



CAIRP STANDARD OF PROFESSIONAL PRACTICE Comments by OAIRP

COMMENTS ON THE COUNSELLING IN INSOLVENCY MATTERS STANDARD

Our specific comments are:

3.01 (a) This section should clarify that Qualified Counsellors have access only to those parts of the file that are relevant to counselling matters.

3.02 We recommend that this section be removed. Since CAIRP is responsible for the ICQC program and it allows non-members to take this program, it would put CAIRP in an awkward position where the Standard discourages Members from using these non-member counsellors.

3.03 The words "In exceptional circumstances" should be removed and this section should read "Where the Member determines that the counselling available..." We also recommend that this section be changed from a "shall" to a "should".

3.04 This section should be removed as it is covered by 3.03(b) already.

7.02 Should be changed from a "should" to a "may". The reason for this is that the BIA used to provide for a 3rd counselling session and that the Trustee could recover the cost for such counselling from the estate. We understand that this provision was quietly removed from the BIA in or around 1997.

COMMENTS ON THE PROPOSALS UNDER DIVISION II, PART III OF THE ACT

Our general comments are:

(1) It is important to keep in mind that Consumer Proposals are summary in nature and that the vast majority of Consumer Proposals are relatively straight forward. Accordingly it is important that we keep reporting as concise and simple as possible. We do not wish for Consumer Proposal reporting to become as cumbersome as Division I Proposals reporting.

(2) It is also important to consider that the profession is quickly heading towards electronic filing with creditors and it is therefore important that templates for any additional schedules be static so that we

can easily e-file these schedules with the creditors in XML or similar format once the various insolvency software packages are adapted to do so.

(3) We are concerned that the OSB may not modify its e-filing system to permit the filing of these additional schedules in XML format which means that we will need to e-file these additional schedules in softcopy format (e.g. PDF). If not already done, we suggest that the OSB be consulted to determine whether it wants this additional information or not before Members are obligated to file these with the OSB.

(4) Claims, guarantees and co-signed obligations by related parties and/or family members seem to be singled out in this Standard. We wish to ensure that this group of creditors not be discriminated against and we wish to ensure they have the same rights as any other creditors. We are also concerned that some Members and/or Debtors believe that it is acceptable to exclude related creditors and/or to treat them differently. We do not wish for this Standard to inadvertently encourage such beliefs. While we believe that this was done with the best of intentions, in many cases this can create more problems than it solves for several reasons. (1) Proposals are to be made to creditors generally and Members and/or Debtors cannot pick and choose which creditors get to participate in the Consumer Proposal; (2) Related parties probably appreciate the opportunity to participate in Consumer Proposals as it may be the only recovery they ever receive (the general assumption is that related parties generally get paid back outside the Consumer Proposal but that is an unproven assumption and one could argue that it is actually the opposite that occurs); (3) By treating all unsecured creditors equally forces the Debtor to come clean with all their creditors; especially the related creditors which are often the group that causes the Debtors the most stress.

(5) Based on the definition of Member in this Standard, it could be interpreted that the Member is personally required to do all of these actions. Accordingly, we wish to confirm that the Member can still delegate some of these tasks to qualified staff members.

Our specific comments are:

3.02 (c) We recommend that this section be removed. It is too vague and we are not sure what it means.

3.03 (d) We recommend that "including through the use of computers or paper techniques" be taken out as this doesn't add anything to the section and it is too vague and subject to interpretation.

3.07 (a) We recommend that this section be removed as it is redundant for the vast majority of Consumer Proposals as the terms in Form 47 are already simple and clear. There are occasional Consumer Proposals where further explanation may be required but these are the exception rather than the rule. Lastly, if this section is kept, there is no section on the Report of the Administrator to insert this information and Schedule A doesn't provide for this either. Consequently, we recommend that a Schedule B called "Additional Information to the Report of the Administrator on the Consumer Proposal" be added where all these additional items can be listed.

