

College of Patent Agents and Trademark Agents Act (S.C. (Statutes of Canada) 2018, c. 27, s. 247)
Act current to 2020-02-11 and last amended on 2019-06-17.

College of Patent Agents and Trademark Agents Act

S.C. (Statutes of Canada) 2018, c. 27, s. 247

Assented to 2018-12-13

An Act to establish the College of Patent Agents and Trademark Agents

[Enacted by section 247 of chapter 27 of the Statutes of Canada, 2018, the definition “Board” in section 2, sections 11 to 20, 25 to 32, 34 to 62 and 64 to 74 and paragraphs 76(1)(c) to (f), (h) and (i) not in force.]

Short Title

Short title

1 This Act may be cited as the *College of Patent Agents and Trademark Agents Act*.
2018, c. 27, s. 247 “1”; 2014, c. 20, s. 366(E).

Interpretation and Application

Definitions

2 The following definitions apply in this Act.

Board means the board of directors established under section 13. (*conseil*)

College means the College of Patent Agents and Trademark Agents established by section 5. (*Collège*)

investigator means an individual designated under section 42. (*enquêteur*)

licence means a licence issued under this Act. (*permis*)

licensee means a patent agent or a trademark agent. (*titulaire de permis*)

Minister means the federal minister designated under section 4. (*ministre*)

patent agent means an individual who holds a patent agent licence or a patent agent in training licence issued under section 26. (*agent de brevets*)

privileged means protected by litigation privilege, by solicitor-client privilege, by the professional secrecy of advocates and notaries or by the privilege set out in section 16.1 of the *Patent Act* or section 51.13 of the *Trademarks Act*. (*protégé*)

Registrar means the Registrar of the College appointed under section 22. (*registraire*)

trademark agent means an individual who holds a trademark agent licence or a trademark agent in training licence issued under section 29. (*agent de marques de commerce*)

2018, c. 27, s. 247 “2”; 2014, c. 20, s. 366(E).

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada or a province.

Designation of Minister

4 The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of this Act.

Establishment and Organization

College

Establishment

5 (1) A corporation without share capital is established, to be known as the College of Patent Agents and Trademark Agents.

Act not applicable to College

(2) The *Canada Not-for-profit Corporations Act* does not apply to the College.

2018, c. 27, s. 247 “5”; 2014, c. 20, s. 366(E).

Purpose

6 The purpose of the College is to regulate patent agents and trademark agents in the public interest, in order to enhance the public’s ability to secure the rights provided for under the *Patent Act* and the *Trademarks Act*.

2018, c. 27, s. 247 “6”; 2014, c. 20, s. 366(E).

Head office

7 The head office of the College is to be in the National Capital Region, as described in the schedule to the *National Capital Act*.

Capacity

8 In carrying out its purpose, the College has the capacity and the rights, powers and privileges of a natural person.

Not Crown agent

9 The College is not an agent of Her Majesty, and the College's directors, the members of its committees, the Registrar, the investigators and any officers, employees, agents and mandataries of the College are not part of the federal public administration.

Official Languages Act

10 The *Official Languages Act* applies to the College.

Members

11 The members of the College are the licensees.

Annual general meeting

12 The College must hold an annual general meeting of members within six months after the end of each calendar year, at a time and place in Canada fixed by the Board.

Board of Directors

Composition

13 (1) The College has a board of directors composed of at least seven directors, including the Chairperson.

Order fixing number of directors

(2) The Minister must, by order, fix the number of directors.

Appointed directors

(3) The Minister may, by order, fix the number of directors that are to be appointed to the Board and appoint those directors.

Maximum number of appointed directors

(4) The number of appointed directors fixed under subsection (3) must not be greater than the minimum number that is required to constitute a majority of directors on the Board.

Elected directors

(5) The remaining directors are to be licensees elected in accordance with the by-laws, and at least one elected director must be a patent agent and at least one must be a trademark agent.

2018, c. 27, s. 247 “13”; 2014, c. 20, s. 366(E).

Ineligibility

14 An individual is not eligible to be appointed or elected as a director if they

(a) are less than 18 years of age;

(b) have the status of bankrupt;

(c) are a member of an association whose primary purpose is to represent the interests of persons who provide advice on patents or trademarks;

(d) were, within the preceding 12 months, a member of a governing body or a steering committee of an association referred to in paragraph (c);

(e) in the case of an appointment to the Board,

(i) are a licensee, or

(ii) are employed by a *department*, as defined in section 2 of the *Financial Administration Act*; or

(f) in the case of election to the Board,

(i) have a licence that is suspended, or

(ii) meet any other ineligibility criteria set out in the by-laws.

2018, c. 27, s. 247 “14”; 2014, c. 20, s. 366(E).

Term

15 (1) Each director is to be appointed or elected for a term of not more than three years, and may be reappointed or re-elected for subsequent terms of not more than three years each.

Determination of term

(2) The length of a director’s term is

(a) set out by the Minister in the order appointing the director, if the director is appointed; or

(b) determined in accordance with the by-laws, if the director is elected.

Staggered terms

(3) For greater certainty, it is not necessary that all directors hold office for terms that begin or end on the same day.

Continuation in office — appointed directors

(4) Despite subsection (1) and subject to section 17, an appointed director continues to hold office until they are re-appointed or their successor is appointed.

Removal — appointed directors

16 (1) An appointed director holds office during good behaviour and may be removed for cause by the Minister.

