

MINISTRY OF TRAINING, COLLEGES AND UNIVERSITIES



*Private Career Colleges Act, 2005*

FACT SHEET #7

## **Change of Ownership**

October 1, 2007

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## PART ONE

### CHANGE OF OWNERSHIP REQUIREMENTS UNDER THE *PRIVATE CAREER COLLEGES ACT, 2005*

A change of ownership may have significant implications on an institution's status as a registered private career college (PCC). Any change of ownership, regardless of the type, must be reported to the Superintendent of Private Career Colleges ("the Superintendent") within the timeframes specified in the *Private Career Colleges Act, 2005* and Ontario Regulation 415/06. These time frames will vary and are outlined in the relevant sections below. Key documents will also need to be submitted to the Superintendent for review and/or approval.

This fact sheet will outline the various types of ownership changes that may occur and the required timelines for notification. This fact sheet will provide some general guidelines regarding the type of information that must be submitted to the Superintendent. Please note that additional information may be required if it is needed to process an application. Review this document carefully and contact the ministry if you have any further questions.

The table below provides a quick overview of the impact that a change of ownership may have on a registration as a private career college. For more detailed information, please see the relevant section in these guidelines.

<b>Type of Change</b>	<b>Impact on Registration as a PCC</b>
<b>Asset Purchase</b>	<b>High:</b> an Application for Registration to Operate a PCC or an Application for Registration of a New Campus is required
<b>Share Purchase</b>	<b>Low to Medium:</b> generally, unless the new shareholder is making changes to the corporation's officers/ directors, this type of change has little impact on an institution's registration as a PCC

<b>Change in Officers/Directors of a Corporation</b>	<b>Medium:</b> the Superintendent must be satisfied that the new officers/directors will continue to meet the conditions of registration
<b>Sole-Proprietorship becomes a Corporation</b> (where corporation has only one officer/ director)	<b>Low:</b> When a former sole-proprietor becomes the <i>only</i> officer/director of a corporation, there is no change in the controlling interest
<b>Change in the members of a Partnership</b>	<b>Medium:</b> the Superintendent must be satisfied that the new partners will continue to meet the conditions of registration

## SECTION 1: ASSET PURCHASE

Section 16 of the *Private Career Colleges Act, 2005* states a registration is not transferable to another person. In law, a “person” can be an individual (i.e. a sole-proprietor or each partner in a partnership) or a corporation. An asset purchase occurs when the property, programs, etc... of a private career college (PCC) are being sold to another person.

In an asset purchase, registration as a private career college does not transfer with the sale. The purchaser will need to apply for registration as a private career college in order to offer vocational programs in Ontario. Both the existing registered PCC and the potential purchaser should be aware of this fact prior to entering into any asset purchase agreement.

In the case of an asset purchase, the requirements for applying for registration under the *Private Career Colleges Act, 2005* are different depending on whether the purchaser is an existing registered private career college or not. The process will be more streamlined if the purchaser is already a registered private career college.

For a list of all registered private career colleges, please visit the ministry website: <[www.edu.gov.on.ca/eng/general/private.html](http://www.edu.gov.on.ca/eng/general/private.html)>.

### **Authority**

Section 47 of O. Reg. 415/06 states that a private career college must give the Superintendent at least 30 days written notice of a transfer of all or substantially all of the assets of the college accompanied by:

- a copy of the documents that will effect the change (such as the purchase and sale agreement);
- the name address, telephone number, fax number and email address of any new director, officer or person responsible for the administration of a campus of the private career college;
- such other information as the Superintendent may require.

### **Form of Notice**

The existing owner should advise the Superintendent of Private Career Colleges in writing on company letterhead that she/he/it intends to sell the institution.

Once the transaction has been completed, the PCC selling its assets must surrender its Certificate of Registration to the Superintendent of Private Career Colleges.

### **Timing of Notification**

The Superintendent of Private Career Colleges must be notified at least 30 days in advance of any asset purchase.

## Fees Required

The following fees must be submitted by the proposed purchaser along with the application for registration:

- \$480 initial application fee (not applicable if the purchaser is an existing PCC)
- \$800 registration fee (includes one program)
- \$48 fee for each approved program being transferred to the new ownership
- No facility inspection fee (unless the proposed purchaser is renovating or moving)

## Information Required

The proposed purchaser must submit either an Application for Registration to Operate a Private Career College or an Application for Registration of a New Campus of a Private Career College.

