

Important Intellectual Property Implications Contained in Bill C-19 and the 2022 Federal Budget

Sebastian D. Beck-Watt, Tushar Sharma

July 28, 2022

As we recently reported, Bill C-19, the *Budget Implementation Act, 2022, No. 1*, received royal on June 23, 2022. The bill implements changes to a broad range of legislation, including several notable updates to intellectual property laws. The Bill includes amendments to the term of copyright and expanded powers for the College of Patent Agents and Trademark Agents (CPATA). Alongside the Bill, the 2022 Federal Budget includes funding aimed at investing in the development of intellectual property and innovation.

Amendments to the Copyright Act¹

The Bill extends the term of copyright protection in literary, dramatic, musical, and artistic works from 50 years from to 70 years after the end of the year of the author's death.

Under the *Canada-United States-Mexico Agreement (CUSMA)*, Canada is required to extend the term of copyright protection to not less than the author's life plus 70 years. The Bill marks the implementation of this provision. The change brings Canada in line with the majority of its trading partners, including the United States and the European Union. Notably, Canada previously extended the term of copyright in published sound recordings and performers' performances and in certain audiovisual works.

Additionally, the term of copyright for a work that was unpublished (or in the case of a lecture or a dramatic or musical work, was not performed in public or communicated to the public by telecommunication) before the author's death, will be the longer of 50 years after publication or 70 years after the author's death. If the author died in the 50 years before December 31, 1998 and the work was not published (or performed in public or communicated to the public by telecommunication, as the case may be) before that date, copyright subsists for the longer of December 31, 2048, or 70 years after the death of the author.

These amendments are not retroactive, insofar as copyright that expired on or before December 31, 2021 will not regain copyright protection. However, copyright terms that were set to expire at the end of 2022 will receive an additional 20 years of protection under the legislation, and all future works will be subject to the 70-year term.

A date has yet to be fixed for the coming into force of these amendments.

Amendments to the College of Patent Agents and Trademark Agents Act²

Bill C-19 also includes amendments to the *College of Patent Agents and Trademark Agents Act*, granting CPATA greater independence and immunity, as well as investigative powers.

Independence: The Registrar is explicitly permitted to delegate any of their powers, duties, or functions, with the Board being able to authorize CPATA's directors, committee members, the Registrar, investigators, officers, or employees to act on behalf of CPATA. Additionally, the Board is now permitted to make by-laws relating to the creation of committees, to define professional conduct, and prescribing circumstances in which, and reasons why, the Registrar must not dismiss a complaint.

CPATA is also specifically allowed to acquire, lease, or dispose of any real or personal property or immovable or movable, sell, dispose of, or lease, any of its acquired or leased property and borrow money.

Immunity: All persons acting for CPATA have been provided immunity from proceedings for damages for anything done in good faith in the exercise of any power, duty, or function under the *College of Patent Agents and Trademark Agents Act*. CPATA is also required to indemnify those persons against all costs, charges and expenses, reasonably incurred by them in respect of any proceeding in which they are involved for anything done in good faith in the exercise of any such power, duty, or function. Immunity from proceedings for damages also lies with any person for disclosing any information or document to CPATA or to an investigator, or making a complaint against a licensee, in good faith.

Investigations: CPATA's Investigations Committee must consider all complaints that are referred to it by the Registrar and must make a determination in respect of all appeals requested. The Investigations Committee and the Discipline Committee are empowered to make rules for their practice and procedure and the management of their internal affairs.

The Investigations Committee is permitted to impose restrictions or conditions on a licensee who is under investigation, or suspend their license. In turn, the licensee may request that the Discipline Committee review the Investigations Committee's decision.

New Funding for IP Programs & Consideration of a Patent Box Regime

Bill C-19 accompanied the 2022 Federal Budget, which included investments in intellectual property and research.³ The largest investment under Bill C-19 is for the establishment of the independent Canadian Innovation and Investment Agency to address Canadian businesses' comparatively low research and development spending. The Budget allocates to the agency \$1 billion over the course of five years for its initial operations, beginning in 2022-23. The Budget also includes \$750 million over six years to support

The Budget also seeks to build on previous intellectual property investment and strategies (such as the National Intellectual Property Strategy, and Elevate IP and IP Assist). To that end, it proposes funding for the following programs:

- A national lab-to-market platform to help graduate students and researchers take their work to market (\$47.8 million over five years, and \$20.1 million ongoing);
- the CanExport program, helping Canadian businesses secure their intellectual property in foreign markets (\$35 million over five years);
- the launch of a survey to assess the government's previous investments in science and research, and how knowledge created at post-secondary institutions generates commercial outcomes (\$10.6 million over five years, and \$2 million ongoing);
- expanding the use of ExploreIP, Canada's IP Marketplace (\$2.4 million over five years, and \$0.6 million ongoing); and,
- expanding the Intellectual Property Legal Clinics Program (\$0.8 million over five years, and \$0.2 million ongoing)

The Budget also notes that the Strategic Intellectual Property Program Review is underway and that the government will also be reviewing other ways to *"build innovative companies that support Canada's competitiveness, keep intellectual property in Canada, and attract talent and investment from around the world."* Notably, the Budget sets out that the government will consider adopting a patent box regime in Canada.

The author of this article gratefully acknowledges the contributions of reviewers Jessica Zagar and Stephen Selznick.

¹ Budget Implementation Act, 2022, No. 1, Division 16

² Ibid., Division 17

³ Budget 2022, chapter 2