Removal — elected directors

(2) An elected director may be removed in accordance with the by-laws.

Ceases to be director

17 A director ceases to be a director if they

(a) die;

(b) resign;

(c) become bankrupt;

(d) become a member of an association whose primary purpose is to represent the interests of persons who provide advice on patents or trademarks;

(e) become a member of a governing body or a steering committee of an association referred to in paragraph (d);

(f) are removed from office under section 16;

(g) in the case of an appointed director,

(i) become a licensee, or

(ii) become an employee of a *department*, as defined in section 2 of the *Financial Administration Act*; or

(h) in the case of an elected director,

(i) have a licence that is suspended,

(ii) cease to be a licensee, or

(iii) meet the ineligibility criteria set out in the by-laws.

2018, c. 27, s. 247 “17”; 2014, c. 20, s. 366(E).

Remuneration

18 The College may pay to the directors the remuneration and expenses that are determined in accordance with the by-laws.

Chairperson

19 (1) The Chairperson is to be elected by the Board from among the directors in accordance with the by-laws.

Duties

(2) The Chairperson presides over meetings of the Board and performs any other duties that are assigned to the Chairperson by the by-laws.

Removal

(3) The Board may remove the Chairperson in accordance with the by-laws.

Meetings

20 (1) The Board must hold a meeting at least once every calendar year.

Open to public

(2) Subject to the by-laws, meetings of the Board are open to the public.

Committees, Registrar and Chief Executive Officer

Investigations Committee and Discipline Committee

21 (1) Two committees of the College are established, to be known as the Investigations Committee and the Discipline Committee.

Appointment

(2) The members of each committee are to be appointed by the Board in accordance with the regulations.

Limitation

(3) An individual is not permitted to be a member of either committee if

(a) they are a member of an association whose primary purpose is to represent the interests of persons who provide advice on patents or trademarks; or

(b) they are a member of a governing body or a committee of an association referred to in paragraph (a).

Limitation

(4) An individual is not permitted to be a member of the Discipline Committee and the Investigations Committee at the same time.

2018, c. 27, s. 247 "21"; 2014, c. 20, s. 366(E).

Registrar

22 The Board must appoint a Registrar of the College, who is responsible for the Register of Patent Agents and the Register of Trademark Agents.

2018, c. 27, s. 247 “22”; 2014, c. 20, s. 366(E).

Chief Executive Officer

23 The Board may appoint a Chief Executive Officer, who is responsible for the College’s day-to-day operations.

Powers of Minister and Report

Powers of Minister

24 (1) The Minister may

(a) review the Board’s activities and require the Board to provide reports and information, other than privileged information, to the Minister; or

(b) require the Board to do anything — including to make, amend or repeal a regulation or by-law — that, in the Minister’s opinion, is advisable to carry out the purposes of this Act.

Deemed best interests

(2) Compliance by a director of the Board with a requirement of the Minister is deemed to be in the best interests of the College.

Annual report

25 (1) On or before March 31 of each year, the College must submit to the Minister a report on the College’s activities during the preceding calendar year.

Tabling report

(2) The Minister must cause a copy of the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the day on which the Minister receives it.

Licensees

Patent Agents

Patent agent licence

26 (1) On application, the Registrar must issue a patent agent licence to an individual who meets the requirements under the regulations.

Patent agent in training licence

(2) On application, the Registrar must issue a patent agent in training licence to an individual who meets the requirements under the regulations.

Conditions

(3) A licence issued under this section is subject to any conditions imposed under this Act.

Representation before Patent Office

27 Subject to any restrictions imposed under this Act, a patent agent whose licence is not suspended is entitled to represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office.

Register

28 (1) The Register of Patent Agents must include the following information:

(a) the name and contact information of every patent agent and the name and contact information of any firm of which the patent agent is a member;

(b) for every patent agent, any conditions that are imposed on their licence under this Act and any restrictions that are imposed under this Act on their entitlement to provide representation;

(c) in the case of a patent agent whose licence is suspended, an indication that their licence is suspended and the date on which it was suspended;

(d) for every patent agent, all disciplinary measures imposed on them by the Discipline Committee;

(e) the name of every individual whose patent agent licence or patent agent in training licence was surrendered or revoked; and

(f) any other information required by the regulations or by-laws.

Updated information

(2) The Registrar must ensure that the information included in the Register is updated in a timely manner.

Available to public

(3) The Register must be made available to the public on the College's website in a searchable format.

Information for Commissioner of Patents

(4) The Registrar must provide the Commissioner of Patents, within the time and in the form and manner that are specified by the Commissioner, with the most recent information referred to in paragraph (1)(a), other than information relating to a patent agent whose licence is

suspended.

Trademark Agents

Trademark agent licence

29 (1) On application, the Registrar must issue a trademark agent licence to an individual who meets the requirements under the regulations.

Trademark agent in training licence

(2) On application, the Registrar must issue a trademark agent in training licence to an individual who meets the requirements under the regulations.

Conditions

(3) A licence issued under this section is subject to any conditions imposed under this Act.

2018, c. 27, s. 247 “29”; 2014, c. 20, s. 366(E).

Representation before Office of the Registrar of Trademarks

30 Subject to any restrictions imposed under this Act, a trademark agent whose licence is not suspended is entitled to represent persons in the presentation and prosecution of applications for the registration of trademarks or in other business before the Office of the Registrar of Trademarks.

2018, c. 27, s. 247 “30”; 2014, c. 20, s. 366(E).

