

INTELLECTUAL PROPERTY RIGHTS AND THE INUIT AMAUTI

A CASE STUDY

prepared for
The World Summit on Sustainable Development

by
Pauktuutit Inuit Women's Association

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SUMMARY

The purpose of this paper is to describe an on-going project by Pauktuutit Inuit Women's Association of Canada. In partnership with the Federal Departments of Indian and Northern Affairs Canada, Department of Foreign Affairs and International Trade, Status of Women Canada, Canadian Heritage, and Environment Canada the Association has pursued activities dedicated to protecting Inuit cultural heritage and cultural property. Fundamental to the project has been the need to raise awareness at the community level about current intellectual property rights (IPR) laws and standards. This case study will describe the processes Pauktuutit has undertaken to build the capacity of Inuit women to evaluate their IPR needs and expectations. The results of these consultations, along with Pauktuutit's participation in discussions at the regional, national, and international level, have allowed the Association to develop options and strategies to protect Inuit intellectual property and traditional knowledge (TK). The project's objectives and activities are consistent with those outlined in Chapter 26 of *Agenda 21*.

The specific objectives of Pauktuutit's project have been to evaluate and protect the intellectual property rights associated with the production and marketing of an Inuit woman's parka called an *amauti*. This traditional clothing exemplifies the innovative adaptation to a harsh Arctic environment and the creative and artistic elements of Inuit culture. The *amauti* is an example of Inuit creativity that uses traditional materials, designs and motifs, is still in use today, and has yet to be exploited or misappropriated like other Inuit creations. The project's efforts to building capacity at the community level has helped Inuit to evaluate the limitations of existing IPR laws and has helped in the search for solutions. The lessons that are learned may be valuable to Indigenous Peoples elsewhere.

The Amauti Project developed from an initiative to encourage traditional sewing skills in remote communities and to develop a southern market for Inuit handcrafted products. The hope was to advance sustainable economic opportunities for Inuit women. The success of such an initiative, however, raises concerns over the strength of policies and legal instruments to protect the IPR of traditional knowledge. In partnership with the Canadian Government, Pauktuutit has worked to inform and raise the capacity of Inuit communities to participate in discussions on national and international policies and laws that can influence the success of economic activities that rest on craft commercialization and cultural heritage.

Overall, the *amauti* case study will highlight how a small component of Inuit material culture and heritage is gaining recognition as an interesting pilot project that explores a range of intellectual property right, capacity-building, and sustainable development issues at the national and international level. The *amauti* embraces Inuit traditional knowledge and cultural expressions, relates to the traditional harvesting and utilization of resources and the role of Inuit women, and addresses the issues of commercialization of a traditional product and how this impacts the economic circumstances of modern Inuit women. These are all relevant to the objectives and activities outlined in Chapter 26 of *Agenda 21*.

INTRODUCTION

The Arctic adaptation of Inuit has inspired some remarkable innovations and technologies. The modern world, however, has appropriated many elements of Inuit material culture without due recognition or compensation for the original creators. The *parka*, *kayak*, and *anorak* are obvious examples. The traditional boot, the *kamik*, is now a trademark brand of outdoor footwear made by Genfoot. The logo for the product line is an *inukshuk*.¹ This exploitation of traditional knowledge, and the intellectual property that it encompasses, is not uncommon among Indigenous Peoples around the world. A 1997 study found 81 percent of Canadian Indigenous artisans had experienced some form of misappropriation or misuse of traditional aboriginal designs.² It is now critical that Indigenous Peoples develop the tools and skills to protect their heritage and ensure they benefit from any use of their intellectual property.

Inuit, like Indigenous Peoples around the world, have not been able to fully participate in many of the economic opportunities of the modern world. Their full participation has been limited, in part, by existing intellectual property right laws and conventions. As the laws currently exist, much of their material and cultural heritage is vulnerable to exploitation and misappropriation. Fortunately there are a number of initiatives that are now acknowledging these shortfalls. The Convention on Biological Diversity (CBD), the World Intellectual Property Organization (WIPO), and *Agenda 21* are examples. Inuit have become active participants in these and other processes and are working hard to control and manage sustainable development practices that meet their unique social and environmental circumstances.

The introduction of the wage economy is relatively recent in the North and for some Inuit the rhythm of community life still revolves around traditional harvesting activities. Wage labour and the market economy have introduced the alien concepts of privatization and commercialization to communally-owned property. Many people practice a mixed economy whereby they supplement their income and offset the high cost of southern food by going out on the land. In fact, the new territorial Government of Nunavut is encouraging employers to adopt work schedules that allow time off for traditional harvesting activities.

In the past, the skins of animals that were taken to nourish also provided clothing that is both beautiful and practical in the harsh Arctic environment. Clothing is an important expression of cultural identity. The *amauti* reflects the practical and functional adaptations of Inuit and is intrinsically linked to Inuit culture. The *amauti* survives today and embodies a link to the past and to the skill sets and role of Inuit women. It embodies an emotional link with their children. It is not surprising, therefore, that Inuit women are concerned about the misappropriation and loss of this part of their cultural heritage. Today, there are many opportunities in the fashion and

¹ The 'history' of the company makes no reference to the *kamik* as a type of Inuit boot though the *inukshuk*, a rock marker or cairn in the shape of a man, is recognized as an Inuit symbol. See the Genfoot Internet site: http://www.kamik.com/kamik_spring/FRAME_ANG_1.html

² See *Craft Commercialization and Intellectual Property Rights*, A Report by the Indigenous Women of the Americas, 1997, pg. 18.

clothing industry and therefore pro-active methods must be taken to demonstrate and protect the links between traditional culture, modern commercial applications, traditional harvesting and utilization of resources, and financial self-sufficiency. The sustainable Indigenous management of the Arctic environment will secure economic opportunities for local communities.

It is with these concerns in mind that Pauktuutit has been encouraged to look more closely at the issue of traditional knowledge and intellectual property rights. For several years Pauktuutit has participated with other Inuit organizations in the promotion of traditional Inuit clothing designs and artistry. In 1995 Inuit fashion and clothing was showcased at the Canadian Museum of Civilization during Ottawa's *Winterlude* festival. The show was entitled *Qaggiq '95*. A second show at the museum entitled *Sanajavut: Our Creations* was performed the following year. In 1995 an Inuit fashion show was part of the Inuit pavilion at Toronto's Canadian National Exhibition. The pavilion was called *Iliqquisivut: Inuit Spirit of the Arctic*. Southern consumers expressed great interest in the clothing and accessories during these events. An economic development project entitled *The Road to Independence* was therefore initiated. The objective was to assist Inuit women to take advantage of opportunities in the fashion and clothing industry by developing skills related to the design and production of traditional and contemporary garments intended for sale to southern consumers. The success of the project, however, had a potentially negative impact: without clarifying the intellectual property rights involved, the sewing creations could go the way of the *kayak*, *parka*, and *kamik*. The *amauti* has yet to be 'discovered' the same way the *parka* was discovered centuries ago.

