

PINDER BUECKERT & ASSOCIATES INC

LICENSED INSOLVENCY TRUSTEE

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November 15, 2017

Office of the Superintendent of Bankruptcy

155 Queen Street, 4th Floor
Ottawa, ON K1A 0H5

Attention: Mr. Bill James
Superintendent of Bankruptcy Policy and Regulatory Affairs

Sector: _____
Office of the Superintendent of Bankruptcy
Secretariat

NOV 24 2017

CCM# _____

Dear Sir:

**Subject: Proposed Changes to Directive No. 1R3, Counselling in Insolvency Matters
and Draft Directive No. 1R4**

Pinder Bueckert & Associates Inc. (PBAI) is pleased that the OSB is recognizing the issues relating to Third Party Debt Advisors and Referral Arrangements between some LIT's which present conflicts of interest and put unsophisticated individuals in a situation where they can be disadvantaged.

We have provided our Firm's comments to both CAIRP and the OSB for consideration.

History (Background)

In order to properly consider our input, we provide the following information about our Firm, the nature of our practice and our experiences with counselling and those outside parties (debt and credit counsellors) that have been working in the field of insolvency and debt restructuring.

Pinder Bueckert & Associates Inc. currently has two LIT's under its corporate license, both with over 10 years experience. We have one licensed estate administrator with over 25 years of experience and an office administrator with over 10 years of experience. All of the above are qualified insolvency counsellors and conduct counselling sessions on a regular basis.

All counselling is conducted by LIT's or our staff as noted above. The exception is for those bankrupts or debtors who may require counselling in another city or jurisdiction. On those occasions (where remote counselling is not completed), we strongly encourage and direct debtors to other LIT's to complete the counselling rather than have counselling be conducted by a credit counsellor or debt service provider that we are not familiar with.

PBAI does not enter into agreements with credit counseling agencies, debt restructuring firms, etc. (non-profit or otherwise) for the purpose of contracting out counselling. We are not concerned that there are qualified, competent counsellors working for other agencies. However, our experience has been that there is an expectation of compensation, etc. which we find unacceptable.

We have been approached by various debt service providers or credit counsellors over the last number of years to discuss possible referral arrangements in exchange for counselling and various other debt services that they may provide, or claim to provide. We have not entered into any of these arrangements as we believe them to be contrary to the provisions already in place in the BIA.

We are aware that this type of practice has been going on for several years and is more prevalent in some areas than others.

Our comments on Directive 1R4 are as follows:

Sections 5 and 9 seem to be duplications as the Code of Ethics Rules 34 to 53 already address conflicts of interest and influence by third parties. However, we understand the reasoning for including specific situations in the proposed directive.

Section 10 - while we understand the intent of this section, it is our position that there could be more flexibility in the location where counselling can be completed. As an example, a bankrupt could request that their counselling be done at their lawyer's office. We see that there could be many "requests for an exception" that could overwhelm the OSB's office unnecessarily.

Section 13 - (a) should include individuals having a GED and we believe that the additional education requirements under section (b) are warranted. We also agree that mandatory professional development is also warranted and make sense whether it is 7.5 hours or another number. In section (f) we feel there should be some consideration in breaking the required experience out between the first and second stage sessions (for example 25 sessions of the first and 25 sessions of the second).

Section 16 - (c) seems to limit individuals who have other employment earnings that may not relate to insolvency issues. We suggest that the wording be changed to include "no other employment earnings that would be in conflict with this directive" or something similar.

Section 20 - we feel that the LIT should be able to designate a corporate LIT and that anyone registered under that corporate LIT be designated to provide the insolvency counselling - not necessarily the LIT "personally".

Section 21 - the Designation Form (Schedule 1) we feel should not be required if the counsellor is registered under the Corporate License or perhaps an annual designation form for each individual counsellor instead of a Designation form for each individual debtor. We feel that amending the form each time there is a change in the individual counsellor in each estate would add unnecessary administration and extra e-filing of documents unnecessarily cumbersome. The designation form could be part of the assessment.

Section 22 - We feel that individuals that fall outside of the required time periods should still qualify for an automatic discharge or certificate of full performance if they did not blatantly "refuse or neglect" to complete the counselling sessions as long as it does not adversely effect the rights of the creditors. For example, someone who does their second counselling session at day 220 but that was the only outstanding issue at discharge - we would not expect to object to their automatic discharge and set a discharge hearing for no benefit to the creditors.

Transitional Provisions

Section 36 (2)(a) - The 48 months of experience at the same firm seems excessive - suggest 12 or 24 months at the same firm or a total of 48 months of experience at more than one firm.

Section 36(2)(b) - Current ICQC counsellors registered prior to the directive coming into force be grandfathered in without the requirement to have completed the Insolvency Administrator's Course or other post-secondary education (or alternatively be enrolled in the IA course or post-secondary courses).

Section 37 (b) - As we noted in Section 13, we feel it is beneficial to quantify a split between first and second stage counselling sessions for the 50 session experience requirement. There is no mention in the new directive how this will affect Group Sessions for first stage counselling. Our office does group counselling and the feedback we receive from individuals indicates that they benefit from discussions in a group setting.

Schedule I

There should be flexibility to choose more than one "box" or alternatively, a box that contains "the LIT, another LIT under the same Corporate License, or an Insolvency Counsellor designated under the same Corporate License". This would reduce the number of "amended" forms that would be e-filed to the OSB.

The debtor's declaration does not take into consideration group sessions in the fee of \$85 (could change to a maximum of \$85 or simply a prescribed fee). The debtor should also have the option of video conferencing from a location of their own choosing - not restricted to their principal residence.

E-filing the form in both XML and PDF seems excessive. The signed form will be retained in the Trustee's file and would be available upon request. Further, where the form is being amended due to change in counsellor or type of counselling, we do not feel it is necessary for the debtor to sign the amended form.

Schedule II

We believe this would be better utilized if it is broken into two forms (as it is now) as dates and counsellors change from time-to-time and these could be e-filed after counselling has been completed.

Thank you very much for your consideration of the suggestions and comments noted above. If you require explanation or clarification, please feel free to contact our office.

Regards,

Pinder Bueckert & Associates Inc.
Licensed Insolvency Trustee

cc: Grant Christensen, CAIRP

— PINDER BUECKERT & ASSOCIATES INC. —

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