

Commentary on Ontario's Protection of Financial Titles



November 2020

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Copyright Notice

Abstract: Commentary by Consumers Council of Canada on the use of titles in the sale of financial products and services in the province of Ontario, in response to a call to consult by Financial Services Regulatory Authority of Ontario.

Keywords: financial services, financial titles, financial advisor, financial planner

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Briefly

1. Financial Services Regulatory Authority of Ontario has taken the position it should not be the licensor of the use of financial titles, but should establish the criteria for licensors and hold them accountable for good performance. Time will tell whether such an indirect approach to oversight and enforcement will be effective. But action to regulate titles of those purporting to provide qualified financial advice and planning is long overdue and needs to move forward.
2. Under the status quo, anyone selling a financial product or service can claim any title for themselves, and this:
 - Rewards fakers over qualified professionals.
 - Misleads people to think they are receiving help in their interests rather than just a sales presentation in the presenter's interest.
 - Creates uncertainty and confusion in the industry and financial harm for the industry's clients.
3. Having a public database of licensees is important to help clients ascertain the good standing of persons holding financial titles and to authenticate a licensed service provider is in good standing and protect licensed service providers and consumers from identity theft.
4. Industry participants have had ample time to prepare for the regulation of financial titles, so grandfathering the use of titles is both unnecessary and likely to heighten the risk clients will be misled or defrauded. Creating exceptions will continue current confusion in the marketplace.



Background

Important consultation on financial titles, years in the making, conducted in 90 days amid the distractions of the COVID-19 pandemic.

The Ontario Government passed the *Financial Professionals Title Protection Act, 2019* with the intention to protect titles for financial planners and financial advisors in Ontario. The Act is supposed to require an appropriate credential for individuals working in the financial services industry using the titles of ‘financial planner’ and ‘financial advisor’ or any title that could reasonably be confused as the same. The Act received Royal Assent in May 2019 but is not yet proclaimed.

The reform is in the financial services industry’s interest. Financial planners and financial advisors will benefit because competing professionals will at least need to adhere to a minimum standard of capability.

Reform is needed, as well, in the interest of consumers. The average Ontarian is unable presently to assess which designations meet and which designations fail to meet reasonable minimum requirements.

Ontario’s consumers and investors should enjoy a higher probability they will receive assistance in saving, investing and planning for their financial goals, aided by a service delivered by individuals with at least minimal education, training and expertise. In the absence of regulation of the use of these professional titles, Ontario’s investors and consumers are at greater risk of receiving financial planning and advisory services from unqualified persons.

The present absence of regulation of financial service titles has harmed Ontarians who received financial advice from unqualified, unsuitable persons.

In the present regulatory environment, the regulation of financial professionals is shared among the Ontario Securities Commission (OSC), the Investment



Industry Regulator of Canada (IIROC), the Mutual Fund Dealers Association (MFDA) and the Financial Services Regulatory Authority of Ontario (FSRAO).

Under the proposed Financial Professionals Title Protection Rule (FPTP), FSRAO is to work with the existing regulatory frameworks for licensing and designating financial professionals, with the goal of efficient and effective regulation.

The approach in Ontario will be that among the financial regulators, FSRAO will accept and approve entities seeking approval as credentialing bodies that meet criteria established by FSRAO. These bodies will hold the direct responsibility for overseeing users of the 'financial planner' or 'financial advisor' titles. FSRAO's approval of credentialing bodies' proposed terms for granting of titles will be required, also.

A goal of the proposed rules is to give Ontario's investors and consumers confidence that financial planning and advisory services are performed by qualified persons. The new title protection framework is supposed to embrace a balanced approach to protect industry's interests, reduce industry's burden and, hopefully, enhance consumer protection beyond its currently poor state, in which there are no established standards over use of those titles.

FSRAO conducted a 90-day public consultation which it closed to further comment on November 12, 2020, amid the distractions of the COVID-19 pandemic.



The New Law

An objective to protect fair competition, end confusion, and inform and protect consumers.

The *Financial Professionals Title Protection Act, 2019* grants FSRAO rule-making authority including:

- approval criteria for credentialing bodies and credentials;
- applications by prospective credentialing bodies;
- application fees; and
- transition periods for existing FP/FA title users.

This submission will address the approval criteria for credentialing bodies and credentials and transition periods for existing FP/FA title users.

