



Minister Announces New Elements in National IP Strategy, including College of Patent and Trademark Agents

Minister of Innovation, Science and Economic Development (ISED), Navdeep Bains officially announced today the government's [National IP Strategy](#) as part of their event to mark World IP Day. The strategy includes important legislative changes as well as new awareness initiatives to improve IP literacy and tools to reduce the costs of IP. The event was live-streamed on Facebook and can be viewed by clicking on the image on the right.

IPIC has been advocating to government for the creation of a self-regulatory body, a College of Patent and Trademark Agents for over 20 years. IPIC has also been advocating for IP policy incentives, and better IP awareness and literacy programs in Canada to change the business culture around the importance of their IP portfolios to business planning. Many of the items included in the government's National IP Strategy are in line with IPIC's requests. To view IPIC's Press Release on this announcement, [click here](#).

IMPORTANT NOTE: IPIC Council and staff had been consulting with ISED for several months on some of the items that were included in today's announcement, however, IPIC was required to keep the information confidential (for Council eyes only) until today's announcement. We are thrilled to finally be able to share the news with IPIC members today in this report.



Creation of a College of Patent and Trademark Agents

Overview

Today's government announcement included the creation of a governance regime for patent and trademark agents (the College of Patent and Trademark Agents). Patent and trademark agents form a profession with a tradition of excellence. However, most of the hallmarks of a professional regulatory system were missing: there was no mandatory code of ethics, continuing education requirement, or discipline process.

There was a double anomaly by Canadian standards: a profession regulated by a government agency, and an incomplete regulatory framework. While the provinces have legislated the creation of more than 300 professional regulatory bodies, very few professions are created by federal statutes. Of these, only three are self-regulated: actuaries, Canada Lands Surveyors, and immigration consultants. The other professions are directly regulated by government, with some involvement by the profession: patent and trademark agents, and bankruptcy trustees.

This new framework will instill greater public confidence in the IP system, thus helping to foster a culture of innovation in Canada. As we all know, the work of patent and trademark agents is a key element in obtaining valuable IP rights, and therefore a key component in Canadian innovation. The new framework will also ensure that Canada has a robust, highly trained intellectual property community of professionals to support the Canadian economy and will hold its members to the highest development and ethical standards. This is a key step that will solidify the excellence of the IP profession in Canada and support a strong IP system.

We assume there will be many questions from members about the next steps in creating the College (see timeline section on following pages), and also about the role of IPIC vs. the role of the College. To be perfectly clear, nothing changes with respect to the IPIC membership value proposition. IPIC is, and will continue to be, the *Voice of IP Professionals*. Agents will continue to be members of IPIC on a voluntary basis, as will other people interested in IP who are not agents (e.g. students, trainees, university and college professors, copyright lawyers, etc.). College membership will be mandatory for all registered agents. The differences in roles between IPIC and the College are identified in the chart below for greater clarity.

	College	IPIC
Membership	Mandatory for all registered agents (only registered agents)	Voluntary: Registered agents Trainees Lawyers who are not agents Professors Students Government employees IP Managers, etc.



	College	IPIC
Register/List	<ul style="list-style-type: none"> • Maintains the register of patent and trademark agents • Liaison with CIPO to ensure smooth operations in relation to register/list 	
Education	<ul style="list-style-type: none"> • Sets requirements for entry into the profession • Sets requirements for CPD 	<ul style="list-style-type: none"> • Offers training courses and webinars to applicants • Offers CPD opportunities on all topics, including ethics • Education and training for non-agents • Annual conference
Exams	<ul style="list-style-type: none"> • Creates exam content and manages all aspects of licensing exams 	
Code and discipline	<ul style="list-style-type: none"> • Develops and maintains code of conduct • Receives and assesses any complaints from the public • Responsible for discipline 	
Insurance	<ul style="list-style-type: none"> • Sets minimum insurance requirements 	<ul style="list-style-type: none"> • Offers errors and omissions insurance Program
Advocacy		<ul style="list-style-type: none"> • Advocacy on IP and innovation policy issues with federal and provincial governments • Voice of the profession to College on policy matters • Court interventions
Public Awareness	<ul style="list-style-type: none"> • Informs public on importance of hiring registered agents and the role of the College 	<ul style="list-style-type: none"> • Promotes the importance of IP and innovation to the public, governments, and industry associations • Outreach work to raise awareness about the value of IP and IP professionals • Media enquiries about IP • Branding of IP professionals and IPIC

