


Workshop created for the
Indigenous Adult and Higher Learning
Association (IHALA) Conference
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Practical and Policy Tools for Protection and Respectful Use of Indigenous Knowledge and Wisdom



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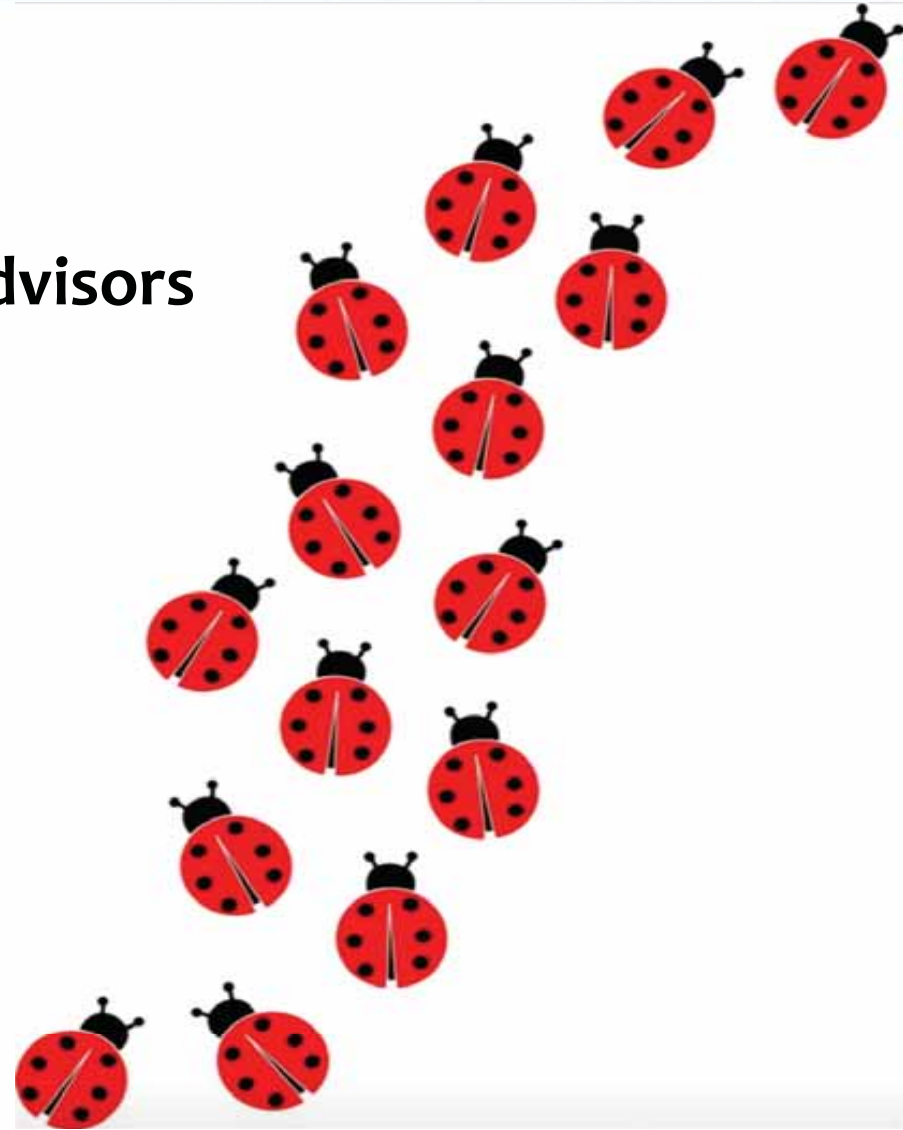
Workshop Overview

- **Acknowledgements**
- **Key question and key problems to address**
- **Summary of FNEESC's "Traditional Knowledge & Intellectual Property Policy Project"**
 - **Development of model policy for institutions**
- **Discussion and Input on Next Steps**
 - **Development of resources for communities**

Acknowledgements:

Project Steering Committee and Advisors

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Key Question:

How do public post-secondary institutions in BC **respect and protect** Indigenous knowledge and wisdom (and the associated cultural heritage and intellectual property) that is used in research, curriculum development/curricular partnerships and teaching/learning?



