

THE EMPIRICAL DIMENSIONS OF CONSUMER BANKRUPTCY: RESULTS FROM A SURVEY OF CANADIAN BANKRUPTS[©]

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The number of consumer bankruptcies in Canada has risen substantially over the last twenty years. Using a 1997 survey of approximately 1,000 Canadian debtors, this article explores the economic situation of debtors seeking bankruptcy protection. This economic situation seems to be quite weak—most of the debtors have very low income, very high debts, and few assets. Moreover, the economic situation of the 1997 debtors seems quite similar to that of the 1977 debtors studied by Wayne Brighton and Justin Connidis almost twenty years ago. The aggregate amount of consumer credit, as a proportion of disposable income, has not risen dramatically, and the author discusses the possibility that the increase in bankruptcy is the result of greater amounts of borrowing among three specific groups of borrowers: the self-employed, women, and young people. Overall, the findings from the survey are quite similar to those reported in a similar American study of bankrupts, and suggest that the rise in bankruptcies is not the result of more widespread opportunistic behaviour by debtors.

Le nombre de faillites des consommateurs a sensiblement augmenté au Canada au cours des vingt dernières années. En utilisant une étude de cas d'environ 1000 débiteurs canadiens, réalisée en 1997, cet article explore la situation économique des débiteurs cherchant la protection de la faillite. Cette situation économique semble très faible—la plupart des débiteurs ont des revenus très bas, de dettes très élevées, et presque pas d'actif. En plus, la situation économique des débiteurs en 1997, semble identique à celle des débiteurs en 1977, étudiée par Wayne Brighton et Justin Connidis, il y a environ vingt ans. Le total des sommes de crédits des consommateurs, en tant que proportion des revenus nets, n'a pas radicalement augmenté, et l'auteur de cet article discute la possibilité que cette augmentation dans le nombre de faillites est le résultat d'un nombre plus grand d'emprunts parmi trois groupes spécifiques d'emprunteurs: les entrepreneurs, les femmes, et les jeunes. En tout, les résultats de cette études sont tout à fait semblables à ceux rapportés dans une étude similaire des faillis aux Etats-Unis, et suggère que l'augmentation du nombre de faillites n'est pas le résultat d'un comportement opportuniste plus répandu chez les débiteurs.

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I. INTRODUCTION

In 1997, 85,297 Canadians went bankrupt.¹ Coming on the heels of large increases in 1995 and 1996, this record-breaking number of bankruptcies generated understandable concern.

In an effort to better understand the increased numbers of bankruptcies, the Office of Consumer and Corporate Affairs at Industry Canada commissioned a survey of debtors seeking bankruptcy protection in 1997. The last time that a similar large-scale effort had been undertaken was in 1982, when Wayne Brighton and Justin Connidis

¹ See "Monthly Statistics" for December 1997 compiled by the Office of the Superintendent of Bankruptcy, online: Office of the Superintendent of Bankruptcy <<http://strategis.ic.gc.ca/SSG/br01011e.html>> (date accessed: 10 September 1999). The total bankruptcies for 1998 was 75,465, a reduction caused, in part, by the policy changes documented in this article: see *ibid.* "Monthly Statistics" for December 1998.

studied a sample that had declared bankruptcy in 1977.² Here, the results of our 1997 survey are summarized.³

Part II provides a very brief overview of the aggregate statistics on personal debt in Canada. These statistics show that, although the ratio of outstanding total liabilities to disposable personal income has risen significantly over the past thirty years, this increase has been largely due to an increase in mortgage debt rather than consumer credit.

Part III discusses the procedures used to gather the survey data. In Part IV, the results of the survey are used to argue that the economic situation of those who sought bankruptcy protection in 1997 was quite weak. This is evidence against arguments that the bankruptcy laws are widely used by economically healthy individuals who simply want to avoid paying legitimate debts. Part V examines the assets and liabilities reported by our 1997 debtors, and compares them to the assets and liabilities reported by the 1977 sample studied by Brighton and Connidis. The results suggest that the indebtedness of those who sought bankruptcy protection in 1997 was quite similar to that of debtors who sought bankruptcy protection in 1977.

If the “typical” bankrupt in 1997 was in an economic situation quite similar to the typical bankrupt in 1977, we must still account for why so many more Canadians found themselves in this situation. In Part VI, three groups of debtors who were more numerous than before are looked at more closely—the self-employed, unmarried women, and young people.

In Part VII, attitudes towards bankruptcy are discussed. Although some have argued that the bankruptcy rate has risen because attitudes towards bankruptcy have softened over time, attitudes towards

² See J.W. Brighton & J.A. Connidis, *Consumer Bankrupts in Canada* (Ottawa: Consumer and Corporate Affairs Canada, 1982).

³ See S. Schwartz & L. Anderson, *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection* (Ottawa: Industry Canada, 1998), online: Industry Canada <<http://strategis.ic.gc.ca/SSG/ca00889e.html>> (date accessed: 11 June 1999) [hereinafter *Empirical Study*]. This report was the work of myself and Leigh Anderson of Carleton University, and was derived from our survey of bankrupts: see S. Schwartz & L. Anderson, *1997 Survey of Potential Bankrupts* [unpublished, on file with author] [hereinafter *Survey of Potential Bankrupts*]. The actual survey process was undertaken with the help of Steve Kiar of COMPAS Inc., an Ottawa survey research firm. This article is a revised and updated overview of the full report, and was presented in an earlier form at the Conference on the Contemporary Challenges of Consumer Bankruptcies in a Comparative Context, Faculty of Law, University of Toronto, 21-22 August 1999. The tables produced below are based on the data from the *Empirical Study* and *Survey of Potential Bankrupts* unless otherwise indicated. The research assistance of Jane Karhi, Nancy Werk, David Hennes, and Kenneth Korah, as well as the assistance of Konstantinos Georgaras of the Office of Consumer Affairs in Industry Canada is gratefully acknowledged.

bankruptcy were not found to vary across categories of several demographic variables. In particular, younger debtors were not seen to have more “lenient” attitudes toward bankruptcy than older debtors. Lacking information on debtors who chose not to file for bankruptcy, and lacking longitudinal data, this finding cannot be taken as conclusive evidence that attitudes have not changed. Nonetheless, the finding is suggestive. The results are summarized in Part VIII.

II. THE OVERALL MARKET FOR CREDIT IN CANADA

There is no consumer bankruptcy without consumer debt.⁴ The average volume of total outstanding liabilities (in nominal dollars) of persons and unincorporated businesses in Canada has been rising almost continuously since 1966; only in 1982 and 1991 was the average amount of debt lower than it had been in the previous year. The rapid rise in the amount of outstanding debt has led many to speculate about its role in causing bankruptcy. For example, Jacob Ziegel and his colleagues have pointed to “the important role which the easy availability of various forms of consumer credit plays in enabling consumers to become so heavily overindebted.”⁵ Alan Murray writes that “[t]here is a strong suggestion that aggressive marketing by providers of credit, particularly issuers of credit cards, is in large measure responsible” for the rise both in American bankruptcies, and in the number of cases in which debtors are delinquent in making payments.⁶ In this section, aggregate measures of personal debt are briefly examined.

Personal debt is usually divided into two major categories: mortgage debt and general consumer credit. Mortgages are usually secured by borrowers’ homes, while general consumer credit is often unsecured by any corresponding asset.⁷

⁴ “Consumer debt” (also known as “personal debt”) is debt for which legal repayment responsibility lies with a person, rather than an incorporated business, regardless of the purpose for which the debt was incurred. For statistical, rather than legal, purposes, the Office of the Superintendent of Bankruptcy (OSB) classifies some bankruptcies of persons as “consumer bankruptcies” and others as “business bankruptcies” depending on the seeming purpose of the debt obligation: Interview with K. Georganas, Office of Consumer Affairs, Industry Canada.

⁵ J.S. Ziegel *et al.*, “Consumer Bankruptcies and Bill C-5: Five Academics Claim the Bill Turns the Problems on Their Head” (1996) 13 Nat’l Insolv. Rev. 81 at 85.

⁶ A.P. Murray, “Debt and ‘The’ Consumer” (1997) 32 Bus. Econ. 41 at 44.

⁷ Car loans are an important exception since most such loans are secured by the vehicle. Some data sources distinguish between secured and unsecured debt, rather than between mortgage and non-mortgage debt, but the latter distinction is used because of the type of data available in Canada.

Individuals and families take out mortgages in order to finance the purchase of homes. Mortgage debt has become more common in recent years—accounting for about 75 per cent of total personal debt in 1995. Consumer credit is now widely used by Canadians as a convenience; as a way of spending future income in the current period. The major components of consumer credit—revolving credit (such as that involved in credit card use), automobile loans, and “all other” (such as intra-family loans and loans from finance companies)—have become quite common across a broad range of income classes.

As a measure of financial vulnerability, however, the nominal level of personal debt is inadequate. Debt becomes a problem only when debtors cannot meet the associated debt payments. An increase in personal debt, therefore, would not necessarily imply an increase in the bankruptcy rate if consumer income (or consumer wealth) was rising at the same time. For that reason, a better measure of financial vulnerability is the ratio of aggregate personal debt to aggregate personal disposable income. That ratio not only measures debt relative to income, but also eliminates the influence of inflation.

Figure 1⁸ shows that the ratio of total personal liabilities to disposable personal income rose considerably from 1965 to 1997. Expressed as a percentage, the ratio of total personal liabilities to total disposable personal income rose by 40 percentage points from 1965 to 1997. In 1965, total personal liabilities were 74 per cent of total disposable income. By 1997, that percentage had risen to 113 per cent—Canadians owed more than their annual income.

Figure 1 also reveals that the growth in the ratio of personal liabilities to personal disposable income was due largely to the growth in mortgage debt. The ratio of consumer credit to personal income was quite flat over this long period. After rising from 0.19 in 1965 to 0.23 in 1979, the ratio then dipped downward, regaining the 1979 level in 1994 before rising to 0.25 in 1997, the last year for which data is available. The ratio of mortgage debt to personal disposable income first grew, in 1979, from about 0.40 to 0.54, before dropping in the early 1980s. Unlike the consumer credit ratio, however, the mortgage ratio had regained its 1979 level by 1997, and then continued upward to its current level of 0.74. Of

⁸ See Appendix, below. Figure 1 shows the total outstanding liabilities of persons and unincorporated businesses and two components of that total—consumer credit and mortgages. Several kinds of liabilities that are important in bankruptcy cases are not included in either consumer credit or in mortgage debt. Student loans and small business loans are treated by Statistics Canada as investments, and so are not included in consumer credit. They are, however, included in the figures shown in Figure 1 for total liabilities of persons and unincorporated businesses. Debts to Revenue Canada are not included in total personal liabilities.

the 40 percentage point increase in the ratio of total liabilities to total personal income from 1965 to 1997, 34 points could be attributed to the increase in mortgage debt, while only 6 points were the result of an increase in aggregate consumer credit.

