



THE RULE OF LAW AND ECONOMIC DEVELOPMENT IN RUSSIA

Canadian Property Registries

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Canadian Property Registries

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Canadian Intellectual Property Office (CIPO)

The Canadian Intellectual Property Office is a federal organization, managed by the Minister of Industry, responsible for registration of all intellectual property rights across Canada. It consists of four offices: the Patent Office, the Office of the Registrar of Trade-marks, the Industrial Design Division, and the Register of Copyrights.

CIPO Patent Office

Canada's patent system falls under the umbrella of CIPO's management. CIPO's Patent Office is headed by the appointed Commissioner of Patents, who administers the body, and the office is manned by patent examiners, who review patent applications. The office also contains a panel of senior officials called the Patent Appeal Board. The board's central function is to hear appeals from refused applicants and make recommendations for a response to the Commissioner of Patents, who typically accepts and follows the board's counsel.

The Patent Office's operations and structure can be organized around its four main functions:

1. Application Processing and Examination – receive, evaluate, and potentially approve all patent applications
2. Records and Maintenance – monitor and maintain all patent assignments
3. Databases– maintain public access to both a searchable database of Canadian and other patent documents and a physical search room for patent research
4. Publication – regularly disseminate patent information

Note that enforcement is not one of the functions of the Patent Office, but rather is the responsibility of the patentee, who may pursue infringement through legal avenues.

Application Processing

In order to be granted the right of a time-limited monopoly on an invention, the inventor must successfully apply for a patent from the Patent Office for a product, composition, apparatus, process, or an improvement of any of the above. A patent may be filed physically at the CIPO office or its designated establishments, or digitally through Industry Canada's Secure Server. In Canada, a patent is granted not to the first inventor but rather to the first inventor who applies for a patent, as determined by the official filing date of the application. To receive an official filing date, an applicant must submit their name and address, a statement that a patent is sought, documentation describing the invention, and a filing fee.

At this point, an applicant may also submit a form claiming to be a "small entity" – defined as either a company with less than 50 employees or a university – and consequently be entitled to reduced fees in both the application for and maintenance of their patent.

Once this initial submission is made, applicants then have a 15 month window to complete their application, though an extension is possible with payment of a fee. Along with the above items, a completed application contains a formal petition, an abstract of the invention, claim defining the scope of the desired patent and a precise description of the invention and its utility (together called the specification), drawings and, if necessary, the nucleotide sequence listing and an appointment of a patent agent.

The Patent Office provides a standard form both online and at its offices to be used as a formal petition, in which an applicant requests a patent and declares that he or she is either the original inventor or the legal representative of the inventor. If the applicant is not a Canadian resident, he or

she must appoint a Canadian resident as a representative to handle the claim. In the form, it is also possible to specify which drawing is to be included with the abstract. Finally, if necessary, small entity status and the appointment of a patent agent are also restated.

The abstract is a brief summary, 150 words or less, of the invention, to be used to index the patent. More detail is provided in the specification, where there must be a clear and complete description of the invention and its usefulness, along with a claim that defines the boundaries of protection desired from the patent. The description must be accurate, without obscurity or ambiguity. It is to be written so that someone skilled in the field – more precisely, an average, technically skilled, but unimaginative practitioner – could effectively create the invention and put it to use. As a result, both the technical field and the precise problem that is solved by the invention must be indicated. As for the claim, its structure is ideally one phrase of clear, singular meaning, demarcating the boundaries of the patent. It should highlight the inventive features of the patent, be without subjective meaning, and be supported by the contents of the submitted description.

The drawings need to be reproducible electronically, and so the Patent Office requires the use of good quality paper, 21.6 cm wide by 27.9 cm long, and forbids the use of colour. Proportions should be maintained and every figure labeled, and photographs are an allowable alternative if the invention cannot be adequately explained through drawings.

All of these elements are assembled in a single application file, for which the office may issue only one patent. Combinations of separate, unique inventions are patentable in a single file only if, when working together, the function of the sum is greater than that of the separate parts, therefore demonstrating a unity of invention.

The file will be made public after an 18 month confidentiality period, calculated from the filing date. A file will not be made public if it is withdrawn two or more months before the end of the confidentiality period. Once public, anyone may review the file and submit prior art or a protest to the application. Prior art is documentation that may undermine a patent claim, limited to other patents, patent applications, or published materials. Any other written communication meant to protest the issuing of a patent is a protest. Upon reception, both prior art and protests are added to the file to be considered in examination and the applicant is informed of their addition. The parties filing prior art or a protest are only given an acknowledgement of reception but are not informed of the action taken as a result, and their personal information remains confidential outside of the contents of their prior art or protest.

