

We have reviewed the proposed changes to Directive 1R3 on Counselling in Insolvency Matters and provide the following comments.

In the “Background regarding OSB’s proposed amendments to Directive No. 1R3”, it refers to changes being made in two phases. Phase 1 proposes a change so that counselling must be delivered under the direction supervision of a Licensed Insolvency Trustee (LIT) at the LIT’s place of business. Phase 2 proposes to ensure counselling is tailored to meet the needs of debtors, modernize delivery, and facilitate the monitoring and assessment of outcomes from insolvency counselling in the future.

Extensive immediate changes are proposed for the supervision of the counselling process in Phase 1, prior to determining what the delivery method and model will be in the future. According to the background paper, the OSB has been studying counselling since 2011, and has had the intervening time period to consider the effectiveness of counselling, and to consider improvements that could be made to make counselling more effective and beneficial for consumer debtors and bankrupts. We think it is conceivable that current counselling model might be changed dramatically in order to improve the effectiveness of counselling, and that the role of the LIT in such counselling might change as well. We submit that the preferred approach would be to establish any changes to the content and delivery requirements of counselling, and then subsequently propose and implement changes in how counselling should be done and supervised by LIT’s and the OSB. In short, we think the order of Phase 2 and Phase 1 should be reversed. As a minimum, the OSB should issue a deadline for the implementation of Phase 2, as it appears to us the largest issue with counselling is to determine if it is effective and how it can be improved to best help the consumer debtors and bankrupts to avoid repeating their previous failures, both financial and otherwise.

Since it appears likely that Phase 1 will be implemented before Phase 2, we comment on the challenges we see in the changes in the proposed Directive. We have noted our comments in the order the topic appears in the draft directive.

### **Interpretation**

“Designate” – The proposed changes contemplate assigning a specific counselor to a specific estate. We are of the opinion this is impractical for all but the smallest of LIT firms, as most firms have or will have several insolvency counselors who provide counselling when they are available, and whose availability may vary from day to day or month to month. We suggest that it is sufficient to have the corporate LIT register the designated counselors with the OSB under the corporate license, and not specify an individual counselor for each estate.

“Designated Insolvency Counsellor” –Again, we feel it is unnecessary and impractical to designate an individual counselor on each specific estate.

“PCIC” – We feel it is premature to refer in the directive to a course that presently doesn’t exist. If the course is changed or updated in the future with a new name, the directive could be updated at that time. As a minimum, Paragraph 13(d) must include a reference to the ICQC, not just the PCIC.

### **Accountability for Insolvency Counselling**

5. In the past, LIT’s were required to pass the ICQC and obtain the requisite counselling hours before they could be a qualified counsellor. This paragraph represents a significant departure from past policy, but one that may be required if the OSB is requiring that LIT’s supervise all insolvency counselors.

### **Delivery**

10. In today’s mobile age, we don’t understand the need for the bankrupt or debtor to be at their private residence for videoconference counselling. Perhaps this requirement should be reconsidered to determine what other venues might be appropriate locations, as we presume the concern of the OSB is that the debtor or bankrupt not be at a third party debt counsellor’s office for the videoconference session. Perhaps it should just be an exclusion that the debtor or bankrupt cannot be at a third party debt counsellor’s office.

### **Registration**

12 & 13. In the past, the OSB has been the body that has licensed the insolvency counselors. In addition, in professional organizations that we are aware of, the responsibility for reporting any required ongoing professional development has been the responsibility of the individual and the reporting is done to the professional organization. We feel that the new PD requirement of 7.5 hours is too high an annual requirement, and should be reduced to between 3 and 4 hours, if it is necessary to specify an annual PD requirement at all. The reporting of any PD requirement of annual hours should be made by the individual to the OSB, as it is the OSB who licenses the individual insolvency counselors.

### **LIT Designation, Duties and Prohibitions**

20. This paragraph requires that a LIT may designate another LIT to do counselling –i.e. when a debtor or bankrupt relocates to another city where the LIT does not have an office. It is unreasonable that in that case only a LIT can do the counselling. We feel the paragraph should allow the designated LIT to use one of their registered counselors to do such counselling.

### **Providing, or Providing for Insolvency Counselling**

21. We feel the application of the provisions in this paragraph are too impractical and onerous. As mentioned previously, most LIT’s have various counsellors who are their employees, and the actual counsellor who delivers the counselling may not be the one who might have been originally contemplated to provide the counselling. We think the providing of the Insolvency Counselling and Designation Form (Schedule 1) is not necessary. We think the reference to a specific estate should be removed, and the general requirement of subsection (d) be the standard in all estates.

## **Standards and Insolvency Counselling Curriculum**

22.(ii) While we appreciate the timing of counselling in a failed Div. 1 proposal is the same in this proposed directive as in the prior version, we think the provision should be the same as in subparagraph (i), that is, between 10 and 60 days following the meeting of creditors where the proposal was refused. We do not understand the reason for the difference in the time requirements between the two situations.

## **Completion of Insolvency Counselling Requirements**

25. We feel the LIT should retain the signed counselling certificate and provide it to the OSB if requested.

## **Remuneration**

26. The fees for counselling have not been increased since they were first established. In the meantime, costs of both office space and salaries have increased significantly. With the proposed changes in this draft directive, there would be a further increase in the amount of work a LIT and his staff will have to incur in providing counselling. We think there should be consideration given to increasing the fee for the counselling sessions.

## **Renewal**

30. We submit that the annual renewal requirements of Paragraph 30 are sufficient evidence of the insolvency counsellors associated with a LIT or LIT firm are compliant with the provisions of the Directive on counselling, and a specific attestation is unnecessary on each individual estate.

## **Transparency**

33. While we understand the desire of the OSB to have counsellors registered against a LIT's license, we think the provisions of Section 11.1(1)c of the BIA do not give the OSB the authority to make the names of registered counsellors a matter of public record, and we would suggest that the names of counsellors not be provided in the publicly available registry.

## **Transitional Requirements**

### **Education Requirement**

36.(2)(b) In the past, there has been no requirement that a BIA counsellor have completed the Insolvency Administrator's course. We do not think it is equitable to now add that as a transitional requirement.

### **Experience Requirement**

37. (1) allows for consideration of relevant past counselling experience of a BIA counsellor, but then in subparagraph 37.2(b) goes on to say that the counsellor must have provided at least 50 counselling sessions for the LIT or a LIT at the same firm in the past 2 years. This would preclude those BIA

counsellors who have moved LIT firms and have not provided 50 counseling sessions at the new firm, which we think would be an unfortunate result of the wording of the section.

As well, as we expect some LIT's may need to hire additional counsellors, it is quite conceivable that a counsellor who previously worked for a third party referrer or debt consultant may leave that employ and become an employee counsellor for a LIT. The wording of subparagraph 37.(2)(b) might not allow for this. However, it is quite conceivable that some properly qualified and otherwise eligible BIA counsellors may move from 3<sup>rd</sup> parties to become employees of the LIT, and consideration should be given for that alternative.

**Respectfully submitted,**

**Robert Price, LIT**