

## GENETIC RESOURCES, JUSTICE AND RECONCILIATION

When the oral history of a medicinal plant as a genetic resource is used to develop a blockbuster drug, how is the contribution of Indigenous peoples recognized in research and commercialization? What other ethical, legal and policy issues come into play? Is it accurate for countries to self-identify as users or providers of genetic resources? This edited collection, which focuses on Canada, is the result of research conducted in partnership with Indigenous peoples in that country, where melting permafrost and new sea lanes have opened the region's biodiversity, underscoring Canada's status as a user and provider of genetic resources and associated Indigenous knowledge. This work is an important resource for scholars, corporations, Indigenous peoples, policy-makers and concerned citizens as Canada and other countries take on the implementation of access and benefit-sharing policies over genetic resources and associated Indigenous knowledge. This title is also available as Open Access on Cambridge Core at <http://dx.doi.org/10.1017/9781108557122>.

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Cambridge University Press

978-1-108-47076-6 — Genetic Resources, Justice and Reconciliation

Edited by Chidi Oguamanam

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# Genetic Resources, Justice and Reconciliation

CANADA AND GLOBAL ACCESS  
AND BENEFIT SHARING

Edited by

**CHIDI OGUAMANAM**

University of Ottawa



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press

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## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

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[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108470766](http://www.cambridge.org/9781108470766)

DOI: 10.1017/9781108557122

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When citing this work, please include a reference to the DOI 10.1017/9781108557122

First published 2019

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

NAMES: Oguamanam, Chidi, editor.

TITLE: Genetic resources, justice and reconciliation : Canada and global access and benefit sharing / edited by Chidi Oguamanam (University of Ottawa).

DESCRIPTION: Cambridge ; New York, NY : Cambridge University Press, 2018. |

Includes bibliographical references and index.

IDENTIFIERS: LCCN 2018026043 | ISBN 9781108470766 (hardback : alk. paper)

SUBJECTS: LCSH: Germplasm resources—Canada. | Medicinal plants—Research—Canada. | Traditional medicine—Canada. | Indigenous peoples—Legal status, laws, etc.—Canada. | Oral history—Canada.

CLASSIFICATION: LCC QH430 .G45685 2018 | DDC 333.95/340971—dc23

LC record available at <https://lccn.loc.gov/2018026043>

ISBN 978-1-108-47076-6 Hardback

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Contents

<i>List of Contributors</i>	page vii
<i>Preface: “Mashkikiikwe”</i>	xiii
John Borrows	
<i>Acknowledgements</i>	xvii
 <b>PART I THE EVOLUTION OF THE ABS POLICY LANDSCAPE IN CANADA</b>	 1
<b>1 The ABS Canada Initiative: Scoping and Gauging Indigenous Responses to ABS</b>	3
Chidi Oguamanam	
<b>2 Canada and the Nagoya Protocol: Towards Implementation, In Support of Reconciliation</b>	20
Timothy J. Hodges and Jock R. Langford	
<b>3 Aboriginal Partnership, Capacity Building and Capacity Development on ABS: The Maritime Aboriginal Peoples Council (MAPC) and ABS Canada Experience</b>	40
Chidi Oguamanam and Roger Hunka	
 <b>PART II HURDLES TO ABS: CONCEPTUAL QUESTIONS, PRACTICAL RESPONSES AND PATHS FORWARD</b>	 61
<b>4 Unsettling Canada’s Colonial Constitution: A Response to the Question of Domestic Law and the Creation of an Access and Benefit-Sharing Regime</b>	63
Joshua Nichols	

vi	<i>Contents</i>	
5	<b>Making Room for the Nagoya Protocol in Nunavut</b> Daniel W. Dylan	80
6	<b>Implications of the Evolution of Canada’s Three Orders of Government for ABS Implementation</b> Frédéric Perron-Welch and Chidi Oguamanam	98
7	<b>Biopiracy Flashpoints and Increasing Tensions over ABS in Canada</b> Chidi Oguamanam and Christopher Koziol	117
8	<b>Applying Dene Law to Genetic Resources Access and Knowledge Issues</b> Larry Chartrand	138
9	<b>Access and Benefit-Sharing in Canada: Glimpses from the National Experiences of Brazil, Namibia and Australia to Inform Indigenous-Sensitive Policy</b> Freedom-Kai Phillips	157
	<b>PART III NEW TECHNOLOGICAL DYNAMICS AND RESEARCH ETHICS: IMPLICATIONS FOR ABS GOVERNANCE</b>	179
10	<b>Access and Benefit-Sharing in the Age of Digital Biology</b> Peter W. B. Phillips, Stuart J. Smyth and Jeremy de Beer	181
11	<b>ABS: Big Data, Data Sovereignty and Digitization: A New Indigenous Research Landscape</b> Chidi Oguamanam	196
12	<b>Ethical Guidance for Access and Benefit-Sharing: Implications for Reconciliation</b> Kelly Bannister	212
13	<b>Mapping the Patterns of Underestimated Researcher-Indigenous Collaboration: Towards Independent Implementation of ABS Principles</b> Thomas Burelli	231
14	<b>ABS, Reconciliation and Opportunity</b> Chidi Oguamanam	252
	<i>Index</i>	267

