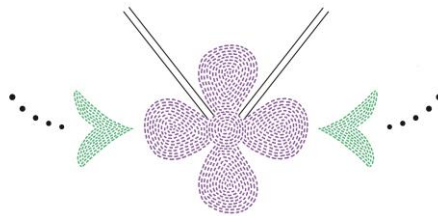


National Inquiry into
Missing and Murdered
Indigenous Women and Girls



Enquête nationale
sur les femmes et les filles
autochtones disparues et assassinées

**National Inquiry into Missing and Murdered
Indigenous Women and Girls
Truth-Gathering Process Part III
Expert & Knowledge-Keeper Hearings
“Human Rights Framework”
Hôtel Pur, Central Ballroom
Ville de Québec / Quebec City**



Part III Volume VI

Wednesday May 16, 2018

**Panel II: “International Human Rights Law as a Foundation
for the Inquiry's Work and Recommendations”**

Brenda Gunn

Corey O'Soup

Jean Leclair

Dalee Sambo Dorough

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1 Quebec City, Quebec

2 --- The hearing starts on Wednesday, May 16th, 2018 at
3 8:07 a.m.

4 **MS. LAUREEN "BLU" WATERS-GAUDIO:** We welcome
5 you all back again this morning for another day on the
6 Algonquin territory, the territory of the, I wanna say
7 Wendake, and it's not Wendake, Wandat.

8 And I'm grateful again that we're here, that
9 we get to listen to the words of those that carry the
10 knowledge and bring us information of things that need to
11 change.

12 This morning, I ask those Ancestors to come
13 and sit and be with us, so that we open our ears again in a
14 good way. And we remember to speak to each other, today,
15 in a good way, so to our words come out good. Because
16 sometimes when we hear those harsh words that are being
17 told to us, the histories, the understandings, it's a
18 little bit riled up as Indigenous people, and not
19 Indigenous people.

20 So I ask today that those Ancestors help us
21 to find that balance today, so that we can walk in a good
22 way and we can speak in a good way, we hear in a good way,
23 and our minds understand things in a good way, today.

24 I'm gonna ask Penelope to do the actual
25 opening blessing. For me, I just call in the Ancestors for

1 today, and then we have the next part coming to affect.

2 **MME PENELOPE GUAY:** Bon matin. On est rendu
3 à notre troisième journée. Ça demande beaucoup d'attention
4 et de... j'ai de la misère à trouver les mots pour exprimer...
5 J'avais besoin de matériaux, ce matin, là, pour me donner
6 de la force et du courage.

7 Si ça vous arrive d'avoir besoin, j'ai de la
8 sauge en arrière, vous pouvez aller, parce que ça devient
9 un peu plus fatigué. On est ici, aussi, pour... si vous avez
10 besoin d'être écouté ou de sortir les émotions, parce qu'on
11 devient plus sensible. Plus le cœur... est touché quand on
12 est plus sensible, quand on est plus vulnérable, si vous
13 avez besoin, c'est là pour vous.

14 Je remercie les Commissaires, les courageux
15 et courageuses. Je remercie les témoins, dont les experts
16 ou les gardiens du savoir. Je vous remercie tous ceux qui
17 viennent écouter, c'est important. C'est important
18 d'entendre ce qui va se dire, ce qui va se passer. Ça va
19 laisser sûrement des marques dans l'histoire, et vous êtes
20 les témoins. Merci à vous tous, et bonne journée.

21 **MS. LAUREEN "BLU" WATERS-GAUDIO:** So our
22 women warriors have been outside, today, offering some
23 force, and we will honour them once we finish that, we'll
24 get straight into hearing from our group and their
25 Ancestors. Rebecca will then speak, then we'll get

1 started, sorry.

2 **MS. REBECCA VEVEE:** (INDIGENOUS LANGUAGE)

3 **MS. AUDREY GIRARD:** This is known as the
4 (INDIGENOUS WORD) song or Earth Song. I share it as, it's
5 from the West coast, we share it today so that we can start
6 the day in a good way. We're on day three of four heavy
7 days, and we're taking care properly, so we're doing..
8 Ladies?

9 (INDIGENOUS CHANT)

10 **MS. CHRISTA BIG CANOE:** Good morning, Chief
11 Commissioner, Commissioners. This morning, it is my
12 pleasure to introduce you to the first witness the
13 Commission counsel is calling, which is Professor Brenda
14 Gunn. Before we start any testimony, I ask that Professor
15 Gunn be affirmed.

16 **CHIEF COMMISSIONER MARION BULLER:** Professor
17 Gunn, do you solemnly affirm to tell the truth and give
18 your evidence in a good way today?

19 **MS. BRENDA GUNN:** I do. Yes. Thank you.

20 **BRENDA GUNN, AFFIRMED**

21 **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MS.**

22 **CHRISTA BIG CANOE :**

23 **MS. CHRISTA BIG CANOE:** Thank you. I will
24 be asking and putting forward a motion to qualify Professor
25 Gunn as an expert. I have not had any indication of an

1 objection, and on that basis, the parties with standing in
2 attendance are consenting to the process in which I'm
3 qualifying Professor Brenda Gunn.

4 So, Brenda, I'm just going to ask you a
5 couple of questions to get us started, and the first one is
6 pretty simple. Can you share a little bit about your
7 background with us?

8 **MS. BRENDA GUNN:** Yes, thank you. I am
9 Métis from Manitoba. My family comes from just north in
10 the St. Andrews, St. Clements area. How far did you want
11 me to go?

12 **MS. CHRISTA BIG CANOE:** That's a good start.
13 Are you currently still residing in Manitoba?

14 **MS. BRENDA GUNN:** Yes. I currently live in
15 Winnipeg and teach at the University of Manitoba.

16 **MS. CHRISTA BIG CANOE:** And, what are you
17 teaching at the University of Manitoba?

18 **MS. BRENDA GUNN:** My core courses include
19 the first-year Constitutional Law course in the Faculty of
20 Law. I teach Environmental Law. I also teach a course on
21 Indigenous Rights and International Law, as well as a
22 course on Métis people and Canadian law.

23 **MS. CHRISTA BIG CANOE:** I also understand
24 that you are the Director of Innocence Canada and Manitoba
25 Legal Aid Management Council. Do you want to tell us a

1 little bit about that?

2 **MS. BRENDA GUNN:** That's correct. I sit on
3 the board of Innocence Canada as we've been transitioning
4 from the Association in the Defence of the Wrongfully
5 Convicted into Innocence Canada, as well as on Legal Aid
6 Manitoba. Both of those I have been sitting for about a
7 year and a half now.

8 **MS. CHRISTA BIG CANOE:** And, Professor Gunn,
9 is it okay if I call you Brenda?

10 **MS. BRENDA GUNN:** Yes, that's fine.

11 **MS. CHRISTA BIG CANOE:** Thank you. Brenda,
12 I just want to give you -- I'm going to pass you a copy of
13 your C.V.

14 **MS. BRENDA GUNN:** I have a copy.

15 **MS. CHRISTA BIG CANOE:** You have a copy?
16 Perfect. I just want to highlight a couple of things on
17 there. So, in addition to what you're currently doing, I
18 understand that you have spent some time. So, in your
19 earlier practice career, you were in Guatemala. Can you
20 tell us a little bit about that?

21 **MS. BRENDA GUNN:** Yes. I worked at a
22 community legal clinic in a town called Rabinal in the
23 department of Baja Verapaz. There were, during the
24 internal arm conflict, several genocides that occurred
25 throughout the country, and in the township that I lived

1 in, there were several genocides that had occurred all
2 around the town. And so, there had been an earlier case of
3 genocide brought to the Inter-American Commission of Human
4 Rights that proceeded to the Inter-American Court of Human
5 Rights for a different genocide in Guatemala. And so, the
6 communities I was working with were interested in bringing
7 a similar case forward.

8 And so, I ended up providing technical
9 expertise to the lawyer who was working on the case, who
10 was a domestic Guatemalan lawyer with very little
11 international experience. So, I provided her technical and
12 strategic advice on how to proceed with the case, issues
13 such as bringing one case or multiple cases, and how to
14 address the multiple known and unknown victims from the
15 genocide.

16 **MS. CHRISTA BIG CANOE:** And, in terms of the
17 genocide, and it might seem obvious, but who were the
18 people being disappeared or massacred?

19 **MS. BRENDA GUNN:** Sorry, yes. In the case
20 that I was specifically working on, it was the Mayan
21 communities around the areas perpetrated by the state and
22 the -- oh, goodness. I don't know the English words. A
23 civilian force that was sort of state supported were the
24 perpetrators, sort of alongside the state.

25 **MS. CHRISTA BIG CANOE:** So, the Mayans are

1 Indigenous people?

2 **MS. BRENDA GUNN:** Yes, sorry. Mayan are one
3 of the Indigenous peoples in Guatemala.

4 **MS. CHRISTA BIG CANOE:** If I could just ask
5 you, is there anything else in your C.V. that you wanted to
6 highlight in relation to your professional experience?

7 **MS. BRENDA GUNN:** Throughout the course of
8 my career, I've managed to participate in several different
9 human rights advocacy capacities. I've developed several
10 civil society reports to international human rights treaty
11 monitoring bodies, and attended Canada's periodic reviews
12 before CERD, and the Committee on Economic, Social and
13 Cultural Rights. I've also worked with domestic Canadian
14 lawyers and provided expert advise on potential
15 international avenues to pursue claims that were stymied or
16 frustrated in the domestic process.

17 I've also worked on a land claims case in
18 Belize that was before the Inter-American Commission of
19 Human Rights. I regularly attend international meetings
20 such as the U.N. Permanent Forum on Indigenous Issues and
21 the U.N. Expert Mechanism on the Rights of Indigenous
22 Peoples. As well as in my academic capacity, I am the co-
23 chair of the Indigenous Peoples Interest Group, the
24 American Society of International Law, and I also sit on
25 the Indigenous Rights Committee of the International Law

1 Association.

2 **MS. CHRISTA BIG CANOE:** Thank you. And, can
3 I just ask one last question? I understand you have a
4 Master's. Can you tell us what your Master's is in?

5 **MS. BRENDA GUNN:** Yes. I do have a Bachelor
6 of Arts Law Degree from the University of Toronto, and then
7 my Master of Laws from the University of Arizona in
8 Indigenous Peoples' Law and Policy, and my thesis looked at
9 the impacts of NAFTA on Indigenous peoples' rights.

10 **MS. CHRISTA BIG CANOE:** Thank you. Chief
11 Commissioner and Commissioners, based on the knowledge,
12 skills, practical experience, teaching experience and legal
13 practice as described by Professor Gunn, and as evidenced
14 in her curriculum vitae, which I would ask is made an
15 exhibit, I am tendering her as an expert, specifically in
16 the area of international human rights law as it relates to
17 Indigenous people.

18 **CHIEF COMMISSIONER MARION BULLER:** Professor
19 Gunn's C.V. will be marked as an exhibit.

20 --- EXHIBIT NO./PIÈCE NO. B1

21 Curriculum Vitae of Brenda Gunn (eight
22 pages).

23 **CHIEF COMMISSIONER MARION BULLER:** Based on the consent of
24 parties as well as evidence adduced, certainly, Professor
25 Gunn is qualified to give expert opinion evidence in the

1 area of international human rights as it relates to
2 Indigenous people.

3 **MS. CHRISTA BIG CANOE:** Thank you. So,
4 Professor Gunn, we have a -- I understand that you've
5 prepared a presentation.

6 **MS. BRENDA GUNN:** Yes, there is a PowerPoint
7 that I believe is available. And I must make my most
8 sincerest apologies to all the parties for the extremely
9 late notice in which you are receiving it. That is 100
10 percent my timing issue and in no way related to the
11 Inquiry, but my own difficulties in completing it in a
12 timely fashion. So my sincere apologies.

13 **MS. CHRISTA BIG CANOE:** And I don't think --
14 that's kind of you. I don't think it's necessary, because
15 if I understand correctly, this is prepared on all the
16 material that we've included in the summary and it's kind
17 of -- the point of the presentation. And we're going to be
18 walking through it together, so that is to help kind of
19 highlight the key points that you wanted to explain. So if
20 we could get the PowerPoint presentation up, that'd be
21 great.

22 **MS. BRENDA GUNN:** Yeah, that's correct.
23 It's all based on the paper that I believe is submitted.
24 And I -- just because I will be covering some somewhat
25 technical international law, I thought it might be easier,

1 rather than just trying to hear and digest. That if you
2 had some of the words behind me. So you'll see that it's
3 quite text heavy, but it's containing a lot of the
4 substantive comments that I'm hoping to make today with the
5 hope that parties will then have a reference for future
6 questions.

7 **MS. CHRISTA BIG CANOE:** Thank you. So if we
8 can go to the first slide, my first question for you,
9 Brenda, is what is a human rights-based approach and why is
10 it appropriate -- an appropriate way of addressing violence
11 against Indigenous women?

12 **MS. BRENDA GUNN:** Thank you. Yes, this is
13 the slide.

14 So a human rights based approach is really a
15 framework by which we can start to begin to examine
16 Canada's actions and determine whether the actions that
17 Canada has taken, or the failure to act over the last few
18 decades, complies with international human rights
19 standards. And so, it's my opinion that by using an
20 international human rights-based approach, that we can
21 begin to identify the various recommendations for changes
22 to laws -- sorry, excuse me -- to begin to identify the
23 laws that have failed to protect, and in some cases may
24 have contributed to the situation of murdered and missing
25 Indigenous women.

1 Importantly, I think it gives us a framework
2 to begin to analyse Canada's obligations, but also to begin
3 to identify various inequalities and vulnerabilities. It
4 can be used to address power -- discriminatory practices
5 and address some of the unjust distributions of power and
6 begin to identify some of Canada's actions that undercut
7 human rights.

8 The next reason that I think a human rights-
9 based approach is appropriate is because of the way in
10 which it keeps Indigenous women's needs at the centre and
11 at the focus of the work. It does this in part by
12 acknowledging Indigenous women and girls as rights holders.
13 It promotes their agency and autonomy and allows for the
14 process to consider the various different contexts and
15 different ways in which women experience discrimination.
16 All along, with the goal of increasing the safety,
17 protection, and empowerment of Indigenous women.

18 **MS. CHRISTA BIG CANOE:** Thank you.

19 My next question is, what relevancy does
20 international law instruments have, specifically to missing
21 and murdered Indigenous women, girls, two-spirited, and
22 transgendered, and how does it apply in Canada?

23 **MS. BRENDA GUNN:** Thank you.

24 The next slide, please? In order to answer
25 this question, I think it's useful to understand some

1 basics of international law, so I often call this my
2 international law 101. And thinking about how
3 international law not only exists out there in the
4 international world of Geneva and New York, where the UN
5 exists, but also how it applies in Canada. So many people
6 may know that traditionally, in the early 1900s and
7 somewhat ongoing today, there is a distinction in the
8 different types of international law that exists out there
9 and sometimes people use the categories of hard law and
10 soft law.

11 So hard law would be law that is directly
12 binding on states and is directly enforceable. And so,
13 this can include things like Treaties. So all the
14 different international human rights treaties that I'll be
15 making reference to. But it also includes customary
16 international law, as well as general principles of law. I
17 can explain those further, but I'm not sure that it's
18 necessary for our point today.

19 The second category is soft law, which is
20 not directly binding on its own, but is still considered to
21 be international law. It's more about the enforceability
22 and how the obligations become part of a state's
23 obligations. And so soft law is a difficult category
24 because it includes a whole range of activities. It can
25 include general assembly resolutions. It can include

1 declarations like the UN Declaration on the Rights of
2 Indigenous Peoples that's connected to a UN resolution.
3 But it also includes reports of UN committees, and Treaty
4 monitoring bodies, and also previous decisions of
5 international bodies.

6 And so while we have these two categories,
7 it's particularly important I think to note that when we're
8 referring to human rights, particularly in the application
9 in Canada there's been a decreased emphasis on the type of
10 instrument, is it hard law or soft law? But we see
11 particularly Canadian Courts far more concerned about the
12 normative value of the various instruments. And so, the
13 Courts tend not to get themselves focussed on, is this
14 Treaty implemented in Canada and what are all the steps?
15 But actually, just looking at the normative value. And so
16 even though in Canada we have sort of, three or four
17 technical rules or the application, we don't see the Court
18 following those.

19 So our technical rule is that for
20 international human rights treaties to apply in Canada, the
21 treaty must be transformed into domestic law, and that's
22 usually done through enabling legislation. That can be
23 done sort of, explicitly or implicitly. But the Supreme
24 Court has definitely noted in cases, and I did take out the
25 case references, that treaties -- unimplemented treaties

1 can still have legal effect in Canada, and that's coming
2 from Baker and Justice L'Heureux-Dubé.

3 Customary international law has been clearly
4 held by the Supreme Court in 2008 to apply directly in
5 Canada as law, unless there's state law that explicitly
6 states that our domestic laws will be contrary or different
7 than the customary international law. And declarations,
8 such as the UN Declaration aren't directly enforceable.
9 But what we do see the Supreme Court of Canada doing in
10 multiple cases and in different ways is always striving to
11 interpret Canadian law along and in line with Canada's
12 international human rights obligations. The belief of the
13 Court being that Canada undertakes its actions
14 internationally to uphold international human rights law in
15 an honest and genuine fashion. And so the Court see itself
16 as having a role to ensure that Canada is upholding those
17 obligations.

18 And so, I point this out only because
19 throughout my presentation I'm going to be talking about
20 some treaties, international human rights treaties that
21 Canada has -- is a party to. I may make reference to a
22 couple of treaties that Canada is not yet party too, as
23 well as declarations. And so I put this forward as a way
24 to help us move beyond the typical roadblocks that are
25 sometimes put up where people want to stop and have

1 technical conversations, "Well, how does this apply? Is
2 this really relevant?" To encourage us when engaging in a
3 human rights-based approach, to try to identify the broader
4 normative obligations that exist for Canada and that we can
5 use those as our lens to judge actions going forward.

6 **MS. CHRISTA BIG CANOE:** Thank you. I'm
7 hoping you're going to be able to help us understand a bit
8 more in terms of the core principles. What are the core
9 principles that should further guide the work of the
10 Inquiry from a human rights approach?

11 **MS. BRENDA GUNN:** Thank you. Next slide,
12 please.

13 There's a couple of core principles that I
14 have identified, and of course, I mean, people can pick
15 different ones. But a few that I decided to highlight both
16 in my article that is included in my materials, and in my
17 presentation today is the idea of universality and
18 inalienability of human rights. So, this means that all
19 peoples are entitled to human rights. Inalienability also
20 relates to the idea that you can't agree to give up your
21 human rights. They are rights that we hold as peoples and
22 we expect states to uphold them.

23 Indivisibility, interdependence and inter-
24 relatedness of human rights relates to the idea that human
25 rights work together to uphold the dignity of people. And

1 so, particularly, when we're talking about engaging a
2 human-rights-based approach, we must look at the totality
3 of human rights and human rights obligations so that we
4 can't just look at civil and political rights, or look at
5 economic, social, cultural rights, or we can't divorce the
6 issues of the right to housing from the right to
7 participate in public life, that all of these actually work
8 together.

9 It also extends to how we understand rights.
10 So, you can only understand the right to education when you
11 -- particularly in the Indigenous context when we think
12 about Indigenous peoples' rights to their culture and their
13 right to their Indigenous languages; right? So, all of
14 these rights work together to help us understand their
15 context.

16 Non-discrimination and substantive equality
17 relate to the idea that as Indigenous peoples, we have the
18 same human rights as other people, but this doesn't mean
19 that everyone is treated the same. In fact, it's quite
20 clear in international law, including references in the
21 U.N. Declaration, that in order to achieve human rights, it
22 may require states to take special measures and take steps
23 to work with Indigenous peoples to realize their human
24 rights. Non-discrimination is also important because it's
25 a reminder that as Indigenous peoples, we're not to be

1 discriminated against for being Indigenous.

2 Participation and the inclusion of
3 Indigenous peoples in any decision-making process is -- has
4 been noted in international law since about or at least, I
5 would say, the mid-1990's. A lot of people think that FPIC
6 has come out from the U.N. Declaration and sort of point to
7 it there, but it's important to note that at least since
8 the mid-1990's, treaty-monitoring bodies such as the
9 Committee on the Elimination of Racial Discrimination has
10 noted that Indigenous peoples have a right to participate
11 and be included in any process where their rights are
12 potentially impacted.

13 **MS. CHRISTA BIG CANOE:** So, just a point of
14 clarification, Brenda, I know that you've done a lot of
15 work with the Indigenous People Forum and on UNDRIP
16 specifically. So, when you're saying "the U.N.
17 Declaration," are you referring to UNDRIP?

18 **MS. BRENDA GUNN:** Yes. Sorry. I don't tend
19 to use the abbreviation UNDRIP. I simply refer to it as
20 the U.N. Declaration. So, when I say "the U.N.
21 Declaration", I am referring to the U.N. Declaration on the
22 Rights of Indigenous Peoples, and that's a way to
23 distinguish from the American Declaration on the Rights of
24 Indigenous Peoples. So, I use the U.N. Declaration and the
25 American Declaration.

1 **MS. CHRISTA BIG CANOE:** Thank you. And,
2 sorry.

3 **MS. BRENDA GUNN:** No, thank you. I'm
4 working hard to get out of my acronyms, and the short
5 forms, and abbreviations that we use in this area. So,
6 thank you for the clarification.

7 The final two points relate to
8 accountability and the rule of law, and then some of
9 Canada's basic obligations. Accountability and the rule of
10 law hopefully is something that we know well in Canada that
11 I think has -- when I was listening yesterday, I think
12 we've heard some frustration, is that the human rights
13 system really evolved international law -- sorry. I'm
14 trying to think of an easy way to explain this, but I think
15 international law used to just be about state-to-state
16 relationships on the international level and the idea of
17 sovereign equals where every state was going to be equal to
18 the others, and it was completely inappropriate for one
19 state like the U.S. to look and meddle in the internal
20 affairs of another state like Canada.

21 International human rights law came about
22 because we saw atrocities coming out of the Second World
23 War and other areas. So, when we talk about accountability
24 and the rule of law, it's important to note that human
25 rights law has evolved to assist in that looking-

1 internally-at-state-actions and ensure that the world has
2 mechanisms to judge behaviour of states to protect the
3 citizens and the people within its borders.

4 So, human rights law provides one of those
5 forums of accountability where states like Canada have to
6 report internationally, but also, the expectation that
7 states are actually going to uphold all of the obligations
8 that they've taken on, and that stems all the way back to
9 the U.N. Charter where Canada as a country that has agreed
10 to participate and be a member of the U.N. has undertaken
11 to uphold all of its human rights obligations.

12 The final principle is just I thought I
13 would highlight the basic obligation that relates to the
14 situation of murdered and missing Indigenous women and
15 girls is Canada's duty of due diligence to prevent,
16 investigate, prosecute, punish and compensate. And so,
17 this has arisen in several different treaties, and is now
18 quite foundational in this area. So, those are some of the
19 guiding or core principles that I think could inform a
20 human-rights-based approach.

21 **MS. CHRISTA BIG CANOE:** Thank you. Could
22 you also explain to us what factors contribute to making
23 Indigenous women and girls and two-spirited susceptible to
24 violence, or create a vulnerable circumstance?

25 **MS. BRENDA GUNN:** Yes. Next slide, please.

1 One of the values that I see in a human-rights-based
2 approach is for the way in which it understands the
3 contributing factors. And so, there are many reports that
4 have been written from various international bodies that
5 speak to the economic and social marginalization of
6 Indigenous women as a contributing factor.

7 But, what I want to highlight here is that
8 through a human-rights-based approach, we can see that a
9 contributing factor is the failure of Canada to recognize
10 and act as -- in accordance with its obligations to address
11 economic and social issues through a rights-based approach.
12 So, Canada, in my opinion, continues to address economic
13 and social issues as policy issues, but under our human-
14 rights-based approach and what we've seen developing
15 through the various international human rights body is a
16 need to recognize these are rights, so that there is a
17 right to housing, that this isn't just a policy issue that
18 can be prioritized or not prioritized in any sort of
19 budget, that every person has a right to an adequate house
20 which includes a safe house, not being afraid of being
21 evicted, that it's sort of adequate in condition, but also
22 in the security of tenure to that placement.

23 And so, it also, through this lens of human
24 rights and looking at the contributing factors as a failure
25 to recognize and address these human rights issues, also

1 shifts our way of thinking from people who access services
2 such as housing services as service-users to actually
3 rights-holders. So, I really do think that the
4 contributing factor is not just sort of the marginalization
5 but, actually, the fact that Canada doesn't act as though
6 these are rights, that they are required under
7 international law to address and fix, and not just, you
8 know, where budgets permit, and I'll maybe speak to that a
9 bit more. And, related to this is the way in which
10 colonial and post-colonial policies have targeted
11 Indigenous women and particularly impacted their human
12 rights.

13 **MS. CHRISTA BIG CANOE:** I actually like the
14 way you've explained instead of looking at it purely
15 service issues that it should be a shift, or the thinking
16 should be a shift to right holders. One of the things that
17 -- one of the concerns we have in terms of the factors
18 contributing and it might seem very basic, but I'm
19 wondering if you could also address, you know, the denial
20 of economic and social and cultural rights and how that
21 contributes.

22 That's already been evidenced in our last
23 panel, and the Commissioners have heard, as they've moved
24 across the country to 15 community hearings, a number of
25 people talking about those social factors. And so the way

1 you've situated it as a service issue, we heard
2 Professor Metallic the other day also, when talking about
3 essential services, the failure to recognize that basic
4 right as a right-holder.

5 So if you could just spend a little more
6 time on the economic and social marginalization that
7 contributes to that vulnerable circumstance or that
8 violence. I know it seems basic, but connecting that right
9 to housing and ---

10 **MS. BRENDA GUNN:** Yeah.

11 **MS. CHRISTA BIG CANOE:** --- the prevention
12 of violence or addressing violence would be helpful.

13 **MS. BRENDA GUNN:** Okay. The quote on the
14 screen is coming from one of the reports from the Committee
15 on the Elimination of Discrimination Against Women, that's
16 the CEDAW abbreviation, and it's a long quote, but I pulled
17 it because I thought it summarized some of this in a way
18 and sort of in a good way.

19 And so ---

20 **MS. CHRISTA BIG CANOE:** Sorry.

21 **MS. BRENDA GUNN:** --- sorry. This is the
22 slide that says contributing factors still, which is -- I
23 can give you a slide number, Slide 5.

24 Well, perhaps, I'll start reading as we pull
25 it up. Ah, yes.

1 So it says:

2 "The Committee is concerned that
3 Indigenous women continue to suffer
4 from multiple forms of discrimination,
5 in particular, with regard to their
6 access to employment, housing,
7 education and healthcare, and continue
8 to live in poverty in the State Party,
9 Canada, as reflected by high poverty
10 rates, poor health, inadequate housing,
11 lack of access to safe water and low
12 school completion rates. It further
13 notes with concern the low
14 participation of Indigenous women in
15 the labour market, in particular, in
16 similar or decision-making decisions
17 their disproportionately high
18 unemployment rates, and their lower pay
19 compared with men and non-Indigenous
20 women." (As read)

21 And so the Committee has identified the
22 various ways that Indigenous women experience economic and
23 social marginalization. And the point that I was trying to
24 highlight is that Canada, like many other countries, has
25 multiple pressures on it for what could be viewed as finite

1 resources.

2 And so, the hope with shifting and looking
3 at this as human rights, where Canada has legal obligations
4 to fulfill, it means that when prioritizing budgets and
5 engaging in certain activities that Canada is required to
6 fulfill and address these areas, and others, of economic
7 and social marginalization.

8 **MS. CHRISTA BIG CANOE:** Thank you. Before I
9 ask you the next question, you've written a paper, Engaging
10 a Human Rights Based Approach to the Murdered and Missing
11 Indigenous Women and Girls Inquiry, that has been
12 submitted, and so you've kind of helped stage some
13 foundational concepts, like the core principles.

14 And this is also -- it's contained, and I
15 would like to be able to rely on this and parties to rely
16 on it. And on that basis, Chief Commissioner, I ask that
17 this also be marked as an exhibit. And that's the Engaging
18 A Human Rights Based Approach paper.

19 **CHIEF COMMISSIONER BULLER:** Yes.
20 Professor Gunn's paper will be the next exhibit, please.

21 --- **EXHIBIT NO./PIÈCE NO. B2:**

22 "Engaging a Human Rights Based Approach to
23 the Murdered and Missing Indigenous Women
24 and Girls Inquiry" by Brenda L. Gunn,
25 published in the Lakehead Law Journal (2017,

1 2:2) pp. 89-116

2

3 **MS. CHRISTA BIG CANOE:** So I'm hoping you
4 can also help us understand what are some examples. So
5 we've heard you, you know, using acronyms and explaining to
6 us what these various either treaties, declarations,
7 conventions are, but can you give us some examples of
8 international instruments? And you had talked about the
9 Committee and shared this last quotation on a finding by
10 CEDAW, so is it possible for you to please provide us some
11 examples about both international instruments and findings
12 on what is happening in Canada?

13 **MS. BRENDA GUNN:** There are many different
14 international human rights instruments -- oh, sorry, next
15 slide please, International Instruments -- that speak to
16 the fundamental human rights of Indigenous women. And as
17 part of my presentation, I decided not to walk through each
18 instruments, and -- but I thought I would start by trying
19 to highlight some of the key generalized findings that we
20 can see across.

21 And so, this first slide is really drawing
22 on three or four different areas. One is the Convention on
23 The Elimination of Discrimination Against Women -- and my
24 apologies, I may not have gotten the full technical name
25 right; I live in acronyms -- and the Committee findings for

1 Canada's periodic reports, as well their general
2 recommendations on gender-based violence against women.

3 And there was a new general recommendation
4 that came out in 2017 that speaks to gender-based violence
5 against women that came out after my paper, so my paper
6 doesn't reference it. And then finally, I also just
7 quickly included a line from the Special Rapporteur on
8 violence against women, its causes and consequences, I
9 believe is her full name, and part of her findings after
10 her country visit that concluded last month, in April I
11 think it was.

12 And so, when -- oh, and also the Committee
13 on The Elimination of Racial Discrimination that oversees
14 the implementation of the International Convention on The
15 Elimination of All Forms of Racial Discrimination.

16 And so, when you read these different
17 instruments, recommendations, the reports on Canada's
18 obligations, we can see that there is recognition that the
19 prohibition of gender-based violence against women has
20 evolved into a principle of customary international law.
21 This was one of the findings of the -- general
22 Recommendation 35 from last summer of CEDAW.

23 And again, if we refer back to my reference
24 on how international law applies in Canada, I did state the
25 the Supreme Court of Canada has held that customary

1 international law applies directly in Canada as law, unless
2 State law explicitly states otherwise. And to the best of
3 my knowledge, we have no law in Canada that explicitly
4 states that they're -- like I'm not even sure how would one
5 would state such law, but that there is no prohibition
6 against gender-based violence, I at least hope such a law
7 wouldn't exist.

8 An interesting development that's also
9 coming out that we start seeing is the recognition that
10 gender-based violence against women may in certain
11 circumstances also be regarded as torture or ill treatment.
12 And I can provide more detail and provide the general
13 recommendation for the Inquiry if they're interested.

14 All of these different reports has clearly
15 noted that Canada has failed to take sufficient measures to
16 ensure that all cases of murdered and missing Indigenous
17 women have been investigated and prosecuted, and that those
18 failures constitute violations of human rights under both
19 the Convention on Elimination of Discrimination Against
20 Women and the International Convention on the Elimination
21 of all Forms of Racial Discrimination.

22 And I thought it was worth noting the
23 Special Rapporteur on violence against women. That's what
24 the SRVAW abbreviation is. She noted that gaps in
25 incorporation and implementation of human rights framework,

1 including CEDAW and other treaties, result in insufficient
2 human rights based approach in laws and policies on
3 preventing violence against women, and insufficient
4 services for women and girl victims.

5 So her report really makes that connection,
6 I think, between the failure to take a human-rights based
7 approach in Canadian law as again part of that contributing
8 factor. She also noted a lack of a specific federal law or
9 model law on violence against women, and domestic violence
10 and a lack of a national action plan.

11 And in my preparations for this
12 presentation, I was really thinking about national action
13 plans, because it's something that you see in international
14 human rights law all the time. Everyone calls for a
15 national action plan and we always want national action
16 plans -- and I see one of my co-experts nodding along --
17 and it almost feels right, because it's just something we
18 ask for. And I was thinking about, well, why do we want
19 these?

20 And one of the Commissioners was asking
21 questions yesterday about -- and sort of thinking about we
22 know that rights are indivisible but how do we sort of work
23 this through and for me I think that's the importance of a
24 national action plan, because what a national action plan
25 does is gets us to see the big picture. What are all of

1 the human rights obligations and how are we going to
2 address them, not thinking about housing here and a silo
3 and education here and health there. But what a national
4 action plan should do is set up that broader picture and
5 framework; then set up requirements for monitoring and
6 evaluating the progress for implementation; and then also
7 set, you know, timelines for activities and really gives us
8 that big picture plan.

9 And so it's been noted many times that
10 there's a lack of a national action plan on violence
11 against women and including Indigenous women there.

12 And so based on these reports and many
13 others, there are lots of recommendations and the terms of
14 reference refer to a few, and so I decided not to sit here
15 and try to present hundreds of recommendations. But I
16 pulled up a few common things that I thought were important
17 and that may or may not have always been discussed.

18 So, one is the need for Canada to collect
19 disaggregated data. Canada gets -- or this is noted by
20 almost every committee every time Canada engages in a
21 periodic report on human rights treaties. There is a
22 failure of Canada to collect the data to actually know the
23 statistics. And this is important because without knowing
24 the -- having the actual data on the various issues that is
25 disaggregated for women, Indigenous women and men in

1 different regions and considering the different aspects,
2 it's really difficult to monitor and evaluate.

3 And so in many of these reports you can see
4 that Canada highlights the various activities that they've
5 undertaken and the committee commends Canada often for
6 taking these actions, but they've noted that without the
7 disaggregated data being presented, it's hard to then
8 evaluate those activities. And so one of the common
9 recommendations that exists is for Canada to monitor and
10 evaluate and then report back on the measures taken.

11 They also, in virtually every report, talk
12 about needing to take a human rights based approach to
13 addressing the situation of violence against Indigenous
14 women, including murdered and missing Indigenous women, and
15 address the root causes, which is, as I've mentioned,
16 economic, social and cultural rights. That's my ESCR
17 abbreviation.

18 They also include an important
19 recommendation frequently about the need to promote the
20 justiciability of rights. And this has particularly been
21 noted because there's questions about whether or not our
22 *Charter of Rights and Freedoms*, which Canada often points
23 to as where they have implemented these various
24 international human rights treaties, there's questions
25 about whether or not our Charter -- whether we can actually

1 litigate economic and social rights under the Charter.

2 And so if that's the main instrument that
3 Canada's using to implement, how do we enforce. And so the
4 justiciability of rights relates to enforceability.

5 And so that can occur either through the Charter, you know,
6 amending the Constitution, or interpretive approaches that
7 make it clear that the Charter, or by passing legislation
8 that allows for a specific mechanism to enforce economic,
9 social and cultural rights.

10 They include recommendations about
11 strengthening services and dedicating adequate resources,
12 need to adopt a national action plan. There's also
13 recommendations in many of the reports to ratify or exceed
14 or become a party to other international human rights
15 treaties, and importantly, also to train public officials
16 on human rights. And the recommendations range from police
17 and service providers to judges and lawyers and various
18 people.

19 **MS. CHRISTA BIG CANOE:** Thank you. That's
20 helpful actually kind of taking the principled approach to
21 identifying the common themes, because the material is
22 large.

23 But as a technical point, I would like to
24 ask that a number of documents are actually put into
25 exhibit so that the parties withstanding have opportunities

1 to ask questions.

2 So if we can take care of that little piece
3 of housekeeping, I'm actually going to be requesting to put
4 in four different documents as exhibits, starting first
5 with the United Nations' Declaration on the Rights of
6 Indigenous People. And it is noted as Schedule C in the
7 summary.

8 **CHIEF COMMISSIONER BULLER:** May I call it
9 UNDRIP?

10 **MS. CHRISTA BIG CANOE:** Yes, you may call it
11 UNDRIP.

12 **CHIEF COMMISSIONER BULLER:** Sorry. Okay.
13 UNDRIP will be the next exhibit, please.

14 --- **EXHIBIT NO./PIÈCE NO. B3:**

15 United Nations Declaration on the Rights of
16 Indigenous Peoples (15 pages)

17 **MS. CHRISTA BIG CANOE:** I would also ask
18 that the CEDAW report of the Inquiry concerning Canada of
19 the Committee on the Elimination of Discrimination Against
20 Women under -- I'll give you an acronym, don't worry --
21 under Article 8 of the Operational Protocol to the
22 Convention on the Elimination of All Forms of
23 Discrimination Against Women, which is noted as Schedule D
24 on the summary. And we can call that the CEDAW Operational
25 Protocol.

1 CHIEF COMMISSIONER BULLER: Okay.

2 MS. CHRISTA BIG CANOE: No, sorry.

3 MS. BRENDA GUNN: No, that's the Inquiry --
4 the ---

5 MS. CHRISTA BIG CANOE: Oh, sorry, the ---

6 MS. BRENDA GUNN: --- report of the CEDAW --
7 -

8 MS. CHRISTA BIG CANOE: CEDAW Report of the
9 Inquiry.

10 CHIEF COMMISSIONER BULLER: Okay. The CEDAW
11 Report of the Inquiry is the next exhibit.

12 MS. CHRISTA BIG CANOE: Sorry, we don't have
13 volume on the ---

14 CHIEF COMMISSIONER BULLER: Okay. Back on
15 now? Okay.

16 The CEDAW Report of the Inquiry is the next
17 exhibit. Thank you.

18 MS. CHRISTA BIG CANOE: Thank you.

19 --- EXHIBIT NO./PIÈCE NO. B4:

20 "Report of the inquiry concerning Canada of
21 the Committee on the Elimination of
22 Discrimination against Women under article 8
23 of the Optional Protocol to the Convention
24 on the Elimination of All Forms of
25 Discrimination against Women" United Nations

1 CEDAW/C/OP.8/CAN/1, published March 30, 2015
2 (58 pages)

3 **MS. CHRISTA BIG CANOE:** I will also request
4 that the CEDAW 65th session, which is the concluding
5 observations on the combined 8th and 9th periodic reports of
6 Canada that's noted as Schedule E in the summary. And so
7 we can just maybe refer to that one as CEDAW periodic ---

8 **CHIEF COMMISSIONER BULLER:** Report.

9 **MS. CHRISTA BIG CANOE:** --- report as an
10 exhibit.

11 **CHIEF COMMISSIONER BULLER:** Okay. The CEDAW
12 Periodic Report will be the next exhibit.

13 I think we're up to five? Thank you.

14 **MS. CHRISTA BIG CANOE:** Yes. That would be
15 5th for the Professor Gunn's.

16 --- **EXHIBIT NO./PIÈCE NO. B5:**

17 "Concluding observations on the combined
18 eighth and ninth periodic reports of Canada"
19 United Nations CEDAW/C/CAN/CO/8-9 (19 pages)

20

21 **MS. CHRISTA BIG CANOE:** And I have one more
22 please.

23 But before I do that, I just want to note
24 that the prior report, concluding observations, not of the
25 combined 8th and 9th but the prior CEDAW report is actually

1 referenced in our terms as one of the reports that the
2 Commission can take into account, so there is no need to
3 exhibit it -- or have it tendered for exhibit, and I just
4 want to let the parties know that as well.

5 And then the last thing I'm asking for is
6 the CERD, which is the Committee on the Elimination of
7 Racial Discrimination concluding observations on the
8 combined 21st and 23rd periodic reports of Canada, concluding
9 observations on Canada. So we will refer to that as the
10 CERD Concluding Observations.

11 **CHIEF COMMISSIONER BULLER:** Okay. The CERD
12 Concluding Observations will be Exhibit 6.

13 **MS. CHRISTA BIG CANOE:** Thank you. And I
14 just want to note that that's what's mentioned in Schedule
15 F of the summary.

16 --- **EXHIBIT NO./PIÈCE NO. B6:**

17 "Concluding observations on the combined United
18 Nations Committee on the Elimination of Racial
19 Discrimination CERD/C/CAN/CO/21-23, (11 pages)

20 **MS. CHRISTA BIG CANOE:** And thank you for
21 that little piece of housekeeping. I just want to make
22 sure that as we are addressing these issues and if we have
23 particular questions that our expert can actually answer
24 them.

25 And on that fun note, I have another

1 question for you, Brenda. So you've told us about some
2 international treaties in law and are there others? So
3 we've talked now and you've showed us some of those common
4 themes, but I'm curious, those are the ones that are
5 relevant. But I want to know, are there other specifically
6 relevant treaties that the Inquiry should be aware of as it
7 relates to missing and murdered Indigenous women, girls,
8 two-spirit and transgendered people?

9 **MS. BRENDA GUNN:** Yes. Thank you.

10 And the next slide, please, with the
11 International Covenant on Economic, Social and Cultural
12 Rights.

13 **MS. CHRISTA BIG CANOE:** Slide number.
14 What's the page number by chance?

15 **MS. BRENDA GUNN:** It is slide seven.

16 **MS. CHRISTA BIG CANOE:** Page seven? Thank
17 you.

18 **MS. BRENDA GUNN:** I guess I should have
19 numbered them on the screen.

20 So this international covenant has the twin,
21 which is the International Covenant on Civil and Political
22 Rights. But I highlighted or chose to highlight this
23 covenant because of its focus on economic, social and
24 cultural rights. And I thought I would just highlight a
25 couple of key aspects today.

1 One is that basically one of the first
2 obligations under this covenant or treaty -- we use all
3 sorts of different words I think just to make international
4 law even more confusing for people. We use treaty and
5 covenant and convention and they all mean the same thing,
6 more or less. Is the first -- Article 2 says that each
7 state party undertakes to take steps to the maximum of its
8 available resources.

9 So one of the first things that this
10 convention says is that Canada, as the state party to this
11 treaty, is obligated to, to the maximum of its available
12 resources, take steps to progressively fully realize the
13 rights contained in the present covenant.

14 So I mean there's some discussion in
15 international law about what maximum available resources is
16 but I think it sends a strong signal again that these
17 aren't just sort of minor policy things that we can sort of
18 prioritize or not but that states have actual obligations
19 to ensure economic, social and cultural rights and must
20 take steps to fully realize these rights.

21 The next points I just thought I would
22 highlight the way in which the committee that oversees this
23 Convention has highlighted the interaction between
24 economic, social and cultural rights and gender-based
25 violence. And so the committee has noted that gender-based

1 violence is a form of discrimination that inhibits the
2 ability to enjoy rights and freedoms, including economic,
3 social and cultural rights on the basis of equality.

4 And I've pulled out the citation in my
5 slides but it is in the larger paper and I believe my
6 summary also includes a pinpoint reference to the paper
7 where you can find the citations.

8 The committee has also noted that a failure
9 to protect against violence against women or to prosecute
10 perpetrators is a violation of the right to health. And so
11 again, useful to see how the situation of violence against
12 women and murdered and missing Indigenous women and girls -
13 - and my apologies that I'm using the abbreviation, I do
14 recognize that we're looking far broader than just sort of
15 this gender here -- that there's a connection. It's not
16 just violence but the fact that this violence really
17 undercuts some fundamental basic human rights.

18 And then under this covenant, there is an
19 opportunity for parties to sign on to an optional protocol
20 which would open up a complaints process. So it would give
21 the ability of individual people to bring a complaint to an
22 international body where Canada has failed to uphold its
23 obligations or there's an allegation of rights violated,
24 but Canada is not currently a party to the optional
25 protocol that would recognize the competence of the

1 committee to consider individual communications which is
2 the complaints process.

3 On the next slide, I have -- slide 8, I've
4 made some reference to the U.N. Declaration on the Rights
5 of Indigenous Peoples and I know we have another expert
6 speaking in a little bit about the U.N. Declaration but I
7 guess because I spent a few years in my life looking at it
8 and something that I think about a lot, I thought I would
9 throw in a few things for me that are important to
10 highlight here today.

11 So the U.N. Declaration grounds Indigenous
12 peoples inherent human rights in Indigenous peoples' own
13 customs, laws and traditions. And so this instrument makes
14 it really clear that when we're talking about international
15 human rights and the rights of Indigenous peoples that we
16 need to make specific reference to Indigenous peoples'
17 laws.

18 So in order to understand the rights to
19 lands, territories and resources and the extent of those
20 rights, we refer to Indigenous peoples' own laws on the use
21 and rights over those lands.

22 The Declaration is very clear that all
23 rights apply equally to Indigenous men and women and I
24 think it's worth noting that despite the U.N. Declaration
25 taking many, many, many years, some say 30, to negotiate

1 and finalize that this provision on the rights applying
2 equally to Indigenous men and women was one of the first
3 provisions to receive consensus by the state party.

4 So this seemed to be the least contentious
5 aspect of it and I think it's important to highlight that
6 even though the gender lens isn't explicitly included
7 throughout all of the articles, it is one of the
8 interpretive approaches or the framework that we need to be
9 using when looking at it.

