

October 25, 2021

Financial and Consumer Services Commission of New  
Brunswick (FCNB)

Submitted via email to: [consultation@fcbn.ca](mailto:consultation@fcbn.ca)

## **Re: Consultation Notice – Title Protection 2021**

FAIR Canada is pleased to provide comments in response to the above-referenced consultation.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investor rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy issues, policy submissions to governments and regulators, and proactive identification of emerging issues.<sup>1</sup>

Our recent recommendations made with respect to the [Ontario title protection framework](#) and the equivalent proposed [Saskatchewan regime](#) apply equally to this FCNB consultation. Our responses to the specific questions posed in this consultation are set out below.

**1. FCNB is considering recommending a regime similar to the approach recently taken in Ontario and Saskatchewan to protect “Financial Planner” and “Financial Advisor” as regulated titles in New Brunswick. Such an approach would leverage existing regimes for licensing and designating financial professionals, and maximize the extent to which New Brunswick’s regulation of these titles is harmonized with other jurisdictions.**

**a. Are you supportive of New Brunswick adopting legislation to protect “Financial Planner” and “Financial Advisor” as regulated titles in a legislative model similar to those of Ontario and Saskatchewan?**

We are supportive of efforts aimed at creating a meaningful consumer protection framework for financial planning and advisory services in Canada. To achieve such a framework, it should seek to:

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<sup>1</sup> Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

- promote high standards and effectively regulate the conduct (not just the titles) of individuals providing financial planning or financial advisory services;
- address the fundamental problem that, contrary to consumer expectations, most “financial advisors” are salespeople and not financial professionals; and
- ensure the regulator has effective mechanisms to address consumer harm and take action to protect consumers from those who breach conduct standards.

As elaborated further below, we believe the Ontario regime does not go far enough in meeting these objectives and is a poor model to seek to replicate in other jurisdictions. Saskatchewan tried to address some of the deficiencies in the Ontario model, but we believe more should be done to protect consumers and create a better framework.

**b. Do you have any general comments about New Brunswick adopting such legislation? Please elaborate.**

The Ontario legislation introduced some improvements to the status quo in that it creates basic minimum standards around the use of the titles of financial planner (FP) and financial adviser (FA).

In our view, however, and the view of many other commentators, it failed to deliver a meaningful consumer protection framework for a variety of reasons. These include, for example, that FSRA relegated its responsibility for enforcing misconduct to the different credentialing bodies. Moreover, the bar in terms of proficiency and acting in the consumer’s best interest was set too low. In essence, the Ontario regime fails to meaningfully address the significant gap between what consumers expect from financial professionals and what is legally required of such professionals, particularly of FAs.

The proposed Saskatchewan legislation introduces some improvements in these areas. It remains an open question, however, as to how well it will protect consumers, or address consumer confusion and the existing expectations gap.

We believe it will be important for the FCNB to look beyond the Ontario and Saskatchewan models and consider other important consumer protection elements. Specifically, we would encourage the FCNB to consider the consumer protections enshrined in the Québec title protection framework. These include, for example:

- A standard code of ethics set out in regulation that includes a best interest standard.
- A single credentialing body (the Institut québécois de planification financière (IQPF)).
- University-level education requirements.
- A regulation specifying continuing education requirements.

**2. Under the Ontario Legislation, FRSA may impose compliance orders on individuals who use a protected title without an approved credential, but does not have the power to levy fines or provincial offences. The Saskatchewan Legislation enables the provincial regulator, the Saskatchewan Financial and Consumer Affairs Authority, to impose fines and other penalties on individuals who violate the Saskatchewan Legislation. FCNB is considering recommending similar enforcement powers to those in the Saskatchewan Legislation. Do you have any comments on New Brunswick adopting similar enforcement powers in any potential New Brunswick title protection legislation? Please elaborate.**

Meaningful consumer protection requires not only setting high standards of conduct for FPs and FAs, but also providing the statutory regulator with effective enforcement powers to deal with misconduct. The regulator's ability to impose fines and other penalties is an important backstop and is, in our view, critical to ensuring a robust and effective consumer protection framework.

In this respect, relative to its Ontario counterpart, the Saskatchewan approach to enforcement is much better. For example, in addition to requiring FPs and FAs to deal with clients competently, professionally, fairly, honestly and in good faith, the Saskatchewan regime also requires them to:

- address material conflicts of interest in the best interests of their clients; and
- put the clients' interests first when making a suitability determination.<sup>2</sup>

Failure to comply with these requirements is deemed a violation of the individual's obligation to maintain their credential "in good standing" and, as such, exposes the FP or FA to potential fines and penalties under the Saskatchewan legislation.<sup>3</sup> These include fines of up to \$500,000 and penalties of up to a year in prison.

Saskatchewan's legislation also provides the FCAA's Executive Director with the power to issue a compliance order when:

A person's activities or failure or neglect to undertake any activities may harm the interests of persons receiving financial planning or financial advice from a credentialed individual or a person who ought to be a credentialed individual.<sup>4</sup>

We believe the enforcement powers outlined in the Saskatchewan legislation is a significant improvement over the Ontario regime. However, it is not clear why fines and penalties are not also applied in situations where the interests of the client may have been harmed. Stated differently, why limit the FCAA's remedy in these situations to only being able to issue compliance orders?

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<sup>2</sup> [The Proposed Financial Planners and Financial Advisors Regulations](#); Sask. FCAA, ss. 6 and 7.

