

What We Heard:

Indigenous Intellectual Property (IP) Roundtable

Calgary, Alberta

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Prepared by: Canadian Council for Indigenous Business

An overview of what we heard

The roundtable discussion and insights were structured around four central priorities:

- 1) Soliciting feedback on the types of support needed to ensure Indigenous entrepreneurs can effectively and meaningfully engage with aspects of the TK or IP.
- 2) Provide a platform for connections and knowledge sharing between Indigenous business participants related to knowledge and intellectual property protection.
- 3) Gaining further insights on the challenges that Indigenous entrepreneurs face related to using and protecting elements of their TK or IP in their business.
- 4) Working collaboratively to identify policy advocacy points related to Indigenous Knowledge and its interaction with Western IP frameworks.

What we heard

Feedback on types of support needed

The importance of definitions and terminology regarding understanding and discussing Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs)

An important roundtable discussion was around the distinction between the terminology those in attendance used to describe Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) and what is commonly known as IP. As referenced in previous What We Heard reports, Indigenous business participants noticed a clear difference in how ownership is understood for Indigenous Knowledge compared to non-Indigenous IP frameworks. Throughout our engagements, Indigenous entrepreneurs have consistently expressed that TK cannot or should not be owned and fenced off by a sole individual in the same way property is generally understood to exist as something owned in the Western context.

The roundtable participants described TK as passed down, iterated on, and adopted by generations of Indigenous Peoples united by community. Indigenous entrepreneurs in the room used terms like sacred, sensitive, secret, and special to talk about elements of their TK and TCEs. Some felt that TK has a living component that needs to be carefully considered when using it. Others felt strongly that connecting with their TK and TCEs, as well as embracing and spreading them, was the best way to ensure the survival of their culture and communities into the future.

According to these discussions, the language that most frequently rose to the surface compared Indigenous Peoples' concept of "stewardship" over knowledge and the Western idea of ownership over knowledge. When discussing the IK they incorporated or relied on in their business operations, the Indigenous entrepreneurs in the room did not identify as owners of any knowledge. Rather, they saw themselves as stewards of this information and were responsible for carrying it in a good way for the next generation to access, embrace, and use in their own

lives or businesses. This distinction was nicely summarized by a few Indigenous business attendees from various communities within the Blackfoot Confederacy in Southern Alberta. They touched on the fact that, despite having ties to different First Nations within the confederacy, they do not recognize a single community or representative as the owner of their TK. Instead, their TK assumes a communal existence that every member Nation can engage in their own and occasionally unique ways.

Concern about non-Indigenous people or foreign actors misappropriating Indigenous Knowledge and identity

Indigenous business participants shared a common concern about the position, presence, and sometimes misbehaviour of non-Indigenous businesses or foreign actors engaging with or posing as authentic Indigenous businesses. An interesting discussion related to this focused on how Indigenous Peoples' art, knowledge, expressions, and other elements of Indigeneity have become increasingly prominent in the economy and popular culture. Some attributed this to the "era of reconciliation," a term used by a few at the roundtable to describe the societal shift toward increased awareness of and engagement with Indigenous Peoples and businesses, which has increased the demand for Indigenous cultural products. While Indigenous people, communities, and businesses continue to rightfully reclaim their culture and identity and reaffirm their socioeconomic well-being, many non-Indigenous actors see an opportunity to capitalize on this broader trend. Roundtable attendees shared a common sentiment: if anyone should generate revenue by leveraging aspects of Indigenous Knowledge (IK) or Indigenous Cultural Expressions (ICEs), it should be Indigenous individuals and communities reaping the financial windfalls from this commercialization.

Many attending Indigenous business owners shared examples and vented frustrations about non-Indigenous people exploiting, misusing, and promoting Indigenous art, knowledge, or expressions as their own without proper attribution. When describing the impacts of these unfair practices on themselves and their businesses, most felt they were being excluded from activities involving their own histories and stories. On more than one occasion, a roundtable participant described connecting (or reconnecting) with their Indigenous Knowledge as a means of honouring and embracing their heritage and healing from past traumas. Others put it more bluntly, stating Indigenous people are fed up with other (non-Indigenous) people telling stories and appropriating cultures that are not theirs and benefitting financially throughout the process.

