Your First Counselling Session

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What to Expect at Your First Counseling Session

This guide will help you understand what to expect at your first counselling session in the proposal and bankruptcy process so you can be properly prepared for it, and so you will have an opportunity to think about any questions you might have for your counsellor.

Summary

If you became bankrupt or made a consumer proposal to your creditors then you are required, as one of your necessary duties, to attend two counselling sessions before a qualified insolvency counsellor. If the sessions are not completed, then you cannot be released from your debts.

Counselling sessions follow Directive 1R3 issued by the Superintendent of Bankruptcy which states:

> " *"counselling" means to assist and educate bankrupts and/or relatives of bankrupts, or consumer debtors, on good financial management, including prudent use of consumer credit and budgeting principles; in developing successful strategies for achieving financial goals and overcoming financial setbacks; and, at any time, where appropriate, in making referrals to deal with non-budgetary causes of insolvency (i.e. gambling, addiction, marital and family problems, etc.);"*

Most Licensed Insolvency Trustees conduct these 35 to 45 minute sessions one-to-one, although group sessions are permissible.

Who you will meet

You will meet with a Qualified Insolvency Counsellor – someone who is part of our staff or one of our associates.

We are a training firm and as such we sponsor individuals who wish to obtain their designation as a Qualified Insolvency Counsellor ("QIC") and who are apprenticing towards this designation. If an apprentice will be conducting your counselling session, that apprentice will be supervised by a fully designated QIC.

A QIC is someone who:

- has taken and passed a course administered by the Canadian Association of Insolvency and Restructuring Professionals, known as the Insolvency Counsellor's Qualification Course (the "ICQC"). This course teaches personal insolvency and bankruptcy, interviewing and counselling individuals, money management, and money in context; and
- has over 100 hours of directly supervised experience counselling individuals pursuant to the counselling Directive 1R3. This experience must extend beyond one year.

Agenda at your First Counselling Session

This meeting is usually the first time we have seen you after your proposal or bankruptcy filing and therefore we take several minutes to ensure you are financially progressing as you should be and that our necessary work is moving along properly. For example:

- we want to make sure you are not being bothered by any creditors, collection agents, or wage garnishments – all of which should have stopped;
- we will ask you to confirm your banking is uninterrupted;
- if you decided to stop your payments and allow your vehicle or other asset to be picked up by a secured lender we will discuss whatever steps may have already occurred and those that should still be expected or necessary;
- we will make sure you are aware of how you can make your payments to us online;
- if you have proceeded with a bankruptcy filing we will collect whatever further income tax information you may have brought with you, and
- if you proceeded with a consumer proposal we will make sure you are aware of the responses we have received from your creditors so you are better aware of the proposal outcome. In the not-so-common occurrence that creditors turn down your proposal offer, we will discuss your options and the appropriate next steps.

At this, the first of your two counselling sessions, we will discuss money management, spending and shopping habits, warning signs of financial difficulties, and obtaining and using credit.

Money Management, spending and shopping habits

Prepare a report

Please bring to this session a summary of your actual receipts and disbursements for the last month. To prepare this summary either:

- complete the blank form we gave you. If you do not have one, you can download it from our website; or
- online, complete the fillable form on our website. Save it and then email it to us.
- if you decided to start using your own Excel spreadsheet, perhaps a master that we emailed to you, then either print it out or email it to us.

This report will help us in a discussion of money management. If you are bankrupt, then providing these reports to us on a monthly basis is actually one of your duties.

To complete this form accurately you need to keep track of all the money you received and the money you spent. Perhaps you keep receipts, take note of cheques you write, maybe you can print a summary of all transactions from your online banking, or possibly you will follow a combination of these.

This report is not a budget – it is not supposed to be your normal or desired monthly numbers or what you might expect to normally occur. This report is supposed to represent what actually occurred. Only after we both understand your actual numbers can a useful budget be prepared. This is your financial plan of action - but that's at the second counselling session!

Some questions about your report

- How were you able to keep track of your numbers?
- Which of your expenses seem to be more controllable? More uncontrollable?
- Which expenses can you reduce or eliminate?
- Do you receive income bi-weekly and yet have large monthly expenses? Sometimes the timing of cash flow creates short term problems. How can that be controlled?
- Do you make shopping lists? Do you use coupons? Do you buy on impulse?
- Think about the types debts you declared in this process. Do these debts suggest anything to you?
- Is your income irregular perhaps because of commissions or self-employment? How can you deal with irregular income so that there is always money available to pay bills?
- If you have a partner, do you share the financial duties and, if so, how?
- Do you talk to your partner about money? Do you pay your children an allowance?

