

Practice and Ethics of Budget Counselling

Research Project - Final Report
Submitted to Industry Canada's Office of Consumer Affairs

By



November 20, 2006

Research Report published by:



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Union des consommateurs is a member of the organization Consumers International (CI), a federation with 234 members from 113 countries.

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ISBN-10: 2-923405-14-5
ISBN-13: 978-2-923405-14-8
EAN: 9782923405148

Union des consommateurs would like to thank Industry Canada for its financial assistance to this research project. The opinions expressed in this report are not necessarily shared by Industry Canada or the Government of Canada.

In the interests of concision, we chose to not feminize the text herein.

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UNION DES CONSOMMATEURS, *strength in networking*

Union des consommateurs is a non-profit organization whose membership is comprised of several ACEFs (*Associations coopératives d'économie familiale*), *l'Association des consommateurs pour la qualité dans la construction* (ACQC), as well as individual members.

Union des consommateurs' mission is to represent and defend the rights of consumers, with particular emphasis on the interests of low-income households. Union des consommateurs' activities are based on values cherished by its members: solidarity, equity and social justice, as well as the objective of enhancing consumers' living conditions in economic, social, political and environmental terms.

Union des consommateurs' structure enables it to maintain a broad vision of consumer issues even as it develops in-depth expertise in certain programming sectors, particularly via its research efforts on emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in the community.

Union des consommateurs acts mainly at the national level, by representing the interests of consumers before political, regulatory or legal authorities or in public forums. Its priority issues, in terms of research, action and advocacy, include the following: family budgets and indebtedness, energy, telephone services, radio broadcasting, cable television and the Internet, public health, food and biotechnologies, financial products and services, business practices, and social and fiscal policy.

Finally, regarding the issue of economic globalization, Union des consommateurs works in collaboration with several consumers groups in English Canada and abroad. It is a member of Consumers International (CI), a United Nations recognized organization.

INTRODUCTION

Budget counselling is extremely important to all consumers experiencing financial problems. In budget counselling an expert may help a consumer assess his spending, income and debts and, based on the results, suggest solutions and offer advice on how the consumer might better control his personal finances.

According to Industry Canada's Office of Consumer Affairs:

Budget counselling allows you to take control of your finances with the help of a budget counsellor. This service uses their experience and training to help you determine why you are in debt, and to find ways to deal with the problem.

Anyone can use a budget counselling service. Counselling will help you establish a realistic plan for managing your money. The budget counsellor can also help you find other options, if your financial problem can't be solved by budgeting alone.

You can use budget counselling services even if you do not currently have any problems with debt. These organizations are there to help you and to explain different financial strategies.¹

Budget counselling is not necessarily limited to assistance in identifying the right tools for the situation. Depending on the organization and the type of experts involved, it may entail having representatives negotiate with creditors and even having the budget counselling organization manage a consumer's debt repayment.

In Canada, various types of budget counselling are on offer, including telephone consultations and counselling on the Internet. Some are provided by for-profit enterprises, others by non-profits (e.g. community groups, bankruptcy trustees, financial advisors, financial adjusters, etc.). Surprisingly, in Canada there are no laws or regulations with the specific intent of ensuring consumer protection in the sphere of budget counselling. In other words, anyone can claim to be an expert, duly qualified to advise consumers—whatever the training and experience he may (or may not) possess. Thus, a vulnerable consumer could pay fees for services, which, at the end of the day, prove to be of no use to him.

With the disturbing rise in household debt seen in recent years, more and more individuals and businesses are endeavouring to assist indebted households... or to profit from their indebtedness and the attendant insecurity. As experience in the U.S. has shown, potential exists for grave abuses at the expense of consumers.

Moreover, Canada's Office of Consumer Affairs offers this word of caution:

¹ Industry Canada, "Budget Counselling – Seeking Help from the 'Pros,'" in *Canada's Office of Consumer Affairs*, <<http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/en/ca02193e.html>> (consulted on 4 July, 2006).

Once again, caution is advised. There are people who appear to be offering their help but they end up taking advantage of your vulnerability. Double-check before signing anything.²

The Bank of Canada's discount rate rose from 2.25% on January 1, 2002, to 4.25 %, as of July 11, 2006³. As a consequence, the costs of household indebtedness will continue to rise in the coming years. Worried and vulnerable consumers are likely to turn increasingly towards those offering assistance or promising solutions. Hence the importance and urgency of examining the regulation of the practices and ethics of budget counselling in Canada with a view to ensuring that consumers enjoy an adequate level of protection in this sector.

This project proposes to analyse the functioning, funding and regulation of the organizations that offer budget counselling services in Canada, so as to ensure that consumers are well served and to minimize the risks of fraud or conflicts of interest.

The first chapter of the report consists of a brief analysis of the situation in the U.S.

The second chapter examines the Canadian context, including:

- Identification of the different actors offering budget counselling services
- Analysis of the laws and regulations at the federal level and in five provinces: Alberta, British Columbia, New Brunswick, Ontario and Quebec
- Analysis of the existing self-regulation mechanisms

The third chapter presents the results of a survey of organizations offering budget counselling services in the five provinces surveyed. Based on information gathered directly from budget counselling enterprises, our survey sought to better ascertain: the different practices in the industry, the type and scope of training required of or provided to counsellors, the funding models of such enterprises, and the regulation of their professional ethics.

It's important to point out that our survey did not generate the expected results. Whereas, we had hoped to receive between 30 and 50 responses, only five of the organizations identified by our contacts in the different target provinces completed our questionnaire. In Chapter three, we discuss the methodology adopted and the problems encountered in its application.

To compensate for this problem, we then effected a more in-depth study than originally planned of the self-regulatory frameworks adopted by certain non-profit organizations by way of their industry associations (Codes of Practice, accreditation standards), in both the United States and Canada.

Consequently, this study's conclusions and recommendations are based on the research conducted in its entirety—the results of our survey alone having proven insufficient to permit drawing any conclusions or advancing any recommendations.

² Ibid.

³ Bank of Canada, *Interest rates in Canada*, <http://www.bankofcanada.ca/pdf/annual_page1_page2.pdf> (consulted on 4 July, 2006) and, Bank of Canada, "Communiqué of 13 July, 2006," in *Monetary Policy Report Update*, <<http://www.bankofcanada.ca/en/press/2006/pr06-11.html>> (consulted on 15 July, 2006).

CHAPTER 1: THE SITUATION IN THE UNITED STATES⁴

In March 2005, three companies that had defrauded consumers for sums in excess of 100 millions dollars US, by promising to erase their debts, acknowledged their culpability before the Federal Trade Commission, which had accused them of illegal practices.

*"Consumers who want to get out of debt are looking for services to help relieve their financial troubles, not make them worse," said Lydia Parnes, Acting Director of the FTC's Bureau of Consumer Protection. "The FTC is committed to ridding the debt services industry of companies who shatter consumer confidence and hurt legitimate businesses' ability to help consumers."*⁵

Between 1999 and 2003, the number of complaints registered at the US Better Business Bureau concerning budget counselling organizations increased by no less than 590%, i.e. from 1,140 complaints to 7,862 complaints.⁶ The majority of these complaints concerned certain practices, considered abusive, used by non-profit organizations active in the budget counselling sector. In several states (Illinois, Maryland, Minnesota, Missouri and Texas) class actions were brought against certain budget counselling organizations, alleging excessive fees, poor services, a lack of valid financial education made available to consumers and, indeed, a worsening of the financial situation of certain consumers who had asked these agencies for assistance and followed their advice.⁷

One of the modifications proposed in 2002 to the Bankruptcy Act (United States Code Title 11) sought to make budget counselling with a non-profit organization mandatory before a consumer would be allowed to declare bankruptcy.⁸ On this occasion, the United States Senate examined the abuses committed, especially at the expense of consumers, by certain non-profit organizations active in the budget counselling sector. A situation that certain authors have summed up as follows:

⁴ Consumer Federation of America (CFA) and National Consumer Law Center inc. (NCLC), "Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants," April 2003, <http://www.consumerfed.org/pdfs/credit_counseling_report.pdf> (consulted on March 1, 2006) and, United States Senate, "Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling," S. Rpt 109-55, 13 April 2005, a report prepared by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:sr055.pdf> (consulted on May, 15 2006).

⁵ ConsumerAffairs.Com Inc., *Debt Management Companies Scuttled*, 30 March 2005, <http://www.consumeraffairs.com/news04/2005/debt_managers.html> (consulted on April 1, 2006).

⁶ Aleksandra Todorova, "Debt management: the crisis in credit counseling," <<http://www.smartmoney.com/debt/advice/index.cfm?story=creditcounseling2004>> (consulted on July 4, 2006).

⁷ Op. cit. 4. United States Senate, S. Rpt. 109-55, 13 April, 2005.

⁸ Debra Cowen and Debra Kaweck, "Credit Counseling Organizations" in *EO CPE 2004-1*, p. 4, <<http://www.irs.gov/pub/irs-tege/eotopica04.pdf>> (consulted on July 14, 2006).

Some credit counselling organizations have been accused of using aggressive and abusive marketing practices, misusing their non-profit status, charging consumers excessive fees, and paying excessively high salary to executives.⁹

In a report entitled *Profiteering in a Non-profit Industry: Abusive Practices in Credit Counseling*, the Senate concluded: "...some credit counseling agencies are engaged in abusive practices that hurt debtors, including charging excessive fees, putting marketing before counseling, and providing debtors with inadequate educational counseling, and debt management services" and "some non-profit credit counseling agencies are funnelling millions of dollars each year from cash-strapped debtors to insiders and affiliated for-profit businesses, in apparent violation of tax laws prohibiting tax-exempt charities from benefiting private interests."¹⁰

The situation of one organization in particular which, for three different reasons, has been cited for its reprehensible practices, may alone suffice to illustrate the scope of the problem in the United States.¹¹

1) The Cambridge Credit Counseling Corporation, a non-profit organization put up charts in the employees' rest area naming the best and worst counsellors of the month.¹² The ones named as the best were in fact those who had signed up the largest number of consumers in Debt Management Programs (DMPs)¹³ with the organization, regardless of whether this was in fact the best solution for the consumers in question. This type of practice, common in sales, raises doubts regarding the true interests pursued by budget counsellors, particularly when one realises that a percentage of the sums repaid by consumers to their creditors via DMPs ends up with the budget counselling organization that signed them up in the first place. Thus, certain organizations apparently promote their own funding rather than offer impartial assistance to a clientele grappling with debt problems.

2) One investigation revealed that the officers of some non-profit enterprises received absolutely staggering salaries, totally out of line with the standard remuneration in this type of organization, high enough to even raise eyebrows in the private sector. In 2002, for example, the president of the Cambridge Credit Counseling Corporation earned \$624,000 a year.¹⁴ In 2004, this organization was subject to legal action alleging that the proprietors had used it to divert millions of dollars towards for-profit enterprises, which they also owned. In the words of the District Attorney: "What is clear is that the owners set up this charity primarily to enrich themselves -

⁹ Kim Jinhee, E. Thomas Garman and Benoit Sorhaindo (2003), "Relationships Among Credit Counseling Clients' Financial Well Being, Financial Behaviors, Financial Stressor Events, and Health" in *Association for Financial Counseling and Planning Education*, p. 75, <<http://www.afcpe.org/doc/Vol1427.pdf>> (consulted on May 1, 2006).

¹⁰ Op. cit. 4. United States Senate, S. Rpt. 109-55, 13 April 13 2005.

¹¹ Other cases of abuses, committed by other non-profit enterprises, are detailed in the Senate report. Op. cit. 4. United States Senate, S. Rpt. 109-55, April 13, 2005.

¹² Todorova reveals that "in testimony before Congress, former Cambridge Credit Counseling employee John Pohlman described the agency's office as a "boiler room." An electronic board at the front of the room displayed the names of the counselors who had the top sales for the month in red and yellow lights. The refrigerator in the lunch room, on the other hand, posted a sign reading "The two lowest producing counselors will be cleaning the refrigerator on Saturdays."

¹³ A DMP is a program that manages debt repayment by the consumer. This repayment, the total amount of which must be calculated in accordance with the consumer's financial capacities, is shared among the creditors. We shall return to the characteristics of DMPs below.

¹⁴ Consumeraffairs.com, "Credit Counseling riddled with fast-buck promoters, Congress finds," 25 March 2004, <http://consumeraffairs.com/news04/credit_counseling.html> (consulted on April 7, 2006).

funnelling millions of dollars to their other for-profit companies - and not to benefit the people using their services". As a result, the enterprise was assessed a fine of 4.2 million dollars US.¹⁵

3) The investigation also revealed that, for managing the repayment of their debts, the Cambridge Credit Counseling Corporation levied on consumers additional fees of up to 10% of the agreed on monthly sums for debt repayment—without necessarily advising them that these sums would not be paid to creditors.

Consider what happened to Raymond Schuck, a retired museum director from Lima, Ohio, and one of the consumers who testified at the Congressional hearing in March. He enrolled in a debt-management plan with Massachusetts-based Cambridge Credit Counseling in 2001 to pay off about \$90,000 of credit-card debt. Cambridge told him that he would be charged a 10% monthly fee on his payments of \$1,946 a month, but allegedly failed to disclose that his first payment would stay with the agency. "Had I known this policy in advance, I would have searched for a different credit-counseling agency," Schuck testified. "I would not have agreed to give Cambridge \$2,000 when that money could have gone to my creditors."¹⁶

Obviously, not all organizations offering budget counselling in the United States have committed such abuses at the expense of consumers. However, the fact remains that some did take advantage of the good name that non-profit organizations generally enjoy in the eyes of consumers to defraud and abuse them¹⁷ and that it was the absence of adequate regulation and oversight which made such abuses possible.

¹⁵ Consumeraffairs.com, "Cambridge Credit Counseling Fined \$4.2 Million," 4 November 2005, <http://www.consumeraffairs.com/news04/2005/cambridge_credit.html> (consulted on 7 April, 2006).

¹⁶ Op. cit. 6, Todorova.

¹⁷ It is important to mention that the US Bankruptcy Act has, since the fall of 2005, made it mandatory for consumers to consult a CCS before declaring bankruptcy. This amendment to the Act is based on the good name non-profit organizations enjoy in their role as budget counsellors. See: Op. cit. 4. CFA and NCLC (2003), p. 4.

PRACTICES

In the United States, the crisis around budget counselling brought to light specific problems concerning one of the services offered during budget counselling: management of a consumer's debt repayment by an agency. This type of service is offered, for example, by Credit Counselling Services (CCSs). In the US, creditors created these non-profit organizations in the 1960s¹⁸ in order to provide consumers with a service, which, via the reorganization of their budgets, could enable them to more easily repay their debts.¹⁹ CCSs offer a variety of services to consumers: budget counselling, training on budgeting and personal finances, and Debt Management Plans (DMPs).²⁰ DMPs are in effect debt consolidation plans in which a CCS acts as an intermediary between creditors and the consumer/debtor.

The Association for Financial Counseling and Planning Education (AFCPE) defines this type of program as follows:

*A debt management program (DMP) is one of the services offered by credit counselling agencies. It gives individuals a plan for paying off their liabilities by consolidating their unsecured debts into one monthly payment. **The debtors make the payment to the counselling agency, which in turn disburses payments to creditors.***²¹

The AFCPE also emphasizes the advantages that a consumer may draw from such a program:

*Clients who enrol in the agency's payment plans may benefit because agencies can negotiate lower interest rates, smaller minimum payments and eliminate late charges (Bayot, 2003). Many clients also benefit from stress reduction, because they claim that the stresses caused by their financial difficulties are reduced after they joined a credit-counselling program.*²²

CCSs have agreements with certain creditors that enable them to negotiate debt repayment by consumers regarding the size of monthly payments and applicable fees. While the total amount of a consumer's debt is not subject to negotiation, such agreements between creditors and CCSs may nevertheless benefit consumers, particularly via a reduction in interest rates and the assurance that creditors will not undertake any further actions to increase pressure on the consumer. Thus, following a budgetary consultation that enables him to assess the consumer's financial situation and, ideally his capacity to pay, the budget counsellor will propose, if need be, a DMP and determine the monthly-consolidated payments. The CCS will manage these repayments and see to their allocation among the different creditors, in accordance with the agreements concluded with these latter.

¹⁸ Op. cit. 8, Cowen and Kawecki (2004), p. 1.

¹⁹ According to the CRCS, the National Foundation for Credit Counseling (NFCC) primarily serves the interests of creditors, the founders of said organization: "(...) creditors have historically controlled the credit counseling industry and added billions of dollars to their profits through their control of non profit credit counseling agencies (CCAs) affiliated with the National Foundation for Credit Counseling (NFCC)". For more information on this subject, see Consumers for Responsible Credit Solutions (CRCS), *Nonprofits in Service to One of America's Most Profitable Industries: A Report on How Creditor Control of the Credit Counseling Industry Hurts Consumers and the Need for Fundamental Reform*, p. 4, <http://foundationcenter.org/pnd/connections/conn_item.html?id=74000017> (consulted on 15 June, 2006).

²⁰ Op. cit. 4, CFA and NCLC (2003) p. 1.

²¹ Op. cit. 19, CRCS.

²² Ibid.

This type of agreement enables the consumer to repay his debts, to maintain his credit rating and avoid, incidentally, resorting to bankruptcy. This type of agreement is also very advantageous to creditors, in that the sums recovered following a debtor's bankruptcy are obviously far lower than that which can be obtained via a DMP, which after all, aims to ensure full repayment of debts, in the long term. This type of agreement, concluded via a third party, i.e. the CCS, also reduces the costs of collection that creditors might have had to engage to recover debts. Thus, for creditors, CCSs become, via such agreements, important and profitable intermediaries between consumers and themselves.

AGREEMENTS BETWEEN CCSS AND CREDITORS

As mentioned above, CCSs were created by creditors to, on the one hand, facilitate debt repayment by consumers and, on the other hand, to enable creditors to limit their losses.

As it happens, the repayment agreements concluded between consumers and their creditors via DMPs also serve as funding sources for CCSs. Not only are they authorized to levy a certain percentage of consumers' payments as management fees, but the agreements concluded between CCSs and creditors also ensure that a portion of the sums recovered by creditors will be returned to the CCS that facilitated and managed said repayment. According to a variety of sources, in the United States, such remittances equal approximately 12 to 15% of the sums recovered through DMPs.²³

Consequently, a fraction of CCS funding directly depends on the number of DMPs concluded with consumers and the size of the monthly payments agreed on. Numerous observers consider such financial agreements between CCSs and creditors a cause for concern. They raise the issue that this type of funding formula could lead CCSs to turn a blind eye to certain ethical questions:²⁴ an organization in financial difficulties could in effect be tempted to encourage consumers to enrol in DMPs even when they actually lack the means to do so or that that might not be the ideal solution to their debt problems. Moreover, it might set debt repayment rates in excess of such consumers' real capacity to pay.²⁵

These ethical questions re CCSs are all the more problematic as these organizations, through the other services they provide to the community (courses and training, educational materials, budgeting guidelines, etc.) offer truly useful services to consumers.

*Three years after their initial participation in a credit counselling session, the clients had significantly better credit risk scores, fewer credit accounts, lower debt, and fewer credit delinquencies compared to a control group.*²⁶

Laws in the United States²⁷ have not prevented the abuses committed by certain non-profits that only used their non-profit status as a cover for their for-profit interests.²⁸ As it happens, the good

²³ Op. cit. 4. United States Senate, S. Rpt. 109-55, 13 April 13 2005, p. 4.

²⁴ See: Op. cit. 19. CRCS and the Public Interest Advocacy Centre (PIAC), *Credit Reporting: How Are Consumers Faring?*, August 2005, p.49 and 50, <www.piac.ca/files/piac_credit_reporting.pdf> (consulted on 15 June, 2006).

