

Essai / Essay

Access to data and reports after completion of a research project

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Résumé: L'accès aux données et aux rapports après avoir complété un projet de recherche

Lors de projets de recherche, des protocoles éthiques doivent être suivis pour s'assurer que les droits et la propriété intellectuelle des peuples autochtones et des chercheurs sont protégés. Dans ce contexte, les chercheurs recueillent et analysent les données, écrivent des rapports, présentent leurs résultats lors de conférences et les publient. Une fois qu'une étude est complétée, quels sont les droits des chercheurs concernant les données recueillies et les rapports qu'ils ont rédigés? Quels sont leurs devoirs? Ces questions sont particulièrement importantes pour les chercheurs travaillant en collaboration avec des organismes autochtones ou pour ces derniers. Avant de signer un contrat ou une entente de recherche, les chercheurs devraient s'assurer qu'ils garderont le droit d'utiliser les données et les rapports pour leurs propres écrits et publications.

Abstract: Access to data and reports after completion of a research project

During research projects, ethical protocols must be followed to ensure protection of the rights and intellectual property of Aboriginal peoples and researchers. In such a context, researchers collect and analyse data, write reports, present their findings at conferences, and publish them. Once the project is completed, what are the researchers' rights to the data they have collected and the reports they have written? What are their duties? These questions are particularly relevant to those researchers who work with or for Aboriginal organisations. Before signing any contract or research agreement, researchers should make a point of retaining the right to use the data and reports for their own writing and publishing.

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We are beginning to realise the obvious: a story does not exist as something to be captured but as something to be passed on (Morrow and Schneider 1995: 2).

Introduction

For over 20 years now, whenever researchers have dealt with North American Aboriginal peoples, their projects have usually included ethical protocols and taken a collaborative approach. In the meantime, Aboriginal peoples around the world have actively asserted their rights to intellectual property (e.g., Bell and Napoleon 2008; Brown 1998, 2003; Coombe 1998; Greaves 1994; Nicholas and Bannister 2004). This is very explicit in Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples*. It stipulates that Indigenous peoples “have the right to maintain, control, protect and develop their intellectual property over [...] cultural heritage, traditional knowledge, and traditional cultural expressions” (United Nations 2007: 11).

When working with or for Aboriginal organisations on a project, academic or non-academic researchers are expected to collect and analyse data, to write reports, to present their findings at conferences, and to publish them. Once the project is completed, what are their rights to the data they have collected and the reports they have produced? What are their duties? If they cannot freely access the data and reports, their publishing opportunities—and rights—may be likewise limited. These questions will be discussed here through the example of an oral history study where the researcher’s rights were not respected after completion of the project. The example is a personal one and is meant to warn other researchers about censorship. My intent is to reflect on the possible reasons for such conduct: diverging views on authorship, changing attitudes toward public access, and new research relationships.

Background

In the summer of 1994, Parks Canada in Inuvik asked me to organise an oral history workshop in the Inuvialuit¹ community of Sachs Harbour (Banks Island). The theme was the possibility of conducting an oral history study on the Aulavik National Park area, which had been created in 1992. The attendees agreed to an oral history project and wanted two major outcomes: a book and a video on Inuvialuit land use and knowledge about Banks Island as a whole, and not just the park area. The book would preserve the oral history of Banks Island for the benefit of future generations of Inuvialuit and the public and for the use of northern schools, colleges, and universities.

Following the workshop, I wrote a report of recommendations for Parks Canada for a multi-year oral history study of the island to be undertaken by the Inuvialuit

¹ The Inuvialuit are the Inuit of the Western Canadian Arctic.

Social Development Program (ISDP).² The recommendations were accepted and from 1995 to 1999 I coordinated the Aulavik Oral History Project for ISDP. My work involved several tasks: writing the terms of reference between ISDP and Parks Canada (the main funding agency); applying to other funding sources; interviewing the research participants with the help of Inuvialuit research assistants; taking photos during the interviews; coordinating and editing the work of the Inuvialuit who transcribed and translated the interviews and archival tapes; producing indexes of the translations; writing a final report; and completing a video.

Each Inuvialuit participant signed a consent form, thereby agreeing that the “interview recordings, whether audio, video or photographic, and the resulting translations and/or transcriptions and/or images, would be used for the following purposes: 1) final report(s), 2) book(s), 3) video(s), 4) brochure(s), 5) poster(s), 6) educational material(s), and 7) paper(s) written or presented about the Aulavik Oral History Project.” The consent form also indicated that the “interviewee gives permission to the Inuvialuit Social Development Program (ISDP) to deposit copies of the recorded interviews, as stated above, at the N.W.T. Archives. Any use of this material will need approval of ISDP.” Each consent form was co-signed by myself and the Inuvialuit research assistant,³ under the sentence “I agree to use the information according to the conditions stated above.”

