

## Ethical Guidance for Access and Benefit-Sharing

### *Implications for Reconciliation*

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#### Abstract

This chapter offers an ethical grounding for reframing access and benefit-sharing (ABS) as a tool for a more just social, economic, ecological and cultural order in Canada. The chapter complements and expands legal and regulatory approaches to ABS by examining how the established Canadian context for research ethics can inform the national and international framework for ABS, particularly as related to the rights, responsibilities and interests of Aboriginal peoples, their traditional ecological resources and their knowledge systems, amid a phase of national reconciliation in Canada. Examination of ethical codes and guidelines that are founded in a relational approach shed light on how responsibilities are interlinked with rights to knowledge and genetic resources. The chapter suggests an Aboriginal-sensitive ABS regime in Canada is a logical tool for facilitating right relationships through shared understandings between different worldviews and the modes of ethical reasoning that they embody.

*Modern science's great strength, its ability to focus on a part of nature and apply analytical tools and techniques, is also its fatal weakness. By being focused, science routinely shatters and fragments, thereby obliterating context, connections and interactions... Knowledge without spirit is soulless, lacking in love, humility and responsibility that must guide and constrain its application. Knowledge embedded in Indigenous languages and cultures will never be duplicated by science, so like endangered plants and animals, must be protected and encouraged to flourish.*

– Turtle Lodge Declaration, 2017

## INTRODUCTION: RATIONALE AND GOALS

The discourse on access and benefit-sharing (ABS) over biological/genetic resources and associated Indigenous traditional knowledge in Canada has largely focused on legal and policy solutions to address a myriad of jurisdictional and cross-cultural issues. Rights, consent, fairness and equity are dominant themes in ownership, access and fair use discussions. All of these themes have ethical dimensions, but ethics has been more implicit than explicit in much of the ABS discourse to date (Oguamanam, Chapter 11).

When explicit, ethics often has surfaced in morally-judgemental and politically potent ways that elicit defensive reactions, further polarizing the parties and diminishing the principles in question. Wikipedia's entry on 'bioprospecting' provides examples of 'famous cases' over the last two decades where bioprospecting proponents have been accused of biopiracy, cultural misappropriation or unauthorized commodification of Indigenous cultural knowledge and traditional resources (e.g. ICBG-Maya project in Mexico, Rosy periwinkle in Madagascar, the Neem tree in India, Hoodia in South Africa and more).<sup>1</sup>

Spotlighting bioprospecting and biopiracy dilemmas has dramatically increased global public awareness, and catalyzed tremendous opportunity for debate, reflection and response at individual, institutional and systemic levels, from local communities to international fora. A case in point is the International Cooperative Biodiversity Group (ICBG-Maya) project initiated by Drs. Brent and Elois Ann Berlin at University of Georgia in 1998–2001 (Berlin & Berlin, 2004; Feinholz-Klip et al. 2009). ICBG-Maya research involved documenting Chiapas biodiversity and the ethnobotanical knowledge of the Mayan Indigenous peoples of Mexico as a basis for exploring drug discovery. The project provoked vehement international controversy around issues of consent and was eventually cancelled by the funder, sending waves of unrest throughout the ethnobiology community. However, as the ICBG-Maya experience illustrated, applying a predominantly Eurocentric rights-based approach to resolving nuanced ethical dilemmas encourages a social and political mindset of 'blaming and shaming' and sets the stage for 'winners and losers' depending on whose rights prevail. The full potential of considering and responding in concrete and constructive ways to the ethical dimensions of the dilemmas posed by cases such as the ICBG-Maya project has yet to be realized.

A more explicit consideration of ethics that is predicated on *relationships* and acknowledges an inextricable connection of rights to *responsibilities* offers a different opportunity – one that is particularly timely and relevant to ABS within Canada, amid a national commitment by the federal government to 'reconciliation.' This commitment was articulated in Prime Minister Justin Trudeau's 2015 statement on the report and recommendations of the Truth and Reconciliation Commission

(TRC). Trudeau remarked that, ‘it is time to act, without delay, to advance the process of reconciliation, and rebuild Canada’s relationship with First Nations, Inuit, and Métis Peoples based on rights, respect, cooperation, and the standards of the United Nations Declaration on the Rights of Indigenous peoples’ (Liberal Party of Canada, 2015).

As highlighted by Perron-Welch and Oguamanam in Chapter 6 of this volume, the federal government recently issued ‘Principles Respecting the Government of Canada’s Relationship with Indigenous peoples’ (Department of Justice, 2017). These ten principles are described as a ‘significant move away from the status quo to a fundamental change in the relationship with Indigenous peoples’, and ‘a step to building meaning into a renewed relationship.’