Register

31 (1) The Register of Trademark Agents must include the following information:

- (a)** the name and contact information of every trademark agent and the name and contact information of any firm of which the trademark agent is a member;
- (b)** for every trademark agent, any conditions that are imposed on their licence under this Act and any restrictions that are imposed under this Act on their entitlement to provide representation;
- (c)** in the case of a trademark agent whose licence is suspended, an indication that their licence is suspended and the date on which it was suspended;
- (d)** for every trademark agent, all disciplinary measures imposed on them by the Discipline Committee;
- (e)** the name of every individual whose trademark agent licence or trademark agent in training licence was surrendered or revoked; and
- (f)** any other information required by the regulations or by-laws.

Updated information

(2) The Registrar must ensure that the information included in the Register is updated in a timely manner.

Register available to public

(3) The Register must be made available to the public on the College's website in a searchable format.

Information for Registrar of Trademarks

(4) The Registrar must provide the Registrar of Trademarks, within the time and in the form and manner that are specified by the Registrar of Trademarks, with the most recent information referred to in paragraph (1)(a), other than information relating to a trademark agent whose licence is suspended.

2018, c. 27, s. 247 "31"; 2014, c. 20, s. 366(E).

Obligations

Standards of professional conduct and competence

32 A licensee must meet the standards of professional conduct and competence that are established by the code of professional conduct. A licensee who fails to meet those standards commits professional misconduct or is incompetent.

Code of professional conduct

33 (1) The Minister must, by regulation, establish a code of professional conduct for licensees.

Amendment or repeal

(2) Only the Board may, by regulation and with the Minister's prior written approval, amend or repeal the regulations establishing the code.

Professional liability insurance

34 (1) Subject to subsections (2) and (3), a licensee must be insured against professional liability.

Exception — employee of Her Majesty

(2) A licensee who is employed by Her Majesty in right of Canada or a province, or by an agent of Her Majesty in right of Canada or an agent or mandatary of Her Majesty in right of a province, is not required to be insured against professional liability for work done as a licensee within the scope of that employment.

Exception — by-laws

(3) A licensee may be exempted by the by-laws from the application of subsection (1).

Suspension, Revocation and Surrender of Licences

Suspension

35 (1) The Registrar may, in accordance with the by-laws, suspend a licence if the licensee fails to

- (a) pay the annual fee in accordance with the by-laws;
- (b) pay, within the time and in the manner provided for under this Act, any other fee or amount that the licensee is required to pay under this Act;
- (c) provide any information or document in accordance with the by-laws;
- (d) comply with any requirement that is imposed by the by-laws with respect to continuing professional development;
- (e) comply with a condition of their licence that is imposed under this Act;
- (f) comply with any requirement with respect to professional liability insurance that is imposed under this Act; or
- (g) comply with any other requirement that is imposed under the by-laws.

Notification

(2) The Registrar must notify a licensee in writing if their licence is suspended under this section.

Length of suspension

(3) A licence is suspended under this section until the licensee complies with the requirements set out in the by-laws to address the failure that led to the suspension or until the licence is revoked by the Registrar under subsection (4).

Revocation

(4) The Registrar may, in accordance with the by-laws, revoke a suspended licence if it has been suspended under this section for the applicable period of time that is specified in the by-laws.

Surrender of licence

36 The Registrar may, in accordance with by-laws, approve the surrender of a licence on application by a licensee made in accordance with the by-laws.

Investigations

Duty to Investigate

Investigation

37 The Investigations Committee must, on the basis of a complaint or on its own initiative, conduct an investigation into a licensee's conduct and activities if it has reasonable grounds to believe that the licensee has committed professional misconduct or was incompetent.

Notice to licensee

38 The Investigations Committee must give notice, before the conclusion of the investigation and in accordance with the by-laws, of the nature of an investigation to the licensee who is its subject and give the licensee a period of at least 30 days after the date of the notice within which they may make written representations to the Committee.

Complaints

Consideration of complaints

39 The Investigations Committee must consider all complaints received by the College that, in the opinion of the Committee, relate to professional misconduct or incompetence by a licensee.

Conclusion of consideration

40 (1) If, after considering a complaint, the Investigations Committee does not have reasonable grounds to believe that the licensee has committed professional misconduct or was incompetent, the Committee must dismiss the complaint and notify the complainant in writing of the dismissal and the reasons for it.

Limitation

(2) The Investigations Committee is not permitted to disclose privileged information in its notice to the complainant.

Referral

41 With the complainant's consent, the Investigations Committee may refer a complaint that it has dismissed to a body that has a statutory duty to regulate a profession.

Conduct of Investigation

Investigator

42 (1) The Investigations Committee may designate an individual as an investigator to conduct an investigation under the Committee's direction.

Revocation

(2) The Investigations Committee may revoke the designation.

Powers of investigator

43 (1) For the purpose of investigating a licensee's conduct and activities, an investigator may

(a) subject to subsection (3), enter the licensee's business premises at any reasonable time and require the production of any document or other thing that is relevant to the investigation, and examine or copy the document or thing or remove it for examination or copying; and

(b) require the licensee, or a business partner or employee of the licensee or any person employed by the same employer as the licensee, to provide any information that is relevant to the investigation.

