

# Board of Directors Meeting Agenda

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

<b>Date</b>	<b>Thursday, March 3, 2022</b>
<b>Time</b>	<b>12:00 ET – Public Meeting:</b> you must use individual access link sent from Zoom to your e-mail
<b>Chair</b>	<b>Ruth McHugh</b>

ITEM	TOPIC	TIME	SPEAKER	Page #	ACTION
<b>1. Introductory Matters/Call to Order/ Approval of Agenda/Conflicts of Interest</b>					
Introductory Remarks - Chair					
<b>Conflicts of Interest</b> - Board members to declare if they have any conflicts regarding matters on the agenda					
<b>2. CONSENT AGENDA</b>					
Matters are dealt with by unanimous consent and without debate. Directors may seek clarification or ask questions without removing a matter from the consent agenda. Any Director may request a consent agenda item be moved to the regular agenda by notifying the Chair or the CEO prior to the meeting.					
2.1	Minutes of December 10, 2021, meeting			5	Approval
2.2	CEO Report			8	Information
<b>3. Establishing the College – Building a Modern Regulator</b>					
3.1	<b>By-law Amendments</b>	12:10	D. Pink	14	Approve resolution

	<p>The Board previously approved the content of drafting instructions. The memorandum in the package describes what the by-laws will do, but a final copy is not yet available. The following resolution is proposed:</p> <p><i>Whereas the Board has approved the instructions for amendments to the College and Board By-laws;</i>  <i>And whereas drafting is being undertaken by the Department of Justice;</i>  <i>And whereas the final version is not yet available, but the Board has reviewed the proposed changes;</i>  <i>Therefore, be it resolved,</i>  <i>The Board agrees to approve the final version of amendments to the College and Board By-laws by written resolution.</i></p>				
3.2	<p><b>RBC Credit Arrangement</b>  <i>Be it resolved, the CEO is authorized to execute the Line of Credit Agreement included in this meeting package</i></p>	12:25	D. Pink	18	Approve
3.3	<p><b>Board Succession - Board of Directors Skills Matrix</b>  The Board has seen this in an earlier version. It has been reformatted and edited. It provides the basis of a questionnaire for the Directors as part of the Board renewal process.</p> <p><i>Be it resolved, the Board adopts the Board of Directors Skills &amp; Attributes Matrix included in the Board package.</i></p>	12:30		28	Approve
3.4	<p><b>Board and Committee Recruitment</b>  The CEO will brief the Board on the state of the process for selection of Directors and committee members.</p>	12:40	D. Pink		Information
3.5	<p><b>Board Elections</b>  <a href="#">List of Candidates</a></p>			33	Information
3.6	<p><b>Appointment of Election Commissioner</b>  <i>Be it resolved, pursuant to Board By-law 31(5), the Board appoints ----- as the Election Commissioner.</i></p>	12:55	D. Pink		Approve
<b>4. Protecting the Public Interest- Enhancing Competence</b>					
4.1.	<p><b>Registration Monitoring Report</b>  <b>Monitoring Reports</b> are how the CEO &amp; Registrar informs the Board on</p>	1:00	J. Slabodkin	34	<b>Discuss</b>

	operational issues to assist the Board in understanding CPATA's regulatory workings.				
4.2	<b>Competence Initiative</b>	1:30	D. Pink and J. Slabodkin	49	Approve
<p><i>Whereas CPATA has begun to assess the competencies required to ensure the public is protected by provision of high-quality services from new and existing licensees and has developed a 3-year initiative to refine entry level and continuing competencies;</i></p> <p><i>And whereas research to date has demonstrated gaps and deficiencies in the currently utilized competency framework, embodied in the Qualification Exams;</i></p> <p><i>And whereas CPATA endorses a focus on development and assessment of entry level and continuing competence as a primary responsibility and as a means to promote public protection;</i></p> <p><i>Therefore, be it resolved the Board</i></p> <ol style="list-style-type: none"> <li><i>1. endorses the ongoing work to develop and implement a comprehensive competence plan for entry level and continuing competence;</i></li> <li><i>2. directs the Registrar to report regularly to the Board on the progress of and financial status of the initiative.</i></li> </ol>					
<b>5. EFFECTIVE GOVERNANCE</b>					
<b>5.1</b>	<b>CPATA's Governance</b> A memo from the CEO outlines issues for a beginning discussion on Board Evaluation	1:45	D. Pink	52	Discuss
<b>5.2</b>	<b>Checklist for Regulatory Boards - CPATA</b>		D. Pink	57	Discuss
<b>5.3</b>	<b>2020-2021 Financial Statements</b> In preparation for a meeting to review the Audited Statements, the Board will review the year end statements and compliance certificates.	12:20	S. Walker, D. Pink	59	Discuss
<b>6. FOR INFORMATION</b>					
6.1	IPIC Submission to ISED re Agent-Client Privilege.			69	
6.2	CPATA Finance Policies			81	
6.3	Balsillie - Canada needs a revived Economic Council			99	

<b>6. In-Camera</b>			
Separate agenda circulated to Directors			
<b>6. ADJOURN</b>			
<b>FUTURE PUBLIC MEETINGS</b>			
	May 26, 2022 – All Day – Board and AGM – Ottawa Aug. 18, 2022 – 12:00 ET via Zoom October 28/29 – Board Planning and Meeting – Ottawa?		



**Public Board of Directors Meeting  
Held via Zoom  
December 10, 2021, 4:30 p.m. ET  
Minutes**

**BOARD MEMBERS:**

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

**STAFF:**

Sean Walker CPA, CFO  
Andrés Diaz, Operations Manager  
Victoria Rees, Manager Professional Responsibility  
Dana Dragomir, Communications Officer/Recording Secretary

1. Call to Order

The chair called the meeting to order at 4:40 p.m. ET. No conflicts of interest were declared. No opening remarks were made in the interest of time.

2. Consent Agenda

- 2.1 Minutes of the October 30 Meeting
- 2.2 Amendment to Bd. Policy No. 7 – Nominations and Elections
- 2.3 CEO Report

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

3. Establishing the College

- 3.1 Discipline Committee Skills Matrix

**On a motion made by Doug Thompson, seconded by Ruth McHugh, the Board approved the Discipline Committee Skills Matrix.**

Appointment of Discipline Committee

Ruth McHugh remarked the exceptional quality of candidates put forth to serve on the Committee.

**On a motion made by Jeff Astle, seconded by Ruth McHugh, the Board appointed Marcel Mongeon, Jay Sengupta, Ray Anand, Benoit Yelle, Kathleen Lickers, Charles Boulakia and Jean Whittow, QC to the Discipline Committee for terms ending at the 2022 Annual Meeting.**

3.2 Appointment to Registration Committee

**On a motion made by Doug Thompson, seconded by Jeff Astle, the Board appointed Heidi Jensen to the Registration Committee.**

3.3 Board of Directors Skills Matrix

Ruth McHugh recommended that private and corporate Board experience be included in the Skills Matrix. Minor formatting and copyedits will be provided by the Board to Darrel Pink via e-mail, following which the Board agrees to approve the Board of Directors Skills Matrix via an electronic vote.

3.4 Board Policy No. 8 - Governance

Minor formatting and copyedits will be provided by the Board to Darrel Pink via e-mail, following which the Policy will be revisited at the January 2022 Board meeting.

4. Building a Model Regulator

4.1 Recruitment of Committees and Board of Directors

The Board discussed the need for non-Board members on the Nominating Committee, while the Governance Committee is to be predominantly made up of Directors.

Directors agreed to complete a self-assessment tool to capture their skills for the purposes of serving on committees.

The process for (and especially the role of government in) recruiting Board and Committee members was deliberated.

4.2 2022-2023 Operation Plan

Darrel Pink spoke to elements of the Operation Plan, including the need for a regulatory policy for Class 2 agents to revert back to Class 1, the upcoming, long-term Competency Initiative and Code of Conduct education for licensees. Members of the Board endorsed the plan, agreeing that it was directionally-correct and robust.

4.3 By-law amendments

The Board received the drafting instructions that have been sent to the Department of Justice, for the previously approved necessary by-law amendments.

5. For Information

5.1 October 31 Financial Statements

Sean Walker CPA presented the Financial Statements. The Board acknowledged the value of The new legislative compliance section.

5.2 Correspondence from Agent re CIPO

The Board appreciated receiving this concrete example of challenges experienced by licensees in dealing with CIPO.

6. Adjourn

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



## BRIEFING NOTE

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

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SUBJECT      CEO Report

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FROM         Darrel Pink, CEO & Registrar,

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TO             Board of Directors

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DATE          March 3, 2022

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### Operations/Licence Renewal

We are in the midst of our annual renewal. We had hoped there would be an updated Agent Portal, but development by Thentia was not sufficiently advanced to allow us to be sure it would be ready in time for testing and launch by early February. Therefore we have maintained our existing infrastructure.

As we did in 2020, we are offering firms the option of bulk payments for all their agents. This requires manual inputting by us but is a service we believe we need to offer.

This renewal involves our first 'Annual Licensee Report'. It is a modest effort to familiarize licensees with their obligations, especially relating to insurance. That requirement has gone smoothly. We continue to engage with many agents and law firms about their obligations and with several insurers about insurance products that meet our requirements to fill gaps in coverage from primary law society insurance.

We are seeing agents change their licence category to Class 2 to avoid the expense of insurance. This is a risk we have identified. We may not appreciate



its full extent until later in the year as we have given licensees an option to not have insurance until the end of the year.

## **Branding/Social Media**

You will note in this Board package that our new branding has been applied throughout. The new logo – a slight variation on the original that includes our name in French and English – is making its way onto all materials, emails, whether sent from computer or phone, and all our printed materials.

The website has also been refreshed (no more crashing lightbulbs).

We are building systems so all material is prepared in both languages, and we are publishing simultaneously – most of the time. Our goal is that becomes 100% of the time.

We have established our social media presence on LinkedIn, Facebook. We will start to add materials to these sites as we develop a comprehensive communications strategy – work we are doing with McMillan Vantage.

## **Newsletter**

In March we launch our monthly newsletter to the profession. We have not developed and may not create a name for it. It will be sent regularly and will become our primary means of communicating with licensees.

It will allow us to advise the profession about several initiatives in the Business Plan, such as the Competence Initiative and Ethics Training.

## **By-laws**

Elise Schissler, a former drafter with the government of Canada, has been shepherding our by-law development through the various processes of drafting, revising and eventual publication. You have a memo from her in the Board Package describing the nature of the amendments. At this stage there is no ability to revise language and so I propose the Board approve the final version through a written resolution once we receive the final version from the government drafters in May. Once the Board approves them, they must be

'registered' with the Privy Council Office and then they can be published in the Canada Gazette.

The process is complicated. Having Elise involved has confirmed the need for a wholesale revision of the by-laws, a project we will begin later this year.

### **Official Languages**

We had had our initial training from the Official Languages Commissioner's office and a second session will happen before the Board meeting. We are strongly committed to meeting our obligations but are finding even the OLC office cannot tell us what they are. For example, what are the requirements on us in hiring and are there any authorities in the Minister, which there would be if we were a government office?

There is no update on the OLA complaint.

Because Thentia could not complete its upgrade in time, we could not launch a bi-lingual portal, which several licensees have noted. This will be rectified in March.

### **Committee Recruitment**

I have regular updates from Boyden on their recruitment for the Governance & Nominating Committee and the Risk & Audit Committee. They have identified many highly qualified candidates. The reception for CPATA's approach to professional regulation, among those they have contacted, has been very positive. Many highly qualified individuals are willing to be considered.

Noteworthy, some have expressed an interest in the Board and if we can provide names for the Minister's consideration, we have a strong starting position for selecting possible names.

Ruth and Jeff will assist in reviewing the long list and selecting a small group for further consideration. An oral report will be provided at the March meeting.

## Elections

On January 31 we hosted an orientation session for those interested in being nominated. About 20 attended, The session was bilingual. The recording and slide deck are available [here](#).

A list of candidates is included in the meeting package.

## Preparing for Strategic Planning

My plan is the College should develop its long term strategies later this year. We have booked a full day meeting in October, and I expect to use that time to focus on strategic planning.

As we develop relationships with others in the IP community and expand our understanding of the expectations for IP professionals, we will record our findings and undertake complementary research. I have retained Don Thompson to assist with this work.

## Annual General Meeting and Board Meeting – May 26 – 27, Ottawa

The AGM is scheduled for May 26. We have booked apace at the Lord Elgin Hotel for Board meetings and the AGM. I would like to invite the Minister to speak at the AGM. Following the meeting we can have a reception – with invitations to our Ottawa based stakeholders and licensees who attend the meeting. Registration will be required, so we'll have an accurate number count.

The meeting itself will be broadcast so anyone can attend.

Board By-law 5 specifies the agenda for the Meeting as:

The agenda for an annual general meeting must contain the following items for discussion:

- (a) the CEO's presentation of the College's annual report and audited financial statements;
- (b) the Chairperson's address to the meeting;
- (c) questions from the licensees to the Board; and
- (d) any additional matter the Board adds to the agenda.

The Meeting agenda for the Board will focus on orientation and immediate priorities, as we will have our newly elected and appointed (hopefully) Directors.

Schedule for the Board and AGM:

Wednesday, May 25 – Board & staff dinner (new and old Directors)

Thursday, May 26 – 3:30 – 4:00 – Board Orientation

4:30 – 5:30 – AGM

5:30 – 6:30 – Reception

7:30 – Board Dinner – New and old Directors and guests

Friday, May 27 – 8:30 – Noon – Public Board Meeting

This schedule will allow all to depart Ottawa in the afternoon, should flights enable that.

You will hear from Vikki when it is time to confirm arrangements.

### **Annual Report**

Preparation of our first Annual Report is underway. It is being developed in both official languages and talks about our development as a new regulator since the Board was appointed until December 31, 2021. You will see materials and approaches to it in the in-camera meeting.

The Report need not include our audited financial statements but under the agreement we have with ISER for the loan guarantee, we must provide the audited statements to the Minister. We intend to send both the Annual Report and the Audited Statements by the end of March.

### **Speaking Invitations**

On February 25, I gave a presentation to the Council of the College of Chiropractors of Ontario on 'Right Touch Regulation'.

I have been invited to speak at the ABA Conference on Professional Responsibility in early June in Baltimore. Dan Pinnington, CEO of LawPro is a member of the organizing committee. WE are developing a panel that will address 'What a Modern Regulator Looks Like'. There will be 2 Americans and 2 Canadians on the Panel.

We have made a submission to CNAR for three of us to present at their annual conference in Charlottetown in October. We have proposed to present on Building a New Regulator. If our proposal is accepted, Jen and Andres will be involved. CNAR provides the best continuing Professional Development opportunities for our staff on issues arising from professional regulation.

## BRIEFING NOTE

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DECISION	<input checked="" type="checkbox"/>	REPORT		ATTACHMENTS	
DISCUSSION	<input type="checkbox"/>	New	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>
INFORMATION	<input type="checkbox"/>	Update	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
SUBJECT	By-Law Amendments				
FROM	Darrel Pink, CEO & Registrar,				
TO	Board of Directors				
DATE	March 3, 2022				

## ISSUE

The Board must approve amendment to the by-laws to address insurance requirements, staggered terms for elected Directors, new fees for foreign practitioners and consequential amendments.

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

By-law amendments are the exclusive purview of the Board.

Drafting of the by-law amendments is with the Department of Justice. Once approved by the Board, they will be registered with the Privy Council Office and published in the Canada Gazette in early April. They are in effect when registered.

#### Summary of By-laws Amendments

I: *By-laws of the College of Patent Agents and Trademark Agents (College)* ("College By-laws")

- A number of the amendments make it explicit that the fees are to be paid to the College and specify the particular item numbers of the schedule where the fees are listed.
- All the fees were previously listed in the schedule to the Board By-laws, even though some of them are established and required to be paid

pursuant to the College By-laws. A new schedule is added to the College By-laws where the appropriate fees are now listed (the fees payable under paragraphs 9(d), 12(d), 20(c), 23(g) and 25(d)).

- A new requirement is added (s. 28(1)) when a class 2 licensee applies to be reinstated as a class 1 licensee, to demonstrate that they will be insured against professional liability as of the date of the reinstated class 1 licence (or show that they are exempt from the insurance requirement).

## II: *By-laws of the College of Patent Agents and Trademark Agents (Board)* ("Board By-laws")

- A number of the amendments make it explicit that the fees are to be paid to the College and specify the particular item numbers of the schedule where the fees are listed, where in the originally enacted By-laws the wording was merely "pay the applicable fees" (amendments to sections 52, 54, 55, 57(2) and (3)(b) and 59(1)).
- Some of the fees listed in the schedule were actually payable pursuant to the College By-laws, so that items 3, 4, 6 and 9 to 14 of the schedule are moved to the College By-laws.
- Definitions "non-resident patent agent", "non-resident trademark agent" and "Regulations" are added.
- Section 6 makes four requirements for elections of directors:
  1. specify that two of the elected directors be patent agents and two be trademark agents;
  2. provide for a clear beginning and end point of the three-year term of office of directors;
  3. make an exception for the first elections, that the term of office of the runners-up (the patent agent and the trademark agent who get the next-highest number of votes) is two years, to achieve staggered terms of office;
  4. provide that when a director leaves office before the end of their term, the elected replacement director's term ends when the departing director's term was scheduled to end.
- Section 31 is modified to coordinate with the new requirement that there are to be two patent agent directors and two trademark agent directors,

and provides for an annual decision whether any elections are needed in the coming year, and for which vacancies.

- New requirements for professional liability insurance:
  1. Class 3 licensees are to provide proof annually of their insurance or of their exemption (s. 55);
  2. Class 2 licensees and certain employee licensees are exempt from the requirement to have the insurance. (s. 55.1(1));
  3. Features of the required insurance are specified (s. 55.1(2)).
  
- New requirements are added for non-resident agents:
  1. Fees are payable for inclusion in the Registers (s. 60.2) and annually for maintaining their listing in the Registers (s. 60.3(2));
  2. The annual statement specified in the Regulations is required between May 1 and June 30 each year and must include proof of the agent's continued authorization to act in their home jurisdiction.
  
- Licensees who are now being required to have professional liability insurance are exempt from that requirement until December 31, 2022, giving them time to secure such insurance.

## Summary

The final drafting will be available in early March. The Board must approve the by-laws before registration.

## Recommendation

### Request of the Board

Approve the following resolution.

Whereas the Board has approved the instructions for amendments to the College and Board By-laws;

And whereas drafting is being undertaken by the Department of Justice;

And whereas the final version is not yet available, but the Board has reviewed the proposed changes;



Therefore, be it resolved,

The Board agrees to approve the final version of amendments to the College and Board By-laws by written resolution.



**ROYAL BANK OF CANADA CREDIT AGREEMENT**

**DATE: February 3, 2022**

<b>BORROWER:</b> COLLEGE OF PATENT AGENTS AND TRADEMARK AGENTS / COLLEGE DES AGENTS DE BREVETS ET DES AGENTS DE MARQUES DE COMMERCE	<b>SRF:</b> 560328544
<b>ADDRESS</b> (Street, City/Town, Province, Postal Code) 400 - 411 ROOSEVELT AVE OTTAWA, ON K2A 3X9	

Royal Bank of Canada (the “**Bank**”) hereby confirms to the undersigned (the “**Borrower**”) the following credit facilities (the “**Credit Facilities**”), banking services and other products subject to the terms and conditions set forth below and in the standard terms provided herewith (collectively the “**Agreement**”). The Credit Facilities are made available at the sole discretion of the Bank and the Bank may cancel or restrict availability of any unutilized portion of these facilities at any time and from time to time without notice.

**CREDIT FACILITIES**

**Facility #1      Revolving demand facility in the amount of \$500,000.00, available by way of RBP based loans.**

Minimum retained balance \$0.00

Revolved by the Bank in increments of \$5,000.00

Interest rate: RBP + 2.50% per annum. Interest payable monthly, in arrears, on the same day each month as determined by the Bank.

Margined: Yes [ ] No [X]

**OTHER FACILITIES**

The Credit Facilities are in addition to the following facilities (the “**Other Facilities**”). The Other Facilities will be governed by this Agreement and separate agreements between the Borrower and the Bank. In the event of a conflict between this Agreement and any such separate agreement, the terms of the separate agreement will govern.

- a) Credit Card to a maximum amount of \$25,000.00.

**SECURITY**

Security for the Borrowings and all other obligations of the Borrower to the Bank, including without limitation any amounts outstanding under any Leases, if applicable, (collectively, the “**Security**”), shall include:

- a) General security agreement on the Bank’s form 924 signed by the Borrower constituting a first ranking security interest in all personal property of the Borrower;
- b) Irrevocable guarantee in the amount of \$1,000,000.00 signed by Her Majesty the Queen in Right of Canada, as represented by the Minister of Innovation, Science and Industry, supported by an opinion letter.

**REPORTING REQUIREMENTS**

The Borrower will provide to the Bank:

- a) annual audited financial statements for the Borrower, within 90 days of each fiscal year end;
- b) such other financial and operating statements and reports as and when the Bank may reasonably require.

## **BUSINESS LOAN INSURANCE PLAN**

The Borrower hereby acknowledges that the Bank has offered it group creditor insurance coverage on the Borrowings under the Business Loan Insurance Plan and the Borrower hereby acknowledges that it is the Borrower's responsibility to apply for any new or increased insurance amount for the Borrowings that may be eligible.

If the Borrower decides to apply for insurance on the Borrowings, the application will be made via the Bank's Business Loan Insurance Plan application (form 3460 ENG or 53460 FRE). If the Borrower has existing uninsured Borrowings and decides not to apply for Business Loan Insurance Plan coverage on any new Borrowings, it hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for Business Loan Insurance Plan coverage on all such Borrowings, and that all such Borrowings are not insured under the Policy as at the date of acceptance of this Agreement.

If the Borrower has Business Loan Insurance Plan coverage on previously approved Borrowings, such coverage will be applied automatically to all new Borrowings eligible for Business Loan Insurance Plan coverage that share the same loan account number, up to the approved amount of Business Loan Insurance Plan coverage. This Agreement cannot be used to waive coverage on new Borrowings eligible for Business Loan Insurance Plan coverage if Business Loan Insurance Plan coverage is in effect on the Borrower's existing Borrowings. If the Borrower does not want Business Loan Insurance Plan coverage to apply to any new Borrowings, a different loan account number will need to be set up and all uninsured loans attached to it.

