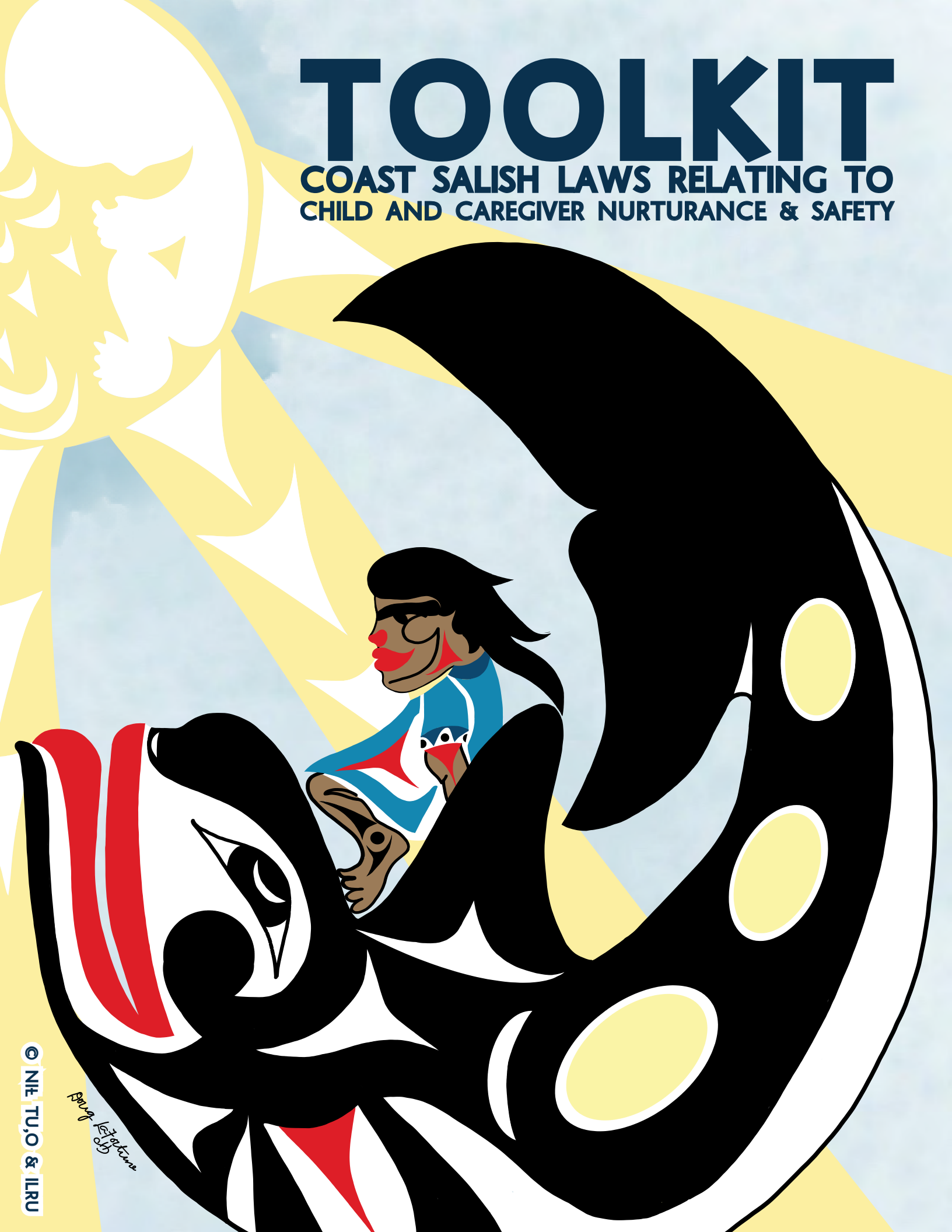
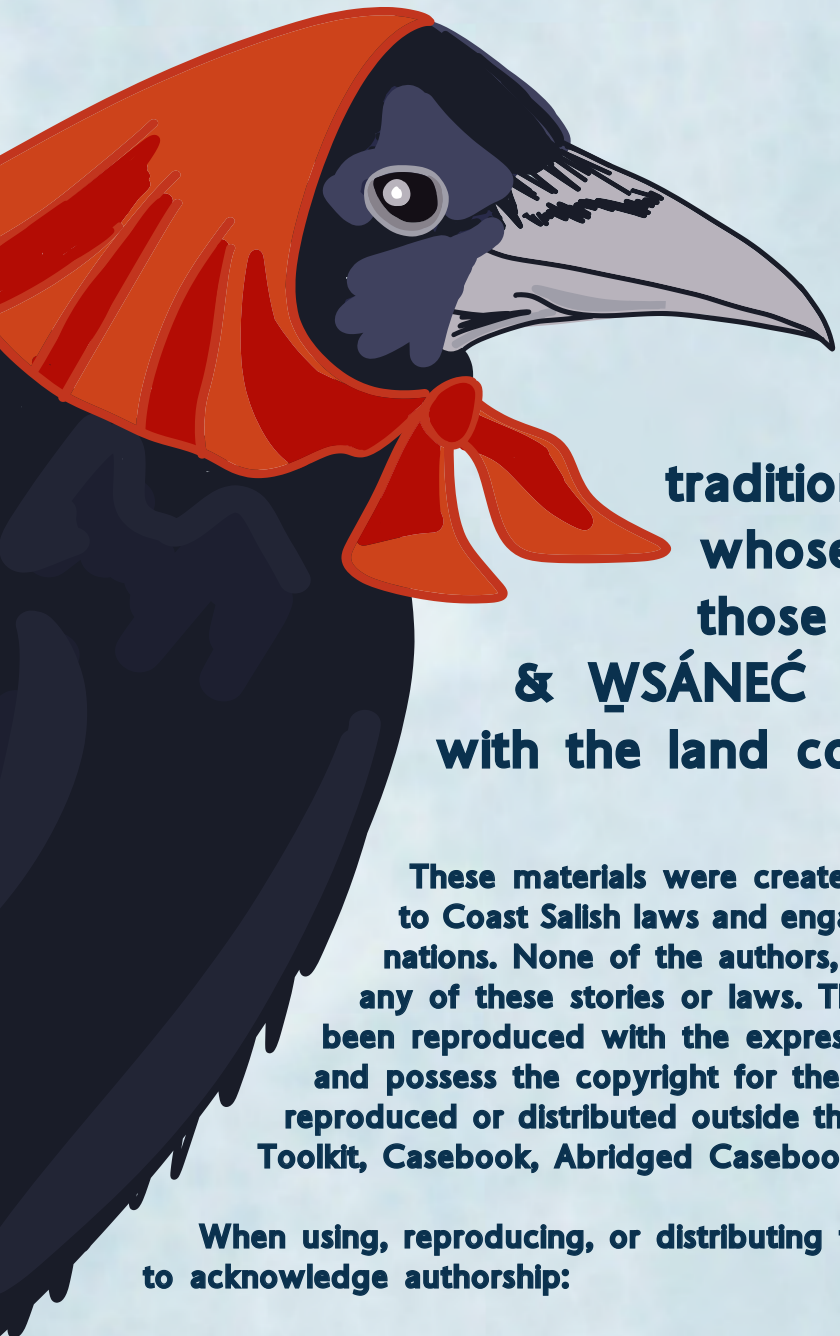


TOOLKIT

COAST SALISH LAWS RELATING TO
CHILD AND CAREGIVER NURTURANCE & SAFETY





The Indigenous Law Research Unit acknowledges, with respect, the history and legal traditions of the ləkʷəŋən peoples on whose lands our office stands, and those of the Songhees, Esquimalt, & W̱SÁNEĆ peoples, whose relationships with the land continue today.

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If you have any questions or concerns about this or anything else in these materials, please email: toolkit@niltuo.ca or ilru@uvic.ca.

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INTRODUCTION

Late Coast Salish Elder Kwulasulwut (Dr. Ellen White) was taught by her Elders that to get to the core of knowledge, you move from the inside first, and then out to the surface:

“They said you learn the base, the very basic, the inside, the stem, and the core. It sort of sounds like it when you translate it, the core of what you are learning and then expand out. The teacher will already know that - it is like a big tree, never mind the apples or if it’s flowers, we’re going to learn inside first and then out, they said. Never from outside first.”¹

This process for learning, including the learning of the legal principles that guide one’s life, begins at the earliest of ages and continues throughout one’s life.²

At this moment in time, it is critical to go to the core of that knowledge and learn from the inside out. In the context of this project, it means turning to Coast Salish law, knowledge and experience for knowledge and learning to guide present-day child welfare practice at NIT TU,O. The Toolkit, Casebook, Abridged Casebook, and Activity Books created for this project invite people to explore Coast Salish law and critical legal issues relating to children and caregivers through the stories specific to seven Northern Straits Coast Salish Nations: W̱SÁNEĆ (Tsawout, Tseycum, Pauquachin and Tsartlip), lək̓ʷəŋən (Songhees, Esquimalt), SĆÍΛNEW (Beecher Bay Klallam), and T’Sou-ke.

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 in this context. 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 NIT TU,O serves.

WHAT IS NIŁ TU,O

CHILD AND FAMILY SERVICES SOCIETY

NIŁ TU,O Child and Family Services Society is a Delegated Aboriginal Agency (DAA). A DAA is an agency that has authority from the Provincial Director of Child Welfare through a delegation agreement to administer all or parts of British Columbia's Child, Family and Community Service Act (CFCSA). It emerged in 1997 following a planning process involving eight First Nations.

NIŁ TU,O has proudly served as the DAA for seven Coast Salish Nations within the Southern Vancouver Island region (including SĆIΛNEW, T'Sou-ke, Songhees, Tsartlip, Pauquachin, Tseycum, and Tsawout) since 2001. NIŁ TU,O offers supports to individuals of these communities, or affiliated with these communities. NIŁ TU,O's Board of Directors is comprised of leadership from each community we serve. Each community has a seat in which the respective Chief and Council appoints a representative.

Under the CFCSA, the Minister designates the Director of Child Protection, who, in turn, delegates child protection services across the province to delegated social workers. NIŁ TU,O offers the following delegated services:

- Guardianship and care for children in continuing care;
- Voluntary support services to families;
- Voluntary care or special needs agreements
- Recruitment, training and support for caregivers;
- Youth Agreements;
- Respite Services;
- Extended Family Program; and
- Agreement with Young Adults.

NIŁ TU, O offers a variety of support services to help families, children and youth, including:

- One-to-one work with children, youth, young adults and families to enhance life;
- Support to Families Responding to Child Protection Concerns;
- Supported visitation program;
- Counselling Services;
- Fetal Alcohol Spectrum Disorder (FASD) Supports;
- Aboriginal H.I.P.P.Y Program; and
- Support To Caregivers Caring for Children from their Extended Family or Community.

WHAT IS NIŁ TU,O'S APPROACH?

NIŁ TU,O approaches social work practice differently, centred on a Coast Salish worldview. The word NIŁ TU,O comes from the Coast Salish language SENĆOŦEN, and is reflective of the language of the WŚĀNEĆ peoples. It implies "new beginning" and reflects the hopes and aspirations of the communities that have come together for the common goal of caring for their children and families.

NIŁ TU,O'S MISSION

NIŁ TU,O's mission is to ensure the safety and protection of children, work together to maintain the traditional values of the extended family, and demonstrate mutual respect, love, patience, and nurturing for children and families. The safety and well-being of children and communities are at the centre of NIŁ TU,O's work.

NIŁ TU,O is committed to centering a WŚĀNEĆ Elder's advocacy, so we never lose sight of the root causes of family breakdowns while working to strengthen and rebuild families and support intergenerational healing. From a Coast Salish worldview, in times of great loss, transition, and healing, families and communities come together to lift each other up in their time of need. This requires individuals to depend on others to be their voice, hands, and feet. NIŁ TU,O's role is to serve as the voice, hands, and feet of each family in their time of need, through advocacy, support work, and prevention services. This work is meant to lift each child, family, and community member up in the best way NIŁ TU,O can as an agency.



NIŁ TU,O'S STRUCTURE



WHAT IS ILRU?

The Indigenous Law Research Unit, or ILRU, is an academic research institute housed at the University of Victoria that is dedicated to the revitalization of Indigenous laws and governance. We believe Indigenous laws need to be taken seriously as laws. Our vision is for Indigenous laws to be living and in use on the ground, and to be researched, taught and theorized about just as other great legal traditions of the world are.

We partner with Indigenous communities to articulate their own legal principles and processes, on their own terms, in order to effectively respond to today's complex challenges. We collaborate with communities by invitation and focus on the legal questions that drive our research partners' needs and goals. We also work to deepen broader education and engagement with Indigenous law through the delivery of workshops and the development of academic and public legal education resources.

Our goal is to create sites of respectful dialogue and collaboration to reinvigorate communities of Indigenous legal practice locally and globally. The revitalization of Indigenous laws and governance is essential to re-building deliberative democracy and healthy citizenries in self-governing, lawful communities. Creating more respectful and symmetrical relationships across legal traditions is a necessary part of building and maintaining robust reconciliation within and between peoples, now and for future generations.

“The existence and ongoing meaningful presence of living Indigenous legal traditions in many Indigenous peoples' lives and communities is a fundamental premise underlying ILRU's work. Still, it would be misleading to suggest that all Indigenous laws are completely intact, employed formally or even in conscious or explicit use. We are not suggesting that here. Rather, when we talk about Indigenous legal traditions at this point in history we are necessarily talking about an undertaking that requires not just articulation and recognition, but also mindful, intentional acts of recovery and revitalization.”³

– Dr. Hadley Friedland and Dr. Val Napoleon
in “Gathering the Threads”

WHO IS THE TOOLKIT FOR?

This Toolkit, and its accompanying Casebook, Abridged Casebook, and Activity Books are the first step to help people think about what Coast Salish legal traditions have to say about child and caregiver nurturance and safety. They are designed as resources for professionals working with the nations that Nl̓t̓u,ŋ serves: W̓SÁNEĆ (Tsawout, Tseycum, Pauquachin and Tsartlip), lək̓ʷəŋən (Songhees, Esquimalt), SCÍÁNEW (Beecher Bay Klallam), and T'Sou-ke as well as for families, caregivers, and communities, including youth.

HOW TO USE THE TOOLKIT, CASEBOOKS, & ACTIVITY BOOKS?

