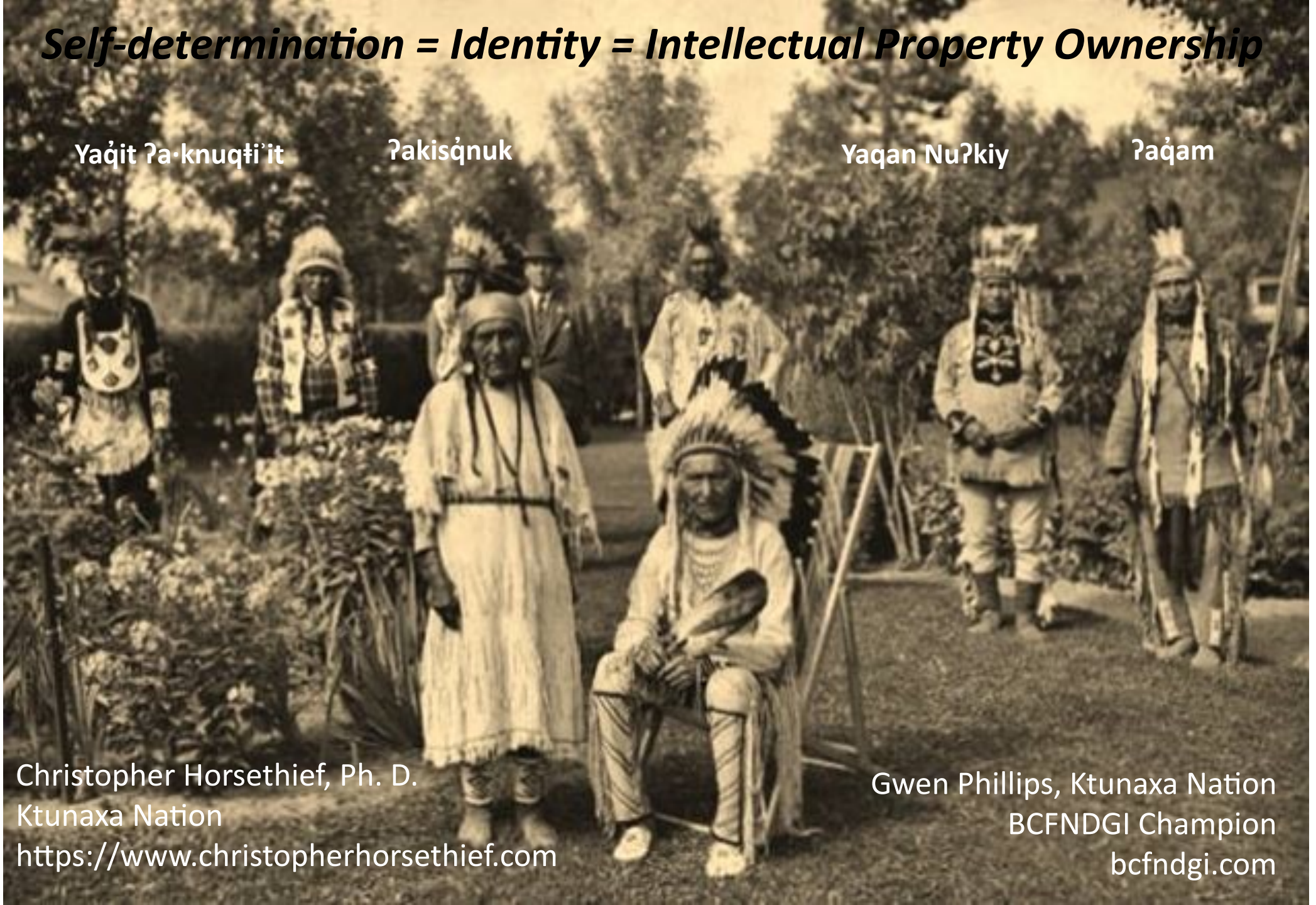
Indigenous Identity and Data Sovereignty

Approaches to Asserting Ownership & Taking Control

Self-determination = Identity = Intellectual Property Ownership



Christopher Horsethief, Ph. D.
Ktunaxa Nation
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Gwen Phillips, Ktunaxa Nation
BCFNDGI Champion
bcfndgi.com

Intellectual Property Law in Canada

Canadian Intellectual Property law is generally to assist with:

Protecting your brand

Building and protecting your business' brand image.

Protecting your innovation

Identifying whether you need a patent or an industrial design, or both, to protect your innovation.

Protecting your artistic creation

Protecting your original artistic creations, including computer programs.

IT DOES NOT PROTECT INDIGENOUS IDENTITY OR COLLECTIVE INTELLECTCUAL PROPERTY
IT DOES NOT PROTECT OUR LANGUAGES, STORIES, SONGS, IMAGES, SPIRITUAL CONCEPTS…

Indigenous Intellectual Property

The primary differences, as discussed in the Ktunaxa communities are:

Protecting your identity

Cultural identity belongs to the collective, irreducible to the individual.

Protecting the foundation for innovation and adaptation

No culture is static; our information must be the primary force in adapting changes to fit our protocols and practices.

Protecting community creation

Preserving resources meant for the entire community—for the entire community—not just locally famous personalities.