The general message of this brief overview is that the overall indebtedness of the Canadian population has increased substantially in the past two decades. More important for the study of bankruptcy, the increase in overall indebtedness has been combined with an increase in the overall ratio of personal liabilities to personal income, a ratio that provides an aggregate measure of the financial vulnerability of borrowers.

The suggestions arising from the aggregate data, however, cannot tell us whether the increase in the debt-to-income ratio is due to more debt being accumulated by the same kinds of individuals who always borrowed, or if the increase is the result of more individuals borrowing.

III. SURVEY PROCEDURES⁹

In early 1997, the Office of Consumer Affairs of Industry Canada commissioned the survey upon which our empirical work is based. The survey asked questions of debtors who sought bankruptcy protection between mid-March and early May of 1997. Combined with data contained in an official form summarizing the financial position of the debtors (required to be filed with every bankruptcy application), the information gathered by the survey process was intended to help elucidate the causes of consumer insolvency in Canada.

Rather than attempting to locate and survey bankrupt individuals ourselves—a process that would have been greatly hindered by fragmentary information on the names, addresses, and telephone numbers of the underlying population—we decided early on to enlist the cooperation of bankruptcy trustees.¹⁰

There are approximately 1,000 licensed bankruptcy trustees in Canada. We began the survey process with the names of all trustees,

⁹ This section of the article is partly based on a report to Industry Canada written by COMPAS Inc. in July 1997: see COMPAS Inc., *Industry Canada Personal Bankruptcy Survey* (Ottawa: COMPAS Inc., 1997).

¹⁰ Bankruptcy trustees are licensed by the Office of the Superintendent in Bankruptcy (OSB) to administer bankruptcies. Trustees are officers of the court and represent all interests in the bankruptcy process—not just those of the debtors who seek their help.

provided by Industry Canada, along with the number of consumer bankruptcies that each trustee had handled in the previous calendar year. Trustees who had not handled more than 100 consumer bankruptcies were then excluded from the sampling frame.¹¹ Next, we chose the 15 trustees who handled the largest numbers of consumer bankruptcies in each province; these trustees became part of a core group.¹² No two trustees were drawn from the same firm in the same city.

In order to ensure the representation of trustees handling smaller numbers of bankruptcies, an additional 33 trustees, not part of the core group, were then randomly selected from among those remaining. In total, 129 trustees were asked to participate in the survey process.

Having identified the trustees who would be asked to participate, we then went through the following procedures, as applicable, with each trustee: (1) we sent trustees a letter asking them to participate in the study and telling them what would be required. We included supporting letters from the Office of the Superintendent of Bankruptcy (OSB) and from the Canadian Insolvency Practitioners Association (CIPA), the trustees' professional organization; (2) we telephoned trustees who did not respond to the first letter. At the same time, we asked regional staff of the OSB to call trustees in support of the project; and (3) we sent a second letter to those who had not yet decided whether to participate.

As a result of these recruitment efforts, 75 trustees agreed to take part in the study. Each of them then received an instruction letter detailing what they needed to do, a set of questionnaires, and pre-paid return envelopes.

The instructions to the trustees asked them to give a questionnaire to each person filing for bankruptcy, along with a cover letter explaining the nature of the survey and of the underlying study. We also asked the trustees to encourage the debtors to fill out the questionnaire. Respondents were to complete the questionnaire and enclose it in a sealed envelope. The trustee would then collect the completed questionnaires and attach the Statement of Affairs for each participant. In practice, most respondents seem to have completed the questionnaire during their initial meeting with their trustees, although

¹¹ This was done to ensure that the remaining trustees, from whom participating trustees would be drawn, would have sufficient volume to meet the target number of respondents.

¹² Due to the requirement that trustees handle at least 100 personal bankruptcy cases, not all provinces had 15 trustees in the core group.

some may have taken the questionnaire away with them and returned it during a subsequent visit.

This process began in mid-March, and continued until the end of April 1997. Trustees who did not seem to be participating (having previously agreed to do so) were called and encouraged to participate more fully. In the end, 63 of the 75 trustees sent in at least one completed survey. Overall, the questionnaire was completed by 1,094 debtors.

In light of the procedures detailed above, it should be clear that the resulting sample of debtors is not a simple random sample drawn from the underlying population of those filing for bankruptcy in the survey period. To obtain a sense of its representativeness, we can compare the sample to the population of debtors who declared bankruptcy in the same period. This comparison can only be undertaken with reference to the limited number of variables that are collected electronically by Industry Canada.

Between early March and early May, 17,115 people filed for consumer bankruptcy in Canada. Table 1, below, shows the distribution, by province, of those 17,115 debtors along with the provincial distribution of our sample of 1,094 respondents. We see that Quebec debtors are somewhat under-represented in our sample, while British Columbia debtors are somewhat over-represented. Table 1 also shows the age distribution of both the population and the sample, and indicates that our sample is slightly younger than the population.

We have no reason to believe that trustees departed in any significant way from the procedures described above. While the comparison with the population shows that the provincial distribution of the survey respondents is somewhat different than the distribution in the population, we feel confident that the survey is broadly representative of the population.

TABLE 1
COMPARISON OF POPULATION OF BANKRUPTS TO SURVEY
RESPONDENTS, BY PROVINCE AND AGE

<i>Province</i>	<i>Proportion of Population</i>	<i>Proportion of Sample</i>
Ontario	0.364	0.331
Quebec	0.302	0.158
British Columbia	0.083	0.169
Alberta	0.127	0.174
Saskatchewan	0.026	0.035
Manitoba	0.028	0.057
Nova Scotia	0.042	0.048
New Brunswick	0.015	0.005
Newfoundland	0.011	0.017
Prince Edward Island	0.002	0.006
<i>Date of Birth</i>		
1921–1946	0.149	0.127
1947–1956	0.251	0.217
1957–1966	0.347	0.338
1967–1979	0.251	0.308
Other	0.002	0.010

IV. A PROFILE OF THOSE SEEKING BANKRUPTCY PROTECTION IN 1997

There is no typical bankruptcy—with so many different circumstances and so many different patterns of behaviour at work, it is impossible to characterize any one as “typical.” The primary purpose of undertaking the survey of potential bankrupts was to inquire into the reasons for such bankruptcies. Before embarking on an empirical discussion of those reasons, Table 2, below, reviews how survey respondents answered the simple, direct question: “What events or debts triggered your application for bankruptcy?”

TABLE 2
THE EVENTS OR DEBTS THAT “TRIGGERED” BANKRUPTCY

<i>Triggering Event or Debt</i>	<i>Per Cent of Total</i>
Loss of Job or Reduced Income	18.8
Personal Problems	10.9
Debt Repayment Process	6.1
General Inability to Repay Loans	6.5
Credit Cards	18.8
No Specific Event/Debt or “No Response”	11.1
Debts to Government	11.3
Small Business Failure	4.1
All Other Events or Debts	25.9
Total Number of Triggering Events or Debts Named (n=1,484)	

* Each respondent was allowed to report more than one triggering event or debt, so the reported percentages need not add up to 100 per cent.

The most notable features of the responses summarized in Table 2 are the range of “triggers” on the one hand, and their ambiguity on the other. Some specific factors are mentioned—“credit cards,” “small business failure”—but several of the more important “triggers” are far less specific—“loss of job or reduced income,” “personal problems,” and the large “other” category.

With the diversity of possible bankruptcy “triggers” in mind, this section describes our sample of debtors seeking bankruptcy protection, and compares them to their 1977 counterparts, as studied by Brighton and Connidis in 1982. First, some basic demographics—gender, age, marital status, and education—are analyzed, followed by a description of the overall economic situation of the sample, including employment, household income, and receipt of government transfers. Then the structure of their assets and liabilities is examined. Where possible, our sample is compared to either that of Brighton and Connidis, or to the Canadian population.

A. Demographic Characteristics

In recent decades, broad social trends may have changed the nature of the population that incurs debts and that is, therefore, at risk of bankruptcy. Small businesses are springing up more quickly than before. Women are more likely to work, to hold debt in their own names, and to be single mothers. A greater proportion of young people

attend post-secondary institutions and borrow to do so. Credit cards have become a common means of borrowing for consumer products and services. As a result, the demographic characteristics of debtors seeking bankruptcy protection in 1997 may be quite different from those of debtors seeking bankruptcy protection in 1977.

Roughly 40 per cent of the individuals seeking bankruptcy in our sample were women. By contrast, about one-quarter of the cases studied by Brighton and Connidis were filed by women.¹³ This may reflect any number of changes in the credit market, including greater credit availability for women and changes in marital status.

In 1970, about 30,000 Canadian couples divorced. By 1980, that number had more than doubled to 62,000 per year. The divorce rate peaked in the mid-1980s and, since that time, about 80,000 couples divorced each year until 1995.¹⁴ Almost 70 per cent of the Brighton and Connidis sample of bankrupts were married (or living in a common-law arrangement), 22 per cent were formerly married, and only 8 per cent were single.¹⁵ Twenty years later, the marital status of our sample of potential bankrupts was quite different. Only about 43 per cent were married (or living in a common-law arrangement), 30 per cent were formerly married, and 28 per cent were single.

Most studies have found that potential bankrupts, as a group, are younger than the general population. Older people are more likely to have paid off their mortgages, accumulated savings and other assets, and built up seniority in their jobs. Almost 40 per cent of the Brighton and Connidis sample were under thirty years of age.¹⁶ By comparison, 28 per cent of the Canadian population in 1976 were under thirty.¹⁷ Our sample

¹³ See Brighton & Connidis, *supra* note 2 at 19.

