

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 1st for IPIC and July 1st 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 2022.¹*

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.

¹ 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.