

CAIRP Webinar June 2021 – Summary of OSB and CAIRP Presentations

The Canadian Association of Insolvency and Restructuring Professionals (CAIRP) hosted their first webinar of their 2021 - 2022 National Webinar Series, together with the Office of the Superintendent of Bankruptcy (OSB). This online event featured presentations by Mark Rosen and Jean-Daniel Breton, the Chair and Vice-Chair respectively of the CAIRP Board of Directors, and by Elisabeth Lang, Superintendent of Bankruptcy.

In their presentation at the June 18 (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, efforts to enhance the insolvency system through collaborative efforts with the OSB and responses to government consultations. The Chair and Vice-Chair also provided an update on how the association has managed during the pandemic.

In her presentation, the Superintendent provided an overview of the OSB 2021-22 Business Plan Priorities, gave an update regarding the OSB's research of stakeholder views of remote delivery of assessments and counselling, and highlighted the progress achieved by the OSB and CAIRP in their collaboration towards increasing representativeness in the LIT profession. The Superintendent also gave an overview of the recent organizational changes within the OSB, and shared her views regarding certain compliance matters.

The event was also an opportunity for the participating LITs to direct questions to the Superintendent and/or 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 18 and June 22 webinars and thanking Superintendent Lang for her participation. The Chair advised 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 opened the presentation by acknowledging the challenging journey through uncharted waters the COVID-19 pandemic had presented the insolvency profession over the last 16 months. They reminded members that as part of the association's annual planning process, the Board of Directors establishes high level goals to guide the development of CAIRP's strategies, action plans and budget. The Chair/Vice Chair reported that key performance indicators are also set to monitor and measure the association's success in achieving these goals and advised that members can review CAIRP's performance each year through the annual report which is published online in August. The Chair/Vice Chair noted that when COVID-19 hit, the Board established an additional goal of implementing solutions to the challenges presented by COVID-19. They reported that since March 2020 the Board of Directors had been meeting monthly and the Executive Committee often met weekly 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.

The Chair/Vice Chair reported that while Fiscal 2020-21 started with great uncertainty as to the financial implications of the pandemic, the CAIRP board, committees and staff worked hard to successfully mitigate all risks and pivot the delivery of services to a virtual environment. They further reported that as part of this effort monthly, then quarterly COVID-19 related financial risk assessments were prepared to help steer the association to a small surplus by year end. They also noted that the technology upgrades made prior to the pandemic including the new association management system greatly assisted the association in being able to function effectively when the pandemic hit.

On the education front, the Chair/Vice Chair reported that in 2020-21, all education programs were delivered completely virtually, including the tutorial, all exams and the Competency-based National Insolvency Exam (CNIE) assessment and appeal centres. They also reported that the 2020 CNIE pass rate was the highest in six years and the Core Knowledge Exam (CKE) and Practical Course on Insolvency Counselling (PCIC) pass rates also remained strong. They advised that the education program will continue to be delivered virtually in 2021-22 and that based on candidate feedback, several new instructional supports such as virtual office hours and sessions with successful graduates of the Chartered Insolvency and Restructuring Professional (CIRP) Qualification Program (CQP) have been added to the toolkit to support candidate preparation for the CNIE.

The Chair/Vice Chair shared that CAIRP introduced the National Webinar Series to provide professional development for members when in-person events were cancelled. The program turned out to be very popular with over 70% of CAIRP membership attending one or more of the more than 20 webinar offerings. They advised that members will again be provided with virtual professional development offerings including consumer, corporate, plenary and regional technical updates through the re-launch of the National Webinar Series for 2021-22.