10 And so while there is limited reference to
11 Indigenous women's rights, we do know that all rights do
12 apply to Indigenous women. And I think for the purposes of
13 my presentation, the U.N. Declaration is an important
14 touchstone because the way in which it can provide a lens
15 to view Canada's general human rights obligations.

16 So most of my presentation is referring to
17 general international human rights instruments that are
18 dealing with discrimination against women, against racial
19 discrimination, economic, social and cultural rights, et
20 cetera.

21 We can use the U.N. Declaration then to
22 understand how economic, social and cultural rights, as
23 protected under the ICESCR, apply in the Indigenous
24 specific context in part by referencing how those rights
25 are articulated in the U.N. Declaration.

1 So it helps because as was noted yesterday,
2 these instruments were -- many of them were negotiated
3 without the participation of Indigenous people. So it is
4 through the progressive interpretation of these general
5 international human rights treaties that we've seen them
6 modify and adopt to better account for Indigenous peoples'
7 rights and the U.N. Declaration is a helpful lens there as
8 well.

9 And just a small point in my -- apologies if
10 it's slightly off base here but I just wanted to highlight
11 that when Canada made its statement of support, it made two
12 references to the Constitution and, as a constitutional law
13 scholar and someone who engages in international human
14 rights, I have my opinion and hopes as to what these mean.

15 And so it is my hope that when Canada says
16 that it's implementing the Declaration in accordance with
17 the Canadian constitution, it was making a division of
18 powers argument and it's a common statement that is made.

19 Just to give a really quick bit of
20 constitutional law, under our constitution, the federal
21 government doesn't actually have power to implement
22 international treaties which is different from some other
23 states. And so even though Canada is the one that goes out
24 into the international world and signs on to the treaties,
25 it doesn't have the power to implement them domestically

1 unless the subject matter of that treaty is assigned to the
2 federal government under the division of powers.

3 So what this means I think is that the U.N.
4 Declaration which references potentially areas that
5 traditionally fall to the provincial governments, that
6 implementing the U.N. Declaration in Canada may require the
7 involvement of both the federal and provincial governments.
8 And so the phrase that "adopt and implement in accordance
9 with the Canadian constitution" I hope is a reference to
10 division of powers and in not a limiting way of saying that
11 section 35 is our only vehicle but merely a vehicle.

12 On the next couple of slides, the next slide
13 that's additional international instruments, I just want to
14 highlight one or two more instruments that I think are
15 worth considering when we're talking about a human rights-
16 based approach and trying to wrap our head around the
17 really broad range of international human rights that
18 exist.

19 So in slide 9, I've made reference to the
20 Convention against Torture and Other Cruel, Inhuman or
21 Degrading Treatment or Punishment. I did write the full
22 one out there because I can never remember that. This is
23 often referred to as CAT for short, the Convention against
24 Torture, but it's important to note that it's much broader.

25 And so under this treaty that Canada is a

1 party to, Canada is obligated to take effective action to
2 prevent torture and ill treatment and ensure that its
3 competent authorities proceed to a prompt and impartial
4 investigation wherever there is a reasonable ground to
5 believe that an act of torture has been committed.

6 Ans as I noted earlier, there is some
7 increasing recognition that gender-based violence against
8 women in some circumstances may be considered torture. So
9 we can see how the situation may also invoke obligations
10 under this treaty.

11 The committee that oversees this Convention
12 has noted that Indigenous women in Canada experience
13 disproportionately high levels of life-threatening forms of
14 violence, spousal homicide, and enforced disappearances and
15 that Canada has failed to promptly and effectively
16 investigate, prosecute and punish perpetrators or provide
17 adequate protection for victims.

18 So we can see that the committee is
19 connecting murdered and missing Indigenous women to
20 violations of the Convention against Torture.

21 In another case that is not related to
22 Indigenous women, the committee against torture did note,
23 and I thought it was worth highlighting here, that in
24 action by police and law enforcement officials, who failed
25 to provide adequate protection against racially motivated

1 attacks when such groups have been threatened, is a
2 violation of that.

3 And as the work of the Inquiry, I'm sure, is
4 showing that this is a very particular violation and
5 Indigenous women are particularly targeted, and being a
6 Manitoban, I'm well aware that the Manitoban justice
7 Inquiry that looked into the situation of Helen Betty
8 Osborne. The police have been implicated in this for a
9 considerable period of time, so there, again, another
10 potential way that the convention against torture and the
11 protections and obligations there may also be implicated.

12 The next slide looks at the international
13 convention for the protection of all persons from enforced
14 disappearance. It is important to state from the beginning
15 that Canada is not a party, and so again, I recognize that
16 officially Canada does not have obligations under this
17 convention. But it should be noted that some of the people
18 who've been working on this issue, enforced disappearance,
19 have started to argue that the right against enforced
20 disappearance may be a rule of customary international law.

21 Again, this would apply in Canada unless
22 there's domestic law that explicitly states otherwise.

23 Here again, we can see the connection that
24 enforced disappearance violates a range of civil and
25 political rights, as well as economic and social rights.

1 So we can see the way in which human rights is really, this
2 process of invisibility interrelatedness and
3 interconnectedness really plays out particularly when we're
4 looking at murdered and missing Indigenous women that
5 enforced disappearance also engages in multiple rights
6 violations beyond just a single instrument.

7 One of the things that is noted under the
8 international conventional on enforced disappearance is
9 that there's a requirement for state parties to ensure that
10 enforced disappearances are criminal offence in domestic
11 law, as well as there is an obligation to insure that
12 widespread or systemic practices of enforced disappearance
13 constitutes a crime against humanity.

14 And so, there's an inclusion that beyond
15 individual cases, where we have widespread or systemic
16 practices, that again it moves us beyond that individual
17 level that it may at some level constitute a crime against
18 humanity.

19 Some of the literature will use the phrasing
20 "an international crime," and so this is sort of what the
21 literature, I believe, is trying to get at is that, at some
22 point, where the disappearance are widespread or systemic,
23 it elevates in the type of crime that it is.

24 There's recognition under the convention
25 that's states can be responsible for enforced disappearance

1 even if they are not the one who directly perpetrated the
2 enforced disappearance, if the state failed to act with due
3 diligence or to properly investigate and prosecute. Under
4 this convention, finally, there is an obligation to insure
5 that victims can obtain reparations and compensation.

6 So I think I will just leave it at
7 highlighting those, but I should note that there are, as
8 I've noted, many other international human rights treaties
9 that could be relevant.

10 **MS. CHRISTA BIG CANOE:** So, Brenda, we noted
11 that Canada is not a party and therefore has not new
12 obligation on this particular convention.

13 Would it be a recommendation that the
14 Commissioners for the Inquiry should recommend that Canada
15 be a party to this particular convention or ratify it?

16 **MS. BRENDA GUNN:** Yes, it is not only my
17 recommendation that Canada should become a party to this
18 convention, in part of one way to show its commitment to
19 address the issue, but also to speak to the rights that are
20 violated and insure that people who experience violations
21 have venues to address. It also would provide Canada a
22 framework for how to start addressing these issues-- and
23 sorry I don't like the term "issues" -- but to start
24 addressing the situation domestically.

25 And I should point out that I'm not, it's

1 not just me that's suggesting this. There are many other
2 references to the need for Canada to become a party to this
3 convention. In the reports that look at this situation of
4 murdered and missing Indigenous women, this is one of the
5 conventions that is often referred to. And it's an
6 interesting convention in part, because particularly where
7 there are obligations to create criminal offences, that's
8 something that falls directly within federal powers.

9 I know federal processes generally engage in
10 provincial consultation before becoming party to new human
11 rights obligations. It is worth noting that in this
12 convention there are some specific obligations that Canada
13 could undertake as they fall within its own jurisdiction
14 under the constitution.

15 **MS. CHRISTA BIG CANOE:** Thank you. So I know
16 one of the things that the convention has actually been
17 graveling about when we talk about human rights' lens, is
18 when you're doing an analysis through a human rights' lens,
19 what are common mistakes or incorrect assumptions that
20 people make, or generally men make?

21 **MS. BRENDA GUNN:** Thank you. Next slide,
22 please, slide 11.

23 So, as the more I thought about what are
24 some of the common mistakes, the list got a little longer
25 and longer and longer. I thought I had one or two, and so

1 I do hope these are helpful.

2 But my starting point, and this is sort of
3 my biggest pet peeve as an international lawyer and
4 international human rights lawyer is the belief that
5 international law isn't actual law. And so, it's
6 interesting, in the past I've taught international law at
7 the Law school, but we had some new professors come in that
8 wanted to teach, so.

9 But it was amazing, whenever I teach
10 international law and international human rights' law,
11 students come in and they don't think they're learning real
12 law. And I don't know where this assumption has come from,
13 but it seems to be somewhat widespread. I mean, I'm
14 teaching second-year law students, right, and they already
15 think is, and I'm like, "Where did you get that from?" And
16 people can't point it out.

17 And so whether we do this implicitly or
18 explicitly, there seems to be an assumption that
19 international law doesn't set actual obligations or isn't
20 real law in Canada.

21 And so, sometimes particularly when we refer
22 to human rights, there's this idea that they're just moral
23 precepts and what Canada should do what country should be
24 doing, but in fact, it's actually law with lining
25 obligations. And so, I think it's important to separate

1 the enforceability of law, and I will admit that there can
2 be challenges with how do you enforce international law
3 from the actual legal status of law.

4 And I think, as we point to the child and
5 caring families society, Cindy's case, can I also call it
6 Cindy's case? As we point to that case, we can see that
7 there's challenges enforcing domestic laws, so I'm not sure
8 that international law is alone, here, but. So
9 international law is law.

10 And again, I just referred to this housing
11 as a social policy not a human right, in case I hadn't gone
12 this road, yet, I really wanted to make sure I said it
13 before the end of my presentation, today.

14 The other thing that happens is that people
15 will look at human rights and isolation, and they don't
16 mean to, but what I will often see is that people say, "Oh,
17 this is a violation of this article." And they want to
18 point to a specific article, but what I try to show in my
19 presentation is that very rarely is there a state action
20 that violates merely one article of one convention. The
21 way in which human rights work together, they are so
22 interconnected and to really understand the breath and the
23 depth of the obligation, you really want to look at them
24 together.

25 And related to that is often a failure to

1 look at human rights' instruments and isolation, and so
2 many people now refer to the UN declaration without sort of
3 realizing that many other rights that are contained in the
4 UN declaration exist in international law in other places.
5 I haven't really found, you know, any new rights that came
6 up in the UN declaration, but we're actually more an
7 articulation of existing human rights in an Indigenous
8 specific context or in a more modernised context.

9 So the convention and the elimination of all
10 forms of racial discrimination is from the '60s, I think,
11 the ICCPR and the ICSCR, economic and social culture
12 rights, civil and political rights, those were articulated
13 in the '70s, right?

14 So what we have more of is a modernization
15 and an Indigenous specific lens coming in for example. So
16 there's really a need to synthesize and understand Canada's
17 obligations in a more holistic and broader approach, which
18 is challenging, right. It requires -- I've given you a
19 sense of the breadth of international law that's relevant.
20 So it does require a, sort of, continuing to understand
21 international human rights law.

22 Oh, and I've just thought of another one and
23 I'll add it in here as it relates. Sometimes people fail
24 to appreciate the difference between international law and
25 some of the rules connected to international law, and

1 international human rights law. And I think I tried to
2 highlight some of this at the beginning where I was talking
3 about the differences in the way international law applies.
4 Particularly when we're looking at international human
5 rights, the obligations of states to protect their
6 citizens. We can see the Courts internationally and
7 domestically moving away from a lot of those technical
8 rules because the goal is actually to ensure that states
9 are protecting the people within their borders.

10 And so there is a need to make sure that
11 when we're applying rules that we also ensure that we
12 realize that we're talking about human rights and not
13 international law that comes out on, sort of, I don't know,
14 coastal sea territories, or the continental shelf rules,
15 right? Like, that's sort of how you create borders between
16 people are not necessarily exactly how the rules apply when
17 we're thinking of human rights.

18 The final two that I just want to highlight
19 is there seems to be a continuing separation of economic,
20 social, and cultural rights from civil and political
21 rights. And this is particularly problematic because I
22 think when we do this there's a subtle hierarchy that we
23 are implying. And Canada, I think, can be on the
24 international world Canada still really fails to recognize
25 that economic, social, and cultural rights are at the same

1 level of civil and political rights. And in the '70s we
2 separated them and in the '70s we had some ideas maybe
3 about first generation, second generation, third generation
4 of human rights.

5 But now, today, we really talk about the
6 interdependency and interrelatedness and you can't exercise
7 your civil and political rights if you don't have economic,
8 social, and cultural rights. They all work together, so
9 important that we see those as equal rights and that we
10 can't think of one as more important. And I think about
11 this in relation to Indigenous rights, sometimes people
12 think, "Do we need self-government, or do we need land
13 rights before we need to do this? Or do we need this
14 before that?" And yes, we need to prioritize, and yes, we
15 need a plan, but it's really important that we realize that
16 in order to fully realize all rights and self determination
17 that they all need to work together and that they're on the
18 same field with that same end goal.

19 And finally, I just want to say that
20 sometimes there's a failure to interpret general human
21 rights in this specific Indigenous women context. And
22 there is increasing recognition that the way in which
23 Indigenous women may experience violations and how they
24 would articulate their rights may be different to other
25 groups, and that that's okay and that lens is necessary to

1 understand. And so, this can then include a failure to
2 think about the interactions between individual and
3 collective rights, and again, that these aren't competing
4 rights, but they actually work together. And that we also
5 need to include various lenses and the way in which women
6 experience violations differently that can relate to
7 ability, sexual orientation, et cetera. And then finally,
8 thinking about how a colonial legacy and racism impacts
9 Indigenous rights.

10 **MS. CHRISTA BIG CANOE:** On that -- sorry --
11 on that last point, can you please expand and -- on those
12 impacts, those impacts on colonization and specifically
13 what impact does colonization have on human rights, and how
14 do we decolonize through a human rights lens?

15 **MS. BRENDA GUNN:** Thanks. The next slide is
16 impacts of colonization on human rights.

17 The best way I could think of to answer this
18 question was by looking to the preamble of the UN
19 Declaration and the very powerful story that I think it
20 tells. Because it starts by saying that Indigenous Peoples
21 are equal to all other peoples of the world, but also that
22 we're Indigenous and we have a right to be Indigenous
23 Peoples, and we have a right to be different and to be
24 respected as such. And I think that's an important
25 recognition because people continue in different ways to

1 try to say that Indigenous rights are different and include
2 a lesser than lens there.

3 Sometimes we hear this in relation to self-
4 determination. Some people try to make arguments that
5 somehow Indigenous Peoples' rights to self-determination is
6 different than other people's rights to self-determination.
7 And I think the UN Declaration, particularly at the
8 beginning here says that no, we're in fact -- we're
9 peoples. We're part of the peoples of the world and we
10 have the same rights as others. We just might exercise
11 them in different ways. The UN Declaration and the United
12 Nations go on to say that they're concerned that Indigenous
13 Peoples have suffered from historic injustices as a result
14 of colonization and dispossession from their lands. And so
15 it's important to recognize, I think, that colonization
16 occurred. Hopefully that's becoming less of a contentious
17 point in Canada. But yes, it did occur, and two, that it
18 was negative on Indigenous Peoples.

19 And one of the areas in which it was
20 particularly problematic was the removal of Indigenous
21 Peoples from their lands, and this continues today, whether
22 it be forms of development that are pushing or putting
23 additional pressures on Indigenous Peoples' lands, or the
24 economic situation in communities that are forcing an urban
25 migration. But I think to answer your question more

1 specifically relates to the next to preambular paragraphs
2 that I've pointed out, is the recognition that in Canada
3 and in many colonial states, the system is currently
4 broken. And that one of the things that happened through a
5 colonial process was that a new government came in and
6 opposed all sorts of rules and control over the Indigenous
7 Peoples.

8 And so, the UN says that they are convinced
9 that by recognizing the rights of Indigenous Peoples it's
10 going to enhance harmonious and cooperative relations. And
11 so while I hear fear all the time from various sectors in
12 Canada that if we recognize the rights of Indigenous
13 Peoples that it's going to somehow fracture Canada or tear
14 us apart, the UN and human rights is actually saying, no,
15 it's the failure to recognize fundamental human rights that
16 has created the problems. And the colonial process itself
17 was a violation of those human rights. And so if we want
18 to fix, or address, or reconcile the word we use in Canada,
19 what we need to do is start by realizing Indigenous
20 Peoples' rights. And that includes, when you look at the
21 final preambular paragraph, that this process of
22 implementation is something to be done in the spirit of
23 partnership and mutual respect. And so part of the process
24 of recognizing Indigenous People's rights includes that
25 right to self-determination where Indigenous Peoples

1 determine their own futures and it removes that colonial
2 relationship, right?

3 So we're trying to shift the relationship
4 from a colonial one where the government has complete
5 control over Indigenous Peoples in so many aspects to a new
6 form of -- to a new relationship where Indigenous Peoples
7 are determining their own future and resetting their
8 relationship with Canada in determining that. So in areas
9 where there's treaties, I live in Treaty 1 territory, we
10 have treaties that we can refer to, to begin to think about
11 that relationship going forward. And so for me, the human
12 rights are important to the process of decolonization, if
13 that's what we think we can do, because it's going to shift
14 that relationship from control over to being equal
15 partners. Where we get to determine, and we have the
16 ability to live in freedom and safety, with all the rights
17 that are often available to many non-Indigenous Canadians.

18 **MS. CHRISTA BIG CANOE:** Thank you. And I
19 can't help but think just -- maybe a Cole's Note version,
20 because I've actually heard you say this before, and so you
21 can disagree if I'm mistaking or misquoting, but one of the
22 -- one of the things on how we decolonize is that it's
23 about changing the relationship to actualize the Indigenous
24 self-determination. So, rather than Canada having control
25 over Indigenous peoples' rights, because that's what led to

1 the situation in the first place, that I put by putting the
2 human rights upfront and as the priority, we move away from
3 the control and we reset the relationship. Is that
4 correct, a correct assessment?

5 **MS. BRENDA GUNN:** Yes. I think so, and I
6 think that's why under the International Covenant on Civil
7 and Political Rights, and the International Covenant on
8 Economic, Social and Cultural Rights, self-determination is
9 Article 1. You can't have and realize your other human
10 rights if you're under that sort of colonial control and
11 power. So, self-determination is really a starting point
12 for the realization of human rights.

13 Now, the U.N. Declaration puts it as Article
14 3, but it's important to note that Article 1 and 2 is
15 equality and non-discrimination. I think those were
16 important, sort of, caveats and set ups to understand
17 Indigenous peoples' right to self-determination, that it's
18 the same as everyone else's, because you can't discriminate
19 against us. And, equality that we have rights but that
20 we're also going to exercise them in our Indigenous way.

21 **MS. CHRISTA BIG CANOE:** Excellent. What are
22 the obligations of governments and other actors? So, I
23 mean, we've been contextualizing that already, and you've
24 been talking about the responsibilities and where there are
25 obligations, but more specifically, what I'm thinking of

1 is, what are the obligations of governments and other
2 actors with respect to human rights of, specifically,
3 Indigenous women, international law?

4 **MS. BRENDA GUNN:** Next slide, please, Slide
5 13? So, international law continues to evolve, and the
6 recognition of who has rights continue to evolve, but I
7 thought I would highlight a few aspects here. One is that
8 Canada, as the state, has the responsibility to take all
9 appropriate measures. This is part of their due diligence.
10 So, due diligence is to take all appropriate measures to
11 prevent, investigate, punish and compensate violence
12 against women. And, this can include either through --
13 sorry, state responsibility can arise either through the
14 direct actions Canada takes, but state responsibility also
15 arises where Canada fails to act to protect and promote
16 these rights.

17 It also means that under international human
18 rights law and the Vienna Convention on the Law of Treaties
19 specifically makes reference to this, is that the
20 obligations are binding on the state as a whole, which
21 includes all branches, judicial, legislative, et cetera.
22 As well, international law is quite clear that internal
23 division of powers cannot be an excuse for failing to
24 implement obligations. And so, in Canada, even though
25 we're a federal state with the provinces being sort of

1 sovereign in their own realm, the obligations still fall
2 back to Canada. So, even, you know, where it's a challenge
3 for Canada, because the federal government doesn't have
4 power to implement the international human rights
5 obligation, they are still the ones that are
6 internationally responsible for ensuring that all the
7 obligations that they've undertaken are upheld.

8 There's a few other points that I thought I
9 would reference over who is obligated to uphold the human
10 rights. There's increasing recognition that corporations
11 have the responsibility to respect human rights. So, it's
12 the state that sets up the infrastructure to ensure
13 protection and promotion and enforcement, but corporations
14 have the responsibility to respect human rights.

15 I note this only because from what I've
16 heard, many of the mining camps or resource-development
17 camps that exist greatly increase the safety concerns of
18 many Indigenous women. And so, again, even where the
19 violations of these fundamental human rights may occur
20 through a corporate actor, an employee in a mining company,
21 for example, that corporation itself has obligations to
22 respect human rights. But, that can also, again, trigger
23 Canada's obligations where they're failing to take
24 appropriate measures to prevent, investigate, punish and
25 compensate for violence against women.

1 And then the final act or thought I would
2 note is Indigenous governments, and I thought I would
3 include this because there were conversations that occurred
4 yesterday, thinking about self-government and what are the
5 protections that would exist for Indigenous women, and how
6 to ensure that if we move beyond the -- I think what I
7 heard was if we move beyond the *Indian Act*, are there going
8 to be protections? And, I know some have argued that the
9 *Charter* should apply. My argument has simply been that our
10 governments, Indigenous governments, are bound to uphold
11 the same inherent fundamental human rights as other state
12 actors. And, as we choose to exercise self-governing
13 powers, I hope and I would expect our governments to be
14 upholding those obligations, which include, you know,
15 obligations to ensure that Indigenous women are
16 participating in the decision-making processes.

17 **MS. CHRISTA BIG CANOE:** So, Brenda, we're
18 going to move to recommendations, and this is going to be,
19 actually, our last area of focus. But, before I get your
20 attention to the presentation, one of the things I know
21 that we've discussed is, and we've put it in as an exhibit,
22 the paper, *Engaging a Human Rights Based Approach*, I just
23 want to clarify, this is a framework, framework concept,
24 and in the summary, we had pinpointed particular
25 recommendations you make throughout the paper itself. But,

1 can you explain to us what you mean when you say, "this is
2 a framework concept"? This isn't, you know, the end all,
3 be all in terms of recommendations?

4 **MS. BRENDA GUNN:** Yes. And, maybe I'll
5 actually ask for my last slide to be put up, just because
6 it relates to my first recommendation. So, I'll try to
7 slide myself into answering my first recommendation, if
8 that's all right?

9 What I've tried to highlight here today is
10 that there are a broad range of international human rights
11 obligations that Canada has that are potentially violated
12 when we look at the situation of gender-based violence and
13 murdered and missing Indigenous women and girls. And so,
14 my presentation has not tried to say, "this is right",
15 "these are the norms". I've tried to sort of hint and
16 provide some guidance as to where the Inquiry or where one
17 might look to find the basic human rights.

18 But, the work that needs to be done is to
19 really review all of the international human rights
20 instruments, and they include, both at the U.N. level and
21 at the regional level through the organization of American
22 states. So, it's to understand, what are the range of
23 obligations?

24 And then once you have a sense of the
25 obligations, the next step is to then judge Canada's

1 actions and failures to act against that -- those
2 obligations. And so, my first recommendation is that the
3 Inquiry undertake the research necessary to develop an
4 understanding of the specific obligations, and then use
5 that framework, those basic obligations, to judge Canada's
6 actions, and then you can use that sort of understanding to
7 develop the recommendations, which is, again, going to
8 feedback to ensure those rights are realized.

9 And so, what I mean by creating a framework
10 is that in my preparation today, I did not go through all
11 10 to 15 human rights' instruments, all of the general
12 recommendations, all of the reviews of Canada's -- all of
13 the, sort of, interpretations that exist on all of these
14 instruments. That's a large body of work. It's probably,
15 in a rough estimation, 100 to 200 hours of work.

16 So, I didn't do that detail, but what I was
17 trying to piece together is how do you begin this process,
18 and where are some of the places, and what might you get
19 from starting to engage some of this international law in
20 this process.

21 **MS. CHRISTA BIG CANOE:** Excellent. And,
22 what are your further recommendations for the National
23 Inquiry?

24 **MS. BRENDA GUNN:** So, in the paper and
25 today, I would recommend that a human-rights-based approach

1 inform both the substantive issues, so the actual review
2 and identifying the underlying causes and creating
3 recommendations, but also ensure that the Inquiry engage in
4 a human rights based process to the Inquiry, which includes
5 things like ensuring Indigenous women are involved in the
6 process and are participating.

7 I've also suggested that the human rights
8 based approach be used to develop the framework to examine
9 state policy and determine whether or not the Canadian
10 system complies with all of Canada's obligations, and that
11 the Inquiry build upon the rich body of existing reports
12 and recommendations that are -- have -- that exist out
13 there, as well as develop recommendations that strengthen
14 the capacity of Indigenous women to know and assert their
15 rights. So I think there's a lot that can be gained
16 through that empowerment process.

17 And then the final recommendation would just
18 be that consider recommending that Canada exceed or become
19 party to key human rights treaties.

20 I've just highlighted a couple. There are
21 more. Again, other treaty monitoring bodies have listed
22 various ones. But, you know, if I had to pick my top
23 three, I'm not sure if -- how far I would go with the but I
24 do think that the Convention for the Protection of All
25 Persons from Enforced Disappearances is really important

1 because while we -- a lot of people focus on CEDAW and the
2 gender-based violence, I think this is a convention that is
3 specifically looking at enforced disappearances, and that's
4 what the Murdered and Missing Indigenous Women, you know,
5 that's under international law would be considered enforced
6 disappearances. So, it is the treaty that, for me, speaks
7 most directly to the situation.

8 I also think that becoming -- or exuding to
9 the optional protocol to the International Covenant on
10 Economic, Social and Cultural Rights would make a strong
11 statement on Canada's belief that economic, social and
12 cultural rights are rights and they are justiciable.
13 Canada -- and it would ensure that Canada has civil and
14 political rights on the same level as economic, social and
15 cultural rights. And then it actually creates a complaint
16 process if people believe that Canada's failing to uphold
17 their obligations.

18 So I think it makes both a strong political
19 statement but then it creates a practical avenue to enforce
20 rights.

21 And finally, I would include the American
22 Convention on Human Rights, again, because of the
23 enforcement mechanism. It's through the American
24 Convention on Human Rights that opens up access to the
25 Inter-American Court of Human Rights.

1 **MS. CHRISTA BIG CANOE:** Thank you. And I
2 also understand that you're being mindful of time because
3 you said in the final recommendation, but I know that your
4 paper does make more recommendations and you're open to
5 receiving questions on potentially any of those from your
6 paper?

7 **MS. BRENDA GUNN:** Yes.

8 **MS. CHRISTA BIG CANOE:** Excellent.
9 Chief Commissioner, Commissioners, this
10 concludes my examination in-Chief. I would suggest that we
11 probably take our break at 10:30 but I wanted to ask if the
12 Commissioners had any questions for Professor Gunn at this
13 point, or if you want to defer it?

14 **CHIEF COMMISSIONER BULLER:** I'm going to
15 defer until after cross-examination.

16 **QUESTIONS BY/QUESTIONS PAR COMMISSAIRE AUDETTE :**

17 **COMMISSAIRE MICHÈLE AUDETTE:** Je vais faire
18 mes questions en français. J'ai beaucoup aimé votre
19 présentation et vous m'avez amenée dans un autre monde,
20 mais un monde très, très, très important.

21 Dans le cadre des audiences, les
22 commissaires et moi avons entendu près de 1,200 personnes,
23 des hommes et des femmes, des jeunes, des grands-mères, des
24 sages nous expliquer leur réalité concrète au quotidien.
25 On reçoit aussi des appels des gens qu'on connaît. Comme

Questions (Commissaire Audette)

1 hier, c'était une amie de Attawapiskat qui m'expliquait
2 qu'ils ont crise par-dessus crise et qu'elle ne comprenait
3 pas que nos travaux en ce moment allaient les aider,
4 allaient, dans l'immédiat, pouvoir sauver des vies ou
5 sauver des femmes. Et je dois vous avouer que j'étais un
6 peu perplexe, mais je lui ai dit de garder espoir.

7 Ça serait important, je pense, pour profiter
8 du mandat aussi qu'on a, d'éduquer les canadiens et
9 canadiennes mais aussi les femmes, les victimes. J'aime
10 mieux les appeler les femmes fortes, les survivantes, et
11 toutes ces familles qui sont touchées par la perte d'un
12 être cher, que le travail que vous faites n'a peut-être pas
13 un résultat immédiat, mais à moyen et long terme, une
14 importance, je vous dirais, capitale dans mes mots.

15 Si vous pouvez, en quelques secondes,
16 quelques minutes, mettre ça dans des mots qui ne sont pas
17 avocats ou juristes, mais vous l'avez très bien fait
18 d'ailleurs en anglais... moi, j'ai été capable de vous
19 suivre, alors bravo... mais qui a une importance aussi
20 d'action immédiate mais de pression nationale et
21 internationale. Premier commentaire?

22 **MS. BRENDA GUNN:** Thank you. I'll do my
23 best not to be legal jargon.

24 **COMMISSIONER MICHÈLE AUDETTE:** You did
25 great.

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1 **MS. BRENDA GUNN:** I do try. Thank you.

2 **COMMISSIONER MICHÈLE AUDETTE:** You were
3 great.

4 **MS. BRENDA GUNN:** You know, I think I made
5 the point in the paper, I believe in human rights and I
6 believe in the fight and I believe that human rights can be
7 transformative, but I'm not under any disillusion or, you
8 know, that this is going to save our kids tomorrow.

9 You know, we've lost members of my family
10 this year. It's been a really rough year for the family.
11 It's hard when you're working at the big picture to
12 remember that it matters because it feels like you're
13 losing sight of the little details in the day-to-day
14 activities.

15 In a previous life I was a youth care worker
16 and the place that I worked at, the motto was along the
17 lines of every girl matters. And I believe in it. And I
18 just -- but I went to law school because it was really
19 frustrating because I was, like, how can we help our
20 communities one person at a time? Like it's just going to
21 take too long and the system seems to be breaking people
22 down faster than we can build them back up.

23 And so, for me in the work that I do, I
24 choose to engage at that bigger picture level, and I think
25 that's what engaging in human rights does is that it's that

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1 -- as you said, that longer term vision. It's trying to
2 change the system that is responsible for the atrocities
3 that we experience on the day-to-day level.

4 And but I think importantly, and I think
5 your comment really highlights, that you can't do one and
6 not the other; right? It's not like we can shift all of
7 our resources into fulfilling human rights and at the
8 expense of ensuring that those services exist. And I think
9 that's why, in part, the human rights framework engages at
10 that systemic level.

11 So what are the changes that need to occur
12 to laws, to policing, to, you know, various actors, but
13 also the recommendations -- I want to say always but
14 someone's going to find a report that didn't make this
15 recommendation. So, you know, most of them say that Canada
16 needs to increase availability of services, ensure cultural
17 appropriateness of services, and dedicate appropriate
18 funds, maximum available resources. And so I do think to a
19 certain level human rights, where they're actually realized
20 and fulfilled, can address some of those day-to-day issues.

21 If we had more health supports, if we had
22 education systems that was not just the Canadian colonial
23 system but actually about educating children on the land,
24 in our communities, in their mother tongue -- or sorry,
25 mother tongue is the word they use a lot internationally --

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1 in their Indigenous language.

2 You know, I think that would address some of
3 the day-to-day pictures, but I guess I'm playing the long
4 game; right? I think if we just try to deal with issues as
5 they arise on the ground that they're going to continue to
6 arise, and whether it's naïve or not, I believe that there
7 is a way to change the system so that we actually have
8 better outcomes going forward.

9 **COMMISSAIRE MICHÈLE AUDETTE:** Merci beaucoup
10 de votre témoignage. Je ne crois pas que c'est naïf de
11 votre part, mais plutôt important de démontrer que il y a
12 des actions dans l'immédiat qui doivent se faire par les
13 états. Donc, ici on parle du Canada, je vais ajouter les
14 provinces, mais aussi nos communautés.

15 Et aussi, avoir des gens sur toutes les
16 sphères et sur toutes les tribunes pour faire avancer nos
17 droits. Alors, je vous remercie du travail que vous faites
18 à cet effet.

19 Dans votre présentation et dans la lecture
20 des documents que vous nous avez donné, Madame Gunn, vous
21 avez fait mention lors des débats ou du travail qui s'est
22 fait autour de la déclaration sur les droits des peuples
23 autochtones aux Nations Unies, qu'il a eu une difficulté
24 pour intégrer le droit des femmes autochtones.

25 Je peux le confirmer pour avoir été témoin à

Questions (Commissaire Audette)

1 certaines rencontres à l'ONU, où on travaillait justement
2 sur les articles de cette déclaration-là, et le mouvement
3 des femmes autochtones, surtout des Trois Amériques,
4 demandaient à ce que dans le préambule, on assure que cette
5 déclaration-là s'applique autant aux hommes et aux femmes.
6 Un homme seulement, juste un, et quelques femmes aussi,
7 sont venus nous voir pour nous dire, « Si vous commencez à
8 miner le droit des femmes, on va devoir amener le droit de
9 la communauté des Deux-Esprits, des personnes avec des
10 besoins particuliers. » Comme si on diminuait la force des
11 droits autochtones en emmenant ceux des femmes autochtones.

12 Alors, ma question c'est : vous avez
13 mentionné l'importance qu'on reconnaisse les droits
14 autochtones, mais êtes-vous d'accord qu'il y encore une
15 disparité ou un écart entre les hommes et les femmes
16 autochtones dans nos communautés ou ici, au Canada?

17 **MS. BRENDA GUNN:** I guess the simple answer
18 is probably yes. The addressing it and trying to
19 understand why it exists, it's a difficult question. Part
20 of it, I think -- I never know where I need to impugn
21 negative intent on the part of our leaders that have
22 engaged in these conversations and these negotiations. I
23 mean, part of it, I think, is differences and ideas, and I
24 think there are people who truly believe that if you
25 address the collective rights that it will raise us all up;

Questions (Commissaire Audette)

1 right? And, to a certain extent, I understand that, and I
2 can agree with the need to, and I understand concerns that
3 come from various aspects of the community that are
4 concerned about anything that is perceived or in reality
5 going to divide us further.

6 The colonial process has been really clear
7 on its intent to divide, and the divide and conquer tactics
8 continue to occur in various ways, and I've seen how
9 governments sometimes have talked about they're starting to
10 weaponize (indiscernible) and informed consent and use it
11 to start dividing communities. So, I'm very conscious and
12 understand positions where people say we have to always
13 stay as a whole, and somehow a concern that if you
14 recognize and focus on part of a collective that that's a
15 divisive action.

16 I guess the only response I have is that
17 when I think about collective governance in many Indigenous
18 communities, how I understand it, it was never sacrificing
19 individual identity or being or rights for the collective.
20 It was not. But, it was how the collective was responsible
21 for protecting the individuals, and how the individual
22 contributed and was part of the collective. And, we need
23 to recognize that the collective is made up of people;
24 right? The collective isn't this sort of entity that
25 exists out there; it's a collective of people.

Questions (Commissaire Audette)

1 And so, you need strong individuals to have
2 a strong collective, and I don't -- I am not personally
3 worried that recognizing and promoting and addressing
4 issues that Indigenous women face is actually going to
5 detract from other fights. I actually think it strengthens
6 them and goes forward. But, we have to be careful in how
7 we proceed. We have to be attuned to the different
8 pressures that exist out there, and again, try to
9 articulate that -- sorry, even at our graduation at U of M,
10 there was a female graduation student who gave an address,
11 and she said, like, it's the strong women that raises a
12 strong community. We're raising the kids, and so we need
13 to be strong so that the community can be strong, and I
14 truly believe that. And, it's not that the men aren't
15 important; right? This is where I also -- we have to move
16 beyond those hierarchies. Just because we talk about one
17 part of a collective doesn't mean we're disregarding it,
18 but making sure that when we're talking about self-
19 government, we're thinking about all of the different ways
20 in which different people in that collective will
21 experience that self-government and what protections need
22 to be existing.

23 So, in other work that I have developed, and
24 I am in the process of writing, I'm talking about the need
25 to take a gendered lens when interpreting and implementing

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1 rights to make sure that we're looking at the different
2 ways Indigenous women experienced colonization, the
3 different ways in which colonization -- I was going to say
4 attacked, but maybe that's not -- targeted? That's not
5 even a better word, but targeted Indigenous women. And so
6 that in our processes of realizing rights that we're
7 addressing those specific instances as well.

8 And, I also think, and I agree with some of
9 the speakers yesterday, that it's important to go through
10 and turn to our traditions. You know, John Burrows has
11 written a lot about Indigenous laws, but he's also
12 acknowledged that there may be moments in time where we
13 also think that -- or remember that Indigenous traditions
14 have always also been evolving traditions.

15 And so, we may need to have moments where we
16 also reflect to make sure that our own legal traditions are
17 upholding current standards of international human rights
18 law in a way that's appropriate for our traditions; right?
19 It's not about imposing a colonial approach, but actually
20 just making sure that we allow our own laws to continue to
21 evolve in line with these standards.

22 **COMMISSIONER MICHELLE AUDETTE:** J'ai encore
23 trois autres petites questions. On va profiter de votre
24 expertise et vos connaissances.

25 Vous avez, d'ailleurs, dans votre

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1 présentation et dans vos écrits, parlé de la nécessité d'un
2 plan d'action national pour contrer la violence faites aux
3 femmes et aux filles autochtones. Et je comprends que un
4 plan d'action national a une importance, mais en même
5 temps, comment on fait dans un plan d'action national pour
6 pouvoir respecter la diversité culturelle?

7 Parce que vous avez parlé dans votre
8 introduction de votre document sur toute
9 l'intersectionnalité, la race, la culture, le sexe, le lieu
10 où la personne habite, pour faire en sorte qu'un plan
11 national va respecter toute cette richesse culturelle-là,
12 mais aussi la réalité socioéconomique du peuple Inuit
13 versus les femmes du Downtown Eastside ou celles du Québec
14 et ainsi de suite; il y a une diversité.

15 Donc, pour ne pas avoir une approche
16 monolithique ou, comment on fait dans un plan national?
17 Dans un plan d'action national, pardon.

18 **MS. BRENDA GUNN:** Okay, one question at a
19 time? Okay.

20 **COMMISSIONER MICHÈLE AUDETTE:** Unless you
21 want all?

22 **MS. BRENDA GUNN:** Whichever is fine. I can
23 take notes and answer. I can go one a time. We'll go one
24 at a time. That's a good question. When we say national
25 action plan, I don't envision a single step-by-step process

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1 that is going to apply and a good national action plan
2 accounts for the fact and creates the frameworks and steps
3 necessary to ensure that the implementation of rights and
4 addressing violence against Indigenous women and girls is
5 appropriate to the specific region that you're in. So a
6 national action plan will have to set out how are we going
7 to go about implementing the rights on a culturally-
8 specific basis and taking into those accounts.

9 So this means that we're not going to say
10 that this is what we're going to do across all of Canada,
11 but rather, how do you go about taking account of the
12 differences for the different First Nations and communities
13 in B.C., how do we address, you know, all the different
14 regions and all the different First Nations and Indigenous
15 peoples we have in Canada. That's actually what needs to
16 go into the national action plan.

17 So I actually see the national action plan
18 as being the safeguard against a sort of monolithic
19 approach where you would -- right? It's not just that this
20 is what's going to happen across Canada but is actually the
21 planned and coordinated approach of how to start addressing
22 all the differences.

23 **COMMISSAIRE MICHÈLE AUDETTE:** Je me permets
24 de dire vraiment intéressant.

25 Ma dernière question serait, parce que je

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1 vais arrimer les deux dans la même question. À votre avis,
2 quels seraient les moyens pour les femmes autochtones
3 d'éduquer les femmes autochtones ici au Canada concernant
4 leurs droits, leurs droits... vous avez parlé domestiques
5 mais aussi des outils internationaux, comment elles peuvent
6 les utiliser? Et vous avez brièvement parlé de la
7 communauté interaméricaine au niveau des droits, cette
8 partie-là, mais il y a aussi...

9 **Mme BRENDA GUNN:** Excusez-moi...

10 **COMMISSAIRE MICHÈLE AUDETTE:** Allez-y. Ah,
11 il n'y a pas de traduction? Je vais *rewinder* ma question.

12 You know, the translation, you laugh later,
13 so you look weird.

14 **(LAUGHTER/RIRES)**

15 **COMMISSIONER MICHÈLE AUDETTE:** So now you
16 know why I laugh later. But I don't look weird.

17 **(LAUGHTER/RIRES)**

18 **MS. BRENDA GUNN:** No, I've -- okay. We're
19 good now. Thank you. I did ---

20 **COMMISSIONER MICHÈLE AUDETTE:** You're good
21 now?

22 **MS. BRENDA GUNN:** --- to the -- how do we
23 educate the women on both the international level?

24 **COMMISSIONER MICHÈLE AUDETTE:** Yeah, that -
25 - to know that they have domestic rights.

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1 **MS. BRENDA GUNN:** Yeah.

2 **COMMISSAIRE MICHÈLE AUDETTE:** Canada,
3 interaméricains et à l'ONU.

4 **MS. BRENDA GUNN:** I think there's -- there
5 is different ways to go about it. One of the things that's
6 included in the UN Declaration as an obligation of all
7 State information to adequately -- to ensure that all
8 public information adequately reflects the aspirations of
9 Indigenous peoples.

10 And so on one level I would say it's also
11 having curriculum in public school systems and all school
12 systems and adequately reflects Indigenous people's
13 aspirations, which would include their rights and
14 understanding. So I think there is a larger systemic issue
15 that needs to ensure us that all people are educated and
16 know their rights.

17 I heard one of the experts yesterday talk
18 about, I think the Commissioner used the word,
19 "consciousness-raising circles", and I'm not sure if that's
20 what -- the word she used, I can't remember, but going to
21 the places where the women are and meeting with them and
22 having conversations.

23 There is lots of material that does exist
24 out there about knowing your rights. And through the
25 various UN agencies, they've developed a lot of community-

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1 focused material on knowing your rights, so there are a lot
2 of things that we can build from, and it's having people
3 who can go out and talk about those things. And you know,
4 part of what I think works is the -- hearing from people
5 about their daily lives.

6 And part of what I think human rights
7 education can do is give a language to name the violations
8 of their rights. So people know how their rights are
9 violated. They may not be able to name the rights or the -
10 - you know, where those come from, but we know when we've
11 been violated and the wrongs that have been perpetrated
12 against us.

13 And so, I think human rights education, in
14 part, is helping people name experiences, as well as
15 knowing what they should be expecting from the State when
16 they interact with them, whether that be a government
17 service provider at any sort of government office, whether
18 it be how the police should be treating them. I mean,
19 people know how the police treat them, but do they know how
20 the police are supposed to act and what they should be
21 expecting.

22 And then, I think the third component of
23 that is knowing where to go, where do you turn to enforce
24 your rights; right? So it's sort of the -- naming the
25 experience, knowing what their rights are, knowing the

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1 expectations, and then where do you go to enforce those
2 rights.

3 So whether it be creating or knowing
4 complete -- police complaint procedures -- sorry, that was
5 difficult to say -- or the international mechanisms, or
6 other feminist groups, other community groups that are
7 working on these issues internationally, right, where can
8 they turn for assistance.

9 **COMMISSIONER MICHÈLE AUDETTE:** Thank you.
10 And I forgot to mention that there is probably costs --
11 now, I'll speak English.

12 **MS. BRENDA GUNN:** Okay.

13 **COMMISSIONER MICHÈLE AUDETTE:** There is
14 probably costs attached to this. So do you think it's
15 important that Canada support the women's group or
16 organization that could defend or inform or educate women?

17 **MS. BRENDA GUNN:** Yeah. Not only do I think
18 it's important, but several of the reports actually
19 identify it is a legal obligation that Canada has to fund
20 these programs and ensure that they are taking actions to -
21 - for women to know their rights.

22 And again, as part of this education, I -- I
23 100 percent agree that we want to ensure that women are
24 empowered to know their rights and know where to enforce.
25 But I also think it's important that the recommendations

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1 don't just start with women.

2 I mean, we also have to make sure that all
3 government officials -- and I'm gong to use that really
4 broadly to include lawyers who work within the Canadian
5 system, judges, conservation officers -- that they know
6 those rights as well, so that the education needs to happen
7 there so that the rights violations can hopefully stop.

8 **COMMISSIONER MICHÈLE AUDETTE:** Merci
9 beaucoup. Merci.

10 **COMMISSIONER QAJAQ ROBINSON:** I'm going to
11 defer my questions until cross.

12 **MS. CHRISTA BIG CANOE:** Commissioner
13 Eyolfson?

