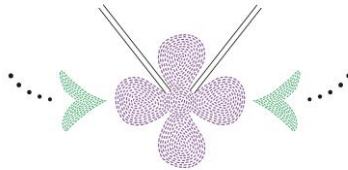


National Inquiry into  
Missing and Murdered  
Indigenous Women and Girls



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 VII**

**Thursday May 17, 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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**VI**

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B28	Inuit Tapiriit Kanatami Position Paper Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada (18 pages) Witness: Brenda Gunn; Submitted by Christa Big Canoe, Commission Counsel	9
B29	Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada through comprehensive legislation, Inuit Tapiriit Kanatami, April 2017 (five pages) Witness: Brenda Gunn; Submitted by Christa Big Canoe, Commission Counsel	10
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**VII**  
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Quebec City, Quebec

--- The hearing starts on Thursday, May 17<sup>th</sup>, 2018 at  
8:20 a.m.

(OPENING REMARKS/PRAYER)

**MS. LAUREEN WATERS-GAUDIO:** ...so that we  
have that fire to keep us going and to keep us healthy and  
to have that cleansing, and to have that great Qulliq that  
was there for our Inuit people to have them continue with  
life. So it's very important that we honour that fire,  
just as we do in other nations when we come together, and  
we have sacred fires, we have those sacred objects that  
help us on our journeys.

And I'm very grateful that Rebecca is  
carrying that and carrying for that for us so that all  
those Inuit know that they're represented in this Inquiry  
and that all people have value and life, they're all gifts.  
And to return to our original ways to learn these teachings  
and to learn what sustained our families for time  
immemorial. It's the beginning.

And I'm happy to see that all of us are  
returning to that, returning to our traditional ways and  
learning about the ways that our ancestors lived and how  
they governed themselves.

And I think that's what part of this is  
about with these expert witnesses. We're bringing them in



1 to prove that these things have always existed and to point  
2 out where things need to change. I'm very grateful for our  
3 panels, all our panelists that have come this week and told  
4 us, no, this has been (inaudible) since the beginning of  
5 time, and we're here to fight for you. So to come together  
6 as all nations is very important.

7           Nothing is ever perfect in life. No ways of  
8 someone doing something is the right way only. There's  
9 many ways. But it's very important that we come together  
10 and support each other so that we can continue to do this  
11 work, to find the systemic causes, the reasonings why are  
12 women, two-spirited LGBTQ community, why are people are  
13 going missing, and why is it just us being murdered in such  
14 high rates, why are we being incarcerated in high rates.

15           These are things that we need to stop, we  
16 need to find the reasoning's, and we all need to fight  
17 together. We know that there is always a little bit of pot  
18 that gets thrown around in the way of money, and we all  
19 have to fight for it; right. So doing that, we're  
20 continuing those colonial ways of separating each other and  
21 fighting with each other.

22           So today, I ask those ancestors if they'll  
23 take care of that, and I'll speak that more when I do my  
24 opening prayer for you.

25           But we'll get Rebecca to start us off and

1 Penelope will come after that and speak in the French  
2 language so that you don't have to listen so much through  
3 your headphones, and it's a little bit more comfortable for  
4 those that are here, those French-speaking, and to honour  
5 this territory where this language is.

6 **MS. REBECCA VEVEE:** (Speaking native  
7 language). Good morning, everyone. Once again, we come  
8 together. Thank you.

9 Good morning. It's good that we've gathered  
10 again. And I've done some research to find out why we've  
11 lit the oil lamps. When people are missing, people light  
12 candles for vigils.

13 I am grateful for the moments we are in  
14 today. Our presence here with presentations, the experts  
15 I'm very grateful to, as well as the Commissioners for the  
16 invitation.

17 At times, when we're all on our own, we are  
18 united through these fronts. For your welcoming's, thank  
19 you once again for inviting me. And it's hard for me to  
20 express how grateful I am. My heart is jubilant for being  
21 here with you all. Thank you.

22 **MS. PENELOPE GUAY:** Kwe. Bon matin. Je  
23 voulais dire que je remercie mes ancêtres de l'héritage  
24 qu'ils nous ont donné. Merci à nos grands-mères, à nos  
25 grands-pères d'être présents dans le monde des esprits.

1           Je remercie aussi les experts ; hier, à la  
2 fin de notre dernière prière, je me suis un peu effondrée  
3 parce que les larmes venaient facilement d'avoir entendu  
4 les experts nous conter leurs droits, leurs revendications  
5 et nous aussi, à partir des femmes et des hommes qui ont  
6 vécu beaucoup de violence. Alors, ça m'a touchée  
7 énormément.

8           J'ai pensé, ce matin, à ça et je me suis  
9 dit : qu'est-ce qu'il faut faire? Parce qu'on sait  
10 qu'entendre et réentendre, avec le cœur, on a des  
11 traumatismes nous aussi, hein? On les a entendus; vous avez  
12 entendu hier aussi.

13           Alors, ce qui m'est venu, dans mes prières,  
14 c'est d'aller dans la forêt, en fin de semaine, d'aller  
15 voir les arbres, d'aller leur parler, aussi, de ce qui  
16 s'est passé, parce qu'ils entendent, eux aussi. Il ne faut  
17 pas garder ça à l'intérieur de nous. C'est ce qu'on m'a  
18 enseigné aussi, c'est ce que je vous enseigne : aller dans  
19 la nature, vider son cœur, pour qu'il prenne soin de nous.

20           Alors, en fin de semaine, c'est ce que je  
21 vais faire [Rires]. J'en aurais besoin pour me donner de  
22 l'énergie pour continuer.

23           Je vous remercie d'être ici ce matin. Je dis  
24 toujours qu'on est en train de marquer l'Histoire, on est  
25 en train de faire des pas. Merci les commissaires, je vous

1 aime. Merci.

2 J'ai reçu un enseignement, ce matin aussi,  
3 du petit sac de médecine noir : il y a de la sauge dans le  
4 petit sac et ça nous permet d'ouvrir nos cœurs. Alors,  
5 c'est ce qu'on va faire toute la journée aujourd'hui. Je  
6 vous remercie beaucoup.

7 **MS. LAUREEN WATERS-GAUDIO:** Thank you to  
8 those grandmothers that have spoken.

9 (Speaking native language).

10 What I've said to you is my name is Earth  
11 Song. I'm an aayahkwew, which means neither man nor woman.  
12 I'm from the Wolf Clan, and my family is from Ahtahkakoop,  
13 Saskatchewan and Eskasoni, and I bring that to you so you  
14 know where my family is from and you know who I am.

15 My name means to bring life to the world, to  
16 the earth. It was the first sounds that Earth made. So  
17 for me it's very important and I'm very honoured that I get  
18 to stand before you to say some words.

19 I want to thank the Commissioners for  
20 bringing in the grandmothers. When we first started this  
21 road, they approached each and every one of us with tobacco  
22 and they asked us if we'd their helpers. If we'd help  
23 guide them on this journey, which is a very difficult  
24 journey. And that we've done this is a good way, that we  
25 bring forth those teachings we were gifted with, that we're

1 very honoured that we got from many, many people, to share  
2 and to make sure that we're following our traditional ways.

3 So I say thank you to them for doing that  
4 process, cause that's what's been guiding us along this  
5 journey. By going back to our original ways and including  
6 spirituality, including ceremony, including that part of  
7 our being that needs to be addressed, not just our  
8 emotional, our physical and intellectual.

9 And for me, when I have this tobacco in my  
10 hand, it's not me who speaks. I ask those Ancestors to  
11 help me, help me say the words that need to be said. And  
12 when we pray, we pray and repeat the words that need to be  
13 said. I'm grateful that that time is given to us for doing  
14 that work.

15 Because we just don't run by the clock, we  
16 never had a clock a long time ago. Ceremony starts when  
17 it starts and it finishes when it finishes, and that's hard  
18 for some people to comprehend and to understand because  
19 we're human beings; sometimes we want things to hurry up.  
20 "Come on, come on, I have things to do." But we can't do  
21 that, we can't rush, when the spirits are asking that words  
22 be said, so that we can learn, so that we can say things.

23 Because other times, when we're acting with  
24 our human hat, oh boy, we can just keep going and we can  
25 just say things. So I'm grateful that I've been given this

1 gift and I've been given this responsibility to share with  
2 you. And to share with you that teaching that comes from  
3 the Cree and the Anishinaabe people; that's tobacco and  
4 we're giving it. This is our linkage to the spirit world,  
5 this is our linkage to those ancestors, it's one of our  
6 original teachings that to get something we have to give  
7 something, and for us, it's that tobacco.

8 We give tobacco so we can be guided, so that  
9 we can do things in a good way, speak in a good way, hear  
10 in a good way, listen in a good way, and then live our  
11 lives in a good way.

12 Then, I'm grateful that each and every one  
13 of you are invested into this, because it involved all of  
14 our people. One affects one affects many. It's not just  
15 an individual thing that happens to just one family; it  
16 affects communities, it affects nations.

17 So today, those ancestors want me to say to  
18 you that, "Don't worry, we as a collection of people will  
19 fix this. These are our people, we need to invest into it.  
20 We need to do this work, we need to continue doing this  
21 hard work. We need to continue supporting each other, we  
22 need to come together. We need to stop all that violence,  
23 we need to stop discriminations, we need to stop separation  
24 and racisms. All people are gifts from the Creator, no  
25 matter where they come from, no matter what colour they

1 are, no matter what practices they practice."

2 So if we come together like that, the  
3 Creator says, and the ancestors say, "We'll be one and  
4 we'll be strong. Because one tree in the forest gets blown  
5 down easily; but many trees that help surround it protect  
6 each other. And we may lose a few, but we still have many  
7 more left. So the greater we come together in numbers,  
8 those ancestors say, we'll be stronger."

9 And not everyone will like this process  
10 that's going on, and that's okay. But we still need to  
11 support each other, we still need to have a voice. Those  
12 that oppose this, they still need to have a voice. So that  
13 we can learn what it is that they're feeling and what  
14 they're experiencing, and how we can make changes and how  
15 can we move forward in a good way. But if we just stop and  
16 not continue to help each other, we will not be strong.

17 So be like those trees; stand together, be  
18 that great forest, be that strength that's needed. For  
19 this, I say (Indigenous language). And thank you all for  
20 being here again today.

21 **MS. CHRISTA BIG CANOE:** Good morning, Chief  
22 Commissioner and Commissioners. Just before we formally  
23 open into cross, there's a couple housekeeping items that I  
24 propose I deal with so it's out of the way.

25 First, what I'd like to do is, yesterday,

1 during Doctor Dorrough's testimony, she had raised a couple  
 2 of documents, or said some information that we just want to  
 3 put in as exhibits. And one of them was the "American  
 4 Declaration on the rights of Indigenous people," was one of  
 5 the instrument she spoke about.

6 If we could have that made, and I'm gonna  
 7 suggest to just that the numbers continue, I'll just check  
 8 with Madam Clerk, I believe that's 27? So if we could have  
 9 that made 27.

10 **--- EXHIBIT No./PIÈCE No. B27**

11 American Declaration on the Rights of  
 12 Indigenous Peoples - adopted at the  
 13 third plenary session, held on June 15,  
 14 2016 (22 pages)

15 **CHIEF COMMISIONNER MARION BULLER:** "The  
 16 American Declaration of the rights of Indigenous..

17 **MS. CHRISTA BIG CANOE:** "People."

18 **CHIEF COMMISIONNER MARION BULLER:** "People."  
 19 Exhibit 27.

20 **MS. CHRISTA BIG CANOE:** Thank you. There is  
 21 also, I'm gonna say.. "The Inuit Tapiriit Kanatami position  
 22 paper implementing the UN Declarations on the rights of  
 23 Indigenous people in Canada." If we could have that made  
 24 exhibit 28, please?

25 **--- EXHIBIT No./PIÈCE No. B28**



1 Inuit Tapiriit Kanatami Position Paper  
2 Implementing the UN Declaration on the  
3 Rights of Indigenous Peoples in Canada  
4 (18 pages)

5 **CHIEF COMMISIONNER MARION BULLER:** Yes, "The  
6 Inuit Tapiriit Kanatami position paper implementing the UN  
7 Declarations on the rights of Indigenous people in Canada"  
8 is exhibit 28.

9 **MS. CHRISTA BIG CANOE:** Also from "The Inuit  
10 Tapiriit Kanatami implementing the UN Declarations on the  
11 rights of Indigenous people in Canada through a  
12 comprehensive legislations", if that could please be number  
13 29?

14 --- **EXHIBIT No./PIÈCE No. B29**

15 Implementing the UN Declaration on the  
16 Rights of Indigenous Peoples in Canada  
17 through comprehensive legislation,  
18 Inuit Tapiriit Kanatami, April 2017  
19 (five pages)

20 **CHIEF COMMISIONNER MARION BULLER:** Yes.  
21 "ITK's implementing the UN Declaration on the rights  
22 of Indigenous people in Canada through a comprehensive  
23 legislation" is exhibit 29.

24 **MS. CHRISTA BIG CANOE:** And one other  
25 housekeeping issue. It is not an exhibit, it was

1 originally intended to just be a demonstrative aid, was  
2 Corey O'Soup's resources.

3 It didn't actually get up on the screen but  
4 it had been distributed to parties, and we will ensure that  
5 it gets put onto the useful links on the website. If we do  
6 have time, even over lunch, we'll have it put up on the  
7 screens so that people can see. The resources were just  
8 public Internet resources in relation to a number of the  
9 conventions. And it was done in a slide presentation, but  
10 that was a demonstrative aid, not an exhibit, cause that's  
11 all publicly available information. I just wanted to  
12 indicate that it got overlooked yesterday.

13 In terms of housekeeping issues or matters,  
14 I'm complete with those. And so, at this point, I would  
15 like to advise and inform you that we will have 15 parties  
16 with many in attendance for cross-examination, today.

17 And so, with cross-examination, we will  
18 begin with as each one's called, we'll cite the numbers.  
19 The minutes will begin, the time will begin the moment the  
20 counsel steps up and talks.

21 And so the first party is the Eastern Door  
22 Indigenous Association, and they have 20 minutes. So 20  
23 minutes, thank you.

24 **COREY O'SOUP, Resumed/Sous le meme serment:**

25 **BRENDA GUNN, Resumed/Sous le meme serment:**

1 **DALEE SAMBO DOROUGH, Resumed/Sous le meme serment:**

2 **JEAN LECLAIR, Resumed/Sous le meme serment:**

3 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. NATALIE**

4 **CLIFFORD :**

5 **MS. NATALIE CLIFFORD:** Thank you. Good  
6 morning. My first question is for Professor Gunn.

7 I wondered if you could clarify whether  
8 Canada currently has an international obligation to  
9 prevent, investigate, prosecute, punish and compensate for  
10 murdered and missing Indigenous women and girls?

11 **MS. BRENDA GUNN:** Thank you. Yes, I think  
12 it's the simple answer and we can point to Suda and Suda's  
13 (phon.) interpretation of their convention. Which would  
14 include all of the general recommendations that they have  
15 developed, and they have three that deals specifically with  
16 gender-based violence against women. And how gendered-  
17 based violence against women is a violation of Suda  
18 (phon.).

19 **MS. NATALIE CLIFFORD:** Is it also a domestic  
20 obligation, maybe by way of the charter, section 7 and 15-  
21 1?

22 **MS. BRENDA GUNN:** One of the challenges that  
23 often exists when we're talking about domestic application  
24 of international law is that, occasionally what we've seen  
25 is that when Canada does its periodic reporting, it will

1 report to the oversight body.

2 So the Committee on the Elimination of  
3 Discrimination Against Women, in this case, that they have  
4 fully implemented the instrument and they'll point to  
5 different areas of domestic law where it's implemented.  
6 But I've seen occasions -- and I'm speaking generally here,  
7 not specifically to CEDAW, where when international human  
8 rights instruments engaged in domestic litigation, the  
9 Department of Justice response tends to be that that Treaty  
10 has not been implemented because there's no specific  
11 legislation that can be pointed to. And so I acknowledge  
12 that that's one of the challenges, is there seems to be at  
13 least a divide in sometimes what Canada reports  
14 internationally and what the Department of Justice allows  
15 to be engaged in litigation domestically.

16 My preferred response would be again to, at  
17 minimum, point to the *Baker* decision where the Supreme  
18 Court of Canada said that even -- sorry -- even  
19 unimplemented treaties can have legal effect in Canada.  
20 And so, if Canada were to say that they hadn't specifically  
21 implemented CEDAW through enabling legislation, we might be  
22 able to rely on CEDAW -- or sorry, on the *Baker* decision to  
23 say that CEDAW still has domestic effect. Which would get  
24 me to the point where I would say that, yes, obligations  
25 like the duty to prosecute -- punish -- sorry, I don't have

1 the words in front of me and I can never remember them.  
2 Those obligations do exist domestically.

3 The second aspect would be through the  
4 recent arguments by the CEDAW committee that after 25  
5 years, the committee now is of the opinion that the  
6 prohibition of gender-based violence of women has evolved  
7 into a principle of customary international law which does  
8 apply in Canada. And that prohibition against gender-based  
9 violence against women includes that obligation to  
10 prosecute, punish, compensate, investigate -- I'm getting  
11 them all out of order this morning. But ---

12 **MS. NATALIE CLIFFORD:** So then despite  
13 *Baker*, and despite the application of customary  
14 international law, you offered a critique of the Judiciary  
15 yesterday that -- and correct me if I've misinterpreted --  
16 but that, basically, they buck the appropriate framework  
17 for application of international human rights law and -- in  
18 the face of it. So is this correct?

19 **MS. BRENDA GUNN:** I think the Judiciary,  
20 like many lawyers, have not received sufficient education  
21 on international law, and so they rely on submissions of  
22 counsel. And I'm not always sure that counsel, when they  
23 are relying on international instruments, do a sufficient  
24 job explaining to the Court how they're evoking  
25 international law and what they want the Court to do with

1 it. So I don't sort of, fully blame judges, but I do think  
2 that Canadian courts in particular have done a very good  
3 job of moving beyond the technical issues about how  
4 international law applies and have, in many cases,  
5 undertaken to interpret domestic law in accordance with  
6 Canada's international human rights obligations. And so, I  
7 think that's a very strong and powerful move towards  
8 ensuring that Canada's international human rights law does  
9 apply in Canada. But they do it often through that  
10 interpretive approach, which is called the presumption of  
11 conformity.

12 **MS. NATALIE CLIFFORD:** You also pointed to -  
13 - in your observation and misconception among Canadians and  
14 students, was your example, that international law doesn't  
15 have application in Canada; correct?

16 **MS. BRENDA GUNN:** Yes.

17 **MS. NATALIE CLIFFORD:** Would it be an  
18 appropriate characterization that this sort of, perception,  
19 is that it doesn't have teeth?

20 **MS. BRENDA GUNN:** I've heard that. I'm not  
21 sure that's always what it's wrapped up to be. I do think  
22 that sometimes there is a conflation between issues around  
23 law as law, and law and its ability to be enforced, and I  
24 think that's what you're referring to by not having teeth.  
25 And so, yeah, I think that is probably part of the issue,

1 is that people think since it can be difficult to enforce  
2 international law, you know, we're not -- there's no  
3 international police that are going to come arrest the  
4 Prime Minister for failing to uphold the international  
5 obligations. That maybe it's not real law, even though  
6 international law is just enforced differently I would say,  
7 then a lot of domestic law.

8 **MS. NATALIE CLIFFORD:** Would you attribute  
9 this back to a lack of education about human rights and  
10 international law?

11 **Ms. BRENDA GUNN:** I think so. I am an  
12 educator, so I do think education is important and I do  
13 think that -- I don't know where these misconceptions come  
14 from. But I do know that as a law professor, it is  
15 something that I try to teach all my law students, that  
16 international law is law and there's various ways that it  
17 has relevance in Canada.

18 **MS. NATALIE CLIFFORD:** DO you think that the  
19 misconception and -- coupled with the Judiciary's approach,  
20 have contributed to basically developing a reality in  
21 Canada whereby individuals don't seek to assert their human  
22 rights to an international standard?

23 **MS. BRENDA GUNN:** It's an interesting idea.  
24 I think sometimes, I mean, if you don't know the options,  
25 and I know a lot of people don't understand what the

1 international human rights obligations are and how they can  
2 be enforced domestically or internationally. So if you're  
3 not aware of the avenues, you're not going to pursue them.  
4 I mean, if people were aware of the options and were of the  
5 view that the judges don't take them seriously, then I'm  
6 not -- you know, I would assume that would have people  
7 hesitant to bring it forward.

8 But again, I want to reiterate that I am of  
9 the opinion, I do think the judges have done a fairly good  
10 job of trying to bring in international human rights law in  
11 particular into domestic law, and not allow Canada to sort  
12 of, take positions where they say internationally that  
13 they've implemented, but not allow it to be engaged  
14 domestically. So the Courts have been good. But I do  
15 think -- I guess I'm not sure that the misconception is the  
16 part that holds people back from asserting those rights. I  
17 think it's a lack of knowledge of their existence, or what  
18 they mean, or how to do that.

19 **MS. NATALIE CLIFFORD:** Okay. So one of your  
20 recommendations was that the Commissioners use an  
21 international human rights-based approach in their  
22 recommendations; correct?

23 **MS. BRENDA GUNN:** Yeah.

24 **MS. NATALIE CLIFFORD:** So I guess my  
25 concern, and I wonder if you could support your position in



1 response to the judicial interpretation of international  
2 human rights law, coupled with this misconception as Mr.  
3 Leclair characterized it, as a mindset that needs to be  
4 changed. Whether that will affect -- or hinder the  
5 effectiveness of their recommendations? Is it a lofty  
6 goal?

7 **MS. BRENDA GUNN:** Thank you. I guess a  
8 couple of things. There are many of examples where the  
9 Courts are using international human rights law and  
10 international law. So the Courts do, particularly the  
11 Supreme Court of Canada is quite open to hearing these  
12 arguments. And I can provide a few additional examples.  
13 But the Courts are open to these arguments when they are  
14 properly put before the Courts. If there is some  
15 hesitance, whether it be from Canadian governments, and I  
16 include provincial governments in that, is using a human  
17 rights-based approach going to weaken the Inquiry's  
18 recommendations -- if I understand your questions  
19 correctly. I don't think so.

20 The human rights-based approach isn't  
21 necessarily going to just say that the recommendations are  
22 all going to be, implement human rights. It can be broader  
23 than that, right? So that's why I was saying I would hope  
24 that the human rights-based approach would inform the  
25 process of the inquiry, including basic human rights, like

1 ensuring the participation of Indigenous women in the  
2 process. But also, can provide a framework to judge  
3 Canada's actions and omissions against, right? So when  
4 we're trying to say that the Canadian state has failed to  
5 address this issue, we can speak about it in a general  
6 sense, but I think what the human-rights-based approach  
7 gives us is an ability to say -- provide, basically, a  
8 list. Like, these were all the obligations that Canada was  
9 required to do, and then look at the actions that Canada  
10 has taken, or the failure to act, and say, has Canada met  
11 its obligations?

12 So, it's a way to sort of create and  
13 organize the analysis of the situation of murdered and  
14 missing Indigenous women and girls. So, I actually think  
15 it would strengthen the recommendations, because instead of  
16 the Commission identifying things that Canada should do on  
17 its, sort of, through own research or ideas, what the  
18 human-rights-based approach does is connect those ideas to  
19 legally binding obligations that Canada has. So, it's,  
20 like, you should do this, and that connects to a legal  
21 obligation that you've voluntarily undertaken in the  
22 international arena.

23 Political will to implement recommendations  
24 is another issue, but I think when you ground  
25 recommendations in law, and maybe this is because I'm a

1 lawyer, I think it gives its strength and force.

2 **MS. NATALIE CLIFFORD:** Thank you. Dr. Sambo  
3 Dorough, I have a few questions. I just wanted to confirm,  
4 yesterday, you gave evidence of Canada's cooperation and  
5 control and drafting of the UNDRIP; correct?

6 **MS. DALEE SAMBO DOROUGH:** Maybe not control.  
7 I wouldn't use that term.

8 **MS. NATALIE CLIFFORD:** Cooperation?

9 **MS. DALEE SAMBO DOROUGH:** They did have  
10 influence.

11 **MS. NATALIE CLIFFORD:** Okay. But, since its  
12 release, Canada has more or less side-stepped; correct?

13 **MS. DALEE SAMBO DOROUGH:** I would  
14 characterize it as -- and you're speaking specifically  
15 about their pronouncement of support for the U.N.  
16 Declaration on the Rights of Indigenous Peoples?

17 **MS. NATALIE CLIFFORD:** Yes.

18 **MS. DALEE SAMBO DOROUGH:** So, first, yes,  
19 they did have an active role, and they did have influence  
20 in the context of negotiation and drafting amongst states,  
21 as well as Indigenous peoples and other parties. With  
22 regard to the use of the term "side-stepped", I would  
23 moreover characterize it as a lack of full, comprehensive,  
24 meaningful, effective implementation of the rights affirmed  
25 in the U.N. Declaration on the Rights of Indigenous

1 Peoples.

2 I understand that there is an ongoing  
3 discussion about how to do so amongst a range of different  
4 actors including, as I referenced yesterday, the bill being  
5 considered by -- offered by private member Romeo Saganash.  
6 If, as an outside observer, of which I am, I'm not a  
7 Canadian national, I wouldn't necessarily characterize the  
8 ongoing process as one of side-stepping. However, I would  
9 also indicate that Canada, like many other countries across  
10 the globe, has not done a sufficient -- I could use a  
11 stronger term, but a sufficient set of activities to  
12 operationalize the rights affirmed in the U.N. Declaration  
13 in favour of Indigenous peoples.

14 **MS. NATALIE CLIFFORD:** Thank you. And, does  
15 the right to self-determination import a right to self-  
16 government?

17 **MS. DALEE SAMBO DOROUGH:** Absolutely. I  
18 think that it's more important, however, to characterize  
19 them in the way they have been articulated in black and  
20 white in the U.N. Declaration. Article 3 in the United  
21 Nations Declaration on the Rights of Indigenous Peoples  
22 affirms that all Indigenous peoples have the right to self-  
23 determination by which they can determine their political  
24 status and freely pursue their economic, social and  
25 cultural development.

1           This is a right that's understood in  
2 international law. The principle of equal rights and self-  
3 determination is affirmed in the United Nations Charter.  
4 It's explicitly affirmed in the International Covenant on  
5 Civil and Political Rights, and the International Covenant  
6 on Economic, Social and Cultural Rights. Article 1,  
7 paragraph 1, "all peoples have the right of self-  
8 determination."

9           Its articulation in the U.N. Declaration as  
10 reflected in Article 3 is the understanding in  
11 international law of the affirmation of the right to self-  
12 determination and its specific attachment to Indigenous  
13 peoples as peoples. Article 4 in the United Nations  
14 Declaration affirms the right of Indigenous peoples to  
15 self-government. Some have tried to characterize this as  
16 solely an internal right. They are two distinct rights.  
17 That's my short answer to your question. Article 3, the  
18 right of self-determination; Article 4, the right to self-  
19 government, autonomy and so forth.

20           **MS. NATALIE CLIFFORD:** Thank you. And,  
21 finally, my final questions are for Mr. LeClair. I'm going  
22 to speak in English. I hope that's okay. Thank you.

23           Your evidence yesterday, you recommended or  
24 hoped that First Nations, and maybe even suggested that  
25 they have an obligation to implement the UNDRIP; is that

1 correct?

2 **MR. JEAN LECLAIR:** Well, not an obligation.  
3 It's their decision to do so, but I think they have the  
4 legitimacy to do so. And, my argument is that it was also,  
5 strategically, an extremely powerful instrument, because in  
6 Akwesasne, for instance, they developed a court. So, other  
7 nations are doing -- taking other initiatives, and in some  
8 ways, it becomes much harder, not just politically but  
9 legally, to just bypass these exercises of self-  
10 governments.

11 And, I know that Indigenous nations and  
12 First Nations don't have a lot of resources, but some even  
13 small initiatives that prove to be successful are bound to  
14 influence governments. For instance, if I take an example  
15 I know, the Atikamekw, for instance, the family councils  
16 that they provided for in their youth protection initiative  
17 proved so successful that the Government of Quebec created  
18 what it called, if I remember well, the Committee de  
19 Persons Significative, the Significant Peoples' Committee,  
20 to be used where non-Indigenous families were concerned.

21 And so, Indigenous initiatives are not only  
22 strategically and legally a good idea, but it could even  
23 serve as examples for non-Indigenous, and that would create  
24 better relationships, better understanding of Indigenous  
25 legal orders.

1                   **MS. NATALIE CLIFFORD:** So, with encouraging  
2 First Nations to develop internally and use the UNDRIP on  
3 their own, I wondered if it would be fair to say that the  
4 *Indian Act* violates the UNDRIP?

5                   **MR. JEAN LECLAIR:** In many ways. That's  
6 quite understandable. The idea is -- I think everyone  
7 agrees about this now. The thing is, is how do you go from  
8 the *Indian Act* to something else? A lot of First Nations  
9 are negotiating modern treaties, for instance. But, some  
10 First Nations are not in a position to easily do that,  
11 because they're not -- they don't have the political clout.  
12 They're not on territories that have sufficient resources  
13 to provide a spark of interest from the governments. I'm  
14 being blunt, but this is a reality. And, I think we have  
15 to find ways, because all First Nations and all Indigenous  
16 peoples in Canada are not in the same position, and do not  
17 necessarily wish to follow the path of self-determination  
18 at the same pace or in the same fashion.

19                   So, this calls into -- this begs the  
20 question how to do so, and that's for the First Nations to  
21 determine. Some will prefer treaties, but I think, for  
22 instance, and that's a controversial solution, but I'm  
23 thinking of John Burrows' proposition that there might be  
24 some place for federal legislation to provide a means of  
25 going forward from the *Indian Act* to greater self-

1       determination. But, some people say this is not a good  
2       idea, the federal government should not be involved, that's  
3       a decision for the First Nations to make and Indigenous  
4       Nations in Canada, but I'm only saying that not everyone  
5       can adopt the same path at the same speed.

6                   **MS. NATALIE CLIFFORD:** Thank you.

7                   **MS. CHRISTA BIG CANOE:** Thank you,  
8       Ms. Clifford.

9                   The next party withstanding, Women Walking  
10       Together, Ms. LaPlante and Ms. Okemaysin-Sicotte, if you  
11       could please come up.

12       **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

13       **MS. OKEMAYSIN-SICOTTE:**

14                   **MS. DARLENE OKEMAYSIN-SICOTTE:** Hi. Good  
15       morning. My name is Darlene Rose Okemaysin-Sicotte. I am  
16       the Co-Chair for Iskwewuk E-wichiwitochik, it's Women  
17       Walking Together. We're a grassroots organization in  
18       Saskatoon, Saskatchewan in Treaty 6.

19                   We actually have been doing our work for  
20       12 years. We -- we don't have government funding, we don't  
21       have no office, we're not even non-profit. So we've had a  
22       long journey on this work on awareness, remembrance and  
23       supports to families, in particular.

24                   So my first question is to Dr. Dalee, and my  
25       six questions will be to her and then a few others.



1           In yesterday's testimony, you spoke about  
2           the United Nations' Special Rapporteur on Violence Against  
3           Women in her 12-day visit to Canada in April 2018, in  
4           particular, about the ongoing systemic inequalities and  
5           violence against Indigenous women in Canada.

6           The expert visited Ottawa, Iqaluit,  
7           Montreal, Toronto and Winnipeg, and this goal was to  
8           review, assess and address gender-based violence against  
9           women to ensure that Canada is honouring its commitments  
10          under the Convention on the Elimination of all Forms of  
11          Discrimination Against Women and the Declaration on the  
12          Elimination of Violence Against Women, with special  
13          attention to the situation of Indigenous women who face  
14          multiple and interconnected forms of discrimination and  
15          violence.

16          My question is, do you agree the biggest  
17          challenge is the inability of the current government to  
18          commit to a long-term political will to address this?

19                 **DR. DALEE SAMBO DOROUGH:** Thank you for the  
20          question. I think it's fair to say that, at least with  
21          this current government, there has been an expression of  
22          willingness.

23          The campaign promise of the Trudeau  
24          Government, not to mention the mandate letters that were  
25          issued to various members of his Cabinet with regard to

1 implementation of the UN Declaration, but also the  
2 reference, the specific reference, for example, to  
3 Minister Carolyn Bennett, indicate and expressly state  
4 reference to international human rights law. Given that,  
5 those two items, the campaign promise, the subsequent  
6 promise, when finally elected, as well as the mandate  
7 letters, that it appears there is an opening an opportunity  
8 to do so.

9 Political enterprises and political will, I  
10 cannot point to you for certain, and I think to some extent  
11 it is a call to action to all of us to uphold those  
12 promises. And I would regard them as solemn obligations,  
13 especially when you see the statements of the ministers  
14 within the hallowed halls of the UN General Assembly.

15 Jody Wilson-Raybould spoke to the UN General  
16 Assembly, Minister Carolyn Bennett spoke to the UN  
17 Permanent Forum on Indigenous Issues. So I would  
18 characterize those as solemn obligations, the  
19 representatives of government who have made important  
20 pronouncements.

21 And words matters, as I said yesterday. So  
22 I would suggest that, absolutely, and let's see how the  
23 promise intersects with the political will in regard to,  
24 not only the UN Declaration on the Rights of Indigenous  
25 Peoples, but as stated in the mandate letters, other

1 international human rights law.

2 **MS. DARLENE OKEMAYSIN-SICOTTE:** Okay. Thank  
3 you.

4 Do you agree that Canada should immediately,  
5 in terms of the visit from the Rapporteur, to immediately  
6 implement legislation and provide maximum resources to  
7 address the inequality of access to housing, funds to  
8 education, employment training and child welfare on  
9 reserves, and if so, can you expand?

10 **DR. DALEE SAMBO DOROUGH:** The short answer  
11 is absolutely. I think that the visit of the Special  
12 Rapporteur on Violence Against Women is a alarm. And  
13 usually, when you hear an alarm, you pay attention, you  
14 take action, you exit the building. Whatever it takes;  
15 right?

16 So as far as the opportunities, I think at  
17 the moment that she issued these statements, it would have  
18 been highly constructive for Indigenous women across Canada  
19 to stand up, link arms, and say, did you hear what she  
20 said. Sort of along the lines of what Corey O'Soup was  
21 saying in relation to children.

22 I think that there are numerous options on  
23 the basis of the statements that she made, and as you know,  
24 the forthcoming actual country report. And in fact, that  
25 may have been an opportune time in terms of the issuing of

1 the report to take further actions at the local level and  
2 the regional level, at the national level, but also, I  
3 think it's an invitation at the international level.

4 **MS. DARLENE OKEMAYSIN-SICOTTE:** Okay. Thank  
5 you.

