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# Examining the 2022 Federal Budget's Provisions for Intellectual Property

By Ken Clark and Michael Puopolo

The 2022 Federal Budget and the accompanying omnibus bill, Bill C-19, seek to implement the following legislative changes that will affect intellectual property rights:

1. New offences and penalties will be added to the *Competition Act*. The Commissioner of Competition will have expanded investigatory powers.
2. Copyright term will be extended from 50 to 70 years.
3. The College of Patent Agents & Trademark Agents (CPATA) will have expanded self-regulatory powers and members involved in regulatory activities will be given statutory immunity.

## New Legislative Measures

### *Competition Act*

#### New Offences and Penalties

- Conspiring to fix wages and other terms of employment, or conspiring to refrain from hiring or soliciting each other's employees is now an offence.
- Selective or discriminatory responses to a competitor for the purposes of impeding their expansion into, or eliminating them from, the market can constitute an anti-competitive act.
- Drip pricing can now constitute false or misleading representation.
- The maximum fines for administrative penalties have increased, including the ability to fine 3% of a corporation's annual worldwide gross revenue.

#### Expanded Investigative Powers of the Commissioner of Competition

- An affiliate of a corporation can be ordered to provide information, if they are likely to have that information. The affiliate may be outside of Canada, so long as the corporation carries business or sells products in Canada.
- Any person can now apply to the Competition Tribunal regarding an abuse of a dominant position.
- In considering anti-competitive agreements and mergers, the Tribunal may consider the network effects within the market, the entrenchment of the market position of the leading incumbents, and any effects on price competition including price, choice, or consumer privacy.

### *Copyright Act*

- The general copyright term is to be extended from 50 to 70 years.
- If the work was unpublished before the author's death, the copyright will now subsist for the longer of 50 years after publication or 70 years after the death of the author.
  - If the work was not published before December 31, 1998, and the author died within 50 years prior to that date, the copyright subsists for the longer of December 31, 2048, or 70 years after the life of the author.

- Budget 2022 also mentions working to ensure fair remuneration for copyright holders and a “sustainable educational publishing industry.” No legislation regarding these issues has been tabled.

### ***College of Patent Agents and Trademark Agents Act***

#### Expanded Independence and Immunity

- It is now explicitly stated that the College may acquire, dispose of, or lease real or personal property and borrow money.
- The Board may authorize the College’s directors, committee members, the Registrar, investigators, officers, or employees to act on behalf of the College. The Registrar can delegate any of their powers, duties or functions.
- All persons acting for the College exercising their powers, duties or functions in good faith are immune from proceedings for damages. The College must indemnify these persons against costs and payments arising from any proceeding involving the exercise of their powers or duties.
  - Those disclosing information or making a complaint to the College or investigator in good faith are also immune from proceedings for damages.
- The Board may now make by-laws respecting the creation of committees, defining professional conduct, and prescribing circumstances in which the Registrar may dismiss a complaint.
- The Governor-in-Council may make regulations applying any provision of the *Canada Not-for-profit Corporations Act* to the College. The Board may now make by-laws in respect to the subject matter of regulations imposed by the Governor-in-Council.

#### Expanded Investigative Powers

- Complaints are to be made to the Registrar, who then refers them to the Investigation Committee.
- The Investigation Committee may now make rules respecting their practices, procedures, and management.
- The Investigation Committee may impose restrictions or conditions on a licensee who is under investigation, or suspend their license. That licensee may request that the Discipline Committee review that decision.

### **Tax Incentives**

The Scientific Research and Experimental Development (SR&ED) Program is under review.

The adoption of a patent box regime will be assessed.

### **Investments in Research & Development, Economic Growth, and a Stable Supply Chain**

The budget proposes the creation of an independent federal innovation and investment agency. This would cost \$1 billion over five years to support its initial operations, starting in 2022-23.

The government also proposes to invest \$750 million over six years, starting in 2022-23, to support the growth and development of Canada’s Global Innovation Clusters. These include: plant-based protein alternatives, ocean-based industries, advanced manufacturing, digital technologies, and artificial intelligence.

Among other provisions, there will be an attempt to modernize the National Research Council and investigate new ways of integrating university researchers and business partners to better serve invention and innovation.

### **Summary of other provisions**

Beyond these large sweeping actions, the table below outlines many of the 2022 Federal Budget's other investments designed to encourage research, innovation, and the development of intellectual property (IP).

