ABORIGINAL EMPOWERMENT AND SOUVENIR TRADE IN CANADA

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Abstract: This paper considers issues being raised in Canada regarding inexpensive mass-produced souvenirs that depict aboriginal peoples. After describing “native type” souvenirs currently available in Canada, the paper reviews claims that these practices violate consumer and intellectual property laws and that the Canadian state has responded to these critiques in a contradictory way with policies for aboriginal economic development that are in tension with policies promoting cultural tourism. Finally, the debate over current souvenirs is related to broader struggles by aboriginal peoples to sustain their cultures and transform their relations with the Canadian state. Keywords: souvenirs, aboriginal peoples of Canada, cultural appropriation, cultural integrity, consumer legislation, intellectual property, tourism policy, cultural politics.

INTRODUCTION

When foreign tourists visit Canada, they often purchase mass-produced souvenirs that depict aboriginal Indian, Inuit and Métis peoples, or replicate their distinctive native cultural forms. Widely
available at shops in popular tourist areas and in airports, railroad and bus stations, these objects range in price from a few dollars to generally no more than CAN$30.00. Despite their low individual costs, however, the combined sale of these "native type" souvenirs constitutes a multi-million dollar business in Canada. While they depict aboriginal cultural forms, such commodities are rarely produced or sold by aboriginal peoples or by companies that employ them. Therefore, aboriginal peoples rarely benefit economically from their sale and, furthermore, many of these souvenirs depict aboriginal peoples in distorting, stereotypic ways.

Not surprisingly, practices employed to market "native type" souvenirs have come under fire as aboriginal peoples struggle to establish more equitable relationships between their own First Nations and other groups within the Canadian state. This paper considers issues now being raised with regard to these objects. While its emphasis is on challenges regarding souvenirs marketed by non-aboriginal entrepreneurs, it will also consider some inexpensive items being sold to tourists by aboriginal producers which constitute challenging alternatives to non-native made forms.

This paper first describes "native type" souvenirs widely available in Canada and outlines how they are produced and sold. Second, critiques regarding these commodities are reviewed, including arguments that practices employed to produce and sell them violate Canadian laws as well as international conventions on intellectual property. Third, it considers the response of the Canadian state to these critiques, and, finally, it situates issues regarding souvenirs within the broader context of aboriginal cultural politics in Canada today.

This paper is one result of ongoing research on the relationships between aboriginal cultural forms and tourism practices in Canada. The focus here is on souvenirs, and more specifically on their production and marketing, while the semiotics of their reception is analyzed elsewhere in more detail (Blundell 1990). Other aspects of the research are reported in Blundell 1989a and 1989b. Research methods have included observations and interviews by the author over the past several years at locales across Canada where cultural forms by or about aboriginal peoples are produced or represented for tourists, including production centres, trade shows, exhibitions, and retail outlets, and also museums and cultural centres, powwows, and various "reconstructed" historic (and prehistoric) sites. Research assistants and students of the author have also contributed their observations of touristic practices in Canada (as noted in the Acknowledgements).

MARKETING "NATIVE TYPE" SOUVENIRS

"Native type" souvenirs widely sold in Canada include replicas of familiar Indian artifacts and art forms, such as drums, bows and arrows, feather headdresses, tomahawks, and totem poles (Figure 1). In virtually every souvenir shop in Canada, one can also purchase moldmade figures that depict Inuit hunting scenes and animals found in the north (Figure 2). Both in their style and their subject matter, these figures are reminiscent of the internationally acclaimed soapstone
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Figure 1. Mass-Produced Replicas of Totem Poles

carvings that are handmade by the Inuit (who are generally referred to outside Canada as “Eskimo”). But while small Inuit produced carvings rarely sell for less than CAN$100.00 and can cost several thousands of dollars, these moldmade “Inuit style” figures are easy to find for under $10.00.

Widely available are also plastic Indian and “Eskimo” dolls dressed in feathers and leather (Figure 3), as well as a vast array of functional items that in some way replicate aboriginal forms or aboriginal peoples themselves. Examples of functional items that can be purchased for under $30.00 include beaded key chains and necklaces that incorporate miniature figures of Indians; pot holders, oven-mitts, tote bags, and tea-towels with pictures on them of Indian motifs or Inuit fishing scenes; refrigerator magnets “sculpted” as befeathered Indian Chiefs; metal bottle openers shaped as totem poles; T-shirts, mugs, and puzzles with images on them of aboriginal forms; and various greeting cards and wall-hangings that reproduce works attributed to Native American artists. Functional items also include the postcards that tourists both collect as souvenirs and send to their friends and relatives back home. One popular series, produced by The Postcard Factory in
Figure 2. Mass-Produced Figures of Inuit Hunting Scenes and Northern Animals

Figure 3. Mass-Produced Indian and Mountie Dolls
Toronto, includes postcards with the inscription "CANADA" printed across photographic images of natives and native cultural forms.

Many "native type" objects are produced by large companies that also make other kinds of goods. Some items are imported from the United States or from "off-shore" countries such as China (for example, the beaded key chains noted above), although many items are produced in Canada. In fact, retailers that have been interviewed report that foreign tourists prefer souvenirs labeled "Made in Canada." A number of popular "Made in Canada" lines are produced by small, family run companies, several of which are located in Ontario and Quebec.

Some producers market their goods directly to retail outlets, while others use agent companies that distribute catalogues to prospective retailers. For example, the company Quality Goods represents many "lines" produced in Canada and abroad, and its 45-page "Canadian Handicrafts and Souvenir Catalogue" includes nine pages of color illustrations devoted entirely to inexpensive "native type" items.

