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**PRESERVATION AND CONSERVATION OF EXPRESSIONS OF FOLKLORE:
THE EXPERIENCE OF NORTH AMERICA**

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My paper will focus on the present situation in Canada in regards to the preservation and protection of folklore. Firstly, I will attempt to describe government policies and programs in this field and will then give other examples on how a certain number of national or provincial institutions and organizations have also developed concrete actions. While Canada and the United States may share certain common historical, geographical and commercial particularities, there are nonetheless numerous and significant differences in regards to culture and education. I will therefore dwell uniquely on the Canadian situation based on my own experience working with various organizations on various programs in the past twenty years.

CANADIAN CULTURE AND FOLKLORE

It is almost impossible to establish what is truly Canadian culture. Canadian sociologists tend to agree on the notion of a *mosaic* of various cultures whose interrelations and juxtaposition constitute what is Canadian culture. We therefore often refer to *Canadian cultures*. In fact, in 1971, the Canadian Government officially established policies on multiculturalism and bilingualism. The Canadian cultural mosaic manifests itself first on a geographical basis. Because of its vast territory, it is not surprising that Canada actually possesses several regional subcultures. There is a definite difference in mentality between Canadians living on the Pacific West Coast and those living in the Central prairies or the Eastern or Atlantic regions. And within those major regional subcultures new divisions can also be drawn to illustrate differences in mentality, traditions and attitudes.

However, when defining the Canadian mosaic, we tend to think primarily in terms of *ethnic pluralism*. Today, Canadians tend to distinguish four main cultural family entities. The first two are the cultures of those we call the *founding peoples*, referring to the culture of French origin and the Anglo-Saxon culture. The latter can be subdivided into several cultures representing various groups: English, Scottish, Irish, Welsh. The culture of French origin is more homogeneous. Originating primarily from various provinces of Central and Western France, French Canadians rapidly blended into one main culture under French rule to form a "Canadian" culture. Today, there are nonetheless important cultural differences between the French-speaking people in Manitoba or Ontario and those who inhabit Quebec or the Maritime Provinces. The third Canadian cultural family is made up of all the other ethnocultural groups who have immigrated to Canada since the beginning of the 19th century. Their cultural vitality has constantly grown in recent years. It is a very complex entity which includes cultures of various origins: European, Middle Eastern, Asian, Latin American, African etc. It is a fact that most of these immigrants have adopted English as the basic language for communication and eventually as a mother tongue. Many of these cultural communities work hard at maintaining their native languages and traditions. Finally, the fourth cultural family is that of the Native peoples (Amerindians and Inuit) and the Metis. This group can also be subdivided into several smaller groups. The 20,000 or so Inuit people live across a wide stretch of territory but have maintained a certain homogeneity. Amerindians have a more complex historical past with distinct particularities which have often divided them.

The notion therefore of "Canadian folklore" is also complex and is based primarily on the earlier mentioned four major cultural groups. Several factors have also been favorable to the conservation and evolution of folklore across Canada: predominance of a rural population (up to the end of the Second World War); high level of illiteracy within certain groups in earlier times and the use of folk traditions to create a sense of belonging to a particular local or

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national community. French Canada for example until recently, was living its "Golden Age" of oral literature due in part to the French colonial policy which did not allow the establishment of printed newspapers in New France and later, due to imposition by British authorities of the English language and its related institutions. Thus, the absence of French-language publications and schools contributed to the survival of a culture rooted in folklore. Early French-Canadian writers also introduced numerous customs and legends in their works and thus promoted folk heritage. The enriching contacts which French Canada established with the native peoples and the marked preference of English Canada for the sea helped to further distinguish the two cultural communities. Since the 19th century, the sporadic influx of immigrants and refugees from all regions of the world have greatly enriched Canadian folklore with new elements.

