

November 6, 2017

Proposed Changes to Directive 1R3

Office of the Superintendent of Bankruptcies (OSB)

This communication is in response to the opportunity for the public to comment on the proposed changes to Directive 1R3, regarding counselling for debtors who have entered into either a bankruptcy or a consumer proposal to resolve their debt issues.

My name is Bob Hauck and together with Jo-Ann Whitmarsh, we own the 4 Pillars franchise in Kamloops, BC. We have operated the franchise here for 7 and a half years. We are local Chamber of Commerce members, and have an A+ rating with the Better Business Bureau. During our time here, we have helped hundreds of Kamloops residents. Our business has grown every year since we started—much of this growth has happened by word of mouth—we do very little advertising. Our clients do much of our marketing for us because of their satisfaction with how we have been able to help them, and with the follow-up that we do.

The proposed changes to the counselling directive follow from and are directly connected to the April 28th report prepared by the OSB: “Review of Licensed Insolvency Trustee business practices in relation to administration of consumer insolvencies”. That report presents an extremely one-dimensional and negative view of the role of debt consultants in the Canadian insolvency industry. Nowhere in the report was there any self-reflection on why so many Canadians choose to work with a debt consultant. From our perspective, the answer to this question is quite simple: there is an inherent conflict in the role of a Licensed Insolvency Trustee because of their duty to protect the rights of the creditors. By contrast, our clients pay us to represent them throughout the insolvency process—they get the best possible solution to their debt troubles, and are assisted with financial rehabilitation so they never have to use the insolvency system again later in their life. As a result of our work with our clients, the ‘default rate’ for insolvencies that we are involved is approximately 2% vs. an industry average of roughly 24% when debtors work directly with an LIT and receive no pre or post-filing representation and assistance. Clearly, we provide a huge benefit to our clients. Furthermore, our 4 Pillars consulting operation, and that of the other 4 Pillars offices we are familiar with, operates with the highest ethical standards. While there may be some independent debt consultants or other debt consulting companies who operate with much lower standards, the OSB should not be painting all debt consultants with the same brush.

The collective impact of the proposed changes to the mandatory counselling would be to disallow debt consultants from providing these counselling services, even if they are registered counsellors and have been following proper and ethical counselling practices for years. As the proposed directive outlines, anyone who receives any compensation from debtors for financial rehabilitation services (budgeting, credit rebuilding and other financial literacy skills) will be prohibited from delivering the mandatory counselling.

We urge the OSB to consider the economics of the current mandatory counselling system. For compensation of \$170, a registered counsellor must contact the debtor on two separate occasions to book an appointment, and must spend sufficient time to understand the debtors' situation so they can provide meaningful advice to the debtor. For many trustee offices, the provision of counselling services makes limited business sense and so they often outsource the counselling to third parties who have a much lower cost of doing business. When LITs do provide the counselling with in-house resources, there is a great deal of anecdotal evidence to suggest that the result is mixed at best and occasionally very poor.

In the OSB's deliberations about changing the counselling process, the only 'quality' consideration is the risk that the debtor may be sold a financial product of some kind—there is no consideration given to the actual quality of the counselling material being delivered, nor its effectiveness in helping the debtors produce different financial results for themselves going forward. I submit that the effort we put into counselling our clients is a major contributing factor to the almost complete absence of failed insolvencies in our practice. We also do not use the mandatory counselling sessions to sell financial products to our clients, as this would be outside the intention of these sessions, and could lead to losing our license to provide the counselling.

The OSB's concern about debtors' being 'sold' financial products or services that may cost the debtors something in addition to the payments they are making into a proposal reflects a lack of connection to the real world of debtors: our clients are individuals who most often have life goals that require access to credit. Most commonly, they are looking for affordable vehicle financing, or the ability to qualify for a mortgage. Without a focus on credit rebuilding, these goals will not be achievable, or they will be subject to predatory interest rates because sufficient credit rebuilding has not occurred. While none of the above products are ever 'sold' inside a mandatory counselling session, it is impossible to do proper financial rehabilitation work without having access to credit rebuilding products and services of some kind. By definition, a counsellor who is interested in the long-term financial health and well-being of their client will be directing them to credit rebuilding tools and services. A counsellor who does not do this, sometime in the course of their relationship with the debtor, is doing the debtor a significant disservice.

As a result, the proposed OSB directive will have the following negative consequences:

1. First, the proposed changes to the directive ignore the relationship that has already been established between us and our clients. Through the processing of the debtor's financial information prior to filing a bankruptcy or proposal, a strong and long-lasting relationship has been established. If the mandatory counselling is handled by someone other than us, the benefit of the relationship will be lost. It will be extremely difficult for a third party who does not know our clients the way we do to add much value to the counselling process.
2. If the proposed directive is implemented, a large number of existing counsellors will be prevented from performing counselling, or will choose to no longer counsel because of the limited profitability of counselling. If trustees are obliged to do more of the counselling in-house, the quality of counselling

will suffer further as trustees strive to minimize the time and personnel costs associated with counselling.

3. For existing debt consulting companies such our 4 Pillars operation in Kamloops, if we are no longer conducting the mandatory counselling sessions, a significant portion of time will be freed up. We estimate that at least 25% of our time is currently spent booking and conducting counselling with our clients, and the counselling that we receive as referrals from the trustees we work with. The time required to book these meetings, and the frustration and time lost when some of these counselling meetings do not occur, should not be underestimated. We sometimes have to reschedule counselling sessions several times as people's lives are busy—life happens, and a planned counselling session is pre-empted. Our revenue from doing this counselling is approximately 5% of our gross revenue. If we are prevented from doing the counselling, we will simply sign-up more clients for debt restructuring. While this will be positive for our bottom line, it will be negative for our clients who will have to go through a mandatory counselling process that will likely produce very minimal benefit.
4. It has already been identified that many trustee firms have limited interest in doing the counselling, and so outsource it. If they are forced to do the counseling in-house, the time requirements involved with booking and conducting the counselling will very likely lead to real quality issues. The third party individuals who are currently counselling for trustees will have to choose between doing mandatory counselling, or conducting other 'credit counselling' activities for which they are paid. In many cases, we believe they will opt to focus on their other credit counselling and debt restructuring activities. If they do, then the result will be a tremendous shortage of qualified counsellors, which will further impact on the quality of counselling.

As a result of these negative consequences for the quality of the counselling and the long-term financial rehabilitation of debtors, our request for OSB action is twofold:

1. Please slow down the implementation process of these changes and take the time to study much more thoroughly what works and does not work in post-filing financial rehabilitation. It has been four years since there has been any study on counselling and it is important to have a current understanding of the various approaches of those involved in the insolvency industry to counselling.
2. Please engage all players in the industry, including debt consulting companies such as ours, in a real dialogue about counselling and any other proposed changes that may be planned to the insolvency process. We believe that as debt consultants who are strongly committed to our clients' long-term financial well-being, we have a strong and credible knowledge base that can inform any proposed changes, and ensure these changes reflect the true interest of our clients, the debtors.

Thank you in advance for your consideration of these comments.

Sincerely,

Bob Hauck