Producers and agent companies also exhibit their "lines" at trade shows held in large Canadian cities such as Vancouver, Toronto, and Montreal, where representatives of retail outlets can place orders. According to one source, there are more than 50 such trade shows in Canada each year (National Gift Show Directories 1990:5). For example, at the huge Toronto Fall Gift Show held in 1990 (attended by the author), over 700 exhibitors occupied the space of six buildings on that city's Canadian National Exhibition Grounds. At this show, open only to retailers and their guests, exhibitors displayed commodities targeted to the souvenir, handicraft and gift shop trade, including a huge range of mass-produced items, handmade arts and crafts, gem stones, jewellery, leather goods, housewares, and specialty clothing, to give but a few examples.

Among these exhibitors, about two dozen offered mass-produced "native type" souvenirs that had been produced by nonnative companies and were at the "low end" of this show in terms of their price range. As will be discussed later, there were also a few booths where native companies and cooperatives were wholesaling their own handcrafted items. Along with their mass-produced "native type" goods, many nonnative exhibitors of souvenir forms were also wholesaling little figures of mounties, objects that depict Canadian wildlife and nature scenes, and various products with the word "CANADA" or a picture of Canada's national (maple leaf) flag imprinted on them (as for example, plates, mugs, tea towels, and T-shirts).

When offered for sale in retail outlets, "native type" objects are marketed not primarily as representations of aboriginal cultures in Canada, nor as mementos of a tourist's encounters with aboriginal peoples. Instead, they are sold as keepsakes of the country, as souvenirs that can be thought of as distinctly Canadian (Mathieson and Wall 1982:169). They are also frequently promoted as "authentic" souvenirs of Canada.

CHALLENGES TO ENTREPRENEURIAL PRACTICES

Over the past several years, concerns have been raised regarding the production and sale of these mass-produced "native type" objects.
Critical articles have appeared in the native press (Desjarlais 1987; McDougall 1988; O'Farrell 1989), in the publications of cultural organization (Cardinal-Schubert 1990; Danzker 1990), in consumer protection magazines (Palik 1985), and in the popular press, including Canada's national news magazine, Maclean's (Van Dusen 1983).

These concerns have also led aboriginal organizations, in collaboration with government agencies, to commission two reports by Ottawa attorney Marc Denhez (1983, 1990) that review legislation relevant to the marketing of “native type” commodities. The first of these was commissioned in 1983 by the Inuit Tapirisat, which is the national political organization of the Inuit. The second, completed in 1990, was commissioned by the Department of Indian and Northern Affairs (DINA), the Government of the Northwest Territories, and Arctic Cooperatives Limited (which is the central distribution agency for the Northwest Territories Inuit Cooperative). In these reports, Denhez refers to the commodities at issue as “imitation native art” or “fakelore,” and considers more expensive, handmade items as well as mass-produced goods.

Critiques Regarding Promotional Practices

As Denhez also confirms, aboriginal peoples rarely benefit economically from the production or sale of inexpensive “native type” souvenirs, although these objects depict them or replicate their distinctive cultural forms. Instead, mass-produced objects made by nonnative companies flood the market, making it difficult for aboriginal producers to compete with their own generally hand-crafted items. In many souvenir shops across Canada, there are no native-made objects among the rows of plastic totem poles, moldmade figures of Inuit hunters, and befeathered Indian dolls. This is the case not only in private commercial shops, but also in souvenir shops in public institutions, including duty free shops in airports and some shops in national and provincial parks (O'Farrell 1989).

What makes this situation especially reprehensible, critics contend, is that practices employed to promote and sell such objects often mislead consumers. Particularly contentious are labels or tags on souvenirs which make claims regarding their origin, their originality, and the materials and manufacturing processes employed to produce them. For example, some tags claim that items are made of “stone” or that they are “carved,” when they are manufactured from synthetic materials. Designations such as “handmade,” “handcrafted,” “authentic,” and “original” appear on tags attached to mass-produced, non-native made objects. One producer of a widely available line of moldmade “Inuit style” figures labels each a “Wolf original,” while another producer of such figures includes the words “hand carved” in quotes on its tags, although the objects are clearly machine-tooled. Other tags create the impression that objects come from the north, as for example a widely available line labeled “The Aardik Collection,” and another line labeled “Arctic Art,” when this is not the case (Denhez 1990:34, 100).

Critics are especially concerned about promotional practices that imply that these “native type” souvenirs are “authentic.” To be sure, and as has been elaborated elsewhere (Blundell 1990), ideas about what constitutes an “authentic” object are historically specific and vari-
A widely held view in the West is that authentic objects are those that have been made by the people they represent (Appadurai 1986: 45), and it is this view that informs many critiques of current promotional practices. To be authentic, critics contend, "native type" objects must be produced by aboriginal peoples or replicated by others only with their consent.

But tags attached to "native type" souvenirs promote conceptions of "authenticity" that are both broad and vague. For example, some tags imply that an object is "An Authentic Souvenir" because it is "Made in Canada," or because it represents people, places, or objects found only in Canada. This later conception of "authenticity" is advanced in booklet style tags attached to dolls produced by the company Indien Art Eskimo that read, in part: "Historical themes, people and customs of our country have inspired our artisans in the creation of this valuable doll. . . ." Such a notion of "authenticity" is also implied for mass-produced "Inuit style" figures marketed under the label "Aardvark Reproductions - The Aardik Collection." Promotional leaflets sometimes displayed at shops where these figures are sold state that they are "handcrafted" (with "handcrafted" placed in quotes) by Giulio Stipani who has carved these "figures of native people . . . with simple lines that show a way of life that reaches back to the first inhabitants of our great land."

Entrepreneurs also encourage purchasers to consider a souvenir authentic because it conforms to their own notions of what is properly "native," even when the object is obviously made abroad. Signs over a display, or at the entrance to a souvenir shop, which advertise "Native," or "Indian," or "Eskimo" Handicrafts promote such an interpretation. Entrepreneurs also imply that souvenirs are "authentic" because they are replicas of an ethnographic "original," a conceptualization of "authenticity" advanced by the Vancouver-based company Boma that mass-produces totem poles and attaches booklet-style tags to them that provide ethnographic information (written in the past tense) about totem poles and Indian cosmology.

