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**INTERGOVERNMENTAL COMMITTEE ON
INTELLECTUAL PROPERTY AND GENETIC RESOURCES,
TRADITIONAL KNOWLEDGE AND FOLKLORE**

Eighth Session

Geneva, June 6 to 10, 2005

**WIPO PANEL ON, “INDIGENOUS AND LOCAL COMMUNITIES’
CONCERNS AND EXPERIENCES IN PROMOTING, SUSTAINING
AND SAFEGUARDING THEIR TRADITIONAL KNOWLEDGE,
TRADITIONAL CULTURAL EXPRESSIONS AND GENETIC
RESOURCES”**

EXPERIENCES FROM CANADA

JUNE 6, 2005

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* This document comprises the presentation in the form received from the presenter. Any views expressed in the presentation are not necessarily those of WIPO or any of its Member States.

INTRODUCTION

Thanks to our Chairperson's invocation which is part of our traditional protocol. We have been asked to participate, each in our personal capacity, but also from the perspective and concerns of our communities.

My name is "*Mahikun Pimoteo*", my Cree Spirit name (Walking Wolf), and I'm also a Chief from the Makwacis Cree and Treaty 6 Territory. My community is Niyaskweyak (Ermineskin) otherwise referred to as an Indian Reserve in Hobberna (Maskwacis/Bearhills). Our membership is close to 3100, the vast majority of whom are youth under 18. While we have adopted very many modern conveniences, we have also retained much of traditional ways; our Cree culture, language, laws and ceremonies (sacred and social)...

1. The nature of traditional knowledge (TK) and traditional cultural expressions (TCE's) that are currently held in my community are quite varied and substantial. As stated previously, we have managed to retain much of our way of life, however, it has come under severe and increasing challenges.

Since we began our international activity in 1977, we've had concerns as reflected in the Kiruna Declaration of Principles, a statement of "*irrevocable and inborn rights...*" including:

2. "*Right to maintain our culture, language and traditions in freedom.*"

This was expanded in

"The 1984 (September) Panama Declaration of Principles of Indigenous Rights, Principle 13: the original rights to their material culture, including archaeological sites, artifacts, designs, technology and works of art lie with the Indigenous People(s)."

These are very important to our Cree culture identify, community life and sustainable relationship with our environment. Let me mention four examples which illustrate the very essence of who we are as Neyaskweyak and Maskwacis Cree: (i) Dance (ii) Ceremonies (both social and sacred) (iii) Medicines and (iv) Games. There are many social/traditional dances, ceremonies, games each with their own songs. It is likewise for our sacred ceremonies. In fact, after winter long preparations one of our sundances begins today. We have traditional games with songs; i.e. stick, bone, handgames.

2. The role of customary law, practices and protocols are essential to sustaining and safeguarding our TK and TCE's. Again, not only is law very important but it is our identity. Customary laws are manifested in two ways in my community. We have decided to codify or write down some of our customary/custom laws. For example, our Government, the Chief and Council have passed some custom laws in writing, beginning with our Constitution. Other examples include Land Tenure/Holdings, Child and Family, Estates and Subsistence, (HFTG) matters. There are, however, many customary laws that have been left unwritten and are transferred through oral testimony. The practices and protocols of our sacred ceremonies, while largely secret or unwritten, are maintained through our societies or community; sometimes family, roles. I was very torn and devastated two days ago when a student of mine and colleagues as a fellow lawyer died on Friday. In fact, I want to dedicate this presentation

in the memory of a great Cree Chief, Dr. Harold Cardinal. His funeral a traditional funeral, with full customary law, will be conducted tomorrow. On Friday also, a newly elected Nipisikopahk (Samson) Chief and Council was inaugurated under custom and traditional ceremony. Four Cree traditional leadership honour songs were sung, Maskwacis songs that can only be sung in our Territory as customary law and practice. Those songs also have a protocol we must respect.

3. Our community experience with misappropriation and misuse of TK and TCE's has largely been with tourism and recent proliferation of new communications technology. Some of our ceremonies witnessed by tourists, even under restricted permission, have been taped or filed without respect for Cree protocol, or without free, prior and informed consent. I should add this has also been breached by other Indigenous Peoples who don't have or are unaware of traditional knowledge, practices and protocols. So yes, we are concerned about the lack of external understanding of and respect for customary law and community values. Protocol must be followed. In some UN studies, for example, there was lack of respect for our rules to access and use of our information.

4. In order to safeguard and sustain TK and TCE's, our communities have acted in a positive or pro-active way. The ways include a range of practical, legal, educational and social responses. The practice response includes internal training sessions by cultural leaders and elders. For example, for Oskapewsak (helpers). While this is a cultural experience education, education is also done in our community schools by curriculum development. Parental and leadership influence has meant that children and youth as students are made aware of Cree culture and language including traditional knowledge about respect. Traditional rights of passage ceremonies provide our children and youth opportunities to learn from elders. Adults in particular, young adults learn through feasts, sacred ceremonies and prayer fasts. A social response includes the traditional ways of knowledge/information transfer through practices during social dances and functions. The traditional symbols and beadwork also include traditional principles.

Perhaps the most recent response, in the area of a legal response, will prove to be one of the most important. Most legal responses are probably the use of courts to prevent misuse and misappropriation. This legal and educational approach by very respected elder and Chief Wayne Roan with academic Earle H. Waugh is the first substantial publication on Nature's Laws. It outlines understandings held by Indigenous Peoples and should and will, I believe, contribute substantially to greater external understanding of and respect for Nature's Laws and community values. Chief Wayne Roan is from my community and I'm very proud of his outstanding contribution along with colleague Ms. Kathy Twinn. Their work will soon be available on a website.

5. The needs and expectations of my community are respect and support. We need support for continued works like that of Chief Wayne Roan and our elders. We need and expect a system to protect their TK but also financial and other support. Within the national and within the international community we need and expect respect and recognition. We need a system or mechanism to recognize that Cree Laws; Nature's Laws, exist and to respect them. For example, they must not be excluded from, nor be subject to National Domestic Laws. They must be referenced as valid and existing international laws especially where numbered Treaties and other agreements exist.

6. Finally, based on my community's experience, needs and expectations, the inter-governmental committee must pay attention to what we previously stated. I submit respectfully: Be guided by respect; ensure our International Treaties are honoured according to their original spirit and intent and as understood by Indigenous Peoples, Tribes and Nations (They are sacred agreements based on traditional knowledge and traditional cultural expressions and are indeed powerful solutions).

In conclusion, ensure the principle of free, prior and informed consent of Indigenous Peoples is followed and implemented throughout your work. Thank you.

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