The sentiments and intentions expressed are unquestionably vital to a conciliatory way forward between Indigenous peoples and federal, provincial and territorial governments in Canada. However, what these sentiments really mean has yet to be seen and felt. According to Professor Mark Selman, reconciliation has been treated by both government and business as mainly a legal, political and economic challenge, with community protocols regarded as important relational ‘hoops to jump through’ to meet ‘strategic objectives.’ He argues for attention to the ‘significant ethical dimension’ which requires ‘both sides learning to see each other’s reasons for coming to judgement about what is good, right, wise or equitable’ (Selman, 2016).

There are similar gaps in ABS efforts to sufficiently recognize ethical dimensions beyond legal, political and economic systems when Indigenous cultural knowledge and genetic resources are associated. This chapter attempts to respond to those gaps by taking an applied ethics approach to ABS, drawing on contemporary theory and practice from both descriptive ethics (e.g. ethical codes) and relational ethics (i.e. an emphasis on the nature and significance of relationship).

The goal is to offer timely and relevant contributions to ‘Aboriginal-sensitive ABS’ in a reconciliation framework within Canada. This is achieved through selectively highlighting established ethical codes and guidelines for research involving Indigenous peoples that are founded in a *relational* approach. In particular, this chapter examines two relevant domains for ABS: (i) national ethics policy for academic research involving Indigenous peoples in Canada and (ii) international ethical standards in the discipline of Ethnobiology. It also describes past efforts to inform the national ABS context through the development of voluntary ABS guidance for accessing traditional knowledge associated with biological/genetic resources (Bannister, 2008).

The commentary herein is intended to complement and expand – not replace – legal and regulatory approaches to ABS. Grounding ABS more explicitly in applied ethics not only builds on a legacy of learning and ethics policy development in Canada, it increases the potential for ABS to become a tool for a more just social, economic, ecological and cultural order in Canada (Hodges & Langford, Chapter 2).

## RESEARCH ETHICS IN CANADA: CIHR GUIDELINES AND TCPS2

Trudeau's 2015 statement and the 2017 Principles mentioned above are not just about rights; they are about *right relationships*, which is the heart of the ethical approach offered in this chapter. In general, ethics can be understood as how we treat one another, or how we relate to one another. Ethics derives from the ancient Greek *ethos* referring to character or disposition. It has many meanings today, from social uses as a synonym for morality, to formal fields of inquiry within philosophy, to many practical applications of ethical codes and guidelines.

Ethics emerged as an applied academic discipline in the 1960–70s. This was largely catalyzed by unsettling questions raised among scholars and professionals regarding the controversial involvement of their disciplines in technology, sustainable development, human and environmental health, and violations of human rights (Hardison & Bannister, 2011). The institutionalization of ethics as formal research policy based on ethical guidelines is also a relatively recent phenomenon. In Canadian universities, the earliest policies for governing research involving humans date back to the 1970s for social sciences and humanities (SSHRC, 1977) and the 1980s for medical research (MRC, 1987). However, these early guidelines were seen to have little influence, and most researchers did not even know the guidelines existed (Rocher, 1999).

In 1994, focused efforts were initiated to develop a single unified policy for all Canadian research involving humans. There was notable tension in the policy-making process as a fine balance was attempted between meeting the demands of a diverse spectrum of research while ensuring the protection of human participants in research and avoiding paternalism (McDonald, 2009). The first version was established in 1998 as the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS) (Oguamanam, Chapter 11). However, the section on research involving Indigenous peoples was left in abeyance with explicit recognition that the section was based largely on publicly-available information and insufficient discussions had taken place with representatives of Indigenous peoples or researchers involved in such work (McDonald, 2009).

To address the pressing need for guidance, the Canadian Institutes for Health Research (CIHR) established a working group and process to consult with Indigenous peoples and researchers in Canada and to inform development of the CIHR Guidelines for Health Research Involving Aboriginal People (2007).<sup>2</sup> The CIHR Guidelines marked a turn in Canada, offering the first national policy with detailed philosophical grounding and practical guidance for academic researchers working in an Indigenous context. The CIHR Guidelines remained in place until 2010 when they were superseded by a new version of the TCPS (i.e. TCPS2) that contained a twenty-eight-page chapter on 'Research Involving the First Nations, Inuit and Métis Peoples of Canada.' A revised version of the TCPS2 was adopted in 2014 with no changes to this chapter.<sup>3</sup>

Ethics policy expert, Dr. Marlene Brant-Castellano (Mohawk of the Bay of Quinte Band), who chaired the technical advisory committee for TCPS2 Chapter 9, acknowledged tensions inherent in the colonial nature of the TCPS2 language used to codify Indigenous ethical principles. Based on her involvement with the policy-making process, she reframed key terminology to help bridge the policy language used with applications in an Indigenous context. For example, where the TCPS2 uses ‘respect for human dignity,’ Indigenous articulations may include ‘spiritual responsibilities to maintain right relationships’ (Brant-Castellano, 2008, 23). She also shared a more elaborate translation offered by Anishinabek Elder George Courchene, in the context of relationships between researchers and Aboriginal participants in research (Brant-Castellano, 2008, 23):

- **Kindness** implies respect for the dignity of the others involved, not dominating or pressing our own agenda at the others’ expense;
- **Honesty** involves communicating our principles and intentions as the basis for relationship and ensuring free, informed consent for actions taken;
- **Sharing** recognizes that the common good requires give and take by all, with respect for the different gifts that each party brings; and
- **Strength** is courage to stand firm for our principles; in some cases, strength is resilience, as in the capacity to bend to circumstance while holding on to important values.

