



**BOARD OF DIRECTORS MEETING AGENDA  
OPEN MEETING  
ARC The Hotel, Ottawa**

<b>Date</b>	<b>Saturday, October 30, 2021</b>
<b>Time</b>	<b>8:30 am ET - in-camera 9:00 am ET - public meeting</b>
<b>Chair</b>	<b>Tom Conway</b>

<b>ITEM</b>	<b>TOPIC</b>	<b>TIME</b>	<b>SPEAKER</b>	<b>Page #</b>	<b>ACTION</b>
<b>1 Introductory Matters/Call to Order/ Approval of Agenda/Conflicts of Interest</b>					
Introductory Remarks by Chair					
<b>Conflicts of Interest</b> - Board members are to declare if they have any conflicts regarding matters on the agenda					
<b>2. CONSENT AGENDA</b> The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Directors may seek clarification or ask questions without removing a matter from the consent agenda. Any Director may request a consent agenda item be moved to the regular agenda by notifying the Chair or the CEO prior to the meeting.					
	Minutes of October 5, 2021, meeting	9:05			Approval
<b>3. Establishing the College</b>					
3.1	Board Policy No 6 Privacy - The Board will receive a briefing from Mara Consulting on the privacy obligations of the College and is asked to approve a policy adopting the College's obligations.	<b>9:10</b>	Mara Consulting K. Bustin and J. Walsh		Approval

	<b><i>Be it resolved the Board adopts CPATA's Privacy Policy dated October 30, 2021 and directs the CEO to implement its requirements across the College.</i></b>				
3.2	Committee Appointments - Investigations Committee - Discipline Committee - Registration Committee - Recruitment for these committees has continued through calls for expressions of interest from the profession for the positions reserved for agents.	10:10	V. Rees to address IC		Appointment to IC  Deferred
3.3	<b><i>Board and Committee Recruitment</i></b> - Memo from CEO on use of Boyden to assist in recruitment for Committee and Board.	10:15			Discussion
3.4	Appointment of Auditor - Resolution	10:30	D Pink/S Walker		Information
<p><i>Whereas Board By-law 8(1)(a) requires the Board to annually appoint an auditor to audit the College's accounts;</i></p> <p><i>And whereas the CEO requested quotes for an audit from several accounting firms for audit services for the years ending December 31, 2020, and December 31, 2021:</i></p> <p><i>And upon the CEO and CFO reviewing the quotes and making a recommendation to the Board, The Board appoints Grant Thornton LLP as auditor for the College for the years ending December 31, 2020, and December 31, 2021.</i></p>					
<b>Break</b>					
<b>4. Building a Model Regulator</b>					
4.1.	Board Policy No 7 – Nominations and Elections - Following initial discussion on Oct. 5, this policy has been modified based on input and is ready for approval.	10:45	D. Pink		Approval
<b><i>Be it resolved the Board adopts Board Policy No. 7, Nominations and Elections, and directs the CEO to implement the policy.</i></b>					

4.2	<p>2022 Budget, Reserve Policy, and amendments to By-law Schedule A</p> <ul style="list-style-type: none"> <li>- The CEO and College staff have prepared an operating budget for 2022 based on assumptions stated in the budget briefing document. No fee change is proposed.</li> <li>- The CFO and CEO recommend an approach to establishing a reserve policy</li> <li>- Small amendments to the fee schedule are recommended</li> </ul>	11:00	D. Pink/ S. Walker CPA		Approval
<p><i>Be it resolved:</i></p> <ol style="list-style-type: none"> <li>1. <i>the Board approves the 2022 Operating Budget as presented in the Board Package;</i></li> <li>2. <i>the Board mandates the Risk &amp; Audit Committee to bring recommendations to the Board on a Reserve Policy; and</i></li> <li>3. <i>Schedule A to the Board By-laws be amended in accordance with the revised schedule included with the Budget.</i></li> </ol>					
4.3	<p>Mandatory Liability Insurance</p> <ul style="list-style-type: none"> <li>- Following the October 5, 2021, meeting draft resolution was amended and circulated to the profession. It has been revised to provide clarity on when insurance must be in place.</li> </ul>	11:30	D. Pink		Approval
<p><i>Whereas s. 34 of the CPATA Act mandates licensees be insured against professional liability;</i></p> <p><i>And whereas it is in the public interest that the requirement for insurance be based on known and foreseeable risks;</i></p> <p><i>And whereas the provision of patent and trademark services by licensees involves intellectual property rights and interests that extend beyond Canada, even if those rights are only initially registered in Canada;</i></p> <p><i>And whereas it is imperative licensees acquire sufficient insurance to address the known and foreseeable risks associated with their individual or their firm's practices;</i></p> <p><i>And whereas the obligation of CPATA is to set minimum levels of insurance applicable to licensees, while recognizing minimum levels will not be adequate to address known and foreseeable risks associated with the practices of many licensees and their firms;</i></p>					

*And whereas the College recognizes licenses will need to make a variety of arrangements regarding liability insurance and that such coverage may come into effect at various dates in 2022*

*Therefore:*

*Be it resolved under s. 75(1)(q) and (r) of the CPATA Act mandatory professional liability insurance requirements will be:*

- a. Commencing in 2022, Class 1 and Class 3 licensees, providing patent or trademark services to the public, must be insured under a liability insurance policy provided by an insurance company licensed in Canada, that will indemnify for civil liability arising from the licensee acting as a patent agent or a trademark agent;*
- b. The limit of liability is a minimum of \$1.0 million per claim and a \$2.0 million aggregate;*
- c. The liability insurance policy must cover claims made outside of Canada; and*
- d. These requirements will be satisfied so long as inception of coverage under a liability insurance policy meeting the requirements commences in 2022.*

*Further, the Board directs the CEO to have by-laws drafted and presented to the Board for approval in time for publication in advance of **the requirement coming into effect.***

*Further, to inform future decision-making, the Board directs the CEO to engage in additional research and to bring recommendations to the Board relating to:*

- 1. Whether policy limits should remain at \$1.0 million per claim and a \$2.0 million aggregate.*
- 2. The impacts on the profession of the insurance requirements.*

<b>5. FOR INFORMATION</b>			
5.1	September 30 Financial Statements and memo from CFO		
5.2	<b>The question every legal regulator needs to answer -</b> October 15, 2021, by Jordan Furlong – Law 21		
6.0	Adjourn	12:00	
<b>6. In-Camera</b>			
- <b>with CEO</b> – It is intended this discussion will involve Board and CEO succession planning.			
- <b>without CEO</b> -			
<b>FUTURE MEETINGS</b>			
	Dec. 10, 2021 – 16:00 ET via Zoom Jan. 20, 2022 – 12:00 ET via Zoom Mar. 03, 2022 – 12:00 ET via Zoom Apr. 14, 2022 – 12 :00 ET via Zoom May 26, 2022 – All Day – Board and AGM - Ottawa		

**Public Board of Directors Meeting  
Held via Zoom  
October 5, 2021, 2:30 p.m. ET  
Minutes**

**BOARD MEMBERS:**

Ruth McHugh, Acting Chair  
Jeff Astle  
Karima Bawa  
Doug Thompson  
Darrel Pink, CEO & Registrar

**REGRETS:**

Tom Conway, Chair

**GUESTS:**

Patrick Mahoney, Axxima (from 3:03 p.m. to 3:48 p.m.)

**STAFF:**

Sean Walker CPA, CFO  
Jennifer Slabodkin, Director Registration & Education, Deputy Registrar/Recording Secretary  
Andrés Diaz, Operations Manager  
Victoria Rees QC, Counsel, Professional Regulation

1. Call to Order and Approval of the Agenda

The Chair called the meeting to order at 2:33 p.m.

The Chair acknowledged the College's observance of Canada's first National Day for Truth and Reconciliation and thanked management for sharing learning and reflective materials to the Board and staff.

2. Conflicts of Interest

Jeff Astle noted that his registration as a Patent Agent and Trademark Agent may be perceived as a conflict of interest with respect to the mandatory professional liability insurance policy discussion.

The Chair acknowledged this potential or perceived conflict of interest. The Board agreed that no conflict existed.

No further conflicts were declared.

3. Agenda

The Chair provided an overview of the agenda.

**On a motion made by Doug Thompson, seconded by Karima Bawa, it was resolved to approve the agenda. Motion carried.**

4. Consent Agenda

**On motion made by Doug Thompson, seconded by Jeff Astle, it was resolved to approve the Consent Agenda, which included the minutes of the July 29, 2021, Board of Directors meeting. Motion carried.**

5. Registration Committee

The Deputy Registrar discussed the process of recruitment used to populate five of the seven positions available on the Registration Committee and presented the five candidates to the Board.

The Chair noted she serves on another Board in Alberta with Hilary Rose, but that did not reflect a conflict of interest with her recommendation of Ms. Rose to the Committee.

**On a motion made by Doug Thompson, seconded by Karima Bawa, it was resolved to approve the following appointments to the Registration Committee:**

- **Tina McKay – Chair**
- **Mark Piro – Vice-Chair**
- **Hilary Rose**
- **Jeffrey Orser**
- **Martin Béliveau**

**Motion carried.**

The CEO advised the Board that several highly qualified candidate submissions were received for the open positions on the Investigations Committee and Discipline Committee, that the vetting process was underway, and that names will be brought forward to the Committee at their next meeting.

6. Board Policy No. 6 – Nominations and Elections

The CEO presented Board Policy No. 6 and highlighted the following:

- All individuals who seek to be elected will be required to undergo an orientation program to ensure they understand the expectations and responsibilities.
- The appointment process discussions with the Minister's office should be starting soon.

The Board discussed whether more than one nomination was required to be eligible for election but noted that other processes were in place to ensure the competency of the candidate and decided not to make changes to that section.

The Board discussed privacy concerns with providing election candidates with a complete list of agents and their contact information for the purposes of electioneering and noted that the College would need express consent to distribute that information for that purpose. The CEO advised that the information was already available on the public register but recommended obtaining a privacy policy recommendation on that section of the proposed policy.

The Board discussed options for notifying agents of the election and providing them with information regarding the election candidates. A board member recommended circulating an email to agents with a link to the candidate profiles on the College website, directing them to the website for more information. A board member expressed concerns about election candidates only directing their communications to a subset of the profession, rather than the whole, if they were provided with the list of agents and their contact information.

The Board agreed to direct the CEO to remove the section of the policy that allows for the provision of email addresses to the election candidates.

*ACTION – The CEO will revise Board Policy No. 6 – Nominations and Elections based on the Board's discussions and will recirculate it to the Board for consideration.*

#### 7. Appointment of the Auditor

The CFO provided an overview of the RFQ process and advised that six firms were contacted, and four responses of interest were received, including E&Y, KPMG, Grant Thornton and MNP. He advised that quotes were expected by October 8, 2021, and that the auditor would be responsible to provide their auditors' reports in both English and French.

#### 8. Risk and Audit Committee & Governance and Nominating Committee

Karima Bawa previously circulated non-substantive amendments to the Board for the terms of reference and skills matrices.



**On a motion made by Doug Thompson, seconded by Karima Bawa, it was resolved to approve the revised Terms of Reference and Skills Matrices for the Risk and Audit Committee and the Governance and Nominating Committee. Motion carried.**

9. Patent Agent and Trademark Agent Mandatory Professional Liability Insurance

The CEO advised about the feedback received on the consultation on mandatory professional liability insurance. There was no opposition to its imposition. However, several comments submitted by agent-lawyers recommended there not be additional coverage required for those already insured through a law society. The CEO noted that approximately 30-35% of the profession were also lawyers. The most significant difference between the coverage offered by the law societies, except for British Columbia, and what may be required by CPATA, was that they did not provide global coverage (i.e., insurance that covers conduct of an agent regardless of where that claim is made).

The CEO noted the rationale for the proposed policy limits was reflected in the current requirements for the law society coverage but indicated that there was little evidence to support that those limits were appropriate for IP agents and acknowledged that further research was required. It was also noted that the limits for the law societies have been in place since the 1980s and could be considered out of date just based on inflation alone. The Barreau du Quebec was the only exception with a required a minimum \$5 million per claim and \$10 million aggregate, which was by virtue of the fund size itself and not a reflection of actuarial analysis of risk.

The CEO noted the consultation report posed the question of affordability and whether different approaches should be taken for Trademark Agents and Patent Agents. Advice suggests that creating two smaller separate insurance pools will increase the costs for both groups.

The CEO advised the Board was not required to make a final decision at this meeting and could defer their decision to their October 30, 2021, meeting, allowing more time for research and analysis. The insurance policy renewal period is March 1<sup>st</sup> for IPIC and July 1<sup>st</sup> for the law societies.

Jeff Astle presented his recommendations to revise the resolution to the Board. The proposed resolution, as noted in the Revised Agenda read:

*Be it resolved under s. 75(1)(q) and (r) the Board will adopt by-laws regarding mandatory professional liability insurance that require:*

*a. Commencing in 2022, Class 1 and Class 3 licensees, providing patent or trademark services to the public, must be insured under a liability insurance policy provided by an insurance company licensed in Canada, that will indemnify for civil liability arising from the licensee acting as a patent agent or a trademark agent;*

*b. The limit of liability is a minimum of \$1.0 million per claim and a \$2.0 million aggregate;*

*c. The liability insurance policy must cover claims made outside of Canada; and*

*d. These requirements will be satisfied so long as inception of coverage under a liability insurance policy meeting the requirements is in 2022.<sup>1</sup>*

*Further, the Board directs the CEO to have by-laws drafted and presented to the Board for approval in time for publication in advance of January 1, 2022.*

*Further, the Board directs the CEO to engage in additional research and to bring recommendations to the Board relating to:*

- 1. Whether policy limits should remain at \$1.0 million per claim and a \$2.0 million aggregate.*
- 2. The impacts on the profession of the insurance requirements*

The proposed amendment was:

*b. Unless a licensee was insured with a greater limit of liability in 2021, in which case such greater limit must be retained, the limit of liability is a minimum of \$1.0 million per claim and a \$2.0 million aggregate;*

A board member expressed concern about agents with existing coverage downgrading their limits because of the College imposing lower minimum requirements than what they may have already had in place.

The Chair noted that agents need to be made aware that the minimum coverage specified by the College may not be enough for their practice and inquired about the availability of data regarding risk for IP agent professional practice so the Board could make an informed, evidence-based decision.

Patrick Mahoney responded that data does exist for lawyers but that does not necessarily mean that the information will be accurate or applicable to IP agents.

<sup>1</sup> The renewal date for the IPIC policy is March 1; Law Society insurance policies renew on July 1. The intention is to allow licensees adequate time to find a policy that satisfies these requirements.

A board member recommended the Board be clear that they are not suggesting the minimum coverage is adequate and that agents should analyze their comfort with their own risk to determine how much coverage is needed.

With respect to global coverage, Patrick Mahoney asked the Board to consider whether IP work was inherently international in nature. He indicated that global coverage is available but not widely so.

The Board discussed revising the resolution to require licensees to have a minimum amount of insurance coverage while informing them that the minimum may not be sufficient, based on the level of risk associated with their individual practice.

The Board agreed further discussion was required and deferred their decision regarding mandatory professional liability insurance to their October 30, 2021, meeting.

*ACTION – The CEO will draft recitals that may be inserted prior to the resolution that speak to the public interest, risk and the need for firms and agents to have adequate insurance and will circulate them to the Board.*

*ACTION – Karima Bawa will send her proposed wording for the resolution regarding mandatory professional liability insurance to the CEO.*

#### 10. Review of the Unaudited Financial Statements

The CEO and CFO presented an overview of the unaudited financial statements for the period ending August 31, 2021, and highlighted the following:

- The College is not expected to need to use the line of credit before the 2022 renewal fees are received.
- The College will be discussing lending options with RBC to ensure that there is at least \$250,000 available on the line of credit.
- ISED Canada was advised of the zero balance on the line of credit and the Board was advised that discussions to maintain the Government's guarantee were ongoing.
- The College's focus is to keep the line of credit at zero to avoid interest, identify and build the amount needed in reserves, and build operational capacity.

The Board noted fewer agents registered as class 1 licensees than was budgeted. The CFO confirmed that management will be reviewing expenses and registration numbers over the coming weeks and will be confirming the annual fee schedule and proposing a budget for 2022.

11. CEO Report

The CEO provided a written report. He advised two additional complaints have been received. The College has received some ethics inquiries from agents. Discussions with them focus on giving them the information they require to, to exercise professional judgement. It was noted that it will be challenging to educate a significant proportion of the profession who have never been regulated or subject to a Code of Conduct.

12. Other Business

The CEO confirmed the next Board meeting will be in-person in Ottawa on October 30, 2021, with a planning session scheduled for October 29, 2021.

Karima Bawa advised that she would be speaking on diversity in the profession at the 2021 IPIC Conference.