As part of CAIRP's integrated communications plan, the Chair/Vice Chair reported that a number of initiatives were undertaken to help raise the industry's profile. They advised that quarterly meetings were held with the Provincial Association Presidents to discuss local and regional matters and the meetings were particularly helpful in surfacing member issues as a result of the pandemic. To improve communications alignment each association assigned a Board member to the revamped CAIRP Media/Communications Committee. They noted that the association has also undertaken a brand refresh including website enhancements to expand content and create a better user experience. The Chair/Vice Chair reported that CAIRP has been very active in the media and that over the past year most media outlets across Canada carried a CAIRP story. To recognize the tremendous efforts of the recent CQP graduates, the Chair/Vice Chair advised that ads featuring the 2020-21 graduates will be placed in CPA Canada's (Chartered Professional Accountants) *Pivot* magazine, CAIRP's *Rebuilding Success* magazine and on LinkedIn.

The Chair/Vice Chair reported that CAIRP has been working closely with the OSB on a Representativeness Project over the past year and indicated the Superintendent will provide more details in her remarks including a recently agreed to Joint Statement between OSB and CAIRP. They

advised the recent CIRP graduating class illustrates how the industry is evolving with women comprising 52% of the 2020-21 graduates and over 20% of graduates are visible minorities. They further advised that recent statistics from CAIRP's data collection project show similar numbers. The Chair/Vice Chair noted this was an exciting development in the industry over the last few years as the insolvency industry embraced diversity and inclusiveness as part of business practices.

The Chair/Vice Chair reported that since March 2020 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 *Time Limits and Other Periods Act (COVID-19)*. The Chair/Vice Chair also reported that CAIRP raised a number of issues with the Canada Revenue Agency (CRA) and Revenue Quebec which were addressed. They advised that CAIRP also participated in a roundtable discussion organized in February 2021 by Innovation Science and Economic Development Canada (ISED) and the Department of Finance Canada which focussed on the impact of COVID on the economy. CAIRP pulled together a delegation of members from large and small firms and corporate and consumer practices from across the country to provide views on the impact of the pandemic and specifically the impact on Micro, Small and Medium Sized Enterprises (MSMEs). The Chair/Vice Chair reported that CAIRP recently responded to the OSB's Comprehensive review of directives and regulations under the *Bankruptcy and Insolvency Act (BIA)* and *Companies' Creditors Arrangement Act (CCAA)*. The Chair/Vice Chair thanked all of the Consumer and Corporate Committee members, Provincial Presidents and Associations and member firms who focussed on assisting in enhancing the insolvency system by collectively spending hundreds of hours discussing, researching and preparing CAIRP's response to the OSB's comprehensive regulatory review. They further advised that CAIRP looks forward to discussing the recommendations with the OSB.

The Chair/Vice Chair concluded their remarks by thanking Superintendent Lang and her team for their openness to work through issues over the last 16 months since the start of the pandemic. They advised 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. The Chair/Vice Chair then introduced Superintendent Lang to share her views and update.

Presentation by the Superintendent of Bankruptcy

Superintendent Lang opened her remarks by recognizing the challenges faced by LITs, CAIRP and the OSB during the ongoing COVID-19 pandemic, while asserting that she is very proud of everything that has been accomplished in spite of these challenges.

Turning to the overview of OSB's 2021-22 Business Plan priorities, the Superintendent spoke of the OSB's Comprehensive review of directives and regulations which aims to modernize and improve the regulatory framework, enhance the effectiveness of its administration, and increase accessibility to insolvency proceedings. With the public consultation period having closed on June 10, 2021, the Superintendent maintained that the OSB would review the input provided by all stakeholders and develop a plan to reflect possible changes to processes, regulations and IT systems. Recognizing the ability of LITs who, due to the pandemic, adapted their business models to incorporate online options to better serve Canadians, she asserted that the OSB would consider LIT feedback on how licensing could be modernized to reflect and encourage innovations that support client service excellence.

