

## CHANGES IN THE LAW AIMED AT IMPROVING OUTCOMES FOR INDIGENOUS PEOPLES INVOLVED IN THE JUSTICE SYSTEM



## TOPICS FOR DISCUSSION

- Notable developments in the protection of Indigenous human rights
- Indigenous child protection reform



# Protecting Indigenous Human Rights in BC



## OVERVIEW

BC Human Rights Tribunal: enhancing  
access to the tribunal for Indigenous  
Peoples

Notable Decisions: Campbell v.  
Vancouver Police Board (No. 4), 2019  
BCHRT 275

R.R. v. Vancouver Aboriginal Child and  
Family Services Society (No. 2), 2019  
BCHRT 85

## Expanding Our Vision: Cultural Equality & Indigenous Human Rights, January 15, 2020

- The BCHRT committed to addressing the access to justice concerns for Indigenous Peoples in bringing human rights complaints to the tribunal and commissioned the preparation of a report by Ardith Walpetko We'dalx Walkem QC
- The Expanding our Vision Report uncovered several barriers Indigenous Peoples face in accessing the tribunal and made 9 recommendations

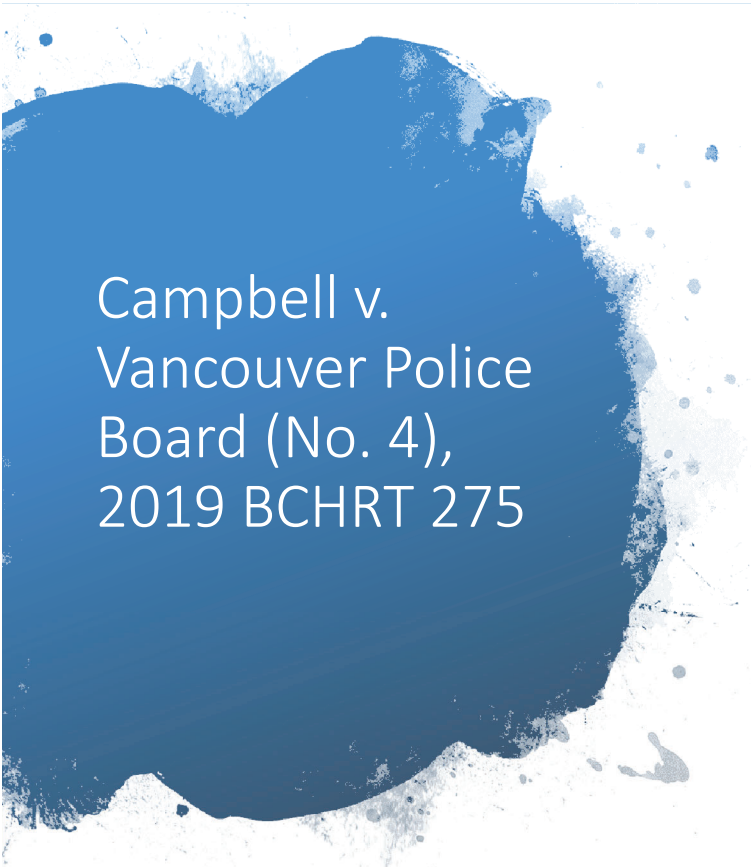
### SUMMARY OF RECOMMENDATIONS

Broaden the concept of human rights to incorporate international human rights principles as reflected in the UNDRIP and Indigenous legal traditions, in the Code and BCHRT operations and practice

Advocate to add Indigenous identity as a protected ground to the Code. Current grounds of discrimination under the Code (including based on race, colour, ancestry or religion) do not adequately address the discrimination Indigenous Peoples report experiencing.

Increase the number of Indigenous Peoples at all levels of the BCHRT, including staff, tribunal members and contractors.

- Create education materials and training:
  - a) for Indigenous Peoples about the Code and BCHRT processes;
  - b) Within the BCHRT, to develop cultural competency and safety among BCHRT staff and tribunal members;
  - c) for the general public, through a proactive campaign to highlight specific areas of discrimination faced by Indigenous Peoples.
- Identify and remove procedural barriers within the BCHRT.
- Increase the training for and number of lawyers available to support Indigenous Peoples in bringing human rights complaints, with an emphasis on Indigenous lawyers.



