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Evaluation of Mandatory Counselling

Final Report

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ACRONYMS USED IN THIS REPORT

Acronym	Meaning
AEB	Audit and Evaluation Branch
BIA	<i>Bankruptcy and Insolvency Act</i>
CFCS	Canadian Financial Capability Survey
ERPA	Economic Research and Policy Analysis Branch
GST/HST	Goods and Services Tax/Harmonized Sales Tax
OSB	The Office of the Superintendent of Bankruptcy

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EXECUTIVE SUMMARY

Program Overview

In 1992, mandatory counselling was introduced in an amendment to the *Bankruptcy and Insolvency Act* to promote debtor rehabilitation and to help debtors avoid repeat bankruptcies. Under mandatory counselling, trustees and counsellors provide information and educate debtors on sound financial management practices.

Mandatory counselling represents a significant activity for the insolvency system. In 2011-12, about \$17.8 million in mandatory counselling fees were paid out of estates. This figure varies every year depending on the number of filings which are affected by the state of the economy.

Evaluation Purpose and Methodology

The objective of this evaluation was to inform management decision-making and program improvements. AEB conducted the evaluation in accordance with the *Policy on Evaluation* and the *Directive on the Evaluation Function*, and addressed the core issues of relevance and performance. The evaluation covered the period from April 2007 to March 2012.

The evaluation findings and conclusions are based on the analysis of multiple lines of evidence. The methodology included a review of documents, a literature review, an environmental scan, interviews with stakeholders, a survey of debtors, a survey of trustees and counsellors, data analysis, and econometric analysis.

Findings

Relevance

Mandatory counselling addresses a continued need by contributing to the rehabilitation of debtors and helping them avoid future financial difficulties. While there is a continued need for all types of debtors to receive mandatory counselling, trustees and counsellors believe that mandatory counselling can be less relevant for individuals who went bankrupt because their businesses failed; debtors living with addictions; and victims of circumstance.

In terms of the federal role, the Government of Canada has exclusive jurisdiction over bankruptcy and insolvency under the *Constitution Act*. Mandatory counselling is aligned with government priorities, and is also consistent with the strategic outcomes of Industry Canada.

Performance

Mandatory counselling had a positive impact on debtors. Specifically, debtors found the counselling sessions useful; were generally aware of sound financial practices and pitfalls; and implemented prudent financial behaviours after receiving mandatory counselling. In addition, evidence suggests that debtors who cited the overuse of credit as a reason for their financial difficulties were less likely to be repeat filers.

Several aspects of the design and delivery were working well. Stakeholders generally believed that the required content was current and effective. However, there were opportunities for incremental improvements through the identification and dissemination of useful materials for delivery and tools for debtors. In addition, some stakeholders felt that the sessions were too short, while others suggested more counselling for certain debtors.

The OSB currently measures the performance of the insolvency and bankruptcy system as a whole, rather than mandatory counselling specifically. Going forward, the OSB could measure the effectiveness of mandatory counselling by collecting additional data at the time when the counselling sessions are delivered; gathering feedback from debtors; and tracking changes in debtor behaviour after the counselling sessions.

Given that mandatory counselling is integrated within larger OSB bankruptcy and insolvency processes, the evaluation assessed efficiency by examining ways to improve efficiency and the current fee structure. There were few opportunities suggested by stakeholders to improve efficiency. However, some stakeholders suggested that video-conferencing and a streamlined form of mandatory counselling could be effective and efficient, while others believed that the current fees should be examined.

Recommendations

The conclusions of the evaluation led to the following recommendations:

1. The OSB should develop and collect additional performance data to further measure the effectiveness of mandatory counselling and inform whether improvements need to be made.
2. To assist in the delivery of mandatory counselling, the OSB should explore ways of facilitating access to products and tools for delivery of the program and for use by qualified counsellors and debtors.
3. The OSB should examine the current model of mandatory counselling to see if options could be provided to better address the needs of the various debtor groups. Once completed, the OSB should consider the resources required to support the updated model.

1.0 INTRODUCTION

This report presents the results of an evaluation of the mandatory counselling provided under the supervision of the Office of the Superintendent of Bankruptcy (OSB) in accordance with the *Bankruptcy and Insolvency Act* (BIA).

The purpose of the evaluation was to inform management decision-making and program improvements by assessing the relevance and performance of mandatory counselling. The report is organized into four sections:

- Section 1 provides the context and profile of mandatory counselling;
- Section 2 sets out the evaluation methodology along with a discussion of data limitations;
- Section 3 presents the findings pertaining to the evaluation issues of relevance and performance; and
- Section 4 summarizes the study's conclusions and provides recommendations.

1.1 Context

The OSB contributes to a fair and efficient marketplace by protecting the integrity of the bankruptcy and insolvency system for the benefit of investors, lenders, consumers and the public. Its mandate includes supervising the administration of all matters to which the BIA applies; maintaining a publicly accessible record of bankruptcy and insolvency proceedings; investigating complaints and conducting investigations as may be appropriate; licensing private sector trustees; and establishing and enforcing standards in estate administration.

When individuals are unable to pay their debts, they can seek protection under the BIA and file for a bankruptcy or a consumer proposal.¹ Bankruptcy is a formal procedure where an insolvent individual relinquishes all of his or her assets (except those exempted by law) over to a trustee in bankruptcy who will liquidate them in order to pay creditors a portion of what is owed to them. In contrast, a consumer proposal is when an offer is arranged through a trustee to pay the insolvent's creditors a percentage of what is owed over a specific period of time (up to five years). Payments are made from the consumer debtor to the trustee, and the trustee uses that money to pay each affected creditor.

While repeat bankruptcies had been unusual in the 1970s, these rates grew to 10-12% of all bankruptcies by the 1980s because of easier access to credit, the emergence of complex financial products, and other contributing factors. In this context, mandatory counselling was introduced in 1992 in an amendment to the BIA to help avoid repeat personal bankruptcies by providing debtors with information and education on financial management. Under the amendment, a trustee (or a qualified counsellor acting on behalf of a trustee) must deliver mandatory counselling to individuals who file for bankruptcy or a consumer proposal.

¹ Individuals also have the option of filing a Division I proposal, which is a more complex version of a consumer proposal and does not require mandatory counselling.

1.2 Objectives for Mandatory Counselling

The objectives of mandatory counselling are to promote the rehabilitation of debtors and to help debtors avoid repeat bankruptcies. OSB Directive 1R3 (the Directive) is the current directive that governs mandatory counselling. Under the Directive, counselling is defined as educating debtors on good financial management practices, including: the prudent use of consumer credit and budgeting principles; developing successful strategies for achieving financial goals and overcoming financial setbacks; and, where appropriate, making referrals to deal with non-budgetary causes of insolvency (i.e. gambling, addiction, marital and family problems).

1.3 Roles and Responsibilities

In addition to debtors who receive counselling, there are a number of stakeholders who play a role in mandatory counselling including:

- *The OSB:* The OSB is the regulator and is responsible for supervising the administration of all estates and matters under the BIA. In addition, the OSB licenses trustees and registers qualified insolvency counsellors. The Superintendent of Bankruptcy provides instructions to trustees through a directive on mandatory counselling (Directive 1R3).
- *Trustees:* These private-sector professionals administer bankruptcies and proposals, and are responsible for providing mandatory counselling to debtors. As of October 2012, there were 1012 trustees, but some are no longer active and others focus on corporate files and do not typically provide mandatory counselling.
- *Insolvency Counsellors:* Qualified insolvency counsellors may deliver mandatory counselling to debtors. As of October 2012, there were 1,161 insolvency counsellors on file with the OSB across Canada, but many provide credit counselling and other education services to clients outside of mandatory counselling.
- *The Canadian Association of Insolvency and Restructuring Professionals (CAIRP):* This national organization represents most trustees in Canada. CAIRP develops the training materials and delivers the qualification course to trustees and counsellors who want to provide mandatory counselling.
- *Creditors:* A creditor is any person or company to whom a debtor owes money. Creditors may be impacted by the fees that are set for mandatory counselling, as they may reduce the amount of funds available to creditors from an estate. According to Allen and Damar (2012), there were an average of 12 creditors for every bankruptcy estate and 13.5 for every consumer proposal between 2007 and 2009.