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## Preface

*“Mashkikiikwe”*

*John Borrows*

My great-great-grandmother was an Anishinaabe medicine woman: mashkikiikwe. Her name was Margret McCleod and she had an exceptional understanding of the natural world. The Saugeen peninsula in Ontario’s forests, fields and gardens were her home. She was intimately familiar with Georgian Bay’s rocky shores and dramatic limestone escarpments. She recognized and understood the varied forms of life this environment supported. As she walked through this world, she could name each plant, insect, bird and animal. Margret described this world in Anishinaabemowin: mashkikik, manidooshensak, binesiikwak, aweskiiyak. She would call plants mashkikik – which means ‘the strength of the earth.’ She would see insects as manidooshensak, or little spirits, as they are called in our language.

Each Anishinaabe name would generate awareness of the natural world’s character. This was not only the case in generic categories like plants or insects. Each species of plant or insect carried a name. For example, strawberries were odeminan – heart-berries, because of their shape, colour and heart-health properties. Odemin was also the name of a man whose heart was healed through gaining powerful experiences after the love of his life died, and he passed to the other side. Mandaamin, corn, was the food of wonder and was brought to the Anishinaabe through love, conflict, care and experimentation. Each tree, stalk, blade and root would impart their own lessons and relationships to humans and their environment.

Margret found it difficult to translate what she knew into English. Though she was fluent in Anishinaabemowin and French, English was her third language and it was much harder for her to use. For instance, a chicken’s gender was analogized from learning about other barnyard animals: there were bull-chickens and cow-chickens, depending on whether the birds were male or female. While humorous, this example illustrates how challenging it was for some Indigenous people to help settlers see the detailed knowledge people like her possessed. Women, like my great-great-grandmother, might be dismissed as simple, primitive or pagan depending on who was observing or recording what was being said in English.

On the other hand, our plant knowledge was considered a threat in some circumstances. Its power to shape our beliefs and behaviour challenged Euro-Canadian assimilative philosophies and practices. For instance, religious societies on our reserve actively discouraged work with plants and medicines. Such work was regarded as superstitious, witchcraft or inspired by the devil by some Christian teachers. With great compulsion, they forced women to abandon their relationships with plants, insects, birds, animals, water and rocks by getting them to destroy the objects used to learn and practice Anishinaabe law and tradition. Fortunately, these people never quite succeeded in destroying our knowledge, though they did cause significant pain and loss.

As a result, much of our traditional knowledge was preserved because people kept speaking their language, thus retaining essential features of a relationship to nature that is non-Western in outlook and practice. Second, one of the societies insisting on the destruction of plant knowledge were themselves of a scholarly bent. The Jesuits wrote down the ‘recipes’ Anishinaabe women used on our reserve, thus preserving a vital thread for future generations. Third, the Midewin Society, our Grand Medicine Society, was never fully eradicated and it is enjoying a renaissance across Anishinaabe akiing (Ojibwe country) today. One aspect of this society regards plants as central to living well in the world (*mino-bimaadiziwin*) and thus continues to teach about physical and spiritual health rooted in these ancient relationships. Finally, people like my great-great-grandmother were storytellers and their words continue to circulate in our communities and beyond in the present day. These are the stories I often draw upon as a law professor engaged in the revitalization of Anishinaabe law. One of these sources is a book called *Tales of Nokomis*, by Verna Patronella Johnston, and she explicitly references that she learned these stories from Margret who, in turn, learned them from her great-great-grandmothers.

You cannot interact with the elders of my reserve without understanding that so-called traditional ecological knowledge is a vital part of our past and future. You cannot work with Anishinaabe law, health, spirituality, economics, politics, culture or any other part of our lives without seeing how deeply they are connected to our knowledge of the natural world. The same is generally true of Indigenous peoples in many parts of the world. Article 31 of the United Nations Declaration on the Rights of Indigenous peoples has made this clear, by stating:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect

and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.

