

# REACTIONS TO RECENT CANADIAN EMPIRICAL STUDIES ON CONSUMER BANKRUPTCIES<sup>©</sup>

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## I. INTRODUCTION

I was particularly pleased to learn that the study on consumer bankrupts in Canada<sup>1</sup> conducted by Justin Connidis and myself is still referred to, more than fifteen years later. But while I was pleased, I also admit to being a little surprised. It appears that at least one of the several recommendations in our original report—that of updating the profile of consumer bankrupts at least every five years—has not been followed to the letter! After fifteen-plus years, I looked forward to the opportunity of reviewing recent Canadian empirical studies on the same topic. I would like to share a few observations on this work.

## II. THE SCHWARTZ AND ANDERSON STUDY

In the first chapter of their study, Saul Schwartz and Leigh Anderson conclude that

[o]verall, it would seem that individuals seeking personal bankruptcy protection in 1997 were not much different than those who sought bankruptcy in 1977. They were in severe economic straits with low incomes, poor job prospects and a history of social assistance or unemployment insurance receipt. Like the Brighton and Connidis sample, the debtors in our sample do not seem to be exploiting bankruptcy laws in order to relieve themselves of legitimate debts.<sup>2</sup>

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\* Brighton Research, Ottawa, Ontario. I would like to extend my appreciation to Professor Jacob Ziegel for getting in touch with me, and for providing me with this opportunity to participate in the Conference on the Contemporary Challenges of Consumer Bankruptcies in a Comparative Context, Faculty of Law, University of Toronto, 21-22 August 1998.

<sup>1</sup> J.W. Brighton & J.A. Connidis, *Consumer Bankrupts in Canada* (Ottawa: Consumer and Corporate Affairs Canada, 1982).

<sup>2</sup> S. Schwartz & L. Anderson, *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection* (Ottawa: Industry Canada, 1998) at 18, online: Industry Canada <<http://strategis.ic.gc.ca/SSG/ca00889e.html>> (date accessed: 16 July 1999). The findings of this study are summarized in

I am not at all surprised by this conclusion. We found in our original study that consumer bankruptcy was very much a social-class related phenomenon, experienced to a large degree by those in the lower social classes. This is still true today. Indeed, from a social stratification perspective, I would have been surprised had any other conclusion emerged.

An issue of some concern is what proportion of bankrupts have “surplus” or disposable income that could be applied to the payment of debts. We concluded that “[c]onsumer bankrupts do not fit the stereotype of ‘high rollers walking away from their debts’ while holding on to substantial assets. Rather, in most cases a poverty or near-poverty level of living is indicated, as measured by income or by assets.”<sup>3</sup> Schwartz and Anderson found that “[o]nly about 37 per cent had a monthly income that was greater than their monthly expenses and the positive amounts that occurred were usually quite small. Such small amounts of ‘surplus’ income suggest that the possibility that our sample could repay their debts, given their current income, was remote.”<sup>4</sup>

This is certainly consistent with our findings seventeen years ago—which is not to say that there are no cases of surplus income, but that there is little likelihood of significant amounts of surplus income. Again, this is consistent with the overall profile of personal bankrupts. As noted in our 1982 study, and revisited later in this comment, it seems to be more productive to identify measures that can detect impending insolvency, and find alternatives to filing for personal bankruptcy.

In our earlier study, we did not take a detailed look at various sub-groups. I therefore enjoyed reading the analysis in chapter two of Schwartz and Anderson’s study concerning the self-employed, unmarried women, and young people under thirty.<sup>5</sup> Their analysis is valuable, partly because it reinforces the point that those seeking bankruptcy protection are not a homogeneous group.<sup>6</sup> Schwartz and Anderson have provided us with a more detailed profile of the characteristics of these groups. At the same time, they note that their

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this Symposium: see S. Schwartz, “The Empirical Dimensions of Consumer Bankruptcy: Results From a Survey of Canadian Bankrupts” (1999) 37 Osgoode Hall L.J. 83.

<sup>3</sup> Brighton & Connidis, *supra* note 1 at 76.

<sup>4</sup> Schwartz & Anderson, *supra* note 2 at 10.