If the Borrower has existing Borrowings to which Business Loan Insurance Plan coverage applies, and any new Borrowings would exceed the approved amount of Business Loan Insurance Plan coverage already in place, the Borrower must apply for additional Business Loan Insurance Plan coverage (if eligible) in order for Business Loan Insurance Plan coverage to apply to any new Borrowings. If the Borrower decides not to apply for additional Business Loan Insurance Plan coverage in respect of any new Borrowings (if eligible), the Borrower hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for additional Business Loan Insurance Plan coverage on such new Borrowings and that such new Borrowings are not insured under the Policy as at the date the Borrower executes this Agreement.

If there are any discrepancies between the insurance information in this Agreement and the Business Loan Insurance Plan documents regarding the Borrowings, the Business Loan Insurance Plan documents govern.

Business Loan Insurance Plan premiums (plus applicable taxes), will be taken as a separate payment, directly from the bank account associated with the loan, at the same frequency and schedule as your regular loan payments, where applicable. As premiums are based on the outstanding loan balance and the insured person's age at the time the premiums are due, the cost of Business Loan Insurance Plan coverage may increase during the term of the loan. The premium calculation is set out in the Business Loan Insurance Plan terms and conditions provided to the Borrower at the time the application for Business Loan Insurance Plan coverage was completed. Refer to the terms and conditions (form 3460 ENG or 53460 FRE) for further explanation and disclosure.

## **STANDARD TERMS**

The following standard terms have been provided to the Borrower:

- Form 472 (11/2020) Royal Bank of Canada Credit Agreement – Standard Terms
- Form 473 (02/2020) Royal Bank of Canada Credit Agreement – Margined Accounts Standard Terms
- Form 473A (06/2021) Royal Bank of Canada Credit Agreement – RBC Covarity Terms and Conditions
- Form 473B (02/2020) Royal Bank of Canada Credit Agreement – Margined Accounts Standard Terms

**ACCEPTANCE**

This Agreement is open for acceptance until March 5, 2022, after which date it will be null and void, unless extended by the Bank in its sole discretion.

**ROYAL BANK OF CANADA**



Per: \_\_\_\_\_  
Title: Vice President

**RBC Contact: DONNA GIBSON**

/pt

**CONFIRMATION & ACCEPTANCE**

The Borrower (i) confirms that it has received a copy of the Royal Bank of Canada Credit Agreement Standard Terms, Form 472, as well as all other standard terms which are hereinabove shown as having been delivered to the Borrower, all of which are incorporated in and form an integral part of this Agreement; and (ii) accepts and agrees to be bound by the terms and conditions of this Agreement including all terms and conditions contained in such standard terms.

Confirmed, accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**COLLEGE OF PATENT AGENTS AND TRADEMARK AGENTS / COLLEGE DES AGENTS DE BREVETS ET DES AGENTS DE MARQUES DE COMMERCE**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Borrower

The following set of standard terms is deemed to be included in and forms an integral part of the Royal Bank of Canada Loan Agreement which refers to standard terms with this document version date, receipt of which has been duly acknowledged by the Borrower. Terms defined elsewhere in this Agreement and not otherwise defined below have the meaning given to such terms as so defined. The Borrower agrees and if the Borrower is comprised of more than one Person, such Persons jointly and severally agree, or in Quebec solidarily agree, with the Bank as follows:

#### GENERAL

This Agreement amends and restates, without novation, any existing credit or loan agreement between the Borrower and the Bank and any amendments thereto, (other than existing agreements for Other Facilities). Any credit facility existing under any such credit or loan agreement which is secured by security under section 427 of the *Bank Act* (Canada) (or any successor to such provision) is deemed to be continued and renewed, without novation, under the Credit Facilities. Any amount owing by the Borrower to the Bank under any such credit or loan agreement is deemed to be a Borrowing under this Agreement. This Agreement is in addition to, and not in replacement of, agreements for Other Facilities. Any and all Security that has been delivered to the Bank and which is included as Security in this Agreement shall remain in full force and effect, is expressly reserved by the Bank and shall apply in respect of all obligations of the Borrower under the Credit Facilities. The Bank expressly reserves all Security granted to the Bank by the Borrower to secure the Borrower's existing debt towards the Bank, should the execution of this Agreement effect a novation of said debt. Unless otherwise provided, all dollar amounts are in Canadian currency.

#### CONDITIONS PRECEDENT

In no event will the Credit Facilities or any part thereof be available unless the Bank has received:

- a) a duly executed copy of this Agreement;
- b) the Security provided for herein, in form and substance, and executed and registered to the satisfaction of the Bank;
- c) such financial and other information or documents relating to the Borrower or any Guarantor if applicable as the Bank may reasonably require; and
- d) such other authorizations, approvals, opinions and documentation as the Bank may reasonably require.

#### AVAILABILITY

**Revolving facilities:** The Borrower may borrow, convert, repay and reborrow up to the amount of each revolving facility (subject to Margin where applicable) provided each facility is made available at the sole discretion of the Bank and the Bank may cancel or restrict the availability of any unutilized portion at any time and from time to time without notice.

**Non-revolving facilities:** The Borrower may borrow up to the amount of each non-revolving facility provided these facilities are made available at the sole discretion of the Bank and the Bank may cancel or restrict availability of any unutilized portion of these facilities at any time and from time to time without notice.

#### LOAN REVOLVEMENT

If the Credit Facilities include a revolving demand facility by way of RBP and/or RBUSBR based loans, the Borrower shall establish a current account in Canadian currency, and, where RBUSBR based loans are made available, in US currency (each a "**General Account**") for the conduct of the Borrower's day-to-day banking business. The Borrower authorizes the Bank daily or otherwise as and when determined by the Bank to ascertain the balance of any General Account and:

- a) if such position is a debit balance the Bank may, subject to the revolving increment amount and minimum retained balance specified in this Agreement, make available a Borrowing by way of RBP Loans, or RBUSBR Loans as applicable, under this facility;
- b) where the facility is indicated to be Bank revolved, if such position is a credit balance, the Bank may, subject to the revolving increment amount and minimum retained balance specified in this Agreement, apply the amount of such credit balance or any part as a repayment of any Borrowings outstanding by way of RBP Loans, or RBUSBR Loans as applicable, under this facility;
- c) where this facility is indicated to be Borrower revolved, if such position is a credit balance, the Bank will apply repayments on such facility only if so advised and directed by the Borrower;
- d) Overdrafts and Bank revolved facilities by way of RBP Loans, or RBUSBR Loans, are not available on the same General Account.

#### REPAYMENT

- a) Amounts outstanding under the Credit Facilities, together with interest, shall become due in the manner and at the rates and times specified in or pursuant to this Agreement and shall be paid in the currency of the Borrowing. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day.
- b) Unless the Bank otherwise agrees, any payment hereunder must be made in money which is legal tender at the time of payment.
- c) In the case of a demand facility of any kind, the Borrower shall repay all principal sums outstanding under such facility upon demand including, without limitation, an amount equal to the face amount of all LCs and LGs, if applicable, which are unexpired or unexpired, which amount shall be held by the Bank as security for the Borrower's obligations to the Bank in respect of such Borrowings.
- d) Where any Borrowings are repayable by scheduled blended payments of principal and interest, such payments shall be applied, firstly, to interest due, and the balance, if any, shall be applied to principal outstanding with any balance of such Borrowings being due and payable as and when specified in this Agreement. If any such payment is insufficient to pay all interest then due, the unpaid balance of such interest will be added to such Borrowing, will bear interest at the same rate, and will be payable on demand or on the date specified herein, as the case may be.
- e) Borrowings repayable by way of scheduled payments of principal plus interest shall be so repaid with any balance of such Borrowings being due and payable as and when specified in this Agreement.
- f) For any Borrowings that are repayable by scheduled payments, if the scheduled payment date is changed then the maturity date of the applicable Borrowings shall automatically be amended accordingly.
- g) Without limiting the right of the Bank to terminate or demand payment of or to cancel or restrict availability of any unused portion of any revolving demand tender loan facility, Borrowings by way of tender loans shall be repaid (i) if the tender is not accepted, by returning the relevant draft, or certified cheque, if applicable, to the Bank for cancellation or (ii) if the tender is accepted, by returning the relevant draft, or certified cheque, if applicable, once letters of guarantee or performance bonds are arranged. In the event such draft, or certified cheque, if applicable, is presented for payment, the amount of the draft, or certified cheque, if applicable, will be converted to an RBP based loan with an interest rate of RBP plus 5% per annum.
- h) Should the Bank demand immediate repayment in full of any amounts outstanding under any term facility due to an Event of Default, the Borrower shall immediately repay all principal sums outstanding under such facility and all other obligations in connection with any such term facility.
- i) Except for Borrowings secured by a mortgage, any amount that is not paid when due hereunder shall bear interest until paid at the rate of RBP plus 5% per annum or the highest premium indicated for any of the Borrower's facilities when in excess of 5%, or, in the case of an amount in US currency if applicable, RBUSBR plus 5% per annum or the highest premium indicated for any of the Borrower's facilities when in excess of 5%. Such interest on overdue amounts shall be computed daily, compounded monthly and shall be payable both before and after any or all of default, maturity, demand

and judgement. For Borrowings secured by a mortgage, any amount that is not paid when due hereunder shall bear interest until paid at the same rate as the interest rate applicable to the principal amount of the Borrowings as specified in this Agreement.

- j) In the case of any reducing term loan and/or reducing term facility (“**Reducing Term Loan/Facility**”), provided that nothing contained in this paragraph shall confer any right of renewal or extension upon the Borrower, the Borrower and the Bank agree that, at the Bank’s option, the Bank may provide a letter (“**Renewal Letter**”) to the Borrower setting out the terms upon which the Bank is prepared to extend the Reducing Term Loan/Facility. In the event that the Bank provides a Renewal Letter to the Borrower and the Reducing Term Loan/Facility is not repaid on or before the maturity date of the applicable Reducing Term Loan/Facility, then at the Bank’s option the Reducing Term Loan/Facility shall be automatically renewed on the terms set out in the Renewal Letter and the terms of this Agreement shall be amended accordingly.

#### **PREPAYMENT**

Where Borrowings under any term facility are by way of RBP and/or RBUSBR based loans, the Borrower may prepay such Borrowings in whole or in part at any time without fee or premium.

Where Borrowings under any term facility are at a fixed interest rate, provided an Event of Default shall not have occurred and be continuing, the Borrower may prepay such Borrowings on a non-cumulative basis up to the percentage indicated in this Agreement of the outstanding principal balance on the day of prepayment, without fee or premium, once per year during the 12 month period from each anniversary date of the Borrowing. Any prepayment of the Borrowing prior to the maturity date, in whole or in part (in excess of any prepayment explicitly permitted in this Agreement), requires an amendment of the terms of this Agreement. An amendment to permit such a prepayment requires the Bank’s prior written consent. The Bank may provide its consent to an amendment to permit a prepayment upon satisfaction by the Borrower of any conditions the Bank may reasonably impose, including, without limitation, the Borrower’s agreement to pay the Prepayment Fee as defined below.

The Prepayment Fee will be calculated by the Bank as the sum of:

- a) the greater of:
- (i) the amount equal to three (3) months’ interest payable on the amount of the fixed rate term facility Borrowing being prepaid, calculated at the interest rate applicable to the fixed rate term facility Borrowing on the date of prepayment; and
  - (ii) the present value of the cash flow associated with the difference between the Bank’s original cost of funds for the fixed rate term facility Borrowing and the current cost of funds for a fixed rate term loan with a term substantially similar to the remaining term and an amortization period substantially similar to the remaining amortization period of the fixed rate term facility Borrowing, each as determined by the Bank on the date of such prepayment;
- plus:
- b) Foregone margin over the remainder of the term of the fixed rate term facility Borrowing. Foregone margin is defined as the present value of the difference between the Bank’s original cost of funds for the fixed rate term facility Borrowing and the interest that would have been charged to the Borrower over the remaining term of the fixed rate term facility Borrowing;
- plus:
- c) a processing fee.

The Prepayment Fee shall also be payable by the Borrower in the event the Bank demands repayment of the outstanding fixed rate term facility Borrowing on the occurrence of an Event of Default. The Borrower’s obligation to pay the Prepayment Fee will be in addition to any other amounts then owing by the Borrower to the Bank, will form part of the Borrowings outstanding and will be secured by the Security described herein.

The prepayment of any Borrowings under a term facility will be made in the reverse order of maturity.

#### **EVIDENCE OF INDEBTEDNESS**

The Bank shall maintain accounts and records (the “**Accounts**”) evidencing the Borrowings made available to the Borrower by the Bank under this Agreement. The Bank shall record the principal amount of such Borrowings, the payment of principal and interest on account of the Borrowings, and all other amounts becoming due to the Bank under this Agreement. The Accounts constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Bank pursuant to this Agreement. The Borrower authorizes and directs the Bank to automatically debit, by mechanical, electronic or manual means, any bank account of the Borrower for all amounts payable under this Agreement, including, but not limited to, the repayment of principal and the payment of interest, fees and all charges for the keeping of such bank accounts.

#### **CALCULATION AND PAYMENT OF INTEREST AND FEES**

- a) The Borrower shall pay interest on each Overdraft, RBP and/or RBUSBR based loan monthly in arrears on the same day of each month as determined by the Bank. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days.
- b) The Borrower shall pay interest on each fixed and/or variable rate term facility in arrears at the applicable rate on such date as agreed upon between the Bank and the Borrower. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days.
- c) The Borrower shall pay an LC fee on the date of issuance of any LC calculated on the face amount of the LC issued, based upon the number of days in the term and a year of 365 days. If applicable, fees for LCs issued in US currency shall be paid in US currency.
- d) The Borrower shall pay LG fees in advance on a quarterly basis calculated on the face amount of the LG issued and based on the number of days in the upcoming quarter or remaining term thereof and a year of 365 days. LG fees are non-refundable. If applicable, fees for LGs issued in US currency shall be paid in US currency.
- e) Amounts payable by the Borrower hereunder shall be paid at such place as the Bank may advise from time to time in the applicable currency. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day. Interest and fees payable under this Agreement are payable both before and after any or all of default, maturity, demand and judgement.
- f) The Borrower shall not be obligated to pay any interest, fees or costs under or in connection with this Agreement in excess of what is permitted by Applicable Law. In no event shall the effective interest rate payable by the Borrower under any facility be less than zero.

- g) The annual rates of interest or fees to which the rates calculated in accordance with this Agreement are equivalent, are the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by 365.

#### **FEES, COSTS AND EXPENSES**

The Borrower agrees to pay the Bank all fees stipulated in this Agreement and all fees charged by the Bank relating to the documentation or registration of this Agreement and the Security. In addition, the Borrower agrees to pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the preparation, negotiation, documentation and registration of this Agreement and any Security and the administration, operation, termination, enforcement or protection of its rights in connection with this Agreement and the Security. The Borrower shall indemnify and hold the Bank harmless against any loss, cost or expense incurred by the Bank if any facility under the Credit Facilities is repaid or prepaid other than on its Maturity Date. The determination by the Bank of such loss, cost or expense shall be conclusive and binding for all purposes and shall include, without limitation, any loss incurred by the Bank in liquidating or redeploying deposits acquired to make or maintain any facility.

#### **GENERAL COVENANTS**

Without affecting or limiting the right of the Bank to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, the Borrower covenants and agrees with the Bank that the Borrower:

- a) will pay all sums of money when due under the terms of this Agreement;
- b) will immediately advise the Bank of any event which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of this Agreement or any Security or an Event of Default;
- c) will file all material tax returns which are or will be required to be filed by it, pay or make provision for payment of all material taxes (including interest and penalties) and Potential Prior-Ranking Claims, which are or will become due and payable and provide adequate reserves for the payment of any tax, the payment of which is being contested;
- d) will give the Bank 30 days prior notice in writing of any intended change in its ownership structure or composition and will not make or facilitate any such changes without the prior written consent of the Bank;
- e) will comply with all Applicable Laws, including, without limitation, all Environmental and Health and Safety Laws;
- f) will immediately advise the Bank of any action requests or violation notices received concerning the Borrower and hold the Bank harmless from and against any losses, costs or expenses which the Bank may suffer or incur for any environment related liabilities existent now or in the future with respect to the Borrower;
- g) will deliver to the Bank such financial and other information as the Bank may reasonably request from time to time, including, but not limited to, the reports and other information set out under this Agreement;
- h) will immediately advise the Bank of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations in accordance with the terms of this Agreement;
- i) will keep its assets fully insured against such perils and in such manner as would be customarily insured by Persons carrying on a similar business or owning similar assets and, in addition, for any buildings located in areas prone to flood and/or earthquake, will insure and keep fully insured such buildings against such perils;
- j) except for Permitted Encumbrances, will not, without the prior written consent of the Bank, grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of its properties, assets or other rights;
- k) will not, without the prior written consent of the Bank, sell, transfer, convey, lease or otherwise dispose of any of its properties or assets other than in the ordinary course of business and on commercially reasonable terms;
- l) will not, without the prior written consent of the Bank, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein;
- m) will not, without the prior written consent of the Bank, merge, amalgamate, or otherwise enter into any other form of combination with any other Person;
- n) will permit the Bank or its representatives, from time to time, i) to visit and inspect the Borrower's premises, properties and assets and examine and obtain copies of the Borrower's records or other information, ii) to collect information from any person regarding any Potential Prior-Ranking Claims and iii) to discuss the Borrower's affairs with the auditors, counsel and other professional advisers of the Borrower. The Borrower hereby authorizes and directs any such third party to provide to the Bank or its representatives all such information, records or documentation requested by the Bank; and
- o) will not use the proceeds of any Credit Facility for the benefit or on behalf of any Person other than the Borrower.

#### **GENERAL INDEMNITY**

The Borrower hereby agrees to indemnify and hold the Bank and its directors, officers, employees and agents harmless from and against any and all claims, suits, actions, demands, debts, damages, costs, losses, obligations, judgements, charges, expenses and liabilities of any nature which are suffered, incurred or sustained by, imposed on or asserted against any such Person as a result of, in connection with or arising out of i) any breach of any term or condition of this Agreement or any Security or any other agreement delivered to the Bank by the Borrower or any Guarantor if applicable or any Event of Default, ii) the Bank acting upon instructions given or agreements made by electronic transmission of any type, iii) the presence of Contaminants at, on or under or the discharge or likely discharge of Contaminants from, any properties now or previously used by the Borrower and iv) the breach of or non compliance with any Applicable Law by the Borrower or any Guarantor.

#### **AMENDMENTS AND WAIVERS**

Save and except for any waiver or extension of the deadline for acceptance of this Agreement at the Bank's sole discretion, which may be communicated in writing, verbally, or by conduct, no amendment or waiver of any provision of this Agreement will be effective unless it is in writing, signed by the Borrower and the Bank. No failure or delay, on the part of the Bank, in exercising any right or power hereunder or under any Security or any other agreement delivered to the Bank shall operate as a waiver thereof. Each Guarantor, if applicable, agrees that the amendment or waiver of any provision of this Agreement (other than agreements, covenants or representations expressly made by any Guarantor herein, if any) may be made without and does not require the consent or agreement of, or notice to, any Guarantor.

#### **SUCCESSORS AND ASSIGNS**

This Agreement shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. The Borrower shall not be entitled to assign or transfer any rights or obligations hereunder, without the consent in writing of the Bank.

#### **GAAP**

Unless otherwise provided, all accounting terms used in this Agreement shall be interpreted in accordance with Canadian Generally Accepted Accounting Principles, as appropriate, for publicly accountable enterprises, private enterprises, not-for-profit organizations, pension plans and in accordance, as appropriate, with Public Sector Accounting Standards for government organizations in effect from time to time, applied on a consistent basis from period

to period. All financial statements and/or reports shall be prepared using one of the above bases of presentation, as appropriate. Except for the transition of accounting standards in Canada, any change in accounting principles or the application of accounting principles is only permitted with the prior written consent of the Bank.

#### **SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement and such invalid provision shall be deemed to be severable.

#### **DEFAULT BY LAPSE OF TIME**

The mere lapse of time fixed for performing an obligation shall have the effect of putting the Borrower in default thereof.

#### **SET-OFF**

The Bank is authorized (but not obligated), at any time and without notice, to apply any credit balance (whether or not then due) in any account in the name of the Borrower, or to which the Borrower is beneficially entitled (in any currency) at any branch or agency of the Bank in or towards satisfaction of the indebtedness of the Borrower due to the Bank under the Credit Facilities and the other obligations of the Borrower under this Agreement. For that purpose, the Bank is irrevocably authorized to use all or any part of any such credit balance to buy such other currencies as may be necessary to effect such application.

#### **CONSENT OF DISCLOSURE**

The Borrower hereby grants permission to any Person having information in such Person's possession relating to any Potential Prior-Ranking Claim, to release such information to the Bank (upon its written request), solely for the purpose of assisting the Bank to evaluate the financial condition of the Borrower.

#### **JOINT AND SEVERAL / SOLIDARY**

Where more than one Person is liable as Borrower, for any obligation under this Agreement, then the liability of each such Person for such obligation is joint and several (in Quebec, solidary) with each other such Person.

