

## BOARD POLICIES

NAME OF POLICY	No. 1 - How CPATA works – Its Principled Approach to Regulation and Governance		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS	By-law		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
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## How CPATA works - Its Principled Approach to Regulation and Governance

### 1. Introduction and Overview

The Government of Canada enacted the College of Patent and Trademark Agents Act at the end of 2018, as part of its National Innovation Strategy. In 2019 they appointed an interim Board to get the organization up and running. In the spring of 2020, the Board appointed a CEO to further that work.

This is our plan for operating a new, state of the art public interest regulator of the intellectual property professions. It is intended to assist those involved – Board and committee members, CEO and staff, adjudicators, licensees and the public – to understand how the College intends to work. Because this form of operation differs from many 'self governing' regulators of professions in Canada and elsewhere, documenting the form of operation is crucial. It will ensure we start properly and maintain this form of operation instead of defaulting to other structures that some might assume apply because they are used by other regulators.

This is part of a suite of documents providing parameters for how we operate. This document knits together our approach, while other documents explain the full range of College operations<sup>1</sup>. This document is not authoritative; the authoritative documents are the statute, regulations, by-laws and policies.

### What is CPATA?

The College is the regulator of Patent and Trademark agents in Canada. If someone wants to hold themselves out as a patent or trademark agent, or if they want to act on behalf of clients in dealing with the Canadian Intellectual Property Office (where patents and trademarks are registered), they must be a licensee of the College. It is unique as a national regulator; there are no provincial regulators of patent and trademark agents<sup>2</sup>.

### What does CPATA do?

The Act says,

The purpose of the College is to regulate patent agents and trademark agents in the public interest, to enhance the public's ability to secure the rights provided for under the [Patent Act](#) and the [Trademarks Act](#).<sup>3</sup>

In practice that means:

- We ensure people entering the profession meet our standards for professional competence and ethics. To do that we:
  - o Set competency standards for those who want to be licensed as an agent
  - o Require trainee agents to work with an experienced agent for two years, and
  - o Pass an examination to ensure the applicant meets our entry level competence standards
- We then issue a patent or trademark license and require that the license be renewed each year. License fees fund our operations.
- We set ethical and practice standards for agents and enforce them through a variety of techniques, including advisory and support services, and a complaints and discipline system if necessary.
- Once fully operational, we will require licensees to have mandatory professional liability insurance, and we will require them to take appropriate steps to demonstrate they remain competent.
- We also to plan to work with the profession to encourage equity and diversity in the profession, to make the services of agents more widely available to support innovation in

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<sup>1</sup> Regulatory policies (including registration, investigations, discipline, quality assurance, professional development), operational and management policies, Board governance policies (including Board processes, values, roles, relationship with CEO, CEO, Board and committee evaluation, planning [strategic and operational], budgeting, risk management, external [stakeholder and government] relations, public and profession consultations

<sup>2</sup> About 1/3 of the profession are lawyers and are therefor regulated in that sphere, an overlap the College recognizes and will address to avoid confusion for the public and licensees, or any gaps in public protection.

<sup>3</sup> s. 6

the Canadian economy, and to support innovation in the way patent and trademark agents do their work, and the way intellectual property rights are protected in Canada.

### Who's In Charge?

The College has a Board of Directors, committees, and a CEO/Registrar and staff.

The Board has 7 members: 4 are appointed by the Federal Minister of Innovation, Science and Industry; the remaining three directors are elected from among the roughly 2,500 licensees.

The Board of Directors has overall responsibility to see that the College performs the role described in the Act. They do so by instructing the CEO, and then monitoring what the College is doing, and most important, what the College is accomplishing.

The Board gives its primary instructions by enacting by-laws and policies; it adopts annual business plans and budgets, and a strategic plan and organizational values. The by-laws sort out who does what, and generally flesh out the business and governance rules. The Board has enacted three core policies that set the tone for what we do and how we do it: Regulatory Objectives, Regulatory Standards and Regulatory Principles. They are described in more detail later in this document.

The Board's instructions are carried out by the CEO/Registrar and staff, and by 5 committees.

Most of our work is done by the CEO/Registrar and staff. They handle all interactions with licensees, trainees and members of the public. Later in this document we describe that work in more detail.

The staff and Board are assisted by five committees:

The Registration Committee – we want to ensure our regulatory decisions are fair. If the staff make a decision and a trainee or licensee disagrees, they can appeal that decision to the Registration Committee.

The Investigation and Discipline Committees – when concerns arise about whether an agent is acting ethically or competently, these concerns cannot be resolved or addressed at an early stage, and there is evidence of professional misconduct or professional incompetence, these concerns will be investigated and referred to the Investigations Committee. If appropriate, that Committee will then refer a complaint to the Discipline Committee for formal adjudication.

