



FP CANADA™ RESPONSE TO FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN (FCAA) CONSULTATION ON PROPOSED FINANCIAL PLANNER AND FINANCIAL ADVISOR REGULATIONS

September 20, 2022

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INTRODUCTION

FP Canada is pleased to respond to Financial and Consumer Affairs Authority of Saskatchewan (FCAA) Proposed Regulations [2021-001], *The Financial Planners and Financial Advisors Regulations* (the Proposed Regulations) under *The Financial Planners and Financial Advisors Act* (FPFAA).

A national professional body working in the public interest, FP Canada is dedicated to championing better financial wellness for all Canadians by leading the advancement of professional financial planning in Canada. FP Canada is the leading certification and enforcement body for professional Financial Planners in Canada. There are about 17,000 CERTIFIED FINANCIAL PLANNER® professionals and about 1,900 QUALIFIED ASSOCIATE FINANCIAL PLANNER™ professionals who meet FP Canada's rigorous professional and ethical standards, over 700 of whom are in Saskatchewan.

We commend the FCAA and the Government of Saskatchewan for undertaking this consultation, and for the significant work that has been done to date on developing the FPFAA.

We are supportive of the FPFAA and its consumer protection intent. We believe that this legislation, supported by rigorous regulations and proper implementation, will serve the best interests of consumers in Saskatchewan. Now more than ever, we believe this level of consumer protection is essential to ensuring that when families in Saskatchewan seek financial advice, they can be confident in the professionals they work with.

Serving the public interest is central to the work FP Canada does. In preparation for this submission, FP Canada commissioned consumer research in Saskatchewan so that we could firmly ground our consultation question responses in the consumer perspective. Working with a third-party research firm, we conducted an online survey between September 1, 2022, and September 6, 2022, with a sample size of 600 responses from Saskatchewanians, with a margin of error of +/- 4.0% 19 times out of 20.

The results of this research are incorporated throughout our submission. Before going in depth on findings around implementation of the legislation, we would note that support for the legislation remains high. In total, 79% of respondents in Saskatchewan indicated that they approve of "*the Saskatchewan Provincial Government passing title protection legislation in order to provide clarity and help protect consumers.*" Interestingly, 54% strongly approve and only 2% either strongly or somewhat disapprove.

Question 1: Credentialing Bodies (CBs) – Process When Approval Revoked or Operations Cease

Credentialing Body and Credential Approval Process

To avoid a situation where a CB's approval is revoked, or a CB's operations cease while under the FPFAA, **we recommend that as part of the FCAA's application review process, the FCAA not approve CBs or credentials that require extensive terms or conditions to be attached in order to meet the requirements for approval.**

For consumers to benefit from the protections provided by the FCAA's implementation of the FPFAA, their confidence in a CB's stability and competence, and the competency of their credential holders,

must begin at the moment of approval. Any gap in meeting the minimum standards established by the FCAA for a CB or a credential only serves to erode consumer confidence in the efficacy of the title protection framework.

An extensive list of terms or conditions that a CB or a credential must meet to maintain its approval under the FPFAA is an indicator that, at the moment of approval, the CB or credential has not yet met the minimum standard set by FCAA and, accordingly, should not be approved.

Paths to Certification

In the circumstance where a CB's approval is revoked, it will be in the public interest for its credential holders to be provided with the opportunity to efficiently earn a credential from another approved CB.

Most CBs, including FP Canada, already have specific, expedited paths to certification for professionals holding credentials, licenses, or qualifications from other credentialing or professional bodies. These pathways provide recognition of the education individuals have already earned and the standards they have met.

We recommend that these paths to certification be relied upon as much as possible so that, if necessary, a credential holder is brought under another existing CB's oversight in a way that leverages that CB's existing processes.

Role for the FCAA

In the circumstance where a CB ceases operation immediately and without warning, **we recommend the FCAA have a role in overseeing its credential holders until they can leverage an alternate certification pathway, or another solution can be sought.**

The credential holders in this situation will likely have no warning or control over the operations of a CB and should not be unduly penalized.

Question #2: Approval Criteria for Financial Advisor (FA) Credentials

Raising the Baseline Competency Profile (BCP) to Match Consumer Expectations

The FCAA references stakeholder input in support of raising the BCP for FAs to match to consumers' expectations and the fact that the existing Product-Focused Approach precedent set by FSRA in Ontario does not reflect the nature of consumers' expectations or their specific needs when engaging with an FA.