This Toolkit, and its accompanying Casebook, Abridged Casebook, and Activity Books aim to open space for new understandings to child safety and caregiver nurturance through the lens of Coast Salish law rather than state or colonial law. By state or colonial law, we mean Canadian and British Columbian law, in particular the provincial CFCSA, which binds Nl̓t̓u,ŋ as a DAA.⁴

The Toolkit, Casebook, Abridged Casebook, and Activity Books for this project are living documents, much like the oral traditions and laws of the Coast Salish people. They are not static, and we imagine they will change and be adapted over time. The Coast Salish knowledge and stories referred to in all of these materials belong to the Coast Salish peoples of the Southern Vancouver Island region, specifically the seven nations that Nl̓t̓u,ŋ CFSS serves. Nl̓t̓u,ŋ and ILRU do not own, or attempt to have any stake in, any Coast Salish knowledge presented in the resources created for this project.

The resources are meant to support learning that can be done at an individual level, or in a group setting with a facilitator or not. Working through all of the information and exercises presented here would require an intensive multi-day workshop. However, most of the activities can also work well as standalone engagements.

TOPICS COVERED IN THIS TOOLKIT

UNIT ONE

THE NORTHERN STRAITS SALISH COMMUNITIES NIŁ TU,O SERVES

This unit profiles the communities served by NIŁ TU,O.

UNIT TWO

COAST SALISH WORLDVIEWS AND INDIGENOUS STORYWORK

This unit provides an overview of some aspects of Coast Salish worldviews and Indigenous storywork, focusing on the importance of oral narratives or Indigenous stories for teaching, learning and thinking in the Coast Salish world.

UNIT THREE

INDIGENOUS LAW AND NARRATIVE LEGAL ANALYSIS

This unit covers basic concepts and questions about the nature of law and Indigenous law and introduces a method of engaging with stories or narratives to learn about and engage with the Indigenous legal traditions of the Coast Salish world.

UNIT FIVE

COAST SALISH LAWS RELATING TO CHILD AND CAREGIVER NURTURANCE AND SAFE

This unit explores Coast Salish laws relating to child and caregiver nurturance and safety.

UNIT FOUR

A BRIEF HISTORY OF COLONIALISM, SOCIAL WORK, AND CHILD WELFARE

This unit provides a timeline that makes connections between the historical development of social work, child welfare, and colonialism.

UNIT SIX

TRANSFORMING SYSTEMS OF OPPRESSION

This unit identifies and addresses common stereotypes surrounding Indigenous peoples and families as it pertains to child and caregiver nurturance and safety, and looks at the importance of trauma-informed practice to support the transformation of oppressive systems.

UNIT 1

THE NORTHERN STRAITS SALISH NATIONS

NIŁ TU,Ō SERVES

Since the time of creation, the Northern Straits Salish Peoples—**ŲSÁNEĆ** (Tsawout, Tseycum, Pauquachin and Tsartlip), **lək̓ʷəŋən** (Songhees, Esquimalt), **SĆIĀNEW** (Beecher Bay Klallam), and T'Sou-ke—have lived and built their societies in and around what is now called Southern Vancouver Island. Each of these nations are distinct, with different languages or dialects, histories, and traditions. What binds them, for this project, is their location and their connection to NIŁ TU,Ō, which serves as the DAA for these communities' state law child welfare matters.

ŲSÁNEĆ NATION

The Tsawout, Tseycum, Pauquachin and Tsartlip First Nations are part of the larger **ŲSÁNEĆ** Nation, which has occupied its villages around the Saanich Peninsula and the Salish Sea continuously for thousands of years. **ŲSÁNEĆ** means “the emerging people” in **SENĆŌFEN**, the language of the **ŲSÁNEĆ**.⁵ The idea of the “emerging people” refers to an oral history about a time when the **ŲSÁNEĆ** people survived a great flood by tying their canoes to an arbutus tree rooted on top of the mountain **ŁÁU, WELNEW**, or “the place of refuge,” using a cedar rope.⁶ The **SENĆŌFEN** immersion school located at **ŲJOŁEŁP** (Tsartlip) is named after **ŁÁU, WELNEW**, which saved and sheltered the **ŲSÁNEĆ** after the flood.

Dr. Nicholas **XEMFOLTŲ** Claxton describes this inter-relationship of the **ŲSÁNEĆ** communities as follows:

“... in pre-contact times, while the **ŲSÁNEĆ** people were a Nation, **STÁUTŲ** (or Tsawout) was a permanent winter village. The **ŲSÁNEĆ** as a nation had other winter villages that together comprised the Nation (Tsawout, Tsartlip, Pauquachin and Tseycum). All of these communities traditionally shared one same language, culture, law, spiritual beliefs, societal structure, education system, and importantly, we all Reef Net fished.”⁷



W̱SÁNEĆ oral history talks about how the Creator XÁLS put the W̱SÁNEĆ in this place, providing the teachings, practices and laws needed for people to “live a prosperous meaningful life on [their] homelands.”⁸ The W̱SÁNEĆ homelands (ÁLENENEŁ) includes a rich mix of marine and land, including, “what is now known as Southern Vancouver Island, the San Juan Islands, the Southern Gulf Islands, and the waters in between that span across to the Fraser River.”⁹ As Dr. Claxton notes, “the W̱SÁNEĆ territory included so much of the marine environment that we often refer to ourselves as the ‘Saltwater People’.”¹⁰

The W̱SÁNEĆ people are signatories to two Douglas Treaties signed in 1852, and were subsequently separated into discrete reserves and nations by the colonial government under the *Indian Act*.¹¹ W̱SÁNEĆ oral history describes the Douglas Treaties as peace agreements between two societies that preserved W̱SÁNEĆ peoples’ way of life (ĆELÁNEN) from being disturbed by colonial governments, including their rights to ownership of fishing locations, the entire W̱SÁNEĆ traditional territory, and the W̱SÁNEĆ system of governance.¹²

Each of the modern four W̱SÁNEĆ communities descends from a historical and permanent W̱SÁNEĆ winter settlement that the W̱SÁNEĆ would visit for approximately three to six months per year, with the remainder of the time spent on the waters of their traditional territory.¹³

W̱JOŁEŁP (TSARTLIP)

W̱JOŁEŁP (Tsartlip First Nation) is located close to what is known now as Brentwood Bay on the western side of the Saanich Peninsula.¹⁴ W̱JOŁEŁP means “Place of the maple leaves” in SENĆOŦEN and is the largest of the W̱SÁNEĆ communities.¹⁵ W̱JOŁEŁP is home to the ŁÁU, WELNEW Tribal School, where students, from pre-school programs to adult education, have the opportunity to learn W̱SÁNEĆ teachings and SENĆOŦEN.¹⁶ W̱JOŁEŁP is governed by a chief and council and has over 1,000 members. As of December 2020, the reserve lands cover approximately 392 hectares.¹⁷

STÁUTW̱ (TSAWOUT)

STÁUTW̱ (Tsayout First Nation) is located on the east side of the Saanich Peninsula, north of what is known as Victoria and across from ŁELTOS (James Island) meaning “splashed on the face.”¹⁸ STÁUTW̱ means “houses on top” in SENĆOŦEN, as this was the view coming in from the ocean and is still a village site today. Tsawout First Nation has a population of 1,600 people, 1/3 of which are band members, and six reserves totaling 419 hectares.¹⁹ STÁUTW̱ is home to a rare dune ecosystem, TIXEN—meaning “spit” in SENĆOŦEN.²⁰

W̱SÍKEM (TSEYCUM)

W̱SÍKEM (Tseycum First Nation) is located on the northwest side of the Saanich peninsula, next to what is known as Patricia Bay.²¹ W̱SÍKEM means “land of clay” in SENĆOŦEN. Tseycum First Nation has a 28-hectare reserve and shared control of four reserves totaling about 164 hectares. It has around 200 members and is governed by a chief and two councillors.²²

BOKÉĆEN (PAUQUACHIN)

BOKÉĆEN (Pauquachin First Nation) is located on the west side of the Saanich Peninsula along the Saanich Inlet. The village community of BOKÉĆEN means “land of cliffs and bluffs”²³ in SENĆOŦEN.²⁴ Pauquachin “began as a small group of 14 families and many of these families are still present today.”²⁵ In the Pauquachin community, both Hul’q’umi’num’ and SENĆOŦEN are spoken. Pauquachin has two reserves totalling 321 hectares as well as joint control of a 4.8-hectare reserve at Goldstream.”²⁶ Pauquachin has approximately 450 members and is governed by a chief and four councillors.²⁷



LƏK'WƏŋƏN PEOPLES

lək'wəŋən refers to the lands held and lived on by the Songhees and Esquimalt peoples, historically lək'wəŋiʔnəŋ-speaking people, for thousands of years. Meaning “the place where the herring fish are smoked,” lək'wəŋən peoples occupied territories that cover the bounds of what is known as Greater Victoria and across the Salish Sea, from Albert Head to Cordova Bay and to the San Juan Islands.²⁸ The lək'wəŋən people carefully managed the land through controlled burning and the cultivation of food. Its rich resources, particularly the camas root, and natural harbour made it a trading centre for different nations.²⁹ Songhees Big Houses are traditional multi-family dwellings where people would live and learn communally, which impact the ongoing understanding of “family and community as fundamental to society.”³⁰ Although pressured by colonial forces to shift to a single, nuclear-family model, the Big Houses “remained but became places of cultural activities and education.”³¹

The lək'wəŋən people are descendants of a number of family groups: Teechamitsa, Whyomilth, Kosampsom, Swenwhung, Chilcowitch, Chekonein and Kakyaakan.³² In 1843, many lək'wəŋən families from surrounding villages moved to be closer to the new Fort Victoria, which they helped to build, in present-day downtown Victoria.³³ Within a couple of years, Governor James Douglas moved a settlement of lək'wəŋən people at the foot of Johnson Street across the bay of the Inner Harbour, and another settlement of lək'wəŋən people from the grounds near the legislative buildings to the Esquimalt harbour.³⁴ In 1867, the lək'wəŋən peoples were formally split into three bands by the colonial government, and the Discovery Island Band later merged with the Songhees Nation.³⁵

While the Songhees and Esquimalt Nations are lək'wəŋən peoples, they are separate communities and First Nations today. Nl̓x̌ TU,O does not serve the Esquimalt community.

SONGHEES

The Songhees' traditional territory extends throughout what is known as Greater Victoria and the San Juan Islands. The Songhees people speak lək'wəŋən. The name Songhees may come from a lək'wəŋən word meaning “people from scattered places.”³⁶

The original site of the Songhees Reserve was located in Victoria's Inner Harbour. In 1911, as the settler population expanded, the colonial government relocated the Songhees village and people to the current location in Esquimalt and away from their traditional harbour territory.³⁷ This location was called “Eyellnuk” which translates as “open or clear land.”³⁸

The Songhees Nation currently has four reserves on 125.5 hectares at the Esquimalt harbour, neighbouring the Esquimalt Nation.³⁹ The main Songhees Nation community straddles the municipalities of Esquimalt and View Royal.

The Songhees First Nation is a Douglas Treaty Nation signatory and one of the Te'mexw Nations negotiating a new treaty through the BC Treaty Process.⁴⁰ The Songhees Nation, as of November 2019, had 656 members and four reserves totalling 138.1 hectares.⁴¹

T'SOU-KE NATION

In T'Sou-ke cosmology, in the beginning of the world, “a copper box dropped from heaven at a point just east of Billings Spit and four men came out of it.” These men each founded the T'Sou-ke, Elwha, Malahat and Hul'q'umi'num' peoples.⁴²

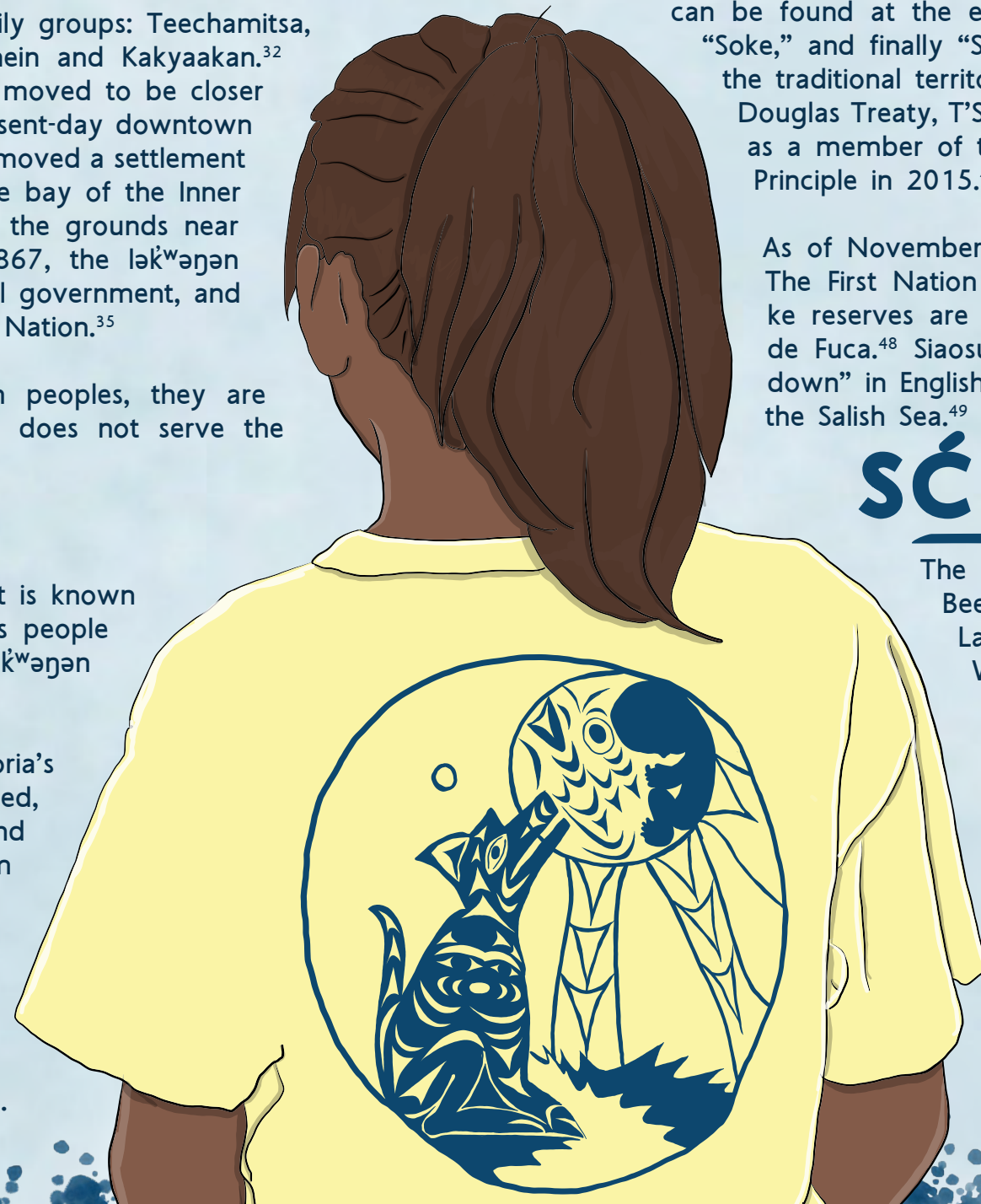
T'Sou-ke's traditional territory roughly covers “from Beechey Head to the east, Port Renfrew to the west, north to the Koksilah River and south towards the United States, including the Northern Straits and Secretary Island.”⁴³ The word T'Sou-ke means “Stickleback” in the Northern Straits Salish dialect of SENĆOŦEN, which is an endangered species of fish that can be found at the estuary of the Sooke River.⁴⁴ Europeans anglicized T'Sou-ke to “Soke,” and finally “Sooke”—which is also now the name of the main town within the traditional territory of the T'Sou-ke people.⁴⁵ Originally signatories to the 1850 Douglas Treaty, T'Sou-ke is negotiating a new treaty through the BC Treaty Process as a member of the Te'mexw Treaty Association. They signed an Agreement in Principle in 2015.⁴⁶