Brant-Castellano (2008, 23) concluded: ‘[t]ogether, these virtues balance one another to maintain respect for self and others. All parties to a relationship are responsible for maintaining this ethical balance. While words to describe relationships differ, it is possible to see the harmony between the ethics of ‘respect for human dignity’ endorsed by researchers and the ethics of ‘right relationships’ embodied in First Nation, Inuit and Métis traditional teachings’.

Both CIHR Guidelines and TCPS2 contain explicit support for cultural protocols, customs, and community level guidelines and codes of practice. It is considered the researcher’s responsibility to be informed, and to respect these. Article 9.8 of the TCPS2 requires that any inconsistencies between the TCPS2 and community custom are to be identified and addressed in advance of initiating the research, or as they arise. Moreover, Article 9.8 states that the ‘absence, or perceived absence,’ of formally articulated community research codes or guidelines ‘does not relieve the researcher of the obligation to seek community engagement in order to identify local customs and codes of research practice’ (Burelli, Chapter 13). It is in everyone’s best interest to deepen our individual and collective understandings of how to appropriately engage with communities and clarify cultural expectations in research.

The CIHR Guidelines and TCPS2 were both indirectly influenced by a concurrent international process to develop a code of ethics in ethnobiology, led by the International Society of Ethnobiology (ISE). For transparency, the connection

between these three policy initiatives is through participation of the author as a member of the respective working groups and advisory committees for each process, namely: as a member of the Aboriginal Ethics Working Group (AEWG) from 2004–07 which developed the CIHR Guidelines; a member of the Panel on Research Ethics-Technical Advisory Committee on Aboriginal Research (PRE-TACAR) from 2005–08 which advised on TCPS2 Chapter 9 (2008); and as Chair of the ISE Ethics Program from 2004–present and facilitator of the ISE Code of Ethics development process. A brief history of the ISE Code of Ethics is provided below.

#### ETHICS IN ETHNOBIOLOGY: ISE CODE OF ETHICS

Ethnobiologists often act as intermediaries between Indigenous and local communities on the one hand, and the apparatus of biocultural diversity research, conservation and development, on the other. As a discipline, ethnobiology is considered over a century old, but in the last couple of decades public interest in Indigenous cultures and plant-based resources has put ethnobiology under a brighter light.

A corollary of their prominent role in biocultural brokering is that ethnobiologists are often in the precarious position of unwittingly facilitating cultural appropriation. The Maya-ICGB provides a case in point. It was with the intention of facing this double-edged role with eyes wide open that the late Dr. Darrell Posey led a charge in the early 1990s to create a Code of Ethics for ethnobiologists worldwide through the International Society of Ethnobiology, (ISE), which he co-founded.

The Code of Ethics for ethnobiologists was ten years in the making. It was rooted in the Declaration of Belem (1998), which resulted from the ISE's first international congress and is considered the first international declaration to explicitly recognize the expertise of Indigenous knowledge holders and call for fair compensation for use of their cultural knowledge and biological resources (Posey & Dutfield, 1996). Posey envisioned subsequent congresses as the vehicle to complete the code of ethics and formalize a position in support of Indigenous intellectual property rights (IPRs) and just compensation of Indigenous knowledge holders (Posey, 1990). He called on ethnobiologists to 'take the intellectual lead' and appropriate actions 'toward the development of a new ethic that serves as a model for other disciplines' (Posey, 1990: 97–8).

Until his death in 2001, Posey led an extensive international process involving hundreds of people of diverse cultural and professional backgrounds from across the world to create the ISE Code of Ethics. It was unanimously adopted by ISE members in 2006, with additions in 2008. It remains in place to this day, available in eight languages, and with a commitment to compliance as a condition of ISE membership.<sup>4</sup> A number of other ethnobiology societies and environmental organizations around the world have formally adopted the ISE Code of Ethics or used it as a model to develop their own.

The ISE Code of Ethics offers both aspirational and concrete guidance through 17 principles and 12 practical guidelines and compels us to interpret and implement these *in relationship with* those with whom we are working. What sets the ISE Code of Ethics apart from other guidance is explicit emphasis on Indigenous proprietary rights, cultural responsibilities and interrelationships within a framework of *mindfulness* – a framework offered by an Indigenous elder from Aotearoa (New Zealand) well before mindfulness became a popularized social and educational phenomenon in North America. Mindfulness is described in the ISE Code of Ethics (2016) as invoking ‘an obligation to be fully aware of one’s knowing and unknowing, doing and undoing, action and inaction.’

