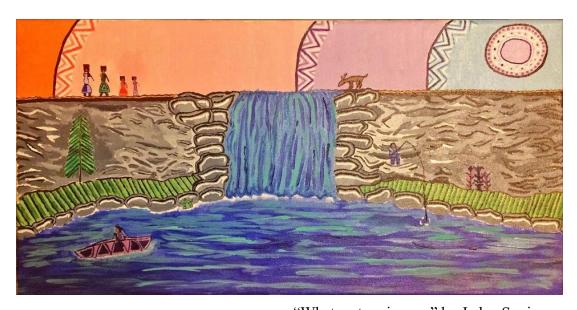# INDIGENIZING RESEARCH

A RESOURCE GUIDE FOR INDIGENOUS PEOPLES, ACADEMICS AND POLICY MAKERS

A Living Document

"What water gives us" by Jaden Squire

GWF

Co-Creation of Indigenous
Water Quality Tools

McMaster
University

Indigenizing Research: A Resource Guide for Indigenous Peoples, Academics and Policy Makers

Introduction

The purpose of this research guide is to foster dialogue between Indigenous peoples, academics and policy-makers concerning methods utilized by our research team. The resource guide is expected to be accessible both to Indigenous community and activists; along with researchers, policymakers and academics, respecting the agency of Indigenous peoples.

What to find in this document?

In this document, you will find resources touching upon academic books and articles, ethical guidelines by government and Indigenous organizations, and decisions and standards held by international organizations. This research guide covers five topics: (1) Indigenizing Research, (2) Traditional Ecological Knowledge and Its Relevance, (3) Research Ethics and (4) Intellectual Property, and (5) The Doctrine of Discovery, *res nullius,* and the Framework of Dominance.

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- Dawn Martin-Hill (Mohawk, Wolf Clan), Associate Professor, McMaster University
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Disclaimer

This guide does not attempt or claim to be a complete list of resources. The inclusion or exclusion of any resource does not imply endorsement or disapproval. When describing the organizations, we have used text from the organizations' website.

Contact

For more information about our research project is available at https://www.ohneganos.com/. For general inquiries and copies of the research guide, you can contact, Colin Gibson, Program Manager: gibsoc13@mcmaster.ca. To contact our Principal Investigator, Dawn Martin-Hill, dawnm@mcmaster.ca.

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1. Indigenizing Research

Key Concepts

Indigenization, which is defined as "a collaborative process of naturalizing Indigenous intent, interactions, and processes and making them evident to transform spaces, places, and hearts. In the context of post-secondary education, this involves including Indigenous perspectives and approaches. Indigenization benefits not only Indigenous students but all students, teachers, staff members, and community members involved or impacted by Indigenization…. The goal is not to replace Western knowledge with Indigenous knowledge, and the goal is not to merge the two into one. Rather, Indigenization can be understood as weaving or braiding together two distinct knowledge systems." (Antonie et all, 2019). In research contexts, Indigenization is critical because scientific research privileges the dominant Euro-centric perspective, thereby excluding Indigenous sciences, knowledges, experiences and worldviews. The Indigenous peoples were excluded from research, and they were often misrepresented and even exploited in by researchers.

Then, *Decolonization* refers to the processes of "process of deconstructing colonial ideologies of the superiority and privilege of Western thought and approaches. On the one hand, decolonization involves dismantling structures that perpetuate the status quo, problematizing dominant discourses, and addressing unbalanced power dynamics. On the other hand, decolonization involves valuing and revitalizing Indigenous knowledge and approaches and weeding out settler biases or assumptions that have impacted Indigenous ways of being." (Antonie et all, 2019. For a general discussion, see Smith, 2018, 2008).

Today, we are increasingly seeing scholars implement Indigenous research methodology into their research. Indigenous research methodology is usually defined as "relational accountability" As a researcher you are answering to all your relations when you are doing research" (Wilson, 2001). Indigenous research methodologies can be used by all researchers or by Indigenous research conducted by Indigenous scholars (Weber-Pillwax, 1999). For general surveys of Indigenous research methodology, see Kovach (2009) Drawson et al. (2017) Easby, (2016). For applications, see Alfred (2005 and 2009), Martin-Hill (2008), McCarthy (2016).

