Credit Counselling Canada
Conseil en crédit du Canada

June 10, 2021

Office of the Superintendent of Bankruptcy,

235 Queen Street, W.,

Ottawa, ON K1A 0H5

RE: Comprehensive review of directives and regulations under the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act

Thank you for the opportunity to consult regarding the review of the directives and regulations under the Bankruptcy Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA).

The members of Credit Counselling Canada (CCC) want to bring to your attention our collective viewpoint concerning the items under consideration. The following also describes our issues with the specific regulations noted in Appendix A.

Overview

Credit Counselling Canada the leading national association of non-profit credit counselling services (NCCS) agencies governed by professional volunteer boards of directors. Our members are accredited based on required governance, financial stewardship and operational standards. Given our expertise and credibility, members are often asked to provide expert opinions to the media and governments contemplating legislative change. For example, Michelle Pommells, CEO of CCC, was appointed an expert member of the Government of Canada's Consumer Protection Advisory Committee coordinated by the Financial Consumer Agency of Canada.

Honesty, transparency, unparalleled expertise and professionalism are the basis of our counselling services. Our members are all non-profit organizations or registered charities. We have provided counselling services and money management education to individuals and families across Canada for fifty decades. For more than two decades, we have offered counselling support services to trustees who do not have adequate resources, time or capacity to provide effective insolvency counselling services and develop quality educational material for their clients. Trustees currently have limited flexibility to partner with non-profit credit

counselling agencies to provide the legislated required debt counselling services to insolvent consumers.

CCC provides oversight and audits of professional body of members who are required to track and report on the performance of their credit counselling programs. In addition, the majority of our members across Canada are already regulated in several provinces that have legislation requiring registration, licensing and oversight. Furthermore, the Canadian Bankers Association also sets standards. For example, it requires annual reporting on members' activities and compliance with prescribed mandatory requirements.

In the 'Comprehensive review of directives and regulations under the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act ', the Superintendent states its intention to identify areas of Canada's insolvency system that can be made more agile, transparent and responsive without jeopardizing the integrity of the system. The following identifies CCC and its members' suggestions for modernizing and improving the regulatory framework, enhancing the effectiveness of its administration, and increasing accessibility to insolvency proceedings.

Our Perspective

MODERNIZATION / INNOVATION

What are the challenges and opportunities, including those brought to light by the COVID-19 Pandemic, that you, your firm, your sector, or consumers face? Could the use of technology and more efficient processes address these?

The outbreak and subsequent proliferation of the COVID 19 Virus (aka. the Pandemic) caused great consternation for households, individuals, communities, agencies, and organizations. It created daily challenges for the government, public services, healthcare, transportation, food procurement, and distribution outlets, including business, finance, and banking. The impact has been vast, and the fallout long-lasting.

Early in the process, many members, like most organizations and service providers, shut their doors and adopted the view that the challenge would pass in relatively short order. But, much to everyone's surprise, it was the start of a new reality, one where organizations were forced to "Adapt or Die". Members quickly learned that

while the consumer landscape had been significantly adversely affected, people's needs for money management support remained essentially unchanged. As a result, the vast majority of members began working remotely. Members reformatted their processes, aligned protocols and practices with the changing times and continued business as usual.

The majority of our members moved from approximately 80% in-person direct client services and 20% via the internet, virtually or by telephone, to 99% via the internet, virtually or by phone.

While many members saw their caseloads shrink by 30 to 50% in 2020-21, the consumers who reached out for assistance were genuinely in need. In the extreme, such consumers were willing to do what was necessary to bring about a positive change to household finances.

At the same time, bankruptcy services fell to zero very early in the Pandemic, primarily due to the court closures. However, clients using Debt Retirement Programs as a relief measure from oppressive interest charges and high monthly payments continued to make their deposits as agreed, for the most part.

The first wave of the Pandemic had a severe impact on community education opportunities. However, by mid to late summer 2020, some members successfully secured the cooperation of several community partners, and education sessions of several hours duration recommenced. For example, one member reported that they delivered 75% of these workshops via ZOOM, with 25% occurring in person while observing social distancing protocols.