There are other current factors in Canada which presently make it difficult to describe the exact nature of cultural and folklore activity in Canada. Firstly, policies pertaining to cultural development are not the sole responsibility of the Federal Government. Each Canadian province has a fair autonomy in establishing its cultural policies and programs and the situation can vary greatly from one province to another. Secondly, the use of the term "folklore" has been the subject of many debates and as a result several other terms have also been used and applied at various times to express the same thing, thus creating a certain climate of confusion. In recent years, the following expressions or terms have appeared and disappeared in both official publications and daily usage: *folklore*, *folk arts*, *folk culture*, *traditional culture*, *folklife*, *folkways*, *heritage* (both tangible and intangible), *living heritage*, *expressive heritage*.

For the purpose of this World Forum, I will mostly be using the general term *folklore* as well as *living heritage* or *expressive heritage* to describe the situation in Canada currently and the work undertaken by government agencies, educational institutions, private organizations and individuals.

THE FEDERAL GOVERNMENT

All aspects pertaining to Canadian culture, including folklore, are primarily regrouped under the responsibility of the Department of Canadian Heritage. Established in June 1995, this is the Ministry which oversees all matters relating to Canadian identity and values, cultural development, heritage, and areas of natural or historical significance. Some of the agencies under its jurisdiction include: The Canadian Broadcasting Corporation, the National Film Board, the Canada Council, Multiculturalism Canada, National Museums, National Archives and Library, Canadian Studies program, etc. On the Federal level, the main institution which is concerned with the preservation and conservation of folklore and ethnology material is the Canadian Museum of Civilization (formerly known as the Museum of Man) located near Ottawa, the National Capital. Its Canadian ethnology service contains a collection of some 54,000 artifacts on 110 different Native peoples and some 10 Inuit regions. The Canadian Centre for Folk Culture Studies specializes in folklife and multicultural aspects of Canada and its collection contains some 23,000 artifacts. It has also helped fund and publish dozens of research projects on various aspects of Canadian folklife in its *Mercury* publication series. The Museum's library and archival collection on archaeology, ethnology and folklore includes some 50,000 books, more than half a million photographs as well as films, videos and 15,000 hours of sound recordings.

The Canadian Ethnic Studies Program administered by the Multiculturalism Directorate has also provided funding for various research projects. Some of the funded research includes: *Ethnomusicology of the Métis in Alberta and Saskatchewan*; *Traditional Doukhobors folkways*; *Gaelic Language and Folklore in the Cape Breton Islands*; and *Italian Songs in Toronto*. The Multiculturalism Department also offers grants and contributions to organizations, institutions and individuals in the field of Heritage cultures and languages. Funding may be for research, writing, editing, translation, publication or promotion, or for the organization of conferences. Some folklore related projects have also received Federal funding through the Canada Council (*Explorations* program) or through the National Film Board of Canada which has produced excellent documentary films on various aspects of Canadian folklife.

1964 saw the creation of the *Canadian Folk Arts Council* which received operational funding through the Multiculturalism Directorate. This organization was to offer programs and services for the many folk artists and groups (mostly in the field of music and dance). The CFAC established several national and regional folk arts festivals and initiated a series of training programs and international exchanges. The organization ceased to exist in 1986. A National Folk Arts Conference was convened in 1988 in Winnipeg to try to develop a new comprehensive policy on the folk arts in Canada. Because of the complexity of the issue and the wide scope of activities and applications ranging from scientific research to education, to community and leisure activities to the performing arts, not to mention the political implications, no consensus was reached and as of today, no official National Government supported agency oversees the coordination of folklore activity in Canada. Also, as of now, the Canadian Government has not issued any official document stating its position or intentions on the 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore.

A private organization, *Folklore Canada International*, has been in existence since 1987. FCI has been active in establishing international folklore festivals in Canada and cultural exchanges in this field. It is the Canadian section of CIOFF (International Council of Folklore Festivals and Organizations). Its Director General is Mr. Guy Landry who is also the current President of CIOFF which has over 65 member countries. FCI has been responsible in the past three years for the organization of an annual *Canadian Expressive Heritage Conference*. It also maintains in Montreal a folklore documentation center and library with books, documents and audio-visual documents which the public can consult. Other national organizations in the field of folklore are: *The Canadian Society for Traditional Music* and *the Canadian Folklore Studies Association*.