Privileged information

(2) An investigator may take any action under subsection (1) with respect to any privileged information, including privileged information contained in a document or other thing, unless the information

(a) is subject to litigation privilege or solicitor-client privilege or the professional secrecy of advocates and notaries;

(b) is not protected by the privilege set out in section 16.1 of the *Patent Act* or section 51.13 of the *Trademarks Act*; and

(c) is not related to a patent, a trademark, a geographical indication or a mark referred to in paragraph 9(1)(e), (i), (i.1), (i.3), (n) or (n.1) of the *Trademarks Act*.

Warrant to enter dwelling-house

(3) If the licensee's business premises are in a dwelling-house, the investigator may enter them only with the occupant's consent or under the authority of a warrant issued under section 44.

Receipt

(4) An investigator may remove a document or other thing from business premises under paragraph (1)(a) only if the investigator gives a person who appears to be in control of the premises a receipt for the document or thing.

2018, c. 27, s. 247 "43"; 2014, c. 20, s. 366(E).

Warrant

44 (1) On the application of an investigator, the Federal Court may issue a warrant authorizing an investigator to do anything set out in subsection (2) if the Court is satisfied by information on oath that

(a) there are reasonable grounds to believe that a licensee has committed professional misconduct or was incompetent;

(b) there are reasonable grounds to believe that there are documents or things in a place, including a dwelling-house, that are relevant to an investigation into the licensee's conduct or activities; and

(c) the warrant is necessary because

(i) there are reasonable grounds to believe that the matter is urgent and that it would be impractical to carry out the investigation using only other investigative procedures,

(ii) there are reasonable grounds to believe that the powers conferred by section 43 have been or are likely to be ineffective,

(iii) there are reasonable grounds to believe that information in the documents or other things meets all the conditions set out in paragraphs 43(2)(a) to (c), or

(iv) section 43 does not authorize the investigator to enter the place.

Powers

(2) A warrant may authorize an investigator, subject to any conditions set out in the warrant, to

(a) enter and search the place referred to in paragraph (1)(b);

(b) examine or copy any document or other thing that is relevant to the investigation and that is in the place, including any document or thing that contains information that is privileged; and

(c) remove from the place any document or other thing that is relevant to the investigation, including any document or thing that contains information that is privileged.

Receipt

(3) An investigator who removes a document or other thing from a place under the warrant must give a receipt for the document or thing to a person who appears to be in control of the place.

Use of force

(4) In executing a warrant, an investigator may use force only if they are named in the warrant, are expressly authorized by it to use force and are accompanied by a peace officer.

***Ex parte* application**

(5) An application under subsection (1) may be made *ex parte*.

Order — document or information

45 (1) On the application of an investigator, the Federal Court may make an order requiring a person to produce any document or other thing for examination, copying or removal by an investigator or to provide any information to an investigator, subject to any conditions that are

specified in the order, if the Court is satisfied by information on oath that

(a) there are reasonable grounds to believe that a licensee has committed professional misconduct or was incompetent;

(b) there are reasonable grounds to believe that the document, thing or information is relevant to an investigation into the licensee's conduct or activities; and

(c) the order is necessary because

(i) there are reasonable grounds to believe that the matter is urgent and that it would be impractical to carry out the investigation using only other investigative procedures,

(ii) there are reasonable grounds to believe that the powers conferred by section 43 have been or are likely to be ineffective,

(iii) paragraph 43(1)(b) does not authorize the investigator to require the person to provide the information, or

(iv) there are reasonable grounds to believe that the document or thing contains information that meets, or the information meets, all the conditions set out in paragraphs 43(2)(a) to (c).

Privileged information

(2) An order under subsection (1) may be made with respect to any privileged information, including privileged information contained in a document or other thing.

***Ex parte* application**

(3) An application under subsection (1) may be made *ex parte*.

Receipt

(4) An investigator who removes a document or other thing produced under an order must give a receipt for the document or thing to the person who produces it.

Sealing and notification — legal counsel

46 (1) If an investigator requires the production of a document or other thing — or is about to examine, copy or remove it — under section 43, under a warrant issued under section 44 or under an order made under section 45, and the document or thing is in the possession of legal counsel or a firm of legal counsel,

(a) the investigator must not examine or copy the document or thing;

(b) legal counsel or a representative of the firm must place the document or thing in a package and seal and identify the package in accordance with the regulations;

(c) the investigator must retain and remove the package once it is sealed; and

(d) legal counsel or the firm must take all reasonable steps

(i) to notify the holder of a privilege with respect to the document or thing within the period prescribed by regulation, or

(ii) if the holder cannot be located within that period, to immediately notify the law society of the applicable province or the Chambre des notaires du Québec, as the case may be.

Objection

(2) If an investigator requires the production of a document or other thing — or is about to examine, copy or remove it — under section 43, under a warrant issued under section 44 or under an order made under section 45, a person in possession of the document or thing may object to its production, examination, copying or removal on one or more of the following grounds:

(a) the document or thing is not relevant to the investigation;

(b) if the investigator is acting under section 43, the document or thing contains information that meets all the conditions set out in paragraphs 43(2)(a) to (c);

(c) if the investigator is acting under the authority of a warrant or order, the production, examination, copying or removal of the document or thing is not authorized by the warrant or order.

Objection — sealing and notification

(3) If the person makes an objection under subsection (2),

(a) the investigator must not examine or copy the document or thing;

(b) the person must place the document or thing in a package and seal and identify the package in accordance with the regulations;

(c) the investigator must retain and remove the package once it is sealed; and

(d) if the person is not the owner of the document or thing or the holder of a privilege with respect to it, the person must immediately notify the owner or holder of the objection.

