

How the IP Strategy Could Transform Canadian Innovation

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It was a “hallelujah moment,” so to speak, when the Government of Canada announced its national Intellectual Property (IP) Strategy, highlighting IP as a priority for the country. After decades of neglect, IP is finally getting the attention it rightly deserves from Ottawa. The [IP Strategy](#), announced on February 27, 2018, in the 2018 [federal budget](#), promises \$85.3 million over five years with \$10 million yearly after that to support the strategy.

The IP Strategy underscores the need to ensure Canadians are IP-savvy and able to compete in today’s new big-data, tech-driven and knowledge-based economy. While the government highlights conventional mechanisms such as law reform, there is a welcome focus on fixing the very system of IP in Canada. Canadian policy makers must be attentive to the institutional frameworks and socio-cultural and economic processes relating to IP from the very early inventive stages to the later commercialization stages and must craft solutions and provide resources to improve the [IP system](#).

Rationale for a Canadian IP Strategy

To date, Canadian residents have a poor record of registering for IP protection. The 2017 World Intellectual Property Organization (WIPO) report ranks Canada as twentieth in terms of patents, sixteenth for trademarks and forty-third for designs, and there are no Canadian companies in the top 100 patent applicants worldwide.

The Canadian government’s vision of leveraging IP for macroeconomic growth is also consistent with the findings of the Organisation for Economic Co-operation and Development (OECD), which [reports that](#) “now, more than ever, policy makers need to harness drivers of growth like the creativity and ideas contained in intellectual property to stimulate economic growth and foster social well-being.” IP allows rights holders to protect and commercialize their knowledge-based capital, which the [OECD identifies](#) as a key factor for increasing productivity and improving living standards.

The government rightly recognizes that a holistic and integrated strategy on IP increases the competitiveness and growth potential of firms, especially in the context of start-ups and small and medium-sized enterprises (SMEs). Indeed, research shows that IP, especially in the form of patents and trademarks, is positively related to firm outcome factors, including firm valuations,[1] firm survival[2] and venture capital funding.[3] However, acquiring IP does not guarantee commercial success. Inventors, entrepreneurs and companies use different IP strategies and processes depending on their unique [makeup and industry circumstances](#). As such, any successful IP strategy must be mindful of mechanisms offering a tailored approach to innovation from the grassroots.

In the new strategy, the government recognizes underserved groups often absent from the innovation landscape, such as women and Indigenous communities, and is consciously taking an evidence-based approach to resolving problems. The strategy highlights grassroots initiatives such as university-based IP legal clinics as a win-win: such clinics are nimble, offer tailored solutions to help underserved groups and start-ups for free, and train law students to improve their knowledge of IP, client-facing skills and ultimate employability.

While Canada’s IP Strategy boasts some holistic ideals, it still has work to do in eschewing the existing siloed approach and linking its mechanisms and eventual data findings to similar exercises within the budget. The IP Strategy must resonate with other initiatives that share a similar end goal: to enhance economic growth by creating and sustaining innovative jobs and talent in Canada.

Unpacking Canada’s IP Strategy

The long-awaited strategy highlights the need for Canadian businesses, creators, entrepreneurs and innovators to understand, protect and access IP. The strategy identifies three main mechanisms to ensure that these objectives are met: IP awareness, education and advice; strategic IP tools for economic growth; and IP law.

IP awareness, education and advice: The government plans to continue to support the work of the Canadian Intellectual Property Office (CIPO) in deploying outreach, learning and advice programs; gathering evidence through a survey on IP awareness and use; and funding IP legal clinics based at Canadian universities that are training the next generation of IP practitioners. At the same time, the strategy advances the provision of quality IP education, awareness and assistance to Canadian businesses, and assists Indigenous peoples to engage meaningfully in policy discussions on the protection of traditional knowledge at the WIPO negotiations. Finally, a new team of advisers [will be hired](#) to help innovators improve their IP proficiency.

Strategic IP tools for economic growth: The government proposes several [tools for economic growth](#), including expedited IP resolution before the Federal Court and the Copyright Board of Canada, a patent collective pilot project, cooperation with the Standards Council of Canada on the standards-setting process, and improving companies’ global competitiveness. The government also aims to create a centralized IP database, which will contain IP held by government and academia for businesses to license and commercialize.

IP law: The government proposes some legislative changes to clarify acceptable practices and prevent misuse of IP rights. These changes include new requirements for demand letters in both patent and copyright law; a new research exception in the Patent Act to allow research and development of patented technology without the need to pay for a licence or triggering infringement; and the expansion of patent licensing protection to bankruptcy and insolvency law. Finally, a new College of Patent and Trademark agents will be created to better regulate the profession.

Prioritizing Knowledge in a Knowledge-based Economy

It isn’t a coincidence that the government highlights IP awareness and education among the first of its strategy mechanisms. There is a need to understand the level of knowledge and practices at the grassroots level of Canada’s inventors, creators and businesses. All too often, IP is not understood or articulated well — it’s not uncommon for patents to be called copyrights or vice versa. Further, IP awareness has been an area of weakness for Canadian start-ups and SMEs. According to [CIPO](#), 83 percent of Canadian SMEs indicated that IP was not relevant to their business when citing reasons for not seeking IP rights. This problem is compounded for traditionally underserved groups. Here, the government aptly shines the spotlight on women and Indigenous entrepreneurs.