During the project, archival tapes were translated, and 60 Inuvialuit—mainly elders—from five communities (Aklavik, Inuvik, Sachs Harbour, Tuktoyaktuk, and Ulukhaktok, which was then called Holman) were interviewed for a total of 72 interviews, which were transcribed in Inuvialuktun (the main language used during the interviews), translated into English, and indexed. Twenty-two historic sites on Banks Island were visited by helicopter with Inuvialuit elders. Some of the interviews were filmed and used in the video.

I submitted my contract to the ISPD every year, usually in April, once Parks Canada had agreed to the terms of reference of the next project phase. In the spring of 1998, after the departure of the person⁴ at ISDP I had worked with since 1990, I had to submit my contract to someone else who sent it back to me five months later. As I wanted to complete the project and was under financial pressure, I signed it despite the addition of a paragraph entitled “Ownership of research,” which had been added to the end of the contract without my being consulted about its content. It stated, “all research,

² ISDP is a branch of the Inuvialuit Regional Corporation (originating with the 1984 Inuvialuit land claim agreement signed with the Canadian government). Both are based in Inuvik and cover all six Inuvialuit communities. From 1989 to 1994, ISDP had previously managed two oral history studies about Herschel Island and the Yukon North Slope for the creation of two major parks in those areas and with funding from the Yukon Heritage Branch and Parks Canada (Nagy 1994a). I worked for ISPD as the anthropologist in charge of these projects.

³ As much as possible I wanted the interviews to be done in Inuvialuktun by a person from the community so that the interviewee would feel comfortable during the interview. Inuvialuit research assistants were thus essential. They also translated and explained the consent form.

⁴ For the present text, I have decided to keep confidential the names of people mentioned or cited.

information, opinions and all other material acquired or produced by the Contractor in relation to the Aulavik Oral History Project are the property of ISDP whether under this or any previous agreement with the Contractor.”

I was fine with the idea that ISDP would own the material I collected and produced since it acted as a kind of trustee to the Inuvialuit project participants.⁵ It thus made sense that ISDP would be the one to contact for copies of the Aulavik material or for permission to use. The paragraph did not specify, however, that as the principal investigator I could use the material for future presentations or publications, as indicated on the consent forms. I wondered whether the wording had the potential to restrict my rights as an author although I doubted that ISDP could own my “opinions” (i.e., those to be included in my final report), and do so retroactively. Indeed, I knew that under Canadian law I held the authorship of the material I wrote since I was working for ISDP as a consultant, not as an employee (see Government of Canada 1985). Thus, though not the owner of the work I produced, I still had moral rights⁶ as its author. Furthermore, since I had previously presented papers and published about the oral history projects I had coordinated for ISDP (Nagy 1994a, 1994b) without ever encountering a problem when I informed it of my intentions, I did not expect anything different now.

Trying to publish the final report

To write the final report of the Aulavik Oral History Project, I selected and grouped thematically excerpts from the project interviews and from archival tapes that I had chosen to be translated. Each Inuvialuit elder I quoted was fully named with a reference to the English translation and/or transcription of the interview. I also contextualised the narratives with information from the literature about the Inuvialuit and Banks Island. After completing the final report, a 173 page-long document with six chapters (Nagy 1999), I mailed copies to ISDP, the funding agencies, the project participants, the NWT Archives, and the newly opened Inuvialuit Cultural Resource Centre in Inuvik.

In 2000, I wrote to Parks Canada to ask whether they would fund the publication of the final report as originally stated in their terms of reference with ISDP. They answered that they could not provide funding. Following completion of the project, I continued to present papers on it at conferences, and was invited to write one article and two chapters based on the papers (Nagy 2002, 2004, 2006). Once again, there was never any negative feedback when I informed ISDP or sent it copies of the published

⁵ According to the Canadian Copyright Act, the interviewer owns the interviews (Government of Canada 1985). Without the new ownership clause, this would have been my case as I was working on contract for ISDP (ibid.).

⁶ Moral rights are those related to the attribution, integrity, and association of the work (e.g., text, photos, video) produced by an author (ibid.).

texts. I also sent copies to project participants if I had cited them.⁷ In the meantime, Inuvialuit and researchers asked me for extra copies.

