

- **Paragraph 8** – Per the directive, if necessary, the LIT will be required to identify/register another LIT to carry out the counseling session prior to completion of said counselling session. Are LITs not already preregistered with the OSB and therefore already qualified to complete counselling? If we refer a debtor/bankrupt to another Trustee to complete the required counseling, it should be unnecessary to “register” that with the OR.
- **Paragraph 9(b)** – The LIT would not be able to engage the services of another LIT to assist with providing counselling services and compensate said LIT as they would be considered a “Third Party”. Further, Paragraph 9(b) restricts LITs from referring work to any other LIT, with or without compensation for said referral. I am assuming the bankrupt estate or consumer proposal trust account will be charged with the payment for counseling to be paid to the third party Trustee/counselor.
- **Paragraph 10(1)** – This paragraph specifically dictates that the LIT is required to register all specific locations where counselling sessions may take place and appears to dictate where the LIT may conduct business.
 - Pursuant to Paragraph 9 (e), the LIT is expected to carry “out insolvency counselling functions with competence, honesty, integrity, impartiality and due care.” The necessity of registering all specific locations where counselling sessions may take place is irrelevant providing the LIT is adhering to Paragraph 9 (e).
 - I have conducted counseling at coffee shops, detention centres, debtor’s/bankrupt’s residences, etc. I cannot understand how the whereabouts of the counseling would have any effect on the end result.
- **Paragraph 13** – This paragraph identifies various requirements being set out as “prerequisites”. Notwithstanding the necessity of outlining minimum educational requirements, additional consideration should be given as follows:
 - **High School Diploma** – Although a minimum requirement, all post-secondary institutions consider practical experience in place of a high school diploma when considering placement in post-secondary educational programs
 - **Successful completion of either:**
 - Administrators Course – No prerequisites exist to register for this course.
 - Minimum of two (2) relevant post-secondary courses. Again, consideration/exceptions are permitted by the institution if there is not high school diploma.

Consideration should also be given for those candidates who have relevant experience. In most cases, practical experience is equivalent to or superior to institutional education.

- **Experience Requirement** – Has provided a minimum of 50 sessions under direct supervision – a) definition of “direct supervision”, b) is this the simplest way to ensure qualifications?
- **Validation of Competency** – This paragraph exposes all LIT’s to legal liability the way it is written. “Competency” is left open to interpretation and is not only unclear in its definition, but opens multiple vulnerabilities to liability for any potential errors, omissions and/or negligence on the LIT. Basically, this paragraph provides complete indemnification to the OSB with no consideration to their involvement.

NOTE: If a qualified counselor moves firms, must they then re-qualify? (redundant)
 Is the Directive suggesting that a LIT would be unable to register a qualified counselor from Money Mentors or Alberta Credit Counseling, which agencies administer the OPD program under the BIA?

- **Paragraph 14** – Refers to a person who:
 - Directly or indirectly involved in activities inconsistent with the LIT (including those representing a real, potential or perceived conflict of interest)

- Engaged or involved with the provision of financing and lending services, including but not limited to: credit rebuilding, loans, and insurance
- Employed by, associated with or acting on behalf of a Third-Party Advisor or Referral Agent

Based on the foregoing, again, it appears as though the OSB is attempting to dictate/manipulate who the LIT is able to employ.

If a person is a qualified counselor today, why would they now cease to qualify as a result of where they are employed? It appears that the OSB is handing off policing of debt counselors to LIT's.

