

Trustees at Work

Financial Pressures, Emotional Labour,
and Canadian Bankruptcy Law

ANNA JANE SAMIS LUND



UBCPress · Vancouver · Toronto

Contents

List of Figures and Tables / ix

Acknowledgments / xi

Introduction: The Stories We Tell about Bankruptcy Law / 3

- 1 Bankruptcy in the Books: A Doctrinal Account of Personal Bankruptcy Law / 18
- 2 Becoming and Being an Insolvency Trustee / 39
- 3 Trustee *Economicus*: A Financial Account of Personal Bankruptcy Law / 70
- 4 Emotions at Work / 96
- 5 Once More, with Feeling: An Emotional Account of Personal Bankruptcy Law / 119

Conclusion: Feeling Our Way into New Stories / 151

Glossary of Insolvency Law Terms / 169

Notes / 177

Selected Bibliography / 201

Index / 209

Figures and Tables

Figures

- 1 Canadian consumer bankruptcies and proposals, 2011–17 / 25
- 2 Facts for which a discharge may be refused, suspended, or granted conditionally / 31
- 3 Insolvency filings in Canada (consumer and business), 2007–17 / 121

Tables

- 1 Comparison of provincial property exemptions: Alberta, Ontario, and Newfoundland and Labrador / 27
- 2 Repeat bankruptcies as a percentage of all consumer bankruptcies, 2010–12 / 30
- 3 Breakdown of oppositions filed by opponent as found in the Office of the Superintendent of Bankruptcy's statistics, 2012 / 31
- 4 Most common grounds for opposition to a debtor's discharge cited in written decisions, 2003–13 / 36
- 5 Most common grounds for opposition as found in the Office of the Superintendent of Bankruptcy's statistics, 2012 / 37
- 6 Breakdown of interviewees by practice composition (personal versus business bankruptcy) / 41
- 7 Breakdown of interviewees by office size (number of trustees) / 46

- 8 Breakdown of oppositions for non-compliance by duty as found in the Office of the Superintendent of Bankruptcy's statistics, 2012 / 60
- 9 Emotional harmony, dissonance, and deviance /100
- 10 Breakdown of interviewees by bankruptcy file load / 125

Introduction: The Stories We Tell about Bankruptcy Law

The Moral Ambivalence of Debt

Diana fell in love with Marjorie. They had two children. They got married and stayed together for almost a decade. Eventually, they grew apart. Diana met someone new and moved out of the family home. She and Marjorie disagreed on how to split custody of their children. They hired lawyers. Marjorie tried to settle the dispute before trial by proposing a custody arrangement, but Diana rejected the settlement offer because she wanted more time with the children. They went to trial, and the judge awarded primary custody to Marjorie. Diana was ordered to pay almost \$25,000 to compensate Marjorie for the costs of the custody lawsuit, because Diana forced a trial even though she would have achieved a better outcome if she had accepted Marjorie's settlement offer. Additionally, Diana owed her own lawyer almost \$15,000. Diana could not pay these amounts and filed for bankruptcy.¹

Greg owned a couple of oil field servicing companies. When his father died, he inherited a valuable piece of land, sold it for \$3 million, and invested the proceeds. The price of oil collapsed and Greg's companies struggled financially. Greg withdrew his invested inheritance to pay corporate debts. He also spent some of the money on himself, buying a vacation property and a boat. After the money ran out, he had to sell the boat and the vacation property at a significant loss. Then the taxman

came calling. The Canada Revenue Agency realized that Greg had not paid taxes for years. With penalties and interest, his tax bill added up to \$1.9 million. Greg could not pay this amount and made an assignment into bankruptcy.²

