

**DISCIPLINE COMMITTEE
COLLEGE OF PATENT AGENTS AND TRADEMARK AGENTS**

IN THE MATTER of a hearing of an application by the Investigations Committee of the College of Patent Agents and Trademark Agents (“**CPATA**”) regarding the conduct of **IMRAN SIDDIQUI 2021-2516** 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

(Applicant)

- and -

IMRAN SIDDIQUI

(Respondent)

DECISION OF THE DISCIPLINE COMMITTEE

I. Introduction

1. The Investigations Committee of CPATA initiated an application to the Discipline Committee on November 21, 2023 (the “Application”). In summary, it was alleged that the Respondent committed professional misconduct for (1) being an agent-in-training, while concurrently employed by the Canadian Intellectual Property Office (“CIPO”) and his supervising intellectual property (IP) firm without the knowledge or authorization of either employer, and attempted to conceal this fact, contrary to the fundamental canon of the *Code of Professional Conduct for Patent Agents and Trademark Agents* (the “Code”) which requires integrity, (2) commencing an action on behalf of CIPO regarding one of his supervising IP firm’s client patent applications contrary to part 3 of the Code relating to conflicts; (3) knowingly providing the College with inaccurate contact information to be published on the College’s public register; and (4) failing to respond to communications from the College and failing to cooperate with the College in its investigation of the complaint contrary to part 7 of the Code relating to an obligation to communicate with the College and cooperate with investigations.
2. The Chair of the Discipline Committee assigned this panel of the Discipline Committee (the “Panel”) to conduct the hearing on the Application.
3. Prior to the hearing, the parties notified the Panel of a proposed Consent Disposition.
4. The hearing took place on August 20, 2024 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 (“ASF”) and a Joint Submission on Penalty (“JSP”), supplemented by a Book of Authorities, and a Draft Order for the Panel’s consideration. Oral submissions were presented by the parties’ counsel.

5. At the end of the parties' oral submissions, the Panel retired for a brief period to consider its decision.
6. After its deliberations, 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

7. 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.
8. The parties submitted an ASF last dated July 19, 2024. In the first four paragraphs of the ASF, the Respondent admits the allegations in the same form set out in the Application as follows
 1. The Respondent was concurrently employed with CIPO and his supervising IP firm without the knowledge or authorization of either employer, and attempted to conceal this fact, contrary to the following provision 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 the highest standards of the profession in order to retain the trust, respect and confidence of the members of the profession and the public.

2. The Respondent commenced an office action on behalf of CIPO with regard to one of his IP firm's client patent applications, contrary to the following provisions of the Code:

Part 3 Conflicts

Principle

In each matter, an agent's judgment and loyalty to the client's interest must be free from compromising influences.

Rule 3

Principle

In each matter, an agent's judgment and loyalty to the client's interest must be free from compromising influences.

Conflicts of Interest

(1) An agent must not act for a person if there is a substantial risk that the agent's loyalty to or representation of that person would be materially and adversely affected by the agent's own interest or the agent's duties to another client, a former client or any other person (referred to in this Code as a "conflict of interest"), except as permitted under the Code.

3. The Respondent knowingly provided the College with inaccurate contact information for publishing on the College's public register, contrary to the following provision 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 the highest standards of the profession in order to retain the trust, respect and confidence of the members of the profession and the public.

4. The Respondent failed to respond to communications from the College, and failed to cooperate with the College in their investigation of this complaint, contrary to the following provisions of the Code:

Part 7

Duties to the College, Members and Other Persons

Principle

An agent must assist in maintaining the standards of the profession in dealings with the College and members of the profession generally. An agent's conduct toward other agents must be characterized by courtesy and good faith.

Rule 7

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

9. The balance of the particulars in the ASF, with the additional evidentiary references redacted, are as follows:

5. The following are particulars of the allegations:

- i. The Respondent was an active Class 3 Patent Agent in Training (license number 2021-2516) until November 23, 2022 when his license was suspended for nonpayment of fees.
- ii. On October 5, 2022 the College was contacted by the Respondent's training supervisors who reported that they had recently discovered that the Respondent had violated the terms of his employment agreement by working concurrently with a private firm (the "Firm") and for the Canadian Intellectual Property Office ("CIPO") as a patent examiner, while attempting to conceal the same. For example, the Respondent used a different spelling for his name while working at CIPO.
- iii. The College's Investigations Committee subsequently initiated a complaint against the Respondent on October 24, 2022. The Respondent was advised of the complaint and given an opportunity to respond to it.