Deeply integrated with your protocols to PROTECT your IDENTITY or COLLECTIVE PROPERTY, your LANGUAGE, your STORIES, your SONGS, your IMAGES, your SPIRITUAL CONCEPTS…

Indigenous Intellectual Practice

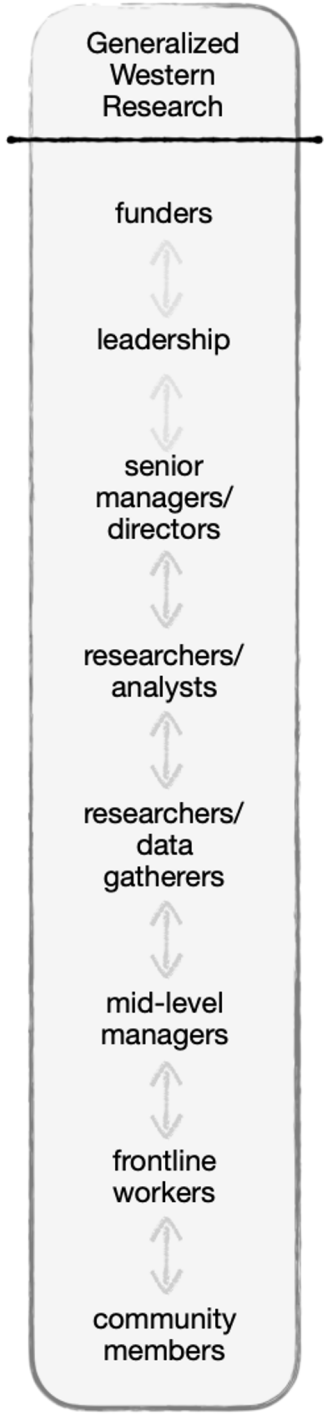
- We went from autonomous decision making groups
- To managed communities
- Then allocated centralized skills in umbrella organizations
- Now we have our Nation governance bodies and organizations
- Western researchers focus on implementation science free of context
- With the goal of reducing pushback through Knowledge Translation (KT)
- Which focuses on vertical silos, improving translation within, not between
- So Indigenous technicians developed internal capacity
- Now we need KT between silos—basic research ideas identified prior to research that serves both Western and indigenous needs (MDEs)
- This also includes IP, which provides assurance to Indigenous participants (not subjects) that they can share information without fear of losing it.

Ktunaxa Intellectual Property

- Indigenous Nations each have unique stories describing how humans and all things, came to be; each Nation has a unique language and culture that attaches them to a particular place.
- Indigenous Intellectual Property encodes a Nation's laws and norms; it is collectively owned and it describes relationships of a particular people to land, water, stars, Creator, Spirits, other people, other animals, rocks, trees…
- Ktunaxa Intellectual Property includes Ktunaxa identity, artistic expressions, language, technologies, oral and written records… all manifestations of the Ktunaxa culture, including the data that relates to the Ktunaxa culture, identity and worldview, history and future.
- The Ktunaxa Nation is an Indigenous Nation comprised of the Ktunaxa speaking peoples in both Canada and the USA. As a distinct society, the Ktunaxa peoples collectively hold Indigenous rights and title, including the rights to self-determination and self-government.
- The Ktunaxa had and have, systems of collecting data related to environmental, social and economic circumstances; systems to collect, record, analyze and use data to communicate across time and distance. Stories, pictographs, hide records, place names, string calendars, tipi covers, smoke signals… records and information management systems.
- Individuals and groups are entrusted with responsibility for data collection, retention and analysis; data is used to inform decision-making at many levels and managed according to the Ktunaxa worldview.

Measuring Ktunaxa“ness”

- Ktunaxa (Indigenous) Governing Bodies assert Ktunaxa rights and title on behalf of Ktunaxa people. Ktunaxa Governing Bodies are independent entities who have for millennia, worked together as the sovereign Ktunaxa Nation in advancing and protecting their individual and shared interests.
- Independently, the Ktunaxa Governing Bodies primarily perform functions related to *personal jurisdiction*; protecting Ktunaxa citizens and their immediate environments.
- Collectively, the Ktunaxa Governing Bodies assert *territorial jurisdiction* through which to protect Ktunaxa interests more broadly, across their territory. This collective responsibility includes protecting the Ktunaxa identity as a distinct peoples with inherent rights and title, and a unique language and culture; protecting Ktunaxa intellectual property.
- Through self-determined processes, the Ktunaxa people will measure their transition back to self-governance; measuring the Ktunaxa“ness” of the Ktunaxa population and measuring how well Ktunaxa institutions are functioning.
- The Ktunaxa Governing Bodies collectively assert ownership over the Ktunaxa identity and intellectual property and ownership over Ktunaxa data, on behalf of the Ktunaxa people.


Generalized Western Research
funders
leadership
senior managers/ directors
researchers/ analysts
researchers/ data gatherers
mid-level managers
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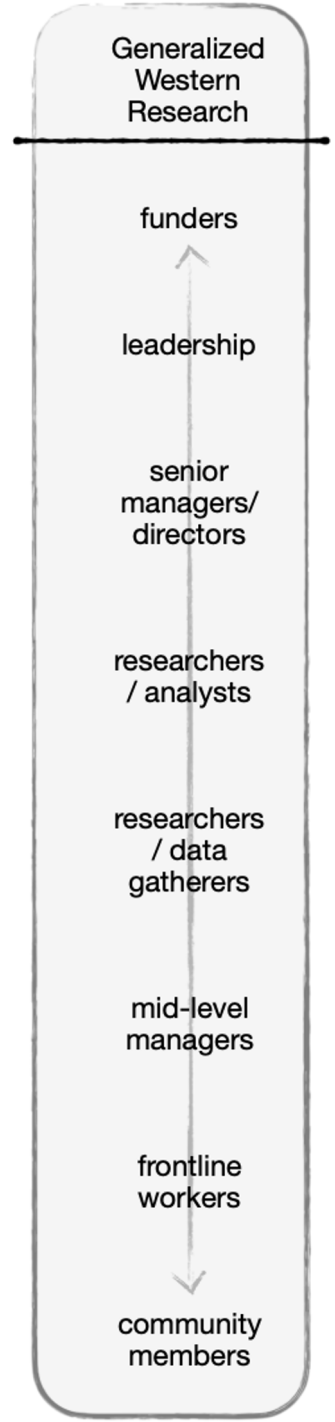
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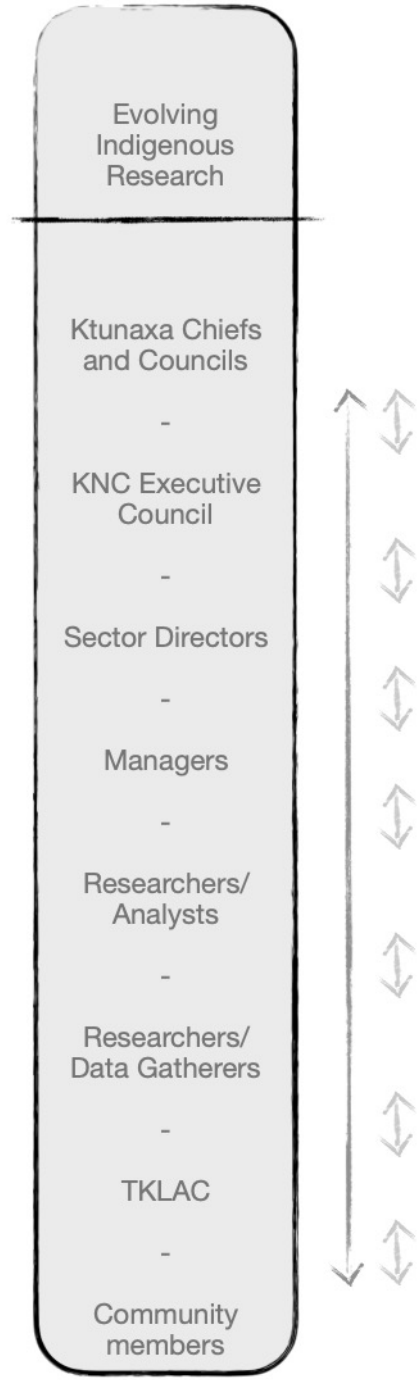