#### **EVENTS OF DEFAULT**

Without affecting or limiting the right of the Bank to terminate or demand payment of, or to cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, each of the following shall constitute an "Event of Default" which shall entitle the Bank, in its sole discretion, to cancel any Credit Facilities, demand immediate repayment in full of any amounts outstanding under any term facility, together with outstanding accrued interest and any other indebtedness under or with respect to any term facility, and to realize on all or any portion of any Security:

- a) failure of the Borrower to pay any principal, interest or other amount when due pursuant to this Agreement;
- b) failure of the Borrower, or any Guarantor if applicable, to observe any covenant, term or condition or provision contained in this Agreement, the Security or any other agreement delivered to the Bank or in any documentation relating hereto or thereto;
- c) the Borrower, or any Guarantor if applicable, is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- d) if any proceeding is taken to effect a compromise or arrangement with the creditors of the Borrower, or any Guarantor if applicable, or to have the Borrower, or any Guarantor if applicable, declared bankrupt or wound up, or to have a receiver appointed for any part of the assets or operations of the Borrower, or any Guarantor if applicable, or if any encumbrancer takes possession of any part thereof;
- e) if in the opinion of the Bank there is a material adverse change in the financial condition, ownership structure or composition or operation of the Borrower, or any Guarantor if applicable;
- f) if any representation or warranty made by the Borrower in any document relating hereto or under any Security shall be false in any material respect; or
- g) if the Borrower, or any Guarantor if applicable, defaults in the payment of any other indebtedness, whether owing to the Bank or to any other Person, or defaults in the performance or observance of any agreement in respect of such indebtedness where, as a result of such default, the maturity of such indebtedness is or may be accelerated.

#### **LETTERS OF CREDIT AND/OR LETTERS OF GUARANTEE**

Borrowings made by way of LCs and/or LGs will be subject to the following terms and conditions:

- a) each LC and/or LG shall expire on a Business Day and shall have a term of not more than 365 days;
- b) at least 2 Business Days prior to the issue of an LC and/or LG, the Borrower shall execute a duly authorized application with respect to such LC and/or LG and each LC and/or LG shall be governed by the terms and conditions of the relevant application for such contract. If there is any inconsistency at any time between the terms of this Agreement and the terms of the application for LC and/or LG, the terms of the application for the LC and/or LG shall govern; and
- c) an LC and/or LG may not be revoked prior to its expiry date unless the consent of the beneficiary of the LC and/or LG has been obtained.
- d) LC and/or LG fees and drawings will be charged to the Borrower's accounts.

#### **FEF CONTRACTS**

Bank makes no formal commitment herein to enter into any FEF Contract and the Bank may, at any time and at all times, in its sole and absolute discretion, accept or reject any request by the Borrower to enter into a FEF Contract. Should the Bank make FEF Contracts available to the Borrower, the Borrower agrees, with the Bank as follows:

- a) the Borrower shall promptly issue or countersign and return a confirmation or acknowledgement of the terms of each such FEF Contract as required by the Bank;
- b) the Borrower shall, if required by the Bank, promptly enter into a Foreign Exchange and Options Master Agreement or such other agreement in form and substance satisfactory to the Bank to govern the FEF Contract(s);
- c) in the event of demand for payment under the Agreement, the Bank may terminate all or any FEF Contracts. If the agreement governing any FEF Contract does not contain provisions governing termination, any such termination shall be effected in accordance with customary market practice. The Bank's determination of amounts owing under any terminated FEF Contract shall be conclusive in the absence of manifest error. The Bank shall apply any amount owing by the Bank to the Borrower on termination of any FEF Contract against the Borrower's obligations to the Bank under the Agreement and any amount owing to the Bank by the Borrower on such termination shall be added to the Borrower's obligations to the Bank under the Agreement and secured by the Security;



- d) the Borrower shall pay all required fees in connection with any FEF Contracts and indemnify and hold the Bank harmless against any loss, cost or expense incurred by the Bank in relation to any FEF Contract;
- e) any rights of the Bank herein in respect of any FEF Contract are in addition to and not in limitation of or substitution for any rights of the Bank under any agreement governing such FEF Contract. In the event that there is any inconsistency at any time between the terms hereof and any agreement governing such FEF Contract, the terms of such agreement shall prevail;
- f) in addition to any security which may be held at any time in respect of any FEF Contract, upon request by the Bank from time to time, the Borrower will deliver to the Bank such security as is acceptable to the Bank as continuing collateral security for the Borrower's obligations to the Bank in respect of FEF Contracts; and
- g) the Borrower will enter each FEF Contract as principal, and only for purposes of hedging currency risk arising in the ordinary course of the Borrower's business and not for purposes of speculation. The Borrower understands and hereby acknowledges the risks associated with each FEF Contract.

#### **EXCHANGE RATE FLUCTUATIONS**

If, for any reason, the amount of Borrowings and/or Leases if applicable, outstanding under any facility in a currency other than Canadian currency, when converted to the Equivalent Amount in Canadian currency, exceeds the amount available under such facility, the Borrower shall immediately repay such excess or shall secure such excess to the satisfaction of the Bank.

#### **LANGUAGE**

The parties hereto have expressly requested that this Agreement and all related documents, including notices, be drawn up in the English language. Les parties ont expressément demandé que la présente convention et tous les documents y afférents, y compris les avis, soient rédigés en langue anglaise.

#### **WHOLE AGREEMENT**

This Agreement and any documents or instruments referred to in, or delivered pursuant to, or in connection with, this Agreement constitute the whole and entire agreement between the Borrower and the Bank with respect to the Credit Facilities.

#### **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province in which the branch of the Bank, which is the Borrower's branch of account, is located, and the laws of Canada applicable therein, as the same may from time to time be in effect. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.

#### **NOTICES**

Any notice or demand to be given by the Bank shall be given in writing by way of a letter addressed to the Borrower. If the letter is sent by telecopier, it shall be deemed received on the date of transmission, provided such transmission is sent prior to 5:00 p.m. on a day on which the Borrower's business is open for normal business, and otherwise on the next such day. If the letter is sent by ordinary mail to the address of the Borrower, it shall be deemed received on the date falling five (5) days following the date of the letter, unless the letter is hand-delivered to the Borrower, in which case the letter shall be deemed to be received on the date of delivery. The Borrower must advise the Bank at once about any changes in the Borrower's address.

#### **COUNTERPART EXECUTION**

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together constitute one and the same instrument.

#### **ELECTRONIC MAIL AND FAX TRANSMISSION**

The Bank is entitled to rely on any agreement, document or instrument provided to the Bank by the Borrower or any Guarantor as applicable, by way of electronic mail or fax transmission as though it were an original document. The Bank is further entitled to assume that any communication from the Borrower received by electronic mail or fax transmission is a reliable communication from the Borrower.

#### **ELECTRONIC IMAGING**

The parties hereto agree that, at any time, the Bank may convert paper records of this Agreement and all other documentation delivered to the Bank (each, a "Paper Record") into electronic images (each, an "Electronic Image") as part of the Bank's normal business practices. The parties agree that each such Electronic Image shall be considered as an authoritative copy of the Paper Record and shall be legally binding on the parties and admissible in any legal, administrative or other proceeding as conclusive evidence of the contents of such document in the same manner as the original Paper Record.

#### **CONFIDENTIALITY**

This Agreement and all of its terms are confidential ("**Confidential Information**"). The Borrower shall keep the Confidential Information confidential and will not disclose the Confidential Information, or any part thereof, to any Person other than the Borrower's directors, officers, employees, agents, advisors, contractors, consultants and other representatives of the Borrower who need to know the Confidential Information for the purpose of this Agreement, who shall be informed of the confidential nature of the Confidential Information and who agree or are otherwise bound to treat the Confidential Information consistent with the terms of this Agreement. Without limiting the generality of the foregoing, the Borrower shall not issue any press release or make any other public announcement or filing with respect to the Confidential Information without the Bank's prior written consent.

#### **DEFINITIONS**

For the purpose of this Agreement, if applicable, the following terms and phrases shall have the following meanings:

**"Applicable Laws"** means, with respect to any Person, property, transaction or event, all present or future applicable laws, statutes, regulations, rules, policies, guidelines, rulings, interpretations, directives (whether or not having the force of law), orders, codes, treaties, conventions, judgements, awards, determinations and decrees of any governmental, quasi-governmental, regulatory, fiscal or monetary body or agency or court of competent jurisdiction in any applicable jurisdiction;

**"Borrowing"** means each use of a Credit Facility, excluding Leases, and all such usages outstanding at any time are "Borrowings";

**"Business Day"** means a day, excluding Saturday, Sunday and any other day which shall be a legal holiday in Canada or any Province thereof, or a day on which banking institutions are closed throughout Canada;

**“Business Loan Insurance Plan”** means the optional group creditor insurance coverage, underwritten by Sun Life Assurance Company of Canada, and offered in connection with eligible loan products offered by the Bank;

**“Capital Expenditures”** means, for any fiscal period, any amounts accrued or paid in respect of any purchase or other acquisition for value of capital assets and, for greater certainty, excludes amounts expended in respect of the normal repair and maintenance of capital assets utilized in the ordinary course of business;

**“Contaminant”** includes, without limitation, any pollutant, dangerous substance, liquid waste, industrial waste, hazardous material, hazardous substance or contaminant including any of the foregoing as defined in any Environmental and Health and Safety Law;

**“Corporate Distributions”** means any payments to any shareholder, director or officer, or to any associate or holder of subordinated debt, or to any shareholder, director or officer of any associate or holder of subordinated debt, including, without limitation, bonuses, dividends, interest, salaries or repayment of debt or making of loans to any such Person, but excluding salaries to officers or other employees in the ordinary course of business;

**“Current Assets”** means, at any time, those assets ordinarily realizable within one year from the date of determination or within the normal operating cycle, where such cycle is longer than a year;

**“Current Liabilities”** means, at any time, amounts payable within one year from the date of determination or within the normal operating cycle, where such cycle is longer than a year (the operating cycle must correspond with that used for current assets);

**“Current Ratio”** means the ratio of Current Assets to Current Liabilities;

**“Debt Service Coverage”** means, for any fiscal period, the ratio of EBITDA to the total of Interest Expense and scheduled principal payments in respect of Funded Debt;

**“EBITDA”** means, for any fiscal period, net income from continuing operations (excluding extraordinary gains or losses) plus, to the extent deducted in determining net income, Interest Expense and income taxes accrued during, and depreciation, depletion and amortization expenses deducted for, the period;

**“Environmental Activity”** means any activity, event or circumstance in respect of a Contaminant, including, without limitation, its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation, or its Release into the natural environment, including movement through or in the air, soil, surface water or groundwater;

**“Environmental and Health and Safety Laws”** means all Applicable Laws relating to the environment or occupational health and safety, or any Environmental Activity;

**“Equivalent Amount”** means, with respect to an amount of any currency, the amount of any other currency required to purchase that amount of the first mentioned currency through the Bank in Toronto, in accordance with normal banking procedures;

**“Equity”** means the total of share capital (excluding preferred shares redeemable within one year) contributed surplus and retained earnings plus Postponed Debt;

**“Financial Assistance”** means any form of direct or indirect financial assistance of any other Person by means of a loan, guarantee or otherwise or any obligations (contingent or otherwise) intended to enable another Person to incur or pay any debt or comply with any agreements related thereto or to otherwise assure or protect creditors of another Person against loss in respect of debt or any other obligations of such other Person;

**“Fixed Charge Coverage”** means, for any fiscal period, the ratio of EBITDA plus payments under operating leases less cash income taxes, Corporate Distributions and Unfunded Capital Expenditures to Fixed Charges;

**“Fixed Charges”** means, for any fiscal period, the total of Interest Expense, scheduled principal payments in respect of Funded Debt and payments under operating leases;

**“Foreign Exchange Forward Contract”** or **“FEF Contract”** means a currency exchange transaction or agreement or any option with respect to any such transaction now existing or hereafter entered into between the Borrower and the Bank.

**“Funded Debt”** means, at any time for the fiscal period then ended, all obligations for borrowed money which bears interest or to which interest is imputed plus, without duplication, all obligations for the deferred payment of the purchase of property, all capital lease obligations and all indebtedness secured by purchase money security interests, but excluding Postponed Debt;

**“Guarantor”** means any Person who has guaranteed the obligations of the Borrower under this Agreement;

**“Lease”** means an advance of credit by the Bank to the Borrower by way of a Master Lease Agreement, Master Leasing Agreement, Leasing Schedule, Equipment Lease, Conditional Sales Contract, or pursuant to an Interim Funding Agreement or an Agency Agreement, in each case issued to the Borrower;

**“Interest Expense”** means, for any fiscal period, the aggregate cost of advances of credit outstanding during that period including, without limitation, interest charges, capitalized interest, the interest component of capital leases, fees payable in respect of letters of credit and letters of guarantee and discounts incurred and fees payable in respect of bankers’ acceptances.

**“Investment”** means the acquisition (whether for cash, property, services, securities or otherwise) of shares, bonds, notes, debentures, partnership or other property interests or other securities of any other Person or any agreement to make any such acquisition;

**“Letter of Credit”** or **“LC”** means a documentary credit issued by the Bank on behalf of the Borrower for the purpose of paying suppliers of goods;

**“Letter of Guarantee”** or **“LG”** means a documentary credit issued by the Bank on behalf of the Borrower for the purpose of providing security to a third party that the Borrower or a person designated by the Borrower will perform a contractual obligation owed to such third party;

**“Margin”** or **“Margined”** means that the availability of Borrowings under the credit facilities will be based on the Borrower’s level of accounts receivable, inventory and Potential Prior Ranking Claims as determined by reference to regular reports provided to the Bank by the Borrower;

**“Overdraft”** means advances of credit by way of debit balances in the Borrower’s current account;

**“Permitted Encumbrances”** means, in respect of the Borrower:

- a) liens arising by operation of law for amounts not yet due or delinquent, minor encumbrances on real property such as easements and rights of way which do not materially detract from the value of such property, and security given to municipalities and similar public authorities when required by such authorities in connection with the operations of the Borrower in the ordinary course of business; and
- b) Security granted in favour of the Bank;

**“Person”** includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof including Canada Revenue Agency, and any other incorporated or unincorporated entity;

**“Policy”** means the Business Loan Insurance Plan policy 5100, issued by Sun Life Assurance Company of Canada to the Bank;

**“Postponed Debt”** means indebtedness that is fully postponed and subordinated, both as to principal and interest, on terms satisfactory to the Bank, to the obligations owing to the Bank hereunder;

**“Potential Prior-Ranking Claims”** means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Bank for repayment of any amounts owing under this Agreement;

**“RBP”** and **“Royal Bank Prime”** each means the annual rate of interest announced by the Bank from time to time as being a reference rate then in effect for determining interest rates on commercial loans made in Canadian currency in Canada;

**“RBUSTR”** and **“Royal Bank US Base Rate”** each means the annual rate of interest announced by the Bank from time to time as a reference rate then in effect for determining interest rates on commercial loans made in US currency in Canada;

**“Release”** includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place and exhaust, and when used as a noun has a similar meaning;

**“Tangible Net Worth”** means the total of Equity less intangibles, deferred charges, leasehold improvements, deferred tax credits and unsecured advances to related parties. For the purpose hereof, intangibles are assets lacking physical substance;

**“Total Liabilities”** means all liabilities exclusive of deferred tax liabilities and Postponed Debt;

**“Unfunded Capital Expenditures”** means Capital Expenditures not funded by either bank debt or equity proceeds.

**“US”** means United States of America.

# College of Patent Agents and Trademark Agents

## Board of Directors

### Skills & Attributes Matrix v. 6

2021-12 -14

#### Introduction

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

CPATA is a risk focused regulator. It identifies regulatory and enterprise risks and proactively takes steps to mitigate them. Given that it is a new regulator, it is committed to gathering information that will allow it to understand the environment that influences the practices of licensees.

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

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

The Directors and Committee members subject to [Code of Conduct](#).

## Specific Knowledge, Skills, Attributes and Experience

- I. The Skills Matrix below is used to:
- II. identify the specific knowledge, skills, attributes, perspectives, and experience required on the Board;
- III. facilitate appointments that will fill gaps in the required knowledge, skills, attributes, and experience; and
- IV. assist with identifying training and education needs on an ongoing basis.

As a whole, the Board's members must possess/demonstrate the following:

- Local, national, and international backgrounds and experiences that reflect the diverse education and knowledge of registrants and the public served by the College.
- Regional diversity, to reflect the reality that IP practice, and the public's knowledge and expectations of IP practice varies throughout the country.
- Viewpoints from diverse experiences (lived and work), various backgrounds and specialties to inform dialogue and decision-making and contribute to decisions that meet intended objectives, are practical and, ultimately, protect the public.
- Diverse leadership experience in the public, private, and not-for-profit sectors, to promote knowledge and the sharing of best practices.
- Demographic Factors – gender, age, linguistic, racial and ethnic diversity

The College is committed to the foundational principles of equity, diversity, and inclusion, and reconciliation with Canada's Indigenous Peoples which are reflected in the composition of committees and the level of cultural competence expected of committee members.

In addressing the elements included in the Matrix, these general parameters apply:

**Knowledge goal:**

A Board that understands how CPATA operates in substance and principle, risk principles, the prosecution of patent and trademark applications, the use of patents and trademarks as business tools, litigation involving patents and trademarks, and the need for a clear and reliable IP legal framework

**Skills goal:**

A Board that communicates effectively both orally and in writing, and through various channels and technologies, to discern and analyze a range of issues be they ethical, governance, strategic, regulatory, etc.

**Experience goal:**

A Board that has relevant professional, committee, Board, work and lived experience, to engage in effective debate and decision-making in an in-person and on-line environment

**Attributes goal:**

A Board that has a strong ethical foundation, is organized, and meets deadlines, is highly collaborative in its decision-making, demonstrates active listening skills, and behaves in a fair, respectful, culturally competent, and courteous manner

<b>Knowledge of</b>	CPATA Act, Regulations, by-laws, Regulatory Objectives, Standards and Principles	Patent and Trademark Agent services	Complex organizations from playing a leadership role	Compensation and Human Resource management	Good governance principles	Risk management	Accounting/Budgeting/ Investment/ Risk management oversight	Government relations	Canada's IP and Innovation Strategy & Agenda	Equity, diversity, inclusion <sup>1</sup>
<b>Skills</b>	Organizational and time management	Effective oral communications	Financial literacy	Identifying trends, assessing risks/ opportunities, providing insight for strategic decisions,	To facilitate superior Board performance, placing a premium value on collective achievement	Use technology to enable Board and Committee work	Attention to detail	Cultural competence <sup>2</sup>		

<sup>1</sup> 'Equity, diversity, inclusion' are closely tied to cultural competence, and include having the knowledge, experience, and skills to actively work to protect against and prevent individual and systemic discrimination, to cultivate appropriate attitudes toward cultural differences, and to ensure that the College's processes are open and accessible to all. Commitment to positively addressing issues affecting Canada's First nations and the College's role in truth and reconciliation are a part of this.

<sup>2</sup> 'Cultural competence' refers to an ability to understand, communicate with and effectively interact with people across different cultures; acknowledge the harmful effects of discriminatory thinking and behavior on human interaction; and acquire and perform the skills necessary to lessen the effect of these influences in order to serve the pursuit of justice. (Rose Voyvodic, "Lawyers Meet the Social Context: Understanding Cultural Competence" (2006) 84:3 The Canadian Bar Review 564 at 564)

<b>Experience</b>	Service on Board of a regulator, not for profit or corporation – some with experience as a chair or CEO reporting to a Board.	Business & innovation at a senior executive level	Fiduciary duties, good governance principles, and stewardship	Budgeting, financial reporting, financial oversight, and external audits	Collegial and effective decision making	Enterprise & regulatory risk management	Creating safe spaces that welcome and support all who wish to connect, learn, share, belong, and grow	Best practices in corporate management in complex, evolving business environments		
<b>Attributes</b>	Integrity and high ethical standards in personal and professional dealings	Adaptable - recognizing plans change	Leading and considering all stakeholders to make sound business decisions, promote a positive culture	Objectivity - evidence based decision making	Professionalism & civility and act ethically/ with integrity	High-performance standards for self and others	Speak the truth	Takes full responsibility for decisions made	Follow through on commitments.	Strong work ethic



# Nominees for the CPATA Board of Directors

FEBRUARY 16, 2022

## Patent agent candidates

Jeff Astle

Colin Climie

Andrew Currier

Kevin Holbeche

Cathy Ma

Neil Padgett

## Trademark agent candidates

Brigitte Chen

Julien Collin

Peter Cooke

Leonora Hoika

Karol Pawlina

Ali Sodagar

Anna Sosis

Douglas Thompson

## MEMORANDUM

<b>TO</b>	<b>Board of Directors</b>
<b>FROM</b>	<b>Darrel Pink, CEO and Registrar</b>
<b>DATE</b>	<b>March 3, 2022</b>
<b>SUBJECT</b>	<b>Monitoring Report – Registration &amp; Education</b>

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

## ANALYSIS

### Introduction

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

CPATA:

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

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

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

regulation that meets our regulatory objectives, standards and principles, and fair registration principles of transparency, objectivity, impartiality and fairness<sup>1</sup>.

The Objects of the Registration process are:

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

### **The Work of Registration & Education**

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

#### Registration:

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

#### Education:

- developing mandatory continuing professional development requirements<sup>3</sup>,
- developing standards of practice,
- developing an agent training course,

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

<sup>3</sup> To start in Q3 2022

- revocations, prior experience assessments and facilitating reviews of a Registrar's decision with the Registration Committee,
- administering the qualifying examinations with the Boards of Examiners<sup>2</sup>, and
- confirming compliance with professional liability insurance requirements.

These classes of licensure are available:

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

### **Processing Applications and Issuing Decisions**

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

First line decisions are made by the Registrar. However, the College By-laws require that the Committee administering licensing requirements, established under the Regulations<sup>4</sup> (the Registration Committee), review decisions of the Registrar on the request of the affected applicant.

The Registration Committee:

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

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

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<sup>2</sup> College By-law 22

<sup>4</sup> College Regulation 3

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

Examples include:

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

An applicant for a class 3 licence must demonstrate Canadian residency, good character, fitness to practice, language proficiency in English or French and require a training agreement with a Training Supervisor (an individual approved by CPATA to supervise Agents in Training for the 24-month training requirement)<sup>5</sup>. The training agreement must demonstrate a commitment to the learning of ethical and competent practices<sup>6</sup>.

Eligibility for the Qualifying Examinations is established through completing the 24-month training requirement and the agent training course<sup>7</sup> prescribed by CPATA. Agents in Training are expected to attempt the Qualifying Examinations at the first sitting of the exams that follow the completion of their training period<sup>8</sup>. Individuals unsuccessful in the Qualifying Examinations through CIPO had to register as Agents in Training to access exam registration. The 24-month training requirement for this group is considered complete.

