



**FP Canada**<sup>TM</sup>  
*Advancing Professional  
Financial Planning*

# FP CANADA<sup>TM</sup> RESPONSE TO CONSULTATION ON THE REGULATION OF FINANCIAL PLANNERS AND FINANCIAL ADVISORS

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Attention: Dean Murrison, Director, Securities Division  
Financial and Consumer Affairs Authority of Saskatchewan  
601, 1919 Saskatchewan Drive  
Regina, SK S4P 4H2

Delivered by email to: [finplannerconsult@gov.sk.ca](mailto:finplannerconsult@gov.sk.ca)

## 1. Introduction

FP Canada™ is pleased to respond to the Financial and Consumer Affairs Authority of Saskatchewan's (FCAA) "Consultation on the regulation of financial planners and financial advisors". We commend the FCAA and the Government of Saskatchewan for consulting on this important consumer protection issue.

FP Canada (formerly Financial Planning Standards Council), a national professional body working in the public interest, is dedicated to fostering better financial health for Canadians by leading the advancement of professional financial planning in Canada. There are approximately 19,000 professional financial planners in Canada certified by FP Canada, including roughly 750 in Saskatchewan, all of whom have met, and continue to meet, FP Canada's standards, through CERTIFIED FINANCIAL PLANNER® certification (CFP® certification) or FPSC Level 1® (soon to be QAFPTM) certification. In addition, through our partnership with IQPF in Quebec, we continue to work towards harmonizing standards for all financial planners across Canada.

FP Canada ensures its certificants meet appropriate standards of competence and professionalism by establishing rigorous education, examination, experience and ethical requirements for certification. Financial planners certified by FP Canada play a vital role in the lives of many Saskatchewan families, safeguarding their financial health and enabling them to achieve their life goals, such as a comfortable retirement, allowing them to live their lives confidently, and ultimately strengthening their ability to contribute to the communities in which they live.

## 2. At Issue – The Need for Title Restriction in Law

For too long, consumers in Canada looking for financial advice have been forced to navigate an environment characterized by virtually no regulation of titles, and a confusing myriad of qualifications, licenses and professional obligations of those calling themselves "financial advisors" or "financial planners". This lack of regulation has left consumers confused as to what type of advice they need, whom they can or should get it from and who is qualified to provide it.

Of particular concern is the fact that the lack of restriction of titles has undermined the ability of consumers to know where to get the critical financial planning help they need from qualified

professionals. While the title “financial planner” has been well-defined and understood throughout the financial services industry for many years, the lack of regulation in most provinces – including Saskatchewan – has enabled anyone, regardless of qualification, expertise or professional accountability, to call themselves a “financial planner”. This causes undue harm to consumers.

Further, whereas the “financial planner” title is well-understood by industry, the term “financial advisor” has been used ubiquitously to describe almost anybody who sells financial products or offers financial advice of any kind – irrespective of actual education or training. This has left consumers looking for financial help with almost no ability to distinguish between any given “advisors”, Or the services they may be qualified to offer.

In order to finally create clarity for consumers and empower them to make the right choices for their financial well-being, provinces must protect and restrict the use of key financial services titles in law, all in accordance with clear, meaningful definitions and standards.

### **3. FP Canada’s Views on the *Financial Professionals Title Protection Act, 2019***

FP Canada was pleased to work closely with the Government of Ontario as it took steps to address this long-standing issue in Ontario this year, with the introduction of the *Financial Professionals Title Protection Act, 2019* (the Act).

The Act legally restricts use of the titles “financial planner” and “financial advisor” in Ontario to individuals who obtain, and maintain in good standing, an approved financial planning or financial advising credential, respectively, from an approved credentialing body. The Act further delegates responsibility for the oversight of individuals holding an approved credential to the issuing credentialing body, and the approval of credentialing bodies and credentials themselves to the Financial Services Regulatory Authority (FSRA) – Ontario’s new independent financial regulator.

In our view, the Act represents a significant positive step forward for consumer protection in Ontario. Importantly, it serves to mitigate confusion around titles and helps allow consumers to make informed decisions about whom to approach for financial planning or advice. It provides consumers with confidence of knowing what their “financial planner” or “financial advisor” is qualified to do, and that any “financial planner” or “financial advisor” they turn to has met education, examination and ethical requirements for the same, and is held accountable by a recognized professional body for their conduct.

