

CONSULTATION PAPER

FINANCIAL PLANNER TITLE PROTECTION IN MANITOBA

Introduction

Currently in Manitoba, individuals can hold themselves out to the public as “financial advisors” or “financial planners” without having any qualifications to provide such advice. The Government of Manitoba, to further its commitment to strengthening consumer protection, is proposing to adopt title protection legislation that would prohibit people from using these titles unless they are qualified to provide such financial advice.

Manitoba Finance is issuing this Consultation Paper to seek comments from the public on:

- the advisability of adopting such legislation, and
- if the Government of Manitoba does go forward with title protection legislation, submissions on specific questions regarding the structure of such a regulatory regime and certain elements of it.

Developments in Other Provinces

Any legislative approach implemented in Manitoba will need to consider those being contemplated, or in place, in other provinces. The following outlines developments in Québec, Ontario, Saskatchewan, and New Brunswick.

QUÉBEC

Québec adopted legislation regarding use of the title “financial planner” in 1998. It provides that in order to use the title financial planner or the F.PI. designation in Québec, an individual must hold a diploma issued by the Institut québécois de planification financière and, with limited exceptions, be authorized under a certificate issued by the Autorité des marchés financiers. The Government of Québec has also adopted a supporting Regulation that prohibits the use of a number of similar titles, including “financial adviser”, “financial consultant” and “private wealth advisor” on the basis that they are too similar to the term “financial planner”.

ONTARIO

The Government of Ontario initially proposed title protection legislation in 2017 after receiving a report from an Expert Committee it commissioned to look into this issue. It also issued a Consultation Paper in 2018 on this topic. Based on the overall positive response to the Consultation Paper, the Government adopted legislation in 2019 to create a title protection regime, which would come into force on proclamation to allow for supporting regulations to be developed. The Government proposed to assign responsibility for administering the legislation to a new financial services regulator, the

Financial Services Regulatory Authority of Ontario (FSRA), which consolidated the activities of several existing regulators and became operational in 2019.

The Ontario model, which came into force in 2022, has a number of key elements:

- it prohibits individuals from calling themselves “financial advisors” or “financial planners” unless they are a member of a “recognized credentialing organization”
- it gives FSRA the authority to:
 - adopt rules in support of the regulatory regime
 - approve and oversee credentialing bodies to ensure they have policies and procedures for the effective administration of a credentialing program, including oversight of credential holders, and
 - issue compliance orders against those who violate the legislation, including:
 - individuals who use the financial planner, financial advisor or similar titles without holding an approved credential
 - approved credentialing bodies that do not comply with the legislation, supporting rule or any terms and conditions imposed by FSRA on its approval, and
 - entities that represent themselves as being an approved credentialing body or offering an approved credential without having FSRA’s approval

FSRA, in its supporting Guidance, takes a more restricted approach to similar titles than in the Québec regime, only specifically prohibiting variations of titles closely related to “financial advisor” or “financial planner” that use the word “financial” (such as “qualified financial advisor” or “financial wealth planner”). This would implicitly permit individuals who do not hold an approved credential to use titles such as “wealth planner” in that Province.

SASKATCHEWAN

Saskatchewan adopted The Financial Planners and Financial Advisors Act in July 2020. Subsequently the Financial and Consumer Affairs Authority of Saskatchewan (FCAA), the body that will administer the regulatory regime, published proposed Regulations for comment by the public in July 2021 and July 2022. The Saskatchewan legislation is similar to Ontario’s in requiring individuals to obtain approved credentials from approved credentialing bodies in order to use the “financial planner” or “financial advisor” titles. However, the Saskatchewan statute differs from Ontario’s in a number of respects, particularly:

- broader enforcement powers are granted to the Executive Director of the FCAA. While in Ontario FSRA is limited to issuing compliance orders – for example against individuals who use a protected title without an approved credential – it does not have the power to levy fines. In Saskatchewan the FCAA is given the

power to impose administrative fines and take other enforcement actions for non compliance, and

- in creating a potentially simplified process for approving credentialing bodies or credentials, by permitting the Executive Director to recognize a decision made by an authority in another Canadian province or territory regarding the body or credential.

In addition, the most recent version of the draft regulation published by the FCAA indicates that it is considering departing from the Ontario definition of the “financial advisor” credential by imposing a higher proficiency standard for use in Saskatchewan. If adopted, this may mean that a body in Ontario entitled to grant this credential in Ontario may not be approved to issue it in Saskatchewan without expanding its educational requirements. For the same reason, an individual entitled to use this credential in Ontario may not be able use it in Saskatchewan without obtaining further qualifications. Given that much of the financial services sector in Canada is national in nature, lack of harmonization between jurisdictions can create practical problems. In its publication, the FCAA asked commenters whether the public protection benefits of a higher proficiency standard for financial advisors outweighs the concerns raised by a lack of harmonization.