14 **COMMISSIONER EYOLFSON:** I'll defer until
15 after cross as well?

16 **MS. CHRISTA BIG CANOE:** Thank you.

17 So that will conclude the -- it will
18 conclude my questions of examination in-chief, but similar
19 to what I suggested Monday, is we -- we are not going to be
20 calling the close of examination in-chief until all four
21 witnesses are done today.

22 At this point, I kindly request a 15-minute
23 break. And I know that we're trying to keep on schedule,
24 so it's now 10:42. If we could be back in the room three
25 minutes before eleven, then we can hopefully keep on

1 schedule. We are pretty close to being on schedule.

2 So if we can be back at 10:58, that'd be
3 great.

4 **CHIEF COMMISSIONER BULLER:** Fifteen (15)
5 minutes.

6 --- Upon recessing at 10:45/
7 l'audience est suspendue à 10h45

8 --- Upon resuming at 11:14 a.m./
9 l'audience est reprise à 11h14

10 **MS. CHRISTA BIG CANOE:** Chief Commissioner,
11 Commissioners, before I introduce the next witness, I do
12 have one piece of housekeeping, and that is actually to ask
13 if we can make an exhibit of the PowerPoint presentation
14 that Professor Gunn used throughout her testimony.

15 **CHIEF COMMISSIONER BULLER:** Certainly. The
16 PowerPoint will be Exhibit 7.

17 --- **EXHIBIT NO./PIÈCE NO. B7:**

18 Hardcopy of PowerPoint presentation of
19 Brenda L. Gunn, dated May 16, 2018 (14
20 pages)

21
22 **MS. CHRISTA BIG CANOE:** And so it's a
23 pleasure to introduce the next witness, who is Mr. Corey
24 O'Soup. Mr. Corey O'Soup is Saskatchewan's Provincial
25 Advocate for Children and Youth.

1 Before Mr. O'Soup begins his testimony, he
2 would like to be affirmed.

3 **CHIEF COMMISSIONER BULLER:** Mr. O'Soup, do
4 you solemnly affirm to tell the truth and give your
5 evidence in a good way today?

6 **MR. COREY O'SOUP:** I do.

7 **CHIEF COMMISSIONER BULLER:** Thank you.

8 **MR. COREY O'SOUP:** Thank you.

9 **COREY O'SOUP, Affirmed:**

10 **MS. CHRISTA BIG CANOE:** So I have not
11 received any objections in terms of the manner in which I
12 propose to qualify Mr. O'Soup as a witness, and -- is it
13 okay, Mr. O'Soup, if I call you Corey?

14 **MR. COREY O'SOUP:** Yes.

15 **MS. CHRISTA BIG CANOE:** Thank you.

16 So -- are there any objections? Okay.

17 So on that basis, with implied consent of
18 the parties, I will proceed with qualifying Corey.

19 **EXAMINATION IN-CHIEF/INTERROGATOIRE EN-CHEF PAR MS. BIG**
20 **CANOE:**

21 **MS. CHRISTA BIG CANOE:** So Corey, I just
22 want to start with a little bit of background. Can you
23 tell me a little bit of your personal history or
24 background?

25 **MR. COREY O'SOUP:** Sure, I'd be more than

1 happy. I'm from a place called The Key First Nation. I
2 always like to ask people if they know where The Key First
3 Nation is, and inevitably, I get one or two hands in the
4 crowd out there.

5 (LAUGHTER/RIRES)

6 MR. COREY O'SOUP: So they know where The
7 Key First Nation is, so then I don't have to tell you where
8 it is now.

9 Where -- you know, I'm a Saulteaux person.
10 It's a relatively small First Nation in Saskatchewan,
11 pretty much in the central area of Saskatchewan, and unless
12 you're on the road to our First Nation, you probably
13 wouldn't be coming there.

14 We have a Band office, we have a Saulteaux-
15 plex. We don't have gas stations, we don't have RCMP, we
16 don't have a school on our First Nation. It's actually
17 quite small, and some might say, insignificant, but there's
18 something I'm really proud of about our First Nation.

19 Actually, back in the 1950s, one of my
20 kookums, Gwen O'Soup-Crane, was the very first female chief
21 ever elected in all of Canada. So you know, from our small
22 seemingly insignificant First Nation where not too many
23 people have heard of us or know where we are, we've made
24 some history with one of my kookums. She's passed now, but
25 if you ever want to look up whoever the first female chief

1 was, that's who she was.

2 My mother is Métis, so I'm truly an
3 Indigenous person of Canada. And you know, we didn't grow
4 up with much. I remember looking in the fridge and getting
5 ready for school most days, and not seeing much in the
6 fridge, you know, to take for lunch or to have breakfast
7 with. I remember my suppers were tomato macaroni soup most
8 days, and if we had money there was wieners chopped up and
9 put in the tomato macaroni soup. So it's not too different
10 from the situations that I deal with on a daily basis with
11 the kids that we serve.

12 And you know, I'm also part of a typical
13 Indigenous family as well. My parents divorced when I was
14 young, so I have a biological brother and a biological
15 sister. My dad remarried, and I got two stepbrothers and a
16 stepsister, and we adopted another little boy from our
17 Reserve. And then my mother remarried, and I got four
18 stepbrothers on that side as well.

19 So, you know, I believe I'm positioned both
20 as an Indigenous young person, youth, growing up that way,
21 and also, you know, just realizing that we come from
22 certain places that not everybody comes from. And I hope
23 to bring that perspective today, you know, as an Indigenous
24 person in this role.

25 **MS. CHRISTA BIG CANOE:** Thank you, Corey. I

1 already mentioned that you're the provincial advocate for
2 Saskatchewan. Do you want to tell us a little bit about
3 that?

4 **MR. COREY O'SOUP:** You know, one of the
5 things that I'm really proud of is I'm actually the first
6 Indigenous advocate we've ever had in the Province of
7 Saskatchewan, in fact, across the country. We've had
8 three, and I would be the third. So we've had one in
9 Alberta and we have one -- we've had one in B.C. as well.
10 But in Saskatchewan, I'm the first Indigenous advocate that
11 we've ever had.

12 And I believe that's important for another
13 reason. You know, when we went through the process of
14 getting this position and being appointed to this position,
15 you know, a majority of the kids and the youth that we
16 serve that call our office -- the families that call our
17 office are Indigenous children and youth. And you know, we
18 decided very early on to, you know, change our priorities
19 and to make a plan, specifically around Indigenous children
20 and youth and families.

21 So that required us to really take a look at
22 our strategic plan and take a look at the direction that we
23 wanted to go. So we've created a brand new plan
24 specifically around Indigenous children and youth.

25 And I'm not ashamed to say that, you know,

1 because a lot of times we get left out of the conversation,
2 and in fact, most of the time we get left out of the
3 conversation. So I'm not ashamed to say that we've focused
4 our entire strategic plan on Indigenous children and youth
5 in the Province of Saskatchewan, and we've done that for a
6 number of reasons, and I think we'll cover some of those.

7 **MS. CHRISTA BIG CANOE:** Yes. Thank you.
8 I'm actually going to hand you your CV, your curriculum
9 vitae.

10 Chief Commissioner, I'm going to ask that
11 this get entered as an exhibit, but I have one note of
12 particular request: that we redact everything under Corey's
13 name, except for Saskatoon, Saskatchewan so that there is
14 no information. So if we could please redact any of his
15 personal information but have this as the first exhibit for
16 his testimony.

17 **CHIEF COMMISSIONER BULLER:** Yes. The redact
18 -- the redacted CV will be the next exhibit please.

19 --- **EXHIBIT NO./PIECE NO. B8**

20 Curriculum vitae of Corey O'Soup

21 (seven pages)

22 **MS. CHRISTA BIG CANOE:** Thank you.

23 So Corey, you were telling us some stuff
24 about your position as the advocate, but I was going to ask
25 you if you could highlight or discuss, particularly, any of

1 your experience, your professional experience and
2 education?

3 **MR. COREY O'SOUP:** Yeah. Education has been
4 one of the biggest things that I have done in my career.
5 And I'm also proud to say that I'm the very first educator
6 that's ever held a position and of Advocate for Children
7 and Youth in the Province of Saskatchewan. And I've asked
8 my colleagues across the country that we meet regularly as
9 well, and none of them can recall an educator actually
10 being in this office.

11 And you know, for me, that's a really
12 important piece of information because as educators as
13 teachers we're natural advocates. You know, we're not just
14 teachers, we're not just educators, we're counsellors,
15 we're chefs, we're chauffeurs, you know, we're social
16 workers, we're everything for our children and youth once
17 they come into our classrooms.

18 So I think, for me, that's one of the most
19 important things that we can have as an advocate, someone
20 that works with them, someone that understands them,
21 someone that's been sitting in front of them and having
22 those difficult conversations with them, you know. So I
23 find that to be really important as I talk about, you know,
24 kind of the places that I have been and the things that
25 I've done with education.

1 I've worked -- I've had a unique experience
2 in education. I've worked both in our provincial system as
3 a Superintendent of Education with the Ministry of
4 Education, responsible for First Nation Métis education in
5 the Province of Saskatchewan, working with our school
6 divisions to ensure that they have plans around First
7 Nation Métis education and to ensure that they enact those
8 plans.

9 But I've also worked on the other side of
10 the fence, if you want to say, in First Nations' education
11 world at the Federation of Sovereign Indigenous Nations as
12 -- first as a Senior Policy Analyst and then as Executive
13 Director of Education and Post-Secondary Training. And
14 there's not too many people that can say that they've
15 really worked on both sides of those sides education
16 federally and provincially.

17 And I've also been -- had education
18 experience in another province as well. I was a Senior
19 Manager in Education, First Nation Métis Inuit Services
20 Branch in Alberta as well. So I bring a unique perspective
21 from the education world that not too many people have.

22 You know, I know the insides and outs of the
23 provincial system. I know the challenges that we faced in
24 our federal system. I remember coming to Ottawa for an
25 education meeting, representing the FSIN, and the next

1 thing you know, we were marching on the Hill, you know. So
2 you know, it's something that I like to point out that it's
3 something that really drives me to do what I do.

4 **MS. CHRISTA BIG CANOE:** Thank you. I just -
5 - you know, looking at your CV, I note you have some other
6 awards and certificates, including the valedictorian.

7 **MR. COREY O'SOUP:** Yeah, there's a couple of
8 things that I was... So I'm a graduate of a program called
9 ITEP, the Indian Teacher Education Program in Saskatchewan,
10 and I was lucky enough to be the valedictorian of my
11 graduation class.

12 One of the other things that -- that's there
13 is I was actually awarded the Premier's Award of Excellence
14 for Public Service in Saskatchewan, and that was in regards
15 to my work in LaLoche.

16 Back in January of 2016, a young man went
17 into our community of LaLoche and into the school there and
18 shot and murdered four people, injured many others. And it
19 was during that time that I was working as a Special
20 Advisor at the Ministry of Education.

21 And we had all of our leaders go up there.
22 We had our premier there, we had our prime minister there,
23 we had our national chief, we had our provincial chief, and
24 all of the different people.

25 And the community asked all of those leaders

1 -- we said we need one person that we can liaise with on
2 the ground that can lead your team, that can lead us
3 through this crisis of the biggest tragedy that our, you
4 know honestly, our education system in Saskatchewan had
5 ever faced because we'd never had something like that.

6 So I don't know how my name got put there,
7 but it was put into the mix and I was appointed to lead our
8 government and the community of La Loche through the
9 tragedy that they faced, and I spent a lot of time up
10 there.

11 I didn't mention that I have five children
12 of my own. And during this time I was in La Loche,
13 probably for almost a year, and most days were 6 o'clock in
14 the morning till 1 o'clock, 2 o'clock in the morning, till
15 things had to get done, five, six, seven days a week. If I
16 was lucky, I'd get to fly home on a Friday night or a
17 Saturday night and fly back in Sunday night or Monday
18 morning.

19 And, you know, the difficulties of dealing
20 with a tragedy like that really change you as a person and
21 really make you reflect on life and on the life of our
22 children, particularly our Indigenous children and youth in
23 a different way. And that prepared me, I think, really,
24 for the role that I'm in today.

25 **MS. CHRISTA BIG CANOE:** Thank you.

1 Chief Commissioner and Commissioners, based
2 on the knowledge, education, professional experience as
3 described by Mr. O'Soup, and as evidenced in his curriculum
4 vitae, I am tendering Corey O'Soup as an expert
5 specifically in the areas of advocacy for children and
6 youth, and First Nation and Métis education.

7 **CHIEF COMMISSIONER MARION BULLER:** Yes.
8 Given the evidence tendered and the implied consent, I'm
9 satisfied that Mr. O'Soup has the necessary knowledge,
10 education, and professional experience to give opinion
11 evidence in the area of advocacy for children and youth,
12 and also in the area of First Nation and Métis education.

13 **MS. CHRISTA BIG CANOE:** Thank you.

14 Before we actually start in to questions
15 around looking at the human rights and about what the
16 provincial advocate in Saskatchewan is doing to ensure that
17 there's use of human rights and the human rights lens in
18 the work they do, I do want to touch on one thing.

19 I understand that in your position you have
20 the ability to investigate. Can you just talk a little bit
21 about the ability to investigate?

22 **MR. COREY O'SOUP:** Yeah. One of our roles
23 and one of the things that is in our legislation is that
24 when a child is critically injured or dies in the care of
25 government services, particularly in child welfare or in

1 our justice system, but also in our education and our
2 health system, we do have the ability -- we are notified
3 and we do investigate those deaths and those critical
4 injuries, and we do make recommendations and put out
5 reports from time to time.

6 **MS. CHRISTA BIG CANOE:** Thank you. But I
7 also understand that in legislation you're not actually
8 compellable as a witness in relation to any investigation
9 that you're overseeing or have done. Is that true?

10 **MR. COREY O' SOUP:** That is true.

11 **MS. CHRISTA BIG CANOE:** So on that basis,
12 Chief Commissioner, Commissioners, I'm going to ask that we
13 actually -- through a motion that Mr. O'Soup is happy to
14 answer any questions in relation to his examination in-
15 chief or the materials brought but that it is noted on
16 record that there's a prohibition on asking any questions
17 in relation to an issue from which he's not compellable.
18 So we cannot ask questions about any of the investigations
19 his office has undertaken or that he has personally
20 undertaken as it relates to anyone or any of the
21 investigations.

22 So my motion request is that there is an
23 actual prohibition on questions of that nature.

24 **CHIEF COMMISSIONER MARION BULLER:** For the
25 record, there will be no questions about any of the

1 investigations that Mr. O'Soup has conducted personally or
2 that his office has conducted in the course of either
3 direct or cross-examination.

4 Thanks.

5 **MS. CHRISTA BIG CANOE:** Thank you. And it
6 also needs to be noted that that's a legislative
7 prohibition that exists.

8 So one of the first questions or sort of
9 areas I'm hoping that we can explore, Corey, is, you know,
10 I think when we were first talking I said to you, you know,
11 well, how do you look at human rights in the work you do
12 every day, and what is the human right framework that
13 applies specifically to children and youth in Canada?

14 **MR. COREY O'SOUP:** Specifically in our
15 office and I believe in most of the offices across Canada -
16 - I'm a member of the Canadian Council of Children and
17 Youth Advocates, and we have a national organization.
18 Every province and territory except for Prince Edward
19 Island and Northwest Territories have some form of
20 advocate, ombudsperson, or child representatives. And
21 specifically here in Saskatchewan the basis for our
22 advocacy is based in the United Nations Convention on the
23 Rights of a Child.

24 **MS. CHRISTA BIG CANOE:** Excellent. But I
25 understand that your particular office actually is guided

1 by four priorities.

2 MR. COREY O'SOUP: Yes.

3 MS. CHRISTA BIG CANOE: Could you share
4 those priorities with us?

5 MR. COREY O'SOUP: Yeah. And I mentioned
6 this briefly in my introduction. We've taken our office
7 into a new direction really based on Indigenous children
8 and youth and based on the United Nations Convention on the
9 Rights of a Child, so we laid out four priorities for my
10 term in this position, and those are forming the basis for
11 our go-forward in our action plan.

12 The first one is based around building
13 better, more positive relationships with our First Nation
14 and Métis peoples. And that means a few different things
15 to me. That just doesn't mean, you know, picking up the
16 phone and phoning the Chief and saying, "How are you doing,
17 can we come visit with you?"

18 Building and fostering relationships is the
19 foundation on which we do our work because I believe that
20 our -- our First Nations people have the knowledge, have
21 the experience, have the ability, and now in the Western
22 world of things, we have the letters behind our names, we
23 have the BEds, the MSWs, the PhDs; we have the letters
24 behind our names to take care of our own children, to
25 educate, to train, to discipline; and even more than that,

1 we have the inherent right as Indigenous peoples to do all
2 of those different things. And that's the basis for us
3 building a better, more positive relationship with our
4 First Nations and Métis partners.

5 So when I ask my staff to go into those
6 First Nations and I ask them to build relationships, I ask
7 them to really close your mouths, open your ears, and open
8 your hearts because our Indigenous people have a lot to
9 teach you, they have a lot to teach me about how we've
10 parented, how we've trained, how we've disciplined our
11 children. And I want you to bring that back to your office
12 and I want that to inform the way that you work with all
13 children in our province, and I want you to educate our
14 staff and I want you to take what you've learned and to
15 share that with all of the other professionals in your
16 work, you know.

17 And then we have the opportunity to share
18 with those organizations, those First Nation, Métis
19 organizations, you know, what we do and we can teach them
20 about the United Nations Convention on the Rights of a
21 Child; we can teach them that their children have specific
22 rights and that those are international rights as well that
23 have been adopted by Canada. But only once we've actually
24 built that relationship.

25 The second piece that we talk about, which

1 is really important to us, is around education. Education
2 is one of the rights in the United Nations Convention on
3 the Rights of a Child, cited in, I believe, Article 28 and
4 29.

5 And education for me is -- I like to say
6 it's the key to breaking the cycles that our children, that
7 our families are in. We know those cycles; we're talking
8 about one of them here today. You know, cycles of trauma;
9 of abuse; physical abuse, sexual abuse; violence; drugs;
10 alcohol; gangs. You know, our kids and our families are
11 caught up in these cycles. And, you know, we try and, you
12 know, treat the symptoms, is what I like to say. We put
13 more doctors, we put more counsellors, we put more of those
14 types of pieces in place -- and we need those. Our people
15 need those. But if we truly want to break those cycles, as
16 an educator and as the advocate, I believe that education
17 is the key to breaking those cycles.

18 And what I like to tell our young people is
19 that unless you cross that stage and get that diploma,
20 someone else is going to choose your future for you. You
21 know, someone else is going to tell you how much money you
22 make, and that's probably going to be Social Services.
23 Someone else is going to tell you where to live and the
24 type of place you can live in. Someone else is going to,
25 you know, tell you what kind of education you can have,

1 unless you cross that stage.

2 And all of our kids, they want the same
3 thing that every other kid wants -- and I mean our kids,
4 our Indigenous kids. They want a good life. You know,
5 they want to have a nice home. They want to put clothes on
6 the backs of their own kids when they grow up, and unless
7 they get that education they won't have that opportunity.
8 They want opportunity; they want hope for the future. And
9 I believe that education is the key for doing that. That
10 opens up all of those doors for them. And as a teacher, I
11 would be remiss if I did not truly believe in that.

12 The third piece that we focused in our
13 office is around the area of health, specifically mental
14 health. Article 24 in the Convention mentions the right to
15 health for our children and our youth.

16 And we all know that mental health is an
17 issue in Saskatchewan. I've come to an agreement with our
18 Ministry of Health that it's actually an epidemic in our
19 province; and more specifically, Indigenous youth suicide
20 is an epidemic within our province. And I know it's not
21 just Saskatchewan and I know it's not just Indigenous kids.
22 It's all across our country in all areas of life but
23 specifically we've targeted our Indigenous kids and mental
24 health.

25 And I'd like to point to an example of a

1 health system. When you break your leg or you have a flu -
2 - I know Ms. Gunn had a cough here today -- when something
3 like that happens to you, what do you do? You go to the
4 doctor. You go to the emergency room if it's really bad.
5 And the doctor sees you. They'll give you some medicine.
6 They'll write you a prescription. If your leg's broken,
7 they'll set your leg. They'll put a cast on it. And
8 you'll go away and you'll feel like you've received some
9 sort of help and, like, you're on the way to getting
10 better.

11 But when you look at our mental health
12 system, the challenges there exist. They're real for our
13 children and our youth. And we see those examples in our -
14 - come to our office on a constant basis.

15 You take that same child that's suffering
16 with mental health issues, whatever it is, you know, ADHD,
17 anxiety, OCD, ODD, youth -- there's so many of these
18 different diagnoses. If you take that same child into that
19 same emergency room or that same health clinic, that child
20 sits there for 10, 12, 14, 16 hours. And you know what
21 happens? Someone on a phone says send them home. So those
22 kids go home. I'm telling you, we're dealing with life and
23 death situations when that happens. We send them home and
24 we tell them the doctor of the mind, the child psychiatrist
25 will see you in two years. That's how long it takes to see

1 a child psychiatrist most times in Saskatchewan is two
2 years.

3 And you know what happens in those two
4 years? Those children end up in one of our reports and is
5 dying or has being critically injured.

6 The challenges in our mental health system
7 are real, particularly for our Indigenous people,
8 particularly for our people in the north. We have 15 child
9 psychiatrists -- and I'm just using this an example -- in
10 Saskatchewan. One of them travels one day every two weeks
11 to our northern communities. So I'm guessing that the
12 actual wait list for them is longer than two years.

13 And I'm not saying child psychiatrists are
14 the be all, end all when it comes to mental health. It's
15 just an example that I use. There's different supports out
16 there. But for sure our mental health system is one of the
17 priorities that we need to tackle within our systems and
18 within our -- or within our province and within our role
19 that's one of the things that we do.

20 And the fourth piece of our priority is
21 focussed on youth voice and the right to be heard, which is
22 Article 12 in the United Nations Convention on the Rights
23 of a Child.

24 I believe that our children and youth need
25 to be at the tables and it is their right to be at tables

1 when decisions are being made about them, when they are
2 being discussed. They need to have a voice. And that
3 voice just can't be me. Because, you know, our tag line in
4 our office is a voice for children in need. And I believe
5 that we can't get that voice without talking to our
6 children and our youth, and I can talk a little bit more
7 about that when we talk about our report there. But I
8 believe that our children need to be heard and it is their
9 right to be heard and it shouldn't be me talking for them
10 at the end of the day. It should be them sitting up here
11 representing themselves, but you got me today.

12 **MS. CHRISTA BIG CANOE:** Actually, I think,
13 Corey, that is a good point to -- a good place that we can
14 maybe talk about "Shh, Listen."

15 Counsel would have seen on the table some
16 version, so it was provided electronically but there's
17 actually -- the report is in hard copy available for folks
18 in the room to look at.

19 But I'm going to ask you, because, you know,
20 you had said earlier that your office, you know, is guided
21 by the UNCRC, which is the Convention. And I know that in
22 addition to your four priorities there's four guiding
23 principles that you rely on from the UNCRC. And I know
24 that we can see that when we look at the report, but maybe
25 we can touch on those four principles and segue into the

1 report.

2 **MR. COREY O'SOUP:** Yeah, there's four
3 guiding principles within the United Nations Convention on
4 the Rights of a Child. The first one is non-
5 discrimination. It's Article 2.

6 The second one is best interests, in that
7 the best interests of the child must be considered in
8 everything that we do. You know, we talk about including
9 it in legislation, we talk about including it in decisions
10 that are being made about the child. You know, that is one
11 of the foundational principles of the UNCRC. And I believe
12 that that needs to be one of the things that we consider
13 the most.

14 And I believe one of the best ways to do
15 that is the fourth *[sic]* principle, is the right to
16 participate, the right to be heard. You know, so how do
17 you do that? How do you ensure that the best interests of
18 the children are being upheld? I think you have to go
19 right to them.

20 And the fourth principle is the right to
21 life, survival and development. And I believe all of those
22 four principles are alive and active in this report that
23 we've submitted to you.

24 **MS. CHRISTA BIG CANOE:** Right. And so one
25 of these concepts and what I was struck by, the pictures

1 we've seen coming up on the screen are actually with the --
2 with youth holding the signs, come from this report.

3 One of the things I was struck with right
4 away was that the "Shh Listen", in addition to its title,
5 is actually a huge message about listening to the children
6 and youth and hearing their voice and it's really apparent
7 throughout the report. That's the focus.

8 So, you know, tied to Article 12 of the
9 UNCRC, some of that drove this work. And so can you now
10 please tell us about this report?

11 **MR. COREY O'SOUP:** Yes, I can probably --
12 and I have talked for hours about this report. I will give
13 you the Coles note version though.

14 Thank you for pointing out the title. The
15 title was really important to us because so often our
16 children don't have a voice. They're not listened to.
17 They're not heard.

18 And early on in the process, as we did a
19 scan of the literature that was out there on the topic of
20 Indigenous youth suicide, there's many really good reports
21 done by some really smart people, probably smarter than me.
22 You know, lots of academics, lots of, you know, good
23 recommendations on the topic of youth suicide. But we
24 identified a gap very early on. And the gap was youth
25 engagement and youth voice.

1 A lot of these reports did pull together,
2 you know, different panels and different focus groups, but
3 our report decided to go at a different way. We decided to
4 give an entire report to youth voice. And we wanted to
5 find out what it was like to be an Indigenous child in our
6 society today, particularly in our northern community.

7 We did get a little bit of pushback on that,
8 particularly around the topic, because some professional
9 said, "Well, if you talk to kids about suicide, well,
10 they're going to start talking about it and they're going
11 to start doing it." Well, respectfully, they're already
12 talking about it. You know, they're talking about it in
13 chat rooms. They're talking about it, you know, on social
14 media and their phones. They're talking about it at
15 parties in basements. They're just not talking to us about
16 it. And the data we have already shows us that they're
17 already doing it.

18 You know, so we decided to push through that
19 and we decided that it was most important to have their
20 voice on the topic of youth suicide.

21 And, you know, at the end of the day, we
22 were able to present on the topic to over a thousand kids
23 in northern Saskatchewan, a pretty significant number, and
24 I think about 264, if my recollection is right, actually
25 gave their voice to this report, which is a significant

1 sample size.

2 And, you know, we made a commitment to them
3 as well. So often when we are talking to our children and
4 youth, we take from them. And we just go in, we do a
5 survey, we ask them some questions and then we never come
6 back. And we made a commitment to these kids and to all
7 the kids in Saskatchewan that we would be back, that we
8 would build a relationship with you.

9 So in some of the communities that we've
10 been in, we've been back there four or five times already.
11 They know who we are. They know who our staff is. They
12 know who I am. And before we even released this, before
13 any other people saw this, we said to them that we want to
14 make sure that it's all right with you. So we took it back
15 to them and we validated with them to ensure that what they
16 said was reflected. And then we gave them the opportunity
17 to change.

18 So, for me, that's truly implementing, you
19 know, Article 12 of the United Nations Convention on the
20 Rights of a Child, and that they had the opportunity to
21 have their voice heard.

22 And we've taken this report, honestly, all
23 across Canada, all across the world. You know, I was
24 invited to speak at the office or the organisation of
25 American States to represent civil society versus Canada

1 because they read this report.

2 The first night we released this report it
3 crashed our website. People wanted to hear what kids had
4 to say on this topic of youth suicide. We estimated that
5 first night over 5,000 people did a full download of this.
6 Within the first week, once we got it fixed, estimates were
7 as high as 20,000 people did a full download, 130 -- over
8 130,000 people clicked and read it online from all over the
9 world. Countries like Russia, Australia, India, England, I
10 think there was over 50 countries that we could identify
11 from the statistics, because they wanted to hear what our
12 kids had to say; right? And, I believe that what you see
13 in this is going to change the way that you perceive our
14 young people. It has actually changed the way that I
15 parent myself, you know? It had that impact on me
16 personally. I have five kids, and most times, you know, we
17 as adults, we as professionals, and I'll speak to myself as
18 a parent, as a teacher, as an educator, as the advocate for
19 children and youth, most times I think, with my education,
20 with my experience, I know what's best for kids. And, we
21 as adults, governments, you know, provincial, federal,
22 international, we make decisions based on when we were
23 kids, or we make decisions based on what we know, or the
24 knowledge of what we've read in a book, and that's what
25 happens.

1 But, kids, it's different than we were kids
2 now, and I have this conversation with my own child, and I
3 say, you know, how was your day? And, they talk about it,
4 and then we have this discussion. And, at the end of the
5 discussion, you know, half the time I hear from them is,
6 "Dad, you have no clue. You don't understand. You don't
7 know what it's like to be a kid nowadays."

8 And, these kids in this report have opened
9 my eyes. I don't just ask my child anymore, "How are you
10 doing?" Because what do they say? "We're good. We're
11 fine. We're okay." Right? And, that's what kids say to
12 us. But, what they've told us in this report is, "we're
13 not okay". When you ask me if I'm okay and I say I'm okay,
14 there's a good chance I'm not.

15 So, you need to ask them again and again,
16 and that fiftieth time or that hundredth time when they say
17 "we're not okay", that's me crying out for help. You need
18 to dig a little deeper. So, now, with my own children and
19 in the work that I do, I dig a little deeper because of
20 what these kids have said to us. I could go on and on.

21 **MS. CHRISTA BIG CANOE:** I know you can go on
22 and on, and I know you're passionate about it. One of the
23 things that you guys just really directly asked the kids
24 is, what youth want adults to know about suicide. And, I
25 know on page 8, there's a number of quotations that were

1 grabbed. I know we have a couple of them we can put up on
2 screen too, with "feathers", and it's exactly what you were
3 just talking about.

4 I know it's exactly what you were just
5 talking about. There's that difference in generations and,
6 you know, the electronic age you were talking about, but
7 one of the ones that I know when I read it hit me was the
8 same point you're talking about, that we're not seeking
9 attention, I think. Adults often minimize, so we're not
10 listening to the voice. We're not giving life to Article
11 12, because our lives get busy, too.

12 So, there are a couple of things on these
13 direct quotes like, you know, "parents are too busy with
14 their phones", but specifically, this one struck me, that
15 "we aren't seeking for attention; we actually need help."
16 "Don't bring us down further. You need to know when we're
17 actually not okay." "Keep us busy. If we're busy, we
18 shouldn't be sad." And, "Please don't isolate us. It only
19 makes us feel worse." "We aren't being dramatic, we
20 actually need help." And, "In isolated communities like us
21 in the north, there is no help."

22 And, at one point, you told me when I read
23 this report, I cried. That was the point I cried reading
24 this report, because I realized that when youth can
25 recognize their own situation too, but we're not letting

1 them speak and we're not letting them be heard, that we're
2 not effecting their human rights.

3 **MR. COREY O'SOUP:** I think, you know, when
4 we talk about this specific quote, you know, I talked
5 about, you know, when we talk to our children, when we ask
6 them if they're okay and, you know, they usually say
7 they're okay. But, that one time when they say, "I'm not
8 okay. I had a bad day at school." Or, you know, "I'm
9 fighting with my friend," or whatever their response is,
10 you know, what do we say? "I had a bad day." "Well,
11 tomorrow is a new day." "Oh, get over it." "Well, when I
12 was a kid, you know, I had to walk backwards five miles
13 uphill in a blizzard. You have it easy." Right?

14 And, our kids are saying when we are openly
15 seeking help, do not say it's just we're seeking attention.
16 It is us opening up our hearts and our lives to you. We're
17 crying out for help, so you need to take that opportunity
18 when I say that I'm hurting. When I say that I had a bad
19 day, that is your opportunity to insert yourself into my
20 life, and insert yourself into my situation, and to dig a
21 little bit deeper.

22 I think we can all do a better job of that.
23 You know, and particularly in our northern communities, you
24 know, part of the questions we asked, you know, was we
25 asked our kids, "Well, what do you like about your

1 communities," right? And, the things, especially in the
2 north, "We love the open air. We love the freedom. We
3 love riding our bikes, hunting, fishing, trapping, the
4 lakes."

5 But, the flip side of that, "What is the
6 barriers? What's the isolation," right? So, you know,
7 it's not easy being a kid. It's not easy being a kid in
8 the north. It's not being an Indigenous kid in the north.
9 It's even less easy to be an Indigenous kid in northern
10 Saskatchewan that's a girl, you know?

11 One of the stats that we point out here in
12 Saskatchewan is that Indigenous girls are 26 times more
13 likely to die by suicide in Saskatchewan than non-
14 Indigenous girls. Twenty-six times. You know, for me,
15 that's unacceptable. That's why we do things like this.
16 That's why we just can't wait for tragedy to happen.
17 That's why we have to become a part of the solution.
18 That's why we have to listen to our kids.

19 **MS. CHRISTA BIG CANOE:** And, I know that
20 something that you're obviously passionate about is the
21 education, and there's a tie between what your office is
22 doing and looking at, sort of, breathing life into
23 recognizing human rights through Articles 28 and 29 of the
24 U.N. CRC, because it speaks to the children's right to
25 education. And, at this point, before I ask you the

1 question, I sometimes have to do these technical things
2 like put evidence in.

3 I'm going to ask that we actually put into
4 the record as an exhibit the Convention on the Rights of
5 the Child. This is marked as Schedule C in the summary,
6 and we can just call it the U.N. CRC.

7 **CHIEF COMMISSIONER MARION BULLER:** Exhibit,
8 I think it's number 8, please.

9

10 --- **EXHIBIT NO./PIÈCE NO. B9:**

11 United Nations Convention of the Rights of
12 the Child (15 pages)

13

14 **MS. CHRISTA BIG CANOE:** I think it might be
15 nine. And so, because we keep referring to these articles,
16 but I want to make sure the whole thing is in, so if there
17 are further questions that Corey can answer, he will be
18 able to.

19 So, knowing that there's a right to
20 education for children and how important it is to you, you
21 were just talking about challenges and barriers, and you
22 feeling, you know, how do you breathe life into these human
23 rights when you have all these existing barriers? So, can
24 we talk a little bit about the right of education, but can
25 you tell us about some of the barriers? How much success

1 are Indigenous children in Saskatchewan seeing in terms of,
2 like, rates of graduation? And, those barriers, how are we
3 going to try to overcome them?

4 **MR. COREY O'SOUP:** You can tell I'm very
5 passionate about education in particular, and I believe
6 that it is the key for our children, and youth, and our
7 families to break these cycles that we're in.

8 Unfortunately, in Saskatchewan in
9 particular, this right is not being upheld to the fullest
10 that it could be. A simple statistic around Indigenous
11 education in Saskatchewan is a graduation room. I know
12 it's not the be all, end all way that we can measure
13 success, but right now, it's the accepted measure of
14 success in our school system.

15 And, an Indigenous person, an Indigenous
16 young person in Saskatchewan graduates at the rate of 43.2
17 percent in our school system, and a non-Indigenous young
18 person in Saskatchewan graduates at a rate of 85.4 percent;
19 almost double of what our Indigenous kids graduate, you
20 know? So, for me, that's a tragedy, because if we want to
21 break these cycles we're in, we have to -- we just have to
22 exercise that right to education. Our Indigenous people
23 have to, and this goes into another -- a couple of
24 different articles.

25 You know, if you cite Article 30; we have

1 the right to language, and culture, and religion, you know,
2 in the United Nations Convention on the Rights of a Child,
3 and that includes in our education system, and that's
4 clearly laid out for us. And, you know, our elders have
5 spoken to me, and they've given me a little slap on the
6 hand a couple of times. And, you know, it comes to
7 measuring, you know, the success of our kids by graduation
8 rates.

9 I haven't met one elder, or one kokum or
10 mushum, or one parent that says, "I don't want my child to
11 cross that stage." But, they also mention to me that, you
12 know, that's not the only way to measure the success of our
13 young people as well. And one Elder told me, she said,
14 "You know, I have a grandson. He goes to work everyday,
15 you know. He ports down at the local gas station. He
16 might not have a car, he might not have a way to get to
17 work everyday. So sometimes he'll bike, sometimes he'll
18 bum a ride, or sometimes he might walk. But you know what?
19 He gets up everyday, he goes to work, he's putting clothe
20 on the back of his kids, you know. He's home every night.
21 They're happy, they're laughing. They come and visit me.
22 But he's only got a grade 9 education."

23 So by your definition of success in the
24 education world, you say he's not successful, but for me,
25 as his (Indigenous word), he's successful. So I challenge

1 our education systems, in my previous role within education
2 and also in this role, to change the way that we define
3 success for Indigenous kids, because it's not always the
4 same way as we define it in our educational academic world
5 or the same way that governments define it.

6 So just because my child doesn't cross that
7 stage, and I'm not saying that not everybody wants to and
8 that they shouldn't and we shouldn't aspire to that, but we
9 shouldn't just automatically declare a kid's a failure
10 because they didn't cross that stage.

11 And the same is true on the flip side; just
12 because they cross that stage that doesn't mean that
13 they're gonna be a success either. So we really have to
14 challenge the norms out there, particularly in our
15 Indigenous education systems, because it wasn't always
16 meant that we had to cross this stage and get a diploma to
17 say that we've been successful, you know.

18 So there's a few different ways that we can
19 exercise that right to education for our young people. And
20 I think we need to aspire to help them cross that stage,
21 but we can't just tell them that they're not successful if
22 they don't. We need to, you know, look to our elders, look
23 to our communities to truly define success in education and
24 to truly define whether we're meeting that right and
25 whether our children are meeting that right to education.

1 **MS. CHRISTA BIG CANOE:** So Corey, one of the
2 things, too, and you've really given us some really good
3 context in terms of sort of what we know from the
4 convention and how you're trying to breathe some life into
5 it, but some of those bit barriers, like the funding
6 disparity between on-reserve and off-reserve.

7 When you're looking like particularly like
8 something like Article 28, that, you know, recognizes state
9 parties recognize the right of the child to education, and
10 with the view to achieving this right progressively on the
11 bases of equal opportunity, and there's a number of things
12 that they must do.

13 But we've also been having conversations
14 over the last couple of days, and you probably heard
15 Professor Dunn talking about substantive equality. So you
16 know, is it just about equal funding or is it about trying
17 to achieve an even playing field in terms of needs?

18 **M. COREY O' SOUP:** Well, I think, you know,
19 some of the things we talk about, too, in human rights and
20 also children's rights, is special measures, right, you
21 know? And bringing our children up to the equal standard
22 requires special measures, right?

23 It's not just, okay, if we have the same
24 amount of money we'll achieve the same way. We've been so
25 far behind for so long that we need special measures in

1 order to bring us just to the level of non-Indigenous kids
2 in our provinces, in our country as well, you know. So
3 different special measures are targeted, specific targeted
4 funding within our education systems, you know.

5 There's a couple of examples in
6 Saskatchewan, you know, we have a couple programs like
7 Following Their Voices, that are targeting specifically
8 First Nation and Metis children and youth, and their
9 engagement and their achievement. But the only way that we
10 can do that is by targeting special funding, right?

11 Those things cost money, but the challenge
12 again, too, is the data collection, right? And I know Miss
13 Gunn talked about that earlier this morning; how do we know
14 that, when we're investing these dollars, how do we know
15 that it's being successful, you know? And along with
16 investment, we need to put data systems in place.

17 And some of the things we're doing in
18 Saskatchewan are good, they're really small, you know, they
19 could probably be instead of in 20 schools, they could
20 probably be in 200 schools or 2,000 schools. If we truly
21 want to make an impact, and that requires additional
22 funding, and funding dollars. And those are the things
23 that we advocate for with our government, you know.

24 And then, the other piece to that is that's
25 the provincial side of things, right? You know, the

1 alternative is our federal education system, which
2 depending on where you live and on how good of a proposal
3 writer you might be, the funding is, in some places, as low
4 as 50%, maybe as high as 80% compared to what a provincial
5 student would get.

6 So say, on average, if a provincial student
7 in Saskatchewan might get 12,000\$ per student. A First
8 Nation student in Saskatchewan, on reserve, could get as
9 low as 6,000\$ per student. They could get anywhere between
10 6 and 12, depending on the different things that you've had
11 to apply for, the different hoops you've had to jump
12 through to get additional funding.

13 So there's disparities there, you know, and
14 I think that's why I marched on the hill back in the day,
15 in Ottawa, that one time, was around funding, right?
16 Because it's so important. Because we asked our Indigenous
17 people, we ask our Indigenous school systems to the same
18 thing with less money constantly.

19 It's the same fight that Cindy Blackstock
20 had, you know? The underfunding of our child welfare
21 system; it's the same thing in our education system. And
22 then, we challenge our First Nation people and we say,
23 "Well, how come your kids aren't being successful? How
24 come they're not graduating?" "Well, you've only given us
25 half of the funding that our counterparts get in the

1 province."

2 So we need to challenge both our provincial
3 and our federal governments on that case. And I've
4 challenged our provincial government to the point where
5 they have stood up in our provincial legislature, that they
6 agree that there is disparity and that they are going to
7 lobby-- whatever that means-- in their own way, the federal
8 government to increase funding to on reserve kids in
9 Saskatchewan. So I know they're in the process of writing
10 a letter, but I know it needs to be more than just a
11 letter.

12 **MS. CHRISTA BIG CANOE:** So and now, you were
13 just taking about, you know, taking into account some of
14 those cultural aspects and not just using the academic
15 ones. One question I really do want to put to you, though,
16 is: what about the whole education system recognising some
17 Indigenous perspective?

18 So when we had our first expert hearing,
19 there was one of our expert was Donna (phon.) Kennedy, and
20 she talked about how in Canada we still teach-- like, quite
21 frankly, my son came home with a assignment and it was a
22 map of 1712 and it had the Louisiana purchase and Rupert's
23 Land, and that was his homework assignment. And he was
24 smart enough to actually also put in a map of the known
25 First Nations and Indigenous people's at the time, to which

1 his teacher was quite surprised, cause that wasn't the
2 homework assignment.

3 But this is one of the issues we see and
4 this is something that Donna (phon.) Kennedy talked about,
5 was boy, our whole entire education system would be so
6 enriched if we actually had Indigenous perspectives and
7 cultures as the access for all kids to understand the
8 basis, and that it would increase education, that it would
9 increase the respect for the human rights all children
10 have.

11 **M. COREY O' SOUP:** Yes. Including Indigenous
12 education, Indigenous perspectives in our education
13 systems, both on and off reserve, it's something that's
14 critical, cause it's not only for our people, right? It's
15 for non-Indigenous people to learn the other half of
16 history that they weren't taught, you know.

17 I didn't learn about Indigenous history
18 until I was in university. I was never taught about it in
19 school, in elementary school or in high school; in fact, I
20 was taught the opposite. I was taught that I was a savage,
21 I was taught that I was uncivilized. I was taught that I
22 had to be saved, you know. Those were the things that I
23 was taught about myself; I was not taught the true history
24 until my first Indigenous studies class in university.

25 I know we're heading down a direction where

1 we are doing better in our education systems, but we need
2 to do even better than we are. And in Saskatchewan, in
3 2007, it was mandated that we have to teach treaties in our
4 classrooms, you know. That was a good first step, you
5 know, teaching treaties in our classrooms will get us a
6 start in education, but we need to go beyond that, you
7 know.

8 We need to teach our kids about missing,
9 murdered Indigenous women and girls, we need to teach our
10 kids about youth suicide. We need to teach our kids about
11 the TRC, you know. They need to learn those things, they
12 need to learn the historical aspect, they need to learn the
13 contemporary aspect.

14 And there's only one way that that's gonna
15 happen in our school system, and that's through the
16 curriculum. Honestly, that is, you know, like I have an
17 office, I have a number of staff, we travel the province,
18 we're trying to teach them about the United Nation
19 convention on the rights of a child, we're trying to teach
20 them that. But we're never gonna get to every kid; the
21 only way we're gonna get to every kid is through the
22 curriculum.

23 And I get asked this question, too, about
24 youth suicide, about you know, the TRC. "Well, when should
25 we start teaching our kids about suicide? When should we

1 start teaching our kids about residential schools and
2 colonization. And -- you know, like aren't they too young?
3 You know, like when is it too young?

4 And I turned the question back on the
5 reporter one time. I said, well how old was it when our
6 first child was taken? How old were they; 4 years old,
7 5 years old? I said, that's when we need to start teaching
8 them. You know what I mean? Of course, it needs to be age
9 appropriate and grade appropriate, but that's when we need
10 to start teaching them, you know.

11 Suicide. You know, we've seen in our
12 research as young as 6 years old, kids dying by suicide.
13 When is it too young to start teaching them about mental
14 health, about anxiety, about all of those different things
15 that lead to that? It's not too young.

16 Same thing with missing and murdered
17 Indigenous women and girls. How young are our girls being
18 taken away? How young are they being stolen from us?

19 That's when we start teaching them about it,
20 and that needs to be in our curriculum. It can't be an
21 add-on, it can't be a piece that, you know, a special class
22 that you take in Grade 12 that's an elective, and the only
23 people that take that class are our people; right.

24 **MS. CHRISTA BIG CANOE:** M'hm.

25 **MR. COREY O'SOUP:** You know, it has to be

1 compulsory, it has to be within the curriculum.

