

## **MAKING SPACE:**

### **Prioritizing Aboriginal Practices in Aboriginal Child Protection Case Conferences**

**by**

**Judge Rosemary Gallagher and Elder Kathy Louis, OBC**

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The British Columbia Provincial Court is participating in a pilot project aimed at addressing the needs and concerns of Aboriginal families who are involved in the child protection system: The Aboriginal Family Healing Court Conference (AFHCC).<sup>1</sup> The current model provides for early involvement of Elders. The Elders work with the families to address child protection concerns and develop a Healing and Wellness plan for the parents with the goal of returning the children home. The Court becomes involved through a specialized Family Case Conference called the Aboriginal Family Healing Court Conference. These healing conferences are different from the traditional Family Case Conference in a number of ways, an important one being that Elders attend in support of the parents and there is emphasis on healing plans and cultural safety. The model is developed with a principal focus on urban Aboriginal family realities and is delivered by the Spirit of the Children Society, a Ministry of Child and Family Development (MCFD) contracted agency.

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<sup>1</sup> Aboriginal is the preferred term of the lead Elders on this project.

## **Goals for the Project**

The AFHCC project goals are to reduce the over-representation of Aboriginal children in care by providing cultural interventions that increase the effectiveness of the court processes for child protection cases; to reduce the number of cases that go to trial; and, to improve the health, social and justice outcomes for Aboriginal children and families who come into contact with the child protection system.<sup>2</sup> As a pilot project, our focus is to develop a workable approach that might broaden the participation and leadership of Aboriginal Elders and to experientially document the process and its impact on a small number of families.

## **Background**

It is key Elders committed to bringing about change for children and families who drove the creation of The Aboriginal Family Healing Court Conference pilot project. They recognized that the “usual mode” of court process was too often failing children and families, and believed that it was possible to have a better model, built on Aboriginal participation and leadership. They worked with the BC Provincial Court, the BC Government and the Spirit of the Child Society beginning in 2012 to implement the Aboriginal Family Healing Court Conference model in the New Westminster Courthouse. The project did not proceed at that time for a number of reasons, but as a result, the Elders felt frustrated and abandoned. However, they did not give up and re-initiated discussions about the project following the Representative of Children and

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<sup>2</sup> Office of the Chief Judge, “Aboriginal Family Healing Court Conference Overview”, 2017

Youth's (RCY) report: *Paige's Story: Abuse, Indifference and a Life Discarded*<sup>3</sup>. The report documented the many ways in which child welfare, the courts and other systems failed a young Aboriginal girl over several years. The Elders, along with many in the Justice system, recognized that Paige's tragedy is a reality many Aboriginal children and families endure and joined the Elders of the New Westminster First Nations Criminal Court to re-engage with the government to make the AFHCC a reality.

They had allies in the justice system. Judge Marion Buller (retired), whose vision and determination played a significant role in bringing the AFHCC into the Provincial Court, has explained "Making space for Aboriginal practices, elder support and a more relational way of providing services is crucial to creating safe justice processes for Aboriginal people."<sup>4</sup>

A Working Group and Steering Committee were formed to work together to achieve approval from the various stakeholders to implement the AFHCC model. Ultimately, Chief Judge Crabtree, on behalf of the Provincial Court of BC, the BC Government and the Spirit of the Child Society committed to a three year pilot project based on a model jointly developed between Elders and the court. The Elders emphasize that Aboriginal practices used in the model are to be as taught by local Tribal Nations and Elders.

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<sup>3</sup> Representative for Children and Youth, *Paige's Story: Abuse, Indifference and a Young Life Discarded* (May 2015), online: <[www.rcybc.ca/sites/default/files/documents/pdf/reports\\_publications/rcy-pgreport-final.pdf](http://www.rcybc.ca/sites/default/files/documents/pdf/reports_publications/rcy-pgreport-final.pdf)>.

<sup>4</sup> Judge Marion Buller (retired) speaking at the CLE conference: Access to Justice For Children Conference: Child Rights In Action, May 11-12, 2017.