Though the Act represents a significant and positive step forward, much work remains to be done. The Act was passed as a high-level framework, intended to be fully fleshed out by future rules and regulations. Accordingly, there are at least three areas where well-founded rules and regulations will be necessary for the Act to serve its intended purpose.

The Act’s rules and regulations must establish in law clear, distinct definitions for the terms “financial planner” and “financial advisor”, so that consumers and industry alike understand the knowledge, skills and abilities of each, and can differentiate accordingly.

Second, regarding the approval of credentialing bodies and credentials described in the Act, the FSRA must establish rigorous, transparent and objective criteria to use in its assessments, grounded in the public interest, beyond the base criteria enumerated in the Act.

Finally, there must be fair transition rules for existing practitioners that, while sensitive to the needs of industry, ultimately serve the best interests of consumers.

FP Canada has provided detailed policy recommendations for each of these three critical issues to the FSRA. We have included these recommendations for the FCAA and Saskatchewan government's review in **Appendix A**.

## 4. Considering the Merits of a Similar Approach in Saskatchewan

It is important for consumers in Saskatchewan that policymakers take action to mitigate confusion and enhance protection for those in need of critical financial planning to help them gain more confidence with their financial lives. In our opinion, the approach laid out in Ontario is sound, and Saskatchewan should give serious consideration to mirroring this approach.

Once appropriate rules and regulations are in place, we believe Ontario's approach will succeed in creating clarity and enhancing protection for consumers in the province, as intended. Further, Ontario's regulatory approach is efficient. It prudently leverages existing standards, and accepted industry practices and norms, by recognizing well-established professional credentials already offered by one or more reputable professional certification bodies.

As is the case in Ontario, there is already a critical mass of "financial planners" in Saskatchewan who voluntarily hold the type of financial planning credential envisioned by the Act (i.e. CERTIFIED FINANCIAL PLANNER® certification). Such an approach will avoid unnecessary regulatory duplication that could negatively impact existing practitioners and firms.

Finally, by mirroring Ontario's approach, Saskatchewan will be contributing to a harmonized national approach, which is critical to all Canadians. Nationally harmonized standards will eliminate any chance of regulatory arbitrage, while providing much-needed clarity to the many firms that operate in multiple jurisdictions across the country, including Saskatchewan, and to consumers.

## 5. Conclusion

FP Canada would like to thank the FCAA and the Government of Saskatchewan for undertaking this important consultation. We are strongly supportive of moving forward with title restriction in Saskatchewan and believe a regulatory approach like Ontario's should be given serious consideration.

Should Saskatchewan move forward with its own legislation to restrict the "financial planner" and "financial advisor" titles, we would encourage the government to incorporate our recommendations in Appendix A directly into legislation – including the definitions of "financial planner" and "financial advisor" and rigorous, public interest-based criteria for credentialing bodies and credentials – to help ensure it is meaningful, and that it eliminates consumer confusion and adequately protects consumers.

We would welcome the opportunity to lend our counsel or to discuss these issues in greater detail with the FCAA and the government at your earliest convenience.

# Appendix A – FP Canada Recommendations to the FSRA for Building out the *Financial Professionals Title Protection Act, 2019*

As discussed above, the nature of the Act means that it will be up to the FSRA, in consultation with stakeholders such as FP Canada, to develop specific rules and regulations to ensure the title protection is meaningful, eliminates consumer confusion and adequately protects consumers. To help ensure the efficacy of the Act, FP Canada has provided the following recommendations for building out the Act to the FSRA:

## 1. Definitions and Distinctions

In addition to the definitions captured under Section 1 of the *Financial Professionals Title Protection Act, 2019*, we strongly urge adopting clear and distinct definitions for both “Financial Advisor” and “Financial Planner”, as follows. Without clearly and distinct definitions within the Rules governing the Act, consumers, industry and financial services providers alike will continue to be confused.

- “Financial Advisor” (or “Financial Adviser”) means an individual who demonstrates appropriate knowledge to address investment needs and risk management for clients in a targeted manner in areas including debt, credit, budgeting and retirement planning, and who is licensed to sell, securities, mutual funds and/or insurance. A Financial Advisor can provide appropriate solutions to targeted needs of clients within the scope of their licensing.
- “Financial Planner” means an individual who has demonstrated appropriate knowledge in debt, credit, budgeting, education planning, disability planning, insurance and risk management, investment planning, retirement planning, tax planning, estate planning and legal aspects (“financial planning areas”), who has a deep understanding of the interrelationships among all these areas and who can identify and address challenging ethical situations and client circumstances and formulate appropriate strategies and solutions based on the client’s needs and goals.

