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Résumé de l'article

Depuis plus d'un siècle, le musée national canadien d'histoire humaine, qui s'est appelé successivement le Musée national du Canada, le Musée national de l'Homme, le Musée canadien des civilisations et, depuis peu, le Musée canadien de l'histoire, a documenté et rassemblé des archives de patrimoine culturel immatériel en lien avec différents groupes culturels. À l'origine recueilli puis conservé en fonction de mandats législatifs reposant sur de larges principes relatifs à l'intérêt public, ce matériel comprend un ensemble considérable de récits, de chansons et d'informations liés aux pratiques culturelles, à la fois passées et présentes, des sociétés autochtones du Canada. Cet article envisage les problèmes des concepts de nation, de savoir et d'intérêt public tels qu'ils se posent dans les accords contractuels, la législation sur des sujets allant du droit de propriété intellectuelle au droit de la famille, les négociations de traités entre les Peuples autochtones et le gouvernement du Canada, et la consultation au sujet de différentes définitions culturelles de la propriété et du sacré qui affectent l'accès au patrimoine immatériel autochtone et son usage quotidien au musée. Enfin, cet article envisage les problèmes qui pourraient se poser dans la poursuite de ce travail en raison de la réduction de la portée et du mandat du musée au moment où, de Musée canadien des civilisations, il devient Musée canadien de l'histoire.

GOOD INTENTIONS AND THE PUBLIC GOOD

Intangible cultural heritage in a Canadian national museum¹

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Introduction

Since the inception of the Anthropology Division of the Geological Survey of Canada in 1910, Canada's national museum of human history, called, successively, the National Museum of Canada, the National Museum of Man, the Canadian Museum of Civilization, and now the Canadian Museum of History, has recorded and preserved the intangible cultural heritage of people in Canada in addition to assembling collections of objects. During the twentieth century the framework for the Museum's work in relation to the intangible cultural heritage of Aboriginal² people in Canada was provided by the Museum's legislative mandate and two long-term initiatives generated from within the Museum. In 1911 "An Anthropological Survey of Canada," published in the journal, *Science*, by Edward Sapir, the first director of the Anthropology Division, set out a program of research designed to address anthropological issues considered urgent at that time. The subsequent research undertaken by Sapir and his colleagues, as well as ethnologists working on contract, recorded cultural information in various Aboriginal communities across Canada, information which Sapir, and others, believed to be imperiled by rapid acculturation. Since Sapir's departure in 1924 curators trained in ethnology and related disciplines have pursued individual programs of research, including the recording of intangible cultural heritage. From the late 1960s to the late

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1. Certain of the issues and events described in this paper were previously cited by the author in "Stewardship, Community and Intangible Cultural Heritage in Canada," published in 2009 in *Museus e Património Imaterial. Agentes, fronteiras, identidades*. Lisbon: Instituto dos Museus e da Conservação: 371-386.
 2. In this paper the use of "Aboriginal" follows the definition in the Constitution Act (1982) and encompasses First Nations, Inuit and Métis.

1980s the Museum also funded the Field Research Contracts Programme, sometimes called “Urgent Ethnology,” which provided contracts to external researchers to record information believed to be on the brink of permanent loss.

The Museum began as a component of the Geological Survey of Canada and was subsequently established as a separate institution under the aegis of a succession of Federal Government departments. In 1967, as the National Museum of Man, it became one of several federal museums administered by the National Museums Corporation and in 1990, as the Canadian Museum of Civilization, became a federal Crown Corporation with an arms-length relationship to the Government of Canada. In 2013 it was renamed the Canadian Museum of History, with a revised legislative mandate.

Between 1990 and 2013 the Museum’s purpose was defined by *The Museums Act* (Canada, 1990: 4):

The purpose of the Canadian Museum of Civilization is to increase, throughout Canada and internationally, interest in, knowledge and critical understanding of and appreciation and respect for human cultural achievements and human behavior by establishing, maintaining and developing for research and posterity a collection of objects of historical or cultural interest, with special but not exclusive reference to Canada...

This mandate was virtually unchanged from the mandate defined in the previous legislation, passed in 1967. The statement of purpose suggests that the collection itself was both an object of endeavor and an assemblage that mandated endeavor, and its primary purpose was to be a vehicle for the generation and preservation of knowledge for a ‘posterity’ that includes all people in Canada and subsequent generations. It was intended to guarantee both the possibility of the intergenerational transfer of knowledge and its wide availability in our own time. In the practice of the Museum the collection has been considered to include not only objects, but also information preserved by the Museum about intangible cultural heritage of Canadians of all cultural groups.³

In its approach to research throughout much of the twentieth century the Museum honored a concept of public knowledge that had been developing within the ambit of Western Europe since the eighteenth century, privileging the collective over the individual and the secular over

3. I joined the National Museum of Man as the Pacific Coast Ethnologist in 1979, and became the Chief of the Canadian Ethnology Service (the Ethnology division) in 1989, and the Director of Ethnology and Cultural Studies in 2002. I retired from the Canadian Museum of Civilization in 2009.