In the fall of 1999 these intellectual property concerns became pressing when the New York City fashion designer Donna Karan sent a buyer to the Western Arctic to collect older traditional Inuit clothing for inspiration for her fall 2000 fashion line. Pauktuutit mobilized a media and letter writing campaign to put a stop to this misappropriation of Inuit culture. The incident stressed the urgency to explore effective forms of legal protection that respect the nature of traditional knowledge and cultural heritage.

Protecting the intellectual property of Indigenous peoples is problematic. The current legal regimes are geared for commercial or economic rights over privately owned intellectual property. The laws and conventions related to copyrights, patents, trademarks, and industrial designs do not readily apply to the collectively owned traditional knowledge of Indigenous people. These laws do not protect cultural heritage or the misappropriation of designs, motifs, and styles that are owned by an entire culture or peoples. By most standards, these forms of cultural expression are considered within the public domain and are available to everyone to use. For example, any artist — Aboriginal or otherwise — may seek inspiration from the cultural heritage of an Indigenous Peoples and create a work of art. The painting, drawing, sculpture, or writing is protected under modern copyright laws and the artist has full rights to sell, reproduce, and licence the use and reproduction of the creation. The artist is not required to respect, recognize, or provide compensation to the people whose cultural heritage inspired the work.

The definition of traditional knowledge and the legal and economic rights afforded to its owners requires clarification. Traditional knowledge is not defined just in terms of age or antiquity but in

the social meaning and context of its application and transfer. Modern contractual notions of ownership and of intellectual property rights are not readily amenable to Indigenous holistic concepts of knowledge, innovations, and practices. At its simplest, it is an issue of collective versus individual ownership.

Pauktuutit's intellectual property rights project was initiated to focus specifically on the traditional knowledge of Indigenous women. The project was developed to serve as a case study of the issues, procedures and obstacles that arise while initiating legal protection of a specific product — the *amauti*. This is an ideal subject for a project of this nature. The *amauti* embraces Inuit traditional knowledge and cultural expressions, relates to the sustainable harvesting and utilization of resources with the potential for long-term economic opportunities for Inuit women at the local community level, provides the opportunity for capacity building, and encourages participation in IPR discussions at both the national and international level. A critical component is the consultation with Inuit women about how best to collectively protect, market, and share the benefits related to their creations.

The Amauti Project consists of three inter-related phases or stages. The initial step has been to seek out the thoughts and opinions of the key stakeholders — Inuit clothing producers. This process was completed in May 2001 when a successful workshop was conducted in Rankin Inlet, Nunavut. The next stage involves developing a national inventory or registry to recognize all the seamstresses and designers and to document the regional variations in designs. This component is relevant to current discussions unfolding within the CBD with respect to Article 8(j) and within WIPO. The final stage envisions an association of manufacturers who will share a trademark or mark of authenticity that will guarantee the consumer that they are buying a true handcrafted product. This is seen only as an interim solution since such a mark or tag cannot control others from exploiting Inuit intellectual property that is classified within the public domain. Ultimately, strategies will be developed that will challenge the fundamental basis of existing IPR regimes.

The task is challenging. There is a sense of urgency. There is a demand from the south to use and profit from inventions and imagery that are truly Inuit, and there are fewer elders who can provide the traditional knowledge and skills that have yet to be recorded. One participant at Pauktuutit's workshop in Rankin Inlet spoke about this:

She commented that to write about how a caribou *amauti* was made that it would be a very thick book from the moment of cutting up the caribou. She commented how she thought detailed information would be necessary. Also she raised the need to rush because people are starting to die off and... Inuit will be able to teach young people. She commented that a few people know how to make *amautis* out of bird skins. Her big worry is the sewing skills that young people will have and she wonders if they will learn to be great seamstresses similar to the ones of the past. She expressed her great pride of *amautis* that do not require the belt. She commented that if someone were able to make a book that they would have to include all the different women who make comfortable and beautiful *amautis* and

be very detailed with recognition given to the women. She listed the names of some Inuit women from different regions that were known for making comfortable and beautiful amautis. She also shared how she makes different coats and how she can go to different communities to find people making the same coats. She voiced how she wished Inuit wouldn't say they did not have the ability because they are so capable and she questioned if it was because of the lack of formal education or too much modesty.

WHAT IS AN AMAUTI?

Historical evidence indicates that the style and form of the *amauti* and other Arctic clothing has changed little over the centuries. This is evident from Inuit oral history and the records of early explorers. The materials used in making the *amauti* can be linked to the sustainable harvesting and the utilization of local biological resources such as skins, sinew, fur, ivory, bone, and antler. Caribou and seal have been traditional sources of food and the raw material for clothing, shelter, and boats. Caribou hair is hollow and is an ideal insulator for winter clothing. As the inner liner for clothing, the hair is water resistant and this reduces the risk of matting and sticking from sweat and condensation. Sealskin has water repellent qualities that make it the preferred material for clothing during the wetter spring and summer months. Modern materials such as wool duffle and printed calico are now commonly used to make the *amauti* but the shapes and styles remain.

The distinction between an Inuit man's *parka* and the *amauti* of a woman is common throughout the Arctic. Regional and community variations in clothing designs can readily be distinguished. The style and decorations of the *amauti* can indicate a region and location. Different styles also indicate the age and status of a woman in the community. For example, women who do not have children wear an *arnautit*. It does not have a pouch to carry a child. In the Western Arctic, it is called a *niviaqsiqsiuti*. Some *amautis* are worn for work, some for hunting; others are made for special occasions. Decorations can denote social status. The *amauti* is a form of artistic expression by Inuit women.

The *amauti* is unique in that it is designed with a large hood and pouch in which to carry a child. This allows for the mother to remain in close contact with her child yet it frees her hands for other activities. A large loose shoulder enables the mother to bring the child around from her back for nursing. The child always remains protected from the elements. The custom fit of the *amauti*, combined with a flap in the front and back, protected the child from the cold. For example, a child can be held in front of the mother while under the *amauti* in order to go to the bathroom. A child may not have any clothing but a hat until the age of three. This close and prolonged contact between the mother and child extended breastfeeding and helped to space births.

Traditionally, women were responsible for decisions regarding children, food preparation, and the running of the household. Some women have noted that in the past they were responsible for deciding what type of skin a man should bring home, what food should be brought home, and even were to erect the summer tent. In all activities cooperation, sharing, and complementary

skills were essential in one of the most challenging environments of the world. Inuit women were fundamentally linked to the traditional harvesting and use of resources and to the long-term survival of their community.