What we learned:

1) Technology such as Zoom, email, text, Facebook, conventional telephone, and cellular telephone are helpful and valuable tools. However, it is a mistake to assume they can fully meet the engagement needs of consumers. In members' experience, individuals living in an urban setting are far more likely to be familiar with technology and comfortable with its use. Additionally, individual education levels often dictate technological competencies. Furthermore, age often determines consumer comfort level with effective use of technology. In simple terms, just because an individual can send and receive an email does not mean they are technologically sophisticated. Or that they are capable of its efficient or effective usage.

Access to the internet and bandwidth also posed challenges. Members cited numerous instances where consumers living in remote areas and northern regions reported how their community only had limited internet access. In rural areas, service was often "spotty". In other instances, the consumer's economic situation prevented them from purchasing a computer or paying monthly internet connection charges, regardless of location. The latter situation is of grave concern given the significant shift toward technology in the economy, which the Pandemic is now accelerating.

2) While many consumers learn and absorb information effectively using technology, they do so at differing rates. For example, an in-person intake interview generally runs between 50 and 70 minutes; this is usually followed by at least three subsequent telephone calls seeking clarification or additional information. However, when an initial intake takes place virtually, the duration is usually 45 to 50 minutes. However, some members report receiving up to ten additional emails seeking further information or clarification. While technology has become a helpful tool in the counselling process, it is not a panacea. For some clients, it will never fully replace the benefits of in-person interactions.

3) Proponents of virtual learning submit that the process is economically attractive for consumers of modest means who have transportation, mobility, or childcare challenges. Group education sessions delivered virtually can be a financially efficient method of reaching into communities. The argument is that virtual learning can attract households and individuals who would not otherwise take the time to participate. These observations are entirely accurate. However, it is essential to note that some individuals attending a virtual information session are less engaged than they might be if attending in person.

To illustrate, in preparation for this submission, CCC looked at one members' documentation regarding participant interaction during both in-person and virtual information sessions between April 28, 2021, and May 5, 2021. The agency delivered five information sessions within its region (on the east coast). In addition, they gave an identical financial literacy education session to young adults between 21 and 26. Attendance on average ran at 13 individuals, although the highest number was 16 and the lowest 11. Three sessions were virtual and two in person. Each session ran 2.5 hours with a ten-minute break at the 75-minute point. The virtual sessions received an average of 9 questions each, while the in-person

sessions recorded 31 questions. All virtual sessions ended on time, but the live presentations went over their question period time allotment.

In summary terms, our observations on client engagement suggest that counselling, as required under the BIA, should only be delivered virtually when no other alternative exists.

We further conclude that the OSB's draft directives establish obstructive rules for trustees. The proposed regulations create barriers in the marketplace that deny non-profit counselling service providers the ability to offer and provide insolvency counselling services to trustees and Canadian citizens. Our view is that these rules are excessive, closing the door on non-profit counselling services ability to deliver quality services to trustees and insolvent Canadians. We concur that the door needs to be closed to third-party debt consultants who undertake to mislead consumers, as documented by the OSB. However, helping Canadians in financial distress should be the goal, not undermining the valuable work of NCCS.

In short, trustees should have the ability to obtain professional assistance from proven, competent providers that are available to service their clients. In addition to being registered Insolvency Counsellors, non-profit credit counselling staff must achieve an Accredited Financial Counsellor Canada® designation. They must also provide proof of 30 hours of continuing professional development and education every two years to maintain this designation. Also, credit counselling staff must comply with the code of Ethics and Standards of Practice established and monitored by their association's accreditation process. These mandatory requirements distinctly exceed the standards set out in the OSB's draft directives.

Furthermore, non-profit credit counsellors are in a unique position to assist consumers. The majority of our non-profit credit counselling service providers are multi-social service agencies. In most cases, financial problems come with other life issues, and credit counsellors are qualified to identify those issues and arrange proper supports for the client. For many of our members, this may be as simple as walking a client down the hall to make an internal referral for other critical social services that are needed.

The directive seems to effectively override or negate the legislated right of trustees under the BIA to engage external professional counselling services that can provide Canadians with quality debt counselling.

Concerning referral arrangements between trustees and debt counselling service providers, we agree that there should not be any closed-door arrangements.

However, there is nothing inappropriate in trustees using external service providers who are highly competent and provide quality counselling to indebted consumers.