The 17 principles underscore a range of deeper considerations needed to give expression to both *rights* of self-determination and *responsibilities* of care to past, present and future ancestors and to other sentient beings through stewardship of lands, airways, and waterways. It is in this twinning of rights with responsibilities that are derived from Indigenous worldviews and Indigenous articulations of natural law (Borrows 2002, 2010; Napoleon, 2012; Battiste, 2016; Borrows and Coyle, 2017) that the understanding of a relational biocultural ethic more fully emerges.<sup>5</sup>

As noted in Bannister and Solomon (2009: 158), the ISE Code of Ethics underscores ‘layers of duty in research that compel researchers to be concerned about the dignity and autonomy not only of *individuals*, but also of *collectives* or *groups*.’ It extends the concept of research ethics ‘beyond just humans to the surrounding environment upon which human well-being depends and includes rights and responsibilities to the living and non-living, and extends into past, present and future.’ Researchers are obliged to consider larger temporal scales (years, decades or generations) for projects and more comprehensive resources (time, funds) to be able to put in place what is needed to understand and meet mutual expectations around the research – such as defining goals, obtaining consent, sharing outcomes and benefits in meaningful and useful forms, and adequately protecting community knowledge and property from misrepresentation or misappropriation.

Some examples of elements in the ISE Code of Ethics that encourage a relational biocultural ethic include:

- Explicit acknowledgement of Indigenous prior proprietary rights and cultural responsibilities;
- Encouragement and commitment to supporting active community participation in all stages of research from inception to implementation;
- Promotion of the concept of ‘educated prior informed consent,’ which recognizes informed consent as an ongoing process requiring an educative component that employs bilingual and intercultural education methods and tools to ensure understanding by all parties involved;
- Support for the precautionary principle through promoting proactive, anticipatory action to identify and to prevent biological or cultural harms

- resulting from research activities or outcomes, including publications that facilitate cultural knowledge appropriation;
- An expectation that researchers incorporate reciprocity, mutual benefit and equitable sharing in ways that are culturally appropriate and consistent with the wishes of the community involved;
  - Conceptualizing research as a cycle of continuous and ongoing communication and interaction, which should not be initiated unless there is reasonable assurance that all stages can be completed;
  - Support to Indigenous communities in undertaking their own research based on their own epistemologies and methodologies is a priority;
  - Underscoring the importance of acknowledgement and due credit in accordance with community preferences for all agreed outcomes (e.g. publications, educational materials, images) including co-authorship when appropriate. This extends equally to secondary or downstream uses and applications, requiring researchers to ensure the connections to original sources of knowledge and resources are maintained in the public record;
  - An expectation to conduct research in the local language to the degree possible, which may involve language fluency or employment of interpreters;
  - An expectation that researchers have a working understanding of the local context prior to entering into research relationships with a community, which includes knowledge of, and willingness to comply with, local governance systems, cultural laws and protocols, social customs and etiquette.

#### ETHICAL GUIDANCE FOR ACCESS AND BENEFIT-SHARING IN CANADA

Inspired in part by the ISE Code of Ethics, the creation of a national code of conduct to provide voluntary ABS guidance regarding best practices for researchers was proposed several years ago. In a report commissioned by Environment Canada prior to the Nagoya Protocol, Bannister and Haddad (2006) mapped out the policy landscape and recommended how to navigate and complement existing research ethics policies and structures with a national ABS code of conduct in mind. As described in Bannister (2009), such an endeavour would build upon existing research ethics policies related to Indigenous research, institutional structures and research ethics review processes, and an established compliance mechanism within Canadian research institutions that receive funding from the federal granting agencies (i.e. institutional research ethics review of all research involving humans is required before release of research funds).

In 2008, Environment Canada invested in initial efforts to develop comprehensive voluntary national ABS guidance that was consistent with the Convention on



Biological Diversity, Bonn Guidelines (2002), former CIHR Guidelines (2007–10), former TCPS (1998) and ISE Code of Ethics (2006). The resulting ‘Draft Access and Benefit-Sharing (ABS) Guidance to Access Traditional Knowledge Associated with Genetic Resources in Canada’ was intended to promote conduct consistent with Canadian values and ethics described in policies and research practices related to Aboriginal peoples in Canada, and in keeping with Aboriginal cultural protocols and Canada’s international obligations (Bannister 2008; Koziol & Oguamanam, Chapter 7; Langford & Hodges, Chapter 2).

