

# Board of Directors Meeting Agenda

Open meeting  
Via Zoom ([Registration link](#))

Date	Friday, May 27, 2022
Time	8:30 a.m. ET – Public Meeting: you must use individual access link sent from Zoom to your e-mail
Chair	Tom Conway

ITEM	TOPIC	TIME	SPEAKER	Page #	ACTION
1.	Introductory Matters/Call to Order/Land Acknowledgement/ Approval of Agenda/Conflicts of Interest				
	Introductory Remarks – Chair – includes introductions of directors				
	Land acknowledgement – We are holding this meeting located in Ottawa, on the traditional, unceded territories of the Algonquin Anishinaabeg people. We thank them for welcoming us and recognize the creativity and innovation that has sustained indigenous peoples on this land for thousands of years.				
	Conflicts of Interest – Board members to declare if they have any conflicts regarding matters on the agenda				
	2. CONSENT AGENDA				
	Matters are 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.				
2.1	Minutes of March 3 and 17, 2022, meetings	8:40		5	Approve
3.	Appointment of Chair and Vice Chair	8:45	T. Conway/ D. Pink		
	S. 13 of the Act and Board By-laws 12 and 13 allow for the appointment of a chairperson and vice chairperson of the Board. S.19 of the Act requires the Board to elect the Chairperson. In the absence of a Governance & Nominating Committee and formal				

policies for selection of the Chairperson and Board succession, the incumbent directors are presenting proposals for the Board's consideration.

*Be it resolved, the Board elects Tom Conway as chairperson for a one year term and Ruth McHugh as vice chairperson for a one year term;  
And be it further resolved the Board directs the Governance Committee to develop a policy for future selection of the chairperson and vice chairperson.*

#### Establishing College Committees

4.	Governance Committee Terms of Reference Nominations and Board Development Committee Terms of Reference	9:00	R. McHugh	33	Approve
	Appointment of Committees	9:15	T. Conway/ D. Pink		Approve

The by-laws establish three regulatory committees (Registration, Investigations and Discipline) and two governance committees (Governance & Nominations and Risk & Audit) Terms of reference and skills matrices for all committees have been approved. The regulatory committees have started their work and are being recommended for reappointment. The governance committees were recruited with the assistance of Boyden to ensure a selection process that canvassed widely for persons with the required skills and attributes. A report on the process and the proposed list of governance committee appointments are in the Board materials. It is proposed to now separate Governance and Nominations into 2 committees, as described in the CEO's memo.

*Be it resolved,*

- The Board approve the Terms of Reference for the Governance Committee and the Nominations & Board Development Committee, and*

*2. The Board appoints committee members to the regulatory and governance committees as listed on the CPATA Committee List included in the Board materials.*

5.	Board Governance Policies	9:30	D. Pink	41	Approve
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Approval of Board. Policy No. 8 – Board Governance – The Board had previously reviewed this policy in principle, subject to corrections and minor revisions. Those have been made.

*Be it resolved, the Board adopts Board Policy No. 8 – Board Governance*

6.	Confirmation of College and Board by-laws	9:40	D. Pink		Approve	
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Section 80 of the Act states:

80. Any by-laws that are made by the Board before the first election is held under subsection 13(5) are repealed on the 180th day after the day on which the first election is held, unless they are confirmed by a resolution of the Board, as it is constituted after that election, before that 180th day.

The initial by-laws together with recent amendments adopted by the start-up Board are:

[By-laws of the College of Patent Agents and Trademark Agents \(Board\) SOR/2021-168](#)

[By-laws Amending the By-laws of the College of Patent Agents and Trademark Agents \(Board\)](#)

[By-laws of the College of Patent Agents and Trademark Agents \(College\) SOR/2021-167](#)

[By-laws Amending the By-laws of the College of Patent Agents and Trademark Agents \(College\)](#)

The Board has directed the CEO to undertake a review of the by laws in light of CPATA's initial year of operation (and now with new by-laws required by amendments to the Act).

Be it resolved, pursuant to s. 80 of the Act, the Board confirms the College (SOR/2021-167) and Board (SOR/2021-168) By-laws, as amended.

7.	Amendments to the College of Patent Agents and Trademark Agents Act	10:00	D. Pink	46	Information
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The CEO will review the amendments to the Act as introduced in Parliament.

8.	Preliminary Report from the Official Languages Commissioner	10:15	D. Pink	56	Discussion
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The Year Ahead

9.	Priority Items for the Board and CPATA	10:20	D. Pink	59	Discussion
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**9.1 Competence Initiative** – A memo re Competency Framework Panel Summaries is attached. Jen Slabodkin, Dir. Of Registration and Deputy Registrar is available to answer questions.

**9.2 Insurance Review** – In light of the initial experience with requiring professional liability insurance, the CEO will be engaging in discussions with the profession and insurers to determine what clarification of the CPATA's public interest requirements are needed and how CPATA can be satisfied all licensees have the required professional liability insurance.

**9.3 Excellence in Governance** – continue to improve CPATA's governance through ongoing Board and committee education, policy development and necessary structural changes

**9.4 Government Relations/ Strategic Communication/ Stakeholder relations**

**9.5 Strategic Planning** –October 2022

**9.6 EDI** – The College will need to identify how it must address issues of reconciliation and EDI as a professional regulator. Our Regulatory Standards state: *We promote equity, diversity and inclusion in the patent and trademark profession and do not impose inappropriate barriers. We have due regard to the need to eliminate unlawful discrimination and harassment and consider carefully the health and capacity of those we deal with and understand the stress that involvement with the College can cause.*

9.7 Survey of profession – building our knowledge of the profession

9.8 Becoming a risk-focused regulator

9.9 Developing a means to assess outcomes/performance

## 10. For Your Information

10.1 – 2022-03-24 Discipline Committee Minutes

10.2 – April 30 Financial Statements and Compliance Certificate

10.3 – ‘Leave the Room’ – SMLK Blog post on Conflicts of Interest

10.4 – The Fig-leaf of Protection for Consumers – Stephen Mayson

10.5 – Google General Counsel’s Clarion Call for U.S. Patent System Reform Should Not Be Heeded

10.6 – Meeting schedule for Board and Committees

## 11. In Camera – with CEO

In Cameral – without CEO

## 12. ADJOURN

### FUTURE PUBLIC MEETINGS

Aug. 18, 2022 – 12:00 ET via Zoom

October 28/29, 2022 – Board Planning and Meeting – Location TBC

December 15, 2022, via Zoom

March 2, 2023, via Zoom

May 24-26 – Board meeting and AGM – Ottawa

**Public Board of Directors Meeting**  
**Held via Zoom**  
**March 3, 2022, 12:00 p.m. ET**  
**Minutes**

**BOARD MEMBERS:**

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

Regrets: Tom Conway

**STAFF:**

Sean Walker CPA, CFO  
Andrés Diaz, Operations Manager  
Victoria Rees, Manager Professional Responsibility  
Dana Dragomir, Communications Officer/Recording Secretary  
Jennifer Slabodkin, Director of Registration and Education, Deputy Registrar  
Vicci Sakkas, Administrative Coordinator

1. Call to Order

The chair called the meeting to order at 12:05 p.m. ET. No conflicts of interest were declared. Opening remarks regarding the lifting of COVID restrictions and the humanitarian crisis in Ukraine were made.

2. Consent Agenda

2.1. Minutes of the October 30 Meeting

2.2. CEO Report

**On a motion made by Doug Thompson, seconded by Karima Bawa, the Consent Agenda was approved.**

3. Establishing the College

3.1. By-law amendments

The by-laws amendments address insurance requirements, staggered terms for elected Directors, new fees for foreign practitioners and consequential amendments. Darrel Pink explained the process that will be undertaken. The final drafting will be available to the Board in early March.

**On a motion made by Doug Thompson, seconded by Karima Bawa, the Board agreed to approve the final version of amendments to the College and Board By-laws by written resolution.**

### 3.2. RBC Credit Arrangement

In light of CPATA's financial situation, RBC has proposed the amount of the RBC loan be reduced to \$500,000. Senior management concur with this. A form for a revised line-of-credit is included in the meeting package.

**On a motion made by Doug Thompson, seconded by Karima Bawa, the Board approved giving the CEO authority to execute the Line of Credit Agreement included in the meeting package.**

### 3.3. Board of Directors Skills Matrix

The Board reviewed and endorsed the final form of the Skills & Attributes Matrix. The CEO will circulate a survey to the Board to capture the skills and attributes of the Board. This will identify what is required in recruiting additional directors. A numbered ranking system for skills will be included.

### 3.4. Board and committee recruitment

The CEO reported on the work to date to recruit members of the Risk & Audit Committee and the Governance & Nominating Committee. The quality of candidates for both committee and Board positions is exceptional.

### 3.5. Board elections

The list of six candidates for the Patent Agent positions and the eight for the trademark agent positions was circulated.

The Board requested the development of ineligibility requirements and a method for declaring conflicts of interest for elected Board positions.

### 3.6. Appointment of the Election Commissioner

The by-laws allow the Board to appoint an Election Commissioner. The CEO noted he identified a qualified person for this work after consultation with the Federation of Law Societies of Canada.

**On a motion made by Doug Thompson, seconded by Jeff Astle, the Board approved the appointment of Karen Cooper as the Election Commissioner for the 2022 CPATA Board elections.**

## 4. Protecting the Public Interest – Enhancing Competence

### 4.1. Registration Monitoring Report

Jennifer Slabodkin presented an update on the operations of the Registration and Education areas of the College. The Board will mobilize to provide suggested candidates for the difficult-to-fill role of patent agent on the Registration Committee.

### 4.2. Competence Initiative

Technical and professional competency frameworks for patent agents and trademark agents do not exist for Canadian practice. The current state of the qualifying examinations does not provide adequate assurances to enable CPATA to assert we are meeting our foundational objective to measure entry level competence. The Board has been briefed on

the work done to date by our primary consultant, Principia Assessments (Jennifer Flynn) in consultation with patent and trademark practitioners. Significant resources over the next four years will be required to develop and validate the technical competency frameworks; develop and implement the new qualifying examinations; and explore pre-requisite education and training, and continuing competence programs

**On a motion made by Jeff Astle, seconded by Karima Bawa, the Board :**

- 1. endorsed the ongoing work to develop and implement a comprehensive competence plan for entry level and continuing competence;**
- 2. directed the Registrar to report regularly to the Board on the progress of and financial status of the initiative.**

5. Effective Governance

5.1. The Board, having reviewed the recent report on governance at the Law Society of British Columbia, had requested the CEO to take some of the recommendations of Harry Cayton from that review and look at how they might apply to CPATA. The CEO did so and the Board considered a rudimentary Board Evaluation tool. It was agreed this will be shared with the Governance Committee with a request they use it as they develop a board evaluation scheme for the CPATA Board.

5.2. Checklist for Regulatory Boards

At the Board's request the CEO prepared a checklist on CPATA's performance using criteria presented by Harry Cayton. This too will inform the work of the Governance Committee.

5.3. 2020-2021 Financial Statements

The Board congratulated Sean Walker CFO for his ability to deliver financial statements for a new, national, virtual organization in a paperless way.

6. For Information

6.1. IPIC Submission to ISSED re Agent-Client Privilege

6.2. CPATA Finance Policies

The Board inquired why the daily maximum transfer amount for CPATA was \$100,000. Sean Walker explained that it was to consolidate and simplify the administrative work of paying suppliers. The Board declared themselves satisfied with this procedure.

6.3. Balsillie - Canada needs a revived Economic Council

\*Darrel Pink CEO noted an error to the date for the Annual General Meeting. The correct dates are:

- **Annual General Meeting:** Thursday, May 26, from 4:00-5:00 p.m. ET (held in Ottawa and livestreamed for viewing across the country)
- **Board Meeting:** Friday, May 27 from 8:30-11:30 a.m. ET (held in Ottawa and available for public attendance via Zoom)

7. Adjourn

**On a motion made by Karima Bawa, seconded by Doug Thompson, the meeting was adjourned.**

### **Addendum**

On March 10, 2022, the Board approved the amendments to the by-laws.

Moved by D. Thompson, seconded by J. Astle

The Board of Directors of the College of Patent Agents and Trademark Agents approves the amendments to the Board and College by-laws dated 2022-03-09.

**Public Board of Directors Meeting**  
**Held via Zoom**  
**March 17, 2022, 5:00 p.m. ET**  
**Minutes**

**BOARD MEMBERS:**

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

**STAFF:**

Sean Walker CPA, CFO  
Andrés Diaz, Operations Manager  
Dana Dragomir, Communications Officer/Recording Secretary  
Jennifer Slabodkin, Director of Registration and Education, Deputy Registrar  
Vicci Sakkas, Administrative Coordinator

**GUESTS:**

Alexandra Harris, Grant Thornton LLP  
Chris Trenaman CPA, CA, Grant Thornton LLP

1. Call to Order

The chair called the meeting to order at 5:00 p.m. ET. No conflicts of interest were declared.

Approval of the Audited Financial Statements

Sean Walker CPA, CFO presented the audited financial statements to the Board. The result of the audit by Grant Thornton was that the Financial Statements present fairly the financial position of CPATA.

**On a motion made by Ruth McHugh, seconded by Doug Thompson, the Board  
Be it resolved:**

***The Board approves CPATA's Audited Financial Statements for the period ending  
December 31, 2021 as provided in this meeting package;***

***Further, be it resolved the Chair of the Board and the Chief Executive Officer are  
authorized to sign the statements on behalf of the College and the CEO is authorized  
to publish the statements on CPATA's website and distribute them as required..***

2. Adjourn

**The meeting was adjourned at 5:15 p.m.**

## **CPATA Board of Directors and Committees – May 26, 2022**

### **Conseil d'administration et comités du CABAMC – 26 mai 2022**

#### **Board of Directors/Conseil d'administration**

Tom Conway, Ottawa –  
Chairperson/président

– (2023 -Chair/président – 2024 -  
director/administrateur)

Ruth McHugh, Edmonton – Vice-  
Chairperson/vice-présidente

(2023, 2024 – Chair/présidente)

Jeff Astle, Boucherville – (2024)

Karima Bawa, Vancouver –  
(2024)

Brigette Chan, Montréal – (2024)

Andrew Currie, Toronto – (2024)

Leonora Hoicka, Toronto –  
(2024)

Appointed Director A/  
Administrateur nommé A –  
(2025)

Appointed Director A/  
Administrateur nommé B –  
(2025)

Darrel Pink – CEO &  
Registrar/premier dirigeant et  
registraire

Staff/Personnel – Dana Dragomir

# CPATA Board of Directors and Committees – May 26, 2022

## Conseil d'administration et comités du CABAMC – 26 mai 2022

### Registration Committee/Comité d'inscription

Tina McKay – Chair/présidente – (2024)  
Martin Béliveau – (2024)  
Jason Hynes – (2024)  
Heidi Jensen – (2024)  
Jeffrey Orser – (2024)  
Mark Pioro – (2024)  
Hilary Rose – (2024)  
Staff/Personnel - Jen Slabodkin, Director Registration & Education/ directrice de l'inscription et de l'éducation

### Investigations Committee/Comité d'enquête

Kristin Dangerfield QC – Chair/présidente - (2024)  
Pierre Cantin – (2024)  
Sanjay Goorachurn – (2024)  
Barb Murchie – (2024)  
Herman Van Ommen QC – (2024)  
Staff – Victoria Rees – Manager Professional Responsibility/chef de la responsabilité professionnelle

### Discipline Committee/Comité de discipline

Marcel Mongeon – Chair/président – (2024)  
Ray Anand – (2024)  
Charles Boulakia – (2024)

Kathleen Lickers – (2024)  
Jay Sengupta – (2024)  
Benoit Yelle – (2024)  
Jean Whittow QC – (2024)  
Staff/Personnel – Victoria Rees QC

### Governance Committee/Comité de gouvernance

Ruth McHugh FCPA – Chair/présidente – (2023)  
Amber Bartol – (2024)  
Karima Bawa – (2023)  
Peter Cowan – (2024)

### Nominations & Board Development Committee/Comité des nominations et du développement du Conseil

Charity Callahan – Chair/présidente – (2024)  
Jeff Astle – (2024)  
Evelyn Spence – (2024)  
Brent Yorke – (2024)  
Staff/Personnel - Darrel Pink  
Jen Slabodkin

### Risk & Audit Committee/Comité de vérification et des risques

Bob Plamondon FCPA – Chair/président  
Jeff Astle – (2024)  
Iris Almeida-Côté  
Maureen Rogers  
Staff/Personnel – Sean Walker CPA, CFO

## BRIEFING NOTE

DECISION	<input checked="" type="checkbox"/>	REPORT		ATTACHMENTS	
DISCUSSION	<input type="checkbox"/>	New	<input checked="" type="checkbox"/>	Yes	<input checked="" type="checkbox"/>
INFORMATION	<input type="checkbox"/>	Update	<input type="checkbox"/>	No	<input type="checkbox"/>

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SUBJECT      Establishment of independent Governance and Nominations & Board Development Committees

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FROM          Darrel Pink, CEO & Registrar,

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TO             Board of Directors

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DATE          March 3, 2022

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## ISSUE

The Board must approve the separation of the governance and nominating functions into two committees.

## Why is this here – the public's interests

Through the process of recruiting for committee members, the groups undertaking this task (Jeff Astle, Ruth McHugh, Darrel Pink with the assistance of Boyden) identified that the initial terms of reference for the Governance & Nominating Committee was likely too large and that, given where CPATA is in its development there is likely a need for comprehensive and ongoing education/board development for the Board and committees. The group received advice that in many organizations the board development function has been segregated from governance and added to a committee that deals with nominations. That was an appealing approach and the group undertook its recruitment work based on that assumption. Individuals who agreed to join each committee did so on this basis.

This approach will advance the public interest by developing comprehensive training and education for the Board and committees that is commensurate with CPATA's rapid evolution and thus the need to keep all aspects of the College up to date on a wide range of matters.

## Summary

It is noted this change will require changes in the by-laws, but the non-compliance with the current by-law is seen as non-material because the new structure addresses the same functions.

## Recommendation

It is recommended the Board approve the revised Terms of Reference for the Governance Committee (unchanged from the original) and for the new Nominations & Board Development Committee (which keeps the original language and adds specific obligations for Board Development)

## Request of the Board

Approve the following resolution.

*Be it resolved,*

- 1. the Board approve the Terms of Reference for the Governance Committee and the Nominations and Board Development Committee, and*
- 2. the Board appoints committee members to the regulatory and governance committees as listed on the CPATA Committee List included in the Board materials.*

## Memorandum

DECISION	<input checked="" type="checkbox"/>
DISCUSSION	<input type="checkbox"/>
INFORMATION	<input type="checkbox"/>

REPORT	
New	<input checked="" type="checkbox"/>
Update	<input type="checkbox"/>

ATTACHMENTS	
Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

TO	Board of Directors
FROM	Darrel Pink, CEO & Registrar Jen Slabodkin, Director, Registration & Education, Deputy Registrar
DATE	May 28, 2022
SUBJECT	Registration Committee Appointments

## Message

The Registration Committee's role is central to the CPATA public interest protection mandate and the registration process set out under the College By-laws.

