

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

IN THE MATTER of a hearing of an application by the Investigations Committee of the College of Patent Agents and Trademark Agents/Collège des agents de brevets et des agents de marques de commerce (“**CPATA**”) regarding the conduct of **ALPESH PATEL 2021-1516** to be held before the Discipline Committee according to the provisions of the *College of Patent Agents and Trademark Agents Act*, 2018, c 27, s 247 (“**Act**”).

B E T W E E N:

College of Patent Agents and Trademark Agents/
Collège des agents de brevets et des agents de marques de commerce
(Applicant)

- and -

Alpesh Patel
(Respondent)

DECISION OF THE DISCIPLINE COMMITTEE

I. Introduction

1. The Investigations Committee of CPATA¹ initiated an application to the Discipline Committee on November 28, 2022 (the “Application”). In summary, it was alleged that the Respondent committed professional misconduct for (1) failing to respond to College communications, (2) failing to cooperate with a College investigation; (3) failing to inform the College Registrar in writing of a pending criminal charge; and (4) failing to inform the College Registrar in writing of his interim interlocutory suspension by the Law Society of Ontario (“LSO”). It was also alleged that the Respondent is ungovernable.
2. The Chair of the Discipline Committee assigned this panel of the Discipline Committee (the “Panel”) to conduct the hearing on the Application, and the hearing was set to begin on November 27, 2023.

¹ CPATA is referred to in this decision as “the College” as this term was used in the Application and in all materials filed by the parties.

3. Prior to the hearing, the parties notified the Chair of a proposed Consent Disposition. The hearing proceeded on November 27, 2023 in accordance with the College's Policy on Consent Dispositions dated January 30, 2023 (the "Consent Disposition Policy"). The parties jointly submitted an Agreed Statement of Facts and a Joint Submission on Penalty, supplemented by a Book of Authorities, and a Draft Order for the Panel's consideration. Oral submissions were presented by the parties' counsel. At the end of the parties' oral submissions, the Panel reserved its decision.
4. On December 19, 2023, the Panel advised the parties that it approved the Consent Disposition with immediate effect, and provided an Order based substantively on the Draft Order, with written reasons to follow. These are those reasons.

II. Proposed Consent Disposition

5. The Consent Disposition Policy permits the parties to submit a proposed settlement of the Application (a "Consent Disposition") to a Discipline Panel for its review at a public hearing. If the proposed Consent Disposition is approved by the Panel, its terms are implemented in an order. If the Consent Disposition is rejected, it forms no part of further proceedings against the licensee.
6. The parties submitted an Agreed Statement of Facts dated November 21, 2023 (the "ASF"). In the first four paragraphs of the ASF, the Respondent admits the allegations in exactly the form set out in the Application:

1. **The Respondent failed to respond promptly to the College contrary to the following provisions:**

- (a) **Part 7 of the Code (Duties to the College, Members and Other Persons):**

- Rule 7(3):**

- An agent must respond promptly and in a complete and appropriate manner to any communication from the College relating to their conduct.

2. **The Respondent failed to cooperate with the College in their investigation contrary to the following provision:**

- (a) **Part 7 of the Code (Duties to the College, Members and Other Persons):**

- Rule 7(3):**

- An agent must respond promptly and in a complete and appropriate manner to any communication from the College relating to their conduct.

3. **The Respondent failed to advise the Registrar in writing that he is charged with a criminal offence under the Criminal Code contrary to the following provisions:**

- (a) **Section 51 of the By-laws (Obligations of Licensees):**

- Information to be provided

51 A licensee must advise the Registrar in writing if the licensee

...

(d) is charged with, pleads guilty to or is found guilty of any offence under the [Criminal Code](#), the [Controlled Drugs and Substances Act](#), the [Income Tax Act](#), the [Excise Tax Act](#) or under a provincial securities act

(b) Section 2 of the Code (Fundamental Canon):

The most important attribute of an agent is integrity. That principle is implicit in this Code and in each of the rules and commentaries set out in it. Irrespective of the possibility of formal sanction under any of the rules in this Code, an agent must at all times conduct themselves with integrity and competence in accordance with the highest standards of the profession in order to retain the trust, respect and confidence of members of the profession and the public.

4. **The Respondent failed to advise the Registrar in writing that he is the subject of an interim interlocutory suspension by the Law Society of Ontario contrary to the following provisions:**

(a) Section 51 of the By-laws (Obligations of Licensees):

Information to be provided

51 A licensee must advise the Registrar in writing if the licensee

...