Superintendent Lang noted that the OSB would continue to help Canadians find the right debt solution by adding new tools to its debt solutions portal, and would engage partners to help promote the tools on OSB's website. She also maintained that the OSB's work to strengthen its Compliance Framework would continue in 2021-22 with multiple projects planned. These include: finalizing updates to the Debtor Compliance Management Tool including the integration of Artificial Intelligence (AI) and a new Debtor Detection Analysis System Risk Model; exploring AI tools to support program delivery and compliance as well as the detection of issues and trends within the insolvency system; engaging in discussions with stakeholders to ensure the enforcement and prosecution of the most serious insolvency offences; exploring an increased focus on compliance promotion and a risk-based approach to LIT compliance; consulting LITs on the establishment of a new Trustee Annual Report; leveraging IT solutions for LIT office visits; updating the Estate Administration IT system; conducting LIT office visits where there are significant dealings with debt advisors and pursuing compliance and enforcement measures, where appropriate; and, continuing to engage with federal and provincial partners to identify and address misleading advertising and deceptive practices in the debt advisory marketplace.

In terms of operational training, the Superintendent maintained that the OSB would continue to focus on approaches that ensure the OSB has a qualified and capable team, and that the organization would resume the "A Day in the life of an LIT" training piloted prior to the pandemic. Finally, the Superintendent noted that the OSB would engage with government partners through a new Financial Risks and Trend Analysis committee, in order to identify the financial risks and trends emerging in the marketplace, which may impact the Canadian insolvency system and which may require action by one or more government department.

The Superintendent then shared results and highlights of the OSB's COVID-19 measures questionnaire, distributed among LITs and debtors in November 2020, which sought feedback on remote service delivery measures put in place in light of the pandemic. She asserted that feedback on these measures was very positive with 75% of LITs and 92% of debtors indicating that remote assessments are as effective or better than in-person, and 82% of LITs and 91% of debtors indicating that remote counselling sessions are as good or better than in-person. She also noted that 41% of LITs indicated a preference for in-person assessments and 26% of LITs indicated a preference for in-person counselling post-pandemic, and similarly 40% of debtors would prefer in-person assessments and 36% would prefer in-person counselling post-pandemic. All in all, she maintained that it seems clear that remote service delivery was a good option for most, but that maintaining debtor choice going forward will be key.

Superintendent Lang then spoke of the importance of increasing representativeness in the LIT profession. She asserted that increasing diversity is not just the right thing to do, it's good for business with proven benefits to productivity and innovation. She noted that the OSB and CAIRP have been working collaboratively to advance the goal of increasing representativeness and that collaboration has been reflected in the most recent updates to the OSB-CAIRP Memorandum of Understanding, as well as in the OSB-CAIRP Joint Statement on Representativeness in the LIT profession which was published on June 18. The Superintendent highlighted further work being done by OSB and CAIRP, including: implementing data collection of candidates for the Chartered Insolvency and Restructuring Professional Qualification Program and LIT self-identification of Employment Equity (EE) groups, in order to help track

progress; convening a joint representativeness roundtable with select LITs in December 2020 to discuss industry approaches to increase representativeness; publishing guidance with tips and best practices to help LITs increase representativeness within their organizations; and, continuing to make efforts to increase awareness of the profession in order to encourage interest from diverse communities. She reiterated that the OSB remains committed to advancing representativeness in the LIT profession, to encouraging EE groups to self-identify, and to work collaboratively with CAIRP to increase diversity and representativeness for the benefit of the insolvency profession and Canadians.

Superintendent Lang then provided an overview of the recent review of the OSB executive structure which will position the OSB well to respond to the current and future needs of the insolvency system. The revised OSB structure includes: changes to Operations and regional offices which will lead to an increased focus on compliance promotion and a risk-based approach; the standing-up of a new Integrity & Enforcement team which will lead on criminal prosecutions, professional conduct investigations, conservatory measures and major cases including CCAA files; a re-alignment within the Innovation & Transformation team to help lead the OSB into the future through IT updates, data analysis and innovative thinking; a re-alignment of the Regulatory Policy & Public Affairs team which will continue to lead on regulatory policy including directive updates, but will also bring communications and outreach into the team; and, setting-up a new National Programs team which will bring a more comprehensive approach to the OSB's oversight programs.