Application to Federal Court

(4) The legal counsel or firm referred to in subsection (1), the person who makes the objection under subsection (2) or any other person who has a right or interest in the document or other thing that is sealed may apply to the Federal Court in accordance with the regulations for a determination of whether any of the grounds set out in paragraphs (2)(a) to (c) apply with respect to the document or thing.

Handling of sealed package

(5) The sealed package is to be retained, opened or returned only in accordance with the regulations.

Return or application for retention order

47 (1) An investigator who, as a result of the application of any of sections 43 to 45 or the regulations referred to in subsection 46(5), is in possession of a document or other thing that is not in a sealed package must, within the applicable period determined in accordance with the regulations made under paragraph 76(1)(i), return the document or thing or apply to the Federal Court for a retention order under subsection (2).

Retention order

(2) On application by the investigator, the Federal Court may order that the document or thing may be retained by the investigator until no later than the conclusion of the investigation or, if an application is made to the Discipline Committee under subsection 49(1), until the final disposition of the proceedings before the Discipline Committee and any appeals. If the Court does not order that the document or thing be retained, the document or thing must be returned as soon as feasible.

Application for return

48 (1) A person who has a right or interest in a document or other thing that, as a result of the application of any of sections 43 to 45 or the regulations referred to in subsection 46(5), is in the possession of an investigator and that is not in a sealed package may, on giving notice to the Investigations Committee, apply to the Federal Court for an order that the document or thing be returned or that any copies of the document or thing made by or on behalf of the Committee or an investigator be destroyed.

Order

(2) The Court may order, on any conditions that it considers appropriate,

(a) that the document or thing be returned; and

(b) that any copies of the document or thing made by or on behalf of the Investigations Committee or an investigator be destroyed, if the removal of the document or thing by an investigator was not authorized under this Act.

Conclusion of Investigation

Application or dismissal

49 (1) If, at the conclusion of an investigation, the Investigations Committee is satisfied that there is sufficient evidence that the licensee has committed professional misconduct or was incompetent, the Committee must apply to the Discipline Committee for a decision as to whether the licensee committed professional misconduct or was incompetent. Otherwise, the Investigations Committee must dismiss the matter.

Written representations

(2) The Investigations Committee must consider any written representations made by the licensee under section 38 before the conclusion of the investigation.

Notice of application or dismissal

(3) The Investigations Committee must, in writing, notify the licensee and any complainant of the application or dismissal and, in the case of dismissal, the reasons for it.

Limitation

(4) The Investigations Committee is not permitted to disclose privileged information in its notice to the licensee or complainant.

Withdrawal of application

50 The Investigations Committee may withdraw an application to the Discipline Committee only if the Investigations Committee is no longer satisfied that there is sufficient evidence that the licensee has committed professional misconduct or was incompetent.

Disciplinary Proceedings

Oral hearing

51 The Discipline Committee must hold an oral hearing for every application made by the Investigations Committee in order to determine whether a licensee committed professional misconduct or was incompetent.

Hearings open to public

52 Except to the extent necessary to protect privileged or confidential information, the hearings of the Discipline Committee are open to the public.

Parties

53 The Investigations Committee and the licensee are parties to the application.

Right of complainant to make submissions

54 If the application results from a complaint, the complainant is entitled to make oral and written submissions to the Discipline Committee.

Powers

55 (1) The Discipline Committee has the power

- (a) to summon and enforce the appearance of persons and compel them to give oral or written evidence on oath and to produce any document or other thing that the Committee considers necessary to decide the application, in the same manner and to the same extent as a superior court of record;
- (b) to administer oaths; and
- (c) to accept any evidence, whether admissible in a court of law or not.

Privileged information

(2) The Discipline Committee may take any action referred to in subsection (1) with respect to information that is privileged.

Powers before decision

56 (1) Before making a decision under section 57, the Discipline Committee may take any action referred to in any of paragraphs 57(3)(a) to (c) if the Discipline Committee is satisfied that it is necessary for the protection of the public.

Action is provisional

(2) Any action taken under subsection (1) is provisional and ceases to have effect

- (a) after the decision on the application is made, unless the action is confirmed in the decision; or
- (b) if the application is withdrawn.

Decision on application

57 (1) After the hearing of an application, the Discipline Committee must decide whether the licensee has committed professional misconduct or was incompetent.

No professional misconduct or incompetence

(2) If the Discipline Committee decides that the licensee did not commit professional misconduct or was not incompetent, the Committee must dismiss the application.

Professional misconduct or incompetence

(3) If the Discipline Committee decides that the licensee has committed professional misconduct or was incompetent, the Committee may, in its decision,

- (a) impose conditions on a licence of the licensee;
- (b) impose restrictions on the licensee's entitlement to represent persons under section 27 or 30;
- (c) suspend a licence of the licensee for a period of not more than two years or until specified conditions are met, or both;

- (d) revoke a licence of the licensee;
- (e) reprimand the licensee;
- (f) require the licensee to pay a penalty of not more than \$10,000 to the College;
- (g) require the licensee to pay to the College or any complainant all or a portion of the costs incurred by them during the application before the Committee;
- (h) require the licensee to reimburse all or a portion of the fees or disbursements paid to the licensee by a client; and
- (i) take or require any other action that the Committee considers appropriate in the circumstances.

Decision and reasons in writing

(4) The Discipline Committee must give its decision and the reasons for it in writing.