Diana and Greg turned to bankruptcy, as do tens of thousands of other Canadians every year. Bankruptcy provides overindebted individuals with debt relief – a second chance, a fresh start. But not all debtors get this benefit. Diana and Greg fall into a small minority of debtors who are not able to easily access debt relief. This book examines why some debtors are deemed to be deserving of relief and allowed to release their debts, whereas others are labelled culpable and denied the benefit of debt relief. Insolvency trustees, the professionals who administer personal bankruptcies, play a central role in this story. They are tasked with sorting deserving debtors from undeserving ones. The legislation governing the personal insolvency system, the federal *Bankruptcy and Insolvency Act*, provides them with some direction, but trustees shape the law when they apply it. This book examines the degree to which the financial and emotional realities of trustees' work influence which debtors are deemed to be deserving of relief and which ones are not. However, the story starts with Diana, Greg, and the competing cultural narratives that colour how we might view their financial decisions.

When they fell on hard times, Diana and Greg joined a long tradition of characters, real and fictional, who have struggled to pay their bills. Many works of literature are stories about debtors.³ The title character in Gustave Flaubert's *Madame Bovary* divides her energies between bouts of unsustainable spending and extramarital affairs. The young doctor Lydgate in George Eliot's *Middlemarch* is driven into debt by a spendthrift wife. He takes a loan under suspicious circumstances, leading to rumours that he was complicit in a murder. Anne and Arthur, the protagonists in Charles Dickens's *Little Dorrit*, fall in love as they take turns living in the Marshalsea, London's notorious prison for debtors. Anne lives in the Marshalsea with her heavily indebted father. Arthur is defrauded in a Ponzi scheme, consequently cannot pay his debts, and is eventually imprisoned. Mitya, the eldest sibling in Fyodor Dostoyevsky's *Brothers Karamazov*, is accused of killing his father. The accusation gains an air

of truth because Mitya is heavily in debt, at least partly as a result of an inheritance dispute with his father.

These fictional accounts underline the dangers of debt. It can result in a loss of standing, credibility, material well-being, and, ultimately, freedom. Debtors are stigmatized, but at the same time the fictional narratives about how we perceive debt and the people who incur it are nuanced and complex. The financial ruin of literary debtors is caused by a range of behaviours: some culpable, some blameless, and often a mix of the two. Assigning fault for the characters' indebtedness is rarely a straightforward exercise. Readers are invited to sympathize with as well as cast blame on the debtors. The stories of actual Canadian debtors – like Diana and Greg – are often as complex as those of our literary touchstones.

In twenty-first-century Canada, debt is ubiquitous but also morally ambivalent. Debtors are stigmatized and are often blamed for their financial strife. One might condemn Diana for not resolving her custody dispute earlier. One might condemn Greg for his extravagant purchases and lack of attention to his tax obligations. But we also celebrate the fruits of people's borrowing. For many Canadians, homeownership, post-secondary education, and entrepreneurial activity are possible only with access to credit – in other words, if they can incur debt. An individual's consumption also signals status: we use the goods a person has purchased as a measure of that person's success.⁴ People convey that they are accomplished by living in a big house, driving a fancy car, or wearing brand-name clothing. For many, these purchases are made on credit.⁵ Consumer spending has macroeconomic implications too. It is an important driver of the Canadian economy.⁶ Some have gone so far as to suggest that consumption is a citizen's patriotic duty.⁷ Credit – and its corollary, debt – are laudable and blameworthy, good and bad, replete with contradictions.

Debt Forgiveness and Its Justifications

Debt can become unmanageable. Every year, thousands of Canadians end up with significant debt and have no realistic chance of ever repaying it. Rather than keeping these individuals in a perpetual state of indebtedness – or imprisoning them, which was a common practice in

the past – Canadian law allows overly indebted Canadians to be relieved of their financial obligations.⁸ The system of rules governing debt relief for individuals is called “personal insolvency law.” Bankruptcy is one type of legal proceeding available in the personal insolvency system. In bankruptcy, individuals surrender most of their property to be divided up among their creditors; in exchange, they receive a discharge, which is the technical term for debt relief. The bankruptcy discharge marks a drastic departure from the normal rules that promises should be kept and debts should be paid. One might wonder why, as Canadians, we make debt relief available.

