

Ethnographic Archival Records and Cultural Property

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RÉSUMÉ Cet article examine des concepts de la propriété culturelle tels qu'ils se rapportent aux fonds d'archives. De façon plus spécifique, il examine comment ces concepts s'appliquent au matériel archivistique ethnographique relatif aux Premières Nations. L'auteur explore les responsabilités éthiques et morales des archivistes face au contenu de l'information dans de tels fonds d'archives et leur façon de considérer ces images et ces documents dans la précarité de leur contexte culturel. L'auteure se penche aussi sur l'engagement croissant des populations autochtones envers la gestion de leurs ressources culturelles et les façons dont la collaboration contribue à des méthodes de soin et de conservation qui font appel à la spécificité culturelle des documents. Les questions relatives au droit de propriété moral et physique sont également abordées.

ABSTRACT This article looks at concepts of cultural property as they apply to archival holdings, and specifically how these concepts apply to ethnographic archival materials with First Nations content. The author explores ethical and moral responsibilities of archivists to the information content of such material in our holdings and the ways we treat culturally sensitive images and content. The author also addresses the increased involvement of aboriginal people in the management of their cultural resources and how collaboration can determine culturally appropriate care and preservation from an archival perspective. Issues relating to moral and physical ownership are also addressed.

Archivists who work with documents that relate to indigenous people and communities must often face issues of cultural and intellectual property in the way they inform decisions about use and access to these materials. They must consider the moral and ethical implications attached to materials that may not have been created under circumstances that would be judged ethical by today's standards. Archivists must also understand their obligation to work closely with the communities depicted and referenced in their holdings, and establish policies and guidelines that are respectful to those communities. Finally, the competing needs of other users such as scholars, the museum community, and others must also be addressed. This paper will examine these issues by looking at a specific subset of records: ethnographic archival materials collected and accumulated by anthropologists and other scholars. Guide-

lines for establishing policies and respectful relationships with those that are the subject of these types of records are based on the experience of the archives at the UBC Museum of Anthropology (MOA).

To understand better the basis for creating internal policies that are respectful of indigenous views, it is important to first look at what is meant by property and cultural property in an archival context. In a western tradition, property is something that is owned or belongs to some person or persons. Legal definitions include rights that attach to those who are the owners and determine what uses one can make of one's property. Cultural property is defined as the material manifestations that relate to a civilization, especially that of a particular country at a particular period.¹ These definitions, however, are not applicable to archival material that has First Nations' content. Cultural property laws, for example, focus on physical objects and do not encompass more intangible expressions of cultural heritage such as those found in archival repositories. A further complication arises in that the type of ethnographic records under discussion here was not created by the people whom they represent, but by those working in an academic western tradition to record what they – at that time – considered evidence of dying cultures that would soon be extinct.² These efforts have been described as a period of “salvage anthropology” as anthropologists documented through audio recordings, films, and extensive field notes all the information they could for the future.

Of course indigenous cultures, did not die, but continue to survive and flourish today. Unfortunately, due to attempts at integration and assimilation of these peoples into European culture, much traditional knowledge has been lost or diluted. Those records created by anthropologists and ethnographers, such as Dr. Wilson Duff, offer a rich source for First Nations groups to re-connect with their traditional cultural roots.³ They provide evidence of stories, dances, language, and other traditional knowledge that may be at risk of disappearing.

However, the location of these materials within a museum archival context situates them within a politically contested ground where First Nations groups are asserting greater control over issues of representation and over ownership of their material culture. As part of this process, First Nations are also redefining the parameters of what constitutes cultural property. Aboriginal communities, for example, consider traditional knowledge to be an expression of the human soul in all its aspects, as well as the foundation for economic, social,

1 *Oxford English Dictionary*, <<http://dictionary.oed.com/...=property>>.

2 There are, of course, many other archival sources of information and research on First Nations communities aside from the records created by anthropologists and ethnographers. These include church archives, government archives, municipal archives, First Nations community archives and information centres, and many others.

