

Further steps taken towards financial title regulation

OCTOBER 28, 2021 6 MIN READ

Related Expertise

- [Banking and Financial Services](#)
- [Corporate and Commercial Disputes](#)
- [Financial Services Regulatory](#)

Authors: [Lawrence E. Ritchie](#), Madeleine Blouin

The titles used by financial professionals have historically been subject to minimal regulation and oversight, and the wide variety of titles, credentials and services offered can be confusing for investors and financial services consumers. Momentum is building across Canada, however, to regulate and oversee certain financial professionals and the titles they use. Ontario and Saskatchewan have both recently published draft regulations for their pending financial titling regimes, and New Brunswick has begun a consultation to explore similar legislation. In May 2019, Ontario's *Financial Professionals Title Protection Act* (the Ontario Act) received royal assent. The Ontario Act establishes a general prohibition against using FA (Financial Advisor) or FP (Financial Planner) titles or titles that could reasonably be confused with FA or FP titles unless the professional has obtained an approved credential from an approved credentialing body. A proposed rule, Rule 2020-001 – Financial Professionals Title Protection (the Ontario Rule) sets out specific criteria for credentialing bodies and baseline profiles for credential holders. It is contemplated that the program will be overseen through the Financial Services Regulatory Authority of Ontario (FSRA), and subject to rules it establishes. No in-force date has been announced yet. In July 2020, Saskatchewan passed the *Financial Planners and Financial Advisors Act* (the Saskatchewan Act), which was closely modelled on the Ontario Act. The stated goal of the Saskatchewan Act is to create consistency between Saskatchewan and Ontario (and any further jurisdictions adopting a similar model) and to streamline compliance for credentialing bodies and financial professionals. When the regimes in Ontario and Saskatchewan come into force, anyone who uses the Financial Planner, Financial Advisor or similar titles in either jurisdiction will be required to hold appropriate credentials from a credentialing body approved by each regulator. Each regime delegates primary administration and oversight of the FP and FA credentials to approved credentialing bodies and sets out only basic threshold criteria to govern the use of each title. In July 2021, the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) published a [Notice of Proposed Regulations and Request for Comment \[PDF\]](#) under the Saskatchewan Act. In keeping with the overall legislative framework, the proposed Saskatchewan regulations (the Saskatchewan Regulations) closely mirror the Ontario Rule. Both the Saskatchewan Regulations and the Ontario Rule establish threshold competency profiles for FA and FP title holders, and permit individual credentialing bodies to meet or exceed the floor established by the regulatory regime. In addition, each regime requires FA and FP title holders to meet minimum criteria pertaining to financial services knowledge, ethics, client outcomes and technical knowledge. While the proposed regulations in Ontario and Saskatchewan regimes are very similar, the Saskatchewan Regulations do make some key departures from the Ontario Rule. Under the proposed regime in Saskatchewan, for example, credentialing bodies must hold individual FP and FA credential holders to a minimum standard of client treatment, including: “address[ing] material conflicts in the best interests of their clients” and “put[ting] the clients’ interests first when making a suitability determination.” In its Notice of Proposed Regulations and Request for Comment, the FCAA observed that “some parties have indicated a preference for a higher minimum standard to apply to individuals who are using the FP or FA titles”. This concern had been addressed by explicitly incorporating the Client Focused Reforms project carried out by Canadian securities regulators and the Conduct of Insurance Business and Fair Treatment of

Customers Guidance adopted by insurance regulators. This is in contrast to the Ontario Rule, which charges credentialling bodies with ensuring that FPs and FAs “deal with the [credential holder’s] clients competently, professionally, fairly, honestly and in good faith” and meet certain key educational requirements addressing conflicts of interest. The Ontario Rule does not prescribe a best interest standard — or any particular standard — for managing client conflicts and does not require FAs or FPs to conduct any suitability determinations with respect to financial advice. If Saskatchewan’s proposed regulations come into force, credentialling bodies for FAs and FPs will be required to ensure that credential holders in that jurisdiction are governed by the minimum requirements regarding conflicts and suitability. Credentialling bodies will therefore either need to institute stricter rules for FAs and FPs in Saskatchewan and accept any resulting cross-jurisdictional inconsistencies among its membership, or will need to implement ceiling requirements across the board in all jurisdictions to accommodate the more stringent Saskatchewan requirements. Meanwhile, Ontario’s title regime continues to move forward following a [second public consultation](#) through which FSRA sought stakeholder input regarding shorter proposed transition periods for existing FP and FA title users, additional requirements to provide FSRA’s CEO with information necessary to establish a consolidated registry of title holders, and a proposed fee structure. FSRA’s stated aims in implementing a fee structure would be to enable the recovery of costs incurred to design and implement the framework, enable the recovery of ongoing regulatory costs for overseeing the FP/FA sector, and not introduce undue burden on individual credential holders and potential credentialling bodies. Following the lead of Ontario and Saskatchewan, the New Brunswick Financial and Consumer Services Commission (FCNB) concluded its own [public consultation \[PDF\]](#) on a framework for the protection of titles used by financial professionals on October 25. In its Notice of Public Consultation, the FCNB noted it was considering recommending the adoption of financial professional title legislation similar to Ontario’s and Saskatchewan’s regimes. The Notice of Public Consultation accordingly sought public comment regarding the differences between the Ontario and Saskatchewan regimes, including differences between the proposed penalties and enforcement provisions — the Saskatchewan legislation, for example, contemplates fines and offences for violators of the title requirements, whereas the title legislation in Ontario only contemplates compliance orders against title violators. The Notice of Public Consultation also noted that the Saskatchewan legislation adopted a simplified approval process for credentialling bodies already approved in other jurisdictions, whereas Ontario’s law will require all credentialling body applicants to go through the full approval process. The consultation period closed on October 25. It is unclear when these regimes will eventually become operational, but the trend towards formalizing consistent oversight over financial title users is apparent. Industry stakeholders, including consumers and investors, should keep a close eye on further developments as the Ontario and Saskatchewan regimes approach finalization, and as New Brunswick pursues its own similar legislative and regulatory approach. As these frameworks near implementation, further provinces and territories may begin to enact their own measures to regulate the use of FA and FP titles.

This article was originally published by *The Lawyer’s Daily* (www.thelawyersdaily.ca), part of LexisNexis Canada Inc., under the headline “Movement towards financial title regulation expands across Canada.”