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**THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE / COMITÉ PERMANENT DES BANQUES
ET DU COMMERCE**

EVIDENCE / TÉMOIGNAGES

DM May 14, 2003

**THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE
EVIDENCE**

OTTAWA, Wednesday, May 14, 2003

The Standing Senate Committee on Banking, Trade and Commerce met this day at 4:00 p.m. to examine on the administration and operation of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act.

Mr. Denis Robert, Clerk of the Committee: Honourable senators, as the clerk of the committee, I have been instructed to inform the members of the committee of the unavoidable absence of the Chair and Deputy Chair. In that case, we will proceed with the election of an acting chair for this meeting.

Senator Moore: I nominate Senator Kroft as acting chair.

Mr. Robert: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Richard H. Kroft (*Acting Chairman*) in the Chair.

The Acting Chairman: We will proceed with our examination on the administration and operation of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act. Our witnesses today are, from the Canadian Alliance of Students Associations, Mr. Rob South, and Mr. Michael Conlon from the Canadian Federation of Students. Good afternoon, and welcome to the committee. Please proceed.

Mr. Michael Conlon, Director of Research, Canadian Federation of Students: Honourable senators, on behalf of our over 450,000 members at 65 member campuses, I thank the Senate committee this afternoon for the opportunity to appear before you.

I would like to spend my time this afternoon providing the committee with a bit of background and some factual data about student loan repayment as it pertains to recent changes to the Bankruptcy and Insolvency Act. I will finish my remarks by commenting on some of the less calculable consequences of this act and some of what we have seen in our office in terms of the suffering this act is causing. As the staff person responsible for taking the calls from those individuals, I would be happy to take questions and offer testimony about particular cases that we have become aware of.

I hope my remarks will provide us with a useful base for discussion, and, as I shall repeat throughout, add a bit of data to a debate that has been marked more by rhetoric than good public policy, in our view.

To begin, I think it is important to remember the questionable pedigree of this law. As most of you know, the law had its genesis in Bill C-5, passed in April 1997. Despite a series of hearing in which various stakeholders, including ourselves and the chair of the National Bankruptcy and Insolvency Section of the Canadian Bar Association, warned against the idea of any prohibition whatsoever on bankruptcy, Bill C-5 was enacted with a two-year prohibition. The law took effect in September of 1997.

Then, less than six months later, in the education budget, the prohibition was raised from two to ten years. This sweeping change to the law was undertaken with no consultation or review of how the existing legislation was working. In a clear attempt to avoid, in our view, transparent debate on the law, the change was buried deep in the budget enabling legislation. Indeed, when we took to the Hill to lobby various ministers and members of Parliament about the nature of the changes, many of them were unaware that the change had taken place because it was buried deep in the legislation.

Indeed, the Standing Senate Committee on National Finance has expressed its lingering dissatisfaction with the process that culminated in these changes. Their 1998 report stated that the committee has already expressed its dissatisfaction with the process that culminated in Bill C-5 and looks forward to a much more open consultation process in general for future amendments to bankruptcy legislation.

Despite calls from the Senate committee and a unanimous motion from the HRDC standing committee, initiated by member of Parliament Libby Davies, the federal government to date, either through HRDC or Department of Finance, has produced no research justifying the leap from two to ten years.

Though no justification has been offered for the jump from two to ten years, two fairly clear messages have --

The Acting Chairman: I appreciate your attempt to move it along, but could you slow down just a little bit? The translator is having some problem. Thank you.

Mr. Conlon: Though no justification has been offered for the jump from two to ten years, two fairly clear messages have emerged from the federal government about the law. First, student loan defaults were out of control, and something needed to be done. Second, current student financial aid measures, such as interest relief and debt reduction, are so generous as to justify a ten-year prohibition on students loan bankruptcies.

On the first point, there is no doubt that throughout the 1990s students had a more difficult time repaying their loans. During this period, student debt went from an average of \$8,000 in 1990 to \$25,000 in 1998. Tuition fees rose by over 126 per cent during that same period, and, more importantly, or as importantly, non-repayable grants based on need were eliminated in most provinces. To take but one example, in Ontario, when the NDP eliminated its grants program in 1992-93, the average amount of loan that students borrowed on a yearly basis jumped in one year from \$3,200 to \$6,100.

The reality is that students were and are taking on huge debt to finance an education. In addition, as a needs-based system, those who borrow the most are those who come to the system with the least. If there is one thing that I would like to stress today, it is that point. Those students that we are seeing with \$50,000 and \$60,000 debt loads, unable to pay them back, are

those who come from the lowest socio-economic demographic to begin with, because the Canada Student Loan program is needs tested.

In the context of those realities, please consider the following figures. These figures all come from the final year in which student loans were still eligible for bankruptcy. Of just over 1 million loans and repayments, the number of consumer bankruptcies that year that included student loans was 10,296, barely 1 per cent of the loans in repayment. We know today that 94 per cent of the principal amount of student loans is repaid in full. Finally, the following income figures should give a clear sense of the socio-economic demographic of those victimized by this law. In 1996, the average gross household income of those declaring consumer bankruptcy was \$37,130. Of those declaring bankruptcy where the primary debt was student loans, the annual median income was \$14,211.

Those figures belie the claims of those in the Department of Finance and Human Resources Development who continue to claim, in an unhelpful and unsubstantiated way, that there were legions of wealthy former students abandoning the medical offices, law firms, dental offices and courtrooms of Canada to avail themselves of lax bankruptcy laws. This is simply not the case.

Again referring to the 1998 report of the Standing Senate Committee, there is an implicit suggestion that individuals are being manipulative, but there is little or no empirical evidence to substantiate this assumption. One possible effect of this change may be that individuals will be discouraged from using bankruptcy. However, the consequences of this will be that creditors will remain unpaid, and continuing problems of indebtedness, stress and other social problems will expand.

Five years later, I can testify to the prescience of this analysis. No data has ever been produced beyond uninformed rhetoric about widespread abuse, and the social suffering this law has caused continues to mount.

As the staff person charged with handling this file in our office, I get over 10 calls a week from former students in absolutely dire straits as a result of this law. Though we are talking about a fairly small number of individuals, it should be of a concern to this committee that almost every single last one of the cases that we vet are from our most desperate fellow citizens, those without the resources and capital to begin to even imagine life beyond the student debt.

One other brief point is that unlike the United States, the current bankruptcy legislation as it stands has absolutely no hardship provision whatsoever. Several of the individuals we have on file in our office have become permanently disabled in the period after leaving university studies, making it impossible for them to work. They remain to this day victims of harassment from credit agents asking them to repay student debt that is now in excess of over \$70,000 with interest.

I will skip my brief remarks on the current student financial assistance available to students and invite questions on that. The position of the Canadian Federation of Students is simply that though interest relief helps some students, the reality is that if a student loan is in default, a student is not eligible for any of the options that the federal government has laid out to assist students. In other words, if you cannot afford to pay the loan back, you are not eligible for those repayment programs that the federal government has in place.

To sum up, the Canadian Federation of Students is calling on the federal government to repeal this regressive legislation and enact concrete solutions to address the problem of student

debt. I want to be clear on this issue. Throughout the 1970s and 1980s, the issue of student debt and irresponsible students was not an issue that was on the public agenda, but it is almost as if some politicians have decided that you have, for whatever reason, a generation of students that came through in the 1990s somehow less responsible and diligent than their colleagues in the 1970s and 1980s. I would like to stress that what changed was not the diligence or responsibilities of the students involved but the upfront direct cost that students bear for their education and the massive student debt that those from lower socio-economic brackets incur as a result of pursuing their dream of post-secondary education.

Students who borrow under the CSOP do so to finance an education and expand their ability to productively participate in society. Canada has a proud history of using education as a means of expanding the quality of opportunity. However, I think this law is a threat to that record. That record is in jeopardy as many low-income Canadians are scared off by huge student debt loads and tuition fees for basic arts programs that now exceed \$5,000 in some provinces.

Bill C-36 as it now stands is yet another message for low-income Canadians. That message is, "Do not even think about going on to post-secondary education if you cannot afford the upfront costs. The consequences of borrowing and not being able to pay the loan back are too dire."

I do not think this is a message we should be sending to the people most in need of the social hope offered by post-secondary education. Simply put, borrowing from the Charter, it is the position of the Canadian Federation of Students that this law, this 10-year prohibition on student loan bankruptcies, has no place in a free and democratic society.

(1620 follows, Mr. Rob South, Government Relations Officer, Canadian Alliance of Students Associations: I would like to thank the chairman) DV May 14, 2003

Mr. Rob South, Government Relations Officer, Canadian Alliance of Students Associations: I would like to thank the chairman and the committee for their time today.

CASA advocates on behalf of 19 universities and college students unions from across Canada representing close to 300,000 students. Today, I want to bring attention to the concerns of many students and former students regarding the provisions in the Bankruptcy and Insolvency Act that deal with government student loans. As this committee has already heard in previous testimony, currently the act prevents individuals from discharging their student loan until 10 years after they have left school. Further, the committee heard from Industry Canada officials that:

There is a general consensus that the provisions of the act are too harsh with respect to students.

CASA is in full agreement with this statement and believes that the provision on students is poor public policy.

CASA generally considers evidence-based research to be a key element of good public policy. The current provision for students in the act was introduced with virtually no statistical backing. A mere 10 months after a provision was introduced in 1997 to make individuals unable to discharge their student loan debts until two years after leaving school, the provision was changed to 10 years. Clearly, this was not enough time to observe the effects of what introducing the two-year provision would be. Further, the introduction of the 10-year provision lacked any public consultation whatsoever.

The Government of Canada stated that the reason for the introduction of this 10-year rule was to help ensure the financial stability of the Canada Students Loan Program. Obviously, CASA shares with the government the desire to have a sustainable and effective student loan program.

The short lived two-year provision for students loan debts was introduced in light of the Canada Student Loans Programs annual losses from bankruptcies more than doubling between 1990-1991 and 1995-1996. This doubling suggested not only alarming increase in losses for the government, but also an alarming increase in the number of borrowers who have difficulty repaying their loans due to higher debt loads.

In 1998, the federal government took a number of positive steps to help students deal better with rising debt loads. These steps included introduction of the Millennium Scholarship Foundation to help lower student debt levels while in school. Canada study grants were introduced for needy students with dependents. Tax relief was provided on the interest portion of all student loan repayment. The Debt Reduction and Repayment Program was created and the amount of interest relief available for borrowers repaying their student loans was increased from 30 months to 54 months.

Interest relief basically gives borrowers below a certain income threshold respite from their loan payments. Though their principal will not go down while on interest relief no further debt will accumulate on their loans.

Most of the provisions in the 1998 budget were well thought out and have helped borrowers to varying degrees. However, their effects on reduction of the incidence of student loan bankruptcy are virtually immeasurable because of the 10-year provision being introduced.

Therefore, the Government of Canada cannot reasonably know whether there is a pressing financial need on the Canada Student Loan Program for the 10-year provision, or whether this provision is merely punishing a few individuals who fall into very unfortunate financial circumstances.

To try to balance the concerns of financial stability for the Canada Students Loan Program and the obvious desire of borrowers to be treated fairly and not be unnecessarily punished for very unfortunate financial circumstances, CASA proposes that the Bankruptcy and Insolvency Act allows individuals to discharge student loan debts through bankruptcy five years after leaving school.

This change would hopefully have three effects. First, it would allow the government of Canada to see the effect that the changes it instituted in the 1998 budget had on student loan bankruptcy. Second, it would not allow debts to be discharged until an individual had the opportunity to exhaust the interest relief measures made available from the government of Canada. Third, and most important, it would provide the right balance between the protection of the financial stability of the Canada Student Loans Program and the need to treat all individuals who fall into serious financial misfortune in a fair and compassionate manner.

CASA asks that the Standing Senate Committee on Banking, Trade and Commerce give serious consideration to this recommendation. This recommendation would bring about a more reasonable balance that would bring the Bankruptcy and Insolvency Act closer to achieving one of its major goals ensuring that consumers are treated fairly in insolvencies.

I am sure that you have noticed that this recommendation is similar to the recommendations to the committee from the Personal Insolvency Task Force and the recommendations found in the joint declaration from the Canadian Association of Insolvency and Restructuring Professionals and the Insolvency Institute of Canada. Stakeholders have reached a near consensus on this issue. CASA hopes the committee and the government of Canada will do so as well.

I would like to thank the committee for their time this afternoon. I welcome any questions.

The Acting Chairman: Could you tell your positions so that we understand the distinction between your two organizations.

Mr. South: Our position is that the 10-year provision saying that students cannot have their government students loan debts eliminated via declaration of bankruptcy until 10 years after they leave school should be reduced to five. The Canadian Federation of Students position is that there should be no distinct piece of legislation on this whatsoever.

Mr. Conlon: From our standpoint, the standing provisions in the bankruptcy law itself were sufficient. That is, when an individual presents himself to the court as bankrupt, they must substantiate their inability to pay their debt. We had confidence in the earlier process that judges would weed out those rare cases of individuals who could actually pay the debt but had made no effort to do so.

The law, as it is currently, is directed and affecting the most marginal people in society. Therefore, it should not exist.

The Acting Chairman: In your view, that there should be no special provisions for students in regard to student loans.

Mr. Conlon: Yes. It is our position that students should be treated under the law the same as every other citizen.

Mr. South: With regard to the differences between our positions, both organizations feel that though we have a policy that we believe is best, either one of these policies would be a vast improvement over the current state of affairs.

Mr. Conlon: That is fair to say.

Senator Kelleher: One or both of you have stated that the current legislation was introduced virtually without statistical basis. Since you have been living with it, have you any statistical basis to give us to show that the government was wrong in increasing the period to 10 years?

Mr. Conlon: There are two issues. We are dealing with both a statistical issue and a political or values issue. From a statistical standpoint, those Canadians who come from the highest quartile of income in Canada are twice as likely to attend a post-secondary institution as those from the bottom quartile. That gap continues to widen.

Tuition fees continue to increase. In most provinces, student financial assistance and non-repayable assistance either remains stagnant or has been eliminated. Therefore, you have increasing levels of debt.

The problem remains the same. If you come from a family that does not have the means to help you with your post-secondary education costs, you will be incurring a huge amount of debt to pursue that education. From our standpoint, the problem of student debt has either remained

the same or become worse since the law was introduced. That would argue that the federal government recognized that there was a problem with student debt but picked the most punitive solution to the problem.

