

**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 **ERIC FINCHAM 2021-0606** 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 -

**ERIC FINCHAM**

(Respondent)

**FINAL REASONS FOR DECISION**

**INTRODUCTION**

- [1] In our decision dated December 10, 2024 (the merits decision)<sup>1</sup>, we found that the Respondent Eric Fincham had breached his duty to cooperate with his regulator, the College of Patent Agents and Trademark Agents (the College). We dismissed the College’s three substantive allegations of failure to serve two clients. Mr. Fincham did not attend the merits hearing, and we proceeded in his absence.
- [2] The detailed timeline of what has occurred to date in this proceeding is largely set out (with one major exception, addressed below) in our Interim Decision Relating to Penalty and Costs dated May 9, 2025 (“the May 9, 2025 Decision”). This was a 67-paragraph decision that addressed several issues, and included a final section headed “Addendum” concerning systemic issues relating to adjudicative and deliberative privilege. What occurred along that timeline in this proceeding is integral to an understanding of these reasons and today’s final decision in this proceeding. We therefore rely upon the May 9, 2025 Decision, and include it as Appendix A at the conclusion of today’s final reasons for decision.
- [3] To be clear, we issued the May 9, 2025 Decision in the normal course, with the intention that the May 9, 2025 Decision, like the December 10, 2024 Merits

Decision, would be translated and released in the normal course. The May 9, 2025 Decision constituted a public decision of this Discipline Committee (DC), which was sent to the Investigations Committee (IC) and its counsel that day.

#### **PROCEEDINGS IN THIS APPLICATION SINCE DECEMBER 10, 2024**

- [4] Based on our December 10, 2024 Merits Decision, we directed a hearing (the penalty hearing) to determine an appropriate penalty and costs order. To that end, Discipline Committee staff made efforts to ensure that our merits decision, and the need to schedule a penalty hearing, came to the Respondent's attention.
- [5] There was no reply to the DC's communications, and Mr. Fincham did not appear at the penalty hearing on April 4, 2025. The College's Investigation Committee provided affidavit evidence of its attempts to serve him with its materials for the penalty hearing, and it asked for an order revoking his license on grounds of ungovernability. We reserved our decision.

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<sup>1</sup> *College of Patent Agents and Trademark Agents (CPATA) v Eric Fincham*, 2024 CPATA 3

- [6] Following the penalty hearing, the panel decided that the College needed to address two issues that were not canvassed at the hearing. One of them concerned the efforts that the prosecution (the IC) made or could have made to reach Mr. Fincham between December 10, 2024 and April 4, 2025. This point is addressed at length in the May 9, 2025 Decision, which we refer to at several points below, but we will not repeat that discussion in detail.
- [7] In the May 9, 2025 Decision, we summarized the IC's service attempts at paragraph 20, and after discussing some additional information about the Respondent's whereabouts that had come to our attention, we asked the IC to provide specific information and submissions within four weeks to assist us in determining whether he had received sufficient notice to allow us to complete the hearing without his participation.
- [8] Concurrently, a systemic issue regarding the proper functioning of the DC, and the appropriate relationship between the DC and IC and the College administration, arose as a result of a letter sent to the panel by IC counsel on April 9, 2025. On behalf of the College's CEO, the Chair of its IC, its General Counsel, Professional Regulation and its two outside counsel, the contents of the letter indicated (as we stated in para 55 of the May 9, 2025 Decision) that these individuals "had requested, received, reviewed and/or quoted back to the DC panel [portions of] the confidential correspondence during deliberations between the panel and the CPATA staff member who was assisting the panel."
- [9] Again, the May 9, 2025 Decision sets out what occurred at a level of detail that will not be repeated in this final decision. However, in light of the ensuing events in this proceeding, and the issue of mootness raised by the IC, it is important to note (again by way of brief summary) that the DC panel in its Interim Decision raised systemic concerns about the College's apparent allocation of responsibilities and its understanding of the DC's independent adjudicative responsibility and deliberative privilege. See, for example, paragraphs 57-61 of the May 9, 2025 Decision. The panel indicated that the only staff who were available to the DC to assist with adjudicative responsibilities such as privileged deliberative and case processing tasks appeared to be performing operational duties at the same time that included disclosure of this information and these activities to the College's administration and prosecution.
- [10] At paragraphs 63-66 of the May 9, 2025 Decision, the panel therefore invited the IC to provide affidavit evidence and submissions within four weeks on a number of specific points arising out of the IC's April 9, 2025 correspondence and the issues surrounding the separation of adjudicative and prosecutorial and administrative responsibilities and information in a professional regulatory organization.

- [11] On May 21, 2025, counsel for the IC requested a four-week extension of the deadline, which we granted on May 23, 2025.
- [12] On June 20, 2025, the IC filed a notice of motion, supporting affidavit, written submissions, book of authorities and proposed order.
- [13] In her affidavit, the General Counsel, Professional Regulation stated that its “purpose...[was] to provide evidence relating to Eric Fincham in light of the Panel’s [May 9, 2025] Decision...” In response to the panel’s request for information on the IC’s efforts to contact the Respondent, she advised that the IC had hired an investigator in May 2025 to attempt to locate him. The investigator advised the IC on June 3, 2025, and provided written confirmation from a funeral home on June 12, 2025, that Mr. Fincham had died on January 27, 2025, prior to the penalty hearing.