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2. Traditional Ecological Knowledge

Key Concepts

Traditional Ecological Knowledge (TEK), is part of Indigenous knowledge (IK). Indigenous Knowledge can be defined as "Indigenous knowledge is a complete knowledge system with its own epistemology, philosophy, and scientific and logical validity... which can only be understood by means of pedagogy traditionally employed by the people themselves." (Daes, Report on the Protection of Heritage of Indigenous People). Indigenous Knowledge is slowly being recognized by mainstream science. (Hamacher, 2018 and Bartels, 2019, on Navajo Astronomical Knowledge, Brender, 2017). In turn, TEK reflects "a body of information about the interconnected elements of the natural environment traditional Indigenous people have been taught, from generation to generation, to respect and give thanks for" (Brant J., cited in NAFA, 1996). IK has been recognizing as science and has been started to become incorporated in mainstream science. Moreover, IK in general, and TEK in particular, are increasingly recognized as a fundamental resource for adaptation, resilience-building in the face of impending environmental change and water security (UNFCCC, 2016; UNESCO, 2018). Similarly, the UN Sustainable Development Goals call to "support and strengthen the participation of local and Indigenous communities in improving water and sanitation management. (UN, 2016).

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3. Research Ethics

Key Concepts

Academics interested in doing research with First nations should follow special ethical rules. The most important rules are The First Nations principles of OCAP® that establishes how First Nations data should be collected, protected, used, or shared. (® is an international intellectual property symbol that signifies that the OCAP name and logo are registered trademarks of First Nations Information Governance Centre, a non-profit organization mandated by the Assembly of First Nations). As explained by the First Nations Information Governance Centre (2019), OCAP stands for: **O**wnership: "Refers to the relationship of First Nations to their cultural knowledge, data, and information. This principle states that a community or group owns information collectively in the same way that an individual owns his or her personal information." **C**ontrol: "affirms that First Nations, their communities, and representative bodies are within their rights in seeking to control over all aspects of research and information management processes that impact them. First Nations control of research can include all stages of a particular research project—from start to finish. The principle extends to the control of resources and review processes, the planning process, management of the information and so on." **A**ccess: "First Nations must have access to information and data about themselves and their communities regardless of where it is held. The principle of access also refers to the right of First Nations communities and organizations to manage and make decisions regarding access to their collective information. This may be achieved, in practice, through standardized, formal protocols." Possession: "Physical control of data. Possession is the mechanism by which ownership can be asserted and protected." These principles have been further developed in a number of documents. FNIGC (2007 and 2011).

Other important standards are those established in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (TCPS), which include a special chapter on "Research Policy Involving the First Nations, Inuit and Métis Peoples of Canada. (The Tri-Council is composed by the three main funding agencies through which the Government of Canada supports research and training at post-secondary institutions, namely, The Canadian Institutes of Health Research (CIHR), the Natural Sciences and Engineering Research Council (NSERC), and the Social Sciences and Humanities Research Council (SSHRC). This chapter establishes that the research goals that are directed by the Indigenous communities, designed and implemented in the co-creation of content. nd Intellectual property, data, equipment and tools remain with the communities.

The Assembly of the First Nations also developed research ethics guidelines (AFN, 2008), and some communities have developed their own guidelines, standards and procedures. There are special rules for the Six Nations (Six Nations Council, 2014), Mi'kmaq peoples and their knowledge (Mi'kmaw Ethics Watch, 1999), Inuit develops some principles for research with Inuit (Inuit Tapiriit Kanatami 2005, 2007, 2018), Métis (Métis Centre of NAHO 2010), First Nations of Quebec and Labrador (Assembly of the First Nations of Quebec and Labrador 2005), Manitoulin First Nations (Noojmowin Teg Health Centre of Manitoulin Island, 2003), Aboriginal Women (Quebec Native Women, 2012), Manitoba First Nations (Manitoba First Nations Education, 2014), among others. Some institutions also have developed their own standards (see, e.g., Aurora Research Institute, 2011) The First Nations of Quebec and Labrador Health and Social Services

Commission developed a useful toolbox for researchers. (2018) For some academic discussion on indigenous ethic research standards, see Brant Castellano (2008) and Riddle et al. (2017).

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4. Intellectual Property

Key Concepts

According to UNDRIP, article 31: "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."

WIPO defines the main three categories of legal protection as follows. *Traditional Knowledge* (TK) is "knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity." These include agricultural, environmental or medicinal knowledge, or knowledge associated with genetic resources (e.g., knowledge about traditional medicines; traditional hunting or fishing techniques; knowledge about animal migration patterns; knowledge about water management). For purposes of protection, international law distinguishes traditional knowledge from *Traditional Cultural Expressions* (TCE)*,* also called "expressions of folklore", may include "music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions." Traditional cultural expressions may be considered as the forms in which traditional culture is expressed; form part of the identity and heritage of a traditional or indigenous community; are passed down from generation to generation. Genetic resources (GR) are defined in the Convention on Biological Diversity (CBD) "as those biological materials contain genetic information of value, and are capable of reproducing or being reproduced." (WIPO, 2019g)

These three categories are protected by international law and some nations laws. TK and TCE are protected against misuse and misappropriation such as their copying, adaptation or use by unauthorized third parties. Most commonly, TK is protected by recognizing exclusive rights that exclude third parties from using them and providing compensation for misuse, as well as "non-property" forms of protection, like moral rights, equitable compensation schemes and protection against unfair competition.