1.4 Design and Delivery

In accordance with the BIA, individual debtors who file a bankruptcy or a consumer proposal must receive counselling. Bankrupts who refuse or neglect to receive counselling will have to appear before the court and may face conditions that must be fulfilled before receiving their

discharge. For consumer proposals, debtors must attend mandatory counselling to receive a Certificate of Full Performance of Consumer Proposal and have their debts discharged.

To deliver mandatory counselling, a trustee or counsellor must have taken the Insolvency Counsellor's Qualification Course through CAIRP; performed 100 hours of counselling under the direct supervision of a qualified insolvency counsellor; demonstrated one year of experience in counselling; and be registered with the OSB. Once an individual has met these requirements, they do not need to re-certify.

As set out in the Directive, mandatory counselling consists of two counselling stages:

Consumer and Credit Education

In this stage, debtors receive consumer advice in the areas of money management, spending and shopping habits, the warning signs of financial difficulties, and obtaining and using credit. This counselling session may be conducted individually or in a group setting with up to twenty participants.

Identification of Roadblocks to Solvency and Rehabilitation

This stage begins with assisting the bankrupt or consumer debtor in better understanding their strengths and weaknesses with regard to money management and budgeting skills. The trustee or counsellor assists the debtor, where appropriate, in:

- Identifying the non-budgetary causes that may have contributed to his or her financial difficulties (gambling, compulsive behaviour, substance abuse, family difficulties, etc.);
- Understanding his or her behaviour in financial management and consumption habits; and,
- Increasing his or her awareness of resources that will help him or her achieve and maintain economic stability;
- Developing recommendations and alternatives for a financial plan of action, including a referral for specialized counselling to deal with non-budgetary causes of insolvency if appropriate.

At the end of each stage, the trustee (or counsellor) and the debtor sign a certificate acknowledging that the counselling took place.

The Directive does not set a minimum amount of time for the counselling sessions. While these sessions are to be conducted in person, they may be held by telephone because of sickness or physical distance, but prior authorization is required from the OSB.

1.5 Resources

The OSB operates under a vote net authority which is an alternative means of funding under which Parliament authorizes a program to apply its revenues towards costs directly incurred for specific services or activities. Total OSB expenditures for 2011-12 were \$38.1M. Of this amount, \$24.5M (64%) was spent on salary and \$13.6M (36%) on Operating and Maintenance. In terms of staff, the OSB had 373 full-time equivalent positions in 2011-12.

Mandatory counselling represents a significant activity for the insolvency system. Given that the cost for mandatory counselling is set at \$85 per stage for counselling provided to individuals, about \$17.8 million in counselling fees were disbursed to trustees and counsellors in 2011-12.² The annual figure varies with the number of filings which are affected by the state of the economy.

² The first session can be conducted with a group of debtors. Group sessions cost \$25, but they are rare. According to the debtor survey, about 1.6% of all debtors had group counselling.

2.0 METHODOLOGY

This section provides information on the evaluation approach, objective and scope, the specific evaluation issues and questions that were addressed, the data collection methods, and data limitations for the evaluation.

2.1 Approach

The Audit and Evaluation Branch (AEB) managed the evaluation, conducted most of the data collection methods, and developed this final report. Contractors were used to conduct an environmental scan of performance measures and to administer a telephone survey to bankrupts and consumer debtors. In addition, the Economic Research and Policy Analysis (ERPA) Branch of Industry Canada conducted econometric analysis to identify the most significant factors that affected the probability of a debtor having had a previous bankruptcy or insolvency.

2.2 Objective and Scope

The objective of this evaluation was to inform management decision-making and program improvements aimed at ensuring that mandatory counselling responds to current needs and is effective. AEB conducted the evaluation in accordance with the Treasury Board *Directive on the Evaluation Function* and addressed the core issues of relevance and performance. The evaluation covered the period from April 2007 to March 2012.

2.3 Evaluation Issues and Questions

The evaluation addressed the following questions on relevance and performance:

Relevance

1. Does mandatory counselling address a continued need? Is there a continued need for mandatory counselling for all types of bankrupts and consumer debtors?
2. Does mandatory counselling align with the priorities of the federal government and the strategic outcomes of Industry Canada?
3. Do mandatory counselling activities align with the roles and responsibilities of the federal government?

Performance

4. To what extent has the mandatory counselling system under the *Bankruptcy and Insolvency Act* been effective?
5. Is the design and delivery of mandatory counselling effective?
6. Going forward, how could the OSB measure the effectiveness of mandatory counselling?

7. To what extent does the current program model for mandatory counselling demonstrate efficiency?

2.4 Data Collection Methods

Multiple lines of evidence, along with the triangulation of data, were used where possible to address all evaluation questions on relevance and performance. The following data collection methods were used:

- Document review
- Literature review
- Environmental scan
- Interviews
- Survey of trustees and counsellors
- Survey of debtors
- Data analysis
- Econometric analysis

Documentation Review

A document review was conducted to gain an understanding of mandatory counselling and to gain insight into relevance and performance. Key documents included:

- *The Constitution Act*
- *Bankruptcy and Insolvency Act*
- OSB directives on mandatory counselling
- Speeches from the Throne
- Government of Canada Budgets
- Program documentation
- Parliamentary and Senate Committee reviews
- The 2002 Consulting and Audit Canada evaluation of mandatory counselling
- CAIRP documentation (including training course materials)

Literature Review

A review of academic literature focusing on the core evaluation issues of relevance and performance was conducted. Specifically, it examined the literature on behavioural change to identify how and why financial counselling works; the research on consumer insolvency and the types of consumer debtors that are likely to benefit from different approaches to counselling; and the broader societal context surrounding consumer access to credit and consumer indebtedness to identify external challenges or barriers that may limit effectiveness. The literature review can be found in Appendix A.

Environmental Scan

An environmental scan examined the approaches taken in other countries for counselling bankrupts and debtors. It included an examination of the performance measurement strategies and performance indicators used to measure the effectiveness of credit counselling, debt management and debtor assistance services. Appendix B contains the environmental scan.

Interviews

Interviews were conducted to gather in-depth information for evaluation purposes, including views, explanations and factual information that addressed the evaluation questions. Interviews allowed AEB to gain insight into the relevance and performance of mandatory counselling from the perspective of OSB staff, stakeholders who deliver counselling sessions, academics and subject matter experts, creditors, and credit-reporting agencies. The interviews were semi-structured in nature and provided qualitative feedback on mandatory counselling from a range of stakeholders. The interviews were conducted in person or by telephone.

In total, 44 interviews were conducted:

- OSB staff (5)
- OSB staff who act as guardian trustees (2)
- CAIRP (2)
- Trustees from large firms (5)
- Trustees from smaller firms (7)
- Counsellors (7)
- Credit counselling organizations (4)
- Academics and other subject matter experts (3)
- Creditors and a creditor association (7)
- Credit-reporting agencies (2)

The list of individuals interviewed and the interview guides are presented in Appendix C.

Survey of Trustees and Counsellors

AEB designed and administered a web-based survey of trustees and counsellors in consultation with the OSB. The survey captured perceptions on the continued need for mandatory counselling and the effectiveness of the design and delivery of mandatory counselling.

E-mails and letters were sent to 1,012 trustees and 1,161 counsellors who were invited to participate in the survey. The overall response rate was 44% with 962 people completing the survey. The survey questionnaire can be found in Appendix D.