This document identifies the following as key provisions of the legislation:

- Section 2 of the Act prohibits any individual from using the title “Financial Planner” or “planificateur financier”, an abbreviation of that title, an equivalent in another language *or a title that could reasonably be confused with that title...*¹ [emphasis added]
- Section 3 of the Act prohibits any individual from using the title “Financial Advisor” or “conseiller financier”, an abbreviation of that title, an equivalent in another language *or a title that could reasonably be confused with that title...*² [emphasis added]

¹ Bill 100, *Protecting What Matters Most Act (Budget Measures), 2019*, Schedule 25, *Financial Professionals Title Protections Act, 2019*.

² Bill 100, *Protecting What Matters Most Act (Budget Measures), 2019*, Schedule 25, *Financial Professionals Title Protections Act, 2019*.



- And the Act's commentary:

Currently, the *Commodity Futures Act* and the *Securities Act* provide that the Ontario Securities Commission may make rules prescribing the conditions of registration or other requirements for registrants. Amendments are made to each Act to indicate that this power includes the ability to make rules prescribing conditions of registration for registrants in connection with the use of specified titles.³

Currently, the *Insurance Act* provides that the Authority may make rules respecting licences authorizing a person to act as an insurance agent in Ontario. An amendment is made to indicate that this power includes the ability to make rules requiring that a person licensed to act as an insurance agent use a specified title.⁴

³ Bill 100, *Protecting What Matters Most Act (Budget Measures)*, 2019, Schedule 25, *Financial Professionals Title Protections Act*, 2019

⁴ Bill 100, *Protecting What Matters Most Act (Budget Measures)*, 2019, Schedule 25, *Financial Professionals Title Protections Act*, 2019



Overview

Rules intended to achieve a level playing field based on minimum qualifications for qualified competitors to serve consumers.

The proposed FFTP Rule sets out:

1. the requirements and standards that entities would be required to meet in order to obtain FSRA approval as a credentialing body, and to obtain FSRA approval of a Financial Planner (FP) or Financial Advisor (FA) credential; and
2. ongoing requirements to maintain such approvals.

The Notice of Proposed Rule and Request for Comment:

1. provides background and rationale to help understand the Rule; and
2. sets out the process for public consultation.

The proposed Guidance:

1. sets out the proposed approach:
 - a. to the administration of applications for credentialing bodies; and
 - b. FP/FA credentials under the proposed Title Protection Framework.
2. is intended to help potential applicants understand:
 - a. what is required to be approved, and maintain approval, as a credentialing body; and
 - b. what is required to have an FP or FA credential approved under the *Financial Professionals Title Protection Act, 2019 (FPTPA)*.



3. includes an outline of the type of information FSRA would expect in an application for approval of a credentialing body, as well as approval of FP or FA credentials.

Comments

The time has come to define financial titles, without favour or exception.

FSRAO has identified the primary objective of the framework as “creating minimum standards for title usage.”

FSRAO operates within the existing licensing and professional designation regimes. This relies on the outdated licensing and regulatory silos that divide authority among the OSC, IIROC, MFDA and FSRAO.

A coordinated regulatory approach to financial advice in Ontario would be a superior option to the status quo, given the Ontario government’s stated goals of reducing regulatory requirements while protecting consumers. The present, complex and sometimes competing frameworks do not address the serious gaps in the existing regulations.

This new addition to the framework is a stop-gap approach, rather than an example of streamlined, modern and efficient regulation that reduces complexity for the industry, its employees and consumers.

The outcome: individual title-holders will be required to meet all of the requirements of their existing licensing and professional designation bodies and additional criteria of FSRAO-licensed Credential Bodies for FP/FA titles.

FSRAO will approve credentialing bodies (“Credentialing Bodies”). Credential Holders will be required and, in turn, individual title holders (“Individual Title Holders”) will be required to meet conduct requirements and professional standards as set out by their respective credentialing body.



FSRAO identifies the following key principles to be satisfied:

- Protect the public interest through the implementation of new minimum standards that credentialing bodies and individual title holders must meet.
- Protect the public interest through oversight of the credentialing bodies, and require compliance by individuals found using the FP or FA titles without an approved credential.
- Introduce new requirements for those using FP and FA titles.
- Work with existing regimes for granting and supervising financial planning and advising designations and licences.
- Avoid burden on market participants.
- Deliver a principles-based and outcomes-focused regulatory regime, to appropriately respond to the dynamic nature of the financial services sector.
- Accommodate the complex and diverse existing landscape of financial planners and advisors, their employers and their designation or licence-granting bodies.

The Consumer Perspective

No regulatory framework in Ontario exists to regulate the provision of planning and advice by self-styled FP and FAs.

A plethora of titles are used by industry.