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<sup>5</sup> College By-laws 3(1), 3(2), 9, 12, 16, 17

<sup>6</sup> College By-laws 16-19

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

<sup>8</sup> College By-law 21

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

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

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

Licensees are given seven days written notice before suspension of a licence<sup>9</sup> and that notice includes the reason(s) for the suspension. If the matter is corrected within two years of the suspension date, the licence will be reinstated<sup>10</sup>. Licences suspended for over two years but less than five years can be reinstated if the matter is corrected and continuing professional development requirements are met<sup>11</sup>. Licences suspended for more than five years are revoked<sup>12</sup>.

Reinstatement to class 1 from either suspended status or class 2 requires the applicant to demonstrate they can practise competently and ethically. The by-laws specify this be accomplished via continuing professional development<sup>13</sup>. A broad interpretation of *continuing professional development* has been taken, as there are situations where supervised practice and/or successful completion of the qualifying examinations, besides completion of specified continuing professional development courses, may be more effective for licensees to demonstrate their competency.

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

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

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<sup>9</sup> CPATA Act 35(2); Board By-law 57(1)

<sup>10</sup> Board By-law 57(2)

<sup>11</sup> Board By-law 57(3)

<sup>12</sup> Board By-law 58

<sup>13</sup> Board By-law 57(3), College By-law 28(2)(b)

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

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

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

### Administering the Qualifying Examinations

The College By-laws<sup>14</sup> permit the Registrar to appoint an advisory group made up of class 1 patent and trademark agent licensees and CIPO representatives to assist in the preparation, administration and marking of the qualifying examinations.

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

<sup>14</sup> College By-law 22



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

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

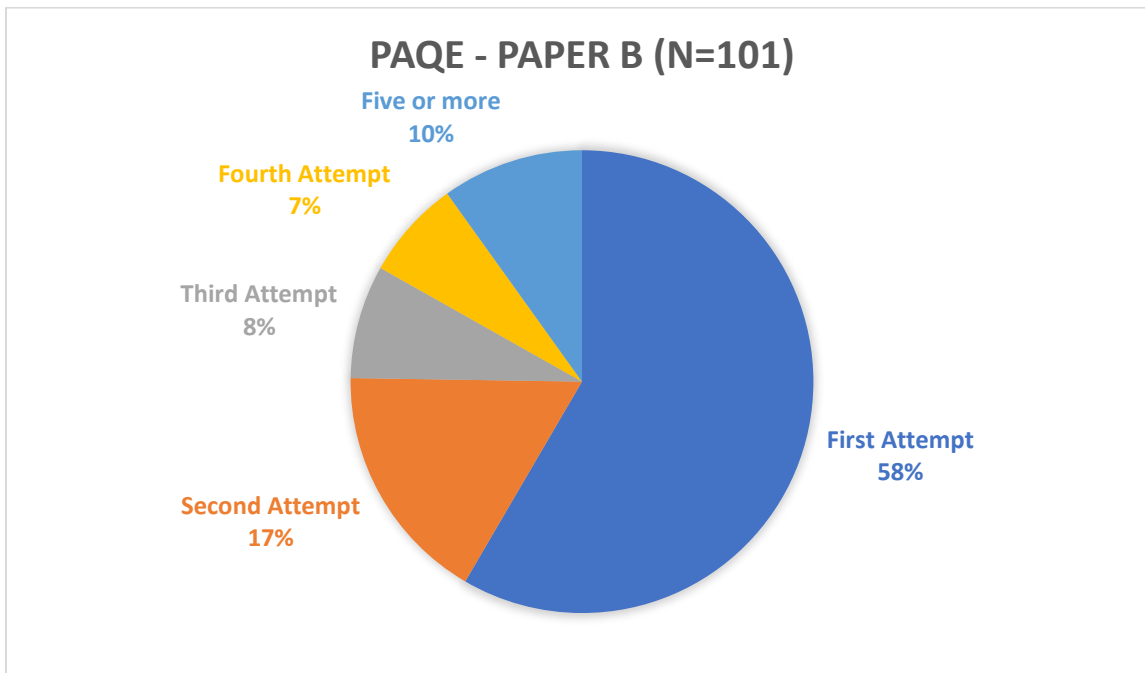
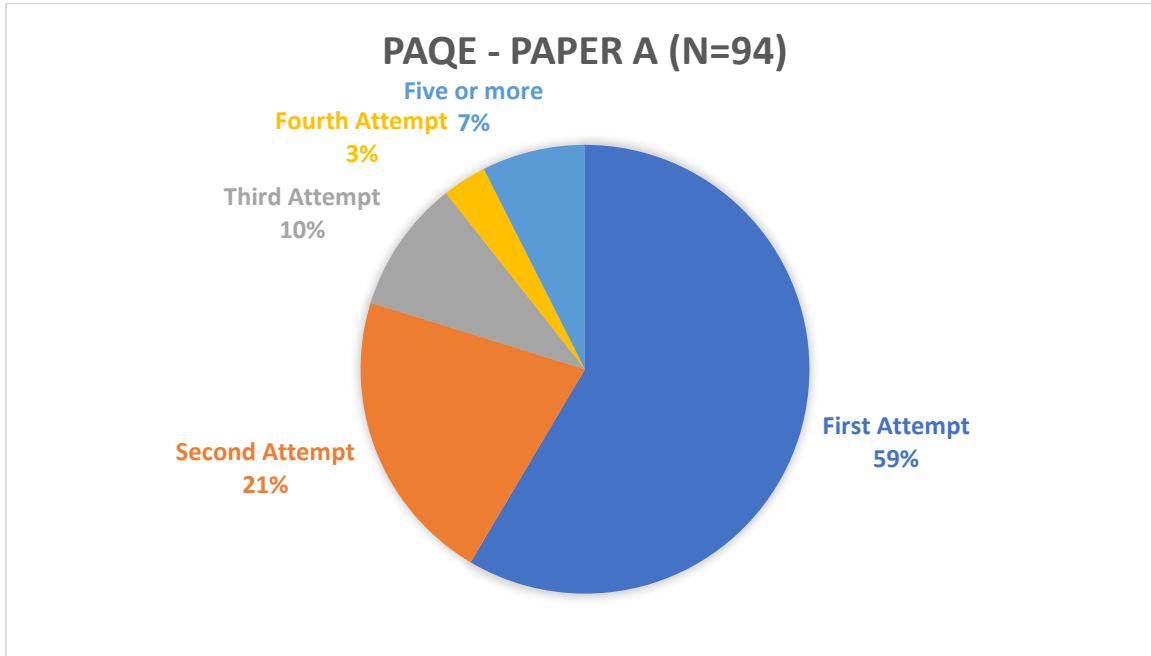
The 2021 Qualifying Examinations were administered bilingually and virtually using a third-party exam platform and live proctoring service. As with any significant process change, it will take some time for candidates to become familiar with the technology and adjust their expectations and approaches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

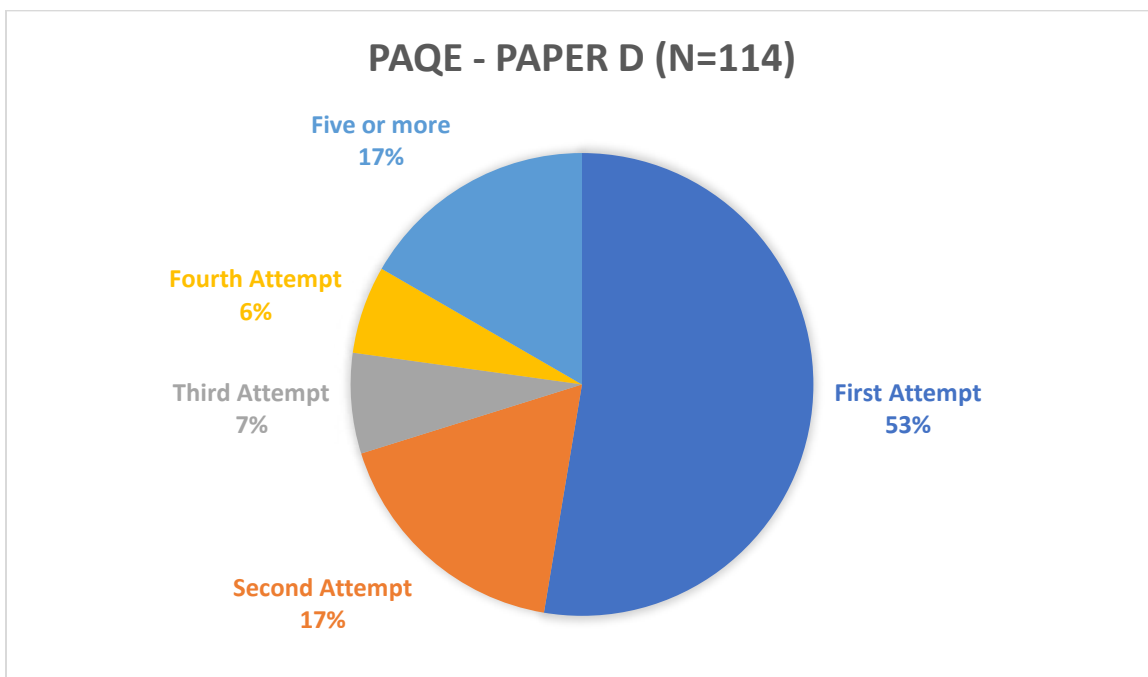
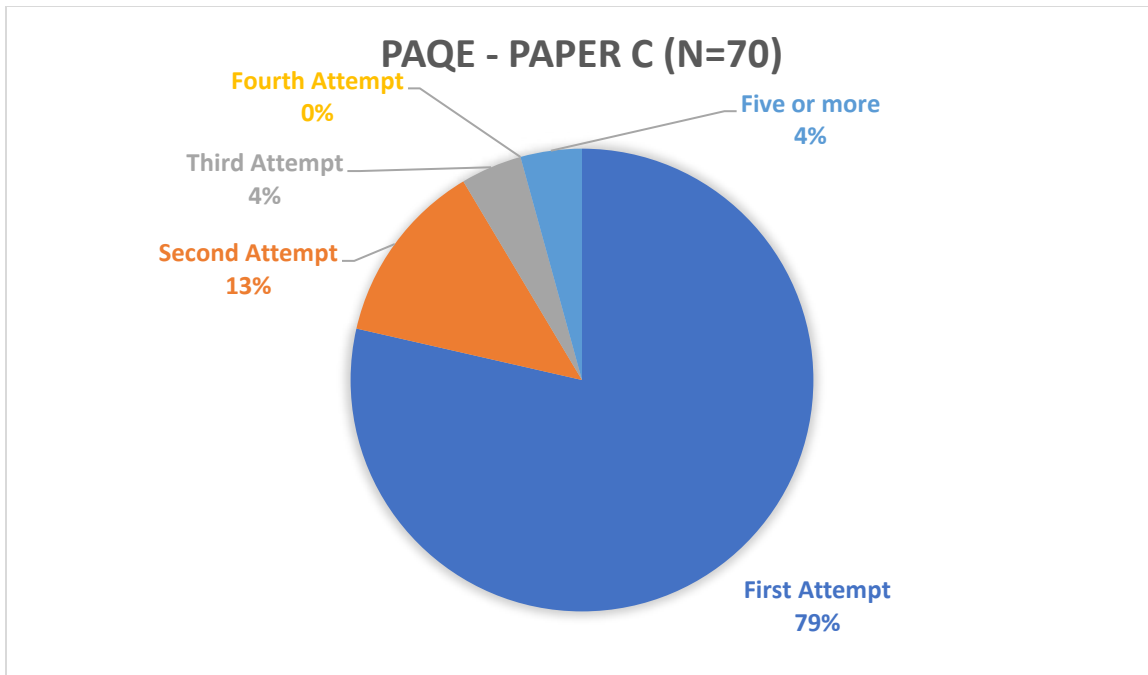
- Providing candidates with a list of system requirements and encouraged them to test their systems before the exam dates to troubleshoot and resolve any issues with the platform and their computers
- Hosting candidate orientation sessions, co-presented by past exam board members, to provide an opportunity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

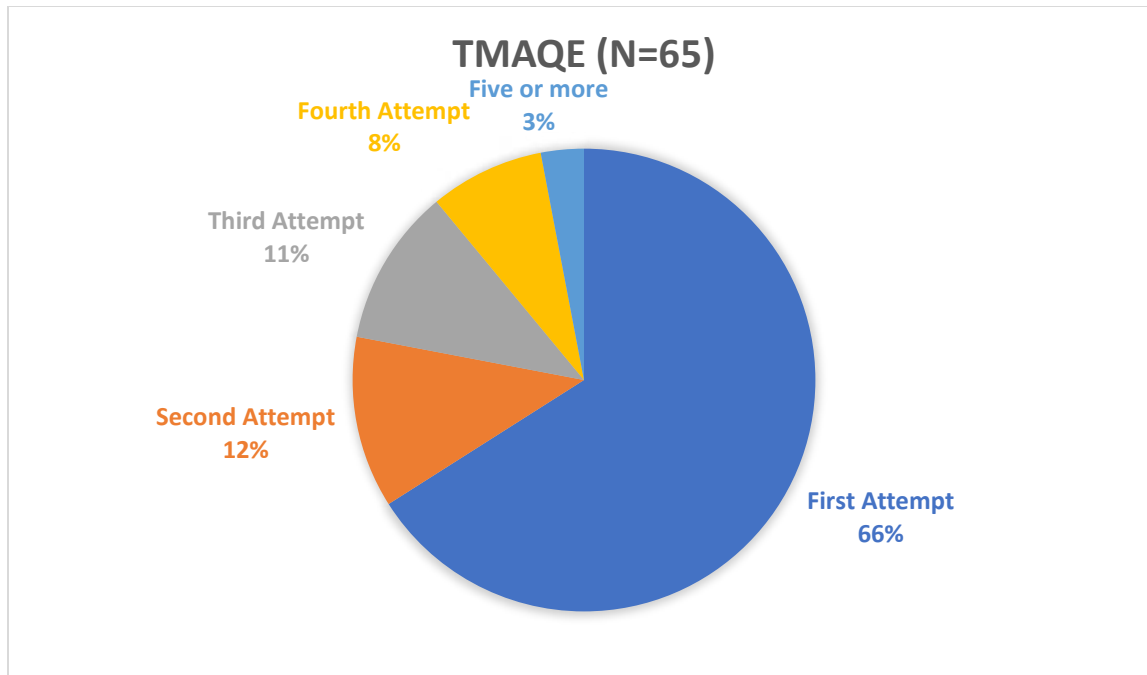
Some candidates experienced technical issues on the exam platform related to internet connectivity and navigation, and user and system errors/delays.

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

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



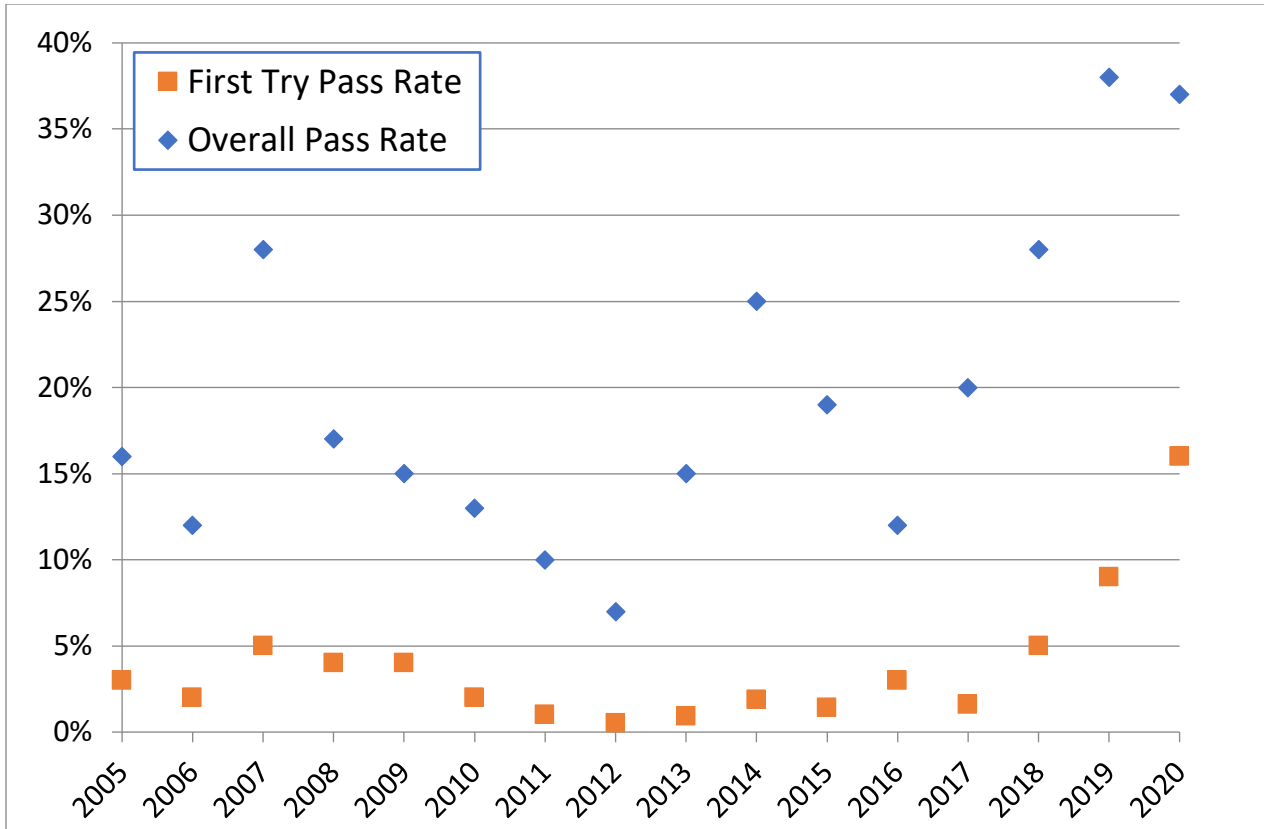




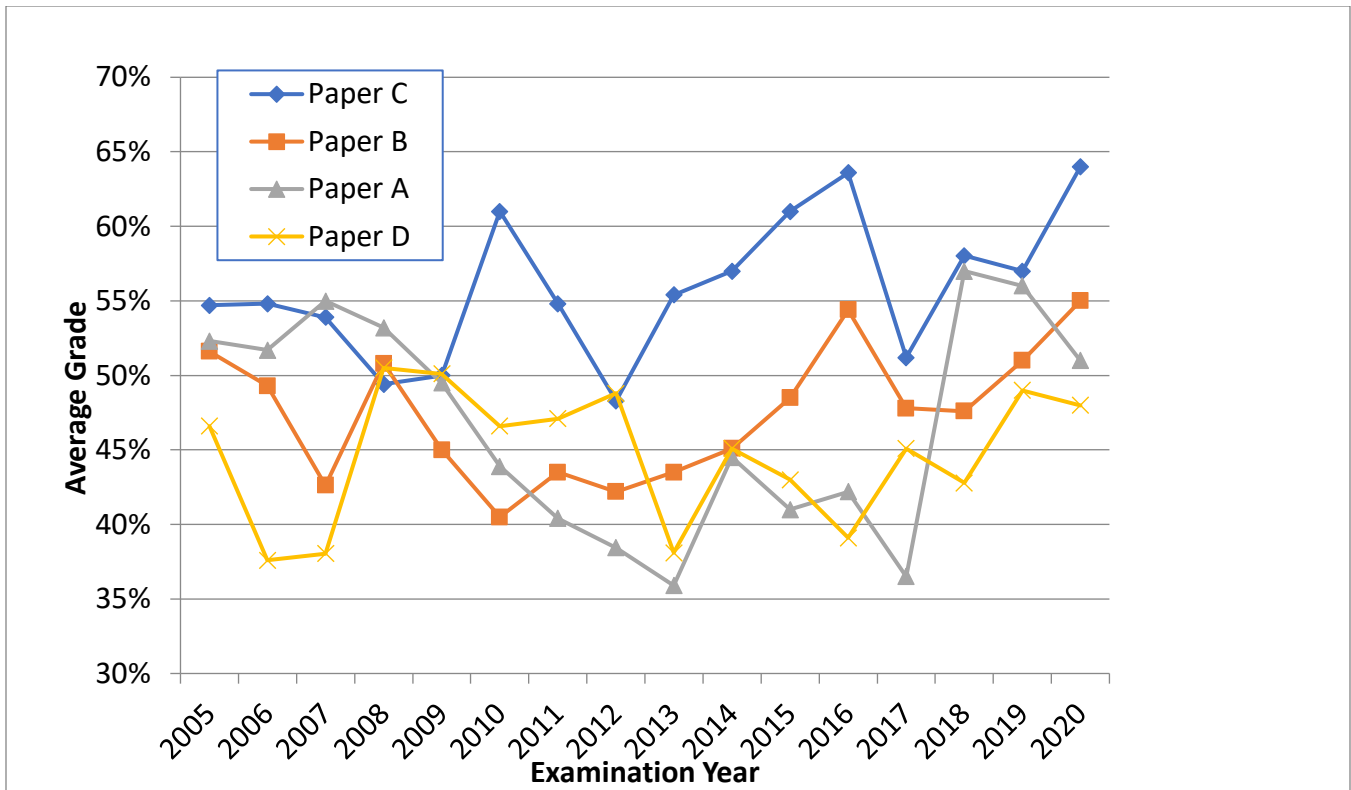
The result releases of the 2021 administrations are tentatively scheduled for March 2022.

The following historical data was provided by CIPO:

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



2005-2020 Patent Agent Qualifying Examination Average Grades by Year



2013-2020 Trademark Agent Qualifying Examination Passing Rates by Year

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

2013-2020 Trademark Agent Qualifying Examinations Average Marks by Year

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

### Mandatory Professional Liability Insurance

Mandating that licensees hold professional liability insurance assists CPATA in protecting the public against practitioners who make mistakes. The by-laws<sup>15</sup> require the nature of liability insurance requires by class 1 agent.. Class 3 licensees must either be covered by the policy of their supervisor/firm, the policy of their employer, or hold their own policy.

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

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

Given there are only a few providers that offer policies that meet the requirements, many firms are adding the required coverage through their excess insurance policies<sup>16</sup>.