Clothing is therefore an important expression of cultural identity among the Inuit that reflects regional differences in materials and in motifs. Efforts have been made by Pauktuutit to promote its recognition in southern markets in an effort to encourage the rejuvenation of traditional skills and the economic self-sufficiency of Inuit women. Without adequate protection of the intellectual property involved, however, these efforts are exposed to misappropriation and exploitation.

BACKGROUND TO THE AMAUTI PROJECT

The Amauti Project was the inevitable result of a series of projects and activities that Pauktuutit had been involved in over several years. A clothing project called *The Road to Independence* was completed in 1998 that had the goal of providing Inuit women with concrete tools for sustainable financial independence. The fashion showcases of previous years had provided Pauktuutit with an opportunity to assess potential markets and consumer preferences. It was found, for example, that caribou and sealskin garments needed to be made in standard sizes and finished in accordance with southern standards.

This pilot project attempted to train and equip Inuit women with the skills and knowledge to compete in retail markets that are located outside of their communities. The idea was to cultivate an appreciation for hand-crafted Inuit clothing in a manner that maintained Inuit ownership and the benefits of production of the garments. The intent was to provide viable economic opportunities and financial independence for women that did not undermine the cultural integrity of Inuit communities. The project promoted employment through practical applications of traditional knowledge and skills, as well as training to compete in retail markets that extend beyond their communities. Underlying principles included the transfer of skills to younger women by the elders, community development, and ownership and control of the benefits.

While the *Road to Independence* project was unfolding, Pauktuutit was participating in a number of other initiatives that were relevant to the issues of IPR and traditional knowledge. The Association has worked actively with Indigenous women throughout the Americas and around the world. Pauktuutit is a member of an organization called Indigenous Women of the Americas that was formed in 1993. This organization is a member of the larger Continental Network of Indigenous Women (CNIW), a network drawing membership from North, South, and Central America. The first Continental meeting was held in Ecuador in 1995 in preparation for the *Fourth World Conference on Women* held in Beijing in 1995. The second CNIW meeting was held in Mexico in 1997 and the third was held in Panama in 2000. These meetings established the common priorities of Indigenous women throughout the Americas. A workshop for North American CNIW members took place in Aylmer, Quebec in January 1996 to establish regional priorities. In July 1996 a Continental workshop was held in Guatemala to set up commissions that would address specific issues. Three commissions were established: a Commission on Leadership Training, a Commission on International Instruments, and a Commission on

Commercialization and Intellectual Property.

Pauktuutit is a member of CNIW's Commission on Commercialization and Intellectual Property. The commission is responsible for seeking mechanisms to protect the cultural heritage of Indigenous peoples, especially those related to the commercialization of Indigenous art. As a result, a second Continental meeting entitled the *Inter-American Training Workshop on Intellectual Property Rights* was held near Ottawa, Ontario in April 1999. The workshop addressed issues of craft commercialization, globalization, fair trade, and traditional systems for regulating access to, and the use of designs. Conclusions from the workshop included the need to repatriate indigenous designs, the need to develop a certification tag for indigenous products, and the need to review existing legislation concerning intellectual property rights.

With respect to the Convention on Biological Diversity (CBD), Pauktuutit's president was part of the Canadian delegation attending the third Conference of the Parties in Buenos Aires, Argentina in 1996. A representative also participated as a delegation member during the 1997 *Workshop on Traditional Knowledge and Biological Diversity* held in Madrid, Spain. Recently, representatives attended the second meeting of the Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) held in February 2002 in Montreal, Quebec and the sixth Conference of the Parties in The Hague, Netherlands in April 2002. In 1997 Pauktuutit became a member of the Aboriginal caucus of the Canadian Open-Ended Working Group on Article 8(j) (OEWG8(j)). This working group provided a forum for Aboriginal organizations to discuss and advise federal and provincial representative about Canada's strategies to implement the CBD and in particular, Article 8(j).³ As a result of Pauktuutit's participation, the Association was encouraged to look more closely at the *amauti* as case study to explore the IPR implications of TK. Pauktuutit was provided funds from the Biodiversity Convention Office of Environment Canada to prepare the initial project proposal that led to the Amauti Project. Overall, Pauktuutit was provided support and encouragement to engage in a dialogue about the role of traditional knowledge in the national policies and programs that were being developed to meet the objectives of the CBD and *Agenda 21*.

In other domains, Pauktuutit currently has special consultative status with the UN Economic and Social Council and with WIPO's Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore. Members of WIPO's Fact Finding Missions on Intellectual Property and Traditional Knowledge met with Pauktuutit in November 1998 and were shown examples of the *amauti*. In 1999, Pauktuutit was invited to Geneva by WIPO to attend the second *Roundtable on Intellectual Property and Traditional Knowledge* and to make a statement on

³ Article 8(j) of the CBD states that, subject to national legislation, Contracting Parties shall:

1. respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities ...relevant for the conservation and sustainable use of biological diversity;
2. promote the wider application of such knowledge, innovations and practices with the approval and involvement of the holders;
3. encourage the equitable sharing of the benefits arising from the use of such knowledge, innovations and practices.

behalf of Inuit women.

The multi-faceted activities of Pauktuutit throughout the late 1990s encouraged the Association to look more closely at the IPR implications of TK. The clothing project, the networking of Indigenous women throughout the Americas, the participation with the Canadian government at CBD conferences and workshops, and the interest of WIPO are all factors that stimulated Pauktuutit to proceed with the Amauti Project. Thanks to the initial funding support of the Biodiversity Convention Office and encouragement from the Aboriginal caucus of the OEWG8(j), a project proposal was prepared. In partnership with a number of Federal departments, Pauktuutit has been able to proceed with the case study. This project and all those activities that precede it reflect the aims and objectives of Chapter 26 of *Agenda 21*.

PREPARATIONS FOR THE INUIT WOMEN'S TRADITIONAL KNOWLEDGE WORKSHOP ON THE AMAUTI AND INTELLECTUAL PROPERTY RIGHTS

As noted, while participating in consultations related to the Convention on Biological Diversity, Pauktuutit was asked to look at the *amauti* in terms of IPR and TK. The garment was perceived as a suitable case study that encompassed issues of cultural property, traditional knowledge, intellectual property rights, and individual versus collective rights in the context of Canadian laws and legislation and in the context of international agreements and conventions. The Inuit clothing and fashion industry hinges on traditional knowledge and designs and on the harvesting and processing of furs and skins and thus offers a multifaceted link to Article 8(j) of the CBD.

