

That Albert Johnson Story: Aboriginal Oral History
Inclusion in Canadian Archives

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Leslie McCartney, Trent University,
Peterborough, Ontario, Canada

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Leslie J. McCartney
London, UK
0208 340 2230
leslie.mccartney@sympatico.ca

Abstract

Using the example of the story of Albert Johnson, the Mad Trapper of Rat River, this paper will discuss two related issues: the lack of recorded oral history by Canada's First Nations in Canadian archives and once deposited into the archival holdings, the inadequacies of the current categorization and copyright laws pertaining to the recordings. Many archives in Canada house document versions of the Johnson story as created by the RCMP and popular media. Few if any Johnson stories can be found in the archives as told by the Gwich'in people who also participated in the events. Issues arise however as to how oral stories opposed to those in literary form can be given the same protection and respect.

Two Issues

There are two purposes in this paper I wish to present today: the first is to address the lack of recorded oral history by Canada's First Nations in Canadian archives of past events perceived, witnessed and experienced by them and how important it is for these records to be included in our archives; the second is that once these oral histories are deposited into the archives, attention needs to be drawn to the inadequacies of the current categorization under the *Copyright Act* pertaining to them. The question I wish to leave you with today is how can these oral forms of history as opposed to literary forms be given the same protection and respect that literary works receive?

Let me state at the outset that I am neither a lawyer nor archivist yet I have worked in both fields. For two years I was the Executive Director of the Gwich'in Social and Cultural Institute in the Northwest Territories. The GSCI has an extensive archival collection including at least one thousand hours of oral history audio-tape. In future, the GSCI hopes to operate a publicly accessible archive. While working with the GSCI and thinking about its future, the issues I raise in this paper were and continue to be very real ones that this or any organization collecting First Nations oral history must grapple with.

The Albert Johnson Story: A Story of Firsts

As a springboard to the issues I wish to address, I want to tell you a story that I have grafted together from files in various archives around the country, of an event that

was unfolding in the cold and dim light of an arctic winter in 1932 in Canada's Yukon and Northwest Territories. The story goes as follows:

A strange man arrived in Fort McPherson in the summer of 1931 via the Peel River on a handmade log raft. He hardly spoke to anyone, bought a canoe from a local man, several rounds of ammunition and supplies in the local store and then made his way to the Rat River where he built himself a cabin. On New Years Eve the Royal Canadian Mounted Police at the Arctic Red River detachment received complaints from some Gwich'in men that a man by the name of Albert Johnson had been springing their traps. An RCMP Constable and Special Constable were dispatched to investigate. Upon reaching the cabin, the man inside refused to open the door. They made their way to Aklavik to obtain a search warrant. Two RCMP Officers and two Special Constables returned to the cabin. As one Officer knocked on the door the man inside shot through the door and a bullet was lodged in his chest. The Officer managed to crawl a short distance away where his colleagues managed to settle him into their dog sled and they travelled back to Aklavik. This incident led to a full police party made up of members of the RCMP, Royal Canadian Corps of Signals, local trappers and Gwich'in people to find the assailant. The party returned to the cabin and despite their efforts to blast the cabin with dynamite (which they first had to thaw in a frying pan over an open fire) Johnson escaped. Johnson managed to elude police for a total of 53 days in bone chilling weather and over mountain ranges. During the chase, a RCMP officer was killed by Johnson. Once Johnson crossed the mountains into the Yukon, RCMP from Old Crow became involved. WWI hero, pilot Wop May, was also called in by the Canadian government to assist in the hunt by ferrying supplies to the men and their dog teams by aircraft. Johnson continued to elude the posse until about noon on February 17, 1932 when they caught up with him on the Yukon's Eagle River. Before being killed himself, Johnson shot and wounded another man from the police party. Johnson's body was taken back to Aklavik where he was buried. On his body was found over \$2,000.00 in cash comprised of both

Canadian and American bills, five pearls, some pieces of gold dental work (not his) and some alluvial gold. There was nothing on his body to identify him and as of today, the real identity of the man known as Albert Johnson has never been established although there are several theories in many publications speculating who he really was.