Insolvency scholars have tried to answer this question. One of their ongoing projects is to justify why people are allowed to escape otherwise binding obligations in the bankruptcy system. Considering the complex cultural narratives attached to debt, it should not come as a surprise that bankruptcy also occupies morally ambivalent terrain. Early in the country’s history, Canadian legislators questioned the very existence of a personal bankruptcy system: from 1880 to 1919 there was no federal bankruptcy legislation in Canada.⁹ Since 1919, however, bankruptcy has been an option for Canadian debtors. Scholars offer five alternative justifications for why individuals should be able to access debt relief.

A Safeguard of Dignity and Liberty

The debt relief available in bankruptcy promotes individuals’ dignity and protects their liberty. These are core values of Canadian society.¹⁰ Indebtedness impairs a person’s liberty. In centuries past, indebted individuals were imprisoned, sold into slavery, or even executed.¹¹ Canadian debtors no longer face these perils, but indefinite indebtedness still restricts individuals’ autonomy and erodes their dignity.¹² Most debts grow over time because the creditor charges interest on the initial amount of the loan. Debtors may make significant payments to their creditors but never make meaningful headway in reducing the amounts owing because of the operation of interest. These perpetual debtors are not able to enjoy the fruits of their labour, because any amounts earned are used to pay down their always increasing debt load. They are condemned to a meagre existence with little hope for improvement – a state of affairs that undermines their sense of self-worth. When individuals have incurred

obligations that would relegate them to perpetual indebtedness, bankruptcy safeguards their liberty and restores their dignity by releasing their debts.¹³

A Tool for Rehabilitation

The debt relief available in bankruptcy can rehabilitate the debtor. Rehabilitation can mean at least three different things: economic recovery, emotional relief, and financial education.¹⁴ Each of these types of rehabilitation can improve the debtor's life and can have a positive impact on the wider community.

Bankruptcy facilitates a debtor's economic recovery because it allows individuals to release their past debts. The freshly released debtor is then better able to contribute to the overall economic well-being of a community by consuming products and services and by engaging in productive labour. In contrast, overly indebted people have less money to spend on products and services and they may be discouraged from working hard if any income they earn is devoted to debt repayment.¹⁵ Since the Great Recession of the late 2000s, there is growing awareness that providing relief to indebted households to stimulate consumer spending helps promote economic recovery on a national scale.¹⁶

Bankruptcy provides debtors with emotional relief. Being in debt can be a stressful, hopeless, and shameful experience. Debtors worry about how to make ends meet. They may be subject to the aggressive tactics of debt collection agencies, such as strongly worded letters or harassing phone calls.¹⁷ If creditors sue to recover their debts, the debtors may be served with legal documents. When creditors start enforcing their claims, debtors may have their property seized, their bank accounts emptied, and their wages garnished. Bankruptcy prevents creditors from taking steps to enforce their claims, thereby providing some emotional relief to debtors.

By providing debtors with emotional relief, bankruptcy positively impacts the broader community. Communities are spared the "resulting relief costs, suicides, and criminality concomitant to financial despair."¹⁸ Community members may take comfort in the fact that the debtor has been dealt with in a humane fashion.¹⁹ Moreover, the discharge instills in individuals a "renewed confidence in [their] ability to control [their] future."²⁰ Individuals with a heightened sense of

control over their own lives may be more willing to take risks, such as engaging in post-bankruptcy entrepreneurial ventures.²¹ Heightened levels of entrepreneurialism can contribute to economic growth and prosperity in a community.

Bankruptcy may offer debtors a financial education, teaching them how to avoid the behaviours that resulted in their financial distress.²² For example, the Canadian bankruptcy system promotes financial education by making financial counselling mandatory for all bankrupt individuals. The counselling aims to teach debtors basic financial literacy skills, such as budgeting.

