

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

## Frequently Asked Questions

The proposal is presented in the document titled *Sustaining Excellence: A Modernized Regulatory Framework for Patent and Trade-mark Agents, Consultation Paper*.

The following are answers to questions raised by members in the course of the consultation by IPIC.

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### Summary

#### 1. How would you summarize the proposal put forward by IPIC?

Via changes to the *Patent Rules* and to the *Trade-marks Regulations*,

- the profession, through IPIC:
  - manages the admission process,
  - maintains a code of ethics,
  - manages the discipline process;
- CIPO maintains the registers and final say in disciplinary decisions; and
- continuing professional development and insurance requirements are established.

### Rationale

#### 2. Why is IPIC making this proposal?

To exercise leadership in helping the profession chart its future and because two of the objectives stated in IPIC's constitution and by-laws are:

*d) To ensure high levels of knowledge, training and ethics in Canadian intellectual property practitioners;*

*e) To increase the level of intellectual property business in the Canadian economy.*

**3. Why is IPIC consulting its members on this proposal?**

Because IPIC would assume new responsibilities.

**Admission**

**4. Would every agent be required to maintain membership in IPIC?**

Every agent would be on the register maintained by CIPO as is currently the case but would not be required to be a member of IPIC. However, all candidates would be subject to the admission process managed by IPIC and all agents would be subject to the code of ethics maintained by IPIC.

**5. Would members who are not registered agents continue to be members of IPIC?**

Yes, IPIC would continue to serve the interests of all its members, including IP lawyers who are not agents, tech transfer officers, IP managers, trainees, students, academics, foreign members and all others who have an interest in IP.

**6. Would the new admission process have an impact on those already in training to become an agent?**

If IPIC, by decision of its members, decides to change the admission process (for example, by requiring completion of a preliminary exam or of a certain course before being eligible to write the qualifying exams), there would be a transition period. However, any changes that would be made would be with the intention of improving the experience of new members to the profession and maintaining the standards of the field.

**7. I have heard that the training period for patent agents would be increased from 12 months to 24 months and that all trade-mark agent trainees, including lawyers, would have to write the trade-mark agent exam. Why do I not see this information in the consultation paper?**

These changes have been put forward in a consultation by CIPO in 2009. They are not related to IPIC's current proposal for self-regulation however IPIC does support these proposals by CIPO. CIPO has not yet announced whether or not they will proceed with the changes.

**Maintenance**

**8. Would there be exceptions to mandatory insurance?**

Yes (for example, for in-house agents). The intention is not to over-insure, but rather, to guarantee that all practitioners will be insured. This will enhance the reputation of the profession, and offer peace of mind to clients. If a lawyer or agent is already insured, it will likely not be necessary to purchase additional insurance.

**9. Would it be required that all insurance be provided by IPIC?**

No.

**10. Would it be required that all mandatory continuing education be provided by IPIC?**

No. IPIC would set the standards for professional development that would align with the standards of the field. Agents would be able to choose the medium of continuing education that would suit their needs best, whether these courses are offered by IPIC or not.

**11. Would lawyers who already have mandatory CLE be required to do twice the amount of continuing education?**

No. By doing continuing education in the areas required by the regulations (e.g. some hours should be in patents or trade-marks or both depending on your registration), you would likely satisfy the requirements for both your agent and lawyer practices. IPIC programs are already accredited by the law societies in Québec, BC and Ontario and by the New York CLE Board.

### **Professional Conduct**

**12. Would IPIC be assuming greater liability by managing a discipline process?**

Given that CIPO would still play a role, this will be a subject of analysis and discussions with CIPO. If IPIC does assume some liability, it should not be greater than the liability assumed by other associations that exercise a regulatory role.

**13. I am already regulated by my provincial law society. Is there a risk of conflict between the law society's code of ethics and the one proposed by IPIC? Is there a risk of duplicate disciplinary processes?**

IPIC's code of ethics, which all members already agree to follow, is based on a model code of ethics for lawyers. Further revisions would take into account the fact that the majority of IPIC members are lawyers. The draft discipline process adopted by the members of IPIC in 2003 for an eventual self-regulation regime proposes that agreements be reached with the law societies to ensure the coordination, and avoid duplication, of disciplinary procedures involving lawyer-agents.

**14. As a lawyer-agent, I have concerns about being regulated by non-lawyers.**

As a lawyer-agent, you are already regulated by the Commissioner of Patents and Registrar of Trade-marks, who is not currently a lawyer. If you are also an engineer or an accountant, you are regulated by non-lawyers. In addition, the majority of IPIC members are lawyers.

## **CIPO's Role**

### **15. What will be CIPO's role if the proposal is implemented?**

CIPO will continue to maintain the registers of agents. CIPO also may be involved in preparation of exams, and may be involved in some steps of the disciplinary process. CIPO would have the final say in the decision to sanction an agent or not.

## **Benefits**

### **16. What are the benefits?**

By giving a greater role to the profession, it means increased predictability as to future regulation of the profession. A more comprehensive admission process can facilitate the training of new agents and better protect the public interest. Proper regulation of the profession can lead to increased recognition and help to maintain and grow the IP business. A clear code of ethics and disciplinary process and mandatory insurance are elements that protect both the clients and the professionals. This proposal also benefits CIPO by putting in place effective regulation and doing so while allowing CIPO to focus on its core activities.

## **Financial Considerations**

### **17. Will this proposal bring additional fees for me and/or my firm?**

No. In our proposal, IPIC would collect exam fees, and IPIC and CIPO would arrive at an agreement for the sharing of the annual maintenance fees paid by agents to CIPO. In other words, the fee that you currently pay to CIPO every year to be on the register should be sufficient to fund this new regulatory regime.

## **Other Countries**

### **18. How are agents regulated in other countries?**

Our research has revealed that developed countries have more extensive regulation regimes for patent and trade-mark agents than what we have in Canada. All involve some government role, to varying degrees.

## **Alternative**

### **19. How is this proposal different from the College proposal?**

The College, previously proposed by IPIC, would be a new regulatory entity and would require new legislation, which is unlikely to happen in the near future. This new proposal would see IPIC playing a greater role in the regulation of the profession and we think that it can be achieved through

regulation. It does not prevent the College if later desired; it would in fact make it easier.

### **New Role for IPIC**

**20. Is there a risk to the public interest in the fact that IPIC would have both a regulatory function and an advocacy function?**

While some professions (such as lawyers) have separate organizations for these functions, most professions have only one body that does both. Furthermore, the continuing role for CIPO in our proposal provides government oversight not seen in most professions.

**21. Is there a risk that my interests as a member be neglected because IPIC has both roles?**

The already strong involvement in IPIC by members of the profession gives us confidence of being able to continue to properly serve members in all areas. However, if that were no longer the case, members could ask IPIC to seek the creation of a separate organization for the regulation of the profession. This would be made easier by the fact that all the elements would already have been implemented.

### **Next Steps**

**22. What happens after July 9 (when the consultation period ends)?**

IPIC Council will examine the survey results and all the comments received via e-mail, meetings and informal discussions. If Council decides to continue with this project, members will be asked to make a decision at the Annual General Meeting on October 14 in Québec City. If that decision is to continue, then Council will ask CIPO to consider and discuss the proposal.

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