

ON THE FRONT COVER



THE HONOURABLE MADAM JUSTICE ARDITH WALKEM, WALPETKO WE'DALX

By Louise Mandell, Q.C.

When Ardith was appointed to the Supreme Court of British Columbia on December 14, 2020, the news zoomed around the province like a ray of hope. She had no more vases for her bouquets. An advocate and educator, a prolific and powerful writer, Ardith became the first First Nation woman to sit as a judge of the B.C. Supreme Court.¹ Such is the occasion that it is being celebrated by her appearance on the cover of the *Advocate*.

The cover portrait painted by David Goatley shows Ardith against a backdrop of the mountains surrounding her Chilliwack home. However, she grew up in Spences Bridge, a member of the Cook's Ferry community, with strong connections to Lytton and Ashcroft of the Nlaka'pamux Nation. Nlaka'pamux stories, values, laws and territory are strands woven together from Ardith's early life, forming the fabric of her brilliant career in law.

Her parents were residential school survivors. As a girl, she lived on a small family cattle ranch without electricity, a telephone or running water in winter. Coming from a family of limited means fostered in her an attitude of empathy toward the differences of others. Existing in spaces of social or economic vulnerability created an openness to the lived experiences of others.

Her father, Bert Walkem, was proficient in multiple Indigenous languages and was one of her teachers of Nlaka'pamux laws and culture. He took her hunting with him, providing her a lens through which to see Nlaka'pamux territory as a geography of spirit—a world where all of life's forces are intertwined, sustaining the whole. On her road to the bench, she travelled a road no other judge has. She followed a vastly different map of the world.

Ardith was trained since childhood in the peacekeeping traditions of the Nlaka'pamux people. Her curiosity about what motivates people, what they care about, is essential to understanding others. She is bi-juridical, with experience in Indigenous legal systems and over 20 years practising Canadian law. Ardith co-edited a book, *Box of Treasures or Empty Box? Twenty Years of Section 35*, exploring the legacy of s. 35 of the *Constitution Act, 1982*.

Drawing from values that contributed to her community's radical resilience, she learned that her craft was the power that comes from dedication and striving for excellence. Witnessing how we have the power to determine how we experience life after trauma, Ardith chose compassion, humour, optimism, intuition, curiosity and self-expression.

Her family valued education. Ardith earned a bachelor of arts degree from McGill University and a law degree and a master's degree in Indigenous law from UBC, where she also taught in the Faculty of Law. She is currently enrolled in a Ph.D. program focusing on ways of incorporating Indigenous laws into criminal and family law decision making. Ardith articulated at Mandell Pinder, the Union of BC Indian Chiefs ("UBCIC") and McDonald and Associates before being called to the bar in 1996.

Ardith has owned and operated her own law firm for decades and was a partner at Cedar and Sage in Chilliwack with her partner in life and law, Halie Bruce. They have two daughters. Being hockey and soccer moms has opened up times of pure joy. As a family, they laugh a lot, explore the world and focus on what is important: love and support and the way we connect with one another. Their travel often includes international forays to watch soccer matches.

Ardith's legal practice focused on working with individuals and peoples who feel disempowered within our legal system. This has included Indigenous communities, individual harvesters (hunters or fishers charged criminally), and parents and communities in the child welfare system. Through her broader policy work, she sought to empower and give voice to the traditionally disempowered. She worked on Indigenous women's issues for Indigenous organizations, recognizing that a gendered analysis of law and policy is necessary to achieving fairness. Her core belief is that freedom from discrimination is a cornerstone of access to justice. Human rights, at their core, are about inclusion and honouring the dignity and uniqueness of others. In 2019, she was commissioned by the BC Human Rights Tribunal to produce a report on Indigenous peoples' human rights titled *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights*.² Her recommendations are currently being implemented.

In her practice, Ardith was both an advocate and an educator, bringing the area of Indigenous law into focus. The Supreme Court of Canada has

recognized the continuance of Indigenous laws and customs as the “golden thread” of the common law.³ This recognition is empowering for Indigenous communities and has the potential to benefit all Canadians, but it requires implementation and efforts from all of us to do shared work in considering how to move forward. Much of Ardith’s practice involved working with different Indigenous Nations to find ways to rearticulate Indigenous laws and legal orders into a modern legal and political context. This work evolved into finding ways to incorporate Indigenous laws and ways of problem solving into broader alternative dispute resolution processes.

Ardith has an infectious quality of loving and creativity, collaborating with colleagues to educate about Indigenous laws in ways that can shift patterns of thought, individually and collectively. She curated a project called *Testify: A Project of the Indigenous Laws + Arts Collective* that pairs artists and legal theorists to create an opportunity for dialogue about Indigenous laws and opportunities for their dynamic expression as part of Canadian society and Canada’s legal landscape. Ardith was paired with renowned artist Corrine Hunt, who created a sculpture that was generously donated to Vancouver Island University. Ardith’s paper, “We Are Our Laws Walking: The Light Shining Through”,⁴ calls upon the imperative of hope embodied in Indigenous legal traditions to repair and weave Canadian society back to wholeness. *Testify* has exhibited in Vancouver, Vancouver Island University, Osgoode Hall Law School, Windsor Law School, McGill University, Chippewas of the Thames, the Law Society of Ontario and the University of Victoria.