As part of the 3rd *Canadian Expressive Heritage Conference* held in Montreal in March of 1996, Folklore Canada International convened a special meeting to implement a lobbying strategy aimed at encouraging the federal and provincial governments to develop a global national and provincial vision with specific policies on living heritage. The goal of the meeting was to explore possible means of protecting and enhancing expressive heritage and to recommend actions, propose solutions and define a strategy of action for investing in the future and more effectively meeting the challenges ahead for expressive heritage as the third millennium approaches. The major recommendations which were presented at the end of the meeting were:

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1. That the Government of Canada, through its Department of Canadian Heritage, recognize, in keeping with its support for the 1989 UNESCO Recommendation in Paris:

1.1 expressive heritage forms part of the universal heritage of humanity and of Canada just as natural, historical and architectural heritage does; and

1.2 expressive heritage should be managed in accordance with the standards that are generally applied by budgeting and guaranteeing the funds required for listing, conservation, preservation, dissemination, protection of transmitters and disseminators, and international cooperation.

2. That the Department of Canadian Heritage, in keeping with its mission, play its major role as a leader and catalyst of all the country's efforts to list, conserve, recognize, preserve, disseminate and protect the expressive heritage:

2.1 By creating as soon as possible a national *ad hoc* committee, in partnership with Folklore Canada International, to develop and propose a structure and operating methods for an *Issue Table* and

2.2 By providing the administrative and financial support required to manage this *Issue Table*.

3. That the Department of Canadian Heritage, through its contributing programs and grants, provide substantial support to the management of expressive heritage:

3.1 By taking all necessary steps to provide the financial, human, professional, scientific and technical resources required for listing, conservation, preservation, dissemination, protection and international cooperation in the area of expressive heritage; and

3.2 By directly investing, by helping the community obtain funding from other departments and levels of government, by encouraging the private sector to invest in studies, research and training, and by developing events, shows and tour packages, by publishing materials for dissemination and by producing consumer goods.

4. That Folklore Canada International, in cooperation with the Department of Canadian Heritage, establish partnerships with various groups in the community to:

4.1 Develop comprehensive computerized directories of all activities and of all stakeholders related to Canadian expressive heritage, updated regularly and distributed as the needs of the community so require;

4.2 Through a committee of experts, develop a strategy to encourage the provinces, departments of education, educational institutions and the private publishing sector to develop:

a. a school curriculum, support programs and appropriate instructional materials to support stakeholders in the field of education;

b. university and college courses in fields related to expressive heritage management; and

4.3 produce visual and audio-visual documents enabling potential partners, tourist groups, private companies and others to recognize, discover and enhance the Canadian expressive heritage.

4.4 develop a major national plan to enlist the Canadian public's participation in expressive heritage, with the support of national and provincial association partners.

5. That the Department of Canadian Heritage promote international cooperation and exchanges:

5.1 By delegating and hosting groups, performing companies and experts and by financially participating in creating review panels, conferences, festivals and documents for dissemination, as well as enhancement, training and research activities in other countries;

5.2 By financially participating in the creation and management of a permanent CIOFF secretariat in Canada operating through FCI; and

5.3 By informing embassies and other diplomatic agencies about the activities of expressive heritage groups and activities in Canada, and of Canadian groups and artists abroad.

The above-listed recommendations are currently being studied by officials at Canadian Heritage and FCI is confident that new developments will be implemented in the near future.

CANADA AND THE COPYRIGHT LAW

Most countries have enacted some form of legislation governing copyright. Each country has to ensure that its citizens respect its specific values and rights. Canada has since 1928 reiterated its adherence to the *Bern Convention* of 1886 which it had originally agreed to as a British colony. Several modifications to the *Bern Convention* have been implemented in the past decades and Canada does not necessarily adhere to all of them. It must be noted however that by the *North American Free Trade Agreement* (NAFTA), Canada has agreed to respect the modified version of the *Bern Convention* implemented in 1971.