²⁵ Voir Op. cit. 4. United States Senate, S. Rpt. 109-55, 13 April 2005.

²⁶ Op. cit. 9. Jinhee et al, p. 76.

²⁷ Notably, the US Code, IRC Section 501(c)(3), which stipulates the requirements for recognition as a charitable organization and the concomitant tax exemptions (<<http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>>) and the Credit Repair Organization Act of 1997, and Federal Trade Commission, Chapter 2- Credit Repair Organizations, Sec. 2451 in *Regulation Of Credit Repair*

name enjoyed by non-profits often represents in itself a guarantee in the eyes of consumers that their interests will take precedence when they turn to the services of such organizations. In a word, they presume that in dealing with non-profit enterprises they are protected from all conflicts of interest.

Since the tabling of the above-mentioned Senate report, a number of actions and initiatives have been instituted to restore the severely tarnished image of the CCSs. The Federal Trade Commission (FTC) has conducted investigations on non-profit organizations specializing in budget counselling and, more specifically, in negotiating consumers' debts with creditors. The FTC has undertaken legal proceedings against certain organizations that violated the law and abused the confidence of consumers. Some of these organizations have been forced to pay significant fines.²⁹

In addition, the FTC has elaborated a list of trustworthy non-profits, in order to assist consumers in selecting an organization for the mandatory counselling that they must seek before making a declaration of bankruptcy.³⁰

A Code of Practice was elaborated in 2003 by and for independent budget counsellors in collaboration with the certification agency Bureau Veritas Quality International (North America) (BVQi-NA). Said code constitutes an addendum to the ISO 9001 standard.

This Code of Practice, which must be included for all ISO 9001 certification, and which may also serve as a guide on good practices for all budget counsellors, provides guidelines on ethics and practices to members of The Association of Independent Consumer Credit Counseling Agencies (AICCCA), as well as on employee training within these enterprises.³¹

Organizations, <<http://www.ftc.gov/ro/chro/croa1.htm>> (consulted on 12 July, 2006). The latter regulates the activities of organizations lacking charitable organization status.

²⁸ In this regard, see: Op. cit. 4. United States Senate, S. Rpt. 109-55, 13 April 2005; CFA and NCLC; and, Op. cit. 6. Todorova.

²⁹ Lighthouse Credit Foundation Inc., for example, was fined 2.4 million dollars. Federal Trade Commission, "Debt Management Operation Settles FTC Charges," May 3, 2006, <<http://www.ftc.gov/opa/2006/05/lighthouse.htm>>. An agreement in principle between the FTC and DebtWorks, Inc. (AmeriDebt) shall apparently result in the company paying a fine of over 35 million dollars. Federal Trade Commission, "AmeriDebt Founder Settles FTC Deception Charges," 9 January 2006, <<http://www.ftc.gov/opa/2006/01/andrispukke.htm>> (consulted on 15 May, 2006).

³⁰ US Trustee Program, *List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111*, <http://www.usdoj.gov/ust/ao/bapcpa/ccode/cc_approved.htm> (consulted on June 1, 2006).

³¹ Association of Independent Consumer Credit Counseling Agencies (AICCCA), *Code of Practice: Addendum to the ISO 9001:2000 Standard for Consumer Credit Counseling Agencies*, 30 October 2003, <www.aiccca.org/mbrdocs/Code%20of%20Practice.doc> (consulted on 10 May 2006).

Article 7 of the Code of Practice - Counselor Training – stipulates that:

The consumer credit counseling agency shall establish and maintain documented records in accordance to ISO standards which address the qualifications and training of counselors. The consumer credit counseling agency shall be able to demonstrate that counselors are:

Adequately trained to meet the needs of the organization (...)

One may remark, first of all, that the Code does not stipulate what should constitute adequate training even as certification demands that it be demonstrated that counsellor training does meet this requirement. Adequate training should in all likelihood enable a counsellor to render all services provided to clients in a competent fashion. Article 9 – Service Requirements – defines the type of services that a budget counsellor should provide:

- A. Counselors conduct comprehensive interviews, to include, at a minimum:
 - 1) The client's complete financial position (e.g., assets, liabilities, income, and expenses), and identify and explore the root cause of the client's financial situation.
- B. Counselors develop a solution which is optimum for both the client and the creditors, including:
 - 1) Possible alternatives such as liquidation or leveraging of assets
 - 2) Financial counseling to clients who do not need payment assistance
 - 3) Providing a DMP to clients as an alternative to bankruptcy
 - 4) Advising client to close all credit lines with consideration for business or employment related purposes
 - 5) Encouragement to avoid additional debt while the client is improving his financial situation
 - 6) Communicating the consequences that obtaining new revolving debt has on the success of the DMP
 - 7) Identification of additional relevant community resources, which may include: family counseling, mental health counseling, and/or addiction treatment and counseling.
- C. Provide the client with a documented evaluation of his/her financial status to include a recommended plan of action which addresses the identified issues.
- D. Service shall be provided with documented disclosure to clients regarding the:
 - 1) Fee structure for services provided: if a fee is not charged for the service, then any contribution requested by the agency from the client must be clearly identified and noted that it is voluntary
 - 2) Creditors' support of the consumer credit counseling agency through fair share contributions
 - 3) Potential impact on the client's personal credit report
 - 4) Client's responsibility to monitor financial statements/reports from creditors and the consumer credit counseling agency, to verify their accuracy, and to detect and report discrepancies

Beyond the knowledge required to conscientiously establish a budget and the indispensable human skills needed to establish a relationship of trust with the client re all information pertinent to the evaluation of his file, the counsellor must also be aware of all the existing alternatives to

bankruptcy. Ideally, a counsellor shall be knowledgeable re all applicable laws, especially regarding consumer issues (prescription, restitution of property), as well as a skilled negotiator. In addition, a counsellor must be well informed regarding the available community resources (family counselling, mental health counselling, addiction treatment and/or counselling) and be able to judge which resources a client might need.

One shall also note that, among the services that a counsellor must furnish is providing information, which includes the disclosing of any financial support from creditors to the organization offering budget counselling.

Regarding payment for budget counselling services, the Code stipulates the following under Article 10 – Compensation and Fees:

The consumer credit counseling agency shall maintain documented evidence that demonstrates its ability to maintain a low fee structure for services, with specific focus upon:

- A. Compensation is not paid to the counselor based upon the outcome of the counseling process.
- B. Fees, voluntary contributions, or requested donations from clients for the enrolment into a Debt Management Plan (DMP) do not exceed the lesser of \$75 or the maximum fee allowed by law in the state of residence of the client
- C. Fees, voluntary contributions, or requested donations from clients for the maintenance of a DMP do not exceed the lesser of \$50 or the maximum fee allowed by law in the state of residence of the client
- D. Fairshare payments to the agency are voluntary contributions directly from creditors and are not considered part of B and C above.

This, then, is the article that specifies an important ethical rule: the prohibition on tying the results of the counselling with the financial compensation received by the budget counselling agency.

It's worth remembering that this Code of Practice remains voluntary in nature, and that budget counsellors may not be held legally bound to respect it. As we shall see in the following chapter, the situation in Canada is substantially the same as regards the legal obligations pertaining to training and ethical rules.

CHAPTER 2: THE SITUATION IN CANADA

This chapter proposes an overview of budget counselling in Canada in an attempt to identify the characteristics of the organizations offering this service to consumers, as well as the different forms of regulations to which they may be subject.

It is no easy task to summarize and characterize the budget counselling landscape in Canada. One must take into account the number of actors and their differing statuses, the many laws applicable to the different organizations or enterprises apt to offer this service, whether these laws are general or specific, and the existence, for certain parties, of a self-regulatory framework provided by the associations they belong to.

These then are the issues that arise as we endeavour to present an overview in the present chapter.

THE DIFFERENT ACTORS OFFERING BUDGET COUNSELLING SERVICES

In Canada a number of different actors offer budget counselling services to consumers. These actors come from different backgrounds in both the private sector and the community sector. Let it be noted from the very outset that the activities of these organizations and enterprises can be quite diverse—budget counselling, the subject of this study, often being just one of the services offered and, perhaps, the only one in common among these different types of enterprises.

In the private sector, a number of actors, practising under a variety of titles, offer consumers budget counselling as part of their activities. These titles include: bankruptcy trustees, financial adjusters, credit repairers, financial advisors, credit investigators, credit repair experts, insolvency counsellors, credit counsellors and personal financial advisors.

In the community sector, many non-profit organizations offer budget counselling services across the country.³² Credit Counselling Services (CCSs) are well established everywhere in Canada (with the exception of Quebec) as recognized providers of budget counselling services. The same holds for the ACEFs (*Associations coopératives d'économie familiale*) in Quebec. That said, many other organizations also offer budget counselling to their clientele. Examples include the YMCA, women's centres and therapy groups, particularly those working with compulsive gamblers.³³ Certain community organizations only operate in Quebec. In the budget counselling field, the ACEFs and *les Services Budgétaires Populaires ou Communautaires* (SBPs or SBCs) are the most common and best-known organizations in Quebec.

Whereas for the majority of private sector actors, budget counselling constitutes a preliminary, if integral, component of the services they have to offer—indeed it may serve as a means to justify such services, this is not the case for actors from the community sector. Non-profit organizations provide budget counselling as a stand-alone service, a tool made available to consumers to enable them to take control of their financial situation, if possible. Any complementary services offered to the consumer in relation to this goal are identified during the budget counselling exercise.

In the following section, we provide brief definitions and descriptions of these different actors and their activities.

³² Regarding the functioning of the different types of organizations that offer budget counselling, see: The Public Interest Advocacy Centre (PIAC), *Credit Reporting: how are Consumers faring?*, August 2005, pp. 49 and 50, <www.piac.ca/files/piac_credit_reporting.pdf> (consulted on 15 June, 2006).

³³ The budget counselling services offered by these organizations may only represent a tiny portion of their overall activities. Consequently, our study does not specifically examine these organizations.

DEFINITIONS

As we shall see in the following section on the legislative regulatory framework, the appellations used by certain actors have legal definitions and may even be, in certain cases, subject to rather strict regulation. This is also the case for certain of the activities that these actors are permitted to practice.

In what follows we shall endeavour to briefly define just what is referred to by these various titles, to identify the principal activities of the various actors and to determine the role played by budget counselling in their activities as a whole.

Budget counselling

To paraphrase Canada's Office of Consumer Affairs, one could define budget counselling as an intervention aimed at enabling the consumer to take control of his financial situation, with the assistance of a budget counsellor. This is done by identifying the causes of his indebtedness, as well as the means to resolve this situation. This counselling serves to develop a realistic plan to enable the consumer to gain control of his financial situation via a budget. Budget counsellors may also help a consumer find other options, should the available income prove insufficient to balance his budget.

Instruction No. 1R2 on Insolvency Counselling published on December 21, 1994, as part of the Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3), defines in Section 2 the "counselling" that the trustee is bound to offer as follows:

"counselling"

means to assist and educate (...) 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, making referrals to deal with non-budgetary causes of insolvency (e.g. gambling, addiction, marital and family problems, etc.).³⁴

Trustee in Bankruptcy

*"A trustee in bankruptcy is a person licensed by the Superintendent of Bankruptcy to administer proposals and bankruptcies and manage assets held in trust. The trustee can give a debtor information and advice about both the proposal and bankruptcy processes and make sure that both the debtor's rights and the creditor's rights are respected."*³⁵

The work of a bankruptcy trustee is, as we shall shortly see, defined and regulated by the Bankruptcy and Insolvency Act (BIA). The trustee is required to offer a counselling service in which he shall explore all possible solutions to the consumer's debt problems in order to provide impartial advice. The trustee may also confer this task to an insolvency counsellor, i.e. a person who has completed the training course approved by the Office of the Superintendent of Bankruptcy (OSB) and the Canadian Association of Insolvency and Restructuring Professionals (CAIRP).³⁶

³⁴ Office of the Superintendent of Bankruptcy of Canada, *Directive No. 1R2*, <<http://strategis.gc.ca/epic/site/bsf-osb.nsf/en/br01091e.html>> (consulted on 4 July, 2006).

³⁵ Office of the Superintendent of Bankruptcy of Canada, *Trustees in Bankruptcy*, <http://strategis.gc.ca/epic/internet/inbsf-osb.nsf/en/h_br01224e.html> (webpage consulted on 4 October, 2006).

³⁶ National Insolvency Qualification Program (NIQP), *Insolvency Counsellors Qualification Course 2006/2007*, <http://www.cairp.ca/NIQP/English/ICQC/ICQC_Eng_2006.pdf> (consulted on October 2, 2006).

Financial Planner or Advisor

In Quebec, the title financial advisor is akin to that of financial planner. Both titles are regulated by *The Act respecting the Distribution of Financial Products and Services* (R.S.Q., c. D-9.2) and, consequently, constitute titles whose use is restricted and require specific training on seven areas of intervention. A financial planner is a person who offers services related to personal financial planning in seven different areas: finances, taxation, legal issues, retirement, estate planning, investments and insurance. In a word, activities having more to do with consumers concerned about their savings rather than with indebtedness. While the title of financial planner seems unambiguous, other similar titles are less precise, such as for example “financial advisor” or “financial consultant.” In effect, one might expect to obtain from the latter services related to one’s financial situation as a whole, including debt problems. Budget counselling in the sense employed in this study plays a negligible role in the work of financial advisors, who are primarily concerned with present earnings and retirement. As such, budgeting becomes a tool for estimating present and future needs.

Personal Financial Advisor

This title is widely used in financial institutions to designate persons who offer advice on credit issues and, incidentally, credit products. A Personal Financial Advisor is required to have a certificate in Financial Planning and two years of experience, or a BA in Business Administration or a related field and to be a holder of a *certificat de représentant en épargne collective* (Certificate as a Collective Savings Representative). Their work requires them to examine a consumer’s overall financial situation; this enables them to propose their products in compliance with the rules in force in financial institutions.

Financial adjuster

Financial adjusters offer their services to consumers with debt problems—the most frequent solution put forward being a consumer proposal, which, by law, must be submitted by a trustee in bankruptcy. The financial adjuster demands a fee to prepare and evaluate a proposal, a task that must also be carried out by the bankruptcy trustee. *“In the industry, financial adjusters are perceived as useless intermediaries from the consumer’s point of view.”*³⁷ The title financial adjuster also includes practitioners akin to credit repairers. They purport to offer to the bankrupt consumer or the consumer with a poor credit record different ways to “restore his name”, i.e. to recover an acceptable credit rating. Although they generally effect a summary evaluation of their clients’ income and expenditures, financial adjusters do not perform true budget counselling that entails well-informed and objective choices in the implementation of solutions. The options suggested are often limited to a referral to a trustee in bankruptcy.

Credit Repairer

There are certain actors in the market who target consumers experiencing major difficulties in obtaining credit. Credit repairers mainly present themselves loan brokers. They offer to prepare loan requests for consumers, which entails making certain *remedial changes* to one’s credit file, as indicated by this advertisement of a credit repairer: *“Often, all it takes is a few changes for*

³⁷ Radio-Canada, “Faire affaire avec un redresseur financier... un pensez-y bien!”, broadcast on *La Fature*, 16 March 2004, <<http://www.radio-canada.ca/actualite/lalecture/277/redresseur.shtml>> (consulted on June 4, 2006).

you to be able to buy a new car, or acquire a property, or even have it refinanced! We take care of all of the legwork and we put you in touch with the right people.”³⁸

Ontario's Consumer Protection Act of 2002 (S.O. 2002, c. 30, Schedule A) defines a credit repairer as a person working in the “credit repair” sector, i.e. *“services or goods that are intended to improve a consumer report, credit information, file or personal information, including a credit record, credit history or credit rating.”³⁹*

Debt Reduction Consultants (Or Family Budget Counsellor or Home Economics Advisor)

Debt reduction consultants essentially work to refinance consumer debts in order to reduce monthly payments. This approach targets in particular a property-owning clientele with net value on their properties, as this enables refinancing using a mortgage as collateral. Certain businesses offering the same type of service give the persons in charge of meeting potential clients the title of family budget counsellor or home economics advisor.⁴⁰ Their work consists of drawing up a list of the client's debts and proposing refinancing to lower monthly payments. Subsequently, the file is referred to a loan broker who will submit a mortgage-refinancing package to financial institutions, which is the preferred solution for consolidating the consumer's debts.⁴¹

Debt reduction consultants focus their efforts on the monthly debt repayments; they do not concern themselves with a consumer's budget and financial situation as a whole.

Credit repairers

The parties representing themselves as experts in improving credit ratings target a clientele whose credit records leaves much to be desired. Promises are made to consumers *“to ‘fix’ bad credit for a fee — often substantial, usually payable in advance. So-called credit repair clinics say they will arrange to have negative credit information removed from your record — including information about bankruptcies and default judgements.”⁴²* The Consumer Measures Committee has published a document addressed at young adults entitled “Dealing with Credit.” As this document puts it: *“Credit repair companies claim to act on consumers’ behalf to improve their credit file — fast — but for a fee. This fee is often as high as \$1500. In reality, no credit repair company has the power to change or erase accurate information in a consumer’s credit file — information such as a history of late payments. The only way to improve a poor credit rating is to work with your creditors and show that your payment habits have improved.”⁴³* In general, credit repairers do not concern themselves with the elaboration of a client's budget.

³⁸ Crédit redresseur, le redresseur de crédit, <<http://www.e-monsite.fr/redresseurdecrit/>> (consulted on October 2, 2006).

³⁹ Government of Ontario, *The Consumer Protection Act of 2002*, S.O. 2002, Chapter 30, Schedule A, Part V, <http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/02c30_e.htm> (consulted on July 4, 2006).

⁴⁰ See the EquityCanada job offer reproduced in Appendix 4.

⁴¹ Debt Freedom Canada, “DFC services,” <http://www.debtfreedom.ca/index.php?option=com_content&task=view&id=17&Itemid=28>, (consulted on October 4, 2006).

⁴² Ontario Ministry of Government Services - Consumer Protection, Credit “Repair” <http://www.gov.on.ca/MGS/en/ConsProt/STEL02_045974.html> (consulted on June 2, 2006).

⁴³ Government of Nova Scotia, *Dealing with Credit – Making decisions in a changing consumer marketplace*, <<http://www.gov.ns.ca/snsmr/consumer/pdf/credit.pdf>> (consulted on July 4, 2006).

Budget counsellor or consultant

These appellations are used by persons working in non-profit organizations such as ACEFs (*Associations coopératives d'économie familiale*), *Services budgétaires populaires / communautaires*, Credit Counselling Services and other community groups, which are known by different names in different regions. The task of the budget counsellor consists of drawing a detailed portrait of the consumer's financial situation and history (debts, income, and expenditures) in order to find and implement solutions to his problems. This is carried out as part of an approach that takes account of the different social, economic and psychological factors influencing the situations in which these persons find themselves and is respectful of their values and priorities. This meeting is an opportunity for the counsellor to provide objective, clear and jargon-free information, which shall enable the consumer to make a well-informed decision. Some organizations accompany consumers, when required, in the implementing of solutions. This may entail budgetary follow-up meetings over a period of time, as needs dictate.

Rather than proposing complementary services (loan or mortgage brokerage, for example), the main goal of organizations offering budget counselling is, to assist, inform and accompany consumers regarding the various financial strategies they may adopt to take control of their financial situation.

FEDERAL LAW GOVERNING BUDGET COUNSELLORS

The purpose of this section is to provide an overview of the principal laws governing budget counsellors in Canada, whether they practise in the private sector or in the community sector. This overview will help us to determine a potential regulatory framework regarding the mandatory training required to be authorized to offer this service, as well as the appropriate ethical rules, especially with respect to the funding of the organizations or enterprises offering this service.

Whereas in principle general laws do apply to the activities of Canadian businesses, it is our observation that no federal law deals specifically with this type of practice or activity nor do any prescribe a formal framework that would be applicable to businesses offering this service,⁴⁴ with the exception of the Bankruptcy and Insolvency Act, which specifically regulates bankruptcy trustees, notably with respect to budget counselling.