Based on the discussion in the consultation paper, the assumption would seem to be that most Canadian consumers have financial situations so complex they would require their advisors to have "comprehensive" technical expertise (including expertise in estate planning, tax planning, retirement planning, investment planning, financial management and insurance and risk management), in addition to competency pertaining to products and services. However, our consumer research does not indicate this is the case.

As part of our consumer research in Saskatchewan we asked consumers to indicate what type of advice they would expect from an FA. The result was 60% of respondents indicated that they expected investment advice – the number one expectation. Only 7% indicated that they expected advice from an FA in all the technical areas that the FCAA is consulting on requiring for FA title use.

Through this consumer research we were able to further explore the consumer value proposition associated with implementation of the FPFAA. The research indicated that consumers had strong opinions about the importance of the distinction between FPs and FAs and how the FCAA defines the qualifications for these credentials.

When asked, 85% of consumers agreed that *“the qualifications for Financial Planners and Financial Advisors **should be distinct and different** so that consumers can determine which advice professional best suits their needs.”*

Similarly, 87% agreed that *“the qualifications for Financial Planners and Financial Advisors should be designed to ensure that **the consumer clearly understands** what advice Financial Planners are qualified to provide and what advice Financial Advisors are qualified to provide.”*

Digging deeper into the specific issue regarding qualifications, we presented consumers with the proposed set of qualifications for FPs and FAs where the only differentiator is that an FP can provide a financial plan – with knowledge and competency in the technical areas being the same.

Consumers in Saskatchewan were asked to agree or disagree with a number of statements about the proposed new direction for FA credential competency. Overall, 65% of respondents agreed that *“[b]ecause these **qualifications for Financial Planner and Financial Advisor are too similar, it will make it too difficult to understand the difference between them** so the consumer can select which type of advice/service provided best meets their needs.”* Likewise, 67% of respondents agreed that *“**these qualifications for Financial Planner and Financial Advisor are too similar, if the only difference is that a financial planner can provide a financial plan and a financial advisor cannot.**”*

Our consumer research in Saskatchewan, therefore, does not support the proposed requirements that the BCP for FA include the same knowledge and competency areas as FP.

(Amended October 28, 2022)

Following closure of the formal consultation period, FP Canada has continued to engage in discussions with consumer advocacy groups and other sector stakeholders on this consultation question.

In light of these discussions, we would propose an alternative approach to enhancing the FA BCP; one that raises the competency bar for FA credential holders to better serve consumers, without eroding the critical distinction between FP and FA credentials or decreasing harmonization with Ontario to the point that it would be detrimental to consumers or other framework stakeholders. As well, while our proposal would enable FA credential holders to better serve the consumer, it would not raise the bar so high as to risk reducing the availability of those services for consumers.

Specifically, we recommend that the FCAA expand the current BCP approval criteria under the Product-Focused approach to include a new requirement that FA credentials not only require education related to the products and services by an individual but must also require **an understanding of the implications of the products an individual recommends on other areas of the client’s financial picture.**

For discussion purposes we have had conversations with stakeholders in the sector and while some of the wording may be slightly different, we believe there is general agreement around the sentiment to raise the BCP FA criteria bar slightly as proposed below, but not so high as to mirror the BCP for FP.

(Note: new language is proposed in red below)

S.7(1)(b) subject to such educational requirements related to financial advising and associated matters that provide the technical knowledge, professional skills and competencies that would

reasonably be expected of an individual providing financial advice, including, without limitation, educational requirements related to:

- (i) the Canadian financial services marketplace and regulatory environment;*
- (ii) the products and services provided by the individual;*
- (iii) ethical practices and professional conduct;*
- (iv) dealing with conflicts of interest;*
- (v) collecting personal and financial information;*
- (vi) defining and disclosing to the client at the time of engagement the scope of the engagement and area of product expertise;*
- (vi) identifying client objectives, needs and priorities; and*
- (viii) providing suitable financial and investment recommendations to a client within the FA's area of product expertise while considering the alternatives and implications of those recommendations as integrated with the client's circumstances and the client's best interests.*

We would emphasize that this expanded Product-Focused approach, based on a new requirement to understand the implications of the products an individual provides on other areas of the client's financial picture, is intended as a higher minimum standard for FA credential approval, not as a cap on an individual FA's capabilities or possible areas of expertise. In this regard, to drive clarity to the consumer, we further recommend that language be added to the FA criteria to include a disclosure to the client in the initial terms of engagement around the scope of their area(s) of expertise so that the client has a clear understanding of the FA's competencies.