Financial education for debtors is intended to benefit the broader community by decreasing the number of repeat bankruptcies. Bankruptcies impose costs on other members of the community. Some may experience direct losses, such as when they are unable to collect a debt because the debtor has started bankruptcy proceedings. Others may incur indirect costs. When a tax debt to the government goes unpaid, other taxpayers are impacted because they are either called on to pay more taxes or to make do with less funding for government services. When credit card debts go unpaid, the lender can pass along the costs of default to other borrowers by charging them more when they borrow money. Financial education seeks to reduce the direct and indirect costs imposed on members of the broader community by helping individuals avoid repeat bankruptcies.

A Carrot to Maximize Creditor Recovery

The debt relief available in bankruptcy can encourage debtors to cooperate in the bankruptcy process and thereby increase creditor recovery, or, at the very least, reduce the creditors' costs.²³ To understand this justification for bankruptcy, it helps to keep in mind that bankruptcy is a debt collection device. Some types of debt collection law apply when a debtor refuses to pay one creditor, but bankruptcy applies when a debtor is unable to pay multiple creditors.

When multiple creditors are trying to get paid, they may act in self-interested ways that harm the creditor group as a whole. The debtor may have assets that are worth more if sold all together than separately, e.g., a purchaser may pay more for all the equipment necessary to run a

bakery than if the pieces of equipment are sold separately. But if multiple creditors are enforcing their claims in separate debt collection proceedings, they might sell the debtor's assets off in a piecemeal fashion: one creditor seizes and sells the debtor's muffin tins, while another seizes and sells the debtor's oven. These creditors will recover less money than if the sales were coordinated and will also incur redundant collection costs because each creditor pays to seize assets and to advertise them for sale. Bankruptcy imposes a coordinated, cooperative process on the creditors.²⁴ The trustee acts on behalf of the creditors, gathering together the debtor's property, realizing value from it (e.g., by selling off assets or liquidating investments), and then distributing the value among the creditors. This collective model allows for the debtor's estate to be sold off in an organized fashion and saves creditors from incurring redundant collection costs.²⁵

Creditors may recover more in a bankruptcy when a debtor cooperates, because an uncooperative debtor can reduce the trustee's recovery, increase the trustee's costs, and thereby deplete the amounts that the creditors ultimately get paid. Uncooperative debtors might hide assets from a trustee. For example, they could remove funds from a bank account and stow the cash in an old mattress.²⁶ Uncooperative debtors might dissipate their assets on the eve of bankruptcy: realizing that bankruptcy is inevitable, a debtor might clear out their bank account to go on one last vacation before starting insolvency proceedings. Uncooperative debtors attempt to put assets out of the trustee's reach by transferring them to friends or family. Trustees can unwind many of these transactions, but doing so is costly.²⁷ By making the discharge contingent on the debtor's cooperation, bankruptcy aims to reduce unnecessary costs and increase the creditors' recovery.

One might question whether the discharge can be justified on the basis of increased creditor recovery, because in many Canadian bankruptcies creditors get nothing. In 2007, two Canadian academics reported that 70–80 percent of debtors have so little property and such meagre income that creditors do not recover anything in bankruptcy.²⁸ Even in these cases, however, creditors still benefit from the orderly administration of a bankruptcy. They are spared the expense of attempting to collect from insolvent debtors, and they have the satisfaction of knowing that an

independent third party – the trustee – has looked at a debtor’s finances and confirmed that they have no ability to repay the debts.²⁹

A Stick to Promote Responsible Lending

The debt relief available in bankruptcy can encourage lenders to be more responsible when advancing credit. Increasing levels of consumer indebtedness contribute to increasing personal insolvency filings in Canada. Policy makers have responded by adopting financial literacy initiatives to encourage individuals to borrow more responsibly, but insights from behavioural psychology suggest that it may be easier to encourage creditors to lend responsibly rather than to teach debtors to borrow responsibly.