IPIC offered to assist the government and take a proactive role in the creation of the College. The overriding goal for IPIC's assistance will be to help establish the College as soon as practical, and then withdraw to ensure that the College is, and is seen to be, a separate and distinct entity. In this regard, IPIC proposed to work with the government on the legislation to modernize the governance framework and to manage the initial steps in the creation of the College after legislation is enacted (e.g. recruiting a transition Board and initial registrar/executive director, implementation committees, housing registrar until occupancy secured, support



in drafting of by-laws, rental of office space, incorporation (depending on legislation), and organizing the founding general meeting.)

Should you have any questions on next steps or on the College itself, please don't hesitate to contact Adam Kingsley, IPIC Executive Director at akingsley@ipic.ca or at 613-234-0516.

Timeline

There are multiple steps that need to be taken in Parliament before a bill is passed and receives Royal Assent. We have been made aware, however, that the College legislation will be included in the second *Budget Implementation Act (BIA2)* this fall. The reason for this is because it is part of the National IP Strategy which was introduced as a promise of government in the federal budget of 2017.

Although omnibus legislation such as budget bills progress through the same process as a regular bill (see below), the chances of an omnibus bill being voted down in the House of Commons with a majority government in place are slim to none. The reason being that if a budget bill were to be voted down, it would be a no confidence vote and the government would fall.

Therefore, it is almost a matter of certainty that the enabling legislation to create the College will pass. The standing committee review is still important, though, as we want to ensure no substantial changes to the legislative wording are taken that the profession does not support. Or conversely, that changes are made that the profession is seeking to the legislative text.