## **The Launch**

The AFHCC officially launched January 24, 2017. The program began accepting families in February and the first Aboriginal Family Healing Court Conference took place on April 3, 2017. The scope of the project was initially limited to those families serviced by the Burnaby/New Westminister Ministry of Child and Family Development office with court files in New Westminister. There is now capacity to include families with court files at Robson Square and Port Coquitlam who are connected to the MCFD Aboriginal Teams in Burnaby, New Westminister, and Tri-Cities. For those families, the file is transferred for one purpose only - the AFHCC.<sup>5</sup> Once that has happened, the file is then returned to the originating court. During the initial stages, the project is moving slowly, building capacity and developing inclusive, respectful processes that build the confidence of those involved. The involvement of so many peoples - not just the Elders and families, but also social workers, support workers and legal counsel can create challenges, however, each person, bringing their unique experience, outweighs the challenge of numbers. It is anticipated that the pilot program will work with 15 families over the course of approximately a year and a half.

The AFHCC takes place once a month, in court conference room 212, in the New Westminister Courthouse. The usual, conventional court conference room is blanketed with Aboriginal artworks - a dream catcher hangs at the door, a quilted blanket, cut and sewn by hand hangs on one wall. A large print of an Inuit mother and child hangs on another wall. The long round table is covered with a ceremonial blanket and on it lies a

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<sup>5</sup> Rule 8(12) under the *Provincial Court (Child, Family and Community Service Act)*.

paddle, engraved with the symbol for the AFHCC, as well as a pair of child sized moccasins. The artworks are gifts provided by various organizations involved in the evolution of the project.

### **The Process**

Near the beginning of the conference, the procedure is for the Elder to describe the AFHCC as:

“a unique process that utilizes the Medicine Wheel and Four Directions cultural teachings, beliefs and values to guide Aboriginal children and families through a more traditionally based conference. The process values the sacred teachings of Respect, Courage, Honesty, Humility, Wisdom, Truth and Unconditional Love, while incorporating principles of Kindness, Sharing, Trust and Caring into the decision-making process and development of the Healing and Wellness Plan for Families. The Elders and program coordinator work closely with the families offering support and guidance through the process of addressing Ministry identified child protection concerns as the family begins to move towards wellness”.<sup>6</sup>

The AFHCC is an expansion of the Family Case Conference process into a healing circle, to allow for more culturally appropriate processes. An Aboriginal family can talk about what is going on in their lives and - telling their stories in an environment which is

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<sup>6</sup> Kathy Louis, Elder, material prepared for AFHCC, 2017

attentive to both their cultural practices and their unique personal situation. It is a safe place to talk about emotions and other aspects of their specific difficulties, while the healing circle provides empathy and support. The families can benefit by learning from collective wisdom. As well they can grow from learning to listen deeply to differing perspectives and they can be empowered by being involved in designing a Health and Wellness Plan that works for them.<sup>7</sup>

To achieve these goals, the process is designed to respect the Elders' roles in Aboriginal communities, which have been foundational to the wellness of the communities for centuries. These communities have had the opportunity to learn from their Elders as they teach, listen and advise spiritually and culturally. Elders pray and participate in ceremonies, ensure continuation of culture and help restore balance to individuals and communities. From the perspective of a judge, family members and others involved in the process, it is clear that the benefits of Elders having a strong role in the AFHCC initiatives are numerous, from assisting the parents to help them feel more confident and to trust in the fairness of the process, to increasing the families' sense of belonging to a respected community, to serving as community role model for the parents and families.<sup>8</sup>

The role of the judge is somewhat like the role of the "keeper of the circle" in a healing circle. It is not the same as the judge's role in a family case conference as it is not judge led conflict resolution. It is a quieter role. Although the role differs from the

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<sup>7</sup> Sally Campbell, Julie Daum, CLE material prepared for Circle Process For Mediators Workshop, April 24-26, 2017.

