

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

IN THE MATTER of the hearing of an application by the Investigations Committee of the College of Patent Agents and Trademark Agents (the “**College**”) regarding the conduct of **MATHIEU AUDET 2021-0065** held before the Discipline Committee according to the provisions of the *College of Patent Agents and Trademark Agents Act*, S.C. 2018, c. 27, s. 247 (the “**Act**”).

BETWEEN:

**COLLEGE OF PATENT AGENTS AND TRADEMARK AGENTS**

(Applicant)

- and -

**MATHIEU AUDET**

(Respondent)

**DECISION OF THE DISCIPLINE COMMITTEE**

**I. Introduction**

1. The Investigations Committee of the Applicant (the College) made an application to the Discipline Committee on March 23, 2023 (the “Application”). In summary, it was alleged that the Respondent engaged in professional misconduct by: (1) failing to inform the client of certain anticipated fees prior to initiating the work on behalf of the client; (2) failing in his duty to competently perform services to the standards expected, in particular by not conducting a prior art search in the absence of full disclosure of the risks of not doing so, and/or failing to obtain the client’s informed consent, and/or failing to disclose to the client the risks associated with the absence of such a search; and (3) failing to clearly communicate with the client throughout the course of his mandate, thereby failing in his duty to provide quality services in accordance with the standards expected.
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 advised the Panel of a proposed consent disposition.

4. The hearing took place on November 29, 2024, in accordance with the College's Policy on Consent Dispositions dated January 30, 2023 (the "Consent Disposition Policy"). In connection with the proposed Consent Disposition, the parties have submitted an Agreed Statement of Facts and Admissions along with a Joint Submission on Penalty (together, the "Proposed Consent Disposition").
5. Counsel for the parties presented oral submissions.
6. Following the presentation of oral submissions by the parties, the Panel adjourned to deliberate on its decision.
7. Upon conclusion of its deliberations, the Panel informed the parties that it approved the Proposed Consent Disposition with immediate effect, and issued an oral order with written reasons to follow, as set out herein below.
8. Following these deliberations, the Panel held a closed session with the Respondent to deliver an oral reprimand by digital means.

## **II. Proposed Consent Disposition**

9. The Policy on Consent Dispositions 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 proposal Consent Disposition is approved by the Panel, its terms are implemented in an order. If the proposed Consent Disposition is rejected, the matter proceeds to a subsequent hearing during which the rejected Consent Disposition is neither considered nor referred to by the subsequent Discipline Committee.
10. The parties submitted an Agreed Statement of Facts and Admissions dated November 21, 2024. The Respondent admits certain allegations of the Application, as follows:

**Allegation #1 – The Respondent failed to inform the client of certain anticipated fees prior to initiating the work on behalf of the client, contrary to the following provisions:**

### **Part 4 of the Code (Quality of Service):**

#### **Rule 4(5):**

An agent must take reasonable steps to advise the client of the cost of seeking or obtaining intellectual property protection, on the recommendation of the agent, in Canada or elsewhere.

**Allegation #2 – The Respondent failed to competently perform services to the standards expected, in particular by not conducting a prior art search in the absence of full disclosure of the risks of not doing so, and/or failing to obtain the client’s informed consent, and/or failing to disclose to the client the risks associated with the absence of such a search, contrary to the following provisions, contrary to the following provisions:**

**Part 1 of the Code (Competence):**

**Rule 1(3):**

An agent must assume complete professional responsibility for all agency services that they provide and maintain direct supervision over staff and assistants such as agents in training, students, clerks and legal assistants to whom they may delegate particular tasks and functions.

**Part 4 of the Code (Quality of Service):**

**Rule 4(1):**

The agent must give the client competent advice and service based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the agent’s own experience and expertise.

**Rule 4(2):**

The agent’s advice must be open and transparent and must clearly disclose what the agent honestly thinks about the merits of the matter at issue and the likely results.

**Allegation #4<sup>i</sup> – The Respondent failed to clearly communicate with the client throughout the course of his mandate thereby failing to provide quality services in accordance with the standards expected, contrary to the following provisions:**

**Part 1 of the Code (Competence):**

**Rule 1(2):**

An agent fails to meet standards of professional competence if:

(a) there are deficiencies in

(i) (i) [...]