During the last part of her presentation, the Superintendent shared some thoughts about compliance. She urged LITs to maintain the integrity and ethics for which the LIT profession is known. She also urged caution to avoid solicitation of bankruptcy or insolvency which can lead to criminal consequences pursuant to s. 202 of the BIA. On the topic of credit rehabilitation, the Superintendent commented that this continues to be a "service offering" among some LITs who are getting debtor consent to provide their information to a credit rehabilitation organization, who will then provide financial literacy and loan options to the debtor. She raised a number of questions regarding this practice, including: What are the upsides for an LIT? Isn't this practice a further encroachment into the role of the LIT? What does this mean for the LIT profession in the long run? Is it really best for debtors to get right back into a loan just as they're emerging from their insolvency? The Superintendent maintained that LITs should instead focus on their value proposition and always consider, first and foremost, what is best for the debtor.

Superintendent Lang then urged LITs to focus on closing aged estates, particular those that have been open for 10 or more years, noting that this is an area of risk that the OSB will continue to monitor in 2021-22. She then reminded LITs that they continue to be required to have either a resident or non-resident office in the locality of the debtor to accept a filing or conduct remote assessments, adding that these rules will remain in place until further notice. Finally, she concluded by speaking on the topic of ownership and control of LIT firms. The Superintendent asserted that the OSB is keeping a close eye on possible investors and ownership of corporate firms, and reminded LITs that these types of structural changes must be pre-approved by the OSB, as per the Licensing Directive.

Questions and Answers

1. Question: How is the Office of the Superintendent of Bankruptcy (OSB) addressing the proliferation of non-resident offices being opened by Licensed Insolvency Trustees (LIT)s in provinces where they

are typically not resident? What requirements will be implemented to ensure that there is a trustee on site? Is the service model moving towards a “bankruptcy mill” where those with the most advertising dollars and ability to open remote offices will eventually dominate the business? Personally I believe that this does a disservice to debtors.

Superintendent: As mentioned in my presentation, the consultation on potential amendments to relevant directives recently closed. The review includes considerations around the requirements for a resident or non-resident office. We will assess the feedback received and consider the question from the perspective of all stakeholders. Debtor choice will be a key consideration, however, and we’d have to think carefully about how much we limit debtor choice by insisting on a local office given that this could mean a debtor can’t actually choose the LIT they want, in some cases, even if they prefer virtual services. But let me also emphasize that nothing in terms of changes to how services are provided will detract from, or reduce, the importance of the LIT fulfilling their duties as expected and abiding by the Code of Ethics.

2. Question: About 8 or 9 years ago, the OSB found that a debt advisory firm had an arrangement to refer files to 55 trustees across Canada. The issue was that the firm effectively controlled the administration of the files after the appointment of the trustee. Was any action ever taken by the OSB against any of the trustees? Does the OSB currently monitor the trustees that this firm refers their files to?

Superintendent: As I’m sure you can appreciate, we can’t speak to any ongoing investigations and, of course, the COVID-19 pandemic has caused some re-prioritization of our work. However, the debt advisory marketplace, of which the firm in question is a part, remains a priority and the OSB will work to detect and address any impacts on the integrity of the insolvency system, including impacts on debtors and creditors, and to take appropriate action in relation to LIT relationships with debt advisors as well as debt advisors who hold themselves out as LITs, solicit insolvencies or mislead debtors. Needless to say, we expect LITs to fully and comprehensively carry out their duties in an insolvency file including a full and proper assessment and realization of assets and/or amounts to be paid.

3. Question: I read the OSB’s “Insolvency Statistics in Canada” report and was puzzled by the fact that 2020 insolvency filings represent the “largest annual decrease ever recorded.” What are the OSB and CAIRP’s thoughts on this matter? Do the OSB and CAIRP view the past year of record-low filings as a success? How do the OSB and CAIRP assess the effectiveness of the Canadian insolvency system?