2 And even -- if I can point on the Convention
3 on the Rights of a Child, for the first time our office has
4 been invited in Saskatchewan to be a part of the Curriculum
5 Review Committee.

6 So we are pushing for the UNCRC to be
7 included at all grade levels where appropriate. We also --
8 as an Indigenous person, as an educator, I always push to
9 ensure that our Indigenous histories and contemporary
10 issues are taught as well. So those are some things that
11 we'll be pushing on that committee.

12 **MS. CHRISTA BIG CANOE:** Thanks, Corey. You
13 know, looking at some of the other big issues, and I know
14 that you want to be able to cover some of the topics,
15 especially as it relates to things like child welfare and
16 the connection between it and children having the right to
17 be raised by their parents when safe to do so.

18 It -- obviously, these are -- you know,
19 Professor Gunn had talked about the interconnectedness of
20 all of these legal rights. And so, you know, when we talk
21 about kids doing well in education, and we talk -- I mean,
22 you were saying how -- one of those principles, how young
23 are they when they're taken away, and that's why we have to
24 educate them.

25 But what about the issues in child welfare,

1 particularly, under the right to be raised by their parents
2 when safe to do so, and can you speak to that? And
3 potentially, can you also speak to the States' -- the
4 States' obligation to provide assistance, when required to
5 do so, to parents in their child-rearing responsibilities?

6 **MR. COREY O'SOUP:** Yeah. Those are both
7 articles under the Convention.

8 When it comes to child welfare, and more
9 specifically, children being taken away from their homes
10 and being raised by someone other than their family, I have
11 a big issue with that. When I took this role and when I
12 was interviewed, you know, they asked me what my number one
13 priority would be. And my number one priority in this role
14 would be to reduce the number of children that are being
15 taken away from their homes. We know that's not maybe
16 100 percent achievable, but I believe that there are
17 opportunities where we can reduce that number.

18 You know, in Saskatchewan, the number of
19 children that are being taken away from their homes, the
20 estimates are as high as seven -- or as low as 70 and as
21 high as 90 percent of kids that are in our child welfare
22 system in Saskatchewan are Indigenous kids. There's just
23 over 5,000 kids that have been apprehended -- in our last
24 annual report, I think around 54 -- between 5,400 and 5,500
25 -- and as high as 90 percent of those kids are Indigenous

1 kids. They're definitely not having their right to be at
2 home being raised by their parent being met.

3 You know, our justice -- our senator, Murray
4 Sinclair, compared the current child welfare system, the
5 current foster system to the residential school system.
6 You know, at the height of the residential school system,
7 there were thousands of kids being taken away from homes.
8 He said, the current foster care system, there is more kids
9 in our current system than were ever in the residential
10 school system.

11 And it's not a historical issue; it's a
12 contemporary issue. Kids are still being taken away. Kids
13 are still dying in our child welfare system. Kids are
14 still being injured. Kids are still running away. Kids
15 are still being asked to leave home to get an education in
16 our child welfare system. So it's not that different from
17 our residential school system. And that's one of the
18 things that we like to point to, you know, as a right.

19 You know -- and, you know, when it comes to
20 something like child welfare and apprehensions, it's not an
21 easy thing to tackle, you know, but I believe that in order
22 to do that we need to become a solutions-based
23 organization. We need to focus on prevention, we need to
24 focus on solutions. And I believe those solutions come
25 from our people, come from our Indigenous people.

1 You know, we just can't ignore the fact
2 that, you know, for thousands of years we were able to take
3 care of our own kids, we were able to parent, we were able
4 to train, we were able to discipline, we were able to
5 educate. It's only been in the last 150 years that someone
6 said we can't, and someone decided the best thing for our
7 kids was to take them away from us. It's the worst thing
8 that they could have ever done.

9 I believe that we need to reclaim our child
10 welfare system, and our First Nations and our Métis people
11 need to reclaim that system and we need to take back
12 control of that.

13 And I support our First Nations, you know,
14 in Saskatchewan who are going through -- there's a special
15 Chief's Task Force on Child Welfare. And I've told them, I
16 support them, you know. If the federal government and the
17 provincial government can ever to agreement where they want
18 to transfer back child welfare back to our First Nations, I
19 said I'll be behind that 100 percent.

20 Because I work in both systems, and no --
21 neither system is better than the other. Both of them are
22 challenged to meet the needs of our kids, you know. It's
23 just that, you know, if we, as First Nations people taken
24 back control of that child welfare system, we'll be able to
25 create a plan and we'll be able to create a strategy and a

1 framework based on our history and our people and based on
2 our Elders and the needs of our kids. We wouldn't have to
3 fit ourselves into this box that's been prescribed for us
4 by the provincial government or the federal government.

5 **MS. CHRISTA BIG CANOE:** Thank you, Corey.
6 You know, when talking, you sound like you are more
7 passionate than just education by the way. But there is
8 connections, that interconnectedness again. When we're
9 talking about things like the child welfare, and I mean, I
10 think the Commissioners could take judicial notice on this.

11 We know from reports and existing stuff that
12 children that are taken away from their families have more
13 barriers and actually end up in a trajectory that often
14 puts them before the justice system, puts them into poverty
15 when they age out. So I know that you can speak a little
16 bit to both the justice and poverty issues from where you
17 do your work.

18 **MR. COREY O'SOUP:** Well, you know, one of
19 the other areas that we do have the authority to look into
20 are the accountability measure over our provincial
21 government, is -- I'll speak first to the criminal justice
22 system for our young people.

23 You know, we talk about our adult Indigenous
24 people being over represented in our criminal justice
25 system at, whatever the rate is, it's too high, 40 percent,

1 50 percent, I'm not sure. But if you look at our
2 provincial system, you know, and -- you know, I go into our
3 youth jails and our staff goes into our youth jails on a
4 regular basis, and we visit, and we advocate for those
5 kids, it's just part of our job.

6 When I go into one of those facilities, on
7 any given day, I'm not saying every day, but on any given
8 day I walk into one of those facilities and 100 percent of
9 those kids are our kids. It's not 50 percent, it's not
10 40 percent, it's 100 percent of those kids on any given day
11 can be one of our kids. And I know for a fact that it's
12 not 100 percent of our kids doing the crimes.

13 So why is it 100 percent of our kids in our
14 youth justice facilities? There is no why, it's just
15 wrong; right? So we have to do things to change that
16 system, to challenge that system.

17 You know -- and I liken it to -- I was just
18 -- I can't remember who I was having the conversation with,
19 but you know, I live in a pretty, you know, well-to-do
20 community in -- just outside of Saskatoon called
21 Martinsville. Lots of, you know, parents that have lots of
22 money. There's not too many Indigenous people there.

23 And on any given day I can see, you know, a
24 group of kids riding their bikes or they're hanging out at
25 the 7-Eleven or at the McDonalds, or they're just walking

1 down the street, you know, a group of five or six kids.
2 And it could 1:00 in the morning, it could be 2:00 in the
3 morning, it could be 7:00 in the evening. But you know
4 what we say? Oh, those are just kids being kids, hanging
5 out with their friends, you know. Just whatever.

6 But you know when it's a group of five or
7 six of our kids, you know what it is, it's a gang. Right?
8 They're up to no good. Call the police. Walk on the other
9 side of the road. Be careful. Oh, what's our
10 neighbourhood coming to?

11 Those kids are just being kids like any
12 other kids. We need to give them that right to just be
13 kids; right? That's what the United Nation Convention on
14 the Rights of a Child is all about. It empowers us as
15 adults to allow our children to be children again, you
16 know? It says in there that they have the right to
17 recreation. They have the right to play. You know, they
18 just have a right to have fun, you know? Our kids are
19 growing up so fast now, you know? It's totally different
20 than when we were kids. It's not the same. I think that
21 was one of the quotes that came up on the screen. It's not
22 the same as when we were kids.

23 I can liken it to bullying, you know? When
24 I was a kid, if I got bullied -- yes, I got bullied. I
25 know I look way too cool not to be bullied; right? But,

1 when I was a kid, I did get bullied, you know? And, the
2 kids say this even in here, you know? You get pushed into
3 a locker, or somebody might steal your shoes, or your
4 jacket might go missing, you know? And, you'd go home, and
5 you'd be safe.

6 Not the same nowadays; right? It's becoming
7 increasingly violent and aggressive, our kids are telling
8 us. They're scared to walk home from school. They're
9 scared to end up in the hospital. They're scared to end up
10 dead from bullying. It's different. They can't turn it
11 off. It's 24/7 with these devices, with the internet.

12 One of the things that I like to say is if I
13 could turn the internet off for eight hours a night, just
14 so our kids could be kids, so they could interact with
15 their families, that they could just sit down and have
16 supper, that they wouldn't have to worry about who's saying
17 what on Snap, or Kick, or Instagram, or whatever the latest
18 platform it is, that they could just go to sleep and not
19 have to worry about that because it wouldn't be on, our
20 children would be in such a much healthier environment.
21 Instead, you know what happens? Our kids end up in our
22 jails. They end up in a report like this, and that's what
23 happens.

24 **MS. CHRISTA BIG CANOE:** Corey, one of the
25 points you touched on was, you know, the right to be free

1 from violence. Article 19 speaks to how states shall take
2 all appropriate measures to protect children from all forms
3 of violence, and we've already talked, like, the
4 implication for Indigenous children is that they're more
5 exposed to it. So, what about violence in relation to the
6 work that you guys are doing, or how are you helping to
7 raise awareness and talk about preventing it?

8 **MR. COREY O'SOUP:** Yes. I think everything
9 is pretty much covered in these 54 articles for our kids;
10 right? You know, and that also aligns with Article 22 of
11 UNDRIP as well, of our women and our children; right?

12 The big thing about violence for me is our
13 response as adults. You know, our kids are going to be
14 kids. They're going to wrestle, they're going to fight,
15 they're going to get into trouble. You know, they're going
16 to do different things. But, what happens when something
17 violent happens to our kids? And, I'll point back to here
18 again, to the voices of our kids. You know, they've said,
19 you know, if something's happening, if somebody is getting
20 in a fight, something is going on, you know what we do? We
21 do what everybody else does; we call the police. And, you
22 know what happens? They don't come, or it's six hours
23 later, or it's eight hours later, or it's the next day and
24 everything has already been de-escalated and things have
25 already happened and, you know, that's what happens.

1 Our kids in here state that in order for
2 them to not think about suicide, they need a safer
3 community. They don't want to be scared walking down their
4 streets. They need to be safe and protected. And, what
5 they've done in here is they've called us to action on
6 certain things. And, I wouldn't say they've called the
7 government to action. That's kind of what I did in here as
8 part of my call to action. They're calling their friends,
9 they're calling their families, they're calling their local
10 communities to action, and one of the 16 that they talk
11 about is lack of physical safety in their communities, and
12 this is specifically coming from them. And, I think for
13 me, this goes back to Article 12 again; right? The right
14 to be heard. If these kids aren't telling us and if
15 they're not opening up to us like they did, we would just
16 assume that everything is okay.

17 But, you know what? They mention police as
18 a big issue here; right? And, this isn't me; this is what
19 they said. You know, even on the topic of bullying, you
20 know, they mentioned teachers as well as participants in
21 bullying. They also mentioned the police. They mentioned
22 adults, they mentioned leaders in their community as
23 participants in bullying.

24 We think of bullying as just kids bullying
25 kids and it's not, and that's one of the other differences

1 about when we were kids. When we were kids, it was kids
2 bullying kids, and now, they specifically pointed out to us
3 that it's not just kids bullying kids. And, we create
4 programs, we create Stop Bullying, Anti-Bullying, we create
5 all of these different things based on kids bullying kids.

6 But, what I've challenged our government and
7 other organizations in our province to do is to look at
8 what the kids have to say. How come we're not creating a
9 program targeting adults and telling them that what you're
10 doing is engaging in bullying behaviour? And, what happens
11 is our kids end up in a book like this talking about it.
12 So, we need to really talk and think about, you know, the
13 area of violence and what that results in, you know, and
14 what our kids are saying to us.

15 **MS. CHRISTA BIG CANOE:** Thank you, Corey.
16 And, what you're saying and what you guys heard, and list,
17 and report, also, we've been hearing from the Convention on
18 the Rights of Children, and specifically, the Committee on
19 the Rights of the Child to send more calls to Canada in its
20 reports.

21 So, I note that in your material, there was
22 the Committee on the Rights of Child's 61st Session. I'm
23 going to ask that that be entered as an exhibit. It was
24 listed as Schedule B on the summary, and I'm just going to
25 draw your attention to just one part of it, and it's

1 located on page 7, and it's under "General Principles", and
2 it's 33. The paragraph number is 33.

3 **MR. COREY O'SOUP:** If you just read it to
4 me?

5 **MS. CHRISTA BIG CANOE:** It's right there.
6 Do you see it?

7 **MR. COREY O'SOUP:** Yes.

8 **MS. CHRISTA BIG CANOE:** So, here, the
9 committee is recommending that the state party include some
10 information in its next periodic report on matters and
11 programs relevant to the Convention on the Rights of
12 Children. And, specifically under (a), it says take under
13 measures to address the over representation of Aboriginal
14 and African-Canadian children in the criminal justice
15 process. It talks about addressing disparities and access
16 to services by all children facing situations of
17 vulnerability, including ethnic minorities, children with
18 disabilities, immigrants and others. And, it also talks
19 about taking immediate steps to ensure that in law and
20 practice, Aboriginal children have full access to all
21 government services, and receive resources without
22 discrimination.

23 So, all of the points you're talking about,
24 that you're dealing with from the Office of the Provincial
25 Advocate, we also know that there's international bodies

1 that are pointing out some of these same issues,
2 particularly when they're making concluding observations of
3 Canada.

4 **MR. COREY O'SOUP:** I think the challenge
5 when we come to this and having our rights upheld here in
6 Canada, and having our international children's rights
7 upheld, is there is no mechanism for our children to reach
8 the international community. We have the United Nations
9 Convention on the Rights of a Child, and it's like many of
10 the things that Ms. Gunn was speaking about this morning.

11 There is an optional protocol on
12 communication that Canada has not signed off on, and that
13 would ensure that our children have a right to access the
14 international level, you know, when they've exhausted all
15 of the levels here within Canada. So, whether that's at
16 the municipal, the provincial, the federal level.

17 And then that's one of our recommendations,
18 and you'll see that Canada adopt or ratify the optional
19 protocol on communications, which means that our children
20 have the ability to take their complaints to the
21 international level. Now, we don't have that.

22 A couple of other things that would help us
23 down this road, and it's also mentioned a little bit here
24 and in different documents that we presented as well is the
25 idea of a national commissioner for children and youth here

1 in the country of Canada. I know it's mentioned in the
2 AFN's document. I know it's mentioned in our CCCYA
3 document. I've mentioned it here specifically. It's been
4 mentioned in the UNCRC, the committee. It's been mentioned
5 all over that in Canada, we do not have a national
6 commissioner for children's rights, and that person, I
7 believe, would be able to elevate, particularly issues of
8 national importance, like the issue of missing and murdered
9 Indigenous women and girls; right? And, if Canada was not
10 compliant, there would be a body, a person that could take
11 that to the next level of international -- of the
12 international system; right? And, right now, we don't have
13 that.

14 And, I would take it even a step further
15 that, you know, that I would recommend that we have that
16 person and that body and that that person must be
17 Indigenous. They have to be. Because even in Saskatchewan
18 alone, I told you some of the statistics, you know, 90 --
19 up to 90 per cent of our kids are in our child welfare
20 system, are Indigenous. Our graduation rate is 43 per
21 cent. You know, the kids on any given day are a hundred
22 per cent in our criminal justice system. The mental health
23 system is continually failing our Indigenous kids.

24 If we do, and when we do, and I hope we do
25 have a National Children's Commissioner, that person must

1 be Indigenous in order to meet the needs of our kids,
2 because most of the kids that are accessing our systems or
3 that have trouble with our provincial and our federal
4 systems are our Indigenous kids.

5 **MS. CHRISTA BIG CANOE:** Corey, before we
6 move into some more of your recommendations, I just ---

7 **CHIEF COMMISSIONER BULLER:** Excuse me. Just
8 before we do that, you wanted one document marked as an
9 exhibit.

10 **MS. CHRISTA BIG CANOE:** Yes. And so --
11 sorry, the one that I had asked be marked last was the one
12 that was in Schedule B, and it's the Committee on the
13 Rights of Child. It's the concluding observations
14 regarding Canada. If I could have that marked as the next
15 exhibit?

16 **CHIEF COMMISSIONER BULLER:** It'd be 10,
17 please.

18 **--- EXHIBIT NO/PIÈCE NO. B10:**

19 "Consideration of reports submitted by
20 States parties under article 44 of the
21 Convention" Convention on the Rights of the
22 Child CRC/C/CAN/CO/3-4 (22 pages)

23 **MS. CHRISTA BIG CANOE:** And I do want to
24 note that Corey has mentioned UNDRP, but we already have
25 UNDRP in as an exhibit. If Madam Clerk could remind me

1 what number that is? Three? So is Exhibit 3.

2 And we haven't, I don't believe, put "Shh,
3 Listen" into evidence yet.

4 **CHIEF COMMISSIONER BULLER:** Which one?

5 **MS. CHRISTA BIG CANOE:** I wasn't telling you
6 to shh, I promise.

7 **CHIEF COMMISSIONER BULLER:** Yes.

8 **MS. CHRISTA BIG CANOE:** So ---

9 **CHIEF COMMISSIONER BULLER:** The Shh report -
10 - Listen, We Have Something to Say, youth voices from the
11 north will be Exhibit 11, please.

12 --- **EXHIBIT NO/PIÈCE NO. B11:**

13 "Shhh...Listen!! We have something to say!
14 Youth Voices from the North" Report of the
15 Saskatchewan Advocate for Children and Youth
16 (47 pages)

17 **MS. CHRISTA BIG CANOE:** Thank you.

18 So and I will have -- I'm going to actually
19 ask Corey to start sharing some of his recommendations with
20 you specifically, and we will have -- I'm going to hand up
21 -- so I believe that a copy was provided to each of you,
22 yes. And so once Corey's made those I'll be seeking to
23 make that an exhibit as well.

24 **MR. COREY O'SOUP:** All right. Okay?

25 Yes, I made a list of 15. I don't think

1 I'll go into all of them because you guys know I like to
2 talk and I could keep you here all day and I know it's
3 lunch time.

4 One of the ones that we did talk about was
5 the National Children's Commissioner. That's really high
6 on our list there. That's number 12 on the list there.

7 But some of the things that are really
8 important to me as the Advocate for Children Needs, that a
9 child rights lens should be applied when formulating
10 recommendations specifically targeted towards Indigenous
11 youth. And these should be measured against the four
12 foundational principles of the United Nations Convention on
13 the Rights of a Child. And the best interests of
14 Indigenous children and youth must be a primary
15 consideration.

16 So as our governments, you know, are
17 possibly formulating new legislation, new policies, they
18 must take into consideration the best interests of a child
19 and they must use the UNCRC as a lens to do that, because
20 right now it's the only lens that we have to take into
21 consideration our children's rights.

22 Ensure special consideration and special
23 measures are provided to Indigenous youth to eliminate the
24 cause of discrimination and ensure they can fully enjoy
25 their rights at the same level as other children and youth.

1 I think we talked about that pretty explicitly today. And
2 I think that, you know, our Indigenous children and youth
3 do need special consideration because the systems that we
4 are living in, that our children are living in on an
5 everyday basis, and whether that's the education, the
6 health, the social services, the child welfare system,
7 whatever system it is, those systems have continued to fail
8 to meet the needs of our young people, and I believe they
9 need special consideration.

10 And we talked about ensuring the education
11 system is appropriate for all children and youth, and that
12 has to be done through curriculum. I believe that that's
13 the only way that all of our children, both Indigenous and
14 non-Indigenous will learn the proper histories, will learn
15 about all the things that our people have had to face. And
16 I believe that can only happen through curriculum.

17 And I'll skip to number five here. I
18 believe all levels of governments and public services must
19 conduct a child rights impact assessment when making
20 changes to policy practice and legislation. The child
21 rights impact assessment, we call it the CRIA, is something
22 that is being more widely used as people develop policies
23 and legislation around children's legislation. And it's
24 not something that you just do at the beginning. I believe
25 it should be done at the beginning as those are being

1 developed, but it's also something that you can do to
2 measure whether or not what you've changed and what you've
3 adopted has made an impact.

4 So, not just during the creation and
5 implementation phase, but also as a check, you know, to see
6 if what you're doing is actually working.

7 And number six is probably one of the most
8 important pieces and why I'm here today, is to ensure that
9 Indigenous youth are given the opportunity to participate
10 and have their voice heard in all matters that affect them.

11 I hope there is a day when I can bring a
12 young person with me and they can tell their story, and
13 they can say what I said today, and they can challenge our
14 governments, they can challenge our systems. And that is
15 where I would like us to get as a society where our
16 children are not just our future. They are our present,
17 you know. And people always like to say, well, our kids
18 are our future. But I believe they are our present.

19 And if you look down south even, those
20 parkland kids from Florida, they are changing the world. I
21 could tell you example after example from Saskatchewan
22 about kids that are changing the world. You know, they are
23 changing their community and they are having an impact in a
24 positive way that neither me as an Indigenous man or
25 anybody else can have that same impact that they can have.

1 So I believe we need to give them voice and we need to give
2 them platform.

3 And then the last one that I want to mention
4 is number eight. Canada must take immediate steps to sign
5 and ratify the third option and protocol to the United
6 Nations Convention on the Rights of a Child on a
7 communications procedure. That will give our children the
8 opportunity to speak and elevate their complaints to when
9 we let them down, and Saskatchewan, when Canada lets them
10 down, they have the opportunity to take it to an
11 international level.

12 **MS. CHRISTA BIG CANOE:** Yeah.

13 **MR. COREY O'SOUP:** And we'll just keep the
14 other one for your information.

15 **MS. CHRISTA BIG CANOE:** And actually,
16 though, if we could take the document that's actually
17 titled "Corey O'Soup's Recommendations for Consideration by
18 the National Inquiry into Missing and Murdered Indigenous
19 Women and Girls", include but not limited to, if we could
20 call that Corey O'Soup's Recommendations and put it into
21 exhibit?

22 **CHIEF COMMISSIONER BULLER:** Exhibit 12.

23 **MS. CHRISTA BIG CANOE:** Thank you.

24 --- **EXHIBIT NO./PIÈCE NO. B12:**

25 "Corey O'Soup's Recommendations for

1 consideration by the National Inquiry into
2 Missing and Murdered Indigenous Women and Girls"
3 (2 pages)

4 **MS. CHRISTA BIG CANOE:** There are just a
5 couple more things. I know that in the materials that you
6 provided the CCC -- CCCYA is the acronym, the Canadian
7 Council of Provincial Child and Youth Advocates had its
8 Aboriginal -- I just want you to contextualise this for us.
9 Sorry, it is titled "Aboriginal Children and Youth in
10 Canada. Canada Must Do Better." The document.

11 **MR. COREY O'SOUP:** Yeah, I got it here.

12 **MS. CHRISTA BIG CANOE:** Okay. Perfect.

13 Can you just briefly tell us about this and
14 also tell us a little bit more about the CCCYA's position
15 on the advocacy you're doing.

16 **MR. COREY O'SOUP:** Well, the CCCYA -- I
17 think I mentioned it a little bit earlier -- is a group of
18 child and youth advocates from across the country. We're
19 not all called advocates. Some are called ombudsmen or
20 ombudsperson. Some are also called representatives. And
21 only one province, Prince Edward Island, and one territory,
22 Northwest Territory, do not have some form of child
23 advocacy, ombudsperson or representative within their
24 province or territory.

25 Now we all have varying legislations, so

1 like in Saskatchewan we have the ability to look into,
2 like, social services, education, health, justice and
3 corrections. That's not the same across all of the
4 provinces. Some of them we have the ability to look into
5 child welfare. Some have investigative abilities like we
6 have. It's really kind of a mishmash of legislations. But
7 we all come together and we meet regularly, three times per
8 year, and we try to bring national issues to the table.
9 And sometimes we do, I guess, collaborate and come out on
10 something like this report here. This was done before I
11 came, so I will just speak generally to it as, you know,
12 the title kind of speaks for itself. Canada must do
13 better, you know. And, as a group of advocates, we believe
14 that Canada must do better. I can't say it any better than
15 that; right? You know, in all forms of the rights of our
16 children and youth, we can do better, and we must do
17 better. Whether that's through legislation, whether that's
18 through adopting the optional third protocol, whether
19 that's the creation of a national commissioner, which we
20 call for, as well as a national organization, you know, on
21 all of those situations and all of those areas, Canada must
22 do better and we must do better for our children and our
23 youth.

24 **MS. CHRISTA BIG CANOE:** And, is it fair to
25 say, Corey, that, like, a number of these issues have

1 existed for a long time and have been raised by the various
2 offices? I note that this is actually written in 2010.

3 **MR. COREY O'SOUP:** This is 2010. If you
4 read through this, you'll see that the issues are pretty
5 much the same today as they were eight years ago; right?
6 Which is why we still have to do better; right? So, you
7 know, these things aren't changing, they're not getting
8 better, and I believe that's why we're sitting here today,
9 because we must do better.

10 **MS. CHRISTA BIG CANOE:** And so, Chief
11 Commissioner and Commissioners, I'm asking that this
12 document also be entered as an exhibit, the Canadian
13 Council, but the report being Aboriginal Children and Youth
14 in Canada - Canada Must Do Better.

15 **CHIEF COMMISSIONER MARION BULLER:** Exhibit
16 13, please.

17 --- **EXHIBIT NO./PIÈCE NO. B13:**

18 "Aboriginal Children and Youth in Canada:
19 Canada Must Do Better" Canadian Council of
20 Provincial Child and Youth Advocates, June
21 23, 2010 (14 pages)

22 **MS. CHRISTA BIG CANOE:** Thank you. Just in
23 terms of a couple housekeeping notes, Corey, you mentioned
24 the AFN report. You started basically listing reports.

25 **MR. COREY O'SOUP:** Sorry.

1 **MS. CHRISTA BIG CANOE:** It was put in your
2 material, so I'm going to simply suggest and ask, are you
3 open to receiving questions from parties or the
4 Commissioners in relation to any of the materials that were
5 provided in advance?

6 **MR. COREY O'SOUP:** Yes, I would be open to
7 that, and I'll qualify that by saying that, you know, we're
8 not an expert on some of these things that we've submitted.
9 We just agree with a lot of the things that they've had to
10 say, and it supports, you know, our position on many of the
11 things that I've stated today.

12 **MS. CHRISTA BIG CANOE:** Okay. And, I just
13 raise that, because on that basis, if a party does put the
14 document, there may be a request for that exhibit to go in
15 by the party.

16 I have no more questions for you in the
17 examination in-chief. And so, I'm cognizant of time, that
18 it's 12:30. So, I'm not sure if Commissioners would like
19 to ask questions, defer them, come back after lunch with
20 Mr. O'Soup, and what your preferences are?

21 **CHIEF COMMISSIONER MARION BULLER:** I'm going
22 to defer until after cross-examination again.

23 **QUESTIONS BY/QUESTIONS PAR COMMISSAIRE MICHÈLE AUDETTE :**

24 **COMMISSAIRE MICHÈLE AUDETTE:** J'ai quelques
25 commentaires. It won't take long. Est-ce que vous avez la

Question (Commissaire Audette)

1 traduction? Non? He understood me. Avez-vous la
2 traduction? I didn't know I was funny.

3 Sean, the magician. Est-ce que vous avez la
4 traduction, prise trois?

5 **MR. COREY O'SOUP:** Oh, now I can. I was
6 hearing French for a while.

7 **COMMISSAIRE MICHÈLE AUDETTE:** Écoutez, je
8 vais poser... je vais juste faire deux petits commentaires.
9 Vous m'avez fait lire énormément depuis très tôt ce matin,
10 alors c'est pour ça que j'ai mes lunettes avec mes foyers
11 tellement qu'il y avait de la documentation, documentation
12 riche en statistiques, autant pour les femmes et jeunes
13 filles, surtout jeunes filles autochtones en situation de
14 vulnérabilité. Donc, j'invite les parties intéressées et
15 le reste de l'équipe de l'Enquête de vraiment prendre le
16 temps de regarder tout ce que vous nous avez donné.

17 Le seul commentaire pour le moment avant
18 d'arriver aux questions peut-être demain, quand ce sera
19 l'échange entre les parties intéressées, les commissaires
20 et vous, je vais juste dire à tout le monde que dans le
21 document que vous avez donné qui date de 2010.

22 Est-ce que le Québec était présent lors de
23 cette rencontre-là? Est-ce que le Québec a un
24 *ombudsperson*, un équivalent comme vous?

25 **MR. COREY O'SOUP:** Yes, Quebec is a full

1 participant in our meetings.

2 **COMMISSAIRE MICHÈLE AUDETTE:** O.k.

3 **MR. COREY O' SOUP:** I would have to double
4 check to make sure that they were there in 2010, but ever
5 since I've been there, they've been full participants.

6 **COMMISSAIRE MICHÈLE AUDETTE:** Quand les
7 provinces et territoires participent avec vous, est-ce
8 qu'ils ont cette grande connaissance sur les jeunes
9 autochtones comme vous l'avez, vous, parce que si je
10 comprends bien, vous avez aussi l'intérêt des jeunes non-
11 autochtones de la Saskatchewan, là, ou c'est juste pour les
12 autochtones?

13 **MR. COREY O' SOUP:** Yes. I would say it
14 really depends on the region, because in Saskatchewan,
15 Indigenous issues are one of our biggest issues. So, it
16 varies across the provinces, and I would say because I am
17 Indigenous, I do bring that particular -- I bring those
18 particular issues to the table on a regular basis, even
19 though they may not always be priority number one for other
20 advocates.

21 We also do advocate for other children in
22 Saskatchewan, not just Indigenous kids. But, one of the
23 things that I learned in the education world is that what's
24 good for Indigenous, for First Nation and Métis children is
25 good for all children, and I liken it to a classroom

Question (Commissaire Audette)

1 setting. If you're trying to create a more safe or caring
2 learning environment for our children and our youth, or if
3 you're trying to build better relationships with our
4 Indigenous children and youth, and we've created programs
5 specifically around that, that doesn't mean that the other
6 children in that room will not benefit from that teacher
7 doing that. That raises the bar for everybody.

8 So, just because we're targeting and
9 specifically measuring the impact it's having on our
10 Indigenous kids, all the other kids are benefitting from a
11 teacher that has built a better caring and learning
12 environment, that's created a safer place for them.

13 So, I'm not ashamed that I do put very
14 vocally out there that I stand up for Indigenous kids. We
15 do advocate for all children in our province.

16 **COMMISSIONER MICHÈLE AUDETTE:** Je veux pas
17 vous mettre *on the spot* mais ça va ressembler à ça. De
18 façon hypothétique, advenant que le gouvernement, l'année
19 prochaine, va nommer une autre personne qui n'est pas
20 autochtone, pensez-vous que les intérêts des autochtones
21 vont être aussi présents dans le rapport?

22 **MR. COREY O'SOUP:** Are you saying a national
23 commissioner?

24 **COMMISSAIRE MICHÈLE AUDETTE:** Vous, oui, de
25 la Saskatchewan.

Question (Commissaire Audette)

1 **MR. COREY O'SOUP:** Oh. Well, they'd have to
2 fire me first. I have a five-year appointment, so that's
3 the way it works, and we have the provision for an
4 additional five years. But, I believe that I put in
5 policies and procedures, and I put in a strategic plan that
6 even if a new person does come in, I believe that our staff
7 is well trained and has a good understanding, and we have a
8 number of Indigenous staff as well that would carry on the
9 fight for the office, and I believe that they see it to be
10 important and that it is a priority for them as well. So,
11 it's not just me anymore. I believe that that has filtered
12 down to all of my staff, and they've taken that new vision
13 and they're running with it.

14 **COMMISSAIRE MICHÈLE AUDETTE:** O.k. Est-ce
15 que vous avez remarqué avec les autres provinces et
16 territoires, qu'ils ont mis aussi des politiques ou une
17 structure où on prend en considération les intérêts des
18 jeunes enfants autochtones?

19 **MR. COREY O'SOUP:** I couldn't -- I don't
20 want to speak for them, but I would say that we are leading
21 the way when it comes to Indigenous children and youth in
22 Saskatchewan. I know other provinces are doing some really
23 good things, and I don't want to discount that because
24 they're doing some amazing work. It's just been the way
25 that we decided to set up shop in Saskatchewan, and it's

Question (Commissaire Audette)

1 just that, you know, we have an Indigenous person in the
2 role.

3 And, typically, we don't get these roles as
4 Indigenous people. Like, I'm an independent officer of the
5 Legislature. My colleagues in Saskatchewan are, like, the
6 Chief Electoral Officer, the Provincial Auditor, the
7 Ombudsperson, the Privacy Commissioner, the Ethics
8 Commissioner, and they're all non-Indigenous. Before me,
9 there was never an Indigenous person in this role in
10 Saskatchewan. We don't get these roles, you know? So,
11 I've taken it with great humbleness and respect in
12 realizing that I have an opportunity to make change for our
13 children and our youth, and that unless I do it, nobody
14 else is going to do it right now. So, I take that on very
15 seriously.

16 And, you know, I believe we need to be in
17 all of those roles. We need to be, you know, budget
18 officers. We need to have these leadership roles where
19 we're elevated so that we can make change in all different
20 levels, because unless we make change in all of those
21 different levels, the things that we're fighting for here
22 and today and in my job, they're going to be a lot harder.
23 If I had a provincial auditor that was Indigenous you know,
24 and they put an Indigenous lens on it like I've put on the
25 advocate for children and youth, things would be different

Question (Commissaire Audette)

1 and things would change at a much quicker pace.

2 **COMMISSAIRE MICHELE AUDETTE:** Bien, merci
3 beaucoup. Merci beaucoup parce que ça va nous permettre de
4 pouvoir poser ce genre de questions aux provinces et
5 territoires lors des audiences institutionnelles, à savoir
6 si eux et elles apportent cette même lunette, je dirais,
7 pour les intérêts de nos jeunes enfants. Merci beaucoup.
8 Vous êtes un bel exemple.

9 **QUESTIONS BY/QUESTIONS PAR COMMISSIONER QAJAQ ROBINSON:**

10 **COMMISSIONER QAJAQ ROBINSON:** I'm going to
11 defer most of my questions to cross-examination time.

12 But there's one issue that I think might be
13 more specifically for you, so I'll ask that question now.

14 In terms of the application of the U.N.
15 Declaration on the Rights of the Child, and then your
16 provincial frameworks, your sort of jurisdiction when it
17 comes to the question of what is a youth, my understanding
18 from the U.N. Declaration is that it's 18 years or younger.
19 That includes -- is that the case as well for the
20 population you serve?

21 **MR. COREY O'SOUP:** Yeah, generally, and for
22 the most part. There are cases when, you know, we'll
23 follow our kids up to the age of 21, you know, depending on
24 the services that they need and require. So there are
25 different, I guess, applications where we can do that, when

1 they need certain supports.

2 We would like to push that to age 24, and
3 that's one of our legislative amendments that we've made.

4 **COMMISSIONER QAJAQ ROBINSON:** And that's
5 where I want to ---

6 **MR. COREY O'SOUP:** Requested.

7 **COMMISSIONER QAJAQ ROBINSON:** --- sort of
8 asked you and share with you what we've heard from youth
9 who aged out. And you talked about -- and the impact of
10 that on their lives, and you've used the term the right to
11 be a child, just let kids be kids. And what we've learned
12 from women, the young women we've heard from is there is a
13 need to be given the services to go from being a youth to
14 an adult.

15 **MR. COREY O'SOUP:** Yeah.

16 **COMMISSIONER QAJAQ ROBINSON:** Sort of that
17 right to learn to become an adult ---

18 **MR. COREY O'SOUP:** Yeah.

19 **COMMISSIONER QAJAQ ROBINSON:** --- almost is
20 sort of how it was contextualized to me; I heard directly
21 from these young women.

22 Do you see this as sort of a gap in the
23 human rights framework as well as domestic law when it
24 comes to this need that we're hearing from the youth.

25 **MR. COREY O'SOUP:** So many of our young

Question (Commissaire Robinson)

1 people fall through the cracks once they turn 18, or
2 depending on where you are, once they turn 16 and the
3 services drop off. I liken it to my own daughter; she just
4 turned 18 in January. I didn't just cut her off, kick her
5 out and, you know, throw out the -- throw her out the door
6 and say, "Go live and thrive and survive in this world,"
7 right? You know, she still had to finish Grade 12. I
8 still have to, you know, have a curfew on her. I still
9 have to have all of those things in place for her, right,
10 because she still is a child.

11 You know, once you turn 18 it just doesn't
12 mean you are an adult. Just because you have the right to
13 mark X on a ballot doesn't mean that you're an adult. And
14 those transition pieces are so important for our kids, you
15 know, transition to higher education, for instance, right?
16 You know, if a child needs those supports and the
17 government is responsible for them, they should be, you
18 know, taking that responsibility even further so that our
19 kids have the opportunity to thrive and survive as young
20 adults.

21 So, yes, I do think it's a gap and I think
22 it's somewhere where a lot of our Indigenous girls are
23 falling through, right? And it's something that we don't
24 necessarily always address, you know, because we're trying
25 to get that age raised to 24 in Saskatchewan to provide

Question (Commissaire Robinson)

1 educational services but going from 21 to 24, there's a lot
2 of money involved, right? So where's the first place that
3 our governments typically go to save money? It's on the
4 backs of our young people and it's on the backs of our
5 Indigenous peoples a lot of the times.

6 **COMMISSIONER QAJAQ ROBINSON:** Thank you. I
7 have other questions but I'm going to save them for later
8 on.

9 **MR. COREY O'SOUP:** Okay.

10 **MS. CHRISTA BIG CANOE:** Commissioner
11 Eyolfson?

12 **COMMISSIONER BRYAN EYOLFSON:** I'll wait till
13 after cross-examination.

14 Thank you.

15 **MS. CHRISTA BIG CANOE:** Thank you.

16 I note the time is 10 to 1:00. I'm going to
17 request that we have a 40-minute lunch. That would bring
18 us back here to begin the testimony of M. Leclair, with
19 Fanny Wylde as Commission counsel, at 1:30. So if we could
20 take that break now?

21 But before, there is one issue. During the
22 last panel, we had reminded -- we had discussed Rule 48,
23 and I just would like to remind counsel in the room that
24 Rule 48, except with the permission of the Commissioners
25 and as herein after specifically provided, no counsel other

Question (Commissaire Robinson)

1 than the Commission counsel may speak to witnesses about
2 the evidence that he or she has given until the evidence of
3 such witness is complete. And we will be closing the
4 evidence for this panel at the end of all four testimony.

5 So it's just a reminder. And then once it
6 goes into cross-examination, the other half of that rule as
7 it applies to Commission counsel will be read in.

8 So it's not a prohibition on saying hello or
9 have a nice day; it's a prohibition on talking about the
10 evidence in this time period.

11 Thank you.

12 So we're adjourned till 1:30.

13 --- Upon recessing at 12:50 p.m.

14 --- Upon resuming at 1:41 p.m.

15 **Me FANNY WYLDE:** Vous aviser que le prochain
16 témoignage aura lieu en langue française. Également, une
17 simple information, je vous avise que les parties
18 (inaudible) consentent à ce que je présente le prochain
19 témoin à titre de (inaudible). Donc, avant de vous
20 présenter notre premier témoin expert de l'après-midi, je
21 demanderai...

22 **CHIEF COMMISSIONER MARION BULLER:** (cut)
23 looking for a microphone, please.

24 **Me FANNY WYLDE:** Est-ce que ça fonctionne?
25 Test, un, deux? Donc, avant de vous présenter notre

1 premier témoin expert de cet après-midi, malgré qu'il est
2 avocat de profession, donc il est assermenté d'office.
3 Pour la forme, je demanderai à monsieur le registraire de
4 procéder à l'assermentation du témoin.

5 En fait, si le monsieur registraire n'est
6 pas ici, de procéder à l'affirmation solennelle du témoin.

7 **CHIEF COMMISSIONER MARION BULLER:** Professor
8 Leclair, do you affirm-- I'm sorry, Professor Leclair, do
9 you solemnly affirm to tell the truth this afternoon, and
10 to give your evidence in a good way?

11 **Me JEAN LECLAIR:** I do.

12 **JEAN LECLAIR, Affirmed:**

13 **CHIEF COMMISSIONER MARION BULLER:** Thank you.

14 **EXAMINATION IN-CHIEF BY/INTERROGATOIRE PAR MS. FANNY WYLDE:**

15 **Me FANNY WYLDE:** Donc, votre nom?

16 **Me JEAN LECLAIR:** Je m'appelle Jean Leclair.

17 **Me FANNY WYLDE:** Et si vous permettez de vous
18 présenter brièvement, d'où vous venez?

19 **Me JEAN LECLAIR:** Je suis de Montréal. Je
20 suis le frère de deux grandes sœurs. J'ai une épouse, un
21 fils, deux magnifiques nièces.

22 **Me FANNY WYLDE:** Merci. Donc, quelle est
23 votre profession?

24 **Me JEAN LECLAIR:** Je suis à la fois avocat,
25 mais avant tout, je suis professeur à l'Université de

1 Montréal, à la Faculté de droit.

2 **Me FANNY WYLDE:** D'accord. Et vous avez
3 effectué vos études à quel endroit et quelle année?

4 **Me JEAN LECLAIR:** J'ai fait mes études pour
5 l'essentiel à Montréal, plus spécifiquement à l'université,
6 j'ai fait mon bac en Droit à l'Université de Montréal, j'y
7 ai fait ma maîtrise.

8 Et après avoir travaillé comme assistant ou
9 recherchiste auprès de juges de la cour Fédérale du Canada,
10 j'ai commencé un doctorat, mais finalement, j'ai été
11 embauché sans que j'aie besoin de le finir.

12 **Me FANNY WYLDE:** Je comprends que vous avez
13 été reçu au Tableau de l'Ordre du Barreau du Québec?

14 **Me JEAN LECLAIR:** Oui, en 1987.

15 **Me FANNY WYLDE:** Parfait. Donc, vous
16 mentionnez que actuellement vous enseignez. Vous enseignez
17 où, exactement?

18 **Me JEAN LECLAIR:** J'enseigne à la Faculté de
19 droit à l'Université de Montréal comme professeur depuis
20 1991, mais j'y étais déjà comme chargé de cours. J'ai
21 commencé pas mal jeune à enseigner.

22 **Me FANNY WYLDE:** Parfait, merci beaucoup.
23 Est-ce que vous pouvez décrire brièvement... bon, je
24 comprends que vous enseignez, mais brièvement, vos sujets
25 de recherche à laquelle vous avez également participé.

1 **Me JEAN LECLAIR:** J'ai participé et je
2 participe à plusieurs projets de recherches qui touchent
3 les questions autochtones.

4 Celui auquel je participe en ce moment, qui
5 intéressera, j'espère un jour, les membres de cette
6 Commission ou autre, c'est un projet qui porte sur les
7 ordres juridiques autochtones sur à la fois en Afrique du
8 Sud, en Zambie, au Burundi, en Nouvelle Calédonie, aux Iles
9 Salomon, chez les Sapouetmeks (phon.) sur la Côte-Ouest,
10 chez les Innus et les Attikameks au Québec.

11 Et l'objectif c'est à la fois de décrire ces
12 ordres juridiques, on travaille avec des équipes qui sont
13 en partie composées de chercheurs autochtones. Et on en
14 est au stade où on étudie les interactions entre les ordres
15 juridiques autochtones et les ordres juridiques étatiques.
16 C'est fascinant de voir la différence entre, par exemple,
17 l'Afrique du Sud, qui a reconnu dans sa constitution le
18 droit autochtone, et d'autres pays qui l'ont pas fait.
19 Alors, oui?

20 **Me FANNY WYLDE:** Je comprends d'après les
21 discussions que nous avons eues ensemble en préparation de
22 cette audience, vous avez participé également à d'autres
23 Commissions d'enquête. Est-ce que vous pouvez nous en faire
24 part?

25 **Me JEAN LECLAIR:** Oui, avec un collègue, je

1 (version française - 24 pages)

2 --- EXHIBIT NO./PIÈCE NO. B15:

3 Curriculum vitae of Me Jean Leclair

4 (English version - 22 pages)

5 **Me FANNY WYLDE:** Merci, Commissaire en chef.

6 Donc, à la lecture de votre curriculum vitae, Maître
7 Leclair, je comprends que vous avez participé à plusieurs
8 publications et plusieurs ouvrages.

9 Est-ce que, de façon brève, vous pouvez nous
10 exposer ces publications qui seront en lien justement avec
11 votre présentation d'aujourd'hui?

12 **Me JEAN LECLAIR:** Bien, plus ou moins en
13 lien. C'est sûr que mon expertise c'est sur les questions
14 de fédéralisme, sur les questions de droits relatifs aux
15 autochtones. Je distingue ça du droit autochtone lui-même.

16 En fait, tous mes intérêts s'articulent
17 autour de l'histoire. En fait, j'enseigne l'histoire du
18 droit constitutionnel, l'histoire du droit occidental, et
19 les questions autochtones. Tous ces cours-là sont
20 incompréhensibles sans un éclairage par l'histoire.

