



CIHR Team in Aboriginal Anti-Diabetic Medicines  
Équipe IRSC sur les médecines autochtones antidiabétiques

## Protection of Traditional Medicine and Value-added Products Workshop

ANNUAL RETREAT OF THE CIHR TAAM  
Montreal, Quebec  
August 19 and 21, 2009

Prepared by:  
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## EXECUTIVE SUMMARY

As part of the commitment to inform participants about the status of the *Research Agreement on the Project on Ilyiyiu Anti-Diabetic Plants*, the Steering Committee of the CIHR-Team on Aboriginal Anti-diabetic Medicines organized a one-day workshop as part of the Annual Retreat of August 2009.

The workshop was held in two parts. The first half-day was an information session on intellectual property; during the second half-day, participants discussed changes stemming from the project, and priorities for the remainder of the project and for follow-up.

As the objective of the project was not the patenting of any resulting study but rather the development and promotion of anti-diabetic medicines from traditional use, the group recommended further discussion on the mechanisms of protecting traditional knowledge.

Priority discussions addressed the possible impact of the project on traditional medicine, the continuing role of the scientists / researchers, the means of integrating the anti-diabetic medicines into clinical practice, the ways to protect traditional knowledge for future generations, the development of a healer's council / association, and the value of sharing the project.



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## INTRODUCTION

### **Background**

Researchers from Université de Montréal, McGill University and the University of Ottawa have an agreement to work with the Cree Board of Health and Social Services of James Bay, the Cree Nations of Mistissini and Whapmagoostui, along with healers and elders from the Cree Nations to study anti-diabetic medicines from Cree traditional plant uses.

This unique collaboration was initiated in 2003 with funding from the Canadian Institutes of Health Research (CIHR). The first project received a New Emerging Team Grant for *“Rigorous scientific evaluation of selected ant-diabetic plants: Towards an alternative therapy for diabetes in the Cree of Northern Québec”* for April 2003 to March 2006. The current project, *“Rigorous evaluation and integration of traditional medicine in aboriginal diabetes care”*, is funded by the Aboriginal Institute of Health of CIHR and is effective from April 1, 2006 to March 31, 2011.

### **Objectives**

In fulfilment of their commitment to open communication, the CIHR Team in Aboriginal Anti-diabetic Medicines (CIHR-TAAM) partners meet annually to discuss the progress of their project and to determine future direction. In addition to the usual updates from the scientific studies of the *Project*, the conference organizers, who are the Steering Committee members of the CIHR-TAAM, proposed that the 2009 Annual Retreat participants consider issues around patents, set goals for the remainder of the agreement, and discuss post-agreement plans.

### **Participants**

Participants of the two half-day sessions included agreement participants (healers, elders, helpers and administrators from the Cree Nations of Whapmagoostui and Mistissini); representatives from the Cree Board of Health and Social Services of James Bay; and researchers from Université de Montréal, the Université de Montréal, McGill University and the University of Ottawa. Healers and elders from the Cree Nation of Waskaganish also participated in the retreat. Additional resource people provided information sessions or participated in panel discussions. See Appendix 3 for a list of participants.



## Process

The conference organizers planned a half-day discussion session on protecting traditional knowledge, and another half-day planning workshop as part of the 2009 three-day annual retreat. They then contracted a facilitator to moderate these two half-day sessions. See the final agenda in Appendix 1 and note that the first half-day session was on the morning of August 19, 2009 and the second half-day session was on the morning of August 21, 2009.

The first half-day session was a discussion on “Protection of Traditional Medicines and Related Intellectual Property”. This session included a welcome from the director of the project, Dr Pierre Haddad, a video presentation, and two presenters who provided information on community-based research and the protection of traditional knowledge, and a national and global perspective on the protection of intellectual property.

The presentations were followed by discussion from a panel of resource people, among whom were the initial presenters, along with questions from the session participants. Conference organizers selected the presenters and other resource people for the panel for their expertise on the issues of either the protection of traditional knowledge or intellectual property rights. See the list and biographies of resource people in Appendix 4.

The last half-day session was a planning workshop on “Value-added Products: Myth or Reality?”. This session began with a presentation by Teresa Shiki, a Shuar healer from Ecuador. After questions and answers, the participants broke into small groups to discuss questions developed by the organizers and the facilitator. See questions in Appendix 2. The groups reported the key points to their discussion at the retreat’s final plenary session and then Dr. Alain Cuerrier provided the closing remarks.

All presentations, comments, questions and answers were translated into Cree.



## THE WORKSHOP

### PROTECTION OF TRADITIONAL MEDICINES AND RELATED INTELLECTUAL PROPERTY

This first half-day session was a plenary session which provided three informative presentations illustrating perspectives on the protection of traditional medicine, and a panel discussion on intellectual property.

#### ***Overview of presentations***

1. “Open your eyes to Nature”, a Brenda Gaudry video

Professor John Thor Arnason, University of Ottawa, introduced the video on behalf of Brenda Gaudry, who was not available to present the video herself. Ms Gaudry is a Swampy Cree from Barrow, Manitoba who has a business using traditional medicines from an environment similar to that of the James Bay area. In the video, Ms. Gaudry shows how to properly collect the plants, respect them, use them, and provide a sustainable practice.

2. Ethics in Aboriginal Health Research and Protection of Indigenous Knowledge and Related Intellectual Property Rights

Dr. Kelly Bannister is the Director and a Research Associate of the POLIS Project on Ecological Governance and an Adjunct Associate Professor at the University of Victoria. Dr Bannister shared some concerns from her experience in community-based research. Key points included the following:

- In developing a research agreement with Aboriginal communities, the participating group must first deal with the question “How do we protect cultural knowledge? This can be a challenge: academic research is founded on building / creating / exploiting knowledge. From the outset, the approach must be based on community participation, not just individual participation, and on environmental health, not just human health. Project time frames must be longer than just the life of a research agreement; they must address impact on the next generations.



- There must be common understanding of terminology in the use of phrases such as “protection” in “protection of cultural knowledge”. The following phrases, for example, use that phrase in very different ways:
  - Protect Indigenous knowledge and knowledge systems from being lost or eroded;
  - Protect Indigenous knowledge from culturally inappropriate uses, exploitation or commodification [commercialization];
  - Selectively protect Indigenous knowledge from unwanted exploitation and commodification by others to ensure community use and development.

Dr. Bannister suggested that goal-setting should clarify process, cost, capacity, feasibility and desirability in light of consequences, limitations and alternatives. If patenting is the preferred option, then this should be specified in an agreement. She emphasized the need to develop a benefit-sharing agreement, using the Bonn Guidelines, to establish a formal mechanism to distribute monetary benefits (e.g. a community trust). The experience of the San people regarding “Hoodia” should be a lesson to all (Munoz Tellez 2006). In sharing her experience, she advised the group to consider the following:

- As there is general consensus that Canadian intellectual property law is not suited to protect Indigenous knowledge but will for a time protect interests for the “new” invention, ensure that the patent wording does not disclose any information that you want to retain solely for the community.
  - What information does the Team want to make available to the public?
  - With whom do you want to develop the patent?
  - Will the research agreement be made public? Will it be a redacted version or a generic template based on key principles and procedure?

*“Of course we are going to make mistakes. But we have to decide how we are going to learn from them”.*

*Dr. Kelly Bannister*

Dr. Bannister concluded her presentation with some recommendations:





1. Publish an ethnology of the project, recording the process of the agreement. This is as important as the agreement itself. The story of the project journey will be invaluable to future community-based researchers.
2. Prepare a public relations strategy to tell the story of the development of the plant medicines. In this way, the CIHR-TAAM can proactively manage the media and academic interest.

Dr. Bannister's presentation is included as Appendix 5.

### 3. Granting Access Without Our Consent: Canada's Plan on Implementing an ABS Regime

Merle Alexander, a member of the Kitasoo Xai'xais First Nation, is a lawyer with the Boughton Law Corporation in Vancouver, B.C. His presentation addressed points of law relating to sustainable development law, and in particular the protection, preservation, and maintenance of traditional knowledge (TK). Among the key points Mr. Alexander raised were the following.