The proliferation of titles confuses investors and consumers. The titles used are not backed by minimum standards for qualifications, expertise and the advice given by self-styled FPs and FAs. As a result, Ontarians have misplaced trust in and reliance on the advice of self-styled FPs and FAs.

Existing professional designations exist that meet the consumer's need by requiring title holders to meet reasonable minimum requirements for FAs and FPs. Other so-called professional designations purport to *offer* reasonable



minimum standards, but do not *require* objectively reasonable minimum requirements. The average Ontarian – quite reasonably – would be confused about which designations meet and which designations fail to meet reasonable minimum requirements.

The proposed framework, subject to meaningful, new knowledge gained through public consultation, should be implemented immediately upon approval of the first credentialing body and without grandfathering the use of titles by person who have not met the framework's credentialing requirements. No transitional exemptions should exist for either title. The new system should not be exposed to gaming. The reforms are many years in the making and long-standing industry participants have had ample time to prepare. Investors and consumers will require education on the proposed framework to avoid unscrupulous misuse of titles and to create a marketplace for the services of those holding the rehabilitated titles.

The concept of 'financial planning' requires the ability to deliver broadly and/or holistically expertise and a process to consider all aspects of a client's financial and personal circumstances to develop a financial plan. This approach attempts to bridge the regulatory silos into which the different securities licensing and insurance licensing are separated. It must do so without bias or limitation based on a title holder's potentially limited licensing. That is, recommendations for managed products must take into account OSC-regulated products, IIROC-regulated products, MFDA-regulated products and FSRAO-regulated products. So too, financial planning is not limited to the consideration of product as solutions. It must also include: debt reduction, expense reduction, savings goals, etc.

To assist the public in avoiding fakers, a central, public database operated and offered in common by all regulatory bodies of FP and FA title holders is needed. This database should include notices of ongoing investigations of a title holder by a regulatory and/or Credentialing Body as well as all enforcement actions and disciplinary decisions regarding title holders. Without such a public database,



the estimated 47,000 present users of the FA title may continue to use it without the outcome of removing the current state of confusion of Ontarians and the propose framework will be undermined.

Common definitions of FPs/FAs are required to capture the universe of potential licensed titles holders and potential unlicensed abusers of the titles.

Establishing approval criteria for credentialing bodies

Approval criteria for credentialing bodies are necessary, to provide the licensing and oversight of credentialing programs. Credentialing bodies must be required to ensure that only individuals meeting minimum standards are able to obtain and maintain a credential by virtue of holding a designation or licence from each Credentialing Body. Paragraph 15(2) of the Act provides FSRAO with authority to set criteria for Credentialing Bodies' governance structure and practices, as well as disciplinary processes. While setting practices appears upon initial consideration to be the key to reasonable criteria for granting of title user's authority, a robust, independent and stringent enforcement process is essential to an effective and credible credential. The later issue requires attention, and, once credentialing bodies are licensed, audit and close supervision will be required.

Credentialing Bodies must have:

- a requirement for credential holders to adhere to a reasonable code of conduct.
- a public interest mandate in place.
- internal processes and controls to effectively identify and mitigate real or perceived conflicts of interest.

For clarity, Credentialing Bodies must

- have a code of conduct consistent with public, investor and client protection.



- be barred from any lobbying of government directly or indirectly. Lobbying is inconsistent with a public interest mandate.
- treat investors and consumers fairly, honestly, in good faith and in keeping with the investor's/insured's best interest.

This submission will focus on two parts of the proposal set forth in the Notice:

1. Establishing approval criteria for credentials

Paragraph 15(1)(3) of the Act grants FSRAO rule-making authority to establish criteria for licences and designations, including: educational requirements, examination requirements, Code of ethics and professional standards, and continuing education.

The proposed FP Baseline Competency Profile and FA Baseline Competency Profile set forth objectively reasonable standards of competency for FPs/FAs.

Of the universe of users claiming to offer FP/FA or reasonably confusing titles, all will need to prove their individual competency. No individual who is licensed by a body that recognized as a Credentialing Body should be granted grandfathered use of a FP/FA or any reasonably confusing title based upon mere participation in the industry, membership in an organization or granting of a licence in the absence of fulfilling competency courses, exams and continuing education. The potential harm of licensing without objective evidence of competency risks the credibility of the proposed framework and consumer confidence in the titles.

Given the advance notice to the public and industry of Ontario's intentions, legislative debate and proclamation of and public consultation about the proposed framework, no potential title user can claim insufficient notice of the requirement they must qualify for a title license prior to the coming-in-to-force of the framework. Given the extensive notice about the proposed framework over the years preceding the new framework, no transition period is appropriate



beyond the time already provided and between this consultation and finalization of the framework.