This story was one of several firsts in Canada. It was the first large scale manhunt carried out in the Canadian North; it was the first manhunt in Canada to use aircraft and it was the first manhunt to use a radio transmission during the hunt. From these radio transmissions “the Arctic Circle War,” as the press coined the story, was carried throughout Canada on radio and hence, it was one of the first daily play-by-play of a police event being carried live on radio.

Established Archival Record

Because of these firsts, and because of the mystery of Johnson’s true identity, this story has been well documented in archives throughout Canada. The National Archives of Canada has an extensive file on the case. Most of this file contains newspaper clippings and correspondence regarding the bureaucratic process of burying an unknown criminal and then distributing his possessions, payments for medical services and for the aircraft involved in these search. Other holdings include various clips of radio programs regarding the case and audio-tapes of some of the men who were involved in or who discussed the case over the years. The Johnson files at the Royal Canadian Mounted Police Archives in Ottawa contain the various police reports filed by the police involved as well as the Inspector Eames reports and correspondence up until the 1960s attempting to reveal the fugitive’s true identity. The file in the Northwest Territories Archives contains some newspaper clippings and notes about the case and the files at the Archives in the Yukon contain similar material as well as copies of screenplays written about the case or author’s notes who have written about the case, most notably Dick North who lived in Whitehorse for many years and who has written extensively about the case (North 1969, 1972, 1989). What is important to note from all of these holdings, is that

they are documents created by either the RCMP, newspaper columnists, screen writers or authors. Anyone investigating this historical event from these sources would find an overwhelming amount of material and would assume that this historical event or story had been well documented and therefore told in its entirety. But this assumption would be far from accurate.

Unheard Johnson Stories

One story is always told at the expense of another, every story is seen and told through a cultural filter placed over a lens, and the Johnson story is no exception. What is glaringly absent from these archival sources is the story of the Johnson affair as told by the three Special Constables, all of whom were Gwich'in, or the host of Gwich'in people who were involved in this case. According to several Gwich'in Elders today, there were many Gwich'in people who assisted the police in their hunt for Johnson. For it was on the land where the Gwich'in have lived since time immemorial that this event occurred. It was the Gwich'in Special Constables that enabled the police party to find their way using centuries old trails; it was the Gwich'in people who assisted the police by providing them food and lodgings at their camps along the trails used; it was the Gwich'in people that made it possible for the police party to survive. Instead of this story unfolding on a landscape that was barren, frozen and void of people in the Arctic as the archival records seem to indicate, it was unfolding on a rich Gwich'in cultural landscape; a landscape alive with stories, legends, place names, trails, sacred sites and stories of people who had, for centuries, been intimately connected with the land; a cultural landscape upon which the most northerly Athapaskan speaking Aboriginal people, whose traditional land use area spanned from Alaska through the Yukon to the western portions of the Northwest Territories to the Mackenzie River, called home; a people today who, but to a lesser extent, are still connected to the land¹. None of these stories were or have been written

¹For discussions about the Gwich'in cultural landscape see Heine (1997); Heine, Andre, Kritsch and Cardinal (2001).

down as those directly involved still used the oral tradition of telling stories as opposed to committing them to paper.

While acting as a researcher for the GSCI on a project interviewing and recording the life histories of Gwich'in Elders, the story of Johnson surfaced at many times as a marker of time and place as many interviewees referred to "that Albert Johnson year", "that time they were hunting Johnson, February, 1932" or "that year we stay at (certain place name) when we heard about Johnson." I came to realize that this event, for many Gwich'in Elders, was analogous to questions I had heard many times in southern Canada: "Do you remember where you were and what you were doing on November 22, 1963, or more recently on September 11th, 2001?" In the interviews, everyone remembered where they were on the land, who they were camping with and what they were hunting when they became aware of the Johnson events. It became very evident during these interviews that it was the land that served as, what some anthropologists have referred to as mnemonic aids or pegs, upon which a myriad of associations and oral narratives were hung, how they acted as intrinsic ties between personal history and land and concept of self in that self was anchored to places on the landscape (Andrews and Zoe 1997:160-177; Basso 1984:22, 23; Cruikshank et al 1990:56; Cruikshank 1998:18; Kritsch and Andre 1997:131; Rosaldo 1986; Schiffelin 1976).