13. Adjournment

**On a motion made by Doug Thompson, seconded by Jeff Astle, it was resolved to adjourn the meeting at 4:06 p.m. ET. Motion carried.**



**CPATA  
Cabamc**

**College of Patent Agents and Trademark  
Agents  
Board of Directors**

**Privacy Program  
Awareness Session**

October 5, 2021

Prepared by: Mara Consulting


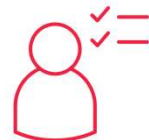


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### Privacy Training Objectives

To support the Board in carrying out its oversight role, the objective of this training is to enhance Board members':

- Awareness and understanding of access and privacy legal obligations, principles and practices
- Understanding the Board's role in overseeing privacy compliance and risk management within the College
- Knowledge of potential sources of privacy breaches and requirements for responding to privacy breaches



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## Today's Agenda

- ❖ Introduction to Privacy
- ❖ Governing legislation and policies
- ❖ College Privacy Policy overview
- ❖ Accountability for privacy and the Board
- ❖ Preventing and responding to privacy breaches

## What is Personal Information (PI)?

**Personal Information** is information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

- Information relating to the race, national or ethnic origin, colour, religion, age, or marital status of the individual,
- Information relating to the education or the medical, criminal or employment history of the individual
- Information relating to financial transactions in which the individual has been involved
- Any identifying number, symbol or other particular assigned to the individual
- An individual's address
- The views or opinions of another individual about the individual

*In relation to personal information, **privacy** is an individual's right to decide and control how information about themselves is made available, used by and distributed to others.*

### What Personal Information is in the College's Custody or Control?


**Personal information is held by the College and its service providers in multiple storage locations/platforms:**

- Thentia Workbench
- Thentia Licensee Portal
- The Public Register
- Paper
- Email system
- File drive

*Although publicly available... it is still considered personal information!*

**Examples of personal information include:**

- Agent, applicant, employee first and last name
- Home Address
- Email address of an individual
- License number & class
- Proof of Canadian residency
- Disciplinary Actions
- Criminal background check
- Opinions and character references
- Payroll information – employee salary, SIN, date of birth



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## Legislation and Policies Governing Personal Information


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### Applicable Legislation and Policies

**College of Patent Agents and Trademark Agents Act**

Authorizes the College to carry out the following activities involving the collection, use or disclosure of PI:

- maintain the register of patent agents and trademark agents
- issue licenses
- administer qualifying exams
- collect associated fees
- maintain a code of conduct
- conduct investigations




**College of Patent Agents and Trademark Agents Regulations**

- Licence requirements related to education, good character, and physical and mental fitness
- Collection of agent in training information
- Handling of privileged and confidential information

**College of Patent Agents and Trademark Agents By-laws**

- Board and committees' roles
- Register requirements
- Obligations of a licensee
- Investigations
- Transitional provisions



### Applicable Legislation and Policies

**Federal Privacy Act and Regulations**

Applies to federal government institutions set out in the Schedule of the Act. The Act has three basic components:

- grants individuals the legal right of access to PI held about them by government institutions;
- imposes obligations on government institutions regarding how they collect, maintain, use and disclose PI under their control; and
- establishes an independent Privacy Commissioner to oversee compliance with the legislation.

**Treasury Board of Canada Secretariat**

The following Federal TBS directives, policies and standards apply to the conduct of federal government institutions subject to the Privacy Act, including the College:

- Directive on Privacy Impact Assessments
- Policy on Privacy Protection
- Directive on Privacy Practices
- Privacy Breach Management
- Standard on Privacy and Web Analytics
- Directive on Personal Information Requests and Correction of Personal Information







### Access to Information Act (ATIA)

- Federal legislation that gives Canadian citizens, permanent residents and any person or corporation present in Canada a right to access **records** of government institutions
- Goal is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society
- Right of access is subject to limited and specific exemptions.
  - ↪ e.g., Solicitor-client privilege; Personal information

**What is a record?**  
Any documentary material, regardless of the medium or form, e.g.:

- ✓ Internal reports or briefing notes
- ✓ Consultants' reports
- ✓ Meeting notes and minutes
- ✓ Expense reports
- ✓ Entries in notebooks, journals
- ✓ Email messages and texts related to College business
- ✓ Documentation of decision-making process for appointments of a CEO, committees

**What are some Do's and Don'ts?**



## CPATA Board Accountability for Privacy

### CPATA Board Accountability for Privacy

Board members play an important role in overseeing privacy compliance and the management of privacy risks within the College

#### The Board is Accountable to:

- ✓ Oversee the College's compliance with the *Privacy Act* and the *CPATA Act*
- ✓ Review and approve the College Privacy Policy and Privacy Statements
- ✓ Periodically review the status of the PMP and significant privacy risks as part of its organizational governance, risk and compliance role.
- ✓ Acknowledge the Board Code of Conduct, including the obligations to maintain confidentiality of all information (including PI) received or reviewed

### College Privacy Policy Overview

## Privacy Policy Overview

### Policy Statement:

- Personal information in the College's custody or under its control is only created, collected, retained, used, disclosed and disposed of in a manner that respects and complies with the *Privacy Act* and its Regulations and aligns with TBS privacy policies and directives.
- The College upholds the privacy rights of individuals whose PI is controlled by the College, in accordance with these requirements.

### Based on the principles of the CSA Model Code for the Protection of Privacy and TBS Policies and Directives

- *Accountability*
- *Identifying Purpose*
- *Consent*
- *Limiting Collection*
- *Limiting Use, Disclosure, Retention*
- *Accuracy*
- *Safeguards*
- *Openness*
- *Individual Access*
- *Challenging Compliance*

## Privacy Policy Overview

### Policy Scope:

All individuals working with, for or on behalf of the College are accountable for complying with the Privacy Policy whenever they are collecting, using, disclosing, storing or disposing of PI in the custody or under the control of the College:


- The College Board of Directors;
- Individuals employed by the College on a permanent, temporary, part-time, or contract basis;
- Members of the Investigations Committee, Discipline Committee, and Registration Committee;
- All service providers of the College to the extent that they collect, access, use, process or store PI on behalf of the College as part of their duties (e.g., Thentia)


**Accountability for Privacy**


- The College is accountable for PI in its custody and under its control, including PI that is collected, used, accessed, disclosed, stored or disposed on its behalf by service providers.
- The College has developed, implemented and maintains, a Privacy Management Program to facilitate meeting its privacy obligations, adhering to privacy principles, and effectively managing privacy risks over time.
- The College uses contractual or other means to hold service providers accountable for complying with the College's obligations.

The **Privacy Management Program (PMP)** is comprised of:

- ❖ Privacy Policy
- ❖ Privacy Statements (Website and Agent)
- Privacy Breach Management Protocol
- Privacy Notices
- Privacy Training & Confidentiality Agreement
- Privacy Inquiry Procedure
- Access to and Correction of Personal Information Procedure
- Privacy Protection Contract Language
- Privacy Reporting Obligations
- Ongoing review of the above

 **Andrés Díaz**  
CPATA Privacy Designate

 The Board is responsible for approving the **Privacy Policy** and the **Privacy Statements**



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KB220  
JW [2]91  
JW [2]99

**Limiting Collection**

- PI may only be collected if:
  - the PI is directly related to a regulatory activity of the College; and
  - the collection of the PI is necessary for the College to meet its statutory purposes and its regulatory objectives.
- In determining its authority to collect personal information, the College's powers, and duties under the *CPATA Act*, Regulations, by-laws and its policies requiring or authorizing the collection of PI should be consulted.


**Identifying Purposes**

Before collecting new PI, the College must:

- Identify the purpose for collecting PI and only collect what is needed to meet that purpose
- Post a Privacy Notice and a Privacy Statement at a location where it is likely to come to a reader's attention.
  - CPATA Website
  - Thentia Portals

[Home » Meet the College » Privacy](#)

**Privacy**



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## Slide 16

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- KB220** I reworded first couple notes a bit to try to tighten - can you provide an example of a limiting collection reco from the PIA to illustrate - 'To establish authority to collect each element of PI, the specific purpose must be identified and tied directly back to the College's statutory purpose and authority. The College is only permitted to collect the least amount of personal information necessary to meet that identified purpose'.  
Kim Bustin, 2021-09-23
- JW [2]91** Could we flip the example a bit - rather than talk about recommendations re limiting collection (bc I think they'll trigger more discussion that we need to have - e.g., social media, crim record checks, contact us form) - talk about how the College was already thinking about this from a transparency perspective - without really knowing it was a really great privacy practice as well - specifically re the fact that they have been, and continue to develop Registrar policies that clearly articulate why specific information is required, how it is tied to assessment criteria etc. The College is not simply requesting a swath of PI to then assess individually - it's all very structured  
Julie Walsh, 2021-09-24
- JW [2]99** Canada residency policy - add to speaking notes  
Julie Walsh, 2021-09-24

**Limiting Use, Disclosure and Retention**  
 To comply with the *Privacy Act*, the College must:

- Only use PI for the purpose it was collected or for a consistent purpose, unless otherwise authorized by the *Privacy Act*;
- Provide access to PI to its employees and service providers on a 'need to know' basis only
- Only disclose PI as permitted under the *Privacy Act* or another law (e.g., to create and maintain the Register) or with the individual's consent
- Use and disclose the minimum amount of PI required for the purpose
- Retain PI only as needed to fulfill the identified and authorized purposes, or to comply with the law.

**Accuracy**



- The College must take reasonable steps to ensure PI is accurate, complete, and up to date as is necessary for the purposes for which it is to be used
- The College has documented procedures allowing individuals to request a correction of their PI

**Challenging Compliance**

- The College has a procedure in place for investigating privacy inquiries and complaints

**Safeguarding Personal Information**

- The College is accountable to protect PI against such risks as unauthorized access, use, disclosure, or disposal using reasonable security arrangements.
- The security arrangements include a combination of technical, administrative, and physical safeguards

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**Privacy Breach Management**

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### What is a privacy breach?

- A privacy breach is the unauthorized collection, use, access or disclosure of PI, in contravention of the *Privacy Act*.
- A privacy breach may be the result of carelessness or errors or (less frequently) malicious actions by insiders (employees, contractors) or intruders.
- Common sources of privacy breaches include:
  - Inappropriate access by employees ('snooping')
  - System compromise/cyber attack
  - Human error (e.g., email to wrong recipient)
  - Lost or stolen equipment/portable devices

Cause of Privacy Breaches at ISED (2019)

Cause	Percentage
Email	53%
Wrongful disclosure	20%
Traditional mail	7%
Wrongful access	6%
Data entry	7%
Loss	7%

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### Privacy Breaches – Impacts

**Organizational Impacts**

- Internal breach response costs (financial and lost productivity)
- Reputational impacts
- Negative impact on employee morale
- Job losses

**Loss of Trust in Regulatory Body**

Canadians and Agents may lose confidence in the College's ability to regulate patent agents and trademark agents in the public's interest

**Individual Harm**

- Identity theft
- Inconvenience, embarrassment, sensitivity or stigma
- Harm (agent may lose clients if sensitive PI is leaked)

**Offences, Penalties and Legal Action**

Offences to common law - Intrusion upon seclusion tort (\$20K)  
 Legal Action, including class action (amounts vary)

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### Privacy Breaches – Real Life Examples

**CRA:** Hackers used thousands of previously stolen usernames and passwords to access government services in three separate serious breaches, accessing and compromising PI from at a minimum 14,500 CRA user accounts. The CRA had to temporarily shut down online services as a result, hindering people's access to important services in the midst of the pandemic, particularly the CERB. Resulted in the filing of an ongoing class action lawsuit in August 2020.

**Class action lawsuits**

- HRSDC Student loan data breach (\$17.5M settlement)
- Equifax data breach (\$700 M settlement)

**CBC:** Computer equipment containing confidential information of 23, 675 employees, former employees, and contractors of the Corporation was stolen. Resulted in CBC offering these individuals free credit monitoring and identity theft insurance for one year after the event occurred.

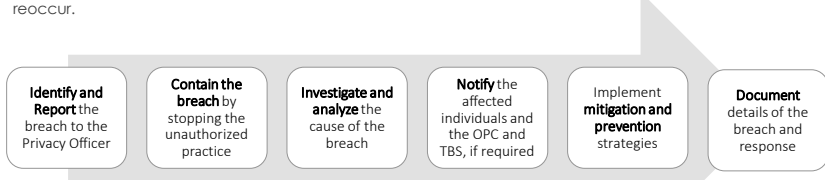



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### Privacy Breach Management Protocol

**The College's Privacy Breach Management Protocol is a key part of its Privacy Management Program**

This protocol outlines the steps that must be followed by anyone working for or on behalf of the College who discovers a possible breach of privacy related to PI controlled by the College. The guidance is intended to ensure that when a privacy breach does occur, it is quickly contained, and similar privacy breaches do not reoccur.

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Thank you  
Questions?  
[www.maraconsulting.ca](http://www.maraconsulting.ca)

CPATA  
Cabamc

## PRIVACY POLICIES

<b>NAME OF POLICY</b>	Privacy Policy		
<b>APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS</b>	Privacy Act Privacy Act Regulations CPATA Act, Regulations and by-laws		
<b>APPROVED BY</b>	<b>EFFECTIVE</b>	<b>REVIEWED</b>	<b>REVISED</b>
Board	Date	Date	Date

In this policy:

- a. "administrative purpose" means the use of information about an individual in a decision-making process that directly affects that individual. This includes all uses of personal information for confirming identity (authentication and verification purposes) and for determining eligibility of individuals for government programs.
- b. "agent" means an individual registered with the College as a Patent Agent or Trademark Agent
- c. "Board" means the Board of Directors of the College of Patent Agents and Trademark Agents ("the College"). The Board consists of nine directors, five appointed under s. 13 of the *CPATA Act* and four elected.
- d. "CIPO" means the Canadian Intellectual Property Office.
- e. "the College" means the College of Patent Agents and Trademark Agents.
- f. "*CPATA Act*" means the *College of Patent Agents and Trademark Agents Act*.
- g. "non-administrative purpose" means the use of personal information for a purpose that is not related to any decision-making process that directly affects the individual. This includes the use of personal information for research, statistical, audit and evaluation purposes.
- h. "OPC" means the Office of the Privacy Commissioner of Canada.
- i. "patent agent" means an individual who holds either a patent agent licence or a patent agent in training licence.
- j. "personal information" means information about an identifiable individual that is recorded in any form. As defined in section 3 of the *Privacy Act*: "*information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,*
  - *information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual;*
  - *information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;*
  - *any identifying number, symbol or other particular assigned to the individual;*

- *the address, fingerprints or blood type of the individual;*
  - *the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations;*
  - *correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence;*
  - *the views or opinions of another individual about the individual;*
  - *the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual; and*
  - *the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual."*
- k. "personal information bank" means a description of personal information that is organized and retrievable by a person's name or by an identifying number, symbol or other particular assigned to that person. The personal information described in the personal information bank has been used, is being used, or is available for an administrative purpose and is under the control of a government institution. Institution-specific personal information banks are specific to the College; standard personal information banks are those containing personal information for a common internal service (e.g., accounts payable, receivable, access to information requests).
- l. "PIA" means Privacy Impact Assessment, which is a due diligence exercise that: (i) identifies and addresses potential risks to the privacy of individuals' personal information that may arise during the implementation of a system, project, program or activity of the College or a change thereto; and helps to support ensure the College's compliance with this policy, the *Privacy Act* and the *CPATA Act*.
- m. "privacy breach" means the unauthorized collection, use or disclosure of personal information. Such activity is "unauthorized" if it occurs in contravention of the *Privacy Act*. A breach may be the result of inadvertent errors or of malicious actions by employees, agents, contractors, third parties, partners in information-sharing agreements, or intruders.
- n. "Privacy notice" means a notification, electronic or otherwise, to individuals about: the purpose for which personal information is collected (i.e., principally how the information is intended to be used); the authority for such collection; and the contact information for an individual within the College who can answer questions about the collection. A privacy notice should provide a reference to the College's

Commented [JW1]: Agree with this change.

Privacy Statement where more information about the College's information practices may be found.

- o. "Privacy Officer" means the individual designated by the Chief Executive Officer (CEO) or head of the College under section 73(1) of the *Privacy Act*.
- p. "Privacy Statement" means a publicly available statement that explains the personal information the College collects, uses, discloses, stores, and protects in compliance with applicable legislation, and how individuals may exercise their privacy rights with respect to their personal information held by the College.
- q. "service provider" means an organization, business or individual that provides services to the College (e.g., IT, consulting, advisory services) and is not an employee of the College.
- r. "TBS" means the Treasury Board of Canada Secretariat. TBS provides advice and makes recommendations to the Treasury Board committee of ministers on how the government spends money on programs and services, how it is regulated and how it is managed.
- s. "trademark agent" means an individual who holds either a trademark agent licence or a trademark agent in training licence.

## 1. POLICY OBJECTIVES

- The College complies with the *Privacy Act* and applicable TBS policies and directives governing personal information in its custody or control; and
- All individuals working with, for or on behalf of the College are accountable for respecting the privacy rights of individuals, in accordance with the *Federal Privacy Act* and TBS policies whenever they are collecting, using, disclosing, storing or disposing of personal information in carrying out their duties.

## 2. SCOPE

This policy applies to these individuals when acting for or on behalf of the College with respect to personal information in the custody or under the control of the College:

- The College Board;
- Individuals employed by the College on a permanent, temporary, part-time, or contract basis;
- Members of the Investigations Committee, Discipline Committee, and Registration Committee; and
- All service providers of the College to the extent that they collect, access, use, process or store personal information on behalf of the College as part of their duties.

### 3. POLICY STATEMENT

Personal information in the College's custody or under its control is only created, collected, retained, used, disclosed and disposed of in a manner that respects and complies with the *Privacy Act* and its Regulations and aligns with TBS privacy policies and directives. The College upholds the privacy rights of individuals whose personal information is controlled by the College, in accordance with these requirements.