Superintendent: First, as I’m sure some of you know, the trend of lower insolvency rates is not limited to Canada. Through my engagement with my international counterparts over the past 16 months, I can tell you that almost all have experienced a similar trend. The general view is that insolvency filings were down in 2020 due to:

- a) Government supports;
- b) Creditor forbearance including things like mortgage deferrals; and
- c) The rate of business closures in Canada always significantly exceeds the rate of business insolvency filings – that is to say that some businesses simply close but don’t file a corporate

insolvency. Where a personal insolvency has 50% or more debts arising from a business, our statistics reflect this in a sub category of individual business filing.

In terms of how to assess the effectiveness of the Canadian insolvency system, this is a great question. The OSB has been working hard over the past year or so to revise its performance measurement profile to ask that very question and to ask what measures we can use to determine how we are performing.

The ultimate departmental performance measure that the OSB and other marketplace regulators feed into at Innovation, Science and Economic Development Canada (ISED) is that Businesses, investors and consumers are confident in the Canadian marketplace, including the digital economy.

We measure this through some long, medium and short-term results. I won't go through all the measures today but some that we are looking at include things like: the % of LITs who were subject to compliance monitoring (based on established risks); the % of high risk insolvency filings that are detected by the OSB and the % of enforcement actions initiated against debtors resulting from examinations and official receiver inquiries.

Mark Rosen, Chair, CAIRP / Jean-Daniel Breton, Vice-Chair, CAIRP: I think the Superintendent clearly articulated the issues in terms of the low numbers in 2020 which was primarily as a result of government funding supports. The funding slowed the process of filings. We also saw an increase in the number of businesses, particularly MSMEs who did not undertake a filing but chose to simply walk away from their business. CAIRP raised the issue of a gap in the insolvency system for MSMEs when we met with ISED and Finance Canada at the February 2021 Roundtable. CAIRP also raised the MSME issue in our recent submission to the OSB and provided a number of recommendations to address the issue. We look forward to further discussions with both the OSB and ISED on how we can move forward with legislation that will help MSMEs in this regard.

My expectation is we will start seeing an uptick in personal insolvencies when Canadians have received their second vaccine, the economy starts picking up more momentum and the government support programs wind down. As CAIRP indicated in our submission to the OSB, we believe there is sufficient access to the insolvency system through the LIT firms. On the issue of compliance, we look forward to reviewing the OSB data. Based on our data over the past year, CAIRP has received a minimal number of complaints concerning our members.

4. Question: Can you please advise what guidance LITs should follow given the recent Eyton decision in Ontario, and given the Shayoun decision in Quebec?

Superintendent: The recent Ontario Superior Court decision in Eyton (re: John Trevor Eyton, 2021 ONSC 1719 (CanLII: <https://canlii.ca/t/jdms5>)) relates to the disallowance by an LIT of a statute barred claim given that it had been two years since the date the debt originated and there had been no acknowledgement of the debt by the debtor. My office intervened as we felt the LIT had taken the right approach from a legal standpoint in that a statute-barred debt cannot constitute a provable claim in bankruptcy. From the OSB's perspective, this decision does not change the fundamental principles or duties of the parties in insolvency. Under s. 158 of the BIA, debtors must provide documents and submit

a Statement of Affairs to the trustee setting out assets and liabilities. LITs have the duty to verify the Statement of Affairs under s. 21 of the BIA. And as was always the case, a determination needs to be made as to whether a claim is provable or not. If the LIT determines, on the facts available, that it is statute-barred then they can disallow it. Alternatively, under ss. 135 (1) of the BIA, they have the authority to require further evidence in support of the claim or security. Also remember that creditors may face consequences for submitting statute-barred claims. This could include disallowance of the claim, criminal proceedings for filing a proof of claim containing any wilfully false statement or wilful misrepresentation (per s. 125 of the BIA) or making a false claim or statement of account that is untrue (per ss. 201(1) of the BIA). How you handle each individual claim and the degree to which you review past files is a question for you using your professional judgment in light of the specific facts in a particular file.

