

# What We Heard:

Indigenous Intellectual Property (IP) Roundtable

Winnipeg, Manitoba

November 8, 2023



Prepared by: Canadian Council for Aboriginal Business  
Prepared for: Innovation, Science, and Economic Development Canada (ISED)

## **About the Participants:**

Most of the participants were Indigenous business owners from Winnipeg and surrounding areas of Manitoba and Northern Ontario, with a few representatives of support organizations and a settler-led corporation that works closely with First Nations. They totaled 33 attendees, both in person and virtually. Although the group was at various stages of their IP journeys, the majority identified as IP novices, with only a handful possessing extensive understanding of patenting and trademarking.

Please see the accompanying flash report for more details on the roundtable's makeup and participants' awareness and use of IP and innovation.

## **An overview of what we heard**

The roundtable discussion and insights were structured around three central themes:

- 1) Education on IP fundamentals;
- 2) Access to funding for IP protection; and
- 3) Safeguarding Indigenous Knowledge and innovation.

### **1) Education on IP Fundamentals**

- There are challenges in understanding IP for Indigenous entrepreneurs. The following questions and topics illustrate some of these difficulties:
  - What are the various types of IP?
  - Identifying the types of IP Indigenous entrepreneurs have in their businesses.
  - Understanding and appreciating the value of their IP.
  - Why is IP protection important?
  - Identifying which types of IP protection will benefit their businesses and the processes involved.
  - Awareness of and access to educational resources.
- An entrepreneur's time and focus are dedicated to the demands of their business. Too much responsibility is currently placed on Indigenous business owners to not only understand the Western IP system but also maneuver through the extra considerations when it comes to protecting their Indigenous or Traditional Knowledge (TK). Once these protections are in place, the onus continues to be placed on the entrepreneur in that they must maintain and enforce their IP, both of which can be time-consuming and costly processes.

### **2) Access to funding for IP protection**

- Government must work to regain the trust and respect of Indigenous Peoples. As such, more resources must be dedicated to establishing trust with Indigenous entrepreneurs using government funding or programming to protect and register their IP.
- Program administration: Cultural awareness is required to understand Indigenous businesses' challenges within the Western system. In addition, education surrounding

Indigenous TK, communal rights, Indigenous governance, and the shortcomings of Canada's IP system is necessary to ensure that efforts are adequately informed.

- Indigenous representation, and integration of values where possible, is required in government program administration to ensure that Indigenous eyes, ears, and minds are involved in reviewing Indigenous Peoples' intellectual properties, formally safeguarding them, and funding their IP initiatives.

### **3) Safeguarding Indigenous Knowledge and Innovation**

- Current IP laws, institutions, and processes reflect Western concepts of ownership, individuality, and legislative authority, which directly conflict with Indigenous communities' ability/sovereignty to pursue their own IP strategies using Indigenous laws and traditions in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the treaties.
- Indigenous Peoples must lead the restructuring of the current IP system and have the opportunity and resources to create new systems, notably for the protection of TK and Traditional Cultural Expressions (TCEs).

## **What we heard**

### **Fostering Indigenous IP Innovation and Exploration**

- There is general support for the creation of Indigenous "IP safe havens."

Participants voiced concern that Indigenous entrepreneurs are forced to adhere to Western notions of IP ownership, which hinders their ability to conceptualize IP strategies that work better for their communities or reflect Indigenous ways of protecting their knowledge and businesses. Those in attendance, however, saw the benefit of providing Indigenous entrepreneurs with the space (both physical and conceptual) to discuss and brainstorm about formal IP protections, their potential business value, and their application to TK and TCEs. They preferred a culturally safe environment where Indigenous Knowledge is recognized and respected, allowing them to engage with their intellectual properties more freely and experiment with how they may benefit their businesses.

It was suggested that this model should be adopted by academic institutions and laboratories, which are major incubators for innovators yet lack safe venues for Indigenous innovation. For context, many agreements with university laboratories automatically transfer ownership of foreground IP to the university. This arrangement has resulted in settler institutions claiming ownership of technologies that replicate or emerge from Indigenous Knowledge. The loss of IP rights in this case may also prevent Indigenous Peoples from commercializing their IP to enhance Indigenous community prosperity and well-being.

Several participants said they valued the opportunity to gain a deeper understanding of their relationship with TK and TCEs within their businesses. This knowledge would enable them to make more informed decisions regarding the formal safeguarding of these assets. In dealing with IP matters, Indigenous entrepreneurs face an environment characterized by fear and doubt, which is a product of how the IP system operates. The many aspects of IP, the evolving legal

landscape, and its incongruence with Indigenous values make the field challenging and potentially intimidating for Indigenous entrepreneurs who are just starting out.