Survey of Debtors

AEB developed a survey questionnaire in consultation with the OSB and a contractor administered the survey of bankrupts, consumer debtors, and repeats (i.e. debtors who had a

previous bankruptcy or a previous consumer proposal). The survey captured the perspectives of debtors on the usefulness of mandatory counselling, its impact in changing behaviour, and debtor knowledge in the area of basic personal financial management.

Out of a population of 109,990 debtors who filed for bankruptcy or filed a consumer proposal between March 2011 and February 2012, 5,168 debtors were invited by letter to complete the survey online and then contacted by telephone. In total, 1,744 of these debtors participated in the survey, resulting in a response rate of 34%. Two-thirds of the respondents completed the survey by telephone. The survey questionnaire can be found in Appendix E.

Data Analysis

A statistical analysis of OSB administrative data was conducted to analyze trends in bankruptcies and insolvencies. In addition, the data was analyzed to understand the profile of bankrupts, consumer debtors and repeats, and identify the most common reasons for financial difficulties. Finally, financial data was analyzed to assess the efficiency of the program.

Econometric Analysis

The Economic Research and Policy Analysis (ERPA) Branch of Industry Canada conducted regression analyses using OSB administrative data to identify the variables that determined the likelihood of an individual having had a previous bankruptcy or consumer proposal. ERPA also calculated the marginal effects for each of these variables. These regression analyses provided insights into the core issues of relevance and performance.

2.5 Limitations

There were three limitations to the methodology:

1. *Lack of a control group:* As mandatory counselling is a legislative requirement, it was not possible to evaluate the effectiveness of the sessions against a control group that did not receive mandatory counselling. In the absence of a control group, the evaluation team relied on debtor survey information and an econometric analysis of the differences between first-time filers and repeat filers to mitigate this limitation.
2. *Lack of information on who delivers counselling:* The OSB collects data on which trustees administer debtor files, but it does not capture information on who delivers the counselling sessions to debtors.³ This meant that it was not possible to assess the quality of the sessions provided by individual trustees and counsellors, which limited to some extent the assessment of the effectiveness of mandatory counselling. To mitigate this limitation, the evaluation team conducted a survey of debtors which provided insight into the usefulness of the counselling sessions at a global level.

³ Trustees retain this information as part of the estate file but they do not send the information to the OSB.

3. *Limits to readily available historical data on repeat filers:* As electronic filing only became mandatory in 2007, sufficient data was not available to develop a model to predict which debtors will become repeats since the median time between filing is 10.2 years. As such, it was not possible to fully assess whether the counselling sessions were effective in reducing the number of repeat bankruptcies and insolvencies and the determinants of repeat filing in Canada. To mitigate this limitation, the econometric analysis examined the characteristics of first-time filers versus debtors who had a previous bankruptcy or consumer proposal.

3.0 FINDINGS

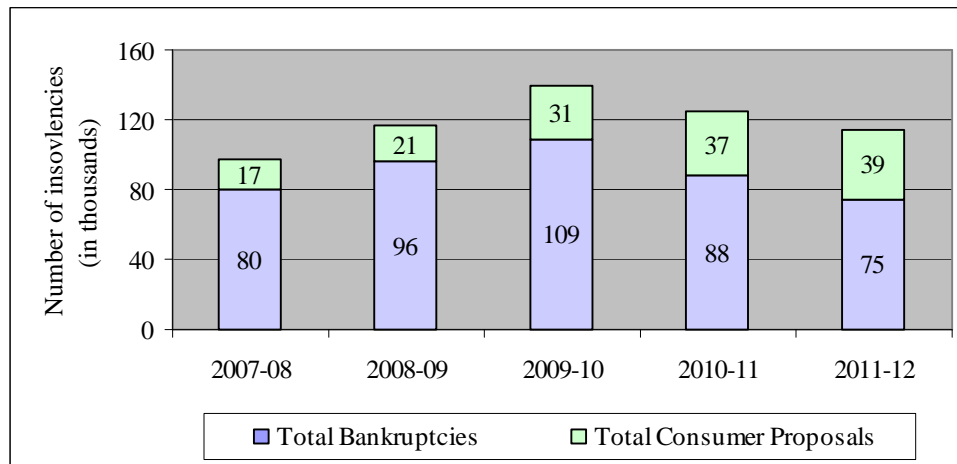
3.1 Relevance

3.1.1 Does mandatory counselling address a continued need? Is there a continued need for mandatory counselling for all types of bankrupts and consumer debtors?

Key Finding: Mandatory counselling addresses a continued need by contributing to the rehabilitation of debtors and helping them avoid future financial difficulties. While there is a continued need for all types of debtors to receive mandatory counselling, trustees and counsellors believe that mandatory counselling can be less relevant for individuals who went bankrupt because their businesses failed; debtors living with addictions; and victims of circumstance.

The recent economic recession resulted in the highest number of filings for bankruptcy or insolvency in history. The total number of individuals who filed reached a peak of 139,060 in 2009-10 before falling to 113,966 in 2011-12. Figure 1 shows the number of bankruptcies and consumer proposals filed over the last five fiscal years based on OSB administrative data.⁴

Figure 1: Number of Bankruptcies and Consumer Proposals

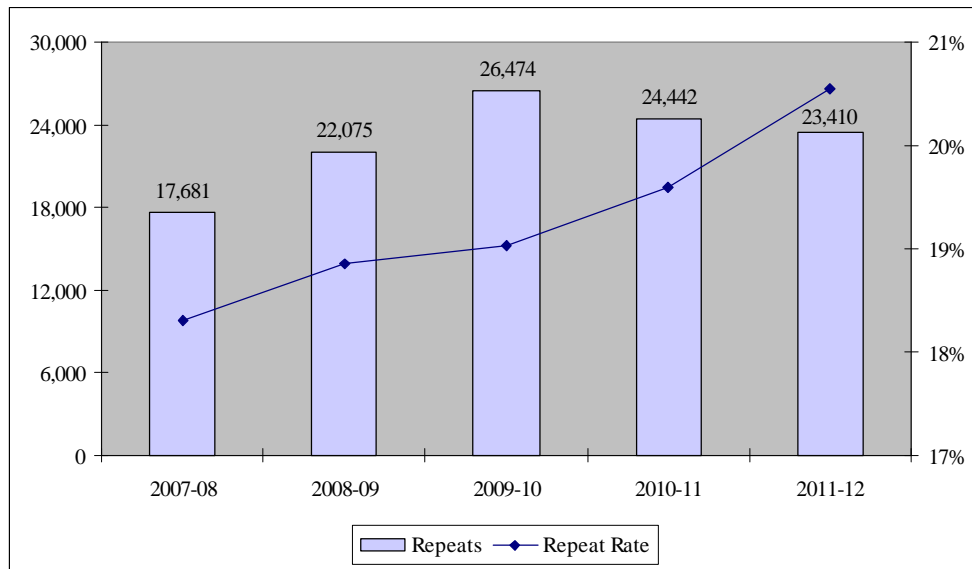


The number of repeat bankrupts and repeat consumer debtors has also been gradually rising. Based on OSB administrative data, Figure 2 shows the repeat rate over the last five years and the number of repeat filings.⁵ From 2007-08 to 2011-12, the repeat rate climbed from 18.3% to 20.5%. During this period, the total number of repeats grew from 17,681 in 2007-08 to 26,474 in 2009-10 before falling to 23,410 in 2011-12.

⁴ The statistics are based on OSB administrative data and include all bankruptcy and consumer proposals by individuals. For joint filings, secondary filers were also excluded. Accordingly, the numbers will show slight discrepancies when compared with the monthly numbers published by the OSB.

⁵ Repeat filings include filings by debtors who had either a previous bankruptcy or consumer proposal. A debtor who filed for bankruptcy after a failed consumer proposal would be included in these statistics.