3.07 (b) We recommend that this section be removed as claim of related parties are just as valid as other claims. The additional scrutiny should be applied when the Trustee vets the Proof of Claim. If a Trustee has concerns about a related party claim it can always be disclosed in 3.07(d) (v) or other section 3.07(d)(x). Note that a section 3.07(d)(x) would need to be added. Related party should also be defined. Lastly, if this section is kept, there is no section on the Report of the Administrator to insert this information and Schedule A doesn't provide for this either therefore we recommend that a Schedule B called "Additional Information to the Report of the Administrator on the Consumer Proposal" be added where all these additional items can be listed.

3.07 (c) There is no section on the Report of the Administrator to insert this information and Schedule A doesn't provide for this either therefore we recommend that a Schedule B called "Additional

Information to the Report of the Administrator on the Consumer Proposal" be added where all these additional items can be listed.

3.07 (d)(ix) We recommend that this section be removed. We don't understand why this has to be disclosed for family members only. These claims are just as valid as any other claims and they have a right to claim the full amount owing at the date of proposal regardless of whether the co-signor and/or guarantors makes payments or not. Family Member should also be defined or this should be changed to related party.

3.07 (d)(iv) to (ix) There is no section on the Report of the Administrator to insert this information and Schedule A doesn't provide for this either therefore we recommend that a Schedule B called "Additional Information to the Report of the Administrator on the Consumer Proposal" be added where all these additional items can be listed.

3.07 (e) The Statement of Estimated Realization should have a high and low section under Bankruptcy as there is often a range of estimated recoveries. The estimated percentage recovery should also be disclosed as that is what the creditors are ultimately looking for. We also recommend that the inclusion of the analysis be a "should" as opposed to a "shall".

3.09 We recommend that this section be removed. If this section is maintained then it should be changed to a "may" instead of a "should". Sending out the report a second time when it has already been sent out under 66.14 is redundant and ineffective.

3.10 Report of the Administrator attached as Schedule "B" should be exactly the same as the prescribed Form 48. Paragraph 1 is missing "and that we filed a copy of it with the official receiver on the ____ day of _____, _____." Adding appendices is acceptable but the main report should be as prescribed. We also recommend that the use of Appendix "A" be a "may" as opposed to a "should".

3.11 We recommend that members not be required to send interim Administrator's Statement of Receipts and Disbursements to creditors as these are not required under the BIA and we understand that creditor rarely ask for such statements. We believe that a dividend sheet is sufficient and "should" be sent to creditors. We should not be creating additional paperwork when there is no demand for it. At best this should be a "May" instead of a "Should" and/or the standard could say that Members "shall" provide interim Administrator's Statement of Receipts and Disbursements when requested by a creditor or a debtor.

3.12 We recommend that this section be removed. If this section is maintained then we recommend that it be changed to "the Member may remind the Consumer Debtor as to the effect of a deemed annulment of the CP and, additionally, may discuss with the Consumer Debtor the following: (a) A plan to bring the payments up to date; (b) Whether a Material Adverse Change has occurred; (c) The feasibility of filing an amended Consumer Proposal, and; (d) Other available alternatives. The logic for this recommendation is that missed payments in Proposals occur very frequently and we don't believe there should be automatic notification for every missed payment. In addition Debtors are advised of all their duties and provisions with respect to Consumer Proposal at the beginning of the proceedings.

4.01 We recommend that this be changed to a "May" as the BIA didn't intend for a voting letter to be sent to creditors and it doesn't require one either as no meeting is taking place. In addition, sending the BIA standard voting letter lead to confusion as some of the creditors are under the impression that voting "No" is the same as requesting a meeting. We understand that the new BIA provisions work fine now that creditors are used to them.

4.02 We recommend that this be changed to a "May" as there is already a prescribed form in the BIA. We understand that the new BIA provisions work fine now that creditors are used to them.