Language is the vehicle by which the soul of a culture comes into the world.



Project Goal:

Contribute to **appropriate recognition, protection and respectful use of traditional knowledge and wisdom** that is accessed and used by BC post-secondary institutions for **research, curriculum development and teaching/learning.**

- Funding from BC Ministry of Advanced Education, Skills and Training provided to FNECS to **address policy gap.**
- Goal is linked to expressed institutional commitments to **TRC, UNDRIP** and **reconciliation** with Indigenous peoples in Canada.



Truth and Reconciliation Commission (TRC 2015) Calls to Action:

- Develop culturally appropriate curricula
- Acknowledge Indigenous rights, including language rights
- Create post-secondary language programs
- Implement **United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP 2008) as framework for reconciliation

UNDRIP recognizes:

- Indigenous rights to practice and revitalize traditions
- Free, prior and informed consent
- Rights to control and protect intellectual property over traditional knowledge.

B.C. Public Post-Secondary “Indigenization” efforts

- Aboriginal Service Plans and Indigenous Strategic Plans to meet TRC calls to action and UNDRIP obligations

Project Findings:

Absence of institutional policies, procedures, protocols to prevent appropriation of Indigenous knowledge, or to protect Indigenous rights to associated intellectual property

- ***Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*** (TCPS2 2014) covers “research” only.
- e.g., Language study for curriculum development typically not considered “research.”

Silo’ed policy approach of institutions is part of problem

- e.g., disconnected policies on Research Ethics, Intellectual Property, Scholarly Integrity

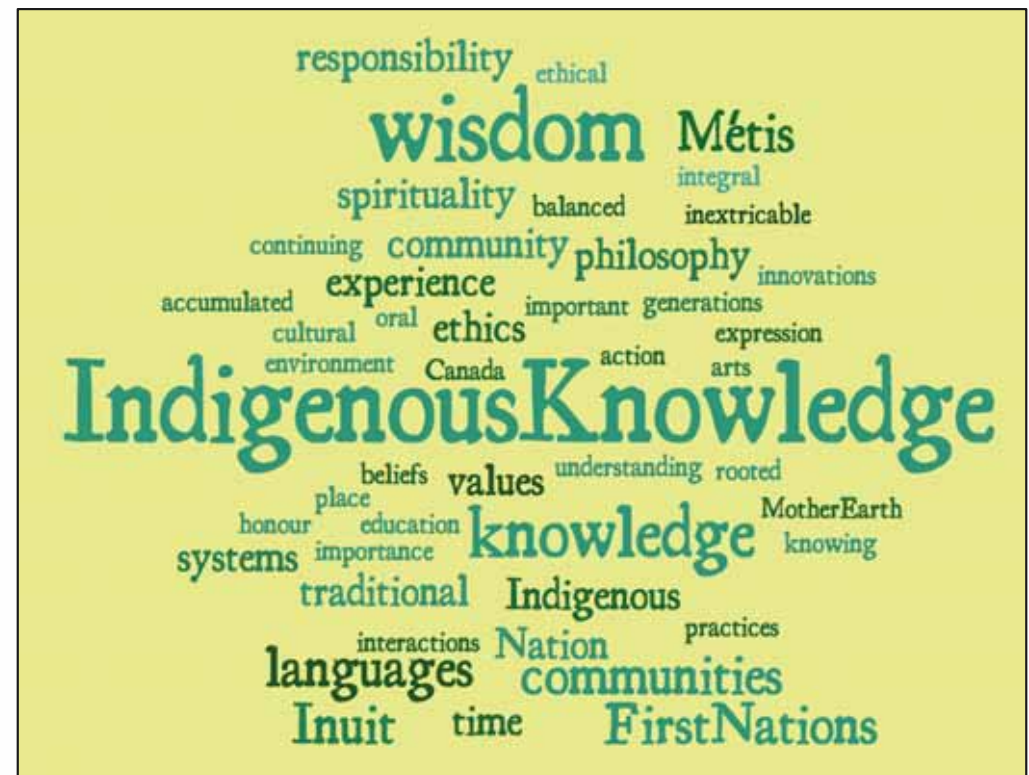


- **Long history** of accessing & using Indigenous knowledge for university research & education.
- **Mixed experiences** by Indigenous Nations, communities and knowledge holders.
- **Potential benefits** of collaboration.
- **Common issues** of misappropriation, loss of control, loss of integrity, de-contextualization.
- *How are issues being addressed as part of current Institutional reconciliation and Indigenization efforts?*

If concerns from the past have not been sufficiently addressed then what does the future look like?