Introduction of the Bill

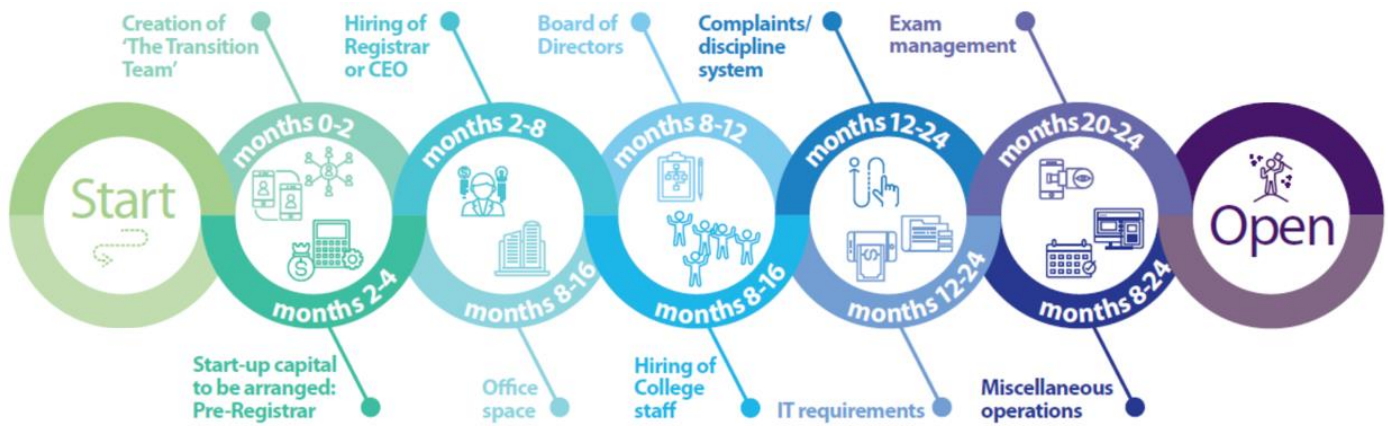
House of Commons



Royal Assent and
Coming into Force

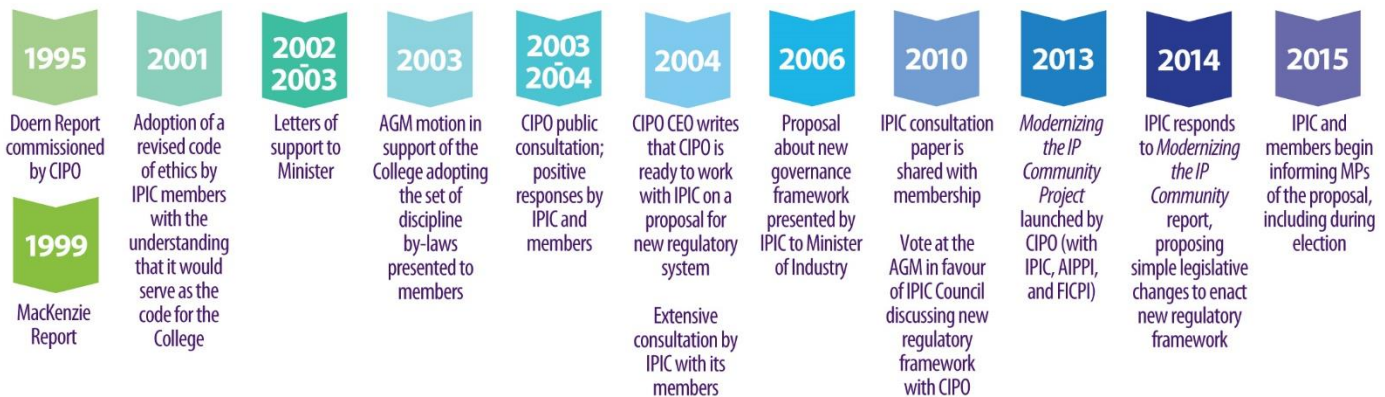
Once the second *Budget Implementation Act (BIA2)* has received Royal Assent and has come into force, work on the creation of the College will begin as we enter the transition period (see image below). This process is estimated to take 24 months. A more detailed version of the graphic below was provided to government in 2017 and can be viewed by clicking on the image.





Thank You

IPIC has been advocating for the creation of a governance framework for over 20 years and we are therefore very happy to hear this announcement. IPIC Council would like to take this opportunity to thank members of IPIC's Professional Regulation Committee for all their work in researching, compiling a robust set of recommendations and advocating for these changes. The image below provides a snapshot of some of the work that has been done by IPIC committee members, current and past council members, presidents and staff.



2016

- Concerted effort by IPIC members to meet MPs and Senators about proposal
- ISED and CIPO launch consultation on draft code of conduct and governance model
- IPIC webinars and consultation with members about a revised Code of Ethics
- IPIC and members respond to government's code of conduct consultation
- IPIC meetings, webinars, and consultation with its members about governance framework
- IPIC submits a 400-page response to government's governance model consultation
- Revised IPIC Code of Ethics is adopted at the AGM
- Resolution asking IPIC Council to continue its work to establish a self-regulatory framework is adopted at the AGM