Ardith dedicated a considerable portion of her career to public legal education, increasing lawyers’ professional development, competency and capacity, and to working within legal organizations to achieve these shared goals. While acting as co-chair of the Law Society of British Columbia’s Truth and Reconciliation Advisory Committee, appointed by the benchers, Ardith produced the video “But I Was Wearing a Suit” to raise awareness of bias and systemic discrimination in the legal profession towards Indigenous lawyers.⁵

Some of the major litigation she participated in focused on Aboriginal title, Aboriginal rights and treaty rights, including appearing as one of the lead counsel before the Supreme Court of Canada in *R. v. Morris*.⁶ This was a constitutional case that affirmed the right of the descendants of those who signed a pre-Confederation treaty in British Columbia to continue to hunt at night with the aid of lights in accordance with their laws. She was a senior member of the litigation team that participated in an intervention before the Supreme Court of Canada in *Tsilhqot’in Nation v. British Columbia*,⁷ whose trajectory through the courts was made possible by the *British Colum-*

bia (Minister of Forests) v. Okanagan Indian Band case she worked on, which achieved a historic costs award.⁸

Following the birth of her children, the rights of children evolved into a priority area. Ardith's work addressed the systemic problem of over-representation of Indigenous children in care, contributing to the re-envisioning of how we think about child welfare. Traditionally, child welfare focused on the parent(s) and the state as key actors. Indigenous communities were rarely, if ever, involved, and their contributions were dismissed. Her work has been guided by an understanding that, in order to stop the over-representation of Indigenous children in the child welfare system, it is necessary to actively involve Indigenous communities in the child welfare process and broaden who we see as valid legal actors in these processes.

She authored a guidebook entitled *Wrapping Our Ways Around Them: The Child, Family and Community Service Act (CFCSA), Aboriginal Communities and Parents Plain Language Guidebook*.⁹ The guidebook is widely distributed to members of the bench, bar and Indigenous communities. This has increased the knowledge and awareness of the judiciary, legal counsel and communities regarding how they can help maintain community ties for Indigenous children who are in care. The second edition of the guidebook, published in 2021, focuses on federal child welfare legislation and empowering Indigenous laws in that area.

Ardith has been recognized for her great contributions in law:

- In 2016, she received the Bill McFarland Award from the Parent Support Services Society of BC in recognition for excellence in the advancement of child welfare.
- In 2018, she was appointed Queen's Counsel.
- In 2019, she received the CLEBC Leaders in Learning Award in recognition of her commitment to mentorship, role modelling and delivering learning opportunities to lawyers, particularly regarding Indigenous laws and Truth and Reconciliation.

Now, she has been appointed a judge of the B.C. Supreme Court. Grand Chief Stewart Phillip, President of the UBCIC, recognized her contributions:

Over the past three decades, Ardith has made immeasurable contributions to our organization and member nations. We know her for her legal rigor, brilliant mind, warm sense of humour, and principled commitment to supporting Indigenous peoples and families and to the full and fair enactment of Indigenous Title and Rights. As a BC Supreme Court judge, she will be a shining light of justice – richly insightful, deeply knowledgeable, and strong in advancing what is right.¹⁰

Everyone will feel they are given a fair hearing in her courtroom. Coming from the position of someone who has stood in the place of being “other”, she is careful to honour the need for gentleness and respect, and to make room to actually see and consider the different sides and perspectives people bring with them.

Mapping the terrain of our further journey along the road of reconciliation, Ardith broke the glass ceiling. Young Indigenous lawyers now can imagine themselves following in her footsteps. This is all part of the legal profession's inspired collective response to the Truth and Reconciliation Commission's Calls to Action, which drive us to reimagine a justice system enriched by the principle of proportionality, inspiring hope as we weave the threads back together again.

ENDNOTES

1. Though not the first member of her extended family to serve on the bench. Interested parties may choose to search her last name and that of Judge Begbie: her paternal great-uncle was once the Attorney General of the province and one of the first lawyers trained on these lands to practise in British Columbia.
2. *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights* (January 2020), online: <www.bchrt.bc.ca/shareddocs/indigenous/expanding-our-vision.pdf>.
3. *R v Van der Peet*, [1996] 2 SCR 507 at para 263, McLachlin J (dissenting, but not on this point).
4. Online: <testifyindigenous.ca/we-are-our-laws-walking-the-light-shining-through/>.
5. “But I Was Wearing a Suit” (2017), online: <www.cle.bc.ca/butiwaswearingasuit/>.
6. 2006 SCC 59.
7. 2014 SCC 44.
8. 2003 SCC 71.
9. *Wrapping Our Ways Around Them: The Child, Family and Community Service Act (CFCSA), Aboriginal Communities and Parents Plain Language Guidebook* (Nlaka’pamux Nation Tribal Council-ShchEma-mee.ikt Project), online: <pubsdb.lss.bc.ca/pdfs/pubs/Wrapping-Our-Ways-Around-Them-eng.pdf>.
10. UBCIC, News Release, “UBCIC Congratulates Ardith (Walpetko We’dalx) Walkem on Appointment to the British Columbia Supreme Court” (14 December 2020), online: <www.ubcic.bc.ca/ubcic_ardith_appt_bc_supreme_court>.