2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Unfortunately, as the chapters in this volume explain, Canada and other nation states have not yet developed respectful ways of relating to Indigenous law and traditional knowledge. Governments and corporations seem to consider the country as being only a consumer of Indigenous genetic resources. Yet Canada produces knowledge, foods, medicines, cosmetics and other goods which are based on Indigenous cultural heritage, knowledge and cultural expressions. There is very little protection in this sphere, despite Canada's diverse ecological heritage, and Indigenous peoples' rich traditional knowledge. Thus, not only have we, as Indigenous peoples, been significantly marginalized in this global cultural and economic space, we continue to struggle with universities and corporations over the use or even abuse of our relationships with wild rice, corn, strawberries and insects. This even occurs in relation to our entire genetic inheritance which is increasingly important to biotechnological and other knowledge applications.

Today, our knowledge and relationships with the genetic diversity of our territories is threatened by governments, corporations, scientists and other bodies and individuals. Biopiracy and cultural appropriation abound. *Genetic Resources, Justice and Reconciliation* addresses these issues from international and Canadian domestic perspectives. Many Anishinaabe people enjoy sharing their knowledge *except* if it is obtained in improper ways or used for inappropriate purposes. As this book demonstrates, propriety and appropriateness are best defined in harmony with the systems which generate these insights. It is also important to note that there are some Indigenous ideas and practices that cannot be freely shared because of the protections created within Indigenous legal systems to ensure proper use, as any legal system will insist.

Thus, the focus of this book is on the significant challenges faced by Indigenous communities in securing respect for their legal systems, and in relation to how knowledge generated within their societies is used. It discusses how Indigenous peoples encounter 'political disinterest, entrenched interests, senior bureaucratic inertia and [a] fundamental failure to see Canada as both a user and provider of genetic resources and traditional knowledge.' The authors demonstrate that there can be no equitable knowledge governance without recognizing and affirming Indigenous law's role in creating a better relationship with one another and the natural world. Some of these laws will be recognized through the 'development of community protocols, establishment of Indigenous knowledge databases and their management, material transfer and other contractual agreements, revision of existing research protocols to directly accommodate equitable access and benefit

sharing; prioritization of resources to translate relevant documents, simplification of such documents in plain language and enhancing their accessibility, not excluding explanation of key terms.’ The work of Access and Benefit Sharing Canada (ABS; [www.abs-canada.org](http://www.abs-canada.org)), as captured in some of the contributions in this book, show that Indigenous political agency will be affirmed when international and domestic law, along with corporate and scientific communities entrench Indigenous understandings of law in their work. Perhaps there is no more opportune time for Canada to heed that counsel than now – given the federal government’s efforts related to ‘truth and reconciliation.’ Indigenous peoples’ laws related to genetic resources must become more prominent in guiding intellectual property and broader knowledge governance policies.

Until Indigenous laws and governance are taken more seriously, trust between the parties will be difficult to generate. This challenge particularly pronounced when Indigenous-settler interactions are set by rules and terms which do not incorporate Indigenous views, as the following contributions in *Genetic Resources, Justice and Reconciliation* demonstrate. For this reason, Indigenous peoples have been slow to engage botanical, agriculture, food and beverage, pharmaceutical, biotechnology and cosmetic industries as they work to advance their agendas. The following chapters provide valuable insights into how Indigenous peoples, nation states, corporations, scholars and scientists might better address injustices encountered in the inequitable use of genetic resources and associated Indigenous knowledge. By using the concept known as ABS, this book introduces readers to the grounds which must be cultivated to build better relationships with the natural world, particularly when Indigenous knowledge is implicated in these efforts.

## Acknowledgements

This edited collection is the product of a multifaceted collaboration, the support of several institutions and many individual acts of goodwill that cannot adequately be acknowledged in the present space. The ABS Canada ([www.abs-canada.org](http://www.abs-canada.org)) project which birthed this present book owes its life to a Social Sciences and Humanities Research Council of Canada (SSHRC) Insight Grant awarded in 2014. A number of my colleagues, including Professors Ikechi Mgbeoji of Osgoode Hall Law School and Teresa Scassa of the University of Ottawa Faculty of Law, and Frédéric Perron-Welch of the Centre for International Sustainable Development Law at McGill University, are my partners in the grant. Other colleagues, including Professors Jeremy de Beer, Elizabeth Sheehy, Bruce Feldthusen and Helene Dragatsi provided internal project review and administrative support of significant value.