Some in attendance felt that as a result of the lateral violence within Indigenous communities that sometimes exists, there is uncertainty or unwillingness to integrate cultural symbols into artworks or designs. The desire to avoid misappropriating these culturally sensitive elements within a business context adds to the fear and concern voiced about experimenting with the formal protection of TK and TCEs.

The underlying issue appeared to be striking a compromise between protecting the integrity of Indigenous Knowledge from unauthorized use and guaranteeing its availability for use by those who should rightfully benefit from it. The concept of the Indigenous domain was proposed as an alternative to the public domain to distinguish the distinct cultural traditions, practices, and histories shared by Indigenous communities, with a focus on restricting non-Indigenous peoples from commercializing or benefiting from them exclusively.

This fear is also present within Indigenous communities since they may not always be willing to discuss their Indigenous Knowledge and Ways of Being out of concern that it will be stolen or collected without any benefits for the community, or used for a different purpose than it was intended (moral rights). This concern highlights the importance of establishing dedicated spaces for Indigenous entrepreneurs and communities to work through their individual IP strategies while recognizing the sovereignty and authority of Indigenous Nations to lead these efforts and providing the funding for this to manifest.

### **No One-Size-Fits-All Approach**

- The current IP systems can be useful for Indigenous businesses in certain sectors, particularly STEM fields.

Another common notion among Indigenous businesses around the table, especially those engaged in industries typically associated with STEM programming, was that the current IP system is useful for protecting some types of IP but falls short of supporting Indigenous businesses that rely more heavily on TK. For these STEM-adjacent companies, maneuvering Western IP systems and standards is possible because their creation, product, or process is often not inherently tied to any unique aspects of TK or TCEs. Those in attendance noted that not all Indigenous businesses incorporate or weave their TK or TCEs into their business models in the same way. For some Indigenous entrepreneurs, TK and TCEs inform every aspect of the business, from branding to the products themselves, whereas others may approach business using cultural values.

As with previous roundtables hosted in other regions of Canada, there are clear differences in the relationship with IP maintained by those Indigenous businesses involved in sectors like information technology, healthcare, and engineering compared to those engaged in retail trade, arts, entertainment, accommodation, food, and cultural industries, or the traditional gift-giving space. It appears that IP is integral to the function of businesses involved in STEM-adjacent industries, which forces companies in these sectors to become comfortable operating within IP frameworks sooner than others. These Indigenous business leaders and their expertise may be able to help demystify IP and its uses for other Indigenous entrepreneurs. The needs, concerns, and experiences shared by businesses in these two sub-groups differed. However, there was a shared concern about the onus placed on entrepreneurs to protect their creations and that the

IP system is not robust enough to reflect the needs of all Indigenous business owners in all industries.

- Supporting a pathway for Indigenous community IP ownership through increased investment and capacity building.

Another sentiment shared by Indigenous entrepreneurs who attended is the need for more resources and support to help Indigenous communities establish or reclaim, in certain instances, traditional ways of protecting and verifying Indigenous Knowledge. These Indigenous entrepreneurs represented numerous First Nations and Métis communities across Canada. Many of them mentioned that their Nation or community had existing protocols or systems for safeguarding sacred knowledge. A major barrier appeared to be that the current legal framework does not recognize Indigenous institutions on a par with settler ones and the authority of Indigenous laws more broadly. Participants advocated for Indigenous control and stewardship over the use of TK and TCEs in business, empowering Indigenous communities to develop processes to regulate the use of communal TK for their people. The ability of Indigenous Nations to grant and administer Indigenous IP or establish an independent system related to TK and TCEs will ensure acceptable use and may generate own-source revenue, which is critical for supporting Indigenous sovereignty and self-sufficiency.

- The use of artificial intelligence (AI) may be a tool for safeguarding IP if designed in an inclusive and culturally sensitive way.

There appeared to be interest in learning about how AI tools could be used to protect IP by identifying infringements or encrypting sensitive information. There was a buzz among the Indigenous entrepreneurs in attendance about AI's potential as a grassroots means of protecting their IP. Some described experiences in which AI and machine learning have been valuable in combing the Internet to monitor their unique cultural patterns, designs, or artwork that external actors might misappropriate. Others mentioned using the technology to encrypt their processes and sensitive information to ensure IP is inaccessible to those seeking to cause damages. It was clear that Indigenous business participants generally viewed this technology as an accessible means of identifying IP infringements that would free them up to focus on business operations.

With the right expertise and familiarity with the technology, it could provide a more economical and time-efficient method than traditional IP filing, monitoring, and litigating. However, it must be noted that those in the room raised concerns about AI and some of the unknowns surrounding this new technology. For example, some participants expressed concerns about the mass codification of Indigenous Knowledge and sacred teachings required to use AI to protect them and how this conflicts with the requirements of many Indigenous Nations for TK to be transmitted orally. Several participants also highlighted worries about how AI trained in an Indigenous language might be used to train individuals, which is problematic because the teachings would lose cultural context or fabricate stories about culture or traditions.