3 Dr. Wilson Duff's research focussed on the native cultures of the Northwest Coast and was instrumental in the development of scholarship in this area. His papers are housed at the UBC Museum of Anthropology and at the British Columbia Archives.

and spiritual growth.⁴ In line with this idea, museums recognize that First Nations hold moral (if not legal) ownership of physical objects. First Nations' rights to ethnographic archival materials, however, are not as clear-cut as to their material culture whose custodianship is with the museum. Indigenous groups did not create these ethnographic records, but they still manifest important evidence of their spiritual and cultural traditions. Dr. Julie Cruikshank, a University of British Columbia anthropologist who has done extensive work on oral traditions, notes that "Spoken words embodied in ordinary speech, may be ephemeral physical processes. But they become *things* when they appear on paper, on artifacts or when they are recorded in magnetic or digital codes on tapes or disks, or in film or videotape."⁵ Moreover, Dr. Michael Ames, former director of the UBC Museum of Anthropology, has noted,

People are the artists or creators of their own histories and cultures and therefore also have, in essence, and should be granted in practice, exhibition and moral rights to their cultural representations. This "cultural copyright" or creative control should be recognized even though the photographer, film-maker, or archives may have legal possession of the images.⁶

Archivists' handling ethnographic archival material must respect this cultural copyright and the meanings and values that aboriginal groups attach to these records.

One of the key distinctions that the UBC Museum of Anthropology makes to promote the idea of cultural copyright is the difference between the physical legal ownership of a thing or record, and the cultural and moral ownerships attached to records and objects. The museum recognizes that it does not own the ritual or spiritual properties that objects or archival records embody, and that the people from which they came and who are represented in the material retain these rights.⁷ These distinctions are not a matter of what is "legal," but what the museum views as among its ethical responsibilities to aboriginal peoples. Mohawk scholar Deborah Doxtator has pointed out, however, that these distinctions are problematic for members of First Nations communities. She states that:

4 Simon Brascoupé and Karin Endemann, *Intellectual Property and Aboriginal People: A Working Paper* (Ottawa, 1999), p. 30.

5 Julie Cruikshank, "Oral Tradition and Material Culture: Multiplying Meanings of 'Words' and 'Things,'" *Anthropology Today*, vol. 8, no. 3 (June 1992), pp. 5–9.

6 Michael Ames, "Cultural Copyright and the Politics of Documents that Move and Speak," in Harold Naugler, ed., *Documents that Move and Speak: Audiovisual Archives in the New Information Age, Proceedings of a Symposium, National Archives of Canada, April 30-May 3, 1990* (Munich, 1992).

7 Elizabeth Johnson, "'Equal Partners': How Can We Implement this Principle?," *AABC Newsletter*, vol. 7, no. 4 (Fall 1997), p. 5.

Moral ownership ... is not the same as "legal" ownership in the museum world. It not only inhibits possession of, control over or easy access to the object or informational records concerning it, but it can mean never having cultural autonomy to present your own history and culture without involving a third party. It can also mean that you must always ask someone else to see what is "morally" yours.⁸

In addition, Michael Ames, has also stated that those professions exercising power over archival material may be cultural trespassers who operate in violation of cultural copyrights.⁹

Reconciling the competing opinions on the nature of ownership can thus make it difficult for archives to act ethically and morally in terms of the ethnographic material in their holdings. Compounding the problem is when criticism comes from within the museum and archival community. In addition, the debates that do occur can still be bound in a western academic tradition and tend to reflect western legal and philosophical perspectives. To appreciate the issues better, it is important to understand the significance that aboriginal communities place on archival material. Most important, ethnographic materials can help aboriginal communities in maintaining and strengthening their cultural identities. Cynthia Callison, a lawyer and member of the Tahltan First Nation, has stated "There must be recognition of our living cultures rooted in the traditional heritage of intangible expressions and it is necessary to understand the importance of Aboriginal communities' responsibility for and control of these expressions."¹⁰ Moreover, Michael Ames notes that "we must recognize that First Nations communities give more importance to the continuities between past and present and their continuing presence in contemporary society."¹¹ For these reasons, among others, First Nations communities wish to reclaim that which is lost, and to have control over their own histories and their cultural representations within and outside their communities. Ethnographic records in this regard are not distinguishable from material culture, but have the same properties and spiritual qualities. Control over these and all cultural representations is thus an important aspect of maintaining a distinct identity within a larger society.