Finally, entrepreneurs imply that objects are authentic by using terms and producer names that may lead consumers to conclude that they are made by aboriginal peoples, when this is not the case. Thus the names of some companies printed on labels include words such as "Indian," or "Eskimo," or "Native," implying aboriginal involvement in the making of goods, when the company is neither native owned nor an employee of native peoples. In some cases, objects are attributed to, or even signed with, an exotic, native-sounding name, when the producer is actually European (Denhez 1983:4, 1990:34-35; Palik 1985). This is the case for so-called "Wolf Originals" and also for other lines of mass-produced "Inuit style" figures marketed under the labels "Boma," "Dimu," and "Images of the North by Siku," "Siku" being a word in the language of the Inuit (viz. Inuktituk) for "ice" (Denhez 1990:5-30). As has been the experience of this author and her students, Denhez documents cases where salespeople have (falsely) told customers that such objects are made by aboriginal Indian or Inuit producers (Denhez 1990:33ff; Blundell 1990).

In his review of existing Canadian legislation, Denhez concludes
that many current practices violate consumer protection laws, including provisions of the (federal) Competition Act, which prohibits "... the use of misleading advertising and deceptive marketing practices in promoting the supply or use of a product or service, or any business interest" (Weston 1991: Foreword). Current practices are said to not only violate provisions of the National Trade-Mark and True Labelling Act which has the intent of preventing consumers from being misled, but also the Business Practices Act and the Industrial Design Act (Denhez 1990:93ff). Moreover, current practices are said to violate provincial laws (including those of Ontario where many lines of mass-produced "Inuit style" figures are made), although the provisions of these acts have hardly ever been enforced (Denhez 1990; O'Farrell 1989). Denhez calls for stricter enforcement of existing legislation, specifically recommending that the government intervene to ban labeling practices that, in the words of the Competition Act, leave "a general impression conveyed' which is erroneous" (1990:97). This form of action is considered a "purely negative disposition" and Denhez notes that manufacturers might decide to put nothing at all on their products. Therefore, it has been recommended that further action be taken to require "full disclosure" on labels so that "consumers not only be told what their product is not, but also what it is," that is, that nonnative-made forms "carry a label indicating that they are imitations" (Denhez 1990:97, emphasis in original).

Concerns about Copyright

In addition to the claim that current labels attached to "native type" souvenirs are misleading, and in some cases illegal, there is the concern that some practices may violate The 1988 Canadian Copyright Act (Denhez 1990:96). This act prohibits unauthorized reproductions of an artist's work—even when someone has purchased it—as would be the case, for example, if souvenirs incorporated images of an aboriginal artist's work without his or her consent (Agnew 1990). Moral rights provisions of the Copyright Act also protect the integrity of an artist's work, stating that an artist's right of integrity is infringed if the work "... is, to the prejudice of the honour or reputation of the author, distorted, mutilated, or otherwise modified; or used in association with a product, service, causes or institution" (quoted in Agnew 1990:27). The Act also permits cultural producers to require a royalty for such use, and it provides for the licensing of bodies to administer copyright such as CAR/FAC (Canadian Artists' Representation), a national organization run by artists.

The Canadian Copyright Act can now address situations such as the one that arose recently in connection with an exhibit of Inuit sculptures sponsored by the Amway Environmental Foundation and first put on at the United Nations in 1989 (Speak 1991). A soapstone sculpture by Nalenik Temela, an Inuit artist from Lake Harbour, was reproduced without his consent on the front cover of the exhibition catalogue, and it was also depicted on a souvenir pin used to promote the exhibit when it opened in October of 1991 at the Canadian Museum of Civilization in Ottawa. Having already reproduced this im-
age, representatives of Amway sent the artist a contract to sign whereby he would relinquish all reproduction rights for $1.00 (Inuit Art Foundation 1991). The artist declined, and has now become the first Inuk member of CAR/FAC that will negotiate reproduction arrangements with Amway on his behalf.

**Issues Regarding "Cultural Appropriation"**

For many items, it is not just (dis)information on tags or the unauthorized use of specific cultural forms that is at issue. Rather, it is the use by non-aboriginal producers of motifs, aesthetic styles, and even subject matters associated with aboriginal cultures. In particular, critics single out objects made by nonnatives that are reminiscent of Inuit produced soapstone carvings as well as those that replicate the distinctive style of West Coast Indian totem pole and mask making traditions. For example, Palik (1985:58) illustrates a $400 Inuit-made carving and a very similar $25 mass-produced example from the Dimu catalogue. Critics claim that the non-aboriginal producers of these objects cash in on the popularity of aboriginal art forms, and that “[a]llusions to native style may very well lead some consumers to believe that some level of native participation existed” in making them when this is not the case (Denhez 1990:93ff).

More is at issue here than misleading consumers about aboriginal peoples’ involvement in souvenir production. At issue also is the use of what Anderson calls “the material image base” of an aboriginal culture, that is, “the artifacts which provide the concrete support for the images and designs” of the culture (1990:9). It is this image base that is “appropriated” by non-aboriginal producers for their own economic, aesthetic, or signifying ends. As one aboriginal critic has argued:

> For me, the definition of appropriation originates in its inversion, cultural autonomy. Cultural autonomy signifies a right to cultural specificity, a right to one’s origins and histories as told from within the culture and not as mediated from without. Appropriation occurs when someone else speaks for, tells, defines, describes, represents, uses or recruits the images, stories, experiences dreams of others for their own . . . (Todd 1990:24).