Behavioural psychology suggests that individuals overconsume credit because they are impulsive and irrational.³⁰ Consumers tend to underestimate the likelihood of their own financial collapse, because overindebtedness is not a very salient risk. They are more prone to worry about dramatic risks like being the victim of a terrorist attack. Consumers also suffer from an overconfidence bias, which leads them to believe that bad things will not happen to them. They fail to plan adequately for negative events such as an illness or a job loss. Finally, consumers discount future benefits more than future costs. They prefer immediate gratification with long-term costs to delayed gratification, and so overspend with borrowed money because they underestimate how burdensome it will be to repay the loans.³¹

Institutional creditors are better positioned than individual consumers to calculate the risks involved when they make a loan. They can take an actuarial approach when assessing a borrower’s creditworthiness by drawing on a wealth of experiences in similar transactions.³² Actuarial calculations, based on metadata, are often significantly more accurate than an individual’s skewed assessment of their ability to repay a debt.³³ Yet, lenders have financial incentives to extend amounts of credit that exceed an individual’s ability to repay. Default can be lucrative because many lenders charge an increased rate of interest, penalties, or fees on overdue payments. Bankruptcy changes a lender’s calculation. It makes default more costly for creditors by forcing them to forgo the collection of debts. Consequently, it creates an incentive for creditors to set reasonable limits on consumers’ access to credit.³⁴

A Form of Social Welfare

The debt relief available in bankruptcy can operate as a form of social insurance, alleviating financial pressures on individuals when they are impacted by personal misfortunes such as job loss, marriage breakdown, or illness. Individuals who experience such misfortunes may incur debts, but can then release them through bankruptcy. Viewed in this light, bankruptcy becomes akin to a form of social welfare and is animated by a similar philosophy – that there is a collective responsibility to care for less fortunate members of a community.

Some scholars characterize bankruptcy as an alternative to other forms of welfare. Governments may opt to provide a robust social safety net that precludes an individual from incurring debt when struck by misfortune. Alternatively, they may allow individuals to incur personal debt, but then give individuals the ability to discharge the debt.³⁵ Imagine how these two approaches operate in the context of job loss. A government program could provide an unemployed individual with replacement income. Alternatively, the individual could be expected to draw on credit cards and bank loans to make ends meet, but then be given recourse to bankruptcy if repayment of these debts becomes unmanageable.³⁶

A different take on bankruptcy is that it is only one element of a robust social safety net, not an alternative to other forms of support. Bankruptcy is intended to provide individuals with a fresh start, but this fresh start may be meaningful only if individuals have access to other social supports. An American study found that for a full third of individuals, bankruptcy did not provide financial relief. Rather, a year after bankruptcy, they reported that their financial situations remained unchanged or had worsened.³⁷ The authors attributed these dire results to other gaps in the social safety net. Post-bankruptcy job retraining was insufficient. Medical coverage for people with chronic illnesses was inadequate. Employment insurance did not compensate individuals for reductions in income that fell short of complete job loss.³⁸ Bankruptcy alone was not able to protect the less fortunate; rather, it needed to be combined with other social programs.

Welfare Queens, Bankruptcy Kings, and Public Anxiety

Personal bankruptcy shares some similarities with welfare. Welfare programs provide benefits, supports, and services to indigent individuals.

These programs are paid for with taxes levied on other members of a community. The bankruptcy system operates according to a similar redistributive logic. Whereas most individuals are expected to repay their debts, individual bankrupts are excused from fulfilling their repayment obligations. The cost of this debt forgiveness is borne directly by an individual's creditors, and they often pass those costs on to a broader constituency.

The costs of both the welfare system and the personal bankruptcy system are justified in terms of the relief they provide to the “deserving poor,” but they trigger public anxiety that unscrupulous individuals are taking advantage of public benefits. The source of this anxiety is sometimes characterized as a moral hazard, a concept drawn from economics. If a discharge is available, some individuals may act in ways that make a bankruptcy more likely, for example, by incurring debt that they have no intention of repaying.³⁹ When undeserving debtors file for bankruptcy, other members of a community bear the costs and may be concerned that the system turns them into dupes.