- Each Aboriginal/treaty right is integrally linked to the traditional knowledge that ensures its continuation between generations. This is recognized in the Supreme Court decision *R. v. Côté* (Cote 1996).
- The standards for respecting TK are better developed internationally than they are in Canada. The international standards include:
  - The United Nations' *Convention on Biological Diversity* (CBD). Through this instrument, Canada, similar to other states, has the right to assert sovereignty over all natural, biological and genetic resources. In addition, the Convention signatories, who include Canada, recognize the desirability of sharing of equitably benefits arising from the use of TK, innovations and practices relevant to conservation of biological diversity and the sustainable use of its components (CBD 1993).
  - The Bonn Guidelines provide guidance on access to genetic resources and benefit-sharing provision in the CBD (Bonn 2002). For example, voluntary guidance is provided to groups and / or governments in negotiating contractual arrangements for access and benefit-sharing (ABS).



Mr. Alexander concluded his presentation by recommending that:

1. A nationally consistent approach to the implementation of ABS be developed;
2. Aboriginal governments, as constitutional partners, develop a national ABS policy and / or legislation;
3. TK not be dissociated from ABS, as TK is inseparable from Aboriginal resource rights. For example, a hunting right has no value if the hunting technique is lost. The knowledge of the moose species and the uses of the sinew is not valued if the knowledge of the territory is not connected to the right.

Mr. Alexander's complete presentation is included as Appendix 6.

### ***Panel Discussion with Guest Speakers and Stakeholders***

After the presentations, a forum discussed intellectual property rights. This was the opportunity for session participants to ask questions of the presenters. First there were initial comments and or questions from the panellists other than the presenters as follows:

Josie Goffredo, a Montreal lawyer with experience in Aboriginal law, advised the project participants to ensure the community understands the full implications of the patent and its implications on traditional knowledge.

Anthony (Tony) Durst, Ph.D., University of Ottawa, has experience in patenting a natural health product. He advised participants to ensure the patent's usefulness to the community, i.e. would the patent protect their product, and would sharing the knowledge of these medicines to the general public be beneficial to the community.

Marie Frawley-Henry, Senior Policy Analyst, Assembly of First Nations (AFN), asked whether the project considered the difference in traditional practice of diabetes for men and women, and whether the project will be shared with the International Diabetes Federation conference to be held in Montreal on October 18-22, 2009.

Raymond Obomsawin, Ph.D., Senior Advisor, National Aboriginal Health Organization (NAHO), provided an overview of the increase in the number of patents using traditional medicine around the world. He described the huge cost of drug production, pointing out that it costs approximately 8 million dollars to get a drug approved. He outlined the



advantages of a patent, noting that it is a temporary monopoly. However, disadvantages include the lengthy time required to obtain a patent, the need for clinical trials, annual fees, and ongoing costs. He suggested alternatives to patent as described in Posey's *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities* (Posey and Gatfield 1996).

Before discussion, Dr Pierre Haddad and Elizabeth Patterson, CIHR-TAAM Lawyer, described the context of the project. Initially, the objective of the project was not to commercialize and patent. However, the study has led to the discovery of a compound which may be patented. In June 2009, the team met in Chibougamau and participated in an informational session on patents in drug development. This current session was intended to explore that development and consider options.

A number of key points were raised in the subsequent discussion:

1. Are there other means, excluding the option to patent, where the compound may be used by others without the consent of the Cree?
  - There is an assumption in law that “informed consent” is required.
  - Information published about plant use is legally available to anyone. For example, the Hoodia “discovery” was made from published information from the 1960’s. However, there was a large international outcry about San people being exploited for their TK, and an ABS agreement was eventually developed (Munoz Tellez 2006)<sup>1</sup>.
  - A patent may not be the most appropriate or effective instrument to protect TK.
  - Information contained in a copyright is legally protected.
  - In the future, disclosure may be a legal requirement if TK is an aspect of the patent.
2. There are other major research teams studying TK, but they have no links to Aboriginal groups. How does that research begin? What happens to their discoveries? How are TK or Aboriginal contributions to their findings acknowledged?

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<sup>1</sup> Note that to date, the “P57” compound of Hoodia is not in the marketplace (Chennells 2007). After spending €20m euros (~\$32m CAD) over four years Unilever announced November 2008 that it failed to develop a weight management product. To date, Phytopharm, the licence holder for the P57, is still seeking an alternative business partner (<http://www.phytopharm.com/hoodia-extract/>).



- There is a lot of knowledge regarding the indigenous uses of plants that has been published. Any researcher can use this knowledge because it is in the public domain.
  - Many researchers who have published discoveries from “common” knowledge / or information available in the public domain have failed to acknowledge TK, or to consider an ABS agreement.
  - It is necessary to prove the original source of the TK.
  - It is necessary to determine who should be acknowledged; an individual, a community or a group.
  - It is up to project participants to determine how and with whom to share the discoveries.
3. If the Cree communities proceed with the development of a patent, who will pay for the patent and the clinical trials? What information should be incorporated, given that it will become public domain? What kind of benefit sharing is anticipated?
- Initially, the University of Montreal will provide the funding.
  - New partnerships will be required to provide the funding for the next steps in the patenting process: e.g. clinical trials, preparing the patent license applications.
  - The patenting process is complex and expensive, and there is no guarantee of fiscal return on the investment.
  - Patenting should be considered a means, and not an end goal of the project.
  - If the project participants want to share this knowledge beyond the local community and develop a nature health product, an alternative would be to develop it as a sustainable resource and market the product as was shown in Brenda Gaudry’s video.
  - The discussion opens a broader question on the commodification of Cree TK.
  - Strategies are required to share the knowledge without permitting it to be lost, or exploited without Cree consent. The Cree are the shareholders of this knowledge and as such they will have to make the decisions.



## ***Summary of Comments***

General consensus was that TK must be protected. There is a benefit to both communities and researchers continuing the collaborative work. However, further discussion is needed on the protection of TK, on benefits sharing, and on the feasibility and desirability of patenting the compound discovered as part of this project. Discussions closed with an affirmation that the main objective of the project is to help the Cree use their own medicine to help the diabetics in their communities.

### VALUE-ADDED PRODUCTS – MYTH OR REALITY

The last half-day session was a workshop which sought to identify the next steps to be taken by CIHR-TAAM. It began with a presentation by Teresa Shiki, a healer from the Shuar Nation in Ecuador, who gave an overview of her healing practices in relation to diabetics. See a summary of Ms. Shiki's presentation and the non-translated presentation in Appendix 7.

Workshop participants then broke up into eight pre-assigned groups, with a healer and community member participating in each group, to discuss the following key questions:

- A. Has the preparation of traditional medicines changed?
- B. How have the scientific results from the CIHR-TAAM agreement changed the practice of Cree medicine?
- C. What is the future role of the scientists after expiry of the agreement?

Highlights from the small group discussions were as follows.

## ***Changes resulting from the project***

Participants commented on some of the changes that have occurred since the beginning of the project:

- The findings are helping to prove that the traditional medicine (TM) is effective; scientific results are validating the TK.





learning to prepare the TM for themselves.

- There is growing participation from the elders as they get more involved in the project.
- Greater numbers of youth / young people are asking for / about TM, and more youth are participating in teachings.
- The elders and healers see this project as a process of trust building between themselves and the scientists / researchers. They are pleased with the process, and will continue to participate if it is kept this way.
- There has been a positive contribution to diabetes care in the community.

### ***The practice of traditional medicine***

As the long-range health goal is to decrease the burden of diabetes in the Cree community by integrating TM into diabetes care, the groups discussed whether plant preparation offered to Cree diabetics would change. Points raised in the discussion included the following.

- Healers would continue to use plants according to traditions.
- Some healers will prefer their TM over those prepared in the laboratory studies.
- Many healers who have not used the plant before will likely try to use it: this will depend on the healer and the community. If a healer changes practice, others will likely follow and the adoption may be widespread, lending a new dimension to the TK.