### **ORDER REQUESTED**

- [14] Based on this information, the IC asked for an order
- a. “Permanently staying these proceedings or, in the alternative, issuing an abatement order”;
  - b. “Setting aside” the Panel’s May 9, 2025 Decision;
  - c. Confirming that the requested order does not affect the December 10, 2024 merits decision; and
  - d. Confirming that the publication ban ordered by the panel at the merits hearing, protecting the names of the complainants and persons whose patent annuities were at issue, remains in effect.

### **ANALYSIS**

- [15] Our conclusion incorporates the substance of what the IC has requested, although the reasoning that follows departs from the submissions put forward by the IC in certain respects.
- [16] The fourth order, for a continuation of the publication ban, appears superfluous, because it remains in effect. In any event, its extension follows as a matter of logic. We ordered the ban as a limited exception to the open courts principle that governs most civil, criminal and regulatory proceedings. Indeed, the limited exception of a publication ban covering the names of clients is also prevalent in most professional regulatory proceedings.
- [17] Clients (and associated complainants, as in this case) have significant privacy and confidentiality interests. These interests should not be sacrificed when their

names are unimportant for a public understanding of a proceeding in which they are not the parties. Rather, the case is brought forward by the College prosecution to protect the public interest and take appropriate action against the other party, a regulated professional. The privacy interests of the clients and complainants remain unchanged with the death of the member between the merits and penalty hearings.

- [18] The procedural and substantive consequences of a party's death for the pending proceeding or appeal have been considered in a variety of legal contexts: civil and human rights cases (where the general rule is that an individual party's executor or personal representative can continue the litigation)<sup>2</sup>, regulatory and criminal.
- [19] On the last three requested orders, the IC acknowledged that none of the regulatory authorities it provided dealt with the circumstances we are faced with: a party's death that occurred after a merits decision, but (unbeknownst to the other party and the tribunal) before a penalty hearing was held and a decision released. Several of the regulatory discipline cases cited by the IC dealt with two other situations: where a respondent died, and the regulator and the tribunal were notified, after a proceeding was commenced but before any hearing took place<sup>3</sup>, or after a merits hearing but before a finding was made<sup>4</sup>.
- [20] Criminal cases involve a finding of "misconduct" and a "penalty", so there is a possibly useful analogy, but the decisions provided by the IC do not hold that the criminal jurisprudence on abatement is binding on professional discipline tribunals. The decisions submitted to us also do not deal with a sentencing or penalty hearing having been held without the court's or the Crown's knowledge that the accused had died. Nevertheless, the criminal cases submitted by the IC (dealing with the accused individual's death after conviction but before sentencing<sup>5</sup>, or after sentencing but before a decision on appeal<sup>6</sup>) are based on a seminal case in the Supreme Court of Canada, and we would apply similar reasoning in the circumstances presented by Mr. Fincham's death.
- [21] In our view, the relevant principles, adapted to the regulatory discipline context, were stated by the Supreme Court in *R. v. Smith*,<sup>7</sup> a criminal appeal case.
- [22] *Smith* again involved an accused who was convicted and sentenced but died while his appeal was pending. The Crown moved to abate the appeal, arguing

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<sup>2</sup> See for example *Morrison v. Ontario Speed Skating Association*, 2010 HRT0 1058

<sup>3</sup> *Ontario (College of Pharmacists) v St-Denis*, 2017 ONCPDC 10; *Ontario (College of Pharmacists) v Savji* 2015 ONCPDC 24 (allegations however remained on the record)

<sup>4</sup> *Ontario (College of Pharmacists) v Sharma*, 2021 ONCPDC 18

<sup>5</sup> *R. v. RJC*, 2020 NBQB 129. See also *Machtmes RD (Master Seaman)*, *R v*, 2021 CanLII 41835, a General Court Martial decision.

<sup>6</sup> *R. v. MacLellan*, 2019 NSCA 2

<sup>7</sup> 2004 SCC 14, [2004] 1 SCR 385

- [23] The court noted<sup>8</sup> that a similar argument was adopted by the Quebec Court of Appeal in exercising its discretion to hear an appeal following the accused's death where there was fresh evidence that the only incriminating evidence (the accused's confession to a police officer) was extracted by physical violence.
- [24] The Supreme Court made clear that the conviction itself could not be abated by a court following the accused's death. The court, however, retained jurisdiction to proceed with the appeal "in the interests of justice", which is a jurisdiction that should be sparingly exercised.<sup>9</sup>
- [25] The court applied the familiar *Borowski*<sup>10</sup> criteria on mootness to determine whether the proceeding should continue despite the death of the most affected individual. Adapted to the criminal context, the Supreme Court ruled:

1. whether the appeal will proceed in a proper adversarial context;
2. the strength of the grounds of the appeal;
3. whether there are special circumstances that transcend the death of the individual appellant/respondent, including:

<sup>10</sup> *Borowski v. Canada (Attorney General)*, [1989 CanLII 123 \(SCC\)](#), [1989] 1 S.C.R. 342

(a) a legal issue of general public importance, particularly if it is otherwise evasive of appellate review;

(b) a systemic issue related to the administration of justice;

(c) collateral consequences to the family of the deceased or to other interested persons or to the public;

4. whether the nature of the order which could be made by the appellate court justifies the expenditure of limited judicial (or court) resources to resolve a moot appeal;

5. whether continuing the appeal would go beyond the judicial function of resolving concrete disputes and involve the court in free-standing, legislative-type pronouncements more properly left to the legislature itself.

51 What is necessary is that, at the end of the day, the court weigh up the different factors relevant to a particular appeal, some of which may favour continuation and others not, to determine whether in the particular case, notwithstanding the general rule favouring abatement, it is in the interests of justice to proceed. (emphasis added)

[26] Applying the Supreme Court's reasoning, we reach the following conclusions.