People opposed to social welfare have developed caricatures on which to focus this collective anxiety about the abuse of public benefits. In the United States, President Ronald Reagan popularized the image of a “welfare queen.”⁴⁰ American legal academic A. Mechele Dickerson described the welfare queen as:

a long-term dependent, unmarried, urban black woman who had a herd of illegitimate children, [who] felt she had a God-given right to stay home full-time to rear those children, steadfastly refused to work in the labor market to earn income to support those children, but wore designer clothing while driving her Cadillac to the grocery store to buy filet mignon with her food stamps.⁴¹

Likewise, Americans are haunted by the spectre of bankruptcy royalty: individuals who incur debt on luxurious and hedonistic purchases and then “cavalierly file for bankruptcy rather than ... curtailing spending habits, or working to repay the ... debts.”⁴² In Canada, the specifics of these stereotyped caricatures may change. For example, the welfare cheat may be recast as a seasonal employee who works the bare minimum

necessary to qualify for employment insurance. The bankruptcy royal's hedonistic purchases are more likely to include snowmobiles and beer. The details change, but the underlying anxiety about duplicity on the part of undeserving individuals persists.

These caricatures have permeated the public's imagination and are referenced as anecdotal evidence that there is good reason to be anxious about welfare and bankruptcy abuse. Even though they may bear little resemblance to most of the individuals who actually make use of these systems, the caricaturized rogues resonate with the public by appealing to salient, negative emotions. They inspire feelings of righteous indignation and vindicate the public's nagging suspicions that they are being duped.

Support for the bankruptcy system will wane if the public views the system as being rife with abuse.⁴³ Lawmakers recognize this risk. Since the introduction of the discharge into English bankruptcy law in 1706, lawmakers have struggled to craft a system that provides relief to deserving individuals while preventing abuse by undeserving ones.⁴⁴ This book reports on the Canadian personal bankruptcy system's attempt to sort deserving debtors from undeserving ones.

The Canadian personal bankruptcy system uses a number of different mechanisms to weed out abusive debtors. Central among these is the discharge process. Most individuals in bankruptcy have their debts automatically discharged, meaning they are relieved from the legal obligation to pay these debts. An individual's automatic discharge takes effect once a set period of time has elapsed from the start of the bankruptcy process. Before this period elapses, a bankrupt's discharge can be opposed. If it is, there is no automatic discharge and instead the bankrupt must appear in court and a judicial officer decides whether or not the bankrupt will be released from their debts. Insolvency trustees, the professionals who administer personal bankruptcies, file the lion's share of oppositions across Canada. They oppose in some cases – thereby denying an individual an automatic discharge – but not in others. This book examines how trustees decide when to file an opposition.

To answer this question, this book adopts different approaches to Canadian personal bankruptcy law. Doctrinal legal scholarship concerns itself with the law articulated in statutes and the written decisions of

judicial officers. This book examines these sources of law, and supplements them with two additional sources of data: statistics from the federal government and interviews with licensed insolvency trustees. It suggests that when the concept of the deserving debtor, as articulated in the federal *Bankruptcy and Insolvency Act*, is applied to real situations, money and feelings matter. The trustees tasked with implementing insolvency law face financial and emotional pressures in their workplaces. These pressures shape the trustees' assessments of whether or not debtors are deserving of relief. To explain how the discharge process operates, this book layers financial and emotional accounts of the personal bankruptcy system onto the framework of doctrinal law.

Chapter 1 describes Canadian bankruptcy law from a doctrinal perspective. It starts with a description of an afternoon sitting of bankruptcy court, where debtors appear once their discharge has been opposed. It then provides an overview of a personal bankruptcy from start to finish and explains how the discharge hearing fits into this process. A discharge hearing can be triggered by one of three parties: a creditor, a trustee, or a federal government analyst. Trustees are by far the most likely party to file an opposition, which is why this book focuses on them.