(Take 1630 Follows -- Mr. Conlon continuing: In terms of statistical data...)

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(Take 1630 begins, Mr. Conlon continuing...to the problem)

In terms of statistical data, in our office, we have hundreds of testimonials from individuals. We weed the testimonials out carefully for people who have the means to pay the loan back, and those who do not do so in desperate circumstances. We would be happy to provide that database and contact information to the committee.

Senator Kelleher: That would be helpful.

Mr. South: I have something to add in terms of the difficulty as well. Appreciating the value of the statistical database that the Canadian Federation of Students has offered to put forward. There are many individuals in terms of actual declaration of bankruptcy who, because of the 10-year provision do not apply. They know what the law is, they see a professional financial advisor and they are simply consulted and told, "Do not bother. There is no hardship provision at all in this law. You have only been out of school two, four, six or eight years. You could declare bankruptcy but it would do absolutely nothing. There is nothing the courts could do."

I had the opportunity to attend one of the Industry Canada public consultations on the Bankruptcy Act that was held last summer as a leadup to this committee's work and I met with several bankruptcy professionals there. On a somewhat testimonial basis, they told me that they have had numerous people like this in their office and that is exactly their advice, that they do not recommend bothering to declare bankruptcy because the bankruptcy provisions cannot be helped.

Senator Kelleher: We have a number of witnesses who have not yet appeared, but we know what they will say. They appear to be favouring a five-year period as opposed to ten. I know one of you does not want any period and the other has indicated five years. Could you live with a five-year period?

Mr. Conlon: Mr. South and I have had discussions about this issue. From our standpoint, this is a principle issue. What has happened is that those honest but unfortunate debtors in student loans are being treated differently than their fellow citizens. On a principle basis, we find that difficult to accept and on principle would never accept it.

Having said that, as an individual, and I hope my sincerity is obvious, the individuals I deal with, and I want to reiterate, are the most desperate marginal citizens. I do not give the time of day to those people who call up who are obviously in a situation where they could have paid the loan back and did not and get documentation from people. The reality is that many of those people would be helped by a change from ten to five years. From that standpoint, we would see it as a useful step forward.

We would continue to push on the political side and would really ask this committee to look more broadly at access. I know your purview is fairly narrow, but the reality is that the problem is not irresponsible debtors and the answer is not punitive legislation.

If you want, as I think we do in Canada, a very large swath of participation rates across all socioeconomic brackets, you will need to do better public policy than prohibiting people from declaring bankruptcy. We continue to reiterate that, but going from ten to five, absolutely, we would see that as a useful step.

Mr. South: The position of the Canadian Alliance of Students Association is clear on this matter. I have nothing to add.

Senator Moore: Mr. South, you said that CASA represents 300,000 students on how many campuses?

Mr. South: Nineteen, including, of course, St. Mary's University in Halifax.

Senator Moore: Very good.

In the past, the level went up to ten years, now you want five years and, Mr. Conlon, you want nil. At the time that the period went up to 10 years, there was great concern that the program was in financial difficulty and there was a run on the abuse, perhaps and non-payment. If the period were reduced to five years, what do you think would be the situation; would it be another negative experience? Do you think that the students would respond responsibly, loans would be paid back and the system would be able to continue?

Mr. Conlon: The answer to that question is not super short, but I will do my best. We need to also put this law in the context of the bank's involvement in the Canada Student Loan Program. I remember sitting around a table with members of the chartered banks who were bragging about the fact that they had pushed the federal government into instituting this law.

As most of you will know, between 1995 and 2000, it was the banks' funds that funded the Canada Student Loan Program. Many of the headlines that were driving the agenda of this law as well as the implementation of credit checks were being driven by the chartered banks. Many people within HRDC were uncomfortable with that, because by creating a crisis about student loans, the banks were able to leverage public policy in a way to protect their investment which is, of course, what banks are charged to do. Many of the headlines were not borne out in the statistics in terms of default rates, for example. The default rates were greatly exaggerated at that time and it was a highly charged political environment.

My sense is that there will not be a huge run of students if the law was changed from ten years to five. However, as long as costs remain where they are, and as long as those from the bottom of the socio-economic ladder must be taking out loans of \$40,000, \$50,000 and \$60,000 -- and those are the people who take out those loans, there will be problem, whether it manifests itself in declaring bankruptcy or other repayment problems. There needs to be a holistic solution to the problem.

The quick answer is I do not think there will be a run of people declaring bankruptcy.

Mr. South: I agree with Mr. Conlon that I do not think there would be a run of people declaring bankruptcy. I will approach it from a slightly different perspective.

Looking at the logic of what was brought forward with the law, not necessarily agreeing with the logic, but even using its own logic, the argument was basically that former students would declare bankruptcy because the student loan debt being unlike other types of debt in that there were no capital assets, people could readily declare bankruptcy when they graduated because they had no capital assets and then eliminate a large portion of debt.

Is it reasonable to suggest that someone would put off earning money if they could and accumulating assets such as furniture, televisions, cars or houses, over a five-year period to discharge their student loan? Basically, we think not.

Senator Angus: Your positions are pretty clear, gentlemen. Mr. Conlon, in your case, you mentioned at the end that this repressive legislation should be repealed and concrete solutions to address the problem of student debt should be enacted. We have one side of the equation. What concrete solutions would you recommend to the committee?

Mr. Conlon: From our standpoint, the critical change that happened in the early 1990s in terms of public policy in postsecondary education was that, on the one hand, you had a massive rise in tuition fees, 126 per cent between 1990 and 1998, and I use that figure in the context of the law. At the same time, you had provincial governments, for political and fiscal reasons, eliminating non-repayable assistance in many cases.

British Columbia and Quebec are the only two provinces that still have a comprehensive system of grants. From our standpoint, the two basic solutions are a needs-tested system of national non-repayable grants, and the second is a national strategy on tuition fees.

As an organization, we live and breathe with the jurisdictional reality that provinces set tuition fee levels. Part of the problem has been federal underfunding through the CHST. We have been actively encouraging the federal government to find means to reinvest in this CHST. To be fair, the federal government has invested in research and at some level has done a good job in that. The bottom line is the basic issue of access for low-income Canadians.

From the Canadian Federation of Students standpoint, the federal government has done a very poor job over the last five years of addressing that challenge. The two issues are tuition fees and grants and that the federal government is in a position through the Canada Student Loan Program to increase the amount of assistance that is non-repayable.

(Take 1640 begins, new speaker, Senator Angus continuing: In your representations to the government...)

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(Take 1640 starts here, following Mr. Conlon: that is non-repayable)

Senator Angus: In your representations to the government, for which I commend you and both of your organizations -- I think this is the only way to advance the situation -- what has been the reaction? I was on the committee when we did this 10 years ago, and you have given a quotation of our particular finding or recommendation on this subject. We did not get anywhere. Have you picked up on it in your lobbying or representations, and what was the nature of the rebuff you received?

Mr. Conlon: Initially, when the law was first passed, we got a fairly grand Ottawa shuffle. When we went to Industry, they shrugged their shoulders and said HRDC controls the Canada Student Loan Program, talk to them. Speaking metaphorically, we trudged over to HRDC and they said, we agree with you, more or less, that this is a fairly punitive law, but this came from the Department of Finance, so go and talk to them.

As the world has evolved, it has become clear to us that is exactly what did happen. At the time, politically, it was not a hot-button issue for the Department of Industry, but it was one for the Department of Finance and it came from within the Department of Finance. There are some

people, not very many, who are very committed to the law in the Department of Finance. My sense is that we have made some progress in HRDC making the case that this law is having a very adverse effect on people that one ought not to have an adverse effect on if you are interested in progressive social policy.

Senator Angus: Mr. South, you were clear in pointing out you are happy with the five years. Why would you not want to go for the whole nine yards?

Mr. South: The basic position of our organization is because you can get interest relief on your government student loans for that full five-year period, that it may actually be in someone's disinterest to declare bankruptcy prior to the exhaustion of their interest relief. As I am sure the committee knows, the declaration of bankruptcy does horrible things to one's credit record and can severely hamper the ability to get future financial packages later in life. It is a real black mark or scarlet letter on their financial record and we do not want students to have to endure that. If they can get government protection for five years, where they have to make absolutely no payments -- if we can ensure that people who are in most dire financial circumstances have to make no payments, that works out fine for us.

Mr. Conlon: To clarify, it is only the interest through the Interest Relief Program that is paid. The individual, in many cases, still has to make payments on the principal. Depending on the individual circumstances, it is very rare that a person does not pay any principal.

Mr. South: If your income is low enough on the threshold that the government puts forth, you will not have to make any payment on interest or on principal.

Mr. Conlon: That would be in about the .8 percentile in Canadian income. The level at which that would occur is hovering around the poverty line.

Senator Angus: As a matter of logic, if we believe in the principle of a level playing field, why should students -- just because there was this run on the fund at one time through perhaps some bad apples, as the chairman suggested -- but basically one does not have to declare bankruptcy and one is free to enjoy the reliefs that exist for the five years or whatever period. I am having trouble understanding why we would have either -- if we are going have it and if it makes sense and government has a good reason, I would probably tend to go with the 10, but I am persuaded so far anyway that the thing makes no sense at all.

Mr. South: As I have mentioned before, we would be much happier with the position that the CFS is advocating than the current position of the government. As I have also indicated, our position is five years, for we see it provides the right balance between compassion for individuals in dire financial circumstances and the express desire of the government to try to keep the Canada Student Loan Program financially sustainable.

Senator Angus: Are you going into politics?

Senator Fitzpatrick: Let me commend you both on your presentations, I think you have done a very good job. I would be interested in knowing about the reasons -- if you have this information, and you may not -- for these dire financial circumstances. Do they come about primarily as a result of the student debt that students may have run up as a result of getting their education and then presumably they are not able to get a job that pays well enough to pay it off? Is that the primary reason?

I guess there is a question of how you deal with that situation. It might be a tendency to look at an easy way out and declare bankruptcy. It was not very long ago where declaring bankruptcy for an individual was really quite frowned upon -- and I guess maybe there is a test that individuals should have to meet. I can understand it more if there are other circumstances that cause dire financial situations, but if it is just a student loan that you have not been able to, or do not think you can pay off, maybe it is an easy way out.

Do you have any information with respect to why most of these bankruptcy declarations take place?

Mr. South: From the cases I have dealt with from students who have called our office, it is generally a combination of factors. One is the high debt load they have incurred while getting an education. The other is that while government and individuals invest in education because it basically translates into opportunity, unfortunately for everyone that opportunity does not always play out. Not everyone manages to fulfil the promise that education provides. In conjunction with this, it is often individuals that this circumstance has happened to on top of some other unfortunate factors in their lives. I believe, in Mr. Conlon's presentation, he mentioned physical disabilities, people becoming handicapped and not being able to work full time. There are other health factors that can come into play, such as life-threatening illnesses -- and not just necessarily for the individual. If you have a son, daughter, wife, husband, mother or father who has a terminal illness and needs constant care, you cannot often put in the amount of hours of work that you would need to be able to pay off loans of the magnitude that people are incurring. It is something that both Mr. Conlon and I believe that a compassionate society should be taking care of.

Mr. Conlon: I think it is important to remember that the people who are borrowing the most money are the people who are from the lowest socio-economic demographic; the statistics bear that out. In addition, you are also looking at individuals from previously marginalized communities, Aboriginal communities and other communities where people do not have the kind of social capital to draw on to get high-paying work. Again, that is borne out in the data in terms of the income jump between people who come from families earning under \$30,000. The apple does not fall that far from the tree -- it falls about \$12,000 from the tree in most scenarios.

The reality of the situation is that the student loan system is set up as a needs-based system, as it should be to confer the most on those who are the most in need. The Bankruptcy and Insolvency Act, as it is set up now -- I would assume, and hope, it was not set up to do so -- is having a prejudicial effect on those at the bottom end of society. As Mr. South has outlined, the law is absolutely merciless. Your personal circumstances are irrelevant to the law, whatever those circumstances may be.

(Take 1650 follows, Sen. Fitzpatrick: To follow up,)

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(Following take 1640: Mr. Conlon, circumstances may be. TAKE 1650 BEGINS HERE: Senator Fitzpatrick new speaker)

Senator Fitzpatrick: To follow up, there is no hardship test. If upon graduation you are suddenly disabled, then there is no relief in that regard. It seems to me that that would be pretty valid.

The Acting Chairman: Senator Fitzpatrick, if I could intervene here, that special relief in cases of hardship was in the recommendation of the personal insolvency task force.

Senator Fitzpatrick: That is what I was getting at. You have not made the case for that, and I wonder why not.

I take it you do not have the statistics of the number of persons who are declaring bankruptcy only because of their student loans.

Do you have any statistics on the average amount of these bankruptcy declarations? I do not know whether it is \$10,000 or \$40,000 or \$50,000.

I have to comment on what you said regarding the socio-economic circumstances of the students. I suppose that is a decision that you have to make at the time you apply for the loan. I do not see that you should bear any less responsibility because you come from a poorer family than someone else. I appreciate it is not fair if you come from circumstances in which no matter how much debt you run up someone will bail you out, but this is a decision you must make as students when you take the loan: Will I be able to finish my schooling and get a job and pay it back? I have some difficulty with that being the rationale that there should be some relief. Perhaps you can answer my questions and comment on that last remark.

Mr. Conlon: On the last remark, it goes to the issue of values. I think that with regard to the Canada student loan program, the legislation now somewhat contradicts the points you made. The Canada Student Loans Program as it was set up was designed to provide the same educational opportunities to all Canadians regardless of their socio-economic background.

When the law was instituted in 1964, it did not envision tuition fees at Dalhousie University next year for a four-year degree at \$5,000. We are not even talking about the \$22,000 a year tuition fees at University of Toronto. It really is a values question. It may not be a statistical question. Do we as a society only want the sons and daughters of lawyers becoming lawyers? I can tell you, at those tuition fees, with this regime of student debt, that is what will happen. All the statistical data suggests it will.

It is an issue of choice, but having said that, I would disagree with your conception of choice. Anatole France says that as a society we are all universally free to choose whether or not to sleep under a bridge. That is true, but in terms of choice, do we want a society in which people choose what is necessary for them or should they choose where their talents lead them? It is a values question. I am not sure I have a statistical answer that will satisfy it.