¹⁴ See "Divorces in Canada" (CANSIM) Matrix 0007, series D190, online: Statistics Canada <<http://www.statcan.ca/english/CANSIM>> (date accessed: 16 June 1999). Many of those who divorce later remarry, so that marital status at any one point in time need not reflect the rising number of divorces. Indeed, the percentages of the overall Canadian population in each marital status did not change very much from 1976 to 1996. Among those 15-64 years old in 1976, 30 per cent were single, 66 per cent were married, and 4 per cent were widowed or divorced: see Statistics Canada, *Canada Year Book 1980-81* (Ottawa: Ministry of Supply and Services, 1981) 135 [hereinafter *Canada Year Book*]. By 1996, 32 per cent of those 15-64 years old were single, 60 per cent were married, and 8 per cent were widowed or divorced. Even for those who divorce and later remarry, however, the initial marital disruption is often accompanied by economic disruption as one household becomes two, as the repayment of existing debts becomes more difficult, and as consumption patterns change: see Statistics Canada, *Annual Demographic Statistics 1996* (Ottawa: Statistics Canada, 1997) at 73 [hereinafter *Annual Demographic Statistics 1996*].

¹⁵ See Brighton & Connidis, *supra* note 2 at 20.

¹⁶ *Ibid* at 20.

¹⁷ See *Canada Year Book*, *supra* note 14 at 134.

is older than that of Brighton and Connidis, but the Canadian population has gotten older as well. In our 1997 sample, roughly 32 per cent were under thirty; in the Canadian population of 1996, only 21 per cent were under thirty.¹⁸

The information on age and marital status suggests that those seeking bankruptcy protection are not concentrated in a single “family type,” such as “young single individual” or “married with children.” Almost half of the sample (46 per cent) had no dependants. However, a large number of bankrupts had at least one dependant under the age of fifteen (39 per cent) or at least one adult dependant (29 per cent).

Another trend of the past few decades that deserves mention is the rise in the percentage of families that have only one parent, often called “lone-parent” families. In 1976, there were about 560,000 lone-parent families (or 10 per cent of Canadian families),¹⁹ with the lone parent being the mother in roughly 80 per cent of the families. In 1996, there were over one million lone-parent families, comprising over 13 per cent of all families.²⁰ In our sample, 15 per cent of those seeking bankruptcy protection were unmarried and had at least one dependant under twenty-one years old.

Since 1977, the average level of educational attainment in Canada has been rising. More Canadians now have high school diplomas, more have some form of post-secondary education, and more have university or college degrees. Overall, the educational attainment of our sample of debtors was slightly higher than that of all Canadians in 1995. More than half of the sample (53 per cent) had some education beyond high school, and more than one-quarter had earned some form of post-secondary degree. In the general population in 1995, 46 per cent had some post-secondary education, up from 25 per cent in 1980.²¹

One difference between the general population and the group seeking bankruptcy protection is that, of the debtors in the sample with

¹⁸ See *Annual Demographic Statistics 1996* *supra* note 14 at 86.

¹⁹ See B. Ram, *Current Demographic Analysis: New Trends in the Family: Demographic Facts and Features* (Ottawa: Statistics Canada, 1990) at 87.

²⁰ See Statistics Canada, *Annual Demographic Statistics 1997* (Ottawa: Statistics Canada, 1997) at 200.

²¹ For the 1980 percentages, see Statistics Canada, *Education in Canada, 1985* (Ottawa: Statistics Canada, 1986) at 255. For the 1995 percentages, see Statistics Canada, *Labour Force Annual Averages, 1995* (Ottawa: Statistics Canada, 1996) at B-11. For the debtors, 52.9 per cent had some post-secondary education and 24.9 per cent did not have a post-secondary certificate or degree, such that 46 per cent (24.9/52.9) of those with some post-secondary education lacked a certificate or degree. The corresponding calculation for Canadians who were fifteen years of age or older in 1995 is 19 per cent (8.9/46.2).

some post-secondary education, only 54 per cent had a post-secondary degree or certificate. In the general population, 81 per cent of those with post-secondary education had a certificate or a degree.²² It is not clear whether this is the result of the difference in the age distributions, or because potential bankrupts were more likely to have tried and failed to get a post-secondary degree.

B. *Economic Situation*

The debtors' Statements of Affairs contain information about the monthly income and expenses of the potential bankrupts. Our survey asked debtors about their annual household income (before taxes), employment status, weeks worked, and receipt of government transfers. By combining those two sources of information, the economic situation of our sample can be characterized fairly completely.²³

Where possible, the economic situation of our sample is compared to that of the Brighton and Connidis sample. Brighton and Connidis analyzed the economic situation of their sample by combining information about occupation from the Statement of Affairs with fragmentary data on income and employment that was gathered by the Official Receiver during the bankruptcy process.²⁴

First, the monthly income and expense information appearing on the Statement of Affairs is looked at, followed by a discussion of the distribution of the annual household income of our sample. Not surprisingly, perhaps, those seeking bankruptcy reported that they had very little income above that needed to meet their expenses.²⁵

²² See *ibid.*

²³ Before discussing data drawn from the Statement of Affairs, it is worth elaborating on the nature of the information provided. Each potential bankrupt fills out a Statement of Affairs that represents the debtor's considered assessment of his or her financial position. The values reported on the Statement of Affairs are not immediately verified by the trustee, but the trustee typically helps the person estimate the relevant values. Moreover, debtors must certify in writing that the information provided on the Statement of Affairs is, to the best of their knowledge, accurate. Purposefully misrepresenting information provided on the Statement of Affairs can prejudice the discharge of one's debts, and potential bankrupts are informed of this fact by the trustee.

²⁴ Wayne Brighton and Justin Connidis did not survey personal bankrupts, relying instead on official records of the bankruptcies.

²⁵ On their Statements of Affairs, potential bankrupts report monthly income in three categories: net monthly take-home pay, the monthly contributions from dependants (if any), and "other" monthly contributions. Only those who were currently employed would have had net monthly take-home pay; others depended on the contributions of other family members and on government transfers. Contributions by dependants are captured directly, while contributions from

Overall, median net monthly income from all sources was \$1,400.²⁶ That monthly income would translate into an annual income of \$16,800, if it continued for twelve months. By way of comparison, in 1995, the Statistics Canada Low Income Cut-off (LICO) for a single adult living in a large urban area was \$16,874; for a family of four it was \$31,753.²⁷

Not surprisingly, perhaps, more than half of the potential bankrupts had monthly expenses that were equal to, or greater than, their monthly income. Only 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. The 70th percentile was \$49 per month; that is, 70 per cent of the sample had “surplus” income less than, or equal to, \$49.²⁸ The 80th and 90th percentiles were \$139 and \$259, respectively. These figures suggest that relatively few debtors—perhaps 10 or 15 per cent—had significant surplus income. Even that estimate, however, does not take into account any special circumstances that might be relevant to those debtors.

For some of those seeking bankruptcy, the monthly income that they report on the Statement of Affairs may reflect recent (and perhaps temporary) economic difficulties. For that reason, our survey asked debtors about their pre-tax income in the previous year. Table 3, below, shows the quintile limits of the resulting distribution.²⁹

other family members and government transfers are combined into “other income.” Also reported on the Statement of Affairs are monthly expenses in two categories: fixed expenses, such as food and housing, and “other” expenses.

²⁶ Almost one-third reported no monthly take-home pay (this includes the group who reported that they “did not know”). The median take-home pay for those reporting a positive value was only \$1,300 per month. Dependants potentially contribute to the monthly income of sample members, but most (about 77 per cent) reported receiving no income from any dependants. Of the one-quarter who reported a positive value, the median was a substantial \$1,182 per month. About one-half of the sample had income from “other contributions,” presumably from family members or from government transfers. The median amount received for those who had positive values was about \$500.

²⁷ See Statistics Canada, *Income Distributions by Size in Canada* (Ottawa: Statistics Canada, 1995) at 50.

²⁸ This measure of surplus income is simply the difference between monthly expenses and monthly income as reported on bankrupts’ Statements of Affairs. It is not the same as the standard for surplus income established by the OSB directive: see Office of the Superintendent of Bankruptcy, *Directive No. 11: Surplus Income* (issued 30 April 1998), online: Office of the Superintendent of Bankruptcy <<http://strategis.ic.gc.ca/SSG/br01055e.html>> (date accessed: 30 August 1999). For further discussion of surplus income payment requirements, see J.S. Ziegel, “The Philosophy and Design of Contemporary Consumer Bankruptcy Systems: A Canada-United States Comparison” (1999) 37 *Osgoode Hall L.J.* 205 at 225-28.

²⁹ A quintile distribution divides the sample into five equal parts, and a quartile distribution divides the sample into four parts.

TABLE 3
QUINTILE DISTRIBUTION OF INCOME IN THE 1997 SURVEY OF
POTENTIAL BANKRUPTS, AND FOR ALL CANADIAN FAMILIES
AND UNATTACHED INDIVIDUALS

<i>Quintile</i>	<i>1997 Survey of Potential Bankrupts (\$)</i>	<i>All Canadian Families and Unattached Individuals (\$)</i>
First	11,000	16,694
Second	19,500	30,013
Third	29,800	45,217
Fourth	43,000	67,598
Fifth (maximum value)	200,000	N/A
Median Income	24,000	37,130

As Table 3 shows, the sample of those seeking bankruptcy protection was much poorer than the general population. Median household income in the sample was about \$24,000—well below the median income of \$37,130 for all Canadian families and unattached individuals.³⁰ About 40 per cent of the sample had incomes less than half of the national median income, a commonly used “poverty line.”

The mean pre-tax income (adjusted for inflation) in the Brighton and Connidis sample was \$29,687.³¹ The corresponding mean in our sample was \$28,622—quite close to that reported by Brighton and Connidis. Assuming that the income information reported by Brighton and Connidis was reasonably accurate, the 1997 group of potential bankrupts is similar to the 1977 group, at least in terms of their mean pre-tax annual income.

The employment status information collected on our survey describes what respondents were doing at the time that they filled out the survey. A rough comparison to the overall Canadian population

³⁰ The number who did not answer this survey question was fairly high, probably because respondents did not know the overall income of the household in which they were living, or because they were reluctant to answer the question. About four-fifths of the sample (856 of 1018) answered this question; Table 3 is based on those who did answer.