- 1) If the proposed purchaser is not a registered PCC, an Application for Registration to Operate a Private Career College and all required supporting documentation must be submitted;
- 2) If the proposed purchaser is a registered PCC, a completed Application for the Registration of a New Campus of a Private Career College is required;
- 3) If a sole-proprietor is going into business with a partner (i.e. the business structure is moving from a sole-proprietorship to a partnership) or if a sole-proprietorship or partnership is incorporating *where the corporation will have additional officers and directors*, a complete Application for Registration to Operate a Private Career College must be submitted by the new legal entity;

- 4) If a sole-proprietor or partnership is incorporating where the former sole-proprietor or former partners will be the **only** officer(s) and/or director(s) of the new corporation, an Application for Registration is not required. Please see [Section 4](#) of this document for the information that is required for this particular type of asset purchase.

### Application for Registration

If the proposed purchaser is not a registered PCC, the purchaser must complete the registration process by submitting an Application for Registration to Operate a Private Career College. For more information on applying for registration as a private career college, please consult the Guidelines for the Application for Registration to Operate a Private Career College, available on <[www.serviceontario.ca](http://www.serviceontario.ca)>.

If the proposed purchaser *is* currently a registered private career college, the asset purchase is treated like the registration of a new campus of an existing private career college. Please refer to the Guidelines for the Registration of a New Campus of a Private Career College, available at <[www.serviceontario.ca](http://www.serviceontario.ca)>.

#### **Please note:**

The following information is usually submitted to the Superintendent with the Application for Registration; however it may not be required, depending on the circumstances of the asset purchase:

- The floor plan of the campus and the fire inspection report do not need to be provided by the proposed purchaser unless the purchaser will be conducting renovations to the facilities.
- If the selling institution is approved for student assistance purposes and the proposed purchaser has already submitted



an up-to-date corporation profile report in order to obtain pre-approval as a continuing institution for student assistance purposes (see [Part 2](#) of this document for more information), the corporation profile report does not need to be submitted with the application for registration, as the Superintendent already has this information on file.

### Program Approval

In an asset purchase, the purchaser does not need to submit the complete Application for Program Approval (including all the appendices) for each vocational program that will be offered *if* the program is already approved by the Superintendent and will continue, under the new ownership, to be offered as it was originally approved by the Superintendent.

The Purchaser must provide the first three pages of the Application for Program Approval along with a written attestation that the programs will be delivered as they were approved by the Superintendent. The attestation must indicate the name, address, phone number and email address of the person who will be responsible for the development and maintenance of each vocational program.

The purchaser must also provide the Superintendent with:

- a training completion plan for each program (Appendix M of the Application for Program Approval)
- the projected enrolment for the institution's next fiscal year of operation (this may be submitted on a separate sheet). Enrolment must be reported by program and provide a breakdown of the number of domestic and international students in each program.

- If the program has an off-site placement, the purchaser must submit Appendix I of the Application for Program Approval, including new placement host agreements and evidence of WSIB coverage for students.

**Note:** If the purchaser will be offering programs that were **not** not offered at the PCC under the former ownership, a complete Application for Program Approval, including all appendices, must be submitted to the ministry. The programs must be approved before they can be delivered or advertised.

### Conditions of Program Approval

A private career college is required to maintain a copy of the description of each vocational program on site at the facility where the program is being offered. This allows ministry staff to confirm on inspection that the program being delivered by a college is the same as the program that was originally approved by the Superintendent of Private Career Colleges. In an asset purchase, the vendor (or selling institution) must supply the purchaser with the copy of the approved program description so that the purchaser has this information on file.

An approved vocational program that is to be offered by a new owner will continue to be approved for the duration of the original approval period. After becoming registered, the new owner, if desired, may make changes to the approved programs by using the Registration Information for Career Colleges (RICC) system.

## Training Completion Assurance Fund (TCAF) premiums

In an asset purchase, any TCAF premiums paid by the former owner will be transferred to the purchaser as a credit. When selling or purchasing the assets of a private career college, it is recommended that this be accounted for in the purchase agreement.

