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# **MANAGING GENETIC RESOURCES IN THE 21st CENTURY**

**Domestic Policy Guidance for Canada**

**DISCUSSION PAPER**

Draft

## Executive Summary

This document presents **domestic policy guidance for managing access to genetic resources and traditional knowledge associated with genetic resources in Canada, and the sharing of the benefits arising from their use**. The guidance identifies the objectives, guiding principles, scope and common elements that Canada's Federal, Provincial and Territorial governments agree should guide the development and implementation of measures to manage genetic resources within their jurisdictions.

**Genetic resources** are plant, animal, and microbial materials that contain functioning genes that have actual or potential economic, environmental or social value. Globally, use of genetic resources has evolved into a multi-billion dollar a year business, as researchers seek to identify and use the specific properties of genetic resources in a wide range of scientific, environmental and commercial applications, such as developing new medicines, improving crop yields and modifying industrial processes.

The guidance focuses on two goals: facilitating the **sustainable access** to genetic resources; and providing for the fair and equitable **sharing of benefits** among Canadians arising from their use. Together, these practices are known as **access and benefits sharing** or **ABS** measures and policies.

How we manage our genetic resources will affect Canadians in every region of the country. Canada's forests, prairies, farms, wetlands, freshwaters and marine areas are rich in biodiversity, and potentially the source of genetic resources with important new applications. Many Canadians are also directly involved in economic sectors closely associated with genetic resources, such as agriculture, forestry, fishing, biotechnology and health care.

Canada's Federal, Provincial and Territorial governments have agreed that, as a country rich in biodiversity, Canada has a strong interest in the establishment of a fair, open and effective national approach to managing access to genetic resources and benefit-sharing. Such an approach can build on the actions already taken by jurisdictions across the country to conserve and protect biodiversity. It can help establish Canada as a key participant in the global biotechnology-based marketplace. It can also ensure that Canadians are well-prepared to manage the challenges of conserving and using genetic resources and realize the important environmental, economic and social benefits offered by genetic resources within our country.

In Canada, responsibility for managing genetic resources flows from the broader resource management rights and responsibilities of Federal, Provincial and Territorial governments, and Aboriginal peoples under self-government and land claims agreements. Domestic policy guidance on ABS must take into account that Federal, Provincial and Territorial governments, private land owners, private companies and Aboriginal peoples are all managers of genetic resources. Furthermore, it must recognize the special role that Aboriginal peoples play in ABS as holders of **traditional knowledge associated with genetic resources**. This is knowledge about specific properties and uses of genetic resources that has been gained over generations of experience and practices with the natural environment and its biological resources.

Canada is not alone in facing the challenges of managing genetic resources. Internationally, Canada is one of 193 Parties to the 1992 **Convention on Biological Diversity**, established to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from their use. In 2002, the Parties agreed to negotiate an international regime covering ABS. As both a provider and user of genetic resources, Canada has a clear interest in the development of a fair, practical and transparent international regime – one that reflects the principles and core elements of our own national policy approach to ABS.

## The Objectives and Principles of Access and Benefit Sharing policy in Canada

*Canada's Federal, Provincial and Territorial governments have agreed that their approaches to managing access to genetic resources and benefit-sharing within their own jurisdictions should be guided by certain objectives and principles:*

### **Objectives**

- **Promoting the conservation and sustainable use of Canada's biodiversity**
- **Improve Canada's competitiveness in the bio-based economy**
- **Support ethical scientific research and development**
- **Foster regional and Aboriginal development**
- **Support Canada's foreign policy objectives**
- **Contribute to the improvement of the health of Canadians**

### **Principles**

- **Environment-focused** - contributing to the conservation and sustainable use of biodiversity
- **Practical and economically supportive** – generating and sharing economic benefits of the utilization of genetic resources among both providers and users as a means of contributing to sustainable development,
- **Simple, efficient and adaptable** – taking into account different sectors and allowing for different approaches in different jurisdictions
- **Supportive of current governmental policies** – and building on and respecting Canada's existing international commitments
- **Balanced, equitable and transparent** – balancing responsibilities between users and providers of genetic resources in a manner that is clear and whose rationale makes sense
- **Inclusive** – developed and implemented with the appropriate involvement of Aboriginal groups and communities

## The Scope of Access and Benefit Sharing policy in Canada

***Canada's Federal, Provincial and Territorial governments agree that access and benefit sharing policy in Canada should:***

1. *Address* all genetic resources in Canada, both in the wild (referred to as *in situ*) and in collections (referred to as *ex situ*), with the exception of those genetic resources noted below, which should not be subject to any requirements developed under access and benefit sharing policy in Canada;
  - human genetic resources;
  - genetic resources beyond Canada's borders;
  - genetic resources acquired for personal use or consumption; and
  - genetic resources purchased or traded as commodities (for example, trees used for lumber)
2. *Address* traditional knowledge associated with genetic resources, with the exception of traditional knowledge associated with genetic resources that is in the public domain;
3. *Recognize* international agreements or arrangements dealing with the subject matter that are relevant to Canada and in harmony with access and benefit sharing policy in Canada

## Common Elements of Access and Benefit Sharing Policy in Canada

***Canada's Federal, Provincial and Territorial governments agree that the development and implementation of their measures to manage access to genetic resources and benefit-sharing should be founded on the following three common elements, while recognizing the need for jurisdictions to have flexibility to tailor their approaches to their particular circumstances,:***

