

Board of Directors Meeting Agenda

In person: Regency Room – Prince George Hotel (Halifax, NS)

DATE	November 12, 2022
TIME	8:30 am AT
CHAIR	Tom Conway

ITEM	TOPIC	TIME	SPEAKER	PAGE #	ACTION
1. Introductory Matters/Call to Order/ Approval Of Agenda/Conflicts of Interest					
1.1.	Call to Order – Introductory Remarks	8:30	T. Conway		
1.2.	Conflicts of Interest – Board members are to declare if they have any conflicts regarding matters on the agenda		T. Conway		
2. CONSENT AGENDA					
2.1.	<p>The Consent Agenda matters are proposed to be 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.</p> <ul style="list-style-type: none"> - Minutes – 2022-08-18 Board Meeting - Nominations and Board Development Committee Terms of Reference - 2022-09-02 Report of Nominating & Board Development Committee - 2022-11-12 Report of the Governance Committee - 2022-11-12 Report of the Audit & Risk Committee - CEO Report 	8:40	T. Conway	5 8 13 15 20 24	Approve



Enhancing CPATA’s Governance

3.1	<p>CPATA’s Regulatory Checklist The Board has approved reviewing CPATA’s work against a Regulatory Checklist developed by Harry Cayton. The Governance Committee recommends the Board set aside a meeting for a detailed review of its work to date and its work in progress to evaluate its progress towards meeting the checklist requirements.</p>	8:45	R. McHugh	27	Discussion and Direction
3.2	<p>Director Remuneration At the Board’s request the Governance Committee has reviewed the remuneration for directors and committee members and presents a report to the Board Resolution: <i>The Board of Directors accepts the recommendations of the Governance Committee regarding remuneration of directors and committee members and directs the changes be incorporated in the by-laws.</i></p>	9:00	K. Bawa	31 34	Approve
3.3	<p>Board Meeting Evaluations The Governance Committee has developed a Board meeting Evaluation Survey to be administered after each meeting Resolution – <i>The Board approves the Board Meeting Evaluation Survey and directs the CEO to administer it immediately after each Board Meeting</i></p>	9:20	R. McHugh	45	Approve
3.4	<p>Director attendance at committee meetings The Governance Committee outlines its approach to directors identifying preferences for committee assignments. Board to approve without a resolution.</p>	9:30	R. McHugh	47	Discuss and approve

CPATA as a Modern Regulator



4.1	<p>How CPATA Operates The Board is asked to approve a revised Board Policy No. 1 – How CPATA Operates, which has been amended to reflect CPATA's current organizational structure Resolution – <i>Approved amended Bd. Policy No. 1 – How CPATA Operates</i></p>	9:40	D. Pink	48	Approve
4.2	<p>Describing how we act in the Public Interest Draft Policy No. 9 is presented to the Board for consideration and direction to publish it for consultation Resolution – <i>Draft Bd. Policy No. 9 be published for consultation with a final version to be returned to the Board in March 2023</i></p>	9:50	V. Rees	69 74	Approve for consultation

Other Business

	CEO Selection Committee Report	10:00	T. Conway		
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In Camera

- Board and CEO
- Board without CEO

10:30

For information

5.1	<p>1. CNAR E-Book on Diversity 2. JMaciura – A New Analysis of Incompetence</p>			87 103	
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Future Meetings

	<p>2022 December 15/22 Board-Public meeting 2023 January 26/23 Committee of the Whole March 2/23 Board-Public meeting</p>				
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April 13/23 Committee of the Whole
May 24-26/23 AGM & Public Meeting Ottawa
July 6/23 – Committee of the Whole
August 17/23 – Board-Public meeting
September 21/23-Committee of the Whole
November 9/23 – Board-Public meeting
December 14/23 – Board Public meeting

2024

January 18/24 – Committee of the Whole
March 7/24 – Board-Public meeting
April 18/24 – Committee of the Whole
May 29-31/24 AGM & Public Meeting Ottawa

**Public Board of Directors Meeting Held via
Zoom on August 18, 2022
12:00 p.m. ET
Minutes**

BOARD MEMBERS:

Tom Conway, Chair
Ruth McHugh
Karima Bawa
Leonora Hoicka
Brigitte Chan
Jeff Astle
Andrew Currier
Darrel Pink, CEO and Registrar

STAFF:

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
Anne-Tiphaine Camus, Administration, Registration and Education

1. Introductory Matters/Call to Order/Approval of Agenda/Conflicts of Interest
The meeting was called to order at 12:03 p.m. No conflicts of interest were declared.

2. Consent Agenda
The Minutes of the previous meeting did not include Victoria Rees and Leonora Hoicka in attendance and contained a typo in Brigitte Chan's name. Changes will be made to the Nominations and Board Development Committee Terms of Reference to ensure language aligns with the Governance Committee Terms of Reference.
The Board approved the consent agenda.

3. Governance and Policy
 - 3.1 Confirmation of College Bylaws
Section 80 stipulates that by-laws must be confirmed by the Board within 180 days of changes or else become revoked. Darrel Pink spoke to the significant bylaw revision project that will combine Board and College bylaws and reorganize elements for better flow.
On a motion made by Leonora Hoicka, seconded by Ruth McHugh, be it resolved, pursuant to s. 80 of the Act, the Board confirms the College By-laws (SOR/2021-167) as amended and Board By-laws (SOR/2021-168), as amended.

 - 3.2 CEO Search Committee Terms of Reference

Tom Conway provided an update on the process, noting Boyden has had discussions with several candidates; it is a competitive market with similar jobs being open in other organizations; and interviews will be scheduled in October.

On a motion made by Jeff Astle, seconded by Karima Bawa, the Board approved the Terms of Reference for the CEO Search Committee as included in the Board package.

3.3 Review of 2022-23 Business Plan

Darrel Pink reviewed the 2022 Business Plan. He highlighted the the College's statutory obligation to file an Annual Report on Access to Information and Privacy.

Victoria Rees spoke to the activities of the Investigations and Discipline Committees, including the work to be done to address the Investigation Committee's new authority regarding interim suspensions and conditions on licensees. She discussed how the Official Languages Act will apply to hearings. She spoke to several policies being drafted by the Discipline Committee, including a Policy on Hearings and a Policy on Pre-Hearing Conferences. Draft Policies will be provided as part of future Board materials.

3.4 Committee Reports

The Board received its first reports from committees.

The Nominating and Board Development Committee is focusing on reviewing the nominations and election process and will begin to focus on establishing a board and committee development agenda.

The Governance Committee is addressing the issues of Board and Committee member remuneration. A Report will be given to the Board in the early fall. The Committee proposes the Board create a work plan for itself. The directors agreed this would be valuable. The CEO and Chair will develop and present a proposed work plan to the Board.

Within the reports, there was a discussion of the role of the Nominations and Board Development Committee pertaining to Board Elections. The consensus was that any recommendations for the election process would be presented to the Board for approval prior to implementation.

There was a discussion about directors auditing committee meetings as part of the on-boarding process.. It was agreed this will be considered by the Governance Committee and its advice will be brought to the Board.

4. Updates on Core Operations

4.1 New bi-lingual Agent Portal – demonstration

Operations Manager Andrés Diaz showcased a test environment for the new bilingual portal, launching early this fall.

4.2 CEO Report

Darrel Pink emphasized the new addition of Privacy and Access to Information Annual Reports to the legislative obligations of the College. Compliance with these Acts will be added to the recurring Legislative Compliance Memo presented to the Board.

5. For Information

5.1 Notice from CICC re use of Insignia

It was noted the new College of Immigration Consultants has created an insignia for its licensees and the Board was asked if there was merit in considering this for patent agents and trademark agents, as a way of protecting the public interest or pre-empting unauthorized practice. The Board acknowledged it is better to wait until the College is more established before considering this application more seriously.

6. In Private Discussion without CEO

The public meeting was adjourned at 1:50p.m.

Tom Conway

Chairman of the Board of Directors

Minutes approved on (date)

NOMINATIONS & BOARD DEVELOPMENT 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.

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, advising the Board on information to be provided to the Minister's Office regarding the College's needs, and, in conjunction with the Governance Committee, 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

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:

- 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) In collaboration with the Governance Committee, identifies the skills and qualifications required of members of the various Board-appointed Committees, statutory committees, and Chair appointments.
- d) 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;
- e) Following consultation with the Governance Committee, recommends committee member and committee chair and names for potential Board appointments to the Board for approval.

Elections

The Committee

- a) Determines if, based on the terms of elected directors, an election is necessary¹ and, if so, whether the position is to be filled by a patent agent, a trademark agent or either²;
- b) Following discussions with the Governance Committee³, advises the CEO regarding communications with the profession about the desirable skills and attributes for new Directors;

¹ Board By-law 31(1)

² By-law 31(2)

³ Governance Committee ToR state: Reviews, and brings forward to the board, communications to licensees and the Government of Canada (in the case of public member appointments) regarding the skills sought in nominees for directors.

- c) Facilitates an orientation for prospective election candidates⁴
- d) Assists the CEO in recommending appointment by the Board of an Election Commissioner⁵;

Board Development

The Committee:

- a) Provides the Governance Committee areas for Directors' ongoing updating of skills and knowledge of the College and its businesses, and receives its recommendations for skills development and education for the Board as a whole or for individual directors based on their assigned responsibilities.
- b) Oversees the development and delivery of orientation and training for new directors and committee members,
- c) 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 knowledge required, and other priorities identified by the Board or committees;
- d) Is responsible for development and delivery of ongoing governance education and training that reinforces CPATA's approved governance policies
- e) Consults with the Board and committee chairs and vice chairs about their views on required education and training
- f) 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.

A specific list of activities the committee is to undertake, usually without setting out in detail the process the committee is to follow.

⁴ By-law 32(e)

⁵ By-law 31(5)

**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) and Deputy Registrar are *ex officio* members 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 filled⁶.

The Board, by a vote of two-thirds of those present, may at pleasure remove a member of the Committee⁷ 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 Board⁸.

CHAIR

The Chair and members of the Committee are appointed by the Board.

The Committee Chair is a voting member of the Committee.

**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.

⁶ Registrar's Policy on Committees

⁷ Registrar's Policy on Committees

⁸ Registrar's Policy on Committees

QUORUM

Quorum of the Committee is three.

RESOURCES

The Committee is supported by the CEO and Deputy Registrar.

REPORTING

The Committee develops, documents, and adopts for Board approval an annual work plan and reports to the Board by providing a high-level written 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

Approved: 2021-10-05

Revised: 2022-05-27, 2022-08-18

NOMINATING & BOARD DEVELOPMENT COMMITTEE MEETING REPORT – OCTOBER 4, 2022

Attendance: Charity Callahan (Chair), Jeff Astle, Evelyn Spence, Brent York

Darrel Pink, CEO, Jennifer Slabodkin, Deputy Registrar

Nominations and Elections Process

The CEO described the nominations and elections process that was administered for the 2022 election. The Committee discussed conducting a survey to gather feedback on the election process from those who were nominated in 2022.

The Committee discussed whether membership in professional organizations should continue to be included as ineligibility criteria and whether that criteria should be expanded to include employment at the Canadian Intellectual Property Office.

The Committee discussed whether elections were the preferred means of licensee participation on the Board and queried whether an appointment process should be considered as an option for some, or all licensee director positions.

The Committee will administer a post-2022 election survey to gather feedback from nominees.

Developing a Workplan

The CEO presented the draft workplan to the Committee and confirmed that the Board would be responsible for approving it once finalized.

The Committee noted they need to consider a process for effectively working with the Governance Committee.

Assessing Committee Needs

The Committee queried if the current slate of members reflect the entirety of the skill matrices, what was needed to achieve full reflection of the skills matrix for the elected Board members, and whether each committee should have an approved set of education goals.

The Committee agreed to prepare a discussion paper on the philosophy, approach and plan for development, for the Board to review in early 2023. A curriculum for different roles and committees that is specific to CPATA should be developed and include the range of items that directors and members need to have access to, to be successful.

The Committee will use the sample process developed by the Chair and CEO to review skills for existing board and committee members and recruit to fill gaps.

The CEO will be following up with the board and committees to identify immediate training/development needs.

Board Development Materials

The Committee inquired when their privacy training would be delivered and discussed whether they would have access to personal or private information to perform their duties. The CEO confirmed that it was the CEO's responsibility to monitor compliance with privacy training requirements. The Committee noted that they may require additional HR-related privacy training, and training for freedom of information requests.

The Committee discussed:

- developing a curriculum that included the functions and processes of CPATA, including the duties and functions of committees;
- the use of a learning management system or volunteer management system to assist with tracking terms, what training or development is available and who participates, such as SharePoint, or possibly a module within Thentia; and
- whether a declaration should be presented at the end of training to confirm the participants did what was asked of them.

Review of Director Membership in Organizations

The Committee discussed potential issues with respect to director membership with professional associations, law societies and the Canadian Intellectual Property Office.

The Committee will be considering a memo prepared by the CEO that identifies and discusses issues with director membership in organizations.

GOVERNANCE COMMITTEE MEETING REPORT – SEPTEMBER 9, 2022, AND OCTOBER 11, 2022

Attendance: Ruth McHugh, Chair, Karima Bawa, Peter Cowan, Amber Batool

Darrel Pink, CEO, Jennifer Slabodkin, Deputy Registrar

Checklists for Regulatory Boards

The Chair asked the Committee to share feedback on the checklist included in the meeting materials.

The Committee noted that several parts of the checklist were subjective. The Chair clarified that the intent was to be more of a self-evaluation rather than a third-party evaluation.

With respect to “Appoint a competent CEO and trust them”, the Committee discussed adding the use of regular performance reviews and clear lines of accountability to demonstrate a competent and trustworthy CEO was appointed.

With respect to “Ask[ing] for reports that include what you need to know, not everything you want to know”, the Committee noted that sometimes you don’t know what you need to know, and that some guidelines on form and content would be helpful for consistency. The Chair highlighted the public interest rationale component of current materials, costs etc. as examples for inclusion in the reporting guidelines. The Committee noted that Board/Committee and CEO compensation matters should be connected with the public interest rationale.

The Deputy Registrar advised that the revised by-laws contemplate removal of appointed and elected directors, in addition to the Chair, which will allow for the “enforcement” piece of the Code of Conduct section of the checklist.

The Committee discussed what to do with the checklist. The CEO noted that the Board has already expressed support for the Cayton structure and recommendations, and that the logical next step would be public reporting on compliance.

There should be an annual evaluation against the checklist, either completed by the Board itself, or by a third-party; including identifying indicia to confirm that CPATA is meeting the objectives on the checklist.

The Committee discussed when the review should be conducted and recommended that it be scheduled around the same time that the annual board and committee member competency reviews occur. The CEO advised that a competency review for current board and committee members was not scheduled, but that a competency review would be conducted when the two ministerial appointments were made.

The Committee recommended that a special Committee of the Whole meeting be scheduled annually, for the Board to review and discuss each item on the Checklist for Regulatory Boards, evaluate CPATA's status with respect to each item, and identify action items, as needed. The Chair of each Regulatory and Board Committee will be tasked with providing evidence to support compliance with the checklist and will be invited to attend the meeting. The Governance Committee members will be invited to attend the meeting.

Board/Committee and Chair Evaluation & Feedback

The Chair presented the sample meeting evaluation survey to the Committee and described the process for the board secretary or senior staff support to gather the information from the survey and share it with the Chair (and Vice Chair in the case of the Board) for consideration and follow up, as needed. It was noted that the Chair was ultimately responsible for addressing feedback gleaned from the meeting evaluation surveys but that board members and the board secretary had some shared accountability to ensure that feedback is being actioned appropriately.

The Committee agreed to share the survey with the Board for discussion at the November 12, 2022, meeting.

Board and Committee Remuneration

The CEO advised that a retroactive change to remuneration would require a by-law revision, therefore the GC recommendation to the board was adjusted to reflect the remuneration change will take effect upon coming into force of the next bylaw revisions, anticipated to be March 31, 2023.

The Chair noted the Committee should either accept or reject the recommendations in whole to prevent a conflict of interest, and that the information would be included as a Directive under Board Policy No. 3.

The Chair clarified that the Board and Committees are being compensated and must be held accountable for their performance but that those issues were considered separately. In other words, compensation would not be decreased for lower scores or increased for higher scores. The by-law revisions contemplate removal of directors with respect to performance.

Membership in Professional Associations/Organizations

The Committee agreed that the Nominations and Board Development Committee should consider whether expansion on s. 14 of the Act should be attempted via bylaws or some other method to provide clarity and provide a recommendation to the Board.

S. 14 (c) indicates - are a member of an association whose primary purpose is to represent the interests of persons who provide advice on patents or trademarks.

To date the only organization that has been noted as meeting the definition is IPIC. A board member requested clarity on different organizations they belong to, and there wasn't anything definitive the board chair or CEO could point them to in order to clarify whether their membership in these organisations would prove problematic. Additional clarification would be welcome if it can be achieved

The CEO was directed to request that the Nominations and Board Development Committee consider, research, including legal research, and provide a recommendation to the Board regarding the authority under section 14(c) of the CPATA Act, with respect to board members' membership in other organizations.

The CEO advised that the Nominating and Board Development Committee initiated their discussions on how to consider membership in various professional associations/organizations. An estimated time of completion for that work was not available.

Director Eligibility to Run for Election

The Committee agreed there should be a by-law that identifies conflicts for election candidates, and that the Nominations and Board Development Committee should consider this matter and provide a recommendation to the Board.

The CEO was directed to request that the Nominations and Board Development Committee consider, research, including legal research, and provide a recommendation to the Board regarding by-law provisions for conflicts for election candidates.

The CEO advised that the Nominating and Board Development Committee initiated their discussions on eligibility criteria for Directors but that there was no urgency given that the next elections will occur in 2024.

Director Attendance at Committee Meetings

During the September 2022 board meeting, the board asked the Governance Committee to discuss director attendance at Committee meetings and provide a recommendation

The Chair explained that the original intent was to allow new board members to observe meetings so they could learn more about the committees for which they are eligible for membership, and to better understand their work. The opportunity to observe committee meetings as a guest will allow new board members to consider which committees they may wish to serve on in future.

The Committee recommended that new Board members may attend one (1) meeting of each of the committees for which they are eligible for membership as an observer to better understand their work.

CEO Succession

The Chair and CEO provided an update on the CEO/Registrar search.

CEO Evaluation

The Committee discussed developing a CEO evaluation framework that was connected to the strategic plan and Board Policy No. 5.

The Committee noted that Boyden created the CEO position profile and would be well equipped to work on this project.

