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The 2020/2021 Year in Access to Justice on ABlawg

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Event Commented On: Access to Justice Week 2021

The Canadian Bar Association's annual [Access to Justice Week in Alberta](#) ran from October 25-31, 2021. This post is the annual look back at the past year of access to justice posts on ABlawg. The blog focuses on important cases that changed the law rather than programs that provided access to justice for underserved communities – the [access to justice blog](#) covers several of those initiatives, and some other changes not covered on ABlawg.

One useful development at the Supreme Court of Canada (SCC) was *Fraser v Canada (Attorney General)*, [2020 SCC 28 \(CanLII\)](#), covered for ABlawg [here](#) by Jennifer Koshan and Jonnette Watson Hamilton. *Fraser* was the first successful adverse effects claim for equality rights under section 15 of the *Canadian Charter of Rights and Freedoms* [[Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)] in over 20 years. *Fraser* clarified the test for adverse effects claims and hopefully set *Charter* equality rights on a path for useful growth in coming years.

In the environmental context, Kirk Lambrecht Q.C. covered the Court of Appeal's decision in *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board*, [2020 ABCA 456 \(CanLII\)](#). *Normtek* rejected the Environmental Appeal Board's restrictive interpretation of 'directly affected', broadening the range of Albertans who can be heard by Alberta's environmental protection tribunals. While the Environmental Appeals Board has not released a written decision on standing since *Normtek* was decided, The Alberta Public Lands Appeal Board did release a standing decision (*Gordeyville and Area Community Members Group v Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks*, [2021 ABPLAB 9 \(CanLII\)](#)) which may mark the beginning of wider citizen participation in Alberta land- use decisions.

In the area of domestic violence, progress was again set back by COVID-19. Professor Jennifer Koshan wrote [a post in February](#) on the Family Violence Death Review Committee [2019/2020 Annual Report](#) and the need for legislative action. Alberta is still working on a new family violence strategy. The [Single Mothers' Alliance of BC Society test case](#), a challenge to BC's legal aid funding scheme for women leaving abusive relationships, was not heard in 2021 as planned and is currently set for trial in March 2022.

A major development of the past year was the reinvigoration of calls for reconciliation, driven partially by the horrific new evidence of mass graves at residential schools. The good news is that the law on the duty to consult and treaty rights continued to develop with *Yahey v British*

Columbia, [2021 BCSC 1287 \(CanLII\)](#), a positive decision on the Crown’s obligation to consider cumulative effects on treaty rights. *Yahey* was covered for ABlawg by Robert Hamilton & Nick Ettinger in [a post here](#).

The bad news is that the litigation resulting from the landmark Canadian Human Rights Tribunal decision in *First Nations Child & Family Caring Society of Canada v Attorney General of Canada* dragged on into 2021. *First Nations Child & Family Caring Society* is a decision finding the federal government discriminated against First Nations children and families in regard to child and family services that continued to be fought by the federal government, most recently in *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, [2021 FC 969 \(CanLII\)](#). Indigenous Services Canada [appealed that decision on Friday October 29, 2021](#), although the government has indicated it would [prefer to negotiate than pursue the appeal](#). If Canada is moving towards reconciliation, it does not seem to be moving very fast.

[Last year](#), referring to the Black Lives Matter movement and calls for racial justice in policing (an issue that is also strongly connected to reconciliation), I wrote that “whether serious attempts to address the systemic racism of Canada’s justice system are made, or if the calls for reform are brushed off, is the major access to justice issue to watch in 2020/2021.” Lisa Silver wrote [a post on Conlin v Edmonton \(City\) Police Service, 2021 ABCA 287 \(CanLII\)](#), which addressed the threshold standard on which the Chief of police must review public complaints about police misconduct being sent for disciplinary hearings. *Conlin* did not significantly change the law, and the needed reforms will likely require legislative change. At a minimum, the Law Enforcement Review Board needs to be reformed to ensure greater civilian oversight of Alberta’s police. It appears the calls for police reform have not yet met with success.

I will end with a caution against too much optimism or pessimism. There is a temptation to think any problem being worked on is moving towards being solved, but there is little evidence that is the case for access to justice. Despite the hard work of a community dedicated to access to justice issues, the access to justice problem is not getting smaller. The gradual progress on access to justice is being matched by countervailing pressure to cut costs and the emergence of new social and economic problems. On the other hand, there is no reason to think Canada’s access to justice problems are unsolvable, only that current efforts are not sufficient.

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