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To: OSB Policy and Regulatory Affairs
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Introduction:

1. I write to you in my personal and private capacity **ONLY**.
2. I have been involved actively in the insolvency for over 55 years, commencing as a high school and continuing as a university summer student.
3. I note that until the mid 1980's most trustees were CPA's or other professional accountants & until the early 1970's spent most of their time practicing in their accounting, auditing and tax practices, and were generally only being "part time" trustees, and ...
4. Those trustees, mostly being professional accountants had education, training and were very cognisant about (i) ethics and (ii) conflicts of interest and understood those issues very well. They also had knowledge and used "forensic" and "verification" skills when conducting their audits and attestation as to financial information and statements prepared by others and for use by third parties.
Business structure and operations was also part of their knowledge, training and acquired skill sets.
As such those trustees were well equipped to deal with almost 99% of any debtor's or corporation's financial situation and carry out their required duties and obligations imposed by the BIA.
5. I have participated in the Insolvency and financial community in the past in numerous positions as a, or as involved as a:
 - Co- author of: (all published by Carswell Thompson)
 - i. The Canadian Guide to Troubled Businesses and Bankruptcy (CD ROM and loose leaf publication)
 - ii. Identifying and Advising Businesses in Trouble, and
 - iii. Restructuring and Accounting for Businesses in Trouble.
 - Member, CAIRP — Canadian Association of Insolvency and Restructuring Practitioners
 - Member, Past Board member, Executive Board Member and former Treasurer; OAIRP — Ontario Association of Insolvency and Restructuring Practitioners
 - Member; Ontario Institute of Chartered Accountants
 - Member; Canadian Institute of Chartered Accountants

- Member; Judicial Liaison Committee. A joint committee of OAIRP and Ontario Bar Association (OBA), which was instrumental in the appointment of a Deputy Registrar for the Bankruptcy Court of the Ontario Superior Court of Justice. *(Now dissolved)*
- Member; BORC — Bankruptcy Court Operation Review Committee. A joint committee of the OBA, OAIRP, Attorney General’s office and the judiciary, to improve the operations at the Toronto Bankruptcy Court.
- Member of the CRA Insolvency Liaison Committee
- Fellow; CICAM — Canadian Institute of Certified Administrative Managers
- Founder (1982); and executive member since inception of the Toronto Area Insolvency and Restructuring Discussion Group
- Chairman; Working Group 1 — Administrative Process-for the Personal Insolvency Task Force (PITF) in a joint submission to the Senate of Canada’s Standing Committee on Banking Trade and Commerce with respect to the CAIRP’s and Insolvency Institute of Canada’s (IIC) Joint Submission re-insolvency reform – 2003
- Made submissions to the Personal Insolvency Task Force (Report dated August 2002)
- Mentored and sponsored numerous success candidates who have become highly respected LIT’s

6. And most of all – I am most passionate about my work as a LIT.

(NOTE - I have used “debtor” and or “bankrupt” and “LIT”, “Trustee” and or “Administrator” (of a consumer Proposal) in this submission without regard to their legal status)

In response to your **Notice to Stakeholders** dated March 12, 2021 invitation stakeholders to “contribute comments and suggestions on how to:

- i. modernize and improve the regulatory framework,
- ii. enhance the effectiveness of its administration, and
- iii. increase accessibility to insolvency proceedings,

and that you stakeholders to contribute comments and suggestions on how to:

- i. modernize and improve the regulatory framework, and
- ii. enhance the effectiveness of its administration and increase accessibility to insolvency proceedings.

to identify areas of Canada’s insolvency system that can be made more:

- i. agile, and
 - ii. transparent and responsive
- without jeopardizing the integrity of the system.

.....so that the OSB will consider potential amendments to the regulatory framework, specifically the Superintendent's:

- i. directives, and
 - ii. forms and regulations,
- to position the insolvency system for success now and in the future.”

MY OPENING QUESTIONS:

I start with the following questions -

1. What is your interpretation of the word “agile” used above?
2. What is the accessibility issue?

The document dated (modified) March 12, 2021 that the link provided to in the above notice is entitled ***“Comprehensive review of directives and regulations under the Bankruptcy and Insolvency Act and the Companies’ Creditors Arrangement Act”***,

I have some opening comments about that document:

1. You presented a series of questions in the document that by doing so, you have **“directed”** the submissions to be made to be on the topics you noted about and the questions you posed, rather than having a free flow open discussion on the matters noted in you covering email sent on March 12, 2021
2. I note that the above document commences with

“The insolvency regime” ... where you stated that:

The aim of the insolvency regime is to minimize the impact of a debtor’s insolvency on all stakeholders. It does this by pursuing the key objectives of the:

- i. equitable and orderly distribution of the debtor’s assets and***
- ii. providing a fresh start for the debtor.***

It seeks to ensure these objectives by providing certainty in the marketplace to promote economic stability and growth and by striking the appropriate balance among competing interests.

My concerns, before I believe an appropriate submissions can be made with respect to your document are as follows:

I note four (4) immediate concerns as to you notice and document as ***in my opinion*** fails to address the following major items that I believe, if identified as issues to start with (and or any other appropriate items that other may suggest be added), then any recommendations with respect to the Directives and Regulations would have a enhanced “foundation” on which a proper discussion can then be commenced and changes suggested.

My four concerns are:

1. PURPOSES OF INSOLVENCY LEGISLATION

Your statement as to what the objectives and purposes of an insolvency system is far too short.

As noted by the “experts” and academic authors who publish about insolvency along with the historical laws dating back to biblical days (as every religious bible that I have reviewed has laws pertaining to insolvency) which was well before any organized a form of governments and or codified laws applying to the general population were formulated.

I suggest the following are (also) the purposes of insolvency legislation:

1. Allows an honest AND unfortunate debtor to free themselves from overburdening debts (settle debts on reasonable terms or conditions) to obtain a fresh start with or/on reasonable conditions)
2. Rehabilitation of debtor
3. Reintegration of debtor into society (become a useful citizen), and
4. Allow debtor to support family (during process)
5. Control of debtor’s assets, and
6. Expeditious & inexpensive method to get assets turned over by debtor to the trustee for distribution
7. Economical realization (one person doing realization)
8. Maximizes the value of assets being liquidated
9. Removes assets from unproductive users to allow the assets to be taken over by successful parties to create a positive economic effect in the economy (and society)
10. Strikes a balance between liquidation and reorganization
11. Preserves the insolvency estate to allow equitable distribution to creditors
12. Orderly distribution of debtor’s assets among its creditors
13. Ensures equitable treatment of similarly situated creditors
14. Recognizes existing creditor rights and establishes clear rules for ranking of priority claims
15. Provides certainty to creditors (domestic and foreign) promote economic stability and growth
16. Investigation into affairs of debtor ... so can
17. - Reverse preferences and transfers at undervalue
18. - Punish fraudulent debtors / (and creditors)
19. - Sanctions against debtors (and others) who do not follow duties
20. Integrity / promote confidence in the system (creditors expectations re all of the above so that they are treated fairly as regards to other classes of creditors and)
21. Provides for timely, efficient and impartial resolution of insolvency
22. Ensures transparent and predictable insolvency laws that contain incentives for gathering and dispensing information; and
23. Provides and balances all stakeholders’ interests as fair as possible.
24. Uniform laws (across Canada (subject to constitutional issues- as provinces determine property rights) and internationally
25. Follows Parliament’s wishes (upholds the “law”)

Although many of the above may seem similar, each has its own history and reason for being included, and it is these small nuances that require consideration, as the BIA and all its “rules” SHOULD have to meet with one if not more of the “purposes” of the legislation.

