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LAW REPORT



Jim Mutter's Whiteboard Law not only specializes in the technology sector, but also takes a high-tech approach to business: its law offices are based in the cloud | CHUNG CHOW

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Biggest law firms in Metro Vancouver

Fast-changing technology sector keeps lawyers and law firms on their toes

TECHNOLOGY | Bitcoin, drones, anti-spam legislation are among areas in which the law struggles to keep up with 21st-century digital advancements

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If there is one area of commercial law that is in a constant state of playing catch-up, it's the tech practice.

Technology changes so fast, and can be so disruptive, that lawyers in the tech field of big law firms are often forced to try to apply outdated laws to emerging technology trends.

Music copyright laws, for example, took years to catch up to Napster and BitTorrent file sharing. And governments are still trying to figure out what to do with Bitcoin.

"You're trying to interpret new technologies in light of old laws," said Neil Melliship, one of about nine lawyers in the Vancouver tech practice of Clark Wilson LLP.

"The law itself will often trail," added Jeffrey Vicq, who is also with Clark Wilson, specializing in trademark law. "The technology itself will always push the law."

Canada's Anti-Spam Legislation - CASL - is a good example. Canada was a laggard when it came to putting laws in place to deal with email spam and unwanted software add-ons. CASL affects virtually every business in Canada, so understanding the new law became imperative for commercial law firms.

Explaining its implications to clients fell to lawyers like Ryan Black, co-chair of information technology practice at McMillan LLP. Before he went into law, Black was a computer programmer. His knowledge of computers and software has come in handy as a lawyer specializing in technology.

When CASL was in the works, Black and his colleague, Andrew Aguilar, delved into it and published a CASL guidebook called *Internet Law Essentials: Canada's Anti-Spam Law (CASL)*.

Historically, lawyers fresh out of law school who wanted a career in commercial law in Vancouver would often become part of a firm's mining practice.

While mining still provides a lot of work for Vancouver law firms, the growth of Vancouver's technology sector has also resulted in the growth of the tech practice.

"Practitioners that have a general corporate commercial practice certainly are involved in the space, but I think more and more companies in B.C. are looking

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SURVEY | Big data changing the way leaders make big decisions



52%
Percentage of senior executives who said they rely too much on data and analytics when making decisions and not enough on their intuition, according to the new Queen's Smith School of Business Executive Survey



41%
Percentage who said they rely on their intuition and experience more and not enough on data and analytics, according to the poll, which surveyed 250 Canadian senior executives



81%
Percentage who at least somewhat agree that "big data" is changing how leaders make major business decisions and that important decisions are now based more on data and analytics and less on intuition and experience



56%
Percentage who find that decisions based on data analytics, as opposed to experience and intuition, tend to deliver better results; 28% say it makes no difference

SOURCE: QUEEN'S SMITH SCHOOL OF BUSINESS

FAST-CHANGING

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for specialized knowledge in the technology space, particularly startups that are looking to raise venture capital from the U.S.," said **Michael Macaulay**, a partner in **Lawson Lundell LLP's** tech practice.

While Vancouver's tech sector has been growing steadily since the 1990s, Kelowna is where the real explosion is currently happening, said **Jim Mutter**, founder of **Whiteboard Law**, which is about as high-tech as a law firm can get, since it is a virtual company headquartered in the cloud.

"You wouldn't believe how fast the sector is growing in Kelowna," Mutter said. "They're doubling every six months - way faster than we did in Vancouver

in the early days."

One of Kelowna's more successful technology companies was **Immersive Media**, which developed 360-degree video, originally used for **Google** (Nasdaq:GOOG) Street View.

In December, Mutter was involved in the \$100 million acquisition of Immersive Media by **Digital Domain Holdings**.

A former partner with **Fasken Martineau**, Mutter left law in 2000 to co-found a software startup called **Apparent Networks**, which raised \$35 million and eventually became **AppNeta**. He then spent a few years in government, heading up the Premier's Technology Council.

In 2011, after he had gone back into private practice, he founded **Whiteboard Law**. He applied what he had learned

in the high-tech startup world and went virtual. **Whiteboard's** small stable of lawyers has no head office.

"My entire practice lives in the cloud through **Clio**," he said, referring to the Vancouver company that provides online business software to law firms.

Broadly speaking, there are two main areas of specialization for commercial lawyers working for the tech sector: money matters and intellectual property.

The former includes mergers and acquisitions, initial public offerings and financing. The latter includes things like patent law.

Taking a high-tech startup public isn't all that different from taking a junior mining company public. But there are some areas that require highly specialized

expertise, such as life sciences and clean technology.

"If you want to go get a patent lawyer that's really good at IP [intellectual property] for chemical patents, you really should be getting a really good top chemical engineer who became a patent lawyer because there's a whole different set of words and thought processes that you go through," Mutter said.

"At our firm, we have formal engineers and people who have chemistry backgrounds," Black said of **McMillan**. "Quite often those scientific background people will end up doing more traditional IP work like prosecuting patents."

Having a science degree could come in handy when working biotech, because those companies often partner with other

biotech or large pharmaceutical companies when commercializing new drugs, therapies and devices.

It is a field that is fraught with potential patent infringement suits, which can be costly.

Because technology changes so fast, it often emerges in a legal vacuum. Drones and self-driving cars are a good example of technologies that have overtaken current laws. Another is 3D printing.

"When you look at things like 3D printing that will have an impact on a whole range of laws, both intellectual property-focused and otherwise, and legislation will eventually have to catch up and deal with that as well," **Vicq** said, "that's an example, I think, of where technology is pushing where law will ultimately have to follow." ■

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