As of November 2019, there are 272 Members of the T'Sou-ke First Nation.⁴⁷ The First Nation is governed by a chief and two councillors. The two T'Sou-ke reserves are on 67 hectares around the Sooke Basin on the Strait of Juan de Fuca.⁴⁸ Siasun is the largest T'Sou-ke village, which translates as “slanted down” in English. This refers to the landscape where it is situated—overlooking the Salish Sea.⁴⁹

SCÍΛNEW (BEECHER BAY)

The main community of the SCÍΛNEW First Nation is located on Beecher Bay in East Sooke.⁵⁰ SCÍΛNEW lands include Fraser Island, Lamb Island, Long-neck Island, Twin Island, Village Island, and Whale Island.⁵¹ SCÍΛNEW (pronounced CHEA-nuh) means “the place of the big fish” in the Klallam language, “indicating the richness of the sea life in the region.”⁵² They can trace their ancestry to people who spoke four different languages, including lək'wəŋən through the Kakyaakan family group.⁵³ The language most commonly spoken today in Beecher Bay is Hul'q'umi'num'.⁵⁴

Originally signatories to 1850 Douglas Treaties, SCÍΛNEW is negotiating a new treaty through the BC Treaty Process as part of the Te'mexw Treaty Association. SCÍΛNEW is governed by a chief and two councillors and also incorporates traditional leadership components including Elders and the Hereditary Chief.⁵⁵





UNIT 2 COAST SALISH

WORLDVIEWS & STORYWORK

The Coast Salish World is immense, stretching through and beyond the bounds of the Salish Sea, and along the lower Fraser River.⁵⁶ The large number of Coast Salish nations within the Coast Salish world intersect with three major current metropolitan areas (Victoria, Vancouver, and Seattle), creating a landscape of rural and urban experiences all connected by ocean or river.

The Coast Salish peoples speak various languages and dialects from the Salishan language family.⁵⁷ Central Coast Salish includes five languages, “Squamish, Halkomelem, Nooksack, northern Straits, and Clallam.”⁵⁸ There are three dialects of Halkomelem. These include, Hul’q’um’num’, an Island group, spoken by separate but closely related First Nations on Vancouver Island and adjoining islands on the west side of the Salish Sea; Hənq’əminəm, a Downriver group; and Halq’eméylem, an Upriver group.⁵⁹

This terrestrial and marine region is home to diverse societies. This is true for the seven Northern Straits Salish communities that Nl̓x̌ TU,O serves. The W̓SÁNEĆ (Tsawout, Tseycum, Pauquachin and Tsartlip), lək̓ʷəŋən (Songhees, Esquimalt), ŚĆIΛNEW (Beecher Bay) Klallam, and T’Sou-ke communities all have distinct and rich histories, languages or dialects, and traditions. Despite the unique and proud histories of the many Coast Salish nations, however we know they were never entirely separate from one another. These communities are, and always have been, connected through marriage, trade, ceremony, laws, and beliefs.⁶⁰

“The networks of intermarriage and cooperation in economic and ceremonial activities among neighbouring tribes regardless of language made the whole Coast Salish region a kind of social continuum.”⁶¹

We can see through different nations’ oral histories that this social continuum extends to include the ways different communities care, protect, and nurture one another, especially children and families. Although the term Coast Salish is not exact, we use it in this project to reflect the shared or similar legal principles, processes and responses that people within the seven nations Nl̓x̌ TU,O serves use to care for, protect and nurture children and their caregivers. We call this subject area the Coast Salish Laws relating to Child and Caregiver Nurturance and Safety. Using these phrases is not meant to disregard or erase the individual histories of these nations. Instead, we use them to show the ways in which these rich communities have bonded, over time, through their legal interactions with one another.

Much like how XÁLS walked through the Coast Salish world in the beginning of time, and created sites of transformation unique to the land and people, so do Coast Salish communities remain both distinct and related to each other.

COAST SALISH WORLDVIEWS

Coast Salish worldview is embedded within different aspects of Coast Salish life, including its stories of creation or transformation that tie people to place, each other, and other territories. Creation and teaching stories weave a Coast Salish worldview, and provide a foundation for understanding Coast Salish law. As Stó:lō/Coast Salish orator, writer, and storyteller Dr. Lee Maracle observes,

“Words are not objects to be wasted. They represent the accumulated knowledge, cultural values, and the vision of an entire people or peoples. We believe the proof of a thing or idea is in the doing. Doing required some form of social interaction and thus, story is the most persuasive and sensible way to present the accumulated thoughts and values of a people.”⁶²

Narratives are central to teaching generations about people’s connection to land. WSÁNEĆ scholar Dr. Nicholas XEMFOLTW Claxton discusses how people’s relationship with land and territory is a part of their identity as WSÁNEĆ people, and how stories and oral histories inform and reinforce this connection. For example, teaching stories are written and visible on the ÁLENENEÇ (homeland) of the WSÁNEĆ people:

“Our ancestral language, enforced by our teachings and beliefs and reflected in the territory, illustrates the strong relationship between the WSÁNEĆ people and the ÁLENENEÇ. This was how the WSÁNEĆ lived since time immemorial, since the beginning. The most important part of our WSÁNEĆ oral history is the story of the great flood.”⁶³



ŁÁU, WELNEW

Dr. Nicholas XEMFOLTW Claxton provides the following oral history, as told to him by his late uncle, Earl Claxton Sr. (YELKÁTFE):

“One day a long, long time ago, the waters began to rise. The people began to worry as the waters rose up to their homes. They collected their belongings and went to their canoes. As the water rose, they paddled to the highest mountain. When they reached the top, one of the men made a long anchor rope of cedar bark. The waters rose to the top of the mountain. The people were anchored there for a long time, but were well prepared and had lots of dried salmon to eat. As they were tied up there, a raven came and landed on the bow of the canoe. It seemed to be telling them something. So finally one of the men pointed out to the far distance and said, “NI QENNET TFE WSÁNEĆ!” Look what is emerging! So then they knew this is what the raven was telling them. They knew the flood was over. As the tide went down, they gathered in a circle and gave thanks to the mountain that saved their lives. They said from now on this place will be called ŁÁU, WELNEW, the place of refuge, and we will be called the WSÁNEĆ people.”⁶⁴

ŁÁU, WELNEW & WSÁNEĆ LAW

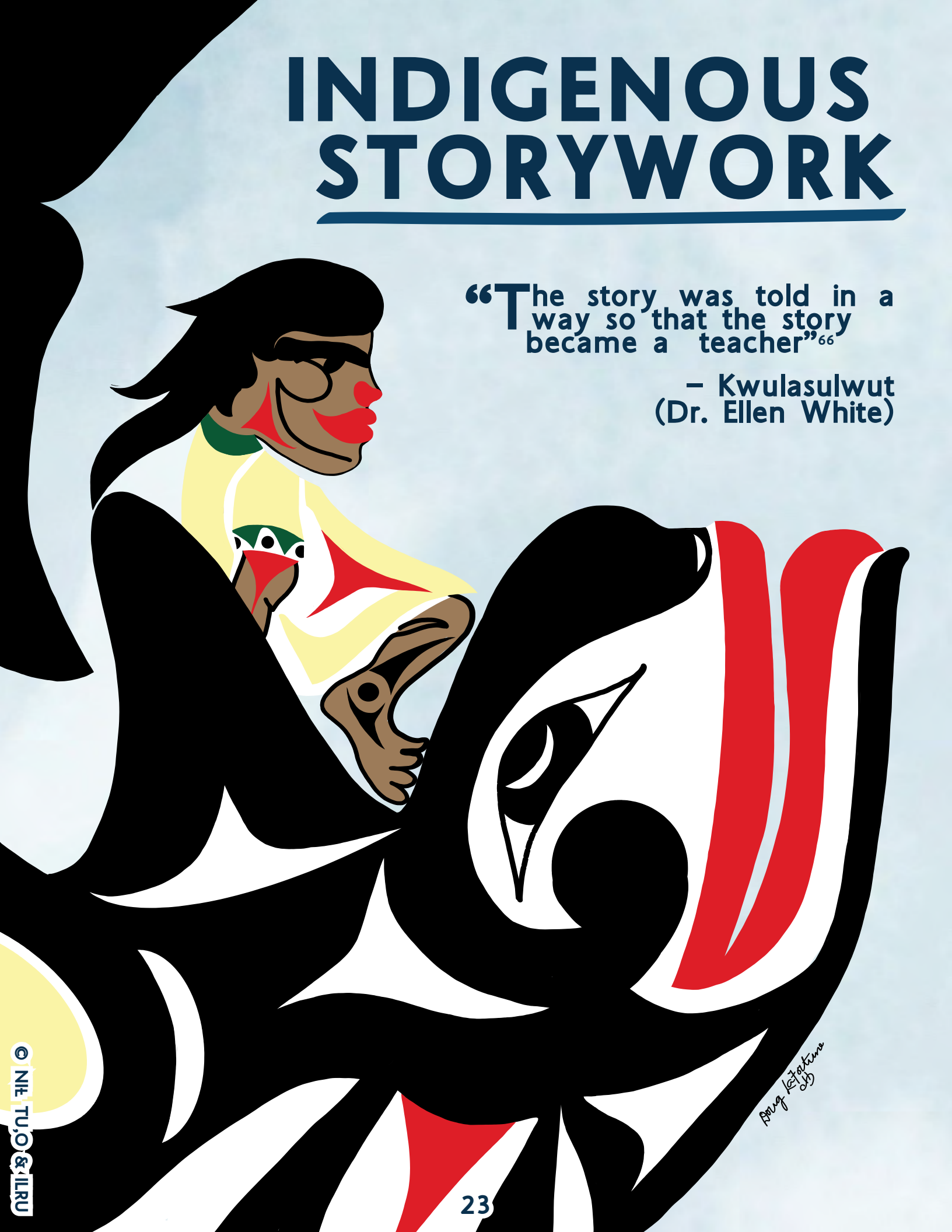
From a WSÁNEĆ worldview, Dr. Nicholas XEMFOLTW Claxton connects the role of stories in upholding WSÁNEĆ law,

“These laws were put in place so that we could live with one another and with the land in a good way. This is what is known as SKÁLS (our laws and beliefs). Over thousands of years, these laws and beliefs are upheld in the hearts and minds of the WSÁNEĆ in the sacred stories of life known as S,OXHELI. One example of this is the flood story above. Stories like these were more than just stories: they were our reality. For the WSÁNEĆ, the laws, beliefs, the SENĆOFEN language, and the land were all a part of our CELÁNEN, our birthright. WSÁNEĆ Elders maintain that our CELÁNEN, as a concept, cannot be ceded, sold, given away, or, most of all, forgotten. An example of this is TENEW, the SENĆOFEN word for “land.” While this word can be translated into “land,” “soil,” or “earth,” it also has a deeper meaning. Literally it would translate into “my wish for the people,” which refers to the land as a gift to us from the Creator. A gift that was meant for us to exist as WSÁNEĆ people with our WSÁNEĆ identity and worldview. Another example of this is TETÁČES, the SENĆOFEN word for “islands.” This word is for the islands in our territory but its deeper meaning is “relatives of the deep.”⁶⁵

INDIGENOUS STORYWORK

“The story was told in a way so that the story became a teacher”⁶⁶

– Kwulasulwut
(Dr. Ellen White)



Ang Isitakun

Stories in the Coast Salish world have always been used as tools for teaching, learning, and thinking. For Hul'q'umi'num' legal scholar Dr. Sarah Morales (Sutaxwiye), storytelling “offers a way for me to understand the legal tradition of my own community, for example, the process of how values, beliefs, traditions and customs are passed down by Elders, in the hopes of creating a new memory in the minds of our younger people.”⁶⁷ W̱SÁNEĆ scholar Robert YELKÁTŦE Clifford emphasizes how active engagement with stories creates participants, and point beyond themselves:

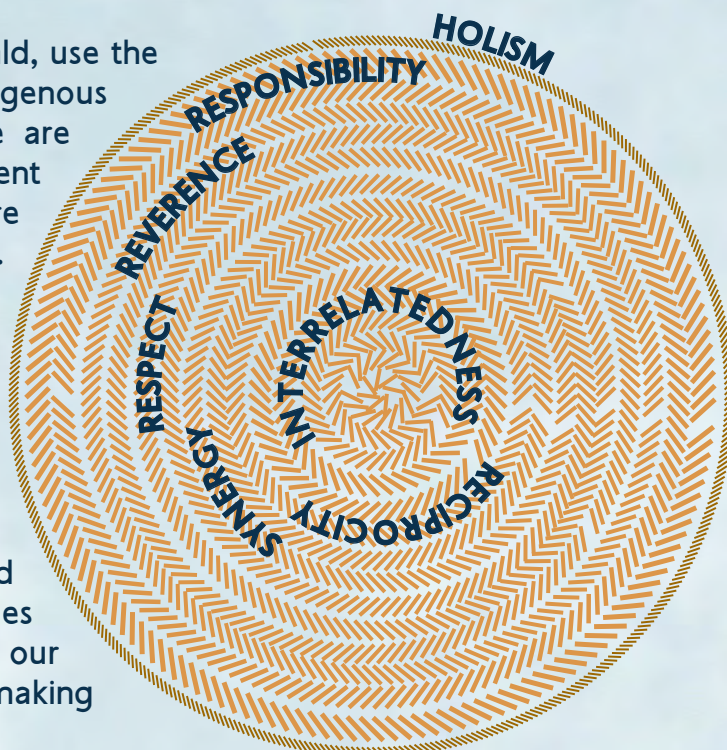
“Stories shape us. However, stories are also shaped by context, by relationships, by understandings, and by everything that gives them life. It is in that sense that a story is already composed of many voices. We always insert ourselves in stories as an agent when we learn from them. We can carry them no other way. We have our own relationships to a given story. It is unique to us, but shaped by everything that has come before. It will continue to be shaped by all that comes after. It is relational. It is, in short, the song and the echo (and contains the resonance of all the echoes that came since.”⁶⁸