- Each healer has a specialty. Referrals should be made to the appropriate person so they can make their specific medicine.
- Healers will continue to decide which plant will be used in treatment. They may prefer to use their own fresh plants or they may use the ones prepared in the labs. This will depend on patient symptoms.
- Healers are responsible for the preparation of the treatment and that duty should remain with them. They prepare different formulations for specific needs based on their experience. Standard preparations are not something healers are accustomed to; preparation of a treatment is specific to each patient.
- Healers do not have general recipes and measurement is done by observation. Measured doses are provided to the patient and there is no difference in dose for young people and adults.
- There will never be just one way to do plant preparations, or creation of formulations. Therefore, there is no medicine that will treat everyone. Medicines will never be made exclusively by the scientists.
- Healers are often reluctant to pass on their knowledge; however, their role as mentors, teachers, and guardians of TK will become increasingly important as recognition of and demand for TM increases. A strategy and funding will be required to support them in this role, and increase the number of healers and healer apprentices / helpers.

Looking ahead to the future, participants identified a number of priorities for ongoing work. These have been organized under the following headings:

- Role of scientists;
- Community participation
- Knowledge transfer
- Healers' Council/Association
- Sharing
- Next Steps.

### ***Role of scientists***

- Proceed with the clinical trial, analyse and report final results to the communities.



- Test plants for suitability. The strength of the medicine varies with the strength of the plant, and that strength is not known until the medicine is prepared and used. Knowing which plant to harvest would be beneficial;
- Complete the ranking of the plants;
- Determine whether the processes of freezing, boiling or drying the TM affect its efficacy, and whether a prolonged shelf life affects efficacy.
- Provide a forum for mutual understanding, respect and communication between the scientists / researchers and elders / healers;
- Promote recognition that science and TK are two different but complementary systems;
- Consider mechanisms to conserve the medicines. This would not only sustain the plant resource, but also allow for the availability of prepared remedies in advance.
- Pursue post-study projects, including the following:
  - Study the synergy between plants to assess impact of combinations;
  - Test the synergy *in vivo*;
  - Current *in vivo* study involves plants used in TM; future study should consider the mechanisms for the different effects on diabetes for each plant;
  - Develop laboratory tests to determine the activity of the preparations;
  - Study safety aspects of the various TMs, combinations of TMs or drugs to TM interactions, and identify side effects.
- Prepare supporting documents for clinical use on the TMs, emphasizing consistency, efficacy, and safety.
- Work with both healers and clinicians. Scientists can aid in the teaching of TK, and help with the TM integration in the clinic by increasing awareness and confidence in TM as the medicines are proven effective.
- Engage in the educational element of this project and the preservation of TK.
  - Prepare accessible, easily read edition of study results for use in schools, initially in the region.





- Create books incorporating the healer's culture and plants.
- Make the information more visible through larger, more prominent promotional vehicles (posters, T-shirts).
- Ensure that the translator and the translations are of the highest possible quality.
- Seek funding for this and other post-agreement studies.

### ***Community participation***

- Develop protocols for integrating TM into community health programs. Some communities have already started the integration process of TM into their clinics but it is critical they have the results of the studies.
- The integration process should incorporate an awareness and educational component to address the following considerations:
  - Results of scientific study should be available. The information should be available so that the patient and the clinician would understand it.
  - TM should not be "westernized", nor its value reduced.
  - TM is sometimes viewed as part of the "old ways", and, as such, is seen as being in conflict with modern cultural and religious systems.
  - There is a need to sensitize the community clinics to the importance and validity of the tradition and medicine. This will enable effective collaboration between healers and clinical staff to determine what is best for each patient.
  - Medical knowledge in the community should not be viewed as an isolate professional practice. Treatment must incorporate doctors, healers, the patient, their family, and common knowledge. No single treatment is applicable to all patients: some TM can be prepared in bulk, some only by a healer, and some by the patient after being taught by a healer.
  - Naturopathy could be a venue for integrating tradition medicine.
  - This integration is a community-based process; and each community should proceed at its own pace, according to their specific needs and capacity.



- Diagnosis, including blood tests, should still be done by the clinicians; but decisions on chemical versus TM treatments would be a collaboration between the healer and clinician. If the patient uses both and the blood sugar decreases, the healer and the clinician can decide to decrease the use of one of the treatments. This would represent a true integration of western and traditional medicines in diabetic health care.
- In a complementary system, the initial steps for the consultation would be as follows:
  - Step 1: Understanding all the options, the patient decides what form of treatment they would like to take. They inform their doctor that they would like to use TM.
  - Step 2: The patient goes to the healer; and the healer decides on appropriate TM, and prepares the treatment.
  - Step 3: Follow up would be determined by the healer (who may need to prepare the treatment or vary it as deemed necessary), and clinicians. Family members of the patient should be part of this process. The follow-up may combine TM and western medicine, or alternate between the two.
- A record should be kept of how the medication works, its impact on patients, and their response. This documentation should be maintained by both healers and clinicians.
- Quality of translation is important: all information and considerations must be made very clear when patient interviews are done and results explained.
- A new training model for the integration of TM and western medicine should be developed:
  - Should be shorter than for the training of a medical doctor or a naturopathic doctor, i.e. more practical;
  - Should include naturopathic principles;
  - Should follow a community-based approach, and allow communities to dictate requirements.
- Funding for TM teachings and integration of Cree healing ways should be accessed through the Cree Regional Authority or the Cree Board of Health and Social Services.



## ***Knowledge transfer***

Communities are losing their spirituality, traditional ways and culture because the knowledge is not being passed on. With the continued collaboration of the scientists, youth and elders, knowledge can be preserved, passed on, and integrated into the communities:

- Through the use of pamphlets, brochures or booklets providing timely information on scientists / researchers activities under the Agreement;
- With festivals and / or cultural events where elders can pass on their knowledge. Events may be structured specifically to attract youth (e.g., culinary arts with TK).
- Through development of a traditional centre where the healers would have a place to practice, to hold social, cultural and spiritual events, to tell their stories, and to bring people together for celebration and knowledge exchange.

## ***Healers' council / association***

Cree communities should consider the establishment of Healers' council / association. This group would provide guidance on plant use, qualifications of healers, and how things will or should change in the future.

- It may be desirable to create an entirely new group, distinct from the current project participants, to ensure consideration of the full range of relevant perspective on such issues as TM, nutrition, law and social science.
- The Elder's Council of the CIHR-TAAM could approach the Board of Directors of the Cree Board of Health and Social Services to ask if they will help fund the Healer's group.
- The role of the scientists in this project would be largely mediated by the Healers' group.

*“Traditional Medicines are an important part of our way of life; protecting them is protecting our culture.”*

*Cree Healers*



## ***Sharing***

Participants felt that if sharing the results of the study will help in the fight against diabetes, then this knowledge should be shared.

- The sharing of the process may help others learn what to do for their own projects. Most people will find this agreement is a useful model.
- The sharing of the process may not necessarily provide a standard or a model, but it may provide a starting point and help others avoid making the same mistakes. The CIHR-TAAM experience will provide useful learning.
- The communities can decide what sections of the agreement to share, and what sections to exclude.

## ***Next Steps***

Small groups provided a summary of their discussions to the final plenary session. A number of common themes for the next steps were identified:

- Implement a diabetes program integrating TM and findings of the project in the Cree communities.
- Share the knowledge from the studies and the process of the project. The sharing of information would be first to the participating communities, then to other Cree communities, and then to the world at large.
- Find funding sources, renew the agreement, and continue research. Identify and undertake highest priority post-project studies, and explore TM as a strategy to combat other diseases that are affecting the communities.
- Continue to protect TK, and develop a program for its maintenance in the younger generation.
- Develop a traditional healer's association to assist in the decision-making on TK and planning issues.



## CONCLUSIONS

Dr Alain Cuerrier, on behalf of Dr Pierre Haddad, thanked the participants, guests, translators and facilitator for their active involvement in the discussions. He acknowledged that the scientists and communities need to fulfill the goals of their collaboration, which are primarily to improve the health of the Cree, to identify plant medicines that might be effective against the symptoms of diabetes, to learn how and why the plant medicines work against diabetes, and to transmit the knowledge relating to the plant medicines to the younger generation of Crees. He concluded that the discussion on next steps was timely, and that further discussion is required to resolve critical questions on the protection of TK, involvement of other communities, sharing of project experience, and funding for a continued collaboration.



