



FOCUS GROUP REPORT

*Summary of ABS-Canada Eastern
Focus Group Sessions: Moncton, NB*



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Summary of ABS-Canada Moncton Focus Group Sessions

Introduction

Historical Background

Biological resources from Aboriginal or indigenous and local communities (ILCs) have long been a target for colonial appropriation. However, there is growing awareness over inequitable access to these biological resources, and the failure to share benefits derived from their subsequent commercialization. This awareness has grown out of the end of colonialism in virtually all countries of the global south, increased waves of decolonization in the enclave territories, and the advent of corporate-driven biotechnology. In particular, modern biotechnology research and product development practices often manifest through a phenomenon termed “biopiracy,” or the commercialization of Aboriginal knowledge of biodiversity and genetic resources without adequate consultation or the equitable sharing of resulting benefits. This biotechnology industry practice can itself be blamed, at least in part, on the current state of international intellectual property law. For many critics, intellectual property law reflects and reinforces colonial power imbalances, as it rarely accounts for or appropriately values the significance of traditional or Aboriginal knowledge of ILCs.

The late 20th century recorded an upsurge in the use of patents by corporate and individual entities to usurp biological resources in ILCs and their centuries-long associated traditional knowledge. The controversies generated by those provocative patents resulted in their being challenged through a number of cumbersome and costly legal processes. As its consequence, the injustice of biopiracy has fueled consciousness over the paucity of the development imperative in the global intellectual property order. Many lament that the post-TRIPs intellectual property regime is insensitive to traditional knowledge and the models of knowledge production in ILCs. Pressures from developing countries and Aboriginal Peoples and ILCs have resulted in multiple platforms for negotiating the development imperative in intellectual property. The highpoints of this new discourse



include the 2007 World Intellectual Property Organization's Development Agenda (WIPO-DA) that aims at mainstreaming development considerations in national and international intellectual property policies. Among other things, the Agenda recognizes the importance of genetic resources and its association with forms of traditional knowledge and the need for access and benefit sharing (ABS) over genetic resources under equitable terms.

Before the enunciation of the WIPO-DA, in 2000 WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established to take on the challenge of negotiating text-based instruments to effectively protect traditional knowledge, traditional cultural expressions, and genetic resources. Much earlier, in 1992, through its Article 8(j), the *Convention on Biological Diversity* (CBD) provided a big boost to the protection of traditional knowledge pursuant to various working group initiatives which culminated in the 2000 Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization. In 2010, after several years of negotiation, the *Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* (Nagoya Protocol) to the CBD was signed as a binding treaty instrument based on concepts developed under the voluntary Bonn Guidelines.

The combined effect of the foregoing regimes and complementary initiatives in other fora has been to highlight the equity gap in the management and exploitation of various knowledge forms, including traditional knowledge in the utilizations of genetic resources, as a strategy to promote their conservation and sustainable use. Examples of these complementary initiatives include the WIPO Committee on Intellectual Property and Development, the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty), and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Each of these initiatives form sites of continuing dialogue on the interface of intellectual property and development.

Canada is member of the CBD, the International Treaty and a reluctant signatory to the UNDRIP. Canada remains an active participant in the international processes leading to the emergent regime on ABS over genetic resources and associated traditional knowledge. However, Canada has yet to



ratify the Nagoya Protocol. Canada's reluctance over implementing the Protocol is linked to a lack of preparedness for national implementation of the Protocol; the Government has stressed the need for deeper stakeholder engagement, especially with Aboriginal Peoples. As a result, Canada has engaged in ongoing contacts with various stakeholders on the way forward for the country in regard to the subject of ABS in general and the Nagoya Protocol in particular. Given the complex nature of the ABS systems, the historical reluctance to mainstream the development imperative in the international intellectual property framework, and a colonial IP lens that disdains traditional or Aboriginal knowledge, there is an ongoing capacity challenge for Aboriginal Peoples which undermines their ability to fully participate as key partners as Canada charts a national direction on ABS post-Nagoya.