The Audit and Risk Committee – assists the Board by working with staff in dealing with financial management, and the assessment and management of risks more generally.

The Governance and Nominating Committee – assists the Board in its succession role by working with government on nominating Board members for appointment, overseeing the process for electing Board members from among the licensees, and nominating committee members to be appointed by the Board.

We may set up additional committees as we embark on new activities or deal with new issues.

### **How we are different?**

CPATA is a brand-new regulator. It has not grown out of another organization. We have built a new regulator from the ground up.

Most of our Board are directors who are not licensees. This flows from our mandate to protect the public interest. It brings a wide range of skills to the board table and keeps us in touch with our public interest mandate and enhances the transparency of our work.

We are results oriented. The CEO has the responsibility to operate regulatory programs, and then report to the Board. Together they determine whether those programs are creating the outcomes specified by the Board.

We are driven by a set of policies designed to result in high quality regulation. We have studied the best-in-class regulators in the world and modelled our regulatory practices and operations after those regulators.

We are professionally managed. Regulating the profession is important work and requires staff with the appropriate experience and expertise in professional services regulation.

We are committed to consulting with stakeholders, so we understand the impact and results of our plans or regulatory decisions, including the policies we put in place.

We are national; most regulators of professions in Canada are provincial/territorial. Because patents and trademarks are a federal government responsibility, so too is the regulation of the agents licensed to deal with the CPIO.

We are virtual – our primary mode of doing business is virtual. As a modern regulator, we do not plan to have a central office, and most of our meetings will be held on-line.

**When will this happen?**

The Act was passed in 2018. Since 2019 the Board, and starting in 2020 the CEO, have been planning for the organization. We expect to be 'start up functional' in the spring of 2021. And we expect it will take about four more years before all the planned aspects of our work are up and running.

**2. The governance model**

The chosen governance model is a policy governance board with the CEO/Registrar as its sole employee.

In the College, the CEO and Registrar roles are combined in one person, the CEO. The CEO is responsible for leadership, management and operations. The Registrar is responsible for maintaining regulatory policies and processes, and for initial regulatory decision-making.

In keeping with the governance model having the CEO as the only employee, the Registrar function will be vested in the CEO, and delegated by the CEO to a Deputy Registrar, and as necessary to employees or contractors. Registrar decisions will be reviewed under the policies or by-laws.

The Board and CEO will build the approach described in this document into their work.

**How the work gets done**

In what follows, we describe the various actors in the College: the Board, Committees, CEO and staff, and how they are knit together by various enactments. Before looking at those details, we describe more generally how it is that the work of the College gets done.

The roles of the Board, committees and staff are found in the Act, the Regulations, the By-laws, governance policies enacted by the Board, and regulatory policies adopted by the Registrar. Taken together, these define how the work is accomplished, and who does it. Publication of all policy documents is an essential requirement so the public and licensees are aware of how we do our work, make decisions and change in response to new circumstances.

The Act sets up CPATA and creates its mandate. It describes in some detail the keeping of the official registers of licensees, and the structures (including two statutory committees) and processes for dealing with complaints and hearings about professional conduct.

The rest of the work of the regulator is within the control of the Board and the Registrar.

The By-laws set out the details of corporate governance, such as the responsibilities of the Board, CEO and Registrar, the way Directors are appointed and elected, and the mandates for the operation of the organization, including finances.

By-laws and Policies define the mandates and processes for regulatory programs, including entry to licensure, and continuing licensure. Three key Board policies describe:

- what is to be accomplished by the College (the Regulatory Objectives),
- the activities of the College and how we carry out those programs (the Regulatory Standards), and
- How the College makes regulatory decisions (the Regulatory Principles).

Together, these policies describe what to do, and provide a 'code of conduct' for our operation.

The College will start with 4 key programs/activities:

1. Admissions/Registrations
2. Complaints and Discipline
3. Mandatory Professional Liability Insurance
4. Governance, including elections and appointments to the Board, and appointments to Committees

After these programs are functioning (although more program development may be planned) work will begin on additional programs such as:

5. Innovation and IP Practice
6. Continuing fitness
7. Quality Assurance reviews
8. Practice Standards development and advice
9. Continuing competence and professional development
10. Pro bono programs

A high-level implementation schedule is found at Appendix 3.

The By-laws mandate three additional committees: the Nominating and Governance Committee, the Registration Committee, and the Audit and Risk Committee. The By-laws describe how these

committees are appointed, how vacancies might occur and how they are filled. There will be specific competencies required by committee members, as well as a mix of public representatives and licensees. Details of committee requirements will be in the published Terms of Reference.