There should not be fixed reciprocal arrangements solely between one Trustee and a counselling service provider. Instead, when an external debt counsellor identifies that bankruptcy or a consumer proposal is the best option for an insolvent debtor, they should be required to provide the debtor with a list of local trustees without recommendation.

In the final analysis, CCC cannot understand why the trustee community and (by extension) the OSB continues to work against the non-profit credit counselling sector, given the many decades of successful collaboration on behalf of Canadians. We conclude that this shift is a concerted effort by the federal government to bring about a government monopoly on for-profit debt help services spurred by powerful lobbyists within the insolvency industry.

Does technology present opportunities to more effectively verify whether a debtor has disclosed all of their assets and to verify and realize upon those assets?

Yes. While certain practices may already be in place, members believe additional or augmenting practices are possible using technology.

1) Disclosure of all debt – amending regulations so that an electronic copy of the applicants' Equifax and Trans Union files accompany all filings. The accessing of the information by the LIT should not become part of the permanent file and should never be reported as part of the consumers' credit history.

2) Upon discharge, LITs should be required to file a Notice of Discharge in all relevant consumers credit history files at all Canadian credit reporting institutions.

3) Credit Reporting Outlets should be legally required to purge all information in a consumer's file relating to bankruptcy, and penalties should exist to ensure compliance.

In terms of identifying assets and using technology in the process, LITs could interface with the technology of several provincial registries. By way of example:

Motor Vehicle Registration, Registry of Bills of Sale, Registry of Property and Deeds, Registry of Births, Deaths and Marriages. There may also be others, depending upon province.

LICENSING MODERNIZATION

At this time, CCC feels neither equipped nor adequately informed to offer an opinion or response to these questions.

CONSUMER PROTECTION

What business practices affecting the insolvency system, if any, expose consumers and creditors to potential harm?

CCC acknowledges the challenge of responding to this question in a completely objective manner, given the nature of our members' work and the highly charged and increasingly antagonistic nature of the relationship between our sector and certain elements within the insolvency community. These, along with certain publicly stated negative opinions regarding our sector by LITs make an objective response challenging.

Going further, negative opinions directly written and stated by LITs regarding the NCCS sector, the messages relayed within LIT advertising, the use as their own of acronyms evolved, grown, used, and understood as NCCS terminology, along with direct comments brought back by clients having consulted with LITs, are mounting problems. Despite claims to the contrary, the behaviour tells of the (dare we say, entirely self-serving) lack of professional respect for the NCCS sector within the greater LIT community.

Misrepresentations in Advertising

While warm, positive rapports may exist on the surface between the non-profit credit counselling industry and the trustee community, an adverse reality driven by a specific object is plainly evident. That is, to force the demise of the NCSS sector, thereby leaving the entire population with but a single option in terms of debt relief and small debtor assistance.

Members acknowledge that not all LITs exhibit this view. Many continue to see local NCCS agencies as credible partners and allies. However, were OSB officials to survey the numerous NCCS agencies that have closed their doors in the last five years, they would learn that Trustee advertising is the single most significant factor

in each agencies demise. Were OSB officials were to inquire further, they would see how Trustee advertising has evolved. Trustees now paint insolvency as a simple, uncomplicated process that is "not a big deal". Some even push an "everybody's doing it" advertising mentality. Trustees have gone so far as to inform members that clients cannot believe their "good fortune". They do not know what took them so long! Worst still, some trustee advertising mislead consumers by promising to lower their debts by as much as 75%.

Not only is there minimal understanding of the aims of the non-profit credit counselling sector, there is a willful effort to mislead consumers concerning industry practices. Some LIT's have taken to falsely maligning community-based charities and non-profit agencies in writing. Others regularly accuse NCCS agencies, many of whom owe their founding to a faith-based movement serving their communities for over 50 years, of unethical and dishonest practices. The OSB should hold those who claim that NCCS is misleading the public to account. It is a self-serving practice that has no place in a professional community.

While we support free speech, we deeply resent the misrepresentation of our industry. Furthermore, we put it to the OSB that people assume that an officer of the Supreme Court of their province of residence will be respectful, honest and ethical in behaviour. LITs are officers of that High Court, and it falls to the OSB to ensure their behaviour is not only professional but appropriate. To put it more bluntly, we believe it is the OSB's duty, and a public expectation, that the OSB hold Trustees fully accountable who follow such deceptive practices.

