

## Discipline Committee: Policy on Conduct of Digital Proceedings

<b>NAME OF POLICY</b>	Policy on Conduct of Digital Proceedings		
<b>APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE</b>	CPATA Act, ss. 51-63; Policy on Pre-Hearing Conferences		
<b>RESPONSIBILITY</b>	Manager of Professional Responsibility		
<b>APPROVED BY</b>	<b>EFFECTIVE</b>	<b>REVIEWED</b>	<b>REVISED</b>
<b>Discipline Committee</b>	<b>2022-11-28</b>	-	-

### 1. Definitions

- 1.1 'Act' means the College of Patent Agents and Trademark Agents Act;
- 1.2 'Chair' means the Chair of the Discipline Committee Panel appointed to conduct the proceeding, or another member of the Panel designated to serve in this capacity;
- 1.3 'Complainant' means the individual or entity that filed the original complaint with the College, and who has the right, under s. 54 of the Act, to make oral and written submissions to the Discipline Panel, which submissions may be made at a time or times agreed upon by the Parties and the Chair;
- 1.4 'Contested proceeding' means a proceeding where the licensee is contesting one or more aspects of the College's Application;
- 1.5 'Discipline Proceedings Coordinator' means the staff person at CPATA designated to provide administrative assistance to the Discipline Committee and any panel thereof;

- 1.6 'Discipline Panel' refers to the members of the Discipline Committee assigned to conduct the proceeding;
- 1.7 'Disposition Proceeding' means the proceeding conducted after the Findings Proceeding to hear evidence and submissions from the Parties in respect of the decision on disposition of the Investigation Committee's Application;
- 1.8 'Digital proceeding' includes motions, pre-hearing conferences, hearings on findings and disposition and any post-hearing procedures conducted using digital means;
- 1.9 'Finding Proceeding' means the proceeding conducted for purposes of considering the Investigation Committee's Application and determining whether the evidence supports a finding of professional misconduct and/or incompetence;
- 1.10 'Official record' means the audio recording of proceedings created by a court reporter, together with all exhibits tendered and approved for submission by the Discipline panel;
- 1.11 "Party' or 'Parties' means the Investigations Committee as represented by counsel for the College, the Licensee, and counsel for the Licensee. Note that a Complainant is not a Party;
- 1.12 'Participant' means the Parties and any witness called to testify during a proceeding, and may include the Complainant;
- 1.13 'Uncontested proceeding' means that a proceeding will not involve argument by either Party on either the findings or the penalty, or both, and includes Settlement Proposals.

## 2. Application

- 2.1 While proceedings will by default be conducted digitally, this policy applies to all proceedings before the CPATA Discipline Committee, whether conducted digitally or in-person.
- 2.2 Digital proceedings are conducted pursuant to ss. 51-63 of the Act. Nothing in this policy is intended to replace the provisions of the Act, regulations or By-laws. This policy is intended to provide guidance and direction, and to explain or clarify the provisions of the Act.

- 2.3 In the event of a conflict between this policy and the Act, the Act prevails.
- 2.4 The current preferred hearing platform is Zoom, with YouTube used for purposes of broadcasting the proceedings, and SharePoint and Titan File used for document management.

### 3. Document Submission Guidelines

#### 3.1 Documents

All documents that will be relied on during a proceeding must be filed with the Discipline Proceedings Coordinator at least 5 (five) days prior to the scheduled proceeding.

- 3.2 A document may be posted but will not be considered part of the Official Record until it has been confirmed as such by the Chair.

- 3.3 For formatting and order of documents, see attached Appendix A.

#### 3.4 Other Materials

All other materials that will be relied on during a proceeding must be filed with the Discipline Proceedings Coordinator at least 5 (five) days prior to the scheduled proceeding. These could include but are not limited to:

- i. Video files
- ii. Audio files
- iii. Image files

### 4. Privacy and Publication Orders

- 4.1 At any point during the proceedings, the Panel may, in accordance with s. 52 and on motion from one or both Parties, order restrictions or limitations on publication of certain documents or information, or on public participation in a proceeding when it is necessary to protect privileged or confidential information.

## 4.2 Recording, Streaming, Broadcasting and Photographing

- 4.2.1 The parties and any observers or other participants to the proceeding (other than the court reporter who is transcribing the proceedings) must not record, broadcast or stream any portion of the proceeding using any personal recording devices, audio, or video technology.
- 4.2.2 The parties and any observers or other participants to the proceeding must not take any photographs or screen shots of the digital proceeding, the participants or any documents or exhibits presented during the proceeding.
- 4.2.3 Where the panel has made an Order respecting publication or public participation in the proceedings under s. 52, it would be a breach of the panel's order to engage in the behavior set out at paragraphs 4.2.1 and 4.2.2, and individuals in breach of this order may expose themselves to liability.

## 4.3 Observers

- 4.3.1 Observers must abide by the terms and conditions in 4.2 when observing proceedings, including the requirement to adhere to any orders respecting publication or public participation made under s. 52, and the Chair may reinforce these requirements on the record, as necessary.

## 5. Decorum during Digital Proceedings

- 5.1 Digital proceedings are formal legal proceedings in which the same etiquette that applies to in-person proceedings must be maintained.
- 5.2 Participants should ensure that any background visible onscreen is appropriate for a formal proceeding.
- 5.3 Participants must ensure that their surroundings are private and free from distractions and sounds that risk interrupting the proceeding (including animals, cell phones, etc.). Only active participants will appear on camera or be heard during the proceeding, unless otherwise directed. The Chair will have control of who may be muted and/or visible.