## Financial Security

If the purchaser is not currently a registered PCC, the purchaser will need to provide sufficient financial security in the form of a surety bond, a personal bond accompanied by collateral security or a letter of credit. Please refer to Fact Sheet #4A – Training Completion Assurance Fund: Financial Security, available at <http://www.edu.gov.on.ca/eng/general/private.html> for more information on posting financial security under the PCCA.

If the purchaser is an existing PCC that is opening a new campus through an asset purchase, additional financial security is not always required; however, there are a few circumstances in which the PCC may be requested to provide additional financial security. For instance, if the programs to be offered at the new campus are very expensive, additional financial security may be needed in order to provide adequate protection for students attending the new campus. Unless the PCC is advised by the Superintendent that it must provide additional financial security, the financial security will not be amended to reflect the addition of a new campus mid-year; the amount of financial security required will be adjusted at the PCC's next renewal of registration.

## SECTION 2: SHARE PURCHASE (CORPORATIONS)

A share purchase occurs when all or some of a corporation's shares are sold by the shareholder(s) to another person or persons. In a share purchase situation, the registration is not being transferred to a new legal entity and therefore a new application for registration is not required. However, the Superintendent does need to be notified, as a transfer of the shares of a corporation may result in a change of the "controlling mind" of the corporation, even if the legal entity remains the same. The Superintendent must be satisfied that the controlling mind behind the corporation will continue to operate the private career college in compliance with the *Private Career Colleges Act, 2005* and its regulations.

### Authority

Section 47 of O. Reg. 415/06 states that a notice of a transfer of the shares of a corporation sufficient to allow the person purchasing the shares to make a change to the corporation's board of directors shall include:

- a copy of the documents that will effect the change (such as the share purchase agreement);
- the name address, telephone number, fax number and email address of any new director, officer or person responsible for the administration of a campus of the private career college;
- such other information as the Superintendent may require.

## Form of Notice

The corporation must provide the Superintendent of Private Career Colleges with written notice of a share purchase on company letterhead.

The notice must provide a breakdown of the total allocation of the corporation's shares (so that the Superintendent can determine whether the transfer will result in a change of controlling interest). The notice must also be accompanied by a copy of the share purchase agreement.

The notice should include the name of the person (or corporation) that will be purchasing the shares. The written notice must clearly indicate whether or not the share purchase will result in a change of the officers and directors of the corporation. If the share purchase **will** result in a change of the officers or directors of a corporation, the new officers and/or directors must submit additional information providing particulars on these changes. Please refer to [Section 3](#) of this document for more information.

## Timing of Notification

The Superintendent must be notified at least **30 days before the change occurs**.

Once the sale transaction has been completed, the purchaser must provide verification (e.g. a copy of the signed share purchase agreement) that the transfer has been completed and the date on which the transfer was processed.

## Fees Required

There are currently no fees associated with a share purchase.

## **Financial Security Requirements**

If the financial security is a surety bond or letter of credit provided by the corporate entity, new financial security is not required.

If the financial security is a personal bond secured by collateral security provided by a former shareholder (i.e. issued to an individual instead of the corporate entity), new financial security must be provided by the private career college in whatever form it chooses (a personal bond secured by collateral security, a surety bond or a letter of credit). New financial security should be posted in the name of the legal entity.

## **TCAF premiums**

The transfer of a corporation's shares should not impact the organization's TCAF premiums. Premiums are paid by the legal entity; in a share purchase, the legal entity remains the same.

## **SECTION 3: CHANGE OF OFFICERS AND DIRECTORS OF A CORPORATION**

Section 18(2) of the Private Career Colleges Act, 2005 gives the Superintendent of Private Career Colleges the authority to revoke a registration if the Superintendent believes that any of the requirements for registration are not met. Depending on the past conduct of the individuals, a change in the officers and directors of a corporation may impact an institution's registration as a private career college. For example, if the past conduct of the new officers and/or directors provides grounds for the belief that the private career college will be not operated in accordance with the law and with honesty and integrity, the institution's registration could be revoked.