Your key objectives have shortened the list so much that in my opinion you have allowed:

- i. the regulator,
- ii. the administrators (LITs) of the process,
- iii. the creditors, and
- iv. the debtors

all to be somewhat absolved their responsibility in making the system work well and have turned the insolvency process in (my opinion) over 95% of the current filings a process of “pushing buttons” on a computer or mobile device to enter debtors information into a system that then allows for an automatic process to:

- i. File the “legal” documents electronically to commence an insolvency proceeding
- ii. Send required notices (mostly) electronically that a proceeding has commenced
- iii. Allows many creditors to (as many now do, and or will soon) electronically receive and or process the notice, file their proof of claim, and receive distributions.
- iv. Prepare most reports required for the court by pressing a button to obtain a bankrupt’s discharge, and
- v. Prepare all and file all the forms etc. to obtain the Trustee’s (or Administrator in a CP) discharge and no one throughout has actually provided much “professional” oversight as seems to be required – (my emphasis) by the BIA – especially considering the duties imposed by the BIA on the OSB (section 5 to 11) , Official Receivers (section 12) and Trustees (section 13 to 41) and the related BIA Rules, and Directives.

Any suggested changes to the insolvency system or procedures should be reconciled with each of the above purposes of insolvency legislation, or perhaps the changes may not be appropriate, or the currents “law” needs changing.

2. CAUSES OF INSOLVENCY -and FORM 79

If the OSB is collecting data re “causes of insolvency” then this is a very important issue as that information would be a excellent source of data for other government departments use for policies relating to education, immigration, banking and finance, criminal code, and all departments using any economic based data.

I believe this matter should be a concern to the OSB is the way LIT’s and the OSB deal with Form 79 headed up as “Information relating to the affairs of the bankrupt/debtor” at Part D question 14 – “Give reasons for your financial difficulties:”, that I will refer to as “causes” below.

I believe that this section is most important as knowing a debtor’s causes (of insolvency) leads to:

- i. Proper statistics providing the government with the causes of insolvency to assist the government in making its economic policies

- ii. Provides the LIT with information of matters that they may need to investigate to uncover undisclosed assets and liabilities along with possible voidable transactions as being preferential and or transfers at undervalue and also verify the causes of the debtors bankruptcy as required in section 170(1) (b)
- iii. Allows for the counselling for the debtor as required by Directive 1R6 to specifically identify and deal with the actual causes of the debtor's financial failure in order to assist the debtor in dealing with those issues and assisting them to avoid a repeat.

I also note that the software that most LITs use have a list of choices for the "causes".

I find it most strange that the list is so similar to the list of items noted in section 171 of the BIA which was in the past required to be reported in every estate, however since the BIA was revised many revisions ago, this report is no longer required, unless requested by the OSB. I wonder when (if ever) the OSB has made a request under this section.

(It should be noted that there was an informal "agreement" for several years in place that that trustees were not required to file this report even though the BIA required it.)

I suggest that this section was put in the BIA due to the reason that (in my opinion) 95% if not more of all insolvencies up until the late 1960s were the result of a receiving order.

As such at the it was impossible to determine what the actual cause of the financial failure was until investigated by the trustee, and that investigation was usually with the assistance of the creditors.

Today, considering that (in my opinion) 99% of all current insolvencies are voluntary, this matter should be addressed as I note that the "causes" noted on most filings that I have seen do not reflect causes at all, and usually only state in some manner that the debtor is insolvent.

the reason / causes should be – why they became insolvent or the reason for their overextension of credit or why their expenses exceed their income.

Causes are the "what happened" to the debtor that resulted in them being in their current situation.

For instance, take the case of a debtor who has been working as a teacher for he last 10 years, and has along with 5 or 6 credit cards totalling \$25,000 also has as one of their creditors - CRA listed in the amount of \$48,000.

Certainly, one would expect that the "cause" listed on Form 79 should explain the CRA debt.

If it does not, something would appear to be amiss, and

When I see "overextension of credit" listed as the "cause" on a file with the above facts I question:

- i. Was the debtor properly assessed as required by Directive 6R3?
- ii. Did LIT can properly decide or suggestion on the type of counselling required?
- iii. How could the LIT make a recommendation with respect to any discharge conditions or suspensions to be imposed?
- iv. And in the case of a proposal – how can the LIT make a recommendation to the creditors to accept or reject the proposal?

What caused the debtors problem is what should be answered in Question 14, not what they are facing today. It should be "why" and "how" they ended up being insolvent etc.

The LIT now, only when a non automatic discharge occurs, must file a section 170 report that requires per sec 170(1)(b) for the LIT to report their findings of the debtor's causes.

However most software programs generate and fill in this 'field' in that report using the exact same wording as used when preparing the original form 79 and there is minimal if any thought process required by the trustee (and do they even understand that they can change this field when preparing the sec 170 report? (or as noted above just press buttons).

3. WHO OBTAINS A LICENCE AS AN LIT

This matter should be of great concern to the OSB,

The LITs are the service providers appointed pursuant to the BIA in Canada and are required to carry out the duties and obligations stated in the BIA.

With out competent LIT's the BIA will not work.

I go into more detail on this topic and issue in my comments below on "Licensing Modernization" below.

I also suggest that:

- a. Unless someone is properly compensated for their education, experience and professional ability and meet the standards set by their regulators and associations and or professional organization that they are members of one cannot expect a good work product, and
- b. Without proper compensation you cannot expect individuals to want become LITs that requires completing a fairly difficult study and exam program, and then if successful, having to meet the rigorous demands both professionally as a member of CAIRP (if they choose to join and ort remain a member) and statutorily with respect to the obligations and duties imposed by the BIA on a LIT.

As such the next following topic becomes an issue

4. FEES FOR SUMMARY ADMINISTRATION AND CONSUMER PROPOSAL

Summary Administration Tariff

The Tariff for a Summary administration was \$500.00 in 1960 (I believe) if not earlier Since then the CPI has risen from 29.6 to 263.07 today or an increase of almost 8.9 times suggesting that the tariff should be about \$4,450.

