Indigenous jurisdiction, Self-Determination and Child Welfare

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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

Our Challenges
Colonization, Residential Child Welfare System
Family and Social Breakdown

Ground We Are Standing On

Nk'mipx Language, Laws, Culture

Our Roots - Our Strengths

The Work of the ShchEma-mee.tkt Project

Carrying Our Laws and Traditions Forward
Indigenous Laws: Parallel Indigenous Legal Institutions

The establishment of Indigenous parallel judicial institutions transform the situation for Indigenous children, families, and communities. A key option for the recognition of parallel Indigenous institutions include:

A BC CFCSA co-sentencing court at the BC CFCSA appropriate way. This evolved at all levels.

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 from ancestors to live in the right way with each other.

Our creation stories teach us our laws and show us the ways to adapt to situations, keep our laws alive, and relate to each other. Historic stories show how our ancestors may have used these teachings in their own lives and provide the guidance we need today.

Stories show us a trail toward justice. The Shx’iiw’alh identified stories that illustrate Nlaka’pamux law and values. Skalula (Owl) and the Boy, T The Boy who was Abandoned, and Coyote and the Deaf Monsters. Though these stories may be individual, families or communities, they share across tellings.

Some of the justice teachings we draw from this:

- Hala’u’si 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 the efforts to address a situation (perhaps with a closer family unit) have failed;
- To arrive at the solution, the birds engage in a joint decision 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.

Case Study: Aboriginal Family Healing Court Case Conferences

A hybrid court established in the New Westminster Provincial Court which is a process involving the judge, elders, parents (and potentially representatives of the child’s), the child, and the child’s community or family. The goal is to create a wraparound approach to address child protection concerns. The court provides opportunities to develop innovative solutions to Indigenous values, ways of making decisions, and family healing. The court promotes a holistic approach to healing where elders, community members, and families can work closely together to develop a family history healing and wellness plan.

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.

Involvement of Indigenous children and communities in the creation and implementation of laws. The involvement and participation of Indigenous communities in the legal process can ensure that laws are reflective of Indigenous values and ways of making decisions. Indigenous legal processes can incorporate traditional dispute resolution methods, such as mediation, to address child protection concerns.

Involvement of Indigenous children and families in the legal process can promote healing and wellness. The involvement of Indigenous children and families in the legal process can promote healing and wellness. The involvement of Indigenous children and families in the legal process can promote healing and wellness. The involvement of Indigenous children and families in the legal process can promote healing and wellness. The involvement of Indigenous children and families in the legal process can promote healing and wellness. The involvement of Indigenous children and families in the legal process can promote healing and wellness.

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Advocacy/Indigenous Laws

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

- Identifying supports within the community to help a family to heal problems that have led to the child protection concern;
- Providing on-going support, identifying and implementing strategies within their extended family;
- Culture-specific protection and the need for children to be maintained within their extended family;
- Advocating for the rights of Indigenous children;
- Providing care for children in their extended family;
- Providing care in a setting that respects Indigenous culture.

APPENDIX: Forms and Making Applications

Introduction

The BC CFCSA, BC CFCSA Regulation and Rules set out the law and process for child protection matters. The purpose of the BC CFCSA Regulation 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 filled 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));

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.

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. A1.206 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.