6 This is still in regards to the visit from  
7 the Rapporteur. Do you think Canada, all provinces and  
8 territories, should redesign the child welfare and foster  
9 care system and practises, in particular, those children  
10 left behind of the missing and murdered Aboriginal women?

11 **DR. DALEE SAMBO DOROUGH:** Yes. I must say  
12 as a proviso, that I am not intimately familiar with the  
13 specific conditions of Indigenous children in Canada.  
14 However, if the issues are similar to those in Alaska, a  
15 concrete, constructive response needs to be undertaken,  
16 especially in the context of orphaned children.

17 This is a -- when, for example, Corey spoke  
18 about the best interest of the child, the *Indian Child*  
19 *Welfare Act* in the United States and within our  
20 communities, our Inuit communities and other Alaska native  
21 communities that actually means something and something  
22 important. The urgent nature of it, the threats and risk  
23 to such orphaned children needs immediate response.

24 **MS. DARLENE OKEMAYSIN-SICOTTE:** Thank you.  
25 Do you also agree that a monitoring

1 mechanism is recommended in -- that was recommended in the  
2 document of the CEDAW to track and monitor the conditions  
3 of Murdered and Missing Indigenous Women and Girls post  
4 Inquiry is necessary to prevent further violence against  
5 Indigenous women?

6 **DR. DALEE SAMBO DOROUGH:** Yes. I would only  
7 amend that statement to say throughout, and not necessarily  
8 post Inquiry. And I think that that was one of the key  
9 messages of the Special Rapporteur on Violence Against  
10 Women as she left Canada following her country visit. That  
11 even before the work of the Inquiry is concluded that  
12 action should be taken.

13 So I would say that not only post Inquiry,  
14 but as soon as possible, as -- and I think there are ways  
15 in which action could be taken.

16 **MS. DARLENE OKEMAYSIN-SICOTTE:** Okay. Thank  
17 you.

18 This is the last question on the Rapporteur.  
19 Do you agree that a national action plan on violence  
20 against women should have a specific prevention of violence  
21 plan against Indigenous women that reflects the barriers of  
22 the *Indian Act* and to accommodate the over 620 different  
23 communities, their languages and cultural practices in such  
24 a plan?

25 **DR. DALEE SAMBO DOROUGH:** I think that the

1 first step should be outreach to all of those Indigenous,  
2 First Nations, Métis, as to what the major priority is in  
3 regard to the *Indian Act*.

4 I'm not familiar with discussions to date  
5 regarding the *Indian Act*. I'm familiar to some extent with  
6 its impacts upon especially Indigenous women but I think  
7 that any kind of national action plan in response to these  
8 issues needs to start with dialogue with the Indigenous  
9 peoples concerned and their exercise of the right of self-  
10 determination because they are the self in self-  
11 determination and that a national action should begin in  
12 that way in order to identify the priorities and what the  
13 specific problems are and what the potential solutions are.

14 If there is dialogue and discussion about  
15 instituting a national action plan, it should also draw  
16 from the developments that have taken place at the  
17 international level. Yesterday I referred to the U.N.  
18 declaration, a range of other international human rights  
19 instruments, as well as the sustainable development goals  
20 and you could probably very quickly and easily identify the  
21 alignment of the issues and concerns related to the *Indian*  
22 *Act*, the status and the rights and interests of Indigenous  
23 women and girls and put together something fairly  
24 comprehensive.

25 **MS. DARLENE OKEMAYSIN-SICOTTE:** Okay, thank

1 you. That ends my questions for Doctor Dalee.

2 My next question is for Brenda Gunn. In  
3 your testimony yesterday, you spoke about forced  
4 disappearance may be a rule of customary international law  
5 which would apply in Canada.

6 Would you say that this forced disappearance  
7 implies murder when they're the first -- when there's first  
8 abduction, then detainment ending with location of the  
9 person that was abducted? In Canada, how would we hold  
10 Canada responsible under the international convention for  
11 the protection of all persons from enforced disappearances?  
12 If so, would you recommend that compensation and  
13 restitution take place for the families of missing and  
14 murdered Aboriginal women and girls?

15 **MS. BRENDA GUNN:** Thank you for the  
16 question.

17 Yes, I did say that it's -- that enforced  
18 disappearance is beginning to be recognized as a rule of  
19 customary international law. At least some are making that  
20 argument. And so my point was if it is a rule of customary  
21 international law, then it does apply directly in Canada as  
22 law and that was sort of held by the court in 2008 with how  
23 customary international law applies.

24 I did raise that convention and the idea of  
25 enforced disappearance because I do thing that many of the

1           circumstances that we know about of the process of murdered  
2           and missing Indigenous women and the way in which Canada  
3           has known about this situation for a significant period of  
4           time and arguably has failed to act in a way to  
5           successfully prevent, investigate, prosecute, punish and  
6           compensate that, you know, this seems to fit with what that  
7           convention is aiming to do.

8                         Now I do want to be clear. I know that  
9           Canada has not actually ratified that convention, so we  
10          can't use that convention generally but holding Canada  
11          responsible I think is always a challenge. Despite being a  
12          lawyer, I don't always think that litigation is our best --  
13          best approach.

14                        I do think that the inquiry is part of the  
15          process of holding Canada responsible and I think that's  
16          part of -- I mean holding someone responsible is also  
17          understanding what they've done, right. And so the truth  
18          that is being sought through the inquiry process I think is  
19          key to that accountability process.

20                        I can't say that the international standards  
21          do speak to compensation and reparations. Reparations is  
22          the term generally for a remedy in international law. So  
23          it would be reparations and compensation is what they speak  
24          to. And so if Canada is found to have these obligations,  
25          which I strongly believe they do, and has failed to uphold



1       them, then yes, international law requirements does include  
2       aspects of compensation and reparations.

3                   And it's important to also think that  
4       reparations internationally can include a broad range of  
5       activities.

6                   Yesterday I spoke about some of the cases of  
7       genocide that I worked on in Guatemala and for those  
8       communities, they were looking for a range of things.  
9       There was some personal compensation that was made but in a  
10      couple of the communities, there were memorials that were  
11      built. One of them in particular was a big stone thing and  
12      it has kind of a book and all around it has all the names  
13      of the people who were lost in that particular genocide.

14                   There were dollars set out for community  
15      health. I'm trying to think of the range of activities.  
16      There was a need to apologize publicly and in various  
17      Indigenous languages and on the radio and to make the  
18      decision publicly available so that, you know, for the  
19      survivors and others to know that the genocide had occurred  
20      and that Guatemala had -- is part of that responsibility.

21                   So I do just want to point out that  
22      compensation and individual financial payments can be part  
23      of that but it can also be much broader and include some of  
24      those requirements to do community building and some of  
25      those socio-economic programming that is necessary to

1 adjust the situation going forward, just both a cause and a  
2 consequence in that sort of way.

3 **MS. DARLENE OKEMAYSIM-SICOTTE:** Yes, thank  
4 you. I'm really glad that you were able to give an  
5 example.

6 My next question is to Corey O'Soup, the  
7 Saskatchewan Children's Advocate. In light of the crisis  
8 of the high suicide rates of Indigenous girls in  
9 Saskatchewan, the Arctic and around Canada, in your  
10 experience at the Government of Saskatchewan's Education  
11 Ministry, can you share for example a school or program  
12 that has culturally-based learning environment and would  
13 you -- would it be a more desired focus on future long-term  
14 resourced education delivery?

15 **MR. COREY O'SOUP:** One specific school?  
16 Okay. There's a school actually in Saskatoon called  
17 Oskāyak and I think you're pretty aware of that and I  
18 believe that school could be a school that not only  
19 Saskatchewan can look to but the rest of the country can  
20 look to.

21 It's culturally-based. The staff is  
22 culturally-based as well. The administrators are First  
23 Nation and Métis. They have elders in the school and I  
24 believe it's a shining beacon within our province of the  
25 way that we can do better or a way that we should do

1 better, a way and a place that our children feel like they  
2 belong. They feel like they are welcomed. They feel like  
3 they are valued and that their culture and their traditions  
4 are infused, are a part of their education system. And  
5 those are all things that we advocate for at the office as  
6 well.

7 So if you're looking for one particular  
8 school, that's one particular school that I could point out  
9 to you.

10 **MS. DARLENE OKEMAYSIM-SICOTTE:** Okay, thank  
11 you.

12 Would you agree that the political will  
13 should provide maximum resources in that area as a  
14 preventive instrument in light of the epidemic of missing  
15 and murdered Aboriginal women and girls?

16 **MR. COREY O'SOUP:** Yes, I believe that we  
17 need to fully resource our -- I want to say this correctly.  
18 We should fully resource our education system to meet the  
19 needs of our First Nation and Métis children in the  
20 Province of Saskatchewan. We have it as one of our key  
21 priorities at the Ministry of Education in Saskatchewan.  
22 Now the challenge I see there is that we don't always fully  
23 resource our priorities, especially when it comes to our  
24 Indigenous children. And I think that that's one of the  
25 things that we can do better, and we should do better.

1                   **MS. DARLENE OKEMAYSIN-SICOTTE:** Okay.

2                   Thank you very much. That ends our  
3 questions to the panel.

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

5                   Next I would like to invite up Ms. Beaudin  
6 from the Regina Treaty Status Indian Services.

7                   And, yes, just for the record they have 20  
8 minutes.

9                   **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. ERICA**

10 **BEAUDIN :**

11                   **MS. ERICA BEAUDIN:** Good morning, everyone.

12                   Once again, I acknowledge the welcome and  
13 the hospitality to this territory in which I'm a guest from  
14 Treaty 4. I'm glad to be going home to my home fire today  
15 as my Kokum heart dearly misses my new grandson.

16                   I thank the knowledge keepers and the Elders  
17 for their prayers, medicines and songs we are all protected  
18 by.

19                   For the record my name is Erica Beaudin and  
20 I am the Executive Director of the Regina Treaty Status  
21 Indian Services. I shared my lineage for the public record  
22 on Tuesday. I will get right into my questions.

23                   My first questions are for Professor Gunn.

24                   Thank you for your discussion yesterday, as  
25 extremely informative and helpful. Yesterday you spoke

1 about the International Convention for the Protection of  
2 All Persons from Enforced Disappearance and the Convention  
3 Against Torture and Other Cruel, Inhuman, or Degrading  
4 Treatment or Punishment as other instruments that could be  
5 used to assist as foundations for other measures -- and I  
6 hope I'm not being too wordy here -- to protect Indigenous  
7 woman against violence.

8 Very quickly, could you expand how  
9 practically this could occur, starting with having Canada  
10 sign on?

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

12 I guess part of the reason I raised those  
13 instruments, including -- I'm going to use the abbreviation  
14 CAT for torture one, that Canada is a party to, and the  
15 enforced disappearance that Canada is not, was more along  
16 the lines of my overall recommendation that the inquiry  
17 take a human rights-based approach to analyzing the causes  
18 and consequences of murdered and missing Indigenous women  
19 and girls and trying to get to those root causes.

20 So my recommendation and discussion was that  
21 the Inquiry could consider the full range of obligations  
22 and protections that exist in international human rights  
23 law to judge Canada's actions and omissions against. And  
24 so that was one way that I was suggesting was that you take  
25 the different responsibilities to get the big picture of

1 everything that Canada has to do. Instead of this, there's  
2 this treaty and this treaty and this treaty and this  
3 treaty, and this declaration and this declaration and this  
4 report by the Special Rapporteur and all of this, but try  
5 to bring it together to a bigger picture because of the way  
6 in which they all interact.

7 But I think your question may also be  
8 getting at how to sort of get Canada to start engaging with  
9 these instruments more. The process for Canada to become a  
10 party to a treaty is simple and difficult all at the same  
11 time. I mean, from the international perspective it's  
12 quite easy; Canada just needs to sort of sign the  
13 instrument, send the letter, do what it needs to do.

14 But, practically, the Canadian approach is  
15 to take broad-scale consultations with all of the different  
16 provinces to ensure that if they sign on they're able to  
17 implement it. So I do think that there may be some  
18 challenges if we want sort of immediate action for Canada  
19 to sign on, that may be a longer process; which is why I  
20 think we don't need to hold ourselves back and wait for  
21 that to happen.

22 We can use some of the normative ideas  
23 within those instruments to start judging Canada's actions  
24 against. So -- and I think, you know, practically, actions  
25 that people can also start taking is learning about these

1 different instruments; there's lot of different information  
2 online, and starting to push Canada, and to become a party  
3 to that instrument.

4 It's been a recommendation by many different  
5 human rights bodies already but I don't hear that push  
6 domestically. I haven't seen a lot of community  
7 organizations. And, I mean, I'm part of the NGOs; I've  
8 been part of the NGO delegations to the U.N. that have  
9 gotten these recommendations, you know, so I include myself  
10 in that we haven't, I think, successfully started a  
11 movement in Canada that's put that pressure on to become a  
12 party. So I think actions like that.

13 Sometimes I also think naming actions in  
14 relation to human rights standards can be powerful. We do  
15 often refer to murdered and missing Indigenous women and  
16 girls and to spirit again I recognize that I'm using an  
17 abbreviation but I mean to be inclusive and beyond Cis  
18 gender.

19 But we can, you know, think about is -- does  
20 it help the advocate see? Does it help us to name this as  
21 enforced disappearance, right? Particularly because many  
22 people when they think about enforced disappearance think  
23 about Latin American countries and I don't know if it's  
24 drug cartels or what sort of comes to mind when people hear  
25 those terms and so what would it mean if we started using

1 that term here in Canada to say that the state has known  
2 about a systemic, widespread problem and enforced  
3 disappearance and has failed to act?

4 So those are some of my ideas in a general  
5 sense. I'm not sure if I fully got to the heart of your  
6 question, but...

7 **MS. ERICA BEAUDIN:** I think we could have a  
8 two-day seminar on that one question itself.

9 **MS. BRENDA GUNN:** Okay.

10 **MS. ERICA BEAUDIN:** But thank you for at  
11 least two steps in there on how we can practically start,  
12 and also from community level on.

13 My second question is in one of your later  
14 slides, you discussed how we may decolonize through a human  
15 rights lens. I realize the discussion was more about the  
16 different high level measures, however, I'm wondering how  
17 we could use these tools to ensure that beyond safety and  
18 security, which is the ability to survive or live, how we  
19 could include reclamation of our lands, languages, cultures  
20 and traditions which we require to survive and thrive as  
21 Indigenous peoples, which I believe is integral to creating  
22 strong and vibrant woman and societies.

23 **MS. BRENDA GUNN:** Thank you. That's a  
24 really great question, and I feel that I'm going to  
25 disappoint you by going back to the high level.



1           But I think even within your question is an  
2 important point that I was trying to highlight, is that  
3 human rights work together, and a violation of one human  
4 right is a violation of many. And so I think you're  
5 absolutely right and Dalee talked a little bit about the  
6 right to security of the person that exists throughout.  
7 Well, as Indigenous peoples we don't have safety and  
8 security if we don't have our full cultures. And our  
9 cultures are connected to the land and our being, and our  
10 knowledge of who we are is connected to those territories.

11           So it's sort of reinforcing in that way that  
12 if we don't have our full access to our lands and  
13 territories, we don't actually have that safety and  
14 security in that really holistic way.

15           So I actually see those ideas as being  
16 really connected and important for the realization of human  
17 rights. Again, I'm not sure I can think of more practical  
18 ideas but I do think that when I was talking about how  
19 human rights can be used for decolonization part of what  
20 I'm speaking to, and I think this builds off Dr. Dorough  
21 was speaking about, is that we are looking at removing that  
22 sort of colonial control that continues to exist in many  
23 different fashions, and looking to ensure that we as  
24 Indigenous peoples can determine our own futures. And so  
25 part of that decolonization process is a removing of that

1 government control over our lives to make sure that we have  
2 the space and recognition to make decisions for ourselves.  
3 So -- and so I think it all works together in that way.

4 **MS. ERICA BEAUDIN:** Okay. I'm going to go a  
5 little bit apart from what we're discussing. In Slide 13  
6 you discuss state's guilt in not providing safety and  
7 security amongst other violations. First of all, who  
8 decides if the state is guilty?

9 Secondly, do you believe this National  
10 Inquiry could possibly be a measure or the beginning of the  
11 government to avoid court through a class action suit by  
12 the families of MMIWG, such as the IRS and Sixties Scoop  
13 that's now before the courts or there is a recent decision  
14 made? Could this still occur?

15 **MS. BRENDA GUNN:** I'm not sure I feel  
16 comfortable on whether or not a class action could or  
17 should occur or whether it would be successful. I think  
18 that's a legal opinion that's sort of beyond my expertise  
19 and the scope. But what I am able to comment on is sort of  
20 who decides if a state is guilty.

21 I mean, some of the ways that we've -- I  
22 think some of the experts have been pointing out is that  
23 when you look at specific human rights treaties, so if we  
24 look at the Convention on the Elimination of Discrimination  
25 Against Women, it's the committee on the Elimination of

1 Discrimination Against Women that makes the comments and  
2 observations if Canada is upholding its obligations.

3 And in all of the periodic reports,  
4 particularly the couple that were referenced in my  
5 evidence, and is -- I think we included them as exhibits,  
6 right -- they clearly speak to Canada's violation or  
7 failure to uphold their obligations. So that's one place.  
8 And that already exists; right? That doesn't need to be a  
9 new finding. It's already clear. These international  
10 bodies in several different instances have said that Canada  
11 has failed to uphold its obligations under various treaties  
12 in relation to the failure to address murdered and missing  
13 Indigenous women and girls.

14 So I think part of that already exists out  
15 there. I do think that the Inquiry, if they take a human  
16 rights-based approach where they're using international  
17 human rights standards to evaluate Canada's actions  
18 against, part of their conclusions and the benefits of the  
19 sort of legal process that is involved is I think that  
20 they're able to say, if they look at international rights  
21 standards and look at actions, they can make conclusions if  
22 Canada has failed to uphold those obligations. And so I  
23 don't use the term "guilty" per se, but whether they're --  
24 they failed to uphold their obligations or whether they  
25 violated rights is the phrase that I tend to use. And I

1 think the Inquiry may be in a very good position to build  
2 upon the existing determinations that already exist out  
3 there.

4 **MS. ERICA BEAUDIN:** Thank you. When we look  
5 at the national and international conventions,  
6 declarations, et cetera, and we look at the  
7 intersectionality of those instruments, many of our nations  
8 live and/or hunt, trap fish on both sides of the Medicine  
9 Line; therefore, they would be considered dual citizens.  
10 How can the tools mentioned above, or that we discussed,  
11 work together to protect the rights of those Indigenous  
12 women who have this reality?

13 **MS. BRENDA GUNN:** The UN Declaration on the  
14 Rights of Indigenous Peoples and I believe the American  
15 Declaration, right, Dalee, both make reference to borders;  
16 right? Okay. Yes. Yes. They both make reference to the  
17 way in which borders have impacted Indigenous peoples and  
18 the rights to be able to continue practicing their  
19 traditions.

20 So there are already standards that exist  
21 that can be referenced and need to be considered. This  
22 issue is also being addressed in different forums. I  
23 believe there's going to be some further studies on what  
24 does this mean coming out in the next year or two from  
25 various universities and expert bodies.

1           So, sorry, I guess my simple answer is that  
2           the issue of borders is included within the UN Declaration  
3           and the American Declaration, so we do have a touch point  
4           to start looking at the violations and how those interact.  
5           And some of the trafficking instruments also sort of speak  
6           to that movement of people across borders, but I don't  
7           think your question was on that aspect. It was more for  
8           nations that are divided by these new lines that states  
9           inserted.

10                   **MS. ERICA BEAUDIN:** So this is a formal  
11           question, but could you clarify the author of the quote,  
12           "The system is breaking people down faster than we can  
13           build them up." You had mentioned that yesterday and I  
14           just loved it so much I wanted to use it, but I don't want  
15           to -- you -- it may be you.

16                   **MS. BRENDA GUNN:** I was going to say me but  
17           now I'm afraid that I'm going to misquote someone. I think  
18           that's something -- because it wasn't on the slide; right?  
19           If it was on ---

20                   **MS. ERICA BEAUDIN:** No, it was ---

21                   **MS. BRENDA GUNN:** I think that was what I  
22           had said in response to one of the questions from the  
23           Commissioners I believe, yeah.

24                   **MS. ERICA BEAUDIN:** So I can quote that as  
25           you?

1                   **MS. BRENDA GUNN:** Yeah, I guess. I'm sure  
2 the transcript will clarify if it was me or not but, yes,  
3 I'm pretty sure that was my words.

4                   **MS. ERICA BEAUDIN:** Okay. Thank you ---

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

6                   **MS. ERICA BEAUDIN:** --- very much for your  
7 time, Professor Gunn.

8                   **MS. BRENDA GUNN:** Okay.

9                   **MS. ERICA BEAUDIN:** Next questions are for  
10 Mr. O'Soup. I realise that I'm at five minutes left so I'm  
11 going to be a fast talker and I hope you are too.

12   (LAUGHTER/RIRES)

13                   **MR. COREY O'SOUP:** Depends on the question.

14                   **MS. ERICA BEAUDIN:** So thank you for your  
15 presentation yesterday. Your passion for the wellbeing of  
16 our youth is very apparent.

17   Much of your time yesterday discussed  
18 education as being a pathway to survival for our youth,  
19 starting out with graduation from Grade 12. The statistics  
20 of 43.2 versus 85.4 in Sask is very disturbing. Is this  
21 graduating Grade 12 out of regular K to 12?

22                   **MR. COREY O'SOUP:** The way that we measure  
23 statistics in Saskatchewan with regards to Grade 12 is --  
24 and the stats that I used are from Grade 10 to 12, so a 3-  
25 year graduation rate, on time graduation rate. So, that's

1 the way that we measure it in Saskatchewan.

2 **MS. ERICA BEAUDIN:** Okay. You also  
3 discussed redefining success for Indigenous youth and  
4 challenging norms. This I take to mean creating  
5 alternative benchmarks and supports to meet those  
6 benchmarks. In doing this, creating success in our -- in  
7 doing this, creating success in our definitions relate to  
8 less female youth going -- will this relate to more -- to  
9 less, sorry -- my bifocals are not working that well this  
10 morning ---

11 (LAUGHTER/RIRES)

12 **MS. ERICA BEAUDIN:** --- relate to less  
13 female youth going missing and/or murdered?

14 **MR. COREY O'SOUP:** I think raising the  
15 education levels and putting in -- within our education  
16 system, both as achieving education, but both -- but also  
17 as putting in the curriculum topics like missing and  
18 murdered Indigenous women and girls to educate them will  
19 definitely result in the reduction of more young women and  
20 girls going missing, for sure.

21 **MS. ERICA BEAUDIN:** Okay. Bullying is  
22 violence, slut shaming, gay bashing, et cetera, are  
23 unfortunately very prevalent in our school systems. How  
24 can schools and parents, as well as us as the village who  
25 raises all of our children, stop this verbal, spiritual and

1 physical violence before it escalates into suicide or  
2 murder, especially for our young Indigenous women?

3 **MR. COREY O'SOUP:** You know, that's one of  
4 the biggest topics that we had in our book; right? And  
5 that takes us directly to Article 19 within our UNCRC and  
6 also aligns with the Article 22 in UNDRP. And I believe  
7 that the answers come from our kids.

8 And within this report -- like, we can -- as  
9 adults we can create programs and initiatives for our kids  
10 and we do that. You know, we create stop bullying, anti  
11 bullying campaigns for them, but we base those so often on  
12 what it was like when we were kids, you know. And we base  
13 those decisions and we invest dollars and money because of  
14 what we think is best for kids. And I think I said  
15 yesterday a little bit how we don't always know what's best  
16 for kids because it's different nowadays to be a child in  
17 today's world. And I think we need to reconsider the way  
18 that we create those bullying programs.

19 You know, and our kids give us some --  
20 actually, some concrete answers within the book here. And  
21 I think if we go to them more often than we go to us, as  
22 adults, I think we'll find the solutions.

23 So I can point out a couple of those. And  
24 the first thing that they say really is stop bullying;  
25 right? And that's a message to everyone; right? And then,



1       you know, they speak to our communities and they speak to  
2       our leaders, you know.

3                   One example from the children and youth that  
4       they said about a solution to stop being bullying was, why  
5       don't you call a community meeting -- and this was to their  
6       Chiefs -- why don't you call a -- why doesn't the Chief  
7       call a meeting of all of the people in the community and  
8       we'll go up front, not just one of us, but a group of us,  
9       and we'll tell them what it's like to be bullied in this  
10      community, and maybe that will change. You know so, things  
11      like that, practical things like that.

12                   But the other piece that we need to do as  
13      well is -- and I mentioned this yesterday as well -- is we  
14      need to rethink ourselves as adults and the way that we  
15      participate in bullying behaviour. And I think that's a  
16      key for us, because we weren't surprised by bullying being  
17      one of the behaviours that led to, you know, suicide, and  
18      it shouldn't be. But one of the things we were surprised  
19      by was that adults were particularly pointed out by our  
20      children and our young people.

21                   So we need to create anti-bullying programs  
22      for adults, for professionals, for parents, for teachers,  
23      you know. Different things like that, that we can do to  
24      help our children and our youth, and those are things that  
25      they specifically point out to us.

1                   **MS. ERICA BEAUDIN:** Thank you. Just very  
2 quickly, and I apologies, I want to get to the Doctor and  
3 Professor, today.

4                   In the Prairies, we've had two very  
5 disturbing and heartbreaking legal decisions that found the  
6 killers of our Indigenous youth that being the killers of  
7 Colten Boushie not guilty.

8                   How do we impart hope into our youth and  
9 parents when the message from the jurisdiction system is  
10 young Indigenous people don't matter? I raise this question  
11 in response to your discussion regarding the mental health  
12 of youth.

13                   **M. COREY O'SOUP:** You know, those are both  
14 really disturbing things that happened, and I won't speak  
15 to the justice decision on that, I will more speak to the  
16 things that happened during the things that happened after,  
17 you know. Especially when you go on social media and you  
18 see all of the comments, all of the hurt, all of the pain  
19 that are pointed at us as Indigenous people, you know.

20                   And I was asked this question one time: is  
21 it okay that we're having this discussion? And for me, I'm  
22 okay with it, because I think we thought we were somewhere  
23 else-- and I'll speak for Saskatchewan. I think we thought  
24 we were somewhere else in this discussion around racism,  
25 around, you know, the things that happened. We thought we

1 were further along this path of reconciliation, because we  
2 had glossed things over.

3 But what happened when we saw these cases  
4 come out and the resulting backlash -- whatever you want to  
5 call it on social media -- it really gave me a true picture  
6 of where we were. And at least now we can have that  
7 discussion about reality, instead of about the discussion  
8 about, we'll maybe we're 10 steps along this way. In  
9 reality, we are way back here.

10 And it's okay that those things are out  
11 there, because now we can talk about them. They're not  
12 hiding behind closed doors, they're not hiding in  
13 discussions behind our backs; they're actually right in our  
14 faces, and now we can confront it, now we can deal with it,  
15 you know.

16 And those things directly impact our  
17 children and youth, you know. Racism and being put down  
18 and not feeling like they're good enough or they're equal;  
19 those things affect the mental health of our children and  
20 our young people.

21 And yes, they do end up in reports like  
22 this, you know, there's a direct correlation between that,  
23 so we must do better and we can do better. But I'm okay  
24 that we're having that discussion, because at least it's  
25 now out and we can directly confront it.

1                   **MS. CHRISTA BIG CANOE:** Thank you very much,  
2                   thank you.

3                   **CHIEF COMMISSIONER MARION BULLER:** Thank you,  
4                   Ms. Beaudin.

5                   **MS. CHRISTA BIG CANOE:** I would like to  
6                   invite Miss Zarpa up on behalf of ITK. ITK will have 20  
7                   minutes.

8                   **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. ZARPA :**

9                   **MS. ELIZABETH ZARPA:** Hi, good morning. My  
10                  name is Elizabeth Zarpa, I'm counsel with ITK. So I just  
11                  wanna start off with saying thank you all for being here.  
12                  I know everybody has travelled really far to be here, this  
13                  week.

14                  My questions this morning will predominantly  
15                  be geared towards Doctor Dalee Sambo Dorough, and maybe if  
16                  I have time to the others. So I first off wanna start with  
17                  questioning sort of Dalee, you, you travelled from Alaska  
18                  to get here.

19                  **MS. DALEE SAMBO DOROUGH:** Yes.

20                  **MS. ELIZABETH ZARPA:** How long did it take to  
21                  get from Alaska to Quebec City?

22                  **MS. DALEE SAMBO DOROUGH:** A total time of at  
23                  least 10 hours. I actually overnighed in Vancouver to get  
24                  here, so it took me two days, so. But in actual flight  
25                  time about 10 hours.

1                   **MS. ELIZABETH ZARPA:** To traveling here or  
2 just traveling generally from sort of Alaska and northern  
3 regions takes around two days?

4                   **MS. DALEE SAMBO DOROUGH:** Yes.

5                   **MS. ELIZABETH ZARPA:** Okay. And is the  
6 flight cost quite, are they sort of, how much do they  
7 usually range in?

8                   **MS. DALEE SAMBO DOROUGH:** As far as this  
9 particular trip, I'm unaware of the detail cost, but  
10 anywhere in Alaska is expensive for a couple of reasons.

11                   So I don't have a detailed response to the  
12 cost of this travel, but generally speaking, travel from  
13 Alaska to anywhere, since we're not considered a major hub,  
14 there's a specific term actually used in with travel agents  
15 and others as to how to characterize even Anchorage, which  
16 is our largest city in Alaska.

17                   **MS. ELIZABETH ZARPA:** Okay, so traveling, is  
18 it generally quite pricy to, like, 1,000-2,000\$ return  
19 trip?

20                   **MS. DALEE SAMBO DOROUGH:** Yes, no question,  
21 no question.

22                   **MS. ELIZABETH ZARPA:** And that's a common  
23 sort of experience across, sort of, Canada's north?

24                   **MS. DALEE SAMBO DOROUGH:** Absolutely.

25                   **MS. ELIZABETH ZARPA:** Okay. And do you think

1 that that sort of cost to traveling and the time it takes  
2 to get down to sort of the southern hub is kind of a  
3 deterrent to individuals who wanna, who have to travel?

4 **MS. DALEE SAMBO DOROUGH:** No question. Just  
5 a quick example; I was invited to service faculty to the  
6 (Indigenous word) program in Iqaluit in 2014 or 2015. It  
7 took at least two and half days and just the flight from  
8 Ottawa to Iqaluit alone was a minimum of a 1,000\$.

9 **MS. ELIZABETH ZARPA:** Okay. And you  
10 mentioned also sort of in your experience of traveling for  
11 education, you had to go outside of Alaska to pursue your  
12 Master's and also PHD?

13 **MS. DALEE SAMBO DOROUGH:** Yes.

14 **MS. ELIZABETH ZARPA:** Is that because there  
15 was no law school in Alaska?

16 **MS. DALEE SAMBO DOROUGH:** That's exactly  
17 right. There is no law school in Alaska.

18 **MS. ELIZABETH ZARPA:** Okay. And is there any  
19 law school in the north, like, in Nunavut?

20 **MS. DALEE SAMBO DOROUGH:** In...?

21 **MS. ELIZABETH ZARPA:** Canada's north?

22 **MS. DALEE SAMBO DOROUGH:** No, not to my  
23 knowledge, hence programs like the (Indigenous name)  
24 program. Greenland, likewise. So Alaska, Canada,  
25 Greenland, I am fairly certain, but not 100% certain that

1 the Siberian Yupik people in the (Indigenous name) region  
2 wouldn't have access unless they went to an urban centre.

3 **MS. ELIZABETH ZARPA:** Okay. And you  
4 mentioned that you're involved in the (Indigenous word)  
5 program?

6 **MS. DALEE SAMBO DOROUGH:** Yes, I was invited  
7 as faculty during that, when they had funding and were able  
8 to offer the program to Inuit students, those interested in  
9 pursuing law.

10 **MS. ELIZABETH ZARPA:** Okay. And so, did you  
11 see the sort of, sorry, I'm trying to draw between sort of  
12 the experience of obtaining legal education in Canada's  
13 north with generally understanding of access to justice and  
14 recognizing sort of, I guess, Article... I think it was  
15 Article... it was in the SEDAW recommendations... SEDAW  
16 recommendations from 2016, 9-B, that looks at awareness  
17 raising within Indigenous communities of especially  
18 marginalised groups of Indigenous women.

19 Do you have any sort of insight with regards  
20 to how to better implement SEDAW 9-B within sort of  
21 northern remote communities where individuals,  
22 predominantly Inuit, live in the north when they don't have  
23 to travel down south to obtain a legal education?

24 **MS. DALEE SAMBO DOROUGH:** I think that  
25 generally speaking not only... SEDAW, but other instruments

1 related to -- I'm just quickly having a peek at -- at the  
2 various different articles. And so a number of different  
3 international instruments that reference education,  
4 including the UN declaration, but a wide range of them.  
5 And as far as a one pathway toward the access to justice,  
6 in my experience, and I've served as a mentor to Inuit law  
7 students, in particular more recently, one who attended  
8 University of Ottawa Law School. There are huge barriers.  
9 The cost, first and foremost, and this is on the part of an  
10 individual who managed to have some resources. But as far  
11 as access to resources and access to even admission at one  
12 of these institutions is -- there are numerous challenges.  
13 Am I being responsive to your question?

14 **MS. ELIZABETH ZARPA:** Yeah. You're  
15 recognizing sort of, the barriers that exist to asserting  
16 or, sort of, implementing, sort of ---

17 **MS. DALEE SAMBO DOROUGH:** Yeah.

18 **MS. ELIZABETH ZARPA:** --- access to  
19 Indigenous rights, sort of, doctorence (sic) on the ground  
20 in Nunangat.

21 **MS. DALEE SAMBO DOROUGH:** Yeah.

22 **MS. ELIZABETH ZARPA:** Yeah, thank you for  
23 that. I also sort of wanted to get a little cognisant of  
24 the time.

25 I wanted to also recognize, sort of, the



1 experience of individuals, sort of, living within Inuit and  
2 Nunangat and having to travel down south for different  
3 services. It's a common theme and I think that one of the,  
4 sort of, gaps within the testimony are sort of something  
5 that was alluded to a little bit was travelling down south  
6 for services. But I think there's an increasing number of  
7 Inuit who also live in urban settings. And I also wanted  
8 to recognize there's currently -- we talk about services in  
9 the north, education, access to justice.

10 But I'm also cognisant that Ottawa has a  
11 very large number of Inuit within Canada, and I also want  
12 to respectively provide a document to be tendered as  
13 evidence relating to the ongoing missing women's case of  
14 Inuk, Mary Papatsie, who lived in Ottawa. And she's still  
15 missing. So I wanted to sort of highlight that and pass it  
16 along for an exhibit.