It was suggested that Indigenous-led solutions and initiatives are needed to guide "knowledge stewardship" in Indigenous businesses and communities. Those in attendance felt that too many non-Indigenous actors were taking up space that should belong to Indigenous Peoples and communities attempting to assert their interests in the IP ecosystem. While many were concerned about non-Indigenous organizations based in Canada, others looked to international markets.

More serious worries were attached to foreign actors and their engagement with Indigenous businesses and the broader Indigenous economy. Many Indigenous business participants felt that it was easier to counterfeit Indigenous products in international markets where there might be weaker IP laws or less ability for Indigenous business owners to surveil the theft or misuse of

their IK and ICEs. They mentioned experiencing unauthorized use firsthand and only discovered it through the grapevine of their loyal customer base. One roundtable attendee described a situation in which their customers brought IP infringement to their attention by tagging their business and leaving comments on the webpage of a Chinese-based online wholesale company. This example indicates an added layer of complexity for Indigenous businesses to consider when looking to expand into international markets.

Some Indigenous business participants detailed the difficulties faced when developing meaningful relationships and partnerships with foreign companies or nations using different or non-existent IP laws. They noted that Indigenous businesses are especially vulnerable in digital spheres, such as E-commerce platforms, where they may be at a disadvantage due to a lack of training or resources, which can make them targets for nefarious actors seeking to steal their IP or infringe on important aspects of their IK. Many felt that overcoming these challenges involved more training for Indigenous entrepreneurs to participate in E-commerce safely and effectively while also working to create more uniformity in international IP frameworks when it comes to recognizing and protecting IK and ICEs.

Indigenous Knowledge and community involvement

Another interesting topic focused on how IK interacts with partnerships, specifically with settled, non-Indigenous businesses, and a few best practices for establishing relationship boundaries. A few key threads regarding partnership building are worthy of examining further:

Data ownership

Many Indigenous entrepreneurs in the room, especially those with businesses on reserve, raised concerns about elements of their TK and statistical data being housed outside the community. Citing experiences from their own businesses and communities, many noted that data ownership often lives outside Indigenous communities or institutions, which puts them at a disadvantage when trying to access, leverage, catalogue, or protect their information. While many Indigenous communities have introduced licensing agreements that have provided some value, there are still concerns about partnerships with non-Indigenous companies and governments, which can be predatory and effectively cede ownership of data or knowledge to a non-Indigenous entity. Many roundtable attendees also mentioned that numerous Indigenous communities already have certification tags in place to protect and recognize the authenticity of their TK and its uses, despite very few having the digital or physical infrastructure to house and steward large collections of sensitive data.

Impacts on community

Indigenous business participants discussed the importance of taking Indigenous data and knowledge infringements seriously, as they often lead to major data security concerns for the community. Unfortunately, according to the speakers in the room, data loss due to ransomware, IP theft, or fraud is all too commonplace for Indigenous communities and businesses. Many shared stories about how their community recently overcame a data infringement caused by ransomware and malicious online actors holding them hostage. Without the necessary resources to bolster their cyber defenses and the capacity to control data and knowledge storage, Indigenous communities and businesses will remain vulnerable to these types of intrusions and exploitations.

The roundtable found that Indigenous businesses generally want to collaborate to understand their TK better, including how it may be used and protected in business; however, the Western IP system does not promote these culturally sensitive safeguarding initiatives. It was widely believed that a deep connection with and ability to preserve Indigenous Knowledge are critical components of Indigenous sovereignty and should be a central concern for Indigenous communities seeking to assert their rights in this matter.