A consultation process with Inuit garment producers was seen as the essential first step in evaluating the IPR implications of the *amauti*. A workshop was therefore proposed that was entitled *Inuit Women's Traditional Knowledge on the Amauti and Intellectual Property Rights*. Preparing for this was a momentous task. Funding was a critical problem and a great deal of time and effort went into the endeavour. Pauktuutit received funding support from a number of Federal Government departments and from a number of Inuit regional associations and corporations. By February 2001 funding was in place and preparations began for the workshop. It was scheduled for late May 2001 in Rankin Inlet, Nunavut.

Inuit women had to define and clarify their IPR needs and expectations and determine how best to collectively protect, market, and share the benefits of their products. Only after the holders of traditional knowledge communicate their concerns and ideas can a legal process be initiated that seeks protection. Obstacles and problems can then be documented in a manner that is meaningful at the national level and suitable for consideration in such forums as the Convention on Biological Diversity and WIPO. The results of the workshop therefore provided the fundamental basis upon which any further work on the Amauti Project would proceed.

The workshop was seen as an opportunity to raise awareness about IP laws and the CBD and to increase the capacity of Inuit women to judiciously address these issues at the community level. It was a practical and technical examination of the application of the IPR system with respect to traditional knowledge. The workshop provided an opportunity to build the capacity of elders,

community leaders and garment producers to explore the range of instruments or mechanisms (IP regimes, legislation, contracting, and government policies and guidelines) that could serve to protect the use of traditional knowledge and creations. The goal was to seek consensus on the best legal mechanisms for protection and how best to adopt a collective legal personality that respects Inuit cultural concerns. This could only be done through meaningful involvement of community members in the IPR issues that affect their lives. It was essential to empower Inuit to take charge of the access to and benefits from using their TK.

Preparing the workshop material required special attention. Effort was made to ensure the material visually appealing. The intent was to prepare plain-language resources that could later be used by other organizations or groups that wished to hold similar consultative workshops on traditional knowledge and IPR. The subject matter is complex and often confusing so it was important that key terms, concepts, laws, and conventions were presented in an understandable manner. Material was prepared that:

- Described Canada's IP laws;
- Described the history of the CBD;
- Described the World Intellectual Property Organization (WIPO) and its 1982 Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation;
- Detailed WIPO's Fact Finding Mission, including its consultations with Aboriginal peoples in Canada;
- Described Panama's *Act 20* which protects traditional knowledge and the collective property rights of its Indigenous peoples; and
- Described a draft contract prepared by the International Centre for Human Rights & Democratic Development intended to help Indigenous women protect their intellectual property.

Accompanying this workshop material was a plain-language glossary that was prepared as reference material. Having all this technical information translated into Inuktitut proved particularly challenging since many terms and concepts do not have self-explanatory equivalents in Inuktitut. The workshop material was recognized as being valuable outside of the Arctic context and has since been translated into Spanish. These documents are available for distribution throughout South and Central America.⁴ The material is continuing to be reworked to

⁴ The International Centre for Rights and Democratic Development (Rights and Democracy) based in Montreal, Quebec took on the initiative to translate the workshop material into Spanish. The final report of the workshop has also been translated.

be more generic and useful cross-culturally. By removing references that are more specific to the *amauti* and Inuit, it is hoped the resulting document will be useful to other Indigenous Peoples who may wish to conduct community-level consultations about their own IPR needs and expectations.

The preparation of plain-language documentation is an element of Pauktuutit's work that deserves greater explanation. Through the years the Association has found that the most successful way to deliver information to local communities is in the form of plain-language text. A stop smoking project and an HIV/AIDS education campaign have proven to be highly successful projects that rely on material that is developed to be Inuit-specific. Care is taken while preparing the text to ensure that it is amenable to translation into Inuktitut. This can be a time consuming process. Technical words and concepts may lack direct Inuktitut equivalents and therefore wording must be chosen carefully. Ideally, a translator from the central Arctic is preferred because their dialect can be understood more or less by those to the east and west.⁵ Engaging the community during the preparation of material is also an important component. Usually a steering committee composed of members from different parts of the Arctic are engaged to guide the direction and development of material.

The written form of Inuktitut is phonetic and therefore there may not always be agreement or consistency between the works of any two translators. Compounded with differences in regional dialects and the written forms of the language, and it is difficult to prepare a universally acceptable document that is understood by everyone.⁶ An essential element to any product is to have it translated into the various Inuktitut dialects. Pauktuutit often produces material that is translated into Inuktitut syllabics and roman orthography for each of the western Inuvialuit and Labrador dialects.

Particular care was taken while developing the plain-language glossary. The intent was to offer participants a reference document that would be useful to them after the workshop. Definitions ranged from such concepts as copyrights, patents, trade secrets, and trademarks, to such organizations as WIPO, the WTO, and the OAS, to such agreements and conventions as the CBD, the Paris Convention for the Protection of Industrial Property, the Free Trade Agreement of the Americas, and the TRIPS Agreement. The approach was to offer a brief statement about the term, concept, or organization and then to describe how it is used and why it is important. In this way the terms and concepts are presented in a manner that offers some context. For example, the following two definitions are from the glossary. Text in bold indicated a corresponding

⁵ The Inuk translator who prepared the material for this workshop made sure she kept a copy of her work for future considerations given the time and energy she devoted to translating what was essentially new technical terminology.

⁶ Inuit are sensitive to their regional dialects of Inuktitut. For Labrador Inuit roman orthography of the Inuttut dialect is used. In Nunavik Inuttitut syllabics is used. In Nunavut there are regional dialects of Inuktitut syllabics. In the western Arctic region of Inuvialuit Inuit speak both Inuinnaqtun and Inuvialuktun and the written form uses roman orthography.

definition was also available.

Appellation of Origins

This is a special kind of **geographical indication**. It is usually a label or mark placed on something that is for sale. It indicates the product has a special quality that is a result of where the product was made.

How is it Used? Many makers of the same product may share the same appellation of origin. The label helps people who buy the products know where the product was made.

Why is it important? The Appellation of Origin is a mark that guarantees that the product has a reputation for quality. All the goods made in the same region share this reputation. Appellation of Origin is a form of **collective** rights.

Collective

This word describes an organization that protects the rights of all its members. Often people who have common concerns or common interests will form a collective. All members of a collective are equal.

How is it Used? A collective may apply for a **trademark**, a **copyright**, a **collective mark**, or a **certification mark** in the name of all its members. The collective would then act to protect the intellectual property rights of everyone who is a member.

Why is it important? A collective may be a method to protect traditional knowledge. For example, people who make the *amauti* may decide to start a collective. This organization would manage the rights that are connected with legal and economic protection of the *amauti*. It is easier for a designer to have the collective manage their legal rights.

