

THE LEGACY AND FUTURE OF SOCIALWORK, COLONIALISM, INDIGENOUS LAW, AND CHILD WELFARE IN B.C.

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28 NOVEMBER 2022

Tara Williamson

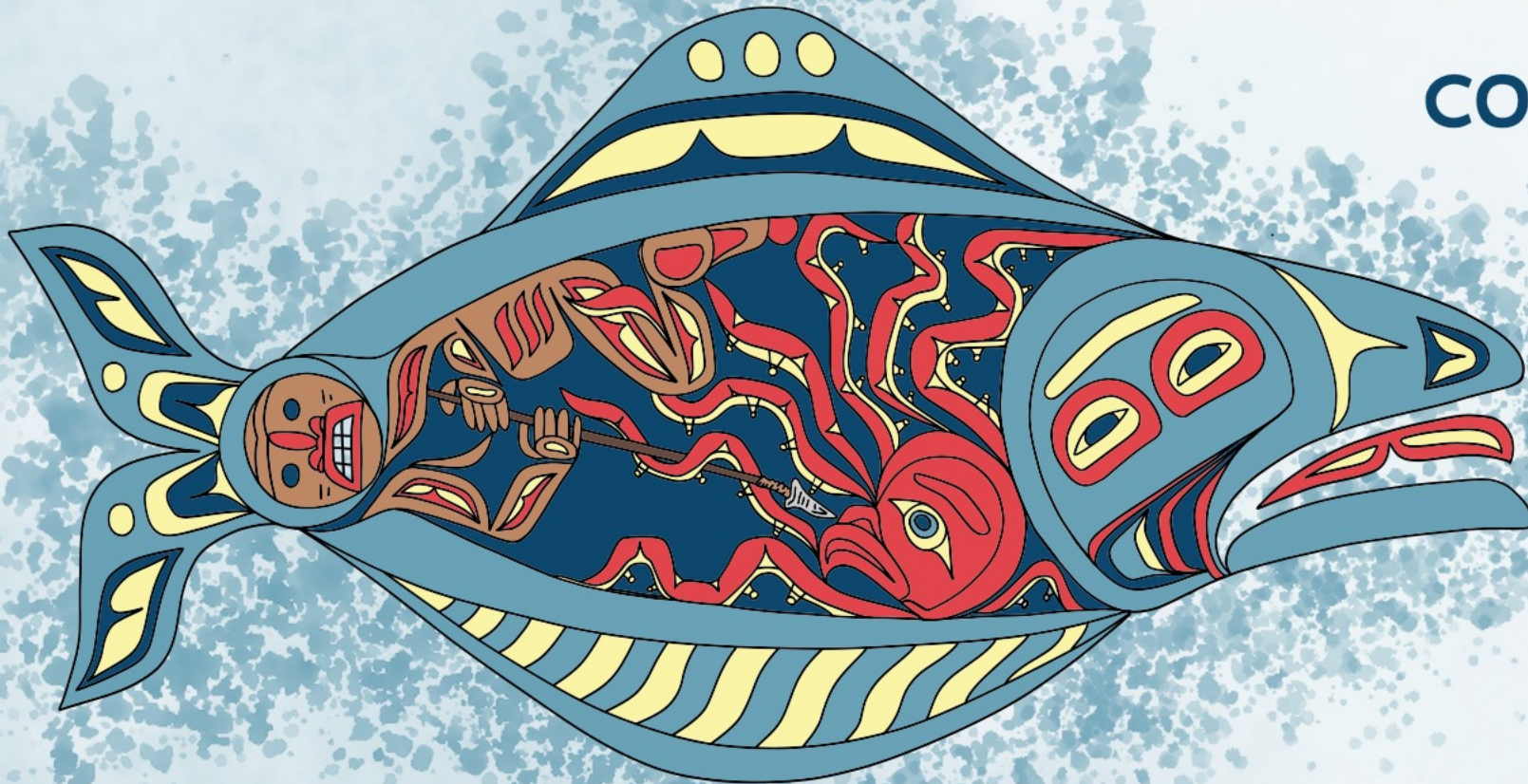
(she/her/hers/they/them/theirs)

Leslie-Ann Paige

(she/her/hers)

Ellen Campbell

(they/them/theirs)



Art by Bradley Yuxwelupton Dick



OUTLINE

1. **Introductions**
2. **Why is it important to revitalize Indigenous Laws?**
3. **The Project Overview and Context of the Project**
 - Colonialism and Social Work
4. **Project Goals**
 - Reflecting Legal Pluralism within the Coast Salish World
5. **Methodology**
 - Coast Salish Storywork
6. **Application of Methodology**
7. **Implementation**



Art by Ellen Campbell (based on a photo by Michelle Munkittrick)

NIŁ TU,Ō CHILD AND FAMILY SERVICES SOCIETY

- Delegated Aboriginal Agency (DAA) with authority through a provincial delegation agreement to administer parts of British Columbia's *Child, Family, and Community Service Act* (CFCSA).
- Offers a variety of Family Strengthening services for Coast Salish children, families, and caregivers.



www.niltuo.ca

NORTHERN STRAITS COAST SALISH NATIONS

NIŁ TU,O has served as the DAA for Northern Straits Coast Salish Nations since 1997, including:

ŪSÁNEĆ First Nations

- Tsawout
- Tseycum
- Pauquachin
- Tsartlip

lək'wəŋən

- Songhees

SĆIΛNEW (Beecher Bay)

T'Sou-ke



Art by Ellen Campbell



NIETU,O & THE REVITALIZATION OF INDIGENOUS LAW IN A SERVICE DELIVERY CONTEXT

- Practice within the child welfare context as an extension of law
- Legislation and policy funnels down into practice, which is the primary impact on children and families
- Incorporating Indigenous laws into our practice is integral in shifting the systems of oppression in which child and family services is situated



A Paradigm Shift: Nl̓x̌ TU,Ō Service Delivery

Through this project, we aim to weave a basket of knowledge about child and caregiver nurturance and safety that holds and supports community.

This work starts from that centre and moves out to reflect back a view of Coast Salish law relating to child and caregiver nurturance and safety.

This basket weaves together the lived experiences of Coast Salish children and families impacted by the child welfare system, this history of colonial violence within the Coast Salish world, and Coast Salish understandings of child and caregiver nurturance and safety through its stories and law.