The Committee discussed recommending the creation of a Human Resource Committee, consisting of the Chair and Vice Chair of the Board, and Chair of the Audit & Risk Committee to provide annual CEO compensation recommendations to the Board.

The CEO explained that creating a Human Resource Committee to facilitate the annual CEO evaluation and provide recommendations for compensation is not necessary, and would be burdensome, given the limited staff capacity to support committees. The CEO recommended a third-party be hired to facilitate the CEO evaluation process. The Chair and Vice-Chair would liaise with the third-party provider to conduct the evaluation and would receive the report prior to it being presented to the Board. The Committee agreed with this approach.

In response to a committee member question regarding how succession planning would be handled in the absence of an HR committee, the CEO confirmed that succession planning is a requirement across the organization; the CEO is responsible for succession planning for staff and for preparing a CEO succession plan. Establishing a succession plan will be one of the performance criteria for the CEO, and therefore will be covered during the CEO annual performance evaluation.

The CEO further advised that the by-laws allow for the appointment of a Deputy CEO. The Chair expressed concern about appointing a Deputy CEO, as that may have the unintended consequence of the Deputy CEO forming the expectation that they will automatically become the next CEO if the position becomes vacant. The Chair preferred to appoint the Deputy Registrar as “interim or acting” CEO until the vacancy was filled, if needed. The Committee agreed that there should be a back-up assigned for signing authority, and that it should likely be the Deputy Registrar.

The Chair noted that the process regarding the third-party CEO evaluation be reflected in the hiring process with candidates.

The Committee recommended that a third-party be engaged to facilitate the CEO evaluation process.

AUDIT & RISK COMMITTEE MEETING REPORT – SEPTEMBER 7, 2022, AND OCTOBER 20, 2022

Attendance: Bob Plamondon, Chair, Iris Almeida-Côté, Maureen Rogers, Jeff Astle

Darrel Pink, CEO, Sean Walker, CFO, Bryce Cross (Baker Tilly – Risk Consultant)

Following the call to order and no declaration of conflicts, the Chair invited members of the Committee to introduce themselves. The committee has discussed the use of an Action Items tracking document that will accompany the meeting materials and allow Committee members to review progress on outstanding projects and tasks.

Committee Terms of Reference

The Terms of Reference (ToR) were reviewed by the Committee. It was noted that the name of the Committee is “Audit & Risk” in accordance with CPATA’s bylaws. This language is being corrected on the ToR’s, CPATA’s website and materials. There was a small typo found in the ToR and will be corrected. The Committee felt that the ToR are very long but will wait awhile to get acclimated before requesting any changes be made. Committee members discussed the need to have additional orientation materials made available and that a portion of each meeting (e.g. 20 minutes) should be dedicated to orientation and education about CPATA.

Committee Work Plan/Macro Agenda

The Committee review the detailed Work Plan/Macro Agenda and discussed the overall approach and how the Committee will interact with the Board of Directors and other Committees with respect to reporting and following timelines.

Work Plan/Macro Agenda Notes:

- The Annual License Fee has been set at \$1,000 for both 2022 and 2023. Therefore, there is limited ability to adjust revenue budgets and expectations.
- The competency initiative has been approved by the board and is a multi year project ranging from 2022 to 2024.
- The vast majority of the budgeted expenses are fixed about 25% of expenses are related to projects and initiatives.
- Committee work plan will include preparing an investment policy/plan and the financial reserves policy.

Internal Financial Statement package review (July and August 2022)

The Committee reviewed the internal financial statement packages for July and August 2022. The Committee members asked for that 1-page financial summary be added to meeting package to highlight significant variances year-to-date and for the year-end forecast. This was incorporated for the meeting in October.

Legislative Compliance

The Legislative Compliance memos were reviewed by the Committee, and it was noted that we are required to add in additional reporting areas to the memo, including items related to the Privacy Act and Access to Information. In addition, the annual legislative reporting obligations of the College have been added to the member for the October meeting as well.

CPATA is currently exempt from the new Accessibility Act due to the small size of the organization.

Enterprise and Regulatory Risk items:

The Committee meeting in October had a large focus on Enterprise and Regulatory Risk. The Committee was provided with a copy of the current Risk Register and also the presentation that was previously shared with Staff and the Board. The Consultant (Bryce Cross) who has provided assistance in the development of the documents attended the meeting for support as well.

The CEO provided background information on the difference between Enterprise and Regulatory risks and why it is important for regulators to be cognizant of the risks associated with the profession, such as discipline and complaints against Agents, size, demographics and sustainability of the profession. Also, risks exist related to outside groups and organizations such as government and other regulators (e.g. Law Societies, engineers, accountants, etc.).

The Committee discussed the Risk Register and the overarching methodology CPATA should be using for the Risk Management program. A few examples of the methodology include:

- At each meeting or at least quarterly the risk register should be updated and any changes or rankings or impacts or likelihood etc. be highlighted. Visual cues should be used to identify changes such as arrows, colours, highlights.
- The Committee noted that several parts of the checklist were subjective. The Chair clarified that the intent was to be more of a self-evaluation rather than a third-party evaluation.
- We are currently seeing a “Knowledge based economy” with data and expertise along with Cyber Security being significant areas of focus and risk.

- The Committee will continue to review and update the Risk Register with a focus on the highest priority items. Looking at the measurement, timelines and mitigation items that can be put in place to eliminate the risk or reduce the severity.
- We will need to carefully consider what info will be published and made public as to not raise any unnecessary concerns.
- The Committee has asked for four Quarterly updates on the Risk work.

Budget Planning for 2023:

At the October meeting the Committee spent time reviewing the budget planning assumptions and draft schedules for 2023. The Committee reviewed the initial draft budget documents. The plan is to incorporate any strategic items that have a financial impact into the next draft of the budget. The Committee will review the budget document at the next meeting on November 23rd and then make recommendations for the budget for the Board's approval at the December Board meeting.

Overall budget planning Notes:

- CPATA is currently recruiting for a new CEO who is expected to be in place by the end of 2022. This individual is expected to have input on the budget process for 2023 and will be consulted as soon as possible.
- The current version of the draft budget has a deficit presented. We are working on mitigation scenarios to attempt to "balance the budget". In addition, the Board of Directors is meeting in November to discuss Strategic Priorities, which may impact the budget as well and will need to be incorporated into the next draft version.
- As CPATA is a Not-for-Profit regulator the overarching budget principle is to "live within our means" while also establishing financial reserves sufficient enough to cover any extraordinary expenses or loss of income that may occur in any given year.

Income Related items:

- CPATA has limited ability to influence the Annual License fee income amounts. We are not permitted to adjust the annual fee from the amount already present in the by-laws for 2022 and 2023. The fee has been set based on a "Full Practising Class 1" fee of \$1,000. Agents with both Patent and Agent Licenses receive a 50% discount on the second license (\$1,500 total).
- The budgeted number of practising Class 1 agents has been kept consistent with that used for 2022 – 2,250 single and multiple license agents. We do not yet have the history to be able to project the annual change in license numbers.

- The budget for Exam fees income has been increased to reflect the number of writers for the fall of 2022. This figure will be revisited once all the registrations have been received for 2022.

Expense related items:

- Wages and Benefits – We have added additional staff in 2022 in accordance with the staffing plan and have seen staffing costs rise due to new hires.
- Board and Committee compensation and meeting costs – in 2022 the Governance and Regulatory committees have been populated with only a small number (2) of Board of Director positions left to be filled. The proposed change to Board and Committee remuneration along with the increased full slate of committee meetings for 2023 has increased this budget item significantly.
- Outsourced professional fees – CPATA has been using a model of outsourcing Financial, Complaints and Discipline and some Communications roles in an attempt to reduce costs and gain access to various expertise without hiring them as employees.
- Professional & Consulting fees – projected costs for Human Resource recruitment and IT systems are expected to decrease substantially for 2023 but are mostly offset by the increase in Legal fees (in addition to the outsourced management of discipline) for the investigations and hearings that are planned and forecasted to incur.
- Insurance fees have substantially exceeded what was expected and budgeted for 2022 especially in the Directors & Officers (D&O) insurance. The budget for 2023 has been set based on the current and expected increases for the 2023 renewals (10-20% increases).
- Office & Administrative expenses are budgeted to increase for 2023 based on increased costs for software packages and credit card fees. There is a potential that we will be able to now charge a surcharge on credit card payments for fees given a recent class action lawsuit and charge in rules. This is currently being investigated and steps being put in place to allow for the surcharge.

Cash Flow and balances

- The initial calculations based on the draft budget indicate that CPATA will have sufficient cash on hand each month during the year to cover payment of required expenses.

Memorandum

TO	Board of Directors
FROM	Darrel Pink
DATE	November 12, 2022
SUBJECT	CEO Report

Message

CNAR

Jen Slabodkin, Andres Diaz and I presented to the CNAR Conference on October 26. We presented live and had previously recorded the presentation which is available to those who were not able to attend our session and for those who attended the Conference remotely. A copy of the slides is included in the meeting package. The presentation was well received and there were many congratulations (and some envy) for what we have been able to do. It was gratifying to hear from experts in regulation who validated our work and approaches. I have had some follow up inquiries that I will pursue.

Our approaches to being virtual, independence, professionalizing regulation, governance and remuneration and building competence from first principles were of particular interest.

The CNAR conference attracted 470 in person registrants and about 200 on-line participants. It is the largest annual gathering of professional regulators in Canada and gives a chance to see what the most progressive ones are doing – both through presentations and one-one-one conversations.

Of particular note was the time I spent with John Murray the CEO of the College of Immigration and Citizenship Consultants. There are many things, as new national regulators, we can and should collaborate on.

IPIC

The Board was present at the IPIC Conference and is aware of the presentation we made there. It is noteworthy that several present and former IPIC leaders publicly emphasized their views that CPATA should be engaged in dealing with 'unauthorized practice'. I noted in response to questions that very limited exclusive jurisdiction and much of their concern is about activities that we do not have broad authority over. I also emphasized my view that dealing with UAP requires considerable resource, which are seen as being used for the benefit of the profession rather than the public. CPATA will likely want to develop a policy in this area so the profession and government understands how the provisions in the

Act are seen by us. I have views on the proper threshold for CPATA intervention, that can make their way into a policy in due course.

Committees

All Board committees are now operating on a regular schedule. Their initial on ongoing reports are included in this package. We are developing 'action lists' for each committee so they can track the work they are doing.

Each committee is developing a work plan. I expect early in 2023, they will be ready to come to the Board for discussion. It has been necessary for the committees to become comfortable with their mandates, for the members to get to know each other and for some of their initial priorities to be addressed before they can focus on the longer terms.

We will need to develop an effective mechanism for the regulatory committees to report to the Board. It's on my 'to do' list.

2022 Exams

These have been administered and went very smoothly. Fewer hiccups than last year. Jen and Thiphaine did a bi-lingual orientation session for exam writers which was well received. Providing as much information as possible to writers goes far to minimizing anxiety.

Budget

We have begun working on the 2023 budget and have shared an early draft with the A&RC. The budget will be finalized after the November 11 Planning Session. I note we are now seeing a more steady stream of complaints and as the complaints investigation and discipline processes mature, there is a need for more resources. An area which saw few expenses this year, will grow considerably next.

We are also budgeting for a new remuneration regime, assuming it will be adopted by the Board.

The competence initiative will also entail significant resources in 2023.

Competence – next steps

In anticipation that our competence work will be a strategic priority, we are investing some resources to connect with the universities who are offering IP programs and clinics. Most are law school centered.

Our goal is create a discussion paper on training for new IP professionals and to canvass what is happening in Canada as well as in a few other comparable jurisdictions. Though we have identified training and education as a priority, it will require significant time a resources to determine, in consultation with the profession, what a desirable training regime will involve. WE are using the services of an Alberta based patent Agent, who has been involved in our competence work, to assist us.

Leadership Transition

I am filling in many of the details of the transition process for the new CEO. I am mindful of Andrea's advice to us that success will be measured by how smooth departure of the present CEO is and equally how smooth the landing of the new CEO is. The runway metaphor is embedded in my mind.

New Directors

We have provided some input to ISEC on the candidates for the Board. By the time we meet in November, we hope they will be joining us.

Personal Leave

I am traveling from November 14 to December 4. Though it is intended to be a real vacation, I will have my computer and will stay in touch on a myriad of things that are happening.

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

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

Memorandum

TO	Board of Directors
FROM	Governance Committee
DATE	October 12, 2022
SUBJECT	<i>Regulatory Checklist</i>

Message

The Board will recall it looked at Harry Cayton's Regulatory Checklist several months ago. It did a quick analysis of CPATA's standing/compliance with each element and referred the issue to the Governance Committee for further review.

The GC has concluded CPATA adherence to the elements of the checklist \can constitute an important public statement about the nature of CPATA's regulation.

The GC recommends the Board, in a facilitated discussion dive deeply into each of the elements to en articulate the extent of our compliance and the work that needs to be done to improve. It is proposed this take place at the January Committee of the Whole Meeting. Such a discussion will also serve as a valuable introduction to the new CEO and the new directors.

The Board is requested to discuss this and determine if it agrees with this approach

Checklist for Regulatory Boards

Introduction

In its efforts to be a modern risk-based regulator, the CPATA Board had determined it will use a checklist developed by Harry Cayton to evaluate how it and CPATA are doing to meet its objectives.

The Governance Committee has considered the Checklist and recommends the Board undertake a deep dive into its work and the College's regulatory work to determine the state of its adherence to the items on the Checklist. Key for the Board is to ensure this is not a superficial process but, in keeping with commitments to make evidence-based decisions, the Board must identify the facts that indicate where CPATA lies on the spectrum of compliance.

This review should engage the CEO & Registrar, staff who support committees, committee chairs and

outside consultants who work with CPATA.

Process

In advance of the scheduled meeting where the Checklist will be reviewed, the Board Chair and the CEO should engage with all who will participate in the review. The Chair may determine an outside facilitator could assist the Board in reviewing the checklist and if so, they should be engaged early enough to assist in gathering information and the identification of issues to allow for a critical review of all items in the Checklist.

For each item the Board should ask ‘How can CPATA publicly demonstrate its adherence to or advancement of the standard?’ Documenting the evidence in support of its compliance will create a record for future reviews.

The Governance Committee has recommended this process should be the single topic on a Committee of the Whole agenda.

Harry Cayton Indicators	CPATA’s initial assessment in 2022	CPATA’s 2023 assessment
Be clear about your purpose as a regulator; keep the public interest as your unremitting focus focus	Adopted Regulatory Objectives, Standards and Principles to guide all regulatory work. Material presented to the Board for decisions is always connected to public interest and, if applicable, the ROs	
Set long-term aims and shorter-term objectives	Short -term – 2022-24 Business Plan Long term – Development of Strategic Framework for Board discussion – October 2022	
Agree how to deliver and monitor those aims and objectives	Beginning – First Monitoring Report presented March 2022 Outcomes measurement to be developed so there is reporting on all regulatory work and the approved objectives	
Have competencies for board members whether	Board adopted a Skills and Attributes Matrix	

<p>elected or appointed and apply them to everyone though a selection or nominations process, induction, and regular appraisal</p>	<p>Shared to ISED to Hopefully-govern Board Appointments; shared with candidates for elected Directors</p>	
<p>Have a code of conduct for board members and enforce it</p>	<p>Adopted Board Policy No. 3. Proposed by-law revisions regarding removal of officers will allow for enforcing the Code of Conduct</p>	
<p>Declare conflicts of interest, keep a register of interests, and ensure that decisions are not tainted by partiality or bias</p>	<p>Conflicts check a part of each agenda. To date none reported</p>	
<p>Behave with respect and courtesy towards board members and others</p>		
<p>Commit to corporate decision-making and to corporate responsibility for decisions made</p>		
<p>Appoint a competent CEO and trust them</p>	<p>Regular performance reviews and clear lines of accountability demonstrate that a competent and trustworthy CEO was appointed</p>	
<p>Ask for reports that include what you need to know not everything you might want to know</p>	<p>Nature of reporting to the Board will continue to evolve to meet this standard. Reporting should be consistent and reflect information such as costs, impact/effect on current policy, and if stakeholder consultation has taken place.</p>	
<p>Make clear decisions and follow-up on their implementation</p>	<p>Board resolutions are circulated in advance, refined as required and matters are reported on by the CEO</p>	

<p>Provide the resources needed to deliver your objectives</p>	<p>Board approves the budget which is designed around planned activities and approved programs</p>	
<p>Make independence, fairness, and justice for the public and registrants the core values of registration and complaints and discipline</p>	<p>CPATA Act established independent Investigation and Discipline Committees, Board established independent Registration Committees – all have final decision-making authority. Directors do not participate in regulatory decision-making</p>	
<p>Continue to keep the public interest as your unremitting focus</p>	<p>Links and reference to the public interest is an aspect of all Board policy decisions</p>	

Memorandum

TO	Board of Directors
FROM	Governance Committee
DATE	September 23, 2022
SUBJECT	Board and Committee Remuneration

Message

The CPATA Act contemplates the Board will set a rate for remuneration for Directors. A by-law authority is included in s. 75 to do so.

The start-up Board, appointed in August 2019, worked for over a year on establishing the College. They met with government officials, retained the interim CEO and Registrar, and developed the first set of Board Policies. This was done with no compensation or reimbursement of expenses.

The initial approach to remuneration was placed in the *Board By-laws*. The Board's approach was to adopt a model based on what the Government of Canada paid board members in various situations. Treasury Board policy was the basis for the approved remuneration.

It was recognized a more thorough review would be required once CPATA was operational and we had more experience with the range of governance, oversight and advisory roles of directors. The Board assigned this work to the Governance Committee which was mandated to address a long-term plan for Board and Committee remuneration.

The Committee had received a proposal from a large consulting firm to undertake this work. The proposal was generic and did not resonate with the Committee. It preferred to seek advice from someone who understood CPATA, as a start-up regulator, the world of professional regulation and had experience in not-for-profit governance. The Committee asked Allan Fineblit KC of Winnipeg, the former CEO of the Law Society of Manitoba and a consultant to the start- CPATA Board, to provide advice to CPATA based on his experience with us and the broader areas the Committee wanted reflected in consideration of a fair and comprehensive approach to Board and Committee remuneration.

Core to CPATA's design as an independent regulator is a commitment to fair remuneration for all who participate in governance and regulation. This is in contrast to the model of most self-governing

professions, where volunteerism or giving back to the profession through volunteering for the regulator are stated or implicit expectations. It is for this reason many self-governing bodies pay no remuneration to board or committee members who belong to their profession.