### 4. PROCEDURES

#### 4.1 Accountability for Personal Information

- The College is accountable for personal information in its custody and under its control. The College has developed, implemented and maintains, a Privacy Management Program to facilitate meeting its privacy obligations, adhering to privacy principles, and **effectively** managing privacy risks over time.
- The College's accountability extends to personal information that is collected, used (e.g., handled or processed), accessed, disclosed, stored or disposed on its behalf by service providers. The College uses contractual or other means to hold service providers accountable for complying with the College's obligations.
- The CEO of the College has designated a Privacy Officer under section s. 73(1) of the *Privacy Act* with the powers, duties, and functions to make sure the College's complies with privacy legislation, through the College's Privacy Management Program.
- Individuals subject to this policy must:
  - formally acknowledge (in writing) upon hire or contract signing they have reviewed, understand and agree to comply with the College's privacy policies, and annually confirm this agreement;
  - complete the required privacy training within the first month of their employment or contract, and any additional privacy training required thereafter; and
  - adhere to this Privacy Policy and supporting privacy procedures when collecting, using, disclosing, storing, handling and retaining personal information.
- The Privacy Officer will facilitate privacy training for individuals and periodically review and update the privacy training based on significant changes to privacy legislation, best practices, or risks impacting the College.

Commented [JW2]: Agree with this change.

#### 4.2 Privacy Impact Assessments

- In accordance with the TBS Directive on Privacy Impact Assessments, the College will complete a PIA (using the template in Annex C of the TBS Directive

on Privacy Impact Assessments) for a program or activity in the following circumstances:

- when personal information is used for or is intended to be used as part of a decision-making process that directly affects the individual; and
- upon substantial modifications to existing programs or activities where personal information is used or intended to be used for an administrative purpose.
- The requirement for a PIA will be incorporated as a component of the College's project management, IT planning, and new business process development.
- The College will notify the Privacy Commissioner of any planned initiatives (legislation, regulations, by-laws, policies, or programs) that could relate to the *Privacy Act* or to any of its provisions, or that may impact on the privacy of Canadians. This notification is to take place at a stage to permit the Commissioner to review and discuss the issues involved.
  - The Privacy Officer will work with the Office of the Privacy Commissioner to implement any recommendations or conduct any subsequent consultations throughout the development of the PIA.
- Completed PIAs must:
  - be reviewed to determine ensure compliance with applicable privacy legislation and this policy;
  - be approved by the CEO;
  - be provided to the TBS and the OPC; and
  - be summarized and made available on the College website in accordance with the TBS Directive on Privacy Impact Assessments.

Commented [JW3]: Agree with this change.

### 4.3 Consent

- The College obtains written or verbal consent<sup>1</sup> from an individual under the following circumstances:
  - Before the indirect collection of personal information, unless seeking consent would result in collecting inaccurate information, would defeat the purpose of collection or would prejudice the use of the information collected; [should we have something broader which allows the College to collect personal information about a registrant from a complainant?]
    - for example, the College will generally collect personal information about an Agent from a complainant for the purpose of investigating the Agent without consent, as obtaining consent would prejudice the use of the information.

Commented [JW4]: This is a great example of a situation where consent would not be obtained given it would defeat the purpose of, or prejudice the use of the personal information. For clarity, we recommend adding as an example.

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<sup>1</sup> The nature and extent of verbal consent is recorded and a memo noting the consent is filed

- o Before using or disclosing personal information for a purpose or purposes that are not consistent with the purposes for which the information was originally obtained or compiled;
- o Before disposing of personal information unless such disposition is expressly authorized by legislation, or the two-year minimum retention period established by the *Privacy Act* Regulations has passed; and
- o If it intends to disclose a complaint received by the College or any privileged or confidential information obtained in the course of an investigation or proceeding. In this case, written consent ~~is required of~~ will be sought of all persons whose rights or interests may reasonably be affected.

Commented [JW5]: Agree with this change.

Obtaining an individual's consent to a collection of personal information does not replace or establish authority for the collection of that information under the *Privacy Act*; rather the College ~~will seek to collect only must ensure the~~ personal information ~~that to be collected is~~ directly related to and demonstrably necessary for the College's regulatory activities<sup>2</sup> (see section 4.4 for more information on collection).

Commented [JW6]: As 'seek to' implies a degree of discretion, we recommend removing and simply stating that the College will collect only personal information that is directly related to and demonstrable necessary for the College's regulatory activities (as required under the *Privacy Act*).

#### 4.4 Collection of Personal Information

- Personal information may only be collected or created (e.g., issuing a licence number, or placing limitations on a licence is creating personal information) if:
  - o the personal information is directly related to a regulatory activity of the College; and
  - o the collection of the personal information is necessary for the College to meet its statutory purposes and its regulatory objectives.
- In determining whether the personal information is directly related to a regulatory activity, the College's powers, and duties under the *CPATA Act*, Regulations, by-laws and policies requiring or authorizing the collection of personal information should be consulted. The College's policies provide direction and guidance on the necessity of personal information to accomplish the College's objectives. Before collecting or creating new personal information, the College ~~will must:~~
  - o Identify the personal information to be collected;
  - o Identify the purpose(s) for collecting each type of personal information;
  - o Post a privacy notice (see section 4.5);
  - o Identify each element of personal information to be included in a Personal Information Bank (PIB); and

Commented [JW7]: Agree with this change

<sup>2</sup> Information required to support the College's regulatory activities must meet the TBS policy requirements of being 'demonstrably necessary'

- o Collect only as much personal information needed to accomplish the identified purpose(s).
- The College collects or creates personal information intended to be used for an administrative purpose directly from the individual to whom it relates except:
  - o When the individual authorizes the College to collect the personal information from another source;
  - o When the personal information is collected for a purpose for which the personal information may be disclosed to the College under subsection 8(2);
  - o When collecting the personal information directly from the individual might result in the collection of inaccurate information; or
  - o When collecting the personal information directly from the individual might defeat the purpose or prejudice the use for which the personal information is being collected. [Daryl should this be broader – for example when a complaint is brought forward and personal information is provided by a complainant?] For example, the College will generally indirectly collect personal information about an Agent from a complainant for the purpose of investigating the Agent rather than directly from the Agent as direct collection would likely defeat the purpose or prejudice the use of the personal information.

**Commented [JW8]:** As with the consent section, this is another example where the indirect collection is permitted given direct collection would prejudice the use of the personal information. Recommend adding as an example

#### 4.5 Privacy Notice

- At a location where it is likely to come to a reader's attention, the College provides an up to date a privacy notice before personal information is collected from individuals.
- The notice is adapted for either written or verbal communication, as required.
- The content of the notice includes:
  - o The purpose and authority for the collection;
  - o Any uses or disclosures that are consistent with the original purpose of collection;
  - o Any legal or administrative consequences for refusing to provide the information;
  - o The individual's rights of access and correct personal information under the *Privacy Act*;
  - o Reference to the applicable PIB, as described in InfoSource; and
  - o The right to file a complaint to the Privacy Commissioner of Canada regarding the College's handling of the individual's personal information.

#### 4.6 Use of Personal Information

- Personal information may only be used:



- For the purpose for which the information was obtained or compiled by the College or for a use consistent with that purpose; or
- For a purpose for which the information may be disclosed to the College under subsection 8(2) of the *Privacy Act*. This includes any purpose in accordance with any Act of Parliament or a regulation made thereunder that authorizes its disclosure.
- Individuals subject to this policy must:
  - Only use the minimum amount of personal information required for the immediate, valid purpose identified; and
  - Access personal information only on a need-to-know basis. Individuals are only permitted to access and use personal information when it is necessary to carry out their role within the College.

#### 4.7 Disclosure of Personal Information

- Personal information will not be disclosed unless consent of the individual is obtained, or if the disclosure is otherwise permitted or required under the *Privacy Act* or under the CPATA Act.
- For further clarity, and notwithstanding anything else to the contrary contained herein, personal information may be disclosed for the following purposes:
  - Maintaining the Registers of Patent Agents and Trademark Agents;
  - complying with a subpoena, warrant or court order;
  - if there is a risk of harm and the disclosure is in accordance with section 65(2)(e) of the CPATA Act;
  - For the purpose of adhering to the *Privacy Act* where, in the opinion of the CEO:
    - the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
    - disclosure would clearly benefit the individual to whom the information relates; and
  - With the written consent of the individual to whom the information relates (such as disclosure to an intersectional regulator (e.g., provincial law society).
- Everyone subject to this policy must:
  - Only disclose the minimum amount of personal information required to meet the valid purpose identified; and
  - Consult with the Privacy Officer before disclosing any personal information outside of what is required for their role.

Commented [JW9]: Agree with this change.

Commented [JW10]: Agree with this change.

#### 4.8 Retention and Disposition of Personal Information

- Personal information is retained for the period needed to fulfill the identified and authorized purposes, or to comply with a legal requirement, in compliance with the College's Records Retention Schedule and the *Library and Archives Canada Act*;
- Personal information used for an administrative purpose is retained for a minimum of two years unless the individual authorizes the disposal; and
- Personal information no longer required to be retained according to the College's Records Retention Schedule, will be securely destroyed, erased or de-identified such that contents are unreadable.

#### 4.9 Accuracy

- The College takes reasonable steps to ~~confirm that the~~ensure personal information is accurate, complete, and up to date as is necessary for the purposes for which it is to be used, and to minimize the possibility that inaccurate or incomplete information may be used to make a decision that directly affects an individual.
- The College has documented procedures allowing individuals to request a correction of their personal information where the individual believes there has been an error or omission, in accordance with the College's Access to and Correction of Personal Information Procedure.

Commented [JW11]: Agree with this change.

#### 4.10 Safeguarding Personal Information

- The College is accountable to protect personal information in its custody and under its control against such risks as unauthorized access, collection, use, disclosure, or disposal using reasonable security arrangements. The security arrangements include a combination of technical, administrative, and physical safeguards. The reasonableness of the security arrangements takes into consideration factors such as the sensitivity, amount, distribution, format and the method of storage of the information to be protected.
- When disclosing personal information, the ~~College will implement~~ensures reasonable safeguards ~~are in place~~ before the information is shared.
- The College requires access to personal information to be role-based and limited to the minimum amount of information needed for the authorized purpose(s).
- The College monitors access to and use of personal information to provide timely identification of inappropriate or unauthorized access to or handling of personal information through such means as auditing.

Commented [JW12]: Agree with this change.

- The College requires service providers to adhere to the College's legal obligations related to handling and safeguarding of personal information and service providers are required to comply with this privacy policy.
- College contracts with service providers that access, use or otherwise handle or store person information on the College's behalf include provisions to address:
  - obligations of the service provider acting on behalf of the College under applicable legislation and policies;
  - control over the personal information;
  - limitations on collection, use, disclosure, and retention of personal information;
  - secure disposition of the personal information;
  - administrative, technical and physical safeguards; and
  - providing the College with the right to review, assess, audit, or verify compliance with the service providers contractual obligations (as described above).

#### **4.11 Privacy Breach**

- The College has published a Privacy Breach Management Protocol to be followed for all known or suspected privacy breaches to provide for an effective and timely response to privacy breaches, in accordance with legal requirements.
- Individuals subject to this policy must immediately report any actual or suspected breach of privacy to the Privacy Officer.
- If the Privacy Officer becomes aware of a Privacy Breach, the Privacy Officer must notify the CEO.

#### **4.12 Openness**

- The College's practices for managing personal information are available to individuals, including members of the public and agents, through the College's Privacy Statements on its website. The Privacy Statements will be reviewed periodically and updated as needed based on changes in how the College collects, uses, discloses, or protects personal information.

#### **4.13 Individual Access**

- Individuals may request access to their personal information and may examine or will receive a copy of their personal information maintained by the College, subject to exceptions in the *Privacy Act*, by making a request to the College Privacy Officer in writing.
- The College has published an Access to and Correction of Personal Information Procedure compliance with the *Privacy Act* and TBS policies.

- Requests for access to personal information will be processed in accordance with the College's Procedure.
- Any requests for access to personal information must be immediately referred to the Privacy Officer.

#### 4.14 Privacy Inquiries

- The College has published a Privacy Inquiries Procedure in compliance with the *Privacy Act* and TBS policies.
- All privacy inquiries (including privacy complaints) must be investigated by the College in accordance with its Privacy Inquiries Procedure.
- Upon receipt of a privacy inquiry, anyone subject to this policy must immediately refer the inquiry to the College's Privacy Officer.

#### 4.15 Personal Information Bank (PIB)

- The College has registered one PIB with the TBS (*insert reference #, once registered*) related to Agent personal information.
- The College stores personal information in several standard PIBs including:
  - *Access to Information Act* and *Privacy Act* Requests PSU 901
  - Employee Personnel Record PSE 901
  - Security Incidents and Privacy Breaches PSU 939
- The College will notify TBS of changes to PIBs and, where these changes are substantial, ~~will provide ensure that~~ TBS ~~receives~~ a privacy impact assessment as required by the Directive on Privacy Impact Assessments.
- The Privacy Commissioner of Canada will be notified if the College plans to use personal information for a new, consistent use not already identified in the relevant PIB.

Commented [JW13]: Agree with this change.

## 5. POLICY GUIDELINES

To support the administration of this policy, the College may develop additional written procedures to provide guidance in specific areas, in alignment with the direction of this policy and the Privacy Management Program.

If written procedures or guidelines differ from this policy, this policy prevails.

## 6. ROLES AND RESPONSIBILITIES

### a) Employees

All employees are required to:

- Sign the College Confidentially Agreement, upon hire or upon contract signing and prior to accessing personal information, that they have reviewed, understand and agree to comply with this Privacy Policy and any supporting privacy policies and procedures when collecting, using, accessing, storing, handling, retaining, or disposing of personal information;
- Respect the privacy rights of individuals and protect personal information, as required under this policy; and
- Complete the College's privacy training within the first month of employment with the College, and any additional training as may be required thereafter, as outlined in the College's Privacy Management Program and/or as directed by the CEO.

### b) Chief Executive Officer (CEO)

In addition to the duties outlines above, the CEO is accountable to:

- Delegate appropriate authority under the *Privacy Act* to the College's Privacy Officer;
- Review and approve the College Privacy Policy and its Privacy Statement(s) and any significant changes, and recommend approval to the Board;
- Implement and oversee compliance with this policy and the Privacy Management Program within the College and report to the College's Board;
- Recommend approval of the Privacy Policy and Privacy Statements to the Board;
- ~~Make available~~ Ensure the College's information practices are made available to the public; and
- Approve agreements and contracts related to service providers' handling of personal information.

Commented [JW14]: Agree with this change.

### c) Board of Directors

The Board is responsible to:

- Approve the College Privacy Policy, and Privacy Statements;
- Know and understand their obligations under this policy;
- Complete privacy training;
- Acknowledge the Board Code of Conduct, including the obligations to maintain confidentiality of all information (including personal information) received or reviewed during their time on the Board; and

- Receive and review periodic reports on the status of the Privacy Management Program and significant privacy risks as part of their role in overseeing organizational governance and risk.

#### d) Privacy Officer

The Privacy Officer is responsible to, in addition to the responsibilities of an employee:

- Provide advice and guidance to employees with respect to the management of personal information within the College;
- Monitor, assess and report to the CEO and through the CEO to the Board on the College's progress in implementing the Privacy Management Program;
- Maintain and update the Privacy Management Program (including the organization's policies, procedures, training and other privacy controls) as needed based on:
  - Changes in the College's legal or regulatory framework;
  - The outcome of PIAs, audits, or other privacy or security risk assessments;
  - Recommendations arising from privacy breach or complaints investigations; and
  - Emerging privacy risks and best practices.
- Identify the need for new or updated PIBs;
- Lead the process to complete or update PIAs as necessary, where required under this policy;
- Identify and assess privacy risks associated with projects, programs and services;
- Lead the College's response to privacy breaches, complaints and access/correction requests, ensuring compliance with *Privacy Act*;
- Prepare annual reports for TBS and OPC under the *Privacy Act* and TBS policies; and
- Monitor the College's response to privacy risks in order to mitigate them in to ensure they are being mitigated on effectively and in a timely manner.

Commented [JW15]: Agree with this change.

## 7. COMPLIANCE AND MONITORING

- The College Privacy Officer with the support from the CEO, monitors compliance with this policy.
- In the College's Annual Report to the Minister under the CPATA Act, a report on compliance with this policy will be included.
- Non-compliance with this policy may be subject to disciplinary action, including termination of employment or contract.

## REFERENCES AND RELATED DOCUMENTS

- *Federal Privacy Act and Regulations*



- *College of Patent Agents and Trademark Agents Act, Regulations and By-laws*
- *TBS Directive on Privacy Practices*
- *TBS Policy on Privacy Protection*
- *Patent Act*
- *Trademark Act*
- *Library and Archives of Canada Act*
- *Standard on Privacy and Web Analytics*

### CONTACTS FOR ADDITIONAL INFORMATION

Name	Phone	Email
Andres Diaz	(514) 562-7017	privacy@cpata-cabmac.ca

## PRIVACY POLICIES

<b>NAME OF POLICY</b>	<b>Board Policy No. 6 - Privacy</b>		
<b>APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS</b>	<i>Privacy Act</i> <i>Privacy Act Regulations</i> <i>CPATA Act, Regulations and by-laws</i>		
<b>APPROVED BY</b>	<b>EFFECTIVE</b>	<b>REVIEWED</b>	<b>REVISED</b>
Board	October 30, 2021	Date	Date

In this policy:

- a. "administrative purpose" means the use of information about an individual in a decision-making process that directly affects that individual. This includes all uses of personal information for confirming identity (authentication and verification purposes) and for determining eligibility of individuals for government programs.
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  - information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual;
  - information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
  - any identifying number, symbol or other particular assigned to the individual;



- *the address, fingerprints or blood type of the individual;*
  - *the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations;*
  - *correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence;*
  - *the views or opinions of another individual about the individual;*
  - *the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual; and*
  - *the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual."*
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Privacy Statement where more information about the College's information practices may be found.

