

INTELLECTUAL PROPERTY INSTITUTE OF CANADA

INSTITUT DE LA PROPRIÉTÉ INTELLECTUELLE DU CANADA

An Essential Part of Canada's Innovative Economy

The New Regulatory Framework for
Patent Agents and Trade-mark Agents

**A PROPOSAL
TO THE
MINISTER OF INDUSTRY**

JULY 2006



IPIC

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Executive Summary

Background

The patent and trade-mark agency profession in Canada dates back to the 19th century. The profession was created by way of the federal *Patent Act* and *Trade-marks Act* pursuant to which only registered Patent and Trade-mark Agents are permitted to represent patent and trade-mark owners and applicants before the Canadian Intellectual Property Office (CIPO). The qualification requirements for agents are set out in the respective acts and regulations and include the completion of rigorous exams, set and administered jointly by CIPO and the Intellectual Property Institute of Canada (“IPIC” – formerly the Patent and Trademark Institute of Canada (PTIC)).

IPIC, which celebrates its 80th anniversary this year, is the professional association of Patent Agents, Trade-mark Agents and lawyers practising in all areas of intellectual property (IP) law. Its membership totals 1,600 individuals, consisting of practitioners in law firms and agency firms of all sizes, sole practitioners, in-house corporate intellectual property professionals, public servants, and academics. Clients include virtually all Canadian businesses, universities, and other institutions that have an interest in IP such as patents, trade-marks, copyright, and industrial designs, in Canada or elsewhere, and also foreign companies that hold IP rights in Canada.

Members of IPIC have a unique perspective on Canada’s IP regime and how it compares to the regimes around the world, what makes it attractive or a risk to foreign investment, and how it helps or hinders Canadian businesses in a global economy. From this perspective, it is apparent that Canada is lagging behind other countries and that our IP framework needs strengthening and modernization.

The Canadian College of Patent Agents and Trade-mark Agents

In today’s world, a company’s primary assets are its IP, including its trade-marks, patents, and the related exclusive rights. Such rights can and do have tremendous value given the commercial advantages they provide to an owner. While registered Patent and Trade-mark Agents are the only people entitled to represent IP owners before CIPO in respect of these valuable rights, the profession is not regulated in the manner that is now expected from modern professions.

Accordingly, IPIC undertook an initiative to modernize the profession to better support and enhance Canada’s economic and innovative competitiveness, and to better protect the interests of the Canadian public and IP owners. That initiative has led to the proposed creation of a national

College of Patent and Trade-mark Agents. The regulation of the profession in accordance with modern professional standards will include a code of ethics, compulsory professional insurance, continuing education, regulations pertaining to the handling of client funds held in trust, a client indemnity fund, and an effective and transparent disciplinary process.

Overall, the goal of the proposal is to create a comprehensive regulatory regime to better protect the interests of IP owners and the public. CIPO has been working closely with IPIC on this initiative, culminating in the preparation of draft federal legislation for the creation and operation of the College.

The Protection of Confidential Communications

One aspect of that legislation is a provision recognizing and protecting the confidential communications that are exchanged between an IP owner and an agent when that agent is providing his/her professional services. The provision creates a statutory prohibition against the forced disclosure of those confidential communications during the course of intellectual property litigation. Presently, no such protection is available in Canada. Protection of this kind, however, is available by statute in most other developed countries, including Australia, New Zealand, the United Kingdom, Japan, France, Germany, the Netherlands, and the European Union. Additionally, similar protection arises in the United States by way of jurisprudence.

The forced disclosure of such highly valuable confidential communications can lead to the loss of IP rights in Canada and elsewhere. It is significant to note that in the United States, courts have held that if a foreign jurisdiction prohibits the forced disclosure of such confidential information, then that prohibition against disclosure will be respected by the court in the course of U.S.-based litigation. However, if there is no domestic protection, then there likely will be no bar to the production of such confidential information in the United States. The absence of such protection puts Canadian IP owners at a distinct disadvantage *vis-à-vis* their competitors in other jurisdictions where such protection is available—especially in such an important market place as the United States. Moreover, the potential for the forced disclosure will act as a disincentive for IP owners and innovators to invest and operate in Canada.

Some, but not all, Patent and Trade-marks Agents are also lawyers. In most circumstances, a confidential communication between a lawyer and an IP owner will be protected from forced disclosure by way of the common law doctrine of solicitor/client privilege. The same confidential communications between clients and non-lawyer agents, however, are not subject to that same protection in Canada despite the fact that, in many instances, that agent is working in the same firm as the lawyer, often doing the same work and for the same clients. Additionally, even where the agent is also a lawyer, Canadian

jurisprudence has suggested that confidential communications between an IP owner and a lawyer may not be privileged if the lawyer is acting in his/her capacity as an agent. Ultimately, it is the IP owner and the public at large who will benefit from the protection of confidential communications. It will put Canadian IP owners in the same position as their foreign competitors, and will also remove any uncertainty as to the scope of protection afforded to lawyer and client communications made in the IP context.

Moving Forward

The present document explains the legislative proposal developed by IPIC, after many discussions with Industry Canada and CIPO, to contribute to the economic development, competitiveness and innovation performance of Canada. IPIC believes that implementing it will benefit the Canadian public, the IP owners and the profession.

The proposal:

- Creates a comprehensive framework to better protect the interests of IP owners and the public;
- Sends a clear message to investors about the strength of Canada's IP regime;
- Provides a strategy that ties in with the government's competitiveness and commercialization agendas, without costs to the government;
- Allows CIPO to focus on its core mandate of administering the system of IP rights by transferring the regulation of IP professionals to those who have the most knowledge about the practice; and
- Will generate increased recognition for the excellence of the profession.

Introduction

Celebrating its 80th anniversary in 2006, the Intellectual Property Institute of Canada (IPIC) is the professional association of Patent Agents, Trade-mark Agents, and lawyers practising in all areas of intellectual property (IP) law.

Patent Agents and Trade-mark Agents are skilled professionals who have passed examinations, managed jointly by the Canadian Intellectual Property Office (CIPO) and IPIC.

Patent Agents draft and prosecute patent applications for inventions. Patent agents also engage in the interpretation of patents and patent applications as they relate to patentability, infringement and validity in order to provide advice to clients on such matters.

Trade-mark Agents prepare, file and prosecute trade-mark applications. Trade-mark Agents provide advice to clients with respect to the adoption of trade-marks, their availability and registrability as well as their maintenance, enforceability and validity so that clients can make business decisions.

