

Board of Directors Meeting Agenda

Via Zoom

DATE	December 15, 2022
TIME	12:00 noon ET
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	12:00 pm	Chair	-	-
1.2.	Conflicts of Interest – Board members are to declare if they have any conflicts regarding matters on the agenda				
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 – 2022-11-12 Board Meeting - 2022-11-15 Report of Nominations & Board Development Committee - 2022-11-17 Report of the Governance Committee - 2022-12-15 Report of Audit & Risk Committee 	12:05		<p>4</p> <p>9</p> <p>12</p> <p>14</p>	Approve



3. Enhancing CPATA's Governance

3.1	<p>2023 Budget The CEO and CFO will present the 2023 budget which has been reviewed by the Audit & Risk Committee</p> <p>Resolution – <i>Be it resolved to approve the 2023 Operating Budget Materials</i></p> <ul style="list-style-type: none"> • 2023 Budget Package • CFO Presentation 	12:15	D. Pink/ S. Walker CPA	15	Approve
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4. CPATA as a Modern Regulator

4.1	<p>Submission on Unauthorized Practice from IPIC CPATA received a brief from IPIC recommending CPATA implement the necessary infrastructure to receive complaints regarding unauthorized practice.</p> <p>Resolution – Whereas CPATA recognizes that ss. 67 and 68 of the CPATA Act limit the use of the title of Patent Agent' or 'Trademark Agent' or of persons representing themselves as such if they are not licensees of CPATA; And whereas the Act is not clear on the mandate of CPATA regarding enforcement of these provisions; And whereas there need to be discussions with ISED regarding the application of these provisions; Be it resolved the CEO, following necessary consultations, is to report and provide advice to the Board on all aspects of addressing allegations of unauthorized practice at the Board's meeting in March 2023.</p> <p>Material – IPIC Submission on Unauthorized Practice</p>	1:30	D. Pink	23	Approve
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For Information

	1. The Investigations Committee has authority to develop policies governing its work. They have developed new policies on the			33	
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	<p>Decision Making Thresholds and Guidelines for the conduct of Complaints Investigations, which are provided to the Board for its information together with a memo from the IC Chair, Kris Dangerfield KC</p> <ul style="list-style-type: none"> - Investigations Committee Policy on Decision Making Thresholds - Investigations Committee Guidelines on Conduct of Complaints Investigations <p>2. October 31, 2022, Financial Statements and Financial Highlights</p> <p>3. 2022-11-23 Legislative Compliance Memo</p>			<p>35</p> <p>38</p> <p>42</p> <p>47</p>	
Future Meetings					
	<p>2023</p> <p>January 26/23 Committee of the Whole</p> <p>March 2/23 Board-Public meeting</p> <p>April 13/23 Committee of the Whole</p> <p>May 24-26/23 AGM & Public Meeting Ottawa</p> <p>July 6/23 – Committee of the Whole</p> <p>August 17/23 – Board-Public meeting</p> <p>September 21/23-Committee of the Whole</p> <p>November 9/23 – Board-Public meeting</p> <p>December 14/23 – Board Public meeting</p> <p>2024</p> <p>January 18/24 – Committee of the Whole</p> <p>March 7/24 – Board-Public meeting</p> <p>April 18/24 – Committee of the Whole</p> <p>May 29-31/24 AGM & Public Meeting Ottawa</p>				

**Public Board of Directors Meeting
Held at the Prince George Hotel in Halifax
on November 12, 2022
7:30 a.m. ET
Minutes**

BOARD MEMBERS:

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

STAFF:

Sean Walker, CFO
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-Thiphaine Camus, Administration, Registration and Education

1. Introductory Matters/Call to Order/Approval of Agenda/Conflicts of Interest

The meeting was called to order at 7:32 a.m. ET.

The Chair acknowledged that the meeting was held in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq.

The Chair advised that the Board and staff had participated in a strategic planning session on November 11, 2022.

The Chair provided an update on the Ministerial appointment of Directors to the Board, noting that despite full assurances by the Government of Canada, the two remaining positions were not yet filled. The Board expressed disappointment with the Government of Canada on their failure to appoint the remaining directors, who should have participated in the strategic planning session. The Chair noted the delay in making these appointments was unreasonable and urged the Minister to make the appointments as soon as possible.

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

No conflicts of interest were declared.

2. Consent Agenda

The Board inquired about the Nominating and Board Development Committee's plan to consider appointment of directors rather than elections. The CEO confirmed that the Board committees were in the process of developing work plans, which would be brought forward to the Board for approval, and that no action would be taken by any Committee without Board direction.

On a motion made by Andrew Currier and seconded by Leonora Hoicka, the Board resolved to approve the consent agenda. Motion carried.

3. Enhancing CPATA's Governance

3.1 CPATA's Regulatory Checklist

The Vice-Chair provided a brief overview of the proposed process for the Board to review CPATA's work against the Regulatory Checklist developed by Harry Cayton.

The Board agreed with the proposed regulatory checklist compliance process as recommended by the Governance Committee, which includes a dedicated Committee of the Whole meeting where the Board will assess the checklist, determine compliance and identify action items, and all Committee Chairs will demonstrate compliance for their areas.

The Board agreed that a report should be published demonstrating compliance with the checklist and highlighting action items.

ACTION – The Board will review CPATA's work against the Regulatory Checklist developed by Harry Cayton and adapted for CPATA at their January 2023 Committee of the Whole meeting.

ACTION – The CEO will invite the Chairs of all Committees to attend the January 2023 Board Committee of the Whole meeting to demonstrate compliance with the regulatory checklist adapted for CPATA.

3.2 Director Remuneration

The CEO described the process for researching director remuneration and the options provided by the consultant. The CEO highlighted CPATA's philosophy to provide reasonable compensation for the professional support provided by directors and committee members. The Board commented on the diversity of how professional regulators handle remuneration and appreciated the background information used by the Governance Committee to make the recommendations.

The CEO noted that professions utilizing the volunteerism model were recognizing that the remuneration model allowed for clearer expectations and lines of accountability to be articulated.

The Board inquired whether there were any restrictions on the number of members appointed to committees. The CEO confirmed that the terms of reference, which are approved by the Board, consider committee size and composition, in concert with the Act, Regulations and By-laws, and that these terms of reference may be revisited by the Board should it be determined that changes need to be made.

It was noted that the compensation for individuals on Committees who provide additional support, such as training, needed to be considered.

ACTION - The CEO will inform the Department of Justice of the drafting instructions for the revised remuneration provisions for incorporation into the revised by-laws, scheduled to come into force in Spring 2023.

Be it resolved that the Board of Directors accepts the recommendations of the Governance Committee regarding remuneration of Directors and Committee Members and directs the changes to be incorporated into the by-laws.

MOVED: Brigitte Chan

SECONDED: Jeffrey Astle

Motion carried.

3.3 Board Meeting Evaluations

The Vice Chair provided an overview of the Board Meeting Evaluation Survey and Governance Committee recommendation.

Be it resolved that the Board approves the Board Meeting Evaluation Survey and directs the CEO to administer it immediately after each Board meeting.

MOVED: Leonora Hoicka

SECONDED: Brigitte Chan

Motion carried.

3.4 Director attendance at committee meetings

The Vice Chair provided an overview of the Governance Committee's recommendation to allow each Director, who has not been appointed to a committee, to attend a Board Committee meeting as an observer.

The Board expressed agreement with the process for Directors to attend Committee meetings, as recommended by the Governance Committee.

ACTION - The Administrative Coordinator will circulate Board Committee dates to the new board members so that they can determine if they wish to observe any of the meetings with the intention of identifying areas of interest.

ACTION - Directors interested in observing a committee meeting should indicate their preferences to the CEO as soon as possible.

4. CPATA as a Modern Regulator

4.1 How CPATA Operates

The CEO provided an overview of the revised Board Policy No. 1 How CPATA Operates. The CEO confirmed that if any changes were made to the definition of "public interest", as a result of Board Policy No. 9 The Public Interest and CPATA's Decision Making, they would be reflected in Board Policy No. 1.

Be it resolved that the Board approve the amended Board Policy No. 1 How CPATA Operates.

MOVED: Ruth McHugh

SECONDED: Leonora Hoicka

Motion carried.

4.2 Describing how we act in the Public Interest

The Manager of Professional Responsibility presented the draft Board Policy No. 9 The Public Interest and CPATA's Decision Making to the Board and noted that the articulation of the public interest in this way is unique for a professional regulatory body.

It was noted that the application of the public interest lens when making decisions can be challenging, which is why CPATA needs an intentional and measurable framework. The Board agreed that measurement in this area can be difficult. The scope of the CPATA's public interest mandate is not clearly defined in its enabling legislation. For this reason, CPATA requires a framework that provides precision and clarity to CPATA's public interest mandate and also provides guidance and direction to staff and to Board and Committee members when carrying out CPATA's public interest mandate. It was noted that this policy, combined with the regulatory checklist compliance framework, will provide that directional guidance.

It was also noted that this policy was not meant to be static, and should be considered a living document, benefiting from regular consideration, discussion and revision.

