



Consultation: A Governance Framework for IP Agents Part 1: Code of Conduct

Submission to
Innovation, Science and Economic Development Canada
By the Intellectual Property Institute of Canada

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INTELLECTUAL PROPERTY INSTITUTE OF CANADA
INSTITUT DE LA PROPRIÉTÉ INTELLECTUELLE DU CANADA

Submission in Response to the First Part of the Consultation on a Governance Framework for IP Agents – the Code of Conduct

Introduction

IPIC

The Intellectual Property Institute of Canada (IPIC) is the professional association of patent agents, trademark agents and lawyers practising in all areas of intellectual property (IP) law. Our membership totals over 1,700 individuals, consisting of practitioners in law firms and agencies of all sizes, sole practitioners, in-house corporate intellectual property professionals, government personnel, and academics. Our members' clients include virtually all Canadian businesses, universities and other institutions that have an interest in intellectual property (e.g. patents, trademarks, copyright and industrial designs) in Canada or elsewhere, and also foreign companies who hold intellectual property rights in Canada.

The consultation

IPIC's constitution includes the objective to "ensure high levels of knowledge, training, and ethics in Canadian intellectual property practitioners." We therefore afford great importance to this consultation by Innovation, Science and Economic Development Canada (ISED) in conjunction with the Canadian Intellectual Property Office (CIPO).

The Institute has maintained – and is the only organization to have done so – a code of ethics for the majority of Canadian patent and trademark agents during the past 90 years. We therefore want to emphasize that the main issue regarding a code of conduct for patent and trademark agents is not the lack of such a code, but rather the possibility of enforcing it. With regard to enforcement, there are two issues:

- Although IPIC has a code of ethics, because it is a voluntary association and not the regulator of the profession, its ability to enforce it is limited.
- The IPIC code applies to a majority of agents (IPIC members) but not all registered agents.

We therefore welcome the second part of the government's consultation, the governance model, and we will respond with our proposal for a modern governance framework.

Even more important than enforcing a code, is ensuring that professionals understand it and willingly abide by the code. The purpose of a regulatory system should not be to "catch in the act" agents who do not follow the code but rather to instill a sense of ethics and high standards of practice in all members of the profession. IPIC has been doing so for 90 years and we believe

that an organization managed by the profession will be the best way of doing so in the future. This approach has existed for professionals in Canada since before Confederation.

The code

Since 1926, periodic revisions have been made to the Institute's code of ethics and IPIC's current code was adopted by the membership in 2001.

As part of our ethics education activities, we held a webinar in November 2011 and received suggestions from members to update our code, especially about conflicts given Supreme Court decisions on this issue in recent years.

IPIC's Professional Regulation Committee then created a sub-committee which looked at the new Model Code of Professional Conduct of the Federation of Law Societies, the United States Patent and Trademark Office's Rules of Professional Conduct, and the American Bar Association Model Rules of Professional Conduct. The committee proposed revisions to IPIC's current code, and added sections from the Federation of Law Societies Model Code to meet the Federation's objective of eliminating any significant differences in rules of conduct across the country.

In 2013, CIPO initiated the *Modernizing the IP Community* project. To avoid duplication of efforts, we provided our draft revised code to the working groups. The draft was included as an appendix to the report with the recommendation that all agents (not just IPIC members) should be subject to a code based on the draft revised IPIC code and aligned with the Federation's code. In IPIC's response to the 2014 consultation on that report, we indicated that this code had not yet been adopted by members.

Before our next step with this draft – consulting IPIC members towards adoption – we wanted to get a sense of how the regulation of agents would evolve after this 2014 report, with the idea that adoption could be in the context of creating a new regulatory body. We didn't expect that the government would itself hold a further consultation on the code. Therefore, the draft revised code that is the subject of the consultation has not yet been adopted by the members of IPIC.

Recommendations

We understand the government's desire to have in place a code to guide the work of agents given the coming into force of privilege for communications between clients and their agents.

We believe that the best approach would be to adopt a code for all agents in the context of a complete regulatory framework, under a self-regulatory model. However, if the government prefers an interim measure, we recommend the following:

1. Use IPIC's current Code of Ethics

This code is appended to this submission.