Application Examination

Once the application file is complete, the applicant then has five years to formally request an examination, for an additional fee. If five years passes, the application is considered abandoned and enters the public domain, though a reinstatement can be requested for a further fee. An expedited “advanced examination” can also be requested for an extra fee, though the file must have already been laid out for public inspection and is only done in exceptional circumstances where the duration of the regular application process may prejudice an applicant’s rights. Accelerated examination is now also available in Canada for all green technologies.

The examination of a patent is conducted both in form, considering the language by which the applicant defines their invention, and in substance, evaluating the invention for its ability to address its purpose. The examiners also uses three criteria of patentability – novelty (first of its kind), utility (must work or have a useful function) and ingenuity (not obvious beforehand to person of ordinary skill with technology involved) – in evaluating the application. In the process, if the examiner believes the same application has been filed elsewhere internationally, they may requisition from an applicant any prior art filed, previous application or patent numbers for any region, the details of any previous patent conflict and a translation of those documents into either French or English if it is in neither.

At the conclusion of the examination, the patent examiner issues an Examiner's Report. If the applicant is successful, he or she is given a notice of allowance and a final fee is requested. Once paid, the patent is issued; however if the fee is not paid, the patent is considered abandoned. If the application is rejected, the report details the reasons for its refusal and the applicant is given an opportunity to correct its faults.

An applicant may address the examiner's issues through filing an amendment, either by an insert or by replacing all affected pages. In those circumstances, an amendment must be a good faith response to the examiner's concerns with the intention of advancing the claim. Amendment is also allowed after a notice of allowance, but only to correct clerical errors or to add elements that could be reasonably inferred from the original. If any changes affect the scope of the patent, however, the amendments will be rejected. An amendment is not possible after the payment of the final fee.

If, after amendment, the application is still unacceptable for the same reasons, the examiner will issue a Final Action Report which rejects the claim and comprehensively details its fatal flaws. If new concerns are found, another Examiner's Report will be issued before resort to a Final Action Report. Once the Final Action Report is issued, an applicant has only six more months to correct the patent or to argue how the application is within a patent's appropriate limits. If the examiner is unsatisfied with either the corrections or the applicant's response, the file is forwarded to the Patent Appeal Board, where it is reviewed. The board may choose to hold a hearing if it desires and no amendment is allowed at this stage. After the review, the board presents its findings to the Commissioner of Patents, who makes the ultimate decision. If the applicant is still unsatisfied with the proceedings or findings, he or she may appeal their case to the Federal Court Trial Division.

Records and Maintenance

Once a patent is issued, it has annual maintenance fees which must be paid throughout the life of the patent, up to twenty years after the official filing date. The fees are structured so that they increase with the duration of the patent. If the patentee does not pay the fees, the patent lapses and others may use the technology freely. However, the patent can be revived within twelve months of a lapse with a written request and payment of fee. After twelve months, the patent can no longer be revived.

Re-examination of a patent may be requested by anyone at any time during a patent's duration, but only on the basis of prior art. In that case, the Commissioner of Patents will appoint a Re-examination Board, who may either refuse re-examination if no substantially new issue is raised, or proceed based on the prior art. To respond to the challenge, the patentee is afforded an opportunity to amend their patent, so long as it does not broaden the scope of the claim. After review, a Certification of Re-examination is issued where the Board will detail which parts of the patent are still acceptable and cancel any that are not. Any changes will be deemed to have been in place at the original date of issue, or not issued at all if the entire patent is revoked. If a patentee is unsatisfied, they may appeal the findings to the Federal Court within three months.

If a patentee does not make their invention commercially available in Canada and does not provide an adequate reason for doing so, the patent rights are considered abused. This can occur when market demand is not being met, where prejudice is being caused against industry through the patentee's refusal to grant license, when a patentee demands unreasonable terms for a license, or where the patent is unfairly affecting the use and sale of product in Canada. In these instances, a party may ask the Commissioner of Patents for relief. The patentee is then allowed to oppose the relief. At this point, either party or the Commissioner of Patents may request a hearing, which is administered by the Patent Appeal Board. At the hearing, the Board will render a decision to the Commissioner of Patents whereby a compulsory license may be granted.

The Patent Appeal Board also administers the Patent Agent Qualifying Examinations. Once a patent agent passes the exam, they are added to the CIPO approved list of patent agents who are given the right to interact with CIPO on behalf of their clients. The listing is available both online and at patent offices.

