

MEMORANDUM

TO	Board of Directors
FROM	Darrel Pink, CEO and Registrar
DATE	March 3, 2022
SUBJECT	Monitoring Report – Registration & Education

Monitoring Reports are how the CEO & Registrar informs the Board on operational issues to assist the Board in understanding CPATA’s regulatory workings.
This report briefs the Board about registration and education activities since the inception of CPATA.

ANALYSIS

Introduction

The College of Patent Agents and Trademark Agents (‘CPATA’) regulates patent and trademark agents in the public interest, to enhance the public’s ability to secure the rights provided for under the Patent Act and the Trademarks Act. The Registration & Education function is the gatekeeper for those who wish to join the profession and remain licensed. That means CPATA safeguards that people entering the profession meet the standards for professional competence and ethics.

CPATA:

- maintains standards for the ethical and competent delivery of patent and trademark services;
- maintains up-to-date practice standards for licensees and provides guidance in applying the standards; and
- maintains standards for education, training and fitness and will develop admission programs to support competent trainees that meet CPATA’s requirements for registration.

The College Act, Regulations and By-laws set this mandate.

Registration & Education works with applicants applying to become licensees and with licensees who wish to change their registration class upward (i.e., to a practising agent) or downward (to inactivate or to surrender their licence). For all matters, we reflect a modern, risk and evidence-based approach to

regulation that meets our regulatory objectives, standards and principles, and fair registration principles of transparency, objectivity, impartiality and fairness¹.

The Objects of the Registration process are:

- a. Promoting and ensuring competent and ethical delivery of patent and trademark services by licensees;
- b. Maintaining standards for education, training and fitness to ensure the admissions programs deliver competent trainees that meet CPATA's requirements for registration;
- c. Applying policies in a principled manner, proportionately, fairly and efficiently with decisions clearly explained, including their public interest rationale;
- d. Making fair decisions supported by appropriate evidence;
- e. Conducting adjudicative processes promptly, to ensure fairness for applicant or licensee; and
- f. Promoting equity, diversity and inclusion in the patent and trademark profession by not imposing inappropriate barriers and having due regard to the need to eliminate unlawful discrimination and harassment, considering carefully the health and capacity of those we deal with and understanding the stress that involvement with CPATA can cause.

The Work of Registration & Education

Registration and Education work involves several activities, most supported by existing or soon to be developed Registrar's Policies.

Registration:

- processing decisions on class 1, 2 and 3 applications, training supervisor applications, surrender and reinstatement requests, CEO/Registrar Certificates of Standing requests, and Foreign Practitioner status requests, suspensions and

Education:

- developing mandatory continuing professional development requirements³,
- developing standards of practice,
- developing an agent training course,

¹ Ontario Fairness Commissioner – Fair Registration Principles. Regulators in Nova Scotia, Ontario, Manitoba, Alberta, and British Columbia have statutory fair registration practice legal obligations but there is no similar national framework. Though there is no legal requirement, CPATA demonstrates leadership in modern, progressive regulatory processes by incorporating these principles into our day-to-day practices.

³ To start in Q3 2022

- revocations, prior experience assessments and facilitating reviews of a Registrar's decision with the Registration Committee,
- administering the qualifying examinations with the Boards of Examiners², and
 - confirming compliance with professional liability insurance requirements.

These classes of licensure are available:

1. Class 1 Licence – Active Agent
2. Class 2 Licence – Inactive Agent
3. Class 3 Licence – Agent in Training

Processing Applications and Issuing Decisions

Until the online application portal is built, application documents are submitted electronically via email where they are triaged for completeness and queued for review and decision. Decisions are made and issued electronically.

First line decisions are made by the Registrar. However, the College By-laws require that the Committee administering licensing requirements, established under the Regulations⁴ (the Registration Committee), review decisions of the Registrar on the request of the affected applicant.

The Registration Committee:

- approves standards for evaluating competencies and passing marks for the qualifying examinations; and
- when requested by an applicant or a licensee, reviews decisions made by the Registrar under the By-laws.

We have developed and put into place processes, policies and decision-making protocols to ensure that risk and fair registration principles are always applied. We start each analysis by considering what risk may be involved to the public by the request being made. We also apply an equity lens to decisions and have dealt with a variety of issues involving individuals from equity seeking communities. We consider what is the most proactive, principled and proportionate way to approach each decision. Several of the

² College By-law 22

⁴ College Regulation 3

fair registration practice provisions intended to reduce barriers to entering professions have been addressed and implemented by CPATA.