21 On peut difficilement comprendre le droit
22 actuel relatif aux autochtones si on s'intéresse pas aux
23 rapports historiques qu'on a entretenus avec eux. Et dans
24 un monde où l'histoire devient de plus en plus absente, ça
25 rend la discussion des revendications autochtones

1 extrême­ment complexes.

2 Et ce qui m'intéresse aussi dans mes
3 travaux, c'est comment le droit se saisi de l'identité des
4 personnes, et comment ça peut poser des problèmes, et puis
5 également constituer un avantage. Pis je m'intéresse aux
6 rapports entre ma discipline, le droit, et les autres
7 disciplines que sont l'histoire, l'anthropologie.

8 Il y a des tensions entre ces disciplines-
9 là, pis on le voit très bien quand on arrive à l'occasion
10 d'un procès qui porte sur les droits ancestraux, où là
11 défile tout un grand nombre d'experts. Pis aussi, avec ça,
12 on a la tradition orale, qui est très différente. Alors,
13 c'est des questions comme celles-là qui m'intéressent.

14 **Me FANNY WYLDE:** Merci. Et puis, finalement,
15 par rapport à votre pratique professionnelle, je comprends
16 que vous avez fait l'objet de prix et de reconnaissances?

17 **Me JEAN LECLAIR:** Oui. Mais enfin, la
18 Fondation Trudeau accorde le titre de lauréat à certaines
19 personnes, qui à la fois, bien, ils considèrent que ce
20 qu'on produit est valable manifestement mais aussi parce
21 qu'on prend part au début public. Et j'ai toujours trouvé
22 important d'intervenir sur les questions sur lesquelles je
23 connais quelque chose bien sûr et je pense que c'est pour
24 ça qu'ils me l'ont accordé.

25 **Me FANNY WYLDE:** Parfait.

1 Donc, Commissaire en chef, Commissaires, à
2 la lumière de l'éducation, de la formation, des
3 compétences, les années de pratique et d'expérience
4 notamment en matière d'enseignement, tel que cité plus haut
5 par Maître Leclair et décrit dans le CV notamment qu'on a
6 déposé en pièce, je vous sou mets la requête suivante à
7 l'effet de nommer Maître Leclair à titre de témoin expert
8 notamment dans les matières suivantes: le fédéralisme, le
9 droit constitutionnel canadien, les Autochtones et le droit
10 canadien, la théorie et l'épistémologie du droit, et enfin
11 l'histoire du droit canadien.

12 **CHIEF COMMISSIONER MARION BULLER:** Can you
13 repeat that, please?

14 **MS. FANNY WYLDE:** Which part? All of it?

15 **CHIEF COMMISSIONER MARION BULLER:** Yeah.

16 **Me FANNY WYLDE:** Donc les champs
17 d'expertise: le fédéralisme, le droit constitutionnel
18 canadien, les Autochtones et le droit canadien, la théorie
19 et l'épistémologie du droit, et enfin l'histoire du droit
20 canadien.

21 **CHIEF COMMISSIONER MARION BULLER:** Is this
22 by consent of the parties?

23 **MS. FANNY WYLDE:** Like I mentioned into the
24 introduction, the parties all consent that I present Maître
25 Leclair as an expert.

1 **CHIEF COMMISSIONER MARION BULLER:**

2 Certainly. By consent then and on the basis of the
3 evidence tendered, we do qualify Professor Leclair as being
4 able to give expert opinion evidence based on his
5 knowledge, education, teaching experience, research, and
6 other background in the areas of federalism, Canadian
7 constitutional law, history of Canadian law, Aboriginal
8 peoples and Canadian law, and theory and epistemology of
9 law.

10 **MS. FANNY WYLDE:** Thank you, Chief
11 Commissioner.

12 Donc, Maître Leclair, je comprends
13 qu'aujourd'hui votre présentation va porter sur la latitude
14 constitutionnelle des deux ordres de gouvernement eu égard
15 à la mise en œuvre de la Déclaration des Nations Unies sur
16 le droit des peuples autochtones.

17 Mais d'abord, je comprends que vous voulez
18 partager quelques mots en introduction aux commissaires?

19 **Me JEAN LECLAIR:** Oui. Bien premièrement,
20 je voulais les remercier chaleureusement de m'avoir invité
21 à témoigner ici aujourd'hui puis j'espère que ma
22 contribution leur sera utile.

23 Je voudrais saluer aussi Elder Rebecca et...
24 bien je vous rappelle que la Commission tient aujourd'hui
25 ses audiences sur le Québec où bien avant l'établissement

1 des Français, différents peuples autochtones, dont les
2 Iroquoiens du Saint-Laurent, les Wendats, les Innus, ont
3 interagi les uns avec les autres.

4 Et puis je tiens à souligner aussi comme...
5 que c'est pas sans émotions que je me présente devant cette
6 Commission où... parce que j'ai regardé certaines des
7 audiences où j'ai vu un grand nombre de personnes dont la
8 vie a été déchirée par la perte d'une sœur, d'une mère,
9 d'une amie, d'une cousine.

10 Et je sais pas comment personnellement
11 j'arriverais à garder ma santé mentale si les femmes
12 importantes de ma vie venaient à disparaître tragiquement
13 et dans l'indifférence de tous. Alors je vous remercie de
14 m'accueillir.

15 Écoutez, le droit d'un Autochtone, qu'il
16 soit national ou international, a longtemps été un
17 instrument d'oppression des peuples autochtones mais on
18 cherche de plus en plus en faire un moyen d'émancipation et
19 c'est dans cette logique que s'inscrit l'avènement de la
20 Déclaration des Nations Unies sur les droits des peuples
21 autochtones adoptée en 2007. Et cette déclaration, il faut
22 le souligner, a été rédigée en grande partie par les
23 peuples autochtones eux-mêmes et plusieurs grands noms du
24 monde autochtone canadien y ont d'ailleurs contribué.

25 On m'a demandé de témoigner sur la question

1 très spécifique de la latitude constitutionnelle dont le
2 gouvernement fédéral et les provinces disposent pour mettre
3 en œuvre la déclaration à laquelle le Canada a adhéré en
4 2010. Et puis avant d'entrer dans le détail de cette
5 question complexe, je désire rappeler certains des
6 objectifs plus généraux que je poursuis ici.

7 J'aimerais entre autres que mon intervention
8 d'aujourd'hui serve de mise en garde contre les attentes
9 démesurées de ce que le droit à lui seul peut contribuer à
10 la question des rapports entre les peuples autochtones du
11 Canada et la population non-autochtone du Canada,
12 population à laquelle les peuples autochtones sont
13 étroitement imbriqués, que ce soit collectivement ou
14 individuellement.

15 Je voudrais également que mon intervention
16 serve à démentir les affirmations de ceux qui voient dans
17 l'éventuel mise en œuvre de la déclaration une
18 transformation radicale, dangereuse et sans précédent de
19 l'ordre politique canadien, que ce soit à l'échelle
20 nationale ou provinciale.

21 J'aimerais qu'on retienne donc qu'à lui seul
22 et quoi qu'il puisse être très utile, le droit n'est jamais
23 beaucoup plus que le reflet de notre volonté d'être
24 solidaires les uns des autres ou au contraire de notre
25 volonté d'ériger des barrières entre les uns et les autres.

1 Le droit, qu'il soit autochtone ou étatique,
2 n'est jamais neutre. Il traduit toujours un rapport de
3 force.

4 Bref, même l'insertion du texte de la
5 déclaration dans la constitution formelle du Canada
6 changerait peu de chose si les citoyens canadiens et leurs
7 représentants politiques persistaient à refuser de
8 reconnaître la légitimité des revendications autochtones.
9 Le succès de la déclaration dépend donc plus d'un
10 changement de mentalité que d'un changement du droit.

11 Ceci dit, je reconnais que le droit, à
12 certaines conditions, peut être un vecteur de changement et
13 c'est ce dont on m'a demandé de parler aujourd'hui.

14 **Me FANNY WYLDE:** Merci, Maître Leclair.

15 Pouvez-vous nous exposer maintenant la
16 manière dont vous avez procédé pour nous l'exposer
17 justement?

18 **Me JEAN LECLAIR:** O.k. Bien je vais
19 procéder de la manière suivante. En guise de préambule, je
20 dirai un mot au sujet du rôle des peuples autochtones eux-
21 mêmes dans la mise en œuvre de la déclaration.

22 Par la suite, je rappellerai que la
23 déclaration est une norme de droit international qui n'est
24 pas immédiatement applicable en droit fédéral ou
25 provincial.

1 Je distinguerai ensuite entre la
2 reconnaissance politique de la déclaration par un
3 gouvernement, de son incorporation en droit au moyen d'une
4 loi. Et cette distinction, comme on le verra, elle est
5 fondamentale car une reconnaissance politique de la
6 déclaration, aussi importante soit-elle, n'en portera
7 aucune conséquence juridique immédiate alors qu'une fois
8 incorporée en droit interne au moyen d'une loi, bien les
9 dispositions de la déclaration pourraient être sanctionnées
10 par un tribunal.

11 Cela fait, j'aborderai par la suite la
12 question spécifique de la latitude constitutionnelle dont
13 disposent les provinces et le fédéral pour incorporer la
14 déclaration en droit interne. Et cette question soulève le
15 problème du partage des compétences législatives dans le
16 fédéralisme canadien. Le Canada est pas un état unitaire,
17 c'est une fédération. Y a deux ordres de gouvernement.

18 Et celui de l'arrimage de la déclaration à
19 la doctrine des droits ancestraux développés par les
20 tribunaux canadiens depuis l'enchâssement des droits
21 ancestraux issus de traités au moment de l'adoption de
22 l'article 35 de la Constitution de 1982.

23 Cette disposition, je vous le rappelle,
24 déclare ceci:

25 "Les droits existants - ancestraux ou

1 issus de traités - des peuples
2 autochtones du Canada sont reconnus et
3 confirmés."

4 Ce même article précise:

5 "Dans la présente loi, « peuples
6 autochtones du Canada » s'entend
7 notamment des Indiens [des Premières
8 nations], des Inuits et des Métis du
9 Canada."

10 Et dans cette partie-là de mon exposé, je
11 tenterai de démontrer que depuis quelques années, la Cour
12 suprême a modifié les règles et la dynamique du partage des
13 compétences en matière autochtone.

14 Ayant reconnu le caractère collectif des
15 droits constitutionnels reconnus aux peuples autochtones,
16 droits qui leur confèrent entre autres le droit d'être
17 consultés lorsque leurs intérêts constitutionnellement
18 protégés sont menacés, la Cour suprême a été forcée pour
19 ainsi dire d'abandonner le point de vue traditionnel selon
20 lequel les peuples autochtones étaient des objets de droit
21 relevant de la compétence exclusive du gouvernement
22 fédéral.

23 Les droits constitutionnels des peuples
24 autochtones les autorisent en quelque sorte aujourd'hui à
25 se penser eux-mêmes dans les limites des droits que leur

1 reconnaît la constitution et ces droits se déploient
2 aujourd'hui bien au-delà des minuscules frontières des
3 réserves indiennes.

4 En d'autres mots, les peuples autochtones
5 sont aujourd'hui des sujets de droit et non plus des objets
6 de droit. Ils ne sont plus de simples communautés
7 culturelles. Ils se sont élevés au statut de communautés
8 politiques qui entretiennent des relations non plus
9 simplement avec le gouvernement fédéral mais également avec
10 les provinces sur le territoire desquels s'exercent leurs
11 droits aux territoires.

12 En raison du paragraphe 91(24) de la
13 Constitution de 1867, sur lequel je reviendrai, le
14 gouvernement fédéral a toujours été le principal
15 interlocuteur des peuples autochtones au Canada.

16 Toutefois, parce que le Canada est une
17 fédération où les pouvoirs sont partagés entre les deux
18 ordres de gouvernement, les provinces et le fédéral, les
19 provinces sont elles aussi des interlocutrices des nations
20 autochtones.

21 En outre, la Cour suprême, on le verra, a
22 récemment reconnu que dans certaines circonstances, les
23 provinces étaient en mesure, plus qu'elles ne l'étaient
24 auparavant, de légiférer sur les questions autochtones.

25 En somme, dans les limites des contraintes

1 imposées par la Constitution de 1867, qui consacre la
2 nature fédérale de notre pays, et des contraintes imposées
3 par la Constitution de 1982, qui constitutionalise les
4 droits ancestraux et issus de traités, les provinces
5 peuvent, tout comme le parlement fédéral, adopter une ou
6 des lois visant à mettre en œuvre la déclaration. En fait,
7 on va le voir, la collaboration des deux ordres de
8 gouvernements est nécessaire. Brenda l'a évoqué d'ailleurs
9 ce matin.

10 En vérité, je vais parler beaucoup plus du
11 rôle des provinces dans la mise en œuvre de la déclaration
12 parce qu'on pense trop souvent... enfin, le public pense trop
13 souvent que seul le fédéral a un rôle à jouer en ce
14 domaine.

15 En réalité, quand on pense à la question de
16 la violence faite aux femmes autochtones et aux compétences
17 législatives qui sont sollicitées pour y trouver un remède,
18 on s'aperçoit vite que plusieurs des compétences les plus
19 importantes relèvent des provinces, compétences sur la
20 santé, sur la protection de la jeunesse, sur le droit de la
21 famille, sur la prévention du crime, sur l'administration
22 de la justice, la justice criminelle, pour n'en citer que
23 quelques-unes.

24 En outre, même si le parlement fédéral
25 pourrait intervenir dans tous ces domaines en vertu du

1 pouvoir accessoire associé à sa compétence sur les peuples
2 autochtones, ce sont bien souvent les provinces qui ont
3 développé les connaissances et le savoir-faire spécialisé
4 dans ces domaines-là.

5 Mais, on l'a entendu, ça n'empêche pas le
6 fédéral de dépenser et des fois il ne le fait pas. Comme
7 on l'a vu, il ne finance pas les services de manière
8 équivalente aux services qui sont offerts, par exemple, aux
9 enfants non-autochtones. On l'a entendu ce matin.

10 Et je terminerais ma présentation en
11 soulevant la question des avantages mais aussi des
12 inconvénients qui pourraient découler d'une incorporation
13 en droit provincial ou fédéral de déclaration, parce que
14 l'incorporation en droit de la déclaration c'est bien sûr
15 un mécanisme très efficace, mais à partir du moment où on
16 le fait, c'est la magistrature canadienne et non les
17 peuples autochtones qui auront le dernier mot sur le sens à
18 donner aux 46 articles de la déclaration.

19 **Me FANNY WYLDE:** Merci, Maître Leclair.

20 Donc, vous parlez du pouvoir fédéral, du
21 pouvoir de la province, de ce fédéralisme-là dans cette
22 implantation de cette déclaration-là. Mais qu'en est-il du
23 rôle des peuples autochtones?

24 **Me JEAN LECLAIR:** S'il y a une chose qui
25 s'est imposée en droit international et en droit canadien

1 au cours des dernières décennies c'est bien l'importance de
2 consulter les peuples autochtones avant d'adopter des
3 mesures qui auront un impact important sur leur vie
4 individuelle et collective.

5 L'idée d'incorporer la déclaration en droit
6 provincial ou fédéral est, selon moi, une très bonne idée.
7 Le problème, comme on va le voir, c'est de savoir comment
8 s'y prendre si on veut que cette incorporation emporte des
9 résultats autres que symboliques ou politiques. Je suis en
10 train de démontrer que la manière de procéder à cette
11 intégration en droit interne déterminera le succès ou
12 l'échec de l'entreprise.

13 Il faut aussi réaliser que cette
14 incorporation ne se traduira pas uniquement en victoire
15 autochtone. Il ne fait aucun doute, et il ne faut pas être
16 devin pour le savoir, que les droits reconnus par la
17 déclaration devront éventuellement être équilibrés avec les
18 intérêts de la population non-autochtone.

19 Le paragraphe 46(2) de la déclaration ouvre
20 d'ailleurs la porte à cette mise en équilibre.

21 Toutefois, ce que je veux souligner c'est
22 qu'avant de se lancer... puis ça rejoint la question que vous
23 m'avez posée... c'est qu'avant de se lancer dans la rédaction
24 d'une loi, le gouvernement fédéral ou le gouvernement d'une
25 province devrait s'assurer que tel est le désir des

1 premiers peuples concernés.

2 Il semble bien, il faut l'avouer, que tel
3 soit le vœu d'un grand nombre de représentants autochtones,
4 d'où le projet de loi dont je parlerai tout à l'heure de
5 Romeo Saganash. C'est, en tout cas, le vœu exprimé par la
6 Commission de vérité et de réconciliation et par le Comité
7 pour l'élimination de la discrimination raciale de l'ONU,
8 dont Brenda a parlé ce matin. Et le 13 septembre dernier,
9 on recommandait encore une fois au Canada de mettre en
10 œuvre la déclaration.

11 La Cour suprême d'ailleurs va rendre
12 prochainement un jugement très important dans une affaire
13 où la question qui lui est posée est précisément de savoir
14 si un gouvernement doit consulter les peuples autochtones
15 avant même que soit adoptée une loi.

16 Mais que ce soit obligatoire ou non, il sera
17 toujours politiquement prudent et sage de la part d'un
18 gouvernement de solliciter l'opinion des peuples
19 autochtones.

20 Mais toujours sur ce thème du rôle des
21 nations autochtones, je voudrais insister sur une chose qui
22 m'apparait essentielle. Les nations autochtones devraient
23 immédiatement mettre en œuvre la déclaration sans attendre
24 les gouvernements, en se fondant sur leurs propres
25 conceptions juridiques des choses. Après tout, comme les

1 peuples autochtones et comme plusieurs membres éminents des
2 premières nations du Canada, je l'ai dit, ont étroitement
3 contribué à l'élaboration de la déclaration, il me semble
4 qu'ils sont en droit de prendre l'initiative.

5 Pour beaucoup d'entre eux, le droit fédéral
6 et provincial souffre un déficit de légitimité. Mais comme
7 la déclaration est le fruit de leur propre collaboration,
8 ils peuvent certainement s'en inspirer. Ils sont des
9 gouvernements, après tout.

10 Et je ne suis pas sans savoir que les
11 nations autochtones ont des ressources limitées, mais en
12 exerçant immédiatement, sans attente, l'autonomie
13 gouvernementale qu'elle revendique depuis toujours, les
14 nations autochtones lanceraient un message politique très
15 puissant. Elles placeraient les gouvernements devant un
16 fait accompli qu'ils ne pourraient pas aisément balayer du
17 revers de la main.

18 Prenons quelques exemples, par exemple. Les
19 Atikamekw, par exemple, ont réussi à mettre sur pied un
20 programme efficace de protection de la jeunesse que la
21 province de Québec a officiellement reconnu en janvier
22 dernier. Ce sont eux qui sont à l'origine d'une
23 modification de la *Loi sur la protection de la jeunesse*
24 permettant la mise en place de régimes alternatifs comme le
25 leur.

1 D'autres nations... je pense aux Squamish... ont
2 adopté leur propre protocole de consultation en matière
3 environnementale. De plus en plus de premières nations le
4 font.

5 D'autres nations, aidées en cela par des
6 intellectuels autochtones, ont entrepris de réactiver les
7 traditions juridiques autochtones en s'inspirant de la
8 tradition orale dans le cadre, par exemple, en Ontario du
9 *Assessing Justice and Reconciliation Project* et certains de
10 ces projets portent sur la violence faite aux femmes en
11 particulier.

12 D'autres exemples d'initiatives autochtones
13 existent. Quand on lit les journaux, malheureusement, on
14 l'apprend. Si on pouvait trouver un endroit, on pourrait
15 trouver toutes ces initiatives-là aisément pour les rendre
16 accessibles pour d'autres premières nations. Ce serait
17 extrêmement utile.

18 Et il me semble que c'est là la voie de
19 l'avenir. Si j'avais une recommandation à faire, c'est
20 qu'il me semble qu'il faut accompagner les peuples
21 autochtones dans les projets d'autodétermination qu'ils ont
22 eux-mêmes élaborés, et ça m'apparaît une des voies royales
23 de la réconciliation.

24 Certains projets... ces projets pourraient
25 fort bien, je l'ai dit, être en lien avec l'éradication de

1 la violence faite aux femmes. Après tout, pendant des
2 milliers d'années, les peuples autochtones ont eu des
3 ordres juridiques qui fonctionnaient très bien, je vous
4 remercie. Alors comment ça se fait que depuis 150 ans ils
5 ne seraient plus capables de le faire.

6 Toutefois, réactiver et renouveler les
7 traditions juridiques autochtones soulève aussi des
8 difficultés, particulièrement là où la question de la
9 violence faite aux femmes est en jeu.

10 En effet, comme le souligne avec courage les
11 intellectuels autochtones, qui sont John Borrows et Val
12 Napoleon, il faut éviter de cultiver une conception trop
13 romantique de ce qu'était le droit autochtone avant
14 l'arrivée des Européens.

15 Et là-dessus j'ai le texte de..

16 **Me FANNY WYLDE:** Effectivement.

17 Donc, Maître Leclair, Commissaire en chef et
18 Commissaires, je vous invite à prendre connaissance du
19 texte « *Gender and Violence: Drawing on Indigenous Legal*
20 *Resources* », un texte écrit de Emily Snyder, Val Napoleon
21 et John Borrows. Avant que je vous soumette le tout en
22 pièce, est-ce que vous pouvez me décrire de façon brève de
23 quoi ce texte-là s'agit, de quoi il s'agit, en fait?

24 **Me JEAN LECLAIR:** Simplement c'est que c'est
25 un texte qui rappelle que la violence faite aux femmes

1 n'était pas inconnue même avant le contact avec les
2 Européens. Cette violence faite aux femmes, en fait, elle
3 est malheureusement et largement universelle.

4 Ce qui importe, toutefois, comme soulignent
5 ces auteurs-là c'est que les traditions juridiques
6 autochtones avaient développé des mécanismes pour
7 confronter ces problèmes-là et elles peuvent aujourd'hui
8 encore être la source de modes contemporains autochtones de
9 résolution de conflits, des modes de résolution de conflits
10 qui ont plus de chances, qui ont des chances d'avoir plus
11 de légitimité aux yeux de la population autochtone que les
12 solutions offertes par le droit étatique.

13 **ME FANNY WYLDE:** Donc à cet effet-là,
14 Commissaire en chef et Commissaires, j'aimerais déposer en
15 pièce, pièce numéro 16, le présent texte dont on vient de
16 souligner. Merci.

17 **CHIEF COMMISSIONER MARION BULLER :** The
18 article "Gender and Violence: Drawing on Indigenous Legal
19 Resources" by Snyder and Napoleon and Borrows will be
20 exhibit 16, please.

21 **--- EXHIBIT NO./PIÈCE NO. B16:**

22 "Gender and Violence: Drawing on Indigenous
23 Legal Resources" by Emily Snyder, Val
24 Napoleon and John Borrows, UBC Law Review
25 Volume 48:2 pp. 594-654

1 **Me FANNY WYLDE** : Thank you. Bon, juste une
2 petite question, Maître Leclair. Vous avez mentionné, si
3 je ne m'abuse, que ces auteurs-là sont des femmes
4 autochtones elles-mêmes?

5 **Me JEAN LECLAIR**: John Borrows est en homme,
6 Val Napoleon c'est aussi, c'est une Cree du Manitoba, John
7 est un Anishinaabe. C'est une des grandes figures
8 intellectuelles, et je pense que je fais pas de peine à
9 personne en disant que Val Napoleon est aussi probablement
10 la plus grande figure femme intellectuelle autochtone.

11 Emily Snyder, si je ne me trompe pas, n'est
12 pas une autochtone, mais c'est une auteure qui travaille
13 depuis longtemps avec Val et John sur les questions de
14 féminisme autochtone.

15 Il y a d'autres grands auteurs actuellement,
16 il y a Hadley Freeman, aussi, il y a Sarah Morales, qui est
17 une autochtone récemment embauché à U-Vic. Il y a plein de
18 jeunes et brillants intellectuels autochtones qui se
19 prononcent sur ces questions-là.

20 **Me FANNY WYLDE** : Merci. Je vous invite à
21 poursuivre.

22 **Me JEAN LECLAIR** : Ce que souligne ces
23 auteurs, aussi, et je terminerais là-dessus, c'est que au
24 même titre que le droit autochtone, et là, je les cite,
25 « Indigenous Laws can be influenced by sexist ideologies,

1 and can be a site to reproducing power dynamics in ways
2 that discipline gendered and legal subjects. »

3 Autrement dit, comme je vous le disais, tous
4 les droits sont susceptibles d'être porteurs... d'idéologie,
5 bonne ou mauvaise. Alors, bref, les peuples autochtones, à
6 mon sens, doivent profiter de l'occasion qui se présente
7 pour mettre eux-mêmes en œuvre la déclaration. Bien sûr,
8 dans la mesure de leurs moyens, mais peut-être que une des
9 recommandations qu'on peut faire c'est de financer ces
10 initiatives-là. Ils devront néanmoins faire en posant un
11 regard critique sur leurs propres traditions juridiques.

12 Alors, c'est tout ce que je voulais dire sur
13 le rôle des peuples autochtones, mais il est absolument
14 capital je pense, on parle trop souvent juste des provinces
15 du fédéral, puis maintenant, je vas parler du rôle des
16 provinces et du fédéral.

17 **Me FANNY WYLDE:** Donc, je comprends que
18 maintenant vous allez parler justement du partage des
19 compétences. À cet effet, est-ce que vous êtes d'accord si
20 on procède au dépôt d'un fascicule à lequel vous avez
21 participé « Les Peuples autochtones et droits
22 constitutionnels. »

23 Pouvez-vous brièvement me décrire de quoi ce
24 document-là, de quoi il en retourne?

25 **Me JEAN LECLAIR :** Bien, le document en

1 question, c'est un document qui est assez volumineux, il a
2 130 pages et il est mis à jour à chaque année par moi et
3 mon collègue, Michel Morin, qui est aussi un expert,
4 surtout sur les dimensions historiques du droit autochtone.

5 Et c'est un texte qui est destiné à
6 introduire les juristes, mais aussi le grand public que ça
7 intéresse, aux droits ancestraux issus de traités, mais
8 aussi à la question qui nous importe aujourd'hui : le
9 partage des compétences à l'intérieur de la fédération
10 canadienne.

11 Qui peut régler les questions
12 autochtones, et quels sont les droits que les autochtones,
13 les droits collectifs que les autochtones peuvent invoquer
14 à l'intérieur de notre système constitutionnel?

15 **Me FANNY WYLDE** : Donc, merci. Commissaire
16 en chef et Commissaires, j'aimerais procéder au dépôt de ce
17 fascicule à titre de pièce 16. Merci.

18 --- **PIÈCE No./EXHIBIT No. B17** :

19 Fascicule 15 : « Peuples autochtones et
20 droit constitutionnel » by Jean
21 Leclair and Michel Morin in
22 JurisClasseur Québec (133 pages)

23 **CHIEF COMMISSIONER MARION BULLER**: Can I have
24 the title again, please?

25 **Me FANNY WYLDE** : Fascicule 15 : Peuples

1 autochtones et droits constitutionnels.

2 **CHEF COMMISSIONNER MARION BULLER:** That will
3 be the next exhibit, I think that's 17.

4 **Me FANNY WYLDE :** Merci. Donc, je comprends,
5 là, on l'a entendu également avec Professeure Gunn ce
6 matin, comment on peut mettre en œuvre justement un
7 document international dans une fédération?

8 **Me JEAN LECLAIR :** Il y a plusieurs façons de
9 le faire, ce que j'aimerais exposer dans ce qui s'en vient,
10 c'est qu'on peut le faire par une déclaration politique.
11 On peut le faire en investissant de l'argent, puis on peut
12 le faire en adoptant des lois, ou une loi. Je vais
13 regarder ces choses-là, si vous voulez bien.

14 Je l'ai évoqué plus haut, la... et puis Brenda
15 l'a expliqué ce matin, la déclaration est un instrument
16 juridique de droit international, qui a été adopté par
17 l'assemblée générale des Nations Unies le 13 septembre
18 2007. Pis après, si il a été initialement refusé, il faut
19 le rappeler, le Canada a finalement adhéré, de manière
20 hésitante, en novembre 2010, pour enfin l'appuyer sans
21 réserve, pour prendre l'expression de la ministre, en mai
22 2016. Mais en droit international, une simple déclaration
23 par opposition à un traité n'est pas juridiquement
24 contraignante. Ça veut pas dire que c'est sans importance.

25 Et en outre, on va le voir, mais en droit,

1 un traité ou une déclaration lie le Canada en droit
2 international, mais il faut encore que ces normes de droit
3 international elles atterrissent, elles soient introduites
4 en droit interne, provincial et fédéral. Et donc, la
5 déclaration, elle n'aura d'impact juridique véritable au
6 Canada que si elle est incorporée en droit interne.

7 Et en droit constitutionnel canadien, les
8 normes de droit international, je le répète, que ce soit le
9 traité ou les déclarations, ne sont pas immédiatement
10 applicables par un tribunal du seul fait de l'adhésion du
11 Canada à une déclaration ou à un traité.

12 Il peut y avoir des exceptions, on peut
13 interpréter la common law, c'est ce que Brenda expliquait,
14 dans l'esprit de ce au terme des valeurs de droit
15 international. Mais à cette adhésion par le Canada doit
16 s'ajouter, généralement, l'adoption de lois par les ordres
17 de gouvernements compétents, provinces ou fédéral, pour
18 mettre en œuvre un document international.

19 Et je rappelle que le Canada est une
20 fédération; les pouvoirs législatifs, ils sont partagés
21 entre les deux ordres de gouvernement. Alors, le contenu
22 du traité ou de la déclaration déterminera si ce sont les
23 provinces ou le fédéral qui peuvent la mettre en œuvre.
24 Ainsi, si une disposition de la déclaration des Nations
25 Unies porte sur une matière de compétence fédérale au sens

1 de l'Article 91 de la constitution de 1867, seul le fédéral
2 pourra le mettre en œuvre.

3 Au contraire, si une disposition de la
4 déclaration porte sur une matière de compétence
5 provinciale, au sens de l'Article 92, cette fois, de la loi
6 constitutionnelle de '67, seule la province pourra le
7 mettre en œuvre.

8 Enfin, si la déclaration porte à la fois sur
9 des matières de compétences fédérales et provinciales, ce
10 qui est le cas, bien, la collaboration des deux ordres de
11 gouvernement sera nécessaire pour qu'ils puissent, au terme
12 de leurs compétences respectives, adopter chacun de leur
13 côté les dispositions législatives nécessaires à la mise en
14 œuvre de l'entièreté de la déclaration.

15 En somme, si un ordre de gouvernement veut
16 mettre en œuvre législativement la déclaration, il doit
17 s'assurer qu'il détient la compétence constitutionnelle
18 pour le faire, pis il doit s'assurer de l'étendu de cette
19 compétence-là.

20 Je vais revenir plus loin sur la mise en
21 œuvre au moyen d'une loi, mais j'aimerais dire un mot sur
22 ce que certains gouvernements pourraient choisir de faire,
23 je parle des gouvernements provinciaux, parce que le
24 fédéral a choisi d'adopter une loi, à savoir procéder à une
25 reconnaissance purement politique.

1 Alors, une assemblée législative pourrait
2 procéder à une reconnaissance symbolique de la déclaration
3 au moyen d'une résolution parlementaire. Ça, c'est quand
4 la chambre, une assemblée provinciale, ils adoptent pas une
5 loi mais ils adoptent une résolution ou qu'ils approuvent,
6 par exemple, la déclaration. Il s'agirait là d'un acte
7 purement politique.

8 Si l'assemblée nationale du Québec, par
9 exemple, adoptait une telle résolution afin de reconnaître
10 la déclaration-- ce qu'elle n'a pas fait, en passant-- il
11 ne fait pas de doute que ce geste comporterait une
12 incontestable dimension normative. Parce que cette
13 décision politique obligerait peut-être éventuellement le
14 Québec à modifier ses lois.

15 Mais en soit, une telle résolution n'est pas
16 juridiquement contraignante; elle ne permettrait pas à un
17 justiciable autochtone d'invoquer un droit reconnu par la
18 déclaration devant un tribunal québécois. Pour que la
19 déclaration puisse être invoquée en droit provincial ou
20 fédéral pour contraindre un gouvernement ou un tiers à lui
21 obéir, il faudrait une incorporation directe et expresse de
22 la déclaration au moyen d'une mesure législative, supposons
23 que la question du partage des compétences que j'ai évoqué
24 plus haut.

25 Mais avant d'examiner l'adoption d'une loi,

1 je vous ai dit tout à l'heure en préambule qu'on pouvait le
2 faire politiquement, je viens d'en parler, au moyen d'une
3 loi, je vais en parler un peu plus, mais je vais avoir
4 parlé d'investissements, de dépenses, au fond. C'est qu'il
5 y a un grand nombre de droits reconnus dans la déclaration
6 qui pourraient être mis en œuvre par une province ou le
7 fédéral autrement qu'au moyen d'une loi ou autrement que
8 simplement politiquement.

9 Pensons à ce que le gouvernement fédéral a
10 fait, par exemple, qui a créé un groupe de ministres, de
11 travail de ministres chargés de réviser la législation pour
12 veiller à sa conformité avec les principes de la
13 déclaration ou de l'adoption de principes régissant la
14 relation du Gouvernement du Canada avec les peuples
15 autochtones. Alors ces deux techniques-là pourraient être
16 adoptées sans difficulté par les provinces, puis à moins
17 que je me trompe, le *Path to Reconciliation Act* du Manitoba
18 est un peu de cette nature-là aussi. On vise à adopter...
19 ils ressemblent un peu au projet de loi aussi adopté par...
20 proposé par M. Saganash, mais ça, on est encore dans
21 l'ordre du politique.

22 Mais si on pense... pensons également à tous
23 les droits reconnus par la déclaration et qui, pour une
24 large part, requiert avant tout des investissements plutôt
25 que des lois.

1 Alors les paragraphes 13(2), 14(2), 14(3)
2 qui concernent la prise de mesures par les états afin de
3 protéger le droit des peuples autochtones de transmettre
4 leur culture aux générations futures. Ça prend de l'argent
5 ça.

6 L'article 21 concernant l'amélioration des
7 conditions de vie des peuples autochtones, le paragraphe
8 24(2) qui concerne la prise de mesures afin d'assurer aux
9 peuples autochtones leur droit à la santé, l'article 28
10 concernant le droit à une compensation appropriée pour les
11 terres qui sont exploitées, article 39 qui concerne
12 l'assistance financière et technique accordée aux peuples
13 autochtones afin qu'ils puissent jouir des droits énoncés
14 dans la déclaration, tout ça exige des investissements.

15 Comme le disait le regretté professeur
16 Roderick Macdonald de l'Université McGill :

17 "When governments do not want to spend
18 money, they spend law."

19 Lorsque les gouvernements ne veulent pas
20 dépenser d'argent, ils dépensent du droit. S'ouvrir la
21 bouche est souvent moins couteux que d'ouvrir son
22 portefeuille. Il y a donc un risque qu'un gouvernement
23 préfère adopter une loi qui promet la reconnaissance de
24 droit plutôt que de dépenser de l'argent. Il faut avoir
25 cette réalité à l'esprit quand on réfléchit à la question

1 de l'adoption d'une loi ayant pour objet d'incorporer la
2 déclaration en droit interne provincial ou fédéral. Il
3 faut se méfier.

4 En passant, l'Assemblée nationale du Québec
5 semble effrayée de dépenser même des mots car elle n'a pas
6 encore... elle n'a encore jamais réussi à adopter une
7 résolution parlementaire en appui à la déclaration. Toutes
8 les tentatives ont actuellement échoué.

9 **Me FANNY WYLDE:** Donc, Maître Leclair, bon,
10 cette incorporation-là en droit canadien, je comprends que
11 ça suscite des préoccupations et des craintes notamment aux
12 droits ancestraux et de traités.

13 Qu'en est-il, en fait? Est-ce que ça peut
14 véritablement les perturber, les éteindre, les modifier?

15 **Me JEAN LECLAIR:** Il y a certaines personnes
16 qui sont inquiètes parce qu'ils se disent qu'est-ce qui va
17 arriver de la déclaration si... si on adopte la déclaration,
18 est-ce que ça va perturber la doctrine des droits
19 ancestraux et issues de traités développées par la Cour.

20 Attendez, je veux juste retrouver mon truc
21 parce que je ne veux pas me tromper. Bien, je m'en
22 souviens de toute façon.

23 L'idée c'est qu'on se dit... il y a des gens
24 qui vont dire, "Ah, ben là, si on adopte la déclaration, la
25 déclaration va avoir préséance sur la doctrine des droits

1 ancestraux et issues de traités. On va perdre les droits
2 que la Cour suprême a reconnus." Il faut comprendre que la
3 déclaration, je vous le répète, elle n'est pas
4 immédiatement applicable en droit canadien. Alors je vous
5 l'ai dit, ça prend une loi pour la mettre en œuvre.

6 Alors, je sais que c'est compliqué, mais en
7 droit constitutionnel, la Constitution c'est la loi
8 suprême. C'est la loi fondamentale. Et toutes les lois
9 qui sont en-dessous de la Constitution doivent respecter la
10 Constitution, ce qui fait qu'actuellement, si on adopte,
11 par exemple, le projet de loi, bien, le projet de loi de M.
12 Saganash sur la mise en œuvre de la déclaration, ça
13 demeurerait une simple loi et cette loi devrait respecter
14 la Constitution, donc respecter ce que la Cour suprême a
15 développé au cours des années.

16 Et donc à moins qu'on intègre la déclaration
17 dans la Constitution elle-même, là ça serait différent,
18 mais vous le savez, c'est pas demain la veille, là,
19 transformer ça. C'est la loi mettant en œuvre la
20 déclaration qui va être assujettie à la Constitution et non
21 l'inverse. C'est pas vrai qu'on va tout bouleverser
22 l'ordre constitutionnel canadien si on adoptait une loi
23 provinciale ou fédérale pour mettre en œuvre la
24 déclaration.

25 **Me FANNY WYLDE:** Oui.

1 **Me JEAN LECLAIR:** Ce que je pourrais peut-
2 être aborder maintenant c'est la question de
3 l'incorporation au moyen d'une loi ou de lois. D'accord?

4 **Me FANNY WYLDE:** En fait...

5 **Me JEAN LECLAIR:** Oui?

6 **Me FANNY WYLDE:** Excusez-moi, Maître
7 Leclair. En fait, je comprends que là vous allez vous
8 concentrer... est-ce qu'il est préférable de procéder avec
9 une seule loi ou plutôt des lois?

10 **Me JEAN LECLAIR:** O.k. Bien, on va voir... je
11 vais essayer de vous expliquer le plus clairement possible
12 que selon moi, une loi très générale risque d'avoir peu
13 d'effet. Je pense que si on veut vraiment recourir... que la
14 déclaration soit introduite en droit interne, à mon humble
15 avis, il faudrait qu'on le fasse au moyen de lois
16 spécifiques qui visent des domaines particuliers où on
17 consulterait les autochtones pour chacun de ces domaines-là
18 et la déclaration pourrait servir d'étrier, pourrait servir
19 de *stepping stone* pour arriver à ça.

20 Bon, je l'ai dit plus haut, je le rappelle,
21 juste en guise de préambule, je répète ce que j'ai dit tout
22 à l'heure. Notre... la déclaration va être mise en œuvre par
23 l'ordre de gouvernement qui est compétent. Autrement dit,
24 il faut regarder dans la déclaration les matières sur
25 lesquelles elle porte et si ces matières-là relèvent du

1 fédéral, c'est le fédéral qui pourra les mettre en œuvre.
2 Si elles relèvent des provinces, c'est les provinces qui
3 pourront les mettre en œuvre. Et je le rappelle, il en est
4 ainsi parce que notre Constitution fédérale de 1867, elle
5 dresse une liste de compétences pour les provinces et le
6 fédéral et ces compétences-là sont mutuellement exclusives.
7 Autrement dit, le parlement ne peut pas poursuivre une
8 finalité provinciale et les provinces ne peuvent pas
9 poursuivre une finalité fédérale.

10 Par exemple, aujourd'hui, si une province
11 adoptait un Code criminel, ce serait inconstitutionnel
12 parce que la compétence est fédérale.

13 À l'inverse, le fédéral, demain, adopterait
14 un Code civil ou une loi générale sur les contrats, ce
15 serait inconstitutionnel parce qu'il n'a pas cette
16 compétence-là. Il faut s'assurer que chaque ordre
17 intervient convenablement. Or, le paragraphe 91.24 de la
18 Constitution de 1867 attribut une compétence exclusive au
19 parlement fédéral à l'égard des Indiens et des terres
20 réservées aux Indiens, sauf que la Cour suprême a déclaré
21 maintenant que les Indiens au sens... dans cette
22 Constitution-là, ça comprend aussi les Inuits et les Métis.
23 Dans l'affaire *Daniels* en 2016, on a dit que ça relevait
24 aussi des Métis.

25 Ça veut dire que les provinces ne pourraient

1 pas adopter des lois qui visent à réglementer dans le
2 détail toutes les questions relatives aux peuples
3 autochtones sur leur territoire. Ce serait
4 inconstitutionnel. On va voir qu'elles peuvent le faire
5 dans l'exercice de leur compétence.

6 Et ce qui complique les choses aussi au
7 Canada c'est que si le fédéral dispose d'un pouvoir
8 législatif à l'égard des peuples autochtones, ce sont les
9 provinces... et puis je m'excuse si c'est compliqué, là... mais
10 ce sont les provinces et non le fédéral qui sont
11 détentrices du domaine public, des terres de la Couronne où
12 se fait l'exploitation, les terres de la Couronne qui sont
13 les territoires autochtones.

14 Et conformément à l'article 109 de la
15 Constitution de 1867, ce sont les provinces et non l'état
16 central qui ont la plus grande part du domaine public.
17 Alors exception faite des territoires fédéraux, que sont le
18 Yukon, les Territoires du Nord-Ouest et le Nunavut,
19 auxquels il faut ajouter certaines terres fédérales, les
20 terres de réserves par exemple, tout le domaine public du
21 Canada, toutes les grandes forêts qu'on voit appartiennent
22 aux provinces.

23 Et chose capitale à garder en tête, ce sont
24 sur ces territoires-là que se déroulent les activités
25 d'extraction des ressources qui font la richesse du Canada

1 et ce sont sur ces territoires-là, au fond... ce sont ces
2 territoires-là qui appartenaient aux autochtones et qui,
3 aujourd'hui, sont formellement propriété des provinces.

4 Ajoutons à ça, pour ajouter encore une
5 couche de complexité, que ce sont les provinces qui
6 disposent de la compétence de principe en matière de santé,
7 d'éducation, de langue, de protection de la jeunesse, de
8 droit de la famille, d'administration de la justice, de
9 réglementation et de l'exploitation des ressources
10 naturelles sur leurs territoires, et vous comprendrez que
11 de cette complexe répartition de pouvoir législatif puis du
12 domaine public résulte la nécessité de faire intervenir les
13 deux ordres de gouvernement à l'occasion de l'élaboration
14 de tentatives de solution à un problème autochtone.

15 Et la situation était déjà passablement
16 compliquée mais elle s'est encore plus complexifiée, je
17 m'excuse, avec la constitutionnalisation des droits
18 ancestraux et issus de traités des peuples autochtones en
19 1982.

20 Alors juste pour vous rappeler ce que c'est
21 les droits ancestraux puis issus des traités, la Cour
22 suprême a défini les droits ancestraux comme des activités,
23 la chasse, la pêche, qui étaient fondamentalement
24 importantes pour un groupe autochtone avant le contact avec
25 les Européens.

1 Alors vous voyez, y a une dimension très
2 folklorisante. C'est uniquement des activités qui étaient
3 importantes pour les peuples autochtones avant le contact
4 avec les Européens qui peuvent constituer un droit
5 ancestral. C'est ce que ça fait quand on a un droit
6 ancestral.

7 Mais si j'arrive, si je suis un Autochtone,
8 j'arrive à faire la démonstration que ma communauté a un
9 droit ancestral de chasser, je peux utiliser ce droit-là
10 comme un bouclier à l'encontre des lois fédérales et
11 provinciales.

12 La Cour suprême a aussi reconnu un titre
13 aborigène. Je vous ai dit qu'un droit ancestral c'est une
14 activité particulière. Le titre c'est un droit au
15 territoire lui-même. C'est le droit d'exploiter le
16 territoire.

17 Et encore là, si on arrive à faire la preuve
18 d'un titre et c'est extraordinairement difficile et ç'a
19 couté 40 millions de dollars à la seule nation qui a réussi
20 à le faire, on peut se servir de ce titre-là comme d'un
21 bouclier à l'encontre des lois fédérales et provinciales.

22 Et puis finalement, y a les droits issus de
23 traités. Les Autochtones ont signé des traités de toute
24 sorte de nature, de paix et d'amitié, et puis des traités
25 dits numérotés que tous les Autochtones de l'ouest du pays

1 connaissent fort bien. Et ces traités-là, ben avant 1982,
2 une loi fédérale pouvait les abroger. Mais depuis 1982,
3 ils sont élevés dans la constitution. Ils sont enchâssés
4 dans la constitution. Alors on peut pas y porter atteinte
5 aisément.