- o. "Privacy Officer" means the individual designated by the Chief Executive Officer (CEO) or head of the College under section 73(1) of the *Privacy Act*.
- p. "Privacy Statement" means a publicly available statement that explains the personal information the College collects, uses, discloses, stores, and protects in compliance with applicable legislation, and how individuals may exercise their privacy rights with respect to their personal information held by the College.
- q. "service provider" means an organization, business or individual that provides services to the College (e.g., IT, consulting, advisory services) and is not an employee of the College.
- r. "TBS" means the Treasury Board of Canada Secretariat. TBS provides advice and makes recommendations to the Treasury Board committee of ministers on how the government spends money on programs and services, how it is regulated and how it is managed.
- s. "trademark agent" means an individual who holds either a trademark agent licence or a trademark agent in training licence.

## 1. POLICY OBJECTIVES

- The College complies with the *Privacy Act* and applicable TBS policies and directives governing personal information in its custody or control; and
- All individuals working with, for or on behalf of the College are accountable for respecting the privacy rights of individuals, in accordance with the Federal *Privacy Act* and TBS policies whenever they are collecting, using, disclosing, storing or disposing of personal information in carrying out their duties.

## 2. SCOPE

This policy applies to these individuals when acting for or on behalf of the College with respect to personal information in the custody or under the control of the College:

- The College Board;
- Individuals employed by the College on a permanent, temporary, part-time, or contract basis;
- Members of the Investigations Committee, Discipline Committee, and Registration Committee; and
- All service providers of the College to the extent that they collect, access, use, process or store personal information on behalf of the College as part of their duties.

### 3. POLICY STATEMENT

Personal information in the College's custody or under its control is only created, collected, retained, used, disclosed and disposed of in a manner that respects and complies with the *Privacy Act* and its Regulations and aligns with TBS privacy policies and directives. The College upholds the privacy rights of individuals whose personal information is controlled by the College, in accordance with these requirements.

### 4. PROCEDURES

#### 4.1 Accountability for Personal Information

- The College is accountable for personal information in its custody and under its control. The College has developed, implemented and maintains, a Privacy Management Program to facilitate meeting its privacy obligations, adhering to privacy principles, and managing privacy risks over time.
- The College's accountability extends to personal information that is collected, used (e.g., handled or processed), accessed, disclosed, stored or disposed on its behalf by service providers. The College uses contractual or other means to hold service providers accountable for complying with the College's obligations.
- The CEO of the College has designated a Privacy Officer under section s. 73(1) of the *Privacy Act* with the powers, duties, and functions to make sure the College's complies with privacy legislation, through the College's Privacy Management Program.
- Individuals subject to this policy must:
  - formally acknowledge (in writing) upon hire or contract signing they have reviewed, understand and agree to comply with the College's privacy policies, and annually confirm this agreement;
  - complete the required privacy training within the first month of their employment or contract, and any additional privacy training required thereafter; and
  - adhere to this Privacy Policy and supporting privacy procedures when collecting, using, disclosing, storing, handling and retaining personal information.
- The Privacy Officer will facilitate privacy training for individuals and periodically review and update the privacy training based on significant changes to privacy legislation, best practices, or risks impacting the College.

#### 4.2 Privacy Impact Assessments

- In accordance with the TBS Directive on Privacy Impact Assessments, the College will complete a PIA (using the template in Annex C of the TBS Directive

on Privacy Impact Assessments) for a program or activity in the following circumstances:

- when personal information is used for or is intended to be used as part of a decision-making process that directly affects the individual; and
- upon substantial modifications to existing programs or activities where personal information is used or intended to be used for an administrative purpose.
- The requirement for a PIA will be incorporated as a component of the College's project management, IT planning, and new business process development.
- The College will notify the Privacy Commissioner of any planned initiatives (legislation, regulations, by-laws, policies, or programs) that could relate to the *Privacy Act* or to any of its provisions, or that may impact on the privacy of Canadians. This notification is to take place at a stage to permit the Commissioner to review and discuss the issues involved.
  - The Privacy Officer will work with the Office of the Privacy Commissioner to implement any recommendations or conduct any subsequent consultations throughout the development of the PIA.
- Completed PIAs must:
  - be reviewed to determine compliance with applicable privacy legislation and this policy;
  - be approved by the CEO;
  - be provided to the TBS and the OPC; and
  - be summarized and made available on the College website in accordance with the TBS Directive on Privacy Impact Assessments.

### 4.3 Consent

- The College obtains written or verbal consent<sup>1</sup> from an individual under the following circumstances:
  - Before the indirect collection of personal information, unless seeking consent would result in collecting inaccurate information, would defeat the purpose of collection or would prejudice the use of the information collected;
    - for example, the College will generally collect personal information about an Agent from a complainant for the purpose of investigating the Agent without consent, as obtaining consent would prejudice the use of the information.

<sup>1</sup> The nature and extent of verbal consent is recorded and a memo noting the consent is filed

- Before using or disclosing personal information for a purpose or purposes that are not consistent with the purposes for which the information was originally obtained or compiled;
- Before disposing of personal information unless such disposition is expressly authorized by legislation, or the two-year minimum retention period established by the *Privacy Act Regulations* has passed; and
- If it intends to disclose a complaint received by the College or any privileged or confidential information obtained in the course of an investigation or proceeding. In this case, written consent will be sought of all persons whose rights or interests may reasonably be affected.

Obtaining an individual's consent to a collection of personal information does not replace or establish authority for the collection of that information under the *Privacy Act*; rather the College will seek to collect only personal information that is directly related to and demonstrably necessary for the College's regulatory activities<sup>2</sup> (see section 4.4 for more information on collection).

#### 4.4 Collection of Personal Information

- Personal information may only be collected or created (e.g., issuing a licence number, or placing limitations on a licence is creating personal information) if:
  - the personal information is directly related to a regulatory activity of the College; and
  - the collection of the personal information is necessary for the College to meet its statutory purposes and its regulatory objectives.
- In determining whether the personal information is directly related to a regulatory activity, the College's powers, and duties under the *CPATA Act*, Regulations, by-laws and policies requiring or authorizing the collection of personal information should be consulted. The College's policies provide direction and guidance on the necessity of personal information to accomplish the College's objectives. Before collecting or creating new personal information, the College will:
  - Identify the personal information to be collected;
  - Identify the purpose(s) for collecting each type of personal information;
  - Post a privacy notice (see section 4.5);
  - Identify each element of personal information to be included in a Personal Information Bank (PIB); and
  - Collect only as much personal information needed to accomplish the identified purpose(s).

<sup>2</sup> Information required to support the College's regulatory activities must meet the TBS policy requirements of being 'demonstrably necessary'

- The College collects or creates personal information intended to be used for an administrative purpose directly from the individual to whom it relates except:
  - When the individual authorizes the College to collect the personal information from another source;
  - When the personal information is collected for a purpose for which the personal information may be disclosed to the College under subsection 8(2);
  - When collecting the personal information directly from the individual might result in the collection of inaccurate information; or
  - When collecting the personal information directly from the individual might defeat the purpose or prejudice the use for which the personal information is being collected. For example, the College will generally indirectly collect personal information about an Agent from a complainant for the purpose of investigating the Agent rather than directly from the Agent as direct collection would likely defeat the purpose or prejudice the use of the personal information.

#### 4.5 Privacy Notice

- At a location where it is likely to come to a reader's attention, the College provides an up to date a privacy notice before personal information is collected from individuals.
- The notice is adapted for either written or verbal communication, as required.
- The content of the notice includes:
  - The purpose and authority for the collection;
  - Any uses or disclosures that are consistent with the original purpose of collection;
  - Any legal or administrative consequences for refusing to provide the information;
  - The individual's rights of access and correct personal information under the *Privacy Act*;
  - Reference to the applicable PIB, as described in InfoSource; and
  - The right to file a complaint to the Privacy Commissioner of Canada regarding the College's handling of the individual's personal information.

#### 4.6 Use of Personal Information

- Personal information may only be used:
  - For the purpose for which the information was obtained or compiled by the College or for a use consistent with that purpose; or
  - For a purpose for which the information may be disclosed to the College under subsection 8(2) of the *Privacy Act*. This includes any purpose in

accordance with any Act of Parliament or a regulation made thereunder that authorizes its disclosure.

- Individuals subject to this policy must:
  - Only use the minimum amount of personal information required for the immediate, valid purpose identified; and
  - Access personal information only on a need-to-know basis. Individuals are only permitted to access and use personal information when it is necessary to carry out their role within the College.

#### **4.7 Disclosure of Personal Information**

- Personal information will not be disclosed unless consent of the individual is obtained, or if the disclosure is otherwise permitted or required under the *Privacy Act* or under the *CPATA Act*.
- For further clarity, and notwithstanding anything else to the contrary contained herein, personal information may be disclosed for the following purposes:
  - Maintaining the Registers of Patent Agents and Trademark Agents;
  - complying with a subpoena, warrant or court order;
  - if there is a risk of harm and the disclosure is in accordance with section 65(2)(e) of the *CPATA Act*;
  - For the purpose of adhering to the *Privacy Act* where, in the opinion of the CEO:
    - the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
    - disclosure would clearly benefit the individual to whom the information relates; and
  - With the written consent of the individual to whom the information relates (such as disclosure to an intersectional regulator (e.g., provincial law society)).
- Everyone subject to this policy must:
  - Only disclose the minimum amount of personal information required to meet the valid purpose identified; and
  - Consult with the Privacy Officer before disclosing any personal information outside of what is required for their role.

#### **4.8 Retention and Disposition of Personal Information**

- Personal information is retained for the period needed to fulfill the identified and authorized purposes, or to comply with a legal requirement, in compliance with the College's Records Retention Schedule and the *Library and Archives Canada Act*;
- Personal information used for an administrative purpose is retained for a minimum of two years unless the individual authorizes the disposal; and
- Personal information no longer required to be retained according to the College's Records Retention Schedule, will be securely destroyed, erased or de-identified such that contents are unreadable.

#### 4.9 Accuracy

- The College takes reasonable steps to confirm that the personal information is accurate, complete, and up to date as is necessary for the purposes for which it is to be used, and to minimize the possibility that inaccurate or incomplete information may be used to make a decision that directly affects an individual.
- The College has documented procedures allowing individuals to request a correction of their personal information where the individual believes there has been an error or omission, in accordance with the College's Access to and Correction of Personal Information Procedure.

#### 4.10 Safeguarding Personal Information

- The College is accountable to protect personal information in its custody and under its control against such risks as unauthorized access, collection, use, disclosure, or disposal using reasonable security arrangements. The security arrangements include a combination of technical, administrative, and physical safeguards. The reasonableness of the security arrangements takes into consideration factors such as the sensitivity, amount, distribution, format and the method of storage of the information to be protected.
- When disclosing personal information, the College will implement [ens](#)reasonable safeguards before the information is shared.
- The College requires access to personal information to be role-based and limited to the minimum amount of information needed for the authorized purpose(s).
- The College monitors access to and use of personal information to provide timely identification of inappropriate or unauthorized access to or handling of personal information through such means as auditing.
- The College requires service providers to adhere to the College's legal obligations related to handling and safeguarding of personal information and service providers are required to comply with this privacy policy.



- College contracts with service providers that access, use or otherwise handle or store person information on the College's behalf include provisions to address:
  - obligations of the service provider acting on behalf of the College under applicable legislation and policies;
  - control over the personal information;
  - limitations on collection, use, disclosure, and retention of personal information;
  - secure disposition of the personal information;
  - administrative, technical and physical safeguards; and
  - providing the College with the right to review, assess, audit, or verify compliance with the service providers contractual obligations (as described above).

#### **4.11 Privacy Breach**

- The College has published a Privacy Breach Management Protocol to be followed for all known or suspected privacy breaches to provide for an effective and timely response to privacy breaches, in accordance with legal requirements.
- Individuals subject to this policy must immediately report any actual or suspected breach of privacy to the Privacy Officer.
- If the Privacy Officer becomes aware of a Privacy Breach, the Privacy Officer must notify the CEO.

#### **4.12 Openness**

- The College's practices for managing personal information are available to individuals, including members of the public and agents, through the College's Privacy Statements on its website. The Privacy Statements will be reviewed periodically and updated as needed based on changes in how the College collects, uses, discloses, or protects personal information.

#### **4.13 Individual Access**

- Individuals may request access to their personal information and may examine or will receive a copy of their personal information maintained by the College, subject to exceptions in the *Privacy Act*, by making a request to the College Privacy Officer in writing.
- The College has published an Access to and Correction of Personal Information Procedure compliance with the *Privacy Act* and TBS policies.
- Requests for access to personal information will be processed in accordance with the College's Procedure.
- Any requests for access to personal information must be immediately referred to the Privacy Officer.

#### 4.14 Privacy Inquiries

- The College has published a Privacy Inquiries Procedure in compliance with the *Privacy Act* and TBS policies.
- All privacy inquiries (including privacy complaints) must be investigated by the College in accordance with its Privacy Inquiries Procedure.
- Upon receipt of a privacy inquiry, anyone subject to this policy must immediately refer the inquiry to the College's Privacy Officer.

#### 4.15 Personal Information Bank (PIB)

- The College has registered one PIB with the TBS (*insert reference #, once registered*) related to Agent personal information.
- The College stores personal information in several standard PIBs including:
  - *Access to Information Act and Privacy Act Requests* PSU 901
  - *Employee Personnel Record* PSE 901
  - *Security Incidents and Privacy Breaches* PSU 939
- The College will notify TBS of changes to PIBs and, where these changes are substantial, will provide TBS a privacy impact assessment as required by the *Directive on Privacy Impact Assessments*.
- The Privacy Commissioner of Canada will be notified if the College plans to use personal information for a new, consistent use not already identified in the relevant PIB.

## 5. POLICY GUIDELINES

To support the administration of this policy, the College may develop additional written procedures to provide guidance in specific areas, in alignment with the direction of this policy and the Privacy Management Program.

If written procedures or guidelines differ from this policy, this policy prevails.

## 6. ROLES AND RESPONSIBILITIES

### a) Employees

All employees are required to:

- Sign the College Confidentially Agreement, upon hire or upon contract signing and prior to accessing personal information, that they have reviewed, understand and agree to comply with this Privacy Policy and any supporting privacy policies and

procedures when collecting, using, accessing, storing, handling, retaining, or disposing of personal information;

- Respect the privacy rights of individuals and protect personal information, as required under this policy; and
- Complete the College's privacy training within the first month of employment with the College, and any additional training as may be required thereafter, as outlined in the College's Privacy Management Program and/or as directed by the CEO.

#### **b) Chief Executive Officer (CEO)**

In addition to the duties outlined above, the CEO is accountable to:

- Delegate appropriate authority under the *Privacy Act* to the College's Privacy Officer;
- Review and approve the College Privacy Policy and its Privacy Statement(s) and any significant changes, and recommend approval to the Board;
- Implement and oversee compliance with this policy and the Privacy Management Program within the College and report to the College's Board;
- Recommend approval of the Privacy Policy and Privacy Statements to the Board;
- Make available the College's information practices to the public; and
- Approve agreements and contracts related to service providers' handling of personal information.

#### **c) Board of Directors**

The Board is responsible to:

- Approve the College Privacy Policy, and Privacy Statements;
- Know and understand their obligations under this policy;
- Complete privacy training;
- Acknowledge the Board Code of Conduct, including the obligations to maintain confidentiality of all information (including personal information) received or reviewed during their time on the Board; and
- Receive and review periodic reports on the status of the Privacy Management Program and significant privacy risks as part of their role in overseeing organizational governance and risk.

#### **d) Privacy Officer**

The Privacy Officer is responsible to, in addition to the responsibilities of an employee:

- Provide advice and guidance to employees with respect to the management of personal information within the College;
- Monitor, assess and report to the CEO and through the CEO to the Board on the College's progress in implementing the Privacy Management Program;

- Maintain and update the Privacy Management Program (including the organization's policies, procedures, training and other privacy controls) as needed based on:
  - Changes in the College's legal or regulatory framework;
  - The outcome of PIAs, audits, or other privacy or security risk assessments;
  - Recommendations arising from privacy breach or complaints investigations; and
  - Emerging privacy risks and best practices.
- Identify the need for new or updated PIBs;
- Lead the process to complete or update PIAs as necessary, where required under this policy;
- Identify and assess privacy risks associated with projects, programs and services;
- Lead the College's response to privacy breaches, complaints and access/correction requests, ensuring compliance with *Privacy Act*;
- Prepare annual reports for TBS and OPC under the *Privacy Act* and TBS policies; and
- Monitor the College's response to privacy risks to mitigate them in an effectively and timely manner.

## 7. COMPLIANCE AND MONITORING

- The College Privacy Officer with the support from the CEO, monitors compliance with this policy.
- In the College's Annual Report to the Minister under the CPATA Act, a report on compliance with this policy will be included.
- Non-compliance with this policy may be subject to disciplinary action, including termination of employment or contract.

## REFERENCES AND RELATED DOCUMENTS

- *Federal Privacy Act and Regulations*
- *College of Patent Agents and Trademark Agents Act, Regulations and By-laws*
- TBS Directive on Privacy Practices
- TBS Policy on Privacy Protection
- *Patent Act*
- *Trademark Act*
- *Library and Archives of Canada Act*
- Standard on Privacy and Web Analytics

## CONTACTS FOR ADDITIONAL INFORMATION

<b>Name</b>	<b>Phone</b>	<b>Email</b>
Andres Diaz	(514) 562-7017	privacy@cpata-cabmac.ca

## MEMORANDUM

<b>TO</b>	<b>Board of Directors</b>
<b>FROM</b>	<b>Darrel Pink</b>
<b>DATE</b>	<b>October 18, 2021</b>
<b>SUBJECT</b>	<b>Professional Recruiting for College Board and Committees</b>

## MESSAGE

Why is this before you?

