



THE CANADIAN
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March 14, 2019

Via email: ised.minister-ministre.isde@canada.ca; navdeep.bains@parl.gc.ca

Mr. Navdeep Bains, P.C., M.P.
Minister, Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Minister:

Re: College of Patent and Trademark Agents, Transitional Board

We are writing on behalf of the CBA Intellectual Property Law Section and the Ethics and Professional Responsibility Committee (CBA Section and Committee) about the composition of the transitional Board of Directors of the College of Patent and Trademark Agents (the College).

The CBA is a national association of 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Section deals with law and practice relating to all forms of ownership, licensing, transfer and protection of intellectual property and related property rights, including patents, trademarks and copyright. The CBA Committee fosters ethical and professional conduct and standards in the legal profession.

A federal regulatory body for patent and trademark agents (IP agents) has been the focus of policy discussions and consultations for some time, including a number of submissions from the CBA Section.¹ The CBA Section and Committee have supported the development of a self-regulation model for IP agents so long as it includes appropriate regulatory objectives, has a governing body with appropriate accountability, and addresses potential conflicts between overlapping regulatory regimes for lawyer agents.²

It is premature to assess whether the proposed College meets these criteria, as significant aspects of the regime remain to be developed through regulation and bylaws. The CBA Section commented

¹ Including [Consultation on a Governance Framework for IP Agents – Governance Model, Discipline Process and Conflicts](#) (August 2016) and [Consultation on a Governance Framework for IP Agents – Code of Conduct](#) (June 2016)

² The IP agent community in Canada is comprised of lawyer agents (those qualified to practice law and registered as patent or trademark agents) and non-lawyer agents (those registered as patent or trademark agents only). Non-lawyer agents practice in law firms and on their own. All CBA Section members are lawyers, and many are also licensed patent or trademark agents (lawyer agents).

briefly³ on the statutory framework for a College of Patent and Trademark Agents proposed in the *College of Patent Agents and Trademark Agents Act* in Bill C-86, *Budget Implementation Act, 2018, No. 2* (passed in December 2018).⁴ We look forward to providing our input as the governing framework for the College evolves, to ensure it is designed to protect the public interest as required by the legislation. We strongly encourage robust public consultation throughout this process.

The legislation provides for the appointment of a transitional Board of Directors. You recently put out a call for applicants to that first Board, whose job it will be “to lay the foundation for the College and ensure that a robust, public interest–minded body oversees intellectual property agents.”⁵

The eligibility criteria in the call for Directors include a strong understanding of modern professional regulation frameworks, knowledge of rules of professional conduct and responsibility, and high ethical standards.⁶ We urge the government to ensure that the transitional Board (and subsequent Boards) includes the deep expertise in professional regulation and ethics necessary to fully appreciate the implications for lawyer agents of potential conflicts between overlapping regulatory regimes and to ensure that the College acts in the public interest.

Both the CBA Section and the Federation of Law Societies of Canada⁷ have argued that regulation of lawyer agents by the College is not necessary and not in the public interest. The government having chosen otherwise, clarity on the appropriate roles of the regulated professionals and their respective accountabilities will be critical to ensuring the public can “secure the rights provided for under the Patent Act and the Trademarks Act” as intended under the legislation.⁸ We caution that the College governance bodies (transitional and permanent) will require a full understanding of the existing regulation of lawyer agents and non-lawyer agents (including their scope of practice) and must develop regulations and rules to address inconsistency and conflicts between the regulatory regimes.

Further, the public interest can only be served if there is substantive understanding by Board members of the distinctions between solicitor-client privilege and the statutory privilege granted to IP agents. Some co-mingling of these privileges is evident in the background materials supporting the establishment of the College and may lead to public confusion and conflict if great care is not taken in elaborating the regulatory framework for the College.

We look forward to engaging with you and your team as the framework governing the College develops. As mentioned, full and meaningful consultation on proposed regulations and by-laws is of critical importance.

Yours truly,

(original letter signed by Sarah MacKenzie for James Kosa and Darcia Senft)

James Kosa, Chair, CBA IP Law Section

Darcia Senft, Chair, CBA Ethics and Professional Responsibility Committee

³ CBA IP Section submission, [Bill –C-86, Budget Implementation Act](#) (November 22, 2018)

⁴ [Bill C-86, Budget Implementation Act, 2018, No. 2](#), Part 4, Division 7, Subdivision D

⁵ [Government of Canada Launches Call for Directors](#) (February 15, 2019)

⁶ Government of Canada Launches Call for Directors, *supra* 5

⁷ CBA IP Section submissions, *supra* 1 and 3; FLSC [Submission of the Federation of Law Societies of Canada to the Senate Committee on Banking, Trade and Commerce](#) (November 22, 2018).

⁸ *Supra* 4, s. 6.