

November 24, 2017

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

RE: Proposed Regulatory actions by the Superintendent of Bankruptcy

The members of Credit Counselling Canada (CCC) and the Canadian Association of Credit Counselling Services (CACCS) want to bring to your attention our collective concerns with the proposed draft Directive No. 1R4. The following information provides our comments with detailed concerns of specific provisions outlined in Appendix A (below) regarding this proposed directive.

Overview

Credit Counselling Canada and Canadian Association of Credit Counselling Services are national associations governed by professional volunteer boards of directors. Our members are accredited based on required governance, financial stewardship and operational standards. Given our expertise and credibility members are often asked to provide expert opinions to the media as well as to governments contemplating legislative change. Patricia White, Executive Director of CCC was appointed as an expert member of the Government of Canada's National Steering Committee for Financial Literacy coordinated by the Financial Consumer Agency of Canada. Henrietta Ross, CEO of CACCS, leads the certifying body that provides the professional designation, 'Accredited Financial Counsellor Canada'.

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



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

In the ['Review of Licensed Insolvency Trustee business practices in relation to administration of consumer insolvencies'](#) the Superintendent has identified some inappropriate practices through a small sampling of trustees that engaged in relations with certain external counselling service providers (third party debt consultants). To remedy this, the Superintendent issued this draft directive which seeks to address and eliminate the inappropriate and unethical practices and dubious relationships. We strongly support the objective of improving oversight and eliminating disreputable practices that harm consumers and charge debtors with needless and costly services.

We have spoken to many trustees across the country with which we have a working relationship and there seems to be a great deal of inconsistency in the interpretation of the draft directive. We seek clarity in a number of sections of the draft document.

Clearly, when tens of thousands of Canadians seek bankruptcy protection with a trustee every year, trustees must ensure clients are provided with certified counsellors and accredited counselling services such as those offered by our not-for-profit agencies.

Counselling Evaluation Results

The report, "[Evaluation of Mandatory Counselling](#)", issued in 2013 by the Superintendent, raised issues regarding the delivery of mandatory credit counselling by trustees' in-house counselling services. The Superintendent's report raised some key issues of concern including:

- Inconsistency in the amount of counselling time provided by trustees;



Duration	Consumer and Credit Education
Less than 30 minutes	19%
30 minutes to 1 hour	69%
1 hour to 1.5 hours	12%
More than 1.5 hours	1%

p.21

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

In the survey, 50% of the trustees and counsellors who deliver mandatory counselling believed that tools and resources should be developed." p.20

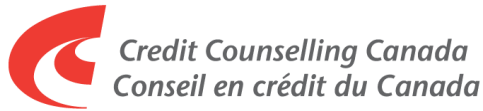
- Weak support by trustees for continual professional development for counsellors:
"In the interviews, there was a noticeable split among stakeholders on whether trustees and counsellors should engage in ongoing professional development and training for mandatory counselling. In the survey, 70% of counsellors believed that this was needed compared to only 56% of trustees." p.20

The draft directive suggests that trustees are the only competent option for providing counselling services which is questionable given the above observations.

The draft directive, as currently written, will require trustees to curtail current service arrangements with us by creating unwarranted and restrictive barriers.

Our Perspective

We conclude that the draft directive establishes obstructive rules on trustees and that the proposed rules actually create barriers in the market place that deny not-for-profit counselling service providers with the right to offer and provide insolvency counselling services to trustees and Canadian citizens. It is our view that these excessive rules will close the door on not-for-profit counselling services ability to offer quality services to trustees and insolvent Canadians. The doors need to be closed to third party debt consultants who undertake to mislead consumers as documented by the OSB.



Helping Canadians who are in financial distress should be the goal. Regardless of the manner that best suits their situation, closing the door to not-for-profit credit counselling will not only impact the choices Canadians have to rehabilitate their situation, it will also impact the results of their chosen path. The consequences for the creditor community need to be carefully considered if the free flow of consumer choice is to be impacted. This is because consumers pay less of their debt back in insolvency. Strong, healthy and productive relationships between not-for-profit credit counselling and the trustee community is conducive to reaching the best solutions for consumers with debt problems.

Trustees should be able to obtain professional assistance from proven, competent providers that are available to service their clients. In addition to being registered Insolvency Counsellors, credit counselling staff must achieve an Accredited Financial Counsellor Canada[®] designation and must provide proof of 30 hours of continuing professional development and education every two years in order to maintain this designation. Also, credit counselling staff must comply with the code of Ethics and Standards of Practice established and monitored by their association's accreditation process. These mandatory requirements that we have distinctly exceed the standards as set out in the draft directive.