17 **MS. CHRISTA BIG CANOE:** So has this been  
18 previously provided? Can we stop the time for one moment,  
19 please? Has this document been previously provided? Can  
20 we give the expert an opportunity to see it? To see if ---

21 **MS. ELIZABETH ZARPA:** She's already seen it.

22 **MS. CHRISTA BIG CANOE:** Okay.

23 **MS. DALEE SAMBO DOROUGH:** I have seen news  
24 media reports about this particular issue, yes.

25 **MS. CHRISTA BIG CANOE:** So but has she

1 actually seen this document? May I see it for a minute to  
2 show her?

3 **MS. DALEE SAMBO DOROUGH:** Yes, yes.

4 **MS. CHRISTA BIG CANOE:** Okay. So have  
5 parties -- have all other parties with standing, or the  
6 Commission have had the opportunity to see it?

7 **MS. ELIZABETH ZARPA:** No.

8 **MS. DALEE SAMBO DOROUGH:** Yes, I received  
9 and internet link to this particular story.

10 **MS. ELIZABETH ZARPA:** Okay. Wonderful.

11 **MS. CHRISTA BIG CANOE:** Time is still  
12 stopped. And we just have to resolve a couple of quick  
13 things if we could. So we now have established that the  
14 witness has seen it. We have provided one copy to the  
15 Commissioners before it is actually exhibited. Could you  
16 undertake to send it electronically to all parties with  
17 standing as well, or by email send them the link?

18 **MS. ELIZABETH ZARPA:** Yes.

19 **MS. CHRISTA BIG CANOE:** Do any parties  
20 object to receiving this document in that manner? On the  
21 basis of implied consent, can you then before we go -- I'll  
22 start the time again. Can you seek to then have the  
23 exhibit put in on that basis, please? The implied consent  
24 of the parties, because they didn't receive a prior copy.

25 **MS. ELIZABETH ZARPA:** Sure.

1                   **MS. CHRISTA BIG CANOE:** Thank you. So we  
2 can start time again.

3                   **MS. ELIZABETH ZARPA:** So yes, I wanted to  
4 link in, sort of the experience within the article, states  
5 that, "Ms. Papatsie, prior to moving to Ottawa ---"

6                   **CHIEF COMMISSIONER MARION BULLER:** Excuse  
7 me. We haven't formally marked the document. So the news  
8 article entitled "Brother of Missing Inuk woman questions  
9 police investigation" posted June 13, 2017, it's a CBC  
10 article, is Exhibit 30.

11                   **--- EXHIBIT No./PIÈCE No. B30:**

12                                   "Brother of missing Inuk woman  
13                                   questions police investigation" CBC  
14                                   article by Stu Mills posted June 13,  
15                                   2017 5:00 AM ET, last updated June 13,  
16                                   2017 (five pages)

17                   **MS. ELIZABETH ZARPA:** Thank you. So yes, I  
18 wanted to get into a little bit of the experience of having  
19 to go down south and moving down south. So within the  
20 article itself, Ms. Papatsie -- it outlines that she's  
21 moved down south around 15 years ago after she -- her  
22 brother stated that -- in the article, that she experienced  
23 a sexual assault and then moved down south. I want to sort  
24 of go into a little bit of detail perhaps, with regards to  
25 accessing different services which are Inuit specific in

1 southern -- in southern areas.

2 Are you aware of, sort of, any -- so the  
3 article -- the article that you sent around, which is  
4 "Where do you go when it's 40 below?" domestic violence  
5 among rural Alaskan native women. It sort of, illustrates  
6 within that the experience of Alaska native women when they  
7 experience domestic violence and uncertainty about where to  
8 go.

9 But I'm sort of -- or interested in  
10 understanding what your ideas are around, where do Inuit  
11 women who experience different levels of hardship -- when  
12 they're living in northern remote communities that don't  
13 have access to, you know, health care or mental wellness  
14 programs. They move down south to pursue educational  
15 aspirations. When you're below the 60<sup>th</sup> parallel in urban  
16 settings, do you think it's equally as important to have  
17 Inuit specific programming that deals with, you know, the  
18 well-being of Inuit communities?

19 **MS. DALEE SAMBO DOROUGH:** First of all, let  
20 me just say that I wasn't familiar with the procedural  
21 aspects, so I'm pleased to note that this particular  
22 article has been admitted and will be circulated to all.

23 In specific response to your question, as I  
24 characterized yesterday, despite the imposed borders for  
25 Inuit throughout Alaska, Canada, Greenland, and the Russian

1 far east, there's no question that there are numerous  
2 barriers and challenges to access any kind of services. It  
3 was my understanding in the review of this particular  
4 article that Mary, in particular, was a well-adjusted woman  
5 within her community, active, engaged until she became a  
6 victim of sexual assault, and thereafter, unwell in terms  
7 of the security of her person. And that she ended up  
8 travelling to Ottawa, I don't know by what means, but I'm  
9 sure that there were difficult issues that exacerbated her  
10 mental health condition in order to find her way to Ottawa  
11 and then subsequently become missing. And if I also  
12 understand correctly, on the basis of the quotations from  
13 her brother, that no prompt action was taken, hence the  
14 headline of the story questioning the capacity of the  
15 police to follow up despite repeated efforts and calls.

16 So I would submit that there are numerous  
17 examples. I could cite additional examples coming from the  
18 Arctic region in Alaska, in terms of access to services.  
19 For example, typically even after such an event it takes on  
20 average, because of issues of jurisdiction and law  
21 enforcement that are -- well, there are many complications  
22 just in regard to law enforcement and access to law  
23 enforcement. It may take a day, it may take two weeks  
24 depending on weather, for a law enforcement official to get  
25 into a community. That's just one thing in order to

1 respond to such a crime. And then of course, in terms of  
2 health services and if the individual is, as I said  
3 yesterday, injured or just in the way of evidence and  
4 gathering of evidence, these things, you know, sometimes  
5 they're delayed in a way that there wouldn't be in an urban  
6 setting. So I mean, there might have been many different  
7 contributing factors to the experience that she had.

8 And then, I think it aligns with what I was  
9 trying to say about the difficulties within the Artic  
10 Region and the barriers, not to mention, I mean, the  
11 physical barriers, the financial barriers, but also, the  
12 emotional barriers.

13 **MS. ELIZABETH ZARPA:** Thank you for that.  
14 And I wanted to sort of look into the idea of sort of  
15 service providing and frontline workers within sort of  
16 northern regions.

17 I know with, though, in the hearing about  
18 the realities of intimate partner violence in the Northwest  
19 Territories from frontline service providers, the report  
20 that you submitted as evidence.

21 **DR. DALEE SAMBO DOROUGH:** M'hm.

22 **MS. ELIZABETH ZARPA:** Within that, it  
23 outlined sort of the barriers that exists within sort of  
24 that region.

25 And a majority of the participants on page 9

1 of that report had provided information. Their occupation  
2 are RCMP officers, nurses, shelter workers, victim service  
3 workers, counsellors, social workers. A majority of the  
4 participants who gave information for this report are  
5 non-Indigenous, and the Northwest Territories is  
6 predominantly an Indigenous sort of area.

7 **DR. DALEE SAMBO DOROUGH:** M'hm.

8 **MS. ELIZABETH ZARPA:** Is it a common theme  
9 that individuals within sort of northern regions that work  
10 within these certain fields, even though they make up a  
11 majority of the population, don't actually have these types  
12 of job titles?

13 **DR. DALEE SAMBO DOROUGH:** I think that as a  
14 pretty solid generalization for most of these institutions  
15 across the Canadian Arctic and throughout the Circumpolar  
16 Arctic, with potentially the exception of the Nordic States,  
17 that yes, that would be the case.

18 **MS. ELIZABETH ZARPA:** And do you think that  
19 having individuals who are, say, Indigenous to that  
20 particular territory or region would provide sort of more  
21 insight with regard to an issue if there was a violent --  
22 there was violence against an Indigenous women or a girl or  
23 murdered -- missing and murdered case in that region? Do  
24 you think that adds value to having more Indigenous  
25 presence within these sort of frontline working job?

1                   **DR. DALEE SAMBO DOROUGH:** Absolutely. I  
2                   didn't have a chance to detail one of my recommendations in  
3                   this regard, but the idea that culturally appropriate  
4                   services be provided, which would include Inuit in holding  
5                   such positions. Whether it is in relation to behavioural  
6                   health, domestic shelter workers, law enforcement, local  
7                   legal systems and institutions, I think there is no  
8                   question.

9                   If you looked at the -- for example, I  
10                  referenced yesterday the Alaska Judicial Council's study on  
11                  racial disparity in sentencing and their final  
12                  recommendations, they were quite comprehensive about their  
13                  suggestion that more Indigenous persons be employed in this  
14                  wide range of positions to be responsive to the problem of  
15                  racial disparity.

16                 **MS. ELIZABETH ZARPA:** Right. And thank you  
17                 for providing that sort of information and that feedback.

18                 And -- but is it okay to make the assumption  
19                 that individuals potentially would fulfill these types of  
20                 very important positions to give a cultural background if  
21                 there was more access to educational institutions for the  
22                 training within northern regions?

23                 **DR. DALEE SAMBO DOROUGH:** No question. I  
24                 think that -- well, there are two things I would say about  
25                 that. Not only formal education and access to education in



1 all of these various different areas, but I think we also  
2 need to lift up the local knowledge and recognize that our  
3 own measures of social control, consistent with Inuit  
4 values and perspectives and customs and institutions, can  
5 be marshalled as well in response to these issues.

6 So I think it's a combination of creating  
7 the intellectual and the political space as well as the  
8 financial resources in order to allow that to develop, in  
9 addition to this important linkage that you're making about  
10 access to education and informing those who are passionate  
11 about this area of work to gain education to be responsive  
12 within their own home communities. So I think it's made up  
13 of at least these two important dimensions of  
14 responsiveness to these issues.

15 **MS. ELIZABETH ZARPA:** Right. And also sort  
16 of understanding your rights and knowing how to assert them  
17 within sort of the environmental sort of context.

18 Are you aware, sort of -- you mentioned  
19 yesterday in your testimony about this experience of  
20 natural resourced companies coming into different regions?  
21 Did you want to sort of emphasize a little bit more with  
22 regards to different measures that could be taken to better  
23 address the issue and how it affects Inuit women,  
24 specifically?

25 **DR. DALEE SAMBO DOROUGH:** M'hm. I think

1 that one of the key issues -- and the example that I gave  
2 yesterday, the Mandan, Hidatsa, and Arikara people,  
3 actually, I should make a correction. It was oil  
4 development on their land and on their territory on the  
5 basis of an arrangement and an agreement that they were  
6 parties to and this dynamic of what I characterize to be  
7 the dark side of resource development.

8 I think that from the outset, if in fact  
9 such activity is going to take place, that the place and  
10 the voice of the Indigenous peoples concern the Inuit  
11 communities, concern their leadership should, again, at the  
12 outset take into consideration all of these various  
13 different adverse impacts before development takes place.  
14 Yes, we recognize that there may be positive and uplifting  
15 dynamics, but as far as the adverse impacts that those  
16 should be addressed at the outset.

17 And this is what I was trying to say when I  
18 indicated that we've known about these conditions for  
19 years, yet we don't do anything about them as far as taking  
20 into account all of the implications of research  
21 development. We often think about them in terms of  
22 environmental impact, but as far as social impact, social  
23 and cultural impact, that this is an area that I believe is  
24 a major gap across the board, not just for Indigenous  
25 communities, but for many communities.

1           I know that before major developments took  
2 place in Alaska, for example, the Trans Alaska Pipeline  
3 System, that all kinds of environmental standards had to be  
4 met. To some extent social and cultural, but they looked  
5 at, oh, well, we may end up crossing a sacred grounds  
6 burial site, things like that, but not with the living  
7 beings that were going to be impacted in terms of  
8 social/cultural impacts. So I would suggest that this  
9 become an element in consideration.

10           And then also, the practical aspects of,  
11 okay, if the development's going to take place, then those  
12 that are there to monitor the stages and steps, which means  
13 that you have to operate on the basis of local control and  
14 self-determination, that do we have sufficient police and  
15 law enforcement activity driven by Indigenous peoples in  
16 order to monitor such activity.

17           I mean, the last thing you need is what took  
18 place with the Mandan, Hidatsa, and Arikara. And again, I  
19 stated yesterday, I was only there for less than three  
20 days, and these events took place. But they also spoke  
21 about other factors in terms of alcohol abuse, drug abuse,  
22 sale of drugs. I mean, the list went on. And it was  
23 stunning to know.

24           **MS. ELIZABETH ZARPA:** All right. Thank you.  
25 I think I'm out of time. Thank you.

1                   **MS. CHRISTA BIG CANOE:** Thank you,  
2                   Ms. Zarpa.

3                   Commissioners ---

4                   **CHIEF COMMISSIONER BULLER:** Excuse me. I've  
5                   had a request for a short break.

6                   **MS. CHRISTA BIG CANOE:** And I was going to  
7                   ask for the same thing.

8                   And actually, rather than just asking for a  
9                   short break, though, I will ask for the morning 15 minute  
10                  break. And I know I'm sounding quite sharp on this, but we  
11                  will recommence in 15 minutes with the next party, which  
12                  will be Government of Saskatchewan, whether people are in  
13                  the room or not.

14                 --- Upon recessing at 10:34 p.m./

15                 l'audience est suspendue à 10h34

16                 --- Upon resuming at 10:53 a.m./

17                 l'audience est reprise à 10h53

18                 **MS. CHRISTA BIG CANOE:** ...up, the  
19                 Government of Saskatchewan. I believe Barbara Mysko is  
20                 counsel for Saskatchewan Government of Saskatchewan has  
21                 three minutes.

22                 We need the mic on, please.

23                 **CROSS-EXAMINATION/CONTRE-INTERROGATOIRE PAR MS. BARBARA**

24                 **MYSKO:**

25                 **MS. BARBARA MYSKO:** Good morning. My name

1 is Barbara Mysko. I'm counsel for the Government of  
2 Saskatchewan.

3 I have a short amount of time. I don't have  
4 any intention to cross-examination in a western traditional  
5 sense. I just want to assist in supplementing the record  
6 through a briefing note that I provided, distributed to all  
7 parties last night, and which I understand Mr. O'Soup has  
8 had an opportunity to review.

9 First I would just like to ask for  
10 permission to address Mr. O'Soup and to thank you for your  
11 presentation. I found it very engaging and I hold you in  
12 very high esteem and have enormous respect for the work  
13 that you do.

14 So I'd like to just direct your attention to  
15 the briefing note that I mentioned. It's -- I have to go  
16 through the process of identifying it so that it's on the  
17 record. It's entitled The Truth and Reconciliation  
18 Addressed in Current Curriculum. And it's dated June 17<sup>th</sup>,  
19 2015 and it was revised on May 16<sup>th</sup>, 2018.

20 Mr. O'Soup, have you had an opportunity to  
21 review that briefing note?

22 **MR. COREY O'SOUP:** Yes, I have.

23 **MS. BARBARA MYSKO:** Okay. And are familiar  
24 with the contents therein?

25 **MR. COREY O'SOUP:** Yes, I am.

1                   **MS. BARBARA MYSKO:** And are you familiar  
2 with the programs that are represented in the briefing note  
3 as well?

4                   **MR. COREY O'SOUP:** Yes, I'm very familiar  
5 with most of these programs. In fact, I was a part of  
6 developing quite a few of them when I worked at the  
7 Ministry of Education.

8                   **MS. BARBARA MYSKO:** And you talked about the  
9 importance of incorporating Indigenous perspectives into  
10 the Saskatchewan curriculum, and I acknowledge that we have  
11 work to do, and I would just like to ask you whether these  
12 represent some of the improvements that we've seen in our  
13 system over the last number of years.

14                   **MR. COREY O'SOUP:** Yeah, you know, I'm  
15 actually really proud of the work that we've done in  
16 Saskatchewan with regards to incorporating and infusing  
17 First Nation, Métis, Inuit ways of knowing into our  
18 curriculum. It's something that we've worked really hard  
19 on in Saskatchewan and something that I'm proud to be a  
20 part of.

21                   And I guess for me, when it comes to we have  
22 to do better, we need to do better, I think the question I  
23 was asked earlier about Colton Boushie, you know, and the  
24 resulting, you know, actions online. For me, that says  
25 that, yes, we are doing really good and we have a lot of

1 stuff, but there's still so much more to do; right?

2 And that's where I kind of come across on  
3 that way is, yes, I think we're doing some really good  
4 stuff, but our kids need to know, our parents need to know,  
5 our adults need to know the other side of history.

6 You know, like for me, growing up, I wasn't  
7 taught any of this stuff in school.

8 **MS. BARBARA MYSKO:** Me neither.

9 **MR. COREY O'SOUP:** You know, I didn't learn  
10 about my people, other than in a negative way, you know,  
11 that we were savages, we were uncivilized, we had to be  
12 saved, until I got into university. So I'm very thankful  
13 for the things that we're doing here, but it just shows to  
14 me that we still have a lot further to go when we have  
15 cases like Colton Boushie and we have the racism that comes  
16 out. You know, and we need to educate our children and our  
17 families more.

18 **MS. BARBARA MYSKO:** Thank you very much for  
19 that.

20 I'd like to tender this briefing note as an  
21 exhibit.

22 **CHIEF COMMISSIONER BULLER:** Truth and  
23 Reconciliation Addressed in Current Curriculum Document  
24 dated June 17<sup>th</sup>, 2015, revised May 16, 2018 will be the next  
25 exhibit. And I think that's 31.

1                   **MS. CHRISTA BIG CANOE:** Is that 31?

2                   **CHIEF COMMISSIONER BULLER:** Okay. Thirty-  
3 one (31). Thank you.

4                   **--- EXHIBIT NO/PIÈCE NO. B31:**

5                                   "Truth and Reconciliation addressed in  
6                                   current curriculum" Ministry of  
7                                   Education briefing note by Maria Chow  
8                                   and Delise Pitman, created June 17,  
9                                   2015 revised May 16, 2018 (four pages)

10                   **MS. BARBARA MYSKO:** Thank you, Chief  
11 Commissioner. Thank you, Mr. O'Soup.

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

13                                   The Commission would like to call upon the  
14 Native Women's Association of Canada next. I believe  
15 that's with, yeah, Virginia Lomax. And Ms. Lomax will have  
16 20 minutes.

17                   **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

18                   **VIRGINIA LOMAX:**

19                                   **MS. VIRGINIA LOMAX:** Good morning. My name  
20 is Virginia Lomax. I'm the counsel to the Native Women's  
21 Association of Canada.

22                                   And if it's all right with you today, Mr.  
23 Soup [*sic*], I'd like to begin with you.

24                                   You mentioned that youth are speaking to  
25 each other about mental health but not necessarily to



1 adults; is that correct?

2 **MR. COREY O'SOUP:** Yes. The statistics are  
3 when talking about mental health issues, particularly the  
4 area of suicide, 54 per cent of kids actually go first to  
5 their peers, then to anyone else.

6 **MS. VIRGINIA LOMAX:** Could you give me some  
7 reasons why that might be happening?

8 **MR. COREY O'SOUP:** Well, I mean, I think  
9 sometimes as adults, and I think I mentioned this  
10 yesterday, I think we -- and our kids mention this as well  
11 -- you know, when they come to us with some of their  
12 concerns, you know, we tend to come back with certain  
13 responses and they've mentioned these responses. You know,  
14 they tell us that, you know, when they come to us with  
15 something that's happened to them, a lot of times we'll  
16 say, "Well, why don't you just get over it?" You know,  
17 "Things will be better tomorrow." Or, you know, "When I  
18 was a kid, you know, it was way harder than when you are a  
19 kid. You have it so easy." So why would our kids want to  
20 come to us when we say things like that?

21 Or they specifically mention teachers in  
22 here. When they go to their teacher, you know, the person  
23 they're supposed to trust, the teacher plays favourites;  
24 right? And, you know, sometimes, you know, they disregard  
25 what that child has to say, or sometimes even what they've

1 said in here is, "When I'm getting bullied in school, I  
2 have to move. I am removed from the situation. Why is the  
3 bully not removed? Why do I have to leave the situation?"

4 And, you know, our kids, you know, have told  
5 us those different things and I believe those are some of  
6 the reasons why they don't come to us, because the people  
7 that they're supposed to trust, their parents, their  
8 teachers, their caregivers, the ones that they are supposed  
9 to able to tell anything to, we react in those ways. And  
10 it doesn't take long for our kids not to trust us.

11 And me, personally, with my own children,  
12 I'm still building up that trust from some of the things  
13 that I did as a parent, you know. And like I said, these  
14 kids have taught me so much and they've changed my life and  
15 they've changed the way that I parent and that I talk to  
16 young people and to my own children.

17 **MS. VIRGINIA LOMAX:** Thank you. Do you have  
18 any specific best practices for relationship building for  
19 youth in remote rural and northern communities?

20 **MR. COREY O'SOUP:** You know, it's always a  
21 challenge, particularly as a government organisation, to  
22 build those relationships, and particularly in our northern  
23 and our Indigenous communities, because governments for so  
24 long have been seen in a negative light. And particularly  
25 when you come in and you're asking questions; right? And

1 we ask our young people, we ask our northern people, we  
2 survey them to death, we ask them the same questions over  
3 and over, and then we leave.

4 For me, the best way that we can do it is to  
5 commit to building that relationship. And that just  
6 doesn't mean going and taking and not giving back. The way  
7 that we built our relationships with our children and our  
8 youth is we went to where they were. We didn't ask them to  
9 come to Saskatoon or to come to Regina. And we didn't ask  
10 them to come into a situation where they were uncomfortable  
11 with.

12 We decided early on -- and, you know, the  
13 geography of the north was discussed earlier. You know,  
14 the geography in northern Saskatchewan is a system of roads  
15 that are not paved, most of them are hilly and you cannot  
16 see what's coming over the next. And if they have gravel,  
17 great, if they don't, you better not be driving on them in  
18 the rain, you know. And we made that commitment that we  
19 were going to go into those communities. We were going to  
20 build the relationship with the kids, in particular, and we  
21 have upheld that commitment.

22 And, for me, that's the best way to do it.  
23 Go where they are. Meet them where they're at and make  
24 that commitment.

25 And I think I've probably spent almost half

1 my time in my job up in our northern communities and I have  
2 staff that's dedicated to working up there. So it takes a  
3 lot of perseverance, patience and it also takes a will to  
4 do it.

5 **MS. VIRGINIA LOMAX:** And could you comment  
6 on any specific best practices for relationship building  
7 that may be specific to Two-Spirited, LGBTQ+ or gender  
8 diverse youth?

9 **MR. COREY O'SOUP:** Yeah, you know, we had a  
10 number of those represented in this document that we have.  
11 So us, we've made that commitment as well to our LGBTQ2S  
12 youth and they're a very important part of the work that we  
13 do. And their voice was heard in here too.

14 You know, they mentioned -- I'll -- more of  
15 a direct quote. It's not a word I would use. But they  
16 said, you know, "Gays get bullied way more than the  
17 straight kids"; right? So I think it's upon us, as adults,  
18 to build that relationship with them, to create safe spaces  
19 for them. It's even more difficult for Indigenous LGBTQS -  
20 - 2S people and our children and youth, and even more  
21 difficult for our youth to come out, you know.

22 And I think we need to create those safe  
23 spaces, first in our schools, which we've been doing, but  
24 also in other areas of our community. And we have to do --  
25 we have to educate our adults, you know, and we have to

1 give them a space to listen and to learn, and that has to  
2 be right within our communities.

3 I know we do a lot of Internet this,  
4 Internet that, online this. The best way that we can teach  
5 our kids and we can teach the adults in our communities, I  
6 believe, is face-to-face, and that takes a commitment.

7 **MS. VIRGINIA LOMAX:** Thank you.

8 And so, we have heard from some families who  
9 have testified that there is either a lack of funding or  
10 sometimes there is a reluctance or a refusal for funding  
11 for certain types of education for Indigenous youth, and  
12 that this can have a direct link to violence against  
13 Indigenous women and girls.

14 So by way of example, there may be a  
15 preference to fund university level education and a  
16 reluctance to fund or devaluing of funding certain types of  
17 trade schools. For example, a trade school or a college or  
18 even an esthetician program, and that this can contribute  
19 to Indigenous youth not accessing the education that they  
20 wanted and turning to the streets in many circumstances.

21 Have you witnessed this situation I have  
22 described?

23 **MR. COREY O'SOUP:** I would say that right  
24 now, currently, there is not sufficient funding to meet the  
25 needs of our Indigenous children and youth in the Province

1 of Saskatchewan. I would echo that's probably similar  
2 across Canada.

3 Particularly on Reserve, which many of our  
4 northern communities are, there is a distinct funding gap,  
5 and it depends on where you are how good you can write a  
6 report or a proposal, you may get more funding compared to  
7 the First Nation beside you. So there are distinct gaps  
8 when it comes to funding our schools and our education  
9 system, particularly when it comes to our Indigenous kids.

10 And you know, even though we may say it is a  
11 priority, I believe we have to invest in our children, we  
12 have to invest in them early and often. I believe the best  
13 place and the most effective place would be to invest in  
14 them in the early years.

15 And I think that's statistically proven as  
16 well. If you can invest in those kids early, if you can  
17 get them reading at a certain grade level, if you can get  
18 them achieving by a certain time, and different things like  
19 that, they'll go on to graduate, they'll go on to be more  
20 successful.

21 And I think we tend to often go to our  
22 education system, we go to our child serving systems, we go  
23 to our Indigenous people, and we make cuts there. And I  
24 find that quite troubling how often it actually happens.  
25 So I think we need to do the opposite.

1           There are many studies out there -- I didn't  
2 bring any of them, but I know Dr. Eric Howe in Saskatchewan  
3 has done a couple, one for the FSIN and one for the Métis  
4 Nation of Saskatchewan, that talks about investing in our  
5 education system, and investing in our young people.

6           And you know, they come out with figures  
7 like if we invest in our young people and if we get them to  
8 certain levels of high school, of graduate, of post  
9 graduate levels of education, the impact on our economy is  
10 in the billions of dollars, you know.

11           And I know our governments go in four year  
12 cycles and it's a challenge to think, you know, or to  
13 invest in things that are maybe, you know, 20 years long,  
14 rather than the 4 year cycle in trying to create that  
15 system. But if we make that concerted effort to invest in  
16 our young children, the impact on our economy, particularly  
17 in our Indigenous children and youth, is measured in  
18 billions of dollars. I can't see how we cannot do that,  
19 and I continue to advocate for that.

20           **MS. VIRGINIA LOMAX:** Thank you.

21           And so you spoke yesterday about reclaiming  
22 the child welfare system. Could you give me an idea of  
23 what you think that reclamation might look like?

24           **MR. COREY O'SOUP:** Well, I think, you know,  
25 this is a conversation that's happening across the country

1 in our First Nations. And currently, the way that it works  
2 in our province, I don't want to speak for any other ones,  
3 but the child welfare system on Reserve is operated by our  
4 people, but the authority comes from the provincial  
5 government, through delegated agreements.

6 And what I mean by reclaiming and what I  
7 mean by supporting that, is I believe that our people  
8 should have full autonomy over their own child welfare  
9 systems. And I believe that's the direction we're going.

10 I don't think we're all ready for that. I  
11 think different agencies are at different areas of  
12 readiness to actually do that reclamation. And I've had  
13 some conversations with some chiefs, and maybe it's a  
14 5-year plan or a 10-year plan, but I believe that control  
15 of our child welfare system should go back to our people.  
16 Then we can more fully incorporate our traditional ways of,  
17 you know, of parenting, of knowledge, of growing, of  
18 education, and those can impact our kids in a different way  
19 that they're not getting right now.

20 **MS. VIRGINIA LOMAX:** Thank you.

21 And you spoke yesterday about the complaints  
22 mechanism for the rights of the child at an international  
23 child. Would you agree that it may be useful to have a  
24 complaint system in place within provincial and federal  
25 levels and provincial and federal jurisdictions similar to



1 that complaint system for youth to bring forward human  
2 rights complaints, as access to justice is certainly a  
3 barrier for youth?

4 **MR. COREY O'SOUP:** Yeah. I mean, we do have  
5 a couple of systems in place, you know, provincially. I  
6 mean, in the Province of Saskatchewan, you know, we would  
7 be the place where children and youth can come that have  
8 concerns about their rights under their -- underneath the  
9 Convention, and basically any rights. Any youth or adult  
10 or member of the public can call our office professionals,  
11 they call our office.

12 So I believe we are that body within the  
13 Province of Saskatchewan. There's also the Human Rights  
14 Commission as well, but they deal mainly with complaints  
15 around discrimination.

16 And the problem is that the UNCRC in  
17 Saskatchewan, in particular, and I don't want to speak  
18 again for everybody, but in Canada, in general, does not  
19 have any real teeth legally; right? And I think that's the  
20 big concern for us, is how do we get some teeth into that.  
21 And if we can elevate that to an international level with  
22 the third optional protocol on communications and the  
23 complaints, I think that that would allow us to at least  
24 take it to another level.

25 Because on things like, say, for instance,

1 Jordan's Principle, you know, we spent millions and  
2 millions of dollars fighting this through the system,  
3 right, and we exhausted everything. If we would have had  
4 that protocol in place, we could have elevated it to the  
5 UNCRC to the international level, but we don't. So there  
6 is other examples like that that we can point to as well.

7 **MS. VIRGINIA LOMAX:** Thank you very much.

8 And now, I have some questions for  
9 Professor Gunn.

10 You mentioned yesterday that there is a  
11 general prohibition in international law against violence  
12 against women. Is that correct?

13 **MS. BRENDA GUNN:** Yeah.

14 **MS. VIRGINIA LOMAX:** Would you say that  
15 there is the same prohibition against violence against  
16 two-spirited LGBTQ+ and gender diverse individuals?

17 **MS. BRENDA GUNN:** That's a really good  
18 question. And to be honest, this morning, I can't actually  
19 recall specifically the position and...

20 The reference I made was was specifically to  
21 gender-based violence. And I want to say yes. I'm just  
22 having difficulties at the moment recalling a specific  
23 citation that I can sort of point to in my knowledge. And  
24 I am sorry. There is a lot of international law that  
25 floats around out there, and I just -- sometimes I'm afraid

1 to say a definite yes without...

2 But I can't imagine that there wouldn't be  
3 that extension with -- given the awareness and inclusion of  
4 diverse sexualities and gender identifications. This is  
5 knowledge and included within human rights generally, so I  
6 can't imagine that it wouldn't extend.

7 But I'm sorry that my answer is somewhat  
8 qualified, and there may be others in the room that could  
9 point to the specific to say for certain. Sorry.

10 **MS. VIRGINIA LOMAX:** It's all right.

11 So yesterday, you mentioned that there is a  
12 perception in Canada, even among legal professionals that  
13 international law is not real law. Is that correct?

14 **MS. BRENDA GUNN:** Yes.

15 **MS. VIRGINIA LOMAX:** And would you agree  
16 that it's possible that the reason this perception exists  
17 is Canada's failure to consistently implement international  
18 legal principles or implement what they have signed to?

19 **MS. BRENDA GUNN:** At one level, yes. I  
20 think for lawyers and judges, when I hear that, that it's  
21 not real law, I think it's that sort of idea. But -- I  
22 mean, I hear it from second year law students who wouldn't  
23 necessarily know that. Like these are students on their  
24 first day of international law, you know, "Why are you in  
25 this class?" "Oh, it's interesting. I know it's not real

1 law, but I think it's interesting."

2 And -- so I actually am not fully sure that  
3 I understand. But it definitely contributes, at least in  
4 the legal profession, to the idea that this isn't real law.

5 I had one lawyer once approach me to see if  
6 there's any international avenues available for a case that  
7 had stalled out domestically. And the lawyer, quite a  
8 senior lawyer, well-respected in the jurisdiction that he  
9 practices, said, "You know, you know how it goes. When all  
10 else fails you turn to international law; right?" That it  
11 was the last resort and not sort of a real option, but if  
12 you have nothing else you can try that.

13 So I definitely think -- I think it's dual  
14 in that it's also quite technical, and people, if you don't  
15 know the technical rules, you just work off assumptions  
16 that have infiltrated your knowledge in some sort of way.

17 But if I could flip your question I would  
18 say that if Canada was more consistent in its approach to  
19 international law, for what it says internationally and  
20 domestically, it would help the situation and address that  
21 issue.

22 **MS. VIRGINIA LOMAX:** Thank you. And you  
23 mentioned yesterday that you teach a course in Métis people  
24 and the law; correct?

25 **MS. BRENDA GUNN:** Yes.

1                   **MS. VIRGINIA LOMAX:** Could you identify any  
2 elements or issues within the international treaties and  
3 declarations that you've discussed with us here this week  
4 that may have unique impacts on Métis women, girls, or  
5 gendered first people?

6                   **MS. BRENDA GUNN:** These are really good  
7 questions. Thanks. They're really getting my brain going  
8 this morning.

9                   Perhaps I can speak in some generalized  
10 fashions and -- but I think it's fair to say that there's  
11 very little recognition of Métis land bases and delineation  
12 and demarcation and legal protection of Métis traditional  
13 lands.

14                   The Métis governments -- governance systems  
15 that exist internationally and in the provinces do not  
16 necessarily have the same recognized jurisdiction that may,  
17 for example, exist under the *Indian Act*, even though all of  
18 its limitations and problems with the *Indian Act*. I'm not  
19 sort of saying it's a good system but it is a system that  
20 provides some form of recognized jurisdiction over people  
21 and space over certain subject matters.

22                   And so outside the Alberta settlements there  
23 isn't necessarily that recognition, and so I think that  
24 makes it a particular challenge. I'd heard anecdotally  
25 that even in my home province, sometimes consultation on

1 various issues doesn't always address the Métis people  
2 because they may not know where the Métis are or there's  
3 not a First Nation Reserve or there's not that easy place  
4 to go to, or sometimes the Métis consultations occur just  
5 in general urban centres in the general place.

6 So given those general issues and perhaps  
7 differences it's my assumption that that can translate to  
8 some unique challenges in relation to murdered and missing  
9 Indigenous women and may then also require some unique  
10 considerations.

11 **MS. VIRGINIA LOMAX:** Thank you.

12 And with the rest of my time my final  
13 questions will be for Dr. Samo Dorough.

14 Yesterday you mentioned that we need not  
15 wait for the end of the Inquiry before acting; is that  
16 correct?

17 **DR. DALEE SAMBO DOROUGH:** Yes, echoing the  
18 words of the Special Rapporteur on violence against women.

19 **MS. VIRGINIA LOMAX:** Would you be able to  
20 give me some specific examples of what immediate actions  
21 you believe could be taken?