the sacred (Hooper-Greenhill, 1992:176). In awarding contracts to external researchers under the Field Research Contracts Programme in the late twentieth century the Museum strove to balance the collective interests of the nation at large and the Museum's own requirement to be accountable for the expenditure of public monies with recognition of the individual rights of scholars. By the early twenty-first century the issues that both of these approaches raise for the protection and continuation of Aboriginal intangible heritage were at centre stage and the idea of public knowledge was in a dynamic tension with the diverse perspectives of Canadian First Nations on issues of religious belief, epistemology, and property. Within the Museum the broad issue of the preservation and protection of Aboriginal intangible cultural heritage has recently been further complicated by the narrowing of the Museum's mandate to a focus on Canadian history and the more restrictive definition of research in the *Canadian Museum of History Act*, passed in December, 2013.

Scholars, Communities and Access

Any recording of intangible cultural heritage preserved in a memory institution involves, at a minimum, the person who contributed the information or performance, the person who recorded it, and the repository institution, in this case the Museum. As the recording becomes historicized this group inevitably expands to include the family and community of the contributor and it may include descendants of the person who recorded it. The agreements under which the material was recorded become very important.

Early contracts awarded by the Museum under Edward Sapir between 1911 and 1924 contained the notation,

All manuscript notes, ethnological specimens, photographs, and such other scientific material as results from the expedition, are to be the exclusive property of the Geological Survey, and are to be turned in to the Survey as early as possible, and not later than the acceptance of the manuscript (Canadian Museum of History, n.d.: 1).

All of this material is now in the public domain and is available for use by First Nations and the public at large. However, external researchers in the Field Research Contracts Programme worked under contracts that generally gave to the Museum copyright in the final report, often a matter of a few summary pages, and ownership of the tapes and notes recorded, but were silent in the matter of copyright in the tapes and notes. The overriding

concern in the development of contracts at that time was to ensure that all parties understood that the contractor was not, in fact, a government employee. The contracts either left the copyright in legal limbo, or accorded it by default to the contractor. Copyright to the full body of the work is given to the Museum only in a few specific later contracts. When these contracts were awarded it was anticipated that the field work would lead to publication. To provide protection to the researcher while the publication was in development, the Museum entered into agreements with researchers that specified the level of access to unpublished notes and the conditions under which this access could be given. These were later held to have the force of contracts. While some contractors opened their files for research, most opted to provide access on a case by case basis with their express consent and the consent of the Chief Ethnologist, a position within the Museum's organization at that time. Although many of the research projects resulted in monographs published in the Museum's Mercury publication series, the access agreements have remained in effect for the original notes and tapes. They also remain in effect for the substantial body of work that remains unpublished. This has the effect of leaving the Museum responsible for the preservation and care of the material but unable to access it for any other purpose, even to share it with the First Nation concerned, without the explicit consent of the contractor.

The express intent of the contracts developed for the Field Research Contracts Programme was to define the relationship between the contractor and the museum. The relationship between the contractor and the Aboriginal people with whom he or she worked was considered the responsibility of the contractor. The then head of the Canadian Ethnology Service, aware that among the Aboriginal people of the Pacific Coast, particularly, some aspects of intangible cultural heritage were considered to be lineage property, inquired about legal avenues to incorporate the concept, but was informed that the copyright law prevailing at that time gave copyright to the person who pushed the button on the tape recorder (A. McFadyen Clark: personal communication).

More than a hundred years have passed since Sapir wrote his article for *Science* and in many instances his prediction about the value of a record has come true. The information recorded by Aboriginal people working with ethnologists, linguists and folklorists of generations past has become historicized and is either no longer commonly available in the originating community or is not available in the form in which it was first preserved. As Aboriginal communities and groups develop educational curricula and

language programs and pursue claims to land, the narratives, songs and historical information recorded by earlier generations take on a profound importance. The Supreme Court decision in the *Delgamuukw* case (Canada, 1997), which placed oral narrative on a comparable footing with written documents in establishing basic claims to land, reinforced the political importance of narratives preserved in the past. Although many scholars are reluctant to relinquish responsibility for recorded material during their lifetimes, either because their work is incomplete or because they feel they have a relation of trust with the individuals with whom they worked, scholars who have deposited material have generally been helpful both to the museum and to the community in ensuring access. Between 1987 and 2009 there were only two significant instances in which negotiations between a scholar and a community about the use of recorded material were protracted and unsuccessful. In a third instance hesitation on the part of the recording scholar vanished when the museum agreed to insert a note at the beginning of a long-unfinished manuscript simply stating that it was unfinished.