Warning signs of financial difficulties

Causes of financial problems

The most common reasons individuals have financial difficulties are usually a combination of the following:

- **Inadequate budgeting and overspending**. This can be the result of:
    - Insufficient financial education.
    - Having a very short term financial outlook. No medium or longer term financial planning.
    - Making impulse purchases.
    - Having too many credit cards.
    - Not creating habits that would curtail your spending and that would maintain saving.

- **Unemployment or adverse change in employment situation**. Employment insurance is just a stop-gap resource. We encourage you to take steps that would benefit you in the long term, such as developing and maintaining good contacts in your field, pursuing lifelong learning in your chosen career and in other areas, developing goals, and considering other ways you could use your own personal skills for income potential.

- **Separation or unsatisfactory relationships**. When two become one, the total expenses of the two simply increase. Two person can live less expensively when they are together, such that the debt level of two persons can become unmanageable when they separate. And then there's support payments, etc. Separation is one of the greatest impediments to the development of long term wealth.

- **Overextension of credit**. Arguing "*they gave me too much credit*" goes hand in hand with "*you asked for it*". If you simply found yourself with too much debt, it might also be due to inadequate budgeting and overspending.

- **Health issues – illness or injury**. Depending on the extent of your injury, the financial cost of injury is so drastic, including lost income and increased costs that we believe it is prudent to carry disability insurance and critical illness insurance coverage. Benefits from Worksafe BC and the Canada Pension Plan Disability are generally seen as inadequate by themselves. This coverage is simply a good plan of defense.

- **Business failure**. Self-employed individuals can find themselves with little fallback if their business is unsuccessful. Entrepreneurs are expected to use their own financial resources to build their business and we have seen significant mortgage debt and home equity lines of credit, as well as personal credit cards all used for business purposes. On this we have two primary recommendations - firstly, you need to continue to build the business. Your business relies on you – you do everything. You need to rely on good people to help you out – whether they are a tradesman, a bookkeeper, or a lawyer to help you collect or lien your projects.

  Secondly, you need to set a limit and accept it. Set a limit on how much you will personally put into your business and think about the risks of business failure. Think about the personal consequences of having a large debt arising from an unsuccessful business?

- **Failure to file income tax returns and pay taxes**. Just avoid this. The only justification for not filing tax returns is tragedy. Non-payment is very different – be sure to at least file your returns. If you cannot pay you may still be able to work out a payment plan with Canada Revenue Agency, and it is always easier for you to deal with CRA in the proposal process if you have been compliant in filing your returns.

Signs you might be having a financial problem

It goes without saying that you are in a financial bind if you are receiving demand letters, your credit card has been cut off, collection agents are calling you, garnishments are threatened, but consider these earlier warning signs of potential financial troubles:

- Poor credit card debt management: - You should pay off your credit card in full every month. If you pay only the minimum amount, then this debt can easily become out of control;
- Borrowing from bottom-feeders: - Don't apply for expensive loans. One well-known lender charges individuals about 34% per annum, charges an additional monthly fee for life insurance, requires you to pledge your household furniture as collateral, and amortizes the loan over several years to keep your monthly payment low. And worse yet is the payroll loan. Did you get a payroll loan because you couldn't get a loan from anywhere else? Try to avoid these never-never plans and always think about what it costs and when you will be free from that debt.
- Your total debt load is getting unmanageable: - As a rule of thumb, you shouldn't allow your total debt load (excluding any mortgage on your home) to become so large that your total monthly debt payments exceed 20% - 25% of your net monthly income;
- Some of your decisions are not so money-smart: - Be sure to think about the financial choices you make. Our highest costs are usually associated with our accommodation and our transportation. Do you live in a penthouse or a basement suite? Are you buying a house or a more modest condo? Are you leasing or purchasing your car? Is it new? Do you take public transit or do you ride a bike? The choices that you make affect your ability to develop long term wealth;
- You've run out of money – When there's no money to pay something, maybe it's a utility bill or perhaps it's the rent, then there's not enough planning going on. Whatever the cause, it is helpful to have a contingency fund available when things are tough. Such a fund is very difficult to build up when new already have a debt load; and
- You've been turned down – maybe in a tenancy application, for a consolidation loan, or by a financial institution when you try to open a new account. There's only one reason – bad credit. If a search of your credit bureau reveals a low score or enquiries being made by collection agents, you may be in trouble.

