in a fair and efficient manner, having regard to the legitimate and frequently competing interest of various stakeholders representing, in turn, various societal interests.
- the issue of post-bankruptcy revenues is clarified and addressed in a cohesive manner in the BIA;
- trustees are afforded appropriate and fair remuneration for their professional services;
- stakeholders and practitioners are afforded electronic means of communications and e-commerce;
- debtors' assets are evaluated in a just manner and their realization maximized in an insolvent estate;
- all procedures in personal bankruptcies are streamlined and reduced without jeopardizing the integrity of the system;
- bankrupts with no surplus income or seizable assets are dealt with as efficiently as possible.

PITF'S CRITERIA

Criteria against which PITF must prioritize the issues to be examined and serve as the measure against which final recommendations must be gauged are:

Fairness: is a function of what the system appears to be to on-lookers, whether or not they are familiar with the system.

Accessibility: going bankrupt in Canada must be seen as a right, not a privilege. Accordingly, access to the system must be simple, inexpensive and readily available throughout the country.

Predictability: debtors and creditors understand what the result of the process will be: consistency.

Efficiency: the social cost of the system and its economic cost are directly related to its efficiency. This raises questions about whether a trustee needs to be involved in every aspect of a personal insolvency and, more generally, whether the system as a whole is as efficient as it could or should be.

Responsibility: the system should encourage social and economic responsibility of both debtors and credit grantors.

Understandability: is the process itself, and are the results of the process, transparent and comprehensible to each of the debtor and to the creditor?

Effectiveness: deals with whether the insolvency system is responsive to the perceived needs of its users and whether it is consistent with the rest of the socio-economic fabric of the country.

THE PITF TEAM

Structure

PITF is comprised of a broad base constituency of stakeholders with a strong interest in the subject matter; namely creditors and/or creditor representatives, debtor representatives, members of the judiciary, trustees, a member of the Canadian Insolvency Practitioners Association as well as a number of academic scholars in the field of Bankruptcy Law.

Meetings

A series of four or five meetings of the Task Force will be held over the course of the next year. In addition, five sub-groups have been created. These sub-groups will be called upon to deal with, and make recommendations to the Task Force, in specific subject areas.

Results

A comprehensive Report outlining strong rationales supporting recommendations for changes to the BIA, its Rules and Directives, including other relevant aspects of the insolvency system. In addition, the Report will also serve as a form of bench marking by positioning Canada and comparing the Canadian insolvency system with that of Australia, USA and the UK while respecting the fundamental policy and flavor which characterize the personal insolvency system in Canada. The final Report will be published

to elicit further public discussion before final recommendations are made to the Minister.

Method of Payment of Members

Members of the task force will conduct their duties *pro bono*. Their expenses, however, will be paid by the OSB.

RESULTS OF THE ELECTRONIC TRANSMISSION OF DIRECTIVES AND FORMS

Under the government's "On-Line" program, the OSB recently used electronic mail to send out the revised versions of Directives 8R2 and 11R, as well as the modified versions of forms 2, 3, 65, 79 and 82. Here is a brief report of how well this initiative worked.

Electronic transmission had an overall success rate of 98.5% with only 12 instances of non-reception out of 854. The main reason for the failures was that certain recipients had Hotmail e-mail accounts that were experiencing technical problems just when our messages were being transmitted. Three unsuccessful transmissions were the result of incorrectly entering the e-mail addresses. All 12 clients who did not receive their transmissions electronically did receive hard copies of the revised directives and forms. To correct the problem for future transmissions, the OSB contacted each of these clients to confirm their exact e-mail address and then updated its data bank.

Another part of the process involved sending a test message before the actual transmission of the documents. This message informed those on the electronic mailing list that there would shortly be an electronic mailout to all trustees with e-mail addresses known to the OSB. The message also mentioned that the documents concerned were already available on the OSB Web site. This measure enabled us to observe a certain number of new visits to the Web site for this purpose, indicating that a good number of trustees were now aware of the new system. Of the trustees who obtained the information from the Web site, six experienced problems and contacted the OSB by telephone or e-mail: three of them said they were having problems downloading or accessing the attached documents, and the three others requested hard copies because of problems with their computer systems.

Thus, this first experience definitely proved to be a success. On the one hand, it showed that it was possible to use the power and versatility of the Internet to reach almost all of the trustee community within a predictable time frame, and, on the other, virtually all these recipients were able to benefit from the advantages of electronic messaging.

If you have not already done so, we strongly urge you to communicate your e-mail address to the OSB. This will enable you to receive instantaneous updates, on a 24/7 basis, on all insolvency-related information that might interest you.

Please don't delay. Send your e-mail address, or any change in your postal address, fax number or telephone number, to Lilliane Kutkewich at **kutkewich.lilliane@ic.gc.ca** or (613) 941-2699.

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2000 STATISTICS
(By Office)

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Halifax	1			1	2
Montréal	4	1		5	10
Québec	2	1	1	3	7
Ottawa	1	1	1		3
Toronto	4	2	3	4	13
London	3	2	1	2	8
Calgary	1	1		2	4
Vancouver	1	1			2
Total	17 (35%)	9 (18%)	6 (12%)	17 (35%)	49 (100%)
	32 (65%)			17 (35%)	49 (100%)

ADDRESSES OF DIVISION OFFICES OF THE SUPERINTENDENT OF BANKRUPTCY INDUSTRY CANADA

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