However, one must consider **all the additional procedures required** by an LIT as per the Directives and rules issued since then to be performed in a summary administration notwithstanding that no real increase in the tariff:

i. **Assessment as required by Directive 6R3:**

- a. In my opinion, the requirements to deal only with “Standards” 1-3 as noted in paragraph 7 of the Directive is an exercise that would if conducted by a CPA or other such qualified professional for a debtor would cost anywhere from \$1,000 to \$3,000. Just for that part of the assessment.
- b. Then, the “Standards” noted in paragraphs 8 and 11, which take considerable time, are also required to be done in whole or in part by a person qualified in insolvency matters, (and most likely has at minimum has passed the Practical Course on Insolvency Counselling and or the Insolvency Administration Course.
- c. I have attached a copy of an assessment worksheet (from years ago) that is seven (7) pages long and addresses most if not all the items required as per the Directive is required to properly carry out an assessment.

One can easily see that the time and cost to deliver the “services”, required by Directive 6R3 to carry out a proper assessment, is very large, and is most likely would cost far greater than the average fees that consumer insolvency filings currently generate if provided by an independent party such as a lawyer, financial planner or advisor, or someone that had no interest in obtaining funds to manage or becoming the LIT for an insolvency proceeding to be filed.

ii. **Surplus income – Directive 11R2**

This Directive came into effect and requires the LIT to explain many matters to the debtor and administer the Directive’s requirements.

The SI issue, calculations and reasoning are most complex. The result is that most LIT state to most debtors “if you file a bankruptcy this is (\$ XXX.00 per month) what you have to pay for 9 or 21 months, and if you want to file a CP , this (\$XXX.00 per month) that you have to pay for months.

Please see my ADDITIONAL COMMENTS below where I deal with this in more detail.

iii. **Mediation Section 68 and at Section 170**

These sections and related requirements also came into effect with no change to the tariff. If an LIT gets involved in these situations there is nothing in the tariff to compensate the LIT for the required work

iv. **Counselling as required by Directive 1R6 and section 157.1 (and section 66.13(2)(b) of the BIA**

First, I suggest that this matter should not be in the BIA at all, however if it is and I have the following comments:

We understand that the OSB considers counselling as a **Major** (their emphasis – as based on information relayed to the LIT community) Insolvency matter as it generated about \$23.4 Million in fees for 2019 (calculated at \$170.00 for each of the \$137,718 consumer filings in

Canada that year.

Considering that most LIT's provide for individual counselling sessions, and usually hold the first sessions in the month after filing and the second session in the sixth or seventh month after the filing (at a time that the debtor no longer is making unbearable payments to their creditors and their financial situation has calmed down, my comments that follow are based on these aforementioned "facts".

The requirement (Paragraph 20 of the Directive) to provide advice on:

- a. budgeting,
- b. achieving financial goals,
- c. spending habits,
- d. responsible use of credit, and
- e. other information the LIT deems appropriate, and
- f. assisting in developing a budget tailored to their specific needs
- g. assist in developing financial goals tailored to their specific needs and
- h. an appropriate plan to reach those goals.

There is a requirement that each counselling session is to be relevant to that individual debtor (please see Paragraph 20 (3) (a) and 20(4), and that the two sessions are conducted at times when the debtor's circumstances **MUST** - My emphasis) -have drastically changed. As such there is no "efficiency of scale" here, as each session must be individually planned and dealt with by a qualified person.

Considering that you expect LIT's and or Insolvency counsellors to be highly educated and professionally competent, how much time do you or should you expect for a session that ONLY pays \$85 and that requires:

- i. a review the file,
- ii. a review income and expense statements on hand,
- iii. planning the session,
- iv. making an appointment for the counselling,
- v. meeting with the debtor,
- vi. filling out the form,
- vii. e-filing the form, +6
- viii. taking and keeping notes on the session, and
- ix. collecting the fee, to take.

Do you feel that all the above can be competently done for \$85.00?

Please also see my ADDITIONAL COMMENTS on counselling below.

v. **HST refunds (4 times per year) & DC 905 changes required when TLIT dies nit want cheques**

This is a time-consuming process that provides no or minimal at best additional compensation for the LIT

vi. **Pre & Post tax returns**

Many years ago the government (via CRA) reduced the personal exemptions on pre and post filing tax returns by pro-rating them reducing estate realization, however with no changes made by the government to the tariff.

As a result, CRA by paying the refunds (usually generated in most consumer estates) to the bankruptcy estate, CRA indirectly funded a good portion of the trustee's remuneration in consumer estates.

Changing back to the "old system" may be a way to better fund (and provide fees to LITs administering consumer bankruptcies).

vii. **Opposed discharges**

The amount of time and effort spent by a trustee on the discharge as opposed to whatever reason can be more than the cost and time involved in administering a complete no opposition Bankruptcy from start to finish yet no additional fees are provided by the tariff when an opposition is filed

viii. **(for trustees in the GTA) - the Toronto Court has its special rules and timeliness issues**

For the last few decades the Toronto court has not been able to handle the volume of required discharge hearings on a timely basis as such has required that the trustee prepare a supplementary report WITHOUT ANY EXTRA COMPENSATION

This situation also creates issues and concerns for both creditors and debtors as the bankrupt's discharge hearing is not held in a timely manner.

Preparing supplementary report, as noted above filing in court, and with the official receiver and creditors, travelling and attending in court (until Covid) which generally takes at least a half a day or more in the Toronto Court, even if you have just one matter to be heard – yet no additional fees are provided for this.

One could easily have certain amounts added to the summary tariff if court attendances or a supplementary report is required

ix. **Conditional orders of discharge**

Administering funds received under a conditional order could also be dealt with by an additional tariff allowance

x. **Solicitors bill of costs be taxed and or other reasonable administrative expenses**

If reasonable, these should be allowed to be paid from funds after the trustee's fees are paid makes sense in certain cases and again the taxing officer should be allowed to have the amount if appropriate added to the tariff allowance.

My concluding comments re the Tariff

- a. Increasing or changes to the Summary Administration Tariff would appear to be an administrative matter that if the OSB wants to do it, it only requires a rule change which I understand does not require parliament intervention.
- b. That the OSB and CAIRP form a committee to make a chart that lists:
 - i. the duties / tasks and obligations of a LIT administering a simple summary administration file
 - ii. the skill level of the person that you feel should be doing that task
 - iii. the average salary that is estimated for a person with that skill level is
 - iv. the amount of time that you estimate that the task / duty / item should take.
 - v. The estimated overhead costs per file that the LIT incurs

Once you have the chart above, you can then establish the amount of a fair fee for the file

ADDITIONAL COMMENTS re:

1. SURPLUS INCOME (SI) GUIDELINES

Considering that individuals are paid monthly, semi -monthly, weekly, or biweekly, thee is an issue in that most major payments are based on a schedule different than their periods, in my opinion leads to financial disaster.

I understand that in many countries, that all pay periods and payments are made **ONLY** on monthly amounts, so that one's income can be "matched" to their monthly payments, making budgeting easier to understand and deal with.