## Campbell v. Vancouver Police Board (No. 4), 2019 BCHRT 275

- Deborah Campbell, an Indigenous mother witnessed the police stop and arrest her 19-year-old son. Her questions about what was going on went unanswered. Instead she was roughly separated from her son and blocked from witnessing his arrest
- She alleged that the VPD discriminated against her on the basis of race, colour and ancestry contrary to s. 8 of the Human Rights Code
- The VPB denied their conduct amounted to discrimination

# Campbell Decision

- The tribunal found that the police conduct towards Ms. Campbell amounted to discrimination and ordered the VPB to pay 20k as compensation for injury to her dignity, feelings, and self-respect
- Having found that the VPB lacked training and preparedness to deal appropriately with an Indigenous person – the tribunal also ordered that the VPB train any officers who engage with Indigenous people to ensure they do so without discrimination

The VPB perpetuated the historical disadvantage against her as an Indigenous person and her Indigenous identity was a factor in the adverse treatment

The police relied on “subconscious stereotypes to assess her as suspicious, possibly criminal” instead of a mother trying to ensure the safety of her son

The tribunal considered the social context history and longstanding troubled relationship between police and Indigenous Peoples including both under-policing and over-policing



## R.R. v. Vancouver Aboriginal Child and Family Services Society (No. 2), 2019 BCHRT 85

- On April 30, 2019, the British Columbia Human Rights Tribunal decided that it would hear a complaint filed by a First Nations mother, alleging that VACFSS discriminated against her based on race, ancestry, colour, and mental disability contrary to s. 8 of the *Human Rights Code*
  - RR alleges that VACFSS relied in part on “stereotypical and prejudicial assumptions” related to her mental health and status as an Indigenous woman to deny her custody of her four children and place restrictions on her access
  - That VACFSS failed to accommodate her cultural and disability-related needs and instead relied on her protected human rights characteristics to create barriers for the return of her children to her care
- 
- VACFSS argued to dismiss the claim - denies these allegations and argued that at all times, it was acting within its authority under the *Child, Family and Community Service Act* in keeping with the best interests of the children

### Decision:

Motion to dismiss R.R.’s complaint dismissed

The tribunal may draw an inference of discrimination if it determined that “RR was subjected to an unreasonably strict parenting standard, particularly compared to the foster homes where the children had experienced abuse and had engaged in serious self-harm.”

Tribunal agrees to hear complaint – outcome pending



# CHANGES TO INDIGENOUS CHILD PROTECTION LEGISLATION

Provincial and Federal



## OVERVIEW

- History of child welfare policies and practices

### Legislative Reform:

- Bill C-26: *Child, Family and Community Service Amendment Act (contained 50 amendments)*, in force April 1, 2019
- *An Act respecting First Nations, Inuit and Metis children, youth and families* in force January 1, 2020:

### Tools for Implementation:

- Wrapping Our Ways Around Them
- Jordan's Principle

## Over- representation of Indigenous Children and Youth in Care

Provincial Rate of CYIC per 1,000 Population (0-18 years)

Year	All	Indigenous	Non - Indigenous	Rate of CYIC All	Rate of CYIC Indigenous	Rate of CYIC Non-Indigenous
2002	10,049	4,273	5,776	10.7	64.0	6.6
2003	9,479	4,256	5,223	10.2	62.6	6.1
2004	9,009	4,170	4,839	9.8	60.2	5.7
2005	8,975	4,340	4,635	9.8	61.5	5.5
2006	9,056	4,491	4,565	9.9	62.5	5.4
2007	9,165	4,663	4,502	10.1	63.5	5.4
2008	9,108	4,729	4,379	10.0	63.1	5.3
2009	8,832	4,630	4,202	9.7	60.6	5.1
2010	8,394	4,576	3,818	9.2	58.7	4.6
2011	8,264	4,567	3,697	9.1	57.5	4.5
2012	7,952	4,483	3,469	8.8	55.1	4.2
2013	7,925	4,171	3,754	8.8	50.1	4.6
2014	7,934	4,139	3,795	8.9	48.7	4.7
2015	7,736	4,417	3,319	8.6	50.8	4.1
2016	7,217	4,420	2,797	8.0	49.8	3.4
2017	6,951	4,364	2,587	7.7	48.1	3.2
2018	6,698	4,252	2,446	7.4	46.0	3.0