The Competition Act [R.S., 1985, c. C-34], for example, prohibits the making of false representations on the part of businesses. As do provincial consumer protection laws. *Misleading advertising* refers to providing the public with false or misleading information, knowingly or recklessly, to influence the decision to purchase the advertised product or service.⁴⁵

Part VI: OFFENCES IN RELATION TO COMPETITION

52. (1) *No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.*⁴⁶

As for ethical rules, while the applicable laws do cite concerns in relation to confidentiality that are certainly relevant to budget counselling, they do not explicitly address the particular set of issues that this study sought to come to grips with. Consequently, we shall only briefly mention the principles prescribed by the federal law on the protection of personal information.

As we saw above, certain American businesses active in budget counselling incorporated as non-profit organizations to take advantage of the public's confidence in this type of organization and exploit consumers. In order to determine whether the same type of abuse of the advantages conferred by legislation on certain charitable organizations is likely to occur in Canada, we shall now briefly examine the criteria of the federal legislation enabling incorporation as a non-profit organization. We will also endeavour to identify the potential advantages to enterprises active in budget counselling of incorporating as a non-profit organization, as well as the restrictions that may be imposed on non-profit corporations.

⁴⁴ On this subject, see also: Op. cit. 32, PIAC, pp. 49 and 50.

⁴⁵ Industry Canada, *Your Business and Federal Legislation – Marketplace Rules: The Competition Act*, <<http://strategis.ic.gc.ca/SSG/me00110e.html>> (consulted on July 4, 2006).

⁴⁶ Government of Canada, *The Competition Act*, [R.S.C., 1985, c. C-34], <<http://www.canlii.org/ca/loi/c-34/>> (consulted on July 21, 2006).

BANKRUPTCY AND INSOLVENCY ACT⁴⁷

Pursuant to the Bankruptcy and Insolvency Act, trustees in bankruptcy shall provide, or provide for, budget counselling for bankrupt individuals. The estate of the bankrupt shall pay the costs of the counselling, where such exist.

*Counselling Services**157.1 (1) The trustee*

(a) shall provide, or provide for, counselling for 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.

The Act stipulates that “A trustee shall comply with such code of ethics respecting the conduct of trustees as may be prescribed.” (Section 13.5). Directives on budget counselling were issued on December 21, 1994, by the Superintendent of Bankruptcy in accordance with paragraphs 5(4)(b) and c) of the Act.⁴⁸ In addition to defining such counselling, these directives also defines what constitutes a *qualified counsellor*, who, alone, shall be authorized (see: Section 4) to provide such counselling:

2. The following definitions apply to the these directives:

“qualified counsellor”

means an individual (independent counsellor authorized by the trustee, a trustee, an administrator of consumer proposals, and an employee of a trustee or administrator of consumer proposals) who has obtained the qualifications and skills to provide financial counselling to a debtor, consumer debtor, bankrupt or relative of a bankrupt;

Section 7 specifically stipulates the content of the initial phase of counselling:

7. (1)

In the first stage, the qualified counsellor shall present information to provide the bankrupt and/or relative, or a consumer debtor, with consumer advice in the areas of:

- money management;*
- spending and shopping habits;*
- warning signs of financial difficulties; and*
- obtaining and using credit.*

Furthermore, a Code of Ethics for Trustees in Bankruptcy has been elaborated, which is an integral part of the General Rules of the Bankruptcy and Insolvency Act. (R.S.C., c. 368). This Code expressly stipulates that a Trustee must avoid conflicts of interest as well as anything that could suggest a possible conflict of interest.

⁴⁷ Government of Canada, *Bankruptcy and Insolvency Act* [R.S.C., 1985, c. B-3], <http://www.canlii.org/ca/loi/b-3/> (consulted on September 12, 2006).

⁴⁸ Office of the Superintendent of Bankruptcy, *Directive No. 1R2 – Counselling in Insolvency Matters*, 21 December 1994, <<http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/en/br01091e.html>> (consulted on September, 12 2006).

44. Trustees who are acting with respect to any professional engagement shall avoid any influence, interest or relationship that impairs, or appears in the opinion of an informed person to impair, their professional judgement.

47. Trustees shall not engage in any business or occupation that would compromise their ability to perform any professional engagement or that would jeopardize their integrity, independence or competence.⁴⁹

The Office of the Superintendent of Bankruptcy (OSB)⁵⁰ issues licences to bankruptcy trustees who satisfy the legal requirements.⁵¹ It sets and applies the professional standards pertaining to the administration of bankrupt individuals' estates and sees to the application of the Bankruptcy Act by ensuring that trustees respect its provisions.

9. An individual who wishes to apply for a licence must meet the following prerequisites:
- a. not be an insolvent person and not have been in a state of insolvency within five (5) years preceding the date of the application;
 - b. possess a Canadian university degree or its equivalent, or hold a relevant professional designation recognized in Canada or have a minimum of five (5) years relevant work experience;
 - c. have successfully completed:
 - i. the *National Insolvency Qualification Program*; and
 - ii. the *National Insolvency Examination*, as described in the licensing process set out in Appendix "A";
 - d. have successfully completed the *Insolvency Counsellor's Qualification Course*, as established by the Superintendent of Bankruptcy;
 - e. be in good standing with, and not subject to any current disciplinary action by any professional organization of which the applicant is a member.
14. The suitability of a candidate to become a trustee is evaluated by a Board of Examination that will consider the skills of the applicant.
15. The applicant shall demonstrate before the Board:
- a. the ability to administer professional engagements;
 - b. the ability to apply related legislation and jurisprudence;
 - c. appropriate experience and a good understanding of business and consumer matters;
 - d. good judgement in the administration of professional engagements; and
 - e. a high standard of business ethics and professionalism.

Obviously, the training required for recognition as a *qualified counsellor* is less exhaustive. The explanatory notes accompanying Directive No. 1R2 specify that:

⁴⁹ Office of the Superintendent of Bankruptcy, *Code of Ethics for Trustees in Bankruptcy*, <<http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/en/br01108e.html>> (consulted on September 12, 2006).

⁵⁰ Office of the Superintendent of Bankruptcy Canada (OSB), *What We Do*, http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/en/h_br01552e.html (consulted on July 4, 2006).

⁵¹ Directive No. 13 specifies which qualities are required and which criteria pertain to the obtaining and maintaining of a trustee licence. See: Office of the Superintendent of Bankruptcy, *Directive No. 13, Trustee Licensing*, <<http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/en/br01057e.html>> (consulted on October 10, 2006).

1. *It is recognized that counselling services should be provided by skilled and qualified individuals and that standards be established for the delivery of the service.*
2. *In this respect, it is suggested that everyone, including trustees, take a training program if they wish to provide counselling. A training program should establish a level playing field as to the skills and qualifications of the individuals who will be providing counselling services.*
3. *The establishment of standards is meant to reinforce and facilitate the rehabilitation of all individual debtors. Standards will establish a uniform structure for the delivery of content.*
4. *The implementation of the above recommendations will ensure that individual debtors facing financial difficulties will receive professional advice from qualified people, who will assist them in adopting more responsible practices with respect to financial matters and avoiding reoccurrence.*
5. *(...) As of January 1, 1997, only those individuals meeting the prescribed requirements will be allowed to provide counselling.*

The National Insolvency Qualification Program (NIQP) dispenses the Insolvency Counsellors Qualification Course (ICQC), a distance teaching course comprised of four sections on key concepts which enables candidates to acquire the competencies required of a qualified insolvency counsellor:

- Personal Insolvency/Bankruptcy under the BIA
- Interviewing and Counselling
- Elements of Money Management
- Money in Context⁵²

To be eligible to take the ICQC, the candidate, if he is not enrolled in the National Insolvency Qualification Program (NIQP), must:

- Have a High School Diploma,
- Five years of general work experience OR
- Two years of post secondary education
- AND currently work for a trustee OR
- Currently work for a credit counselling service that counsels debtors.⁵³

The prerequisites, notably the employment-related requirement, as well as the 50 to 100 hours of training required by the Office of the Superintendent of Bankruptcy before one may practice budget counselling under the Bankruptcy and Insolvency Act, clearly show the degree of seriousness accorded this type of service. This seriousness in all likelihood is due to the fact that the consumers addressed by this type of service are already in a situation of insolvency and, according to the concerns cited in the notes accompanying Directive 1R2, it's important to avoid any recurrence of such a situation.

⁵² National Insolvency Qualification Program (NIQP), *Insolvency Counsellor's Qualification Course*, <<http://www.cairp.ca/NIQP/English/ICQC/index.htm>> (consulted on July 4, 2006).

⁵³ National Insolvency Qualification Program (NIQP), *Insolvency Counsellor's Qualification Course 2006/2007*, <http://www.cairp.ca/NIQP/English/ICQC/ICQC_Eng_2006.pdf> (consulted on September 12, 2006).

One could of course argue that one should be equally concerned about budget counselling when a consumer seeks to **avoid** finding himself in an initial situation of insolvency, and that it's important that all budget counsellors dispose of sufficient training to enable them to properly advise the consumers who consult them.

THE INCORPORATION OF NON-PROFIT ORGANIZATIONS IN CANADA

As in the United States, many of the Canadian organizations offering budget counselling are incorporated as non-profit organizations. A condition of this type of incorporation is that net revenues serve the public good rather than the administrators. In exchange, these organizations benefit from tax exemptions.

The Canada Corporations Act (Part II, sections 153 to 157.1(3) – Corporations without Share Capital)⁵⁴ enables the incorporation of non-profit corporations at the federal level. The purposes of the organization “must fit under, or have goals similar to, one of the following categories: national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting. To ensure that corporations created under this Act are non-profit, corporations may not provide financial benefits to their members.”⁵⁵

Public benefit not-for-profit corporations carry on activities that are primarily for the benefit of the public. Their revenue sources may include public and corporate donations, government grants, contract funding, and fee-for-service programs or activities. A public benefit not-for profit corporation may, but will not necessarily, be registered under the *Income Tax Act*.⁵⁶

One will have noted that nothing in this law restricts the types or sources of donations that this type of organization may receive, nor the type of contracts that it may conclude for funding purposes. Such limits as exist shall only depend on the organization's mission and the ethical rules it adopts or which are imposed on it. Thus, it is under the auspices of *The Income Tax Act* that the federal and provincial governments exercise their jurisdiction over these organizations, by granting tax exemptions to not-for-profit organizations.⁵⁷

As in American legislation, Canadian law also provides for tax exemptions to registered charities [R.S.C. (1985), c. 1 (5th suppl.) section. 149 (1) f)]⁵⁸.

⁵⁴ Government of Canada, *Canada Corporations Act* (R.S.C., 1970, c. C-32), <<http://www.canlii.org/ca/sta/c-1.8/whole.html>> (consulted on June 15, 2006).

⁵⁵ Industry Canada, *Corporate and Insolvency Law Policy. Corporate Not-For-Profit Law, Canada Corporations Act: Part II*, <http://strategis.ic.gc.ca/epic/internet/incilp-pdci.nsf/en/h_ci00020e.html> (consulted on June 15, 2006).

⁵⁶ Industry Canada, *Corporate and Insolvency Law Policy. Chapter 1: Corporations and Directors, What, Who, Why and How*, <<http://strategis.ic.gc.ca/epic/site/cilp-pdci.nsf/en/ci00691e.html>> (consulted on June 15, 2006).

⁵⁷ Canada Revenue Agency, *Income Tax Guide to the Non-Profit Organization (NPO)*, <http://www.cra-arc.gc.ca/E/pub/tg/t4117/t4117-e.html#P100_5723> (consulted on June 15, 2006).

⁵⁸ According to the Canada Revenue Agency, the courts have identified four general categories of charitable purposes. For an organization to be so registered, its purposes have to fall within one or more of the following categories: the relief of poverty; the advancement of education; the advancement of religion; or certain other purposes that benefit the community in a way the courts have said are charitable. <http://www.cra-arc.gc.ca/E/pub/tg/t4063/t4063eq.html#P203_19112> (consulted on September 12, 2006).

THE PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT (PIPEDA)⁵⁹

All Canadian organizations, whether for-profit or not, must comply with The Personal Information Protection and Electronic Documents Act [2000, Ch. 5], which protects consumers from those who collect such information in the private sector. It should be noted that if a **provincial law that is substantially similar** to Part 1 of the PIPEDA applies to an organization, a class of organizations, an activity or a class of activities, these shall be exempt from the application of Part 1 of the PIPEDA in respect of the collection, use or disclosure of personal information that occurs within that province, and instead subject to said provincial law. According to the Act, these organizations must:

- obtain your consent when they collect, use or disclose your personal information;
- collect information by fair and lawful means; and,
- have personal information policies that are clear, understandable and readily available.

⁶⁰

These rules apply of course to the personal information held by organizations active in consumer budget counselling. They also apply to creditors and other parties with whom budget counselling organizations may have communicated as part of negotiations on behalf of the individuals consulting them.

⁵⁹ Pursuant to paragraph 26(2)b) of PIPEDA, the Governor in Council may, "if satisfied that legislation of a province that is substantially similar to this Part [Part 1] applies to an organization, a class of organizations, an activity or a class of activities, exempt the organization, activity or class from the application of this Part in respect of the collection, use or disclosure of personal information that occurs within that province."

It should be noted that Alberta, British Columbia, Ontario and Quebec all have laws that have been deemed substantially similar to the federal law. See: Office of the Privacy Commissioner of Canada. Resource Centre, <http://www.privcom.gc.ca/legislation/02_06_01_e.asp> (consulted on June 17, 2006).

⁶⁰ Office of the Privacy Commissioner of Canada - Resource Centre, *A Guide For Individuals - Your Privacy Rights*, <http://www.privcom.gc.ca/information/02_05_d_08_E.asp> (consulted on September 12, 2006).

PROVINCIAL LAWS

Provincial legislation is bereft of specific provisions on budget counselling per se, although it may expressly regulate certain other activities which may be conducted as part of budget counselling: renegotiations of consumer debts with creditors, debt repayment management and the provision of other financial advice.

LAWS ON INCORPORATION

As the provincial laws governing the incorporation of not-for-profit organizations have the same effects and entail the same obligations and advantages as federal legislation,⁶¹ we shall dispense with discussing this subject. Suffice it to mention that provincial laws also lack provisions restricting either the sources of funding available to not-for-profit organizations or their ability to conclude contracts for such purposes.

CONSUMER PROTECTION LAWS

The provinces have adopted laws regulating the practices of all sectors of commercial activities operating in their respective jurisdictions. Naturally, these laws apply to the budget counselling field as well. Thus, not-for-profits and private sector practitioners and organizations active in any area in which budget counselling is offered are subject to these laws inasmuch these organizations may be identified as merchants or the services they offer as commercial activities. Naturally, the situation differs substantially depending on whether budget counselling is a component of a service for which the consumer must pay fees or whether budget counselling is offered as a distinct and complete service that is free of charge. Budget counselling per se, provided free of charge, may certainly not be labelled a commercial activity, even if certain other activities of the organization could fit this definition.

In Quebec, for example, The Consumer Protection Act (R.S.Q., c. P-40.1)⁶² prohibits, as do the analogous laws in the other provinces,⁶³ false representations and in this regard specifically mentions certain banned practices⁶⁴:

- 220. No merchant, manufacturer or advertiser may, falsely, by any means whatever:**
- a) ascribe certain special advantages to goods or services;*
 - b) hold out that the acquisition or use of goods or services will result in pecuniary benefit;*

⁶¹ In Quebec, for example: For fiscal purposes, a non-profit organization (NPO) is an entity created and operated solely for non-profit purposes. Its income must not be distributed to proprietors, shareholders or members, or made available to them for personal gain. See: Revenu Québec, *General Information – Non-profit organizations*, <<http://www.revenu.gouv.qc.ca/eng/entreprise/impot/osbl/info.asp>> (consulted on September 12, 2006).

⁶² Government of Quebec, *Consumer Protection Act*, R.S.Q., c. P-40, <<http://www.canlii.org/qc/laws/sta/p-40.1/20061117/whole.html>> (consulted on September 12, 2006).

⁶³ *Lois sur la protection du consommateur, sur les pratiques commerciales ou sur la concurrence.*

⁶⁴ It should be noted that in general provincial laws prohibit, for example, "...credit repairers to accept advance payment, security for payment or to charge a fee unless their services cause a material improvement to the consumer's credit file." Excerpt from "Consumer Protection," on the government of Ontario's website <http://www.gov.on.ca/MGS/en/ConsProt/STEL02_045974.html> (consulted on September 12, 2006). We shall not examine this type of regulation or prohibition here, as it goes beyond the scope of this study.

c) hold out that the acquisition or use of goods or services confers or insures rights, recourses or obligations.

222. No merchant, manufacturer or advertiser may, falsely, by any means whatever:
c) hold out that goods or services have been furnished.

228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

This short list may already suffice to raise doubts about the legality of the consumer advertisements of certain merchants who give the impression that they are able to eliminate consumers' debts, clean up their credit records and modify their credit rating. Such practices are common among certain businesses whose employees sometimes even present themselves as consultants in home economics, but in fact often only offer, following budget counselling, debt consolidation via loans with often rather high interest rates, which may even be tied to a mortgage, or simply suggest that their clients declare bankruptcy or file a consumer proposal, even if other solutions could, in many cases, be more advantageous. On the other hand it's difficult to see how organizations might contravene these provisions if they offer budget counselling whose only claimed advantage consists in the possibility that consumer might become better informed and regain control of his financial situation by himself. This is even more the case when one considers the fact that these services are offered free of charge and are not tied to any other for-fee services.

In light of the funding structure of certain not-for-profit organizations, one must admit that there is apparently a grey area if the issue is to determine whether the fact that the party offering the service obtains part of its funding from a third-party creditor to whom the debtor is to make payments constitutes *an important fact*, which should in all cases be disclosed to the consumer, even if it has no bearing on the amount of the debt to be repaid by the consumer.

The provinces have established specific legal regulatory frameworks governing collection agencies either through specific laws or through sections in their consumer protection acts. Certain legislators (in Alberta and Saskatchewan, for example) have opted to explicitly include in their legislation "debt repayment agencies" ("debt repayment agency" means a collection agency that carries on the activities of offering or undertaking to act for a debtor in Alberta in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors in consideration of a fee, commission or other remuneration that is payable by the debtor)⁶⁵ along side collection agencies. The jurisprudence, in other provinces, has established that enterprises, which manage a consumer's debt repayment to his creditors, whether private businesses or non-profits, must be considered equivalent to collection agencies.⁶⁶

⁶⁵ Government of Alberta, *Collection and Debt Repayment Practices Regulation* (ALBERTA REGULATION 194/99 under the Fair Trading Act), art. 1 g), <http://www.qp.gov.ab.ca/documents/regs/1999_194.cfm> (consulted on September 12, 2006).

⁶⁶ In Nova Scotia, for example, *The Collection Agencies Act* (R.S., c. 77, s. 1) defines collection agencies as follows: "collection agency" means a person, other than a collector, who deals with a debtor for the purpose of obtaining or arranging for payment of money owing to another person(...)." Available on line at the government of Nova Scotia's website: <<http://www.gov.ns.ca/legislature/legc/statutes/collecta.htm>> (consulted on September 12, 2006); see also, in Ontario, *The Collection Agencies Act*, R.S.O. 1990, C.14: "collection agency" means a person other than a collector who obtains or arranges for payment of money owing to another person, or who holds out to the public as

In a case where a respondent was accused of having effected debt collection without a license, the Ontario Court of Justice concluded that an enterprise that assists a **debtor** (?) in the management of his debts, even if said enterprise is a not-for-profit organization, must be considered a collection agency and register in accordance with the provisions of the **Collection Agencies Act**, and this is so even if the enterprise is not, at any moment, in possession of the sums disbursed by the debtor for payment to his creditors.