By allowing payments or contracts to be entered into that do not match ones pay period creates chaos for the individual.

Certainly the OSB can request Parliament (and or other government departments) to make that change.

Failing to do so only promotes insolvency filings and causes undue financial problems for Canadians.

For people who are paid monthly or semi monthly and have biweekly or weekly payments to make (whether it be mortgages car payments or other), they soon find out that in 2 or 3 months each year, that they have an **extra** payments to make, which in many cases puts them in a deficit position.

On the other hand, people who are paid weekly have 4 months a year in which they receive 5 pays and if paid bi- weekly they have 2 months per year in which they receive 3 pays.

Preparing a budget when one is paid weekly, or bi-weekly is basically impossible unless one "uses" their extra weekly or bi-weekly pay as a "bonus".

However, the SI requirements do not take this into account, but the SI requirements use the “average” monthly income as the base.

I can provide you with examples showing that a debtor receiving bi-weekly pay, and having no true SI but is required to make monthly payments as per the Directive, only has the capacity to make 2 SI payments in a year – (in the 2 months they receive their extra pay), and ...

If they are required to pay the SI amount monthly they will have a deficit in 10 months every year, and have a surplus in 2 months in any year - and even if those amounts “balance off”, the debtor will most likely fail in making their payments, or somehow coming up with these 10 payments.

I have rarely (I recall none) seen the required SI payments or payments set in a CP to match the debtor’s bi-weekly or weekly pays

In my opinion the current SI system for lower income bankrupts and CP’s only is another contribution factor leading to their having another future insolvency filing as many debtors go out and borrow funds at high interest rates during their insolvency process in order to meet their monthly surplus income requirements in a bankruptcy or their CP payments in order not to go into default.

I challenge anyone to prepare a monthly budget for someone who is paid weekly when their annual income exactly matches their annual expenses, as they will be in deficit 10 months of every year.

If any readers of this letter take issue with this comment I would be more than happy to discuss it with them personally and they are free to call me to discuss this with me and I can provide an excel schedule backing up my statement re this matter.

The requirements to pay surplus income accordingly to the OSB guidelines also is a major issue that I personally see that impairs many debtor’s rehabilitation.

In addition, the surplus income rules have not changed for many years, notwithstanding the fact that:

- i. the cost of living in certain areas has risen much faster than the CPI
- ii. motor vehicles, at least in Ontario, are now exempt, however one would assume that the operating cost of a vehicle that is exempt) would also be exempt or added to the SI guidelines. It should also be noted that the estimated cost of operating a vehicle in Ontario is approaching \$1000 a month when one considers depreciation or lease payments, interest charges on loans, insurance and operation and repair costs.

OTHER (almost if not true) NECESSITIES are now just about required to be a participant in our modern society:

- iii. cell phones,
- iv. Home internet,
- v. Cable TV required to obtain any TV signal,

all the above have become a “basic” necessity that they are today, and the guidelines were created long before the above had become a necessity, yet little if any adjustments have been made to the guidelines over the years.

In my opinion the SI Directive and section 68 (1) should be renamed “PENALTY TO GO BANKUPT” as that is reality what it is.

Debtors could be requested to challenge the requirement to make any payments by requesting mediation or in court, (under section 68 or 170) however what LIT would suggest that to a debtor as the LIT would then spend a great deal of time with negative benefit to the LIT or the creditors.

As such the whole process of paying SI in a bankruptcy (or the amount offered in a CP) just as noted above, becomes a “penalty to go bankrupt” with minimal if any meaningful distribution to creditors from these funds when one also considers that it takes at least two years before any distributions made in bankruptcy, there is minimal if any benefit to creditors.

The alternative, instead of filing a bankruptcy is the filing a consumer proposal which to some extent has also become just a “game” for the following reasons:

- i. \$100-\$300 per month proposals rarely provide any meaningful payments to creditors.
- ii. When the consumer proposal regime was instituted, the 60 months maximum payment schedule was supposed to be a maximum, however creditors soon learned to realize that by requesting payments for the full 60 months, many debtors agreed to that in order to avoid bankruptcy.
- iii. As such debtors were advised to start offering 60 months of payments, however the monthly amount was reduced to accommodate the 60 months of payments.
- iv. LITs have far less work to do and receive higher fees that in a bankruptcy (and therefore have a conflict of interest.

I believe “forcing” debtors (or anyone) to make a 60-month commitment, is putting an undue hardship on any debtor.

Many debtors got into financial difficulty for lack of planning and lack of understanding finance etc. By filing a CP they are now are forced make a five-year commitment when they still have little if any true understanding of family finance.

Again, the bottom line is that debtors making a CP just agree to pay a “penalty” for not having to go bankrupt.

We see time and time again, that after two or three years of payments, that some debtors finds it difficult to continue with the payments, however rather than lose the payments made to date, and then file for bankruptcy (at an additional cost), it usually makes more sense to them to continue with the making the payments for another two or three years to complete the proposal, not withstanding the hardship may create for the debtor.

This may lead to debtors going to high interest lenders to finance their ongoing required CP payments, and to avoid defaulting.

I feel that only after reading the above (or having a discussion on the above, that one can then approach answering your questions or making any specific comments in your "Comprehensive Review ..." document".

ADDITIONAL COMMENTS re

2. COUNSELLING

An opening question should be: "What do other countries do in regard to counselling?"

I have suggested in the past that if the OSB really wants to do something about counselling then the OSB should request that those setting Canada's (or the provincial) educational guidelines require that home economics, personal finance, understanding credit, and basic legal contracts be part of the basic education all Canadians obtain.

In addition consideration must also be given to the fact that many of the immigrants to our country have varied educational backgrounds and their knowledge of financial issues and money issues could possibly be a major cause of many of the reasons for their requiring insolvency services. The issue of how to avoid this issue should also be explored.

One final item re: Counselling – who should be the service-provider? I suggest that the OSB require that each bankrupt and consumer debtor attends (and maybe pass) a course (to be requested be set up at the community college or at high school level (at minimum) that covers all the topics noted in Paragraph 20 of Directive 1R6 so that the debtor has the tools, information and knowledge to understand and deal with each of those topics that the OSB feels are required.

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I will now proceed to make my comments on your document:

1. Modernization Innovation

Hiding assets (or digital assets)

Your main concern seems to be debtors hiding assets.

This issue has been around long before modern times and insolvency legislation began.

As society and economies expanded, and debtors and creditors no longer lived in the same community, or were known to each other, the creditors' concerns about debtors hiding assets, and a debtor's ability to hide assets has expanded in similar proportions.

The saving grace here is that most debtors are honest and as most debtors currently using the insolvency system never had any significant assets to hide before taking or becoming involved in an insolvency proceeding.