5.00 to 5.04 We recommend that this whole section be removed. Before carefully reviewing BIA 66.251 we were under the understanding that that this section applied to Consumer Proposals where Trustees were not getting payments on a periodic (monthly) basis which is what the title of this section of the BIA implies. That being said, upon reading the body of the section this is not what it says and it goes on to state that Administrators have to notify the OSB and the creditors of a material change and this applies to every Consumer Proposal where Administrators don't distribute every three months. This essentially covers the vast majority of Consumer Proposals as we understand that Consumer Proposals that provide for distributions every 3 months are rare. This additional notification serves no useful purpose that we can determine. At best it tells everyone that a deemed annulment is coming in the next 1 to 3 months which is of no value to any of the stakeholders. The facet of this section that doesn't seem logical is why a Consumer Proposal that distributes dividends every three months is exempt from this? The only reason we can think of is that this section was intended for proposals that don't provide for periodic payments (as the title of the section implies). We don't believe that we should encourage a literal interpretation of a BIA section which arguably appears to be wrong or poorly drafted. Hence, we believe this whole section should be removed and to let the BIA speak for itself on this matter.

COMMENTS ON PREPARATION AND VERIFICATION OF STATEMENT OF AFFAIRS

Our general comments are as follows:

(1) Based on the definition of Member this Standard, it could be interpreted that the Member is personally required to do all of these actions. Accordingly, we wish to confirm that the Member can still delegate some of these tasks to qualified staff members.

Our specific comments are as follows:

1.03 We recommend that Schedule "A" be removed as it has no relevance to the preparation and verification of the Statement of Affairs ("SOA").

2.02 The definition of Date of Initial Bankruptcy Event is different than the definition in the BIA. We recommend that the BIA definition be used.

4.02 We recommend that this section be reworded such that it doesn't read like the Member is the one disclosing matters on the SOA. For example, under (a) it should read "The Member shall ensure that the Debtor discloses on the SOA..."

4.03 (a) We don't understand the nature of the detailed listing of assets that is being referred to. Debtors generally don't keep a listing of assets and if this implies that an "application form" or similar paper document is required then we recommend that this section be removed. It is acceptable for members to directly enter all information given to them by Debtors in Ascend, Uberbase or other software package and the SOA is ultimately the detailed listing of assets.

4.03(b) We find this section vague and we are unsure what it is alluding to. Our understanding is that the OSB doesn't want contingent tax refunds listed on the SOA if that is what is being alluded to. We recommend that this section be clarified and/or expanded (e.g. accident claims, matrimonial entitlements)

4.03(d) We recommend that this section be removed or clarified. We find this section too broad and vague. If a member is provided with sufficient credible information to assess value then that member shouldn't be obligated to consult all available public information. For example, the matter in which the section reads suggests that if you are provided with an appraisal on a property you should arguably do a title search, look at MLS listings, Grapevine listings and other "public" information. As a result,

this may leave members open to attack where someone comes back, in hindsight, and claims that the member should have looked at X.

4.04 (b) We recommend that Schedule "B" be a suggested or "**May**" form. There is already a form in Ascend used by the majority of Members which is similar but slightly different. Suggested wording for this section is "A fully executed form of statement of consent to the use of personal information. The Member may use the form attached as Schedule "B".

4.04 (c) Refer to comments for 4.03(a). This is the SOA and there is no need for an additional list.

4.04(d) We recommend that Schedule "C" should be a suggested or "**May**" form. There is already a form in Ascend used by a majority of Members which is similar but slightly different.

4.04 (e) The word "Descriptive" should be changed to "description"

4.05 We recommend that this section be removed. If this section is maintained, then we recommend that the "**Shall**" be changed to a "**May**" as there is no requirement in the BIA to do this. Summary bankruptcies and Consumer Proposals are supposed to be summary in nature and this could potentially create a large amount of unnecessary work as creditors are generally not interested and/or responsive to such matters. We understand that members do occasionally consult with creditors in this fashion and we further understand that it is often difficult to get creditors to participate. We believe that this should be left to the member's discretion. Furthermore if this section is kept, we recommend that the wording be changed to say "...of the Member learning of the occurrence of any Material..."