Cihr-Taam Annual Retreat August 2009



## REFERENCES

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**CIHR Team in Aboriginal Anti-Diabetic Medicines**  
Équipe IRSC sur les médecines autochtones antidiabétiques

**Annual Team Retreat**  
**CIHR Team in Aboriginal Anti-diabetic Medicines**

**Date:** Wednesday August 19<sup>th</sup> to Friday August 21<sup>st</sup>, 2009

**Location & Lodging:** Hôtel Maritime  
1155, rue Guy (corner René Lévesque)  
Montréal, Québec, Canada H3H 2K5  
Tel: +1 514 932-1411 / 800 363-6255  
Fax: +1 514 932-0446

**Conference Room:** Grand Mât

**Workshop on Protection of Traditional Medicine and related Intellectual Property**

**Wednesday August 19<sup>th</sup> - Conference room**

8-8:50am Breakfast in the conference room  
8:50am Opening prayer  
8:55am Welcome and introduction (Pierre)  
9-10:30am Titles of workshops:

**Protection of Indigenous Knowledge, Traditional Medicine and related Intellectual Property**

- Brenda Gaudry, Creative Spirit, Barrows, Manitoba; presentation of a video entitled "***Open you Eyes to Nature***" Wild plants from the boreal forest have medical and healing properties as well as uses for making crafts.
- Kelly Bannister, adjunct professor in Faculty of Human and Social Development at University of Victoria, BC. "***Ethics in Aboriginal Health Research***"



**CIHR Team in Aboriginal Anti-Diabetic Medicines**  
Équipe IRSC sur les médecines autochtones antidiabétiques

**and the protection of Indigenous Knowledge and related Intellectual Property Rights”**

- Merle Alexander, Tsimshian Nation, Kitasoo Xai'xais First Nation, Chair of the Aboriginal Practice Group and Shareholder, Boughton Law Corporation, Vancouver BC. **“Granting Access without Our Consent: Canada’s Plan on Implementing an ABS Regime”**.

|               |  |
|---------------|--|
| 10:30-10:40am | Short Break  |
| 10:40-12:30pm | Round table Discussion with guest speakers and stakeholders <ul style="list-style-type: none"><li>▪ Marie Frawley-Henry, Assembly of First Nations</li><li>▪ Raymond Obomsawin &amp; Jennifer O’Neill, NAHO</li><li>▪ Carole Lévesque, Director of <b>DIALOG</b> – Research and Knowledge Network Relating to Aboriginal Peoples, INRS</li><li>▪ Josie Goffredo, Lawyer U.de Montréal – Ph.D Student of Carole Lévesque</li><li>▪ Anthony Durst, Chemistry, U. Ottawa</li><li>▪ Donnie Nicholls, CRA</li></ul> |
| 12:30-1:30pm  | Lunch in the Bistro  |

**Afternoon outing: Lab visits & Botanical Gardens**

|        |  |
|--------|--|
| 1:45pm | Bus leaves from the Maritime Hotel   |
| 2pm    | Lab visit: University of Montréal  |
| 4:30pm | Visit of the Montréal Botanical Garden (First Nation Garden)<br>4101, Sherbrooke Street East – FIJI Tent<br>Introduction by Ethnobotanist Alain Cuerrier |
| 5:30pm | Welcoming by Pierre Haddad and Cocktail  |
| 6:00pm | Traditional signing from l’Ensemble vocal <i>ODAYA</i>   |
| 6:30pm | Traditional Feast <i>by Simple Pleasure</i>  |
| 8:45pm | Bus returns to the Maritime Hotel  |

**Thursday August 20th - Scientific committee meeting in the conference room**

|           |   |
|-----------|---|
| 8-8:55am  | Breakfast served in the conference room   |
| 8:55am    | Opening prayer  |
| 9-10:30am | Lab updates – 1 person per lab (30 minutes per lab: 20 min. presentation, 10 min. for questions)<br>Cuerrier<br>Arnason<br>Haddad |





|              |   |
|--------------|---|
| 10:30-11am   | Break   |
| 11-12:30pm   | Johns<br>Bennett<br>Foster  |
| 12:30-1:30pm | Lunch in the conference room  |
| 1:30-3:00pm  | Discussion on prioritization strategies for plant phytochemistry and bio activity                       |
| 3pm          | Break   |
| 3:30-4:30pm  | Community based research<br>PTMF Observational study, (Jill Torrie & Paul Linton to make presentations) |
| 4:30-5:00pm  | Funding after 2011!   |
| 5:30pm       | Closing prayer  |
| 6pm          | Dinner on your own and evening free   |

#### **Friday August 21st – Workshop in conference room**

|             |  |
|-------------|--|
| 8:00-8:55am | Breakfast in the conference room   |
| 8:55am      | Opening prayer   |
| 9:00-9:30am | Traditional Healer Teresa Shiki, Schuar Nation, Equador<br><b>« Los Shuar pueblos milenarios de la Amazonia Ecuatoriana, Conocimientos, experiencias, y practicas ancestrales la medicina shuar - Tsuak Tsuamatai »</b>  |
| 9:30-12pm   | <b>Workshop with the Healers: Value-added Products: Myth or Reality?</b> <ul style="list-style-type: none"> <li>○ How will the scientific results of the CIHR-TAAM impact the practice of Cree TM?</li> <li>○ Will the plant preparations offered to Cree diabetics change?</li> <li>○ What role can the scientists play in the future?</li> </ul> |
| 12 noon     | Closing Prayer, end of 2009 CHIR-TAAM Annual Retreat,<br>Lunch in the Bistro   |



**Protection of Indigenous Knowledge, Traditional Medicine and related Intellectual Property**

- A. Is a patent the best means to protect Indigenous Knowledge and related IPR?
  - 1. Legally?
  - 2. From the world view of the community?
  - 3. If not, how else could IK and related IPR be protected?
- B. If a patent is a worthy possibility, what factors would make it fair and effective for the community?
  - 1. Why?
  - 2. What do you need to do to make it a reality?
- C. How do you build that into the remaining years of the agreement?

**Workshop with the Healers: Value-added Products: Myth or Reality?**

- A. How will the scientific results of the CIHR-TAAM impact the practice of Cree TM?
  - 1. What has changed?
    - a. What needs to occur before the end of the agreement (2012)?
  - 2. List 4 priorities and who needs to do them
    - b. What are the conditions of their success?
  - 3. What needs to happen by 2017?
  - 4. List the priorities in the order of importance and who needs to do them
- B. Will the plant preparations offered to Cree diabetics change?  
If the long range health goal is to decrease the burden of diabetes in the community by integrating Traditional Medicine into diabetes care. Then:
  - 1. Who prepares plant preparations?
  - 2. Will the scientists contribute?
    - i. By testing plant preparations periodically?
    - ii. In other ways?
    - iii. How will that impact the plant preparations?
  - 3. Will there be different formulations for particular needs?
    - iv. How do we determine this?
  - 4. Who communicates this?
  - 5. When can we start?
    - v. Now
    - vi. In five years?
    - vii. In ten years?
  - 6. What are the next steps?
- C. What role can the scientists play in the future?



- 1) What are the obligations of the relationship?
- 2) Remaining tasks in the agreement
- 3) Proposed studies/what do we want?
  - a. Are the communities agreeable to share the final research agreement
    - i. Nationally?
    - ii. Internationally?
  - b. Does the Team want to get involved in national and international arenas to have proper protection of IK and related IPR?
    - i. What are the challenges? How do we overcome them?
    - ii. Who can do this?
    - iii. What needs to be in place for us to succeed?
- 4) Funding after 2011?