IPIC is pursuing, beyond the June 13 deadline, a consultation of its members on the draft revised code towards adoption at the Annual General Meeting at the end of September. Therefore, if the government were to follow the principle of using the IPIC Code of Ethics in force and as amended from time to time, the new adopted code (which will likely be very similar to the code that is subject of the consultation) could automatically replace the current code.

Reasons:

- Unless the government intends to place in regulations the code of conduct – which we don't recommend – using IPIC's code carries more weight because it has been adopted by a group widely representative of the profession. Already IPIC is named in the *Patent Rules* and *Trade-marks Regulations* as the organization outside of CIPO that supplies members of the agent exam boards. If the government recognizes the qualification of IPIC with regard to entry into the profession, why not regarding ethics, especially as an interim measure?
- The consultation paper raises questions about potential conflicts between codes when agents belong to more than one professional regulatory body. We will answer those questions in our submission to the second part of the consultation as these issues include discipline questions.

However, before considering conflicts between different professions, the government must first consider conflicts *within the same profession*. How will conflicts be resolved if CIPO uses a code that is different than IPIC's code?

- A first issue is that the consultation paper does not explain how the government intends to use this code.
- A second issue is that agents agree to adhere to the IPIC code by becoming members but there is no requirement to adhere to a code used by CIPO.
- Further work is required on the draft code. For example, the draft revision put forward by government includes sections of the 2012 Model Code of the Federation of Law

Societies. The Federation has since made revisions to the code and is currently holding a consultation on further revisions. We need to study these revisions to determine which are applicable to a code for agents. We intend to do so in the coming weeks. Other examples include the possible addition of text to Rule 2 (Confidentiality) because of the privilege statute and a required revision explained under the next recommendation.

2. Remove Rule 3.4 pending further study

If the government decides to use the draft revised code despite Recommendation 1, we ask that the rule and the commentary for Rule 3.4 be removed. However, the header should be kept to indicate that the issue of Concurrent Representation is being considered and a note could be included to the effect that this rule is under development.

IPIC will study this further and work on developing a rule and/or commentary for this topic.

Reasons:

To help members understand this consultation by government and the code that is subject of the consultation, IPIC held webinars on June 3 (English) and June 6 (French). We have received feedback from members with serious concerns about Rule 3.4. The concerns are as much for the agents as for innovators who may lose access to the expertise of the agent that they currently call upon.

Rule 3.4 appears to be modeled on Rule 3.4-4 of the *Model Code of Professional Conduct* of the Federation of Law Societies of Canada.

IPIC believes that the application of Rule 3.4-4 of the Federation *Model Code* is uncertain in the context of patent and trademark agency practice. In particular, the scope of the expression “competing interests” is not clear, and no elaboration is provided in the associated commentary in the draft revised code.

In contrast, the Federation’s *Model Code*, provides a helpful example:

*An example is a law firm acting for a number of sophisticated clients in a matter such as **competing bids in a corporate acquisition** in which, although the clients’ interests are divergent and may conflict, the clients are not in a dispute. Provided that each client is represented by a different lawyer in the firm and there is no real risk that the firm will not be able to properly represent the legal interests of each client, the firm may represent both even though the subject matter of the retainers is the same. Whether or not a risk of impairment of representation exists is a question of fact.*

There is no counterpart in patent or trademark agency practice to representing a number of clients presenting competing bids in a corporate acquisition. Equivalent circumstances, that might constitute “competing interests” in the context of patent or trademark agency practice, are not described.

***“The law of conflicts is mainly concerned with two types of prejudice: prejudice as a result of the lawyer’s misuse of confidential information obtained from a client; and prejudice arising where the lawyer ‘soft peddles’ his representation of a client in order to serve his own interests, those of another client, or those of a third person”*: CN v McKercher LLP 2013 SCC 39 at ¶ 23.**

The above example of competing bids in a corporate acquisition clearly invokes both forms of prejudice described in *McKercher*. First, the law firm would know e.g. the dollar value of the bid each client is making for the target company—clearly critical confidential information. Second, there is a single target company to acquire, and only one of the clients can prevail—the risks and consequences of favouring one client’s interests over the interest of another are substantial.

Further study would be required in order to assess what circumstances might constitute similar competing interests in patent and trademark agency practice, raising significant issues of potential misuse of confidential information, or jeopardizing the likelihood of effective representation.

Accordingly, IPIC recommends that Rule 3.4 be deleted from the draft Code, pending further study.