Examples include:

- exploring and approving flexible training arrangements,
- recognizing prior experience completed outside of Canada and/or outside of a traditional training setting toward the 24-month training requirement to establish eligibility for the qualifying examination,
- permitting law school students and other post-secondary school students to apply for recognition of articling/internship terms completed under the supervision of an approved supervisor toward the 24-month training requirement,
- seeking subject matter expertise and recommendations on prior experience assessments,
- accepting non-objective evidence to demonstrate language proficiency (such as successful completion of professional and academic education and relevant employment), and
- sharing draft decisions with applicants who may be negatively affected by a decision to allow for additional information and/or documentation to be provided and considered before a final decision is rendered.

An applicant for a class 3 licence must demonstrate Canadian residency, good character, fitness to practice, language proficiency in English or French and require a training agreement with a Training Supervisor (an individual approved by CPATA to supervise Agents in Training for the 24-month training requirement)⁵. The training agreement must demonstrate a commitment to the learning of ethical and competent practices⁶.

Eligibility for the Qualifying Examinations is established through completing the 24-month training requirement and the agent training course⁷ prescribed by CPATA. Agents in Training are expected to attempt the Qualifying Examinations at the first sitting of the exams that follow the completion of their training period⁸. Individuals unsuccessful in the Qualifying Examinations through CIPO had to register as Agents in Training to access exam registration. The 24-month training requirement for this group is considered complete.

⁵ College By-laws 3(1), 3(2), 9, 12, 16, 17

⁶ College By-laws 16-19

⁷ College By-law 15. Research regarding the development of the agent training course is underway.

⁸ College By-law 21

The first phase of the competency initiative involves developing and validating a technical competency framework that identifies the skills relevant to the practice of a Trademark Agent and a Patent Agent. These technical competency frameworks will be the foundation of the 24-month training requirement, agent training course and qualifying examinations.

There is only one pathway to registration as a Class 1 licensee – complete 24 months of supervised training, pass the qualifying examinations, and meet the Canadian residence, good character, and fitness to practise requirements.

The CPATA Regulations allow Foreign Practitioners (individual residents of a country other than Canada authorized to act as a patent/trademark agent under the law of that country) to apply to be added to the appropriate Public Register and have limited entitlements before CIPO.

Licensees are given seven days written notice before suspension of a licence⁹ and that notice includes the reason(s) for the suspension. If the matter is corrected within two years of the suspension date, the licence will be reinstated¹⁰. Licences suspended for over two years but less than five years can be reinstated if the matter is corrected and continuing professional development requirements are met¹¹. Licences suspended for more than five years are revoked¹².

Reinstatement to class 1 from either suspended status or class 2 requires the applicant to demonstrate they can practise competently and ethically. The by-laws specify this be accomplished via continuing professional development¹³. A broad interpretation of *continuing professional development* has been taken, as there are situations where supervised practice and/or successful completion of the qualifying examinations, besides completion of specified continuing professional development courses, may be more effective for licensees to demonstrate their competency.

The statistics below show the number of decisions for each application/request type. These statistics reflect the work done since CPATA's coming into force on June 28, 2021. In just seven months of operation, we have issued **599 decisions** for these application/request types.

Making some decisions requires more analysis than others. For example, conducting a prior experience assessment takes more resources, including external subject matter expertise, than processing a

⁹ CPATA Act 35(2); Board By-law 57(1)

¹⁰ Board By-law 57(2)

¹¹ Board By-law 57(3)

¹² Board By-law 58

¹³ Board By-law 57(3), College By-law 28(2)(b)

CEO/Registrar Certificate of Standing request. But each application/request must be processed, a decision must be made and communicated to the individual. Note that where the number of applications or requests was less than 5, NR (not reportable) will be displayed.

Type of Application/Request	# Processed	Notes
Class 1 Licence	NR	The first administration of the qualifying examinations was held in November/December 2021. The results are not yet available to permit class 3 licensees to apply to register for class 1. Applications processed include individuals successful with the 2020 qualifying examinations administered by CIPO.
Change to Class 2 Licence	118	63 Trademark Agents 34 Patent Agents 21 Dual Agents
Change to Class 1 from Class 2 Licence	NR	
Class 3 Agent in Training Licence	266	93 Trademark Agents in Training 155 Patent Agents in Training 18 Dual Agents in Training 22 Trainees are in progress with the Trademark Agent training requirements. 22 Trainees are in progress with the Patent Agent training requirements. All other trainees have completed the 24 months training; registration as class 1 is pending successful completion of the qualifying exams.
Surrender Licence Requests	17	15 TM 2 Dual