Finally, it was noted that the extent to which CPATA can act in the public interest is sometimes constrained by the CPATA Act. For example, the Investigations Committee would like to be able to exercise right-touch, risk-based regulation in the public interest, if it were not constrained by the authority set out in CPATA's legislative framework.

Be it resolved to publish the Draft Board Policy No. 9 The Public Interest and CPATA's Decision Making for consultation with a final version to be returned to the Board at their March 2023 meeting.

MOVED: Ruth McHugh

SECONDED: Jeffrey Astle

Motion carried.

Other Business

CFO Report

The CFO asked the Board if there were any questions about the financial statements, for which there were none. The CFO highlighted that CPATA's primary source of revenue was licensee fees and noted that the Board discussed budgetary options during the strategic planning session.

ACTION – The CFO will ensure that the Audit & Risk Committee receive and review the financial statements prior to being sent to the Board.

CEO Selection Committee Report

The Chair thanked the current CEO for his leadership as CPATA's inaugural CEO/Registrar and provided an overview of the CEO selection process and highlighted the use of matrices to identify required skills, attributes, attitudes etc., and noted that Boyden was contracted to assist with the recruitment and selection process.

Adjournment

On a motion made and carried unanimously, it was resolved to end the public meeting at 9:11 a.m. ET, and to move in-camera.

Appointment of Chief Executive Officer and Registrar

Following its in-camera meeting, the Board passed the following motion:

**Whereas CPATA retained Boyden Canada to search for CPATA's next CEO & Registrar;
And whereas CPATA was engaged in the recruitment process through its CEO Search Committee;
And whereas following the search, the Committee has recommended to the Board that Juda Strawczynski be appointed as CEO & Registrar;
Therefore, be it resolved under ss. 22 and 23 of the College of Patent Agents and Trademark Agents Act, the Board of Directors appoints Juda Strawczynski as the Chief Executive Officer and Registrar of CPATA under the terms of employment outlined in a memo to the Board from Tom Conway, dated November 9, 2022.
Be it further resolved the appointment will be effective at a date to be agreed upon between Juda Strawczynski and the Chair of the Board.
MOVED: Ruth McHugh
SECONDED: Jeffrey Astle
Motion carried.**

The meeting adjourned at 10:30 a.m. ET.

Tom Conway

Chairman of the Board of Directors

Minutes approved on (date)

NOMINATIONS & BOARD DEVELOPMENT COMMITTEE MEETING REPORT – NOVEMBER 15, 2022

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

Jennifer Slabodkin, Deputy Registrar

Nominations and Elections Process

The Committee discussed the administration of the post-2022 election survey which will be used to gather feedback from nominees. To maximize uptake, the Committee agreed that the survey should be circulated before the holidays, with a reminder email sent early in the new year, with a final submission deadline of mid-January 2023. Participants will be able to either email their responses back or submit them via an anonymous form, with the only piece of required information being whether they ran in the patent agent or trademark agent election.

The Committee discussed whether there was value in surveying any other stakeholder groups regarding the nominations and elections process and agreed that the staff should provide their feedback on lessons learned from a communications, technology and administration perspective.

Candidate Conflicts of Interest

The Committee discussed creating interpretive statements for “eligibility”, “independence” and “conflict of interest”, which could be added to Board Policy No. 3 Code of Conduct and Board Policy No. 7 Nominations and Elections, for transparency and to assist potential board candidates in self-identifying issues before entering the nomination and election process.

The Committee noted that prescriptive by-law changes would create inflexibility, particularly when CPATA’s approach to regulation and governance is focussed on being right-touch, risk-based, proportionate and principled. Instead, the combination of adding interpretive statements to allow for self-selection out of the process, and new sections to the relevant Board policies that describes how decisions will be made regarding eligibility, along with potential outcomes, should provide the clarity and structure needed to consider eligibility issues.

The Committee agreed that separating out eligibility information into a stand-alone document would assist potential candidates when determine if they were eligible to run for election.

The Committee discussed identifying a list of conflicted organizations where membership would constitute ineligibility under section 14(c) of the Act and including it in materials regarding eligibility for nomination and election.

Developing an Onboarding/Orientation Checklist

The Committee reviewed a draft onboarding/orientation checklist, and suggested the following amendments:

- The interpretive statement regarding eligibility, as discussed above, should be added into the recruitment process section.
- A list of artifacts to review (i.e. Board policies, minutes etc.) and when to review them should be clearly articulated.
- A checklist for candidates and new directors should be developed so that they can keep track of things they need to do or review, that reflects the components and order in the onboarding/orientation checklist.

The Committee discussed the value of social events, whether virtual or in-person, to foster conversations, knowledge-sharing and collaboration amongst Board and Committee members.

Developing a Board Manual

The Committee discussed whether to proceed with developing a Board Manual and queried whether keeping it updated would be overly burdensome, particularly when changes are made.

The Committee decided to review the draft Board Manual template to confirm the contents and identify the most effective and efficient way to present and store it (i.e. a manual, a table of contents with links to external materials etc.).

Board Development

The Committee discussed the potential issues with self-assessment of competence and experience level against a skills/competency matrix, and determined that asking for evidence to support their responses would assist with validation. The Committee noted that providing a list of examples of evidence for demonstrating skill or experience level would also be helpful.

The Committee decided that prior to the next meeting, they will each complete the skills matrix as a beta test to determine where clarifying statements might be needed and to identify a preliminary list of examples for evidence to demonstrate skills.

GOVERNANCE COMMITTEE MEETING REPORT – NOVEMBER 17, 2022

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

Jennifer Slabodkin, Deputy Registrar

CEO Performance Review

The Committee reviewed the proposal submitted by Boyden regarding the CEO Performance Review process.

The Committee noted that the proposal lacked direction on key aspects of the process, such as key participating stakeholders, and the key metrics used for the evaluation. The Committee agreed that Boyden should be asked to provide clarification on these areas so that the process and required resources could be mapped out before implementation.

The Committee also noted:

- the key stakeholders should be objective;
- the CEO's success in some areas is directly impacted by the onboarding process;
- the process should not be too onerous;
- clear objectives should be set so that the appropriate information is collected and analysed; and
- confusion about the role of Boyden and the role of Roar (CEO transition firm), as there appeared to be overlapping scopes.

There was insufficient time to obtain clarification on the notes described above before the December 15, 2022, Board meeting. Therefore, a memo to the Board from the Committee on this item will be brought forward to their March 2, 2023, meeting.

Board Evaluation

It was noted that procedures for Board evaluation were not yet established, and that the first evaluation should be conducted by an objective third party, at least initially. The Chair recommended that Alan Fineblit be contacted to determine if he can conduct the evaluation, or if he could recommend a firm who could.

Once more information is obtained about the third-party evaluation process and what is involved, the Committee can provide specific direction to staff about what needs to be done and when.

Board Policy No. 3 Director's Code of Conduct

The Committee discussed Board Policy No. 3. Director's Code of Conduct. The Committee queried who was responsible for managing and enforcing Director compliance with the Code. The Deputy Registrar was asked to confirm whether all of the current Directors had signed the Undertaking Regarding the Code of Conduct.

The Committee noted:

- the policy was too long and agreed to recommend splitting out the Conflict of Interest section into a separate policy;
- that some sections were not feasible (i.e. returning of materials upon completion of term);
- that Director's should be asked to sign an attestation, not a policy, and that attestation should be administered and tracked electronically;
- the version of the policy on the website is difficult to navigate because there are no page numbers;
- example scenarios regarding possible conflicts of interest should be provided in addition to interpretive statements (for example – "Directors are precluded from participating in organizations whose main purpose is to advocate for members of the profession" – this incorporates the wording from the Act that was noted in our meeting materials); and
- the section on Performance Monitoring was not in any workplan, and that if the Board Chair was expected to do something on a cyclical basis, it should be noted in a workplan for them.

The Committee will continue their discussion of Board Policy No. 3 Director's Code of Conduct, at their February 9, 2023, meeting.

Committee Workplans

The Chair reiterated that Committees of the Board are struck to do the work of the Board and that the Board must approve their workplans so that they have a clear line of sight and can provide direction on where committees focus their resources.

The Committee noted that if anything was missing or offside during their review of the workplans, it would be flagged with the Chair of that Committee.

Review of Macro Agenda

Due to time constraints, the review of the macro agenda was deferred to the next meeting.

Candidate Conflicts of Interest

The Deputy Registrar was asked to provide an update to the Committee via email regarding the Nominations and Board Development Committee's discussion on candidate conflict of interest.

Memorandum

TO	Board of Directors
FROM	Sean Walker, CPA, CGA, CIA Chief Financial Officer
DATE	December 15 2022
SUBJECT	Audit & Risk Committee – November 23, 2022 meeting update

Message

The Audit & Risk Committee met on November 23, 2022. The main focus of the meeting was to review the 2023 CPATA budget including the financial reports, planning assumptions and potential areas of risk. In the meeting package are the budget materials being put forward for review and approval by the Board of Directors for implementation on January 2023.

The Committee also reviewed the Legislative Compliance memorandum and the October 2022 Financial reports and supporting documents (Financial Highlights). These documents are also included in the meeting package.

