



IPIC

**Sustaining Excellence:
A Modernized Regulatory Framework
for Patent and Trade-mark Agents**

Consultation Results

August 2010

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Consultation Results

1. Introduction

The Self-governance Committee and the Council of the Intellectual Property Institute of Canada (IPIC) are seeking to modernize the regulatory framework for patent agents and trade-mark agents. On May 27, 2010 a proposal for self-regulation of our profession was published on the IPIC website. Members of IPIC were then consulted during the period of May 27 to July 9, 2010 in a variety of ways:

- members were invited to answer an online survey;
- members were invited to send comments by e-mail;
- the President and the Executive Director gave presentations to local groups in Montréal, Ottawa, Toronto, Calgary, Edmonton and Vancouver;
- members of the Committee and Council spoke with colleagues in their firms.

The consultation yielded very positive results. Council therefore decided to continue with the project. The next step will be a decision at the Annual General Meeting on October 14th, 2010. If the decision is positive, it will be followed by discussions with CIPO.

Presented below are the results of the survey, followed by a summary of comments received via the survey, by e-mail, at the local groups and in the firms.

2. Survey Results

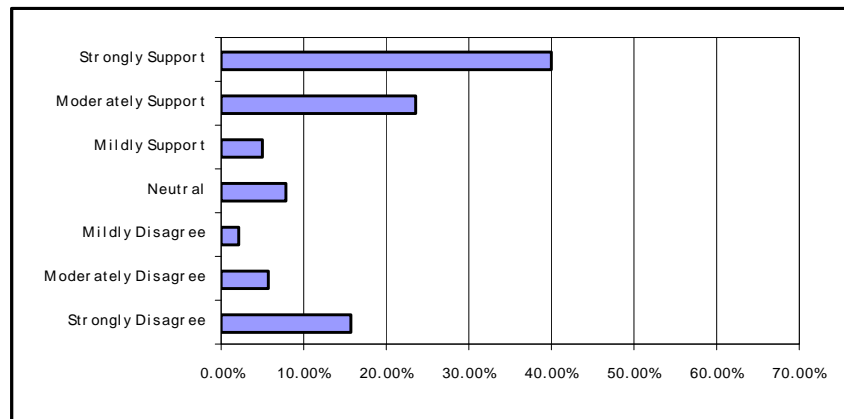
2.1 Overview

- 140 members completed the survey, and there were written comments from 49 members.
- The survey was not intended to be a scientific survey but one of many tools to obtain feedback from members about the proposal.

2.2 Survey Responses

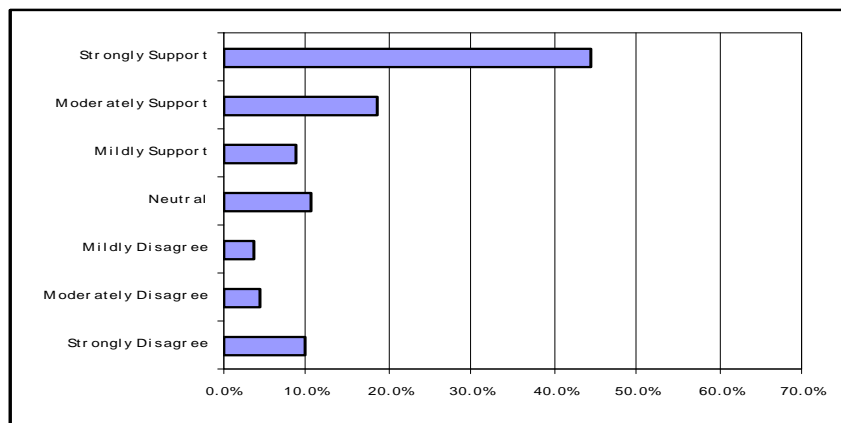
Q1. The profession, through IPIC, should become responsible for the establishment and management of a complete admission process as outlined in the proposal (understanding that CIPO will retain the registers of agents).