Figure 2: Number of Repeats and the Repeat Rate over Last Five Fiscal Years



Repeat bankruptcies and insolvencies can result in costs for society as a whole. Specifically, they can contribute to slower growth in the economy by increasing the costs for goods, services and credit.⁶ In addition, they can lead to increased court and administration costs due to the processing of filings and the monitoring of debtors.⁷

Helping debtors avoid future financial difficulties can provide benefits to creditors and debtors. In the interviews, creditors stressed that rehabilitating debtors leads to higher profits for their businesses. Specifically, it allows for the provision of additional credit and it increases the number of clients who qualify for new products (e.g. mortgages). Creditors interviewed also indicated that lowering the repeat rate in Canada could lead to lower costs to consumers for vendor financing. For debtors, the direct, tangible benefits of debtor rehabilitation can be improved finances. There can also be intangible benefits such as reduced stress and better health.⁸

According to OSB administrative data, the most common reason for financial difficulties is the overuse of credit. Over the last five years, close to 60% of all bankrupts and consumer debtors cited this factor as a reason for their financial difficulties.⁹ Mandatory counselling directly addresses the rehabilitation needs of these bankrupts and consumer debtors by providing information, advice and assistance regarding prudent financial practices. Specifically, it can help debtors who have mismanaged their finances through the required discussions on money management, spending and shopping habits, the warning signs of financial difficulties, and obtaining and using credit.

⁶ See the US study on bankruptcy by Miller and Miller (2006)

⁷ See the US study on bankruptcy and insolvency by Lown and Llewellyn (2004)

⁸ See Kim, Garman, and Sorhaindo (2003); O'Neill, Sorhaindo, Xiao, and Garman (2005); and O'Neill, Prawitz, Sorhaindo, Kim, and Garman (2006)

⁹ The next most cited reasons over the last five years were insufficient income (35%), unemployment (26%), health concerns (18%), marital breakdown (16%) and business failure (11%).

Mandatory counselling can also provide an opportunity for debtors to learn essential skills and knowledge that can help them deal with future financial challenges. In the United States, one study found that even debtors who already knew basic financial management concepts showed improved knowledge as a result of the credit counselling and financial education that was provided as part of their bankruptcy (Lyons et al., 2010). The study found that the counselling helped debtors acquire the financial knowledge and skills needed to obtain a fresh start and establish long-term financial security.

In Canada, debtors found mandatory counselling to be valuable. Specifically, 91% of all respondents in the debtor survey felt that the advice and assistance that they received in the counselling sessions will be somewhat useful or very useful in helping them avoid future financial difficulties. This positive view was consistent across bankrupts (92%), consumer debtors (92%), and repeats (89%).

While there is a continued need for all types of debtors to receive mandatory counselling, trustees and counsellors believe that mandatory counselling can be less relevant for three types of debtors: individuals who went bankrupt or filed a consumer proposal because their business failed; debtors living with addictions; and debtors who were victims of circumstance.

Although these three groups are distinct, they are small in number. According to OSB administrative data, 11.3% of all debtors identified business failure as a reason for their financial difficulties but only 3.6% of debtors identified business failure as the sole reason. Similarly, 1.7% of all debtors who received mandatory counselling cited gambling as a reason for their financial difficulties and another 1.5% identified substance abuse as a contributing factor.¹⁰ Victims of circumstances are not tracked, but 2.5% of all debtors cited health as the sole reason for their financial difficulties.

In the survey, 24% of all trustees and counsellors said that debtors whose financial difficulties arose from business-related reasons should receive a different form of mandatory counselling. According to survey respondents, some business failures stem from poor business financial practices which trustees and counsellors are not required to address under the current Directive. According to trustees and counsellors, many sole proprietors and self-employed debtors need basic instruction in record keeping and bookkeeping; separating business-related expenses from personal affairs; and understanding accrual and cash accounting. Furthermore, some business failures resulted from a lack of knowledge of taxes, including how to estimate and make payments for GST, PST, and income tax instalments. For these debtors, rehabilitation could include advice and assistance that would help ensure that their business cash flows are balanced and include tax payments.

The second group of debtors with different needs consists of debtors with addiction issues (gambling, substance abuse, etc.). According to the interviews, these debtors can require a different kind of counselling because their financial difficulties are the consequences of deeper, underlying problems. According to the survey, 7% of all trustees and counsellors said that debtors living with addictions need a different form of counselling. Trustees and counsellors will

¹⁰ Gambling and substance abuse may be underreported. This information is captured at the time of filing but is not updated. According to interviewees, many debtors will not reveal these challenges in the first meeting with a trustee.

refer these debtors to specialists, but there is no guarantee that these debtors will follow up on a referral or complete a treatment program.¹¹ Some survey respondents suggested that these debtors will not be able to get on track with their finances until they get their addictions under control.

Finally, mandatory counselling can be less relevant for victims of circumstance whose financial difficulties were caused by factors outside of their control (e.g. health problems). According to the survey, 16% of all trustees and counsellors suggested that these debtors should receive a different form of mandatory counselling. This group may know how to budget but they are unable to do so effectively because of a lack of funds and because they are unable to work. In these cases, debtors may benefit from a streamlined form of mandatory counselling (e.g. a single counselling session) because there is less of a need for debtor rehabilitation.

In practice, trustees and counsellors will tailor the content of the counselling sessions to make mandatory counselling as relevant as possible to the debtor. They place less emphasis on some of the required topics under the Directive (i.e. obtaining and using credit or the warning signs of financial difficulty) where there are fewer opportunities for rehabilitation and spend more time on topics that may be useful in the future (e.g. budgeting and saving).

Despite the best efforts of trustees and counsellors to tailor the information to meet debtor needs, there may be limits to the relevance of mandatory counselling for all groups. Certain groups of debtors will continue to need advice and assistance that is of a different focus, provided by specialists, or more streamlined than what is currently being offered.

3.1.2 Does mandatory counselling align with the priorities of the federal government and the strategic outcomes of Industry Canada?

Key Finding: Mandatory counselling is aligned with government priorities as outlined in recent Federal Budgets. It is also consistent with the strategic outcomes of Industry Canada.

The objectives of mandatory counselling are to promote the rehabilitation of debtors and to avoid repeat bankruptcies. These objectives are consistent with the Government of Canada priority of preserving the integrity of the financial system, which was most explicitly articulated in Budget 2008:

“The Government is committed to further support the implementation of a framework of financial regulation that promotes integrity and efficiency, based on well-understood principles, which is responsive and innovative, and which allows Canada have a voice internationally.”

¹¹ The vast majority of discharges take place through the automatic discharge process in accordance with the terms of the BIA. For discharges that are not automatic, registrars determine whether or not a discharge is granted, and whether conditions will be placed on the debtor. This means that provisions already exist to deal with cases which require special considerations, including cases where addiction issues are known.

Another priority for the Government of Canada is improving financial literacy. In Budget 2009, the government announced the establishment of an independent task force to make recommendations on a cohesive national strategy on financial literacy.

“Another way to enable consumers to look after their best interests is to raise the level of financial literacy. Financial literacy is the ability to understand personal and broader financial matters, apply that knowledge and assume responsibility for one’s financial decisions. Financial literacy is an important life skill that empowers consumers to make the best financial decisions in their particular circumstances. While a number of initiatives are currently underway to improve financial literacy for Canadians, it is time to better organize efforts. To that effect, the Government will establish an independent task force, which will make recommendations to the Minister of Finance on a cohesive national strategy on financial literacy.”