The draft ABS guidance was comprised of ‘voluntary recommendations to facilitate appropriate access to traditional knowledge associated with biological/genetic resources,’ noting that ‘appropriate access is not simply facilitated access’ (Bannister, 2008: 11). The draft ABS guidance also sought to promote wider understanding on the nature of traditional knowledge, how it is evolved and held by Indigenous peoples, issues arising from use of traditional knowledge associated with biological/genetic resources, and existing codes, guidelines and protocols that are relevant to ABS. It was intended to help both users and providers establish effective participation and the relationships necessary for a degree of trust, confidence, transparency and legal certainty in the negotiation and implementation of access, and fair and equitable benefit-sharing agreements/arrangements for traditional knowledge associated with biological/genetic resources (Bannister, 2008).

The draft ABS guidance contained ten principles and specific practical guidance on implementation of the principles. The principles included:

- **Mindfulness** (evaluation of one’s understandings, actions and responsibilities to others);
- **Self-determination** (recognition of existing Aboriginal rights under the Constitution of Canada, treaties and common law);
- **Reconciliation** (learning from the past as an impetus for establishing productive and mutually beneficial relationships with Aboriginal peoples for present and future);
- **Respect for Aboriginal relationships to biodiversity** (including responsibilities stemming from being granted access to traditional knowledge);
- **Respect for and valuation of traditional knowledge** (including inherent and extrinsic values and different meanings based on different world-views and intentions);
- **Meaningful relationships** (transparency, communication, participation and reciprocity);
- **Confidentiality** (obligations to maintain confidentiality to protect the integrity of traditional knowledge and prevent harms from culturally inappropriate access and use);
- **Consent** (establishing that prior informed consent has been obtained from each community and individual who provides traditional knowledge);

- **Fairness and equity** (equitable sharing of benefits derived from use of traditional knowledge, including legal concepts of fairness, distributive justice, and balance);
- **Diligence** (a prior understanding of the local community context and broader Canadian legal context when entering into a research relationship with a community).

Specific guidance for **implementation of the principles** was provided for three phases of research or development activities:

- **Pre-planning and preparation** (including initiating community contact, and acquiring necessary background information);
- **Access to traditional knowledge** (including community and institutional approvals, and community and individual prior informed consent) and
- **Use of traditional knowledge** (including negotiation of mutually agreed terms, equitable sharing of benefits, and reciprocal capacity building).

The draft ABS guidance did not progress through to policy, presumably due to a change in government priorities (Hodges & Langford, Chapter 2). However, the investment in the development process was evidence of recognition within Environment Canada that much research and development based on biodiversity and associated traditional knowledge had been undertaken without the awareness or consent of the traditional knowledge holders, raising significant ethical and legal issues. Moreover, awareness was increasing that real and perceived adverse impacts had resulted, generating suspicion and lack of trust, and sometimes interfering with customary rights and responsibilities related to conservation of biodiversity as part of Indigenous heritage.

The draft ABS guidance responded to an urgent need to understand how traditional knowledge associated with genetic resources could be accessed and used in culturally appropriate and environmentally sustainable ways by those seeking to explore and benefit from biodiversity. The draft ABS guidance aspired to meet this need at the national level, as part of Canada's domestic and international commitments under the CBD, and as a part of fiduciary responsibilities of the Crown to Indigenous peoples that are affirmed in Canada's constitution (Bannister, 2008).

The draft ABS guidance (2008), ISE Code of Ethics (2006), Chapter 9 of the TCPS2 (2014) and CHIR Guidelines (2007–10) all attempt to balance the ongoing need for clearly articulating expectations of researchers in 'how to do research right' while also promoting and supporting relational dimensions that will create 'right relationships' within the research endeavour. All build on 'best practice' standards at the time for ethical and equitable collaborative research with Indigenous peoples, with the intention of democratizing and decolonizing the research enterprise. Likewise, all involved extensive time, process, and contributions from Indigenous scholars, researchers and community members. The substance, process and spirit of

these endeavours as a whole offer invaluable guidance towards informing a future ABS regime for Canadians within a reconciliation framework – especially when taken alongside other landmark accomplishments and benchmarks for ethical conduct within Canada, such as the work of the Royal Commission on Aboriginal Peoples (1996) and the Truth and Reconciliation Commission (2015) (Perron-Welch & Oguamanam, Chapter 6).

#### FROM ETHICS POLICY TO ETHICAL PRACTICE TO ETHICAL SPACE

As established, an extensive foundation of relevant research ethics policy developed through robust processes exists and can be used to inform ABS in Canada. However, negotiating the right words to put into policy is one thing; bringing the words to life amid the complexities and challenges of real world ethical practice is another. Increasingly, researchers and Indigenous practitioners collaborating in research have shared their successes, innovations and lessons learned (Burelli, Chapter 13) over the last decade as a result of genuine commitments to understand and implement the spirit and intentions of the guidance discussed. The ‘Working Better Together Conference on Indigenous Research Ethics,’ is an example of a unique national forum in 2015 that critically explored the dynamic intersection of policies, procedures, practices, and philosophies of contemporary Indigenous research ethics.<sup>6</sup>