The overall objective was to build the capacity at the local community level in order to engage in a productive discussion about the IPR implications of TK. To do so required the use of terms and concepts that are not a part of everyday life for most people anywhere, let alone in the Arctic. Discussions of copyright and trademark laws are not what people usually talk about. The workshop material and the glossary were prepared in a manner that would engage the reader and be a useful reference as workshop delegates began to explore the issues of IPR and to discuss how their traditional systems of ownership, knowledge, and production related to these modern 'laws' about knowledge.

INUIT TRADITIONAL KNOWLEDGE WORKSHOP ON THE AMAUTI AND INTELLECTUAL PROPERTY RIGHTS

The workshop's four-day agenda presented material and issues in a manner that built upon each item. The first morning session introduced the workshop and its objectives and reviewed the written material. The afternoon session offered a visual presentation about the history of the *amauti*. This was followed by a session where the delegates went into four breakout groups to answer a range of questions prepared to clarify what was an *amauti* and what was it that needed

protection. The intent was to identify what specifically required IPR protection — the shape or design, the decorations, the material, the decorations, or how the *amauti* is made. The four groups were presented with the following questions for consideration and their conclusions were later presented to the plenary:

- What is an *amauti*?
- How are *amauti* designs different between regions?
- What materials have *amauti* been made with traditionally and what are they made of today?
- Is there a difference between an *amauti* made today and those made in the past?
- Is there a difference between an *amauti* made for everyday use and one made for sale?
- What is it about the *amauti* that needs to be protected? The shape? The materials? The decorations? The designs? How it is made?
- How does someone learn to make an *amauti*?
- Are there rules about who can make an *amauti*?
- How do they choose the shape, design, materials, and decorations for an *amauti*?
- How do Inuit women want to protect their knowledge of the *amauti*?

The second day opened with delegates expressing their concerns and experiences about the use and misuse of the *amauti* and other innovations that embody Inuit cultural heritage. The delegates expressed their pride in the *amauti* and their concerns that it should be protected. The question of ownership was also discussed. All Inuit own the *amauti* collectively, though individual seamstresses may use particular designs that are passed down between generations.

Another breakout session was organized to address questions about Inuit customary laws. The subsequent plenary session discussed each group's conclusions. Questions that were considered included:

- Who owns Inuit traditional knowledge?
- What are the Inuit customary laws that deal with ownership and the proper use and sharing of knowledge?
- Who owns the traditional designs, tools, and decorations?
- Do Inuit need permission to use their knowledge?
- Can traditional knowledge be someone's private property?

- Do those who use traditional knowledge owe anything to their community?
- Can non-Indigenous peoples use Indigenous peoples' traditional knowledge?

The objective was to determine what standards and expectations could be incorporated into a new regime. It was important to document what customary practices guide the use and transmission of traditional knowledge associated with the *amauti*.

The remainder of the second day was devoted to presenting to the delegates information about the Convention on Biological diversity. The history of the CBD and issues before the CBD were presented. It was considered important that delegates understand the Convention and Article 8(j) in the context of traditional knowledge and innovations and how it related to the IPR issues before them. Knowledge of the CBD is not widespread at the local community level in the Arctic. There is a need to build the capacity so that Inuit can be more active participants in the process. As noted, Inuit have representatives at various meetings related to the CBD and WIPO but the developments at these forums are not being effectively conveyed at the community level. This session of the workshop, therefore, placed the CBD in the context of the *amauti* and IPR and this made the presentation more meaningful and concrete.

On the third day the delegates were introduced to specific aspects of Canada's IPR laws. The intent was to clarify some of the misunderstandings associated with various existing legal tools. For examples, delegates often spoke of trying to patent the *amauti*. It was explained that a patent could not protect the overall concept and design of the *amauti*. The applicability and limitations of existing IPR tools were explained and the delegates were given the opportunity to discuss the matter and pose questions. It was explained that the historical origins of the *amauti* and the associated Inuit traditional knowledge, and the concept of collective versus individual ownership, limits the relevance of modern IPR instruments. Currently, individuals or corporations use IPR laws for their own economic protection and benefit. The delegates expressed concern about the need for collective ownership, cultural protection, and ownership by Inuit as a people. It was suggested that trademarks, certification marks, or perhaps industrial designs were suitable short-term forms of protection. A common concern was that these forms of IPR protection might reduce the number of people who are willing to make the *amauti*. The delegates did not want any restrictions on Inuit to use or benefit from their own traditional knowledge and cultural and intellectual property. However, delegates recognized the urgency with which to begin seeking some form of protection.

The afternoon session on the third day was devoted to international examples and experiences. It was with great pleasure that Pauktuutit was able to invite Graciela Magan from *Peru's Centre for Indigenous Cultures (CHIRAPAQ)* and Sonia Henriquez from the *Coordinadora Nacional de Mujeres Indigenas de Panama*. These two women shared their experiences with the delegates and helped place the IPR concerns of Indigenous women into an international perspective. Additionally, the delegates were directed to the reading material that explained WIPO's activities and to a draft contract developed to guide access to the intellectual property of Indigenous people. The *International Centre for Human Rights and Democratic Development* had prepared

the contract.

The final day was geared towards developing a strategy or workplan. The effort had been to provide the delegates with a better understanding of potential tools and directions that they may choose to initiate. Discussion began about the value of trademarks and how this could be practically implemented. Delegates considered collective marks, official marks, and the formation of an association or public authority. An association could serve the collective needs of Inuit seamstresses and could register for trademark protection. Delegates were very interested in the practicalities associated with a trademark or label. They wanted a clear understanding how it would impact the making of the *amauti*. It was stressed to the delegates that these were commercial tools and that they could not effectively prevent anyone, Inuit or non-Inuit, from entering the market with products based on traditional knowledge. Delegates felt that rather than try to fit Inuit needs within existing IPR laws, that perhaps a new law should be created that would effectively protect against the misappropriation of their cultural heritage. Based on these discussions, a workplan was developed.

CUSTOMARY LAWS

An important objective of the workshop was to develop a better understanding of the customary laws and rules that govern access to the patterns and techniques associated with the *amauti*. Such an understanding would lend itself to developing a more Inuit-specific, or *sui generis*, form of protection. The challenge is to interpret these customary systems in a manner so they can be integrated into effective forms of protection for the intellectual property rights of Inuit. These strategies must respect indigenous values.