6 Et donc la question du partage des
7 compétences s'est complexifiée parce que la Cour suprême a
8 déclaré que ces droits ancestraux et issus de traités
9 tombaient dans la compétence exclusive du parlement
10 fédéral. Mais en même temps dans la même phrase en fait,
11 elle a affirmé que les provinces, comme Ottawa, pouvaient
12 adopter des lois qui limitent ces droits-là, qui limitent
13 la portée de ces droits dans des limites raisonnables.

14 Parce qu'il faut savoir que la Cour suprême,
15 oui, elle a reconnu des droits ancestraux, oui, elle a
16 reconnu des titres aborigènes, oui, elle a reconnu les
17 droits issus de traités, mais dans une affaire qui
18 s'appelle l'affaire *Sparrow*, elle a autorisé les
19 gouvernements et le fédéral à limiter ces droits-là d'une
20 manière raisonnable.

21 Et le raisonnement de la Cour lorsqu'elle
22 l'a énoncé était totalement illogique sur le plan
23 constitutionnel parce qu'on pouvait pas à la fois dire que
24 les droits ancestraux relevaient du pouvoir exclusif du
25 fédéral et que les provinces pouvaient limiter un droit

1 autoriserait le parlement à adopter des lois dans un très
2 grand nombre de secteurs dans le mesure où elles auraient
3 pour finalité de régler les peuples autochtones.

4 Par exemple, le fédéral pourrait pas
5 régler la santé en général. Ça serait
6 inconstitutionnel, mais il peut régler la santé
7 autochtone.

8 Toutefois, comme je l'ai dit plus tôt, je
9 pense pas que le fédéral va se mettre à adopter des lois
10 qui visent l'ensemble des matières visées par la
11 déclaration parce que plusieurs de celles-ci relèvent au
12 premier chef des provinces, santé, éducation,
13 administration de la justice, territoire, exploitation des
14 ressources.

15 Pour ce qui est des provinces, la Cour
16 suprême a beaucoup élargi leur pouvoir d'adopter des
17 dispositions législatives relatives aux peuples
18 autochtones. Et puis pour être bien franc, la Cour suprême
19 a élargi -- assoupli, je m'excuse, les règles du partage
20 des compétences en matières autochtones parce qu'elle
21 voulait permettre aux provinces de tirer pleinement partie
22 du potentiel économique de leur domaine public.

23 Les provinces peuvent donc maintenant
24 régler les droits ancestraux ou issus de traités qui
25 grèvent leur territoire dans la mesure où le test de

1 l'atteinte raisonnable développé dans *Sparrow* est respecté.

2 Je pense que la Cour suprême reconnaît aussi
3 implicitement que dans des domaines comme la santé et
4 l'éducation ou la protection de la jeunesse, il importe
5 d'accorder une latitude aux provinces pour accommoder les
6 intérêts spécifiques des peuples autochtones.

7 L'exclusivité du partage des compétences
8 n'est pas pour autant abandonnée. Je veux dire une loi
9 provinciale qui viserait à régler directement un
10 intérêt régi par la loi sur les Indiens serait
11 inconstitutionnel.

12 En outre, je pense que dans l'exercice d'une
13 de ces compétences, une province peut adopter des
14 dispositions législatives qui se rapportent aux Autochtones
15 mais uniquement si elles visent à améliorer la situation
16 des Autochtones.

17 Pensons à des lois provinciales
18 d'application générale qui portent sur l'éducation, la
19 santé, la protection de la jeunesse ou les services de
20 police, qui comporteraient des dispositions visant à
21 établir un régime particulier pour tenir compte des
22 spécificités de la clientèle autochtone ou visant à
23 déléguer des pouvoirs à des organisations autochtones.

24 Pensons à des lois provinciales
25 d'application générale portant sur l'exploitation des

1 mines, des hydrocarbures, de l'énergie hydroélectrique, qui
2 comporteraient des dispositions visant à établir un régime
3 spécifique de consultation des peuples autochtones. À mon
4 sens, il fait aucun doute que ces lois-là seraient valides.

5 Dans une affaire *Kitkatla* que je vais donner
6 comme exemple, la Cour suprême a jugé que le *Heritage*
7 *Conservation Act* de la Colombie-Britannique était une loi
8 provinciale d'application générale valide malgré qu'elle
9 comportait des dispositions spécifiques qui parlaient des
10 Autochtones.

11 La Cour a jugé que le trait dominant de la
12 loi... en droit constitutionnel en anglais on parle le
13 "pith and substance" de la loi était, et je cite la Cour:

14 "...de conserver et de protéger toutes
15 les formes de biens, d'objets et
16 d'artéfacts culturels qui, en Colombie-
17 Britannique, ont une valeur
18 patrimoniale pour l'ensemble de la
19 province."

20 Toutes des choses en passant qui relèvent de
21 la compétence des provinces en matière de propriété et
22 droit civil, les objets, la propriété, et cetera.

23 Mais la loi avait la particularité de
24 protéger ces artéfacts culturels mais aussi d'en autoriser
25 la destruction. Or la loi précisait s'appliquer aux

1 artéfacts autochtones et permettait donc au ministre d'en
2 autoriser aussi bien la protection que la destruction.
3 Alors les groupes autochtones ont dit, "La loi vise les
4 Autochtones. Elle est inconstitutionnelle."

5 Et la Cour a jugé les artéfacts en question
6 avaient une double nature culturelle, étant bien sûr partie
7 à l'héritage autochtone mais également partie au patrimoine
8 culturel de tous les Britanno-Colombiens.

9 L'intervention de la province était donc...
10 était donc pas au premier regard inconstitutionnelle, puis
11 la Cour a ensuite pris soin de souligner, et je la cite:

12 "...qu'une disposition législative
13 n'excède pas la compétence de la
14 province du seul fait qu'on y trouve le
15 mot 'autochtone'."

16 Alors c'est pas parce qu'une loi provinciale
17 parle d'Indiens, de Métis ou d'Autochtones qu'elle est
18 inconstitutionnelle.

19 La Cour a jugé que les dispositions en
20 litige constituaient pas une atteinte interdite, un
21 empiètement on dit en droit, parce qu'elles étaient
22 suffisamment intégrées à une loi d'application générale
23 valide et qu'elles n'imposaient pas un traitement
24 défavorable particulier aux Autochtones, garantissant au
25 contraire aux artéfacts culturels des autochtones une

1 protection dont ils ne bénéficiaient pas avant l'adoption
2 de la loi.

3 La Cour a jugé en effet que les dispositions
4 en litige faisaient partie d'un régime soigneusement
5 équilibré, qui établissait un juste équilibre entre la
6 nécessité de préserver l'intégrité du patrimoine autochtone
7 culturel, le patrimoine culturel autochtone et celui de
8 promouvoir l'exploitation des ressources naturelles de la
9 province.

10 Bref, ce que je veux montrer, c'est que la
11 caractère améliorateur, *ameliorated character*, du régime
12 législatif provincial a beaucoup joué dans la décision d'en
13 reconnaître la constitutionnalité. Si la loi avait
14 simplement eu comme objet de prévoir un traitement
15 particulier qui n'aurait pas eu comme finalité d'établir un
16 juste équilibre entre les intérêts des autochtones et ceux
17 de la population de la province, elle aurait fort
18 probablement été jugée inconstitutionnelle.

19 En somme, s'il est vrai que les peuples
20 autochtones relèvent de la compétence exclusive fédérale,
21 ça n'empêche pas, dans l'exercice de leurs compétences
22 exclusives, les provinces peuvent accessoirement adopter
23 des mesures législatives permettant non seulement de
24 limiter raisonnablement les droits reconnus par l'article
25 35, dans les limites permises dans le test de *Sparrows*,

1 mais également d'accommoder et d'adapter leur régime
2 législatif à la spécificité autochtone. Bref, si la loi
3 provinciale poursuit un objet améliorateur, il y a de
4 fortes chances pour qu'il soit jugé valide.

5 Je signale que cet assouplissement du
6 pouvoir des provinces de légiférer à l'égard des peuples
7 autochtones, c'est une source d'inquiétude pour les peuples
8 autochtones. Les peuples autochtones ont toujours vu d'un
9 œil très suspicieux les interventions législatives
10 provinciales; ils préfèrent négocier avec le fédéral. Leur
11 interlocuteur favori demeure le gouvernement fédéral.

12 Mais en revanche, il faut bien admettre que
13 si cet assouplissement n'avait pas eu lieu, c'est-à-dire
14 que si on n'avait pas reconnu un pouvoir aux provinces de
15 légiférer à l'égard des peuples autochtones, elles ne
16 seraient pas en mesure de mettre en œuvre la Déclaration.
17 Alors ça, c'est un élément important.

18 Et après ce long préambule, j'en arrive à la
19 question qui m'était posée [Rires] : est-ce que c'est mieux
20 d'avoir une loi générale, qui dit : « on introduit la
21 Déclaration en droit provincial ou fédéral » ou est-ce
22 qu'on est mieux d'avoir des lois spécifiques?

23 Alors... attendez, je ne veux pas me répéter.

24 **Me FANNY WYLDE:** De toute façon, Me Leclair,
25 avec la complexité du droit constitutionnel, si vous vous

1 répétez, c'est juste pour notre bénéfice! [Rires]

2 **ME JEAN LECLAIR** : Je vais me répéter juste
3 un petit peu, ça ne sera pas long!

4 **ME FANNY WYLDE** : Merci!

5 **ME JEAN LECLAIR** : Alors, il y a plusieurs
6 des articles de la Déclaration, je le répète, plusieurs
7 articles de la Déclaration qui portent sur des matières qui
8 relèvent des provinces. Je le répète : la santé,
9 l'éducation, les relations de travail, l'administration de
10 la justice, pour n'en nommer que quelques-unes et, bien
11 sûr, au premier chef, tout le domaine de l'exploitation des
12 ressources naturelles tiré du domaine public provincial.

13 Il ne fait donc aucun doute que les droits
14 reconnus par ces dispositions de la Déclaration pourraient
15 faire l'objet d'une loi, d'une incorporation au moyen de
16 mesures législatives appropriées, parce qu'elle relève de
17 la compétence des provinces.

18 Il va de soi, à l'inverse, que les provinces
19 n'auraient pas la compétence requise pour légiférer sur des
20 matières qui relèvent du gouvernement fédéral. Pensez par
21 exemple aux dispositions de la Déclaration qui touchent à
22 des matières militaires, la défense nationale ou du droit
23 criminel, par exemple, ou la citoyenneté ; ce sont des
24 choses que les provinces ne peuvent pas mettre en œuvre.

25 Bref, la mise en œuvre de l'entièreté de la

1 Déclaration requiert l'adoption de lois par les deux ordres
2 de gouvernements, à moins bien sûr qu'on modifie la
3 Constitution pour y intégrer, comme je l'ai dit, mais ce
4 n'est pas demain la veille.

5 Alors, est-ce qu'on doit procéder à une
6 incorporation ou comment on pourrait... prenons le Québec,
7 par exemple. Le Québec, je ne me gêne pas pour le dire, n'a
8 strictement rien fait sur cette question-là, même pas de
9 résolution parlementaire, rien du tout ; c'est un cancre
10 dans cette chose-là. Mais imaginons que le Québec décide
11 d'incorporer la Déclaration ; comment est-ce qu'il pourrait
12 faire? Soit il procéderait par une loi générale, je vais
13 donner un exemple, ou il procéderait par des lois
14 spécifiques.

15 Alors, examinons l'hypothèse d'une courte
16 loi visant l'incorporation en termes généraux de la
17 Déclaration. Vous voulez dire quelque chose, Maître?
18 D'accord. Imaginons une disposition fictive qui dirait
19 ceci : les droits reconnus au terme de la Déclaration et
20 qui relèvent de la compétence du Québec en vertu de
21 l'article 92 de la Constitution de 1867 ont force de loi au
22 Québec, point à la ligne. Est-ce qu'une loi comme celle-là
23 serait constitutionnelle ou inconstitutionnelle?

24 Il me semble que comme elle ne se rattache
25 pas directement à une loi provinciale dont le trait

1 dominant relève de la province, la constitutionnalité d'une
2 telle loi serait douteuse, parce qu'elle a pour trait
3 dominant les peuples autochtones du Canada. Ça ne vise que
4 les peuples autochtones, ce n'est pas une loi, par exemple,
5 sur la santé, qui vise à introduire une disposition de la
6 Déclaration.

7 J'ai tendance à croire qu'une loi formulée
8 comme ça serait probablement inconstitutionnelle. Mais bon,
9 je dis « peut-être » parce que toute réponse catégorique à
10 ce sujet-là est un peu...

11 **ME FANNY WYLDE** : Donc, selon vous, quelle
12 forme devrait épouser, quelle formulation cette loi-là
13 devrait épouser?

14 **ME JEAN LECLAIR** : Comme on va le voir, je
15 pense qu'il faudrait qu'elle soit intégrée à une loi... il
16 faudrait qu'on intègre... je vais juste continuer mon affaire
17 pour être sûr d'être logique et puis je vais y revenir.

18 Est-ce que je peux tout y répondre, parce
19 que c'est important? C'est que je pense qu'on ne peut pas
20 avoir une loi qui viserait exclusivement... qui serait isolée
21 de toutes les compétences provinciales. Je pense que dans
22 une loi qui porterait sur l'éducation, une loi qui
23 porterait sur la santé, une loi qui porterait sur les
24 évaluations environnementales, sur le développement de
25 l'hydroélectricité, une loi qui porterait... je ne sais pas,

1 moi, sur l'agriculture, la protection de la jeunesse - puis
2 la protection de la jeunesse, ça en est un bon exemple. On
3 a des exemples de ça à travers le Canada de lois
4 provinciales qui, accessoirement, portent, comme je l'ai
5 dit, dans une perspective amélioratrice, portent sur une
6 dimension autochtone.

7 Alors, dans ces lois-là, on pourrait
8 intégrer l'un des droits qui est reconnu. On pourrait
9 assurer la mise en œuvre du droit reconnu par la
10 Déclaration, par ce moyen-là. Le fédéral, lui, il a une
11 compétence directe sur les peuples autochtones; alors, il
12 peut adopter une loi comme celle-là, qui dit : on introduit
13 les droits reconnus au terme de la Déclaration et qui
14 relèvent du Parlement fédéral, ont force de loi.

15 Et d'ailleurs, en passant, c'est ce qu'on a
16 avec le projet C-262, dont je pourrais parler. C'est que je
17 pense que quand on regarde ce projet de loi, je le
18 rappelle, présenté par le député Roméo Saganash, qui est un
19 député Cri du Nouveau Parti démocratique - et en passant,
20 le titre complet du projet de loi s'appelle la *Loi visant à*
21 *assurer l'harmonie des lois fédérales avec la Déclaration*
22 *des Nations Unies sur les droits des peuples autochtones.*
23 C'est une loi qui est assez courte et qui comporte un long
24 préambule et six articles et je vais juste les examiner,
25 parce que l'article 3, je pense que... quand je disais, en

1 préambule, que je voulais juste qu'on évite de fonder, des
2 fois, trop d'espoir sur certaines choses, parce que ce
3 projet de loi a plein de vertus, mais je pense que
4 l'article 3, qui dit ceci :

5 « La Déclaration des Nations Unies sur les
6 droits des peuples autochtones, dont le texte
7 est reproduit à l'annexe, constitue un
8 instrument universel garantissant les droits
9 internationaux de la personne et trouvent
10 application au Canada. »

11 Alors, cette disposition-là, je pense qu'il
12 faut la prendre pour ce qu'elle est. C'est une disposition
13 qui encourage les tribunaux à interpréter les lois
14 fédérales, conformément aux valeurs de la Déclaration.

15 Mais il ne faudrait pas y voir une loi qui
16 permettrait de déclarer invalide une loi fédérale qui
17 contreviendrait à un article de la Déclaration. Pourquoi je
18 dis ça? Parce que d'une part, l'expression « y trouve
19 application au Canada », c'est vague, comme expression. Et
20 la loi ne comporte pas, comme on le voit parfois, un
21 mécanisme qui assure la prépondérance, qui assure la
22 primauté de, en l'occurrence, la déclaration. Je vous
23 donne un exemple.

24 Que ce soit la Charte québécoise ou la
25 Déclaration canadienne des droits et libertés de 1960, on

1 peut y lire une disposition qui dit à peu près ceci, qui
2 dit les lois qui sont incompatibles, par exemple, avec la
3 Charte québécoise, sont inopérantes à moins qu'elles ne
4 comportent... à moins qu'elles ne précisent s'appliquer
5 malgré la Charte québécoise.

6 Autrement dit, on a un mécanisme qui, dans
7 la loi, prévoit la suprématie de la Charte québécoise sur
8 les autres lois. Or ici on n'a pas rien de semblable dans
9 la loi fédérale actuelle et je doute que les tribunaux
10 canadiens lisent dans l'expression et trouve application au
11 Canada un mandat les autorisant à déclarer inopérantes les
12 dispositions de lois fédérales irréconciliables avec la
13 déclaration.

14 Ils vont sûrement y voir une clause
15 interprétative, c'est sûr, mais je pense pas qu'ils vont
16 jamais déclarer une loi fédérale invalide sur la base de
17 cette disposition-là.

18 Une telle clause est loin d'être inutile et
19 elle peut fort bien permettre d'infléchir l'interprétation
20 actuellement donnée aux lois fédérales affectant les
21 intérêts des Autochtones mais il faut pas exagérer son
22 impact potentiel. L'adoption d'une telle clause pourra
23 constituer une première étape, un encouragement à
24 interpréter les lois fédérales dans le respect des droits
25 reconnus aux termes de la déclaration.

1 Et de ce qui précède, il me semble qu'une
2 loi autre que simplement interprétative qui déclarerait
3 sans plus que les droits reconnus aux termes de la
4 déclaration et qui relèvent de la compétence du fédéral par
5 exemple ou des provinces ont force de loi, ben je pense pas
6 qu'une loi comme celle-là permettrait de réaliser les
7 espoirs qu'on fonde sur elle si on s'attend à ce qu'elle
8 autorise un juge à invalider une loi provinciale ou
9 fédérale qui contreviendrait à un droit reconnu à la
10 déclaration.

11 Pourquoi est-ce que les juges prendraient
12 pas ces mots-là? Pourquoi est-ce qu'ils diraient pas ils
13 trouvent application au Canada, ça me permet d'utiliser le
14 projet de loi de Monsieur Saganash pour déclarer telle loi
15 fédérale est invalide?

16 Pour comprendre ça, il faut comprendre qu'il
17 y a des raisons institutionnelles et qui font que, en
18 l'absence d'un... raisons institutionnelles j'entends par
19 là, je le dis tout de suite mais je vais le répéter, le
20 fait que les juges sont pas élus, le fait que les juges ont
21 une légitimité limitée, ils peuvent pas faire n'importe
22 quoi, d'accord.

23 Et donc en l'absence d'un mandat législatif
24 très clair, les juges vont hésiter à déclarer une loi
25 inopérante sous prétexte qu'elle est compatible avec une

1 autre loi. Vous savez, quand les tribunaux déclarent une
2 loi invalide aujourd'hui, c'est parce qu'elle contrevient à
3 la constitution.

4 Mais là ici on a affaire à une simple loi
5 fédérale qui incorpore la déclaration et là on demande est-
6 ce qu'avec une simple loi fédérale on peut déclarer
7 d'autres lois fédérales invalides? Donc c'est des lois qui
8 sont sur le même niveau au fond dans la hiérarchie du
9 droit.

10 Et pour vous donner un exemple de... oui, je
11 m'excuse, Madame la commissaire, je sais que c'est... mais
12 c'est que je veux vous expliquer que même dans
13 l'interprétation de l'article 35 de la constitution, les
14 juges ont pas été aussi généreux qu'on aurait pu l'espérer
15 et ça s'explique pour les raisons que je viens d'évoquer.

16 Je veux souligner que pour des raisons qui
17 tiennent à la fragilité des bases de légitimité de leurs
18 pouvoirs, les juges, même lorsqu'ils sont autorisés par un
19 texte constitutionnel, hésitent à donner une interprétation
20 qui ébranlerait les fondements de l'ordre politique
21 canadien.

22 Pleins d'espoirs ont été fondés sur
23 l'article 35. Je sais pas si vous vous souvenez mais on
24 espérait voir la Cour suprême y trouver le socle d'un droit
25 à l'autodétermination ou à quelque chose qui ressemblerait

1 à la souveraineté limitée reconnue aux nations autochtones
2 américaines par exemple.

3 Puis la Cour s'est plutôt repliée sur une
4 conception, je l'ai expliqué tout à l'heure, très
5 folklorisante des droits autochtones. Elle a dit au fond,
6 elle a limité ces droits-là à des activités, à des
7 pratiques culturelles intimement liées au mode de vie des
8 Autochtones avant le contact avec les Européens. C'est
9 hyper sclérosant ça. C'est comme si de dire que l'identité
10 autochtone a arrêté d'évoluer au moment du contact avec les
11 Européens.

12 Et puis elle a aussi reconnu, oui, je le
13 reconnais, des droits plus ambitieux aux territoires comme
14 le titre aborigène mais c'est d'une complexité et d'un coût
15 incroyable à prouver.

16 Alors pourquoi est-ce que la Cour a adopté
17 une approche culturaliste qui fait reposer sur les peuples
18 autochtones le fardeau de prouver qu'ils occupaient le
19 territoire avant nous? C'est eux qui doivent prouver
20 qu'ils étaient là. C'est ça la doctrine des droits
21 ancestraux.

22 Il fait aucun doute que ça tient au fait que
23 les juges ont pas estimé avoir la légitimité requise pour
24 reconnaître une souveraineté politique limitée aux peuples
25 autochtones du Canada. Je pense qu'ils vont venir à ça.

1 Ils vont en venir à ça mais il y a encore des... il faut
2 qu'il y ait des choses qui se passent politiquement avant
3 qu'ils en arrivent à ça.

4 Puis même s'ils interprétaient un texte
5 constitutionnel et non une simple loi, ils ont jugé ne pas
6 être en droit de reconnaître d'un coup de baguette magique
7 judiciaire un troisième ordre de gouvernement parce que ce
8 troisième ordre de gouvernement, si on connote ça à une
9 autonomie politique, il serait exercé par qui? Par les 630
10 bandes, Premières nations? Par les 60 à 80 nations
11 identifiées par la Commission royale de Dussault et
12 Erasmus? Qu'est-ce qui arriverait des Métis? Qui
13 exercerait cette autonomie-là pour les Métis?

14 Ce qui fait que reconnaître judiciairement
15 des droits politiques par opposition à des droits
16 simplement culturels, c'est ça que la Cour fait, aurait
17 constitué une modification majeure de l'ordre politique
18 canadien. Et au fond, c'est aux politiciens à entreprendre
19 une telle démarche. C'est ça que la Cour envoie comme
20 message.

21 Et si les juges ont pas voulu voir dans
22 l'article 35 de notre constitution, la loi fondamentale du
23 pays, un tremplin pour assurer la reconnaissance de droits
24 de nature politique aux peuples autochtones, ben tout ce
25 que je dis c'est qu'il faut se garder de penser qu'une

1 simple loi fédérale incorporant la déclaration va les
2 amener à le faire, ce qui veut pas dire, et je vais
3 l'inciter là-dessus, que ce projet de loi-là a pas son
4 utilité. Absolument pas, au contraire. Il faut voir les
5 choses en termes de cheminement.

6 Puis pour vraiment amener les juges à
7 changer leur approche, les politiciens doivent agir et
8 adopter, comme je le disais tout à l'heure, explicitement
9 de manière claire et précise des lois donnant un contenu
10 concret aux dispositions de la déclaration.

11 Les tribunaux vont aller plus loin
12 uniquement si leur mandat est clair. Une loi générale
13 incorporant en bloc la déclaration, sans plus, ne sera
14 jamais considérée être de cette nature-là, selon moi, selon
15 mon expérience. On y verra simplement une loi
16 d'interprétation. L'adoption d'une telle loi peut
17 constituer une première étape mais en soi, elle comporte
18 des limites.

19 Si on veut vraiment mettre en œuvre la
20 déclaration en droit interne provincial ou fédéral, puis là
21 je vais me concentrer ici sur les provinces, il faudrait
22 donc selon moi, je l'ai dit tout à l'heure, intégrer les
23 droits qui y sont énoncés dans des lois provinciales
24 d'application générale portant sur des secteurs précis
25 comme l'éducation, la langue, la santé, l'administration de

1 la justice, les ressources naturelles, et cetera.

2 Les dispositions de la déclaration pourront
3 alors être intégrées efficacement à un régime législatif
4 précis. Elles pourraient l'être avec le concours des
5 peuples autochtones qui seraient consultés sur des
6 questions précises. Leurs initiatives pourraient être
7 mobilisées. Je reviens à mon exemple des Attikameks. De
8 telles dispositions précises et bien intégrées aux lois
9 auront plus de chance d'accomplir leur mission qu'une
10 incorporation générale et désincarnée de la déclaration en
11 droits internes.

12 Confrontés à des dispositions précises, les
13 juges n'hésiteront plus à les mettre en œuvre. Puisque ces
14 normes vont bénéficier de la légitimité démocratique
15 découlant de leur approbation par l'assemblée législative
16 provinciale, si je pense au Québec ou aux provinces, et de
17 la participation des peuples autochtones à leur
18 élaboration, ben là les juges auront plus de scrupule à
19 appliquer les lois.

20 En outre, comme je l'ai dit plus haut, les
21 dispositions relatives aux peuples autochtones dans de
22 telles lois provinciales seront greffées à des lois dont le
23 trait dominant, éducation, langue, et cetera, relèvera
24 indubitablement de la compétence des provinces. Elles
25 seront donc jugées constitutionnelles.

1 Est-ce que je suis après dire... parce que
2 je veux absolument pas laissé cette impression-là... est-ce
3 que je suis après dire que le projet de loi que Monsieur
4 Saganash défend avec une incroyable intégrité, lui qui a
5 passé des années à l'ONU à défendre la déclaration, est-ce
6 que je dis que ç'a peu de chance de changer les choses
7 parce que ça procède à une incorporation générale plutôt
8 que spécifique, absolument pas. Ce serait outrancier, ce
9 serait disgracieux de ma part de dire ça.

10 Mais ce que je dis c'est que je ne minimise
11 pas l'impact politique majeur de son adoption, mais je
12 pense qu'il faut voir l'article 3 pour ce qu'il est, une
13 disposition qui vise à encourager une interprétation des
14 lois fédérales qui soient en harmonie avec les principes de
15 la déclaration et non un mécanisme permettant un contrôle
16 judiciaire des lois.

17 Et surtout, je pense que la grande force de
18 ce projet de loi se trouve dans ces autres articles. En
19 effet, les articles 5 et 6 du projet de loi prévoient la
20 mise en place d'un mécanisme de mise en œuvre de la
21 déclaration qui appelle la collaboration des peuples
22 autochtones.

23 Alors l'article 5 dit ceci :

24 « Le Gouvernement du Canada, en
25 collaboration et en coopération avec

1 influenced federal law policy and
2 practice for far too long. It would
3 require the government to get on with
4 the work of respecting the human rights
5 of indigenous peoples, develop a
6 national action plan with indigenous
7 peoples and report annually on
8 progress. »

9 Bref, parce que j'en arriverai à ma
10 conclusion...

11 **Me FANNY WYLDE:** Donc, vous en concluez?

12 **Me JEAN LECLAIR:** Donc, ce que je dirais
13 c'est que le parlement fédéral est constitutionnellement
14 autorisé à mettre en œuvre la déclaration dans ses champs
15 de compétences. Il en va de même des provinces, dans leurs
16 secteurs de compétences. Mais pour que cette incorporation
17 aille au-delà d'une injonction à ce que le droit fédéral ou
18 provincial soit interprété en harmonie avec la déclaration,
19 il est préférable de procéder à la pièce en consultation
20 avec les peuples autochtones plutôt qu'au moyen d'une loi
21 générale que les tribunaux hésiterons à mettre en œuvre.

22 Une telle loi a certainement son utilité
23 politique si elle inclut la mise en place, comme le fait le
24 projet de loi, d'un plan d'action provincial ou national de
25 mise en œuvre de la déclaration.

1 En somme, il faut voir les choses dans la
2 perspective d'un cheminement. Une loi provinciale ou
3 fédérale encourageant les tribunaux à interpréter les lois
4 dans le respect de la déclaration serait un premier pas
5 important mais qui devrait être suivi d'adoptions plus
6 spécifiques. Il ne faut pas en rester à la première étape,
7 sinon les politiciens pourraient s'en servir pour se
8 dédouaner de leur devoir de mettre véritablement en œuvre
9 la déclaration.

10 **Me FANNY WYLDE:** Maître Leclair,
11 maintenant... merci de votre exposé.

12 Je vous inviterais... j'aimerais que vous
13 partagiez avec le Commissaire en chef et les Commissaires
14 quels seraient les avantages et les désavantages à lier la
15 déclaration au moyen de loi?

16 **Me JEAN LECLAIR:** C'est sûr que l'avantage,
17 comme on l'a vu, c'est que si on a juste une reconnaissance
18 politique, c'est puissant. On peut s'en servir comme
19 levier politique. On ne peut pas se présenter devant un
20 tribunal pour assurer la mise en œuvre.

21 Alors qu'un loi, ça permet quand même de
22 forcer la main au gouvernement en se présentant devant les
23 tribunaux.

24 Et l'inconvénient, et je conclurai là-
25 dessus, c'est qu'à mon sens, il va quand même y avoir

1 quelque chose de perdu quand la déclaration va être
2 incorporée en droit interne fédéral et provincial, parce
3 qu'actuellement les peuples autochtones peuvent mobiliser
4 la déclaration comme ils l'entendent dans le débat public.
5 Ils peuvent tenter de faire prévaloir leur interprétation,
6 mais à partir du moment où la déclaration sera incorporée
7 en droit interne, ce seront les tribunaux canadiens qui
8 auront le dernier mot sur la portée de celle-ci et
9 l'interprétation qu'ils vont donner à la déclaration sera
10 peut-être pas en harmonie avec les espoirs des autochtones,
11 mais c'est un risque à courir parce qu'il faut prendre des
12 risques. Mais je pense que c'est un risque qui mérite
13 d'être pris, si on le voit comme une première étape.

14 Mais par exemple, les Cris... comme je suis
15 du Québec, je connais mieux la situation au Québec... mais
16 les Cris ont été tellement habiles au chapitre
17 international dans leur utilisation du droit international,
18 dans leur *shaming practices* de l'état canadien.

19 Et la déclaration, quand je dis que les
20 autochtones peuvent se l'approprier, c'est aussi pour en
21 faire un *shaming mechanism* qui est très puissant.

22 C'est pour ça que je persiste à croire qu'il
23 est important pour les peuples autochtones de s'approprier
24 la déclaration pour en faire eux-mêmes quelque chose.

25 Puis je conclurais en disant que ce qui

1 importe le plus à la réconciliation c'est, il me semble, le
2 développement et le maintien d'un esprit de fraternité. Et
3 il faut, pour que le droit en arrive à traduire cet esprit
4 de fraternité, s'inspirer des traditions juridiques
5 autochtones.

6 En droit autochtone, le droit est envisagé
7 dans une perspective relationnelle qui exclut le tout ou
8 rien, qui reconnaît que les choses se transforment dans le
9 temps, qui admet que le droit n'est pas un point final mais
10 un jalon sur un chemin, que l'on le veuille ou non, on est
11 jamais seul.

12 La déclaration est donc un jalon important,
13 mais ce n'est pas le dernier sur le chemin de la
14 réconciliation.

15 Merci beaucoup de votre attention.

16 **Me FANNY WYLDE:** Merci beaucoup, Maître
17 Leclair. Je n'ai pas d'autres questions.

18 J'inviterais maintenant la Commissaire en
19 chef et les Commissaires, si elles ont des questions à
20 poser, de procéder à celles-ci.

21 **CHIEF COMMISSIONER MARION BULLER:** I'm going
22 to defer my questions to after cross-examination.

23 **QUESTIONS BY/QUESTIONS PAR COMMISSIONER QAJAQ ROBINSON :**

24 **COMMISSIONER QAJAQ ROBINSON:** Merci. I'm
25 hoping you can expand on what you shared with us when it

1 comes to the domestic implementation of the U.N., of UNDRIP
2 to the territories, more specifically. Under the division
3 of powers, you were speaking about the federal government
4 and the provinces. Nunavut, Northwest Territories and the
5 Yukon are largely Indigenous populations. The
6 implementation and adherence to the principles of the U.N.
7 Declaration will have real impacts on that population, as
8 it does across the country.

9 How do you see this playing out within the
10 territories when they are, in effect, although there is
11 some devolution of power and some of them are becoming more
12 province-like, in a legal sense still creatures of federal
13 legislation? Do you see the same legislative development
14 as being necessary for the territories as well?

15 **MR. JEAN LECLAIR:** That's a tough one. I'd
16 say what makes it even more complicated is that most of the
17 northern territories are covered by treaties, northern
18 treaties. And so, it is going to be interesting to see how
19 the implementation of the Declaration plays out in view of
20 the constitutional rights enshrined in these modern
21 treaties.

22 But, to come back to your question, maybe
23 it's not a convincing answer, but the situation is
24 different from one territory to the other. But, in
25 Nunavut, where you have a majority of Inuit, I think that

1 simply by the exercise of their political power, they can
2 introduce, having the majority, the principles or the
3 rights recognized under the Declaration in Nunavut
4 legislation.

5 But then again, they'll have to determine
6 how Nunavut legislation, if it implements the declaration,
7 fits in with the Inuit rights under the treaties, as for
8 other territories where you don't have a majority of
9 Indigenous peoples. And I think Nunavut is -- I don't
10 think they have yet, but when I last look at this, they
11 were very enthusiastic about the signing of the UN
12 Declaration and they were planning to integrate it in their
13 own legal order, but I haven't heard of anything yet as to
14 how they're going to do it.

15 Coming back to territories where you don't
16 have the -- the Indigenous peoples don't have the political
17 clout to exercise pressure to introduce a declaration, well
18 then you -- what will the Northwest Territory legislature,
19 what will Yukon legislature do? And in Yukon you have
20 many, many modern treaties also. So, honestly, I'd have to
21 think about it. But the fact that it's devoluted power
22 will not, I think, exercise any break on the possibility of
23 the local legislatures who implement in their areas of
24 jurisdiction the principle of the declaration. I don't
25 think that the dynamic will be different.

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1 I think that politically, because of a
2 greater presence of Indigenous peoples, they might play the
3 role of forerunners of how this could actually change
4 something into general legislation. That's the best I can
5 offer.

6 **COMMISSIONER QAJAQ ROBINSON:** Okay. So in
7 essence, I mean, the reality is it will depend on political
8 will in every province ---

9 **MR. JEAN LECLAIR:** I think so.

10 **COMMISSIONER QAJAQ ROBINSON:** --- and
11 federal government, also the territories.

12 **MR. JEAN LECLAIR:** Yeah.

13 **COMMISSIONER QAJAQ ROBINSON:** Okay.

14 **MR. JEAN LECLAIR:** But, you know, if I may?

15 **COMMISSIONER QAJAQ ROBINSON:** Yeah.

16 **MR. JEAN LECLAIR:** Law does not produce
17 social reality.

18 **COMMISSIONER QAJAQ ROBINSON:** M'hm.

19 **MR. JEAN LECLAIR:** So it can be a brick in
20 the wall, but -- and it has to be mobilised politically.
21 And I think the declaration is a humongously powerful tool
22 in that fashion because it's the only international legal
23 document written in great part by the Indigenous peoples
24 themselves. And so this carries a lot of weight.

25 And we were talking about education, and I'm

1 a great believer in education, and I think that we have to
2 remind people of the importance of this declaration, of the
3 need to implement it. It will not produce social reality
4 on its own, but it's a great tool and we should not
5 diminish its importance, because symbolically it's highly
6 important for Indigenous peoples and it would be a shame to
7 diminish its value, its symbolic value because that's very
8 normative too. These symbols are very powerful and they
9 can bring change.

10 **COMMISSIONER QAJAQ ROBINSON:** One final
11 question and it's just so that I understand I suppose why
12 we're not having the discussion. Other than building the
13 UN Declaration into the Constitution, to give it that
14 supremacy, the reason why we're not doing that is because
15 there isn't the political will to open it up; is that
16 correct?

17 **MR. JEAN LECLAIR:** Yeah. But ---

18 **COMMISSIONER QAJAQ ROBINSON:** Do you see its
19 value though? Like if there was the political will, would
20 it be the most ideal way?

21 **MR. JEAN LECLAIR:** I like the way Indigenous
22 peoples envisage law in terms of relationship. And I think
23 that the language of rights is not always very helpful to
24 create relationships.

25 And so on the first -- on one side I'd say

1 yes. I think UNDRP is a great tool because it's expressed
2 in terms of rights, a language that non-Indigenous people
3 understand.

4 **COMMISSIONER QAJAQ ROBINSON:** And courts
5 enforce.

6 **MR. JEAN LECLAIR:** And courts enforce. So,
7 on the one hand I would agree with you. What I find
8 disappointing about the language of rights is that creates
9 a tendency for people to essentialize their identities to
10 make a point, and essentializing their identities in a way
11 that sometimes can be unhelpful because it reifies the
12 complexity of who they are, and the relationships that they
13 entertain with a lot of people around them, and their
14 individual complexities, which makes them human.

15 And so on the one hand I'd say the rights
16 discourse is very powerful, but we should not invest -- put
17 all our eggs in that basket. We also have to try and
18 resort to political solutions in terms of federalism. I
19 think, in a sense, federalism is the ability, as one says,
20 to have your cake and eat it. It's a mixture of autonomy,
21 but also a recognition that your autonomy depends on your
22 willingness to relate to others and that in some fashion
23 you also partake of greater things with others.

24 And so this calls for very subtle
25 negotiations and we have to put faith in our leaders that

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1 they can -- but also, I'm thinking of the -- of all sorts
2 of fascinating thing happening in Indigenous civil society.
3 The Idle No More movement led by women in urban areas.
4 That's wonderful. That's a new voice. It's no longer just
5 the -- it creates greater complexity. But then that's the
6 world we live in and it's -- provides greater richness to
7 the discourse too.

8 I'm not a big fan of my own discipline, by
9 the way. I think it complicates matters often, but it's a
10 useful tool.

11 **COMMISSIONER QAJAQ ROBINSON:** I have more
12 questions but I'm going to reserve the rest of them until
13 after cross-examination when all of us can talk.

14 Thank you. Merci.

15 **COMMISSIONER EYOLFSON:** Thank you. I'll
16 defer as well until after the cross-examination.

17 **QUESTIONS BY/QUESTIONS PAR COMMISSIONER MICHÈLE AUDETTE :**

18 **COMMISSIONER MICHÈLE AUDETTE:** Pas moi. Je
19 vais poser quelques questions, évidemment, mais je vais
20 revenir demain et j'ai beaucoup de difficulté à dire *cross-*
21 *examination* en français.

22 **ME JEAN LECLAIR:** C'est contre-
23 interrogatoire.

24 **COMMISSIONER MICHÈLE AUDETTE:** Je sais, mais
25 je ne veux même pas le dire, parce que je ne suis pas

1 contre du tout.

2 **ME JEAN LECLAIR:** Okay!

3 **COMMISSIONER MICHÈLE AUDETTE:** Non, c'est
4 aussi pour faire un clin d'œil... oui, contre-interrogatoire,
5 c'est comme : « *I am against!* », mais faire un clin d'œil à
6 la représentante de ONWA, de Ontario Native Women
7 Association où l'Enquête nationale a aussi un grand respect
8 sur la diversité des protocoles à travers le Canada. Il y a
9 eu un bel enseignement, hier, en disant : « Moi, je ne vois
10 pas ça comme étant un contre-interrogatoire.. » oh, je l'ai
11 eu, mais comme étant un partage de savoir et d'histoires,
12 comme on a toujours eu avec la tradition orale. Alors, j'ai
13 bien aimé.

14 Tout d'abord, un gros merci. Pour moi, ça a
15 été toute une aventure, toute une belle expérience et j'ai
16 beaucoup d'admiration pour mes collègues ici qui ont cette
17 connaissance-là au niveau du droit ; le droit a plusieurs
18 facettes, évidemment. Mais je suis très à l'aise de dire
19 aussi que le bagage ou l'expérience que j'ai depuis les 20
20 dernières années m'amène peut-être à poser ces questions-
21 là.

22 Vous avez mentionné qu'il y avait peut-être
23 trois façons : reconnaissance politique, mesures
24 législatives et la troisième serait quoi?

25 **ME JEAN LECLAIR:** Dépenser de l'argent.

1 **COMMISSIONER MICHÈLE AUDETTE:** C'est ça,
2 hein! Okay! [Rires] Et s'approprier la Déclaration? Bon,
3 parfait. Dans la reconnaissance politique, je comprends
4 qu'une motion à l'Assemblée nationale -on va parler pour le
5 Québec -ou une motion à la Chambre des communes au niveau
6 fédéral, à Ottawa, peut avoir, oui, un impact ou une portée
7 politique intéressante pour les groupes de pression.
8 Cependant, je vous dirais, avec les 20 ans d'expérience
9 dans ce domaine-là, on voit que c'est... je ne sais pas si
10 vous êtes d'accord ou peut-être que vous pouvez m'expliquer
11 un peu plus, elles ont une durée de vie le temps du parti
12 politique au pouvoir.

13 **ME JEAN LECLAIR:** Non, parce que prenez la
14 résolution qui avait été adoptée par Harper pour
15 reconnaître la nation du Québec à l'intérieur du Canada. Ça
16 demeure une résolution qui va demeurer tant qu'on ne la
17 retire pas, tant qu'on ne l'annule pas. Sauf que sa portée,
18 simplement, elle est de nature plus politique qu'autre
19 chose. Alors, c'est sûr que si on l'oublie [Rires], sa
20 portée disparaît, alors qu'une loi, tant qu'elle n'est pas
21 abrogée, elle peut être invoquée et présentée devant un
22 tribunal. Et même si on l'oublie, si j'arrive avec ma loi,
23 j'ai encore... tant qu'on ne l'a pas abrogée, ma loi demeure
24 pertinente.

25 **COMMISSAIRE MICHÈLE AUDETTE :** Une loi... je

1 vais revenir avec ça tout à l'heure, pour les mesures
2 législatives. Pour revenir encore avec la reconnaissance
3 politique, on va avoir vu, lu et entendu des assemblées
4 législatives lire leurs motions, en chambre, il y a des
5 débats et des fois, elles sont adoptées à l'unanimité. Je
6 me souviens que l'Assemblée nationale, ici, en 2010, avait
7 adopté une motion pour appuyer une initiative qui
8 s'appelait la Marche Amun et la Marche Amun dénonçait la
9 discrimination découlant de la *Loi sur les Indiens* à
10 l'égard des femmes et des enfants. Et pour faire suite à un
11 projet de loi, C-3, qui est aujourd'hui connu sous le nom
12 de l'arrêt McGiver (phon.).

13 Et là, à l'unanimité, on a des politiciens
14 de tous les partis qui disent : il y a une discrimination
15 qui découle de la loi. Alors, pour les gens qui ne sont pas
16 en droit, comme moi ou comme d'autres gens, on a
17 l'impression que quand il y a une reconnaissance politique,
18 et surtout unanime, qu'il va y avoir, dans les actions
19 gouvernementales des répercussions intéressantes.

20 C'est là où je me demande : est-ce que c'est
21 si important d'aller vers des reconnaissances politiques,
22 quand on voit qu'il n'y a pas de répercussion dans les
23 politiques gouvernementales? À moins que vous n'ayez des
24 exemples?

25 **ME JEAN LECLAIR** : Non, mais écoutez, ce que

1 je dirais, c'est que je pense qu'il y a une demande de
2 reconnaissance publique par les autochtones ou par d'autres
3 groupes, dans d'autres situations. Je pense que la
4 résolution, si elle est sincère, elle pourrait avoir un
5 effet important.

6 Mais il n'en reste pas moins que c'est un
7 instrument politique. Vous savez, plus la norme est
8 importante, plus on va l'élever dans la hiérarchie des
9 normes. Par exemple, on a une résolution ; c'est un
10 instrument politique. On a un règlement municipal ; le
11 règlement est sous la loi.

12 Quand on trouve ça vraiment important, quand
13 on estime qu'une norme devient, au fond, le symbole de ce
14 qu'une communauté politique estime important, ça devient la
15 Constitution. Et c'est pour ça que c'est à la fois très
16 difficile de mettre une norme dans la Constitution et très
17 difficile de la modifier, parce qu'on modifie la communauté
18 politique. Alors, selon la norme que l'on choisit, ça
19 témoigne de l'importance qu'on accorde à l'enjeu.

20 Et je répondrais que vous avez raison de
21 dire qu'il faudrait dire au gouvernement qu'il adopte des
22 résolutions ; oui, mais encore?