A focal point was to delve into the concept of ‘ethical space,’ introduced to Canadian research ethics by Cree philosopher and educator, Willie Ermine (2000). Ermine referred to ethical space, as a place *between* worldviews, an ‘abstract space’ created when the intentions of Indigenous and Western worldviews confront each other. These different intentions are ‘guided by a past that includes memory, values, interests, and . . . actions’ (Ermine, 2000, 18–19). He proposed that ethical space gives us ‘the opportunity to be reflective about personal convictions and how these formed perceptions influence our intentions about the ‘other.’ This confrontation of worldviews sets up the conditions by which negotiation is necessary in order to arrive at ethical interaction.’ Ermine suggests that ethical space offers possibilities for new models of research and knowledge production that are co-developed through respectful negotiation in this cross-cultural interaction.

Ermine’s subsequent elaboration on ethical space (Ermine et al., 2004) significantly informed development of both the CIHR Guidelines and TCPS2 Chapter 9. Ethical space is used as an underlying organizing framework in the CIHR Guidelines to encourage respect for the totality and validity of an Indigenous community’s principles, values and beliefs (Canadian Institutes of Health Research, 2007:17). The CIHR Guidelines underscore the need for ‘a series of stages of dialogue’ about ‘intentions, values and assumptions’ and a ‘continual questioning of “is this ethical?”’ that begins with the conversations prior to designing the research and

continues past the point of dissemination of results (Canadian Institutes of Health Research, 2007, 17).

Brant-Castellano and Reading (2010, 14) note that both the CIHR Guidelines and TCPS<sub>2</sub> Chapter 9 'seek to create 'ethical space' at the place where communities and researchers meet.' They go on to say: '[d]ifferent worldviews, needs, and expectations between the parties can be expected to present challenges. Dialogue undertaken with an ethical commitment to mutual benefit and good relations can be a powerful instrument to prevent violations of human dignity.'

Ermine (2015) has since described ethical space as ultimately an encounter of spiritual magnitude:

[E]thics has to do with the human spirit – which is unseen, and the unseen is the unknown. . . . so we have a hard time working with it. Nevertheless, when we look at the spiritual level, a spirit inside each and every one of you can see the spirit of another person. These are the teachings that we go through with our old people, our spiritualists. . . . if we can do this [relate to one another] at that level, then we have a different paradigm or a different formulation that we can work with. . . . When we're talking about the ethics, it's at this level that things really start to happen, that the critical mass of energies, of spiritual people working together, can produce profound results.

Similarly, Dr. Leroy Little Bear (Small Robes Band, Blood Indian Tribe, Blackfoot Confederacy) explained that 'existence consists of energy' in Aboriginal philosophy. He goes on: 'All things are animate, imbued with spirit, and in constant motion. In this realm of energy and spirit, interrelationships between all entities are of paramount importance, and space is a more important referent than time' (Little Bear, 2000, 77).

It may be daunting or confusing for many researchers, practitioners and policy-makers to understand or embrace Indigenous philosophies and the existence of spiritual dimensions of ethical space within their research. However, these notions are embedded in the CIHR Guidelines, which refer to 'sacred space' as an important concept in understanding Aboriginal world views. Sacred space is defined as

the relationships between the individual and a recognized spiritual entity, the Land, kinship networks (including all plant and animal life) and Ancestors. This relationship is both spatial (where the individual is inclusive of the family and the community) and temporal (where the present generation is inclusive of past and future generations). In this sacred space, there is an interconnectedness founded on purity, clarity, peace, generosity and responsibility between the recognized spiritual entity, the Land and the Ancestors. The notion of sacred space is also key to understanding accountability in the production and transmission of traditional knowledge.

(CIHR Guidelines, 2007, 17–18)

Similar sentiments have been articulated by many Indigenous scholars, elders and traditional knowledge holders and practitioners across the country. For example,

Anishnabe Elder and spiritual leader, Dave Courchene (Sagkeeng First Nation), founder of Turtle Lodge (Manitoba), underscores the role and relevance of spirituality from his perspective: '[n]atural law is the first rule of spirituality.' Elder Courchene teaches that 'natural laws are not negotiable' and there is a duty and responsibility of guardianship, not ownership because no one owns the land (Courchene as quoted in Bannister, 2017, 22–3). Little Bear (2000) articulates his perspective on the ethical-legal connection: 'Aboriginal traditions, laws and customs are the practical application of the philosophy and values of the group,' and 'the philosophy, the values and the customs in Aboriginal societies are also the law. Law is not something that is separate and unto itself. Law is the culture, and culture is the law' (Little Bear, 2000, 83). Elder Courchene teaches that spirituality and ceremony are part of the principles and values that need to underlie our biocultural endeavours. At a recent gathering on Indigenous Protected and Conserved Areas,<sup>7</sup> Elder Courchene explained that 'spirituality is involved in everything, and there is ceremony for everything,' urging us to begin with prayer as 'an important part of ceremony to evoke spirit and to proceed with respect for one another as human beings.' He continued: '[t]he values and principles found in ceremony are what are missing from the world today. Answers lie in ceremony. A way of life that connects to ceremony accesses a higher intelligence. Ceremony is needed to heal the world and the self. . . . Solutions come from this place of hope and joy and love. Giving thanks is the first ceremony' (Courchene as quoted in Bannister, 2017, 22–3). Elder Courchene teaches about what he calls 'going back to the beginning.' He explains: '[t]he beginning is all about spirituality, acknowledging the great mystery that we call the Creator. Spirituality begins with each one of us. It means understanding the importance and influence that spirit can have in our lives. We need to first do our own work in ourselves, to make peace in our own life' (Courchene as quoted in Bannister, 2017, 22–3).

