

**Report of the Study Committee on
Bankruptcy and Insolvency Legislation
Canada 1970**



Bankruptcy and Insolvency

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INTRODUCTION

0.0.01 We were appointed in February 1966 by the then Minister of Justice, the Honourable Lucien Cardin, who at that time was responsible before Parliament for the administration of the *Bankruptcy Act*, "to review and report on the bankruptcy and insolvency legislation of Canada."

0.0.02 The committee was meant to be neither a committee of inquiry nor investigation. It was our responsibility to review the existing legislation and to make recommendations, in a draft form, for necessary amendments. Accordingly, no public meetings were held and no formal evidence was taken. However, we did have the advantage of the advice and useful expressions of opinion of many interested persons and organizations.

0.0.03 In June of 1960, the Honourable Davie Fulton, the then Minister of Justice, made a speech in Winnipeg to the Canadian Credit Men's Trust Association during which he stated that the *Bankruptcy Act* was under review. He asked for all interested persons to make submissions in respect of the Act to him through the Superintendent of Bankruptcy. The speech was widely publicized. From the time that this request was made until the appointment of this committee, some 1,200 specific suggestions contained in a great number of briefs were, in fact, made which indicated wide concern over the functioning of the bankruptcy system in this country. A list of the major briefs is contained in appendix "A" to this report.

0.0.04 The first task of the committee was to review all of the suggestions for changes which had been made. When this was done, a questionnaire was sent to all official receivers and registrars in Canada. We are indebted to them for the care that they took in supplying us with the information requested. Copies of these questionnaires are attached as appendices "B" and "C".

0.0.05 At a later stage, we supplemented the information we had received from the briefs and the questionnaires by interviewing a number of judges, registrars, official receivers, trustees, lawyers and law teachers, principally in Montreal and Toronto.

0.0.06 Several submissions and briefs were also submitted to us after our appointment. In many instances, the individuals concerned or representatives of the organizations who submitted the briefs asked to appear before the committee and, in all cases, they were given the opportunity to do so.

0.0.07 As the work of the committee progressed, we had occasion to invite a number of persons with special qualifications to prepare memoranda on

0.0.12 We have attempted to review the principal articles contained in the major law reviews of Canada, England and the United States for the past twenty-five years or more. Several studies on problems relating to bankruptcy in other countries were made available to us, often on a confidential basis. We also had

valuable experience and has greatly assisted us in our study. National Bankruptcy Conference for the past four years. This has been a most annual conferences of the National Conference of Referees in Bankruptcy and the Members of the committee have also been privileged to attend, as guests, the is currently engaged in a study of "Bankruptcy Problems" in the United States. the committee met with members of the staff of the Brookings Institution which Administrative Office of the United States Courts. On two occasions, members of and, from time to time, with the Chief of the Division of Bankruptcy, Other discussions were had with officials of other Departments of Government. the United States Department of Justice and the Federal Bureau of Investigation. 0.0.11 The problem of fraudulent bankruptcies was discussed with officials of

0.0.10 It is appropriate that special mention be made of the assistance which we received from many officials and other bankruptcy specialists in the United States of America. It is only natural that Canada should be particularly concerned with the United States bankruptcy experience. Both are North American countries. The social conditions, economies and constitutional provisions relating to bankruptcy and insolvency of both countries are similar in many respects. Moreover, many of the problems Canada faces in bankruptcy first appeared in the United States.

their way to assist us in our research. teachers, court and administrative officials of these countries who went out of edge and record our appreciation to the many judges, lawyers, trustees, law- these features with specialists in the countries concerned. We gratefully acknowl- Acts of other countries, we had the opportunity through these visits to discuss almost every case where we recommend incorporating features of the Bankruptcy the systems of these countries, we had been attracted by particular features. In they had and the research which was being done. In many cases, while studying concerned with learning how their bankruptcy systems functioned, the problems Belgium, the United States of America and Australia. In these countries, we were 0.0.09 The committee visited the United Kingdom, France, Switzerland,

Switzerland, West Germany, Belgium, the Netherlands and Italy. also examined, but not in the same detail, the bankruptcy systems of legislation of England, France, Australia and the United States of America. We other jurisdictions. We particularly studied the Bankruptcy Acts and related and law. To this end, we examined with some care the bankruptcy systems of premises inherent in the Canadian bankruptcy system dictated by our tradition 0.0.08 It was important to widen our perspective and to understand the particular subjects. These papers were of great assistance to us and we desire to express our thanks to those who furnished them.

the benefit of a number of books and monographs relating to consumer credit and wage earners bankruptcies published in the last few years.