In keeping with these definitions, the following distinctions between “Financial Advisor” and “Financial Planner” should be made clear:

- “Financial Advisor” is a broader term than “Financial Planner” that relates to someone who is licensed to sell product.
- “Financial Planner” refers to more specific knowledge, skills and abilities, but also encompasses all the base knowledge and skillset that are contained in the “Financial Advisor” title.
- Based on this distinction, since a “Financial Planner” represents a higher level of skill, any “Financial Planner” who is licensed to sell product should also be permitted to use the title “Financial Advisor”.
- In the same vein, a “Financial Advisor” who does not hold a financial planner credential should *not* be permitted to use the title “Financial Planner”.

Further, we note that a definition of “In Good Standing” is required. For that, we offer the following: *“In Good Standing” means an individual who holds an approved credential from, and continues to meet the obligations set out by, an approved credentialing body.*

## 2. FSRA Criteria and Rules

With respect to section 15 (1) of the Act, we recommend the criteria and rules set out by the FSRA, and prescribed under the rules, include the following:

*15 (1) The Authority may make rules in respect of the following matters:*

*1. Respecting the meaning of “good standing” for the purpose of sections 2 and 3.*

**Recommendation:** Adopt the definition of “good standing” set out above.

*2. Establishing criteria for credentialing bodies to be approved under section 4, including, without limitation, criteria relating to,*

*i. the applicant’s governance structure and practices, and*

*ii. disciplinary processes the applicant must have in place for individuals holding approved credentials it has issued.*

**Recommendation:** For the purposes of assessing whether a credentialing body should be approved, adopt more specific criteria, as follows. The body:

- a) has a governance structure that ensures the independence of its certification and its disciplinary review processes and decisions, and avoids perceived or real conflicts regarding the public interest;
- b) has the necessary expertise, resources and infrastructure to carry out its mandate;
- c) demonstrates that it holds its credential holders accountable through a robust disciplinary review process that operates in accordance with (a) above;
- d) requires continuing education of those certified by it; and
- e) administers its certification program in accordance with generally accepted standards for certification bodies (which may include specific details of the Canadian CANP9, ISO17024 standard for certification bodies).

*3. Establishing criteria for credentials to be approved under section 7, including, without limitation, criteria relating to,*

*i. educational requirements,*

*ii. examination requirements,*

*iii. codes of ethics and professional standards, and*

*iv. continuing education requirements.*

**Recommendation:** For the purposes of assessing whether a credential should be approved, adopt specific criteria as follows. The certification requires:

- a) post-secondary education necessary for practice as a “Financial Planner” or “Financial Advisor”, as applicable;
- b) pre-certification education and study as determined by the credentialing body;

- c) pre-certification experience;
- d) standardized comprehensive examinations for certification;
- e) mandatory continuing education;
- f) rules of professional conduct including a duty of care and loyalty to clients;
- g) that credential holders are held accountable through a robust disciplinary process;
- h) rules governing issuing a new certification to a former credential holder;
- i) rules governing the certification of persons who are certified in other jurisdictions;
- j) mandatory professional liability insurance (either individually or through employment arrangement); and
- k) any other obligations prescribed by the Lieutenant Governor in Council.

4. *Governing applications for approval, including application fees.*

**Recommendation:** No specific recommendations at this time.

5. *Governing approved credentialing bodies.*

**Recommendation:** Adopt obligations and powers as the basis for governing (i.e. overseeing) approved credentialing bodies, as follows:

Obligations of an Approved Credentialing Body

An approved credentialing body shall regulate its credential holders in accordance with its by-laws and other regulatory instruments and its practices and policies, which shall include performing the following regulatory functions:

- a) setting educational standards, examination and experience requirements that are consistent with the definition of “Financial Planner” or “Financial Advisor”, as applicable;
- b) assessing applicants for suitability for certification;
- c) setting professional and ethical conduct standards;
- d) setting continuing education requirements;
- e) investigating complaints;
- f) disciplining those certified by it;
- g) enforcing protection of the Recognized Body’s certification marks;
- h) maintaining a public, real-time database of the certification status of those under its purview;
- i) notifying FSRA of, and making public, all disciplinary actions of its credential holders, in a timely manner.

Maintenance of Records

An approved credentialing body shall maintain records in relation to its business and affairs in accordance with sound business practices.