In a fourth case, made particularly difficult because of the death of the original scholar and the very sensitive nature of the recorded information, the Museum, the community and an independent scholar were able to work co-operatively with the permission of the family of the original scholar to create a record useful and accessible to the community. In the late 1980s the Museum was contacted by an Aboriginal group who needed access to a particular manuscript developed for the Museum by a contractor in the 1960s. Access to the manuscript had been restricted by the Museum because it contained very sensitive personal information. When consulted, the leaders of the community confirmed that they did not wish to see the personal information released into the community; however, the manuscript was the only source of information relating to family relationships and economic holdings in the period encompassed by the research, and they required this information not only for their land claim, but also to address an immediate threat posed by industrial interests to land and associated resources of vital economic interest to certain families. While the *Privacy Act* restricted the Museum from releasing the personal information in ordinary circumstances, research for land claims could be considered an exception and the *Privacy Act* did not provide a shield for insulating individuals from the revelation of harmful personal information. Redacting the document by blacking out the names, an established practice in other government departments for conforming simultaneously to the *Access to*

Information Act and the *Privacy Act*, would do no good in this instance. In a small community anyone with prior knowledge of the community could deduce the names from the context and the sensitive information would be revealed.

The original contract was unavailable. The contractor had passed away some time before, but as the material remained unpublished her interest in the material was still in force. When contacted, her daughter consented to the Museum's working with the manuscript. After some discussion with the community leaders and their legal counsel, the Museum agreed to provide a contract to an ethnologist with whom the community had been working for some time to work with a blacked-out version of the manuscript and produce a document that held the genealogical and economic information required by the community, while making the process clear and preserving the moral rights of the original contractor. This was done, and the work was completed.

In this case the death of the original scholar was not a significant impediment because she had a single heir who could be located. In a fifth case, however, the publication of material that had been held by the Museum for several decades was effectively blocked because the researcher who had recorded the information had not resolved the succession of copyright before her death and her interests were shared by more than twenty relatives. Securing permission to use the material was simply too difficult and the projected publication was set aside. This is a significant consideration for both the Museum and ethnologists as the researchers of the 1970s and 1980s grow older.

With a profound interest in their intangible heritage, Aboriginal people have visited and corresponded with the Museum with increasing frequency over the past several decades. While the Museum has worked to resolve issues posed by the *Copyright Act* (Canada, 1985a) and prior contracts in order to make information available to First Nations, it has faced a corresponding challenge in finding ways to meet the requirement for public accountability and access to the information that is in the public domain, while acknowledging principles of lineage property where these exist and respecting the need to seclude sacred material. In addition to the diverse approaches to cosmology, epistemology and property within Aboriginal societies, these challenges are complicated by competing definitions of indigenous society, community, and the role of Aboriginal approaches to governance within the Canadian polity. The search for solutions driven by philosophical concerns and facilitated by consultation and exchange

of views, is constrained by the legislation and judicial decisions taken in other arenas of Canadian life. The *Constitution Act* (Canada 1982) defines the term 'Aboriginal,' and protects rights confirmed by treaty, but does not mention cultural diversity within the indigenous population beyond "Indian," "Métis," and "Inuit." The *Canadian Charter of Rights and Freedoms*, embedded in the *Constitution Act* but often cited separately, affirms the value of Aboriginal interests and respect for a multicultural environment without reference to competing ideologies or claims to resources.

The concept of the sacred, a term in popular discourse for the many approaches to cosmology in contemporary and historic Aboriginal societies, has had a pivotal role in bringing all of these issues to light. At the time much of the information was recorded, it was assumed to undergo a leveling process as it entered the Museum. The sacred and secluded, clothed in the secular garb of typescript, became potentially available to a greater public, to the degree allowed by the contracts and the *Copyright Act*. Museum material was excluded from the Canadian Government *Access to Information Act*, passed in the 1985, but the exclusion was based on the understanding that such materials were considered to be available through public repositories (Canada, 1985b: Section 68). At the same time the tapes, photographs, notes and manuscripts assembled by the Museum were caught up in the *Access to Information Act*'s fraternal twin, the *Privacy Act* (Canada, 1985c) which placed an embargo on the public distribution by the Government of personal information such as addresses and other, more intimate, information pertaining to the identity of persons as individuals. Neither the *Access to Information Act* nor the *Privacy Act* gave consideration to sacred material.

In the 1980s there was a groundswell of concern in Canada, as well as in the United States, about the acquisition and handling by museums of objects sacred to Aboriginal people. Much of the early concern was about human remains and Plains medicine bundles, but it was extended to other kinds of objects. The discussion came to a head in Canada when a Haudenosaunee false face mask was placed in the *Spirit Sings* Exhibition in Calgary in 1986. A Task Force on the relationship between First Peoples and Museums, jointly sponsored by the Assembly of First Nations, a political group, and the Canadian Museums Association, brought together museum professionals and representatives of Aboriginal communities and groups, and resulted in recommendations concerning repatriation, interpretation and access to collections (Canadian Museums Association and Assembly of First Nations, 1992). The Canadian Museum of Civilization adopted the

recommendations of the Task Force Report in principle in 1992, shortly after they were tabled, and other museums across Canada continue to be guided by them. The Canadian Museum of Civilization also developed a *Human Remains Policy*, adopted in 1991, a *Repatriation Policy*, adopted in 2001. These policies are complemented by the Canadian Museums Association Ethical Guidelines (Canadian Museums Association, 1999). In 1993 the Canadian Museum of Civilization inaugurated a Sacred Materials Project, which brought representatives of First Nations to the Museum each year to view objects associated with their history, identify materials that are sacred and/or require special care, perform ceremonial care, as required, and discuss repatriation. In discussions arising from review of sacred material various cultural perspectives on the sacred obviously had a central place, but decisions concerning the ultimate disposition of the material, considerations of epistemology and property also emerged as significant. A few specific examples illuminate these.