Capacity building adds governance development based on endogenous cultural values and imperatives,

-

community driven AND Nation based research methodologies

-

that marry resources to community values

-

as they have been calibrated over 13000 years;

-

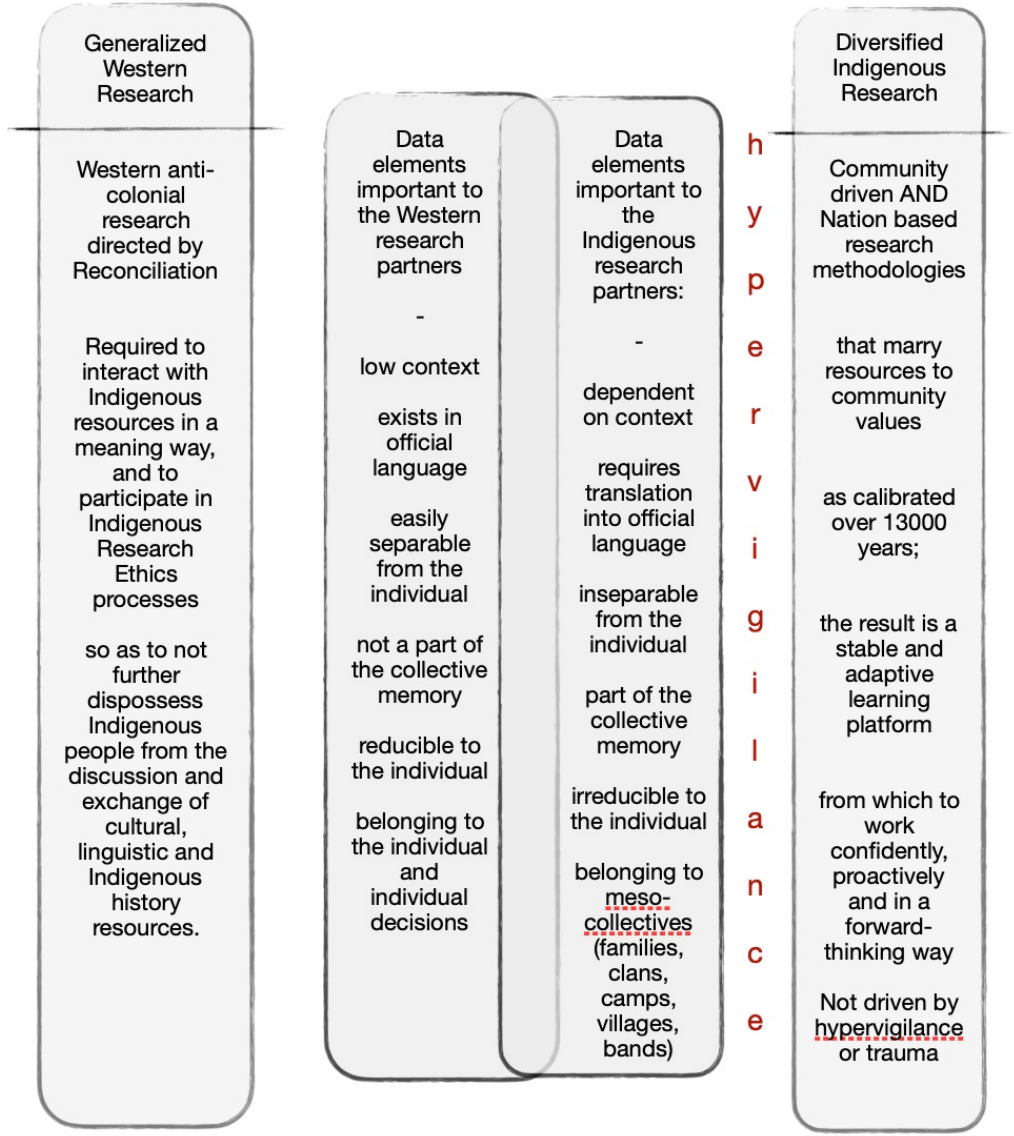
the result is a stable and adaptive learning platform