Fair remuneration for all will allow CPATA to recruit well qualified people, with diverse backgrounds and skills, to participate in all aspects of its regulation. The Committee believes this principle is foundational and will strengthen CPATA and create opportunities to attract excellent directors and committee members.

The Committee received Me. Fineblit's draft report and asked for clarification in some areas. The Committee supported the thrust of his recommendations.

Here is a summary of his recommendations

Annual honourarium for Directors:

Chair - \$20,000

Vice-Chair - \$15,000

Directors - \$5,000

Per diem for meeting attendance –

Chair - \$525/half day

Vice-Chair - \$450/half day

Directors - \$350/half day, \$150(<2 hrs)

Committee Chair - \$525/half day

Committee members - \$350/half day, \$150(<2 hrs)

Adjudicative/Discipline Committee Hearing Panel members –

First 2 days - \$350/half day

Subsequent days - \$500/half day

Travel – for all

> 4 hours - \$350

< 4 hours - \$175

There is **no per diem paid for meeting preparation** or other CPATA related work.

The Committee recommends Allan's advice to the Board. In its review, while it thoroughly considered each area of advice, it believed the Committee should not 'tinker' with the numbers. They were put together as a package and the GC recommends the same approach to the Board.

The Committee notes there is no specific authority in the Act regarding compensation for Committees, but it believes the lead up to s. 75 of the Act (**75 (1)** The Board may make by-laws **respecting any matter necessary to carry on the activities of the College**, including by-laws...) provides the basis for adopting this plan for Committee members, who bring expertise and dedication to their regulatory and advisory work.

The new remuneration regime will come into effect with the coming into force of by-law amendments.



Compensation Policy for CPATA's Boards and Committees

Abstract

This Report recommends a straight forward comprehensive approach to providing fair and reasonable remuneration to CPATA Directors and Committee Members

Allan Fineblit KC

The retainer

I have been asked by the CPATA Governance Committee to make a recommendation to them on a fair and reasonable compensation policy for the CPATA Board and its Committee members. From the outset my advice to the Governance Committee has been that there is not a lot of “science” to setting this kind of policy. It ultimately involves good judgement about what is the right policy for CPATA. That judgement of course will need to be informed by looking at the options, with some analysis, particularly about some of the important pros and cons of each option.

That early advice was confirmed when I did an environmental scan of Board and Committee compensation policies in other regulatory bodies and other not for profit organizations. (I am sending an anonymized summary of that information with this report). There is a wide range of practices and little by way of a pattern or template that establishes any clear set of underlying common principles. My sense is that people use their “gut” to set compensation for Boards and Committees based on the culture of the organization, the expectations of its stakeholders and the local environment.

I was directed by the Governance Committee to use a few basic principles to underlie CPATA’s new policy. The policy should be fair, reasonable, transparent and administratively simple. It should reflect the fact that CPATA is not a charity to which people should be asked to donate their valuable time, but it is also not a business, which will make significant profits that might be argued justify significant compensation.

No compensation?

The research studies I read suggest that most “associations” (a term which usually includes both charities and non-charitable not-for-profits, but excludes for profit businesses) pay nothing to Board or Committee members including to their Board Chairs. Some of the rationales for this include:

- Board and Committee members are seen as volunteers;
- Payment might encourage Board and Committee members to feel more like employees and move them to be too “hands on” or operational in their work;
- Registrants (in CPATA’s case called “licensees”) expect their money to be spent on regulatory activities and do not see that direct connection when it comes to compensation for Boards and Committees;
- Other stakeholders (government in particular) might be left with the impression that Board members are acting in a self-interested way by using association funds to pay Board and Committee members (especially if Boards are setting their own compensation or if the compensation amounts are seen as overly generous);
- It encourages people to go along with the majority and not make waves for fear of losing their “paycheck”;
- It is not a necessary expense because Board and Committee members are rarely motivated by compensation and most often participate because of a connection to the mission.

Associations that do compensate Boards and/or Committees explain their rationales using one or several of these reasons:

- The organization is not a charity and should not ask people to donate their time;
- Compensation makes Board and Committee members more accountable for their performance. This seems to be especially true when associations have formalized processes for performance review of their Board and Committee members;
- Compensating Board and Committee members for their time promotes diversity (particularly economic diversity). This is especially important for associations where there may be a wide range of income levels among those eligible for Board and Committee membership;
- Compensation improves attendance, especially when the compensation is tied to meeting attendance;
- It helps with recruitment;
- People are being asked to give significant amounts of their time which may impact on their income from their employment or business and should be compensated for that loss (a similar rationale is that people are giving up valuable personal or family time).

The Act which established CPATA specifically permits the payment of remuneration to directors and, the CPATA Board has already decided that compensation is appropriate for its Board members, so why am I spending time setting out the rationales for and against compensation? Because it is important for the Governance Committee to know the reasons why some do not compensate and even more important to be able to clearly articulate why CPATA has decided to compensate its Board and Committee members and, to be clear on how they believe it will benefit the organization.

The models worth looking at

There are dozens of models used by Canadian organizations to compensate their Boards and Committees. There are five of those models that are worth noting:

1. Most Canadian professional regulatory bodies now include public representatives on their governing bodies (Boards) and Committees. Some have Board Compensation policies that differentiate between public representatives and licensee Board members either setting different rates of compensation or, more commonly, **paying only the public representatives** and not the licensee Board members.

The rationale for paying public representatives but not licensee Board members include:

- These individuals draw no benefit from being part of that regulated profession and have no professional responsibility to give back to that profession;
- Recruitment of public representatives is greatly enhanced by having compensation available. This rationale is commonly given when a regulatory body is looking for highly specialized skills in their public representatives;

Most regulators however do not differentiate in how they pay Board and Committee members based on whether they are licensees or public representatives. The primary reason given for this is that it promotes a culture of equality: “They are all valued Board members regardless of how they got here”.

In my view this is a compelling point. It is hard to make a case for any differential compensation based on how the Board or Committee member got there.

2. Some organizations pay Board and Committee members an **annual honorarium** or allowance. These are not generally intended to compensate for all the time that is normally dedicated to meetings and other Board and Committee duties. It is instead intended as a way of tangibly recognizing the time and effort that is being given and in a small way compensating for some of the lost income, or lost family and leisure time. The main benefit of this kind of policy is its simplicity and its transparency. Everyone knows what every Board and Committee member is paid. There is no time keeping, reporting or “billing” required.

The “cons” associated with this kind of policy include:

- It is a blunt instrument that does not differentiate between those who have heavy loads and those with lighter ones;
- A small honorarium is inadequate to accomplish the objectives of Board compensation (e.g., offsetting some of the lost earning opportunity). That concern could of course be addressed by paying a larger honorarium.
- An honorarium does little to encourage active participation or attendance. You are paid the same, regardless of whether you are on one or many Committees, prepare well or poorly and whether you show up regularly or occasionally.

Many organizations pay their Board Chair a special honorarium to reflect the additional time needed to fulfill that role. The amounts vary widely, which may reflect variances in the expectations or the duties assigned to the Board Chair or may be simply the result of the organizations culture. Some organizations pay a special honorarium to their Committee Chairs and Board Vice-Chair.

The honorarium approach should be kept on the table because it meets two key CPATA objectives of transparency and simplicity. It may be best used however in combination with another compensation model to address the cons associated with it.

3. Some organizations pay Board and Committee members on an **hourly basis**. This encourages Board and Committee members to prepare well and attend regularly. It differentiates between those that take on a lot of work and those that do not. It is the fairest way to compensate for lost work or personal time. It is however, far from a perfect model.

Paying Board and Committee members on an hourly basis tends to be expensive. While ultimately the cost of any model depends in part on the rate set, overall, because it compensates for every hour spent, an hourly rate model tends to be the most expensive. It also creates a significant administrative burden for the Board and Committee members and for the organization’s financial administration. Board and Committee members must keep their time and submit an account regularly. Hourly billing takes discipline and practice and not every CPATA Board and Committee member will be experienced hourly billers.

It is even worse for the administration of the organizations. They must review and “audit” the accounts they receive. Why did Board member A bill three hours for a meeting and Board

member B only billed two? Why did it take Committee member C eighteen hours to read all the meeting material and Committee member D billed for only five? And by the way, what am I supposed to do with that discrepancy? Even if those are accurate reflections of the time it took each to read the materials, is it appropriate to pay C more than we pay D simply because she is a slower reader?

The hourly compensation model is also the least transparent model because every Board and Committee member will be paid a different amount based on how much time they put in.

Because the hourly model is the most expensive, administratively burdensome and not that transparent, it does not seem like a good model for CPATA.

4. Probably the most common compensation model for those not-for-profit organizations that do compensate Boards and Committees is the **per diem** model. Board and Committee members are paid for the meetings they attend at a fixed rate intended to reflect not only the meeting time but also some expected preparation time.

This model is attractive because it is reasonably transparent (the rates are published and uniform) and, it is fairly easy to administer. Often the Chair gets a higher per diem to reflect the additional workload preparing for meetings. Per diems are usually half day rates based on a minimum number of hours and if a meeting is short the payment is hourly instead.

This model is relatively easy to administer but does require some system to record attendance at meetings and to transmit that information to the organization's financial administration. Some have this done by the Board secretary. Others ask Board and Committee members to fill out a form certifying their attendance and submit it to the organization.

The big "pro" of a per diem model (besides its simplicity and transparency) is that it promotes attendance at meetings. If you do not come to the meeting, you do not get paid. There are also some "cons". It is meeting based and a lot of the work of some Board and Committee members is not meeting based. For example, some prepare presentations for the Board or a Committee, some act as an informal advisor to the CEO, and some attend events representing the organization.

The per diem model is popular for good reason. It is simple, straightforward and transparent. It is the model CPATA now uses and is worth keeping alive as an option for CPATA in the future alone or in combination with one or more of the other models.

5. Some organizations offer "**perks**" as a way of rewarding Board and Committee members for their service, either alone or along with some other form of compensation. Examples of those I have seen are:
 - Spousal travel to meetings is paid for;
 - Board members are enrolled in the organization's health and benefits plan;

- Board members are permitted to designate a charity to which the organization will make a donation on their behalf.

The rationale for these perks as compensation include that they are sometimes more attractive to potential Board members, some are non-taxable and for those that pay for spousal travel it is seen as a way to compensate for lost family time.

The “cons” are primarily about optics. I have been calling these “perks” and that is how they may be seen by stakeholders. They have no connection to the amount of time and effort a Board or Committee member spends on organization work. Because they often are perceived negatively, I recommend **not** including perks in the CPATA compensation model, at least not initially. It may be that once CPATA is a more mature organization where the organizational culture is well developed and well understood by stakeholders that some of these benefits can be added into the Board compensation package.

Some points to ponder

1. Most organizations treat their Board and Committees Chairs differently that the rest of the Board or Committee members. CPATA’s current policy pays the Board Chair a higher per diem rate (\$750.00 v \$550.00) based on the Federal Treasury Board guidelines that are the template used to develop the current policy. Most organizations do pay more to their Chair not because their time is more valuable but because the role of Chair usually requires a lot more time and effort. Similarly, some organizations pay their Board Vice Chair (sometimes called the “Chair Elect”) and committee Chairs more for the same reason.
Many use a different compensation model entirely, for example, paying Board and Committee members on a per diem basis but the Chair is not paid a per diem amount and instead gets an annual stipend or honorarium.
2. CPATA’s current policy does not address compensation for Committee members. The CPATA legislation that specifically permits compensation to be paid to Board members is silent about Committee members being paid. That should not be an impediment to paying Committee members because the Act gives the Board broad powers to make by-laws on any matter necessary to carry out the activities of CPATA which would include compensation of Committee members.
There seems to be no good policy basis to pay Board members but not Committee members. The rationale’s set out earlier apply equally to Committee and Board members. But, should Committee members be compensated at the same rate as the Board? Generally, Board membership carries not only responsibility for attending and participating in meetings, but also a fiduciary duty to steward the organization and monitor performance overall. There are also risks associated with being a director of any organization that generally do not apply to Committee members. Those may be good reasons to differentiate the rates of compensation or, to look at different models for Board and Committee work.
3. One type of committee is generally treated a bit differently when it comes to compensation. Adjudicative committees (those that hold hearings) are generally compensated based on the length of the hearing. Because some hearings can be lengthy and can have a large impact on the members’ day jobs or personal and family time, compensation tends to be generous. (In the case of CPATA only the Discipline Committee will hold those kind of hearings). There are

dozens of models. Some for example, pay rates that increase after the first or second day of a hearing. Because hearing panels are usually small (often just 3 members), the financial impact, even of generous compensation, is small and the benefit of being able to attract people to sit on longer hearings, seems worth it.

4. Almost all Boards pay for travel expenses and some pay for travel time. For those living outside of major centers especially, travel time can be significant. Because CPATA is a national regulator every committee that meets in person will have a significant number of members travelling to that meeting. There will of course be big differences in the amount of travel time needed to get to a meeting and, for some, travel time will be very significant. CPATA's current policy includes the per diem rate for travel.

Travel right now is a bit unpredictable. In the future how much will CPATA's Board and Committee meet in person and how much will be virtual? These are the days of cancelled and delayed flights which can add greatly to travel time (and frustration!). Is that a short-term problem or the new reality of travel?

I am of the view that there needs to be some recognition of travel time and the per diem model of payment for travel makes the most sense. That of course can be revisited once CPATA has a better sense of how often there will in person meetings and what the world of travel feels like once the dust settles a bit.

Performance measurement

An organization that pays its Board and Committees, does so in recognition of the contribution Board and Committee members make to the organization, and the sacrifices of lost earning time and/or lost family and leisure time. Along with that goes some heightened expectation among stakeholders that Board and Committee members will "earn" their compensation by way of the work they do and the value they add to the organization.

Many organizations address that by having in place some kind of regular (usually annual) performance review process. These are usually self-assessments intended to focus Board and Committee members on the expectations the organization has of them and how they performed against those. Often the Chair will schedule a meeting annually to review the self-assessment and provide their own feedback. There are many templates for this kind of assessment available. Similarly, many organizations have in place an annual process for the Chair to receive feedback on their own performance, again using some form of survey document.

The magic number

Aside from choosing the model for compensation CPATA will need to decide how much it will pay in any model it chooses. What is the magic number? There is none, and any amount selected will be seen by some as overly generous and by others as not generous enough. There is no science to picking the number and proof of that lies in the fact that regulators in Canada are all over the compensation map (literally and figuratively). It is even more difficult for CPATA to find the right number because it is a national regulator, so there will be no common compensation culture. There appear to be big differences between the "norm" in Regina and in Toronto.

One of the rationales for paying Board and Committee members is to partially replace some of the income they may be foregoing because of the time spent on their Board commitments. While the goal is not to fully replace any lost income, could the amount of lost income be a useful guide for setting compensation amounts? CPATA Board and Committee members will come from a wide variety of employment or business backgrounds. Some will be salaried employees. Some of those salaried employees will be given time off with pay for CPATA work. Some will be expected to take unpaid time off or vacation time. Other Board and Committee members will be self-employed or earn their income based on what they produce. Even for those people who are giving up “billable hours” for CPATA work there will be a wide variance in how much they are giving up depending on how and how much, they bill.

There is one hugely important point to keep in mind when setting the amount of compensation for Board and Committee members. No one will be joining the CPATA Board or one of its committees for the money. While lost income may deter some people and is a good rationale for some form of compensation, those who do participate do so for a lot of other reasons.

For some it will be the prestige of being a member of their own governing body, or for public representatives, the association with a national regulatory body like CPATA (the “it looks good on a CV” reason). For some it will be the opportunity to do interesting work. In my limited experience with CPATA it has been nothing but interesting work and I remember telling Tom (he luckily ignored me) that he really didn’t have to pay me because it was so much fun. Some will value the opportunity to help shape the future of patent and trade mark work in Canada. For others it will be seen as a good networking opportunity. Whatever the reason(s) people participate, compensation will be very low on that list of reasons. All that is to say that in setting the amount of compensation the number can be relatively modest given that there are other benefits to being on a CPATA Committee or its Board.

My recommendations

1. I recommend that CPATA use a hybrid model for compensating its Board: a combination of an annual honorarium (paid in quarterly installments) and a per diem payment for meetings attended. This model will allow for compensation that reflects both the non-meeting work required (including travel time) and, by paying for meeting attendance as well, CPATA derives the benefit of recognizing differences in individual meeting commitments. This model is relatively simple to administer (although it will require some method of recording and reporting meeting attendance), it is quite transparent and reasonably fair.

As noted earlier there is no real science to setting the amount of compensation, especially for a national organization with licensees and public representatives of very diverse backgrounds. The “magic numbers” I recommend struck me as fair, and not overly frugal or overly generous. I recommend the annual honorarium be \$5000.00 and the per diem rate be \$350.00 per half day meeting. This is be higher than the current policy amount of \$550.00 per day but it is not out of line with what many other regulatory bodies pay and, even more importantly seems fair and reasonable. For meetings less than 2 hours long, I recommend that the compensation should be \$150.00 per meeting.

2. I recommend that CPATA Committee members be paid the same per diem rate as I recommended for Board meetings but that there be no annual honorarium to reflect the fact that Committee work does not generally carry the same overall fiduciary responsibilities described earlier and so will generally require less non-meeting time.
3. For Committees that perform an adjudicative function I recommend the same per diem rate as is paid for other Committee meetings for the first 2 days of a hearing but, if a hearing goes longer, I recommend a higher rate for each additional half day beyond the 2 days of \$500.00 per half day. This will be pretty rarely required, but when it is required, it will help compensate those hearing panel members for the significant disruption a lengthy hearing can cause to their work and life.
4. I recommend a higher amount of compensation for Board and Committee Chairs. I recommend the Board Chair annual honorarium be \$20,000.00 and that the Chair's per diem for Board and Committee Chairs be 50% higher or \$525.00 per half day.
5. I recommend that the Vice Chair of the Board be paid an adjusted honorarium and per diem rate as well. It appears that the work of the Vice Chair, especially in these early days of CPATAs development, is almost equivalent to that of the Chair. That may diminish as CPATA becomes more settled and many of the start-up policies and procedures are established. For that reason, I am recommending the Vice Chair's annual honorarium be \$15,000.00 and the per diem for the Vice Chair be \$450.00 for each half day.

I am not making any recommendation at this time regarding extra compensation for other officer positions or for Committee Vice Chairs in part because I think it is too early to assess if some of those positions will require significantly more of a time commitment than ordinary Board or Committee membership. That issue should be revisited when the policy is next reviewed.