The hope is that this act of weaving, and the basket created through this practice, will breathe renewed life into child welfare practice throughout the region, and make it more resonant with the core, or the stem, of the communities and individuals Nl̓x̌ TU,Ō serves.

Photo by Michelle Munkittrick



INDIGENOUS LAW RESEARCH UNIT



- The Indigenous Law Research Unit (ILRU) is a dedicated research unit committed to the restatement and revitalization of Indigenous laws.
- Arm's-length institute housed at UVIC law; project-funded
- ILRU Goals:

Work with and support work by Indigenous communities to rebuild and revitalize their laws.

Develop tools to better access, understand, and apply Indigenous laws today.

Create more respectful and symmetrical conversations across peoples, legal orders, and societies.

Web: ilru.ca

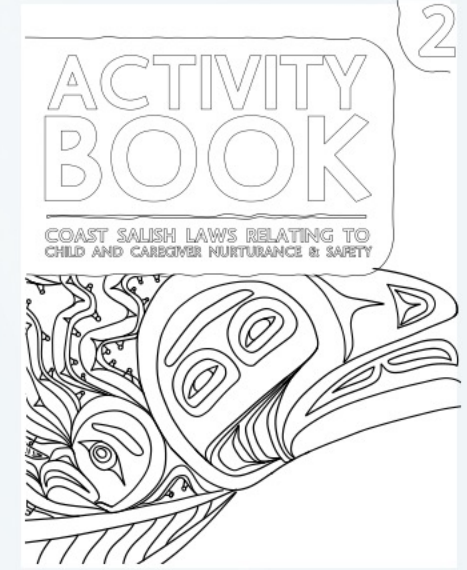
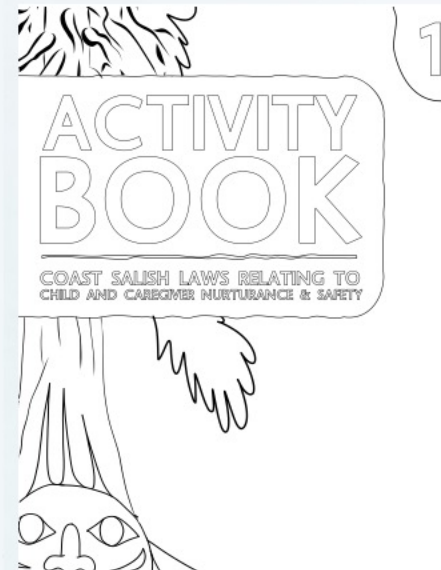
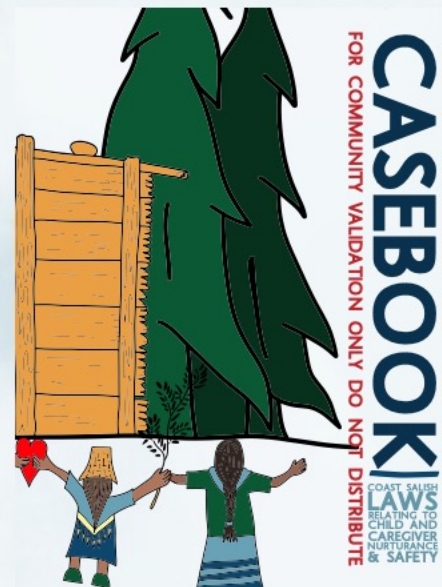
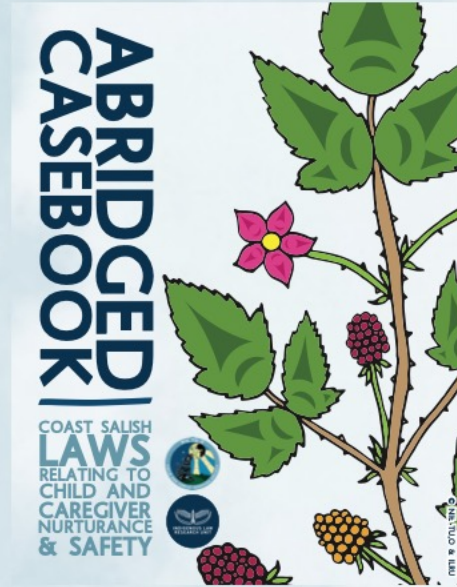
Instagram: [@ilruuvic](https://www.instagram.com/ilruuvic)

Facebook: [The Indigenous Law Research Unit](https://www.facebook.com/TheIndigenousLawResearchUnit)

Artwork based on Val Napoleon's Raven Paintings, illustrated and digitized by Ellen Campbell



Coast Salish Laws Relating to Child & Caregiver Nurturance & Safety Materials



<https://ilru.ca/toolkit-centres-salish-laws-on-child-caregiver-nurturance-and-safety/>

Facebook: The Indigenous Law Research Unit

Instagram: @ilruuvic

PROJECT GOALS

- **Draw laws** from narratives, experiences, art, and knowledge from the communities and Nations that NIT TU,O serves to promote a shift in child welfare practice today.
- **Make visible** law from narratives
- **Refocus** concept of “child welfare” to child and caregiver nurturance & safety
- **Promote** Broader Public Education
- **Provoke** Conversation

COLONIALISM & SOCIAL WORK: A TIMELINE

CONTEXTUALIZING THE PROJECT

The POOR LAWS determined who is eligible for welfare based on whether someone is considered deserving or undeserving.

1500s

The CHARITY ORGANIZATION SOCIETY MOVEMENT adopts a "scientific" Darwinian model of charity. This model supported the use of asylums and eugenics for people considered to be "defective" or "feeble."

MID-1800s

The establishment of INDIAN RESIDENTIAL SCHOOLS. While schools were already being operated by Christian churches, The Bagot Commission of 1844 stated that children should be separated from families to assimilate them & convert them to Christianity.

MID-1800s

The ACT TO ENCOURAGE THE GRADUAL CIVILIZATION OF INDIAN TRIBES IN THIS PROVINCE, AND TO AMEND THE LAWS RELATED TO INDIANS was the precursor to the present-day *Indian Act* & legalized the process of enfranchisement: the process by which a person would lose Indian status.