(e) has been found to have committed professional misconduct or been found to be incompetent by a tribunal of a body that has a statutory duty to regulate a profession.

(b) Section 2 of the Code (Fundamental Canon):

The most important attribute of an agent is integrity. That principle is implicit in this Code and in each of the rules and commentaries set out in it. Irrespective of the possibility of formal sanction under any of the rules in this Code, an agent must at all times conduct themselves with integrity and competence in accordance with the highest standards of the profession in order to retain the trust, respect and confidence of members of the profession and the public.

7. The Application also contained an allegation that the Respondent was “ungovernable”. This was not admitted and is not addressed further in this decision.
8. The balance of the ASF is as follows:

5. The following are particulars of the allegations:

A complaint inquiry was received by the College from a former client, AL, in March 2022 with regard to the quality of service provided by the Respondent.

- (a) The Respondent's licence (sic) was administratively suspended since at least June 28, 2021 for failing to submit a membership renewal and pay the required fees.

- (b) The College also subsequently learned that,
- i. the Respondent had been suspended from the Law Society of Ontario since February 2022, and,
 - ii. on April 1, 2022, the Respondent was charged with fraud over \$5,000 under the *Criminal Code of Canada*.
- (c) The Respondent failed to report to the College (sic) the LSO suspension and the criminal charges.
- (d) The College contacted the Respondent on April 4, 2022. Among other things, the College asked the Respondent if he intended to seek reinstatement as a trademark agent. The College also asked the Respondent about the status of the LSO matter and asked for the Respondent's response to Mr. L's concerns. The College requested a response by April 11, 2022. However, the Respondent did not respond.
- (e) On April 25, 2022, the LSO proceeded with an interim suspension hearing. During the hearing, the College became aware that the Respondent was the subject of seven complaints, including failing to cooperate with the Law Society's investigation, and that he had been charged under the *Criminal Code*.
- (f) The Law Society Panel found "an abundance of compelling and credible evidence exists to show a risk of danger to the administration of justice and to the public interest" and ordered the Respondent's licence suspended on an interlocutory basis. The Respondent, through his counsel, consented to the continuation of his interim suspension. As noted, the Respondent did not advise the College of the continued interim interlocutory suspension.
- (g) On April 29, 2022, the Investigation Committee initiated an investigation of the Respondent. The Respondent was advised that this investigation involved the following issues:
- failure to report the LSO suspension of his licence to practise law in Ontario;
 - failure to respond to Mr. L's complaint;
 - offering to take steps to reinstate Mr. L's trademark application despite being suspended;
 - failing to respond to these matters by April 11, 2022 as requested.
- (h) The College's investigator attempted to follow up with the Respondent on a number of occasions and attempted to schedule an interview to discuss the above-noted matters. However, the Respondent has failed to respond either adequately or at all to the College's requests.

General

6. The Respondent understands the nature of the allegations that have been made against him and that by voluntarily admitting to these allegations, he waives his right to require the College to otherwise prove the case against him.
7. The Respondent understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.

8. The Respondent understands that the panel's decision and reasons will be published, including the facts contained herein and the Respondent's name.
 9. The Respondent understands that any agreement between him and the College does not bind the Discipline Committee.
 10. The Respondent acknowledges that he has had the opportunity to receive independent legal advice and has done so.
9. The parties also filed a Joint Submission on Penalty dated November 21, 2023, the contents of which are as follows:

THE PARTIES HERETO hereby agree that the Discipline Committee make the following order:

- (a) The Respondent shall be reprimanded;
- (b) The Respondent's licence shall be suspended for a period of seven (7) months from the date of this Order or such longer time until the Respondent pays to the College costs in this matter in the amount of \$5000.00.

The Respondent acknowledges that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, will be posted on the College's website, and published in its newsletter.

The Respondent acknowledges that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee.

The Respondent acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and further acknowledges that he has sought legal advice.

III. Submission of the Parties

10. In oral submissions, the parties focused on the proposed disposition.
11. College counsel submitted that the proposed penalty achieves the objectives of a regulatory body in the imposition of penalty, which are protection of the public, specific and general deterrence and rehabilitation.
12. College counsel referred to a number of decisions made by other regulatory bodies. Counsel submitted that the cases provided illustrate the penalties imposed by other regulatory bodies for each of the types of discipline violations admitted by the Respondent.
13. College counsel referred to four cases which concerned an allegation that a registrant² had failed to advise their regulatory body of a criminal charge or conviction:

² For ease of reference, this decision refers to members of regulated professions as "registrants", although this may not be the terminology in the relevant legislation.