6. Speaking of which, I recommend that the Board and Committee compensation model and rates be reviewed every 2 years to determine if they continue to accomplish their objectives and continue to be fair and reasonable.
7. As noted above I am recommending payment for travel time using the per diem rates set out above. Once CPATA has a better sense of how much travel time it requires (how much of its work will be conducted virtually) it can better assess if that policy needs to be revisited.
8. I recommend that CPATA establish a process for an annual review of Board and Committee member performance. It does not need to be onerous (many organizations use an on-line survey and follow-up conversation with the Chair) and there are many generic models readily available. Having a system to review Board and Committee member performance does tie in nicely to the goals of Board and Committee compensation and adds to the credibility of the

rationales identified for paying it. A similar model should be developed for reviewing annually the performance of the Chairs of the Board and Committees.

9. The current CPATA Board and Committee Compensation policy does set out the rationale for paying compensation as well as the rates and other policies surrounding it. I recommend enhancing that narrative in the new policy to reflect the goals compensation is intended to achieve, the tie in to the performance review process and also a report on compensation paid annually to Board and Committee members (it can be generic and need not specify individual compensation received). This will enhance transparency and add to the credibility of the compensation model used.

Conclusion

I have recommended a set of Board and Committee compensation policies and the amounts that I think are reasonable. The CPATA Compensation Committee and the Board itself should however apply their own knowledge, experience and mostly importantly consider whether these recommendations feel right to them. If they do not feel right that suggests that some adjustments should be made because as I said way too often in this report, setting compensation in the CPATA context is much more of an art than a science.

Appendix A

Canvass of Other Regulators of Professions on Board and Committee Compensation

The list below does not include data obtained from a similar survey that was done by another organization. I was asked not to share the results because the participants had not consented to sharing their data. The information is listed by size of the organization from smallest number of licensees to largest:

1. Regulatory body pays no remuneration to Board or Committee members or to Chairs except public representatives. Publics representatives are paid \$75 per half day, \$125 for a full day and an additional \$125 for each meeting for preparation time.
2. Regulatory body pays no remuneration to Board or Committee members. Board Chair is paid an annual honorarium of \$10,000.
3. Body that has some regulatory functions and some representative functions pays \$150 per meeting.
4. Regulatory body pays no remuneration.
5. Regulatory body pays no remuneration except Board Chair is paid \$12,000 per year for a two-year term.
6. Regulatory body recently held a vote on paying Board members and it was defeated by one vote. Public representatives are paid by the government. Board Chair is paid \$50,000 annually and Vice Chair is paid \$15,000 annually. Both are adjusted annually to reflect inflation.
7. Regulatory Body pays \$500 per half day or \$135 per hour of meeting time (whichever is less), \$175 for evening meetings (any meeting that starts after 4:00 PM). The Board Chair is paid an additional annual honorarium of \$12,500 and the Chair elect is paid an additional honorarium of

- \$5,000. The only Committee Chair that receives an additional honorarium is the Chair of the Complaints Investigation Committee who is paid an additional \$10,000.
8. Regulatory body does not pay Board or Committee members except for public representatives who are paid \$200 per meeting. The Board Chair is paid an annual honorarium of \$50,000 and the Vice Chair is paid an annual honorarium of \$25,000. All meetings are held in one city and if the President or Vice President do not reside in that city, they are paid an additional \$5,000 and \$2,500 respectively (this additional amount was waived during Covid when meetings were all virtual). Committee members (except public representatives) are not paid, except for hearing tribunal panel members who are paid \$500 per day after the first 2 days of a hearing. Public representatives on hearings however, are paid the \$500 for all days including the first two. The organization also has a policy that the partner of the President and Vice-President may travel with them on organization business and that partner's travel expenses are paid by the organization.
 9. Regulatory body pays Board member \$400 per meeting and an additional \$200 for meeting preparation for each meeting attended.
 10. Regulatory body pays \$350 per half day of meetings and an annual honorarium of \$4,000 to Board members (all committees are made up of Board members so no special consideration for committees). The Chair is paid an annual honorarium of \$75,000 but is not paid the meeting per diem.
 11. Regulatory body pays nothing to Board or committee members. Board Chair is paid annual honorarium of \$45,000 and Vice Chair \$25,000.
 12. Regulatory body pays nothing to Board members but the Chair gets an honorarium of \$90,000. Public representatives are paid by government.
 13. Not a regulatory body but has some regulatory functions pays Board Chair \$45,000 annual honorarium. Other Board members receive an annual honorarium of \$12,000. In addition, all are paid \$1,500 per meeting and Committee Chairs are paid \$1750 per meeting they Chair. The organization also allows the Board members to participate in the organizations health benefits plan and all costs of that are covered by the organization.
 14. Insurer for Regulatory body pays all directors except the Board Chair and Vice Chair an annual honorarium of \$35,000. The Chair and Vice Chair are each paid an honorarium of \$50,000. Each committee membership adds \$4,000 to the honorarium except for chairs, who are paid an honorarium of \$10,000 (the Audit Committee Chair is paid a higher honorarium of \$14,000. Everyone is also paid \$1,250 for each Board meeting attended and \$750 for each committee meeting attended.
 15. National organization that is a coordinating body for provincial regulators pays nothing except an annual honorarium to the Board Chair of \$50,000.

Memorandum

TO	Board of Directors
FROM	Governance Committee
DATE	October 12, 2022
SUBJECT	Board meeting evaluation survey (after each meeting)

Message

The Governance Committee, in accordance with its work plan, has developed a straightforward evaluation for the Board's consideration.

The intention is it will be a part of each Board package and is to be completed and shared with the Chair and CEO immediately following the meeting. The intent is to assist in meeting planning by identifying what is going well and what needs improvement.

CPATA BOARD MEETING EVALUATION		
<i>November 11-12, 2022</i>	<i>Name -</i>	<i>Comment</i>
The agenda was clear, supported by the necessary documents and delivered with time to review in advance.		
The Chair guided the meeting effectively, according to the agenda, so the Board could engage in strategic decision-making.		
The Chair encouraged active and productive discussion: all members were invited to participate and share their opinions, and opinions were treated respectfully.		
Members participated responsibly, seeming well prepared to discuss materials sent in advance.		
Feedback from previous surveys has been appropriately addressed, discussed, or otherwise considered.		
Time was well spent, and I enjoyed connecting with the other Board members.		

Following each meeting, the Chair/CEO will report to the Board on the results of each evaluation.

Sample summary of feedback to Board Chair and VC from CEO (who receives the confidential survey results)

We wanted to let you know that the Board Feedback for the Chair survey results showed that 100% strongly agreed to the survey questions and there were no comments.

Great job on a successful Board meeting!

Chair, Month, Day 2022

Memorandum

TO	Board of Directors
FROM	Governance Committee
DATE	October 12, 2022
SUBJECT	Director attendance at committee meetings

Message

The Committee has been considering the best way for Directors, who have yet to be appointed to a committee, to determine their preference.

The Board proposes each Director, who has not been appointed to a committee, may attend any Board Committee meeting as an observer.

To do so, a Director should advise the Committee Chair and the CEO of their intention to attend. They will be provided with a calendar invitation to the meeting and the materials in advance.

Directors will communicate their preferences for committee appointment to the Board Chair and Chair of the Nominating Committee.

It is expected all committees will thus be at full strength by the end of Q1, 2023.

Board Policy No. 1 – How CPATA works

NAME OF POLICY	No. 1 – How CPATA works – Its Principled Approach to Regulation and Governance		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	Board By-laws		
RESPONSIBILITY	CEO and CFO		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
Board	May 11, 2021	Oct–Nov 2022	November 12, 2022

1. Introduction and Overview

The Government of Canada enacted the [College of Patent and Trademark Agents \(CPATA\) Act](#) in 2018, as part of its National Innovation Strategy. In 2019 they appointed an interim Board. In the spring of 2020, the Board appointed a CEO.

In 2022, CPATA’s permanent Board took over with five directors appointed by the Minister of Innovation, Science, and Industry and four directors elected by the profession.

This policy describes how CPATA operates as a new, state of the art public interest regulator of the intellectual property professions. It should assist the Board, committee members, CEO, staff, decision-makers, licensees, and the public to understand how CPATA works. Because CPATA, as an independent professional regulator, differs from many ‘self-governing’ regulators of professions in Canada and elsewhere, documenting the form of operation is crucial. It will ensure we maintain the approaches incorporated in CPATA as a start-up, that we maintain this form of operation and not default to other structures that some might assume apply because they are used by other regulators.

This is part of a suite of documents providing parameters for how we operate. This document knits together our approach, while other documents explain the full range of College operations¹. This document is not authoritative; the authoritative documents are the statute, regulations, by-laws, and policies.

¹ Regulatory policies (including registration, investigations, discipline, quality assurance, professional development), operational and management policies, Board governance policies (including Board processes, values, roles, relationship with CEO, CEO, Board and committee evaluation, planning [strategic and operational], budgeting, risk management, external [stakeholder and government] relations, public and profession consultations

What is CPATA?

CPATA is the regulator of Patent and Trademark agents in Canada. If someone wants to hold themselves out as a patent or trademark agent, or if they want to act on behalf of clients in dealing with the [Canadian Intellectual Property Office](#) (where patents and trademarks are registered), they must be a licensee of CPATA. It is unique as a national regulator; there are no provincial regulators of patent and trademark agents².

What does CPATA do?

We ensure people entering the profession meet our standards for professional competence and ethics. To do that we:

- Set competency standards for those who want to be licensed as an agent Require trainee agents to work with an experienced agent for two years and administer qualifying examinations to ensure applicants meets our entry level competence standards.
- We annually renew patent or trademark licenses. License fees fund our operations.

We set ethical and practice standards for agents and enforce them through a variety of techniques, including advisory and support services, and a complaints and discipline system if necessary.

We require licensees to have professional liability insurance, and we will require them to take appropriate steps to demonstrate they remain competent (continuing professional development).

We will work with the profession to encourage equity and diversity in the profession, to make the services of agents more widely available to support innovation in the Canadian economy, and to support innovation in the way patent and trademark agents do their work, and the way intellectual property rights are protected in Canada.

Who's In Charge?

The College has a Board of Directors, committees, and a CEO/Registrar and staff.

The Board has 9 members: 5 are appointed by the Federal Minister; four are elected by 2,500 licensees.

The Board is responsible to see that CPATA performs the role described in the Act. They do so by instructing the CEO, and then monitoring what CPATA is doing, and most importantly, what CPATA is accomplishing.

The Board gives its primary instructions by enacting by-laws and policies; it adopts annual business plans and budgets, and a strategic plan and organizational values. The by-laws sort out who does what, and generally flesh out the business and governance rules. The Board has enacted [Regulatory Objectives, Standards and Principles](#) that prescribe what we, as a regulator, do and how we do it: They are described in more detail later in this document.

² About 1/3 of the profession are lawyers and are therefore regulated in that sphere, an overlap the College recognizes and will address to avoid confusion for the public and licensees, or any gaps in public protection.

The Board's instructions are carried out by the CEO/Registrar, who employs the staff, and by 3 Board committees.

The Regulatory Committees (Registration, Investigations and Discipline) are independent and carry out their roles without direct Board oversight. Most of CPATA's work is done by the CEO/Registrar and staff. They handle interactions with licensees, trainees, and members of the public.

CPATA's six committees are:

Regulatory Committees

- **The Registration Committee** – responsible for fair regulatory decisions. If the Registrar makes a decision and a trainee or licensee disagrees, they can have that decision reviewed by the Registration Committee.
- **The Investigation and Discipline Committees** – when concerns arise about whether an agent is acting ethically or competently; these concerns cannot be resolved or addressed at an early stage by the Registrar; and there is evidence of professional misconduct or professional incompetence, the matter will be investigated and referred to the Investigations Committee. If appropriate, that Committee will then refer a complaint to the Discipline Committee for formal adjudication.

Board Committees

- **The Audit and Risk Committee** – assists the Board by working with staff in dealing with financial management, and the assessment and management of enterprise and regulatory risks and the annual audit.
- **The Governance Committee** – assists the Board to bring best governance practices to all areas of the Board and committee work including evaluation of Board and committee performance
- **The Nominating and Board Development Committee** – assists the Board in its succession role by working with government on nominating Board members for appointment, overseeing the process for electing Board members from among the licensees, and nominating committee members to be appointed by the Board. The Committee establishes training and continuing development opportunities for the Board and committees

We may set up additional committees as we deal with new issues.

How are we different?

CPATA is a new regulator. It has not grown out of another organization. We have built our policies, procedures, and practices from the ground up.

Most of our directors and members of the regulatory committees are not licensees. This flows from our mandate to protect the public interest. It brings a wide range of skills to the board table and keeps us in touch with our public interest mandate and enhances the transparency of our work.

We are results oriented. The CEO has the responsibility to operate regulatory programs, and then report to the Board. Together they determine whether those programs are creating the outcomes specified by the Board.

We are driven by a set of policies designed to result in high quality regulation. We have studied the best-in-class regulators in the world and modelled our regulatory practices and operations after those regulators.

We are professionally managed. Regulating the profession is important work and requires staff with the appropriate experience and expertise in professional services regulation.

We are committed to consulting with stakeholders, so we understand the impact and results of our plans or regulatory decisions, including the policies we put in place.

We are national; because patents and trademarks are a federal government responsibility, so too is the regulation of the agents licensed to deal with the CPIO.

We are bi-lingual and carry out all activities in both official languages and serve the profession and the public in their official language of choice.

We are virtual – our primary mode of doing business is virtual. We do not have a central office. Most of our meetings will be held on-line. Our Board meetings are broadcast and recorded, with all materials remaining available for access by the profession or public.

2. The regulatory model

CPATA is a modern, risk-based and outcomes focused regulator. Its approach to being modern is summarized in its commitment to applying 'Right Touch Regulation'³ to all its regulatory activities. In essence CPATA's approach to regulation is to regulate using only the means necessary to address the risks or other issues identified as requiring College intervention. That describes the 'risk-based' approach. Outcomes focus means CPATA intends to report on its work in ways that demonstrate what difference it makes and how its regulatory actions result in change⁴.

³ Originally developed by the Professional Standards Authority in England, the concepts have been widely adopted and are well summarized in a publication of the College of Registered Psychotherapists of Ontario at https://www.crpo.ca/wp-content/uploads/2018/10/Right-touch-risk-based-presentation_FINAL.pdf.

⁴ The Government of Ontario recently introduced a framework for health regulators to report on their work, entitled College Performance Measurement Framework. See: https://health.gov.on.ca/en/pro/programs/hwrob/CPMF_summary_report.aspx A Google search shows how the framework has been adopted and applied by many health regulators.

How the work gets done

By-laws and Policies define the mandates and processes for regulatory programs, including entry to licensure, and continuing licensure. Three key Board policies describe:

- what is to be accomplished by CPATA (the Regulatory Objectives),
- the activities of CPATA and how we carry out those programs (the Regulatory Standards), and
- how CPATA makes regulatory decisions (the Regulatory Principles).

Together, these policies describe what to do, and provide a form of ‘code of conduct’ for our operation.

The Act sets up CPATA and creates its mandate. It describes in some detail the keeping of the official registers of licensees, and the structures and processes for dealing with complaints and hearings about professional conduct. The Regulations, enacted by Order-in-Council set criteria for some regulatory obligations, such as licensure.

The Registrar and staff carry primary responsibility for regulatory transactions with trainees, licensees, and the public in accordance with the Regulations and By-laws. This includes registration of trainees and licensees, all record keeping including the Register of agents, the administration and content of competency assessments, annual renewal of licenses including payments, and receiving complaints and statements of concern about the conduct of licensees or trainees. Registration decisions can be reviewed by the Registration Committee, at which CPATA may be represented by staff or by counsel instructed by the CEO/Registrar or delegate.

Concerns about licensee conduct that cannot be consensually resolved or addressed at an early stage and raise issues of possible misconduct or incompetence must be referred to the Investigations Committee, under the appropriate guidance documents. The Investigations Committee will decide whether to refer to the Discipline Committee for adjudication.

The Investigations and Discipline Committees are responsible for their roles as described in the Act, and policies they adopt. Recent amendments to the Act enable the Registrar to review matters at intake to determine if they constitute a complaint to be referred to the Investigations Committee.

The Registration Committee hears reviews from registrants, trainees and licensees who disagree with a decision of the Registrar.

CPATA main activities include:

1. Registration & Accreditation – setting competence standards and assessing them, managing licensee status
2. Professional Responsibility – Complaints and Discipline, the Code of Professional Conduct (including ethics education)
3. Mandatory Professional Liability Insurance
4. Governance, including elections and appointments to the Board, and appointments to Committees and building a solid structure to support an independent regulator

Future work may include:

1. Promoting innovation and IP Practice
2. Continuing competence and professional development
3. Quality Assurance reviews (will likely require legislative amendments)
4. Practice Standards development and advice
5. Supporting pro bono activities by licensees to broaden availability of IP services to Canadians

The By-laws mandate additional committees and describe how they are appointed, how vacancies might occur and how they are filled. Specific competencies, skills and attributes are required for committee members, as well as a mix of public representatives and licensees. Details of committee requirements are published in their Terms of Reference and Skills matrices.

Using this documentation as guidance, the work is allocated as follows:

The CEO/Registrar and staff

- support the Board in its oversight, policy direction, stakeholder relations (government, industry, and the profession) and performance measurement (regulatory outcomes and governance);
- administer Board and committee meetings, providing agendas, notices, briefing materials and minutes, researching policy, operational issues, and best practices throughout the world, and providing insight and advice;
- administer elections for Board positions, and recruitment for committee positions, subject to oversight by the Nominating and Governance Committee.
- administer the organization, including all operational policy and operations related to business planning and finance, risk analysis (enterprise and regulatory), information technology, human resource management and compliance with statutory requirements including privacy, access to information, bilingualism, equity and diversity and employment;
- set operational policy for all programs operated by CPATA;
- are responsible for maintenance of CPATA's web and social media presence, communications strategy, and execution in dealing with the public, stakeholders, and the profession including various forms of consultations.

The Nominating and Board Development and Governance Committees assist the Board by carrying out the role described for them relating to board and committee appointments, elections for Board positions and creating a model of continuous education and improvement for the Board and committees.

The Audit and Risk Committee assists the Board by reviewing management's budgets, financial plans, and risk analyses.

The Board oversees the operation of CPATA, approves strategic plans, business plans and budgets, evaluates the performance of itself and committees, considers reports describing the extent to which programs of CPATA are achieving the desired outcomes, appoints and supervises the CEO and evaluates the performance of the CEO. In short, the Board ensures that we ‘protect the public interest’.