Using this documentation as guidance, the work is allocated as follows:

The CEO/Registrar and staff

- carry primary responsibility for regulatory transactions with trainees, licensees, and the public. This includes registration of trainees and licensees, all record keeping including the Register of agents, the administration and content of competency assessments, annual renewal of licenses including payments, and receiving complaints and statements of concern about the conduct of licensees or trainees. Registration decisions can be appealed to the Registration Committee, at which the College may be represented by staff or by counsel instructed by the CEO/Registrar or delegate. Complaints that can't be resolve or addressed at an early stage and raise issues of possible misconduct or incompetence will be referred to the Investigations Committee, under the appropriate guidance documents. The Investigations Committee will decide whether to refer to the Discipline Committee for adjudication;
- support the Board in its oversight, policy direction, stakeholder relations (government, industry and the profession) and performance measurement (regulatory outcomes and governance);
- administer Board and committee meetings, providing agendas, notices, briefing materials and minutes, researching policy, operational issues and best practices throughout the world, and providing insight and advice;
- administer elections for Board positions, and recruitment for committee positions, subject to oversight by the Nominating and Governance Committee.
- administer the organization, including all operational policy and operations related to business planning and finance, risk analysis (enterprise and regulatory), information technology, human resource management and compliance with statutory requirements including privacy, access to information, bilingualism, equity and diversity and employment;
- set operational policy for all programs operated by the College;
- are responsible for maintenance of the College's web and social media presence, communications strategy and execution in dealing with the public, stakeholders, and the profession including various forms of consultations.

The Investigations and Discipline Committees are responsible for their roles as described in the Act, Regulations, By-laws and policies

The Nominating and Governance Committee assists the Board by carrying out the role described for it relating to board and committee appointments and the holding of elections for Board positions.

The Audit and Finance Committee assists the Board by reviewing management's budgets, financial plans and risk analyses.

The Registration Committee hears appeals from registrants, trainees and licensees who disagree with a decision of the Registrar.

The Board oversees the operation of the College, approves strategic plans, business plans and budgets, evaluates the performance of itself and committees, considers reports describing the extent to which programs of the College are achieving the desired outcomes, appoints and supervises the CEO and evaluates the performance of the CEO. In short, the Board ensures that we 'protect the public interest'.

What does it mean to protect the public interest? There are two important parts to this mandate. First, we must ensure agents are competent and ethical in delivering their services. This protects the public who use these services. Second, we ensure in providing their services the profession upholds the system that protects intellectual property rights. We will do that by ensuring continuing competence, promoting innovation in the delivery of patent and trademark agent services and the operation of the government's intellectual property programs, promoting equity and diversity within the profession, and promoting programs that make IP services accessible to Canada's innovators.

In combination, these assurances promote the reputation of the profession and the College as worthy of trust and respect.

### **3. Detailed Role Descriptions**

In this section we describe in greater detail the roles of the various actors in the College.

#### **3.1 Who makes policy?**

CPATA's Board has determined it will be a Policy Board. Its authority and key functions are elaborated in the By-laws and can be summarized as: we will make policy decisions that direct the organization, the CEO and our committees.

We use the term 'policies' to refer to different kinds of documents, enacted by different bodies within the College.



**Board Policies**

Policy directions will most often involve articulating an outcome that will require resources to achieve a particular goal. The Board then monitors the College's compliance with those policies, and the achievement of those goals and outcomes. Our governance policies guide how we operate the College. Some policies – like the Regulatory Objectives – set goals of what the College is to achieve.

Examples of Board Policies that set goals are in the Regulatory Objectives, such as:

“Protect those who use patent and trademark services”.

The Regulatory Standards provide broad directions that guide the operation of the College, such as:

‘We are clear about our purpose and open and transparent in all processes: we publish our regulatory requirements, guidance, policies, processes and decisions; we provide accurate accessible information about our licensees; and we report on our performance and outcomes.’

Further examples like these are found in the Regulatory Objectives, Standards and Principles, and Strategic Goals and Objectives, and corporate values articulated after the first round of strategic planning. The Board also sets other policies such as those related to governance and finance. An example of a model for Board policy setting by establishing an Admissions Program is included in Appendix 2.

**CEO/Registrar Policies**

The CEO/Registrar make policies compliant with or to further the By-laws and Board Policies. These can be administrative policies (such as human resource policies, or those related to using IT resources), or policies related to the design and operation of a particular program. For example, a program policy might describe a trainee testing program, including how it will operate, its goals, means of achieving those goals, limitations, performance targets, etc.