## Authority

Pursuant to section 34(1) of the Private Career Colleges Act, 2005, every private career college shall notify the Superintendent in writing of any change in the officers or directors of the corporation within five days after the change occurs.

## Form of Notice

Notice of a change of officers or directors of a corporation may be delivered in writing on company letterhead.

## Timing of Notification

Notice of a change of officers or directors must be delivered within **five days after the change occurs.**

## Fees Required

There are currently no fees associated with a change of officers or directors of a corporation.

## Additional Information Required

- An Applicant Profile and Reference Form (available online at [www.serviceontario.ca](http://www.serviceontario.ca)) must be submitted for each new officer and/or director of the corporation;
- An updated corporation profile report must be provided;
- The corporation must provide the Superintendent with written confirmation that the vocational programs offered by the private career college will be delivered as they were approved by the Superintendent;
- If the program has an off-site placement, the corporation may need to submit Appendix I of the Application for Program

Approval, including new placement host agreements and evidence of WSIB coverage. Please contact your program consultant to determine if this information is required.

### **Financial Security Requirements and TCAF premiums**

Because the legal entity remains the same, a change in the Officers and Directors of a corporation should not impact the institution's financial security or TCAF premiums.

However, if the financial security was a personal bond secured by collateral security provided by a former officer/director who is no longer affiliated with the corporation, new security must be provided by the corporation in whatever form it chooses (a personal bond secured by collateral security, a surety bond or a letter of credit).

## **SECTION 4: SOLE-PROPRIETORSHIP OR PARTNERSHIP TO A CORPORATION**

**Please note:** This process only applies if a sole-proprietorship or a partnership is incorporating and the former sole-proprietor and/or former partners will be the *only* officers and directors of the corporation. Where other individuals will be joining the corporation as officer and directors, the rules in section 1 of this document must be followed.

If a sole-proprietor or a partnership will be incorporating, the new corporate entity is a new "person." While this type of ownership change is technically an asset purchase, a new Application for Registration is not required. Because the controlling mind behind the private career college is not changing, there is very little risk that



this type of ownership change would have an impact on students or on the institution's status as a registered private career college.

### Authority

Section 47 of O. Reg. 415/06 states that a private career college must give the Superintendent written notice of a transfer of all or substantially all of the assets of the college, accompanied by:

- a copy of the documents that will effect the change (such as a corporation profile report);
- the name address, telephone number, fax number and email address of any new director, officer or person responsible for the administration of a campus of the private career college;
- such other information as the Superintendent may require.

### Form of Notice

Before incorporating, the sole-proprietor or partners must provide written notice to the Superintendent that she/he is intending to incorporate. The notice must clearly state that the existing sole-proprietor or the existing partners will be the *only* officer(s) and/or director(s) of the corporation.

### Timing of Notification

The Superintendent of Private Career Colleges must be notified at least **30 days in advance** of any asset purchase.

## **Fees Required**

There are currently no fees associated with this type of ownership change.

## **Information Required**

The new corporation must submit a Corporation Profile Report and, if the business name (i.e. operating name) of the corporation will be different than the legal name, a copy of the Master Business Licence or a Certified Business Names Report.

The corporation must also submit evidence that the liability insurance policy has been amended to reflect the new legal entity.

Sample contracts, the student complaint procedure and a copy of the agreement with the third-party transcript arrangements (after September 18, 2007) will also need to be submitted for review as staff in the PCCCU will need to confirm these documents reflect the new legal entity.

## **Financial Security and TCAF premiums**

The financial security and TCAF premiums for the new corporation will remain at the same level. Any pre-paid TCAF premiums will be transferred to the new corporation. However, the financial security will need to be updated to reflect the new legal entity.

## **Program Approval**

Unless the vocational programs have off-site placements, no additional information is required for program approval. If the vocational programs do have off-site placements, Appendix I of the Application for Program Approval must be submitted. Ministry staff

will review the placement host agreements and WSIB insurance policies to ensure that these documents reflect the new legal entity.

## **SECTION 5: CHANGE IN THE MEMBERS OF A PARTNERSHIP**

Partnerships may be formed under the *Partnership Act* or the *Limited Partnerships Act*. If one or more partners withdraw from a partnership while others remain or if new persons join an existing partnership as new partners, the Superintendent must be notified in order to determine whether the change in partners will affect the institution's status as a registered private career college.