22 **DR. DALEE SAMBO DOROUGH:** I think that, for  
23 example, a line of communication within the context of the  
24 Inuit Crown Agreement concerning issues related to intimate  
25 partner violence, domestic violence, sexual assault, and

1 other discriminatory acts perpetrated against Inuit women,  
2 that such a line of communication could begin promptly.  
3 And an opportunity for the National Inuit Organization, as  
4 well as the respective political institutions but more  
5 significantly the Inuit women and girls impacted by this  
6 distressing concern, that they could begin to identify --  
7 open the line of communication but then begin identifying  
8 ways forward even well before the conclusion of this  
9 National Inquiry, that that would be one important starting  
10 point.

11 **MS. VIRGINIA LOMAX:** Thank you all for  
12 sharing your knowledge with us.

13 **MS. CHRISTA BIG CANOE:** Thank you, Ms.  
14 Lomax.

15 Next the Commission would like to call up  
16 Ms. Comacchio on behalf of Ontario Native Women's  
17 Association.

18 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

19 **CHRISTINA COMACCHIO :**

20 **MS. CHRISTINA COMACCHIO:** Once again, I'm  
21 actually going to share my time with some of the members of  
22 Ottawa that are present with me.

23 **MS. CHRISTA BIG CANOE:** We can start time  
24 and just so it's noted for the record, there's 25 minutes.  
25 And if you could introduce your colleagues, that would be

1 helpful. Thanks.

2 **MS. CHRISTINA COMACCHIO:** My name is  
3 Christina Comacchio; I'm counsel for the Ontario Native  
4 Women's Association. With me is Cora-Lee McGuire-Cyrette,  
5 Courtney Skye, and Cheryl Bagnall, and they are employees  
6 with ONWA.

7 I would like to direct my questions to Jean  
8 Leclair, please. And unfortunately, they're in English.

9 Can you explain your experience in applying  
10 a gender-based, culturally relevant analysis to your work?

11 **MR. JEAN LECLAIR:** Could you repeat slowly,  
12 please?

13 **MS. CHRISTINA COMACCHIO:** Yes. Can you  
14 please explain your experience in applying a culturally  
15 relevant gendered lens to your analysis of the Canadian  
16 Constitution and Federalism?

17 **MR. JEAN LECLAIR:** Well, the issue of  
18 intersectionality has been raised. The fact that  
19 Indigenous women are discriminated, both as women and as  
20 Indigenous in our system, and this plays out in many ways.  
21 For instance, I don't know specifically what you're looking  
22 at but certainly the issue of how women have been treated  
23 by state law, starting with the -- with what has been  
24 remedied in part by C-31 in 1995 -- 1985, rather, and the  
25 ongoing litigation over the *McIvor* case.



1           But this also plays out where membership  
2 rules are concerned. And certainly the cultural dimension  
3 is absolutely essential for -- because the big challenge is  
4 having state law recognize the legitimacy of Indigenous  
5 legal orders that have their own understanding even of what  
6 is comprised in our material world; is this confined just  
7 to material objects or are there more spiritual dimensions  
8 to issues.

9           And the *Ktunaxa* case, just before Christmas  
10 that was rendered by the Supreme Court of Canada was a good  
11 example of that; whether the spirit of the grizzly bear  
12 should be protected in the *Ktunaxa* area.

13           And so these issues are constantly present  
14 because state law is built upon an ideology which is very  
15 western culturally, and in many ways, very, very male in a  
16 gendered -- from a gendered perspective.

17           **MS. CHRISTINA COMACCHIO:** Thank you.

18           Yesterday in response to one of Commissioner  
19 Audette's questions you mentioned that Canada has  
20 implemented laws that don't create social realities for  
21 Indigenous communities and Indigenous women, and that these  
22 laws were to help Aboriginal communities. Is this concept  
23 of helping not reflect dominant racist, paternalistic  
24 discourse within Canadian law, and should that discourse be  
25 changed?

1                   **MR. JEAN LECLAIR:** If I understand well,  
2                   what I meant by the fact that law does not create social  
3                   reality is that unless there's legitimacy to law, if we  
4                   distinguish legality; legality is does the institution  
5                   adopting the law has a right to do so according to its own  
6                   rules. So you have the *Indian Act*, for instance, that was  
7                   adopted democratically according to western rules, but  
8                   whether it has legitimacy in the eyes of the persons that  
9                   are being dealt with by the *Indian Act* is an entirely  
10                  different question.

11                  So you can create the *Indian Act* but it  
12                  doesn't mean that it's going to be followed on the ground.  
13                  And I think that we have to focus on the legitimacy of the  
14                  rules from the perspective of Indigenous peoples. And  
15                  that's why I find it so important first that, as I said,  
16                  Indigenous peoples make the declaration their own,  
17                  according to their own understanding. And actually the  
18                  very, very big issue and it's been present in all the  
19                  presentations is the willingness of the State to give a  
20                  space to this understanding of law from an Indigenous  
21                  perspective. And I think that if the State could just  
22                  realize how, in a sense, its own legitimacy was -- would be  
23                  buttressed by the -- by its recognition of the legitimacy  
24                  of efficient and legitimate rules of Indigenous peoples, we  
25                  would be on the right path to reconciliation.

1                   But there are all sorts of, as you  
2 mentioned, ideological convictions that are deeply rooted,  
3 and bureaucratic practises that are not easily changed, and  
4 these are the most difficult challenges we have to face.  
5 It's a transformation of mentalities.

6                   **MS. CHRISTINA COMACCHIO:** Just building on  
7 that, do you agree that in the discussions of absence of  
8 political will behind legislation give it teeth that while  
9 the beneficial legislation, their lax political will, there  
10 is, on the flip side, political will to implement sexist  
11 and racist legislation, like the *Indian Act*, that does  
12 create negative social realities for Indigenous women and  
13 girls?

14                   **MR. JEAN LECLAIR:** It certainly can, but I  
15 think it's becoming much more difficult. For instance,  
16 take the *LaValle* case in the seventies that said basically  
17 that treating women discriminately in a... *d'une manière*  
18 *discriminatoire*, in a discriminatory manner was justified.  
19 Then the human rights committee said in the *Lovelace* case  
20 that this wasn't right, and the government had to change  
21 its position.

22                   I'm thinking of the Idle No More movement  
23 that was led by women and that, I think, maybe I'm wrong,  
24 but it seems to me that it has transformed Indigenous civil  
25 society, and that these movements will make it much more

1 difficult to implement a more sexist legislation.

2 But I think, as I said also, this is  
3 something that's internal to Indigenous communities also.  
4 They have their own issues over these distinctions, and  
5 they have to face this critically also.

6 **MS. CHRISTINA COMACCHIO:** Just a few quick  
7 questions. So yesterday, we entered into exhibits the  
8 gender and violence article. An important part of the  
9 contextualization of this article is the Aboriginal Sexual  
10 Violence Action Plan that it is critiquing. I believe this  
11 is cited at Footnote 2 of the article. . Have you read this  
12 plan that the article is based on?

13 **MR. JEAN LECLAIR:** Honestly, no. I only  
14 read the paper.

15 **MS. CHRISTINA COMACCHIO:** And actually, that  
16 action plan is also -- builds upon the strategic framework  
17 from 2007 for violence against women, and these documents  
18 were written in partnership by the Métis Nation of Ontario,  
19 Ottawa and the OFIFC.

20 Would you agree that these background  
21 information -- the background reports that this article is  
22 critiquing are necessary for the Commissioners to review to  
23 properly understand the context of the gender and violence  
24 article?

25 **MR. JEAN LECLAIR:** They probably are. And I

1 also think that the Commission would be very -- it would be  
2 a good idea for the Commission to meet with Val Napoleon  
3 and Emily Snyder and John Borrowes, who wrote the paper.

4 **MS. CHRISTINA COMACCHIO:** On that basis, I  
5 would like to tender actually those two documents as  
6 exhibits. I have -- just as a -- I have circulated them to  
7 the parties and Commission counsel and received no  
8 objections.

9 Can you pause the time, please?

10 **MS. CHRISTA BIG CANOE:** Yes. You can -  
11 you're actually going to have to exhibit on the record in  
12 your time. There's no objection.

13 **MS. CHRISTINA COMACCHIO:** Okay.

14 **MS. CHRISTA BIG CANOE:** So go ahead and  
15 exhibit.

16 **MS. CHRISTINA COMACCHIO:** Do you want me to  
17 bring the copies? I only have one, stapled, sorry.

18 **CHIEF COMMISSIONER BULLER:** At some point,  
19 we'll need copies as well.

20 **MS. CHRISTINA COMACCHIO:** Yes.

21 **CHIEF COMMISSIONER BULLER:** Okay.

22 **MS. CHRISTINA COMACCHIO:** I can undertake to  
23 provide them electronically as well.

24 **CHIEF COMMISSIONER BULLER:** Thank you. The  
25 document, A Strategic Framework to End Violence Against

1 Aboriginal Women, prepared by the Ontario Native Women's  
2 Association and the Ontario Federation of Indian Friendship  
3 Centres, September 2007, will be Exhibit 32.

4 --- EXHIBIT NO./PIÈCE NO. B32:

5 "A Strategic Framework to End Violence  
6 against Aboriginal Women" prepared by  
7 the Ontario Native Women's Association  
8 and the Ontario Federation of Indian  
9 Friendship Centres, September 2007 (12  
10 pages)

11 **CHIEF COMMISSIONER BULLER:** And Aboriginal  
12 Sexual Violence Action Plan by the Métis Nation of Ontario,  
13 2011, will be Exhibit 33, please.

14 --- EXHIBIT NO./PIÈCE NO. B33:

15 "Aboriginal Sexual Violence Action  
16 Plan" Ontario Federation of Indian  
17 Friendship Centres / Métis Nation of  
18 Ontario / Ontario Native Women's  
19 Association, 2011 (26 pages)

20 **MS. CHRISTINA COMACCHIO:** Thank you. Those  
21 are all my questions, and I'm going to pass it to Cora now.

22 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. MCGUIRE**  
23 **CYRETTE:**

24 **MRS. CORA-LEE MCGUIRE CYRETTE:** My questions  
25 are to Professor Brenda Gunn.

1           In light of multiple non-compliance orders,  
2           the Canadian Human Rights Tribunal has issued post caring  
3           society. Inquiry -- or if the Inquiry does recommend a  
4           national action plan with a monitoring body, how can we  
5           assure that Canada and all levels of government actually  
6           uphold these obligations when Canada cannot uphold the  
7           court order of the Federal Human Rights Tribunal?

8           **MS. BRENDA GUNN:** I'm not sure I have an  
9           answer, and I'm not sure if the question is somewhat  
10          rhetorical.

11          In -- I mean, enforcement of the law is  
12          always a challenge, and I think that was the sort of point  
13          that I was raising when people say that international law  
14          doesn't have teeth. From my experience, when I engage in  
15          civil society and engage in advocacy and international law,  
16          I mean, the only thing we can do is keep trying to put the  
17          pressure on Canada and make their non-compliance known and  
18          push for that.

19          I'm not sure I have any magical answers. I  
20          do think that, you know, if the government doesn't want to  
21          act, I don't know how we do it. I don't know if we can  
22          arrest the prime minister. I'm not sure of the extent of  
23          how Canadian law works. I don't know. I know what happens  
24          if I fail to follow a court order and injunction. I don't  
25          know how we enforce it, necessarily.

1           I mean, some would answer that this is the  
2 whole point of a democratic government, that if the  
3 government fails to follow the law, the next election cycle  
4 they get dealt with that way. I'm not sure that's a  
5 satisfactory answer.

6           But you know, in Bill C-262 on the  
7 implementation of the UN Declaration, this was part, I  
8 think, the wisdom of the Act is that you state that, one,  
9 needs to create the national action plan; and two, you say  
10 that you have to periodically report back to Parliament on  
11 the actions taken. So I think that's a sort of attempt to  
12 create an accountability mechanism, right, so that you have  
13 to do something and then you have to publicly state what  
14 you're doing. And if you're -- you know, if the government  
15 in power isn't doing it, I think there's opportunities for  
16 opposition parties to bring it up and remind government of  
17 obligations.

18           So those are some of my answers, but I agree  
19 with the challenge on enforcing the law.

20           **MRS. CORA-LEE MCGUIRE CYRETTE:** Thank you.

21           Would you agree child welfare is the root  
22 cause of missing and murdered Indigenous women and girls?

23           **MS. CHRISTA BIG CANOE:** I'm sorry. Stop the  
24 time.

25           I'm not sure if that's within the expertise



1 of this particular witness, if you're asking a question in  
2 relation. If the witness believes she can answer in part,  
3 I'd just ask her to qualify her expertise in that area.

4 **MS. BRENDA GUNN:** Yeah, thank you.

5 I was going to respond with sort of my  
6 limited knowledge. But what I can say is that the periodic  
7 reports of Canada to various human rights treaty bodies,  
8 the treaty bodies have made those connections.

9 I believe Canada's periodic reports to the  
10 Convention on the Rights of the Child and in the responses  
11 that have come from the Committee, I believe have made that  
12 connection, at least, if not directly, I think implicitly,  
13 by saying problem with child welfare, problem with murdered  
14 and missing Indigenous girls when it's in relation to the  
15 rights of the child; right. So I believe others have made  
16 that connection.

17 **MRS. CORA-LEE MCGUIRE CYRETTE:** Thank you.

18 Do you agree that the Inquiry should hear  
19 direct evidence of the child welfare system?

20 **MS. BRENDA GUNN:** I think that's a little  
21 hard for me to answer, other than to say if a human rights-  
22 based approach is taken and if the information that they  
23 collect demonstrates that this is one of the human rights  
24 obligations that Canada has, and may be violated, it could  
25 be an important aspect. But I don't have that knowledge to

1 say that in my expertise there is international Indigenous  
2 rights.

3 **MS. CORA-LEE MCGUIRE CYRETTE:** Okay. I'm  
4 going to pass it over to...

5 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR COURTNEY**  
6 **SKYE:**

7 **MS. COURTNEY SKYE:** Hi. I'm going to be  
8 asking questions to Dr. Sambo Dorough. And we just wanted  
9 to thank you for your lifetime of work and the knowledge  
10 and lift up your work that you bring here and to  
11 acknowledge the -- how clearly you spoke about the  
12 individual and collective rights faced by Indigenous women  
13 and how Indigenous women's advocacy has made that happen.

14 The 4<sup>th</sup> World Conference on Women in Beijing  
15 highlighted the essential need for empowered and autonomous  
16 women as being essential to achieving accountable  
17 government administration and sustainable development in  
18 all areas of life.

19 Can you further expand on how the political  
20 mobilization of Indigenous women in decision-making is  
21 affirmed by international declarations?

22 **MS. DALEE SAMBO DOROUGH:** Well, first of all,  
23 there is the general reference to, for example, within the  
24 UN Declaration on of Rights of Indigenous Peoples as well  
25 as the American Declaration and the ILO convention number

1 169, the broad reference to gender equality in terms of the  
2 rights of Indigenous women and Indigenous men.

3 Secondly, as I stated in my intervention,  
4 the rights affirmed in these various different  
5 international human rights instruments including the UN  
6 Declaration on the Rights of Indigenous Peoples are  
7 interrelated, interdependent and indivisible. So one could  
8 make a very strong argument about the, again,  
9 intersectional perspective of the rights and the  
10 interrelated nature of the rights.

11 So I think that there's many, many different  
12 ways to respond to this particular question, and also in  
13 the context of the exercise of a specific right and  
14 specific case studies.

15 **MS.COURTNEY SKYE:** Thank you. Women's equal  
16 participation in decision-making is not only a demand of  
17 simple justice or democracy, but can also be seen as a  
18 necessary condition for women's interest to be taken into  
19 account. Without the active participation of women and the  
20 incorporation of women's perspective in all of decision-  
21 making, the goals of equality, development and peace cannot  
22 be achieved.

23 In your opinion, how can this Inquiry's  
24 recommendations assure that the broad political  
25 mobilisation of Indigenous women through organisations of

1 their own choosing across all issues that affect their  
2 lives in order to sustainably address systemic violence and  
3 create safety for Indigenous women?

4 **MS. DALEE SAMBO DOROUGH:** You should have  
5 been president for the drafting of the UN Declaration on  
6 the Rights of Indigenous Peoples.

7 I think that a number of different rights,  
8 in particular as affirmed in the UN Declaration on the  
9 Rights of Indigenous Peoples affirmed the right to  
10 participate erectly in matters that affect you at all  
11 levels and on the basis of representatives chosen by the  
12 Indigenous peoples concerned.

13 And because of the gender equality provision  
14 and the strong potential and the power and the influence of  
15 Indigenous women, in this particular issue of Indigenous  
16 women and girls, that there's no question that the voice  
17 and the objectives and the concerns of Indigenous women and  
18 girls across Canada and across the globe can have  
19 extraordinary influence in all of these matters.

20 And you point to the Beijing platform, any  
21 field and any area, the sustainable development goals that  
22 I referenced yesterday, including some of the objectives  
23 regarding gender equality and all of the various different  
24 indicators is another example. Again, I think there are  
25 any range of possibilities, and the potential for these

1 important instruments to inform that engagement.

2 There's many strategies that can be  
3 undertaking, and I would urge a multi-faceted or multi-  
4 pronged approach. And it seems pretty clear that your  
5 respective organisations are doing this in terms of local  
6 action, regional action, national and international  
7 engagement.

8 **MS. COURTNEY SKYE:** I have one final  
9 question. So yesterday you spoke about the direct result  
10 of increased violence experienced by Indigenous women and  
11 girls who live near resource extraction industries.

12 Would you agree that a recommendation should  
13 be made to create a mandatory legislated requirement that  
14 all corporations engaged in resource development need to  
15 work with the nearby Indigenous women and communities and  
16 be required to adequately fund the necessary measures to  
17 ensure their safety for the duration of the resource  
18 extraction?

19 **MS. DALEE SAMBO DOROUGH:** Yes, I think, and  
20 you've stated your question in a very comprehensive  
21 fashion. I think that here again there is important need  
22 for intersectional perspectives.

23 Brenda Gunn yesterday referred to the  
24 guiding principles on business and human rights, and this  
25 is an extraordinary body of important work that is being

1 invoked by Indigenous peoples in numerous ways where  
2 extractive industries especially are engaged in resourced  
3 development.

4 I think that specific to this would be the  
5 need to call all of the various different international  
6 instruments as well as any national laws, policies and  
7 regulations in order to build up this entire area and  
8 dimension of safeguarding Indigenous women and girls and  
9 Indigenous peoples generally.

10 I want to make note that at the recent  
11 permanent forum on Indigenous issues, and this was a  
12 stunning development in my view. The report from-- and I  
13 forget it specific title-- but the report concerning  
14 mercenaries being employed by, in some cases, state  
15 government, but more specifically third-party corporations  
16 where Indigenous peoples are attempting to defend their  
17 land rights being met by mercenaries.

18 And this is... you know, we've been involved  
19 in this human rights work for a long time and how is it  
20 that mercenaries become engaged in defending the rights and  
21 interests of third-parties and to a larger state government  
22 interests in the face of, again, the human rights  
23 instruments that have been developed that should be in  
24 favour of all of us as individuals but Indigenous peoples  
25 as collectivities?

1           So this has also sparked an entire area, and  
2           it's my view, that there is a need for a discussion about  
3           Indigenous human rights defenders. Because yes, we can  
4           talk about human rights defenders, but in the Indigenous  
5           context, especially when we're talking about the distinct  
6           status and rights of Indigenous peoples, including their  
7           political, economic, social and cultural rights, and the  
8           political right to self-determination, and inherent rights  
9           to lands, territories and resources that we should be  
10          engaged in harmed conflict over the defence of our lands,  
11          territories and resources.

12                 I know that's probably not entirely  
13          responsive and probably too much to take on now in terms of  
14          our rights, but these are... emerging developments that are  
15          heightening the impacts upon Indigenous women and girls.  
16          And we as Indigenous women know the power of women when it  
17          comes to defense, especially of their fruits' security and  
18          their lands territories and resources, and more often than  
19          not it is Indigenous women who are the frontlines of those  
20          battles.

21                 So I hope I didn't overwhelm you with that  
22          response, but it's important for everyone to know.

23                 **MS. CHERYL BAGNALL:** (Indigenous word) and  
24          good morning to the panellists. The rest of my questions  
25          will be directed towards Corey O'Soup.

1           So Corey, in your experience as an educator  
2 and an advocate for children, do you have experience in  
3 educating youth on the human rights? And can you speak to  
4 me in fact of this education, specifically as this  
5 increases the safety of girls?

6           **M. COREY O'SOUP:** Yes, you know, our  
7 curriculums are limited when it comes to educating our  
8 children and youth on human rights, and even more  
9 specifically on women's rights and even much specifically  
10 on the United Nations convention on rights to a child.

11           So in all my time teaching, I'm trying to  
12 think back if it ever came... There's probably not one class  
13 that I had a curriculum that I taught that had any of those  
14 issues actually within it, and I taught history 10-20-30, I  
15 taught wellness, I taught science, I taught a number of  
16 different classes, and during my time teaching I would say  
17 that it has not been represented. But part of what we are  
18 advocating for within Saskatchewan is that those things are  
19 included in curriculum. I know they're there. They just  
20 weren't in places that I taught. Typically they are, you  
21 know, maybe one day, one lesson, you know, as part of, you  
22 know, United Nations or different things like that, or you  
23 know, in those types of situations.

24           My goal is to have them actually woven  
25 throughout curriculum so that you cannot go through our



1 school system without learning about women's rights, or  
2 about UNCRC, or about human rights. And I believe that  
3 that should be start -- start being taught right from  
4 kindergarten, right to grade 12, so that you cannot have  
5 the experience that I had, and that many of us had, about  
6 not learning about it. And then also from the other side  
7 of the table, now that I recall, about not teaching about  
8 it, you know? So I believe that serves two purposes. It  
9 serves in educating our children, but it also serves in  
10 educating our teachers who are teaching our children about  
11 those rights.

12 **MS. CHERYL BAGNALL:** In the, "Shush, Listen  
13 to Us" report, did you copywrite the used stories and do  
14 you agree that all the stories belong the people and  
15 communities who experienced them?

16 **MR. COREY O'SOUP:** I don't believe we've  
17 copywrited them, but all of the guidelines were followed  
18 but research ethics and I believe the stories belong to the  
19 children and the youth. And whenever I reference them I  
20 like to say that I'm not talking as Corey, specifically  
21 when I talk about the voices in here. They are their  
22 voices and sometimes when I challenge people using their  
23 voices they challenge me, and it's like, it's not me that  
24 you're talking to. It's our children that you're talking  
25 to and they deserve to be heard.

1                   **MS. CHERYL BAGNALL:** So would you also agree  
2 that the National Inquiry's final report must not own the  
3 stories they have heard and instead honour these stories,  
4 but not copywriting them?

5                   **MR. COREY O'SOUP:** Oh, gee. That's a -- I'm  
6 not even sure where they're going. But I believe all of  
7 our stories belong to all of us. They belong to the women,  
8 and the children, and the girls. I'm not too sure where  
9 that's ---

10                   **MS. CHRISTA BIG CANOE:** Time's up.

11                   **MR. COREY O'SOUP:** Oh, people are ---

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

13                   **MS. CHERYL BAGNALL:** Our time's up?

14                   **MS. CHRISTA BIG CANOE:** Yes. Thank you.  
15 Just so it's clear though, that if a witness is answering a  
16 question that was asked, we allow the witness to complete  
17 the question.

18                   Next we would like to call up the Battered  
19 Women's Support Service. I believe this will be Ms. Angela  
20 Marie MacDougall and Anemki Wedam and the -- this party,  
21 Battered Women's Support Service, has 40 minutes and as  
22 soon as they start talking the time begins.

23                   **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. ANGELA**  
24                   **MARIE MacDOUGALL:**

25                   **MS. ANGELA MARIE MacDOUGALL:** Good morning.

1 Thank you to the Elders, thank you to the Commissioners,  
2 and thank you witnesses, and to counsel. I -- as  
3 mentioned, my name is Angela MacDougall and I'm Executive  
4 Director, and I'm here with my colleague Anemki Wedam. And  
5 we drew straws and I got the straw which says that I'm  
6 going first.

7 Dr. Sambo Dorough, thank you for your work  
8 and for your vision and clarity of voice. I'd like to ask  
9 you please, you spoke earlier about resource extraction and  
10 extensively about the dark side, I think, of resource  
11 extraction. Would you be willing to give us a sense about  
12 how you see through your consultations, how you've noted  
13 the ways in which this dark side is at the -- is at a core  
14 of colonization, in terms of resource extraction and  
15 economic development and the making of nation states,  
16 settler nation states?

17 **MS. DALEE SAMBO DOROUGH:** In fact, I'd like  
18 to respond in the context of how the UN Declaration of  
19 Rights of Indigenous Peoples was drafted and where the  
20 attention of all actors was focussed. The contentious  
21 issue of the right to self-determination and the arguments  
22 that I discussed yesterday about states wanting to  
23 prescribe the nature of the right to self-determination of  
24 Indigenous Peoples and our response. That was one area.

25 The second contentious area is what you've

1 just said. The rights of Indigenous Peoples to their  
2 lands, territories, and resources. And I think that your  
3 linkage to the colonial nature and the -- what I referred  
4 to yesterday as colonial violence, hits the nail right on  
5 the head. Because in hindsight, this was probably the most  
6 important cluster of articles in the UN Declaration. The  
7 cluster of articles related to lands, territories, and  
8 resources. Because since the time of first contact it's  
9 always been about the gold. And up until more recently,  
10 nearly every land claims agreement, nearly every discussion  
11 about resolving the rights of Indigenous Peoples to lands,  
12 territories, and resources, has been triggered by those  
13 keen to access the renewable and non-renewable resources on  
14 Indigenous Peoples' lands.

15 And I can cite specifically our own  
16 experience with the *Alaska Native Claims Settlement Act of*  
17 *1971*, a unilateral piece of legislation adopted by the  
18 United States Congress, signed into law by President Nixon,  
19 that did a wide range of things. Including provisions to  
20 extinguish the rights of Alaska native people to all lands  
21 outside of the settlement area, as well as -- get this --  
22 as well as to extinguish Aboriginal hunting and fishing  
23 rights. And it said, in just a very few words. Imagine  
24 that impact. And in that context, and I learned about this  
25 at a very young age, in that context I think it's safe to

1 say that Indigenous Peoples are the only peoples in the  
2 entire world that are forced to have their rights  
3 extinguished. Maybe someone has done other research and  
4 knows about this. But I think it's pretty safe to say.

5 So if you think about colonialism, if you  
6 think about racial discrimination, if you think about the -  
7 - even the simple question of how is it that one peoples  
8 has the power and the right to purportedly extinguish the  
9 rights of others? That's a -- that's, you know, a great  
10 question for an ethics class, right? But never mind that.

11 I think that there are all kinds of linkages  
12 throughout history that can be made by individual  
13 Indigenous Peoples to get to the heart of your question and  
14 the essential nature of your question. The only other  
15 examples that I want to cite is what I stated yesterday  
16 about the James Bay Northern Quebec Agreement and  
17 hydroelectric power. Here again, it was a resource that  
18 was needed and largely that and claims agreement, which  
19 fortunately dramatically contrasts with the experience in  
20 Alaska. That land claims agreement was propelled by the  
21 need of New York State for electricity. And I can cite  
22 many other examples where -- especially we've seen  
23 heightened violence between Indigenous Peoples trying to  
24 protect their land rights, as I just spoke of, and  
25 extractive industries. Or again, any kind of renewable or

1 non-renewable resource triggering an address of the rights  
2 to lands, territories, and resources, and the legacy of the  
3 colonial violence that has emerged from that.

4 **MS. ANGELA MARIE MacDOUGALL:** Thank you for  
5 your answer.

6 I'm just going to go across the panel  
7 randomly. Professor Gunn, you spoke yesterday about  
8 intersectionality and in -- actually, sorry. I apologize.  
9 That was you also Dr. Sambo Dorough. I'll get back to you,  
10 Professor Gunn.

11 The intersectionality and looking at the  
12 various declarations, and the conventions, and reports from  
13 the UN, and wanting to map those out in some way and  
14 thinking. Do you see -- in thinking about that  
15 specifically, you know, we come from the territory now  
16 called British Columbia, and in the region, the Squamish,  
17 Tsleil-Waututh, the Musqueam people, Coast Salish people.  
18 And, there aren't treaties, there's very few treaties  
19 within -- that have been signed within British Columbia,  
20 and resource extraction and the Canadian enterprising  
21 nature in terms of resource extraction has been there since  
22 the beginning of British Columbia. And, it's very  
23 intensifying right now around third parties with respect to  
24 pipelines.

25 Do you imagine a way to use these

1 international instruments to entrench or at least begin a  
2 dialogue around violence against Indigenous women as it  
3 relates to resource extraction through, perhaps, legal  
4 proceedings, domestic legal proceedings?

5 **MS. DALEE SAMBO DOROUGH:** Yes. I think that  
6 if I'm correct, the voices of First Nations have been  
7 amplified in relation to resource development in British  
8 Columbia. As an outside observer, I've paid attention to  
9 these developments. Some of them have been raised within  
10 the U.N. Permanent Forum on Indigenous Issues, and  
11 representatives from First Nations in B.C. travelling to  
12 participate in the Permanent Forum and raising their voices  
13 about this area. I think there is no question that the --  
14 especially the Indigenous-specific international human  
15 rights instruments throughout B.C. and elsewhere can be  
16 invoked.

17 **MS. ANGELA MARIE MacDOUGALL:** May I  
18 interrupt? I'm sorry.

19 **MS. DALEE SAMBO DOROUGH:** Yes.

20 **MS. ANGELA MARIE MacDOUGALL:** Specifically,  
21 around violence against Indigenous women and girls, the  
22 piece around -- maybe you were getting to that point.

23 **MS. DALEE SAMBO DOROUGH:** I was trying to,  
24 but yes. Go ahead.

25 **MS. ANGELA MARIE MacDOUGALL:** Building in a

1 framework to highlight in very clear ways the relationship  
2 to resource development and extraction to violence against  
3 women, and anything we want to do, anything that wants to  
4 be done specific to land claims.

5 **MS. DALEE SAMBO DOROUGH:** Yes. I guess I  
6 would just quickly say that the response that I gave  
7 earlier about social and cultural impacts, that this needs  
8 to take on a very unique and, I suppose, as I said  
9 yesterday, a distinctions-based approach in relation to the  
10 individual and the collective rights of Indigenous women  
11 and girls when it comes to resource development activities.  
12 And, I think I would not be surprised that this becomes a  
13 very specialized field of development when we talk about  
14 social and cultural impacts and that side of development,  
15 and would just simply urge that anyone taking on this  
16 particular human rights enterprise, again, review all of  
17 the available tools and resources at the international  
18 level, as well as at the national level, but even more  
19 significantly, Indigenous knowledge and Indigenous legal  
20 traditions.

21 **MS. ANGELA MARIE MacDOUGALL:** Thank you for  
22 your reply. Professor Gunn, you spoke yesterday about --  
23 you gave evidence relating to finding ways to build in  
24 human rights frameworks within civil society, am I correct?

25 **MS. BRENDA GUNN:** Yes.



1                   **MS. ANGELA MARIE MacDOUGALL:** In British  
2 Columbia, we've had, at various times, a Commission of  
3 Human Rights, and that was dismantled a few years ago and  
4 it's being reimagined. I'd like to enter into evidence a  
5 document, Human Rights Commission for the 21<sup>st</sup> Century -  
6 British Columbians Talk About Human Rights. I did email  
7 copies. I don't have a hard copy.

8                   **MS. CHRISTA BIG CANOE:** Can we stop the time  
9 for a moment, please? When you say you emailed copies,  
10 they were provided to Commission counsel and all parties?

11                   **MS. ANGELA MARIE MacDOUGALL:** To Commission  
12 counsel, yes, and to all parties, yes.

13                   **MS. CHRISTA BIG CANOE:** But, has it been put  
14 to the actual witness?

15                   **MS. ANGELA MARIE MacDOUGALL:** No, it has  
16 not.

17                   **MS. CHRISTA BIG CANOE:** Okay. So, one of  
18 the things we'll do before we actually ask for it to be  
19 entered is I'm seeing if I have a copy on me so that we can  
20 see if the witness is familiar with that document.

21                   **MS. ANGELA MARIE MacDOUGALL:** If chief  
22 counsel doesn't have a copy and in the interest of time, I  
23 would be willing to speak around the document without  
24 having to reference the document.

25                   **MS. CHRISTA BIG CANOE:** It's not an issue,

1 it's just a matter if we have it, then she can see it. She  
2 might be very familiar with it and then it's easy to move  
3 forward with it. Can you remind me the name of it, please?

4 **MS. ANGELA MARIE MacDOUGALL:** It's called  
5 the Human Rights Commission for the 21<sup>st</sup> Century - British  
6 Columbians Talk About Human Rights.

7 **MS. CHRISTA BIG CANOE:** Yes, if you don't  
8 have a hard copy, I'm not sure what to tell you, because I  
9 don't have that.

10 **MS. ANGELA MARIE MacDOUGALL:** It might be  
11 the best way to proceed.

12 **MS. CHRISTA BIG CANOE:** All right.

13 **MS. BRENDA GUNN:** I'm not familiar with this  
14 document. There was an underlying question, I believe?

15 **MS. ANGELA MARIE MacDOUGALL:** Would it be  
16 okay for me to read a paragraph from the document, as  
17 evidence?

18 **MS. CHRISTA BIG CANOE:** Okay. So, it's  
19 outside of normal practice, but for the purpose of if  
20 you're reading or pinpointing a paragraph, and you're  
21 willing to undertake to provide that page and citation,  
22 then we can talk about putting it into an exhibit after the  
23 fact, if the Commissioners are okay with that approach.

24 **CHIEF COMMISSIONER MARION BULLER:** That's  
25 agreeable. Thank you.



1 cultural understanding and cultural safety  
2 training to help create a safe where  
3 respectful conversations can take place.  
4 As well, the Commission should develop, in  
5 collaboration with Indigenous partners, a  
6 focused engagement strategy to increase  
7 awareness and effectiveness of the  
8 Commission, and its role for the  
9 Commission to learn from Indigenous  
10 communities.

11 **MS. CHRISTA BIG CANOE:** So, sorry, stop the  
12 clock again? Could you do me a favour and just pinpoint  
13 it? One of your colleagues has been nice enough to pull it  
14 up. That was such a large read-in that it's not going to  
15 be fair for the -- yes. But, if you can pinpoint it,  
16 please, like, which page you're looking at?

17 **MS. ANGELA MARIE MacDOUGALL:** Just one  
18 moment, please. The introduction and the...