Questions

The consultation paper includes these questions related to the Code of Conduct:

- 1 *Does the draft code cover all the right elements? Keeping in mind that a code is a “living document” that evolves as the profession and jurisprudence evolves, we believe that it does cover all the right elements at this time.*

Are any elements missing? As indicated above, some further revisions are needed but we believe that no significant elements are missing.

Are any changes necessary before implementation? Yes – see Recommendation 2.

- 2 *Should the code of conduct or other applicable regulations clearly define what activities qualify as permitted practice in front of the patent or trademarks office?*

In Canada, professional codes of conduct do not define the activities (they don’t define *what* the professionals practice but address *how* they practice).

The *Patent Act* and *Rules* and *Trade-marks Act* and *Regulations* already define the activities that qualify as permitted practice in front of the patent and trademarks offices.

Conclusion

Creating a modern governance framework for patent and trademark agents is not only a question of establishing rules and enforcing them. It is about instilling ethical behaviour and fostering a culture where members of the profession strive to achieve high standards.

The profession of patent and trademark agents has maintained those high ethical standards. One of the contributing factors has been the code of ethics maintained by IPIC.

We recommend that, if the government seeks an interim measure before the implementation of a new governance framework, it uses the IPIC Code of Ethics in force and as amended from time to time.

After that interim measure, the profession should be permitted to implement the new governance framework. In this regard, IPIC will put forward, in response to the second part of the consultation, a proposal for a modern governance framework to sustain the profession's excellence and protect the public interest.

***Intellectual Property Institute of Canada
Code of Ethics
(as of March 6, 2001)***

Nothing in the Code shall affect the more onerous obligations or rights of the agent with respect to the agent's obligations under any other statute, regulation or code of ethics.

Definitions

"agent" includes a registered trade-mark agent, a registered patent agent and a member of the Intellectual Property Institute of Canada and further includes a patent or trade-mark agent trainee where appropriate in the context of any particular Rule of this Code.

“client” means any natural person or legal entity that takes advice or asks services of the agent or who seeks such services directly or indirectly on behalf of others.

“member of the Institute” means an individual who has been admitted by the Intellectual Property Institute of Canada into one of its classes of membership.

FUNDAMENTAL CANON

The most important attribute of a member of the Institute is integrity. This principle is implicit in this Code of Ethics and in each of the Rules and Commentaries thereunder. Over and above the possibility of formal sanction under any of the rules in this Code, an agent must at all times conduct himself or herself with integrity and competence in accordance with the highest standards of the profession so as to retain the trust, respect and confidence of members of the profession and the public.

1. COMPETENCE

PRINCIPLE

An agent owes the client a duty to be competent to perform any agency services undertaken on the client's behalf.

Rules

1. An agent must not undertake or continue any matter without honestly feeling competent to handle it, or able to become competent without undue delay, risk or expense to the client or without associating with another agent who is competent to handle the matter. An agent must promptly advise the client whenever it is reasonably perceived that the agent may not be competent to perform a particular task and whenever practical, provide reference to those known to the agent as likely to have such competence.

2. An agent must assume complete professional responsibility for all business entrusted to the agent, maintaining direct supervision over staff and assistants such as trainees, students, clerks and legal assistants to whom particular tasks and functions may be delegated.

3. An agent must maintain appropriate office procedures and systems including without limitation, systems for meeting the requirements for all deadlines arising from client matters and

for handling and maintaining client affairs without prejudicing client affairs.

4. An agent should keep abreast of developments in the branches of law wherein the agent's practice lies by engaging in study and education.

5. An agent conducting agency practice other than for an employer must maintain a professional liability policy from a reputable insurer for at least the amount recommended by the Institute.

Commentary

Competence in a particular matter involves more than an understanding of the relevant legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied.

An agent who practices alone or operates a branch or a part-time office should ensure that all matters requiring an agent's professional skill and judgment are dealt with directly by an agent qualified to do the work.

2. CONFIDENTIALITY

PRINCIPLE

An agent has a duty to preserve the confidences and secrets of clients.

Rules

1. An agent must hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and must not divulge such information unless such disclosure is expressly or impliedly authorized by the client, required by law or otherwise permitted or required by this Code.

2. An agent must exercise reasonable care to prevent the agent's employees, associates and others whose services are utilized by the agent from disclosing or using such confidential information.

