

ETHNOBOTANY AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLE

1. Who are Indigenous People? Are they the same as Tribal People?

- Generally, those occupying an area at the time of colonization or conquest.
- Traditional territory
- Separate culture
- Desire to be separated from national government authority
- tribal in organization.
- Labour Organization Convention – will recognize and protect tribal people. New person that moves in is not protected.

2. Intellectual Property Law

- Unlikely to permit patenting of a plant solely on the basis of the knowledge that the plant has medicinal properties i.e. folk knowledge
- A claim that covers a particular extract might be valid under Contemporary Developed World Patent Law. Compound extracted may be *changed and patented*.

3. Trade Secret Protection

- An application of contract law.
- Those who know about the plant enters into an agreement with those who want access to it. Can't transfer the knowledge to a third party without re-negotiations.

4. United Nations Convention on Biodiversity – 1992

- The Nation which holds the plant has control to access to the plant
- Article 8 states that the rights of indigenous people are set by national law
- Gives indigenous people no rights over land resources (*genetic resources*) – they cannot bargain with outsiders – only the Nation can make agreements.
- However, the Nation must *consult* with the people of the land before permitting any exploration or exploitation of these resources.

5. World Intellectual Property Organization (WIPO)

- Developed model provisions for national law on protection of folklore against elicit exploitation and other prejudicial actions. Not yet set in law.
- Intellectual property includes but not limited to – songs, emblems, folklore, medicines, photographs, pottery, paintingsa very long list of their creations.

6. Current Legal Situation

- There is no protection from competition – another country for same resource
- No protection with respect to derived knowledge. Should there be?
- Little legal pressure for the Nation to share rewards with indigenous people.

7. Nations Negotiate with RX Companies for Genetic Resources

- Accept payment for large tracts of land set aside as a *nature preserve* – Merck Co. have rights to explore for medicinal plants while indigenous people live and work in the preserve.

8. What can Indigenous People do to Protect Intellectual Property?

- Prevent outsiders from coming into communities.
- Do not share knowledge with outsiders.
- Send elected individual to meet with national government.
- Cause disruptions

9. Digging Into the Roots of Research Ethics – Kelly P. Bannister

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- Ethnobotanist, Botany Department, University of Victoria
- Worked with the Indigenous Secwepemc, British Columbia
- Studied their medicinal plants, made chemical extracts from plants
- Previous ethnologists studied songs from tribe and held copyrights to them
- Would not allow her professor and dissertation director to sell extracts to RX company
- Created a big problem with the professor and the university- stopped her research
- Results still unpublished