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Via Email

Denis Martel
Director of Patent Policy, Strategic Policy Sector
Innovation, Science and Economic Development Canada

Dear Mr. Martel

**Re: Submission in Response to Annex A of the Strategic Consultation entitled,
"A Governing Framework for IP Agents"**

I write on behalf of the lawyers and patent and trademark agents of my firm, Borden Ladner Gervais LLP (BLG) with respect to the above Consultation published May 26, 2016.

As you may know, BLG is a Canadian law firm with more than 725 lawyers, intellectual property agents and other professionals with offices in Vancouver, Calgary, Toronto, Ottawa and Montreal.

Our intellectual property practice goes back six generations and our current BLG lawyers and agents have contributed their time and expertise extensively in responding to the myriad consultations which form part of the ongoing process to modernize Canada's intellectual property laws, regulations and Canadian Intellectual Property Office practices.

We have reviewed Annex A to the Strategic Consultation, namely, the *Proposed Draft Code of Conduct*, with a view to meeting today's due date for comments. We plan to address Annex B of the Consultation separately at a later date.

We attach, in chart form, our comments about specific draft provisions in Annex A, together with suggestions in respect of the proposed language. Due to the short response time, we have made a number of suggestions to the proposed code provisions. However, we suggest greater attention must be given to the draft provisions, prior to the drafting of legislation, for the following reasons:

1. We believe that it is very important that the rules that ultimately apply to trademark agents and patent agents are closely aligned with the rules to which Canadian law firms must adhere (or at least the agent rules must not prove to be more onerous than applicable law society rules). If the code applicable to agents is not compatible with law society rules

then law firms in Canada that provide intellectual property advice and services will likely have to create a separate corporation and separate operation for their agents. This would have the effect of severely disadvantaging agents and creating considerable duplication and expense, arguably making Canadian agents less competitive than our global counterparts. Furthermore, it would prove to be very difficult for any agents who are also lawyers as they could have competing duties and obligations under the two regimes.

2. In our comments we have referred to the rules of conduct governing the Law Society of Upper Canada and the Rules of Professional Conduct of the United States Patent and Trademark Office. We note, however, that the Federation of Law Societies of Canada has developed a model code, found at: <http://flsc.ca/national-initiatives/model-code-of-professional-conduct/federation-model-code-of-professional-conduct/>. An interactive model code that shows corresponding provincial law society provisions can be found at: <http://flsc.ca/interactivecode/>. This model code may provide useful insight into Canada-wide coverage and best practices that can help shape the federal legislation that will govern Canadian IP agents.
3. It may be fruitful for your department to consult outside of the IP profession. We are aware that a tremendous amount of work went into the model code created by The Federation of Law Societies of Canada. There are likely some lawyers who were instrumental in developing and refining that model code who could provide current and informed answers on the importance of refining Annex A in key areas such as client identification, conflicts and confidentiality.

Thank you for the opportunity to comment on the Strategic Policy Consultation. We welcome any questions or comments you may have in respect of our submissions. Please feel free to contact me by telephone or email if that would be helpful.

Sincerely,

Borden Ladner Gervais LLP

/Jason Howg/

Jason Howg
Partner, Lawyer,
Patent Agent and Trade-mark Agent
JH/TLM/bmp/ked

Encl.

1. Comments

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