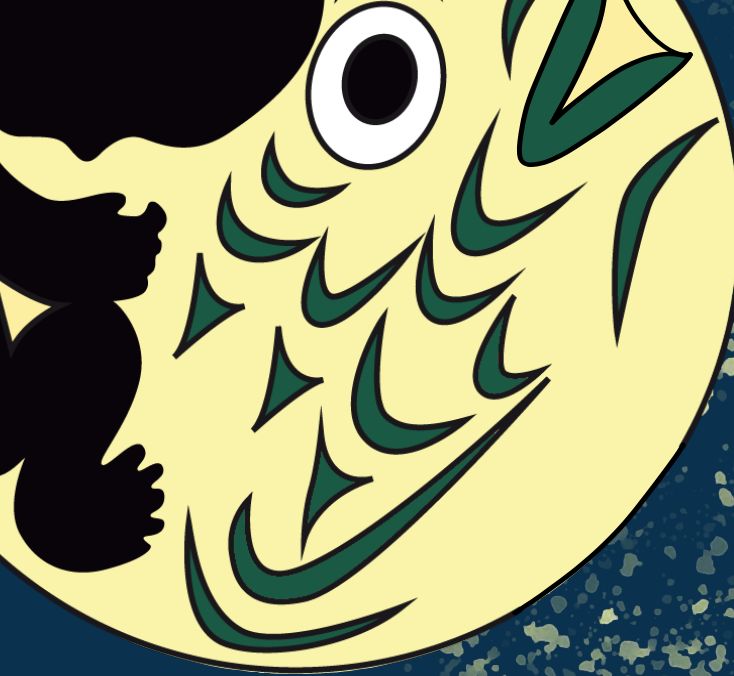
Kwulasulwut (Dr. Ellen White) explains that people can be asked critical questions about a story as it is being told, to create connections to a whole range of matters:

“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 every one of us hunts magical[ly] all the time in our thoughts.”⁶⁹

Stories require active listening and critical thinking, as noted by Simon Baker, who instructs, “listen carefully to what is said. Keep whatever is useful, and let the words that you can’t use go out the other ear.”⁷⁰ As Dr. Jo-ann Archibald Q’um Q’um Xiem concludes, “coming to know and use Indigenous stories through storywork requires an intimate knowing that brings together heart, mind, body and spirit.”⁷¹

Many Coast Salish Elders, including Dr. Archibald, use the metaphor of a storybasket to engage in Indigenous storywork. According to Dr. Archibald, there are seven principles guiding ethical engagement with Indigenous stories that get to the core of making meaning with and through stories. These are respect, responsibility, reciprocity, reverence, holism, interrelatedness, synergy. These seven principles are the strands that weave the storybasket, which begin to articulate worldview embedded in Coast Salish stories and oral history.⁷² We encourage everyone who engages with these stories to keep these principles in mind as they learn and think about stories. How are these principles useful in our thoughts? How do they expand our thinking? How do they get to the core of making meaning for you?





UNIT 3

WHAT IS INDIGENOUS LAW?

WHAT IF ALL STARS MATTERED?⁷³

Adapted from a piece written by Dr. Darcy Lindberg

When I look up to the sky on a clear night for constellations, I sometimes think, “what if all the stars mattered?” When we think of the laws we commonly see being used in Canada, we have been taught to search for legal meaning based on the Canadian law, yet in the background lies seemingly infinite stories, characters and teachings outlined by Indigenous peoples in their legal traditions. Indigenous people have relied upon their specific legal orders to maintain good relations with each other, to settle disputes, to set out obligations with each other, and to interact with other nations around them.

Many mainstream educational materials suggest the stereotype of Indigenous peoples as lawless prior to European contact. This false idea still goes unquestioned, or worse, is implicitly taught to students today. We have all developed certain assumptions and associations with the concept of law that can make it hard to understand that law existed in Indigenous societies prior to European contact and the arrival of European style police force, legislature and judicial system. Historically, these stereotypes and assumptions played out tragically in real life.

These assumptions facilitate the perpetuation of violence against and oppression of Indigenous peoples and children. Negative assumptions about the lawlessness of Indigenous communities has allowed Indigenous children to be perceived as vulnerable within their own communities, and justified their separation and removal from their families through oppressive practices. These assumptions also obscure the legal mechanisms used within Indigenous societies to resolve disputes and to protect community members, particularly children, from violence.

What if all the stars mattered? This Toolkit presents Indigenous laws as primary and viable and emphasizes the role of children within these laws. Thorough and critical engagement with these practices is part of re-constellating Indigenous legal practices so that we can help to make all of the stars matter.

INDIGENOUS LAW IS:⁷⁴

"The intellectual process of deliberating & reasoning to apply rules according to context"

** A way for large groups of people to collectively govern themselves.*

Process for solving problems, making decisions, creating safety, maintaining and repairing relationships.

** Societally informed. As many distinct Indigenous legal traditions as there are nations.*

** Alive but not always intact or explicitly in use. At this time in history requires articulation, recognition, rebuilding and revitalization.*

- ◆ Law is more than a set of rules and practices. Law is more than declarations and positions. Law is more than a set of "do's and don'ts."
- ◆ Law is about the public principles and processes that guide collective decision making.
- ◆ Law requires people to deliberate, reason, interpret, and debate these principles and processes to address the challenges in their communities.
- ◆ Where people live together, there is law.
- ◆ Law is a public human practice. Law helps people who live together collaboratively and legitimately solve problems, resolve conflict, protect each other, manage resources, and maintain relationships to one another.
- ◆ There is not one Indigenous Law. Indigenous law may be organized differently in distinct societies (e.g. Cree law is different from WSÁNEĆ law).
- ◆ Indigenous laws emerge from ongoing, living traditions. A particular land, history, set of norms, language, and societal organization shape, maintain, and, over time, add to Indigenous law.
- ◆ Indigenous laws preexist Canada and British Columbia and they didn't go anywhere. They are not part of history or the past. However, colonization and colonialism have greatly affected Indigenous laws. In some places, Indigenous law might not be visible or fully functioning today. It is not only possible, but essential to rebuild these systems and institutions in a way that respects their integrity.⁷⁵

Despite colonial efforts to erase Indigenous law, and deny its legitimacy or validity, Indigenous legal traditions are capable of thriving and serving the needs of their communities. The people of Indigenous societies are the ones responsible for determining how their legal traditions may meet their needs and should be reflected in contemporary lawmaking.

OUR STARTING POINTS⁷⁶

Adapted from a piece prepared by Dr. Hadley Friedland, Jessica Asch, and Dr. Val Napoleon

INDIGENOUS LAW IS LAW

Indigenous law must be taken seriously as law so that it can do the necessary and hard work of law—collectively solving problems, governing, managing conflict, and creating peace through diversity and difference. Indigenous law is a specific way to respond to universal human problems, such as child safety and caregiver nurturance.

All too often, people ask questions that generalize or obscure Indigenous laws. Imagine asking what Canadian justice is? How helpful is that question? Why then would we ask what Aboriginal justice is? We need to ask questions that draw out the principles or processes embedded in Indigenous law. Moving away from these generalizations allows the law to be more accessible, understandable, and usable.

Calling Indigenous law a cultural practice or custom instead of law can also undermine it. Imagine calling Canadian law the cultural practices of Canadian society? What is lost by refusing to call Indigenous law—law?

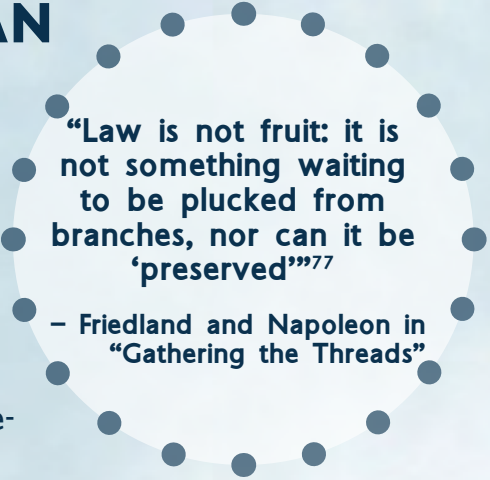
INDIGENOUS LAWS ARE PART OF ONGOING, LIVING INDIGENOUS LEGAL TRADITIONS

Indigenous laws are part of ongoing, living legal traditions. Indigenous legal traditions include the full scope of law, including legal principles, procedures, responses, and governance processes of a particular people, community or nation. They include the organization and processes of law, including institutions, dispute-resolution and decision-making systems, and the public collective memory of responses to legal problems (referred to as precedent).

No legal system or order is perfect—that is impossible. But, systems do not have to be perfect for people to govern themselves. Each generation of Indigenous people has used intellectual resources from their legal traditions to collaboratively solve problems and manage conflicts, and has adapted the law as is necessary to deal with challenges of their time. Indigenous laws are not something relegated to the past, and we must use the present tense in order to remember it is alive and practiced today.

INDIGENOUS LAW REQUIRES HUMAN INTERPRETATION & DÉLIBÉRATION

Law does not interpret itself. People interpret and then apply law to human problems. Legal interpretation is about seeking the intended meaning of a law. People have different approaches to interpretation and different personal experiences of the world. This will result in different conclusions about the meaning of different laws. Law becomes the collective process to legitimately work through these differences. For law to apply collectively, it has to be interpreted collectively to include diversity and different opinions.




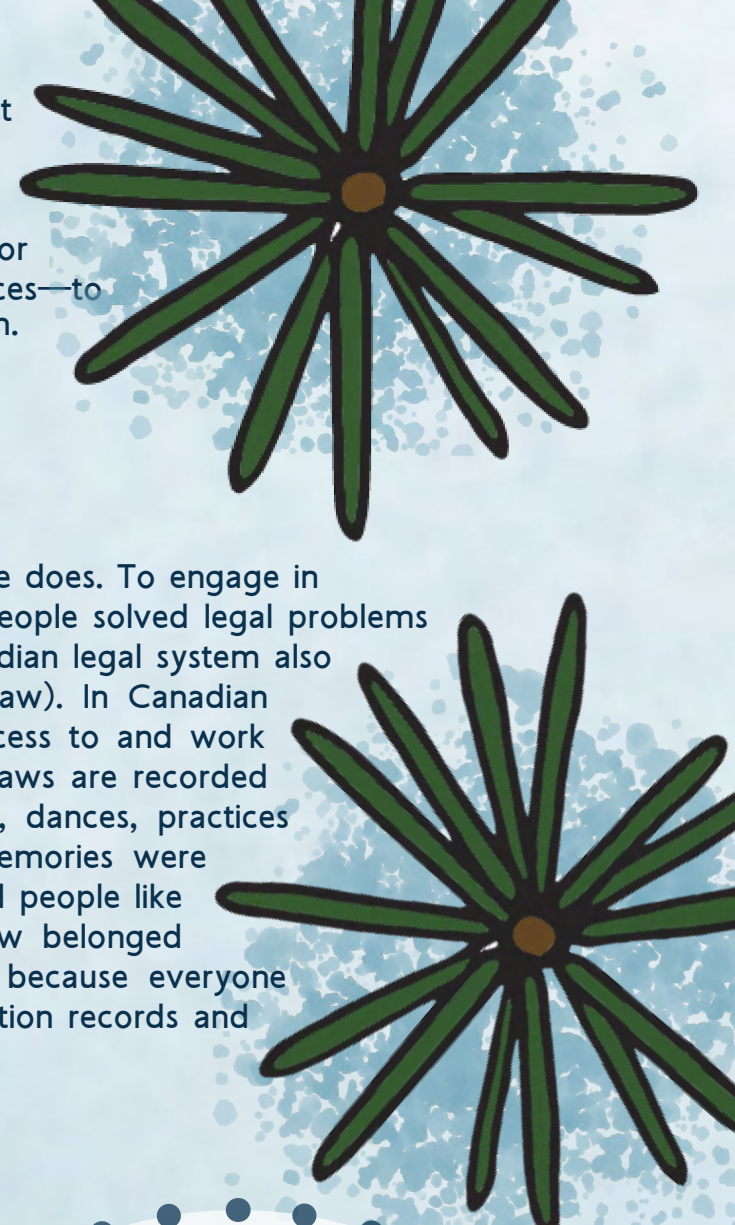
“Law is not fruit: it is not something waiting to be plucked from branches, nor can it be ‘preserved’”⁷⁷

– Friedland and Napoleon in “Gathering the Threads”

How and why people interpret the law and apply it is informed by, among other things, their spiritual beliefs. Still, human laws and human beings have to be accountable for their legal decisions. So, while there are often spiritual consequences for poor behaviour, humans interpret those consequences—to understand them, learn from them, and teach them.

INDIGENOUS LAW REQUIRES PUBLIC MEMORY & RECORD

Law is a public process and it is something everyone does. To engage in law, there has to be a collective memory of how people solved legal problems in the past—this is called legal precedent. The Canadian legal system also has precedent (these are law stories called case law). In Canadian law, it is mostly lawyers and judges who have access to and work with case law to solve legal problems. Indigenous laws are recorded in oral histories, oral narratives, ceremonies, songs, dances, practices and other expressions. Historically, these public memories were accessible by everyone and not available to selected people like judges and lawyers. In other words, Indigenous law belonged to everyone and everyone was responsible for it because everyone was taught the oral histories or stories. Each generation records and teaches in the present as they are best able.



Part of rebuilding Indigenous law is to recreate Indigenous public memory, those law records or legal precedents, so that everyone can access them, understand them, and apply them through legitimate legal processes. Indigenous law, like so many other aspects of Indigenous peoples' lives, has been impacted by colonization.

COMMON QUESTIONS ABOUT INDIGENOUS LAW⁷⁸

Adapted from a piece prepared by Lindsay Borrows and Dr. Emily Snyder

WHAT HAPPENS WHEN INDIGENOUS PEOPLES DISAGREE OVER THEIR LAWS?

In any legal tradition, there are differences of opinions. Law is often unclear and open to interpretation. From our perspective, disagreements about Indigenous laws do not detract from them. Instead, we think disagreements, engagement and discussion enhance the vitality of these laws and help shape them, over time, as is needed.

HOW DO DECENTRALIZED LEGAL ORDERS WORK?