In addition, the OSB must regulate advertising by trustees more stringently and bring about an end to trustees glorifying and trivializing the process and state of insolvency. By way of illustration, for many years, the tobacco industry advertised and glamourized smoking. They did so with free reign until a movement sprang up which said, "No! Smoking is not glamourous." Consequently, advertising by the tobacco industry is highly regulated. We are not advocating such restrictive conditions for LIT advertising. However, bankruptcy is not glamourous!

On the contrary, the Financial sector looses hundreds of millions to bankruptcy each year, adversely affecting countless Canadian's ability to save. We may never know the true cost in lost taxes. Therefore, we are calling on the OSB to correct the problems with Trustee advertising.

Inadequate Mandatory Counselling Sessions

The average consumer spends no more than 30 minutes in a mandatory bankruptcy or consumer proposal counselling session. These sessions are little more than an ineffective checklist item. Thirty minutes is not sufficient for consumers to receive the proper educational tools and advice needed to break past spending habits successfully. Inadequate counselling is one of the reasons we see an uptick in repeat bankruptcies and consumer proposals. To put it more specifically, the recidivism rate for consumer proposals is presently 22%. By contrast, the recidivism rate for NCCS debt management programs is less than one per cent.

How could regulatory changes within the insolvency system better protect consumers and creditors against these harms?

Our earlier comments also relate to this question. We wish to add that tightening the requirements can only improve the perception of the system, particularly among credit-granting institutions. Therefore, any reviews, enhancements, additions or deletions are as much an exercise in good public relations as they are commitments to integrity, ethical business practices and efficiency.

Mandatory Counselling Sessions

The Trustee's mandatory counselling sessions should be a minimum of one (1) hour each. It's the minimum required to ensure consumers receive and come away with best-practice tools on budget/money management and goal setting practices. Sessions should also be spread out within the program instead of completed within the first 90 days of commencing a bankruptcy or consumer proposal. For example, one session should be given at the beginning covering budget/money management. Then, another session should be provided towards the end of the program on goal setting practices and re-establishing credit once the program is complete. Currently, these two sessions are done at the beginning of filing for bankruptcy or a consumer proposal. Presently, after a thirty-minute counselling meeting, consumers are left to their own devices. The only requirement is to maintain monthly payments. They learn little if anything about financial literacy at the end of the process.

Advertising Issues

A more straightforward complaint process is needed. The onus should not always be on the consumer or our sector to prove that trustee advertising on Radio/TV and other channels is misleading. Presently, complainants must produce the offending advert or recording and all pertinent information to the OSB office. The OSB then

notifies the Trustee about who complained. It should be possible to submit complaints anonymously.

Are there compliance and enforcement activities that the OSB should consider to strengthen consumer protection and protect the integrity of the insolvency system?

The present review is an opportunity to ensure that the counselling required under the Bankruptcy Insolvency Act (BIA) is helpful, adequate in relevance and practical for consumers in their post-discharge life. Most critically, as stated previously, the OSB needs to ensure required counselling sessions are not only genuine but of suitable duration. Consumers regularly complain to our members that they received only a cursory counselling session from trustees, lasting scarcely long enough to sign required insolvency documentation. These complaints are relayed with sufficient frequency to raise concern.

As Officers of the court, Licensed Insolvency Trustees (LITs) are charged with ensuring the integrity of the BIA, including that ALL its terms and conditions are adhered to in ALL cases. Unfortunately, while most legislative requirements are embraced and guarded with extreme conscientiousness, the importance of "rehabilitating" the consumer is often forgotten or minimized. We feel this happens for two reasons.

1. First, the current compensation rate is genuinely inadequate, and the timeframe outlined in the current regulation ineffective. Yet, one critical outcome of this process is that clients effectively grasp money management concepts and avoid problem spending habits. Second, in our estimation, the compensation rate must increase by at least 40%, potentially up to 50% immediately. Third, compensation rates must then be reviewed to reflect value, cost, and inflation at least every three years. Finally, individual consumers should pay the prescribed hourly rate, with couples paying the same amount unless seen at separate appointments.