Sean Walker
Chief Financial Officer

Memorandum

TO	Board of Directors
FROM	Darrel Pink, CEO and Sean Walker, CFO
DATE	December 15, 2022
SUBJECT	CPATA Budget 2023

Message

This memo provides information on the 2023 Budget assumptions and limitations. The results of the Board's Strategic Planning session in November 2022 have been incorporated.

The Audit & Risk (A&R) Committee met on November 23rd to discuss the proposed budget. The Committee recommends adoption of the proposed 2023 budget to the Board of Directors.

The capital letters reference items on the Budget Documents (e.g. **(A.)** refers to Annual License fees).

Overall Budget Planning Notes:

- The budget is has a \$0 net Deficit/Surplus (Balanced Budget) and includes a **\$100,000 Contingency (O.)**. The A&R Committee was presented with a **\$0 (P.)** budget without an amount recorded as a Contingency. The group felt it was necessary to have a Contingency of \$100,000 (4.3% of Revenue) and incorporated adjustments to reduce expenses to achieve the desired Contingency. These adjustments are outlined in this memo.
- This is a tight budget, any unforeseen expenses will drive us to deficit, and the CEO will have to be extremely tight on fiscal management.
- CPATA has an income challenge that limits our ability to increase Licensee fees to address inflationary and other increased costs associated with assuming the activities required by the Act. Adjustments require a change in By-laws. Fees are therefore set at \$1,000 for 2023. The Board began to discuss potential approaches to fee adjustments, but it will take at least two (2) years to create a structural solution. The A&R Committee should begin immediately to develop potential options.
- The budget provides for only one in person meeting in 2023. This will reduce Board and Staff Travel and meeting costs by approximately **\$40,000 (E.)** and reduce travel remuneration by one day equalling **\$6,500 (D.)**

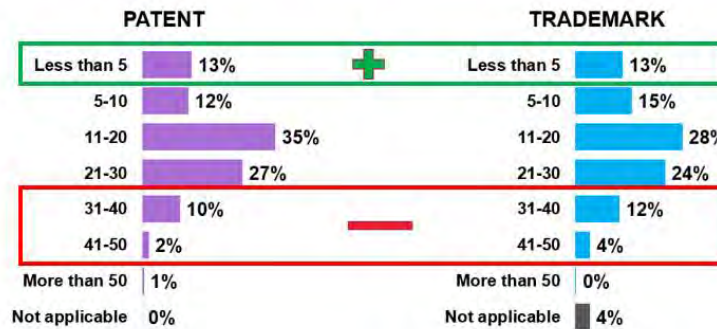
- The recently approved changes to policy on Board and Committee remuneration may be red flag until it becomes better understood. It appears that we are foregoing programs in order to compensate outside expertise. Rigorous meeting planning and reducing meetings may be required.
- Discipline costs related to the investigation, reporting and hearings are still difficult to plan with respect to the number and complexity of complaints received that may result in external investigations and potential prosecution and/or hearings which require engaging counsel. We have budgeted for external complaints support, two routine investigations and two complex investigations with one requiring a hearing. There are two projected hearings in early 2023. As we learn more about the process and profession, we will be able to estimate the potential discipline costs more accurately.
- 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. The A&R Committee has the establishment of financial reserves on the workplan for 2023. A general rule for operating expenses is a reserve of 3 to 4 months of expenses. We will also be looking at a discipline reserve as well. The budget contains a projected Net Asset (Reserve) balance at the end of 2022 and 2023 of **\$358,000 (Q.)** which represents less than two months of current expenses.

Income Related items:

- **(A.)** 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 is 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.
- Based on a recent survey of agents conducted for CPATA, we are seeing a flat level of growth in the profession. The percentage of agents with less than five (5) years experience is offset by the percentage of agents with more than thirty (30) years. (see chart below)

2023 Budget/Fiscal Reality

- Little to **no growth** expected in the profession in the near future. **Retirements/Resignations** are being replaced by **new agents**.



- We anticipate there may be a number of agents who change to an inactive class for 2023 given the **mandatory insurance** requirement. We are hopeful that any attrition will be offset by new agents moving from Class 3 (trainees) to Class 1 (practicing).
- The budget for **Exam fees (B.)** income has been increased to reflect the number of writers for the fall of 2022. We are anticipating similar numbers for 2023.

Expense Related items:

- **Wages and Benefits (C.)** – The staff complement remains stable in this budget . We have adjusted the budget for changes in Health Benefits, wage increases and compensation for the new CEO.
- **Governance expenses** including Board **(D.)** and Committee **(F.)** 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. A **new compensation model** for Board and Committee members has been approved in November and is expected to be in place for Q2 (April 1) 2023. This change along with the increased full slate of committee meetings for 2023 has increased this budget item.
- **Outsourced professional fees (G.)** – 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 expertise without hiring employees. This model continues to be evaluated and we are expecting costs to increase on the discipline side based on the number and complexity of investigations and hearings expected.
- **Professional & Consulting fees** – projected costs for **Human Resource** training and support **(I.)** and IT systems are expected to decrease substantially for 2023. They are offset by the increase in **Legal fees (H.)** (in addition to the outsourced management of discipline) for the investigations and hearings that are planned and forecasted to incur.

- The A&R Committee has recommended that the new CEO spend a significant number of months in the role before enrolling in development programs to allow for determination of the type of support that may be most beneficial. This results in a reduction of **\$35,000** in expenses for Human Resources **(I.)** training and enrollment/dues and memberships **(M.)** compared to the previous draft.
- **Registration Exam costs (J.)** The costs for the Patent and Trademark exams continue to evolve as the program is reviewed and improvements implemented. The budgeted costs reflect the costs to administer the exams in 2023.
- **Insurance fees (K.)** have substantially exceeded what was expected and budgeted for 2022 especially in the **Directors & Officers** (D&O) insurance. The budget for 2023 is based on the current and expected increases for the 2023 renewals (10–20% increases).
- **Credit card processing fees (L.)** are a significant cost for the College. Given the recent class action lawsuit allowing companies to recover a processing fee from customers paying by credit card we hope to be able to recover a portion **(\$10,000)** of the fees incurred. The fees range between 1.5% to 2.75% depending on the type of credit card used. This is currently being investigated and steps being put in place to allow for the surcharge
- **Office & Administrative** expenses are budgeted to increase for 2023 based on increased costs for **software (N.)** packages and credit card fees.

Statement of Financial Position:

- The initial calculations based on the draft budget indicate that CPATA will have sufficient cash **(R.)** on hand each month during the year to cover payment of required expenses.
- Asset and Liability balances have been estimated based on the expected timing of commitments during 2023 and are consistent with the forecast for the remainder of 2022.

College of Patent Agents and Trademark Agents - Draft Operations Budget 2023

	<i>October</i>				
	Budget 2021	Budget 2022	Forecast 2022	Budget 2023	Ref
INCOME:					
License Fees - Class 1	1,664,950	2,050,000	2,069,265	2,050,000	A.
License Fees - Class 2	-	20,000	20,500	20,000	A.
License Fees - Class 3	-	30,000	25,775	50,000	A.
Exam Fees	107,000	122,500	166,100	157,000	B.
Application Fee Income	-	25,750	61,555	51,250	
Certificates & Letters Fees	-	-	2,125	2,250	
Other Income (CIPO Grant)	515,100	-	-	-	
TOTAL INCOME	2,287,050	2,248,250	2,345,320	2,330,500	
EXPENSES:					
Total Wages	531,508	648,540	575,625	704,515	C.
Total Employee Benefits	-	51,795	57,505	104,089	C.
Board Remuneration	31,108	30,867	68,825	118,600	D.
Board Travel and meeting costs	7,500	68,000	82,541	57,000	E.
Committees - Member Compensation	15,000	45,000	71,725	57,550	F.
Total Governance Expenses	53,608	143,867	223,091	233,150	
Legal Fees - Mgr PR	-	115,200	111,384	144,000	
Communications Consultant	54,250	-	5,000	15,000	
Professional Fees - Accounting Services	60,000	70,000	91,770	80,000	
Total Outsourced Professional Fees	114,250	185,200	208,153	239,000	G.
External Audit Fees	17,500	16,000	15,515	18,000	
Legal Fees - Regulatory & Admin	140,917	89,100	142,794	90,000	H.
Legal Fees - Discipline	16,667	118,175	99,521	193,000	H.
Translation fees	30,000	40,000	85,725	45,000	
Consulting - Registration/Competency	142,500	120,000	136,799	185,000	
Consulting - Communications	105,750	50,000	95,617	23,000	
Consulting - Risk & Outcomes	26,000	24,000	20,115	5,000	
Consulting - Human Resources training/support	144,000	162,500	180,418	10,000	I.
IT Consultant - Network & General	12,000	14,400	11,251	12,000	
IT Consultant - License System	30,000	104,000	52,200	72,200	
IT Consultant - Website/Graphic Design	30,000	1,800	30,763	10,800	
Total Professional & Consulting fees	695,334	739,975	870,717	664,000	
Exam Software	-	44,000	44,000	45,000	
Exam Board members support fees	107,000	133,000	79,400	60,000	
Exam translation fees	-	-	-	20,000	
Total Registration Exam costs	107,000	177,000	123,400	125,000	J.