3. The agent must continue to hold in confidence such information despite conclusion of the matter or termination of the professional relationship with the client.

4. An agent must guard against participating in or commenting upon speculation concerning the client's affairs or business even if certain facts are public knowledge.

5. An agent must not disclose any information disclosed to the agent in confidence concerning a client's business or affairs regardless of its source, other than facts that are a matter of public record.

6. When disclosure is required by law or by order of a court of competent jurisdiction, the agent must always be careful not to divulge more information than is required.

7. Disclosure of confidential information to the Institute when required to do so by the Institute may be justified in order to establish or correct a fee, or to defend the agent or the agent's associates or employees against any allegation of malpractice or misconduct, but only to the extent necessary for such purposes and no more.

Commentary

An agent should take care to avoid inadvertent disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure, unless the first client, after full disclosure, consents.

3. CONFLICTS

PRINCIPLE

In each matter, an agent's judgment and fidelity to the client's interest must be free from compromising influences.

Rules

1. An agent must not advise or represent both sides of a dispute or potential dispute.

2. The agent must not act for a party where the agent has confidential information that could be used to the disadvantage of another client or former client, except with the consent of the other client or former client, after full disclosure.

3. The agent must ensure that his or her relationship with the client and any other person or firm involved in any matter on which the agent is giving advice to the client does not and will not lead to a situation where there is or is likely to be a conflict between the interests of the client and the agent.

4. In the case of a firm of agents where at least one of the agents of the firm has confidential information that could be used to the disadvantage of another client or former client of the firm, and the firm acts only for one of the clients, appropriate steps must be taken to maintain such confidential information and ensure that it is not used to the disadvantage of the client or former client such that a reasonably informed person would be satisfied that no use of confidential information would occur. When an agent transfers from one firm to another, the agent and the new firm must ensure that all reasonable and proper measures are taken to maintain the confidentiality of information relating to the clients of the former firm, such that a reasonably informed person would be satisfied that no use of confidential information would occur.

5. Subject to Rule 6 below, the agent must not enter into a business transaction with a client, or knowingly give to or acquire from the client an ownership, security or other monetary interest in an intellectual property right related to the agent's professional advice, unless:

- a) the transaction is a fair and reasonable one in the circumstances and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;
- b) the client is given a reasonable opportunity to seek independent legal advice about the transaction, the onus being on the agent to prove that the client's interests were protected by such independent advice; and
- c) the client consents in writing to the transaction.

6. When an agent has been retained to prepare or to provide services relating to a new patent application and the agent conceives an improvement or modification to an invention or a portion of an invention to be claimed in the application so that the agent reasonably believes himself or herself to be a co-inventor and proposes to list himself or herself as a co-inventor, the agent must advise the client to obtain independent professional advice as to:

- a) whether or not naming the agent as a co-inventor is appropriate and justified; and
- b) whether a new agent should be retained to prosecute the application.

7. The agent must not enter into or continue a business transaction with the client relating to the agent's professional advice if:

- a) the client expects or might reasonably be assumed to expect that the agent is protecting the client's interests; and
- b) there is a significant risk that the interests of the agent and the client may differ.

Commentary

(1) Business transaction would include circumstances in which an agent is a co-inventor and retains any interest in the invention, or any other circumstance where an agent acquires an interest in an intellectual property right of a client.

(2) When an agent has been retained to prepare a patent application and, in the process of carrying out this service or an associated service, the agent conceives of an improvement, modification, or variation that is included in the patent application and that the agent reasonably believes renders himself a co-inventor who should be named as such in the application, the agent normally has a duty to assign his rights as a co-inventor to his client without further charge or

additional expense to his client who should be considered the rightful owner of the entire invention described and claimed in the application.

(3) If an agent accepts employment from more than one client in a matter or transaction and a conflict subsequently arises between these clients which cannot be resolved by the clients, the agent should not normally continue to act for any or all of them and the agent may have to withdraw completely from acting in connection with that matter or transaction.

(4) Before an agent accepts employment from more than one client in a matter or transaction, the agent should normally advise the clients that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned.

4. ADVISING CLIENTS

PRINCIPLE

An agent must be both honest and candid when advising clients.