Many Indigenous legal orders are described as decentralized. This means there is no one person or body of people in power that make all the decisions. It means there is no centralized legal institution like the justice system in Canadian law. In decentralized systems, decision-making and authority exists in many places, which enhances its ability to respond to specific situations. Decentralized does not mean without order.

ARE ELDERS IN CHARGE OF INDIGENOUS LEGAL ORDERS?

Elders are often important authority figures in many Indigenous societies and bring important insights about the law. However, Elders are not the only decision makers in Indigenous communities. For example, in Coast Salish legal traditions, leaders, family members, and the broader community also might make decisions relating to specific problems. People often say that they cannot question Elders. Although it is important to be respectful of all people, we believe people should be able to raise questions and engage in respectful debate in all legal orders. It is important to remember that not all Elders believe the same thing.



**SPIRITUAL
INSTITUTIONS:**
Ceremonies, lodges,
dances, potlatches,
marriages, etc.

Legal institutions often refer to the places law or legal decisions are carried out. When we think of Indigenous law, law can come from or exist within a number of places within Indigenous communities, just like in other legal traditions. These places include:

**ECONOMIC
INSTITUTIONS:**
Band/community
offices, gatherings,
feasts, marriages,
big houses,
potlatches, dances,
etc.

**SOCIAL/POLITICAL
INSTITUTIONS:**
Formal community leadership
like chief and council, Elder
councils, youth councils,
gatherings, feasts, marriages,
dances, potlatches, clan houses,
kinship/family models, etc.

IS IT HARMFUL TO ENGAGE WITH INDIGENOUS LAW IF YOU ARE AN OUTSIDER?

People outside a legal tradition often feel stuck because they worry they will do some harm by engaging with Indigenous legal resources, such as oral narratives or published stories. This might be a concern not only for people with settler backgrounds, but also for people from different Indigenous legal traditions (for example, a Cree person might raise this concern when reading a WSÁNEĆ story).

For Dr. Jo-ann Archibald Q'um Q'um Xiiem, a Stó:lō scholar, a respectful methodology is founded on the principle of respect for the cultural knowledge embedded in the stories, and respect for the people who owned or shared the stories. This principle of respect includes trust and the notion of being culturally worthy, which means being ready intellectually, emotionally, physically, and spiritually to absorb knowledge.⁷⁹ A lot of intergenerational transmission was lost or disrupted because of the colonial legacies that permeate the Coast Salish world as we see it today. The work in reclaiming Coast Salish law means making space for Coast Salish stories and language within our places of work and learning. Making space for Coast Salish oral traditions today requires the participation of both cultural insiders and outsiders to ready themselves and absorb knowledge in the way Archibald and Kwulasulwut (Dr. Ellen White) describe.

Looking at stories as law, from our perspective, is respectful because it involves thinking about the decisions and responses within them as ways of understanding a legal tradition. The process of working with stories helps people take Indigenous law seriously as law; it leaves space for legal interpretation, debate, and deliberation and provides insights to help people see tangible solutions for addressing contemporary problems. These stories, like the law, are resilient and can withstand serious, sustained engagement.

WHAT HAPPENS WHEN INDIGENOUS LAWS ARE WRITTEN DOWN & ADAPTED?

Laws change over time. The purpose of law is to help us respond to the current world. If law cannot change, it is irrelevant. In the work of recovering and reclaiming Indigenous legal traditions, ways of knowing and being, many Elders learned English and writing as 'tools' to represent, record, teach, and preserve the oral traditions.⁸⁰



“Indigenous peoples
are diverse and their laws flow from many sources. Understanding their communities’ legal foundations can lead to a better understanding of their contemporary potential, including how they might be recognized, interpreted, enforced, and implemented.”⁸¹
– Dr. John Borrows (KegeDonce),
Canada’s Indigenous Constitution

SOURCES, RESOURCES, & APPLICATIONS OF INDIGENOUS LAW

WE THINK OF
INDIGENOUS LAW
AS A ROOTED TREE.

WE START AT ITS ROOTS,
WHICH ARE ITS SOURCES, OR
AUTHORITIES.

ITS TRUNK AND BRANCHES SHOW
WHERE LAW IS RECORDED & EXPRESSED
THROUGH THE MANY RESOURCES OF
INDIGENOUS LAW.

ITS APPLICATIONS, LIKE FRUIT, LEAVES,
CONES, OR NEEDLES, ARE THE
WAYS IN WHICH INDIGENOUS LAW
IS TAKEN UP IN THE WORLD
TO SUPPORT INDIGENOUS
GOVERNANCE & SERVE
INDIGENOUS COMMUNITIES.

Applications

*Applicable to
real, messy, human
communities, to help
solve mundane,
every day problems.

- ◆ Applications include the ways the accessible ways that people implement or apply Indigenous law on the ground to help solve the problems of every day life.
- ◆ Indigenous law can inform applications such as codes, policies, curriculum, assessments, institutions, management strategies, dispute resolution, or court processes.
- ◆ If law isn't useful to the real, messy work of human life, why bother?

Resources

- ◆ Indigenous societies, like all others, have public resources for teaching, recording, and expressing law.
- ◆ Resources refer to the places where law may be recorded and expressed.
- ◆ While there are not many written resources, like papers or textbooks, of Indigenous law, there are many other resources to draw law from.
- ◆ Indigenous legal resources are recorded in oral narratives and stories, practices, languages, artifacts, and social interactions as well as dances, songs, ceremonies, art, and land-based teachings.
- ◆ People draw on these resources to better access and understand the law, and to apply the law to challenges of today.

Sources

* Indigenous legal
traditions usually
involve interaction
of two or more
sources.

- ◆ Sources are the foundations or authorities underlying the law.
- ◆ They are what people look to when making or justifying legal arguments.
- ◆ [Here](#) you can see Dr. John Borrows (Kegedonce) talk about the five sources of Indigenous laws that ground legal thinking he has identified: the sacred, the natural world, deliberative law, positivist law, and customary law.⁸²
- ◆ Dr. Val Napoleon added social interaction as a source of law, and Dr. Alan Hanna identified relationality as a source of law.⁸³
- ◆ These are not air tight categories, and people often draw on multiple sources at a single time.



COAST SALISH STORIES AS LEGAL RESOURCES

Stories and oral histories are fundamental to the teaching and practice of the legal traditions within the Coast Salish world. Stories facilitate education in the home, on the land, and within the longhouse.⁸⁴ This education system maintains Coast Salish peoples and their connections to the land, spirituality, law, and each other.

Stories, oral narratives, or teachings continue to reinforce law in many Coast Salish societies. Hul'q'umi'num' legal scholar, Dr. Sarah Morales (Su-taxwiye), for example, talks about how stories are used to “transmit legal rules within the Hul'q'umi'num' legal tradition.”⁸⁵ Robert YELKÁTFE Clifford explains that the “stories in W̱SÁNEĆ SYESES (our oral history) have characters that are there to remind us of our values, teachings, and our ŠXENÁNS (our way of life).”⁸⁶ Each story is set in a different context and may contain numerous teachings, or legal principles, to guide the W̱SÁNEĆ people.⁸⁷

Dr. Morales cautions against decontextualizing, or separating, stories or their teachings from each other, or from the language, land, and relationships from which they arise.⁸⁸ Clifford speaks similarly about the function of stories in understanding law in the W̱SÁNEĆ legal tradition:

“The W̱SÁNEĆ mode of reasoning means that stories always link together with other stories, with the SENĆOŦEN language, and with other aspects of knowledge and worldview. The more work we do in building these connections beyond the words of the story, the better we begin to understand the mode of reasoning required in W̱SÁNEĆ law. Building these connections is not simply about learning the stories (though that is a helpful guide) but requires deeper engagement and embodied learning.”⁸⁹

Stories are entry points to understanding Indigenous law. As tools for legal thinking, stories can provide insight into numerous teachings and bridge understanding, particularly for people outside a legal tradition. However, it is important to emphasize that story analysis on its own cannot provide a whole picture of an Indigenous legal tradition or society.

Clifford uses the story of TETÁĆES as an example of the ways in which stories teach law within a W̱SÁNEĆ worldview and cosmology. This telling also emphasizes the roles that SENĆOŦEN and place have in not just contextualizing the teachings, but deepening understanding.⁹⁰

TETÁĆES

THIS VERSION OF TETÁĆES WAS TOLD BY STOLŹEŁ (JOHN ELLIOT SR.)⁹¹

“A long time ago, when the Creator, XÁLS, walked the Earth, there were no islands in the WŚÁNEĆ territory. The islands that are there today were human beings and WŚÁNEĆ ancestors. At this time, XÁLS walked among the WŚÁNEĆ people, showing them the proper way to live.

In doing this, XÁLS took a bunch of WŚÁNEĆ people and threw them out into the ocean. Each of the people thrown into the ocean became the islands in the territory today. These islands were each given a particular name that reflects the manner in which they landed, their character or appearance, or the significance they have to the WŚÁNEĆ people.

ŁEL,TOS means “splashed on the Face” and was the name given to one island because of the way the southeast face of ŁEL,TOS is worn away by the wind and the tide.

Today in SENĆOŦEN, the word for “island” is TETÁĆES. The word TETÁĆES is a combination of two other distinct words in SENĆOŦEN: TEĆ (meaning deep) and SCÁLEĆE (meaning relative or friend).

Therefore, TETÁĆES literally means ‘Relative of the Deep’.

After throwing the WŚÁNEĆ people into the ocean, XÁLS turned to speak to the islands and said:

“Look after your relatives, the WŚÁNEĆ people.”

XÁLS then turned to the WŚÁNEĆ People and said:

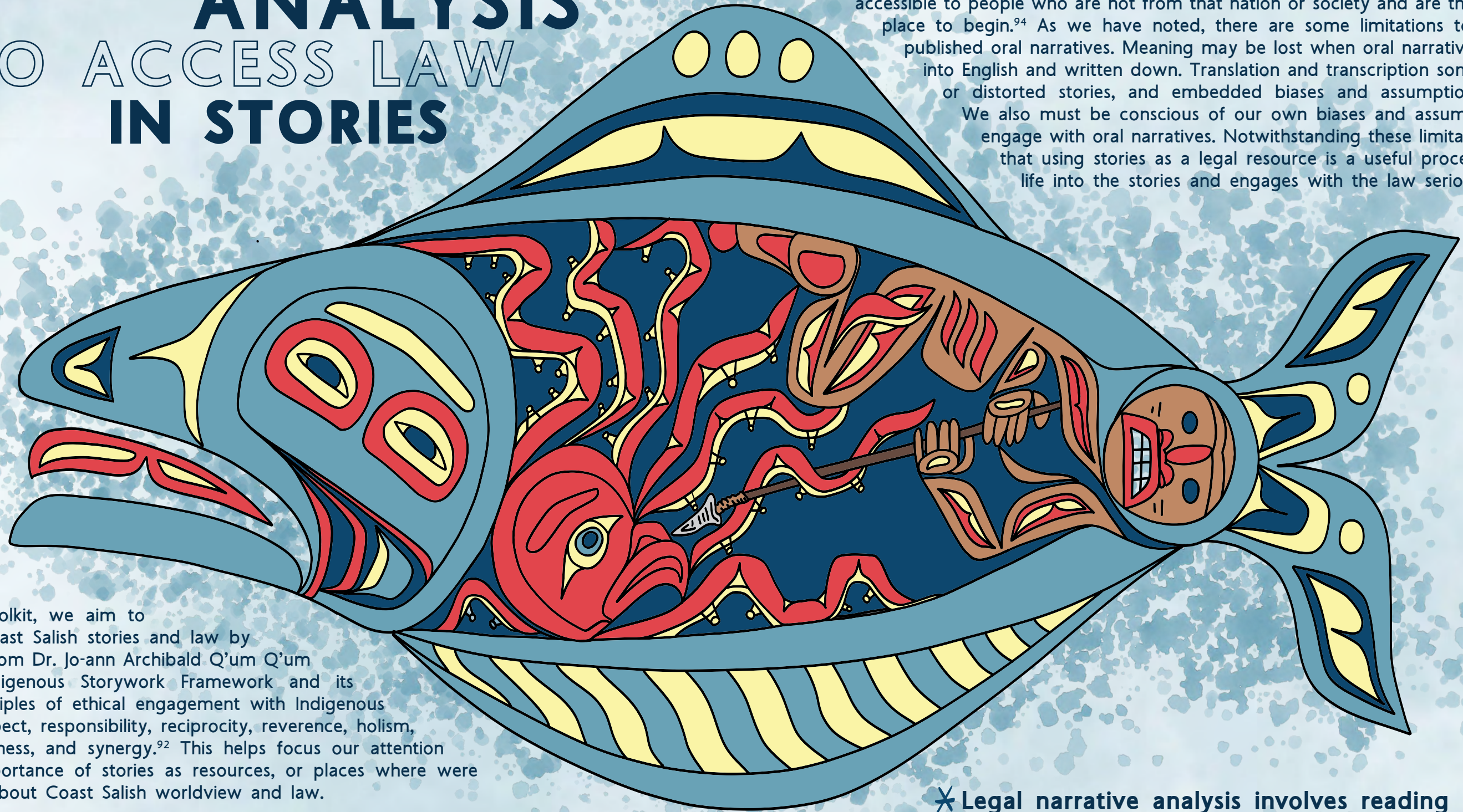
“You will also look after your TETÁĆES (*relatives of the deep*).”



USING LEGAL NARRATIVE ANALYSIS TO ACCESS LAW IN STORIES

that comes from the common, or state, law. This approach, called the ‘case brief’ method is a tool that helps people draw out legal principles and, importantly, legal reasoning from court decisions.⁹³ The ILRU uses this method when reading and analysing Indigenous narratives and stories to draw out the reasoning that is sometimes hidden within them.

One of the advantages of using legal narrative analysis is that the learning starts by engaging with published and translated stories from an Indigenous society. These resources are more accessible to people who are not from that nation or society and are therefore an easier place to begin.⁹⁴ As we have noted, there are some limitations to engaging with published oral narratives. Meaning may be lost when oral narratives are translated into English and written down. Translation and transcription sometimes changed or distorted stories, and embedded biases and assumptions within them. We also must be conscious of our own biases and assumptions when we engage with oral narratives. Notwithstanding these limitations, we believe that using stories as a legal resource is a useful process that breathes life into the stories and engages with the law seriously as law.



In this Toolkit, we aim to lift up Coast Salish stories and law by starting from Dr. Jo-ann Archibald Q’um Q’um Xiem’s Indigenous Storywork Framework and its seven principles of ethical engagement with Indigenous stories: respect, responsibility, reciprocity, reverence, holism, interrelatedness, and synergy.⁹² This helps focus our attention on the importance of stories as resources, or places where we can learn about Coast Salish worldview and law.

