

CAIRP Webinar June 2020 – Summary of OSB and CAIRP Presentations

The Canadian Association of Insolvency and Restructuring Professionals (CAIRP) launched their 2020 2021 National Webinar Series with one focusing on the impact of COVID-19 on the insolvency system. This online conference featured presentations by Mark Rosen and Jean-Daniel Breton, the Chair and Vice-Chair of CAIRP respectively, and by Elisabeth Lang, Superintendent of Bankruptcy.

In their presentation at the June 15 (English) and June 22 (French) online events, the Chair and Vice-Chair briefed members on CAIRP's work to help members weather the COVID-19 pandemic and provided an update on how it had managed during the pandemic, including pivots that it had to make to deliver its professional development and education programs.

The Superintendent's presentation highlighted the measures taken by the Office of the Superintendent of Bankruptcy (OSB) to mitigate impacts of the pandemic on debtors, creditors, and Licensed Insolvency Trustees (LITs). She also spoke of the collaboration between the OSB and CAIRP to identify the challenges faced by the LIT community during the pandemic, and the possible solutions to ensure the effective operation of the insolvency system for the benefit of Canadians.

The event was also an opportunity for the participating LITs to ask their questions to the Superintendent and the CAIRP Chair and Vice-Chair. Below is a summary of the presentations and a [record of the question and answer](#) sessions from the webinars.

Summary

Presentation by the CAIRP Chair/Vice-Chair

The CAIRP Chair began by welcoming participants to the June 15 and June 22 webinars, thanking Superintendent Lang for her participation in the events and acknowledging the challenging time COVID-19 had presented to the insolvency profession. He advised that he wanted to take the opportunity to provide an update on how CAIRP had managed during the pandemic and some pivots that CAIRP had to make to deliver its professional development and education programs. The Chair also reported he would brief members on CAIRP's work on behalf of members to weather the COVID-19 storm. Finally, the Chair advised that he would be providing the CAIRP briefing for the English session and Vice-Chair Jean-Daniel Breton would provide the same briefing for the French session.

The Chair/Vice-Chair reminded members that as part of CAIRP's annual planning process, the Board establishes high level goals to guide the development of CAIRP's strategies, action plans and budget. They reported that when COVID-19 hit, the Board established an additional goal of implementing solutions to the challenges presented by COVID-19. The Chair/Vice-Chair reported that since March the Executive Committee and Board of Directors had been meeting monthly to identify and mitigate financial and operating risks for CAIRP and importantly, to discuss and get resolution for member issues and challenges as a result of COVID-19. In addition, they reported that a COVID-19 Task Force was created comprised of the Executive Committee and the Immediate Past Chair. During the height of the pandemic, the Task Force was meeting on a daily, sometimes hourly basis to address issues.

The Chair/Vice-Chair advised that since March, CAIRP has provided responses to the National Judiciary Committee and worked closely with the OSB on the Omnibus order with all provincial and territorial courts. CAIRP also provided a response to the Legislative Proposal Relating to the Draft *Time Limits and other Periods Act* and raised a number of issues with the Canada Revenue Agency and Revenue Quebec which were addressed. CAIRP members received seven updates on important issues for members and a COVID-19 section was created on the CAIRP website with helpful information.

The Chair/Vice-Chair advised that CAIRP's strong financial position along with the technology upgrades including the new website and association management system greatly assisted CAIRP in being able to function effectively when the pandemic hit. On the education front, they reported CAIRP's online course delivery model continues without disruption to candidates and CAIRP is well positioned to implement remote proctoring options for the Core Knowledge Exam and the Competency-based National Insolvency Exam (CNIE) should it be required. The Chair/Vice-Chair further advised the in-person tutorial would be delivered on-line through a combination of pre-recorded sessions and live webinars to effectively prepare candidates for the upcoming CNIE. They reported CAIRP's Professional Development program required a major pivot from in-person Provincial Forums and National Exchange/Annual Conference to webinars which will be available through the CAIRP National Webinar Series. More than 20 webinars will be offered to address topics of importance for consumer and corporate practitioners including regional technical updates.