Both Patent Agents and Trade-mark Agents appear before tribunals headed by the Commissioner of Patents and the Registrar of Trade-marks, respectively, on behalf of their clients. Under the *Trade-marks Act*, a person seeking to register a trade-mark may choose to appoint a Trade-mark agent to act on their behalf. Under the current *Patent Rules*, every applicant for a patent who is not the inventor must appoint a Patent Agent to prosecute an application before the Patent Office.

CIPO receives in a year approximately 40,000 patent applications and 40,000 trade-mark applications. There are over 700 Patent Agents and 1,500 Trade-mark Agents in Canada.

In 1995, Professor Bruce Doern of the Carleton University School of Public Administration, in a report prepared for CIPO on the regulation of patent and trade-mark agent qualifications, stated:

“The fourth conclusion centres around the issue of the self-regulation model of professional governance. (...) It clearly involves a continuum of possible powers and relationships. However, my considered view is that, in the mid-1990s, there is no convincing rationale for the patent and trade-mark profession to be so directly supervised by an agency of the federal government in matters of its professional qualifications. As the federal agency involved, CIPO should focus on its more complex mandate tasks and should not be so closely regulating one of the client groups it must interact with in other vital public interest ways.”

In 1999, in a report to IPIC on self-regulation, Gavin MacKenzie, an expert on the regulation of professionals who is currently the Treasurer of the Law Society of Upper Canada, wrote:

“I have accordingly recommended the creation of a self-regulatory body that I have called, for the purpose of this report, the College of Patent and Trademark Agents. (...) I do believe that the proposed College would remedy the problems inherent in the current regulatory regime.”

In the mid-1990s, the members of IPIC were also becoming aware of another critical problem in the IP regime in Canada: the absence of protection from disclosure of the communications between clients and their Patent Agent or Trade-mark Agent. This was a problem that already some countries, such as the United Kingdom, had solved by statute. The concern was heightened in 1999 when an American court compelled the disclosure of communications between a large pharmaceutical company and its French patent agent while affording the privilege of protection to the other party. The Court stated that if protection had existed in France, it would not have compelled the disclosure. This decision prompted France, the European Patent Organization and other jurisdictions to adopt statutory protection, thus placing Canada at an increasingly competitive disadvantage.

With the report from Gavin MacKenzie as a blueprint, the increasing knowledge about protection of confidential communications in other countries as a motivator, and broad support expressed by industry, IPIC embarked on a comprehensive project that has led to the present proposal. Along the way, through thousands of volunteer hours, IPIC has consulted its members, done research in the regulation of professions, analyzed case law pertaining to confidential communications, met frequently with government officials and stakeholders, consulted experts and prepared draft legislation and regulations.

The present document summarizes the conclusions and recommendations resulting from this extensive work.

1. The Legislation

The Patent Agents and Trade-mark Agents Act

1.1 Concept

- The Government of Canada should introduce a bill to create a new regulatory framework for Patent Agents and Trade-mark Agents.
- The legislation would bestow upon Patent Agents and Trade-mark Agents the same rights, obligations, status and recognition as most other professionals in Canada.
- The clients of Canadian agents would obtain the same protection for their confidential communications as the protection enjoyed by their counterparts in many countries.

1.2 Purpose

- The purpose of this legislation is to regulate Patent Agents, Patent Agents-in-Training, Trade-mark Agents and Trade-mark Agents-in-Training to ensure that the public interest is served and protected, and to establish a College that will govern the Patent Agents, Patent Agents in Training, Trade-mark Agents and Trade-mark Agents in Training in Canada.

Additional information available:

- Legal opinion and Supreme Court decision on jurisdiction of Parliament
- Examples of similar statutes

1.3 Content

- The legislation will:
 - Create the Canadian College of Patent Agents and Trade-mark Agents (the “College”). See Section 2 below;
 - Make consequential amendments to the regulatory regime administered by CIPO. See Section 3 below;
 - Protect from disclosure confidential communications between Patent Agents or Trade-mark Agents and their clients. See Section 4 below; and
 - Prevent the unauthorized and unqualified use of the titles of Patent Agent and Trade-mark Agent, and therefore protect the public. See Section 5 below.

1.4 Title

- *An Act to regulate Patent Agents and Trade-mark Agents and to establish a College to govern Patent Agents and Trade-mark Agents in Canada*
- Short title: *Patent Agents and Trade-mark Agents Act*¹

1.5 Regulations

- The Act will permit the Board of Governors of the College to make regulations, subject to approval by the Minister of Industry or the Governor in Council, after the appropriate public consultation process.
- In this document, IPIC proposes many of these regulations. It is understood, however, that the College and the government will develop the actual regulations once the Act has been adopted.

1.6 Bylaws of the College

- The Act will permit the Board of Governors of the College to make bylaws subject to the approval of the voting members of the College.
- In this document, IPIC proposes many of these bylaws. It is understood, however, that the College will develop the actual bylaws once the Act and regulations have been adopted.

¹ In this document, we refer to it as the Act. Other Acts are given their titles.

2. The Canadian College of Patent Agents and Trade-mark Agents

2.1 Basic Structure of the College

In the public interest

- The College will be a not-for-profit corporation, without share capital, consisting of a Board of Governors and members.
- It will be distinct from IPIC. See Section 2.12 below.
- It will be independent from the government but will have, under statutes, certain obligations towards the Minister of Industry (see Section 2.10 below) and towards CIPO. See Section 3 below.

2.2 Members of the College

Among the best in the world

2.2.1 The concept

- For most self-governing professions, being a member of a profession is tied to being a member of a regulating body.

2.2.1.1 What continues as before

- The nature of the work and the role of Patent Agents and Trade-mark Agents in the Canadian IP system.

2.2.1.2 What is new

- All Canadian agents will be members of, will govern and will be governed by the College.
- Those people who want to become recognized as a Patent Agent or a Trade-mark Agent in Canada will be members of and be governed by the College.
- After meeting specific requirements, a person will simultaneously become:
 - A Patent Agent or a Trade-mark Agent
 - With the right to use the title “Patent Agent” or “Trade-mark Agent”
 - With the obligation to adhere to the Code of Ethics of the College;
 - A member of the College
 - With the right to vote on the affairs of the profession
 - With the obligation to adhere to the bylaws of the College; and
 - Listed as a “Patent Practitioner” or “Trade-mark Practitioner” With the right to practise before the Patent Office or Trade-marks Office (see Section 3 below).