In the client agreement, the client authorizes Renew to "assist in the arrangement and proposal of an acceptable repayment plan of the Client's debts to their creditors". In its explanatory instruction manual to clients, Renew advises: "Upon retaining our services you have given us control of your financial and credit affairs and you are not allowed to conduct any discussions or make any payment arrangements, orally or in writing without our authorization. We will handle everything on your behalf"

The judge concluded that:

Therefore it is obvious, based on its own published material, that Renew arranges for payment of money owing to another person, as set out in the definition of "collection agency" in the Act, and instructs its clients to advise creditors to contact Renew to discuss debtors' payment arrangements.

(...)

I therefore conclude that the true object of the Act and intent of the Legislature is to protect debtors by requiring that all those who deal with them register in order that the Registrar may ascertain which, if any, parts of the legislation may apply....

(Our underlines)⁶⁷

Therefore, the laws that apply to this type of business also apply to those that practise "debt pooling." This is "an arrangement or procedure under which a debtor pays to a debt pooler money to be distributed or paid, according to a system, by that debt pooler to 3 or more creditors of the debtor,"⁶⁸ i.e. this is the Canadian version of the DMPs in the United States.⁶⁹

Other than the rules on harassment and the restrictions on communicating information to third parties, which, in general, do not apply to organizations offering budget counselling, the rules common to all of these laws primarily concern mandatory registration by the pertinent enterprises and the prohibiting of collecting from the consumer any sum superior to the sums owed to creditors. Agencies which manage for consumers the repayment of their debts to creditors, whether private sector or not-for-profit, must, as a rule, register and obtain the permits required to engage in certain of their practices.⁷⁰

providing such a service. Available on line at the government of Ontario's website: <http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c14_e.htm> (consulted on October 18, 2006).

⁶⁷ Government of Ontario, Ontario (Ministry of Consumer and Business Services) v. Gnish, 2004 ONCJ 399, <<http://www.canlii.org/on/cas/oncj/2004/2004oncj399.html>> (consulté le 18 octobre 2006).

⁶⁸ Government of British Columbia, Business Practices and Consumer Protection Act [SBC 2004], Chapter 2, Section 125, <http://www.qp.gov.bc.ca/statreg/stat/B/04002_07.htm> (consulted on October 18, 2006).

⁶⁹ See the definition given this type of program by the Association for Financial Counseling and Planning Education (AFCPE) on page 12.

⁷⁰ In Alberta, for example, all "collection agencies, collectors, debt repayment agencies and debt repayment agents" must obtain a licence issued in accordance with the provisions of the *Fair Trading Act and the Collection and Debt Repayment Practices Regulation*, Alberta Regulation 194/99: Fair Trading Act: Collection And Debt Repayment:

However, these laws contain no rules on the training that practitioners must acquire, nor any restrictions on the types of funding to which they may have recourse.

Quebec

As we saw in the chapter on federal legislation, certain specific laws, in this instance the Bankruptcy and Insolvency Act, may include provisions on the training required of certain practitioners offering budget counselling to consumers. Provincial laws may also stipulate that certain titles shall be restricted to those who have acquired the training specified by a law or regulation. For example, Quebec's **Act Respecting Distribution of financial products and services** (R.S.Q. c. D-9.2) confers on l'*Autorité des marchés financiers* (AMF) the power to monitor, notably, financial planners, also referred to in the Act as "*representatives*," along side insurance salesmen, securities brokers and claims adjusters.

Authority has, in effect, been conferred on the AMF to ensure, with respect to the distribution of financial products and services, compliance with the different regulatory requirements concerning the training of representatives and the issuance of licenses to practice to representatives subject to the provisions of the *Act*, in the eight areas defined therein, including financial planning. Thus:

56. Subject to section 60, no person may use the title of financial planner or purport to offer financial planning services without holding the appropriate certificate issued by the Authority.

In addition, as the Regulation Respecting the Issuance and Renewal of Representatives' Certificates (no 1)⁷¹ stipulates:

16. The minimum training for a candidate in the sector of financial planning is a diploma conferred by the Institut québécois de planification financière.

The *Regulation respecting titles similar to the title of financial planner* (R.Q. c. D-9.2, r.4), adopted pursuant to *An Act respecting the distribution of financial products and services*, has determined that the following titles are similar to the title of financial planner and may not be used by anyone: chartered financial planner (CFP), registered financial planner (RFP), chartered financial adviser (CFA), financial consultant, financial co-ordinator, financial adviser, personal finance consultant, personal finance co-ordinator, personal finance planner; any title including one of the following 5 expressions, in which the words composing each expression either appear together or are separated by other words: financial planner; financial planning, financial adviser, financial consultant, financial co-ordinator.

Practices Regulation. On line at <http://www.qp.gov.ab.ca/documents/regs/1999_194.cfm> (consulted on October 22, 2006).

In Ontario, however, the law exempts certain not-for-profit organizations from the obligation to register: "**19.1** (1) The restriction in subsection 4 (1) of the Act against a person acting as a collector, unless the person is registered by the Registrar under the Act, does not apply to a person employed by an incorporated full or associate member agency of the Ontario Association of Not-For-Profit Credit Counselling Services" (O. Reg. 467/01, s. 1). Consulted on July 7, 2006.

⁷¹ Regulation Respecting the Issuance and Renewal of Representatives' Certificates (no 1), available on line at the IQPF's website at: <<http://www.iqpf.org/download/document/bsf-r1-eng.pdf>> (consulted on October 4, 2006).

The Act stipulates that “Only a person holding a diploma in financial planning issued by the *Institut québécois de planification financière* may obtain, from the Authority, a certificate authorizing the person to use the title of financial planner” (section 57) and that “The Authority may, for each discipline, determine by regulation: 1) the minimum qualifications required to obtain a certificate, the courses that an applicant for a certificate must take, and the rules relating to the preparation and passing of prescribed examinations” (section 200).

The *Institut québécois de planification financière* describes its mission as follows:

*“To contribute to the protection and financial well-being of Quebec consumers by overseeing the training of financial planners and promoting a rigorous professional approach marked by integrity and transparency.”*⁷²

⁷² Institut québécois de planification financière, *Mission*, <<http://www.iqpf.org/mission.asp?lng=1>> (consulted on October 3, 2006).

The Authority is also responsible for determining via its regulations:

1. The occupations that are incompatible with the pursuit of activities as a representative.
2. The conditions and restrictions that apply to the pursuit of activities as a representative.
3. The rules applicable to client solicitation and the representations made by representatives.
4. The product information that representatives must give to clients, and the manner of giving such information.

Naturally, the Act imposes certain ethical obligations on financial planners; they are “bound to act with honesty and loyalty in their dealings with clients,” as well as “with competence and professional integrity” (section 16). Moreover, “where representatives require compensation from the persons with whom they transact business, they must disclose to the client the fact that they also receive remuneration for the products sold and the services rendered [or] any other benefit” (section 17).

Based on the preceding, one might naively believe that any person or enterprise that offers consulting services on personal consumer finances is adequately regulated under the legislation in Quebec. That would require ignoring the restrictive meanings applicable to the common terms used in the Act.

L'Institut québécois de planification financière explains in effect what should be understood by personal financial planning:

Personal financial planning is a process of optimizing your financial situation and your assets. In general, financial planning deals with the areas of finances, taxation, legal aspects, estate planning, insurance, investment and retirement planning.

The role of a financial planner is to guide you through the financial planning exercise by helping you choose a strategic action plan that is wholly adapted to your needs and that takes your constraints and personal goals into account. Your planner will devise realistic strategies and suggest coherent measures to enable you to attain the goals you have set for yourself. With your input, your planner will set out valuable guidelines that allow you to keep track of your financial progress and make the right decisions at the right time.

*Robust management of your personal finances is the key to gaining financial autonomy, achieving your goals and making your dreams a reality.*⁷³

Let's make it clear that the preceding is only presented as an example of possible provincial legislation on the regulation of a type of services pertaining to advice on personal finances. Well aware that financial planning as presently defined can cover far broader areas than that dealt with in budget counselling, we are led to conclude that the Act only protects those consumers wishing to optimize their wealth. Moreover, it's clear that consumers with financial difficulties or debt problems must turn to practitioners, of which neither the training nor the ethics are regulated by any law, if they seek the elaboration of “a strategic action plan that is wholly adapted to [their] needs and that takes [their] constraints... into account,” as well as advice to develop “realistic strategies and coherent measures” and to achieve “sound management of [their] personal finances” as the “key to gaining financial autonomy.”

⁷³ Institut québécois de planification financière, *Financial Planning*, <<http://www.iqpf.org/planif.asp?lng=1>> (consulted on September 18, 2006).

In Quebec, ACEFs and other not-for-profit organizations that offer budget counselling services and which obtain funding from their *Agence régionale de santé et de services sociaux*, whether on a regular basis or via service agreements, are subject to said body's complaints review process. The Act Respecting Health Services and Social Services recognizes users rights, notably the right "to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate." As mentioned in the brochure distributed by the *Protecteur des usagers en matière de santé et de services sociaux* (Protector of Health and Social Services Users), a person may file a complaint if he is dissatisfied with the quality of services or if he deems that his rights have not been respected.

Consequently, a direct complaint may be filed to *l'Agence régionale de la santé et des services sociaux*: (The Regional Health and Social /services Agency)

*5° "by any natural person who requires or uses services provided by an organization, partnership or person whose services or activities relate to the field of health and social services and with which or whom a service agreement has been made by the agency for the provision of services, and who cannot otherwise apply to an institution under Division I. This does not apply, however, in the case of a complaint concerning a physician, dentist or pharmacist, or a resident, who practises with such an organization, partnership or person."*⁷⁴

⁷⁴ Government of Quebec, *Act respecting health services and social services*, (R.S.Q., c. S-4.2) Division III, section 60).

PROVINCIAL AND NATIONAL ASSOCIATIONS

Certain organizations offering budget counselling have formed associations with the objective of encouraging members to share their concerns, develop their practices and ensure the defence of their interests and the promotion of common ethical practices. While the majority of the members of these provincial and national associations are from the community sector, some of them also open their doors to members from the public and parapublic sectors, as well as individual members.

In general, these provincial and national associations promote an approach based on self-regulation of their members, and are responsible for ensuring that this self-regulation is respected. Among the requirements these associations impose on their members are common policies such as a code of ethics and good practices.

There are a number of associations regrouping organizations offering budget counselling. These include, notably, the Canadian Association of Insolvency and Restructuring Professionals (CAIRP), the Canadian Association of Independent Credit Counselling Agencies (CAICCA), Credit Counselling of Canada (CCC), the Ontario Association of Credit Counselling (OACCS) and, in Quebec, Union des consommateurs and the Coalition des associations de consommateurs du Québec (CACQ).

In this section, we shall examine the ethical rules that these associations impose on their members as well as, where applicable, the minimum training that practitioners offering budget counselling are bound to complete under the rules established by these associations.

CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS (CAIRP)⁷⁵

CAIRP is a national professional association founded in 1979⁷⁶ composed of trustees in bankruptcy, receivers, agents of the bankrupt and insolvency counsellors. A not-for-profit corporation, CAIRP promotes the practice of insolvency administration and the public interest in this field. CAIRP manages the "National Insolvency Qualification Program" (NIQP), the official qualification process for individuals seeking to become a licensed Trustee in Bankruptcy in Canada, as well as the ICQC, the Insolvency Counsellor's Qualification Course.⁷⁷ CAIRP offers courses on insolvency administration as well as continuing professional development programs to its members, accountants and trustees in bankruptcy.

CAIRP's present mission statement reads as follows:

- Develop, educate, support and give value to its members;

⁷⁵ Insolvency and restructuring professionals have also formed provincial associations affiliated with the national association, the Canadian Association of Insolvency and Restructuring Professionals. See: <http://www.cairp.ca/english/provincial_assoc/prov_assoc.asp> (consulted on August 21, 2006).

⁷⁶ In 1992 CAIRP changed its original name, Conseil canadienne d'insolvabilité/Canadian Insolvency Association, to dispose of the pejorative connotation of its acronym in English ("CIA" for Canadian Insolvency Association) and to better reflect the considerable professionalism of its members. See: <<http://www.cip.ca/english/aboutcipa/aboutcipa.htm>> (consulted on October 18, 2006).

⁷⁷ Canadian Association of Insolvency and Restructuring Professionals (CAIRP), *NIQP Home page*, <<http://www.cip.ca/english/niqp/index.html>> (consulted on July 3, 2006).

- Foster the provision of insolvency / restructuring services with integrity, objectivity and competence, in a manner that instills the highest degree of public trust; and
- Advocate for a fair, transparent and effective system of insolvency / restructuring administration throughout Canada.⁷⁸

In September 1997, CAIRP and the Superintendent of Bankruptcy signed a Memorandum of Understanding to create the National Insolvency Qualification Program (NIQP), which seeks to harmonize the qualifications required of any person wishing to become both a member in good standing of CAIRP and a trustee in bankruptcy.⁷⁹ Applicants for the NIQP must meet one of the following qualifications:

- Hold a Canadian university degree or equivalent
- Hold a relevant professional designation recognized in Canada
- Permission from the NIQP Board of Directors⁸⁰

CAIRP also imposes rules of conduct on its members: "In order to qualify as professionals in the eyes of the public and other professional and governmental bodies, Chartered Insolvency and Restructuring Professionals (CIRPs) must set for themselves high standards of conduct. The Rules of Professional Conduct (the Rules) which set these high standards are, first and foremost, to protect the public." These rules are based on a certain number of principles:

1. A member's conduct shall all times maintain the good reputation of the profession.
2. A member shall perform his professional services with integrity and care.
3. A member shall sustain his professional competence by keeping informed of developments in professional standards and legislation.
4. A member, when engaged in an assignment, shall be free of any influence, interest or relationship which impairs professional judgement or objectivity or which, in the view of a reasonable and informed observer, has that effect.
5. A member has a duty of confidence to a client and shall not disclose, without proper cause, any information obtained in the course of an engagement. Nor shall such information be exploited directly or indirectly by a member.
6. A member shall accord to any other member the courtesy and consideration due between professional colleagues.⁸¹

The interpretation of these rules further specify that:

1. A member shall conduct himself at all times in a manner which will maintain the good reputation of the Association.
2. A member shall perform his professional engagements with integrity and due care.
3. A member shall maintain his professional competence by keeping himself informed of, and complying with, developments in professional standards, including the standards of professional practice from time to time adopted by the Association, in all functions in which he practises or is relied upon because of his calling.

⁷⁸ About CAIRP; < <http://www.cip.ca/english/aboutcipa/aboutcipa.htm> > (consulted on October 18, 2006).

⁷⁹ Id.

⁸⁰ Canadian Association of Insolvency and Restructuring Professionals (CAIRP), *Memorandum of Understanding*, < <http://www.cairp.ca/NIQP/English/PDFs/MOU-040924.pdf> > (consulted on July 3, 2006).

⁸¹ Canadian Association of Insolvency and Restructuring Professionals (CAIRP), *Rules of professional conduct and interpretations*, < <http://www.cip.ca/english/aboutcipa/pcrules.html> > (consulted on July 7, 2006).

4. A member shall with respect to any professional engagement hold himself free of any influence, interest or relationship which impairs his professional judgement or objectivity or which, in the view of a reasonable and informed observer, has that effect.⁸²

CANADIAN ASSOCIATION OF INDEPENDENT CREDIT COUNSELLING AGENCIES (CAICCA)⁸³:

The CAICCA, a seven-member British Columbia association, has as its mandate, among other things, ensuring that its members respect its code of ethic, ensuring that counsellors are adequately trained and have access to professional development programs, consumer education consumers and promotion of consumer interests. The organization's very concise code of ethics reads as follows:

We will manage our Agencies in a manner that:

1. *Treats all consumers with dignity and respect regardless of their income level;*
2. *Provides a level of service that meets with established standards of professional practice and conduct;*
3. *Regards the well-being of the person served as our primary professional obligation;*
4. *Protects the client's right to privacy and confidentiality;*
5. *Maintains appropriate licensing and is in good standing with regulatory bodies;*
6. *Respects that monies deposited by clients, less agreed to fees and disbursements, remain the property of the client until the funds are actually disbursed to the respective creditors;*
7. *Encourages and educates individuals in budgeting, good financial management and in the proper use of credit;*
8. *Ensures that all financial assessments are fair and unbiased;*
9. *Avoids any areas where there is a conflict of interest or may appear to be a conflict of interest;*
10. *Limits services to financial matters and refers non-financial issues to appropriate professionals; and*
11. *Continues to support the improvement of government legislation, government regulations, general knowledge, skills and expertise in debt/credit management and related areas.*⁸⁴

Regarding the training of credit counsellors, CAICCA affirms that it is working to institute and maintain training opportunities for its members. Nothing, however, indicates that it requires as a condition of membership that budget counsellors satisfy specific minimum training standards.

One will have noted that this British Columbia association is alone in counting private sector budget counselling agencies among its members. Its code of ethics mentions that real and apparent conflicts of interest must be avoided and that evaluations must be free of bias.

⁸² Op. cit. 81. CAIRP, *Rules of Conduct*.

⁸³ Canadian Association of Independent Credit Counselling Agencies (CAICCA), <<http://www.caicca.ca/>> (consulted on July 10, 2006).

⁸⁴ Id.

CREDIT COUNSELLING CANADA (CCC)⁸⁵

A national organization, the CCC has made improving budget counselling in Canada its mission. Furthermore, it seeks to ensure that all Canadians have access to Credit Counselling services. Specifically, it seeks to:

- Ensure all Canadians have access to not-for-profit credit counselling.
- Ensure a quality of service is provided to Canadians by member agencies.
- Advocate on issues relevant to money management and the wise use of credit along with public policy and legislative issues around these issues.
- Promote awareness of the existence and availability of non-profit credit counselling.
- *On behalf of Credit Counselling Canada members, cultivate positive working relationships with stakeholders.*

The CCC was created, amongst other reasons, to offer a platform through which not-for-profit credit counselling organizations across Canada could sensitize consumers regarding the assistance programs available in Canada, in particular those offered by not-for-profit organizations, and also to develop national standards in credit counselling. The membership is comprised of Credit Counselling Services from every region in Canada, with the exceptions of Quebec and Saskatchewan,⁸⁶ where these organizations do not exist. The CCC, which has elaborated and adopted a code of ethics that members are bound to respect, promotes the standardization and improvement of services offered by its members. As with the OACCS, candidates for membership must apply for membership and satisfy the organization's selection criteria to gain accreditation.

Two sections in the Accreditation Manual of the Credit Counselling of Canada are of particular interest:⁸⁷ one is concerned with *Organizational Integrity*, which covers considerations related to the public interest and ethics, while the other deals with human resources, in particular the issue of consultants' qualifications.

As for requirements related to the issue of integrity, the Manual puts forward as indicators the absence of conflict of interest in relations with the interested parties, and the absence of any exclusivity agreement with any particular creditor that could be perceived as a conflict of interest. The Manual proposes as examples of "Best practices:"

- The agency has a conflict of interest policy and a supporting document that all Board Members and personnel must sign annually.
- The agency has a code of ethics for Best Practices of conduct and a supporting document that all Board Members and personnel must sign annually.

One may note from these few lines that the CCC does not in any fashion impose mandatory ethical rules on its members—it simply suggests the concerns that such codes must address.

⁸⁵ Credit Counselling of Canada (CCC). <<http://www.creditcounsellingcanada.ca/>> (consulted on July 10, 2006).

⁸⁶ Saskatchewan is an exceptional case in that it is a governmental agency, the Provincial Mediation Board, which carries out the functions performed elsewhere by credit counselling services, in accordance with the Provincial Mediation Board Act, c. P-33 R.S.S., 1978 by offering: "assistance to individuals with personal debt problems by reviewing their financial situation, providing direction and explaining various options. The board may arrange repayment plans with creditors." On line at <<http://www.saskjustice.gov.sk.ca/provmediation/>>.

