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Information Sessions on Counselling

Fall 1993

Office of the Superintendent of Bankruptcy



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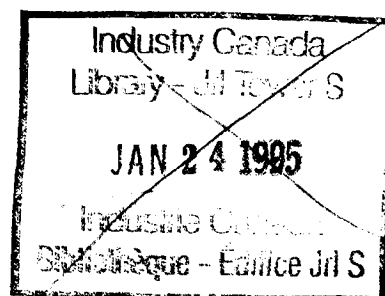
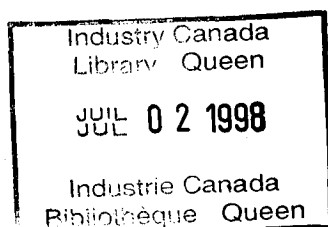
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"Appreciation is extended to Fred Waddell, Ph. D., for the use of materials from his manual, Solution-focused Financial Counselling, available from Genesis Press, 1031 Sanders Street, Auburn, Alabama, USA 36830 (\$40 + 5% shipping)."

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INTRODUCTION

Counselling in Bankruptcy and Insolvency

In Canada, bankruptcy is slowly becoming a socially accepted solution to indebtedness. Many indebted consumers are aware that bankruptcy is a way to resolve their problems, and are consequently becoming less and less shy to resort to bankruptcy as a solution. The *Bankruptcy and Insolvency Act* has been elaborated to provide for mandatory counselling for debtors who face financial difficulties, to assist them in the development and creative use of all their resources to achieve economic security or well-being by generating alternatives.

Pursuant to section 157.1 and 66.13(2)(b) of the *Bankruptcy and Insolvency Act* (BIA), the trustee shall provide for the counselling of a debtor who is considering becoming bankrupt or who wishes to make a consumer proposal. The counselling is divided in three sessions, two of which are mandatory. The purpose of the first counselling session is to assess the debtor's situation and present possible alternatives to bankruptcy. The debtor will then be able to choose the best alternative offered to him or her in light of his or her financial situation. The first counselling session should guide the debtor in choosing the most suitable way to help him or her get back on his or her feet. The purpose of the second and third session is to help rehabilitate the debtor by understanding the contributing causes of his or her insolvency, and assist the debtor in acquiring management and budgeting skills to avoid reoccurrence.

Sections 157.1 and 66.13(2)(b) of the BIA read as follows:

"157.1 (1) The trustee

(a) shall provide, or provide for, counselling for an individual bankrupt, and

(b) may provide, or provide for, counselling for a person related to an individual bankrupt, in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b), and the estate of the bankrupt shall pay the costs of the counselling, as costs of administration of the estate, according to the prescribed tariff.

66.13 (2) An administrator who agrees to assist a consumer debtor shall

(b) provide, or provide for, counselling for the consumer debtor in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b)"

This manual is divided in three parts which correspond to the three counselling sessions, and then subdivided in subsections according to the different subjects elaborated in each counselling session.

SECTION I: THE FIRST COUNSELLING SESSION

INQUIRY INTO THE DEBTOR'S PROPERTY AND FINANCIAL AFFAIRS

Preamble

The first counselling session is designed to assess the debtor's situation and understand how severe his or her problem is. In the bankruptcy and insolvency process, the purpose of the first counselling session is to canvass all other options and to try to avoid bankruptcy if possible. Bankruptcy should be considered the last possible solution, to be resorted to only when all other options have been rejected. At the end of the session, the debtor should understand the various options and their consequences and be in a position to take an enlightened decision as to the proper course of action to be taken. The essence of the first counselling session is based on the premise that if a bankruptcy is avoided, and alternative means of solving the financial difficulties are chosen, then the first counselling session has been a success.

CHAPTER I: PERSONAL INFORMATION AND PERSONAL STATEMENT OF AFFAIRS

There are a variety of possible solutions to a debtor's financial problems. The starting point is a private, in-office counselling session with a trustee. The first counselling session will provide the debtor with an opportunity to gain an understanding of the bankruptcy process and other restructuring and credit work-out alternatives available to him or her.

The first counselling session is an assessment of the debtor's financial situation and a discussion of possible remedies. During this session, the counsellor will begin by analyzing the debtor's financial situation. He or she will obtain information on the debtor's financial affairs, review the debtor's immediate concerns on his or her financial problems, and identify and discuss the merits of possible solutions available to resolve the financial difficulties.

Before proceeding, it should be noted that when the counsellor is providing the debtor with information and discussing possible alternatives, he or she should use layman's language that the debtor can understand. When referring to credit and insolvency matters, the counsellor should always make sure that the debtor fully understands the meaning of the words. At the end of this document, a glossary of insolvency terms is provided for the counsellor so he or she may define the meaning of these terms to the debtor when necessary.

It will be helpful for the counsellor to have a guideline to follow so he or she can fully identify all the sources of income, all the payments made and to be made in the near future.

The following pages will help the counsellor to identify not only the income and debts of the debtor but also his or her monthly budget of spending and his or her way of living. The following pages include a personal information sheet and charts to help identify income, debt

payments, insurance and other seasonal expenses, monthly spending expenses, variable expenses, emergencies and future goals, and a summary of all the above combined. Finally, the last page is a guideline to identify all of the debtor's assets.

The counsellor should request that the debtors bring with them to the first counselling session, personal and legal documents, including contracts, all debts and asset information, such as:

- the mortgage on his or her house or property,
- all insurance policies concerning real and personal property,
- any legal action taken against him or her,
- all conveyance pertaining to the debtor's property,
- his or her income tax returns, pay cheque stubs, or other documents
- pertaining to other sources of income,
- current bills, sales contracts, etc; and
- a complete list of creditors with most recent statements.

A: PERSONAL INFORMATION

COUNSELLOR: _____

DEBTOR

NAME: _____ DATE: _____

ADDRESS: _____

TELEPHONE: home: _____ work: _____

AGE: _____ S.I.N.: _____

DATE OF BIRTH: _____

MARITAL STATUS: _____

EMPLOYMENT STATUS

EMPLOYER: _____

OCCUPATION: _____

SPOUSE

FULL NAME: _____

ADDRESS IF DIFFERENT: _____

TELEPHONE: home: _____ work: _____

SPOUSE'S EMPLOYMENT STATUS

EMPLOYER: _____

OCCUPATION: _____

NUMBER OF DEPENDENTS

NAME	RELATIONSHIP	DATE OF BIRTH
------	--------------	---------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REFERRED BY: _____

GENERAL PROBLEM: _____

B : IDENTIFYING INCOME

1. EMPLOYERS			
Job # 1		Job # 2	
A. Gross \$	Per	A. Gross \$	Per
B. Deductions/ Withholdings	\$	B. Deductions/ Withholdings	\$
1. Federal Income Tax	\$	1. Federal Income Tax	\$
2. Provincial Income Tax	\$	2. Provincial Income Tax	\$
3. Pension Plan Contribution	\$	3. Pension Plan Contribution	\$
4. Health Insurance	\$	4. Health Insurance	\$
5. Life Insurance	\$	5. Life Insurance	\$
6. Credit Union	\$	6. Credit Union	\$
7. Union Dues	\$	7. Union Dues	\$
8. Other	\$	8. Other	\$
C. Net (take home pay) Subtract B from A	\$	C. Net (take home pay) Subtract B from A	\$
II. PENSION INCOME		II. PENSION INCOME	
A. Gross	\$	A. Gross	\$
B. Deductions/ Withholdings	\$	B. Deductions/ Withholdings	\$
1. Federal Income Tax	\$	1. Federal Income Tax	\$
2. Provincial Income Tax	\$	2. Provincial Income Tax	\$
3. Insurance	\$	3. Insurance	\$
4. Survivor Benefit Plan	\$	4. Survivor Benefit Plan	\$
5. Other	\$	5. Other	\$
C. Net (Subtract B from A)	\$	C. Net (Subtract B from A)	\$
AVERAGE GROSS PER MONTH	\$	AVERAGE GROSS PER MONTH	\$

C: DEBT PAYMENTS
(all debt balances and payments except mortgage)

CREDITORS OR COLLECTION AGENCY	PURPOSE OF DEBT	MONTHS PAST DUE	REMAINING BALANCE	MONTHLY PAYMENT	PLAN TO PAY Y OFF BY (MO. & YR)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
TOTALS			\$	\$	

D: INSURANCE AND OTHER SEASONAL EXPENSES

INSURANCE OR SEASONAL EXPENSES	DATE NEEDED	PRIOR AMOUNT NEEDED BY:		NEW AMOUNT NEEDED BY:		DIFFERENCE PER:	
		DUE DATE	AMOUNT	DUE DATE	AMOUNT	DUE DATE	AMOUNT
1. Life Insurance							
2. Disability (Loss of Income Insurance)							
3. Auto Insurance							
4. Homeowner's Insurance (Do not include if paid with mortgage-Schedule C)							
5. General Insurance Theft, Personal Liability, Other							
6. Recreational Vehicles							
7. Driver's Licence and Registration							
8. Taxes, Municipal and School							
9. Other (Specify)							
10. Other (Specify)							
11. Other (Specify)							
12. Other (Specify)							
TOTALS			\$		\$		\$