Mr. South: We would certainly support a hardship provision being added as well, so please consider that on the record.

I have actually requested from the Canada Student Loans Program the exact question that you asked on the average amount being lost per bankruptcy. I have not received that information. When I do, I will forward it to you.

On the third point, it is obviously a values question. Sometimes you can see fault in the value of legislation by looking at the broader value of the legislation that it is housed within. When you had officials here from Industry Canada testifying at the beginning of last week, one of the points that they made was that the Bankruptcy and Insolvency Act has to be not so punitive that it discourages individuals from taking risk in our society. We want individuals from all socio-economic backgrounds to get an education. We have broadly accepted as a

society that this is a good thing. If you do not have the financial resources, it means you have to borrow. That is a risk. The legislation in principle should not be too punitive to people who take risks. Ten years is definitely too punitive to people who take risks with their education.

(French follows by Senator Prud'homme: Je vais aller du côté)

LL/14-05-03

(après anglais)

Le sénateur Prud'homme: Je vais aller du côté pratique. Vous êtes deux représentants de groupes d'étudiants dont le nombre dépasse tout ce que j'ai connu lorsque j'étais étudiant. Il y aurait lieu pour vous deux de vous consulter à nouveau et de voir là où vous êtes vraiment d'accord. On sait qu'il y a actuellement une course très importante au leadership et, que pour les étudiants, c'est l'endroit rêvé pour aller faire des représentations.

Vous avez parlé que les finances étaient ce qui vous avaient créé le plus de problèmes. Le ministre des Finances pour les dix dernières années se prépare à devenir peut-être, vers le mois d'avril, comme je l'ai déjà dit, le premier ministre du Canada.

Quand j'étais étudiant, j'ai été chassé de toutes les universités, mais je l'ai terminé quand même. J'étais un organisateur étudiant. Les occasions rêvées pour les groupes d'étudiants, c'est à ce moment, non seulement de faire des représentations à M. Angus et les autres, c'est d'aller directement, en même temps que venir ici, mais ne pas sous-estimer votre pouvoir de persuasion dans toutes les universités où vous êtes organisés et où il y a des clubs politiques. Lorsque l'on veut être des activistes, il faut mettre de son côté toutes les possibilités de succès. Mon message est passé.

Lorsque vous faites vos représentations, voyez s'il y a entre vos deux grands organismes des points communs. J'aime beaucoup les lobbies s'ils sont d'accord avant de commencer. Ils doivent s'entendre pour empêcher que les gens se servent de leurs arguments.

Je vous souhaiterais de regarder à nouveau votre stratégie et de profiter des prochains mois pour faire des représentations très fortes auprès des candidats qui actuellement aspirent à vouloir diriger le pays. Car ils sont très sensibles. Comme disait Félix Leclerc : «la veille, ils vous appellent par votre prénom et le lendemain, ils ne se rappellent plus de votre nom». Si l'on peut vous être utile, dites-le-nous. Ce qui n'empêche pas que nous allons étudier votre dossier et je vous remercie de la sagesse de vos présentations.

(Le président: Thank you very much. We have gone over ...)

(anglais suit)

(Following French)

The Acting Chairman: Thank you very much. We have gone over our time, but it was because of the interest of the senators in your work. I thank you for appearing before us.

(Take 1700 follows: The Acting Chairman continuing: Honourable senators, we now have as our next witnesses)

DF May 14, 2003

(the Acting Chairman continuing)

Honourable senators, we now have as our next witnesses Mr. Steve Howard and Mr. Edward Rothberg from Advocis.

Welcome and please proceed, gentlemen.

Mr. Steve Howard, CA, President and Chief Executive Officer, Advocis: Honourable senators, it is our pleasure to meet with you today and assist in your review of the Bankruptcy and Insolvency Act from the perspective of the 17,000 financial advisers who are members of Advocis. I hope that you will have, or have had, an opportunity to consider the written submission that we provided to you last week.

Today, our perspective is limited to the proposals to extend creditor protection from registered pension plans to other registered retirement income plans, notably RRSPs but also registered retirement income funds and deferred profit-sharing plans.

starting point is the recommendations released last August by the Personal Insolvency Task Force, the PITF, convened by the Superintendent of Bankruptcy. When we last appeared before the Banking Committee of the Senate in 1995, we were the Life Underwriters' Association of Canada, an association of insurance agents only. I would like to begin by telling you something about the association today because the changes in the intervening years are relevant to your deliberations.

We changed our name from the Canadian Association of Insurance and Financial Advisers, or CAIFA, in 1998 to reflect our transition from an association of life insurance agents to multi-licensed practitioners or professional advisers. Approximately 70 percent of our members are licensed to sell mutual funds and other securities as well as life insurance. A significant number of our members specialize in pension benefits. This year, CAIFA merged operations with the Canadian Association of Financial Planners under the distinctive but product-neutral name Advocis.

As life insurance agents, our members are well-versed in the principles of creditor protection that apply to contracts of life insurance, including annuities and contracts registered as RRSPs. Among the approximately 10 million Canadians served by our members, a substantial portion are self-employed individuals, often professionals or the proprietors of small businesses who save for retirement through an RRSP rather than a registered pension plan. They now achieve the equivalent of a pension plan's exemption from execution or seizure by saving through an insurance RRSP.

Notwithstanding our members' established practice of providing creditor protection for retirement savings through insurance, our board did conclude, although at that time an insurance-focused organization, that all registered retirement income plans should enjoy creditor

protection. In our view, this is not a radical change. The Canadian Life and Health Insurance Association reported that at the end of 2001, accumulated RRSP assets totalled more than \$292 billion, and RRSP assets administered by life insurance constituted \$55 billion of that total.

Any self-employed professional, small business owner or, indeed, any employee without a pension plan can acquire creditor protection today. A financial adviser who does not recommend an insurance plan for a self-employed client who is vulnerable to economic reversals might arguably be negligent. I venture to surmise that a near majority of self-employed individuals who have accumulated substantial RRSP assets are in the insured group. The experience of that group is the laboratory for assertions that new anti-abuse provisions are necessary to extend creditor protection to unprotected RRSPs.



I would also mention the experience in Prince Edward Island, which extends creditor protection to all RRSPs, and Quebec, which has extended creditor protection to RRSPs administered by trust companies and caisses populaires.

What would be the consequences of extending creditor protection to non-insurance RRSPs? Probably nothing dramatic. The regrettable fact is that most Canadians fail to save sufficiently for retirement and fail to take advantage of existing tax-assisted opportunities to save. We are a nation of consumers. Your witnesses last week indicated that 75 to 80 per cent of consumer bankruptcies resulted from credit card debt and, of that, 90 per cent of personal bankruptcies qualify for summary administration of indebtedness of less than \$10,000. A recurrent observation is that most debtors will reduce their RRSPs rather than file for bankruptcy. One of your witnesses agreed that it is rare that there are significant amounts of RRSPs in a bankruptcy.

If extending creditor protection to RRSPs creates an incentive to save for retirement through a protected RRSP, that will be a good thing. It may accelerate the trend for employers to offer group RRSPs as a traditional pension plan. However, since creditor protection has long been available through insurance RRSPs, it is doubtful that extending creditor protection will by itself create a greater propensity for people who do not already do so to put money into a protected plan. The exception to this prediction may be money that is contributed through an employer-sponsored group RRSP as an alternative to a traditional plan.

Mr. Edward Rothberg, General Counsel, Advocis: I would like to continue by stating two broad propositions that we elaborate on in more detail in our submission. The first proposition is our preference to retain the existing principle in the Bankruptcy and Insolvency Act to defer to provincial law and protect the bankrupt's assets by referring to provincial exemptions from execution and seizure. I refer to section 67 of the Bankruptcy Act.

Prince Edward Island, Saskatchewan and Quebec now provide creditor protection for RRSPs in addition to insurance RRSPs. In Quebec, the protection is partial only to certain RRSPs. Alberta is reviewing options to extend creditor protection to all future income plans.

We are not aware of a pressing need for the Bankruptcy and Insolvency Act to overtake or displace this trend and create inconsistent federal and provincial schemes of creditor protection for RRSPs within a province. In short, we recommend that the Bankruptcy and Insolvency Act not be amended to provide for creditor protection for RRSPs. That should be a provincial matter.

The second proposition I put to you is that whether creditor protection for RRSPs is provided directly under the Bankruptcy and Insolvency Act or by reference to provincial exemptions, the

Personal Insolvency Task Force has not made the case for sweeping anti-abuse provisions that will reduce the level of protection that has long been available through insurance RRSPs.

(Take 1710 follows -- continuing with Mr. Rothberg -- That level of protection...)

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(Mr. Rothberg continuing... insurance RRSPs.)

That level of protection is well understood, predictable and accepted by lenders in their calculation of credit risk.

As some of your witnesses indicated last week -- and I am truly impressed by the ability to generate a transcript virtually overnight -- the personal insolvency system is fundamentally sound, notwithstanding anecdotal evidence to the contrary, where certain high-income earners have pursued an unaffordable lifestyle and then filed for bankruptcy to escape their debts.

Honourable senators heard from witnesses last week who observed that the bankruptcy system does seem to work on the whole for personal consumer bankruptcy.

In the absence of compelling evidence of pervasive abuse, we recommend case-by-case remedies over indiscriminate clawbacks of existing protection.

The Bankruptcy and Insolvency Act now contains a cure for abuses that may undermine the integrity of the bankruptcy provisions. This is a conditional discharge. I refer to the 1995 Saskatchewan ruling in *Norton, trustee of and Norton* in which the judge ordered the bankrupt to make payments from an otherwise exempt RRSP.

While we have heard that provincial statutes against fraudulent conveyances are ineffective to prevent misuse of creditor protection, we are also aware that trustees in bankruptcy are reviewing and challenging contributions or transfers to an exempt RRSP.

We hear that fraudulent conveyance legislation cannot reverse ordinary-course contributions to an RRSP. We reject the premise that an ordinary-course contribution that cannot be caught under fraudulent conveyance law is nevertheless fraudulent, even though a small business owner or even an ordinary consumer is indebted at the time.

We therefore reject the PITF's concept of a so-called irrebuttable presumption that any contribution made within three years preceding bankruptcy was made with an intention to defraud creditors and should have no protection.

The clawback of contributions over three years is crude palm tree justice, which is to say no justice at all for the great majority of individuals who have innocently saved for retirement in accordance with public policy by contributing to a tax-assisted retirement income plan.

We reject the PITF's proposal to impose a cap on protection over and above the contribution limits mandated under the Income Tax Act. These limits were devised to be actuarially equivalent to the limits for defined benefit pension plans in 1989. Equivalence was supposed to be phased in by 1995.

Pension plans are protected. Freezes on the contribution limits in the 1990s have preserved the shortfall of potential protection for RRSPs compared with defined benefit plans.

The PITF acknowledges that the dollar value of defined benefit plans which possess the additional economic of no downside risk can exceed the value of RRSPs. The defined benefit plans are protected.

The announced increase in RRSP contribution limits for 2005, that is to \$18,000, I believe, will finally catch up, more or less, to the defined benefit limits for 1989, but then the defined benefit limits will be bumped up and again leave RRSP limits behind.

We acknowledge that pension plans are, with some exceptions, locked in until retirement and that RRSPs are not.

We are unaware of widespread abuses where RRSP owners have invoked creditor protection for insurance plans. If circumstances suggest that a discharged bankrupt has orchestrated a strategic bankruptcy to defeat creditors, or will access an RRSP for immediate gratification rather than saving for retirement, a court may order a tailored conditional discharge.

Instead of the PITF recommendation that a financial institution lock in a bankrupt's RRSP until retirement as a condition for protection, we generally prefer the approach of the Uniform Law Conference of Canada last year and that is now in force as of March 2003 in Saskatchewan.

The Saskatchewan approach is to require de facto locking in RRSP assets as protected so long as they remain in the plan. Payments out of the plan may be garnisheed in the manner of an employee's wages. We would, however, prefer to see payments out of the RRSP enjoy similar protection to pension income.

We will be happy to answer any questions you may have.

Senator Oliver: I would think that it would be in the interest of Canadians to have protection for creditors that was the same from province to province. One of the ways to have it the same from province to province is if there were a federal statute that controlled and governed that, rather than have a series of provincial statutes that may or may not be different.

With that general comment in mind, what I heard you say today is that you would like to leave the Insolvency Act alone, make no amendments to it whatsoever, and leave it to provincial legislatures to deal with protection for RRSPs that are non-insurance.

Saskatchewan has adopted such a scheme as that. We are told that Quebec had such a scheme, but rejected it, at least in part. Can you tell us about what other provinces are doing? What is the status of all the other provinces? Is there any uniformity or are they all different?

Mr. Rothberg: I am familiar with Saskatchewan. I was under the impression, which may be mistaken, that Quebec extends creditor protection to RRSPs that are administered by provincially-chartered deposit-taking institutions such as trust companies and caisses populaires.

I know Alberta is now considering extending creditor protection to all retirement income plans. I have seen a draft report that the Alberta Law Reform Institute has approved. They are taking a somewhat different approach from Saskatchewan that is considerably more liberal, if I may so say. It does not even require the de facto locking in approach that Saskatchewan has adopted.

Senator Oliver: What are the Atlantic provinces doing?

Mr. Rothberg: I am not aware of what they are doing.

Senator Oliver: Would it not be better to have one national, federal scheme rather than a series of different provincial schemes for this kind of protection?

Mr. Rothberg: That would depend to the extent to which there is a problem out there with RRSPs being seized by trustees in bankruptcy. My response to that would be, yes, you are probably right; it would be preferable to have lateral uniformity as well as vertical uniformity between the province and the federal legislation.

Our real concern is what form that federal protection might take. Thus far, the proposals that we have seen recommended by the Personal Insolvency Task Force appear to us to have serious drawbacks and we prefer not to see those proposals adopted.

Senator Oliver: What are the principal drawbacks in regard to their proposal for the federal statute?

Mr. Rothberg: I find no justification for putting a cap on the limit of protection in an RRSP in addition to the implied protection that is mandated under the Income Tax Act.