Databases

CIPO maintains two databases that are accessible to the public. The first is the online Canadian Patent Database, which is searchable on multiple fronts, such as title, abstract, claim, owner, country of origin, patent number, etc. Each page contains the basic identification of the patent, a drawing and an abstract and provides links to PDFs of every section of the application, which are also searchable in the advanced menu. The entirety of Canada's patent database has been digitized, though at times older patents will not have a complete online record. For those files, the missing elements can be ordered from the CIPO Client Service Centre.

The second is a physical library of patents at the CIPO Client Service Centre, where information regarding patents and help searching the database is provided. The centre not only has access to Canadian, American, and European patent databases, but it also provides general information about intellectual property law, registry and processes in Canada and abroad. The library can be visited, but CIPO staff are also on hand to take calls, emails and faxes during business hours.

Before applying for a patent, CIPO strongly recommends a preliminary search in its patent databases to prevent duplication. The database also serves as an important resource for industry, allowing it to track new developments, discover pre-existing technical solutions, find inspiration for new avenues of research, and track down patentees in order to procure a license. Patent holders are not required to mark or advertise their patent, though it is illegal to illegitimately claim to be a patent holder.

Publication of Registrations

One of CIPO's central goals is to keep all research centres, universities, and industry players aware of new innovations, in the hopes of spurring development and preventing wasted time and resources. To that end, CIPO disseminates information regarding patents through the Canadian Patent Office Record. It is published every week, and the online edition is considered the official record. The paper broadcasts important notices, new patents, and patent applications open to public inspection.

CIPO Office of the Registrar of Trade-marks

Trade-marks in Canada are governed by The Office of the Registrar of Trade-marks. The Trade-marks Office serves four basic functions:

1. Application Processing and Examination – receive, examine, and evaluate trade-mark applications and award trade-marks where appropriate
2. Records, Databases and Publication – maintain logs of all existing and pending trade-marks, as well as transfers and licensing of trade-marks, provide a digital and material database of trade-marks, pertinent legislation and publish the registration of new trade-marks
3. Dispute Resolution – manage both opposition statements and expungement proceedings

The Trade-mark office is not responsible for monitoring of the marketplace for infringement or enforcement of trade-mark rights.

Application Processing

While not required to guarantee intellectual property rights, any design, words, or combination thereof used to identify and sell a good or service may be registered with the Trade-mark Office. Simply using a particular mark in the marketplace long enough can establish trade-mark rights, but a registered trade-mark is considered *prima facie* evidence of ownership, meaning in dispute the burden of proof is placed upon the challenger. The only exception is for any mark relating to precious metals, for which a registered trade-mark is required. A registered trade-mark provides fifteen years of exclusive rights in Canada, renewable for a fee every fifteen years thereafter.

The Trade-mark Office recognizes and issues three types of trade-mark. The first is an “ordinary mark,” the aforementioned combination of word and design used to distinguish and sell in the marketplace. The second is a “certification mark,” a mark established by either an individual or organization which is licenced to products which qualify based upon predetermined standards. The third and final is a “distinguishing guise,” wherein a product is distinguished by the unique wrapping, shape, or container of a good. The name of a company, known as a trade name, can only be registered if it is functioning as a trade-mark by distinguishing and identifying a good or service.

To apply for a trade-mark, an applicant must send an application for registration, a formal drawing of the mark if necessary, and the filing fee. If an applicant resides outside Canada, a resident of Canada must be appointed to act as a correspondent with CIPO. There is no standardized application form for a trade-mark, and so the applicant must formulate an application that clearly specifies their name and address, the trade-mark, an entitlement paragraph stating their right to use the trade-mark in association with particular good or services, and the date of first use if necessary. The drawing must be made in black and white, with an optional description of colour if it forms a part of the trade-mark, and it is not to be larger than 22 cm by 35 cm, all to permit clear reproduction. If trade-mark is awarded, the mark must be used as registered, without change for the rights to be maintained. Only one mark may be contained per application.

Application Examination

When an application arrives at the Trade-mark Office, it is reviewed to confirm that it is complete. If it is missing elements, the Office contacts the applicant asking for the missing pieces. As soon as the application is complete, it is assigned a filing date. The Office then conducts a search of any possibly conflicting trade-marks. These search results are considered, along with compliance with the requirements of the *Trade-marks Act* and *Trade-marks Regulations*, in an examination administered by a trade-mark examiner.