**Annual Team Retreat  
CIHR Team in Aboriginal Anti-diabetic Medicine**

Montreal  
August 19<sup>th</sup> and August 21<sup>st</sup>, 2009

**Table 1. PARTICIPANT LIST**

| <b>Name</b>   | <b>Surname</b>       | <b>Affiliation</b>                  |
|---------------|----------------------|-------------------------------------|
| Afshar        | Arvind               | Haddad                              |
| Ahmed         | Fida                 | Bennett                             |
| Alexander     | Merle                | Vancouver Lawyer                    |
| Arnason       | John, Thor Professor | Arnason                             |
| Arnason       | Carol                | Arnason                             |
| Assinewe      | Valerie Dr.          | Stonecircle                         |
| Awashish      | Francis              | Mistissini Healer's Helper          |
| Frawley-Henry | Mary                 | AFN                                 |
| Badawi        | Alaa Dr.             | Public Health Agency Canada         |
| Bailie        | Anna                 | Johns                               |
| Barrister     | Kelly Dr.            | UVictoria                           |
| Bennett       | Stefanny             | Bennett                             |
| Blackned      | Bert                 | CBHSSJB Waskaganish                 |
| Blacksmith    | Jane                 | CN Mistissini                       |
| Bobet         | Ellen                | Consultant for plain language texts |
| Brault        | Antoine              | Haddad                              |
| Cuerrier      | Alain Dr             | Cuerrier                            |
| Davindge      | Linda                | CN Whapmagoostui                    |
| Downing       | Ashleigh             | Cuerrier                            |
| Durst         | Anthony [Tony] Dr    | UOttawa                             |
| Durst         | Mary                 | UOttawa                             |
| Esau          | Charles              | CN Waskaganish                      |
| Esau          | Hazel                | CN Waskaganish                      |
| Ferrier       | Jonathan             | Arnason                             |
| Guerrero      | Jose Antonio         | Arnason                             |
| Haddad        | Pierre Professor     | Haddad                              |
| Harbilas      | Despina              | Haddad                              |
| Harris        | Corry                | Johns                               |
| Johns         | Tim, Professor       | Johns                               |



| <b>Name</b>  | <b>Surname</b> | <b>Affiliation</b>                                   |
|--------------|----------------|--|
| Kawapit      | Agnes          | CN Whapmagoostui                                     |
| Lavoie       | Louis          | Haddad   |
| Lebrun       | Laurence       | Cléf des champs                                      |
| Linton       | Paul           | CBSSJB Public Health                                 |
| Linton       | Harriett       | CBSSJB Mistissini                                    |
| Liu          | Rui            | Foster   |
| Loon         | Laurie         | Healer's Helper Mistissini                           |
| Loon         | Joseph         | Healer's Helper Mistissini                           |
| Madiraju     | Padma          | Haddad   |
| Mao          | JingQin        | Foster   |
| Mark-Stewart | Florrie        | Healer, CN Eastmain                                  |
| Masty        | George         | CN Whapmagoostui                                     |
| Méthot       | Nadine         | Haddad   |
| Mianscum     | Kenny          | CNACA  |
| Muhammad     | Asim           | Arnason  |
| Nachar       | Abir           | Haddad   |
| Nistor       | Lidia          | Haddad   |
| Obomsawin    | Raymond Dr     | NAHO   |
| Ogrodowczyk  | Carolina       | Foster   |
| O'Neill      | Jennifer       | NAHO   |
| Ottereyes    | Jonathan       | CIHR-TAAM Cree Region                                |
| Ottereyes    | Ghislain       | CBSSJB, clinical study Mistissini                    |
| Ouchfoun     | Meriem         | Haddad   |
| Owen         | Pat            | Johns  |
| Patterson    | Elizabeth      | Grand Council Cree Lawyer                            |
| Petawabano   | Smally         | Elders' Councils CN Mistissini and CBHSSJB           |
| Petawabano   | Laurie         | Elders' Councils CN Mistissini and CBHSSJB           |
| Petrov       | Katya          | Consultant for design, layout, printing, translation |
| Saleem       | Ammar          | Arnason  |
| Spack        | Tracy          | Public Health Agency of Canada                       |
| Tabib        | Christine      | Johns  |
| Tendland     | Youri          | Cuerrier   |
| Teresa       | Shiki          | Cléf des champs                                      |
| Torrie       | Jill           | CBSSJB Public Health Dept.                           |
| Trapper      | Jimmy          | Elder, Waskaganish                                   |
| Trapper      | Annie          | CBHSSJB Mistissini                                   |
| Vachon       | Annika         | CBSSJB, clinical study Mistissini                    |



| <b>Name</b>    | <b>Surname</b> | <b>Affiliation</b>                         |
|----------------|----------------|--|
| Vallerand      | Diane          | Haddad                                     |
| Walshe-Roussel | Brendan        | Arnason                                    |
| Webb           | Brian          | Cree-English translator                    |
| Whiskeychan    | Tim            | CN Waskaganish and Cree-English translator |
| Whiteduck      | Alyssa         | Stonecircle                                |
| N'Guyen        | San            | Arnason                                    |
| Gunner         | Mabel          | Elder, CN, Mistissini                      |
| Morin          | Véronique      | journalist                                 |
| Robinson       | Elizabeth Dr   | CBSSJB, Public Health Dept.                |
| Wysote         | Tracy          | CBSSJB, Public Health Dept.                |



***Merle Alexander, B.A., LL.B.***

***Lawyer, Boughton Law Corporation, Vancouver, B.C.***

Merle Alexander is a co-chair of the Aboriginal practice group. He practices corporate / commercial law with a focus on Aboriginal sustainable development, which balances economic development, respect for Aboriginal rights and environmental conservation for future generations. Mr. Alexander is also a recipient of Business in Vancouver's 2009 "Top Forty Under 40" award.

He advises clients on the purchase and sale of businesses, the structuring of joint ventures, limited partnerships and corporations, the drafting and negotiation of commercial and residential leases both on and off reserve lands, the incorporation of non-profit entities, and the negotiation of interim measures and impact benefit agreements.

Mr. Alexander also has extensive experience in negotiating self-government and comprehensive treaty claims agreements and represents clients in both British Columbia and the Yukon.

He has a professional and personal interest in the protection of Aboriginal intellectual property rights, particularly traditional knowledge, and has negotiated treaty chapters on Heritage Resources, drafted protocols and represented national Aboriginal organizations in various international forums.

Mr. Alexander is a member of Kitasoo Xai'xais First Nation, Tsimshian Nation.

***Kelly Bannister, B.Sc., M.Sc., Ph.D.***

***Director and Senior Research Associate, Victoria, B.C.***

Dr Kelly Bannister is the Director of the POLIS Project on Ecological Governance (part-time) and a Research Associate since 2000. She has drawn on her background in Ethnobotany to build a research program on biocultural diversity, in collaboration with a number of First Nations and community non-profit organizations. Her focus is on ethical and legal issues in research involving biodiversity and Indigenous cultural knowledge, and the potential of local governance mechanisms (e.g., codes of ethics, community research protocols) to address power relations and facilitate equitable research practices. Her ultimate goal is the evolution of new institutional frameworks (i.e., principles, policies, practices) that support collaborative research between universities, rural communities and First Nations.

In 2001, Dr Bannister developed the Community-University Connections initiative at POLIS and facilitated a pilot project in the Clayoquot Sound region to help foster respectful and mutually beneficial collaborative research approaches between academic researchers, community groups and First Nations. She has collaborated with the office of the Vice President, Research, the office of Director, Cooperative Education and the Human Research Ethics Board on campus-wide initiatives to support and enhance community-based research and learning opportunities, and establish good ethical practices.

She is newly appointed as Adjunct Associate Professor in [Studies in Policy and Practice](#) (Faculty of Human and Social Development) where she anticipates furthering her theoretical and applied work in community-university collaborations.

As of Spring 2008, Dr. Bannister is co-leading a new project on [Intellectual Property Issues in Cultural Heritage](#). The project is based at SFU and funded for seven years under the MCRI program of SSHRC.

***Anthony (Tony) Durst, B.Sc., Ph.D.***

***Professor of Chemistry, University of Ottawa***

Dr. Tony Durst's group is involved in the isolation and evaluation of natural products of medicinal interest from plants native mainly to Central America, especially Costa Rica. Active compounds are dealt with as lead structures and are chemically modified to try to improve activity. His group is currently focusing on an anti-anxiety compound, anti-fungal agents and has identified an agent with activity against Type II diabetes. This work is interdisciplinary and is carried out jointly with Prof. J.T. Arnason (Department of Biology).