1857

The first CHILD PROTECTION ACT [SBC 1901, C 9] enables the creation of Children's Aid Societies (Victoria and Vancouver created societies the same year). The Act talks about apprehension, guardianship, and foster care with the State considered a protector of last resort. Because child welfare was under the jurisdiction of the provincial government, the first Children's Aid Societies had little to no involvement with families on reserve.

1901

THE INDIAN ACT

1876

The SETTLEMENT HOUSE MOVEMENT brought the middle & upper class to live amongst the poor to provide advocacy and services. This movement focused more on societal causes of poverty (rather than individual causes) and ushered in the professionalization of social work.

LATE 1800s

INDIAN ACT AMENDMENT

makes attendance at Indian Residential Schools mandatory for children ages 6-16. Children and families were subject to arrest, and parents subject to imprisonment, if found in violation of this law.

1894

The SEXUAL STERILIZATION ACT

of BC authorized principals of any residential school to sterilize any of the children in the schools without their knowledge or consent, as children were placed under the welfare of their principal. The Act remained in effect until 1979.

1933

The BRYCE REPORT

on the Indian Schools of Manitoba and the Northwest Territories condemns the unsanitary and inhumane conditions of residential schools. He reports on the alarming number of student deaths and incidents of disease. Eventually, Dr. Bryce's research is defunded and suspended under the federal department of supervision of Duncan Campbell Scott.

1907

The INDIAN ACT WAS AMENDED TO INCLUDE SECTION 88

which stipulated that provincial laws of general application could apply to "Indians" and lands reserved for "Indians." This allowed provincial child welfare organizations to work on reserve. Within 10 years of this amendment, the representation of Indigenous children in care in BC alone went from less than 1% to 34.2%.

1951

The SIXTIES SCOOP

During this time, children were apprehended by the thousands with little to no regard for the cultural, emotional, or psychological well-being of the children or their families. Children were sent and sold for money all over the world, often with no information about where they were originally from, making repatriation difficult, if not impossible. It's estimated that approximately 20,000 Indigenous children were taken from their families during the Sixties Scoop.

1950s-1980s

INDIAN CONTROL OF EDUCATION

In response to Canada's assimilationist education policies, the National Indian Brotherhood published a plan for Indigenous education that prioritizes Indigenous philosophies and methodologies.

1972

The KIMELMAN REPORT

is issued by the Province of Manitoba and explicitly states that "cultural bias in the child welfare system is practiced at every level." Provinces begin adding the language of "best interests of the child" to child welfare legislation.

1983

The UNITED NATIONS CONVENTION RIGHTS OF THE CHILD (CRC) is a legal international agreement that protects the civil, political, economic, social, and cultural rights of children. The CRC states that Indigenous children are entitled to the right to their culture, religion and non-discriminatory education, and to access to diverse languages.

1989

REPRESENTATION FOR CHILDREN AND YOUTH ACT is established in BC and establishes the Office of the Representative Child and Youth Advocate. Ellen Tuohy is appointed as the first Representative Child and Youth Advocate.

2006

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1867
Confederation under the **BNA ACT, 1867**. Matters pertaining to "Indians" and lands reserved for "Indians" is delegated to the federal government under section 91(24).

1876
THE INDIAN ACT

LATE 1800s
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2006
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2006

The **REPRESENTATIVE FOR CHILDREN AND YOUTH ACT** is passed in BC and establishes the Office of the Representative for Children and Youth. Dr. Mary Ellen Turpel-Lafond is appointed as the first Representative.

1996

The **MILLENNIAL SCOOP** has been referred to as a present-day attempt to assimilate Indigenous children. There are more Indigenous children in care now than at the height of the residential school system. In British Columbia, data from 2016 shows that Indigenous children were less than 10% of the population of British Columbia but made up 60.1% of Indigenous children and youth in care.

1990

FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM
The federal government enacts legislation to download the administration of child welfare to Indigenous authorities and communities.

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The **UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)** states that Indigenous children and youth have the right to **Article 7**: "live in freedom, peace and security" and not be forcibly removed from their community **Article 14(2)**: "all levels and forms of education . . . without discrimination"

2007

Note that Canada was an objector to UNDRIP until 2016.

JORDAN'S PRINCIPLE

2007

Jordan River Anderson was born with complex medical needs and spent the first 3 years of his life in hospital before he was given the clearance to return home. However, the federal and provincial governments fought over the bills for his medical costs for a further 2 years, during which time he could not return home. In the end, Jordan died at 5 years old, in the hospital, having never lived in his family home. Jordan's Principle states that the level of government of first contact should pay for services and resolve any conflict or jurisdictional dispute with other levels of government after the needs of the client are met.

2008

The **STATEMENT OF APOLOGY** to Former Students of Indian Residential Schools was issued by then Prime Minister Stephen Harper. It is important to note that an apology is not legally considered an admission of guilt. Despite the apology, in 2009, Harper is on record saying that Canada has "no history of colonialism."

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INDIGENOUS RESILIENCE, CONNECTEDNESS AND REUNIFICATION – FROM ROOT CAUSES TO ROOT SOLUTIONS
In September 2015, Grand Chief Ed John was appointed the Special Advisor on Indigenous Children in Care by the BC government. His report included 85 recommendations that focused on direct support, prevention, access to justice, cultural appropriateness, Indigenous jurisdiction, and service coordination.

2016

2018-2019

BILL 26 introduced amendments to the *Child, Family and Community Service Act (CFCSA)*. These amendments incorporated recommendations from both the TRC Calls to Action and the final report from Grand Chief Ed John. The changes emphasize the importance of keeping Indigenous children with their families and communities, where they may learn and practice their traditions and languages.

2015

The **FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA (FNCFCS)** went to the Canadian Human Rights Tribunal. Led by Cindy Blackstock, the FNCFCS brought a discrimination claim against the Canadian government citing inequitable treatment of Indigenous kids in the child welfare system on race and national ethnic origin. The Canadian Human Rights Tribunal found in favour of FNCFCS and ordered Canada to immediately cease its discriminatory conduct.

2019

The **CANADIAN HUMAN RIGHTS TRIBUNAL** orders the Canadian government to pay the highest remedy it can order—\$40,000 per person—to First Nations children taken into care since 2006. The ruling is appealed by the federal government under Prime Minister Justin Trudeau.