Names and surnames may not be registered, unless it can be shown that the name has achieved a secondary meaning culturally or is also a recognizable word or location. Descriptive words of an inherent feature or quality cannot be registered, nor can geographical locations of origin, the name of an object in a foreign language, or deceptive or misdescriptive words. Obscene or immoral subject matter is also forbidden, as are plant variety denominations and portraits or signatures of a person unless they died over thirty years ago. An application containing any of these elements will not be approved.

If a trade-mark is confusingly similar to a registered or pending trade-mark, the examiner will also deny registration. Factors such as the goods or service being marketed, similarity in look or sound to another registered mark, or the presence of similar ideas to another registered mark will all be considered together in evaluation. The mark also cannot be similar to official government marks (such as the Canadian flag), the Royal Family coat of arms, RCMP or armed forces badges and crests, the emblems of the United Nations, Red Cross and Red Crescent, and the symbols of other nations, provinces, municipalities, or public institutions.

If the examiner has any of the above objections or others, the applicant will be notified and given a chance to respond. An examiner may request a disclaimer from the application, whereby exclusive

use of a portion of a trade-mark is foregone. If the applicant's response is unsatisfactory, a rejection letter will be issued containing the grounds for refusal. The applicant may appeal this rejection to the Federal Court of Canada if they choose.

If there are no issues, a second pre-publication search is conducted to guarantee no applications have been filed during the evaluation process that may conflict with the trade-mark and, if one is found, provide the applicant with an opportunity to respond. Otherwise, the details of the application are published in the Trade-marks Journal, giving members of the public an opportunity to oppose the trade-mark, which must be done within two months of the publication date. Any disputes arising from a filing of opposition are forwarded to the Trade-marks Opposition Board, a process detailed in the Dispute Resolution section of this document.

If no opposition is filed, or an opposition has been dismissed, the application is allowed and no further changes are considered. A notice of allowance is issued and the registration fee must be paid. Once paid, a certificate of registration is issued and the trade-mark is registered in the database.

Records, Databases and Publication of Registrations

To maintain the registration of a trade-mark, an owner must pay a renewal fee every fifteen years. Failure to do so expunges the trade-mark from the registry. A trade-mark can also be assigned to another party, but to avoid ownership disputes it is recommended assignment be recorded at the registry.

Though not required to apply for trade-mark, CIPO recommends that applicants do a preliminary search of trade-marks in both official languages to assess if the proposed mark may be confused with another registered trade-mark. A preliminary search of trade names is also recommended, but there is no centralized database for trade names, the availability of records depending upon Provincial legislation, making the process potentially complicated.

The Canadian Trade-marks Database is accessible online, each entry containing all the details of the application and registration. It is searchable on multiple fields, such as by file number or owner name; product, service or ware associated with the trade-mark; or by Vienna Code, an international system to classify trade-mark by its figurative elements. A physical library is also available at the CIPO Service Centre, where agents can help in person or by phone with any information required, but cannot do searches for applicants.

The Trade-marks Journal, a listing of all trade-mark applications, application extensions, registrations, amendments, is published weekly online. The CIPO website holds the archives for every journal published online since the year 2000.

CIPO also maintains a database of marks, crests, badges, and official symbols prohibited by national legislation as described in the previous section. There is also a registry of trade-mark agents, all of whom must have been working in trade-mark for two years or passed a qualifying exam administered by CIPO. If a trade-mark agent is nominated by an applicant to handle their file, CIPO will correspond only with the agent.

Dispute Resolution

The Trade-mark Opposition Board acts on behalf of the Registrar in handling both opposition and expungement proceedings. The Board consists of a chair, members and hearing officers, who are each delegated authority by the Registrar to run hearings and render decisions in both proceedings.

During the review period of two months in the application process, a third party may either file an opposition statement, accompanied by a fee, or request for extension of time to file an opposition statement, which also requires a fee, so long as the reasons for the extension are included in the

statement. An opposition statement must include the grounds for opposition to sufficient detail so that the other party may effectively reply. The Registrar reserves the right to dismiss any opposition it deems to be frivolous. If the opposition is legitimate, adversarial proceedings not dissimilar to a legal court begin, wherein parties may file evidence, arguments and counter-arguments, cross-examine evidence and participate in an oral hearing. It is due to the complex nature of the proceedings that parties are encouraged to procure legal counsel, especially as proceedings generally take two to four years.

Once completed, the Board makes a recommendation to the Registrar, who renders a decision. If the losing party is unhappy with the decision, they may appeal to the Federal Court.