College of Patent Agents and Trademark Agents - Draft Operations Budget 2023

October

	Budget 2021	Budget 2022	Forecast 2022	Budget 2023	Ref
Insurance - D&O	29,105	15,000	36,569	40,310	
Insurance - General Liability	20,000	1,375	1,493	1,698	
Insurance - Mandatory Liability	10,000	2,338	10,859	12,000	
Insurance - Cyber	-	8,460	9,639	12,128	
Total Insurance expenses	59,105	27,173	58,560	66,136	K.
Bank Fees and Interest	30,400	10,200	1,342	1,632	
Credit Card Processing fees	30,000	45,000	54,279	43,800	L.
Payroll Provider Fees	-	-	650	650	
Dues and memberships	10,000	8,000	8,070	11,900	M.
Office - Furniture	10,000	2,400	4,570	5,000	
Software Costs	3,500	7,900	19,377	18,328	N.
Staff Travel	10,000	20,000	23,905	10,000	E.
Total Office & Administration	93,900	93,500	112,194	91,310	
Contingency	100,000	100,000	-	100,000	O.
Amortization	-	1,200	3,074	3,300	
	-	-	-	-	
TOTAL EXPENSES	1,754,705	2,168,250	2,232,320	2,330,500	
SURPLUS (DEFICIT) OF REVENUE - EXPENSES	532,345	\$ 80,000	\$ 113,000	\$ 0	P.

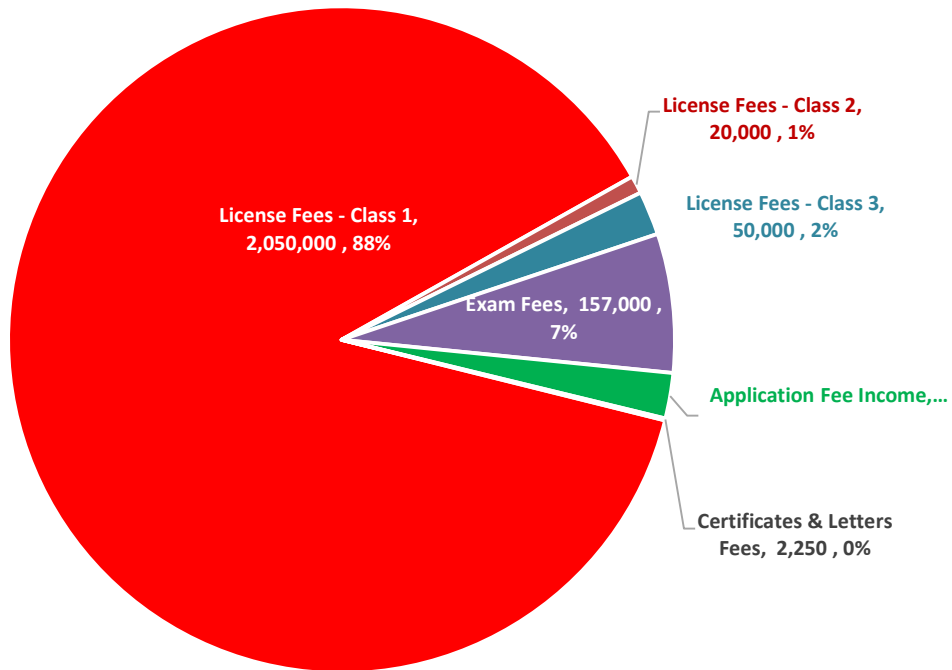
CONTINUITY OF NET ASSETS (RESERVE) BALANCE

	Actual 2021	Forecast 2022	Budget 2023	
Beginning Net Assets - Beginning	(388,931)	245,017	358,017	
Surplus of Income over Expenses (Projected)	633,948	113,000	0	
Total Net Assets - Ending of year 2022/2023	245,017	358,017	358,017	Q.

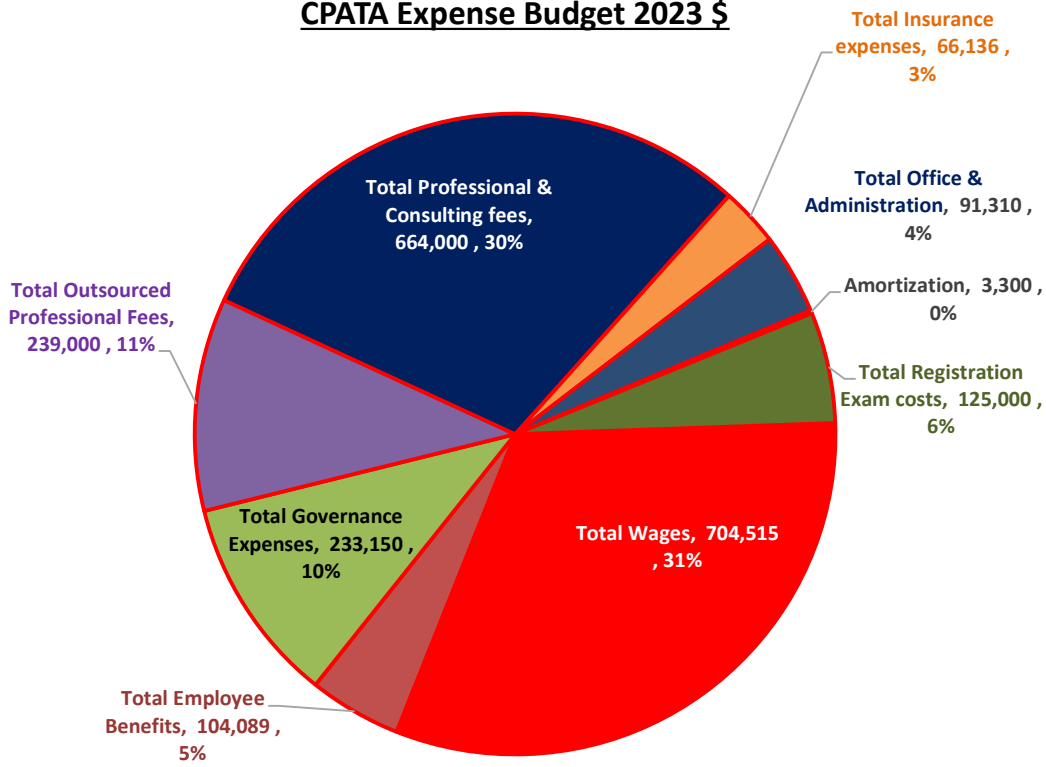
Budgeted Statement of Financial Position 2023 (Balance Sheet)

	Actual <u>2021</u>	Forecast <u>2022</u>	Budget <u>2023</u>	Ref
Current Assets				
Cash	466,824	482,817	463,617	R.
HST/GST Rebate Receivable (payable)	(25,492)	35,000	35,000	
Prepaid expenses and contracts	24,888	26,000	25,000	
Total Current Assets	466,220	543,817	523,617	
Fixed Assets				
Fixed Assets	9,611	11,680	17,180	
Accumulated Depreciation	(1,442)	(4,480)	(7,780)	
Total Fixed Assets	8,169	7,200	9,400	
Total Assets	474,389	551,017	533,017	
Current Liabilities				
Accounts Payable	124,744	115,000	100,000	
Accrued Payables	104,628	78,000	75,000	
Current Liabilities	229,372	193,000	175,000	
Total Liabilities	229,372	193,000	175,000	
Opening Net Assets (Operating Reserves)	(388,931)	245,017	358,017	
Surplus (Deficit) of Revenues over Expenses	633,948	113,000	-	
Total Net Assets	245,017	358,017	358,017	Q.
Total Liabilities and Net Assets	474,389	551,017	533,017	

CPATA - Income Budget 2023



CPATA Expense Budget 2023 \$



Intellectual Property Institute of Canada (IPIC) Submission on Unauthorized Practice

Submission to the College of Patent
Agents and Trademark Agents
(CPATA)

November 23, 2022

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

It is recommended that the College implement the necessary infrastructure to receive complaints regarding unauthorized practice and to fully investigate whether a person is carrying on activities that are unauthorized. As part of the complaints process that is already set up on the College website, a section for complaints regarding unauthorized practice would give the public a place to register complaints and to alert the College as to the problem which the College would then investigate. The College's role in dealing with unauthorized practice is specifically mandated by section 74 of the *College of Patent Agents and Trademark Agents Act* (the "*College Act*"):

74 On application by the College, if the Federal Court is satisfied that a contravention of section 67, 68, 70 or 71 is being or is likely to be committed, the Court may grant an injunction, subject to any conditions that it considers appropriate, ordering any person to cease or refrain from any activity related to that contravention or ordering the person to take any measure that the Court considers appropriate. [emphasis added]

INTRODUCTION

The Intellectual Property Institute of Canada (IPIC) is the professional association of patent agents, trademark agents and lawyers practicing in all areas of intellectual property law. Our membership totals over 1700 individuals, consisting of practitioners in law firms and agencies of all sizes, sole practitioners, in-house corporate intellectual property professionals, government personnel, and academics. Our members' clients include virtually all Canadian businesses, universities and other institutions that have an interest in intellectual property (e.g., patents, trademarks, copyrights, and industrial designs) in Canada or elsewhere, as well as foreign companies that hold intellectual property rights in Canada.