2.2.2 How we propose that the concept be enacted

2.2.2.1 Legislation

- The Act would define a Patent Agent or a Trade-mark Agent as a person entered on the Register of Patent Agents or the Register of Trade-mark Agents.

- The Act would specify that the Registers be kept by the College.
- The Act would specify that, to be entered on either Register, a person must meet the requirements for admission and maintenance established in the regulations.
- The Act would grant the College the authority to establish such requirements and it would specify that the Board of Governors, subject to the approval of the Governor in Council (or of the Minister of Industry), may make regulations for entry, maintenance and removal from the Registers.
- The Act would specify that every Patent Agent and every Trade-mark Agent be a member of the College.
- The Act would specify that a Patent Agent-in-Training and a Trade-mark Agent-in-Training be a non-voting member of the College but nonetheless bound by its Code of Ethics. See Section 2.3 below.

2.2.2.2 New regulations and bylaws

- The requirements to register as a Patent Agent or a Trade-mark Agent would be included in the regulations and bylaws, as explained in the following sections.

2.2.2.3 Existing regulations

- The *Patent Rules* and *Trade-marks Regulations* would be amended to:
 - Recognize that Patent Agent, Trade-mark Agent, Register of Patent Agents and Register of Trade-mark Agents are terms and concepts created by the *Patent Agents and Trade-mark Agents Act*;
 - Establish a link between the College and CIPO to transfer the information contained in the Registers; and
 - Modify the terminology that defines who can represent applicants before the Patent Office and Trade-marks Office. See Section 3 below.

Additional information available:

- Proposed new wording for the *Patent Act* and *Rules* and for the *Trade-marks Act* and *Regulations*

2.3 Admission to the College

Entering the profession

2.3.1 The concept

- Admission to the College means admission to the profession of Patent Agent or to the profession of Trade-mark Agent.

2.3.1.1 What continues as before

- Successfully passing exams on patent law and practice or trade-mark law and practice.
- Exam boards composed of professionals.
- Patents: To be eligible to write the exams, a person must have worked in the area of Canadian patent law and practice or be a patent examiner.
- Trade-marks: If not already a lawyer, to be eligible to write the exams, a person must have worked in the area of Canadian trade-mark law and practice for 24 months.

2.3.1.2 What is new

- Every person who wants to become a Patent Agent or a Trade-mark Agent will be required to write the exams.
- Our proposal formalizes the concept of Patent Agent-in-Training and Trade-mark Agent-in-Training:
 - A person will need to register with the College as an Agent-in-Training for a minimum of 24 months to be eligible to write the exams; and
 - The Agent-in-Training will need to do a full-time apprenticeship of 24 months and identify a mentor who will verify that the apprenticeship meets the training guidelines of the College. The College may recognize equivalent experience *in lieu* of the apprenticeship provisions;
- The College will administer the exams.
- An Agent-in-Training who is not a lawyer must successfully pass an exam on basic Canadian legal principles.

IPIC's actions to prepare for these changes:

- With a measure and evaluation specialist, continue the review of the current exams and establish templates and best practices.
- Create a course on basics of law.
- Continue patent agent and trade-mark agent training courses.
- Continue exam tutorials.

- To be eligible to write the Patent Agent exams, the Patent Agent-in-Training must hold a university degree in pure or applied science or an equivalent university degree.
- To be eligible to write the Trade-mark Agent exams, the Trade-mark Agent-in-Training must hold a university degree in any discipline.
- All Patent Agents and Trade-mark Agents will be bound by the Code of Ethics of the College. The exams will test knowledge of the Code of Ethics.

2.3.2 How we propose that the concept be enacted

2.3.2.1 Legislation

- The Act would grant the College the authority to establish requirements for entry, maintenance, registration on and removal from the Registers, and it would specify that the Board of Governors, subject to the approval of the Governor in Council (or of the Minister of Industry), may make the regulations on the above and on standards for the examinations.
- The Act would define a Patent Agent-in-Training and a Trade-mark Agent-in-Training as a person who is training to become a qualified agent and who is enrolled as an Agent-in-Training in accordance with the bylaws.
- The Act would grant the College the authority to establish and apply standards for the admission and the training of Agents-in-Training.
- The Act would specify that Agents-in-Training are non-voting members of the College.

2.3.2.2 New regulations and bylaws

- The regulations would set the admission requirements as outlined in Section 2.3.1 above.
- The bylaws would establish the examination process including: selection of members of the board, format, dates, fees, notices, location(s) of exams; publication of results and appeals process.

2.3.2.3 Existing regulations

- The sections of the current *Patent Rules* and *Trade-marks Regulations* that pertain to the qualifications needed by Canadian residents to become Patent Agents or Trade-mark Agents would be repealed.

2.4 Transition Period

A fair approach

2.4.1 The concept

- All Patent Agents and Trade-mark Agents who are currently on CIPO's List and Register as residents of Canada will be 'grandfathered' into the College.
- Currently registered firms and non-resident agents will be "grandfathered" onto the Lists of Practitioners. See Section 3 below.
- Every person who is currently training towards writing the exams will be eligible for the exams if they meet the requirements that were in effect before the Act comes into force. They must, however, successfully pass the exams in the following five years after the Act comes into force.
- If a person has successfully passed some of the patent exams, the credits for those exams will be valid for up to five years after the Act comes into force.
- If, after the five-year transition period, a person has not passed all the exams, he or she will have to meet the qualifications set by the Act, the regulations and the College.
- Evidence of training will include having sat at least one exam and/or an affidavit explaining the nature and duration of the training.
- A person will be required to join the College as a Patent Agent-in-Training or a Trade-mark Agent-in-Training for a duration of 24 months. The duration of their pre-College training or overseas qualification as agents/attorneys will be taken into account to reduce this requirement.

2.4.2 How we propose that the concept be enacted

2.4.2.1 Legislation

- The Act would include provisions to "grandfather" agents.
- The Act would include provisions that, if certain requirements are met according to the regulations, a person who has begun his or her training will be eligible to sit the exams under the requirements that were in effect before the Act comes into force if he or she successfully passes the exams within five years.

2.4.2.2 New regulations and bylaws

- Regulations would define the conditions for the five-year transition as described above.

2.4.2.3 Existing regulations

- Either the Act or the regulations would allow firms and non-resident agents from the List and Register currently maintained by CIPO to be grandfathered onto the Lists of Practitioners.