In March 2005, as I no longer had the means to pay for extra copies,⁸ I submitted the manuscript to the University of Alaska Press to see whether they would be interested. Since no one was working for ISDP at that time,⁹ I contacted the Inuvialuit Cultural Resource Centre (ICRC) to discuss the possibility of the University of Alaska Press publishing a book based on my final report if the peer reviews proved to be favourable. Following a few email exchanges, I was told that after consultation with Parks Canada, they had decided to hold off any decisions on the Aulavik project for now, but with the approval of the community of Sachs Harbour they would like to see further development. I was also assured that as the primary researcher my involvement would be considered essential, and that Parks Canada and ICRC would later discuss this issue in the hope of developing a plan for the next year.

Both reviews were positive, and the university press confirmed it would consider publication once the requested changes had been made. I sent Parks Canada and ICRC copies of the reviews, asking the latter to confirm with the press that copyright (and hence royalties) should belong to ISDP since I had been asked to clarify this point. I added that ICRC and possibly some of the Inuvialuit project participants could review the final revised version, as previously suggested by ICRC. But no answer was forthcoming from my ICRC contact, who, as I later learned, no longer worked there, and no one else followed up with me on this issue.

Thinking ICRC had lost interest, in the summer of 2006 I asked someone from Parks Canada for advice. The person offered to write a review of my final report and send it to Parks Canada in Inuvik. Once again, it was positive, but nothing happened. I waited a full year and in late 2007 again contacted Parks Canada in Inuvik about the book. By then, seven years had elapsed since completion of the project, and I was now dealing with different people who needed substantial background on the Aulavik Oral History Project. In fact, the new staff seemed totally unaware of it and the final report that I had been trying to get published. To my surprise, I learned they no longer had a copy,¹⁰ and I had to provide another one.

A few months later, I was told that Parks Canada wished to see a “more friendly” book, with more photos than texts—a publication that would be very different from the

⁷ Needless to say, in these publications I acknowledged all of the Inuvialuit participants, research assistants, translators, transcribers, ISDP, and the funding sources.

⁸ For me, a self-employed consultant, getting extra copies was expensive because of the laser photos and the costs of mailing them.

⁹ Although the Inuvialuit Social Development Program still exists, to my knowledge there is no office or any specific staff assigned to it. All of its cultural files must have been taken over by the Inuvialuit Cultural Resource Centre.

¹⁰ I had originally sent them two copies of the final report as well as one unbound copy in case they wanted to make more copies. I thought final reports on research funded by Parks Canada would be kept in their library.

final report. I replied that I would rather pursue the revisions to the final report that the University of Alaska Press had requested. I did not start working on the revisions, as I still needed official ICRC approval to get the book published. But before I even tried to contact ICRC, the following email and fax arrived from the Inuvialuit Corporate Group¹¹ legal counsel in April 2008:

We are aware of your intention to publish a book based on the Aulavik Oral History Project. We hereby wish to remind you of your obligation under paragraph 5 of the Agreement dated September 1, 1998 between yourself (as contractor) and the Inuvialuit Social Development Program (ISDP) which states that “*all research, information, opinions and all other material acquired or produced by the Contractor in relation to the Aulavik Oral History Project are the property of ISDP whether under this or any previous agreement with the Contractor.*” Please be advised that all information related to the Aulavik Oral History Project is the property of ISDP and cannot be used without permission. Please conduct yourself accordingly.

After the shock of receiving a formal notice from a legal counsel rather than a letter from ISDP/ICRC telling me they were not interested in seeing the report published, I sought legal advice, and was told that the paragraph added to my 1998 contract could be considered an “abusive clause” (Romeo Saganash, pers. com. 2008).¹² I wrote back to the Inuvialuit Corporate Group a long letter giving the background and goals of the Aulavik Oral History Project and presenting my perception of my rights as the author of the final report. I emphasised that I had always understood and agreed that the copyright and royalties for the book should belong to the Inuvialuit (through ISDP), but as stated on the consent forms I had co-signed with the Inuvialuit participants I thought I was allowed to present papers and publish on the project. I concluded by saying that if not granted permission to publish I had no intention of working on revisions to my final report. I got the following answer from the legal counsel:

[...] At this time, the Inuvialuit Cultural Resource Centre is not interested in granting you permission to use any material related to the Aulavik Oral History Project to write a book or for any other purpose. Please be advised that all information related to the Aulavik Oral History Project is the property of ISDP and cannot be used without permission. Such permission shall be obtained prior to the use of any such material. We thank you for your attention to this matter.