E: MONTHLY SPENDING EXPENSES

	SUBTOTAL BEFORE	BEFORE	ADJUSTED	SUBTOTAL ADJUSTED	+ OR - \$ DIFFERENCE BETWEEN BEFORE & AFTER
1. SUPPORT PAYMENTS (FIXED)	\$ _____	<div style="text-align: right;">_____ Alimony</div> <div style="text-align: right;">_____ Child support</div>	<div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div>	\$ _____	\$ _____
2. SHELTER (FIXED)	\$ _____	<div style="text-align: right;">_____ Rent or mortgage payment</div> <div style="text-align: right;">_____ Property tax</div> <div style="text-align: right;">_____ Homeowner's or tenant ins.</div> <div style="text-align: right;">_____ Lot rent</div> <div style="text-align: right;">_____ Condominium maintenance</div> <div style="text-align: right;">_____ Other</div>	<div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div>	\$ _____	\$ _____
3. SHELTER OPERATION (VARIABLE)	\$ _____	<div style="text-align: right;">_____ Cable TV</div> <div style="text-align: right;">_____ Gas</div> <div style="text-align: right;">_____ Electricity</div> <div style="text-align: right;">_____ Telephone</div> <div style="text-align: right;">_____ Furnace/AC (maintenance)</div> <div style="text-align: right;">_____ Home and appliance repair</div> <div style="text-align: right;">_____ Other</div>	<div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div>	_____	\$ _____
4. CLOTHING (VARIABLE)	\$ _____	<div style="text-align: right;">_____ Purchase for self</div> <div style="text-align: right;">_____ Purchase for spouse</div> <div style="text-align: right;">_____ Purchase for children</div> <div style="text-align: right;">_____ Laundry and dry cleaning</div> <div style="text-align: right;">_____ Alterations/shoe repair</div>	<div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div>	\$ _____	\$ _____
5. CHILD CARE AND EDUCATION (VARIABLE)	\$ _____	<div style="text-align: right;">_____ Day care nursery</div> <div style="text-align: right;">_____ Baby sitting</div> <div style="text-align: right;">_____ Tuition and fees</div> <div style="text-align: right;">_____ Lessons</div> <div style="text-align: right;">_____ School activities</div> <div style="text-align: right;">_____ Other</div>	<div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div> <div style="text-align: right;">_____</div>	\$ _____	\$ _____

	SUBTOTAL BEFORE	BEFORE	ADJUSTED	SUBTOTAL ADJUSTED	+ OR - \$ DIFFERENCE BETWEEN BEFORE & ADJUSTED
6. FOOD (VARIABLE)	\$ _____	_____ Groceries _____ _____ Coffee breaks/ vending mach. _____ _____ Snacks _____ _____ Restaurant _____ _____ Other _____		\$ _____	\$ _____
7. TRANSPORTATION (VARIABLE)	\$ _____	_____ Car Insurance _____ _____ Licence and registration _____ _____ Gas and oil _____ _____ Tune-ups, lube job _____ _____ Tires _____ _____ Major repairs _____ _____ Parking fee/ticket _____ _____ Bus fare _____ _____ Cab fare _____ _____ Car rental _____ _____ Other _____		\$ _____	\$ _____
8. HEALTH (VARIABLE)	\$ _____	_____ Chiropractor _____ _____ Dental _____ _____ Eye exam _____ _____ Glasses/contacts _____ _____ Prescription drugs _____ _____ Non-prescription drugs _____ _____ Dietary supplements _____ _____ Therapy _____ _____ Other _____		\$ _____	\$ _____
9. PERSONAL (VARIABLE)	\$ _____	_____ Barber/hairdresser _____ _____ Cosmetics/hair products _____ _____ Cigarettes _____ _____ Organizations/clubs _____ _____ Professional dues _____ _____ Allowances _____ _____ Pets (veterinarian) _____ _____ Other (specify) _____		\$ _____	\$ _____

	SUBTOTAL BEFORE	BEFORE	ADJUSTED	SUBTOTAL ADJUSTED	+ OR - \$ DIFFERENC E BETWEEN BEFORE & AFTER
10. RECREATION/ ENTERTAINMENT (VARIABLE)		_____ Vacation _____ _____ Hobbies and materials _____ _____ Personal development and _____ _____ Physical improvement _____ _____ Alcohol _____ _____ Entertainment/recreation _____ (specify type of) a. _____ b. _____ c. _____ d. _____ e. _____ f. _____			
	\$ _____			\$ _____	\$ _____
11. MISCELLANEOUS (VARIABLE)		_____ Newspapers _____ _____ Magazine subscriptions _____ _____ Magazine/newsstand _____ _____ Audio/visual material _____ _____ Books _____ _____ Other _____			
	\$ _____			\$ _____	\$ _____
12. DONATIONS (VARIABLE)		_____ Church _____ _____ Charities _____ _____ Political contributions _____ _____ Other (specify) _____			
	\$ _____			\$ _____	\$ _____
13. BIRTHDAYS AND SPECIAL EVENTS		_____ Husband/wife/children _____ _____ Religious holidays _____ _____ Other _____			
SUMMARY OF (CATEGORIES 1-12)	\$ _____			\$ _____	\$ _____

F: VARIABLE EXPENSES

These variable expenses should be carefully planned if the debtor is in financial difficulty.

OCCASION	PROBABLE COST	DATE NEEDED	CHECK IF ALREADY PURCHASED	AMOUNT TO SET ASIDE THIS YEAR	AMOUNT TO SET ASIDE PER MONTH
1. Weddings					
2. Baby Gifts					
3. Easter/Passover					
4. Christmas/Hanukkah/ other religious holidays					
5. Birthdays					
Others:					
TOTAL					

G: SPENDING PLAN SUMMARY

Initially this process of estimating and planning spending, saving, and investing may be time-consuming, but it is the very heart of a spending plan and the key to gaining financial control and making financial progress.

SUMMARY OF SCHEDULES	TOTAL ADJUSTED THIS YEAR	TOTAL ADJUSTED THIS MONTH	PROJECTED DIFFERENCE \$ + OR -
<u>I. FIXED EXPENSES</u>			
1. SHELTER			
2. SUPPORT PAYMENT (CHILD/SPOUSE)			
3. DEBT PAYMENT (B)			
4. SEASONAL EXPENSE (C)			
SUBTOTAL: FIXED EXPENSES			
<u>II. VARIABLE EXPENSES</u>			
5. SHELTER: OPERATION			
6. CLOTHING			
7. CHILD CARE			
8. FOOD			
9. TRANSPORTATION			
10. HEALTH			
11. DONATION			
12. PERSONAL			
13. RECREATION/ ENTERTAINMENT			
14. MISCELLANEOUS			
15. GIFTS, CARDS, FLOWERS (E)			
SUBTOTAL: VARIABLE EXPENSES	\$	\$	\$
TOTAL: FIXED AND VARIABLE EXPENSES	\$	\$	\$

H: IDENTIFYING ASSETS

1. DO YOU OWN PROPERTY? (house, land, cottage, rental/business properties)

YES _____

NO _____

	Property A	Property B
date of purchase	_____	_____
price of purchase	_____	_____
market value	_____	_____
conveyances	_____	_____
insurance policies	_____	_____

2. DID YOU FILE INCOME TAX RETURNS FOR ANY OF THE PREVIOUS FIVE YEARS?

19__

19__

19__

19__

19__

3. DO YOU OWN VEHICLES?

YES _____

NO _____

If yes, what kind of vehicles?

Make	Year	Serial number	License No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. DO YOU HAVE LIFE INSURANCE POLICIES?

YES _____

NO _____

If yes, with what companies?

5. WITH WHAT BANKS HAVE YOU HAD ACCOUNTS IN THE LAST 5 YEARS?

6. HAVE YOU CARRIED ON A BUSINESS IN THE LAST 5 YEARS?

YES _____ NO _____

If so, what were the names of your businesses?

7. DO YOU OWN ANY OF THESE ASSETS?

	original cost	present value
Cash on hand or in bank	<hr/>	<hr/>
Accounts receivable	<hr/>	<hr/>
Stock in trade	<hr/>	<hr/>
Equipment	<hr/>	<hr/>
Furniture	<hr/>	<hr/>
Vehicles	<hr/>	<hr/>
Stocks, Bonds, R.R.S.Ps	<hr/>	<hr/>
Insurance policies	<hr/>	<hr/>
Company pension plan	<hr/>	<hr/>
Equities (Co-ops, etc.)	<hr/>	<hr/>
Household furnishings	<hr/>	<hr/>
Personal effects	<hr/>	<hr/>
Musical instruments	<hr/>	<hr/>
Paintings, Art, Antiques	<hr/>	<hr/>
China and/or Silver	<hr/>	<hr/>
Jewellery	<hr/>	<hr/>
Furs	<hr/>	<hr/>
T.V, Stereos, VCRs	<hr/>	<hr/>
Cameras, Video equipment	<hr/>	<hr/>
Computer	<hr/>	<hr/>

Coin and/or Stamp collection	_____	_____
Encyclopedia	_____	_____
Shuffleboard, Pool table	_____	_____
Bicycles/golf or ski equipment	_____	_____
Tools	_____	_____
Guns (shotguns, rifles)	_____	_____
Tax refund still to receive	_____	_____
Others	_____	_____
Others	_____	_____

8. HAVE YOU EVER FILED A PROPOSAL?

YES _____ NO _____

If so, when?

9. HAVE YOU EVER BEEN BANKRUPT?

YES _____ NO _____

If so, when?

10. HAVE YOU APPLIED FOR ASSISTANCE THROUGH CREDIT COUNSELLING, ORDERLY PAYMENT OF DEBT, COURT CONSOLIDATION, VOLUNTARY DEPOSIT?

YES _____ NO _____

If so, which and when?

11. HAVE YOU RECEIVED OR DO YOU EXPECT TO RECEIVE AN INHERITANCE?

YES _____ NO _____ APPROXIMATE AMOUNT _____

Provide details

12. ARE THERE ANY WRITS, JUDGEMENTS, GARNISHMENTS, WAGE ASSIGNMENTS OUTSTANDING AGAINST YOU?

YES _____ NO _____ FOR HOW MUCH _____

Provide details

13. WITHIN THE LAST 12 MONTHS HAVE YOU?

- a) Disposed of or transferred any of your assets?

YES _____ NO _____

Provide details

- b) Made payments in excess of regular payments to a creditor?