A third party may also file for expungement of the trade-mark, also known as a section 45 proceeding, but such a request is generally not entertained until three years after the issue of the trade-mark. An expungement can be requested if the trade-mark holder's ownership of the mark is contested, if its distinctiveness is newly in question, if it is abandoned, or in cases of non-use. Section 45 proceedings may also be launched by the Registrar if deemed appropriate. A section 45 filing also demands a filing fee.

If a trade-mark holder fails to respond to the proceedings, the trade-mark registration is expunged. Otherwise, a section 45 proceeding can be filed. The proceeding is similar to opposition hearings, including evidence, written arguments and representations in an oral hearing, making legal counsel recommended over the typical two to four year period. If a party is unsatisfied with the results, they may appeal to the Federal Court.

CIPPO Industrial Design Division

Industrial design is governed by the Industrial Design Division of the CIPPO. It serves two central purposes:

1. Application Processing and Examination – receive and examine industrial design applications, registering those which qualify
2. Records and Databases – receive and record assignments of industrial design and maintain an industrial design register and database

Enforcement of industrial design rights lies outside the purview of the CIPPO and rests upon the individual industrial design holder.

Application Processing

Industrial design provides protection of imitation for visual features of shape, configuration, pattern, or ornament applied to a fully assembled manufactured article. The features must be original and visual, not solely functional or relating only to the process of manufacturing. Ideas, methods of construction, materials used in construction, or the function of an article are not protectable under industrial design.

Protection is available for ten years after the date of registration, but the legal right is created only through registration with CIPPO. The owner of the design is the only person eligible to apply for registration. Five and a half years before expiration, a maintenance fee must be paid or protection ceases, and once ten years have passed from the filing date, the design enters the public domain.

If a design has not been published, there is no time limit to the application process. However, if the design has been made public, the owner has one year to apply for registration. In the instance

of conflict between two essentially identical designs, the design with the earliest date of application is registered. An application is limited to a single design and its variants without substantial differentiation.

A completed application consists of an application form with the applicant's information, a title and description of the industrial design, at least one drawing or photograph of the design and the required fees. The title must include the object to which the design applies. The description must describe the visual features of the design and where they exist in the article, and should eschew elements of the manufacturing process, how the object operates, or its size and dimensions. A completed application can be submitted electronically through the CIPO website.

The photo or drawing must show the finished product in a neutral background, visually depicting every feature of the industrial design in solid lines. Environment is included only if it relates to or makes clear the features of the industrial design. The quality of any photograph or drawing must be of a high enough quality that it is digitally reproducible in black and white. There should only be enough views included to describe the industrial design, typically limited to perspective, front, back, top, bottom, right and left side, but more may be included if necessary.

Application Examination

When an application is received, it is reviewed to make sure that it meets the minimum administrative requirements. If so, it is given a filing certificate and a filing date; if incomplete, a notice is sent detailing what is missing. The application is then classified by object and a search is conducted of all registered industrial design. After comparing the results with the application, an examiner gauges the originality of the design and either approves registration or issues a report noting any flaws or objections and what is required to amend the application. If rejected, an applicant is given an opportunity to reply either in argument or amendment. If the examiner is still unsatisfied, they will issue a final report outlining their reasons for denying registration. These results may be appealed to the Patent Appeal Board, who follow the same procedure in industrial design as they do for patents (see Patents section). Those results are appealable to the Federal Court of Canada.

Records and Databases

It is highly recommended that all assignment and licencing of industrial design be recorded with CIPO. To do so, CIPO only requires a copy of the written documentation and the required fee.

CIPO maintains an industrial design database online, wherein all entries are searchable by fields such as article, description and current owner. The search room at CIPO Client Services Centre also maintains a physical record of industrial design registration.

CIPO Register of Copyrights

The Canadian Register of Copyrights is maintained by the Copyright Office, which is overseen and directed by the government appointed Commissioner of Patents. The Registrar of Copyrights, appointed by nomination process, oversees and directs the Copyright Office on behalf of the Commissioner of Patents.

Copyright registration in Canada can be divided into 4 categories:

1. Application Processing – receive and register copyright applications
 2. Assignments and Amendments – receive, process and record any transfer of rights or changes to the copyright record
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3. Databases – maintain public access to both electronic and paper copyright registry databases

Application Processing

Copyright is an automatic right that every person has over the fixed expression of their ideas. As such, there is no examination process or merit analysis involved in registering copyright in Canada. Any person whose work is protected by copyright in Canada may register the copyright. If the application form is filled out correctly and the fees are paid, the Registrar shall grant registration.