4.06 Refer to comments for 4.05. We recommend that this section be removed.

4.07 We recommend that this section be removed as it has no relevance to the preparation and verification of the SOA. This is an Assessment matter.

4.08 We recommend that this section be removed as it has no relevance to the preparation and verification of the SOA. This is a realization of asset matter.

4.09 Refer to comments for 4.08. We recommend that this section be removed.

4.10 Refer to comments for 4.08. We recommend that this section be removed. In addition, Debtors have no duty or obligation to purchase assets therefore we see no reason why Members need to justify why a debtor didn't sign an agreement.

5.02 We recommend that this section be changed to "**May**" instead of "**shall**". Most of the information listed is nice to have but it is unnecessary for the vast majority of files. In addition, Debtors often do not keep all this information and some information can be difficult to obtain (e.g. student loan documents). We believe that a sworn SOA is still a strong piece of evidence and that the Proof of Claim process is the proper forum to ultimately vet claims.

5.02 (b) We recommend changing the wording to this section to reflect that it is the Debtor listing the secured creditors and we recommend taking out the word "link" (this is software lingo) and instead say that the Debtor must disclose to which asset each secured liability relates.

5.03 We recommend that this section be removed as it has no relevance to the preparation and verification of the SOA.

5.04 We recommend that this section be changed from "**should**" to "**may**". We do not believe that is necessary to do security and title searches on every asset when the information may be provided to members by other means (e.g. a creditor proving his security and providing copies of the registered security) or in the instance of an exempt asset where registration is irrelevant.

5.05 We recommend that “including to any legal counsel (where prior notice has been provided to the Trustee)” be removed as it is redundant. For example if legal counsel represents a creditor then it is appropriate to send the SOA to the legal counsel only.

5.06 Although we agree with this section we recommend that it be removed as it has no relevance to the preparation and verification of the SOA. Alternatively, this section could be changed to say that members should ensure that Debtors list known collection agencies on the SOA, in addition to the creditors that they represent, and that it is appropriate to indicate a nominal claim value of \$1 and disclose the collection agencies as contingent creditors.

6.01 We recommend that this section be rewritten as follows:

The Member shall confirm the identity of the Debtor by obtaining:

A copy of at least one valid government issued identification and maintain a copy in the estate file, and;

All legal names and aliases of the Debtor and disclosing same on the SOA.

6.03 We recommend that this section be removed as it repeats what is already in section 4.04(b).

7.01 We believe that this section will require further review beyond the comments period provided for this standard in light of the new Form 79 recently issued by the OSB. We further wish to emphasize that the Debtor’s duties under the BIA is to make disclosure of all property disposed of within the last year [158(f)] and to disclose property disposed of by gift or settlement without adequate valuable consideration within the last five years [158(g)]. The duty under 158(g) does not apply to all property disposals in the last five years however the new Form 79 fails to make that distinction and it is possible that further amendments to Form 79 may happen. If that is the case our recommendation below could change.

7.01 (a) Considering the new Form 79 and section 2.1 of the BIA, which deems a change in the beneficiary in an insurance contract to be a disposition of property, we recommend that this section be reworded as follows:

Make disclosure of all property disposed of and changes in the beneficiary in an insurance contract within the period beginning on the day that is five years before the date of the initial bankruptcy event and how and to whom and for what consideration any part thereof was disposed of.

7.02 We recommend that this section be removed as it has no relevance to the preparation and verification of the SOA. The matters covered by this section are often dealt with after the preparation of the SOA as they often require further investigation and directions from creditors. Perhaps this matter could be included in some another standard.