Many of the Gwich'in Elders insisted that what had been written about the story (based primarily from the popular culture versions of books and movies) was not completely true and they would then proceed to tell me the story as they knew it. Indeed the basic framework and facts of the story were similar to those I just told, but what was unique was that the story was really a story about how the Gwich'in people were living their lives in 1932. It was very evident that there were distinct differences between what their narratives were saying and what they were really talking about (Ricoeur 1979). The

stories told are rich from a social history and Gwich'in cultural standpoint. Listening to the stories, which sound more like travelogues than factual stories, in the foreground, the stories tell where families were staying on the land, where they were traveling and hunting, what they were trapping, the intricacies of the relationships between the various people and entire Gwich'in group. In these stories, Johnson is merely a shadow in the background. What was really being discussed are the underlying social, political and economic frameworks of the times that were impacting their lives. For example, Treaty 11 had been signed only ten years previously and shortly thereafter the Gwich'in discovered they were not exempt, as they had promised they would be, from the game laws and regulations that made it illegal to hunt their traditional food source animals in certain seasons. Time frames for legal hunting and quotas were being imposed on the number of animals that could be harvested² The stories make reference to the economic realities of their lives and how the decline of fur prices due to the depression were affecting their way of life. Also addressed in the stories is the state of the health of many of the people due to flu epidemic that swept through the area only a few years before (1928) taking with it most of the young and old. As well, the stories detail how some of their children were now entering the residential school system and how this was affecting families and their travel upon the land. Several of the stories are abundant with details of how camps were set up and what trails that were used between various places on the land. The stories also serve as markers to Gwich'in place names on the land, their associated meanings and linking stories.

Thus, in “that Albert Johnson Story” as many Gwich'in Elders refer to the story, Johnson is merely one thread in a rich tapestry of Gwich'in social history as it appeared

²Upon signing Treaty 11, the Gwich'in found that they were not exempt from The Migratory Birds Convention Act, 1916, nor the Northwest Territories Game Act of 1917. These Acts and Regulations were made binding on the Gwich'in despite the fact that the Treaty was to take precedence over any other enactments and that almost 90% of the Aboriginal population relied on trapping as their primary means of income (Fumoleau 1973:217, 225; Morrison 1985:163).

in 1932. This social history speaks to social interruption, upheaval, dislocation and survival, not only physically survival on the land but of a people embracing and adapting to a changing world around them. Just as the story as told in the archives is one from the perspective of the police and newspaper columnists, in the Gwich'in versions, although Johnson may just be mentioned in passing, they are from a perspective steeped with cultural meaning embedded with the relationships between the people, hunting, land, resources, property and kinship ties. To disregard the stories because Johnson is not in the forefront would discredit the entire story - for it is the historical, political, economic and social realities as experienced by the Gwich'in people in 1932 and the cultural construction of the story that *is* the story.

Addition of Oral History to Archival Holdings

If these oral history stories of Johnson were to be collected and deposited in an archives they would represent a more holistic and balance approached to the records that currently exist.³ The oral history would present yet another approach to “knowing”, or add another perspective to a Canadian historical event. As Cruishank notes “narrative recollections and memories about history, tradition and life experience represent distinct and powerful bodies of local knowledge that have to be appreciated in their totality, rather than fragmented into data” (2003:19). Furthermore the deposit of these stories can fulfill several secondary purposes; if recorded in the Gwich'in language, there will be a spoken record of a language that is currently on the brink of extinction. Furthermore, the stories can serve as a Gwich'in historical record for the Gwich'in people themselves (and all people) as very few young Gwich'in people today live on the land, nor do they know the place names or the stories connected to those places.

³ I am using the definition of oral history as cited by Thompson (2000:vi) i.e., “tape recorded history information drawn from the speaker’s personal knowledge; the use or interpretation of this as an academic subject.”

It would be logical therefore for researchers to collect the oral history surrounding the Johnson story for example and deposit it into an archive for some of the reasons outlined above but there are many issues to consider if this is to be undertaken. Many of the Gwich'in Elders and other Aboriginal people I have worked with have become increasingly concerned with copyright protection of their stories, and given their treatment in the past these concerns are justified. "I'm not giving my story so someone else can make money off it" is a common response yet these Elders realize that if they don't tell the stories they know, they will die with them. Indeed there has been a significant breakdown of generationally transmitted stories through oral traditions not just in the Gwich'in community but in many Aboriginal communities in Canada. Elders realize that by recording their stories, they will be preserved and can be used in future as a heritage resource for the next generation, especially if the stories are told in their own language, and also by other people to reflect the cultural diversity found in this country.