Decision and reasons available to public

(5) A decision and the reasons for it, other than any privileged and confidential information contained in the decision or reasons, must be made available to the public on the College's website.

Notice to Registrar

58 (1) The Discipline Committee must provide a copy of every decision made under section 57 to the Registrar.

Notice to licensees — revocation or suspension

(2) The Registrar must notify all licensees of every decision made under subsection 57(3) to revoke or suspend a licence.

Notice to licensees — dismissal of application

(3) The Registrar must, if requested by the licensee who was the subject of an application to the Discipline Committee that was dismissed, notify all licensees of the dismissal.

Appeal to Federal Court

59 A party to an application may appeal a decision of the Discipline Committee made under section 57 to the Federal Court within 30 days after the day on which the decision is made.

Filing of decision in Federal Court

60 (1) The College may file in the Federal Court a certified copy of a final decision of the Discipline Committee made under section 57 that is not subject to appeal.

Effect of filing

(2) On the certified copy being filed, the decision becomes and may be enforced as an order of the Federal Court.

Suspension lifted if conditions met

61 (1) If the Discipline Committee suspends a licence under paragraph 57(3)(c) until specified conditions are met, the Committee must, on application by the licensee, lift the suspension if the Committee is satisfied that the conditions are met.

***Ex parte* application**

(2) An application under subsection (1) may be made *ex parte*.

Notice to Registrar

(3) The Discipline Committee must provide written notice to the Registrar as soon as feasible after it lifts the suspension.

Revocation by Registrar

(4) The Registrar may, at any time after the second anniversary of the day on which a licence is suspended under paragraph 57(3)(c) until specified conditions are met and after giving at least 30 days' written notice to the licensee, revoke the licence if the suspension has not been lifted under subsection (1).

Notification

(5) The Registrar must notify the licensee in writing as soon as feasible after their licence is revoked.

Amounts paid as penalty

62 Amounts paid to the College as a penalty under paragraph 57(3)(f) may be expended only for the purpose of supporting the mental health of licensees.

Rules of procedure

63 The Discipline Committee may make rules respecting the practice and procedure before it and rules for carrying out its work and for the management of its internal affairs.

Confidentiality

No waiver

64 For greater certainty, the disclosure of privileged information to the College, including to the Investigations Committee or to the Discipline Committee, or to an investigator does not constitute a waiver of the privilege.

No disclosure

65 (1) Subject to subsection (2), the following persons must not disclose a complaint received by the College or any privileged or confidential information obtained in the course of an investigation or proceeding under this Act:

- (a) a current or former director of the Board;
- (b) a current or former member of the Investigations Committee or of the Discipline Committee;
- (c) the Registrar or a former Registrar;
- (d) a current or former investigator;
- (e) a current or former officer, employee, agent or mandatary of the College;
- (f) a person who is or has been engaged by the College.

Exceptions

(2) A person referred to in subsection (1) may disclose a complaint or information referred to in that subsection if

- (a) the disclosure is for the purpose of permitting the exercise of powers or the performance of duties or functions under this Act, including in connection with a proceeding under this Act;
- (b) the information is available to the public;
- (c) the disclosure is to the person's legal counsel;
- (d) the person has obtained the written consent of all persons whose rights or interests might reasonably be affected by the disclosure; or
- (e) there are reasonable grounds to believe that
 - (i) there is a significant risk of harm to any person if the disclosure is not made, and
 - (ii) making the disclosure is likely to reduce the risk.

Testimony and production

(3) A person referred to in subsection (1) is not required, in any proceeding other than a proceeding under this Act,

- (a) to give testimony on a complaint received by the College or on any privileged or confidential information that the person is prohibited from disclosing under that subsection; or
- (b) to produce such a complaint or any document or other thing that contains any such privileged or confidential information.

Application for order authorizing disclosure

66 (1) The College may apply to the Federal Court for an order authorizing the disclosure of confidential information that would be prohibited by section 65 to a law enforcement agency or other public authority.

Limitation

(2) The Court must not make an order if the information is privileged or if it was obtained by the College as a result of a person making, in the course of an investigation or proceeding under this Act, an oral or written statement that may tend to incriminate the person.

Documents and other things

(3) An order that authorizes the disclosure of information may also authorize the delivery of documents or other things that are in the possession of the College and that relate to the information.

Prohibitions and Offences

Claiming to be patent agent

67 A person, other than a patent agent whose licence is not suspended, must not

- (a)** use the title “patent agent” or a variation or abbreviation of that title, or any words, name or designation, in a manner that leads to a reasonable belief that the person is a patent agent; or
- (b)** represent themselves, in any way or by any means, to be a patent agent.

Claiming to be trademark agent

68 A person, other than a trademark agent whose licence is not suspended, must not

- (a)** use the title “trademark agent” or a variation or abbreviation of that title, or any words, name or designation, in a manner that leads to a reasonable belief that the person is a trademark agent; or
- (b)** represent themselves, in any way or by any means, to be a trademark agent.

2018, c. 27, s. 247 “68”; 2014, c. 20, s. 366(E).

Offence and punishment — section 67 or 68

69 (1) Every person who contravenes section 67 or 68 is guilty of an offence and liable on summary conviction to a fine of not more than

- (a)** \$25,000 for a first offence; and
- (b)** \$50,000 for a second or subsequent offence.

Imprisonment precluded

(2) If a person is convicted of an offence under subsection (1), no imprisonment is to be imposed as punishment for the offence or in default of payment of any fine imposed as punishment in relation to the offence.