19 **MS. CHRISTA BIG CANOE:** The page numbers are  
20 right on the bottom corner.

21 **MS. ANGELA MARIE MacDOUGALL:** Page 19.

22 **MS. CHRISTA BIG CANOE:** Thank you. I'm  
23 sorry, do you know which paragraph that began at? Just on  
24 the introduction, is that recommendation on the  
25 independence of the Commission?

1                   **MS. ANGELA MARIE MacDOUGALL:** No. So, here  
2 we go. It's number (e), page 27.

3                   **MS. CHRISTA BIG CANOE:** I'm sorry. Okay.  
4 And so, we'll just note that.

5                   **MS. ANGELA MARIE MacDOUGALL:** So, in  
6 summary, the paragraph refers to ---

7                   **MS. CHRISTA BIG CANOE:** Sorry. Sorry, the  
8 time is still stopped, so wait one moment, please.

9                   **MS. BRENDA GUNN:** I think I may have pulled  
10 it up on my laptop, which will be much easier to read  
11 because my -- yes, I believe I have it in a font size that  
12 is...

13                   **MS. ANGELA MARIE MacDOUGALL:** Thank you,  
14 chief counsel.

15                   **MS. CHRISTA BIG CANOE:** And, although I do  
16 like the reference to being a chief counsel, I'm actually  
17 just Commission counsel. So, we'll start the time again,  
18 and please proceed with asking the question after the read  
19 in.

20                   **MS. ANGELA MARIE MacDOUGALL:** I am wondering  
21 what you think about this idea of a domestic agency  
22 applying a declaration into the infrastructure?

23                   **MS. BRENDA GUNN:** I think in all of my work  
24 in advocacy generally has been about translating  
25 international human rights forums into domestic law. And

1 so, I think it's important for this to happen in various  
2 aspects. I have recently released a paper on the role of  
3 national human rights institutions on implementing the U.N.  
4 Declaration. It's a little bit beyond what I've spoken to  
5 here, but I do think that the international human rights  
6 standards that exist and the protections that they provide,  
7 particularly in relation to violence against Indigenous  
8 women and girls. It's important to have multiple avenues  
9 and I'm not sure that we can over-implement something or  
10 have too many avenues to pursue. So I would say in a very  
11 general sense I'm in favour of such approaches. Without  
12 having read the full report I'm not sort of willing to say  
13 that, you know, I would support a B.C. Human Rights  
14 Commission, but I think in a generalised, yes, inter --  
15 domestic human rights norms and understanding should be  
16 informed by international standards as well.

17 **MS. ANGELA MARIE MacDOUGALL:** Thank you.

18 My next question's for Corey O'Soup.

19 Morning.

20 **MR. COREY O'SOUP:** Good morning.

21 **MS. ANGELA MARIE MacDOUGALL:** You gave a  
22 harrowing statistic yesterday of Indigenous girls and  
23 suicide. Would you be willing to repeat that again?

24 **MR. COREY O'SOUP:** Yeah, for Indigenous  
25 girls in Saskatchewan on the area of suicide, our

1 Indigenous girls are 26 times more likely than non-  
2 Indigenous girls in Saskatchewan to die by suicide?

3 **MS. ANGELA MARIE MacDOUGALL:** Thank you.  
4 How do you understand this? How do you make sense of this?

5 **MR. COREY O'SOUP:** You know, if you look to  
6 -- and this is why we went and asked the questions of our  
7 kids around the topic of suicide; right? And they laid it  
8 out pretty clearly for us. You know, they gave us six  
9 themes as to why; right? We also asked them for solutions  
10 and they gave us some calls to action. So the six themes  
11 are, if you have your book, they're on page two, you know,  
12 as to why, from the kids.

13 The first one is bullying and cyberbullying,  
14 which we've discussed quite a bit here. The second one is  
15 around lack of emotional support. Third one is the impact  
16 of substance misuse, lack of physical safety, lack of  
17 activities, the impact on emotional and mental wellness.  
18 So those were all the six themes that the young people gave  
19 us and they detailed quite clearly in the report about --  
20 underneath all of those about why those were themes, and  
21 then they gave us some solutions as well. So I always like  
22 to turn back to the young people.

23 **MS. ANGELA MARIE MacDOUGALL:** Thank you.

24 In that work, in your work -- and we spoke  
25 in -- it was spoken here yesterday or the day before around

1 provide a gender-based lens, looking at gender. To what  
2 extent do you think that Indigenous girls in Saskatchewan  
3 can speak to their experiences on the gender-based lens?

4 **MR. COREY O'SOUP:** Well, I mean, when we're  
5 talking to young people we have to ---

6 **MS. ANGELA MARIE MacDOUGALL:** I mean this in  
7 terms of the -- we're in a culture, in a context where  
8 there's a lot of pervasive sexism and misogyny and it's  
9 very difficult I think.

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

11 **MS. ANGELA MARIE MacDOUGALL:** We've -- that  
12 it's difficult to even raise issues of gender in mixed and  
13 co-ed settings.

14 **MR. COREY O'SOUP:** I think the first  
15 challenge is actually giving them that setting; right?  
16 Giving them the voice and the right to be heard, which is  
17 one of their rights, you know, under Article 12. So I  
18 think we need to create those settings for them, and we  
19 don't always give them that safe opportunity to do so. So,  
20 you know, I think that's the first that we have to do.

21 And I would say they do not have very many  
22 opportunities to do so in a safe environment where they  
23 feel like their voice will be heard. But I believe that --  
24 through the process that we went through, they did have  
25 that opportunity in a safe environment. Elders were



1 around. Mental health supports were around during this  
2 process in order to give them that. But as a general rule,  
3 I would say that we don't give them the opportunity and  
4 they are not afforded that opportunity to exercise their  
5 right.

6 **MS. ANGELA MARIE MacDOUGALL:** In terms of  
7 applying a gender-based analysis to ---

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

9 **MS. ANGELA MARIE MacDOUGALL:** --- to their  
10 experiences?

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

12 **MS. ANGELA MARIE MacDOUGALL:** Thank you. I  
13 appreciate that. Thank you.

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

15 **MS. ANGELA MARIE MacDOUGALL:** I have one  
16 more questions, and that would be for you, Professor  
17 Leclair.

18 Yesterday you spoke of three things and one  
19 of them was money. I don't recall the other two. I  
20 thought I wrote it in my notes, but would you mind  
21 repeating those again?

22 **MR. JEAN LECLAIR:** Yes, it was political  
23 declaration and the use of legislation.

24 **MS. ANGELA MARIE MacDOUGALL:** Would you be  
25 willing to expand on that a bit this morning for those that

1 perhaps are watching testimony?

2 **MS. CHRISTA BIG CANOE:** What's the question  
3 about?

4 **MR. JEAN LECLAIR:** Yes. Well, there are  
5 many ways of implementing international norm and Professor  
6 Gunn spoke eloquently on this issue a few minutes ago. But  
7 basically what I was saying is that you can do it  
8 politically via resolution in the assembly, but this is  
9 basically just a political tool. It's quite useful, but  
10 it's limited. Sorry.

11 But then if you look at some of the rights  
12 that are recognised by the Declaration, many of them  
13 require investing money. And that's another means of  
14 providing for the implementation of the Declaration. And  
15 sometimes it's -- I was -- what I was saying is that it's  
16 easier to spend law instead of spending money in the sense  
17 that you would just adopt a law and that's -- so I'm just  
18 saying that -- and I was just saying that adopting a law is  
19 a very good idea, but you have to be aware that you have to  
20 follow up on this and make sure that what you're aiming at  
21 will be implemented.

22 And finally, I was spoking [*sic*] of --  
23 speaking, rather, of using -- resorting to legislation to  
24 do so. And then what I said is that you have -- you can  
25 either choose a general incorporation, and that's a useful

1 tool, as long as it's articulated to what you find, for  
2 instance, in the Romeo Saganash Bill, which provides for --  
3 and, again, Professor Gunn spoke about that a few minutes  
4 ago -- a supervision process where a parliament is called  
5 upon to assess every year how it can manage the  
6 implementation of the Declaration.

7 And then finally -- because I don't want to  
8 take too much time -- you have specific legislation in  
9 specific areas that would take into account the specificity  
10 of a particular Indigenous perspective or issue.

11 **MS. ANGELA MARIE MacDOUGALL:** Thank you.  
12 One final question before I pass to my colleague. One of  
13 the things that we are experiencing now in British  
14 Columbia, which I think has been a factor across the lands,  
15 is -- and it ties to your comments, Dr. Sambo Dorough.  
16 Canada has decided to underwrite a third party with respect  
17 to resource extraction, which is to say that to underwrite  
18 any losses that they may have as a right to Indigenous  
19 resistance, or resistance and insistence on free, prior and  
20 informed consent in terms of -- and that -- and Canada's  
21 going to underwrite that, so to allocate taxpayer resources  
22 in terms of underwriting that. And, you know, we've heard  
23 testimony yesterday and the day before that was specific  
24 around the absence of resources.

25 I'm wondering from either of you panellists,

1 are you willing to speak to how do we make sense of  
2 Canada's priorities with respect to human rights vis-a-vis  
3 industry and capitalism?

4 **MR. JEAN LECLAIR:** You're asking ---

5 **MS. ANGELA MARIE MacDOUGALL:** This is  
6 whoever would like to speak. It's open for whoever would  
7 like to take this. This is at the heart of the -- in terms  
8 of we're using international instruments, how do we make  
9 sense of it? How do we apply that when on a very -- basis  
10 on a daily -- day-to-day basis?

11 **DR. DALEE SAMBO BOROUGH:** M'hm. Yeah. I'll  
12 just quickly answer what -- and hope that we have time for  
13 other panellists to answer.

14 I think that one of the things I would point  
15 out to you is a report that was done by the Club de Madrid  
16 entitled Shared Societies, which gets at this question of  
17 capitalism and, let's say, free market economy and the need  
18 to have an entire paradigm shift. But going to what you've  
19 referenced about government willing to underwrite the  
20 process to achieve the operationalization of free, prior  
21 and informed consent, that this -- I would characterise  
22 that as quite significant, as long as the substance and the  
23 procedure in relation to that particular right are met ---

24 **MS. ANGELA MARIE MacDOUGALL:** Well, I think  
25 I've made everything clear.

1 MS. DALEE SAMBO DOROUGH: Yeah.

2 MS. ANGELA MARIE MacDOUGALL: Underwriting  
3 the third party in terms of industry and denying  
4 Indigenous.

5 MS. DALEE SAMBO DOROUGH: I see. Not  
6 underwriting.

7 MS. ANGELA MARIE MacDOUGALL: No.

8 MS. DALEE SAMBO DOROUGH: This is -- that's  
9 a completely different discussion of which, in my view and  
10 opinion, would be a violation of, in particular, the right  
11 to self-determination of the Indigenous peoples concerned.  
12 And if you see free, prior and consent as an element of the  
13 right to control your lands, territories and resources, as  
14 affirmed in Chilcotin, that -- yeah, that's a whole  
15 different issue which would trigger, I wouldn't be  
16 surprised, litigation.

17 MS. ANGELA MARIE MacDOUGALL: Thank you.  
18 I'll pass to my colleague.

19 CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. ANEMKI  
20 WEDAM :

21 MS. ANEMKI WEDAM: Thank you. Professor  
22 Gunn, you spoke of the forced disappearance the past --  
23 yesterday, as well as today, regarding murdered and missing  
24 Indigenous women and girls. I would like to ask you, would  
25 you agree that it's also forced displacement from

1 Indigenous communities due to the lack of underfunding  
2 [*sic*] and services within First Nation communities?

3 **MS. BRENDA GUNN:** I will say that  
4 personally, I appreciate how you're thinking through the  
5 ideas. The international jurisprudence that I'm aware of,  
6 and definitions of, sort of, removal and forces is -- I  
7 guess it's quite literal in that removing people from the  
8 land. I've recently -- I believe that the World Bank,  
9 their new -- I forget what they're calling them -- social  
10 policy -- their new approaches, their indicators for  
11 development projects are starting to be aware that where  
12 land is developed in reducing Indigenous peoples' ability  
13 to use their land in the traditional ways that they had may  
14 be considered a forced displacement. To my knowledge, I'm  
15 not aware of that interpretation. And so, I would say  
16 currently, I'm not sure the international law has  
17 recognized that. It doesn't mean that it couldn't  
18 recognize that. I think other rights are also implicated  
19 in that process of requiring people to move for services.  
20 Yes, I think that's...

21 **MS. ANEMKI WEDAM:** When the Indigenous women  
22 and girls are forced to leave their community, to cleave  
23 violence either from their intimate partner relationships  
24 within Indigenous community, and they are forced to leave  
25 their community due to the underfunding, lack of services,

1 lack of intervention on the part of leadership, and  
2 sometimes it's leadership that invokes the violence through  
3 the way in which they operate as organizations within  
4 community, that seems to continue and compound when they  
5 leave. Would you agree that it gets worse once they're  
6 displaced from their family and from their community, and  
7 then forced to move away because they don't get the  
8 adequate supports?

9 **MS. BRENDA GUNN:** I can't speak to the  
10 availability of services specifically, but what I can say  
11 and connect back to my testimony yesterday was that one of  
12 the starting point recognitions of the U.N. Declaration was  
13 the negative impacts of colonization, including and  
14 especially the removal of Indigenous peoples from their  
15 lands and traditional lands. So, I think as a starting  
16 point, international Indigenous rights has recognized that  
17 the removal or the forcing of Indigenous peoples off their  
18 lands is a very fundamental violation and leads to all  
19 sorts of other rights violations. And so, while I  
20 appreciate the statements, and I think I would, in my  
21 personal capacity, generally agree, due to my limited, sort  
22 of, knowledge and preparations on that, available services,  
23 I think I'm limited to just say that international law has  
24 recognized the problems with that, being forced to move.

25 **MS. ANEMKI WEDAM:** Dr. Dorough, you

1 mentioned yesterday about the fiduciary obligation that  
2 exists in Canada, particularly as it relates to the Crown,  
3 and we continue to see that fiduciary duty being eroded by  
4 Indigenous Affairs due to the *Indian Act*, which further  
5 compounds the human rights of Indigenous women and girls.

6           Could you speak to how we can use the  
7 international human rights lens to address those breaches  
8 of that fiduciary duty of the Crown?

9           **MS. DALEE SAMBO DOROUGH:** I want to respond  
10 with a proviso that I'm not familiar with the case law and  
11 priorities set by those impacted by the *Indian Act*. But,  
12 with regard to your specific question about use of the  
13 international human rights instruments to respond to this  
14 range of issues, I think that there are many creative and  
15 innovative ways that Indigenous peoples can utilize these  
16 instruments, again, at the local level, at the regional,  
17 national and international level, and I regard them -- this  
18 is akin to something that Brenda Gunn stated, that I regard  
19 them as one of the useful tools. At the outset of my  
20 intervention yesterday, I referred to the Inuit engagement  
21 in this work, because we saw that this specific  
22 international human rights instrument responding to  
23 Indigenous peoples would be a useful tool.

24           Depending upon the particular circumstance  
25 and the case, obviously, the use of the international human



1 rights mechanisms, and by this, I mean specifically the  
2 human rights treaty body that would be a venue depending  
3 upon the particular case of bringing forward either a  
4 shadow report to the Government of Canada's reports, or to  
5 file information with them, depending upon, again, the  
6 actual controlling treaty, raising it at various different  
7 Indigenous specific fora.

8 The requirement to exhaust domestic  
9 remedies, at least for me and what I've seen in regard to  
10 that specific requirement of exhausting domestic remedies,  
11 is a bit difficult and troubling because oftentimes, it is  
12 the domestic institutions that have triggered the problem  
13 and the lack of implementation at the domestic level in  
14 response to the solemn and legal obligations once a  
15 government has acceded to or ratified an international  
16 instrument. But, I think there are many different ways in  
17 which Indigenous peoples can utilize the system.

18 One of the more recent examples is how  
19 Standing Rock peoples utilized various different  
20 mechanisms, again, at the local level with the state, at  
21 the national level in terms of their pressure on the  
22 federal government, and then taking their cases and issues  
23 to the international level.

24 **MS. ANEMKI WEDAM:** The other question I have  
25 for you was regarding, how do we balance the individual and

1 collective rights within Indigenous communities,  
2 particularly for women and girls that are equally  
3 marginalized? To me, I see -- you know, I see within our  
4 communities, women and girls that are deeply impacted  
5 through violence. Their children are abducted through the  
6 child welfare system, and yet, within that internalized  
7 marginalization and internalized violence, how do we  
8 balance those rights of the women and girls that are deeply  
9 marginalized?

10 **MS. DALEE SAMBO DOROUGH:** I think that  
11 that's one reason why I made the reference yesterday to the  
12 voices of Indigenous women in the context of the drafting  
13 and negotiation of the U.N. Declaration on the Rights of  
14 Indigenous Peoples, and their insistence upon a specific  
15 reference, especially where it was of concern to them  
16 against the backdrop of cultural practices, customs and  
17 institutions, many of which may be long standing within  
18 Indigenous nations, communities and peoples. The specific  
19 references, and in particular, Articles 1 and 2, and also,  
20 the article concerning gender equality within the U.N.  
21 Declaration, can formulate the compelling legal arguments  
22 in order to safeguard Indigenous women as persons, as  
23 individuals, but then, also, a way to then challenge some  
24 of these practices internally. I think Jean Leclair  
25 responded to some of this yesterday in a comment that he

1 made about some of the debates that do take place within  
2 Indigenous communities and the difficulty with reconciling  
3 collective customs and practices that impede or deny the  
4 rights of an Indigenous women or an Indigenous girl. And I  
5 think that it is hard to have a general answer without  
6 knowing the specific context, but it's important to  
7 recognise that in international human rights, instruments  
8 that speak to the rights of Indigenous, an un-Indigenous  
9 woman, it's one powerful collection of rights and the  
10 balance that exists within the UN Declaration.

11 **MS. ANEMKI WEDAM:** Corey, you spoke about  
12 the underfunding for Indigenous youth relating to education  
13 and you suggested that there's a real dire need to provide  
14 special support services to ensure that we can cultivate  
15 the achievement for Indigenous youth and education systems.  
16 And you framed it as special services. And I guess, would  
17 you agree on the flip side of that that many Indigenous  
18 youth are marginalized and overprescribed as delinquent  
19 youth in the public education system and funnelled into  
20 alternate schools as opposed to providing support in a more  
21 substantive way that can ensure their strengths as  
22 Indigenous youth can be emulated through the public system?

23 **MR. COREY O'SOUP:** Yes. If I can clarify.  
24 I'm not sure how it was perceived out there but my  
25 intention was special measures ---

1                   **MS. ANEMKI WEDAM:** Okay.

2                   **MR. COREY O'SOUP:** --- not special services  
3 for our Indigenous youth, which is, you know, stated in  
4 Article I believe 21 of UNDRP for our children, and with  
5 also aligns with the best interests of the child, which is  
6 Article 3 in the UNCRC.

7                   So I wouldn't say necessarily to fund  
8 special services for our children and youth. I would say  
9 more overall funding for the overall education system on  
10 reserve.

11                   And I do agree with you, there has been  
12 instances where we have entire classes full of our  
13 Indigenous children and youth just because they are  
14 Indigenous and they term them behaviour. They term them,  
15 you know, cognitively challenged. They use all of the  
16 terms in the book. And part of that reason is because when  
17 you get funding for those kids, you get extra funding if  
18 you funnel them into those programs.

19                   So I believe there's inherent problem with  
20 that and when we do designate funding for those services,  
21 because those kids that desperately need those services are  
22 the ones that should be getting those services and we  
23 shouldn't just be designating funds just because our  
24 children are Indigenous.

25                   So I would say that the overall education

1 system, particularly on reserve, is underfunded in all  
2 areas. And often we have to make choices between, you  
3 know, field trips and speech language pathologist. We have  
4 to make choices between those types of things. You know,  
5 taking our kids and letting them experience other things  
6 because of the underfunding. So I believe that that needs  
7 to happen that that funding needs to come up to equality.

8 **MS. ANEMKI WEDAM:** Are you aware that the  
9 provinces and territories get extra funding for Indigenous  
10 youth that are treaty or registered separate and above what  
11 they get through transfer payments from the federal  
12 government?

13 **MR. COREY O'SOUP:** Are you ---

14 **MS. ANEMKI WEDAM:** We used to call them  
15 master tuition agreements.

16 **MR. COREY O'SOUP:** No, I ---

17 **MS. CHRISTA BIG CANOE:** Sorry, sorry. I'm  
18 not sure -- you can -- if you're comfortable answering, but  
19 I'm not sure if the information you're providing him is  
20 going to be able to fall within his area of knowledge and  
21 if you feel like you can answer it.

22 **MS. ANEMKI WEDAM:** Sorry.

23 **MS. CHRISTA BIG CANOE:** But I would ask for  
24 the qualification.

25 **MS. ANEMKI WEDAM:** Sorry. I'll reframe the

1 question.

2 The federal government transfers funding to  
3 the provinces and territories, and quite often the  
4 provincial Ministries of Education or the school boards in  
5 each region of the country do -- are not accountable for  
6 how those transfer payments go to support Indigenous youth  
7 in public education systems. So would you agree that there  
8 needs to be better accountability to ensure that Indigenous  
9 youth in the public systems are getting the right to  
10 quality education with those transfer payments?

11 **MR. COREY O'SOUP:** Well, I couldn't speak  
12 directly to the amount or the number or a dollars that  
13 those transfer payments would specifically be. I can just  
14 state generally again that we do need more additional  
15 funding for our children and our youth, specifically our  
16 Indigenous children. And I think that's the clear point  
17 here is that, you know, whether it's coming from the  
18 federal government or the provincial government, it is not  
19 enough and it's not sufficient to meet the needs of our  
20 children and our youth.

21 **MS. ANEMKI WEDAM:** Okay. Thank you.

22 **MS. CHRISTA BIG CANOE:** Thank you. Thank  
23 you very much.

24 Chief Commissioner and Commissioners, I note  
25 that the time is 12:30. I also note that there's

1 approximately 3 hours of testimony left. On that basis I  
2 am going to request a 30-minute lunch so that we can  
3 commence at 1:00. And the first party that will be called  
4 at that time will be Families for Justice.

5 **CHIEF COMMISSIONER BULLER:** 1:00 please.

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

7 --- Upon recessing at 12:29 p.m./

8 La séance est suspendue à 12h29

9 --- Upon resuming at 1:10 p.m./

10 La séance est reprise à 1h10

11 **MS CHRISTA BIG CANOE:** Good afternoon, Chief  
12 Commissioner, Commissioners, you'll just note -- oh, and it  
13 just went away as I was about to point it out.

14 There was -- oh, yes. Earlier I had just  
15 made a housekeeping reference and it's not an exhibit, but  
16 resources, so we've had it up over the lunch hour and as I  
17 said, it will be available online with our other links and  
18 all the parties have received it.

19 If we could recommence. The first party  
20 that we'd like to call after the lunch break is Families  
21 for Justice. So Ms. Fraser's here and she has 25 minutes.

22 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. SUZAN**

23 **FRASER:**

24 **MS. SUZAN FRASER:** Thank you. Good morning  
25 -- or good afternoon, Commissioners, thank you. Panel

1 members, thank you. Good afternoon.

2 My name is Suzan Fraser. I'm here on behalf  
3 of 20 families and we've called ourselves Families for  
4 Justice, families of -- from across Canada, almost, we've --  
5 -- not too far north but -- and not too, too far east, but  
6 British Columbia, Alberta, Saskatchewan, Manitoba and  
7 Quebec, and they include families members of Shoshone  
8 women, of Cree women, of Dene women, and Anishinaabe women,  
9 and also include the family of Pamela Holopainen who went  
10 missing on December the 14<sup>th</sup>, 2003 and her mother was an  
11 Inuit woman.

12 So we want to thank you for the knowledge  
13 that we share. Professor Leclair, I was not able to be  
14 here for your evidence yesterday so I won't have any  
15 questions for you this afternoon, and I'm sorry I couldn't  
16 hear it in its entirety.

17 I want to start by addressing some questions  
18 for you, Mr. O'Soup, as advocate, on your wonderful job  
19 with the report, and focusing on Article 12 of the  
20 Convention on the rights of a child and participation. So  
21 I'm right that Article 12 gives children and youth the  
22 right to be heard and to participate in matters affecting  
23 them.

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

25 **MS. SUZAN FRASER:** Okay. And by you



1 engaging as an advocate with young people and hearing from  
2 them directly, that is in partial fulfillment of that  
3 right.

4 **MR COREY O'SOUP:** Yes, I would say so.

5 **MS SUZAN FRASER:** Okay. The right -- and  
6 that right is an inalienable right, so it is -- they hold  
7 it themselves?

8 **MR COREY O'SOUP:** Well, it's based on the  
9 UNCRC but I believe that is true as well.

10 **MS SUZAN FRASER:** Okay. And so what means  
11 is that they are permitted to exercise that whether the  
12 adults around them necessarily think that they should have  
13 that right or not; is that fair?

14 **MR COREY O'SOUP:** Yeah, and I believe that  
15 they do on many different occasions, yes.

16 **MS SUZAN FRASER:** And it's not just about  
17 dealing directly with the provincial government or federal  
18 government, any kind of administrative matter, even in a  
19 proceeding like this, they would have a right to  
20 participate in.

21 **MR COREY O'SOUP:** Yes, according to Article  
22 12.

23 **MS SUZAN FRASER:** Okay. And so part of the  
24 challenge in dealing with young people because of their  
25 circumstances is that in order for that right to be

1           meaningfully exercised we need to create meaningful  
2           opportunities for them to be heard and the adults have to  
3           be prepared to listen, or those are sort of the conditions  
4           for really the exercise of that right.

5                       **M. COREY O' SOUP:** Yes.

6                       **MS. SUZAN FRASER:** Okay. So when I look at  
7           your report and the measures you took. And first, I just  
8           want to stop and look at the report, noticing the size of  
9           the report and that it doesn't neatly fit on a shelf,  
10          right?

11                      **M. COREY O' SOUP:** You know, that's the way  
12          that we intended it to be. Actually, it was to honour "Go  
13          Down a Secret Path" is why we chose this size.

14                      **MS. SUZAN FRASER:** Yes.

15                      **M. COREY O' SOUP:** It's the size of an LP and  
16          that's where we got our inspiration from. Because you're  
17          right, it doesn't just sit comfortably on a shelf, so you  
18          can't put it on a bookshelf. And you know if you run your  
19          finger along your bookshelf, there it is; or if you put it  
20          on your desk, it stands out.

21                      **MS. SUZAN FRASER:** Right. And that's because  
22          you want people to give life to this report and for it to  
23          be in people's faces?

24                      **M. COREY O' SOUP:** Yes.

25                      **MS. SUZAN FRASER:** Okay. So, and if we can

1 just go on page 1 of the report, which is your executive  
2 summary.

3 **M. COREY O' SOUP:** Yes.

4 **MS. SUZAN FRASER:** One of the objectives of  
5 the report is for the report to be, and this is, it's at  
6 the second objective so in the second column part-way down,  
7 the second objective of this report is to be a platform for  
8 the voices of these young people to be heard. Right? So  
9 it's really to elevate their voices and to bring them  
10 forward.

11 **M. COREY O' SOUP:** Yes.

12 **MS. SUZAN FRASER:** Okay. And so, I want to  
13 look at how you operationalized that, just in terms of the  
14 process and the steps that you took. Because sometimes...  
15 the way that you get to the point where young people is...  
16 the foundational work that you do will sometimes really  
17 assist you or really allow young people to make their  
18 voices known and to be comfortable doing so. Would you  
19 agree?

20 **M. COREY O' SOUP:** Yes, I would agree 100%.

21 **MS. SUZAN FRASER:** Okay. So when we look at  
22 your, on page 9 of your report for the people following  
23 along with their own version, the steps that you took to  
24 engage with young people.

25 **M. COREY O' SOUP:** Yes.

1           **MS. SUZAN FRASER:** The first thing you do is  
2           you approached it with the rights framework and the  
3           literature in order to give an understanding of statistical  
4           trends in youth engagement on the topic. Right? So you did  
5           your homework, essentially?

6           **M. COREY O' SOUP:** Yes.

7           **MS. SUZAN FRASER:** Okay. And then you met  
8           with the Chiefs and the leaders and the stakeholders, who  
9           had lost young people, to listen and to learn from them, and  
10          to explore a role with your office?

11          **M. COREY O' SOUP:** Yes.

12          **MS. SUZAN FRASER:** Right? Am I right in  
13          understanding that the reason you would do that is you would  
14          have to, in order to meaningfully participate with young  
15          people, establish a level of trust with the leadership and  
16          the adults in the community?

17          **M. COREY O' SOUP:** Yes, you know, with our  
18          process, we needed them to be aware that we were in their  
19          communities, especially on our Indigenous communities,  
20          because we do respect their right that they are on sovereign  
21          territories and we did want them to know why we were there  
22          and what the process was and, you know, for what purpose.

23          **MS. SUZANE FRASER:** And sometimes, even  
24          though you probably have a right to seek out young people  
25          and to hear from them directly as part of the legislative

1 framework that governs what you do?

2 **M. COREY O'SOUP:** Yes.

3 **MS. SUZAN FRASER:** But just because you have  
4 the right to speak directly to young people doesn't mean  
5 that's gonna end up being the best process for hearing from  
6 them, is that fair?

7 **M. COREY O'SOUP:** Yes, that's fair.

8 **MS. SUZAN FRASER:** And sometimes if you want  
9 to access young people, when you gain the trust of adults,  
10 they will help transfer that trust to the young people?

11 **M. COREY O'SOUP:** Yes, you know, because a  
12 lot of the times, and the places that we went, the young  
13 people wouldn't have known us. So we had to lean on the  
14 relationships that we had with some of the adults within the  
15 community to be able to reach those young people.

16 **MS. SUZAN FRASER:** All right. And if you had  
17 not done of all of that preliminary work, in terms of doing  
18 your research and making those relationships in the  
19 community, would the young people have come to you?

20 **M. COREY O'SOUP:** I would say probably not  
21 have, not in the numbers that they did, you know. We might  
22 have, you know, engaged with a few here and there, but I  
23 mean, we would have been strangers entering into their  
24 worlds and them not knowing who we are or what we were there  
25 for.

1           So I believe we needed to, you know, frame  
2           that in order to make sure that they were safe and that they  
3           weren't just talking to basically strangers.

4           **MS. SUZAN FRASER:** Right. So then that sort  
5           of became, once you had established those relationships and  
6           done your homework, that became the next piece of the work  
7           that you do was to establish with the young people a kind of  
8           informed, what I would call as a lawyer informed, consent  
9           process, but what really is about telling them about the  
10          work that you intend to do, telling them about what you hope  
11          to gain from them and telling them about what's going to be  
12          done with their stories once they had told them?

13          **M. COREY O'SOUP:** Hum, mmm.

14          **MS. SUZAN FRASER:** And you conveyed all of  
15          that information in advance and got their agreement on it  
16          before you actually started hearing from them?

17          **M. COREY O'SOUP:** We did a couple of things.  
18          Before we actually went into this report, we actually did  
19          presentations to them and we gave them an invitation. So we  
20          did presentations to over 1,000 youth in the north, and  
21          after the presentations were done they were given an  
22          invitation to come and participate.

23          So they were taught about our office a  
24          little bit, taught about their rights, and then we had a  
25          discussion about why we were there. And then, we invited

1           them to participate, and out of that over 1,000, there's  
2           approximately 264 that decided to participate.

3                       And then with the consent piece, if they  
4           were over 16, they could sign the consent form themselves.  
5           If they were under 16, they had to get permission from a  
6           parent or guardian and they had to sign the consent forms.

7                       **MS. SUZAN FRASER:** So that would be, and the  
8           parents also having the same kind of information about what  
9           your process was gonna look like before the young person  
10          engaged?

11                      **M. COREY O' SOUP:** Yes.

12                      **MS. SUZAN FRASER:** Okay. So then, in  
13          presenting to those thousand youths across northern  
14          Saskatchewan, how many communities did you have to visit?

15                      **M. COREY O' SOUP:** We presented in 12  
16          communities.

17                      **MS. SUZAN FRASER:** Okay. And if you hadn't  
18          invited young people from Saskatoon, without doing that  
19          work, as kind of an alternative way of doing it, do you  
20          think you would have had effective participation from the  
21          young people?

22                      **M. COREY O' SOUP:** Like, within the city of  
23          Saskatoon?

24                      **MS. SUZAN FRASER:** Yes.

25                      **M. COREY O' SOUP:** I think if we would have

1 went through the same process and presented to them.

2 **MS. SUZAN FRASER:** Yes?

3 **M. COREY O' SOUP:** We probably would have had  
4 similar numbers. I mean, it's, you know... there's 250,000  
5 people in Saskatchewan, or in Saskatoon, so we probably  
6 would have got a good number, I would have said.

7 **MS. SUZAN FRASER:** Right.

8 **M. COREY O' SOUP:** It's hard to tell, though.

9 **MS. SUZAN FRASER:** And so, but would you get  
10 the same reception from the northern communities if you were  
11 just inviting people to Saskatoon?

12 **M. COREY O' SOUP:** Oh, you mean inviting them  
13 down to Saskatoon?

14 **MS. SUZAN FRASER:** Yes.

15 **M. COREY O' SOUP:** Oh, no, for sure not.  
16 There's definitely implications of travel, of, you know,  
17 parents coming, you know, supervision, all of those  
18 different issues that would've have affected that, so no. I  
19 thought you meant if we invited kids from Saskatoon to  
20 participate.

21 **MS. SUZAN FRASER:** No.

22 **M. COREY O' SOUP:** No, to ask them to come to  
23 Saskatoon or Regina or any major city was not a  
24 consideration, because we felt like we had to go to them.

25 **MS. SUZAN FRASER:** Okay. And then, you went



1 back?

2 **M. COREY O'SOUP:** Yes.

3 **MS. SUZAN FRASER:** Once you collected all the  
4 information, you went back to the young people to tell them  
5 what you had heard and how you had understood what they had  
6 conveyed to you?

7 **M. COREY O'SOUP:** Yes. We made that  
8 commitment early on to them, when we first met with them,  
9 that we would come back to them and we would validate what  
10 they said to ensure that it truly was a representation of  
11 what they told us before we actually shared that with  
12 anybody else, we went back to them.

13 And then, that gave us the validation, and  
14 in some places, we went back more than once to ensure that  
15 we had their voices and their validation. And even now, to  
16 this day, we continue to go back to those communities and  
17 continue to talk to those young people in order to keep and  
18 establish that relationship going.

19 **MS. SUZAN FRASER:** Okay. So in terms of a  
20 process like this; this process has its own timeline, its  
21 own deadline, it's possible that this process could get an  
22 extension. But if young people wanted to participate in  
23 this process, do you think it would be necessary for there  
24 to be similar outreach and similar engagement?