The issues raised are not new nor are they exclusive to the Gwich'in people themselves. Many Aboriginal people across the country have voiced their concerns over centuries of misuse of their traditional cultural expressions such as art, songs and stories which have been culturally appropriated and commercially exploited; how many of the sacred symbols, stories and songs have been used without authorization, how these cultural expressions have been fragmented, used outside the context and intent they were originally created for, and how there has been a lack of acknowledgment of the source of these expressions and virtually no economic benefits arising from the use of these back to the original creators (Government of Canada:2001:24; Kulchyski 1997). What is paramount is that for a deep appreciation of these cultural expressions, they must be preserved and promoted within the cultural context in which they were created and intended.

This is where copyright issues come into play. Basically, copyright is a number of legal rights that are attached to "works" and although not defined by law, "works are

best understood as intellectual creations such as books, films and art” (Noel 1999:7).

Copyright exists to protect the creators right for control of use and payment for use of the work. Its counterbalance is for the public to access these works (Noel 1999:8). Of the seven categories of copyright, literary works, that is anything that is written down, is considered first class whereas sound recordings are deemed second class. Second class works are deemed to have taken first class works and render them into another work.

There also exists a folklore category. Folklore is defined as “traditional forms of artistic expression of a people, group or community” (Government of Canada 2001:8). In songs, dances and old stories that have been handed down for generations for example, the author is unknown, the work previously unpublished (Government of Canada 2001:8). If I were to go out and collect the Johnson story today from members of the Gwich’in community, I would be collecting folklore because none the original Gwich’in members who participated in the events are still alive.

But let us operate on the assumption that I did collect oral history interviews with Gwich’in people who were involved in the story. What is under copyright must be original, therefor historical facts such as those found in the Johnson story are not protected by copyright but what would be protected are the expressions of these facts in an original form, such as in a literary story or the sound recording of the interview. For literary works, copyright remains with the creator whereas in sound recordings, copyright remains with the maker of the sound recording, that is the person by whom the arrangements necessary for the first fixation or the sounds were undertaken (*Copyright Act* 2 “maker”(b)). This is usually the interviewer or producer. Oral histories, under the *Copyright Act*, are considered and protected under the Sound Recording definition (Noel 1999:74). Thus, the interviewee has no copyright rights. The *Copyright Act* states that authors of work have the right to the integrity of the work (14.1(1)), that is, any changes to the work are prejudicial (Noel 1999:46). In oral history recordings, the storyteller has no recourse therefore if the story is appropriated or used in such a way as to prejudice

her/his reputation, s/he have no legal recourse if his/her name is not used, no recourse if the work is distorted, modified, misinterpreted or changed. Therefore the interviewee does not have any moral rights. In literary works, the creator/author enjoys both the copyright and moral rights.

Furthermore, if the story is told in a mother tongue, and many Gwich'in want to tell their stories in their language today, as the Gwich'in language is the most endangered Dene language in the Northwest Territories (Northwest Territories 2002:11), it would need to be translated into another language, most likely English, in order for it to be understood by most Gwich'in people and the general public⁴. The *Copyright Act* includes the right to reproduce the work via translation (Section 3(1)(a) as long as the original owner, in the case of an audio recording the interviewer or producer, gives permission for the translation to occur and if so, the translated work becomes a separate piece of work, that is, the author of the translated work is now the first owner of copyright unless of course there is agreement to the contrary (Noel 1999:35). The term of copyright for a sound recording is the remainder of the calendar year of the making of the sound recording plus 50 years (*Copyright Act*: Section 6).