Type of Application/Request	# Processed	Notes
Reinstatement Requests	45	34 Suspended by CPATA 09/16/2021 (21 Trademark Agents, 8 Patent Agents, 4 Dual) 11 Suspended by CIPO before 06/28/2021
CEO/Registrar Certificate of Standing Requests	9	
Foreign Practitioner Status Requests	NR	
Suspensions for Non-Payment of Fees 09/16/2021	126	98 Trademark Agents 22 Patent Agents 6 Dual Agents
Revocations	0	
Prior Experience Assessments	9	Countries of origin include: China, India, United States, South Africa
Requests for Review of a Registrar's Decision	NR	
Registration Hearings	NR	

Administering the Qualifying Examinations

The College By-laws¹⁴ permit the Registrar to appoint an advisory group made up of class 1 patent and trademark agent licensees and CIPO representatives to assist in the preparation, administration and marking of the qualifying examinations.

The 2021 Trademark Agent Board of Examiners included 6 Trademark Agents and 2 CIPO representatives; the 2021 Patent Agent Board of Examiners included 12 Patent Agents and 4 CIPO representatives. Most exam board members will be returning for the 2022 administration. However, CIPO has advised there will be no representatives appointed from the Trademark Branch for the Trademark Agent Qualifying Examination due to their resourcing constraints. CIPO representatives from the Patent Branch have been confirmed for the 2022 Patent Agent Qualifying Examination but there are no guarantees that CIPO representation will be ongoing.

¹⁴ College By-law 22

65 candidates wrote the 2021 Trademark Agent Qualifying Examination held November 9-10, 2021; 5 in French and 60 in English.

126 candidates wrote the 2021 Patent Agent Qualifying Examination held December 7 – 10, 2021, 2 in French and 124 in English.