I am seeking authority from the Board to engage [Boyden's Ottawa Office](#) to assist the College in Committee and Board recruitment.

### Introduction

The College has established its regulatory committees (Investigations, Discipline and Registration) and its governance committees (Risk & Audit and Governance & Nominating [GNC]). To populate the regulatory committees the public members were recruited through the College's network and connections with other regulatory bodies. Agent members of those committees are being recruited through requests for expressions of interest. Names have been submitted to the Board for approval for the vacancies on these committees.

Recruitment for membership on the governance committees requires expertise and a network that are not part of the CPATA's present capacity. The networks the Board and staff have may not bring us the expertise the College wants for the roles assigned to these committees by their terms of reference, especially given the expectations they will advance our focus on risk, outcomes measurement and diversity.

## Professionalizing Committee and Board Recruitment

Though we have yet to engage with the Minister's Office regarding Board selection, good governance would have the Nominating Committee (it is a sub-committee of the GNC) develop a slate or a pool of qualified candidates based on the skills and attributes adopted for the Board. To do so will require national reach and a process that is able to select possible candidates based on a rigorous, fair and objective process.

From experience I have with another national Board on which I am a member, I became aware of the Board recruitment expertise of Boyden, the firm we have retained for all our staffing.

In discussions with [Mike Naufal](#), who does the Board Recruitment at Boyden, they would propose the following process:

- Establish/Confirm the Committee's Mandate & Project Timeline
- Confirm the Director/Committee member Competencies and Selection Criteria
- Develop the Prospect List for the Committee's Review
- Reach out to and Secure the Interest of Candidate
- Conduct Short List Interview
- Referencing and Due Diligence
- Recommend Individuals for Appointment
- Inform Unsuccessful Candidates of their Status

The process is very similar to one used in executive recruitment. As with that work, the advantage a firm like Boyden brings is experience and a wide network from which to seek interest in our work.

The work is not inexpensive. Our quote from Boyden for recruitment of 6 committee/Board candidates in \$65000. Subsequent searches would cost \$8000 a piece.

My view is this is another way in which CPATA can distinguish itself from other regulators and set a standard of professionalism in Board and Committee selection. Even if the Minister is not agreeable to having the College put forward names for Board appointment, using this process for our own committee

selection will go far to ensure we have the best people we possibly can assist us in advancing our mandate.

I am seeking authority from the Board to engage Boyden to assist the College in Committee and Board recruitment. The Board work will depend on discussions with the Minister's Office. We have included costs for this in the budget that is being submitted to the Board on October 30.

A handwritten signature in black ink that reads "Darrel Pink". The signature is written in a cursive, flowing style.

**Darrel Pink**

CEO & Registrar

[dpink@cpata-cabamc.ca](mailto:dpink@cpata-cabamc.ca)



## MEMORANDUM

<b>TO</b>	<b>Board of Directors</b>
<b>FROM</b>	<b>Sean Walker, CFO and Darrel Pink, CEO</b>
<b>DATE</b>	<b>October 20, 2021</b>
<b>SUBJECT</b>	<b>External Audit Firm Recommendation</b>

## MESSAGE

The College currently requires an external audit be performed for the fiscal years ending December 31, 2020 and December 31, 2021 based on the Canadian accounting standards for not for profit organizations. In addition, we are looking for advice from firms on the best approach for the multiple (two) year audit. We are looking for proposals based on a planned three-year agreement for 2020, 2021 and next year 2022. We reached out to five (5) Halifax CPA firms who expressed interest in the College's audit and who also have offices in Ottawa and across the country. Two of the firms contacted provided quotes with supporting documentation on the services they can provide. Accounting firm capacity is currently an issue, and some firms were not able to take on new clients. We did consider reaching out to additional firms but given the short timeline to present a recommendation and for the chosen firm to have time to begin interim review work, we felt it best to proceed with evaluating the two firms.

There are several mandatory criteria and attributes that need to be met by the firms to be considered for the College's audit, including

- The firm needs to be registered and authorized to perform audit engagements
- Previous experience auditing a regulator and/or similar Not-for-Profit
- Firm to have a national presence (offices in Halifax and Ottawa preferred)
- Opportunity to have a face to face with Auditors
- Bilingualism – financial statements and reports will need to be produced in both English and French (two separate copies)
- Auditor independence and other compliance with CPATA policies

Both firms met all criteria.

### **Evaluation Criteria and Matrix:**

There were additional criteria in our evaluation. The two firms that responded were Grant Thornton and KPMG and their scores based on the evaluation matrix were Grant Thornton 82.75% and KPMG 78.75%. The

criteria were independently evaluated by the CEO and CFO and shared with a member of the Board for review.

1. Overall capacities of the firm	10%
2. Professional team assigned	25%
3. Proposed methodology	25%
4. Understanding of CPATA's Regulatory purpose and the assignment	10%
5. Capacity for innovation and ability to audit a virtual organization	10%
6. Costs	20%
<b>Total Points</b>	<b>100%</b>

Both firms scored relatively close on most criteria, however, Grant Thornton has more experience with similar not-for-profit regulatory bodies including another new regulatory College. The Grant Thornton team is also familiar to the College's CEO and CFO as we have had a positive working relationship in the past with previous organizations.

**Proposed Fees:**

The two firms included quoted fees for the first audit period(s) 2020 and 2021 and the third year of the proposed agreement 2022. Grant Thornton's proposed fee was \$40,125 for the three periods including translation and administrative fees. This quote was approximately 30% less than that quoted by KPMG,

**Recommendation:**

Based on the scoring of the two firms, the lower fees and previous experience with the firms we are recommending that the College choose Grant Thornton as external auditors for the fiscal years 2020, 2021 (current engagement) and 2022 (next year).

## MEMORANDUM

<b>TO</b>	<b>Board of Directors</b>
<b>FROM</b>	<b>Darrel Pink</b>
<b>DATE</b>	<b>October 15, 2021</b>
<b>SUBJECT</b>	<b>Nominations &amp; Elections Policy – Privacy consideration</b>

## MESSAGE

The draft policy reviewed at the last meeting has been edited and is ready for approval.

The initial version contained the following provision:

The CEO will provide licensee email contact information to candidates on the condition the candidates agree in writing:

- i. to use the information solely for purposes of communicating to the profession about the election;
- ii. not to duplicate or provide a copy of the contact information to anyone;
- iii. to destroy the contact information at or before the end of the election period; and
- iv. to provide written confirmation of the destruction to the CEO.

Candidates may communicate with licensees as frequently as they deem to be appropriate. Following the Board discussion, I obtained a privacy opinion that provided the following advice:

*Sharing personal information (licensee lists) with a candidate, must be authorized under the Privacy Act. There are only a few possible options that provide this authority:*

- *8(1) ... with the consent of the individual to whom it relates.*
- *8(2)(a) for the purpose for which the information was obtained or compiled by the College or for a use consistent with that purpose;*
- *8(2)(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;*

*Section 8(1) - Given the volume of licensees, obtaining their consent may be challenging in this case given your timing and volume of licensees, but could be something to consider moving forward.*

*Section 8(2)(b) does not appear to apply. Although the CPATA Act requires the College to conduct elections, it does not specifically require or authorize the College to share licensee personal information with candidates to accomplish this purpose.*

*With respect to 8(2)(a): Personal information is collected to support the College in carrying out its mandate under the Act, which includes conducting elections in compliance with section 5. It may be possible to make the argument that the purpose for the disclosure of personal information to candidates is consistent with that purpose. To make this argument, however, the College would need to demonstrate the **necessity** of sharing the list of licensees with the candidate and (1) ensure this purpose is clearly articulated in the Elections Policy (2) ensure the Agent Privacy Statement is updated to reflect the collection, use and disclosure of personal information for this purpose and (3) only disclose the minimum amount needed for the purpose. Note that the College's PIA and its privacy policy would also need to be updated to reflect this intended disclosure of personal information and the rationale.*

*Before choosing to rely on Section 8 (2)(a) of the Privacy Act as providing authority for this disclosure, **we recommend that you first consider other less privacy-invasive options, such as:***

- *Recommend the candidates consult the public register for licensee communication information.*
- *Make candidate information available on the website (in addition to the election date info that must be published in accordance with section 31(3) of the Board By-laws) and recommend that licensees reach out to candidates for more information.*
- *Email licensees information related to the election candidates, making the same recommendation that licensees reach out to candidates for more information.*

Considering the Board discussion and the advice received, I have deleted the original proposed language about providing lists of licensee names to candidates.



**Darrel Pink**  
CEO & Registrar  
dpink@cpata-cabamc.ca

## BOARD POLICY NO. 7 - NOMINATIONS AND ELECTIONS

<b>NAME OF POLICY</b>	<b>Nominations &amp; Elections</b>		
<b>APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS</b>	<b>Board By-Law – 31 ff</b>		
<b>APPROVED BY</b>	<b>EFFECTIVE</b>	<b>REVIEWED</b>	<b>REVISED</b>
Board	October 30, 2021	Date	Date

### Introduction

CPATA is the modern, risk-focused public interest regulator of patent agents and trademark agents in Canada, and our core mandate is to protect and promote the public interest in the delivery of patent and trademark services. CPATA supports and enforces standards of practice and professional responsibility through a variety of activities, including advisory and support services, and a complaints and discipline system if necessary.

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 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.<sup>1</sup>

There are four (4) elected Directors – two to be filled by licensees who are trademark agents and two to be filled by licensees who are patent agents.

Elected Directors may be Class 1 or Class 2 Licensees.

Service on the College's Board of Directors requires an understanding of and commitment to public interest regulation of the Patent and Trademark professions. The Board's role is focused on public protection and the oversight of strategy and the CEO

<sup>1</sup> See: [How CPATA works - Its Principled Approach to Regulation and Governance](#)

to enable effective regulation. Though elected Directors may bring the perspective of practitioners, they do not represent the interests of the profession.

## **Elections**

Class 1, Class 2 and Class 3 Licensees, who are not suspended, may vote.

Elections are to be held during the 3<sup>rd</sup> week of March.

Voting will open at 8:00 am ET on the Monday of that week and will close at 5:00 pm ET on the Thursday of that week.

Elections are held electronically.

Each eligible licensee will receive a ballot, or an electronic message connected to a ballot, that lists only the candidates for whom the licensee may vote.

Trademark agents will vote for those seeking a director position reserved for trademark agents (the trademark election).

Patent agents will vote for those seeking a director position reserved for patent agents (the patent election).

Licensees who are both patent and trademark agents may vote in both elections.

The CEO will announce the results of the election as soon as they are tabulated by advising the candidates of the results and publishing them on the College's website.

The results will indicate the number of eligible voters for each Director position, the name of the candidate, the number of votes for each candidate, and the names of candidates elected.

In the event of a tie vote between candidates, in the presence of the candidates, the CEO must draw a name from a repository that contains the candidates' names. The name drawn will be declared elected.

## **Nomination procedure**

By December 15 the CEO must circulate to all licensees and post on the College's website a notice regarding the election providing dates and processes for all aspects of the nomination and election process. The notice includes notice of the number of director positions to be filled by the trademark agent and patent agent elections,

## **Nominations**

To be nominated to be an elected Director, a licensee submits a Nomination Form to the CEO

- a) signed by one licensee as a nominator and consented to by the licensee as nominee;
- b) confirming the licensee is not ineligible under Board By-law 32 (a) – (c);
- c) acknowledging that if elected the licensee will be able to comply with the Director's Conflict of Interest policy; and
- d) committing the licensee to attend an online orientation for prospective candidates, facilitated by the Governance and Nominating Committee.

Nomination Forms must be sent to [ceo@cpata-cabamc.ca](mailto:ceo@cpata-cabamc.ca) by 5:00 pm ET on January 15.

As soon as practicable after the close of the nomination period on January 15, the CEO will publish the names of the licensees who have been nominated ('candidates').

If at the end of the nomination period on January 15, the number of nominations equals the number of elected Director positions to be filled by the trademark or patent elections, and all licensees nominated are eligible for election, the CEO will advise the licensee nominees of that, declare the licensees elected and advise the profession.

If there are not enough nominations to fill the director positions to be filled by the trademark or patent elections, there will be a vacancy on the Board of Directors to be filled in accordance with Board By-law 41.<sup>2</sup>

## **Election Commissioner**

A dispute about the eligibility of a licensee will be referred by the CEO to the Election Commissioner under Board By-law 33.

## **Election Period**

The College makes reasonable amount of space available on its website to all candidates to allow them to publish information about themselves and their reasons for seeking election.

If the CEO believes a candidate wishes to publish material the CEO considers inappropriate for the election and the Candidate does not withdraw the material, the issue will be referred to the Election Commissioner who will, within 48 hours, decide on whether publication is appropriate. The determination of the Election Commissioner is final and not subject to appeal.

<sup>2</sup> **Vacancies on the Board** 41 If there is a vacancy on the Board for an elected director, the Board may appoint a person with the requisite qualifications to fill the vacancy for the remainder of the term.

## **Disputes**

A dispute under Board By-laws 36 or 39 may be initiated by providing a written notice, outlining the basis for the dispute, to [ceo@cpata-cabamc.ca](mailto:ceo@cpata-cabamc.ca).

A dispute under By-law 39 must be filed within 5 days of the announcement of the election results.

The CEO will immediately direct the issue to the appropriate decision maker. The Election Commissioner or the Governance and Nominating Committee may ask the candidate initiating the dispute for additional information before undertaking the processes prescribed by the By-law.

An inquiry and ruling on the dispute will be conducted in accordance with to requirements of [Board Policy No. 2 – Regulatory Objectives, Standards and Principles](#).

The Governance and Nominating Committee must advise the candidates who might be affected by the dispute under By-law 39 of the dispute and may allow them to make submissions on the issue to be determined by the Committee. The Committee may cause notice of the dispute to be published on the College's website.

## **Withdrawal of Nomination**

A withdrawal of nomination under Board By-law 38 must be directed to [ceo@cpata-cabamc.ca](mailto:ceo@cpata-cabamc.ca).

On receipt of a notice of withdrawal the CEO advises the other candidates and the profession. If possible, the name of the candidate who has withdrawn will be removed from the electronic ballot.

## **Appendix A**

### **Nominations and Elections By-Laws**

#### **Determining need for elections**



31(1) Each year, the Governance and Nominating Committee determines if, based on the terms of elected directors, an election is necessary.

### **Election required**

(2) If an election is required, the Committee determines whether the position is to be filled by a patent agent, a trademark agent or either.

(3) The CEO must publish the dates on the College's website for all aspects of the election process. (4) The CEO is responsible for the administration of the election process.

### **Election commissioner**

(5) The Board may appoint an election commissioner to address any issues arising in the election process.

### **Ineligibility**

32 For the purposes of subparagraphs 14(f)(ii) and 17(h)(iii) of the Act, the ineligibility criteria are the following:

(a) in the five years immediately preceding the election day, the individual

(i) has been found to have committed professional misconduct or been found to be incompetent by the Discipline Committee, or

(ii) has been found to have committed professional misconduct or been found to be incompetent by a tribunal of a body that has a statutory duty to regulate a profession;

(b) the individual is the subject of an application by the Investigations Committee to the Discipline Committee under subsection 49(1) of the Act;

(c) the individual has served as a director for the six years immediately preceding the election day;

(d) the individual has not provided a declaration regarding conflicts of interest; and

(e) the individual has not attended an orientation for prospective candidates, facilitated by the Governance and Nominating Committee.

### **Dispute**

33 (1) The CEO must refer a dispute about the ineligibility of a nominee for a position as a board member to the Election Commissioner who, following receipt of the reasons for the CEO's determination regarding ineligibility and a submission from the prospective nominee, must rule on ineligibility.

**No review by Board**

(2) The ruling of the Election Commissioner is not subject to review by the Board.

**Elections electronically**

34 Elections for directors are to be held electronically.

**Election policy**

35 The Board must establish and publish on the College's website an election policy.

**Dispute**

36 (1) Any dispute that arises during the election period or regarding the election results are to be ruled on by the Election Commissioner.

**Final decision**

(2) The ruling of the Election Commissioner is not subject to review by the Board.

**Eligibility to vote**

37 A licensee whose licence is not suspended is eligible to vote in an election for directors.

**Withdrawal of nominations**

38 A candidate who withdraws from an election must give notice in writing to the CEO.

**Dispute — validity of election**

39 (1) If a candidate asserts that there are reasonable grounds to dispute the validity of the election process, the candidate may file a notice of dispute with the Governance and Nominating Committee.

**Inquiry**

(2) If the Committee finds that the notice gives reasonable grounds to doubt the validity of the election process, they must hold an inquiry into the validity of the election process.

**Report and recommendations**

(3) Following its inquiry, the Governance and Nominating Committee must make a report and recommendations to the Board.

**Board may declare validity**

40 (1) After reviewing the report and recommendation of the Governance and Nominating Committee, the Board may

- (a) declare the election result to be valid; or
- (b) declare the election result to be invalid and
  - (i) may disqualify an apparently successful candidate and declare another candidate to have been elected, or
  - (ii) direct that another election be held.

**Minor irregularities**

(2) The Board is not to declare an election result invalid based on a minor irregularity with respect to the election process.