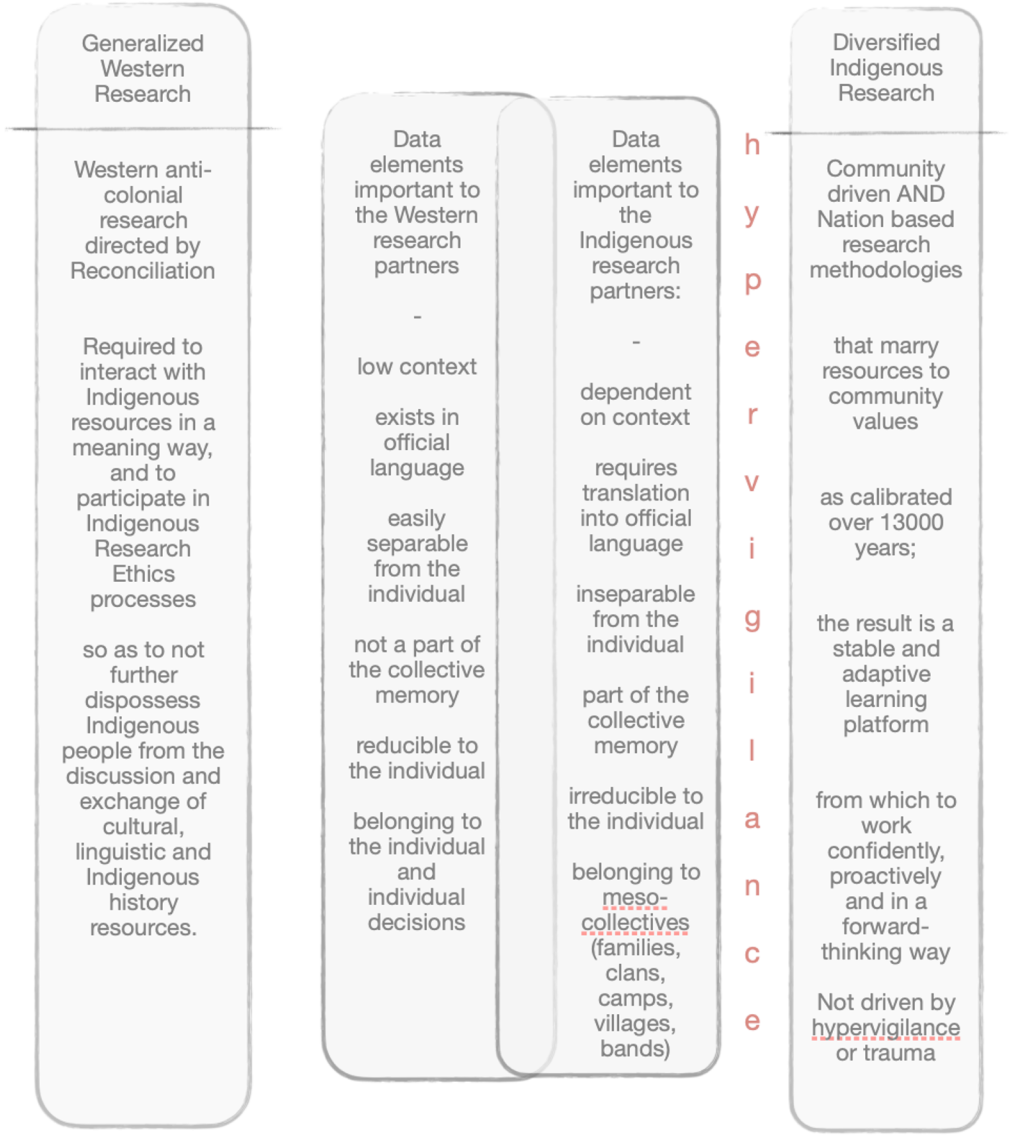
-

that offers a strong base for reciprocal calibration via

-

minimum data elements


Generalized Western Research
Western anti-colonial research directed by Reconciliation
Required to interact with Indigenous resources in a meaning way, and to participate in Indigenous Research Ethics processes
so as to not further dispossess Indigenous people from the discussion and exchange of cultural, linguistic and Indigenous history resources.
Data elements important to the Western research partners
-
low context
exists in official language
easily separable from the individual
not a part of the collective memory
reducible to the individual
belonging to the individual and individual decisions
Data elements important to the Indigenous research partners:
-
dependent on context
requires translation into official language
inseparable from the individual
part of the collective memory
irreducible to the individual
belonging to meso-collectives (families, clans, camps, villages, bands)
hypervigilance
Diversified Indigenous Research
Community driven AND Nation based research methodologies
that marry resources to community values
as calibrated over 13000 years;
the result is a stable and adaptive learning platform
from which to work confidently, proactively and in a forward-thinking way
Not driven by hypervigilance or trauma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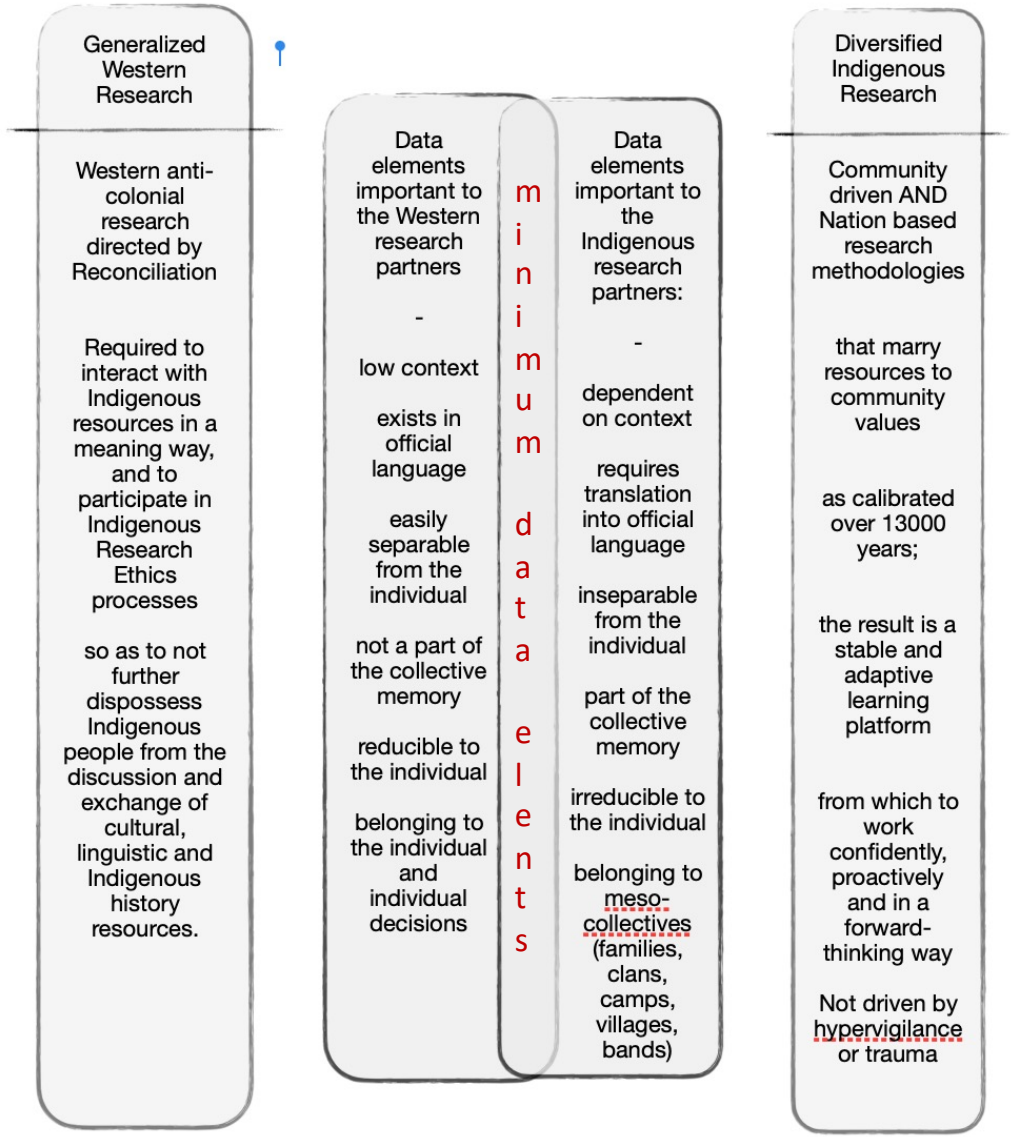
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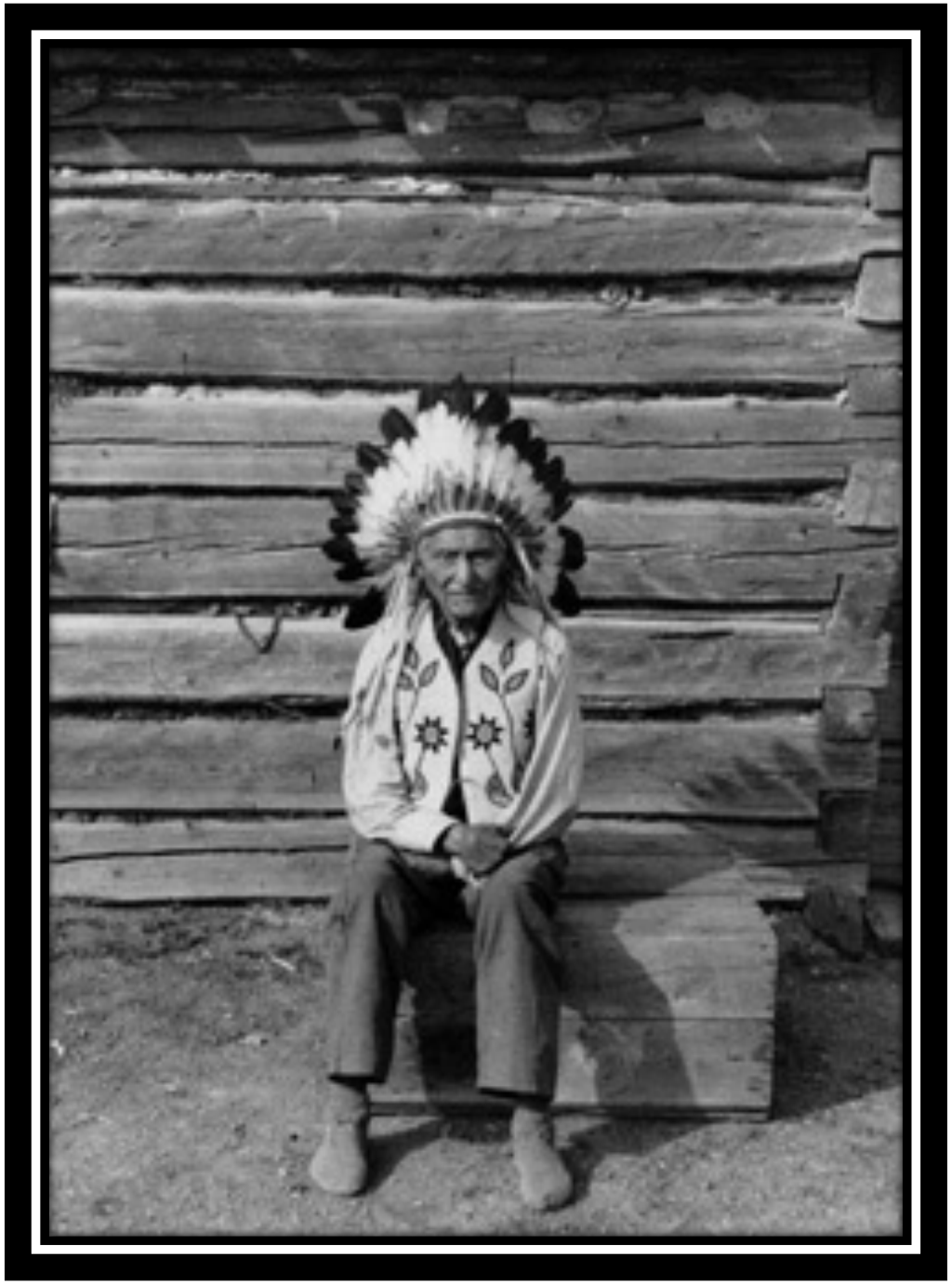