Just as there are many resources of law, including stories, there are many ways, or methods, of engaging with Indigenous law. This includes the ways we might engage with those stories. Legal narrative analysis, used by Indigenous Law Research Unit (ILRU), is a form of narrative analysis adapted from a method of analyzing judgments

✱ Legal narrative analysis involves reading a story and thinking through five main components in each story, exemplified in the graph below. There are examples of the legal narrative analysis method in the Casebooks.

LEGAL NARRATIVE ANALYSIS

ISSUES

- ✗ Issues are the human problems raised in a story.
- ✗ These are questions you ask a story.
- ✗ There are an infinite amount of questions you can ask a single oral narrative.
- ✗ The key is to find a question that relates to area of Indigenous law you are researching.
- ✗ It is helpful to ask questions that speak to how people respond in a situation to draw out legal reasoning.
- ✗ For example, in child and caregiver nurturance law, one might focus on questions such as “what is the proper response when a child is in danger? Or, “what is the proper response when a caregiver needs help?” These are just two examples of the type of questions you might ask.

FACTS

- ✗ Facts are the relevant background information to the issue.
- ✗ They are the parts of the story that are necessary to understand in order to make sense of a decision made in the story.
- ✗ Not all facts in a story are relevant to a particular issue.

RESOLUTIONS/DECISIONS

- ✗ Resolutions/Decisions are the answer(s) to the issue or question raised in a story.
- ✗ There may be more than one resolution or decision.
- ✗ However, the decisions should always directly answer your issues or questions.

REASONS

- ✗ Reasons are the “because” of the decision.
- ✗ Sometimes, the reasons are said clearly in a story.
- ✗ Other times, the reasons are unsaid, but you can conclude or infer the reasons because of other information in the story.
- ✗ You must be able to explain your reason from what you have learned from the story itself, and not from other knowledge or information that cannot be linked to the story.
- ✗ Determining the reasoning is important for drawing out specific principles in law.

BRACKETS

- ✗ Brackets are information, questions and thoughts that you may have about story but are not related to your analysis.
- ✗ They may be places to put other knowledge that you have that might explain something in a story, or things you don’t understand at all.
- ✗ We find brackets are a useful place to put questions that might be answered by other stories or indicate where you might see the development of an overall legal principle.

✗ **REMEMBER:** LEGAL NARRATIVE ANALYSIS IS ONLY ONE WAY OF WORKING WITH INDIGENOUS LAW STORIES AND IT MAY NOT BE USEFUL FOR EVERY STORY. WE ENCOURAGE YOU TO THINK ABOUT OTHER METHODS TO ENGAGE IN SUBSTANTIVE, PRACTICAL ANALYSES OF INDIGENOUS LAWS.

✗ **TIP:** WHEN READING A STORY, YOU MIGHT FIND IT HELPFUL TO USE A DIFFERENT HIGHLIGHTER FOR EACH OF THE DIFFERENT CATEGORIES

UNIT 4:

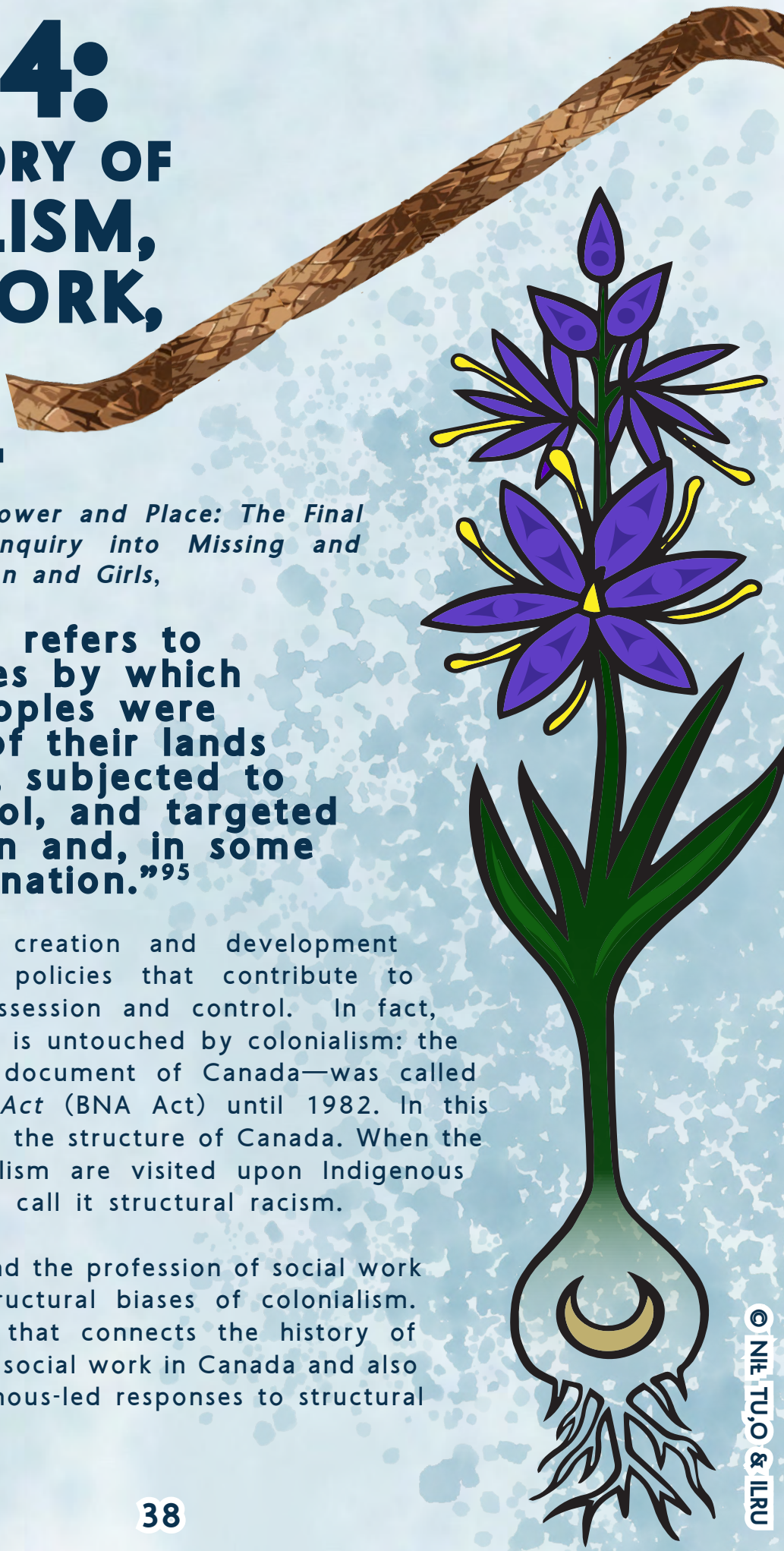
A BRIEF HISTORY OF COLONIALISM, SOCIAL WORK, & CHILD WELFARE

As defined in *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*,

“Colonization refers to the processes by which Indigenous Peoples were dispossessed of their lands and resources, subjected to external control, and targeted for assimilation and, in some cases, extermination.”⁹⁵

Colonization includes the creation and development of institutions, laws and policies that contribute to the overall goals of dispossession and control. In fact, almost no institution or law is untouched by colonialism: the Constitution—the founding document of Canada—was called the *British North America Act* (BNA Act) until 1982. In this way, colonialism is built into the structure of Canada. When the negative effects of colonialism are visited upon Indigenous peoples because of this, we call it structural racism.

The social welfare system and the profession of social work are not immune to the structural biases of colonialism. This chapter is a timeline that connects the history of colonialism to the history of social work in Canada and also outlines some of the Indigenous-led responses to structural racism.



COLONIALISM & SOCIAL WORK: A TIMELINE

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 INDIAN ACT

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).

1867

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 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 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 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 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

2007

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”

Note that Canada was an objector to UNDRIP until 2016.

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, a Cree lawyer from Saskatchewan, 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.

1989

The **UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (CRC)** is a legally binding international agreement that sets out the civil, political, economic, social and cultural rights of every child. The CRC states that Indigenous children are entitled the right to enjoy their culture, religion and language; to non-discriminatory education; and, to access to diverse media in their languages.

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.

2007

JORDAN'S PRINCIPLE

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.”

2016

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.

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.

2015

The TRUTH AND RECONCILIATION COMMISSION OF CANADA – 94 CALLS TO ACTION

After a decade of research dedicated to seeking the truth behind residential schools, the TRC released 94 Calls to Action that included calls to reduce the number of Indigenous kids in care, implement Jordan's Principle, and provide culturally appropriate services for Indigenous kids and their families.

2019

The **FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS** articulates 231 calls for justice. Fifteen of those calls are directed specifically at child welfare and include recognizing Indigenous jurisdiction over children and families; defining ‘the best interests of the child’ in a culturally relevant way; and increasing funding at all levels of child and family welfare.

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 this federal legislation is to recognize Indigenous jurisdiction over and establish national standards for child welfare.

UNIT 5:

COAST SALISH LAWS RELATING TO CHILD AND CAREGIVER NURTURANCE & SAFETY

WHY ARE WE CALLING IT “CHILD SAFETY AND CHILD & CAREGIVER NURTURANCE”?

Canadian law uses the term ‘child welfare’ to refer to services designed to support and care for children (to nurture) and to protect children (safety). However, ‘child welfare’ is not a neutral term in Indigenous communities. ‘Child welfare’ represents, for many, harmful state institutions that have forcibly separated Indigenous children from their parents and families for generations. The term can trigger the trauma and memories of being in the child welfare system or negative experiences with state law and the Canadian state. We do not want to confuse the work of this project, or Indigenous law, with that system or Canadian law. Since this project is about turning to Coast Salish law to see what it can teach us about nurturing and providing safety for children and their caregivers, we have decided not to adopt the term ‘child welfare’ for this Toolkit and its accompanying Casebook, Abridged Casebook, and Activity Books.

Moving away from the term ‘child welfare’ does not mean that principles of child safety are absent in Coast Salish or Indigenous law. Protecting and nurturing children are universal issues around the world, and every society has particular ways of addressing those issues. In the Coast Salish legal tradition, there are many stories, or oral narratives, that speak directly to the responsibilities and responses that individuals and communities have when children need to be protected. Because Coast Salish communities had decentralized governance structures, families and the broader community were in charge of responding to these issues rather than a state or external actor.

We also wanted to make sure that this project did not over-emphasize or prioritize, as the term ‘child welfare’ often does, responses that are necessary to protect children when they are in danger. Although these responses are critical, many of the stories we reviewed and the community members we spoke with reinforced the importance of creating conditions that enable both children and their caregivers to thrive. In this way, prevention of harm and a focus on general wellness is just as, if not more, important to an effective legal system. The phrase ‘Coast Salish laws relating to child and caregiver nurturance and safety’ is meant to reflect all the legal principles, processes and systems of care and safety that bind individuals and their communities and highlights the importance of emotional, physical, and spiritual supports that caregivers and children should be able to expect and receive.

AN OVERVIEW OF COAST SALISH CHILD SAFETY & CAREGIVER NURTURANCE LAW

The imposition of Canadian law on Coast Salish territory, in particular as it pertains to child welfare, has drastically shifted the legal landscape for many communities. Nevertheless, Coast Salish Peoples hold full jurisdiction and authority over laws relating to child and caregiver nurturance and safety. In fact, it is not difficult to see the persistence of Coast Salish law through the stories and day-to-day lived experiences of Coast Salish individuals and communities. While this project did not include a full analysis and synthesis of Coast Salish laws relating to child and caregiver nurturance and safety, some conclusions from the preliminary research are undeniable:

1. Families are the primary legal institution for caring for and teaching children in Coast Salish legal traditions

Families are a primary legal institution for the practice of law in Coast Salish communities, including the laws that guide caring for and teaching children and each other.

Coast Salish laws may be practiced differently among families. As Dr. Sarah Morales (Sutaxwiye) explains, unlike in state law, Hul'qumi'num family laws are not exclusively laws about family and child wellness. Hul'qumi'num "[F]amily laws encompass "the norms, customs and traditions, or customary laws" which contribute to the maintenance of snuw'uyulh.⁹⁶ Snuw'uyulh is the Hul'qumi'num word for "way of life" or "way of being on mother earth", and is the word that most closely resembles the concept of law.⁹⁷ Family laws are developed through "family law-making" processes, through which family members practice customs distinctly across processes such as ceremonies or deliberative practices.⁹⁸ As Hul'qumi'num family laws are decentralized, they are also "more open to change and adaptation across family units."⁹⁹ The acknowledgment and acceptance of these differences and the fluidity of family laws is important to understanding the practice of law in the Coast Salish world.

Coast Salish Peoples begin caring for and educating their children from the moment of conception. Sharon Marlo Paige reflects that "parenting begins when a couple discovers that the woman is pregnant."¹⁰⁰ This has also been referred to as "the teachings of the unborn child."¹⁰¹ Some teachings suggest that "when [baby] starts to kick" is the moment that intentional teachings directed to the child begin.¹⁰² This early teaching is an important way of acknowledging 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.”¹⁰³
— Luschiim (Arvid Charlie)

Historically, some legal responsibilities of caring and teaching have included extended families, Elders, and the broader community:

“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.”¹⁰⁴

— Dave Elliot Sr.