³¹ Due to data constraints, Brighton and Connidis had usable income information for only about 60 per cent of their sample. Moreover, they were forced to report three different average incomes, one for a group who reported before-tax incomes, one for those who reported after-tax incomes, and one for those who reported income, but did not specify whether the reported income was before or after tax. The adjustment factor for inflation used here is 2.6. The mean pre-tax income reported by Brighton and Connidis was \$11,418: see Brighton & Connidis, *supra* note 2 at 29. See also note 51, *infra*, for further discussion of our adjustment procedures.

reinforces the point made above about the relatively weak economic status of those seeking bankruptcy protection.³²

The percentage of persons aged 25–54 who were in the labour force³³ was roughly the same for both the potential bankrupts and the general population—85 per cent of the potential bankrupts, and 83.7 per cent of the general population.³⁴ However, the unemployment rate³⁵ was considerably higher among the potential bankrupts than among the general population. Whereas only 8.6 per cent of the general population were unemployed,³⁶ more than 25 per cent of the potential bankrupts were unemployed.³⁷

While the current employment status of each respondent is of interest, their labour force participation over a longer time period may also be relevant to their bankruptcy. Only 12 per cent of the sample had not worked at all in the twelve months prior to seeking bankruptcy protection. The median number of weeks worked in the previous twelve months was 40; 28 per cent reported working the full year (51 or 52 weeks). Thus, the problem for many of these people was their inability to find work that was both steady and remunerative, rather than their inability to find work at all.

Insolvency may be a temporary phenomenon. The fact that liabilities exceed assets at the moment when the Statement of Affairs is filed does not necessarily mean that the insolvent person could never repay his or her debts. If, however, there is evidence that the debtor is unlikely ever to be able to repay, then the argument in favour of granting debtors a “fresh start” is, perhaps, more compelling. While there is no way to accurately predict the future income of any individual, their occupation provides some hint as to their likely future earning power.

³² Our survey questions were not as detailed as those asked by Statistics Canada and, thus, only a rough comparison to national statistics is possible.

³³ The terms used in this section are those in common usage in the field of labour statistics. “Labour force participation” means that a person is either working or looking for work.

³⁴ The figure for the general population applies to 1996: see Statistics Canada, *Historical Labour Force Statistics, 1996* (Ottawa: Statistics Canada, 1997) at 20 [hereinafter *Historical Labour Force*].

³⁵ Of all those participating in the labour force, the unemployment rate measures the proportion who are not working and looking for work.

³⁶ See *Historical Labour Force* *supra* note 34 at 21.

³⁷ Thus, 85 per cent of our sample were working or looking for work and, of that 85 per cent, roughly 25 per cent were not working and were looking for work.

The Statement of Affairs states the occupation of those seeking bankruptcy.³⁸ For the majority of our sample—almost 70 per cent—we have occupational information, and can compare it to that reported for Canada as a whole and to similar information collected by Brighton and Connidis. The other 30 per cent of the sample were either unemployed (and did not report an occupation) or were out of the labour force (including homemakers, students, and retired persons).

Occupational information is often summarized by scales that attempt to measure “occupational prestige” with “self-employed professionals,” “employed professionals,” and “high-level managers” at one extreme, and with unskilled workers near the other extreme.³⁹ Both Brighton and Connidis, and the *General Social Survey*⁴⁰ used an occupational prestige scale called the Pineo-Porter-McRoberts (PPR) scale. This scale has sixteen categories, ranging from self-employed professionals to farm labourers. To facilitate comparison with those two sources, we also coded our occupational data according to the PPR scale (see Table 4, below).⁴¹

³⁸ Even if the person is not working for pay at the time of filing the Statement of Affairs, occupational information is sometimes reported in the space provided on the form.

³⁹ When using such scales, one must first convert each response (e.g., “registered nurse”) to one of a set of standardized numerical codes. One such set of codes is called the Standard Occupational Classification (SOC) codes. For example, a “registered nurse” is in category 3131. Occupational prestige scales then link each of the SOC codes to new categories arranged along the spectrum from high- to low-prestige occupations. For example, a registered nurse would be placed with “semi-professionals.”

⁴⁰ See Statistics Canada, *General Social Survey, Cycle 11: Social and Community Support (1996)* (Ottawa: Statistics Canada, 1997) [hereinafter *General Social Survey*].

⁴¹ See P.C. Pineo, J. Porter & H.A. McRoberts, “The 1971 Census and the Socioeconomic Classification of Occupations” (1977) 14 *Can. Rev. Soc. & Anth.* 91.

TABLE 4
OCCUPATIONAL PRESTIGE
USING THE PINEO-PORTER-MCROBERTS SCALE

<i>Occupational Prestige Scale Category</i>	<i>1977 Brighton & Connidis Sample of Bankrupts*</i>	<i>1997 Survey of Potential Bankrupts</i>	<i>1995 Canadian Population†</i>
Self-Employed Professional	0.0	0.0	1.3
Employed Professional	1.9	3.9	7.9
High-Level Management	1.0	0.6	3.3
Semi-Professional	2.7	7.1	8.8
Technician	0.7	1.2	1.8
Middle Management	3.2	4.1	9.8
Supervisor	3.4	3.1	2.2
Foreman	1.1	0.6	2.0
Skilled Clerical/Sales/Service	4.9	7.0	7.9
Skilled Crafts and Trades	13.3	15.5	9.9
Farmer	0.7	0.1	1.7
Semi-Skilled Clerical/Sales/Service	20.7	18.9	14.3
Semi-Skilled Manual Labour	8.1	4.4	8.1
Unskilled Clerical/Sales/Service	6.1	14.2	7.8
Unskilled Manual Labour	31.4	18.6	11.7
Farm Labour	0.8	0.6	1.6
Per cent of Sample Reporting Occupation and Included in Above Distribution	64.1	69.4	66.0
Unemployed, Not in Labour Force, or Not Reporting Occupation	35.9	30.6	34.0

* J.W. Brighton & J.A. Connidis, *Consumer Bankrupts in Canada* (Ottawa: Industry Canada, 1982).

† Statistics Canada, *General Social Survey, Cycle 11: Social and Community Support (1996)* (Ottawa: Statistics Canada, 1997).

In the article that first described the scale,⁴² Peter Pineo, John Porter, and Hugh McRoberts suggested that it is sometimes useful to collapse the sixteen category scale even further into a three category scale. In their sample of bankrupts, Brighton and Connidis found that 3 per cent were in a category that combined “self-employed professionals,” “employed professionals,” and “high-level management.” By contrast, 10 per cent of the Canadian labour force were in that category in the 1971 census. When our occupational categories are

⁴² See *ibid.*

combined in the same way, it is found that 4.5 per cent of bankrupts were in this high prestige group of occupations. By 1995, however, according to the *General Social Survey* of that year, 12.5 per cent of Canadians were in this category.⁴³

At the other end of the occupational prestige spectrum, Brighton and Connidis found that 38 per cent of their sample were in the three unskilled occupational categories, compared to 24 per cent of the Canadian labour force in 1971.⁴⁴ In our sample, 33 per cent were in the unskilled categories, as opposed to 21 per cent of the *General Social Survey* sample.⁴⁵

Brighton and Connidis concluded that “[t]hese findings clearly show that consumer bankrupts do not constitute a representative sampling of the labour force. Rather, it is obvious that consumer bankrupts are drawn heavily from the lowest skill levels.”⁴⁶ Based on the occupational information in our sample, we found essentially the same pattern.

Despite being active in the labour force, a majority of the sample (57 per cent) had received some form of government transfer in the two years prior to seeking bankruptcy protection. About 85 per cent of those receiving government transfers (45 per cent of the whole sample) had received either unemployment insurance benefits, social assistance, or both. These percentages are far higher than those for the general population. The Canadian Council on Social Development reports that, in 1997, there were approximately 2.8 million social assistance recipients in Canada.⁴⁷ According to Human Resources Development Canada, 1.2 million Canadians (or 4.0 per cent of the overall population) received Unemployment Insurance benefits in January 1995.⁴⁸

Receipt of employment insurance benefits or social assistance payments is an acknowledgment, by an outside institution, of one’s

⁴³ See *supra* note 40.

⁴⁴ See Brighton & Connidis, *supra* note 2 at 25.

⁴⁵ See *supra* note 40.

⁴⁶ Brighton & Connidis, *supra* note 2 at 24.

⁴⁷ See Canadian Council on Social Development, *Estimated Number of Persons and Cases Receiving Provincial and Municipal Social Assistance, March 31 1997* online: Canadian Council on Social Development <http://www.ccsd.ca/fs_sa97.htm> (date accessed: 16 August 1999). The data include members of families receiving social assistance.

⁴⁸ See Statistics Canada, *Unemployment Insurance Statistics* (Ottawa: Statistics Canada, 1995) at 10. The federal program formerly known as Unemployment Insurance is now known as Employment Insurance (EI).

economic difficulties.⁴⁹ Still another indication of economic difficulty is that about one-third of the sample had applied for additional credit and had been turned down. That is, another outside institution—in this case a creditor rather than a social program—had judged the debtor's economic situation to be difficult. Combining the government and private screening, 64 per cent had either received unemployment insurance, received social assistance benefits, or applied—and been turned down—for credit.

C. Summary

Overall, Canadians facing bankruptcy were not doing very well in terms of income and employment. While this seems obvious, it is worth mentioning because of the opinion sometimes expressed that many bankrupts are *not* in particularly difficult circumstances and are simply taking advantage of bankruptcy laws to avoid repaying their debts.

With respect to their economic situations, our sample was much like the sample studied by Brighton and Connidis almost twenty years ago. Their incomes were relatively low (although certainly not all would qualify as poor by standard definitions), and they had little income beyond that necessary to live quite modestly. If they could find work, they worked in jobs that yielded relatively low incomes. The proportion that received either unemployment insurance or social assistance suggests that even the employment they had may not have been very stable.

V. THE ASSETS AND LIABILITIES OF THOSE SEEKING BANKRUPTCY IN 1997

In 1977, Brighton and Connidis found that the mean level of liabilities was \$25,493; the median was much lower, just under \$10,865.⁵⁰

⁴⁹ Those receiving EI need not be poor; EI claims are based largely on having been employed in an insurable job for the requisite number of weeks. There is no means testing done before EI claims are approved. Nonetheless, the fact that a person has been unemployed and has not quickly found another job is an indication of potential economic difficulty.

⁵⁰ See Brighton & Connidis, *supra* note 2 at 40. Data on financial assets and liabilities can be quite skewed, with some very large values at the upper end. In such cases, the arithmetic average will often give a misleading picture of the central tendency of the data, since the high values can raise the mean quite substantially. In such cases, the median—the value of a variable below which half of all values lie—is a better indicator of central tendency. Medians are generally relied on in this report, although means are occasionally reported as well.