- 69% of respondents are in support (strongly, moderately or mildly).



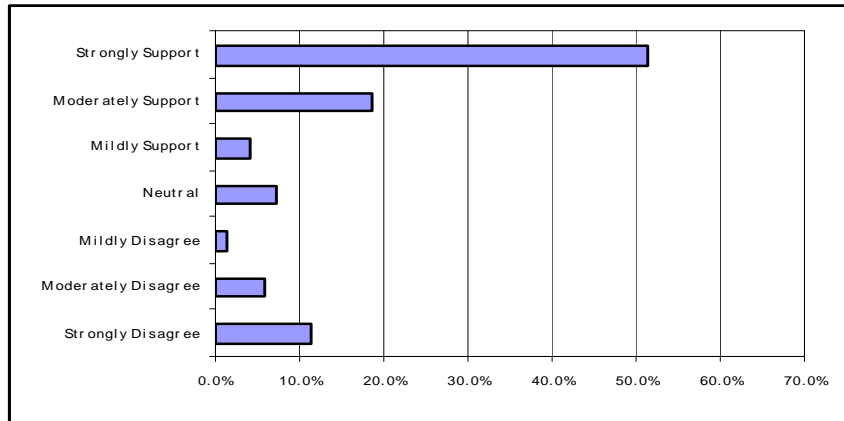
Q2. It is a good idea for IPIC and CIPO to set requirements for continuing professional development, as is done by other established professions.

- 72% of respondents are in support (strongly, moderately or mildly).



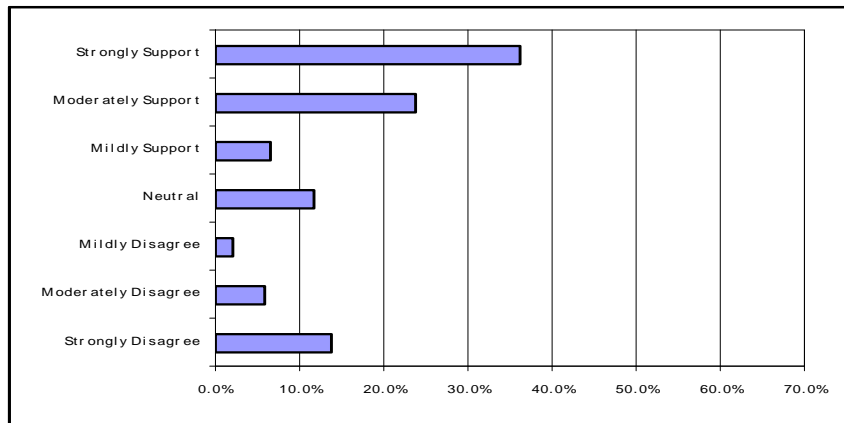
Q3. IPIC should maintain a mandatory code of conduct and a mandatory code of ethics for all agents (not only IPIC members).

- 74% of respondents are in support (strongly, moderately or mildly).



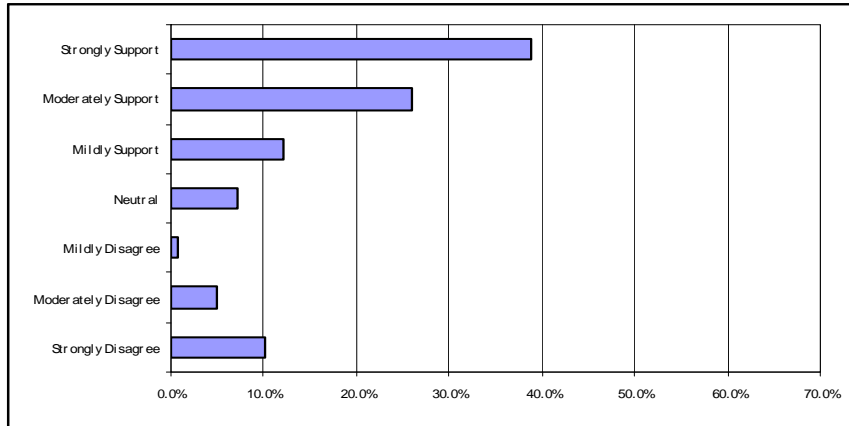
Q4. It is a good idea for the profession, through IPIC, to manage the process for the discipline of agents (understanding that CIPO will have the final say in decisions involving whether and how an agent will be subject to discipline after a fair review of a complaint).