By taking this expanded Product-Focused approach, the proposed BCP enhances the expectations of the competencies an FA must possess but does not raise the bar to such a level so as to preclude the opportunity for harmonization with Ontario.

Professionals Specializing in a Single Area

There are many professionals in the financial services sector today who are experts in specific areas under discussion (e.g., insurance planning, tax planning, retirement planning, estate planning, wills, etc.), and they focus on one of these single areas in their professional practice.

With the proposed requirement for knowledge and competency in all of "*estate planning, tax planning, retirement planning, investment planning, finance management and insurance and risk management*"¹ for FA title use, the FCAA is potentially inhibiting the kinds of specialized individuals mentioned above from participating in the FPFA title protection framework by requiring them to obtain additional education and training outside their area of practice or specialization, thus eroding the overall efficacy of the legislation.

¹https://fcaa.gov.sk.ca/public/CKeditorUpload/Notice_of_Proposed_Reg_and_Request_for_Comment_for_FPFA_Regulations_APPENDIX_v3.pdf

In addition, if they were to upskill to meet the FCAA’s standards for FA title use under the title protection framework, their cost of service to the consumer may also increase to a level that places them out of reach for many.

However, by enhancing the BCP for FAs as we have articulated above, it would allow individuals working in specialized areas to continue to provide these services while ensuring that consumers are also aware of how that advice impacts other elements of their financial picture.

Summary

We recommend that, in the public interest, the FCAA keep the BCPs for FPs and FAs clear and distinct from one another. We recommend that, based on consumer research in Saskatchewan, the FCAA not increase the FA BCP as proposed. The framework creates two separate and distinct types of credentials to ensure consumers have choice as to the type of professional needed to provide them with financial advice that meets their diverse needs.

Question #3: Decrease in Harmonization

As stated by the Government of Saskatchewan on December 2, 2019, upon the introduction of the FPFAA, “[i]mplementing legislation similar to *The Financial Professionals Title Protection Act, 2019 in Ontario will allow for consistency between jurisdictions and reduce the risk of duplicate or differing credentialing requirements for industry members.*”²

We fully agree with the concerns and potential consequences – especially for consumers – that the FCAA has outlined in the consultation paper, including “*fewer approved FA credentialing bodies in Saskatchewan and fewer options for consumers or investors to obtain financial advice. It will also mean that FA credentialing bodies may need to incur additional regulatory burden to be approved in Saskatchewan.*”³

We agree with the importance the Government of Saskatchewan places on the need for consistency between jurisdictions to reduce the risk of duplicate or differing credentialing requirements.

While there will undoubtedly be minor areas where a provincial jurisdiction may implement its respective title protection framework in a way that does not completely harmonize with other jurisdictions (in ways that do not impact consumer expectations or protections), for the consumer to have clarity and confidence in an individual providing professional financial advice, there must be consistency across the fundamental elements that drive the consumer protection embodied in the title protection framework.

The criteria for FP or FA title use are the most important elements that should be harmonized across jurisdictions. It is the foundation upon which consumer clarity and confidence are built, and from the research we have seen, it is fundamental to helping consumers navigate a complex financial services sector to discern which advice best suits their needs.

When we asked consumers in Saskatchewan about this aspect of FPFAA implementation, 83% of respondents indicated that “*the qualifications for Financial Planners and Financial Advisors should be*

²<https://www.saskatchewan.ca/government/news-and-media/2019/december/02/financial-planners-act>

³https://fcaa.gov.sk.ca/public/CKeditorUpload/Notice_of_Proposed_Reg_and_Request_for_Comment_for_FPFA_Regulations_FINAL.v2.pdf

consistent with other provinces so consumers in Saskatchewan and across Canada **can benefit from the clarity and consistency from Financial Planners and Financial Advisors regardless of where they are located.**”

When presented with the competency profiles for FPs and FAs under the Comprehensive Approach, 71% agreed that “***if the qualifications for Financial Advisors are not in line with other provinces, consumers will be confused,***” and 68% indicated “***if these qualifications are not in line with other provinces, consumers in Saskatchewan will not receive clear and consistent advice and services from Financial Planners and Financial Advisors as in other provinces.***”

Based on the importance that the Government of Saskatchewan has placed on consistency across jurisdictions in the implementation of the FPFSA, and the corresponding importance that the Saskatchewan consumer places on it, **we recommend that FCAA not decrease the harmonization with other jurisdictions, particularly pertaining to the BCP for FAs.** The consumer in Saskatchewan does not appear to support the direction the FCAA is consulting on.