Expressed in constant 1996 dollars, the mean for the Brighton and Connidis data was \$66,281 and the median \$28,249.⁵¹

The liabilities of the “average” debtor seeking bankruptcy protection had not changed much since 1977. The median level of total liabilities fell slightly from \$28,249 to \$26,016. On the asset side, the median level of assets was quite low, but had increased somewhat over time. Adjusted for inflation, the median bankrupt in 1977 had assets of about \$1,040, while the median 1997 potential bankrupt had assets of \$3,000. The median difference between liabilities and assets (adjusted for inflation) was \$24,362 in 1977, compared to \$16,885 in 1997.

Thus, the picture that emerges is that potential bankrupts in 1997 were in roughly the same asset and liability position as were bankrupts in 1977. One could perhaps argue that the 1997 bankrupts were a bit better off since their assets were somewhat larger, and the median gap between assets and liabilities, adjusted for inflation, was about 70 per cent of what it was in 1977 ($\$16,885/\$24,362$). Given the very large standard deviations for these variables, however, that difference may not be very important.

A. *Structure of Liabilities*

Although those seeking bankruptcy protection in 1997 were in roughly the same economic position as were bankrupts in 1977, we know that many more people found themselves in the position of having to seek bankruptcy protection. One key to understanding why there were so many more bankruptcy cases may lie in analyzing how the composition of those liabilities changed.

Those filing for bankruptcy list their liabilities on their Statement of Affairs. Each creditor is named and the amount of the debt is specified. Often, the purpose of the debt is either made explicit or can be inferred from the name of the creditor. Using that information, we categorized each liability for each bankrupt into one of twenty-four mutually exclusive categories, defined by either the source of the debt or

⁵¹ Before comparing dollar values reported in our study to those reported in the Brighton and Connidis report, their numbers must first be adjusted to take account of the overall changes in price levels that have occurred since 1977. In the nearly twenty years that separate our sample from that studied by Brighton and Connidis, consumer prices rose considerably. Using 1986 as a base (that is, 1986=100), the consumer price index was 58.1 in 1977 and 151.6 in 1996. In the remainder of this section, whenever the findings of Brighton and Connidis are compared to our own, the dollar value reported by Brighton and Connidis is increased by the factor of 2.6 (151.6/58.1); these are called “adjusted” figures for 1977. The adjusted figures are reported along with the original numbers as they appear in the Brighton and Connidis report.

by the purpose of the debt. For example, two of the twenty-four categories are “Bank—Mortgage” and “Other Financial Institution—Car Loan.” For each of the twenty-four categories, we coded the secured and unsecured amounts separately.

In order to summarize the results, we used the twenty-four categories of debts to create one set of categories differentiated only by the source of the credit (*e.g.*, all bank debts) and another set distinguished its type (*e.g.*, all mortgages). The liabilities were classified as having come from nine different sources: (1) banks, (2) other financial institutions, (3) various levels of government, (4) credit card companies, (5) retailers, (6) utilities, (7) private individuals, (8) medical and dental institutions, and (9) a residual category (called “other debts”), the source of which was either not identifiable or in a miscellaneous category. Selected types of debt were also identified: mortgages, car loans, student loans, and debts to Revenue Canada.

The classifications by source and type represent two different ways of categorizing the same information. For example, a student loan would appear in the “government” category when we discuss sources of debt, but would have its own category when we discuss types of debt. Similarly, a bank mortgage would appear under “bank” when we discuss sources and under “mortgage” when we discuss types.

There was considerable diversity in the structure of liabilities in our sample. Only rarely had a single debtor borrowed from each possible source, and most had no debts in several categories. To illustrate the levels of debt by source, Table 5, below, contains summary measures for amounts owed to six of the more important sources. The first column of the Table shows the percentage of the sample who reported at least one debt from the corresponding source. The surprise here is the proportion—60 per cent—who reported owing money to a government agency, often Revenue Canada or a student loan program.⁵²

Since a relatively large group of debtors did not have debts in some categories, Table 5 also reports the median value for those who reported the dollar value of at least one debt. For example, among the

⁵² Trustees have told us that Revenue Canada is sometimes listed among those holding debts, even when no such debt is known to exist. This is because Revenue Canada must be notified of all bankruptcies. Since all creditors must also be notified of potential bankruptcies, including Revenue Canada, a debtor saves a step in the notification process. That this is partly true is supported by the fact that a fraction of Revenue Canada debts have no dollar amount associated with them. However, the majority of Revenue Canada debts are listed with specific dollar amounts, suggesting that a “real” debt exists. To be specific, 48.2 per cent of the sample reported debts to Revenue Canada on their Statements of Affairs. Only 34.5 per cent of the sample, however, reported specific positive values for those debts.

52.5 per cent of the sample who owed money to banks, the median amount owed was \$14,200. Indeed, debts owed to banks were the largest, presumably because a large part of mortgage debt was concentrated in that category. The next most important creditor (in terms of the size of the median debt for those who had at least one liability in the category) was “other financial institutions,” with a median of just over \$8,000. Mortgages are an important source of liabilities to those institutions as well. The government was the next largest source, with a median debt of \$6,000 among those who had such debts. Debts on credit cards and debt owed to retailers were quite common but were generally smaller. The median credit card debt was just over \$3,500, for those who had such debts, while the median retailer debt was \$1,600, and the median “other” debt was \$2,000.

TABLE 5*
SOURCES OF LIABILITIES

<i>Source of Credit</i>	<i>Per Cent for Those With at Least One Liability</i>	<i>Median Value of Liabilities for Those With at Least One Liability (\$)</i>
Banks	52.5	\$14,200
Other Financial Institution	57.1	\$8,065
Government	60.2	\$6,000
Credit Card Companies	68.5	\$3,547
Retailers	58.3	\$1,600
Other Sources	50.9	\$2,000

* The values presented in this table have been updated since the original study (see *Empirical Study*) and, therefore, may not be identical to corresponding values presented in the original paper.

The purpose for which debt was incurred is as important as its source. Table 6, below, reports on four important types of debt. The vast majority of bankrupts did not have mortgages. Nor did the majority have either car loans or student loans. In each case, roughly 25 per cent of the sample had such liabilities. More than one-third of all bankrupts, however, had debts to Revenue Canada.

Mortgages were by far the most important category in the sense that, among the bankrupts who had mortgages, the median amount of the liability was quite large, almost \$75,000. Of course, that debt was probably counterbalanced on the asset side by the debtor’s equity in the house. The median car loan, for those that had such loans, was \$10,000. The median student loan, for those who had them, was \$10,100. Debts to

Revenue Canada, while more common than mortgages, car loans, or student loans, were typically smaller in size, with a median of \$2,500 for those who had such liabilities (and who knew their magnitude).

TABLE 6
TYPE OF LIABILITY

<i>Type of Debt</i>	<i>Per Cent With at Least One Liability</i>	<i>Median Value of Liabilities for Those With at Least One Liability (\$)</i>
Mortgage	22.7	74,314
Car Loan	25.9	10,000
Student Loan	25.3	10,100
Revenue Canada	34.5	2,500

B. *Structure of Assets*

On their Statements of Affairs, potential bankrupts report on their ownership and value of fifteen types of assets. Each asset is then either claimed as exempt (and, therefore, protected against being sold to pay outstanding debts) or non-exempt.⁵³

Median asset levels were quite low, both in absolute terms and in comparison to overall liability levels. The median amount of exempt assets was \$2,000 (for those who had such assets), and the corresponding median for non-exempt assets was \$2,090. Combining exempt and non-exempt assets, the overall median for those with positive asset values was \$3,150.

Next, the proportion of debtors who had assets in any one of the fifteen asset categories can be analyzed. The value of exempt assets was quite small in each category. Homes were the most highly valued exempt assets, with a median value of \$75,000, but only 5.8 per cent of the sample had homes that were exempt. The other exempt assets were either held by a small proportion of the sample (*e.g.*, insurance, or stocks and bonds) or were held by sizable proportions, but were of little value (*e.g.*, furniture, automobiles, or personal effects).

⁵³ The definition of which assets are exempt and which are non-exempt varies across the provinces. The treatment of homes, in particular, varies across provinces. For a more complete discussion of this issue, see Ziegel, *supra* note 28 at 219; 258-61, Table A-1.

The value of non-exempt assets was also quite small, although some debtors had homes (14.4 per cent reported owning homes, with a median value of \$83,000) or cars (27.5 per cent, with a median value of \$2,000) that could be sold.

C. *Summary*

Overall, it seems that individuals seeking bankruptcy protection in 1997 were not much different from those who declared 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 those of the Brighton and Connidis sample, the debtors in our sample do not seem to be exploiting bankruptcy laws in order to relieve themselves of debts.

The absolute number of personal bankruptcies in Canada has risen dramatically—by a factor of eight—since 1977. So if the average bankrupt is little different than his or her 1977 counterpart, we must account for the larger number of people who found themselves in a situation where bankruptcy seemed to be the best option. Two of the major possibilities are that, (1) although the type and number of people who borrow are roughly the same, those people are more likely to declare bankruptcy; and that (2) while the likelihood that any one debtor goes bankrupt remains about the same, more and different types of people borrow.

It is likely, of course, that both alternatives are relevant to varying degrees. That is, there may be more people at risk of bankruptcy because of rising debt levels, and also more people at risk of falling into an economic situation that forces them into bankruptcy (*e.g.*, through the loss of a job or a marital disruption).

VI. A CLOSER LOOK AT THREE GROUPS OF DEBTORS SEEKING BANKRUPTCY

One of the possible explanations for the large number of bankruptcies that now occur each year in Canada is that, over time, groups of Canadians that traditionally did not borrow began to carry heavy debt loads and, thus, became vulnerable to financial insolvency. Another possible explanation is that particular subgroups of Canadians, which had always carried relatively heavy debts, became more numerous.

Consider three groups: the self-employed, unmarried women and men, and young people under thirty.

The self-employed have always been heavy borrowers, since they must finance the costs of starting up and maintaining a small business.⁵⁴ Since the mid-1970s, however, the number of workers who classify themselves as self-employed has risen considerably (see Table 7, below). In 1977, 1.3 million workers were self-employed; by 1996, that number had increased by almost one million workers to 2.3 million. According to Garnett Picot, Marilyn Manser, and Zhengxi Lin, self-employment accounted for about 80 per cent of the growth in employment in the 1990s.⁵⁵ Moreover, most of the recent increase in self-employment took the form of unincorporated “own-account” employment, in which the self-employed person is the only employee. Self-employment is a risky business, however, and large numbers of small businesses fail each year.