The Skills Matrix provides a useful guide for ensuring appointees collectively cover all required areas of knowledge, skills, attributes and aptitudes. Following extensive recruitment strategies, all of the categories have been covered with the exception of in-house practitioner representation. We propose the following slate of six re-appointments and one new appointment to the Registration Committee:

**Tina McKay** – Senior Manager Business Operations, Law Society of Alberta (proposed Chair, re-appointment). Tina has extensive regulatory experience in registration, education, credentialing and conduct matters. Prior to joining the Law Society of Alberta in 2009, practised law with a focus on trademarks, technology transfer, immigration, corporate, real estate and family.

**Mark Pioro** – Deputy Registrar & General Counsel, College of Psychotherapists of Ontario (proposed Vice-Chair, re-appointment). Mark is a lawyer working in regulation and policy since 2012, with proficiency in research, analysis, advising, training and stakeholder relations, and has represented the College of Psychotherapists of Ontario in over 100 registration matters before the Health Professions Appeal and Review Board.

**Hilary Rose** – Chair Finance & Audit Committee for Legal Aid Alberta, CPA Alberta By-laws & Rules Subcommittee (re-appointment). Hilary is a member of CPA Alberta, and the Institute of Corporate Directors. She is a governance and financial leader with deep expertise in the financial services sector, the Alberta public sector and Aboriginally owned business, and has overseen various Human Resource initiatives.

**Jeffrey Orser** – Acting Senior Director, Patent Services and Strategic Affairs, Patent Branch, Canadian Intellectual Property Office (re-appointment). Jeff brings over 18 years of overall experience in the field of Intellectual Property (IP) at the Canadian Intellectual Property Office (CIPO). In his current role, Jeff provides strategic leadership and oversight for Patent Branch strategic and operational planning, training, information technology functions, quality management, and operational functions.

**Martin Béliveau** – Chairperson, Trademarks Opposition Board, Canadian Intellectual Property Office (re-appointment). Martin is responsible for setting the strategic direction and leading the operations of the quasi-judicial tribunal. He manages the team of decision-makers, oversees the development of procedure and hearing schedule, ensures respect of rules of natural justice, establishes and maintains relationship with stakeholders, and sets the strategic direction and performance standards of the Opposition Board.

**Heidi Jensen** – Founder, Jensen IP (re-appointment). As a practising Trademark Agent and sole-practitioner, Heidi has extensive experience in all aspects of trademark clearance, protection and enforcement before the Office of the Registrar of Trademarks. She specializes in trademark portfolio management and branding life cycle management.

**Jason Hynes** – Partner, Bereskin & Parr (new appointment). As a practising Patent Agent with a background in mechanical engineering, and an adjunct professor at Western University, Jason has a deep understanding of all aspects of patent prosecution, and the importance of maintaining fair and ethical registration practices with a view towards promoting equity, diversity and inclusion. He has previous in-house experience and current, extensive large firm experience where he advises clients on all strategic aspects of intellectual property.



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

## 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.

For the Registration Committee, this regulatory approach includes finding ways to transparently, objectively, impartially and fairly set and approve competency standards under s. 2 of the College By-laws and adjudicate requests for review submitted under s. 5 and s. 6 of the College By-laws.

## Objects of Registration Process

The objects of the registration 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. Maintaining standards for education, training and fitness to ensure the admissions programs deliver competent trainees that meet the College'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 in a timely manner, to ensure fairness for applicant or licensee;
- 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 the College can cause.

## The Registration Process

The Registrar has primary responsibility for regulatory transactions with licensees, trainees and the public, including making decisions under the College By-laws with respect to registration. If an individual is not in agreement with a decision of the Registrar, the decision

can be reviewed by the Registration Committee on the request of the affected applicant or licensee.

The Registration Committee provides direction respecting registration. After reviewing a decision of the Registrar, the Committee may request additional information, approve the application under review, with or without conditions, and specify the effective date of the decision, or conduct a hearing which will produce a decision with reasons.

Decisions of the Registration Committee are final and cannot be reviewed by the Board.

### **Role of Registration Committee**

The Registration Committee is responsible for supporting the Board's professional regulation and public protection mandate by carrying out responsibilities assigned under s. 2, s. 5 and s. 6 of the College By-laws.

### **Responsibilities**

The Registration Committee's responsibilities include:

- Supporting the ethical and competent delivery of patent and trademark services by licensees;
- Reviewing decisions made by the Registrar under the College By-laws and makes decisions, including approving applications under review, with or without conditions, and conducting a registration hearing in accordance with the Regulatory Objectives, Standards and Principles, Act, Regulations, College By-laws, and Registrar's Policies;
- Setting and approving standards for the evaluation of the competencies that are to be assessed by the qualifying examinations and the passing marks for those examinations to ensure that all licensees have the necessary skills and competencies to practise as patent agents and/or trademark agents.
- Recommending and commenting on revisions to By-laws, policies and procedures needed to support a registration process that is transparent, objective, impartial and fair.

### **Committee Composition**

The Registration 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.

### Registration Committee Skills Matrix – Proposed Committee Member Coverage

The Skills Matrix below is used to:

- identify the specific knowledge, skills, attributes and experience<sup>1</sup> required of the Registration Committee members and as a whole;
- facilitate appointments that will fill gaps in the required knowledge, skills, attributes and experience; and
- assist with identifying training and education needs on an ongoing basis.

Members as a whole must possess/demonstrate 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. [Current 3F, 4M; 3 bilingual; 5 ON, 2 AB.]

Knowledge	Skills	Experience	Attributes
CPATA Act  ✓ X 7	Effective oral communications  ✓ X 7	Professional regulation  ✓ X 4	Active listener & strong communicator  ✓ X 7
Patent Act Rules and practice  ✓ X 2	Effective written communications including writing decisions with reasons  ✓ X 3	Federal Court and administrative tribunal procedures  ✓ X 3	Fair, impartial, open-minded, self-aware  ✓ X 7

<sup>1</sup>'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 issues;

'Experience' includes professional registration, 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.

Knowledge	Skills	Experience	Attributes
Trademark Act Regulations and practice  ✓ X 3	Decisions are proportionate, consistent and targeted  ✓ X 2	Law relating to privilege and privacy  ✓ X 4	Courteous, respectful and patient  ✓ X 7
CPATA Regulations  ✓ X 7	Collegial and effective decision making  ✓ X 7	Administrative Law <sup>2</sup>  ✓ X 6	Apply confidentiality and discretion  ✓ X 7
CPATA College By- laws  ✓ X 7	Conflict management  ✓ X 7	Patent Agent services  ✓ X 1	Cultural competence <sup>3</sup> ✓ X 2 trained
CPATA Code of Professional Conduct  To be trained X 5 familiar with FLS Model Code X 1 familiar with CPA Code	Attention to detail  ✓ X 7	Trademark Agent services  ✓ X 2	Ethical  ✓ X 7
Familiar with registration policies and decisions  ✓ X 5	Organization & time management  ✓ X 7	Not For Profit, regulator and/or other community service  ✓ X 3 NP/Regulatory ✓ X 2 public sector	Strong work ethic  ✓ X 7
Charter & Human Rights  ✓ X 4	Practice & business management  ✓ X 4	Business & innovation  ✓ X 7	Professionalism, civility, collaboration  ✓ X 7

<sup>2</sup> '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 and make answer; unbiased decision-makers; those who hear the application decide the case; and there are adequate reasons for the decision. (Federation of Law Societies of Canada National Adjudicator Training Curriculum)

<sup>3</sup> 'Cultural competence' refers to an ability to understand, communicate with and effectively interact with people across different cultures; acknowledge the harmful effects of discriminatory thinking and behavior on human interaction; and 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)

Knowledge	Skills	Experience	Attributes
Equity, diversity, inclusion and access to justice principles <sup>4</sup>  ✓ X 4	Information analysis and judgment  ✓ X 7	CPATA Board  Not applicable at this time	Competent to use the technology facilitating the committee's work  ✓ X 5
Fair Registration Practices (Transparent, Objective, Impartial, Fair)  ✓ X 6	Conducting interviews  ✓ X 4	Adult education <sup>5</sup>  ✓ X 3	Respected by peers  ✓ X 7
Unconscious Bias/Implicit Bias <sup>6</sup>  ✓ X 2	Procedural fairness  ✓ X 7	Fitness to practice, capacity and health impacts on professional practice <sup>7</sup>  ✓ X 3	Accountability, honesty and integrity  ✓ X 7
Indigenous Context  To be trained ✓ X 1	Risk assessment  ✓ X 2	Competence assessment and standard setting  ✓ X 2	Adaptability  ✓ X 5
		In-House Practitioner Not represented	
		Sole Practitioner ✓ X 1	
		Small Firm ✓ X 1	
		Large Firm ✓ X 1	

<sup>4</sup> 'Equity, diversity, inclusion and access to justice principles' are closely tied to cultural competence, and include 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

<sup>5</sup> 'Adult education' experience is valuable for understanding how adults learn, how to evaluate whether learning has taken place, and developing or identifying effective educational opportunities

<sup>6</sup> 'Unconscious Bias/Implicit Bias' is a bias or prejudice that is present but not consciously held or recognized. (Merriam-Webster)

<sup>7</sup> '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.

## Memorandum

DECISION	<input type="checkbox"/>
DISCUSSION	<input type="checkbox"/>
INFORMATION	<input type="checkbox"/>

REPORT	
New	<input type="checkbox"/>
Update	<input type="checkbox"/>

ATTACHMENTS	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

TO	CPATA Board
FROM	Darrel Pink
DATE	May 10, 2022
SUBJECT	Investigations Committee Appointments

## Message

The Investigations Committee's role is central to the CPATA public interest protection mandate and the complaints process set out under the Act. The Board has been provided under separate cover with the proposed Terms of Reference and Skills Matrix for this committee.

We propose that the Investigations Committee begin its work with appointment of five highly skilled and experienced licensees and non-licensees (a majority must be non-licensees, therefore we recommend one patent agent, one trademark agent, and three non-licensees) who are collectively able to create a best practices foundation for our complaints investigation process within the current constraints of the Act.

The Skills Matrix provides a useful guide for ensuring appointees collectively cover all required areas of knowledge, skills, attributes and aptitudes. Victoria Rees was retained to research and identify appropriate candidates from across the country. Using her professional regulation network, we have identified four strong candidates, and will require a notice to licensees for expressions of interest from the patent agent profession. The current candidates are:

**Kristene Dangerfield, QC** – recently retired CEO, Law Society of Manitoba – **Chair**

**Pierre Cantin** – an engineer, lawyer and patent agent, with experience in mechanical and aeronautic engineering. He is bilingual and has a working knowledge of Spanish and German. He has been lead counsel and patent agent for CCM Hockey since 2018. Prior to this, he was employed for 15 years as in-house counsel and patent agent for Ballard Power Systems, Bombardier Aerospace and Pratt & Whitney.

He has experience working with single inventors, small businesses, as well as large law firms and very large innovative businesses. He currently supervises trademark agents on files as well.

**Sanjay Goorachurn** – partner, Smart & Biggar, Montreal – member of Quebec and Ontario Bars, former Patent Agent, current Trademark Agent – **proposed Vice Chair**

**Herman Van Onnen, QC** – recently retired practitioner in Vancouver, BC – former President, Law Society of BC – former Hearing Tribunal and current Veterinary Board Hearing Tribunal member

**Barbara Murchie, QC** – member of Law Society of Ontario – recently retired from IP and patent agent practice with Bennett Jones, Toronto – current Law Society Tribunal Adjudicator

The fifth member to populate this committee should be a Patent Agent with business and innovation experience. We propose that the call for expressions of interest go out as soon as possible, and that the recommended individual then be appointed by the Board via email resolution later in August.

We have received two open and complex complaints from CIPO, which require appointment of an investigator to move the investigations forward. The Committee's quorum is three.

Attached is a copy of the Skills Matrix showing the categories covered by the four candidates above, together with copies of bios for each proposed Committee member.

A handwritten signature in black ink that reads 'Darrel Pink'.

**Darrel Pink**  
CEO & Registrar  
[dpink@cpata-cabamc.ca](mailto:dpink@cpata-cabamc.ca)

## Investigations Committee Skills Matrix – Proposed Committee Member Coverage

The Skills Matrix below is used to:

- identify the specific knowledge, skills, attributes and experience<sup>1</sup> required of the Investigations Committee members and as a whole;
- facilitate appointments that will fill gaps in the required knowledge, skills, attributes and experience; and
- assist with identifying training and education needs on an ongoing basis.

Members as a whole must possess/demonstrate 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: [Current 2F, 2M; 1 racialized; 1 bilingual; 1 Ont; 1 Que; 1 BC; 1 Man.]

Knowledge	Skills	Experience	Attributes
CPATA Act	Effective oral communications	Professional regulation	Active listener & strong communicator
To be trained	✓ x 4	✓ x 3	TBD
Patent Act Rules and practice	Effective written communications including writing decisions with reasons	Federal Court and administrative tribunal procedures	Fair, impartial and open-minded
✓ x 2	✓ x 3	✓ x 3 tribunal ✓ x 2 Federal Court	TBD

<sup>1</sup> 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 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.

Trademark Act Regulations and practice  ✓ x 2	Collegial and effective decision making  ✓ x 4	Law relating to privilege and privacy  ✓ x 4	Courteous, respectful and patient  TBD
CPATA Regulations  To be trained	Conflict management  ✓ x 4	Administrative Law <sup>2</sup>  ✓ x 4	Apply confidentiality and discretion  ✓ x 4
	Attention to detail  ✓ x 4	Patent Agent services  ✓ x 2	Cultural competence <sup>3</sup>  ✓ x 4 trained
CPATA Code of Professional Conduct  To be trained – 4 familiar with FLS Model Code	Organization & time management  ✓ x 4	Trademark Agent services  ✓ x 2	Ethical  ✓ x 4
Registrar's Policies for Investigations Committee and complaints process	Practice & business management	NFP, regulator and/or other community service	Strong work ethic

<sup>2</sup> 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 and make answer; unbiased decision-makers; those who hear the application decide the case; and there are adequate reasons for the decision. (Federation of Law Societies of Canada National Adjudicator Training Curriculum)

<sup>3</sup> 'Cultural competence' refers to an ability to understand, communicate with and effectively interact with people across different cultures; acknowledge the harmful effects of discriminatory thinking and behavior on human interaction; and 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)

To be trained – 1 familiar with regulatory investigations; 3 familiar with hearings	✓ x 3 practice ✓ x 1 business	✓ x 4	✓ x 4
Administrative law principles incl. fairness and natural justice  ✓ x 3	Investigations & evaluation of factual evidence  ✓ x 3	Business innovation  ✓ x 1	Professionalism & civility  ✓ x 4
Charter & Human Rights  ✓ x 3	Conducting interviews  ✓ x 2?		Competent to use the technology facilitating the committee's work  ✓ x 4
Restorative justice & ADR principles <sup>4</sup>  ✓ x 2?		Adult education <sup>5</sup>  ✓ x 2	Respected by peers  ✓ x 4
Equity, diversity, inclusion and access to justice principles <sup>6</sup>		Fitness to practice, capacity and health impacts on	

<sup>4</sup> '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, blaming and shaming' and instead seeking collaborative solutions

<sup>5</sup> 'Adult education' experience is valuable for understanding how adults learn, how to evaluate whether learning has taken place, and developing or identifying effective educational opportunities

<sup>6</sup> 'Equity, diversity, inclusion and access to justice principles' are closely tied to cultural competence, and include having the knowledge, experience and skills to actively work to protect against and prevent individual and systemic discrimination, to cultivate appropriate

✓ x 2? TBD		professional practice <sup>7</sup>  ✓ x 3	
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Recommendation for fifth Investigations Committee member:

- current licensed Patent Agent
- non-lawyer
- any province
- any gender
- experience operating a business and supporting business and service innovations
- ideally 10 – 20 years in practice
- preferably bilingual

attitudes toward cultural differences, and to ensure that the College's processes are open and accessible to all

<sup>7</sup> '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.

## Memorandum

DECISION	<input type="checkbox"/>
DISCUSSION	<input type="checkbox"/>
INFORMATION	<input type="checkbox"/>

REPORT	
New	<input type="checkbox"/>
Update	<input type="checkbox"/>

ATTACHMENTS	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

TO	CPATA Board
FROM	Darrel Pink
DATE	May 10, 2022
SUBJECT	Discipline Committee Appointment

## Message

The Discipline Committee's role is central to the CPATA public interest protection mandate and the complaints adjudication process set out in the Act. The Board previously approved the Terms of Reference and Skills Matrix for this committee, copies attached.

The Skills Matrix provides a useful guide for ensuring appointees individually and collectively cover all required areas of knowledge, skills, attributes and aptitudes. A notice seeking expressions of interest for service on the Investigations Committee and Discipline Committee was circulated to licensees in September. There was a strong response from many qualified candidates. Victoria Rees has conducted research across Canada in respect of non-licensee candidates, conducted interviews with a short list of licensees and non-licensees, and is bringing forward seven candidates at this time.

The Discipline Committee must be able to conduct proceedings in both official languages. It must consist of individuals who are subject experts, who are geographically and demographically diverse, who have experience with the wide range of employment environments in which licensees work, and who possess excellent skills, knowledge and judgement in relation to serving on adjudicative tribunals. They each must possess the attributes of a strong work ethic, professionalism, being respected by their peers, being culturally competent, able to conduct themselves with appropriate decorum, and in a fair-minded and balanced way.

The Terms of Reference under the Act require that the Investigative and Discipline Committees both be comprised of a majority of non-licensees, and non-IPIC members. In the case of the Discipline

Committee, its work will generally be done in panels of three, including at least one patent or trademark agent. The hearings will be conducted by audio-visual means, and so each Committee member must have the technological skills and capabilities required for this purpose.

As a group, the individuals being recommended for appointment have the following characteristics:

- 4 of 7 are fully bilingual
- 3 identify as female and 4 identify as male
- 50% identify as racialized
- They represent the provinces of BC, Ontario and Quebec
- 3 are patent and/or trademark agents, one of whom is fully licensed and all 3 of who are reciprocally entitled to practice before the USPTO
- 6 of 7 are also lawyers
- 5 of 7 have experience with professional regulation, and three of these have extensive experience serving on and Chairing administrative tribunals

The following are the individuals being recommended for appointment to the Discipline Committee:

**Raj Anand** – Raj is an Ontario lawyer, who practices with Weir Foulds LLP in Ottawa. His areas of practice include administrative law, human rights, Constitution, labour relations, civil litigation, professional negligence and discipline. He has experience conducting hearings in both official languages with the LSO Hearing and Appeals Tribunals, and Boards of Inquiry. He has extensive decision writing experience. He led reform of the LSO Hearing Tribunal, including drafting the rules of procedure, and has been recognized by his peers on numerous occasions. He served on the Board of Directors for Legal Aid Ontario, as well as on the Board of the Centre for Addiction and Mental Health. Ray identifies as Southeast Asian.