Brief Pause…

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

- ✓Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.
- ✓**They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.**

UNDRIP – Recognition of Identity Ownership

- ✓ Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. **This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures,** such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
- ✓ **States shall provide redress** through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, **with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.**
- ✓ Indigenous peoples have the right to revitalize, **use, develop and transmit to future generations** their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

UNDRIP – Identity and Nationhood

- ✓Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
- ✓**States shall provide effective mechanisms for prevention of**, and redress for:
  - **Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;**
  - **Any form of forced assimilation or integration**;
- ✓Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.

Every indigenous individual has the right to a nationality.

UNDRIP – Recognition of Data Sovereignty and Data Governance

UNDRIP establishes the **minimum human rights standards** of Indigenous peoples worldwide – data is foundational to monitoring these human rights standards, and data rights are held by Indigenous peoples.

- The BC Office of the ***Human Rights Commissioner*** has recommended that ***Indigenous Data Governance be recognized*** in the Grandmother's Perspective Report on disaggregated data
- Minister Miller has publicly stated that he recognizes Indigenous Data Sovereignty
- The Government of Canada has passed DRIP law
- The Government of BC has passed DRIPA
  - ✓ ***Section 4 requires BC to develop an action plan to advance UNDRIP***
  - ✓ ***Sections 6 and 7 enable the Province to enter into agreements with Indigenous governing bodies regarding collaborative processes or shared decision-making***

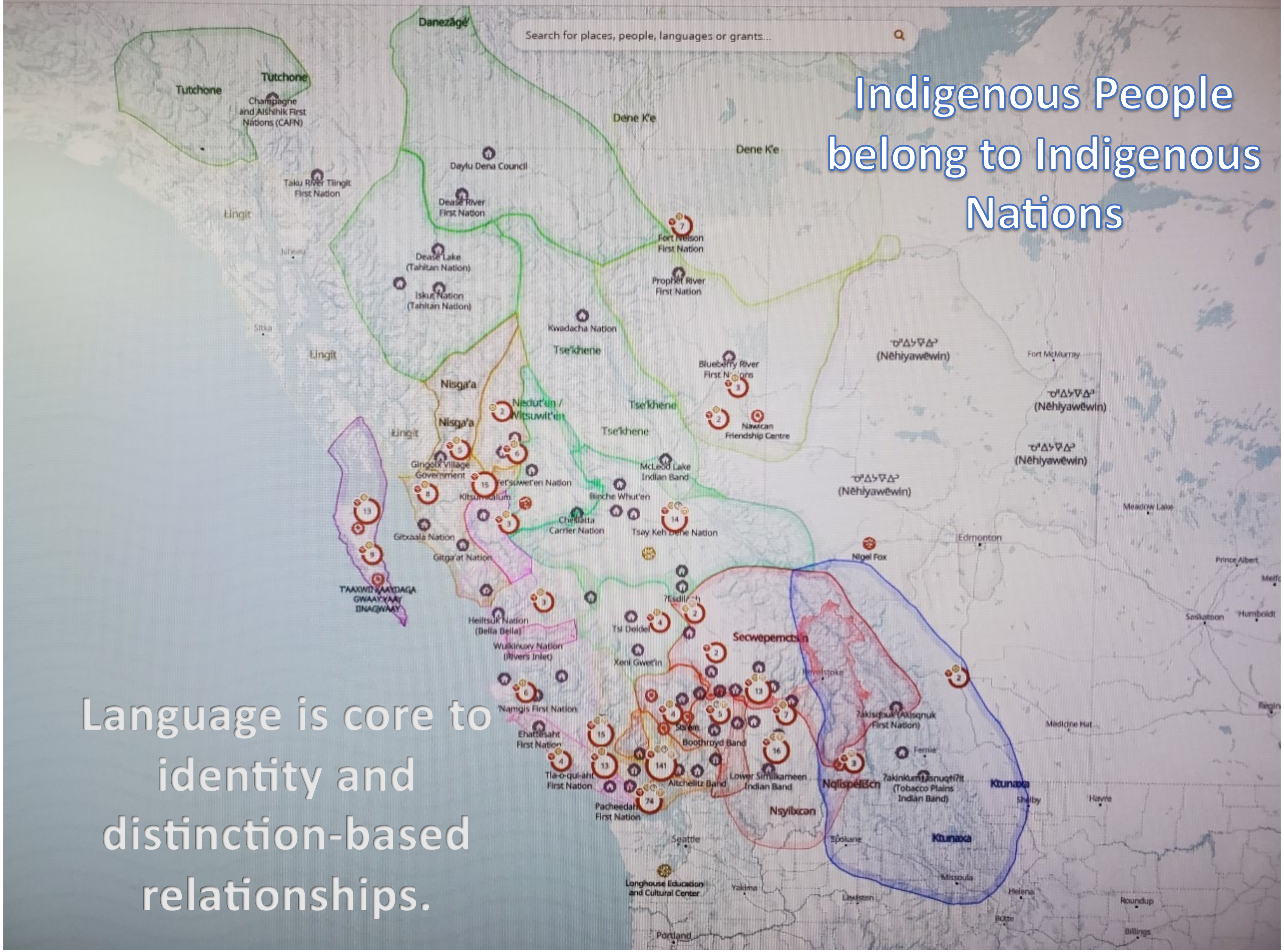
The BC DRIPA Action Plan could advance government-to-government Data Quality and Sharing Agreements that recognize each Nation group's ownership of their intellectual property and right to control their data.