⁵⁴ Although some of the self-employed operate large and medium-sized businesses, those who operate small businesses are the ones who are likely to use personal bankruptcy as a way of gaining relief from their debts.

⁵⁵ See G. Picot, M. Manser & Z. Lin, “The Role of Self-Employment in Job Creation in Canada and the United States” (OECD/CERF/CILN International Conference on Self-Employment, Venture Inn, Burlington, Ontario, 24-26 September 1998), online: Canadian International Labour Network <<http://labour.ciln.mcmaster.ca/papers/seconf/cilnindex.html>> (date accessed: 25 August 1999).

TABLE 7*
TRENDS IN THE NUMBER OF SELF-EMPLOYED WORKERS, LONE-PARENT FAMILIES, DIVORCES, AND THE DOLLAR VOLUME OF FEDERAL STUDENT LOANS

<i>Year</i>	<i>Self-Employed Workers[‡]</i>	<i>Lone-Parent Families[‡]</i>	<i>Divorces^{**}</i>	<i>Dollar Volume of Federal and Provincial Student Loans^{‡†}</i>
	(000)	(000)	(000)	(\$millions)
1975	-	-	50.6	-
1976	1,191.3	559.3	54.2	-
1977	1,291.2	-	55.4	-
1978	1,345.6	-	57.2	-
1979	1,448.1	-	59.5	-
1980	1,482.8	-	62.0	-
1981	1,521.3	712.0	67.7	-
1982	1,542.3	740.5	70.4	-
1983	1,596.6	768.1	68.6	-
1984	1,661.3	795.7	65.1	-
1985	1,679.3	823.6	62.0	-
1986	1,637.2	854.9	78.3	-
1987	1,792.1	872.1	96.2	-
1988	1,788.9	890.4	83.5	-
1989	1,788.3	912.7	81.0	-
1990	1,864.6	933.8	78.5	768.5
1991	1,906.7	952.7	77.0	1,008.2
1992	1,964.2	986.0	79.0	1,059.9
1993	2,010.4	1,011.2	78.2	1,145.6
1994	2,085.6	1,025.6	78.9	1,843.1
1995	2,220.2	1,042.8	77.6	2,131.5
1996	2,371.2	1,055.4	71.5	-
1997	2,448.9	1,071.8	-	-

* The values presented in this table have been updated since the original study (see *Empirical Study*) and, therefore, may not be identical to corresponding values presented in the original paper.

[†] Statistics Canada, "Canada, Labour Force Characteristics, Monthly From January 1976, Unadjusted" (CANSIM) Matrix 03450, series D984561 (December value), online: Statistics Canada <<http://www.statcan.ca/english/CANSIM>> (date accessed: 16 June 1999).

[‡] Statistics Canada, "Lone-Parent Families": see Statistics Canada, *Intercensal Estimates of Families, Canada and Provinces, 1981-1986* (Ottawa: Statistics Canada, 1988), Statistics Canada, *Revised Intercensal Population and Family Estimates, July 1, 1971-1991* (Ottawa: Statistics Canada, 1994), and Statistics Canada, *Annual Demographic Statistics 1996* (Ottawa: Statistics Canada, 1997) (data for 1992 to 1995 can be found in the same titled report for the corresponding year).

** Statistics Canada, "Divorces in Canada" (CANSIM) Matrix 0007, series D190.

†† Calculations based on the work of R. Finnie & S. Schwartz, *Student Loans in Canada: Past, Present, and Future* (Toronto: C.D. Howe Institute, 1996) at 85, Table A-1. Student loans issued to Quebec students are not included in these figures.

Unmarried women are more numerous than before, and I believe that they are more likely to be carrying heavy debts. Table 7 shows the trends in the number of divorces and in the number of lone-parent families, and illustrates that Canadian women are more likely than before to be unmarried heads of families at some point in their lives.

The number of divorces rose by more than 50 per cent between 1975 and 1995. While many divorced men and women remarry, the economic disruption caused by the divorce may contribute to the need for bankruptcy protection. Moreover, unmarried women—whether divorced, separated, or never-married—are now more likely to end up as household heads. Table 7 shows that the number of lone-parent families rose from about 560,000 in 1976 to more than 1 million in 1996; the vast majority of lone-parent families are headed by women.

We had no evidence that unmarried women are more likely to be in debt than before, but suspect that the increased need of some unmarried women to borrow (perhaps because of the need to maintain a lone-parent family), combined with the easier availability of credit, might have led unmarried women to become more likely to borrow.

Unlike the self-employed, young people are not more numerous than they once were. Indeed, the mid-1970s were a time when Canada had large numbers of young people, as the baby boom cohort passed through their twenties. In the late 1970s, for example, there were about 4.5 million Canadians between the ages of fifteen and twenty-four;⁵⁶ in the 1990s, that number had fallen to about 4 million.⁵⁷ For this group, what has changed is their propensity to borrow. One source of increased borrowing is borrowing to attend post-secondary schools. Table 7 shows that the volume of federal and provincial student loans tripled from \$768 million in 1989-1990 to \$2.13 billion in 1994-1995. This increase came partly from increases in lending authorized by the Canada Student Loans Program, and partly from provincial student loan programs that sprang up in the 1990s as provincial student grant programs were eliminated. In addition, we believe that young people are now more likely to borrow using credit cards, but we have no data to back up that conjecture.

⁵⁶ See *Canada Year Book*, *supra* note 14 at 134, Table 4.13.

⁵⁷ See *Annual Demographic Statistics 1996*, *supra* note 14 at 64.

In this section of the article, these three groups—the self-employed, unmarried women and men, and young people—are looked at more closely in the context of our survey. While we might have chosen to look more closely at any number of different groups within the sample, we chose these three because evidence from previous studies⁵⁸ indicates their potential importance in explaining the rise in the number of bankruptcies, and because preliminary data analysis indicated that these groups were numerically important.⁵⁹

A. *The Self-Employed*

Roughly one in every four debtors in our sample was either self-employed at the time of our survey, or reported on their Statement of Affairs that they had been self-employed within the past five years. Roughly 40 per cent of those defined as self-employed in that way reported being self-employed at the time of the survey. Of the other 60 per cent, two-thirds were currently employed as wage-earners, and the remainder were either unemployed or out of the labour force.⁶⁰ For some of the self-employed, financial problems with small businesses might have been an important precursor to their seeking bankruptcy protection.

⁵⁸ See, in particular, 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) [hereinafter *As We Forgive Our Debtors*].

⁵⁹ The overall sample size for the survey is 1,018. Readers should be aware that each of the three groups discussed in this section is, therefore, comprised of only a few hundred debtors. The definitions for the subgroups are given in the appropriate sections below. See the following table for the raw sample sizes:

<i>Full Sample</i>	1,018
Self-employed	251
Not self-employed	767
Unmarried women	254
Unmarried men	321
Married respondents	443
Debtors under thirty years of age	326
Debtors thirty years of age or older	692

⁶⁰ Thus, those who were not self-employed, by our definition, were those who were not currently self-employed and had not been self-employed within the last five years. Both the self-employed and those not self-employed include individuals who were currently working for someone else, or not working at all.

Table 8, below, shows that the self-employed debtors in our sample were more likely to have debts from every source. In some cases—credit card debt or credit obtained from non-bank financial institutions—the differences were relatively small. In other cases, the differences were quite substantial. For example, more than 80 per cent of the self-employed debtors owed money to various levels of government, compared to about 66 per cent of those who were not self-employed.

TABLE 8
SOURCES OF LIABILITIES: COMPARISON OF THOSE WHO
WERE SELF-EMPLOYED TO THOSE WHO WERE
NOT SELF-EMPLOYED

<i>Source of Credit</i>	<i>Per Cent With at Least One Liability</i>	<i>Median Value of Liabilities for Those With at Least One Liability (\$)*</i>
<i>Total Liabilities</i>		
Self-Employed	N/A	51,005
Not Self-Employed	N/A	21,200
<i>Banks</i>		
Self-Employed	61.4	19,411
Not Self-Employed	51.4	13,000
<i>Other Financial Institution</i>		
Self-Employed	62.5	12,000
Not Self-Employed	58.3	6,900
<i>Government</i>		
Self-Employed	81.7	9,788
Not Self-Employed	65.8	5,000
<i>Credit Card Companies</i>		
Self-Employed	72.5	5,081
Not Self-Employed	67.5	2,947
<i>Other Sources</i>		
Self-Employed	64.1	4,429
Not Self-Employed	50.7	1,530

* The median value for total liabilities need not be equal to the sum of the medians for each of the components.

Still more important is the size of these debts. Table 8 compares the median levels of total liabilities and several different debt sources for the self-employed and for other debtors. Overall, the median level of total liabilities for the self-employed debtors was just over \$51,000. For those who were not self-employed, the median level of total debt was considerably lower, at just over \$21,000. Government debt was roughly twice as large for the self-employed as for the other debtors. Indeed, the self-employed debtors had roughly double the amount of debt in every category, except bank debt (which is dominated by mortgage debt) and credit card debt. Even in those two categories, the self-employed debtors had considerably higher debt levels.

Considering debts by type, the self-employed debtors have somewhat higher median debts for mortgages and car loans, and somewhat lower student-loan liabilities. These differences may reflect their greater age, rather than their self-employment. The clearest difference is in the amount owed to Revenue Canada. For those who were not self-employed, the median debt to Revenue Canada was relatively small (about \$1,500); for those who had been self-employed, the median was \$7,000.

The median pre-tax annual income of the self-employed debtors was \$27,500, as compared to \$22,500 for those who had not been self-employed, but this larger income was counterbalanced by the higher debt levels noted above. Not surprisingly, then, ratios of the debt-to-annual income for the self-employed debtors were much higher than those of the other debtors. The median ratio of total debt-to-annual income was 2.14 for the self-employed, and 1.20 for the other debtors. Looking at the ratio of total unsecured debt-to-annual income, we see that the ratio for the self-employed debtors was 1.22, and for the others, 0.84.

Even though the self-employed debtors once ran their own businesses, their bankruptcies were not necessarily related to their self-employment. Indeed, only 18 per cent of the self-employed debtors listed "small business failure" as the event that triggered their bankruptcy. Another 14 per cent, however, listed debts to Revenue Canada as the triggering debt. On the other hand, 13 per cent said that "no particular events or debts" triggered their bankruptcy, and 5 per cent listed marital disruption. In general, there is no way to be sure that the bankruptcy of someone who had been self-employed was directly related to his or her self-employment.