Your concern, although all stakeholders are aware of this issue, I believe are somewhat misguided especially considering that dishonest individuals will always figure out a way or try to “beat the system”, no matter what “rules” or laws state. Dishonest individuals always operate outside the laws and rules and are usually one step ahead of the system (rules and laws) in any case.

Creditors are an important part of this process as they would be expected to have obtained some details as to the borrower’s assets and liabilities at the time credit was extended.

I suggest that the OSB leave this issue as one that CRA or those responsible for banking and finance should deal with, as this is a matter that affects them much more than the OSB and administration of the BIA, and also that this issue will be a moving target that will move faster than the BIA can deal with/

Hiding other assets and income

We only can suggest that add more pertinent questions to 79 at ***“Information relating to the affairs of the bankrupt/debtor”***, such as those in the US bankruptcy filings.

Questions about a debtor’s:

- i. income as reported on their tax returns the past 5 years,
- ii. Employers during the last 5 years
- iii. Addresses with owner’s name and or rent paid the last 5 years
- iv. Approximate amounts owed to creditors 1 (one) & 5 (five) years ago
- v. Credit cards or other loan facilities or bank accounts operated in the last 5 (five) years

I suggest looking at other countries (especially the USA Form 107) forms to see what information they require and what questions they request answers to, for their insolvency filings.

In this regard I also make the following observations and provide some additional comments:

- i. “Examination by Official Receiver of bankrupts” (and officer of bankrupt corporation) we note that Section 161 reads ***“Before a bankrupt’s discharge, the official receiver SHALL,”*** (my emphasis on ***“shall”***) yet this rarely done., notwithstanding that the BIA states “Shall”.
- ii. I suggest that specific information relating to the affairs of the bankrupt/debtor” be required in all corporate filings and use a the starting list the questions that were asked on a form that has now been discontinued but at one time was “Form 28” (copy attached), as currently there is no information other than assets and liabilities required to be filed with the Official receiver or forwarded to creditors.
- iii. We have ATM’s all over the world, ability to download money or get credit on a mobile device, so why not have an “insolvency machine” or “insolvency app” where an individual goes, then enters their personal information and “voila” a report showing all the asset and liabilities is generated and all debt collections are stayed all bank balances and or other

amounts / deposits that be seized and registrations of all real estate “transferred to the trustee in bankruptcy and or a caution registered on title in the case of a CP and a PPSA registration issued to alert all of the filing

- iv. Unless the creditors report any assets that the debtor has not disclosed as being disposed, the trustee’s investigation into missing assets would be most difficult as there would be no real starting point or direction to commence any investigation.
- v. We also note that many creditors file (themselves or have third parties file proof of claim son their behalf)

We have advised you in the past that many of these proof of claims do not meet the requirements of the BIA (See section 124 and Directive 22R2) as many do not provide a statement of account and only provide “BALANCE due” as at certain date, and sometimes may also that \$XX payments were made within 90 days of filing.

As such the trustee has no idea what the debtor’s activities were prior to the insolvency filing, which may make the LIT aware of assets the debtor may have bought, or if the debtor made any large purchases or paid or pre paid any creditors within certain time limits.

Considering that relatives are many times co-signors on accounts, the statements accompanying proof of claim should re quired for at least 12 (Twelve) months preceding the filing.

At the present time I am of the opinion that many of the tasks carried out in an LIT’s office have due to the high volumes being handled have been delegated to low level data entry clerks that have not been trained what to look for and that are required for (i) a proof of claim to be admitted, (ii) what if any further details should be requested from a creditor, and (iii) what if any further investigation is warranted based on the information provided in the proof of claim.

2. LICENSING MODERNIZATION

I find it very disheartening to see the deterioration in the quality of the people who over the last 15 to 20 years have become LIT’s.

Most of the current LIT’s have minimal if any formal professional education in financial or legal matters and minimal if any training to (i) identify and (ii) deal with the ethical issues that arise in any professional practice when dealing with third parties.

In addition, as noted above many of the tasks carried out in an LIT’s office have, due to the high volumes, been delegated to low level “data entry” clerks that have not been trained to understand how their work product impacts the duties and responsibilities of the LIT in administration of the file.

Furthermore, most recent trustees have minimal if any accounting or legal background and as such determining what to do with debtors who had business assets, were in business, have had statement of

claims issued against them, or issued by them, rarely have the ability to deal with these type of issues, and especially is a consumer debtor was involved with any complex issues.

I have read CAIRP's submission regarding your notice herein and agree with their recommendations that the present system licences be maintained.

However I also recommend that certain post secondary courses be **made a requirement** of becoming an LIT.

I believe that without the knowledge, that would be acquired by)having already or) taking a course and passing a fairly extensive post secondary course (and I would suggest that it should be at a university level) covering the contents listed below, one cannot possibly carry out the duties and responsibilities of an LIT outlined in the BIA and its rules and Directives. (for as noted earlier, most LIT's until about 35 years ago were qualified CPAS's and had acquired the knowledge of all the topics listed below as part of their formal (University level) studies and education in their becoming a CPA)

The course contents should be:

The Canadian legal landscape as it applies to business -both its roots and related case law, with particular emphasis on its application to business.

Topics should at minimal include:

- i. contracts,
- ii. commercial transactions,
- iii. fiduciary relationships,
- iv. business organizations, (see also xvi – xviii below)
- v. torts,
- vi. assignments,
- vii. contracts, insurance, negotiable instruments
- viii. real estate interests, ownership mortgages and transfer
- ix. Employment law,
- x. Canada's court system,
- xi. professional liability,
- xii. the Sale of Goods Act,
- xiii. bailment and leasing,
- xiv. agency relationship,
- xv. creditor rights
- xvi. secured creditors

The nature, formation, management, operation and assets and liabilities of:

- xvii. partnerships,
- xviii. corporations and
- xix. other business forms and entities

In addition, as not included above, a course or courses dealing with:

- i. ethics, and
- ii. conflicts of interests

And another course in basic bookkeeping and understanding financial statements would appear to be a requirement before one becomes an LIT.

If these courses are not readily available, that CAIRP should prepare (perhaps in conjunction with the OSB) these courses.

Another issue that I see is the inherent conflict of interest as meeting the requirements in Directive 6R3 put the LIT in a position of having some conflict of interest in most cases, It is how these conflict of interests are dealt with that may become an issue in many estates.

I also add the following comments:

1. Deemed trusts may be an issue why so many MSME's are abandoned
2. MSMEs- perhaps government who allow for easy incorporations of companies create a fund similar to title insurance, so they can deal with abandoned corporations. Streamlining the process to be similar to that of a CP, or first time bankrupt under certain parameters is a great idea.
3. Some of the academics who write about insolvency matters when writing or lecturing about corporations fail to realize that most MSME's are "mom & pop shops" that were only set up via a corporation to minimize taxes and that they are not "real" corporations, yet this is ignored in their statistics and as a factor in the conclusions they reach about corporate insolvency.
4. LILAs- is this even an issue?
Accessibility to the internet is available at high schools, public libraries, and almost all social service agencies thorough out all parts of Canada.
5. Debt consultants - I suggest that as most debtors cannot afford a knowledgeable lawyer in insolvency matters, and that they may want to seek out an opinion from a person other than an LIT, who as noted above, has an inherent conflict of interest providing debtors with advice.
As such Debt consultant MAY provide a valuable service.
6. Does the OSB have any comments on section 49(4) of the BIA?