In July 2011, the National Task Force on Financial Literacy group delivered its report. Among its recommendations, the Task Force called for the promotion of “financial literacy through federal programs that are in direct contact with the population”. Specifically, the Task Force noted that low-income Canadians and low-wealth Canadians were most likely to be among those needing help. In this context, mandatory counselling is aligned with the recommendations of the national strategy because it helps educate all debtors on good financial management. Further, given that about 46% of debtors had low incomes, mandatory counselling helps low-income Canadians.¹²

In terms of departmental strategic outcomes, Industry Canada is responsible for the oversight and regulation of a number of aspects of the Canadian marketplace, including bankruptcy and insolvency. Industry Canada ensures the integrity of the Canadian marketplace by providing oversight and regulation. Within Industry Canada’s Program Activity Architecture, mandatory counselling is located within bankruptcy and insolvency, which is a Program Sub-Activity that falls under the “Market Frameworks and Regulations” Program Activity. This Program Activity contributes to the strategic outcome: “The Canadian market is efficient and competitive.”

3.1.3 Do mandatory counselling activities align with the roles and responsibilities of the federal government?

Key Finding: Mandatory counselling is consistent with the roles and responsibilities of the federal government. Under the *Constitution Act*, the federal government has exclusive jurisdiction over bankruptcy and insolvency.

The *Constitution Act* of 1867 through section 91 (21) grants exclusive jurisdiction to the federal government in matters concerning bankruptcy and insolvency. Within the federal government, mandatory counselling relates to the authorities granted under the *Department of Industry Act* of 1995. According to Section 4 of this *Act*, the powers, duties and functions of the Minister of Industry extend to all matters relating to bankruptcy and insolvency.

¹² Statistics Canada defines low income as equal to 50% of the median net household income. For information on the Low-Income Measure see <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl-eng.htm>

While bankruptcy and insolvency clearly falls under federal jurisdiction, provincial laws and regulations can play an indirect role in influencing what is covered in the counselling sessions. Specifically, the discussions regarding the budgetary and non-budgetary factors that led to financial difficulties prior to filing can touch on aspects that fall under provincial jurisdiction such as property rights, civil rights, and consumer protection. Similarly, the content of the second counselling session on the roadblocks to solvency and rehabilitation can be influenced by areas of provincial jurisdiction. For example, the Government of Quebec has legislation that prevents payday loan companies from operating in the province. The provinces also regulate casinos and other forms of gambling.

Within Ontario, provincial laws and regulations governing professional associations play an indirect role in the delivery of mandatory counselling by some counsellors. Specifically, some counsellors work for not-for-profit agencies that are accredited by the Ontario Association of Credit Counselling Services (OACCS). To obtain their Certified Credit Counsellor designation, these counsellors must complete the Accredited Financial Counsellor Canada program in addition to the Insolvency Counsellor Qualification Course. To maintain this designation, these counsellors must enrol in continuing education courses.

3.2 Performance

3.2.1 To what extent has the mandatory counselling system under the *Bankruptcy and Insolvency Act* been effective?

Key Findings: Mandatory counselling had a positive impact on debtors. Specifically, debtors found the counselling sessions useful; were generally aware of sound financial practices and pitfalls; and implemented prudent financial behaviours after receiving mandatory counselling. In addition, evidence suggests that debtors who cited the overuse of credit as a reason for their financial difficulties were less likely to be repeat filers.

Determining the effectiveness of mandatory counselling is challenging because it is difficult to disentangle the results of the two counselling sessions from the broader changes that occur in a bankruptcy or insolvency. Ideally, to determine the effectiveness of mandatory counselling, the evaluation would study a control group that did not receive mandatory counselling, but this was not possible because of the legislative requirement to provide counselling to all debtors.

To assess the overall effectiveness of mandatory counselling, the evaluation team pursued multiple lines of inquiry including debtor perceptions of the usefulness of mandatory counselling, debtor knowledge regarding prudent financial practices, changes in debtor behaviour after the counselling sessions, and differences in the reasons for financial hardship between first-time filers and repeats.

Perceptions of the Usefulness of Mandatory Counselling

In the short run, a goal of the counselling sessions is to provide useful knowledge and advice to debtors. In this context, mandatory counselling was effective. Overall, 92% of respondents believed that the information provided in both counselling sessions had been useful. These views

were consistent among bankrupts, consumer debtors, and repeats. Consumer debtors found the information the most useful with 71% saying that the information was very useful and 23% saying that it was somewhat useful. Among bankrupts, 67% said that it was very useful and 25% said that it was somewhat useful. The group that found the information the least useful were repeats, but 66% still found the information to be very useful and 25% said that it was somewhat useful.

Another indicator of usefulness was whether the counselling sessions provided debtors with new insights into their personal situation. While most survey respondents (68%) already knew why they had run into financial difficulties, roughly one-third of debtors reported that the sessions had helped them identify the causes of their bankruptcy or insolvency. At the end of the sessions, very few debtors did not know what had created their financial difficulties (1.6% for repeats, 0.9% for bankrupts and 0.3% for consumer debtors).

Over the longer term, debtors believe that mandatory counselling will help them avoid financial difficulties in the future. Specifically, 91% of survey respondents felt that the advice and assistance that they received in the counselling sessions will be useful or very useful in helping them avoid future financial difficulties. These results were consistent among the different types of debtors.

Debtors who did not feel that mandatory counselling would help them avoid future financial difficulties (8%) were asked in a follow-up question why this was the case. About 68% of these respondents stated that counselling sessions were not useful because the information provided was not sufficient. The other key reason cited by 28% of these respondents was that their bankruptcy or insolvency was due to circumstances that are unlikely to reoccur (e.g. a serious illness, unemployment, or the death of a spouse).

Debtor Knowledge of Prudent Financial Practices

Financial literacy is a very broad concept and includes many dimensions such as earnings and income, spending, savings and investing, borrowing, and protecting (Rabbior, 2011). It is not realistic to expect that two counselling sessions can cover all areas of financial education, but the evaluation sought an understanding of debtor knowledge regarding how credit works, what are good practices for personal financial management, and what are the potential pitfalls.

In the survey, debtors were asked five basic questions on financial knowledge. The questions covered budgeting and saving, obligations when co-signing loans, interest on loans, credit ratings, and credit card terms. The questions were based on the Directive, material in the Insolvency Counsellor's Qualification Course, and specific concerns that had been raised by stakeholders in interviews. The findings should be seen as suggestive rather than conclusive because there are few relevant benchmarks for comparison and some questions would not have been covered in the counselling sessions if they were not relevant to a debtor's situation.

Overall, the fact that respondents answered most of these questions correctly suggests that debtors were aware of prudent financial practices and potential pitfalls after they completed mandatory counselling. Specifically, 98% of debtors agreed that, in general, a budget should

have an amount set aside for savings every month. Similarly, 96% correctly answered that if someone co-signs a loan for a relative, they become responsible for making the loan payments if the relative cannot make the payments. Debtors did almost as well as the general population for a question that was based on the 2009 Canadian Financial Capability Survey (CFCS). In total, 87% of debtors said that making a larger down payment would lower the total amount that you pay back on a car loan compared to 89% of respondents from the general population who said that a larger down payment would lower the cost of a house. Finally, a large number of debtors (81%) correctly answered that making late payments on loans and debts can hurt your credit rating.

In contrast, there were gaps in debtor knowledge regarding the terms and conditions for credit cards. In the survey, debtors were presented with a scenario about what would happen if they did not pay off the full balance of a single purchase on their credit card by the due date. In Canada, credit cards charge interest back to the date when the debtor made the purchases until the debtor makes a payment that covers the full amount of the purchases.¹³ In the survey, only 28% of respondents correctly answered this question and this was consistent across all types of debtors (31% for bankrupts, 29% for consumer debtors, and 25% for repeats).

Behaviour Changes

In the interviews, trustees and counsellors emphasized that the goal of mandatory counselling was more than just the transfer of knowledge. Instead, they stressed the importance of debtors implementing sound financial practices in their daily lives. In the survey, debtors reported significant changes in behaviour after mandatory counselling. Table 1 shows the increase in the frequency for various prudent financial practices by type of debtor.