What are we talking about?

- “**Indigenous knowledge**” used here to refer to the **knowledge and wisdom of First Nations, Inuit and Métis peoples**.
- Referring to **accumulated systems** of knowledge, wisdom, beliefs, philosophy and ethics, practices, languages, innovations, arts, spirituality, and other forms of cultural experience and expression that are specific to **place**, usually transmitted **orally**, and rooted in the experience of **multiple generations**.
- Gained by respective First Nations, Inuit and Métis communities over long periods of **time** through their interactions with their **environment**.
- Passed down through **traditional education systems** of community or Nation and hold importance today.
- **Comes from, is integral to, and belongs to** the respective Indigenous family, community or Nation.



Cultural and Intellectual Property Associated with IK

- IP **means different things** to different people in different contexts and within different cultural regimes. Western IP laws protect the concrete **expression** of an idea, not the idea itself.
- Cultural and intellectual property associated with Indigenous knowledge may involve **tangible and intangible expressions** of Indigenous knowledge embodied in stories, songs, prayers, languages, laws, protocols, teachings, practices, ceremonies, dances, art, designs, literary works, recipes, formulas, processes and scientific discoveries that are informed by Indigenous knowledge.
- Intangibles may be **fixed** through performances, writing, graphic recordings, sound recordings, video recordings, photographs.
- Generally is agreed that Western IP laws are **inadequate** to protect Indigenous interests, rights and cultural responsibilities.



- Academic **documentation** for research, language studies, and curriculum development can **transform** and **fix** intangible cultural expressions into **tangible** forms.
- Western legal **rights can be attached** to the tangible, and **IP ownership can be claimed** by the academic proponent or a third party.
- Process may **facilitate appropriation** of some Indigenous knowledge and associated cultural and intellectual property (intentionally or not).

Requires a proactive approach to ensure academic policies and practices do not facilitate appropriation of traditional knowledge.

Project Outcome:

Development of a “***Model Institutional Policy for Protection and Respectful Use of Indigenous Knowledge and Wisdom***”

- **Comprehensive** (not just for “research” and not just about IP)
- **Integrated / clearly articulated relationships with policies on:**
 - Human Research Ethics
 - Intellectual Property
 - Academic Freedom
 - Academic and Scholarly Integrity
 - Human Rights, Fairness, Equity
 - Quality Assessment
 - Indigenization ➤ **Example**

Example: Potential Synergy of Model Policy with Indigenization at UVic



He?kw səlelexw'tala sčelāgen's | Remember our ancestors/birthright

Nācā māt gwens čey'i | Work together

New'ews sn 7ey? šweleqwan's | Bring In your good feelings

a'sac7ay'xw meqw ta'sa tečel | Be prepared for all work to come

Our Strategic Directions

UVic strives to integrate and honour Indigenous cultures, histories, beliefs and ways of knowing into our everyday activities. This Plan sets ambitious goals to advance our shared belief that post-secondary education can make a difference in how we live together in this world and will guide our work over the coming years.

The initial stage of creating the Plan involved an examination of the work of the Indigenous Academic Advisory Council, which has been the voice of Indigenous faculty and staff on Campus for a number of years.

After extensive consultation, we have identified five strands with goals and actions associated with each one:

1. Students
2. Faculty and Staff
3. Education
4. Research
5. Governance

Bringing the Plan to life will be challenging and will require the engagement of the entire university community.