2.5 Maintenance on the Registers

Professionals of the knowledge economy

2.5.1 The concept

- Patent Agents and Trade-mark Agents will need to meet certain requirements, as set in the regulations and bylaws, to remain on the Registers managed by the College.

2.5.1.1 What continues as before

- Payment of an annual fee. This fee, however, will be paid to the College instead of to CIPO. See Section 2.11 below.

2.5.1.2 What is new: errors and omissions insurance

- Patent Agents and Trade-mark Agents will be required to maintain and provide proof of errors and omissions insurance.
- The requirement will not apply to certain categories of members, such as:
 - non-practising members;
 - members who practise exclusively as instructors; and
 - members who practise exclusively as an employee of:
 - the Government of Canada or a province or territory;
 - a university; or
 - a corporation other than a professional corporation of agents.

IPIC's actions to prepare for these changes:

- IPIC will continue, as it has for many years, to negotiate an E&O insurance program on behalf of its members.

2.5.1.3 What is new: continuing education

- Continuing Professional Development (CPD) will begin on a voluntary basis when the College becomes operational. Mandatory requirements will increase during the first five years, after which time, all requirements will be mandatory. This will allow time for suppliers, in particular IPIC, to develop courses (e.g., distance education) and have them evaluated and accredited by the College. It will also allow sufficient time to establish an appropriate monitoring system.
- The College will not provide education activities. It will set the standards and accredit the organizations (IPIC and

IPIC's actions to prepare for these changes:

- Maintain strong educational content of seminars and two annual conferences.
- Continue publication of professional journal.
- Support and develop local *Informals* groups.
- Develop distance education capacity.
- Create new advanced patent and trade-mark courses.
- Take advantage of the experience in obtaining accreditation from New York CLE Board.

others including universities, other associations, private organizations and in-house programs within firms) that will deliver the educational content.

- A minimum amount of CPD will be required within a specified period (e.g., two years). It will include formal education (accredited programs) and self-learning (e.g., study). It will also recognize work such as publishing or speaking at a conference.

2.5.1.4 What is new: trust funds

- Patent Agents and Trade-mark Agents will need to file an annual report of funds held in trust.
- To simplify the process, the College will accept copies of reports filed with other organizations (e.g., law societies).

2.5.1.5 New reinstatement mechanisms

- Procedures will be in place for voluntary or involuntary temporary suspension or permanent removal from the Registers. (e.g., for not paying fees or as a result of disciplinary proceedings). An example of a voluntary temporary suspension would be a parental leave, during which the status of an agent could be “inactive” or “non-practising.”
- Procedures will be in place for reinstatement. The College will need to establish these procedures but, as an example, applicants could be required to:
 - Reapply within one year of removal;
 - Pay a fee (reinstatement + regular fee);
 - Meet all other current requirements;
 - Meet additional requirements such as continuing education or passing exams.

2.5.2 How we propose that the concept be enacted

2.5.2.1 Legislation

- The Act would grant the College the authority to:
 - Establish requirements for entry, maintenance on and removal from the Registers;
 - Approve, renew, amend, cancel, revoke and reinstate the registration of Patent Agents and Trade-mark Agents on the Registers;
 - Discipline and suspend Patent Agents and Trade-mark Agents;
 - Evaluate and accredit continuing education courses in patent and trade-mark law and practice;

- Set standards for continuing education requirements; and
- Set and collect fees and other revenues.
- The Act would specify that the Board of Governors, as permitted by the regulations, determine the requirements for maintenance on the Registers.
- The Act would specify that Patent Agents and Trade-marks Agents must carry professional liability insurance unless exempt by the regulations.

2.5.2.2 New regulations and bylaws

- The bylaws would set the minimum level of insurance and the requirements for proof of insurance. The regulations would define the exemptions for insurance.
- The regulations would establish the duration of the transition period for CPD. The bylaws would establish the specific requirements.
- The bylaws would establish the requirements for reporting trust funds.
- The regulations and bylaws would establish the mechanism for removal from and reinstatement on the Registers.

Additional information available:

- Proposed CPD requirements

2.5.2.3 Existing regulations

- The requirements in the *Patent Rules* and *Trade-mark Regulations* for initial and annual fees from Canadian resident Patent Agents and Trade-mark Agents would be repealed. CIPO would continue to collect fees from non-resident agents and firms.

2.6 Code of Ethics

High stakes call for high standards

2.6.1 The concept

- The Code of Ethics sets out the fundamental principles that govern how Patent Agents and Trade-mark Agents practise.

2.6.1.1 What continues as before

- The proposed Code of Ethics is very similar to IPIC's current Code of Ethics. IPIC's Code was developed using the Canadian Bar Association's model code and the codes from two law societies.

2.6.1.2 What is new

- IPIC, being a voluntary association, cannot enforce its Code of Ethics, nor can it prevent a person from practising as a Patent Agent or Trade-mark Agent. The College, however, will oblige its members to adhere its Code of Ethics as a requirement to practise that will be enforced by the discipline process.
- The Code of Ethics sets these principles:
 - Competence: *A Patent Agent or a Trade-mark Agent owes the client a duty to be competent to perform any agency services undertaken on their behalf;*
 - Confidentiality: *A Patent Agent or a Trade-mark Agent has a duty to preserve the confidences and secrets of clients;*
 - Conflicts: *In each matter, a Patent Agent's or a Trade-mark Agent's judgment and fidelity to client interests must be free from compromising influences;*
 - Advising clients: *A Patent Agent or a Trade-mark Agent must be honest and candid when advising clients;*
 - Fees: *A Patent Agent or a Trade-mark Agent owes a duty of fairness and reasonableness in his/her financial dealings with clients;*
 - Withdrawal of services: *Having agreed to act in a matter, a Patent Agent or a Trade-mark Agent owes a duty to clients not to withdraw services except for good cause. If withdrawal is required or*

IPIC's actions to prepare for these changes:

- At a Special General Meeting in 2001, IPIC members adopted a Code of Ethics on the understanding that it was a step towards self-governance.

permissible, the Agent must do so only upon notice that is reasonable in the circumstances;

- *Duty to the profession: A Patent Agent or a Trade-mark Agent must assist in maintaining the standards of the profession and should participate in its organizations and activities;*
- *Duty to members: A Patent Agent's or a Trade-mark Agent's conduct toward other Agents must be characterized by courtesy and good faith;*
- *Advertising: A Patent Agent or a Trade-mark Agent may advertise services and fees or otherwise solicit work, provided that the advertisement is not false or misleading, is in good taste and is not likely to bring the profession into disrepute; and*
- *Unauthorized practice: A Patent Agent or a Trade-mark Agent owes a duty to assist in preventing the unauthorized practice of persons or entities, who are not members of the College or otherwise authorized under the relevant IP statutes or respective provincial law society, to provide advice and services concerning the relevant IP statutes.*

Additional information available:

- The proposed Code of Ethics includes rules of conduct for each principle.