### Mandatory Continuing Professional Development

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

<sup>15</sup> Board By-law 52(c)

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

The by-laws<sup>17</sup> require class 1 licensees to report their continuing professional development plans annually, and for licensees re-entering practise (i.e., reinstatement to class 1 from class 2 or suspension) to demonstrate they meet continuing professional development requirements, as prescribed by the Registrar. Given that reporting to the College is new, no requirements for CPD were implemented this year. The plan is to survey the profession later in 2022 to establish some baseline data.

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

### **Standards of Practice**

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

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

### **Agent Training Course**

The by-laws<sup>18</sup> require agents in training to complete an agent training course as a pre-requisite for establishing eligibility to attempt the qualifying examinations and for class 1 licensure. The content and delivery method of the course will be informed by the competency initiative.

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

<sup>18</sup> College By-laws 15(b) and 23(b)



## BRIEFING NOTE

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<b>DECISION</b>	<input checked="" type="checkbox"/>	<b>REPORT</b>		<b>ATTACHMENTS</b>	
<b>DISCUSSION</b>	<input type="checkbox"/>	<b>New</b>	<input checked="" type="checkbox"/>	<b>Yes</b>	<input type="checkbox"/>
<b>INFORMATION</b>	<input type="checkbox"/>	<b>Update</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>
<b>SUBJECT</b>	<b>Competency Initiative</b>				
<b>FROM</b>	<b>Darrel Pink, CEO &amp; Registrar, Jen Slabodkin, Director, Registration &amp; Education, Deputy Registrar</b>				
<b>TO</b>	<b>Board of Directors</b>				
<b>DATE</b>	<b>March 3, 2022</b>				

## ISSUE

Technical and professional competency frameworks for patent agents and trademark agents do not exist for Canadian practice.

The current state of the qualifying examinations does not provide adequate assurances to enable CPATA to assert we are meeting our foundational objective to measure entry level competence.

Significant resources over the next four years will be required to:

- Develop and validate the technical competency frameworks;
- Develop and implement the new qualifying examinations; and
- Explore pre-requisite education and training, and continuing competence programs

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

Licensing processes are used to mitigate risk associated with potentially dangerous activities. The primary driver is protection of the public. We want the people who are doing these things or providing these services to be competent, so that they don't harm their clients or someone else. That's also our driver at CPATA.

The public should have access to properly licensed professionals, who have been scrutinized to ensure they are competent. In CPATA's case: ensuring a client who retains an IP agent ends up with a clear and enforceable claim of ownership of their intellectual property and is able to enforce their intellectual property claims.

It follows, in accordance with Board Policy No. 2 – Regulatory Objectives, Standards and Principles. and in particular, Regulatory Objectives 1 and 6<sup>1</sup>, that CPATA's primary concern is to protect the public, and our first line of activity is to ensure that practitioners – both new and experienced – are professionally competent. By 'competent' we mean they are technically competent in the work they do as an IP agent, and that they act ethically.

As with other frameworks, the regulator also must deal with those who act incompetently or unethically, usually through two mechanisms: 1) Professional Conduct – which is complaints and discipline, and 2) professional liability insurance where the intent is to protect innocent parties who have been harmed by the licensed professionals. Discipline activities and insurance are important backstops to the regulator's primary work, which is to ensure competence.

In CPATA, this is reflected in our commitment to be a modern risk-based public interest regulator. We use Right Touch Regulation approaches, which are embodied in the Regulatory Objectives, Standards and Principles.

Technical competencies are a set of skills relevant to the activity being regulated (in our case, the IP practitioner). They also cover technical knowledge about IP law and rules of practice, and ethical requirements (typically spelled out in a Code of Conduct). The Professional competencies are relevant to how to properly function as a professional. These skills focus on communication, client relations, workload management, business awareness, self-awareness and development, professional collaboration, and professional conduct.

The Board has been briefed on the work done to date by our primary consultant, Principia Assessments (Jennifer Flynn) in consultation with patent and trademark practitioners. A review of the competencies assessed by the current exams has been undertaken with an initial statement

<sup>1</sup> To advance its role as a risk-focused, modern public interest regulator, the College adopts as its Regulatory Objectives that it will strive to 1 protect and promote the public interest in patent and trademark services; 6. ensure licensees deliver patent and trademark services ethically and competently. promote equity, diversity and inclusion in the patent and trademark profession and in the delivery of patent and trademark services.

of competencies and plans adopted for immediate improvement in exam development. Next steps involve refining and expanding the competencies to address all areas of professional practice

## Summary

A focus on professional competence – that is, having practitioners ‘get it right’ instead of waiting for ‘regulatory failure’ – is the most effective way to protect the consuming public, and the important role that IP agents play in protection intellectual property rights.

## Recommendation

For the Board to express formal support for CPATA to engage in the competency initiative over the next four years.

## Request of the Board

Motion to express formal support for CPATA to engage in the competency initiative.

Whereas CPATA has begun to assess the competencies required to ensure the public is protected by provision of high quality services from new and existing licensees and has developed a 3 year initiative to refine entry level and continuing competencies;

And whereas research to date has demonstrated gaps and deficiencies in the currently utilized competency framework, embodied in the Qualification Exams;

And whereas CPATA endorses a focus on development and assessment of entry level and continuing competence as a primary responsibility and as a means to promote public protection;

Therefore, be it resolved the Board

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

## MEMORANDUM

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TO	Board of Directors
FROM	Darrel Pink
DATE	
SUBJECT	Governance – Checking in on how we are doing

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### Why is this here? – the Public Interest

Good governance is an essential component of effective public interest regulation<sup>1</sup>. To achieve effective governance, Boards should undertake regular evaluations to support effective decision making, policy development, strategic thinking and an appropriate relationship with the CEO. CPATA’s Board is committed to being a modern regulator and to devoting time and resources to its effective governance so CPATA can fulfil the regulatory and operational standards the Board has set for the organization.

### MESSAGE

The Board has looked at the Harry Cayton Review of governance at the Law Society of British Columbia and has asked to spend some time on some of his generic recommendations.

In one appendix he presents a questionnaire for a board on how it is carrying out its governance responsibilities relating to:

1. How the Board works
2. Its objectives and strategy
3. Board meetings
4. Board performance
5. Risk Management

<sup>1</sup> [Report of a Governance Review of the Law Society of British Columbia, November 2021](#)

The Board should consider if it is ready to undertake this self-reflection and what should be done with the results. A Board is responsible for its effectiveness. This is generally assessed by a combination of:

1. meeting evaluations,
2. regular self-evaluation of its operations (which may or may not include a peer-assessment of Directors), and
3. outside review of governance, by a consultant.

The Board may wish to start some of this work now, for example, by reviewing the charts below and determining if there are changes that should be made or if there is anything missing. Directors could also complete the assessment and we could compile the results to assist the Governance & Nominating Committee as it begins its work. Completing it may also assist in design an orientation for the Board and new Directors, by clarifying where we should focus.

Or it can wait until the Governance Committee is appointed and assign this work to them, as it falls within its Terms of reference.

At this stage the Board is asked to reflect on this and offer its preliminary thoughts.

1.	Board	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't know
1.1	The Board has clear terms of reference					
1.2	The roles and responsibilities of the Board are clearly defined and distinct from those of the CEO					
1.3	The Chair leads meetings well with a clear focus on the significant issues facing the organization					
1.4	The Chair allows full and open discussion before major decisions are taken					
1.5	The Board is cohesive and combines being supportive of the CEO with providing appropriate challenge					
1.6	The Board has the right blend of skills, diversity, expertise, and personalities to enable it to face its challenges successfully					

1.7	The Board delegates sufficient and appropriate responsibility and authority to the Chief Executive					
1.8	A Senior Independent Board member role exists to support the Board					
1.9	The Board continually strives to improve its effectiveness					
1.10	Induction and development programs ensure that Board Members remain up to date throughout their terms of office					
1.11	The Board actively makes opportunities to explain the role of the organization with key stakeholders					
1.12	The Board discharges its obligations under its legislation					
1.13	The Board acts, and is seen to act, independently					
1.14	The Board focuses on strategic matters and does not stray into operational issues.					

Comments:

2.	Objectives, strategy	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't know
2.1	The Board has a clear set of objectives					
2.2	The Board has developed a strategy that is central to the way it is directed					
2.3	The organization's capability and resources its people, assets, financial and other resources are aligned to the organization's strategy					
2.4	The Board devotes sufficient time to reviewing the implementation of the strategy					
2.5	All projects are clearly aligned to the strategy and fall within the organization's remit					
2.6	The strategy is updated as appropriate according to any changes in the external environment					

Comments:

3.	Board meetings	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't know
3.1	The number of Board meetings a year is appropriate for the level of business					

3.2	The Board meets for the right length of time					
3.3	The business of each meeting is appropriate in its content, level and quality					
3.4	The split between public or confidential business is appropriate					
3.5	Sufficient information is provided in meeting papers which is of an appropriate format to support Board Members in their role as decision makers					
3.6	The support provided by the CEO is of the necessary quality					
3.7	Due regard is given to potential conflicts of interest in conducting Board business					

Comments:

<b>4.</b>	<b>Performance</b>	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't know
4.1	The Board receives regular reports in key outputs that flow directly from the agreed work or wider Board decisions					

4.2	The Board gets early warning signals of problems ahead that will adversely affect outcomes, targets of financial performance					
4.3	The reports on performance provided to the Board provide analysis of performance against budget, targets and key outcomes, and discusses any necessary remedial action					
4.4	The Board takes collective responsibility for the performance of the organization					

Comments:

<b>5.</b>	<b>Risk Management</b>	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't know
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5.1	The Board is clear on its risk appetite and takes full account of risk in its decisions					
5.2	The Board has a sound process for identifying and reviewing its principal risks and receives regular reports on risk management and internal controls					
5.3	The Board receives reliable and regular budget projections and is confident that the available funding will enable the organisation to operate as planned					
5.4	The Board is satisfied that statutory and similar requirements are implemented to protect against litigation and reputational risk					
5.5	No substantial, unexpected problems have emerged of which the Board should have been aware earlier					

Comments:

6. Continuous Improvement

Thinking about the effectiveness of the Board, provide your thoughts on .

6.1 Key strengths:

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6.2 Things that would improve its effectiveness.

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



## Checklist for Regulatory Boards

<b>Cayton's Checklist</b>	<b>CPATA</b>
Be clear about your purpose as a regulator; keep the public interest as your unremitting focus	Adopted Regulatory Objectives, Standards and Principles to guide all regulatory work. Material presented to the Board for decisions is always connected to public interest and, if applicable, the ROs
Set long-term aims and shorter-term objectives	Short -term – 20220-24 Business Plan Long term – Development of Strategic Framework for Board discussion – October 2022
Agree how to deliver and monitor those aims and objectives	Beginning – First Monitoring Report presented March 2022 Outcomes measurement to be developed so there is reporting on all regulatory work and the approved objectives
Have competencies for board members whether elected or appointed and apply them to everyone through a selection or nominations process, induction, and regular appraisal	Board adopted a <a href="#">Skills and Attributes Matrix</a> Shared to ISED to Hopefully- govern Board Appointments; shared with candidates for elected Directors
Have a code of conduct for board members and enforce it	Adopted <a href="#">Board Policy No. 3</a>
Declare conflicts of interest, keep a register of interests, and ensure that	Conflicts check a part of each agenda. To date none reported

decisions are not tainted by partiality or bias	
Behave with respect and courtesy towards board members and others	
Commit to corporate decision-making and to corporate responsibility for decisions made	
Appoint a competent CEO and trust them	???
Ask for reports that include what you need to know not everything you might want to know	Nature of reporting to the Board will continue to evolve to meet this standard
Make clear decisions and follow-up on their implementation	Board resolutions are circulated in advance, refined as required and matters are reported on by the CEO
Provide the resources needed to deliver your objectives	Board approves the budget which is designed around planned activities and approved programs
Make independence, fairness, and justice for the public and registrants the core values of registration and complaints and discipline	CPATA Act established independent Investigation and Discipline Committees, Board established independent Registration Committees – all have final decision-making authority. Directors do not participate in regulatory decision-making
Continue to keep the public interest as your unremitting focus	Links and reference to the public interest is an aspect of all Board policy decisions

**CPATA Board of Directors****March 3, 2022****From: Sean Walker, CPA, CGA, CIA  
Chief Financial Officer (Outsourced)**

Re: Financial Statements for December 31, 2021

This memo is prepared in support of the financial statements included in the Board of Directors package. The meeting package includes a preliminary draft of the yearend financial statements that are currently being audited by Grant Thornton and also a copy of the monthly internal financial statements.

Draft of yearend financial statements for audit

The audit package including an updated version of these statements with supporting notes and the Auditors report on the statements will be provided to the Board at an additional meeting later in March.

The auditors have requested that CPATA add a column for the opening balances as at January 1, 2020 to the Statement of Financial Position. These statements include a Statements of cash flows and changes in net assets. These reports are typically only provided as part of the yearend audited financial statements.

Monthly internal financial statements

The internal financial statements presented in the package include a comparison of budget and actual revenues and expenses for the year and a statement of operations broken down by department. This is the format normally presented to the Board for each meeting.

Financial narrative information for 2021

Overall financial results include:

- Revenue Generated in 2021 totaled \$2,062,000
- Expenses incurred in 2021 totaled \$1,428,000
- Net surplus for 2021 was \$634,000 which allowed CPATA to cover the start-up expenses incurred during 2019 and 2020 and end the year with a \$245,000 net asset reserve balance to help fund CPATA's operations moving forward.

Revenue items:

- Licence fee revenue relates to Patent Agents and Trademark Agents fees received by CPATA after coming into force in late June 2021. There were 1,880 Patent and Trademark licences renewed at the annual fee of \$700 and 393 Patent and Trademark licences renewed as the reduced rate of \$350 for agents who hold both Patent and Trademark licenses.
- The CIPO transfer grant revenue relates to the pro-rated transfer of fees, representing the months CPATA was responsible for regulating agents in 2021, received from the Canadian Intellectual Property Office (CIPO) from the fees agents paid for 2021.

- Exam fees relate to the Patent and Trademark qualification exam registration fees. There were 127 Patent exam writers who wrote a total of 393 papers. There were 72 Trademark exam writers who wrote both parts of the exam.
- Application fees relate to fees paid for various applications with CPATA including reinstatements, Class changes and requests to surrender a licence applications.

Expense items:

- Board and committee expenses relate to travel costs and remuneration for members of committees and the Board of Directors along with meeting expenses.
- CPATA engaged software companies for the development of the exam software and the online licensee system.
- Legal fees relate to support received by CPATA on a number of programs and initiatives including a privacy impact analysis, general advice, by-law drafting, complaints and discipline process and investigations and responses to complaints received during the year.
- Professional and consulting fees were incurred for a number of projects during the year including recruitment support for hiring employees and populating committees, monthly outsourced financial and information technology services, communications and planning and advice on the registration and competency initiatives.
- CPATA recruited employees during the year for some key roles, the expenses are recorded under salaries and benefits.
- Translation fees relate to cost incurred as CPATA produces documentation in both official languages (English and French).

Statement of Financial Position notes

- CPATA had a net positive cash position at the end of 2021 with sufficient cash on hand to support the amounts payable to suppliers early in 2022.
- The operating loan that was accessed during 2021 reached an amount of \$894,000 was paid down to \$0 by the end of the year. It is anticipated that we will not need to access the available loan funds in the near future.

## College of Patent Agents and Trademark Agents Statement of Financial Position - DRAFT

December 31 2021 2020 January 1, 2020

### Assets

#### Current Assets:

Cash and cash equivalents	\$	466,824	\$	-	\$	-
HST receivable				34,813		-
Prepaid expenses		24,888		10,000		-
		<b>491,712</b>		<b>44,813</b>		-

#### Capital assets

		<b>8,169</b>		-		-
	\$	<b>499,881</b>	\$	<b>44,813</b>	\$	-

### Liabilities

#### Current Liabilities:

Accounts payables and accrued liabilities	\$	222,228	\$	433,744	\$	17,850
HST payable		32,636		-		-
		<b>254,864</b>		<b>433,744</b>		<b>17,850</b>

#### Net assets:

Unrestricted net assets		<b>245,017</b>		<b>(388,931)</b>		<b>(17,850)</b>
	\$	<b>499,881</b>	\$	<b>44,813</b>	\$	-

## College of Patent Agents and Trademark Agents Statement of changes in net assets - DRAFT

Year ended December 31

		2021 Total		2020 Total		January 1, 2020 Total
Net assets, beginning of the year	\$	(388,931)		(17,850)		-
Excess (Deficit) of revenues over expenditures		<b>633,948</b>		(371,081)		(17,850)
Net assets, end of year	\$	<b>245,017</b>	\$	<b>(388,931)</b>	\$	<b>(17,850)</b>

# College of Patent Agents and Trademark Agents

## Statement of Operations - DRAFT

Year ended December 31

2021

2020

### Revenues

Licence fees	\$	1,453,817	\$	-
CIPO transfer grant		476,000		-
Exam fees		106,000		-
Application fees		25,925		-
		<b>2,061,742</b>		<b>-</b>

### Expenditures

Accounting fees		24,610		-
Amortization		1,442		-
Board and committee		110,110		62,687
Dues and memberships		2,522		-
Exam software		38,117		-
Insurance		50,785		18,895
Interest and bank charges		55,867		-
Legal fees		250,881		27,492
Licensee system software		41,070		20,000
Office		9,840		-
Professional and consulting fees		392,789		63,606
Salaries and benefits		391,245		178,402
Staff travel		5,669		-
Translation fees		52,848		-
		<b>1,427,793</b>		<b>371,081</b>

Excess (deficit) of revenues over expenditures	\$	<b>633,948</b>	\$	<b>(371,081)</b>
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# College of Patent Agents and Trademark Agents

## Statement of cash flows - DRAFT

Year ended December 31

2021

2020

Increase (decrease) in cash and cash equivalents

### Operating

Excess (deficit) of revenues over expenditures	\$	633,948	\$	(371,081)
Amortization		1,442		-
		<b>635,390</b>		<b>(371,081)</b>

Change in non-cash operating working capital:

Prepaid expenses		(14,888)		(10,000)
HST receivable/payable		67,449		(34,813)
Payables and accruals		(211,516)		415,894
		<b>(158,955)</b>		<b>371,081</b>

### Investing

Purchase of capital assets		<b>(9,611)</b>		-
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Net increase (decrease) in cash and cash equivalents

**466,824** -

Cash and cash equivalents

Beginning of the year		-		-
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End of year

**\$ 466,824 \$ -**

## Statement of Financial Position

As of December 31, 2021

	TOTAL	
	AS OF DEC. 31, 2021	AS OF DEC. 31, 2020 (PY)
<b>Assets</b>		
Current Assets		
Cash and Cash Equivalent		
1010 RBC Chequing Account	466,824.14	
<b>Total Cash and Cash Equivalent</b>	<b>\$466,824.14</b>	<b>\$0.00</b>
1230 Other current assets	0.00	
1400 Prepaid expenses	24,887.91	10,000.00
<b>Total Current Assets</b>	<b>\$491,712.05</b>	<b>\$10,000.00</b>
Non-current Assets		
Property, plant and equipment		
1600 Computer Equipment	9,610.78	
1605 Computer Equipment - Accum Amort	-1,441.70	
<b>Total Property, plant and equipment</b>	<b>\$8,169.08</b>	<b>\$0.00</b>
<b>Total Non Current Assets</b>	<b>\$8,169.08</b>	<b>\$0.00</b>
<b>Total Assets</b>	<b>\$499,881.13</b>	<b>\$10,000.00</b>
<b>Liabilities and Equity</b>		
Liabilities		
Current Liabilities		
Accounts Payable (A/P)		
2000 Accounts Payable (A/P)	117,600.33	406,980.77
<b>Total Accounts Payable (A/P)</b>	<b>\$117,600.33</b>	<b>\$406,980.77</b>
Credit Card		
2020 RBC Visa Credit Card	5,463.04	
2030 RBC Line of Credit	0.00	
<b>Total Credit Card</b>	<b>\$5,463.04</b>	<b>\$0.00</b>
2010 Accrued Payables	37,889.95	13,625.00
2015 Accrued Liabilities - Committee Remuneration	61,119.45	13,138.24
2050 GST/HST Payable	32,635.55	-34,813.09
<b>Total Current Liabilities</b>	<b>\$254,708.32</b>	<b>\$398,930.92</b>
Non-current Liabilities		
2200 Deferred Revenue - Payments Received	155.50	
2210 Deferred License Fees	0.00	
2250 Deferred Exam Fees	0.00	
<b>Total Non-current Liabilities</b>	<b>\$155.50</b>	<b>\$0.00</b>
<b>Total Liabilities</b>	<b>\$254,863.82</b>	<b>\$398,930.92</b>
Equity		
Retained Earnings	-388,930.92	
Profit for the year	633,948.23	-388,930.92
<b>Total Equity</b>	<b>\$245,017.31</b>	<b>\$ -388,930.92</b>
<b>Total Liabilities and Equity</b>	<b>\$499,881.13</b>	<b>\$10,000.00</b>