Rules

1. The agent must give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law, and the agent's own experience and expertise.
2. The agent's advice must be open and undisguised, and must clearly disclose what the agent honestly thinks about the merits and probable results.
3. If it should become apparent to the agent that the client has misunderstood or misconceived the position or what is really involved, the agent must use reasonable efforts to explain to the client, the agent's advice and recommendations.
4. An agent must reasonably promptly act on the client's instructions and must reply to all client inquiries.
5. An agent must take reasonable steps to advise the client of the costs of obtaining or seeking any intellectual property protection in Canada or elsewhere recommended by the agent.
6. An agent must communicate in a timely and effective manner at all stages of the client's matter or transaction.
7. An agent must reasonably promptly inform the client of any material error or omission with respect to the client's matter.

5. FEES

PRINCIPLE

An agent owes a duty of fairness and reasonableness in his or her financial dealings with the client.

Rules

1. An agent must not stipulate for, charge or accept any fee that is not fully disclosed, fair and reasonable.
2. An agent must not appropriate any funds under an agent's control for or on account of fees without the authority of the client, save as permitted by Rule 7.
3. An agent must not permit a non-agent to fix any fee to be charged to a client, except where such person uses a fee schedule, provided that an agent has set the fee schedule and is responsible for sending the account to the client.
4. An agent may not show as a disbursement to a third party any sum which is not paid to a third party.
5. Save as permitted by Rule 6 or unless the client has consented, an agent must not accept from or pay to anyone other than the client a commission or other compensation related to the agent's professional employment in a matter.
6. An agent shall not divide a fee with another agent or a lawyer who is not a partner or associate unless:
 - (a) the client consents either expressly or impliedly to the employment of the other agent or the lawyer; and
 - (b) the fees are divided in proportion to the work done and responsibilities assumed.
7. Money held by an agent to the credit of a client may not be applied to fees incurred by the client unless an account has been rendered to the client.
8. An agent must clearly identify on each statement of account if requested by the client the amount attributable to fees and the amount attributable to disbursements and other charges.

Commentary

Factors which may determine that the amount of an account is a fair and reasonable fee in a given case include, but are not limited to, the following:

- a) the nature of the matter, including its difficulty and urgency; its importance to the client; its monetary value; and the need for special skills or services;
- b) the time and effort expended;
- c) the results obtained;
- d) the customary charges of other agents of equal standing in the locality in similar matters and circumstances;
- e) the likelihood, if made known to the client, that acceptance of the retainer will result in an agent's inability to accept other work;
- f) the experience and ability of the agent;
- g) any estimate given by the agent;
- h) whether the fee is contingent on the outcome of the matter;
- i) the client's prior consent to the fee and the sophistication of that client; and
- j) the direct costs incurred by the agent in providing the services.

6. WITHDRAWAL OF SERVICES

PRINCIPLE

Having agreed to act in a matter, an agent owes a duty to the client not to withdraw services except for good cause. If withdrawal is required or permissible, the agent must do so only upon notice that is reasonable in the circumstances.

Rules

1. An agent must withdraw when:
 - a) the client persists in instructing the agent to act contrary to professional ethics;
 - b) the client persists in instructions that the agent knows will result in the agent's assisting the client to commit a crime or fraud;
 - c) the agent is unable to act competently or with reasonable promptness; or
 - d) the agent's continued service to client would violate the agent's obligations with respect to conflict of interest.

2. An agent may withdraw when justified by the circumstances. Circumstances that may justify, but not require, withdrawal include the following:
 - a) the client fails after reasonable notice to provide funds on account of fees or disbursements in accordance with the agent's reasonable request;
 - b) the client's conduct in the matter is dishonourable or motivated primarily by malice;
 - c) the client is persistently unreasonable or uncooperative, and makes it unreasonably difficult for the agent to perform services effectively;
 - d) the agent is unable to locate the client or to obtain proper instructions;
 - e) there is a serious loss of confidence between agent and client; or
 - f) the agent is unable to continue with the agent's practice or retires from such practice.
3. An agent may withdraw if the client consents.
4. If an agent withdraws or is discharged from a matter, the agent must endeavour to avoid foreseeable prejudice to the client and must also cooperate with a successor agent if one is appointed.
5. If an agent withdraws or is discharged from a matter and is in receipt of an official communication on the matter to which a response must be filed to avoid abandonment, the agent must endeavour to report the official communication in a timely manner to the former client in order to avoid prejudice to the former client and to permit the former client to take appropriate steps to safeguard his or her rights in the matter.
6. Upon withdrawal or dismissal, an agent must promptly render a final account and must account to the client for money and property received from the client.