Chapter 2 introduces the insolvency trustee by describing who chooses to become a trustee and their training process. It then describes the practices they use to sort deserving debtors from undeserving ones in two different situations – where a debtor engaged in misconduct prior to bankruptcy, and where a debtor failed to cooperate with the trustee during bankruptcy. Oppositions are more frequently filed in the latter situation. This finding is surprising because the *Bankruptcy and Insolvency Act* lists grounds for denying a debtor a discharge, and this list contains more behaviours that predate bankruptcy than that occur during bankruptcy. Likewise, case law frequently involves debtors who are deemed undeserving of a discharge because they engaged in pre-bankruptcy misconduct. Explaining this discrepancy between doctrine and practice occupies the balance of the book.

Chapter 3 explains the trustees' tendency to focus on cooperation during bankruptcy instead of pre-bankruptcy conduct with reference to the financial constraints and incentives of their work. Trustees are able to inexpensively identify instances of non-cooperation, whereas

investigating pre-bankruptcy misconduct can be prohibitively costly. Additionally, trustees use oppositions to enforce fee payment arrangements with debtors and a large portion of trustee oppositions are lodged in response to non-payment of fees. Financial considerations help explain why trustees oppose in some cases and not others, but they do not tell the whole story. An explanation based solely on financial considerations does not account for why trustees incur the expense of an opposition when there is little likelihood of financial recovery. It also cannot explain why trustees are reluctant to characterize a debtor's pre-bankruptcy conduct as censure-worthy.

[Chapter 4](#) lays the groundwork for understanding how trustees' discretionary decisions may be shaped by the emotional context in which they work. It introduces the concept of emotional labour, provides a theoretical account of the techniques of doing emotional labour, and describes how these techniques are learned and policed. It illustrates these concepts using examples drawn from previous research on the emotional labour of professionals and workers in the debt industry (e.g., debt collectors, bailiffs, and bankruptcy lawyers). This chapter explains how carrying out emotional labour may shape a person's judgments.

[Chapter 5](#) examines the emotional labour of insolvency trustees and how it can impact their decision making. The trustees' work brings them face-to-face with negative emotions. Trustees need to manage the debtor's feelings of sadness and shame, alongside their own emotions of compassion and frustration. They must work to comply with a register of professionally appropriate emotions, including empathy and hope, while also eschewing any overly strong displays of emotion. The chapter posits that trustees may learn to think about their work in ways that help them to sustain professionally appropriate emotions. When trustees adopt these ways of thinking, they shape the trustees' assessments of debtor deservingness: trustees minimize the severity of pre-bankruptcy conduct and focus on a debtor's cooperativeness during bankruptcy.

Overall, this book contributes to a growing body of literature on Canadian personal insolvency law. This literature can be classified according to any number of typologies. A common distinction is drawn between doctrinal work and socio-legal scholarship. Doctrinal work synthesizes law as it appears "on the books," meaning in statutes and case law.

Socio-legal scholarship seeks to understand “law in action,” or how it is brought to life through people’s practices. Scholarship on the Canadian personal insolvency system includes both these strains. Legal scholars have carefully analyzed legislation and written decisions from judges so as to distill the legal principles applicable in the personal bankruptcy system.⁴⁵ They have proposed improvements, often by drawing on other countries’ experiences with insolvency law.⁴⁶ They have commented on reforms and analyzed the political processes that shape these reforms.⁴⁷ They have traced the historical determinants of the current system.⁴⁸ Lastly, they have used empirical methods – statistical analysis, surveys, interviews, and court file reviews – to better understand how the bankruptcy system operates in practice.⁴⁹

What follows is an in-depth study of how insolvency trustees bring doctrinal bankruptcy law to life through their practices. It is not the first scholarly attempt to describe and explain the practices of insolvency trustees.⁵⁰ In 2000, Iain Ramsay authored a groundbreaking socio-legal article on insolvency trustees. Drawing on interviews with insolvency trustees, he described their practices and outlined how they were shaped by market imperatives.⁵¹ This book updates and supplements Ramsay’s investigation of how financial pressures shape trustees’ practices. It also does something entirely new – it examines the emotional dynamics of insolvency trustees’ work, and offers a preliminary account of personal bankruptcy law’s emotional contours, which have hitherto remained largely unmapped.