2020

An **ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH, AND FAMILIES** comes into effect. The purpose of the this federal legislation is to recognize Indigenous jurisdiction over and establish national standards for child welfare.

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CONTEXTUALIZING THE PROJECT

Paradigm shift with Child Welfare in Canada

- 2016 Canadian Human Rights Tribunal Ruling on First Nations Child Welfare and Jordan's Principle
- Move to a needs-based model for Delegated Aboriginal Agencies by the Federal Government
- *Act Respecting First Nations, Inuit and Metis children youth and families which is in effect as of January 1, 2020 (the Federal Act)*

The Federal Act supersedes British Columbia's Child, Family, and Community Services Act in a number of key areas

- Space for legal pluralism in regards to child welfare matters relating to Indigenous children and families, in particular by creating space for Indigenous law to guide practice.

Why is it important to revitalize Indigenous laws?

- **Recognizing the impact of colonialism and Canadian law on Indigenous law:**
 - Indigenous law may not be visible or evenly functioning, but it is operating today
 - Indigenous law can be rebuilt notwithstanding the damage
 - Indigenous law IS LAW
- **Indigenous legal traditions must:**
 - be an integral part of conceiving and building Indigenous governance,
 - be part of rebuilding our citizenries from the ground up, and
 - form the basis for relating to other peoples, and to state governments



A Paradigm:

Legal Pluralism within the Coast Salish World

While the notion of legal pluralism may be new to Child Welfare law, it is not new within Coast Salish law:

“One of the most interesting characteristics of the Hul’qumi’num legal tradition is the acceptance of differences in family laws.”

Dr. Sarah Morales

Here’s how it could work using an example of prenatal care

The Federal Act:

Prenatal care

(2) To the extent that providing a prenatal service that promotes preventive care is consistent with what will likely be in the best interests of an Indigenous child after he or she is born, the provision of that service is to be given priority over other services in order to prevent the apprehension of the child at the time of the child’s birth.

An Act Respecting First Nations, Inuit, and Métis Children, Youth, and Families,
s 14(2)

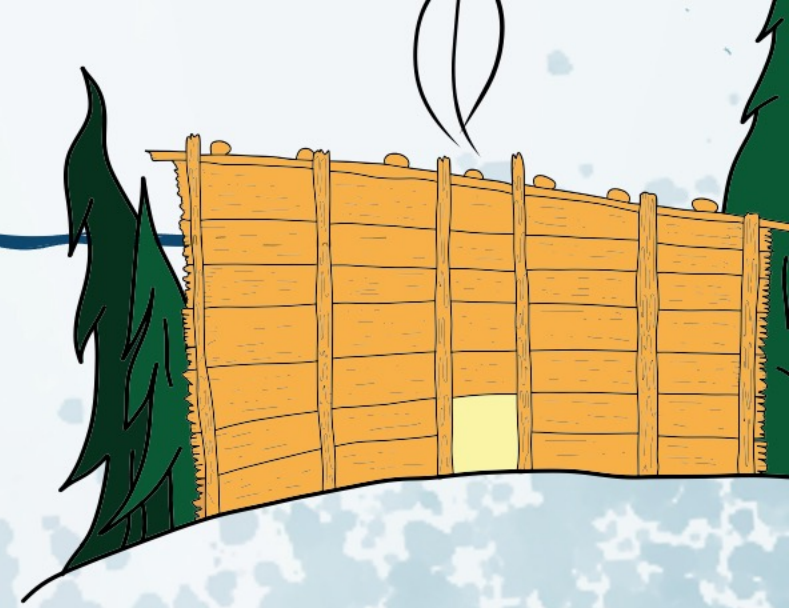
Coast Salish Law:

“We know that snuw’uyulh begins with the unborn child or an expectant mother. The expectant mother receives the disciplines on how to be physically, emotionally, spiritually, and mentally in balance to have that child ... You know our snuw’uyulh goes right to death and beyond.”



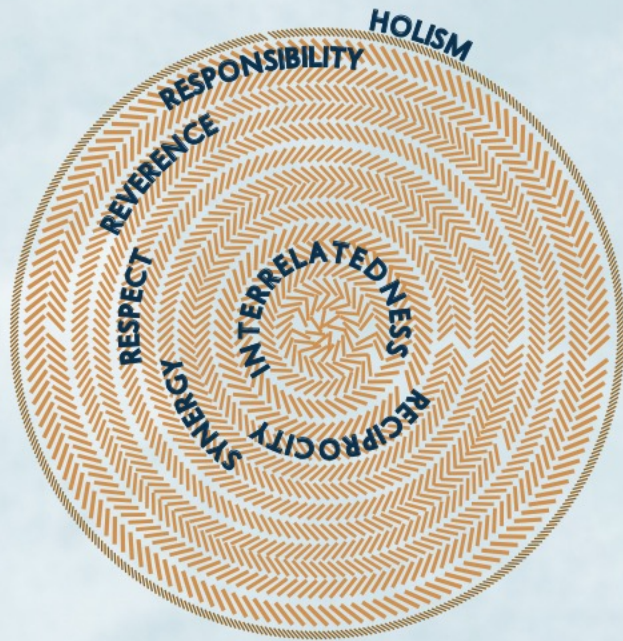
A PARADIGM SHIFT: LEGAL PLURALISM

“This where it all began, right in that Bighouse. Your Elders were your teachers. The Elders had lived a long life and so had much experiences and much wisdom. Those people were the teachers. From the time of understanding when a child began to think, the teaching had already started. Your mother, your uncles, your aunts, your older brothers, sisters, your grandparents were all your teachers.” — Dave Elliott



Centering Coast Salish Methodologies and Law

Dr. Jo-ann Archibald, a Stó:lō Scholar who developed the Indigenous Storywork Framework, an ethical framework to engage with Indigenous stories stated,