7. DUTY TO THE PROFESSION

PRINCIPLE

An agent must assist in maintaining the standards of the profession and should participate in its organizations and activities.

Rules

1. An agent must conduct himself or herself in a professional manner.
2. An agent must refrain from conduct that brings discredit to the profession.

3. All correspondence and remarks by an agent addressed to or concerning another agent, whether inside or outside of the agent's firm or concerning another firm, or the Institute, must be fair, accurate and courteous.
4. An agent must reasonably respond on a timely basis and in a complete and appropriate manner to any communication from the Institute.
5. In connection with an agent's practice, an agent must not discriminate against any person on the basis of race, national or ethnic origin, colour, gender, religion, sexual orientation, age or mental or physical disability.
6. An agent should not undertake to act for a client if he is not comfortable, for justifiable reasons, with undertaking the requested task or job for that particular client or he does not agree with the instructions from the client to such an extent that the instructions will impair the agent's ability to perform his or her services in accordance with these Rules.
7. In connection with an agent's practice, an agent must not sexually harass a colleague, staff member, client or other person.
8. An agent has a professional duty to meet proper financial obligations in relation to the agent's practice.
9. An agent who hires a person with the understanding that he or she will provide instruction, guidance and teaching of patent agency or trade-mark agency practice to that person, must do his or her best to provide such instruction, guidance and teaching.
10. An agent must report to the Institute any conduct of which the agent has personal knowledge and which in the agent's reasonable opinion, acting in good faith, raises a serious question of whether another agent is in breach of this Code.

8. DUTY TO MEMBERS

PRINCIPLE

An agent's conduct toward other agents must be characterized by courtesy and good faith.

Rules

1. An agent must not engage in sharp practice and must not take advantage without fair warning of a mistake on the part of another agent not going to the merits or involving sacrifice of the client's rights.
2. An agent must avoid unjustifiable or uninformed criticism of the competence, conduct, advice or charges of other agents.

3. An agent should agree to reasonable requests by another agent for extensions of time, waivers of procedural formalities, and similar accommodations unless the client's position would be materially prejudiced or unless to do so would be contrary to the client's instructions.
4. An agent must answer with reasonable promptness all professional letters and communications from other agents which require an answer.
5. When an agent leaves a firm to practice elsewhere, neither the agent nor the firm must exercise or attempt to exercise undue influence or harassment upon the client to influence the clients' decision as to who will represent the client.
6. While the agent is employed, the agent must not solicit business from the agent's employer's clients or prospective clients on his or her own account, without the knowledge of the agent's employer.
7. The same courtesy and good faith must characterize the agent's conduct to other persons representing themselves.

9. ADVERTISING

PRINCIPLE

An agent may advertise service and fees, or otherwise solicit work, provided that the advertisement is

- a) *not false or misleading;*
- b) *in good taste, and*
- c) *not likely to bring the profession into disrepute.*

Rules

1. An agent must not use any description that suggests that the agent is any one of the following:
 - a) a patent agent
 - b) a trade-mark agent
 - c) a barrister
 - d) a solicitor

- e) a notary entitled to practice in the Province of Quebec

when in fact the agent is not such a person.

- 2. The agent may indicate that his or her practice is restricted to a particular area, or may indicate that the agent practices in a certain area if such is the case.
- 3. The agent must not indicate by way of advertisement, letterhead, or otherwise, that he or she has a professional office at a named location when in fact such is not the case.

Commentary:

The use of phrases such as “John Doe and Associates”, or “John Doe and Company” and “John Doe and Partners” is improper unless there are in fact, respectively, two or more other agents associated with John Doe in practice or two or more partners of John Doe in the firm.

10. UNAUTHORIZED PRACTICE

PRINCIPLE

An agent owes a duty to assist in preventing the unauthorized practice of persons or entities, not authorized under the relevant intellectual property statutes or respective provincial law society providing advice and services concerning the relevant intellectual property statutes.