Dr. Durst's group has designed and are synthesizing mimics of estrogen and estradiol that cannot be converted into the dangerous ortho-quinones which are thought to be responsible for the estrogen-induced breast cancers. This work is carried out jointly with Prof. J. Wright, (Department of Chemistry, and Carleton University).

**Marie Frawley-Henry**

**Assembly of First Nations, Ottawa**

Marie Frawley-Henry, a member of Nipissing First Nation, Ontario, is a Senior Policy Analyst with the Assembly of First Nations (AFN), Health and Social Secretariat, Ottawa. She serves as the Chair of the AFN National First Nations Diabetes Working Group, lead for the AFN Women's Council, and also serves on a number of foundations, including the Tony Blair Faith Foundation and Belinda Stronach Foundation to advance the health, social and economic welfare of Indigenous peoples worldwide. Ms. Frawley-Henry's extensive career also includes the work of re-instituting a Gender Equality Secretariat at the AFN, in addition to serving in the former capacity as Director of International Affairs in the promotion of gender equality and human rights of Indigenous peoples with key United Nations agencies, United Nations Permanent Forum on Indigenous Issues and the Organization of American States.

**Brenda Gaudry, 100% Aboriginal Owned and Operated Business Entrepreneur  
Creative Spirits, Barrows, Manitoba**

My adventure started when I enrolled into a three-week course (Non Timber Harvest Products in the Northern Forest) that was offered in our area in May of 2002 by Keewatin Community College, The Pas, Manitoba Canada. I always tell others that I was blind and never saw the opportunities and beauty that Mother Nature provides. When you live all your life in such a remote area, you take everything for granted. This course opened my eyes taught me to see the beauty and endless possibilities. We learned how to identify the different uses and to harvest plants/trees using sustainable techniques that does not impact long term productivity. We were also taught by an aboriginal elder to always give offerings for all the things we take from nature, to respect all living things and most of all to harvest sustainable so there will be some for next year and generations to come. The course also provided us to assess the opportunities of natural resources and to develop entrepreneurial skills that motivated me into starting my own Home Based Business, than expanding into Eco Tourism to share my knowledge with others. The Eco tours and workshops I offer promote hands on learning experiences. Sharing knowledge, identification, uses and sustainable harvesting techniques, a great learning opportunity for anyone that wants to learn more about the bounties Mother Nature provides.

My Unique craft store promotes products that are natural, and featuring local aboriginal artisans. I offer products that promote good health, promote healing and an increased awareness of spirituality with an appreciation of the beauty for our natural world. I love being outdoors, exploring, researching and learning what's in our forests. There's so much yet to discover, with a creative imagination and of course hard work! The possibilities and potential are endless

**Josie Goffredo, Attorney**

Josie Goffredo holds an LL.B. (2004) from the University of Montreal and was called to the Bar in 2006. In the course of her university studies, she worked for the Attorney General's office as a summer law student thereby enabling her to discover her interest for aboriginal law. She cumulated two years experience as a delegate at the Quebec Ombudsperson's office in Montreal where she also completed her articling. Additional training with the editorial team of a legal publishing house in Paris allowed for further development in her legal researching skills.

Ms. Goffredo was formerly an attorney at two small Montreal law firms where she practiced a wide range of areas of law, including aboriginal law. She recently successfully completed a course in aboriginal law in order to further her knowledge in this field. She is also involved with the youth in her community as a member of the corporation of a community youth leadership center. She is a volunteer lawyer at the Mile-End Legal Clinic and is a volunteer jurist on the Research Ethics Committee at the Jewish General Hospital.





**Raymond Obomsawin, Ph.D.**

**Senior Advisor, National Aboriginal Health Organization (NAHO), Ottawa**

Raymond Obomsawin has served as Director National Office of Health Development - National Indian Brotherhood (AFN); and Founding Chairman - NIB's National Commission Inquiry on Indian Health; Executive Director in the California Rural Indian Health Board; Supervisor of Native Curriculum – Government of the Yukon Territory; and Evaluation Manager - Department of Indian and Northern Affairs Canada. His most recent post in the Canadian public service was as Senior Advisor on Cultures, Knowledge Systems, Local Ownership and Ethnicities at the Canadian International Development Agency. He is currently engaged with government funding as Senior Researcher relative to establishing a Public Sector Policy on Traditional Medicine in Canada.

Dr. Obomsawin's professional experiences and achievements include Co-Chaired the United Nations Environment Program - Convention on Biological Diversity (CBD) Ad Hoc Technical Expert Group on the Potential Impacts of Genetic Use Restriction Technologies (alias "Terminator Seed" technologies). He spearheaded the first world-wide inter-sectoral review funded by a Western government on Indigenous Culture Based Knowledge Systems in Development. The study elicited the involvement of over 500 public and non-governmental organization sector bio-social development, technical and research institutions in all world regions, and entailed field mission research carried out in the Andean and upper Amazon regions of South America, as well as East Africa, South Asia, and Southeast Asia. He has produced academically and / or professionally over eighty (85) articles, reports, policy documents, presentations, and publications.

**Jennifer O'Neill, M.Sc.**

**Research Officer, National Aboriginal Health Organization (NAHO), Ottawa**

Jennifer O'Neill is a Research Officer, First Nations Centre, NAHO Education. She obtained her Master of Science in Public and Population Health (Specialization – Global Health), from Simon Fraser University and her Bachelor of Science in Health Science, from Brock University.

Her work experience and positions include being a Policy Analyst, Maternal and Child Health Program, First Nations and Inuit Health Branch, Health Canada , Research Assistant, The Centre for Learning in Practice, The Royal College of Physicians and Surgeons of Canada, Teaching Assistant, Simon Fraser University - Perspectives on Cancer, Cardiovascular Disease, and Diabetes, Intern, ADRA Mongolia – Health Department and a Consultant, Ministry of Health (Mongolia), National Centre for Health Development.

Ms. O'Neill's areas of interest (i.e. research, policy development, etc.) are in Epidemiology, Population and public health, Traditional knowledge, Disease prevention and control, and Health research systems.



## APPENDIX 5. DR. KELLY BANNISTER'S PRESENTATION

### Ethics in Aboriginal Health Research and Protection of Indigenous Knowledge and Related Intellectual Property Rights

CIHR Team in Aboriginal Anti-diabetic Medicines  
Annual Retreat

Montreal, August 20, 2009

Kelly Bannister, M.Sc., Ph.D

kel@uvic.ca

#### Community-based research ethics

- Beyond individualism → collectives and collective decision-making
- Beyond humans → extends to surrounding environment upon which human wellbeing depends
- Toward broader timeframes (beyond the project, beyond this generation)
- Compels us to seek out and establish mutually-agreed terms for research
  - e.g., consent, collaboration, sharing outcomes, protecting community knowledge and property

**Key question:** how to *protect* cultural knowledge in academic research, which is premised on *building/creating/exploiting* knowledge?

#### Contributions to research ethics policy

- Working group member of *CIHR Guidelines for Health Research Involving Aboriginal People* (2007)
- Technical advisory committee member for Panel on Research Ethics on development of draft second edition Tri-Council Policy Statement
- UVic research ethics board member (until 2008)
- Consultant to Environment Canada on domestic Access and Benefit Sharing policy (or lack thereof)
- Chair of Ethics Committee, International Society of Ethnobiology (involved in developing ISE Code of Ethics 2006)

#### Protection of Indigenous knowledge

- What do we mean by "protection"?
- Do we all mean the same thing?
  - Protect Indigenous knowledge and knowledge systems from being lost or eroded?
  - Protect Indigenous knowledge from culturally inappropriate uses, exploitation or commodification?
  - Selectively protect Indigenous knowledge from unwanted exploitation and commodification by others to ensure community use and development?
- Are these all compatible?



### Key tools to address the issues at source

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- Community-based collaborative research approach
- Agreed ethical standards (consistent with CIHR Guidelines 2007)
- Comprehensive research agreement (mutually-agreed terms)

*All being used in TAAM project*

→ Lack of guidance on 'where to go from here'

### How is (or is) Indigenous knowledge being protected in Canada?

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- Broad national interest → Cultural heritage (tangible & intangible)
- Canadian IP law not suited to protect most Indigenous knowledge
- Reliance on contractual approaches, ethical guidelines, and codes of conduct in research context
- Canadian precedent for First Nation-held patent derived from traditional medicine?

