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When AI and intellectual property threaten estate planning: Practical strategies

By **Daniel Nelson and Emma Chapple**

Law360 Canada (May 6, 2026, 1:24 PM EDT) -- By now, it should be abundantly clear that modern estate planning — particularly for clients with intellectual property — is less "tidy will and testament" and more "multidimensional chess played against the future." The good news? There are strategies. The less-good news? They require actual planning.

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Let's talk about how to prevent your client's legacy from devolving into a juridical food fight.

Corporations vs. people: One of these is immortal

Here's the first uncomfortable truth: people die; corporations, barring catastrophe or incompetence, do not. That alone makes corporate structures an appealing vessel for intellectual property, a savvy entertainment lawyer or corporate lawyer will tell you.

When IP sits inside a corporation, several advantages emerge:

- The corporation enjoys perpetual existence (handy when your client does not).
- Capital gains are triggered on shares, not necessarily on the underlying IP.
- Shareholder agreements can impose order — mandatory buy-sell provisions, restrictions on transfer and general guardrails against chaos.

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Of course, those same agreements can shackle an estate if drafted with all the flexibility of a medieval corset. Control cuts both ways.

On the tax side, tools like a s. 85 rollover allow clients to transfer assets into a corporation on a tax-deferred basis. Translation: less immediate pain, more long-term planning flexibility.

The contrast is stark. When assets are held personally, death triggers consequences — taxes, probate and the occasional family skirmish. When held corporately, the structure absorbs the shock.

Alter ego trusts: Not just for the philosophically inclined

For estate planning clients aged 65 and up, the alter ego trust is a quietly powerful instrument. It offers:

- Probate avoidance (and the associated tax savings)
- Privacy — no public airing of assets and beneficiaries
- Continuity, since the settlor typically acts as trustee during their lifetime.

The mechanics are elegant. The settlor transfers assets into the trust, remains the primary beneficiary while alive, and then, upon death, the assets flow seamlessly to designated beneficiaries.

There is, however, a psychological hurdle: a client of an entertainment lawyer must be comfortable relinquishing direct ownership. For some, this feels like handing over the car keys while still in the driver's seat.

But for those who embrace it, the benefits are considerable. Transfers to heirs are faster, challenges are more difficult and alternate trustees can step in without the procedural gymnastics of a power of attorney.

Estate freezes: Locking in today, gifting tomorrow

If your client's IP is driving significant corporate value, an estate freeze can be a thing of beauty.

In essence, the current value of the corporation is "frozen" in the hands of the testator, while future growth accrues to the next generation. The result?

- Certainty regarding capital gains tax at death
- A clear plan to fund that tax liability
- Participation by heirs in future upside, without ceding voting control.

It's a neat trick: the client keeps the steering wheel, while the kids get the turbocharged engine.

Pipeline strategy: The tax whisperer

Post-mortem tax planning is where things get particularly arcane — and, for tax aficionados, oddly thrilling.

The pipeline strategy aims to transform what would otherwise be taxed as higher-rate dividends into lower-rate capital gains. The choreography goes something like this:

- A capital gain is recognized on the testator's final return.
- Shares pass to beneficiaries at a stepped-up adjusted cost base.
- Those shares are sold to a holding company in exchange for a demand note.
- Funds flow back as tax-free intercorporate dividends and the note is repaid.

Elegant? Yes. Simple? Not remotely. Effective? Often.

And for those wondering about the "bump" strategy — generally less helpful here, as intangible property (read: IP) tends not to qualify. A rare instance where being intangible is, tax-wise, a disadvantage.

Multiple wills: Divide and conquer

If there's a workhorse strategy in Ontario estate planning, this is it. An estate lawyer will tell you that multiple wills allow practitioners to separate assets that require probate from those that do not.

The secondary will can govern:

- Shares of private corporations
- Intellectual property
- Digital assets.

The payoff? Those assets may sidestep probate tax entirely. In Ontario, a court order is still required, but the savings can be substantial.

Caveat: this is not a one-size-fits-all solution. Some provinces frown upon or outright prohibit the practice. Always check your jurisdiction before getting too clever.

Executors: Choose wisely (no, more wisely than that)

If there is one hill to die on — figuratively, of course — it is executor selection. For IP-heavy estates, the traditional "responsible relative or trust company" model often falls short. You need specialization.

Common approaches an estate lawyer uses:

- Dividing executorship between primary and secondary wills
- Assigning distinct roles within a single will
- Appointing a "literary executor" or IP trustee with industry expertise.

The ideal setup? A competent general executor (often a trust company) paired with a specialist who understands the nuances of publishing, licensing or digital media.

The challenge, naturally, is finding such a unicorn — and then finding a backup when the unicorn retires, resigns or becomes otherwise unavailable.

A case study in getting it right

Consider a client with a mix of personal and corporate IP assets. The planning might look like this:

- IP is held both personally and through a holding company
- A spouse, followed by a trust company, is appointed as general executor
- Primary and secondary wills divide the asset pool
- A separate literary trustee is appointed with exclusive authority over all "Literary Works."

And "Literary Works" is defined expansively — published works, unpublished manuscripts, copyrights, trademarks, patents and all rights "in any media now known or hereafter devised." (That phrase again, earning its keep.)

The literary trustee is then empowered to:

- Publish or complete unpublished works
- Negotiate and renegotiate contracts
- Protect, sell or otherwise exploit the IP (subject to moral rights)

- Deposit materials with archives or libraries.

Meanwhile, the general executors handle everything else but are required to assist the literary trustee where needed. It's a division of labour that would make any project manager weep with joy.

For a real-world flavour, consider the litigation in *Glen Gould Estate v. Stoddart Publishing Co. Ltd.*, [1998] O.J. No. 1894, which underscores just how contentious literary rights can become when expectations and documentation diverge.

Final word: Orchestrate, don't improvise

When IP and AI enter the estate planning arena, improvisation is not your friend. Your estate lawyer and entertainment lawyer should push for orchestration — clear structures, defined roles and anticipatory drafting that accounts for both human nature and technological evolution.

Because if you don't design the system, the system will design itself. And it will not send you a thank-you note.

This is the third article of a three-part series. Read the first article: The confluence of AI, intellectual property and estate planning: What could go wrong?; the second article: The confluence of AI, intellectual property and estate planning: Preventing calamity.

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