

Wəlastəkwey Stories: Legalized Theft



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The Wəlastəkəkewiyik are the Indigenous Peoples of the Saint John River watershed. Their name means “People of the Beautiful River” and they have lived along the Saint John River in New Brunswick, Maine, and Quebec for millennia. Through Oral Traditions, teachings were passed down from generation to generation.

In the 1970s and 1980s, elders from four Wəlastəkəkewiyik communities allowed a researcher to record their stories thinking it would be a gift to their children. Instead, they and their families lost all rights to their stories.

The researcher was László Szabó (1922–2008), a Hungarian immigrant and linguistics professor at the University of New Brunswick, who worked with elders from Wəlastəkwey communities at Kingsclear, Oromocto, St. Mary’s, and Woodstock, recording their stories onto reel-to-reel tapes. Szabó had received grant funding to undertake this work from the National Museum of Man (now the Canadian Museum of History), and the American Philosophical Society in Pennsylvania. What complicated matters was that the storytellers were completely unaware of Canadian copyright law, which grants copyright in a story, not to the storyteller, but to the collector or recorder of a story.

According to the *Canadian Copyright Act*:

the maker of a sound recording has a copyright in the sound recording, consisting of the sole right to do the following in relation to the sound recording or any substantial part thereof: (a) to publish it for the first time, (b) to reproduce it in any material form, and (c) to rent it out, and to authorize any such acts (section 18(1)).

By privileging the person capturing the recording, storytellers lose all rights to their own stories. For Indigenous communities where cultural knowledge has been transferred through oral traditions, this can be particularly devastating.

For the Wəlastəkəkewiyik, it was not only access to their stories that was lost, but also access to an important record of their language. Today it is estimated that there are fewer than 60 lifelong Wəlastəkwi speakers, all of whom are grandparents or older, which means that their language is critically endangered. Being able to publish these stories for use in language classes became an important goal for the families of the storytellers.

From Dr. Szabó's point of view, he was documenting a "valuable part of Canadian history" (Szabó, 1988), and he would later talk about how the elders had since passed away, but their stories lived on through his recordings and transcripts, available for "students of literature, folklore, linguistics, and education" (Szabó, 1988). What seems to be missing is recognition that these stories belong to the Wəlastəkəkewiyik, and that their children deserve to learn from this priceless treasure trove of Wəlastəkwey linguistic, social, cultural, and historical knowledge.

The effort to regain their stories began in the early 1990s. Andrea Bear Nicholas, a Wəlastəkwey from Tobique First Nation and holder of the Endowed Chair in Native Studies at St. Thomas University (now professor emeritus), came across the collection of stories while conducting research at the Canadian Museum of History. A few years later, she was able to start a conversation with Dr. Szabó about publishing the stories after crossing paths with him through happenstance.

Bear Nicholas and her husband, a fluent Wəlastəkwi speaker, negotiated with Dr. Szabó to edit the transcripts of the stories to ensure an accurate transcription and translation. Although Dr. Szabó had worked with fluent elders to translate the stories, his translations were sometimes inaccurate, and even offensive. One example was his translation of the Wəlastəkwey word *mətewəlon*, as 'witch,' but which actually means a spiritual leader or person with extraordinary spiritual power. Throughout this editing process, Szabó would request pay for reviewing the edits they worked on. Concerned that he might try to sell the stories elsewhere, Bear Nicholas was able to use some of her Chair budget from the university to make these payments.

Over the next three years, a good working relationship with Dr. Szabó was established and he eventually mentioned that he had another set of recordings, 37 large reel-to-reel tapes, and offered to sell them. The families agreed to buy them on condition that he surrender copyright to them, explaining to him that "it would be like buying a car that you couldn't drive anywhere" (Bear-Nicholas, personal communication) if they purchased the tapes without securing copyright. They obtained his agreement in writing to the transfer of rights once he was fully paid. The payment was made but when they pursued publishing the stories a few years later, they were unable to get him to finalize the process. He had changed his mind about releasing the copyright and was not even willing to consider joint copyright.

By this time, Bear Nicholas had arranged with a local archive to copy the reel-to-reel tapes onto cassettes so that elders and remaining Wəlastəkwi speakers could work with the copies to identify the stories. Unable to secure copyright from Dr. Szabó, Bear

Nicholas and the families eventually resorted to legal avenues to negotiate with him. In 2006, this all came to a halt when Dr. Szabó's lawyer stopped responding to communications. With the bid to secure copyright unsuccessful, publication of the stories was no longer an option because the families of the storytellers were unwilling to take on the legal risk.

In 2011, an adult language immersion program began in the Wəlastəkwey community at St. Mary's. A year or two later, during lunch with a colleague, Bear Nicholas mentioned how they had this "beautiful collection of stories" (Bear Nicholas, personal communication) but had been unable to use them in the program. This colleague also happened to be an executive with the Canadian Association of University Teachers (CAUT). Greatly concerned about this situation he took the issue back to CAUT for discussion. There was immediate recognition of the injustice the *Copyright Act* had inflicted on the Wəlastəkewiyik by granting rights to their stories solely to the sound recorder. CAUT agreed to support the families of the storytellers by helping to publish the stories and by promising legal support, if needed.

In 2015, the first volume of Wəlastəkwey stories was published, with launches in two of the communities and at the St. Thomas University campus. This was a bold move by the families of the storytellers but now with the backing of CAUT they welcomed the chance to have the issue finally settled in court. At the time of writing, there has been no action against the Wəlastəkwey families by the Szabó estate, and they plan to continue publishing more of the stories.

Indigenous Peoples have long been documented by colonial researchers who felt they had a responsibility to document for posterity what they feared would "vanish in the onslaught of modernity" (Robinson, 2020, p. 153). This kind of "salvage ethnology," together with the complicity of laws granting sole rights to collectors, contributed to the weakening of Indigenous information systems, here illustrated through the inability of the Wəlastəkewiyik to lawfully publish their stories and language for use in their own communities.

As stated in the *Report of the Royal Commission on Aboriginal Peoples*:

In the past, Aboriginal people have not been consulted about what information should be collected, who should gather that information, who should maintain it, and who should have access to it. (Canada, 1996, p. 498)

With an increasing focus on Indigenous rights, institutions are having to navigate between existing Canadian laws and commitments to respect Indigenous rights like those defined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Once implemented, Article 13 of UNDRIP may impact rights to the audio recordings of Indigenous Peoples found in museums and archives:

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.

As a Collections Information Specialist at the Canadian Museum of History, noted, “ethical obligations to Indigenous source communities [are] changing” (Wise, 2020).

Bear Nicholas, who has spoken to the House of Commons Standing Committee on Industry, Science and Technology regarding the *Copyright Act*, advocates for the implementation of UNDRIP as she sees it providing the ability to “abolish all copyright laws that legalize the theft of Indigenous cultural and intellectual property” (Bear Nicholas, 2017).

The Wəlastəkwey elders who had their stories recorded in the 1970s have all passed on, never seeing their gift of story and language realized. Their children and grandchildren are now the elders. Through publishing the stories in their original form, in a manner which does not surrender their claim to their oral traditions, they regain control of their history. While it may be tempting to consider the outcome a tentative success, Indigenous communities should not have to live with the threat of litigation when accessing their own cultural knowledge, nor should they have to rely on the goodwill of outside organizations to advocate for them.

Respect, by others, for the First Nations principles of OCAP® (ownership, control, access, and possession of First Nations data and information) is essential if First Nations are to regain their rights of data sovereignty, self-determination, and self-government. Through respect for and implementation of these rights, First Nations will be better able to revitalize their languages and cultures—precious gifts for future generations.

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