They have a proposal that would, in effect, require calculation of the age of the RRSP annuitant at less than 21. In effect, they would strip protection from any growth income in the plan.

One of the first things that I did when I started working for my association when we were the Life Underwriters Association of Canada was to go through, beginning to end, the newly proclaimed pension tax regulations. This was truly a steep learning curve. I had no background in pensions. I had a reasonable background in taxation.

An exercise that occurred through the second half of the 1980s attempted to establish some form of equivalence between the ability to save for retirement with tax assistance through an RRSP and a pension plan. At one point, I had a working knowledge of the actuarial formula that attempted to establish this equivalence.

I remember that when there was a proposal to eliminate something called the PAR, whatever that was, \$600, that was a major step in the effort to establish actuarial equivalence between contributions to an RRSP going in and benefits going out.

I would like to think that that equivalence should be respected and that if the objective of extending protection to RRSPs is to establish equivalent protection that is available to pension plans, that it would be a marked reduction in equivalent protection if a cap on protected assets were imposed over and above the cap that is implied by the contribution limits.

(Take 1720 begins, Mr. Rothberg continuing: Another recommendation with which...)

DV May 14, 2003

(Mr. Rothberg continuing Following: contribution limits)

Another recommendation with which we take issue is the three-year claw back of contributions. I have had conversations with the author of the RRSP section of the Personal Insolvency Task Force report,

My background primarily is in the law of life insurance and creditor protection. A critical development was the decision of the Supreme Court of Canada in *Ramgotra* in 1996. That

decision resolved some uncertainty in the law of creditor protection for life insurance products, including life insurance RRSP.

Senator Oliver: What about the three-year claw back?

Mr. Rothberg: Bear with me, I will get to it. Mr. Justice Gonthier said that if you want to cure abuses of creditor protection for life insurance products, you should rely on the fraudulent conveyance legislation in the provinces. I fully expected that trustees in bankruptcy would take that seriously, and there would be a true renaissance of jurisprudence in fraudulent conveyance law.

This did not really seem to happen except in some dramatic and obvious cases where somebody transferred unprotected money from a RRSP to an insurance RRSP within 60 days before bankruptcy. That was a no-brainer.

I asked my colleague, Bob Klotz, why fraudulent conveyance jurisprudence had not developed. He said that it is difficult to prove intent to defraud creditors. He might be a little bit pessimistic about this one.

I was on the phone the other day with somebody who is not one of our members, a physician, who has come become aware of our association as source of reasonable information and financial services matters. He chatted with me about his circumstances. He is a physician. He has RRSP in the order of perhaps a quarter of a million dollars. He was telling me that indeed the trustee in bankruptcy was seeking a court order to impugn contributions that he had made when he transferred his RRSP from a non-insured to an insurance RRSP.

Notwithstanding the sense that fraudulent conveyance legislation is ineffective, I can think of one fairly ordinary situation in which the law is working as it should. The transfer from protected and unprotected assets is being challenged.

The premise of the three-year claw back is that we can never really tell what somebody was intending when they made their RRSP contributions within the period before bankruptcy. The PITF report notes that the notion of non-protection for anything that was contributed to a RRSP within three to four years before bankruptcy is a rough approximation and attempt to avoid the need to ask the determine the intention of the individual.

This is a critical question. Law exists to enable a court or trustee in bankruptcy to ask precisely that question. It is entirely unfair to the great majority of Canadians who routinely contribute to a RRSP to deny protection for those assets within three years of bankruptcy on the premise that they probably had in mind attempting to defraud a creditor.

I said as much to my colleague, Mr. Klotz. He rather surprised me. I thought that he would be thinking about somewhat striking or dramatic situations of the type where someone transfers money from an unprotected plan to a protected plan.

I am sorry that he is not here. I am speaking for him and this is hearsay.

In his view, the difficulty was in trying to impugn ordinary course contributions. In other words, the difficulty is impugning a situation where somebody routinely, not as an extraordinary gesture, but routinely contributes to a RRSP.

A typical situation would be putting in money at the end of the year. A person puts in money to the RRSP. This person is a small business owner who has a line of credit or is indebted. The

view underlying this notion of impugning denying credit protection to the three-year period was that someone should not be contributing to a RRSP if they had debts. They should be paying those debts. Speaking as someone who is heavily indebted around RRSP season thanks to end of year charitable donation, end of year Christmas gifts and end of year occasional trip to some place warm, I reject the notion that I should not be contributing to my RRSP if I have outstanding debts and that any contributions that I make over a three-year period preceding bankruptcy should be denied.

I could elaborate on that.

The Chairman: We better ensure everyone has an opportunity to ask questions before we go into a further elaboration.

Senator Moore: I want to follow up on Senator Oliver's comment. Mr. Rothberg, you say that the three-year period is objectionable. What if it were reduced to two years or one year? Would that help?

Mr. Rothberg: I am biting my tongue on this one. I was just at a meeting this morning. I mentioned to my colleague, Steve Howard, that I am burdened by history.

Before the *Ramgotra* decision in 1996, I think that most of our members were knowledgeable about the rules of creditor protection and life insurance in a bankruptcy situation. They would have referred to section 91 of the Bankruptcy and Insolvency Act. They would have cited the following proposition.

They would have paraphrased section 91, as it was then understood and before the Supreme Court changed our understanding of that section. They would have said that notwithstanding provincial creditor protection for life insurance, or other creditor protection or exemptions from execution or seizure, all contributions to an insurance RRSP or acquisition of an insurance product otherwise protected made within one year of bankruptcy is to void against the trustee. Contributions made within five years before bankruptcy are void against the trustee if made when the contributor to the RRSP, in the case of a RRSP, was insolvent.

That was a common misunderstanding. When I speak to some of our members, that remains their understanding.

Under those circumstances, little harm would be done if, through another mechanism, the one-year claw back was revived.

Senator Moore: You prefer that as the test period?

Mr. Rothberg: Yes, if there were a claw back. The information that I have been acquiring based to a large extent on the recent report of the PITF and the evidence given by witnesses last week, it is fairly rare for a RRSP to be the subject of a bankruptcy.

I see that repeatedly. To my surprise, in the great majority of bankruptcies, there is no RRSP or the stigma of bankruptcy is so overwhelming that if there had been an RRSP, the owner has depleted the RRSP. This was a surprise to me, but I have seen it several times.

Unfortunately, it is largely anecdotal evidence. If there is a problem out there, it might very well concern large RRSPs, not the kinds of RRSPs that the preceding witnesses were discussing or that I understand to be present in the great majority of bankruptcies. Those seem to involve indebtedness of less than \$10,000.

Where there are circumstances that the RRSP is substantial, there are existing mechanisms to have access to the assets and that RRSP without imposing an arbitrary claw back even of one year. However, if there is value deemed to be in a claw back, I think one year might be acceptable if only because there is an historical acceptance of that proposition.

(Take 1730 Follows - Senator Angus: Gentlemen, as a preliminary and to ...)

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(1730 -- following Mr. Rothberg after: of that proposition.)

Senator Angus: Gentlemen, as a preliminary and to ensure that I understand, you talked about insurance RRSPs and bank RRSPs. Could you walk me through the fundamentals of that?

Mr. Rothberg: Yes. Insurance legislation in all provinces provides for protection against exemption or seizure of the value in a life insurance contract. There is a fairly broad definition of "life insurance," which we all have a reasonable understanding of. Life insurance is intended to protect the widows and orphans in the event of death. However, the definition of "life insurance" also includes an annuity or undertaking to provide a annuity so that when we talk about an insurance RRSP, it really is an RRSP that has somewhere embedded in the contract, "is an undertaking to provide a annuity." It is an insurance RRSP. The protection derives from the --

Senator Angus: I do not want to interrupt you unduly but my understanding of an RRSP, in the usual sense, is that it can be self-administered or run by someone else and it needs to be registered. That is what the first "R" stands for so that the tax exemption is available during the building up or frittering away. Are you saying that, where a life insurance policy provides for certain annuities, these become transferred or transformed?

Mr. Rothberg: In all cases, the contract, no matter the form, is registered. In the same way that one can register a GIC, which becomes an RRSP, one can register a segregated fund or an individual variable insurance contract that becomes an RRSP. One can enter into a contract with a life insurance company for what functionally is an RRSP that includes an option to annuitize. That option will turn that product into a life insurance contract. Once that contract is a life insurance contract, the life insurance aspect of the RRSP will confer creditor protection. There was litigation in the courts leading up to the *Ramgotra* decision about whether insurance RRSPs were truly RRSPs or were they life insurance contracts? Especially in British Columbia, but also in Newfoundland, truly from sea unto sea, trustees in bankruptcy attacked the notion that a life insurance RRSP was indeed a life insurance contract. The courts have consistently, which is rare to find in the courts, upheld the character of these RRSPs as life insurance contracts, in effect, as both. The character protection comes from the life insurance aspect and not from the RRSP aspect. That is convenient and it is a benefit that is utilized, in my understanding, very often by professionals or small business owners or self-employed individuals who do not have access to a pension plan but who do have the advice of a life insurance agent, such as our members, who alert them to the possibility of achieving protected tax-assisted retirement savings through a life insurance RRSP.

Senator Angus: The others are the non-insurance RRSPs, such as the one with a bank or with a broker or a self-administered one that is registered with any of the above. Where does this insurance RRSP get registered?

Mr. Rothberg: In the same place.

Senator Angus: The member of your association comes to see me and convinces me of the prudence of investing in these instruments and so I write the cheque. It may seem elementary to you but where is it registered and with whom?

Mr. Rothberg: Where does it actually happen? It happens in the same place. The Canada Customs and Revenue Agency, CCRA, administers the registrations for income tax purposes.

Senator Angus: Are you limited to \$13,500 per year in terms of how much premium you can pay or is it totally different?

Mr. Rothberg: Everything is the same except that you are writing a cheque to ManuLife or to SunLife rather than to the Royal Bank of Canada or to TD Trust, as the case may be.

There has been discussion about extending protection to RRSPs from pension plans since at least 1998. That is when our association first began to think about the issues. An organization called the Uniform Life Conference of Canada was suggesting that it was time to extend protection to RRSPs. The concept is to extend protection, which is customary under pension plans, to the alternative retirement saving plan for the self-employed. The discussion always commences with the observation that there are two kinds of RRSPs -- protected and unprotected. An RRSP held with an insurance company is protected because, in effect, it shelters under the life insurance aspect of the product.

Senator Angus: We have a good sense of the difference now and I heard you earlier advocating that we should rely simply on the provincial legislation for the exemption and the uniformity. Is that right? Was that the thrust of the information?

Mr. Rothberg: That would be my preference. I prefer the provincial solutions that I am aware of to the proposed federal solution.

Senator Angus: Following that, my question is: Why should your members receive this special treatment while the consumers of the other RRSP products do not? It seems to me that if your recommendation were adopted, it would be a non-level playing field.

Mr. Rothberg: It would only be non-level until the provinces followed suit, such as Saskatchewan, possibly Alberta and Quebec to some extent and until they also extended creditor protection to all RRSPs, relying on their character as RRSPs and not on the incidental character as life insurance.

Senator Angus: When it comes to the dicey part of the argument, you call it life insurance.

Mr. Rothberg: When a life insurance company is at loggerheads with a trustee in bankruptcy on whether the product is protected, they will draw on what are now very well established principles that the thing is protected because it is a contract of life insurance because it is also an annuity. You have a string of conditions that result in protection for the insurance RRSP. The members of my association, acting through their board who deliberated the proposal to extend protection from the life insurance product to the all-purpose, general product, agreed that yes, it was the right thing to do.

Senator Angus: I can see that. It is a competitive business, as you know, selling RRSPs, especially during January and February. If you can get a leg up on the competition, why not do it?

Mr. Rothberg: The question is: Once you accept that protection should be extended from pension plans to all RRSPs, and not just to life insurance, then what conditions should be attached to the protection?

Senator Angus: That is correct.

Mr. Rothberg: Perhaps because we are familiar with what we are familiar with and we are resistant to change, we are very familiar with the protection that applies to RRSPs that also have this incidental character of life insurance. We would like to see the same kind of protection continue. We think that the proposals that the PITF has put forward -- the three-year claw back of contributions -- and the cap on protection over and above the contribution limits, which are part of the Income Tax Act, are not justified.

The Acting Chairman: Thank you, gentlemen.

(1740 follows -- The Acting Chairman continuing: We welcome to our table, ...)

DM May 14, 2003

(The Acting Chairman continuing -- your help a great deal.)

We welcome to our table, from the Consumers' Union, H el ene Talbot and Luc Rochefort. Welcome, and thank you for being here. Please proceed.

(French follows, Mr. Rochefort, UP, L'Union des consommateurs est un organisme)

Gs/14-05-03

(après anglais – Chairman – Please proceed.)

M. Luc Rochefort, analyste, Politiques et réglementation en matière de budget, de crédit et d'endettement, Union des consommateurs: L'Union des consommateurs est un organisme à but non lucratif qui regroupe 8 ACEF à travers le Québec ainsi que le regroupement des consommateurs d'assurance et des membres individuels. L'Union des consommateurs est issue de la fusion de la Fédération des associations coopératives d'économie familiale et d'Action réseau consommateur, regroupement qui existait respectivement depuis 1970 et 1978. Notre mission est de représenter et défendre les consommateurs en prenant en compte de façon particulière les intérêts des ménages à revenus modestes. Nos interventions s'articulent autour des valeurs chères à nos membres, la solidarité, l'équité et la justice sociale ainsi que l'amélioration des conditions de vie des consommateurs au plan économique, social, politique et environnemental.

L'expertise de nos ACEF membres se fonde sur une expérience de terrain depuis plus de 30 ans auprès des familles endettées. Par le biais de consultations budgétaires, les ACEF se sont penchés sur les problématiques liées au surendettement. Suite aux grandes révisions de la Loi sur la faillite du début des années 1990 et des retombées de cette loi sur les consommateurs, le moment était opportun de mener des études et d'évaluer ces modifications qui répondent aux besoins des consommateurs. Entre autres, l'étude sur la faillite de l'ACEF du nord de Montréal — dont nous avons déposé une copie — et l'étude sur la proposition aux consommateurs dont nous parlerons aujourd'hui.