<sup>8</sup> Kathy Louis, Elder, material prepared for AFHCC.

traditional court setting, the judge still has the powers given by legislation based upon relevant legal principles. The keeper “holds the space” so that participants in the circle can speak from the heart, listen and have an opportunity to be heard. The judge helps to maintain focus and attends to the pace of the dialogue. The judge assists the Elders with creating an environment where trust is built, where families can speak honestly and the collective wisdom of the group can emerge.<sup>9</sup> Importantly, the judge is witness to the Elders providing sage advice to the family, which may be more easily heard and accepted than if coming from someone involved with Ministry or from the judge. The Elder can, for example, remind the parents of their responsibility to achieve a balance, caring for the body, mind, emotions and spirit of the individual, the family, the community and the nation<sup>10</sup> - something that a judge or Ministry social worker cannot do.

### **Stories\* from the Pilot Project**

So far, the conferences have produced some remarkable evidence of communication, support and potential healing. In one conference, the participants sitting in circle included the mother, the project co-ordinator, the social worker and her supervisor and their legal counsel, the mother’s counsellor, family strengthening worker, substance use and mental health worker and legal counsel, the Elder and the judge. The Elder began by performing a smudge ceremony, easing the circle into a sense of connectedness.

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<sup>9</sup> Sally Campbell, Julie Daum, CLE material prepared for Circle Process For Mediators Workshop, April 24-26, 2017.

<sup>10</sup> Kathy Louis, Elder, material prepared for AFHCC.

\*The AFHCC is a confidential process. For purposes of this article, facts have been modified to provide for complete anonymity. As well, consents from each family for inclusion in the article have been obtained.

She then shared a bit about herself - her twelve years of Residential School, the loss of her brother to suicide, her career as a registered nurse, working in psychiatric care and her commitment to the AFHCC. The Elder then relied on the words (above) to describe what the AFHCC is and how it will proceed. The judge began by asking the mother whose two teen age girls are in Ministry care, what she would like to talk about and how she is doing with the Wellness Plan she has created with the help of The Elder and the program co-ordinator, in preparation for the family healing conference. The conversation began with supportive comments on the mother's progress from the Elder, the program co-ordinator and the support worker's perspectives. It took some time, just over an hour, for the mother to appear to relax and want to speak. When she did, she was able to describe difficult early years in her life - involving incest and rape and the lifelong shame and guilt she carries. The silence and attention in the circle were heartfelt. The Elder, who was sitting beside the mother, moved her chair closer to her, gently leaned into her and said "It is my honour to walk with you. You were an innocent child who walked in the light. The shame and guilt is not yours to take". The mother cried deeply, but there was a sense of relief in the tears - there was a palpable sense of connection between the Elder and the mother. The heartfelt conversation continued and by the end of the conference, the mother, who had been in denial and anger for a very long time, turned to the Elder and said she was ready to try to work on her Healing and Wellness Plan.

The Elder provided a kind of listening that is present and judgment free. This listening allows for connection between Elder and mother that creates space for the mother to



grieve for and potentially remember her better self. It is this quality of deep listening that can provide the mother with the hope and will to take a first step. It can provide the catalyst for change. All of us believe that this listening allows the court process to touch the lives of this Aboriginal parent in a way that makes a difference.

### **Integrating Healing and Participation in the Court Conference Process**

As is detailed above, there are a number of participants at each conference, each thinking and exploring ways to integrate the family court conference process with traditional Aboriginal approaches to healing - a pioneering of new ways of integration.

One new tool is the project's use of the Healing and Wellness Plan. The plan is based on a broad holistic definition of its purpose. According to Elder Jim Dumont: "wellness from an Indigenous perspective is a whole and healthy person expressed through a sense of balance of spirit, emotion, mind and body. Central to wellness is belief in one's connection to language, land, beings of creation, and ancestry, supported by a caring family and environment."<sup>11</sup>

The Healing and Wellness Plan provides a structure for families to work with Elders and the program co-ordinator to create a concrete Healing Plan which is a personal tool for achieving wellness, a balanced life and healing for parents and families. The development of a Healing Plan is based on the Medicine Wheel teachings<sup>12</sup>, and is

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<sup>11</sup> Elder Jim Dumont, National Native Addictions Partnership Foundation: Honouring Our Strengths Indigenous Culture as Intervention in Addictions and Treatment Project: University of Saskatchewan-Definition of Wellness, 2014.