Obviously, I failed in my attempt at entering into a dialogue with the Inuvialuit Corporate Group—and indirectly the Inuvialuit Cultural Resource Centre, which now represented ISDP for the Aulavik project. This time, I was forbidden—again without explanations—to use any of the material I had collected or written about. As a researcher, I felt I had lost my intellectual freedom. I had to restrain myself from even thinking about possible future publications that would contain material from a research

¹¹ The Inuvialuit Corporate Group was created under the 1984 Inuvialuit Final Agreement and is composed of the Inuvialuit Regional Corporation (IRC) and its subsidiary corporations (IRC 2006).

¹² Section 1437 of the Civil Code of Quebec deals specifically with abusive clauses (Moore 2003). In Canadian Common Law, the expression “unfair contract terms” is used (BCLI 2005).

project on which I had worked for many years. Surprisingly, other researchers have since been allowed to use the final report I had written and the translations I had edited (e.g., Arnold et al. 2011; Gray 2003; Inuvialuit elders with Bandringa 2010). I am glad that this material has been disseminated, but my inability to use it myself has been particularly frustrating and unfair since it affects my career as a researcher.

Indeed, a researcher's duties include sharing the results of research projects at conferences and in publications, and such effort is often requested by funding agencies that use public money. For researchers who work in universities and/or seek funding from peer-reviewed programs, the watchword is "publish or perish." As Phyllis Morrow said about her collaborative work with the Yupiit:

As the academic member of the team, I have to grapple with the expectation that my contributions to the world of "the literature" will be valued insofar as they are original, individually "owned" insights. This creates a certain pressure toward high-risk interpretations: that is, going out on an intellectual limb to say something new or at least express myself in a unique way. Because of its twin emphasis on ownership and authenticity, the academy is suspicious of collaboration at the same time it applauds the presence of Native voices (Morrow 1995: 43).

When review committees look over a curriculum vitae, much attention is paid to how many publications the candidate has, with or without co-author(s),¹³ peer-reviewed or not, how many conference papers, etc. There are very few major funding agencies in Canada, and the competition is fierce since funding is limited. Most social science researchers apply for funding from the Social Sciences and Humanities Research Council, which requires a list of publications for only the past six years; hence a record of continuous publishing is a precondition for funding.

Diverging views on authorship

In the humanities and social sciences, authorship has been called into question since the 1960s by postmodernism and post-structuralism. In anthropology, the tendency towards reflexivity in the 1980s gave way to various debates over the authority of researchers and their interpretations and representations of "the Other" (e.g., Clifford and Marcus 1986; Geertz 1988). For publications on oral history, sharing of authorship with the person interviewed is recommended (Frisch 1990; Schneider 2002). This is especially so when the oral history is based on personal and traditional narratives from a few individuals who are usually listed as "in collaboration with" the researcher who collected, edited, annotated, contextualised, and interpreted the narratives.

Co-authorship has increased, with Aboriginal people undertaking their own research projects or becoming partners to community-based studies (e.g., Huntington

¹³ As Morrow (1995: 49, footnote 17) noted, "coauthored publications do not count as much for tenure, and it seems to matter very much who is listed as senior or first author."

2006; McCall 2011). One result has been a trend to list *all* of the elders of a specific cultural group as authors or co-authors. Although some might be cynical,¹⁴ this is likely a strategy of resistance to Western academic publications that give the researcher sole authorship. It also reflects a view that the cultural heritage of Aboriginal peoples, particularly in the area of traditional knowledge and narratives, belongs not to individuals but to a collective entity (e.g., Bell and Napoleon 2008; Greaves 1994; Morrow 1995).

I tried to understand the letter of refusal I got in 2008, wondering whether one reason was a divergence in views on authorship. I saw myself as the author of the Aulavik final report, in keeping with legal systems that “appear to agree that an author is a human being who exercises subjective judgement in composing the work and who controls its execution” (Ginsburg 2003: 1066). But some Inuvialuit might see authorship differently. Indeed, I came upon a report on the web entitled *Inuvialuit Settlement Region - Traditional Knowledge Study* (Inuvik Community Corporation et al. 2006), which incorrectly referenced three of my works. In a paper I presented at a 1997 workshop, my name had been removed, and the authors listed as “Inuvialuit Social Development Program and Groupe d’Études Inuit et Circumpolaires,” the latter being the research group that had organised the event. The same “co-authors” were added after my name for another conference paper. For the 1994 book *Herschel Island and Yukon North Slope Inuvialuit Oral History*, I was described as the “editor” rather than as the author. I was wrongly listed as the editor of the Aulavik final report, and not as its author, in the reference section of two recent publications published respectively by the Inuvialuit Cultural Resource Centre (Inuvialuit elders with Bandringa 2010) and by the Inuvialuit Regional Corporation (Arnold et al. 2011).¹⁵