Les objectifs principaux de notre recherche sont de connaître l'efficacité, de mesurer les tendances et les impacts de la proposition en évaluant ses limites et ses difficultés, d'identifier clairement les avantages et les désavantages pour les consommateurs à utiliser la proposition comme solution pour se sortir d'un endettement problématique et finalement, d'identifier comment elle est un moyen pour les débiteurs de reprendre le contrôle de leurs finances personnelles. Pour ce faire, nous avons fait appel à la firme de sondage CROP pour mettre en oeuvre le projet. Le sondage a été réalisé à partir d'une liste de nom provenant du BSF auprès de 59 personnes provenant du grand Toronto et du grand Montréal. L'étude nous permet d'amener les recommandations suivantes. D'abord, au niveau du rôle du surintendant des faillites, son devoir d'information. Il faudrait, selon les répondants, baliser les informations qui sont transmises par les syndicats aux débiteurs afin qu'ils sachent exactement à quoi s'en tenir. Comme l'a mentionné avec justesse un répondant, les personnes qui entrent dans le processus de la proposition devraient toutes recevoir les mêmes informations. Ainsi, nous recommandons que le surintendant émette des instructions claires auprès des syndicats pour uniformiser les informations à transmettre aux débiteurs lors des rencontres. Pour ce faire, les objectifs suivants devraient guider le BSF: s'assurer de l'application et de la compréhension d'abord des règles de la proposition en exposant les droits et obligations des syndicats et des débiteurs ainsi que les modalités d'application.

(M. Rochefort: Ensuite, d'identifier les coûts et les modalités de paiement...)

(français suit)

LL/14-05-03

(après français)(M. Rochefort)

Ensuite, d'identifier les coûts et les modalités de paiement, de spécifier les documents devant être remis aux débiteurs, de simplifier du même coup la terminologie utilisée pour la rendre accessible à tous et d'expliquer les caractéristiques et les limites de la proposition en la distinguant des autres solutions à l'endettement.

Nous recommandons également que le surintendant publie un guide pratique destiné aux débiteurs, les informant sur leurs responsabilités, les devoirs des syndic ainsi que sur le déroulement des modalités de la proposition. Ce guide pratique, complémentaire au guide existant, «Se sortir de l'endettement» devrait être obligatoirement distribué aux débiteurs. Il devrait contenir l'information éducative proposée lors de trois séances de crédit-conseil obligatoires.

Maintenant, au niveau du devoir de représentation du BSF. Considérant la méconnaissance de la population, des alternatives à la faillite et des ressources d'aide à la gestion des finances personnelles, nous recommandons que le BSF organise ou collabore à des campagnes de sensibilisation et d'information sur le crédit, le surendettement et leurs conséquences et que le BSF publicise les services de consultation budgétaire offerts par les organismes d'aide aux consommateurs compétents et reconnus en participant au développement de leurs mécanismes de financement afin de maintenir la gratuité des services.

Maintenant, au niveau du devoir de surveillance. Les débiteurs ont été confrontés à différents obstacles qui affectent grandement l'efficacité de la procédure. Que ce soit la durée de l'entente, les paiements mensuels, l'absence de suivi et les relations entre le syndic et le débiteur considérées comme le moteur de la réussite selon plusieurs répondants.

Nous recommandons que le BSF accentue son rôle de surveillance en établissant des règles de conduite pour les syndic, en assurant la formation et un encadrement adéquat des syndic dans l'application des procédures et enfin en assurant la mise sur pied de nouveaux outils.

Nous recommandons que le BSF procède à l'encadrement systématique des syndic par la mise sur pied d'un comité de déontologie qui devra avoir les objectifs suivants: de corriger les lacunes dans le processus de la proposition pour favoriser la réhabilitation des débiteurs en procédant à des vérifications régulières pour s'assurer que les débiteurs sont informés des différentes options leur permettant de résoudre leurs problèmes de surendettement en s'assurant que la formation et l'information prévues dans le cadre des séances de crédit-conseil ont été adéquatement offertes.

En sanctionnant les défaillances des syndic à l'égard des politiques déjà en place. En recevant et en traitant les plaintes. Des représentants des syndic, du BSF et des associations de consommateurs devraient siéger à ce comité. La mise sur pied de ce comité permettrait d'assurer la normalisation et l'harmonisation des procédures.

Enfin, le devoir d'évaluation et de suivi. Nous recommandons que le BSF procède à la conception d'une grille d'évaluation informatisée à des fins de recherche. Cette grille devra être remplie à la fin de la proposition en toute confidentialité par le débiteur. Nous estimons important que soient colligées les données suivantes : informations sur le répondant, la durée prévue de l'entente, les coûts facturés par le syndic, le montant mensuel à payer, le pourcentage de la dette à rembourser et les montants correspondants à chacun des créanciers et le taux de satisfaction des débiteurs face aux syndic.

L'ensemble de ces données permettrait au comité de corriger les lacunes et d'assurer un meilleur encadrement. Cette banque de données statistiques serait profitable au BSF par l'acquisition d'informations concrètes sur le déroulement des procédures et sur le travail des syndic. Elle serait profitable aux débiteurs en leur permettant de magasiner leur syndic.

En deuxième lieu, nous recommandons que des modifications législatives soient apportées dans les procédures de la proposition. Nous avons constaté que les répondants qui ont échoué la proposition évoquent plusieurs causes dont la maladie, la perte d'emploi, une séparation ou la durée de l'entente. Selon eux, il y a un manque de souplesse dans la procédure face aux changements de leurs situations. Nous recommandons que la durée de l'entente soit limitée à quatre ans, que la grille servant au calcul du revenu excédentaire soit assouplie afin d'assurer au débiteur une marge de manoeuvre.

Compte tenu que le refus d'une contre-offre entraîne pour le débiteur l'échec de la proposition, nous recommandons qu'une rencontre de médiation obligatoire soit imposée suite au refus de la contre-offre par les créanciers. Le syndic produirait un rapport au registraire dans le cadre d'une audition où le débiteur aurait la possibilité de défendre son offre. Le registraire aurait le pouvoir d'accepter ou de refuser l'offre.

En ce qui concerne les séances de crédit-conseil obligatoires. Considérant qu'aucune réglementation n'existe sur leur contenu et sur leur durée et que plusieurs syndic ont négligé de les offrir aux débiteurs et que les répondants ont clairement indiqué avoir manqué d'encadrement lors du déroulement et de la fermeture de l'entente, nous recommandons que des pénalités soient imposées aux syndic qui négligeraient les séances de crédit-conseil obligatoires. Les amendes perçues pourraient servir au développement des programmes d'éducation et au soutien de campagnes d'information ou au financement d'associations de consommateurs qui offrent actuellement des services un peu partout au Canada.

Nous recommandons que le contenu des séances soit uniformisé. Par ailleurs, les répondants ont constaté des lacunes au niveau des suivis post-propositions. Ainsi, nous recommandons au BSF d'obliger la tenue d'une troisième séance de crédit-conseil qui devrait se tenir lors de la fermeture du dossier. Celle-ci permettrait aux débiteurs d'effectuer un bilan du dossier et de tenir des informations supplémentaires sur le crédit, le budget en vue de leurs réhabilitations financières.

Nous recommandons qu'une obligation des divulgations des coûts soit imposée au syndic. Il faudrait concevoir un document explicatif et un état de compte qui fait état des coûts facturés par le syndic aux débiteurs, incluant les coûts d'ouverture du dossier, des montants versés et des modalités de paiement, du montant global à rembourser ainsi que la part de chacun des créanciers en dollars et en pourcentage et du terme de l'entente en nombre de mois et de paiements.

Par ailleurs, dans les cas d'échec où le débiteur est dans l'obligation de déclarer faillite, nous recommandons qu'aucun frais ne soit chargé aux fins d'ouverture de dossier lors de la faillite. Ainsi, le débiteur n'aurait pas à payer pour un dédoublement de service.

En conclusion, nous estimons essentiel que l'étude se poursuive et que les données soient colligées de façon plus systématique. C'est pourquoi nous recommandons la création et la mise en place d'une banque de données. Il nous apparaît important d'utiliser le contenu de la recherche, notamment en ce qui a trait à la durée de l'entente, le pourcentage payé, le revenu

excédentaire et le paiement mensuel pour des fins statistiques. Nous recommandons aussi que la grille servant à déterminer le revenu excédentaire soit revue et corrigée pour tenir compte du coût réel de la vie et ce, en laissant une certaine marge de manœuvre aux débiteurs pour les imprévus.

Le but premier de nos recommandations est la satisfaction et le respect des droits des débiteurs. Nous croyons que la grille sur le taux de satisfaction des débiteurs permettra d'évaluer le travail des syndic partout au Canada et de corriger les lacunes du processus. Cette grille fournirait ainsi un portrait en constante évolution de la réalité des débiteurs et des syndic. Il est nécessaire d'ajouter pour conclure que nos recommandations suivent une logique séquentielle. Les mises en oeuvre de certaines recommandations devraient s'effectuer par le biais de consultations avec des organismes d'aide à travers le Canada.

Le sénateur Angus: Monsieur Rochefort, je trouve que votre mémoire et vos recommandations ont beaucoup de bon sens malgré la vitesse avec laquelle vous les avez exprimés. D'après vous, actuellement, y a-t-il un code de déontologie?

Mme Hélène Talbot, conseillère budgétaire, Association canadienne d'études fiscales du Nord de Montréal, Union des consommateurs: Je ne sais pas s'il y a déjà un tel code mais je sais qu'il y a des directives de la part du surintendant des faillites qui devraient être respectées. Il y a une certaine surveillance de sa part. Ce que l'on voudrait, c'est comme dans plusieurs autres professions, que ce soit les huissiers, les médecins, qu'il y ait un comité de déontologie où différents acteurs de la société peuvent s'asseoir et regarder les problèmes.

Comme on le dit dans l'étude, on vient représenter les consommateurs. On aimerait donc avoir un comité de déontologie où il y aurait des représentants de consommateurs.

Par le biais de mon travail comme conseillère budgétaire dans une ACEF locale, à Montréal, il nous arrive assez fréquemment d'avoir des plaintes, des gens qui ont déclaré faillite ou qui ont fait une proposition. On les réfère à la direction des faillites, c'est-à-dire aux séquestres officiels. Cela arrive que les gens nous rappellent et ils sont plus ou moins satisfaits des réponses qu'ils reçoivent des séquestres officiels.

(M. Angus : Dans la loi actuelle, ...)

(français suit)

CA/14-05-03

(après français)

Le sénateur Angus: Dans la loi actuelle, à l'article 34, il est prévu qu'il y a un code de déontologie pour les syndic. Le syndic se conforme à des normes élevées de déontologie, lesquelles sont d'une importance primordiale pour le maintien de la confiance du public dans la mise en application de la loi.

Je comprends que vous voulez avoir une conformité des normes de comportement d'éthique par les syndic. C'est pourquoi j'ai posé la question. Dans votre mémoire, je n'ai pas lu des exemples d'abus.

Prétendez-vous que le système actuel ne fonctionne pas bien au Québec?

Mme Talbot: Dans le passé, l'ACEF du Nord a intenté un recours collectif contre des redresseurs financiers qui travaillaient avec certains syndic. Cela a pris plusieurs années avant que nous soyons entendus auprès de la direction des faillites.

Le sénateur Angus: D'après vous, c'est vrai?

Mme Talbot: Les gens ont eu des difficultés dans le passé.

Le sénateur Angus: Je trouve que vos recommandations ont du sens. Mais pourquoi ajouter un autre code?

Mme Talbot: On ne parle pas du code, mais d'un comité de surveillance pour assurer une bonne application.

Le sénateur Angus: Par exemple, les huissiers ou les avocats ont un code de déontologie ou le code des professions du Québec. Il y a un syndic pour le Barreau. Peut-être qu'il y a une surveillance générale au niveau du gouvernement. Vous voulez une surveillance par le bureau du surintendant?

Mme Talbot: Il y a déjà une surveillance qui se fait par le bureau du surintendant. Je faisais allusion à un comité où serait regroupé des représentants des syndic, des représentants du bureau du BSF et des représentants des associations de consommateurs à travers le Canada où on pourrait recevoir les plaintes, les écouter, les traiter et faire des recommandations ou avoir un certain pouvoir pour les traiter.

Le sénateur Angus: J'ai une autre question concernant les frais d'une proposition en échec. Reste-il de l'argent à la fin de ce processus?

Mme Talbot: Je ne suis pas certaine de comprendre votre question. Vous mentionnez que les gens doivent déclarer faillite par la suite?

Le sénateur Angus: Si la proposition ne fonctionne pas, vous voulez que les fonds déposés pour la proposition soient utilisés après la faillite, mais il ne restera plus d'argent.

Mme Talbot: Nous parlons de l'ouverture du dossier. Dans l'étude qui a été menée, certaines personnes ont dû, suite à l'échec de la proposition pour différentes raisons, déclarer faillite. Ces personnes étaient surprises de constater qu'elles devaient payer un autre montant pour l'ouverture du dossier chez le même syndic. Elles avaient déjà un dossier d'ouvert, mais elles devaient quand même payer des frais supplémentaires. Au Québec, ces frais supplémentaires s'élèvent à 200 \$ ou 300 \$.

Si une proposition échoue, nous pensons que la somme qui a été déboursée pour l'ouverture de la proposition du consommateur devrait quand même servir à payer l'ouverture du dossier pour déclarer faillite.

Le sénateur Angus: Il ne s'agit pas de l'argent déposé avant?

Mme Talbot: Cela concerne l'ouverture du dossier.

M. Rochefort: Il ne faut pas oublier que les faillis sont en grande difficulté financière.

Le sénateur Angus: Serait-il préférable que les syndic poussent les personnes vers la faillite au lieu de faire un succès de la proposition?

Mme Talbot: Je ne crois pas. Depuis 1995 ou 1996 — je ne me souviens pas de l'année précise — la directive disait qu'une personne ayant un revenu excédentaire devrait faire une proposition.

Le sénateur Angus: Vous n'avez donc pas de plainte à porter contre les syndicats?

Mme Talbot: Le problème est au niveau de la loi. Par exemple, si quelqu'un perd son emploi et voudrait continuer la proposition mais ne peut plus faire ses paiements parce que ses revenus ont diminué de façon substantielle, cette personne n'aura plus la possibilité de continuer à la payer. On devrait pouvoir élargir la proposition pour cette personne en lui suggérant de continuer la proposition tout en faisant de moins gros paiements. Cela s'appliquerait pour des raisons valables.