- *Ontario (College of Pharmacists) v Oduro*, [2017 ONCPDC 20](#)
 - *College of Nurses of Ontario v Scott*, [2017 CanLII 95225](#)
 - *College of Nurses of Ontario v Lacroix*, [2020 CanLII 115965](#)
 - *Ontario (College of Pharmacists) v Mawad*, [2018 ONCPDC 32](#) (“*Mawad*”).
14. The first three cases above concerned additional charges and resulted in a suspension of three or four months, plus other sanctions. In the *Mawad* case, where the only issue was a lengthy failure to report a criminal charge, the suspension was two months. Counsel submitted that this group of cases suggests a suspension of an average of three or four months is appropriate for the failure to report a criminal charge.
15. College counsel then referred to the following cases, all of which concerned an allegation that a registrant failed to advise the regulatory body of disciplinary action taken against them by another regulatory body:
- *College of Physicians and Surgeons of Ontario v Abraham*, [2022 ONCPSDT 1](#)
 - *Ontario (College of Pharmacists) v Qaisar*, [2015 ONCPDC 23](#)
 - *Basu v College of Physicians and Surgeons of Saskatchewan*, [1985] SJ No 862.
16. The College submitted that these cases suggest that a suspension of one or two months is appropriate in relation to the Respondent’s failure to advise the College of the interim suspension by the LSO.
17. College counsel next referred to *MacDonald Weiser (Re)*, [2023 LSBC 29](#), in which a lawyer was suspended three months when he was found to have committed professional misconduct for practicing while suspended, and for failing “to provide full and substantive responses to questions and/or statements contained in correspondence from the Law Society within designated timeframes, or to produce copies of files as requested” (para. 12). Counsel submitted that this case suggests a two or three month suspension for the failure to respond promptly to the College.
18. College counsel lastly referred to three cases concerning a registrant’s failure to cooperate in a regulatory body’s investigation:
- In *College of Physiotherapists of Ontario v Vogel*, [2022 ONCPO 45](#) (“*Vogel*”) a physiotherapist was found to have committed professional misconduct when they did not respond to any communications from that college concerning a complaint over a period of two years. The physiotherapist did not attend the hearing. The physiotherapist was ordered to attend for a reprimand and suspended unless and until they completed extensive remedial education.
 - In *Law Society of Ontario v Diamond*, [2017 ONLSTH 191](#) (“*Diamond*”), a lawyer failed to cooperate in the LSO’s investigation into his books and records; however, had fully complied by the date of the hearing. The LSO panel imposed a reprimand and costs.

- In *Chimistes (Ordre professionnel des) c Cozak*, 2022 QCTP 46 (“Cozak”), a chemist was initially ordered suspended for four months by the regulatory body for obstructing an investigation into allegations that they were involved in the production of illicit drugs. On appeal, the Quebec Professions Tribunal found that the chemist’s responses indicated an arrogant and insolent attitude towards the regulatory body, to the point of ridicule. The Professions Tribunal ordered permanent cancellation of registration. College counsel submitted that this case pushes the applicable penalty higher in the present case.

19. College counsel emphasized the seriousness of the Respondent’s conduct, submitting that the multiple types of misconduct and the result in *Cozak* increase the applicable penalty in the present case.

20. As to the proposed costs of \$5,000, the College submitted that the authority to impose costs is in section 57(3)(g) of the Act and the costs were necessitated by the Respondent.

21. College counsel also referred to *R. v. Anthony-Cook*, 2016 SCC 43 (“*Anthony-Cook*”), which is the leading case for the proposition that a negotiated sentence in a criminal case must be approved unless it “would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest” (para. 32). This principle is equally applied in professional regulation: *Timothy Edward Bradley v Ontario College of Teachers*, 2021 ONSC 2303; *College of Immigration and Citizenship Consultants v Norris*, 2022 CICC 31.

22. The Respondent agreed with the College’s submissions. The Respondent’s counsel advised that the Respondent had not practiced since March 2022, and given a voluntary undertaking to the College not to practice in June 2023. The Respondent’s counsel also submitted that the Respondent has complied with these restrictions and is capable of rehabilitation. The Respondent stated that the proposed disposition was fair.

IV. Discussion

23. As set out in the ASF, the Respondent admits that he failed to respond to College communications and failed to notify the College of the criminal charge and LSO suspension.

