



**SUBMISSION TO
THE OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY
(OSB)**

**INDUSTRY RESPONSE TO THE COMPREHENSIVE
REVIEW OF DIRECTIVES AND REGULATIONS
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*
*AND THE COMPANIES' CREDITORS ARRANGEMENT
ACT***

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The Office of the Superintendent of Bankruptcy

Policy and Regulatory Affairs

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Re: OACCS Submission regarding the Comprehensive review of directors and regulations under the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act

Attention Policy and Regulatory Affairs,

Thank you for the opportunity to provide this submission on behalf of the accredited financial counselling industry in Canada. This submission represents the feedback obtained from the accredited non-profit credit counselling member agencies that we represent in addition to the Accredited Financial Counsellor Canada designated Practitioners in various industries throughout the country.

Overview of the Canadian and Ontario Associations of Credit Counselling Services (CACCS and OACCS)

Ontario Association of Credit Counselling Services (OACCS) sets the standard for the Canadian financial counselling industry in tandem with the Canadian Association of Credit Counselling Services. The Canadian Association has been built upon the legacy foundation of the Ontario Association of Credit Counselling Services, which launched the non-profit credit counselling sector in Canada, over 50 years ago.

At both the provincial and national level, the associations represent and regulate an industry network of accredited, not-for-profit member agencies and certified professionals offering preventative education and confidential counselling services to clients experiencing financial difficulties. In short, our mission is to help individuals and families achieve their optimal financial health. Working closely with both the federal and provincial governments, our organization is a lead expert for consumer protection reform and legislative protections and advancements.

Our organization was the first association in Canada to develop and implement accreditation for member agencies. Achieving accredited status is a mandatory requirement for full membership and is repeated every 4 years. In the last decade when it became apparent that 3rd party accreditation would provide an arm's length assessment of our membership, our association played a founding role in creating the Canadian Centre for Accreditation (CCA), to administer the credit counselling sector, community health, child welfare as well as many other standards for accreditation. As a founding partner with CCA, the accreditation process ensures strong and consistent operating practices for member agencies and helps to align with best practice governance now reaching over hundreds of social services throughout Canada. These requirements are based on professional delivery standards, legal criteria, standards of excellence and adherence to rigorous standards of practice and code of ethics. These high standards of excellence in governance, accountability, services and ethics are founded on integrity, trust and protection of the clients they serve.

Through industry-leading professional designations and specialized training and education for the financial counselling profession, we have set the bar high for required expertise in the financial counselling industry. OACCS has consistently led the way for the personal financial counselling industry in Canada by first introducing mandatory Accreditation for member agencies in the 1980's and then introducing mandatory Certification for counsellors in 2006. This requirement is a Canadian mandatory standard for every non-profit agency, governed by the OACCS and CACCS.

Today, the Accredited Financial Counsellor Canada designation is recognized as the highest professional designation level available to financial counselling practitioners in Canada. To become certified, a professional must complete course work in preparation of two examinations, requiring a 70% pass rate. Following successful completion of the exam and attesting to having completed 1000 hours of practicum experience, they are bestowed the AFCC mark. AFCCs are required to continue to maintain their designation through the completion of 30 continuing education units (CEUs) in every two-year period.

In addition to the standards, certification and best practices our members must adhere to, all are licensed under the appropriate legislation within the provinces they serve. In many instances, the licensing and regulation falls under the Collection Agency and Debt Repayment Acts and the governmental authorities that enforce the Acts. The board of the OACCS/CACCS is composed of professionals within the financial services industry and beyond to protect the interests of the association and all its stakeholders. Currently directors include individuals from the Licensed Insolvency Trustee community, Credit Counselling Industry, Financial Counselling Education Certification, Technology Services and the Financial Services Industry.

In order to ensure that the associations protect and achieve their mission of helping individuals and families achieve optimal financial health, it is imperative that we, the associations and our membership, provide advocacy, professional development and financial counselling governed under the most stringent criteria. Debt relief and remediation takes many forms in Canada, and it is imperative to explore these alternatives in an unbiased environment to protect the best interests of the consumer now and into the future. Canadians need to be and want to be exposed to these options prior to taking the path of last resort: insolvency. Non-profit credit counselling creates the forum to allow that to occur.

The Financial Wellness of Canadians

As a component of our industry research, the OACCS has conducted with the help of mortgage insurance provider, Sagen (formally known as Genworth Canada) and research firm, Environics Research Group, an annual benchmarking of the Canadian Financial Fitness levels over time. Through our findings, we are able to benchmark the Financial Fitness levels of Canadians and, "*What Shape Are You In?*". The below percentiles reflect the Financial Fitness of Ontario and Canada heading into 2020 at the commencement of the COVID-19 pandemic.

With over 8 years of quantifiable data, we are able to ascertain that now, more than ever, Ontarians are in need of access to experienced financial practitioners to help them reach their goals of increased financial well-being and increased consumer protections and education to help guide them in building and strengthening their capacity.