# College of Patent Agents and Trademark Agents

Budget vs. Actuals: CPATA - Budget 2021 V1 - FY21 P&L Classes

January - December 2021

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
<b>Income</b>				
4000 Service/Fee Income				
4010 Licensee fees - CPATA fees	1,453,817	1,664,950	-211,133	87.00 %
4040 Licensee fees - CIPO Transfer (2020)	476,000	515,100	-39,100	92.00 %
4050 Exam fees	106,000	107,000	-1,000	99.00 %
4070 Application fee income	25,925		25,925	
<b>Total 4000 Service/Fee Income</b>	<b>2,061,742</b>	<b>2,287,050</b>	<b>-225,308</b>	<b>90.00 %</b>
<b>Total Income</b>	<b>\$2,061,742</b>	<b>\$2,287,050</b>	<b>\$ -225,308</b>	<b>90.00 %</b>
<b>GROSS PROFIT</b>	<b>\$2,061,742</b>	<b>\$2,287,050</b>	<b>\$ -225,308</b>	<b>90.00 %</b>
<b>Expenses</b>				
5500 Wages & Benefits	391,245	586,757	-195,512	67.00 %
6005 Professional and consulting fees				
6010 Professional fees - Accounting Services	89,830	60,000	29,830	150.00 %
6020 Professional fees - Communications		22,500	-22,500	
6040 Professional fees - Management Consultant	1,575		1,575	
6050 Professional fees - Planning	38,195		38,195	
6200 Consulting - Admissions	81,270	242,000	-160,730	34.00 %
6210 Consulting - Communications	35,094	31,500	3,594	111.00 %
6230 Consulting - Human Resources	119,087	146,000	-26,913	82.00 %
6240 Consulting - Policies		10,000	-10,000	
6270 IT Consultants - Network & General	15,329	12,000	3,329	128.00 %
6290 IT Consultant - Website	12,410	30,000	-17,590	41.00 %
<b>Total 6005 Professional and consulting fees</b>	<b>392,789</b>	<b>554,000</b>	<b>-161,211</b>	<b>71.00 %</b>
6015 Accounting Fees	24,610	17,500	7,110	141.00 %
6030 Legal Fees	250,881	130,917	119,964	192.00 %
6060 Translation expenses	52,848	30,000	22,848	176.00 %
6280 IT Consultant - License Systems	41,070	30,000	11,070	137.00 %
6505 Board and Committee Expenses	110,110	103,775	6,335	106.00 %
7010 Bank fees and interest	55,867	60,400	-4,533	92.00 %
7130 Dues and memberships	2,522	10,000	-7,478	25.00 %
7135 Insurance	50,785	59,105	-8,320	86.00 %
7205 Office Expenses	9,840	11,000	-1,160	89.00 %
7310 Exam Software costs	38,117		38,117	
7320 Staff Travel	5,669	10,000	-4,331	57.00 %
7410 Contingency		100,000	-100,000	
<b>Total Expenses</b>	<b>\$1,426,352</b>	<b>\$1,703,454</b>	<b>\$ -277,102</b>	<b>84.00 %</b>
<b>NET OPERATING INCOME</b>	<b>\$635,390</b>	<b>\$583,596</b>	<b>\$51,794</b>	<b>109.00 %</b>
<b>Other Expenses</b>				
8000 Amortization	1,442		1,442	
<b>Total Other Expenses</b>	<b>\$1,442</b>	<b>\$0</b>	<b>\$1,442</b>	<b>0%</b>
<b>NET OTHER INCOME</b>	<b>\$ -1,442</b>	<b>\$0</b>	<b>\$ -1,442</b>	<b>0%</b>
<b>NET INCOME</b>	<b>\$633,948</b>	<b>\$583,596</b>	<b>\$50,352</b>	<b>109.00 %</b>

# College of Patent Agents and Trademark Agents

## Statement of Operations by Department

January - December 2021

	ADMINISTRATION & OPERATIONS	BOARD & GOVERNANCE	MARKETING & COMMUNICATIONS	REGULATIONS - COMPLAINTS	REGULATIONS - REGISTRATION	TOTAL
<b>INCOME</b>						
4000 Service/Fee Income						\$0.00
4010 Licensee fees - CPATA fees	1,453,816.67					\$1,453,816.67
4040 Licensee fees - CIPO Transfer	476,000.00					\$476,000.00
4050 Exam fees					106,000.00	\$106,000.00
4070 Application fee income	25,925.00					\$25,925.00
<b>Total 4000 Service/Fee Income</b>	<b>1,955,741.67</b>				<b>106,000.00</b>	<b>\$2,061,741.67</b>
<b>Total Income</b>	<b>\$1,955,741.67</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$106,000.00</b>	<b>\$2,061,741.67</b>
<b>GROSS PROFIT</b>	<b>\$1,955,741.67</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$106,000.00</b>	<b>\$2,061,741.67</b>
<b>EXPENSES</b>						
5500 Wages & Benefits	387,824.79	3,419.85				\$391,244.64
6005 Professional and consulting fees						\$0.00
6010 Professional fees - Accounting Services	89,830.00					\$89,830.00
6040 Professional fees - Management Consultant				1,575.00		\$1,575.00
6050 Professional fees - Planning		17,569.50			20,625.00	\$38,194.50
6200 Consulting - Admissions				26,400.00	54,870.00	\$81,270.00
6210 Consulting - Communications			35,093.75			\$35,093.75
6230 Consulting - Human Resources	97,420.39	21,666.67				\$119,087.06
6270 IT Consultants - Network & General	15,328.75					\$15,328.75
6290 IT Consultant - Website	840.00		11,570.00			\$12,410.00
<b>Total 6005 Professional and consulting fees</b>	<b>203,419.14</b>	<b>39,236.17</b>	<b>46,663.75</b>	<b>27,975.00</b>	<b>75,495.00</b>	<b>\$392,789.06</b>
6015 Accounting Fees	24,610.00					\$24,610.00
6030 Legal Fees	6,945.41	10,350.00		226,215.16	7,370.00	\$250,880.57
6060 Translation expenses	52,847.73					\$52,847.73
6280 IT Consultant - License Systems	41,070.00					\$41,070.00
6505 Board and Committee Expenses		54,765.24			55,344.45	\$110,109.69
7010 Bank fees and interest	55,867.48					\$55,867.48
7130 Dues and memberships	2,522.00					\$2,522.00
7135 Insurance	28,553.34	22,231.25				\$50,784.59
7205 Office Expenses	9,839.66					\$9,839.66
7310 Exam Software costs					38,117.25	\$38,117.25
7320 Staff Travel	4,234.33	1,434.74				\$5,669.07
8000 Amortization	1,441.70					\$1,441.70
<b>Total Expenses</b>	<b>\$819,175.58</b>	<b>\$131,437.25</b>	<b>\$46,663.75</b>	<b>\$254,190.16</b>	<b>\$176,326.70</b>	<b>\$1,427,793.44</b>
<b>PROFIT</b>	<b>\$1,136,566.09</b>	<b>\$ -131,437.25</b>	<b>\$ -46,663.75</b>	<b>\$ -254,190.16</b>	<b>\$ -70,326.70</b>	<b>\$633,948.23</b>

**CPATA Board of Directors**  
**March 3, 2022**

Re: Legislative Compliance Memo

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

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

GST/HST

CPATA has elected to charge GST/HST on the Annual License fees, application fees and Exam Registrations by completing and keeping on file the appropriate forms for CRA. <sup>1</sup> For 2020 and 2021 CPATA is an Annual filer for GST/HST. The HST filing for 2021 has been drafted and will be reviewed as part of the annual External Audit before being submitted to CRA by the deadline of March 31, 2022 and payment remitted.

Payroll Statutory Deductions

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

CPATA is up to date with CRA Payroll remittances as of the remittance received by CRA on February 11<sup>th</sup> for January payroll remittances. The payments are remitted by the third-party payroll provider (WagePoint).

CPATA has remitted the required amounts to Revenu Quebec from the amounts withheld from employees living in Quebec. The filing (mailed on February 2) and payment (EFT on February 4<sup>th</sup>) required for Quebec's Health Services fund and Labour standards have been sent.

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

### Statements of Remuneration Paid (T4)

The T4 reporting for 2021 was received and processed by CRA on January 19<sup>th</sup>. The filings were processed as submitted with no changes required. We have sent the year end reporting package and payment to Revenu Quebec as mentioned and are now waiting to receive confirmation on the filing.

### Annual Federal filing requirements with CRA

CPATA will be required to file a Corporate Income Tax return (T2) for 2020 and 2021 and 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. The filing for 2020 is currently outstanding and will be completed along with the 2021 filing. There are no penalties for late filing as there is no tax owing. The decision was made to have both the Audit and Tax returns completed together for 2020 and 2021 after CPATA had officially come into force and begun formal operations.

### 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, with the potential exception of the 2020 annual CRA information return filing.



**Darrel Pink**  
CEO & Registrar



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

IPIC Brief on the Impact of *JANSSEN INC.  
AND MITSUBISHI TANABE PHARMA  
CORPORATION V. SANDOZ  
CANADA INC, 2021 FC 1265* on Patent  
and Trademark Agent Privilege in  
Canada

Submission to the Minister of  
Innovation, Science and Industry

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**February 2, 2022**

## EXECUTIVE SUMMARY

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**DECISION DATE:** NOVEMBER 19, 2021

**ISSUE:** Interpretation of Section 16.1 of the *Patent Act* (statutory privilege for the confidential communications between patent agents and their clients).

**DECISION:** The Prothonotary interpreted the section very narrowly:

1. It provides privilege only for communications related to obtaining patent protection. The Court defines this as the disclosure of an invention and other communications contributing to the “patent bargain” (the *quid pro quo* of offering an inventor exclusive rights in a new and useful invention for a limited period in exchange for disclosure of the invention).
2. Communications from a patent agent to a client assessing the potential infringement of a third party patented invention (and the client’s freedom to operate) are not privileged under Section 16.1.
3. The issue whether patent agent communications about third party infringement of a client’s patent, potential remedies for infringement and patent validity were not addressed, although the narrow interpretation suggests at least some of these areas may fall outside the analysis of privileged subject matter.

**REPERCUSSIONS:** The decision has altered the landscape for businesses which have been operating for more than five years under a regime in which they assumed their communications with patent and trademark agents for the services normally provided by such professionals, are privileged and will be maintained in confidence, unless waived by the client. This is likely to lead to years of costly litigation to finalize the scope of Section 16.1 of the *Patent Act* (and Section 51.13 of the *Trademarks Act*) if left to the Courts, since:

1. The Prothonotary’s narrow interpretation appears to be at odds with the expansive language of the statute which equates patent agent privilege with solicitor-client privilege and covers communications directed to “any matter relating to protection of an invention”
2. The decision appears contrary to other recent Federal Court decisions that suggest Section 16.1 is to be interpreted broadly with only narrow exceptions.

3. The statutory privilege language in Section 51.13 of the *Trademarks Act* is identical, so this decision threatens to limit the scope of trademark agent privilege.
4. In addition to exposure of the opinions of Canadian patent and trademark agents in Canadian litigation, the decision could also jeopardize the confidentiality of such opinions in foreign litigation, especially in the United States.

A proposed solution from CPATA of involving a lawyer in any confidential communications between an agent and the agent's client will not protect past communications but will compound the costs of seeking such advice going forward. This increase in cost will disproportionately impact sole inventors and small and medium enterprises in Canada, denying them access to justice **and to timely strategic advice to help them build their businesses.**

***IMMEDIATE REMEDY SOUGHT:*** Absent an early decision of a higher Court providing a broader interpretation of Section 16.1 and/or Section 51.13, IPIC proposes the addition of wording to each section clarifying the intention of Parliament to fully protect the clients of patent and trademark agents under the privilege doctrine:

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*Patent Act: Section 16.1 (1) (c) "it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection or **patentability of any invention, or infringement or validity of any patent.**"*

*Trademarks Act: Section 51.13 (1) (c) "it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection, **registrability, infringement, misappropriation or validity of any trademark, geographical indication or mark referred to in paragraph 9(1)(e), (i), (i.1), (i.3), (n) or (n.1).**"*

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## BACKGROUND

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### *DEFINITION OF PRIVILEGE*

The classic statement of privilege attorney-client privilege was formulated by the American jurist, John Henry Wigmore, and is usually referred to as the Wigmore test (see 8 Wigmore, Evidence, § 2285 at 527). This is the accepted standard in Canada for assessing whether communications are privileged (see *Solosky v. The Queen* (1979), [1980] 1 S.C.R. 821). As later stated by the Supreme Court of Canada:

“The Wigmore test as to whether or not a communications is privileged requires that: (1) the communications must originate in a confidence that they will not be disclosed; (2) this element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; (3) the relation must be one which in the opinion of the community ought to be sedulously fostered; and (4) the injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.” (*R. v. Gruenke*, [1991] 3 S.C.R. 263)

Of significance is that the communication was made in confidence with the expectation that it would not be disclosed, even in legal proceedings, without the consent or waiver of the party to whom the privilege belongs.

### *FACTS AND ISSUE IN THE JANSSEN CASE*

In this case, the plaintiffs claimed privilege in the entirety or portions of a number of documents. Some of the documents included opinions authored by a Japanese patent agent employed by a predecessor company of one plaintiff and shared within the company. The Prothonotary found these communications were intended to be confidential, were made for the purpose of giving or seeking legal advice, and the confidentiality had not been waived by the client.

**The specific issue for this briefing paper is that the Prothonotary interpreted section 16.1 of the *Patent Act* (the statutory basis of patent agent privilege in Canada) as covering only a narrow class of patent agent communications for “protection of an invention” which he defined as “... the disclosure of the invention or otherwise contribut[ing] to the patent bargain”, i.e., “obtaining patent protection”. He specifically excluded “legal advice” a patent agent might provide on infringement or non-infringement of a third-party patent. The Prothonotary noted that the issue whether patent agent privilege applies to an infringement opinion of the client’s own patent was not before the Court and was not a point to be decided. He made no comment whether patent agent communications about patent validity (whether of**



the client's own or a third-party patent) would fall within his interpretation of privileged communications under the Act.

The texts of Section 16.1 and corresponding Section 51.13 of the *Trademarks Act* are included in the schedule to this paper.

### **BRIEF HISTORY OF PATENT AGENT PRIVILEGE IN CANADA**

In *Lumonics Research Limited v. Gould, et al.*, [1983] 2 F.C. 360, the Federal Court of Appeal recognised that patent agents perform legal services and render legal advice, but found professional legal privilege (under common law) does not extend to the legal advice communications of patent agents who are not also members of the legal profession (solicitors). The Court also stated:

“.. all confidential communications made to or by a member of the legal profession for the purpose of obtaining legal advice or assistance are privileged, whether or not those communications relate to the kind of legal advice or assistance that is normally given by patent agents. .... And this in spite of the fact that a solicitor, as such, cannot represent an applicant in proceedings before the Patent Office.”

The legal advice and services that a patent agent normally performs can be defined by the types of services and opinions that have, for decades, been the basis on which the regulator (formerly CIPO, and now CPATA<sup>1</sup>) examines patent agent competence and qualifies Canadian patent agents to practice in Canada. These legal services are patent application preparation and prosecution, as well as any post-grant procedures, and opinions on validity and infringement of the patents of both a patent agent's clients and third parties. Similarly, the regulator examines trademark agent competency and qualifies Canadian trademark agents to perform legal services related to trademark application preparation and prosecution, and validity and infringement of the trademarks and other statutory rights defined in the *Trademarks Act*, of a trademark agent's clients and third parties.

Subsequent to *Lumonics*, Federal Court decisions narrowed the privilege for communications between lawyer-patent agent professionals and their clients, distinguishing when the professional was acting as a patent agent (and the communications were not privileged) and acting as a lawyer (E.g., *Laboratories Servier v. Apotex Inc.* (2008), 2008 FC 321 (Fed. Ct.)).

<sup>1</sup> The Canadian Intellectual Property Office or CIPO was the regulator under the *Patent Act* and the *Trademarks Act*. In June 2021, the College of Patent Agents and Trademark Agents or CPATA became the new statutory regulator.

## DISCUSSION POINTS

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### *THE PROTHONOTARY'S NARROW INTERPRETATION OF PRIVILEGE FOR PATENT AGENT COMMUNICATIONS*

A patent is a grant by the federal government to the patentee or the patentee's legal representative of "the exclusive right, privilege and liberty of making, constructing and using the invention and selling it to others to be used," for the term of the patent (Section 42, *Patent Act*). In other words, a patent is a monopoly whose value is the ability to exclude others from practising the claimed invention or require them to pay to do so. What falls outside the scope of the patented invention is free for others to use, even if disclosed (but not claimed) in the patent. Not only does the *Patent Act* cover the obtaining of patents, it also covers validity and impeachment of patents (Sections 58 to 60), infringement (Sections 54 and 55.1 to 56), and remedies for infringement (Section 55 and 57(1)).

Similarly, a valid registered trademark "gives to the owner of the trademark the exclusive right to the use throughout Canada of the trademark in respect of" the goods or services for which it is registered (Section 19, *Trademarks Act*). The *Trademarks Act* also deals with trademark licensing, validity, infringement and remedies for infringement of trademarks, and trademark offences such as counterfeiting.

The Prothonotary applied a narrow interpretation to the following phrase in Section 16.1 of the Patent Act: "[the communication] is made for the purpose of seeking or giving advice with respect to any matter relating to the protection of an invention".

- a. He omitted the introductory language "with respect to any matter relating to" and focused on "the protection of the invention", limiting his analysis to those provisions of the *Patent Act* related solely to obtaining a patent. He omitted from the definition communications related to the scope of the exclusive right to make, construct, use and sell the invention granted under the patent, whether that is the right of the patent agent's client or of a third party (i.e., the client's freedom to operate without infringing a third party patent). These and patent validity are also matters covered by the *Patent Act*.
- b. He adopted a narrow definition of "protection" focused on shielding or preserving from harm, and didn't consider the equally valid (and in this case more appropriate) definition of preserving legal rights or economic markets.

- c. He implicitly changed the wording of “the protection of an invention” to “the protection of **[a client’s]** invention”, refusing to accept that the analysis of a third party patent would be relevant to the scope of protection for a third party’s patented invention and therefore a client’s freedom to operate.

The *Trademarks Act* has the same wording regarding the types of communications protectable under trademark agent privilege and, following the *Janssen* decision, could be subject to the same narrow interpretation by the Courts:

“[the communication] is made for the purpose of seeking or giving advice with respect to any matter relating to the protection of a trademark, geographical indication or mark referred to in paragraph 9(1)(e), (i), (i.1), (i.3), (n) or (n.1).”

## 2. The Public Expects Confidential Communications with Patent and Trademark Agents to be Privileged

Businesses seek the assistance of subject matter experts, patent and trademark agents, to provide intellectual property advice and to represent these businesses before the patent and trademark offices. This is a specialized area of law, and in the course of discussing the best form of intellectual property protection or other course of action involving intellectual property rights, a client may need to disclose to the agent confidential information about its broader research and development, business strategies and competitors beyond what may ultimately end up in a patent or trademark application. In addition, the IP agent may need to provide legal opinions on the intellectual property rights of third parties, such as competitors, to provide the client with the best advice possible.

Without privilege protecting these communications, full, frank and free discussions between agents and their clients is impeded. By extending patent agent privilege and trademark agent privilege to “any matter relating to the protection of” an invention or trademark, Parliament clearly intended to be expansive, rather than restrictive, in the definitions. This is reinforced by the language in the preamble of each of Section 16.1 and 51.13 comparing agent privilege to the privilege afforded client communications with the legal profession:

“... is privileged in the same way as a communication that is subject to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries...”

The preamble has been interpreted broadly by the Federal Court. In a recent decision upholding a 2020 Prothonotary decision, the Court stated “[c]ommunications between a client and patent agent enjoy the same protections as solicitor-client communications” and that a

temporal exception to that privilege, specifically stated in Section 16.1, was to be narrowly interpreted (*Richards Packaging Inc. v Distrimed Inc.* 2020 FC 1162, dated December 17, 2021).

This appears to be a different approach from the *Janssen* decision, which interpreted the privilege narrowly.

The statutory privilege in the *Patent Act* and *Trademarks Act* was enacted in June 2016, and for more than five years, businesses have relied on it in obtaining "the kind of legal services normally performed by patent agents" (per the *Lumonics* Court). The apparent divergence in caselaw will, at the very least, result in extensive litigation on the scope of agent privilege until resolved in a higher court.

In light of the *Janssen* ruling, the College of Patent Agents and Trademark Agents recently advised non-lawyer agents to consider involving a lawyer in the advice-giving process for communications falling outside the analysis of protected advice in the decision<sup>2</sup>. Where the lawyer is not actively involved in formulating the advice, this will amount to an additional layer of expense for the client, which will be particularly onerous for sole inventors and small and medium enterprises in Canada. The added financial burden has a potential chilling effect on their seeking such legal advice at the critical early stage of their business, denying them access to justice **and to timely strategic advice to help them build their businesses**. Where the lawyer is actively involved in formulating the legal advice, analysis of caselaw pre-dating the statutory privilege may be needed to avoid a finding that the lawyer is really acting as an agent and therefore the communications may not be privileged.

### ***RISKS TO CONFIDENTIAL CANADIAN OPINIONS IN US LITIGATION***

In addition to the risk of disclosure of patent or trademark agent communications in Canada, there is a very real risk that the *Janssen* decision may require production of such communications in foreign litigation, particularly in the United States.

Even though U.S. Courts recognize only a narrow common law privilege for their domestic non-lawyer patent agents, some District Courts have recognized broader privilege for the communications of foreign patent agents about foreign patents based on the protection provided to such agents in their home country. A number of countries have enacted or amended legislation to take advantage of this, including the United Kingdom, France, Australia and Japan.

<sup>2</sup> <https://cpata-cabamc.ca/en/patent-agent-privilege-federal-court-decision/>

The original statutory language in the Canadian *Patent Act* and *Trademarks Act* was thought to have effectively provided such protection for the legal opinions of Canadian agents. With the *Janssen* decision, this is now in doubt.

## PROPOSED AMENDMENT TO THE CURRENT LEGISLATIVE DEFINITIONS

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In the absence of a higher Court ruling broadly interpreting Sections 16.1 and 51.13 to cover the kinds of legal services and legal communications normally provided by patent agents and trademark agents in Canada, a minor revision of the statutory language could clarify Parliament's presumed intent:

*Patent Act:* Section 16.1 (1) (c) "it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection **or patentability of any invention, or infringement or validity of any patent.**"

And

*Trademarks Act:* Section 51.13 (1) (c) "it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection, **registrability, infringement, misappropriation or validity of any** trademark, geographical indication or mark referred to in paragraph 9(1)(e), (i), (i.1), (i.3), (n) or (n.1) ."

## SCHEDULE

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### *PATENT ACT (R.S.C., 1985, c. P-4)*

#### Privileged communication

**16.1** (1) A communication that meets the following conditions is privileged in the same way as a communication that is subject to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries and no person shall be required to disclose, or give testimony on, the communication in a civil, criminal or administrative action or proceeding:

- (a) it is between a patent agent and their client;
- (b) it is intended to be confidential; and
- (c) it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection of an invention.