Plains Secret Society Tapes

An early visit under the Sacred Materials Project brought members of a Plains tribe to the Museum, who found tapes, recorded by a contractor several decades earlier, that contained information provided by members of a secret religious society. The visitors were concerned that the material had been recorded and expressed the intention to repatriate the tapes and destroy them. Had it gone forward the request would have generated a then unprecedented discussion with the Museum's Board of Trustees, whose approval for deaccession from the collection was required under the *Museums Act* (1990). However, after discussion within the community the tribal representatives decided not to proceed with the request. Subsequently the Museum was informed that an individual who had worked with the original contractor held the copyright under Canadian law, and later received a request from the original contractor to transfer the material to another member of the tribal group as an individual, not a member of the collective. The Museum retained the tapes. However, pending resolution of the issues of ownership of copyright, stewardship of the intangible heritage and ownership or stewardship of the tapes, the Museum's function is restricted to their physical preservation.

While the primary issue relating to the disposition of these tapes may appear to be the handling of material sacred to a particular group, the material has actually been impacted by a number of additional concepts that overlie one another and can be in competition with one another.

These include the preservation of knowledge in the public interest; the leveling of the sacred/secular boundary in a public institution; contractual agreements; the Copyright Act; family law; and the relationship between individual and collective interests.

Plains Medicine Bundle

Somewhat different issues arose in regard to a medicine bundle requested for repatriation by a Plains Aboriginal group in the late 1990s. Although this bundle was considered sacred and was clearly able to be repatriated under the Museum's *Repatriation Policy* (Canadian Museum of Civilization, 2001), an immediate difficulty presented itself in that the group requesting the return was not the group to whom the last holder of the bundle belonged. However, the person who had originated the bundle several generations earlier had belonged to the requesting group. The underlying issue here was epistemological: the cultural practice of vesting authority in knowledge held by specialists, knowledge that was considered inseparable from the object, but completely separable from ethnicity and day-to-day political authority. The Museum was informed that an agreement had been made within the communities concerned to transfer the knowledge required to use and care for the object from a person belonging to the originating group to a person belonging to the requesting group. The difficulty for the Museum lay in the fact that this was a group of people drawn together by a common interest and similar degrees of knowledge but with no formal role in either tribal government. Moreover, members of the group denied the authority of the tribal government(s) to make a decision in matters of this kind and the tribal government(s) concerned agreed with them. The Museum, however, was required to repatriate objects to a government or other corporate body, and ideally to a corporate body within the originating group.

In this instance the contractual agreement, which was such an uncertain tool in the case of the tapes, was helpful. The Museum agreed to have a lawyer draw up an agreement that set out both the issues and the proposed actions in clear language, showing the consent of the parties concerned without attributing an improper degree of authority to the tribal government, and the representatives of the Aboriginal groups agreed to secure the necessary signatures. While the discussions were being held in the communities, the Museum lent the medicine bundle to the requesting group. When the paperwork was received the Museum's Board of Trustees approved the transfer and the object was repatriated.

In the case of the Plains medicine bundle discussed above, the first level of agreement was entirely among the First Nations concerned, with the repatriation agreement between the Museum and the requesting First Nation predicated upon it. The object was transferred from the Museum to the requesting First Nation, but it was the reunion of that object with the associated knowledge that provided both the motive and impetus for the repatriation. The associated specialist knowledge had never been with the Museum, but from a Plains perspective the knowledge was integral with the object. In the case of a nineteenth century totem pole from northwestern British Columbia, issues surrounding the custody of the pole were resolved through discussions that led to the conceptual separation of the physical object from the non-material property vested in the narrative(s) and songs that had mandated its original creation.

Skeena River Totem Pole

In the 1990s the Museum approached the original owners of the Gambalch pole in an effort to resolve issues that had arisen around the original transfer of the pole to a private individual in the 1960s. The pole had since been replaced in the community by a new pole. While the representatives of the Gitxsan House were satisfied that the original pole should stay in the Museum, they wished to have it restored. An artist from the community was commissioned by the Museum to reconstruct a lost section of the pole. Members of the House attended the pole's public installation in the Museum's Grand Hall and a dinner hosted by the Museum. In this new transaction the House agreed that the Museum could hold the physical object in perpetuity, and the Museum agreed that the House retain the non-material property in the pole, including the narratives, songs and chiefly names, as well as the right to have a pole carved again incorporating these privileges. In acquiring the pole, the Museum had never claimed the non-material privileges, focusing only on the pole that was their material expression. The new agreement highlighted their existence and brought Western and Gitxsan concepts of property into a complementary relationship.