<sup>5</sup> See Schwartz & Anderson, *supra* note 2 at 39-56; and Schwartz, *supra* note 2 at 107-18.

<sup>6</sup> Schwartz and Anderson conclude, *supra* note 2 at 66, that “[c]hapters 1 and 2 suggest that those seeking bankruptcy protection are neither a homogeneous group nor a representative sample of the population. Our finding that aggregate measures of economic performance are poor indicators of bankruptcy should not, therefore, be surprising.”

analysis raises further questions, including, for instance, the debt patterns of the young. They made the following observation:

One puzzling aspect in the situation of young people seeking bankruptcy protection is that more than 40 per cent of the 1977 Brighton and Connidis sample were less than 30 years old, at a time when student loans were not an important type of debt and when credit card usage was much more limited.<sup>7</sup>

The other findings presented by Schwartz and Anderson regarding those under age thirty suggest to me that a further breakdown of this sub-group may be required in order to understand it better. An analysis identifying at least two groups of young people, as indicated by type of debt held or other factors, may help solve the puzzle.

Similar work remains to be done on the characteristics of other sub-groups of this population, a point the authors make in their study. They also note that the particular three groups chosen were selected “because of evidence from previous studies ... of their potential importance in explaining the rise in the number of bankruptcies, and because preliminary data analysis indicated that these groups were numerically important.”<sup>8</sup>

Did the authors reach any conclusions, or have any further thoughts, about the importance of these three groups in explaining the rise in the number of bankruptcies? They do suggest several avenues for further investigation, including models for different sub-groups and finer measures of aggregate time-series variables. My reaction to these suggestions is mixed, in part because the results of this type of analysis do not seem, so far, to hold out much hope in addressing the social issues of consumer bankruptcy. I believe that other approaches, including “event history analysis,” present better possibilities for insight. I will return to this point shortly.

I found the results in chapter four of Schwartz and Anderson’s study quite useful. In the section on “Economic Situation,” the findings point out important differences between the two populations, including the fact that “unlike those seeking bankruptcy protection, those seeking credit counselling had some income that might be available to pay off their debts.”<sup>9</sup>

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<sup>7</sup> *Ibid.* at 47.

<sup>8</sup> *Ibid.* at 40, citing in particular the work by T.A. Sullivan, E. Warren & J.L. Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (New York: Oxford University Press, 1989).

<sup>9</sup> See Schwartz & Anderson, *supra* note 2 at 75.

I would like to see more attitudinal data of the kind presented in the section on “Attitudes Towards Bankruptcy,”<sup>10</sup> and more done with it. In particular, it would be useful to see the data on attitudes cross-tabulated, or otherwise analyzed, with other demographic and economic variables presented in chapters one and two. These could include an analysis of the attitudes of various sub-groups defined by age, socio-economic status, region, clusters of debts held, etc. As well, the ability to compare ratings on the same set of attitudinal statements to various segments of the population at large would, I think, be fascinating.

My overall reaction to the Schwartz and Anderson study is very positive. It provides, among other things, a needed update and sensitive analysis of the profile of those seeking bankruptcy protection; food for thought in the comparisons with credit counsellors; and a candid presentation of the limitations of macroeconomic measures (at least for those used) to explain consumer bankruptcy.

### III. THE RAMSAY STUDY

I would like to offer a few reactions as well to Iain Ramsay’s findings.<sup>11</sup> First, his data raise questions about bankruptcy from a social-class perspective. In particular, I note his summary observation that the class breakdown of bankrupts is not representative of the general population, but that it provides some evidence of a growing lower middle-class use of bankruptcy.<sup>12</sup> I do not believe this is necessarily inconsistent with the findings from our earlier study, nor those of Schwartz and Anderson’s study. It may indeed reflect a trend for the lower middle class to be more vulnerable than it was previously. It may also be related to the demographics of the sample, including region (province of Ontario) and community size (Greater Toronto Area). Ramsay’s finding raises questions from both a social stratification and social issue perspective: are other social classes more vulnerable to insolvency than previously? I would like to see further analysis of this finding in comparison to broader samples of personal bankrupts, including those for other regions of Canada and other community sizes.