YES _____ NO _____

Provide details

- c) Had any assets seized by any creditor?

YES _____ NO _____

Provide details

14. WITHIN THE LAST FIVE YEARS HAVE YOU?

a) Sold, disposed of or transferred any real estate?

YES _____ NO _____

Provide details

b) Made any gifts to relatives or others in excess of \$500.00?

YES _____ NO _____

Provide details

15. HAVE YOU MADE ARRANGEMENTS TO CONTINUE TO PAY ANY CREDITORS?

YES _____ NO _____

Provide details

16. HAS ANYONE GUARANTEED A DEBT FOR YOU?

YES _____ NO _____

Provide details

17. DO YOU HAVE A SAFETY DEPOSIT BOX?

YES _____ NO _____

Provide details

18. DOES YOUR SPOUSE OWN ANY ASSETS?

YES _____ NO _____

Provide details

19. DO YOU HAVE ANY CREDIT CARDS?

YES _____ NO _____

Provide details

CHAPTER II: DEBTORS' VIEWS RESPECTING THEIR PROBLEMS

People often find it more difficult to express themselves about money matters than about any other facet of their lives. This fact may mean that debtors will be uncomfortable with the counselling session and may resist attempts to assist them. Debtors often link their identity or personal self-image to money and how they are handling it. To admit that they have somehow "failed", is often generalized about their overall capability and responsibility as an adult. This means that if you say or imply that they have indeed "failed," you will have confirmed their own worse fears. This makes it far more difficult for you to help them take any action on their own behalf.

Since debtors also blame themselves greatly for the problems that they have put themselves in, it is important that the counsellor help the debtors understand that blaming themselves or feeling shame for their problems is not at all helpful, and will only make it more difficult to resolve their problems.

A: CHANGING THE DEBTOR'S BELIEFS

Counsellors sometimes confuse debtors' values with their beliefs. Not wanting to interfere with debtors' values, they may avoid helping debtors overcome self-limiting beliefs. Such a misunderstanding of values and beliefs severely limits a counsellor's ability to help debtors. While you need to respect and not interfere with your debtors' values, be aware that their beliefs about themselves and money may often be self-limiting and may cause, or at least contribute, to their financial problems.

Beliefs tend to be key motivators. They determine how people respond to daily occurrences and circumstances. Beliefs change much more easily and rapidly than values. They change frequently as we mature, have new experiences, and gain new education and information. This means that, as a financial counsellor, you need to help your debtors realize that it is not important whether or not a particular belief about money or circumstances is "right," or "wrong," or "true" or "false." Instead, is the particular belief useful or not? Is the belief helping or is it causing problems? If a certain belief is not useful, but leads to problems, then it no longer serves any useful purpose and should be replaced with a belief that is more useful. Helping your debtors understand this key point is important in helping them change habits that are based on problem-causing beliefs.

For the debtors, the counsellor's task of restructuring the debtors' beliefs is a very demanding endeavour. Admitting a need to change can appear to be the same as admitting that one is not good enough the way one is, or that one has somehow "failed." Change can threaten a person's self-esteem so he or she defends his or her behaviour to protect him or herself from feelings of worthlessness or inadequacy. This common attitude can be an obstacle in your efforts to help debtors gain better financial control of their lives by changing what they are doing.

Avoid criticising the practices of the debtor. Try to understand what happens to cause the debtor to mismanage money resources. Ask debtors to explain their thinking when making purchases. What would the debtor consider to be a good financial position and would it be acceptable? What does the debtor expect? What are the debtors' expectations about indebtedness? You may hear debtors referring to "needing" certain things or that they "must have" such and such. If you listen very carefully you should find that the language of debtors reveals the motivation behind their spending habits. First, try to understand how the debtors justify their own actions.

In counselling it is important not to solve the debtors' problems. Solving their problems often ends in failure. Rather, attempt to lead the debtors to self-understanding of how their own behaviour has resulted in their current financial difficulties. Once they agree, it is a relatively simple matter to help them to develop a constructive approach to handling their own finances.

As a counsellor, use a language that empowers your debtors rather than reinforces their worst fears and self-limiting beliefs. For example, you can "reframe" the word "change," and simply refer to it as "simply doing things differently" or "doing something else instead," and not use the word "change" at all.

B: CLARIFYING VALUES AND IDENTIFYING GOALS

The following questionnaire is to be filled out by the debtor. It is designed to help the counsellor identify where change is needed. It will help the counsellor see what values and beliefs the debtor really has and is prepared to modify at this point and time. It will clarify values and identify goals.

1. How do you perceive your financial situation: a mild and temporary problem, a temporary but serious problem, a permanent and serious problem, etc...?

2. What information about buying goods and services, or managing money would you like to learn?

3. What do you primarily want to do or have?

4. How do those goals conflict with the interests of other family members?
-
-
5. How do you define your problem?
-
-
6. What are your prospects for changes in living expenses, income or crisis?
-
-
7. What have you considered doing about your financial problem?
-
-
8. Are you working with any other adviser or lawyer?
-
-
9. Who do you think can help you?
-
-
10. What do you think would have happened if you had not come here?
-
-
11. What steps have you thought about taking?
-
-
12. How did you find out about this counselling service?
-
-
13. What are your expectations concerning the outcome of this session?
-
-

CHAPTER III: THE EXTENT AND NATURE OF THE DEBTOR'S PROBLEMS

One of the initial tasks of a financial counsellor is to accurately determine the financial condition of the debtor. In some instances his or her financial problems are not as bad as he or she had thought. However, in most instances, the problems will be as bad or as worse than the debtor had thought, and the counsellor needs to know details to help the debtor take appropriate action. The two following questionnaires will provide a number of measures to help determine the type and severity of the debtor's financial problems. The first one will indicate the profile of the financial health of the debtor and the second one, the severity level of the financial problems.

A: PROFILE OF YOUR FINANCIAL HEALTH

Please write an X beside the statements that describe you.

1. _____ A member of my household has had a change in income. (job loss, lower paying job, etc.)
2. _____ A member of my household has lost the ability to fulfil home responsibilities.
3. _____ I am presently supporting people other than my children.
4. _____ A new child is born.
5. _____ My spouse has recently passed away.
6. _____ A creditor is currently taking legal action against me.
7. _____ I have received a threat of legal action from one or more of my creditors.
8. _____ Part of my wages or salary is deducted to pay a wage assignment or support.
9. _____ I am receiving past-due notices on my charges or bills.
10. _____ I have to take out new loans to pay off old ones.
11. _____ In order to pay my rent, utility or grocery bills, I have to skip instalment payments or take out loans.
12. _____ I am behind on my rent.
13. _____ I am behind on my utility payments.

- 14._____ I have seriously considered filing for bankruptcy.
- 15._____ I am behind on more of my credit instalment payments.
- 16._____ I have been turned down for a loan or other credit.
- 17._____ I have now charged up to the limit on one or more credit cards.
- 18._____ I am paying only the minimum amount due each month on one or more credit cards.
- 19._____ I frequently rely on the automatic-loan overdraft protection of my chequing account.
- 20._____ Items and services that I used to buy with cash I now buy on credit.
- 21._____ To pay current bills, I have sold non-matured bonds or stocks.
- 22._____ I do not know how much I owe on all my outstanding debts combined.
- 23._____ I do not know how much my total monthly payments are on all my debts combined.
- 24._____ Members of my household and I frequently argue about money.
- 25._____ I frequently worry about money and money problems.
- 26._____ My monthly mortgage (or rent) plus utilities is more than 40% of my take home pay.
- 27._____ To pay current bills, I have withdrawn money from savings.
- 28._____ I have less than one month's net income in savings or other liquid assets.

B: SEVERITY LEVEL OF FINANCIAL PROBLEMS

Please write an X if you feel you are experiencing this situation.

(Moderate) I am having trouble paying...

1. _____ seasonal (infrequent) bills such as insurance, taxes, membership dues, etc.
2. _____ routine gifts for Christmas, birthdays, anniversaries, etc.
3. _____ repairs of car, appliances, home, etc.
4. _____ lack of money for unexpected events, special needs
5. _____ little or no savings
6. _____ use of savings for routine living expenses
7. _____ some worry, anxiety, family arguments about money
8. _____ increasing balances on credit cards, charge accounts

(Severe) I am experiencing...

9. _____ spending 4% or more of take home pay on alcohol, drugs or gambling
10. _____ can't afford basic essentials, i.e. food, clothes
11. _____ postponement of medical and dental for self or family
12. _____ some reduction in family income-money often runs out before pay day
13. _____ frequent worry, family arguments regarding money
14. _____ interference in job, family duties or with relationships
15. _____ full balance on credit cards, charge accounts

(Very Severe) I am experiencing...

16. _____ spending 6% or more of take home pay on alcohol, drugs or gambling
17. _____ insolvency (unable to pay bills and other obligations when due)
18. _____ threatened loss of food, housing (eviction), foreclosure, utilities
19. _____ legal action threatened by creditors, collection agencies
20. _____ litigation fees from divorce, defendant in civil suit
21. _____ negative cash flow
22. _____ some reduction in family income

(Crisis) I am experiencing...

23. _____ spending 6% or more of take home pay on alcohol, drugs, or gambling
24. _____ physical survival endangered
25. _____ loss of food, housing, or utilities
26. _____ legal action by creditor in process, i.e. wage assignment, repossession, foreclosure, seizure of assets or property, etc.
27. _____ filing or decision to file bankruptcy
28. _____ loss or severe reduction in family income

CHAPTER IV: ALTERNATIVE MEASURES TO HELP THE DEBTOR'S FINANCIAL SITUATION

After debtors have identified problem situations governing their management of financial resources, their personal needs and wants, the counsellor should assist them to think of possible remedies. When debtors raise valid strategies for better financial management they should be given credit for their efforts. Strategies that are not particularly useful should be considered and the counsellor should reflect reservation regarding their use. Through a process such as this, debtors can develop new strategies for governing their financial resources.