RECOGNITION OF INDIGENOUS NATIONS AND INDIGENOUS GOVERNING BODIES

Measuring What Matters

CULTURE = LANGUAGE AND LAND STEWARDSHIP

200+ First Nation Governing Bodies (IGBs) holding Title and Rights in BC on behalf of 34+ linguistically unique Indigenous Nations



Indigenous People belong to Indigenous Nations

Language is core to identity and distinction-based relationships.

NATION TO NATION TO NATION

BC First Nation (Indigenous) Governing Bodies Align with these Language Groups:

Anishnaubemowin
Dakelh (ᑕᗸᒡ)
Dane-Zaa (ᑕᓀ ᘔ) | ᓀᐦᐃᔭᐍᐏᐣ (Nēhiyawēwin)
Danezāgé'
Dene K'e
Diitiidʔaatx̣
Éy7á7juuthem
Gitsenimx̱
Hailhzaqvla
Hul'q'umi'num'/ Halq'eméylem / hən̓q̓əmin̓əm̓
Ktunaxa

Kwak̓wala
Łingít
Nedut'en
Nəxʷsƛ̓ay̓əmúcən
Nisg̱a'a
Nłeʔkepmxcín
Nsyilxcən
Nuučaan̓uł
Nuxalk
Oowekyala / 'Uik̓ala
Pəntl'áč
Secwepemctsín
SENĆOŦEN / Malchosen / Lkwungen / Semiahmoo / T'Sou-ke

She shashishalhem
Ski:xs
Sḵwx̱wú7mesh sníchim
Sm̓algyax̱
Sṫáṫimcets
Tāłtān
Tse'khene
Tsilhqot'in
Witsuwit'en
X̱aad Kil / X̱aaydaa Kil (Haida)
ᓀᐦᐃᔭᐍᐏᐣ (Nēhiyawēwin)
[illegible]enaksialak̓ala / [illegible]a''islak̓ala

Sourced from First Peoples' Cultural Foundation

LANGUAGE IS A FOUNDATION OF NATIONHOOD

INDIGENOUS GOVERNING BODIES ARE

RECLAIMING OWNERSHIP OVER IDENTITY AND INTELLECTUAL PROPERTY.

A Collective Assertion of Each Nation's Rights

- In order for DRIPA to take effect in BC, we have to stand ourselves up as the Indigenous Governing Bodies of each Nation group; the other governments cannot define who we are.
- We cannot let the other governments continue to lump us together as First Nations people; there are at least 34 unique groups of Indigenous peoples who have unceded rights and title in BC.
- As soon as we each replace the term, Indigenous people, with terms we know ourselves by, then the DRIPA and other legislation, like the Child Welfare Act and the federal Language Act, move from the abstract, to the concrete.
- The Indigenous Governing Bodies of each Nation group (linguistic) can, through a simple collective assertion, claim ownership over their unique identity as a distinct Indigenous group, ownership over your intellectual property and your population data.
- This is a statement that demands RECOGNITION by the other governments, so you can then set a table to advance RECONCILIATION and develop your own Nation-based DRIPA Implementation Plan.
- Working government to government, the Governing Bodies of 34+ Nation groups can set Nation-based tables through which to develop DRIPA Implementation Plans to address all matters, as per Community-defined priorities.

Example – DRIPA Language to Guide Implementation Planning in BC

Article 1 - Tsilhqot'in peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2 - Tsilhqot'in peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on the Tsilhqot'in peoples origin or identity.

Article 3 -Tsilhqot'in peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4 - Tsilhqot'in peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to Tsilhqot'in internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5 - Tsilhqot'in peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6 - Every Tsilhqot'in individual has the right to their Tsilhqot'in nationality.

IN PLAIN SIGHT

Report examined Indigenous-specific racism in health care, including a ***comprehensive presentation of data*** (recognized as collectively owned by Indigenous Peoples of BC) AND concludes that:

- application of ***Indigenous data governance*** principles ***is a critical aspect of*** supporting the ***implementation of the UN Declaration***
- current Indigenous ***data governance processes need to evolve to align with UNDRIP***, and to produce required data in a more nimble and timely manner

Recommends renewal of data governance and ***proper delegation by Indigenous Governing Bodies*** to institutions and new positions (e.g., Indigenous Health Officer)

RECOMMENDATION #9

Indigenous data governance processes:

- Be developed with ***Indigenous institutions and governments in support of self-determination and sovereignty***.
- Create clear ***protocols for access to information***, including for Indigenous communities, the ***Indigenous Health Representative and Advocate, and Indigenous Health Officer.***
- Accelerate the movement towards a vision of a ***Nation-governed and mandated regional data centre and alignment with the National Data Governance Strategy.***
- ***Result in renewal of the TDQSA to reflect the UN Declaration, align with the vision of a regional data centre***, and to address recommendations provided in the *TDQSA Rapid Review (February 2019).”*

BC DATA GOVERNANCE CENTER- CORE FUNCTIONS

IGBs ***define*** what they want from their Data Center and how it will be governed

A Governance Body ***oversees*** the work of the Data Center under the authority delegated to them, by BC's FNGBs. They are accountable to BC FNGBs

As a FN public service agency, the Data Champion(s) and First Nations professionals ***serve*** IGBs.

INDIGENOUS PEOPLES (NATIONS) OF BC - Intellectual Property Ownership

ASSERTING DATA AND IP OWNERSHIP and CONTROL
BC INDIGENEOUS (FN) GOVERNING BODIES: Data Sovereignty and Data Governance

CENTRE OVERSIGHT - MANAGING ACCESS
BC DATA CENTER GOVERNANCE BODY

CENTRE OPERATIONS - POSSESSION

BC DATA CENTER

Core functions:
Protection of Intellectual Property
Statistical Production Services
Data Management Services
Capacity Building Services

FIRST NATIONS' *DATA SOURCES* LANDSCAPE

FIRST NATIONS' *DATA USERS* LANDSCAPE

https://www.ic.gc.ca/eic/site/108.nsf/eng/00004.html

The intersection of the intellectual property (IP) system and the protection of Indigenous knowledge and cultural expressions is receiving increasing attention with Indigenous peoples in Canada, among government policy-makers and in international trade and policy fora. Indigenous peoples have a particular stake in this area as it relates to their broader interests in protecting their knowledge and culture and ensuring its appropriate use.