(ii) their attention to the interests of clients,

(iii) he records, systems or procedures of their professional business,  
or

(iv) any other aspects of their professional business; and

(b) the deficiencies referred to in paragraph (a) give rise to a reasonable apprehension that the quality of service they provide to clients may be adversely affected.

**Part 4 of the Code (Quality of Service):**

**Rule 4(4):**

An agent must act on the client's instructions in a reasonably prompt manner and must reply to all of the client's inquiries.

11. The remaining details of the Agreed Statement of Facts and Admissions, along with the redacted additional evidentiary references, are as follows:

- i. The Respondent has been a patent agent since 2010 and has held a College license since his training;
- ii. On or about February 15, 2022, the College received a complaint from PR who identified himself as a client of the Respondent from February 2020 to April 2022, when their business relationship ended. PR expressed concerns about the communication and services provided by the Respondent, the quality of the work performed by the Respondent and the reasonableness of the fees charged with respect to a patent application.
- iii. At the time relevant to the allegations against the Respondent, the Respondent was employed at the firm B&C.
- iv. The business relationship between PR and the Respondent had commenced in February 2020 when PR had consulted the Respondent regarding a potential patent application, as PR was planning to present their invention to certain companies. At that time, the Respondent was working for their company, M.
- v. In the fall of 2020, the Respondent prepared and filed a Provisional Patent Application on behalf of PR. No prior art search was performed, as PR had mentioned that his wife had performed such a search.
- vi. In April 2021, the Respondent began working at B&C.

- vii. On or about August 12, 2021, PR became aware that the Respondent had since changed firms when contacted by a member of the Respondent's new firm, seeking instructions with respect to finalizing the patent application process.
- viii. The patent application process was finalized by October 29, 2021, and consisted of both a non-provisional patent application (USPTO) and a PCT application. During this process, the Respondent did not provide the client with any written advice, opinion, recommendation or information regarding:
  - a) the risk of not, and the benefit of, updating the prior art searches performed by PR's wife;
  - b) the option of filing only a PCT patent application (and not also a non-provisional patent application in the United States);
  - c) the patentability of PR's invention;
  - d) an overall description of the entire patent application process;
  - e) a written explanation or estimate regarding the overall cost of seeking or obtaining intellectual property, or, in this case, patent protection.
- ix. Other than the communication of August 12, 2021, from B&C, which mentioned that a prior art search or an update of such a search could be conducted, the Respondent took no steps to conduct a prior art search, to review the prior search conducted by the client before filing the provisional patent application, and/or to obtain the client's informed consent not to conduct such a search or review.
- x. On October 29, 2021, the Respondent's agent-in-training recommended that PR proceed with a USPTO Prioritized Examination for an extra fee. Despite the client's inquiry to the Respondent for particulars of the extra fee, the Respondent never provided the client with a written estimate of the anticipated cost of the prioritized examination.
- xi. The Respondent did not keep track of his time in writing or document the efforts required or expended to prepare the United States non-provisional patent application (USPTO) and did not provide a description of the efforts expended to explain the fees charged to the client.
- xii. Following the filing of the 2 patent applications, the Respondent performed additional steps without ever explaining to the client the possible steps that would follow the filing of the 2 patent applications or providing the client with written notice of the fees that would be incurred for this additional work.