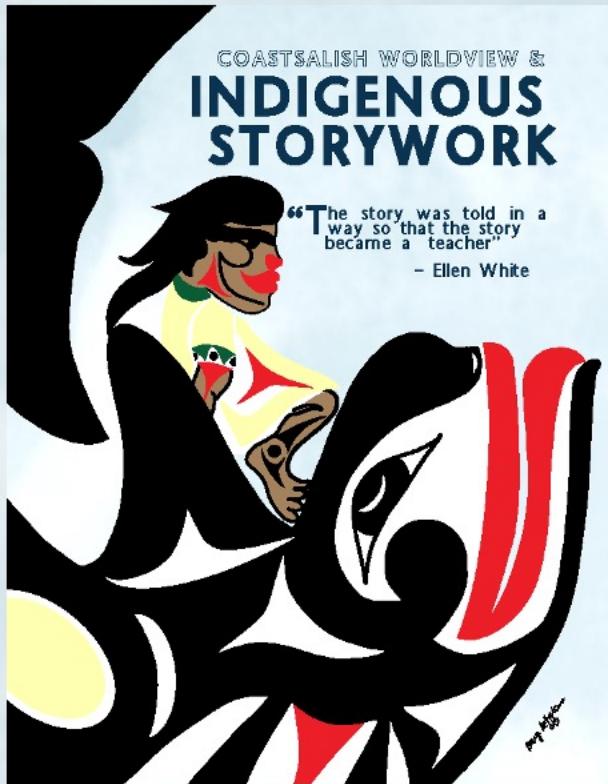
ARCHIBALD'S PRINCIPLES

“coming to know and use Indigenous stories through storywork requires an intimate knowing that brings together heart, mind, body and spirit.”

According to Archibald, there are seven principles guiding ethical engagement with Indigenous stories that get to the core of making meaning with and through stories.

These seven principles are the strands that weave the storybasket, which begin to articulate worldview embedded in Coast Salish stories and oral history.

Centering Coast Salish Methodologies and Law



- **Stories as Tools for teaching, learning, and thinking:**
- **Dr. Ellen White** explained students of stories can be asked critical questions about a story as it is being told, to create connections to a whole range of matters:

“Do you think this can be useful in our thoughts? Can we use some of it...as it is? Does it expand our thinking? Does it expand our magical thoughts? Because each and everyone one of us hunts magical[ly] all the time in our thoughts.”

PRINCIPLES FROM STORYWORK AND NARRATIVE ANALYSIS RESEARCH

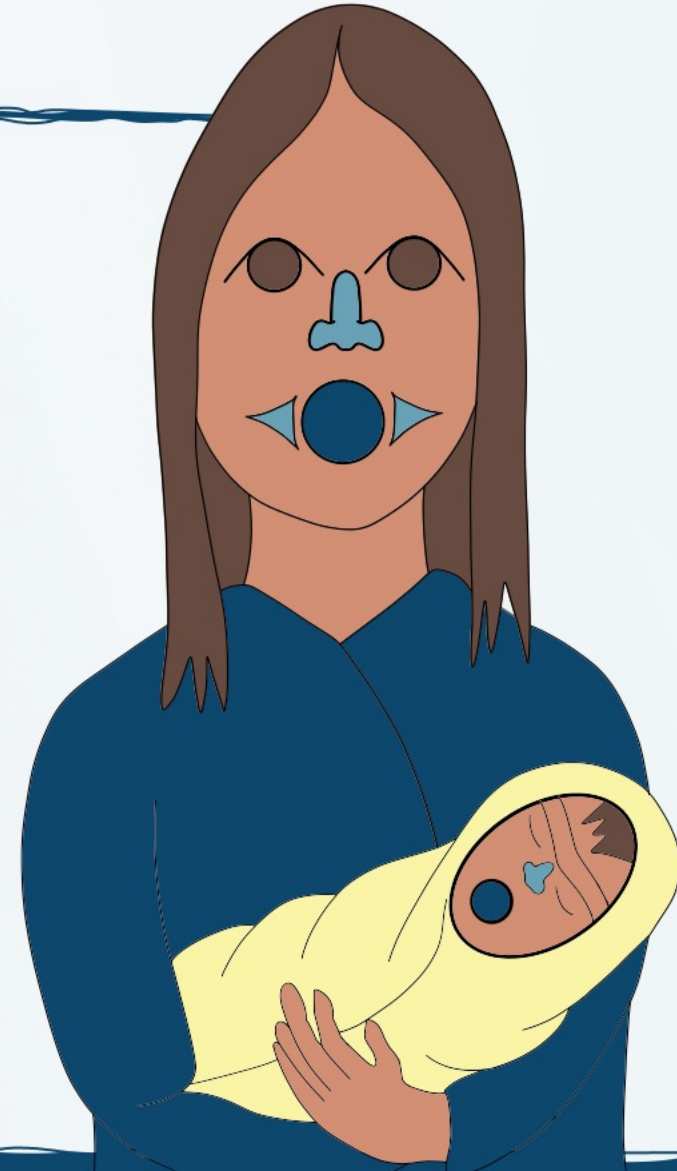
1. Coast Salish Peoples hold full jurisdiction and authority over the creation, maintenance, and enforcement of their laws relating to child and caregiver nurturance and safety

Sharon Marlo Paige:

- “parenting begins when a couple discovers that the woman is pregnant.”
- This has also been referred to as “the teachings of the unborn child.”
- Some teachings suggest that “when [baby] starts to kick” is the moment that intentional teachings directed to the child begin.

This early teaching is an important way of respecting the new life that is joining the community and nation:

- “when they are still babies, [parents] speak to them like [the babies] are grown up; they are teaching them already. Then, when they are growing up, they will and do understand.”



Art by Bradley Yuxwelupton Dick

PRINCIPLES FROM STORYWORK AND NARRATIVE ANALYSIS RESEARCH

2. Coast Salish legal traditions have always included sophisticated legal principles and processes to approach questions relating to child and caregiver nurturance and safety law

The practice of reinforcing Coast Salish law emphasizes the importance of family law as a foundation of Coast Salish societies: “Family laws encompass the norms, customs and traditions, or customary laws, which produce or maintain the state of snuw’uyulh.”

3. The responsibility over the well-being and care of families and children falls within the jurisdiction of Coast Salish families and their respective communities. The strength and health of the nation relied on the passing down of these laws.

Coast Salish legal traditions have always contemplated and anticipated how to approach questions and challenges relating to child and caregiver nurturance and safety. The laws relating to child and caregiver nurturance and safety rely on individuals and communities to interpret and implement their precedents in formal and informal ways.