## MEMORANDUM

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<b>TO</b>	<b>Board of Directors</b>
<b>FROM</b>	<b>Sean Walker, CFO and Darrel Pink, CEO</b>
<b>DATE</b>	<b>October 22, 2021</b>
<b>SUBJECT</b>	<b>College Budget for 2022</b>

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## MESSAGE

As we approach the end of 2021 the College is preparing for and building a budget for 2022. This memo along with the supporting financial schedules outline the strategies and assumptions made as we prepare for the year ahead.

Our first months of operations have taught us a significant amount about the profession and the types of financial challenges we will experience. The come into force date was delayed slightly which resulted a reduced transfer of fees from CIPO and the number of Agents/Licenses and fee revenue was less than we had budgeted for as many agents chose to either change to an inactive status or surrender their licenses. We had budgeted for 2,525 licensee fees for 2021 but the actual number has come in at 2,261 which is about 10% fewer. In addition, the number of agents with “dual” (both Trademark and Patent licenses) is larger than we had expected, as a result the discounted “second” license fee they pay has also reduced the fee revenue compared to budget. We are expecting to be about \$230,000 or 14% under budget for fee revenue in 2021. We have used these updated figures when building the budget for 2022.

### **Budget Principles:**

The proposed license fee in the budget has been set at \$1,000 and \$500 for agents’ second license for those who are both Patent and Trademark Agents. This was the proposed fee discussed by the Board when the budget for 2021 was approved as the plan for the following year. The fee for 2021 was set at \$700 and was in addition to the amount Agents paid to CIPO (Trademark Agents \$306, Patent Agents \$357).

The budget includes funds for furthering the development of programs and projects some of which have begun in 2021. It also includes additional funds wages and benefits as the College continues to fill necessary staffing roles.

The Budget has been presented by Department/program which include Board & Governance, Administration & Operations, Communications & Government Relations, Regulatory – Complaints & Discipline and Regulatory – Registration.

The College has been able to pay down the Line of Credit to \$0 in late 2021. The Budget for 2022 therefore, does not include a loan payment but we recognize that if revenues are lower or expenses are higher than expected we may need to again rely on the Line of Credit to support operating costs. If so, the plan will be to pay it down again as soon as possible.

We have budgeted for a small surplus of revenue over expenses of \$80,000 with the intention to focus on programs and services in 2022 and not intentionally try to build up financial reserves at this time. We will wait until the Audit and Risk Committee is established and we have more historical information and capacity to plan for potential reserves. This has been also outlined in a memo to the Board on reserves.

A contingency of \$100,000 will again be established to provide for unknown expenses and it is anticipated the Operational Reserve will be funded by any "unused" contingency costs and any operating surplus for the year. We are expecting a potential \$100,000 to \$200,000 surplus from 2021 that will be held in reserve to help offset any unforeseen expenses in 2022.

The College has put insurance policies in place and will continue to see costs for a full suite of insurance including D&O coverage that covers regulatory exposure without statutory immunity.

In 2021 the College has hired an Operations Manager, Deputy Registrar & Director of Registration and Education and most recently a Communications Officer (.80 FTE). In the budget for 2022 we are planning for an Executive Assistant (.50 FTE) and a possible additional part-time staff person for policy planning and development.

For the Exam program, the College has a plan to have the fees for writing the exam cover the costs incurred to develop and administer the exam each year. For the first couple of years the development costs are expected to be substantial and therefore, the fees will not be sufficient to cover all of the costs yet.

We are also setting the fees for applications and requests for letters and certificates from the College. The proposed fees are included on the revenue schedule with the budget schedules.

Licensee Figures – below is a chart showing the number budgeted and actual licenses for 2021 and 2022.

	<b>Budgeted 2021</b>	<b>Actual 2021</b>	<b>Budgeted 2022</b>
Trademark Licenses	1,565	1,362	1,355
Patent Licenses	960	899	895
<b>Totals</b>	<b>2,525</b>	<b>2,261</b>	<b>2,250</b>

We are expecting to see a slight decline in license numbers in 2022 which will be partially offset by new agents who pass the qualification exams.

Board and Governance Expenses:

Most expenses related to Board and Governance are meeting expenses, planning for the first Annual General Meeting (AGM), remuneration for members and projected costs for a consultant to support us in recruiting for Board and Committee positions.

Communications and Government Relations:

The expenses in the Communications and Government Relations areas relate to translation costs for materials (website, communications, forms, etc.) and consultant support for working with government. These programs will be supported by the College’s new Communications Officer who starts in November 2021.

Regulations – Complaints and Discipline:

The College is continuing the development of a Complaints and Discipline program. The complexity and number of complaints has already been higher than expected and resources have been planned for establishing and training committees and panels to deal with these matters and professional fees to assist with the investigations and reporting.

Regulations – Registration:

As the College continues to develop its competency framework for new Agents coming into the profession, we are focusing on programs related to the continued development of ‘fundamental examinations’ (question development, administration, software, etc.). This area also includes research and support from working groups and consultants.

Administration and Operations:

Administration and Operations expenses include wages and benefits for staff, accounting fee and consultant costs related to the outsourced finance function. Professional fees in the policy and legal areas and office supplies and costs.

We are also continuing the next phases of development with our Regulatory software program (Thentia) and require support for the development of additional modules and features.

Human Resource consulting and recruitment costs are expected to be needed in 2022 as we continue to refine and expand the staffing model.

We are also expecting that 2022 will allow for in-person Board meetings and we begin to look at travel plans for staff and board members.

Additional Comments:

The College is projecting that we will be able to maintain a positive cash balance throughout 2022 and has budgeted for an approximate \$340,000 cash balance at the end of 2022. The Line of Credit will be available for any unplanned drops in revenue or increases in expenses.

**College of Patent Agents and Trademark Agents  
Budgeted Statement of Operations 2021, 2022**



	<u>2021</u>	<u>2022</u>
<b>Revenue</b>		
Licensee fees - CPATA fees	1,664,950	2,100,000
Licensee fees - CIPO Transfer in 2021	515,100	-
Exam Fees	107,000	122,500
Application and Certificate fees	-	25,750
<b>Total Revenue</b>	<b>2,287,050</b>	<b>2,248,250</b>
<b>Board &amp; Governance Expenses</b>		
Professional Fees	-	10,000
Insurance	59,105	27,173
Board and Committee Expenses	53,608	223,867
Communications Consultant	22,500	22,500
<b>Total Board &amp; Governance Expenses</b>	<b>135,213</b>	<b>283,540</b>
<b>Communications &amp; Government Relations Expenses</b>		
Communications Consultant	85,750	30,000
Translation	30,000	40,000
<b>Communications &amp; Government Relations Expenses</b>	<b>115,750</b>	<b>70,000</b>
<b>Regulations - Complaints and Discipline Expenses</b>		
Legal Fees	120,917	172,700
Consultant Expenses	50,167	105,500
Board and Committee Expenses	-	36,675
<b>Total Regulations - Complaints and Discipline Expenses</b>	<b>171,084</b>	<b>314,875</b>
<b>Regulation - Registration Expenses</b>		
Admissions Consultant	242,000	253,000
Software Costs	-	44,000
<b>Total Regulation - Registration Expenses</b>	<b>242,000</b>	<b>297,000</b>
<b>Administration &amp; Operations Expenses</b>		
Wages and Benefits	531,508	700,335
IT Consultant	72,000	120,200
HR Consultant	144,000	82,500
Accounting Consultant	60,000	70,000
Bank Fees and Interest	60,400	55,200
Travel	10,000	20,000
Accounting/Audit Fees	17,500	16,000
Legal Fees	10,000	12,000
Policy Consultant	10,000	9,600
Dues and memberships	10,000	8,000
Software Costs	1,000	5,400
Office-Furniture	10,000	2,400
Amortization	-	1,200
<b>Total Administration &amp; Operations Expenses</b>	<b>936,408</b>	<b>1,102,835</b>
<b>Contingency Expense allowance</b>	<b>100,000</b>	<b>100,000</b>
<b>Total Expenses</b>	<b>1,700,455</b>	<b>2,168,250</b>
<b>Surplus of Revenue over Expenses</b>	<b>586,595</b>	<b>80,000</b>



**College of Patent Agents and Trademark Agents**  
**Budgeted Statement of Financial Position 2021, 2022**



	<u>2021</u>	<u>2022</u>
<b>Current Assets</b>		
Cash	406,335	340,892
HST/GST Rebate Receivable (Payable)	(3,304)	50,000
Prepaid expenses and contracts	-	3,000
<b>Total Current Assets</b>	<b>403,031</b>	<b>393,892</b>
<b>Fixed Assets</b>		
Fixed Assets	-	15,500
Accumulated Depreciation	-	(1,800)
<b>Total Fixed Assets</b>	<b>-</b>	<b>13,700</b>
<b>Total Assets</b>	<b>403,031</b>	<b>407,592</b>
<b>Current Liabilities</b>		
Accounts Payable	181,680	106,241
<b>Current Liabilities</b>	<b>181,680</b>	<b>106,241</b>
<b>Total Liabilities</b>	<b>181,680</b>	<b>106,241</b>
Opening Operating Reserves	(365,244)	221,351
Current Year Net (Operating) Income (Loss)	586,595	80,000
<b>Total Reserves/Surplus</b>	<b>221,351</b>	<b>301,350</b>
<b>Total Liabilities and Reserves</b>	<b>403,031</b>	<b>407,592</b>

Invoice Items - 2021	Count of Payment Received	Sum of Payment Received	Rates-2021
Change to Class 2 Licence Application	99	14,719.50	150.00
Class 1 Licence Application Fee	1	250.00	250.00
Registrar Certificate of Standing	3	225.00	75.00
Reinstatement to Class 1 Fee	12	1,800.00	150.00
Request to Surrender a Licence Application Fee	7	1,750.00	250.00
<b>Exam Fees - Trademark (\$200 per paper x 2)</b>	65	26,000.00	200.00
<b>Exam Fees - Patent</b>	100	40,000.00	400.00
Renewal - Patent Agent	705	491,400.00	697.02
Renewal - Patent Agent - Multiple Licence Discount	194	67,550.00	348.20
Renewal - Trademark Agent	1164	813,673.00	699.03
Renewal - Trademark Agent - Multiple Licence Discount	198	69,300.00	350.00
Additional income - CIPO Grant		475,791.75	
<b>TOTAL</b>		<b>2,002,459.25</b>	

Invoice Items - 2022 - projected	Count of Payments Projected	Sum of Payment Received	Rates-2022
Change to Class 2 Licence Application	40	6,000.00	150.00
Class 1 Licence Application Fee (20% of exam writers)	40	10,000.00	250.00
Class 3 New applicants	20	5,000.00	250.00
Registrar Certificate of Standing	20	1,500.00	75.00
Reinstatement to Class 1 Fee	10	1,500.00	150.00
Request to Surrender a Licence Application Fee	7	1,750.00	250.00
	<b>Total</b>	<b>25,750.00</b>	
Exam Fees (\$350 per paper)	175	122,500.00	700.00
	<b>Total</b>	<b>122,500.00</b>	
Class 2 Renewals	200	20,000.00	100.00
Class 3 Renewals (250 writing - estimate 50 pass in 2021)	200	30,000.00	150.00
Renewal - Patent Agent	695	695,000.00	1,000.00
Renewal - Patent Agent - Multiple Licence Discount	200	100,000.00	500.00
Renewal - Trademark Agent	1155	1,155,000.00	1,000.00
Renewal - Trademark Agent - Multiple Licence Discount	200	100,000.00	500.00
	2650	<b>2,100,000.00</b>	
<b>TOTAL</b>		<b>2,248,250.00</b>	

## MEMORANDUM

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<b>TO</b>	<b>Board of Directors</b>
<b>FROM</b>	<b>Sean Walker, CFO and Darrel Pink, CEO</b>
<b>DATE</b>	<b>October 20, 2021</b>
<b>SUBJECT</b>	<b>Financial Reserves for extraordinary expenses</b>

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## MESSAGE

The College is still in its infancy, and we are constantly learning more and more about the profession and how we will regulate Patent Agents and Trademark Agents. The College is developing several programs including in Complaints and Discipline, Competency and Registration. Though we have budgeted based on what is known, some costs cannot be accurately predicted, especially in complaints and discipline as the number and complexity of complaints and investigations are difficult to estimate.

CPATA's sources of revenue are annual licensee fees, exam fees and application fees. These revenues will currently cover budgeted expenses. The approach to both application and exam fees is they should cover the costs associated with the regulatory and administrative work done to support the program or activity.

Given that programs and operations, and their associated costs, are evolving, the possibility exists that unforeseen and unavoidable costs may be incurred, resulting in a need for additional funds, especially in complaints and discipline where investigation, hearing and committee costs can increase significantly in complex files. For example, a lengthy hearing may require professional fees (legal, investigation, hearing costs, etc.) that were not budgeted.

Most regulators maintain **Financial Reserves**, to hold funds outside of the annual operating budget to cover foreseeable but unpredictable expenses. These Reserves might be established for various programs (e.g., capital asset funds, operating reserves, complaints and discipline, strategic projects, etc.) each with different rationales for the reserve amounts.

The College includes a 'contingency' figure in our budget of \$100,000 in 2021. The same sum is planned for 2022 to account for unforeseen costs during the year. However, this amount may not cover extraordinary expenses or lost revenue. For example, if many Agents retire or change to an inactive status and do not pay the annual licensee fee, the College will have planned expenses with less revenue. We have a line of credit available for the near future to cover extraordinary costs, but the goal should be to establish reserves substantial enough, so CPATA need not borrow funds to cover expenses.

Based on our experience with a similarly sized law society and that of other regulators, we recommend CPATA establish an **Operating Reserve** to cover two to three months of normal expenses to offset any losses in fee revenues or extraordinary operating costs. The would be \$350,000 to \$500,000.

In addition, the College can rely on the experience of similar organizations to determine an appropriate amount for a **Professional Responsibility (Complaints and Discipline) Reserve**. This would cover costs of investigation, prosecution and hearings for complex discipline matters, beyond what is in the operating budget. It is estimated this reserve will need to be at least \$250,000.

The 2022 Budget is based on the continued development of the Competency, Registration and Complaints and Discipline programs and keeps Licensee fees at the originally predicted level (\$1,000). With this revenue and planned expenses, we do not forecast there will be excess funds available to establish significant reserve balances. We will rely on the Line of Credit and any surplus funds from this year to cover any extraordinary or unbudgeted expenses in the complaints and discipline.

The 2021 surplus is projected to be between \$100,000 and \$200,000.

The RBC line of credit remains in place. Revenue from 2021 renewals and the transfer from CIPO was applied to the loan balance (approximately \$850,000) so it is at a zero balance. Based on the current rate of expenditures and the 2022 renewal period, starting in January, we do not expect to call upon the credit facility, which will be used exclusively to manage extraordinary or unplanned significant expenditures.

This is a short term solution until we have more operating experience and a better understanding of anticipated expenses. Only with time will we develop an appreciation of what the Professional Responsibility costs will be.

At this point it is recommended:

1. The RBC line-of-credit, supported by the Government of Canada's Guarantee remain in place.
2. On completion of the 2021 audit and finalization of the operating surplus number, the Risk & Audit Committee will recommend to the Board what portion of that sum, should be set aside in a **Reserve Account** and whether it should be for an Operating or Professional Responsibility Reserve.
3. The Board should task the Risk & Audit Committee to develop a Financial Reserve Policy and make a recommendation to the Board.
4. The CEO should advise RBC and ISED of this planned approach.