ISSUE

There is no more important function to be served by the College than protecting the public from those who would fraudulently impersonate genuine IP professionals. IPIC's support for the creation of the College was premised on its expectation that the College would zealously ensure this protection, to prevent the obvious public harm arising from incompetent IP advice. This function is especially important in the IP field, due to the public's general lack of sophistication regarding the competencies required for provision of high-quality IP services.

Recommendation: The legislative instrument that created the College includes a means of monitoring and stopping persons who are in breach of sections 67 or 68 of the *College of Patent Agents and Trademark Agents Act* ("unauthorized practice"). This step is necessary to protect the public in keeping with the purpose of the College, namely:

"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 the *Trademarks Act*."¹

It is recommended that the College implement the necessary infrastructure to receive complaints regarding unauthorized practice and to fully investigate whether a person is carrying on activities that are unauthorized. As part of the complaints process that is already set up on the College website, a section for complaints regarding unauthorized practice would give the public a place to register complaints and to alert the College as to the problem which the College would then investigate. The College's role in dealing with unauthorized practice is specifically mandated by section 74 of the *College of Patent Agents and Trademark Agents Act* (the "*College Act*"):

74 On application by the College, if the Federal Court is satisfied that a contravention of section 67, 68, 70 or 71 is being or is likely to be committed, the Court may grant an injunction, subject to any conditions that it considers appropriate, ordering any person to cease or refrain from any activity related to that contravention or ordering the person to take any measure that the Court considers appropriate. [emphasis added]

The case of *R. v. Varin* 2022 QCCQ 442 (also discussed below in the context of criminal prosecutions for unauthorized practice) is a prime example of the role the College should take in preventing harm to the public resulting from unauthorized practice. If there had been a

¹ *College Act*, section 6

procedure in place for the College to receive and investigate complaints of unauthorized practice, the College could have used section 74 of the *College Act* to prevent the public from the full extent of Mr. Varin’s activities (as reported in the decision).

It is also recommended that, with respect to matters which may warrant criminal prosecution of persons who are in breach of sections 67 or 68 of the *College Act*, the College acknowledge its role under section 73 of the *College Act* (which contemplates summary criminal proceedings) is to receive and fully investigate complaints, report appropriate matters to applicable provincial authorities and provide those authorities with all available information and assistance in the prosecution of such matters.

I. Analysis

1. The College Act provides as follows:

67 A person, other than a patent agent whose licence is not suspended, must not

(a) use the title “patent agent” or a variation or abbreviation of that title, or any words, name or designation, in a manner that leads to a reasonable belief that the person is a patent agent; or

(b) represent themselves, in any way or by any means, to be a patent agent.

68 A person, other than a trademark agent whose licence is not suspended, must not

(a) use the title “trademark agent” or a variation or abbreviation of that title, or any words, name or designation, in a manner that leads to a reasonable belief that the person is a trademark agent; or

(b) represent themselves, in any way or by any means, to be a trademark agent.

69 (1) Every person who contravenes section 67 or 68 is guilty of an offence and liable on summary conviction to a fine of not more than

(a) \$25,000 for a first offence; and

(b) \$50,000 for a second or subsequent offence.

(2) If a person is convicted of an offence under subsection (1), no imprisonment is to be imposed as punishment for the offence or in default of payment of any fine imposed as punishment in relation to the offence.

(3) A person is not to be found guilty of an offence under subsection (1) if they establish that they exercised due diligence to prevent the commission of the offence.

70 (1) Subject to subsection (2) and the regulations, a person must not represent another person in the presentation and prosecution of applications for patents or in other business before the Patent Office.

(2) Subsection (1) does not apply to a patent agent whose licence is not suspended, to legal counsel who is providing legal services as authorized by law or to a person who is part of a class of persons exempted under the regulations.

71 (1) Subject to subsection (2) and the regulations, a person must not represent another person in the presentation and prosecution of applications for the registration of trademarks or in other business before the Office of the Registrar of Trademarks.

(2) Subsection (1) does not apply to a trademark agent whose licence is not suspended, to legal counsel who is providing legal services as authorized by law or to a person who is part of a class of persons exempted under the regulations.

72 The Governor in Council may make regulations exempting an activity, a class of persons or an activity that is performed by a class of persons from the application of subsection 70(1) or 71(1).

73 (1) Every person who contravenes section 70 or 71 is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both; and

(b) for a second or subsequent offence, to a fine of not more than \$50,000 or to imprisonment for a term of not more than six months, or to both.

(2) A person is not to be found guilty of an offence under subsection (1) if they establish that they exercised due diligence to prevent the commission of the offence.

74 On application by the College, if the Federal Court is satisfied that a contravention of section 67, 68, 70 or 71 is being or is likely to be committed, the Court may grant an injunction, subject to any conditions that it considers appropriate, ordering any person to cease or refrain from any activity related to that contravention or ordering the person to take any measure that the Court considers appropriate.

5

II. Rationale: Protect the Public

The purpose of preventing unauthorized practice is to protect the public. This has been pointed out by the courts in relation to statutes such as the *Law Society Act* in Ontario. In *R. v. Lawrie*, 58 O.R. (2d) 535, the court found:

“The objects of statutes such as the *Solicitors Act* and the *Law Society Act* and like statutes governing other professions is to protect the public. Such Acts create standards and qualifications of professionalism which must be adhered to by its members. In the words of Chief Justice Robertson in *R. ex rel. Smith v. Ott*, 1950 CanLII 86 (ON CA), [1950] O.R. 493 at p. 496:

To protect the public against persons who, for their own gain, set themselves up as competent to perform services that imperatively require the training and learning of a solicitor, although such persons are without either learning or experience to qualify them, is an urgent public service.”

The *R. v. Lawrie* case was upheld on appeal (1987), 59 O.R. (2d) 161. The Ontario Court of Appeal similarly stated:

“It has been observed many times that the prohibition against the unauthorized practice of law is not merely to protect qualified lawyers from infringement of their right to practise their profession. Its primary purpose is to protect the public.”

The courts have also pointed out that the “public is ill served” when clients are represented by those who lack the requisite knowledge: *R. v. Lemonides* (1997), 35 O.R. (3d) 611; *Ardon Bay Industries Inc. v. Pavlovic*, 2015 BCPC 15 at para. 45.

The courts have noted the statutory obligation of a law society to protect the public against unauthorized practice:

In the case of *The Law Society of British Columbia v. Boyer*, 2016 BCCA 169, the court held: “The Law Society is statutorily obliged to protect the public from the unauthorized practice of law and protect the administration of justice.” [emphasis added]

The College is similarly obliged to protect the public from the unauthorized practice in the area of patent and trademark agency, given the stated purpose of the College as set out in the College Act:

6 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 the *Trademarks Act*.

The harm to the clients who retain people who do not have adequate knowledge and training in patent and trademark law is immense. Loss of patent rights or trademark rights can cause significant financial harm to Canadians. In order for the public to be able to "secure the rights provided for under the *Patent Act* and *Trademarks Act*", the College must ensure that those who offer patent and trademark services to the public are qualified to do so.

III. Other Organizations

As part of protecting the public, other regulatory bodies provide warnings to the public regarding unauthorized practice. Some examples are set out below [taken from websites].

The Immigration Consultants:

Unauthorized practitioners

Unlicensed consultants or unauthorized practitioners are not regulated, and we cannot hold them accountable for their actions. You will not find their names on our [Public Register](#).

Should you be aware of an unauthorized practitioner, you can inform the College and we will take steps to ensure they are not practising without authorization. [Click here](#) to Report a possible Unauthorized Practitioner.

NOTE: To represent or advise you, your RCIC or RISIA must be listed on our Public Register as "Active." Also, some RCICs are authorized to provide only certain services. Always check the Public Register to ensure your RCIC is authorized to perform the service you are asking

Law Society of British Columbia:

Protecting the public is of the utmost priority for the Law Society.

Appointing a custodian and taking action against unauthorized practice of law are ways in which the Law Society ensures the public is well served by lawyers who provide competent, regulated legal services.

Law Society of Ontario:

TAKING ACTION AGAINST ILLEGAL PRACTITIONERS

HOW DOES THE LAW SOCIETY TRY TO STOP ILLEGAL PRACTITIONERS FROM PLACING THE PUBLIC AT RISK?

Only lawyers and paralegals licensed by the Law Society can provide legal services directly to the public.

Illegal practitioners are people who practise law or provide legal services directly to the public without a licence. If you hire an illegal practitioner, you are not protected.