→ Mutually-agreed terms key

### Is patent best means to protect Indigenous knowledge and IPR?

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- Protects new use/composition of plant compound found based on traditional knowledge
  - protects IP (i.e., the "invention")
  - does it protect "Indigenous knowledge"?
- What are goals in pursuing patent (e.g., commercialization)?
  - What is involved (process, cost, capacity)? Is it feasible/desirable?
  - Enforcement of patent?
  - Consequences of not patenting? Alternatives (e.g., trade secret)?

### Other considerations related to patents

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- Develop Benefit-sharing agreement
  - *Bonn Guidelines* as guidance
  - Examples from other projects (e.g., San-Hoodia, Prostratin)
- Establish formal mechanism to distribute monetary benefits
  - e.g., Trust

### Sharing Lessons

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- Make research agreement public?
  - Redacted version?
  - Generic template based on key principles and processes?
- Process of coming to agreement as important as written agreement
  - Project ethnography?
- Story of project journey invaluable to inform future research
- Managing media (and academic) interest proactively
  - Tell your own story




APPENDIX 6. MERLE ALEXANDER'S PRESENTATION





**Granting Access without Our Consent: Canada's Plan on Implementing an ABS Regime**


Merle Alexander  
Tsimshian Nation, Kitsoo Xai'xais First Nation  
Chair of the Aboriginal Practice Group – Boughton Law




- Aboriginal lawyer from Kitsoo Xai'xais First Nation (Klemtu, BC)
- Partner at Vancouver law firm, Chair Aboriginal Practice Group – 7 Aboriginal lawyers – largest in Canada
- SD law – Aboriginal/ Environmental/Business
- Indigenous Peoples Advocate – CBD for 12 years


**Outline**




1. Introduction
2. Aboriginal Rights Related to TK
3. CBD Assertion of Sovereignty
4. State of International Negotiations
5. Canada's Policy Implementation: Failure of the Duty to Consult and Other Issues
6. Questions?



**Introduction**




- An Aboriginal lawyer from the Tsimshian community of Kitsoo Xai'xais on the mid-coast of British Columbia practicing sustainable development law.
- Key area of my legal practice is the protection, preservation, and maintenance of traditional knowledge.
- International: Represent Aboriginal Peoples organizations at Working Groups established under the CBD and WIPO.
- National: Informal national Indigenous network.
- Local: Develop traditional knowledge protocols for a variety of purposes – academic, natural resource companies and government to government relationships.





## Aboriginal Rights and TK

- ❑ Community level – hundreds of Aboriginal communities are attempting to preserve, maintain and protect their traditional knowledge for a wide variety of purposes.
- ❑ Domestically: legal issues regarding traditional knowledge for Government-to-Government consultations and Aboriginal-Industry relationships are increasingly important.
- ❑ Internationally: at least 13 international treaty areas have substantive traditional knowledge-related components.
- ❑ At all levels, there is no agreed definition.
- ❑ Some Indigenous Peoples are reluctant to accept the term “traditional” as it implies something frozen in the past; static and unable to develop.



## Aboriginal Rights and TK

- ❑ I take an Aboriginal rights-based approach to TK protection.
- ❑ Based upon the Supreme Court of Canada comments: “to ensure the continuity of aboriginal practices, customs and traditions, a substantive aboriginal right will normally include the incidental right to teach such a practice, custom and tradition to a younger generation.”
- ❑ In other words, each Aboriginal/treaty right is integrally linked to the TK that ensures its continuation between generations.
- ❑ This connection between our resource rights and TK is fundamental to the National policy and international discussion.




## CBD Assertion of Sovereignty

- ❑ There are three key aspects to the CBD that require BC First Nations close consideration: (1) the CBD; (2) the Bonn Guidelines and (3) the international negotiations.

**The CBD - 1993**


- ❑ The CBD is an existing international treaty whereby Canada asserts sovereignty over all natural, biological and genetic resources.
- ❑ Article 15 states that “**Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources** rests with the national governments and is subject to national legislation.”



## CBD Assertion of Sovereignty

**The Bonn Guidelines - 2002**


- ❑ To implement Article 15 claim to sovereignty, the Parties negotiated a voluntary regime that furthered this claim of sovereignty.
- ❑ The Guidelines contemplate implementing national mechanisms (legislative, policy and administrative) for contract-based arrangements among “providers”, “users” and “stakeholders”.
- ❑ The Guidelines set out a regime whereby a national competent authority will generally regulate minimum standards, conditions and terms to be negotiated in access and benefit-sharing agreements/material transfer arrangements.



## CBD Assertion of Sovereignty

**The Bonn Guidelines – Basic Presumptions**

- (a) Contract law is the most suitable legal framework for dealing with ABS;
- (b) Nation-States will be the primary “Contracting Parties” in ABS arrangements;
- (c) Aboriginal peoples are “stakeholders”;
- (d) Commercialization of Aboriginal Knowledge and monetary benefits thereof are incentives for Aboriginal peoples to enter into ABS arrangements;




## CBD Assertion of Sovereignty

**The Bonn Guidelines – Basic Presumptions**

- (e) Prior informed consent is a one time event that occurs at beginning of an ABS arrangement;
- (f) Prior informed consent of Aboriginal peoples may be determined by a national/competent authority; and
- (g) National governments will act in the best interests of Aboriginal peoples within their countries.

- ❑ Consistent with the CBD is the Nation-States unequivocal assertion of sovereignty over natural, biological and genetic resources within the Bonn Guidelines.




## State of International Negotiations

- ❑ March 2003 – A strong and desperate call for a legally binding regime emerged from the WSSD.
- ❑ Led by impoverished developing countries that seek equitable compensation for genetic resources that are stolen from their territories by multinational corporations.
- ❑ The international community generally agrees that the ABS regime must evolve to a norm-setting international instrument.
- ❑ From 2003-2006, the terms of negotiation are discussed.



## State of International Negotiations

- ❑ COP VII in 2006 – Nation States agree on a mandate to negotiate an ABS regime by Oct 2010.
- ❑ CAN, NZ, AUS and US (coincidentally same 4 that voted against the DESCRIPS) have fought to delay and thwart the negotiations.
- ❑ Not negotiating in good faith, often use Aboriginal consultation duties as pawn for delaying.
- ❑ CAN has simultaneously changed its funding so that it only provides funding to National Aboriginal Orgs.
- ❑ AFN, MNC and ICC have been on and off delegation with only monies to attend, but with no financing to consult their constituency.



## State of International Negotiations

- ❑ Indigenous Peoples have fought vigorously on key issues such as rights recognition, role of indigenous law in access, FPIC and strong participation rights in negotiations.
- ❑ IP have gained substantial negotiation leverage by taking credible positions and choosing allies.
- ❑ IP have earned a seat at the negotiation table.
- ❑ CAN is an adverse and isolated party.



## Canada's ABS Implementation

- ❑ After 16 years of little to no implementation, Env Can has now developed a discussion paper asking stakeholders for their views on ABS.
- ❑ Paper and options included was developed by a Federal/Territorial/Provincial Task Group.
- ❑ AFN presented to the Group but there was no Aboriginal representation on the Group.
- ❑ In the words of the Supreme Court of Canada, the initial steps of this supposed “engagement”, not consultation, represents “an impoverished vision of the honour of the Crown”.



## Jurisdiction and Ownership

- ❑ A key criticism of the Discussion Paper is that it presumes that only the Crown will provide consent on access to GR and TK.
- ❑ There is no consultation/accommodation/consent aspect of decision-making.
- ❑ There is no consideration of existing Aboriginal law that has survived the historical assertion of sovereignty.
- ❑ No acknowledgement that the SCC in *Mitchell* explicitly recognized that Aboriginal customary law survives assertion of sovereignty unless extinguished by treaty or in clear plain intention.
- ❑ There is no such extinguishment in BC, even in modern day treaties. They are silent on jurisdiction on GR and TK.