Children and Youth in Care statistics on British Columbia Services Website:  
<https://mcf.gov.bc.ca/reporting/services/child-protection/permanency-for-children-and-youth/performance-indicators/children-in-care>

## COLONIZATION

- Indian Residential Schools
- Sixties Scoop
- Harmful government policies and laws
- Systemic racism and discrimination
- Forced assimilation
- Imposition of colonial laws, legal systems, values and beliefs on Indigenous peoples





## Impacts from Colonization

- Loss of culture and identity
- Loss of transmission of parenting skills
- Loss of self-determination
- Intergenerational trauma
- Community and family fragmentation
- Poor socio-economic conditions
- Over-representation of Indigenous peoples in the criminal justice system and child welfare system



## REPORTS SETTING OUT HISTORY OF INDIGENOUS PEOPLES IN CANADA

- Report of the Aboriginal Justice Inquiry of Manitoba, 1991
- Royal Commission on Aboriginal Peoples, 1996
- Truth and Reconciliation – Final Report, 2015
- Grand Chief's Ed John's Final Report - *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia*, 2016
- Reclaiming Power and Balance: Final Report on the National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019

## Impetus for Change

- UNDRIP, Adopted September 13, 2007
- *Declaration on the Rights of Indigenous Peoples Act*, November 28, 2019
- TRC Final Report: 94 Calls to Action
- Chief Ed John's Final Report: contains 85 recommendations for transforming Indigenous child welfare system
- Metis Relationship Accord II, ratified November 16, 2016
- MMIWG, 231 Calls for Justice

## Recent Changes to the CFCSA

- Affirms the right of Indigenous children to ***learn about and practice their Indigenous traditions, customs, and languages, and belong to their Indigenous communities***
- Greater involvement of Indigenous communities in child protection planning at every stage of the process
- Ensures Indigenous communities receive ongoing notification of legal proceedings relating to the child
- Enables greater information sharing with Indigenous communities
- Enables child protection reports to be referred directly to Indigenous nations that have child protection laws
- Enables the transfer of jurisdiction to Indigenous nations
- through written agreements



## Positives & Negatives

### P's:

- Greater information sharing and involvement of Indigenous communities in decision-making
- Greater protections for child to maintain cultural and community connections

### N's

- Amendments made without adequate consultation with Indigenous communities and organizations and failure to acknowledge the inherent right to self government
- Only 10 out of 85 recommendations from Chief Ed John's final report utilized in amendments



## Tools for Implementing Change

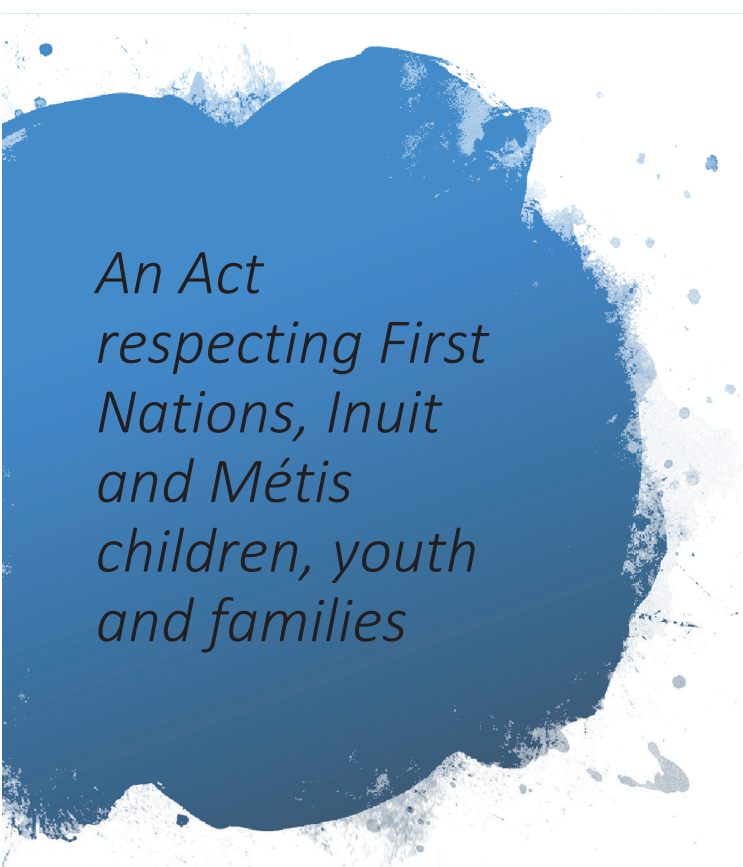
- Jordan's Principle
- Wrapping our Ways Around Them: Aboriginal Communities and CFCSA Guidebook