Indigenous businesses in attendance were equally excited and wary about the uses and capabilities of AI related to protecting aspects of their IP, especially IP attached to expressions of TK. Many stated that OpenAI and other generative AI technologies are still relatively new as consumer and business tools, leaving much uncertainty regarding the ownership and applications of information collected or inputted. While certain companies that attended our roundtable were already actively leveraging these AI tools to protect or streamline their

operations, the majority were unfamiliar with this technology. The idea that this technology would have access to the businesses' IP, which could be tied to sensitive pieces of TK, was unsettling for many in the room. In addition to the skills gap among Indigenous entrepreneurs in terms of effectively using or incorporating AI within their businesses, the potential risks of the yet-unknown consequences of using this technology suggested that research into the long-term implications, supports, programs, and resources is required to ensure its safe implementation.

### **IP is critical for substantive Indigenous engagement in international markets.**

Indigenous entrepreneurs at the roundtable were interested in learning more about how strong IP strategies might allow them to confidently introduce their products, services, or processes to new markets abroad. Some participants said they would like to see increased inclusion of Indigenous IP and TK protections in trade agreements to ensure that entering these global markets is more streamlined for Indigenous entrepreneurs. Much of this would include improved efforts to harmonize IP standards internationally and the need to recognize Indigenous IP more purposefully. This inclusion could also be achieved by heightening the capacity of Indigenous businesses to participate in Nation-to-Nation trade by lowering regulatory and administrative barriers.

- There is marked interest in developing Indigenous geographic indications (GIs) or expanding the current IP framework to effectively capture some Indigenous businesses' unique relationship with the lands and territories where they reside.

There were interesting discussions on GIs as a useful tool for Indigenous businesses seeking to protect and leverage their product's inherent connection to the land. Several Indigenous entrepreneurs in the room emphasized how much of the TK and TCEs present within their businesses are tied to the specific place they come from. GIs were found to be most applicable to Indigenous firms engaged in location-based industries, such as agriculture and agribusiness, natural resources, beauty and cosmetics retailers, tourism, and cultural industries. Those around the table identified these key sectors as more likely to embrace goods, services, or processes tied to Indigenous land management and use. An example offered by one of the participants described how Indigenous businesses are growing and selling wild rice for a mainstream market while making it more consistently available to their communities. This participant also detailed how, through the use of GIs, Indigenous Nations and communities can protect traditional harvesting and processing methods and, in doing so, ensure cultural recognition, protection, and continuity.

An intriguing point was raised about how sparkling wine from the Champagne region of France is protected using GIs according to the unique qualities attributed to its geographical origin, suggesting that Indigenous communities and businesses consider safeguarding agricultural and agrifood products, including country foods such as wild rice or pemmican, by obtaining GI status. Only Champagne producers who have met the criteria and obtained approval are granted GI status, preventing fraudsters from misappropriating this mark of quality and authenticity. Many in the room agreed that this designation might also help wild rice farmed by Indigenous communities in Canada and should be further explored. They discussed how the products they generate or the processes they use in their business are also inherently tied to knowledge of the land itself, prompting them to contemplate GIs as a viable tool for protecting their products.

Those in attendance requested more research dedicated to understanding how Indigenous entrepreneurs might use GIs to protect and catalogue their businesses' unique products and processes tied to the land.

### **Establishing trust in the government's abilities to adequately support Indigenous businesses.**

Enhancing educational resources for government IP advisors and patent agents to better understand Indigenous IP structures is required. Our roundtable event effectively created a safe space for Indigenous business owners to reflect and provide feedback on some of their experiences interacting with government departments responsible for IP education and filing. One central concern participants shared was the disconnect between Indigenous entrepreneurs and government officials tasked with assisting them with their IP needs. Many of the Indigenous business owners conveyed frustration with the government's rigid understanding of IP through Western frameworks and its ignorance of Indigenous IP systems, concerns, and needs. This lack of awareness caused Indigenous entrepreneurs to be hesitant to use government programs or funding because they felt there was an inherent misunderstanding of their cultures, Indigenous Knowledge, and, on the part of settler governments, a serious gap in education about Indigenous IP.