## (1) What type of ABS Implementation?

- ❑ (a) Nationally consistent approach; (b) every Jurisdiction for itself; or (c) Federal – unilateral.
- ❑ **Recommendation:** Nationally consistent approach - Aboriginal Governments are constitutional partners in the development of a National ABS policy on common principles and core elements.
- ❑ Provincial or federal jurisdiction will need to be reconciled in a manner that is consistent with the honour of the Crown.
- ❑ BC First Nations be provided capacity building and funding mechanisms to conduct a province-wide consultation among our constituent First Nations.



## (2) How Does Canada Implement ABS?

- (a) Policy only; (b) Policy, existing leg., and new reg. and non-reg.; (c) ABS legislation.
- Recommendation:** Policy insufficient, implement all existing and new tools while performing a Gap analysis with a prospect of ABS legislation.
- If ABS leg., BC First Nations must be consulted, want explicit recognition of our existing jurisdiction and must be equal parties in shared decision-making.



## (3) Should TK be disassociated with GR ABS?

- NO.
- Aboriginal TK is inseparable from our resource rights.
- A hunting right has no value if the hunting technique is lost, the knowledge of the moose species, the uses of the sinew is not valued, if the knowledge of the territory is not connected to the right.
- Many CAN delegates do not believe that Aboriginal peoples have rights to GR, so if TK issues can be excluded from the ABS discussions, we do not have any right to be at the negotiation table.



## Questions



Ms. Shiki's treatment of diabetics is divided into four steps:

1. Patients need first to detoxify their body and she uses a number of plants to do so: for instance, holly a species of *Ilex*.
2. Then, she uses another set of plants to purify the blood.
3. It is only at this point that she will use anti-diabetic medicines.
4. After taking the anti-diabetic plant preparations, the patient will take plant tonics, such as turmeric (*Curcuma longa*), to strengthen the body.

The following is Teresa Shiki's presentation (not translated from the Spanish):

|  |  |
|--|--|
| <p><b>LOS SHUAR PUEBLOS MILENARIOS DE LA AMAZONIA ECUATORIANA, CONOCIMIENTOS, EXPERIENCIAS, Y PRACTICAS ANCESTRALES</b></p> <p><b>LA MEDICINA SHUAR -TSUAK TSUAMATAI-</b></p> <p>ALGUNAS PLANTAS PARA CURAR DIABETES</p> <p>Teresa Shiki<br/>Herborista tradicional<br/>Contact : <a href="mailto:tereshiki@yahoo.com">tereshiki@yahoo.com</a><br/><a href="http://www.fundacionomaere.org">www.fundacionomaere.org</a></p>  | <ul style="list-style-type: none"><li>• Para combatir el deterioro de nuestro cuerpo humano, nosotros los shuars de la amazonia ecuatoriana tenemos conocimientos y practicas, ya experimentados por miles de años, conocemos el uso de las diferentes partes de las plantas sagradas que curan las enfermedades de nuestro cuerpo.</li><li>• En la salud de los indígenas de la diferentes partes de la amazonia aparece una enfermedad que ahora llamamos <b>diabetes</b>.</li><li>• Esto es mas y mas comun, es como una epidemia.</li><li>• Para los indígenas antes no se conocia esta enfermedad que llamamos : <b>el cancer de la sangre</b>.</li><li>• Los medicos científicos nos dicen que no hay medicinas naturales que curan esta enfermedad y va creciendo paulatinamente en nuestro organismo, hasta la muerte.</li><li>• Existe solamente medicinas quimicas que nos mantienen no mas.</li></ul>                         |
| <ul style="list-style-type: none"><li>• Un reto a la realidad del pasado, en nuestras y otras culturas fuimos olvidando y perdiendo los saberes de las practicas de nuestras plantas de los medicos sabios « Uwishin Tsuakratin » que se curaban con sus propias sabidurias de sus plantas sagradas.</li><li>• El uso directo de las diferentes partes de las plantas puesto en practica nos dan los resultados reales y eficaces, para curar las diferentes enfermedades.</li><li>• Las plantas ayudan a aumentar al sistema inmuno en nuestro cuerpo y tener mas animo de vida.</li><li>• La enfermedad conocida con el diagnostico de los medicos diabetes esta en la sangre, es un exeso de azucar y de graza.</li><li>• Esto afecta directamente el pancreas y no produce la insulina suficiente para el cuerpo que nesecita, afecta al sistema digestivo, higado, rinones, vejiga inflamaciones y trastornos del cuerpo en general el debilitamiento perdida de peso la acumulacion de acidos en en la saliva.</li></ul> | <p><b>EL PROCESO DE TRATAMIENTO QUE YO PROONGO COMO HERBORISTA TRADICIONAL SHUAR ES EL SIGUIENTE :</b></p> <p><b>TRATAMIENTO DE DIABETES AL INICIO</b></p> <ul style="list-style-type: none"><li>• Desintoxicación del cuerpo en general, para quitar las toxinas acumuladas en el organismo del paciente, en las cuales son preparadas con diferentes plantas diureticas.</li><li>• Depuración de la sangre para purificar y sacar las toxinas de la sangre.</li></ul> <p><b>TRATAMIENTO SEGUN EL DIAGNOSTICO DE DIABETES Y SEGUN EL ESTADO DEL PACIENTE</b></p> <ul style="list-style-type: none"><li>• Extractos concentrados hecho a partir de decocción en el agua y de una combinación de diferentes partes de las plantas con propiedades antidiabeticas (glucosa y trigliceridos).</li><li>• Tinturas maceradas que se entieran en el suelo para madurar y consevar.</li><li>• Tonicós naturales de diferentes plantas</li></ul> |





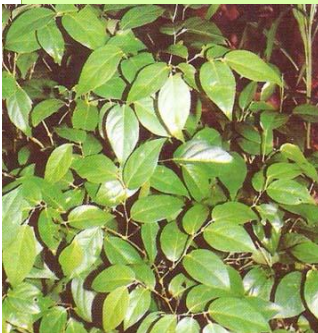
### Teresa preparando sus extractos



### Para desintoxicación del cuerpo :

- Wais (guayusa) : *Ilex guayusa* ( hojas)
- Untuntu (Cana agria) : *Costus spicatus* ( sumo del tallo)
- Pia ( resina)
- Kantse : Amaranthaceae (hojas)
- Shimpi shimpi : Solanaceae (toda la planta)

### Wais, guayusa : *Ilex guayusa*



### Untuntu ,cana agria : *costus spicatus*



### Para depuración de la sangre :

- Kaip: *Mansoa standleyi* (corteza)
- Pampanch: *Kalanchoe pinnata* (hojas)
- Juitian : Acanthaceae ( flores y hojas)
- Yuranmis : Solanaceae ( hojas, semillas)

### Kaip : *Mansoa standleyi*



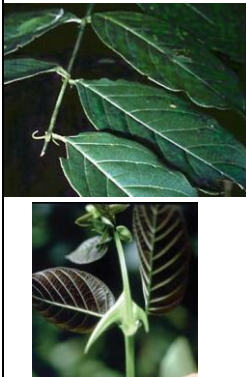
Pampanch : *Kalanchoe pinnata*



### Tratamiento para diabetes

- Kenkuk (Una de gato) : *Uncaria tomentosa* (cortesa).
- Ishpink (Canela) : *Ocotea quixos* (fruto, semilla, corteza, hojas).
- Entsa mik : *Bauhinia tarapotensis* (corteza, hojas).
- Chuchuwak ( Chuchuasu : *Maytenus krukovii* ( corteza ).

Kenku, una de gato : *Uncaria tomentosa*



Ishpink, canela : *Ocotea quixos*



Chuchuwak : *Maytenus krukovii*



### Tonico general

- Tsampu ( *Carica monoica* ) ( hojas, semillas)
- Apu ajej ( *Curcuma longa* ) ( tuberculo)
- Kantse : *Amaranthaceae* (hojas)
- Numpenkam ( *Gesneriaceae* ) ( hojas y flores)
- Kampanak ( *Liliaceae* ) ( bulbo)





Tsampu ( *Carica monoica* )

Apu ajej ( *Curcuma longa* )