One form of appropriation often identified is the representation of aboriginal peoples and aboriginal cultural forms as handy signs of Canada. For example, Miles Morrisseau, the editor of the native news magazine Native Beat, recently visited Ottawa and commented on how Indian art and Indians themselves have come to be thought of as typically Canadian by tourists:

> On arrival, I went into the airport gift shop for a pack of cigarettes and some breath mints. I looked at the items on display and saw things you probably see in every major airport in the country: Indian art for the big spenders and Indian junk for the frugal . . .

> I imagine the reason this stuff sells so well is because travellers from other countries want to take home a little bit of Canada. And for some reason, to them Indians represent Canada more than any other people.
In fact, I can’t remember seeing a little “voyageur doll” or a little “Orangeman doll” in any Canadian airports... (Morrisseau 1991).

Anthropologist Graburn has also argued that aboriginal cultural forms have become national symbols of Canada, constituting what he calls Canada’s “borrowed identity” (1976, 1986). According to him, colonial nations such as Canada, the United States, Australia, and New Zealand have had to differentiate themselves from the mother country and also from one another. Given their shared (Western) background, they have looked for a source of national identity within the colonized country itself, and in the case of Canada they have turned to the natural landscape and the native peoples (Graburn 1986:5). This, of course, is one reason why aboriginal cultural forms are so frequently replicated as souvenirs of Canada. Indeed, as Cohen notes (1992), other than the mounties, Indians (and Inuit) are the only people commonly depicted on picture postcards of Canada.

But as Todd (and other aboriginal critics) contend, when native forms become signs of the Canadian state, they tend to lose their specificity as symbols of distinctive aboriginal groups. Indeed for Todd, such uses are yet a further extension of colonial conquest which constitute a... “denial of difference and of conflict in the service of capital” (1990:3).

This argument that non-aboriginal producers ought not to have unrestricted use of aboriginal images is, however, a particularly contentious one. It is countered by arguments for freedom of expression, including claims that cultural producers must be able to draw widely on diverse styles and subject matters to be creative (see Doolittle, Elton and Laviolette 1987). It is also countered by claims that aboriginal forms are part of the national patrimony that all Canadians can be proud of, and that they are, therefore, properly available for representation as commodities. This view was expressed by the producer of a tea towel who was interviewed by the author at the 1990 Fall Toronto Gift Show. The towel under discussion had a picture on it — created by a nonnative designer — in the distinctive style of West Coast Indian artifacts and art forms. When it was suggested that this image reminded one of a work of art by a well-known Indian artist, the producer agreed and added that “... after all, this art is part of Canada’s heritage.”

Stereotypic (Mis)representations

In addition to the argument that current marketing practices constitute unfair advantages for nonnative entrepreneurs, aboriginal critics are concerned about the meanings that are signified when aboriginal peoples are depicted in (and as) souvenir forms. Inexpensive “native-type” souvenirs rarely portray them as they live today, and in too many cases souvenirs represent aboriginal peoples in ways that also distort their past(s) (Danzker 1990). Thus, many souvenirs depict Indians and Inuit as colorful exotics, as children of nature, and locate them not in the contemporary world but in an eternal past-in-the-present — as part of Canada’s heritage, but not its history (Cooke 1984). Picture
postcards in the “CANADA” series are a case in point (Blundell 1990). Indeed, as well as providing Canada with a “borrowed identity,” another reason aboriginal forms are replicated as souvenirs of Canada is that exotic-looking “native type” souvenirs provoke the widespread idea in the West that Indians and Inuit preserve, albeit vestigially and anachronistically, a more authentic way of life now “lost” in the modern world. Thus, as has been elaborated elsewhere (Blundell 1990), such souvenirs can serve as signs of the authentic nature of a tourist’s own experience. The presumed “authenticity” of aboriginal forms “rubs off,” so to speak, marking Canada as authentically “Other” while, at the same time, authenticating the tourist’s experience of that “Other.” In this way, as Stewart writes, souvenirs retain their “signifying capacity only in a generalized sense, losing [their] specific referent[s] and eventually pointing to an abstracted otherness that describes the possessor” (1984:148).

Finally, many souvenirs are crudely done: indeed some producers take liberties with aboriginal aesthetic styles, and in this way demean them (Desjarlais 1987). Inuit artists are especially sensitive to this issue because they take great pride in the aesthetic quality of their soapstone carvings and are offended when poorly made mass-produced facsimiles are sold. Some producers take other kinds of liberties. For example, some lines of mass-produced “Inuit style” souvenirs include figures of penguins (which are indigenous only to the Southern Hemisphere but serve, it seems, as generic signs of both Polar lands).

THE STATE’S RESPONSE

In response to growing concerns regarding current practices and the recommendations of the Denhez reports (1983, 1990), the federal agency Consumer and Corporate Affairs Canada recently issued the position of its Director of Investigation and Research regarding “... the deceptive marketing of imitation aboriginal artwork—products which have become known as ‘fakelore.’” Specifically, it states that:

Those promoting the sale of imitation artwork should ensure that the representations they use do not convey misleadingly the general impression that they are aboriginal in origin or produced by aboriginal Canadians (CCAC 1991:1).

The above statements appeared in this agency’s Misleading Advertising Bulletin (CCAC 1991), which is sent to producers and retailers in Canada. The Bulletin calls for voluntary compliance on the part of entrepreneurs and suggests that retailers segregate imitation and genuine artwork in their outlets. It further advises that misrepresentations about product origins “may be made explicitly or implicitly” and includes the following examples of practices that “could give the Director reason to initiate an inquiry”: (a) placing imitation artwork “behind a window display sign indicating ‘Indian & Eskimo Arts and Crafts,’” (b) selling imitation artwork “with packaging that is silent as to its origins” in a museum gift shop where a sign indicates “Indian Handi-
crafts, Eskimo Arts," (c) selling imitation artwork "where the packages have representations depicting uniquely native or northern scenes as well as native or native-appearing script or phonetic equivalents," (d) describing mass-produced objects as "handmade," "carved," "handicraft," "handicrafted," "individually made," "sculptured," or with other synonymous terms, (e) describing mass-produced imitation artwork "finished by labourers on an assembly line using hand-held machinery or tools" as "handmade," although "genuine artists" may call their works "handmade" if they "use motorized hand tools to achieve their artwork's final look . . . ," and (f) describing objects made from artificial materials as "sculptured" or "carved" (CCAC 1991:1-3).