Obtaining and Using Credit

Generally, it is credit that brought you to us. You obtained credit, drew against it, and had so much debt you were unable to repay it under normal circumstances. But not always. Sometimes debt builds up through great misfortune or simply through obligation.

Debt can arise in situations where we have not applied for credit

Some financial obligations result from situations where we have not applied for credit. As a few examples:

- We are all obligated to file tax returns and pay taxes on monies we earn through our self-employment and on capital gains, arising from our buying and selling of capital items such as shares. These taxes are very different from your taxes if you are an employee because then your employer has the obligation to deduct and remit your taxes based on a declaration you make regarding the tax credits you are allowed (namely, on your TD1). Canada Revenue Agency would say that to be compliant you must file tax returns and report all income.

When you don't file your income tax return on time and there is an amount owing, CRA will assess a penalty equal to 5% of the debt plus another 1% per month (to a max of 12%) until the return is filed. This rate of penalty for non-filing doubles for subsequent years. There is a substantial penalty for repeatedly failing to report income. Both the unpaid taxes and the penalties bear interest at prescribed rates, currently 5% per year.

- Every resident of British Columbia is required, under BC's *Medicare Protection Act*, to enroll with the BC Medical Services Plan. And once you enroll you have to pay the premium, which depends on your income and ranges between $0 and $150 monthly. We have seen situations where this debt has exceeded thousands.

- Fines can be levied by the Court often due to one's conduct, the most common being due to tax evasion;

- Child support and spousal support obligations; and

- From tort law, a person can be liable to another party for causing them harm.

Debt arises more commonly when credit was obtained

It is more usual for debts to arise because there has been an application for credit and a failure to repay the amount owed.

"Credit" is the availability of funds, commonly from a financial institution. Credit cards are "revolving credit" meaning that the issuer provides a limit beyond which you are not authorized to transact and the balance you owe will revolve as you make payments and as you make purchases with the card. "Instalment credit" is where the credit advanced is to be repaid in regular intervals.

"Debt" is what you owe.

Your credit report

Years ago, merchants would keep lists of customers buying goods from them and promising to repay. These ledgers were sold or traded between merchants so all sellers could be better informed whether they should advance credit to customers. From this ongoing exchange of credit information, Equifax formed in 1899 and was followed much later by TransUnion.

Part 6 of BC's Business Practices and Consumer Protection Act establishes that:

- no one can obtain your credit report from a credit reporting agency unless they have your permission;

- among other matters, the credit reporting agency:
  - can only report your information where the source of that information is known, and
  - can report your first bankruptcy for only 6 full years after you were discharged;
- if you are denied credit based on a credit report, the credit grantor must advise you exactly what in the credit report is the reason for their denial; and
- you can give to a reporting agency up to 100 words to be included in your credit report.

Credit reporting agencies developed a scoring system to rate individuals as to their credit worthiness. Equifax scores us in these ranges:

300 - 559	Poor	4% of us
560 - 659	Fair	10% of us
660 - 724	Good	15% of us
725 - 759	Very good	14% of us
760 - 900	Excellent	57% of us

Generally, your credit score is a reflection of the comments of your various creditors over the last 24 months, and after giving consideration to the amount of your debts compared to the limits they have set for you. Prospective lenders consider many other factors especially including your income and whether you are putting up any collateral for the loan to give them security.

You should expect every lender to request you to authorize that they may obtain your credit report.

Secured and unsecured debt

Sometimes when lenders give you credit it might be partially because you have given them back a lien on something you have. We call these "secured loans" and good examples are car loans, motor vehicle leases, and a mortgage on your home. If you don't make your payments, you have given the lender the right to foreclose on your home, or to seize or repossess your vehicle.

"Unsecured debt" is an amount owed where no collateral or other security has been provided to the lender.

Typical unsecured debt would be a credit card, or income taxes. But it can be confusing. If you provided a security deposit on the credit card, your debt would be secured to the extent of your deposit. If the tax department obtained a certificate from Federal Tax Court certifying your debt, they can register that certificate against any property you own in which case CRA would be secured to the extent of the certificate amount or the equity in your property.

In the bankruptcy and proposal processes, you are generally dealing only with your unsecured debt. Sometimes, if you are bankrupt you still have to make your car payment or they will take your car!

At Ken Rowan & Associates Inc., Licensed Insolvency Trustee, we try to make your journey through the bankruptcy process or the proposal process as simple and effective as possible. If you have questions, please sure to reach out to us at ken@debtsgo.com or by phone at 604-531-4186.

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