3. The governance model

The chosen governance model is a policy governance board with the CEO/Registrar as its sole employee.

The CEO and Registrar roles are combined in one person as the Board requires the CEO to be familiar with all aspects of regulation in order to be responsible for both the policy and operational aspects of CPATA. The CEO is responsible for leadership, management, and operations. The Registrar is responsible for maintaining regulatory policies and processes, and for initial regulatory decision-making.

In keeping with the governance model having the CEO as the only employee, the Registrar function is to allow for delegation to a Deputy Registrar, and as necessary to employees or contractors.

What does it mean to protect the public interests?

The Board has adopted Board Policy No. 9 – The Public Interest⁵ and CPATA Decision-making that details CPATA’s thinking about the public interest and how consideration of public interest factors drives all CPATA decision-making.

4. Detailed Role Descriptions

In this section we describe in greater detail the roles of the various actors in CPATA.

4.1 Who makes policy?

CPATA’s Board has determined it will be a Policy Board. Its authority and key functions are elaborated in the By-laws and can be summarized as: we will make policy decisions that direct the organization, the CEO, and our committees.

We use the term ‘policies’ to refer to different kinds of documents, enacted by different bodies within CPATA.

⁵ Board Policy No. 9 is being reviewed and is subject to public consultation as of the date of this Policy.

Board Policies

Policy directions will most often involve articulating an outcome that will require resources to achieve a particular goal. The Board then monitors CPATA's compliance with those policies, and the achievement of those goals and outcomes. Our governance policies guide how we operate CPATA. Some policies – like the [Regulatory Objectives](#) – set goals of what CPATA is to achieve.

Examples of Board Policies that set goals are in the Regulatory Objectives, such as:

“Protect those who use patent and trademark services”.

The [Regulatory Standards](#) provide broad directions that guide the operation of CPATA, such as:

‘We are clear about our purpose and open and transparent in all processes: we publish our regulatory requirements, guidance, policies, processes and decisions; we provide accurate accessible information about our licensees; and we report on our performance and outcomes.’

Further examples are found in the Regulatory Objectives, Standards and Principles, and Strategic Goals and Objectives, and will be elaborated on in the corporate values articulated after the first round of strategic planning. The Board also sets other policies such as those related to [governance](#) and has supported the CEO's development of a wide range of finance and operations policies.

CEO/Registrar Policies

The CEO/Registrar make policies compliant with or to further the By-laws and Board Policies. These can be administrative policies (such as human resource policies, or those related to using IT resources), or policies related to the design and operation of a particular program. For example, a program policy might describe a trainee testing program, including how it will operate, its goals, means of achieving those goals, limitations, performance targets, etc.

Within the published policies are procedures or the detailed description of the steps to be taken for a business process of CPATA. Examples include the steps to be taken to register for entrance examinations, to become a trainee or licensee, or to renew a license annually.

Procedures describe what is to be done, and the detailed steps to be taken. The steps may be performed by someone inside CPATA, such as an employee, or by someone outside the organization, such as a licensee, trainee, or complainant. Because procedures are operational, establishing them is within the authority of the CEO/Registrar. Processes and procedures are always required to comply with or be subservient to the By-laws.

There may be ambiguity about whether a policy is properly the purview of the CEO/Registrar or the Board. While on a purely technical analysis the CEO/Registrar is free to make any policy provided it fits

within the policy framework already articulated by the Board, the CEO may wish to inform the Board of the policy they plan or tell the Board after the decision has been taken. The challenge is to not burden the Board with administrative detail or invite the Board into operations, while recognizing that what the CEO/Registrar sees as administrative may be seen by others as substantive or a change of direction.

4.2 The Board's role

The Board's five appointed directors are named by the Minister; they cannot be licensees. The Directors elected from among the licensees are not permitted to be members of any organization that advocates on behalf of patent or trademark agents. The terms of the elected directors is three years; the terms of the appointed directors is at the discretion of the Minister but is anticipated 3-year terms will be the norm.

CPATA's by-laws, enacted by the Board, prescribe the Board's roles and responsibilities. They are summarized here for explanatory purposes.

Most requirements are carried out with the assistance, support and advice of the CEO/Registrar and are detailed in [Board Policy No. 5 – Executive Expectations of the Chief Executive Officer](#).

The Board's obligations are prescribed in the [Board By-laws](#), and in particular by-law 8. The Board's responsibilities under the By-laws and good governance practices are:

Supervise the organization

- a. Appoint a CEO and provide clear directions to and oversee the work of the CEO with established performance expectations, succession planning and periodic and regular performance review;
- b. Monitor Board and committee performance, determine the nature of Board evaluation, and ensure it takes place at least annually.

Determine regulatory policy

- c. Adopt Regulatory Objectives, Regulatory Standards and Regulatory Principles;
- d. Determine frequency of review of policies, including an evaluation of whether the policies are successful, and ensure those reviews are carried out;

Governance

- e. Ensure effective governance through policies related to its work, assessment of organizational performance and commitment to succession planning;
- f. Elect the Chair and Vice-Chair;
- g. Working with the CEO, establish a future vision for CPATA and policies and plans, including a strategic plan, related to regulatory and program effectiveness and quality;
- h. Establish Board committees, task forces or working groups to assist in carrying out the work of the Board;
- i. Develop competencies specification for Board members; specify process for those elected from the licensees, including oversight; collaborate with Government of Canada on appointment of Board members;

Financial Oversight

- j. Provide stewardship over CPATA's resources:
 - i. Ensure effective business and financial planning,
 - ii. Approve annual business plans, operating and capital budgets,
 - iii. Set fees;
 - iv. Monitor financial performance,
 - v. Appoint an independent auditor and oversee an independent financial audit (delegated to the Audit and Risk Committee) and approve audited financial statements.

Oversight

- k. Monitor and comment on the regulatory and operational risks for CPATA, and ensure decisions and policies focus on the management and mitigation of risk of harm to the public;
- l. Oversee effective internal and external stakeholder relations and engagement;
- m. Oversee compliance with all legal requirements of CPATA, the CEO and the Board;
- n. Monitor operations through reports from the CEO or others describing compliance with policies;
- o. Monitor the extent to which CEO is achieving established performance criteria for operations;
- p. Monitor the extent to which organizational goals are being achieved, including desired/specified outcomes;
- q. Decide when and what may be subject to compliance audits (not only financial, but also CEO and others' compliance with policies);

Miscellaneous

- r. Address matters assigned to it by the Act and by-laws, and as assigned by the Minister;
- s. Undertake such other matters as the Board considers necessary to achieve the purposes of CPATA.

The Board Chair is elected from the Directors. They chair all meetings unless unavailable or conflicted, work with the CEO to set agendas, act as a key linkage between the CEO and the Board (although not as supervisor of the CEO) and is responsible to see the evaluation of the CEO takes place each year (delegated to the Governance Committee). On occasion the Chair speaks on behalf of CPATA and/or the Board, and is, along with the CEO, a resource for Board members.

4.3 The CEO's and Registrar's roles

The CEO and the Registrar are responsible for management, operations and initial regulatory decision making. The By-laws specify their mandates.

The CEO

The CEO performs the functions and duties normally associated with the office of chief executive officer⁶, including:

Administration

- a. Manage, coordinate and maintain CPATA's operations, administration, finances, and organization;
- b. Engage and supervise employees, agents and contractors of CPATA and direct and supervise them;
- c. Articulate and manage customer service standards;
- d. Set the terms of delegation of the authority of the Registrar;

Board Support

- e. Counsel and assist the Board implementing and evaluating CPATA's regulatory activities;
- f. Keep the Board up to date on developments in professional regulation;
- g. Propose metrics to the Board for compliance reporting, and report on achievement of regulatory goals and outcomes;
- h. Assist Chair of Board in development of Board agenda and Board's focus;
- i. Ensure resources are available for organizing Board meetings, and taking minutes;

Legal

- j. Execute documents on behalf of CPATA;
- k. Ensure the Board complies with the Act, regulations, by-laws and policies affecting it;
- l. Ensure compliance with laws such as privacy, access to information, and bilingualism;

Program Administration

- m. Articulate processes for management of business procedures (adoption, retention, amendment);
- n. Determine insurance requirements for licensees, which may differentiate different classes of practice;
- o. Determine practice standards for licensees;
- p. Determine appropriate levels of transparency related to individual regulatory transactions of CPATA and business processes;

⁶ [Board By-law 46](#)

Performance Management Reporting

- q. Measure and report to the Board on compliance with policies and laws, and achievement of goals and outcomes;
- r. Propose and carry out internal and third party reviews of operations and accomplishments;

Risk Management

- s. Ensure risks are managed, for both the organization and for regulated licensees, including all forms of insurance required for the organization;

Communications

- t. Ensure communications with all stakeholders;

Leadership

- u. Leads CPATA;

Miscellaneous

- v. Carry out the duties and responsibilities conferred by the Act, the Regulations, the By-laws and policies and procedures approved by the Board;
- w. Give effect to policy directions established by the Board;
- x. Other functions and duties as assigned by the Board;
- y. Regular reporting to the Board on other matters as required;
- z. Report to the Minister as required by the Act.

The Registrar

The Registrar performs the duties and responsibilities conferred by the Act, the Regulations, the By-laws and Policies approved by the Board or the CEO. To support the Regulatory Objectives, Standards and Principles, the Registrar establishes regulatory policies, procedures, and forms for all relevant programs, which are called 'Registrar's Policies'.

The Act authorizes the Registrar to delegate some decision-making. The Registrar has done so for all registration decisions by delegating first instance authority to the Deputy Registrar. Monthly reports of delegated decisions are provided to the Registrar.

4.4 Committees

There are three kinds of committees:

Board Committees

The Board can establish committees or task forces, must set their terms of reference, appoint members, and set their tenure. These can be standing committees or set up for a specific purpose (and usually a specific timeframe). Board committees are the Audit and Risk Committee, the Nominating and Board Development Committee, and the Governance Committee.

CEO Committees

The CEO can also strike committees or work groups to assist with the CEO/staff's work. These might be subject matter specialists or may be advisors from other regulators or from other countries. Consultation committees struck by the CEO represent opportunity to engage stakeholders on a variety of issues central of the success of CPATA. To date the CEO has appointed groups to assist in development of a competency profile for entry level agents, and another to advise on the qualification examinations.

Regulatory Committees

These include the Investigations Committee and the Discipline Committee established by s.21 of the Act and the Registration Committee created in the By-laws. They are appointed by the Board, based on articulated competencies. A majority of members of these committees must not be licensees.

The Chair of the Investigations Committee may direct a panel of one or more Committee members to consider a complaint brought forward by the Registrar. The panel will investigate the matter according to the Act. If the committee considers there is merit to the complaint of professional misconduct or incompetence, they must refer the matter to the Discipline Committee.

The Discipline Committee will sit in panels of 1-3 members, as decided by the Chair. They are obliged under the Act to conduct an oral hearing. The Act lays out the procedures, in sections 51– 58, and the appeal provisions to the Federal Court. Further details of the process are set out in the By-laws.

5. Scope of CEO/Registrar regulatory decisions

Transactional work of CPATA is carried out by the staff. In the course of that work they (or staff or contractors reporting to them) make different kinds of regulatory decisions. Some of these are decisions about how the work will be carried out – processes, forms, deadlines, etc. – while some are decisions about individuals. The By-laws specify some requirements for the Registrar's decision making.

5.1 Registration decisions

- The Registrar makes regulatory decisions, always driven by public interest factors about individual licensees or applicants, that can affect the individual's status. This includes admission, ongoing compliance, annual renewals and enquiries/complaints/expressions of concern;
- about the processing of inquiries and complaints; and
- setting procedures for regulatory transactions, including required processes, supporting forms and documents, and required timelines or deadlines.

Processes used for these decisions are circumscribed by Board level policy decisions, including Regulatory Objectives, Standards and Principles, and the By-laws. Decisions must comply with statutory and common law. Of particular importance to all decision making by the Registrar are the decision-making principles, as they create a menu of matters to be considered by the Registrar in determining matters under the By-laws. Evidence based decision-making and providing written reasons are two key principles applied to all regulatory decisions.

In the normal course of operating a regulator, licensees and applicants may find themselves negatively impacted because of a provision of the statute, by-law, or a policy. Examples range from failure to pay a levy or some other amount of money owing to CPATA or failing to make some form of application in time or in a form required or failing an examination. These breaches may be technical (such as failing to do something on time) or substantive (failure to pass an examination or other competency assessment). In evaluating how to respond to this type of breach, the Registrar is guided by CPATA's commitment to using risk as a basis for decision making and the College's commitment to using 'right-touch regulation'.

5.2 CEO decisions

Applicants, licensees, and their agents may contact CPATA.

The CEO/Registrar and staff deal with these situations in a manner that is timely, helpful, respectful, responsive and that demonstrates right touch approaches. When possible, without diluting the impact of the relevant regulatory process, staff will be empowered to resolve matters.

For some of these situations a specific review process will be in place (for example, when an applicant challenges the marking of an examination or assessment). If no specific process exists, the CEO will also provide an internal process to deal with challenged outcomes as matters arise. This internal process will also be available to reconsider a situation in which the CEO or staff have decided on a matter and communicated it. The CEO will publish the process and how to access it, and staff dealing with these situations will advise applicants and licensees of this process. These resolutions will comply with the Regulatory Objectives, Standards and Principles. This internal appeal is in addition to the appeal to, say, the Registration Committee.

The CEO will articulate customer service standards that deal with the timeliness of responses, timeliness of resolutions and the nature of staff responses. We will also have documentation standards, so an appropriate record is kept. As staff must be respectful in their communications and actions regarding licensees and others, so too must people dealing with CPATA be respectful; staff and the CEO/Registrar may refuse to deal with someone who is abusive.

Where required, we use resources to assist the CEO in making regulatory decisions, including subject experts, legal advisors, a 3rd party mediator/resolver, and experts from other regulators.

5.3 Policy/process decision areas

Policy	Primary responsibility
Accounting	CEO
Fee payment and license renewal	CEO
Maintenance of the registers of Patent Agents and Trademark Agents	Registrar, subject to statute
Risk management	CEO subject to oversight by Board and the Audit and Risk Committee
Privacy and related	CEO, subject to relevant statutes
Official Languages	CEO
Human resource	CEO
Technology, including data use and security	CEO
Director and committee member remuneration	Board
Travel	CEO and Board for director travel
Admissions – both what, and how admissions standards are assessed	Board makes high level policy decisions. Registrar decides policies for administration of processes, forms and required documentation, assessment policies, and individual levels of achievement

Policy	Primary responsibility
Business processes for adopting and modifying CEO or Registrar policies	CEO
Complaints' processing	Registrar, subject to Committee policies, the Act, and by-laws
Compliance with licensee reporting requirements such as admission info, keeping addresses up to date, CPD etc.	Registrar
Operating instructions for regulatory programs [this provides clarity about future programs, such as practice audits and the like]	CEO
Adjudication processes	Regulatory Committees subject to the Act, Board policies, by-laws, and Committee policies
Process for reviewing Registrar decisions	CEO for internal appeals; Registration Committee for decisions in that area.
Practice standards	CEO
Unauthorized practice	TBD
Ethical standards	Board
Principles for enforcing ethical standards (and admission standards)	Board
Governance – including how Board works, Board and statutory committees and mandates and membership, Board compensation. . .	Board, by-laws

5.4 Expectations of CEO in making policy decisions

The CEO must make policy and process decisions defensible from legal and risk management perspectives, and practicable. They must advance the public interest and consider and comply with the Regulatory Objectives, Standards and Principles. They may not [violate Board Policy No. 5 - Executive Expectations for the Chief Executive Officer](#) and must comply with Board Policy No. 9 – The Public Interest.

There is no formula for determining how to construct these policies and processes, but there are options and 'ingredients' that we will consider. They include:

- Proportionality – what is the process or policy intended to accomplish, and what is the least intrusive and least expensive way to achieve that goal?
- Are there options from other work of CPATA, or from other regulators, that should be considered?
- What are the legal constraints on the decision? Is the range of options limited by law? Are there some possible outcomes that are more or less risky from a legal perspective? What steps have been taken to identify and resolve the legal issues?
- Consultation. For policy development impacting the profession or the public, we are committed to appropriate consultation, as an aspect of openness and transparency. We will ask ourselves:
 - What kind of consultation has taken place about the policy recommendation?
 - Has the consultation been with the profession, with other regulators or with experts?
 - Has the consultation been transparent?
 - Is the consultation commensurate to the impact on the profession, CPATA, and the public, in terms of cost, complexity and reputation?
 - What are the outcomes/deliverables of the consultation?
 - In what way are the consultation outcomes reflected in the policy ultimately proposed?
- What kind of a change management process is proposed?

We recognize the prevalence of resistance to change; however, we are committed to working with stakeholders as we develop, implement, and modify policies and programs to ensure effectiveness as an independent public interest regulator. We expect the CEO to be competent in making decisions that reflect positively on CPATA, consider the Regulatory Objectives, Standards and Principles, and as much as possible, are acceptable to licensees, applicants, and other stakeholders.

The CEO may incorporate a variety of resources in taking these policy and process decisions, including:

- Subject experts from the profession
- Subject experts from other professions
- Legal advisors
- Technical advisors from other domains, including (for example) educators, behavioural psychologists, testing and assessment experts, business consultants, strategic planning consultants, change management advisors, privacy advisors, risk management advisors
- Leaders and staff from other regulators
- Consumer advocates
- CEO initiated advisory committees
- We do not expect the CEO to know all the answers; but they must be proficient at finding those who can assist in finding good answers.

5.5 Equity, Diversity, Inclusion and Reconciliation

CPATA's commitment to advancing equity in the profession is stated in Regulatory Objective 7 which states:

promote equity, diversity and inclusion in the patent and trademark profession and in the delivery of patent and trademark services.

To meet this commitment CPATA has

- made appointments to committees that reflect diversity, and it has included diversity factors in committee skills matrices so future appointments will reflect this commitment;
- engaged with IPIC to learn from its recent surveys of the profession and to identify how the learnings can be best incorporated into CPATA's regulatory work;
- used gender inclusive language in all publications and is breaking ground in doing so in French where gendered language is common;
- identified diversity and reconciliation competencies to be included in the competencies for licensees.