Entrepreneurs are also advised that misleading advertising and deceptive marketing practices provisions of the (federal) Competition Act are strict liability offenses, which means that criminal liability can arise even when the party making the representation does not intend to mislead. The Crown only needs to prove that a representation is capable of misleading, not that anyone was in fact misled. Liability under the Competition Act can arise for distributors and retailers if they adopt the misleading representations used by manufacturers, and furthermore distributors and retailers " . . . are potentially liable for the representations made by their employees" (CCAC 1991:3-4).

**Collective Rights to Intellectual Property**

Unlike the United States, Canada does not have legislation that is specific to the production of "native-type" commodities by non-aboriginal producers. Despite the specificity of American legislation, even there statutes do not prohibit non-aboriginal producers from marketing "native-type" items, but require only that they be labeled as "imitations" (see Denhez 1990:78-87). But as has been indicated, some critics dispute the very right of non-aboriginal producers to make certain items without the consent of an appropriate aboriginal group, claiming such uses violate **collective** rights that aboriginal peoples ought properly to have over their own expressive cultural forms.

Denhez also reviews legislation that might be relevant to the protection of such collective rights, but he concludes that such rights are not specifically granted under existing Canadian statutes, since legislation in Canada exists to safeguard the interests of producers or consumers but not members of the cultures depicted (1990:61). Laws that protect corporations from having their products "imitated" are arguably applicable to non-aboriginal uses of aboriginal motifs and styles, but in practical terms they would be difficult to apply. The Industrial Design Act does apply to mass-produced items, but only when they are made by a single producer. Similarly, statutory remedies under the Copyright Act provide for remedies with regard to individual works of arts or crafts by individual producers, but not to a style or a category of expressive forms.

While existing Canadian laws do not seem to directly address collective rights to the use of aboriginal cultural forms, Canada has been party to international initiatives designed to regulate the use of intellectual property, including the so-called "folkloric heritage," a category
that for Denhez includes the distinctive expressive forms of Indian and Inuit peoples in Canada (1990:44-48). As Jabbour explains, the term "intellectual property" "... is used as the collective or generic term for that class of law which regulates and encourages the flow of creative contributions to society," and it includes "... such categories as copyright, trademark, patent, appellation of origin, and the like" (1982:5-6).

Concerns regarding the exploitation of the so-called folkloric forms were raised by South American and African countries as early as the mid-1960s, when both Tunisia and Bolivia adopted laws designed to regulate the imitation of their indigenous folklore, and over the next 15 years multilateral treaties were adopted by African countries (WIPO 1986:2). In the late 1960s and early 1970s, the Berne Convention on international copyright (specifically the Diplomatic Conference of Stockholm for the Revision of the Berne Convention) attempted to enforce copyright on "unpublished works where the identity of the author is unknown..." (Denhez 1990:44; WIPO 1986:2). As Denhez reports, however, "... most observers have felt... that the use of international copyright conventions was an awkward mechanism to regulate folkloric heritage" and, therefore, initiatives at the international level have involved attempts to devise legal mechanisms that are "based partly on copyright and partly on other legal concepts" (Denhez 1990:44; WIPO 1986:2-3).

Such initiatives have been undertaken by the two United Nations organizations responsible for "intellectual property," namely UNESCO and the World Intellectual Property Organization (WIPO). Canada is a member-state of both these bodies. These organizations are alarmed by the increased exploitation of folklore throughout the world which has been exacerbated by spectacular developments in technology. As one WIPO report notes:

Folklore is commercialized without due respect for the cultural and economic interests of the communities in which it originates. And in order to better adapt it to the needs of the "market," it is often distorted or mutilated. At the same time no share of the returns from its exploitation is conceded to the communities who have developed and maintained it (1986:1).

In 1983, UNESCO and WIPO jointly submitted (to the joint meeting of the Executive Committee of the Berne Convention and the Intergovernmental Copyright Committee on the Universal Copyright Convention in Geneva) the Model Provisions for National Laws on Sui Generis Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions. These provisions are aimed at controlling the "illicit exploitation" of folklore, that is, "... any utilization made both with gainful intent and outside the traditional or customary context of the folklore... unless there is authorization by a competent authority or the community itself" (quoted in Denhez 1990:44; emphasis in original). While the Model Provisions do not offer a definition of "folklore," they do enumerate "the most typical kinds of expression of folklore... [including]... expressions by words ('verbal'), expressions by
musical sounds (‘musical’), expressions ‘by action’ (of the human body) and expressions incorporated in a material object (‘tangible expressions’)” (WIPO 1986:5). Examples of the fourth category include “drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes, musical instruments, and architectural forms” (WIPO 1986:3-12 and Annex).

A full discussion of these Model Provisions is beyond the scope of this paper, as is a more detailed consideration of how the concept of “folklore” (or “folkloric heritage”) has been deployed. What is relevant to the topic at hand is that the argument is being made in Canada that aboriginal cultural forms fall within the scope of these provisions, that these provisions do prohibit creating the impression that an expression of folklore is “. . . derived from a community where, in fact, such is not the case . . . ,” and that these provisions also recommend measures whereby a country would not import “expressions of [its] folklore of foreign origin” (quoted in Denhez 1990:45).

Denhez reports that in 1989 these Model Provisions were entered in UNESCO’s Recommendation on the Safeguarding of Traditional Culture and Folklore, which was adopted unanimously, including Canada’s vote (Denhez 1990:47-48). This Recommendation also provides that “[d]istortion during dissemination [of folklore] should be avoided so that the integrity of the traditions can be safeguarded,” and that:

Insofar as folklore constitutes manifestations of intellectual creativity whether it be individual or collective, it deserves to be protected in a manner inspired by the protection provided for intellectual productions (quoted in Denhez 1990:47).