FSRAO should encourage Credentialing Bodies and Title Holders to qualify for advanced credentials for FP/FA. FSRAO should consider licensing of Credentialing Bodies to establish and govern advanced credentials in due course.

With respect to the proposed Competency Profiles, they appear to be robust and fit for the purpose. With respect to disclosure by Title Users to the public, they should be required to disclose their credentials in place at the commencement of a planning and/or advisory relationship and, if applicable, upon the change of status during the course of a planning and/or advisory relationship.

FSRAO's proposed implementation framework is appropriate with the following exceptions:

- Fees paid by potential title holders should be sufficient to fund the regulatory regime. That is, the privilege of a FP/FA Title User should be subject to a regime that is self-funding.
- FSRAO must promptly develop a monitoring and supervision plan for oversight of credentialing bodies and use of FP/FA titles or titles confusingly similar on a priority basis. So too, FSRAO must develop an enforcement plan to promptly enforce best practices by Credentialing Bodies and unlicensed Title Users.
- FSRAO must give further consideration to the appropriate structure and diversity of Credentialing Bodies' governance including balanced representation on Boards of Directors by an equal number of investor/consumer representatives to those representing industry directly or indirectly, in order to prevent these bodies from becoming industry captured or hotbeds for anti-competitive conduct.

2. Transition Rules:



- There should be no further transition period for present users of FP/FA titles or titles confusingly similar. Any further transition rule will forcibly place Ontarians in harm's way. But for the long-standing advocacy, legislative process, and framework consultation, a case might have been made for a transition period for the purpose of avoiding the harm of unlicensed title users being taken by surprise. However, no state of surprise reasonably exists. Furthermore, delay will result in further erosion of confidence in titles and further harm qualified FPs and FAs who acted in their clients' best interest by earning credible credentials in the expectation of this reform.
- The monitoring, supervision and enforcement plans must be proposed, commented upon and finalized at the earliest opportunity to provide clarity to industry, Credentialing Bodies and investors/consumers alike.
- A central database of Credentialing Bodies and licensed Title Users must exist, to both sustain and enhance the credibility of the framework and to allow Ontarians to inform themselves whether their potential or existing FP/FA is a true credential holder rather than a faker engaged in fraud. The information in database records must enable the authentication of someone claiming an identity of a FP/A and prevent identity theft.
- During the ongoing transition period, extensive public education about the Title Framework is necessary. The framework is a significant step forward. While industry and potential Credentialing Holders have had years of advance notice, there has been little public discussion and dissemination of the Proposed Title Framework to the public.

Comments on Alternatives Offered for Consideration

1. *Grandfathering*: Grandfathering would undermine the proposed Title Framework and further erode the credibility of FP/FA titles. Furthermore, it would be unfair to Ontarians and compliant industry professionals to let unqualified persons carry on self-styling themselves as FP/FAs.



2. Exemptions: the proposed key policy principles for exemptions are in Ontarians' best interest. Few of the present licensing bodies would qualify, as is, for exemptions. Consideration of exemptions must only be considered when each and every member of the Credentialing Body is granted an exemption qualified on a merit basis that involved individual assessment of their Competency Profile, in keeping with Competency requirements under this framework, as evidenced at the time of granting an individual the right to use a title. Honorary titles and titles granted based on long-standing involvement in the industry, etc., must not be included in the class of individuals considered for exemptions.
3. The anticipated cost and benefits of the proposed framework support the introduction of the proposed framework. There is no detriment to existing and unlicensed title users. Those titles users hold no right of use. There is no public benefit of the continued use of titles or confusing similar titles. Ontario will benefit from increased public trust in a licensing regime which is essential to the majority of Ontarians' future planning. Individual investors and consumers will benefit from minimum standards that bar unqualified and unscrupulous, self-styled FP/FAs.



About Consumers Council of Canada

Consumers Council of Canada, an independent, not-for-profit federal corporation, has worked towards an improved marketplace for consumers in Canada since 1994. One of the most active multi-issue consumer groups in Canada, it provides perspectives that help business and government manage today's consumer issues, is nationally known, and is regularly consulted by news media. Its volunteer Board of Directors and committees of members include experts in consumer issues and policy development, competition policy and law, and business development. The Council monitors consumer views through its Public Interest Network, which is open to residents of Canada. It conducts research to understand consumers' needs and concerns. It informs the public and reports its activities publicly. Its top challenges are to address the many consumer issues and public institutions' requests for capable consumer representation, given the financial resources required.



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