Those who work in the insolvency system, as trustees, lawyers, government analysts, judicial officers, and policy makers, will be particularly interested in this book. As insolvency insiders, they will be able to compare the findings reported here with their own experiences of the system. My hope is that the analysis offered here will provide them with space to reflect on how the personal insolvency system currently operates and how it can be improved.

The book has been written to be accessible to non-specialists. Personal bankruptcy is a low-visibility area of policy, ignored by some and misunderstood by others.⁵² Yet, it has real impacts on individuals and communities. Tens of thousands of Canadians start bankruptcy proceedings every year. Tens of thousands more take advantage of other forms

of legal debt relief. Each insolvency has ripple effects – both positive and negative – on the debtor’s family, friends, creditors, and community. For those interested in learning more about bankruptcy, this book explains how the system operates. The language can be technical at times, and non-specialists are encouraged to make use of the glossary that follows the conclusion.

Readers may adopt different perspectives as they move through this book. They might share the public’s anxiety of being duped by rogues. This book will ask such readers to consider whether the Canadian personal insolvency system is doing enough to weed out undeserving debtors. At the same time, they will be asked to weigh the costs of potential abuse against the benefits to the public of readily available debt relief: many of the justifications for bankruptcy highlight how debt relief benefits the community as well as individual debtors. Any attempt to reform the system needs to balance the costs of abuse with the benefits of accessible debt relief.

Readers may be more reluctant to see themselves as potential future bankrupts, but they should consider adopting that perspective, too. Canadians are more heavily indebted than ever, making it difficult for them to absorb negative financial shocks. Many individuals are one divorce, pink slip, or diagnosis away from being in need of debt relief. The bankruptcy system protects Canadians who have fallen on hard times.

Finally, readers might sympathize with the trustees. In twenty-first-century Canada, many jobs require workers to navigate financial and emotional pressures. This book provides a framework for readers to think about how they navigate those pressures in their own workplaces. It will also invite them to consider how such pressures may shape the law when it is brought to life through the everyday practices of those who work in our legal system.

© UBC Press 2019

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

Library and Archives Canada Cataloguing in Publication

Title: Trustees at work : financial pressures, emotional labour, and Canadian bankruptcy law / Anna Jane Samis Lund.

Names: Lund, Anna Jane Samis, author.

Series: Law and society series (Vancouver, B.C.)

Description: Series statement: Law and society series | Includes bibliographical references and index.

Identifiers: Canadiana (print) 20190202289 | Canadiana (ebook) 20190202343 |

ISBN 9780774861410 (hardcover) | ISBN 9780774861427 (softcover) |

ISBN 9780774861434 (PDF) | ISBN 9780774861441 (EPUB) |

ISBN 9780774861458 (Kindle)

Subjects: LCSH: Bankruptcy – Canada. | LCSH: Bankruptcy trustees – Canada. | LCSH: Debt – Canada.

Classification: LCC KE1499 .L86 2019 | LCC KF1536.ZA2 L86 2019 kfmmod | DDC 346.7107/8 – dc23

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada, and with the help of the University of British Columbia through the K.D. Srivastava Fund.

Set in Sabon Next LT Pro and Myriad Pro by Apex CoVantage, LLC

Copy editor: Frank Chow

Proofreader: Caitlin Gordon-Walker

Indexer: Marnie Lamb

Cover designer: George Kirkpatrick

Cover art: Paul Girgulis

UBC Press

The University of British Columbia

2029 West Mall

Vancouver, BC V6T 1Z2

www.ubcpress.ca