Within the published policies are procedures or the detailed description of the steps to be taken for a business processes of the College. Examples include the steps to be taken to register for entrance examinations, or to become a trainee or licensee, or to renew a license annually. Procedures describe what is to be done, and the detailed steps to be taken. The steps may be performed by someone inside the College, such as an employee, or by someone outside the

organization, such as a licensee, trainee, or complainant. Because procedures are operational, establishing them is within the authority of the CEO/Registrar. Processes and procedures are always required to comply with or be subservient to the By-laws.

There may be ambiguity about whether a policy is properly the purview of the CEO/Registrar or the Board. While on a purely technical analysis the CEO/Registrar is free to make any policy provided it fits within the policy framework already articulated by the Board, the CEO may wish to inform the Board of the policy they plan or tell the Board after the decision has been taken. The challenge is to not burden the Board with administrative detail or invite the Board into operations, while recognizing that what the CEO/Registrar sees as administrative may be seen by others as substantive or a change of direction.

### 3.2 The Board's role

The Board's four appointed directors are named by the Minister<sup>4</sup>; they cannot be licensees. The Directors elected from among the licensees are not permitted to be members of any organization that advocates on behalf of patent or trademark agents. The terms of the elected directors is three years; the terms of the appointed directors is at the discretion of the Minister.

CPATA's by-laws, enacted by the Board, prescribe the Board's roles and responsibilities. They are summarized here for explanatory purposes; check the By-laws for the authoritative versions. Most of these requirements are carried out with the assistance, support and advice of the CEO/Registrar:

#### Supervise the organization

- a. Appoint a CEO and provide clear directions to and oversee the work of the CEO with established performance expectations, succession planning and periodic and regular performance review;
- b. Monitor Board and committee performance, determine the nature of Board evaluation, and ensure it takes place at least annually;
- c. Ensure the CEO has plans to address variance from staff performance standards;

#### Determine regulatory policy

- d. Adopt Regulatory Objectives, Regulatory Standards and Regulatory Principles;
- e. Determine frequency of review of policies, including an evaluation of whether the policies are successful, and ensure those reviews are carried out;

#### Governance

- f. Ensure effective governance through governance policies related to its work, assessment

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<sup>4</sup> The By-laws provide the College, through its Governance & Nominating Committee, will advise the Minister on Board appointments.

- of organizational performance and commitment to succession planning;
- g. Elect the Chair and Vice-Chair;
- h. Working with the CEO, establish a future vision for the College and policies and plans, including a strategic plan, related to regulatory and program effectiveness and quality;
- i. Establish Board committees, task forces or working groups to assist in carrying out the work of the Board;
- j. Develop competencies specification for Board members; specify process for those elected from the licensees, including oversight; collaborate with Government of Canada on appointment of Board members;

### Financial Oversight

- k. Provide stewardship over College resources:
  - a. Ensure effective business and financial planning,
  - b. Approve annual business plans, operating and capital budgets,
  - c. Set fees;
  - d. Monitor financial performance,
  - e. Oversee an independent financial audit, and approve audited financial statements.

### Oversight

- l. Monitor and comment on the regulatory and operational risks for the College, and ensure decisions and policies focus on the management and mitigation of risk of harm to the public;
- m. Oversee effective internal and external stakeholder relations and engagement;
- n. Oversee compliance with all legal requirements of the College, the CEO and the Board;
- o. Monitor operations through reports from the CEO or others describing compliance with policies;
- p. Monitor the extent to which CEO is achieving established performance criteria for operations;
- q. Monitor the extent to which organizational goals are being achieved, including desired/specified outcomes;
- r. Decide when and **what may be** subject to compliance audits (not only financial, but also CEO and others' compliance with policies);

### Miscellaneous

- s. Address matters assigned to it by the Act and by-laws, and as assigned by the Minister;
- t. Undertake such other matters as the Board considers necessary to achieve the purposes of the College.

Appendix 2 contains a prototype annual calendar of topics to be considered by the Board.

The Board Chair is elected from among the Directors. By default, they chair all meetings unless unavailable or conflicted, work with the CEO to set agendas, act as a key linkage between the CEO and the Board (although not as supervisor of the CEO) and is responsible to see the evaluation of the CEO takes place each year. On occasion the Chair speaks on behalf of CPATA and/or the Board, and is, along with the CEO, a resource for Board members.

### 3.3 The CEO's and Registrar's roles

The CEO and the Registrar are responsible for management, operations and initial regulatory decision making. The by-laws specify their mandates.