<sup>3</sup> *Ibid.*, and sections 4 and 5, [The Financial Planners and Financial Advisors Act](#), SS 2020, c 22.

<sup>4</sup> Section 36, [The Financial Planners and Financial Advisors Act](#), SS 2020, c 22.

We would encourage the FCNB to consider going further and ensure that fines and penalties can be imposed for any offences, including situations where the interests of the client have been harmed.

Finally, we believe the FCNB should also consider mechanisms to promote efficient complaint handling, as well as measures to compensate those victimized by an FP's or FA's misconduct.

**3. The Saskatchewan Legislation includes a simplified method for approving credentialing bodies that have already been approved in another Canadian jurisdiction. FCNB is considering recommending a similar provision. Do you have any comments on New Brunswick adopting a simplified approval process for credentialing bodies that have already been approved elsewhere in Canada? Please elaborate.**

We would not recommend the FCNB delegate its consumer protection mandate to a regulator based in another jurisdiction unless FCNB is comfortable the other regulator has robust credentialing standards and a robust vetting process. At this stage, it is too early to determine whether such reliance is appropriate.

**4. In Québec, financial professionals are prohibited from using a list of certain titles, set out in the Regulation respecting titles similar to the title of financial planner, including titles such as “financial consultant”, “personal financial co-ordinator” and “private wealth advisor”, which are deemed to be confusing to the regulated “Financial Planner” title. In Ontario, FSRA has proposed a different approach to prohibiting similar titles, which is set out at Appendix 1 to FSRA's Proposed Title Protection Supervisory Framework. To prevent consumer confusion, FCNB is considering adopting rules to prohibit the use of other similar titles, much like the approach taken in Québec. Do you have any comments on the approach New Brunswick should take to prohibiting similar titles to prevent confusion with regulated titles? Please elaborate.**

We believe the Québec approach is the better one and should be adopted by the FCNB.

In developing examples of titles that could reasonably be confused with the FP/FA titles and thus prohibited, we suggest applying a standard that takes a broad approach, as most consumers do not understand the difference between these titles.<sup>5</sup> A standard along the following lines should be applied:

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<sup>5</sup> This lack of understanding was made clear in Ontario's consumer research on this question. See: [Appendix C - Consumer research for the FP/FA Title Protection Framework](#).



**5. Please comment on any other matters in relation to a potential title protection regime for the “Financial Planner” and “Financial Advisor” titles.**

There are two essential components of a robust consumer protection framework the FCNB should consider when designing its regulatory regime.

**a.) Baseline competency standards**

The term “financial advisor” in a title creates a reasonable client expectation that they are receiving broad-based advice that considers their overall financial situation and needs. Many individuals, however, who currently market themselves as “financial advisors” (or derivatives thereof) are simply salespeople. And many of them are only permitted to sell a narrow selection of financial products (for example, mutual funds or insurance). In short, the advice these individuals provide is limited to the products they sell; they are not providing advice that takes the client’s overall situation and needs into account.

In our view, both the Ontario and Saskatchewan frameworks fall short of addressing this fundamental problem of consumer confusion when it comes to “financial advisors.”

Addressing this problem requires ensuring individuals using titles like “financial advisor” are highly educated and trained professionals, able to offer advice based on a client’s overall financial circumstances. In this respect, the proposed baseline of competencies for FAs in both the Ontario and Saskatchewan models is set too low. Creating a title protection framework without significantly higher proficiency requirements only exposes consumers to more risks and exacerbates ongoing consumer confusion about the nature of the services they are receiving.

**b.) The importance of acting in the client’s best interest**

When dealing with a financial professional, a consumer understandably expects that they are receiving objective advice about their financial situation, goals, and needs – that is, their interests are being put ahead of those of the financial professional.

We believe FPs and FAs should be explicitly required to live up to this expectation. As noted in our response to Question 2 above, Saskatchewan has tried to address this by including requirements regarding conflicts and suitability determinations in line with the Canadian Securities Administrators' Client Focused Reforms.<sup>6</sup> Again, we believe this is a significant improvement over the Ontario model. But it still falls short.

The best approach would be to enact, by regulation, a code of ethical standards as was done in Québec. The Québec regulation requires all FPs to "subordinate [their] personal interests to those of [their] client or any potential client." In short, it comes closest to creating an overarching best interest standard and meeting consumers' expectations when dealing with an individual that holds him or herself out as a FP or a FA.<sup>7</sup>

## Conclusion

We thank you for the opportunity to provide our comments on this issue. We also appreciate the FCNB's desire to seek public input at an early stage, including how New Brunswick could improve on the models being adopted in Saskatchewan and Ontario. It goes without saying that consumer protection should never take a back seat to the desire to harmonize rules with other provinces.

We would be pleased to discuss our submission with FCNB should you have questions or require further explanation of our views on these matters. Please contact me at [jp.bureaud@fair-canada.ca](mailto:jp.bureaud@fair-canada.ca).

Sincerely,



Jean-Paul Bureaud,  
Executive Director

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<sup>6</sup> [The Proposed Financial Planners and Financial Advisors Regulations](#); Sask. FCAA, ss. 6 and 7,

<sup>7</sup> [Code of ethics of the Chambre de la sécurité financière Act respecting the distribution of financial products and services](#), chapter D-9.2, r. 3, see s. 19.