The Copyright Office does not want applicants to submit copies of their work. Due to the nature of artistic expression and the automatic nature of copyrights, the Office will not assess applications for their originality. Any policing of copyrights is done by the rights holders themselves, and any conflicts are brought before the Copyright Board, a separate adjudicative tribunal. The Register does not guarantee the legitimacy or originality of the rights that it lists.

Only owners of a copyright or part of a copyright may apply for registration. The Copyright Office identifies an owner as any one of the following:

- the author of the work;
- the owner of the copyright in the work;
- an assignee of the copyright; or
- a person to whom an interest in the copyright has been granted by licence.

The following information is required in the application for a work: title of work, category of work, publication date if it is published, author name and address, owner name and address and a declaration that the applicant is the owner and thus eligible to register the copyright. For the category of work section, the applicant must identify their work as either literary, musical, artistic, dramatic, or a combination thereof. The owner is usually the creator of the work, but it may also be someone to whom a right has been assigned or licenced, or it may be an employer. To register copyright in another subject matter, the applicant is required to identify the subject matter as either a performance, sound recording or communication signal, as well as provide the owner's name and address and a declaration that they are the owner and thus eligible to register.

Copyrights must only be registered once, regardless of whether it is before or after publication, and there are no renewal fees. The registration fee covers the cost of processing the application and any amendments, as well as producing and sending the registration certificate.

Upon registering a copyright, the owner/agent receives a certificate of registration that serves as evidence that the work is protected by copyright and that they are the owner/agent. The certificate does not guarantee protection against illegitimate applicants who may have registered a copyright that they did not have. Registration with the Copyright Office therefore merely *facilitates* proof of ownership or authorship over a given work. Those who seek to pay licensing fees can also use the database to identify and locate the rights holder of a given copyright.

The owner of the copyright is responsible for policing his/her own copyrights; the Copyright Office is not involved in matter of infringement. If a copyright holder finds that their rights have been infringed, they must take the matter up with the Copyright Board, an entity entirely independent from the CIPO office. The Copyright Board is also responsible for overseeing licensing of copyrights.

Copyright in Canada may be indicated, regardless of whether the copyright is registered, by indicating a © symbol, which may be followed by the name of the owner and the year of first

publication (ex: © Jane Doe, 1992).

Assignment and Amendment

Clerical errors regarding registration may be corrected by the Registrar and do not invalidate the registration. If the error was committed by the applicant, they must file a request for correction and pay the necessary fee. If the error was committed by the Copyright Office, a certificate of correction will be sent free of charge.

Non-clerical errors in the Register, such as illegitimate registration, may only be corrected by order of the Federal Court. The Registrar or any interested party may bring a non-clerical error claim to the Federal Court.

In order to register an assignment or licence of a copyright, the applicant must submit the original agreement regarding the assignment or licence, along with the necessary paperwork and fees. The Copyright Office will keep a copy of the agreement and return the original to the applicant, along with their certificate of registration.

Generally, copyrights last until December 31st of the 50th year after the author's death. Exceptions to this rule exist and can be found in the Copyright Act. Registration of copyright has no effect on its duration.

Databases

Before 1991, the Register of Copyrights was a hard-copy database consisting mainly of microfilm records. This database has not been converted to electronic form, and there appears to be no intention to do so. In order to consult a copyright that was registered prior to 1991 in Canada, a person may go to the CIPO Client Service Center and consult the database, with help from the IP Search Information Officers on hand. The Information Officers may be contacted by phone, email or in person, but will not do searches for clients.

All copyrights registered after 1991 are found on the electronic database. The electronic database can be accessed from the CIPO's website and can be searched free-of-charge. The database can be searched by the following categories: author name, category, country of publication, owner/assignee name, registration number, title and type or year of publication.

Applications, requests for certificate copies and post-registration changes may be done electronically or by hard-copy. Electronic efforts are encouraged via reduced fees.

Quebec's Property Registries

The Land Register and the Movable Real Rights and Personal Rights Register of Quebec are the systems by which rights are publicized rendering them enforceable against third parties. Although the registers initially consisted entirely of hard paper documents, the majority of consultation, registration and document submission are now performed electronically.

The Minister of Natural Resources and Wildlife directs and coordinates the land registry offices, whereas the Minister of Justice directs and coordinates the personal and movable rights registry offices. The Registrar for land (*Officier foncière*) is appointed jointly by the two ministers. The Registrar for land's administrative functions are overseen by the Minister of Natural Resources and Fauna, while his/her public functions are overseen by the Minister of Justice. The Registrar for personal and movable rights (*Officier de la publicité des droits personnels et réels mobiliers*) is overseen solely by the Minister of Justice. Both Registrars must be either a lawyer or a notary.