The passing down of these laws are not only for the baby, but also for the parents:

“The *Sul-hween/Elders* would lay down the expectations and responsibilities associated with those expectations, explaining to the newly expectant parents that their lifestyle would change immediately and that more changes would arrive with the baby.”¹⁰⁵

— Sharon Marlo Paige

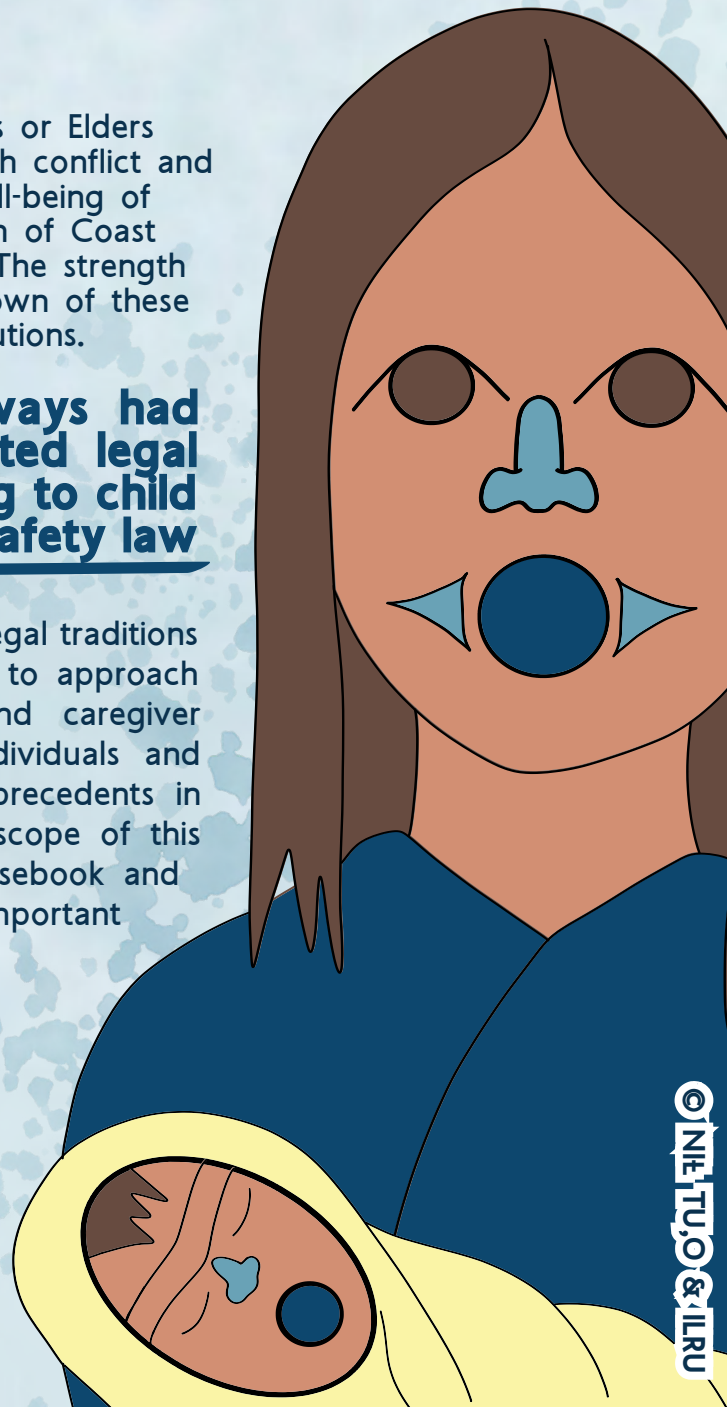
Although there is a practice of calling in teachers or Elders from outside families or communities to help with conflict and teachings,¹⁰⁶ the responsibility to care for the well-being of caregivers and children falls within the jurisdiction of Coast Salish families and their respective communities. The strength and health of the nation relies on the passing down of these laws within those family structures or legal institutions.

2. Coast Salish Peoples have always had well-established and sophisticated legal principles and processes relating to child and caregiver nurturance and safety law

As in every other legal tradition, the Coast Salish legal traditions have always contemplated and anticipated how to approach questions and challenges relating to child and caregiver nurturance and safety. These laws rely on individuals and communities to interpret and implement their precedents in formal and informal ways. Even in the limited scope of this project, the stories and narratives within the Casebook and Abridged Casebook provide guidance on some important legal questions:

✱ HOW TO DEAL WITH UNSUITABLE/HARMFUL CAREGIVERS

- The First Men,¹⁰⁷ Mr. Clookshla and His Family,¹⁰⁸ The Son of Kwinus;¹⁰⁹



✧ HOW TO ARRANGE FOR THE CARE OF CHILDREN WITHOUT PARENTS/PRIMARY CAREGIVERS

- The First Men;¹¹⁰

✧ HOW TO INTERVENE IN SITUATIONS OF HARM/ DANGER AND THE RESPONSIBILITY TO DO SO

- The First Men,¹¹¹ The Legend of the Stoneheads,¹¹² Story of Smútuksen,¹¹³ T'SOXELETs the Cannibal Woman,¹¹⁴ XÁLS Makes Raven a Bird,¹¹⁵ The Son of Kwinus,¹¹⁶ Cla-Moise,¹¹⁷ The Grandma that Turned into Kwash;¹¹⁸

✧ HOW TO INCORPORATE NEW FAMILY MEMBERS (REUNIFICATION OR ADOPTION)

- Story of Smútuksen,¹¹⁹ Legend of the Star Sisters,¹²⁰ The Son of Kwinus.¹²¹

Hul'q'umi'num' legal scholar, Dr. Sarah Morales (Su-taxwiye), has commented that there is great space to uphold these legal principles while allowing for the varied practice of implementing those laws on a family-by-family basis. As she notes: "Individuals and families are encouraged to apply the norms, customs and traditions according to their own interpretations of the teachings ("laws") and others are taught to respect those interpretations."¹²² In this way, Coast Salish law is not necessarily prescriptive, but accommodates solutions that are responsive, relevant, and contextual.

3. Coast Salish laws relating to child and caregiver nurturance and safety emphasize the importance of systems of community care and safety, which include the rights, obligations and agency children, caregivers, and their families hold individually and in relationship to one other.

Autonomy, safety, participation in decision-making, and rights to be sustained (physically, emotionally, mentally, and spiritually) are rights that we see present in the stories that are carried by children, caregivers, and the community alike. This is a departure from Canadian law, which often views children as unable to make decisions for themselves. A number of stories in the Casebook and Abridged Casebook explore rights and obligations as well as the role of agency in Coast Salish laws relating to child and caregiver nurturance and safety:

✧ MUTUAL OBLIGATIONS IN CAREGIVER-CHILD RELATIONSHIPS

- Mr. Clookshla and His Family,¹²³ Clookshla and His Sister Crow,¹²⁴ The Legend of the Stoneheads,¹²⁵ SIÁTEN and SESIÁTEN,¹²⁶ The Son of Kwinus,¹²⁷ Legend of Camossung,¹²⁸ SMÍET,¹²⁹ The Boy and the Spirit,¹³⁰ The Grandma that Turned into Kwash;¹³¹

✧ OBLIGATIONS TO SHARE WITH FAMILY MEMBERS

- The Boy and the Spirit,¹³² Mr. Clookshla and His Family,¹³³ Clookshla and His Sister Crow,¹³⁴ The Son of Kwinus;¹³⁵

✧ OBLIGATIONS OF ACCOUNTABILITY TO ONE'S SELF AND OTHERS

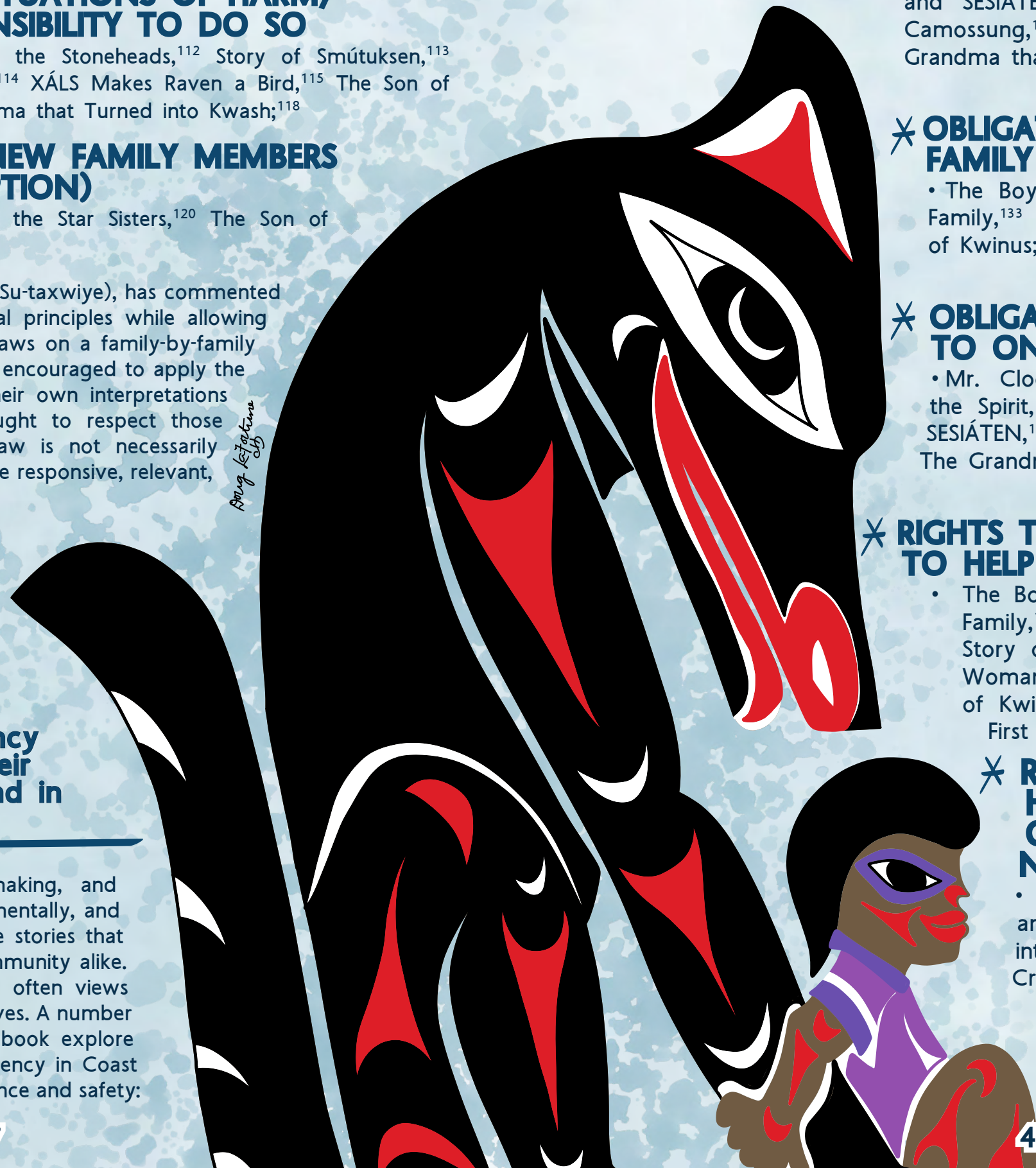
- Mr. Clookshla and His Family,¹³⁶ The Boy and the Spirit,¹³⁷ The Rock Sticker Story,¹³⁸ SIÁTEN and SESIÁTEN,¹³⁹ SMÍET,¹⁴⁰ The Legend of Star Sisters,¹⁴¹ The Grandma that Turned into Kwash;¹⁴²

✧ RIGHTS TO SAFETY AND OBLIGATIONS TO HELP OTHERS IN DANGER

- The Boy and the Spirit,¹⁴³ Mr. Clookshla and his Family,¹⁴⁴ Cla-moise,¹⁴⁵ Legend of the Stoneheads,¹⁴⁶ Story of Smútuksen,¹⁴⁷ T'SOXELETs the Cannibal Woman,¹⁴⁸ XÁLS Makes Raven a Bird,¹⁴⁹ The Son of Kwinus,¹⁵⁰ The Legend of Star Sisters,¹⁵¹ The First Men;¹⁵²

✧ RIGHTS TO HAVE HUMAN NEEDS MET AND OBLIGATIONS TO MEET THE NEEDS OF OTHERS

- The Boy and the Spirit,¹⁵³ Mr. Clookshla and his Family,¹⁵⁴ The Grandma that Turned into a Kwash,¹⁵⁵ Clookshla and His Sister Crow,¹⁵⁶ Legend of Camossung,¹⁵⁷ SIÁTEN and SESIÁTEN;¹⁵⁸





✧ COLLECTIVE RESPONSIBILITIES TO MAINTAIN SAFETY

- Cla-Moise,¹⁵⁹ The First Men,¹⁶⁰ SIÁTEN and SESIÁTEN,¹⁶¹ Story of Smútuksen,¹⁶² T'SOXELETS the Cannibal Woman;¹⁶³

✧ OBLIGATIONS OF EXTENDED FAMILY OR COMMUNITY TO SUPPORT CAREGIVERS AND CHILDREN

- Legend of Camossung,¹⁶⁴ Clookshla and His Sister Crow,¹⁶⁵ Story of Smútuksen,¹⁶⁶ SIÁTEN and SESIÁTEN;¹⁶⁷

✧ OBLIGATIONS TO NURTURE OUR OWN GIFTS AND USE THEM FOR PERSONAL AND COMMUNITY WELL-BEING

- The Boy and the Spirit,¹⁶⁸ The Legend of the Stoneheads,¹⁶⁹ Story of Smútuksen,¹⁷⁰ SMÍET;¹⁷¹ and

✧ THE AUTONOMY OF CHILDREN, AND RESPECTING THEIR CAPACITY TO MAKE THEIR OWN DECISIONS AND BE SELF-GOVERNING

- Cla-Moise,¹⁷² The Rock Sticker Story,¹⁷³ The Legend of the Stoneheads,¹⁷⁴ Story of Smútuksen,¹⁷⁵ T'SOXELETS the Cannibal Woman,¹⁷⁶ SIÁTEN and SESIÁTEN,¹⁷⁷ The Son of Kwinus,¹⁷⁸ The Legend of Star Sisters,¹⁷⁹ The Grandma that Turned into Kwash.¹⁸⁰

It is important to note that

there are always limits to rights and obligations and a balancing that occurs when they interact with each other. That is, the right a child may have to make decisions may be limited by a caregiver's obligation to protect and uphold that child's right to safety. In this way, people are always negotiating, balancing and adjusting these legal principles depending on the specific context.

UNIT 6: TRANSFORMING SYSTEMS OF OPPRESSION

While social work is known as a helping profession, it is also clear that it has often been complicit in the advancement of Canadian colonial policy and has acted as a vehicle for oppression (this history is explored in much greater detail in Unit 3). In order to transform systems of oppression, we have to understand the policies and underlying beliefs that inform and justify harmful practices and how these policies, beliefs and practices may negatively impact people.

Many of these beliefs and justifications reflect common and harmful myths relating to social work and the child welfare system that persist today. It is important to identify and challenge those myths in order to transform these systems of oppression.

CHALLENGING AND RESPONDING TO MYTHS AND STEREOTYPES

OPPRESSIVE MYTH 1

“There are good things about residential schools.”

Residential schools have left a legacy of trauma and a history of hurt, and nothing else, in their wake. Families were torn apart, children were abused, and the after-effects of years of this racist policy are all that remain. One of the strongest advocates and designers of the Indian Residential School System was Hector Langevin, a Canadian politician from the 19th century. He is quoted as saying,

“The fact is if you wish to educate these children you must separate them from their parents during the time that they are being educated. If you leave them in the family they may know how to read and write, but they still remain savages, whereas by separating them in the way proposed, they acquire the habits and tastes — it is to be hoped only the good tastes — of civilized people.”¹⁸¹

The underlying purpose of residential schools is one based on racist notions of European superiority that classified Indigenous people as uncivilized. Assimilation was the goal, and education was a secondary purpose. And, overwhelmingly, there is clear evidence that even the goal of education failed, as survivors and former students emerged from residential schools with limited literacy and numeracy skills.

