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**INTELLECTUAL PROPERTY  
SPECIAL REPORT**

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**INTELLECTUAL PROPERTY  
SPECIAL REPORT**

# IP PREPARING FOR THE FUTURE

WITH LEGAL EDUCATION IN  
INTELLECTUAL PROPERTY,  
THE KEYWORDS ARE  
'EXPERIENTIAL LEARNING.'

BY AVA CHISLING



# W

hen discussing the future of education and intellectual property with law professors, administrators, lawyers, and clients, the concept that comes up most often is "experiential learning" — sometimes discussed with pride and excitement, at other times with skepticism. And that is not the only thing these varied sources agree on. The consensus among those working in IP, whether in academia or in the real world, seems to be that how Canadian universities teach IP today, and the plans they have to teach it in the future, are more progressive and innovative than the legal profession itself. There is even a feeling that tomorrow's IP lawyers will be more in tune with what society expects from professionals than many law firms are. As one university executive remarked, there is a "momentum of inertia" in the legal profession, and the best way to address that resistance to change is to train students to innovate.

James McGill Professor Richard Gold describes the teaching of IP at Montreal's McGill University as fairly comprehensive. "We have the most diverse faculty in terms of areas and depth of expertise in Canada. We look at all aspects of IP." McGill law is

continuing its push towards offering more experiential learning, which is cryptically defined as "learning through reflection on doing," but it is often referred to as a "hands-on approach" to education. Beginning with the 2016-2017 year, for example, McGill law students will spend a week per semester outside of the classrooms to learn real-life skills, ideally related to law. "What these offerings will be, I don't know," says Gold, but he is pretty sure students will not be taught "how to go around a cocktail party." Regarding the hands-on approach to education, Gold says: "There is an overall trend in all law faculties to do experiential learning, although we've been doing it since the 1990s — we just didn't call it that. Suddenly, it got a name and a movement behind it."

Gold sees the future of IP education at his faculty in much the same way as he sees it today, except people will be smarter, hopefully. "The future of teaching intellectual property will be about the realization that context matters. IP in isolation doesn't work. The old school way of teaching IP, one that was quickly abandoned, was about black letter law: 'Everything you want to know about patents, everything

you want to know about copyright and trademarks' all in isolation. Students would leave with a complete incapacity to do anything."

The goal, according to Gold, is to teach students in a way that they'll become not only progressive, smarter, more globally aware lawyers, but other professionals as well. Instead of resisting change, IP lawyers will be cutting edge. They will know how to think outside the box. And they will know what is going on with IP around the world.

"People practising today who are progressive are few and far between. The bottom line is they are increasingly out of touch with the bottom line. Their own practices are hurting them."

#### FOCUS ON THE CONSUMER

Amy M. Fung graduated from law school at the University of Victoria in 2005 and is an associate and registered patent and trademark agent at Oyen Wiggs Green & Mutala LLP in Vancouver. Her patent

practice focuses on technologies in the computer, electrical, and mechanical fields. "There was a limited number of IP courses available at my law school at the time, and I took all two of them," says Wong. "You can't be a functional IP lawyer after simply reading the prescribed textbooks and listening to the lectures in a couple of classes."

Regarding the future of IP education, Fung agrees with Gold's notions that IP cannot be taught in isolation and that there is a need for a more international approach. "In addition to teaching the fundamental legal principles that are applicable here and now, it is important for law schools to continue to cultivate a passion for learning about the law as it changes, and to study the interface between the law and evolving technologies," says Wong. "To be able to protect and advise on their clients' IP interests now and in the future, lawyers need to stay on top of legal developments both in Canada as well as abroad, given that clients are increasingly going outside their own country's borders to do business."

She says when she was in law school, "it was academically based, mixed with some more progressive methods of teaching such as co-operative education placements as well as exchange programs at other universities." Moving forward, she says, "The legal curriculum could benefit from incorporating practical case studies that arise commonly during practice and to explore how they might play out in different countries."

But law schools shouldn't have to teach you everything, she notes, but give you the relevant skills and knowledge that you need to enter the workforce and establish a career.

#### IP LAWYERS AND PREDICTING THE FUTURE

Not surprisingly, technology is another concept that comes up often when discussing the future of IP education. Gold says despite the rapid advancements in technology, changes are not difficult to predict and they are not fundamentally different in nature than they were a decade ago. "IP lawyers are particularly bad at predicting what will happen. They find it difficult to see what the future will look like and so they have been reactionary rather than proactive." This is one problem that law schools should address now so that those graduating in the future will be



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opportunity in international issues, we'll see more of that... and I would continue to evolve our technology program."