#### The CEO

The CEO performs the functions and duties normally associated with the office of chief executive officer, including:

##### Administration

- a. manage, coordinate and maintain the College's operations, administration, finances, and organization;
- b. engage and supervise employees, agents and contractors of the College and direct and supervise them;
- c. Articulate and manage customer service standards;
- d. Set the terms of delegation of the authority of the Registrar;

##### Board Support

- e. counsel and assist the Board implementing and evaluating the College's regulatory activities;
- f. Keep the Board up to date on developments in professional regulation;
- g. Propose metrics to the Board for compliance reporting, and report on achievement of regulatory goals and outcomes;
- h. Assist Chair of Board in development of Board agenda and Board's focus;
- i. Ensure resources are available for organizing Board meetings, and taking minutes;

##### Legal

- j. Execute documents on behalf of the College;
- k. Ensure the Board complies with the Act, regulations, by-laws and policies affecting it;
- l. Ensure compliance with laws such as privacy, access to information, and bilingualism;

##### Program Administration

- m. Articulate processes for management of business procedures (adoption, retention,

- amendment);
- n. Determine insurance requirements for licensees, which may differentiate different classes of practice;
- o. Determine practice standards for licensees;
- p. Determine appropriate levels of transparency related to individual regulatory transactions of the College and business processes;

#### Performance Management Reporting

- q. Measure and report to the Board on compliance with policies and laws, and achievement of goals and outcomes;
- r. Propose and carry out internal and third party reviews of operations and accomplishments;

#### Risk Management

- s. Ensure risks are managed, for both the organization and for regulated licensees, including all forms of insurance required for the organization;

#### Communications

- t. Ensure communications with all stakeholders;

#### Leadership

- u. Lead the College;

#### Miscellaneous

- v. Carry out the duties and responsibilities conferred by the Act, the Regulations, the By-laws and policies and procedures approved by the Board;
- w. Give effect to policy directions established by the Board;
- x. Other functions and duties as assigned by the Board;
- y. Regular reporting to the Board on other matters as required;
- z. Report to the Minister as required by the Act.

### **The Registrar**

The Registrar performs the duties and responsibilities conferred by the Act, the Regulations, the By-laws and Policies approved by the Board or the CEO. To support the Regulatory Objectives, Standards and Principles, the Registrar establishes regulatory policies, procedures and forms for all relevant programs, which are called 'Registrar's Policies'..

### **3.4 Committees**

There are three kinds of committees:

#### **Board Committees**

The Board can establish committees or task forces, must set their terms of reference, and can appoint committee members and set their length of tenure. These can be standing Board committees, or committees set up for a specific purpose (and usually a specific timeframe). As of the date of this document, the planned Board committees are the Audit and Risk Committee, the Nominating Committee, and the Registration Committee.

#### **CEO Committees**

The CEO can also strike committees or work groups to assist with the CEO/staff's work. These might be subject matter specialists or may be advisors from other regulators or from other countries. Consultation committees struck by the CEO represent an excellent opportunity to engage stakeholders on a variety of issues central to the success of the College. As of the date of this document the only planned groups are those that will help to develop a competency profile for entry level agents, and another to advise on the entrance examination. None of these groups has yet been established.

#### **Statutory Regulatory Committees**

These include the Investigations Committee and the Discipline Committee established by s.21 of the Act. These are appointed by the Board, which will select committee members based on articulated competencies. The members of the Investigations and Discipline committees must have a majority who are not licensees.

The Chair of the Investigations Committee may direct a panel of one or more Committee members to consider a complaint brought forward by the Registrar. The panel will investigate the matter according to the Act. If the committee considers there is merit to the complaint of professional misconduct or incompetence, they must refer the matter to the Discipline Committee.

The Discipline Committee will sit in panels of 1-3 members, as decided by the Chair. They are obliged under the Act to conduct an oral hearing. The Act lays out the procedures, in sections 51 – 58, and the appeal provisions to the Federal Court. Further details of the process are set out in the By-laws.

#### **4. Scope of CEO/Registrar regulatory decisions**

Almost all transactional work of the College is carried out by the staff. In the course of that work they (or staff or contractors reporting to them) make different kinds of regulatory decisions. Some of these are decisions about how the work will be carried out – processes, forms, deadlines, etc – while some are decisions about individuals.

##### **4.1 Registrar decisions**

The Registrar makes regulatory decisions:

- about individual licensees or applicants, that can affect the individual's status. This includes admission, ongoing compliance, annual renewals and enquiries/complaints/expressions of concern;
- about the processing of inquiries and complaints; and
- setting procedures for regulatory transactions, including required processes, supporting forms and documents, and required timelines or deadlines.

Both kinds of decisions will be circumscribed by Board level policy decisions, including Regulatory Objectives, Standards and Principles, and by-laws. Decisions must also be compliant with statutory and common law. Of particular importance to all decision making by the Registrar are the decision-making principles, as they create a menu of matters to be considered by the Registrar in determining matters under the By-laws.