The Government of Canada recognizes the lapses in the current legislation and is in the process of undertaking Copyright Reform. In the 2001 Speech from the Throne, the government stated that copyright reform would, among other things, “provide better copyright protection for new ideas and knowledge, diversify Canadian content, and allow access to the arts and heritage for all Canadians” (<http://strategis.ic.gc.ca/SSG/rp01101e.html:2>). Two of the four key objectives for the revision of the *Copyright Act* are to stimulate the production of cultural content and diversity of choices for Canadians; and to enrich learning opportunities for Canadians

⁴ For many Elders, whose first language is Gwich'in, leaving a sound recording of a story in their own language is of vital importance as the language is on the brink of extinction. Fewer than 2% of the community use the Gwich'in language regularly in their home today (Northwest Territories 2002:11).

(Government of Canada 2002:11) This, coupled with the recommendation by the Royal Commission on Aboriginal Peoples that “the federal government, in collaboration with Aboriginal peoples, review its legislation on the protection of intellectual property to ensure that Aboriginal interests and perspectives, in particular collective interests are adequately protected” (Canada, Report on the Royal Commission on Aboriginal Peoples, vol. 3, report page 24) have made lawmakers realize that the current legislation does not address the issue that authorship of songs, dances, legends that cannot be traced to a single person and that oral traditions such as songs, stories and dances, which are embedded within folklore, are not “fixed” and therefore are not protected under the *Copyright Act*. Also, ownership of these traditions has been handed down for generations, an expiry date of 50 years is not applicable. Furthermore, the theory behind the *Copyright Act* is based on a concept of personal ownership of property. Traditional knowledge, stories or folklore does not always fit into this theory. A story takes many forms - it can be a gift from one person to another, it can be communally shared by an entire community or to a special person or group; stories can be meant for certain people to hear only or the right to tell certain stories or sing certain songs can rest with a certain person and therefore the story cannot be retold by others (Cruikshank 1998:36-38). In the literature there is reference to whether or not the *Copyright Act* should be amended to create a new class or rights or alter existing rights to protect works of traditional knowledge or to take into account the special circumstances of the creation and use of such works (Government of Canada 2002:23). Perhaps what is needed is a completely different perspective or approach to these issues. Instead of trying to fit Aboriginal traditional knowledge and folklore into existing western legalistic paradigms, existing legislation and the philosophy upon which it was constructed, perhaps another “landscape” or “way of knowing” needs to be seen and understood. In the end, I believe it should be up to the Aboriginal community to decide how they want to see their oral histories preserved, used and accessed.

All stories, both written and oral, are constructed from selectively reading the past but as I have illustrated with the Johnson example, there is another way of knowing the story from what exists in the extensive current archival material on the case. But in recording these further oral history stories, we need to be aware of not only of how narratives or stories may be locally grounded, culturally specific and highly particular but they indeed are further frameworks of reference or ways of knowing, another way of experiencing the world. Stories intersect within the larger historical, social and political process (Cruikshank 1998:xii) and thus their inclusion into the archival records are important. We have much to learn from the traditional knowledge and folklore in Aboriginal communities especially regarding social history (Cruikshank 2003:1). Contextualized in an understanding of the land as centre of the world versus the margins or something to be conquered, oral histories such as “that Albert Johnson story” have been, in the past, marginalized by more powerful systems of knowledge (Cruikshank 1998:xiii, 4) and the time is past due to include them in our holdings in order that our records reflect the diversity of all Canada’s peoples for not only does these stories tell us about past events, they provide insights into contemporary issues. The stories cannot be fragmentized however.

Currently in the north traditional knowledge and stories are being incorporated into the studies regarding the proposed Mackenzie Valley Pipeline. The stories to be told regarding the land must stand alone and not be fragmented by western science and bureaucracy to isolate the elements, to reduce them into western science categories but instead, they need to be seen within the social, political, economic and historical fabric and context in which the events took place as well as why they need to retold today. Aboriginal people are entitled to the importance of their pasts; their sophisticated stories embodying cultural and historical contexts can make important contributions to the historical record people for all and as such, demand as much respect as other holdings in archives. The legislative issue remains however: how can these oral forms of history as

opposed to literary forms be given the same protection and respect that literary works receive?

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File I: Mad Trapper Case Vol. III Yukon and NWT 1931/32

File II: Mad Trapper Case Vol. III Yukon and NWT 1931/32

File III: Mad Trapper Case Vol. III Yukon and NWT 1931/32