**Amended  
SCHEDULE**

(Section 1)

**Fees**

Item	Description	Fees (\$)
1	Annual Class 1 License	1000
2	Annual Class 1 License (both patent agent and trademark agent)	1500
3	<del>Annual Class 1 License — 2021</del>	<del>700</del>
4	<del>Annual Class 1 License (Both patent agent and trademark agent) — 2021</del>	<del>1050</del>
5	Annual Class 2 License	100
6	Application — Class 3 License	250
7	Annual Class 3 License	150
8	Annual fee to extend Class 3 registration [beyond 24 months]	200
9	Patent agent qualifying examination (per paper)	200
10	Trademark agent qualifying examination (per paper)	200
11	Failed examination remark	200
12	Application for initial registration as a Class 1 licensee	250
13	Application to change from Class 1 to Class 2	150
14	Application to change from Class 2 to Class 1	150
15	Application to surrender licence	250
16	Reinstatement fee from suspended licence	150
17	Registrar certificate	75
18	<u>Foreign Legal Practitioners</u>	
	<u>- Addition to Register</u>	<u>250</u>

**ANNEXE**

(article 1)

**Droits applicables**

Article	Description	Droit (\$)
1	Permis annuel de catégorie 1	1 000
2	Permis annuel de catégorie 1 (permis d'agent de brevets et permis agent de marques de commerce combinés)	1 500
3	<del>Permis de catégorie 1 pour l'année 2021</del>	<del>700</del>
4	<del>Permis annuel de catégorie 1 (permis d'agent de brevets et permis d'agent de marques de commerce combinés) pour l'année 2021</del>	<del>1 050</del>
5	Permis annuel de catégorie 2	100
6	Demande de permis de catégorie 3	250
7	Permis annuel de catégorie 3	150
8	Prolongation au-delà de 24 mois — catégorie 3	200
9	Chacun des examens de compétence — agent de brevets	200
10	Chacun des examens de compétence — agent de marques de commerce	200
11	Nouvelle correction d'un examen de compétence	200
12	Première demande de permis de catégorie 1	250
13	Demande de changement de catégorie 1 à catégorie 2	150
14	Demande de changement de catégorie 2 à catégorie 1	150
15	Demande de remise de permis	250
16	Demande de rétablissement de permis suspendu	150
17	Délivrance d'un certificat par le registraire	75



## 2021-10-06 Revised Liability Insurance Resolution

Whereas s. 34 of the CPATA Act mandates licensees be insured against professional liability;

And whereas it is in the public interest that the requirement for insurance be based on known and foreseeable risks;

And whereas the provision of patent and trademark services by licensees involves intellectual property rights and interests that extend beyond Canada, even if those rights are only initially registered in Canada;

And whereas it is imperative licensees acquire sufficient insurance to address the known and foreseeable risks associated with their individual or their firm's practices;

And whereas the obligation of CPATA is to set minimum levels of insurance applicable to licensees, while recognizing minimum levels will not be adequate to address known and foreseeable risks associated with the practices of many licensees and their firms;

And whereas the College recognizes licenses will need to make a variety of arrangements regarding liability insurance and that such coverage may come into effect at various dates in 2022;

Therefore:

*Be it resolved under s. 75(1)(q) and (r) of the CPATA Act mandatory professional liability insurance requirements will be:*

- a. Commencing in 2022, Class 1 and Class 3 licensees, providing patent or trademark services to the public, must be insured under a liability insurance policy provided by an insurance company licensed in Canada, that will indemnify for civil liability arising from the licensee acting as a patent agent or a trademark agent;*
- b. The limit of liability is a minimum of \$1.0 million per claim and a \$2.0 million aggregate;*
- c. The liability insurance policy must cover claims made outside of Canada; and*
- d. These requirements will be satisfied so long as inception of coverage under a liability insurance policy meeting the requirements commences in 2022.<sup>1</sup>*

*Further, the Board directs the CEO to have by-laws drafted and presented to the Board for approval in time for publication in advance of January 1, 2022.*

<sup>1</sup> The renewal date for the IPIC policy is March 1; Law Society insurance policies renew on July 1. The intention is to allow licensees adequate time to find a policy that satisfies these requirements.

*Further, to inform future decision-making, the Board directs the CEO to engage in additional research and to bring recommendations to the Board relating to:*

- 1. Whether policy limits should remain at \$1.0 million per claim and a \$2.0 million aggregate.*
- 2. The impacts on the profession of the insurance requirements.*



From: Dan Pinnington <dan.pinnington@lawpro.ca>  
Sent: October 21, 2021 7:03 PM  
To: Michele Ballagh  
Cc: Jennifer Slabodkin; Darrel Pink  
Subject: RE: Canadian Patent & Trademark Agents & LawPro

Hi Michele

I am writing in response to your emails and will try to provide answers to the various questions you raise.

I will first confirm what is currently covered under the LAWPRO policy, and I will then explain why LAWPRO unfortunately can't offer coverage that meets all the minimum liability insurance requirements newly set by the College of Patent Agents and Trademark Agents ("CPATA") for the 2022 LAWPRO policy year (coverage January 1 through December 31, 2022).

With the hope and intent of providing answers that address key points with greater clarity, I will make my comments in narrative form, but for the sake of completeness, do so noting all the circumstances of any specific matter would need to be considered with reference to the relevant provisions of the LAWPRO policy, which are provided in "the fine print" section below, along with a link to the full policy.

#### Coverage under the 2022 LAWPRO Policy

I will make some general comments on coverage, and then address the scenarios you ask about in your email.

Services which an insured is responsible for as a lawyer that arise out of the insured's activities as a patent and/or trademark agent would be considered "professional services" (a defined term – see below) under the coverage grant of the LAWPRO Policy.

Professional services must be with respect to the laws of Canada, its provinces and territories (note the exception to Quebec provincial law). If the services provided are with respect to foreign laws (not including, for example, public international law) then there is no coverage.

The annual limits of liability under the LAWPRO policy are \$1M per claim and \$2M in the aggregate.

I will now turn to addressing the scenarios you raised in your email, but I want to first address the comments you made about getting conflicting advice from LAWPRO over the years. We went back through our correspondence to 2007, and other than correspondence on some administrative filings, have no records of any communications with you. While I can't claim that the members of my team are perfect, we do pride ourselves in providing accurate and complete information orally and in writing when we respond to the questions we get from our insureds. This would include carefully worded answers to the coverage questions we get from time to time. I will now address the various scenarios you raise, and I encourage you to follow-up with any further questions you have.

The scenarios you raise are the ones that seem to come up frequently with respect to patent and trademark agents. Let me try to address them in a general manner, again with the proviso that every matter presents a different set of circumstances which must be considered fully with reference to the LAWPRO Policy for any decisions on coverage.

I believe the comments above should address your question on coverage for work involving

Canadian law versus foreign law.

We consider work before the USPTO as work involving foreign law, and as such, this work would not be covered under the LAWPRO Policy. The fact that the work is done in Canada for Canadian clients is not relevant to this determination. I note that Canadian lawyers with detailed knowledge of foreign law are sometimes sued by clients when they rely on advice on foreign law matters is provided to them orally or in writing. In particular this scenario comes up for patent and trademark agents when incorrect or misunderstood advice is given on USPTO processes and filing deadlines.

We would not consider you to be doing work involving foreign law if on the client's instructions you engage a lawyer or trademark agent located in the foreign country to file applications. I note we have seen claims against Ontario lawyers alleging a negligent referral to a foreign lawyer or agent where that person was negligent and/or didn't have malpractice insurance (which is optional in many foreign jurisdictions). While IP lawyers more commonly directly retain agents in foreign countries on behalf of their clients, lawyers in other areas of practice often ask the client to directly retain the foreign agent to reduce their exposure to a negligent referral claim.

We consider the filing of trademark applications in foreign countries on behalf of Canadian clients through CIPO pursuant to the Madrid Protocol as the practice of Canadian law and that work would be covered under the LAWPRO Policy. However, we would consider dealing with post-CIPO filing objections as work involving foreign law, which would not be covered.

Filing trademark applications in Canada as an agent for foreign lawyers and trademark agents on behalf of their foreign clients would be considered the practice of Canadian law and would be covered under the LAWPRO Policy.

While it is rare, we do see Ontario lawyers sued in a foreign country for advice involving Canadian law. If services were provided with respect to the laws of Canada, and the services were provided within Canada, then even if the client is not within Canada, or the claim is made outside of Canada, the policy would still respond in the normal course

LAWPRO can't offer coverage that meets CPATA minimum requirements

Unfortunately, there are several reasons why LAWPRO can't offer coverage that meets all the minimum liability insurance requirements newly set by the College of Patent Agents and Trademark Agents ("CPATA") for the 2022 policy year. That being said, LAWPRO has and will continue to engage in discussions with CPATA, the Law Society of Ontario and other stakeholders on the evolving circumstances relevant to professional liability insurance Ontario patent and trademark agents.

Our proposal for the 2022 insurance program was accepted by Convocation on October 1 and the renewal application process for more than 30,000 lawyers is currently underway, as you will have seen from the 2022 LAWPRO insurance program application renewal email we sent to you two weeks ago. While the 2022 LAWPRO Policy does meet the CPATA coverage limits requirements, as noted above, it doesn't cover professional services with respect to foreign law.

Any changes to the 2022 policy would have to be approved by Convocation and communicated to all our insureds, something that we can't do in the middle of the renewal process, and likely not before the 2023 policy year, if even then. We would need to analyze the impact this change would have on claims costs, determine how much premiums would need to be increased, address increased reinsurance costs, and consult with the other Canadian insurance programs to determine the reciprocal obligations imposed by the mobility agreements with the other law societies.

Michele, I know this is not the answer you had hoped for, but I hope it address the questions you

had on coverage under the LAWPRO Policy. Again, please let me know if you have further questions.

Dan Pinnington  
President & CEO

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“The fine print”

## COVERAGE FOR LAWYERS ACTING AS PATENT AGENTS AND TRADEMARK AGENTS

LAWPRO provides the primary errors and omissions insurance for lawyers licensed as L1 licensees with the Law Society of Ontario. This coverage is renewed annually, and as set out in Part I of the Policy, LAWPRO is:

To pay on behalf of the INSURED all sums which the INSURED shall become legally obligated to pay as DAMAGES arising out of a CLAIM, provided the liability of the INSURED is the result of an error, omission or negligent act in the performance of PROFESSIONAL SERVICES for others.  
[Capitalized terms are defined in the 2022-001 policy]

The definition of “PROFESSIONAL SERVICES” is defined in Part V and provides:

(ii) PROFESSIONAL SERVICES means the practice of the law of Canada, its provinces and territories, where conducted by or on behalf of an INSURED in such INSURED’S capacity as a LAWYER or member of the law society of a RECIPROCATING JURISDICTION (not as a member of the Barreau du Québec), subject to Part II Special Provision A; and shall include, without restricting the generality of the foregoing, those services for which the INSURED is responsible as a LAWYER arising out of such INSURED’S activity as a trustee, administrator, executor, arbitrator, mediator, patent or trademark agent.

Like any insurance policy, the 2022-001 Policy includes various conditions, warranties, exclusions and definitions. In Part II (“Special Provisions”) it states that the Territory to which this policy applies is as follows:

The insurance afforded by this POLICY applies:

- (i) to the performance of PROFESSIONAL SERVICES anywhere in Canada, where such services are performed with respect to the law of Canada, its provinces and territories; and
- (ii) to the performance of PROFESSIONAL SERVICES outside of Canada, where such services are performed with respect to the law of Canada, its provinces and territories, provided either that:
  - (a) such services occupy less than ten per cent (10%) of an INSURED’S time docketed or gross billings for PROFESSIONAL SERVICES in each calendar year; or
  - (b) the CLAIM is made and CIVIL SUIT is brought in Canada, and the issues thereon, including liability and DAMAGES, are adjudicated on their merits in Canada pursuant to the law of Canada, its provinces and/or territories.

In general, the limits of liability under the Policy are \$1,000,000 per claim and \$2,000,000 in the aggregate (see Part IV, general conditions A and B). Factors that may reduce the available limits include:

- Depletion of aggregate limits through prior claims

- Sublimits (ex. Innocent Party Coverage, Prescribed Penalties, Run-off coverage, etc.)
- Related claims or claims are made against multiple insureds within one firm (resulting in only one claim limit being exposed)

Like all insurance policies, the LAWPRO policy includes some Exclusions in Part III that should be considered, including:

- Claims relating to intentional wrongs (dishonesty, fraud, crimes, or malicious acts or omissions)
- Claims brought by employers
- Claims made by or in connection with an enterprise/business owned by the lawyer (or a related party)
- See Part III for more exclusions

From: Michele Ballagh <michele.ballagh@ballaghdward.ca>  
Sent: October 19, 2021 5:34 PM  
To: service@lawpro.ca  
Cc: Darrel Pink <dpink@cpata-cabamc.ca>  
Subject: Canadian Patent & Trademark Agents & LawPro

Dear Sir/Madam:

As you may know, the federal gov't set up a new College of Patent Agents and Trademark Agents (CPATA) in 2021 to govern the profession. Like myself, many trademark and patent agents are also lawyers.

CPATA recently advised that they would be introducing a requirement in 2022 that all patent and trademark agents have insurance to cover their services. The text of the proposed requirement is set out below:

- a. Commencing in 2022, Class 1 and Class 3 licensees, providing patent or trademark services to the public, must be insured under a liability insurance policy provided by an insurance company licensed in Canada, that will indemnify for civil liability arising from the licensee acting as a patent agent or a trademark agent;
- b. The limit of liability is a minimum of \$1.0 million per claim and a \$2.0 million aggregate;
- c. The liability insurance policy must cover claims made outside of Canada; and
- d. These requirements will be satisfied so long as inception of coverage under a liability insurance policy meeting the requirements commences in 2022

My question is obviously whether my existing policy with LawPro covers claims made outside Canada. I'm told that LawPro covers claims made with respect to CDN law, but in my opinion this is not really helpful in determining the answer to this question.

First, I am authorized to practice as a trademark agent before the US patent and trademark office on behalf of CDN applicants. There are many other CDN trademark and patent agents who are also authorized to practice before the USPTO for CDN clients. Obviously, I am offering these services in Canada, but its not clear to me whether this activity is covered by my LawPro policy.

Second, I sometimes cause trademark applications to be filed in foreign countries on behalf of my CDN clients. Historically, we engaged a lawyer or trademark agent located in the foreign country to file those applications on our behalf as our agent per our instructions. Its not clear to me whether this activity is covered by my LawPro policy.

Third, I sometimes cause trademark applications to be filed in foreign countries on behalf of my CDN clients by filing them through the Canadian Intellectual Property Office (CIPO) pursuant to an international treaty called the Madrid Protocol. CIPO forwards this application to the World Intellectual Property Office (WIPO) who forwards corresponding applications each national trademark offices in each identified country for processing. Communications respecting these national applications are thereafter processed largely through WIPO and CIPO and no local trademark agent or lawyer is required in each country unless substantive objections are raised. For these applications, it is my understanding that I do not need to communicate directly with a foreign trademark office. However, each trademark application in the foreign country is prosecuted according to local law with some restrictions imposed by the Madrid Protocol to harmonize practices across the different countries from a procedural perspective. Again, its not clear to me whether this activity is covered by my LawPro policy.

Finally, I sometimes file trademark applications in Canada as an agent for foreign lawyers and trademark agents on behalf of their foreign clients. Occasionally, I am retained directly by a foreign applicant. I am obviously applying CDN law, but may at least in theory be sued outside Canada for any errors in prosecuting the applications in Canada as their agent. Its not clear to me whether LawPro would defend me in a foreign jurisdiction for work performed in Canada for foreign parties.

Frankly, I have contacted LawPro many times over the years and gotten different answers to these questions from time to time so I'd like some sort of formal written response.

I suspect that many other lawyers who are also trademark and/or patent agents will be raising similar queries as well. I suspect that it may be useful for LawPro and CPATA to have a direct discussion about this issue to clarify the situation for lawyers in Ontario at least – if you are not already engaged in such discussions. For this reason, I have copied Darrel Pink who is the CEO and Registrar for the College.

If necessary, I'd like to be able to purchase some sort of supplementary “excess” insurance to cover all the above situations rather than purchase a duplicate or overlapping policy to cover my work as a trademark agent in addition to my existing LawPro policy. Frankly, I'd prefer to have only one professional liability insurer to avoid duplication and disputes between insurers over coverage.

I look forward to hearing from you.

---

Michele Ballagh | Lawyer & Trademark Agent | Ballagh & Edward LLP

McMaster Innovation Park | 102-175 Longwood Road South| Hamilton, Ontario | Canada L8P 0A1

Email: [michele.ballagh@ballaghedward.ca](mailto:michele.ballagh@ballaghedward.ca) | Website: [www.ballaghedward.ca](http://www.ballaghedward.ca)

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
<b>Income</b>				
4000 Service/Fee Income				
4010 Licensee fees - CPATA fees	1,435,973.00	832,476.00	603,497.00	172.49 %
4015 Licensee Fees - Deferred portion	-717,286.50		-717,286.50	
<b>Total 4010 Licensee fees - CPATA fees</b>	<b>718,686.50</b>	<b>832,476.00</b>	<b>-113,789.50</b>	<b>86.33 %</b>
4040 Licensee fees - CIPO Transfer (2020)	476,000.00	515,100.00	-39,100.00	92.41 %
4050 Exam fees		26,750.00	-26,750.00	
4060 Certificate & Letters Fees	300.00		300.00	
4070 Application and Change fees	20,489.00		20,489.00	
<b>Total 4000 Service/Fee Income</b>	<b>1,215,475.50</b>	<b>1,374,326.00</b>	<b>-158,850.50</b>	<b>88.44 %</b>
<b>Total Income</b>	<b>\$1,215,475.50</b>	<b>\$1,374,326.00</b>	<b>\$ -158,850.50</b>	<b>88.44 %</b>
<b>GROSS PROFIT</b>	<b>\$1,215,475.50</b>	<b>\$1,374,326.00</b>	<b>\$ -158,850.50</b>	<b>88.44 %</b>
<b>Expenses</b>				
5500 Wages & Benefits				
5510 Wages	56,697.84	235,916.65	-179,218.81	24.03 %
5520 Wages - Benefits	1,244.97		1,244.97	
5530 Wages - CPP / EI	5,205.74	29,041.00	-23,835.26	17.93 %
5550 RRSP Expenses	3,998.02		3,998.02	
6000 Professional fees - Interim CEO	166,500.00	129,500.00	37,000.00	128.57 %
<b>Total 5500 Wages &amp; Benefits</b>	<b>233,646.57</b>	<b>394,457.65</b>	<b>-160,811.08</b>	<b>59.23 %</b>
6010 Professional fees - Accounting	70,234.00	52,500.00	17,734.00	133.78 %
6020 Professional fees - Communications		22,500.00	-22,500.00	
6030 Professional fees - Legal	156,732.10	111,333.00	45,399.10	140.78 %
6050 Professional fees - Planning	12,669.50		12,669.50	
6060 Professional fees - Translation	18,939.07	20,000.00	-1,060.93	94.70 %
6200 Consulting - Admissions	48,904.00	138,500.00	-89,596.00	35.31 %
6210 Consulting - Communications	34,030.00	25,250.00	8,780.00	134.77 %
6230 Consulting - Human Resources	97,420.39	146,000.00	-48,579.61	66.73 %
6240 Consulting - Policies		7,500.00	-7,500.00	
6250 Consulting - Regulation		38,833.00	-38,833.00	
6270 IT Consultants - Network & General	10,947.65	9,000.00	1,947.65	121.64 %
6280 IT Consultant - License Systems	22,500.00	22,500.00	0.00	100.00 %
6290 IT Consultant - Website	8,970.18	25,000.00	-16,029.82	35.88 %
6295 Payroll provider Fees	135.07		135.07	
6510 Board - Remuneration	26,018.15	24,886.00	1,132.15	104.55 %
6530 Board - Training		5,500.00	-5,500.00	
6600 Committee Expenses		10,000.00	-10,000.00	
7010 Bank fees and interest	20,410.56	22,500.00	-2,089.44	90.71 %
7020 Credit Card Processing Fees	31,672.14	30,000.00	1,672.14	105.57 %
7130 Dues and memberships	1,523.00	6,000.00	-4,477.00	25.38 %
7140 Insurance - D&O	18,191.05	23,605.00	-5,413.95	77.06 %
7150 Insurance - General Liability		15,000.00	-15,000.00	
7160 Insurance - Mandatory Liability	10,231.25	7,500.00	2,731.25	136.42 %
7210 Office - Furniture	579.79	7,500.00	-6,920.21	7.73 %
7215 Office - General expenses	449.75		449.75	