In recent years, staff of the *Canadian Museum of Civilisation* (CMC) has been confronted with the difficult task of trying to apply the Canadian Copyright Law to the established regulations and procedures governing the access and use of archived material such as photographs, manuscripts, and audio visual documents. In March 1996, a guidebook on Copyright matters was put together for CMC staff. The first part of the guidebook is a theoretical one which looks at the fundamental rules governing Canadian Copyright Law. It is divided in fourteen sections which interpret the various pertinent articles of the Law putting emphasis on the legislative dispositions most likely to have an impact on CMC administration. Though primarily theoretical, Section I also includes numerous examples illustrating the stated principles.

Part II of the guidebook is entitled *Practical application of the Canadian Copyright Law at the CMC* and illustrates the specific manner in which Copyright must be addressed

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according to the various types of works administered and acquired by the CMC. This section is divided into seven distinct chapters each covering a specific type of work.

Part III of the guidebook answers specific questions which have been submitted by Museum staff. Most of these particular questions involve legal notions which extend beyond Copyright Law and this is why these particular issues are being treated separately.

Finally, several annexes supply complimentary information such as the lists of countries adhering to the *Bern Convention*, procedures for application for registration of copyright, tariffs of the *Society of Composers, Authors and Music Publishers of Canada* (SOCAN). The guidebook is completed with models for various forms to be used by Museum staff for such purposes as: purchase agreement, donation agreement, request form, agreement relating to the recording of oral interview (license); the recording of musical work; the photographing of the interviewee and videotape, photographic and sound release etc.

Since 1968, the ethnology and folk culture divisions at the Canadian Museum of Civilisation (CMC) have been collecting primarily contemporary creations on which there often applies a copyright. In all cases the following questions must be addressed: a) are we in the presence of a *work of art* in the sense of the Copyright Law? b) who is the owner of the copyright of the said work? c) which copyrights must the CMC obtain? d) which rights are attached to the said work? e) what use can be determined by the CMC?

The guidebook also discusses the question of possession of copyright. It states that it is the specific agreement which governs the implied parties as long as it complies to public order. This means that even if the Copyright Law says that the original holder of the copyright is generally the person having created the said work, the contract will have precedence if it bestows upon the purchaser the said copyright. But who owns the copyright on works sold by their author to the CMC and for which the agreement is silent in this regard or simply does not exist? The author is the holder of the copyright unless it is a Crown (Government) work. For CMC purposes, Crown work must be created or published under the control and supervision of the CMC. Thus, all works created by CMC staff as part of their duties are considered Crown works. The situation becomes more complex as we have to consider whether a work is Crown property or an independent one.

What is protected? The CMC collection includes numerous works by recognized native artists such as carvings, lithographs, drawings, sculptures etc. The *native peoples collection* also includes creations of utilitary objects such as clothing, weapons, tools, pottery etc. created by artisans. "Non-native" collections mostly consist of works by amateur artists said to be *folk art*. The CMC distinguishes between these works of folk art and those created by professional artists, categorized as *contemporary crafts*.

To effectively apply the Copyright Law, we must disassociate the works from the designations given by the CMC. Thus, a painting done by an amateur artist remains a painting as per Copyright Law definition and can benefit from the same protection as those produced by Picasso. Each work must thus be examined individually before judging whether it is protected by the Copyright Law. Article 2 of the Copyright Law defined as *work of art*: paintings, drawings, sculptures and artistic works attributed to artisans (craftsmen), architectural works, carvings and photographs, graphics, geographical and marine maps, plans and compilations of artistic works. Most of the sub-categories mentioned are clear and do not pose application

problems except for works of art attributed to craftsmen. A sculpture be it beautiful or "ugly" created by a famous artist or a lesser known amateur artist falls within the category of "sculptural work". One must therefore initially look at the art object itself and not the creator. If the object can be then placed in a sub category it is not necessary to go further. But what about a quilt or a woven blanket ? This type of creation is not mentioned specifically in the definition of a work of art. It is in such cases that one must go through an additional step.