Regarding the Shayoun decision (Syndic de Shayoun, 2021 QCCS 559 (CanLII: <https://canlii.ca/t/jddm1>)), this is a decision of the Quebec Superior Court, in which my office intervened, and which should settle the question that remained in Quebec only as to whether secured creditors have the right to vote on a consumer proposal. The court found, and the OSB takes the position that, to the extent that a secured creditor wishes to be a part of the decision-making process relating to a consumer proposal filed under Part III, Division II of the Act, it must first exercise its option as required by section 127. In choosing how to respond to a proposal, a secured creditor has 4 options:

- 1) Rely on its security and not respond to the proposal, therefore, no claim filed and no vote – it may be the case that the proposal is not addressed to them to begin with;
- 2) Realize on its security and claim in the proposal for the under-secured shortfall, if any; per ss. 127(1);
- 3) Surrender its security to the trustee and claim for the entirety of the amount owing to it; per ss. 127(2); or
- 4) Value its security and claim as an unsecured creditor for the shortfall, if any, whether that shortfall becomes an actuality (through a trustee-elected redemption, enforced sale or negotiated sale) or not.

Any administrator that is asked to assist with the filing of a consumer proposal by a qualified consumer debtor under Part III, Division II of the Act, must ensure that the requirements of, among others, sections 66.12 (4), 66.13 (3), 66.19 (1), 69.2 (1), 69.2 (4), 112 and 127 are satisfied before the matter is submitted to the official receiver.

5. Question: I just wanted to ask what the impetus is for the anticipated reforms to the low-income / low-asset or no-income/no-asset (LILA/NINA) debtors. Specifically, other than the report(s) from Stephanie Ben-Ishai and Saul Schwartz, what documentation is the OSB basing their assertion that a substantial amount of LILA / NINA debtors are not being treated or being left behind by the current insolvency system. Has the OSB received an increased number of complaints about lack of access? Is there a quantifiable way to verify the problem?

Superintendent: The LILA/NINA project is multi-faceted. First, most of our counterparts around the world have had some system to enable access to debt restructuring to low or no income/asset debtors

for many, many years. Canada stands out in this regard. In fact, Britain recently announced an increase in the limits for access to debt relief orders there. There is also increasing recognition of the impact on the economy generally when people can't be at their most productive due to the stress and challenges arising from overwhelming debt. Secondly, we have analyzed the data on LILA and NINA debtors who have filed an insolvency and the fees charged do not seem to align well with the assets and income available and furthermore, these debtors appear to remain insolvent for a longer period of time. Finally, based on Statistics Canada data, we know that many Canadians do not even darken the door of an LIT, let alone a credit counsellor. Why? Research from the Financial Consumer Agency of Canada (FCAC) seems to suggest that they don't know where to turn and/or may believe they cannot afford to get the help they may need. By creating a lower cost process, we would be on an even footing with our international counterparts and we would very quickly see if there's a need or not.

Mark Rosen, Chair, CAIRP: CAIRP included our views on the LILA/NINA issue in our response to the OSB's Comprehensive review of directives and regulations under the BIA and CCAA. We also brought to the OSB's attention, a research project entitled *Access of LILA and NINA debtors to the legal insolvency system in Canada* authored by Dr. Aurore Benadiba from the Faculty of Law at Laval University. Dr. Benadiba's research determined that LITs typically demonstrate considerable flexibility when dealing with LILA/NINA debtors, often reducing monthly payments and providing accommodation. Based on our discussion with members and as supported by research, it is CAIRP's view that LILA/NINA individuals have access to the insolvency system and are being well served by LITs who work with them on a case-by-case basis depending on their circumstances. We all agree that every Canadian should have access to the insolvency system. CAIRP is committed to work with the OSB to ensure all Canadians have access. In the CAIRP submission, we requested a meeting with the OSB to better understand any additional gaps their research may have identified on the consumer side. Based on our research the only gap we see in the insolvency system is with MSMEs.