My concluding comments to my submission are as follows:

There is an old saying that **"You get only for what you pay for"** and until LITs are properly compensated for their work, you should only expect a mediocre work product at best.

I do not know who has or is analyzing the benefit of counselling, and its real results.

The true cost of living should be determined to make sure that the surplus income guidelines are realistic.

Statistics used in assisting those making the decision on these matters are generally flawed as the statistical average is a used with little if any reports of the "standard deviation" within the sample.

In additions, when debtors are interviewed or asked to comment on the process (after they gave filed) about their experience, I firmly am of the belief that debtors will respond that the process was "positive", as they would think if they did not respond that way, that there may be some repercussions.

In years past, the OSB conducted some in-person "round table" discussions with various members of the insolvency community and LIT's, in order to obtain some "free and honest" opinions on issues in a non-adversarial format in order that each participant could expressed their own personal (and not necessarily their employer or any organization they are members of) views on the process and the topics discussed.

I encourage the OSB to do this more often.

Feel free to contact me directly if you have any questions about this submission.

Respectfully submitted

Kenneth M. Tesis

416.258.6394

kentesis@gmail.com

DATE: _____

ASSESSMENT WORKSHEET

RE: _____

Instructions: tick off only applicable items, notes to right

D – DISCUSSED	ND – NOT DISCUSSED	NA – NOT APPLICABLE
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1. IMMEDIATE CAUSE/PROBLEM FROM/RELIEF NEEDED FROM

I, the undersigned, do state the immediate cause of my financial problems is as follows:

D	ND	NA
----------	-----------	-----------

- Business failure leading to overburdening debts/personal guarantees and loss of income
- Real Estate Investments – Speculation
- Loss of Income – Unemployment due to _____
- Illness (Self or Family Members) _____
- Personal Guarantee / Director's Liability / Business Debts
- Personal – Residential Property (carrying costs/hard to sell _____)
- Shortfall – Properties / Investments / Speculative
- Over Extension of Consumer Credit – Compulsive Spending – Other _____
- Marital Breakdown (loss of 2nd income, support, divorce expenses)
- a) Garnishee of wages by _____ or
- b) threat of garnishment by _____ or
- c) legal proceedings (i.e., judgement, other) _____
- _____
- Student Loans (give Student Loan memo)
- Other – gambling, addictions, or _____
- Other _____

2. STATEMENT OF AFFAIRS & PERTINENT INFORMATION

I have provided the Trustee with a Statement of my Affairs and:

D	ND	NA
----------	-----------	-----------

- I have discussed my financial situation and ability to pay my creditors with the Trustee (i.e., detailed budget)
- I have discussed my Assets & Liabilities and I was explained by the Trustee the meaning of exemption & encumbrances
- The meaning of preferences, settlements and reviewable transactions was explained to me and the Trustee's right/obligation to investigate these transactions.
- Other pertinent information was discussed with the Trustee (details: _____)

3. **OPTIONS** The following was reviewed and explained to me prior to making my decision.

D ND NA

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Informal Proposal / previously turned down |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Better money management / budgeting, reduce expenses |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Find 2 nd Job, rent part of home, other income |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Any assets to sell |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Debt Consolidation |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Borrowing from friends and family |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Credit Counselling |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Proposals – <input type="checkbox"/> Funds or <input type="checkbox"/> No funds available |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Informal – <input type="checkbox"/> Private Proposal with Creditors – <input type="checkbox"/> Funds or <input type="checkbox"/> No funds available |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Proposal Formal Via the Trustee – Part 3 Division 1 or 2 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Last decision to file bankruptcy |

4. **PERTINENT MATTERS:** The Trustee explained the meaning and effect to me of the following items that were pertinent to my circumstances and the "Duties of Bankruptcy" were explained to me and the results if I do not follow the duties.

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Assets – Exemptions – <input type="checkbox"/> After acquired property until discharged |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Vehicle (keep, leased, encumbered, tools of trade, value _____) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Real Estate – vests in Trustee – settlement with Trustee on any realizable equity |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Secured creditors & leases – Arrangements to continue or return _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Garnishment and Stay of Proceedings Section 69 – effect on surplus income/effect on creditors |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Co-Signers Not Released |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Credit Rating – bankruptcy on record for seven (7) years; proposal three (3) years after completion |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Credit Rating – second bankruptcy – on record for fourteen (14) years or longer |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Payment of 50-75% of surplus income to the Trustee per Standards (mediation can be requested) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Surplus Income (nine (9) months) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Conditional Order re Surplus (twelve (12) months) (if Trustee recommends) – and mediation can be requested by Trustee/creditors/Official Receiver |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Employed by relative – see Section 68(11) (estimate value of wages) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Windfalls – lottery/inheritance estate assets until discharged |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Tax Returns/GST Credits – pre and post – per Directive |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Fees of a Trustee or Administrator as per Tariff |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Absolute Discharge, Conditional Discharge, Suspended Discharge (when applicable) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Opposed Discharge – extended period of bankruptcy/credit bureau – anyone can object |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Automatic Discharge – only if no opposition or excess surplus income |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Debts not discharged in bankruptcy, Section 178 – |
| | | | 1) court fines, penalties, restitution orders, recognizance on bail bond; |
| | | | 2) civil Court awards re: bodily harm, sexual assaults, wrongful death; |
| | | | 3) alimony, support, maintenance; |
| | | | 4) fraud, embezzlement, or misappropriation or defalcation, when acting in a fiduciary capacity; |
| | | | 5) debts or liability for obtaining property by false pretenses or fraudulent misrepresentation; |
| | | | 6) dividend to creditors not disclosed; |
| | | | 7) student loans within seven (7) years of last being a student; |
| | | | 8) any interest owed on all the above. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Previous Bankrupt must pay Trustee \$50.00 to open Court File |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Family Law issues – co-habitation, support, alimony issues |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Objection expected due to: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Credit Cards – solicitation by US & Canadian credit card companies |
| | | | - accepting a new credit card where funds owed before bankruptcy |
| | | | - before discharge – possible liability for debt owed prior to bankruptcy |

4.(a) **ALL LEGAL ACTIONS MUST BE DISCLOSED:** Are you involved as a defendant, 3rd party, plaintiff, or otherwise, or have any involvement in any type of law suit? This could be either an asset or potential liability.