### **Authority**

Section 47 of O. Reg. 415/06 states that a private career college must give the Superintendent notice of any change in the partners, if the private career college operates as a partnership.

### **Form of Notice**

The partnership must provide the Superintendent with written notice on company letterhead that one or more of the partners will be changing. The notice must affirm that the partnership will be continuing and must be accompanied by a copy of the partnership agreement. If any new individuals are joining a partnership, the written notice must provide the name and contact information for each new partner.

If one of the partners is leaving a partnership and the partnership will be continuing, the written notice must describe on what terms the withdrawing partner is leaving. For example, the

Superintendent must be made aware if the withdrawing partner will take certain assets (e.g. a program or key real or personal property used to deliver the program). Please note that if a change in partners results in the dissolution of a partnership, additional information may be required.

### **Timing of Notification**

Notification of a change in partners must be received at least 30 days before the change occurs. Once the change in partners has been effected, the Superintendent must be notified within five days that the transfer is complete.

### **Fees Required**

There are currently no fees associated with a change in the membership of a partnership.

### **Additional Information Required**

Along with the written notification and the revised partnership agreement, the Superintendent of Private Career Colleges must also receive written confirmation that the vocational programs will continue to be delivered as they were approved.

Each new partner must submit an Applicant Profile and Reference Form, which is available online at [www.serviceontario.ca](http://www.serviceontario.ca).

## PART TWO

### CHANGE OF OWNERSHIP REQUIREMENTS FOR INSTITUTIONS APPROVED FOR STUDENT ASSISTANCE PURPOSES

Any change in the controlling interest of a private career college (whether through an asset purchase, a share purchase or a change in partners or sole-proprietor) will significantly impact the institution's approval for student assistance purposes. There are two options available to a new owner with respect to approval for student assistance purposes when there is a change of ownership:

- Make an application for approval as a "new institution;" or
- Make an application for approval of the corporation as a "continuing institution." This latter option **must** be exercised **prior** to the change in ownership.

#### Section 1: Approval as a "New Institution"

For more information on applying for approval as a new institution, please refer to the *Performance Requirements, 2007*, available on the OSAP website at <[osap.gov.on.ca](http://osap.gov.on.ca)>. The *Performance Requirements, 2007* sets out the criteria an institution will need to meet in order to be eligible for approval for student assistance purposes. Please note that if the new owner(s) choose to apply for approval as a new institution, students who enrolled at the institution prior to the ownership change would continue to receive student assistance for the balance of the existing academic year; however, students enrolled after the ownership change will not be eligible for financial assistance under the Ontario Student Assistance Program (OSAP).

## Section 2: Approval as a “Continuing Institution”

Approval as a "continuing institution" has two significant implications. First, students attending the institution under its new ownership would be eligible to apply for OSAP on the same basis as students at the institution under its current ownership. However, this benefit comes with corresponding responsibilities. In order to ensure that institutional accountability for the proper administration of OSAP continues without interruption, the prospective new owner must acknowledge that the institution would remain responsible for any liability that might be associated with the administration of OSAP by the institution under its previous ownership. This may include liability for repayment of the cost of defaults above the limits established annually and for repayment of any amounts quantified by an auditor in connection with failure to properly administer OSAP.

As any such liability is likely to be determined after the change in ownership, it is incumbent upon the new owner to become fully informed of the potential liabilities before agreeing to acknowledge the institution's continuing liability. The ministry assumes that this includes the purchaser obtaining full disclosure from the institution under its current ownership.

Prospective purchasers are referred to the OSAP website at <http://osap.gov.on.ca>. This website includes program and institution specific information, including:

- The OSAP Designation for Private Postsecondary Institutions Policy;
- The most recent OSAP default rates for all private career colleges;

- The most recent Performance Indicators of private career colleges which show the percentage of students who graduated, and graduate employment rates of private career colleges;
- The ministry's Default Sharing Policy;
- The *Performance Requirements, 2007*.

The ministry expects that a prospective new owner will familiarize him/her/itself with all of the legislative and policy requirements relevant to the administration of OSAP and the potential financial obligations that the institution remains responsible for as a continuing institution under the ministry default sharing policy.