2.6.2 How we propose that the concept be enacted

2.6.2.1 Legislation

- The Act would grant the College the authority to establish, maintain and apply a Code of Ethics and specify that any member who breaches it is subject to disciplinary proceedings.

2.6.2.2 New regulations and bylaws

- The Code of Ethics would be written in the bylaws.

2.6.2.3 Existing regulations

- No changes required.

2.7 Discipline

The client's recourse

2.7.1 The concept

- The disciplinary process should be clear and fair for the complainant and the member. It should allow for a variety of sanctions commensurate with the offence.

2.7.1.1 What continues as before

- Under the *Patent Act*, the Commissioner may remove a Patent Agent from the Register for gross misconduct. This will remain a possible outcome of a disciplinary proceeding but will be applied by the College instead of by CIPO.

2.7.1.2 What is new

- A complete discipline process.
- Some of the key aspects:
 - The Board of Governors will appoint a Professional Conduct Committee that includes a member of the public;
 - The Board of Governors will appoint members to form eventual Disciplinary Panels;
 - The Professional Conduct Committee will handle all disciplinary matters concerning members of the College and, in particular, will deal with every complaint alleging an offence by a member;
 - If it appears to the Professional Conduct Committee that the member may also be governed by another organization, e.g., a provincial law society, the Executive Director will forward the complaint to that organization for handling, if the College and the organization agree that the latter is to assume jurisdiction;
 - Before making a decision regarding a possible offence, the Professional Conduct Committee will deliver a copy of the complaint and any additional information to the member and set a deadline for the member to provide a written response or explanation;
 - If the Professional Conduct Committee decides that an offence has not been committed, the complaint will be dismissed and the member and complainant will be notified in writing;

IPIC's actions to prepare for these changes:

- At the 2003 Annual General Meeting, IPIC members adopted a set of discipline bylaws as a proposal for the College. These by-laws are based on those of the Canadian Institute of Actuaries.

- If the Professional Conduct Committee decides that an offence may have been committed, it will refer the matter to an Investigation Team to investigate within a specified time and report back to the Committee;
- After considering the report of the Investigation Team, the Professional Conduct Committee will consider a number of options including dismissing the complaint, sanctioning the member or referring the complaint to a Disciplinary Panel (should the complaint be considered severe);
- If the member fails to comply with the sanction or declines to accept same, the committee must refer the charge to the Disciplinary Panel for what will normally be a public hearing;
- If the member is found to have contravened the Code of Ethics, the Disciplinary Panel can impose a reprimand, a suspension or expel the member from the College;
- A person may file a notice of appeal from a decision rendered by the Disciplinary Panel. In that case, the Board of Governors will appoint an Appeal Panel;
- The deliberations of the Professional Conduct Committee and the Investigation Teams are generally to be considered confidential.

Additional information available:

- The set of bylaws that detail the discipline process

2.7.2 How we propose that the concept be enacted

2.7.2.1 Legislation

- The Act would grant the College the authority to establish and apply disciplinary bylaws and rules of practice applicable to proceedings before the Disciplinary Panel or the Appeal Panel.
- The Act would specify that a Disciplinary Panel hear complaints and impose sanctions.
- The Act would specify that a person subject to a decision of the Disciplinary Panel may appeal to an Appeal Panel.
- The Act would specify that the decisions of the Disciplinary Panel are binding unless overturned by an Appeal Panel.
- The Act would grant the Professional Conduct Committee and the Disciplinary Panel the authority to *subpoena* witnesses.

- The Act would provide that evidence adduced or disclosed in a hearing may not be used against the member against whom a complaint was filed before any court of justice or any other administrative tribunal.

2.7.2.2 New regulations and bylaws

- The regulations would define aspects of the discipline rules, such as the nature of the possible penalties, that are less likely to evolve but have the most impact on the rights of the complainant or the Agent.
- The bylaws would provide the detailed rules of procedure.

2.7.2.3 Existing regulations

- Section 16 of the *Patent Act* (the “gross misconduct” clause) would be repealed. The Act confers on the College the authority to remove a Patent Agent from the Register.

2.8 Indemnification

An additional, limited, recourse for the client

2.8.1 The concept

- The College will create an indemnification fund, the sole purpose of which would be to reimburse a client whose funds were misappropriated by a Patent Agent or a Trade-mark Agent. Funds will be disbursed on a case-by-case basis, according to a pre-established process. The fund will not indemnify clients for professional misconduct or negligence.

2.8.1.1 What continues as before

- Some clients may already have access to such a fund if the Agent is governed by another body such as a law society.

2.8.1.2 What is new

- The fund for clients of Patent Agents and Trade-mark Agents.

2.8.2 How we propose that the concept be enacted

2.8.2.1 Legislation

- The Act would state:
 - *(1) The College shall establish and maintain a fund for client compensation (the “Fund”) in accordance with the bylaws.*
 - *(2) The Board of Governors in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member’s practice or in connection with any trust which is related to such member’s practice of patent agency or trade-mark agency of which the member is or was a trustee, notwithstanding that after the commission of the act of dishonesty the member may have died or may have ceased to administer the client’s affairs or to be a member.*

**Additional
information
available:**

- Examples from other statutes

2.8.2.2 New regulations and bylaws

- The bylaws would provide the rules of procedure for the fund.

2.8.2.3 Existing regulations

- No impact.

2.9 Legal Entities

Flexibility for today's realities

2.9.1 The concept

- Professionals can operate under a variety of legal entities, such as sole proprietorship, partnership, limited liability partnership (LLP), professional corporation or regular corporation.
- The options as to the type of legal entity depend on whether the professional is in an association with members of the same profession or of another profession.
- The options available within each profession are the result of the combination of:
 - The law and regulations that govern the profession;
 - The law and regulations that govern other professions; and
 - The federal and provincial laws regarding corporations and partnerships.
- We propose that Patent Agents, Trade-mark Agents and their firms choose the best option for their situation, under certain rules to be established by the College to ensure that the public interest is protected.
- We propose that legislation permit different forms of legal entities when they are authorized under relevant provincial or federal statutes. For example, the Act will allow agents to form an LLP with other agents if the provincial legislation allows for LLPs among professionals, or to form an LLP with lawyers if the provincial legislation and regulations allows those lawyers to form an LLP with other professionals.