B. *Unmarried Women and Unmarried Men*

Unmarried women were more numerous among those seeking bankruptcy protection in 1997 than in the 1977 sample studied by Brighton and Connidis. The well-documented fact that women earn less than men, combined with the increasing proportion of lone-parent families, and the larger number of divorces occurring annually suggests that, over time, more women might have found themselves in an economically vulnerable position. If so, that trend may be a factor contributing to the overall increase in the number of bankruptcies occurring each year.

Teresa Sullivan, Elizabeth Warren, and Jay Westbrook devote a chapter to “Women and Bankruptcy” in their analysis of American bankrupts. When they compared the median debt-to-income ratios of unmarried women and unmarried men, they found that the unmarried women had higher median debt-to-income ratios, and were thus unambiguously worse off. The authors wrote:

These comparative financial data juxtapose two important economic facts about single women in bankruptcy: They are persistently at the lowest end of all income measures, and they file bankruptcy in the same state of relative collapse as other bankrupt debtors. Because of their sharply lower wages, single women are more vulnerable to a small disruption—a few unanticipated medical bills, a short layoff, a handful of credit card charges run up too quickly.⁶¹

In this section, the economic position of unmarried Canadian men seeking bankruptcy protection is compared to that of unmarried women filing for bankruptcy.⁶² Both groups were in a very serious economic position. There is some evidence that the women were relatively worse off, but that evidence is not overwhelming.

Unmarried men had somewhat higher total liabilities than unmarried women. The median level of their total liabilities was \$23,643, compared to \$19,052 for unmarried women. However, men were also more likely than women to have large assets, suggesting that some of the large liabilities of the unmarried men were secured by assets, such as homes and cars. If so, the net indebtedness—measured as the difference between assets and liabilities—of men and women should be, and is, more similar than their total liabilities alone. The median level of net

⁶¹ *As We Forgive Our Debtors* *supra* note 58 at 155-56.

⁶² “Unmarried” is defined as any marital status other than married or living in a common-law arrangement. Thus, respondents who had never been married, those who were divorced or separated (without regard to whether the marital disruption was recent or long past), and those who were widowed are defined as unmarried.

indebtedness is \$15,972 for unmarried men and \$14,826 for unmarried women.

Having slightly lower net indebtedness made the women a bit better off, but that advantage was more than offset by their substantially lower income. The median total monthly income for unmarried men was \$1,200 (\$14,400 annually), and \$1,050 (\$12,600 annually) for the unmarried women. There was a corresponding disparity in pre-tax annual household income, which was quite a bit lower for women than for men. The median for unmarried men was \$20,000; the median for unmarried women was substantially lower at \$14,200. Only one-third of the unmarried women filing for bankruptcy had incomes above the median income of the men. By contrast, 70 per cent of unmarried men in the sample had household incomes greater than the \$14,200 median for unmarried women.

Combining the respondents' estimates of annual income with the information on liabilities allows us to calculate debt-to-income ratios in our sample. These debt-to-income ratios are a better indicator of relative financial position than total liabilities alone; the higher the ratio, the worse the financial position. With the sum of all debts in the numerator, the median debt-to-income ratio was 1.36 for men and 1.31 for women. The higher ratio for men probably reflects the fact that men are more likely to have mortgages that count as a liability in this calculation, without being counterbalanced by the value of the home being used as security for the mortgage.

When the ratio of total unsecured debt to annual income is examined, we see that unmarried women seem somewhat worse off than unmarried men. The median ratio of total unsecured debt to annual income was 1.16 for women and 0.93 for men.

Not only did women have less income with which to pay roughly the same debts, they also had larger families. Only 20 per cent of the unmarried men had any dependants at all, whereas 42 per cent of the women had at least one dependant. In fact, there were more women with two or more dependants (22 per cent) than men with any dependants at all (19.3 per cent).

The evidence seems to indicate that unmarried women are in a worse economic situation than unmarried men. The net indebtedness of the two groups is about the same, but the women have considerably lower income. In addition, because unmarried women are far more likely to have dependant children, some of the women's already lower income must be devoted to their support. However, the conclusion that the unmarried women are worse off is tempered by fact that the overall debt-to-income ratios for unmarried men and women are about the

same, probably because the higher income of the unmarried men is counterbalanced by their higher debts.

C. *Young People*

The economic situation of Canadian young people has drawn considerable attention of late. The gap between youth and adult unemployment rates, which normally decreases during periods of economic recovery, has remained between 7 and 8 percentage points since the recession of the early 1990s. Moreover, there is concern about the school-to-work transitions of young people, concern that even those who find work may be finding only temporary jobs that lack any clearly defined career path.⁶³

One might think that the employment troubles of young people would not affect bankruptcy, because young people with spotty employment histories and tenuous job prospects ought not to be able to amass the large debts that most bankrupt debtors carry. However, two factors may have created a link between the economic troubles of young people and bankruptcy.

The first of these factors is the rapid growth in the volume of student loans. Over the past decade, in the order of \$10 billion dollars has been lent to hundreds of thousands of Canadian post-secondary students.⁶⁴ Some of these borrowers were university students with relatively strong post-education job prospects. Other borrowers, however, were enrolled in short-term courses whose market value was much less certain. Most importantly, however, student loans are issued without any assessment of the borrower's potential to repay; instead, they are based on student financial need. That practice may encourage post-secondary access, but it also leads to situations where some young people have relatively large debts and no means to repay them.

The second factor is the increased availability of bank and retail credit cards. Young people who manage to find a job for even a short time can obtain a credit card, since very little screening of applicants is undertaken, beyond a quick check on current employment.

The economic situation of young people was relatively weak, even within the group of those seeking bankruptcy protection. Their

⁶³ See G. Betcherman & N. Leckie, *Youth Employment and Education Trends in the 1980s and 1990s* (Ottawa: Canadian Policy Research Networks, 1997).

⁶⁴ See Table 7, above. This figure is derived from calculations by the author, which includes an estimate of lending that is based on an assumption of a consistent pattern of lending since 1996.

median indebtedness was about \$16,000, and their median annual household income was \$18,000.

Of greatest interest in this case is the composition of the liabilities held by young people. Not surprisingly, young people are less likely to hold a mortgage and, if they do, to hold smaller ones. Only 10 per cent of those under thirty have outstanding mortgages, as opposed to 30 per cent of those over thirty. The median mortgage debt for the small numbers who have one is \$48,000, compared to almost \$80,000 for the older group. Young potential bankrupts were also less likely to owe money on a car; just over 18 per cent had an outstanding car loan, whereas almost 30 per cent of older debtors owed money on a vehicle.

Large proportions of both groups had outstanding credit card debts—65 per cent of young people and 70 per cent of the older people. However, the credit card balances of the young people were quite modest, with a median of only \$2,000 among those who had outstanding balances, versus \$4,300 for those over thirty.

Thus far, the liabilities of young people seem less severe than those of the older group—fewer mortgages, fewer outstanding car loans, lower credit card balances. Where the young people face considerably heavier debt is in student loans. More than 45 per cent of the younger group had a student loan, compared to only 16 per cent of the older group. For those who had student loans, in both groups, the median amount was close to \$10,000.

For young people seeking bankruptcy, student loans were very likely to comprise a large share of overall debt. For 28 per cent of the young people, student loans were 50 per cent or more of the overall debt and, for 10 per cent, student loans were more than 90 per cent of total debt.

Roughly one-third of our sample of potential bankrupts was under thirty years old. One puzzle here is that, in 1977—at a time when student loans were not an important type of debt and when credit card usage was much more limited—about 40 per cent of the Brighton and Connidis sample was less than thirty years old.⁶⁵ Student loans are, nonetheless, playing a role in bankruptcy that was unknown twenty years ago. Brighton and Connidis set out to measure the extent to which student loans figured in the debts of those seeking bankruptcy protection in 1977, and found virtually none in their sample. In our 1997 sample, a very large proportion of young potential bankrupts had student loans and their outstanding balances were quite large.

⁶⁵ See Brighton & Connidis, *supra* note 2 at 20.

VII. ATTITUDES TOWARDS BANKRUPTCY

Based on the evidence presented in the preceding sections, I believe that an important cause of the rising number of personal bankruptcies is the increase in borrowing by particular subgroups who are either new to borrowing (such as young people or unmarried women), or by subgroups who have traditionally borrowed but who are more numerous now than before (such as the self-employed).

As noted above, however, one commonly held alternative view of bankruptcy is that debtors simply give up more easily now than before, even under similar economic circumstances. There is no empirical evidence to support this view, but it is certainly possible that attitudes concerning bankruptcy have changed over time.

Table 9, below, shows the responses of the full sample of survey respondents to five survey questions relating to attitudes toward bankruptcy. Each survey respondent was asked to rank, on a scale of 1 to 5, the extent to which they agreed with the five statements listed in the Table.⁶⁶

TABLE 9
ATTITUDES TOWARDS BANKRUPTCY

(1) Bankruptcy is a financial decision like any other	3.38
(2) Bankruptcy is a way to overcome past misfortunes and start over	3.70
(3) Bankruptcy is not a sign of personal failure	3.39
(4) Bankruptcy is not something that other people look down on	2.59
(5) Bankruptcy is more acceptable than it was ten years ago	3.67

Perhaps more informative than the simple means reported in Table 9 is the comparison of attitudes according to various demographic variables. By adding up the values for each answer to the five attitudinal questions, we created a simple scale ranging in value from 25, where a score of 5 indicates strong disagreement with all five questions in Table 9 and a score of 25 indicates strong agreement. A high score might be interpreted as a “lenient” view of bankruptcy, while a low score might be

⁶⁶ The third and fourth questions in Table 9 were phrased in a positive way—without the word *not*—on the survey itself. To create a scale in which higher values meant more lenient views toward bankruptcy, the scaling for Tables 9 and 10 was reversed. The values presented in this table have been updated since the original study (see *Empirical Study, supra* note 3) and, therefore, may not be identical to corresponding values presented in the original paper.

interpreted as a more “strict” view. The overall mean on our simple attitude scale is 16.5 out of 25.