STRAND 1 Students	STRAND 2 Faculty and Staff	STRAND 3 Education	STRAND 4 Research	STRAND 5 Governance
Increase recruitment, retention and success of Indigenous students across academic programs of study and programming that supports transition and pathways to university.	Increase the recruitment, retention and success of Indigenous staff.	Ensure the quality, sustainability and relevance of the university's Indigenous academic programs.	Establish and promote culturally appropriate and inclusive definitions, guiding principles and protocols for research with Indigenous participants, in Indigenous communities or on Indigenous lands to ensure respectful and appropriate conduct of research.	Review and potentially revise the governance structure for Indigenous programming, initiatives, and engagement.
Create a warm, welcoming and respectful learning environment and sense of place.	Provide professional development opportunities and recognition to non-Indigenous staff to foster understanding of Indigenous history and culture.	Develop opportunities for UVic students to gain a better understanding of Indigenous peoples, history and culture, and the impact of colonization.	Identify resources for Indigenous research chairs, graduate student scholarships and postdoctoral fellowships.	Identify venues for communicating priorities and opportunities internally and with external partners, including Indigenous communities, government, and funding agencies.
Ensure stable institutional support for Indigenous student services.	Increase the recruitment, retention and success of Indigenous faculty across the university.		Identify, promote and support opportunities for undergraduate students, graduate students and postdoctoral fellows to be involved in Indigenous research initiatives.	
Provide opportunities to recognize Indigenous students' identity.	Support and recognize the research and scholarship of Indigenous faculty.		Promote internationalization of Indigenous research by enhancing relations with Indigenous communities around the world.	
	Support faculty to develop greater knowledge of Indigenous history and culture.			

UVic Indigenous Plan (p.25)

UVic recognizes that research in Indigenous communities or involving Indigenous peoples must be conducted in a respectful and culturally appropriate manner following protocols regarding:

- entering community sites,
- engaging with communities, Elders and Knowledge Keepers,
- acknowledging cultural knowledge and cultural property, and
- disseminating research findings.



UVic Aboriginal Service Plan (p.12): Policies and Process(es) to Ensure Respectful Use of Traditional Knowledge and/or Indigenous Intellectual Property



CREATING A SHARED PATH

ABORIGINAL SERVICE PLAN | 2017/18 - 2019/20



Welcome Figures - Doug Lafortune
Bronze White Tail - Calvin Hunt and John Livingston

Creating a Shared Path: The University of Victoria's Aboriginal Service Plan

Policies and Process(es) to Ensure Respectful Use of Traditional Knowledge and/or Indigenous Intellectual Property

UVic has established policies and processes regarding ethical conduct to ensure the respectful use of Traditional or Cultural Knowledge and/or Intellectual Property in all its activities, including the development and the delivery of the ASP. The University's *Human Ethics in Research Policy* protects the rights of human research subjects by ensuring research involving human participants or human biological materials meets the ethical standards required by Canadian universities and national regulatory bodies.¹ In addition, other university policies and protocols focus specifically on protecting the rights of Indigenous peoples including the Faculty of Human and Social Development's *Protocols & Principles for Conducting Research in an Indigenous Context*.² The university's Working Group on Indigenous Research Protocols is currently in the process of developing a protocol for all researchers engaging in research on Indigenous lands or with Indigenous communities.

When engaging with Indigenous partners for academic program or curriculum development, the university's academic units typically enter into affiliation agreements to ensure that ownership of materials relating to Indigenous language, culture and tradition remains with the Indigenous community in accordance with the university's Intellectual Property Policy.³ In 2016, a joint committee of the University and its Faculty Association recommended a new Intellectual Property Policy to replace the university's current policy. The committee's report is now under discussion and being considered by the administration and the Faculty Association. It contains an express commitment to the recognition of Indigenous rights, including cultural knowledge and expressions that may not always be included within general definitions of intellectual property. It also commits the university and its members to respect the cultural property of Indigenous people in its varied forms.

In developing or formalizing partnerships through protocol agreements, memoranda of understanding or memoranda of agreement, INAF outlines appropriate principles and processes to protect the intellectual and property rights of our partners. While these agreements are tailored to the unique context of each partner, all emphasize the importance of observing cultural customs and practices with respect to traditional knowledge and sacred knowledge, and outline mutually-agreed upon standards concerning the cultural and intellectual property rights of participating communities.