Indigenous Knowledge and the lasting effects of colonialism in the reclamation or reconnection process

The conversation took various turns, eventually landing on unpacking the role of colonialism in the protection, recognition, and codification of Indigenous Knowledge and the ability of entrepreneurs to connect with it now and into the future. The attending Indigenous business owners suggested that IP is a colonial concept established to control the flow of knowledge among people and communities through a rigid, Eurocentric understanding of ownership. Many speakers in the room felt the notion of individually owned IP was a colonial construction to create a dual standard of what is deemed legitimate (settler) knowledge and that which is illegitimate (Indigenous). This double standard supported the assimilative policies embraced by Canada by undermining the value of Indigenous Knowledge in favour of assigning or recognizing the IP ownership rights of an individual.

This process directly conflicts with Indigenous notions of collective responsibility and knowledge-sharing. The Western emphasis on individual ownership has resulted in a perpetual state of conflict in which Indigenous Peoples and communities are forced to fit their knowledge into a framework that is fundamentally flawed in its approach to and understanding of Indigenous Knowledge. This discussion raised more questions regarding how Indigenous communities and businesses can meaningfully protect something that a single individual does not traditionally control. The colonial notion of ownership still informs much of Canada's current IP policies and practices, creating a source of division for many Indigenous businesses and communities attempting to properly defend and exercise their TK.

Another important aspect of this discussion about colonialism and its relationship with Indigenous Knowledge focused on how the colonial project sought to separate Indigenous Peoples from their pre-existing knowledge systems and practices. Many roundtable attendees believed that the history of colonial efforts to divide and degrade Indigenous communities has prevented or hindered access to TK and TCEs and the capability to interact and learn about them meaningfully. Several Indigenous business participants gave examples of how, throughout Canada's colonial history, the use of TK and TCEs was banned, such as the outlawing of Potlatch ceremonies. Indigenous entrepreneurs in the room became open and vulnerable when citing their difficulties connecting to or engaging with their TK in business because they may not have been taught or exposed to it, especially if they grew up in an urban setting.

A handful of speakers related experiences in which they were not always allowed to have a strong connection with their community or Elders, whereby they could develop the necessary relationships to acquire their traditional teachings and practices. However, while many may not

have these connections, several Indigenous business participants said their Elders have been ready to share and continue passing down this knowledge—in some cases, it is only a matter of reaching out, and the worst that can happen is they say no. For many, this realization came later in life or further along their entrepreneurial journey.

Some of the attending Métis business leaders mentioned this point because they acknowledged that they did not have a geographical community to “return to” like some First Nations business leaders in the room did. This complexity underscores the inherent connection between Indigenous Knowledge and the lands on which Indigenous communities reside. For the Métis entrepreneurs around the table, the idea that they could not connect with the land to access and receive knowledge in the same way many First Nations-led businesses could is something they are actively working to overcome in their business and day-to-day operations.

Policy recommendations to create a more robust framework for understanding, recognizing, and protecting TK

Indigenous business participants were asked to identify specific advocacy, support, and resources to ensure that Indigenous businesses and communities can effectively and meaningfully engage with their Indigenous Knowledge, including TK, TCEs, and other Indigenous intellectual properties.

The following are a few of the suggestions put forward by the roundtable:

- More funding for advocacy efforts related to IP and supports or services to help Indigenous businesses protect their IP and/or TK.
- Creation of a more humanized IP registration system with enhanced support to help mitigate feelings of helplessness during filing, protecting, and litigating IP. This could include any variety of one-on-one, concierge, or contact centre services to assist with maneuvering this process.
- Creation of Indigenous-specific post-secondary law programs focused on application and issues regarding TK, TCEs, and IP in Indigenous business and community contexts.
- More resources to retain legal services or more pro-bono/discounted legal support regarding using TK, TCEs, and IP in the Indigenous business context.
- More opportunities for knowledge-sharing among Indigenous businesses regarding TK, TCEs, and IP are needed to assist in identifying barriers and compiling best practices.
- More opportunities are needed for Indigenous entrepreneurs and communities to share their perspectives relating to TK, TCEs, and IP, ensuring their voices are heard and actioned.
- Bringing together Indigenous Knowledge Holders to help develop the strategy for the future. Western IP provisions cannot and will never be able to adequately protect IK in a way that aligns with the cultural beliefs of Indigenous Peoples.
- Ensure substantial international recognition of TK and respect/ collaborate with Indigenous partners to protect TK.
- Increased involvement of Indigenous communities in managing infringements of TK.