Additional information available:

- Information from other jurisdictions and other professions.

2.9.1.1 What continues as before

- No specific exclusions as to the type of legal entity that Patent Agents and Trade-mark Agents can form among themselves, except that the Patent Office currently does not recognize a corporation as a firm that can be listed on its register of patent agents².

² The absence of capital letters for “register” and “patent agent” is intentional here. In this context, their definition is broader than that proposed in the new Act.

2.9.1.2 What is new

- The Act will clarify the types of associations that members of the College can form but it will not resolve all the issues related to provincial laws. For example, the Ontario statute that governs professional corporations lists the professions that are entitled to form a professional corporation. It does not include Patent Agents or Trade-mark Agents.

2.9.2 How we propose that the concept be enacted

2.9.2.1 Legislation

- The Act would state that a member of the College may form, together with other members of the College or members of another profession recognized in Canada, an LLP, a corporation, a professional corporation or other entity as permitted by law.

2.9.2.2 New regulations and bylaws

- The regulations and bylaws would set conditions for creating certain types of legal entities. For example, a corporation should have a minimum amount of liability insurance.

2.9.2.3 Existing regulations

- The *Patent Rules* and the *Trade-marks Regulations* permit firms to be included on the lists of agents held by CIPO. This provides more flexibility for communications between agents and the Patent Office or Trade-marks Office. “Firms,” however, does not include corporations. These documents need to be amended.

2.10 Governance

Professionals governing professionals

2.10.1 The concept

- The governance structure and mechanisms of the College are in essence the “self” of “self-governance.” They are the means available to members to direct the affairs of the profession.

2.10.1.1 What continues as before

- Patent Agents and Trade-mark Agents have influenced the affairs of their professions since 1926 via voluntary membership in IPIC. As indicated in Section 2.12 below, IPIC will continue to be involved in advocacy, education, publications and public awareness.

2.10.1.2 What is new

- Patent Agents and Trade-mark Agents will have a direct say in the governance of their professions. All the governance mechanisms of the College are new. They include:
- A Board of Governors.
 - As many as 12 Governors (directors):
 - two people who are not members of the College and who will be appointed by the Minister of Industry;
 - seven people who are members of the College, who will be elected by members of the College pursuant to the bylaws and from whom the President, Vice President and Secretary/Treasurer will be selected;
 - as many as two people who may be appointed by the Board; and
 - the Executive Director, who is an *ex officio* governor and will not have voting privileges.
 - The Board has the authority to appoint an Executive Director who may hire other staff.
 - Members of the Board will serve without remuneration.
 - The Board will prepare an annual report for the Minister of Industry, College members and the public.
- To protect the public interest, the Minister of Industry will have two means of intervention:
 - Appointment of two members of the Board; and

- Direct intervention under special circumstances.
- An annual general meeting (and special general meetings, if necessary) where members will elect the Board, review the financial statements and fees of the College and amend the bylaws if so required.
- Standing committees, such as:
 - The Admissions Committee will be responsible for developing admission standards:
 - Agent training requirements; and
 - Exams (including the establishment of the examination boards).
 - The Professional Standards Committee will be responsible for:
 - Maintenance of Registers;
 - Insurance requirements; and
 - Continuing Education (including accreditation of courses and other educational services).
 - The Professional Conduct Committee will be responsible for:
 - the Code of Ethics; and
 - the discipline process. See Section 2.7 above.

2.10.2 How we propose that the concept be enacted

2.10.2.1 Legislation

- The Act would define the authority of the Minister of Industry with regard to the College.
- The Act would grant the Board of Governors the authority to manage the business and affairs of the College and to establish committees.
- The Act would define the composition of the Board of Governors and create the position of Executive Director of the College.
- The Act would create the obligation to hold annual general meetings and to produce an annual report.
- The Act would limit the liability of the College, its Board, its volunteers and its staff when they are acting in good faith.

2.10.2.2 New regulations and bylaws

- Regulations would establish certain committees that have a direct impact on the public interest, in particular the Professional Conduct Committee.
- The bylaws would establish all the rules of procedure for the Board of Governors, annual general meetings, elections and other aspects essential to the proper operation of a not-for-profit corporation.

2.10.2.3 Existing regulations

- No changes required.

2.11 Financial Assumptions

Funded by the profession

2.11.1 The concept

- Revenues:
 - The College will be funded by its members.
 - Revenues will generally come from two sources: annual fees and exam fees.
 - Assumptions (fees currently paid to CIPO):

650 Patent Agents x \$350 =	\$227,500
1,400 Trade-mark Agents x \$350 =	490,000
Patent exams: 500 papers x \$200 =	100,000
Trade-mark exams: 50 exams x \$400=	<u>20,000</u>
Total revenues	\$837,500

- Expenses:
 - The College will be a small organization. Having compared the resources of regulatory bodies with memberships of similar size, we propose that the College could operate with four full-time employees. These employees, in support of the Board and the committees, will be responsible for maintaining the Registers, administering exams, processing complaints, accrediting courses and communicating with members.

- Assumptions:

Administration	\$500,000
Insurance	50,000
Exams	70,000
Discipline	<u>180,000</u>
Total expenses	\$800,000

Reserve	\$37,500
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TOTAL	\$837,500
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- Other assumptions:
 - Discipline costs will vary from year to year. Years with low costs will allow a reserve to accumulate for years with high expenses.
 - We propose to negotiate a loan guarantee or other form of support with the government in case discipline costs exceed the budget in the initial years.

Additional information available:

- More details about the financial assumptions

- We propose to negotiate some transitional funding with the government to set up the College. For example, upon the adoption in Parliament of the Act, the fees collected by CIPO from agents to remain on the registers could be transferred to the College and used for start-up costs and creating the indemnification fund (estimated at \$50,000).

2.11.1.1 What continues as before

- Patent Agents and Trade-mark Agents will continue to pay an annual fee to remain on the Registers but the payment will be to the College instead of to CIPO. The current assumption is that the initial fee will be the same as that paid to CIPO which is currently \$350.
- Candidates for the exams will pay a fee to the College instead of to CIPO. The current assumption is that the fees will remain at \$200 per paper for the Patent Agent Exams and \$400 for the Trade-marks Agent Exams.
- CIPO will continue to set and collect the fees for non-resident agents and firms who want to be listed on the Lists of Practitioners. See Section 3 below.