**Charles Boulakia** – Charles practices intellectual property law (since his admission in 2000) with the IP boutique firm of Rideout & Maybee in Toronto. He is a LSO lawyer, patent agent, trademark agent, and is fully licensed to practice patent agency work before the USPTO, the latter permitting him to represent international clients. His background is in science. He is fully bilingual (French is his mother tongue), and currently serves as his firm's Equity, Diversity and Inclusion Officer, as well as its Risk Management partner. He spent four years as Canadian Editor for SCIENCE, SCIENCE, a scientific career development website, and was previously involved with RBC in business plan evaluation. Charles identifies as part African.

**Kathleen Lickers** – Kathleen is a sole practitioner and lawyer with Six Nations of the Grand River since 2003. Her area of practice is Indigenous law, primarily with Boards of Inquiry, complex dispute resolution, legal and commission counsel to the Indian Claims Commission and a Federal Commission of Inquiry, and litigation. She is a LSO Adjudicator, and previously served on the LSO Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples, as well as the LSO's Indigenous Advisory Group. She has been frequently recognized by her peers for her contributions to the First Nations communities and Indigenous peoples. She served on the Board of the Canadian Council of Administrative Tribunals, and has written extensively. Kathleen identifies as a Seneca of Six Nations of the Grand River.

**Marcel Mongeon** – Marcel is a lawyer in Hamilton, Ontario, admitted in 1983, and is employed with Ross, Mongeon, Cavello & Co., a small firm. He also operates Mongeon Consulting, which provides technical and business leadership support and education for remote hearings and corporate governance. His practice includes acting as Registered Patent and Trademark Agent, and supporting a small number of clients in technology matters. He is also a member of the NYS Bar and a retired member of the Barreau. He is fully bilingual (and can also speak Spanish and German). Marcel has served since 1993 as Deputy Judge in Hamilton Small Claims Court, and is a Certified Construction Adjudicator. His background is in astronomy, and he has an MBA and LL.M. Marcel has over 25 years experience in decision-making and writing, and extensive familiarity with privacy and administrative law.

**Jay Sengupta** – Jay is a non-practising lawyer in Hamilton, Ontario, admitted to the Ontario Bar in 1991. She is a mediator, investigator, and member of the Human Rights Adjudication Panel in the Northwest Territories. She serves on the LSO's Hearing Tribunal. She served as Human Rights Commissioner with the Peel District School Board for two years, as Senior Counsel with the Office of Ombudsman of Ontario, and for ten years as fulltime Vice Chair of the Ontario Human Rights Tribunal. From 2012-2018, Jay was part of a specialised team of adjudicators who made up the Child and Youth division of the Social Justice Tribunals of Ontario. She has extensive experience with adjudicative decision-making and writing. Jay identifies as Bengali.

**Jean Whittow, QC** – Jean is a practising lawyer with Sugden, McFee & Ross LLP in Vancouver, BC. She was admitted to the BC Bar in 1984, and the Yukon Bar in 2009. Her areas of practice have focused on administrative law, professional regulation, prosecution and defence of regulated professionals, policy and procedure development, health law, securities law, adjudicative training and counsel to panels and tribunals. Jean served as Director of Professional Conduct with the Law Society of BC from 1991 – 2003. Jean currently provides counsel to administrative hearings and court proceedings, conducts investigations into misconduct for a variety of professional regulators, engages in legislative interpretation, and serves as an adjudicator. She serves as Chair of the Legal Services Society, and served on the LSBC Adjudicator Code of Conduct Working Group.

**Benoit Yelle** – Benoit is a Patent Agent and engineer, and a partner with Gowlings LLP in Montreal, Quebec. He has Reciprocal status with the USPTO. He became a Patent Agent in 2001. He is fully bilingual (French is his mother tongue). His background is in computer engineering, information technology, telecommunications and medical devices. He has been and is responsible for agent trainees in his firm, and has experience in both small business and as in-house counsel. He is keenly interested in enhancing the reputation and professionalism of patent agents in Canada.

### Appointment of Chair

It is our recommendation that **Marcel Mongeon** be re-appointed as the **Discipline Committee Chair**.



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

CONFIDENTIAL

## Summary of Results

Audit & Risk, Governance, and Nominations & Board Development Committees

Committee members

College of Patent Agents and Trademark Agents



COLLEGE OF PATENT  
AGENTS & TRADEMARK AGENTS

COLLÈGE DES AGENTS DE BREVETS ET  
DES AGENTS DE MARQUES DE COMMERCE

Prepared by:  
Michael Naufal and Alain Pescador  
Boyden

May 2022

## 1. Search Overview and Results

The Search launched in early-December 2021 and included broad outreach to leaders across the country, as well as Boyden's internal network of national partners.

The opportunities were posted on Boyden's website and through social media channels as well as on CPATA's website and with the Canadian Network of Agencies of Regulation.

Throughout the process we received positive feedback about CPATA. Many agreed that the establishment of the College was **an important achievement for Canada's innovation agenda**.

We reached out directly to qualified individuals who met the criteria as set out in the Skills and Aptitudes Matrix. They came from a range of settings, including, universities, think-tanks, associations, non-profits, private enterprises, among others.

For the Audit & Risk Committee, we engaged with over 47 candidates and pre-screened those whose qualifications most closely matched the criteria. We narrowed the field to a group of 15 **candidates for the Committee's consideration**. The Committee selected four candidates to interview and, from that, three are being presented and recommended to the Board of Directors for appointment. One of the three candidates will be proposed as Chair of the Committee.

For the Governance Committee and Nominating Sub-Committee (which is being restructured, with the plan to amend the by-laws and the Terms of Reference to establish a separate Nominations and Board Development Committee), we engaged with over 55 candidates and pre-screened those whose qualifications most closely match the requirements. We presented 17 **candidates for the Committee's consideration**. The Committee selected three to interview for the Governance Committee and five for the Nominations and Board Development Committee. The Committee selected two candidates to recommend for appointment to the Governance Committee and three to recommend for appointment to the Nominations and Board Development Committee. One candidate will be proposed as Chair of the N&BD Committee.

The list of selected candidates per Committee is outlined in the next section.

## 2. Selected Candidates for appointment/ratification by CPATA's Board of Directors

The Committee is recommending to CPATA's Board of Directors the following candidates for appointment to the three Committees:

### Audit and Risk Committee

- **Robert "Bob" Plamondon:** Consultant, independent board member, historian, and author; and first external member of the Standing Committee on Audit and Oversight, Senate of Canada.
  - To be proposed as Chair of the Committee
  - Ottawa, ON
  - Bilingual
  - CPA FCA, ICD.D Certified

- Iris Almeida-Cote: Founding President and CEO, Innovaconnect; and Ministerial Audit Committee member, Canadian Space Agency
  - Montreal, QC
  - Bilingual
  - IIA-CGAP, LL.M., ICD.D Certified
- Maureen Rogers: Chief Executive Officer, Pelmorex Television Networks.
  - Toronto, ON (Quebecer by birth)
  - Bilingual
  - CPA, CA

#### Governance Committee

- Amber Batool: VP and Chief of Staff, Sustainable Development Technology Canada.
  - Toronto, ON
  - Not bilingual
  - LLL and JD
- Peter Cowan: CEO Advisor, Board Member, Acquisition Committee, Innovation Asset Collective.
  - Vancouver, BC
  - Not bilingual
  - MBA and LL.M

#### Nominations and Board Development Committee

- Charity Callahan: President, Revitalize Energy Inc
  - To be proposed as Chair of the Committee
  - Calgary, AB
  - Intermediate level of French
  - MBA, CMC and ICD.D Certified
- Brent York: Founder and CEO, Tangenesys Consulting Ltd.
  - Langley, BC
  - Not bilingual
  - P.Eng, MBA, MIES
- Evelyn Spence: General Counsel and Corporate Secretary, Engineers Canada
  - Ottawa, ON
  - French advanced Comprehension (reading and oral) and intermediate Proficiency (writing and speaking)
  - LL.B, CIC.C and GPC.D

## GOVERNANCE COMMITTEE Terms of Reference

### INTRODUCTION

CPATA regulates the patent and trademark profession in accordance with the Act, Regulations, By-laws, Registrar's Policies, and the Regulatory Objectives, Standards and Principles. It is an independent and risk-focused public interest regulator.

CPATA is committed to selecting Board and committee members based on a set of identified skills and attributes, to ensure the Board and committees have the knowledge and attributes to carry out the work effectively, are diverse in all respects, and who strive to attain the vision of CPATA for a modern regulator as outlined in [Board Policy No 2, CPATA's Regulatory Objectives, Standards and Principles](#).

CPATA committees assist the Board to meet its governance and fiduciary obligations. Unless a specific authority is granted, a committee has no independent authority.

Committees develop and document, for Board approval, and follow an annual work plan which includes processes in support of their responsibilities.

'Director' means a member of the College's Board of Directors.

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#### ROLE

The Governance Committee<sup>1</sup> examines corporate governance practices, including Board practices and performance, and make recommendations with respect to the Board. These responsibilities include:

1. Effectiveness - Assessing and making recommendations regarding Board effectiveness and leading the processes for orientation, evaluation and continuing education of Directors, committee Chairs and the Chair of the Board.
2. Governance - Reviewing and monitoring governance practices of the Board and management with a view to enhancing the College's performance

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#### RESPONSIBILITIES

Subject to the powers and duties of the Board, the Governance Committee will perform the following duties.

##### **Board Effectiveness**

The Committee

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<sup>1</sup> Established by Board By-law s. 45. See By-laws 31 ff

- a) Monitors the Board orientation and onboarding process, and, where appropriate, recommends changes to the Board and the CEO;
- b) Facilitates Directors' ongoing updating of skills and knowledge of the College and its businesses, and recommends skills development and education for the Board as a whole or for individual directors based on their assigned responsibilities;
- c) Annually reviews and evaluates the performance of the Board as a whole and individual Directors in accordance with the procedures established by the Board from time to time; and
- d) Oversees the annual reviews and evaluation of the performance of college committees and their chairs against the terms of reference and the standards established for the role of committee chairs.
- e) Oversees the annual review and performance management of the CEO & Registrar in accordance with the procedures established by the Board from time to time. The annual review will include a review of the CEO's salary and compensation structure and may include recommended adjustments to the Board. The review will include a review of the Board approved CEO succession plan.

## Board Governance

### The Committee

- a) Provides a forum for Directors to express their views and concerns regarding the operation of the College, independent of Management and the full Board;
- b) Reviews the College's structures and procedures to ensure the Board is able to, and in fact does, function independently of Management;
- c) Annually reviews the [Board Policy No. 3 – Directors' Code of Conduct](#) and, where appropriate, recommends revisions to the Board;
- d) Monitors compliance with the Code and reports to the Board;
- e) Reviews and considers corporate governance best practices in Canada and makes recommendations to the Board regarding their consideration or adoption as appropriate; and
- f) At the request of the Chair of the Board or the Board, undertakes corporate governance initiatives as may be necessary or desirable to contribute to the success of the College.

## MEMBERSHIP AND VOTING

The Governance Committee has up to 5 members, at least three of whom are Directors.

Non-voting participants:

-  Chief Executive Officer (CEO) is an *ex officio* member of the

A Committee member who, without excuse satisfactory to the Chair, is absent from two consecutive meetings of the Committee is deemed to have resigned, which resignation will create a vacancy on the Committee to be filled<sup>2</sup>.

The Board, by a vote of two-thirds of those present, may at pleasure remove a member of the Committee<sup>3</sup> but the Board will not consider a motion to remove a committee member unless the Committee Member is given notice of the motion and is provided an opportunity to present to the Board.<sup>4</sup>

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#### CHAIR

The Chairs and members of the Governance are appointed by the Board

The Committee Chair is a voting member of the Committee.

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#### FREQUENCY OF MEETINGS AND MANNER OF CALL

Meetings are scheduled in advance and occur at least quarterly, or otherwise at the direction of the Chair or the CEO. Additional meetings may be scheduled by the CEO in consultation with the Chair. Meetings will be held by audio-visual means, or on direction of the Chair, in person. If necessary, votes may be cast by email or other electronic means.

At least once a year the CEO, Governance and Nominations & Board Development Committee must meet to review matters, lessons learned, and plan where there are shared or complementary responsibilities.

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#### QUORUM

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<sup>2</sup> Registrar's Policy on Committees

<sup>3</sup> Registrar's Policy on Committees

<sup>4</sup> Registrar's Policy on Committees

Quorum of the Committee is three

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#### RESOURCES

The Committee is supported by the CEO and Deputy CEO.

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#### REPORTING & EVALUATION

The Committee develops, documents, and adopts for Board approval an annual work plan and reports to the Board by providing a high-level summary of the Committee's activities at the next Board meeting. The summary details what the Committee have been working on (since it last reported to the Board), what the Committee is bringing forward for discussion or approval, and key issues that the Committee is focused on.

The Committee evaluates its work consistent with the Board's approved process for committee evaluation.

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#### DATE OF LAST REVIEW

Approved – 2021-10-05

Revised – 2022-05-27

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## NOMINATIONS & BOARD DEVELOPMENT Terms of Reference

### INTRODUCTION

CPATA regulates the patent and trademark profession in accordance with the Act, Regulations, By-laws, Registrar's Policies, and the Regulatory Objectives, Standards and Principles. It is an independent and risk-focused public interest regulator.

CPATA is committed to selecting Board and committee members based on a set of identified skills and attributes, to ensure the Board and committees have the knowledge and attributes to carry out the work effectively, are diverse in all respects, and who strive to attain the vision of CPATA for a modern regulator as outlined in [Board Policy No 2, CPATA's Regulatory Objectives, Standards and Principles](#).

CPATA committees assist the Board to meet its governance and fiduciary obligations. Unless a specific authority is granted, a committee has no independent authority.

Committees develop and document, for Board approval, and follow an annual work plan which includes processes in support of their responsibilities.

'Director' means a member of the College's Board of Directors.

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#### ROLE

The Nominating & Board Development Committee assists the Board to fulfill its roles regarding Board and Committee succession and is responsible for:

1. Nominating – Assessing the requirements for membership on the Board and advising the Minister's Office of the College's needs, managing the process for nominating candidates for Board and committee membership.
2. Elections – assisting with the election process as prescribed by the By-laws.
3. Oversees the development and execution of continuing education for the Board and committees

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#### RESPONSIBILITIES

The Nominations & Board Development Committee assists the Board to fulfill its roles regarding Board and Committee succession, and is responsible for:

##### **Board and Committee Nominations**

The Committee:

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- a) Assesses the requirements for membership on the Board and College committees;
- b) Creates and maintains a formal and transparent procedure for recommending candidates for appointment to the Board to the Minister;
- c) Manages the processes involved in assessing the capabilities that will be required by the Board and its Committees, by maintaining a "skills and attributes matrix" of the capabilities and term limit tracking matrix of the existing Directors and committee members, and identifying the gaps to be filled and the plan for the orderly succession of the Chair of the Board and its Committees and Directors and committee members to maintain required capabilities;
- d) Recommends committee member and committee chair appointments to the Board for approval.

## Elections

### The Committee

- a) Determines if, based on the terms of elected directors, an election is necessary<sup>1</sup> and, if so, whether the position is to be filled by a patent agent, a trademark agent or either<sup>2</sup>;
- b) Advises the CEO regarding communications with the profession about the desirable skills and attributes for new Directors;
- c) Facilitates an orientation for prospective election candidates<sup>3</sup>
- d) Assists the CEO in recommending appointment by the Board of an Election Commissioner<sup>4</sup>;
- e) Conducts an inquiry into the validity of the election process under Board By-law 39 and reports to the Board.

## Board Development

### The Committee:

- a) Oversees the development and delivery of orientation and training for new directors and committee members,
- b) Is responsible for development and delivery of ongoing education and training for the Board of Directors and committees based on CPATA's approved strategic priorities, significant changes in the environment for licensees, identified skill gaps or new skills or

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<sup>1</sup> Board By-law 31(1)

<sup>2</sup> By-law 31(2)

<sup>3</sup> By-law 32(e)

<sup>4</sup> By-law 31(5)

knowledge required, and other priorities identified by the Board or committees;

- c) Is responsible for development and delivery of ongoing governance education and training that reinforces CPATA's approved governance policies
- d) Consults with the Board and committee chairs and vice chairs about their views on required education and training
- e) Promotes delivery of education and training in a variety of ways and on various platforms that allows some to be undertaken at the convenience of individual directors and committee members as well as in a group setting.

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**MEMBERSHIP  
AND VOTING**

The Nominations & Board Development Committee has up to 5 members, at least one of whom is a Director.

Non-voting participants:

- Chief Executive Officer (CEO) is an *ex officio* member of the Committee.

A Committee member who, without excuse satisfactory to the Chair, is absent from two consecutive meetings of the Committee is deemed to have resigned, which resignation will create a vacancy on the Committee to be filled<sup>5</sup>.

The Board, by a vote of two-thirds of those present, may at pleasure remove a member of the Committee<sup>6</sup> but the Board will not consider a motion to remove a committee member unless the Committee Member is given notice of the motion and is provided an opportunity to present to the Board.<sup>7</sup>

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**CHAIR**

The Chairs and members of the Committee are appointed by the Board

The Committee Chair is a voting member of the Committee.

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<sup>5</sup> Registrar's Policy on Committees

<sup>6</sup> Registrar's Policy on Committees

<sup>7</sup> Registrar's Policy on Committees

## FREQUENCY OF MEETINGS AND MANNER OF CALL

Meetings are scheduled in advance and occur at least quarterly, or otherwise at the direction of the Chair or the CEO. Additional meetings may be scheduled by the CEO in consultation with the Chair. Meetings will be held by audio-visual means, or on direction of the Chair, in person. If necessary, votes may be cast by email or other electronic means.

At least once a year the CEO, Governance and Nominations & Board Development Committee must meet to review matters, lessons learned, and plan where there are shared or complementary responsibilities.

## QUORUM

Quorum of the Committee is three

## RESOURCES

The Committee is supported by the CEO and Deputy CEO.

## REPORTING & EVALUATION

The Committee develops, documents, and adopts for Board approval an annual work plan and reports to the Board by providing a high-level summary of the Committee's activities at the next Board meeting. The summary details what the Committee have been working on (since it last reported to the Board), what the Committee is bringing forward for discussion or approval, and key issues that the Committee is focused on.

The Committee evaluates its work consistent with the Board's approved process for committee evaluation.