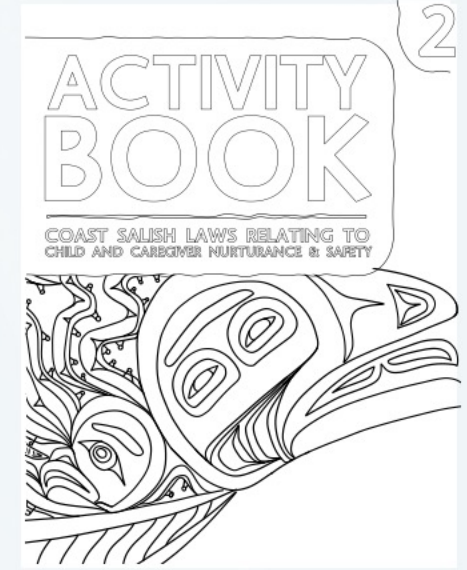
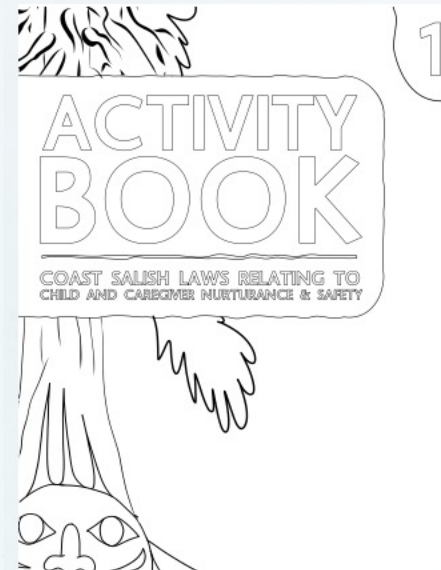
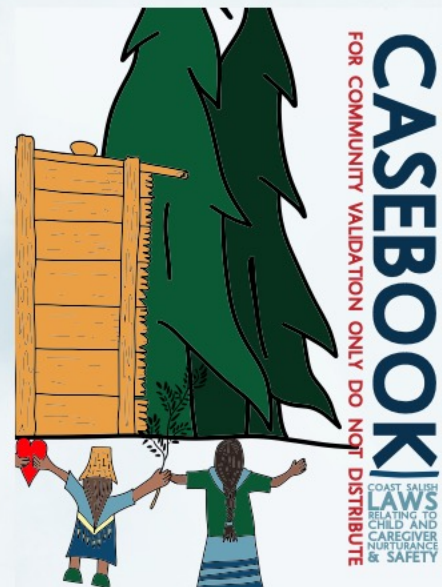
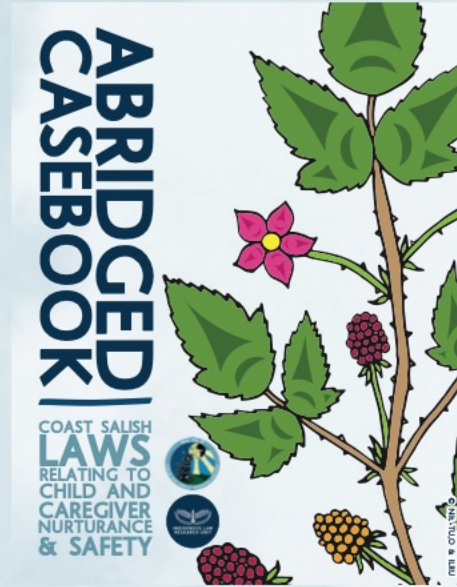




APPLICATION

Art by Doug LaFortune

Coast Salish Laws Relating to Child & Caregiver Nurturance & Safety Materials





QUESTIONS MOVING FORWARD

Art by Doug LaFortune

APPLICATIONS OF INDIGENOUS LAW UNDER C-92

Summary of recommendations from Wahkohtowin Law & Governance Lodge (Hadley Friedland et al), *Bill C-92 for Lawyers and Advocates Wisdom Workshop Shared Conclusions* (2022), online: <drive.google.com/file/d/1OmrDxrPvW5XlCjrTnd32uPgvA-4ppJh7/view>.

Challenges to Implementation

- Inter-Nation Collaboration
- Lack of Preparation and Proactive Actions by Federal and Provincial Governments
- Internalized Colonialism Impacting Law Development
- Colonialism Constraints
- (Mis)interpretations Impacting Implementation
- Lack of Respect for Procedural Issues
- Funding Resistance, Inconsistencies & Gaps
- Uncertainty Because of Lack of Accountability and Respect
- Colonial Bureaucracy Obstructing Progress
- Nothing for Us Without Us!

EXAMPLE: QUÉBEC REFERENCE

Implicit Assumptions and Questioning the Compatibility of Indigenous and Canadian Law

“For the specific purposes of this reference, the question of whether or not there exists an **Aboriginal right of self-government** arises only in relation to the particular field of child and family services. The central purpose of **s. 35** is to effect reconciliation and preserve a constitutional space for Aboriginal peoples so as to allow the[m] to live as peoples—with their own identities, cultures and values—**within the Canadian framework**. As a normative system, Aboriginal **customary law** relating to children and families forms part of those values. Moreover, the evidence filed in the record by the Attorney General of Canada shows that, together, **children and families are the main channel for conveying the markers of Aboriginal identity**. Regulation of child and family services by Aboriginal peoples themselves **cannot be dissociated from their Aboriginal identity and cultural development**”

- Overarching scheme within colonial legal system
- **Narrowed understanding of Indigenous law as “customary law”**
- Some reflections of the general principles that we found in specific relation to Coast Salish Laws

English Summary of Reference to the Court of Appeal of Québec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families,
<courdappelluquebec.ca/en/judgments/details/reference-to-the-court-of-appeal-of-quebec-in-relation-with-the-act-respecting-first-nations-inuit/>

EXAMPLE: QUÉBEC REFERENCE

PARAMOUNTCY

s. 21 of the Act specifies that the legislation has “the force of law as federal law”. The aim of this provision is to render the doctrine of federal paramountcy applicable to Aboriginal legislation. In this regard, the provision alters the fundamental architecture of the Constitution and is ultra vires. The doctrine of federal paramountcy, which is used to resolve irreconcilable conflicts between federal and provincial laws under certain conditions, pertains only to federal laws validly enacted under s. 91 of the Constitution Act, 1867. . . Only s. 35, as interpreted by the courts, could confer precedence on such legislative texts.