One of the key aspects of this debate, are questions over who can or should control the past and the material evidence of the past? Scholar Shauna McRanor has noted in her discussion of oral history records that these documents

8 Deborah Doxtator, "The Implications of Canadian Nationalism on Aboriginal Cultural Autonomy," in Camilla Turner and Joy Davis, eds., *Curatorship: Indigenous Perspectives in Post-colonial Societies: Proceedings* (Victoria, BC, 1995), p. 67.

9 Ames, "Cultural Copyright and the Politics of Documents that Move and Speak."

10 Cynthia Callison, "Appropriation of Aboriginal Oral Traditions," *UBC Law Review: Material Culture in Flux: Law and Policy of Repatriation of Cultural Property*, Special Issue (1995), p. 65.

11 Michael Ames, "Cultural Empowerment and Museums: Opening Up Anthropology Through Collaboration," in Susan Pearce, ed., *Objects of Knowledge* (New Jersey, 1990), p. 159.

contain accounts that form, in part, the intellectual property of First Nations. She further elaborates that First Nations control of these materials would “provide an opportunity for these materials to participate fully in the present social context and would allow inter-relationships to be formed between them and the other records of the community to which they related.”¹² Museums and archives that house these materials are seen by many to be gatekeepers who retain ultimate control over ethnographic materials. The issue, at least from the institutional perspective, is not as clear-cut. The Museum of Anthropology recognizes its responsibilities to the aboriginal communities represented in its holdings, but must also recognize the other stakeholders and communities that it serves.

The conflicts around the museum’s responsibilities to its different audiences will be discussed later in the paper, but first it is important to address some of the ways that the relationships between museums and aboriginal communities have changed. As already noted, in the past museums tended to exhibit and represent First Nations through a western philosophical and academic perspective. This began to change as members of originating communities started to make their voices heard. In the early 1990s the Canadian Museum Association (CMA) and the Assembly of First Nations (AFN) held a joint task force to discuss ways in which the relationship between Canadian museums and First Nations could be improved. In 1992, they issued their findings in a report called, *Turning the Page: Forging New Partnerships Between Museums and First Peoples*.¹³ In it the task force declared their mission statement was “To develop an ethical framework and strategies for Aboriginal Nations to represent their history and culture in concert with cultural institutions.” Both parties agreed that improvements were needed in this relationship and that the partnership between the CMA and AFN was the correct vehicle to address the problems of the past. Three main issues were identified: increased involvement of Aboriginal peoples in the interpretation of their culture and history by cultural institutions; improved access to museum collections by Aboriginal peoples; and the repatriation of artifacts and human remains.¹⁴ For the purposes of this paper, two other findings should be noted. First, it was agreed that new partnerships should be guided by moral, ethical and professional principles, and not limited to areas of rights and interests specified by law.¹⁵ Second, both parties accepted a philosophy of co-management and co-

12 Shauna McRanor, “Maintaining the Reliability of Aboriginal Oral Records and Their Material Manifestations: Implications for Archival Practice,” *Archivaria* 43 (Spring 1997), p. 69.

13 Assembly of First Nations and Canadian Museums Association, *Task Force Report on Museums and First Peoples. Turning the Page: Forging New Partnerships Between Museums and First Peoples* (Ottawa, 1992).