Although the above examples could simply be errors, they might also indicate differing conceptions of authorship. I see myself as the author of the conference papers, the 1994 publication, and the Aulavik final report because I wrote them from my descriptions and observations of the project I coordinated, and especially from my analysis of the data I collected, which was mainly oral history from Inuvialuit elders I interviewed for that project and the previous ones I had headed. To use the words of Kline (1996: 21), I had to “tunnel through a mountain of tapes and navigate a sea of transcripts,” and “look to see where the narratives concur with, contradict, or otherwise relate to one another” (ibid.: 24). My claim to authorship is in line with Ginsburg’s (2003: 1078) statement that, “With respect to works incorporating pre-existing material and data, authorship, if any, inheres in the way the compiler has selected or arranged that information.” I did not include the Inuvialuit participants as co-authors because such acknowledgment had never been requested during the project nor agreed upon in

14 E.g., Geertz (1988: 140) wrote that “the burden of authorship cannot be evaded however heavy it may have grown; there is no possibility of displacing it into ‘method,’ ‘language,’ or (an especially popular maneuver at the moment) ‘the people themselves’ redescribed (‘appropriated’ is probably the better term) as co-authors.”

15 In the case of reports where my role was strictly that of editor, I do identify myself as such.

my contracts.¹⁶ But whenever I quoted them, they were fully named with a reference to the English translations and/or Inuvialuktun transcriptions of their interviews. Incidentally, for publication of a revised version of the Aulavik final report I would have been open to the idea of co-authorship with “Inuvialuit elders,” but this option was never brought up during my correspondence.

Another factor might be confusion between authorship, the holding of copyright, and the role of the publisher—who often holds the copyright. While the Inuvialuit Cultural Resource Centre is to be praised for publishing books about Inuvialuit oral history and traditional knowledge, these publications deliberately play up the Inuvialuit elders as the main authors and play down the researchers who undertook the studies and wrote the books. This is flagrant in the 2011 publication *Nuna Aliannaittuq – Beautiful Land. Learning about Traditional Place Names and the Land from Tuktoyaktuk Elders*, which has no author on its cover although all of the sponsors have their logos printed at the bottom. Page 2 features the credits, and the following appears in fine print under the book title: “Researched and Written: By Elisa J. Hart for the Inuvialuit Cultural Resource Centre, the Inuvialuit Regional Corporation, and the Prince of Wales Northern Heritage Centre.” The names of assistants, interpreters, translators, and transcribers are then listed. But since the copyright indicates “© Inuvialuit Cultural Resource Centre and the Prince of Wales Northern Heritage Centre,” it is unclear whether they and not Elisa J. Hart should be cited as the authors. Indeed, an unpublished version of that book listed in Inuvialuit elders with Bandringa (2010: 308) cites the two institutions as the authors. Maybe this corporate authorship¹⁷ was inspired from a previous book published and authored by Parks Canada (2004) on Inuvialuit oral history entitled *Paulatuuq Oral History Project: Inuvialuit Elders Share Their Stories*. Here, although the main researcher is not identified as the author, the contribution of the Inuvialuit elders is acknowledged in the title.

In the case of the 2010 book *Inuvialuit Nautchiangit: relationships between people and plants*, “Robert W. Bandringa and Inuvialuit elders” are the authors in the credits, but only “Bandringa, Robert W.” is listed as the author under “National Library of Canada Cataloguing in Publication Data” on the same page. On the outside and inside covers, the authors are listed as “Inuvialuit elders *with* Robert W. Bandringa” (my emphasis). Not only have the authors been inverted, but using “with” rather than “and” minimises the second author’s contribution. Furthermore, the copyright is assigned to: “© Inuvialuit Cultural Resource Centre and Robert W. Bandringa, 2010 — In respect and recognition of the intellectual property of all the Inuvialuit and the elders who have contributed to this book.” Here again, there is a wish to stress the Inuvialuit participants’ role in the original study that led to the publication. At the beginning of

¹⁶ In retrospect, the Aulavik Oral History Project would have benefited from an Inuvialuit heritage committee overseeing the research, discussing authorship issues, and commenting on the final report. But when I wrote the Aulavik project recommendations in 1994 after having consulted the Inuvialuit community of Sachs Harbour, I was not aware of any such committee. Also, ISDP, which managed the project, did not ask for one.