25 **M. COREY O'SOUP:** I think whenever gathering

1 children and youth voice, we have to consider who were going  
2 to, how we're going to get to them and how many before we  
3 want the engagement to be.

4 I would say to anybody, including this  
5 process, that if you want to get that information, you have  
6 to go to the young people. To expect them to come, like we  
7 did, to come to a place like this is not always easy, it's  
8 not always doable.

9 And it took over a year for us to do that,  
10 just to get to those 12 communities, just recognizing the  
11 geographical distance, the number of communities, trying to  
12 balance schedules. It took us over a year to really do it  
13 the way that we needed to, and that was just on one topic of  
14 youth suicide, you know.

15 When I first started, I was like, to my  
16 staff, I said, "Well, can we get this done by March?" You  
17 know, and this was November. And you know, we set ambitious  
18 timelines. And you know, my staff said, "Well, maybe June."  
19 And then, June came around and you know, I leaned on some of  
20 my colleagues across the country and I asked them, you know,  
21 "What about your processes? And how long does it take?"  
22 And they said, "You need to take as long as it takes to  
23 ensure that you get a quality product; that you ensure that  
24 the voices are heard."

25 And, you know, it took us till December of

1 last year. So it was over a year to do that. You know, I  
2 was really anxious and I'm the kind of person that wants to  
3 get things done, like, right now and yesterday is too late  
4 for me.

5 **MS. SUZAN FRASER:** Right.

6 **MR. COREY O'SOUP:** But I had to be patient  
7 in order to ensure that we followed the process and that we  
8 got the children's voices. And, you know, it -- it was the  
9 right thing to do.

10 **MS. SUZAN FRASER:** Okay. Thank you very  
11 much for that.

12 And I think there was one part of your  
13 process that maybe I didn't talk to you about which was  
14 engaging the community supports, in addition to the leaders  
15 in the community.

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

17 **MS. SUZAN FRASER:** But also making sure that  
18 the young people were supported by people that they knew  
19 and trusted in the community.

20 **MR. COREY O'SOUP:** Yes. Whenever we spoke  
21 with our young people mostly we had mental health supports  
22 there. We did have -- occasionally we had Elders when they  
23 were available to support the young people throughout the  
24 process. So they were in the room with us, the young  
25 people were made aware; the staff were made aware that they

1 were available for them if the topic became too difficult.

2 They were also available after the  
3 discussion if things were -- you know, became too  
4 difficult. Because we weren't always able to stay and  
5 provide that support, we ensured there was support of  
6 someone within the community that they could go to once we  
7 had to leave.

8 **MS. SUZAN FRASER:** And that's sort of a key  
9 component to the work, right, because you don't want to  
10 leave people in a worse position than when you started with  
11 them.

12 **MR. COREY O'SOUP:** Yeah. You know, on the  
13 topic of youth suicide, and anytime we're talking about  
14 death is a difficult topic and we need to ensure that those  
15 supports are there because we don't -- exactly what you  
16 said; we don't want to leave them in a worse position than  
17 we came. You know, and we did have some ---

18 **MS. SUZAN FRASER:** I just want to note for  
19 the record that I see Dr. Samo Dorough nodding along with  
20 you.

21 Do you agree with what you're hearing from  
22 Mr. O'Soup?

23 **DR. DALEE SAMBO DOROUGH:** Yes, no question.

24 **MS. SUZAN FRASER:** Okay, thank you.

25 So please continue.

1                   **MR. COREY O'SOUP:** Yeah, you know, and the  
2 topic was a difficult one. It's not one that we've always  
3 been able to talk to. There's stigma attached to it.  
4 There's a whole bunch of other things attached to the topic  
5 of youth suicide, so we had to ensure that those supports  
6 were in place.

7                   **MS. SUZAN FRASER:** And I suppose there's  
8 another component to it, as I hear you speaking, which is  
9 that if you're persuading a young person or a young person  
10 is opening up for a first time, if that goes well and is a  
11 meaningful experience, that can be a building block to a  
12 lifetime of using their experience to make change for the  
13 better, right?

14                   **MR. COREY O'SOUP:** Yes. We hope that the  
15 experience we left them with, and I believe that we have,  
16 of empowering them.

17                   **MS. SUZAN FRASER:** Yes.

18                   **MR. COREY O'SOUP:** You know, giving them  
19 voice also empowers them to be change-makers within their  
20 community. It's part of -- one of our priorities and, you  
21 know, those go hand in hand with us. And I believe that it  
22 can have a positive impact on them for the rest of their  
23 lives. If you give them voice, if you give them the  
24 opportunity to be heard, and even more so if you go back  
25 and you validate that, and you tell them what that voice

1 has done and the impact that it's had, then they're going  
2 to be even more empowered throughout the rest of their  
3 lives. And we've -- I don't know if I've said we've taken  
4 this report literally around the world, you know, and we've  
5 communicated that back to those kids that your voices are  
6 not sitting on a shelf. They've gone across Saskatchewan,  
7 they've gone across Canada. We've communicated them to the  
8 leaders. We've been invited to the world stage to take the  
9 voices of you all around the world. And, you know, like,  
10 for us and for them, that's so empowering.

11 **MS. SUZAN FRASER:** Right. It's a movement.  
12 You can actually building a movement of young people by  
13 empowering them in the way that you've done.

14 **MR. COREY O'SOUP:** Yes. Yeah. And that's  
15 what we want to do. We want -- and I think I said this  
16 yesterday, too, our children are not just our future, they  
17 are our present, you know, because by the time our kids --  
18 by the time that we typically give them the chance to have  
19 a voice they're adults, right? So they've lost that  
20 opportunity to influence as children and youth, the future  
21 generations, right? So I think we need to let them have a  
22 voice so that they can be our present and not just our  
23 future.

24 **MS. SUZAN FRASER:** Right. And that would  
25 include a process like this.

1           **MR. COREY O'SOUP:** That would include any  
2 process where we engage children.

3           **MS. SUZAN FRASER:** I'm going to thank you  
4 very much for what you've told us today.

5                   Professor Gunn, I'm going to shift the focus  
6 to you because in your paper that's now an exhibit in this  
7 Inquiry, at page 94 you talked about participation of women  
8 and Indigenous girls as part of a Convention right. And  
9 I'm just wondering if we can talk about that for a minute.

10           **MS. BRENDA GUNN:** Yes. Sorry; you said  
11 page...?

12           **MS. SUZAN FRASER:** Page 94. And I  
13 understand what you said in that paper is that a human  
14 rights-based approach should inform the substantive issues  
15 of the Inquiry but also the process of the Inquiry, and  
16 that international human rights principles and norms should  
17 guide all the policies and programming in all phases of the  
18 Inquiry. The approach requires, I think what you said, is  
19 direct participation of Indigenous women and girls in the  
20 Inquiry's process from beginning to end as the right to  
21 participate in the decision-making is increasingly  
22 recognized as a basic right of Indigenous peoples and  
23 especially, and including, Indigenous women.

24                   So I'm just wondering -- you know, what good  
25 looked like to you when you wrote that, in terms of direct

1 participation in the Inquiry from beginning to end?

2 **MS. BRENDA GUNN:** I think I'm struggling to  
3 use words beyond "direct participation" and I think I used  
4 the words in the planning, right in the development and in  
5 the operationalization from -- you know, not only just to  
6 who the staff people are but to who was participating in  
7 hearings like this; who's on the panels. I think all of  
8 those different ---

9 **MS. SUZAN FRASER:** Okay. And as the Inquiry  
10 moves to hear more evidence through its institutional and  
11 expert hearings, it will eventually come to the age -- or  
12 the stage where they have to make recommendations to take -  
13 - to put their report. Do you think it's important that  
14 the women who are directly affected by the work continue to  
15 have a voice in this process as we move through the  
16 recommendation phase?

17 **MS. BRENDA GUNN:** Yes.

18 **MS. SUZAN FRASER:** Okay. And so if women  
19 are -- and girls are more vulnerable or for whatever  
20 reasons can't make it to a city to participate in this  
21 process do you think it's incumbent upon the Inquiry to  
22 actually conduct outreach to smaller communities to gain  
23 access to women and girls so that they can actually be  
24 heard in this process?

25 **MS. BRENDA GUNN:** I think the idea of



1       engaging human rights standards and using them as a  
2       baseline is in part trying to recognize, and I think the  
3       various experts have tried to highlight the need for  
4       recognizing the different ways that women experience  
5       violence and experience violation of their human rights,  
6       and providing space and opportunity for that participation  
7       and making sure that it's women from different segments.

8                I'm trying to think of how this  
9       international standard has been articulated and utilized  
10       and trying to think whether or not, you know, under the  
11       current status does that require the Commission to go out  
12       or, you know, to provide the space. And I think, you know,  
13       ideally of course everyone would be going to speak to  
14       everyone and I think those are the, perhaps, best  
15       practices. But I think what we're starting to see the  
16       language being used in international law more and more are  
17       good practices, realizing that there's ideals and there's  
18       minimum standards and then there's sort of what we hope and  
19       expect people to do to upholding certain human rights.

20               So I think my best answer I can give -- or  
21       maybe it's a good answer, maybe it's not but the best  
22       answer that I can give is that it's about providing the  
23       space and opportunities for that participation to different  
24       voices. And it's hard for me to say how that needs to  
25       happen because I'm not in the process. I don't know how

1       these decisions are being made but, yes, making sure that -  
2       - I would say a human rights-based approach suggests that  
3       need to hear from the rights holders themselves in every  
4       stage of the process.

5                   **MS. SUZAN FRASER:** Thank you. Thank you. I  
6       appreciate that. And, we're just going to switch gears for  
7       a minute, if I could. In Ontario's -- and this is, again,  
8       for Professor Gunn. In Ontario's provincial child --  
9       *Provincial Advocate for Children and Youth Act*, there is a  
10      provision that says that statute should be -- the  
11      principles of the U.N. Convention on the Rights of the  
12      Child should be applied in the interpretation and the  
13      application of that Act.

14                   So, I'm just wondering if you can tell us if  
15      that assists -- if that's a means of expressly putting into  
16      legislation the adoption of those principles, and if that  
17      gives more power, in your view, to the ability to use the  
18      convention for the children in Ontario?

19                   **MS. BRENDA GUNN:** The Supreme Court of  
20      Canada has recognized that even though our technical rules  
21      of international law require direct incorporation or  
22      implementation, which is usually through enabling  
23      legislation, they're increasingly recognizing the different  
24      ways that international law is being incorporated, and  
25      there's some discussion about whether or not international

1 human rights law can be implicitly implemented.

2 And so, I haven't read the Act, and I'm not  
3 sure if your wording was a direct quote or, sort of, a  
4 summary of what it's stating, but I do think, at a minimum,  
5 where domestic legislation is saying that international law  
6 can be used as an interpretative approach that aligns with,  
7 sort of, the minimum standards that the courts have been  
8 using to say that domestic law should be interpreted in  
9 line with Canada's international human rights obligations  
10 as one way to ensure and assist Canada in upholding those  
11 obligations to make sure that the two lines are consistent.

12 And so, I would suggest that it's a good  
13 thing that there's making that reference and an attempt to  
14 sort of read the two instruments together. Whether or not  
15 -- and I'm not sure if your question is trying to get me to  
16 say that you could use it in court as a cause of action in  
17 and of itself. I'm not sure, and I think that would be a  
18 fairly technical question that I might have to see the  
19 legislation and perhaps beyond my expertise.

20 But, I do think that it does allow one to  
21 invoke and encourage an interpretation of the domestic  
22 legislation in line with the principles and obligations  
23 under the convention.

24 **MS. SUZAN FRASER:** Thank you very much. I  
25 see my time is up. I have many more questions I could ask,

1 but I want to thank you very much for coming on behalf of  
2 my clients who are very, very grateful for the knowledge  
3 that you've provided to the Inquiry.

4 **MS. CHRISTA BIG CANOE:** Thank you. Next,  
5 Beth Symes from Pauktuutit, AT, Saturvitt, OICC and MIA,  
6 has 20 minutes.

7 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. BETH**  
8 **SYMES :**

9 **MS. BETH SYMES:** As part of my introduction  
10 of myself to you, I'm probably the oldest person who is  
11 participating in these proceedings and educated in the last  
12 century when international law, where I went to law school,  
13 involved the law of the sea, and I didn't take the law of  
14 the sea, because I came from a landlocked place that I  
15 didn't think it was going to be all that helpful to me.  
16 But, I must confess that I bear the scars of over 40 years  
17 trying to litigate issues, raising international human  
18 rights conventions, policies, et cetera, and being met with  
19 either dead silence or the command, "Move on, Mrs. Symes".

20 So, with that beginning, I am Beth Symes,  
21 and I represent five Inuit women's organizations, sort of  
22 across Inuit Nunangat, and I'm going to be asking you, each  
23 of you, questions about, sort of, the same set of facts.

24 On Tuesday, I focused on housing, and this  
25 afternoon, I'm going to focus on children and youth, and

1 the obligations to children and youth pursuant to the  
2 international covenants, and let's just do two of them, the  
3 Rights of the Child and UNDRIP. I mean, there's lots more,  
4 but those are enough.

5 So, Dr. Sambo Dorough, for Inuit children  
6 and youth, in fact, in lived reality, is the principal  
7 difference between their current rights under human rights  
8 where they live, human rights legislation under the  
9 *Charter*, and under the Constitution, the explicit inclusion  
10 of social and economic rights as found in, for example, the  
11 Rights of the Child and UNDRIP? Is that really the core  
12 difference?

13 **MS. CHRISTA BIG CANOE:** Can you answer  
14 constitutional and *Charter* questions?

15 **MS. DALEE SAMBO DOROUGH:** Yes, I was going  
16 to respond with the proviso that I'm not intimately  
17 familiar with the national organic documents that you've  
18 referred to, but in regard to the broader issue of the  
19 international human rights instruments, when one takes into  
20 account the wording of, in particular, the international  
21 covenants and the individual rights orientation of those  
22 documents with the exception of Article 1 of both of the  
23 international covenants, it's safe to say that human rights  
24 would attach to youth and children as human beings if we  
25 take into account the nature of human rights, that they are

1 universal regardless of age, sex, ethnicity, cultural  
2 background, religion, et cetera. So, the short answer to  
3 the question is yes.

4 **MS. BETH SYMES:** And, because we don't have  
5 social and economic rights as part of the Charter  
6 explicitly written out, would you agree that they include  
7 the essentials of life?

8 **MS. DALEE SAMBO DOROUGH:** I would surmise  
9 without the documents in front of me that yes, in terms of  
10 organic documents on the basis of the peoples of Canada.  
11 But, as to the explicit details in that broad phrase, I  
12 can't answer specifically. I can cite, for example, the  
13 relevant articles of the U.N. Declaration on the Rights of  
14 Indigenous Peoples that would be responsive to that  
15 particular question.

16 **MS. BETH SYMES:** In terms, then, of  
17 measuring the social and economic rights, and let's just  
18 take in the Rights of the Child and in UNDRIP, would you  
19 agree that they are measured in terms of the relative worth  
20 -- pardon me, the relative wealth of Canada as opposed to,  
21 let's say, Nepal? That is, the standards with respect to  
22 housing, health care and education that are imposed on  
23 Canada would be different than in, say, the fourth poorest  
24 country in the world?

25 **MS. DALEE SAMBO DOROUGH:** No, I would submit

1       that, again, going back to the nature of human rights,  
2       their universality, the attachment of human rights on an  
3       individual basis and a collective basis, regardless of the  
4       context of the GDP or the GNP of a particular country, that  
5       this would create no distinctions.

6               I will point out, however, that there has  
7       been what I would refer to as a false dichotomy, especially  
8       on the part of the United Nations, that access to various  
9       different resources by the UNDP, for example, are there  
10      primarily to support so-called developing countries. So,  
11      in that regard at the international level when those of us,  
12      as in Indigenous peoples, and Inuit in particular, have  
13      made arguments within the United Nations system, especially  
14      in the context of specialized agencies, organs and bodies  
15      of the United Nations that defer to this notion of the  
16      developing world and the developed world, this is a false  
17      dichotomy, because the social and economic and cultural  
18      conditions of Inuit throughout the Canadian Arctic, as well  
19      the Circumpolar Arctic, we oftentimes face the same exact  
20      dismal socioeconomic conditions of those in the so-called  
21      developing world.

22              In some of our communities -- I'll give you  
23      specific examples. In some of our communities, we have no  
24      potable water, and this is the -- is specifically in the  
25      Alaskan context. We have no potable water, we have no

1 other infrastructure to support basic things.

2 Now, if you can think about potable water as  
3 an issue, it touches everything to do with the day-to-day  
4 activities of the lives of individual Inuit children, and  
5 can have numerous serious implications in relation to their  
6 health and their welfare and their well-being, their  
7 quality of life, in every way, shape and form.

8 And I'm certain that you're acutely aware of  
9 the report of ITK in relation to the social and health  
10 determinants. The increase in tuberculosis and other  
11 resulting implications of something as basic as potable  
12 water.

13 **MS. BETH SYMES:** My question is, under  
14 Canada's obligations aren't Inuit entitled to the same  
15 standards of healthcare, housing, education as the rest of  
16 Canadians?

17 **DR. DALEE SAMBO DOROUGH:** Absolutely.

18 **MS. BETH SYMES:** Okay. And that's what I'm  
19 trying to say, is the measure for Canada is what are --  
20 what is available in the rest of Canada. We must bring  
21 everyone at least to that standard, and if we argue in  
22 terms of special measures or equality of results,  
23 additional resources in order to make up for past  
24 discrimination, past omissions.

25 **DR. DALEE SAMBO DOROUGH:** Yes, absolutely.



1 I think that one thing I would say in regard to this term,  
2 "special", is that I think it's more accurate to say  
3 "distinct". Because special measures, at least in various  
4 different venues, when the use of the term "special  
5 measures" has been applied to Indigenous peoples it has  
6 increased the level of resistance and racism because, "Oh,  
7 those people get special measures" without the background  
8 and knowledge of the fiduciary obligation, without the  
9 background and knowledge of the distinct status and rights  
10 of Inuit, for example.

11 But I think in terms of responding also to  
12 individuals that are the most marginalized, politically,  
13 economically, socially and culturally, that distinct  
14 measures should be taken.

15 **MS. BETH SYMES:** But Dr. Sambo Dorough,  
16 don't you agree that the fact that section 15(2) is in the  
17 *Canadian Charter of Rights and Freedoms* is a marked  
18 difference on this than what the legal system is in the  
19 United States?

20 **DR. DALEE SAMBO DOROUGH:** I would have to  
21 defer to someone else on the panel to respond to that  
22 specific question.

23 **MS. BETH SYMES:** Professor Gunn, would you  
24 agree with me that the specific provision of section 15(2)  
25 in the *Charter* specifically mandates and saves special

1 measures, and that's been decisions of the Supreme Court of  
2 Canada in that and other cases?

3 **MS. BRENDA GUNN:** I think when you look at  
4 the couple of cases under 15(2) that are particularly in  
5 relation to Indigenous rights, 15(2) has been included in  
6 our *Charter* in order to ensure that Canada can take  
7 positive steps. And -- so it has protected the fishing  
8 rights, and in the *Cunningham* case, the Métis settlements.

9 So I believe if that's sort of what you're  
10 saying, that special measures -- I just -- I do appreciate  
11 Professor Dalee Sambo's point that -- but terminology  
12 distinct may sort of move away from some of that backlash  
13 that arises.

14 **MS. BETH SYMES:** No. The question I -- or  
15 the fact situation that I want to pose to you to ask the  
16 questions is in -- is around suicide. And on Monday, in  
17 what the Registrar said is Exhibit 5, the social  
18 determinants of Inuit health on page 9, I'll just quote to  
19 you that:

20 "The suicide rates of Inuit children  
21 and teens are 30 times more likely as  
22 are the rates for youth in Canada."

23 (As read)

24 For Inuit youth, 30 times the rates.

25 And Mr. O'Soup, we're not racing to the

1 bottom, or having a competition about which is worse.

2 DR. DALEE SAMBO DOROUGH: M'hm.

3 MS. BETH SYMES: What's interesting in the  
4 ITK document is that the rates for Inuit male youth are  
5 higher than for Inuit female youth, that is, the rates of  
6 suicide.

7 And so, this month there has been two news  
8 articles, CBC, May 8<sup>th</sup> and National Post, May 14<sup>th</sup>, in which  
9 the Nunavut Minister of Health, Pat Angnakak, reported --  
10 his report -- she is reported to have said that in  
11 Pangnirtung, which is this stunningly beautiful village,  
12 fly in, remote, in Nunavut, of 1,400 people, had 12 youth  
13 attempted suicides in a 2-week period in February.

14 The Minister is reported to have said it is  
15 a crisis:

16 "It's not just [in] Pangnirtung [she  
17 said]. It [is] everywhere."

18 And I assume she was speaking about  
19 everywhere in Nunavut.

20 Let's just assume that the facts are  
21 accurate; 12 attempted suicides in a community of 1,400.

22 So Mr. O'Soup, I want to come to you and  
23 talk about Saskatchewan.

24 In the remedy from the Canadian Human Rights  
25 Tribunal from the *Caring Society*, Canada was essentially

1 directed to pay all reasonably necessary costs -- sorry,  
2 the costs of all reasonably necessary health services for  
3 First Nation and youth.

4 Does that, in Saskatchewan, cover First  
5 Nations and youth who don't live on First Nations' land?

6 **MR. COREY O'SOUP:** My understanding is, yes,  
7 that it would.

8 **MS. BETH SYMES:** In Saskatchewan, does that  
9 remedy cover Inuit children and youth?

10 **MR. COREY O'SOUP:** My understanding is that  
11 it would.

12 **MS. BETH SYMES:** Yesterday, you told us  
13 about the lack of mental health services for First Nation  
14 children and youth in Northern Saskatchewan.

15 **MR. COREY O'SOUP:** M'hm.

16 **MS. BETH SYMES:** Following the decision of  
17 the Canadian Human Rights Tribunal, what has changed in  
18 Northern Saskatchewan?

19 **MR. COREY O'SOUP:** Well, you know, the  
20 challenge there is that if we're talking about Jordan's  
21 Principle, in particular, I would say that the challenge is  
22 that the people in Northern Saskatchewan would not even all  
23 have knowledge of Jordan's Principle, nevertheless, the  
24 ability to access it.

25 I know there is 24-hour lines put out there,

1 but the reality is, and this is my reality, maybe  
2 anecdotally, hearing from children and families, is that  
3 access is still an issue; right. You go into our northern  
4 communities, they don't all have phones, so they can't all  
5 dial the 1-800 number. You go into our northern  
6 communities, they don't all have Internet connection. So  
7 you can't just fire up on the Internet and look and search  
8 for these resources.

9           And I think that's the big challenge that we  
10 have within Northern Saskatchewan, is that we create these  
11 programs and initiatives and these, you know, national  
12 programs and we assume that everybody can access them;  
13 right. And that's not always the case in our northern  
14 communities. I don't know what it is like for you guys,  
15 but I know in Northern Saskatchewan, that's not the  
16 reality, you know.

17           So again, we have to find, and we have to  
18 create, and we have to be innovative in the ways that we  
19 reach our people, particularly in those northern and remote  
20 places so that they know that those supports are in place,  
21 so they don't have to suffer anymore, you know.

22           Because Jordan's Principle is intended to  
23 support health, mental health, education, all of the things  
24 that we know that it's supposed to support. But, if you  
25 don't know that you have that, and you don't that you have

1       that ability, or if you have these barriers to you, then is  
2       it really going to help you? Is it really going to change  
3       your life? Or, is it just another dream? So, I would say  
4       no.

5                   **MS. BETH SYMES:** So, let me put it to you  
6       very practically, pragmatically. Although there is a  
7       ringing decision from the Canadian Human Rights Tribunal in  
8       terms of the rights of children and youth to services, on  
9       the ground, two years later, you say that there are still  
10      people who should have the benefit of that decision who  
11      don't even know that it exists?

12                   **MR. COREY O'SOUP:** I would say that that's  
13      the reality. I mean, we are getting better, and the  
14      decisions are getting better, communication is getting  
15      better. I believe we're heading in the right decision, but  
16      there's not always recognition that people out there don't  
17      still have phones, and don't still have the internet, and  
18      that's the reality in our world; right? Especially in the  
19      northern areas of our country. And so, I would say yes.

20                   **MS. BETH SYMES:** So, I wanted to turn to  
21      you, Professor Leclair. I think I understood your thesis.  
22      You speak very rapidly and it was hard to follow in the  
23      translation, but I think your thesis would be for Inuit  
24      that the Inuit leadership might exert political pressure,  
25      shaming Canada for its failure to live up to the

1 international covenants with respect to provision of  
2 services for these youth, children and youth who are  
3 committing suicide, and that the political pressure might  
4 obtain the desired results with greater certainty of  
5 outcome, faster, at less cost, and with better result, that  
6 is an effective order that might have an action plan with  
7 goals, timetables and accountability than if they were to  
8 go to court. Is that essentially your thesis?

9 **MR. JEAN LECLAIR:** Well, I'm saying that you  
10 must not put all your eggs in the same basket. So, yes,  
11 you can go to court. But, also, as I said, you can use the  
12 Declaration, for instance, as a shaming mechanism on the  
13 international level, because Canada is very picky about its  
14 international reputation. And, if it becomes clearer and  
15 clearer that nothing is done, that the rule of law is not  
16 respected within Canada, Canada's rule of law, not just the  
17 UDNRIP but the Human Rights Act in this case, it might be  
18 another tool in the box of Indigenous peoples to have their  
19 rights recognized. As I said, the Cree successfully did  
20 that.

21 **MS. BETH SYMES:** But, you would certainly  
22 say, sir, that it's up to Inuit, First Nations and Métis  
23 whether to take your advice?

24 **MR. JEAN LECLAIR:** Well, actually, that was  
25 the very first thing I said, and I even said -- I'm

1 disappointed it didn't go through in the translation, but  
2 that the very first thing would be for the Indigenous  
3 peoples themselves to make the Declaration their own. That  
4 was the very first thing I said.

5 **MS. BETH SYMES:** That's my time.

6 **MS. CHRISTA BIG CANOE:** Thank you. Thank  
7 you, Ms. Symes. Next, we would like to welcome the  
8 Vancouver Rape Relief & Women's Shelter, Ms. Hilla Kerner.

9 **MS. HILLA KERNER:** Hello. Good afternoon.

10 **MS. CHRISTA BIG CANOE:** And, sorry, just --  
11 yes, 40 minutes, please. So, the Vancouver Rape Relief &  
12 Women's Shelter will have 40 minutes.

13 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. HILLA**  
14 **KERNER :**

15 **MS. HILLA KERNER:** Thank you. I'm a member  
16 of the collective of Vancouver Rape Relief & Women's  
17 Shelter. I'm not a lawyer, so I might make some mistakes  
18 in the way I bring forward questions, and I'm sure  
19 Commission counsel will be helpful in that.

20 I will start with you, Professor Gunn.  
21 Yesterday, you stated that human rights framework enabled  
22 to evaluate unjust distribution of power. Would you  
23 elaborate on that?

24 **MS. BRENDA GUNN:** Yes. I think the basic  
25 idea is that it's sort of two-fold. It allows for a



1 protection against state exercise of power. So, it  
2 provides that safety net, and that sort relates back to  
3 what I was saying about the evolution of human rights and  
4 the importance of remembering that international human  
5 rights were developed to ensure that there was an ability  
6 for the international world to start looking inside the  
7 domestic actions of a state to provide that protection.  
8 So, I think that's one way that it starts to potentially  
9 shift.

10 And, the second way is that broader idea  
11 that I was speaking to that is highlighted in the U.N.  
12 Declaration where the process of realizing human rights and  
13 Indigenous peoples' human rights requires a move beyond a  
14 colonial structure where Canada exercises control over  
15 Indigenous peoples in all fashions of their life to one  
16 where Indigenous peoples can self-determine their own  
17 affairs and their own lives, as well as set that  
18 relationship between Indigenous peoples and the state. So,  
19 those are, sort of, two ways that I see that power-shifting  
20 potential.

21 **MS. HILLA KERNER:** Okay. So, would it be  
22 fair to say that, at best, the redistribution of unjust --  
23 the distribution -- the redistribution of power would mean  
24 eliminating the oppression of women by men, of people of  
25 colour and Indigenous people, by white people, in the poor

1 by capitalist and Neo-Liberal forces? So, each member of  
2 the world will have equal share of power and equal share of  
3 the world wealth.

4 **MS. BRENDA GUNN:** I think stemming back to  
5 some of the questions and comments earlier, I mean, the  
6 idea is with the realization of human rights that all  
7 humans are free and equal to all humans, and having the  
8 same standard of living, and same access to water, and  
9 housing, et cetera. So, I do think that the hope is that  
10 it's levelling in that sort of fashion, yes.

11 **MS. HILLA KERNER:** Okay. And, you also said  
12 yesterday, I think you were trying to make a point that  
13 focusing in a substantial way on women does not mean  
14 infringing men, and you said something to the effect that  
15 self-government concepts that all members are protected  
16 means that focusing on the needs of one group does not mean  
17 disregard to the needs of another group.

18 So, would you agree that self-governing  
19 models that will protect women is a model that each member,  
20 both men and women, have equal share of power and equal  
21 access to and use of resources?

22 **MS. BRENDA GUNN:** Sorry, I'm struggling,  
23 because I think I agree in a very generalized sense, but I  
24 think the idea that I was getting at is that it's about the  
25 opportunity to participate in the public life and having

1 the ability to participate, for example, in decision  
2 making. So, if there's an issue to be resolved by the  
3 community or, for example, a resource development proposal,  
4 my understanding is that this fundamental principle of  
5 participation and decision-making means that, you know,  
6 women and men must be both allowed to participate in the  
7 decision-making process, again, focusing on substantive  
8 equality.

9 And so, if we're thinking of, sort of, power  
10 sharing and benefitting from the resources, I think we're  
11 in a very substantive equality sense, and I'm not sure we  
12 can divide power and sort of, you know, do formal equality  
13 on power, but it's about that substantive and having that  
14 influence over the decisions of the ability to participate,  
15 but also, to influence the outcome needs to be sort of on  
16 par with other members of the community.

17 **MS. HILLA KERNER:** Yes. I think the point I  
18 wanted to make, there is very important, and strong, and  
19 valid call for self-governments, and we should follow the  
20 Indigenous feminist call that -- for self-governance, to  
21 fulfil itself in a just way. It means abandoning the  
22 colonialist structures some First Nations took on and allow  
23 women to have equal share of power and equal share of  
24 resources.

25 Dr. Dorrough, both you and Professor Gunn,

1 you made a really important point that it will be a mistake  
2 to fight only for one set of rights, that all the human  
3 rights are interrelated and interdependent and  
4 interconnected. And this is consistent with our analysis  
5 that fight for Indigenous women only in terms of the sexist  
6 oppression, they will not be able to realise their equality  
7 as women because they will be hampered by the rest of  
8 oppression in the other way. Fighting for Indigenous women  
9 to have equalities Indigenous people will not be realised  
10 because it will be hampered by their sexist -- the sex-  
11 based oppression is essential for economic rights.

12 Do you see this translate to also  
13 collaboration in the UN level? Is there a way -- I  
14 definitely notice that Article 22, it's a declaration for  
15 the right of Indigenous people, try to answer to both forms  
16 of oppression when it comes to women. Do you mind reading  
17 it out loud and elaborate on that?

18 **DR. DALEE SAMBO DOROUGH:** Okay. Article 22  
19 of the UN Declaration on the Rights of Indigenous People  
20 states,

21 "Particular attention shall be paid to  
22 the rights and special needs of  
23 indigenous elders, women, youth,  
24 children and persons with disabilities  
25 in the implementation of this

1 Declaration.  
2 States shall take measures, in  
3 conjunction with indigenous peoples, to  
4 ensure that indigenous women and  
5 children enjoy the full protection and  
6 guarantees against all forms of  
7 violence and discrimination."

8 In the context of the international  
9 Indigenous people's movement, we have seen a very strong  
10 Indigenous woman's caucus emerge at the international  
11 level.

12 So, for example, their participation within  
13 the permanent forum on Indigenous issues, there is a clear  
14 and strong voice by the Indigenous Women's Caucus. And in  
15 large part, they are responsible, for example, the  
16 recommendation that I referred to that was adopted by the  
17 Permanent Forum at 17 Session concerning a review or survey  
18 of good practices as to how to alleviate this horrific  
19 conditions of Indigenous women and girls to violence.

20 **MS. HILLA KERN:** Thank you. Yesterday you -  
21 - I think it might have been anecdotal but I think it was  
22 an important point that you made, that you saw a research  
23 that was surprising because it showed that in spite of the  
24 equality that Canadian women have, they suffer high level  
25 of violence from a male partner in the domestic setting.

1           So I wanted to propose a few possibilities  
2 and explanation to that and to see if you agree with that.

3           I would like to explain to you that in  
4 Canada women are enjoying formal equality and not  
5 substantial equality. Strikes -- a very striking example  
6 is family courts where women are fighting for their  
7 motherhood. They will not be in favour of the mothers.  
8 Many women are economically dependent on their domestic  
9 male partner, and we have a pontification of our culture  
10 that keep reinforcing women's image as a sexual commodity.  
11 And I think this is definitely one explanation why women  
12 are still in Canada are being -- suffering sexual and  
13 sexualist form of violence and battering by the hand of  
14 men.

15           The second explanation I would like you to  
16 entertain is that we see time and again that women -- when  
17 women do gain some forms of equality there is a backlash,  
18 and often the backlash means forms of violence. So when  
19 women got access to employment and to labour fields, we saw  
20 the backlash in terms of sexual harassment. There is --  
21 in theory, there are much, much, much more options for  
22 women to choose and now we see the intensification of  
23 prostitution as a choice. So, a lot of time when women  
24 gain some measure of equality, more possibility, more  
25 access to public life, there is a backlash that very, very

1 often will manifest itself as a form of male violence.

2 Do you agree to either explanation and -- or  
3 would I suggest, both?

4 **DR. DALEE SAMBO DOROUGH:** I think if we take  
5 on these particular issues just in the context of formal  
6 equality that numerous difficulties arise. And I know that  
7 throughout yesterday's offering of testimony that  
8 substantive or relative equality, we didn't have a chance  
9 to really dwell on this particular issue and elaborate how  
10 relative or substantive equality would emerge within the  
11 Indigenous women and girl's context.

12 So I want to say that first that that would  
13 be an important discussion to have. What does relative  
14 equality look like within an Indigenous context? What are  
15 the contours of substantive and relative equality, not just  
16 for Indigenous women and girls, but for Indigenous peoples  
17 as distinct peoples, as distinct cultures?