Une proposition peut durer pendant cinq ans. Beaucoup de choses peuvent arriver en cinq ans, soit une perte d'emploi, la perte d'un conjoint, un début de maladie. Les personnes sont déjà dans le processus de payer leur proposition, mais s'il leur arrive une chose imprévue dans leur vie, la proposition tombe parce qu'elles n'ont plus la capacité de faire les paiements. On veut que ces personnes puissent poursuivre la proposition, mais selon une révision des paiements.

Le sénateur Angus: Vous étiez tous les deux présents lorsque les étudiants ont témoigné au sujet du déchargement?

M. Rochefort: Nous sommes arrivés à la fin de leur témoignage. On n'a pas eu la chance d'écouter leur propos.

Le sénateur Angus: Êtes-vous au courant de la question du terme de dix ans vis-à-vis celui de cinq ans? Que pensez-vous de cela? D'après moi, les étudiants actuels ou les étudiants qui ont fini leurs études sont des consommateurs avec de faibles revenus.

Mme Talbot: J'ai siégé sur le groupe de travail pour l'insolvabilité. Une de nos recommandations était de diminuer le terme de dix ans. On voulait remettre le terme à zéro comme avant parce qu'on juge qu'il y a discrimination.

Les gens qui terminent leurs études et qui n'ont pas d'emploi ou qui travaillent au salaire minimum sont incapables de rembourser leur dette. Ce n'est pas parce qu'ils ne veulent pas payer leur dette, mais plutôt parce qu'ils n'ont pas la capacité financière de rembourser leur prêt étudiant.

Le sénateur Angus: Merci.

Mme Talbot: Une des recommandations de l'ACEF, à l'époque, était de mettre cela à zéro. (Le président suppléant: Thank you very much. You have brought a different...)
(anglais suit)

DC May 14, 2003

(Following French)

The Acting Chairman: Thank you very much. You have brought a different and valuable insight to our study. I also thank Senator Angus for helping to bring out some of the essential highlights. That has been helpful to us. There being no other questions of you, thank you again.

(Take 1810 begins, the Acting Chairman continuing: Honourable senators, I would like to welcome...)

DM May 14, 2003

(Acting Chairman continuing ... I thank you again.)

Honourable senators, I welcome, from Omega One, Mr. Bob Gilmour and Mr. John Owen. Please proceed, gentlemen.

Mr. John D. Owen, Principal, Omega One: Mr. Chairman and honourable senators, Omega One Limited is a creditors agent specializing in providing support services to institutional lenders regarding their activities within the area of consumer insolvency. We believe ourselves to be the biggest, single, volume filer of claims in Canada. We file, in the aggregate, over 4,000 proof of claim documents each month.

The president of the company, that is me, has served *pro bono* as a member of the Personal Insolvency Task Force established by the Superintendent of Bankruptcy in late 2000. This was under the magnificent chairmanship of Mr. Goldstein who I understand has been nominated to be your legal adviser. Frankly, Mr. Chairman, if all your decisions follow that same quality, I do not think you will go far wrong.

Our brief to your committee is the product of a collaboration with the three major retail stores in Canada that offer direct credit facilities to their customers. I am joined today by Mr. Bob Gilmour, who is a senior credit manager with Sears. The other co-conspirators are from Canadian Tire and Hudson's Bay Company.

During the course of our involvement with the PITF, we studied numerous papers and documents from Canadian and foreign sources. We have interviewed insolvency experts from several commonwealth and American jurisdictions, as well as the Scandinavian countries. This experience, coupled with our pre-existing knowledge, has convinced us that the Canadian Bankruptcy and Insolvency Act is the finest piece of insolvency legislation in the world today. Although there is no doubt that some improvements can be made, the main structure of our program is the envy of the world. The American bankruptcy code is centred on the court and fosters an adversarial outcome. The Australian and New Zealand regimes rely on public service officials to deliver cumbersome programs that are beset by hidden taxpayer costs.

Some academic commentators have warned that our private trustee system is flawed by forcing what they call a conflict-of-interest environment. In our view, the tension between the separate needs of an insolvent debtor and an optimistic creditor cannot ever be completely reconciled and must therefore be managed by an independent arbitrator. The professional trustee in the Canadian system provides this arbitration more fairly and cost effectively than any other model. In our view, the Canadian trustees operate in a convergence of interest atmosphere rather than a conflict of interest.

It is notable that the first Canadian Bankruptcy Act in 1920 was largely the result of influence from credit industry professionals who were concerned about the social cost to Canadian families who had to flee the country in order to escape the consequences of unmanageable debt. It is to those individuals that we owe the concept of a discharge in Canadian insolvency legislation.

Over the last 80 years, we have added features like rehabilitation, restructuring with consumer proposals and counselling. Credit industry managers have been at the forefront of all these developments. They remain committed to the maintenance of an equitable, predictable and transparent system that demands honesty from its beneficiaries and integrity from its practitioners and creditors.

Moving now to some of our recommendations, for reasons that are more fully explained in the body of this submission that we previously supplied to the committee, we urge the committee to extend the period of bankruptcy to a minimum of 15 months for all bankrupts and for a period of 21 months for individuals who are able to make a contribution to their estates. We strongly recommend legislative attention to the growing misuse of the insolvency system by individuals who set out to take full advantage of a planned bankruptcy by obtaining property and cash soon before their assignment date.

We endorse the PITF report in most of its findings, especially the two creditor-friendly recommendations which are to allow discharge oppositions by affidavit and for mandatory payments for 21 months for those bankrupts with surplus income.

As a member of the PITF, we have supported the findings contained in its final report. Naturally, however, as with a report of any large and diverse committee, there are items that we would add to or subtract from the emphasis. We have, in the material supplied to you, made 10 specific recommendations. I should like to focus on them in priority order so that if I run out of time I will not be too badly handicapped.

The first one that I would like to address is titled number 10 on page 11 of the material that we supplied, and it is non-dischargeable credit card purchases.

An increasing concern among credit card issuers is the problem of customers who apparently have formed an intention to become bankrupt and who use their cards to the maximum allowed just before going to see a trustee. We regularly see over 100 cases each week where this has occurred. In a recent case, we noted a department store customer who had used her credit card on the same day as the date of her assignment. We checked the time stamp on the sales bill at 11:20 a.m., and then asked the trustee for the time of her appointment with him. "She was supposed to be here at noon, but she called to say she would be a few minutes late, and she arrived at 12:30." No doubt with some bags under her arm.

The U.S. code is undergoing a similar review, and it is expected that an amendment will appear in their legislation to provide for the non-discharge of luxury items acquired within 90 days prior to bankruptcy. There is a difference of opinion as to the threshold dollar value of the purchases that would trigger the presumption. In the U.S. house version, purchases exceeding \$250 within a 90-day period would trigger the presumption, while in the U.S. Senate version, this amount is \$750. We recommend a similar provision to be made in the Canadian act.

(1820 follows, Mr. Owen continuing, The second recommendation ...)

DF May 14, 2003

(take 1820 -- continuing with Mr. Owen)

The second recommendation that I would like to discuss is number 8 on page 10, which is the automatic discharge eligibility at nine months for regular bankrupts without surplus income. The PITF report recommends the status quo in this area. We believe that it is an area needing some attention.

Since 1992, first-time bankrupts can usually expect to be discharged after only nine months. Most creditors would say that this is too short a period and, perhaps surprisingly, many trustees agree. In our view, a 15-month minimum bankruptcy period should be adopted if, for no other reason -- and there are many others -- than to extend the discharge period beyond the 12-month income tax cycle. We believe that the only reliable way for a trustee to be able to verify a bankrupt's income is if the trustee files, or at least monitors, the bankrupt's tax return for the full period of bankruptcy. Under a nine-month bankruptcy this can easily be overlooked. Bankrupts are, of course, obliged to disclose their income to their trustee. However, it is perceived that some bankrupts forget to mention a secondary income source which would become apparent from the CCRA assessment.

We believe that some well-informed individuals file their tax return as early as they can. Then, after they receive any refund due, they see a trustee and file as a bankrupt. If they can do this in March, their discharge will be received before it is time to file the next tax return. Because of cute timing, neither tax refund cheque gets captured by the trustee. To add salt, the bankrupt can ask his employer to increase his CCRA deductions so that the second refund will be higher, and his required contributions to the bankruptcy, which are geared to net income, will be lowered.

As noted in the PITF report, all other countries with a bankruptcy discharge mechanism, except for one U.S. program, have a longer bankruptcy period than Canada. Those jurisdictions that are considering changes appear to be leaning toward lengthening their bankruptcy period rather than shortening it. I believe Mr. Mayrand mentioned this when he was testifying the other day that the Australian period has been increased from one year to three years. Of course, the one year is already longer than ours.

I would like to deal now with the issue of mandatory payments for 21 months for those with surplus income. This is identified as number 4 on page 9 of your hymn sheet. Bankrupts who fall into this proposed category, which are estimated at 15 per cent, are individuals who could have made a consumer proposal and chose bankruptcy instead. It is likely that a conditional discharge would be awarded to any creditor who could justify the expense of seeking such an order. It is fundamental that bankrupts with the means to make a reasonable contribution to their creditors be required to do so.



Consumers who feel a need to obtain a new car or some other desirable item are quite prepared to commit to credit contracts lasting 36 or 48 months. We think it is not unreasonable to expect bankrupts who want a discharge to make geared-to-income payments for 21 months.

The next item, number 3 on page 9 of the material that we supplied, relates to voluntary agreements to make post-discharge payments. We believe that any agreement between the trustee and the bankrupt for the payment of scale fees and estate expenses should be deemed a non-dischargeable debt. This is the very first commitment that the bankrupt will have made to follow bankruptcy. It is part of a rehabilitation process that the bankrupt should be expected to

keep promises made in good faith. If the former bankrupt is allowed, and indeed encouraged, to default on the very first contract he makes following bankruptcy, then the rehabilitation effort is severely compromised.

Our fifth recommendation is identified as number 2 on page 8 of our material and has to do with reaffirmation of discharged debts. In our view, the PITF recommendation is unnecessary. In our experience, there are very few attempts by arm's-length creditors to obtain payment for an unsecured debt that was previously discharged by bankruptcy. Certain American-based creditors may engage in this practice following U.S. rules, but it is rare and it will continue even if it is banned in Canada. This is because the credit collector, who is based in Saint Louis, has no knowledge of Canadian legislation.

Current legislation in Canada prohibits any person from trying to obtain money by deception or fraud. In our experience, this practice, while very rare, is usually generated by a customer request. An example in our recollection concerned a businessman who needed a credit card for business-related hotel stays and car rentals. As a self-employed discharged bankrupt, he was unable to obtain a new card. He contacted one of his former creditors and said, "Look, I was always a good customer of yours, and then I got caught up in some personal guarantees and director liability for a company run by a relative. I had to go bankrupt, but I never intended for my own creditors to lose. Can I pay you what I owe and will you reopen my credit card account?" Canadian credit providers will usually accept gratuitous repayment for previously discharged debts, but the offer must come from the customer and there must be no coercion.

I would like to move now to the question of optional federal exemptions, which has been discussed earlier in this meeting. This is identified as number 1 on page 8 of the material we supplied. We recommend against the setting up of a parallel system of personal exemptions. It will add complexity for little apparent benefit. Debtors resident in provinces with lower exemptions will likely adopt the proposed federal exemptions as a routine choice. The federal scale will become the de facto scale for those provinces. Residents of provinces with generous exemptions will ignore the proposed federal schema. There will remain unequal protection across Canada. By attempting, and failing, to provide a level playing field across the country, the proponents of this suggestion would create irregularities for property rights within some provinces. A debtor's property should not be more or less protected dependent upon whether it was under threat of seizure from a provincial court judgment or a federally administered bankruptcy.

The seventh recommendation is identified as number 5 on page 9 of the material we supplied and deals with credit reporting. We fully agree that consumer proposal debtors should be accorded consumer credit reports that are less derogatory than those for bankrupt consumers. We think this is self-evident and in the creditors' best interests as well. We cannot understand why a non-controversial suggestion affecting only two or three credit reporting agencies needs legislation.

The eighth recommendation, which is number 6 on page 9 of the material we supplied, deals with opposition by affidavit. This recommendation came from the Personal Insolvency Task Force and we support it. Procedures should accompany this legislation to provide that creditors requesting court intervention with attendant costs should remit their opposition and court fee to the trustee. It is the trustee who will have to request the court date and convey the estate file to the registrar. Court costs, presumably limited to the \$50 filing fee, will usually be taxed against

the estate fund so that the trustee will have to refund this amount to the successful opposing creditor. The court charge should not be applicable if there is to be a discharge hearing for other reasons, for example, a second-time bankrupt or opposition by the trustee.

Currently, creditors are discouraged from opposing bankrupts' discharge due to the distance from a centrally located place of business and because the benefit from a successful application has to be shared reasonably amongst all creditors and the trustee.

Our ninth recommendation, number 7 on page 10 of the material we supplied, deals with proof of claim documents following a failed consumer proposal. We support this recommendation.

(take 1830 follows -- continuing with Mr. Owen -- Creditors still, however, should be provided notice...)

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(Mr. Owen continuing - Following: this recommendation)

Creditors should, however, still be provided notice that a consumer proposal has failed, converted to a bankruptcy and that existing consumer proposals claims will be deemed as proved. Creditors should be obligated to file a revised claim in cases where a payment or partial payment may have been collected from a non-bankrupt co-borrower. In other words, the amount of the claim may not necessarily be the same in the subsequent proposal as it was in the failed proposal.

Another recommendation deals with a separate insolvency process for judgment-proof debtors. This is identified as number 9 on page 11 of the material we supplied. This particular recommendation is not, quite frankly, in the interests of my clients or the creditors generally. The recommendation flows from a challenge that was issued to the Personal Insolvency Task Force to attempt to find a way in which the system could be made somewhat simpler for simple bankruptcies and for the program to be made more accessible to those who are identified as debtors with no assets and no significant income.

At the outset of the PITF sessions we tried to consider program simplification from the point of view of what minimum elements are truly necessary for the various stakeholders in a "no asset no income" or NANI, bankruptcy. By definition, these individuals will not be required to contribute towards their bankruptcy beyond paying trustee fees and estate expenses.