The *LAW SOCIETY ACT* gives the Law Society authority to prosecute illegal practitioners. When we are made aware of an individual who may be practising illegally, we may do one or more of the following:

- Send a cease-and-desist letter demanding that the person stop providing legal services they are not licensed to provide. This is often successful.
- Conduct an investigation, especially if the person accused of illegal practice is persistent or is placing the public directly at risk.
- Ask the person to sign an undertaking (agreement) to cease the unauthorized activity. This is a document that may be used later in court if the behaviour persists.
- Initiate court proceedings. The Law Society has the power to seek injunctions in Superior Court. If the injunction is breached, this may result in an application to have the person found in contempt. Contempt can be punishable by fines or imprisonment or both. The Law Society can also prosecute illegal practice in provincial court or provincial offences court. The *LAW SOCIETY ACT* provides for significant fines as well as probation orders if someone is convicted of unauthorized practice.

IV. Procedure

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As set out above, the College Act provides a specific procedure for stopping unauthorized practice:

74 On application by the College, if the Federal Court is satisfied that a contravention of section 67, 68, 70 or 71 is being or is likely to be committed, the Court may grant an injunction, subject to any conditions that it considers appropriate, ordering any person to cease or refrain from any activity related to that contravention or ordering the person to take any measure that the Court considers appropriate.

A review of the Law Society of Ontario website and the Law Society of British Columbia website indicates that the application for an injunction appears to be a common method of addressing unauthorized practice. Both of those law societies have similar processes leading up to an application to the court: issuing a demand letter, investigating, obtaining an agreement or undertaking that the person will comply with certain measures and, failing that, an application for an injunction. This process would result in a court order which if breached would result in contempt on the part of the offending respondent, the penalties for which are not insignificant. Recently, a person found in contempt was sentenced to jail time: *Canadian Standards Association v. P.S. Knight Co. Ltd.*, 2021 FC 1346.

In addition, the College Act provides for a summary conviction offence. It appears that the College can pursue prosecution of illegal practice using the procedure under the Criminal Code for a summary conviction offence.

Recently in Quebec, unauthorized practice was the subject of a criminal prosecution for fraud: *R. v. Varin* 2022 QCCQ 442 (“Varin”). In the Varin case, the court noted that the clients trusted Mr. Varin to obtain protection for their intellectual property, but the accused was unable to get it since he did not have the competence to fulfill the mandate. There were very serious consequences for the clients of Mr. Varin. In one case, the client lost all his partners in his business venture and tens of thousands of dollars invested because his invention was not patented. Another client lost potential rights granted by a patent because he disclosed his invention publicly without having filed a patent application, much less having obtained a patent. Mr. Varin was found guilty of fraud. It is recommended that the College obtain advice as to criminal prosecution of those involved in unauthorized practice.

CONCLUSION

Thank you again for the opportunity to provide feedback on the CPATA process for dealing with unauthorized practice in Canada. If we may be of further assistance, please do not hesitate to contact our CEO Adam Kingsley by email (akingsley@ipic.ca) or phone 613-234-0516.

Memorandum

TO	Board of Directors
FROM	C. Kristin Dangerfield, Chair Investigations Committee
DATE	November 30 ,2022
SUBJECT	Investigations Committee – Approval of Policy and Guidelines For Information Only

Message

The Investigations Committee met on November 24, 2022 and approved the following (copies attached):

- i. Policy on Thresholds for Decision Making
- ii. Guidelines for Complaint Investigations

The Policy and Guidelines are the culmination of months of consideration, research and legal advice where appropriate, as they lay the foundation for the Committee's work in many respects.

Policy on Thresholds for Decision Making

The purpose of this Policy is to provide guidance and clarity for the Investigations Committee when exercising its authority under the Act in respect of consideration and disposition of complaints. Consistent with the recently approved Board Policy #9 Public Interest and Decision Making by CPATA, this Policy articulates in Part 5 the factors the Committee may consider when evaluating the public interest as it pertains to Committee decisions. The Committee is required to determine in each matter whether there is sufficient evidence that a licensee has engaged in professional misconduct or been incompetent. When making such a determination, it is appropriate for the Committee to consider a range of factors such as those set out in the Policy. Consistent with Board Policy #1 How CPATA Works, this Policy also serves to articulate in a clear and transparent manner for licensees and the public how the Committee approaches its decision making.

This Policy refers in section 3 to Interim Orders to the Committee's new authority under the Act to make interim orders for suspension or practice conditions/restrictions. This authority requires amendments to the By-laws, as well as a separate Policy, and these will be developed in the new year.

Guidelines for Complaint Investigations

These Guidelines focus on the role and authority of investigators retained by the Investigations Committee to conduct investigations under the Act. While each investigation is unique and contextual, it is important that there be a high level of consistency, fairness, thoroughness and transparency to the investigations processes. The Guidelines underscore accountability of investigators to the Committee, who are responsible for directing each investigation, and the scope of an investigator's authority. They also set out the Committee's expectations with regard to the content of investigation reports.

The Committee has undertaken a number of investigations to date, and have confirmed that the processes outlined in the Guidelines are appropriate and reflective of current practice.



C. Kristin Dangerfield, Chair

Investigations Committee

Investigations Committee: Decision Making Thresholds Policy

2022-11-24

NAME OF POLICY	Decision Making Thresholds Policy		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	CPATA Act ss. 37 – 50; Regulations 12 - 15		
RESPONSIBILITY	Manager of Professional Responsibility		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
Investigations Committee	2022-11-24	-	-

1. Purpose

The purpose of this policy is to provide guidance and clarity for the Investigations Committee about its authority under the Act and Regulations for consideration and disposition of complaints.

In the event of a conflict between this Policy and the Act, the Act prevails.

2. Consideration of Complaints

- 2.1 The Investigations Committee (“the Committee”) is responsible for considering complaints referred by the Registrar and conducting investigations where the Committee has reasonable grounds to believe that the licensee has committed professional misconduct or was incompetent. (s. 37)
- 2.2 If, after the Committee has concluded its investigation, it is not satisfied that there is sufficient evidence that the licensee has committed professional misconduct or was incompetent, the Committee must dismiss the complaint, under s. 49(1). The Committee must notify the complainant and the licensee and provide reasons for its decision to dismiss under s. 40(1) and 2.1 above.
- 2.3 If, after the Committee has concluded its investigation, it determines that it does not have reasonable grounds to believe that the licensee has committed professional misconduct or was incompetent, but believes that the licensee’s alleged conduct

came close to that threshold the Committee may, as part of the dismissal of the complaint:

- 2.3.1 provide advice or guidance to the licensee about best practices to avoid similar conduct concerns in future;
 - 2.3.2 issue a warning to the licensee, which may be considered by the Committee in the event of future complaints of a similar nature; and/or
 - 2.3.3 confirm the licensee's consent to fulfil certain requirements or conditions in respect of their practice.
- 2.4 The Committee must notify the complainant and the licensee and provide reasons for its decision to dismiss with advice, a warning or consensual requirements, under s. 40(1) and 2.3 above.

3. Interim Orders

If a licensee is under investigation, the Committee has authority to impose conditions on the license, impose restrictions on their entitlement to represent persons, or to suspend a license, where it is necessary for protection of the public. The authority and process for doing so is set out in the Act (s. 37.1(1)), By-laws(TBD) and the Policy on Interim Orders (TBD).

4. Conclusion of Investigation

At the conclusion of an investigation, where the Committee is satisfied that there is sufficient evidence that a licensee has committed professional misconduct or was incompetent, the Committee must apply to the Discipline Committee for a decision as to whether the licensee committed professional misconduct or was incompetent. (s. 49)

5. Factors to Consider respecting Dismissals or Applications to Discipline Committee

- 5.1 The Code of Professional Conduct sets the standards of professional conduct and competence that must be met by licensees. A licensee who fails to meet these standards commits professional misconduct or is incompetent.
- 5.2 It is the role of the Committee to determine in each case whether there is sufficient evidence that a licensee's conduct constitutes a failure to meet the standards

under the Code, in circumstances which amount to professional misconduct or incompetence. (ss. 32 and 40)

5.3 When evaluating whether a licensee has met the standards set by the Code of Professional Conduct, or alternatively whether there is sufficient evidence that a licensee has committed professional misconduct or was incompetent, thereby requiring an application to the Discipline Committee, the Committee may consider a number of factors, including:

- 5.3.1 the seriousness of the allegations;
- 5.3.2 whether the behaviour reflects an isolated event or a pattern of conduct;
- 5.3.3 the licensee's motivation;
- 5.3.4 the licensee's prior relevant complaints history;
- 5.3.5 what, if any, other repercussions the licensee has faced as a result of the conduct and whether those may have impacted the licensee in ways relevant to the College's mandate;
- 5.3.6 the licensee's response to the allegations, if any; and
- 5.3.7 the public interest.

6. Withdrawal of Application

- 6.1 If, after applying to the Discipline Committee under s. 49(1), the Committee receives new information or evidence that results in the Committee no longer being satisfied there is sufficient evidence the licensee has committed professional misconduct or was incompetent, the Committee may withdraw its application to the Discipline Committee at any time prior to conclusion of the hearing of the application. (s. 50)
- 6.2 When withdrawing an application under s. 50, the Committee will provide written reasons for its decision to the licensee and complainant.