6. Question: Given the impact of the pandemic on Micro, Small & Medium Enterprises (MSMEs), what is the OSB contemplating to ensure MSMEs can have better access to the insolvency system?

Superintendent: Since the onset of the pandemic, and prior, we have heard about the need for a lower cost/simplified process for MSMEs. We also heard this from stakeholders who participated in the roundtable discussions with ISED and Finance Canada. Similar to the LILA/NINA issue, we know from Statistics Canada data that many businesses in Canada close their doors and never file a corporate insolvency. Some may file a personal insolvency but if they have corporate assets or any employees, then it would be preferable for them to make a corporate filing. As you may know, this change would require legislative amendments and this work is led by our policy colleagues at ISED. I personally think the time may be right for a simplified, lower cost process for both consumer and corporate debtors.

Mark Rosen, Chair, CAIRP: Further to the Superintendent's comments I would like to point out that section E of the CAIRP submission to the OSB's Comprehensive review of directives and regulations under the BIA and CCAA includes a complete set of recommendations to the OSB on the MSME issue. We recognize that the OSB's comprehensive review was focussed on directives and regulations and did not request matters that may require legislative change. However, given our discussion at the ISED /Finance Canada roundtable which concentrated on MSMEs, we felt it was important to bring specific

recommendations to address the MSME issue forward to the OSB and ISED and we look forward to working with them on this matter.

7. Question: How do you see the industry evolving in the next five years?

Superintendent: I think like every other industry, technology was already going to be a driver of change and it is one that has now accelerated exponentially thanks to the measures put in place in response to the COVID-19 pandemic. I am keen to help shape how that future state looks to ensure we are considering the needs of all stakeholders and mitigating risks appropriately – but not over-rotating on that so as to stifle innovation or healthy competition. I hope that LITs will embrace these changes and work with the OSB to shape that future rather than trying to maintain the status quo – as I honestly don't feel that this is realistic. You may have heard me say this before, but you should always be careful not to be the taxis in an Uber world. By that I mean, happy, safe and comfortable with the hope that you can stop the winds of change somehow. I would look at how that has turned out for taxis and consider it a cautionary tale.

8. Question: What are some of the developments you are seeing internationally?

Superintendent: I would note a few interesting international developments that I've observed. The first is the increasing adoption of debtor-in-possession restructuring models similar to what we have in Canada – which is a nice nod to an approach that we already know can be very effective for helping corporations deal with their debt and continue as a going concern. The second isn't so much of a development but a possible area to watch and that is an increase in the number of zombie firms. These are firms who may be surviving thanks to government supports and/or creditor forbearance but who really aren't viable and while they remain on life-support, they can draw resources away from existing or even new viable firms. I would also mention that I am participating on a committee through the International Association of Insolvency Regulators on Representativeness in the insolvency profession - which confirms that this is an important topic to be addressed outside of Canada just as much as it is inside Canada.

9. Question: Regarding the consultation on the Comprehensive review of directives and regulations, will the OSB make public the submissions by all stakeholders?

Superintendent: As I believe we mentioned in the consultation call out, we will make the submissions public unless a request to the contrary has been received.

10. Question: Will the OSB consider replacing the term “bankruptcy” from its official organizational name with the broader term “insolvency”? For debtors who have submitted a consumer proposal, it can be confusing to see “Office of the Superintendent of Bankruptcy” appear in their estate documents and their credit bureau report.

Superintendent: This would require a legislative amendment and, as such, falls outside of OSB's area of jurisdiction. I know this suggestion has been raised previously so would be familiar to our ISED colleagues.

11. Question: Will the OSB publicly share the results from its COVID-19 measures questionnaire on remote delivery of services that was distributed among LITs and debtors?

Superintendent: Yes, the OSB will share a summary of the results.