2.11.1.2 What is new

- Members of the College will control the amount of the fees and their use.

2.11.2 How we propose that the concept be enacted

2.11.2.1 Legislation

- The Act would grant the College the authority to set fees, collect revenues, borrow money, and hold and manage funds in trust.

2.11.2.2 New regulations and bylaws

- The bylaws would establish the procedure for setting fees.

2.11.2.3 Existing regulations

- The *Patent Rules* and the *Trade-marks Regulations* would be amended to delete the provision for collecting fees from resident Agents and for the exams.

2.12 IPIC

Clear, distinct roles

2.12.1 The concept

- In developing this proposal, we considered the scenario where IPIC, instead of a new regulatory body, would assume the regulatory functions. Actuaries and accountants, among other professionals, have adopted this approach of a single professional organization. The advantage is that resources are used more efficiently.
- We chose to have two independent organizations. This model is applied by a few professionals such as physicians and architects. The advantage is that each organization has a clear mandate: one to protect the public interest, the other to promote and serve the profession. While both organizations are run by the profession, they can each focus on their goals without conflict as to which comes first. A significant number of IPIC members are neither Patent Agents nor Trade-mark Agents and therefore IPIC's priorities may not always coincide with those of the College.

2.12.1.1 What continues as before

- IPIC will remain an organization with voluntary membership.
- IPIC will continue to include members who are not regulated by the College, such as litigators, copyright lawyers, technology transfer specialists, university professors and corporate IP managers.
- IPIC will focus its energies on national and international advocacy (in relation to IP laws, regulations and practice), education, publications and public awareness.

2.12.1.2 What is new

- IPIC will have no further role in exams qualifying people as Patent Agents and Trade-mark Agents nor in investigating ethics complaints.
- The College and IPIC will maintain a collaborative relationship, in particular in the area of education because, while the College will set the exams and the standards for continuing professional development (CPD), IPIC will be one of the main suppliers of training and CPD.

2.12.2 How we propose that the concept be enacted

2.12.2.1 Legislation

- The Act would create the College as a new corporation.

2.12.2.2 New regulations and bylaws

- Not applicable.

2.12.2.3 Existing regulations

- No changes required other than deleting the sections of the *Patent Rules* and the *Trade-mark Regulations* that govern the exams and refer to IPIC. See Section 2.3.2.3 above.

3. Practice before CIPO

An updated status quo

3.1 The concept

- CIPO will transfer the responsibility to regulate Agents to the College.
- CIPO will retain its role in determining who can correspond with the Patent Office and the Trade-marks Office. Our proposal envisages no change to CIPO's role in this regard.
- Some changes to the terminology and to the processes are required for two reasons:
 - Patent Agent and Trade-mark Agent will become reserved titles. Previously, they were used in a more generic form in the regulations.
 - The Registers will be managed by the College.

3.1.1 What continues as before

- Canadian residents who have met the qualifications to become Patent Agents or Trade-mark Agents will be entitled to practise before CIPO.
- Residents of other countries who are on their own country's register of agents can continue to appear on CIPO's list of agents (to be renamed List of Practitioners). They will still be required to appoint a Canadian resident agent as associate agent.
- Firms with at least one member who falls within one of the above two categories will continue to appear on the respective list of agents (to be renamed List of Practitioners) held by CIPO.
- CIPO will continue to set the requirements and collect fees for the latter two categories (non-resident agents and firms).

3.1.2 What is new

- Currently, the Registrar of Trade-marks maintains a "list of trade-mark agents" and the Commissioner of Patents maintains a "register of patent agents." Both lists include resident agents, non-resident agents and firms.

- According to our proposal, the College will maintain the Register of Patent Agents and the Register of Trade-mark Agents because it is the College that will set the requirements and fees to become such an agent.
- We propose that the Commissioner maintain a List of Patent Practitioners and the Registrar maintain a List of Trade-mark Practitioners. These Lists will include:
 - Patent Agents or Trade-mark Agents;
 - Who will be, by definition, members of the College who have met the qualifications to appear on its Registers; and
 - Who will automatically be included on the Lists of Practitioners.
 - Non-resident agents who are on the registers in their own country and have paid the applicable fee to CIPO; and
 - Firms with a member from one of the above two categories and that have paid the applicable fee to CIPO.

3.2 How we propose that the concept be enacted

3.2.1 Legislation

- The *Patent Act* and the *Trade-marks Act* would be amended to recognize the new terminology.

3.2.2 New regulations and bylaws

- The bylaws would establish the mechanisms by which the College is to inform the Registrar and the Commissioner of any change to its Registers.

3.2.3 Existing regulations

- The *Patent Rules* and the *Trade-marks Regulations* would be amended to:
 - Make use of the new terminology;
 - Establish a link between the Registers of the College and the Lists of Practitioners; and
 - Oblige the College to provide any changes to its Registers to CIPO, and oblige CIPO to recognize the information provided by the College.

Additional information available:

- Proposed amendments to the *Trade-marks Act*, the *Trade-marks Regulations*, the *Patent Act* and the *Patent Rules*

4. Protection of Confidential Communications

Bringing Canada in-line with other countries

4.1 The concept

- In the course of practice, Patent Agents receive confidential information from clients, including technical and/or scientific matters, their activities, as well as information on the activities of their competitors. Keeping such information confidential is essential not only to maintain client confidence and trust, but also so as not to jeopardize the patent rights of clients throughout the world.
- Trade-mark Agents provide expert advice to clients about the adoption of trade-marks, their availability, registrability, enforceability and validity. Trade-mark Agents receive confidential information from clients that could seriously jeopardize those clients if it were disclosed.
- Patent Agents and Trade-mark Agents are uniquely qualified to advise clients on whether or not they can get a patent or a trade-mark registration, whether someone else is infringing their rights, and whether they are infringing someone else's rights. Clients who seek assistance from Patent Agents or Trade-mark Agents should be able to share confidential information regarding their inventions, their trade-marks and their related business activities without fear that it may later be divulged in a court proceeding relating to these rights.
- Under current law, confidential communications between a client and a solicitor are treated as "privileged" and they cannot be compelled to produce these communications in any discovery process.
- Confidential communications between clients and Patent Agents or Trade-mark Agents are not subject to that same protection in Canada. This is the case for non-lawyer agents, and also possibly for lawyers acting in the ir capacity as an agent (there is conflicting authority as to whether solicitor/client privilege attaches to communications with lawyers acting as Agents).
- This situation creates significant risk for clients and problems for professionals :
 - Clients who obtain the services of a non-lawyer agent may have their communications disclosed in court, while the same communications made to a lawyer-agent may be protected from disclosure. (There is uncertainty as to the whether or not that protection would be afforded.). This happens despite the facts that:

- The U.S. courts have repeatedly ruled that if the communications were protected in the party's country of origin, the American court will also recognize the communications as privileged. Otherwise, the communications will be disclosed. This situation happened to a French pharmaceutical company, prompting France to amend its legislation.
 - The law in Canada, as in most other countries, does not require a Patent Agent or Trade-mark Agent to be a lawyer.
 - The Government of Canada encourages clients to use the expertise provided by agents.
 - Confidentiality concerning inventions is critical to anyone involved in protecting IP.
 - Confidentiality is engrained in patent systems worldwide.
 - In many offices, lawyer agents and non-lawyer agents work side-by-side, often doing the same work and freely exchanging information.
- Canada and Canadian companies are placed at an international competitive disadvantage. Any company that is active outside Canada and uses the services of a Canadian agent is at risk.
 - Australia, the United Kingdom, New Zealand, France, Germany, Japan and the Netherlands have adopted legislation to protect the communications between Agents and their clients.
 - Amendments to the European Patent Convention (31 countries are signatories) will come into force in 2007 giving privilege to the clients of all European Patent Attorneys (non-lawyers) registered to practise before the European Patent Office. The rationale for this is economic and competitive, namely to ensure that services are provided consistently throughout an economic region thereby removing barriers to competition for such services.
 - Although there is no legislation for agents in the United States, courts in a number of jurisdictions have extended privilege to patent agents who are registered before the U.S. Patent and Trade-mark Office.

4.1.1 What continues as before

- Communications with lawyer-agents that would have been protected continue to be protected.

4.1.2 What is new

- Our proposal will:
 - Bring certainty as to the protection from disclosure of clients' confidential communications with non-lawyer agents and lawyer-agents;
 - Treat all clients entering litigation in Canada equally;
 - Put Canadian clients on a level playing-field when entering litigation in the United States and elsewhere;
 - Allow Canadian clients to seek local advice without jeopardizing their position in subsequent proceedings;
 - Put Canadian agents on a level playing-field when competing for business with agents around the world;
 - Permit Canadian agents to participate in multi-jurisdictional matters without the potential loss of rights for the client; and
 - Bring Canadian law in line with that in other countries such as Australia, France, Japan and the United Kingdom and with the evolving law in the United States.

4.2 How we propose that the concept be enacted

4.2.1 Legislation

- The Act would include the following provisions:

Confidential communications

(1) Subject to subsection (2), a communication, and its content, between a Patent Agent or a Trade-mark Agent and that agent's client or by a Patent Agent or a Trade-mark Agent on behalf of that agent's client is to be considered confidential and shall not be required to be disclosed by the agent or client, and they shall not be required to give evidence on the

communication in legal or administrative proceedings involving the infringement, validity, use, or ownership of any intellectual property right that was the subject of any such communication, whether or not such proceedings were contemplated at the time of the communication.

(2) Communications to which subsection (1) applies are any oral, written or electronic communications including any record or document made for the purposes of, or relating to, such communication between a Patent Agent or a Trade-mark Agent and that agent's client or any person acting on behalf of the client or by a Patent Agent or a Trade-mark Agent on behalf of that agent's client in respect of intellectual property matters arising within the scope of services provided by the Agent.

4.2.2 New regulations and bylaws

- We believe that regulations regarding the above provisions would be unnecessary.

4.2.3 Existing regulations

- No changes required.

**Additional
information
available:**

- Legislative texts from other jurisdictions
- Case law
- Letters of support from law firms, industry groups and clients

5. Unauthorized Practice

Further protection of the public interest

5.1 The concept

- Some people, who are not registered agents, provide assistance to inventors or trade-mark owners by helping them prepare their patent or trade-mark applications to the Patent Office or Trade-marks Office. This is permitted as long as the inventors or the applicants sign their own application.
- Some people do this work honestly: they are clear about their competencies and do not pretend to have more qualifications than they actually have. For example, an engineer who has completed a patent application in the past may choose to help his sister with her application. The clients (or family) choose this help knowingly and at their own risk.
- The problem lies with people who mislead clients about their qualifications. They can cause tremendous harm either in wasted money or lost rights. This legislation proposes to reduce the opportunities for these people to act.

5.1.1 What continues as before

- Inventors and trade-mark owners will still be free to file their own applications or choose whomever they want to prepare their applications.
- Inventors and trade-mark owners will still be required to hire an Agent to represent them before CIPO unless they choose to represent themselves.
- The Registers of Patent Agents and Trade-mark Agents will be available to the public.

IPIC's actions to prepare for these changes:

- IPIC and CIPO have established a bank of speakers (IPIC members) who make presentations on the basics of IP and the role of the Agent to groups such as small business associations.

5.1.2 What is new

- It will be unlawful for someone to call themselves a patent agent or a trade-mark agent or imply that they are an agent if they are not a member of the College. The Act will include sanctions for such unlawful activity.
- The College and IPIC will implement awareness programs about the advantages of hiring a Patent Agent or Trade-mark Agent.

5.2 How we propose that the concept be enacted

5.2.1 Legislation

- The Act would include the following provisions:

Unauthorized use of title

(1) No person other than a person on the Register of Patent Agents shall use the title “patent agent” and no person other than a person on the Register of Trade-mark Agents shall use the title “trade-mark agent.”

(2) No person other than a Patent Agent or a Trade-mark Agent shall use a name, title, addition or description from which it would be reasonable to infer that such a person is a Patent Agent or a Trade-mark Agent.

(3) Every person who contravenes subsection (1) or (2) above is guilty of an offence, and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a subsequent offence.

Injunctive relief

(1) The College may apply to a provincial or territorial court or to the Federal Court of Canada to seek injunctive relief to prevent a person from continuing to hold himself or herself out, or to permit himself or herself to be held out, as a member of the College or as being a Patent Agent or a Trade-mark Agent

(a) who has been convicted under (the above) section, or

(b) who the court is satisfied is contravening or has contravened (the above) section.

Variance

(2) Any person may apply to a provincial or territorial court or to the Federal Court of Canada for an order varying or discharging an order made under subsection (1).

5.2.2 New regulations and bylaws

- Regulations may be required regarding the above provisions.

5.2.3 Existing regulations

- No changes required.