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To: [CIPO Consultations / OPIC consultations \(IC\)](#)
Cc: [Lapin, Philip](#)
Subject: Comments concerning the Draft Trademarks Regulations - from Smart & Biggar / Fetherstonhaugh
Date: July-21-17 1:03:43 PM
Attachments: [image001.png](#)
[image002.png](#)

Registrar:

This submission provides comments on behalf of Smart & Biggar/Fetherstonhaugh in relation to the proposed Trademarks Regulations.

Of serious concern is the proposed change providing for filing dates 365 days per year for electronic filings. As explained below, this change is particularly prejudicial to (a) Canadian applicants who are individuals or who have few employees, (b) Canadian trademark agents who are sole practitioners and smaller Canadian trademark agencies and (c) Canadian applicants who only work Monday to Friday as compared to similarly-situated Asian applicants who only work Monday to Friday.

Our more detailed comments are provided below.

Rule 9(4)

This rule provides that the deemed filing date of a trademark application can be any day including Saturday, Sunday or a holiday. This provision is prejudicial to Canadians generally as well as small Canadian companies, small Canadian trademark firms and poor Canadians, in particular. For the reasons that follow, we suggest that this provision be amended to allow only for a filing date when CIPO is open for business.

If an applicant can obtain a filing date on a Saturday, Sunday or holiday, this prejudices all applicants who do not work 365 days per year. This is particularly prejudicial to individual applicants and small entity applicants who have fewer employees. Where a larger Canadian applicant may have capacity to operate 365 days/year, smaller entities do not have that luxury.

For sole practitioner trademark agents, this proposed amendment will require them to work 365 days per year, which is clearly unfair. If they choose not work 365 days per year, this leaves them at a significant disadvantage to their larger competitors who are better able to ensure that they are open for business 365 days per year.

The provision disadvantages the poor who may not have access to a credit card. Anyone who does not have access to a credit card only obtain a filing date by filing a cheque which can only be accepted by CIPO on a day when CIPO is open.

Moreover, this provision disadvantages all Canadian applicants which only work Monday to Friday as compared to a similarly-situated Asian applicants which only work Monday to Friday. An Asian applicant which files a Canadian application on Monday in Asia, will obtain a

filing date of Sunday (since the Asian company is operating 12 or so hours ahead of Gatineau, Quebec). However, the Canadian applicant which also only operates from Monday to Friday will obtain a Monday filing date, which will effectively be a day later than the Asian applicant.

Accordingly, this proposed provision is prejudicial to Canadian applicants.

One further point is worth making. This proposed provision is contrary to the Canadian federal government's acknowledgment of the need for an appropriate work/life balance.

Recent federal government initiatives to promote work/life balance include the following:

1. In May 2016, the then Minister of Employment, Workforce Development and Labour, MaryAnn Mihychuk, published the *Flexible Work Arrangements Discussion Paper*, which recognized that Canadians face a challenge in finding the right balance between their work life and their personal life. (link: <https://www.canada.ca/en/employment-social-development/programs/labour-standards-equity/consultation-flexible-work-arrangements/discussion-paper.html>)
 - a. In particular, this paper highlighted that achieving balance between often competing responsibilities [work and life responsibilities] can be difficult.
 - b. According to the Canadian Mental Health Association, also cited in this paper, 58% of Canadians reported "overload" due to pressures associated with the many different roles they now play at work and home.
2. The Minister of Families, Jean-Yves Duclos, in his June 6th, 2017 address to the Standing Committee on Human Resources, highlighted that the Government of Canada recognized the tough task of balancing work and personal responsibilities and was introducing policy measures to help Canadians meet such obligations. [Actual quote: "Our government also recognizes the critical role that many Canadians play in supporting family and friends with serious health conditions, disabilities or aging related needs, often while balancing work and other personal responsibilities", while talking about a \$700 million committed over 5 years for creation of employment insurance] [link: <https://openparliament.ca/committees/human-resources/42-1/60/jean-yves-duclos-1/>]

Because this proposed provision encourages applicants and agents to work 365 days/year, this provision is contrary to the government's own initiatives. The provision is particularly prejudicial to individual and small applicants, sole practitioners and small trademark agent firms as well as the poor. Finally, the provision unduly prejudices Canadian applicants as compared to applicants from Asia.

Accordingly, we suggest that this proposal be amended to provide that a filing date can only

be granted on a day when CIPO is open for business.

Rule 35(2)(c)(ii)

There is a typographical error. "... of the Act~~or~~ ..." should read "... of the Act or ..."

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Rule 40:

This rule is incomprehensible. We suggest that this provision be re-drafted so that it is easily understandable to a typical Canadian trademark agent.

Rule 52(1)

The heading is wrong. It should read: "Evidence of the applicant"

Rule 76

This rule is difficult to understand. We suggest that this provision be re-drafted so that it is easily understandable to a typical Canadian trademark agent.

Rule 158

This rule is incomprehensible. We suggest that this provision be re-drafted so that it is easily understandable to a typical Canadian trademark agent.

Rule 159

This rule is incomprehensible. We suggest that this provision be re-drafted so that it is easily understandable to a typical Canadian trademark agent.

We would be pleased to discuss any of these issues at any time. Please feel free to contact us if you would like our further input.

With best regards,

Philip Lapin

For and on behalf of Smart & Biggar / Fetherstonhaugh

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