**2017
2018**

- Lobby MPs and Senators on relevant House and Senate Committees
- Published op-eds in the Hill Times on need for self-regulation
- In-person meetings with IPReg in the UK to learn about their legislation and transition to the College
- Brief ISED policy team on a transition plan leading to the opening of the College
- Create forum for Minister Bains' remarks about self-regulation (IPIC World IP Day 2017, IPIC Conference 2017, Op Ed in newsletter 2018)
- PS David Lametti fireside chat on College and Innovation and Skills Plan at IPIC Conference 2017
- Multiple IPIC Council communications with ISED policy team on various elements of the College enabling legislation
- Discuss policy issues with ISED that would be addressed through subsequent regulations and provide guidance
- Inform opposition MPs that the College is not a partisan issue
- Public support for creating a College of Patent and Trademark Agents, and various elements of the government's National IP Strategy



Other Legislative Changes



Today's broader IP Strategy announcement also put forth upcoming legislative changes. Some of these proposed changes were recommended by IPIC through its patent and trademark wish lists, however until we see the text of the legislative amendments, we will remain cautiously optimistic about the proposals. The limited details available on the legislative changes are identified and as described by the government below.

Patent Act

The *Patent Act* will be amended to create new minimum requirements for patent demand letters, to discourage the sending of deceptive and/or vague letters and reduce costs for the recipient in assessing the merits of the allegations.

- Requirements will mandate that basic information (e.g. patent number and product or activities) will need to be included in a demand letter alleging infringement.
- Regulations will ensure a balance between use of demand letters as a low-cost method to assert a patent right and discouraging bad behaviour.

Amendments will be made to the *Patent Act* to affirm that conducting experiments that relate to the subject matter of a patent does not qualify as patent infringement. Resulting inventions still need to abide by existing patent laws before being sold or used for commercial benefit.

Amendments will be made to the *Patent Act* to ensure that when a patent owner voluntarily makes a licensing commitment to incentivize a standard-setting organization to incorporate its patented technology as part of a standard, prospective licensees will be able to rely on that commitment even if the patent changes owners.

Trade-marks Act

New trademark bad faith opposition grounds will be introduced to prevent the cluttering and misuse of the trademark registration system, notably what is sometimes referred to as "trademark squatting". Use will also be required to enforce a trademark within the first three years after registration.

Copyright Act

The *Copyright Act* will be amended such that settlement demands will be excluded from the copyright Notice and Notice regime.

- This will protect consumers and ensure that the Notice and Notice regime remains effective in discouraging infringement.



Other Legislation

Currently in bankruptcy restructurings, IP licensees in good standing can continue to use the IP if the debtor disclaims the license. New amendments will be made to extend this right to liquidation proceedings.

IP Education & Awareness



In terms of IP education and awareness, there were no new announcements, as all of these items were previously announced in Budget 2018. You can see information on this in our [IPIC Report on Budget](#). We continue to look forward to hearing more on ISED and CIPO's plans in terms of education and awareness.

Today's announcement did specify, however, that government advisors will "supplement, rather than replace, existing IP professionals; advisors will not provide solicitor-client type legal advice nor act in place of the profession". As we have emphasized before, it is critical that the content and delivery of this message comes from experienced members of the IP profession and we look forward to working with those involved.

IP Tools for Growth



Although IPIC is not fully supportive of all the strategies proposed in their "[IP Tools for Growth](#)", we are very supportive of the government's commitment to increased funding for the Copyright Board of Canada as IPIC's Copyright Committees have been actively engaged with ISED over the past year on the issue of Board regulatory reform. This funding will ensure more efficient and less costly IP dispute resolution and copyright tariff setting at the Federal Court and Copyright Board of Canada.

IPIC is also supportive of the hiring of new case management judges at the Federal Court level to streamline dispute resolution as well as the creation of an IP Marketplace, a centralized IP-specific portal for businesses, entrepreneurs and innovators.

Next Steps



While we wait on reviewing the legislation included in the second *Budget Implementation Act*, we will continue to lobby for the importance of the College to MPs and members of the Senate Committee. We look forward to reviewing and providing input on the legislative changes as well as the details of the National IP Strategy items. Once we obtain access to these documents, we will be calling upon our members in IPIC Committees to analyze the National IP Strategy proposals and to contribute to our submissions. Stay tuned!

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