

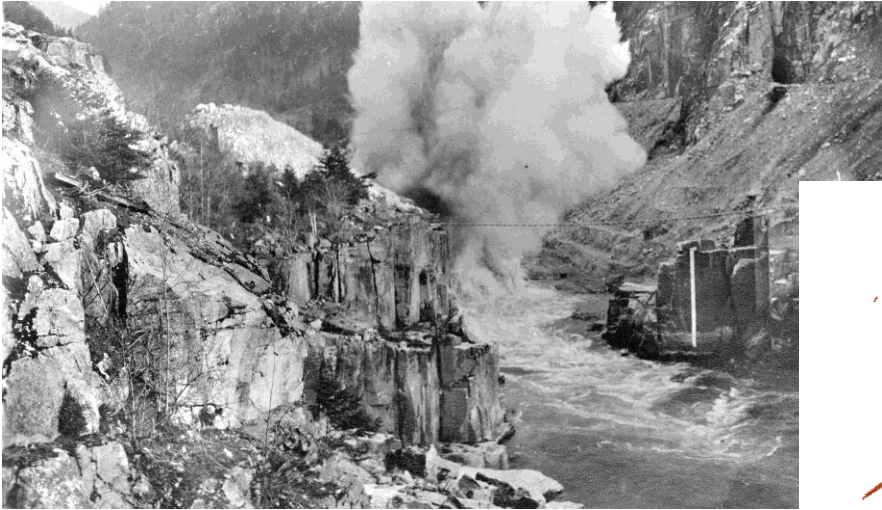
Indigenous jurisdiction, Self-Determination and Child Welfare

Presenters: Halie Kwanxwa'logwa Bruce, J.D.
Dr. Sarah Morales



Wrapping our Ways Around Them

Introduction



Invitation to a Transformative Approach

- **WRAPPING OUR WAYS** is intended to be a resource that empowers Indigenous Nation and community involvement in caring for Indigenous children. It provides advice to lawyers, judges, children, families, community members and social work teams.

KEY

The following icons will be used throughout this Guidebook to guide the reader to important points.

| | |
|----------------------|--|
| ADVOCACY |  |
| ACTIONS |  |
| BEST PRACTICES |  |
| CASE STUDIES..... |  |
| INDIGENOUS LAWS..... |  |



ShchEma-mee.tkt (Our Children) Project

Our Past, Our Present, Our Dream for the Future

uenu
i
wit
in
a
wl
caj





BEST PRACTICES

Indigenous communities could seek to have their own traditional dispute resolution processes used to address child protection. This is possible under s. 22 of the BC CFCSA and also more broadly under the Federal Act's incorporation of Indigenous ways and laws.

Indigenous Laws: Parallel Indigenous Legal Institutions

The establishment of Indigenous parallel judicial institutions transform the situation for Indigenous children, families and options for the recognition of parallel Indigenous institutions include:

is BC CFCSA court sentencing court at the BC CFCSA appropriate way. This involved at all levels



Case Study: Aboriginal Family Healing Court Case Conferences

A hybrid court established in the New Westminster Provincial Court which is a set process involving the judge, elders, parents (and potentially representatives of a child's family). The goal is to create a wraparound approach families in addressing child protection concerns.

and welfare courts (similar to Gladue sentencing) provide an opportunity to develop innovative solutions that blend Indigenous values, ways of making decisions and legal orders.

Indigenous families work closely with elders to better understand their strengths, challenges and how they can address the impacts of colonization and systemic racism;

Programs and social workers are educated about the impacts of past government policies had, and continue to work with Indigenous Peoples in Canada and their culture;

Indigenous families work with elders, the program coordinator and any chosen personal or professional support to develop a cultural safety agreement in order to create a culturally safe environment for the family;

The program coordinator utilizes the tools available in the community to improve outcomes for Indigenous children and families involving Indigenous communities in child protection cases. Involvement of Indigenous communities helps address the isolation parents and children experience in the child welfare process and prevent the loss of family connection experienced by past generations; children; and

Programs work with elders and the program coordinator to develop a cultural family history healing and wellness plan.²¹²

I. Creation Stories: Illustrating a Justice Trail

Nlaka'pamux laws are ancient and contain teachings about our ways of coming to correct decisions to ensure wellness for our children, families, communities and Nations.

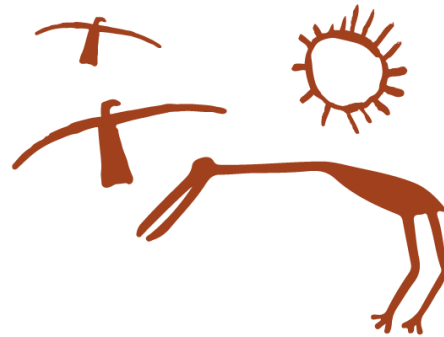
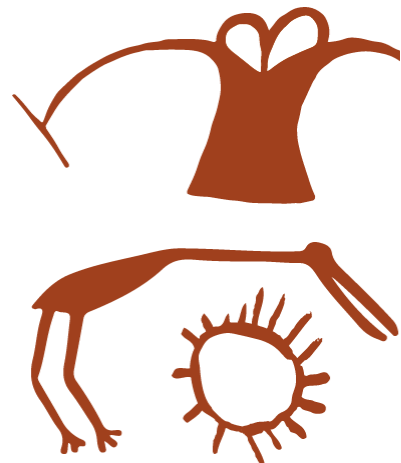
Many of our laws are contained within our creation stories originating in a time of chaos—when our world was being transformed into the world we live in today. Our laws came to us through our ancestors as we learn to live in the right way with each other.