Table 1: Self-Reported Changes in Financial Behaviours

	Bankrupts		Consumer Debtors		Repeats		All Debtors	
	Before	After	Before	After	Before	After	Before	After
Know how much money in all bank accounts	78%	96%	78%	97%	78%	95%	78%	96%
Track income and expenses	51%	96%	46%	97%	51%	94%	49%	96%
Have a household budget	45%	93%	38%	93%	44%	91%	42%	92%
Set short and long term goals	37%	83%	36%	89%	35%	83%	36%	85%
Save for emergencies	27%	68%	26%	78%	24%	63%	26%	70%

¹³ See *Credit Cards: Understanding Your Rights and Your Responsibilities* on the Financial Consumer Agency of Canada website: www.fcac-acfc.gc.ca .

Among all survey respondents, the percentage of debtors who said that they had a household budget increased by 50 percentage points; the percentage of debtors who set short and long term goals increased by 49 percentage points; the percentage of debtors who tracked income and expenses increased by 47 percentage points; the percentage of debtors who saved for emergencies increased by 44 percentage points; and the percentage of debtors who knew how much money they had in all of their bank accounts increased by 18 percentage points.

Differences between Repeats and First-Time Filers

The most common reason for financial difficulties among debtors is the overuse of credit. Over the last five years, about 59% of debtors cited the overuse of credit as a reason for their financial difficulties. Mandatory counselling directly addresses this issue through the required discussions on money management, spending and shopping habits, the warning signs of financial difficulties, and obtaining and using credit. If mandatory counselling were effective and having a positive impact on debtors, then one would expect repeats to be less prone to citing overuse of credit as a reason for their financial difficulties.

Using OSB administrative data, the econometric analysis that was completed for this evaluation found that debtors who cited the overuse of credit was a reason for their financial difficulties were less likely to be repeats. According to the model, if a debtor reported to their trustee that the overuse of credit was a contributing factor in their financial difficulties, then the probability that the debtor had a previous bankruptcy or insolvency dropped by 3.7%. While additional research would be needed to demonstrate causality, from an evaluation perspective, this suggests that mandatory counselling had a positive impact on the management of credit by debtors.

3.2.2 Is the design and delivery of mandatory counselling effective?

Key Findings: Several aspects of the design and delivery were working well. Stakeholders generally believed that the required content was current and effective. However, there were opportunities for incremental improvements through the identification and dissemination of useful materials for delivery and tools for debtors. In addition, some stakeholders felt that the sessions were too short, while others suggested more counselling for certain debtors.

To assess the effectiveness of the design and delivery of mandatory counselling, the evaluation examined: stakeholder impressions of the overall design; the specific content covered in the counselling sessions; resources to support delivery; the duration of counselling sessions; the timing of counselling sessions; and the number of sessions.

Overall Design

According to the survey, trustees and counsellors reported that many aspects of the general design of mandatory counselling were working well. Overall, about 86% of survey respondents who delivered mandatory counselling believed that the Consumer and Credit Education stage was somewhat useful or very useful for both bankrupts and consumer debtors. Similarly, about 81% believed that the Identification of Roadblocks Stage was useful or very useful. In addition, stakeholders believed that many of the more detailed elements of mandatory counselling were

appropriate. For example, the OSB requires face-to-face counselling sessions unless prior authorization from the OSB is obtained; 87% of survey respondents agreed that mandatory counselling was most effective when conducted in-person.

Specific Content for Mandatory Counselling

Stakeholders generally believed that the required content covered in the sessions was current and effective for achieving the goals of mandatory counselling. In the interviews, trustees and counsellors reported that the topics in the Consumer and Credit Education stage were appropriate and broad enough to meet the needs of debtors. The survey results supported this perspective as a very high percentage of stakeholders in each group believed that the required topics were either somewhat useful or very useful. Table 2 presents the results for each required topic from both surveys.

Table 2: Percentage Who Believed a Topic Was Somewhat or Very Useful

	Money Management	Spending and Shopping Habits	Warning Signs of Financial Difficulties	Obtaining and Using Credit
Trustees	84%	74%	66%	79%
Counsellors	93%	84%	82%	89%
Bankrupts	89%	84%	83%	85%
Consumer Debtors	92%	88%	86%	87%
Repeats	90%	85%	82%	82%

It is interesting to note that across all stakeholder groups, trustees were the least likely to find the topics useful. For example, only 66% of trustees believed that the material on the warning signs of financial difficulties was useful. In the interviews, some trustees reported that debtors were often already aware of the warning signs. While this may be true in some cases, the reality is that debtors generally found the topic useful.

The survey also asked trustees and counsellors who delivered mandatory counselling whether new topics should be added. Only 24% recommended adding new topics and their detailed responses fell into two broad themes. First, many debtors are keenly interested in credit scores and credit rehabilitation. Debtors want to learn how credit scores work and how soon they can gain access to credit again. Second, many debtors want to know more about long-term financial planning. According to the survey, these discussions could focus on saving for future milestone events (e.g. retirement or a child’s education) and could include more information on the means to achieve these goals through mechanisms like Registered Retirement Savings Plans, Registered Educational Savings Plans, and Tax-Free Saving Accounts.

According to the interviews and the survey, many trustees and counsellors tailor the counselling sessions to meet the needs of their debtors. The advantage of this approach is that trustees and counsellors are free to cover additional topics and have flexibility to ensure that the sessions are relevant. The disadvantage of this approach is a potential lack of consistency in delivery as debtors likely experience different kinds of mandatory counselling even when they face the same challenges.

Resources to Support Effective Delivery

In terms of available resources to assist in delivery, trustees and counsellors reported that they often produced their own sets of materials such as brochures and workbooks, budgeting tools, videos, and links to online resources. In the interviews, it was suggested that it would be beneficial to have a source of standard tools for trustees and counsellors who do not have the resources to develop their own aids.

In the survey, 50% of the trustees and counsellors who deliver mandatory counselling believed that tools and resources should be developed. The majority of these respondents believed that budgeting tools and revenue-expense tracking tools would be the most useful. A review of websites suggests that some of the desired tools may already be available through commercial software (e.g. Quicken), free websites (e.g. Mint.com), or the Financial Consumer Agency of Canada. In light of the general shift to smart phones and mobile computing, some counsellors suggested that it would be useful to develop phone apps. According to the interviews, the use of interactive tools is valuable because it can shift a debtor's experience of mandatory counselling from two events to an ongoing process of learning.

Of course, a key component for the successful delivery of mandatory counselling is the expertise of the person giving the counselling sessions. According to the interviews, most trustees and counsellors believed that the current iteration of the Insolvency Counsellor's Qualification Course was good and that people who had become qualified insolvency counsellors were able to deliver adequate counselling sessions. However, some counsellors interviewed suggested that the required CAIRP course represented a minimum standard for effective delivery and that the quality of counselling improved with experience and further training.

In the interviews, there was a noticeable split among stakeholders on whether trustees and counsellors should engage in ongoing professional development and training for mandatory counselling. In the survey, 70% of counsellors believed that this was needed compared to only 56% of trustees. Some of the support among counsellors for professional development for mandatory counselling may reflect the fact that many counsellors already face these kinds of requirements. In Ontario, counsellors must participate in professional development to maintain their Certified Credit Counsellor designation. In other parts of the country, some credit counselling agencies and trustee offices have similar requirements for their staff.

In the end, it is difficult to provide a clear assessment of the value of professional development for mandatory counselling because there is no data available on the quality of the sessions provided by individual trustees and counsellors. According to the literature, continuous professional development is considered a best practice in many professions because it acts a cornerstone for maintaining and developing skills.¹⁴ Learning events can also provide a mechanism for the sharing of best practices and new knowledge in evolving fields.