Will professors be ready to implement these kinds of changes? "There's no putting the toothpaste back in the tube when it comes to integrating technology into teaching, as well as integrating the substantive issues raised by technology," says Geist. "So, if you're in administrative law, for example, you're often looking at issues like surveillance and oversight; if you're in criminal law, cyberbullying can enter into the discussion, and so on."

#### IP IS EVERYWHERE

In the future, Gold says the legal professional will be one of two things: either very local (wills and estates, criminal law, etc.) or international. "The boundaries that law societies put into place will become increasingly irrelevant. IP is everywhere. We need global IP lawyers and that is why policy and context are so important. That is the generation of lawyers we are hoping to train and that is where my focus is. We won't only train lawyers, we will train people to think about the law and how to develop international strategies on an international level." He adds: "The MBA has long been the defining degree for business, but I think in the IP world, it is the law degree. We teach about international law, we teach about property law and contract law across states, and I think McGill should be the premiere place for this."

In the years to come, says Gold, "People will see that IP is as technical as tax and that it is linked to just about every aspect of a university education, from religion and economics to tax and policy."

For Ryerson University's Chris Bentley, the head of its Legal Practice Program and its Legal Innovation Zone, the future is very simple: innovate or stagnate. "In law, we love our traditions. We look askance at things that are different. But today's society is all about difference and challenging the established way of doing things to come up with something better, to innovate. If our profession wants to continue to thrive in the future, we need to start accelerating our ability to [train people to innovate]; to not just do it but to accelerate our ability to do it. If there is any profession that cries out for innovation, it is the legal profession." ■



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While Gold may believe predicting the future is easy, legislators, on the other hand, have trouble keeping up with yesterday's advancements. The lag time between IP globalization, evolving technologies, and the relevant laws can be measured in years, sometimes decades. So even if today's students graduate with all the necessary IP knowledge and skills to work in 2030, the laws themselves can make practising in IP difficult. For example, "Patent laws were drafted long before computers were around, and before we had anything that could enable complex data analysis," says Wong. "If you've invented a solution to a problem that is implemented by a mechanical contraption with parts that you can see and touch, then as long as you've got something 'new,' 'useful' and 'inventive,' you can get a patent. The same doesn't always hold true if your invention is implemented by a computer, even though computers have pretty much taken over our lives."

Fung believes rapidly evolving technologies and other changes will create more opportunities in which IP will play an important role. "There is a lot of respect, on the whole, for intellectual property rights, and as long as businesses find ways to create value for their customers and educate the public on what they can or cannot do with their business' IP (while being careful not to alienate their customers in the process), I don't think we will see the world disintegrating into a Wild Wild West when it comes to IP protection and enforcement."

#### SKYFALL, SPECTRE, AND THE REVENANT

One industry that has experienced enormous technological change is the movie business. Today's multi-billion-dollar visual effects industry relies on IP lawyers to

protect its interests. Given the extremely high cost of producing the works and the even higher demand to see them (sometimes illegally), the film business needs IP lawyers who are progressive, tech-savvy, and have an excellent understanding of international law.

Antony Hunt is the group CEO of Cine-site, a successful visual effects and feature animation studio based in Montreal and London, England. Hunt's company has provided visual effects to dozens of award-winning movies, from every Harry Potter film to Skyfall, Spectre, and The Revenant. Cine-site has a lot to lose if IP lawyers graduating today fail to anticipate what protections will be needed in the future, where the threats may come from, in what form, and how to snap them.

"Security and protection are of utmost importance in the movie industry. We are committed to offering services that are constantly monitored, upgraded, and tested against today's security threats," he says. "Our studios utilize industry-standard firewall protection, secure transfer connections via Ssh Net and dark fibre, and encryption for all physically and digitally shipping assets." In terms of what he will need from IP lawyers in the future, he says, "Looking ahead, particularly in terms of animation, protecting our IP will become vital for us to ensure an ongoing supply of quality films. We should all gear up for an IP protection drive so that we can reap the benefits of a diversified revenue stream when movie content crosses over to new media."

Michael Geist, law professor and Research Chair in Internet and E-Commerce Law at the University of Ottawa, says his faculty has adopted "a global, hands-on approach; one that can anticipate where a lot of issues will go." Asked his vision of IP education in the future, he says, "as there is an enormous amount of interest and