24. A member of a regulated profession has a fundamental duty to cooperate with their regulatory body. The obligations of College licensees are particularized in College’s Code of Professional Conduct and its By-laws. Section 51 of the College By-laws requires a licensee to notify the College of a criminal charge or conviction, or disciplinary action by another regulator³. Rule 7(3) of the Code requires a licensee to “respond promptly and in a complete

³ The By-laws of the College of Patent Agents and Trademark Agents have since been amended, and now state:

73 A licensee must advise the Registrar in writing as soon as feasible after the occurrence of any of the following:

...
 (d) they are charged with, plead guilty to or are found guilty of any offence under the *Criminal Code*, the *Controlled Drugs and Substances Act*, the *Income Tax Act*, the *Excise Tax Act*, a provincial act respecting securities, employment standards or official languages or any other provincial act that creates an offence that implicates an individual’s integrity; or
 (e) they have their professional license restricted or suspended by a professional regulatory body, or are found by a professional regulatory body to have committed professional misconduct or to be incompetent within the meaning of the statute under which the body made its finding.

and appropriate manner to any communication from the College relating to their conduct". The College relies on licensees to comply with these obligations so that it can fulfil its mandate to protect the public interest. For these reasons, the Panel finds that the conduct admitted by the Respondent constitutes professional misconduct pursuant to section 57(1) of the Act.

25. Section 57(3) of the Act provides that if the Discipline Committee decides that the licensee has committed professional misconduct it may take one or more of a list of actions, ranging from a reprimand to licence revocation. The sanctions available include those sought in the Consent Disposition; that is, a reprimand (57(3)(e)) and a suspension of seven months which thereafter continues until the Respondent pays \$5,000 in costs (57(3)(c) and (g)).
26. As noted by counsel, none of the cases provided to the Panel has all the elements in the present case. Most of the cases involved multiple types of misconduct, including some quite different than that admitted by the Respondent. The penalty is assessed globally, and not assigned to the individual elements of the case. There is no support in the authorities for consecutive sentencing.
27. Where the sole charges were failure to cooperate in an investigation, which was fully remedied by the hearing date, the penalty was a reprimand and costs (*Diamond*). This is the lowest end of the range of the cases provided. In the majority of cases provided, there were multiple incidents and types of misconduct, and a variety of aggravating and mitigating factors. The penalty in these mid-range cases was a suspension of up to four months, sometimes coupled with a reprimand and costs. At the top of the range, where the registrant continued to deliberately obstruct the regulator's investigation as at the date of hearing, registration was revoked (*Cozak*). We also note *Vogel*, where a continuing suspension was imposed upon a registrant who had failed to respond to the regulator as of the date of hearing and did not attend the hearing. These cases show that a very wide range of disposition has been imposed in cases involving the kinds of discipline violations committed by the Respondent.
28. The ASF contains very limited information. On inquiry by the Panel of the parties, it is plain that there remains an underlying factual dispute and the content of the ASF reflects the extent of the agreement between the parties. The ASF states (and as such, the Respondent admits) that he "has failed to respond either adequately or at all to the College's requests" in relation to its investigation. This is an aggravating factor in the imposition of penalty. A mitigating factor is that the Respondent has cooperated in the resolution of this Application.
29. *Anthony-Cook* holds that a negotiated settlement is not to be rejected lightly. It may only be rejected if its acceptance would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. That test is stringent. It is only satisfied if the proposed disposition is "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down" (para. 34).


30. The reprimand and costs proposed in the Consent Disposition are supported by the Act. This written decision will take the place of an oral reprimand.
31. The suspension proposed by the Respondent is longer than that in many of the cases provided, but within the very wide range of results. On the basis of the evidence before this Panel, the test in *Anthony-Cook* for the rejection of a negotiated settlement is not met.
32. For these reasons, the Panel approves the Consent Disposition.

V. Conclusion

33. The Panel finds that the Respondent's conduct as admitted in the ASF amounts to professional misconduct.
34. The Panel's order made pursuant to section 57(3) of the Act and effective December 19, 2023, is as follows:
- (a) The Respondent is reprimanded;
 - (b) The Respondent's licence is suspended for a period of seven (7) months from December 19, 2023 or such longer time until the Respondent pays to the College costs in this matter in the amount of \$5000.00.

DATE ISSUED:

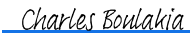
January 22, 2024


Jean Whittow (Jan 22, 2024 14:22 PST)

Jean Whittow KC, Chair



Jay Sengupta


Charles Boulakia (Jan 23, 2024 14:48 EST)

Charles Boulakia