



THE CANADIAN  
BAR ASSOCIATION  
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BARREAU CANADIEN

September 15, 2021

Via email: [dpink@cpata-cabamc.ca](mailto:dpink@cpata-cabamc.ca)

Mr. Darrel Pink  
Interim CEO and Registrar  
College of Patent Agents and Trademark Agents  
400-411 Roosevelt Avenue  
Ottawa, ON K2A 3X9

Dear Mr. Pink:

**Re: Patent and Trademark Agents – Mandatory Liability Insurance**

I write on behalf of the Intellectual Property Section and the Ethics and Professional Responsibility Subcommittee of the Canadian Bar Association (the CBA Sections) in response to the July 2021 Consultation Paper of the College of Patent Agents and Trademark Agents (CPATA) on mandatory liability insurance for CPATA members.

The Canadian Bar Association is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers, and students across Canada. The CBA promotes the rule of law, access to justice, effective law reform and provide expertise on how the law touches the lives of Canadians every day. The CBA IP Section promotes a greater awareness and understanding of law and practice relating to all forms of ownership, licensing, transfer and protection of intellectual property and related property rights, including patents, trademarks, copyright, industrial designs, plant breeders' rights, as well as trade secrets. The Ethics and Professional Responsibility Subcommittee is dedicated to fostering and advancing ethical and professional conduct and standards in the legal profession.

The intellectual property (IP) professional 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). Non-lawyer agents may practice in law firms or on their own. All CBA IP Section members are lawyers, and many are also qualified patent or trademark agents (lawyer agents).

The IP professional community is committed to the highest standards of practice. The CBA supports the development of a self-regulation model for IP professionals if it includes appropriate regulatory objectives and a governing body with appropriate accountability, and addresses potential conflicts between overlapping regulatory regimes for lawyer agents.

Mandatory professional liability insurance is an important aspect of CPATA's regulatory mandate. We appreciate that mandatory professional liability insurance requirements enhance the public interest and public confidence in CPATA's members. The CBA Sections are encouraged by the goals in the Consultation Paper.

Every regulatory body of lawyers in Canada (law society or barreau) requires lawyers in private practice (working in a law firm or self-employed) to carry a minimum of \$1 million in professional liability insurance. Lawyers are also subject to mandatory trust protection indemnity policies, and law society compensation funds protect the public against the potential misuse of trust funds. As a result, every lawyer in private practice is subject to both professional liability insurance and trust fund indemnification policies. This is an important aspect of legal profession regulation and is in the public interest.

In addition to mandatory professional liability insurance from specified providers, private practice lawyers can purchase additional coverage from other insurance brokers and companies. The majority of lawyers and law firms carry coverage well in excess of the mandatory minimums.

In looking at who is subject to mandatory professional liability insurance requirements, the Consultation Paper does not address overlapping regulatory regimes for lawyer agents. In our view, CPATA should not impose additional insurance requirements on lawyer agents. Rather, a framework should be implemented allowing lawyer agents to receive an exemption on submission of proof of insurance to CPATA. This framework resembles law society programs with minimum insurance requirements for lawyers registered in multiple jurisdictions, where proof of insurance in one Canadian jurisdiction is satisfactory for membership with another. Likewise, proof of insurance through a lawyer agent's law society should be satisfactory for CPATA membership.

Similarly, to the extent that non-lawyer agents have equivalent coverage through insurance obtained by law firms that employ them, the CBA Sections recommend these non-lawyer agents receive similar exemptions by submitting proof of insurance.

In our view, additional CPATA-specific mandatory insurance requirements for lawyer agents and non-lawyer agents employed at law firms, who already carry insurance that meets the minimum coverage proposed in the Consultation Paper, place an unnecessary and arguably disproportionate burden on these members and would not assist CPATA to meet its regulatory objectives or further its public interest.

We trust that our input is helpful and welcome the opportunity to discuss it in more detail if necessary.

Yours truly,

*(original letter signed by Julie Terrien for Vincent Yip and Jennifer Biernaskie)*

Vincent Yip  
Chair, CBA Intellectual Property Law Section

Jennifer Biernaskie  
Chair, Ethics and Professional Responsibility Subcommittee