#### Waiver

(2) Subsection (1) does not apply if the client expressly or implicitly waives the privilege.

#### Exceptions

(3) Exceptions to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries apply to a communication that meets the conditions set out in paragraphs (1)(a) to (c).

#### Patent agents — country other than Canada

(4) A communication between an individual who is authorized to act as the equivalent of a patent agent under the law of a country other than Canada and that individual's client that is privileged under the law of that other country and that would be privileged under subsection (1) had it been made between a patent agent and their client is deemed to be a communication that meets the conditions set out in paragraphs (1)(a) to (c).

#### Individual acting on behalf of patent agent or client

(5) For the purposes of this section, a patent agent or an individual who is authorized to act as the equivalent of a patent agent under the law of a country other than Canada includes an individual acting on their behalf and a client includes an individual acting on the client's behalf.

#### Application

(6) This section applies to communications that are made before the day on which this section comes into force if they are still confidential on that day and to communications that are made after that day. However, this section does not apply in respect of an action or proceeding commenced before that day.

### ***TRADEMARKS ACT (R.S.C., 1985, c. T-13)***

#### Privileged communication

**51.13** (1) A communication that meets the following conditions is privileged in the same way as a communication that is subject to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries and no person shall be required to disclose, or give testimony on, the communication in a civil, criminal or administrative action or proceeding:

- (a) it is between a trademark agent and their client;
- (b) it is intended to be confidential; and
- (c) it is made for the purpose of seeking or giving advice with respect to any matter relating to the protection of a trademark, geographical indication or mark referred to in paragraph 9(1)(e), (i), (i.1), (i.3), (n) or (n.1).

#### Waiver

(2) Subsection (1) does not apply if the client expressly or implicitly waives the privilege.

#### Exceptions

(3) Exceptions to solicitor-client privilege or, in civil law, to professional secrecy of advocates and notaries apply to a communication that meets the conditions set out in paragraphs (1)(a) to (c).

#### Trademark agents — country other than Canada

(4) A communication between an individual who is authorized to act as the equivalent of a trademark agent under the law of a country other than Canada and that individual's client that is privileged under the law of that other country and that would be privileged under subsection (1) had it been made between a trademark agent and their client is deemed to be a communication that meets the conditions set out in paragraphs (1)(a) to (c).

#### Individual acting on behalf of trademark agent or client

(5) For the purposes of this section, a trademark agent or an individual who is authorized to act as the equivalent of a trademark agent under the law of a country other than Canada includes an individual acting on their behalf and a client includes an individual acting on the client's behalf.

#### Application

(6) This section applies to communications that are made before the day on which this section comes into force if they are still confidential on that day and to communications that are made after that day. However, this section does not apply in respect of an action or proceeding commenced before that day.

#### Definition of *trademark agent*

(7) In this section, *trademark agent* has the same meaning as in section 2 of the [College of Patent Agents and Trademark Agents Act](#).

### **COLLEGE OF PATENT AGENTS AND TRADEMARK AGENTS ACT (S.C. 2018, c. 27, s. 247)**

#### Definitions

**2** The following definitions apply in this Act.

*patent agent* means an individual who holds a patent agent licence or a patent agent in training licence issued under section 26. (agent de brevets)

*trademark agent* means an individual who holds a trademark agent licence or a trademark agent in training licence issued under section 29. (agent de marques de commerce)



## FINANCIAL POLICIES

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## Financial Policies

<b>NAME OF POLICY</b>	<b>Financial Policies – Operational</b>		
<b>APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE</b>	College Regulations 4, 5, 6, 7, 8,9, 10, 11, 23, 24, 25 and 26 College By-Laws 9, 12, 20, 23 and 25		
<b>RESPONSIBILITY</b>	CEO and all CPATA employees and Consultants		
<b>APPROVED BY</b>	<b>EFFECTIVE</b>	<b>REVIEWED</b>	<b>REVISED</b>
<b>Chief Executive Officer</b>	<b>2021-12-01</b>	<b>Date</b>	<b>Date</b>

## Financial Policy No. 1 – Annual Fee and Refund Policy

### Rationale

CPATA expects licensees to pay for services and license periods for which the Agent is required by CPATA’s by-laws and regulations. A reasonable administrative fee for the extra effort required on behalf of staff to process and pay refunds may be charged to the licensee/individual as part of the refund process.

### Protocol

#### Annual License Fees

When a licensee changes Category from Class 1 (Active Trademark and/or Patent Agent) to Class 2 (inactive) or applies to surrenders their license, they may receive a pro-rated refund (calculated based on a quarter of a year) of license fees paid to CPATA for this year depending on the date that the change is requested. CPATA will allow the Licensee to apply any potential refund to the application fee to change category to Class 2 or surrender their licence.

In addition, Agents must pay the full Annual Fee if they renew or are reinstated before September 30th. If the renewal/reinstatement occurs between October 1 and December 31 the

fee required will be 50% (one-half) of the full Annual Fee amount. (see Pro-rated Annual Fees charts)

### **Invoicing and receipts**

Currently CPATA's process is to have agents initiate the licence renewal process through the online portal. Each agent must verify their information and complete the renewal process which may impact the fee and sales tax amounts invoiced. Receipts may be generated from the online portal once the renewal is complete.

### **Firm/Organization Bulk Payments**

For firms and organizations looking to make payments for five (5) or more agents a Bulk Payment Authorization Form may be completed and sent to CPATA for processing. Each individual agent will still be required to complete the annual renewal process using the online portal.

### **Application/Registration Fees**

No refunds will be provided for application fees paid to CPATA unless it is determined that the application was made in error and/or was not required or is withdrawn before CPATA reviews application. This decision will be made by the CEO & Registrar.

### **Patent and Trademark Qualifying Exams**

If a written request to withdraw from the qualifying examination is received at least 7 days prior to the exam administration, CPATA will provide a refund to the applicant for the portions of the exams not written.

If a written request to withdraw from the qualifying examination is not received at least 7 days prior to the exam administration, the applicant may be asked to provide additional documentation to support a refund request.

The CEO & Registrar and/or Director, Registration & Education, Deputy Registrar will approve any refund requests for exams.

### **Refund Processing**

If the College must provide a payment refund to a licensee or other individual, the refund shall be paid back using the same method and to the same account as the initial transaction. Credit Card payments are to be processed by the CFO in the Moneris system. E-transfers, wire

payments and direct deposits will be paid through RBC Express via an Electronic Funds transfer. CPATA will not send e-mail money transfers.

### Extraordinary Circumstances

If an extraordinary situation occurs (e.g. death or incapacity of a Licensee, etc.) the CEO & Registrar may make an exception and approve a refund to a Licensee at a reasonable amount.

If a Licensee is suspended and has their license revoked by CPATA, no refund will be paid to the Licensee.

### Pro-rated Annual Fees Charts

<b>Annual Fee Period</b>	<b>Annual Fee payment required</b>
Renewal period – January 1 to March 31	100% of Annual Fee payment required
Secondary period – April 1 to September 30	100% of Annual Fee payment required
Final period – October 1 to December 31	50% of Annual Fee payment required

<b>Annual Fee Refund Period</b>	<b>Annual Fee refund provided</b>
Renewal period – January 1 to March 31	75% of Annual Fee refunded less application fees
Secondary period – April 1 to September 30	50% of Annual Fee refunded less application fees
Final period – October 1 to December 31	No refund provided, however, appropriate application fees will be treated as paid from Annual fee payment.

## Financial Policy No. 2 – Payment Authorization and Approval Policy

### Rationale

Only specified individuals are to have the authority to approve payments by CPATA, including approving electronic payments (e.g., Electronic Funds Transfers (EFT), wire transfers, pre-authorized payments, etc.), credit card payments and/or other pre-arranged payments on behalf of CPATA at determined dollar amount thresholds.

This policy exists to ensure that appropriate internal controls, including segregation of duties, are in place surrounding the disbursement of funds and that documentation is available for review by management and the external auditor.

### Protocol

The most important control is the requirement for dual (two) signatures to approve payments. For CPATA these two signatories will be the CEO and CFO.

CPATA has been set up with RBC Express for paying suppliers.

- Vendor Payments are set up in RBC Express by the Outsourced Financial Services Team with Baker Tilly NS LLP. The Financial Services team can set up payments but do not have access to approve or release payments.
- A list of proposed payments with supplier bank info will be provided to the individuals responsible to review and approve the payments.
- Payments are reviewed and approved by both the CFO and CEO in RBC Express before one individual can release the payments and funds are sent to suppliers.

### Credit Card Transactions

- CPATA has an RBC Visa credit card in the CEO and CPATA's name with a \$25,000 credit limit. The card is to be used by the CEO for travel and CPATA expenses with suppliers that require a credit card be used for purchase, such as hotels for Board meetings.
- CPATA has several software subscriptions and licences required to be paid by credit card monthly. These agreements are signed by the CEO or delegated representative before the credit card payments begin.
- The CFO and Outsourced Financial Services Team must monitor these payments monthly to ensure that they agree to the agreements and report any variations to the

appropriate person who signed the agreement for follow-up and resolution with the supplier.

- Examples of these suppliers include:
  - Microsoft Office 365 (including Phone system, Teams, Windows, etc.)
  - Zoom on-line meeting software
  - QuickBooks Online accounting software
  - IdeaZone web services provider
  - Adobe Acrobat software licenses
- For purchases made by the CEO that do not relate to the monthly agreements noted above, an Expense Report is prepared and approved by the Board Chair monthly. See the Travel and Reimbursement Policy for additional information.

### Daily Payment and Transfer Limits

- Electronic payments made to vendors are limited to \$100,000 per day in RBC Express and require dual approval. Several vendors can be paid in a batch, but the daily limit applies for the total aggregate of all payments.
- Bill payments are limited to \$100,000 per day in RBC Express and require dual approval.
- Wire payments are limited to \$100,000 per day in RBC Express and require dual approval.
- For transfers between the line of credit and the operating bank account in RBC Express:
  - \$25,000 and under can be made by one (1) authorized individual
  - Between \$25,000 and \$100,000 need to be approved by the two (2) authorized individuals
  - Transfers are limited to \$100,000 per day

Note - These transfers are required in the instance where CPATA does not have sufficient funds in the operating bank account to cover the electronic payments. Such is the case early in the year before licence renewal payments occur. This was the case in 2021 and CPATA does not expect this situation will occur again.

- Visa payments are automatically withdrawn from CPATA's operating bank account monthly on the due date. This is done to eliminate the risk of late payment interest and fees.
- E-mail transfer of funds are not processed by CPATA as there is not the ability to require dual electronic approval before the payment is sent to another party by CPATA. The College is committed to the foundational principles of equity, diversity, and inclusion, and reconciliation with Canada's Indigenous Peoples which are reflected in the composition of committees and the level of cultural competence expected of committee members.

## RBC Online Banking Access

NOTE – Currently CPATA has additional access to RBC online banking. The CEO and CFO have the login credentials. The sole purpose for this online access is to accept e-mail transfers from individuals whose banks do not permit automatic deposit to CPATA’s bank account.

This online access does allow for one individual to make payments on behalf of CPATA. The risk exists that a payment or transfer could be made without a second approver’s knowledge. To mitigate this risk the online banking system is not being used except to receive one (1) email transfer in 2021.

CPATA is continuing to work with RBC to find a means to reduce this individual access.

## Financial Policy No. 3 – Travel and Reimbursement Policy

### Rationale

Clear policies must be in place to support an understanding of the requirements and authorizations for travel and expense reimbursement by Directors, committee members, consultants and CPATA staff.

The Board and Committee Remuneration Policy (Board Policy No. 4) deals with compensation, travel and accommodations for Board and Committee members. This policy focuses mainly on CPATA Staff, consultants and any other travel and reimbursable expenses. This policy aligns with Board Policy No. 4; however, if there is a discrepancy, this policy will over-rule Board Policy No. 4.

### Principles and Values

CPATA reimburses only those reasonable expenses necessarily incurred while travelling on CPATA business. These expenses do not constitute income or other compensation that would open the way for personal gain. Any deviations from the policy must be approved by the CEO and/or Chair of the Board in writing before reimbursement will be made.

All expenses must be the most economical, cost-efficient option unless otherwise expressly permitted in this policy.

Travel and other reimbursable expenses must be approved by the CEO or their delegate before reimbursement will take place. CEO expenses must be approved by the Chair of the Board of Directors.

Expenses will be approved by electronic means such as via email or using electronic signature.

A travel expense claim submitted for reimbursement for any expense that was not incurred in accordance with this policy, or any fraudulent or other misuse or misappropriation of CPATA funds, may result in disciplinary action, including but not limited to, termination.

### Travel and Accommodations

- Travel is compensated for economy class fares for air and train travel.
- Ground transportation associated with air or train travel is compensated.
- 
-



- Travel by car is compensated at the per kilometer rate paid by the Treasury Board. For 2021 the rates have been set at \$.59 per kilometer for the first 5,000 kilometers driven and \$.53 per Kilometer after that.  
Link to Government of Canada website (updated annually) [Note: Mileage reimbursement for personal car = \\$.59/mile\\*](#)
- International travel with flight times exceeding six (6) hours may be in Business or Executive Class.
- Accommodations will be reimbursed at the hotel rate negotiated by CPATA for attendance at in-person Board or Committee meetings or at the designated conference venue if travel is to attend a conference on behalf of CPATA.
- Reasonable meal expenses will be reimbursed.
- Where pre-approved by the CEO, rental cars may be used for travel and will be reimbursed along with fuel purchased for the trip.
- Events or entertainment expenses will be reimbursed if attended for CPATA business and pre-approved by the CEO and/or Board Chair.

### Additional Reimbursable Expenses

- As CPATA is operating as a mostly virtual organization, there are expenses required for staff to operate remotely. Reasonable and appropriate expenses will be reimbursed upon approval. These types of expenses include:
  - Office supplies for home offices (stationary, pens, paper, etc.)
  - Office furniture and equipment (chairs, monitors, desks, docking stations, mouse, keyboard, headsets, etc.)
  - Long-distance phone calls or a reasonable portion of cell phone costs as determined by employment agreements and/or CEO.
  - Other reasonable expenses as approved by the CEO
  - Note - Computers will be purchased by CPATA and provided to employees
- Reasonable professional fees and industry memberships that are related to employees' employment will be reimbursed and must be approved by the CEO.
- Receipts must be provided for reimbursement of any expenses.
- Board and Committee Remuneration (Honorariums) may be claimed using the CPATA Expense Claim Report. However, for Board members, payments will be made through CPATA's payroll provider to help ensure proper treatment of statutory remittance requirements (i.e. income tax and CPP).
- The CPATA Expense Claim Report – Part 2 Honorarium and Payment Details form must be completed and approved before payment is to be made. A Sample of the form is attached to this policy.

## Claiming for Expenses

- A sample CPATA Expense Claim Report is attached to this policy. This form must be used for all expense claims. Claims must be accompanied by receipts and are to be submitted to CPATA within 60 days.
- Detailed receipts that show what was purchased and the sales tax (GST/HST) paid must be provided for reimbursement of any expenses.
- Reimbursements will be made electronically as part of the monthly payment process to suppliers.
- The CFO will review expense reimbursements to ensure compliance with this policy. Such review will include ensuring proper categorization of expenses and sales taxes.

## Financial Policy No. 4 – Bank Account and Credit Card Privacy Policy

### Rationale

As explained in the College's Board Policy 6 – Privacy, the College's Policy Statement on Privacy is:

“Personal information in the College's custody or under its control is only created, collected, retained, used, disclosed and disposed of in a manner that respects and complies with the Privacy Act and its Regulations and aligns with TBS privacy policies and directives. The College upholds the privacy rights of individuals whose personal information is controlled by the College, in accordance with these requirements.”

The College must protect the privacy of all parties including the information on Bank Accounts and Credit Card details that the College receives for the purpose of processing licence and other fees from licensees and firms. In addition, the College receives bank account information for the purpose of making payments to suppliers and employees.

### Protocol

#### Credit Card and Banking information for processing payments:

Currently, the College receives an application or form and/or e-mail from an individual that includes credit card and/or bank account information for the purpose of processing payment in the financial systems. The goal is to remove this requirement for e-mails and forms for payments of fees and move all payments into the College's Licence database system (i.e., Thentia system) once the applicable modules are developed.

When this credit card and/or bank account (payment information) is received and the payment is processed, the College must ensure as soon as possible that:

- the payment information must be redacted from the application or payment form if the document is going to be saved in College's electronic files.

- the e-mail that was received will either be permanently deleted, or the attachment removed from the e-mail if the e-mail will be saved. This must be done by all College employees and consultants.

CPATA reimburses only those reasonable expenses necessarily incurred while travelling on CPATA business. These expenses do not constitute income or other compensation that would open the way for personal gain. Any deviations from the policy must be approved by the CEO and/or Chair of the Board in writing before reimbursement will be made.

#### **Banking information for payments to suppliers and employees:**

The College currently makes all payments to suppliers electronically and requires bank account information from suppliers in order to make the payment. This information is normally contained on the supplier invoice and/or provided as a separate form. This information must be kept on file by the College for current and future payments.

The College also requires bank account information for employees and Board members for payroll purposes. This information is received as part of the new hire onboarding process. This bank account information must be safeguarded and kept private. This includes being kept on the College's server and/or outsourced CFO's server within a firewall. This includes e-mail that is protected by a firewall.

#### **Refund Processing**

If the College must provide a payment refund to a licensee or other individual, the refund shall be paid back using the same method and to the same account as the initial transaction. Credit Card payments are to be processed by the CFO in the Moneris system. E-transfers, wire payments and direct deposits will be paid through RBC Express via an Electronic Funds transfer. CPATA will not send e-mail money transfers.

#### **Privacy Breach**

If there is a breach of the individual's bank account information, the College's Privacy Officer must be notified along with the individual whose information may have been breached. Appropriate steps will be taken in accordance with the College's Board Policy No. 6 - Privacy.

## Financial Policy No. 5 – Financial Records Retention Policy

### Rationale

CPATA must meet its statutory requirements for financial record retention and ensure that the appropriate records are retained and accessible when required. According to the Canada Revenue Agency (CRA) and various applicable pieces of legislation, records should be retained for a period of seven (7) years.

### Applicable Legislation

- The Income Tax Act
- The Excise Tax Act (includes GST/HST)
- The Employment Insurance Act
- The Canada Pension Plan

### Financial Records are defined as:

- Accounts Payable invoices
- Bank, credit card and loan statements
- General Ledgers and sub-ledgers (in QuickBooks Online system)
- General journals and paper/electronic copies of supporting documentation
- Employee and Board member payroll forms (TD1's, T4's, etc.)
- Financial Information contained in the Thentia system
- (Electronic) Payment records

### Retention

CPATA maintains financial records for the current fiscal year and the immediately preceding six fiscal years. Financial Records older than this period may be destroyed. CPATA maintains payroll records for all current employees and Directors and may destroy payroll records for terminated employees seven years after the employee's termination date.

## **Financial Policy No. 6 – Payroll and Remuneration Policy**

### **Rationale**

CPATA must pay employees accurately and on time. Statutory deductions and remittances are paid to the Canadian Revenue Agency (CRA) as required. This includes payments to Directors and committee members who receive remuneration through payroll.

### **Verification of salary and benefit information**

Once an employee signs their employment contract, financial information is provided to the CFO and Financial Services Team.

The CFO and Financial Services Team will ensure that the employee's information is provided to:

- Payroll System (i.e., WagePoint)
- RBC Royal Bank RRSP investment provider (if applicable)
- Blue Cross – employee benefits (if applicable)

### **Bi-weekly Payroll Processing**

Bi-weekly payroll information is entered into WagePoint by 1:00 pm (AST) on the Tuesday before the Friday pay-date. The CFO approves the payroll report before it is submitted for final processing.

Pay periods that also include significant changes (e.g., new employees, Board remuneration payments, salary increases) must also be reviewed and approved by the CEO before the payroll is submitted for final processing.

### **Annual Reporting**

CPATA provides T4 slips (statements of income) to employees and corresponding reports to the CRA by February 28 for the previous calendar year. The CFO ensures that these reports are accurate and timely.

## **Statutory Payroll Remittances**

The CFO ensures CPATA remits statutory payroll remittances withheld from employees' pay to the CRA by the 15th of the following month. Annual remittances must be reconciled and reported to the CRA by February 28 for the previous year.

## **Payroll System Access**

The CFO ensures employees, Directors, committee members and Board members are provided with login credentials for the payroll system to ensure that they can access paystubs.

## **Director and Committee Member Remuneration**

Directors and committee members receive remuneration based on an approved per diem rate. They are paid quarterly based on submitted claims forms.

The per diem rate reflects the value of the work, time spent at meetings and in preparation and the risks assumed by the Board. It follows rates paid to GIC appointments by the Treasury Board of Canada.

## Financial Policy No. 7 – Capital Assets Policy

### Rationale

The purpose of this Policy is to:

- define and outline CPATA's capital assets policy.
- identify, safeguard, track and record the acquisition, disposal and depreciation of capital assets so the useful life of the asset is maximized.
- define guidelines to capitalize purchases of furniture and fixtures, computer equipment, software and office equipment.

### Risks

Potential risks include erroneous recording of purchases such as capital assets or operating expenses or assets disposed of without proper tracking and accounting.

### Capital Assets vs. Expenses

- A capital asset is defined as a non-consumable, tangible item, valued at a single amount of \$500 or greater which has a minimum useful life of 3 years. The expenditure enhances the service of the asset or extends its useful life.
- Tangible items valued at single amounts less than \$500 will normally be classified as operating expenses. Exceptions will be determined by the Chief Executive Officer (CEO) and/or the Chief Financial Officer (Outsourced CFO).
- The capitalized cost of an asset includes the purchase price, related freight, installation costs, custom charges, rebates, and other direct costs of getting the asset into the condition necessary for its intended use.
- With equipment, components which individually cost less than the capitalization level but when combined exceed the threshold shall be capitalized when purchased as a unit.
- Main categories for capital assets are computer software, computer equipment, furniture & fixtures and office equipment.
- Expenditures for the above items at an amount of \$500 or greater are capitalized.
- Expenditures less than the \$500 threshold for the above items will be treated as regular operating expenses.