In the normal course of operating a regulator, licensees and applicants may find themselves negatively impacted because of a provision of the statute, a by-law or a policy. Examples range from failure to pay a levy or some other amount of money owing to the College or failing to make some form of application in time or in a form required or failing an examination. These breaches may be technical (such as failing to do something on time) or substantive (failure to pass an examination or other competency assessment).

##### **4.2 CEO decisions**

Applicants, licensees and their agents may contact the College.

The CEO/Registrar and staff will deal with these situations in a manner that is helpful, respectful and responsive. When possible without diluting the impact of the relevant regulatory process, staff will be empowered to resolve matters.

For some of these situations a specific appeal process will be in place (for example, when an applicant challenges the marking of an examination or assessment). If no specific process exists, the CEO will also provide an internal process to deal with challenged outcomes as matters arise. This internal process will also be available to reconsider a situation in which the CEO or staff have decided on a matter and communicated it. The CEO will publish the process and how to access it, and staff dealing with these situations will advise applicants and licensees of this process. These resolutions will comply with the Regulatory Objectives, Standards and Principles. This internal appeal is in addition to the appeal to, say, the Registration Committee.

The CEO will articulate customer service standards that deal with the timeliness of responses, timeliness of resolutions and the nature of staff responses. We will also have documentation standards so an appropriate record is kept. As staff must be respectful in their communications and actions regarding licensees and others, so too must people dealing with the College be respectful; staff and the CEO/Registrar may refuse to deal with someone who is abusive.

We will have resources to assist the CEO in making these kinds of regulatory decisions, including subject experts, legal advisors, a 3<sup>rd</sup> party mediator/resolver, and experts from other regulators.

#### 4.3 Policy/process decision areas

What follows is a list of policies typically developed by a regulator of professionals; others may also be required. Some will be decided by the CEO, some by the Board, and some are a shared responsibility. Every decision is subject to the Regulatory Objectives, Regulatory Standards and Regulatory Principles. While the table shows Primary Responsibility, some may have a secondary responsibility as well:

<b><i>Policy</i></b>	<b><i>Primary responsibility</i></b>
Accounting	CEO
Fee payment and license renewal	CEO
Maintenance of the registers of Patent Agents and Trademark Agents	Registrar, subject to statute



<b>Policy</b>	<b>Primary responsibility</b>
Risk management	CEO subject to oversight by Board and the Audit and Risk Management Committee
Privacy and related	CEO, subject to relevant statutes
Human resource policies	CEO
Technology policies, including data use and security	CEO
Travel policies	CEO
Admissions – both what, and how admissions standards are assessed	Board makes high level policy decisions.  Registrar decides policies for administration of processes, forms and required documentation, assessment policies, and individual levels of achievement
Business processes for adopting and modifying CEO or Registrar policies	CEO
Complaints' processing	Registrar, subject to Board policies, Act, Regulations and by-laws
Compliance with licensee reporting requirements such as admission info, keeping addresses up to date, CPD etc.	Registrar
Operating instructions for regulatory programs [this provides clarity about future programs, such as practice audits and the like]	CEO

<b>Policy</b>	<b>Primary responsibility</b>
Adjudication processes	Registrar, subject to Act, Board policies, by-laws and Committee policies
Process for appealing CEO/staff decisions	CEO for internal appeals; Review Commissioner for Registrar's complaint threshold decisions; By-laws and policies for appeals to committees
Practice standards	CEO
Unauthorized practice	TBD
Ethical standards	Board
Principles for enforcing ethical standards (and admission standards?)	Board
Governance – including how Board works, Board and statutory committees and mandates and membership, Board compensation. . .	Board, by-laws

#### 4.4 Expectations of CEO in making policy decisions

The CEO must make policy and process decisions defensible from legal and risk management perspectives, and practicable. They must consider and comply with the Regulatory Objectives, Standards and Principles.

There is no formula for determining how to construct these policies and processes, but there are options and 'ingredients' that we will consider. They include:

- Proportionality – what is the process or policy intended to accomplish, and what is the least intrusive and least expensive way to achieve that goal?
- Are there options from other work of the College, or from other regulators, that should be considered?

- What are the legal constraints on the decision? Is the range of options limited by law? Are there some possible outcomes that are more or less risky from a legal perspective? What steps have been taken to identify and resolve the legal issues?
- Consultation. For policy development impacting the profession or the public, we are committed to appropriate consultation, as an aspect of openness and transparency. We will ask ourselves:
  - What kind of consultation has taken place about the policy recommendation?
  - Has the consultation been with the profession, with other regulators or with experts?
  - Has the consultation been transparent?
  - Is the consultation commensurate to the impact on the profession, the College, and the public, in terms of cost, complexity and reputation?
  - What are the outcomes/deliverables of the consultation?
  - In what way are the consultation outcomes reflected in the policy ultimately proposed?
- What kind of a change management process is proposed?