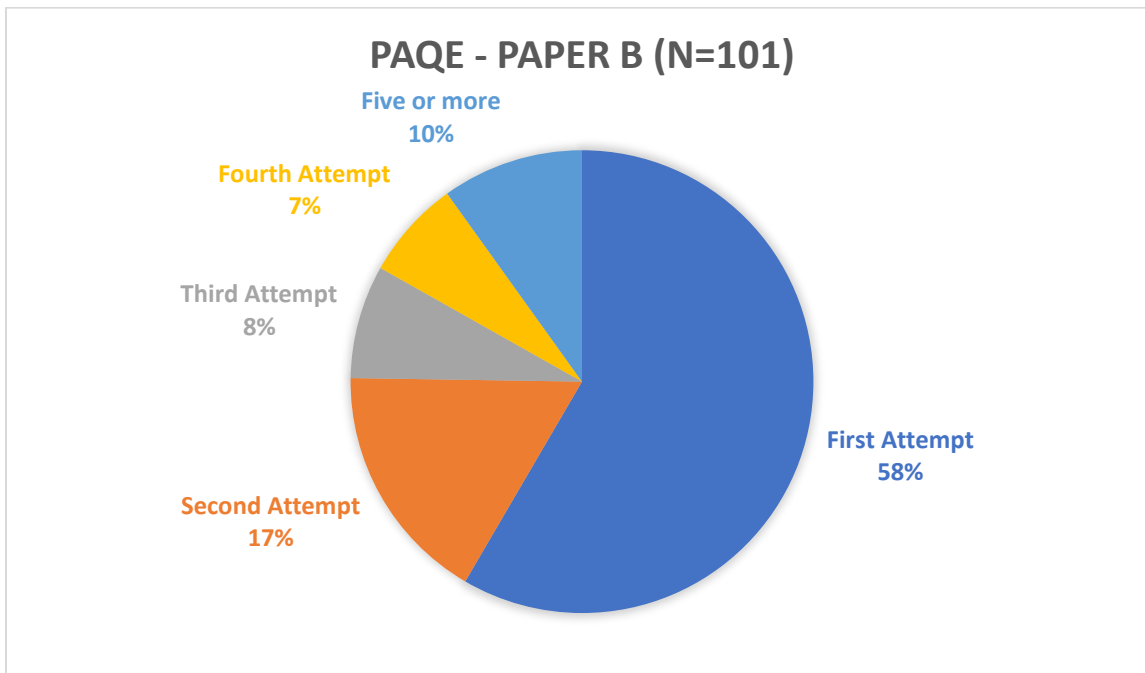
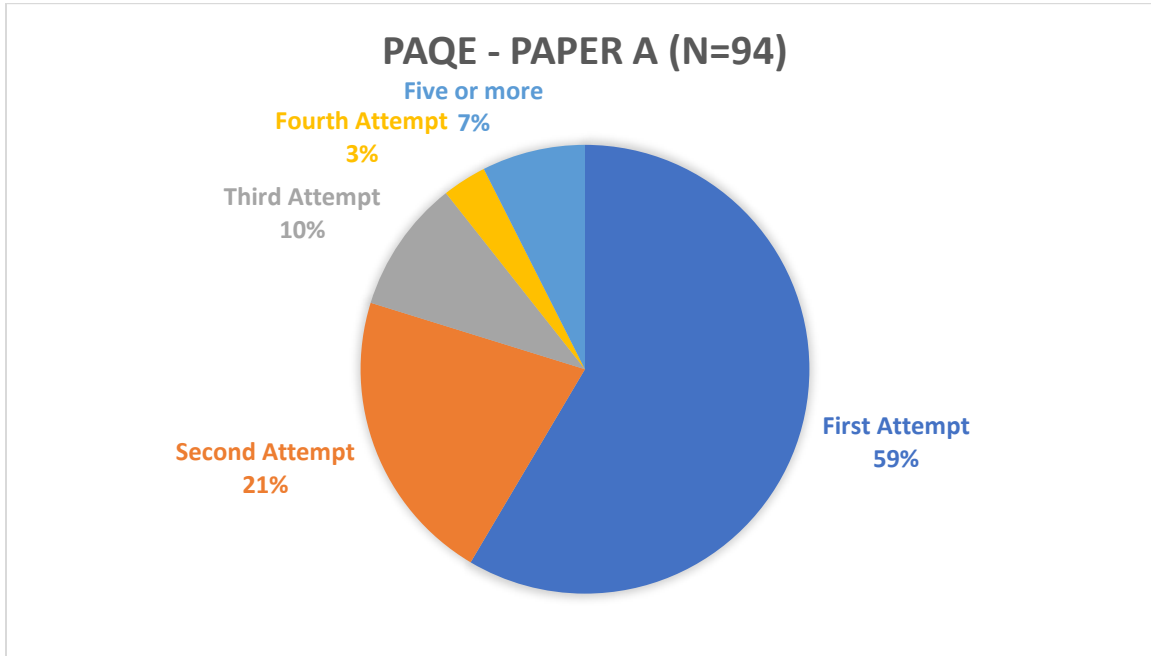
The 2021 Qualifying Examinations were administered bilingually and virtually using a third-party exam platform and live proctoring service. As with any significant process change, it will take some time for candidates to become familiar with the technology and adjust their expectations and approaches to writing the exams online, particularly for those who previously wrote paper-based exams. For example, instead of physically cutting out sections of the exam booklet and taping or gluing them into their answer booklet for Paper A (patent application drafting), copy and paste functionality was implemented on the platform. When possible (i.e., the security and integrity of the exams were not compromised), accommodations were made to minimize the impact of the transition on candidates' performance, including:

