

Since my letter to Mr. William James, Superintendent of Bankruptcy of September 25, 2017 (copy attached), the Office of the Superintendent of Bankruptcy has issued Draft Directive 1R4, Counselling in Insolvency Matter and I thought several issues deserved further comment.

The original stated purpose of counselling in insolvency matters was to reduce the number of repeat bankruptcies which, if my memory is correct was about 11.5%. Once the concept of counseling was deemed to be an acceptable method of reducing repeat filing of proceedings under the BIA, it was then necessary to set up a process as to who would train the counsellors. This gave rise to the following:

CAIRP Provides education and examination via ICQC- Insolvency Counsellors Qualification Course

Trustee Provides 100 hours of practical experience – certifies this to OSB on completion

OSB Undertakes such investigation as deemed advisable or expedient, as to educational background, experience and character and thereafter, approves the individual to be registered as an Insolvency Counsellor to provide counselling pursuant to the Superintendent's Directive on Counselling

20 years ago when ICQC started – the only concern was to have CAIRP provide a course of study and exam after which time a LIT (formerly Trustee in Bankruptcy) would provide 100 hours of practical experience and the OSB thereafter, would issue an approval that results in the entitlement of the counsellor to be paid the tariff for performing counselling.

Nobody envisioned that a new business was being created that has grown to the point that some Trustees feel threatened to the point where that name was changed from Trustee in Bankruptcy to Licensed Insolvency Trustee. Some trustees were so dependent on referrals from credit counselors that their independence as a trustee is questionable. The issue is that there is no regulation of credit counsellor (OSB approved or not). They can, and have advertised wherever they choose, say whatever they wish and there is nobody who has the authority to stop or penalize them for any wrongdoing. The writer is not aware of how a counselling certificate can be withdrawn – only that the OSB can refuse to accept a counselling certificate by a specific individual. The writer is not aware of any listing of the names of all of the credit counselors who have:

1. started the CAIRP, ICQC course
2. passed the CAIRP, ICQC course (to be renamed PCIC – Practical Course in Insolvency Counselling)
3. completed the 100 hours of practical experience by a LIT
4. been authorized by the OSB to conduct and be paid for counselling
5. had any actions taken against them for any wrongdoing – because there is no one who regulates them or has the authority to do or say anything about their conduct

The draft Directive 1R4 starts only when an individual has completed all required training, exams, experience etc. Notably lacking in the Draft Directive 1R4 is any involvement of the OSB in the approval process of a designated counsellor. What appears is that the OSB is requiring a LIT to become the regulator (without any fees, training, etc.) of all of the insolvency counsellors in Canada. This notwithstanding that the LIT had no point in the training course or exam of the counsellor who received their final approval from the OSB. If an LIT finds something wrong with the conduct or action of a counsellor, their recourse is to delist the registration of the Designated Insolvency Counsellor from their license. There appears to be no listing mechanism of this action to warn other LIT's about the insolvency counsellor. Even if there were a listing about actions taken against an approved insolvency counsellor, would an individual LIT be prepared to defend their action if the approved insolvency counsellor contacted legal counsel.

One of the issues with the proposal changes to Directive 1R3 will occur in 100% of the cases where a debtor moves away from the locality of the Licensed Insolvency Trustee (LIT) that the debtor filed their insolvency proceeding with.

It may not be justifiable (financial or otherwise) to require a debtor to return to the office of the LIT only for counselling. The common practice has always been to refer them to another LIT where the debtor now resides and supply the local LIT with review notes, list of questions, etc.

Under the Section "Accountability for Insolvency Counselling" of the draft Directive 1R4, the original LIT can designate another LIT or "an individual who has been registered against the LIT's license to provide counselling." The issue is that the original LIT has no idea who is registered against the local LIT's license or who the local LIT would normally request to perform the counselling. It is the local LIT who should be designating the counsellor. The original LIT has no knowledge of the ability of insolvency counsellors who are registered against another LIT and could not reasonably be expected to take the responsibility for the actions of an approved counsellor who works for or with another LIT. The result of the directive is that the original LIT could only refer counselling to another LIT (not even their staff).

September 25, 2017

Office of the Superintendent of Bankruptcy

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Ottawa, Ontario

K1A 0R4 *OR 1*

Attention: **Mr. Bill James**
Superintendent of Bankruptcy

Tel
1-613-941-1000

Dear Mr. James

When we spoke at the recent CAIRP convention, you asked me to forward my notes to you. As I was unable to find your email address, I am enclosing the notes by regular mail.

Yours truly

Rumanek & Company Ltd.