[27] First, the Respondent Mr. Fincham's finding of professional misconduct will stand. The member's death after our merits finding does not alter our conclusion, already publicly disseminated and reported, that Mr. Fincham breached his duty to cooperate with the College. That conclusion will remain on the public record, like any other finding of professional misconduct, after a member's death. In other cases, the penalty would usually be issued during the lifetime of the member, and it too would remain in place as a final decision following the member's death. In Mr. Fincham's case, there is only a merits decision at this point, and it remains valid.

[28] Second, the Application before this panel did not abate simply because of the death of the Respondent. The panel retains jurisdiction, and must exercise its

discretion to determine whether there are special circumstances that make it “in the interests of justice” to proceed, bearing in mind that this is a jurisdiction to be sparingly exercised.

- [29] Third, as it pertains to the individual determination of the appropriate penalty that would be imposed on Mr. Fincham, there are no special circumstances that justify a continuation of this proceeding.
- [30] The panel’s decision on penalty would be guided by the familiar objectives and principles that govern professional regulatory discipline.
- [31] Without listing and discussing all of them, the criteria of specific deterrence and rehabilitation are obviously irrelevant to a deceased licensee.
- [32] Other penalty objectives remain relevant. General deterrence – showing the profession the outcome that can result from a licensee’s misconduct and warning against similar behaviour – and the related considerations of maintaining confidence in the profession, and in the College’s regulation of the profession in the interests of public protection, remain ongoing despite Mr. Fincham’s death. This is particularly relevant because the disciplinary jurisprudence of this College is in its formative stages; this is only the third Application, and the first Application that was not on consent, to be put before this Committee under the governing legislation.
- [33] On balance, we would not exercise our discretion to proceed with the individual penalty decision that was being considered at our April 4, 2025 hearing. The jurisprudence on the appropriate penalty for a first finding of failure to cooperate is well established in other regulated professions. Given the sequence of events, the Respondent’s non-participation at the merits hearing, and the lack of information before the panel about the methods of service that were available to the IC following the merits decision, we are not in a position to reach a fair and informed decision that would properly address the College’s submission on penalty that Mr. Fincham was ungovernable and revocation of his license should be ordered.
- [34] The service issues occupied the first part of our May 9, 2025 Interim Decision, and we exercise our discretion not to pursue them, or the underlying substantive determination of the appropriate penalty, any further.
- [35] The second part of our May 9, 2025 Decision is different in kind. Borrowing from the Supreme Court’s enumeration of relevant factors as listed above, our concerns raise issues relating to the proper functioning of three entities: the DC, the IC and the College as an institution. In Appendix A, we addressed the acceptable lines of demarcation and confidentiality of information in proceedings such as this in which the IC is a party before the DC; the DC is



required to conduct its proceedings and make decisions independently of the IC and College officials; and the College is the umbrella organization under which the IC and DC are created and operate.

- [36] These are significant issues of “general public importance” and “systemic issues related to the administration of justice” that would appear to justify “the expenditure of limited [quasi-] judicial resources”, and that because of Mr. Fincham’s death may be “otherwise evasive of appellate review”, and may therefore “transcend the death of the Respondent”,
- [37] That said, the IC’s affidavit has informed us without elaboration that these issues are being considered internally. The IC has not addressed our concerns within the original or the extended deadline in our May 9, 2025 Decision, presumably because the IC regards, and has indeed submitted that we should declare, that decision to be “void”, and moreover, as a result, “there is no requirement under the *College of Patent Agents and Trademark Agents Act* that it be published.”
- [38] Having considered the IC’s submissions in light of the jurisprudence and its application to the regulatory context, we reach the following conclusions.
- [39] First, the jurisprudence does not support the assertion that the May 9, 2025 Decision was or is “void”. Indeed, the cases do not use that description, and the Supreme Court’s decision in *Smith* has clarified that the DC had jurisdiction.
- [40] Second, for the following reasons, there is no basis for the claim that the May 9, 2025 decision should not have been, and should not now, be published:
- a. The decision was not void, and does not need to be “set aside”. It is our task, as stated in this decision, to determine whether any of the issues and directions left outstanding in the May 9, 2025 Decision should in our discretion be pursued. Our exercise of discretion with respect to the individual issues in the May 9, 2025 Decision is stated above, and our exercise of discretion with respect to the systemic issues is stated below.
  - b. The panel was not asked, and did not direct the Registrar to withhold the May 9, 2025 Decision and its reasons from the public. To the contrary, the panel chair’s direction to DC staff in providing the May 9, 2025 reasons for release was “It is vitaly important that no-one at the College is involved in this confidential process of release other than [the DC Chair] and you and our panel.” The Registrar is also the CEO of the College and is referred to along with other College officials in the April 9, 2025 letter and the May 9, 2025 Decision that raised the panel’s systemic concerns about the College.

- c. The open court principle, and the public interest in transparency, both of which bind this Committee and have been the subject of much jurisprudence at the court and tribunal level, dictates the release and publication of the Interim Decision. As the Chair of the Law Society Tribunal wrote in the leading decision relating to the analogous situation of lawyer discipline: “Openness is particularly important for the Law Society Tribunal as part of a self-governing profession. Proceedings must be transparent so that members of the public and of the profession are aware of and can have confidence in the impartial and fair resolution of issues that come before us....[Quoting a Task Force report,] ‘The public, the profession and the media have become increasingly interested in matters that Law Society panels hear and in their orders and reasons.’”<sup>11</sup>
- d. Even if the May 9, 2025 Decision were, or were later found to be, decided without jurisdiction, it would be one of many published decisions in that category on CanLII or other reporting services from virtually every court and tribunal. The setting aside (as the IC requests in this case) of a Tribunal decision occurs from time to time, and that has nothing to do with whether the decision is published. The decision exists. Indeed, it was a public decision as of May 9, 2025, and was or could have been disseminated since then.