## DATE OF LAST REVIEW

Approved – 2021-10-05

Revised – 2022-05-27

## Governance Policy

2021-12-10

Board Policies			
NAME OF POLICY	Board Policy No. 8 – Governance		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	Title		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
	Date	Date	Date

### Manner of Governance

1. The Board governs in a manner that emphasizes:
  - a proactive, future focused and outward vision;
  - encouragement of diversity of viewpoints;
  - strategic leadership;
  - the clear distinction of Board, committee, and staff roles; and
  - collective decision making through consensus where possible and votes only when a consensus cannot be achieved;
- i. by
  - directing its energies toward CPATA's Regulatory Objectives, Standards and Principles;
  - guiding and inspiring CPATA's thinking and behaviour through the provision of and adherence to clearly stated policies
  - fostering a sense of group responsibility toward excellence and self-discipline in matters including attendance, decision-making principles, and respect for identified roles;

- ensuring that the work of the Board and the College is communicated to licensees and to outside stakeholders; and
  - regularly assessing its process and performance.
- ii. Council's proceedings are governed by Bourinot's Rules of Order.<sup>1</sup>

## The Board Agenda

1. The Board maintains control of its own agenda.
2. It is the responsibility of the Chair, in consultation with the CEO, to develop the agenda for board meetings.
3. Agenda items must always relate to the Board's role.
4. The agenda is prepared jointly by the Chair and the CEO. The Board delegates to the Chair authority to fill in the details of meeting content.
5. A Director who wishes to add an item to the Board's agenda or to be provided with additional information with respect to a Board matter (such as a legal opinion addressed to the Board) should speak with the Chair. If the Director and the Chair are not in agreement, then the Director may, on notice to the Chair, raise the request during the approval of the agenda at the opening of the meeting, and the matter shall be determined by the Board.

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<sup>1</sup> A summary is attached as Appendix A.

## Minutes

1. Minutes are required for all meetings of the Board, committees and Annual Meetings. Minutes form part of the permanent records of the College and are kept indefinitely.
2. Minutes, once approved, are signed by the Chair, and are considered to be evidence of the proceedings taken unless the contrary is proved.
3. Form and Content of Board Minutes
  - Date, time, place.
  - Name of chair and secretary.
  - Names of the directors present.
  - Names of absent directors.
  - Name of invited guests in attendance. Where the public attends, the names of the members of the public present would not usually be listed.
  - If conflicts were declared they should be noted.
  - Summary of the discussions including:
    - Rulings by the chair;
    - Motions with the name of the mover and seconder;
    - Matters discussed [not a recitation of comments made or the names of those making a comment, but an overview of the scope of discussions and the relevant questions and issues identified during discussion];
  - Results of the votes taken;
  - Record “no” votes and “abstentions” when requested to do so;
  - Note when directors arrive or leave during the meeting;
  - List of the important documents presented or relied upon during the discussion, copies of which should be in the meeting materials and may be appended to the minutes in their approved form.
4. Minutes are kept of committee of the whole meetings.
5. Minutes are not kept of in-camera meetings

## Meeting of Committee of the Whole

1. The Board may meet as a Committee of the Whole, which meeting is in private.
2. The purpose of a meeting of the Committee of the Whole is to allow the Board to consider matters, in a more informal way, that will need to be decided by the Board in an open meeting. For example, in a Committee of the Whole the Board will conduct workshop, for example, to address strategic planning or it will consider CEO, Registrar or Chair recommendations for committee appointments, together with information about

the candidates for consideration. The Committee will recommend to the Board the appointments, which will be made in open sessions.

3. Committee of the whole meetings are not a means to avoid meeting and deciding in public, but rather serve as a vehicle for the Board to address matters in a forum with less formality, in expectation that debate, and final decisions will be made in an open meeting.

## In Camera Meetings

1. The Board holds an in-camera session at the conclusion of each Board meeting with the CEO, to allow for an oral evaluation of the meeting and without the CEO to allow the Board, among themselves to raise any matter with the Chair or each other they consider appropriate. No business is transacted at this in camera session without the CEO.
2. The board may move in camera or hold board meetings that are not open to the public where it determines it is in the best interest of the College to do so. The Chair may order that the meeting move in camera. Any director may request a matter be dealt with in camera in which case a vote will be taken and if a majority of the board so decides, the matter shall be dealt with in camera.
3. In determining when to consider a matter in camera, the Board is guided by the following policy: The benefits that come from open discussion (transparency, accountability and enhanced public confidence in the board) are outweighed by the harm of public disclosure of the matter at hand.
4. The following matters will be dealt with in camera:
  - Matters relating to an individual Directors or a prospective Directors;
  - CEO employment matters;
  - Any other matters where personal information about an individual will or may be revealed;
  - Litigation or potential litigation including administrative tribunal matters;
  - Receipt of advice that is subject to solicitor-client privilege including communications necessary for that purpose;
  - The security of property of the corporation;
  - Contract matters including review of contracts that exceed the CEO's authority, negotiations or disputes;
  - The acquisition, disposition, lease, or expropriation of, or improvements to real or personal property, if the Board considers that disclosure might reasonably be expected to harm the interest of the College;

- Board and committee self-evaluation;
  - Other matters that, in the opinion of the majority of Directors, the disclosure of which might be prejudicial to an individual or to the best interests of the corporation; and
  - Consideration of whether an item is to be discussed in camera.
5. The CEO will remain during an in-camera session, unless the matter involves the CEO's contract of employment, the CEO's evaluation, or other matters personal to the CEO.
6. Guests or counsel may remain during an in-camera session with the permission of the Chair or the consent of the meeting.

## CEO Planning Calendar

- iv. The CEO must prepare for Board approval, a 12-month planning calendar that includes but is not limited to scheduled times for:
- v. orientation for new Directors;
- vi. development of an annual activity plan and a budget to support the approved activity plan and CPATA's Regulatory Objectives;
- vii. education related to the CPATA's purpose and Regulatory Objectives;
- viii. review of and reporting on the Board policies and committee terms of reference by the Board and/or Governance & Nominating Committee;
- ix. receipt of operational monitoring reports;
- x. receipt of work plans and reports from committees that accord with their terms of reference and the approved strategic priorities, as appropriate;
- xi. Board evaluation; and
- xii. Such other matters as are required by the Board.

**(b)** for the life of the author — or, in the case of a work of joint authorship, the life of the author who dies last — as well as the remainder of the calendar year in which that author dies and a period of 70 years following the end of that calendar year, if that period ends after December 31, 2048. 5

**b)** jusqu'à la fin de la soixante-dixième année suivant celle du décès de l'auteur ou, dans le cas d'une œuvre créée en collaboration, du dernier survivant des coauteurs, si cette période se termine après le 31 décembre 2048. 5

**279 Section 9 of the Act is replaced by the following:**

**279 L'article 9 de la même loi est remplacé par ce qui suit :**

#### Cases of joint authorship

#### Œuvres créées en collaboration

**9** In the case of a work of joint authorship, except as provided in section 6.2 or subsection 7(1) or (3), copyright subsists during the life of the author who dies last, for the remainder of the calendar year in which that author dies, and for a period of 70 years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the expiration of the like number of years from the end of the calendar year of the death of the author who dies last. 10 15

**9** Sous réserve de l'article 6.2 et des paragraphes 7(1) et (3), lorsqu'il s'agit d'une œuvre créée en collaboration, le droit d'auteur subsiste pendant la vie du dernier survivant des coauteurs, puis jusqu'à la fin de la soixante-dixième année suivant celle de son décès. Toute mention dans la présente loi de la période qui suit l'expiration d'un nombre spécifié d'années après l'année de la mort de l'auteur doit s'interpréter comme une mention de la période qui suit l'expiration d'un nombre égal d'années après l'année du décès du dernier survivant des coauteurs. 10 15

### Transitional Provision

### Disposition transitoire

#### No revival of copyright

#### Aucune réactivation du droit d'auteur

**280** Section 6, subsections 6.2(2) and 7(1) and (3) and section 9 of the *Copyright Act*, as enacted by sections 276 to 279, do not have the effect of reviving the copyright in any work in which the copyright had expired before the day on which sections 276 to 279 come into force. 20 25

**280** L'article 6, les paragraphes 6.2(2) et 7(1) et (3) et l'article 9 de la *Loi sur le droit d'auteur*, édictés par les articles 276 à 279, n'ont pas pour effet de réactiver le droit d'auteur sur une œuvre si ce droit était éteint à la date d'entrée en vigueur des articles 276 à 279. 20 25

### Coming into Force

### Entrée en vigueur

#### Order in council

#### Décret

**281** This Division comes into force on a day to be fixed by order of the Governor in Council.

**281** La présente section entre en vigueur à la date fixée par décret. 25

### DIVISION 17

### SECTION 17

2018, c. 27, s. 247; 2014, c. 20, s. 366(1)(E)

2018, ch. 27, art. 247; 2014, ch. 20, par. 366(1)(A)

## College of Patent Agents and Trademark Agents Act

## Loi sur le Collège des agents de brevets et des agents de marques de commerce

**282** Subsection 5(2) of the *College of Patent Agents and Trademark Agents Act* is replaced by the following: 30

**282** Le paragraphe 5(2) de la *Loi sur le Collège des agents de brevets et des agents de marques de commerce* est remplacé par ce qui suit :

## Act not applicable to College

**(2)** Subject to any regulations made under paragraph 76(1)(a.1), the *Canada Not-for-profit Corporations Act* does not apply to the College.

**283 Section 8 of the Act is replaced by the following:**

### Capacity

**8** In carrying out its purpose, the College has the capacity and the rights, powers and privileges of a natural person, including the power to

- (a)** purchase or otherwise acquire, or lease, any real or personal property or immovable or movable;
- (b)** sell or otherwise dispose of, or lease, any of its acquired or leased property; and
- (c)** borrow money.

**284 Section 15 of the Act is amended by adding the following after subsection (4):**

### Vacancies during term

**(5)** If an elected director has ceased to hold office before the expiry of their term, the Board may, in accordance with the by-laws, appoint an individual to fill that vacancy for the unexpired portion of that term or for any shorter period that the Board fixes.

**285 The Act is amended by adding the following after section 20:**

### Power to act on College's behalf

**20.1** For the purposes of this Act, the Board may act on the College's behalf and may, by by-law, authorize the College's directors, the members of its committees, the Registrar, the investigators and any officers or employees of the College to act on behalf of the College.

**286 Section 22 of the Act is renumbered as subsection 22(1) and is amended by adding the following:**

### Delegation

**(2)** Subject to the regulations, the Registrar may delegate any of the powers, duties and functions conferred on the Registrar under this Act.

**287 The Act is amended by adding the following after section 23:**

## Non-application de la Loi au Collège

**(2)** Sous réserve de tout règlement pris en vertu de l'alinéa 76(1)a.1), la *Loi canadienne sur les organisations à but non lucratif* ne s'applique pas au Collège.

**283 L'article 8 de la même loi est remplacé par ce qui suit :**

### Capacité

**8** Pour l'accomplissement de sa mission, le Collège dispose de la capacité et des droits, pouvoirs et privilèges d'une personne physique et peut, notamment :

- a)** acheter ou acquérir de toute autre façon, ou louer, des biens réels ou personnels;
- b)** disposer, notamment par vente, ou louer tout ou partie des biens ainsi acquis ou loués;
- c)** contracter des emprunts.

**284 L'article 15 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

### Vacance en cours de mandat

**(5)** En cas de vacance en cours de mandat d'un administrateur élu, le conseil peut, conformément aux règlements administratifs, nommer un remplaçant pour le reste du mandat ou pour une période plus courte qu'il fixe.

**285 La même loi est modifiée par adjonction, après l'article 20, de ce qui suit :**

### Pouvoir d'agir pour le compte du Collège

**20.1** Pour l'application de la présente loi, le conseil peut agir pour le compte du Collège et peut, par règlement administratif, autoriser un administrateur, un membre d'un comité, le registraire, un enquêteur, un dirigeant ou un employé du Collège à agir pour le compte du Collège.

**286 L'article 22 de la même loi devient le paragraphe 22(1) et est modifié par adjonction de ce qui suit :**

### Délégation

**(2)** Sous réserve des règlements, le registraire peut déléguer les attributions qui lui sont conférées sous le régime de la présente loi.

**287 La même loi est modifiée par adjonction, après l'article 23, de ce qui suit :**

## Immunity

### Responsibility for damages — directors and others

**23.1** No action or other proceeding for damages lies or may be instituted against any of the following persons for anything done or omitted to be done in good faith in the exercise or purported exercise of any power, or in the performance or purported performance of any duty or function, conferred on that person under the Act: 5

- (a) a current or former director of the Board;
- (b) a current or former member of a committee of the College; 10
- (c) the Registrar or a former Registrar;
- (d) a current or former investigator;
- (e) a current or former officer, employee, agent or mandatary of the College; and
- (f) a person who is or has been engaged by the College. 15

### Right of indemnification

**23.2** The College must indemnify the persons referred to in section 23.1 against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by them in respect of any civil, criminal, administrative or other proceeding in which they are involved for anything done or omitted to be done in good faith in the exercise or purported exercise of any power, or in the performance or purported performance of any duty or function, conferred on that person under the Act. 20 25

### Responsibility for damages — complainant or others

**23.3** No action or other proceeding for damages lies or may be instituted against a person for disclosing any information or document to the College or to an investigator in good faith, or for making a complaint about a licensee to the College in good faith. 30

**288** The Act is amended by adding the following after section 37:

#### Powers

**37.1 (1)** The Investigations Committee may take any of the following actions in respect of a licensee who is under investigation if it is satisfied that it is necessary for the protection of the public: 35

## Immunité

### Responsabilité pour dommages-intérêts : administrateurs et autres

**23.1** Aucune action ni autre procédure en dommages-intérêts ne peut être intentée contre une personne qui est ou a été administrateur, membre d'un comité, registraire, enquêteur, dirigeant, employé ou mandataire du Collège, ou qui est ou a été engagée par le Collège, pour les actes ou omissions commis de bonne foi dans l'exercice effectif ou censé tel des attributions qui lui ont été conférées sous le régime de la présente loi. 5

### Droit à l'indemnisation

**23.2** Le Collège indemnise les personnes visées à l'article 23.1 de tous leurs frais et dépenses raisonnables — y compris les sommes versées pour le règlement à l'amiable d'un procès ou l'exécution d'un jugement — entraînés par des poursuites civiles, pénales, administratives ou autres dans lesquelles elles étaient impliquées en raison des actes ou omissions commis de bonne foi dans l'exercice effectif ou censé tel des attributions qui leur ont été conférées sous le régime de la présente loi. 10 15

### Responsabilité pour dommages-intérêts : plaignant et autres

**23.3** Aucune action ni autre procédure en dommages-intérêts ne peut être intentée contre une personne relativement à toute plainte qu'elle a formulée de bonne foi au Collège à l'égard d'un titulaire de permis ou pour tout renseignement ou document qu'elle a fourni de bonne foi au Collège ou à l'enquêteur. 20

**288** La même loi est modifiée par adjonction, après l'article 37, de ce qui suit : 25

#### Pouvoirs

**37.1 (1)** Le comité d'enquête peut prendre, à l'égard d'un titulaire de permis faisant l'objet d'une enquête, l'une ou l'autre des mesures ci-après s'il est convaincu que cela est nécessaire pour la protection du public : 30

- (a) impose conditions on a licence of the licensee;
- (b) impose restrictions on the licensee's entitlement to represent persons under section 27 or 30;
- (c) suspend a licence of the licensee.

#### Notice

(2) The Investigations Committee must notify the licensee in writing of any action taken in respect of the licensee and must inform them of their right to make an application for a review by the Discipline Committee at any time.

#### Action is provisional

- (3) Any action taken under subsection (1) is provisional and ceases to have effect if
- (a) the Discipline Committee makes a decision under subsection 37.2(2) that amends or revokes the action;
  - (b) the Investigations Committee dismisses the matter under subsection 49(1);
  - (c) the Investigations Committee withdraws the application under section 50;
  - (d) the Discipline Committee exercises its powers under section 56; or
  - (e) the Discipline Committee renders a decision under section 57.

#### Request for review

**37.2 (1)** A licensee who receives a notice under subsection 37.1(2) may, at any time, request a review of the decision of the Investigations Committee made under subsection 37.1(1) by making an application to the Discipline Committee.

#### Decision

(2) On completion of the review, the Discipline Committee may confirm, amend or revoke any action taken by the Investigations Committee. If the Discipline Committee amends the actions, they cease to have effect in the circumstances referred to in paragraphs 37.1(3)(b) to (e).

#### Notice

(3) The Discipline Committee must, in writing, notify the licensee and the Investigations Committee of its decision and the reasons for it.

- a) assujettir à des conditions tout permis du titulaire de permis;
- b) imposer des restrictions au droit du titulaire de permis de représenter des personnes en vertu des articles 27 ou 30;
- c) suspendre tout permis du titulaire de permis.

#### Avis

(2) Le comité d'enquête avise par écrit le titulaire de permis des mesures prises à son égard et l'informe, dans l'avis, de son droit de présenter, à tout moment, une demande de révision au comité de discipline.

#### Mesures provisoires

- (3) Toute mesure prise en vertu du paragraphe (1) est provisoire et cesse d'avoir effet dans les cas suivants :
- a) le comité de discipline rend une décision au titre du paragraphe 37.2(2) qui modifie la mesure ou l'annule;
  - b) le comité d'enquête clôt l'affaire au titre du paragraphe 49(1);
  - c) le comité d'enquête retire sa demande aux termes de l'article 50;
  - d) le comité de discipline exerce les pouvoirs prévus à l'article 56;
  - e) le comité de discipline rend une décision au titre de l'article 57.

#### Demande de révision

**37.2 (1)** Le titulaire de permis qui reçoit l'avis visé au paragraphe 37.1(2) peut, à tout moment, faire réviser la décision du comité d'enquête rendue au titre du paragraphe 37.1(1) en présentant une demande à cet effet au comité de discipline.

#### Décision

(2) Au terme de la révision, le comité de discipline peut confirmer, modifier ou annuler les mesures prises par le comité d'enquête. S'il les modifie, celles-ci cessent d'avoir effet dans les cas visés aux alinéas 37.1(3)b) à e).

#### Avis

(3) Le comité de discipline avise par écrit le titulaire de permis et le comité d'enquête de la décision qu'il rend au terme de la révision et joint ses motifs à l'avis.

## **289 Section 39 of the Act is replaced by the following:**

### **Dismissal or referral**

**38.1 (1)** The Registrar must consider all complaints received by the College relating to professional misconduct or incompetence by a licensee and may, subject to and in accordance with the by-laws, dismiss any complaint, in whole or in part, for any of the reasons set out in the regulations, but if they do not dismiss the complaint the Registrar must refer it to the Investigations Committee for consideration.

### **Notice of dismissal**

**(2)** If the Registrar dismisses the complaint, the Registrar must notify the complainant in writing of the decision and the reasons for the dismissal and the notice must inform the complainant of their right to appeal the decision to the Investigations Committee within 30 days after the date of the notice.

### **Limitation**

**(3)** The Registrar is not permitted to disclose privileged information in their notice to the complainant.

### **Appeal**

**(4)** The complainant who receives a notice under subsection (2) may, within 30 days after the date of the notice, request an appeal of the Registrar's decision to the Investigations Committee.

### **Decision**

**(5)** The Investigations Committee must dispose of the appeal by dismissing it or allowing it and, if they allow it, they must consider the complaint.

### **Role of Investigations Committee**

**39** The Investigations Committee must consider all complaints that are referred to it by the Registrar and make a determination in respect of all appeals requested under subsection 38.1(4).

## **290 Section 63 of the Act is replaced by the following:**

## **Practice and Procedure**

### **Rules**

**63** The Investigations Committee and the Discipline Committee may make rules respecting the practice and procedure before them and rules for carrying out their work and for the management of their internal affairs.