⁸⁷ Credit Counselling Canada, *Making a Difference – Accreditation Manual*, December 2004.

As for human resources, the Manual declares that personnel must satisfy specific criteria and qualifications. The Manual proposes as examples of "Best practices:"

- The agency has defined criteria for qualifications for staff that includes a background relevant to credit counselling.

Once again, the CCC's only requirement is that hiring criteria exist (and, further on, are respected), without however specifying the type or scope of training apt to guarantee quality counselling services.

Given that the CCC sets no objective standards for its members, it's hard to speak in terms of self-regulation of credit counselling services. In effect, the CCC's different members are free to adopt whatever rules suit them regarding both ethics and their employee training requirements.

ONTARIO ASSOCIATION OF CREDIT COUNSELLING SERVICES (OACCS)⁸⁸

The OACCS is a federation of 23 organizations active in Ontario (CCSs and other Community or Family Counselling Services) and one CCS in Newfoundland and Labrador. Its membership constitutes 70% of all credit counselling agencies in Canada.

This association ensures that its members offer their clients high standards in terms of confidentiality and quality of services, and that they comply with the organization's code of ethics. Incidentally, the OACCS was the first credit counselling association in North America to institute self-regulation and certify its members. It only accredits not-for-profit organizations.

To qualify for Accreditation and OACCS membership, agencies must:

- Prepare extensive documentation demonstrating that its Board, Staff and Program structures meet the rigorous standards set by the OACCS,
- Closely consult with OACCS regarding the operations of the Agency, and,
- Undergo scrutiny by OACCS Reviewers who have visited the agency and have examined financial, management and program records to ensure that standards have been met.

According to the OACCS, its members are highly qualified:

OACCS Credit Counsellors are highly skilled and trained in the areas of personal finance, consumer credit and money management. These skills are uniquely complemented by very strong expertise in the field of counselling. Our Counsellors also have in-depth knowledge of the consumer proposal and bankruptcy process.⁸⁹

In 1997, Queen's Park adopted the Ontario Association of Not-For-Profit Credit Counselling Services Act⁹⁰ in order to grant the OACCS the authority to manage its members in accordance with its regulations and to confer upon them the exclusive right to the designation: "Accredited Not For Profit Credit Counselling Agency".

⁸⁸ Ontario Association of Credit Counselling (OACCS), <<http://www.oaccs.com/main.html>> (consulted on July 10, 2006).

⁸⁹ Ontario Association of Credit Counselling, *Credentials of credit counsellors*, <<http://www.oaccs.com/credentials.html>>.

⁹⁰ Legislative Assembly of Ontario, *Ontario Association of Not-For-Profit Credit Counselling Services Act, 1997*, <http://www.ontla.on.ca/documents/bills/36_parliament/session1/P97082e.htm> (consulted on August 18, 2006).

The OACCS' objectives are, notably, to make not-for-profit credit counselling services available to all residents of Ontario who might be in need of them, to establish and regulate uniform standards throughout the province as regards the knowledge, skills and ethics of all credit counsellors, to offer continuing professional development to its members and to furnish them with the means and opportunities to further improve their knowledge and skills. The Association also advocates public education programs to promote not-for-profit credit counselling agencies. (Section 3)

The OACCS may only grant membership to not-for-profit organizations satisfying its regulations (Section 5), which may, notably, concern categories of members (and the qualifications and conditions applicable to said categories), professional development, and the holding of accounts in trust. The Association may also impose on its members a code of ethics, rules of conduct and standards applicable to their practice. The Association is also empowered to impose suspensions, expulsions and other penalties that may arise from failures to observe the code of ethics, misconduct, incapacities or incompetence on the part of its members. (Section 7)

Although the Act does stipulate that for anyone in Ontario to falsely suggest that he is a member of the Association constitutes an infraction (section 8), it also specifies that the Act does not in any fashion infringe on the right of any party not belonging to the Association to practise *credit counselling*. (Section 11)

There is a long history behind the OACCS accreditation program. In 1980, the Ontario Association of Family Service Agencies (OAFSA), subsequently renamed Family Service Ontario (FSO), undertook the elaboration of an accreditation program for individual and family counselling programs. Drawing inspiration from this initiative, in 1984, the OACCS undertook the elaboration of a similar program, based on the OAFSA's manual, as well as its own codes of conduct.

The accreditation program in operation since 2000 came out of a review effected in 1994, which sought to establish a more objective evaluation of member organizations. The OACCS defines as follows the value and advantages of accreditation:

1. Indicates to the community that the organization respects the recognized standards of operation.
2. Identifies, for private and public funding agencies, the service as worthy of funding.
3. Encourages standardization of practices.
4. Generates knowledge upon which an effective referral system may depend.
5. Establishes objectives of use too the organization in the enhancing of its practices in terms of governance, administration and services.
6. Contributes to protecting the organization against any pressure to lower its standards.
7. Offers the framework necessary for the development of new services and defines frames of reference for new employees.

The accreditation form for credit counselling organizations includes the following sections: Governance (G), Administration (A), General Program (GP) and Credit Counselling Service Delivery (CCSD)⁹¹. Evaluations involve a two-stage process: the agency must first complete the form and provide supporting documents in support of its answers. Following examination of the

⁹¹ Excerpts of accreditation forms may be found in Appendix 5-C.

accreditation form and accompanying documents a meeting is held in the organization's own offices.

The GP section covers, in particular, the confidentiality and security of case files, clients' rights, access to services, policies and procedures re the taking on of cases (including, where applicable, policies and procedures in relation to fees, needs assessment, the range of services the agency offers to the community, etc.).

Concerning the defence of clients' rights, the organization must have a written policy that recognises its commitment to act in the service of clients and to support personnel working directly with clients to defend their rights.

Section A includes evaluation criteria pertaining to the organization's management of personnel and working conditions, as well as its financial management.

An organization's hiring policy must be free of discrimination and take account of the needs of linguistic minorities (i.e. the availability of services in their languages), as well as the accommodations that certain types of disabilities may make necessary. Moreover, the organization must check the criminal records, if any, of employees likely to work with vulnerable persons.

The qualifications required for the position of executive director are specified. Support personnel, who must be sufficient in number, must possess the minimum qualifications and experience necessary to fulfil their functions and responsibilities.⁹² The organization must have a written performance appraisal policy. The organization must also have a policy on volunteers (needs, selection, assignment of tasks, training, and supervision).

The organization must have a code of ethics or professional standards that is binding on employees and volunteers.

The organization must have an orientation program, a customer service training program and a professional development program for its entire personnel. The organization must show that it is a learning centre characterized by opportunities for personnel to change and grow making use of reading materials, reflection and the latest research and innovations, and through opportunities to exchange ideas based on learning experiences or activities—in short, a process for developing, utilizing and communicating knowledge, both internally and externally.

Concerning administrative processes, the organization must have a policy on whatever service contracts it may conclude. This policy must include a statement on the uses to which funds shall be put, an analysis of the community's needs, a description of the target clientele, and an analysis of the organization's capacities and the services to be offered. Moreover, the organization must keep written documentation on its agreements and payment procedures.

The organization must also have a detailed policy on the fees that it may charge its clients. The organization's services must be accessible to all, regardless of one's ability to pay. Payment

⁹² The qualifications required of practitioners who work directly with clientele are set out in the CCSD, as we shall see below.

procedures must be set in an objective fashion and applied in a uniform manner. An appeal process must be instituted. Fees may not be considered as charitable donations. Fees and payment procedures must be disclosed to the client at the initial encounter.

The CCSD focuses more specifically on the services offered to the clientele and the qualifications required to provide said services. The initial evaluation of a case file must include a complete profile of the client's assets, liabilities, income and expenditures, a description of the steps taken by the client to resolve his problems, discussion of the sources of the problem and the options available re finding a solution. All of the preceding information must be included in the client's case file.

The organization must release an official statement that defines the scope of its credit counselling services:

- Counselling on money management:
 - Budget counselling and support, debt or credit problems and, where required, referrals
 - Individual or group education on money management (budgeting assistance, education on consumer and credit issues)
- Counselling on money management involving a third party:
 - Elements of counselling on money management
 - Intervention with third parties (creditors, other community groups, the courts, etc.)
- Debt Management Programs (DMPs):
 - Elements of counselling on money management
 - Debt elimination on a pro rata basis in accordance with a plan implemented and administered by the organization⁹³
- Preventive education in the community (media presentations, conferences with student and community groups, courses on marriage preparation, etc.)

The organization must also define response plans specifying:

- The objectives of the service, the service's action plan, a provision on reviewing the service's action plan, an assessment of the service's duration.
- Maintenance of a detailed record of all activities and events, including interviews with the client and, if need be, communications with third parties.

The last part of the CCSD focuses specifically on the training requirements and supervision of budget counsellors. The organization must, at a minimum, demand a BA with a major in a related field. In addition, counsellors must, within two years of their hiring, obtain their accreditation as an insolvency counsellor.

In Quebec

In contrast with the associations found in the rest of Canada, the two Quebec associations are federations of independent not-for-profit organizations that have formed alliances to advocate in favour of issues or matters of common interest—i.e. they seek to promote and defend consumers' interests at the national level, as opposed to establishing uniform practices among

⁹³ The contents of a DMP and agreement are detailed in CC 4 (see Appendix 5-C). In particular, the organization must disclose to the client the fact that creditors fund the organization via DMPs.

their membership. In fact, respect for the autonomy of member organizations is a guiding principle for both of these associations.

In effect, the mission of most member organizations in Quebec has two components: budget counselling activity and the collective defence of consumer rights. The latter component is the main mission of these associations. **La Coalition des Associations de Consommateurs du Québec (CACQ)**⁹⁴ is a federation of 22 organizations from throughout Quebec. As for **Union des consommateurs**,⁹⁵ it has 10 member organizations.

That said, these associations in Quebec do not neglect the budget counselling component.

One of the priorities in Union des consommateurs' action plan is to ensure the continuing professional development of not just its own members but that of all organizations wishing to participate in such trainings. Union des consommateurs has a *Credit, Budget and Debt* Committee where members meet to discuss the actions to take for improving consumer education on credit, budgeting and personal finances, as well as for promoting better protection of consumers against indebtedness, by taking action, for example, on the legislative level. Every year, this committee organizes a two-day training session on different aspects of budget counselling and the issues that persons who come for counselling actually confront. The purpose is to ensure that counsellors are knowledgeable about these issues and, where pertinent, the available solutions.

The CACQ, for its part, organizes an annual public awareness campaign on credit and indebtedness. The CACQ has set up a training committee to support member associations through information, reflection and training activities.

Thus, these federations do not have a mandate to play the watchdog role re the practice and ethics of budget counselling that has been adopted by certain Canadian associations. Individual member organizations are responsible for elaborating their own codes of conduct and ethics, in accordance with their status as not-for-profit organizations and, where so required, in compliance with the requirements of their funding agencies. It goes without saying, however, that such organizations shall only be admitted as members if they respect the values and the mission of these federations.

The mission of Union des consommateurs concerns the promotion and collective defence of consumers' rights, and working to promote solidarity, equity and social justice by defending the rights and interests of consumers—and in particular those of low or modest incomes, by providing them with a strong public voice. Union des consommateurs seeks to contribute to improving their living conditions on several levels—economic, social, political and environmental—by taking on issues that are national in scope.

Union des consommateurs seeks to be a common forum for support and a place for pooling technical resources and expertise in order to contribute to strengthening the movement to defend consumers' rights.

⁹⁴ Coalition des Associations de Consommateurs du Québec, <<http://www.consommateur.qc.ca/cacq/>> (consulted on July 10, 2006).

⁹⁵ Union des consommateurs, <<http://www.consommateur.qc.ca/union>> (consulted on July 10, 2006).

Thus, Union des consommateurs seeks to assemble persons or organizations interested in the promotion, defence and protection of consumers' rights, by informing, educating, counselling and taking action to defend the interests and rights of its members, as well as those of consumers.⁹⁶

Similarly, the CACQ seeks:

"the promotion and defence of consumers' interests at the national level.

The promotion and defence of rights constitutes an approach to action aimed at the full recognition and full application of human rights. It includes the promotion of rights yet to be recognised, as well as actions that favour the full exercise of existing rights.

A federation of organizations that engage in the collective defence of rights, the CACQ's actions include the following components: non-partisan political action, social mobilization activities, advocacy activities and independent popular education activities focusing on rights and enhancing democratic citizenship.

*We speak of the defence of consumers' interests so as to include, in addition to defending rights per se, all other aspects of consumer issues that are not, strictly speaking, rights issues."*⁹⁷

In Quebec, the ACEFs, while lacking uniform requirements re the training demanded of budget counsellors, may take advantage of regular trainings open to budget counsellors from all organizations. The ACEFs deem that the basic knowledge necessary to offer comprehensive budget counselling must include (beyond budget counselling methods as such):

Knowledge about budgeting, including notably:

- Budget planning tools and spending control methods
- Types of income available (wage-employment and government programs)

Knowledge about debt and indebtedness, including notably:

- Interest rates corresponding to different types of loans
- Interest calculation
- The types of institutions offering credit
- Loan contracts
- The effects of endorsement
- The legislative regulatory framework pertaining to specific types of debts
- Commercial practices

In-depth knowledge of the various applicable laws or provisions concerning, notably:

- Seizure
- The collection of certain types of debt
- Prescription
- The incidence of marital status on certain types of debt
- Voluntary deposit
- Bankruptcy and the consumer proposal process
- Consumer protection

⁹⁶ Union des consommateurs, *Règlements généraux*, June 2006.

⁹⁷ Op. cit. 94.

- Access to justice (small claims, legal aid)
- Protection of personal information, etc.

*Knowledge of the agencies, including from the institutional sector, apt to provide assistance to the consumer.*⁹⁸

This non-exhaustive list clearly shows the scope of formal knowledge that budget counselling organizations deem indispensable if their consultants are to provide a range of practical and legal solutions that is as comprehensive and accurate as possible to the problematic situations that the persons consulting them may confront.

⁹⁸ Excerpts of a working document elaborated by l'Acef de l'Est de Montréal on the basic training required by budget counsellors.

IN SUMMARY

In summing up this overview of regulation in relation to budget counselling, one finding stands out: the legislative regulatory framework on budget counselling in Canada is practically non-existent. The sole exceptions, other than laws of which the application is general in scope, are the laws on bankruptcy and on financial planning.⁹⁹ These latter include no provisions on the training required to work in this field, nor do they stipulate the ethical rules with which budget counsellors must comply, notably as regards their funding.

Certain national associations regulate their members, principally as regards ethics and practices. As in all cases of self-regulation, the effectiveness of such rules shall, whatever their intrinsic value, obviously depend on their application, the degree of supervision exercised by the association ensuring this regulation and its powers of enforcement. Without a superior monitoring and oversight system, it is impossible to determine whether rules are indeed complied with and thus impossible to ensure that the offending parties cease and desist. An association, however well intentioned it might be, shall only be able to intervene against one of its members if it is aware of the latter's misconduct. Moreover, it shall only have such powers over this member that the latter consents to acknowledge. Likewise, a complaints system shall only be effective inasmuch as potential complainants are well aware of the practices to be respected by the professionals whom they consult, as well as the existence of the complaints review system itself. Once complaints have been properly treated, the question then, in all cases, is who is responsible for issuing reprimands and assessing penalties? What powers shall this agency possess and upon what authority shall these powers rest? Finally, these powers shall naturally remain quite limited if a banned practice may nevertheless be employed by non-members of the association charged with enforcing self-regulation.

In order to ensure better consumer protection, the degree of training required of practitioners to whom consumers are likely to turn must be clearly defined. Moreover, practitioners should in no case be authorized to offer the services in question without having first demonstrated that they possess the training necessary to ensure adequate services.

The Codes of Ethics adopted by national and provincial associations usually stipulate, in rather general terms, that the consumer must be well served. Certain Codes declare that practitioners must avoid conflicts of interest and appearances of conflicts of interest or must mention that any funding from creditors must be disclosed to the consumer. However, none of the codes studied goes as far as directly addressing the fact that this type of funding may potentially constitute a source of a real or apparent conflict of interest. Nor do any provide for specific mechanisms to counter such a risk.

⁹⁹ The PIAC made the same finding in its study of 2005: Op. cit. 32, PIAC, pp. 49-50.

CHAPTER 3: FIELD SURVEY

Our project programmed a field study to conduct an on the ground investigation of the practices employed by organizations active in budget counselling in Canada. More specifically, our research sought to gather information directly from budget counsellors on:

- The cost to consumers of budget counselling
- Their sources of funding
- Policy on allocating payments to creditors
- Consumer education programs in place
- Training required of and offered to budget counsellors
- Application of ethical rules
- Participation, if any, in a national association

This chapter presents the results of our industry survey. In light of the difficulties encountered by the field survey, (see: methodology and results), a short section based on our documentary research and our own knowledge of the sector was added to complement the data on funding and training.

METHODOLOGY

Our project planned on sending 30 to 50 questionnaires to selected counsellors or organizations, including: not-for-profit organizations, bankruptcy trustees and private sector businesses, nation-wide.

With the help of contacts in certain provinces (Alberta, British Columbia and Quebec) or via research on the Internet (New Brunswick and Ontario), we sought to identify 10 potential respondents in each of the target provinces. We came up with a database comprised of 41 references: 5 for Alberta, 10 for British Columbia, 8 for New Brunswick, 8 for Ontario and 10 for Quebec.

A 12-question questionnaire was elaborated by Union des consommateurs' Budget, Credit and Debt Committee.¹⁰⁰ The questionnaire focused in particular on the following issues:

- The type of organization and affiliation, if any, with a national or provincial association
- Employees' educational background and training
- Services offered
- Sources of funding
- Negotiations with creditors and debt repayment management
- The organization's code of ethics

An outside consultant was hired to initiate contact and conduct the interviews with the target organizations. Her mandate consisted of kicking off the process and ensuring that the respondents understood the questionnaire and the purpose of the survey. To this end, the consultant was provided with a letter of introduction that explained the survey's objectives and included background information on the abuses denounced in the United States. The

¹⁰⁰ The questionnaires in French and English have been enclosed for consultation in Appendices 1 and 2.

questionnaire as such could be completed by telephone or via e-mail, at the respondent's discretion.

Out of the 41 organizations identified, 37 were contacted by telephone, three were apparently no longer in business and one was on our list twice, due to its being active in two different provinces. All of the organizations received via e-mail an explanation of the survey's purpose, along with the questionnaire to be completed. Whenever the name of a resource person was provided by the organization during the initial contact—this happened 24 times—this person was contacted directly, by telephone or e-mail. In several instances, our request was forwarded to a superior (e.g. the Board of Directors).

Initial telephone contact was made in late January 2006. Respondents, who were promised confidentiality, had until March 1st 2006 to complete the questionnaire. The low rate of response as of that date (i.e. 5 respondents) led us to extend the deadline until April 1st and to follow up with another reminder,¹⁰¹ to no avail—not a single new respondent was generated.¹⁰²

THE FINDINGS

In total, 41 organizations were identified for an attempted initial contact with the aim of inviting them to participate in the study. Unfortunately, very few organizations agreed to participate. A total of only five organizations completed the questionnaire: one in British Columbia, two in Alberta and two in Quebec. Three were not-for-profit organizations and two were for-profit businesses, including one financial adjuster. Not a single trustee in bankruptcy completed the questionnaire.

Three other organizations indicated to us that they would indeed answer the questionnaire. However, they never did return a completed questionnaire, despite our reminders. Four organizations expressly refused to answer the questionnaire. In total, 19 organizations totally ignored our invitation, as well as the three follow-up communications we addressed them.