2. LIT offices should only employ competent individuals whose academic pursuits qualify them as counsellors. These skills would typically be acquired in the pursuit of post-secondary training in Home Economics, along with / or a human service science such as social work or behavioural science. If a LIT does not employ such an individual, they should contract the services of a private individual so credentialed. Or, they should contract a charitable NCCS agency accredited by one of the national industry associations monitoring

that staff are credentialed. In such instances, credentials should be confirmed and updated annually with proof of legitimacy provided to the OSB.

Inadequate Counselling Time Allotments

The OSB should appreciate the magnitude and volume of information shared during a consumer counselling session. The current system of time allowances is ill-conceived – and does not match the desired outcome. Put another way, a single hour at the bankruptcy assignment point, followed by another hour at the discharge, is inadequate. Based on the fifty-year history of CCC's members counselling millions of households, a bare minimum of six hours of counselling is required. Furthermore, we advocate that this time allotment should increase to eight hours in the event of a second (or more) filing. We believe the session delivered at the point of the assignment is inadequate in most cases, and the single hour in the end even more so.

Inappropriate Arrangements with Third-Parties

The OSB needs to hold Trustees accountable for dealing with predatory 3rd parties who charge consumers unnecessary referral fees. We specifically refer to trustees working with companies like 4 Pillars and Canada Tax Review. They refer consumers to trustees by arrangement, unnecessarily charging consumers thousands of dollars for being referred. Trustees then charge these vulnerable consumers another fee when they sign onto a bankruptcy or consumer proposal with the Trustee. Trustees should also not be permitted to include the fees charged by third parties in a consumer proposal, as is being done currently.

We should like to see the OSB apply cautionary statements about LITs that do not follow OSB guidelines on its website, similar to the statements it currently carries concerning non-profit credit counselling.

Furthermore, our members have data that has been validated concerning the practices used by certain predatory LITs and the debt consultation industry, which is thriving. Yet, the OSB consistently turns a "blind eye" to LITs who work with third parties that charge $1,500 to $2,000 and then pass the consumer to a trustee who then validates the transaction with a rubber stamp. We are also aware that several LITs are not completing an assessment unless they receive a referral fee. If the OSB were serious, it would immediately stop this practice so the consultation

industry would go away, creating a better operating environment for vulnerable consumers.

The sad irony is that the OSB issued Directive 1R4 in 2018 to deter referrals from the NCCS industry while continuing to turn a blind eye to the rapacious practices right under its nose. In our view, the decision makes no sense and is akin to the OSB swatting a useful ladybird while allowing a rampaging elephant to run amok.

ACCESSIBILITY TO THE INSOLVENCY SYSTEM

Could the summary process be further simplified for eligible low-income/low-asset estates? What checks and balances would be needed?

Once more, we have concerns about the rationale for making changes strictly for efficiencies. Yet, we are also cognizant of the fact that the BIA, by its nature, should be a modern, evergreen matter for legislation where consumers are beneficially served. Thus, we are not, in principle, opposed to change. As such, we are entirely supportive of any process change that keeps the system moving forward and reflects best business practices, legal requirements, social relevance, and societal respect.

In terms of checks and balances, any change, regulatory or otherwise, must reflect an appropriate rationale, including the perceived benefit to the community and the people it serves. In addition, checks and balances must ensure desired outcomes for the consumers' perspective at all times.

Could estate administrators perform the bulk of the work where the estate is largely administrative with LITs remaining accountable?

Some will argue that there is no reason that a well-trained professional Administrator cannot perform these functions. However, shifting this responsibility away from Trustees, purely as an efficiency to save costs, is a change that should be approached with caution. Moreover, it is reasonable to assume by the definitive and prescriptive nature of the BIA - that the process is legally complex. Therefore, all stakeholders, including the courts, will want assurance that the Act has been followed to the letter in spirit and practice, regardless of who processed the documents.

By preference, we believe it is best that LITs not transfer "administration" work that deals directly with the consumer's financial assessments and recommendations. The

administrative process is fundamental to consumers understanding the best course of action. Consumers have a right to work with the party that is accountable in case mistakes are made. Also, consumers have different situations and conflicts that bring them to visit a trustee. Certified LITs are the trained experts and the party responsible for providing consistent information and guidance to consumers within a legal framework. To underscore the point, we feel confident that the OSB and trustee community would raise the alarm if the certified NCCS counsellors operating in our network abrogated their responsibilities to an administrator within our member agencies.