¹⁷ See Coombe (1998).

the book where the Inuvialuit Ethnobotany Project is introduced, a specific section entitled “Ownership of the project data” states:

As this is a culturally driven research project, the resulting research (i.e. the data collected surrounding and composed of what can be termed as traditional ecological knowledge [TEK] or traditional knowledge, innovations and practices [TKIP]) is owned by the Inuvialuit. In this case, ownership is represented and administered by the Inuvialuit Cultural Resource Centre (Inuvialuit elders with Bandringa 2010: xi).

Such a statement seems redundant given the copyright information already listed. The allusion to TKIP is likely from Article 8(j) on “Traditional knowledge, innovations and practices” of the *Convention on Biological Diversity* (United Nations 1992) and may reflect a fear that pharmaceutical companies will use information from the book to develop commercial products without permission.

Changing attitudes toward public access

Another likely reason for the letter of refusal was a change in attitude toward public access. Although not stipulated in my 1998 contract, but quite explicit in the two formal notices I received from the Inuvialuit Corporate Group, ISDP had sole ownership of the Aulavik material and its permission was required for use. Even though Parks Canada funded the research, it apparently had no authority over use of the material. Indeed, as Lee (1997: 56) indicates: “The Aulavik National Park Establishment Agreement has an innovative clause that speaks to the way that Aboriginal culture is presented to the public. It stipulates that the Inuvialuit reserve the right to approve ‘information concerning Inuvialuit history or culture on Banks Island ... prepared ... for public distribution.’” Nonetheless, since the original agreement mentioned only information prepared *by* Parks Canada (Government of Canada 1992: 6.07), it should not have applied to research papers and publications.

In the section of the agreement entitled “Traditional knowledge research information available to Inuvialuit,” it was stated that “Provision of such material¹⁸ shall be in accordance with Government procedures on access to and duplication of records and subject to access to information, protection of privacy and copyright legislation and to any agreements respecting records or the information contained in them” (ibid.: 5.03). The wording implied that Parks Canada would undertake the research and that the data would be in the public domain. In reality, although Parks Canada funded the Aulavik Oral History Project, the Inuvialuit Social Development Program managed the project and owned the material produced, and Parks Canada had no power to publish about the material without permission from the proper Inuvialuit authorities (ibid.). Thus, the “Government procedures on access” might not apply.

¹⁸ The material is defined as “copies of any reports, audio tapes, video tapes, transcripts or other material produced or collected as part of the process of documenting traditional knowledge” (ibid.).

Federal agencies like Parks Canada fund research projects with public money, but this federal involvement is no guarantee that the resulting data and products will automatically be available to researchers and the public, especially in the case of Aboriginal cultural heritage. This reality seems to be due to new power relationships that have developed between Aboriginal peoples and Parks Canada. Indeed, after its 1996 transfer from the Department of the Environment to the Department of Canadian Heritage, Parks Canada added an Aboriginal Affairs Secretariat to its organisation in 1999 and for over a decade increased consultations and collaborations with Aboriginal peoples on whose land national parks were located (Parks Canada 2011). Parks Canada still funds research and publications but in the case of Aboriginal cultural heritage it seems to have become more of a research facilitator and collaborator (e.g., Fox 1997; Neufeld 1997). Hence, in the recent publication by Inuvialuit elders with Bandringa (2010), Parks Canada is listed as one of the three publishers but its name appears neither among the authors nor in the copyright credits.

As mentioned earlier, the consent forms signed by the Inuvialuit participants also allowed ISDP to deposit copies of the Aulavik material at the NWT Archives. I recently noticed, however, that this material is absent from their online database, unlike the material from the Herschel Island and Yukon North Slope Inuvialuit Oral History projects, which appears under “Inuvialuit Social Development Fonds” and can be made available to researchers and the public.¹⁹ When I contacted the archives about this absence, I was told that ISDP had agreed to allow storage of the Aulavik collection at the NWT Archives but not entry of collection records into the NWT Archives database. It might be difficult for researchers and the public to know about this collection, but I was told that they could access it by obtaining permission from ISDP.

Why this resistance to public access? I think it reflects a desire by the Inuvialuit Corporate Group, and affiliates such as the Inuvialuit Cultural Resource Centre, to tighten control over access to their cultural heritage. This new approach seems to have originated back in the mid-1990s, as William Schneider wrote about a panel discussion of archivists and Aboriginal peoples in Whitehorse in June 1996:

One of the archivists on the panel described how they have a collection of recordings from the Inuvialuit people. [...] [B]efore anyone can use the collection, the research project has to be approved by a council of Inuvialuit. I was shocked by this policy and tried to get clarification. The Inuvialuit panel member related that the policy developed because the Inuvialuit felt that the material had been taken away for years and that it was time to regain control of collections (Schneider 2002: 156).