In our submission, NANI bankrupts need a stay of proceedings to stop the pressing collection demands. They do not need a discharge, because they are already judgment proof. Our proposal is to provide a program giving a NANI debtor a stay of proceedings for six years. This is consistent with most provinces' general limitations period.

During the "stay" period, they would be obligated to report any material improvement in income or windfall assets, and convert their program to a regular bankruptcy. At any time during this period, the debtor could, at his option, convert to a regular bankruptcy if he felt a need for a discharge. Also, during this period, creditors could report any undisclosed assets or income and request conversion.

Critics of this proposal suggest that six years is too long a period and that it contradicts the concept of a fresh start. If a fresh start implies an ability to once again open credit accounts, the dissent is a non-issue. NANI consumers are, by definition, without any means to service new

debt payments. Further, there is a competing concept of providing a safe haven for NANI consumers.

Mr. Chairman, I am sure I have gone beyond the allocated time. That is the end of our submission. We are available to answer any questions.

The Deputy Chairman: Thank you very much for the completeness, clarity and organization of your report. It is very helpful.

Senator Angus: I want to congratulate both of you gentlemen. Obviously, the work you have done in terms of the task force and the presentation is exactly what was contemplated when they stipulated a review for the legislation that is on the books at this time. I was very happy to hear you say that your exhaustive studies and research indicated that it is not too bad and that is certainly not broke. The suggestions you are making seem to be very constructive.

I have to ask you about Omega-One. I understand that three big retailers are involved. Are they the members of Omega-One? What is Omega-One?

Mr. Owen: We are a creditors' agent, and we provide services. I would like to say that we are a collection agency, but we are not. We do not collect outstanding receivables. We provide support services dealing with consumer insolvency and do the things the creditor would do if they did not think we were smarter and better able to do it.

Senator Angus: You have clients?

Mr. Owen: Yes.

Senator Angus: Those three big retailers -- Sears, Canadian Tire and The Bay -- are not your only clients?

Mr. Owen: Not our only clients, nor are all of those existing clients in terms of currently doing work for them.

Senator Angus: Mr. Gilmour, you are from Sears.

Mr. Bob Gilmour, Manager, Asset Recovery, Sears Canada Inc., Omega One: We do not use the services of Omega-One. It was more a fact that because of some of the submissions that were being made and the changes being suggested made, we felt that we should have Omega-One, which is very in-depth in the bankruptcy proceedings, to represent the three of us and put this submission to this group.

Senator Angus: When you say "I am the principal", are you the sole shareholder of Omega-One?

Mr. Owen: I have a wife, and she would dispute that.

Senator Angus: I do not see it listed on the TSX.

Mr. Owen: We are not that big.

Senator Angus: You would have thousands of clients. I was quite taken with your 4,000 proofs of claim in a month. That made me think of a question that is totally irrelevant for this hearing, but I will ask it anyway. Have you detected an increase recently in the kind of claims and insolvencies?

Mr. Owen: We have seen increases in a variety of different ways. We have seen an absolute increase in the number of files that we are processing, but this is largely because we have convinced additional clients to allow us to work for them. In addition to that, we found that the size of the claim, the average balance of the accounts in the retail environment has increased fairly substantially.

I do not know whether Mr. Gilmour would comment on that as well. We think that average balance of claims is increasing quite substantially.

Mr. Gilmour: We have seen that over the last couple of years that the average bankruptcy is definitely going up.

Senator Angus: I do not want to speak for the other members of this committee, but I have developed a sense sitting on this committee for the last 10 years that our bankruptcy and insolvency legislation is enlightened. We are quite proud of the input that we had into it when the act was being finalized. We did recommend some amendments, as I think you may be aware.

However, I have the sense that it is too easy to go bankrupt, and there are many abuses. That could be folklore, but you heard the last two witnesses from the Consumers' Association. There are innuendoes.

We are not legislating at the moment, we are reviewing, and we will give a report. I at least am very interested in knowing in the state of play. You mentioned, as did someone else, the terrible stigma that did about bankruptcy. We were all bought up to neither a borrower nor a lender be. The worst thing was to go into bankruptcy. Now, people wonder why one would even think that that is unusual. I have a problem with that.

Mr. Owen: There is abuse, yes. We tend to focus on the abuse because, after all, that is why our clients are paying us. We try to ameliorate some of the problems that they are finding. We certainly do focus on the abuse and are more conscious of it than they are of all the other hundreds or thousands of people who are not using the system in an abusive way.

(Take 1840 Follows - Mr. Owen continuing: I provide a seminar to my...)

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(1840 -- Mr. Owen continuing after: ...an abusive way.)

** I provide a seminar to my clients in which we have come to the conclusion that probably 85 per cent of the people who declare consumer bankruptcy are perfectly legitimate and are using the system in a legitimate way for legitimate reasons. They are fine. There is probably another 10 per cent who are gamblers of one kind or another, which could include stock gambling. A few years ago, when the house market was high, people would buy, knowing that in six months they would earn \$100,000 in appreciation. Suddenly, it all stopped and they were stuck with a leaky apartment in Vancouver. There are people who gamble in different ways.

The gambling that exists in the casinos is a terrific problem. Roughly 10 per cent of people are what we call "gamblers." There is another perhaps 5 per cent that I would call "credit criminals" that we focus on. Yes, there is abuse and we are most strongly proposing, suggesting and advocating is dealing with one of the abusive elements -- those people who know they are going bankrupt and max out their credit cards before they see their trustee. There are people who, quite frankly, do that very deliberately and knowingly, and they do it maliciously. We want to

stop that. Apparently, the Americans have the same idea and if the Americans do it, it must be good, right?

Senator Angus: Is there a high degree of recidivism? In other words, we are talking mainly about personal bankruptcy or about small business bankruptcy.

Mr. Owen: We are talking only about personal.

Senator Angus: Do some people have multiple -- three, four or five -- personal bankruptcies on their records?

Mr. Owen: If you mean by "recidivism" people who go bankrupt a second and a third time, the superintendent keeps good statistics on this. I believe that they will tell you that in the general population, the rate of bankruptcy is about 2.5 to 3 per thousand. The rate of repeat bankruptcies, that is to say, of the number out of every 100 that you have today, how many have been bankrupt before, is up to 9 or 10. I was absolutely awful at arithmetic and math but people tell me that that is a 40-fold increase in risk. That is an absolute disaster. No one seems to be too concerned about it but I think it is shocking.

Senator Angus: Is there a way to deal with it?

Mr. Owen: It has been dealt with in the legislation and you may suggest that it is not dealt with satisfactorily. It was dealt with by not providing people who have been bankrupt once before the automatic discharge but rather they have to go before a court and obtain a court-approved discharge.

Senator Angus: Is that like a probationary period?

Mr. Owen: It is the discretion of the court; it could be an absolute discharge or a conditional discharge or it could be a suspension.

Senator Angus: Thank you for your good work.

The Acting Chairman: I have a question and hopefully an answer can be provided. In the claims that are dealt with in the process, what percentage would be principal and what would be accumulated interest on that debt?

Mr. Owen: I am sorry but I could not provide any help in that at all. I do not even know how I would arrive such a figure. I do not even have the mechanism.

The Acting Chairman: From your experience, do you have a sense that you end up with core amounts of principal? In how many cases would there be core debt but the real problem would be the interest on that core debt. I am thinking of credit card debt and its high cost. How much of the problem is interest gone rampant on what began as a relatively manageable problem?

Mr. Gilmour: I cannot give you the numbers, of course, in that category. We are seeing, more and more, excellent customers who paid off their balance at the end of the month but suddenly a huge amount of shopping would be done. Suddenly, from a credit granter's point of view, we cannot see it coming. There are other things happening in that person's life causing them to load the card up. In terms of how much is interest, I cannot give the total and whether it is contributing to it.

As John indicated, probably 85 per cent of the people who file, are doing the appropriate thing. They are being upfront and that is how the Bankruptcy Act is supposed to handle it. Again, it is the other 5 per cent or 8 per cent, maybe even 10 per cent, who do the heavy shopping on a card that may have had a zero balance and who had an excellent credit history, that are cause for concern.

Senator Moore: With respect to the credit reporting recommendation, Mr. Owen, you say that consumer proposal debtors should be accorded consumer credit reports that are less derogatory than those for bankrupt consumers. We think this is self-evident in the creditor's best interest as well. We cannot understand why a non-controversial suggestion affecting only two or three credit reporting agencies needs legislation.

In the absence of legislation, has an attempt been made by your company, or by another similar company, to persuade these two or three credit agencies to change that part of their reporting system?

Mr. Owen: I have had conversations with people at Equifax, Transunion and another regional company in Quebec. I get the sense that they feel the same way. There seems to be a blockage of sorts in the system somewhere. My suggestion is that someone in the bureaucracy rather than in the legislature should be picking up a phone to say let us get together and sort something out. It is not controversial and it does not affect anyone badly. There is no one to take the fall on it.

Senator Moore: It is unfair to the debtor who is making an effort.

Mr. Owen: Yes, it is, but everyone agrees that a proposal debtor should have a less derogatory credit report than a bankrupt. Indeed, the way in which the credit reporting codes work, a bankrupt has an R9, which is very bad, and a consumer proposal debtor has an R7, which is not quite as bad. On the face of it, that provides the solution to the problem. The difficulty, though, appears to lie in the duration of those derogatory codes remaining on the person's credit file. Do you begin to count from the time of discharge or completion, whether a proposal or a bankruptcy, or from the date of assignment? How long do you count for, recognizing that this starting point may not be consistent?

Senator Moore: How long do the ratings stay in place?

Mr. Owen: Apparently, they are governed by provincial consumer reporting acts, where they exist. Typically, they are six years but I am not certain.

(1850 follows -- The Acting Chairman: I have no indication of any further...)

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(Take 1850 begins, following Mr. Owen...very sure.)

The Acting Chairman: I have no indication of any further questions, so I thank you very much for being with us and I appreciate that it has been a long day, but you have been very helpful.

Honourable senators, our next witness is Mr. Paul Stehelin, from in Saint John, New Brunswick. Thank you for being here with us, please proceed.

Mr. Paul A. Stehelin, Trustee in Bankruptcy, A.C. Poirier & Associates: Honourable senators, the last time I was in this this room I was grilled very unkindly with respect to a

transaction called Terminal 1, Terminal 2. I hope today will be less grueling than that session that lasted for some six hours.

The Acting Chairman: I can assure you of that, Mr. Stehelin.

Mr. Stehelin: I have provided a handout. I will ask you to please accept it; it is not the fanciest one in the world.

Thank you for giving us an opportunity to speak. We do not plan to take a significant amount of your time. I have been involved in this business since 1970. I was a member of the PITF and I have had a licence since 1973. My primary practice area has been in the commercial insolvency area, corporate restructuring. If you look at my resumé, it certainly has not been in the personal bankruptcy business. After I retired as president with Deloitte & Touche and ended up in Atlantic Canada, which is where I was born, I got into the personal bankruptcy business with my wife and that is the A.C. Poirier on the card. Ms. Doucet, who is appearing with me, is an undischarged bankrupt. You have a real live bankrupt with you today, she has been permitted to come here by her trustee who has kindly paid her fare.

I thought it would be useful, though, on this topic that you hear from someone firsthand what we are talking about when it comes to student loans.

I am going to let Ms. Doucet give her own dissertation, but I would like to make a few comments. The report that was tabled by the Personal Insolvency Task Force clearly outlines the situation with respect to student loans.

There are really two issues. First, the term of forgiveness, how long does it take for it to enter the normal bankruptcy forgiveness process; and, second, there is no relief valve. Where you have extraordinary circumstances, the court has no jurisdiction to try to provide relief. The two issues are the time span and the provision for relief in extraordinary circumstances.

The amendments that were made in about 1998 to bring the threshold to that 10-year threshold were made in total isolation. There was no consultation with the profession or the associations. Suddenly, everyone was faced with a 10-year rule.

I would like to make a brief comment on the availability of credit. Credit is available to students in high school. It is there. It is readily available. Students, including students in high school, are sought out by card companies and some of the financial institutions to get them on credit. That is a truism.

Attached to my presentation, on a handwritten form, is information about someone who walked into my office. I see everyone at least three times. This person walked in yesterday. I thought it was timely. The little handwritten document you have attached, please read it at your leisure. This woman is 32 years old. We are not talking a problem that is solely associated with very young people. This point was made in the Insolvency Institute's presentation that said this student loan thing is not just an issue for the 21-year old who is looking to a bright, cheery future. Many people are going back to school in the hope of bettering themselves and they are not young people. I give that to you because it is another example.

The numbers that I have seen, and the things you read, tend to say that the consumer debt and consumer credit is growing at about a 7 or 8 per cent compounded annual rate. That is not something I wish to get into tonight. However, clearly if that figure continues to compound and we see the kinds of increases in real disposable income we have seen over the last eight or nine

years, there is a point at which I do not know how you continue to service that kind of increase in debt. You cannot do it unless your income goes up.

I have another true example in the documents. I know that it is often difficult to have hard facts, but this is a good example. This woman is 77 years old. She has CPP and OAS. She is a magic, what I call the \$1,081-a-month person. This person is 77 years old. Her husband died approximately 10 years ago. Her net income a month is \$1,081. She walked in. I said, "How much money do you owe?" She said, "\$76,000." I literally laughed. I should not have. She was a very nice lady and looked at me and did not understand why I was laughing. I said, "Let me understand this, you have \$1,081 in income and you owe \$76,000 on credit cards. How many cards?" Four. I said, "How did you get that much credit? I would like to know. It sounds wonerful." She said, "It was very simple, every time I could not make a payment, they upped my credit limit. I went and got the cash, made the payment and away I went." She said it took her literally 10 years to get there, but everyone knew what her income and debt load was. The point I am making is that where there is debt, credit is readily accessible.

As you will see from Ms. Doucet's debts, and we will talk about that later, the argument is often made by HRDC. They have actually made it in writing, that their debt is different, because it is made on an unsecured basis, without collateral. That is the phrase they have used and continue to use. It is also different because it is made in the expectation of future earnings.

