

MINISTRY OF TRAINING, COLLEGES AND UNIVERSITIES



Private Career Colleges Act, 2005

FACT SHEET #8

COMPLIANCE MONITORS

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Table of Contents

1. INTRODUCTION.....	2
2. AUTHORITY	2
3. SEEKING SUPERINTENDENT’S APPROVAL	3
4. COMPLIANCE MONITOR QUALIFICATIONS	3
5. REPORTS TO THE SUPERINTENDENT	6

1. INTRODUCTION

When the Superintendent has grounds for concern about a registered private career college's (PCC) capacity or willingness to operate in compliance with the *Private Career Colleges Act, 2005* ("PCCA, 2005") and regulations, there are a range of options available in the PCCA, 2005 to address these concerns. One option open to the Superintendent is to add a condition to the PCC's registration. One such condition that has been used in some cases is requiring that a Compliance Monitor be paid for by the PCC to oversee and report to the Superintendent on the PCC's operations with a view to assessing the PCC's compliance in particular areas.

The wording of such a registration condition will vary according to the circumstances of the situation and will be assessed on a case by case basis. In general, however, where a Compliance Monitor is required as a condition of registration the PCC must retain a Compliance Monitor that is approved by the Superintendent.

It is important to note that the Compliance Monitor has no authority to make decisions regarding a PCC's operation. The monitor may only report findings to the Superintendent as result of inquiries and examinations.

The purpose of this fact sheet is to assist PCCs whose registration is made subject to a condition requiring a Compliance Monitor by setting out the qualifications of persons seeking to act as Compliance Monitors.

2. AUTHORITY

Pursuant to section 15 of the PCCA, 2005, a registration or renewal of a registration may be made subject to conditions specified by the Superintendent or prescribed by regulation. In addition, the Superintendent may at any time, at the written request of the registrant or on his or her own initiative, add a condition to a registration or change or remove a condition of a registration that he or she had previously specified.

3. SEEKING SUPERINTENDENT'S APPROVAL

Where a Compliance Monitor is required as a condition of registration the PCC will be given an appropriate period of time to select a Compliance Monitor for consideration by the Superintendent.

The PCC should submit sufficient information to the Superintendent to allow the proposed Compliance Monitor's qualifications to be assessed.

Once approved, the Compliance Monitor will be paid by the PCC to work on either a full or part time basis, and will report directly to the Superintendent according to terms set out in the registration condition.

4. COMPLIANCE MONITOR QUALIFICATIONS

Any person seeking the Superintendent's approval to act as a Compliance Monitor must meet **all** of the following qualifications:

A. EXPERIENCE IN REGULATORY COMPLIANCE

A Compliance Monitor must have a minimum of **three years** of recent full time work experience in a field or profession in which over 80% of the work was directly related to enforcement, investigations, inspections, auditing or other direct regulatory compliance functions.

Examples of qualifying work experience include:

- Inspections or investigations on behalf of a public, regulatory body;
- Conducting assurance engagements as a public accountant, pursuant to the *Public Accounting Act, 2004*
- Conducting assurance engagements on:
 - financial information other than financial statements;

- compliance with agreements, statutes and regulations;
- compliance with legislative and related authorities;
- control procedures at a service organization.
- Internal auditing, as defined by the *International Professional Practices Framework* of the Institute of Internal Auditors¹;
- Fraud examination (e.g. Certified Fraud Examiner, etc.);
- Officer or manager employed in a position specifically dedicated to overseeing an organization's compliance with law.

B. KNOWLEDGE OF THE PCCA, 2005 AND THE PCC SECTOR

A Compliance Monitor must demonstrate either existing, adequate knowledge and understanding of the PCC sector and the PCCA, 2005, or an ability to easily and effectively acquire same. For example, such capabilities may be demonstrated by:

- Previous work experience in the sector (e.g. consultant, employee, third-party assessor, instructor, etc.); or
- Past professional experience in which the ability to effectively read, understand and apply legislation was appropriately demonstrated.

C. ACCEPTABLE COMPLIANCE HISTORY

A Compliance Monitor must not have any prior history of serious non-compliance with the PCCA, 2005 or regulations. Examples of serious non-compliance would include being a manager, owner or director of an organization that was issued one or more Notices of Contravention or Orders under the PCCA, 2005 for items 1.1 through 1.12 listed in Table 1 of O. Reg. 415/06, or that was refused registration or proposed for revocation or suspension of its registration.