**Initiative**

**Investment**

**Purpose**

Innovation, Science and Economic Development Canada (ISED)

\$47.8 million over 5 years, starting in 2023-24, and \$20.1 million ongoing

To launch a national lab-to-market platform to assist graduate students and researchers take their work to market

\$35 million over 5 years, starting in 2022-23

To Global Affairs Canada for the

CanExport

program to help Canadian businesses secure their IP in foreign markets

\$10.6 million over 5 years, starting in 2022-23, and \$2 million ongoing

To launch a survey to assess the government's previous investments in science and research, and how knowledge created at post-secondary institutions generates commercial outcomes

\$2.4 million over 5 years, starting in 2022-23, and \$0.6 million ongoing

To expand the use of

Explore IP

, Canada's IP marketplace, so that more Canadian business can take advantage of public sector IP

\$0.8 million over 5 years, starting in 2022-23, and \$0.2 million ongoing

To expand the

Intellectual Property Legal Clinics Program

, which serves to improve access to basic IP services

\$1 billion over 6 years on a cash basis, starting in 2024-25

To support the

Strategic Innovation Fund

's efforts to support critical mineral projects with priority to manufacturing, processing, and recycling applications. This will also be used to support the growth of the solar panel industry

\$45 million over 5 years on a cash basis, starting in 2022-23

To engage with stakeholders, conduct market analysis, and support projects that will strengthen Canada's semiconductor industry

National Resources Canada and the National Research Council

\$144.4 million over 5 years, starting in 2022-23

To support research, development, and deployment of technologies and materials to support critical mineral value chains

Clean Agricultural Technology

\$329.4 million over 6 years, starting in 2022-23, with \$0.6 million in remaining amortization

To triple the size of the

Agricultural Clean Technology Program

and invest in technologies that reduce emissions and save farmers time and money

\$100 million over 6 years, starting in 2022-23

To federal granting councils to support post-secondary research in developing technologies and crop varieties that will allow for net-zero emission agriculture

Communication Security Establishment (CSE)

\$17.7 million over 5 years starting in 2022-23, and \$5.5 million thereafter until 2031-32

To further protect Canada from cyberthreats by establishing a research chair program to fund research on cutting-edge cybersecurity technologies and other technology related to CSE activities

Implementation of the National Security Guidelines for Research Partnership

\$125 million over 5 years, starting in 2022-23, and \$25 million ongoing

For the

## Research Support Fund

to build capacity within post-secondary institutions to identify, assess, and mitigate potential risks to research security

\$34.6 million over 5 years starting in 2022-23, and \$8.4 million ongoing

To enhance Canada's ability to protect our research, and to establish a Research Security Centre to directly advise research institutions

## Coordinated Accessible Health Network

\$30 million over 4 years, starting in 2022-23

To expand the Network nationally to Quebec, the territories, and Indigenous communities, and invest in made-in-Canada health technologies and solutions

## Canadian Institute of Health Research

\$20 million over 5 years, starting in 2022-23

To support research on the long-term effects of COVID-19 infections, and the impacts of COVID-19 on health-care symptoms

\$20 million over 5 years, starting in 2022-23

To support research on dementia and brain health, including treatment options and the mental health consequences for caregivers

## Canadian High Arctic Research Station

\$14.5 million over 5 years, starting in 2022-23, with \$8.4 million in remaining amortization, and \$2.5 million ongoing

To support the completion and operation of the research station and strengthen Canadian leadership on Arctic issues

## The Lunar Gateway

\$1.9 billion over 24 years

To build and operate the Canadarm3. The

### *Civil Lunar Gateway Agreement Implementation Act*

was included in Bill C-19 to ratify the Canada-U.S. Lunar Gateway Treaty and enable Canadian astronauts to go to the moon

Various federal granting councils

\$38.3 million over 4 years, starting in 2023-24, and \$12.7 million ongoing

For the federal granting councils to add 12 to 25 new, internationally recruited Canada Excellence Research Chairs in the fields of science, technology, engineering, and mathematics

\$40.9 million over 5 years, starting in 2022-23, and \$9.7 million ongoing

To support target scholarships and fellowships for promising Black student researchers

For any questions about the 2022 Federal Budget relating to the intellectual property provisions, contact Ken Clark.

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