In 1984, WIPO and UNESCO had also debated a draft treaty to protect folkloric heritage which went further than earlier recommendations, including the Model Provisions (WIPO 1986:11). However, according to a WIPO report, this treaty was not adopted because “. . . the great majority of participants considered it premature to establish an international treaty since there was not sufficient experience available as regards the protection of expressions of folklore at the national level, in particular concerning the implementation of the Model Provisions . . . ” (WIPO 1986:11).

Contradictory State Policies

International treaties that might be applicable to the marketing of “native-type” souvenirs seem, at least for the time, to be stalled. At the national level legislation requiring “full disclosure” on labels has not been initiated. The recent directives issued by Corporate and Consumer Affairs aimed at enforcing existing laws seem consistent with UNESCO/WIPO provisions, but it remains to be seen what effect they will have in the marketplace, and whether other provincial and territorial regulatory agencies will follow suit. Indeed, in the past different state agencies within Canada have seemed to work at cross-purposes with one another.
For example, the federal government has long promoted arts and crafts programs as vehicles of aboriginal economic development (Nicks 1990; Muehlen 1990/91), and as a result many native communities now depend on sales of their arts and crafts for a large portion of their income. The federal agency Tourism Canada, for example, reports that sales by 14,000 native artists reached $36 million dollars by 1980, with most of these sales in the “crafts” and “arts” sectors (that is, most sales are of handmade and limited edition items, rather than in the “souvenir” sector,” where it is acknowledged “. . . most items [are] produced by non-Native manufacturers using Indian designs and motifs”) (Tourism Canada 1989: Annex 1:2). In another government report, it is estimated that some 40,000 Indians living on reserves produce some arts and crafts for the market (DINA 1988:13). In the case of soapstone carvings made by Inuit, the (federal) Department of Indian and Northern Affairs (DINA) has attempted to protect native made carvings from imitations by registering the symbol of the igloo as a trademark and providing Igloo tags for carvings in order to certify that they are handmade by Inuit (Inuit Art Foundation 1990/91:57).

While earnings from arts and crafts are economically important in many aboriginal communities, they are insufficient to provide most native producers with an adequate income, and so they would clearly benefit from greater access to the “low end” (souvenir segment) of the market. This is a huge market in Canada. Foreign tourists to Canada spent over $7 billion in 1989 (and domestic tourists spent another $17 billion), with up to 11% of this amount going for retail goods (ISTC 1990:7-8). The federal government does not collect data on how much of the money spent on retail goods goes to producers of “low-end” souvenirs, but observers agree that such sales annually generate several hundred million dollars, of which “native-type” items made by non-aboriginal producers likely account for between $4–16 million (personal communication with Denhez; O'Farrell 1989).

Despite a large market for “native type” souvenirs and government policies that promote aboriginal economic development through arts and crafts production, legal action has rarely been taken to stop what many consider unfair forms of competition from nonnative producers. Only one successful prosecution involving inexpensive souvenirs has been reported by Denhez and other critics, this one undertaken in 1974 under the Province of Ontario’s Combines Investigation Act against a company selling “Eskimo” dolls and seal-skin purses as Canadian-made when they were actually made in Norway and the United States (the company was fined $20,000) (Vancouver Province 1974). Moreover, despite Canada’s new copyright legislation, resort to intellectual property laws may prove problematic for aboriginal producers. As Coombe (1991) documents, increasingly North American courts are interpreting trademark and copyright laws in ways that benefit powerful corporations rather than individual cultural producers or members of minority groups.

Furthermore, many government-run (or government-associated) retail outlets—such as gift shops in public museums, art galleries and federal or provincial parks, as well as duty-free shops—sell nonnative made “native type” souvenirs in ways that may violate consumer pro-
tection laws (CCAC 1991:1). As one of many examples that could be given here, Denhez describes the situation at a store at Niagara Falls, one of Canada's most famous tourist destinations. This store is operated by the Niagara Falls Commission, which is part of the Government of Ontario. A sign at the door to the shop displays the Commission's logo and announces "Indian Handicrafts/Eskimo Art." Inside the shop, the contents are mostly nonnative made forms, including "Wolf" sculptures, and so, Denhez argues, "a purchaser could be legitimately forgiven for concluding that his purchase had a tacit, if not overt, warranty of authenticity from the public sector" (1990:32).

Policies designed to promote aboriginal economic development are also in tension with those designed to attract more international tourists to Canada. Thus, since the mid-1980s Tourism Canada has undertaken initiatives aimed at promoting Canada's cultural forms for touristic consumption, including its "rich native and multicultural heritage" (Tourism Canada 1988:24). For example, Tourism Canada has prepared a draft position paper entitled Native Tourism Products, whose stated purpose is "to examine the potential of native culture to attract international visitors [to Canada]" (Tourism Canada 1989:1). In this paper, a "Native tourism product" is defined as:

any tourism product which emphasizes the historical, traditional, cultural and artistic aspects of Canada's native peoples; which can be integrated into existing or emerging touring corridors, primary and secondary gateway cities, or the adventure product line; and which has the potential to attract tourists from Canada's international markets (1989:1).

Significantly, the paper continues, "[t]he above definition in no way states a requirement for native ownership/operation to qualify as a native product within the context of this report" (1989:1).