The FCAA in its two Notices of Proposed Regulations has commented on the question as to which other titles will be considered to be similar to “financial advisor” and “financial planner” and, as such, prohibited for use unless the individual holds an approved credential. In its 2022 Notice of Proposed Regulations, it states that it will be issuing further guidance on this question.

The title protection regime in Saskatchewan has not yet come into force.

NEW BRUNSWICK

In August 2021, the Financial and Consumer Services Commission of New Brunswick (FCSCNB) published a Notice of Public Consultation on the desirability of adopting “financial advisor” and “financial planner” title protection legislation in that Province. In March 2023, the New Brunswick Government introduced legislation to implement a title protection regime, which was passed by its Legislature in June 2023 and which will come into force on proclamation.

The New Brunswick legislation follows the Ontario and Saskatchewan statutes in proposing to restrict the use of the “financial advisor” and “financial planner” titles to individuals holding an approved credential from a recognized credentialing organization. In other respects it is more similar to the Saskatchewan model in granting the FCSCNB and the Director appointed under the Act, broad investigatory and enforcement powers. In the Notice of Public Consultation, the FCSCNB notes the difference between the Ontario and Québec regimes, regarding the approach to titles similar to “financial planner”, with Québec prohibiting a wider range of titles. The FCSCNB indicates that it

is considering adopting the more restrictive rules in place in Québec, but a final determination on this issue is left to the future supporting Regulation.

Request for Comments

Given the initiatives in other provinces, to introduce title protection regimes for people holding themselves out as providing financial planning and financial advice, Manitoba Finance is seeking comments on the following questions:

1. Should the Manitoba government proceed with legislation to prohibit individuals from calling themselves “financial advisors” or “financial planners” unless they possess appropriate qualifications?
2. If so, should the overall approach of the legislation follow the models adopted in Ontario and proposed in Saskatchewan and New Brunswick, where the regulator approves credentials and credentialing organizations that are considered to have appropriate proficiency, ethical, continuing educational and disciplinary requirements?
3. Assuming it should, how should some of the differences between the regulatory regimes implemented or proposed in those three provinces be resolved? In particular:
 - Should the regulator in Manitoba be vested with the broad investigatory and enforcement powers given in the Saskatchewan and New Brunswick legislation? Alternatively, is the more limited ability to issue compliance orders in Ontario more appropriate?
 - Should the more simplified method for approving credentialing bodies previously approved in another Canadian jurisdiction, set out in the Saskatchewan and New Brunswick legislation, be adopted in Manitoba?
4. How important is it that the legislative requirements in Manitoba be harmonized with the regulatory regimes adopted in Ontario and proposed in Saskatchewan and New Brunswick, particularly regarding:
 - The definitions of “financial planner” and “financial advisor”,
 - The application process for recognized credentials and credentialing bodies, and
 - The ongoing compliance requirements for recognized credentialing bodies.
5. What degree of regulatory coordination is desirable among regulators in Canada that oversee financial planner title protection, now or in the future?
6. How broad should the title protection regime be in terms of the titles that are subject to it in addition to “financial advisor” and “financial planner”, given the relatively narrow approach taken in Ontario and the broader approaches taken in Québec and under consideration in Saskatchewan and New Brunswick?

7. What should be the process if the recognition of a credentialing body or one of its credentials is revoked?

8. How important to the proposed regulatory regime is a single, central, public database listing all individuals entitled to use these titles? The legislation in Ontario, Saskatchewan and New Brunswick all contemplate that the regulator will post lists of approved credentials and recognized credentialing organizations on their website, but do not call for a central database listing all approved individuals (although in Ontario each recognized credentialing organization maintains a publicly accessible list of their respective members). FSRA has stated that it intends to develop such a central database that the public can access but this is not yet in place.

This Consultation Paper is open for comment **until September 30, 2023**. Submissions should be sent to:

Manitoba Finance
Fiscal Policy and Corporate Services
824-155 Carlton Street
Winnipeg MB R3C 3H8
Email: FINADM_CORPSERV@gov.mb.ca

Commenters should be aware that submissions may not be kept confidential and may be subject to disclosure under The Freedom of Information and Protection of Privacy Act.

Questions on this Consultation Paper may be directed to:

Jennifer Penner, A/Manager, Strategic Policy, Corporate Services
Fiscal Policy and Corporate Services
Manitoba Finance
Phone: (204) 792-5173
Email: Jennifer.Penner@gov.mb.ca

July 5, 2023