Knowledge is passed down between generations and is owned by all. In general, access to the traditional knowledge of the *amauti* is relatively informal though the delegates suggested that in the past there were rules about who could make an *amauti*. Participants indicated that the sources for certain rules are now unclear. The *amauti* is still made in the same way as in the past using Inuit designs. Therefore no Inuk can be denied the right to learn how to make one. As one break-out group noted: "Because people are always dying their knowledge is passed down to their children and so the knowledge will always belong to Inuit." In the past, Inuit would follow the appearance of their parent's garments as well as those of close relatives. They would learn from older Inuit. Therefore designs were often regionally and community specific. A person could tell where someone was from by the design or shape of his or her clothing. Today, any patterns can be used.

It is clear that there were customary rules about the use of specific or regional designs. There were rules about the butchering, drying, and preparation of skins and about how patterns were measured. Similarly, there were rules about the style and decoration of the *amauti*. It was not always possible to ask about different designs; such knowledge was passed down between parents and children.

Participants raised some concern about the misuse of regional designs. On the one hand, any Inuk

should be able to learn the different regional styles. On the other, it may not be proper for an Inuk to start profiting from the designs of another region. This raised the question of what an individual owed a community for the use of traditional knowledge. Should those who make a profit give something back to the community? It was suggested that an association or organization with a membership should be formed to ensure that knowledge about the *amauti* is returned to the community. If there was to be some form of protection, all Inuit women should be able to have access. Delegates clearly stated that non-Inuit should be restricted or denied access to the use of this knowledge.

The discussions suggested that there are no longer clear customary laws that can define or dictate access to the traditional knowledge of the *amauti*. The delegates recognized the changing modern circumstances and indicated that perhaps some traditional - modern hybrid system would be appropriate. Regional differences should be documented and some form of compensation should be returned to the community were a design originated. The objective is not to control or restrict an Inuk's access to the knowledge but to help preserve a community's knowledge. It is unclear how this knowledge will be accessed and taught in the future other than in a traditional manner. It was felt that it was important to protect the old ways for making the *amauti*. One suggestion was to have an agency or agents to manage designers, the use of designs, and the compensation due to a community.

ISSUES

Throughout the workshop the delegates raised many issues. They provide valuable insight into the concerns of the participants and the depth of the discussions. The issues are at the root of community economic development projects that respect traditional values and activities. A community industry based on the *amauti* offers a huge potential for Inuit women and would encourage the sustainable harvesting of fur animals. The issues often hinge on meeting the demands of southern markets in terms of preferred designs and sizes, and of the materials used.

Delegates expressed concern over the loss of traditional sewing and manufacturing techniques. Sewers are no longer using the size of the hand to measure and fit the *amauti*. It was felt that there was a need to revive the traditional hand measuring techniques from elders. Though there are few elders still alive, they could teach others how to use their hands to measure and cut patterns from skins. Delegates discussed the issue of custom fits versus standard small, medium, large sizes. It was felt the loss of traditional sewing and measuring techniques is leading to the *amauti* no longer fitting comfortably. An important quality of the *amauti* is at risk being lost if they are made from patterns instead of by the traditional method. Style and decorations are superseding traditional concerns over comfort and form. Interestingly, it was noted that some Inuit clothing creations now incorporate design elements that infringe on protected designs such as Nike and teletubbie characters. Delegates agreed that Inuit must respect the ownership of these designs and not use them.

The delegates expressed the need to record the different styles of the *amauti* in all the communities. The *amauti* is now being made without pouches or large hoods and are being made

to meet the desires of the southern consumer. Traditional materials such as skins and fur are being lost to modern western materials like calico and duffel. This presents a dilemma — meet the needs of the southern market and promote economic development at the community level or defend the traditional systems and lose that potential. Currently Inuit women are undervaluing their work and are not getting a good price for a hand-made *amauti*. There is the continued need to promote the value and beauty of Inuit-made fur fashions and to encourage the Western markets to recognize the importance of a sustainable fur industry in the North that will promote economic self-sufficiency at the community level.

The participants felt it was important to protect the old ways of making the *amauti*. They wondered whether younger people would learn to be great seamstresses like those in the past. People may not be well versed in traditional knowledge yet there are too few elders to pass on the sewing skills to younger Inuit. Further, it was stated that younger people working on such a project might feel intimidated by the elders. Nonetheless, it was concluded that there is a need to document knowledge to give it strength. But the delegates made it clear that they did not want to collect patterns to give to the government.

The *amauti* is not an art form like a sculpture but is more utilitarian, practical, and comfortable. Nonetheless, some clothing is art. The delegates considered whether individual products should be protected as an art form or should there be some way of protecting all variations of the *amauti* using a legal instrument like industrial designs. Cloth patterns can be protected from alteration and copying but the *amauti* expresses more than a shape or pattern, it reflects a community's identity and Inuit cultural heritage. Unfortunately, the antiquity of the *amauti* as a form of clothing makes certain legal protection difficult.

The delegates also expressed concern that non-Inuit were coming up north and learning how to make these forms of clothing. Delegates were of the opinion that these people should not learn to make the *amauti* but should buy them from Inuit makers. There was concern that the *amauti* is now being taken apart and used to make patterns to manufacture more *amautis* for profit. Inuit want to prevent this without prior informed consent. Currently a person can buy an *amauti* and take it apart to use as a pattern to make new ones, possibly for sale, and without asking permission from the person who made the original. Raises the question of ownership of the pattern and who and how the *amauti* is being reproduced. At a minimum, it was felt that permission should be asked before doing this.

Delegates considered the option of labelling their creations as one method of protection. Essentially they did not want a system that prevented or reduced the number of Inuit who could make the *amauti* but they wanted a system that discouraged non-Inuit. They envisioned a label that added value to their products, something that identified their products as fairly made and traded. Like the *Igloo Tag* that was promoted until recently by DIAND, the label should include information about the creator and where they are from. The mark should be a cultural property or cultural heritage mark that is recognizable and enforceable through legislation. The participants indicated that such a label should not be exclusive to the garment producers but should protect the collective — a collective body must own the label. The labelling system should be

implemented until a more comprehensive mechanism or tool can be developed.

The delegates thought that protecting the *amauti* within existing IP laws would fail to meet the collective concerns and values of Inuit. They felt that Inuit should not lose their cultural ways in order to protect the *amauti* and that the laws must respect the Inuit values of helping and sharing. Fitting into already defined forms of protection would not allow this. Protection must respect collective knowledge and Inuit must therefore cooperatively work out the best way to protect the *amauti* in a manner that is appropriate to Inuit ways and not just to meet the concerns of lawyers. They felt there should be mechanisms that address cultural property instead of intellectual property. Protection for traditional knowledge should be without a time limit; protection should last for the lifetime of the people. Protection for the traditional knowledge of Inuit intellectual property is sought for all Inuit.