Tourism Canada's definition here of a "native tourism product" contrasts dramatically with that offered in another policy document prepared in the mid-1980s by the Department of Indian and Northern Affairs. This federal agency supports what it calls "Indian tourism," but defines it as "Indian-owned business that falls into certain industry groups" (e.g., guiding/outfitting and sport fishing, native crafts supplies, art museums, accommodation) (DINA 1988:1-2ff). The different mandates of these two federal agencies explain, in part, their alternative ways of defining native forms for touristic consumption in these two documents, with Tourism Canada attempting to increase tourism revenues for primarily non-aboriginal business interests in Canada, while DINA is specifically promoting aboriginal economic ventures. Nonetheless, these two agencies appear to be working at cross purposes with one another and indeed Tourism Canada's definition of a "native tourism product" seems out of step with the UNESCO/WIPO provisions described above.

ABORIGINAL STRUGGLES FOR EMPOWERMENT

Cultural productions by and about Indian, Inuit, and Métis peoples in Canada are produced and sold within the context of a volatile na-
tional debate regarding aboriginal rights. Thus, challenges regarding mass-produced "native type" souvenirs are but one part of a broader struggle on the part of aboriginal peoples to sustain their own cultural forms and transform their relations with the Canadian State. Just as aboriginal political organizations call for the settlement of land claims and the establishment of native self-government, they also call for an end to the cultural policies of state agencies and public institutions that benefit others at their expense.

For example, there are calls for changes in the institutional practices of public museums, which are said to exclude native peoples from having any real voice in how they are represented (Ames 1986, 1987; Danzker 1990; Canadian Museums Association 1987, 1988). Aboriginal critics have also accused non-aboriginal authors, film makers and visual artists of unfair appropriations of native cultural forms (Cardinal-Shubert 1990; Keeshig-Tobias 1990; McMaster 1990; Taylor 1987). As one recent observer has written, "[t]he debate on the appropriation of aboriginal imagery and subject matter by white artists, writers, and film makers has exploded into a major national issue in Canada" (Danzker 1990:23).

Furthermore, accusations of "cultural appropriation" are made not only regarding mass-produced souvenirs, but also regarding more expensive, handmade items that are said to replicate distinctive native ones. One focus of these critiques are carvings in soapstone handmade by non-aboriginal artists that echo those done by Inuit (Denhez 1983, 1990). Another focus are "imitations" of the famous Cowichan knitted sweaters that are an important source of income for members of the Cowichan band of Indians on Vancouver Island (Meikle 1987). The Cowichan Band Council successfully instituted legal action in 1979 to prevent non-Indian producers from using the name "Cowichan." However, there are still over a dozen manufacturers of sweaters in this style (including Japanese producers who market in both North America and Japan); they attach tags to these sweaters that often mislead purchasers to think they are native-made (Denhez 1990:38; Meikle 1987:20-25).

Concerns regarding uses by others of their cultural forms have also been raised by indigenous peoples in other (post)colonial states. For example, in Australia a government study of the Aboriginal arts and crafts industry, as well as a cover story in Time Australia, report concerns similar to those now being raised in Canada (Attwood 1990; Commonwealth of Australia 1989). In the United States, a federal study concluded that sales of imported, non-Indian made "Native American-style" goods significantly cut into sales by American Indians of jewellery and handicrafts (Watkins 1985). As Anderson has remarked with regard to challenges by aboriginal Australians, "...the foundation of the debate is not so much authorship, but authority; a question of unequal power relations" (1990:10). For aboriginal peoples in post-colonial states, cultural forms are one arena of political struggle as those with power attempt to control how cultural forms are produced, used, and made meaningful, and, in particular, who benefits economically from their sale.
Transformative Practices

In addition to writing and speaking out about the ways their cultural forms are used by others, aboriginal peoples undertake a range of other creative practices aimed at transforming widely held meanings about aboriginal peoples and aboriginal cultural forms. That is to say, aboriginal cultural producers also struggle to change the status quo by engaging in what Turner (1990) has referred to as the "politics of signification." As Gruneau writes, such cultural struggles

... will necessarily involve a struggle over signification. What matters is the way in which different social interests might conduct an ideological struggle to separate particular signifiers from any preferred or dominant meaning system and rearticulate them in an oppositional fashion (1988:24).

For example, aboriginal groups are increasingly mounting museum exhibits of their own that challenge the false presumptions that envelop contemporary aboriginal identity and reveal ways in which native images have been exploited (for example, an exhibit entitled "Fluffs and Feathers" held at the Woodland Cultural Centre in Brantford, Ontario; see Doxtator 1988). Artists of native ancestry also challenge the ways that native peoples are treated and thought about in the wider society when they produce individual works of art, for instance, through their use of ironical or parodic aesthetic modes (Ryan 1992).

It is also the case that some aboriginal producers offer inexpensive objects to tourists that constitute challenging alternatives to those mass-produced "native-type" items that currently dominate the souvenir trade in Canada. For example, gift shops on Indian reserves, as well as craft stands at native sponsored events, generally sell only native produced items, many of which carry tags that promote them as "authentic" because they are native-made. Such tags are one response to the proliferation of tags on nonnative made items that have ambiguous wording or advance broad notions of "authenticity."

Another response is the effort by aboriginal producers to make their items more widely known to retailers (for example, the presence at the 1990 Toronto Gift Show of a few native companies and cooperatives exhibiting only native produced goods). Aboriginal associations also put on exhibitions and trade shows where native goods are sold, and there are national organizations that promote aboriginal arts and crafts through their publications and other programs (regarding Inuit arts and crafts, see Inuit Art Foundation 1990/91 and for Indian arts and crafts, see articles in the magazine Artscraft, published between 1989 and 1990 by the National Indian Arts and Crafts Corporation, a national organization whose programs have now devolved to provincial and territorial arts and crafts associations).