If administrators are going to do the work of a LIT, then a significant decrease in fees should also follow as consumers will not be receiving the same expert advice/recommendations as they would from a LIT. Finally, the integrity of this "legal framework" would also be called into question.

What would be a fair rate for a simple consumer estate if a debtor fully complies with their duties?

As we contemplated a balanced and fair response to this question, we concluded that the proposed rate might be driven by the city and province in which the LIT operates. For example, operational costs, such as labour and rental rates, are higher in larger centres than in other regions. Consequently, the proposed rate might be on a sliding scale, depending upon the LIT's location.

That said, we believe the Regulator would be acting in a manner respectful of both consumers and LITs if the rate coming about as a result of this proposed change was initially set between $1,250.00 and $1,500.00. Additionally, the initial rate should be reviewed no later than twenty-four (24) months after commencement and every five (5) years after that.

What characteristics of consumer or business estates would qualify them as simple?

Having studied this question, CCC does not feel qualified to offer an opinion at this time.

Could changes in the fee structure associated with the administration of estates, or the waiver of fees in certain instances, serve to enhance accessibility?

Yes. The fee structure provided under the BIA is prohibitive for some consumers, preventing them from proceeding with an insolvency assignment when needed. We have observed that when a LIT works with a client to make payments lower, the decision to proceed is often almost instantly made. Consumers report to us that cost is always a consideration. Therefore, any flexibility which might come about in fee structures will only serve as a means of helping consumers make decisions in their interest. Furthermore, if fee structures were more clearly laid out in the Act, the need for consumers, or their advocates, to negotiate with LITs would disappear, simplifying the process for everyone.

LITs should do the fee assignment themselves. They should determine whether a fee reduction is appropriate based on clients financial status and affordability when looking to enrol into a bankruptcy or consumer proposal.

In addition or alternately, could a pro bono program help to ensure the administration of services for low-income/low-asset estates?

We are of the view that pro-bono services officially do not exist within the present regulations. We believe this to be a gaping hole in the current structure. A pro bono program would close the gap so that bankruptcy services within Canada are seen as equally accessible to all citizens, irrespective of their income source or level. Therefore, we are entirely supportive of the notion of a regulatory change to bring about this new reality. We see doing so as a socially conscious, inclusive move that will demonstrate the Regulators clear comprehension of the economic condition of a segment of our population. Furthermore, it will allow Trustees to demonstrate to the community their social conscience.

Beyond this, more education sessions should be provided to the consumers who enrol in a bankruptcy or consumer proposal. In other words, there should be no shortcuts.

Fees should also be waived when it’s obvious the consumer’s current and future financial stability cannot and will not support bankruptcy or consumer proposal payments.

OTHER FEEDBACK

In the final analysis, our view is that the principal role of the Trustee should be maintained at the expense of shortcuts being taken for cost savings. Allowing administrators to take over important parts of the insolvency process invites risks that will, ultimately, hurt vulnerable consumers.

Concerning Directive 1R6 (and indirectly Directives 1R4 and 1R5), as we have pointed out, the longstanding and consumer benefiting relationship NCCS developed with Trustees suffered nearly irreparable damage in 2018. These directives are either a deliberate attempt on the part of the Federal government, Trustees or a combination of both to injure, if not destroy, the NCCS sector. The damage to our industry is further underscored by the fact that the OSB ongoingly allows predatory arrangements between third party referral brokers and trustees without interference. These actions call into question the true motives behind the issuing of Directive 1R4, especially given the stated aims of Directive 1R6 to augment Trustees in house counselling provisions.

By filing our response to this consultation, we once again urge the Superintendent to implement a directive that meets the objective of dealing with inappropriate and harmful practices without causing unwarranted consequences for NCCS and indebted Canadians. In addition, members want to see the OSB prove that it is acting in good faith and fashion consistent with recent public statements that it wishes to work with the NCCS sector. Furthermore, we consider that Directive 1R4, 1R5, viewed in light of Directive 1R6, represents a clear violation of the Competition Act – and from federal a government agency.

Since the issuance of Directives 1R4 and 1R5 in 2018 and 2019, 12 NCCS agencies have had to close their community program across the two national associations, lending credence to our misgivings regarding the true motives behind these regulatory actions.