¹ The *International Professional Practices Framework* of the Institute of Internal Auditors may be found at: <http://www.theiia.org/guidance/standards-and-guidance/ippf/>

D. NO CONFLICT OF INTEREST

A Compliance Monitor must have an “arm’s length” relationship with the PCC, as defined by the Canada Revenue Agency². In addition, a Compliance Monitor may not have any actual or perceived conflict of interest with the PCC for which he/she seeks to act as a Compliance Monitor. In particular, the Compliance Monitor may not:

- Be a current employee of the PCC or any affiliated organization.
- Have been employed by the PCC within the previous five years.
- Be employed by the PCC within one year following the Compliance Monitoring engagement.

E. ACCEPTABLE TO THE SUPERINTENDENT

Any person seeking to act as a Compliance Monitor must also be acceptable to the Superintendent. To be acceptable to the Superintendent, the Compliance Monitor must be able to demonstrate to the Superintendent that, having due regard to the specific concerns giving rise to the need for a Compliance Monitor in the specific case in question, the Compliance Monitor has the necessary knowledge, skills and abilities to complete the required work to the satisfaction of the Superintendent within the time frames specified in the condition added to the PCC’s registration.

² “Arm’s length” relationships are defined by the Canada Revenue Agency at : <http://www.cra-arc.gc.ca/E/pub/tp/it419r2/it419r2-e.html>

5. REPORTS TO THE SUPERINTENDENT

A. MANDATORY CONTENT

In addition to any specific requirements set out in the condition being added to the PCC's registration, reports to the Superintendent must include the following information:

- The period of time covered by the report;
- The nature and scope of all inquiries and examinations that resulted in the findings;
- A statement as to whether or not the PCC and its owners, directors, operators, managers, employees, instructors and students cooperated with the Compliance Monitor's inquiries and examinations, including any details of non-cooperation;
- Findings relating to subject matters of the report; and
- Copies of any documents, photographs or other things that tend to support or explain findings;

B. REPORT WRITING GUIDANCE

In order to assist Compliance Monitors in the drafting of acceptable reports, the following suggested guidance is provided:

Drafting Findings:

A finding in a Compliance Monitor's report is usually a paragraph that explains one particular conclusion about a particular area. In general, a well written finding will include all of the following elements:

- **Criteria:** The set standard against which the facts are being judged (e.g. "According to the program approval, Course X requires four written evaluations for each student.");
- **Condition:** This refers to the facts as found to be true by the Compliance Monitor's own personal observations (e.g. "Two evaluations were in the student files for Student A, three for Student B," etc.).

- **Cause:** This explains why, in the Compliance Monitor's opinion, the condition deviated from the criteria (e.g. "Students were not evaluated four times each as required by the program approval.");
- **Effect:** This answers the "So what?" question, and explains what adverse results occurred as a result of the condition not meeting the criteria (e.g. "It therefore cannot be determined whether or not students met the learning objectives for the course."); and
- **Conclusions and Recommendations:** These summarize the issue and, if possible, recommend a solution (e.g. "The program is not being delivered as approved, as all student evaluations are not being administered. It is recommended that the school immediately begin evaluating all students four times each in writing as required.").

Here is a fictional example of a complete finding from a Compliance Monitor's report:

According to the program approval, the one month advanced accounting course is required to be instructed by a licensed public accountant. During the examination of course records and students files at the school, it was determined that for the May course no licensed public accountant took part in the instruction of the course, as was required. According to the school, the accountant who usually instructs the course was on vacation during the entire month of May, so the school permitted another instructor, who is not an accountant, to teach the course. As a result, students in the course were not instructed by someone who met the required qualifications. As the course was not delivered as approved, the school should make arrangements so that when the usual instructor is unavailable another, qualified accountant can teach the course in his or her place.

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?

For assistance in finding qualified candidates, contact the Institute of Internal Auditors at:

<http://www.theiia.org/careers/>

(Navigation: Employers & Agencies)

OR

The Association of Certified Fraud Examiners at:

<http://www.acfe.com/career/career-center.asp>

(Navigation: Fraud Resources > Find a CFE)

If you have questions about the *Private Career Colleges Act, 2005* contact the Private Career Colleges Branch at:

Private Career Colleges Branch
Ministry of Training, Colleges and Universities
9th Floor Mowat Block
900 Bay Street, Toronto, ON M7A1L2

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

Fax: (416) 314-0499, Email: pcc@ontario.ca

Visit our website at: www.edu.gov.on.ca/eng/general/private.html

The full text of the PCCA, 2005 and regulations can also be downloaded from the Ontario government E-Laws website at:

www.e-laws.gov.on.ca