- **Paragraph 15 & 16** – Based on paragraph's 17-20 and the context contained therein, the inclusion of paragraph 15 & 16 are redundant providing the LIT is compliant with paragraphs 17 through 20.
 - Paragraph 19 is redundant based on the details of paragraph 14
- **Paragraph 21**
 - If the LIT is required to meet with the Debtor to complete various forms (assignment of counsellor, Consent, etc.) to assign a counsellor. Would it not be prudent for the LIT to complete the counselling in the first place?
 - Submission to OSB beyond the Counselling certificate is redundant. If the foregoing is required to carry out counselling, the submission of the Counselling Certificate should include all relevant information necessary to meet the Directive and thus any additional filings are unnecessary.
 - Supervision of any designated counsellor is irrelevant based on the requirements outlined above. The cost to administer the above recommendations would preclude any advantage to anyone other than the LIT carrying out the counselling sessions.
 - This entire section is overly onerous to the LIT.
- **Paragraph 24(b) (i) & (ii)** – The Directive appears to suggest the LIT counsel the Debtor on “non-budgetary causes and is apparently recommending that the LIT (or Counsellor) comment, educate, and/or counsel the debtor on matters beyond their ability, thereby potentially exposing the LIT (or Counsellor) to legal liability.
- **Paragraph 24(C)** – In complete contradiction to other areas of the Directives issued by the OSB, this Directive suggests that the LIT involve themselves in matters beyond their intended role and thereby potentially exposing themselves to legal liability.
- **Paragraphs 26 – 29** – Section 131 of the Rules does not take into account the increased administration required by this Draft Directive. As stated under the “How to Comment” section of this Public Consultation, the OSB comments regarding the Rules fall outside the scope of this consultation. It is unfathomable to expect stakeholders to accept such substantial increased administration with no consideration of compensation. The current fee described in Section 131 of the Rules has not changed since before March 22, 2006. Interestingly enough the requirements of the LIT have increased in burden more than once since March 22, 2006.
- **Paragraph 30 (b)** – The revisions detailed herein seem to not only provide ample protection to the OSB, it clearly attempts to begin the process of having stakeholders monitor and manage the administration of records on behalf of the OSB. Pursuant to Paragraph 30 (b), the responsibility of monitoring, documenting and reporting on registered counsellors including the annual professional development training requirement would be the responsibility of the LIT. Perhaps an attempt at implementing a form of self monitoring, however, if this is the case, the rules for self monitoring should be prepared by all stakeholders.

GENERAL NOTES:

- The necessity to protect the integrity of the process is completely understood and supported. It should be noted that the preparation of the above response to the open consultation of the proposed changes to Directive No. 1R3, DRAFT Directive 1R4 is in support of the protection of the integrity of the System.
- The Directive alludes to the potential undue influence, Debtors capacity on signing, and Debtors knowledge/understanding of options before signing. Does the Debtor not swear under oath in front of a Commissioner to ensure there is no question?
- The Draft Directive is very thorough in protecting the Debtor and the OSB, there is little if any protection of the LIT within the Directive. In researching archived documents, I am only able to clearly identify that even on March 22, 2006, the Counselling Fee charged by the LIT was \$85. In at least the last 11 ½ years there has been no change in fees for counselling sessions. Taking into consideration the costs associated with the counselling as laid out in the Draft of Directive No. 1R4, a more reasonable fee per counselling would be approximately \$328.13 per session. Additionally, should some or all of the Directives be implemented, there would be more of a necessity to implement a “missed appointment” charge. The necessity of implementing a deterrent for missed appointments with the trustee (\$78.50) is becoming more prevalent and will be even more important should any or all of these directives be implemented. The LIT requires some discretion to recoup at least some of the costs associated with meetings where the Debtor fails to attend. Although the Debtor is not discharged until such time as they satisfy the requirements under the Act, the LIT should be compensated for meetings booked and not attended.
- It is obvious that a great deal of thought and effort was expended to prepare the Draft Directive No. 1R4. That being said, perhaps this is the opportunity to restructure, redefine and rewrite the education program. This may sound like an impossible undertaking, however, considering the various components identified in the Draft Directive No. 1R4, the majority of the work is complete in order to at least have a viable structure to begin the process and perhaps even initiate a beta program to proceed with.

With the legal liabilities the proposed amendments to the directive would put on every LIT, it would seem the amendments should require legislative approval, not just regulatory.



Senga Bailey, CIRP

sbailey@scbsolutions.ca

www.scbsolutions.ca

210, 617 – 11th Avenue SW

Calgary, Alberta T2R 0E1

tel: 403-261-7779 fax: 403-452-8187