Treaties

A treaty is a form of contract among the Government of Canada, the Government of the relevant province or territory, and the First Nation. It is far less susceptible to change than most contractual arrangements. Aspects of modern treaties with First Nations are protected under Section 35 (1)

of the *Constitution Act*. Once ratified in Parliament, treaties can supersede other competing forms of legislation. The *Nisga'a Final Agreement* (Canada, British Columbia and Nisga'a Nation, 1998), a treaty between the Nisga'a of northwestern British Columbia and the governments of Canada and British Columbia, which came into effect on May 11, 2000, provided for the repatriation by the Museum to the Nisga'a of approximately 100 objects, most associated with shamanic practice. It provided, as well, for the sharing through custodial agreements by the Nisga'a and the Museum of possession of the approximately 300 objects of Nisga'a origin remaining with the Museum. These are foreseen to rotate between the Ottawa Valley and the Nass Valley on a timetable that allows both the Museum and the Nisga'a to develop adequate programs, so that at any one time some of the material is with the Nisga'a and some with the Museum. Section 18 of the *Nisga'a Final Agreement* provides for the application of Nisga'a *ayuuuk* (traditional laws and practice), as well as normal museological practice, to objects in the public domain. While this has not yet been implemented and the practicalities have not yet been explored, in discussion the Nisga'a noted their desire to develop exhibit and teaching formats that recognized continuing lineage affiliation with particular objects.

Knowledge and the Public Interest

The Preamble to the *Nisga'a Final Agreement*, includes the following statement,

Whereas the Parties acknowledge the entitlement of the *Simigat* and *Sigidimhaanak* (hereditary chiefs and matriarchs) to tell their *Adaawak* (oral histories) relating to their *Ango'oskw* (family hunting, fishing, and gathering territories) in accordance with the *Ayuuk* (Nisga'a traditional laws and practices)

For the Nisga'a this statement was an essential affirmation in the face of a British Columbia court's denial of the validity of *adaawak* in the original *Delgamuukw* case (McEachern, 1991), and in compelling memory of a period between 1884 and 1951 when the feasts that provided the necessary context for the telling of such histories were forbidden by Canadian law. The *adaawak*, and the telling of *adaawak*, have everything to do with Nisga'a lands.

The ceremony to initial the *Nisga'a Final Agreement* on August 4, 1998 brought together in the Nisga'a community of New Aiyansh representatives of Canada, British Columbia and the Nisga'a Government as well as Nisga'a

and non-Nisga'a people. The event was carried live on the Canadian television program, *Newsworld*. Rod Robinson, a former President of the Nisga'a Tribal Council, who held the distinguished title, Mene-eskw, and had a very substantial understanding of the meaning and content of *ayuuuk*, chose to provide the context for the ceremony by reading from the Book of Deuteronomy (Holy Bible King James Version: Chapter 6, verse 3).

Hear therefore, O Israel, and observe to do it [i.e. obey the commandments of God]; that it may be well with thee, and that ye may increase mightily, as the Lord God of thy fathers hath promised thee, in the land that floweth with milk and honey.

In explicating the meaning of this passage for his audience, Dr. Robinson emphasized that in this instance the land of milk and honey was the Nass Valley.

Considered together, the Preface to the *Nisga'a Final Agreement* and Chief Mene-eskw's invocation of the *Book of Deuteronomy* at the initialing ceremony suggest some of the complexities of the contemporary cultural heritage of indigenous people in Canada. The tendency in international discussions and conventions to refer to indigenous societies as culturally and politically monolithic is in tension with the diversity of the cultural influences and political affiliations of the day-to-day lives of people of Aboriginal ancestry.

The parameters of the term, "indigenous group," are difficult to define in Canada without reference to specific legal entities. Criteria of inclusion have been impacted historically by various pieces of legislation and court decisions, including the 1876 *Indian Act* (Canada, 1876), which provided legal status to some but not others, *Bill C-31 An Act to Amend the Indian Act* (Canada, 1985d), which provided for the restoration of legal status to some who had lost it through marriage, the Supreme Court decision in the Powley case (Supreme Court of Canada, 2003), which confirmed rights to be accorded to Métis, and modern treaties which define the structure of particular First Nations governments and the processes for determining enrollment. None of these collectives is likely to include all persons of Aboriginal ancestry who may have a personal interest in or identify with Aboriginal intangible heritage; yet the Museum's mandate as a national museum may be held to apply precisely to this larger group.

The deceptively simple term, "community," is also difficult to define. While every Canadian city sits on the traditional lands of one or another Aboriginal society, most centres of First Nations government are on reserves

in rural localities. Nonetheless, over 50% of Aboriginal people in Canada now live in cities. Bridging city and country will continue to be a task for Aboriginal societies for some time to come. Also at issue is the nature of the group. In the case of sacred information, the repatriation several years ago of Midewiwin material by a museum in another part of Canada highlighted the potentially competing interests of the residents of the locality from which the information came and an international religious organization that claimed spiritual jurisdiction but was neither located in nor directed from within the originating community (Petten, 2002).

No matter how 'indigenous group' and 'community' are defined, any group that assumes a proprietary interest in intangible heritage may now have to be constituted as a legal entity. During the 1990s a former Field Contracts Programme researcher attempted to cede his copyright in material recorded under contract with the Museum in the late 1960s to the Aboriginal group from which the information had come, without reference to a tribal government or other body. The action was found to be impossible to implement legally.

