

CPATA Discipline Committee

Skills Matrix

2021-11-03

Introduction

CPATA regulates the patent and trademark profession in accordance with Act, Regulations, By-laws, Registrar's policies, and the Regulatory Objectives, Standards and Principles. This includes setting and enforcing compliance with required ethical and practice standards through a variety of means, and in a manner that is risk focused, fair, transparent, efficient, proactive, proportionate and principled.

For the Discipline Committee, this regulatory approach includes fair, efficient and effective adjudication of applications; adopting a restorative approach that strives to address harm, help agents be accountable for their actions, and, where appropriate in the public interest, foster learning from mistakes rather than merely punishing; and making decisions that are clear, concise, well-supported and balance all relevant interests.

Objects of Complaints Process

The objects of the complaints process are to protect and promote the public interest and preserve the integrity of the patent and trademark profession, in a manner consistent with the College's Regulatory Objectives, Standards and Principles. This includes:

- a. Promoting and ensuring competent and ethical delivery of patent and trademark services by licensees;
- b. Addressing concerns of professional misconduct and professional incompetence, including striving for early resolution of complaints when doing so is consistent with the public interest; and
- c. Enforcing compliance with professional and ethical standards.

The Complaints Process

The Registrar has primary responsibility for regulatory transactions with licensees, trainees and the public, including receiving inquiries about the conduct of licensees. Individuals may either file a complaint directly, or may first complete an Agent Conduct Inquiry Form to help assess whether their questions or concerns can be resolved or addressed at an early stage by the Registrar. If not, the result of the inquiry may be the filing of a complaint for referral to the Investigations Committee for direction, investigation or decision.

The Investigations Committee provides direction respecting investigations. If the Committee decides there is evidence of professional misconduct or incompetence, it must refer the matter to the Discipline Committee. Otherwise, the Committee may dispose of the complaint in accordance with the Act and Registrar's Policy on Complaint Investigations.

Role of Discipline Committee

The Discipline Committee is an essential component of the Complaints Process, which includes the Registrar, the Investigations Committee and the Discipline Committee.

The Discipline Committee is appointed under s. 21(1) of the Act and supports the College and Board's mandate to protect the public interest, by carrying out responsibilities assigned under ss. 51-63 of the Act, the Regulations, and the applicable Registrar's Policies.

Responsibilities

The Discipline Committee's specific responsibilities include:

- Hearing applications referred by the Investigations Committee in accordance with principles of fairness and natural justice, as well as the Regulatory Objectives, Standards and Principles
- Recommending revisions to by-laws, policies and procedures as needed to support an adjudications process that is efficient, effective, fair, transparent, consistent and accountable

Committee Composition

The Discipline Committee as a whole must possess the required skills, knowledge, attributes and experience to enable it to fulfil its responsibilities in the public interest. Most of the Committee consists of individuals who are not licensees as one means of ensuring the public is intrinsically involved in the College's public interest work. Members of the Committee bring to the table knowledge and experience with the patent and trademark agency professions, the legal profession, as well as perspectives of members of the public whom the system is designed to protect.

All Committee members must complete mandatory training prior to commencement of service, and engage in such ongoing training and education during their term on the Committee as determined to be appropriate by the Chair and the Registrar.

The Committee Chair may require additional specific training to effectively lead the Committee and carry out work delegated by the Discipline Committee to the Chair.

Specific Knowledge, Skills, Attributes and Experience

This Skills Matrix below is used to:

- i. Identify the specific knowledge, skills, attributes and experience¹ required of the Discipline Committee members and as a whole;

¹ Knowledge' includes understanding how CPATA operates in substance and principle, risk principles, and the prosecution of patent and trademark applications;

'Skills' include an ability to use the technology employed by the College, to communicate effectively both orally and in writing, and to discern and analyze ethical and evidentiary issues;

'Experience' includes professional discipline, committee or Board work, and engaging in effective debate and decision-making in an in-person and on-line environment;

'Attributes' include having a strong ethical foundation, being organized and meeting deadlines, collaborative decision-making, active listening skills, and behaving in a fair, respectful, culturally competent and courteous manner at all times.

- ii. Facilitate appointments to the Committee that will fill any gaps in the required knowledge, skills, attributes and experience; and
- iii. Assist with identifying training and education needs on an ongoing basis.

Members as a whole must possess the following:

The College is committed to the foundational principles of equity, diversity and inclusion, which are reflected in the composition of committees, and the level of cultural competence expected of volunteers.

| Knowledge | Skills | Experience in | Attributes |
|--|---|--|--------------------------------------|
| CPATA Act | Effective oral communications | Professional regulation & adjudication | Active listener strong communicator |
| Patent Act, Rules and practice | Effective, persuasive written communications | Federal Court and administrative tribunal procedures | Fair, impartial and open-minded |
| Trademark Act, Regulations and practice | Collaborative and effective decision making and writing in accordance with the Committee's Guidelines | Law relating to privacy & privilege | Courteous, respectful and patient |
| CPATA Regulations | Adjudicative hearings management | Administrative Law ² | Apply confidentiality and discretion |
| CPATA By-laws, Pt.5 | Attention to detail | Patent Agent services | Cultural competence ³ |
| CPATA Code of Professional Conduct | Organization & time management | Trademark Agent services | Ethical |
| Registrar's Policies for Hearing Committee | Statutory interpretation | Community service & volunteer leadership | Strong work ethic |
| Administrative & common law | Evaluation of factual evidence & credibility | Law of evidence | Professionalism & civility |

² 'Administrative law' refers to principles of fairness, natural justice, efficiency, transparency, etc. and the four basic rights: for the licensee to know the case against them; to have unbiased decision-makers; those who hear the application decide the case; and adequate reasons for decisions. (Federation of Law Societies of Canada National Adjudicator Training Curriculum)

³ 'Cultural competence' refers to an ability to understand, communicate with and effectively interact with people across different cultures; to acknowledge the harmful effects of discriminatory thinking and behavior on human interaction; and to acquire and perform the skills necessary to lessen the effect of these influences in order to serve the pursuit of justice. (Rose Voyvodic, "Lawyers Meet the Social Context: Understanding Cultural Competence", (2006) 84:3 The Canadian Bar Review 564 at 564)

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| principles relevant to adjudication | | | |
| Charter & Human Rights and values | Conflict management | Conduct of adjudicative hearings | Competent to use the technology facilitating the Committee's work |
| Restorative justice & ADR principles ⁴ | Applying sanctioning principles | Fitness to practice, ⁵ capacity and health impacts on professional practice | Respected by peers |
| Principles of equity, diversity and access to justice ⁶ | Bilingual | Ability to conduct hearings in both official languages | |

⁴ 'Restorative justice and ADR (alternate dispute resolution) principles focus on: early and informal resolution; effective conflict management; understanding context; identifying and addressing actual harms; encouraging accountability; being proactive, principled and proportionate rather than pursuing punishment; avoiding 'naming, shaming and blaming' and instead seeking collaborative solutions where possible and in the public interest

⁵ 'Fitness to practice' encompasses knowledge and awareness of a range of factors that may impact or impair a licensee's ability to provide services competently and ethically, including a physical, mental or emotional condition or addiction, and the most effective ways to identify and address such situations in the public interest

⁶ 'Equity, diversity, inclusion and access to justice principles' are closely tied to cultural competence, and includes having the knowledge, experience and skills to actively work to protect against and prevent individual and systemic discrimination, to cultivate appropriate attitudes toward cultural differences, and to ensure that the College's processes are open and accessible to all