We must then ask ourselves: Is this artistic work attributed to craftsmen as defined in article 2 ? The Copyright Law does not specify or define what is work attributed to a craftsman. We must therefore look at the definition of craftsman: a person who performs a manual task and who is self employed such as: potter, embroider, seamstress, cabinet maker etc. Some of the objects which are the products of this type of activity may be qualified as artwork created by craftsmen. We speak of "certain objects" since a work of art attributed to a craftsman (artisan) must be "attractive to the eye". Though this results in a very objective criteria, the Copyright Law insists on a certain degree of visual aesthetics. Jurisprudence takes into account the intention of the artisan to create an object of beauty.

The CMC applies the general rule that the duration for protection of independent works of art is the lifespan of the artist plus fifty (50) years following the death of the said artist.

The CMC's voluminous (200 pages) document also covers such situations as reproduction rights, exhibition rights, moral rights, acquisitions by the CMC, usage, photographs, audio-visual documents, sound archives, films, literary works, access to archives etc.

As a Crown Corporation, The CMC is subject to the applications of the *Canadian law governing the access to information* as well as the *Law on the protection of personal information*. Under these laws, Canadian citizens and permanent residents have access to most documents of the Federal Administration. This right can be refused by Federal authorities in just a few limited and precise cases defined by the above legislations. Such a case is the "personal data" concerning an identifiable person. Specific articles of these laws on the other hand stipulate that the said laws do not apply to the following two types of documents: "Library or museum documents which are conserved solely for reference purposes or for public exhibition". There are however certain types of documents especially in the ethnology collections which are not accessible to the public because of restrictions which have been applied to them. This is the case for example with a certain number of Native Indian artifacts which cannot be viewed by the public for religious motives. Even in such cases however public access of these works can sometimes be granted as the *Canadian Access to Information Law* shall predominate ! In this complex domain there are obviously many gray zones especially in defining what constitutes a *donation* as opposed to a *deposit*.

Other very complex legal issues arise here as well since the CMC is located physically within the territory of the Province of Quebec (just outside Ottawa) and that Quebec authorities may argue that the CMC should first comply to the dispositions of the Quebec Civil Code !

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FOLKLORE RESEARCH

The most significant pioneer in the field of folklore research in Canada was undoubtedly Charles Marius Barbeau (1883-1969) who initiated the first professional folklore studies in Canada and helped develop folklore collections at the National Museum. Most of his work centered on folk songs and traditions of the French-Canadians and of Pacific Northwest Indians. He also founded the Folklore Archives at Laval University in Quebec City. Other prominent folklorists include the late Edith Fowke, Carole Henderson Carpenter and Helen Creighton.

Academic folklore studies programs now exist in several Canadian Universities throughout Canada. The most important are *Laval University* in Quebec and Memorial University in Newfoundland. Other programs are also offered at the Universities of *Moncton* (New Brunswick), *Trois-Rivières* (Quebec), *York University* and *Laurentian University* (Ontario), *University of Manitoba*, *University of Saskatchewan* and *University of Calgary* (Alberta). There are also undergraduate and graduate programs in ethnomusicology offered at several Canadian universities.

PROVINCIAL GOVERNMENTS - THE QUEBEC EXPERIENCE

As stated earlier, cultural and educational activity falls under both the jurisdiction of the Canadian Federal Government and of the provincial Governments. Some provinces like Quebec, Ontario and Alberta have determined elaborate cultural programs and policies. In the field of folklore and intangible heritage, Quebec has undertaken some significant steps which I would like to briefly mention.

All along its history, Quebec has always developed its own distinct cultural forms of expression. More than twenty years ago Quebec enacted a law pertaining to Cultural monuments, *Loi des biens culturels*, which established guidelines making it compulsory to maintain an inventory in order to better evaluate what should be conserved for future generations. Among those goods figured not only historical monuments but works of art, archaeological relics as well as those of ethnological value. But this notion was only limited to *artifacts* and neglected what could be called *mentefacts* meaning intangible: words and gestures giving sense and life to objects.