0.0.13 In order to obtain a full and complete view of the working of the present legislation, we reviewed, section by section, all of the Canadian statutes relating to bankruptcy and insolvency.

0.0.14 The present *Bankruptcy Act*, enacted in 1949, is based upon the *Bankruptcy Act* of 1919 which in turn was based upon the *Bankruptcy Act* of England, first enacted in its present form in 1883. The 1949 Act was first introduced in Parliament by Bill A5 in 1946. Basically, the 1949 Act, although enacted in the post-war period, had its origins and was drafted just prior to and during the 1939-1945 war. The changes made in the Act at that time related for the most part to procedural matters. In addition, sections of the Act were almost completely rearranged. In retrospect, the *Bankruptcy Act*, (1949) may be criticized, not so much for perpetuating many archaic or meaningless sections, but, for what it did not contain. It should be remembered, however, that many of the defects which now appear in the *Bankruptcy Act* first became apparent after the great expansion of consumer credit following the war and the advent of the "Affluent Society". In this respect, we have the advantage of hindsight over a period of great social change which was not available to the draftsmen of the 1949 Act who could but only guess the shape of the post-war society and economy.

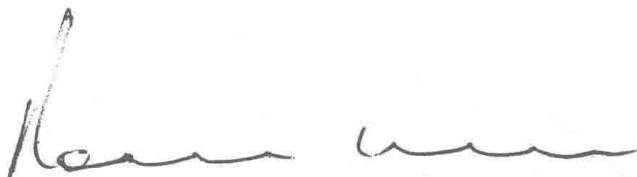
0.0.15 We were initially of opinion that any necessary changes to the legislation could be done by way of amendment only. We soon became strongly of opinion that the proposed revisions should be by way of a new comprehensive Act. The changes we recommend to the existing legislation are many and far reaching. Unless a new comprehensive Act is enacted, the result would be confusing and it would be difficult in many cases to ascertain the law with certainty.

0.0.16 The work in drafting the Bill is well advanced. As there will be several fundamental changes to the law, we are of the opinion that a report should be published now to focus attention on the broad principles that are guiding us so as to give interested persons the opportunity to study the recommendations and thereby be able to view the Bill, when published, with an understanding of its underlying principles.

The Honourable Ron Basford, P.C., M.P.
Minister of Consumer and Corporate Affairs
Ottawa, Ontario

SIR,

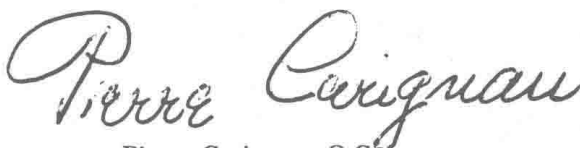
We, the undersigned, members of the Committee appointed "to review and report on the bankruptcy and insolvency legislation of Canada", have the honour to submit our Report.



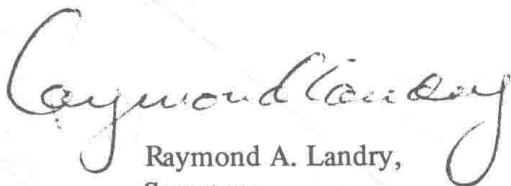
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June, 1970

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Part I

The Evolution of the Bankruptcy System

INTRODUCTION

1.0.01 The history of how man has dealt with the problems of insolvency goes back to ancient times. It is instructive to study that history before considering how the problem should be approached under present day conditions. An understanding of the many refinements and improvements made to the legislation in the past to adapt it to changing conditions may broaden our perspective in considering present problems. This history, we briefly relate in Chapter 1.

1.0.02 Bankruptcy and insolvency legislation also has a long history in Canada. The various developments of the legislation in our country constitute as many efforts to adapt the law to changing circumstances. The brief history contained in Chapter 2 highlights the important phases of the development of the Canadian legislation since Confederation.

1.0.03 The short outline of the present Canadian bankruptcy system contained in Chapter 3 is designed to provide some background against which could be read the rest of the report and, especially, our proposals for changes.

1.0.04 Finally, it is important, in formulating proposals for changes to the bankruptcy and insolvency legislation, to appreciate any constitutional constraints that may exist. This is especially so in Canada where the legislative authority of the State is divided between two levels of governments. Chapter 4 attempts to outline the constitutional position, as it may affect the problems under consideration.