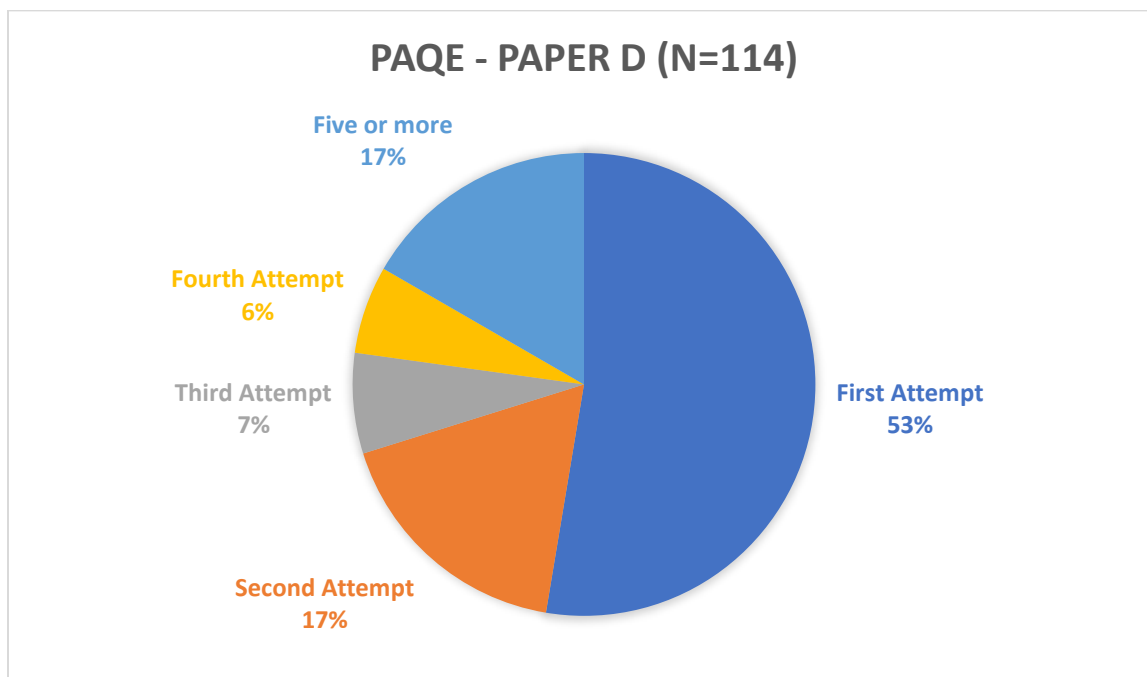
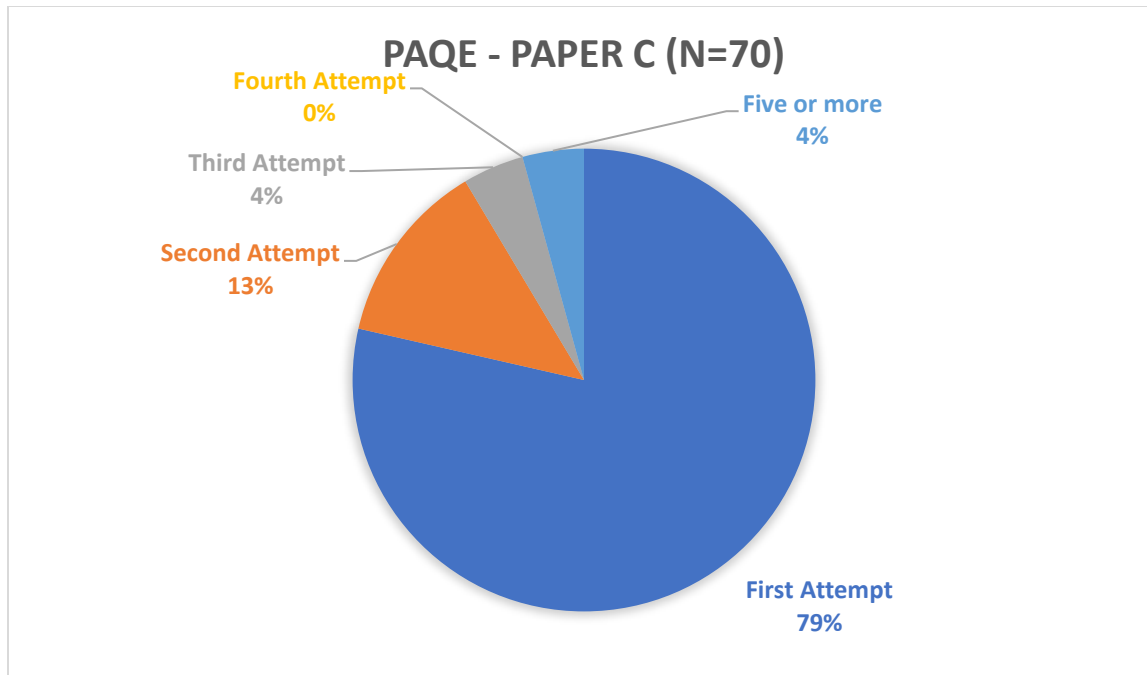
- Providing candidates with a list of system requirements and encouraged them to test their systems before the exam dates to troubleshoot and resolve any issues with the platform and their computers
- Hosting candidate orientation sessions, co-presented by past exam board members, to provide an opportunity for candidates to ask questions prior the exam dates;
- Providing access to a test exam portal that allowed candidates to familiarize themselves with the platform functionality and navigation, and with the Patent Agent Qualifying Examination, access to live proctors to test the security features;
- Allowing candidates to print and pre-highlight/pre-tab reference materials before the exam started (i.e. the Acts, Regulations, Rules etc.);
- Providing the mark breakdown to candidates ahead of time so they could plan their time better;
- Using screensharing functionality to allow live proctors to invigilate the exam while allowing candidates to open the exam materials in a separate pdf window on their computer; and
- Circulating the materials to candidates via email right before the exam started so the materials could be printed and used for reference during the exam.