Unfortunately, no one explained how the lengthy stay of that collection in an archive had been prejudicial to the Inuvialuit. Had it been mismanaged or had some of its users acted unethically? Schneider added:

¹⁹ When searching the database with the key words “Aulavik Oral History Project,” one only finds archival photos that we used during our interviews and for which we were able to add information that I later forwarded to the archives.

I shared this story with a group of Native colleagues in Alaska and was surprised again to hear that they were supportive of that archive's policy of Inuvialuit review and did not see the issue of censorship as an overriding consideration. [...] it does indicate the frustration Native people feel for the way their histories have been collected, the way they are currently managed, and the way they are used by researchers. To some people these issues seem to be more serious than the danger of censorship and the long term impact on freedom of information and inquiry. I am sympathetic with concerns about how the information has been used and represented in the past, but I am not in agreement with public archives holding collections that certain individuals may be restricted from using (ibid.).²⁰

As one such individual, I totally agree with Schneider's concerns, which are also shared by others as explained by George Marcus:

Western liberal ambivalence in the face of valorized censorship is understandable in cases that are culturally ambiguous—where it is not clear that the tight control of knowledge functions internally and traditionally in the same way that it does when it is used as a powerful tactic to assert exclusive claims against outsiders. In other words, there may be no cultural integrity or authenticity to particular claims other than as an effective politics of identity in relation to a larger society (Marcus 1998: 235).

If organisations and individuals become increasingly reticent to allow public access to interviews they originally agreed to share, archives may turn into depositories that do little to disseminate information. Schneider (2002: 160) likewise envisioned situations where individuals would not object to their recordings being online but their community might. This has happened to the web-based version of Project Jukebox at the University of Alaska Fairbanks that he developed in 1988 with his colleagues. The original computer-based program was designed to integrate oral history recordings with associated texts, photographs, and maps. In recent years, however, “permission and ethical issues about making people's recordings so widely accessible have slowed the process of putting more projects online” (University of Alaska Fairbanks Oral History Program n.d.).

A similar situation has developed with interviews gathered since 1978 for the Alaska Native Claim Settlement (ANCSA) 14(h)(1) program, which the Bureau of Indian Affairs has used “to determine if selected sites are eligible for conveyance to the Native corporations as historical places or cemetery sites” (Pratt 2004: 140).²¹ That interview collection has raised various ownership and access problems because the beneficiaries are neither the interviewees nor their communities but rather the Alaska Native corporations (ibid.: 141). Hence, the Bureau of Indian Affairs has established a policy under which

the release of 14(h)(1) data to a requesting party was forbidden without the written consent of the applicant Native corporations—most of which consistently denied data access and use

²⁰ Both the University of Alaska Fairbanks Oral History Program and the Rasmuson Library “are firmly committed to the principles of intellectual freedom and will not accept any form of discrimination” (Schneider 2002: 171).

²¹ I thank Kenneth Pratt for sharing his publication with me.

requests. [...] this stance was contrary to Federal and State preservation/cultural resources management laws [...]. Its most significant legacy is that it fostered a belief among most regional corporations that they own and control all the data generated by the 14(h)(1) program (Pratt 2004: 144).

Nonetheless, the Bureau of Indian Affairs obtained a legal opinion in 1990 stating that “14(h)(1) data should be treated no differently from data collected by other Federal agencies working on public lands with public funds” (ibid.). As Pratt (ibid.: 149) concluded: “since [the data] was gathered as part of a publicly-funded project (mandated by Federal law) [...] the information is in the public domain; and evidently, none of it can be restricted [...]. It should also be noted that works produced by the Federal government cannot be copyrighted.” At the time Pratt wrote his article, ownership of the collection had not been resolved, to the detriment of storage, management, and processing (ibid.: 149-150).

New research relationships

A final reason for the letter of refusal was empowerment of Aboriginal peoples through new research relationships. Various factors have changed the conduct of research in Northern Canada over the past three decades. Aboriginal peoples have signed land claims agreements (e.g., the 1975 James Bay and Northern Quebec Agreement, the 1984 Inuvialuit Final Agreement, the 1993 Nunavut Land Claims Agreement, which led to the creation of Nunavut in 1999, and the 2005 Labrador Inuit Land Claims Agreement) that have given them powers over land management, like the right to refuse archaeological projects. This change has resulted in community consultations and collaborative approaches by archaeologists, as requested by Aboriginal organisations (Andrews et al. 1997; Webster and Bennett 1997). In the 1980s, Aboriginal peoples began to undertake their own research on their tangible and intangible cultural heritage.²² In the 1990s, Canadian museums entered into new partnerships with Aboriginal peoples, which allowed the latter to gain more access and control over their museum-held cultural heritage (Task Force on Museums and First Peoples 1992).