Regardless of measurable outcomes of literacy or any other indicators, education in and of itself will never be enough to justify residential schools and the cruel methods used by government and school officials. Furthermore, by the time settlers arrived in North America, Indigenous peoples had been educating their children for thousands of years. There is no reason to believe that Indigenous people would have stopped educating their children in the face of colonialism. The type of knowledge needed to survive into the future may have changed at contact, but to assume that Indigenous peoples couldn't adapt or respond to those changes is racist and oppressive.

There is no good that came from residential schools.

OPPRESSIVE MYTH 2

“Indigenous people are unable to properly care for children”

The over-representation of Indigenous children in care directly correlates to political and social policy in Canada. In 1951, amendments to the *Indian Act* meant that provincial child welfare societies could extend their jurisdiction onto reserve lands. Within 10 years, the number of Indigenous kids in care in British Columbia went from a total of 29 to 1446. In other words, within a decade, Indigenous kids went from representing less than 1% of the total kids in care population, to representing more than 34%.¹⁸²

The 2016 Canadian Census data shows that while only 7.7% of children under 4 in Canada were Indigenous, they represented over half of all kids in care.¹⁸³ The most common reason cited for the apprehension of children is “neglect”—a category with far-reaching scope.¹⁸⁴ Critics of the child welfare system point out that poverty (which includes lack of engagement in a wage-labour economy, i.e., living on the land) and extended kinship relations (where children have many primary caregivers) have been labeled negligent since first contact. There is real cultural tension between many Indigenous child-rearing practices and Western beliefs about children that give rise to cultural biases at micro and macro levels of practice.

Notwithstanding the attempts by colonization to assimilate Indigenous peoples and children through targeted attacks on family and community structure, Indigenous peoples continue to survive and thrive. This history means that social issues that accompany intergenerational trauma affect Indigenous peoples at higher rates than other groups in Canada. However, that does not mean Indigenous peoples are not capable of properly raising their own children. All families from any background require support and community in order to raise healthy children and this is no different for Indigenous peoples. Prevention, support, and a dedication to reconciliation are critical to fix the problems caused by colonization.

OPPRESSIVE MYTH 3

“Residential schools were a long time ago.”

The last federally operated residential school closed its doors in 1996 in Saskatchewan. Notably, the closure represented the last of the federally operated as opposed to the last residential school period.

The year 1996 was not that long ago, and children who would have been school-age then are now in their twenties and thirties. Residential schools were not a long time ago, but rather have been active well into this past quarter-century.

Canada’s residential school system has left long-lasting and continuing impacts to individuals, families and communities to date. Impacts on physical and emotional health, intergenerational trauma, and grief are a few of the many effects linked to residential schools. The residential school experience will continue to be held and felt by Indigenous peoples, both individually and collectively, for generations to come.

Additionally, state-led displacement and assimilation practices did not end with the residential school system. This can be seen in varying contexts. For instance, many Indigenous children and youth must still leave their home communities at great distances in order to attend school. In worst-case scenarios, Indigenous youth are still subjected to racism and segregation in these schools while also being separated from their families and communities.

OPPRESSIVE MYTH 4

“A child’s cultural background is of secondary importance to their health and well-being.”

The problem with this myth is that it doesn’t take into account the incredible resilience and strength that comes from strong cultural identity. Being rooted in your own culture, knowing who you are, where you come from, and who your ancestors are is a vital part of the health and well-being of all children; this, of course, includes Indigenous children. Instead of justifying child apprehension with this myth, the child welfare system should be working hard to provide resources to keep families together and support families of origin as well as foster families in the revitalization of culture and access to community resources.

TRAUMA SENSITIVE & INFORMED PRACTICE

Indigenous people, including children, have been impacted by colonial systems since contact. Child welfare has manifested in various forms, including residential schools, the 60's Scoop, and modern child welfare practices. Interacting with these systems and practices has led to real, lived experiences of trauma by Indigenous children, their families and their communities.

The term 'trauma' is the "lasting emotional response that often results from living through distressing events or circumstances."¹⁸⁵ Traumatic events can affect a person's well-being, harming their "sense of safety, sense of self, and ability to regulate emotions and navigate relationships."¹⁸⁶ Traumatic events Indigenous people have experienced through their interactions with colonial systems, including the Canadian child welfare system, are commonly associated with harmful and lasting forms of developmental, inter-generational, and historical trauma.¹⁸⁷ This Toolkit frames Coast Salish law as child and caregiver nurturance and safety instead of child welfare to distinguish it from Western structures and systems. We believe this is an important part of reimagining the approach and practice of social work and law in relation to Indigenous children, families, and communities. However, re-framing language does not erase people's lived experiences and memories of trauma associated with the child welfare system. Some topics and activities in this Toolkit that touch on this challenging history and legacy may trigger these traumatic experiences and memories.

We view trauma-informed approaches as necessary not only in the context of this Toolkit, but also in the broader goal of transforming oppressive systems. Being trauma-informed means, in this case, being "aware of the impact of trauma on the brain and the body,"¹⁸⁸ and working to minimize the possibilities of additional harm, in this case, further traumatization or re-traumatization, of people by focusing on safety and engagement.¹⁸⁹

Being trauma-informed does not require people to be counsellors or social workers,¹⁹⁰ or to shy away from difficult topics. It is also important not to make assumptions about people's experiences or perpetuate stereotypes about Indigenous people. However, it does require you to think about how to facilitate and navigate conversations that might trigger trauma, identify and understand trauma, and understand your own abilities and limitations about how to respond.

RESOURCES ON TRAUMA-INFORMED PRACTICE

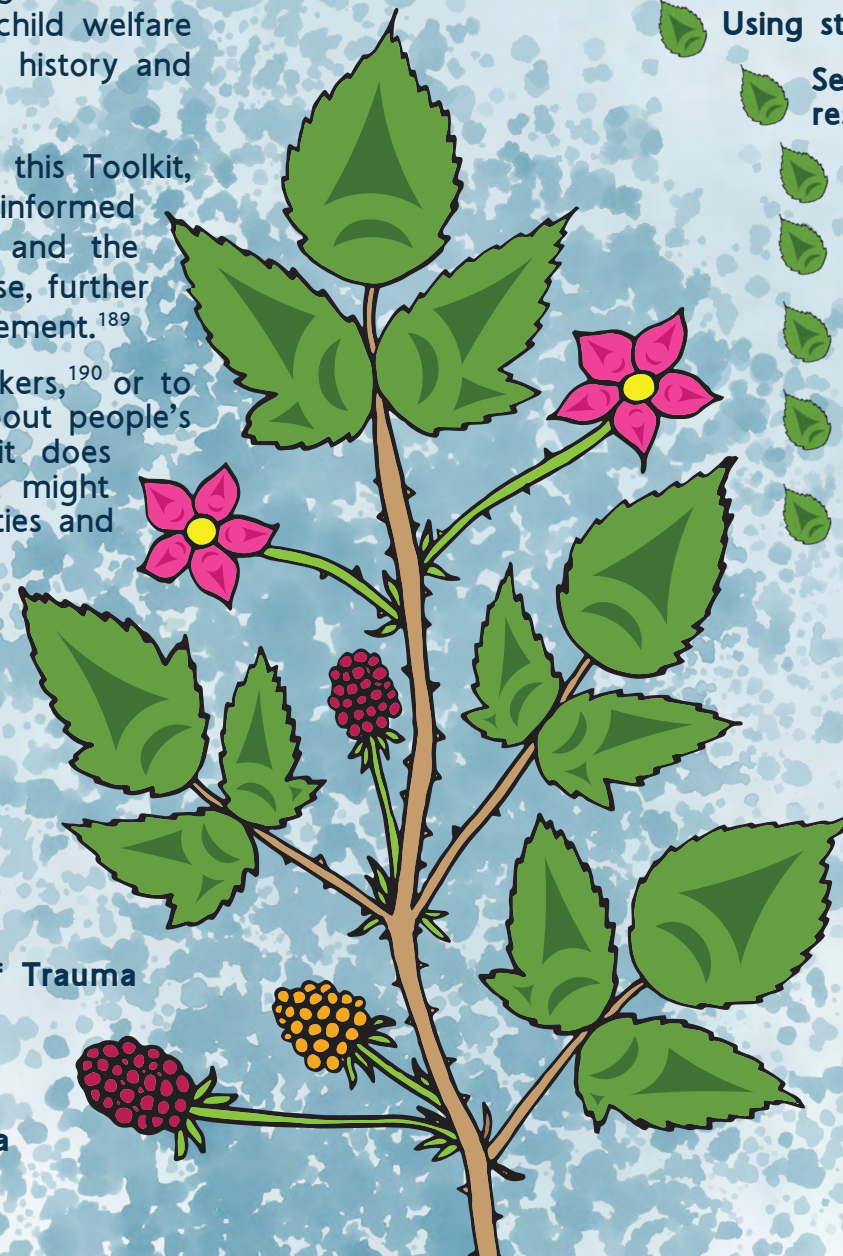
- BC Provincial Mental Health and Substance Use Planning Council's Trauma-Informed Practice Guide
- Government of British Columbia's Healing Families, Helping Systems: A Trauma-Informed Practice Guide
- Substance Abuse and Mental Health Services Administration's Concept of Trauma and Guidance for a Trauma-Informed Approach
- Golden Eagle Rising Society's Trauma-Informed Legal Practice Toolkit
- William Aguiar and Regine Halseth's Aboriginal Peoples and Historic Trauma

SOME TANGIBLE WAYS TO BE TRAUMA-INFORMED

- Seeking feedback about participants' expectations;
- Being transparent about your approach, qualifications and role in the activities;
- Providing an overview of conversations and activities in advance, so participants are able to anticipate triggers;
- Considering how background, culture, genders and age influences different people's experiences to build safer spaces for engagement, conversation and learning;
- Considering how to modify spaces to make them more welcoming and safe for participation and collaboration;
- Facilitating empowerment by providing space for people to choose and collaborate with one another meaningfully;
- Emphasizing that participation is voluntary and be open and willing to make modifications for participants to participate in a way that feels safe for individuals;
- Using strengths-based language to promote resiliency;
- Seeking feedback about the activities and facilitation style and be responsive to it;
- Active listening and active observing of body language;
- Being familiar with trauma responses to be able to identify them with participants;
- Having additional helpers available and identifying them to participants;
- Scheduling health breaks with optional guided breathing/stretching/grounding exercises; and
- Engaging in reflective practice and life-long learning to improve your own practices.

CORE PRINCIPLES OF TRAUMA-INFORMED PRACTICE

- Trauma awareness;
- Emphasis on safety, trustworthiness, and transparency;
- Opportunity for choice, collaboration, and connection;
- Peer support;
- Empowerment, voice, and choice;
- Strengths-based and skill building; and
- Considering contexts: cultures, histories, identities, and genders.¹⁹¹



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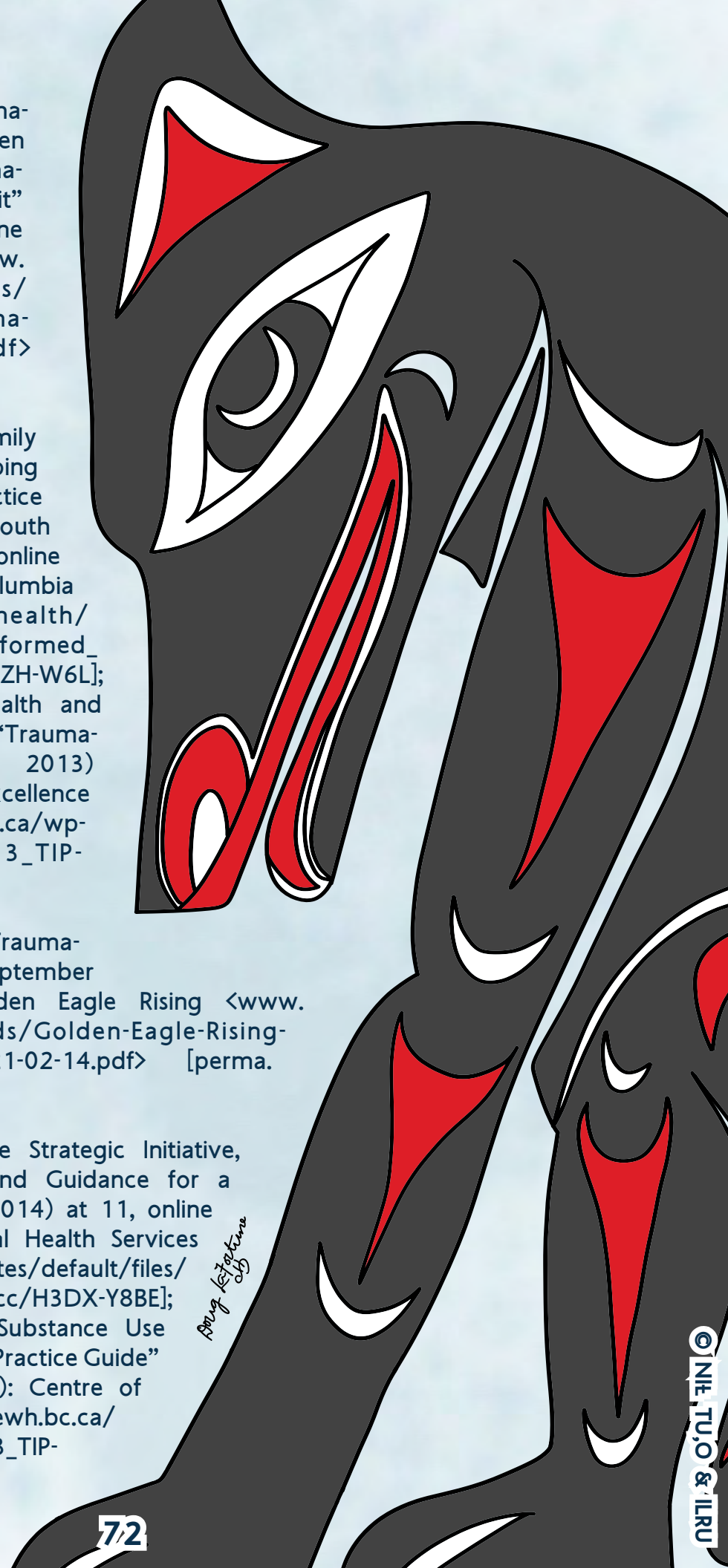
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Angela Wong