Some deep challenges emerge from the provocative ideas, teachings and perspectives shared by Posey, Ermine, Little Bear and Courchene. An ecocentric perspective that seamlessly integrates law, ethics and spirituality provides a stark contrast to the distinctive ways that all of these notions are understood and practised from the anthropocentric perspective underlying most Western ethical, legal and spiritual traditions and institutions. And while the conceptual shift is significant, putting this conceptual understanding into practice presents further challenges. However, it is through openness and courage to ask and explore these questions that relational and descriptive ethics can offer more to ABS than just inspiration through aspirational guidance on paper.

#### ETHICAL SPACE IN PRACTICE

A concrete example of ethical space in practice is found in the work of Elder Dr. Reg Crowshoe (Piikani Nation), a well-known Blackfoot ceremonialist. Elder

Crowshoe facilitates ethical space by guiding organizations and projects through new ways of collaborating and decision-making that equally acknowledge distinct, complementary worldviews. A specific and profound example is detailed in a report by the Alberta Energy Regulator (AER, 2017) and described below.

Elder Crowshoe and his wife Rose led an internal corporate process to help AER increase empathy and inclusivity in its regulatory mandate. The goals of the process were to examine decision-making models and create ethical spaces for Indigenous communities and the AER to work together. The process was referred to as a ‘story of two groups divided by a wall.’ One participant explained how, rather than allowing the wall to alienate, the process revealed an equal opportunity for each group to look through a window to better comprehend the other’s customs and worldviews. Only after building this understanding of *how to be with* one another could the groups walk through a door to meet in an ethical space and to make shared decisions. ‘So often, we think we can charge ahead. To not run to the door takes mindfulness, respect, and discipline. This journey reminded us to not assume, but to listen’ (AER, 2017, vi).

The report concluded that a transformative ethical space is created ‘when we work to understand a perspective that is different from our own, and then examine that understanding with an eye to finding connections with our own perspective, or our own worldview’ (AER, 2017, xvi). It also underscores the importance of *linking* (rather than *merging*) worldviews, where linking means joining in ways that do not diminish either, and honour both. ‘This doesn’t mean we take pieces of western cultures and parts of Indigenous cultures and try to blend them together. Rather, we consider both cultures, and when we have enough understanding to see the connections, we are able to create a new, ethical space where we can tell a new shared story that links two systems’ (AER, 2017, 3).

In reference to linking worldviews, Elder Crowshoe warns that ‘incorporation’ and ‘integration’ of Indigenous knowledge and processes with those of mainstream institutions have created ‘cultural confusion.’ He explains that the confusion arises through mixing oral stories with written documents. Written documentation is from the western concept of collecting data, information, and knowledge. The parallel for an oral culture is the information stored in stories – these are the data, knowledge, and understanding of what is happening in the environment (AER, 2017, 45).

Elder Crowshoe explains that the systems need to remain parallel to retain their integrity; the challenge is to find ways to authentically link these parallel systems. He offers concrete step-wise suggestions that involve asking questions to enable linking through ‘cultural translation’ and ‘cultural interpretation.’ A simple example related to meeting protocols and spaces is asking the questions: How is a meeting called together? What is the appropriate gathering place when important decisions need to be made? What protocols are associated with these places? (AER, 2017, 14).

Referring to the window and door analogue, Elder Crowshoe explains: ‘The window is an analogy for the cultural interpretation and translation necessary to

know how things work on the other side of the wall, for the other culture. . . . The door is providing the ethical space for the two sides to have the discussion' (AER, 2017, 44). One participant concluded 'what we're used to is working on the western side and tossing something over the wall every now and then, and then wondering why it didn't work. . . . what I see now is that we're not trying to develop a process with this document . . . but an opening. We're trying to open a window on that wall so that we can see and understand the process that is going on. And maybe we can even get to the stage where we can make a door that we can walk through' (AER, 2017, 44).