- iv. In his written response dated November 8, 2022, the Respondent did not reply to the substance of the complaint but instead questioned the College's authority to investigate a complaint against him as it was an employment matter. He stated that he had no intention of continuing working in the patent field as he was already administratively suspended by the College.
- v. The Investigations Committee subsequently appointed an investigator. The Investigations Committee wrote to the Respondent on November 30, 2022 to advise him of the appointment of an investigator and requested a response to the particulars of the complaint. The Respondent did not substantively respond to this letter.
- vi. The Respondent had previously disclosed his employment with the Firm to CIPO and took a long-term leave beginning November 19, 2018, so that he could work with the Firm. The leave ended on February 15, 2021.
- vii. The Investigations Committee confirmed that the Respondent worked full time and concurrently as a Patent Examiner for CIPO and as a Class 3 Patent Agent in Training for the Firm from approximately February 16, 2021 to September 5, 2022, when he again went on leave from CIPO.
- viii. The Respondent's concurrent employment ran contrary to his employment agreements. The Respondent was terminated by both employers as a result.
- ix. The Investigations Committee also learned that unbeknownst to either employer, the Respondent was the Patent Examiner for CIPO in respect of a patent application made by the Firm. The Respondent had issued correspondence on behalf of CIPO, on September 23, 2022 to the Firm with respect to their client's Patent Application. The Firm confirmed that the Respondent had not worked on the relevant file at any time.
- x. On December 20, 2021, the Respondent's employment contract with the Firm was renewed with a new clause that prohibited engaging in any other business activity or employment, without the Firm's prior written consent. The Respondent did not disclose that he was concurrently employed with CIPO, in contravention of that employment agreement.
- xi. During the course of the investigation, the investigator attempted to contact the Respondent by his email address and the phone number he had provided the College for its public register. The investigator subsequently determined that the telephone number and mailing address that the Respondent provided to the College was for an office in the CN Tower, but the Respondent's name was not contained in the CN Tower company directory. The investigator was otherwise able to contact the Respondent with the contact information provided to the College. The Respondent stated to the College that he provided this information to prevent his personal information from being posted publicly.

- xii. On December 13, 2022, the College investigator sent an email to the Respondent and requested information and documents. The Respondent did not respond to the investigator's email or provide the documents requested in that email.
- xiii. On March 14, 2023 the Respondent was offered an opportunity to respond to the allegations against him but he declined to do so.
- xiv. The Respondent subsequently sent a letter to the College on March 22, 2023. Among other things, the Respondent objected to the investigation process, claiming that it was not transparent, fair and principled nor in keeping with the College's policies. The Respondent did not address the five allegations that were being investigated. The Respondent urged the Investigations Committee to dismiss the complaint or in the alternative, that he be provided with a copy of the investigation report and given an opportunity to make submissions.
- xv. On March 28, 2023, the College provided the Respondent with a copy of an Interim Investigations Report, and responded to the Respondent's concerns identified above. The Respondent was required to provide a response, on or before May 12, 2023.
- xvi. The Respondent responded on May 12, 2023. The Respondent responded to each of the inquiries set out in the College's letter of March 28, 2023. The Respondent also provided submissions respecting each of the allegations, specifically admitting the conduct at issue, with the exception of his alleged failure to respond and/or cooperate with the College.
- xvii. However, given the nature of the Respondent's responses, the College required considerable clarification. Accordingly, between June and August, 2023, the investigator contacted the Respondent to obtain further clarifying information through an interview. Alternatively, the investigator offered to send the questions so that the Respondent could respond in writing. The Respondent ultimately requested to respond to the questions in writing.
- xviii. Written questions were sent to the Respondent on August 8, 2023. The Respondent wrote to the College on August 25, 2023, taking issue with the relevance of the questions.
- xix. On August 29, 2023, the College responded in detail, explaining why there was no merit to the Respondent's concerns and requesting a response to the questions by September 5, 2023. On September 5, 2023, the Respondent responded, reiterating his concerns with the questions and setting out submissions regarding his alleged failure to respond and/or cooperate, but he again declined to respond substantively to the outstanding issues.

- xx. On June 9, 2023 the College communicated to the Respondent the Investigation Committee's direction for an interview of the Respondent. There was email correspondence between the investigator and the Respondent dated June 11 to August 8, 2023. The Respondent's letter to the College dated August 25, 2023, took issue with the interview questions. The College responded on August 29, 2023 to the Respondent. The Respondent's correspondence to the College dated September 5, 2023 took issue with the relevance of the questions. The Respondent did not, ultimately, respond to the questions.
- xxi. By on or about September 6, 2023, the investigator noted that the Respondent had not, to date, provided any answers to questions she posed to him in writing on August 8, 2023.
- xxii. On or about November 23, 2023, the College informed the Respondent that the Investigations Committee was making an Application to the Discipline Committee for a hearing on the allegations.

General

6. The Respondent understands the nature of the allegations that have been made against him and admits the allegations of professional misconduct as set out in paragraphs 1 to 5 above. The Respondent further understands 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.