The deployment of a survey on IP awareness and use will be a helpful start for policy makers, researchers and IP professionals to ensure that IP services are tailored to the needs of all Canadians. Improvements have been made on involving more women in the IP process, but more work is needed. In particular, [CIPO finds](#) that the number of Patent Cooperation Treaty (PCT) applications filed by female inventors originating in Canada has increased by 377 percent between 1997 and 2015. However, female inventors are still outnumbered by men seven to one, and the share of inventors who are women in Canada has trailed the world average since 2011. Even more discouraging figures persist for Indigenous communities. More information is needed to target initiatives through meaningful consultation and recognition.

With those facts in mind, the IP Strategy’s recognition of the need for increased research funding is encouraging. This empirical work is critical to create evidence-based IP policies going forward. For related initiatives to be successful, it is necessary that the power of all the data gathered be harnessed and used for purposeful

intervention (not merely shelved or used by unscrupulous third parties). The IP Strategy provides some means for correcting this knowledge gap, largely by funding Statistics Canada work, but time is of the essence to ensure Canada does not lose ground to other countries. Further, while funding Statistics Canada work is useful for some big picture findings, resources must also be afforded to university-based IP legal clinics, fueled by legal experts and their students. These clinics are on the front lines of IP commercialization and understand the pain points of starting up and scaling companies, and can more readily access meaningful data points for analysis.

Spurring Innovation from the Grassroots

The government rightfully identifies university-based IP legal clinics as a win-win for Canada. Legal clinics provide its underserved clients the ability to recognize, protect and exploit technology and other inventions from the grassroots for free. Indeed, financial constraints constantly plague a specialized field such as IP law, where obtaining a patent (and there are many other forms of IP) can [cost upwards of \\$20,000](#) — a price range that is more accessible to large, foreign-owned firms with a wealth of expertise and deep pockets.

Legal clinics can help to bridge those gaps for smaller firms, so that IP-savvy inventors and entrepreneurs can more readily market their skills and creations to attract more funding or higher wages.

IP legal clinics offer access to justice tools that address economic mobility: they provide legal support to under-resourced and marginalized communities. Even when entrepreneurs and small business owners recognize the importance of IP, budget pressures may force them to underinvest in IP protection and commercialization strategies, if they do so at all.

Unfortunately, there [are not many](#) such IP legal clinics in Canada. The IP Osgoode Innovation Clinic, founded in 2010 at Osgoode Hall Law School, and the International Intellectual Property Law Clinic, a program of the University of Windsor Law and the University of Detroit Mercy School of Law, are two examples that have made all the difference. They increase the IP literacy of the average Canadian inventor, entrepreneur or business owner while training the next generation of Canada's IP practitioners. Importantly, IP legal clinics are also education and awareness facilitators: they provide information sessions for free to companies and members of the public on a range of IP issues. Similarly, they can easily partner with other groups where necessary and tailor educational and hands-on events to help women and Indigenous communities. In this way, they are effective solutions to the challenges identified in the government's IP Strategy.

While little detail is currently available on how the money promised in the IP Strategy will be spent, government funds should help support the operational expenses of legal clinics to ensure sustainable and scalable models across Canada. Clinics face a sizable challenge in obtaining operational funding to serve the innovation community. So far, the government has noted that "funding will also help clinics obtain resources and tools to improve the quality of the prior art searches," but in reality, legal clinics need funding for the salaries of administrative staff to run the daily operations of the clinic. And in reality, while clinics advance meaningful educational programs and can conduct valuable research work, these too lack funding.

Big-picture Challenges

Reversing the country's IP oversights will take time, patience and financial investment within the IP space and related areas. Linking an IP strategy to other government policy is necessary for success.

For example, the reviews of the Copyright Act and the Telecommunications and Broadcasting Act should take innovation challenges into account and ensure that any recommendations are in accordance with the national IP Strategy. The National Digital and Data Consultations must also mesh with the IP Strategy. A government [discussion paper](#) on the consultations raises an important question: "How do we best protect the intellectual property of entrepreneurs in an era of increasingly digital innovation and invention and support businesses as they develop new products and services for domestic and global markets?" However, this is the only mention of IP in the paper.

Balancing public and private interests in the IP Strategy will be a hurdle; the government needs to reassure Canadians that their private information and data will remain secure while it provides opportunities for new ways of using this data, to stimulate economic growth and social betterment. Awareness about the importance and appropriate uses of proprietary data and resultant IP is crucial.

Conclusion

Innovators go through a "gap period" — the stage of commercialization between the idea and the proof of principle. If innovators cannot make it across this gap, they cannot attract investment from private financing. This isn't an easy task in a relatively [small and conservative](#) investor environment. The 2018 federal budget does provide some access to capital — notably for women entrepreneurs under its Innovation and Skills Plan — but more significant resources are needed.

If Canada wants to be a true leader in innovation and IP commercialization — it is currently [lagging](#) behind on innovation metrics among OECD countries — the government must be willing to pay for it. Canada's new IP Strategy is a good and necessary first step in remedying the issue.

[1] Philipp G. Sandner & Joern Block, "The Market Value of R&D, Patents, and Trademarks" (2011) 40:7 Research Policy 969; Christine Greenhalgh & Mark Rogers, "Trade Marks and Performance in Services and Manufacturing Firms: Evidence of Schumpeterian Competition through Innovation" (2012) 45:1 Australian Economic Rev 50.

[2] Raji Srinivasan, Gary L. Lilien & Arvind Rangaswamy, "Survival of High Tech Firms: The Effects of Diversity of Product-Market Portfolios, Patents, and Trademarks" (2008) 25:2 Intl J Research in Marketing 119; Christine Helmers & Mark Rogers, "Innovation and the Survival of New Firms in the UK" (2010) 36:3 Rev Industrial Organization 227.

[3] Joern H. Block et al, "Trademarks and Venture Capital Valuation" (2014) 29:4 J Business Venturing 525.

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