14 Ibid., p. 4.

15 Ibid.

responsibility as the ethical basis for principles and procedures pertaining to collections related to Aboriginal cultures contained in museums.¹⁶

As museums continue to build and expand their relationships with First Nations communities, they must also keep in mind their responsibilities to the other communities they serve. The task force report also acknowledges this principle, stating that “Aboriginal Peoples must also recognize the legitimate concerns of museums with respect to the care, maintenance and preservation of their holdings,” and also that “Interpretation or representation of information relating to First Peoples should conform to an ethic of responsibility to the community represented, as well as to the scholarly or professional ethics of the academic and museum communities.”¹⁷ In regard to ethnographic records, a museum archive must also consider the rights of the donor of the material, and their wishes or the wishes of their heirs. The concerns of scholars and academics in regard to access must also be addressed as well as the museum’s role as an educational institution. The Museum of Anthropology, for example, is part of the University of British Columbia and is considered a teaching museum. There is an expectation among the university’s academic community that it will have access to the resources of the museum. Finally, the museum must also be responsible to the professional organizations with whom it is associated. This includes the museum and curatorial professions, and the archival community.

The Museum of Anthropology strives to achieve a balance among the different communities to whom it is responsible. In formulating its policies and procedures, the museum is guided by the *Task Force Report on Museums and First Peoples*, and acknowledges that it is accountable to the First Nations communities represented in both its material culture and archival collections. The museum’s policy document, *Management of Culturally Sensitive Material* states:

The Museum of Anthropology is committed to respecting the values and spiritual beliefs of the cultures represented in its collections. We know that our collections contain items which are important to the originating communities, and whose placement and care within the museum continue to affect the values and beliefs of those communities. The museum recognizes that these objects have a non-material side embodying cultural rights, values, knowledge, and ideas which are not owned or possessed by the museum, but are retained by the originating communities.¹⁸

Moreover, this document affirms that the museum willingly enters into discussion with originating communities as to the proper care, display, and stor-

16 Ibid., p. 7.

17 Ibid., p. 8.

18 Museum of Anthropology, *Management of Culturally Sensitive Material*.

age of sensitive materials.¹⁹ The way the museum and the museum archives function is directly affected by the guidelines outlined in these policies, and result in actions that aim to balance all of the museum's responsibilities in a workable and ongoing partnership with First Nations communities.

In regard to the museum archives these issues play out in very specific ways. As archivists we need to balance the competing needs of our users and those depicted in our holdings. As already stated, many of the ethnographic materials we house are considered by First Nations communities to be cultural property and to contain cultural copyrights that are retained by the peoples depicted. The case of images that portray ceremonial rituals and objects that are not intended to be seen by the uninitiated provides a good place to illustrate a number of the points under discussion and to begin to look at practical steps that the Museum of Anthropology archives has taken to improve the way it administers ethnographic records. We have consulted with First Nations groups about which of our records contain culturally sensitive images. Thumbnails of those images have subsequently been removed from our finding aids, with a note indicating what was removed and why.²⁰ For the time being these images are restricted to all but members of the communities depicted. Currently, we have no protocols in place to handle requests from others to view these restricted images, but are in the process of setting up partnerships with communities to determine answers to questions of access and control of this type of material.

Restricting culturally sensitive images can appear contrary to the proviso of the Association of Canadian Archivists' *Code of Ethics* that states that archivists should "encourage and promote the greatest possible use of the records in their care, giving due attention to personal privacy and confidentiality, and the preservation of records."²¹ Culturally sensitive material, however, should be regarded on equal footing with "personal privacy" and "confidentiality." Certainly, this is what is done at the Museum of Anthropology. Some archivists may disagree and argue that doing so does not fulfill the archival mandate of preserving and making records available for all users to the greatest extent possible. David Bearman, for example, has opposed what he sees as archivists giving "privileged censorship status to those who are the subjects of archival information." Moreover, he has stated that:

19 Ibid.

20 Images were identified as culturally sensitive based on information acquired by Dr. Elizabeth Johnson in the course of working with the Musqueam community. Further consultations with the Musqueam and with other First Nations communities are needed to help identify other culturally sensitive material in our archives and in the Museum of Anthropology's collection as a whole. This is an ongoing process, and we rely on expertise from the communities themselves to guide us in determining what is culturally sensitive, and to determine what restrictions should be placed.