¹⁴ See Jackling and Sullivan (2007); International Accounting Standards Board (2008); and Schostak, et. al. (2010)

Duration of the Counselling Sessions

The Directive does not specify the duration for each counselling session, nor does it set a minimum standard. However, according to interviewees, it takes close to an hour to deliver an effective counselling session.

On average, most counselling sessions (68%) last between thirty minutes to an hour according to the survey of trustees and counsellors. However, 19-23% of trustees and counsellors surveyed reported that their sessions last less than thirty minutes, which suggests that some debtors may be receiving counselling sessions that are too short. Table 3 shows the average duration of counselling sessions.

Table 3: Duration of Sessions According to Trustees and Counsellors

Duration	Consumer and Credit Education	Identification of Roadblocks to Solvency and Rehabilitation
Less than 30 minutes	19%	23%
30 minutes to 1 hour	69%	67%
1 hour to 1.5 hours	12%	10%
More than 1.5 hours	1%	0%

Interestingly, a regression analysis found a correlation between debtor ratings of usefulness and the length of counselling sessions. Debtors who did not find the counselling sessions to be useful were disproportionately more likely to report having experienced shorter counselling sessions. This is consistent with the findings from the debtor survey. Table 4 shows debtor perceptions of the duration of the counselling sessions. Among debtors who did not find the information useful, 27% reported that their first counselling sessions was less than 15 minutes and 33% reported that their second counselling session was less than 15 minutes.

Table 4: Debtor Perceptions of the Duration of Counselling Sessions

	Consumer and Credit Education		Identification of Roadblocks to Solvency and Rehabilitation	
	Less than 15 minutes	15 to 30 minutes	Less than 15 minutes	15 to 30 minutes
All Respondents	4%	21%	5%	24%
Debtors who did not find the information useful	27%	38%	33%	28%

Timing of Counselling Sessions

In the interviews and the survey, the timing of the counselling sessions generated a considerable number of comments from trustees and counsellors. While stakeholder comments varied considerably, they were largely focused on when mandatory counselling should start within the insolvency process and the timing of individual counselling sessions.

Under the Directive, mandatory counselling takes place after debtors have filed a bankruptcy or a consumer proposal. In the interviews, many trustees and counsellors argued that debtors needed help well before they have filed. In this context, some counsellors recommended that Canada follow the U.S. model and make mandatory counselling a condition for filing for bankruptcy. In the United States, counsellors provide individualized assessments and help debtors develop a plan to respond to their financial situation. By having the counselling sessions earlier, interviewees argued that debtors would receive advice and assistance while they could still take action.

The U.S. Government Office of Accountability reviewed the American model and actually found that pre-bankruptcy counselling had an unintended, negative effect (GAO, 2007). The audit found that rather than helping steer debtors away from declaring bankruptcy, pre-bankruptcy counselling made their situation worse because it delayed the filing for bankruptcy. By the time debtors attended pre-bankruptcy counselling, their financial standing was almost always beyond rehabilitation and bankruptcy was the only real alternative. Thus, the pre-bankruptcy counselling session represented an additional administrative burden rather than an opportunity for debtors to explore options and pursue alternatives.

With respect to the timing of counselling sessions, the Directive specifies that the first counselling stage on Consumer and Credit Education takes place between 10 and 60 days after debtors begin their bankruptcies or consumer proposals.¹⁵ The second counselling stage on the Identification of Roadblocks to Solvency and Rehabilitation stage takes place at least 30 days after the first counselling stage and no later than 210 days after filing.

According to the survey, most trustees and counsellors who deliver mandatory counselling believed that the timing of the counselling sessions was appropriate. About 71% believed the timing of the Consumer and Credit Education stage was appropriate and 72% believed that the timing of the Identification of Roadblocks to Solvency and Rehabilitation stage was appropriate. However, 47% of trustees and counsellors said that the order of the counselling sessions should be at the discretion of the person delivering the counselling. Trustees showed a slightly higher preference for more discretion than counsellors (50% versus 44%).

Number of Counselling Sessions

Stakeholders suggested that there were debtors who would benefit from additional counselling sessions. In the interviews, trustees and counsellors suggested that a debtor should have an annual mandatory counselling check-up if the debtor spends more than a year in the bankruptcy or insolvency process.¹⁶ They believed that there was too much time between the last counselling session and when these debtors completed their bankruptcies or consumer proposals.

¹⁵ When a Division I Proposal is refused by creditors, the first stage occurs within 10 days.

¹⁶ Under the BIA, first-time bankrupts with no surplus income are eligible for an automatic discharge after nine months. Other bankrupts spend more than a year before they receive an automatic discharge. These debtors include bankrupts with surplus income (21 months), repeat bankrupts (24 months), and repeat bankrupts with surplus income (36 months). Consumer proposals last up to a maximum of five years.

The survey echoed these comments. When asked whether there were groups of bankrupts or consumer debtors who could benefit from additional counselling sessions, about 17% of trustees and counsellors who deliver mandatory counselling suggested debtors who were required to spend more than a year in the bankruptcy or insolvency process (including repeat bankrupts) would benefit. A review of the detailed responses revealed concerns that long stretches could occur after the second counselling session, which could result in individuals forgetting the content of the counselling sessions or losing interest in applying the techniques they had learned.

In addition, some trustees and counsellors would like to provide more mandatory counselling to certain debtors. According to interviewees, even the best trustee or counsellor cannot teach everything that a debtor with very low levels of financial knowledge and skills needs to learn in just two sessions. According to the survey, 18% of trustees and counsellors who deliver mandatory counselling believe that debtors who lack financial knowledge or have poor money management skills should receive additional counselling sessions. Furthermore, 38% of debtors reported that they would have benefited from an additional counselling session.

3.2.3 Going forward, how could the OSB measure the effectiveness of mandatory counselling?

Key Findings: The OSB currently measures the performance of the insolvency and bankruptcy system as a whole, rather than mandatory counselling specifically. The OSB could measure the effectiveness of mandatory counselling by collecting additional data at the time when the counselling sessions are delivered; gathering feedback from debtors; and tracking changes in debtor behaviour after the counselling sessions.

The OSB currently has performance measures for the whole bankruptcy and insolvency process rather than mandatory counselling specifically. Given that mandatory counselling represents a significant activity for the insolvency system, the OSB asked AEB to identify potential performance indicators to measure the effectiveness of mandatory counselling. In this context, the evaluation team examined available documentation and identified additional performance indicators that could be collected at the time of the counselling sessions, after the counselling sessions, and after debtors exit the bankruptcy and insolvency processes.

At present, the available documentation for performance measurement for mandatory counselling is limited. Trustees and counsellors complete and sign a Counselling Certificate at each stage of counselling certifying that they have complied with the terms of the Directive. Debtors also sign the acknowledgement part of the Counselling Certificate to indicate that they have received the counselling and understand the information that was presented. The certificates are general in nature and do not ask whether the specific topics outlined in the Directive are covered explicitly. The information contained in the certificates is not sent electronically to the OSB, rather trustees retain these certificates as part of the estate file. In addition to the certificates, each OSB regional office has a list of counsellors who have provided mandatory counselling for a trustee in the past, but these lists do not follow the same format and they vary in the ways that they are kept up-to-date.

To support the measurement of effectiveness, the OSB could gather the currently available data in a more integrated manner. Specifically, trustees could send data from the Counselling Certificates to the OSB and include the name of the qualified counsellor and the date of the counselling sessions. By gathering this data electronically and in a systematic fashion, the OSB would be able to readily determine who has delivered mandatory counselling and when exactly mandatory counselling was delivered within the timeframes set out in the Directive. In combination with other performance information, this data could help the OSB assess the quality of different service providers and support continuous improvement.

The OSB could also require additional information at the time of delivery of mandatory counselling. Debtors could confirm that they received information on the specific topics that are required under the Directive. In addition, it could be valuable to ask trustees and counsellors to record their perceptions of the level of engagement by the debtor on a standardized scale after each counselling session.