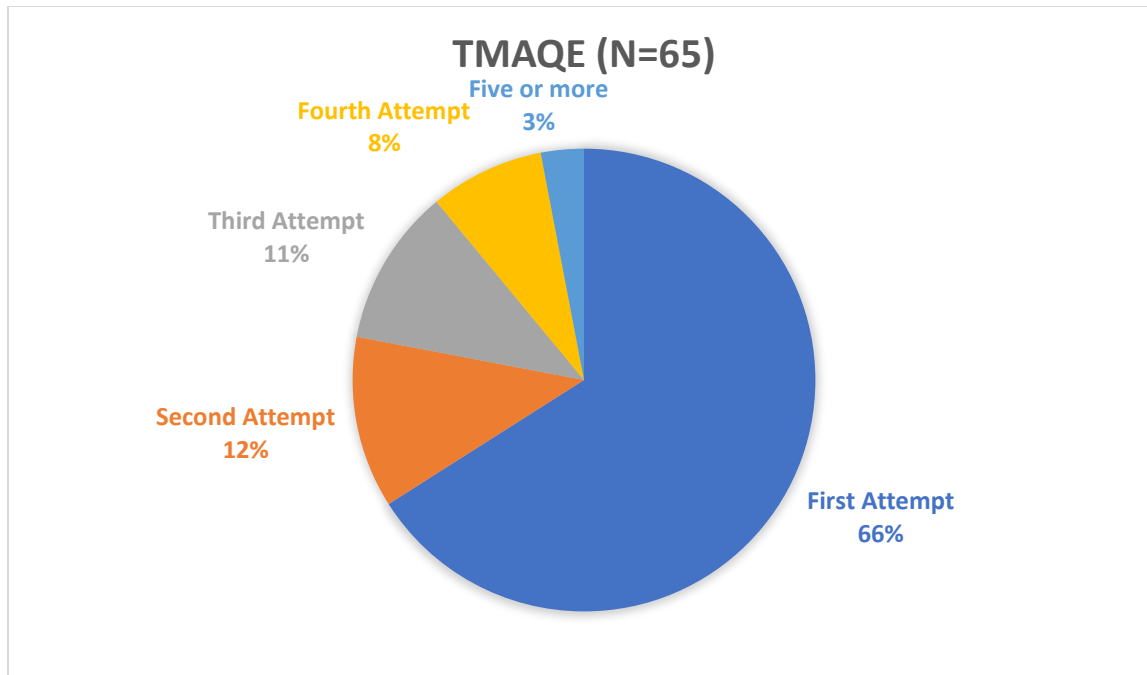
Some candidates experienced technical issues on the exam platform related to internet connectivity and navigation, and user and system errors/delays.

The practice exam and live proctor check-ins were useful in avoiding significant issues on exam days and will be offered again for the 2022 administration.

These charts provide a breakdown of 2021 exam candidates by number of previous attempts.