21 Association of Canadian Archivists, *Code of Ethics*, available at <<http://archivists.ca/about/ethics.aspx>>.

There is a multiplicity of meanings in any kind of record of the past, which can reveal more information about the creator of the record than about the subject. To give any one of these meanings privileged status and allow self-censorship is to confront one of the basic beliefs of archivists: documents should be allowed to communicate whatever information, over time, to whomever.²²

For this reason, archivists should be careful how restrictions are applied to ethnographic archival materials. We should not restrict material because it may depict aboriginal communities according to outdated ideas of ethnic and racial representation, for example, as these depictions provide a basis of study. What we should do is restrict images that have important sacred and ritual properties attached to them, because these types of materials are “personal” and “confidential” to the peoples depicted.

Placing restrictions on culturally sensitive material is just one way in which the Museum of Anthropology archives fulfills its responsibility toward the ethnographic records in its holdings. Other steps undertaken include continuing to work on and build partnerships with communities. To do this, the museum provides internship opportunities for members of indigenous communities to work at the museum and learn about different aspects of its operations. In 2002–2003 the museum hosted two interns from the Haisla community for a year; some of that time was spent in the museum archives researching their communities and helping to identify archival records that might be culturally sensitive.²³ This was also an opportunity for the interns to learn about archival methodology and practice in order to help them with their community archives. Because of this partnership, the museum’s ties with the Haisla community are stronger and there is a foundation on which to continue to build. In 2003–2004 the Museum accepted two new interns from the Musqueam First Nation who also spent time in the archives, as well as in other areas of the museum. These types of arrangements allow museums and aboriginal communities to learn about each other and to build trustful and respectful relationships. These relationships are essential to help the archives formulate policies concerning its holdings and to let individual communities know what records are held that pertain to them.

Another step the museum has taken is to create protocols and informed consent forms for current research being done among First Nations communities.²⁴ Interview and research subjects are told that the information they are

22 David Bearman, “Discussion,” in Naugler, ed., *Documents that Move and Speak*, p. 81.

23 The Haisla interns received an orientation to the archives, including its purposes and methodologies. Regular meetings were set up to discuss different aspects of archival work, and to share knowledge that the interns could take back to their community archives. In regard to culturally sensitive Haisla material in the archives, a search of archival material turned up very little on the Haisla, and nothing that could be considered culturally sensitive.

24 This is an ongoing process, and policies and methodologies for informed consent are revised as we learn more through community collaboration.

providing may be eventually transferred for permanent retention in the museum archives. They are allowed to decide the disposition and use of the information they provide, and whether there should be any access or reproduction restrictions placed on the material once it reaches the archives. In this way, members of First Nations communities are reassured that the information they share with us will not be misused or misrepresented, and allows the museum to conduct valuable research and gather information that may not be shared under different circumstances.

The main issue in this paper, however, is how to establish guidelines to handle ethnographic records that are currently in our archives and to understand the moral and ethical responsibilities of archivists who care for these types of materials. Ethnographic records hold great significance to the surviving members of the communities depicted, and are considered by them to be their cultural and intellectual property. First, it is important to acknowledge that archivists do not have all the answers, and that we are in the process of finding solutions that will work for all parties. Second, we need to establish and continue to build relationships with First Nations communities that are based on mutual respect and trust. Third, archives need to create policies and guidelines that handle competing claims and outline archives' responsibilities to all their clients. We also need to work in consultation with aboriginal communities to identify those records that depict sacred rites and objects, and that may be culturally sensitive. Finally, we need to be pro-active and establish contacts with communities, and let them know that we hold records that pertain to them. We should not wait for them to come to us.

By taking these steps, the Museum of Anthropology archives is better able to meet its responsibility to create partnerships between museums and First Peoples as outlined in the 1992 Task Force report. These steps help the museum deal appropriately with the ethnographic archival records in its care in addition to allowing it to act both morally and ethically in its relationships with all the communities it serves.