- A knowledge mapping asset for communities to own and leverage as they best see fit, this would be optional to use and could function like India's Traditional Knowledge Digital Library (TKDL).
- These events should meet Indigenous businesses where they are, particularly given the intersection of knowledge, location, and land.

There was general support for creating an Indigenous Knowledge Institute to address many of the aforementioned topics. Education, advocacy, research, and creating a safe space to explore TK/TCEs were identified as potential priorities for such an institution.

Indigenous business presentations

As a value-added component of the latest roundtable, CCIB invited two distinguished Indigenous business and academic leaders to attend and share their experiences and knowledge on leveraging and protecting Indigenous Knowledge in business contexts. These presentations offered educational and entrepreneurial insights related to TK and IP, serving as a valuable framework for discussions with other attendees. Each presenter brought unique perspectives on IK and how it may be thoughtfully engaged in business. The following are some of the key takeaways from each presentation:

Angie Saltman, President, Saltmedia

- Angie's experiences with IP, IK, and artistic expression embody a path of healing and self-discovery for her throughout her life.
- Born from concerns over non-Indigenous individuals misusing Indigenous Knowledge, art, and expressions and overshadowing Indigenous voices in this sphere, Angie took pride in including elements of her Indigenous identity, culture, and heritage into her day-to-day work.
- As she progressed on her business IP and Indigenous Knowledge journey, she became increasingly aware that Western IP laws often clash with Indigenous worldviews and notions of how knowledge and information should be handled.
- Throughout her business ventures, she strived to develop strategic partnerships aligned with Indigenous perspectives while ensuring that she retained stewardship over the key aspects of her IK incorporated into her business.

Kyle Napier, Subject matter expert (Sessional Instructor/ PhD Candidate/ Researcher/ Designer/ Consultant, and Indigenous Board Member)

- Kyle emphasized the importance of attributing value to Indigenous Knowledge within IP policies, frameworks, and business contexts.
- This presentation provided educational principles related to IP, suggesting how the current IP system could be broadened to better recognize and reflect Indigenous Knowledge Systems, which long predate Western IP structures.
- On copyright protections, Kyle explained how safeguarding copyrights for Indigenous entrepreneurs engaging TK and TCEs can be a balancing act to prevent TK from slipping into the public domain.
- Kyle discussed one simple tactic: the power of speaking up and negotiating ownership clauses in partnerships, which can be essential for safeguarding IK in business.

Participant quotes and direct insights

- “Great event, and good conversation. I wish there were more government agencies there to listen and learn.”
- “Wonderful work—it would be great for CCIB to put together a digestible resource kit for entrepreneurs considering which IP routes they want to endeavour on. I’d recommend an infographic with deep branches!”
- “Great event—lots of interesting perspectives shared related to IP and Indigenous communities.”
- “Can we do more of these? Can it be an annual thing?”
- “I think there are lots of opportunities to get to know other people at these events and work together. Networking and events that gather us are such a wonderful opportunity to build lasting relationships.”
- “Stop making decisions about us, without us.”

Next Steps

- CCIB will consider the relevance and impact of facilitating additional roundtables as a way to expand and enhance our ongoing IP initiative. This is supported by the feedback that educational and awareness-raising activities target Indigenous entrepreneurs where they are, particularly in Indigenous communities.
- CCIB will increase its coverage of Indigenous IP research across Canada to gather diverse perspectives from Indigenous businesses, informing policy and promoting IP education.
- CCIB will consider developing educational resources, such as an IP toolkit or roadmap, based on research into culturally relevant approaches to protecting TK, TCEs, and IP.
- CCIB will seek to engage in international IP forums to ensure that Indigenous voices and perspectives are reflected in these discussions and keep business members informed about global IP trends that impact them.
- CCIB plans to develop webinars on IP and TK, highlighting Indigenous entrepreneurs’ stories and accessible resources for members and Indigenous business writ large.
- CCIB will continue to promote our Indigenous IP research and public policy efforts through social media and traditional media engagements.

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