In considering the proprietary implications of heritage, Michael Brown notes (2003: 3),

the idea that heritage, both tangible and intangible, is a form of group property that must be returned to its place of origin, much as the excavated physical remains of Aboriginal Australians or Native Americans are repatriated from the museums and laboratories in which they have been held.

This concept has run through discussions of repatriation and identity. Recent, unconcluded, treaty discussions have invoked an obligation on the part of the Government of Canada to protect the First Nation at the treaty table from assimilative influences and have defined any aspect of the society's cultural practice as protected heritage in which the First Nation has a proprietary interest. In large part requests of this kind are precipitated by the sheer force of the pressures acting on Aboriginal people, with local economies stagnant or in decline, fifty of the fifty-three Aboriginal languages in Canada endangered, and families and entire societies struggling with issues of identity left from decades of residential schooling and the outlawing of fundamental institutions through the first half of the twentieth century. The claim to heritage as inviolable group property is similar to the concept of Total Cultural Heritage, also discussed by Michael Brown (2003: 36). This concept has provided the underlying motive for some repatriation

requests, but on a day-to-day basis individual instances are determined by more mundane and familiar legislation governing copyright, the common law of property and family law.

Much of the information preserved by the Museum was assembled under a diametrically divergent concept, which Lawrence Lessig, cited by Michael Brown (2003: 5), has characterized as the "intellectual commons." The intellectual commons includes writings in the public domain. Lessig (2001: 19-20) writes, "In most cases the commons is a resource to which anyone within the relevant community has a right without obtaining the permission of anyone else." However, there are difficulties with the application of the idea of the intellectual commons to ethnographic field notes. The analytical and editing processes that prepare information for publication are also filtering processes that often make the personal more general, clarify what could be misinterpreted, eliminate apparent disconnections between the statement of a particular moment and information that is shared, but unspoken, between the participants in the information gathering process. These issues generally underlie the concern of scholars to restrict the distribution of original field tapes and notes.

As well, people with differently structured epistemologies may not perceive the same information to be legitimately accessible in common. Information is seldom recorded in discrete categories. What is sacred and secular, secluded and public may be gathered together and reside in the same body of notes or on the same tape. While this is often a natural and inevitable feature of the discourse between ethnologist and Aboriginal specialist, it becomes a difficult issue when the wide dissemination of unedited tapes or transcripts of their conversation is contemplated. The openness of collected information concerning certain topics, such as the Midewiwin society to the view of any who care to do research is anathema to those Aboriginal people who believe that the information should be transferred only to those who qualify and in appropriate steps.

Although the genres of discourse generated historically by Aboriginal and European societies are not completely incompatible, neither are they fully congruent. In the translation from the spoken or sung word to text or audiotape, often cited by contemporary academics as a critical alienation from the original context, some of the original meaning may have been lost. As well, ethnographic information is often preserved in a format that Aboriginal people without academic training may not perceive to be accessible. This poses challenges both for dissemination and the reintegration of the information into Aboriginal life.

These are real and vital issues. However, the interest demonstrated by Aboriginal people who visit and correspond with the Museum indicates that the information preserved through writing retains a high value for Aboriginal people of the present day and issues of formatting can be overcome. Virtually all information recorded in the past can have a bearing on issues relating to Aboriginal rights and title, and information about families and technologies that the ethnographer perceived to have a general interest in the 1920s may now be of vital personal interest to contemporary families and to the history of the community at large.

Genre and accessibility may be linked in other, subtle ways that provide other challenges in the preservation of intangible heritage. Within the community, the direct agency and limited duration of an oral performance help to protect the proprietary interest of the narrator or the lineage group, if a proprietary interest exists. The shift in context of presentation to a public institution and from oral to written discourse, can present a challenge to the customary handling of proprietary interest. As the Museum worked with First Nations representatives in the 1990s and early 2000s to develop agreements covering new initiatives ranging from repatriation to the development of exhibitions that attempted to provide for the interests of all parties, it became evident that, while it was possible to provide for reviews, approvals and customary proprietary interests, the public nature of the institution and its goals were to some degree inescapable. Whatever is presented through exhibitions, for example, effectively enters the public domain and remains as part of the Museum's history and its accounting for its expenditure of public monies. It may be possible to maintain Aboriginal proprietary interest in archived material, but it is impossible for the information contained in written documents to dissipate in the way the memory of those who witness an oral or dance performance dissipates, leaving the capacity to regenerate it solely with its originator.

Two potential, and potentially very difficult, challenges to the Museum's mandate as a public institution are the possible exclusion of Canadians from rights that they may have as citizens and the proposals to destroy preserved information. Acceding to a request for the repatriation of information may require the transfer of jurisdiction over the material to indigenous governance structures that may not be democratic, with the material subsequently neither in public repositories nor subject to *Access to Information* legislation. For example the *Access to Information Act* does not cover information held by Aboriginal Governments through treaty. While a number of contemporary writers write favorably of this (Geotze 2005: 250)

and it is a discussion point in certain treaty negotiations, it is hazardous to assume that all current members or descendants of an Aboriginal society are in agreement with traditional forms of disseminating knowledge.

