

# *Creating a College for the Future*

A PROFESSIONAL REGULATORY BODY FOR PATENT AND TRADE-MARK AGENTS

Theme Number 6\*  
October 2004

## **Indemnification**

This thematic sheet addresses various topics related to indemnification and to unauthorized practice.

### **1. Indemnification Fund**

- It is proposed that the College hold an indemnification fund that would reimburse a client whose funds were misappropriated by an agent. It would serve only that purpose and a process would be established to decide on a case by case basis if funds are to be disbursed. It would not indemnify clients for professional misconduct.
- Given that in a large firm, it is unlikely that an agent can embezzle all funds and that in small firms agents do not hold large sums of money in trust in the exercise of agency work, the proposal is to create a fund of \$50,000.
- Over time this fund would be constituted from operational surpluses of the College. Initially, it is proposed to be set up as a loan guarantee from IPIC in case there is a need for the fund.

### **2. Professional Liability Insurance**

#### **2.1 Members**

- As the IPIC Code of Ethics currently stipulates, members of the College would need to hold compulsory insurance. However, this provision would be in by-laws and not the Code of Ethics.
- This would not apply to agents working as an employee of a corporation or university.
- IPIC will continue to negotiate a program with insurers. However, neither IPIC or the College would be an insurer.

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\* The purpose of these thematic sheets is to outline the operations of the College as proposed by IPIC and to seek feedback on these proposals.

## 2.2 College

- The College would hold liability insurance. It is however proposed that this liability be limited by including in the statute clauses such as these two:

### *"Indemnification of the College*

- (1) *No action or other proceedings for damages shall be instituted against the President, any member of the Board of Governors, official of the College or person appointed by the Board of Governors for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or of any neglect or default in the performance or exercise in good faith of any such duty or power. (adapted from the Law Society Act of Ontario; Section 9)*
- (2) *No costs in connection with or arising from any proceeding authorized by this Act or regulations or by-laws enacted under this Act shall be awarded against or payable by the College, the Professional Conduct Committee, or officials of the College for any such proceeding brought and prosecuted in good faith in the performance of any duty or intended performance of any duty or in the exercise or intended exercise of any power under this Act or regulations or by-laws enacted under this Act."*

## 3. Unauthorized Practice

- It is proposed that the following text be included in the statute:

*Every person, not being a member in good standing of the College of Patent and Trade-mark agents, who holds himself or herself out or permits himself or herself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent (trade-mark), shall be guilty of an indictable offence and liable upon conviction to a fine not exceeding \$X or to an imprisonment for a term not exceeding Y months, or both.*

- Therefore, no person could identify himself or herself as a patent agent or trade-mark agent if he or she is not licensed by the College. However, the College would not prevent someone from helping an inventor or a business prepare an application as long as they don't identify themselves as agents.
- The College could consider doing an information campaign on the value of hiring a qualified agent.

## 4. Summary

This proposal would not create significant change from the current practice of patent and trade-mark agents. The most significant change would be that the College could enforce the requirement for insurance which IPIC and CIPO cannot do under the current situation.

Please send your comments to [college@ipic.ca](mailto:college@ipic.ca) by October 29, 2004.