Indigenous business owners who attended our roundtable felt that filing, managing, and litigating their IP pushes them to "sell out" or figure out a way to explain how the TK in their business aligns with the requirements of valuable IP. Indigenous entrepreneurs in the room agreed that this misunderstanding or misinterpretation of their relationship with IP erodes trust in the government's ability to adequately support their IP ventures. For many, this feels like they are being forced to embrace assimilation, further triggering feelings of distrust. Some in attendance suggested OCAP® training for government employees working for agencies like the Canadian Intellectual Property Office (CIPO) as a starting point for those seeking to better understand Indigenous ownership perspectives and what they mean in practice. However, this effort must be paired with tailored training and resources for government officials looking to meaningfully engage and understand the IP needs of Indigenous entrepreneurs. There is too much onus on Indigenous entrepreneurs to learn the IP system and use it themselves while funding these efforts out of their own pockets.

The roundtable attendees viewed learning about IP and securing protections for their business as a process they are forced to undertake on their own time and at their expense. Indigenous business owners indicated an interest in funding and programming that would allow them to experiment with and learn about IP. They felt that if the government expects them to operate within a Western IP framework, then more resources must be dedicated to ensuring that they fully understand the systems in which they must operate. Some remarked that the pools of funding, programs, and various existing supports related to IP, particularly Indigenous IP initiatives, are too advanced for most of the entrepreneurs they aim to serve. Greater resources should be dedicated to demystifying IP as a valuable tool for safeguarding Indigenous businesses, educating Indigenous entrepreneurs on the basic types, applications, and purposes of formal IP, and amplifying the visibility and effectiveness of existing community-based IP systems or systems of knowledge protection.

### **Increased incorporation of national representative Indigenous organizations in the IP verification and filing process.**

One of the focal points of the discussion was how there needs to be an increased presence of Indigenous organizations in verifying, managing, and supporting Indigenous IP efforts. There was a strong desire among the Indigenous entrepreneurs at the roundtable to see a more prominent reflection of themselves in the IP process and system as a whole. Suggestions included having Indigenous reviewers, verifiers, and representation within government programming to ensure that Indigenous eyes, ears, and minds are examining Indigenous Peoples' IP. A step toward more meaningful inclusion could be to increase recruitment and training for Indigenous people to become trademark and patent agents. Those in attendance felt that shifting the responsibility of filing, managing, and verifying IP to Indigenous representative organizations, communities, or collaboration could promote reconciliation by allowing Indigenous Peoples to determine suitable uses of their IP, TK, and TCEs.

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### Participant quotes and direct insights

- “Perhaps the discussion needs to shift from a discussion of ‘Indigenous IP’ to ‘Indigenous knowledge systems.’”
- “There is no universal understanding of Indigenous Traditional Knowledge or Cultural Expressions that can be applied to all Indigenous Peoples in Canada.”
- “Indigenous Peoples need their own sandbox to experiment and figure out ways to leverage their unique TK/TCEs into innovative solutions. Just like there is public domain, there should be an Indigenous domain.”
- “We do not want a trade secret; we want a tribe secret.”
- “There is a need to reinvest in Indigenous Peoples and communities and their capacity to protect the processes and traditions that have served their needs since time immemorial. There are lots of ways for Indigenous Knowledge to support some of the socio-economic trends in society, ranging from food security and animal regeneration to combatting climate change and illness and disease.”
- “I learned that I may have missed the boat on IP for my current business; however, it will be something that is heavily considered in the creation of the next venture.”
- “It is important to be upfront about IP needs and requirements when introducing a new product, service, or process.”
- “Organizations like CCAB need to work harder to convey the importance of IP to smaller businesses because it is valuable and, arguably, more relevant to SMEs, who can easily fall victim [to infringement].”
- “We need to showcase successes to demystify IP for other small Indigenous entrepreneurs.”

### Topics of interest for future discussions

- Copyright
- The relationship between IP and RFPs/RFQs, subcontracting, and the procurement process.
- Protection of IP through non-disclosure agreements or in joint ventures.
- Data management and ownership.
- IP monitoring and enforcement, and insight into what legal action looks like.
- More information on small business grants and supporting various aspects of a business, including developing an IP strategy.
- What must be done to address Indigenous entrepreneurs' concerns with Canada's IP system?



## Next Steps

- CCAB used the insights gained to inform a three-part webinar series that addresses some of the key themes and trends that emerged from our analysis of three Indigenous IP roundtable discussions. Once designed, these will be posted on CCAB's website.
- These webinars utilize our contacts at IP support organizations and law firms and are organized around the roundtable's three prevailing themes:
  - Webinar #1: "What is IP?"
  - Webinar #2: "Funding your IP"
  - Webinar #3: "Enforcing your IP"
- CCAB will prepare an additional roundtable based on the recommendation that public awareness and advocacy events meet Indigenous entrepreneurs where they are, particularly in Indigenous communities.
- CCAB will continue to undertake IP research in other parts of Canada to gather diverse perspectives from Indigenous businesses around the country to help build policy positions while promoting IP education and awareness.

For more information about the roundtable discussion, please contact:

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