# College of Patent Agents and Trademark Agents

Budget vs. Actuals: CPATA - Budget 2021 V1 - FY21 P&L Classes

January - September, 2021

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
7300 Software costs - Administration	3,564.99	749.00	2,815.99	475.97 %
7310 Software costs - Admissions	231.74		231.74	
7320 Staff Travel	2,563.77	7,500.00	-4,936.23	34.18 %
7410 Contingency		0.00	0.00	
<b>Total Expenses</b>	<b>\$830,564.72</b>	<b>\$1,174,113.65</b>	<b>\$ -343,548.93</b>	<b>70.74 %</b>
NET OPERATING INCOME	<b>\$384,910.78</b>	<b>\$200,212.35</b>	<b>\$184,698.43</b>	<b>192.25 %</b>
Other Expenses				
8000 Amortization	388.52		388.52	
<b>Total Other Expenses</b>	<b>\$388.52</b>	<b>\$0.00</b>	<b>\$388.52</b>	<b>0.00%</b>
NET OTHER INCOME	<b>\$ -388.52</b>	<b>\$0.00</b>	<b>\$ -388.52</b>	<b>0.00%</b>
NET INCOME	<b>\$384,522.26</b>	<b>\$200,212.35</b>	<b>\$184,309.91</b>	<b>192.06 %</b>

## Statement of Financial Position

As of September 30, 2021

	TOTAL	
	AS OF SEP. 30, 2021	AS OF DEC. 31, 2019 (PP)
<b>Assets</b>		
Current Assets		
Cash and Cash Equivalent		
1010 RBC Chequing Account	803,437.92	
<b>Total Cash and Cash Equivalent</b>	<b>\$803,437.92</b>	<b>\$0.00</b>
1230 Other current assets	0.00	
1400 Prepaid expenses	40,508.95	
<b>Total Current Assets</b>	<b>\$843,946.87</b>	<b>\$0.00</b>
Non-current Assets		
Property, plant and equipment		
1600 Computer Equipment	9,610.78	
1605 Computer Equipment - Accum Amort	-388.52	
<b>Total Property, plant and equipment</b>	<b>\$9,222.26</b>	<b>\$0.00</b>
<b>Total Non Current Assets</b>	<b>\$9,222.26</b>	<b>\$0.00</b>
<b>Total Assets</b>	<b>\$853,169.13</b>	<b>\$0.00</b>
<b>Liabilities and Equity</b>		
Liabilities		
Current Liabilities		
Accounts Payable (A/P)		
2000 Accounts Payable (A/P)	69,530.58	
<b>Total Accounts Payable (A/P)</b>	<b>\$69,530.58</b>	<b>\$0.00</b>
Credit Card		
2020 RBC Visa Credit Card	-1,363.09	
2030 RBC Line of Credit	0.00	
<b>Total Credit Card</b>	<b>\$ -1,363.09</b>	<b>\$0.00</b>
2010 Accrued Payables	0.00	
2050 GST/HST Payable	65,146.55	
<b>Total Current Liabilities</b>	<b>\$133,314.04</b>	<b>\$0.00</b>
Non-current Liabilities		
2200 Licensee Deferred Revenue	717,286.50	
2250 Deferred Application Fees	6,977.25	
<b>Total Non-current Liabilities</b>	<b>\$724,263.75</b>	<b>\$0.00</b>
<b>Total Liabilities</b>	<b>\$857,577.79</b>	<b>\$0.00</b>
Equity		
Retained Earnings	-388,930.92	
Profit for the year	384,522.26	
<b>Total Equity</b>	<b>\$ -4,408.66</b>	<b>\$0.00</b>
<b>Total Liabilities and Equity</b>	<b>\$853,169.13</b>	<b>\$0.00</b>



## Statement of Operations

September 2021

	TOTAL	
	SEP. 2021	JAN - SEP., 2021 (YTD)
<b>INCOME</b>		
4000 Service/Fee Income		
4010 Licensee fees - CPATA fees	79,100.00	1,435,973.00
4015 Licensee Fees - Deferred portion	186,362.17	-717,286.50
<b>Total 4010 Licensee fees - CPATA fees</b>	<b>265,462.17</b>	<b>718,686.50</b>
4040 Licensee fees - CIPO Transfer (2020)	208.25	476,000.00
4060 Certificate & Letters Fees	150.00	300.00
4070 Application and Change fees	13,939.00	20,489.00
<b>Total 4000 Service/Fee Income</b>	<b>279,759.42</b>	<b>1,215,475.50</b>
<b>Total Income</b>	<b>\$279,759.42</b>	<b>\$1,215,475.50</b>
<b>GROSS PROFIT</b>	<b>\$279,759.42</b>	<b>\$1,215,475.50</b>
<b>EXPENSES</b>		
5500 Wages & Benefits		
5510 Wages	16,614.08	56,697.84
5520 Wages - Benefits	80.95	1,244.97
5530 Wages - CPP / EI	1,352.61	5,205.74
5550 RRSP Expenses	830.76	3,998.02
6000 Professional fees - Interim CEO	18,500.00	166,500.00
<b>Total 5500 Wages &amp; Benefits</b>	<b>37,378.40</b>	<b>233,646.57</b>
6010 Professional fees - Accounting	8,000.00	70,234.00
6030 Professional fees - Legal	5,399.63	156,732.10
6050 Professional fees - Planning		12,669.50
6060 Professional fees - Translation	8,039.54	18,939.07
6200 Consulting - Admissions		48,904.00
6210 Consulting - Communications	4,650.00	34,030.00
6230 Consulting - Human Resources	11,674.65	97,420.39
6270 IT Consultants - Network & General	903.45	10,947.65
6280 IT Consultant - License Systems	2,500.00	22,500.00
6290 IT Consultant - Website	440.09	8,970.18
6295 Payroll provider Fees	36.00	135.07
6510 Board - Remuneration		26,018.15
7010 Bank fees and interest	159.05	20,410.56
7020 Credit Card Processing Fees	1,881.05	31,672.14
7130 Dues and memberships		1,523.00
7140 Insurance - D&O	3,465.00	18,191.05
7160 Insurance - Mandatory Liability		10,231.25
7210 Office - Furniture		579.79
7215 Office - General expenses	275.25	449.75
7300 Software costs - Administration	1,834.92	3,564.99
7310 Software costs - Admissions		231.74
7320 Staff Travel	2,563.77	2,563.77
8000 Amortization	54.22	388.52
<b>Total Expenses</b>	<b>\$89,255.02</b>	<b>\$830,953.24</b>
<b>PROFIT</b>	<b>\$190,504.40</b>	<b>\$384,522.26</b>

# College of Patent Agents and Trademark Agents

## Statement of Operations by Department

January - September, 2021

	ADMINISTRATION & OPERATIONS	BOARD & GOVERNANCE	MARKETING & COMMUNICATIONS	REGULATIONS - COMPLAINTS	REGULATIONS - REGISTRATION	TOTAL
<b>INCOME</b>						
4000 Service/Fee Income						\$0.00
4010 Licensee fees - CPATA fees	1,435,973.00					\$1,435,973.00
4015 Licensee Fees - Deferred portion	-717,286.50					\$ -717,286.50
<b>Total 4010 Licensee fees - CPATA fees</b>	<b>718,686.50</b>					<b>\$718,686.50</b>
4040 Licensee fees - CIPO Transfer (2020)	476,000.00					\$476,000.00
4060 Certificate & Letters Fees	300.00					\$300.00
4070 Application and Change fees	20,489.00					\$20,489.00
<b>Total 4000 Service/Fee Income</b>	<b>1,215,475.50</b>					<b>\$1,215,475.50</b>
<b>Total Income</b>	<b>\$1,215,475.50</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,215,475.50</b>
<b>GROSS PROFIT</b>	<b>\$1,215,475.50</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,215,475.50</b>
<b>EXPENSES</b>						
5500 Wages & Benefits						\$0.00
5510 Wages	56,697.84					\$56,697.84
5520 Wages - Benefits	1,244.97					\$1,244.97
5530 Wages - CPP / EI	5,205.74					\$5,205.74
5550 RRSP Expenses	3,998.02					\$3,998.02
6000 Professional fees - Interim CEO	166,500.00					\$166,500.00
<b>Total 5500 Wages &amp; Benefits</b>	<b>233,646.57</b>					<b>\$233,646.57</b>
6010 Professional fees - Accounting	70,234.00					\$70,234.00
6030 Professional fees - Legal	6,945.41			149,786.69		\$156,732.10
6050 Professional fees - Planning		12,669.50				\$12,669.50
6060 Professional fees - Translation	18,939.07					\$18,939.07
6200 Consulting - Admissions					48,904.00	\$48,904.00
6210 Consulting - Communications	1,380.00		32,650.00			\$34,030.00
6230 Consulting - Human Resources	97,420.39					\$97,420.39
6270 IT Consultants - Network & General	10,947.65					\$10,947.65
6280 IT Consultant - License Systems	22,500.00					\$22,500.00
6290 IT Consultant - Website	260.18		8,710.00			\$8,970.18
6295 Payroll provider Fees	135.07					\$135.07
6510 Board - Remuneration		26,018.15				\$26,018.15
7010 Bank fees and interest	20,410.56					\$20,410.56
7020 Credit Card Processing Fees	31,672.14					\$31,672.14
7130 Dues and memberships	1,523.00					\$1,523.00
7140 Insurance - D&O	18,191.05					\$18,191.05
7160 Insurance - Mandatory Liability		10,231.25				\$10,231.25
7210 Office - Furniture	579.79					\$579.79
7215 Office - General expenses	449.75					\$449.75
7300 Software costs - Administration	3,564.99					\$3,564.99
7310 Software costs - Admissions					231.74	\$231.74
7320 Staff Travel	2,563.77					\$2,563.77
8000 Amortization	388.52					\$388.52
<b>Total Expenses</b>	<b>\$541,751.91</b>	<b>\$48,918.90</b>	<b>\$41,360.00</b>	<b>\$149,786.69</b>	<b>\$49,135.74</b>	<b>\$830,953.24</b>
<b>PROFIT</b>	<b>\$673,723.59</b>	<b>\$ -48,918.90</b>	<b>\$ -41,360.00</b>	<b>\$ -149,786.69</b>	<b>\$ -49,135.74</b>	<b>\$384,522.26</b>

# LAW21 BLOG

## THE LAW21 BLOG

### The question every legal regulator needs to answer

October 15, 2021 by [Jordan Furlong](#) with [2 Comments](#)

Posted in: [Access](#), [Regulation](#)

*Earlier this month, I was fortunate to appear on the closing panel at the [International Conference of Legal Regulators' 2021 Virtual Conference](#). The [premise of our panel](#) was that regulatory innovations are taking place in many different countries, and we should decide whether this is a good thing or not.*

*I was the last of the panellists to speak, and I shared with the audience the following observations, which I thought might be of interest to you.*

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When I was reading over the description of this session, one line in particular jumped out at me: "Should everyone be embracing some form of innovation?"

I want to try answering that by reference to what we've just heard, because [my fellow panelists are](#) telling us something important about what's happening not just in their own countries — reforms that authorize



#### ABOUT JORDAN

I'm a legal sector analyst who's deeply invested in a better future for the legal profession and the society it serves. I've spent the past 20 years studying critical new developments and discerning emerging patterns in the legal services ecosystem. I use these insights to advise legal organizations on how to plan their strategies and achieve their goals.

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What’s going on in all these places is really a return to first principles in legal regulation. These jurisdictions are asking themselves questions like, “What’s the purpose of legal regulation? What are we trying to accomplish here?”

I get to speak to a number of people in the legal regulatory field on a regular basis, and I sometimes ask them that very question: “What’s your purpose? What are you here to do?” And what I usually hear back is some variation on, “We are protecting the public.” I think many of you probably use that phrase, or it’s in your institutional mandate somewhere.

And I think it’s a really interesting answer, because it then allows me to ask an important follow-up question: “Okay. And what are you protecting the public *from*?”

That leads to a number of responses, which all tend to revolve around a common theme: “We are protecting them from *unscrupulous providers* of legal services. We are protecting them from *incompetent purveyors* of legal assistance.”

Okay. Good answers. I think we’d all agree that it’s pretty important to keep the unscrupulous and incompetent away from people whom they could exploit and abuse.



Riddle me this.

But see, here’s where it gets interesting. Because traditional legal regulation, having answered that question, then makes a fundamental error.

Traditional regulation says, “We want to protect the public from the unscrupulous and incompetent. And here’s how we’re going to do it. We’re going to divide the world into two groups: lawyers, and everyone else.”

So they divide the world into these two groups, and they say, “Lawyers: we presume you to be scrupulous and competent. Everyone else: we presume *you* to be *unscrupulous* and *incompetent*.”

Now, I put it to you that this is a category error. Traditional regulation takes one question — “How do we keep the unscrupulous and incompetent away

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It's an error because you and I and everyone else here today knows two things are true:

- Some lawyers are unscrupulous and incompetent.
- Many non-lawyers are scrupulous and competent.

I don't think that's a blasphemous observation. I think that's reality.

And legal regulation recognizes half of that. Because it puts in place a system by which lawyers have to do certain things to get licensed, and they have to do other things every year to stay licensed. Now, **I have my opinions** about how effective those things are. But at least we're doing them. We favour lawyers with the presumption of competence, but we test that presumption.

But legal regulation does not extend the same courtesy the other way. The presumption of incompetence and unscrupulous nature for non-lawyers is *absolute*. The prohibition is *absolute*. There is no process by which non-lawyers can try to rebut the presumption of their unfitness.

Except, that is, in **England & Wales**. And in **Utah**. And in **British Columbia**. And in **Arizona**. And in many other jurisdictions — like **Germany** and **Australia** and **Scotland** and **Florida** and **Ontario** and **Washington** and **Alberta** and **North Carolina**. In all these places, regimes have been set up, or pilot projects are being proposed and established, whereby people who aren't lawyers are given the opportunity, the mere sliver of a chance, to say, "Hey — I know we're not lawyers. But we're ethical. And we're effective. And we can do some good for people."

And you know what — people need someone to do good for them. Because whatever the quality of the services lawyers are giving, **most people aren't getting those services**. We know this. We didn't need study after study to prove it, although we have them now, too.

And so I say to regulators, "Okay, you've kept the public safe from the unscrupulous and incompetent. **More or less**. So — is the public fine now? Do they have what they need? Is everyone happy?"

...innate opportunities of people can get the legal help they need, aren't  
your work here done? Or is there more you can do? Are you here only to  
*protect* the public? Or are you also here to *serve* it?"

Answering those questions, I think, leads regulators to rethink their  
purpose, reimagine their goals, and readjust their strategies. It leads them  
to try something new and different, in hopes of getting better outcomes for  
more people.

There's a word for that. It's called "innovation." And yes — everyone should  
be doing it.

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Jordan Furlong

I'm a legal sector analyst who's deeply invested in a better future for  
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patterns in the legal ecosystem. Currently, I'm serving legal sector  
clients mostly in the areas of lawyer formation, education and licensing, and legal  
services regulation. You can reach me at jordan@law21.ca.

2 Comments



Alexandar Pavlov *October 17th, 2021*

Dear Jordan, thank you for your article. Are you interested with the  
regulation in the civil law jurisdictions? I have experience from  
Bulgaria.  
Thank you.  
Alexandar



I'd be interested in knowing more about lawyer licensing competence frameworks in jurisdictions that feature only one or neither of those elements.

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**Jordan Furlong**

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**Melissa Pershing Moss** 6h

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**Law21**  
on Friday

For your weekend reflection, here's a question you should ask your local regulator of legal services, and how you might challenge the answer they will inevitably give you. My newest Law21 post:  
<https://www.law21.ca/.../the-question-every-legal-regulator-.../>



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**John E. Grant** 6h

Unless and until we change the rhetoric on "public protection" to "public interest," we'll keep seeing protectionism in all forms.

"Public Interest" is inclusive of both "Protection" and "Accessibility," & thereby forces us to reckon with the inherent tension in those concepts.

[https://twitter.com/jordan\\_law21/status/](https://twitter.com/jordan_law21/status/)

**Jordan Furlong @jordan\_law21**  
ICYMI, my newest Law21 post confronts legal regulators with a critical question. You say your job is to protect the public; what exactly are you protecting them from?  
<https://www.law21.ca/2021/10/the-question-every-legal-regulator-needs-to-answer/>

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