[41] Since the May 9, 2025 Decision was not published, we have summarized and attached it verbatim to these reasons to ensure that it is publicly available and that these reasons are understandable. Therefore, there is no necessity to order the May 9, 2025 Decision to be published separately at this point.

[42] Third, given that this panel’s reasons on the “systemic” issues are public, and will be published in this final decision, we regard our mandate and our function as a panel of the DC as completed at this point.

[43] As noted, the IC and the College administration have been made aware of our concerns. Our reasons stand on their own, and it is not necessary in the context of this Application to compel further input from the IC, which as noted has not provided a response regarding the steps taken by College and IC representatives in relation to our panel’s deliberations following the April 4, 2025 hearing.

[44] Our exercise of discretion with respect to the systemic issues that are described in Appendix A is guided by several of the principles in the *Smith* decision that

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<sup>11</sup> *Law Society of Upper Canada v. Xynnis*, 2014 ONLSAP 9, at para 12

we have adopted. While the systemic issues raise matters of public importance, the IC's affidavit suggests they are being addressed, and we anticipate that the DC will be updated as this takes place. For that reason, the expenditure of further resources by a quasi-judicial DC panel may not be necessary.

## **ORDER**

[45] We therefore order:

- a. The Discipline Committee confirms its finding of professional misconduct as stated in its merits decision dated December 10, 2024;
- b. The Discipline Committee confirms that the publication ban ordered earlier, prohibiting the publication in any document or broadcast or transmission in any way of the names of the complainants and persons whose patent annuities were at issue, remains in effect; and
- c. This final decision with the May 9, 2025 Reasons for Decision reproduced as Appendix A below shall be translated and published on CanLII;
- d. In the exercise of the Committee's discretion, this Application is stayed as of today's date and will not proceed to a penalty and costs determination.

[46] The panel's May 9, 2025 Reasons are incorporated into these final reasons and reproduced in the following pages, followed by the conclusion of this final decision.

## **APPENDIX A – THE MAY 9, 2025 REASONS FOR DECISION**

### **INTERIM DECISION RELATING TO PENALTY AND COSTS**

#### **STATUS OF THIS PROCEEDING**

- [1] Following the Committee's decision on the merits on December 10, 2024<sup>12</sup>, we scheduled a hearing on April 4, 2025 to consider the appropriate penalty and costs order.
- [2] The College of Patent Agents and Trademark Agents seeks the revocation of the respondent Eric Fincham's license based on a finding of ungovernability, together with a costs order of \$26,941.74 against him.
- [3] At the conclusion of the hearing, we reserved our decision.
- [4] Following the hearing, the panel deliberated and decided to issue an interim decision to address two issues that were not canvassed by the College at the hearing: whether there were means to reach Mr. Fincham in advance of the hearing that might have been available to the Investigations Committee (IC) or the Discipline Committee (DC) staff; and the appropriate principles on which costs should be awarded at a federal regulatory tribunal where provincial rules appear to vary in a substantive way.
- [5] As set out in the Addendum below, before this interim decision could be released, the panel received unexpected correspondence from the IC on April 9, 2025 that requested a response from the panel.
- [6] We will therefore set out the reasons for our interim decision, and then we address the correspondence from the IC in an Addendum.

#### **COMMUNICATION AND SERVICE ISSUES**

- [7] In the six weeks before the April 4 hearing, the College served the respondent with about ten communications containing correspondence, notices, and successive iterations of its documents and submissions. There was no reply from the respondent, and he did not attend the April 4 hearing or otherwise get in touch with the College or the Committee.
- [8] From the service affidavit filed by the College at the hearing, we summarize the communications sent by the College to Mr. Fincham as follows:

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<sup>12</sup> *College of Patent Agents and Trademark Agents (CPATA) v Eric Fincham*, 2024 CPATA 3

February 20, 2025: College counsel sent emails to Mr. Fincham and his assistant Barbara Duffus, alerting him that the College was seeking revocation, and confirming the hearing arrangements. The email deliveries both failed.

February 21 and 28, 2025: College counsel sent emails to Mr. Fincham and Ms. Duffus, providing the College's proposed order and book of authorities on penalty, and its brief, authorities and proposed order to pay costs of \$24,304.58. The College "strongly encouraged" Mr. Fincham to attend the hearing, as it could proceed in his absence otherwise. Both email deliveries, to both addressees, failed.

March 3, 2025: College counsel sent a letter by email to Mr. Fincham and Ms. Duffus, and by regular mail to Mr. Fincham. The College enclosed the previous three pieces of correspondence, and stated it would seek a penalty of a reprimand and the revocation of his license based on ungovernability. The email deliveries failed, and the letter was returned on March 14 with a note saying the address was "inexistent".

March 4 and 12, 2025: the College filed its penalty and costs materials on TitanFile, the College's online file sharing platform, and says the parties "would have been automatically notified of same."

March 11, 2025: the College notified the Committee and the respondent that the College would be filing amended materials. College counsel copied Mr. Fincham and Ms. Duffus by email, and both email deliveries failed.

March 25, 2025: College counsel again emailed Mr. Fincham and Ms. Duffus to say it would be amending and updating its costs materials. Both email deliveries failed.