In Table 10, below, the average value of this scale by age, marital status, education, and labour force participation is shown. Consider first the hypothesis that the rise in the bankruptcy rate has been caused, in part, by changing attitudes toward bankruptcy. Table 10 shows that attitudes toward bankruptcy do not vary significantly by the age of the person filing for bankruptcy. If anything, younger people have “stricter” views concerning bankruptcy than older people. The mean value of the scale rises slightly, from 16.3 to 17.0, as we move from younger to older age categories. Overall, there is a small positive correlation of 0.06 between age and the attitude scale.

The second finding in Table 10 is that the same similarity we see across age categories appears with the other variables. Men and women have identical attitudes toward bankruptcy. Those without a post-secondary degree have slightly more lenient views toward bankruptcy than those with a post-secondary degree; married people have slightly more lenient views than unmarried people.

These findings are one piece of evidence against the hypothesis that attitudes toward bankruptcy have affected the bankruptcy rate. However, we had information only on a sample of debtors filing for bankruptcy, so we could not compare their attitudes to those not filing for bankruptcy. Moreover, lacking longitudinal information, we could not compare attitudes in 1997 to attitudes in previous decades. The possibility, therefore, remains that changing attitudes towards bankruptcy, or different attitudes among different sub-groups, are a cause of the rising bankruptcy rate.

TABLE 10
ATTITUDES TOWARDS BANKRUPTCY,
BY DEMOGRAPHIC CATEGORY

<i>Overall Mean of the 25-Point Attitude Scale</i>	16.5
<i>Age Categories</i>	
Less than 25 years old	16.3
25–34 years old	16.5
35–44 years old	16.5
45–54 years old	16.8
55 or older	17.0
<i>Marital Status Categories</i>	
Married	16.9
Single	16.4
Divorced, Separated, or Widowed	16.3
<i>Gender</i>	
Male	16.5
Female	16.5
<i>Education</i>	
Post-Secondary Degree	16.2
No Post-Secondary Degree	16.7

VIII. CONCLUSION

Bankruptcy policy in Canada has been formulated in an atmosphere informed far more by anecdote than by empirical investigation. As a result, the legislation governing consumer bankruptcy has placed far too much emphasis on preventing abuse, and on “educating” allegedly incompetent debtors. Recent reforms in the *Bankruptcy and Insolvency Act* (*BIA*)⁶⁷ clearly indicate this emphasis.

There is no doubt that fraud and abuse exist, and that provisions against them must be kept in place. However, the *BIA* already contained significant safeguards against the inappropriate use of bankruptcy. The

⁶⁷ R.S.C. 1985, c. B-3 [hereinafter *BIA*].

1992 reforms needlessly strengthened those safeguards.⁶⁸ In addition, the 1992 reforms introduced mandatory debtor education,⁶⁹ which was intended to educate borrowers in the proper use of credit for those seeking bankruptcy. Even though stories about the financial naïveté of one's friends and relatives are commonplace, the need for such systematic education has never been empirically established.

Our empirical investigation of the circumstances of a group of Canadians who sought bankruptcy protection in 1997 showed that the majority were heavily over-indebted, often because of the loss of a job, the break-up of a marriage, or the failure of an investment in post-secondary education or self-employment. The evidence suggests that few of these debtors could ever repay the amounts that they owed.

The immediate implication is that future reform of the *BIA* should focus on insuring that the most heavily indebted Canadians can be given a fresh start. Many of these debtors borrowed in the pursuit of publicly-approved goals, such as obtaining a post-secondary degree or starting a small business. They tried to do what we, as a society, encouraged them to do. Others were the victims of the widespread economic restructuring of recent years—a restructuring that many believe will, in the long run, benefit all Canadians. They suffered economically so that we all might benefit.

Most of these debtors do not need to be accused of abusing the system, or of mismanaging their financial affairs. Instead, they simply need the chance to reconstitute their economic lives without bearing a lifelong burden of past debts.

⁶⁸ A body of work by economists has emphasized the incentives that bankruptcy regulation can create for opportunistic behaviour. That work asserts that a substantial minority of bankruptcies are the result of strategic actions by debtors to avoid giving up assets (*e.g.*, by shifting their composition to take advantage of property exemptions), and to attempt unduly risky economic actions: see especially M.J. White, "Economic Versus Sociological Approaches to Legal Research: The Case of Bankruptcy" (1991) 25 *L. & Soc'y Rev.* 685; and M.J. White, "Why It Pays to File for Bankruptcy: A Critical Look at the Incentives Under U.S. Personal Bankruptcy Law and a Proposal for Change" (1998) 65 *U. Chi. L. Rev.* 685. Our data cannot conclusively show that debtors are *not* behaving opportunistically, but their lack of assets, low income, and past reliance on government transfers argues against widespread opportunistic behaviour.

⁶⁹ See *BIA*, *supra* note 67, s. 157.1; and Office of the Superintendent of Bankruptcy, *Directive No. 1R2: Counselling in Insolvency Matter* (issued 21 December 1994), online: Office of the Superintendent of Bankruptcy <<http://strategis.ic.gc.ca/SSG/br01091e.html>> (date accessed: 25 June 1999).

IX. METHODOLOGY

This section provides a brief discussion of the implications for statistical testing of not having drawn a random sample for our survey of debtors. As noted in Part III, above, we decided early in the study that it would be inadvisable to attempt to survey a random sample drawn from the population of those seeking bankruptcy protection in early 1997. Contact information was not available for a large proportion of those declaring bankruptcy and, even if it were available, those responding to a survey undertaken long after the initial filing of the Statement of Affairs might have had problems recalling their financial situation at that time, or have been unwilling to do so.

One consequence of not having a random sample is that some statistical tests that might have been appropriate could not be performed. For example, the group of self-employed respondents was compared to those who were not self-employed. One might ask whether the observed differences are reflective of differences in the population of those seeking bankruptcy protection, or whether they simply reflect differences in our particular group of potential bankrupts.

Usually, that question would be answered by testing the hypothesis that the population mean for the self-employed was equal to the population mean for those not self-employed. The essence of that test is to ask how likely it would be to obtain the difference observed *in a random sample* if there was, in fact, no difference in the underlying populations. As we did not have a random sample, however, that test could not be performed.

Nonetheless, we have no reason to believe that our sample was not broadly representative of the underlying population. Therefore, some guidelines for interpreting the reported difference *as if* the samples had indeed been randomly generated are provided.

At several points in the article, the entire 1997 sample of potential bankrupts is compared to the 1977 sample studied by Brighton and Connidis in 1982. If both samples had been randomly drawn from their underlying populations, the sample sizes would have been large enough to detect true differences that are relatively small. Both samples contained about one thousand debtors.

For variables appearing as proportions (including gender, age, marital status, and labour force participation), differences that are larger than 4.3 percentage points would lead to a rejection of the hypothesis that the two populations had the same proportion. For example, there is a difference of 20 percentage points between the proportion of single

people in the Brighton and Connidis sample (8 per cent) and the proportion in the 1997 sample (28 per cent). If the samples had been randomly drawn, such a difference would certainly be interpreted as indicating a true difference in the populations of bankrupts in the two years. By contrast, the difference between the proportion of the Brighton and Connidis sample that was between 30 and 49 years of age (52.5 per cent) and the proportion of that age group in the 1997 sample (55.4 per cent) is only 2.9 percentage points. This difference would generally be judged to be too small to indicate a true difference in the underlying populations.

For continuous variables (such as those measured in dollar values), the size of statistically significant differences depends on the extent of variation in the values of the variables. For some variables (such as total debt) that variation is quite large. For others (such as the number of dependants) it is somewhat smaller. For example, the mean total debt of both the Brighton and Connidis sample and of the 1997 sample of potential bankrupts is reported. The difference in means for total debts, across the two samples, is about \$11,000. If it is assumed that the two samples were randomly drawn, the standard error of the total debt variable would be large enough so that this difference would not be statistically significant at the 1 per cent level. By contrast, the difference in mean net indebtedness was more than \$20,000, a difference that would be statistically significant at any standard significance level.

Several subgroups of debtors within the 1997 sample are compared: respondents who are self-employed are compared to those not self-employed; unmarried men are compared to unmarried women; and debtors under 30 years old are compared to those over 30 years old. Taking the comparison of unmarried men to unmarried women as an example, the difference in a proportion would have to be about 10 percentage points to be statistically significant at the 5 per cent level, and 10 percentage points for significance at the 1 per cent level. The comparison of unmarried men to unmarried women involves the smallest sample sizes, so the size of significant differences for the other two comparisons would be slightly smaller.

The statistical significance of differences between sub-groups in continuous variables, such as total debts or annual income, again depends on the range of variation in each variable. For example, the mean total debt for unmarried men was \$45,801 and, for unmarried women, \$39,895. However, that difference of \$5,906 would not be

statistically significant because of the great range of variation in both quantities.⁷⁰

On the other hand, the mean annual pre-tax income was \$26,380 for unmarried men, and \$19,654 for unmarried women. This difference of \$6,726 would have been statistically significant, because the range of variation in annual income was much smaller than the range of variation in total debts.

In conclusion, a relatively “hard” line on the issue of statistical significance is taken. That is, because our sample was not randomly drawn, no tests of statistical significance are reported in the text. It should be acknowledged, however, that other analysts might take a “softer” line on this issue, because there is no reason to suspect significant departures from randomness.

⁷⁰ Note that I use medians, instead of means, as indicators of central tendency in this article because the data have some very high values that would distort the means. The problem of assessing statistical significance is complicated even further when medians are used in place of means.

APPENDIX

FIGURE 1*
**PERSONAL DEBT AS A PROPORTION OF PERSONAL
DISPOSABLE INCOME, 1965–1997**

* All data are drawn from the Canadian Socio-economic Information and Management Database (CANSIM) which is maintained by Statistics Canada. One part of the database is the “National Balance Sheet” accounts, which includes a series showing the total outstanding liabilities of “persons and unincorporated businesses,” measured at year-end: see Statistics Canada “National Balance Sheet, Year End Outstandings From 1961: Persons and Unincorporated Business in Millions of Dollars” (CANSIM) Matrix 0751, series D160031, online: Statistics Canada <<http://www.statcan.ca/english/CANSIM>> (date accessed: 16 June 1999). Total liabilities are then divided into several categories. The two largest categories are outstanding mortgage debt (Matrix 0751, series D160048), and consumer credit (Matrix 0751, series D160041). These three series are presented here as a fraction of aggregate personal disposable income (Matrix 6550, series D15743).