The same is true of s. 22(3) of the Act, which provides that Aboriginal laws contemplated by s. 21, of which s. 22(3) is the counterpart, prevail over any conflicting or inconsistent provisions of provincial legislation. . . . Section 91(24) does not authorize Parliament to dictate every aspect of the provinces’ dealings with Aboriginal peoples, nor can Parliament completely disregard the provinces. . . . By giving absolute priority to the Aboriginal regulation of child and family services and setting aside the reconciliation test specific to s. 35 of the Constitution Act, 1982, s. 22(3) violates this principle.

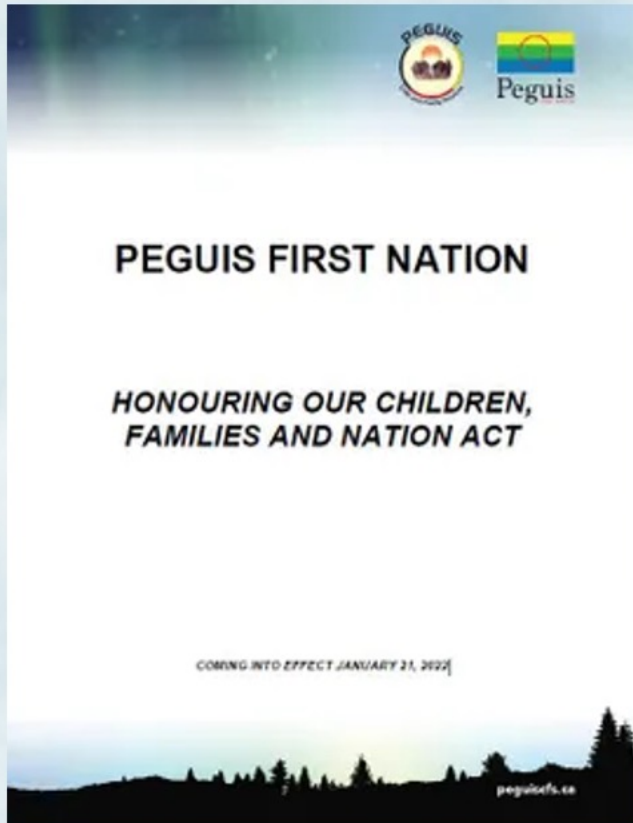
. . . .
Consequently, although provincial child and family services schemes apply ex proprio vigore to Aboriginal persons on the territory of a given province, they cannot prevail over Aboriginal legislation enacted pursuant to the Aboriginal right of self-government and they cannot displace that legislation, in whole or in part, unless such provincial schemes satisfy the s. 35 impairment and reconciliation test.

The answer to the reference question, therefore, is as follows: The Act is constitutional, except for ss. 21 and 22(3), which are not.

- Continued questions on the “validity” and “legitimacy” of Indigenous law from a paramountcy perspective

- Canadian federalism as the basis for understanding or interpreting the legitimacy of Indigenous legal orders

EXAMPLE: PEGUIS FIRST NATION



Peguis First Nation, *Honouring our Children, Families and Nation Act* (2022), online (pdf): <irp.cdn-website.com/8a5c0cb0/files/uploaded/2021-11-16%20%20-%20PFN%20HOCFNA%20%283%29.pdf>.

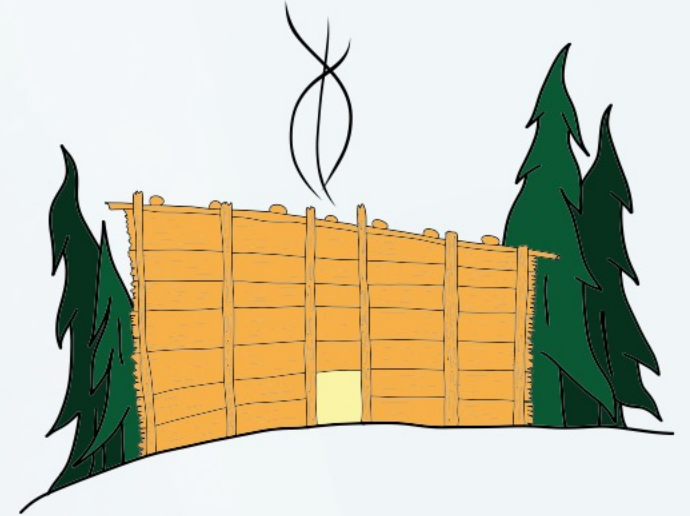


IMPLEMENTATION & EVALUATION

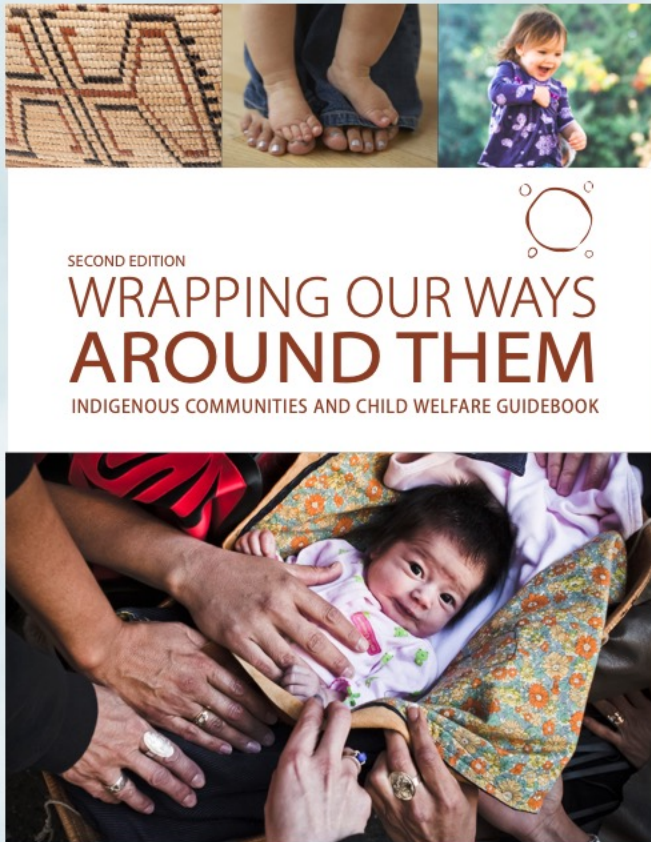
Art by Doug LaFortune

INTERRUPTING COLONIAL APPROACHES TO SOCIAL WORK

- Where social work sits currently
- Interrupting colonial approaches to social work
- Intersections of both worlds:
 - the court system and legal interpretation (practice and legal interpretation having the most impact on children's lives)



Indigenous law, inherent jurisdiction & Bill C-92



How does the revitalization of Indigenous laws connect to First Nations' inherent jurisdiction and Bill C-92?