Furthermore, credit counsellors are uniquely placed to assist consumers as numerous not-for-profit credit counselling service providers are multi-social service agencies. In most cases, financial problems come with other life issues and credit counsellors are qualified to identify those issues and arrange proper supports for the client. For many of our members, this may be as simple as walking a client down the hall to make an internal referral for other important social services that are needed.

The directive seems to effectively override or negate the legislated right of trustees under the BIA to engage external professional counselling services that can provide Canadians with quality debt counselling.

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

There should not be fixed reciprocal arrangements solely between one trustee and a counselling service provider. We propose that when an external debt counsellor identifies bankruptcy or a consumer proposal as options for an insolvent debtor, that the counsellor be required to provide the debtor with a list of local trustees without recommendation.



We Recommend - An Exemption for Not-for-Profit Credit Counselling

By filing our response to the draft directive, we ask that the Superintendent implement a final directive that meets the objective of dealing with and eliminating inappropriate and harmful practices without causing unwarranted consequences for not-for-profit credit counselling services and insolvent Canadians. Our concern is that the proposed directive may be a violation of the Competition Act.

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

By our nature as not-for-profit and charitable organizations we do not wish to use valuable resources and time to challenge the Superintendent in order to defend our right to offer competitive professional services to trustees in an open market place.

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

Clearly, the goal of the Office of the Superintendent of Bankruptcy should be to facilitate ways for trustees to offer financially distressed Canadians a high quality and transparent counselling service including access to external providers. The proposed requirements seem to unfairly put not-for-profit credit counselling services in the same category as third party debt consultants. If the intent is to limit counselling access for insolvent consumers to only LITs, then, consumers will be unduly restricted from receiving the quality counselling and community supports that we provide. Our members are experts in providing money management and identifying the root causes of insolvency. We have capably provided our expertise through this service to consumers for decades.

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

We thank you for the opportunity to share our experiences and views with you as you seek to establish a supervisory framework that ensures quality services delivered with integrity and respects the right of trustees to use qualified external counselling services. Setting standards for counselling service providers by the OSB must not create insurmountable barriers meant to deny access to external



counselling providers for work which trustees have a right to properly outsource in the market place with effective trustee oversight.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia White', is shown on a light-colored background.

Patricia White

Executive Director, Credit Counselling Canada

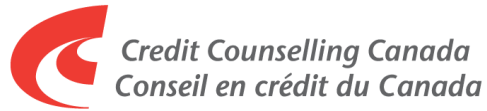
A handwritten signature in blue ink, appearing to read 'Henrietta Ross', is shown on a light-colored background.

Henrietta Ross

CEO, Canadian Association of Credit Counselling Services

Credit Counselling Canada Members:

- 1000 Islands Credit Counselling Service
- Catholic Family Services of Hamilton
- Community Counselling & Resource Centre
- Community Financial Counselling Services
- Credit Counselling Services of Newfoundland & Labrador
- Credit Canada Debt Solutions
- Credit Counselling of Regional Niagara
- Credit Counselling Services of Cochrane District
- Credit Counselling Service of Sault Ste. Marie
- Credit Counselling Services of Atlantic Canada
- Credit Counselling Society
- Family Counselling & Support Services of Guelph Wellington
- Family Counselling Centre of Brant
- Family Service PEI
- Money Mentors
- Sudbury Community Service Centre
- Thunder Bay Counselling Centre



Canadian Association of Credit Counselling Services Members:

- Carizon Family and Community Services
- Community Counselling Centre of Nipissing
- Consolidated Credit Counseling Services of Canada, Inc.
- Family Service Kent
- Family Services Perth-Huron
- Family Service Thames Valley
- Financial Fitness Centre
- Resolve Credit & Financial Counselling
- Thrive Counselling Services Halton Inc.



Appendix A

CONCERNS WITH SPECIFIC PROVISIONS

OF THE DRAFT DIRECTIVE

a) Section 9 and Section 14(c);

We are concerned that these sections forbid any type of referrals between LITs and credit counselling organizations. Currently we may make referrals from a rotational list of local trustees whereby there are no dedicated referrals to one specific trustee. We believe this is a fair and ethical practice that can leave an auditable trail for verification of fairness. An alternative could include that a counsellor will be required to provide the insolvent debtor with a list of local trustees without recommendation.

b) Section 10

If the intent is to demand that all counselling sessions occur at the trustees' office, then we believe this is, in effect, an unnecessary restriction designed to provide a competitive barrier to deter external service providers. This restriction also introduces needless travel expense and inconvenience for insolvent debtors. Clearly, trustees should have the right to demand that certain counselling be done on premises based on exceptional reasons only. In the normal course, there is no rational reason for this regulatory restriction on qualified, professional service providers.