March 27, 2025: College counsel emailed Mr. Fincham and Ms. Duffus to provide the College's "finalized penalty and costs materials", consisting of the amended versions of the five documents previously sent on February 21 and 28, 2025. Again, both email deliveries failed.

[9] In all cases, the College sent its emails to [efincham@ericfincham.com](mailto:efincham@ericfincham.com) and [bduffus@ericfincham.com](mailto:bduffus@ericfincham.com). It referred to these email addresses in its service brief as "the Email Address". The letter on March 3, 2025 was sent by regular mail to 871 rue Shefford, Bromont J2L 1C4, which the College referred to as the "Last Known Address". The service brief indicated that this contact information, and the phone number of 450-534-0094, are the information provided by the respondent that the College has in his public register profile on file.

[10] The College relied on its previous service affidavits, executed on March 8 and September 27, 2024, which traced the information it has had and the attempted

communication it has carried on with the respondent since this application began in 2023.

- [11] The three service affidavits show the following.
- [12] The last known address on file with the College is in fact the street address quoted above, with the addition of Suite 304.
- [13] The College's internet search on December 29, 2023 noted that the respondent's website [ericfincham.com](http://ericfincham.com) listed the same street address without the suite number. However, correspondence sent by the College that day was successfully delivered to both addresses, with and without the suite number.
- [14] On February 23, 2024, the College received an affidavit of attempted service from its process server stating that correspondence could not be delivered to either street address, with or without the suite number, because the building had been renovated, Suite 304 no longer existed, and Mr. Fincham did not reside in that building. The process server was also unable to reach the respondent at 450-534-0094.
- [15] The College's Google search on March 5, 2024 shows the street address, without the suite number, of 871 rue Shefford, Bromont J2L 1C4. The search indicates an email address of [efincham@ef-co.com](mailto:efincham@ef-co.com).
- [16] There is no indication of any participation by the respondent in the prehearing conferences and hearing that followed in 2024.
- [17] On May 15, 2024, the Discipline Proceedings Coordinator notified College counsel that she was unable to reach the respondent or Ms. Duffus at the phone numbers on file for them.
- [18] Emails from College counsel were delivered to Ms. Duffus on May 30, September 24 and 27, 2024, but the College has received failed delivery notices in response to communications after the October 2, 2024 merits hearing.
- [19] Delivery to the respondent at the email on file with the College has not been successful since prior to the merits hearing on October 2, 2024.
- [20] In summary, the evidence indicates
  - a. Since at least the merits hearing on October 2, 2024, the College has served the respondent by email at addresses for Mr. Fincham and Ms. Duffus that were provided by Mr. Fincham some time ago at which emails were known to be undeliverable.

- b. The College has sent materials to the respondent at a street address and location that has also not been used by Mr. Fincham since at least February 23, 2024.
- c. The College has not attempted to contact Mr. Fincham or Ms. Duffus by telephone since at least February 23, 2024.

- [21] There is no doubt that as a general rule, a professional regulator is entitled to rely on the contact information that a member has provided, and it is the member's responsibility to keep such information current.
- [22] The panel's concern arises because of the particular circumstances of this case. As noted, the College served or transmitted documents to the member using contact information that was known to be outdated or otherwise non-functioning. At the hearing, moreover, the College conveyed that it was seeking the revocation of Mr. Fincham's license, even though he has no disciplinary history, and his offence in most circumstances would yield a short suspension. The College submitted that we should impose the most serious penalty because Mr. Fincham had shown himself to be ungovernable, and this was in large part due to his failure to participate in this disciplinary proceeding, including at the penalty and costs hearing.
- [23] In these circumstances, we concluded that it is important to answer several questions, if possible: what steps were and are reasonably available to provide notice to Mr. Fincham; what steps were in fact taken in light of the available knowledge; and should the panel order any additional steps now in order to ensure if possible that Mr. Fincham receives adequate notice of the penalty and costs proceeding?
- [24] Of course every penalty determination is fact-specific, and we have not made any determination at this point.
- [25] Rather, the issue at this stage is to ensure that all reasonable steps are taken to ensure that the respondent receives notice of this proceeding.
- [26] To that end, the panel chair was in touch with the Discipline Proceedings Coordinator Vicci Sakkas several times, stretching back to the release of the merits decision, as well as immediately after the penalty and costs hearing, regarding the efforts Discipline Committee staff were making or could make to ensure that correspondence, notices and decisions from our panel were reaching the licensee.
- [27] The panel understands that in the afternoon following the April 4 hearing, Ms. Sakkas did a standard internet search, without any request on the part of the chair of the panel, which elicited the following street address and phone number

for an Eric Fincham in Bromont: 118 Carredes Loyalistes, Bromont, QC J2L 0R9 and a phone number of 450-919-1361.

- [28] The panel has not done any investigation on its own, and the panel has not accessed the information in the preceding paragraph or the email address that appears in the IC's own service brief at page 16: [efincham@ef-co.com](mailto:efincham@ef-co.com). It is up to the Discipline Committee staff to take appropriate steps to facilitate the administration of DC hearings, and it is up to the IC to take reasonable steps to provide notice and relevant material to Mr. Fincham.
- [29] To that end, the panel asks the Investigation Committee to advise us by way of affidavit evidence and submissions within four weeks of the release of this Interim Decision:
- a. Whether it has made any efforts to date to locate Mr. Fincham, using contact information other than what the IC has submitted in the record it filed with us, either before or after the penalty hearing on April 4, 2025. We include in this inquiry the email address that appears in the service brief at page 16, as well as the address and phone number that Ms. Sakkas obtained on April 4.
  - b. The result of those efforts, if any.
  - c. The IC's submission on what additional steps are reasonable in the circumstances, having regard to the importance of this stage of the proceeding to Mr. Fincham, and taking into account the respondent's own responsibilities and his own actions during this proceeding

- [30] Once we have that information and position from the IC, we may give further procedural direction.