After the counselling sessions, the OSB could collect debtor feedback on the usefulness of the information. Specifically, the OSB could ask debtors to report on any behaviour changes such as the use of a household budget, the tracking of income and expenses, knowledge of how much money was in bank accounts, and the setting of short-term and long-term goals. Data concerning the use of saving for emergencies could also be collected although it should be recognized that not all debtors may be in a position to set aside savings during this period. Finally, the OSB could ask debtors whether they feel more confident about managing their finances, similar to the approach taken by some credit counselling organizations in Australia and the United Kingdom.

Once debtors complete the bankruptcy and insolvency process, trustees, counsellors, and creditors recommended that the OSB conduct surveys every few years to determine whether debtors were continuing to apply the lessons that they had learned in the counselling sessions.

To measure the ongoing success of debtor rehabilitation, most creditors interviewed suggested that the credit scores of debtors be tracked over time. In the United States, several academic studies have used the credit bureau data to measure the impact of counselling on credit usage and credit profiles.¹⁷ In these studies, data was collected at the time that counselling began and then at various points over a period of time (usually one to four years) following the counselling. Debtor data was then compared to a randomly selected comparison group of individuals with similar risk profiles. In Canada, credit-reporting agencies produce similar consumer credit files with credit scores (i.e. judgments about a debtor's financial health at a specific point in time) and credit ratings (i.e. the history of whether a debtor has paid bills within 30 days). In recent years, credit-reporting agencies have been developing new products that place less weight on credit history and more weight on regional data and current conditions to predict the likelihood that a consumer will declare bankruptcy. An advantage of credit-reporting agency data is that it does not rely on self-reported responses from debtors. While tracking credit scores might be valuable for measuring effectiveness, the feasibility would need to be explored further in light of operational and privacy considerations.

¹⁷ See Staten, Elliehausen and Lundquist (2002); Staten and Barron (2006); Barron and Staten (2009, 2011); Collins, Mahon, Martinez and Walsh (2011); and Elliehausen, Lundquist and Staten (2003).

Finally, given that a key objective of mandatory counselling is to help debtors avoid repeat bankruptcies, trustees and counsellors suggested that the OSB continue to track repeat rates, changes in annual repeat rates, and the time between repeating.

3.2.5 To what extent does the current program model for mandatory counselling demonstrate efficiency?

Key Findings: There were few opportunities suggested by stakeholders to improve efficiency. However, some stakeholders suggested that video-conferencing and a streamlined form of mandatory counselling could be effective and efficient, while others believed that the current fees should be examined.

Given that mandatory counselling is integrated within larger OSB bankruptcy and insolvency processes, the evaluation assessed efficiency by seeking the views of stakeholders on ways to improve efficiency and by examining the current fee structure.

Overall, there were few opportunities identified by stakeholders to improve efficiency, with two exceptions. First, some trustees and counsellors who were interviewed suggested that video-conferencing (including online video-conferencing services like Skype) could be effective. In the survey of trustees and counsellors, 87% of respondents believed that mandatory counselling was most effective when conducted in-person, but 59% of trustees and 45% of counsellors believed that the OSB should allow mandatory counselling to be delivered through internet video-conferencing. One study in the United States examined the impact of different mediums on the effectiveness of credit counselling and found that telephone counselling and video-conferencing were no worse than face-to-face delivery (Barron and Staten, 2011). According to the debtor survey, 14% of respondents reported that they would have preferred to have received their mandatory counselling through internet video-conferencing.

Second, trustees and counsellors interviewed suggested a streamlined form of mandatory counselling could be delivered to debtors whose financial difficulties stemmed from factors that were largely outside of their control. Presumably, not all debtors who were victims of circumstance would need two full stages of mandatory counselling because the misuse of credit was not a contributing factor to their financial difficulties. In these cases, a single counselling session could be sufficient.

In terms of the counselling fees, all but one of the trustees and counsellors in the interviews felt that the fees for mandatory counselling should be increased. While \$85 for a session may have been appropriate in 1992, these fees no longer reflect current market realities. According to the interviewees, it takes close to an hour to deliver an effective counselling session and the current fees do not cover the hourly costs of providing a counselling session. This shortfall is even more apparent if the time for preparation is included.

There was a real concern among interviewees that the relatively low fees for mandatory counselling were affecting the quality of counselling sessions given by some of their peers. Because the \$85 was a fixed fee, they suggested that some trustees and counsellors were putting less time and effort into their counselling sessions than they should. In the survey, about a fifth

of trustees and counsellors reported that their counselling sessions lasted less than 30 minutes on average.

There was no consensus among interviewees on how much a counselling session should cost, but the suggestions ranged from \$120 to \$200 per hour with the majority falling in the \$120 to \$150 range. One counsellor reported that she provides the same information to professionals and charges \$200 to \$300 per hour for these seminars.

There are a number of other potential independent benchmarks and all suggest that providing more financial resources for mandatory counselling could be appropriate. If inflation is taken into account, \$85 per hour in 1992 would be \$123 in 2012. According to interviewees, credit counselling fees at not-for-profit agencies ranged from \$125 to \$190 per hour. Financial planners are usually compensated with a percentage of the value of the mutual funds that they manage. However, independent assessments by financial planners in 2009 were between \$100 and \$300 with the average being slightly less than \$200 per hour.

A small number of creditors were interviewed and asked whether the fees to deliver mandatory counselling were appropriate. Across the seven interviews, creditors were hesitant to comment because they were not directly involved in mandatory counselling. While one creditor believed that \$85 for each session was appropriate, the rest were open to a fee increase provided that the value of mandatory counselling could be demonstrated. Specifically, they did not support a fee increase unless there was a clear sense of what the sessions were intended to accomplish and assurance that the impact of mandatory counselling would be measured.

4.0 CONCLUSIONS AND RECOMMENDATIONS

Major conclusions reached during the evaluation are summarized. A set of recommendations are presented to improve the ability of the OSB to meet its objectives for mandatory counselling.

4.1 Conclusions

Regarding relevance, the evaluation determined that:

- Mandatory counselling addresses a continued need by contributing to the rehabilitation of debtors and helping them avoid future financial difficulties. While there is a continued need for all types of debtors to receive mandatory counselling, there are small groups who have different needs and benefit less from the current design.
- Mandatory counselling is aligned with federal government priorities and the strategic outcomes of Industry Canada.
- Mandatory counselling is consistent with federal roles and responsibilities.

Regarding performance, the evaluation determined that:

- Mandatory counselling had a positive impact on debtors. Debtors found the counselling sessions useful, and, after counselling, were generally aware of sound financial practices and changed their behaviour. In addition, evidence suggests that debtors who cited the overuse of credit as a reason for their financial difficulties were less likely to be repeat filers.
- Several aspects of the design and delivery of mandatory counselling are working well, but there are opportunities for incremental improvements through the identification and dissemination of useful materials and tools for debtors. Longer counselling sessions might help some debtors, while others might benefit from more counselling sessions.
- Collecting additional performance data would support the measurement of the effectiveness of mandatory counselling.
- There were few opportunities identified by stakeholders to improve the efficiency of mandatory counselling. However, some stakeholders suggested that video-conferencing and a streamlined version of mandatory counselling could be effective and efficient, while others believed that the current fees should be examined.

4.2 Recommendations

The conclusions of the evaluation led to the following recommendations:

1. The OSB should develop and collect additional performance data to further measure the effectiveness of mandatory counselling and inform whether improvements need to be made.
2. To assist in the delivery of mandatory counselling, the OSB should explore ways of facilitating access to products and tools for delivery of the program and for use by qualified counsellors and debtors.
3. The OSB should examine the current model of mandatory counselling to see if options could be provided to better address the needs of the various debtor groups. Once completed, the OSB should consider the resources required to support the updated model.