Investigations Committee:

Guidelines on Conduct of Complaints Investigation

2022-11-24

NAME OF POLICY	Guidelines on Conduct of Complaints Investigation		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	CPATA Act ss. 37 – 50; Regulations 12 - 15		
RESPONSIBILITY	Manager of Professional Responsibility		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
Investigations Committee	2022-11-24	Date	Date

Introduction

This summary sets out the authority of an Investigator, their relationship with the Investigations Committee, and highlights best practices for conduct of a complaint investigation.

An Investigator will be designated by the Investigations Committee under s. 42(1), and will conduct an investigation under the Committee’s direction. An Investigator will report to CPATA Manager, Professional Responsibility (PR Manager) who will act as the liaison to the Committee.

The authority granted to an Investigator is described in s. 43.

An investigation report will be prepared for all investigations assigned by Committee.

1. General Practices

An Investigator will ensure the key elements of the following investigation best practices as followed, which include but are not limited to:

1.1 Planning and Consultation:

- 1.1.1 Identify the scope and specific issues to be addressed by the investigation;
- 1.1.2 Follow the evidence objectively;
- 1.1.3 Reassess the evidence (or new evidence) on an ongoing basis.

1.2 Interviewing:

- 1.2.1 Named licensee;
- 1.2.2 Persons with relevant information.

1.3 Evidence Collection and Preservation:

- 1.3.1 CPATA's internal records about the licensee in question;
- 1.3.2 Witness statements;
- 1.3.3 Physical or documentary (files, records, notes, communications) with or without warrant;
- 1.3.4 Forensic (accounting / data) with or without warrant;
- 1.3.5 Recorded (audio/video) evidence;
- 1.3.6 Maintain security and chain of custody records (and adhere to CPATA's file retention and destruction policies).

1.4 Analysis of the evidence:

Investigators may consult forensic or subject matter experts (SMEs) as part of the investigation and analysis. An Investigator needs to obtain pre-approval from the PR Manager prior to incurring any costs in this or other regard.

1.5 Investigation Report (see below for details)

The Investigator will consult and remain in regulator contact with PR Manager and provide updates as needed. Together, they will decide whether and when instructions and directions ought to be sought from the Committee.

The Investigator will inform the PR Manager whenever additional conduct issues or risk factors are identified during the investigation.

CPATA's work is conducted in a virtual environment. The Investigator is therefore, expected to conduct investigations in that environment, including interviews.

The Investigator is expected to work in a secure environment and maintain confidentiality in the handling of all information and documents obtained through the course of an investigation. The Investigator is also expected to adhere to CPATA's policies respecting retention and destruction of materials and information.

2. Investigations Process

2.1 Initial Steps

- Investigator to check conflicts before accepting retainer
- Once conflicts are cleared, Investigator will be retained by IC
- Investigator to do preliminary review of file material and prepare a draft
- investigation plan

- Investigator to review plan with PR Manager
- Plan to be approved by IC where a high risk has been identified or where
- the issues are complex
- Investigator will contact complainant and confirm:
 - the role of the Investigator
 - how the investigation process will proceed
 - the issues that will be addressed by the investigation
 - that all relevant information and supporting documentation
 - regarding the complaint have been provided
- Investigator will provide periodic up-dates to the complainant and the Licensee

2.2 Requesting Answers and Documentation

- Investigator may require the complainant or licensee¹ to answer any inquiries or furnish any records or other thing relevant to the investigation (with a deadline to comply)
- Inquiries may be made in writing or by interview. All interviews performed by the Investigator will, with the consent of the individual, be audio recorded and transcribed.
- Investigator is entitled to enter the Licensee's business premises at any reasonable time and require the production of any documents or thing that is relevant to the investigation and examine, copy or remove it. When removing a document or thing, the Investigator will issue a receipt for the document or thing to the any person who appears to be in control of the document or thing.
- If the Licensee's place of business is a dwelling house, the Investigator may only enter with the consent of the Licensee or with the authority of a warrant issued under s. 44.
- Investigator is entitled to receive privileged information unless it falls within the criteria of s. 43(2)(a), (b) and (c).
- The Investigator will document and maintain a log of all documents or things gathered throughout the course of an investigation. Where appropriate, original documents will be copied and promptly returned to the person who was in control of the document.
- All documents or things will be stored securely by the Investigator and maintained in accordance with CPATA's policy for retention and destruction of materials and information

2.3 Refusal to cooperate, urgency, document in possession of a third party or privileged information under s. 43(2)(a), (b) and (c)

- In the event that:
 - a Licensee refuses or is likely to refuse to produce any document or thing that is relevant to the investigation; or

¹ Licensee includes business partner and any person employed by the same employer as the licensee

- a Licensee refuses access to the Licensee's dwelling house that is the Licensee's place of business; or
- the document or thing that is relevant to the investigation is in the possession of a third party; or
- the document or thing that is relevant to the investigation meets the criteria of s. 43(2)(a), (b) or (c); or
- the document or thing that is relevant to the investigation is in the possession of a lawyer or law firm

the Investigator will consult with the PR Manager to determine whether they should seek instructions from IC to apply for a warrant or an order as contemplated in ss. 44 to 48.

2.4 Review of evidence and drafting a report

- 2.4.1 The Investigator will review the evidence and prepare a report for IC's consideration. The report will contain:
- A summary of the investigation steps;
 - A summary of the evidence;
 - Analysis of the issues including the identification of the relevant ethical rules and practice standards that may have been breached;
 - Copies of the complaint, licensee's response(s) and any relevant document including interview transcripts
- 2.4.2 Upon completing the investigation and prior to providing the report to IC, the Investigator will provide a copy of the investigation report to the Licensee and allow the Licensee at least thirty (30) days to make further written submissions regarding the allegations raised and evidence collected.
- 2.4.3 The Investigator will submit the investigation report and any written representations made by the Licensee to the IC for further consideration.

CPATA - FINANCIAL HIGHLIGHTS FOR THE PERIOD ENDING OCTOBER 31, 2022

INCOME RELATED ITEMS:

<p>Licensee Fees TD & Forecast \$19K, 0.9%</p>	<p>Year to date licensee fees are within 1% of budget and are forecasted to be slightly above budget by year-end.</p>
<p>Exam fees Forecast \$43.6K, 35.6%</p>	<p>The Trademark and Patent exams occur in October and November each year. The Forecast shows a surplus forecasted for year-end of approximately \$44K. We have seen an increase in the number of exam writers compared to budget</p>
<p>Application fees YTD \$35.8K, 164.6% Forecast \$35.8K, 139%</p>	<p>During the licensee fee renewal period we received a large number of applications for category changes. Since then we have also seen an increase in new applications for Class 3 (Training) and Foreign Agents. This can be attributed to CPATA's infancy and Agents understanding the various Classes and requirements.</p>

EXPENSE RELATED ITEMS:

<p>Wages & Benefits YTD \$64K, 11.0% Forecast \$67.2K, 9.6%</p>	<p>Year to date and the forecast show savings compared to budget. This is due to a new staff member being hired later than originally budgeted for and changing the staffing plan and not hiring an additional person in 2022. We also expect the new CEO to start in January as possible to December as was budgeted.</p>
<p>Prof fees - Accounting YTD (\$18.4K), (31.6%) Forecast (\$21.7K), (31.1%)</p>	<p>Outsourced Financial service costs have been higher due to the additional work required to support the first external audit and the 2022 Fee collection period. The CFO is using less "expensive" staff wherever possible to reduce fees. The Audit & Risk Committee and Risk Register support has also added time to the CFO's work.</p>
<p>Prof fees - Admissions YTD \$25.7K, 25.7% Forecast (\$6.8K), (19.2%)</p>	<p>These costs are related to the Competency Initiative and continued exam development. The work in 2022 has been more involved than originally budgeted but will be offset by a reduced amount of remuneration paid to testers and reviewers of the exams content.</p>
<p>Consulting - Communications YTD (\$72.6K), (290.5%) Forecast (\$71.6K), (247%)</p>	<p>A larger than expected project with McMillan Vantage was undertaken during 2022 to support CPATA's government relations with the minister's office and other groups in the Intellectual Property industry within Canada.</p>
<p>Consulting - Human Resources YTD (\$25.5K), (18.9%) Forecast (\$18K), (11%)</p>	<p>Additional costs are expected to be incurred to assist with the CEO transition. These costs are mostly offset by savings compared to budget for the HR Consultant hired to assist with the recruitment of Board and Committee members.</p>
<p>Consulting - Website YTD (\$25.2K, 1684%) Forecast (\$28.9K), (1609%)</p>	<p>Additional work on the graphic design and website updates has been required in 2022 due to certain projects on continuing to make the Website bilingual and enhancing usability.</p>
<p>Legal Fees YTD (\$60.8K, 25.2%) Forecast (\$63.5K), (21.9%)</p>	<p>Additional costs have occurred during the year for legal fees in the areas of Privacy Impact, discipline complaint investigations, insurance requirements and By-law revisions and writing and opinions.</p>
<p>Translation expenses YTD (\$12.4K, 21.2%) Forecast (\$20.7K), (31.8%)</p>	<p>Additional translation and interpretation costs have been incurred as the College has been required to increase the amount of written and spoken translation due to requirements in the Official languages Act.</p>
<p>IT - License Systems YTD \$43.2K, 49.8% Forecast \$51.8K, 50%</p>	<p>The College was able to negotiate a reduced rate for licensee costs for the Thentia system given that Class 2 and 3 licensees do not require the level of access to the system/portal. We also were expecting to have to incur costs for development in 2022, however, the new Thentia 2.0 system has just been released, further development will occur in 2023.</p>
<p>Board & Committee expenses YTD (\$28.9K, 19.4%) Forecast (\$8.9K, 2.9%)</p>	<p>The variances YTD related to Board and Committee expenses are due to the increase in meeting and prep time claimed. We expected that these costs will be closer to budget throughout the remainder of the year.</p>
<p>Insurance YTD (\$27.4K, 121.1%) Forecast (\$8.9K, 2.9%)</p>	<p>Insurance expenses have increased this year compared to what was budgeted and we were required to purchase additional D&O insurance for Board members. We also paid a consultant to provide advice on the required insurance policies.</p>
<p>Software Expenses YTD (\$8.9K, 126.8%) Forecast (\$11.5K, 145.3%)</p>	<p>There have been a number of additional licenses and administrative software subscriptions related to the College's start-up and IT security that were not factored into the budget for 2022. Part of these costs are offset by reduced IT provider fees.</p>