Certain organizations are active throughout Canada. This explains why a few of the organizations originally retained were accidentally targeted in more than one province. One of the organizations identified has its head office in the United States (Shield Credit Plan).

The three not-for-profit organizations that participated in the survey are members of a national or provincial association—either Credit Counselling Canada or Union des consommateurs. One of the private sector respondents is a member of the Canadian Association of Independent Credit Counselling Agencies (CAICCA).¹⁰³

¹⁰¹ The organizations were contacted approximately four times each by telephone or e-mail.

¹⁰² All of the responses received are reproduced in Appendix 3. Care has been taken to remove any information that would identify the respondents.

¹⁰³ Op. cit. 83. CAICCA.

SERVICES OFFERED

The services offered by the respondent organizations were quite similar: all do budget counselling and debt renegotiations with creditors;¹⁰⁴ four of them have debt management programs (DMP) and four offer consumers training on budgeting. Three of the respondents are advocates for consumer rights, although they differ in their approaches: two engage in counselling, while the third one takes a more active approach, as it also engages in accompaniment and advocacy.

ETHICS

The respondents that belong to a national or provincial association in English Canada are bound to respect the codes of practice and ethics of their respective associations. The respondent that is a member of Union des consommateurs has elaborated its own code.

The respondent from the private sector that is not a member of any federation or association stated that its practices adhere to the prevailing ethical standards on confidentiality and the disclosure of information. He did not specify who elaborated these rules and gave no details on their content. Presumably, the respondent was referring to the applicable laws.

TRAINING ISSUES RE COUNSELLORS

As for the minimum academic qualifications demanded of counsellors employed by the participating organizations: one demanded a high school diploma, two demanded a college degree and the two remaining respondents required a university degree (without specifying the type of training preferred). Four respondents stated that new employees received in-house training upon hiring. The financial adjuster was the only one that provided no details on this issue.

DURATION OF BUDGET COUNSELLING SESSIONS

The duration of budget counselling varies considerably from one agency to another, i.e. on average, anywhere from 60 to 120 minutes.

There is an apparent correlation between the duration of consultations and requirements with respect to training: whereas, the organization whose minimum requirement is a high school diploma estimated that budget counselling lasts an hour on average, those demanding a university degree estimated an average duration of two hours.

FUNDING

Respondents varied greatly in their general sources of funding. The latter included: fees levied on clients, agreements with creditors as part of debt management programs for consumers, service agreements with trustees in bankruptcy, support from foundations, and government grants. Certain respondents mentioned other non-recurrent sources of funding, such as the sale of budgeting tools, service agreements with public utilities, etc.

One of the respondents declared that 30% of its funding was from clients and 66% from creditors. The independent private organization receives 100% of its funding from the fees

¹⁰⁴ In this regard, in an exchange of e-mails in April 2006, Linda Routhledge of the Canadian Bankers Association revealed that negotiations on consumer debts with budget counselling organizations were conducted in accordance with the specific reputations of the latter.

levied on clients. Another respondent doesn't receive any funding from its clients: 56% of its funding is from a foundation, 24% from the government and 17% from projects. Another respondent is funded 100% by its clients, who pay it a percentage of the sums repaid to creditors.

COMPLEMENTARY INFORMATION ON FEES, FUNDING AND TRAINING

FEES AND FUNDING

Our research has led us to observe that the costs to consumers for budget counselling can vary greatly from one organization to another. Even within the not-for-profit sector, fundamental differences exist between the functioning of consumers associations in Quebec and Credit Counselling services with respect to funding.

Organizations in Quebec

The main sources of funding of Quebec organizations offering budget counselling are a variety of recurrent and non-recurrent public sources. Part of the recurrent funding is assured by *le Secrétariat à l'action communautaire autonome* (SACA), a governmental organization whose mission is, among other things, to support community action in the broad sense of the term and to foster, support and consolidate autonomous community action, notably on the part of organizations advocating the collective defence of rights.¹⁰⁵

Most of the organizations also receive recurrent funding—of greater or lesser importance depending on the organization's location—from Centraide. Centraide disburses financial assistance to community groups recognized as charitable organizations by the Canada Revenue Agency that work with under-privileged populations to implement sustainable solutions based on an approach privileging autonomy and empowerment.¹⁰⁶

In general, Quebec organizations obtain additional funding via service contracts—with, for example, *la Fédération des caisses Desjardins*, Hydro Québec, etc.—donations from religious communities or others, training courses and one-off projects.

One will note that the practice that consists of managing debt repayment on behalf of a consumer, in exchange for direct or indirect retribution, does not exist among community groups in Quebec. Nor do community groups in Quebec collect fees or donations that come directly out of the sums repaid to specific creditors.

¹⁰⁵ Secrétariat à l'action communautaire autonome (SACA). See website of Emploi et solidarité sociale Québec, <<http://www.mess.gouv.qc.ca/saca/quoi-de-neuf.asp?idDoc=3591>> (consulted on July 23, 2006).

¹⁰⁶ See for example the website of Centraide, Greater Montreal, under the section "Who do we help," <http://www.centraide-mtl.org/index_flat_frame_hp_en.jsp> (consulted on July 23, 2006).

CCS

Credit Counselling Services obtain most of their funding from service agreements concluded with different creditors, who cede them a certain percentage of the sums repaid by consumers. As a result of the agreements concluded in connection with *debt management programs* (DMPs), CCSs may receive from participating creditors up to 22% of the sums repaid by consumers. As the Public Interest Advocacy Centre (PIAC) puts it:

*It is financially supported by the banking sector through a donations policy that helps offset costs. The banking industry indicated to us that it doesn't coordinate this sector, but assists with the funding, particularly since provincial governments in many jurisdictions have withdrawn support to credit counselling agencies. Under not-for-profit credit counselling, if the consumer owes money to credit grantors, such as a bank, for every \$1 that the credit counselling agency receives from the consumer (debtor) and pays to the bank, the bank allows the agency 22¢. In other words, 22% of revenues are deducted at the source. The bank credits the consumer (debtor) with 100% of the payment, but 22% is a donation to the credit-counselling agency.*¹⁰⁷

The difference between the amount donated by creditors and the real cost of managing debt repayment by clients is purportedly used by organizations to finance their other activities, such as, notably, promoting the financial education of Canadians.¹⁰⁸

The members of the Canadian Association of Independent Credit Counsellors deduct 15% of the amounts that consumers turn over to them as payments to creditors.¹⁰⁹ They keep 100% of the initial payment made by the debtor.

On the websites of various Canadian organizations, one does find references to the fees that consumers must pay for the services offered as well as, occasionally, mention of the funding obtained from creditors.

For example, on the website of Credit Counselling Society of British Columbia (a CCC member), the following is found in its FAQ section.¹¹⁰

What will your services cost?

Your first counselling session is always free. If you choose to start a debt management program, a small fee will be built into your monthly payment. This nominal amount is based upon each client's particular financial situation. Most of our expenses are paid for by voluntary contributions that we receive from the credit industry. This funding allows us to provide our services and programs at no cost or minimal cost to the clients we serve

What is a debt management program?

¹⁰⁷ Op. cit. 32. PIAC, pp. 49-50.

¹⁰⁸ In the United States, certain organizations have reported that creditor reimbursement agreements with CCSs have now set a ceiling of 6% on the total amount repaid by consumers, thus obliging CCSs to implement far more DMP agreements to survive. See: Op. Cit 6, Todorova. Moreover, this situation will also apparently affect their capacity to play their educational role with consumers, thus endangering their status as charitable organizations.

¹⁰⁹ Op. cit. 32. PIAC, pp. 49-50.

¹¹⁰ Credit Counselling Society of British Columbia, F.A.Q., <<http://www.nomoredebts.org/faq.html#4>> (consulted on October 12, 2006).

This is a program that helps you get out of debt, within a reasonable period of time. First we help you work out a new budget. Then we ask your creditors to reduce your monthly payments to match the repayment plan. Because you have taken positive action to clear your debts, we can often persuade creditors to drop or reduce further interest charges.

Consumer Credit Counselling of British Columbia mentions the following in its FAQ:

Yes, we do charge a monthly fee for this service. This fee is deducted from your monthly payment and is very nominal. We are here to get you out of debt - not create debt. The creditors either eliminate or reduce their monthly interest charges, which not only reduces the amount of time it takes for you to become DEBT FREE, but also offsets the monthly fee for this service. As a result, your net cost for the program is usually nothing.¹¹¹

Credit Counselling of Alberta, for its part, offers the following information on its funding:

The bulk of CCSA's ongoing funding will be provided through a levy system. Under the Orderly Payment of Debts program, the credit granting industry across Canada is legislated to pay a 15% levy on any debts recovered or repaid through OPD. Recognizing the value of the repayment program provided by CCSA, many larger creditors have also voluntarily agreed to pay up to an additional 7%. With this funding structure, CCSA is able to provide many free and low-cost services.

CCSA would like to acknowledge and thank our voluntary levy supporters:

- Canadian Bankers Association
- Alberta Treasury Branches
- Alberta Credit Unions
- Retail Credit Granters
- Canadian Financial Corporations

In addition to the levy, CCSA also covers its costs by offering selected additional programs on a fee-for-service basis. One such example is our customized employer program. While clients of our Orderly Payment of Debts program do pay some nominal client fees, CCSA has made the commitment to ensure that everyone can talk to a counsellor free of charge through our toll-free information line.¹¹²

The Personal Credit Counselling Service of Newfoundland and Labrador (PCCS) mentions that:

The agency is currently funded from a variety of sources including the credit industry, employers and the corporate sector. The agency also actively fundraises when appropriate, and occasionally benefits from government grants.¹¹³

¹¹¹ Consumer Credit Counselling (CCC), FAQs <<http://www.iamdebtfree.com/cccfags.htm>> (consulted on October 2, 2006).

¹¹² Credit Counselling of Alberta, Funding, https://www.creditcounselling.com/aboutccsa_funding.aspx (consulted on September 18, 2006).

¹¹³ Personal Credit Counselling Service of Newfoundland and Labrador, About Us, <<http://www.debthelpnewfoundland.com/backgroundinformation.html>> (consulted on October 18, 2006).

TRAINING OF COUNSELLORS

In order to complete the information gathered through our survey and through our examination of accreditation manuals, we studied the websites of organizations to enhance our data set on the training that different types of organizations require of their budget counsellors.

Beyond general statements to the effect that their budget counsellors are qualified (the PCCS, for example, states “*We have a number of qualified Credit Counsellors available*”), not-for-profit organizations neither mention the training demanded of their employees nor the training given to them. On its website, the Credit Counselling Society of British Columbia emphasizes the importance of choosing the right organization when in need of budget counselling.

How Can We Help – Choosing a Credit Counselling Service

*Before signing up for services find out if the agency is non-profit and offers free and low-cost services. Ask for proof that they are a member of CCC and have properly trained credit counsellors on staff that meet the high standards of CCC.*¹¹⁴

Credit Counselling Services of Alberta (CCSA) mentions for its part:

*Our counsellors are very well-versed in family financial management and consumer debt handling strategies.*¹¹⁵

However, a job offer on their website provides some revealing details:

CCSA's Calgary office has an immediate opening for a full-time intake counsellor. The successful candidate will utilize their (sic) excellent communication skills to provide telephone counselling to individuals experiencing a variety of financial concerns and stressors.

Applicants should be able to demonstrate:

- attention to detail
- time management
- teamwork
- clear professional boundaries
- ability to work independently

*Preference will be given to applicants with a human services university degree and high-volume telephone counselling experience.*¹¹⁶

These requirements may be compared with the ones mentioned in a job offer¹¹⁷ for a position as *family economics counsellor*¹¹⁸ or as a *family budget advisor* put out by a private sector

¹¹⁴ Credit Counselling Society of British Columbia, *How Can We Help*, <<http://www.nomoredebts.org/choosing.html>> (consulted on October 13, 2006).

¹¹⁵ Op. Cit 111, *About CCSA*, <<https://www.creditcounselling.com/aboutccsa.aspx>> (consulted on October 11, 2006).

¹¹⁶ Op. Cit 111, *Current opportunities*, <<https://www.creditcounselling.com/careers2.aspx>> (consulted on August 18, 2006).

¹¹⁷ See the EquityCanada job offer reproduced in Appendix 4.

¹¹⁸ In Quebec, the ACEFs (Associations coopératives en économie familiale) are not-for-profit organizations specializing in budget counselling which have enjoyed consumer recognition for nearly 40 years. Given the job description, it is plausible to posit that the use of the title “family economics counsellor” was chosen to take advantage of consumers confidence and is, in effect, apt to sow confusion among the latter. Also to be noted: during

organization in Gatineau that purports to specialize in budget counselling and managing repayment of personal debts.

Family Economics Counsellor. *The main responsibilities are: to prepare financial forecasts, funding scenarios and other reports on financial management; to follow up on clients and funding initiatives in order to elaborate, implement and use management tools; and to participate in the preparation of operating budgets.*

Qualifications and terms of employment

Education: Some secondary school.

Years of job-related experience: None.

Description of skills: Candidate must be a quick learner, results-oriented, extremely disciplined, an excellent communicator, ready to undertake a career as a family budget advisor. Knowledge of real estate an asset.

Salary offered: To be discussed.

Other forms of remuneration: Commissions or performance bonuses.

Other requirements: An attractive personality, flexibility and autonomy.¹¹⁹

(Our underlines)

a certain period of time, this business used the acronym ACEF (for *Association des conseillers en économie familiale*).

¹¹⁹ This job offer was on the website of Emploi Québec on July 25, 2006, <<http://placement.emploi.quebec.net/mbe/ut/suivroffrs/apercoffr.asp?CL=french&page=drhc&nooffr=0979626>> (consulted on July 28, 2006).

CONCLUSIONS

The primary goal of this study was to see whether the abuses committed in the United States could occur in the Canadian context or whether regulation in Canada guaranteed that such abuses were unlikely in this country. Our overview of federal and provincial legislation led us to find that no regulation is in force with the specific intent of controlling the practice and ethics of budget counselling. Anyone may claim to be an expert in budget counselling without possessing the knowledge and training required to provide adequate services.

In Canada, the use of certain professional appellations is indeed regulated by a variety of laws and provincial regulation does address the making of false or misleading claims. However, the industry is such that certain vulnerable consumers, afflicted by debt problems, could be tempted to listen to the siren songs of the first charlatan they come across. Certain American hucksters, as we have seen, have taken advantage of lax enforcement of the law to operate under the guise of not-for-profit as organizations, thus exploiting the good name of such agencies in order to abuse the confidence of consumers.

Whereas governments emphasize the importance of budget counselling and provide consumers with useful references,¹²⁰ some parties address stark warnings to consumers, notably against not-for-profit organizations:¹²¹

Is Credit Counselling a Good Idea? Investigate BEFORE You Act:

Consider that the alternative, bankruptcy, may well permit you to recover a good credit rating much faster than credit counselling. Negative credit items remain on your credit report for up to seven years. This would include the records of your credit counselling and a list of your "bad debts." Bankruptcy will also remain on your record for up to seven years, but you may well be able to re-establish credit after a couple years. Think about that. You might consider a credit-counselling program now which will stop creditors from harassing you. You can then investigate bankruptcy.

While credit-counselling services are generally presented as not-for-profit, unbiased, consumer debt counselling services, they are also often franchises and collect a fee from your creditors for collecting your payments. Not-for-profit credit counselling services may be receiving secret commissions or generous financial support from creditors, the Government, United Way and industry at large. "Not-for-profit" does not mean that the employees and/or operators of many of these services are not collecting salaries and growing a business.

¹²⁰ See for example the page devoted to budget counselling by the Office of Consumer Affairs. On line at <http://strategis.ic.gc.ca/epic/site/oca-bc.nsf/en/ca02193e.html> (consulted on October 18, 2006).

¹²¹ A similar article has been published in the United States: Charles Essmeier, "Credit Counseling – Six Tips to Avoid Counseling Scams," Ezine @rticles, <http://ezinearticles.com/?Credit-Counseling---Six-Tips-to-Avoid-Counseling-Scams&id=60652> (consulted on October 8, 2006).

You could actually be paying for these services, but the costs may be hidden. Ask hard questions of any service you are considering.

HERE IS WHAT SOME CREDIT COUNSELLING SERVICES WANT YOU TO BELIEVE. CAVEAT EMPTOR. *"Any one can experience debt problems. The important thing to remember is that you are not alone, you have options. Credit counselling services provides confidential consumer debt counselling services for all."*

- Free confidential financial counselling. Remember the counselling is free, but they may be taking a commission out of each payment you make.
- Arrangement with creditors, through a debt management program,
- Budget planning,
- Alternatives to bankruptcy,
- Credit rehabilitation

SOMEONE HAS TO PAY FOR ALL THIS. GUESS WHO PAYS!

Check Your Credit Rating

Your Credit, Your Rights

Credit Counsellors also have a mandate to reduce the number of bankruptcies being filed each year. That is why some services are apparently free to the public.

Think about it. Credit Counsellors are not running a charity program. These hidden fees that you pay will soon offset any frozen interest rates.

*Do not forget Bankruptcy Trustees by law must represent the interests of the Creditors first and foremost, so you are caught between a rock and a hard place.*¹²²

As this kind of cautionary message clearly shows, certain questions merit clarification, notably, the nature of the funding models of organizations offering budget counselling, as well as transparency concerning the real interests pursued by the different actors offering such services to consumers.

Due, perhaps, to a certain fear of this type of blanket denunciation, the lack of collaboration from the organizations approached during our survey was a striking aspect of this study. A similar survey, undertaken by the government, would probably enjoy much greater chances of success. Fortunately, the sparse data gathered by our survey together with our documentary research was sufficient to produce a few relevant observations on certain aspects of budget counselling in Canada.

Beyond the issue of openness and that of balancing the different interests in play, the issue of the training of budget counsellors emerged as a fundamental issue. It seems obvious that the gravity of budget counselling intended to help a consumer take control of his financial situation, and the multitude of issues raised in the search for solutions to debt problems, require more

¹²² In CanLaw – section: Credit counselling services, <<http://www.canlaw.com/credit/counselling.htm>> (consulted on September 18, 2006).

than an attractive personality, good communications skills, some high school education and a good knowledge of real estate.¹²³

The legislation regulating the training of certain consultants (e.g. counsellors/advisors regulated by the Bankruptcy and Insolvency Act, as well as financial advisors) and the prohibition on allowing those without the required training to imply that they are qualified to offer these services certainly offer pertinent examples of how to guarantee that any assistance offered to the public shall be provided by competent practitioners.

The average levels of indebtedness among Canadians are such that they, and the attendant economic and social consequences, must not be under-estimated. The fact that businesses have the opportunity to pass themselves off to consumers as disinterested parties working to help them surmount their debt problems, when they in fact sow confusion re the work they really seek to accomplish, is a state of affairs that should not be tolerated. That the remuneration of a supposed family budget advisor should be based on commissions or performance bonuses is perplexing to say the least. The sale of a product (credit, mortgages or even a DMP) under the cover of budget counselling is, in our view, ethically and socially unacceptable.¹²⁴

It seems that clear that budget counselling should be accessible to all. Ideally, as regards guaranteeing the total impartiality of counselling, it might seem problematic that the survival of organizations offering such counselling be tied to funding that may directly depend on the sums likely to be paid to creditors via, for example, debt management plans. It may seem difficult to strike a balance between the complete autonomy of organizations offering budget counselling—including their independence vis-à-vis creditors—and the need for funding, which could quite logically come from creditors who benefit, directly and indirectly, from the results of effective budget counselling.

This balance remains to be found. In the following pages we submit a few proposals intended as potential solutions pertaining to the funding issue, as well as the regulation of budget counselling services and, in particular, the training required to proclaim oneself a budget counsellor.

¹²³ See the job offer from EquityCanada reproduced in Appendix 4.