- 67% of respondents are in support (strongly, moderately or mildly).



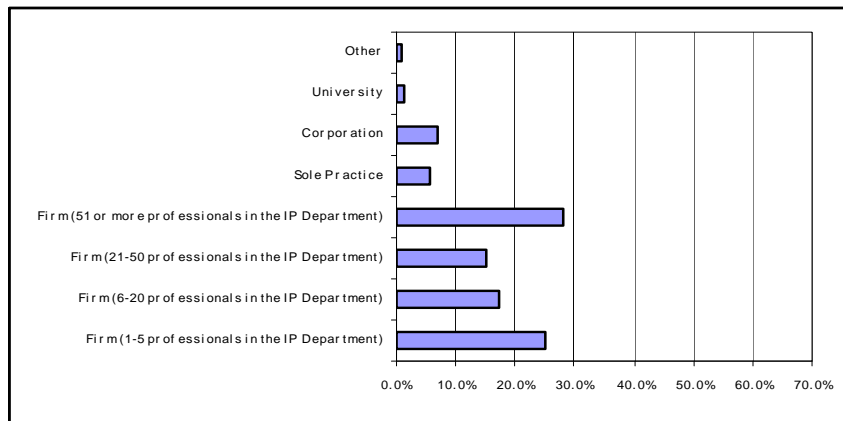
Q5. Many established professions have minimum insurance requirements, and our profession should have this as a mandatory requirement as well.

- 77% of respondents are in support (strongly, moderately or mildly).