## **289 L'article 39 de la même loi est remplacé par ce qui suit :**

### **Rejet ou renvoi**

**38.1 (1)** Le registraire étudie les plaintes reçues par le Collège portant sur un manquement professionnel commis par un titulaire de permis ou sur l'incompétence d'un titulaire de permis et peut, sous réserve des règlements administratifs et conformément à ceux-ci, rejeter toute plainte, en tout ou en partie, pour toute raison prévue par règlement. S'il ne la rejette pas, il la renvoie au comité d'enquête pour étude.

### **Avis du rejet**

**(2)** S'il rejette la plainte, le registraire en avise par écrit le plaignant, motifs à l'appui, et l'informe, dans l'avis, de son droit d'appeler de la décision au comité d'enquête dans les trente jours suivant la date de l'avis.

### **Limite**

**(3)** Le registraire ne peut, dans l'avis ou les motifs, communiquer au plaignant des renseignements protégés.

### **Appel**

**(4)** Le plaignant qui a reçu l'avis prévu au paragraphe (2) peut, dans les trente jours suivant la date de l'avis, interjeter appel de la décision du registraire au comité d'enquête.

### **Décision**

**(5)** Le comité d'enquête statue sur l'appel en le rejetant ou en l'accueillant. Dans ce dernier cas, il étudie la plainte.

### **Rôle du comité d'enquête**

**39** Le comité d'enquête étudie les plaintes qui lui sont envoyées par le registraire et statue sur les appels portés devant lui au titre du paragraphe 38.1(4).

## **290 L'article 63 de la même loi est remplacé par ce qui suit :**

## **Pratique et procédure**

### **Règles**

**63** Le comité d'enquête et le comité de discipline peuvent établir des règles de pratique et de procédure et des règles concernant l'accomplissement de leurs travaux et la gestion de leurs affaires internes.

**291 (1) Paragraph 75(1)(c) of the Act is replaced by the following:**

(c) respecting the filling of vacancies among elected directors;

**(2) Subsection 75(1) of the Act is amended by adding the following after paragraph (f):**

(f.1) respecting the creation of committees;

**(3) Subsection 75(1) of the Act is amended by adding the following after paragraph (i):**

(i.1) defining the terms “professional misconduct” and “incompetence” for the purposes of this Act;

**(4) Subsection 75(1) of the Act is amended by striking out “and” at the end of paragraph (t) and by adding the following after that paragraph:**

(t.1) prescribing the circumstances in which the Registrar must not dismiss a complaint or the reasons for which the Registrar must not dismiss a complaint;

(t.2) respecting the form and manner in which the Registrar may dismiss a complaint; and

**(5) Subsections 75(2) and (3) of the Act are replaced by the following:**

**Different treatment**

(2) The by-laws made under paragraphs (1)(j) to (t) and (u) may distinguish among classes of licensees or licences.

**For greater certainty**

(3) For greater certainty, by-laws made under paragraphs (1)(i.1) to (u) are regulations for the purposes of the *Statutory Instruments Act*.

**292 (1) Subsection 76(1) of the Act is amended by adding the following after paragraph (a):**

(a.1) respecting the application of any provisions of the *Canada Not-for-profit Corporations Act* to the College;

(a.2) limiting the powers, duties and functions that may be delegated by the Registrar and the persons to whom they may be delegated;

**291 (1) L’alinéa 75(1)c) de la même loi est remplacé par ce qui suit :**

c) concernant les vacances à combler parmi les postes des administrateurs élus;

**(2) Le paragraphe 75(1) de la même loi est modifié par adjonction, après l’alinéa f), de ce qui suit :**

f.1) concernant la création de comités;

**(3) Le paragraphe 75(1) de la même loi est modifié par adjonction, après l’alinéa i), de ce qui suit :**

i.1) définissant les termes « manquement professionnel » et « incompétence » pour l’application de la présente loi;

**(4) Le paragraphe 75(1) de la même loi est modifié par adjonction, après l’alinéa t), de ce qui suit :**

t.1) prévoyant les circonstances dans lesquelles le registraire ne doit pas rejeter une plainte ou les raisons pour lesquelles il ne doit pas la rejeter;

t.2) concernant les modalités applicables au rejet des plaintes par le registraire;

**(5) Les paragraphes 75(2) et (3) de la même loi sont remplacés par ce qui suit :**

**Traitement différent**

(2) Les règlements administratifs pris au titre des alinéas (1)j) à t) et u) peuvent traiter différemment les catégories de permis ou de titulaires de permis.

**Précision**

(3) Il est entendu que les règlements administratifs pris au titre des alinéas (1)i.1) à u) sont des règlements pour l’application de la *Loi sur les textes réglementaires*.

**292 (1) Le paragraphe 76(1) de la même loi est modifié par adjonction, après l’alinéa a), de ce qui suit :**

a.1) concernant l’application de toute disposition de la *Loi canadienne sur les organisations à but non lucratif* au Collège;

a.2) limitant les attributions que peut déléguer le registraire ainsi que les personnes à qui il peut les déléguer;

**(2) Subsection 76(1) of the Act is amended by adding the following after paragraph (g):**

**(g.1)** prescribing the reasons for which the Registrar may dismiss a complaint;

**(3) Subsection 76(2) of the Act is replaced by the following:**

**Authorization**

**(2)** Regulations made under paragraph (1)(a.2) may authorize the Board or any committee of the College, and those made under paragraphs (1)(c), (d), (f) and (g) may authorize the Board, the Registrar or any committee of the College, to make by-laws with respect to all or part of the subject matter of the regulations and, for greater certainty, those by-laws are regulations for the purposes of the *Statutory Instruments Act*.

**293 The Act is amended by adding the following after section 86:**

**By-laws**

**87** All by-laws that are made by the College before the coming into force of this section are deemed to have been made by the Board.

**Deemed authority**

**88** All regulations authorizing the College to make by-laws under subsection 76(2), as it read immediately before the coming into force of this section, are deemed to authorize the Board to make the by-laws.

**DIVISION 18**

**Civil Lunar Gateway Agreement Implementation Act**

**Enactment of Act**

**Enactment**

**294 The Civil Lunar Gateway Agreement Implementation Act is enacted as follows:**

An Act to implement the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway and to make related amendments to other Acts

**(2) Le paragraphe 76(1) de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**g.1)** prévoyant les raisons pour lesquelles le registraire peut rejeter une plainte;

**(3) Le paragraphe 76(2) de la même loi est remplacé par ce qui suit :**

**Autorisation**

**(2)** Les règlements pris au titre de l'alinéa (1)a.2) peuvent autoriser le conseil ou tout comité du Collège — et ceux pris au titre des alinéas (1)c), d), f) et g) peuvent autoriser le conseil, le registraire ou tout comité du Collège — à prendre des règlements administratifs relativement à toute matière traitée dans les règlements. Il est entendu que ces règlements administratifs sont des règlements pour l'application de la *Loi sur les textes réglementaires*.

**293 La même loi est modifiée par adjonction, après l'article 86, de ce qui suit :**

**Règlements administratifs**

**87** Tout règlement administratif pris par le Collège avant la date d'entrée en vigueur du présent article est réputé avoir été pris par le conseil.

**Autorisation réputée**

**88** Tout règlement qui autorise, en vertu du paragraphe 76(2), dans sa version antérieure à la date d'entrée en vigueur du présent article, le Collège à prendre des règlements administratifs est réputé autoriser le conseil à les prendre.

**SECTION 18**

**Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway**

**Édiction de la loi**

**Édiction**

**294 Est édictée la Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway, dont le texte suit :**

Loi portant sur la mise en œuvre du Mémoire d'entente entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique sur la coopération relative à la station lunaire civile Gateway

# **RAPPORT PRÉLIMINAIRE D'ENQUÊTE DU COMMISSAIRE AUX LANGUES OFFICIELLES**

COLLÈGE DES AGENTS DE BREVETS  
ET DES AGENTS DE MARQUES DE COMMERCE

AVRIL 2022

N/Réf. : 2021-0671-EI

## **1. Allégations et position du plaignant**

Selon les trois personnes qui ont déposé les plaintes (les plaignants), la version française du site Web du Collège des agents de brevets et des agents de marques de commerce (le Collège) n'est pas de qualité égale à la version anglaise. Plus précisément, les plaignants allèguent que le portail des agents, les formulaires pour le renouvellement des permis ainsi que le procès-verbal de la réunion du Conseil d'administration tenue le 5 octobre 2021 ne sont disponibles qu'en anglais.

Les plaignants allèguent également qu'il était impossible de s'inscrire en ligne à la séance d'information en français de novembre 2021 destinée aux candidats aux examens de compétence des agents de brevets et des agents de marques de commerce.

Les plaignants estiment que l'intégralité du contenu du site Web du Collège et du portail des agents devrait être accessible dans les deux langues officielles.

## **2. Question et cadre juridique**

L'enquête visait à déterminer si le Collège avait rempli ses obligations linguistiques énoncées à la partie IV de la Loi sur les langues officielles (la *Loi*) et respecté l'esprit de la *Loi*.

Le Collège a été créé par une loi du Parlement, la Loi sur le Collège des agents de brevets et des agents de marques de commerce, qui prévoit que « [l]a *Loi sur les langues officielles* s'applique au Collège ».

## **3. Position de l'institution fédérale**

Le Collège a reconnu qu'il n'avait pas respecté ses obligations linguistiques comme il est indiqué dans les allégations. Il a expliqué qu'il ignorait l'étendue de ses obligations en matière de langues officielles et que le gouvernement du Canada ne lui avait fourni aucune orientation à cet égard. Il a affirmé avoir pris des mesures correctives pour remédier aux violations. Par exemple, le Collège a révisé son site Web et a confirmé que ce dernier est maintenant entièrement bilingue. À l'avenir, le Collège veillera aussi à publier les documents du Conseil d'administration simultanément dans les deux langues officielles ainsi qu'à prêter une attention accrue lorsqu'il diffusera les renseignements concernant l'inscription aux séances d'information. De plus, il collabore avec son fournisseur Web tiers afin que le portail des agents soit accessible en français et en anglais.

Le Collège a expliqué qu'il n'est doté d'aucune politique ou procédure en matière de langues officielles, mais qu'il travaille à l'élaboration de tels documents. En outre, en février 2022, il a demandé et obtenu de la formation linguistique pour son personnel.

Dans sa réponse aux allégations, le Collège a fourni des renseignements contextuels, qui sont résumés à la sous-section 5.1 du présent rapport.

## **4. Méthodologie**

L'enquête a tenu compte des renseignements fournis par les plaignants et par le Collège de septembre 2021 à janvier 2022.

## **5. Information prise en considération dans le cadre de l'enquête**

### **5.1 Contexte**

Le Collège a été créé par une loi du Parlement en décembre 2018. Cependant, l'institution fédérale n'a commencé à mener ses activités qu'en juin 2021, lorsque la loi du Parlement est entrée en vigueur. Qui plus est, le Collège ignorait la date exacte à laquelle la loi du Parlement entrerait en application. Dans l'intervalle, le gouvernement du Canada n'a aucunement collaboré à la mise sur pied du Collège, à l'exception de la nomination d'un premier conseil d'administration par le ministre de l'Innovation, des Sciences et du Développement économique en août 2019. Nommé par le Conseil d'administration en mars 2020, le président-directeur général et registraire intérimaire du Collège a été chargé de créer la structure et le cadre réglementaire du Collège sans aucune ressource (financière, humaine, etc.) du gouvernement.

Par exemple, le président-directeur général et registraire intérimaire n'a pas été rémunéré pendant plus de dix mois. En outre, aucun employé n'a pu être embauché pour contribuer à l'élaboration de politiques et de procédures jusqu'à ce que des fonds soient disponibles. L'infrastructure du site Web du Collège a dû être achetée, conçue et mise en œuvre pendant cette courte période, et l'institution n'a pas élaboré simultanément deux versions (en français et en anglais) de cette infrastructure.

## **6. Analyse et conclusions**

Il est important de souligner qu'il incombe à chacune des institutions fédérales de respecter ses obligations prévues par la *Loi*. Cependant, je suis conscient que le Collège a été mis sur pied dans un contexte particulier et qu'il aurait dû recevoir du soutien afin de remplir pleinement ses obligations linguistiques.

Le Collège, en tant qu'institution fédérale visée par la *Loi*, doit communiquer avec le public, et lui offrir ses services, de façon simultanée dans les deux langues officielles. De plus, il doit veiller à ce que ses communications et ses services soient de qualité égale en français et en anglais. Ces obligations s'appliquent indépendamment des formats, des supports, des moyens ou des outils utilisés par l'institution pour communiquer ou offrir ses services.

Le Collège a reconnu qu'il n'avait pas respecté ses obligations prévues à la partie IV de la *Loi* en ce qui concerne le contenu de son site Web et du portail des agents. Par conséquent, les plaintes s'avèrent fondées au titre de la partie IV de la *Loi*.

Je reconnais que le Collège a pris des mesures encourageantes pour remédier aux incidents soulevés dans les plaintes. Il doit maintenant entreprendre l'élaboration de procédures et de politiques en matière de langues officielles. Si de telles politiques et procédures avaient été élaborées avant l'entrée en vigueur de la loi du Parlement, avec un soutien adéquat du gouvernement du Canada, les incidents qui ont mené aux plaintes auraient pu être évités.

## **7. Recommandations**

Afin que le Collège des agents de brevets et des agents de marques de commerce se conforme à ses obligations prévues par la *Loi sur les langues officielles*, je lui recommande, dans les trois mois de la date du rapport final d'enquête :

- 1. d'élaborer des procédures et des politiques écrites officielles sur le respect des langues officielles qui reflètent fidèlement les obligations prévues à la partie IV de la *Loi sur les langues officielles*;**
- 2. d'élaborer un plan de formation en matière de langues officielles pour ses employés afin de garantir que ces derniers reçoivent périodiquement des rappels et des renseignements sur leurs obligations linguistiques;**
- 3. de prendre toutes les mesures requises pour veiller à ce que le portail des agents soit accessible dans les deux langues officielles.**

Raymond Théberge  
Commissaire aux langues officielles

**PRELIMINARY INVESTIGATION REPORT  
OF THE COMMISSIONER OF OFFICIAL LANGUAGES**

COLLEGE OF PATENT AGENTS AND TRADEMARK AGENTS

**APRIL 2022**

**Our Ref.: 2021-0671-EI**

## **1. Allegations and position of the complainant**

According to the three individuals who filed the complaints (the complainants), the French version of the College of Patent Agents and Trademark Agents' (the College's) website is not of equal quality to the English version. In particular, the complainants alleged that the Agent Portal, the forms for the renewal of licenses, and the minutes of the Board of Directors meeting held on October 5, 2021, are available in English only.

The complainants also alleged that it was impossible to register online for the November 2021 French information session for candidates taking patent and trademark agents exams.

The complainants are of the opinion that all communications on the College's website and Agent Portal should be entirely available in both official languages.

## **2. Question and legal basis**

The investigation sought to determine whether the College met its language obligations under Part IV of the Official Languages Act (the Act) and complied with the spirit of the Act.

The College was created by an Act of Parliament, the College of Patent Agents and Trademark Agents Act, which states that "the *Official Languages Act* applies to the College."

## **3. Position of the federal institution**

The College acknowledged that it failed to meet its language obligations with regard to the allegations. It explained that it did not fully understand the extent of its language obligations and that the Government of Canada did not provide any guidance in this regard. The College said that it has taken corrective measures to resolve the violations. For example, the College reviewed its website and confirmed that the website is now fully bilingual. In future, the College will also ensure to post Board of Directors materials in both official languages simultaneously and will take greater care when posting registration details for information sessions. The College is also working with its third-party web provider to make its Agent Portal available in both official languages.

The College explained that it does not have official languages policies and procedures, but that it is working on developing them. In February 2022, the College also sought and obtained official languages training for its staff.

In its response to the allegations, the College also provided background information, which is summarized in subsection 5.1 of this report.

## **4. Methodology**

The investigation took into account the information provided by the complainants and by the College between September 2021 and January 2022.

## **5. Information considered during the investigation**

### **5.1 Context**

The College was established by an Act of Parliament in December 2018. However, the federal institution did not become “operational” until June 2021, when the Act of Parliament came into force. Importantly, the College did not know the exact date on which the Act of Parliament would come into force. Between those two dates, the College’s implementation was done without any support from the Government of Canada, beyond the appointment of a start-up Board of Directors by the Minister of Industry, Science and Economic Development in August 2019. The interim Chief Executive Officer and Registrar of the College, appointed by the Board of Directors in March 2020, was given the task of creating the College’s structure and regulatory framework without government support—financial, human, or otherwise.

For example, the interim Chief Executive Officer and Registrar was working without compensation for more than 10 months. Moreover, until funding was available, employees could not be hired to help with the development of policies and procedures. The College’s website infrastructure had to be procured, designed and implemented in this short period, and the College did not develop two versions of this infrastructure simultaneously (in English and in French).

## **6. Analysis and conclusions**

It is important to note that every federal institution is individually accountable to meet its obligations under the Act. However, I am aware of the particular context in which the College had to be implemented, and I am sensitive to the support it should have received in order to fully meet its language obligations.

The College, as a federal institution that is subject to the Act, must communicate and provide its services to the public in both official languages. It must do so simultaneously and ensure that those communications and services are of equal quality. These requirements apply notwithstanding the format, support, media or medium used to communicate or provide services.

The College acknowledged that it failed to meet its obligations under Part IV of the Act with regard to the content on its website and Agent Portal. Therefore, the complaints are founded under Part IV of the Act.

I recognize the encouraging steps taken by the College to remedy the incidents cited in the complaints. The College must now begin to develop official languages policies and procedures. Had such policies and procedures been developed prior to the coming into

force of the Act of Parliament—and with the necessary support from the Government of Canada—the incidents that led to the complaints could have been prevented.

## **7. Recommendations**

To ensure compliance with its obligations under the *Official Languages Act*, I recommend that, within three months of the date of the final investigation report, the College of Patent Agents and Trademark Agents:

- 1. develop official written policies and procedures on official languages compliance that accurately reflect the obligations of Part IV of the *Official Languages Act*;**
- 2. develop an official languages training plan for its employees to ensure that employees are periodically reminded and informed of their language obligations; and**
- 3. take all necessary measures to ensure that its Agent Portal is available in both official languages.**

Raymond Thériault  
Commissioner of Official Languages

## Memorandum

DECISION	<input type="checkbox"/>
DISCUSSION	<input type="checkbox"/>
INFORMATION	<input checked="" type="checkbox"/>

REPORT	
New	<input type="checkbox"/>
Update	<input checked="" type="checkbox"/>

ATTACHMENTS	
Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

TO	Board of Directors
FROM	Darrel Pink, CEO & Registrar Jen Slabodkin, Director, Registration & Education, Deputy Registrar
DATE	March 29, 2022
SUBJECT	Competency Framework Panel Summaries

## Message

The first phase of CPATA's competency initiative is underway.

For this phase of the project, CPATA was responsible for recruiting and screening subject matter experts to update the draft technical competency profiles for trademark agents and patent agents, which includes competencies, performance criteria, and knowledge concepts.