1. Increase the income

- | | |
|-----------------------|--|
| Advantages: | Will maintain the same life style and provide for opportunities. |
| Disadvantages: | More money will not necessarily solve a mismanagement problem. |
- a) The spouse or another family member gets a job, or the debtor gets a second job. The debtor may also request overtime, a raise, or a job with more responsibility.**
- | | |
|-----------------------|---|
| Advantages: | Will develop responsibility and skills. It will keep family independent of welfare. |
| Disadvantages: | May interfere with studies, primary job or family life. |
- b) Exhaust all benefits which a person may be entitled to such as disability, unemployment pay, veteran's pay, etc.**
- | | |
|-----------------------|---|
| Advantages: | Valuable payment which may be temporary or permanent. |
| Disadvantages: | Must satisfy defined requirements. |
- c) Verify if the debtor can be, and is, entitled to income tax refunds, income security programs, tax credits, tax reduction programs.**
- | | |
|-----------------------|--|
| Advantages: | Valuable payment and will help short-term problem. |
| Disadvantages: | Temporary help. |
- d) Exploit talents, handcrafts, skills or services into an income.**
- | | |
|--------------------|--|
| Advantages: | Will be a profitable use of spare time and it may be done at home. |
|--------------------|--|

Disadvantages: Depends upon the time available and the profitability of the work and product.

2. Reduce living expenses: examine the fixed costs and current expenses in order to make a budget suitable to the debtor's needs.

Advantages: More money available for debts.
Requires making an elaborate evaluation of debts and income.

Disadvantages: Will modify the family's life-style.
May cause arguments among family members.

3. Convert some assets to cash. (e.g. by garage sale, flea market, newspaper ad)

Advantages: The debtor's life-style will be maintained.

Disadvantages: The assets will be sold at a lower market value.
There will be a loss in future appreciation and reduced collateral.

a) Convert bonds, stocks, mutual funds, RRSPs, life insurance, etc.

Advantages: The debtor is using assets which have accumulated for such time of needs.

Disadvantages: The assets are sold at lower market value.

b) Convert personal or real property such as a cottage, a rental property, etc.

Advantages: Money is available after the sale is negotiated.
Reduces operating costs, licenses, taxes, etc.

Disadvantages: Alternative transportation or housing might have to be found.
Items of sentimental value might be lost.
If secured collateral, permission to sell is required.

4. Make an informal arrangement with creditors:

a) The debtor is assertive and sets up a conservative plan himself.

All agreements are in writing and copies are kept. The debtor communicates with the creditors and sets up a paying plan where payments of the debts are adjusted. When debtors are dealing directly with creditors, it is important that they explain to the creditors why they cannot make payments and suggest making lower payments over a longer period of time. An example of the proposed plan could be that:

The rent or mortgage is paid every month.

Some bills may have to be paid in full, other bills receive only the minimal payment required, while others may have only interest paid.

It is important that enough money is paid on both principal and interest to prevent the bill from becoming larger because of interest accumulating on the unpaid balance.

Advantages: The creditors may be cooperative if they are kept informed.
Will prevent harassment, wage garnishment, repossession or damage to credit rating.

Less stigma than bankruptcy.

Disadvantages: A complicated debt program requires some advice from a counsellor.

Payments increased for a longer period of time will cost more in total interest.

Creditors may use unfair tactics or require someone else to vouch for the debtor.

An arrangement does not necessarily invoke a stay of proceedings and there will be no discharge of debt, like a bankruptcy.

An informal arrangement will also change the debtor's life-style.

b) Consult a public or private credit counsellor

The counsellor may assist in drafting a budget, or contact creditors to set up a debt payment plan. The debtor may find such a counsellor in a family service agency, a labour union, a cooperative extension service, a company personnel department, or a private agency, etc.

Advantages: Creditors may agree if a third party contacts them.
Arrangements do not have to go through the court.
The service, combined with the education, may be at low cost or free.

Disadvantages: No assurance of success if creditors do not accept the payment plan.
The debtor does not have the protection of the court.

5. Make an arrangement with creditors with help of a third party:

a) The debtor makes a debt consolidation loan

The debtor may also ask a bank or a financial institution about combining or "consolidating" the debts into one loan. In such a case, the bank or financial institution will pay off the debts, and in return, they will make monthly payments to that creditor.

b) The debtor applies for a consolidation order

If the debtor lives in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia or Prince Edward Island, he or she may apply for a Consolidation Order.

A Consolidation Order sets out the amount of and the times when, payments are due to the court. The court will distribute the debtor's payments to the creditors. This part of the BIA (Part X: Orderly Payments of Debts) lets the debtor pay off debts over three years.

c) Voluntary Deposit scheme

For residents of Quebec, the Voluntary Deposit scheme is similar to a Consolidation Order. The debtor must make a monthly payment based on the income and number of dependents, to the court. This service is usually available at the local court house.

Advantages:	Creditors may agree if the party distributing the income is the court or a bank. Will free the debtor from harassment and wage garnishment.
Disadvantages:	The debtor will be able to keep his or her assets. If the debtor does not follow the proposed payments, the arrangement will fall and the creditors will be able to take action against the debtor. An arrangement does not necessarily invoke a stay of proceedings. Will change the debtor's life-style.

6. Make a consumer proposal (pursuant to Division II of Part III of the *Bankruptcy and Insolvency Act* (BIA), section 66.11 to 66.40)

To be eligible for such a proposal, the debtor must:

be an insolvent natural person whose aggregate debts, excluding any debts secured by the person's principal residence, do not exceed \$75 000 or such other maximum as is prescribed; and

not have made a proposal under Division I of Part III of the Act.

The counsellor must then help the debtor to prepare the consumer proposal, and file a copy of the proposal, signed by the consumer debtor, with the Official Receiver. He or she must then follow the procedure dictated by section 66.11 to 66.40 of the BIA. If the creditors do not accept the debtor's proposal, the debtor will be in the same situation he or she was faced with before the proposal.

Advantages:

A consumer proposal invokes an automatic stay of proceedings (69.2) whereby no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable, unless they have the court's permission.

Will prevent garnishment.

This type of proposal does not require that a creditor meeting be called, unless requested by the creditors.

There is no automatic bankruptcy if the creditors turn down the debtor's proposal.

Disadvantages

Separate arrangements have to be made with secured creditors.

The creditors may not accept the consumer proposal and the debtor will be back at square one (although not automatically bankrupt, as is the case under Division I).

If the proposal is accepted, the debtor will have to conform to a strict budget and meet the said proposal.

Will involve a definite change in life-style.

The proposal may not succeed if the debtor does not have steady employment and surplus income.

7. Declare bankruptcy (section 49 of the BIA)

A bankruptcy is performed by an assignment, which is a legal document where an insolvent debtor assigns or transfers all of his or her assets to a trustee in bankruptcy for the general benefit of the creditors. The assignment is the starting point of a bankruptcy.

The main causes of bankruptcy include loss of income, increased expenditure due to high interest rates, divorce, taxes and over-extension of credit or over indulgence in drug abuse, alcohol or gambling.

The procedure to become a bankrupt includes:

The debtor makes an assignment of all his or her property for the general benefit of the creditors.

The assignment shall be offered to the Official Receiver in the locality of the debtor.

It shall be accompanied by a sworn statement in the prescribed form showing the property of the debtor divisible among the creditors, the names and addresses of all the creditors and the amount of their respective claims and the nature of each, whether secured, preferred or unsecured.

The Official Receiver shall then appoint a trustee who will, within five days, send to every creditor a notice of the first meeting of creditors.

The trustee will administer all of the debtor's seizable assets, liquidate them and divide the amount in proportionable shares to their claims.

The debtor will be automatically discharged in nine months of all his or her debts, excluding exceptions.

Advantages:

Invokes an automatic stay of proceedings (69.3) where no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceeding, for the recovery of a claim provable, unless they have the court's permission.

Will give a chance to the debtor to start anew.

The debtor will be automatically discharged of all debts after nine months, if the bankruptcy is a first bankruptcy (168.1), except for nondischarged debts (178).

Disadvantages:

There is a stigma of bankruptcy.

Will affect the debtor's credit so it may be difficult to obtain a mortgage or a loan.

Property held in joint possession can be sold by the trustee and the spouse's share distributed to him or her.

Some debts will not be discharged (178).

From the moment a trustee is appointed, he or she administers all the debtor's assets, therefore the debtor has no control over assets.

Debtors who have assets, and who could pay off debts in a few years could be subject to an opposition to their discharge.

CHAPTER V: RIGHTS, DUTIES AND RESPONSIBILITIES OF THE DEBTOR, THE BANKRUPT AND THE CREDITOR

After assessing all the debtor's financial and personal information and elaborating all the possible solutions, the counsellor must clearly explain to the debtor the implications of a bankruptcy or a consumer proposal to assist in implementing a solution to the debtor's financial problems. The rights and responsibilities of the bankrupt and his or her creditors must be fully understood to avoid any penalty attached with non-compliance.

1. THE DEBTOR'S DUTIES IN A CONSUMER PROPOSAL

Concerning a consumer proposal, the debtor shall comply with the proposed payments. If he or she fails to do so for three months, he or she will be subject to section 66.31 which declares the consumer proposal to be deemed to be annulled.