## The Way Forward

Decolonizing child protection policies practices:

- Learn about the history of colonization and ongoing impacts
- Take remedial steps to counter biases and negative stereotypes about Indigenous peoples
- Learn about Indigenous values, customs, beliefs, laws and culture
- Affirm the significance of lifelong cultural and community connections for Indigenous children



## *An Act respecting First Nations, Inuit and Métis children, youth and families*

- In force January 1, 2020:
- First Nations Child and Family Caring Society of Canada, Et al. v. Attorney General of Canada, 2016 CHRT 2.
- 8<sup>th</sup> non-compliance order issued September 6, 2019
- Federal Government undertakes changes in funding policies
- Expansion of Jordan's Principle

---

## Purpose of the Legislation

- Affirms the inherent right of self-government including jurisdiction over child and family services
- Sets out national standards for the provision of child and family services in relation to Indigenous children
- Intended to contribute to the implementation of the UNDRIP

---

## Positives

- Affirms the need to preserve the Indigenous child's cultural continuity
- Interpret the best interests of the child in a manner that is consistent with the law of the Indigenous group, community or people to which the child belongs
- Creates a priority placement scheme to keep the child connected to their Indigenous family, community or another Indigenous community
- Priority to preventative care services to support the child remaining with the family
- The child must not be apprehended on the basis of his or her socio-economic conditions, including poverty, lack of adequate housing or infrastructure or the state of health of his or her parent or the care provider



---

## Negatives

- “Best Interest of Child” (BIS) is paramount – the framework is informed by the cultural biases and norms of those applying it
- The BIS framework is often used to keep Indigenous children from their families and communities
- There is no mention of funding to assist Indigenous communities in the provision of child and family services
- There is no mention of funding to support the provision of preventative services

---

## Implementing Changes: Wrapping our Ways Around Them, authored by Ardith Walpetko We'dalx Walkem QC

- Actively involve Indigenous communities at all stages of process, including safety planning
- Identify barriers to community involvement in the process and suggests ways to support communities to be involved in planning
  - Ie: resources, funding, travel, etc.
- Actively involve community in assessing child protection concerns in a culturally appropriate ways
  - Identify any stereotypes or false assumptions
- Acknowledge and respect Indigenous laws, customs and traditions and the right to self-determination
- Acknowledge and understand the impacts of colonization, residential schools, the 60's scoop and historical trauma of Indigenous peoples

---

## Wrapping our Ways Around Them

- Assess any child protection concern through a culturally appropriate and informed lens – ensure Indigenous peoples are leading the process
- Learn about and understand how colonization and intergenerational trauma contributes to fear and mistrust. Bridge the gap.

---

## Wrapping Our Ways Around Them

### Some Best Practices to Consider:

- 1.01 A transformative and remedial approach involving Indigenous communities
- 1.02 Early and active interventions in CFCSA matters by communities is required
- 1.06 Creating a better future requires us to acknowledge and address the impacts of colonization and historic trauma of residential schools and sixties scoop
- 3.01 Child protection concerns must be assessed in a culturally appropriate way
- 3.04 In assessing child protection concerns for Aboriginal children and families, determine where these concerns reflect poverty rather than an actual safety concern

## Takeaways

- Meaningful dialogue that incorporates culturally appropriate and Indigenous lead planning for Indigenous children
- Conscious awakening to our current practices and shifting our mindset on how we do our work moving forward with Indigenous children, families and communities
- Implementation of cultural competency and cultural humility training

## Resources and Practical Tools

- Wrapping Our Ways Around Them:  
[https://cwrp.ca/sites/default/files/publications/en/wowat\\_bc\\_cfcsa\\_1.pdf](https://cwrp.ca/sites/default/files/publications/en/wowat_bc_cfcsa_1.pdf)
- Jordan's Principle
  - Phone # 1-855-JP CHILD (1-855-572-4453), 24 HOURS A DAY
  - [www.canada.ca/jordans-principle](http://www.canada.ca/jordans-principle)

