
The Protection of Indigenous Knowledge
and related Intellectual Property Rights:
The example of the Cree Diabetes Project

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Presentation

1. International Context
2. Canadian framework
3. Example of a contractual agreement on
ABS: Anti-diabetic Cree plant project
4. Conclusion

1. International Context: ABS at the time of negotiations

- U.N. Convention on Biological Diversity
- Bonn guidelines
- Nagoya Protocol (in negotiation)

2. Canadian framework

- Little legal protection for TK
- Ethical Guidelines from the Canadian Institutes of Health Research, Tri-Council Policy Statement: Chapter on Aboriginal Persons (SSHRC, NSHRC, CIHR)
- Research Protocols (ex. AFNQL)
- Commercial IP licenses

3. Cree anti-diabetic plants project

- ❑ Project funded by CIHR for 8 years (2003-11)
- ❑ 3 Universities, 1 Hospital
- ❑ 4 Cree communities, CBHSSJB, (GGCEI), elders (in northern Québec)
- ❑ Objective: Effectiveness of traditional plants on symptoms of diabetes and interaction between medicines and plants
- ❑ Long term: Improve services offered by CBHSSJB

Cree (Iiyiu/Eenou) Concerns

- ❑ Cree knowledge or plants would be commercialized
- ❑ Knowledge would not be used in a secure fashion
- ❑ Cree would not be kept informed
- ❑ Researchers would mislead them

Agreement

- ❑ Was not signed before the start of the project
- ❑ Negotiations started in 2007
- ❑ Good faith throughout the negotiation
- ❑ Interim Agreement in 2008
- ❑ Final agreement in 2009

Principles: Confidentiality of TK

- ❑ Traditional knowledge is confidential (unless published under the rules of the agreement)
- ❑ Consent of the communities and the elders to publish
- ❑ Cannot be used for any purpose but research (even after publication)
- ❑ No transfer to third parties without permission

Publications

- ❑ Revision of all publications by the elders and communities
- ❑ A 12-week process: summarize in Cree, review, comment, extract TK, make changes
- ❑ Transmission to the journal
- ❑ Differences in interpretation
- ❑ abstracts, conferences : abridged process

Intellectual Property

- Results, intellectual property= joint
- co-authors
- Acknowledgements
- Patents: consent of researchers and Cree necessary
- Joint company if commercialisation (51% Cree ownership)

Benefits

- Participation and exchange of information
- Co-ownership of data
- Co-ownership of IP Improve the situation of people with diabetes
- Recognition of traditional medicine and elders
- Training, employment, scholarships
- Herbarium, videos? Books?

End of project

- At the end of the project: TK, plants returned to Crees or destroyed
- Data and results stored by both parties
- Use of data or IP = consent of the researchers and Cree necessary
- Possibility to terminate (or project component) if threat to cultural integrity

4. Conclusion

- Unique agreement, real partnership, not only ABS
- Was possible due to perseverance of the Cree and good faith of researchers

Impact of Nagoya Protocol?

- Potential Impacts of Nagoya Protocol?
 - Would certainly have helped in negotiations
 - More awareness, models, best practices
- But...
 - Lack of Binding Minimum Requirements
 - Will depend on Canada's implementation
 - Compliance mechanisms
 - Will still depend on good faith and respective power in negotiations