Due diligence

(3) A person is not to be found guilty of an offence under subsection (1) if they establish that they exercised due diligence to prevent the commission of the offence.

Unauthorized representation before Patent Office

70 (1) Subject to subsection (2) and the regulations, a person must not represent another person in the presentation and prosecution of applications for patents or in other business before the Patent Office.

Exception

(2) Subsection (1) does not apply to a patent agent whose licence is not suspended, to legal counsel who is providing legal services as authorized by law or to a person who is part of a class of persons exempted under the regulations.

Unauthorized representation before Office of the Registrar of Trademarks

71 (1) Subject to subsection (2) and the regulations, a person must not represent another person in the presentation and prosecution of applications for the registration of trademarks or in other business before the Office of the Registrar of Trademarks.

Exception

(2) Subsection (1) does not apply to a trademark agent whose licence is not suspended, to legal counsel who is providing legal services as authorized by law or to a person who is part of a class of persons exempted under the regulations.

2018, c. 27, s. 247 "71"; 2014, c. 20, s. 366(E).

Regulations

72 The Governor in Council may make regulations exempting an activity, a class of persons or an activity that is performed by a class of persons from the application of subsection 70(1) or 71(1).

Offence and punishment — section 70 or 71

73 (1) Every person who contravenes section 70 or 71 is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both; and

(b) for a second or subsequent offence, to a fine of not more than \$50,000 or to imprisonment for a term of not more than six months, or to both.

Due diligence

(2) A person is not to be found guilty of an offence under subsection (1) if they establish that they exercised due diligence to prevent the commission of the offence.

Injunction

74 On application by the College, if the Federal Court is satisfied that a contravention of section 67, 68, 70 or 71 is being or is likely to be committed, the Court may grant an injunction, subject to any conditions that it considers appropriate, ordering any person to cease or refrain from any activity related to that contravention or ordering the person to take any measure that the Court considers appropriate.

By-laws and Regulations

By-laws

75 (1) The Board may make by-laws respecting any matter necessary to carry on the activities of the College, including by-laws

- (a)** respecting the election of directors, the terms of elected directors and their removal;
- (b)** establishing ineligibility criteria for the purposes of subparagraphs 14(f)(ii) and 17(h)(iii);
- (c)** respecting the filling of vacancies caused by the temporary absence or incapacity of elected directors;
- (d)** respecting the remuneration and expenses of directors;
- (e)** respecting the election and removal of the Chairperson of the Board and the Chairperson's duties;
- (f)** respecting the duties and functions of the Board and the meetings of the Board, including quorum;
- (g)** respecting the conflicts of interest of directors, members of the Investigations Committee and members of the Discipline Committee;
- (h)** respecting the duties and functions of the Registrar;
- (i)** respecting the maintenance of the Register of Patent Agents and the Register of Trademark Agents and information that is required to be included in those Registers;
- (j)** respecting the classes of firm in connection with which a licensee may work as a licensee;

- (k) fixing the annual fee — or the manner of determining the annual fee — that is to be paid by licensees;
- (l) fixing any other fee — or the manner of determining any other fee — that is to be paid by licensees, including any fee for the late payment of another fee;
- (m) establishing the time within which and the manner in which any fees or other amounts are to be paid;
- (n) respecting the information and documents that licensees must provide to the College;
- (o) respecting continuing professional development requirements for licensees;
- (p) respecting requirements for licensees to do *pro bono* work;
- (q) respecting the professional liability insurance that licensees are required to maintain;
- (r) exempting licensees from the requirement to be insured against professional liability;
- (s) respecting the suspension and revocation of licences under section 35;
- (t) respecting the surrender of licences and applications for a surrender; and
- (u) respecting the notification of licensees under section 38.

Different treatment

(2) The by-laws made under paragraphs (1)(j) to (u) may distinguish among classes of licensees or licences.

For greater certainty

(3) For greater certainty, by-laws made under paragraphs (1)(j) to (u) are regulations for the purposes of the *Statutory Instruments Act*.

2018, c. 27, s. 247 “75”; 2014, c. 20, s. 366(E).

Regulations — Governor in Council

76 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including regulations

- (a) respecting the Investigations Committee, the Discipline Committee and other committees of the College, including the composition of those committees, the eligibility for membership in them, the terms of the members and their removal;
- (b) respecting the reports and information that must be provided or submitted to the Minister;
- (c) respecting conditions to be imposed on licences or classes of licences;

- (d) respecting the requirements that individuals or classes of individuals must meet under section 26 or 29, including requirements in relation to qualifying examinations and in relation to fees with respect to qualifying examinations;
- (e) respecting what constitutes representation for the purposes of sections 27 and 70 or for the purposes of sections 30 and 71;
- (f) respecting restrictions on the entitlement of licensees or classes of licensees to provide representation under section 27 or 30;
- (g) respecting the information to be included in the Register of Patent Agents or the Register of Trademark Agents;
- (h) respecting the sealing of documents and other things and objections under section 46, including in relation to notifications, the identification of sealed packages, applications to the Federal Court and the retention, opening and return of sealed packages; and
- (i) respecting the determination of the applicable periods referred to in subsection 47(1).

Authorization

(2) Regulations made under paragraphs (1)(c), (d), (f) and (g) may authorize the College to make by-laws with respect to all or part of the subject matter of the regulations and, for greater certainty, those by-laws are regulations for the purposes of the *Statutory Instruments Act*.