5. **BUDGETING REVIEW** I have reviewed my Budget (attached) with Trustee and discussed:

D ND NA

- I have reviewed my Budget (attached) with Trustee
- Payments required per Superintendent Standards and Section 68 – fixed by Trustee (mediation available)
- My ability to make settlement with creditors was discussed (reason to refuse Discharge)
- My ability to maintain current monthly expenses
- Special needs expenses – alimony, support, transportation, medical prescriptions, income tax, G.S.T. child care, restitution orders (supporting evidence), any debt for interest owed
- Section 170.1 – recommendation of Trustee on discharge (mediation available) based on:
 - surplus income – current/during bankruptcy, self employed, irregular income
 - amount of dividend paid to creditor re: debt
 - viable proposal not made
 - financial circumstances

6. **OTHER MATTERS** The Trustee discussed with me the following areas in order that I consider costs to creditor using the argument of my spending habits (if considered extravagant) which will be a reason for creditors, the Trustee, the Superintendent of Bankruptcy or the Court to object to my discharge.

D ND NA

- Vehicle
 - Operation Costs – Exemptions
 - Keep/lose - Need for Work/Family/Health
- House/Real Estate/Investments/Percentage of ownership
 - Costs – repairs/upkeep/etc.
 - Future/Equity Build Up;
 - Vests in Trustee (must buy back or lose & increase value – risk if value rises)
 - Re-sign Mortgage – at risk again
- Canada/Ontario Student Loans
 - New Rules given ----- **Obtain letter from School**
 - Not out of school 10 years? – current situation – future repayment of loans
- Electronic Equipment (stereo, computers, books)
 - Costs of CD's, videos, books, magazines, internet, cell phones, use of local library
- Cigarettes & Alcohol – cost
 - Cleaning – clothes/house
 - Health – Self – 2nd hand smoke
 - Example for children
- Pets
 - Food
 - Vets / Boarding
- Other – Law Suits: _____
 - Destruction of personal property; Injuries to others; _____

7. POSSIBLE OBJECTIONS TO YOUR DISCHARGE

The Trustee advised me that:

- (a) The Trustee must recommend a condition of discharge as per Section 170.1 and directive # 12.
- (b) Objections to my discharge could be made due to any of the following matters and that the matter noted may apply in my situation:

D ND NA

- Student Loans – survive if you have been a full time or part time student in the seven years prior to bankruptcy – Student Loans still have right to object on grounds as per memo
- Future income/surplus income – ability to pay – amount paid compared to total debt
- Financial resources/family situation/financial circumstances
- Single Judgement/Creditors – should offer proposal/settlement
- Small total debt load – must offer proposal/settlement
- Not offering viable proposal is a reason to not receive an absolute order of discharge
- Gambling, addictions is a reason to not receive an absolute order of discharge
- Not Self-Excluding yourself from Ontario Casinos, or obtaining Gambling Counselling
- Credit card abuse is a reason to not receive an absolute order of discharge.

The Trustee advised that the following factors are considered at discharge.

- Age
- Ability to pay
- Station in life
- Conduct – before and during
- Observation of duties
- Causes of bankruptcy
- Rehabilitation of bankrupt
- Interests of creditors
- Integrity of the system
- Public confidence in the system

Recommendation by Trustee: The Trustee can make a recommendation for a conditional discharge if I consent to it. I will be required to make 12 months more of payments for a maximum of 21 months. The factors for this recommendation are based on the above facts and my financial resources, family situation and financial circumstances.

Section 173 matters: **(facts for your discharge if proven must: (1) be adjourned; (2) refused; (3) suspended; or (4) granted with conditions attached)**

- Assets less than \$0.50 on the dollar of unsecured liabilities (unless not responsible)
- Omitted to keep proper books and records within 3 years of bankruptcy
- Continued to trade after becoming aware of insolvency
- Failure to account satisfactorily for any loss of assets or deficiency of assets
- Brought on or contributed to the bankruptcy by rash and hazardous speculations, by unjustified extravagance in living, by gambling or by culpable neglect of his business affairs.
- Has put creditors to unnecessary expense by frivolous or vexatious defense to any action properly brought before him

- Within 3 months of bankruptcy incurred unjustifiable expenses by bringing a frivolous or vexatious act
- Within 3 months of bankruptcy given a preference to any creditor
- Within 3 months of bankruptcy incurred debts to have assets equal to \$0.50 on the dollar of unsecured liability
- Previously been bankrupt or made a proposal to creditors
- Guilty of fraud or fraudulent breach of trust
- Offence committed under this or any other Act in connection with property
- Failed to make surplus income payments
- Not making viable proposal – if could have
- Failed to perform duties or comply with any Court Order

8. I have been advised to seek **non-budgetary counselling** for:

- Alcohol, drugs or other substance abuse
- Cigarette smoking
- Self awareness confidence matters
- Skills (re)training
- Basic (re)evaluation/training
- E.S.L./D
- Gambling
- Self-Exclusion from Ontario Casinos, Racetracks, and Slot Games.

ASSESSMENT WORKSHEET

RE: _____

Y – YES
N – NO
N/A – NOT APPLICABLE

9. NOTE RE VIABLE PROPOSALS

(i) For the purpose of paragraph 170.1(2)(c) of the Act, the Trustee shall determine whether or not the debtor has the potential to file a viable proposal by considering the following factors:

Y	N	NA
---	---	----

- the debtor;
- i) has sufficient property or assets available to make a "lump sum payment" proposal, or
- ii) has surplus income in accordance with the Directive on Surplus Income and also has the capacity at the time of assessment to sustain continued payments to a proposal for a period of time.
- iii) can reduce some expenses to increase disposable income
- iv) can find additional income: 2nd job, renting part of home, to assist in making payments
- the family or personal situation of the debtor; (notes) _____
- the financial situation of the debtor; (notes) _____
- the number and type of creditors of the debtor, both secured and unsecured; (notes) _____
- the likelihood of acceptance of a proposal by the creditors, and; (notes) _____
- whether the return to creditors from a potential proposal would be greater than the return from a bankruptcy; (notes) _____
- whether the Trustee determines the debtor has the potential to file a viable proposal, the Trustee should inform the debtor of the Trustee's duty pursuant to paragraph 4 of this Directive; (notes) _____
- where the Trustee determines the debtor has the potential to file a proposal, but where it is unlikely that a proposal would be viable because of other circumstances, the Trustee shall describe those circumstances as in the Section 170 report, (notes) _____
- where the Trustee determines the debtor has the potential to file a viable proposal, and the debtor chooses to file an assignment in bankruptcy rather than a proposal, the Trustee shall comment in the Section 170 report that a viable proposal could have been filed, and recommend that the bankrupt be discharged with conditions; (notes) _____

Signature of Trustee

Signature of Debtor

ASSESSMENT WORKSHEET

RE: _____

10. The Trustee in Bankruptcy/Administrator has discussed and reviewed with me:

- My views of the situation – immediate problem and approaches in dealing with all problems I am faced with.
- The merits and consequences of the pertinent options available (see # 3 above);
- The rights and responsibilities of the debtor in a bankruptcy or a consumer proposal or a division 1 proposal (see # 4 above);
- The specific effect of relevant credit and insolvency matters, as they relate to my circumstances (i.e. with garnishments, co-signing, credit rating, taxes, fees).
- The possible outcome of the discharge process as it may relate including the Trustee's statutory responsibility to report on any fact, matter or circumstances which may, if an opposition is filed, justify the Court's refusal to grant an absolute order of discharge (see # 7 above)
- The responsibility of a bankrupt to contribute surplus income to the estate (see # 4 & # 7 above)
- The type and nature of counselling adapted to the debtor's needs that will be offered to assist in the rehabilitation (see # 8 above).