- 5.4 Parties must join the virtual hearing room at least 5 (five) minutes before the start time, and all participants must be reachable 15 (fifteen) minutes before the start time, at the telephone number provided to the College.
- 5.5 During a digital proceeding, all participants should display their name and role in the proceeding; i.e., Pierrette Thibeau – College Counsel; Sanjay Patel – Witness; Inge Parker – Observer, and their pronouns; e.g., they/them, she/her, etc.
- 5.6 It is preferable that any meetings or discussions between Counsel and clients take place before the proceeding commences or recommences. If parties need to meet or confer once the proceeding has commenced, a party should request a recess from the panel Chair and wait to be placed in a digital breakout room, rather than attempting to communicate by email or text during a proceeding, in order to avoid disruption.
- 5.7 Appropriate attire is required for anyone appearing on camera during a proceeding.
- 5.8 Eating and drinking during a proceeding by participants is generally not permitted unless the Chair grants permission in exceptional circumstances. Drinking water should be done discreetly from a plain glass or cup to avoid unnecessary distractions on screen.
- 5.9 Unless addressing the Panel or otherwise being requested by a participant in the digital proceeding to speak, all participants must keep their sound muted.
- 5.10 Participants should speak slowly and clearly and not speak over other participants for clarity of audio and to avoid any lag or overlap in sound.
- 5.11 Participants are not permitted to use their telephones (landline or cell) while the proceeding is in progress for any purpose other than to connect to the digital proceeding.
- 5.12 Speaking participants should look at the camera, if possible, and ensure that their face is adequately visible unless to do so would infringe on an individual's human rights.
- 5.13 If a participant requires a break, they must make this request to the Chair and wait for authorization before leaving the proceeding. The Chair will have canvassed with

the Parties at a Pre-hearing Conference any accommodations necessary for any participant to minimize disruption and respect the needs of participants.

5.14 During any recess, all cameras must be turned off and sound muted.

## 6. Witnesses

- 6.1 For contested proceedings, unless such confirmation has been provided during a Pre-hearing Conference, parties must confirm with the Chair or Discipline Proceedings Coordinator at least 5 (five) business days prior to commencement of the proceeding, which witnesses they intend to call, in what order, and what time each witness is expected to join the proceeding.
- 6.2 Parties must provide the names and contact information for each witness so that the Discipline Proceedings Coordinator can schedule a technology set up with any witnesses prior to the proceeding.
- 6.3 Parties must confirm with the Chair or Discipline Proceedings Coordinator how they intend to put documents or materials before a witness, whether through screen sharing, file transfer or other means for secure transmission.
- 6.4 Except as directed by the Chair, or as agreed by the Parties and the Chair at a Pre-hearing Conference, witnesses are not permitted to refer to any notes, resources or materials, and the Chair may ask for confirmation of this at the commencement of or at any time during the witness' testimony.
- 6.5 Except as directed by the Chair, witnesses must be alone in a private room or space and must not communicate with anyone during their testimony.
- 6.6 To prepare witnesses in advance of the proceeding, parties should:
  - 6.6.1 Review the procedures and appropriate decorum for digital proceedings;
  - 6.6.2 Ensure that the witness has the necessary technology to participate in the digital proceeding (i.e., computer, high-speed internet connection, headset/microphone);
  - 6.6.3 Inform the witness that the Discipline Proceedings Coordinator will email them to set up the videoconferencing link; and

- 6.6.4 Ensure that the witness understands how documents or materials will be shared with them during the proceeding.

## 7. Post Proceeding

### 7.1 Transcripts

A certified Court Reporter will be present at every proceeding. A copy of an audio transcript may be prepared at the request of any Party, or the Chair, at the cost of the College. Written transcripts may be requested and will be at the cost of the party making the request.

### 7.2 Posting of Decisions

- 7.2.1 Subject to any other direction from the Panel, for contested matters,
- 7.2.1.1 The Discipline Panel will endeavor to prepare a written Decision on Findings with reasons within 60 (sixty) days of the end of the proceeding on findings.
  - 7.2.1.2 The Discipline Panel and Parties will then schedule a Disposition Proceeding to take place no later than 30 (thirty) days following the filing of the Decision on Findings.
  - 7.2.1.3 The Discipline Panel will endeavour to prepare a written decision with reasons on disposition within thirty (30) days of the end of the Disposition Proceeding,.
- 7.2.2 All written decisions will be translated and posted on the College's website as soon as possible.

## APPENDIX A

### Formatting and Order of Materials

1. Documents must be uploaded using Titan File, and clearly identified by name and number.
2. The timing for posting of documents or materials for the Panel will occur in accordance with the direction from the Chair's at a Pre-hearing Conference.
3. Documents for each stage of the proceedings must be combined in a text-searchable PDF that includes:
  - i. An index
  - ii. Document tabs
  - iii. Electronic bookmarks
  - iv. Page numbers (top right)
4. Documents for each stage of the proceedings must be combined in a text-searchable PDF that includes:
  - i. Agreed Statement of Facts and Guilty Plea;
  - ii. Joint Submission on Penalty;
  - iii. Joint Submission on Terms, Conditions or Limitations;
  - iv. Undertaking and Acknowledgement; and
  - v. Any other joint submission or agreed document.
5. Parties may highlight or underline relevant portions of text within the documents for ease of reference.
6. The file names for electronically filed documents must start with the name of the licensee, followed by the name of the party, and the document title and number with a clear description indicating the content. For example:



SMITH, John (licensee) – CPATA – Agreed Statement of Facts and Guilty Plea  
LEE, Sally (licensee) – Licensee – Undertaking and Acknowledgement

7. Should the parties wish to introduce documents through a witness, they must submit one brief for each witness. The file name must include the witness' name. For example:

SMITH, John – CPATA – Witness Brief – DOE, Jane

LEE, Sally – Licensee – Witness Brief – DOE, John