A related point is the prospect of censorship, which, in its turn is tied to the idea of cultural privacy. George E. Marcus (1998: 237) writes that:

Western liberal societies must learn to think of themselves in multi-or-transcultural terms qualitatively and to a degree they have never done before. The problem is that there is probably no discourse of general principle, universal truth or sure procedure – all characteristic of and dear to liberal thought – that will effect such a change.

An even more serious challenge to the values embedded in the Museum's national role is the destruction of intangible heritage of the kind originally contemplated in the matter of the Plains secret society tapes. Within the academic community there is a lively debate about the loss of knowledge to posterity posed by the repatriation and re-interment of human remains and associated burial goods, a practice now accepted by the Museum (Canadian Museum of Civilization, 1991) and by virtually all museums in North America. While this practice is supported by the fact that the inviolability of graves has resonance across cultural boundaries, a request to repatriate with intent to destroy the only existing record of a body of intangible heritage would be less likely to find broad public support and would pose a significant challenge to the mandate to preserve.

The Issues in International Discussion

The fundamental issues relating to intangible cultural heritage are of worldwide concern, as the development of UNESCO's 2006 *Convention for the Safeguarding of Intangible Cultural Heritage* suggests. As of May 15, 2014 the *Convention* had been approved, accepted or ratified by 148 states, although Canada was not among them. The *Convention for the Safeguarding of Intangible Cultural Heritage* is only one of several international agreements concluded or in preparation that implicate the preservation and use of intangible cultural heritage and/or genetic resources. Canada was an early signatory to the *Convention on Biological Diversity*; Article 8j of this convention specifically concerns the maintenance, promotion and equitable sharing of traditional knowledge, innovations and practices. Canada has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples on November 12, 2010. For several years the World Intellectual Property Organization (WIPO) has been working on global issues relating

to traditional cultural expressions. The Convention on Biological Diversity also has standing international committees reporting on the progress of ongoing discussions.

The Convention on Biological Diversity has generated the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization*, while WIPO has commissioned interim reports and publications (Skydstrup, 2006; Torsen and Anderson, 2010). WIPO is working toward an international treaty, but the varied situations and perspectives of the participants and the complexity of the issues make this a difficult task. Participating countries, including Canada, come to the table with different concepts of knowledge and society and speak to very different experiences of colonialism and the effects of past and current industrial development. Nations in which the population is small, with relatively few component ethnic groups may have a different perspective from large plural societies such as Australia, Canada and the United States on the practicalities of implementing a binding agreement. Major issues cross-cutting current separate reports on traditional knowledge and traditional cultural expressions to be considered at the meeting in Geneva of the 27th session of WIPO's Intergovernmental Committee on Intellectual property and Genetic Resources and Traditional Cultural Expressions, held March 24 to April 4, 2014, were "(1) the meaning of 'traditional'; (2) the beneficiaries of protection, in particular, the role of states or 'national entities'; (3) the nature of rights, including the meanings of 'misappropriation' and 'misuse'; and (4) the treatment of 'publicly available and/or widely diffused' TK [Traditional Knowledge] and TCEs [Traditional Cultural Expressions]" (McCook, 2014). These are fundamental issues still present after years of discussion. That there are tensions running through these discussions is unsurprising. A second on-line report (Third World Network, 2014) stated, "Even though the WIPO Assembly mandate is to conclude an international legal instrument, there is no consensus regarding the legal nature of the instrument/s on TK and TCE. Developing countries demand a treaty for the protection of TK and TCE while developed countries are yet to commit to a legally binding treaty." The meeting was temporarily adjourned on the first day for focused discussion on this point (Saez, 2014). Following the two weeks of meetings the Intergovernmental Committee (IGC) forwarded revised draft articles on traditional cultural property and traditional cultural expressions (World Intellectual Property Organization, 2014) to the WIPO General Assembly, with a plan for further discussion of cross-cutting issues at a meeting of the IGC in July 2014. At

the July 2014 meeting the IGC will determine whether to recommend that the WIPO General Assembly convene a diplomatic conference to facilitate discussion of a treaty (Biodiversity Policy and Practice, April 4, 2014).

The WIPO deliberations have implications for the Museum's practice. Still heavily bracketed, indicating that they are some way from consensus, the revised Draft Articles. Paragraph 6.3 states that [Member States]/[Contracting Parties] may adopt appropriate limitations or exceptions, in accordance with national law, for... (b) preservation, display, research and presentation in archives, libraries, museums or cultural institutions, for non-commercial heritage or other purposes in the public interest." Every museum administrator will likely focus with some concern on the term, "non-commercial," in this paragraph. Thirty-five years ago exhibitions and other projects developed by national memory institutions in the public interest could be considered non-commercial; however, all museums, certainly all Canadian museums, are now tasked with a significant measure of cost-recovery, and the line between "non-commercial" and "commercial" grows increasingly faint.