c) Section 13 f) i)

We are concerned that the phrase...*"by delivering insolvency counselling under the direct observation of:"* actually means "direct supervision". Depending on how this is interpreted, we believe that this may in effect be a restriction designed to provide a barrier to external service providers whereby services can only be offered in the trustees' office when the trustee is present.

d) Section 16 b)

We are concerned that the phrase...*"are employed by the corporate LIT"*; means that corporate LITs cannot engage external counselling service providers. Again, this appears to establish an unreasonable regulatory restriction designed to provide a competitive barrier that prohibits external service providers including not-for-profit organizations.

e) Section 16 c)

We are concerned that the phrase...*"have no third-party employment, earnings, or individual bankrupt or consumer debtor related financial activities or interests;"* means that our credit counsellors could not refer people to a trustee who firstly attempted a debt repayment program.



There are cases whereby a client's situation is suitable for carrying out a debt repayment program but subsequently the client decides to file a consumer proposal or bankruptcy. Because the client may have paid the initial fee for the debt repayment program, it seems we would be unable to make a referral from our list of local trustees.

We understand and are concerned about the potential for abusive services and fees being charged to debtors when in fact the person(s) may have chosen the option of going directly to a trustee. As drafted, we are of the view that the provision takes a regulatory shotgun approach and needs to be refined. The proposed provision does not take into account valid situations such as clients who are successfully working on a debt repayment program but then become sick or unemployed which then leads them to seek an insolvency option.

We are prepared to assist in drafting a provision that takes a targeted approach to the valid concern.

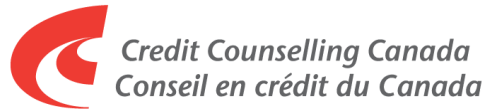
f) Section 18 2)

The provision takes a regulatory all-encompassing approach. *"Such conflicts of interest may include, but are not limited to, where the insolvency counsellor or an organization or person with which the insolvency counsellor has a relationship, has in the past or may during the administration of the individual bankrupt's or consumer debtor's insolvency proceeding, receive any form of payment or remuneration, directly or indirectly from the individual bankrupt or consumer debtor, for any financial advisory product or service, other than prescribed fees paid to the LIT in respect of insolvency counselling."* Our understanding of this provision is that our credit counsellors are deemed to have a conflict of interest if they had worked with an individual in a debt repayment program before filing for bankruptcy.

Again, we are prepared to assist in drafting a provision to address this issue with respect to conflict of interest parties.

g) Section 19

This appears to conflict with provision 16 b) which seems to indicate the counsellor can only be an employee of the corporate LIT. The provision states *"When designating a counsellor who is not an employee of the LIT's firm, the LIT shall warrant that neither the designated counsellor, nor an organization or person with which the designated counsellor has a relationship, is directly or indirectly receiving any other remuneration or consideration in relation to the counselling from the individual or corporate LIT, other than the amount prescribed for providing the counselling sessions."* We ask for clarification.



We would also comment on the fact that the amount of compensation for mandatory counselling should be revised to reflect the current costs of providing qualified counsellors to perform this service. The rate has not changed in over 25 years since insolvency counselling was first legislated. This concern about an insufficient amount for mandatory counselling sessions was also raised in the Superintendent's 2013 report on mandatory counselling and is likely the cause of a lack of investment by trustees in spending time in counselling, developing in-house educational material and providing professional development for in-house counsellors.

h) Section 22, 23 and 24

These sections appear not to have been amended from the original directive even after consultation on mandatory counselling. Please refer to the report on the *Examination of Mandatory Counselling* and consider stakeholder input and recommendations made to the OSB. Specific recommendations were also made in 2015 by a sub-committee of the OSB to address the counselling components and the timing of the counselling.

i) Section 26

As previously noted, section 131 of the Rules still sets the remuneration for insolvency counselling at \$85 per session. This remuneration amount needs to be updated and is particularly important to do so given the Superintendent's expectation that trustees and/or insolvency counsellors make additional investments in improving counselling skills, tools and educational information.

j) Section 35

We encourage the Superintendent to administer an effective compliance monitoring and oversight framework, but we also promote the need for modern day regulatory powers. These powers include provisions for the Superintendent to apply administrative monetary penalties (AMPs) in the case of non-compliant behaviour, rather than just quietly adjusting the taxation on an estate. Such AMPs, when applied, should be publicly listed; such as, at minimum, on the Superintendent's website. The AMP scheme would effectively deal with infractions by trustees in terms of not meeting the directive standards regarding the provision of counselling service offered by the trustee or through the trustee's external counselling service provider.