

## **PATENT AGENTS AND TRADEMARK AGENTS**

### **SUMMARY OF DECEMBER 14, 2021**

#### **Context**

Some lawyers also act as patent agents or trademark agents.

The College of Patent Agents and Trademark Agents (CPATA), under reserve of an approved by-law by Justice Canada, has adopted the requirements for liability insurance as follows:

*A licensee who holds a classe 1 licence or a class 3 licence must have professional liability insurance that meets the following requirements:*

- (a) it must be issued by a company licensed in Canada;*
- (b) it must cover claims made in and outside Canada;*
- (c) it must indemnify the licensee for any civil liability that arises from the licensee acting as a patent agent or trademark agent;*
- (d) it must have coverage limits of a minimum of \$1 million per claim and \$2 million aggregate per year.*

*A licensee is not required to be insured against professional liability until the end of the year 2022, but must make all reasonable efforts to obtain the required insurance as early in that year as is reasonably possible.*

#### **The Insurance Policy Issued by the Fonds d'assurance responsabilité professionnelle du Barreau du Québec**

Under the Fonds d'assurance's current policy (that is, the policy expiring on March 31, 2022), lawyers who have subscribed to this policy are covered if their services qualify as «Professional Services» as defined in the policy, and subject to the other terms and conditions of the policy.

The Fonds d'assurance considers that a lawyer who acts as patent agent or a trademark agent renders Professional Services as defined in the policy.

The limit of coverage is \$10 million except where the multiterritorial limitation of \$1 million applies.

Section 2.02.1 of the policy lists the cases where the \$1 million limit applies:

2.02.1 - MULTITERRITORIAL LIMITATION: The coverage per Loss is limited to \$1,000,000 for Claims Made against an Insured, subject to an excess Limit of Coverage of \$1,000,000 for a Claim Made against a C.O.L.L.P. regardless of the number of members in the C.O.L.L.P.

- a) arising from Professional Services which have or should have been rendered by the named Insured outside Quebec, in its capacity as a member in good standing of the Barreau du Québec;
- b) arising from Professional Services which have or should have been rendered by the Insured in Quebec and which give rise to a suit brought outside Quebec and to any judgment rendered outside Quebec or to any judgment in recognition of a judgment rendered outside Quebec;
- c) against the named Insured only because he is a member of a partnership, and is legally obligated to pay under a judgment rendered outside Quebec, and resulting from Professional Services which have or should have been rendered by an insured member of the Barreau du Québec or by a member of a Law Society of another province or territory in Canada;
- d) against the named Insured only because he is a member of a partnership, and is legally obligated to pay under a judgment rendered in Quebec and resulting from Professional Services which have or should have been rendered by a member of a Law Society of another province or territory in Canada; or
- e) arising from any suit brought outside Quebec and from any judgment rendered outside Quebec or from any judgment in recognition of a judgment rendered outside Quebec resulting from Professional Services which have or should have been rendered by an insured member of the Barreau du Québec or by a member of a Law Society of another province or territory in Canada.

When analysing a claim, we must consider the facts of each case in order to determine the extent of the insurance coverage. For example, where services have been rendered is a question of fact to be examined in each case.

Lawyers who render services outside of Québec or who are exposed to the risk of suits brought outside of Québec are invited to determine whether coverage of \$1 million is sufficient for them and consult their insurance broker in order to obtain Excess coverage, if necessary.