The Indigenous Intellectual Property Program Grant application process is now open. All applications must be received by 11:59pm PT September 8, 2021.

Introduction to IP Rights and Protection of Indigenous Knowledge and Cultural Expressions in Canada

The relationship between IP and the protection of Indigenous knowledge and cultural expressions is complex and challenging. Learn more about their relationship in Introduction to Intellectual Property Rights and the Protection of Indigenous Knowledge and Cultural Expressions in Canada. This information is also available in Inuktitut PDF - 329 KB, Plains Cree PDF - 370 KB, Ojibwe PDF- 332 KB, Michif PDF — 196 KB and Mi'kmaq PDF - 323 KB.

Innovation, Science and Economic Development Canada
Indigenous Intellectual Property Program

- The Indigenous Intellectual Property Program (IIPP) grant supports Indigenous peoples' IP awareness and capacity building as well as participation in the development and implementation of law, policy and programs at both the domestic and international level relating to the relationship between IP and the protection of Indigenous knowledge and cultural expressions.
- The program, launched by the Minister on April 26, 2019, has provided support for the WIPO Voluntary Fund and Indigenous organizations in Canada.
- To learn more about the IPP grants and application process, visit our Indigenous Intellectual Property Program Grant webpage.

Intellectual Property and Data Sovereignty To do list:

Prepare a Declaration of Data Sovereignty (example shared) to inform the other governments and the world, of who your people are in relation to DRIPA, and in it:

- ✓ Identify your people as a distinct society with a unique language and identify the Governing Bodies who have authority to act on behalf of your people.
- ✓ Assert that you have the right to maintain, control, protect and develop your cultural heritage, language, traditional knowledge and traditional cultural expressions, as well as the manifestations of your sciences, technologies and culture, including but not limited to, human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.
- ✓ Assert that you also have the right to maintain, control, protect and develop your intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- ✓ Establish symbols and statements to be used by your Nation, in regards to IP Ownership.
- ✓ Give notice to the federal and provincial governments, that you intend to establish regulations through which to assert data sovereignty and develop processes to implement data governance and information management and that.
- ✓ Assert that you wish to establish a Community-driven, Nation-based DRIPA Implementation Plan and lay out your governments' engagement and decision-making pathway(s).
- ✓ Develop an IP proposal and budget and submit to the federal government program and to the provincial government stating that you see this as an aspect of redress.

Ktunaxa Nation Declaration of Data Sovereignty

The rights of Ktunaxa peoples, including those articulated in the United Nations Declaration on the Rights of Indigenous Peoples, are recognized in Canada through federal and provincial legislation.

Through this Declaration, the Ktunaxa peoples, as a Nation of people who speak the Ktunaxa language, and who have a unique cultural identity, do assert that we are a distinct society that is self-determining and sovereign, with a right to maintain, protect and develop the past, present and future manifestations of Ktunaxa culture and identity. This document is intended to set the foundation for the exercise of Ktunaxa rights in relation to Ktunaxa data and intellectual property.

The Ktunaxa peoples collectively hold the rights to self-determination and self-government and these rights are asserted, at this time, through the following Ktunaxa Indigenous Governing Bodies.

Ktunaxa Governing Bodies:

- **Yaq̓it ʔa·knuqƛiˀit Government**
- **ʔakisq̓nuk Government**
- **Yaqan NuʔkiyGovernment**
- **ʔaq̓am Government**

Ktunaxa Governing Bodies are sovereign entities who have for millennia, worked together as the Ktunaxa Nation in advancing and protecting Ktunaxa interests, rights and title.

Ktunaxa Governing Bodies commit to work together collectively as the Ktunaxa Nation, to assert data sovereignty and intellectual property rights on behalf of Ktunaxa people in order to protect the Ktunaxa identity and take ownership and control of the data that relates to Ktunaxa peoples.

The Ktunaxa Governing Bodies assert ownership of Ktunaxa intellectual property and assert the right to maintain, control, protect and develop Ktunaxa cultural heritage, language, traditional knowledge and traditional cultural expressions, as well as the manifestations of Ktunaxa sciences, technologies and culture, including but not limited to, human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts and assert ownership over the data that relates to these expressions and manifestations.

Ktunaxa Governing Bodies assert ownership over Ktunaxa the data that relates to their peoples and their wellbeing; historic and contemporary Ktunaxa population data. Working together as the Ktunaxa Nation, Ktunaxa Governing Bodies will assume data governance and information management functions to support their Community Development and Nation Rebuilding activities, regulating access to and possession of Ktunaxa data and intellectual property.

Ktunaxa Governing Bodies commit to work together, government-to-government and Nation-to-Nation with Canada and British Columbia, to develop a Tripartite Data Quality and Sharing Agreement and to develop a plan through which to fully implement Ktunaxa Nation data sovereignty, data governance and information management functions.

Ktunaxa Governing Bodies commit to work together, government-to-government and Nation-to-Nation with other First Nations Governments in B.C. towards a vision of every Nation achieving data sovereignty, in alignment with their own worldview.

Ktunaxa Governing Bodies commit to work together with other Indigenous Governing Bodies in B.C. on a government-to-government and Nation-to-Nation basis, to collectively ensure ethical access to data to produce timely and frequent population and province-wide reports, to support comprehensive systems improvement and accountability.

MADE THIS _____ DAY OF Ktunaxa_____, _____

SIGNED BY THE GOVERNING BODIES OF THE Ktunaxa_ NATION.

_____ _____

- Official Signature First Nations Government

➢ _____ _____

- Official Signature First Nations Government