44% of those surveyed indicated being at risk for falling into further delinquency or alert levels with regards to their debt. The further we act now to provide stronger protection and guidance for these consumers, the more we can help Ontarians find a path to financial freedom and actualization of life goals.

With this information, we are grateful to have the opportunity to provide our feedback to the OSB on behalf of our accredited members and certified practitioners across Canada.

Submission Responses to the Proposed Questions from The Office of the Superintendent of Bankruptcy

MODERNIZATION AND INNOVATION

What are the challenges and opportunities, including those brought to light by the COVID-19 pandemic, that you, your firm, your sector, or consumers face? Could the use of technology and more efficient processes address these?

Traditionally the use of technology has been prohibited, requiring face to face interactions for the insolvency process. The pandemic has highlighted and proven the effectiveness in leveraging technology to meet clients where they are and to promote accessibility. This forced shift has enabled greater access for clients who would otherwise not have the means to meet the outdated policies of face-to-face meetings.

The industry was primarily a face-to-face service. It is our hope that the OSB continues to embrace the technology available to permit clients to meet and conduct the business necessary, via online meeting options, when face to face is not preferred or accessible to the client. Video conferencing enables the ability to still connect and read body language and emotions, while also providing greater flexibility for clients who may have challenges due to travel costs, time off work, childcare services, geographic location, etc. The vast majority of clients are embracing the opportunity to videoconference or telephone their assessment, counselling sessions and contact with the trustee office.

We strongly encourage increased access to services at variable times, and through different modes, allowing a greater number of people to access services that might not otherwise be able to, and therefore might forgo utilizing services at all. The resultant behaviour will allow for more efficient means in addressing debt relief issues for Canadians in all geographic areas, at all ages, and at all socio-economic levels. This will translate into a more effective system for all stakeholders.

Which technologies could be leveraged to modernize the insolvency system? How could technology further reduce administrative burden, transaction costs, and increase efficiency?

Allowing continued widespread use of video/teleconferencing technology on a permanent basis will make the industry more effective and efficient. The expanded use of technology would reduce administrative burden, transaction costs, and increase efficiency. Virtual meeting platforms, standardized intake and data collection tools could be developed in Canada that would ease this strain.

Creating a central document repository, along with a platform for information interchange and funds exchange would greatly enhance the efficiency while at the same time reducing administrative burden and costs. An example of this is the MasterCard RPPS (Remote Payment and Presentment Service) platform widely used in this industry in the US. This allows electronic payments (reducing fraud and cost) along with proposal exchange (reducing time, cost, and increasing accuracy) on a digital platform.

Additionally, facilitating filing and electronic meetings have exceedingly positive impacts on Canadians in remote areas or experiencing accessibility/health challenges.

Are there risks or concerns associated with the use of certain technologies?

All interactions have inherent risk, whether they are in-person or via the use of technology. The risk with technology is worsened when multiple different platforms are used, with varying levels of security. Centralizing these systems with greater security protocols will help mitigate avenues for fraud. Additionally, electronic payment processes greatly reduce the risk associated with Mail fraud.

In addition, with a centralized system, marginalized clients, or those who are most vulnerable, can be better managed and supported throughout the insolvency lifecycle. All forms need to be both secure and mobile friendly.

Does technology present opportunities to more effectively verify whether a debtor has disclosed all of their assets and to verify and realize upon those assets?

Yes, if a centralized registration system is used, the data collected can be more readily accessed and vetted as needed. This increases transparency and robust client files for better service and effective management.

LICENSING MODERNIZATION

Should licences be issued on a national basis? What opportunities and/or challenges would this create?

Despite provincial deviations in policy, the internet has broken provincial barriers and expanded access across the country. Although licenses should be issued on a national basis, there are provincial variations in the execution of an insolvency that would need to be considered and could present challenges. Such challenges could be addressed through the centralization system, which would highlight specific deviations in a file pertaining to a client within a specific province.

Should there be conditions to be met to qualify for a national licence? For instance, should there be a probationary period to allow for sufficient experience to be gained? If so, how long a period would be appropriate and why?

Conditions should be met to qualify for a national licence. A twelve (12) month probationary period could provide for a period of demonstration regarding the understanding of the variances between provincial limitations and exceptions. This probationary period would allow a probationer sufficient time to work with a more senior licenced practitioner to oversee the process while obtaining the experience hours required in meeting the licence requirements.

With a National focus including the province of Quebec, the OSB needs to provide French language requirements with the provisions.

What office requirements should be considered with respect to a national licence? What benefits and/or challenges would this create?

In order to meet the needs of all Canadians, it is important for a trustee to have an office presence. With technological advancements as discussed, a physical office presence is not needed in all catchments or required in the immediate vicinity of the client. In cases where the consumer has experienced their phone calls or emails being ignored, they can contact the office for escalation and support as needed.

Should LIT candidates have the option to apply for a consumer only, commercial only, or full licence? What opportunities and/or challenges would this create?

LIT candidates should be able to have the option available to focus on their area of interest as well as their area of expertise. This allows a company to diversify their staffing and have a number of salary grids that are appropriate to their firm and reflective of the community that they represent.