¹²⁴ Todorova, Op. cit. 6, quotes a counsellor at AmeriDebt, a company that was fined several million dollars: "The goal of AmeriDebt's counsellors was to sell consumers a debt-management plan regardless of whether they need it or not."

RECOMMENDATIONS

- Whereas average debt levels among Canadians are a source of concern;
- Whereas a large number of persons are consequently at risk of confronting situations of severe indebtedness;
- Whereas persons in a situation of severe indebtedness may be particularly vulnerable;
- Whereas certain businesses may be tempted to take advantage of this vulnerability;
- Whereas certain businesses make misleading representations about the types of services they're able to offer and the results their clients may expect;
- Whereas, if these persons must pay fees in the expectation of a service that they may not receive, the situation of severe indebtedness in which they find themselves may worsen rather than improve:

Union des consommateurs recommends that governments rigorously and systematically apply the provisions of the law designed to ban false or misleading representations targeting persons confronted with situations of severe indebtedness.

- Whereas many practitioners agree on the approaches to and the objectives of proper budget counselling;
- Whereas a budget counsellor must master a large number of areas of expertise in order to present the consumer with a complete and accurate set of possible solutions to a situation of severe indebtedness;
- Whereas no regulation exists with the intent of guaranteeing uniform standards on training and quality of services among all budget counsellors;
- Whereas only if basic training is standardized and adequate is official recognition liable to be granted to budget counsellors and public confidence maintained;
- Whereas training designed for "qualified counsellors," as defined under the Bankruptcy and Insolvency Act, has been elaborated by the Office of the Superintendent of Bankruptcy;
- Whereas this training covers several aspects of the basic work done in budget counselling:

Union des consommateurs proposes that governments, in conjunction with the not-for-profit organizations offering budget counselling in their jurisdictions, examine the possibility of elaborating a regulatory framework on the minimum appropriate training for budget counsellors and official recognition of the organizations whose counsellors have completed such training.

- Whereas all agree on the importance of the public's access to budget counselling services;
- Whereas the federal government may go as far as making budget counselling mandatory for certain persons who have faced severe indebtedness, i.e. bankrupt persons;
- Whereas not-for-profit organizations have long offered this type of service to the public;
- Whereas these services are well-known and have attained a high degree of public confidence;
- Whereas certain businesses, banking on this trust, confer upon their consultants and services titles that are apt to mislead the public or create confusion;
- Whereas it is important to maintain public confidence in a type of activity that is economically and socially beneficial to society as a whole:

Union des consommateurs proposes that governments, in conjunction with the not-for-profit organizations offering budget counselling in their jurisdictions, evaluate the possibility and the pertinence of reserving for recognized organizations the exclusive right to use certain titles or appellations to designate their consultants or services.

- Whereas it is important for not-for-profit organizations to dispose of sufficient financial autonomy to enable the guaranteeing of their total independence;
- Whereas budget counselling must seek to foster the best possible option for the consumer—and not for the creditor—among those available;
- Whereas sound management by consumers of their finances and debts is, directly and indirectly, profitable to creditors;
- Whereas creditors already express, via DMP-related agreements, their willingness to contribute to funding budget counselling;
- Whereas certain critics cite a possible conflict of interest flowing from creditors' funding of budget counselling on the basis of the direct benefits they may obtain from debt management plans;
- Whereas budget counsellors must not be forced to face the difficult choice that may arise between their organization's funding and the best interests of the consumers whom they assist:

Union des consommateurs proposes that governments, in conjunction with the not-for-profit organizations offering budget counselling in their jurisdictions, evaluate the possibility and the pertinence of instituting a funding model for budget counselling that would mainly depend on contributions from creditors, but which would be detached from percentage-based funding tied to the direct benefits creditors obtain from the work of specific organizations.

Union des consommateurs also recommends that the not-for-profit organizations who shall be called on to participate in these different tasks benefit from sufficient funding to enable their adequate participation in the reflection and elaboration processes dictated by the present recommendations.

- Whereas it is important for consumers to dispose of clear and objective information on, notably, the prevention of over-indebtedness and the resources available in the terms of budget counselling;
- Whereas the government plays an important role in ensuring better protection of consumers against the abuses and dubious practices to which they may fall victim when they find themselves in a precarious financial situation;

Union des consommateurs recommends that governments pursue and intensify their public education efforts to prevent over-indebtedness and to warn consumers about certain business practices, in the credit/debt counselling sector, which may be prejudicial to them. Union des consommateurs recommends in this regard that such information be widely publicised and that governments ensure universal access to said information.

Questionnaire

Nom de l'organisme :

Votre organisme

1- Dans quelle province votre organisme est-il situé?

- 01 ☐ Alberta 04 ☐ Ontario
 02 ☐ Colombie-Britannique 05 ☐ Québec
 03 ☐ Nouveau-Brunswick 06 ☐ Saskatchewan

2- Votre organisme est-il?

À but lucratif

- 07 ☐ Administrateur de faillite
 08 ☐ Conseiller financier
 09 ☐ Redresseur financier
 10 ☐ Syndic de faillite
 11 ☐ Autre, spécifiez 12

À but non lucratif

- 13 ☐ Association coopérative d'économie familiale (ACEF)
 14 ☐ Credit counselling Services
 15 ☐ Autre (spécifiez) 16

3- Votre organisme fait-il partie d'une association (provinciale, nationale ou autres)?

- 17 ☐ Oui 18 ☐ Non
 19 ☐ association provinciale 20 ☐ association nationale 21 ☐ autre, spécifiez 22

Nom de l'association : 23

Les employés

4- Quelles sont les formations académiques et les expériences minimales de travail exigées des consultants budgétaires de votre organisme?

- 24 ☐ Sec V 27 ☐ Universitaire, précisez 28
 25 ☐ Collégial, précisez 26 Expérience, précisez 29

5- Quelles sont les formations offertes aux conseillers budgétaires ou financiers de votre organisme? (formation continue)

Développez 30

Les services offerts

6- Quels types de services offrez-vous aux consommateurs ?

- 31 ☐ Formations spécialisées aux consommateurs : 48 ☐ Gestion des finances personnelles - coût 49
 32 ☐ Budget - coût 33 50 ☐ Défense des droits des consommateurs (individuel):
 34 ☐ Investissement - coût 35 51 ☐ Consultation - coût 52
 36 ☐ L'argent et la famille - coût 37 53 ☐ Accompagnement - coût 54
 38 ☐ L'argent et les étudiants - coût 39 55 ☐ Représentation - coût 56
 40 ☐ L'achat d'une maison - coût 41 57 ☐ Négociation avec les créanciers - coût 58
 42 ☐ L'achat d'une voiture - coût 43 59 ☐ Autre, spécifiez 60 - coût 61
 44 ☐ Planification de retraite - coût 45
 46 ☐ Consultations budgétaires - coût 47

7- Pour l'ensemble de vos services

- a) Combien de consommateurs vous ont consulté au cours des 12 derniers mois? 62
 b) Combien de consultations budgétaires individuelles avez-vous effectuées au cours des 12 derniers mois? 63
 c) Quelle est la durée moyenne d'une consultation budgétaire? 64
 d) Combien de cas (en pourcentage) requièrent un suivi? 65 %
 e) Combien de rencontres sont nécessaires à un suivi? 66

8- Quelles sont vos sources de financement ? Sur quelles bases ce financement est-il établi ?

Sources	Financement (consultation budgétaire)				Financement fixe	Autre financement	% du financement global
	Montant fixe	Montant fixe selon le nombre de cb	Selon le % de remboursement du créancier	Autre, spécifiez			
Clients	67	74	81	88	95	102	109

Créanciers	68	75	82	89	96	103	110
Dons (particuliers)	69	76	83	90	97	104	111
Entente avec les syndics de faillite	70	77	84	91	98	105	112
Fondations	71	78	85	92	99	106	113
Gouvernement	72	79	86	93	100	107	114
Autre, spécifiez	73	80	87	94	101	108	115

D- Négociations avec les créanciers

9- Suite à une négociation avec les créanciers, gérez-vous le remboursement des dettes ?

- 116 ☐ Oui 117 ☐ Non
SI OUI 118 ☐ toujours
119 ☐ seulement à la demande du client
120 ☐ seulement à la demande du créancier
121 ☐ Autre, précisez 122

E- Éthique

10- Votre organisme et vos employés sont-ils assujettis à des règles éthiques concernant :

- a) La confidentialité 123 c) Les procurations 125
b) La divulgation d'informations 124 d) autre, spécifiez 126

11- Ces règles sont élaborées par qui et quelles sont-elles ?

- a) 127 ☐ Une association professionnelle Titre 128 Références 129
b) 130 ☐ Une association provinciale Titre 131 Références 132
c) 133 ☐ Une association nationale Titre 134 Références 135
d) 136 ☐ Autre, spécifiez 137 Titre 138 Références 139

12- Quelles sont les conséquences prévues en cas de non respect à ces règles ? 140



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In the United States, there was big concern about the industry of credit counselling. From 1999 to 2003, complaints filed annually with the US Better Business Bureau increased by 590%, from 1,140 to 7,862. In a US report titled «Profiteering in a non-profit industry: Abusive practices in credit counselling », the Senate concluded that: «some credit counselling agencies are engaged in abusive practices that hurt debtors, including charging excessive fees, putting marketing before counselling, and providing debtors with inadequate educational counselling, and debt management services » and « some non-profit credit counselling agencies are funnelling millions of dollars each year from cash-strapped debtors to insiders and affiliated for-profit businesses, in apparent violation of tax laws prohibiting tax-exempt charities from benefiting private interests; » The Consumer's Union decided to do a research, with the financial help of Industry Canada, on the practices and ethics of credit counselling agencies across Canada. The problems that arose in the United States last year could very well repeat here in Canada. This project studies the practices and ethics of both non-profit organizations as well as commercial businesses that provide credit counselling.

We thank you for answering this questionnaire and we want to reassure you that all the information that could identify you will be kept confidential.

Regards,

Luc Rochefort
Analyst
Consumer's Union

Name of organization:

A Your organization

1- In which province is your organization located?

- | | |
|--|--|
| 01 <input type="checkbox"/> Alberta | 04 <input type="checkbox"/> Ontario |
| 02 <input type="checkbox"/> British-Colombia | 05 <input type="checkbox"/> Quebec |
| 03 <input type="checkbox"/> New-Brunswick | 06 <input type="checkbox"/> Saskatchewan |

2- What type of organization are you?

Profit:

- 07 ☐ Bankruptcy administrator
08 ☐ Financial Adviser
09 ☐ Financial Assignee in
bankruptcy
10 ☐ Trustee
11 ☐ Other, specify: 12

Non profit:

- 13 ☐ Association coopérative d'économie familiale
(ACEF)
14 ☐ Credit counselling Service
15 ☐ Other, specify: 16

3- Is your organization a member of a provincial or national association? If so, which one?

- | | | |
|--|--------------------------------------|---|
| 17 <input type="checkbox"/> Yes | 18 <input type="checkbox"/> No | |
| 19 <input type="checkbox"/> provincial | 20 <input type="checkbox"/> national | 21 <input type="checkbox"/> Other, specify 22 |

Name of association: 23

B Your employees

4- What specific level of education and work experience does your organization require from all new financial advisors?

- | | |
|---|--|
| 24 <input type="checkbox"/> High school | 27 <input type="checkbox"/> University, specify 28 |
| 25 <input type="checkbox"/> College, specify 26 | Experience, specify 29 |

5- Does your organization offer any specialized training sessions for employees?

If yes, what sessions: 30

C Services offered

6- What are the services offered to consumers and what are the associated cost?

- | | |
|--|--|
| 31 <input type="checkbox"/> Educational sessions specialized for
consumers: | 48 <input type="checkbox"/> Management of personal finances - cost
49 |
| 32 <input type="checkbox"/> Budget - cost 33 | 50 <input type="checkbox"/> Consumer advocacy: |
| 34 <input type="checkbox"/> Investment - cost 35 | 51 <input type="checkbox"/> Consultation - cost 52 |
| 36 <input type="checkbox"/> Money and family - cost 37 | 53 <input type="checkbox"/> Personalized accompaniment - cost 54 |
| 38 <input type="checkbox"/> Money and students - cost 39 | |
| 40 <input type="checkbox"/> Purchase of a house - cost 41 | 55 <input type="checkbox"/> Representation - cost 56 |
| | 57 <input type="checkbox"/> Negotiation with creditors - cost 58 |
| 42 <input type="checkbox"/> Purchase of a car - cost 43 | |
| 44 <input type="checkbox"/> Retirement planning - cost 45 | 59 <input type="checkbox"/> Other, specify 60 - cost 61 |
| 46 <input type="checkbox"/> Budgetary consultations - cost 47 | |

7- General overview of services dispensed within the past 12 months:

- a) How many consumers did your organization consult within the last 12 months? 62
b) How many of those received individual budget consultations? 63
c) What is the average duration of a budget consultation? 64
d) How many cases (in percentage) needed a follow up? 65 %

12-In the event an employee breaches the code of ethics, what are the subsequent repercussions? 140

A Your organization

1- In which province is your organization located?

- | | |
|---|--|
| 01 <input type="checkbox"/> Alberta | 04 <input type="checkbox"/> Ontario |
| 02 <input checked="" type="checkbox"/> British-Colombia | 05 <input type="checkbox"/> Quebec |
| 03 <input type="checkbox"/> New-Brunswick | 06 <input type="checkbox"/> Saskatchewan |

2- Is your organization?

Profit:

- 07 ☐ Administrator of bankruptcy
 08 ☐ Financial Adviser
 09 ☐ Financial Assignee in bankruptcy
 10 ☐ Trustee
 11 ☐ Other, specify: 12

Non profit:

- 13 ☐ Association coopérative d'économie familiale (ACEF)
 14 ☒ Credit counselling Services
 15 ☐ Other, specify: 16

3- Is your organization a member of a provincial or national association? If so, which one?

- 17 ☒ Yes 18 ☐ No
 19 ☐ provincial 20 ☒ national 21 ☐ Other, specify 22

Name of association: 23 Credit Counselling Canada

B The employees

4- What specific level of educational and work experience does your organization require from all new financial advisors?

- | | |
|--|--|
| 24 <input type="checkbox"/> High school | Experience, specify 29 or extensive industry experience or a combination of experience / education |
| 25 <input checked="" type="checkbox"/> College, specify 26 Minimum | |
| 27 <input type="checkbox"/> University, specify 28 Preferred, | |

5- Does your organization offer its employees any specialized training sessions?

Specify 30 yes, on the job training; counselling workshops, subsidized post-secondary education

C Services offered

6- What services do you offer to consumers and what are the cost associated to those services?

- | | |
|--|---|
| 31 <input checked="" type="checkbox"/> Educational sessions specialized for consumers: | 48 <input type="checkbox"/> Management of personal finances - cost 49 |
| 32 <input checked="" type="checkbox"/> Budget - cost 33 0 | 50 <input type="checkbox"/> Consumer advocacy: |
| 34 <input type="checkbox"/> Investment - cost 35 | 51 <input checked="" type="checkbox"/> Consultation - cost 52 0 |
| 36 <input type="checkbox"/> Money and family - cost 37 | 53 <input type="checkbox"/> Personalized accompaniment - cost 54 |
| 38 <input checked="" type="checkbox"/> Money and students - cost 39 0 | 55 <input type="checkbox"/> Representation - cost 56 |
| 40 <input type="checkbox"/> Purchase of a house - cost 41 | 57 <input checked="" type="checkbox"/> Negotiation with creditors - cost 58 varies |
| 42 <input type="checkbox"/> Purchase of a car - cost 43 | 59 <input type="checkbox"/> Other, specify 60 Debt Management Programs - cost 61 \$0 - \$50 per month, monthkly average is \$20 |
| 44 <input type="checkbox"/> Retirement planning - cost 45 | |
| 46 <input checked="" type="checkbox"/> Budgetary consultations - cost 47 0 | |

7- General overview of dispensed services:

a) How many consumers did consult with your organization within the last 12 months? 62 **4900 new counselling cases, 2500 2nd and review counselling appointments, 600 bankruptcy counselling appointments and approx. 7000 brief counselling appointments**

b) How many of those received individual budgetary consultations? 63 approximately 7000. We review a client's budget and offer them budgeting advice, spending diaries and workbooks to all new clients (at no cost).

c) What is the average duration of a budgetary consultation? 64 1 hour

d) How many cases (in percentage) needed a follow up? 65 30%

e) How many meetings does a follow up generally require? 66 1 - 2

8- What are the sources of your financing?

Sources	Financing by budgetary consulting				Flat financing rate	Other sources of financing	% of the global financing
	Fixed amount	Fixed amount based on number of consultations	% negotiated with the creditors	Other specify			
Clients	67	74	81	88	95	102 x	109 30
Creditors	68	75	82	89	96	103 x	110 66
Donations	69	76	83	90	97	104 x	111 1
Agreements with the trustees	70	77	84	91	98 \$85 per BIA session	105	112 3
Foundations	71	78	85	92	99	106	113
Government	72	79	86	93	100	107	114
Other, specify	73	80	87	94	101	108	115

D- Negotiations with creditors

9- After negotiating with a creditor, do you manage the refunding as well?

116 ☒ Yes

117 ☐ No

IF YES

118 ☐ always

119 ☐ only when asked to by the client

120 ☐ only when asked by the creditors

121 ☐ Other, specify 122

E- Ethics

10- Does your organization and employees follow a code of ethics concerning:

a) Confidentiality 123 yes

c) Proxies 125

b) Information disclosure 124 yes

d) Other, specify 126

11- By whom were these rules elaborated and can you provide us the title and the references of these rules?

a) 127 ☐ A professional order

title 128

references 129

b) 130 ☐ A provincial association

title 131

references 132

c) 133 ☐ A national association

title 134

references 135

d) 136 ☒ Other, Specify 137 We have created our own internal ethics which are in line with provincial and federal privacy legislation

title 138

references 139

12- In the event of a breach of this code of ethics, what are the possible repercussions? 140 potential employee discipline and or dismissal depending upon the situation.

Réponse 2

Votre organisme

1- Dans quelle province votre organisme est-il situé?

- | | |
|--|---|
| 01 <input type="checkbox"/> Alberta | 04 <input type="checkbox"/> Ontario |
| 02 <input type="checkbox"/> Colombie-Britannique | 05 <input checked="" type="checkbox"/> Québec |
| 03 <input type="checkbox"/> Nouveau-Brunswick | 06 <input type="checkbox"/> Saskatchewan |

2- Votre organisme est-il?

À but lucratif

- 07 ☐ Administrateur de faillite
08 ☒ Conseiller financier
09 ☒ Redresseur financier
10 ☐ Syndic de faillite
11 ☐ Autre, spécifiez 12

À but non lucratif

- 13 ☐ Association coopérative d'économie familiale (ACEF)
14 ☐ Credit counselling Services
15 ☐ Autre (spécifiez) 16

3- Votre organisme fait-il partie d'une association (provinciale, nationale ou autres)?

- 17 ☐ Oui 18 ☒ Non
19 ☐ association provinciale 20 ☐ association nationale 21 ☐ autre, spécifiez 22

Nom de l'association : 23

Les employés

4- Quelles sont les formations académiques et les expériences minimales de travail exigées des consultants budgétaires de votre organisme?

- 24 ☐ Sec V 27 ☐ Universitaire, précisez 28
25 ☒ Collégial, précisez 26 Expérience, précisez 29

5- Quelles sont les formations offertes aux conseillers budgétaires ou financiers de votre organisme? (formation continue)

Développez 30

Les services offerts

6- Quels types de services offrez-vous aux consommateurs ?