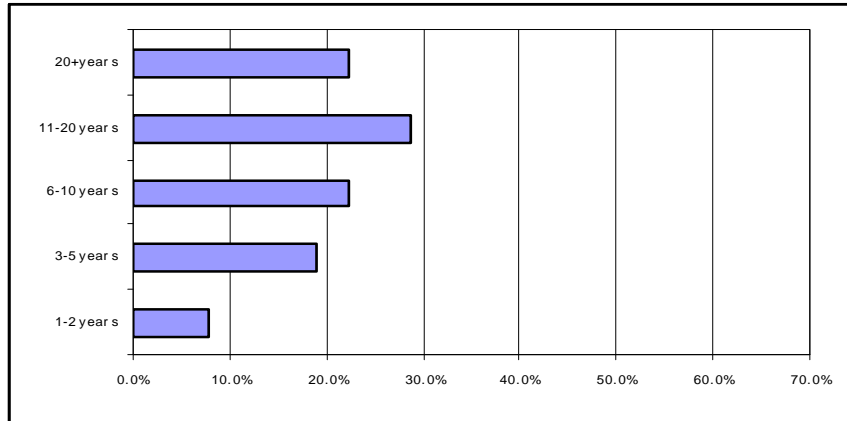


2.3 Participant Profile

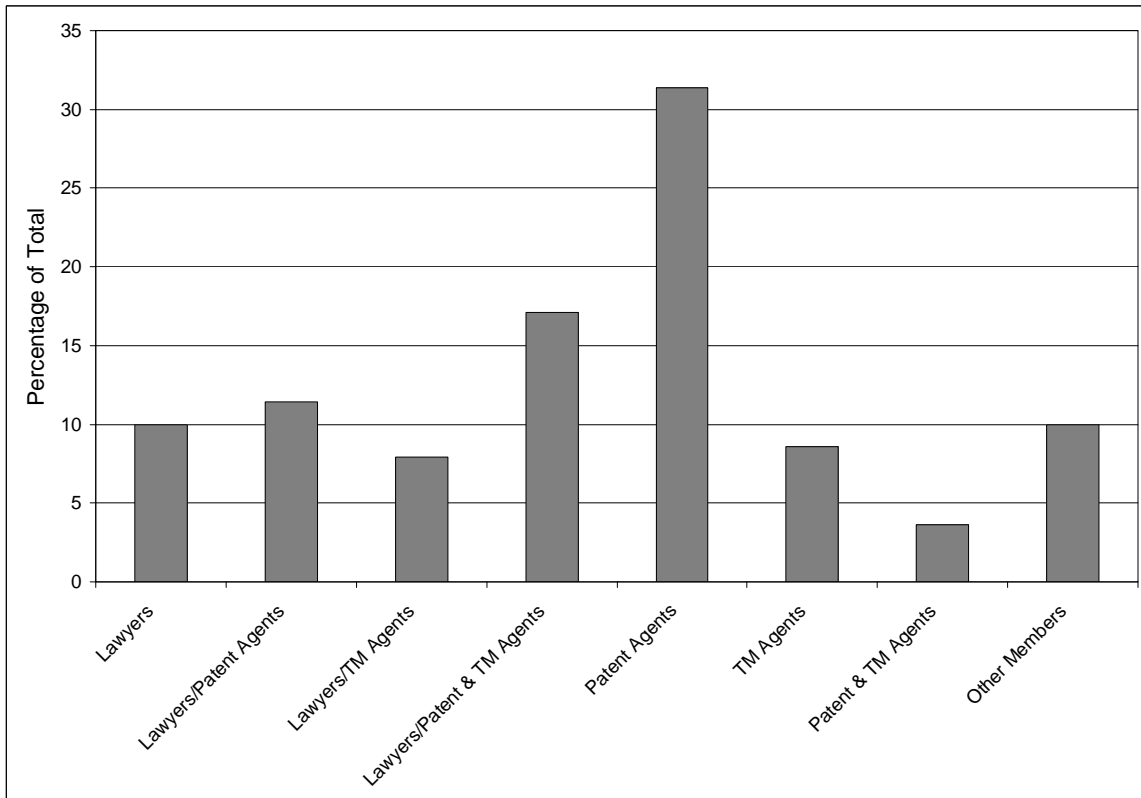
Work Environment



Time in Practice



Nature of Practice



Note: "lawyers" and "other members" include members in training to become agents.

3. Comments on Proposal

Comments were received via the survey, by e-mail and in person at local group meetings and through discussions in firms with members of Council and of the Committee. As reflected in the above results, comments ranged from very enthusiastic to very opposed. Comments and questions received, along with salient points and answers, have been organized into themes, as follows:

3.1 Admission Process

- There is strong support for a more complete admission process and more standardized training. Comments made by respondents indicate they feel this would benefit both trainees entering the profession and employers.

3.2 Maintenance in the Profession – General

- There is strong support for the establishment of requirements to maintain registration. Comments made by respondents indicate they feel this would underline the commitment of the membership to professionalism and integrity.

3.3 Maintenance in the Profession – Continuing Education

- Although some members disputed the value and necessity of mandatory CPD (an issue for debate not just within IPIC), there was support for this part of the proposal because it is consistent with trends regarding the requirement for CPD in other Canadian professions and for patent and trade-mark agents in other jurisdictions. It is thus a further demonstration of the level of professionalism of members of the profession.
- Some respondents asked that caution be exercised on how this is implemented, in particular to ensure availability, at reasonable cost, of professional development activities (e.g. online opportunities).
- The main concern expressed regarding continuing education was from lawyer-agents who already have CLE requirements and do not want to double these requirements. The answer to this

concern is that if lawyer-agents do their CLE in the area of IP, it should be eligible for credits by both the law society of which the lawyer is a member and by IPIC. IPIC courses are already accredited by law societies. The recommendation from this concern, for implementation, is to make it as easy as possible to account for the CPD and not make the administration an onerous task.