Apart from concerns about commerce, paragraph 6.3 would appear to ensure the Museum's continuing right to carry out its mandate in regard to the Aboriginal intangible cultural heritage it preserves, although this appears to be conceived in rather passive terms and does not begin to touch on the issues which the Museum has addressed in the past two decades. However, the Museum's mandate has now changed, and, with it, the focus and cadre of its expertise.

The Canadian Museum of History

The *Canadian Museum of History Act* (Bill C-7), which received Royal Assent on December 12, 2013, changed the name of the Museum, and arguably narrowed the mandate. The purpose of the Museum has shifted from increasing "interest in, knowledge and critical understanding of and appreciation and respect for human cultural achievements and human behavior" and developing a collection with "special but not exclusive reference to Canada" to enhancing "Canadians' knowledge, understanding and appreciation of events, experiences, people and objects that reflect and have shaped Canada's history and identity," as well as "Canadians' awareness of world history and cultures." The focus is now on history, defined in a relatively narrow way. To implement the new mandate, the Museum has undertaken to replace the existing Canada Hall with a large exhibition

devoted to the development of Canada as a nation (Blais, 2014: 14-15), timed to coincide with the 150th anniversary of Confederation, and an internal reorganization of staff, including curatorial staff.

The assembled record of Aboriginal intangible cultural heritage in the Museum may be the largest collection in Canada and is certainly the only collection of national scope. Over the past twenty-five years research, consultation and interpretation relating to Aboriginal intangible cultural heritage, as well as to the substantial collections of Aboriginal artifacts, have been carried out by a staff of curators with graduate training in Ethnology and related disciplines. In 2009 there were ten staff members with graduate training in Ethnology or Aboriginal art history, including the Director of Ethnology and Cultural Studies. All had substantial experience in working with Aboriginal people in regard to both research and individual and community interest in the Museum's holdings. As well, all curators had been engaged since at least 1992 in consultation with Aboriginal people in the development of exhibitions. Four of the ten were Aboriginal. Between August, 2009 and June, 2014, six either retired or moved to work in other institutions, including the Director of Ethnology and Cultural Studies, four curators of ethnology and one art historian. None has been replaced.

There has been substantial debate about the change in the Museum's mandate both prior to and after the passing of Bill C-7, with those opposed expressing the strong suspicion that it constituted a part of a plan by the Conservative government to redirect public understanding of history into channels in which the military, the historic connection with Britain, and the development of the Canadian polity were emphasized at the expense of broader societal issues normally addressed by historians, let alone ethnologists. As Frenette (2014: 59-60) has pointed out, "In recent decades the practice and study of history has become multidimensional, taking into consideration the experience of many different groups and incorporating perspectives that sometimes clash. Historians now study a range of topics: indigenous peoples, colonization, settlement, agriculture, natural resources, industrialization, gender relations, sexuality, migration patterns, ethno-cultural cooperation and conflict." A critical indicator of the Museum's position will be the character of the exhibition opening in the former Canada Hall in 2017, and the degree to which it accommodates the silenced histories (Lorena, 2009: 152) that are legion, particularly in colonial countries. However, the central issue in relation to intangible cultural heritage arising from the revised mandate and the reorganization of research is how the Museum's work in this area can be continued with an

overall institutional purpose that has been directed into narrower channels and a much reduced staff of curators with expertise in contemporary Aboriginal culture and issues.

Current literature suggests that the requirement for informed, sensitive participation by the Museum in a dynamic process of communication with Aboriginal societies in relation to intangible cultural heritage is unlikely to fade. In the light of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, Blake (2009:64) has written of the necessary shift in emphasis to partnership relations between states and communities in the safeguarding of intangible cultural heritage. Kreps (2009: 194) has described the increasing recognition in Western museums of indigenous approaches to curation, understanding that has grown through collaboration between museum curators and originating communities, and states that recognition of this and the importance of intangible cultural heritage “mark[s] a shift in museological thinking and practice from a focus on objects and material culture to a focus on people and their cultural expressions.” Writing of Te Papa, a national museum in New Zealand that is explicitly bi-cultural, Maori and non-Maori, Alivizatou (2012: 51) states, “The museum is quite distinct in the sense that it aims to tell stories rather than only showcase collections, and in doing so invites multiple perspectives, readings, and understandings of the national past, heritage, and tradition.” An attempt to draw the highly diverse population of Canada into recognition and acceptance of a single historical narrative runs against this stream.

Conclusion

The legacy of Aboriginal intangible cultural heritage generated by Edward Sapir’s program of anthropological research and its successors within the national museum is of vital interest to Aboriginal people in Canada today. The broad public interest that was assumed to underlie the recording and preservation of Aboriginal cultural heritage has proved to encompass a dynamic range of epistemologies, religious beliefs, and political entities that bring highly diverse and sometimes competing perspectives on ‘the public good.’ As the Canadian Museum of Civilization, Canada’s national museum of human history engaged in a dialogue between the original philosophical basis for its collection and contemporary issues and concerns regarding preservation, interpretation and access. Whether the Canadian Museum of History is empowered by a vision that can sustain that engagement remains to be seen.

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