The consulting firm engaged to assist with this work, Principia Assessments Ltd. ("PAL") recommended recruiting about 6-8 patent agents and 6-8 trademark agents for the main working groups. In addition to recruiting at least 4 patent agents and 4 trademark agents who are Francophone (or of dual-language identity) for translation review. Ideally, there would be at least 10 (and preferably 12) subject matter experts recruited for each discipline.

Calls for expressions of interest were circulated to the profession and several submissions were received. Agents who were not appointed to the technical competency framework phase will be invited to participate in the professional competency and item development work scheduled to begin in 2023.

The goal was to have groups that both represent the diversity of the profession and include perspectives that have been historically excluded. The dimensions considered included language, gender, practice location, practice context, practice area/industry, skills, backgrounds/career paths, time in practice, and diverse racialized perspectives and lived experiences.

The following groups meet almost all of the recommendations provided by PAL and provides a diverse and representative cross-section of the profession on as many aspects as possible, including language, gender, practice location, practice context, practice area, skills & expertise, background & career paths, generations and other personal identities.

### **Trademark Agent Technical Competency Framework**

#### **Development Panel:**

1. Paul-André Mathieu (TM, 1992) Québec
2. Evan Reinblatt (TM, 2022; PA, 2021) Ontario
3. Enid Goldberg (TM, 2022) Ontario
4. Heather Robertson (TM, 2005) Ontario
5. Madeleine Hodgson (TM, 2016; PA, 2021) British Columbia
6. Richard Whissell (TM, 1999) Ontario
7. Steven Andrews (TM, 2014) Ontario
8. Andrea Rush (TM, 1999; PA, 2005) Ontario

#### **French-Speaking Reviewer Panel:**

1. Philippe Brouillette (TM, 2011; PA, 2022) Québec
2. Sarah Hebert-Tremblay (TM, 2022) Québec

French – speaking 4/10 – 40%

Gender – 5/10 M 5/10 F – 50/50

Practice Locations Represented: Ontario 6/10; Quebec 3/10; British Columbia 1/10

#### **Practice Contexts Represented:**

- As a Sole Practitioner
- In a Patent or Trademark Agent Firm
- In a law firm
- In a multi-disciplinary firm of lawyer and non-lawyer agents

#### **Practice Areas Represented:**

- Artificial Intelligence
- Cannabis
- Consumer Products
- Electronics and Computer Technology
- Energy Oil and Gas
- Financial Services and Technology
- Food and Beverage
- Internet, Digital Media and E-Commerce
- Luxury Goods and Apparel

- Manufacturing, Industrial Goods and Machinery Medical Devices
- Pharmaceuticals and Biologics
- Software, Information & Cloud Technologies
- Telecommunications
- Official Marks for government entities
- Entertainment industry and related licensing
- copyright based industries
- Franchising

#### Skills and Expertise Represented:

- IP strategy
- Communication
- Working with others
- Client relations
- Workload management
- Business awareness
- Professional conduct

#### Backgrounds/Career Paths Represented:

- Engineering
- Non-lawyer agent
- Lawyer-agent

#### Generations Represented:

- Baby Boomer
- Generation X
- Millennial/Generation Y

### Patent Agent Technical Competency Framework

#### Development Panel:

1. Gavin Zealey (PA, 1994) Ontario
2. Jim Hinton (PA, 2014; TM 2013) Ontario
3. Erin Engelhardt (PA, 2015) Ontario
4. Houston Brown (PA, 2017) Alberta
5. Haya Shehab (FR professional level) (PA, 2022) Ontario
6. Leonora Hoicka (PA, 1990; TM, 1983) Ontario
7. Jennifer Jannuska (PA, 2004) Ontario
8. Jeff Astle (PA, 1994; TM, 1992) Québec
9. Anthony Creber (PA, 1982; TM 1985)

French-Speaking Review Panel:

1. Alessandro Colonnier (FR native) (PA, 2019; TM, 2013) Ontario
2. Denis Keseris (FR native) (PA, 2022) Québec

French-speaking 3/11 – 27% (2 native speakers and 1 comfortable contributing professionally)

Gender – 7/11 M 4/11 F

Practice Locations Represented: Ontario 8/11; Quebec 2/11; Alberta 1/11

Practice Contexts Represented:

- As a Sole Practitioner
- In a Patent or Trademark Agent Firm
- In a law firm
- In a multi-disciplinary firm of lawyer and non-lawyer agents
- In-house

Practice Areas Represented:

- Aerospace, Aeronautics and Aviation Agricultural Sciences
- Artificial Intelligence
- Automotive
- Cannabis
- Chemical and Biotechnology
- Cleantech
- Consumer Products
- Electronics and Computer Technology
- Energy Oil and Gas
- Financial Services and Technology
- Food and Beverage
- Internet, Digital Media and E-Commerce
- Luxury Goods and Apparel
- Manufacturing, Industrial Goods and Machinery Medical Devices
- Pharmaceuticals and Biologics
- Railways
- Robotics
- Software, Information & Cloud Technologies
- Telecommunications

Skills & Expertise Represented:

- IP strategy
- Communication
- Working with others
- Client relations
- Workload management
- Business awareness
- Professional conduct

Backgrounds/Career Paths Represented:

- STEM
- Non-lawyer agent
- Lawyer-agent

Generations Represented:

- Baby Boomer
- Generation X
- Millennial/Gen Y

A handwritten signature in black ink that reads 'Darrel Pink'.

**Darrel Pink**  
CEO & Registrar  
[dpink@cpata-cabamc.ca](mailto:dpink@cpata-cabamc.ca)

**CPATA Discipline Committee Meeting via Zoom**

**Thursday, March 24, 2022 11:00 am EST**

**DRAFT MINUTES**

**Attendees:**

Marcel Mongeon, Chair  
Charles Boulakia  
Kathleen Lickers  
Jay Sengupta  
Jean Whittow  
Benoit Yelle

**Regrets:**

Raj Anand

**Staff:**

Victoria Rees  
Manager, Professional Responsibility

**Summary of Action Items:**

<b>Item</b>	<b>Assigned to:</b>	<b>Next report due:</b>	<b>Est. completion date:</b>
Confidentiality Agreement	D. Pink	TBD	
Ensure Committee members received CPATA publications including newsletters	V. Rees		
Finalize the Skills Matrix	V. Rees	April meeting	April meeting
Draft Policy on Delegation to Chair	V. Rees	April meeting	TBD
Draft Policies relating to Conduct of Virtual Proceedings	V. Rees	TBD	
Training in Administrative Law Principles and Conduct of Hearings	J. Whittow/V. Rees	April meeting	
Meetings Schedule	V. Rees	April meeting	April meeting

1. **Welcome and Introductions** – the Chair welcomed everyone and introduced Jean Whittow. He reviewed the Action Items from the February meeting, noting all follow up had been completed. It was agreed Committee members would be interested in receiving CPATA publications including the Newsletter.

The Minutes were approved as circulated.

2. **IP Practice Fundamentals Training – Questions Arising**

The Committee discussed the training module they were asked to review prior to this meeting. It was agreed this was extremely helpful training for both licensees and non-licensees. A summary of the Committee's comments and questions follows:

- How does the 'know your client' general rule apply when dealing with international agent third parties? There needs to be an element of trust between agents.
- How does a lawyer-agent determine which Code applies in given circumstances? Law Society Codes provide an added level of security for clients, but agents need to be very clear which hat they are wearing when providing services or advice. The work is very different. The agent needs to evaluate risks relating to each transaction and clients' interests in each matter. While agency work doesn't usually address potential risks of negative impacts on clients (and focuses on obtaining rights), legal work does.
- Is there a need to identify gaps between different Codes that apply to licensee work? Ms Rees explained the progression of the Code development; the challenges of regulating in an environment of potentially 'competing' or incompatible ethical rules; some of the differences and similarities she noted between the Model Code of Conduct for lawyers and the CPATA Code (e.g. re duties to third parties); and that this Committee and other stakeholders will have an opportunity for input on the Code when the consultation process rolls on early in 2023.
- It was suggested it would be helpful to know where insurers such as Law Pro draw the line between agency and legal work, and that this Committee should be very risk-focused when presented with evidence of Code violations by agents.
- It was noted that there is great concern among agents, arising from the Jansen case, about the potential for watering down agent-client privilege. Agent-lawyers seem

to cross privilege boundaries on a regular basis in practice, and there is a constant tension in this area.

### **3. Terms of Reference**

The Chair noted that the TOR refers to a separate Skills Matrix for the Chair, but Ms Rees confirmed it is up to this committee to consider whether this is needed.

**On motion** (Yelle/Whittow) the Discipline Committee Terms of Reference were approved.

### **4. Skills Matrix**

The Committee agreed on the following amendments to the Skills Matrix Chart under **Knowledge**:

- Replace 'Patent Act, Rules and practice' with 'Patent Office conventions, Patent Agency practice, including the Manuals'
- Replace 'Trademark Act, Regulations and practice' with 'Trademark Office conventions, Trademark Agency practice, including Manuals'
- Add 'International Patent and Trademark systems and practices'

### **5. Policy Priorities**

The Chair referred to the emails from members with a number of helpful suggestions for priorities, including filing timelines, sentencing guidelines, the impact of parallel processes, as well as addressing the process for composition of panels, delegation of authority to the Chair, and use of ADR.

A member expressed the view that all policies must be Act-driven, so a good starting point is to compile all resource documents, and create a Manual of sorts which provides the Committee with a toolkit of essential administrative law principles and case law, and other resources to create a soup-to-nuts guide.

Members discussed the importance of remembering that all committee policies will be public, and this should impact the extent of detail or prescriptiveness of any policies.

Others suggested that the process for creation of policies should be guided by how the committee work will flow: what is likely to be needed first? Interim motions/applications and the need to delegate matters to the Chair should be a priority.

Discussion was had of whether there are any case precedents in Canada to assist the Committee. Ms Rees and others indicated there appear to be none of relevance from CIPO, but possibly some from the USPTO and the UK regulator.

It was noted that the Committee's work will by default be conducted virtually, so policies relating to the conduct of proceedings virtually should be a priority. All policies should also be viewed through the lens of being innovative and taking a best-practices clean slate approach while adhering to administrative law principles. It would also be helpful for the Committee to consider any points at which an Active Adjudicator approach can be adopted, particularly when dealing with self-represented licensees.

It was agreed that the first policy should focus on circumstances for delegation of authority to the Chair to address early and/or interim applications in the public interest. The second priority will be development of policies relating to virtual proceedings.

The Committee also discussed further training needs, particularly for licensee members with less experience in administrative law and conduct of hearings. It was noted that the LSBC and others offer 1 -3 day training programs for new tribunal members but these are not offered in French. After further discussion, it was agreed that Jean Whittow and Victoria Rees will develop a series of 15 – 20 minute (first program maybe longer) training workshops for the committee to be held at the start of each meeting, focusing on administrative law principles and the basics of conducting proceedings. Committee members will also gain knowledge through the process of policy development.

## **6. Schedule of Meetings**

It was agreed that having a schedule of monthly meetings for the next period of time would work best. Ms Rees was asked to work with the Committee to create a schedule of monthly meetings likely focused on the same Monday each month, starting at 3:00 pm EST.

There being no further business, the Chair thanked those in attendance and adjourned the meeting at approximately 12:40 pm EST.

	TOTAL	
	AS OF APR. 30, 2022	AS OF DEC. 31, 2021 (PP)
<b>Assets</b>		
Current Assets		
Cash and Cash Equivalent		
1010 RBC Chequing Account	1,801,573	466,824
<b>Total Cash and Cash Equivalent</b>	<b>\$1,801,573</b>	<b>\$466,824</b>
1230 Other current assets	0	0
1400 Prepaid expenses	44,095	24,888
<b>Total Current Assets</b>	<b>\$1,845,668</b>	<b>\$491,712</b>
Non-current Assets		
Property, plant and equipment		
1600 Computer Equipment	9,611	9,611
1605 Computer Equipment - Accum Amort	-2,403	-1,442
<b>Total Property, plant and equipment</b>	<b>\$7,208</b>	<b>\$8,169</b>
<b>Total Non Current Assets</b>	<b>\$7,208</b>	<b>\$8,169</b>
<b>Total Assets</b>	<b>\$1,852,876</b>	<b>\$499,881</b>
<b>Liabilities and Equity</b>		
Liabilities		
Current Liabilities		
Accounts Payable (A/P)		
2000 Accounts Payable (A/P)	102,009	117,600
<b>Total Accounts Payable (A/P)</b>	<b>\$102,009</b>	<b>\$117,600</b>
Credit Card		
2020 RBC Visa Credit Card	7,338	5,463
2030 RBC Line of Credit	0	0
<b>Total Credit Card</b>	<b>\$7,338</b>	<b>\$5,463</b>
2010 Accrued Payables	-2,145	37,890
2015 Accrued Liabilities - Committee Remuneration	0	61,119
2050 GST/HST Payable	-14,276	32,636
<b>Total Current Liabilities</b>	<b>\$92,927</b>	<b>\$254,708</b>
Non-current Liabilities		
2200 Deferred Revenue - Payments Received	1,370,812	156
2210 Deferred License Fees	0	0
2250 Deferred Exam Fees	0	0
<b>Total Non-current Liabilities</b>	<b>\$1,370,812</b>	<b>\$156</b>
<b>Total Liabilities</b>	<b>\$1,463,739</b>	<b>\$254,864</b>
Equity		
Retained Earnings	245,017	245,017
Profit for the year	144,120	
<b>Total Equity</b>	<b>\$389,137</b>	<b>\$245,017</b>
<b>Total Liabilities and Equity</b>	<b>\$1,852,876</b>	<b>\$499,881</b>

	TOTAL	
	APR. 2022	JAN - APR., 2022 (YTD)
<b>INCOME</b>		
4000 Service/Fee Income		
4010 Licensee fees - CPATA fees	182,700	685,450
4020 Class 2 Inactive Agent Fees	1,875	6,800
4070 Application fee income	12,922	33,372
4060 Certificate & Letters Fees	300	675
<b>Total 4070 Application fee income</b>	<b>13,222</b>	<b>34,047</b>
<b>Total 4000 Service/Fee Income</b>	<b>197,797</b>	<b>726,297</b>
<b>Total Income</b>	<b>\$197,797</b>	<b>\$726,297</b>
<b>GROSS PROFIT</b>	<b>\$197,797</b>	<b>\$726,297</b>
<b>EXPENSES</b>		
5500 Wages & Benefits	49,402	195,926
6005 Professional and consulting fees		
6010 Professional fees - Accounting Services	6,100	33,896
6020 Professional fees - Communications	3,040	3,040
6040 Professional fees - Management Consultant	4,875	7,270
6200 Consulting - Admissions	19,200	29,899
6210 Consulting - Communications	28,500	58,500
6230 Consulting - Human Resources	14,681	36,445
6270 IT Consultants - Network & General	922	3,899
6290 IT Consultant - Website	8,260	17,731
<b>Total 6005 Professional and consulting fees</b>	<b>85,578</b>	<b>190,680</b>
6015 Accounting Fees		0
6030 Legal Fees	43,759	78,421
6060 Translation expenses	2,422	18,338
6280 IT Consultant - License Systems	2,500	10,000
6505 Board and Committee Expenses		
6500 Board - Meeting expenses	758	758
6510 Board - Remuneration	1,925	11,500
6610 Committees - Member Compensation	1,300	1,300
<b>Total 6505 Board and Committee Expenses</b>	<b>3,983</b>	<b>13,558</b>
7010 Bank fees and interest	72	637
7020 Credit Card Processing Fees	903	45,853
<b>Total 7010 Bank fees and interest</b>	<b>974</b>	<b>46,491</b>
7130 Dues and memberships	75	477
7135 Insurance	3,725	15,471
7205 Office Expenses	442	1,380
6295 Payroll provider Fees	65	127
7210 Office - Furniture		124
7215 Office - General expenses	87	127
7300 Software costs - Administration	2,169	7,414
<b>Total 7205 Office Expenses</b>	<b>2,763</b>	<b>9,172</b>
7320 Staff Travel	2,503	2,681
8000 Amortization	240	961

# College of Patent Agents and Trademark Agents

## Statement of Operations

April 2022

	TOTAL	
	APR. 2022	JAN - APR., 2022 (YTD)
Total Expenses	\$197,924	\$582,177
PROFIT	\$ -127	\$144,120

**College of Patent Agents and Trademark Agents**  
**Budget vs. Actuals: CPATA Budget 2022 - FY22 P&L Classes**  
January - April, 2022

	Administration & Operations			Board & Governance			Communications & Government Relations			Regulations - Complaints			Regulations - Registration			TOTAL		
	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget
Income																		
4000 Service/Fee Income			-			-			-			-			-	-	-	-
Total 4010 Licensee fees - CPATA fees	685,450	693,336	(7,886)	-	-	-	-	-	-	-	-	-	-	-	-	685,450	693,336	(7,886)
Total 4020 Class 2 Inactive Agent Fees	6,800	6,668	132	-	-	-	-	-	-	-	-	-	-	-	-	6,800	6,668	132
4050 Exam fees			-			-			-			-			-	-	-	-
4070 Application fee income	33,372	9,750	23,622			-			-			-			-	33,372	9,750	23,622
4060 Certificate & Letters Fees	675		675			-			-			-			-	675	-	675
Total 4070 Application fee income	34,047	9,750	24,297	-	-	-	-	-	-	-	-	-	-	-	-	34,047	9,750	24,297
Total Income	726,297	709,754	16,543	-	-	-	-	-	-	-	-	-	-	-	-	726,297	709,754	16,543
Expenses																		
5500 Wages & Benefits			-			-			-			-			-	-	-	-
Total 5500 Wages & Benefits	195,339	233,444	(38,105)	587	-	587	-	-	-	-	-	-	-	-	-	195,926	233,444	(37,518)
6005 Professional and consulting fees			-			-			-			-			-	-	-	-
6010 Professional fees - Accounting Services	33,896	23,332	10,564			-			-			-			-	33,896	23,332	10,564
6020 Professional fees - Communications			-	3,040		3,040		2,000	(2,000)			-			-	3,040	2,000	1,040
6040 Professional fees - Management Consultant			-		8,832	(8,832)			-	7,270		7,270			-	7,270	8,832	(1,562)
6050 Professional fees - Planning			-		3,332	(3,332)			-			-			-	-	3,332	(3,332)
6200 Consulting - Admissions			-			-			-			-	29,899	40,000	(10,101)	29,899	40,000	(10,101)
6210 Consulting - Communications			-		5,000	(5,000)	58,500	8,000	50,500			-			-	58,500	13,000	45,500
6230 Consulting - Human Resources	261	27,500	(27,239)	36,184	26,668	9,516			-			-			-	36,445	54,168	(17,723)
6240 Consulting - Policies		3,200	(3,200)			-			-			-			-	-	3,200	(3,200)
6270 IT Consultants - Network & General	3,899	4,800	(901)			-			-			-			-	3,899	4,800	(901)
6290 IT Consultant - Website			-			-	17,731	600	17,131			-			-	17,731	600	17,131
Total 6005 Professional and consulting fees	38,056	58,832	(20,777)	39,224	43,832	(4,608)	76,231	10,600	65,631	7,270	-	7,270	29,899	40,000	(10,101)	190,680	153,264	37,416
6015 Accounting Fees	-	-	-			-			-			-			-	-	-	-
6030 Legal Fees		4,000	(4,000)	26,011	19,168	6,843			-	49,648	38,400	11,248	2,763		2,763	78,421	61,568	16,853
6060 Translation expenses	-		-			-	18,338	13,336	5,002			-			-	18,338	13,336	5,002
6280 IT Consultant - License Systems	10,000	34,668	(24,668)			-			-			-			-	10,000	34,668	(24,668)
6505 Board and Committee Expenses			-			-			-			-			-	-	-	-
6500 Board - Meeting expenses			-	758	25,000	(24,242)			-			-			-	758	25,000	(24,242)
6510 Board - Remuneration			-	11,500	10,288	1,212			-			-		-	-	11,500	10,288	1,212
6530 Board - Training			-		2,668	(2,668)			-			-			-	-	2,668	(2,668)
6600 Committee Expenses			-			-			-		26,332	(26,332)			-	-	26,332	(26,332)
6610 Committees - Member Compensation			-		15,000	(15,000)			-		12,224	(12,224)	1,300		1,300	1,300	27,224	(25,924)
Total 6505 Board and Committee Expenses	-	-	-	12,258	52,956	(40,698)	-	-	-	-	38,556	(38,556)	1,300	-	1,300	13,558	91,512	(77,954)