2. THE BANKRUPT'S DUTIES

Section 158

Some of the bankrupt's duties are defined in section 158 of the BIA. They include, among others, that the bankrupt shall:

- make discovery of and deliver all his or her property that is under his or her possession or control to the trustee or to any other person authorized by the trustee to take possession of it or any part thereof and make disclosure of all property disposed of within one year of the bankruptcy;
- deliver to the trustee all books, records, documents, writing and papers relating to his or her property or affairs;
- attend before the Official Receiver for examination under oath with respect to his or her conduct, the causes of the bankruptcy and the disposition of his or her property;
- prepare and submit to the trustee in quadruplicate an elaborate and accurate statement of his or her affairs in the prescribed form;
- give assistance to the trustee when he or she is making inventory of the assets; and
- attend the first meeting of creditors, and when required, the other meetings, etc.

Sections 95 to 100

The bankrupt should also be aware of the duty to disclose all property disposed of within one year preceding the bankruptcy or disposed of by gift or settlement within five years of it. This

property may be deemed part of the debtor's assets if the debtor satisfies one of the conditions elaborated in sections 95 to 100, and if so, the trustee could take possession of these assets even if belonging to a third party.

Section 178

Furthermore, when explaining the discharge provisions of the Act, the counsellor must mention that it does not release the bankrupt of every debt. Among others, it does not release the bankrupt from any fine, penalty imposed by the court in respect to an offence, any debt or liability for alimony or support of a spouse or children, any debts or liability arising from fraud or embezzlement or obtained by false pretences or fraudulent misrepresentation, and finally liability for the dividend that a creditor would have been entitled to receive had he or she been aware of the bankruptcy.

3. THE BANKRUPT'S RESPONSIBILITY TOWARD HIS OR HER DUTIES

The bankrupt's duties are outlined in section 158 of the BIA. Sections 198 to 200 outline the offenses and penalties under the BIA. The latter include the penalties for failing to do one of the things required by section 158, refusing or neglecting to answer fully and truthfully all proper questions put to him or her at any examination, or failing to keep proper books. They also set a fine for failing to disclose the fact of being undischarged.

The bankrupt has the responsibility to disclose all of his or her creditors pursuant to section 49. If a creditor is not disclosed, the debtor may be responsible for payment of the amount of dividend which the creditor would have received if the creditor had been notified, as noted before under section 178.

4. THE BANKRUPT'S RIGHTS

The bankrupt is entitled to some assets which are exempt from seizure. The exemptions are governed by Provincial laws.

5. THE CREDITOR'S DUTIES

Section 124

The creditors must file a proof of claim if they have been notified of the bankruptcy. If they fail to do so, they will not be eligible to obtain a dividend in the bankruptcy, nor will they be able to take action against the debtor after the bankruptcy.

Section 69.2 and 69.3

The creditors are also bound by section 69.2 and 69.3 which invoke a stay of proceedings. In the case of a bankruptcy or a consumer proposal, they cannot commence or continue any action, execution or other proceedings, for the recovery of a claim provable. Subject to the court order, the secured creditor may still realize his or her security in the same manner as he or she would have been entitled to if the sections had not been passed.

6. THE CREDITOR'S RIGHTS

Section 102 and 109

The creditor has the right to receive a notice of the first meeting of creditors and if he or she has duly proved a claim provable in bankruptcy before the time appointed for the meeting, the creditor is entitled to vote.

Section 148

The creditors also have a right to receive a proportional share according to their debts and the amount collected in the liquidation of the assets of the debtor.

CHAPTER VI: THE COUNSELLING CERTIFICATE

On completion of the first counselling session, the counsellor must complete and sign a counselling certificate in the form set out on the following page. The counsellor must then ask the debtor to sign a statement of acknowledgement that counselling has been provided, in the form set out in the following pages. The certificate must also be signed by the trustee or where applicable by the Administrator of consumer proposals.

This counselling certificate and statement of acknowledgement will inform the Superintendent of Bankruptcy that the counselling session has been performed in accordance with the BIA. It will also prevent any opposition to the discharge on the grounds of lack of counselling.

The counsellor must retain the counselling certificate and the statement of acknowledgement as part of the estate file of the consumer debtor and provide the Official Receiver with copies of the counselling certificate and the statement of acknowledgement if he or she requests it.

On the filing of the signed counselling certificate and statement of acknowledgement in the estate file, the trustee in bankruptcy or administrator in a consumer proposal may withdraw the fee for the first counselling session from the estate trust account.

SCHEDULE I
(Section 5)

COUNSELLING CERTIFICATE

FIRST COUNSELLING SESSION

To: Superintendent of Bankruptcy

From: _____
name of individual providing counselling

Re: _____
name of debtor

Date: _____
date of counselling session

I, the undersigned "individual providing counselling" hereby certify to the Superintendent of Bankruptcy that I have,

(a) assessed the debtor's financial situation and ability to pay;

(b) responded to the immediate problem of the debtor;

(c) identified and discussed the merit of the pertinent options available to the debtor, including non-legislative options, Orderly Payment of Debts, proposals, bankruptcy, etc., and provided an explanation of each option together with recommendations;

(d) explained the meaning and effect of credit and insolvency matters to the debtor;

(e) reviewed with the debtor the rights and responsibilities of a bankrupt, of a debtor who files a consumer proposal, and of creditors; and

(f) provided counselling in accordance with section 5 of the Counselling Directive.

SCHEDULE I--Cont.

page 2 of 3

COUNSELLING CERTIFICATE--Cont.

After making a reasonable evaluation, it is my opinion that the debtor:

- (a) understood the options available to resolve his or her financial problems;
- (b) appreciated the probable consequences of each option; and
- (c) made, or is in the process of making, an informed choice with respect to the method of dealing with the debtor's creditors.

Dated at this day of , .

signature of trustee, administrator or authorized
delegate (delete title that does not apply).

Check appropriate box:

- ☐ I certify that in the 6 months preceding this day I have **NOT** either personally or through an authorized delegate provided counselling services other than those referred to in this certificate to the debtor named herein.

- OR -

- ☐ I certify that in the 6 months preceding this day, I have either personally or through an authorized delegate provided counselling services other than those referred to this certificate to the debtor named herein.

Indicate amount received for counselling services provided during the 6 month preceding:

\$ _____

Dated at this day of .

signature of the trustee or the administrator
(Delete title that does not apply)

SCHEDULE I--Cont.

page 3 of 3

To be completed by the trustee or by an administrator when the first counselling session has been held by an authorized delegate:

I have reviewed the file and discussed in detail the case with the authorized delegate to satisfy myself that all of the pertinent information was reviewed, that the course of action selected was appropriate and that the decision of the debtor is the best under the circumstances.

Dated at this day of .

signature of the trustee or the administrator
(Delete title that does not apply)

**ACKNOWLEDGEMENT
(Section 5(2)b)**

I, the undersigned debtor, have consulted with the above-named person or persons and acknowledge having received the counselling referred to in this certificate.

- ☐ In the last 6 months I have **not** received any counselling regarding my financial situation other than the counselling referred to in this certificate.

- OR -

- ☐ In the last six months I have received counselling regarding my financial situation other than the counselling referred to in this certificate.

If other counselling received indicate the amount paid:

\$ _____

Dated at this day of , .

signature of the person counselled

SECTION II: THE SECOND COUNSELLING SESSION

IDENTIFY THE CAUSES OF THE DEBTOR'S INSOLVENCY AND SEEK REMEDIES

CHAPTER I: ASSIST THE DEBTOR TO IDENTIFY AND UNDERSTAND THE CONTRIBUTING CAUSES OF HIS OR HER INSOLVENCY.

A financial crisis may be the final result of poor management over time, insufficient income and inappropriate spending patterns. Financial problems may originate from unexpected or external events that sometimes cannot be attributed to the debtor directly or may also be caused by mismanagement, lack of self-discipline, or ignorance.

In the second counselling session, the counsellor must try to discover the cause of the client's insolvency. The counsellor should discuss some example causes with the client to familiarize and help him or her determine exactly what originated the problem. The following list is not an exhaustive one, but it includes many known causes observed by experts dealing with insolvency. It may help the counsellor discover or narrow the field of causes so he or she may either suggest or recommend remedies, or refer the client to a more specialized individual in the matter.

A: PROBLEMS FROM EXTERNAL EVENTS

1. Change in income level due to a job loss, lower paying job or to lower investment returns.
2. Change in employment status; demoted or transferred.
3. Victim of unscrupulous or fraudulent advice, practice or scheme.
4. Job problems.
5. Loss of ability to fulfil home responsibilities.
6. Need to support parent or other persons.
7. Elderly or younger relative(s) moving into the home or their prolonged dependency.
8. Premature death of spouse.
9. Birth of a child.
10. Handicapped child.
11. Illness or disability.
12. Accident.
13. Divorce, family or marital difficulties.
14. Major or unexpected house or car repair.
15. Lawsuit.
16. Purchase of a house.
17. Events or celebrations of friends/relatives/children with unusual expenses.
18. Others

B: PROBLEMS RESULTING FROM MISMANAGEMENT

Financial

1. Underestimating expenses because of inexperience, few or no records, forgetting incidental costs, or purposely minimizing costs to justify expenditures.
2. Overestimating income by not considering paycheck deductions and taxes.
3. Being overwhelmed with bills and expenses to the point of being afraid, yet doing nothing.
4. Lack of planning or staying with a realistic plan.
5. Not properly establishing responsibility to control money flow, keep records, meet financial obligations, and communicate financial position to others.
6. Calculating just the monthly payment and no total cost over a period of time.
7. Buying and then trying to plan how to pay rather than vice-versa.
8. Lack of a system for paying bills or business organization.
9. Forgetting to get promises in writing.
10. Promising to pay more than income and expenses allow in repayments.
11. Poor handling of money, such as mathematical errors or not keeping a checkbook up to date.
12. Using ineffective consumer complaint procedures and lack of knowledge of consumer or legal rights.
13. Not understanding or controlling credit use.
14. Not recognizing danger signs of credit over-extension, loan consolidation, or second mortgages.
15. Buying a car or truck which needs major repairs or replacement before payments are completed.
16. Not controlling expenses, such as shopping, gas for the car or telephone charges.
17. Not having a cash reserve or credit for emergency use.
20. Utilizing one credit card to pay another credit card.
22. All or a few of the above combined.