- Some engineer-agents asked if, in implementing this proposal, IPIC could examine the possibility of having some CPD opportunities that could answer the requirements of both IPIC and the engineering societies.

3.4 Maintenance in the Profession - Insurance

- There was support for mandatory insurance. Respondents saw it as both a benefit for the agents and for the clients. Since most, if not all, agents already have insurance, this requirement did not seem onerous.
- The main concern expressed was from lawyer-agents who were concerned about having to double their insurance. The answer to this is that if lawyers already hold professional insurance, they will not be obligated to have additional insurance. Some members did however caution that law society insurance may not cover all activities of lawyer-agents, depending on the nature of their prosecution work.

3.5 Code of Conduct

- Since members of IPIC already voluntarily abide to a code of ethics, most respondents saw implementation of a mandatory code of conduct for all agents to be a positive development. Members indicated they see this as a way to further enhance the professionalism of the profession. It was also seen as a possible asset to obtaining statutory protection of confidential communications between clients and their agents.
- Some asked how IPIC could enforce a code of conduct with non-members. The authority would be delegated by the government to IPIC through a change in the *Patent Rules* and in the *Trade-mark Regulations*.

- Concern was expressed about possible conflicts between the agent code of conduct and the codes of conduct for lawyers. This is certainly something that must be considered during implementation, but we do not anticipate that there will be any conflicts between the agent code of conduct and the lawyer codes of conduct since IPIC's current code is based on a code intended for lawyers. The majority of IPIC members are lawyers, who are therefore aware of the importance of this question.

3.6 Discipline

- The proposal of a clear and well structured discipline process which involves the profession and increases accountability of the profession was well supported.
- Questions were asked about IPIC's authority regarding non-members (see 3.5 Code of Conduct).
- Concerns were expressed about lawyer-agents having two discipline processes, one from the law society and one from IPIC. The intent is that IPIC would propose to the law societies that such disciplinary processes would be coordinated between the two organizations to avoid duplication.
- Concerns were expressed about the potential costs to IPIC of discipline proceedings. The additional revenue to IPIC from the transfer of part of the fees currently paid to CIPO by agents is intended to cover these costs. Over time, a reserve would be accumulated for an unusually expensive case. However, historically there have been very few complaints against agents.

3.7 CIPO's Continuing Role

- The majority supports the proposal. This proposal includes the maintenance of the registers by CIPO.
- Some respondents expressed the view that the current regulatory system administered by CIPO is adequate and did not support the proposal.

3.8 Expanding IPIC's Role

- The majority supports the proposal. This proposal includes a new regulatory role for IPIC.
- Concerns were expressed about IPIC holding both regulatory and advocacy functions.
- The first concern is from a public interest point of view (will the regulatory function be neglected?). The answer is that while some professions, such as lawyers, have separate organizations for these functions, many professions in Canada have only one body that does both. Furthermore, the continuing role for CIPO in the proposal provides government oversight that is not present in most professions.
- The second concern is from an IPIC member point of view (will the advocacy function be neglected?). The answer is that members of IPIC are highly involved in all aspects of IPIC's activities and therefore IPIC should be able to continue to properly serve its members in all areas notwithstanding the additional responsibilities that regulation would entail.
- However, were either of these concerns to become reality, this proposal does not preclude the creation of a separate regulatory body in the future. In fact, it would be made easier by having all the necessary elements already in place.
- Questions were asked as to whether this would mean an increase in membership dues. The intent is that the exam fees and part of the annual fees currently paid by agents to CIPO in order to remain on the registers would instead be paid to IPIC. This funding would be sufficient to cover the new functions.

4. Conclusion

A definite majority of respondents to the survey indicated support for all aspects of the proposal. Further discussions within firms and local groups align with these results. Some concerns were expressed with some aspects of the proposal. These are to be taken into consideration during implementation.