The Canadian Network for Agencies of Regulation (CNAR) has articulated an approach for professional regulators in this area⁷ that CPATA endorses as a starting point for its work:

First: the recognition of the **need for inclusion and representation on both sides of protocols and processes**; this means leadership and participants should represent diverse identities and inform diverse cultural contexts. Second: organizations must **implement distinct discourse and education in order to create empathetic and intentional action** that confronts personal and systemic bias. Third: organizations need to **consider claiming responsibility beyond the scope of a regulator's mandates, expanding accountability for upholding the dignity of all stakeholders within regulated professions – beyond accountability solely for the public interest**. With each of these notions working together, proper representation can lead to a relational approach to accreditation and licensing processes; as such, a mutually beneficial relationship between serving a regulator's mandate, as well the dignity and needs of diverse stakeholders throughout, is possible. (Emphasis added)

"Equity Lens" – means the Equity Lens as defined in the Society's Equity Lens Toolkit and its application as outlined in the Toolkit. An equity lens is a series of considerations to guide decision-making to avoid assumptions based on biases and to break down barriers that prohibit equal participation by all persons, particularly those from Equity-Seeking Communities. The components of the Equity Lens are : a) Identify barriers where they occur; b) Eliminate barriers by making adaptations that reflect the lived experience of those affected; and c) Create new ways of working by considering inclusion at the earliest stages rather than at the end. "Equity-Seeking Communities" – means Equity-seeking groups including women, Indigenous peoples, racialized peoples, persons with disabilities and persons seeking equality based on their sexual orientation and gender identity. "Policy" means any policy, regulation, practice standard, procedure, process, or position statement to

5.6 Adjudicator Decision Making

Adjudicators make decisions about admissions (on review of the Registrar), complaints and discipline matters, and other matters yet to be defined.

These decisions will be made in a manner compliant with the Regulatory Objectives, Standards and Principles, an Adjudicator code of conduct, the Act, Regulations, By-laws, and the relevant procedural

⁷ Report published in CPATA Board of Directors meeting materials for August 18, 2022.

rules. Adjudicators will have to complete appropriate training or provide credentials demonstrating they are competent to act in this role before they are appointed to an adjudicative panel.

CPATA will provide legal advice and counsel to Registration and Discipline adjudicative decision-makers, in addition to any advice College staff provide.

Appendix 1: Board Agenda Annual Plan

This plan is set out by quarter. There may be more than one meeting in a quarter.

The Board establishes Governance Policies and other policies directing CPATA's activities.

At each meeting, the CEO reports on the status of policy implementation, deviation from policies, service levels and statutory obligations.

In addition to what is set out here there may be agenda items dealing with current issues, such as:

- developing new programs;
- policy issues with existing programs;
- relevant changes in the Canadian operating environment, or
- relevant developments in regulatory programs in Canada or elsewhere.

The CEO reports regularly on the operation and goal achievement of one or more selected programs, so the Board is briefed on each program no less frequently than once in every 24-month period. In the initial years of operation, a more frequent schedule may be established.

The CEO also reports on Board Governance Policies and proposes amendments as appropriate. This will be carried out on a schedule that ensures the Board is briefed on each policy no less than once in every 24 months. The Board can require more frequent reporting if necessary.

Although the reports will not be part of the Board agendas, the CEO will provide the Board with an operational overview report monthly, with time at each meeting for questions.

Q1

- CEO report of achievements in prior fiscal year, based on business plan and budget
- CEO report on achievements of policy goals for prior year
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Q1 financial report from CFO
- CEO report on selected programs
- CEO report on selected Board Governance Policies
- CEO report on stakeholder relations, including government and profession
- Governance Committee report with recommendations to refresh appointments to committees after reviewing the work and performance in the prior year, and proposed plans for upcoming year

Q2

- Board approves financial audit report on recommendation of the Audit and Risk Committee
- Board appoints auditors for next fiscal year
- Discuss priorities for coming fiscal year, within the context of a) priorities, b) longer term (strategic) plans, and c) relevant changes in the operating environment and in regulation throughout the world

- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Report on CEO performance evaluation, and resulting compensation recommendation
- Q2 financial and risk report from CFO.
- CEO report on selected programs
- CEO report on selected Board Policies
- CEO provides copy of Annual Report to Minister

The General Meeting of Members will also take place in Q2, and newly elected Directors take office after that meeting.

Q3

- Business plan decision as basis for budget
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Report on Board and Committee evaluations
- Q3 financial report from CFO
- CEO report on selected programs
- CEO report on selected Board Policies
- CEO report on stakeholder relations, including government and profession

Q4

- Business plan, budget, and fees for final decision
- Set date for AGM
- CEO exceptions report, describing any deviations from policies, service levels or statutory obligations
- Q4 financial and risk report from CFO
- CEO report on selected programs
- CEO report on selected Board Policies
- CEO report on staff succession policies
- Nominating and Board Development Committee report (prepared in consultation with Governance Committee), including upcoming elections and appointments to the Board, and appointments to Committees

Programs for reporting:

1. Admissions/Registrations
2. Complaints and Discipline
3. Insurance
4. Continuing fitness
5. Quality Assurance and Continuing Professional Competence
6. Governance, including elections and appointments to the Board, and appointments to Committees
7. Practice Standards development and advice

CPATA's Public Interest Policy

Update and Plan

Purpose

- Introduced to Board in October
- Articulates the public interest building blocks
 - Regulatory Objectives
 - Principles
 - Decision Making:
 - Board
 - Committees
 - CEO/Registrar and Management staff

Purpose

- Gives life to the meaning of 'public interest'
- Foundational PI factors:
 - Proactive, principled and proportionate
 - Risk-focused, evidence-based decision making
 - Consideration of legal requirements
 - Consistent application of ROs, Standards and Principles
 - Fair, accountable, transparent, efficient and effective

Challenge is for Board, Committees and staff to apply these lenses when considering whether a decision or action is in the public interest

Public Interest in Regulatory Decisions

- Policy has been streamlined in this draft – see footnotes
- Focuses on key factors to consider:
 - Risk
 - Effective regulation
 - Alternatives
 - Proportionality
 - consistency

Going Forward

- With Board approval, circulate for consultation
- Consider amendments/areas for clarification
- A living document – will benefit from regular evaluation as our decision-making experiences, policies and procedures evolve
- We must be able to demonstrate through actions, not just say in words, that we are acting in the public interest – how will we do this?

Board Policy No. 9 –

The Public Interest Policy and CPATA’s Decision-Making

2022-10-21

NAME OF POLICY	The Public Interest and CPATA’s Decision-Making		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	CPATA Act, Regulations and By-laws		
RESPONSIBILITY	CEO		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
Board of Directors	Date	Date	Date

1. Purpose

CPATA is the independent, public-interest regulator of Patent and Trademark Agents in Canada. The purpose of the College is to regulate patent agents and trademark agents ‘in the public interest’, in order to ‘enhance the public’s ability to secure the rights provided for under the Patent Act and Trademarks Act.’¹

There is no definition of ‘the public interest’ in the Act, Regulations or By-laws, so this Policy is intended to describe how CPATA views its responsibilities under the Act and CPATA’s [Regulatory Objectives](#).

CPATA’s Regulatory Objectives state:

- To advance its role as a risk-focused, modern public interest regulator, the College adopts as its Regulatory Objectives that it will strive to protect and promote **the public interest** in patent and trademark services.

¹ S. 6 of the CPATA Act

Through the statement of purpose in the Act and its primary Regulatory Objective, CPATA has determined protection and promotion of the public interest will drive all decisions made and activities undertaken by its Board, Committees, the Registrar and staff.

This policy is to assist and guide the Board, Committees, the Registrar, and staff to make public interest the primary consideration in decision making and to demonstrate how that occurs through transparency, consistency, relevant considerations, and a principled approach to all regulatory and other decision making.

In his recent review of the [Governance of the Law Society of British Columbia](#), Harry Cayton succinctly stated the challenge for professional regulators in addressing the public interest.

I recognize that the leadership of the Law Society is mindful of its task of ‘Upholding and protecting the public interest in the administration of justice’. The public interest is notoriously difficult to define: we might better say ‘the public’s interests’, there being many different publics with varied interests at different times and in different circumstances. The Society in a way recognizes this, variously, on its website, subtitled the phrase Protecting the Public Interest as, ‘supporting BC lawyers in the practice of law’ and ‘regulating BC lawyers’, ‘preserving the rights and freedoms of all persons’ and ‘setting standards for professional responsibility and competence of BC lawyers. Interestingly it does not include consulting the public in its interests in legal services. In discussion with Benchers, observation of meetings and reading of Society policy papers I have struggled to find explicit arguments articulated as to why policies that affect the way lawyers go about their business are necessarily in the public interest. Of course, they may be and, in some matters, such as prevention of money-laundering, it is self-evident that they are but there has been no discussion in any meeting I have observed as to why a particular policy is in the public interest, merely an assertion that it is.

2. Public Interest as a key foundational principle

Considerations of the public’s interests lie at the heart of CPATA’s mandate under the Act (s.6) and throughout the Regulatory Objectives, Standards and Principles. The public interest, contrasted with the interests of licensees, must be the primary consideration in decision-making at all levels. CPATA exists to protect the public interest in the regulation of patent agents and trademark agents².

The public’s interests drive how CPATA operates and governs itself. Principles of accountability, consistency, openness and accessibility are foundational. When decisions are

² The interests of licensees are the focus of the main membership association, the Intellectual Property Institute of Canada

made by the Board, the Registrar or a committee, the public (and licensees) can expect to understand the reasons for the decision and be presented with those reasons. This must be done intentionally, in order to avoid the situation where the public interest is asserted but no demonstrable link is made to the action involved and a specific interest of the public affected by it.

Protection of the public interest by CPATA comes in many forms. It includes:

- Setting standards for agents to support their competence and ethics in delivering their services – this protects the public who use those services;
- Supporting the profession so that when providing services they uphold the system that protects intellectual property rights;
- Promoting innovation in the delivery of patent and trademark agent services, and the operation of the government’s IP programs;
- Promoting equity, diversity and inclusion in the profession; and
- Recognizing programs and activities that help make IP services accessible to Canada’s innovators and creators.

Operating in a manner that promotes the reputation of the profession and College as worthy of trust and respect, and confirming licensees are competent and ethical is the starting point for saying the public interest is protected.

A specific action undertaken, or decision made must go beyond this to articulate the intended link between the action or decision and the outcome. This will sometimes be assumed. Or it may be obvious there is need of proof through evaluation and analysis. The link between cause and effect must be described and asserted so the public can understand the nature of the intended results.

To illustrate this, consider how more competent practitioners should result in better services for clients. That is not always the case, unless a variety of factors, such as timeliness, affordability, and ethical behavior, are applied by a licensee in delivering services. Decisions by CPATA that assert ‘competence’ must also identify the links between enhancing knowledge and skills as key components of competence and quality of service delivery, so the client benefits from the higher level of competence.

Another example of the primacy of the public interest for CPATA is found in the requirements the Board and Regulatory Committees are comprised of a majority of non-licensees. This is intended to guarantee strong voices and participation of the public in key decision-making where regulatory policies are approved. However, more than mere participation is required.

Decision makers must embody a deep understanding of public service as they fulfill their roles.³

3. Decisions with a Public Interest Component

Though the public interest is foundational to CPATA's governance and operations, certain decisions are made where the Act, Regulations, By-Laws, policies, Regulatory Objectives, Standards and Principles require intentional and strategic consideration of what the public interest entails. They require balancing of interests of the public, licensees, the College, government, and others.

To be meaningful and transparent, these decisions must be effectively communicated, while respecting requirements for privacy and confidentiality. It is not sufficient to make decisions behind a wall of secrecy. CPATA's Board operates in public, with its meeting broadcast and recorded for the benefit of the public. CPATA publishes its regulatory policies so those engaging with it will know the basis upon which matters will be considered, and decisions made. CPATA publishes full or de-identified regulatory decisions on its website promptly, as well as summaries of advice and guidance provided to licensees about their ethical and competence obligations. These help to educate the public and licensees and assist them to evaluate how CPATA is working in the public interest.

Examples of decisions that are public and serve to protect the public interest include:

3.1 The Board

- 3.1.1 Governance Policies development
- 3.1.2 budgetary decisions impacting resources accessed by the public (e.g., website development, meeting bilingualism and privacy requirements);
- 3.1.3 policy decisions relating to transparency and communications (such as the example above of publishing regulatory decisions);
- 3.1.4 policy decisions regarding areas of risk, such as professional liability insurance (deciding to mandate that licensees have professional liability insurance is a key public protection tool) and a risk matrix on which evaluation of anticipated risks are evaluated;
- 3.1.5 admissions standards (committing to psychometrically defensible standards and assessments; support for developing competency profiles).

3.2 The Registrar

- 3.2.1 Registrar's Policies development

³ See [Fit and Proper? Governance in the public interest](#) March 2013

- 3.2.2 the licensing and applications process (e.g., proportional and principled evaluation of applications);
- 3.2.3 managing complaints against licensees (developing an Agent Conduct Inquiry process to provide an avenue for early resolution of conduct concerns);
- 3.2.4 supporting the work of regulatory committees (providing the tools and training needed to facilitate effective decision making);
- 3.2.5 ensuring adherence to statutory requirements (hiring professional staff to guide the College and its regulatory committees in appropriate decision making).

3.3 **Regulatory Committees**

- 3.3.1 decisions about individual applications and licensing matters are made with a view to the Regulatory Objectives, Standards and decision-making principles;
- 3.3.2 customer service standards are supported by timely and open processes and decisions;
- 3.3.3 setting standards for qualification of licensees by supporting and using their experience to develop competency profiles;
- 3.3.4 investigation of complaints in a fair and communicative manner;
- 3.3.5 application of the requirements under the Code of Conduct through careful and consistent consideration of relevant factors regarding a licensee's conduct;
- 3.3.6 conduct of fair and legal adjudicative proceedings through, for example, a commitment to training, learning from experts, and developing efficient and effective processes.

The Regulatory Objectives, Standards and Principles include reference to decision-making principles that are closely followed at every stage, whether by the Board, Committees, the Registrar or management staff.

4. Foundational Public Interest Factors to Consider

What does it mean to 'consider the public interest' when making decisions of any nature? What are the factors to consider?

Relevant factors must be considered when making decisions that may affect the public whose interests are to be protected. To advance its approach to promoting and protecting the public interest, CPATA has enshrined several approaches to how it analyses and applies its public interest lens:

- 4.1 Being proactive, principled and proportionate

- 4.2 A commitment to risk-focused and evidence-based decision making
- 4.3 Consideration of legal requirements under the CPATA Act, Regulations and policies, and applicable legislation such as the *Official Languages Act*, *Privacy Act* etc.
- 4.4 Consistently applying and being guided by the Regulatory Objectives, Standards and Principles
- 4.5 Being fair, accountable, transparent, efficient, and effective.

A decision at any level in CPATA is grounded on these foundational public interest factors, which provide the framework for effective governance. Decisions should refer to public interest factors and apply them openly and consistently.

5. Consideration of Public Interest Factors for Regulatory Decisions

Fact-based and risk-focused decision making is required by the Regulatory Standards. Considerations by the Registrar and Regulatory Committees of the public interest include assessment of these factors as they relate to the nature of the decision to be made. Consideration of how the factors connect to the intended outcome is required.

Risk to the public – Based on CPATA’s knowledge of the risks associated with the issue under consideration. Risks can be actual, anticipated, or foreseeable. Risks are connected to CPATA’s Regulatory Risk Matrix or to an issue identified for inclusion in the Matrix, but in need of immediate consideration in light of the facts being assessed.

5.1 Factors relevant to this assessment may be:

- 5.1.1 In the case of complaints, the nature of the alleged misconduct or lack of competence⁴ and whether the personal or practice circumstances of the licensee are indicative of risk⁵

⁴ These will include whether the conduct is repetitive and ongoing or only one instance; whether the conduct is recent or occurred in the past; if proven, the range of likely disciplinary outcome; whether the conduct arose in the course of the licensee’s practice; whether intervention by the College is necessary to prevent misconduct pending a hearing.

⁵ In medicine, see for an example of factors impacting behaviour – Bratland, S.Z., Baste, V., Steen, K. *et al.* Physician factors associated with increased risk for complaints in primary care emergency services: a case – control study. *BMC Fam Pract* **21**, 201 (2020). <https://doi.org/10.1186/s12875-020-01272-0>

- 5.1.2 In the case of licensing and registration matters, the position or response of the licensee to the matter at hand⁶
- 5.1.3 When considering past conduct, relevant to assessments, in the case of registration applications or complaints, may be whether pre-registration conduct may impact suitability to practise for the purposes of meeting good character requirements⁷
- 5.1.4 When considering the relevance of prior experience for the purposes of fulfilling the 24-month training requirement, consider all relevant factors⁸.

5.2 The licensee's circumstances –when considering risk, factors relating to licensing or complaints are considered⁹.

5.3 Ability to effectively regulate –Is the ability of the College to effectively regulate the IP profession in the public interest reasonably likely to be harmed if the licensee is permitted to

⁶ These will include the level of candour and disclosure of relevant information and the training circumstances of the applicant or licensee.

⁷ The jurisprudence requires consideration of a range of relevant factors that for CPATA might include age at the time of and circumstances involved in a prior criminal or similar offence; frequency and seriousness of any reported occurrences; evidence of rehabilitation (including changes implemented to prevent future occurrences); evidence of positive social contributions since the offence; the degree of supervision by, and guidance of registered patent or trademark agents; and, for foreign applicants, the relevance of the non-Canadian experience to the competencies required to prepare, present and prosecute applications before the Canadian Intellectual Property Office.

⁸ This will include the length, recency, nature, scope, complexity, level of responsibility and diversity of the applicant's experience and the effect of employment interruptions or changing assignments on the applicant's retention of, and ability to build upon, the experience gained;

⁹ These include: any relevant complaints or discipline history, by CPATA or other regulatory bodies; any mitigating factors relevant to an application or complaint, such as the licensee's circumstances or practice environment; any aggravating factors, such as whether the licensee is a repeat offender or has demonstrated a pattern of ungovernability so that compliance with professional standards or any conditions pending a hearing will be unlikely; the impact of an order to place conditions on, suspend or restrict a license on the licensee, and/or the licensee's clients; the significance of any alleged misconduct or other risk factors; the level of notoriety of the matter; or in other words, how a reasonable member of the public might regard the matter; whether the risks or concerns relate directly to a licensee's practice (as compared with a personal matter that does not or has not impacted their practice); any evidence demonstrating an impact on public confidence; and whether public confidence in the ability of the College to regulate the profession is likely to be harmed if the College suspends or restricts a licensee and it later appears that the restrictions or suspension was not warranted

or continues to practice without restrictions pending, if appropriate, completion of an investigation or adjudication of the matter? This may involve consideration of:

5.4 Alternatives – whether the public interest, including in the effective regulation by the College, could be protected through alternate means other than, for example, restrictions and conditions.