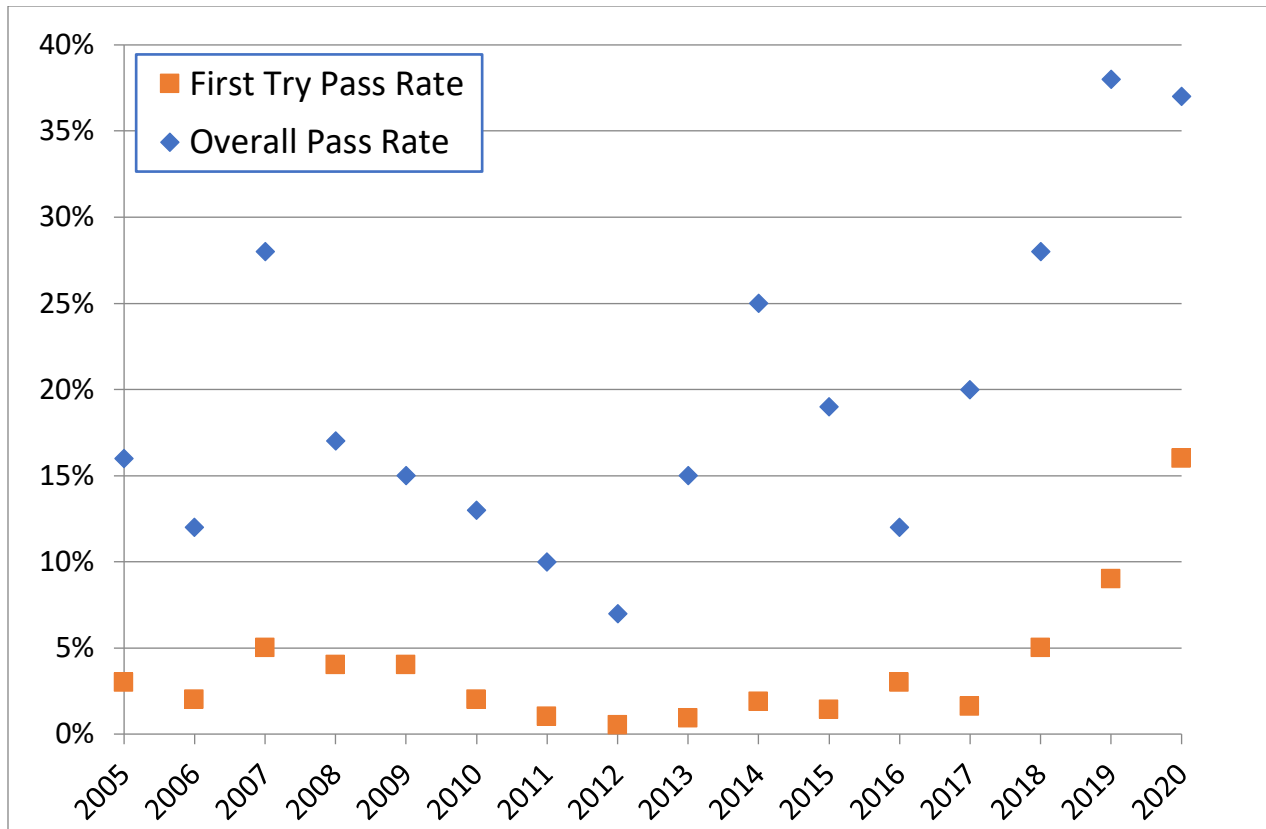




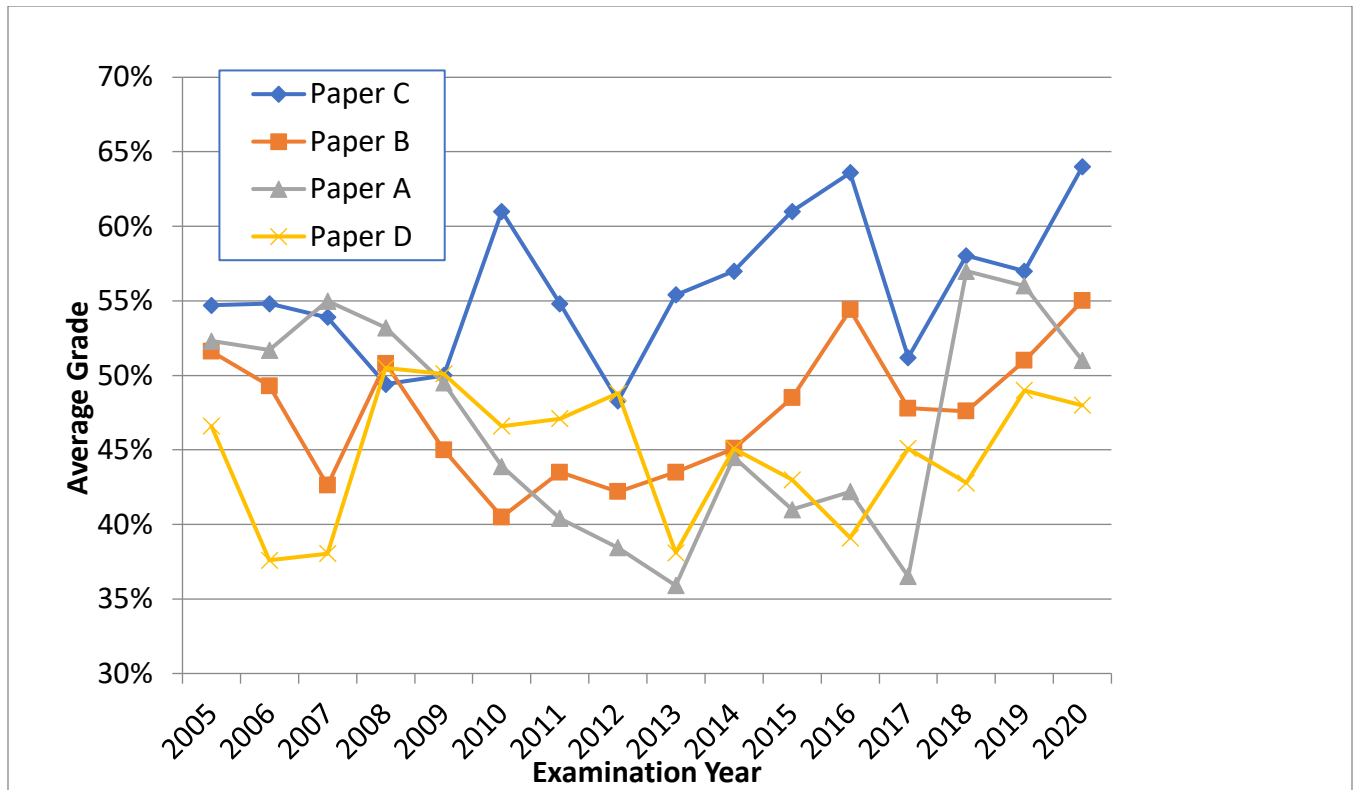
The result releases of the 2021 administrations are tentatively scheduled for March 2022.