The application for each type of licence would need to address the specific competencies required and a mechanism to demonstrate the competencies.

CONSUMER PROTECTION

What business practices affecting the insolvency system, if any, expose consumers and creditors to potential harm?

Business practices taking advantage of the unsuspecting consumer *solely* for profit gain without regard for the consequences to the consumer should not be tolerated. However, 3rd party advisory services providing legitimate advocacy for the consumer in this field provide a benefit to the consumer and the creditor communities. Given the nature of the role and capacity of the LIT under the current BIA directives, 3rd party advocacy and advisory services provide better ongoing counselling opportunities for the consumer resulting in greater financial literacy and less recidivism over time. Studies by the credit bureaus have shown that those consumers that have availed themselves of guidance, financial literacy tools and ongoing financial counselling have performed better over the long term than if they had filed an insolvency. Advocacy and counselling services on an ongoing basis are necessary to

properly rehabilitate the consumer for their re-entry into the borrowing world. It should be noted that not all entities have the best interest of the consumer at the forefront. Greater scrutiny and regulation around these advisory services is warranted. Providing consumers choice and guidance to explore and educate themselves on all debt relief options should be the focus.

Unfortunately, there is still a lot of work to be done around the misconceptions of Bankruptcy. Low-income clients who are at risk of undischarged bankruptcies and the realities of trying to resolve those are overwhelming and costly. Lack of access to affordable insolvency options, additional clarity and access to the Emergency Relief Fund and how clients can make themselves available to this, needs to be more transparent and easier to access.

Additionally, reductions to pathways for proper counselling through the BIA has resulted in reduced client care and triaged supports. Financial issues are only one component of a client profile, which can also include mental health struggles, addictions, family issues, grief,, and other emotional, psychological or behavioral matters. These issues cannot be adequately addressed in such a short time and without the proper skills and expertise. Our Accredited Financial Counsellor Canada designees are equipped with the skills and resources to recommend and refer to the appropriate client care as necessary.

Insolvency is not always the best solution for clients. We would welcome a shift from the promotion of consumer proposal and bankruptcy in favour of community services and improved client access to fiduciary support and education.

How could regulatory changes within the insolvency system better protect consumers and creditors against these harms?

An affordable or free option similar to the UK DRO should be made available to Canadians who are at high risk of not being able to complete a bankruptcy or consumer proposal. Minimum income requirements can be set for individuals considered with appropriate protections built in for those who are at high risk of not being able to complete their obligations to have the flexibility to re-negotiate.

Licensing and regulatory changes within the BIA could address protection issues and should fall under the direction of the OSB/BIA. Certification and regulation should be required for those providing advisory services to potential insolvency candidates - much like the non-profit credit counselling agencies.

Are there compliance and enforcement activities that the OSB should consider to strengthen consumer protection and protect the integrity of the insolvency system?

Not all insolvency system participants are operating within the guidelines and are often stretching the intent of the guidelines to suit their needs. Greater resources are needed to provide greater scrutiny and enforcement within the industry. This will have the impact of protecting the consumer. We recommend re-establishing relationships with accredited debt counselling entities and other legitimate and accredited debt counselling entities providing a more cohesive approach to the debt relief industry offering options other than the two products commonly and widely recommended: Consumer Proposal and Bankruptcy. Opening up opportunities for other debt relief options will protect the integrity of the insolvency system and its intent by not forcing consumers into the only two products LIT's have available. This will result in a more customized solution for each consumers' specific situation.

ACCESSIBILITY TO THE INSOLVENCY SYSTEM

Low Income/low-asset estates? What checks and balances would be needed?

Low income/low-asset estates encounter great difficulty in accessing their rights under the BIA; often turned away due to inability to pay the trustee fees associated with a consumer proposal or bankruptcy. There is a lack of transparency around how one can access the Emergency Relief Fund available through the OSB. We strongly encourage providing a detailed outline of this process and applicable resources on the OSB website.

Could changes in the fee structure associated with the administration of estates, or the waiver of fees in certain instances, serve to enhance accessibility?

In some industries, a portion of the dues/revenue is set aside for funding these types of files/consumers. Creating a fund that could be drawn upon for certain types of files that meet specified criteria could provide the opportunity to create greater accessibility while not 'penalizing' those that provide exemplary service.

Additionally, the source of fees may be worth considering to best enhance accessibility.

In addition or alternately, could a pro bono program help to ensure the administration of services for low-income/low-asset estates?

Yes, see the previous response on funding this endeavor.

Summary

The OACCS, CACCS and its Accredited Members and Practitioners thank The Office of the Superintendent of Bankruptcy for providing the opportunity to discuss this comprehensive review of directives and regulations under the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act.

We will continue to offer our support and advocate on behalf of consumer rights to access appropriate and reputable pathways to financial wellness and to help ensure that Canada's market for consumers is fair, safe and accessible for all. If there are any questions or if further clarification is needed with respect to our feedback, please let me know and I would be happy to discuss.

With our best regards,



William Moores

Executive Director



Ontario Association of Credit Counselling Services

Canadian Association of Credit Counselling Services