5.5 Proportionality – whether the proposed decision is proportional to the identified risk of harm. For example, is a Registrar’s decision not to permit renewal of a license reasonable under all relevant circumstances, taking into account the foreseeable risks to the public if the renewal was permitted?

5.6 Consistency – whether the proposed decision is consistent with previous decisions of a similar nature.

Each decision is recognized to be unique, and the College and its Committees must consider the information, evidence, positions and arguments presented, and balance and give appropriate weight to relevant factors in making a regulatory decision. The factors above should be considered solely for guidance purposes when assessing the public interest in any such decisions.

6. The Public Interest and Policy Development

Public interest is determinative for Board policy decision making. As part of Board decision making, it identifies the ‘public interest’ or the multiple interests at stake (what are the public’s interests in this matter?) and the facts that influence how those interests are assessed. The Board does not simply assert there is a public interest without a factual/evidentiary foundation. Public interest requires a connection between the action to be undertaken and an anticipated outcome.

For example, Board Policy #1 focuses on a clear statement about what CPATA does, how, by whom and for what purpose. The Regulatory Objectives are a definitive statement of purpose. This document alone sets a clear tone for the many ways the public interest will always be the primary factor to consider when making decisions at all levels. But it goes beyond this to

articulate the expected and measurable impact of, for example, a commitment to transparency relating to the Board's activities and decisions.

Board decision making is also premised on the Directors properly filling their roles as public officers. In addition to compliance with CPATA's conflicts of Interest policy, Directors are reminded of their roles in addressing the public interest. They bring selflessness, integrity, objectivity, accountability, openness, honesty and leadership to their role as a CPATA director. Collectively these attributes contribute to the Board's proclivity to public interest based decision making.

Through ongoing self and group evaluation Directors demonstrate their commitment to prioritizing the public interest in all their decision making. Through the development and application of Skills Matrices for the Board and Committees, the Board demonstrates its commitment to ensuring equity, diversity and inclusion, as well as having effective public voices involved at all levels. The Skills Matrices are an effective way of identifying appropriate and necessary factors to consider when making committee appointments and measuring the Board's success in doing so.

7. Conclusion

Public interest is not an amorphous concept. It is a living, breathing concept that gives life to why and how CPATA exists and functions. It flows through the Act, Regulations, By-laws, Code of Conduct, Regulatory Objectives, Standards, Principles and policies. Which public interest factors are relevant to each situation and decision requires careful thought, analysis, balancing competing interests, and a commitment to apply the public interest lens consistently, transparently and in a clear and measurable way.

CPATA is committed to avoiding any temptation (often implicit in self-regulation) to put the interests of the profession, licensees or the College ahead of those of the public. We will be strategic and intentional in staying the course.

College of Patent Agents and Trademark Agents- Statement of Operations August 2022

	Aug. 2022	Jan - Aug., 2022 (YTD)
REVENUE		
4000 Service/Fee Income		
4010 Licensee fees - CPATA fees	171,191.67	1,370,000.00
4011 License Fee Income - PY		12,250.00
4020 Class 2 Inactive Agent Fees	1,700.00	13,600.00
4030 Class 3 License Fees	3,600.00	3,600.00
Total 4010 Licensee fees - CPATA fees	\$ 176,491.67	\$ 1,399,450.00
4070 Application fee income	3,500.00	50,572.00
4060 Certificate & Letters Fees	225.00	1,575.00
Total 4070 Application fee income	\$ 3,725.00	\$ 52,147.00
TOTAL REVENUE	\$ 180,216.67	\$ 1,451,597.00
EXPENSES		
Total 5500 Wages & Benefits	\$ 52,627.51	\$ 409,258.80
Total 6005 Professional and consulting fees	\$ 65,795.86	\$ 355,712.77
6030 Legal Fees	56,705.25	221,353.14
6060 Translation expenses	21,258.73	59,815.49
6280 IT Consultant - License Systems	4,350.00	34,800.00
Total 6505 Board and Committee Expenses	\$ 22,350.00	\$ 125,178.78
Total 7010 Bank fees and interest	\$ 781.76	\$ 48,747.91
7130 Dues and memberships	-	120.81
7135 Insurance	-	-
7140 Insurance - D&O	3,160.71	23,848.00
7150 Insurance - General Liability	132.75	962.08
7160 Insurance - Mandatory Liability		10,858.75
7170 Insurance - Cyber	909.00	6,003.18
Total 7135 Insurance	\$ 4,202.46	\$ 41,672.01
Total 7205 Office Expenses	\$ 1,500.99	\$ 15,811.87
7320 Staff Travel	2,230.43	9,080.15
8000 Amortization	266.13	1,973.92
Total Expenses	\$ 232,069.12	\$ 1,323,525.65
EXCESS (DEFICIT) OF REVENUE OVER EXPENSES	-\$ 51,852.45	\$ 128,071.35

College of Patent Agents and Trademark Agents
Statement of Financial Position
 As of August 31, 2022

	Total	
	As of Aug. 30, 2022	As of Dec. 31, 2021 (PP)
Assets		
Current Assets		
Cash and Cash Equivalent		
1010 RBC Chequing Account	1,179,281.43	466,824.14
Total Cash and Cash Equivalent	\$ 1,179,281.43	\$ 466,824.14
1230 Other current assets	0.00	0.00
1400 Prepaid expenses	68,277.58	24,887.91
Total Current Assets	\$ 1,247,559.01	\$ 491,712.05
Non-current Assets		
Property, plant and equipment		
1600 Computer Equipment	11,679.53	9,610.78
1605 Computer Equipment - Accum Amort	(3,415.62)	-1,441.70
Total Property, plant and equipment	\$ 8,263.91	\$ 8,169.08
Total Non Current Assets	\$ 8,263.91	\$ 8,169.08
Total Assets	\$ 1,255,822.92	\$ 499,881.13
Liabilities and Net Assets		
Liabilities		
Current Liabilities		
Accounts Payable (A/P)		
2000 Accounts Payable (A/P)	177,581.59	124,743.83
Total Accounts Payable (A/P)	\$ 177,581.59	\$ 124,743.83
Credit Card		
2020 RBC Visa Credit Card	2,469.15	5,463.04
2030 RBC Line of Credit	0.00	0.00
Total Credit Card	\$ 2,469.15	\$ 5,463.04
2010 Accrued Payables	0.00	37,889.95
2015 Accrued Liabilities - Committee Remuneration	8,800.00	61,119.45
2050 GST/HST Payable	(32,148.98)	25,492.05
Total Current Liabilities	\$ 156,701.76	\$ 254,708.32
Non-current Liabilities		
2200 Deferred Revenue - Payments Received	(67.50)	155.50
2210 Deferred License Fees	685,000.00	-
2211 Deferred License Fees - Class 2	6,800.00	-
2220 Deferred Application Fees	0.00	-
2250 Deferred Exam Fees	34,300.00	0.00
Total Non-current Liabilities	\$ 726,032.50	\$ 155.50
Total Liabilities	\$ 882,734.26	\$ 254,863.82
Net Assets		
Net Assets - Beginning	245,017.31	-388,930.92
Current year excess (deficit) of revenue over expenses	128,071.35	633,948.23
Total Net Assets	\$ 373,088.66	\$ 245,017.31
Total Liabilities and Net Assets	\$ 1,255,822.92	\$ 499,881.13

CPATA Board of Directors
September 22, 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 legislative compliance reporting and remittance requirements.

GST/HST

CPATA's HST filing frequency has been adjusted by CRA from Annual to Quarterly. We are now required to file GST/HST returns for each quarter by the end of the following month. The Return for the period of April 1 to June 30th was received by CRA on July 21 and the refund payment was received in August 2022. The Return was filed with a refund of \$51,426.

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 15th of the month after the employees are paid.

CPATA is up to date with payroll remittances. New Board members have been added to the Payroll system and remuneration for Q2 was made to all Board members during July.

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 mailed the return on CPATA's behalf and confirmation will be provided once received from CRA.

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. 25¹ of the CPATA Act. We are advised the Minister has tabled the Report in Parliament.

¹ **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.

The Annual Report along with the audited financial statements were provided at the Annual General meeting in Ottawa on May 26th. 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.

We have also prepared a report which shows the amounts paid as remuneration and expenses to directors and committee members during 2021. By law 30 requires that this information be made public at the time the College submits its annual report to the Minister. We are delayed in posting this information.

Privacy Act and Access to Information Act

CPATA is subject to the Privacy Act and the Access to Information Act. In accordance with section 94 of the Access to Information Act and section 72 of the Privacy Act, in early September, CPATA reported on its activities in two reports to be tabled in Parliament by the Minister on our behalf. These reports have been posted on CPATA's website as well.

Official Languages Act

CPATA has undertaken several steps to achieve almost, if not entire, compliance with the OLA.

- As of October 1, our Licensee Portal and Public Register are available in French, as well as English.
- We have hired a new Administrator of Education whose first language is French to increase our capacity to interact with licensees in French.
- All registration forms are available in both official languages.
- We successfully ran our first bilingual candidate orientation session for the qualifying examinations on September 27, with another one scheduled in November.
- We have a draft Official Languages Policy which includes procedures and a training schedule for employees as well as Board and committee members.
- CPATA's Board of Directors now receives an update on Official Languages Act compliance at each quarterly meeting.
- All of our Board meetings are simultaneously translated and materials are published in both official languages
- All of our mass communications including website, newsletter and social media content are published simultaneously in French and English and are of equal quality

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)



Session Briefs from
**CNAR INTERACTIVE
DIGITAL EVENT**
2020



Diversity & Inclusion

Session 1:

The Role of the Regulators and Systemic Racism



Zubin Austin

Professor and Koffler Research Chair at the Leslie Dan Faculty of Pharmacy, and the Institute for Health Policy, Management, and Evaluation at the Faculty of Medicine / University of Toronto

Zubin Austin is Professor and Koffler Research Chair at the Leslie Dan Faculty of Pharmacy, and the Institute for Health Policy, Management, and Evaluation at the Faculty of Medicine, University of Toronto. His research focuses on the professional and personal development of the health workforce. He has published over 200 papers and authored 4 reference textbooks including the recently-published *Communication in Interprofessional Care: Theory and Applications*. In 2017, in recognition of the societal impact of his research, he was installed as a Fellow of the Canadian Academy of Health Sciences, one of the highest honours for health researchers in Canada. He is also the only University of Toronto professor ever to have received both the President's Teaching Award for sustained excellence as an educator and the President's Research Impact Award for the significance of his research. He has been named undergraduate Professor of the Year by students on 20 separate occasions.



Shamira Madhany

Managing Director, Deputy Executive Director / World Education Services

Shamira Madhany joined WES in 2018 after more than two decades of public service. She has extensive experience working with licensing bodies, settlement agencies, and higher education and post-secondary sectors in Ontario. She served as the chief architect of several government programs that enable highly skilled immigrants to obtain employment in their fields. Shamira played a key role in the launch of WES Canada in 2000 during her tenure at the Ontario Ministry of Citizenship and Immigration as Provincial Lead, Access to Professions and Trades. She is a guest lecturer at Queen's University and University of Toronto School of Public Policy, and serves on the board for Windmill Microlending.



Jan Robinson

Registrar CEO / College of Veterinarians of Ontario

Jan Robinson is the Registrar and Chief Executive Officer of the College of Veterinarians of Ontario, a position she began in 2012. A leader in profession-based regulation, Jan has more than 25 years of experience providing vision and direction to regulatory and public policy organizations. Jan's key contributions include the development of a framework to establish governance excellence, implementing an accountability, risk and evidence-based approach to regulation at all levels of the organization, and leading legislative change that promotes public access and safety. As well as providing leadership at the CVO, Jan's interests include the global mobility of professionals, developing cultures that support quality outcomes, and promoting agile legislative and standard setting frameworks.

Session 2:

Braiding Two Worlds: Developing Culturally-Responsive Regulatory Practices in an Era of Truth and Reconciliation



Anna-Marie Nielsen

Manager of Accreditation / Ontario College of Teachers

Anna-Marie Nielsen, OCT, B.Sc., B. Ed., M. Ed joined the Accreditation Unit in 2015 as a continuation of her educational trajectory from classroom teacher, to consultant, to Ministry of Education pedagogical content developer, to program officer. During her 30-year career, she has worked on a variety of science, numeracy and technology-related initiatives at the school, board and provincial levels. Internationally, Anna-Marie has had the opportunity to lecture at James Cook University in Cairns, Australia where she facilitated courses at the Faculty of Education on Patterning and Algebraic Reasoning. In her current role as the Manager of Accreditation with the Standards of Practice and Accreditation Department, Anna-Marie navigates between Faculties of Education, accreditation panels and the Accreditation Committee through all stages of the accreditation process. She facilitates accreditation reviews for the 50+ initial teacher education programs offered at 18 permitted institutions in the province of Ontario.



Carmelina Martin

Program Officer / Ontario College of Teachers

Carmelina Martin's career as an educator spans over two decades. Involved in a variety of provincial, national and international projects; including shaping policy for dance, curriculum writing and reviewing, writing and implementing in-service teacher education courses at York University, a presenter at UNESCO on Arts and Learning and the daCi conference in Taiwan, a panelist for the National Roundtable in Ottawa for Teacher Education in the Arts, founder and director of Pulse Ontario Dance Conference and a recipient of the Ontario Premier Teacher of the Year Award in 2011.

In 2018 Carmelina joined the Ontario College of Teachers as a Program Officer in the Accreditation unit and began her graduate studies in education at York University.



Marg Raynor

Program Coordinator / The Tecumseh Center for Aboriginal Research and Education

Marg is a Métis grandmother and educator, descended from French voyageurs and Ojibway women. She serves as the Brock University's Coordinator for a B.Ed. program, offered in partnership with the Oshki-Pimache-O-Winhe Education Institute. The B.Ed. program involves on-site and distance learning throughout Northern Ontario. She teaches several courses within the program which focus on cultural approaches to education. Marg holds a M.Ed. degree from York University. Her teaching career spans kindergarten to post secondary, but Indigenous education is her passion. She is active in her community and has served on the executive of the Georgian Bay Métis Council and the Georgian Bay Native Friendship Centre, as well as on the Aboriginal Advisory Committee of the Simcoe County District Board of Education. In her personal life Marg is a beadwork artist and active musician, performing at area festivals. She lives with her family in Perkinsfield, ON.

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Introduction

Addressing diversity and inclusion within many different social and professional realms is an ever-evolving discussion that has come to the forefront more than ever in Canada in response to the Truth and Reconciliation Commission of Canada's (TRC) calls to action, as well as the historical human rights movements in support of Black Lives Matter that took place in July and August of 2020. The question of where change in values, mandates, and practices within regulated professions – both throughout licensing and accreditation process, as well as in the field – is one that is significant and pressing. Both "*The Role of Regulators and Systemic Racism*" and "*Braiding Two Worlds: Developing Culturally-Responsive Regulatory Practices in an Era of Truth and Reconciliation*" panels addressed where the role of regulators and the prioritization of diversity and inclusion can and must meet.

There is no immediate and single solution for implementing culturally-responsive practices or eliminating racial discrimination and inherent bias. However, these two panels uncovered three commonalities in their approach that have seen incremental and noticeable change, thus making the experience of all stakeholders within regulated professions more positive, inclusionary, and comfortable.

First: the recognition of the need for inclusion and representation on both sides of protocols and processes; this means leadership and participants should represent diverse identities and inform diverse cultural contexts. Second: organizations must implement distinct discourse and education in order to create *empathetic and intentional action* that confronts personal and systemic bias. Third: organizations need to consider claiming responsibility beyond the scope of a regulator's mandates, expanding accountability for upholding the dignity of all stakeholders within regulated professions - beyond accountability solely for the public interest. With each of these notions working together, proper representation can lead to a relational approach to accreditation and licensing processes; as such, a mutually beneficial relationship between serving a regulator's mandate, as well the dignity and needs of diverse stakeholders throughout, is possible.

It must be clear that such recommendations do not adjust the standards and expectations of those entering regulated professions; it is not an issue of easier treatment. It does, however, curate a more understanding and comfortable experience for diverse people who are seeking licensing or accreditation that ultimately benefits all stakeholders.





Theme 1: The need for inclusion and representation on both sides of protocols and practices

In order to achieve true diversity and inclusion, it must begin with representation. A leadership and staff that reflects the diversity of the world and stakeholders alike must be demonstrated. This can be achieved either throughout diversifying those in decision-making and leadership roles, or on a case-by-case basis where knowledge holders of specific cultures can inform protocols and processes that occur in different cultural contexts.

In the past, moving towards a “colour blind” society was held as an ideal and the principle of neutrality is valued within the role of regulators; however, it is clear now that colour blindness and neutrality do not function in support of diversity and inclusion. Shamira Madhany (Managing Director, Deputy Executive Director of World Educational Services) highlighted the necessity of labels that are responsive to the different needs of racialized individuals. ***Such labels must work to consider identity as a value to be recognized and respected - as opposed to something to be stereotyped, discriminated against or ignored.***

In order to achieve equity, groups that are in need of extra support - or simply support beyond the realm of normalized culture and ethics - need to be identified. This risk of stereotypes or weaponization of labels comes when diversity is not reflected in leadership and staff of those implementing and creating policy that affects a wide realm of people. As such, it is essential to ensure collaboration between knowledge holders and diverse peoples whose identity and communities can inform how regulators’ practices can become culturally responsive and distinct to the needs of diverse people.

It seems conversation of diversity and inclusion tend to gravitate towards discussing the plight and experience of those who have been socially and systemically disenfranchised. Madhany assures that it is equally - if not more important to turn the conversation inward - towards the realm in which many regulators work. Identifying where diverse representation is lacking in the role of regulators reveals where one can actively address what causes disenfranchisement in their field. ***It is suggested to reflect on leadership within boards, councils and appointments, to be critical of representation, and to question whether improving diversity grants the ability to implement change beyond tokenism.*** In addition to paying attention to who is represented in powerful roles, ***diverse representation must be reflected in who has the power to choose who fills such roles.*** Lastly look inwards at managers, how they are trained to treat people, as well as how they make staff and stakeholders feel, depending on identity.

When addressing issues of diversity and inclusion, it is essential to have greater internal awareness as regulators. Be critical of who makes decisions and notice whether the impact of certain decisions is felt differently by racialized individuals. Working towards functional equity

and diverse representation within organizations will translate into a more comprehensive treatment of applicants.