	Administration & Operations			Board & Governance			Communications & Government Relations			Regulations - Complaints			Regulations - Registration			TOTAL		
	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget	Actual	Budget	over Budget
7010 Bank fees and interest	637	3,400	(2,763)			-			-			-			-	637	3,400	(2,763)
7020 Credit Card Processing Fees	45,853	38,000	7,853			-			-			-			-	45,853	38,000	7,853
Total 7010 Bank fees and interest	46,491	41,400	5,091	-	-	-	-	-	-	-	-	-	-	-	-	46,491	41,400	5,091
7130 Dues and memberships	477	2,668	(2,191)			-			-			-			-	477	2,668	(2,191)
7135 Insurance			-			-			-			-			-	-	-	-
Total 7135 Insurance	-	-	-	15,471	9,060	6,411	-	-	-	-	-	-	-	-	-	15,471	9,060	6,411
7205 Office Expenses	1,380		1,380			-			-			-			-	1,380	-	1,380
6295 Payroll provider Fees	127		127			-			-			-			-	127	-	127
7210 Office - Furniture	124	800	(676)			-			-			-			-	124	800	(676)
7215 Office - General expenses	127		127			-			-			-			-	127	-	127
7300 Software costs - Administration	5,614	1,800	3,814	1,800	2,500	(700)			-			-			-	7,414	4,300	3,114
Total 7205 Office Expenses	7,372	2,600	4,772	1,800	2,500	(700)	-	-	-	-	-	-	-	-	-	9,172	5,100	4,072
7310 Exam Software costs			-			-			-			-		-	-	-	-	-
7320 Staff Travel	2,681	6,668	(3,987)			-			-			-			-	2,681	6,668	(3,987)
7410 Contingency		-	-			-			-			-			-	-	-	-
Total Expenses	300,415	384,280	(83,865)	95,351	127,516	(32,165)	94,570	23,936	70,634	56,918	76,956	(20,038)	33,962	40,000	(6,038)	581,216	652,688	(71,472)
Net Operating Income	425,882	325,474	100,408	(95,351)	(127,516)	32,165	(94,570)	(23,936)	(70,634)	(56,918)	(76,956)	20,038	(33,962)	(40,000)	6,038	145,081	57,066	88,015
Other Expenses																		
8000 Amortization	961	400	561			-			-			-			-	961	400	561
Total Other Expenses	961	400	561	-	-	-	-	-	-	-	-	-	-	-	-	961	400	561
Net Other Income	(961)	(400)	(561)	-	-	-	-	-	-	-	-	-	-	-	-	(961)	(400)	(561)
Net Income	424,921	325,074	99,847	(95,351)	(127,516)	32,165	(94,570)	(23,936)	(70,634)	(56,918)	(76,956)	20,038	(33,962)	(40,000)	6,038	144,120	56,666	87,454

- Better than Budget - timing issue
- Better than Budget - real savings
- Worse than Budget - timing issue
- Worse than Budget - real cost/loss

**CPATA Board of Directors**  
**May 27, 2022****Re: Legislative Compliance Memo**

This memo is written to the Board of Directors of the College of Patent Agents and Trademarks Agents (CPATA) to provide an update on CPATA's financial legislative compliance reporting and remittance requirements.

The Government of Canada enacted the College of Patent and Trademark Agents Act at the end of 2018, as part of its National Innovation Strategy. According to the Act the College has been established as a corporation without share capital.

**GST/HST**

CPATA has elected to charge GST/HST on the Annual License fees, application fees and Exam Registrations by completing and keeping on file the appropriate forms for CRA.<sup>1</sup> We have filed the HST return and made payment for Q1 (January to March) in late April 2022. Unfortunately, this will be a sizable payment (\$166K) as we have just collected the bulk of Annual fee renewals. We expect that we will receive GST/HST refunds in each of the next three quarters.

**Payroll Statutory Deductions**

CPATA has employees and Board members who receive remuneration for their positions on the Board. As a result, CPATA is required to withhold and remit statutory deductions from payroll for the various federal government programs. These include Canada Pension Plan (CPP), Quebec Parental Insurance Plan (QPIP), Quebec Pension Plan (QPP), Employment Insurance (EI) and Income Tax (CRA and Revenu Quebec). CPATA is a monthly remitter for these Statutory deductions and must remit to the Canada Revenue Agency (CRA) and Revenu Quebec by the 15<sup>th</sup> of the month after the employees are paid.

CPATA is up to date with payroll remittances. Board remuneration for Q1 have been paid in April and the corresponding remittances have been made in May.

**Annual Federal filing requirements with CRA**

CPATA will be required to file a Not-for-Profit Organization (NPO) Information Return (T1044) for 2021 with CRA within 6 months of the year ending December 31, 2021. CPATA is not a taxable entity so income tax will not be required, however, the returns must still be filed. Grant Thornton has filed the return on CPATA's behalf and confirmation will be provided once received from CRA.

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<sup>1</sup> CPATA has completed Form GST24 E (19) to elect to have GST/HST apply to professional memberships and Form GST29 E (20) to have GST/HST apply to Educational Services (Exams and training). The forms are stored electronically by CPATA and only required by CRA if asked to produce them. Both forms have an effective date of January 1, 2021. As of January 1, 2022 CPATA is now required to file GST/HST quarterly.

### Annual Report and Audited Financial Statements

CPATA's Annual Report has been delivered to the Minister of Innovation, Science and Industry as required by s. 25<sup>2</sup> of the CPATA Act. We are advised the Minister has tabled the Report in Parliament.

The Audited Financial Statements have been provided to RBC and ISED as is required by the terms of the Loan Agreement with RBC and the Government Guarantee.

### Acknowledgement of Compliance

By signing below, Darrel Pink, CEO & Registrar and Sean Walker, CFO (outsourced) acknowledge that the statements made in this letter are accurate and that CPATA is in compliance with all statutory legislative requirements.



**Darrel Pink**  
CEO & Registrar



**Sean Walker, CPA, CGA, CIA**  
CFO (Outsourced)

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<sup>2</sup> **25 (1)** On or before March 31 of each year, the College must submit to the Minister a report on the College's activities during the preceding calendar year.

**(2)** The Minister must cause a copy of the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the day on which the Minister receives it.

CPATA Board of Directors

May 27, 2022

From: Sean Walker, CPA, CGA, CIA  
Chief Financial Officer (Outsourced)

Re: Financial Statements for April 30, 2022

This memo is prepared in support of the internal financial statements included in the Board of Directors meeting package. The internal financial statements presented in the package include a comparison of budget and actual revenues and expenses for the year by department, overall statement of operations (Income statement) and financial position (Balance Sheet).

The budget vs. actual results for the first four months of 2022 includes shaded areas for material variances to budget and the shading relates to timing variances between the budget and actual and “permanent” differences (savings/extra costs) between budget and actual results.

#### Revenue related items for January to April 2022

At the end of March, we were about 86 Class 1 renewals and \$17K behind budget. However, during April we had about 50 agents who renewed and have reduced the gap to budget to \$8K at the end of April.

In addition, application fees continued to be higher than budgeted in the first four months of the year. There were a number of agents who changed category to and from active status and another few agents who caught up from 2021. We do expect fee revenue to continue come closer to budget as the year goes on as more renewals occur.

#### Expense related items for January to April 2022

Wages and benefits are under budget this is related to the timing of hiring new staff (i.e. Administrator for Registrations) position(s) being hired, hiring is currently in process. The savings in the human resources consulting is related to recruitment costs that were budgeted for 2022 and may not be required and included recruitment costs for the next CEO and Registrar position. The recruitment costs for populating committee positions have been larger than budget to date but should even off now that appointments are being made.

IT Consultant – License systems (Admin & Ops) – savings year-to-date relate to the Thentia “usage” fees. We are required to pay additional fees per user (agent) to Thentia for the year based on the number of renewals for 2022. This payment will be calculated and discussed with Thentia in the near future.

Credit Card Processing Fees (Admin & Ops) – The fees for Agents paying by credit card has been higher than expected so far this year. The additional application fees and 2021 renewals along with an underestimate of the fees has resulted in the variance. Some of this variance should be recovered throughout the remainder of the year as we have budgeted for fees to process applications and payments throughout the full year.

Insurance expenses (Board & Governance) – The insurance fees have gone up more than budgeted. We are almost finished the renewal process and are seeing a 10–20% increase for 2022 on all policies.

Board and Committee related expenses are under budget year to date as most of these expenses are expected to occur in next few months as the committees are populated and meetings are held.

Professional Fees (Board & Governance) Management and Planning consultants – the savings to date relate to the timing of the projects and invoicing, we expect these costs to still be incurred this year for Risk and strategic planning consulting.

Board Meeting and Committee Expenses (Board & Governance/Regulations) – The savings so far relate to the timing of meetings and training and travel costs. Additional expenses are expected to occur in next few months as the committees are populated and meetings are held.

Communications Consulting (Communications and Government Relations) – these costs are related to the Annual report preparation and consultant support related to government relations paid to McMillan for writing and support. These expenses are expected to exceed budget and will be tracked closely.

Admissions Consulting (Regulations – Registration) – These savings are timing related as the project(s) is ongoing and we expect that costs will be in line with budget during the year. Consulting – Website – We have incurred some additional costs for website development as we continue to improve the site and add additional features and bilingual components.

Accounting Fees – Additional Accounting fees were incurred early in the year for additional support related to the renewal period and support for the external audit. Translation expenses have been higher than budget early in the year as there have been a number of larger projects that have occurred (e.g. Annual Report, Website translation, audit reports). Legal Fees – these have been a little higher than budget early in the year as we receive support for a number of initiatives related to competency and discipline.

#### Overall Bottom Line for January to April 2022

CPATA's Net Surplus (Net Income) for the first quarter was \$144,120 compared to a budget of \$56,666. The main contributing factor to the excess compared to budget is related to the timing of expenses noted above.

#### Statement of Financial Position notes

Cash Balance at the end of April is \$1.8M and based on the forecasted timing of expenses for the remainder of the year we should have sufficient cash funds to carry CPATA throughout the full year.

Accounts payable have been averaging around \$100K per month and this is consistent for April.

Deferred Revenue relates to the proportionate amount of Agent License payments that have been received already but are not recorded as Fee income until later in the year. CPATA records 1/12 months of fee revenue each month throughout the year.

## Leave the Room!

By: Natasha Danson

When a Council or Board member of a regulator has a conflict of interest, is simply declaring the conflict sufficient? A recent municipal Council case provides useful guidance on this question.

In *Budarick v. the Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner)*, 2022 ONSC 640 (CanLII), <https://canlii.ca/t/jm283> the son of a municipal Councillor was invoiced by the fire department for a call related to lighting an open fire during a fire ban. The issue of the invoice came up at some Council meetings. The Councillor declared a conflict of interest but stayed in the room. During one meeting the Councillor proceeded to question a representative of the fire department about related matters (e.g., its fundraising, and general policies and procedures related to invoicing for calls). Some of that information was later used by the Councillor in representing her son in contesting the invoice in other venues. In another meeting that was closed to the public, the Councillor remained in the room.

The Court upheld the findings that the Councillor had acted in a conflict of interest. Simply declaring the conflict was insufficient. The questions by the Councillor of the broader policy issues were inappropriate in the circumstances: “when a member has a pecuniary interest in a matter under discussion in a council, the member should refrain from entering the fray, even in respect of issues that may seem tangential”. The Court also accepted favourably the comment of the lower court as follows:

I find it is more likely than not that the Respondent's questions and comments were designed and intended to denigrate the Fire Department's practices, to create doubt regarding service charges and to obtain information for the purpose of enhancing her son's ability to challenge or reduce the invoice he received.

The Court also upheld the finding that the Councillor should have left the room of the closed meeting discussing her son's invoice. In addition, the Court upheld the finding that the breach of the conflict of interest was, in all of the circumstances, intentional and not a mere error of judgment. Those circumstances included the Councillor's use of her position of the Council to attempt to influence other municipal entities on the matter. The Councillor was ultimately removed from office.

While this decision turns somewhat on the language of the municipal conflict of interest legislation, it reinforces the best practice for Council, Board and Committee members of regulators to not only declare any conflicts of interest, but to then leave the room when the matter is discussed (even if it is a public meeting) and to not try to influence the decision. This duty cannot be circumvented by attempting to couch one's input on the matter in terms of broader policy issues that are obviously related to the issue.

<https://www.sml-law.com/blog-regulation-pro/blog-recent-posts/>

## CPATA Board Meetings – 2022-23

### CPATA Committee Meetings

All Board Meetings are on Thursdays at from 12:00 – 4:00 ET and held via Zoom unless otherwise noted

June 23, 2022 (TBC)	Joint meeting Governance and Nominations & Board Development Committees	Initial meeting of two committees to align their work
July 7/22	<b>Committee of the Whole</b>	
July 26/22 – 12 ET	Nominations & Bd Development Committee	
July 28/22 – 12 ET	Governance Committee	
August 18/22	Public meeting	
October 3/22 – 12 ET (TBC)	Governance Committee	
October 4/22 – 12 ET	Nominations & Bd Development Committee	
October 6/22	Committee of the Whole	This meeting was originally scheduled for Sept 29 but conflicts with IPIC Conference, so it has been moved ahead by one week
October 27-29	Board Planning Session	Location TBD
Thurs - Oct 27	Travel and opening/dinner	
Fri. - Oct 28	Planning session – to be facilitated by CEO	
Sat. - Oct 29	Public meeting	9:00 – 11:00 ET
November 15/22 – 12 ET	Nominations & Bd Development Committee	
November 16/22 – 12 ET	Risk & Audit C'tee	Budget approval
November 17/22 – 12 ET	Governance Committee	
December 15/22	Public meeting	2023 Budget/Strategic Framework to be approved Note it is 7 week after previous meeting
January 16/23	Committee of the Whole	
February 7/23 – 12 ET	Nominations & Bd Development Committee	
February 9/23 – 12 ET	Governance Committee	
March 2/23	Public meeting	
April 13/23	Committee of the Whole	
May 2/23 – 12 ET	Nominations & Bd Development Committee	
May 4/23 – 12 ET	Governance Committee	
May 24-26	AGM	Ottawa

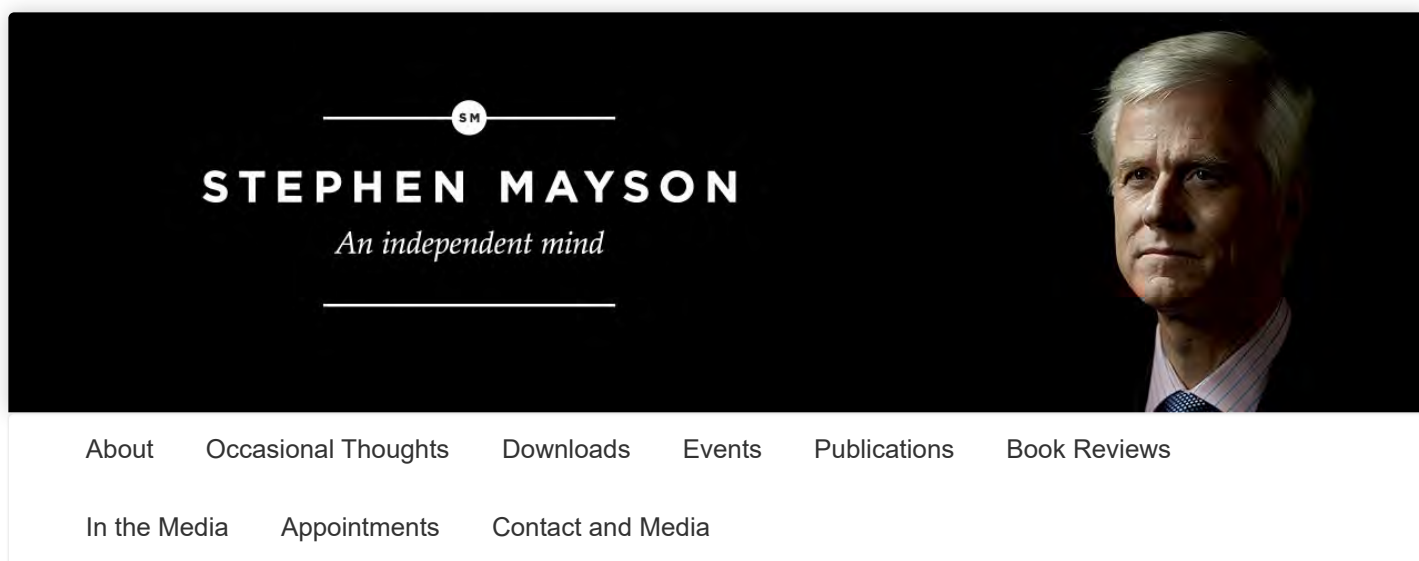
<b>Wednesday - May 24</b>	<b>Travel and dinner</b>	
<b>Thursday- May 25</b>	<b>Board workshop and AGM</b>	
<b>Friday - May 26</b>	<b>Public meeting</b>	9:00 – 11:00 ET

IC meetings:

- June 2, 2022 12pm ET
- July 21, 2022 12pm ET
- September 22, 2022 12pm ET
- November 24, 2022 12pm ET

DC meetings:

- May 30, 2022 3pm ET
- June 27, 2022 3pm ET
- September 26, 2022 3pm ET
- October 31, 2022 3pm ET
- November 28, 2022 3pm ET
- December 12, 2022 3pm ET



# The fig-leaf of protection for consumer harm

Posted on [21 April 2022](#) by [Stephen Mayson](#)

It is almost two years since the [Final Report](#) of the Independent Review of Legal Services Regulation was published (all of the Review's papers are available [here](#)). The catalyst for the Review was the market study carried out by the Competition and Markets Authority. The CMA concluded that the legal sector was not working well for consumers. In carrying out its work, the CMA made several references to consumer harm and detriment. So, too, did the Final Report.