Ministers may also appoint associate officers (*Officiers associés*) who share the responsibilities and obligations of the Registrars. Associate officers are overseen by their respective Registrar.

With regards to the land registry, there also exists two committees: one committee who advises the Registrar of land regarding interpretation application of the law, and a second committee available for consultation by the Registrar or either Minister. The first committee is composed of two members representing the Minister of Justice and two members representing the Minister of Natural Resources and Fauna. The advice of this committee is binding upon the Registrar. The second committee is composed of one member representing each of the following: the Minister of Natural Resources and Fauna, the Minister of Justice, the Quebec Bar, the order of notaries in Quebec and the order of land surveyors in Quebec. The advice of this committee is not binding.

The Land Register of Quebec

Any land-related transaction in Quebec must be registered with the Land Register of Quebec. The Register has a two main functions:

1. Registration – process applications for rights registration
2. Records – publicize land rights and make any relevant documentation accessible to the public

Registration is granted if the forms are properly filled out and the appropriate tariffs are paid. There is neither examination nor judgment process for registering rights. If land rights are not registered, they are merely contractual rights and not enforceable against third parties. The Register does not confer nor create land rights.

Registration Process

Only notaries are able to register land in Quebec. Registration may be done electronically or by paper. In order to register by paper, a notary must bring the relevant paperwork to the appropriate land registry office. The documents are scanned and uploaded to the electronic database, where they are sent to a regional operation centre for processing and analysis.

Electronic registration, called remote registration, can be done by any notary from their own computer. In order to do so, the notary must download the appropriate software used to upload documents to the electronic land registry. The software ensures that documents are readable by the electronic land registry and that all necessary forms and signatures have been provided. The secretary for the order of Quebec notaries provides each notary with an electronic signature that

they must provide in order to upload documents for registration. Each notary also has a client account and account number that they use to access the system.

The only document that is required in order to register land is the original or certified copy of the transaction by which the land was obtained. Exceptions exist for more complicated transactions, such as superficies, where surveyors' plans or certificates of location may be required.

For electronic registration, the processing time for analyzing the application is approximately four business hours. Documents submitted electronically will receive their certificate of registration by email, whereas those submitted in paper will receive a paper certificate.

Electronic and Paper Records

There are 73 land registry offices in Quebec. Traditionally, each land registry office would keep paper records of all land transactions and documents relevant to land registration in their territory. Now, almost all documents are available only online.

In order to ensure the conservation of paper documents over time, the Minister may order the Registrar to replace or reconstitute any of the documents that the Registrar keeps. Upon certification by the Registrar, these new copies hold the same authenticity, validity and effect as the original document did. Under this authority, the Minister requested in 2001 that almost all paper documents dating back to 1974 be converted to digital format.

The delicate process of scanning of paper documents, some dating back to the mid-1800's, was performed at a single location. Paper originals of digitized documents are stored in a single archive center. Certain documents that were not digitized, such as land deeds pre-1974, are available for consultation at their respective registry offices. Copies of most of these remaining paper documents, however, can be ordered from the Land Register Web site and are delivered within 24 to 48 hours.

Digitizing the Register has answered many difficulties that the paper register posed. Firstly, paper documents are fragile and particularly vulnerable to natural disaster. Secondly, operating costs for an ever-growing paper register were constantly increasing. Third, the electronic register allows documents to be accessed from any location.

Anyone can consult the Register and either request certified copies of the documents it holds, or instantly download non-certified copies to their own personal computer. In order to view documents from the electronic Register, the appropriate software must be downloaded for free from the Register's website. To consult the Register, a person may log in as a guest and must enter their credit card information. Those who regularly consult the register are urged to create an account which will provide them with their own user code. Fees apply to consult and obtain copies of any document. The Register may be consulted seven days a week.

The provincial government is responsible to allocate and determine tariffs that the Registrar shall levy for the products and services of the Register. They are also responsible for establishing the location territory for the land registry offices.

The Registrar provides copies to Quebec municipalities of all documents relevant to municipal evaluations. The municipalities, in turn, provide copies to the Registrar of all licensed immovables in their jurisdiction.