Heritage cannot be limited only to include material culture. Today, an increasing number of people believe that the knowledge and know-how which form the process for building objects should also be protected and promoted in the same way as the latter; thus the art form and technique of the weaver or the woodcarver would be considered in the same way as the objects they create.

This increased awareness of intangible heritage is now part of the new Quebec policy on Culture (*Politique culturelle du Québec*) and it thus opens wide the door which will establish a permanent link between the tangible and the intangible. Furthermore, there are basically two ways of ensuring conservation for the intangible heritage. The first consists in the preservation process as in the case of objects of *noble culture*, meaning in a museum or national archive. Thus, an object is separated from its creators or owners or daily users; it becomes sterilized, untouchable and kept intact for future generations and for historians. Many countries have

taken this pathway to centralization of traditional folk arts and many such establishments and State institutes are also experiencing a constant drop in the number of visitors. The second way to preserve intangible heritage is not to extract it from its original setting but to preserve it *in situ*, in other words encouraging individuals and communities to become themselves the guardians of their collective knowledge and know-how and to develop on the local level *valorization centres* which would act as repositories of archives of our collective words and deeds, accessible at all times and which would act more as documentation and information centres than inert archival deposits.

Since the concept is relatively new one, the intangible dimension of cultural heritage needed to be better defined. In the last decade, specialists from around the world have dealt with this question and have exchanged ideas and reflections during international meetings such as those initiated by UNESCO. In this spirit, several Quebec organizations and specialists have also contributed to increasing public awareness of this notion through studies and public forums like the *National Living Heritage Summit* which took place in 1992.

All of these recent efforts have helped to better understand and describe this notion. There is however a constant need to deepen our knowledge in this field and to develop an inventory of resources. Legacy of the worlds' peoples, intangible heritage has evolved in time adapting itself to the changes within our society and has gone through a process of transformation and enrichment to become part of the present through the actions of "transmission agents" which we now refer to as *carriers of tradition*. It is therefore important not only to recognize but to valorize those among us who play this role and thus contribute to the enrichment and development of our cultural heritage.

There is currently an obvious will on the part of the Quebec Ministry of Culture to support the cultural milieu in its quest towards recognition of intangible heritage within the spirit of the Quebec Cultural Policy which states that "... the State must, in cooperation with its partners, support and develop the cultural dimension of our society..."

In various parts of the world several steps have been undertaken to recognize, encourage and promote living heritage. In Quebec the path to collective consciousness in this field has been long and difficult. The period of 1980-1990 has now matured to a full recognition of the notion of intangible and living heritage, first within the framework of universities where ethnologists and folklorists pursue their work as well outside through the activities of various organizations such as the Society for the Promotion of traditional dance, the Quebec Association for Folklore Leisure Activities, the Valorization Centre for Living Heritage and *Heritage et patrimoine vivant du Quebec* whose activities are aimed at the understanding, appreciation and conservation of cultural practices tied to our traditional and collective knowledge. 1993 saw the establishment of the *Conseil québécois du patrimoine vivant* (Quebec Council for Living Heritage) whose mission is to ensure the safeguarding, promotion and transmission of the living heritage of our collectivity. It aims at regrouping and representing the organizations and individuals concerned with preservation, research and dissemination of living heritage. The Council publishes a quarterly newsletter entitled *Paroles, Gestes et Mémoires* (Words, gestures and memories), and organizes regular meetings and events. It has recently launched a new project for a *National inventory of Living Heritage in Quebec* which will be undertaken by grassroots organizations in cooperation with the Council. The purpose of this national inventory is to identify and promote the persons who act as *bearers of tradition*, researchers, and promoters in the framework of a general living heritage

directory which will cover the entire territory of Quebec. This will be followed by a National Registry where "national treasures" will be identified along with the publication of living heritage collections.

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