These students loans are different than all other debt because there is no collateral, and they are made in the expectation of future earnings. That statement is very misleading. Virtually all the debt in a consumer bankruptcy, and that is really what we are talking about here, because it is an asset test to be a consumer bankruptcy, virtually all is unsecured debt; it is Sears, credit cards, lines of credit, that sort of debt.

You can argue that all debt, on an unsecured basis is made in the expectation of future income.

(Take 1900 begins, Mr. Stehelin continuing: If there is no collateral...)

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(Following take 1850: Mr. Stehelin continuing)

If there is no collateral, the only way you can pay it back is out of future earnings.

There is really no difference between student loan debt from a secured or unsecured or expectation-of-future-earnings point of view than there is from all of the other debt in consumer bankruptcies.

Most of the students that I have seen receive a student loan that only pays the tuition and books, and they live on credit, which pays for groceries and all the rest of it. Both debts are unsecured and there is no difference between them.

From my experience of over 30 years in the corporate side, I can say that virtually all debt made by government agencies is on an unsecured basis. Perhaps it is a bad example to use with you, but ACOA lends millions and millions of dollars, all on an unsecured basis, and all of it is lent on the expectation of future income. There is no difference. I fail to see why we somehow single out this and say it is different from the rest.

As we move to what I call a for-profit education system, which is not the topic I am here to talk about, clearly the cost of education is increasing drastically. We are not just talking about university education, but training as well: truck drivers, hairdressers, nursing assistants, all those things. That cost is going up. What we are now seeing is the tip of the iceberg. This problem will just get bigger and bigger as the debt load increases, which it will, unless something changes, and I do not see that change happening in the foreseeable future.

Thousands of individuals are assuming debt to gain what is in some cases a questionable diploma. All of them are doing it in the expectation of bettering themselves and getting a better job. In a number of cases, the jobs never materialize. The meltdown in the high-tech industry is a classic example. All the people who came out in 1999, 2000, 2001, 2002 are having a hard time finding a job. That is what happens. However, they did not go in there with the expectation they would not get a job.

There are two issues. One is the duration, whether 10 years, two years, five years, of the debt being forgiven by the process. The other is a relief valve.

The purpose of the Bankruptcy Act, which I think is the right purpose, is to rehabilitate the honest but the unfortunate debtor. John made a comment that 85 per cent of the people who go bankrupt do so for reasons beyond their control. The role of the courts is to ensure that the act works, and that it works fairly and equitably for all the players.

I am a firm believer that the government should legislate, bureaucrats should help that process, and the courts should interpret the law, not a quasi-judicial bureaucratic kind of process. I spent most of my career in this city. I have lived in Ottawa for 45 years. I have seen many bureaucratic tribunals. They do not work very well. In my opinion, I would far have my day before a court and a judge than some tribunal. I just do not believe in them. To me, they are not an appropriate way to deal with the interpretation of statutes.

I highly recommend a book to you called *The Vanishing Middle Class*. It is a study of U.S. bankruptcy, but we are not much different generally in all these things. It was determined that in excess of 70 per cent of the people who went bankrupt in that study was for one of three reasons. One of the workers had either been laid off or downsized; there were two family incomes and one worker was either downsized or laid off. All the numbers we see -- there was an article in the *National Post* today -- refers to family income. Creditors lend to a family income. However, what happens when a half or a third of the family income disappears? They are insolvent, which is a fact of life. With downsizing, rightsizing and whatever, much of that happens, and it is still going on. There is illness, of either one or both spouses, or of a child, where one of the spouses has to give up his or her occupation. What we are talking about is loss of income causing the insolvency.

The last thing is family breakup, divorce or separation, where they have been living on two incomes in one house and now they have to live in two incomes in two houses.

Students who cannot get a certain level of employment and income will never be able to repay their debts. They are no different from persons who lose their job or get ill. If they cannot get the work or the level of income, they will not be able to repay the debt. In Viola's case, to service the interest on her debt, she needed \$1,675 roughly a month. That is just to pay the interest.

Before I turn this over to Viola, I really believe that the recommendation of five years and a relief valve through the courts for extraordinary circumstances is vital. I do not want to be the trustee who is dealing with a suicide. I have already had two. That is the truth. I have had two where they just gave up, parked their car in the woods and plugged it into the car and they are dead. That is the kind of pressure this brings to bear on people.

Viola will tell her story. She is an undischarged bankrupt. We and the registrar have kept her in bankruptcy for three years. You might ask, why would we do that? It is because it seemed like not a bad idea if we were going to have some changes maybe and there was hope, but more important, it kept the credit collectors from her door. Believe me, when people are discharged and the credit collectors start to come after them, Viola can talk to that. When she filed, her debts with \$134,000. Of that amount, only \$13,000 was a secured debt. It was a car loan. Of the balance of \$121,000, \$45,000 is the balance of her guaranteed student loans; i.e, the ones that are not forgiven by this process.

Ms. Viola Doucet, as an Individual: First, thank you very much for giving me this opportunity to say a few words in regard to the government student loans, other loans and bankruptcy.

There are two points I would like to get across today. The first is how easy it was for me to get into so much debt. The second is that there is no way out for me but to be discharged from these loans.

I went to university with the intention of having a career in the medical field. After my health science diploma, I got accepted into medical school in Sherbrooke, Quebec. Like the other years, I had my government student loans, but when I got there, other students told me that a lot of banks were giving out special lines of credit for medical students. There was also a representative from a branch that came to speak to the class, explaining to us the special privilege we had and how it worked. I was not worried about paying it back since I was to become a doctor. I was determined to become one. That was my only goal. I loved working with people, and I had very good grades and the ability to do it. There was a guaranteed position for me when I was done with my studies and the salary was, of course, very good.

I could not survive with just my government student loans and I could not get any help from my parents like other students. When I started medical school, my parents and family were on social assistance. When my father was working, he never made much more than \$15,000 a year to provide for a family of five. My mother was a housewife, so no income was coming in from her.

All I had to do was to make an appointment with the bank, prove to them I was in medical school, and answer a few questions -- for example, what I already had in debt and what my parents' salary was -- and I got my line of credit with a credit card. It was as easy as that. Most of the people in the class had a line of credit. I was no different from the others. Some did not need as much as others because of where they were from and the help they got from their parents, but I was 1,000 kilometres from home with no help whatsoever from my parents. They could barely put food on the table for the ones who were left at home.

I went on with my studies. However, after three years of ups and downs, I realized that medicine was not for me. I had to make a decision. It was really hard.

(Take 1910 follows: Ms. Doucet continuing: What made it so difficult were)

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(Take 1910 starts here, Ms. Doucet continuing -- really hard)

What made it so difficult were all the debts that I had accumulated over my six years of university. With all of that education, I did not have a degree. I would not be able to find a job with the salary needed to pay the loans.

I had the potential to become a doctor, but it was not for me because it was making me sick emotionally and physically. I went to see a lot of people for advice to make the best decision possible. I spoke with my parents, old friends, friends I had met in med school, a career counsellor, the priest in my parish, even doctors that I was with for practicums. After debating very hard, I finally decided that my health was more important than a big career and money. I decided not to become a doctor. I was then left with a huge debt and the problem of how I was going to pay for it.

That brings me to the second point I would like to make, of how there is no way out for me at this moment. I applied for the good paying jobs so that I could pay off the loans, but I did not have the qualifications needed. I was lucky enough to find a job as a receptionist at the hospital in Moncton because of my background in medicine. However, the salary was obviously not enough to cover the payments for the different loans. I started at \$9 an hour as a casual employee. I now clear \$755 per two weeks, which does not even add up to \$20,000 a year. I was also getting calls from credit agencies asking me for money which I did not have. It got very stressful to the point where I was 24 years old going to bed with chest pains.

I could get the interest exemption on my government student loans but I still had the lines of credit and credit cards, which added up to a total of around \$55,000. That is the number I wrote down but figures that Mr. Stehelin gave are more accurate. I went to see the credit counselling services, but they could not help me. They referred me to a trustee in bankruptcy. I went for a second opinion, which was Mr. Stehelin here with me today, and he only saw the option of bankruptcy also.

Of course, there was a problem with my government student loans. I would not be discharged from these with a bankruptcy; and as soon as I declared bankruptcy, I was not allowed to get the interest exemption. Therefore, the loan would only get bigger and bigger. I was only making enough money to pay for the basics in life, so I could not put anything on the student loans. Because of that, I am still bankrupt after three years. Also, I could only be discharged from these after leaving post-secondary education for 10 years. However, because of the lines of credit, I had no choice but to declare bankruptcy. It was just too much.

Let us say I would have decided to study in a different field and try to make a better life for myself. Realistically, it would not have been possible. First, my financial situation would not permit it. If I could only pay for the basics, I would not be able to pay for tuition and books. How can a person concentrate on studying when they have all of this on their shoulders?

Second, the interest is accumulating more and more over the years, which is making the loan even bigger and making it much more impossible to pay, therefore putting me deeper in the hole.

Third, my 10-year period would have been postponed to the end of those studies that I would have decided to take, making it longer for the interest to be added on and again, making the loan bigger.

After saying all of this, you can see that I had no other choice. If I wanted to live a half decent life, I had to declare bankruptcy and stay bankrupt. There was no way I could rehabilitate myself. The situation is still the same for me right now with the job I have. Even with the bankruptcy, I still had calls, people hounding me for money. I have been threatened once that I would never be able to own anything in my life, so there have been points where I felt basically that my life was over. The dreams of a simple beautiful life seemed gone.

I went to university to better my life and to make a difference in other people's lives by becoming a doctor. I honestly had every intention of doing that; but, unfortunately, it was not for me. I am not the only one in this situation. There are thousands of other people in a similar situation.

We need a way out, and to wait 10 years is not reasonable. Our lives are on hold. That is why we are here today, to support the change for five years; and also to give a chance for a few exceptions to present themselves in front of a judge to be discharged even earlier; because no matter how long they wait, their situation will not get any better.

In spite of my financial situation, I can say I am happy and well adjusted. I have a good job. I will never make a million doing what I do, but I am happy. As you can see, I would like to have the chance to start over and move on with my life.

That is my story.

The Deputy Chairman: Thank you very much. This is a rare moment for us in this room because we have come to grips with the reality of things that are all too often too easy for us to think of as an arms-length piece of legislation.

You present a powerful message to us, as does Mr. Stehelin. I thank you for making this possible.

The point of the term of the five years and everything is graphically clear. We have been through that before your arrival, and I do not think we can add too much to that. I would like to ask you, aside from that issue and without reference to any particular legislative provision, is there something in your story that is within the power of us as legislators -- or just as Canadians interested in people, particular young people -- is there something that happened to you along the way that if you said, if this were different or that were different, my life might not have taken this turn? I say that congratulating you as I do for the tremendous courage and focus and realism and obvious quality with which you have managed your life. Is there something that is wrong in our system, something that if it had not been that way then it might not have turned out this way?

Ms. Doucet: I am not sure how to answer that question. I know, in my particular situation, I loved working with people and the grades were there. I had the possibility and I went for it. As you can see, I grew up very poor. As a young child, my father and mother told me you have got the possibilities, go for it. I had the support. I was never put in the corner and felt I had to do that, but I knew I had the opportunity.

Now, I am a little bit wiser, of course. Knowing what I know now, I would not have gone into med school; I would have gone into administration. However, it is not something you can know at that moment. You try; you go for it and do your best. Unfortunately, medicine was not for me. Therefore, I am left with the situation that I am in at the moment.

Many young people do just that. They go to school to better their lives, find a good job and earn a good living, find a partner and have kids.

(Take 1920 follows, Ms. Doucet continuing -- Many people end up)

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(Ms. Doucet continuing -- find a partner and have kids.)

*** Many people end up, after college or university, finding that jobs are not there for them. In my situation, that is what happened. I cannot speak for other people, but I know that for many of them, that is what happens. They get out of it without their job to pay for the loans, unfortunately.

Senator Moore: Thank you, witnesses, for being here. At the bottom of page 7 of your presentation, you itemize Viola's situation. The rest were all unsecured debts. Of a total of approximately \$121,000, 45 were guaranteed student loans, and the balance was lines of credit and unsecured debt as advanced by various lenders. How was Viola granted that credit? Was it strictly on the basis of hoped-for income by virtue of graduating from medical school? I do not know how many different lenders are involved here, but how was it that they all kept lending without some indication of payback, knowing what this young lady's situation was? She was in school and had limited opportunity to make money when in school. How does this happen? Is there no responsibility on behalf of the lenders to really assess the situation and decide if the money can be paid back, or is this just a huge burden but we do not care because the person has a long life and we will get it out of them sooner or later? How does this happen?

Mr. Stehelin: I have asked that question many times. Let me give you perhaps what is the unpolitically correct answer, which I have been known to give on occasion.

All of the financial institutions in this country have programs that are specifically targeted at students. They call them a student line of credit. They go after the students who are enrolled in what they consider to be the professional schools, the high-income earners.

Senator Moore: Potentially.

Mr. Stehelin: We can simplistically say the average income of a physician in this country is \$175,000. They are now in the second year of their program. It is done gradually. The further the person gets along, the more they shovel out at them. It is like my example of the 77-year-old lady. Why would you ever lend anyone \$76,000 when you know they have an income of \$1,081? That cannot even pay the interest. It does not even come close to paying the interest.

The reality is that so long as the computers print out no defaults, the money will continue to go up. You have all received in the mail, I am sure, cards that say, "You are preauthorized for 15 to \$25,000." I collect them. The machine is geared to growth and lending money. Until the machine starts to suffer by huge losses, which it is not doing, by the way, it will continue. If it were suffering huge losses, the machine would stop shovelling out the cash. Until that happens, it will continue to do it.

Potential high-income earners, lawyers, doctors, CAs, anyone who has the potential for high income, have targeted programs. In Viola's case, all the students said, "What is your problem? You say you have no money. Go down and see Bank X. If you have made it through first year medical school and have your undergraduate degree, they have a program for you." That is how it happens.

Senator Kelleher: I do not have a question, but I to thank Mr. Stehelin for bringing Viola to our attention. It was very dramatic way to do this for us. It certainly made it a lot more meaningful. I want to thank Viola. It cannot have been very easy for you to come here and tell your story like this. I am sure you were not very happy about doing it. I think you have done a great service for us. In that sense, I thank you, and I congratulate you for your performance.

The Acting Chairman: With that, and with the gratitude of the committee, we will call it a day.

The committee adjourned.