* Variances from budget are presented for each section



College of Patent Agents and Trademark Agents

Statement of Operations

October 2022

	TOTAL	
	OCT. 2022	JAN - OCT., 2022 (YTD)
REVENUE		
4000 Service/Fee Income		
4010 Licensee fees - CPATA fees	172,442.08	1,714,179.58
4011 License Fee Income - PY		12,250.00
4020 Class 2 Inactive Agent Fees	1,708.33	17,083.33
4030 Class 3 License Fees	7,325.00	25,775.00
Total 4010 Licensee fees - CPATA fees	181,475.41	1,769,287.91
4050 Exam fees	51,100.00	51,100.00
4070 Application fee income	2,300.00	57,554.50
4060 Certificate & Letters Fees		1,725.00
Total 4070 Application fee income	2,300.00	59,279.50
Total 4000 Service/Fee Income	234,875.41	1,879,667.41
Total REVENUE	\$234,875.41	\$1,879,667.41
TOTAL REVENUE	\$234,875.41	\$1,879,667.41
EXPENSES		
5500 Wages & Benefits		
5510 Wages	32,306.92	289,011.20
5520 Wages - Benefits	1,061.13	10,638.96
5530 Wages - CPP	820.58	15,856.80
5535 Wages - QC QPIP	314.21	1,238.90
5540 Wages - EI	266.86	4,356.18
5550 RRSP Expenses	1,476.32	13,426.70
6000 Professional fees - Interim CEO	18,500.00	185,000.00
Total 5500 Wages & Benefits	54,746.02	519,528.74
6005 Professional and consulting fees		
6010 Professional fees - Accounting Services	10,000.00	76,769.61
6020 Professional fees - Communications		3,040.00
6040 Professional fees - Management Consultant		9,180.00
6050 Professional fees - Planning	7,500.00	9,575.00
6200 Consulting - Admissions		74,299.00
6210 Consulting - Communications	1,509.41	97,616.77
6230 Consulting - Human Resources	29,000.00	160,917.77
6270 IT Consultants - Network & General	773.20	9,701.05
6290 IT Consultant - Website	1,262.50	26,762.51
Total 6005 Professional and consulting fees	50,045.11	467,861.71
6015 Accounting Fees		0.00
6030 Legal Fees	32,988.25	293,518.64
6060 Translation expenses	877.14	70,724.58
6280 IT Consultant - License Systems	4,350.00	43,500.00
6505 Board and Committee Expenses		
6500 Board - Meeting expenses		788.70
6510 Board - Remuneration	0.00	50,425.00
6520 Board - Travel	16,922.03	50,379.73

	TOTAL	
	OCT. 2022	JAN - OCT., 2022 (YTD)
6600 Committee Expenses		6,172.90
6610 Committees - Member Compensation		69,925.00
Total 6505 Board and Committee Expenses	16,922.03	177,691.33
7010 Bank fees and interest	116.76	1,196.82
7020 Credit Card Processing Fees	2,011.76	51,399.40
Total 7010 Bank fees and interest	2,128.52	52,596.22
7130 Dues and memberships	2,964.38	6,079.19
7135 Insurance		
7140 Insurance - D&O	3,160.71	30,169.42
7150 Insurance - General Liability	132.75	1,227.58
7160 Insurance - Mandatory Liability		10,858.75
7170 Insurance - Cyber	909.00	7,821.18
Total 7135 Insurance	4,202.46	50,076.93
7205 Office Expenses	204.95	2,610.14
6295 Payroll provider Fees	90.50	559.63
7210 Office - Furniture		241.64
7215 Office - General expenses	99.80	1,027.69
7300 Software costs - Administration	905.70	15,877.36
Total 7205 Office Expenses	1,300.95	20,316.46
7320 Staff Travel	4,577.46	16,157.45
7325 Meals and entertainment	2,318.04	2,847.63
Total 7320 Staff Travel	6,895.50	19,005.08
8000 Amortization	266.13	2,506.18
Total Expenses	\$177,686.49	\$1,723,405.06
EXCESS (DEFICIT) OF REVENUE OVER EXPENSES	\$57,188.92	\$156,262.35

College of Patent Agents and Trademark Agents

Statement of Financial Position

As of October 31, 2022

	TOTAL	
	AS OF OCT. 31, 2022	AS OF DEC. 31, 2020 (PP)
Assets		
Current Assets		
Cash and Cash Equivalent		
1010 RBC Chequing Account	920,641.49	
Total Cash and Cash Equivalent	\$920,641.49	\$0.00
1230 Other current assets	0.00	
1400 Prepaid expenses	42,988.02	10,000.00
Total Current Assets	\$963,629.51	\$10,000.00
Non-current Assets		
Property, plant and equipment		
1600 Computer Equipment	11,679.53	
1605 Computer Equipment - Accum Amort	-3,947.88	
Total Property, plant and equipment	\$7,731.65	\$0.00
Total Non Current Assets	\$7,731.65	\$0.00
Total Assets	\$971,361.16	\$10,000.00
Liabilities and Net Assets		
Liabilities		
Current Liabilities		
Accounts Payable (A/P)		
2000 Accounts Payable (A/P)	101,391.77	406,980.77
Total Accounts Payable (A/P)	\$101,391.77	\$406,980.77
Credit Card		
2020 RBC Visa Credit Card	6,542.61	
2030 RBC Line of Credit	0.00	
Total Credit Card	\$6,542.61	\$0.00
2010 Accrued Payables	2,100.00	13,625.00
2015 Accrued Liabilities - Committee Remuneration	4,025.00	13,138.24
2050 GST/HST Payable	-9,930.47	-34,813.09
2060 GST/HST Suspense	0.00	
Total 2050 GST/HST Payable	-9,930.47	-34,813.09
Total Current Liabilities	\$104,128.91	\$398,930.92
Non-current Liabilities		
2200 Deferred Revenue - Payments Received	0.00	
2210 Deferred License Fees	342,835.92	
2211 Deferred License Fees - Class 2	3,416.67	
2220 Deferred Application Fees	0.00	
2250 Deferred Exam Fees	119,700.00	
Total Non-current Liabilities	\$465,952.59	\$0.00
Total Liabilities	\$570,081.50	\$398,930.92
Net Assets		
Net Assets - Beginning	245,017.31	-388,930.92
Current year excess (deficit) of revenue over expenses	156,262.35	

	TOTAL	
	AS OF OCT. 31, 2022	AS OF DEC. 31, 2020 (PP)
Total Net Assets	\$401,279.66	\$ -388,930.92
Total Liabilities and Net Assets	\$971,361.16	\$10,000.00

CPATA Board of Directors

November 23, 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 July 1 to September 30th was received by CRA on October 27th. The Return was filed with a refund of \$37,437 and as of November 17 CRA is still processing the return.

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 Q3 was made to all Board members during October.

Note – We have received and paid two (2) notices from Revenu Quebec related to differences in the 2021 calculation of the QPIP on Board of Director remuneration. The amount of the difference was \$189.13 and was paid in October. We also received a notice from Revenu Quebec stating that the remittance for the Board of Directors remittance for July 2022 was late by a couple of days and a \$30 penalty was assessed, which was remitted on November 14th.

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.

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

The bilingual Licensee Portal and Online Register is launching on September 30, making all of CPATA's channels and publications fully bilingual. CPATA has been in touch with the Office of the Official Languages Commissioner to request model "Official Language Policies" and suggested employee training programs, in response to the Commissioner's recommended steps. Regarding hearings, CPATA has sought a legal opinion and hearings will be conducted in the language of preference of the person subject to the charge, with simultaneous translation for the public. Decisions will be translated into the other language for public consultation. CPATA is well on its way to full compliance with the Official Languages Act.

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.

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)