Our creation stories teach us our laws and show their messages adapt to situations, keep our laws as our core ways of being and relating to each other. Historic stories show how our ancestors may have lived their teachings in their own lives and provide the guidance for us today.

Creation stories show us a trail toward justice. The Shsh identified stories that illustrate Nlaka'pamux laws and families: Skalula (Owl) and the Boy, The Boy who was Abandoned, and Coyote and Defeat the Monsters. Though these stories may vary across individuals, families or communities, they share common teachings.

Some of the justice teachings we draw from this:

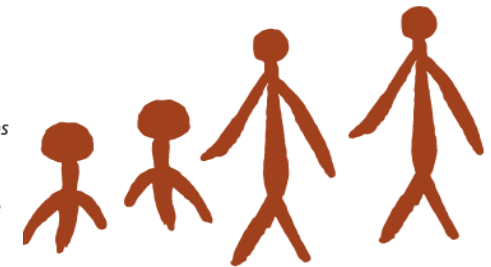
- Hala'u is responsible for coordinating the discussion and response;
- The bird family is willing to take action to protect a party, even as against a closely related family member or a very powerful member of the community/Nation;
- This is a story where other efforts to address a situation (perhaps with a closer family unit) have failed;
- To arrive at the solution, the birds engage in a joint discussion to decide what needs to be done and how to do it. No one is left out of the discussion or the solution; there are obligations on all members of the bird family to act; and
- This story addresses a community-level response to domestic violence and illustrates our obligations to act.



Indigenous child's community or family supports it, traditional dispute resolution decision-making processes should be used for Indigenous children.

Programs should propose mechanisms that blend Indigenous decision-making processes with other alternative dispute resolution processes (such as mediation) to create a model that respects Indigenous values, community and family well-being, and family well-being. Appropriate, the child, working with the director, and legal counsel.

Alternative dispute resolution models could be developed for developing an Indigenous decision-making model that reflects Indigenous values and family wellness and could be integrated into a stand-alone process, or as an option falling under the jurisdiction of the court and legal orders.



Advocacy/Indigenous Laws

At a protection hearing, Indigenous communities could make interventions, including:

- Identifying supports within the community to help a family to heal the problems that have led to the child protection concern;

APPENDIX: Forms and Making Applications

Introduction

The BC CFCSA, BC CFCSA Regulation and Rules set out the law and process of child protection matters. The purpose of the BC CFCSA Rules is to “promote the safety and well-being of children by allowing court decisions to be obtained fairly and efficiently”. Where necessary to ensure the best result for children, the Rules or procedures may allow for some flexibility.

Appendix A of the Rules contains forms that can be used when asking the court to make certain orders. Some of these forms are for use by the director (for example, Form 1 is a Presentation Form and contains information which the director must file when they take a child into care); other forms can be used by the director, parents, Indigenous communities or others to make an application about a child. There are no specific forms for exclusive use by Indigenous communities.

There are two ways for Indigenous communities to ask the court to make an order about a child: (1) File a written application, using the forms provided in the Rules; or (2) Make an in-person application in court. The Judge has the discretion to decide whether to allow an application to be made orally or require that official forms be filed to make an application.

Orders that Indigenous communities could ask a court to make include:

1. Access to a child in:
 - a. interim or temporary custody (s. 55), or
 - b. continuing custody (s. 56);
2. Changes to supervision, temporary custody or access orders (s. 57);
3. Disclosure (s. 64 or 79);
4. Adding the Indigenous community as a party to a proceeding (s. 39(4));
5. Transferring the file to a different Registry (Rule 8(12)), or with the consent of all parties (Rule 8(13));

APPENDIX:



BEST PRACTICES



Indigenous communities can help assess child protection concerns in a culturally sensitive way and identify any stereotypes, or false assumptions, that may be reflected in the consideration of a child's risk. Additionally, Indigenous communities can help define the risks that a child faces through involvement in the child welfare system by pointing out how:

- Removing an Indigenous child from their cultural connections may endanger them over the long-term;
- Cultural factors may insulate an Indigenous child against identified risks; and
- False assumptions about Indigenous cultures or parenting styles may influence a determination that a child is at risk.

Indigenous laws could create different steps in a child welfare process, ultimately contemplating situations where parent(s) are unable to care for a child, and how that child would be cared for within their family and community.

Actions

Where a parent or family has turned their life around, an Indigenous community could support an application to cancel a CCO. Even if that does not happen, Indigenous communities could actively seek, support and develop placement options within the extended family and cultural community. The test for setting aside a CCO is set out in *Director of Child, Family & Community Service v. AI*.²⁰⁶ Section 54 allows a party to a CCO proceeding to apply to the court to cancel a CCO “if circumstances that caused the court to make the order have changed significantly” or to receive notice if another party makes an application to cancel the CCO. Only a party to a child protection proceeding can apply to cancel a CCO. Permission of the court is required to ask for a CCO to be set aside, and that will only be granted where “the circumstances that caused the court to make the order have changed significantly”.



A Circle of Care and Accountability process will be formed to support each family or child where intervention is required, and will work together on an on-going basis to keep the children safe, and to help heal the family where possible.