The process clearly had a transformative effect at individual and organizational levels. The AER became aware of and accepted the Indigenous oral system of decision-making. AER staff understood that to reach mutually acceptable decisions, they needed to first look through 'the window' and observe the ways that decisions are made in Indigenous communities and in a western regulatory framework. Passing through 'the door' was an eventual act of bridge-building, linking the two decision-making processes in a respectful way to create a new, ethical space (AER, 2017, 45). Simply put, ethical space is not 'yours' or 'mine', and not even the commonality we share. Rather, it is the distance *between* us that Ermine at al. (2004, 20) call a 'space of possibility.' It is a space in which no one has the edge, one that we intentionally choose (or not) to step into, and one in which we can co-create something new and shared together, while retaining our respective autonomy.

#### REVISITING ETHICAL GUIDANCE FOR ACCESS AND BENEFIT-SHARING IN CANADA

A decade has passed since a national ethical guidance for ABS was under consideration in Canada (Bannister, 2008). Since then, much has evolved in terms of Canadian ethics policy and practice in research involving Indigenous peoples, and Canada has become one of the global leaders in this regard. The relevance of ethics to ABS in Canada has increased exponentially, and there is an obvious opportunity for any ABS regime of the future to draw upon this extensive foundation, some of which has been summarized here.

The opportunity does not just lie in the ethical guidance that is already policy, or in making use of the institutional structures, such as research ethics review systems. There is also an invitation to learn from a decade of intercultural experiences and examples of putting ethics into practice on the ground under these national policies (Burelli, Chapter 13). Increasingly, there is also an opportunity to understand new ethical frameworks such as 'ethical space,' as well as new conceptual frameworks, such as 'integrative science' and 'two-eyed seeing' (as described in Bartlett et al., 2012 but not discussed here) for rethinking the intentions, values and practices that could, and perhaps should, underlie ABS in an age of reconciliation.

A deep examination of what is ‘appropriate facilitated access’ to traditional knowledge associated with biological/genetic resources would reveal something different today than it did a decade ago (Bannister, 2008). This is true not only because government policy and legal precedents have evolved, but because mainstream society’s reference points are shifting as a more accurate account of Canadian historical events is unveiled, Indigenous experts provide new articulations of Indigenous and natural laws, and Indigenous knowledge keepers help us to understand what it means to have responsibilities interlinked with rights to knowledge and genetic resources. In this light, an Aboriginal-sensitive ABS regime in Canada is a logical tool for facilitating ‘right relationships’ based not on facilitating access but on the need to enable shared understandings between different worldviews and the modes of ethical reasoning that they embody.

#### BEYOND ETHICS AND ABS

This chapter has attempted to build a case for more explicitly infusing ethics into the legal, economic and policy discourses associated with ABS. But the ethical considerations at stake cannot wait for, and will not be resolved by, an ABS regime. The opening quote included in this chapter from the Turtle Lodge Declaration (2017) emerged from a recent gathering of Indigenous knowledge keepers and scientists that took place at Turtle Lodge, Manitoba. The document underscores the destructive trajectory for the earth as a result of our human legacy of anthropocentrism and dominance over the natural world. But, unlike many declarations, this one does not usher an urgent call to the scientific or wider global community to halt or change what we are doing before it is too late.

The Turtle Lodge Declaration is short and clear. It is a *personal* pledge made by those present, to keep five commitments. These are: to honour past ancestors, take responsibility for future generations, care for all humanity, love and respect all non-human species, and support all youth in learning about stewardship based in natural laws. The summary report of the Truth and Reconciliation Commission says that ‘reconciliation must become a way of life’ (TRC, 2015, 184) and that ‘reconciliation begins with each and every one of us’ (TRC, 2015, 185). If these statements hold true, then like the signatories to the Turtle Lodge Declaration, let’s take them personally.

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## NOTES

- 1 See <https://en.wikipedia.org/wiki/Bioprospecting>.
- 2 See [www.cihir-irsc.gc.ca/e/29134.html](http://www.cihir-irsc.gc.ca/e/29134.html).
- 3 See <http://pre.ethics.gc.ca/eng/policy-politique/initiatives/tcps2-eptc2/Default/>.
- 4 See [www.ethnobiology.net/what-we-do/core-programs/ise-ethics-program/code-of-ethics/brief-history/](http://www.ethnobiology.net/what-we-do/core-programs/ise-ethics-program/code-of-ethics/brief-history/).
- 5 I acknowledge Rozzi's (2013) definition of the term 'biocultural ethics.' My use of the 'relational biocultural ethic' is somewhat related but was coined independently.
- 6 <https://indigenousresearchethics2015.wordpress.com/>.
- 7 The gathering on Indigenous Protected and Conserved Areas was part of a national Indigenous experts-led initiative sponsored by Parks Canada as part of the Pathway to Canada Target 1 initiative to meet Aichi Target 11 conservation commitments of 17% lands and inland waters in conservation status by 2020. See [www.conservation2020canada.ca/home/](http://www.conservation2020canada.ca/home/).