23 **COMMISSAIRE MICHÈLE AUDETTE** : Merci. Et pour
24 ce qui est, avant d'arriver encore à des mesures
25 législatives, on voit, à travers le Canada, par la lecture

1 des documents qu'on reçoit et les rapports qu'on a analysés
2 et qu'on continue d'analyser, qu'il y a eu des initiatives
3 qui ne sont pas nécessairement attachées à des lois.

4 Et je vais vous donner un exemple avec
5 lequel je suis très à l'aise, au Québec : en 2004-2007,
6 premier plan d'action gouvernemental pour lutter contre la
7 violence faite aux femmes autochtones, un plan d'action au
8 Québec, où on mobilise plusieurs ministères avec des
9 mesures concrètes. C'est un plan d'action et, pouf, après
10 quatre ans, le plan d'action n'existe plus.

11 Donc, pensez-vous que lorsqu'un gouvernement
12 adopte, par l'influence d'une motion politique ou une
13 reconnaissance politique, un plan d'action, que ça devrait
14 être aussi attaché à une mesure législative pour que ça
15 reste dans la culture du gouvernement?

16 **ME JEAN LECLAIR** : Ça peut être très
17 compliqué, la question que vous posez.

18 **COMMISSAIRE MICHÈLE AUDETTE** : Mais vous êtes
19 expert!

20 **ME JEAN LECLAIR** : C'est parce que des fois,
21 les gouvernements ne peuvent pas adopter des lois dans
22 certains secteurs, mais ils peuvent dépenser de l'argent
23 dans le secteur.

24 Alors, pensons au pouvoir fédéral de
25 dépenser ; le fédéral ne peut pas adopter des lois sur les

1 universités, mais il dépense beaucoup d'argent, d'accord?
2 Et il se sert de son argent pour faire ce qu'il ne peut pas
3 faire avec une loi.

4 Alors, je ne connais pas en détail le
5 programme dont vous me parlez, mais le programme dont vous
6 me parlez, s'il vise essentiellement la violence faite aux
7 femmes autochtones, peut-être que le Québec craignait
8 qu'une loi sur cette question-là soit déclarée
9 inconstitutionnelle? Mais il n'y a rien qui ne l'empêche de
10 dépenser son argent dans un secteur qui relève des
11 compétences fédérales.

12 Mais la question beaucoup plus complexe que
13 vous posez, c'est : est-ce qu'un gouvernement, une fois
14 qu'il a commencé à dépenser, peut cesser de dépenser?
15 Malheureusement, la réponse est oui. Et la Cour suprême l'a
16 bien dit, par exemple, quand un moment donné, dans les
17 années 1990, c'était la récession et la Colombie-
18 Britannique recevait des sommes d'argent au terme du
19 pouvoir de dépenser fédéral. Et, tout à coup, le fédéral a
20 adopté une loi et il a dit : dorénavant, la Colombie-
21 Britannique, elle est assez riche, elle ne recevra plus
22 l'argent. La Colombie-Britannique est allée jusqu'en Cour
23 suprême, mais le gouvernement a dit : le Parlement est
24 souverain, il peut adopter une loi puis changer les choses
25 puis ce n'est pas parce qu'il a un contrat avec la province

1 que ça change les choses.

2 Alors, pour reprendre votre problème, c'est
3 un peu le drame, ça; c'est que si on se met à dépenser de
4 l'argent, les gens s'attendent à des choses et ça a un
5 impact normatif, ça change le comportement et puis on cesse
6 de financer. Et ça, c'est un gros problème. Puis un
7 problème que vous connaissez certainement mieux que moi,
8 c'est que les deux gouvernements peuvent jouer, des fois ;
9 on le sait avec le *Jordan principe*. C'est qu'ils disent :
10 « Ah non, moi, je n'ai pas à financer ça, c'est de la
11 compétence de l'autre. » Puis l'autre dit : « Non non,
12 c'est de la compétence de l'autre » puis les autochtones
13 tombent juste dans le milieu. Ça, c'est aussi une autre
14 difficulté du système qu'on a.

15 **COMMISSAIRE MICHÈLE AUDETTE** : Oui, en effet.
16 Juste pour vous dire que les femmes et les hommes qu'on a
17 entendus lors des audiences communautaires, partout à
18 travers les territoires qu'on a traversés et caressés, je
19 dirais qu'il y a quelque chose, a *trend*, comme ils disent,
20 qui revient toujours, c'est des mesures qui doivent se
21 faire dans l'immédiat, mais pas à court terme ; ça ne
22 fonctionne plus, c'est du long terme.

23 Alors, quand on dit que le gouvernement...
24 votre recommandation, que le gouvernement devrait dépenser,
25 mes mots seraient d'investir pour les femmes et les filles

1 autochtones, je sens qu'il faut que ça soit à long terme.

2 **ME JEAN LECLAIR** : Comme la protection de
3 l'environnement, d'ailleurs. C'est le problème des mandats
4 électoraux très courts.

5 **COMMISSAIRE MICHÈLE AUDETTE** : Vous avez le
6 droit de le dire, vous!

7 (RIRES/LAUGHTER)

8 Alors, pour terminer, je vous dirais, un
9 autre aspect, dans votre présentation, où les Premières
10 Nations, les peuples autochtones, pardon, doivent
11 s'approprier la Déclaration. Je trouve ça très intéressant
12 et c'était l'une de mes questions, jusqu'à ce que vous
13 ajoutiez, parce que j'avais une préoccupation : il faut de
14 l'argent pour ça. Il faut des sous ; je suis d'accord avec
15 vous. Il faut... pour faire en sorte que nos nations puissent
16 justement... elles ont aussi une volonté politique, je veux
17 juste... Peut-être que vous le savez : l'Assemblée des chefs,
18 ici, en 2015, avait adopté une déclaration sur les droits
19 des enfants, ici, au Québec, des Premières Nations. Et tout
20 récemment, en février 2017, l'Assemblée des chefs a aussi
21 un réseau de femmes élues, donc on parle de la Table des
22 femmes élues, qui avaient une déclaration pour la
23 protection et la sécurité au niveau de la tolérance zéro
24 auprès des femmes victimes de violence et, évidemment, les
25 enfants.

1 Ce sont des vœux politiques, mais en
2 réalité, dans les communautés, de s'approprier une
3 déclaration, de se faire un plan d'action, de mettre en
4 place des mesures, s'il n'y a pas de volonté politique au
5 fédéral et qu'il n'y a pas d'argent qui en découle,
6 l'investissement dont vous parlez... je pense que ça va être
7 difficile?

8 **ME JEAN LECLAIR** : Oui. Et je pense que... et
9 je sais que je m'aventure un peu, mais là aussi, il va y
10 avoir une responsabilité des gouvernements autochtones eux-
11 mêmes. Par exemple, il y a peut-être des économies
12 d'échelle à faire, il y a peut-être moyen de s'assurer que
13 sur certaines questions, les bandes puissent créer des
14 institutions politiques qui se fédèrent un peu.

15 En fait, c'est ce que la Commission
16 Dussault/Erasmus expliquait. C'est qu'à un moment donné il
17 y a certains services qui, si on veut qu'ils soient offerts
18 par des gouvernements autochtones, il va falloir qu'il y
19 ait des fédérations autochtones où on délègue du pouvoir à
20 des institutions plus englobantes.

21 Puis aussi, ça pose la difficulté de savoir
22 est-ce que c'est toujours les chefs des premières nations
23 qui sont les mieux placés pour s'occuper de certains
24 problèmes. Par exemple, je pense à l'itinérance en milieu
25 urbain. Est-ce qu'il n'y a pas d'autres institutions

1 autochtones en milieu urbain qui devraient, elle, être
2 financées? Parce que là je sais que je m'aventure sur un
3 sentier.

4 Tout ce que je veux dire par là c'est que
5 c'est l'occasion pour tout le monde, pour tous les acteurs
6 intéressés, je pense, de réfléchir à la meilleure façon
7 d'intervenir.

8 Mais je tombe pas dans le panneau ici de
9 penser que tous les autochtones sont unanimes et puis qu'ils
10 s'aiment les uns, les autres. Je sais fort bien qu'il y a
11 des dissensions. C'est normal. Toutes les communautés
12 humaines sont comme ça.

13 Mais je pense qu'à un moment donné... je
14 prends l'exemple des Cris qui sont restés unis, ça les a
15 aidés. Et donc je parle en termes de *real politics*. Si on
16 est uni, c'est souvent plus efficace.

17 **COMMISSAIRE MICHÈLE AUDETTE:** Oui. Une
18 petite parenthèse, cinq enfants à la maison, c'est rare que
19 j'ai le consensus, juste cinq... imaginez ma communauté.

20 Pour terminer, pouvez-vous me dire ce que
21 vous vouliez dire par « Law doesn't produce social
22 reality » ? Est-ce que c'est ce que vous avez dit?

23 **Me JEAN LECLAIR:** Oui. Ce que je veux dire
24 c'est que souvent les juristes arrivent et puis ils disent,
25 « Bon, on va adopter telles normes. Ça va tout régler. »

1 Mais je suis désolé. On peut... une norme va fonctionner
2 dans la mesure où elle est... vous le savez, vous, il y a
3 plein de communautés autochtones qui n'appliquent pas la
4 *Loi sur les Indiens* parce qu'ils lui la confèrent aucune
5 légitimité. On a beau avoir la loi; il ne la mettent pas
6 en œuvre. Ils ne distribuent pas les certificats de
7 possession et puis tout ça. Ils créent leurs propres
8 systèmes en marge de l'état parce que leur norme est la
9 légitimité.

10 Et donc c'est pas parce que j'arrive avec la
11 plus belle norme du monde qu'elle va se traduire dans la
12 réalité par des changements. Ça fait partie de la
13 dynamique.

14 Mais le droit a une dimension, comme on le
15 dit en anglais *aspirational*. Ça vise à... c'est un idéal
16 qu'on poursuit, mais il faut travailler à sa mise en œuvre
17 par toutes sortes de moyens, par de l'argent, par de
18 l'éducation.

19 Mais en soi, vous le savez, le Canada a
20 adopté plein de lois pour régler les problèmes des
21 autochtones. Ça n'a pas fonctionné. Ça n'a pas produit la
22 réalité sociale qu'on voulait.

23 **COMMISSAIRE MICHÈLE AUDETTE:** Je comprends
24 maintenant. J'étais quasiment pas d'accord, mais là je
25 comprends.

1 Un gros, gros merci et surement à demain
2 encore.

3 Thank you, Chief Commissioner.

4 **Me FANNY WYLDE:** Merci.

5 Commissaire en chef, Commissaires, je
6 propose d'ajourner la session et de prendre une pause de 15
7 minutes?

8 Merci.

9 **MS. CHRISTA BIG CANOE:** Yes, please.

10 **CHIEF COMMISSIONER MARION BULLER:** Okay, 15.

11 --- Upon recessing at 3:33 p.m./

12 l'audience est suspendue à 15h33

13 --- Upon resuming at 3:58 p.m./

14 l'audience est reprise à 15h58

15 **MS. CHRISTA BIG CANOE:** Chief Commissioner,
16 Commissioners, we'd like to recommence.

17 Commission counsel, Violet Ford, will be
18 calling our next witness, but I did just want to touch on a
19 couple of housekeeping issues. Knowing that it's now
20 almost 4:00, and given the anticipated evidence of our next
21 witness, as well as potential questions from the
22 Commissioners, and at the request of a number of the
23 parties with standing, we're going to ask that we do no
24 cross-examination this afternoon. So that moving forward,
25 we know that we'll hear the full testimony of our next

1 witness.

2 And with that, I would ask Commission
3 counsel, Violet Ford, to call our next witness.

4 **MS. VIOLET FORD:** Thank you.

5 Good afternoon, Commissioner, and we ask to
6 have the witness affirmed.

7 **CHIEF COMMISSIONER BULLER:** Dr. Dalee Sambo
8 Dorough, do you solemnly affirm to tell the truth and give
9 your evidence in a good way?

10 **DR. DALEE SAMBO DOROUGH:** Yes, I do.

11 **CHIEF COMMISSIONER BULLER:** Thank you.

12 **MS. VIOLET FORD:** Thank you.

13 **DALEE SAMBO DOROUGH, Affirmed:**

14 **EXAMINATION ON QUALIFICATIONS BY/INTERROGATOIRE SUR LES**
15 **QUALIFICATIONS PAR MS. FORD:**

16 **MS. VIOLET FORD:** Dalee Sambo Dorough, Dalee
17 Sambo Dorough, can you give us some of your background?

18 **DR. DALEE SAMBO DOROUGH:** M'hm.

19 **MS. VIOLET FORD:** Where you come from?

20 **DR. DALEE SAMBO DOROUGH:** Okay. Qulianup
21 (phon.).

22 Before doing so, allow me to congratulate
23 all of the expert witnesses that have spoken before me. I
24 think that an excellent record of evidence was laid down by
25 each of the three preceding experts. Also, allow me to

1 thank the Inquiry Commissioners for the opportunity to
2 share some of my views today.

3 In regard to my background, I began my
4 career in the work of international Indigenous human rights
5 when I began my work with the Inuit Circumpolar Council. I
6 held the portfolio of Human Rights, and in particular, the
7 work at the United Nations.

8 I started that involvement in 1984, when I
9 first travelled to Panama City, Panama for the World
10 Council of Indigenous Peoples Meeting. And at that
11 meeting, myself and six other Indigenous peoples were
12 sequestered into a small room and asked to prepare the
13 first Indigenous People's Declaration in order to deliver
14 it to the actual Working Group on Indigenous populations in
15 order to influence the content.

16 And I was selected by the delegates at that
17 meeting to attend the next session of the Working Group in
18 1985 in Geneva, Switzerland where the Centre for Human
19 Rights is within the UN human rights regime, and selected
20 to introduce that Declaration and request that it be
21 annexed to the report of the Working Group, with the key
22 message that this is what Indigenous peoples believe to be
23 the Declaration on the Rights of Indigenous Peoples.

24 And I made the request for it to be annexed
25 to the report. It was annexed to the report. And I was

1 struck by the comments of the Jean Leclair about Indigenous
2 ownership of the UN Declaration, when in fact, oh, yeah, we
3 owned it, and we still own it. And the idea, as someone
4 has said already, of breathing life into it, has been my
5 work consistently from that point on.

6 I participated in the drafting of the
7 Declaration at every single meeting, every single caucus
8 session concerning the Declaration from 1984 until it was
9 finally adopted by the General Assembly on September 13th,
10 2007 on behalf of my own people, the Inuit.

11 **MS. VIOLET FORD:** Thank you for that.

12 Now, I see from your CV that you are doing
13 other work. Can you describe the work you do now, or what
14 is your occupation now?

15 **DR. DALEE SAMBO DOROUGH:** At the present
16 moment, I am a tenured Associate Professor of International
17 Relations at the University of Alaska, Anchorage. Some of
18 you may know that Alaska does not have a law school. If
19 there were an option to teach in a law school in my own
20 home state, I would.

21 So I teach courses in international
22 relations, public international law, also courses cross-
23 listed with Alaska native studies. For example, I teach a
24 course that I developed called, Comparative Northern
25 Politics, and I teach a course entitled, Tribes, Nations

1 and Peoples.

2 In addition, I have tried to integrate my
3 advocacy work with my academic work through various
4 different fora. I continue to be involved at the
5 international work at the United Nations. I was at the
6 recent Permanent Fora on Indigenous Issues.

7 As you may note from my CV, I'm the former
8 Chairperson of the Permanent Forum on Indigenous Issues,
9 and also, a former member of what is referred to as the
10 Voluntary Fund for Indigenous Peoples that was established
11 by the United Nations in 1985.

12 **MS. VIOLET FORD:** Thank you.

13 What academic degrees do you have, and when
14 did you obtain them and where?

15 **DR. DALEE SAMBO DOROUGH:** Thank you.

16 I attended undergraduate at University of
17 Alaska Anchorage, then I took on the completion of a
18 Master's in law and diplomacy at the Fletcher School of law
19 and Diplomacy at Tufts University, a joint program between
20 the Fletcher School and Harvard. That was -- I have to
21 include the footnote -- the most conservative right-wing
22 academic institution that I've ever attended in my life.
23 It did help me to hone my human rights advocacy skills.

24 (LAUGHTER)

25 **DR. DALEE SAMBO DOROUGH:** They do still

1 invite me back on Arctic-related issues because, as many of
2 you know, the Arctic is becoming a very vogue topic now and
3 so as an Arctic Indigenous person I get invited back.

4 But thereafter I decided to pursue a PhD in
5 law and I first thought I'd try to attend Australia
6 National University, largely because Philip Alston,
7 essentially the author of the Convention on the Rights of
8 the Child, was in Australia. But my mother elbowed me and
9 told me that that's too far away. So I decided to apply to
10 University of British Columbia where John Burrows was a
11 visiting professor at the time.

12 As soon as I arrived, he left. But I stayed
13 and finished off my PhD in law. And my thesis focused
14 upon, really, the quest for equality, and in particular,
15 the right of self-determination and its application to
16 Indigenous peoples as understood in international law. And
17 that was finished off in 2002.

18 **MS. VIOLET FORD:** Now, Dalee, can I ask you
19 to highlight some of the other key areas of your CV that
20 qualifies you in this area?

21 **DR. DALEE SAMBO DOROUGH:** Okay. As I said,
22 I continue the work in international human rights in favour
23 of Indigenous peoples. I have published in this area, most
24 recently and a co-author finished an article for the Oxford
25 Handbook of Cultural Heritage, focusing on Indigenous

1 cultural rights.

2 My research and interest at the moment are
3 heavily focused upon Inuit perspectives to all of the
4 developments within the Arctic region. For example, I
5 completed a recent chapter on the Indigenous Perspectives
6 to Arctic Shipping which is of great interest to everybody
7 in Canada, from what I can tell. And a number of other
8 contributed chapters.

9 And I'm also presently involved with the
10 International Law Association's Committee on the
11 Implementation of the Rights of Indigenous Peoples. Some
12 of you may be familiar with the International Law
13 Association. I'm the co-chair of that committee. In
14 addition, I served on the prior committee which provided an
15 expert commentary on the U.N. Declaration on the Rights of
16 Indigenous Peoples, and it was noted as an exceptional
17 contribution by James Anaya, the former Special Rapporteur
18 on the rights of Indigenous peoples.

19 **MS. VIOLET FORD:** Thank you.

20 Just before we finish qualifying you with
21 your work experience, are there any other considerations
22 that you would like to talk about, as in in your personal
23 information that you would like to talk about?

24 **DR. DALEE SAMBO DOROUGH:** Okay. In addition
25 to the -- in addition to the U.N. Declaration, I

1 participated in a two-year revision process of the
2 International Labour Organization's Convention Number 107
3 that emerged as Convention Number 169 in 1989.

4 In addition I was involved with some of the
5 early work that resulted in the 2016 adoption of the
6 American Declaration on the Rights of Indigenous Peoples.

7 More recently, though, I haven't been
8 engaged within the OAS process but I think it's significant
9 to say that in 1989 a group of Indigenous peoples were
10 invited to Mexico City, Mexico, by the government of Mexico
11 asking what the OAS should do in order to proceed in a good
12 way in the adoption -- or the drafting and the adoption of
13 the American Declaration, and we came up with pages and
14 pages of recommendations, none of which they took into
15 consideration, which is disappointing. And it's my hope
16 that throughout all of your collective efforts, that it
17 results in some concrete action in contrast to how the OAS
18 handled that particular process.

19 Nevertheless, the OAS and the American
20 Declaration is a significant international Indigenous human
21 rights instrument, regardless of what they did in 1989.

22 **MS. VIOLET FORD:** Okay. Moving on to now
23 what I would like to have Dr. Sambo Dorough's CV entered
24 into evidence and to be marked as Exhibit A.

25 **CHIEF COMMISSIONER MARION BULLER:** The CV

1 will be Exhibit 18.

2 **MS. VIOLET FORD:** Eighteen (18)?

3 --- **EXHIBIT No./EXHIBIT No. B18:**

4 Curriculum vitae of Dr. Dalee Sambo
5 Dorough (11 pages)

6 **MS. VIOLET FORD:** Thank you.

7 Dr. Sambo Dorough, would you like to make
8 some other introductory remarks before we get into the
9 testimony?

10 **DR. DALEE SAMBO DOROUGH:** Yes, thank you.

11 To be frank ---

12 **MS. VIOLET FORD:** Oh, sorry.

13 **DR. DALEE SAMBO DOROUGH:** Yeah.

14 **MS. VIOLET FORD:** This is only my second
15 time doing the evidence -- direct examination, and I'm sure
16 everybody in this room probably figured that out by now.
17 So thank you, Christa.

18 I have to now qualify based on implied
19 consent of her qualifications.

20 **MS. CHRISTA BIG CANOE:** Just to check
21 there's no objections.

22 **MS. VIOLET FORD:** Are there any objections?
23 Thank you, Christa.

24 **CHIEF COMMISSIONER MARION BULLER:** In what
25 areas are you seeking to qualify this witness?

1 **MS. VIOLET FORD:** Yes, correct.

2 Chief Commissioner and Commissioners, based
3 on the knowledge, skills, practical experience, training
4 and education and expertise as described by Dr. Dalee
5 Sambo, and as evidenced in her curriculum vitae, I would
6 like to qualify her as a qualified expert witness in the
7 area of development and evolution in international human
8 rights standards.

9 **CHIEF COMMISSIONER MARION BULLER:** Certainly
10 based on the implied consent, the evidence adduced, this
11 witness certainly has the requisite knowledge, skills,
12 experience, training, and expertise to give expert opinion
13 evidence regarding the development and evolution of
14 international human rights standards.

15 **MS. VIOLET FORD:** Thank you.

16 So Dr. Sambo, do you want to proceed?

17 **DR. DALEE SAMBO DOROUGH:** I might amend that
18 because we should be specific to Indigenous human rights --
19 international Indigenous human rights, otherwise we might
20 go all over the place here.

21 **CHIEF COMMISSIONER MARION BULLER:** Okay.
22 Just for the record, then, we'll change the ruling to
23 international Indigenous human rights standards.

24 **DR. DALEE SAMBO DOROUGH:** Thank you very
25 much.

1 As far as introductory remarks is concerned,
2 what I would like to emphasize in the testimony that I
3 share today is the history of the development of
4 international human rights and standards that are specific
5 to Indigenous peoples, but moreover to emphasize those that
6 are particular to Indigenous women and girls and relevant
7 to the Inquiry and especially their security as human
8 beings.

9 I also would like to emphasize throughout
10 the testimony the obligations that the Government of Canada
11 has in favour of Indigenous women and girls, and
12 specifically in favour of Inuit women and girls throughout
13 the Arctic region in Canada. And we'll hopefully
14 illustrate various different rationale as to why these are
15 not only important legal imperatives but also very
16 important moral imperatives in the face of this harrowing
17 experience that Indigenous women and girls undertake. And
18 I suppose, to some extent, my principal message is that the
19 government of Canada has numerous solemn obligations to
20 Inuit throughout Canada by virtue of their commitments
21 under international human rights instruments. In my view,
22 and I think we've already heard it from the other expert
23 witnesses, is that Canada should urgently and rigorously be
24 addressing the disproportionately high rates of violence,
25 sexual violence, sexual assault, disappearances, and

1 discrimination being perpetrated against Inuit women and
2 girls, as well as other Indigenous women and girls.

3 It is a well-known fact to me, and I'm sure
4 to many, and especially after we have spent the day
5 listening to the other expert witnesses, that one of the
6 major contributing factors to widespread and alarming
7 statistics and human rights violations amongst Indigenous
8 Peoples is racial discrimination. I think that it's
9 important, not only to reference them as far as the legal
10 effects and the legal impacts, but I think we do need to be
11 very elementary about the matter of racial discrimination.
12 And in this way, I want to read the definition of racial
13 discrimination under the Convention on the Elimination of
14 All Forms of Racial Discrimination. The Convention states:

15 "...the term "racial discrimination"
16 shall mean any distinction, exclusion,
17 restriction or preference based on
18 race, colour, descent, or national or
19 ethnic origin which has the purpose
20 [which has the purpose] or effect of
21 nullifying or impairing the
22 recognition, enjoyment or exercise, on
23 an equal footing, of human rights and
24 fundamental freedoms in the political,
25 economic, social, cultural or any other

1 field of public life.”

2 It’s a very, very broad definition and I
3 think we all know what racial discrimination is when we see
4 it, but it’s also important to underline that this is the
5 wording of the Convention itself.

6 As far as Indigenous women and girls and
7 missing and murdered Indigenous women and girls, the
8 diverse legal context in my view, range from the lack of
9 law enforcement, to the judiciary, to penal institutions,
10 and to denial of equality, whether it’s relative equality
11 or substantive equality. And for Indigenous women and
12 girls this has generated not only insecurity of person and
13 immediate family, but also damaging impacts upon every
14 dimension of their womanhood as Indigenous women and girls.
15 Their relations with all others and their relations with
16 their own peoples, with their lands and territories, and
17 with society overall.

18 And in this regard, I think it’s important
19 that we all take an intersectional perspective, and others
20 have already used this term, how one human rights treaty
21 intersects with another. And scholars have written about
22 the intersectional perspective of gender and racial
23 discrimination, for example, that as we’ve heard -- and I’m
24 sure that as you’ve heard in your community hearings, that
25 an intersectional perspective in the context of Indigenous

1 Peoples means more than gender and racial discrimination.
2 It impacts everything that happens in the day to day lives
3 of Indigenous Peoples, of Indigenous women and girls.

4 In this regard, it's essential to understand
5 the nature of human rights and we heard it this morning
6 from Brenda Gunn. Like the relations of Inuit women and
7 girls within their communities, their human rights and
8 responsibilities are interrelated, interdependent, and
9 indivisible, and they are tied to their distinct cultural
10 context. As Brenda also stated, human rights are
11 universal. They cannot be taken away. It's one thing for
12 a government to deny or violate your human rights, but they
13 cannot be taken away. It's one thing for a government to
14 deny or violate your human rights, but they cannot be taken
15 away. It's one thing for a government to purportedly
16 extinguish rights, but as I'll address later,
17 extinguishment has its own implications and consequences.

18 Essentially, human rights are about human
19 dignity. And in the most elementary terms, human rights
20 are about the relationship between people and government.
21 Human rights not only limit the power of government, human
22 rights also create a duty and a responsibility for
23 government to look after the basic needs of the people and
24 the protection of fundamental freedoms for all. So it has
25 -- the nature of human rights has diverse elements. And in

1 the case of Indigenous Peoples, their collective human
2 rights are integral to their survival as distinct peoples
3 and distinct cultures. So the interrelated, and
4 interdependent, and indivisible nature of human rights
5 means that the exercise of a particular right has impacts
6 upon the exercise and enjoyment of all other rights. For
7 example, the denial of personal security as a human being
8 will have immediate impacts upon the right to food, for
9 example. We could come up with many, may different
10 scenarios. And of course, the taking of a life is the
11 worst human rights violation possible.

12 Everyone here is aware of the fact that
13 Indigenous Peoples individually, and as a whole, have
14 suffered from the impacts of colonial violence. Such
15 violence lingers and though the notion of racial
16 superiority has been soundly denounced, it too lingers.
17 The history of the subjugation, domination, and
18 exploitation of Indigenous Peoples is revealed in nearly
19 every policy adopted by the government of Canada. Specific
20 and lasting examples include the forced relocation of Inuit
21 in 1953. Anyone who doesn't know about Indigenous Peoples
22 being forcibly removed from their lands or other purposes
23 and intents should look into the forced relocation of Inuit
24 by the government of Canada.

25 It ranges also to the so-called need for

1 certainty in the comprehensive land claims agreements with
2 Inuit and the insistence upon purported extinguishment of
3 Inuit rights. Such violence and vulnerability are further
4 perpetrated by systemic discrimination. We've heard about
5 some of that today. As well as Jean Leclair's recently
6 concluded testimony about racial disparities. On that
7 note, I just want to point out that as far back as 1979 I
8 was involved in a study by the Alaska Judicial Council
9 about racial disparity and sentencing. And the conclusions
10 and the recommendations of the Alaska Judicial Council in
11 this regard were very constructive and I would point the
12 Commissioners to the results. Because for example, in
13 terms of practical results, they suggested the need for
14 more Indigenous public defenders, more Indigenous
15 investigators, more Indigenous Judges, more Indigenous
16 Prosecutors. You get the picture. The idea was to
17 saturate the legal system and all of the legal implications
18 with an Indigenous perspective.

19 In the Arctic, simultaneous with our work to
20 prepare comprehensive Arctic policy principles, we took
21 into account the issue of domestic violence. In the early
22 formulation of the Arctic policy of the Inuit Circumpolar
23 Council, there was a section on gender equality and also
24 specifically what was then referred to as conjugal
25 violence. Our work continued, and we felt it was worth our

1 time to spend money on participating in the work of the UN
2 Declaration and that this tool could help us, certainly at
3 the international level. We knew that we needed to take
4 action at the local level and at the regional level in
5 terms of Inuit as a circumpolar people that transcend the
6 borders of the Russian Federation, the United States,
7 Canada, and Greenland. So we spent money to devote
8 attention and time to the drafting of the Declaration. We
9 were suffering quite a lot from the effects of the Cold
10 War. Our blood relations were divided by the Iron Curtain
11 between then Soviet Union and the United States.

12 In addition, all kinds of other developments
13 were taking place in the Arctic at a really fast pace.
14 And, some of these include the threats to Inuit food
15 security, namely and specifically through the threats to
16 Inuit whaling activities by the International Whaling
17 Commission, prompted by animal rights' groups that believed
18 that whales have absolute rights, and they were the
19 spokespersons for those whales.

20 There was a major undertaking to reverse
21 that and to get the International Whaling Commission to
22 recognize that Inuit needed a different response in terms
23 of the international regime. And so, what we have today is
24 something quite remarkable in terms of management and co-
25 management in our favour and, really, through the right to

1 self-determination. But, in the background also, the Innu
2 and others will remember the low-level test flights that
3 were taking place in the Canadian Arctic.

4 Others are aware of the impacts of the Hydro
5 Quebec project, and I think significantly, the drowning of
6 thousands of caribou in Northern Quebec. Disputed, but had
7 massive impacts on our people. The 1986 Chernobyl
8 disaster, I mean, not just the whole world community, but
9 because of the air currents that the settling of
10 radioactive waste in our homelands. I mean, I could go on-
11 and-on. The oil and gas lease sales, radioactive waste
12 being dumped by the Soviet Union into the Arctic Region.

13 So, all of these things were going on at the
14 same time, but yet again, we felt that it was important to
15 pay attention to the development of international
16 Indigenous human rights that, again, would be a useful tool
17 for us.

18 I think the U.N. Declaration, as has been
19 discussed in relation to women and girls, and also as
20 introduced by Corey O'Soup, Indigenous youth, Indigenous
21 children, and these universal human rights that have now
22 found a distinct cultural context for Indigenous peoples in
23 the U.N. Declaration on the Rights of Indigenous Peoples is
24 very significant. Earlier, there was a question about the
25 U.N. Declaration reflecting the minimum standards for the

1 survival, dignity and well-being of Indigenous peoples.
2 That is affirmed in Article 43 of the U.N. Declaration.

3 And, the Declaration also -- I was invited
4 some time ago by Willy Littlechild, Wilton Littlechild, to
5 make a contribution to a book that Columbia University
6 concluded and -- put together and concluded, and he asked
7 me to write about the U.N. Declaration, and by the time I
8 was done, it was the access to justice document.

9 So, if one thinks about it, all of the human
10 rights standards affirmed in the U.N. Declaration, and how
11 they intersect with other international human rights
12 treaties, actually does create a pathway towards justice
13 for Indigenous peoples, that this is one way to guarantee
14 our access to justice in every possible context, whether
15 it's land rights, self-government and self-determination,
16 the right to health, the right to education, gender
17 equality, non-discrimination, you name it.

18 **MS. VIOLET FORD:** So, you went through the
19 things leading up to Inuit involvement with the U.N.
20 Declaration. Can you provide more insights on the legal
21 status of the U.N. Declaration?

22 **MS. DALEE SAMBO DOROUGH:** I think that --
23 yes, I can. I think that's a really important question,
24 especially in the face of those that have tried to diminish
25 the status of the Declaration, or the nay-sayers, or the

1 people that refer to it as only an aspirational instrument.

2 The first thing I want to say about that,
3 especially in this context, is that the Government of
4 Canada was quite active in the drafting and negotiation of
5 the Declaration. They would send an entire herd of lawyers
6 to every meeting, and they were very careful. They were
7 very, very careful about the language.

8 But, I want to underscore the fact that this
9 was both under Conservative governments as well as Liberal
10 governments, that the main point is that Canada had a seat
11 at the table and effectively influenced the outcome of the
12 language. So, not only Canada, but Australia, New Zealand,
13 the United States, Indonesia, other governments had active
14 participation. And, I think that's important to note,
15 because there shouldn't be any resistance to embracing the
16 U.N. Declaration in the domestic context, especially if you
17 had a seat at the table and you, for all intents and
18 purposes, got what you wanted.

19 Now, of course, on the Indigenous side of
20 the table, we were making all the arguments against racial
21 discrimination, and this was -- the pinnacle of this debate
22 was probably in relation to the right to self-
23 determination, because governments, including the
24 Government of Canada, were arguing that, oh no, the right
25 to self-determination of Indigenous peoples is different

1 than the right to self-determination for whole nation
2 states. They argued the Blue Water Principle. They argued
3 all these other principles, and I'll tell you what. The
4 way that Indigenous peoples won the language of Article 3,
5 which is, as pointed out by Brenda Gunn earlier, which is
6 the same article affirmed in Article 1 of the International
7 Covenants on Civil and Political Rights, Economic, Social
8 and Cultural Rights, it is the same right.

9 But, the way that we won that argument was
10 by being intellectually honest about racial discrimination,
11 that if, in fact, Canada or any other government wanted to
12 create a different status for Indigenous peoples in this
13 international human rights instrument, it would be racially
14 discriminatory, and would violate what some scholars refer
15 to as a pre-emptory norm of international law, a norm or a
16 standard of which there shall be no derogation.

17 And, 1996, a few years later, the Government
18 of Canada made a -- they turned the corner and actually, on
19 the floor of the then Commission on Human Rights Working
20 Group on the Declaration, they turned a corner and made a
21 very important statement about the right of self-
22 determination applies to all peoples, including Indigenous
23 peoples. But, you can imagine that on our side of the
24 table, we're listening very, very carefully to how they
25 articulated that, because words matter.

1 As far as the legal status is concerned, I
2 have a number of different quotes, but I'll confine myself
3 just to a couple of them. In particular, former Special
4 Rapporteur on the rights of Indigenous peoples, James
5 Anaya, troubled by the increasing number of states
6 challenging the legal status of the U.N. Declaration,
7 stated even though the Declaration itself is not legally
8 binding in the same way that a treaty is, the Declaration
9 reflects legal commitments that are related to the *Charter*,
10 other treaty commitments and customary international law.
11 The Declaration builds upon the general human rights
12 obligations of states under the Charter and is grounded in
13 fundamental human rights principles such as non-
14 discrimination, self-determination and cultural integrity
15 that are incorporated into the widely ratified human rights
16 treaties as evident in the work of the United Nations
17 treaty bodies. In addition, core principles of the
18 Declaration can be seen to be generally accepted with
19 international and state practice. And, hence, to that
20 extent, the Declaration reflects customary international
21 law.

22 I'll just add the footnote that the
23 international law association in the review of the U.N.
24 Declaration in its expert commentary did echo the status of
25 the U.N. Declaration, and in particular, those articles

1 that refer or are regarded as customary international law.

2 And in particular I will just emphasise, as
3 the International Law Association did, that in the
4 discourse of customary international law, self-
5 determination, autonomy or self-government, cultural rights
6 and identity, land rights, as well as reparation, redress
7 and remedies constitute customary international law.

8 But they also went on to say, like the
9 interrelated interdependent and indivisible nature of human
10 rights, the ILA Committee recognised that it would be
11 inappropriate to deal with these areas separately, that the
12 rights just listed are all strictly interrelated, to the
13 extent that the change of one of its elements affects the
14 whole. So, therefore, the rights affirmed in the UN
15 Declaration must be read as a whole.

16 And, in addition, it's significant that the
17 Government of Canada has pronounced its support for an
18 implementation of the UN Declaration. I also want to note
19 that the United Nations General Assembly has expressed its
20 support for the UN Declaration on no less than eight
21 different occasions.

22 And we always think about the United Nations
23 as this big, you know, institution of others. We need to
24 remember that the United Nations is an organisation of
25 member states, including Canada, the United States and

1 others, you know. Oh well, let's leave that to the
2 specialised agencies or organs of the United Nations. But
3 in this regard, as far as an international Indigenous human
4 rights instruments, it is governments that have reaffirmed
5 their support for the UN Declaration.

6 I also want to say that I think that this
7 constant relationship between the exercise of rights and
8 the interaction between rights, whether it is the
9 intersectional perspective that's been spoken of and how
10 Indigenous peoples have characterised the holistic nature
11 of their rights and how they express that to the United
12 Nations, that all of these are definitely relevant to the
13 inquiry of you, as Commissioners, and the rights and
14 concerns of Indigenous peoples.

15 I think it's important also just to say
16 quickly that clearly Article 3, the right to self-
17 determination, again, as Brenda Gunn stated, it is an
18 essential foundational right. It has been recognised as --
19 by legal scholars as a prerequisite to the exercise and
20 enjoyment of all other rights. So it's required in order
21 for Indigenous peoples, either individually or
22 collectively, to benefit from the exercise of the right of
23 self-determination of Indigenous peoples.

24 So the government should take actions to
25 respond to all of these matters before you consistent with

1 the right to self-determination and self-government, that
2 Indigenous peoples, not only through Article 3 and Article
3 4 of the UN Declaration, but also other articles in the
4 Declaration that affirm their right to participate in
5 decision making that affects their rights.

6 I could go further in terms of the range of
7 different articles that affirm their right to self-
8 determination, but the final point that I want to make in
9 regard to Article 3 is that there are important dimensions
10 in terms of self-identification of Indigenous peoples. And
11 fortunately here in Canada you don't have that difficulty,
12 but you can imagine in Africa and Asia and elsewhere there
13 is a difficulty. But significantly also, the right to
14 free, prior and informed consent is an important dimension
15 and element of the right to self-determination.

16 Just quickly, Articles 21 and 22 are
17 explicitly relevant to the Inquiry. I expect that the
18 Commissioners are probably already aware that Article 21
19 affirms that special measures should be taken to improve
20 social and economic conditions and extra attention should
21 be paid to the rights and means of Indigenous women and
22 youth. And also Article 22, which explicitly stresses that
23 measures should be taken to guarantee the protection of
24 Indigenous women and children against all forms of violence
25 and discrimination.

1 There are other provisions that address
2 freedom from discrimination and the exercise of rights, the
3 right to life, physical and mental integrity, liberty and
4 security of person. And security of person is -- I think
5 is fundamental and has so many different dimensions in the
6 Indigenous context, as well as, as I've already said, the
7 right to participate in decision making that would affect
8 Indigenous rights and all other rights.

9 **MS. VIOLET FORD:** Thank you, Dalee.

10 I know that Professor Gunn went over several
11 other international instruments and treaties and
12 conventions, declarations this morning, but can you present
13 your insights and perspectives on those?

14 **DR. DALEE SAMBO DOROUGH:** M'hm.

15 **MS. VIOLET FORD:** Some of the ones that she
16 referenced this morning?

17 **DR DALEE SAMBO DOROUGH:** Okay. There are a
18 number of them and I think that what I'll do is just
19 confine myself to the fact that the UDHR, the Universal
20 Declaration of Human Rights is relevant. And each of the
21 instruments that I'll just quickly list off reflect
22 provisions that talk about equality, that talk about life,
23 liberty and security of person, equal protection before the
24 law, non discrimination.

25 But I think it's important for us to

1 recognise that the Universal Declaration of Human Rights,
2 of which every one of us in this room as human beings are
3 beneficiaries of, that that grew out of and was inspired by
4 victims that demanded -- those survivors demanding that
5 these brutal regimes that murdered millions do something
6 about them.

7 And so it's a cornerstone instrument as far
8 as the International Bill of Rights is concerned. And by
9 that I mean the Universal Declaration of Human Rights, the
10 International Covenant on Civil and Political Rights and
11 the International Covenant on Economic, Social and Cultural
12 Rights, which have already been underscored, but those
13 three instruments together are often referred to as the
14 International Bill of Rights. So each of them is
15 important, all three of them.

16 As I've already stated and which was
17 stressed earlier today, Article 1 of the International
18 Covenants is, in fact, the inspiration and the pedigree for
19 Article 3 within the UN Declaration itself.

20 In addition, as has already been addressed,
21 the Convention on the Elimination of All Forms of
22 Discrimination Against Women, I'll refer to as CEDAW, that
23 that is regarded as the International Bill of Rights for
24 Women.

25 And its preamble makes some important

1 recognitions, of which I won't quote now but I would just
2 like to draw attention to its preamble and the importance
3 of the equality of rights and respect for human dignity, as
4 I said earlier, as far as the nature of human rights.

5 It is significant that though the issue of
6 violence against women is not explicitly addressed in
7 CEDAW, there are provisions that relate to member state
8 obligations to address violence against women.

9 And even more relevant is the fact that the
10 CEDAW committee, which monitors member state compliance
11 with the provisions of the convention or treaty, has
12 elaborated upon these state obligations of ending gender-
13 based violence as part of their human rights obligations in
14 relation to the convention. And I think that that's quite
15 significant.

16 In addition, in 1994, due to the alarming
17 increase of violence against women, a Special Rapporteur on
18 violence against women was established. And I'm sure that
19 you are all aware of the recent visit. But this
20 represents, again, recognition and acknowledgement of the
21 need for an intersectional perspective when it comes to,
22 especially in my view, Indigenous women and girls.

23 So the Special Rapporteur -- and this is
24 even more significant in practical terms of the
25 intersectional perspective of human rights and a need for

1 that, that the Special Rapporteur has the mandate to
2 monitor issues, not only related to the Convention on
3 Elimination of Discrimination Against Women, but also to
4 the Universal Declaration on Human Rights, the Declaration
5 on the Elimination of Violence Against Women, the Beijing
6 Platform for Action, and other international human rights
7 instruments. So it's a very broad mandate.

8 And I think that the closing mission
9 statement by the Special Rapporteur was, in my view, quite
10 significant. And I'm sure that everyone in the room is
11 acutely aware, but I have taken one paragraph from the
12 mission statement as it was reported in the press, and she
13 stated:

14 "Indigenous women from First Nations,
15 Métis and Inuit communities are overtly
16 disadvantaged within their societies
17 and in the larger national scheme.
18 Indigenous women face marginalization,
19 exclusion and poverty because of
20 institutional, systemic, multiple,
21 intersecting forms of discrimination
22 that has not been addressed adequately
23 by the State."

24 We could all stop right now and say that's
25 all that needs to be said, but unfortunately there's more,

1 I think.

2 So that particular convention and the
3 Special Rapporteur, those statements are quite significant.

4 I'll also say that CERD is relevant. I have
5 already articulated how Indigenous peoples utilized the
6 CERD instrument in relation to the right to self-
7 determination as its reflected in the UN Declaration.

8 There are many, many different dimensions to
9 this. And as far as this notion of intersectional
10 perspectives, in my notes there's a scholar, Pragna Patel,
11 who acknowledged that:

12 "Urgent action needs to [be taken]...at
13 both the national...and
14 international...levels, [so government
15 and the United Nations] to raise
16 awareness of the multiple nature of
17 discrimination experienced by
18 marginalised women, and to mainstream
19 an intersectional or more holistic
20 approach to the question of racial and
21 gender discrimination. It is both the
22 intersectional and the simultaneous
23 nature of multiple discrimination that
24 needs to be understood at a theoretical
25 level [but to me, more significantly,]

1 and addressed at a practical level."

2 The only thing I want to say about the
3 Convention Against Torture, which Brenda also made note of,
4 is that the effects of violence against women are similar
5 to those who've experienced torture and cruel inhumane or
6 degrading treatment of punishment. Powerlessness,
7 posttraumatic stress disorder, physical deformity are just
8 a few of the outcomes which these two groups actually
9 share.

10 But if you think about the raging debates
11 about torture in relation -- well, certainly in the United
12 States -- maybe less so here in Canada, but in the United
13 States, the raging debates about torture in the context of
14 terrorists, and the fact that it's drawn so much attention.
15 Yet at the same time, when we make the correlation between
16 torture and inhumane degrading treatment or punishment
17 against women, and specifically, Indigenous women and
18 girls, it doesn't attract the same raging debate, when in
19 fact it really should. It's actually stunning that this
20 hasn't become a topic of raging debate if we think about
21 the decades that we've been facing this.

22 The only other thing I want to mention is
23 that outside of the 12 of the 18 international human rights
24 instruments that Canada has ratified, though the Government
25 of Canada hasn't exceeded to the International Labour

1 Organization Convention No. 169 on Indigenous and Tribal
2 Peoples, it's relevant because the ILO itself, as well as
3 legal scholars, have affirmed that the ILO Convention
4 No. 169 and the UN Declaration should be read as
5 complementary and mutually reinforcing.

