

July 16, 2019

Office of the Superintendent of Bankruptcy 235
Queen Street, W.
Ottawa, ON K1A 0H5

RE: Proposed Regulatory Actions by the Superintendent of Bankruptcy

Credit Counselling Canada (CCC) and its members would like to extend their appreciation to the Office of the Superintendent of Bankruptcy (OSB) for many of the changes introduced by Draft Directive No. 1R5 (D1R5). We welcome the opportunity to respond to the draft directive and submit our comments.

D1R5 is a positive step in the right direction, addressing several issues created by Directive No. 1R4 (D1R4).

CCC is wholly in favour of changes in the directive that:

- Reduce the administrative burden for the not-for-profit/charitable credit counselling industry and provide for the removal of potential and perceived barriers for LITs to rely on qualified third-party counsellors;
- Eliminate the requirement to request a variance;
- Remove the requirement to audio record counselling sessions.

There are, however, some specific provisions and aspects of the draft directive that CCC believes should be re-examined.

CCC's concerns with specific provisions/aspects of the draft directive:

- The requirement for members to be separately licensed with each LIT.

Being licensed with one LIT should allow a counsellor to work with multiple LITs, and not just the one providing the license. The provision as it stands is not only inefficient but makes it very difficult for counsellors to work with multiple LITs as it is administratively burdensome and impractical for agencies to have to complete the same process multiple times. Once a counsellor has been licensed with one LIT, that license should be on record with the OSB and able to be accessed by other LITs which would then not be required to repeat the licensing process.

- As advocates working to safeguard the interests of Canadian consumers, CCC is actively engaged in providing proactive input and recommendations on consumer protection legislation and policy. D1R5 does not address consumer protection concerns presented in the original report released by the OSB: [‘Review of Licensed Insolvency Trustee business practices in relation to administration of consumer insolvencies’](#). There continues to be much work required to improve oversight and eliminate disreputable practices that harm consumers and charge debtors with needless and costly services. As cited in the report, predatory activities “can negatively impact the financial interests of both creditors and debtors in an insolvency filing”.

We draw special attention to the excessive fees paid by debtors along with the general lack of awareness of fees charged by debt consultants, creditors and LITs. The ‘double dipping’ in the instance of mandatory counselling fees is particularly troubling. The sale of additional products for credit rebuilding is also concerning given that there are much cheaper ways available to re-establish credit. These practices are a blatant exploitation of vulnerable consumers. We urge the OSB to continue taking steps to put a stop to these practices.

The following information provides additional comments on our perspective, with our detailed concerns around specific sections in D1R5 outlined in Appendix A (below).

Overview

CCC is governed by a volunteer board of directors. Our association members are accredited based on required governance, financial stewardship and operational standards. Given our expertise and credibility, members are often asked to provide expert opinions to the media as well as to governments contemplating legislative change.

Honesty, transparency, unparalleled expertise and professionalism are the basis of our members counselling services. We are not-for-profit and registered charities. We have been in operation for decades providing counselling services and money management education to individuals and families across Canada. For more than two decades we have offered counselling support services to trustees who do not have adequate resources, time or capacity to provide effective insolvency counselling services and develop quality educational material for their clients. Trustees previously had flexibility to partner with not-for-profit/charitable credit counselling agencies to provide the legislated required debt counselling services to insolvent consumers.

We can assure the Superintendent that our association provides careful oversight and audits of our members who are required to track and report on performance data on the components of credit counselling programs. In addition, many of our members across Canada are already regulated in several provinces that have legislation requiring registration, licensing and oversight. Furthermore, the Canadian Bankers Association also sets standards and requires annual reporting on members' activities and compliance with prescribed mandatory requirements.

Our Perspective

While doors need to be closed to third party debt consultants who undertake to mislead consumers as documented by the OSB, helping Canadians who are in financial distress should be the overarching goal of the debt counselling sessions.

With respect to the issue of referral arrangements between trustees and debt counselling service providers, we agree that there should not be any closed-door arrangements. However, there is nothing inappropriate in trustees using external service providers that are highly competent, accredited and can provide quality counselling to indebted consumers.

We Request - An Exemption for Accredited Not-for-Profit/Charitable Credit Counselling

By filing our response to the draft directive, we ask that the Superintendent implement a final directive that meets the objective of dealing with and eliminating inappropriate and harmful practices without causing unwarranted consequences for accredited not-for-profit/charitable credit counselling services and insolvent Canadians.

To achieve fairness, we again ask that accredited not-for-profit/charitable credit counselling services be granted a formal exemption from the proposed draft directive.

With over 50 years of respected collective history, we have helped hundreds of thousands of financially distressed Canadians across the country by improving financial literacy, providing counselling in making financial choices or in finding solutions to over-indebtedness. We are open to discuss applicable standards for all counsellors to ensure quality services are provided at a consistent level across Canada, including the concept of those standards being monitored/audited by the OSB.

We agree that there should be an effective monitoring and oversight framework to identify and address inappropriate behaviour and that it should include new powers for the Superintendent to issue administrative monetary penalties (AMPs). AMPs would address infractions by trustees quickly in terms of non-compliance with new counselling standards whether the service is offered by the trustee or through an external service provider.

The OSB has always employed a 'listening' approach which has created greater confidence in the system. CCC would be pleased to discuss these points in more detail with the OSB. We understand that changes to the trustee licensing regulatory framework take place only with detailed dialogue and consultation.

Feel free to call upon me should there be follow up questions or issues. We appreciate you giving us the opportunity to participate in this consultation. As you continue to refine the supervisory framework, we hope that you will consider positively our suggestions so that quality services can continue to be delivered with integrity while respecting the right of trustees to use qualified external counselling services.

Sincerely,



Michelle Pommells
Chief Executive Officer, Credit Counselling Canada

Credit Counselling Canada Members:

- 1000 Islands Credit Counselling Service
- Catholic Family Services of Hamilton
- Community Counselling and Resource Centre
- Community Counselling Centre of Nipissing • Community Financial Counselling Services
- Credit Canada Debt Solutions Inc.
- Credit Counselling of Regional Niagara
- Credit Counselling Service of Sault Ste. Marie & District
- Credit Counselling Services of Atlantic Canada
- Credit Counselling Services of Newfoundland and Labrador
- Credit Counselling Society
- Family Counselling Centre of Brant Inc
- Family Service PEI
- Family Service Thames Valley
- Money Mentors
- Sudbury Community Service Centre
- Thunder Bay Counselling Centre

Appendix A
CONCERNS WITH SPECIFIC PROVISIONS
OF THE DRAFT DIRECTIVE

a) Section 8 (a) and Section 13;

We are concerned that requiring members to be licensed with individual LITs is administratively burdensome for all parties involved, as well as grossly inefficient. In some cases, the number of times an agency is obligated to register is as high as 7-8 times multiplied by the number of individual counsellors in the agency.

We are strongly in favor of the OSB handling the registration of counsellors, not individual LITs, with the OSB maintaining a directory/registry of approved third-party service providers to which trustees can apply.