18 And so this leads me to say that, in  
19 relation to the scenarios that you've described, as far as  
20 access to formal equality may trigger other reactions and  
21 responses, I think there's no way for me to generalise and  
22 say yes or no. I have seen certain individuals, and at a  
23 very micro level, some of these kinds of scenarios becoming  
24 a reality and playing themselves out.

25 And by this I will say only the dynamic that

1 we've seen in some of our smaller communities where,  
2 especially Indigenous women and girls who managed to  
3 capture an opportunity to pursue higher education, to  
4 pursue, as you suggest, positions elsewhere, that there are  
5 jealousies. There are envies. There are, you know, these  
6 things that take place, but this is on a very micro level.  
7 So I would not entertain answering in a generalised fashion  
8 those specific questions.

9 **MS. HILLA KERNER:** Okay. Well, I hope you  
10 will consider what I'm proposing is an answer in terms of  
11 women's oppression, just because of the expertise that I  
12 bring for my work with the women's movement.

13 **DR. DALEE SAMBO DOROUGH:** M'hm. M'hm.

14 **MS. HILLA KERNER:** I believe both Professor  
15 Gunn and you, Dr. Dorough, you presented that the main  
16 challenge with Human Right Declaration and Convention is  
17 abiding and the complying with the principles and the  
18 values that they bring. And with this Inquiry we see clear  
19 examples of a strong grassroots struggle and protest for  
20 many, many years.

21 In 2008 I believe they resulted with a  
22 concluding recommendation of CEDAW to Canada to conduct an  
23 inquiry and nothing happened. And the grassroots movement  
24 pushed and pushed and pushed, led by Indigenous women, and  
25 finally, 10 years after -- 9 years after, the Canadian



1 government struck the Inquiry and still very, very  
2 challenging way for -- and I applaud to the Commissioners  
3 who are still holding onto this important task. But it's  
4 obvious that the Canadian government is not making their  
5 job easy at all, or on the contrary, they put a lot of  
6 difficulties in the way.

7 So would you agree with me, both Professor  
8 Gunn and Dr. Dorrough, that one really important avenue to  
9 get International Human Rights Convention and Declaration  
10 really brought into power is by strong, consistent,  
11 insistent grassroots movements, both when it comes to  
12 women's rights, when it comes to Indigenous peoples right  
13 and definitely when it come to Indigenous women's right?

14 **DR. DALEE SAMBO DOROUGH:** No question. I  
15 would agree that it will take, and has taken, such a  
16 movement at the, certainly at the international level, and  
17 I would suggest that the same may be the case at the  
18 national level, and that this window of opportunity that  
19 exists with this current government that the opportunity  
20 should be seized.

21 And this also has to take into account, at  
22 least from my perspective, as I've stated already numerous  
23 times, that the urgency of this particular situation, that,  
24 and along the lines of the questions from the various  
25 different Inuit organisations, that marginalized peoples,

1 again, primarily politically but also socially,  
2 economically, culturally, spiritually and otherwise, that  
3 the concerted effort and with all of the existing national  
4 and international instruments that something's gotta give  
5 at some point in time. The dam will have to break.

6 And if these initiatives are short up by a  
7 grassroots Indigenous women and girls movement, and it's  
8 already been referenced in terms of, for example, the "Idle  
9 no more" actions, here, in Canada, that maybe there will be  
10 some substantive concrete comprehensive attention paid to  
11 this issue.

12 At the same time, I would also suggest that  
13 all these other strategies and tools that are available  
14 should be triggered and utilised to the maximum extent  
15 possible.

16 **MS. HILLA KERNER:** Professor Gunn, you said  
17 yesterday that even though international human rights  
18 conventions and declarations are considered soft laws,  
19 there is a convention within the court to respect the  
20 normative value that they bring forward.

21 And I was wondering if there is example, not  
22 necessarily in Canada cause I believe there isn't, but in  
23 other places of the world, that it's true when it comes to  
24 decision on violence against Indigenous women?

25 Are there courts that had to deal or judge

1 on cases of violence against Indigenous women, that took  
2 into account the aspiration that comes from the  
3 combination, probably, of SEDAW, the 1993 resolution on  
4 ending male violence against women, and the convention on  
5 Indigenous peoples rights?

6 **MS. BRENDA GUNN:** Thanks. We do actually  
7 have examples where the Canadian court has used  
8 declarations, and we do have examples the Canadian courts  
9 are starting to cite and look to the UN declaration, and  
10 consider it in their decisions.

11 So I do think we do have some examples and,  
12 I'm sorry, and I, the second, I didn't quite get the  
13 second...

14 **MS. HILLA KERNER:** The crux of my question  
15 was: do you have examples, cause obviously I don't, about  
16 applying to violence against Indigenous women?

17 I think there is a common knowledge about  
18 injustice in the decision regarding the murder of Cindy  
19 Gladu, the matter will be discussed in the Supreme Court of  
20 Canada in a few months. We have too many examples of that  
21 in the acceptance of the violation of Indigenous women's  
22 barely integrity, I was wondering if there are examples of  
23 the opposite?

24 **MS. BRENDA GUNN:** Okay, thank you. I'm not  
25 sure of specific examples, but if you don't mind, I'm going

1 to take your question in a slightly different direction.  
2 In part because what I've come to learn, and I've had the  
3 opportunity to do various traditional education seminars  
4 training judges on various aspects of the law and working  
5 on several jurisdictions committees, you know.

6 I've had judges remind me that they're  
7 really required to make decisions based on (cut) for them.  
8 And so, what I often then urge when I'm training lawyers  
9 and other advocates is that, you know, judges can only rely  
10 on what's put before them, and so we need to start putting  
11 forward these international instruments, including  
12 declarations and these decisions.

13 And then, we cannot just throw them out  
14 there cause the judges won't know what to do with them, so  
15 we have to give them the international instruments and say,  
16 "This is how we're relying on them and this is what we want  
17 you to do with them." And then, you can give them some  
18 situations where judges have taken similar steps.

19 So no, not in the violence against women,  
20 but we've seen it in environmental law, we've seen it in  
21 refugee law, we're seeing it in a few other areas. So to  
22 let judges know that this isn't as big of a step or a leap  
23 as they might think it is, but as actually quite standard  
24 practice generally, it has just not happened in a specific  
25 fact, situation or with a specific instrument.

1           **MS. HILLA KERNER:** Another question to you,  
2 Professor Gunn. You mentioned the due diligence duty, that  
3 it has five components.

4           Can you describe the five components, and  
5 how does it might look like in terms of interpreting those  
6 five components?

7           **MS BRENDA GUNN:** Yes. So I believe you're  
8 referring to the duty of due diligence to prevent,  
9 investigate, prosecute, punish and compensate? I can say  
10 those again if you need, I was trying to figure out an  
11 acronym to see if that would help me, but it's prevent,  
12 investigate, prosecute, punish and compensate. And so...

13           I guess, I'm struggling to explain them,  
14 because the prevention aspect is taking all reasonable  
15 measures and taking steps to address and prevent and..  
16 There, I think, are, through the various international  
17 human rights, trinity bodies that have looked into the  
18 issue. There's lots of recommendations that have been made  
19 on what are the various ways that Canada specifically can  
20 prevent this, and this is what I was pointing to with  
21 dealing with the socioeconomic marginalisation and  
22 addressing these as economic rights. Investigate..

23           **MS. HILLA KERNER:** Sorry, so maybe we'll go  
24 one element after another.

25           **MS. BRENDA GUNN:** Okay.

1                   **MS. HILLA KERNER:** So if I paraphrase what  
2 you're saying, women's economic independence, for example,  
3 is a crucial way for a preventative measure?

4                   **MS. BRENDA GUNN:** Yes. They don't sort of  
5 phrase in it that way, but they have noticed the sort of..  
6 access to education, you know, job market and those things  
7 are a contributing factor. So thus to address or to  
8 resolve, you'd need to address this issue, yes.

9                   **MS. HILLA KERNER:** Yes, and I would also  
10 suggest it needs to be mentioned in a few resolutions in  
11 relation to male violence against women, strong women's  
12 movements and the contribution of the women's movements, to  
13 fight for women's equality and against male violence  
14 against women.

15                   Another, supporting the strong women's  
16 movement can that be definitely seen as another  
17 preventative measure?

18                   **MS. BRENDA GUNN:** I think so, and there's  
19 recommendations that have been made about insuring adequate  
20 funding for services that exist, and I think the standard  
21 is culturally appropriate and relevant, so that when we're  
22 talking violence against Indigenous women, the services  
23 should be provided by Indigenous women in culturally  
24 appropriate fashions, etc.

25                   So that strong movement is well recognized,

1 and I think to answer your previous question, that Doctor  
2 Dalee Sambo Dorough addressed -- I mean, this is why also  
3 the international arena has created specific venues for  
4 civil society organisations to engage at the international  
5 level and provide these alternative reports when Canada is  
6 reporting their activities under specific treaties.

7 So I think there is a strong recognition of  
8 the powerful and important role that civil society plays in  
9 addressing human rights violations.

10 **MS. HILLA KERNER:** So investigate, would you  
11 agree that it means investigating individual act of  
12 individual man committed against individual woman? And the  
13 collective act of male violence against women, against the  
14 collective class of women, like this Inquiry?

15 **MS. BRENDA GUNN:** Yes. They talk about both  
16 investigating the individual cases as you've mentioned, but  
17 also they speak to it more of addressing the root causes.  
18 I'm not sure if you falls under investigate per say, it's  
19 they talk about just addressing the root causes, and so  
20 they may technically slot that under prevention, but that  
21 is why we talk about them altogether, I'm not sure that  
22 matters where we slot it.

23 **MS. HILLA KERNER:** And in prosecute, they  
24 mean only the individual man who commits violence or how in  
25 general the prosecute element of due diligence is

1 interpreted?

2 **MS. BRENDA GUNN:** I think generally it's  
3 understood as the individual men. I guess there is, to a  
4 certain degree, a recognition where there's widespread and  
5 systemic issues that, again, they need to be addressed.  
6 I'm not sure there's an expectation of -- under the  
7 prosecution aspect, but I think they're looking more at the  
8 prosecution at the individual level.

9 **MS. HILLA KERNER:** And, the element of  
10 punishment, which is very complicated, we heard in the  
11 previous days there is a rejection by Indigenous feminists,  
12 the colonialist version of restorative justice that ignores  
13 the power imbalance, and sexism, and misogyny within  
14 societies, but also, we know there is a huge problem with  
15 existing prisons systems. And, my group is advocating for  
16 criminalization and charging and criminalizing men, but  
17 we're definitely -- we're not arguing for harsh sentencing  
18 or imprisonment.

19 Is there other examples from the United  
20 Nations human rights arena for punishments that are holding  
21 men accountable, which is a key element of impunities,  
22 repeating again and again, in any United Nation's document  
23 that deals with male violence against women, a way to hold  
24 abusive men accountable as a way to give women justice, but  
25 also, to send a clear public message, this is an



1 unacceptable behaviour, the undermining and compromising  
2 women's equality and safety?

3 **MS. BRENDA GUNN:** Yes, I think that sort of  
4 what -- as this was, you know, first emerging as these  
5 international ideas, it was, I would say, envisioning a  
6 fairly traditional criminal justice process for, you know,  
7 the investigation, prosecution, punishment, sort of viewing  
8 typical western criminal justice systems to address  
9 impunity; right? So that police are investigating,  
10 prosecution is prosecuting, and that the judges are  
11 sentencing; right? Like, I think that's what it envisions.

12 But, I would suggest that where we're  
13 talking about Indigenous men who may be perpetrating the  
14 violence, or generally, when we're speaking of situations  
15 involving Indigenous women, again, we need to make sure  
16 that we're very contextual in our analysis and recognize  
17 that these ideas of prevent, investigate, prosecute, punish  
18 and compensate may also need to ensure that they're applied  
19 and considered in a culturally relevant way so that under  
20 the U.N. Declaration, Indigenous peoples have a right to  
21 their traditional institutions which could include legal  
22 systems and the administration, potentially, of some of the  
23 justice systems.

24 And so, not saying that we use the colonial  
25 restorative justice process, that's not what I'm arguing,

1 but where Indigenous peoples are -- desire to take on some  
2 of that and revitalize and utilize Indigenous laws in  
3 relation to this that that should be part of the  
4 consideration.

5 I don't have an answer as to what the  
6 outcome would look like, and I think it would depend. I  
7 mean, I'm Métis from Manitoba, my spouse is Cree; right?  
8 Our own people, while we live in proximity and mostly  
9 peaceful relations between our people historically, we  
10 would have different concepts; right?

11 And so, it's hard to sort of envision, but I  
12 would say that it has to be engaged in a specific  
13 Indigenous context, and that's where this general principle  
14 that's coming out of CEDAW needs to include that Indigenous  
15 lens and where the U.N. Declaration and the American  
16 Declaration can be very useful.

17 **MS. HILLA KERNER:** And, as a non-Indigenous  
18 feminist, I can tell you that it will be really wonderful  
19 for all women if we could have been relying on our  
20 community to hold men accountable and not relying on the  
21 state. We're just not there.

22 To the element of compensation, can it be  
23 interpreted as individual compensation to the individual  
24 victim on one hand, but also, as a collective compensation  
25 to the class of women or to the class of Indigenous women

1 in form of affirmative action in terms of Indigenous  
2 women's rights?

3 **MS. BRENDA GUNN:** Yes, I think -- I believe  
4 I pointed to this in an earlier question today, and I'm  
5 scanning the audience to try to remember who I was speaking  
6 with. But, the idea of compensation can include the  
7 broader idea of reparations. That's the idea that comes  
8 out, and I provided some of the examples from the genocide  
9 cases that I was working on in Guatemala, and some of the  
10 ideas.

11 So, I think there definitely can be a  
12 collective aspect to the reparation, particularly when  
13 we're looking at widespread and systemic violations of  
14 human rights, that it's not necessarily just limited to  
15 that individual case-by-case. So, a process such as this  
16 that's looking beyond individual cases to look at systemic  
17 issues. It may be appropriate to think about some  
18 collective reparation.

19 **MS. HILLA KERNER:** Thank you very much. Dr.  
20 Dorough, I'm back at you with two points. One, you  
21 mentioned Article 43 in the Declaration, that it sets  
22 minimum standards. Can you explain this idea?

23 **MS. DALEE SAMBO DOROUGH:** The idea is that  
24 the rights, the provisions, the articles affirmed in the  
25 U.N. Declaration on the Rights of Indigenous Peoples are

1 the floor, and that if, for example, a government were to  
2 undertake the enterprise of implementing the U.N.  
3 Declaration on the Rights of Indigenous Peoples, any  
4 provisions in order to do so cannot fall below the  
5 standards and norms affirmed in the U.N. Declaration.

6 It doesn't prevent a government from  
7 exceeding these minimum standards, and that's one reason  
8 why I raised, for example, especially in relation to  
9 violence against Indigenous women and girls, the standard  
10 affirmed in the American Declaration on the Rights of  
11 Indigenous Peoples, and to look to the highest standard  
12 possible.

13 So, the government, as far as the  
14 understanding and interpretation of the rights that are  
15 affirmed herein, again, represent the minimum standard. If  
16 there is an attempt to go below such standards, an Inuit  
17 community, an Indigenous First Nation, any others could  
18 challenge such an action on the basis that you have gone  
19 below the minimum standard.

20 **MS. HILLA KERNER:** And, would it be fair to  
21 say that -- actually, I would like to allow you to give  
22 examples, if you can do on the spot. What would be -- you  
23 said the floor standard. What would be closer to the  
24 ceiling? What would be, if it's even possible to envision,  
25 some rights or elements that have not been articulated?

1           I know in my group, we speak about equality,  
2           which is in a very limited state context, liberty and  
3           women's liberation, that it's very hard to imagine when we  
4           live in an oppressive society. So, can you imagine or have  
5           a concept of what it means if there is room to rise above  
6           and way above the minimum standards?

7           **MS. DALEE SAMBO DOROUGH:** Well, I think  
8           that, really, the objectives of these minimum standards is  
9           the ultimate realization and exercise and enjoyment of the  
10          rights affirmed in the U.N. Declaration. This is the  
11          ultimate objective. And so, the ceiling would, at least in  
12          my view, would be the reality for Inuit women and girls,  
13          Inuit peoples, Indigenous peoples, to exercise and enjoy  
14          these rights.

15          I would hesitate to establish what I might  
16          -- or even pronounce upon what I might consider to be the  
17          ceiling and the highest possible standard, in large part  
18          because of what you started to ask me originally. In these  
19          oppressive conditions, if we cannot even meet these minimum  
20          standards, why at this moment in time talk about the  
21          possible ceiling?

22          But, in my view and opinion, the reality is  
23          the ultimate objective of which I want to recall the  
24          intervention I made yesterday and the opening introduction  
25          that really, the ultimately objective is to push back the

1        tide of colonialism and again, for Indigenous peoples to  
2        realize, exercise and actually enjoy the rights affirmed  
3        herein.

4                    At one point in time, Indigenous peoples  
5        were gathered at one of the meetings to negotiate this  
6        Declaration, and it was the anniversary of the Universal  
7        Declaration on Human Rights. We were able to select one  
8        individual to make a very brief statement. At that time,  
9        it was the Commission on Human Rights Working Group on the  
10       draft Declaration.

11                   And really, the message of this Indigenous  
12       woman who was chosen to make this statement was wouldn't it  
13       be wonderful if Indigenous peoples were exercising these  
14       rights. And that was the Universal Declaration on Human  
15       Rights. So that would be my reply in answer.

16                   **MS. HILLA KERNER:** Okay. Thank you.

17                   I also want -- I heard that on your way here  
18       you had a layover in Vancouver. So I would like, on behalf  
19       of my collective, if you have a layover back to come and  
20       have dinner with us in our house.

21                   **MS. FANNY WYLDE:** Okay.

22                   **DR. DALEE SAMBO DOROUGH:** M'hm.

23                   **MS. HILLA KERNER:** I'm grateful for all of  
24       you. I'm sure you know you're educating. Not just the  
25       Commissioners, my group and many, many people across Canada

1 are watching all of you and learning a lot. So you've been  
2 doing a great service to Canadian people and to Indigenous  
3 people. Thank you. Qujannamikk.

4 **MS. FANNY WYLDE:** Thank you.

5 So the next party to ask questions is the  
6 Assembly of First Nations.

7 Oh, okay. Commissioner Audette is asking  
8 for a short recess. Five minutes. Thank you.

9 --- Upon recessing at 2:36 p.m./

10 l'audience est suspendue à 14h36

11 --- Upon resuming at 2:46 p.m./

12 l'audience est reprise à 14h46

13 **MS. CHRISTA BIG CANOE:** Excellent.

14 Chief Commissioner and Commissioner, I notice Mr. Wuttke is  
15 already at the podium, so Commission counsel would like to  
16 call Assembly of First Nations. They have 40 minutes.

17 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. WUTTKE:**

18 **MR. STUART WUTTKE:** All right. Thank you.

19 Good afternoon.

20 Before I start, I'd like to acknowledge --  
21 and time's ticking. Can I introduce myself first?

22 **MS. CHRISTA BIG CANOE:** We haven't given any  
23 of the other parties that advantage.

24 **MR. STUART WUTTKE:** So I'd like to  
25 acknowledge that we are on Huron-Wendat land. My name is

1       Stuart Wuttke, I am general counsel with the Assembly of  
2       First Nations. I'm also from Garden Hill First Nation,  
3       which is in Manitoba. And the Assembly of First Nations is  
4       a national organization that advocates on behalf of over  
5       630 First Nation.

6                     Now, I'll begin by asking Ms. Gunn  
7       questions. First of all, I'd like to thank you for your  
8       submissions yesterday. They're clearly and truly and  
9       insightful, and I have learned a lot from your submissions.  
10      My questions will be -- tend to be more of clarification  
11      type questions, because I really agree with the testimony  
12      you provided.

13                    Now, with regards to your pet peeve where  
14      you state that a lot of people feel that international law  
15      is not enforceable in Canada or in any other countries,  
16      would it be fair to say that the assumption may be related  
17      to challenges in enforcing international law?

18                    **MS. BRENDA GUNN:** Yes. I think that's what  
19      I was saying, at least in one aspect, at least for the  
20      lawyers. I think that -- and that's where the assumption  
21      comes from.

22                    **MR. STUART WUTTKE:** All right. And  
23      yesterday, you also mentioned that the international  
24      community is really not concerned with the jurisdictional  
25      boundaries within the federation. That should a province



1 breach any international agreements or human rights  
2 standards, that Canada as a state is still responsible for  
3 any violations.

4 **MS. BRENDA GUNN:** Yeah. I think how they  
5 approach it is that the human rights obligations are  
6 binding on the state as a whole, and the internal  
7 mechanisms of how those get realized is an internal  
8 problem, but the obligation is owed to the international  
9 community regardless.

10 **MR. STUART WUTTKE:** Okay. Thank you. Now,  
11 with respects to human rights types of frameworks, would  
12 you agree that unlike treaties or conventions where  
13 sometimes those documents have enforcement provisions such  
14 as arbitration or a reference to the International Court of  
15 Justice, human rights standards really don't have that type  
16 of language imbedded in their framework. Is that correct?

17 **MS. BRENDA GUNN:** I think the enforcement  
18 mechanisms that exist in the international -- or at least  
19 the UN treaty -- or the treaties that exist, the standard  
20 international human rights treaties -- sorry; it's been a  
21 bit of a long day. My brain is slowing down and I need to  
22 slow the thoughts down.

23 The enforcement mechanisms that exist in the  
24 UN human rights treaty system exists in the periodic  
25 reporting, so that Canada is to report back every 2 to

1 4 years on actions that they are undertaking. So it's more  
2 in the supervisory monitoring.

3 There are situations of individual complaint  
4 processes that exist where individual people can bring  
5 complaints to international bodies. They're not the same  
6 as the international court, per se, but they are, at a  
7 minimum, quasi-judicial bodies that engage in anything from  
8 investigations to just more passive receiving information  
9 and then providing concluding recommendations.

10 **MR. STUART WUTTKE:** All right. Thank you.

11 So with respect to international human  
12 rights enforcements, it's more nuanced in some ways where  
13 there is this mobilization of shame, the periodic reporting  
14 on states' compliance. In some ways, there is also  
15 provision of technical assistance to various states or the  
16 withholding of monetary benefits. Those are primarily ways  
17 that international human rights legislation is enforced?

18 **MS. BRENDA GUNN:** Yeah, I think that's fair  
19 to say. Yes.

20 **MR. STUART WUTTKE:** And those types of  
21 mechanisms, other than the periodic reporting, really  
22 wouldn't affect countries such as Canada?

23 **MS. BRENDA GUNN:** You know, it's difficult  
24 to say how international pressure affects. I will say that  
25 we had a period of time in Canada, particularly under the

1 Conservative Government of Harper, that we seemed to be  
2 very much immune to our international reputation.

3 But from my experience, I think that's more  
4 of an exception than the rule for Canada. I think Canada  
5 very much cares about its international reputation. And I  
6 think this -- I don't know if we can still call them a new  
7 government -- I think the Trudeau Government has been far  
8 more conscious of its world reputation and has been taking  
9 steps to promote a positive image. And so I think they  
10 respond more to negative criticisms.

11 And so I think, you know, this is why I  
12 think we now have very large delegations of the Minister of  
13 Indigenous Affairs and the justice minister attending the  
14 Permanent Forum and other mechanisms and spending, you  
15 know, holding multiple side events to sort of showcase the  
16 work. So I see a lot more commitment and involvement in  
17 these international mechanisms.

18 So I do think that we're at a time where  
19 that international pressure will have more -- will have  
20 greater effect.

21 **MR. STUART WUTTKE:** Okay. Thank you.

22 Now, with respect to enforcement and other  
23 incidences of human rights abuses by other states in other  
24 countries, would you agree that a lot of body of evidence  
25 was captured in those abuses through the accessing and

1 obtaining of state records?

2 **MS. BRENDA GUNN:** I'm sorry, I'm not -- I  
3 don't understand the question.

4 **MR. STUART WUTTKE:** Well, for instance, like  
5 in Nazi Germany, a lot of the Germans were meticulous in  
6 maintaining records that sort of showcased their abuse that  
7 was later used as evidence.

8 So would you agree that, you know, accessing  
9 and acquiring state records regarding various abuses that  
10 take place can be used as evidence to showcase that there  
11 has been abuses?

12 **MS. BRENDA GUNN:** I think I understand where  
13 you're going. I will say that one interesting aspect that  
14 has come up from many of the reports from various treaty  
15 monitoring bodies in relation to murdered and missing  
16 Indigenous women and violence against women is the need for  
17 Canada to provide better disaggregated data.

18 And that's not exactly the documents but  
19 what they really are pushing is they don't just want Canada  
20 to appear and say, look, these are all the wonderful  
21 programs. And they list them. They come -- it's amazing  
22 the things, like the states can come up with that they're  
23 doing.

24 What many of these UN treaty-monitoring  
25 bodies are looking for is they want to see the data and

1       they want to see monitoring and evaluation of programs to  
2       actually be able to determine whether or not those  
3       different programs are actually meeting the standards and  
4       addressing human rights situations. So, yes, documentation  
5       is required, and a particular call is for disaggregated  
6       data that looks at men and women, Métis, First Nation,  
7       Inuit, on-Reserve, off-Reserve, sexuality, ability; all  
8       these different sorts of aspects so that there's a way to  
9       better judge the information and claims that are being put  
10      forward.

11                   **MR. STUART WUTTKE:** And you're aware of the  
12      child welfare case that people have been talking about?

13                   **MS. BRENDA GUNN:** At a general level, yes.

14                   **MR. STUART WUTTKE:** Okay. If I were to  
15      suggest that in that case what really turned the matter was  
16      the fact that Canada was forced to disclose a lot of  
17      documentation regarding how the child welfare program was  
18      head up; highly prejudicial documents and that's what  
19      carried the day. Would you agree with that?

20                   **MS. BRENDA GUNN:** I have no knowledge;  
21      sorry. But I will say, again, if there is data that is  
22      provided that support claims that -- you know, at least at  
23      the international level, that's what we're looking for is  
24      data that identifies the meeting or violation of rights.

25                   **MR. STUART WUTTKE:** So AFN is of the opinion

1 that this Inquiry should subpoena -- use its subpoena  
2 powers to compel the production of documents from federal  
3 and provincial governments. Would you agree with this  
4 recommendation?

5 **MS. BRENDA GUNN:** I don't disagree with it,  
6 but I'm not sure in that sort of general sense.

7 Again, my recommendation yesterday was the  
8 need to ensure that there is data and that you need, at  
9 some point, once you develop the human rights framework,  
10 what are the standards you need to then be able to judge  
11 actions against -- determine what Canada is doing or not  
12 doing against those standards.

13 And so in a very general sense that, yes,  
14 documentation that indicates that Canada's actions or  
15 failure to act, I would assume, would support that work.  
16 And I'm not sure if that needs to happen through a subpoena  
17 or what those documents are, but I guess in a very  
18 generalized sense.

19 **MR. STUART WUTTKE:** You mentioned  
20 statistics. One of the issues we have with statistics,  
21 especially with police forces, in Canada anyways, there's  
22 no obligation for them to keep statistics on their  
23 interaction with various groups. And as a result of that  
24 there is no data being collected. Would you agree with a  
25 recommendation that perhaps police forces, education

1 entities should be required, through legislation, to be  
2 begin collecting those -- that data?

3 **MS. BRENDA GUNN:** Yeah, and -- I would agree  
4 with it and I would say that has been one of the  
5 resoundingly large calls from all international human  
6 rights bodies, for Canada to collect better data. And I'm  
7 not a numbers person or a statistician; in fact, I'm not  
8 even sure if I can say the word, but I think what I'm  
9 hearing or at least how I understand the calls for  
10 disaggregated data is that sometimes Canada will say, "15  
11 percent of Indigenous peoples this," and they don't want  
12 that sort of formulated or worked over -- I need a math  
13 person to help me, that sort of worked over number. They  
14 want that raw data that can then be used to analyze, not  
15 already analyzed information that sometimes goes into  
16 creating the statistic.

17 Does that make sense? Sorry.

18 **MR. STUART WUTTKE:** It does.

19 Now, I'd like to move on to your discussion  
20 on the difference between conventions and declarations. I  
21 was wondering if you can provide more information regarding  
22 the difference between how declaration and conventions are  
23 ratified and implemented in Canada and what this means in  
24 practice?

25 **MS. BRENDA GUNN:** Sure. So a convention is

1 a treaty that requires the state to take specific actions  
2 to sign on. So it requires any state to take a positive,  
3 explicit step to become a party to. And then, as I said,  
4 our technical rule for reception into domestic law, in  
5 order for that treaty to apply then in domestic law  
6 technically requires Canada to pass enabling legislation  
7 that brings that international law into effect.

8 And a declaration, those are harder to speak  
9 of in generalization because they come in all different  
10 sorts of ways. So if I assume correctly the greatest  
11 reference or concern might be the U.N. Declaration on the  
12 Rights of Indigenous Peoples. So I'll speak to that one.

13 That's a resolution of the General Assembly,  
14 the highest deliberative body of the U.N. As Dalee has  
15 mentioned, that's an instrument that took approximately 30  
16 years to negotiate from the first NGO conference to the  
17 final Resolution. After Resolution, the General Assembly,  
18 I think Dalee you had said eight? The count now is at  
19 least eight instances where the General Assembly has  
20 referenced the Declaration. So it's not just an instrument  
21 that was sort of passed one day and then moved on. It's an  
22 instrument that has continued to garner a lot of  
23 international attention. And in that sense, many have  
24 argued that its normative value is exceedingly high as it's  
25 one of the only international instruments that speak



1 specifically to Indigenous people's human rights.

2 And so when we think about how that applies  
3 in Canada, if we take the common approach of the courts of  
4 not looking at the technical character; is it a treaty? Is  
5 it a declaration? Has it been implemented? But looking at  
6 the normative value of the instrument and how that can  
7 influence our domestic law, there are many that would  
8 argue, and I agree with, that the U.N. Declaration is a  
9 highly persuasive, representing broad normative values,  
10 including in many aspects, customary international law.  
11 And so it has been argued, and I have argued, that it has  
12 very strong relevance and effect in Canada.

13 **MR. STUART WUTTKE:** Okay, thank you.

14 Moving on to the U.N. Declaration, keeping  
15 in mind that provinces may need to be involved considering  
16 the jurisdictions that they have authority over,  
17 considering that the U.N. Declaration really deals with  
18 what we would call in the Constitution an "Indianness,"  
19 would the federal government be able to enact the -- or,  
20 you know, implement the legislation under Section 91(24) as  
21 it relates to the "Indianness" aspect of their federal head  
22 of power?

23 **MS. BRENDA GUNN:** I guess my answer is, in a  
24 very general sense, yes. I think the federal government  
25 does have jurisdiction to implement the U.N. Declaration,

1 particularly as it relates specifically to Indigenous  
2 people's rights, that it would fall under 91(24). But part  
3 of me feels that pragmatically the involvement of the  
4 provinces is probably important for the operationalization  
5 of the rights, given the fact that many of the rights deal  
6 with lands and resources. And I think Jean Leclair was  
7 saying this yesterday, that much of the land in Canada is  
8 legally categorized as provincial Crown lands and so -- and  
9 if it's the provinces that are giving the resource  
10 development licences, that even if the federal government  
11 could pass legislation, the involvement of provinces would  
12 assist in ensuring that the issuing of resource development  
13 licences is occurring with the full -- or is not happening  
14 without the full participation of Indigenous peoples.

15 **MR. STUART WUTTKE:** Thank you. With respect  
16 to UNDRIP, you mentioned yesterday that the category of  
17 being a peoples under UNDRIP is similar to that of the U.N.  
18 Declaration on the Rights of Peoples -- or the Universal  
19 Declaration on Human Rights; is that correct?

20 **MS. BRENDA GUNN:** I believe that I was  
21 saying that Indigenous peoples are peoples and have the  
22 same rights to self-determination as all peoples, and that  
23 -- and I think Dalee said this as well that the phrasing of  
24 Article 3 in the U.N. Declaration is virtually an exact  
25 mirror of Article -- Common Article 1 of the International

1 Covenant on Civil and Political Rights and the  
2 International Covenant on Economic, Social, and Cultural  
3 Rights. The main difference is it's not all peoples have a  
4 right to self-determination in the U.N. Declaration, it's  
5 Indigenous people. So that's the swap.

6 So the point that I was making was that  
7 Indigenous people have the same right to self-determination  
8 as all peoples. It may -- the implementation and the  
9 exercise of that right may look different but it can't be  
10 limited in a way that other people's rights can't be  
11 limited.

12 **MR. STUART WUTTKE:** Now, were you here for  
13 the panel that was before this panel?

14 **MS. BRENDA GUNN:** I only got here Tuesday  
15 afternoon and I saw a few of the last, and a little snippet  
16 online here and there on Monday of some of the  
17 presentations.

18 **MR. STUART WUTTKE:** You may not be able to  
19 answer this question but a couple of days ago one of the  
20 experts gave an opinion that, essentially, you know, heaven  
21 forbid we get self-government that self-government somehow  
22 would be negative. Would you agree with that statement?

23 **MS. BRENDA GUNN:** I think my opinion that I  
24 stated yesterday, which I think goes to the concerns I had  
25 understood that were raised yesterday and that have been

1 raised in the literature and by various organizations over  
2 the least 20 years, is that exercise of self-government, of  
3 Indigenous peoples' self-government must still ensure that  
4 there are protections for Indigenous women. And so, I have  
5 no opinion on whether or not the Charter should apply. I  
6 think that's for individual nations to determine.

7 But, I am of the opinion that as Indigenous  
8 peoples exercise their right to self-government that they  
9 should be upheld to international human rights standards,  
10 including those in the U.N. Declaration. So, I don't see  
11 self-government as inherently bad or good, but thinking  
12 about how is it operationalized and what protections need  
13 to exist so that all peoples benefit equally from that  
14 exercise?

15 **MR. STUART WUTTKE:** Now, would you agree  
16 that the right to self-government should not be suspended  
17 until a future time, that it should be exercised as soon as  
18 possible by Indigenous peoples?

19 **MS. BRENDA GUNN:** I'm going to keep working  
20 around your questions. They're very direct and I'm going  
21 to dance around them. My apologies.

22 I think the position that I've been trying  
23 to put forward is addressing what I see as a fairly long-  
24 standing debate, Indigenous women's rights first, or self-  
25 government and then we deal with the Indigenous rights? My

1 position has been that all of these rights are necessary.  
2 So, I'm not opposed or in promotion of self-government or  
3 holding it back, but the -- I think my baseline is that we  
4 need to move together to realize all of the rights and  
5 their inter-dependence.

