

Indigenous Traditional Knowledge & Cultural Expression:

How Do They Intersect with the Western Intellectual Property System?

Traditional Knowledge (TK):

“Knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.” This knowledge can be grounded in areas such as: agriculture, science, technology, ecology, medicine, or biodiversity. (WIPO)

Cultural Expression (CE):

Forms part of the identity and heritage of an Indigenous community, is passed down between generations, and includes the artistic expression of culture through music, dance, art, design, names, signs/ symbols, performances, ceremonies, architectural forms, handicrafts, narratives, and other expressions. (WIPO)

Examples of Gaps in the Western IP System:

The Western IP System does not adequately protect:

- Collective ownership rights;
- Historical works and oral expression; and
- The perpetual and timeless character of TK&CE.

The Western IP System does not offer solutions to:

- The degradation of culturally significant TK&CE;
- The limiting character of “novelty” and “originality” in the law of patents, industrial designs and copyrights, as they apply to TK&CE; and
- The high costs of registering IP as an obstacle to Indigenous peoples.



Considerations in Your Legal Practice

Where you know or suspect TK&CE may be involved:

- Discuss with your client how the work was created to avoid misappropriation, and
- When necessary, obtain consent to use a traditional design, a work, or knowledge.

TK&CE deserve protection but often do not fit the Western IP System. Strive to become informed, seek out resources, listen, and take action to work towards equal protection.

An Example of Change: Bridging Western IP and TK&CE in Canada

The **Witness Blanket** is a large scale art installation comprised of 800 reclaimed artifacts relating to Canada's Indian Residential Schools. The artifacts are woven together to bear witness to the violence and suffering caused by the Residential Schools, honour those who survived, and to serve as a symbol of ongoing reconciliation.

In 2019, in an attempt to bridge Western and Indigenous worlds, a legal contract was drafted to vest the legal rights to the artwork not in the artist, Carey Newman, and not in the work's custodian, the Canadian Museum for Human Rights, but in the artwork itself. This legal contract was then ratified in a traditional ceremony at Kumugwe, the K'omoks First Nation Bighouse, a traditional community gathering place in Southern British Columbia.

This is reported to be the first time a Crown corporation has ratified a legally binding contract through Indigenous traditions.



CMHR/Jessica Sigurdson

Resources

Government of Canada: Indigenous Peoples and Intellectual Property: ic.gc.ca/eic/site/108.nsf/eng/00004.html

WIPO: Traditional Knowledge: wipo.int/tk/en

The Witness Blanket: witnessblanket.ca



Constitution Square – 360 Albert Street, Suite 550
Ottawa, ON K1R 7X7 | 613.234.0516 | ipic.ca