I acknowledge that the Trustee/Administrator has explained and reviewed with me all the items noted the above (1-8). I also understand the options available to me and also the consequences and the effects of each and have decided to:

11. **MY DECISION IS TO:** (CHOOSE ONE)

- To file for Bankruptcy as there are no excess funds available to pay my creditors and all other alternatives were considered and not practical in my circumstances; or
- Make an informal proposal; or
- Make a formal division 1 proposal through Trustee
- Consumer Proposal
- File a Notice of Intention
- Other Option – Please explain _____

12. **ACKNOWLEDGEMENT**

- (i) I have received a copy of the "Duties of Bankrupt" and "Acknowledgement"
- (ii) I have received a copy of this Assessment Worksheet and confirm that an assessment has been provided and furthermore, that the consequences of my choice have been explained thoroughly to me.
- (iii) The causes of my insolvency are as follows:

(iv) Other matters to be noted:

Date

Signature of Debtor

Form 28 -- Questions To Be Put To an Officer of the Bankrupt Corporation
, or a
designated person, by the Official Receiver

(Sections 159 and 161 of the Act)

Instructions to Official Receiver

The following questions, or questions to a like effect, are to be put to the person examined under section 159 by the official receiver. The questions should be expanded or supplemented by the official receiver in an endeavour to exact from the examination the maximum of essential information and to determine as nearly as possible the true cause of the bankruptcy, the disposition of the property and the conduct of the bankrupt corporation. The books, statements, etc., of the bankrupt corporation should be available to the official receiver for reference or for the purpose of a more detailed examination of any phase of the corporation's business or conduct which the official receiver may deem warranted.

1. Are you an officer of the corporation referred to in these proceedings?

2. Have you been made aware of your duties pursuant to sections 158 and 159 of the Act?

3. What is your full name and what position do you hold in the corporation?

4. What is the full name of the corporation and what is the address or its head office?

5. When and under what Act of Parliament or of a province was it incorporated?

6. What is the authorized capital of the corporation?

7. What amount of the capital has been subscribed and what amount of subscribed capital has been paid in full?

8. What amount of the capital was paid in cash and what was the consideration for any other issue of the share capital?

9. Did the corporation have a share register containing particulars of the allotment, issue and transfer of all shares?

10. Does it disclose the amount paid, whether by cash or otherwise, on each share of the corporation?

11. What is the total amount, if any, unpaid on the shares of the corporation and by whom is that amount owing?

12. What are the names of the principal shareholders?

13. What are the names of the directors and officers of the corporation?

14. Has the corporation any wholly-owned subsidiary corporations? If so, give particulars.

15. Has the bankrupt corporation or any of its subsidiaries ever been in bankruptcy before or made a proposal or arrangement with the creditors?

16. When did the corporation commence business?

17. What was the nature of its business?

18. Was a proper set of books kept, and are they up to date?

19. Were the books audited annually?

,

20. What is the name of the auditor and when was the last statement drawn up?

Have all proper returns been made to the various government departments requiring them?

21. When did the corporation first become aware of its insolvency?

22. Did the corporation continue to carry on business and contract liabilities after it became aware of its insolvency?

23. Did the corporation make any payments, return any goods, deliver any property or give security to any of its creditors during the three months before the date of the initial bankruptcy event or since it became aware of its insolvency, except in the ordinary course of business? If so, give particulars.

24. Did the corporation, within the 12 months before the date of the initial bankruptcy event,

(a) execute any bill of sale or chattel mortgage or pledge any of its property?

(b) sell, dispose of or remove any of its property, except in the ordinary course of trade? If so, give particulars.

25. Did the corporation make or was it a party to any settlement of property within the five years before the date of the initial bankruptcy event? If so, give particulars.

26. What are the causes of the bankruptcy of the corporation?

27. What were the sales for the past three years and what percentage of the sales represented the profit or mark-up?

28. When did the corporation last show a profit?

29. Did the corporation, within the last twelve months pay a cash dividend or redeem any of its shares, notes, debentures, or any other long-term liabilities? If so, when and for what amounts?

30. What was the total amount of salary and expenses for the officers and directors of the corporation during the twelve months prior to the initial bankruptcy event?

31. Did you personally keep track of the corporation's financial position?

32. Were you involved as director, officer or manager in any other business or corporation? If yes, give details.

33. In the last twelve months prior to the date of the initial bankruptcy event, has the corporation entered into any transactions with the following persons:

(1) Employees, officers or directors

(2) An individual related to any employee, officer or director of the corporation

(3) Another corporation, in which you or any of the persons mentioned in (1) or (2) above, or any individual related to them, had a financial interest?

35. Did the corporation have any creditors or customers who fall within questions number 34(1), (2) or (3) above? If yes, give details.

36. Were all sales made just prior to bankruptcy recorded?

37. Was the corporation selling at a normal markup just prior to bankruptcy? If not, give details.

38. Have you ever been involved as an officer in a corporation which has previously gone bankrupt? If so, give details.

39. At the date of bankruptcy, were there any orders previously accepted but unfilled? If so, what has been the disposition of these orders?

40. Does the Corporation have any other assets other than those shown on the Statement of Affairs, or are any assets held in trust by anyone for the Corporation?

41. What Banks or other Financial Institutions did the Corporation use for banking purposes?

42. Were all business receipts deposited in these bank accounts?

43. Were all goods and services provided by the crewtors solely for the corporate use and not for use by an officer, Director, or other person/business?

44. Have any other assets been disposed of or seized in the year prior to the date of the initial bankruptcy event other than as already disclosed?

45. How do you account for the deficiency created by the business? Example: How or where were the major losses incurred?

•

Note to Official Receiver

Any additional questions put by the official receiver and the answers to them should be entered in the space provided below or on a sheet to be attached to this form.

I,, of the of, in the Province of, do swear (or solemnly declare) that to the best of my knowledge the above answers are true in every respect. I understand that this examination is being adjourned *sine die* and may be continued at a later date if necessary.

SWORN (or SOLEMNLY DECLARED) before me at the of in the Province of, this day of

..... Official Receiver for Bankruptcy Division No of the Bankruptcy District of

..... Signature of Individual Examined

In force April 30, 1998.