We recognize the prevalence of resistance to change; however, we are committed to working with stakeholders as we develop, implement and modify policies and programs to ensure effectiveness as an independent public interest regulator. We expect the CEO to be competent in making decisions that reflect positively on the College, consider the Regulatory Objectives, Standards and Principles, and as much as possible, are acceptable to licensees, applicants and other stakeholders.

The CEO may incorporate a variety of resources in taking these policy and process decisions, including:

- Subject experts from the profession
- Subject experts from other professions
- Legal advisors
- Technical advisors from other domains, including (for example) educators, behavioural psychologists, testing and assessment experts, business consultants, strategic planning consultants, change management advisors, privacy advisors, risk management advisors
- Leaders and staff from other regulators
- Consumer advocates
- CEO initiated advisory committees

We do not expect the CEO to know all the answers; but they must be proficient at finding those who can assist in finding good answers.

### 4. Adjudicator Decision Making

Adjudicators make decisions about admissions (on appeal from the Registrar), complaints and discipline matters, and other matters yet to be defined.

These decisions will be made in a manner compliant with the Regulatory Objectives, Standards and Principles, an Adjudicator code of conduct<sup>5</sup>, the Act, Regulations, By-laws and the relevant procedural rules. Adjudicators will have to complete appropriate training, or provide credentials demonstrating they are competent to act in this role before they are appointed to an adjudicative panel.

The College will provide legal advice and counsel to Registration and Discipline adjudicative decision-makers, in addition to any advice College staff provide.

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<sup>5</sup> To be developed

## **Appendix 1: Board Agenda Annual Plan**

This plan is set out by quarter. There may be more than one meeting in a quarter.

The Board establishes Governance Policies and other policies directing the ~~nature of~~ the College's activities

At each meeting, the CEO reports on the status of policy implementation, deviation from policies, service levels and statutory obligations.

In addition to what is set out here there may be agenda items dealing with current issues, such as:

- developing new programs;
- policy issues with existing programs;
- relevant changes in the Canadian operating environment, or
- relevant developments in regulatory programs in Canada or elsewhere.

The CEO reports regularly on the operation and goal achievement of one or more selected programs, so the Board is briefed on each program no less frequently than once in every 24-month period. In the initial years of operation a more frequent schedule may be established.

The CEO also reports on Board Governance Policies and proposes amendments as appropriate. This will be carried out on a schedule that ensures the Board is briefed on each policy no less than once in every 24 months. The Board can require more frequent reporting if necessary.

Although the reports will not be part of the Board agendas, the CEO will provide the Board with an operational overview report monthly, with time at each meeting for questions.

### **Q1**

- CEO report of achievements in prior fiscal year, based on business plan and budget
- CEO report on achievements of policy goals for prior year
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Q1 financial report from Audit and Risk Committee
- CEO report on selected programs
- CEO report on selected Board Governance Policies
- CEO report on stakeholder relations, including government and profession

- Governance Committee report with recommendations to refresh appointments to committees after reviewing the work and performance in the prior year, and proposed plans for upcoming year

### Q2

- Board meets with auditors and approves financial audit report
- Board appoints auditors for next fiscal year
- Discuss priorities for coming fiscal year, within the context of a) priorities, b) longer term (strategic) plans, and c) relevant changes in the operating environment and in regulation throughout the world
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Report on CEO performance evaluation, and resulting compensation recommendation
- Q2 financial and risk report from Audit and Risk Committee.
- CEO report on selected programs
- CEO report on selected Board Policies
- CEO provides copy of Annual Report to Minister

The General Meeting of Members will also take place in Q2, and newly elected Directors take office after that meeting

### Q3

- Business plan decision as basis for budget
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Report on Board and Committee evaluations
- Q3 financial report from Audit and Risk Committee
- CEO report on selected programs
- CEO report on selected Board Policies
- CEO report on stakeholder relations, including government and profession

### Q4

- Business plan, budget and fees for final decision
- Set date for AGM
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Q4 financial and risk report from Audit and Risk Committee
- CEO report on selected programs
- CEO report on selected Board Policies
- CEO report on staff succession policies

- Nominating and Governance Committee report, including upcoming elections and appointments to the Board, and appointments to Committees

Programs for reporting:

1. Admissions/Registrations
2. Complaints and Discipline
3. Insurance
4. Continuing fitness
5. Quality Assurance and Continuing Professional Competence
6. Governance, including elections and appointments to the Board, and appointments to Committees
7. Practice Standards development and advice

## Appendix 2: An Example of the Policy Basis for a Program of the College

The governance premise of the College is that the CEO delivers programs. The Board sets the policy relevant to programs (an example is detailed below); the CEO develops and delivers the program, and reports to the Board on how things have gone, and how well the program has achieved the relevant goals. Besides the operating statistics and descriptions generated by staff, these reports may include external evaluation reports and surveys of users or others. Under the College's Regulatory Standards, the CEO brings to bear expertise and resources so programs achieve the desired goals in a way that is acceptable to users and is affordable to the College and users.

