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Debt takes victims into a murky world Lack of regulation in B.C. opens doors for national or international firms to abuse clients

BY TRACY SHERLOCK, VANCOUVER SUN MARCH 13, 2013



Blair Mantin of Sands & Associates helps older people who get into financial trouble and may have to proceed with bankruptcy.

Photograph by: Gerry Kahrman , PROVINCE

VANCOUVER — By the time they meet up with Mantin, who is senior vice-president at Sands & Associates, which is a proposal administrator, trustee and bankruptcy firm, they're facing bankruptcy.

Consumer Protection BC has seen an exponential increase in calls about debt settlement companies like this since 2010, leading the agency to highlight the issue to the government in hopes they will strengthen debt collection laws in the province.

"We have seen a spike of more than 2,000 per cent in calls (about debt settlement) over the past two years," said Manjit Bains, vice-president of corporate relations at Consumer Protection BC. "This has been clearly an emerging hot issue over the past few years."

In 2010 they received eight calls while in 2011 and 2012 they received more than 210 calls, Bains said. The average British Columbian has \$37,244 in non-mortgage debt, the highest in the country.

While none of the individuals who have been burned by this type of company who Mantin has worked with was willing to tell The Vancouver Sun their story, Mantin did provide some examples. He said one married couple, who had recently immigrated to Canada, found themselves with \$88,000 in consumer debt. They signed up with a debt settlement company, agreeing to pay them 15 per cent of their total debt — about \$13,000 — in return for a negotiated reduction in their debt, Mantin said.

After about six months, a portion of the wife's wages were seized and the couple ended up in Mantin's office.

Another example Mantin gave was a 70-year-old man with \$17,000 in consumer debt, who was trying to pay that off while living on about \$1,500 a month from Canada Pension Plan and Old Age Security. After paying about \$2,000 to the company in fees, he ended up declaring bankruptcy.

The money made by bankruptcy firms like Sands & Associates, or by "debt pooling" credit counselling organizations is a percentage of the payments people make toward their debt repayment proposal or bankruptcy claim.

Debt settlement companies make most of their money a different way — through upfront fees paid by the person in debt. Sometimes these fees are collected — they could be as high as \$3,000, Mantin said — and then the settlement company is unable to make a deal with a person's creditors. When that happens, they usually don't get a penny back, Mantin said.

“We’re hoping to get some attention so that B.C. will finally change the regulations around debt settlement,” Mantin said, adding that Ontario is in the process of changing its rules and Alberta and Manitoba did so last year.

In 2012, both Manitoba and Nova Scotia introduced rules that ban upfront charges by debt-settlement companies, set maximum fees that debt settlement companies can charge and require debt-settlement companies to be licensed. Alberta already had similar rules in place and now Ontario is contemplating the same.

Of course, Mantin only meets the people for whom debt settlement has not been a success.

Richard Cooper is chair of the Canadian Association of Debt Assistance, an organization that lists three members on its website: Cambridge Life Solutions, Canada Debt Settlement and Total Debt Freedom. All three are debt settlement companies.

Cooper says 75 per cent of his clients pay off their debts at a reduced rate within 36 months of signing up. He says debt settlement companies are the only companies advocating for consumers, while credit counsellors and bankruptcy trustees are acting at least partly on behalf of the creditors.

At his company — Total Debt Freedom — he charges a service fee of 16 per cent, which is paid monthly. When asked what happens if the creditors won’t negotiate, he said, “creditors always, always yield in the hands of a skilled negotiator.”

He said at his company if no deal is struck a full refund of fees is paid.

Ontario’s government is proposing limiting fees to 10 per cent of the debt and banning upfront fees.

“You can’t operate at 10 per cent, it’s just not possible,” Cooper said. “You can operate on a contingency basis, provided there’s no cap on the fee.

He says that waiting seven months until there is a negotiated deal would mean he would have to increase the rate to 25 to 30 per cent of a person’s debts.

“How am I going to pay my staff, my rent, my overhead and my telephones? Nobody can work for free,” Cooper said. “(Ontario’s) proposed changes are designed to strangle debt settlement businesses to the point where they can’t offer services. We’ve seen that happen in Manitoba recently where they adopted the same rules as Alberta and ... it basically shut debt settlement out as an option in the province.”