The workshop delegates also considered the national and international importance of these issues. They felt a national organization or body should be formed to oversee the protection of the *amauti*. Due to a question of trust, they thought a women's group would be best. Cooperation is necessary at the regional level as well as at the larger international level — between Inuit living in Canada, USA, Greenland, and in Russia. Protecting Inuit property rights must account for the pan-Arctic distribution of Inuit and therefore Inuit regional, national and international organizations should participate in the discussions. Delegates also thought support using the Permanent Forum of the UN, the UN Draft Declaration of Indigenous Peoples Rights, as well as the OAS Declaration of Indigenous Peoples Rights.

The workshop discussions were very successful and a range of topics and concerns were raised. They are a testament to the growing knowledge of the Inuit participants and their ability to enter meaningful and productive discussions. The workshop was conceived to provide the participants the information and background needed to discuss questions about IPR. The calibre of discussions serves as a good indicator of the capacity-building success of the workshop.

WORKPLAN

On the final day of the workshops the delegates worked on developing a workplan to guide further work. The work of previous days had raised awareness and capacity by providing technical information about existing IPR systems and had placed these issues in the context of Inuit values, domestic laws, international debates and initiatives, and in the context of how other Indigenous women were coming to terms with the misappropriation of their cultural heritage. The resulting workplan was conceived in terms of short or immediate objectives and long-term objectives.

To address immediate and short-term concerns the delegates concluded that a formal working group was needed to guide the process of protecting Inuit women's intellectual property and that of all Inuit in general. The delegates wanted to continue with the initiative and to continue to nurture a leadership role. They felt the initiative was important to Inuit and that the initiative should not be taken away from them. It was acknowledged that formalized working relationships

with a range of other Inuit organizations, associations, and artistic groups are required as well.

To manage the longer-term objectives requires the formation of an association of sewers to share a common trademark or certification mark. It is this manufacturers' association that will develop an inventory of designs and participate in the evaluation of existing legislation in Canada and elsewhere and evaluate solutions sought by other Indigenous peoples around the world.

A critical component will be to develop working relationships with other groups at the local, regional, territorial, national, and international level. Government departments and agencies, regional Inuit associations, cultural groups and institutes, national Aboriginal organizations, cultural groups, Inuit designers, sewers and clothing producers, women's groups, and elders were all identified. Pauktuutit also anticipates it will continue to participate at WIPO meetings and is seeking support to send a delegation to Panama to explore that country's legislative developments with respect to IPR and TK. The delegate from Panama, Sonia Henriquez, had made a presentation to the workshop about Panama's *Act 20* and it was felt that valuable lessons and skills could be developed by meeting with the country's legislators, government officials, and Indigenous peoples.

Continuing the consultative process is important. An important component of this is the need to make information available in the various Inuktitut dialects. It is important to keep all Inuit informed about these complex matters. It was suggested that information packages be prepared that review relevant national and international laws, treaties, and conventions. These should be distributed in a campaign to raise the capacity within Inuit communities to better understand the issues.

The long-term goals include an interim form of protection and then to proceed with a research and consultation process that will result in a more substantive Indigenous-specific form of legislative protection in Canada. The latter is especially challenging. The aim is to develop a form of protection that respects the age and collective nature of Indigenous cultural and intellectual property. Protection must go beyond the limitations of existing IP laws.

The interim protection will take the form of a tag or label that can be sewn into the garments. The tag will be a trademark symbol, mark of authenticity, or certification mark that identifies the garment as an authentic Inuit-made product. This would be registered with the Canadian Intellectual Property Office. Pauktuutit may act as the administrator or public authority for the label. The authority will act as the association of manufacturers. The workshop delegates clearly stated that they did not want this association to be exclusionary, denying any Inuit from using the tag. The intent is to operate within the existing IPR regime until a more appropriate and culturally relevant model for legal protection can be developed. The label can identify to consumers the source and integrity of the product, but as the delegates learned at the workshop, such trademarks do not protect cultural heritage and traditional knowledge from being appropriated by others.

An important role for the authority will be to develop a collective registry of Inuit cultural

property. The participants indicated they wanted to document the historical, community, and regional variations of the *amauti*. Issues such as ownership, access, benefit sharing, quality control, and other ethical issues need to be further explored and communicated to Inuit social and cultural organizations and to the makers of the *amauti*. This consultative process will lend itself to further refining the legislative changes that are ultimately sought.

THE NEXT STEP

The workshop was very successful with the delegates enthusiastically participating in the discussions. The event was also well received within the press with reports being filed by *CBC North*, *Nunatsiaq News*, and the *Toronto Star*. The workshop therefore serves as a good case study of a consultative process that addresses the IPR concerns of Indigenous Peoples at the local community level. The objective was to reach a consensus on how to proceed with legal protection. The presentation material that was developed is proving to be useful for similar consultations elsewhere.

The workshop's consultative approach provided strong direction for future activities. The delegates recognized the need to better identify and define the traditional *amauti* and the designs and motifs that should be subject to protection. They realized the important social, cultural, economic, gender, and youth considerations that are associated with protecting Inuit traditional knowledge. There is a need to identify and review existing national and international regimes for relevance and applicability to Inuit products and intellectual property and to prepare this material for presentation to Inuit stakeholders through further consultative processes. Australia, New Zealand, and Panama are countries that have begun to develop ways to protect the IPR of TK and these developments should be examined more closely for their relevance.

The immediate plans involve preparations for a fact-finding mission to Panama. As noted, Panama's *Act 20* may offer some valuable lessons that can help guide future activities for protecting the *amauti*. In particular, the Panamanian legislation involves a centralized registry where local Indigenous Peoples provide a description and example of the creations they seek to protect. The legislation is conceived to stop the misappropriation of Indigenous crafts, which is undermining the self-sufficiency of local communities. There are problems with the registry, however, and it would be valuable to have Inuit stakeholders meet the legislators, lawyers, and local Indians to learn more. Before Inuit women proceed with an inventory or registry of their own, it would be important to learn from the Panamanian experience. Travel to Panama will serve to strengthen the international network of Indigenous women and will strengthen the capacity of Inuit stakeholders to address the larger issues of IPR protection. Pauktuutit hopes to invite delegates from Australia and New Zealand to join the fact-finding mission in Panama in order to share and learn from each other's experiences.

Pauktuutit has observer's status at WIPO's Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore. It is therefore important that the Association maintain a presence at these meetings to ensure the voice of Inuit is heard. The Inuit Circumpolar Conference also has this status and together the two organizations can compliment their

interventions and work on joint strategies. The plan to develop a registry or inventory is particularly relevant to this Committee's work and Pauktuutit feels that a great deal can be gained by participating in these discussions. The Amauti Project is a case study that will involve a community-by-community registry and Pauktuutit expects to keep the Committee informed of the lessons that will be learned from the initiative. It is expected that these lessons will be of value to other Indigenous Peoples in and outside of Canada.