- Bill C-92 is in effect as of January 1, 2020
- As a service delivery organization, we are obligated to meet the National Principles and Best Practice identified in Bill C-92
- It is in the best interest of our children to align our practice with the Indigenous laws of the land

STAFF, PROGRAM COORDINATOR, & SOCIAL WORKER TRAINING

Training at NIT TU,O Child and Family Services of

- Course Program geared towards social workers integrating into direct practice
- Two-Day Workshop on Utilizing the Toolkit geared towards programs and direct service

GOALS MAPPING

- Draw laws out
- Refocus “child welfare”
- Promote Broader Public Education
- Provoke Conversation

IMPLEMENTATION & EVALUATION

Workshopping with Caregivers and Children in Care Through:

- Caregiver Dinners
- Craft Nights
- Cultural Nights

GOALS MAPPING

- Draw laws out
- Refocus “child welfare”
- Promote Broader Public Education
- Provoke Conversation

EVALUATION

Meeting with various bodies to evaluate the content, including

- Elders
- Leadership
- Artists

GOALS MAPPING

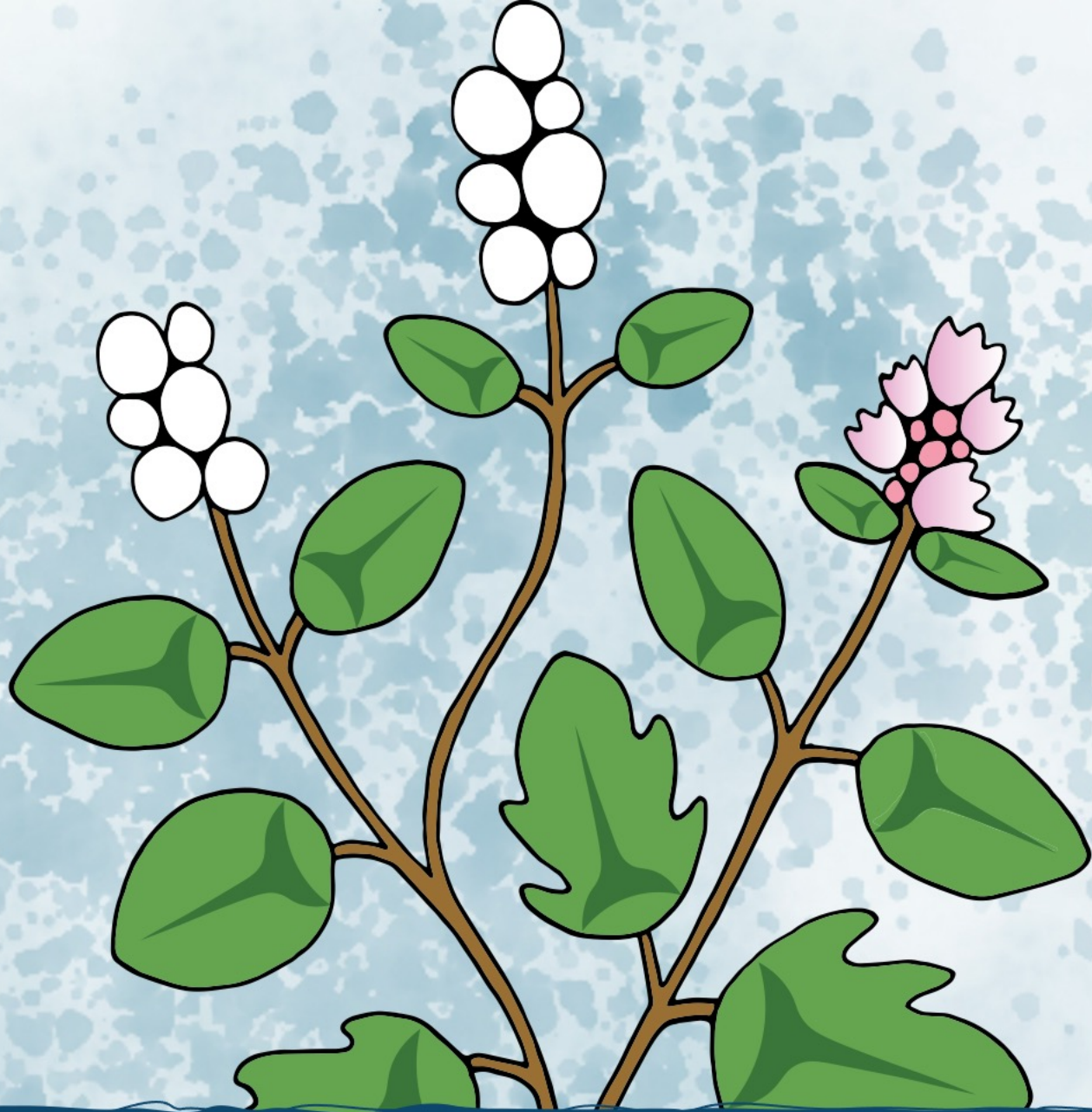
- Draw laws out
- Refocus “child welfare”
- Promote Broader Public Education
- Provoke Conversation



QUESTIONS?

DISCUSSION

- Do some of these challenges resonate with you?
- What's missing? What are some challenges you've experienced in the field?
- Have you been able to identify successful ways to respond to any of these challenges?
- What kinds of Indigenous legal tools/processes/principles that might be helpful in responding to some of these challenges?
- How would you define "practising Indigenous law"?



HÍ,SWŪKĒ SI,IÁM

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Art by Sarah Jim