<sup>12</sup> Kathy Louis, materials produced for AFHCC pilot project.

presented in the oral tradition at the court conference. It is not filed with the court. It belongs to the families.

The project is also committed to improving how adults hear from the children involved and to developing procedures for children's participation in the AFHCC. A number of approaches are being explored - from the child being present to express their views; to a support person being there for the child, meeting with them beforehand and then being present to communicate the child's views; to pictures of the child being displayed in an album; to a letter outlining the child's views, written by a trained professional. The chosen approach will be whichever is appropriate for the unique needs of the family participating in the project.

One conference so far, at the children's request, has included children. The mother's mental health as well as difficulties making ends meet on social assistance are focal points on the Healing and Wellness Plan for the family of 4 children under the age of 18. The eldest, a teenager, and the youngest, under the age of 2, attended each of 3 conferences. The youngest child was a delight to have in the room. He was completely comfortable in the arms of his family - moved from one to another throughout the mornings. The eldest child had been very clear he wanted to come to the conference. The program co-ordinator and his social worker listened to him and realized it was appropriate based on his age, developmental level and feelings about the conference. The young man did not want to speak, however he did want to listen and he did want to share the intricate action figures he was drawing. While working on his art work, he was

an attentive listener, sitting in the circle some of the time or on the floor close by, some of the time, as well as taking intermittent breaks, accompanied by his support worker.

An elementary school age, autistic sibling, with significant mental health issues did not attend the conference. She had been in temporary care of the Ministry for some time and the mother and grandmother, who live together with the children, had come to the difficult decision that this child would have access to more services and better care if placed permanently with the Ministry. They came to the conference to consent to a continuing custody order for that child with ongoing weekly, all day visits with their daughter to continue. The social worker created a beautiful picture book of the child's life with her two families, her biological family and her new family and brought it to the conference to share who this child is and what her two lives are about, effectively bringing her into the conference.

The second eldest child wanted to attend the 3<sup>rd</sup> conference only - the returning home conference. He attended along with his foster mother. The two had bonded over the 18 month period and their close connection was apparent. It was a connection appreciated by the mother and grandmother, who had the opportunity at the conference to voice their appreciation for the care she had provided to their child.

This conference day was a celebration day: the 2 eldest children were returning home. The circle was large, 19 of us, including three Elders and Chief Clifford White, of the Gitxaala Nation, BC, who had been instrumental in bringing the AFHCC into being, had

flown in to witness the ceremony and court orders being made. We passed the feather and each, including the children, had a turn to speak.

The court recording was on. The mother wanted to share the many steps she had taken to bring her mental health back to a place of stability, which now allowed her to join her mother, in all the comings and goings of the children's daily lives - the bussing of children to and from school, the meeting with the required support people in the Wellness Plan and the ways to ease the financial constraints on this family of 6. The social worker for the Ministry acknowledged all the work done by both mother and grandmother to allow for the return of the two children. Lawyers summarized positions and provided the required documents and consents for filing. The judge made the consent orders: returning the 2 children home with terms of supervision, granting the continuing custody order with ongoing weekly family visits for 1 child and extending the supervision order for the youngest child, and providing for the grandmother to be guardian to the children under the *Family Law Act*.

The conference then moved into a blanketing ceremony. Chief White spoke while an Elder, blanketed each of the family members who have achieved the goals set out in their Healing and Wellness Plan to honor their hard work and success. The foster mother too was blanketed for the love and support she has provided.

The conference concluded with all standing in circle, holding hands and listening to the Elder's prayer for the family and all who have participated. We then moved outside to the park to eat cake and watch the children play.

Exploring ways to integrate the Provincial Court family case conference process with the traditional Aboriginal approach to healing is not a small task. There are fundamental differences between judge led conflict resolution and Aboriginal circle healing. But through the process of creating space within the court system for healing circle, the system of support around these vulnerable families is broadened and strengthened with the potential to create pathways to better outcomes - for families and for the justice system.