Regulations — sealed packages

(3) Regulations made under paragraph (1)(h) may authorize the Federal Court to make orders respecting the retention, opening or return of sealed packages.

2018, c. 27, s. 247 “76”; 2014, c. 20, s. 366(E).

Regulations prevail

77 The regulations prevail over the by-laws to the extent of an inconsistency or conflict between them.

Transitional Provisions

Definition of *coming-into-force day*

78 In sections 79 to 86, ***coming-into-force day*** means the day on which section 13 comes into force.

Initial organization of board

79 (1) Before the coming-into-force day, the College’s board of directors is to be composed of five directors appointed by the Minister of Industry.

Appointment on recommendation

(2) Two of the directors are to be appointed on the recommendation of the Intellectual Property Institute of Canada, with one to be an individual whose name is on the register kept under section 15 of the *Patent Act* and the other to be an individual whose name is on the list of trademark agents kept under section 28 of the *Trademarks Act*.

Chairperson

(3) The Minister of Industry must designate a Chairperson from among the directors.

Deemed election or appointment

(4) The directors appointed on the recommendation of the Intellectual Property Institute of Canada who hold office on the coming-into-force day are deemed to have been elected under subsection 13(5) on that day, for a term that ends on the earlier of the day on which the first election is held under that subsection and the first anniversary of the coming-into-force day. The other directors who hold office on the coming-into-force day are deemed to have been appointed under subsection 13(3) on that day for a term that ends on the first anniversary of that day.

For greater certainty

(5) For greater certainty, section 17 applies as of the coming-into-force day with respect to directors who are deemed to be elected or appointed under subsection (4).

Removal for cause

(6) Before the coming-into-force day, a director appointed under subsection (1) may be removed for cause by the Minister of Industry.

Remuneration

(7) Before the coming-into-force day, the College may pay the remuneration and expenses that it fixes to the directors.

Reference to the Board

(8) Any reference in this Act to the Board is, until the coming-into-force day, a reference to the board of directors as constituted under this section.

2018, c. 27, s. 247 “79”; 2014, c. 20, s. 366(E).

Confirmation of by-laws

80 Any by-laws that are made by the Board before the first election is held under subsection 13(5) are repealed on the 180th day after the day on which the first election is held, unless they are confirmed by a resolution of the Board, as it is constituted after that election, before that 180th day.

College not a Crown Corporation

81 Despite Part X of the *Financial Administration Act*, the College is not a *Crown corporation* within the meaning of that Act.

Deemed issued patent agent licence

82 An individual is deemed to have been issued a patent agent licence under subsection 26(1) on the coming-into-force day if their name was, on the day before the coming-into-force day, on the register kept under section 15 of the *Patent Act*.

Deemed issued trademark agent licence

83 An individual is deemed to have been issued a trademark agent licence under subsection 29(1) on the coming-into-force day if their name was, on the day before the coming-into-force day, on the list of trademark agents kept under section 28 of the *Trademarks Act*.

2018, c. 27, s. 247 “83”; 2014, c. 20, s. 366(E).

Provision of information — patents

84 The Commissioner of Patents may, for the purpose of enabling the College or the Registrar to exercise their powers or perform their duties and functions under this Act, provide the Registrar with information relating to an individual or firm whose name is or was on the register kept under section 15 of the *Patent Act*, an individual who has sat for the qualifying examination for patent agents or an individual who has notified the Commissioner in writing of their intention to sit for the examination, including

- (a) the individual’s or firm’s name and contact information and, in the case of an individual, the name of any firm of which they are a member;
- (b) whether the Commissioner has refused to recognize the individual or firm as a patent agent or attorney under section 16 of the *Patent Act*;
- (c) any complaints against the individual or firm; and
- (d) the results of any qualifying examinations for patent agents.

Provision of information — trademarks

85 The Registrar of Trademarks may, for the purpose of enabling the College or the Registrar to exercise their powers or perform their duties and functions under this Act, provide the Registrar with information relating to an individual or firm whose name is or was on the list of trademark agents kept under section 28 of the *Trademarks Act*, an individual who has sat for the qualifying examination for trademark agents or an individual who has notified the Registrar of Trademarks in writing of their intention to sit for the examination, including

- (a) the individual’s or firm’s name and contact information and, in the case of an individual, the name of any firm of which they are a member;
- (b) any complaints against the individual or firm; and

(c) the results of any qualifying examinations for trademark agents.

2018, c. 27, s. 247 “85”; 2014, c. 20, s. 366(E).

Regulations — transitional matters

86 Without limiting the generality of section 76, the Governor in Council may make regulations respecting transitional matters relating to

(a) qualifying examinations for patent agents and trademark agents;

(b) the requirements to be met under section 26 by an individual who has sat for the qualifying examination for patent agents before the coming-into-force day or who has, before that day, notified the Commissioner of Patents in writing of their intention to sit for the examination but whose name was not, on the day before that day, on the register kept under section 15 of the *Patent Act*; and

(c) the requirements to be met under section 29 by an individual who has sat for the qualifying examination for trademark agents before the coming-into-force day or who has, before that day, notified the Registrar of Trademarks in writing of their intention to sit for the examination but whose name was not, on the day before that day, on the list of trademark agents kept under section 28 of the *Trademarks Act*.

2018, c. 27, s. 247 “86”; 2014, c. 20, s. 366(E).

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