The Chair/Vice-Chair concluded their remarks by advising that when the COVID-19 issue hit, the established touch points with the OSB and CRA were critical to CAIRP's ability to raise member/issues and concerns. Bi-weekly calls with the Superintendent became weekly calls and several times, daily calls to work through issues. They thanked Superintendent Lang and her team for their openness to work through issues.

The Chair/Vice-Chair introduced Superintendent Lang to share her views on the impact of COVID-19 on the insolvency industry.

Presentation by the Superintendent of Bankruptcy

The Superintendent began by providing an update on the actions of the OSB since COVID-19 measures went into effect on March 13, 2020. She noted that the OSB acted quickly to provide as much operational flexibility as possible, within the confines of the regulatory framework, to reduce any unintended impacts on debtors, creditors and LITs. The OSB's number one goal, she maintained, has been to ensure the effective operation of the insolvency system for the benefit of Canadians.

The Superintendent highlighted the OSB's efforts, which included issuing and publishing on its website [10 guidance notes for LITs as well as several messages from the Canada Revenue Agency and Revenue Quebec](#), setting up a Regulatory Affairs email address to respond to COVID-19 related questions from LITs, and increasing the frequency of our communications with CAIRP. The Superintendent then explained that, using her authority pursuant to the *Bankruptcy and Insolvency Act* (BIA), she applied for an Omnibus order in all 10 provinces and 3 territories, to provide relief to the insolvency system broadly,

and relief on behalf of all open insolvency estates as well as any filed up to June 30, 2020. At the time of the first application on April 27, 2020 - that was over 451,000 insolvency estates.

The Superintendent shared some key insolvency data on consumer and business insolvency filing volumes since 2008, as well as on the *Companies' Creditors Arrangement Act* (CCAA). She addressed the anticipated surge in insolvency filing volumes and the capacity of the system to manage these files, while also providing an overview of the demographic make up of the LIT community. The OSB is keeping a close eye on the situation and is preparing for a potential increase in filings by testing current IT system capacity and reviewing trends from the last recession (2008-2009). Noting the OSB's ability to transition to the remote work reality, she noted that 96% of OSB employees are able to work remotely, and are working tirelessly to help ensure the insolvency system continues to run smoothly.

Looking towards the future, the Superintendent asserted that insolvency forecasting is a complex undertaking and likely to be even more so in the current context, noting that the OSB is searching for reliable projection models. She maintained that the OSB's recent guidance extending remote service delivery to March 31, 2021 is an example of our effort to ensure that LITs can deliver services to debtors in the most efficient way while working remotely and in the way that many debtors want to be served. She further noted that the OSB will be actively assessing what changes to the system should be made permanent and will endeavour to provide updates in early fall, to assist LITs with their future planning.

The Superintendent affirmed that the OSB will be issuing amendments to the Licensing Directive No. 13R6 to clarify and reinforce the requirement for the corporate LIT to not be subject to any influence, interest or relationship that impairs or appears to impair its professional judgment. She also mentioned that amendments to the Banking Directive No. 5R5 are in the works – but that these may be issued in two phases starting with electronic signatures on bank reconciliations.

In terms of compliance, the Superintendent noted that the OSB's focus for 2020-21 will be on ensuring strong internal controls, on the issue of referral relationships and reduced returns to creditors, and on proper debtor assessments. She offered a reminder that changes to corporate LIT licences require prior approval from the OSB, and that LITs should let the OSB know of any changes via the OSB Licence Administration Application early in the process. Finally, while asserting the importance of providing debtors with information on their options so that they can make an informed choice on how best to deal with their debt, the Superintendent urged LITs to keep in-line with BIA requirements, including the Code of Ethics, relating to their conduct and communications in order to avoid harming the integrity of the insolvency system.

The Superintendent concluded by noting that LIT compliance will be key to enabling significant reductions in administrative burden and increasing opportunities for innovation, and that by working together, we can look forward to some very positive and exciting developments for the insolvency system in spite of the very unfortunate circumstances arising from the COVID-19 pandemic.