- Costs incurred to enhance service potential of a capital asset may be considered an improvement and may be capitalized provided it meets the threshold level of \$500 or greater. The determination is to be made by the CEO and/or CFO.
- Costs incurred to keep capital assets in normal operating condition that don't extend the original useful life of the asset or increase the asset's future service potential are not capitalized. These costs are expensed as repairs and maintenance.

### Grants and Cash Donations

- Grants and cash donations received to help fund capital assets do not reduce the cost of the assets.
- Amounts received will be recorded as deferred capital contributions equal to the asset's purchase price and amortized into revenue on the same basis as the asset to which it relates. CPATA provides T4 slips (statements of income) to employees and corresponding reports to the CRA by February 28 for the previous calendar year. The CFO ensures that these reports are accurate and timely.

### Stolen, Missing or Damaged Assets

- Any capital assets identified as stolen, missing or damaged must be reported immediately to the CEO and/or CFO, who will advise that, if not recovered, they can be written off and removed from the capital assets record system.

### Trade-Ins

- In situations where the purchase of a new asset permits the trade-in of an existing asset, both the actual value of the new asset and the trade-in value of the old asset must be obtained.
- All information must be provided to the CEO and/or CFO and they are responsible for deciding whether it is feasible to trade-in an existing asset.

### Disposal of Capital Assets

- Disposal of all capital assets must be approved by the CFO who will also determine the method of disposal.
- All disposals of capital assets must be recorded in writing so disposals can be tracked and recorded.

### Disposal of Capital Assets

- In the year of acquisition, a half-year of depreciation is taken on all capital assets.

- Depreciation on all capital assets is recorded monthly and is adjusted for any acquisitions/disposals.
  
- Calculation of depreciation on capital assets:
  - Computer Equipment - 30% Diminishing balance
  - Computer Software - 30% Diminishing balance
  - Office Equipment - 20% Diminishing balance
  - Furniture & Fixtures - 20% Diminishing balance

# Canada needs a revived Economic Council to thrive in the 21st century

It's been 30 years since Ottawa disbanded the body that helped it set a clear economic agenda. It needs a new one to help Canada adapt to a competitive high-tech world

JIM BALSILLIE  
SPECIAL TO THE GLOBE AND MAIL  
PUBLISHED FEBRUARY 5, 2022

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Jim Balsillie is chair of the Council of Canadian Innovators and founder of the Centre for International Governance Innovation and the Centre for Digital Rights.

In a [thoughtful essay](#) published last summer, the writer Lauren Dobson-Hughes made a compelling argument that recent crises – including COVID-19 and Canada's retreat from Afghanistan – have not only exposed the country's deeply dysfunctional institutions, but also revealed our bureaucracy's profound limitations on performing even its most basic duties, such as implementing a payroll system for public sector employees, updating privacy legislation or designing a shipbuilding program.

"We are ill-equipped, floundering, and as the Brits would say, not fit for purpose," she wrote. "We built our systems, structures and cultures for a different time. They are now failing us, and fast."

The same can be said for institutions and structures responsible for designing Canada's contemporary economic strategies. Politicians of all stripes worship at the altar of innovation, with visits to Silicon Valley and photo ops with entrepreneurs, but the devotion is a facade. Public-sector departmental structures and policy-makers are proving incapable of dealing with the opportunities and challenges afforded by the Information Age.

If the past two decades of various economic growth councils, blue-ribbon commissions, and "[non-innovation innovation](#)" strategies have proven anything, it is that inside Ottawa there is a dearth of expertise on the issues that accompany our transition to a knowledge-based and data-driven economy.

As the new Parliament restarts its work this week, our elected officials have the chance to take public-institution-building seriously, positioning Canada to capture wealth in a global, innovation-driven economy.

This step begins with rebuilding the Economic Council, an institution the government disbanded in 1992. This new, restructured council would provide the federal government with the research required to establish a long-term policy agenda designed to advance our country's competitiveness.

The pandemic has proven that governments have extraordinary capacities for marshalling resources and effecting change. That same energy can and should be used to kick-start an intellectual renaissance inside our civil service.

As a country, we are falling behind. All signs point to our failure to design strategies that would allow us to prosper in a new, knowledge-based economy. The Organization for Economic Co-operation and Development (OECD) has dire projections for the Canadian economy, while the average salary is dropping, weakening an already endangered middle class.

But we still have a chance to create an innovative, more competitive Canada.

-

Forty years ago, the traditional production-based economy began transitioning to a knowledge-based economy and, more recently, to a data-driven economy. A world previously based on open, shared science, and on liberalizing trade through tariff reductions and a patent system designed to reward genuine inventions, has transitioned into a world of closed science, closed markets and monopolization of knowledge and information.

This shift didn't just signal detachment from physical production. It foundationally changed the structure and behavioural characteristics of companies that pared down capital equipment and workers, yet still operated at global scale, pulling in massive profits and paying little in taxes. Those companies turned to aggressively generating intellectual property (IP) assets (such as patents, copyrights, trademarks and contracts) and, in the past decade, to using data assets to control markets and capture superior economic rents, often with increasing marginal returns.

This transformation has reshaped the global competitive landscape, but was no secret in the international policy community. In advanced countries, policy-makers adopted new strategies and marketplace frameworks that rewarded owners of IP. One of the key global battlegrounds became technical standard setting, the critical frontier where IP rights owners fight for dominance of value chains, wherein a company makes money from IP embedded in products, rather than from the labour embedded in their production.

In recognition of the growing importance of IP, Canada's largest trading partner, the United States, passed the Bayh-Dole Act in 1980, a sweeping legislation that addresses the ownership of inventions that arise from publicly funded research. The 1980s were marked by a series of measures intended to expand American IP ownership and to enable U.S. firms to capture international economic rents. These measures included

establishing the annual Special 301 Report aimed at creating protections abroad for U.S.-owned IP.

After the Bayh-Dole Act, trade agreements became the main policy tool for establishing marketplace frameworks that suited IP owners. Consequently, the U.S. introduced IP protections in the original Canada-U.S. Free Trade Agreement in 1989 and then rolled out more in the North American Free Trade Agreement in 1994, and then the Trade-Related Aspects of Intellectual Property Rights Agreement that formed part of the World Trade Organization Agreement in 1995. Today, the overwhelming majority of the text in the recently ratified Canada-U.S.-Mexico “free trade deal” is about structured marketplace frameworks that extend and entrench the IP and data rights of American companies – so much so that the words “free trade” do not even appear anywhere in the agreement.

With this new strategy, the U.S. was able to overcome the industrial challenges of the 1980s and adapt a tech-driven economy into a knowledge-based one in the 1990s, securing pole position in the race to dominate the data-driven economy of the 21st century.

Charges for the use of intellectual property

Balance of payments, in billions current \$US

Canada  
U.S.

0510152025303540451981198819952002200920160.5955260170.65

THE GLOBE AND MAIL, SOURCE: WORLD BANK

DATA  
SHARE

x

Year	Canada	U.S.
1981-01-01	0.595526017	0.65
1982-01-01	0.676790445	0.8
1983-01-01	0.718907414	0.94
1984-01-01	0.798410514	1.17
1985-01-01	0.797907069	1.17
1986-01-01	0.936850028	1.401
1987-01-01	0.980475172	1.857
1988-01-01	1.303288288	2.601

1989-01-01	1.44648174	2.53
1990-01-01	1.663737469	3.14
1991-01-01	1.788570111	4.04
1992-01-01	1.712795353	5.162
1993-01-01	1.685650281	5.032
1994-01-01	1.763749602	5.852
1995-01-01	1.882422401	6.919
1996-01-01	1.950307887	7.837
1997-01-01	2.287741106	9.161
1998-01-01	2.59220479	11.235
1999-01-01	3.21282261	12.845
2000-01-01	3.563235579	16.139
2001-01-01	3.543578555	16.207
2002-01-01	4.479912201	18.981
2003-01-01	5.454962204	18.652
2004-01-01	6.456200016	22.818
2005-01-01	6.959129029	24.126
2006-01-01	7.083070777	23.075
2007-01-01	8.162785542	24.615
2008-01-01	8.923454841	27.764
2009-01-01	8.922065283	29.421
2010-01-01	9.731280814	31.115
2011-01-01	10.41140815	32.912

2012-01-01	10.90191178	35.061
2013-01-01	11.80132642	35.294
2014-01-01	11.71215736	37.562
2015-01-01	10.7326545	35.178
2016-01-01	11.56746904	41.974
2017-01-01	11.83354218	44.406
2018-01-01	12.77837568	42.736
2019-01-01	12.39964397	41.73
2020-01-01	12.70491161	42.984

**CHARGES FOR THE USE OF INTELLECTUAL PROPERTY**  
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Today, U.S.-based companies own half of the world’s most valuable IP and control vast amounts of digital data, evidenced by the US\$10-trillion combined market value of Apple, Amazon, Facebook, Microsoft and Google parent company Alphabet, with tangible assets comprising only 4 per cent of their assets.

These lessons were not lost on others: Advanced countries such as South Korea, Germany, Singapore, Israel, Sweden, Taiwan and Japan formulated equally sophisticated strategies attuned to their domestic realities and followed the U.S. example. By 2016, industrialized countries’ receipts of international IP payments were more than 100 times higher (US\$323-billion) than those going to low-and middle-income countries (US\$3-billion).

But no country has made as concerted and comprehensive an effort to raise the level of its game as China. The country engaged in a whole-of-society effort to gain traction by bringing IP education to its schools; training legions of IP professionals; establishing specialized IP courts to promote sophisticated litigation capabilities; strategically populating standards-setting bodies; establishing a NASDAQ-like equity board to encourage the development of a sophisticated venture capital sector; and building expansive and increasingly powerful IP holdings for offensive and defensive purposes.

In the last five years, China has filed half of all global patents and started dominating standards-setting bodies. It recently published the “Guidelines for Building a Powerful Country with IP rights 2021-2035,” a report that lays out in startling detail the sophistication of Chinese policy-makers in using national IP assets as a “core element of international competitiveness.”

These strategies have pushed China and its companies to massive valuations, competitiveness and even dominance in critically strategic sectors such as clean tech and 5G and 6G. Alibaba and Tencent are currently valued at approximately US\$1.3-trillion, with total tangible value sitting at less than 3 per cent.

China now rivals the United States in the combined number of Fortune 500 companies and “unicorn” startups valued at more than one billion dollars – a more relevant statistic of emerging economic strength in the contemporary economy than gross domestic product. It is hardly surprising that control of IP and data is the main bone of contention in the current trade and technology war between China and the U.S.

While these developments constituted a paradigm shift for policy-makers around the world, Ottawa was unconvinced.

Rather than investing in public sector institutional capacity to keep up with changes in the global economy, the Canadian government became dependent on a rotting practice of outsourcing its own work to costly, controversial and unaccountable consultants and in the process giving birth to the so-called “shadow public service.”

As public bodies transfer more and more responsibility to management consultancies, the processes for delivering their core functions become less transparent. These self-eroding practices are particularly troubling because the role of government is expanding owing to the nature of the contemporary, post-COVID economy, which requires an unprecedented amount of horizontal integration in policy development, analytical depth, and rapid response by policy-makers.

In the mistaken belief that the knowledge economy functions like the production-based economy and that the government could manage it without updating in-house expertise, our policy-makers disassembled the country’s analytical and research infrastructure, including disbanding the Economic Council in 1992, even as the IP intensive economy was spreading beyond its initial foothold in the United States. The effects of this most unfortunate miscalculation continue today.

Without relevant research and sound advice for the new economy, Canadian policy-makers have spent the past three decades confusing innovation with invention, a science-and-technology strategy with an innovation strategy, IP generation with IP protection, free trade agreements with asset protection agreements, privatization with digitization, and supply chains with value chains. Repeated initiatives aimed at promoting economic growth either had no strategy for generating and commercializing IP (the currency of innovation), or were designed to transfer decades worth of taxpayer-funded IP to foreign firms.

Several observations underscore just how out-of-step Canada has been: Between 2000 and 2016, even as the global share of the capital stock composed of intangible assets dramatically rose, the share of intangible assets in Canada’s economy declined, as documented in a recent report from Statistics Canada.



Despite a highly educated population and public investments in R&D, Canada has consistently been a large net importer of intellectual property, or what economists call the “innovation trade” balance. Instead of exporting high-margin IP, including value-added goods such as machinery and equipment for sectors from agriculture to health care, Canada’s trade is still dominated by traditional lower margin natural resources and agricultural goods. Our trade relationship with South Korea sets in sharp relief the composition of our economy: Canada sells low-margin beef and buys their high margin, IP intensive technology. Forty years after the advent of a knowledge-based economy, Canada’s deficit on IP payments and receipts is widening at an alarming rate, a position we share with developing economies. This deficit would be significantly larger if the value of net flows of data were included.

Since 1976, Canada’s productivity performance has been the worst of all OECD countries, resulting in real wages remaining essentially stagnant since then. “For most of the past 40 years Canada has been in a ‘bad equilibrium,’ wherein real wages have essentially stopped growing” states a recent [research paper](#) by Public Policy Forum fellow Don Wright. “Government policy, consciously or unconsciously, has sustained the resulting low-wage-low-productivity model of competitiveness, hence keeping Canada in the bad equilibrium.”

Our middle class bears the brunt of these policies. According to a [recent IMF report](#), Canada’s prepandemic GDP per capita in 2019 was 3 per cent lower than in 2010; over the same period the U.S., which has aligned its economic policy strategies with contemporary economic realities, experienced a 35-per-cent increase. The World Bank’s [2020 report](#) says Canada is losing ground in terms of GDP per capita, directly affecting purchasing power of the average Canadian, with the current average salary of US\$43,242 down from the peak US\$52,635 in 2013. The gap between Canadian and U.S. performance would be much wider if the changing wealth effects from privately owned assets were included in these measurements.

GDP per capita

Current \$US

Canada  
U.S.

010,00020,00030,00040,00050,00060,000\$70,0001960197019801990200020102259.2942853007.123445

THE GLOBE AND MAIL, SOURCE: WORLD BANK

DATA  
SHARE

x

Year	Canada	U.S.
1960-01-01	2259.294285	3007.123445
1961-01-01	2240.433039	3066.562869

1962-01-01	2268.585346	3243.843078
1963-01-01	2374.498448	3374.515171
1964-01-01	2555.111146	3573.941185
1965-01-01	2770.361804	3827.52711
1966-01-01	3047.106147	4146.316646
1967-01-01	3217.159294	4336.426587
1968-01-01	3462.678872	4695.92339
1969-01-01	3763.953379	5032.144743
1970-01-01	4121.932814	5234.296666
1971-01-01	4520.162878	5609.3826
1972-01-01	5089.587902	6094.01799
1973-01-01	5838.660894	6726.358956
1974-01-01	7033.011021	7225.69136
1975-01-01	7511.211343	7801.456664
1976-01-01	8809.26466	8592.253537
1977-01-01	8919.057461	9452.576519
1978-01-01	9123.691334	10564.94822
1979-01-01	10043.66096	11674.18187
1980-01-01	11170.56397	12574.79151
1981-01-01	12337.46625	13976.10539
1982-01-01	12481.87479	14433.78773
1983-01-01	13425.12249	15543.89372
1984-01-01	13877.91708	17121.22548

1985-01-01	14114.80776	18236.82773
1986-01-01	14461.06924	19071.22719
1987-01-01	16308.96697	20038.9411
1988-01-01	18936.9641	21417.01193
1989-01-01	20715.63148	22857.15443
1990-01-01	21448.36196	23888.60001
1991-01-01	21768.34329	24342.2589
1992-01-01	20879.84833	25418.99078
1993-01-01	20121.16125	26387.29373
1994-01-01	19935.38146	27694.85342
1995-01-01	20613.78788	28690.8757
1996-01-01	21227.34753	29967.71272
1997-01-01	21901.56285	31459.13898
1998-01-01	21024.58507	32853.67695
1999-01-01	22315.24667	34513.5615
2000-01-01	24271.00206	36334.90878
2001-01-01	23822.06012	37133.24281
2002-01-01	24255.33858	38023.16111
2003-01-01	28300.4631	39496.48588
2004-01-01	32143.68141	41712.80107
2005-01-01	36382.50792	44114.74778
2006-01-01	40504.06073	46298.73144
2007-01-01	44659.89514	47975.9677

2008-01-01	46710.50558	48382.55845
2009-01-01	40876.31015	47099.98047
2010-01-01	47562.08343	48466.6576
2011-01-01	52223.69611	49882.55813
2012-01-01	52669.08996	51602.93105
2013-01-01	52635.17496	53106.53677
2014-01-01	50955.99832	55049.98833
2015-01-01	43596.13554	56863.3715
2016-01-01	42315.60371	58021.4005
2017-01-01	45129.35644	60109.65573
2018-01-01	46454.74339	63064.41841
2019-01-01	46326.67264	65279.52903
2020-01-01	43258.17632	63413.51386

**GDP PER CAPITA**  
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The implications for Canada are stark. The OECD recently projected that Canada’s economy will be “the worst performing advanced economy over 2020-2030 and the three decades after.” As economist Dan Ciuriak notes, as IP and data claim a growing share of global income and wealth, without a strategy to improve our “poor terms of trade,” Canada faces a shrinking share of that income and wealth. Under the current bargain we have struck with the rest of the world, Canadians are contributing to the development of intangible assets but not sharing in the ownership or exploitation of those assets.

But the gaps in our government’s capacity to understand the contemporary economy are much wider. It is commonly said that data is now the most important economic asset. It’s also true that data is everywhere except in our national economic accounts and our industry statistics. This means that Canadian policy-makers had no idea what the value proposition was in major data-intensive procurement projects they enthusiastically launched such as the now defunct Sidewalk Toronto project.

Nor did they know the cost of signing on to the data provisions in the recently ratified CUSMA agreement or the Progressive Agreement for Trans-Pacific Partnerships. Indeed, at the February, 2020, meeting of the Industry, Science and Technology Committee, Canada's lead trade negotiators confirmed that the government has no study to show the benefits and costs of the IP and data provisions of CUSMA, even though they account for well over 90 per cent of the economic effects of the agreement.

To make matters worse, when the government turns to external expertise, it receives advice grounded in 19th- and 20th-century thinking about the economy. In 2017, the Federal Government appointed the "Advisory Council on Economic Growth" and asked it to provide "concrete policy actions to help create the conditions for strong and sustained long-term economic growth." The Council said all the right things – for 40 years ago. Its report was completely silent on the imperative for Canada to generate strategic IP portfolios and data assets and to develop co-ordinated strategies to leverage these assets to capture the economic rents. Instead, it proposed strengthening IP protections, which would exacerbate Canada's growing multibillion dollar IP trade deficit.

The Council also proposed a foreign direct investment (FDI) strategy straight out of the last century's playbooks. Its advice was completely oblivious to the reality that the net benefit to the host economy of inward foreign direct investment depends on the direction of flow of technology and rents that accrue to that country and other local spillover effects. In contrast to the industrial era, when foreign multinationals undertook more R&D in their host countries than in local firms, FDI into the contemporary IP- and data-intensive economy targets and expatriates the high-growth firms that are critical to the future dynamism of local economies.

The failure to recognize the shift has resulted in Canada's low growth in innovation and also resulted in falling GDP per capita caused by positioning the country to compete globally with low-wage jurisdictions on the salaries of our tech talent. Another contributing factor is our choice to sell low-margin goods.

It is long past time to acknowledge that we don't have a critical mass of expertise and analytical muscle inside our civil service.

-



Prime Minister Justin Trudeau meets a factory worker at a campaign stop in Welland, Ont., during last fall's federal election. Earlier that year, Mr. Trudeau gave François-Philippe Champagne the innovation, science and industry portfolio. CARLOS OSORIO/REUTERS

A 21st-century Economic Council for a 21st-century Canada

The COVID-19 crisis has demonstrated just how important it is to have governments that are competent, adaptable and accountable. Given the challenges coming from areas such as public health, climate change, the digital revolution and China's increasing geopolitical importance, neoliberalism's "hands off" approach to the economy is untenable. Canada's government and especially our civil service need dynamic capabilities and capacity. They also need to be able to attract policy experts that understand how these cross cutting factors affect the economy, including through global trade linkages. Natasha Tusikov and Blayne Haggart, leading experts on the knowledge-based economy, recently argued that the Canadian government's ability to adapt to rapid change through policy formation is not a luxury but a necessity.

To address the governance capacity gap, the new Economic Council should be focused on harnessing applied knowledge. It should be data-driven and work hand-in-glove with Statistics Canada to adapt the way we measure and model the contemporary economy to capture its essential dynamics. It should have a global perspective. In particular, it should understand how innovation is reshaping comparative advantage in our trading partners – and by extension reshaping Canada's.

The new Economic Council should be capable of integrating horizontally across areas such as demographics, regional economic trends, environment, labour, education, health and most importantly the digital transformation. And it should be interdisciplinary, with the ability to mobilize the range of experts required to authoritatively address any issue area within its remit.

The new Council should draw from expertise that exists in Canadian universities, think tanks and research centres – experts who can assess and evaluate changes in a knowledge-based economy and who understand the mechanics of economic rent capture. It should play a convening role for Canada’s think tanks, signalling areas of research interest and serving to mobilize, leverage and integrate the results of their research for the benefit of our policy-makers. The Council must also consider IP and data’s “dual-use” nature, with its profound effects on security, society and democracy. It should aim to draw on and give feedback to economic research currently performed within government departments. There should be transparency to the processes to avoid “policy laundering.”

The new Economic Council must be independent, with the roles of the Chair and Directors established through Governor in Council appointments. It should have its own budgetary allocation and permanent staff. Its advice, alongside the information and analysis on which it is based, should be open and transparent. This is particularly important given the ever-growing centralization of power held by unelected and unaccountable staff inside the Prime Minister’s Office.

Canada is still without an economic strategy that reflects how the international competitive landscape has been reshaped by the digital transformation. “The difficulty,” economist John Maynard Keynes once said, “lies not so much in generating new ideas as in escaping old ones.” Now more than ever Canada must build a prosperity agenda or else face continued erosion of our standard of living – especially for the middle class.

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