Our Recommendations

To achieve fairness and be in integrity, and for the OSB to be consistent with public statements expressed as recently as June 8 concerning working collaboratively with our sector at the CCC Annual Conference and AGM, we again ask that NCCS be granted a formal exemption from Directives 1R4 and 1R5.

By our very nature as non-profit and charitable organizations, we do not wish to use valuable resources and time to challenge the Superintendent to defend our right to offer alternate professional services to trustees in an open marketplace, as we have stated before. Moreover, we are willing to work with the OSB and the

OACCS to establish criteria that would help to distinguish the "trusted" NCCS actors.

With over 50 years of respected collective history, we have helped hundreds of thousands of financially distressed Canadians across the country with financial literacy, providing unbiased counselling concerning options to over-indebtedness. We are open to discussing applicable standards for all counsellors to ensure quality services are delivered consistently across Canada.

We believe the goal of the Office of the Superintendent of Bankruptcy should be to facilitate ways for trustees to offer financially distressed Canadians a high quality and transparent counselling service, including access to external providers. Directives 1R4 and 1R5 unfairly put non-profit credit counselling services in the same category as third party debt consultants. If the intent is to limit counselling access for insolvent consumers to only LITs, then consumers are at risk of becoming restricted from receiving the quality counselling and community supports that we provide. Our members are experts in providing money management and identifying the root causes of insolvency. We have capably provided our expertise through this service to consumers for decades.

We agree that there should be an effective monitoring and oversight framework to address inappropriate behaviour and that it should include new powers for the Superintendent to issue administrative monetary penalties (AMPs). AMPs would address infractions by trustees quickly regarding non-compliance with new counselling standards, whether the service is offered by the Trustee or through an external service provider.

We thank you for the opportunity to share our thoughts, experiences and clinical practice perspective with you as you review the directives and regulations under the Bankruptcy and Insolvency Act and the Companies Creditors Arrangement Act.

Sincerely,

Michelle Pommells
CEO, Credit Counselling Canada

Credit Counselling Canada
Conseil en crédit du Canada

Credit Counselling Canada Members:

- ~~1000 Islands Credit Counselling Service~~
- Catholic Family Services of Hamilton
- ~~Community Counselling & Resource Centre~~
- ~~Community Financial Counselling Services~~
- Credit Counselling Services of Newfoundland & Labrador
- Credit Canada Debt Solutions
- ~~Credit Counselling of Regional Niagara~~
- ~~Credit Counselling Services of Cochrane District~~
- Credit Counselling Service of Sault Ste. Marie
- Credit Counselling Services of Atlantic Canada
- Credit Counselling Society
- ~~Family Counselling & Support Services of Guelph Wellington~~
- ~~Family Counselling Centre of Brant~~
- Family Service PEI
- Money Mentors
- Sudbury Community Service Centre
- Thunder Bay Counselling Centre

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Appendix A

PREVIOUSLY STATED CONCERNS WITH SPECIFIC PROVISIONS OF THE DIRECTIVE 1R4

a) Section 9 and Section 14(c);

We are concerned that these sections forbid any type of referrals between LITs and credit counselling organizations. Currently, we may make referrals from a rotational list of local trustees whereby there are no dedicated referrals to one specific Trustee. We believe this is a fair and ethical practice that can leave an auditable trail for verification of fairness. An alternative could include that a counsellor will be required to provide the insolvent debtor with a list of local trustees without recommendation.

b) Section 10

If the intent is to demand that all counselling sessions occur at the trustees' office, then we believe this is, in effect, an unnecessary restriction designed to provide a competitive barrier to deter external service providers. This restriction also introduces needless travel expense and inconvenience for insolvent debtors. Clearly, trustees should have the right to demand that certain counselling be done on-premises based on exceptional reasons only. There is no rational reason for this regulatory restriction on qualified, professional service providers in the ordinary course.

c) Section 13 f) i)

We are concerned that the phrase..." *by delivering insolvency counselling under the direct observation of:"* actually means "direct supervision". Depending on how this is interpreted, we believe that this may, in effect, be a restriction designed to provide a barrier to external service providers whereby services can only be offered in the trustees' office when the Trustee is present.

d) Section 16 b)

We are concerned that the phrase*…" are employed by the corporate LIT";* means that corporate LITs cannot engage external counselling service providers. Again, this appears to establish an unreasonable regulatory restriction designed to provide a competitive barrier that prohibits external service providers, including non-profit organizations.

e) Section 16 c)

We are concerned that the phrase…" have no third-party employment, earnings, or individual bankrupt or consumer debtor related financial activities or interests;" means that our credit counsellors could not refer people to a trustee who firstly attempted a debt repayment program.