The collective registry is going to be a major step in the Amauti Project. There are a number of implications that require judicial consideration. These include:

- ownership;
- security, control and access to the information;
- possible licensing and benefit sharing arrangements;
- quality control;
- sustainability;
- membership criteria; and
- ethical issues such as the sharing of patterns and designs, the obligations of individuals to their communities, and the social standards for fair trade practices.

Pauktuutit intends to evaluate these issues from the perspective of Inuit garment producers while the inventory is being conducted. The results should further the value of this case study. By looking at one component of Inuit material culture it is hoped the utility of a registry can be assessed before a larger commitment is made. Evaluating the utility of a registry in tandem with the use of a certification mark or trademark and an evaluation of the efforts of Indigenous Peoples elsewhere in the world should provide a firm basis upon which to judiciously determine the value and limitations of existing laws.

The workshop delegates indicated that an alternative form of IP law should be developed. They concluded existing forms fail to meet the collective concerns and values of Inuit. Laws should protect cultural property. Protection for traditional knowledge should be without a time limit — protection should last the lifetime of the Indigenous People. A new form of indigenous-specific protection should be developed at the legislative level.

One of the most innovative proposals to come out of the workshop was the idea of developing a new IP mark. It was suggested a CP mark be introduced that stands for *cultural property* or *culturally protected*.⁷ Any product or creation that is based on traditional knowledge could carry

⁷ This mark would be similar to a copyright or trademark. The letters CP would be placed within a small

such a mark. Anyone wishing to use the creation as inspiration, or as the basis for his or her own creative work, would require permission, prior informed consent, or a contract that incorporated an access and benefit-sharing component. The details and implications about such a mark have not been explored. Delegates thought this was too premature and should follow the initial phases outlined in the workplan.

The task of addressing the intellectual property rights of traditional knowledge is immense and will inevitably strain the resources of a small NGO. Pauktuutit cannot devote a full-time staff member to this file even though the topic is broad and involves a large volume of material. It is difficult to keep up with the developments that are occurring in a number of forums around the world. Pauktuutit has begun to liaise with Inuit Tapiriit Kanatami and the Inuit Circumpolar Conference to mutually support each other in these endeavours.

CONCLUSION

Pauktuutit's efforts to initiate an economic development projects based on a traditional clothing industry and the efforts to protect the related intellectual property rights, readily fall within the domain of Chapter 26 of *Agenda 21*. For a national NGO of modest means, Pauktuutit often relies on the support of various Canadian Government departments to proceed with its capacity-building initiatives. The government's interest and support can be described as both enthusiastic and generous. Pauktuutit has been encouraged to participate in consultations related to the Convention on Biological Diversity, WIPO, the OAS, and others.

Through a successful consultative process with key stakeholders, Pauktuutit has laid the groundwork for an on-going project that is relevant to the objectives and activities of *Agenda 21*. The Rankin Inlet workshop linked the *amauti* to Inuit traditional knowledge and the role of women in the utilization and sustainable management of Arctic resources, to Article 8(j), to the work of WIPO, and to the international IPR debate on TK. The workshop has received a great deal of credit for the scope and utility of the material presented, the calibre of the discussions, and for the workplan that is both ambitious and visionary. The workplan includes the following:

- developing a catalogue, inventory, or registry of designs and designers;
- forming an association of sewers within which to share a trademark or certification mark of authenticity in order to provide an interim form of protection;
- addressing issues such as ownership, control and access, benefit sharing, licensing, quality control, membership criteria, fair trade, and obligations to the community;
- placing the IPR concerns of Inuit into the larger national and international arena; and

circle.

- assessing the viability of introducing a new IP mark both nationally and internationally.

One of the key challenges faced by Inuit and other holders of traditional knowledge in Canada is the limitations of existing IP laws in Canada. The Federal Department of Industry Canada has expressed a position at the WIPO meetings of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore that is problematic. In response to a Committee questionnaire on existing forms of protection for expressions of folklore in Canada, the department stated such expressions are not accorded specific legal protection as IP through *sui generis* protection or through separate provisions of the statutes. Canadian laws protect “many aspects of folkloric expressions, especially through the protection afforded by copyright, trademarks, and industrial design legislation. Other aspects of folkloric expressions, which are in the public domain, are available without restrictions and thus serve to enrich the fabric of Canada's multicultural society.”⁸ This perspective is not based on consultation or consensus among Aboriginal Peoples about whether their cultural heritage should fall within the public domain for all to draw and profit from. The laws that protect “folkloric expression” in Canada do not distinguish between those who can claim collective cultural or ethnic ownership from those who are simply inspired by, or may want to borrow, or “rip-off” Indigenous cultural heritage.

The Igloo Tag is another example where the Canadian government is divesting itself of direct support for the protection of indigenous cultural expressions. For over 40 years the control and administration of this tag has been managed within the Department of Indian Affairs and Northern Development (DIAND). The tag was introduced and registered as a trademark in 1959 in order to bring a sense of order, credibility, and added value to genuine Inuit art. The labels assisted producers, vendors, as well as consumers in assuring the art's authenticity as handmade. The success of Inuit art in the marketplace offered economic potential for communities where the loss of traditional life-styles had resulted in unemployment. But imitators still mislead the public by employing Inuit imagery, using materials associated with Inuit art, and making references to the North. This “fakelore” continues to deprive remote northern communities economic self-sufficiency.

DIAND has now considered discontinuing or transferring management of the tag even though it has proven to be an effective marketing tool. A limitation of the tags is that they have usually been attached to sculptures, wall hangings, and traditional tools only. There is a range of other Inuit creations, including the *amauti*, that are worthy of some form of authentication mark. This is something that was considered during the *amauti* workshop in Rankin Inlet. Such marks, however, are now viewed as inadequate. Inuit are concerned that their cultural heritage is open to exploitation and misappropriation and that existing IPR laws have failed to protect its misuse.

The Amauti Project exemplifies an effort to raise public awareness about the complex issues

⁸ See the Canadian government's responses to the WIPO Questionnaire *National Experiences with the Legal Protection of Expressions of Folklore* that was submitted for the December 2001 meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (<http://www.wipo.int/globalissues/igc/questionnaire/canada.pdf>).

associated with documenting and protecting the traditional knowledge of Inuit. Many of the lessons learned have broader applications. In the Arctic, protecting the intellectual property rights of traditional knowledge can go hand-in-hand with community-based economic development projects. These projects can encourage and promote traditional values and encourage the sustainable use of renewable resources. They therefore embrace the spirit of Article 8(j) of the Convention on Biological Diversity and the spirit of Chapter 26 of *Agenda 21*.