Personal

1. Lack of communication among family members about finances due to the desire to avoid an emotional issue; inability to express oneself.
2. Inability to say "no" to family member or to sale pressures.
3. Letting pride and stubbornness prevent paying bills or solving a problem.
4. Using money for emotional reasons that are not understood or acceptable by other family members such as making up for past deprivation or insecurity; boosting ego or soothing wounds; creating sense of power; controlling others; seeking revenge by mismanagement, replacing responses for affection and appreciation; compensating feelings of inadequacy; and impressing others.
5. Conflict with significant lack of information about financial environment, immaturity, and skill deficiency.

6. Selfishly spending money for things in order to use it before another family member rather than cooperating in maximizing the use of money for all members.
7. Internal problems of personal maladjustment manifested in compulsive gambling, drinking and eating, spending against one's better judgment.
8. Neither utilizing professional advisors nor educational material.

CHAPTER II: ENCOURAGE THE DEBTOR TO SEEK REMEDIES FOR THE IDENTIFIED CAUSES OF HIS OR HER INSOLVENCY

A: REMEDIES TO BUDGETARY CAUSES

See Chapter IV: Alternative Measures to Help the Debtor's Financial Situation in Section I: The first counselling session.

B: REMEDIES TO NON-BUDGETARY CAUSES

In recent years, the field of counselling and therapy has been altered by a new philosophy that is based on the fundamental premise that people can resolve most of their own problems successfully with a little help, and that clients themselves are the "experts," in respect to their own problems, not the therapist or counsellor. A recent study shows that when left on their own, clients are able to resolve specific problems 60 percent of the time, and when they receive help from a trained professional, the success rate is once again 60 percent.

A financial counsellor is not expected to resolve debtors' psychiatric and psychological problems. Counselling implies assisting debtors with their financial problems, not with their psychological or psychiatric problems. If the counsellor feels that the debtors' financial or personal situation is one that requires the help of a specialist, then the counsellor must suggest the debtor see such a specialist. It helps to contact the agency while the debtor is in the counsellor's office to make the appointment. Although it is important for counsellors to understand that they cannot decide for debtors, these above steps will help debtors' to make a decision.

Financial counsellors must remember that, even if they can refer clients to other specialists, they have a responsibility for helping their clients deal with the attitudes, beliefs and behaviours that are causing problems in the first place; otherwise such problems are likely to reoccur.

As mentioned in the first counselling session concerning debtors' resisting change, the counsellor should analyze debtors' attitudes so that the most direct and simple strategy to remedy the situation is adopted, or suggest a referral to some other specialist.

Financial counsellors are clearly not professionally prepared to handle the following types of problems and a referral should be made to a therapist when encountered.

Problems with substance abuse
Interpersonal problems at work
Talks or hints of suicide

Marital problems other than money
Chronic and severe depression
Intense or uncontrollable outbursts of rage

Chronic insomnia or amnesia
Feelings of profound helplessness
Spouse or child abuse

Hallucinations
Extreme anxiety

If counsellors encounter a behaviour or attitude which is beyond their professional capacity to deal with, such counsellors should refer the debtor. The following resources may be available in your community for possible referrals. The listed organizations usually offer services free of charge or at very low cost to help people who cannot afford to go anywhere else. Some of these services are nation-wide and others are private, local services. Counsellors should investigate their communities using some of the following titles, to see if such services exist.

Community Resources, Agencies, or Organizations

(i) information

Local community information centre: Provides information and referral to community resources in your region.

Reference Canada: The federal government's bilingual telephone referral and basic information service, available nation-wide.

United Way: Provides updated lists of existing associations and members.

(ii) counselling

Big Brothers/Sisters Association: Role models and friends to boys/girls seven to sixteen when parental figure is absent.

University centre for psychological services: Individual psychological assessment and counselling.

Children's aid society: Protection, care and supervision of children.

Counsellor in private practice: Consult yellow pages under "Marriage, Family and counselling."

Local family service centre: Social workers to families, couples and individuals having marital, parent-child, and individual relationship difficulties.

Local social work services, youth services bureau

CLSC: Provides different community services.

(iii) crisis intervention

Crisis counselling: YMCA-YWCA
Crisis Line: Salvation Army
Local Distress Centre
Teen Talk
Local family violence programs

(iv) financial aid

Local Day Care Services
Income Security Programs
Family Benefits
Financial Services Centre
Provincial Financial Assistance

Veterans Services
Unemployment Insurance
Social Assistance Review Board
Worker's Compensation Board

(v) emergency assistance

Food Action Group
Family Services Centre

Emergency Food and Clothing Centre
Food Cupboards

(vi) addiction

Addiction Assessment Services
Al-anon and Alateen
Alcoholics Anonymous
Narcotics Anonymous

Addiction Research Foundation
Alcohol and Drug Addictions Services
Provincial drug and alcohol information line

(vii) housing

Non-profit housing corporation
Placement coordination services
Salvation Army Youth Resource
Women's emergency shelter

Housing co-op for seniors
Emergency housing
Shepherds of Good Hope
YMCA-YWCA

(viii) mental and psychiatric

Psychiatric hospitals
Community mental health programs
Private psychiatric counselling

The Canadian Mental Health Association
Local community social services

CHAPTER III: HELP THE DEBTOR MONITOR AND ANALYZE MONTHLY INCOME AND EXPENSES: PLANNING AND BUDGETING

No system of money management will quickly and permanently eliminate the financial problems of individuals in heavy debt, but it will teach the debtor, for the future, how to prevent this situation from reoccurring. A principal reason people lose control over their personal finances is their failure to make realistic plans for the future.

The purpose of the second counselling session is to prevent the client from encountering a bad financial situation once again. After the first counselling session, which is more oriented to inquiring into the debtor's financial affairs and suggesting a possible remedy, the counsellor in the second counselling session should assist the client to develop a financial plan which will serve as a preventive measure for the future. In the financial plan, the counsellor should help the client see where to make adjustments so goals can be achieved. To do so, the counsellor must determine the manner in which his or her client spends money, i.e. the client's lifestyle, so he or she can determine where changes can be made. The client's lifestyle is a function of how the client uses the available resources. It is the counsellor's responsibility to assist clients in recognizing a personally satisfying lifestyle by examining their values, goals, needs, wants, and resources.

A: IDENTIFYING VALUES AND PRIORITIES

Family members involved in the budgeting plan may not have the same priorities regarding expenses, but these must be reconciled for a united effort and an efficient use of resources. The counsellor should not assume that clients know their priorities. The counsellor may use the two questionnaires in the first counselling session to identify values and goals. Those values and goals will enable the counsellor to limit the nature and extent of adjustment to be made to the client's lifestyle. The counsellor should be sensitive to the client's lifestyle, values, goals, needs, wants and resources when reductions in expenditures are planned. This stage of the development of a budget is the most important and the most difficult because this part will determine if the budget can be followed or not.

B: MAKING THE BUDGET PLAN

After carefully analyzing what the client judges to be important and does not want to modify, and what he or she is willing to let go, the counsellor is prepared to elaborate a first budgeting plan. When assisting the debtor in making a budgeting plan, the counsellor must consider four key elements:

The budget must be tailored to each individual client.

The budget should be the joint effort of a married couple.

The budget should provide a personal allowance determined by the client himself or herself.

The budget records should be kept simple and manageable.

Everyone involved in the budgeting plan should agree on priorities.

The budgeting plan should show hope for the future.

The budgeting plan must be given a chance to work.

There is no "average" budget. A workable budget is one that is simple, flexible, and helps each client achieve individual goals. Therefore, the purposes of the budgeting plan are: 1) to outline objectives, 2) to schedule action and, 3) to set boundaries and limits. Developing a budget that meets major needs and wants, and aids in the control of spending, is a "must" for those persons who are already over-extended.

Pages 5 to 20 in section I: The first counselling session provides budget sheets which the counsellor can use to fill out and analyze where adjustments may be made. They are detailed and easy to read so the debtor can clearly understand them.

C: KEEPING RECORDS

Making a budget is usually much easier than sticking to it. In fact, it is at this point that clients can exhibit a negative reaction to their financial plan because it requires keeping records. Therefore, records should be kept simple so that everyone understands where the money goes. There are three additional reasons for keeping simple records:

- a. They indicate problems in the trial budget.
- b. They demonstrate where the budget needs adjustment over a long term.
- c. They help avoid impulsive buying.

It is advisable for clients to keep records on a weekly basis, and a monthly basis, and over the budget period. Below are some suggestions to families for keeping records which should be presented to the client. Again, the client should select a method of record keeping which is compatible with his or her lifestyle.

- a. As money is spent the item and its price are entered on a form containing separate columns for each category.
- b. In a family, everyone who buys anything puts receipts or notations of expenses on a spindle each day.
- c. A "bookkeeper" could be appointed and everyone can leave notes and receipts on file with the bookkeeper.

If the client keeps accurate records, the evaluation of the financial plan is an on-going process. In other words, the client is continually comparing actual expenditures with planned expenditures so that adjustments in spending or in the plan can be made. Most clients will need to keep reworking their budget until the results satisfy them. Even if a client is satisfied with a first budget, he or she should be cautioned that the plan will still need adjustments periodically as circumstances change.

The counsellor may use the same budget sheets as in the first counselling session to plan the client's budget. They are sufficiently detailed to cover all aspects of the client's financial life.

CHAPTER IV: GROUP COUNSELLING

The second and third counselling sessions, with the agreement of the debtor, may be conducted in group sessions. Counsellors must understand that if they want to conduct group sessions, they will have to modify the session so it is profitable for everyone and it does not violate confidentiality.