## **COSTS**

- [31] In this first contested hearing before the Discipline Committee, the College asked for costs and provided us with some jurisprudence from Quebec, where the respondent was located, and from other Canadian provinces.
- [32] We understand that costs principles may vary across different provinces, in that fee recovery, partial or otherwise, may not typically be awarded in Quebec, while it is a standard provision where costs are awarded in legal proceedings in other provinces.
- [33] We are therefore providing advance notice that we may need to receive submissions on this point, which the College did not address at the hearing.



- [34] We say “advance notice”, because we intend to first deal with the service issue we discussed above, and to determine whether anything further is appropriate in that regard to give Mr. Fincham notice. We will make that determination and any procedural directions that flow from it before receiving costs submissions from one or both of the parties.

## **ADDENDUM**

- [35] This addendum is written based on the information available to the panel at this point. We set out certain aspects of the adjudicative process we followed, which we understand to be typical of administrative tribunals, including disciplinary bodies operating under the umbrella of professional regulators.
- [36] We provide this background to enable the reader to understand the context in which we received IC counsel’s letter of April 9, 2025, expressing an objection with the imprimatur of the CEO and the IC of the College, among others. We provide some information about the confidential steps the panel has taken in this case (again, all typical of such adjudicative and deliberative processes) because some of this information, we learned from the April 9 letter, has found its way into the hands of the prosecution and the senior executive of the College. Indeed, some of the communications between DC staff and the DC panel chair were quoted back to the DC by IC counsel in counsel’s letter of April 9.
- [37] The panel has worked with the DC’s staff throughout this and other discipline proceedings with the understanding and on the basis of entrusting confidential, independent and privileged adjudicative and deliberative information and documents to them by email or phone communications. Ms. Sakkas and a colleague who also assists the DC use the email address Coordination – Discipline <[coord-discipline@cpata-cabamc.ca](mailto:coord-discipline@cpata-cabamc.ca)>. In this case, it was Ms. Sakkas who was assisting the panel, so we refer to her below in discussing the panel’s process.
- [38] This panel, and the DC more generally, has no other staff before, during or after its hearings to assist it in doing its adjudicative work.
- [39] Ms. Sakkas regularly has access to information protected by deliberative privilege, and the DC could not otherwise do its work. By way of example, to illustrate the expectations of the panel regarding confidentiality and deliberative privilege, when the confidential draft reasons for the merits decision were written last fall, they were sent to Ms. Sakkas for confidential processing, revision by panel members, and finalization. Only then were the reasons made available to the parties. Thereafter Ms. Sakkas sent the panel a confidential draft translation that the panel reviewed, revised and approved for release.

- [40] In the following weeks, the panel chair communicated by email several times with DC staff to ensure that staff was taking reasonable steps, on behalf of the DC, so that the merits reasons, and then the notice and arrangements for the scheduling of the penalty and costs hearing, would reach Mr. Fincham.
- [41] For two weeks prior to the April 4 penalty and costs hearing, the panel chair again corresponded with Ms. Sakkas about what notifications and other correspondence she had sent to the licensee to advise him the hearing was proceeding, and to confirm what had been filed by the IC and when.
- [42] At the April 4 hearing, the College submitted that Mr. Fincham's license should be revoked on grounds of ungovernability. Following the hearing, the panel deliberated, and then the panel chair contacted Ms. Sakkas about the same point: confirmation of what the DC staff could and did do to get materials to Mr. Fincham.
- [43] The College's evidence at the hearing was that it was unable to locate Mr. Fincham at the street address, phone number and email coordinates that it had on file and was using in this case. The College provided its information about the efforts it made going back over several years to serve documents and send correspondence to the respondent. The College also provided evidence, on information and belief, about the efforts that Ms. Sakkas (and more generally the DC) had made to correspond with Mr. Fincham about documents and arrangements prior to the April 4 hearing.
- [44] The panel chair therefore asked Ms. Sakkas to confirm how she (or more generally the DC or anyone else) could attempt to locate a licensee such as Mr. Fincham. The Chair wrote:

Can you also give me any information you can find out on how a licensee (or anyone else) can be located in order to serve documents such as the ones that the Committee and the College sent to the email, phone and street addresses that Mr. Fincham has on file. The panel is concerned about this, and we may give further direction to the College before revoking Mr. Fincham's license. In Ontario there are driver's license searches or other tracing methods that the Law Society uses in such situations. [Panel member] Benoit [Yelle] says driver's license searches are not available in Quebec, and the Barreau asks an investigator.