Similar to Schwartz and Anderson’s study, Ramsay found that few bankrupts had any surplus income: less than one-third of his sample

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<sup>10</sup> See *ibid.* at 78; and Schwartz, *supra* note 2 at 118-20.

<sup>11</sup> See I.D.C. Ramsay, “Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis” (1999) 37 *Osgoode Hall L.J.* 15.

<sup>12</sup> *Ibid.* at 40-41.

had surplus income when they declared bankruptcy.<sup>13</sup> Further, I found intriguing his observation that “[a] central actor in the bankruptcy process is the trustee, and it is necessary to understand the relation of trustees to bankrupts, and the influence of professional practices on the processing of bankrupts.”<sup>14</sup>

I believe more study of this relationship and interactions with other key actors could prove very fruitful. It could help us understand better the chain of events leading to bankruptcy, and help identify particularly useful intervention points.

#### IV. A PROPOSED NEXT STEP

Our knowledge of consumer bankruptcy has been expanded greatly by the work presented here. At the same time, we still do not know enough about this phenomenon and what should, or even can, be done about the ever-increasing levels of consumer bankruptcies.

Based on my experience and interests, I would like to put forward a suggestion for further work. It is an idea myself and colleagues developed and advanced about one-and-one-half years ago, and which I believe is relevant and timely today.

The increase in personal insolvency in an economy that has generally improved indicates a weak link in the relationship between the debt that a consumer is taking on, the criteria upon which lenders base their lending, and the policy and legislative structure developed by the provincial and federal governments in the area of personal bankruptcy.

To fully understand the problem, it is insufficient to analyze data such as the number of personal bankruptcies, their distribution, the quantum of the liability, and the perceived reasons for declaring bankruptcy. These data will only provide some educated guesses about the reasons for the increase in those seeking personal bankruptcy. Such studies serve primarily to describe and situate the problem, rather than lead to solutions.

Of greater significance will be a better understanding of what leads the consumer to seek personal bankruptcy. What factors enabled the consumer to take on a debt load that was beyond his or her financial capability? How do credit lenders’ attitudes contribute to this—*i.e.* do they provide loans to consumers who are not able to handle them, or in

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<sup>13</sup> *Ibid.* at 35.

<sup>14</sup> *Ibid.* at 80.

other cases, do they deny loans to consumers, forcing them to use higher cost credit? What factors led the consumer to seek bankruptcy?

To find the answers, research will have to focus on the events in the consumer's life that led the consumer to become indebted, and created a situation that made the burden of debt too heavy to carry.

I would like to address these issues through a line of inquiry known as "event history analysis." This method is based on using the consumer bankrupt's recollection and assessment, in his or her own words, of "what happened." This approach would examine the occurrence of events over time, such as becoming unemployed or ill, or the timing and circumstances of taking on new debt. The benefit of this qualitative approach is to uncover and provide in-depth understanding, in the bankrupts' own words, of what lies behind the attitudes and behaviours of those who become, or nearly become, insolvent. (The perceptions of "significant others," including bankruptcy trustees, lenders, and others can also be included to help round out the sequence of events.) By performing this "event history analysis," it will be possible to determine if there are one or more predictable orders of events or patterns that may lead to bankruptcy.

My proposed approach is in some respects similar to a case history approach. Each bankrupt (or credit counselling client) is treated as a unique case, with his or her own story to tell. The approach allows for the sensitive folding-in of various probes about whether certain interventions (*e.g.*, an offer of credit counselling or other assistance or actions as outlined, for instance, in recent legislative proposals) would likely have affected the course of events.

While the approach may appear anecdotal, it is in fact a recognized scientific technique that will result in the detection of identifiable patterns of behaviour. Once the patterns are identified, it will be possible to decide upon their implications for policy and action. For instance, we may find that some policies have the potential to be effective in some situations, but not in others.

Our society has undergone significant structural change over the last few decades. A study of the personal factors and attitudes influencing individuals to declare bankruptcy may provide solutions to the problem of personal insolvency in the context of the new values and needs that have been generated by these changes. It may also provide a better understanding of the impact of proposed legislative reform. An understanding of the bankrupt's event history and attitudes will also provide insight into many of the public policy themes and questions now being addressed by Industry Canada and other government bodies.