6 And though the ILO Convention only
7 references Indigenous women and sexual harassment in
8 Article 19, it still would be useful, especially when we
9 think about an intersectional perspective that the Inquiry
10 and Commissioners may take with regard to their conclusions
11 and recommendations.

12 I'll also just point out that the -- of
13 course, the Interamerican Convention on Prevention,
14 Punishment and Eradication of Violence Against Women,
15 Special Protections for Vulnerable Groups is relevant, as
16 well as the American Declaration on the Rights of
17 Indigenous Peoples. I think that this American
18 Declaration, in particular, from 2016, is relevant because
19 it has some very strong language with regard to the forms
20 of violence and discrimination, particularly against
21 Indigenous women and children.

22 There is a specific provision that refers to
23 the fact that states should:

24 "...take special [measures] and
25 effective measures in collaboration

1 with indigenous peoples to guarantee
2 that indigenous women, children...[are]
3 free from all forms of violence,
4 especially sexual violence, and [that
5 states] shall guarantee the right to
6 access to justice, protection, and
7 [the] effective reparation for damages
8 incurred to the victims."

9 So I think that it would be useful to
10 integrate such language into your work as you go forward.

11 The only other thing that I want to say is
12 that ---

13 **MS. FANNY WYLDE:** Before -- sorry. I just
14 have to do a couple of housekeeping ---

15 **DR. DALEE SAMBO DOROUGH:** Okay.

16 **MS. FANNY WYLDE:** --- things.

17 Before we explore the other areas that
18 you're going to be speaking on, I would like to ask the
19 Commissioners that I can tender some other exhibits.

20 The first one is the International
21 Convention on Civil and Political Rights, and it's
22 indicated as Schedule C. Doro (phon.) in the summary.

23 I'm adding them as a cluster of exhibits.
24 This is one of the first of the clusters.

25 **CHIEF COMMISSIONER BULLER:** Exhibit 19.

1 --- EXHIBIT NO./PIÈCE NO. B19:

2 International Convention on Civil and
3 Political Rights, adopted by the General
4 Assembly of the United Nations on 19
5 December 1966 (No. 14668, Vol. 999) pp. 172-
6 346

7 MS. FANNY WYLDE: And the second one is the
8 International Convention on -- sorry -- the Convention on
9 the Elimination of all Forms of Discrimination Against
10 Women attached as Schedule E.

11 CHIEF COMMISSIONER BULLER: Exhibit 20,
12 please.

13 --- EXHIBIT NO./PIÈCE NO. B20:

14 Convention on the Elimination of All Forms
15 of Discrimination against Women (ten pages)

16
17 MS. FANNY WYLDE: As well as the Convention
18 on the Elimination of All Forms of Racial Discrimination.

19 CHIEF COMMISSIONER BULLER: Exhibit 21.

20 --- EXHIBIT NO./PIÈCE NO. B21:

21 International Convention on the Elimination
22 of All Forms of Racial Discrimination
23 (nine pages)

24 MS. FANNY WYLDE: Okay. That's it for now.

25 Thank you.

1 **MS. VIOLET FORD:** Yeah, you can proceed.

2 **DR. DALEE SAMBO DOROUGH:** Thank you.

3 The only other comments that I wanted to
4 make was in relation to the American Declaration. Like the
5 ILO, and the reference that the ILO itself makes with
6 regard to the UN Declaration and the ILO Convention being
7 complementary and mutually reinforcing, the American
8 Declaration on the Rights of Indigenous Peoples explicitly
9 provides that the rights recognized in this Declaration and
10 the United Nations Declaration on the Rights of Indigenous
11 Peoples constitute the minimum standards for the survival
12 of dignity and well-being of the Indigenous Peoples of the
13 Americas. So it's quite significant that they've tied the
14 two instruments together.

15 And of course, then that triggers the
16 question of, okay, well what if there's a better standard
17 in the American Declaration in contrast to the UN
18 Declaration. And this would take careful analysis to
19 determine because as a human rights advocate, as an
20 Indigenous person, you would be looking for the strongest
21 possible standard.

22 So it's important to take that into account
23 to look at the linkages between all of these different
24 international instruments, especially those in favour of
25 Indigenous peoples, and of course, see how they are

1 mutually reinforcing and also what may offer the highest
2 standard, because they are not identical and it did engage
3 a completely different political arena and fora as far as
4 the Americas are concerned.

5 The final thing that I'll say is that the
6 special mandates, some of which have already been
7 addressed, such as the Permanent Forum on Indigenous
8 Issues, they recently adopted a recommendation at their 17th
9 session to ask one of their expert members to look at good
10 practices in curbing violence against Indigenous women and
11 girls, so that is on the horizon. In addition, the expert
12 making recommendations on the rights of Indigenous peoples,
13 other special rapporteurs, and of course, the human rights
14 treaty bodies are all contributing to emerging
15 jurisprudence nearly every day.

16 And so, I suppose in that regard we all need
17 human rights education because these developments are
18 taking place, especially in response to urgent needs and
19 hotspots, and urgent issues, and urgent human rights
20 violations. And, in my estimation, this is a -- this is a
21 horrific condition when you think about the urgency and the
22 need for us to turn our attention to the issue in a more
23 urgent fashion.

24 And, I would point to Article 40 of the U.N.
25 Declaration as significant, because it indicates that

1 Indigenous peoples should have access to and prompt
2 decisions through fair procedures and resolution of
3 conflicts, and I would submit that this is one of those
4 areas that -- and the state party concerned happens to be
5 the Government of Canada.

6 I enjoyed the debate that was taking place
7 about, okay, so you have the national level, you have the
8 provinces, you have the territories, but let's not forget
9 that the state party is bound by these international
10 instruments. And, of course, the desire and the objective
11 is that societal change that should, in fact, take place.
12 But, again, it's the member state that participated in the
13 drafting of these instruments; in fact, all of these
14 instruments.

15 And, this is their -- this is their context.
16 All of these instruments came at the hands and are the
17 product of governments. They established and set their own
18 expectations, and I think that that's another important
19 thing we have to remember, is that, sure, in some places we
20 forced them to do so, like the survivors of millions being
21 murdered, but at the same time, I think we need to
22 acknowledge that governments drafted these instruments, and
23 they established their own expectations through consensus,
24 decision making, which is the protocol of the United
25 Nations.

1 I mean, the same happened with the U.N.
2 Declaration, so I think it's important for us to
3 acknowledge that here's no gap in the understanding of the
4 content. You know, yes, you might switch out diplomats
5 every couple of years, but as far as the government and
6 those political institutions that are responsible, we have
7 to be mindful of that as well.

8 **MS. VIOLET FORD:** Dalee, if we could bring
9 it into, now, a more Canadian focus with the domestic
10 relevance of international law by looking at some of the
11 jurisprudence?

12 **MS. DALEE SAMBO DOROUGH:** Okay. I suppose
13 there are probably a couple of ways of making that
14 argument. I think that it's not necessary, really, to go
15 into what Brenda Gunn and others have talked about as far
16 as the necessity for a human rights framework. I think
17 that that's probably pretty well established in terms of
18 the application of these international human rights
19 instruments within a domestic context, and how the U.N.
20 Declaration, for example, and other international human
21 rights instruments can provide us with some guidelines
22 about the framework going forward.

23 I think that it's important for -- at least
24 in moving forward as far as the domestic relevance is
25 concerned that it's pretty clear that the Supreme Court of

1 Canada has acknowledged that international human rights law
2 instruments are relevant in the domestic context. And, a
3 number of different cases, I know Brenda Gunn this morning
4 referenced the *Baker v. Canada* case where the Supreme Court
5 did indicate that international human rights law is a
6 critical influence on the interpretation of the scope of
7 the rights included in the *Charter*. They went further to
8 indicate that the values reflected in international human
9 rights law may help inform the contextual approach to
10 statutory interpretation and judicial review.

11 A number of other cases, the *Tsilhqot'in*
12 case was already referenced. The *Cape* case also affirmed
13 that compliance with Canada's obligations as a signatory to
14 international treaties is relevant, as well as the fact
15 that they are a member of the international community, and
16 that in deciding between possible interpretations, that
17 courts will avoid a construction that would place Canada in
18 breach of those obligations.

19 The second aspect is that the Legislature is
20 presumed to comply with the values and principles of
21 customary and conventional international law, which is
22 significant in large part because of what I expressed
23 earlier about the content of the U.N. Declaration.

24 There are a number of other ways in which
25 domestic law and international human rights law should be

1 shored up, and in my opinion, one thing that hasn't been
2 mentioned so far, unless I wasn't playing close attention,
3 is the fiduciary obligation of government, and the
4 fiduciary obligation of the Government of Canada. I mean,
5 if you think about it, like the United States, this
6 construct of a guardian-ward relationship obviously smacks
7 of colonialism. It chafes against you as an Indigenous
8 person to think about this.

9 But, it also recalls the Law of Nations and
10 the fact that nations, First Nations, Indigenous peoples
11 and their measures for societal control, including
12 traditional law, that this was one of the -- they were one
13 of the actors in the development and the foundations of
14 international law. There's no question that anybody from
15 the Iroquois Confederacy would disagree with that
16 interpretation.

17 But, nevertheless, this guardian-ward
18 relationship emerged, and I think that the fiduciary
19 obligations, they persist, and they should be invoked in
20 the context of missing and murdered Indigenous women and
21 girls. And, the fact that one party has an obligation to
22 act for the benefit of another, and that obligation carries
23 with it discretionary power, the party thus empowered
24 becomes a fiduciary, and equity will then supervise the
25 relationship by holding him to the fiduciary strict

1 standard of conduct. I think we need to remember this in
2 relation to all of the questions put before you.

3 In our current administration in the United
4 States, it's a whole other discussion of reminding them of
5 this relationship and how it emerged historically. I'm
6 very fearful and in part, at least within our current
7 administration in the United States, possibly the best
8 approach is the less he knows the better. But it's
9 important also to think about this, at least for myself,
10 what does the fiduciary obligation of the government of
11 Canada have to say about Inuit women and girls that have
12 gone missing, have been murdered, or face domestic
13 violence, sexual violence, sexual assault and other issues
14 of concern to the inquiry?

15 And so, when understood in the context of
16 already marginalized persons and people, urgent action
17 should be taken, and we know the statistics. It's not
18 necessary to repeat them. But we have to take into account
19 the reality of these international human rights
20 instruments, the source of them, and compound that with the
21 fiduciary obligation of government to Inuit, Metis, and
22 First Nations in Canada. We can't -- we can't sweep that
23 under the -- under the rug.

24 **MS. VIOLET FORD:** You started getting into
25 the issue around Inuit women and girls specifically. Do

1 you want to expand on the distinct context that Inuit women
2 and girls find themselves in, in relation -- murdered and
3 missing Inuit women and girls? The challenges, the
4 particular challenge we're facing?

5 **DR. DALEE SAMBO DOROUGH:** Yeah. I think
6 that that's really important to draw attention to the
7 conditions faced by Inuit in the Arctic region. As you may
8 have already heard, at the national level, and I'm sure
9 you're all aware that Inuit are not governed under the
10 *Indian Act* so the experience with modern day land claims
11 agreements and a realm of other issues, a broad realm of
12 other issues, create a really different experience than
13 Indigenous women and girls, and First Nations or Metis
14 communities. And in addition, there are other unique
15 dimensions of the north that require distinct responses to
16 the reality of conditions faced by Inuit women and girls.

17 We heard about the distinct context of
18 Saskatchewan and youth there, and every time Corey O'Soup
19 used the term north, I was thinking, oh, maybe he's going
20 to actually address the conditions in the Arctic region, in
21 the Inuit Nunangat, our homelands. But I have to say that
22 the statistics are not that much different. We could
23 probably, you know find and replace Indigenous youth in
24 Saskatchewan with that of Inuit youth throughout Inuit
25 Nunangat.

1 Nearly 4 million square kilometres of
2 territory across the whole of the Canadian Arctic. Canada
3 -- I'm sure somebody that's online could look this up, I
4 think they're the second or third largest country in terms
5 of territory, land mass. So if you think about just that
6 alone in terms of the environment, the extreme expanse, the
7 whole of Canada, but then if you look at it from the
8 perspective of someone that works in -- with Inuit in the
9 Canadian Arctic, it also represents really unique
10 environmental conditions.

11 Then you have the very small population. I
12 think ITK presented information -- I wasn't present, but
13 presume that the presented information about the conditions
14 there. But approximately 60,000 Inuit across this whole
15 territory -- and we're talking about very, very small,
16 remote communities. And so a majority of those 60,000
17 Inuit in our homelands, Inuit Nunangat, and those that do
18 gravitate to the south. I have heard estimates that
19 approximately 16,000 or so Inuit gravitate to urban centres
20 in the south. Our numbers in Alaska are not very much
21 different in terms of the territory and the gravitation to
22 urban areas.

23 Many Inuit women and girls face extreme
24 vulnerability and they can't afford to escape threatening
25 and harmful conditions. Their vulnerable conditions are

1 often compounded by their sense of obligation to family and
2 to their community. And security and personal security
3 have a distinct cultural and environmental context. Inuit
4 women experience further challenges throughout remote and
5 isolated communities in the Arctic, such as lack of housing
6 and overcrowding, lack of access to services and resources,
7 food insecurity and other issues. There has been a chronic
8 lack of basic resources in the north for the whole of the
9 Inuit population, but significantly there are even fewer
10 resources to respond to and prevent domestic violence.

11 As has already been stated, there are few,
12 if any domestic violence shelters with comprehensive
13 services. I heard the question put to Tim Argetsinger
14 about the need to vet and identify all of these different
15 shelters. But the shelters are one thing, but
16 comprehensive services are a whole other thing and I think
17 he tried to articulate some of the challenges in that
18 regard. There's a significant lack of access to healthcare
19 and medical facilities when physically injured and little
20 in the way of services or medical care to respond to health
21 effects of what is referred to as intimate partner
22 violence.

23 To underscore the urgent message of the
24 special rapporteur on violence against women, poverty and
25 the impoverishment of Indigenous Peoples plays a huge role

1 in violence against women and girls. The lack of housing
2 leads to serious overcrowding which increases the risk of
3 sexual violence against Inuit women and girls. And this
4 lack of shelters often drive Indigenous women and girls to
5 leave their communities and end up in situations leading to
6 even greater violence, including murder. And that's for
7 just those who can manage to get out of the community.

8 I wasn't sure about the following statement.
9 The more I thought about it, the more I realized it is
10 relevant. And that is, extinguishment of rights can also
11 lead to heightened poverty and other vulnerabilities, in
12 particular, the unilateral extinguishment of rights of
13 Indigenous Peoples has had adverse impacts. For example,
14 upon Quebec's insistence the Parliament and government of
15 Canada included such an extinguishment clause in the *James*
16 *Bay and Northern Quebec Native Claims Settlement Act* that
17 stated -- listen to this, it's really sweeping language:

18 "All native claims, rights, title and
19 interests, whatever they may be, in and
20 to the Territory, of all Indians and
21 all Inuit, wherever they may be, are
22 hereby extinguished..."

23 And though this extinguishment took place
24 over 40 years ago, the impoverishment that resulted has
25 been reinforced elsewhere and, in my opinion, and it would

1 be an important study to pursue, has resulted in diminished
2 resources and services such as shelters or counselling, and
3 increased helplessness in the same way that torture has
4 created this dynamic of powerlessness.

5 In addition to legal and political impacts,
6 as noted by scholar Judy Shepard, for Inuit women and girls
7 in Alaska's northern region -- and here I make the proviso
8 that the conditions are similar for Inuit throughout Inuit
9 Nunangat. Environmental and other social infrastructure
10 factors are also a major contributor to violence and the
11 limitations of leaving an abusive and threatening
12 condition. Shepard specifically noted the following:
13 isolation of communities, severe weather -- oh, by the way,
14 the title of her piece was "Where do you go when it's 40
15 below?" So severe weather, lack of adequate law
16 enforcement, prevalence of alcohol and other drugs,
17 prevalence of weapons. We're still a hunting and gathering
18 society. Absence of many of the basic public service, such
19 as low-income housing and transportation, lack of jobs, and
20 dependence on public assistance, infrequent visits by
21 mental health professionals and the lack of treatment
22 programs for abusers.

23 I would add to this list, in particular
24 items like post-secondary educational institutions in the
25 north. Environmental factors also contribute to

1 vulnerability and conditions of risk, including the impacts
2 of climate change, which contributes to food insecurity;
3 natural resource development and, in particular, extractive
4 industries. We started to hear a little bit about that
5 earlier. I think that we all know there's a dark side to
6 development.

7 A couple of years ago I was invited by the
8 Mandan, Hidatsa, and Arikara people in North Dakota; you
9 know, where all of the oil sands and oil development is
10 taking place, and they sent me the invitation and it
11 sounded like it was going to be a conference about economic
12 development.

13 And, sure enough, it was a conference about
14 economic development. But what took place was this
15 lengthy, full-day discussion -- and it was a three-day
16 conference, a lengthy full-day discussion about the impacts
17 of development in the way of violence against Mandan,
18 Hidatsa, and Arikara women and girls.

19 I was there only 72 hours; there were two
20 Amber Alerts. I think you know what an Amber Alert is,
21 right? These were young girls, and here we are talking
22 about it in the middle of the meeting and I'm just -- and
23 an Amber Alert goes off. That was one day. The next day,
24 another one went off. The first young girl was found safe.
25 The second one wasn't by the time that I left.

1 That's the dark side of development that I'm
2 talking about that we've known about for decades. We've
3 known about this stuff, that where there's -- especially
4 resource extraction. We experienced this when the Trans-
5 Alaska Pipeline was being built in Alaska. The number of
6 especially Inuit women and girls and other Indigenous women
7 and girls that went missing, were murdered, and faced other
8 kinds of sexual assault and violence; some of you may be
9 familiar with this fellow Hanson. We don't know how many -
10 - we don't, to this day, know how many women and girls, as
11 well as Indigenous women and girls, that he raped and
12 murdered or set free out in the woods only to hunt and
13 eventually kill and bury. We still, to this day, don't
14 know anything about those numbers.

15 So as far as extractive industries and the
16 impacts of these kinds of things within communities is very
17 significant. So I think it's another area that needs to be
18 taken into consideration. And as I said, we've known about
19 this dynamic, and the Mandan, Hidatsa, and Arikara people
20 were struggling to find out how do we -- how do we keep our
21 people safe? As an Indigenous government, how do we keep
22 our women and girls safe; how do we avoid the human
23 trafficking? Those were their questions to me; when I had
24 thought that I was going to talk about a comparative
25 analysis between the Alaska Native Claims Settlement Act

1 and corporate structures and economic development, that was
2 what they were most concerned about.

3 Another factor in small rural and remote
4 Inuit communities is the fact that relationships between
5 the victim and the suspected killer or perpetrator have
6 very different dimensions.

7 In our small communities many Inuit women
8 and girls are victims of intimate partner violence, and
9 there's no fancy definition for it, it is simply what it
10 is; intimate partner violence.

11 And not only are there issues in relation to
12 no access to justice and equal application of the rule of
13 law in corresponding institutions, but within the small
14 communities there are a host of other issues that present
15 challenges for an individual woman or girl and her family.

16 And intimate partner violence and other
17 threats trigger, like torture, other activities such as
18 substance and alcohol abuse, mental health issues, high
19 rates of STDs, pregnancy and prematurity, depression and
20 suicide, non-fatal injuries or self-harm, and also fatal
21 injuries, intimate partner homicides, and also, overall
22 cultural instability and cultural poverty. And I'm
23 borrowing the words of Zebeny Numach (ph) when I talk about
24 cultural poverty. And often such issues are invisible in
25 the community unless there are physical scars and

1 deformities. But because they're almost invisible in
2 community, they're often left unspoken and the response of
3 the high incidence of intimate partner violence in Inuit
4 communities has to be tailored, and a distinctive approach
5 to address this particular challenge has to be tailored in
6 terms of what Inuit women and girls within communities
7 wants.

8 I want to point out that some scholars that
9 we're looking at, the Human Development Index and gender
10 equality, their assumption was that where you have high
11 gender equality, that, you know, other indicators would be
12 -- would correspond. And, you know, it sort of makes sense
13 that the idea of gender equity and violence against women
14 and girls, you know, that they would correlate in some way.

15 And Canada arose in some of their tables and
16 so forth, and despite gender equality, and also a very --
17 from an American perspective, a better healthcare system,
18 that Canada ranked really high in terms of intimate partner
19 violence. So it didn't -- they didn't add up in terms of
20 the theory and the assumption of these particular scholars.

21 I have some comments with regard to legal
22 recourse. Should I continue?

23 **MS. VIOLET FORD:** Sure.

24 **DR. DALEE SAMBO DOROUGH:** All right.

25 As noted by a journalist that covered the

1 murder of Rio de Janeiro councilwoman Marielle Franco just
2 this past March, he stated, "It takes a lot of confidence
3 that there will be no justice, to murder someone." You
4 know? And especially a prominent individual; a
5 councilwoman in a major city.

6 He emphasized that there is an overall
7 climate of impunity in Brazil. And if you think about it,
8 and the astounding number of Indigenous women and girls
9 that are murdered and missing in Canada, how far are we
10 away from that climate of impunity?

11 And that climate dramatically increases not
12 just the risk but the reality of murdered and missing
13 Indigenous women and girls. And that if perpetrators
14 believe that nothing will be done, that they can get away
15 with this; nothing will be done by the state or legal
16 mechanisms, then they'll behave in an unfettered fashion
17 and a climate of impunity emerges.

18 And I think this is really why this Inquiry
19 exists, right? If you think about B.C., and I just
20 monitored it from a distance, you know, this stretch of
21 highway where, you know, these numbers kept coming and
22 coming and coming. That suggests that there is a climate
23 of impunity that, yeah, they do have confidence that no
24 justice will emerge.

25 So unsurprisingly within legal structures

1 and institutions, Inuit generally, and Inuit women and
2 girls specifically, are met with ineffective law
3 enforcement responses. As I stated earlier about the
4 Alaska Judicial Council's Report on Racial Disparity in
5 Sentencing; that ranges from prosecutors to public
6 defenders, probation officers, and other support agencies
7 and services, there's also often uneven or discriminatory
8 approaches taken in relation to the duty to investigate
9 that ultimately breeds and perpetuates racial
10 discrimination. And that such racism and discrimination
11 has been identified as systemic throughout legal systems.

12 And additional barriers include lack of
13 legal knowledge, in both civil and criminal proceedings, as
14 well as financial barriers, physical barriers, and
15 emotional barriers.

16 Both in the north and in the south, all of
17 these dynamics are compounded by the increased change of
18 Inuit women and girls being profiled by police and other
19 services in such a way as to minimize the chance that a
20 crime will actually be investigated, regardless of the duty
21 to investigate.

22 And so for those 16,000 Inuit, and of that
23 number the women and girls, the systemic discrimination
24 may, in fact, worsen for them if they've -- especially
25 those that may have attempted to leave because of intimate

1 partner violence. So law enforcement, courts, prisons,
2 there needs to be an entire structural change.

3 All of these economic, social, cultural and
4 political realities contribute to the tragedy of missing
5 and murdered Indigenous women and girls that are
6 experienced here in Canada, and across the globe for
7 Indigenous women and girls, and absolutely affects their
8 collective security, but also their individual security.
9 And a host of effective measures and social infrastructures
10 to address these conditions are lacking, and we've heard
11 about all of them.

12 The right to self-determination and self-
13 government has implications and may also create uneven
14 jurisdiction or authority to address and prevent domestic
15 violence that may escalate to homicide or other harm. I
16 don't know the details of this. I can't substantiate this,
17 but I presume that this is the case.

18 And, again, without greater and fully
19 decentralised local control, it's difficult, if not
20 impossible, for Inuit communities to respond to the reality
21 of Inuit missing and murdered women and girls, or intimate
22 partner violence, domestic violence, sexual violence,
23 sexual assault, discrimination.

24 Of course, as I said earlier, as far as
25 self-determination is concerned and operationalising it in

1 an effective and meaningful way throughout Inuit
2 communities, Inuit have to be participants from the ground
3 up.

4 I want to just briefly mention the
5 sustainable development goals, of which Canada has agreed
6 to at the international level. And I think that they're
7 urgent and crucial as well in relation to the health and
8 welfare of the Inuit and, in particular, Inuit women and
9 girls.

10 The SDGs and the indicators relate to
11 inequalities, poverty, food, health, education, water,
12 sanitation, energy, environment, resources, climate policy,
13 work, economic growth, industry, innovation, infrastructure
14 and institutions of governance, and access to justice. All
15 of these are acutely impacting Inuit communities and have
16 direct implications for Inuit women and girls.

17 Fortunately, UN Women has tried to integrate
18 the perspectives of women in the so-called UN system-wide
19 action plan, which was -- which emerged out of the so-
20 called World Conference of Indigenous Peoples. And
21 they've, you know -- they're working and working, my guess
22 is, directly with the permanent forum on Indigenous issues
23 and their members.

24 There was talk of a national plan here in
25 Canada I think ditto -- and echo the approach of, for

1 example, UN Women to ensure that Indigenous peoples,
2 Indigenous women and girls are engaged in the discussion,
3 especially as Canada goes forward. If -- well, I don't
4 know the status of it. I'll be frank with you. I don't
5 know the status of how serious Canada is taking the need
6 for developing sustainable development goals and
7 indicators.

8 I would echo what Brenda Gunn said about the
9 need for disaggregated data in regard to Inuit, Métis and
10 First Nations.

11 So when we think about the sustainable
12 development goals and the rights and concerns and interests
13 of Inuit as well as their status as distinct Indigenous
14 peoples, will they be left behind, you know? Is this --
15 the mantra is I leave no one behind. Okay. Well, how is
16 that going to happen? You know, the next time around that
17 Canada reports to the UN what they're actively and
18 concretely doing with regard to the sustainable development
19 goals.

20 And in regard to all of this, I continue to
21 think that we cannot wait for evolutionary change; right?
22 I mean, it's almost as though that's what's taking place,
23 but we can't do that. We can't wait for the gradual
24 development of something that looks like concrete action.
25 We have to do something on an urgent basis. And I think

1 that there are ways in which we can do -- take action on an
2 urgent basis.

3 You know, the Special Rapporteur on violence
4 against women, that was a pretty compelling statement that,
5 okay, I've been here. I made my country visit and I took a
6 look around and these -- my recommendation is that
7 something be done right now, even before the work -- your
8 work, our collective work is done. And that was a pretty
9 compelling message on her part.

10 I had a note about a really horrific story
11 but I don't want to share it now. It was just to
12 underscore the message that it really is urgent.

13 **MS. VIOLET FORD:** Thank you.

14 Just a couple more housekeeping things and
15 more documents to be entered into exhibits as listed in the
16 summary.

17 The first one is Violence -- end of the
18 mission statement by Dubravka -- how do you pronounce her
19 name -- Šimonović?

20 **DR. DALEE SAMBO DOROUGH:** Yeah, it's close.

21 **MS. VIOLET FORD:** Šimonović, United Nations
22 Special Rapporteur.

23 **CHIEF COMMISSIONER BULLER:** Exhibit 22.

24 **MS. VIOLET FORD:** Yeah, thank you.

25 **CHIEF COMMISSIONER BULLER:** Exhibit 22.

1 --- EXHIBIT NO./PIÈCE NO. B22:

2 End of mission statement by Dubravka
3 Šimonović, United Nations Special
4 Rapporteur on Violence against women,
5 its causes and consequences - Official
6 visit to Canada (11 pages)

7 **MS. VIOLET FORD:** As well as Billson, Janet
8 Mancini, Shifting Gender Regimes.

9 **CHIEF COMMISSIONER BULLER:** Exhibit 23,
10 please.

11 --- EXHIBIT NO/PIÈCE NO. B23:

12 "Shifting gender regimes: The
13 complexities of domestic violence among
14 Canada's Inuit", by Janet Mancini
15 Billson in Études/Inuit/Studies, Volume
16 30, Issue 1, 2006, p. 69-88

17 **MS. VIOLET FORD:** Okay. And Understanding
18 and Addressing Violence Against Women, the publication of
19 the WHO and PAHO.

20 **CHIEF COMMISSIONER BULLER:** I'm sorry. I
21 might have made a mistake. The report of the Rapporteur is
22 Exhibit 23. The document after that is Exhibit 24. I made
23 a mistake.

24 **MS. VIOLET FORD:** Okay.

25 **CHIEF COMMISSIONER BULLER:** And then the

1 document you just referred to again, please? Could I have
2 the title?

3 **MS. VIOLET FORD:** Yeah, it's Understanding
4 and Addressing Violence Against Women.

5 **CHIEF COMMISSIONER BULLER:** Okay. That's
6 Exhibit 24.

7 **---EXHIBIT NO./PIÈCE NO. B24:**

8 "Understanding and addressing violence
9 against women: Intimate partner
10 violence," publication of the World
11 Health Organization and Pan American
12 Health Organization (12 pages)

13 **MS. VIOLET FORD:** Yeah. And then ---

14 **MS. CHRISTA BIG CANOE:** Sorry, that was 2
15 number 24, so I'm going to guess the next one is 25?

16 **MS. VIOLET FORD:** Did you say 24?

17 **MS. CHRISTA BIG CANOE:** So, yeah. I'm
18 sorry. I just want to make sure. If we could check with
19 Madam Clerk?

20 **REGULATORY OFFICER:** I show 22 as Schedule
21 H.

22 **MS. VIOLET FORD:** Yeah.

23 **MS. CHRISTA BIG CANOE:** Yeah.

24 **REGULATORY OFFICER:** Twenty-three (23) as
25 Schedule J.

1 **MS. VIOLET FORD:** No.

2 **MS. CHRISTA BIG CANOE:** What's the title? I
3 just want to ensure we have the right ---

4 **REGULATORY OFFICER:** It was Shifting
5 Genders.

6 **MS. CHRISTA BIG CANOE:** Shifting genders is
7 number 24?

8 **REGULATORY OFFICER:** I have that as 23 and
9 24 I have a document titled Understanding.

10 **MS. CHRISTA BIG CANOE:** So the Shifting
11 Gender Regimes was 23.

12 **REGULATORY OFFICER:** Correct.

13 **MS. CHRISTA BIG CANOE:** Understanding and
14 Addressing Violence Against Women, was that 24?

15 **REGULATORY OFFICER:** Yes.

16 **MS. CHRISTA BIG CANOE:** And then -- so then
17 the next one should be 25, yeah.

18 **MS. VIOLET FORD:** So just to be clear,
19 number 25 is Understanding and Addressing Violence Against
20 Women.

21 **MS. CHRISTA BIG CANOE:** No, that's 24.
22 That's 24.

23 **MS. VIOLET FORD:** Twenty-four (24). Okay.

24 **THE REGULATORY OFFICER:** What schedule is
25 that?

1 **MS. CHRISTA BIG CANOE:** Sorry, the reference
2 is from the schedule for the witness and I believe there
3 was one that was hopped over, so it's not.

4 **MS. VIOLET FORD:** M'hm. That's to confuse
5 them.

6 As well as Judy Shepherd, Where Do You Go
7 When It's 40 Below? It's listed as Schedule K.

8 **CHIEF COMMISSIONER BULLER:** Twenty-five
9 (25).

10 **--- EXHIBIT NO./PIÈCE NO. B25:**

11 "Where Do You Go When It's 40 Below?
12 Domestic Violence Among Rural Alaska
13 Native Women", by Judy Shepherd in
14 Afilia, Volume 16, Issue 4, pp. 488-
15 510, November 1, 2001

16 **MS. VIOLET FORD:** Twenty-five (25).

17 And the last one is Intimate Partner
18 Violence Hearings about the Realities of Intimate Partner
19 Violence in the Northwest Territories.

20 **CHIEF COMMISSIONER BULLER:** Twenty-six (26).

21 **--- EXHIBIT NO./PIÈCE NO. B26:**

22 "Hearing about the Realities of
23 Intimate Partner Violence in the
24 Northwest Territories from Frontline
25 Service Providers, Northwest

1 Territories Research Project Report for
2 Territorial Stakeholders Final Report
3 by Pertice Mofitt and Heather Fikowski,
4 2017 (60 pages)

5 **MS. VIOLET FORD:** Okay. Thank you.

6 So I guess we're wrapping things up a
7 little. Do you have any recommendations for the
8 Commission?

9 **MS. DALEE SAMBO DOROUGH:** Yes, thank you.

10 I have several of them, but I won't go into
11 each of them. I think that, in particular, it would be
12 repetitive in regard to Brenda Gunn's recommendations
13 earlier about a human-rights-based approach and a human
14 rights framework. But, I suppose I would only add to that,
15 what I spoke about earlier, the need for a very
16 comprehensive intersectional perspective in the context of
17 Indigenous women and girls, and Inuit women and girls that,
18 yes, we have a human-rights-based approach, but we add that
19 -- yes. Yes, exactly. Her body language said it all.

20 Drill through everything, capture every
21 ounce you can. I don't know how one actually substantively
22 addresses the structural and underlying causes and risk
23 factors that will help to prevent violence against Inuit
24 women and girls, and I think that that requires additional
25 study. But, one thing that I have thought of and have been

1 in dialogue with other Inuit in the past, not just here in
2 Canada but elsewhere, and maybe -- I don't know. Maybe Tim
3 Argetsinger raised this, but the potential for an
4 Indigenous human rights monitoring mechanism.

5 We've heard about, and Jean LeClair
6 referenced Romeo Saganash's bill regarding implementation
7 of the U.N. Declaration, but national human rights
8 institutions have been gaining currency in places where
9 we've seen little in the way of democratic principles.
10 But, in a country where democratic principles are soundly
11 affirmed that a distinct and specific Indigenous human
12 rights monitoring mechanism may find juice.

13 I would argue that it is a *sui generis* area
14 of law like intellectual property or other areas of law
15 that -- and it's actually fairly well developed here in
16 Canada. I'm not an expert at it, but if you review the
17 decisions of the Supreme Court of Canada, other work that
18 has attempted to advance the status and the rights of Inuit
19 and Métis and First Nations, that it might be something for
20 consideration.

21 I would also say that like our Article 40 of
22 the U.N. Declaration, that you really do need to tailor the
23 recommendations and make a distinctions-based approach to
24 the recommendations. I think that in the Canadian Arctic
25 and for Inuit women and girls as a distinct culture and

1 distinct peoples with distinct rights that, again, a
2 distinctions-based approach would be really important.

3 Obviously, self-determination would really
4 assist in nurturing and bringing forward self-sufficiency
5 that through self-determination, Inuit communities can be
6 more self-reliant, and identify the problems as well as the
7 solutions in order to address this particular issue of
8 missing and murdered Inuit women and girls, and that just,
9 again, to restate that self-determination is a foundational
10 right, a prerequisite.

11 Just another cluster of suggestions, and
12 we've heard it, but -- we've already heard it, but I think
13 it's important to state again. In my past, I was involved
14 in a construction company, and it was so clear that
15 construction of infrastructure anywhere in the Arctic cost
16 at least 40 percent more, bar none, across the board.

17 So, in terms of social infrastructure for
18 Inuit communities in favour of Inuit women and girls that,
19 yes, resources, but it has to be done on the basis of the
20 actual need, and equitable like equality, substantive and
21 relative to the actual conditions. You can just look at
22 food prices alone and know that you have to take a
23 completely different approach.

24 I won't get into all of my other
25 recommendations, because I think they've been stated and

1 restated in terms of legal institutions and legal systems,
2 measures for recourse and redress, except to underscore
3 that as far as customary international law is concerned,
4 again, any measures for recourse, reparations and redress
5 are considered within the neighbourhood of customary
6 international law, and would, therefore, expand upon the
7 provisions within the U.N. Declaration and other
8 international human rights treaties that discuss recourse,
9 reparations and so forth.

10 I think maybe the only other final thing
11 that I would say included in my couple of -- 12 to 14, 16
12 recommendations, is that for those perpetrators within an
13 Inuit community, especially when they're small communities,
14 that measures of restorative justice and other means need
15 to take place in order to effectively rehabilitate and
16 provide healing resources.

17 And, when I mention this, I mention it in
18 the context of Inuit men and the reality of intimate
19 partner violence and domestic violence, which is rarely
20 spoken of, I suppose. Maybe, maybe not. Maybe I'm wrong
21 about that, but I think in this regard and in the context
22 of Inuit that this is an important area that we need to
23 look at as well.

24 Traditionally, when things of this nature
25 have happened, our people have banished individuals from a

1 community. Now that we have -- you know, if you think
2 about the individual rights, and as a human rights
3 advocate, they're equally important. So, you have to take
4 that into account.

5 One final thing that I do want to say is
6 that -- and it was in part because of Brenda Gunn's
7 comments about the U.N. Declaration and individual rights
8 and collective rights. I actually co-chaired the meeting
9 of the Indigenous Peoples Caucus in 1985 the week before
10 the working group on Indigenous Populations met to discuss
11 the U.N. Declaration, and the week before, I was going to
12 offer our annex to the working group. So, I chaired the
13 meeting.

14 The biggest issue of contention in that
15 meeting was whether or not Indigenous peoples should
16 advance the position that the Declaration should only refer
17 to the collective rights of Indigenous peoples, that we
18 have an entire human rights regime that guarantees our
19 individual rights: the convention against torture,
20 elimination of racial discrimination, the rights of women,
21 on and on.

22 The most compelling argument made to ensure
23 that the U.N. Declaration on the Rights of Indigenous
24 Peoples created a balance between individual rights and
25 collective rights was the voice of Indigenous women. They

1 took the floor and cited cases like *Lovelace* and other
2 cases. Pueblo women talked about it, *Santa Clara Pueblo*
3 case. That was the most compelling argument, that the U.N.
4 Declaration on the Rights of Indigenous Peoples has to
5 create a balance between individual rights of women,
6 Indigenous women, and the collective rights of Indigenous
7 peoples.

8 And, in the end of the day, that's the
9 argument that won, and I think that it's important -- it's
10 an important moment in history that Indigenous women, based
11 upon all of the experiences that they've had until that
12 moment, compelled them to raise their voices against a
13 pretty overwhelming and strong argument that we need our
14 collective rights protected. And, I think that, to me
15 through that act alone as well as the overall Indigenous
16 movement to gain and own and refer to and invoke the UN
17 Declaration on the Rights of Indigenous Peoples, that
18 Indigenous peoples have made an extraordinary contribution
19 to the entire human rights regime internationally,
20 nationally, regionally and locally. And more important,
21 Indigenous women ensured that significant balance. And
22 there's a lot of power in that, and I'm grateful it was
23 expressed. Qujannamiik.

24 **MS. VIOLET FORD:** Thank you, Dalee, for your
25 very powerful statements throughout this presentation.

1 Thank you for making it to Quebec City and changing all of
2 your schedules. We all appreciate it.

3 So I guess to the Commissioners and
4 Chief Commissioner, and the Commissioners that -- are there
5 any questions that you have for Dalee?

6 **CHIEF COMMISSIONER BULLER:** I will have
7 questions tomorrow. Thank you.

8 **COMMISSIONER AUDETTE:** I'll have more --
9 I'll speak English. My brain think in English now.

10 **(LAUGHTER/RIRES)**

11 **COMMISSIONER AUDETTE:** I might dream in
12 English also. I may not.

13 I just wanted to say thank you, because we -
14 - I try to respect the rule that I don't engage with the
15 witness, but she was on the elevator. So I didn't tell her
16 who I was and ---

17 **UNIDENTIFIED SPEAKER:** She might have seen
18 you on TV.

19 **COMMISSIONER AUDETTE:** Maybe not. I have
20 glasses, that's why.

21 And I knew who you were because we Googled
22 you.

23 **(LAUGHTER/RIRES)**

24 **COMMISSIONER AUDETTE:** And because we saw
25 you also at the UN many years, to be frank with you.

1 So I just want to say tomorrow the question
2 will be my time for questions, but I wanted to take this
3 opportunity to say thank you because you come from a long,
4 long way now, that was very far. And I admire that. Thank
5 you. And I admire also the acknowledgement that you just
6 did for the women who fought to make sure that the --
7 within the UNDRIP, we are there, and I remember that day.
8 So thank you.

9 **DR. DALEE SAMBO DOROUGH:** Qujannamiik.

10 **COMMISSIONER ROBINSON:** I'll have questions
11 tomorrow as well, but I just wanted to express,
12 qujannamiik.

13 **COMMISSIONER EYOLFSON:** As well, I just want
14 to say thank you, and I will wait until tomorrow for any
15 questions. Thanks very much.

16 **DR. DALEE SAMBO DOROUGH:** Qujannamiik.

17 **MS. CHRISTA BIG CANOE:** At this point,
18 Chief Commissioner and Commissioners, we would ask to
19 adjourn until tomorrow. I am going to kindly ask counsel
20 to stay, once we're off the official record, just for a
21 couple of housekeeping notes. But can we please adjourn
22 until 8:30 a.m.

23 And before we formally close, I just want to
24 adjourn the hearing, I understand that the Elders will be
25 doing a prayer.

1 **COMMISSIONER AUDETTE:** Housekeeping, same
2 thing here. We need this room. We're having a meeting.

3 **MS. CHRISTA BIG CANOE:** I was just -- it's
4 going to be like two announcements. I just -- they don't -
5 - it doesn't need to be on the public record.

6 **COMMISSIONER AUDETTE:** Okay. No. No. If
7 the announcement could be -- no, you need the mic to do
8 that. You're sure it's not going to be forever? We need
9 the room.

10 **MS. CHRISTA BIG CANOE:** No, it's just two
11 announcements.

12 **COMMISSIONER AUDETTE:** Okay. Merci,
13 beaucoup. Okay. Thank you.

14 **MS. CHRISTA BIG CANOE:** So I'm not certain
15 if the grandmothers will be doing a closing, but for the
16 purposes of just closing the hearing for today, can we seek
17 an adjournment until -- to begin commencing cross-
18 examination at 8:30 sharp tomorrow morning?

19 **(CLOSING COMMENTS AND PRAYER)**

20 **MS. PENELOPE GUAY:** (Problème avec le son) ...
21 remettre sur pied, leur donnant de l'amour, de l'espérance,
22 de l'espoir. J'aurais aimé qu'il soit ici aujourd'hui,
23 parce que justement, c'est ça que j'ai entendu : de
24 l'espoir, du changement, tous ensemble.

25 Alors, c'est ça que je vais dire aux femmes,

1 ce que j'ai vécu ici, puis aux hommes aussi, parce que nous
 2 travaillons avec les hommes aussi. Ils font partie aussi de
 3 la solution ; il faut qu'ils entendent ce qu'on dit, il
 4 faut qu'ils voient ce qu'on fait. Il faut qu'eux aussi se
 5 tiennent debout. Il faut leur dire de ne plus être
 6 violents. Ça, c'est important.

7 Je vous remercie d'avoir témoigné. Merci,
 8 les commissaires, tous les jours. Merci, le monde dans le
 9 milieu [Rires], qui sont venus écouter; je trouve ça
 10 important. Merci les experts ; je ne sais plus si ce sont
 11 les experts ou les alliances, mais c'est important que vous
 12 soyez ici et qu'on trouve des solutions ensemble.

13 Je vous remercie. Je vais aller rejoindre ma
 14 sœur inuite! [Rires]

15 **MS. LAUREEN WATERS:** Thank you everyone. We
 16 now are aware more of what -- from what we have learned
 17 today. Ensure that we keep these to ourselves to respect
 18 the experts and the communities. Those who are not here,
 19 the Qulliq, the oil lamp is lit.

20 Creator, you are our only reliance. People
 21 here have strong minds. We know you have to support them
 22 in words, in mind and spirit. The day is over, and we wish
 23 that things will improve, in Jesus's name. Amen.

24 **MS. PENELOPE GUAY:** Un chant, est-ce que
 25 c'est ça? Oui. Tu peux l'éteindre. Est-ce qu'il y a un

1 chant? Je ne le sais pas, mais je pense que c'est important
2 de finir avec un chant.

3 **UNIDENTIFIED SPEAKER:** Many thanks to our
4 Elders, our grandmothers our knowledge keepers for closing
5 us today. We'd like to sing the women's warrior song in
6 honour and recognition of all of our women that are gone,
7 those that are standing around us in circle, those that are
8 with us.

9 And we'd like to ask if you'd like to come
10 up to join as well. Not to be nervous. There is no
11 judgements. It's an opportunity for us to share, to stand
12 as women, as men to sing together, to honour. So please,
13 if you would like, sing where you're or come up and join
14 our circle or welcome with open arms and also, many thanks
15 for sharing your knowledge and your heart and your passion
16 today, to those knowledge-keepers that spoke to remind us
17 all and all of Canada of the realities of our people, and
18 many thanks for continuing your work and your courage in
19 that work.

20 (MUSICAL PRESENTATION)

21 --- Upon adjourning at 17:58

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LEGAL DICTA-TYPIST'S CERTIFICATE

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I, Nadia Rainville, Court Transcriber, hereby certify that I have transcribed the foregoing and it is a true and accurate transcript of the digital audio provided in this matter.

Nadia Rainville

Nadia Rainville

May 16, 2018