¹ <http://www.uvic.ca/research/conduct/home/regapproval/humanethics/index.php>

² <http://web.uvic.ca/igov/uploads/pdf/protocol.pdf>

³ http://www.uvic.ca/universitysecretary/assets/docs/policies/GV0215_1180_.pdf

UVic Aboriginal Service Plan (p.12): *Policies and Process(es) to Ensure Respectful Use of Traditional Knowledge and/or Indigenous Intellectual Property*

- UVic Working Group on Indigenous Research Protocols “is developing a protocol for all researchers engaging in research on Indigenous lands or with Indigenous communities.”
 - UVic academic units “typically enter into affiliation agreements to ensure that ownership of materials relating to Indigenous language, culture and tradition remains with the Indigenous community in accordance with the university’s Intellectual Property Policy.”
 - 2016 committee recommended **a new Intellectual Property Policy “with an express commitment to recognition of Indigenous rights, including cultural knowledge and expressions that may not be included within general definitions of intellectual property.”** It also commits the university and its members to respect the cultural property of Indigenous people in its varied forms.
 - Office of I.A. outlines appropriate principles and processes to protect the intellectual and property rights of partners through protocol agreements, MOUs and MOAs. All emphasize “observing cultural customs and practices with respect to traditional knowledge and sacred knowledge, and outline mutually-agreed standards concerning the cultural and intellectual property rights of participating communities.”
- **Currently no UVic policy: ASP refers to HRE policy, IGOV-FHSD doc and UVic IP policy.**

Model Policy Purpose:

- **Sets out principles and model clauses** that encourage respectful access to, and use of, Indigenous knowledge within a framework to proactively foresee and forestall unauthorized appropriation and to prevent inappropriate ownership claims over Indigenous knowledge by public post-secondary institutions and all of their faculty, research associates, post-doctoral fellows, students, staff, contractors and affiliates.
- **Intended to complement TCPS2 requirements** and enhance institutional capacity to **address gaps in policy and guidance for “non-research”** activities that are not subject to ethical review.
- **Underscores a need** for all parties to cooperatively discuss and address the ethical and legal issues involved with **respect, honesty, transparency, open-mindedness, and good faith.**

Model Policy – sample model clause (5.4.1):

“Ownership and control of Indigenous knowledge remains with the respective Indigenous community(ies) or Nation(s), thus no individual or institutional claims of ownership will be made. Moreover, no individual or institutional rights will be pursued to Indigenous knowledge or associated intellectual property that has been accessed and used for any institutional purpose.”



Institutional Policy Development based on Model Policy

- Supports **implementation of rights and responsibilities** in:
 - RCAP (1995)
 - UNDRIP (2008) Articles 11.2, 31.1
 - TRC Calls to Action (2015) Articles 10, 13, 16, 43, 44
 - BC Aboriginal Post-Secondary Education & Training Policy Framework & Action Plan (2012)
- Informed by **TCPS2** and key resources/publications of **FNESC, NAHO, AFN**
- Should be **co-developed** with:
 - Aboriginal Service Plan, Strategic Plan, Indigenization Plan, and comprehensive review of other institutional policies (indicated)
- Should draw upon **Institutional in-house Indigenous expertise**:
 - *e.g., UVic Indigenous Law Unit, Indigenous Language Revitalization, CIRCLE, IGOV, NCIED, Indigenous Academic and Community Engagement Office*
- Should draw upon and uphold local **Indigenous communities' and Nations' guidelines and protocols.**

Beyond just policy solutions

Protection and respectful use of Indigenous knowledge and associated cultural and intellectual property by public post-secondary institutions:

- Is not just a consideration for **research**
 - Is not just an **ethical** issue
 - Is not just a **policy** problem
 - **Need to complement institutional policy with practical tools and resources to assist communities**

Invitation to Inform Next Steps (Open Discussion)

1. What information, tools or resources *already exist* to facilitate the respectful use and protection of Indigenous knowledge and wisdom (and associated cultural heritage and intellectual property) that is accessed and used by public post-secondary institutions in BC for research, curriculum development/curricular partnerships and teaching/learning?

➤ **Collate to facilitate access**

2. What information, tools or resources are *still needed* by Indigenous Nations, communities, and organizations for this purpose?

➤ **Develop and make available**

Thank
you