Group counselling can be done effectively with small groups of people who are experiencing similar financial problems. It is important that the counsellor create a relaxed atmosphere and avoid any direct confrontation with individuals. Participation by everyone should be encouraged, although some people take longer than others to feel comfortable enough to participate. The counsellor should take a more active role by asking occasional questions.

Some advantages to group counselling are that the comments of one individual may be profitable to everybody, or it may help clients realize that they are not the only ones in that situation. This may reassure some clients. It may also give an idea to some clients how others perceive their situation.

One of the disadvantages to group counselling is confidentiality. It is very important that everyone understands before agreeing to the sessions, and are reminded again after each session, that what was discussed is confidential and stays within the group. Another disadvantage is that the discussion may be superficial because of the shyness of some clients to discuss their problems among others. The counsellor must be sensitive to the client's attitude towards group counselling, yet must try to help the client open up and express his or her thoughts.

CHAPTER V: THE COUNSELLING CERTIFICATE

On completion of the second counselling session, the counsellor shall:

- (i) complete and sign a counselling certificate and request the debtor to sign a statement of acknowledgement,
- (ii) retain the certificate and statement of acknowledgement as part of the estate file and provide the Official Receiver with a copy if it is requested.

Upon filing in the estate, the trustee may withdraw the fee for the second counselling session from the estate trust account.

The purpose of the certificate is to inform the Superintendent of Bankruptcy that the second session has been satisfactory. It also will prevent any opposition of discharge on the grounds of lack of counselling.

When this certificate is completed, the counsellor should ask the client if he or she would like to meet for a third counselling session, especially if the counsellor feels that the client has not fully understood what was covered in the two first counselling sessions.

File number

SCHEDULE II
(Section 6)

COUNSELLING CERTIFICATE

SECOND COUNSELLING SESSION

To: Superintendent of Bankruptcy

From: _____
name of individual providing counselling

Re: _____
name of bankrupt or consumer debtor

Date: _____
date of counselling session

I, the undersigned "individual providing counselling" hereby certify to the Superintendent of Bankruptcy that I have,

- (a) counselled the bankrupt or consumer debtor in an individual or group (cross out word that does not apply) counselling session;
- (b) assisted the bankrupt or consumer debtor to discover or understand the causes of insolvency including contributory non-budgetary causes;
- (c) encouraged the bankrupt or consumer debtor to seek remedies for the identified causes of the debtor's insolvency;
- (d) provided reference information and referrals to appropriate local professionals, agencies or organizations;
- (e) explained to the bankrupt or consumer debtor how to monitor and analyze income and expenses; and
- (f) provided counselling in accordance with section 6 of the *Counselling Directive*.

File number

SCHEDULE II--Cont.

page 2 of 2

COUNSELLING CERTIFICATE--Cont.

ACKNOWLEDGEMENT

After making a reasonable evaluation, it is my opinion that the bankrupt or consumer debtor understood the information provided.

Dated at _____ this _____ day of _____, _____.

signature of trustee or administrator
(strike out title that does not apply)

Note: If counselling was provided by an authorized delegate, that person must sign below.

signature of authorized delegate

ACKNOWLEDGEMENT

I, the undersigned, have consulted with the above-named individual providing counselling and acknowledge receiving and understanding the counselling referred to in this certificate.

Dated at _____ this _____ day of _____, _____.

signature of bankrupt or consumer debtor

SECTION III: THE THIRD COUNSELLING SESSION

ASSIST THE DEBTOR TO ACQUIRE MANAGEMENT AND BUDGETING SKILLS

CHAPTER I: PROVIDE THE DEBTOR WITH RELEVANT CONSUMER EDUCATION

In the third counselling session, the counsellor should assist the client in understanding how to respect the budget he or she has created. In other words, the client should learn how to: make rational decisions concerning the purchase of goods and services, develop good spending and shopping habits, recognize warning signs of financial difficulties, and understand the implications of using consumer credit.

A: TECHNIQUES OF DECISION MAKING

The counsellor should teach the concept that decisions are made necessarily because of the basic economic principle that resources by definition are scarce, and that there are always more demands on our resources than the supply. Informed decision making concerning the purchase of a good is an attitude that everyone should take, no matter how much their income may be. Even if a person has unlimited money, they may have limited time to enjoy all the goods and services money can buy.

Decision making is a habit that consumers who have never made a budget before will find difficult to adapt to because it will sometimes involve choosing an alternative for something that is desirable. The counsellor must assist the client in recognizing the need for a decision, obtaining information, identifying and weighing appropriate alternatives, and making a choice. The client should also learn how to predict the consequences of decisions. The counsellor must carefully explain that taking each of these steps before each purchase will eliminate unnecessary expenditures and cut the cost of necessary ones. It will also make the client more aware of how his or her budget is doing because he or she will refer to it when making a decision.

The counsellor must assist the client, and his or her family if necessary, in reaching consensus by communication, conclusions and commitments. The counsellor should point out that a lack of communication may result in no decision and events and expenditures may occur by default rather than design.

B: SPENDING AND SHOPPING HABITS

Learning good spending and shopping habits is the next step to saving on unnecessary expenditures and lowering the cost of necessary ones. The counsellor should give the questionnaire on the following page to the client so he or she can see where adjustment can be made.

SMART SHOPPING SKILLS AND PRACTICES

I DO THIS...

	ALWAYS	SOMETIMES	NEVER
1. Prior to purchase, get information about a product or service from friends, government pamphlets, consumer reports, or 3 different places of business.			
2. Read labels to see if products perform the way I want them to.			
3. Prepare a list of question and ask the questions when buying services or goods.			
4. Exchange services or think of alternatives to buying.			
5. Consider renting or sharing items/equipment instead of buying.			
6. Buy from a reputable dealer.			
7. Try out merchandise in the store if possible.			
8. Identify my needs and buy quality that is sufficient for the purpose.			
9. Keep receipts and warranties.			
10. Write down date and place of purchase.			

	ALWAYS	SOMETIMES	NEVER
11. If not satisfied, return product to seller, make the complaint in writing, get name of clerk and supervisor, state preferred resolution of the problem.			
12. Compare prices per unit, per serving and per nutritional value.			
13. Compare 3 items or 3 stores (agencies, banks, etc.) before making a final choice.			
14. Look one day and decide another. Talk it over with a friend or family member.			
15. Buy items which are reduced in price.			
16. Buy second-hand items when they are suitable.			
17. Know prices, so "bargains" or "good deals" are recognizable.			
18. Take care of goods (follow instructions) and food after they are purchased.			
19. Buy good quality items that are used often, but don't buy better quality than necessary.			
20. Figure "total" cost of an item (delivery, installation, upkeep, accessories, replacement of parts).			

	ALWAYS	SOMETIMES	NEVER
21. Pay cash rather than using credit, except when money is saved in the long run or a real need is met.			
22. Figure the extra dollar cost of using credit and consider what extra dollars can purchase to decide whether credit use is worthwhile.			
23. Read and understand terms of contracts, guaranties and warranties.			
24. If contract is too difficult to read or understand, have a knowledgeable person help or review the contract.			
25. Never sign a form or contract before the blanks are filled. Have both parties initial any charges made in lines of the contract.			
26. Record cheques in the register before filling them out.			
27. Avoid being persuaded by fancy containers, sales pitches or "smooth talkers."			
28. Plan how the item can be paid for before it is purchased.			
29. If product or service is "technical," have an expert check it.			
30. Repair before replacing, if this is possible and less expensive over time.			

C: CONTROLLING CREDIT

Credit is a financial and management tool to expand economic activity but it can cause problems if not controlled or understood. The counsellor should explain that credit is a debt. It is a loan, it means committing future income to pay for present needs and wants. Credit is debt with contractual obligations.

Types of credit are charge accounts, mortgages, instalment loans, personal loans, cash loans from banks or other institutions, service credit, etc.

The advantages to buying on credit are:

- It is convenient.

- Usually 30 days free credit have been offered on credit card transactions.

- Needs can be satisfied immediately.

- Can take advantage of a special bargain or sale when cash is not available.

- Making monthly payments may lead to a habitual monthly set-aside.

- Using credit can be a hedge against inflation as prices rise.

- A good credit rating makes it easier to get credit in emergencies.

- Finance payments may be withheld until defective or broken goods are repaired or replaced in some cases.

And the disadvantages are:

- It encourages impulse spending.

- Comparison shopping is discouraged because not all stores accept credit cards.

- Money tied in instalment payments is not available for future needs.

- Credit costs increase the cost of goods purchased.

- If payments are not met, the item may be repossessed and money already paid lost.

- A poor credit rating makes it harder to get credit.

- The consumer may agree to something he or she does not want because the contract is not understood.

- Credit buyers tend to buy higher priced merchandise because they are given a longer period of time to repay the debt.

- Some credit buyers unknowingly pay more for goods than cash buyers who shop around for a "cash discount."

- Credit buyers are more easily defrauded by shady operators who trick them into signing-without-knowing-it credit contracts, who alter the contract by adding additional charges, or who charge exorbitant prices for shoddy goods.

The counsellor may then help the client develop questions to ask before buying on credit, so that credit purchasing is done wisely and prudently.

The following are sample questions that may be asked before buying on credit. These questions are designed to give warnings of credit overextension. They set out criteria for making credit decisions highlighting the client's awareness of self-control.

Do I need it now?

Is it worth the extra credit cost to have it now?

Is it worth the risk of losing the money I have put into it if I don't meet the payments?

Will this purchase help achieve a family or personal goal?

Is the interest cost reasonable?

Will I still be using the purchase when I have finished paying for it?

Will this purchase meet with family approval?

Am I buying it from a fair and honest person or firm?

Can I buy it without committing an anticipated increase in income?

Is my use of a credit card reasonable?

Do I usually make payments on time?