### 1. Prior Informed Consent

- 1.1 Access to genetic resources in Canada is provided by the entity that is legally entitled to grant access at the location where the genetic resource is found – land, water or facility such as a collection maintained *ex situ*.
- 1.2 Access to *in situ* genetic resources should be granted only with and after the documented prior informed consent of the party providing access.
- 1.3 The process for obtaining prior informed consent for access to genetic resources should depend on the mechanism established by the competent authority providing access. Competent authorities could be the federal government, a provincial or territorial government, a First Nation, a Métis community or its representative organization, or an Aboriginal community covered by a self-government or comprehensive land claim agreement.
- 1.4 Prior informed consent involving access to genetic resources granted by an individual landowner or other private authority will be best negotiated under existing common or civil law practices (that is, property and contract law). In most cases involving private

landowners, therefore, there will be no need to obtain prior informed consent by means of a new legal instrument.

## **2 Mutually Agreed Terms**

- 2.1 Those accessing and those providing genetic resources should establish mutually agreed terms which clearly identify how the genetic resource is to be accessed and how the benefits arising from the use will be shared, or, as appropriate, should use those terms established at the international level where Canada has agreed to a relevant intergovernmental agreement (e.g. the *International Treaty on Plant Genetic Resources for Food and Agriculture*).
- 2.2 Jurisdictions should not be prescriptive about the content of the mutually agreed terms such as the precise nature of the benefit sharing measures and their level of detail, such as any minimum requirements on monetary or non-monetary benefits.
- 2.3 Jurisdictions should encourage, to the extent possible, the use of non-legally binding model clauses and standardized benefits that parties can use in the development of their mutually agreed terms, so as to promote more effective and efficient implementation of measures to manage ABS across Canada.
- 2.4 Access to *ex situ* genetic resources (e.g. those in botanical gardens or other collections) should not be subject to measures for prior informed consent, but should be subject to the establishment of mutually agreed terms, including benefit sharing agreements or arrangements, between the provider and the user of the genetic resource, or, as appropriate, at the international level where Canada has agreed to a relevant intergovernmental agreement (for example, the *International Treaty on Plant Genetic Resources for Food and Agriculture* concerning government-managed collections of crop plant germplasm)

## **3 Traditional Knowledge Associated with Genetic Resources**

- 3.1 Access and Benefit Sharing policy in Canada should recognize and take into account that Aboriginal peoples hold traditional knowledge associated with genetic resources. This knowledge has been gained over generations of experience and practices with the natural environment and its biological resources.
- 3.2 Access to traditional knowledge associated with genetic resources should require separate provisions from those for access to genetic resources.
- 3.3 Aboriginal peoples should be entitled to determine whether and how to share the traditional knowledge that they hold, which is associated with genetic resources.
- 3.4 Jurisdictions should develop legislative, policy and/or administrative measures to encourage the development of mutually agreed terms between the users and provider of traditional knowledge associated with genetic resources in the form of a private contract. Jurisdictions should not be prescriptive about the content of the private contracts.
- 3.5 Jurisdictions should encourage, to the extent possible, the development and use of voluntary measures such as guidelines, best practices, model contracts, awareness raising and capacity building to facilitate the negotiation of mutually agreed terms related to accessing and using traditional knowledge associated with genetic resources.

## **Implementing Access and Benefit Sharing policy in Canada**

**Canada's Federal, Provincial and Territorial governments agree that in seeking to contribute to effective and efficient domestic access and benefit sharing policy in Canada they will:**

1. *Encourage* the application of existing mechanisms, such as contracts and permits, to the fullest extent possible, supplemented by regulatory and non-regulatory measures. Implementing access and benefit sharing policy in Canada through the use of existing mechanisms wherever possible allows jurisdictions to retain flexibility with respect to maintaining or adjusting their existing practices, while promoting consistency in approaches across Canada.
2. *Promote* consistency through, for example, the use of consistent public information.
3. *Collaborate* in the development, application and monitoring of implementation tools and in the development of cooperative approaches to ABS policy in Canada.
4. *Share* their experiences regarding access and benefit-sharing with other jurisdictions

## **Possible Implementation Tools**

Jurisdictions will also further elaborate for consideration the development of the following tools in key areas which could promote more effective and consistent approaches:

### **Access Measures**

Jurisdictions will consider the development and application of appropriate tools to facilitate access to genetic resources in Canada. These tools could include:

- *a single window entry* website that directs parties to the relevant competent authority and jurisdiction; and
- *simplified procedures* that enable convenient access for non-commercial purposes, (such as non-commercial scientific research).

### **Administrative Measures**

Jurisdictions will consider the development and application of cost effective administrative measures to promote consistency and efficiency in ABS policies in Canada. These measures could include:

- a voluntary *certificate of compliance* or similar standard agreement that provides parties with evidence that access to genetic resources has been granted in compliance with access and benefit sharing policy in Canada and any specific requirements under the jurisdiction;
- a *national registry* of access to genetic resources in each Canadian jurisdiction; and
- *model contracts, best practices and guidelines.*

### **Advisory Mechanisms**

To strengthen approaches regarding traditional knowledge associated with genetic resources, jurisdictions will consider establishing a *panel of regional Aboriginal experts.*

Jurisdictions also will consider establishing an *advisory panel* representing industry, the scientific community, civil society organizations and other interests to provide ongoing advice to Governments on approaches to managing genetic resources in Canada.