Cadastral Reform

For the past ten years, the province of Quebec has been reforming its cadastral designation system, the method by which individual plots of land are labelled. Initially, the province was divided into counties and each county would allocate lot numbers to land, starting at number one. This meant that in Montreal, for example, there were ten counties and therefore ten lots with the cadastral designation number one. Across the entire province, there were hundreds of lots with the cadastral designation number one. Since the county borders did not match today's municipal borders, often people did not know which cadastral county they lived in. This made identifying which lot number one that a given person was referring to very difficult. Furthermore, farmers who would divide their land would find themselves with cadastral designation numbers such as 1-1, or 1-1-1 if the land was divided a second time. Under the cadastral reform, the province has assigned individual and unique lot numbers to each and every lot in Quebec, allowing appropriate space as well for future subdivisions.

Criticism

There is a single major flaw with the online Register in Quebec: it is not user-friendly. Although the Register claims that it makes ownership in land public information so that any person can consult it, the reality is not so simple. For the average, computer-literate person who merely wants to know who owns a given building, finding that information is extremely hard. The online interface is complicated and the terms are all very technical. Furthermore, the Register appears to require that the user know the cadastral number or lot number for the land that they are looking for and it does not offer a service to convert addresses to cadastral numbers, nor to consult a map in the case of land where the user does not know the address.

The municipality of Montreal, using the information that the Register must share with it, offers an online service that allows users to search by address within Montreal and find out the name of the owner, as well as date of construction, property evaluations and the cadastral and lot numbers for a given piece of land. The service is free-of-charge and simple to use. This service, however, is the voluntary initiative of the city of Montreal. People living outside of Montreal are stuck consulting the Register.

I would like to see the Register of Quebec incorporate a user-friendly, "simple search" option that would allow users to search by address in order to obtain basic ownership information, ideally free-of-charge. This would make their claim that the Register publicizes land rights much more accurate in practice.

The Movable Real Rights and Personal Rights Register of Quebec (MRPRRQ)

The MRPRRQ (*Registre des droits personnels et réels mobiliers*) is a register that publicizes a variety of different rights on movables and personal rights. Common registered rights on movables are hypothecs on vehicles, financial commodities like stocks, precious valuables like jewelry or artwork and on business property. Common personal rights in the register are marriage and divorce contracts and rights relative to the liquidation of successions. The Register publicizes rights and makes any relevant documentation accessible to the public. If rights are not registered, they are merely contractual rights and not enforceable against third parties. The Register does not confer nor create rights.

The MRPRRQ serves the interests of two main parties: creditors wishing to protect their rights by enforcing them against third parties and buyers who would like to protect themselves from buying property which is subject to a debt for which they may be held responsible. By registering rights in the MRPRRQ, it becomes the buyer's responsibility to consult the register. If the buyer buys indebted property, they cannot defend their ownership by any claim of good faith. If the seller stops

paying their debt linked to the property, the creditor may take the object from the buyer, or oblige the buyer to pay the rest of the debt.

The MRPRRQ has two main functions:

1. Registration – process applications for rights registration
2. Records – publicize all records of registered rights

Registration is granted if the forms are properly filled out and the appropriate tariffs are paid. There is neither examination nor judgment process for registering rights.

Registration Process

The main types of people who register rights in the MRPRRQ are members of financial institutions, lawyers, notaries, bailiffs, certain government organizations and occasionally individuals with relation to successions or other matters. Registration may be done electronically, by mail or in person at a MRPRRQ registration office.

In order to register, a person must fill out the appropriate form available on the MRPRRQ website or at a registration office. The person registering must, on their application form, refer to the constituting act of the movable real right or personal right being registered, such as a contract, but in most cases they do not need to provide a copy of the document itself. Once the form is correctly filled out and the appropriate fees are paid, the registration is sent for processing. The processing time for a conventional hypothec is less than 24 hours, at which point the individual holding the hypothec receives a certified statement of registration.

Only regular clients of the MRPRRQ are encouraged to register electronically. In order to register electronically, the client must obtain a user code and an electronic signature from the MRPRRQ registration office. This allows the system to verify their identity. No software must be downloaded in order to use the MRPRRQ; clients need only to log in through the website. Registration may be performed online seven days a week.

Electronic and Paper Records

Using the electronic registry has certain advantages. Primarily, all client fees are reduced by a fixed amount when the transaction is done electronically. Furthermore, the online form automatically verifies that all required information is entered and formatted correctly, which results in fewer rejected applications. Lastly, all updates and changes are incorporated directly into the online software. This means that clients are not required to download updates and that all clients benefit from them instantly.

The online register is available for consultation seven days a week. People may also consult the register by phone, in person at a registry office, and by mail, fax or email for certain items. Documents received by fax or email are not certified. Tariffs apply to all types of consultation.