Have I been able to pay charge card statements in full and thus avoid finance charges?

Can I make these payments without skimping on necessities?

Do I have an emergency fund to take care of unforeseen expenses?

Is my credit good enough so that I can borrow in case of illness or emergency?

Is my income prospect good ?

Have I avoided dipping into savings to meet regular expenses?

Do I avoid borrowing to pay off other credits or debts?

Am I always honest with spouse, self or others about my expenses?

Am I always current in rent or utility payments?

Are my assets greater than my debts?

D: WARNING SIGNS OF FINANCIAL DIFFICULTIES

Many of the questions above are also warning signs of financial difficulties. One of the causes of consumer indebtedness is lack of control over credit purchasing. Credit creates the illusion that the buyer has money and often the purchase is put out of mind even before the bill. The best and safest way to deal with consumer credit is to immediately put some money aside after buying the goods or services or, ideally, always make sure that the money is already saved before buying something. Such advice appears easy to follow, but in reality, the psychology of credit buying makes it very difficult advice to follow.

A person who buys goods and services on credit without knowing exactly when it can be paid is risking indebtedness. Furthermore, a person who has trouble meeting the minimum payment is seriously at risk.

Other signs of consumer indebtedness include dipping into savings to meet regular expenses, such as rent or utilities, selling personal goods which would not otherwise be sold, or not being able to keep up with current bills.

Some signs, such as recurrent bouncing cheques or the need for short term loans, are the result of poor management skills and may lead to indebtedness. Such behaviour requires that the client learn budgeting and planning skills.

The counsellor should elaborate on the warning signs and explain the short and long term consequences of each. He or she should remind the client that most of these difficulties may be prevented by a controlled budget. The counsellor should emphasize following the created budget.

CHAPTER II: GROUP COUNSELLING

The second and third counselling sessions, with the agreement of the debtor, may be conducted in group sessions. See Chapter IV: Group Counselling in Section II: The second counselling session.

CHAPTER III: PROVIDE THE DEBTOR WITH REFERENCE INFORMATION ON AGENCIES AND COUNSELLING FEEDBACK

A: REFERENCE INFORMATION

See Chapter II : Encourage the Debtor to Seek Remedies for the Identified Causes of the Debtor's Insolvency in Section II: The second counselling session.

The counsellor may encourage debtors to seek the services of professionals or associations that can help them with their specific needs.

B: FEEDBACK ON COUNSELLING

At the end of the third counselling session, the counsellor should ask the client what aspects of the counselling sessions were most or least helpful and what key points have been remembered. This information will help counsellors with future clients. It will indicate where more or less emphasis is needed.

The following questionnaire may give the counsellor an idea where his or her strengths and weaknesses are, acting as a counsellor, teacher, and financial assistant.

1. What section of the counselling sessions do you remember the most?
2. What information do you think was most important and most valuable?
3. Did the counsellor express his or her thoughts clearly enough for you to understand every point made?
4. Did you feel that the counsellor placed too much emphasis on certain things and not enough on others? If yes, on what?
5. What will you continue to do after these counselling sessions that you would not normally have done?
6. What things do you think were not important and you will not use?
7. Do you feel like you have learned enough about financial counselling to manage your affairs and avoid problems in the future?
8. Do you feel that the counsellor gave you enough advice on your financial situation and how to resolve it?
9. Did you feel that the counsellor was sensitive to your needs and wants and acted according to them?
10. Did the counselling sessions meet your expectations?

CHAPTER IV: THE COUNSELLING CERTIFICATE

On completion of the third counselling session, the counsellor shall:

- (i) complete and sign a counselling certificate and request the debtor to sign a statement of acknowledgement,
- (ii) retain the certificate and statement of acknowledgement as part of the estate file and provide the Official Receiver with a copy if it is requested.

Upon filing in the estate, the trustee may withdraw the fee for the third counselling session from the estate trust account.

The purpose of the certificate is to inform the Superintendent of Bankruptcy that the third session has been satisfactory. It also will prevent any opposition of discharge on the grounds of lack of counselling.

File number

SCHEDULE III

(Section 7)

COUNSELLING CERTIFICATE

THIRD COUNSELLING SESSION

To: Superintendent of Bankruptcy

From: _____
name of individual providing counselling

Re: _____
name of bankrupt or consumer debtor

Date: _____
date of counselling session

I, the undersigned trustee in bankruptcy or administrator of a consumer proposal (strike out title that does not apply) hereby certify to the Superintendent of Bankruptcy that I or my authorized delegate have,

(a) counselled the bankrupt or consumer debtor in an individual, group (cross out word that does not apply) counselling session;

(b) assisted the bankrupt or consumer debtor to acquire extensive money-management and budgeting skills; and

(c) provided the bankrupt or consumer debtor with relevant consumer education.

File number
SCHEDULE III--Cont.

page 2 of 2

(Section 7)

COUNSELLING CERTIFICATE

After making a reasonable evaluation, it is my opinion that the bankrupt or consumer debtor understood the information provided.

Dated at this day of , .

signature of trustee or administrator
(strike out title that does not apply)

Note: If counselling was provided by an authorized delegate, that person must sign below.

signature of authorized delegate

ACKNOWLEDGEMENT

I, the undersigned, have consulted with the above-named individual providing counselling and acknowledge receiving and understanding the counselling referred to in this certificate.

Dated at this day of , .

signature of bankrupt or consumer debtor

GLOSSARY

Basic Insolvency Definitions

The counsellor, when explaining all the steps, procedures and implications of different solutions to insolvency, may use words that the debtor has never heard before. The bankruptcy and insolvency system contains a glossary of words which the debtor may not be familiar with or understand in the insolvency context, therefore, the counsellor must explain the meaning of the following credit and insolvency matters and their effects where pertinent to the circumstances of the debtor, pursuant to paragraph 5(1)(e) of the Directive on counselling.

- (i) **assets:** In bankruptcy, the term means the property or effects of an insolvent person, applicable to the payment of his/her debts. The term includes all property of every kind and nature, chargeable with the debts of the bankrupt, that comes into the hands of, and under the control of the trustee, except for those exempt from seizure.
- (ii) **co-signers:** A joint signer of an unconditional promise or engagement, in writing, to pay a specific sum at a specific time, or on demand, to a person or to his or her order, or bearer. The co-signer will be jointly and severally liable with the co-signer(s).
- (iii) **credit rating:** A record of an individual's credit history, credit worthiness and payment record. Various credit bureaus maintain and update such records, providing this information to financial institutions and other businesses.
- (iv) **debts not discharged in bankruptcy:** Section 178 defines the debts which are not discharged. The main debts that are not discharged are any debts or liability for alimony or maintenance and support of a spouse or children, a fine, penalty, restitution order imposed by the court, any debts arising out of fraud or false pretences and finally any liability for the dividend that a creditor would have been entitled to had he or she been aware of the bankruptcy.
- (v) **absolute discharge:** An official document that relieves the debtor from his or her obligation to pay the debts owing by him or her at the date of bankruptcy, taking under consideration the exceptions in section 178. An absolute discharge will allow the debtor to start over financially.

- (vi) conditional discharge:** This type of order states that the bankrupt will receive an absolute discharge when a certain condition is met. The condition is usually payment of a certain amount of money to the trustee for the general benefit of the unsecured creditors. The amount of the payment is at the court's discretion and is usually based on the bankrupt's ability to pay as indicated by the net income of the bankrupt's household family unit in excess of reasonable living expenses.
- (vii) suspended discharge:** This type of order states that the bankrupt will receive an absolute discharge at some time in the future. This type of order is usually issued when the court considers it appropriate for the bankrupt to be penalized due to his or her conduct or because it is not the bankrupt's first bankruptcy.
- (viii) fees of the trustee or administrator:** Fees paid to a person who is licensed as a trustee or appointed as an administrator under the BIA. These fees represent the cost of certain services provided by the trustee or administrator to debtors utilizing their services. Fees are usually set by tariff or scrutinized for reasonableness by the court or the Superintendent of Bankruptcy.
- (ix) garnishment:** A statutory proceeding where a person's property, money, or credits are applied to payment of the former's debt to a third person by proper statutory process against debtor and garnishee. The effect of seizure by garnishment is to place under judicial control the property and sums of money belonging to the debtor.
- (x) judgement:** The final decision, or order, of a court deciding a lawsuit will state the court's decision on the amount of a creditor's(s') claim(s) against a debtor. This constitutes final legal proof that a creditor's(s') claim(s) is proper and permits the creditor(s) to continue with further legal action to collect the debt(s).
- (xi) legal action:** The formal demand of one's right from another person or party made and insisted on in a court of justice. The effects of a legal action on the debtor may result in a loss of not only the assets contested but the payment of legal and court fees.

- (xii) payments:** The performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor, where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or in part.
- (xiii) payment of a portion of surplus income to the trustee:** The bankrupt must contribute a portion of his or her surplus income for the benefit of the estate when they have the means to do so. All earnings and expenses of the bankrupt's household family unit are to be considered in establishing an appropriate level of contribution to the estate.
- (xiv) statement of claim:** A document filed with the court by a creditor to start formal legal proceedings. It will usually outline the reasons why a person is being sued and provide some explanation of the debt or other damages claimed.
- (xv) tax credit:** A right to an exemption that a person may be eligible to receive on filing a tax return due to a particular personal situation or low income. (G.S.T. or Child Tax Benefit) Some tax credits cannot be assigned, for example, the child tax benefit is not considered part of the estate in a bankruptcy and cannot be assigned.
- (xvi) tax returns:** A formal statement showing taxable income, allowable deductions and exemptions, and the computation of the tax due or refund.
- (xvii) windfalls:** An unexpected, unanticipated sudden gain or advantage (e.g. a winning lottery ticket, an unexpected inheritance). A windfall is not exempt from seizure and may be taken by the trustee.



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