10. The parties also filed a JSP dated November 21, 2023, the contents of which are as follows:

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

- 1. The Respondent shall be required to appear before a panel of the Discipline Committee to be reprimanded immediately following the hearing;
- 2. Should the Respondent seek to be reinstated of his administratively suspended Class 3 licence, and should reinstatement be accepted and granted by the Registrar, the Respondent's licence shall be suspended, starting on the date of his reinstatement to the College, and to continue uninterrupted for a period of nine months or such longer time until the Respondent pays to the College costs in this matter in the amount of \$5,000.00.

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 Investigations Committee of 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

11. In its submissions, the College focused on the proposed disposition.
12. Counsel for the College 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. The proposed penalty of a reprimand, suspension for 9 months and payment of costs of \$5,000 was proportional to the gravity of the offences which included the deception of the Respondent's employers, the conflict of interest, the failure to respond to communications and the provision of false information.
13. College counsel referred to several decisions made by other regulatory bodies. Counsel submitted that the provided cases illustrate the penalties imposed by other regulatory bodies for each of the types of discipline violations admitted by the Respondent.
14. College counsel reviewed submitted decisions in four (4) strands:
 - The deception of an employer by the professional;
 - The existence of conflicts of interest;
 - Failing to respond to communications from the professional body; and
 - The provision of false information.
15. On the issue of the deception of an employer by the professional, College counsel referred to the cases of: *College of Nurses of Ontario v Punchard*, 2022 CanLII 135436; *College of Nurses of Ontario v Olalere*, 2022 CanLII 113314; and *College of Nurses of Ontario v Verde-Balayo*, 2021 CanLII 149495 (merits); 2021 CanLII 149513 (penalty). Two of the cases dealt with deceiving the employer's insurance benefits provider to obtain benefits that the professional was not entitled to; one of the cases dealt with claiming experience on a resume for a position that were false. Generally, these cases showed that the professional was subject to a reprimand and a suspension of 2 to 4 months for the deception of an employer.
16. Relating to conflicts of interest, College counsel referred to the cases of *Straith (Re)*, 2020 LSBC 11; *Law Society of Ontario v Marler*, 2018 ONLSTH 74 (merits); 2018 ONLSTH 147 (penalty); *College of Nurses of Ontario v O'Connell*, 2019 CanLII 74403; *College of Nurses of Ontario v MacDonald*, 2017 CanLII 97254; and *Barriolhet v Justices of the Peace Review Council*, 2011 ONSC 3246. Although in the first four cases, the professional was subject to reprimands and suspensions from 2 to 6 months, the fifth decision is of note. In that case, a Justice of the Peace was removed from office due to his actual conflicts of interest.

17. On the third strand of failing to respond to communications from the professional body, College counsel noted that there are many cases that could be cited. She cited the following as the most relevant and analogous to the current case: *MacDonald Weiser (Re)*, 2023 LSBC 29; and *College of Physicians and Surgeons of Ontario v Gill*, 2021 ONCPSD 37 (merits); 2021 ONPSDT 51 (penalty). These decisions show that suspensions of 3 or 4 months are warranted together with costs and reprimands.
18. On the last strand of providing false information, College counsel cited the cases of: *Basu v College of Physicians and Surgeons of Saskatchewan*, [1985] SJ No 862; *Ontario (College of Pharmacists) v Mawad*, 2018 ONCPDC 32; and *Ontario (College of Pharmacists) v Galassi*, 2017 ONCPDC 31. These cases established that suspensions were appropriate.
19. College counsel also referred to the only previous decision of this College in *CPATA v Patel*, DC-2023.01 dated January 22, 2024. In that decision, another panel of this Discipline Committee noted that, in citing cases which may include elements of the facts that are under consideration, the correct approach is to assess the penalty to be imposed on a global basis. In other words, based on the finding of professional misconduct which may result from many facts and lapses, what is the appropriate penalty? This decision clearly rejected the idea that a global penalty could be based on assessing an appropriate penalty for each separate lapse and then adding those up in the form of consecutive penalties.
20. The correct approach to a penalty is to consider the penalty on a global basis assessing all lapses leading to a finding of a professional misconduct in the consideration of the penalty.
21. College counsel provided submissions on the duty of this panel to accept a joint submission on penalty. The cases cited on this point were: *Timothy Edward Bradley v Ontario College of Teachers*, 2021 ONSC 2303; *R v Anthony-Cook*, 2016 SCC 43; and *College of Immigration and Citizenship Consultants v Norris*, 2022 CICC 31. The test as expressed in the *Anthony-Cook* case provides that there should not be a departure from a joint submission on penalty unless the proposed penalty would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The *Bradley* case expressed the test a little more directly: to reject a joint submission, a disciplinary body must show why the proposed penalty is so “unhinged” from the circumstances of the case that it must be rejected.
22. Respondent’s counsel provided submissions that supported the cases cited by College counsel. There was also support for the idea that, in order to understand what the appropriate global penalty might be, it was appropriate to consider the different parts of the professional misconduct and to consider how these parts had been dealt with in other disciplinary matters.
23. Respondent’s counsel noted several mitigating factors in this case from the ASF. Despite the incorrect address that had been provided to the College, the College was always able to contact the Respondent. In the case of the file that the Respondent had dealt with while acting in his CIPO capacity, the Respondent had never dealt with the file while acting for the firm. Finally, counsel noted that the Code had not been in place for the first 6 months of the period in which the Respondent was working for both CIPO and the Firm.
24. Respondent’s counsel submitted the JSP met all the relevant requirements and should be accepted by this panel.