## Resources Cited

### Child Protection Reports & Resources:

Report of the Aboriginal Justice Inquiry of Manitoba, 1991: <http://www.ajic.mb.ca/volume.html>

Royal Commission on Aboriginal Peoples, 1996: <https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>

Truth and Reconciliation Commission - Final Report, 2015: <http://www.trc.ca/about-us/trc-findings.html>: <http://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf>

Grand Chief's Ed John's Final Report - *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia*, 2016: <http://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf>

Reclaiming Power and Balance: Final Report on the National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019: <https://www.mmiwg-ffada.ca/final-report/>

*First Nation Child and Family Caring Society of Canada et. al, v. Attorney General of Canada*, 2016 CHRT 2: [https://fncaringsociety.com/sites/default/files/2016\\_chrt\\_2\\_access\\_0.pdf](https://fncaringsociety.com/sites/default/files/2016_chrt_2_access_0.pdf)

### Statutes:

*Child, Family and Community Services Act*, [RSBS 1996] Ch. 46: [https://www.bclaws.ca/civix/document/id/complete/statreg/96046\\_01](https://www.bclaws.ca/civix/document/id/complete/statreg/96046_01)

Bill 26 -*Child, Family and Community Services Amendment Act*, 2018: <https://www.bclaws.ca/civix/document/id/bills/billsprevious/3rd41st:gov26-1>

*Declaration on the Rights of Indigenous Peoples Act* [SBC 2019] Ch. 44: <https://www.bclaws.ca/civix/document/id/complete/statreg/19044>

*An Act respecting First Nations, Inuit and Metis children, youth and families* (S.C. 2019, c. 24): <https://laws.justice.gc.ca/eng/acts/F-11.73/index.html>

### Human Rights Reports and Cases

Expanding our Vision: Cultural Equality & Indigenous People's Human Rights, January 15, 2020: <http://www.bchrt.bc.ca/shareddocs/indigenous/expanding-our-vision.pdf>

Report on Implementation of Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights, June 2020: <http://www.bchrt.bc.ca/shareddocs/indigenous/expanding-our-vision-implement.pdf>

Campbell v. Vancouver Police Board (No. 4), 2019 BCHRT 275: [https://atira.bc.ca/wp-content/uploads/275\\_Campbell\\_v\\_Vancouver\\_Police\\_Board\\_No\\_4\\_2019\\_BCHRT\\_275.pdf](https://atira.bc.ca/wp-content/uploads/275_Campbell_v_Vancouver_Police_Board_No_4_2019_BCHRT_275.pdf)

R.R. v. Vancouver Aboriginal Child and Family Services Society (No. 2), 2019 BCHRT 85:  
[http://www.bchrt.gov.bc.ca/shareddocs/decisions/2019/apr/85\\_RR\\_v\\_Vancouver\\_Aboriginal\\_Child\\_and\\_Family\\_Services\\_Society\\_No\\_2\\_2019\\_BCHRT\\_85.pdf](http://www.bchrt.gov.bc.ca/shareddocs/decisions/2019/apr/85_RR_v_Vancouver_Aboriginal_Child_and_Family_Services_Society_No_2_2019_BCHRT_85.pdf)

Smith v. Mohan (No. 2), 2020 BCHRT 52:  
[http://www.bchrt.bc.ca/shareddocs/decisions/2020/feb/52\\_Smith\\_v\\_Mohan\\_No\\_2\\_2020\\_BCHRT\\_52.pdf](http://www.bchrt.bc.ca/shareddocs/decisions/2020/feb/52_Smith_v_Mohan_No_2_2020_BCHRT_52.pdf)

#### Tools for Frontline Workers

Wrapping Our Ways Around Them: Aboriginal Communities and CFCSA Guidebook, by Ardith Walpetko We'dalx Walkem QC: [https://cwrp.ca/sites/default/files/publications/en/wowat\\_bc\\_cfcsa\\_1.pdf](https://cwrp.ca/sites/default/files/publications/en/wowat_bc_cfcsa_1.pdf)

Jordan's Principle:

- Phone # 1-855-JP CHILD (1-855-572-4453), 24 HOURS A DAY
- [www.canada.ca/jordans-principle](http://www.canada.ca/jordans-principle)