If applying for approval as a continuing institution, the prospective new owner must:

1. Complete the application form "Institution Eligibility & Program Approval Application." Please contact the Standards Officer, Student Verification and Compliance Unit at 416-325-0446 to obtain this application.
2. If the purchaser is a corporation, provide a Corporation Profile Report (CPR) issued within 7 business days of the date that the application is delivered to the ministry. The CPR must be a certified true copy of the data as recorded on the Ontario Business Information System at Companies and Personal Property Security Branch, Ministry of Government Services.
3. Provide a copy of the proposed purchase and sale agreement.
4. Provide a copy of the Financial Aid Office Policy and Procedures Manual that will be used by the institution under the new ownership, including identifying the proposed Financial Aid Administrator.

5. Provide the plan for default management that will be used by the institution under the new ownership.

In reviewing an application, the ministry also will consider any prior history of the prospective new owner in administering OSAP as the owner, controlling shareholder, officer or director of any other institution approved for OSAP purposes as well as any other information it considers relevant to the approval.

If the ministry is satisfied that approval should be granted, it will provide a "without prejudice" letter that sets out the conditions that must be met in order for the approval to come into effect. This is sometimes referred to as "pre-approval."

Approval of institutions for student loan purposes is granted on an annual basis only; therefore an approval of a continuing institution will only be in force from the date it comes into effect until July 31 (i.e., the remainder of the institution's current term of approval for student assistance purposes). Approval for subsequent periods will require that the institution meet all requirements for annual approval within the prescribed deadlines.

Conditions for a pre-approval to come into effect include:

- The institution must be registered and in good standing and its vocational programs must be approved under the *Private Career Colleges Act, 2005* at the date the change of ownership comes into effect.
- The prospective new owner must provide the ministry with written confirmation that:
  - he/she/it understands that approval is only granted on an annual basis and is subject to the terms and conditions set out in the relevant legislation, the *Performance Requirements, 2007* and other relevant ministry policies;



- if a share purchase, he/she/it understands that the corporation has agreed in writing to the terms and conditions of the annual approval and remains liable for compliance with such terms and conditions;
- he/she/it has fully investigated and considered the potential risks of the institution remaining liable (in the case of a share purchase), or of the new institution being liable (in the case of an asset purchase) for any OSAP-related liabilities incurred under the previous ownership, including any default sharing liabilities; and
- the ministry is not liable to the prospective new owner for any injury or damage accruing to him/her/it as a result of the continuing institution approval.
- the institution will have an approved Financial Aid Administrator at the institution.

Please note that additional institution-specific conditions may also be added, depending on the outcome of the ministry's review of the application.

Once the change in ownership has occurred, the institution must provide the ministry with satisfactory documentation that verifies the completion of the ownership change, such as a copy of the completed purchase and sale agreement and/or written confirmation from the institutions' lawyers verifying that the sale has gone through. The documentation required may vary. Please contact the Standards Officer, Student Verification and Compliance Unit at 416-325-0446 for more information.

**Note:** being issued a letter of pre-approval as a continuing institution for student assistance purposes does not mean that the purchaser is approved. In addition to meeting all other conditions set out in the pre-approval letter, the approval will not come into

effect unless the institution has met the requirements of the *Private Career Colleges Act, 2005* (i.e. institutions have followed the processes and met the requirements set out in [Part One](#) of this document).

This document is provided for your information and convenience only. It is not a legal document. For further information and the exact wording please refer to the *Private Career Colleges Act, 2005* and regulations.

### Need More Information?

If you have questions about the *Private Career Colleges Act, 2005* or the administration of OSAP, contact the ministry at:

Ministry of Training, Colleges and Universities  
10<sup>th</sup> Floor Mowat Block  
900 Bay Street  
Toronto, ON M7A1L2

Telephone: (416) 314-0500 or 1-866-330-3395  
Fax: (416) 314-0499

OR

Visit our website at: [www.edu.gov.on.ca/eng/general/private.html](http://www.edu.gov.on.ca/eng/general/private.html)  
And <http://osap.gov.on.ca>

The full text of the act and regulations can also be downloaded from the Ontario government E-Laws website at:  
[www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)