In line with the other expectations of the College, programs should also be admired for their excellence.

For example: the Admissions Program is a key College activity to ensure new agents are professionally competent.

The Regulatory Objectives speak to the high-level goals of an admission program:

- We protect those who use patent and trademark services.
- We ensure Licensees deliver patent and trademark services ethically and competently.
- We promote equity, diversity and inclusion in the patent and trademark profession and in the delivery of patent and trademark services.

The Regulatory Standards also speak to our goals:

- We maintain standards for the ethical and competent delivery of patent and trademark services and enforce compliance with those standards.
- We maintain up-to-date practice standards for licensees and provide guidance in applying the standards.
- We maintain standards for education, training and fitness to ensure our admission programs deliver competent trainees that meet the College's requirements for registration. [RO6]

And our description of how we do business includes:

- We are clear about our purpose and open and transparent in all processes; publish our regulatory requirements, guidance, policies, processes and decisions; provide accurate accessible information about our licensees and report on our performance and outcomes.
- We clearly state the public interest objectives we seek to achieve in our policies.



- We apply policies in a principled manner, proportionately, fairly and efficiently with decisions explained, including their public interest rationale.
- In developing policies and advancing the College's objectives, we obtain expert advice as required, conduct research relevant to the matters under consideration and consult and work with interested stakeholders.

Taken together, this means that the Admissions Program is mandated to be transparent, based on meaningful published standards related to competence and ethics, not so complicated or expensive that it constitutes an unreasonable barrier to entry to the College, and best in class based on the need to seek and implement expert advice. It also must play a central role in the College's objective to promote equity and diversity in the profession and the means for doing this must be articulated and measurable.

The policy statement that underpins the Admissions Program can incorporate those standards by reference, and can be succinct:

The College will operate an Admissions and Registration program that ensures Trainees entering the profession as Patent and Trademark Agents have demonstrated a) entry level professional competence based on appropriately designed and defensible competency statements and assessment techniques, and b) good character and fitness.

This 'Policy' developed by the Board and College Staff will serve as the CEO/Registrar's 'instructions' to develop and implement a program and report to the Board on implementation of the policy and the relevant Regulatory Objectives, Standards and Principles. If those reports disclose features the Board thinks should be changed, then the Policy can be modified.

### Appendix 3: The First 4 Years

The Board intends to be forward looking in the way it works, and that has started. We have a great deal of work ahead to properly launch a new regulator; that will take **some** years to complete. So far in our discussions we have identified:

#### The Work

#### Approximate Timeframe

Figure out how best to operate a 21<sup>st</sup> century regulator, operating across the country. Develop effective consultation mechanisms to properly understand the implications of proposed regulatory actions. Some specific matters required to be addressed include liability insurance, continuing professional development and mandatory *pro bono* services.

About 2 years, 2021 – 2022

Update our admissions and registration program, including a new entry level assessment tool, the articulation of entry level professional competencies, and consideration of a formalized education and training regime

Up to 3 years – 2021 – 2023

Develop our complaints investigation and discipline program, and ensure it all functions smoothly, with appropriately trained decision makers. The matter of co-regulation of licensees will need to be addressed.

About 2 years – 2022 – 2023

Work out all the parts of the annual renewal process, including payments and providing information so we better understand the

About 2 cycles after the initial one – 2021 – 2023

demographics and practice settings of the profession

Determine the best way to protect the public interest through the statutorily mandated compulsory practice insurance

2 to 3 years – 2021 – 2023

Based on what we learn about the demographics of the profession and research into the demand for IP services, work out a strategy to increase diversity, and ensure a sufficient supply of IP agents. Start implementation of that strategy.

About 3 years – 2022 – 2024

Begin the discussion about innovation in the IP agent field, what steps the College can take to support and encourage innovation in the work of IP agents and in protecting IP, and develop that into a 5-10 year strategy

2022 – 2023

Develop and implement a program to ensure continuing competence and continuing fitness to practice

2 years, beginning in 2022

Develop a program of low cost or no cost agent services for those in need.

About 2 years, 2023 – 2024