In the U.S., the Federal Trade Commission introduced a new rule in 2010 that prohibits companies that sell debt relief services over the telephone from charging fees before settling or reducing a customer's credit card or other unsecured debt.

"This seems like it's leaving B.C. as this exposed part of Canada where the (debt settlement company's) marketing budget is now being spent here because there is nobody protecting people from this," Mantin said.

He said B.C.'s lack of response is embarrassing.

"When you look at what other provinces have accomplished over the past 12 to 18 months to deal with this issue, B.C. stands out as a huge failure in protecting vulnerable consumers from being preyed upon."

B.C. Justice Minister Shirley Bond said she intends to enhance consumer protection on debt settlement.

"We recognize that under the current regulatory framework there are further safeguards that would eliminate excessive, upfront fees for which debt settlement companies may not be able to negotiate the large debt discounts they promise consumers," Bond said in a statement.

"My ministry is preparing proposed amendments to the Business Practices and Consumer Protection Act that will regulate debt settlement agencies with the intention of bringing these amendments forward in the near future.

"Any changes that B.C. may consider will require debt repayment agencies to follow specific regulations that protect consumers from harmful practices and would require a legislative change to the BPCPA."

But with an election in May and the legislative session ending March 14, it's clear that no changes will be happening anytime soon.

Leonard Krog, the New Democratic Party critic for the ministry of justice and the attorney-general, said he's surprised the government says it is studying the issue. If the NDP does win the May election, Krog would not promise any particular action on this issue.

"A New Democratic government is going to be interested in protecting consumers. What form that takes — whether its regulation or legislation — and where it fits on the priority list is the trick," Krog said, adding that there are other significant problems the government has to

address. “As much as I’m sympathetic, I can’t say this will be priority one on Day 1 by any stretch,” Krog said.

Consumer Protection BC would support any attempt to strengthen the debt collection laws, Bains said.

“We believe there is a gap in the law and we are encouraging the strengthening of consumer protection law at this time,” Bains said. “We understand that across Canada about half of the provinces are moving in the direction of regulating this industry, and we understand that is the intent of the B.C. government to regulate this industry as well.”

Mantin says that as the other regions make it more difficult for debt settlement companies to charge upfront fees, the companies have increased their efforts in B.C.

“It has definitely intensified in B.C. over the past three months. I’m hearing more of the marketing and seeing more of the clients,” Mantin said.

“There’s not a week goes by that I don’t see at least a couple of clients (who this has happened to) and sometimes it’s more.

“We try to help them as much as we can, but we just wish there was something that prohibited them from ever getting into this situation.”

Steps for debtors

For those feeling overwhelmed there are steps to consider based on the level of debt and how long it has been a problem:

- Credit counselling/debt pooling: Debt pooling companies are also known as credit counselling organizations — they can be either for profit or not-for-profit. What distinguishes them from debt settlement companies are two things: the way the fees are paid and the licensing requirements. They are required to be licensed by the province because they handle the consumers’ money and their fees are paid out of the money a person in debt repays their creditors. If your financial troubles are in the early stages, you should start with credit counselling. The Credit Counselling Society is a non-profit organization, funded by grants and financial institutions, that helps people manage their debts. Their advice is usually free and includes creating a spending plan. Their website is **Error! Hyperlink reference not valid.**

- Debt settlement: Debt settlement companies are not required to be licenced by the province of B.C. because they don't handle your money. Consumers pay them a fee (usually 15 to 20 per cent of the debt) over the first several months of a contracted agreement and in return they will try to negotiate a debt reduction.
- Consumer proposal: A consumer proposal is an offer made to creditors to pay a number of cents on each dollar owed. A good starting point is 30 per cent of your debts, and 90 per cent of the time, consumer proposals are accepted. At least half of a person's creditors must approve a consumer proposal. Only a bankruptcy trustee can initiate a consumer proposal, and the trustee is paid out of the amount paid by the consumer.
- Bankruptcy: This is the last resort. To declare bankruptcy, a person must be insolvent, which means that even if they sold all of their assets, they could not cover their debts. Bankruptcy usually costs about \$1,800 in trustee fees plus 50 per cent of your income over a low-income cutoff for 21 months. Sands & Associates' website is www.sands-trustee.com.

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