Our Project

The ABS Canada Initiative is an independent SSHRC-funded Insight Grant Research platform titled "Building Capacity: Toward an Aboriginal-Sensitive Access and Benefit Sharing over Utilization of Genetic Resources in Canada". Its objectives include capacity building through education, training, networking, consultation and partnership for an exchange of ideas between Aboriginal and other stakeholders on the prospects of an Aboriginal-sensitive policy on ABS. The project engages Aboriginal and other stakeholders on ABS to facilitate dialogue in an open and participatory format on how best to ensure Aboriginal-sensitive ABS over genetic resources and to identify the ongoing challenges associated with that objective. As part of its strategy, ABS Canada is convening a series of loosely-guided focus groups on ABS in key regions across the country, with the input and participation of Aboriginal partners. The purpose of these regional focus groups is to engage all ABS stakeholders, including governments, civil society organizations, and the private sector, in an open and frank discussion about the challenges and opportunities of an Aboriginal-sensitive ABS policy by seeking common ground and a deeper appreciation of the interests and perspectives of each stakeholder group.



The East Coast Regional Focus Group on ABS: Moncton, NB

On 15-16 October 2015, ABS Canada held the first of three scheduled capacity-building workshops and focus groups on Access and Benefit Sharing with Canada's Aboriginal Peoples. The forum's objectives included awareness-raising, capacity-building, and identification and discussion of issues relating to ABS in Canada from Aboriginal and other stakeholder perspectives. Insights collectively generated from this participatory forum are expected to support future policy developments or implementation of national or international ABS frameworks in Canada in ways that reflect and embody Aboriginal sensitivities and interests in ABS in Canada.

The Moncton ABS forum was organized in partnership between ABS Canada and the Maritime Aboriginal Peoples Council (MAPC), with additional support from the Centre for International Governance Innovation (CIGI). It brought together representatives of Aboriginal communities from across the Maritimes, along with researchers and technical experts. The first day of the forum was dedicated to a capacity building seminar on ABS with resource support from the ABS Canada Research Team and an invited external resource expert, Professor Graham Dutfield from the University of Leeds. The second day included loosely-facilitated open discussion amongst Aboriginal participants in a traditional circle format. Through these discussions, participants provided perspectives relating to the protection, governance, and administration of biodiversity and traditional knowledge (TK) in Aboriginal communities, both in the Maritime region and across the country.

Their interventions were wide-ranging. The tenor of participant comments often echoed a historical mistrust of government actors, rooted in colonial relations, ongoing multiple legitimacy crises regarding Aboriginal representations, the legitimacy of Aboriginal-related research projects, concerns over regional and inter-group dynamics and histories, and the combined effects of the foregoing on the quest for Aboriginal-sensitive ABS policy. Overall, participants at the forum were passionate, frank and determined in their collective resolve on the need for Aboriginal Peoples to be fully consulted, resourced and integrated into any further discussions on ABS and related matters in all levels of government in Canada. Participants



also provided insights into areas of opportunity and reflected on potential approaches to regional implementation of ABS in Canada.

Below are key highlights of the outcome of the forum:

- Participants recalled that the present forum builds further upon the 2011 [Iskenisk Declaration on ABS](#) (ISKENISK),¹ in which Aboriginal organizations and individuals articulated essential principles and considerations for implementing the Convention on Biological Diversity and the Nagoya Protocol in Canada on access, use, and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge;
- Participants expressed concerns that Canada continues to engage in sporadically organized government sessions and in attempts to map discussions on ABS but has yet to provide Aboriginal Peoples with opportunities to fully engage in the process;
- Participants expressed concerns over the role of Canada during the negotiation of the Nagoya Protocol. Specifically, they decried Canada's informal preference for the term "Indigenous and Local Communities" over "Indigenous Peoples and Local Communities" as an attempt to undermine the United Nations Declaration on the Rights of Indigenous Peoples;
- Participants indicated that attempts to engage issues of ABS in Canada ought to recognize *Constitution Act, 1982* guarantees pursuant to Section 25, 25(a) and Part II, Section 35 and 35.1 recognitions of Treaty Rights, Aboriginal Rights, and Other Rights, in addition to relevant judicial decisions (including recent Supreme Court jurisprudence on Aboriginal title), the terms of the 1763 *Royal Proclamation*, and with Aboriginal Self-Government;
- Participants agreed that in addition to national laws, international legal regimes have recognized the duty to consult on the part of the

