This Presentation Will:

1. Provide an overview of the basic elements of ABS
2. Review underlying presumptions
3. Show how an environmental issue connects to economics and rights of Indigenous Peoples
4. Suggest a positive way forward.
Thesis of Presentation

• Convention on Biological Diversity (CBD) is an environmental agreement
• But Access and Benefit Sharing (ABS) is an economic issue first and an environmental issue second.
• It must balance poverty alleviation and respect for Indigenous rights with economic development if the ABS regime is to have a positive impact on biological diversity.
CBD: INTRODUCTION

• In force since 1993
• Signed by 193 states
• Major exception is US
• Canada is a Party
Three objectives of CBD:

1. Conserve biodiversity

1. Use components of biodiversity sustainably

1. Fair and equitable sharing of the benefits arising from the utilization of genetic resources (GR)
Definition of Genetic Resources:

1. Units of heredity – aka DNA/RNA
   - Not including human DNA
   - Not including plant genetic resources and associated knowledge for food and agriculture
Uses of Genetic Resources

a. Cosmetics;

a. Food processing;

a. Pharmaceuticals;

a. Taxonomic research;

a. Among others
ABS includes access to Indigenous Knowledge: Article 8(j) of CBD

- Respect, preserve, maintain Indigenous knowledge (IK) related to local biodiversity
- Share IK more widely with support of knowledge holders
- Share benefits arising from use of IK.
Definition of Benefits

- Benefits include monetary and non-monetary advantages derived from the use of genetic resources or Indigenous knowledge.
A simple process

- Parties that wish access to GRs or IK must seek approval from the holders of the GR or IK.
- Parties enter into contract of mutually agreed terms.
- If benefits are derived they are shared in accordance with contract.
Enforcement

- Holders of GRs or IK must control access
- Must also watch patent offices to ensure no illicit use
- Respect each others legal systems and expect fairness in foreign courts
Underlying logic of ABS to support retention of biological diversity

• Poverty is a driver of environmental degradation

• Trade imbalances promote poverty

• States and Peoples in areas of high biological diversity or with reserves of IK tend to be the poorest.
Underlying Logic

• Therefore regulate trade between those with GRs and IK and those with the financial and institutional capacity to exploit
• To reduce poverty
• Which will in turn support retention of biological diversity.
Teasing it apart: the theory

• GRs and IK assumed to have no value until they are being used

• If they have no value in situ there is no incentive to protect it
A neat solution?

• Generate value in GRs and IK to create interest in conserving and using sustainably
Teasing it Apart

• However, the knowledge and land are priceless to those who rely on them
• Instead of providing an incentive for conservation they may instead be simply replacing beaver skins with GRs and IK
Who will benefit?

- ABS presumes the poor and disenfranchised will profit and the resulting wealth and well being will aid conservation

- But will this work in practice?
Who owns GRs?

a) States;
b) Individuals;
c) Companies;
d) Universities and research institutions;
e) Indigenous Peoples?

All of the above.
Who will benefit?

• The poor are generally not landowners;
• Indigenous Peoples have been divested of their lands; and
• the urban poor have few local biological resources
• ABS may only result in the transfer of wealth from the wealthy to the wealthy
Access to IK

- Easier to limit access to IK not yet in the public domain
- But once information is shared it is difficult to ensure it is being used and shared appropriately.
- It is up to Indigenous communities to exercise rights of self-determination and self-government to decide how and if they will allow access, by whom, and for what purposes
Access to local GRs and IK

- Most terrestrial GRs already identified
- Large private and public holdings ex situ
- Therefore no guarantee anyone requires access to local GRs or IK
- Not a get rich quick scheme
Marine GRs

• Conversely only a small portion of marine genetic resources are known
• High seas are global commons with no sovereign ownership outside national jurisdiction
• This is where many are now focusing their bio-prospecting efforts
Benefits to be negotiated

- Value of the GR or IK is in what can be negotiated

- Which depends on the relative strength of the negotiating parties

- No guarantee benefits will actually result from research
Flaws in trickle down theory

- ABS presumes that value generated by trade in GRs and IK will enhance protection of biodiversity.
- However, for this to work as expected it is incumbent on the receiver of benefits to direct profit to environmental protection and there is no guarantee this will actually occur.
- Inspires black market
- Encourages sale without respect for non-monetary values
Genetically Modified Organisms

- End result of access might be GMO’s
- This is addressed in part under the Cartegna Protocol on Biosafety.
- Canada is not a party
- Moral, ethical, political, environmental issues around GMO’s remain open questions
Interconnections: Economics and the Environment

- ABS is connected to environmental protection
- But we have seen that greater retention of biological diversity does not necessarily flow from ABS
- Now let’s see how it connects to Indigenous Rights
Interconnection between Indigenous rights and the environment

- Biological and cultural diversity exist in a positive feedback loop
- If one is thriving so is the other
- Loop is not necessarily positive
- If one is in decline so is the other
Cultural Diversity

• Culture is our epistemology and its daily manifestations

• Different perspectives on relationship to the land
Cultural diversity

• Deliberately or unintentionally, the opportunity for Indigenous Peoples to exercise traditional cultures is diminished by the actions of those who do not share a similar worldview.
Link between cultural and biological diversity

- Positive: An active relationship with the biological diversity on which the culture is based promotes respect for the biological diversity
Interconnections

- Where this is compromised it promotes disaffection, apathy, irresponsibility
- Further undermines retention of biological diversity and the cultures which depend on it for their expression
Interconnections

• ABS has to address loss of biological and cultural diversity at the same time.

• But little evidence of political will in Canada to make this a driving factor of the ABS regime.
Respect for Indigenous Rights?

Several attacks on Indigenous rights in the ABS process
Lack of respect for Indigenous Rights

Many Indigenous Peoples are divested of their land thus no exclusive control over access to genetic resources
Challenges to cultural integrity

• Commodification of GRs and IK contrary to some Indigenous Peoples’ world views

• Conflicting moral and ethical values regarding use, ownership, and obligations to share knowledge
Challenges to cultural integrity

- Serious problems with the Intellectual Property Rights regime and its ability to serve the interests of Indigenous Peoples.
- Recall, where culture is under attack so is biological diversity
Challenges Indigenous Peoples face in protecting their rights

• Relative bargaining strength
• Capacity to track benefits
• Capacity to track patenting of IK
Challenges to Indigenous Rights

• Denied opportunities to participate in ABS decision making processes
• Undermines rights of self-determination and self-government
• Diminishes opportunities for cultural expression and fosters lack of respect for biological diversity
Domestic Application

- Canada is an industrialized country with a sizable Indigenous population.

- Can serve as a microcosm for the world.

- If we can get this right domestically we can serve as an example for others.
Domestic Application

• The Crown is obliged to respect the Constitution of Canada and has adopted the Declaration on the Rights of Indigenous Peoples.
• Canada has legal and moral obligation to consult with or obtain the consent of Indigenous Peoples if rights curtailed.
Domestic Application

• Many elements of law and policy to be considered in developing domestic regime

• Large potential to negatively impact Indigenous Rights
Conclusion

• If we put our collective wills to equity and justice we have the potential to achieve great things.

• But if the ABS process is just further entrenchment of the status quo we are all in trouble.
Conclusion

- It is up to us
- through our democratic and legal processes
- To ensure ABS regime benefits flow to the disenfranchised and for environmental protection.
Questions?

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