

Office of the Superintendent of Bankruptcy

Here are the comments of [REDACTED] in relation to the Draft Directive No. 1R4, Counselling in Insolvency Matters:

Delivery

Section 10 (1)

Rather than having counselling being done in an office of the LIT, the acknowledgement should be amended to have the debtor consent to attend the location of a third party office or a third party location.

Section 10 (2)

Counselling via videoconference should not be limited to the debtor's private residence. At the very least, the debtor's place of work should be included but practically it should include any location where the debtor can make the attestation that they have access to the appropriate technology.

Registration of an Insolvency Counsellor

Registration (Individual License)

Section 11 to 13

The OSB should be mandated with managing a list of qualified counsellors and then the LITs will only be able to use those specific counsellors. Those counsellors are not employees of the LITs so they should not be subject to LITs having to attest to their education, if they are conflict free and have them be covered by the LITs professional liability insurance.

Section 11

Should Sections 11 to 13 of the draft Directive come into effect, consideration should be given to the counsellor being registered to the LIT's corporate license rather than to an individual license.

Section 13 – Education (a) and (b)

No education should be required other than what is required in the Counselling Course.

Section 13 – Education (c)

If Education (a) and (b) are ultimately required no annual professional development of 7.5 hours should be required. Nominal value for the cost.

Section 13 – Validation of Competency (g)

Assuming that the proposed Education and Experience requirements are met the LIT should not be required to directly observe 3 counselling sessions. An unnecessary redundancy with lost productivity

and additional costs. Furthermore validation is entirely subjective. They either have the requirements or not.

Section 13 - Liability Insurance (h)

As noted above, these counsellors are not employees and as such should not be covered by a LIT's professional liability insurance, if that is even plausible. The counsellors operate on their own cognizance and either have insurance themselves or not.

Providing, or Providing for Insolvency Counselling

Section 21 (a)

There are so many scenarios that can unfold here (eg. debtor moves after sign-up OR a different counsellor has to do the sign up than what is on the form because of illness, firm departure OR last minute matters that pop up in real life, etc.) that the most practical way to complete the form would be at the time of the counselling in terms of which counsellor and which location.

Section 21 (d)

This defeats the purpose of having a qualified counsellor do the counselling for the LIT.

Completion of Insolvency Counselling Requirements

Section 25 (a)

Simply keep the form on file for OSB review as requested.

Monitoring

Section 34

The current wording is too burdensome on the LIT. Depending on the nature of the complaint, and as proposed in this draft Directive, the OSB has the ability to deal with and/or sanction the counsellor individually. That should be sufficient and remember, the counsellor is not an employee of the LIT.

Transitional Provisions

Educational Requirements

Section 36 (2) (b)

This would preclude existing qualified counsellors who have not taken the Insolvency Administration Course but are currently in the LIT program, so they should be exempted.

Forms

Insolvency Counsellor Declaration to LIT

The last bullet should read “.....other than an amount not exceeding the prescribed fees paid by the LIT.....”

General Comments:

More videoconferencing requests may ensue to avoid the bureaucracy of registering Insolvency Counsellors but face to face counselling is more effective.

Should the draft Directive come into effect, remuneration per session should be increased to offset increased costs of adding the new forms to the existing sign-up package, increased education and professional development costs for counsellors and increased oversight on behalf of the LIT.