However, what transpired in conversations following the Final Report was that the nature of consumer harm was largely being assumed or only illustrated. A core goal of regulation – the protection of consumers from harm – faced some under-developed but important challenges. What exactly are the *types* of consumer harm in legal services, the *causes* of that harm, the *consequences* of experienced harm, and the

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particular *remedies* that might be available for it (depending on its nature and who caused it)?

The Supplementary Report to the IRLSR ([Consumer harm and legal services: from fig leaf to legal well-being](#), published today) seeks to answer these questions, and this post is taken from the Preface.

## Types of consumer harm

The Supplementary Report identifies two major categories of harm – structural and transactional. The first arises from the inability of far too many of our fellow citizens to access legal advice and support when they need it. It is described as ‘unmet legal need’ and, regrettably, it is persistent and growing over time.

Whereas structural harm results from an inability to access legal services, transactional consumer harm arises from the unsatisfactory engagement of them. Transactional harm manifests itself in a variety of failings or activities of the providers of legal services, including scams and dishonesty, incompetence, under- and over-engineering of services, over-charging, and poor service.

The Final Report emphasised the current ‘regulatory gap’ that creates a sector-specific framework that addresses ‘regulated’ providers (mainly lawyers) but cannot deal with ‘unregulated’, but nevertheless legitimate, providers of many legal services. The consumer harms identified in this Report can be caused by both regulated and unregulated providers.

However, the regulatory framework differs depending on whether the provider in question is regulated or unregulated. In relation to the former, the sector-specific framework of the Legal Services Act 2007 supports a regime of regulators who are able to authorise regulated providers,

A new post by me: The fig-leaf of protection for consumer harm.

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@natalalleycat: An important

require those providers to make certain disclosures to consumers and to carry professional indemnity insurance, as well as submit to the investigation and resolution of unresolved complaints by the Legal Ombudsman.

Where harm is caused by unregulated providers, their principal protection arises under the Consumer Rights Act 2015. While this also imposes certain expectations on providers, the remedies generally have to be pursued by third parties or through private court action by consumers. Not surprisingly, these burdens mean that enforcement is patchy.

The main emphasis of both the sector-specific and general consumer law approaches is on 'dealing with' the provider rather than providing redress directly to the consumer who has suffered harm. These harms are likely to be continuing unresolved legal issues (because the provider has not dealt with the presenting legal need effectively or at all), economic loss, or consequential detriment for the consumer such as stress, ill-health, delays and lost opportunities.

For the most part, only economic loss will be remedied directly under the current approaches to regulation – though the Legal Ombudsman has some power to require rectification or compensation.

The Report finds that the fundamental weakness of the current regulatory approaches is their 'front-end loading'. They focus more on before-the-event requirements that reduce the *prospect* of harm, but leave consumers exposed and without redress when they try to pursue after-the-event redress for the *actuality* of harm suffered.

The current approaches also emphasise taking action against delinquent providers, which are usually undertaken by third-party regulators with limited powers to offer redress directly to

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individual consumers, or by the consumers themselves in (expensive and uncertain) legal action.

## Types of consumer

How individual consumers react to their presenting legal needs, and then seek – or fail to seek – advice and support, will depend on what type of consumer they are and their own legal capability. This Report identifies three broad types of consumer: the fully informed, rational consumer (broadly, the *homo economicus* of neoclassical economics), the ordinary consumer (broadly, the ‘average’ consumer of consumer protection legislation), and the vulnerable consumer.

Existing research of consumer behaviour suggests that we are all, in some way, likely to be vulnerable when addressing our legal needs. In these circumstances, vulnerability is universal and not exceptional. Regulation should therefore recognise this universality and not seek to treat vulnerable consumers as a separate sub-group.

When types of consumers are combined with degrees of legal capability, the Report suggests that four states of consumer engagement emerge: the empowered consumer, the self-representing consumer, the disengaged consumer, and the excluded consumer. Unfortunately, for those who have low to medium legal capability, the tendency will be towards disengagement and exclusion. This translates into unmet or unresolved legal needs for most people.

Even more unfortunately, the Report also suggests that the current structures of consumer protection (whether applying to the regulated or the unregulated communities of providers) exacerbate – or, worse, possibly even cause – this observable tendency towards disengagement or exclusion. In particular, their emphasis on the prevention of harm, sanctions against

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providers, transparency and disclosure requirements that increase the cognitive burdens on consumers, and reliance on consumers to assume the risk and cost of personal action when things go wrong, all contribute to an overwhelming and daunting sense of challenge.

## Towards 'legal well-being'

Against this background, the Report offers an alternative approach. In affirming the conclusions and recommendations of the Final Report, it advocates for a shift in emphasis in legal services regulation. Primarily, it seeks a move away from the pursuit of a negative (the avoidance of consumer harm) to a positive. The outcome would be a positive state of 'legal well-being'.

Such a state is not so much about securing the *absence* of harm as about achieving the *opposite* of it. The concept of legal well-being imagines a state in which consumers can have confidence in their choice of legal advisers without burdensome enquiry about their regulatory status; in which the legal sector offers ease of access to advice, representation and document preparation; in which enquiry, engagement and redress are similarly less burdensome processes; and through which the legitimate participation of citizens in society is supported, in accordance with their legal rights and duties.

In promoting such outcomes, regulatory policy would need to accept that vulnerability is not exceptional, that *caveat emptor* (buyer beware) has no role in the engagement of legal services, that disclosure creates more difficulties than it solves, that competition in provision needs to be encouraged but cannot be relied on to result in fair dealing without some regulatory underpinnings, that legal aid, pro bono services and public legal education cannot close the gap in meeting

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unmet needs, and that qualified lawyers are not always the best providers of legal services.

In any consideration of whether consumers do, or are likely to, suffer harm in their use of providers of legal services, it is difficult to draw clear separating lines between the ideas (and ideals) of addressing unmet need and the challenges of 'access to justice'. The concept of access to justice is closely linked to the constituent concept of legal need. In broad terms, legal need arises whenever a deficit of legal capability necessitates legal support to enable a justiciable issue to be appropriately dealt with.

A legal need will be unmet if a justiciable issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of legal capability. If a legal need is unmet, there is no access to justice.

The persistent and increasing volume of unmet legal needs in England & Wales (and beyond) is arguably the greatest structural challenge facing the regulation of legal services and the performance of the legal sector in its widest sense. While the question directed to me following the publication of the Final Report ('Where is the evidence of consumer harm?') is apparently reasonable and legitimate, it turns out to be a red herring.

When so many citizens do not know that they have a legal need, when so many citizens who have legal needs turn away from seeking help from lawyers, when those who are dissatisfied with their use unregulated providers of legal services have no meaningful route to complaint or redress, when those who are dissatisfied with their use of regulated providers take no action and join the ranks of 'silent sufferers', it is hardly surprising that those most in need of support have no voice ... and so there is no evidence.

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Even looking for ‘disproof’ relies on proving a negative (there is insufficient harm) rather than securing a positive (public and consumer confidence in the rule of law and legal services, as well as legal well-being).

## Time for action

The principal structural recommendation of this Report acknowledges that more lawyers, more pro bono services, more legal aid funding, more public legal education, more sandboxes, and improved legal capability will not – even collectively – close the gap between met and unmet legal needs. Nor can we continue to allow complexity of laws and legal services regulation and the relative inaccessibility of regulated legal services – whether for financial, social or cognitive reasons – to force people into either doing nothing or using unregulated providers.

The structural recommendation, therefore, is to extend the scope of regulation to allow competent providers who are not legally qualified to offer legal services in a sector-specific regulated environment. This might not fully close the gap between met and unmet need but it stands a better chance of slowing or reversing the increase in it than current approaches.

An increase in the number of regulated providers would also allow the natural forces of competition to influence market discipline, quality, efficiency and prices, to the benefit of consumers. However, this Report does not support free and unconstrained competition. The contribution of legal services to the rule of law and the fabric of society, and the vulnerability of the vast majority of the users of legal services, are too important to be left at the mercy of unfettered competition.

Accordingly, to advance the greater well-being of those who engage providers of legal services, this Report (reinforcing the



conclusions and recommendations of the Final Report) also advocates for a single point of entry for regulation, registration and complaints about conduct and service, and the extension of mandatory consumer dispute resolution to complaints against all providers of legal services.

On closer examination, the ‘protections’ of the current framework for the regulation of legal services turn out to be little more than a fig leaf. The main force of regulation is applied to preventing harm and to dealing with delinquent providers rather than for the direct benefit of consumers who have actually suffered harm.

Further, although this Report focuses on harm caused to individual consumers, there is also little in the current regulatory framework that supports the pursuit of collective redress for one-to-many consumer harm that could be caused, say, by scams, dishonesty and mistakes perpetrated by one provider on many consumers – especially through the increasing use of online services.

If citizens cannot readily and effectively enforce or defend their rights, if their health and well-being are adversely affected by the effort of doing so, if they do not feel that their quality of life is enhanced by their successful interaction with the law (even in a positive life-event, such as moving home), then it does us as a society little credit to stand by and do nothing to improve their experience.

We believe that in England & Wales we have the best legal system in the world, and some of the best lawyers. We are right to believe that. But we must also accept that our regulatory framework that oversees it is an emperor with precious few clothes on.



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# Google General Counsel's Clarion Call for U.S. Patent System Reform Should Not Be Heeded



**STEVE BRACHMANN**

MAY 2, 2022, 03:15 PM

“Google has filed the third-highest number of petitions for AIA validity trials at the PTAB. Google isn’t filing those petitions to improve American innovation, but rather to evade legal liability for infringement and thereby protect its own corporate revenues from legitimate inventors.”

On April 28, Google’s General Counsel Halimah DeLaine Prado authored a post published on Google’s official blog to voice concerns felt by one of the world’s richest corporations that the U.S. patent system is currently in a state of growing crisis. The post offers several suggestions, each sanctioned by Google, as to steps that can be taken in all three branches of the U.S. federal government to address patent quality, abusive litigation and forum shopping.



Unfortunately, the proposed reforms would help very little, if at all, toward improving certainty and clarity in patent rights in a way that would actually improve American innovation by supporting small startups and individual inventors in our country. Indeed, any informed observer of the U.S. patent system would recognize that Google's proposed reforms would instead do a great deal to advance Google's own business interests ahead of those startups and individual inventors who need the patent system to work in order to survive.

## Unsubstantiated Claims About Declining Patent Quality Should Raise Questions

Prado's post begins by tracing Google's history as a corporate steward of the U.S. patent system, including its role in founding the License On Transfer (LOT) network, establishing the Open Patent Non-Assertion (OPN) Pledge in 2013 and providing technical support to the Prior Art Archive. Prado touts the 42,000 "home-grown" patents authored by Google engineers, Google's licensing of those patents at what readers are assured is a "fair value," and the sale of patents to bolster the IP portfolios of smaller businesses to provide evidence of Google's bona fides as a sage interpreter of patent law and benevolent overseer of small business interests.

Having established Google's great superiority in understanding the proper role of patents, Prado's post goes on to bemoan how "the American patent system is increasingly failing to promote the cause of innovation and progress." The evidence of this failure is an unsubstantiated claim that patent quality in the United States is declining, a claim that is hyperlinked to [a Colleen Chien article](#), which concludes by noting "one of the major problems with improving patent quality *is our inability to measure it.*" [emphasis added] Of course, as Google has been a great benefactor of the U.S. patent system (see above), we should be able to take their word for it that patent quality is on the decline.

Google's issues with patent quality are sharpened by what Prado calls "a rising tide of wasteful patent litigation." Prado insists that patent litigation has increased by 46% between 2018 and 2021, but this claim is linked to [a litigation report from RPX](#) that analyzes non-practicing entity (NPE) litigation campaigns, petitions for America Invents Act (AIA) trials at the Patent Trial and Appeal Board (PTAB) and a great deal of other data; it's near impossible to determine where Prado's 46% increase in patent litigation figure comes from in the RPX data. Worse, RPX Corp. is notorious for keeping its data secret, thus preventing any independent third parties from vetting for accuracy.

Prado next paints this alleged increase in a way that plays on the natural prejudices people have against the legal system by claiming it is proof that abusive litigation is threatening America's innovation engine. Readers are warned about the return of the "patent troll," an entirely prejudicial term that immediately casts any company enforcing rights against infringers as fairly

tale scum. No patent trolls are named, which was ultimately smart on Prado's part, as the business models employed by companies monetizing patent assets usually play a legitimate function in the complex world of technology licensing.

## **Google Wants Governmental Action to Protect Corporate Profits from Patent Plaintiffs**

Of course, Google has a few suggestions for righting the sinking ship of U.S. patent law. In the Executive Branch, Prado encourages policymakers to invest in the USPTO, which she says often doesn't have enough resources to prevent "invalid patents getting issued to inventors." Leaving aside the fact that any 2L should be able to see the logical inconsistency of a right already being invalid at the time that it is granted (although in the world that Google wants, all competitor patents would most assuredly be dead on arrival), Prado's claim plays right into the nebulous patent quality argument that is a perfect game for Google to play: patent quality is impossible to measure, but the higher it goes, the fewer patents in force that Google must contend with. It's a claim that has nothing to do with improving American innovation, which would be improved by enabling a wider swath of our economy to participate in the patent process by reducing prosecution costs and eliminating Section 101 judicial exceptions, and everything to do with protecting Google revenues by making it harder to obtain enforceable patent rights.

Next, Google wants the federal judiciary to do something about the gamesmanship among patent plaintiffs that has allegedly led to forum shopping, resulting in 25% of all patent lawsuits being filed in a single U.S. courthouse. Finally, Prado hits upon a statistic that is easily vetted and turns out to be true. Though she never mentions it by name, she's obviously speaking about the Waco Division of the Western District of Texas, which is headed by U.S. District Judge Alan D. Albright. The problem for Prado here is that anyone who has a robust understanding of patent law knows that Judge Albright has a reputation for being a very fair-dealing judge with a wealth of knowledge in patent matters. Western Texas also includes Austin, TX, which has a burgeoning high tech sector, and San Antonio, the seventh-largest city in America, and these *TC Heartland*-friendly factors, coupled with Judge Albright's expertise, are perfectly reasonable explanations for the rise of patent litigation in Waco that arguably have less to do with gamesmanship and more to do with the interest that all patent litigants, both plaintiff and defense side, should have in obtaining a fair trial.

## **Why Talk About One Leahy PTAB Bill Without Discussing the Other?**

Finally, and perhaps most brazenly, Prado urges Congress to take legislative action to restore Google's access to validity trials at the PTAB by removing the USPTO's discretion to deny petitions challenging patents that are in infringement proceedings in U.S. district court, where essentially the same validity challenges are often raised by defendants. Prado insists that this bill would curb abusive litigation, but the truth is that the Restoring the America Invents Act would overrule the *NHK-Fintiv* discretionary denial framework at the PTAB that Google and other Big Tech cronies have already failed to overturn through several avenues, including a lawsuit alleging violations of the Administrative Procedures Act filed in U.S. district court. Legislative reforms to the PTAB that Prado's post does not discuss include an upcoming bill from Senators Thom Tillis (R-NC) and Patrick Leahy (D-VT) to reduce the ability of petitioners like OpenSky Industries to extort patent owners with schemes that manipulate legal processes. This, unlike the vast majority of patent suits filed against entities like Google, is actual abuse of the U.S. legal system, and it's conveniently forgotten by Google's General Counsel despite the fact that Leahy is also a co-sponsor of the Restoring the America Invents Act.

One need not squint hard to recognize that Google is addicted to the release from infringement liability, and the PTAB serves as Google's methadone clinic. After all, Google has filed the third-highest number of petitions for AIA validity trials at the PTAB. Google isn't filing those petitions to improve American innovation, but rather to evade legal liability for infringement and thereby protect its own corporate revenues from legitimate inventors.

One can't fault Prado for pushing her employer's company line: Google is one of the largest companies in history and the tech giant needs the easy ability to invalidate competitor's patent rights in order for its business model to continue working. But her post discusses none of the real abuses that are actually going on in the U.S. patent world, such as petitioner extortion of patent owners at the PTAB; it fearmongers about the prospects for American innovation based on claims that are barely substantiated; and it urges governmental action that only serves to increase the difficulty of obtaining and enforcing patent rights for all patent owners. The only new, useful and nonobvious methods that Google has invented in the last decade plus are novel ways to push public opinion in favor of policies that make it hard for anyone to compete with Google in the marketplace, and the company's General Counsel just provided the world with an excellent opportunity to point that out.

In response to Prado's post, USPTO Director Kathi Vidal offered the following statement:

As I noted in my [Day One public message to stakeholders](#), which provides a link for engagement with the USPTO, the USPTO invites input from all stakeholders. We invite it in any form, whether through press or from individuals reaching out. It is important that we dialogue on the key issues so we can shape our innovation ecosystem to bring more innovation to impact, while curbing opportunistic behavior. We can all agree that all of us – including the USPTO – need to play a role. The USPTO will do its part by issuing robust and reliable patents. You will see more on that soon, though long-term sustainable efforts will take new thinking from all, and additional input from stakeholders and deliberation. I’m confident that, together, we can make real change.

*Image Source: Deposit Photos*

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**Anon**

May 3, 2022 10:47 am

As noted in the weekly summary piece that included a small reference to this story:

*"Over the years, Google has worked to ensure that the United States patent system continued to spur new inventions and technologies."*

Excuse me, but HOW exactly?

Is this tied to those meeting-minute LESS private meetings under Director Lee?

Sorry, but *"Supporting that balanced approach, we were one of the first companies to pledge not to sue any user, distributor, or developer of open-source software on specified patents, unless first attacked."* has **nothing** to do AT ALL with making patent examination better.

Zero.

Another hint: relying on misinformation from an academic like Chien is a non-starter.

The rest of that self-serving slop sounds in the Orwellian 1984, which cements Google's transformation of Evil of "Do no Evil" to "Be Evil."

See:

**[HTTPS://WWW.IPWATCHDOG.COM/2022/04/29/BARKS-BITES-FRIDAY-APRIL-29-SCOTUS-DENIES-PETITION-SUBSTANTIAL-SIMILARITY-TESTS-GOOGLE-DECRIES-RISING-TIDE-PATENT-LITIGATION-CHINA-CONCLUDES-FIRST-DRUG-PATE/ID=148757/](https://www.ipwatchdog.com/2022/04/29/barks-bites-friday-april-29-scotus-denies-petition-substantial-similarity-tests-google-decries-rising-tide-patent-litigation-china-concludes-first-drug-pate/id=148757/)**



**Curious**

May 3, 2022 09:20 am

*Don't ever forget how Google was able to overturn a huge infringement case, "Vringo vs IP Internet", after Goog and a few other huge techies were hugely beaten by a 12-person jury 12-0 on every single charge.*

The two judges ruling for Google were Mayer (I've never met a software patent that I didn't think was invalid) and Wallach (I'm an expert in war crimes and the law of war so why am I sitting on a patent court?). Unfortunately, patent law in the United States is decided by people who aren't qualified to either prosecute or litigate patents.

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