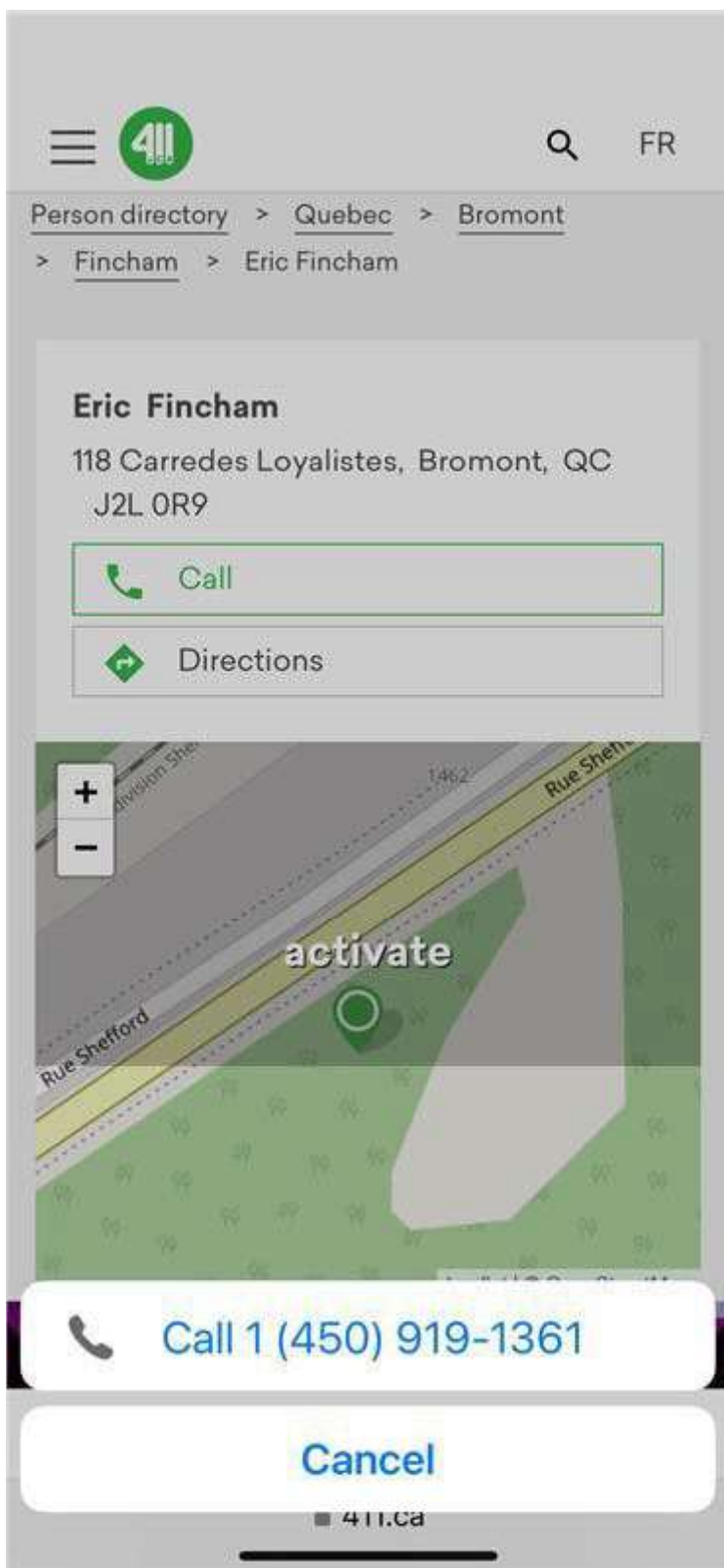
To be clear, I am not asking you to speak to the College about this.

- [45] The last line was written to confirm that the panel was making a confidential inquiry for purposes of its deliberations, which had not concluded. Therefore it

was important for the panel chair to emphasize to Ms. Sakkas, who has College duties beyond her role as Discipline Proceedings Coordinator, the need to maintain adjudicative and deliberative privilege in providing only the panel with information within her knowledge as Coordinator, for the panel's consideration.

- [46] The panel chair also reiterated to Ms. Sakkas that the DC and the IC (in other words, the adjudicator and the prosecution) have independent but different obligations, for their respective purposes, to take reasonable steps to notify parties before the DC.
- [47] The DC is required to hold fair and expeditious hearings, and for that purpose, it has an obligation to provide reasonable notice of its hearings to the parties. The panel chair was inquiring about what had been and could practically be done, from the perspective of the DC. Any panel direction to or inquiries of the IC or its counsel would be done through a decision of the DC.
- [48] The panel chair did not ask Ms. Sakkas to perform any search.
- [49] Ms. Sakkas replied the same afternoon of April 4:

Re: finding any individual, I am not sure. I have done random searches for Eric Fincham over the past year and came up empty handed. When I got your message, I was on my phone and did another search. Result pasted below. I don't know if this is him.



- [50] At that time, and to this day, the DC panel members have made no effort to reach Mr. Fincham using the phone number and address forwarded by Ms. Sakkas on April 4, 2025, or using the email address that the IC provided in its service material at page 16 but did not refer to at the hearing, or in any other way.
- [51] Following their deliberation on April 4, the panel chair consulted with his panel and the DC Chair about the form that any direction to the IC about service should take. The panel chair then advised Ms. Sakkas and the panel that he would write an interim decision, which appears above in its final form, to address the following issue: given the service issues that had arisen, the DC would ask what steps the IC had taken, and what additional steps it should or could take to ensure Mr. Fincham had proper notice before the panel considered the IC's request to revoke his license.
- [52] Just as that draft interim decision was being completed, the panel received IC counsel's April 9, 2025 letter, making assertions about the conduct of the panel, and attaching portions of email exchanges between the panel chair and Ms. Sakkas. These included some of the panel chair's directions to Ms. Sakkas during the panel's deliberations. The letter apparently expressed a complaint on behalf of CPATA, its IC and its CEO that the DC panel had exceeded its proper function by making inquiries about service issues. At the same time, the IC alleged that the DC had committed a "breach of deliberative privilege."
- [53] The IC made no submission about how the situation it raised might be resolved.
- [54] The April 9 letter states:
- We have conferred with the Chair of the IC and CPATA's CEO with respect to this matter, who are of the view that discussing the Panel's deliberations with Ms. Sakkas, and seeking additional factual information from Ms. Sakkas without giving notice to the parties, clearly raises serious concerns. In addition, the IC and CPATA's CEO are quite concerned about the Chair's admonition in his first email not to advise the College about the Panel's request. Ms. Sakkas is an employee of the College, and the information sought from her by the Discipline Committee Chair went beyond the administrative support role of Discipline Proceedings Coordinator, and into areas relating to the College's operations and how it had sought to locate Mr. Fincham. In reviewing the email correspondence from the Chair of this DC Panel with Ms. Sakkas, it is clear that, in addition to the breach of deliberative privilege, the Panel has on its own sought out evidence that was not led at the hearing. These events, individually and certainly combined, raise serious concerns about the processes undertaken by the Panel.