There are cases whereby a client's situation is suitable for carrying out a debt repayment program, but subsequently, the client decides to file a consumer proposal or bankruptcy. Because the client may have paid the initial fee for the debt repayment program, it seems we would be unable to make a referral from our list of local trustees.

We understand and are concerned about the potential for abusive services and fees being charged to debtors when in fact, the person(s) may have chosen the option of going directly to a trustee. As drafted, we are of the view that the provision takes a regulatory shotgun approach and needs to be refined. The proposed provision does not take into account valid situations, such as clients who are successfully working on a debt repayment program but then become sick or unemployed, which then leads them to seek an insolvency option.

We are prepared to assist in drafting a provision that takes a targeted approach to the valid concern.

f) Section 18 2)

The provision takes an all-encompassing regulatory approach. "Such conflicts of interest may include, but are not limited to, where the insolvency counsellor or an organization or person with which the insolvency counsellor has a relationship, has in the past or may during the administration of the individual bankrupt's or consumer debtor's insolvency proceeding, receive any form of payment or remuneration, directly or indirectly from the individual bankrupt or consumer debtor, for any financial advisory product or service, other than prescribed fees paid to the LIT in respect of insolvency counselling." Our understanding of this provision is that our credit counsellors are deemed to have a conflict of interest if they had worked with an individual in a debt repayment program before filing for bankruptcy.

Again, we are prepared to assist in drafting a provision to address this issue with respect to conflict of interest parties.

g) Section 19

This appears to conflict with provision 16 b), which indicates the counsellor can only be an employee of the corporate LIT. The provision states, "*When designating a counsellor who is not an employee of the LIT's firm, the LIT shall warrant that neither the designated counsellor nor an organization or person with which the designated counsellor has a relationship, is directly or indirectly receiving any other remuneration or consideration in relation to the counselling from the individual or corporate LIT, other than the amount prescribed for providing the counselling sessions."* We ask for clarification.

We would also comment that the amount of compensation for mandatory counselling should be revised to reflect the current costs of providing qualified counsellors to perform this service. The rate has not changed in over 25 years since insolvency counselling was first legislated. This concern about an insufficient amount for mandatory counselling sessions was also raised in the Superintendent's 2013 report on compulsory counselling and is likely the cause of a lack of investment by trustees in spending time in counselling, developing in-house educational material and providing professional development for in-house counsellors.

h) Section 22, 23 and 24

These sections appear not to have been amended from the original directive even after consultation on mandatory counselling. Please refer to the report on the *Examination of Mandatory Counselling* and consider stakeholder input and recommendations made to the OSB. Specific recommendations were also made in 2015 by a sub-committee of the OSB to address the counselling components and the timing of the counselling.

i) Section 26

As previously noted, section 131 of the Rules still sets the remuneration for insolvency counselling at $85 per session. This remuneration amount needs to be updated and is particularly important to do so given the Superintendent's expectation that trustees and/or insolvency counsellors make additional investments in improving counselling skills, tools and educational information.

j) Section 33

The Act specifically provides the authority for the Superintendent to establish a registry for trustees and administrators; there is no such authority given to the Superintendent for creating a registry for insolvency counsellors. Therefore, we are of the view that the Office of the Superintendent of Bankruptcy cannot use any other subordinate provision of the Act to assume authority, create and/or maintain this type of public registry of insolvency counsellors.

k) Section 35

We encourage the Superintendent to administer an effective compliance monitoring and oversight framework, but we also promote the need for modern-day regulatory powers. These powers include provisions for the Superintendent to apply administrative monetary penalties (AMPs) in the case of non-compliant behaviour, rather than just quietly adjusting the taxation on an estate. Such AMPs, when used, should be publicly listed, such as, at minimum, on the Superintendent's website. The AMP scheme would effectively deal with infractions by trustees in terms of not meeting the directive standards regarding the provision of counselling service offered by the Trustee or through the Trustee's external counselling service provider.