Jan Robinson (Registrar & CEO of College of Veterinarians of Ontario) pointed out the fact that because there are larger obstacles blocking influence over the voices brought to councils or boards is all the more reason to focus on the committee and panel levels. Diverse representation can and must be implemented from individual behavior to policy recommendations. While conversations are being had about such issues, it is not enough. The active listening and learning from those who represent differing cultures in order to inform culturally responsive practices is essential. Robinson reported that, in her experience, progress beyond workplace conversations is still lacking. For example, there are many conferences addressing diasporas and immigration in Canada, however these conferences host a very low number of regulator attendees. Diverse representation in leadership, as well as listening to those with the lived experience that you do not have, are necessary steps to important and practical change.

These values were demonstrated and put into practice throughout the Ontario College of Teachers' (OCT) integration of the TRC's calls to action with regard to how they conducted their accreditation process when working with indigenous communities. The mandate of the OCT involves reviewing and accrediting programs of professional education. As such, Ontario regulation 34702 (The Ontario College of Teaching Act) covers who is on the panel of accreditation reviews, as well as what the panel needs to review. It does not, however, instruct how site visits and interviews must occur, which is an integral piece of implementing culturally-responsive protocols and processes. Thus, the OCT asked themselves: who needs to be invited to have input on how site visits and interviews should be carried out in order to uphold the relevant TRC calls to action and the dignity of Indigenous teaching program providers going through accreditation reviews?

In order to develop culturally-informed processes that enable the work of accreditation reviews within Indigenous communities, it was clear that Indigenous scholars, knowledge keepers and elders were those who would best inform Indigenous community site visits and interviews. With this understanding, a gathering led by an Indigenous elder was created, called the **"Indigenous writing collective."** This gathering had the intention of elevating Indigenous voices – without interference – in the discussion of how regulation requirements for teacher education programs can be satisfied in Indigenous communities.

Through this consultation, three main action items were formed. First, the disclosure statement read before all panels was adjusted. It was rewritten in response to being notified of triggering or offensive phrases previously used in regard to consent and identity of Indigenous people. The new disclosure statement was implemented immediately and proved more appropriate in Indigenous and non-Indigenous settings.



Second, putting into effect participant guidance from elders and stakeholders in institutions OCT works with before and after site visits. Gaining knowledge and awareness of local culture and contexts in advance prompted a more comfortable experience throughout site visits.

Third, implementing a culturally appropriate name for the interview process. Where interviews have an interrogative connotation, rebranding this protocol as a “**conversation circle**” with agreed upon discussion parameters and allowing the conversation to be led by elders, proved to provide the space and safety for necessary information to be shared in a more positive experience.

Reflection and Inquiry



How do we braid the **transactional** nature of accreditation prescribed in regulation with a **relational** approach to accreditation reviews?



CNAR Interactive Digital Event 2020 / Événement numérique interactif CNAR 2020
Continuously Connecting Canadian Regulators / Le rendez-vous continue des responsables de la réglementation au Canada

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Where neutrality is no longer an option it is important to lean into the principle of equity in terms of representation in order to foster an inclusive and comfortable experience of licensing and/or accreditation in diverse settings. This can manifest in a variety of ways, though it has been proven mutually beneficial in the instance of the OCT, not only including but **supporting** the leadership and guidance of those who represent the communities in which they come into.

Marg Raynor (Program Coordinator at The Tecumseh Center for Aboriginal Research and Education) shared her experience with the three-pronged adjustments that OCT invested in as mutually beneficial. She felt she was given a voice throughout the Indigenous writing collective. Compared to her previous experience, the entire accreditation review process felt less isolated and less stressful, while maintaining the same goal of demonstrating an effective and important teaching program. It is clear that representation in preparation for the role of regulators is an important and actional value for diversity and inclusion.

Theme 2: Discourse and education creates empathetic and intentional action


Following proper representation, an important step towards true diversity and inclusion is adapting a relational approach to all practices. This is a natural subsequent action to increased representation. Specifically, taking on a position of learning within roundtables and conversations led by BIPOC individuals provide insight into cultures different than one's own. As such, the need for open and diverse discourse - as well as diversified education - is necessary in creating empathetic and intentional action that addresses issues of diversity and inclusion. With these incremental efforts to create a space of mutual learning and collaboration with the goal of creating inclusive practices, personal change and recognition of individual bias can influence recognition. Only then can organizations unlearn collective bias in the workplace and impact the role of regulators.



Raynor offered a wonderful depiction of this principle of a relational approach to regulation, as well as the acknowledgement of many different ways of life. Truth and reconciliation can be understood as restoring the balance of original treaties. One treaty that was shared between Indigenous peoples and Dutch European settlers in 1613 was displayed on a beaded wampum belt. This treaty was formed in response to the question of how two societies could coexist. It was agreed upon that these two communities would treat each other as “brothers” who do not interfere with their distinct and different ways of life. While it is apparent throughout history this agreement was not honoured, its original principles were ones of friendship, peace, and longevity. **The principle of friendship can be revisited and understood to inform incorporating collaboration and relational approaches to licensing and accreditation processes.**

In addition to adapting conversation circles and cultural preparation for engaging with Indigenous communities, the purposeful listening and shift towards co-constructing site visits, as well as collaboration on formatting interviews in culturally responsive ways, demonstrates the effort to act in a way that upholds the spirit of friendship and respectful coexistence.





As the three aforementioned adjustments made by the OCT mentioned earlier improved representation on both ends of the process, Raynor asserted the changes led to a sense that the process was a partnership, as opposed to someone outside your program looking for fault. Such steps accompanied by tokens of appreciation – such as offering gifts to students and participating in tobacco offerings – created a “tangible degree of unity” highly reminiscent of the spirit of the wampum belt treaty.

While the needs of accreditation reviews are still met, the process of collecting such information can be done in a relational rather than hierarchical manner. It is recommended that other regulatory panels engaging with Indigenous communities begin by reflecting on the fact that **there are two different worlds of culture; both need to acclimatize to the other in order to interact in a respectful manner.** Listening, asking questions, and learning etiquette from elders are substantial actions that can transform a stressful and, at times, triggering experience into one of friendship that produces mutually beneficial results. It is important to remember a relational approach does not mean to give away control; it allows for the sharing of power that “gets the job done” with a new ideology of teamwork. When taking into consideration the TRC’s calls to action in a regulatory system, the OCT found that information revealed to the panel was articulated more openly and authentically, with less stress and fewer resources required throughout the process. As a result, regulators benefited from the collection of more salient evidence and enabled them to produce a well-rounded image of the program, thus presenting a fulsome and more informed recommendation to the decision-making body.

Where in the OCT’s instance the adjustment was one of restoring an equilibrium through a relation approach, this principle can be applied more broadly by adding a human or “heart” element to a traditionally technical issue. In the past, a regulator’s job was to ensure that professional requirements were fair – in tandem with holding an ideal of neutrality; therefore, identifying and describing certain people in racialized terms was heavily avoided. However, when equity is recognized as a more valuable ideal than neutrality, the recognition and normalization of acknowledging the distinct needs of BIPOC individuals challenges such strictly technical processes. With this step beyond neutrality, the acknowledgement - as opposed to suppression of individual value systems and bias that informs each individual’s lens within the workplace - must be analyzed in order to properly unlearn internalized stereotypes and become intentional with the words and actions taken. As explained by Madhany, this process is necessary for steps towards diversity and inclusion; regulators need to become intentional with the policies written and conscious of initial impressions of each person they encounter.

This specific effort to understand how discrimination can manifest in systems asks individuals and staff to be **courageous** when coming across human or systemic bias and speak out. Racialized individuals prove less likely to receive jobs within regulated professions - regardless of the fact they are highly skilled. This is one instance where education and discourse with diverse people can translate into empathetic and intentional action

- as opposed to allowing subconscious bias dictate the treatment of people. This begins with working personally through bias in order to develop a more inclusive nature.

Recommended as steps in the direction of a greater culture of inclusion and equity is three-fold: First, one must think outside the box and incubate ideas, such as bridging programs. Second, people need to forgive themselves for having implicit bias and engage in difficult conversations - even when worried about being perceived as uninformed. Third, one must step outside their personal experience box and become intentional in thinking differently than their implicit bias. In the workplace, this personal action can manifest in the way policies are written and how protocols are practiced. With empathetic and intentional thought and action, incremental change will occur more naturally than larger or daunting attempts to eliminate discrimination immediately. As stated by Anna-Marie Nielsen (Manager of Accreditation at the OCT) a relational approach is **"right, just, and promotes enduring goodwill;" such approaches begin with discourse and listening to those from diverse backgrounds, as well as education beyond diversity and inclusion courses that have an ending point.**

Theme 3: The need to consider responsibility beyond regulatory mandates

Finally, it is significant to understand the implications of having a diverse and relational approach work in tandem with transactional processes. It seems that taking on responsibility beyond the mandate of a regulator's mission is necessary for upholding the dignity of all stakeholders within regulated professions - particularly within the accreditation or licensing process. While a regulator's role on paper is technical in its approach and serves the good of the public, the process itself must move beyond simply collecting what is needed to make informed decisions. **A balance must be found between the transactional/technical mandate and the human interactions/relational aspects that come to the forefront in the process of collecting information.**

It is clear that values of impartiality and fairness are not functioning in favour of a diverse space. Extending empathy on a personal level is needed within regulators' conversations and actions - specifically when prioritizing diversity and inclusion. **Sensitization at a regulatory level can help bridge the gap between relation and transaction, human and mandate.** Correcting the bias in a generalized process that normalizes a dominant culture, neglects others. Traditionally, the regulator community's mantra is "all competent individuals will be licensed, and all licensed individuals are competent;" however, this mantra is not reflected in reality, nor does it address individual experiences. Generalized rules and regulations remove the human aspect of interaction. While a main duty for regulators is to maintain high standards of practice in regulated professions and serve the public interest by doing so, it has been demonstrated through OCT's case that braiding the public interest with fairness and equity is a more respectful and beneficial approach to regulation for all stakeholders.



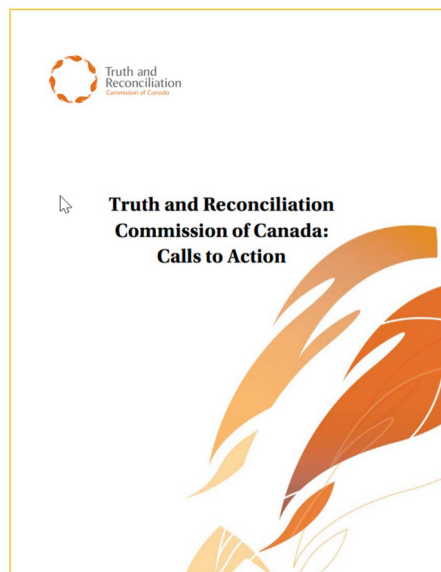
Responding to the TRC's calls to action applicable to regulatory work demonstrates the acceptance of a responsibility towards the comfort of those going through a review - in addition to the responsibility of conducting the review itself.

The critical question for OCT was, "How do we braid the transactional nature of accreditation prescribed in regulation with a relational approach to accreditation reviews?" This question made the requirements needed to be found throughout the review process and how the review process is conducted distinct entities. Thus, the former tended to be technical and maintain high standards, while the latter adjusted itself towards a friendship based, culturally-responsive manner. Ultimately, the transaction between the college and the provider of educational programs remained the same; however, when questioning *how this transaction should be conducted, the responsibility of upholding the dignity of those involved is gained.*

There seemed to be an overall agreement that properly prioritizing diversity and inclusion; extending the accountability and responsibility of regulators beyond their mandate; and taking a more 'heart'-centred and inclusive approach to the work of regulators are recommended. But where does this responsibility end?

Dr. Zubin Austin's (Professor and Koffler Research Chair at the Leslie Dan Faculty of Pharmacy, and the Institute for Health Policy, Management, and Evaluation at the Faculty of Medicine at the University of Toronto) pointed out that even if regulators take steps to eliminate discrimination within their roles, racialized people are still most likely to hit ceilings in diversified workforces. Does diversifying those who are registered where the role of the regulator ends? Should they have a stake in the accountability for where people end up within their respective fields? How they are treated in these professions?

Responding to the TRC Calls to Action



Action #57 Professional Development and Training for Public Servants

Action #63 Education for Reconciliation

Presently, regulators hold finite roles; the function of professional cultures differ greatly. When extrapolating the principle of infusing an empathetic approach into regulation, perhaps this principle can be extended to monitoring the integration of racialized people into their professions. It must be questioned whether remaining silent on issues traditionally beyond the scope of a regulator - though directly linked to stakeholders in regulated professions - becomes negligent.

Madhany prompted the consideration of the impact of becoming licensed and securing a job reflective of one's skills in regard to internationally educated professionals. While at the core, regulation is used to assess the credentials of an individual, often neglected is the sacrifices of lifestyle and identity it takes to move to a different country and seek a job in their original field. The erosion of self-confidence and loss of generational opportunities that those who are internationally educated face if unable to fulfill their capabilities and apply their education in a new country, is an experience in which regulators should empathize.

It is this empathy that should drive the desire to create a more inclusive nature to licensing programs and eliminate inherent bias that has led to the discrimination of racialized people when it comes to being recognized as highly skilled individuals. Accepting responsibility for people -and their lived experiences - who are facing review panels and licensing regulations, in addition to the responsibility to verify standards set to protect the public interest, is significant and necessary in the movement towards merging diversity and inclusion values with the role of regulators.



Conclusion

While these themes provide insight and actionable steps towards creating a more equitable regulation process, it is equally significant to understand that progress is not static. The treaty described earlier that promoted friendship, peace, and longevity was known to be a 'living treaty.' This depicts the expectation for individuals and communities to evolve; as such, ongoing discourse and education is needed. Continuous re-evaluation of how diversity and inclusion can be prioritized and become fundamental to thought and action is required. In this spirit, Robinson cautioned not to "get caught in action that leads to inaction," such as limited courses or producing one report and checking the box. In order to create change beyond empty promises or diversity tokenism, there is a need for the acknowledgment and humility of unlearning bias and expecting continued change in the future. However, turning a spotlight inward and being critical of representation, upholding the spirit of brotherhood when engaging with diverse cultures, and being intentional and empathetic along with procedural throughout regulation, are important steps when confronting the push and pull of progress.



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Julie Maciura

The concept of “incompetence” on the part of a practitioner (“registrant”) for the purposes of disciplinary action has not been frequently discussed by the courts. Arguably, the last significant judicial discussion could go as far back as *Mason v. Registered Nurses’ Association of British Columbia*, [1979] B.C.J. No. 1114. In that case, the concern was the attitude of the registrant that seemed to prevent them from learning from their mistakes.

As such, Manitoba’s highest court’s recent discussion in *Jhanji v. Law Society of Manitoba*, 2022 MBCA 78 provides a welcomed analysis of the issue. While it is in the context of the legal profession, the analysis is broad enough to apply to many professions. In fact, the court cited several cases of incompetence from non-legal regulators. Unlike *Mason*, the type of incompetence in issue was an

alleged absence of capabilities.

The court made the following observations:

- Incompetence harms not only the clients of the registrant, but also the registrant’s colleagues and the systems in which they practice.
- Whether a registrant is incompetent depends very much on the facts; no two cases are alike.
- Different language was used to describe incompetence, including “want of ability suitable to the task,” “lack of knowledge, skill and judgment” and “a basic lack of understanding of the applicable law.” The court contrasted these descriptions to a situation where a registrant had “a bad day.”
- In a nod to the *Mason* kind of case, the court indicated that the causes of incompetence are diverse. It “can arise from the member’s natural qualities or experience” or it can be the result of “deficiencies in their disposition to use their ability and experience properly.”
- Even though it recognized that incompetence findings are quite different from findings of professional misconduct, the court noted that “It matters little to the public interest in the competent practice of law that the appellant provided incompetent service with integrity or that he tried his best in providing incompetent service.” The court agreed with the regulator that no amount of diligence, if exercised incompetently, is an adequate answer to the allegation. In fact, in this case the court accepted that the registrant was a sincere person of good character with good intentions.
- Incompetence findings are often established through expert opinion evidence given by practitioners with broad knowledge and experience in the practice of the profession. In this case the court was reassured by the fact that the two expert witnesses had insight into the context in which the registrant worked (i.e., a sole practitioner practising mainly in litigation and commercial matters).
- The evidence of incompetence was not confined to the registrant’s work product, such as documents he prepared. The evidence also included testimony about the registrant not having an office management system, his files being in disarray, practising without mentoring or practice supports, taking positions on

files that were “nonsensical,” and not following the rules applicable to trust funds. Of particular interest, the expert witnesses also relied on their interviews with the registrant.

- The court acknowledged that this was not a case of “instances of reasonable differences of opinion that are common in discussions about the exercise of professional judgment,” which the court implied might not constitute incompetence. Rather, the court concluded that the registrant “lacks the minimum qualities needed to give effective professional [legal] services.”
- Courts tend to be cautious about using the conduct of a registrant’s defence at their discipline hearing as evidence to support a finding. Such observations can amount to undermining a registrant’s right to make full answer and defence without fear that doing so can be used against them. It can also amount to finding fault for conduct not contained in the allegations. However, in this case, the court supported the discipline panel’s consideration of the registrant’s manner of conducting his defence as reinforcing the concern about his competence. In fact, the court also mentioned the registrant’s conduct of his appeal to court in the same way (i.e., it described his submissions as “prolix and unfocused”).
- The court noted that discipline panel’s reasons cited seven examples of incompetence. These examples assisted the court in rejecting the registrant’s defence that he was a fearless advocate working on complex matters.
- A panel of peers are best able to determine incompetence and, as such, deference will be accorded by the courts to the findings of a discipline panel. Even where there is a right of appeal, a court would disturb the finding only where there is palpable and overriding error.

The court supported the discipline panel’s conclusion that the registrant should never have been admitted to the profession.

The utility of this decision for other regulators might be hampered somewhat because it was such an obvious case. According to the court, the registrant lacked the capacity to be a member of the profession, finding that “The appellant’s professional incompetence is not an isolated, or even a pattern of, gross mistake or the breakdown of previous competent practice; it is more egregious.” As such, the case may provide less guidance in cases that are not as clear-cut. However, the decision is still helpful in its extended analysis of the concept of incompetence.

Julie Maciura is a partner at [Steinecke Maciura LeBlanc](#). She practises exclusively in the area of professional regulation and is a co-author of the Annotated Statutory Powers Procedure Act, 2nd Edition and the Complete Guide to the Regulated Health Professions Act. She can be reached at jmaciura@sml-law.com.