At retail outlets on reserves or at native organized events, one can buy some mass-produced objects, primarily dolls, which are similar to objects sold by nonnative producers (although they are clearly labeled native-made). However, many of the inexpensive native-made items available for sale are in fact handcrafted. They include miniature ca-
noes and drums made of leather or birch bark, small baskets, mats, and napkin rings made of birch bark and sweet grass (some decorated with porcupine quills), replicas of Indian ceramic forms, beaded jewelry, and the "low end" of the moccasin trade (Figure 4). Many of the miniature forms replicate functional items no longer widely used, so that making them not only brings economic rewards to their aboriginal producers but is also a way of preserving these forms within the collective memories of aboriginal groups and sustaining their sense of distinct aboriginal cultural identities. Indeed, in contrast to those mass-produced "native type" souvenirs that generally signify a tourists' experience of Canada, their promoted referent is a tourist's experience of aboriginal cultures in Canada.

In making cultural forms for touristic consumption, aboriginal producers assert the right to represent their own aboriginal past(s). Souvenir production can also be a means whereby they promote among non-aboriginal Canadians new meanings about how aboriginal peoples ought to properly articulate with(in) the Canadian state, meanings that draw upon the past but also constitute innovative responses to the current political context.

For example, this was the case for souvenirs sold at a powwow on a Quebec Indian Reserve during the summer of 1991. Scores of these powwows are put on across Canada on native reserves during the summer months. They include performances (for prize monies) by costumed dancers to the accompaniment of drumming and singing and the sale by aboriginal entrepreneurs of refreshments and native-produced arts, crafts, and inexpensive souvenir forms. Such powwows are enormously popular among native peoples in Canada, and they are also attended by tourists; indeed powwows are advertised abroad in government travel ads as part of the state's effort to promote "native cultural tourism."

Figure 4. Items Made by Aboriginal Producers (photo by John Flanders)
The Quebec powwow under consideration here took place during the first summer after what have come to be termed “The Death of Meech Lake” and “Oka,” those two cataclysmic political events that have now profoundly altered relationships between aboriginal peoples and the Canadian state. “Meech Lake” refers to an accord whereby the federal government attempted to obtain acceptance by the province of Quebec of Canada’s recently repatriated Constitution. Aboriginal groups had protested this accord because it did not grant them rights to self determination that they claim. The accord required ratification by all ten Canadian provinces before late June of 1990. It failed, in part because the one aboriginal member of Manitoba’s provincial legislature refused a motion to extend the deadline for signing the accord (the rules of the Manitoba legislature requiring unanimity in such an event).

“Oka” refers to events that occurred just after the failure of the Meech Lake Accord on and near two Indian reserves in the province of Quebec. During July and August of 1990, there was an armed confrontation on the Kanasatake Reserve near the town of Oka, just west of Montreal, first between Indians and the Quebec police over land claimed by the reserve that was being developed as a golf course by nonnative residents of Oka, and subsequently between Indian protesters and the Canadian army that was ordered in by the federal government (at the request of Quebec). Individuals from the nearby reserve of Kahnawake joined the protest by blockading a major commuter bridge that crossed their reserve and linked Montreal with its densely populated suburbs. Here, too, the Canadian army was called in and there was an armed standoff between the two sides of over two months, which necessitated long detours for non-aboriginal commuters to Montreal and led to angry confrontations between them and the native protestors.

During the events of “Oka,” Mohawk Indian “warriors” led the protest and gained massive coverage in the press and on live television. Wearing the green camouflage “battle fatigues” that many Canadians had come to associate with Vietnam, Indian warriors blackened their eyes and covered the remainder of their faces with makeshift bandanna masks. While state officials portrayed them as criminals (and indicted many on criminal charges), Indians countered that being a Mohawk warrior is a tradition-based role, and that warriors are responsible for defending Indian lands against invasion by a foreign state.

After the conflict of 1990, the summer of 1991 seemed an inauspicious time to hold a powwow in Quebec on the Kahnawake reserve. But this was precisely what was done. Indeed, the powwow was promoted as an opportunity for natives and nonnatives to come together in a spirit of friendship and sharing, as a time to heal the wounds of “Oka.” The powwow also provided the members of this Indian “nation” with the opportunity to represent their own view of recent events to the thousands of aboriginal and non-aboriginal people who showed up from adjacent Montreal and elsewhere in Canada and the United States, as well as to members of the national and international media who covered this event.

One way in which this was accomplished was by offering native-
produced souvenir forms that promoted positive meanings about Mohawk Indians. For example, many people attending this powwow bought T-shirts that bore celebratory inscriptions (e.g., “Kahnawake—Echoes of a Proud Nation”). Also among the inexpensive items being sold, there were picture postcards produced by “Fresh Pine Productions” of Kahnawake, Quebec, which reproduced photographs taken during the Canadian army’s 1990 occupation of Kahnawake Reserve. The postcards showed Canadian soldiers hoisting their guns as they occupied an Indian reserve and encircled it with rows of barbed wire; they showed Canadian army helicopters hovering over Indian homes and army tanks blocking access to reserve roads. Along with captions such as “Forces of Oppression” and “Canadian Apartheid,” these postcards offered a dramatically different view of the people of Canada than found on more “typical” souvenir forms; at the same time, they challenged the state’s view that Mohawk warriors—rather than the Canadian army—had engaged in illicit acts.

CONCLUSIONS

Souvenirs that depict non-aboriginal Canadians are rare indeed, as are inexpensive native-made items that have explicit political intents. Instead, aboriginal cultural forms are commoditized by nonnative producers in a seemingly endless array of ways. But such practices are now widely contested, as aboriginal peoples dispute the right of non-aboriginal entrepreneurs to appropriate native forms for their own economic and symbolic ends. Critics call for greater enforcement of both federal and provincial consumer legislation, and some also advocate the increased use of intellectual property laws.

Debates in Canada about cultural appropriation are not likely to be easily resolved. They indicate that different groups within Canada have profoundly different views regarding how cultural forms are to be produced, and made meaningful, and by whom. These debates indicate that cultural productions—even inexpensive souvenirs—are sites/sights of struggle over power. They reveal that both cultural producers and state officials engage in this struggle. In the case of souvenir forms, it may well be tourists who decide the case through their individual purchasing acts.

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