- | | |
|--|--|
| 31 <input checked="" type="checkbox"/> Formations spécialisées aux consommateurs : | 48 <input checked="" type="checkbox"/> Gestion des finances personnelles - coût 49 |
| 32 <input checked="" type="checkbox"/> Budget - coût 33 nil | |
| 34 <input checked="" type="checkbox"/> Investissement - coût 35 | 50 <input type="checkbox"/> Défense des droits des consommateurs (individuel): |
| 36 <input checked="" type="checkbox"/> L'argent et la famille - coût 37 | 51 <input checked="" type="checkbox"/> Consultation - coût 52 |
| 38 <input type="checkbox"/> L'argent et les étudiants - coût 39 | 53 <input type="checkbox"/> Accompagnement - coût 54 |
| 40 <input checked="" type="checkbox"/> L'achat d'une maison - coût 41 | 55 <input type="checkbox"/> Représentation - coût 56 |
| 42 <input checked="" type="checkbox"/> L'achat d'une voiture - coût 43 | 57 <input checked="" type="checkbox"/> Négociation avec les créanciers - coût 58 |
| 44 <input type="checkbox"/> Planification de retraite - coût 45 | |
| 46 <input checked="" type="checkbox"/> Consultations budgétaires - coût 47 | 59 <input type="checkbox"/> Autre, spécifiez 60 - coût 61 |

7- Pour l'ensemble de vos services

- a) Combien de consommateurs vous ont consulté au cours des 12 derniers mois? 62 1200
b) Combien de consultations budgétaires individuelles avez-vous effectuées au cours des 12 derniers mois? 63 500
c) Quelle est la durée moyenne d'une consultation budgétaire? 64 60min
d) Combien de cas (en pourcentage) requièrent un suivi? 65 60%
e) Combien de rencontres sont nécessaires à un suivi? 66 3

8- Quelles sont vos sources de financement (à cocher) ? Et quel pourcentage ces sources représentent-elle de votre financement total ?

Sources	Financement (consultation budgétaire)				Financement fixe	Autre financement	% du financement global de l'organisme
	Montant fixe	Montant fixe selon le nombre de cb	Selon le % de remboursement du créancier	Autre, spécifiez			
Clients	67 x	74 x	81	88	95 x	102 x	109 100
Créanciers	68	75	82	89	96	103	110
Dons (particuliers)	69	76	83	90	97	104	111
Entente avec les syndicats de faillite	70	77	84	91	98	105	112
Fondations	71	78	85	92	99	106	113
Gouvernement	72	79	86	93	100	107	114
Autre, spécifiez	73	80	87	94	101	108	115
							Total +/- 100 %

D- Négociations avec les créanciers

9- Suite à une négociation avec les créanciers, gérez-vous le remboursement des dettes ?

- 116 ☐ Oui 117 ☒ Non
SI OUI 118 ☐ toujours
119 ☐ seulement à la demande du client
120 ☐ seulement à la demande du créancier
121 ☐ Autre, précisez 122

E- Éthique

10- Votre organisme et vos employés sont-ils assujettis à des règles éthiques concernant :

- a) La confidentialité 123 oui c) Les procurations 125 oui
b) La divulgation d'informations 124 oui d) autre, spécifiez 126

11- Ces règles sont élaborées par qui et quelles sont-elles ?

- a) 127 ☐ Une association professionnelle Titre 128 Références 129
b) 130 ☐ Une association provinciale Titre 131 Références 132
c) 133 ☐ Une association nationale Titre 134 Références 135
d) 136 ☐ Autre, précisez 137 Titre 138 Références 139

12- Quelles sont les conséquences prévues en cas de non respect à ces règles ? 140 avertissement, reprimande, renvoi

Réponse 3

Votre organisme

1- Dans quelle province votre organisme est-il situé?

- | | |
|--|---|
| 01 <input type="checkbox"/> Alberta | 04 <input type="checkbox"/> Ontario |
| 02 <input type="checkbox"/> Colombie-Britannique | 05 <input checked="" type="checkbox"/> Québec |
| 03 <input type="checkbox"/> Nouveau-Brunswick | 06 <input type="checkbox"/> Saskatchewan |

2- Votre organisme est-il?

À but lucratif

- 07 ☐ Administrateur de faillite
08 ☐ Conseiller financier
09 ☐ Redresseur financier
10 ☐ Syndic de faillite
11 ☐ Autre, spécifiez 12

À but non lucratif

- 13 ☒ Association coopérative d'économie familiale (ACEF)
14 ☐ Credit counselling Services
15 ☐ Autre (spécifiez) 16

3- Votre organisme fait-il partie d'une association (provinciale, nationale ou autres)?

- 17 ☒ Oui 18 ☐ Non
19 ☒ association provinciale 20 ☐ association nationale 21 ☐ autre, spécifiez 22
Nom de l'association : 23 Union des Consommateurs

Les employés

4- Quelles sont les formations académiques et les expériences minimales de travail exigées des consultants budgétaires de votre organisme?

- | | |
|---|---|
| 24 <input type="checkbox"/> Sec V | conseillers budgétaires ont une formation |
| 25 <input type="checkbox"/> Collégial, précisez 26 | universitaire, la plupart en service social |
| 27 <input checked="" type="checkbox"/> Universitaire, précisez 28 Il n'y a pas de formation précise exigée. Cependant, tous les | Expérience, précisez 29 |

5- Quelles sont les formations offertes aux conseillers budgétaires ou financiers de votre organisme? (formation continue)

Développez 30 Les conseillers budgétaires sont formés par les conseillers expérimentés de notre Acef. Les nouveaux conseillers apprennent en accompagnant un conseiller expérimenté. Il fera ses premières consultations en étant supervisé par un conseiller. Quand il sera apte à faire seul une consultation budgétaire, il devra consulter au moment de discussion sur la solution. Nous avons de plus une formation continue une fois par mois dans laquelle nous analysons et échangeons sur les consultations les plus complexes.

Les services offerts

6- Quels types de services offrez-vous aux consommateurs ?

- | | |
|--|---|
| 31 <input type="checkbox"/> Formations spécialisées aux consommateurs : | 50 <input checked="" type="checkbox"/> Défense des droits des consommateurs (individuel): |
| 32 <input checked="" type="checkbox"/> Budget - coût 33 | 51 <input checked="" type="checkbox"/> Consultation - coût 52 |
| 34 <input type="checkbox"/> Investissement - coût 35 | 53 <input checked="" type="checkbox"/> Accompagnement - coût 54 |
| 36 <input type="checkbox"/> L'argent et la famille - coût 37 | 55 <input checked="" type="checkbox"/> Représentation - coût 56 |
| 38 <input type="checkbox"/> L'argent et les étudiants - coût 39 | 57 <input checked="" type="checkbox"/> Négociation avec les créanciers - coût 58 |
| 40 <input checked="" type="checkbox"/> L'achat d'une maison - coût 41 | |
| 42 <input type="checkbox"/> L'achat d'une voiture - coût 43 | 59 <input type="checkbox"/> Autre, spécifiez 60 Ateliers thématiques sur |
| 44 <input type="checkbox"/> Planification de retraite - coût 45 | mesure et des soirées publiques d'information avec |
| 46 <input checked="" type="checkbox"/> Consultations budgétaires - coût 47 | un conférencier invité - coût 61 Le prix demandé |
| 48 <input type="checkbox"/> Gestion des finances personnelles - coût 49 | pour un atelier est de 30 \$ de l'heure. Les |
| | conférences sont gratuites. |

7- Pour l'ensemble de vos services

- a) Combien de consommateurs vous ont consulté au cours des 12 derniers mois? 62 Autour de 1000
b) Combien de consultations budgétaires individuelles avez-vous effectuées au cours des 12 derniers mois?
63 265 cb en 2005
c) Quelle est la durée moyenne d'une consultation budgétaire? 64 une heure et demie

- d) Combien de cas (en pourcentage) requièrent un suivi? 65 5%
- e) Combien de rencontres sont nécessaires à un suivi? 66 entre 2 et 10 rencontres

8- Quelles sont vos sources de financement (à cocher) ? Et quel pourcentage ces sources représentent-elle de votre financement total ?

Sources	Financement (consultation budgétaire)				Financement fixe	Autre financement	% du financement global de l'organisme
	Montant fixe	Montant fixe selon le nombre de cb	Selon le % de remboursement du créancier	Autre, spécifiez			
Clients	67	74	81	88	95	102	109
Créanciers	68	75	82	89	96	103	110
Dons (particuliers)	69	76	83	90	97	104	111
Entente avec les syndicats de faillite	70	77	84	91	98	105 175	112 3%
Fondations	71	78	85	92	99 138 040	106 8 160	113 56%
Gouvernement	72	79	86	93	100 47 821	107 9 000	114 24%
Autre, spécifiez	73	80	87	94	101	108 40 774	115 17%
							Total +/- 100 %

D- Négociations avec les créanciers

9- Suite à une négociation avec les créanciers, gérez-vous le remboursement des dettes ?

- 116 ☐ Oui 117 ☒ Non
- SI OUI 118 ☐ toujours
- 119 ☐ seulement à la demande du client
- 120 ☐ seulement à la demande du créancier
- 121 ☐ Autre, précisez 122

E- Éthique

10- Votre organisme et vos employés sont-ils assujettis à des règles éthiques concernant :

- a) La confidentialité 123 oui c) Les procurations 125 oui
- b) La divulgation d'informations 124 oui d) autre, spécifiez 126

11- Ces règles sont élaborées par qui et quelles sont-elles ?

- a) 127 ☐ Une association professionnelle Titre 128 Références 129
- b) 130 ☐ Une association provinciale Titre 131 Références 132
- c) 133 ☐ Une association nationale Titre 134 Références 135
- d) 136 ☒ Autre, spécifiez 137 Nous Titre 138 Références 139

12- Quelles sont les conséquences prévues en cas de non respect à ces règles ?

140 On a jamais eu à gérer ce problème. L'équipe est peu nombreuse. La personne fautive aurait un avertissement sérieux

A Your organization

1- In which province is your organization located?

- | | |
|--|--|
| 01 <input checked="" type="checkbox"/> Alberta | 04 <input type="checkbox"/> Ontario |
| 02 <input type="checkbox"/> British-Colombia | 05 <input type="checkbox"/> Quebec |
| 03 <input type="checkbox"/> New-Brunswick | 06 <input type="checkbox"/> Saskatchewan |

2- Is your organization?

Profit:

- 07 ☐ Administrator of bankruptcy
 08 ☐ Financial Adviser
 09 ☐ Financial Assignee in bankruptcy
 10 ☐ Trustee
 11 ☒ Other, specify: 12 Credit counseling agency

Non profit:

- 13 ☐ Association coopérative d'économie familiale (ACEF)
 14 ☐ Credit counselling Services
 15 ☐ Other, specify: 16

3- Is your organization a member of a provincial or national association? If so, which one?

- 17 ☒ Yes 18 ☐ No
 19 ☒ provincial 20 ☐ national 21 ☐ Other, specify 22

Name of association: 23 for profit credit counseling association (exact name unknown)

B The employees

4- What specific level of educational and work experience does your organization require from all new financial advisors?

- | | |
|--|---|
| 24 <input checked="" type="checkbox"/> High school | Experience, specify 29 all consultants must have a credit counselling license approved by the provincial government |
| 25 <input type="checkbox"/> College, specify 26 | |
| 27 <input type="checkbox"/> University, specify 28 | |

5- Does your organization offer its employees any specialized training sessions?

Specify 30 An initial training for new employees and ongoing raining on various topics, depending on the situations confronted by consultants (consumers situations and needs)

C Services offered

6- What services do you offer to consumers and what are the cost associated to those services?

- | | |
|---|--|
| 31 <input type="checkbox"/> Educational sessions specialized for consumers: | 48 <input type="checkbox"/> Management of personal finances - cost 49 |
| 32 <input type="checkbox"/> Budget - cost 33 | 50 <input type="checkbox"/> Consumer advocacy: |
| 34 <input type="checkbox"/> Investment - cost 35 | 51 <input type="checkbox"/> Consultation - cost 52 0 |
| 36 <input type="checkbox"/> Money and family - cost 37 | 53 <input type="checkbox"/> Personalized accompaniment - cost 54 |
| 38 <input type="checkbox"/> Money and students - cost 39 | 55 <input type="checkbox"/> Representation - cost 56 |
| 40 <input type="checkbox"/> Purchase of a house - cost 41 | 57 <input checked="" type="checkbox"/> Negotiation with creditors - cost 58 see Q.8 |
| 42 <input type="checkbox"/> Purchase of a car - cost 43 | 59 <input checked="" type="checkbox"/> Other, specify 60 Grouping of debts into one payment made to agency - cost 61 \$see Q.8 |
| 44 <input type="checkbox"/> Retirement planning - cost 45 | |
| 46 <input checked="" type="checkbox"/> Budgetary consultations - cost 47 Free for initial visit | |

7- General overview of dispensed services:

- a) How many consumers did consult with your organization within the last 12 months? 62 **approx. 16 000 for 16 branches**
- b) How many of those received individual budgetary consultations? 63 Generally all receive initial free budgetary consultation
- c) What is the average duration of a budgetary consultation? 64 Depends on person
- d) How many cases (in percentage) needed a follow up? 65 Less than 20%
- e) How many meetings does a follow up generally require? 66 Depends on person

8- What are the sources of your financing?

Sources	Financing by budgetay consulting				Flat financing rate	Other sources of financing	% of the global financing
	Fixed amount	Fixed amount based on number of consultations	% negotiated with the creditors	Other specify			
Clients	67	74	81	88 Pay structure is based on the Fair trading Act of each province. 1 st payment to creditors goes to agency, then 15% plus GST of other payments goes to agency	95	102	109
Creditors	68	75	82	89	96	103	110
Donations	69	76	83	90	97	104	111
Agreements with the trustees	70	77	84	91	98	105	112
Foundations	71	78	85	92	99	106	113
Government	72	79	86	93	100	107	114
Other, specify	73	80	87	94	101	108	115

D- Negotiations with creditors

9- After negotiating with a creditor, do you manage the refunding as well?

116 ☒ Yes 117 ☐ No

IF YES

118 ☐ always

119 ☐ only when asked to by the client

120 ☐ only when asked by the creditors

121 ☒ Other, specify 122 The customer is informed of the repayment procedure. The amount

that the customer must pay is determined according to the amount owed and the negotiation done between the agency and the creditors. The client pays a fixed amount to the agency which then repays the creditors.

E- Ethics

10- Does your organization and employees follow a code of ethics concerning:

a) Confidentiality 123 yes

b) Information disclosure 124 yes

c) Proxies 125 yes

d) Other, specify 126 all employees must follow the Fair Trading Act

11- By whom were these rules elaborated and can you provide us the title and the references of these rules?

a) 127 ☐ A professional order

title 128

references 129

- b) 130 ☒ A provincial association title 131 Fair Trading Act references 132 Fair Trading Act
c) 133 ☐ A national association title 134 references 135
d) 136 ☐ Other, Specify 137 title 138 references 139

12- In the event of a breach of this code of ethics, what are the possible repercussions?

140 pAll depending on the severity of the breach, the employee can risk having his or her license revoked. All depending on the matter, the agency can also have its operating license revoked as well

A Your organization

1- In which province is your organization located?

- | | |
|--|--|
| 01 <input checked="" type="checkbox"/> Alberta | 04 <input type="checkbox"/> Ontario |
| 02 <input type="checkbox"/> British-Colombia | 05 <input type="checkbox"/> Quebec |
| 03 <input type="checkbox"/> New-Brunswick | 06 <input type="checkbox"/> Saskatchewan |

2- Is your organization?

Profit:

- 07 ☐ Administrator of bankruptcy
 08 ☐ Financial Adviser
 09 ☐ Financial Assignee in bankruptcy
 10 ☐ Trustee
 11 ☒ Other, specify: 12 Credit counseling

Non profit:

- 13 ☐ Association coopérative d'économie familiale (ACEF)
 14 ☒ Credit counselling Services
 15 ☐ Other, specify: 16

3- Is your organization a member of a provincial or national association? If so, which one?

- 17 ☐ Yes 18 ☐ No
 19 ☐ provincial 20 ☒ national 21 ☐ Other, specify 22
 Name of association: 23 Credit Counselling Canada

B The employees

4- What specific level of educational and work experience does your organization require from all new financial advisors?

- | | |
|--|--|
| 24 <input type="checkbox"/> High school | Experience, specify 29 aWe have training positions as well as advanced positions that require up to 5 years experience |
| 25 <input type="checkbox"/> College, specify 26 | |
| 27 <input checked="" type="checkbox"/> University, specify 28 Degree in Human Ecology, Social Science or Adult Education | |

5- Does your organization offer its employees any specialized training sessions?

Specify 30 We offer both internal and external training sessions, on all aspects of credit counselling

C Services offered

6- What services do you offer to consumers and what are the cost associated to those services?

- | | |
|--|---|
| 31 <input checked="" type="checkbox"/> Educational sessions specialized for consumers: | 48 <input checked="" type="checkbox"/> Management of personal finances - cost 49 |
| 32 <input checked="" type="checkbox"/> Budget - cost 33 | 50 <input checked="" type="checkbox"/> Consumer advocacy: |
| 34 <input type="checkbox"/> Investment - cost 35 | 51 <input type="checkbox"/> Consultation - cost 52 |
| 36 <input checked="" type="checkbox"/> Money and family - cost 37 | 53 <input type="checkbox"/> Personalized accompaniment - cost 54 |
| 38 <input checked="" type="checkbox"/> Money and students - cost 39 | |
| 40 <input type="checkbox"/> Purchase of a house - cost 41 | 55 <input type="checkbox"/> Representation - cost 56 |
| 42 <input type="checkbox"/> Purchase of a car - cost 43 | 57 <input checked="" type="checkbox"/> Negotiation with creditors - cost 58 see Q.8 |
| 44 <input type="checkbox"/> Retirement planning - cost 45 | 59 <input checked="" type="checkbox"/> Other, specify 60 Debt repayment - cost 61 our annual budget is \$2,6 millions |
| 46 <input checked="" type="checkbox"/> Budgetary consultations - cost 47 | |

7- General overview of dispensed services:

- a) How many consumers did consult with your organization within the last 12 months? 62 **18 000**
 b) How many of those received individual budgetary consultations? 63 Approximately 2 000
 c) What is the average duration of a budgetary consultation? 64 2 hours
 d) How many cases (in percentage) needed a follow up? 65 48%
 e) How many meetings does a follow up generally require? 66 1-2

8- What are the sources of your financing?

Sources	Financing by budgetary consulting				Flat financing rate	Other sources of financing	% of the global financing
	Fixed amount	Fixed amount based on number of consultations	% negotiated with the creditors	Other specify			
Clients	67	74 75 - 100	81	88	95	102	109
Creditors	68	75	82 average 19,5 % on debt repayment programs	89	96	103	110
Donations	69	76	83	90	97	104	111
Agreements with the trustees	70	77	84	91	98	105	112
Foundations	71	78	85	92	99	106	113
Government	72	79	86	93	100	107	114
Other, specify	73	80 fee for service work	87	94	101	108	115

D- Negotiations with creditors

9- After negotiating with a creditor, do you manage the refunding as well?

- 116 ☐ Yes 117 ☒ No
IF YES 118 ☐ always
119 ☐ only when asked to by the client
120 ☐ only when asked by the creditors
121 ☒ Other, specify 122

E- Ethics

10- Does your organization and employees follow a code of ethics concerning:

- a) Confidentiality 123 yes c) Proxies 125
b) Information disclosure 124 yes d) Other, specify 126 code of ethics

11- By whom were these rules elaborated and can you provide us the title and the references of these rules?

- a) 127 ☐ A professional order title 128 references 129
b) 130 ☐ A provincial association title 131 references 132
c) 133 ☐ A national association title 134 references 135
d) 136 ☒ Other, Specify 137 They were put in place by our organization, also all professional staff must be in good standing with their own professional association title 138 references 139

12- In the event of a breach of this code of ethics, what are the possible repercussions? 140 yes