Question #4: Mandatory Disclosure of Credentials

Disclosure of Product Authorized to Sell

(Amended October 28, 2022)

As discussed above in our amended response to Question 2 above, to drive clarity to the consumer, we recommend that language be added to the FA criteria to include a disclosure to the client in the initial terms of engagement regarding the scope of their area(s) of expertise so that the client has a clear understanding of the FA’s competencies.

Credential Disclosure

We support requiring FP and FA title users to disclose the approved credentials they hold to consumers.

While we are supportive of a credential disclosure requirement, note that the ability to enforce such a requirement by CBs is limited. We therefore **recommend FCAA set out the disclosure requirement in regulation so there is clarity for credentials holders and for CBs who are responsible for enforcement if a credential is not disclosed to a client.**

We further recommend that FCAA accept an attestation-based approach to a disclosure requirement, whereby, as part of their annual certification renewal with their CB, credential holders would be required to annually attest to disclosure of their credential to clients in the manner set out in regulation.

Question #5: Transition Date and Implementation Period

Implementation Period

While we do not believe an implementation period is ultimately necessary to facilitate a smooth transition, if the FCAA believes it would be beneficial, we would support a short implementation period (e.g., 3 months as proposed in the consultation document).

From a consumer standpoint, the implementation period should be as short as possible so as to not delay the opportunity for the consumer to receive the clarity, confidence, and consumer protection enhancements contained within the FPFAA and the Regulations.

To reduce the need for a lengthy implementation period, or to help avoid the need for one altogether, we recommend that a significant amount of review and consideration of CB applications and credential approvals be done in advance of the coming into force by the FCAA, with final approvals to be provided immediately once the transition period starts (if one is adopted), or otherwise immediately after coming into force. This limits the amount of communication points and provides for clear, consistent messaging across jurisdictions – to both Saskatchewan consumers and industry.

Transition Date

We support an adjustment for the transition period to begin when the FPFAA and the Regulations come into force.

We understand the rationale behind the July 3, 2020, date, which follows the passage of the FPFAA. While this moment did indicate government policy direction to the sector, it is a nuanced moment that is likely to be lost on many industry participants. In Ontario, where the same approach to a transition date was employed, it did appear to cause confusion among some framework stakeholders.

As such, for sector clarity, **we recommend amending the transition date to begin when the FPFAA and accompanying Regulations come into force.**

Industry will benefit from a clear understanding of where the FCAA lands on this issue, and this will need to be well communicated to industry so they can prepare accordingly.

Question #6: Fees and Fee Structure

We appreciate that there is government investment in this public policy initiative, and the fact that it is not operating on a pure cost-recovery basis which would result in a financial burden that is too heavy for those CBs and credential holders operating within the framework.

We support the need for application fees associated with the framework and a regulatory fee per credential holder that an approved CB oversees. We are confident that there is significant value to credential holders associated with the title protection framework for them to help support the estimated costs proposed by the FCAA to maintain the framework.

We believe this value will be further amplified through a consumer education campaign to ensure that consumers understand that credential holders overseen by this framework have the necessary training, skills, and ethics to provide financial planning or advisory services to them.

However, while consumer protection is at the heart of the framework, fees must be kept to a reasonable level and the costs of operating the framework must be carefully monitored, controlled, and fully transparent.

What we see as missing from the consultation paper is a forum for fee discussion; the mechanisms to provide certainty around future fees; and associated transparency to understand the fee, budgets, and overall costs of the program. For instance, it is difficult to provide input on the appropriateness of a potential \$50 fee without understanding if it includes allocation for things like a consumer education campaign, support for IT infrastructure and/or enforcement oversight.

Ultimately, it will be credential holders who must bear most of the costs associated with the framework, many of whom are small business owners. Therefore, it is essential to ensure the cost of establishing and maintaining the framework balances the need for strong and effective consumer protection while also being judicious as to associated costs for credential holders.

We recommend that the FCAA take the appropriate steps to ensure there is transparency and stability around fees, budgets, and the overall cost of the framework. We further recommend that the FCAA convene a stakeholder group to support and discuss the implementation of the FPFAA and provide a venue for input pertaining to the fees associated with the ongoing operation of the framework.

Taking these steps, CBs and credential holders will be able to derive certainty around fees and plan accordingly.




Contact Details

FP CANADA™

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

416.593.8587 | 1.800.305.9886 | fpcanada.ca

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