### Continuing Jurisdiction

An individual who resigns his or her credential, or whose credential is revoked or otherwise terminated remains subject to the continuing jurisdiction of the approved credentialing body in respect to an investigation or disciplinary proceeding arising from his or her conduct while credentialed, and the approved credentialing body has a corresponding obligation to proceed with any such investigations or disciplinary proceedings.

### Audit of Approved Credentialing Bodies

FSRA may make, or cause to be made, every five years or at such other intervals as FSRA considers necessary, a review of the books, accounts, certification and disciplinary review practices of every approved credentialing body.

### Powers to Revoke

The FSRA may, if in the opinion of FSRA it is in the public interest, revoke the approval of an approved credentialing body that no longer meets the requirements set out for it.

6. *Respecting approved credentialing bodies' collection, holding and remittance of fees that are payable by individuals holding approved.*

**Recommendation:** No recommendations at this time.

7. *Respecting approved credentials.*

**Recommendation:** No recommendations at this time.

## 3. Transition Rules

Section 15 (2) of the Act sets of the ability of the Lieutenant Governor in Council to make regulations in various areas, as follows:

- a) *prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations;*
- b) *respecting any matter in respect of which the Authority may make rules, with necessary modifications;*
- c) *respecting transitional matters arising from the enactment of Schedule 25 to the Protecting What Matters Most Act (Budget Measures), 2019, including the treatment of credentials and other qualifications possessed by individuals before sections 2, 3, 9 and 10 come into force;*
- d) *governing the use of protected titles in circumstances where a credentialing body's approval is revoked or where an approved credentialing body ceases to operate;*
- e) *exempting individuals or classes of individuals from section 2 or 3 in the circumstances set out in the regulation, subject to such conditions, limitations and restrictions as may be prescribed in the regulation.*

In response to (c), which pertains to transitional matters, we recommend adopting the transition rules as follows:

**Rules for individuals who are not certified who wish to use the “Financial Planner” or “Financial Advisor” title**

- a) Individuals who do not hold an approved credential who wish to use the title “Financial Planner” or “Financial Advisor” would be required to register with an approved credentialing body for financial planners or financial advisors no more than 12 months after the new law comes into effect.

(For the purposes of this framework, assume the date that the new law comes into effect is January 1, 2020. Therefore, individuals without a certification wishing to use one of these titles must register with an approved credentialing body by December 31, 2020.)

- b) If an individual does not register with an approved credentialing body within this 12-month period, they must cease to use either the “Financial Planner” or “Financial Advisor” title. They must instead use another prescribed title in accordance with their licensure.
- c) If an individual does register with an approved credentialing body within this 12-month period, they will then be given three years from the end of this period to obtain an approved financial planner or financial advisor credential (i.e. until December 31, 2023). During this three-year period, they will be permitted to continue using either the “Financial Advisor” or “Financial Planner” title, provided they stay current and meet the ongoing requirements of the credentialing body.

Approved credentialing bodies will need to create a new category for these individuals (e.g. “non-designated planner”) and will need to oversee them as they work toward obtaining their certification.

- d) If an individual does not obtain an approved financial planner or financial advisor credential from the credentialing body within this three-year period, they must cease to use the “Financial Planner” or “Financial Advisor” title, as applicable.

**Exemption for use of the “Financial Advisor” title**

- a) There should be no exemption for use of the “Financial Planner” title.
- b) Individuals with at least 15 years of relevant work experience as a “Financial Advisor” (as of the law’s effective date) may apply to an approved credentialing body to use the “Financial Advisor” title without having to obtain a financial advisor credential.
- c) If accepted for registration by an approved credentialing body, the individual may use the “Financial Advisor” title for a period of not more than ten years after enactment of the legislation (the Sunset Period) (i.e. it expires December 31, 2030).
- d) Individuals exempt from certification under c) above would be required to abide by the requirements of the credentialing body, and remain in good standing with same.
- e) Approved credentialing bodies should be required to create a new category for individuals exempted from certification under c), above, and be required to oversee such individuals in the same manner they would credentialed individuals.

- f) If an individual exempted under c) above does not obtain an approved financial advisor credential by the end of the 10-year sunset period (e.g. December 31, 2030), they must cease to use the “Financial Advisor” title until such time as they receive an approved credential.
- g) The exemption is for use of title only; there should be *no exemption for the use of any credential*.
- h) Credentialing bodies *may not grandfather their credential*.




## Contact Details

FP CANADA™

902-375 University Avenue, Toronto, Ontario M5G 2J5

416.593.8587 | 1.800.305.9886 | [fpcanada.ca](http://fpcanada.ca)

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