- [55] The correspondence indicates that it was being written on behalf of the senior management of the College which had appointed the DC and our panel members. The letter stated that at least the following individuals - the CEO of CPATA, Juda Strawczynski; the Chair of the IC; the General Counsel, Professional Regulation of CPATA, Victoria Rees, who was present at the hearing and who, according to CPATA's website, "manages...complaints investigation and prosecution..."; and the two outside counsel to the IC – had requested, received, reviewed and/or quoted back to the DC panel the confidential correspondence during deliberations between the panel and the CPATA staff member who was assisting the panel.
- [56] The panel did not receive any request for permission to forward, or for anyone beyond Ms. Sakkas to read, the panel's correspondence with Ms. Sakkas. The April 8 letter appears to assert that Ms. Sakkas – the only adjudicative staff member assisting the panel – had no obligation to respect adjudicative confidences, and was entitled – indeed required – to send the prosecution, and her superiors in CPATA administration, the correspondence between her and the chair of the adjudicative panel.
- [57] When they received this correspondence, none of these individuals advised the DC that they had read correspondence written under deliberative privilege. There is no indication that they destroyed this correspondence upon receiving it.
- [58] The letter from counsel for the IC, on behalf of the College and these individuals, appears to assert that based on descriptions of job functions in a handbook, the staff that the DC relies on to facilitate and conduct hearings is an employee of the College who is entitled to share information and communications sent between the DC and staff in the DC's adjudicative capacity with the prosecution. The justification appears to be that DC staff have other, non-DC, duties within the College.
- [59] The panel's understanding of the regulatory sector and the governing jurisprudence is that such shared arrangements frequently occur in regulatory bodies, where some members of staff perform both operational and adjudicative responsibilities. Subject to any submissions from the College in this case, those sharing arrangements appear consistent with the guidance of the Supreme Court in *2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool)*, 1996 CanLII 153 (SCC), [1996] 3 SCR 919 and subsequent cases. It is the panel's understanding that tribunal staff would typically be directed by their superiors to respect their obligation to maintain the separation of functions, and the deliberative privilege that accompanies it, in independent and impartial tribunals such as the DC.
- [60] If the IC wishes to address these principles of administrative and regulatory law, it should confirm whether it and the College administration take the position

(which seems to be the result in this case) that the DC has no administrative staff with whom this adjudicative tribunal can communicate in confidence about adjudicative matters. These matters would include the typical adjudicative activities that arose here, such as reviewing draft decisions (including this one), arranging hearings and notifying parties.

- [61] In communicating with the only available tribunal staff, the panel assumed that the College's structure complied with the independence and impartiality requirements of administrative tribunals. It is the panel's understanding, again subject to any submissions addressing these points, that measures must be taken to ensure a clear separation between the adjudicative and prosecutorial functions that is required by *Regie* and other governing jurisprudence when the adjudicative function is carried out under the umbrella of the College's administration as a whole.
- [62] The panel therefore invites the IC to provide the following within four weeks, in addition to the matters listed near the conclusion of the above interim decision.
- [63] First, the panel invites any affidavit evidence and submissions the IC wishes to provide with respect to the issues raised in this Addendum, to enable us to reach conclusions on the concerns that have been expressed.
- [64] Without limiting this invitation, with a view of clarifying the limits of the deliberation privilege that members of DC panels can rely upon, the IC is invited in its submission to address the actions of each of the listed individuals in accessing and relying on the panel's adjudicative communications and inquiries to staff. These include but are not limited to questions of whether structural arrangements created and implemented by the College that were apparently in place in this case are acceptable under established principles of administrative law, impartiality and independence, and professional ethics.
- [65] Second, the panel invites the IC to identify what relief, if any, it was or is seeking, arising out of its April 9, 2025 correspondence. Before reaching any conclusions on these points or making any further orders, the panel invites the IC to clarify its position.
- [66] Third, the panel seeks the IC's view on the specific steps the panel should take at this point, having regard to the issues raised in this interim decision and its addendum, to conclude the penalty and costs phase of this proceeding. Among other things, the panel invites the IC's submissions on whether and if so how Mr. Fincham should be notified of the IC's letter of April 9, 2025 and this interim decision and addendum, and given an opportunity to address the matters raised in these reasons.

[67] The panel may provide further direction to the parties after any additional evidence or submissions are received.


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[47] This concludes the DC's hearing of this Application. Today's final decision will be released to the IC, and once translation and publication are completed, the DC file can be closed.

**DATE ISSUED:**

July 9<sup>th</sup>, 2025

Panel of the Discipline Committee

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