

BY E-MAIL – ic.osbregulatoryaffairs-affairesreglementairesbsf.ic@canada.ca

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Sheila Westerink Robin
National Manager, Policy and Regulatory Affairs (PRA)
Office of the Superintendent of Bankruptcy
410 Laurier Ave. W.
Ottawa, Ontario, K1R 5E3

RE: CAIRP Comment – Draft Directive No. 1R5, *Counselling in Insolvency Matters*

Ms. Westerink Robin,

We are writing in response to your request for submissions concerning the Consultation Document titled “Draft Directive No. 1R5, *Counselling in Insolvency Matters*” (“**Draft Directive**”).

The Canadian Association of Insolvency and Restructuring Professionals (“**CAIRP**”) is the national not-for-profit organization that represents approximately 1,000 insolvency and restructuring professionals in Canada, who have earned the professional designation Chartered Insolvency and Restructuring Professional (“**CIRP**”), and as well, over 500 articling, life and corporate associates. Through an MOU with the Office of the Superintendent of Bankruptcy, CAIRP develops and delivers the CIRP Qualification Program (“**CQP**”) that leads to the OSB practice license, Licensed Insolvency Trustee (“**LIT**”). Over ninety percent of Licensed Insolvency Trustees (“**LIT**”), licensed under Canada's *Bankruptcy and Insolvency Act* (“**BIA**”)¹ are members of CAIRP.

CAIRP members deliver consumer insolvency services as legislated by the BIA and provide for counselling sessions as regulated by the OSB’s Directives. With a public interest focus, the comments contained herein are intended to improve the efficiency and fairness of insolvency counselling as a service that supports Canadians who experience financial insolvency.

In view of the tight timeframe, CAIRP has not had the opportunity to undertake a survey of its membership to gauge their views on this Draft Directive. Consequently, CAIRP cannot affirm that the comments herein accurately represent the views of all its members. However, the response herein was developed by a committee of volunteers from various types of practices across Canada and was reviewed by the Executive Committee of CAIRP. Considering this, CAIRP is satisfied that the views expressed herein are consistent with the views of at least a significant portion of its membership.

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.

Comments

As a summary observation of the Draft Directive, CAIRP applauds the OSB for its efforts to reduce the burden of unnecessary administrative requirements currently contained in Directive 1R4 and to streamline the Directive by removing redundant sections aptly covered by the BIA and Rules. CAIRP believes that, once implemented, the proposed changes will significantly improve the quality of Canada's insolvency counselling services. Many of the changes will, as intended, realize service efficiencies that positively impact all stakeholders – debtors, OSB, and LITs. With some exceptions, CAIRP generally believes a less prescriptive Directive will appropriately provide LITs greater authority to use their expertise and professional discretion to the public's best interests. CAIRP also recognizes that with authority, comes the responsibility for LITs to be accountable for the quality of services they deliver.

The following provides section by section comments on the proposed changes:

Section 1

- “Intermediary”
 - Recommend amendment be broadened to “...in relation to any process pursuant to the BIA or to any aspect...”
- “LIT's authorized office”
 - Part (b) is redundant, recommend deleting it.
- “Referral Arranger”
 - Recommend delete “in the debt advisory industry”. Should refer to anyone that participates in a referral arrangement.

Section 8

- Recommend that this section be amended to allow a LIT to assign counselling to a BIA Insolvency Counsellor employee of another LIT; the assigning LIT would retain responsibility and be accountable for the counselling

Section 11

Education

- (a) As accommodated in Transitional Provisions Section 38 of Directive 1R4, individuals who are currently registered as BIA Insolvency Counselors but don't have high school / GED should be grandfathered in.
- (b) Similar to (a), as accommodated in Transitional Provisions Section 38 of Directive 1R4, individuals who are currently registered as BIA Insolvency Counselors but do not have an ICQC certificate should be grandfathered in. Many Counsellors were grandfathered in 1994 and they did not get a ICQC certificate.
- (c) To properly validate that new Counsellors can consistently deliver a high standard of competency, we recommend retaining the minimum requirement of a LIT to observe at least three counselling sessions. Requiring LITs to observe new Counselors supports Counselor competency development while maintaining integrity of the system and serving public interest. For greater flexibility, the observations could be extended to include any LIT employed by the firm.
- d) similar to (c), it is recommended that LITs be required to observe at least three Counselling sessions

- (e) While CAIRP understands the OSB's rationale for proposing a reduction in the minimum number of hours required for professional development, we encourage the OSB to consider maintaining the standard as is. CAIRP believes Counselors should undergo at least 3.5 hours of PD annually for the requirement and the competency it develops to be meaningful.

Experience

- (f) While the requirement of 50 Counselling sessions seemed unnecessarily onerous, removing the minimum parameter altogether is riskier and outside the norm for establishing minimum work competencies. To appropriately develop and evaluate an aspiring BIA Insolvency Counselors CAIRP believes that Counselors should be required to complete a minimum of ten counselling sessions in order to meet the Experience standard.

Old Section 16 and 17

- Support removal as they were redundant.

Old Section 19

- Removal of the Schedule 1 requirement is welcomed as it was ineffective and administratively burdensome.

New Section 15

- This a welcomed change. The 1st and 2nd counselling reports better follow the natural workflow of estates.
- Removal of Schedule 2 is welcomed as it was ineffective and administratively burdensome.

Section 16

- Positive change. The language has been clarified and the details are relegated to the forms.

Section 17

- Positive change. The language has been clarified.

Old Section 22

- Removal of the audio recording requirement is welcomed. The purpose of this requirement was never clear and it was an unnecessary administrative burden for all stakeholders.

Section 18

- Removal of the variance request reduces unnecessary administrative burden.

Section 19

- Providing increased flexibility for the timing of the counselling sessions will be well received by LITs and their clients, allowing LITs to tailor counselling to individual debtor's needs.

Section 20

- This section seems overly prescriptive. Suggest giving LITs great professional discretion.
 - Suggest starting 20.(1) with "Where appropriate, by the end of both...". There are exceptional situations and circumstances where preparing a budget and/financial goals would be meaningless for the debtor.
 - Regarding financial goals, recommend deleting "at least three".

Old Section 38 – Transitional Provisions

- As explained earlier, there is a need to maintain the transition provisions to grandfather currently registered BIA Insolvency Counselors who don't meet the high school / GED or ICQC certificate requirements.

Appendix A

- The requirement to disclose the name of an individual or firm that referred the debtor may be troublesome. While CAIRP understands that the OSB needs to know if the referral was from an intermediary or referral arranger, some legitimate referrers may feel that the requirement to reveal their name is a breach of privacy. Further, well-meaning parties may be discouraged from helping debtors with an introduction to a LIT if there is the possibility of the individual or firm being disclosed publicly.

Closing Remarks

As noted earlier, CAIRP commends the OSB on its efforts to improve the efficiency and effectiveness of the insolvency counselling process in Canada. Further, CAIRP believes that the proposed changes, together with CAIRP's recommended amendments, are both positive and significant.

We trust the OSB will give CAIRP's comments due consideration and we are available at your convenience to discuss any points that may need further clarification or refinement.

Thank you for the opportunity to participate in this important consultation. CAIRP looks forward to continuing to work closely with the OSB in its efforts to deliver exceptional insolvency services that support the best interests of all Canadians.

Sincerely,



Chantal Gingras, CIRP, LIT
Chair, CAIRP



Grant B. Christensen, FCPA, FCGA
President & CEO, CAIRP