Per:

Carl Rumanek, CPA, CA, CIRP, LIT, CEA

Trustee

Thoughts of Carl Rumanek, LIT after the CAIRP Convention in Kelowna, BC, August 22-24, 2017

RE: Credit Counsellors

- 1) The credit counselors must be located and identified. I am told in excess of 2000 people have completed the ICQC. It is not known (by me) how many have completed the 100 hours of practical experience and are capable of performing a statutory counselling. For tracking purposes, it is suggested that each credit counsellor be assigned a number coded to show that (1) the credit counsellor has passed the ICQC exam but has not completed the 100 hours or (2) the credit counsellor has passed the ICQC exam and has completed the 100 hours of practical experience or (3) the credit counsellor has passed the ICQC exam, has completed the 100 hours of practical experience and is authorized to complete a counselling session in accordance with the OSB Directive.

Identification of each credit counsellor should be possible using the data base of either or both of CAIRP or the OSB. Perhaps, a listing of names, address, cell #, phone #, email and which trustees they are registered to as a service provider could be set up as a new section of the OSB website.

- 2) A definition of what services a credit counsellor can offer must be made. At present, there are credit counselors, debt counselors, financial counselors and a host of other variations, all of which should be banned by OSB Directive, if possible or by Order in Counsel or legislation if required.

I realize that there are other providers of financial services, such as those who sell products such as RRSP, RESP, life insurance, mortgages, stocks, bonds, etc. The ban should exempt individuals who are licensed by Federal or Provincial agencies to sell or provide services that are not in conflict with credit counselors.

- 3) All credit counselors should be required to pay a small annual fee (e.g. \$80.00) to the OSB to cover the costs of identification and listing of themselves by the OSB.
- 4) A credit counsellor should be required to adhere to standards of ethics, morality, competence, etc. as established by the OSB from time to time. Penalties should be established by the OSB for non-compliance. The penalties should be harsher than simply revoking their counselling certificate. The OSB must have the ability to penalize or prosecute credit counselors if they acted inappropriately. At a minimum, the listing of

the credit counselors should be permanently flagged to reflect that their counselling certificate has been revoked and a link to separate website (for CAIRP members only) to show the reasons why the counselling certificate was revoked. As an LIT, if I am introduced to a credit counsellor, I would greatly appreciate having a reliable source of information as to the professional background of the credit counsellor.

- 5) The OSB should be tasked with regulating the credit counselors. If credit counselors are to be “registered” in any way to one or more trustees, perhaps, the duties of the trustee compliance officer could be expanded for this purpose. The OSB should also consider being “proactive” in searching out bad credit counselors and not just be “reactive” when a complaint is received.
- 6) The ability of a credit counselor to have the ability to earn income must be protected. If they are to be registered against the license of an LIT, they should have the ability to be able to register with any number of trustees at the same time. The liability, if any, for their actions should be based upon the specific debtor of the specific LIT that the credit counsellor is providing their service. The LIT should not, at any time, have the ability, or even the appearance of having the ability of locking up a credit counsellor to themselves whether the credit counsellor works as an independent contractor or works for any organization (for profit, not for profit, charitable, etc.) that refers files/clients to the LIT.
- 7) It has been suggested that a trustee be required to list at the time of initial filing the name of the individual who would be performing the statutory counselling of a debtor as required under the BIA. Presumably, the trustee could at any time substitute themselves in place of a credit counsellor. The trustee should not be required to list a specific credit counsellor for a specific filing as it impedes on the ability of a trustee to operate their business with any degree of efficiency. Staff must be able to be allocated based on availability due to sickness, holidays, leave of absence due to pregnancy, religious holiday, family illness or death, termination of employment, etc. Listing a specific individual would create a logistical nightmare for the trustee if this was implemented.
- 8) A better approach might be an “after the fact” disclosure by way of expanding the Assessment Certificate and First and Second Counselling Certificates to disclose more information than they do at present.

Assessment Certificate

To show name, employer (if not self-employed) and credit counselling certificate number (if applicable) of any person who completed the application and met with the client or otherwise, assisted the trustee in the preparation of the bankruptcy or proposal documents as the case may be.

If the debtor paid any fee for financial or other services in the 6 months prior to the date of signing of the Assessment Certificate, the name, employer (if applicable), Credit Counselling registration number (if applicable) should be disclosed. If the debtor has made any commitment for payment of monies for any services, post filing of the bankruptcy or proposal, the amount and terms of payment should also be disclosed. This must include all money regardless of whatever services are to be done. Allow space for explanation of services, if the services are not related to a bankruptcy or proposal.

Counselling Certificates

Expand the information to show counsellor's name, employer (if applicable) and counselling certificate number.

In a bankruptcy, the available information should be disclosed on the s.170 report.

In a proposal, the available information should be disclosed on the Administrator's report.

In both cases, the information should be disclosed for OSB tracking purposes on the Trustee's Final Statement of Receipts and Disbursements.

9) Reason for Requirement of Tracking and Supervising Credit Counsellors

It was stated that some credit counselors or the firms they work for were the primary source of new clients for some trustees. It is hard to imagine that a trustee is able to maintain his/her independence if the primary source of his/her business is coming from a single source.

- 10) A LIT is ultimately responsible for the accuracy of a file (bankruptcy or proposal) that they accept under their license. An LIT should not be required to monitor a credit counsellor who is not an employee of the LIT.