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Debt Settlement Consultation  
Consumer Policy and Liaison Branch  
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Thank you for the opportunity to provide our comments on the proposals that are being considered to protect Ontario consumers who deal with debt settlement services. We are pleased to have been part of the consultation process leading up to the development of these proposals, and we look forward to continuing the dialogue on this important issue.

The banking industry has a strong interest in ensuring that consumers who are experiencing difficulty repaying their debts are treated with fairness and receive accurate information about the solutions that are available to them. Many of these individuals are particularly susceptible given that they are facing financial and, in some cases, emotional hardship. We applaud the government for taking action to strengthen the rules governing the debt settlement sector and addressing some of the abuses that banks see occurring on a regular basis.

The government's consultation paper accurately summarizes many of the issues that we are eager to have addressed. Many consumers have sought debt relief by dealing with a debt settlement company only to find that their situation is worsened. Debt settlement companies aggressively market to borrowers through telemarketing calls, television advertisements and transit ads claiming that they will persuade creditors to forgive a significant portion of the loan and/or interest payable. Some advertisements have suggested that debt settlement companies are part of an official government program aimed at helping consumers get out of debt. Most borrowers who are persuaded to use these services have sufficient assets and/or income to repay the debts, but are attracted by the concept of repaying only a portion of the outstanding balance.

Unfortunately for consumers, only about 10 percent of proposals that banks receive from debt settlement companies are actually accepted. The remainder are declined because the repayment terms are not acceptable to the bank (this includes, for example, proposals seeking concessions that are unreasonable, or because the bank has evidence that the borrower has the capacity to meet his/her debt obligations). These consumers are left with more debt than before, fees paid with no results, and a tarnished credit record.

The other issue we see is that consumers are seldom aware of how their settlement is being handled. Debt settlement companies typically enter into an agreement with the client, who makes regular payments to the debt settlement company, usually assuming that it has contacted the creditor and negotiations are underway to reduce the debt. Typically what actually happens is that no payments are sent to the creditor, and the client's payments go first to pay the debt settlement company's significant fees, then to accumulating enough funds to make a settlement.

By the time the debt settlement company contacts the creditor with a proposal, the borrower is significantly in arrears on their loan.

Consequently, the CBA supports the approach in the consultation paper to impose requirements that harmonize with and are similar to those in other jurisdictions. Fee restrictions, disclosure obligations, an explicit ban on misleading advertising, and other standards of conduct are excellent tools for regulating this sector of the market and improving transparency and fairness for consumers. Below, we provide comments and suggestions on a few of the specific proposals outlined in the consultation paper.

### **Defining Debt Settlement Services**

Debt settlement services are commonly provided by companies that are set up for the primary purpose of negotiating settlements with creditors, but we have seen that these services are also being provided by other individuals or professionals acting as agents for the consumer. It is important, therefore, that the definition of debt settlement services be written to capture the full scope of service providers.

### **Regulating Advance Payment of Fees**

To protect consumers from financial loss, we strongly endorse the proposal to ban debt settlement companies from collecting fees from consumers until a settlement is approved by creditors. While debt settlement companies would have the ability to accept payments prior to a settlement offer being made to a creditor, we support the proposal that such funds should be held in a trust account for the consumer's benefit and for the sole purpose of making settlement offers to creditors. We agree that consumers should be refunded any payments along with any interest earned if the settlement offer is declined.

It is not clear, however, what is meant by "the funds are under the consumer's control" and suggest that there be some consideration to putting limits around the "control" given to consumers over the funds on deposit. We doubt that it would be appropriate for consumers to be able to deposit and withdraw funds at random and use the account like a personal deposit account. Furthermore, it is recommended that these deposits be monitored so that debt settlement companies do not co-mingle client funds with their operating funds. It may be advisable, for example, to require debt settlement companies to report quarterly to the government on funds held in trust to encourage ongoing vigilance and supervision.

### **Limiting Amount of Fees**

The consultation paper notes that fee limits would be set that differentiate between arrangements whereby debt payments are made in accordance with a schedule (which is common among credit counselling agencies) and arrangements involving negotiated settlements (the model followed by debt settlement companies). This approach appears to be modeled on regulations that have recently been enacted in Alberta and Manitoba.

From our perspective, however, it is unclear why debt settlement companies and credit counselling agencies would be subject to different fee limits. Apart from one-time administration fees, we are not aware of any credit counselling agency that currently charges clients more than 10 percent of the scheduled repayment. Not-for-profit credit counselling agencies do provide consumers with a higher level of service – education and counselling, often on a one-to-one basis. For many years, banks have provided financial support to not-for-profit credit counselling services in Canada, to help ensure that they have the resources they need to deliver these counselling, education and financial literacy skills to consumers. For these reasons, we believe it would be prudent to harmonize the fee limits so that debt settlement companies and credit counselling agencies are permitted to charge up to 10 percent of the debts owing or the amount

of each scheduled payment, as the case may be (while retaining the ability for credit counselling agencies to charge a one-time administration fee).

Another issue to be aware of is that by restricting the use of the credit counselling model to only members of the Ontario Association of Credit Counselling Services (OACCS), many other reputable credit counselling services would be disadvantaged. Not-for-profit credit counselling agencies in Ontario can choose between two associations – the OACCS and Credit Counselling Canada. Both are equally reputable and hold their members to high standards through their accreditation programs and membership requirements. Banks work with members of both associations and can see no reason to have this legislation favour one association over another. Should there continue to be standards that are specific to credit counselling, we recommend broadening those standards so that members of both associations have the same rights under the law with respect to the amount of fees that can be charged.

### **Mandatory Disclosure**

We agree that it is important that consumers receive clear disclosure of relevant terms and conditions related to their use of the debt settlement service and that consumers understand the risks of failing to make timely payments to creditors. Many consumers are simply not aware how their credit rating is impacted by delays in making payments, and what this means for future decisions about borrowing and using credit. We therefore strongly support imposing a requirement that mandatory statements be prominently disclosed in consumer contracts, and we believe that the proposed draft statement describes the key credit and legal risks that consumers should be aware of prior to entering an agreement with a debt settlement company.

### **Other Prohibited Practices**

Many debt settlement companies have taken the view that they are acting as the consumer's legal representative and have therefore discouraged all communications between the consumer and his/her creditor(s). We are very pleased that the government is proposing to establish rules that prohibit debt settlement companies from doing anything that would restrict a consumer from communicating with creditors. While we understand the aim of the regulations would be to protect and promote the consumer's rights, we strongly believe that additional measures are needed to prohibit debt settlement companies from using their position as intermediary to demand that creditors stop communicating with their clients. Banks see significant value in being able to communicate with their clients to make them aware of other options and assistance that may be available to help them through their situation. Banks also welcome conversations with their clients about the implications of using a debt settlement company and the impact on their credit rating, as discussed above.

We see it as very positive that your government plans to create rules to prohibit debt settlement companies from communicating any false or misleading information, whether publicly or directly to the consumer. Debt settlement companies should not be creating any false expectations that clients will be able to walk away from their debts regardless of their situation, or that creditors will forgive a significant portion of the loan and/or interest payable, particularly when the borrower is well able to repay the loan.

Once again, we greatly appreciate the government's leadership on this important issue and that action is being taken to protect consumers. Thank you for allowing us to contribute to the government's policy development process, and we welcome the opportunity to comment on specific regulatory measures that may be developed as a result of this consultation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Candy H...", is written over the word "Sincerely,".