Rules

- 1. An agent should not, without the approval of the Institute, employ in any capacity having to do with the practice of Patent or Trade-mark Agency or both, an agent who is under suspension as a result of disciplinary proceedings, or a person who has been struck from the Register or has been permitted to resign while facing disciplinary proceedings and has not been reinstated.
- 2. Professional advice is not to be given by unauthorized persons, whether in the agent's name or otherwise.
- 3. An agent must not aid or assist a person who is practicing as a patent agent or trade-mark agent in an unauthorized manner.

Commentary

It is in the interest of the public and the profession that persons who are not properly qualified, and who are immune from control or management or discipline, not be permitted to offer patent and trade-mark agency services to members of the public.

Please Note:

At a Special General Meeting of the Intellectual Property Institute of Canada held in the Westin Hotel, Ottawa, on March 6, 2001, the Members (formerly known as Fellows) passed the following resolutions with regard to the IPIC Code of Ethics:

- a. A resolution that it shall be a breach of the new Code of Ethics for any member to deliberately, or through lack of reasonable care, to fail to abide by the provisions of this Code of Ethics; and
- b. A resolution that the following current provisions of the previous IPIC Code of Ethics which have been effective since November 2, 1996 shall continue in effect until these provisions are amended by further resolution or amendment to the by-laws of the IPIC:

DISCIPLINE

ETHICS SUB-COMMITTEE

1. Council shall appoint from amongst its members a sub-committee to be known as the Ethics Sub-Committee to which Sub-Committee shall be referred all apparent breaches of the Code of Ethics which shall come to the attention of Council.
2. It shall be the duty of the Ethics Sub-Committee to investigate each apparent breach of the Code of Ethics which is referred to it and to report back to Council:
 - (a) whether, following appropriate investigation, it appears that such apparent breach of the Code of Ethics has in fact occurred, and
 - (b) the steps which it recommends to Council for dealing with such apparent breach.

Upon receipt of the report of the Ethics Sub-Committee, Council shall decide whether or not such breach warrants disciplinary action.

DISCIPLINARY ACTION BY COUNCIL

1. Disciplinary action shall be initiated by serving upon the member concerned a statement in writing of the acts or omissions which it is alleged constitute a breach of the Code of Ethics and the section or sections of the Code of Ethics which are alleged to have been breached.
2. The member shall have the right to submit an answer in writing to Council within a time to be stated in the statement referred to in paragraph 1 or such further time as the member may request and Council permit as being reasonably necessary for the preparation of his or her answer.
3. In the event that no such written answer is received or that such written answer does not in the opinion of Council satisfactorily dispose of the matter, Council may summon the member to appear before a special meeting of Council either in person or, if such member so desires, by representative to explain the member's conduct.
4. Subsequent to such appearance of the member before Council or in default of such appearance, Council may, by the affirmative vote of at least six members of Council forming a majority of Council, discipline such member by: -

- (a) admonishment or reprimand delivered orally in the presence of the member or in writing,
- (b) suspension for such period and on such terms as Council deems appropriate, such suspension and the terms of condition thereof to be notified to the member by notice in writing, or
- (c) expulsion from the Institute, such expulsion and the reasons therefor to be notified to the member by notice in writing together with the reasons for such expulsion.

Notice of such admonishment, reprimand, suspension or expulsion and the reasons therefor may, at the discretion of Council, be published and Council may, in its discretion, withhold the name of the member concerned from the Notice, provided, however, (i) that such Notice shall not be published unless the member shall have been advised at the time that the member is disciplined that there will be publication, (ii) that there shall be no publication until the time for appeal as provided in the By-Laws has expired and, (iii) that, in the event of an appeal, there shall be no publication other than in a notice of meeting until the appeal has been determined.

MISCELLANEOUS

1. In the case of a non-resident member, if there is any conflict between the standards of conduct set forth in this Code and the standard of professional conduct obtaining among reputable patent and trade mark agents in the member's own country, compliance by the member with the standards obtaining in the member's own country but not with the standards prescribed herein shall not be deemed to be unprofessional conduct unless, after due investigation, Council by a majority vote at a meeting duly called for the purpose, finds that the conduct of the member reflects discredit on the Institute or its members.
2. Any member may ask Council for a ruling as to whether any publication which the member's firm uses, publishes or proposes to use or publish or any conduct in which the member or the member's firm engages or proposes to engage complies with this Code, and Council may rule thereon.
3. Council may, from time to time issue memoranda on practising ethics which shall be published in the Canadian Intellectual Property Review or other publication of the Institute for the guidance of the members."