The following historical data was provided by CIPO:

[2005-2020 Patent Agent Qualifying Examination Pass Rates](#)



2005-2020 Patent Agent Qualifying Examination Average Grades by Year



2013-2020 Trademark Agent Qualifying Examination Passing Rates by Year

Years	Exams written	Exams passed	Passing rate
2013	67	16	24%
2014	65	15	23%
2015	72	21	29%
2016	91	23	26%
2017	121	28	23%
2018	98	32	33%
2019	96	26	27%
2020	102	43	42%

2013-2020 Trademark Agent Qualifying Examinations Average Marks by Year

Years	Part A	Part B
2013	61%	64%
2014	59%	66%
2015	64%	64%
2016	59%	67%
2017	64%	60%
2018	63%	66%
2019	62%	65%
2020	65%	68%

Mandatory Professional Liability Insurance

Mandating that licensees hold professional liability insurance assists CPATA in protecting the public against practitioners who make mistakes. The by-laws¹⁵ require the nature of liability insurance requires by class 1 agent.. Class 3 licensees must either be covered by the policy of their supervisor/firm, the policy of their employer, or hold their own policy.

The requirements were communicated to all licensees and they must confirm during the 2022 annual renewal process, that they:

- have insurance that meets the requirements (and provide the insurer and policy number);
- are exempt from the insurance requirement (i.e. class 2); or
- intend to purchase the required insurance by the end of 2022.

Given there are only a few providers that offer policies that meet the requirements, many firms are adding the required coverage through their excess insurance policies¹⁶.

Mandatory Continuing Professional Development

Mandatory continuing professional development expectations are implemented by most regulators and are intended to concentrate on ways that practitioners learn and develop throughout their careers. CPD is also used as a tool to infer current competence.

¹⁵ Board By-law 52(c)

¹⁶ For lawyer licensees, the mandatory policies provided by the Law Society of British Columbia and the Barreau du Quebec satisfy CPATA's requirements. The others do not, resulting in numerous conversations with lawyers about how they fill the gap between what is provided by their law society coverage and CPATA's requirements.

The by-laws¹⁷ require class 1 licensees to report their continuing professional development plans annually, and for licensees re-entering practise (i.e., reinstatement to class 1 from class 2 or suspension) to demonstrate they meet continuing professional development requirements, as prescribed by the Registrar. Given that reporting to the College is new, no requirements for CPD were implemented this year. The plan is to survey the profession later in 2022 to establish some baseline data.

The continuing professional development requirements will be set after consultation with the profession, incorporating evidence and best practices in continuing competency, and recognizing that a significant proportion of licensees are also regulated by other bodies (such as lawyers and engineers) that also mandate similar requirements.

Standards of Practice

Professional regulators often develop practice standards to outline the expectations for practitioners that support public protection. They inform practitioners of their accountabilities and the public of what to expect of agents. Standards should apply regardless of a licensee's role, job description or area of practice and provide guidance to assist agents to best serve their client and practise ethically and competently.

Practice standards will be articulated as part of the 2022-2025 Competency Initiative.

Agent Training Course

The by-laws¹⁸ require agents in training to complete an agent training course as a pre-requisite for establishing eligibility to attempt the qualifying examinations and for class 1 licensure. The content and delivery method of the course will be informed by the competency initiative.

¹⁷ College By-law 28(2)(b), Board By-laws 53(b) and 57(3)(c)

¹⁸ College By-laws 15(b) and 23(b)