The next 20 years would bring research approaches and guidelines that reflected the concerns of Aboriginal peoples. Indeed, although various associations of researchers already had codes of ethics, a “more respectful and ethical approach to research” “crystallized during a 1995 conference on ethics in Aboriginal and Northern research” that took place in Inuvik, a major Inuvialuit community (Schnarch 2004: 84). This conference must have been attended by Inuvialuit participants and had likely influenced decisions about research data like the one by a council of Inuvialuit for control of access to archived recordings (Schneider 2002: 156). The extra clause about ownership in my 1998 contract flowed from new Aboriginal attitudes toward research and intellectual property.

²² Many reports and publications could be listed (e.g., those by the Avataq Cultural Institute of Nunavik created in 1980).

It was also in 1998 that the Nunavut Research Institute and Inuit Tapiriit Kanatami published *Negotiating Research Relationships: A Guide for Communities* (NRI and ITK 2002[1998]), which must have changed the attitudes of Inuit organisations and communities toward research, and encouraged them to request consultation, collaboration, and ethical protocols from researchers. That same year also saw the first edition of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, aimed at academics (CIHR et al. 2010). It was followed by two publications by the Department of Indian Affairs and Northern Development on Aboriginal intellectual property (Brascoupé and Endemann 1999; Brascoupé and Mann 2001), which must have circulated among Aboriginal organisations. A few years later, Schnarch's (2004) article on the OCAP principles (Ownership, Control, Access, and Possession) was influential and even endorsed by the Assembly of First Nations of Canada (AFN 2007). Along with the Tri-Council policy statement, the texts by Schnarch (2004) and the CIHR (2008), both originally intended to promote better ethics in health research in Aboriginal communities, would definitely change the rules of research in Canada.

In 2007, almost 10 years after publication of the first Tri-Council policy statement on research, Inuit Tapiriit Kanatami and the Nunavut Research Institute produced their own guidelines for researchers, *Negotiating Research Relationships with Inuit Communities: A Guide for Researchers* (ITK and NRI 2007). Also in 2007, the *United Nations Declaration on the Rights of Indigenous Peoples* was adopted. This important international document further encouraged Aboriginal peoples to assert their rights to intellectual property. In 2008, Inuit Nipingit (National Inuit Committee on Ethics and Research) was formed to draw up recommendations on research involving Inuit for the 2nd edition of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (CIHR et al. 2010; Nickels and Knotsch this issue). The strongly worded letter of refusal I received the same year was thus a product of new power relationships that were impacting research on Aboriginal peoples. Yet, with no explanations being given, I am still clueless about its real intent.

Conclusion

Many years after completing an oral history project, I was forbidden by the Aboriginal organisation that had originally hired me to use any of the material I had produced. I realised too late that my contracts should have included a research agreement²³ to protect my rights as an author. At the time, I believed these rights were protected because all of the participants and myself had agreed in writing that the material could be used for publication. In this essay, I have tried to elucidate the possible reasons for that censorship: diverging views on authorship, changing attitudes toward public access, and new research relationships. The issue for me was not the ownership of the research data and reports, but rather the lack of reasons for restricting their use. Ultimately, the real issue was respect.

²³ For examples, see Bannister (2009); Brascoupé and Mann (2001: 37).

Researchers should make sure that their contracts recognise them as the authors or co-authors of the documents to be produced. They should also insist that after completion of the project they will retain the right to write and publish about the data they collect. Unless there is an explicit agreement with the Aboriginal organisation, community, or individuals to keep the data restricted, they have a duty to share project findings at conferences and in publications. Furthermore, they will need to publish regularly so that their curriculum vitae will pass the high standards of funding agencies. Unfortunately, people outside the research milieu might view publishing as being motivated by money and careerism. This is actually far from reality. We need to change such stereotypes if we are to avoid creating double standards in research ethics and intellectual property rights for both Aboriginal peoples and researchers.

Acknowledgments

An earlier version of this article was presented at the 17th Inuit Studies Conference at the Université du Québec en Abitibi-Témiscamingue (Val d'Or) in 2010 and a shorter one at the Intellectual Property Issues in Cultural Heritage (IPinCH) Mid-Term Conference at Simon Fraser University (Burnaby) in 2011. My deepest gratitude goes to two anonymous reviewers for their comments and editing, and especially to Peter Frost for editing the final version. I also want to thank colleagues and friends who have shared their thoughts on the various issues discussed here and encouraged me to write this text.

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