The expression *Indigenous intellectual property* is a term used in national and international forums to identify indigenous peoples' special rights. For academic discussions, Riley (2004), Graham and McJohn (2005), Drahos (2014), Rimmer (2016), See Blokdyck (2018). However, there are some tensions between the protection of TK and TCE and what Western Law calls "intellectual property," the strongest form of legal protection provided to "creations of the mind," such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce (WIPO 2019a). TK and TCE in many often do not fit the conventional Western Legal definition of IP, so some legislations consider that they are in the "public domain" and they could be used freely. Then, there is a critical challenge, stated by WIPO as follows: there is a need to create "specially-adapted IP rules to prevent unauthorized or inappropriate use of TK and TCEs by third parties, i.e., their copying, adaptation or other kinds of exploitation. This does not mean that conventional IP systems are being forced upon TK and TCEs, but rather that the values and

principles embedded in IP law could be adapted and redeployed for new subject matter and for new beneficiaries" (WIPO 2019h).

There are important attempts to address this policy challenge by WIPO. For a video presentation of the see, by Frank Gurry, Director General of WIPO (Arts Law 2013). WIPO has developed a complete database of existing Codes, Guides and Practices (WIPO 2019b), a survey of existing practices, protocols and policies (WIPO 2019c), a specialized portal for indigenous peoples (2019f), and useful toolkit for document traditional knowledge (WIPO 2017), model of legislation for states (WIPO and UNESCO, 1985) as well as and several guidelines for museums, libraries and archives (WIPO 2010), for handicrafts (WIPO 2003), and arts and festivals (WIPO 2018). WIPO also offers training opportunities for members of indigenous communities (WIPO 2019d and 2019e). Currently, there is an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore undertaking text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s), which will ensure the effective protection of traditional knowledge, traditional cultural expressions, and genetic resources (WIPO 2019g).

For the position of the Government of Canada on the issue, see the reports of the Innovation, Science and Economic Development Canada (ISED, 2016, 2019a and 2019b)

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5. The Doctrine of Discovery

Key Concepts

"The Doctrine of Discovery emanates from a series of Papal Bulls (formal statements from the Pope) and extensions, originating in the 1400s. Discovery was used as legal and moral justification for colonial dispossession of sovereign Indigenous Nations, including First Nations in what is now Canada. During the European "Age of Discovery," Christian explorers "claimed" lands for their monarchs who felt they could exploit the land, regardless of the original inhabitants." (AFN, 2018). For general information on these doctrines, see Reid (2010); Newcomb (1992 and 2008) and Wolfchild (2015).

The Doctrine of discovery is related to the notion of Terra *Nullius* (in Latin, nobody's land), the idea that a thing did not belong to anybody and they free to be acquired by "occupation." In international law, the doctrine means that the lands in America, Asia, Africa and Oceania belonged one owned the land prior to European assertion of sovereignty. The doctrine of discovery and the notion of res *nulliius* are the key components of the United Nations called the "Framework of Domination "United Nations Economic and Social Council" (2010).
The Report of the Royal Commission on Aboriginal Peoples determined the concepts of the Doctrine of Discovery and Terra Nullius are "factually, legally and morally wrong," that "such concepts no longer form part of lawmaking or policy development by Canadian governments" and that "commit themselves "to renewal of the federation through consensual means to overcome the historical legacy of these concepts, which are impediments to Aboriginal people assume their rightful place in the Canadian federation." (1996, section 1.16.2)

In addition, the Doctrine of Discovery is illegal under several international documents. In particular, the Preamble of UNDRIP (United Nations, 2007) holds that "all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust."[1] Articles 28 and 37 of the Declaration also prohibits such doctrines. In two occasions, the United Nations has studied and condemned the doctrine of discovery (United Nations Economic and Social Council, 2010 and UN Permanent Forum on Indigenous Issues, 2014).

In the landmark 2014 decision *Tsilhqot'in.* The Supreme Court of Canada held that "The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada" (SCC, 2014, para 69). In 2015, the report of the Truth and Reconciliation Commission of Canada (TRC) called the Government of Canada to "renounce the concepts of *Terra nullius* and the Doctrine of Discovery" (TRC, 2015, at para. 45:ii). In 2018, the Assembly of the First Nations recommended Canada to "finally and formally end any reliance on the doctrine of Discovery" (AFN, 2018).

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[1] A similar declaration is part of the Preamble of the International Convention on the Elimination of All Forms of Racial Discrimination (United Nations 1965) .

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