In the years following the awarding of the SSHRC grant, we have been lucky to build on the tremendously resourceful student body at the University of Ottawa, especially our Indigenous students who did serve and continue to primarily serve as trainees in various capacities, including as research assistants, community liaisons and agents of mobilization. They helped not only to advance ABS Canada as an ongoing research network but also in ensuring that we had very healthy and sustainable community outreach and collaboration with Indigenous organizations, leaders and community members that partnered and participated in our field work. We are extremely proud to specifically mention the following as ABS Canada's Indigenous alumni: Christopher Folz, Jessica Saris, Jay Pelletier and Joel Morales. Other graduate alumni led by our long-suffering and outstanding Project Manager, Chris Koziol, include Katie Degendorfer, Freedom Kai-Philips, Ece Yilmaz, Jeremy Baarbé, Gaëlle Groux, Andrea Lesperance and Vipal Jain, some of whom doubled as members of the Open African Innovation Research (Open AIR) partnership project at the University of Ottawa.

Part of the evolution of our team is our transition into a research network. This was made possible through the generosity of some institutional partners and funders.



They include the Open African Innovation Research (Open AIR), the Centre for International Governance Innovation (CIGI) and the Maritime Aboriginal Peoples Council (MAPC); the ABS Focal Point at Environment Canada, the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture and officials from the Government of Canada with whom we crossed paths. Open AIR lent us the goodwill of its network and resource support that enabled us to attend and monitor relevant international fora on ABS. Open AIR also facilitated conversations between Indigenous peoples in Canada and their African counterparts. The CIGI partnered with us consistently, sponsoring the attendance and participation of our team members through the Focus Groups. MAPC remains an enduring partner. It assisted us in building needed trust and in mobilizing its federating members: the Native Council of Nova Scotia, the Native Council of Prince Edward Island and the New Brunswick Aboriginal Peoples Council as well as other Indigenous partners spanning the Algonquin Anishinaabeg territory and Fort William First Nation in Ontario, Treaty 6 territory in Saskatchewan, and the Maliseet and the Mi'kmaq in New Brunswick. And there are many names behind these institutional collaborations. With apologies upfront for those we omit, we thank Roger Hunka, Joshua McNeely and Larry McDermott, Nashina Shariff, Nadine Nickner, Oonagh Fitzgerald and Bassem Awad.

Our project benefited from resourceful expert insights of many distinguished colleagues who served in various capacities including as keynote speakers, facilitators, participants and in other capacities through our field work and outreach. In this regard, we thank Dean Martin Phillipson of the College of Law, University of Saskatchewan, Professors Graham Dufield of Leeds University, Konstantia Koutouki of the University of Montreal, Indigenous lawyer and ABS expert, Merle Alexander of Gowlings LLP in Vancouver, and Tim Hodges, Professor of Practice in Strategic Approaches to Global Affairs at the Institute for the Study of International Development at McGill University. Tim was a Co-Chair of the Intergovernmental Negotiating Committee of the Nagoya Protocol from the beginning in 2006 to its completion in 2010; Kent Nnadozie, the Secretary of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture, John Scott and Valarie Normand both of the Convention on Biological Diversity.

My personal thanks must also extend to former Dean Nathalie Des Rosiers and her successors, Acting Dean, François Laroque, substantive Dean, Adam Dodek, and the Centre for Law, Technology and Society at the University of Ottawa for offering me the institutional support and accommodation from the Faculty of Law required to undertake the task of mobilizing, growing and leading the research team that has since morphed into the ABS Canada program. Without their consistent understanding, the project could not have been successful. The same is true of my incredible editor and publisher, Matt Galloway and his team at the Cambridge University Press, whose astonishing efficiency and professionalism did not allow for

*Acknowledgements*

xix

excuses throughout the publication process. Last, but not the least, I sincerely thank all the contributors to this present volume. Their commitment and loyalty as part of the ABS Canada team in various capacities is evident in the research and insights they have shared in this book. For many others, especially my immediate family members, who tolerated and continue to tolerate my unconventional schedules at significant personal sacrifices, I remain grateful. The journey through *Genetic Resources, Justice and Reconciliation: Canada and Global Access and Benefit Sharing* is one of unbelievable collaboration for which all the seen and unseen hands, all the heard and unheard voices of help and goodwill are hereby acknowledged.