- xiii. On February 9, 2022, the Respondent submitted to PR a further invoice in the amount of \$557.63 for “preparing and filing an information disclosure statement (IDS)”.
  - xiv. Following the negative opinion contained in the PCT search report, PR instructed that no further work should be done by the Respondent without prior approval.
  - xv. On March 16, 2022, the Respondent sent a further reporting letter to PR along with the USPTO report and an additional invoice in the amount of \$592.12. When the client took issue with the invoice, the Respondent’s agent-in-training admitted to misunderstanding the client’s instructions.
- 12.** The Respondent has admitted to the accuracy of the facts described and that these facts constitute professional misconduct; he has admitted to the allegations of professional misconduct against him, specifically violations of the following provisions:
- a. Part 4 of the Code (Quality of Service), Rule 4(5), (Allegation #1 of the Application);
  - b. Part 1 of the Code (Competence), Rule 1(3), Part 4 of the Code (Quality of Service), Rule 4(1) and Rule 4(2), (Allegation #2 of the Application); and
  - c. Part 1 of the Code (Competence), Rule 1(2), Part 4 of the Code (Quality of Service), Rule 4(4) (Allegation #4 of the Application).
- 13.** The Respondent states:
- a. That he fully understands the nature of the allegations of professional misconduct brought against him;
  - b. That he understands that by signing the Agreed Statement of Facts and Admissions, he consents to the evidence as set forth in the admitted facts being presented to the Discipline Committee;
  - c. That he understands that by signing the Agreed Statement of Facts and Admissions, he waives his right to require the Investigations Committee to prove the merits of the case against him and his right to a hearing;
  - d. That he understands that the Discipline Committee decision and its reasons, including his name, will be published on the College website and in its newsletter;
  - e. That he understands that the Disciplinary Committee is not bound by the agreement between the parties with respect to the penalty; and
  - f. That he understands that by signing the Agreed Statement of Facts and Admissions, he is doing so voluntarily, unequivocally, and after consulting with legal counsel.

14. The Panel accepts the facts as those on which it can base its decision. The Panel also takes note of the Respondent's admissions and statements.

### III. Submissions of the Parties

15. In its submissions, the College focused on the proposed Consent Disposition.
16. 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 and \$5,000 in costs was proportional to the severity of the offences.
17. Counsel for the College submitted that it was the Panel's duty to accept the Joint Submission on Penalty. The case cited in this respect is as follows: *R v. Anthony-Cook*, 2016 SCC 43. The criteria set out in *Anthony-Cook* stipulates that a joint submission on sentence should not be rejected unless the proposed sentence would bring the administration of justice into disrepute or otherwise be contrary to the public interest.
18. Counsel for the Respondent submitted that he agreed with the submissions made by counsel for the College.

### IV. Discussion

19. In the Agreed Statement of Facts and Admissions, the Respondent admitted to lapses in professional judgment.
20. The Code clearly defines appropriate conduct for a licensed professional. Any deviation from this standard constitutes professional misconduct. Based on the Respondent's Agreed Statement of Facts and Admissions, the Panel finds that the Respondent engaged in professional misconduct under Subsection 57(1) of the Act.
21. Pursuant to Subsection 57(3) of the Act, we may:

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 [...].

The Act clearly empowers us to impose the sanctions proposed in the Joint Submission on Penalty.

22. The Panel recognizes that when presented with a Proposed Consent Disposition, it must not reject the proposal without demonstrating that the proposed sanction is so disproportionate as to cause the public to perceive the disciplinary system as dysfunctional. The Panel finds this is not the case in the present matter.

23. The Panel considered the admitted instances of professional misconduct by the Respondent, including the failure to inform the client of certain anticipated fees prior to initiating the work, the failure to disclose to the client the risks associated with the absence of a prior art search, and the failure to communicate clearly. Considering these elements as a whole, the Panel approves the sanctions proposed in the Joint Submission on Penalty—namely an oral reprimand delivered by digital means and the payment of \$5,000 toward the College's costs incurred in this matter within 60 days of the Panel's order—as they are neither contrary to the public interest nor likely to bring the administration of justice into disrepute.
24. The Panel approves the Proposed Consent Disposition, notably the Agreed Statement of Facts and Admissions and the Joint Submission on Penalty.

## V. Conclusion

25. The Panel finds, based on the Agreed Statement of Facts and Admissions, that the Respondent committed professional misconduct.
26. Pursuant to Subsection 57(3) of the Act, which came into effect on August 20, 2024, the Panel orders as follows:
1. Immediately following the hearing, the Respondent shall appear before the Panel to receive an oral reprimand delivered by digital means;
  2. The Respondent shall pay \$5,000 to the College as partial reimbursement of costs incurred by the College in this matter within 60 days of the date of issuance of these reasons.

## DATE OF REASONS:

January 22, 2025

## Discipline Committee Panel:

M<sup>e</sup> Marcel Mongeon, Chair

M<sup>e</sup> Guy Joubert

Mr. Benoît Yelle, Eng.

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<sup>1</sup>There is no Allegation #3. This is attributable to the numbering of the allegations in the original Application and the fact that the College did not pursue Allegation 3 of the Application.