IV. Discussion

25. In the ASF, the Respondent admitted to several serious lapses in professional judgment.

26. The most serious of these lapses is that of being employed at the same time in two positions that are, by the very nature of the patent system, in a conflict with each other.
27. Patent agents must regularly interact with patent examiners who work for CIPO in advancing the interest of patent applicants. Patent examiners working for CIPO have duties in the examination of patent applications. The interactions between patents agents and CIPO examiners can result in the issuance of a patent which is a government monopoly under the *Patent Act*. As a result, the public expectation is that these two roles must be performed separately and independently to ensure that, when issued, patents are no broader than what is permitted and only those patents which are permitted are issued.
28. The Code makes it clear what is considered appropriate conduct for a licensee. Substantial lapses in meeting the required conduct constitute professional misconduct. Based on the admissions of the Respondent in the ASF, this Panel finds that the Respondent has committed professional misconduct within section 57(1) of the Act.
29. Pursuant to section 57(3) of the Act, we may: ...
 - (c) suspend a licence of the licensee for a period of not more than two years or until specified conditions are met, ...
 - (e) reprimand the licensee; ...
 - (g) require the licensee to pay to the College or any complainant all or a portion of the costs incurred by them during the application before the Committee.

These sanctions clearly include those sought in the JSP.

30. As submitted and as was apparent from the Panel's questions during submissions, we are concerned that in citing cases, we should not be engaged in some type of additive exercise in assessing penalties. Our consideration must be focused on the appropriate principles in assessing a global penalty which takes into account all of the facts that are alleged. We caution that in many of the cited decisions, multiple strands of misconduct were in fact at issue, and the penalties were a global penalty assessment and not strictly related to only one strand. We also caution that in many of the cited decisions, the penalty assessments were based on consent dispositions and should be weighted accordingly.
31. This Panel is aware of its responsibilities in the case of the submission of a JSP that we may not reject it without showing that the proposed penalty was so unhinged as to suggest to the public that the proper functioning of the disciplinary system had broken down. The panel felt that this is not the case here.
32. Based on the wide range of penalties that other disciplinary tribunals have ordered that have been submitted to us, our analysis is that a key aspect in considering an appropriate penalty for professional misconduct is the conflict of interest which was created by the Respondent's actions. Conflicts of interest can result, as it did in the *Barriolhet* case, in removal from function.
33. In this case a suspension of nine (9) months together with a verbal reprimand and the payment of costs of \$5,000 have been agreed to in the JSP. This Panel has considered the conflict of interest issue and the other professional lapses admitted by the Respondent in the issues of deception of employers, providing false information to the College and failing to cooperate with the College's investigation. When we take all four of these strands together, this Panel considers the proposed penalty in the JSP acceptable.

34. The Panel approves the Consent Disposition.

V. Conclusion

35. The Panel finds that, based on the ASF, the Respondent committed professional misconduct.

36. Pursuant to section 57(3) of the Act and effective August 20, 2024, the Panel orders:

1. The Respondent shall be required to appear before a panel of the Discipline Committee to be reprimanded immediately following the hearing¹; and
2. Should the Respondent seek to be reinstated of his administratively suspended Class 3 licence, and should reinstatement be accepted and granted by the Registrar, the Respondent's licence shall be suspended, starting on the date of his reinstatement to the College, and to continue uninterrupted for a period of nine months or such longer time until the Respondent pays to the College costs in this matter in the amount of \$5,000.00.

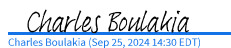
DATE ISSUED:

September 23, 2024

Panel of the Discipline Committee:



Marcel Mongeon, Chairperson


Charles Boulakia (Sep 25, 2024 14:30 EDT)

Charles Boulakia


susan boulter (Sep 25, 2024 13:45 EDT)

Susan Boulter

¹ This is confirmation that the Respondent appeared as ordered on August 20, 2024 before the Panel at which time a verbal reprimand was administered by the Chair of the Panel.