¹ *Iskenisk Declaration on the Access, Use, and Fair and Equitable Sharing of Benefits Arising out of the Utilization of Genetic Resources and Associated Traditional Knowledge in Canada*, Iskenisk, Mi'kma'ki, Canada (28 March 2011), online: MAPC <<http://mapcorg.ca/home/wp-media/ISKENISK.pdf>>. [*Iskenisk Declaration*]



government in matters that affect the interests of Aboriginal Peoples, which include ABS and related matters. Consequently, participants insisted that to be effective, consultation with Aboriginal Peoples has to be sufficiently resourced through funding and various forms of mobilization and capacity-building. This will ensure that complex legal and policy issues related to ABS are not a barrier to effective Aboriginal participation in the process of Government decision-making on the ABS file.

- Participants emphasized that all forms of support, capacity-building and consultation on ABS must involve a transgenerational orientation to deliberately engage Aboriginal youths in learning and teaching on ABS and related concepts;
- Participants noted that within the framework of the Nagoya Protocol, Aboriginal Peoples should have uninhibited freedom to constitute their own competent national authorities, focal points and other structures – including community protocols on ABS – in a manner that reflects their ecological identity, and the complex dynamics of their local, historical, regional, and political contingencies within the Canadian Federation;
- Pursuant to the last observation, participants called on Canada to establish a “national consultation table from the 73 Aboriginal Nations of Aboriginal Peoples” to effectively engage with the details of required consultations and negotiations for implementation of ABS in Canada;
- Participants expressed appreciation for the two-day session. The extended format of the discussions allowed important knowledge to be freely shared, explanations freely sought, and a level of understanding and solidarity to be developed and nurtured. There was enthusiasm and expressions of interest in participating in subsequent focus groups to enhance nation-wide capacity building efforts and to expand dialogue on ABS to include Aboriginal voices from across the country.
- Participants were convinced that much more could be done to “spread the word” on ABS and that part of capacity-building would involve the use of ICT and social media to reach communities;



- Participants worried that the historical and colonial divisions or fragmentations of Aboriginal Peoples along artificial classifications such as reserve and non-reserve Indians may, but must not be allowed to draw a wedge between Aboriginal Peoples, preventing collective action on the issue of ABS;
- Participants urged all Governments in Canada to take inspiration from initiatives such as ABS Canada and to take a proactive and genuine leadership role by beginning an earnest consultation with Aboriginal Peoples and to take an official position on the Nagoya Protocol as soon as possible;
- Participants regretted the reluctance of corporations and government departments to be part of the focus group, but recognized in particular that election caretaker conventions precluded many senior invited officials from attending or expressing the views of their departments ;
- The focus group ended with Aboriginal participants agreeing to turn over to the Maritime Aboriginal Peoples Council the responsibility of developing the 2015 [Petkoutkoyek Statement on ABS](#), which reflects their own articulation of the outcome of the Moncton Focus Group. Promulgated at Petitcodiac (PETKOUTKOYEK),² Moncton, New Brunswick, October 16, 2015, the Statement, which further affirms the 2011 Iskenisk Declaration on ABS, articulates Aboriginal Peoples own narrative of the outcome of the Moncton focus group.
- The next ABS Focus Group has been scheduled for May 5-6, 2016 in Ottawa. A focus group in Western Canada will be held later in 2016, with a final date to be announced. Meanwhile, ABS-Canada is presently engaged in forging partnerships with Aboriginal organizations and individuals, governments and industry stakeholders on future focus groups and activities aimed at establishing an Aboriginal-sensitive ABS policy in Canada.

² *Petkoutkoyek Statement on the Access, Use, and Fair and Equitable Sharing of Benefits Arising Out of the Utilization of Genetic Resources and Associated Traditional Knowledge in Canada*, Petitcodiac, Moncton, New Brunswick, Canada (16 October 2015), online: nebula
<<http://nebula.wsimg.com/a9201150567993d9916f38cc2cc55521?AccessKeyId=04D68C7FD646B1F849CC&disposition=0&alloworigin=1>>.



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