6 And so, I think self-government that isn't  
7 addressing other issues of Indigenous peoples, men and  
8 women, two-spirited, trans-gendered, et cetera, all those  
9 protections need to be in place, and the conditions that  
10 lead to marginalization need to be addressed at the same  
11 time, and it needs to be part of a larger strategic plan to  
12 realize all of the fundamental human rights.

13 **MR. STUART WUTTKE:** Okay. With respect to  
14 some of those issues you were talking about with respect to  
15 protection of equality rights, but even Indigenous world  
16 view, spirituality, respect for the environment, all of  
17 that is attainable under UNDRIP, would you agree with that?

18 **MS. BRENDA GUNN:** Yes, I think so. I think  
19 that's what it's setting out to do.

20 **MR. STUART WUTTKE:** All right. Now, you  
21 mentioned that human rights discourse really started to  
22 become an issue or were really brought to fruition after  
23 the Second World War, considering all the abuses that  
24 occurred. It was also during this time, essentially after  
25 World War II, that other peoples around the world started

1 ending their foreign rule and subjugation and exercising  
2 the right to self-government. Would you agree with that  
3 statement?

4 **MS. BRENDA GUNN:** Are you referring to the  
5 decolonization process in Africa and some of those  
6 processes?

7 **MR. STUART WUTTKE:** Yes.

8 **MS. BRENDA GUNN:** I must admit, I'm terrible  
9 with dates. I know there was a large portion, but I'm not  
10 sure when it started, but there was definitely increased  
11 awareness, and I think the Universal Declaration of Human  
12 Rights speaks to some of those issues that are surrounded,  
13 and I think Dalee may have a better answer ---

14 **MR. STUART WUTTKE:** Sure.

15 **MS. BRENDA GUNN:** --- on that one than  
16 myself. I'm not sure if you can phrase it in another way,  
17 but I don't think I can...

18 **MR. STUART WUTTKE:** Perhaps, Dalee, do you  
19 want me to...

20 **MS. DALEE SAMBO DOROUGH:** Just very quickly,  
21 and more of a footnote to the discussion, yes, the  
22 decolonization process, in fact, Alaska was listed in one  
23 of the listings of non-self-governing territories. So,  
24 Article 1, paragraph 3, related to non-self-governing  
25 territories is relevant to the discussion, and if you had

1 asked that direct question to me, my answer would be, yes,  
2 that's how one could characterize the important need for  
3 all peoples to exercise the right of self-determination,  
4 including those in areas that experience colonization.

5 **MR. STUART WUTTKE:** Just to pick up on that  
6 as well, could you sort of explain to the panel what  
7 subjugation and domination, or foreign domination, would  
8 entail in the international sense?

9 **MS. DALEE SAMBO DOROUGH:** I suppose probably  
10 in the most elementary terms, the answer is colonization,  
11 and those elements of subjugation, domination and  
12 exploitation are captured in the broader concept of  
13 colonization. So, subjugating persons to foreign rule, to  
14 dictatorial conditions, we could point to any number of  
15 circumstances.

16 Domination, obviously, with regard to total  
17 and complete imposition of powers by others over other  
18 peoples. Exploitation, of which we still see today. I  
19 think, in fact, actually, in my intervention yesterday, I  
20 indicated that these forms of colonial violence linger in  
21 different ways, but exploitation of peoples for certain  
22 purposes. And, indeed, this is one reason why the ILO  
23 Convention No. 107 was put in place, because Indigenous  
24 peoples, as labourers, as forced slaves, were being  
25 exploited. That's one example. And, the assimilation

1 orientation of the original ILO Convention No. 107 was one  
2 of the reasons why it was revised and emerged as Convention  
3 No. 169 in 1989.

4 **MR. STUART WUTTKE:** Thank you. Ms. Gunn,  
5 yesterday, you were asked about a national action plan, and  
6 Commissioner Audette asked you a question regarding the  
7 action plan. But, given the reality that the  
8 implementation of a national action plan requires political  
9 will, how would you suggest that we can ensure the national  
10 plans are meaningfully monitored, evaluated in the long  
11 term and beyond political mandates?

12 **MS. BRENDA GUNN:** Yes. Again, I'd just say  
13 that this is a tough question. I think part of the answer  
14 -- again, I would just point to Bill 262, and one of the  
15 aspects that I appreciate about that is the inclusion of  
16 periodic reporting. And so, a national action plan should  
17 have timeframes that, of course, are flexible, but the  
18 development and implementation process included should have  
19 timeframes that are set out.

20 I think the will to implement them increases  
21 where all parties are involved in their design. And so,  
22 while difficult, I believe that a national action plan  
23 that, you know, the government is buying into from the  
24 beginning has a greater chance of being implemented; right?  
25 So, I do think that the goal of a national action plan is



1 for all stakeholders, including governments, to be involved  
2 in that process, and to buy in and agree with the plan, and  
3 that such a plan is one that's likely to -- is more likely,  
4 I guess, to be put into place.

5 But, I think the best safeguards that I can  
6 think of, at least at the top of my head to date, is having  
7 that periodic reporting and contingencies that exist;  
8 right? So, that they're developed with the idea of -- one  
9 of my colleagues in another context said we should be  
10 developing legislation, not for the government we have, but  
11 for a hostile government; right? So, that these plans  
12 shouldn't be developed just with the idea that we have a  
13 government that's interested in addressing the issue, but  
14 sort of build in some of those contingences, and to think  
15 about how to ensure that it continues to have on. And, I  
16 think, again, there's a strong role for grassroots people,  
17 once that plan is in place, to keep the pressure on to make  
18 sure the governments are upholding it, and that people know  
19 that it exists and that commitments were made.

20 **MR. STUART WUTTKE:** All right. Thank you.  
21 I just have a couple more questions on the international  
22 aspect, and I'll ask Dalee the last few questions on this  
23 topic, anyways. Going back to the subjugation type of  
24 framework, would you agree that under those colonial  
25 regimes, that horrible human rights abuses have occurred,

1 and particularly against women in those societies?

2 **MS. DALEE SAMBO DOROUGH:** Yes, I would agree  
3 with that statement. And we have also seen in numerous  
4 different contexts that have been of concern to the United  
5 Nations, and in particular, for example, armed conflict and  
6 other forms of violence.

7 **MR. STUART WUTTKE:** Okay. And just building  
8 on that theme, in fact, the condition that many Indigenous  
9 women face today are similar to what people were  
10 encountered in those colonized areas as well; is that  
11 correct?

12 **MS. DALEE SAMBO DOROUGH:** I think it's safe  
13 to say, as a general response, that -- and we still see  
14 these forms of violence taking place in other areas of  
15 violence that -- so, generally speaking, yes.

16 **MR. STUART WUTTKE:** And would you also agree  
17 that state being complacent or enabling the preying on  
18 Indigenous women, for instance in Canada, is a tactic that  
19 was used in the past to subjugate populations?

20 **MS. DALEE SAMBO DOROUGH:** Again, very  
21 generally speaking, and if you look at and review those who  
22 have chronicled the history of contact between settlers or  
23 colonizers and Indigenous peoples, whether it was in  
24 relation to actual armed conflict between Indigenous  
25 peoples and settlers, yes.

1           And I think that there are probably numerous  
2 recordings of this type of activity and I'm certain there  
3 must be a pool of scholars that have done work in this  
4 particular area as well.

5           **MR. STUART WUTTKE:** And I have one more  
6 question for you. You talked about these camps, mining  
7 camps or other industry camps are located in northern  
8 areas, would you say primarily the people working in those  
9 camps are non-Indigenous?

10           **MS. DALEE SAMBO DOROUGH:** Yes, I would say  
11 absolutely yes. And I can speak from direct firsthand  
12 experience. For example, anyone who, even to this day,  
13 takes an Alaskan Airlines flight to the north will see a  
14 good number -- in fact, actually, they have dedicated  
15 flights for North Slope workers.

16           I know for a fact also in Ontario there are  
17 direct flights out of Kitchener/Waterloo to mining  
18 communities in the north where, you know, there are nearby  
19 Indigenous communities, but what has sprung up around them  
20 are smaller work camps and communities that are certainly a  
21 majority of non-Indigenous employees and other supervisors  
22 and workers.

23           **MR. STUART WUTTKE:** All right. Thank you.

24           I'm going to move on to Mr. O'Soup. And  
25 once again, thank you for your -- the evidence you gave the

1 other day. I found it to be very enlightening and you're  
2 doing a lot of good work in that province.

3 I'll start off on CFS. You mentioned  
4 yesterday that 90 per cent of the children in care in  
5 Saskatchewan are Indigenous; is that correct?

6 **MR. COREY O'SOUP:** I think the estimates go  
7 as high as 90 per cent. They can be as low as 70. I think  
8 the problem with that is data collection and, you know, we  
9 rely on self-identification most of the time. And there  
10 are a lot of instances where our people do not want to  
11 self-identify. And I think that skews the data a lot.

12 And, you know, historically, data collection  
13 has been used to negatively impact our people and in  
14 negative ways, so there's lots of instances where, you  
15 know, that data can be translated in different ways. So we  
16 like to say between 70 and 90.

17 **MR. STUART WUTTKE:** Okay. Thank you.

18 And with respect to children being put into  
19 protective care, do you agree that a negligent or neglect,  
20 I should say, and abuse are the two main categories where  
21 children are put into care?

22 **MR. COREY O'SOUP:** I think those are two of  
23 them. I wouldn't say they were the main, but I think  
24 they're right up there, for sure.

25 **MR. STUART WUTTKE:** Okay. And with respect

1 to neglect, the criteria would be inability to feed your  
2 child, inability to clothe your child, provide adequate  
3 housing, provide an education?

4 **MR. COREY O'SOUP:** Keep them safe and  
5 protected. Yeah, the list goes on and on, yes.

6 **MR. STUART WUTTKE:** So, okay, thank you.  
7 And really, in your view, would these types of factors be  
8 related to poverty?

9 **MR. COREY O'SOUP:** Yes, those are definitely  
10 things that are related to poverty.

11 **MR. STUART WUTTKE:** So would you also agree  
12 that a lot of First Nation or First Nation children are  
13 being removed from their communities because of --  
14 basically out of their loving families because of, you  
15 know, poverty issues?

16 **MR. COREY O'SOUP:** Yeah, I would say that I  
17 would agree with that statement.

18 **MR. STUART WUTTKE:** Have you -- you talked  
19 yesterday about the child welfare case, have you read the  
20 decisions?

21 **MR. COREY O'SOUP:** Which one specifically?

22 **MR. STUART WUTTKE:** The main one from 2016,  
23 October 2016?

24 **MR. COREY O'SOUP:** The -- sorry, you have to  
25 be more specific.

1                   **MR. STUART WUTTKE:** Well, there are a number  
2 of compliance decisions ---

3                   **MR. COREY O'SOUP:** Oh, the Human Rights  
4 Tribunal?

5                   **MR. STUART WUTTKE:** Yeah, the Human Rights  
6 Tribunal, yeah.

7                   **MR. COREY O'SOUP:** I haven't read them  
8 intimately, but I am aware of them, yes.

9                   **MR. STUART WUTTKE:** All right. Thank you.  
10                   Now we talked about funding yesterday and a  
11 lot of children in care. The child welfare case really  
12 dealt with a perverse incentive as far as funding, meaning  
13 that children -- CFS agencies were basically funded on the  
14 number of kids they brought to care, and they were  
15 underfunded for that. And would you agree with that?

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

17                   **MR. STUART WUTTKE:** And in order for the  
18 agency to get more money, they would have to apprehend more  
19 kids.

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

21                   **MR. STUART WUTTKE:** So that really created  
22 the perverse incentive.

23                   **MR. COREY O'SOUP:** You know, it's a  
24 challenge that we have; right? I mean, unfortunately,  
25 sometimes taking children away from their homes is a

1 business; right? And like you just mentioned, taking away  
2 children from their homes is a way to make money.

3 And, you know, I think we need to flip that.  
4 I think we need to invest in prevention and solutions so  
5 that we can find ways to stop taking away our children.  
6 And, you know, once we invest in those children in other  
7 ways such as education and health, you will find that the  
8 economic impacts in the future by investing in those  
9 children will far outweigh the benefits of the small  
10 business of taking them away and putting them in other  
11 places.

12 **MR. STUART WUTTKE:** I agree. And under the  
13 provincial legislation, least disruptive measures or  
14 prevention is to be utilised first and apprehension's a  
15 last resort; is that correct?

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

17 **MR. STUART WUTTKE:** But the opposite is this  
18 in First Nations where they're required to apprehend before  
19 they can provide any services; is that correct?

20 **MR. COREY O'SOUP:** No, I think that there  
21 are prevention services available before apprehension, but  
22 that does happen.

23 **MR. STUART WUTTKE:** Now with respect to the  
24 issue of neglect, would you agree that neglect is often  
25 seen through a Eurocentric view?

1                   **MR. COREY O'SOUP:** I think we definitely  
2 have different viewpoints when it comes to the way that  
3 Indigenous people raise our children and youth compared to  
4 the western viewpoint, which is why I think that we need to  
5 definitely consider giving back control of the child  
6 welfare system to our Indigenous people so that we can -- I  
7 don't want to say impose, but we can use the way that we  
8 were brought up moreso than the western way that we've  
9 been, you know, kind of forced to fit into their box.

10                   **MR. STUART WUTTKE:** I agree. And, for  
11 instance, taking a child on the land to hunt and to learn  
12 the natural environment and traditional ways is valued by  
13 First Nation communities, not so much by eastern teachers;  
14 is that correct?

15                   **MR. COREY O'SOUP:** Yeah. I think that's  
16 changing as well though, but, yes, we definitely value it  
17 more as an educational experience than, say, a field trip.  
18 You know, and for us, I mean, we use that to teach many  
19 different things to our young people. You know, hunting,  
20 fishing, trapping, going out, gathering berries, I mean,  
21 there's so many different lessons that we can teach our  
22 children through that.

23                   And I think that we need to get back to that  
24 more and I -- you know, I've been a part of the provincial  
25 education system too and there are pockets of, I guess, you



1 know, rays of light out there that are starting to realise  
2 the value of that. But for sure, we definitely value it  
3 more in our Indigenous world.

4 **MR. STUART WUTTKE:** And with respect to when  
5 a child is removed from the home, typically they're taken  
6 out of the community, put in a non-Native foster homes.  
7 There are some First Nation foster homes. But when a child  
8 is taken out of the community would you agree that, you  
9 know, they lose their identity, they lose aspects of their  
10 language, their culture, the attachment to the community?

11 **MR. COREY O'SOUP:** Yes. You know, I believe  
12 we need to get back to a place, and we need to be at a  
13 place where the first place that we look to, you know, make  
14 sure our children are safe. And I'm not saying that they  
15 should never be removed because there are definitely  
16 instances where our children need to be removed and put in  
17 safer, protected places, but we need to start looking more  
18 within our own community so that our children and youth can  
19 grow up surrounded by their own people, by their own  
20 practices, by their own language, by their own culture. We  
21 need to start looking at kinship, as well, as a place of  
22 placement, you know, because I do believe that far too many  
23 of our children initially are being taken away, and then  
24 when they are, I believe we need to find more ways to keep  
25 them at home.

1                   **MR. STUART WUTTKE:** Thank you. And I'm  
2 running out of time so I'm going to move on to education.  
3 This might be a very long question.

4                   **MR. COREY O'SOUP:** How much time have you  
5 got? We can go -- I mean, it's ---

6                   **MR. COREY O'SOUP:** Oh, wow.

7                   **MR. STUART WUTTKE:** So you mentioned that  
8 the average graduation rate for Indigenous peoples is about  
9 43 percent in Saskatchewan.

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

11                  **MR. STUART WUTTKE:** Now, with respect to  
12 education, would you also agree that education's also  
13 rolled out in a very Eurocentric type lens?

14                  **MR. COREY O'SOUP:** The education system is  
15 still based a classroom setting with a teacher at the front  
16 of the room, kids sitting in desks being lectured to.  
17 Again, it is changing, but I don't think it's changing fast  
18 enough. And if you can measure it by the success of our  
19 students in that system, you can tell that it doesn't work  
20 for us and that the system needs to change to meet the  
21 needs of our kids.

22                               For far too long, I believe that we've  
23 blamed our families, we've blamed our children as not being  
24 smart enough, as not being ready to learn, as being too  
25 poor, as coming into the classroom with all of these

1 different issues. And our system has said, well, when  
2 they're ready to learn then we'll teach them.

3 But as we know that from no fault of their  
4 own, our children enter into our learning facilities not  
5 always ready to learn. Sometimes they might be hungry  
6 because they haven't eaten for a couple of days. Sometimes  
7 they may not have slept because, you know, maybe they  
8 played videogames all night and there was no parent there,  
9 or maybe their parent was there and, you know, they just  
10 weren't there.

11 And the kids, you know, from no fault of  
12 their own, come into our school systems in those types of  
13 situations. And in the way that we would have said before  
14 is, you know what, you need to have them fed, you need to  
15 have them sleeping and ready to learn.

16 But I believe that, you know, if our  
17 children are hungry when they come into our schools, we  
18 need to feed them. If they've been up all night for no  
19 fault of their own, we need to let them put their heads  
20 down on their desk and maybe catch a few Z's. Because they  
21 can't learn if they're hungry, they can't learn if they're  
22 tired, and we need to adapt to meet their needs.

23 **MR. STUART WUTTKE:** All right. Thank you.

24 That's probably going to be the last  
25 question. But one of the questions I do have, and I think

1 all parents with children in school can relate to stories.

2 I remember one of my kids had this  
3 assignment where he had to put pins on the flag of the  
4 world where his parents came from. So he put one in  
5 Manitoba where I'm from and put one in my wife's tribe in  
6 California. And the teacher said, you can't put them  
7 there. Nobody was here before -- I mean, nobody came from  
8 here. So he put them in different countries.

9 How do we deal with that type of ignorance  
10 of educators when they really don't understand the history  
11 of Canada, history of First Nations people, treaties, the  
12 Indian residential schools, Sixties Scoops, all the abuses  
13 that occurred? How do we -- how would you recommend we  
14 begin to address and overcome that?

15 **MR. COREY O'SOUP:** Well, you know, I think  
16 for us reaching the younger generation, definitely, I've  
17 said it before, it needs to be in our curriculum. We're  
18 doing a better job of that, but it needs to be there more.

19 I think that when it comes to the older  
20 generation, and I -- by older, I mean over 18, so I think  
21 you're all included in that older generation, I didn't want  
22 to offend anyone. But there are different ways that we can  
23 do that, you know, and that's through public education;  
24 right.

25 We had a challenging situation in

1 Saskatchewan just a few months ago with one of our  
2 ministers. You know, she felt like treaty education was  
3 too infused and that we needed to un-infuse it and put it  
4 in a box in a single class, you know.

5 And the uproar was pretty significant, you  
6 know. And I like to take pride in the fact that our people  
7 stood up and we made some noise, and that our allies stood  
8 up. Non-Indigenous people as well stood up for us.

9 So I think we need to search out those  
10 allies, I think we need to do a better job of public  
11 education. I think we need to do a better job as  
12 Indigenous people of engaging in conversations with  
13 non-Indigenous people.

14 And I was taught one time about this  
15 continuum. You know, we have this -- a continuum and  
16 there's seven stages in this continuum. And say on this  
17 side of the continuum you have people that are fully aware,  
18 fully knowledgeable of Indigenous people, and then over  
19 here, you have the most racist people that you can find.  
20 And I think sometimes we try and move these people all the  
21 way from, you know, Stage 1 in this continuum, all the way  
22 to Stage 7 in one conversation.

23 But what we'd like to do and what I was  
24 taught is that, you know, we just to move these people from  
25 Stage 1 to maybe halfway through Stage 1, then into

1 Stage 2, and you know, we need to see, and we need to bring  
2 them along in that way. So if they're in Stage 5, let's  
3 take them to Stage 6. We need to recognize that people are  
4 the way they are because that's the way they were brought  
5 up to be, and it's not easy for them to change as well.

6 So if we can recognize and figure out where  
7 they might be on the continuum and have a conversation with  
8 them that way that's not necessarily confrontational, but  
9 just recognizes who they are, where they are, and that  
10 that's the way that they were brought up as well.

11 **MR. STUART WUTTKE:** All right. Those are  
12 all my questions. Thank you very much.

13 **MS. CHRISTA BIG CANOE:** Thank you,  
14 Mr. Wuttke.

15 Commission counsel is welcoming or inviting  
16 Treaty Alliance of Northern Ontario to come up, and they  
17 have 20 minutes.

18 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

19 **MS. ORDYNIEC:**

20 **MS. KRISTYN ORDYNIEC:** (Speaking native  
21 language). I am Krystyn Ordyniec for Treaty Alliance of  
22 Northern Ontario.

23 First, I would like to acknowledge the  
24 sacred items in the room. The grandmothers for keeping us  
25 strong, and the traditional territory of the Huron-Wendat.

1 Treaty Alliance is made up of Grand Council  
2 Treaty 3 in Nishnawbe Aski Nation, which is 77 communities  
3 in Northern Ontario and Eastern Manitoba.

4 Today, I have also with me the Deputy Grand  
5 Chief of Nishnawbe Aski Nation, Deputy Grand Chief Anna  
6 Betty Achneepineskum.

7 I would like to first start by asking  
8 Professor Gunn some questions. And Professor Gunn, I'm  
9 going to move away from the academic for a minute.

10 **MS. BRENDA GUNN:** I'll try to go with you.

11 **(LAUGHTER/RIRES)**

12 **MS. KRISTYN ORDYNIC:** There are communities  
13 in Northern Ontario and Eastern Manitoba that have lived  
14 under boil water advisories for decades. They lack  
15 adequate housing, running water, electricity, and there are  
16 virtually non-existent health services. They're living  
17 with human rights atrocities on a daily basis, but at the  
18 same time, they're mourning loss of loved ones. And they  
19 were ones that really advocated for this Inquiry to happen,  
20 and they're - they are wondering what is happening at these  
21 expert hearings.

22 So I'm going to ask how you would help to  
23 meaningfully describe to these communities, to these First  
24 Nation people, whose human rights are violated every day,  
25 what it actually means to apply an international human

1 rights framework to this Inquiry?

2 **MS. BRENDA GUNN:** Thank you for the  
3 question. I guess I tried to do that yesterday when I  
4 described it, and I'm not sure if your question implies,  
5 and understandably so, that I was not successful in ---

6 **MS. KRYSZTYN ORDYNIEC:** No, it doesn't ---

7 **MS. BRENDA GUNN:** --- explaining it an --  
8 no. But it's fair enough. I am an academic.

9 But I think -- and this relates to -- I  
10 think, Commissioner Audette's question was along the same  
11 lines; right? That -- this is the challenge, and I --  
12 sorry. I think I'm -- just as my brain gets tired I'm  
13 taking longer paths to get to questions.

14 Is that, you know, I was -- years ago, about  
15 10 years ago, I was doing training to provincial -- one of  
16 the provincial territorial organizations on the UN  
17 Declaration. And I got about -- and I had been invited,  
18 and I got about two minutes into my presentation before a  
19 chief stopped me. And it was like, "What are you talking  
20 about? Like these are the crisis that we're dealing with  
21 on a daily basis, you know. You're talking about this UN  
22 stuff."

23 And so I understand, and I appreciate that  
24 it feels like there is a disconnect between sort of what  
25 sometimes we speak about and is this actually going to



1 clean the water; right? And I guess my only response or my  
2 best response that I can provide is that, one, I think by  
3 using international human rights law we are able to speak  
4 of these issues of the -- I think you mentioned -- boil  
5 water advisory, housing and health services as violations  
6 of fundamental human rights that impact security of the  
7 person, the right to life for peoples. But also then, the  
8 flip side of that is that it also allows us to speak of a  
9 legal obligation that Canada has to address these issues.

10 And so, while all countries have multiple  
11 pressures on their resources, when we think of the right to  
12 clean and accessible drinking water when we think about the  
13 right to a safe and adequate house, when we think about the  
14 right to healthcare, which would include access to our  
15 traditional medicines, it means that governments are  
16 obligated to spend -- under the one convention, to spend  
17 the maximum available resources to realize those rights.

18 So, for me, it's about putting this in a  
19 framework of government has to address these matters. It  
20 can't be the boil water advisories or housing. It can be  
21 the issue that keeps falling off the budget; right? We  
22 can't just keep running out of money. If the money doesn't  
23 stretch that far, this means, as a legal obligation, it has  
24 to move higher up; right? The budget has to be there for  
25 the progressive realization of the rights.

1           I think the second point that I was trying  
2           to think about yesterday is I recognize the disconnect  
3           between potentially the individual lived experiences and  
4           the systemic changes that I'm trying to push forward that I  
5           think the human-rights-based approach addresses. And so, I  
6           do think that the system is broken and that all of the  
7           issues that you raised are symptoms of a broken system.  
8           And, while we can try to fix each of these, you know, every  
9           time the boil water advisory comes up, we can try to fix  
10          the system or create a sanitation system, but it's all part  
11          of a larger broken system.

12           And so, part of the energies that I am  
13          dedicating is to see if I can fix that system to address  
14          these, sort of, symptoms that are very real and very lived.  
15          And so, in that way, I'm playing a longer-term game, but  
16          hoping that governments will also take steps immediately to  
17          start addressing these issues.

18           **MS. KRISTYN ORDYNIEC:** Thank you. And, in  
19          no way did I mean to suggest that you didn't do a good job  
20          yesterday, and I appreciate your answer, and I know that  
21          it's difficult, so thank you very much for that.

22           The next questions are going to be directed  
23          to Mr. O'Soup. You mentioned and spoke in detail with Ms.  
24          Fraser when you were conducting research with the youth in  
25          regard to the suicides, that you attended in the

1 communities multiple times. We heard that today; correct?

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

3 **MS. KRISTYN ORDYNIEC:** And, just applying  
4 what you learned throughout that process, how do you think  
5 that this particular National Inquiry should proceed with  
6 its work in terms of travelling to the remote communities,  
7 both now and on a future basis, to make sure to understand  
8 those unique perspectives of the northern communities?

9 **MR. COREY O'SOUP:** Well, you know, I mean,  
10 I'm challenged to give them advice because I don't  
11 understand the full scope and the ability and the finances  
12 and all of that behind what they have to do. You know,  
13 even myself, you know, over that year, I was not able to  
14 personally attend to every session. I was in, you know, a  
15 lot of them but not all of them. So, I think that has to  
16 be recognized, that I did have staff that did attend to  
17 every session and met with all of the children and youth,  
18 you know? So, that made it, I guess, more -- made me more  
19 able to do it that way, you know?

20 But, I do believe that our children and  
21 youth need to have their voices heard, you know, and it's  
22 not always easy for them to come to a place like this,  
23 even. I'm sitting on a stage like this with the lights,  
24 and the cameras, and all of these lawyers and people here  
25 in their faces, it's not an easy place for them to sit and

1 for us to ask those difficult questions.

2 You need to be able to build a relationship  
3 with them. You need to be able to, you know, coax those  
4 answers that you're looking for out of them, and that can  
5 only be done, you know, in a place where they feel safe and  
6 protected and, you know, where they feel comfortable. This  
7 is not a place that they would feel comfortable in doing  
8 that.

9 That's why we had to go to them, you know?  
10 And, it wasn't always me personally. So, there's ways that  
11 we can do it, you know, and I think those ways are  
12 acceptable. So, you know, I think for me, that's what we  
13 have to consider, is that, you know, our children are not  
14 adults. They're not professionals. They're not, you know,  
15 people that are used to this type of environment, and  
16 especially if they're in a remote and northern community.  
17 You know, we've had stories where kids have never even gone  
18 into a restaurant and ordered food, you know? Those are  
19 the types of barriers that our kids face.

20 There's places in our northern communities,  
21 they don't even have banks or restaurants or different  
22 things like that. So, for them to come here, they don't  
23 have hotels, you know? Everything would be a challenge for  
24 them. And then on top of that, we ask them these difficult  
25 questions, you know?



1 their leg or for having a heart attack. These are the same  
2 types of things; right? They're just, you know, health  
3 issues of the mind and of the brain, you know? And, even  
4 in our northern communities, the access to diagnose, to  
5 treat, to educate is not there, you know? And, that takes  
6 dollars. That takes targeted funding. You know, we've  
7 used the words "distinct measures", "special measures".  
8 That's what it's going to take for us to really get at the  
9 heart and the root of our problems in the area of mental  
10 health.

11 You know, and then our justice system takes  
12 them, and we don't necessarily always treat what the issue  
13 is with them. Yes, they receive those supports and those  
14 services once they're in there, but they're criminalized  
15 already, and now that follows them wherever they go. So, I  
16 think we need to really take a good examination of that  
17 system and how they do intersect.

18 **MS. KRISTYN ORDYNIEC:** Thank you. Yesterday  
19 -- two days ago, sorry, I had asked the panel, and you  
20 spoke about when an Indigenous youth ages out of the child  
21 welfare system, and you mentioned that there were -- you  
22 feel like they are unsupported during those times. What  
23 would some of your recommendations be in order to address  
24 that gap?

25 **MR. COREY O'SOUP:** I think we need to,

1 particularly in Saskatchewan, we need to redefine the age  
2 of a child. Right now, it's 16. So, a lot of the services  
3 drop off at the age of 16. We need to raise that to the  
4 age of 18. I couldn't speak specifically for all of the  
5 provinces across Canada. A lot of our services, we do  
6 extend to age 21. We have suggested legislatively that  
7 those services go to the age of 24 so that those transition  
8 pieces are there so that we can support our kids as they  
9 look to further their education, as they look to become  
10 contributing members of their society.

11 So, I think we need to look at those types  
12 of measures, you know, because those kids fall through the  
13 cracks a lot of the times; right? And, those are the ones  
14 that end up in our systems. Those are the ones that end  
15 up, you know, in an inquiry like this, and I think that we  
16 need to provide better supports because as a parent, I  
17 mentioned this yesterday, my daughter just turned 18. I  
18 didn't kick her out the door and not provide her with any  
19 supports or any services. In fact, she's still living at  
20 home. I'm still feeding her. I'm still providing for her.  
21 I'm still giving her shelter. I'm still supporting her as  
22 she goes on to university next year.

23 You know, I'm supporting her in every step  
24 of the way of her life, and I didn't just cut it off at the  
25 age of 18. I believe if governments are going to take our

1 children, and they're going to take responsibility for  
2 them, they need to follow that up and not just cut them off  
3 as soon as they turn 18.

4 **MS. KRYSZTYN ORDYNIEC:** Thank you very much.  
5 And, I have just one last question. As an educator, how do  
6 we ensure that young family members of those who were lost  
7 to violence and are the subject of this inquiry are  
8 protected from future trauma, especially in remote northern  
9 communities when the information, as you identified,  
10 doesn't always get to them or they see something on social  
11 media.

12 **MR. COREY O'SOUP:** I think that's a  
13 responsibility of us, as adults. I think sometimes we  
14 expect and we push things on governments to do our job as  
15 parents, as adults, as aunties and uncles, as kokums and  
16 moshums. I think that we -- you know, sometimes we say,  
17 well, if the government gives me this or this or this, then  
18 I can do this. But I think when it comes into those  
19 places, especially in our northern and remote communities,  
20 the answers are within our communities.

21 You know, the answers aren't going to come  
22 from me in Saskatoon. They're not going to come from  
23 Ottawa or Quebec City. We need to go into our communities  
24 and we need to search for the answers there, because I  
25 believe the answers are there. They lie within our family



1 systems. They lie within our elders. They lie within our  
2 communities. And if we can take that responsibility back,  
3 I believe that we can make a difference in our communities.  
4 And I believe the job of government is to support us as we  
5 take those systems back and as we take those roles back,  
6 you know. And that's what I believe that we should be  
7 doing.

8 **MS. KRYSZTYN ORDYNIEC:** Thank you very much.

9 My last question will be for Dr. Sambo  
10 Dorough. Yesterday you spoke of the value and necessity of  
11 desegregated data. And I wonder if you could just touch on  
12 that a little bit further, and especially in the context of  
13 the application of certain legislation that may have  
14 certain -- well, not may have, it's a legacy of sex-based  
15 discrimination in certain legislation.

16 **MS. DALEE SAMBO DOROUGH:** I think that --  
17 first acknowledge that Brenda Gunn referred to the need for  
18 desegregated data. Indigenous peoples have made this  
19 intervention on numerous occasions within in particular the  
20 special mandates in relation to nearly everything. Because  
21 across the globe, and I would expect here in Canada as  
22 well, there isn't sufficient desegregated data so that we  
23 can even establish the baseline as to the status and  
24 conditions of Indigenous peoples in Canada, whether it is  
25 to health, to housing, et cetera. And more often than not,

1 we're finding NGOs and others to provide that information,  
2 if you set aside the issue of self-identification, because  
3 that is an individual right to determine your own identity,  
4 and your willingness to share that information.

5 In relation to this particular issue, the  
6 subject of the Inquiry, Indigenous women and girls, I think  
7 that it would be extremely helpful if a mechanisms could be  
8 put into place to look at all the status and the conditions  
9 of the rights affirmed in the various different  
10 international instruments and give us at least a baseline  
11 as to where things stand. And if issues such as  
12 discrimination, violence -- it would be a complex system  
13 but on a community-by-community basis I do think that it is  
14 possible to allow for the appropriate agencies at the  
15 national level and at the local level.

16 And also, to piggyback on the comment that  
17 Corey made, for communities themselves to begin such -- or  
18 at least put the -- a little meat on the bones as far as  
19 the opportunity to track this kind of information. It's a  
20 difficult task and it takes someone with skill to do so,  
21 but we've seen Indigenous communities elsewhere develop  
22 that. I mean, the social and health determinants, for  
23 example, of ITK is one example.

24 **MS. KRISTYN ORDYNIAC:** Thank you very much.

25 And with that I would just like to say

1 Miigwich to the experts, to the Commissioners and also to  
2 the parties who have shared their knowledge today. Thank  
3 you.

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

5 Next, Commission Counsel would like to  
6 invite the Advocate for Children and Youth of Saskatchewan  
7 up, Mr. Gregory Walen. He will have 20 minutes.

8 **CROSS-EXAMINATION BY/CONTRE INTERROGATOIRE PAR MR. GREGORY**  
9 **WALEN:**

10 **MR. GREGORY WALEN:** Thank you.

11 Commissioners, members of the panel, my name  
12 is Greg Walen. I am counsel to the ---

13 **MS. CHRISTA BIG CANOE:** We don't have volume  
14 yet.

15 **CHIEF COMMISSIONER BULLER:** We need to stop  
16 the clock.

17 First of all, on the motion of Registrar,  
18 we're making the following order, just a brief housekeeping  
19 matter.

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

21 **CHIEF COMMISSIONER BULLER:** That it's an  
22 order to redact all personal identifiers on CVs that have  
23 been filed as exhibits.

24 Thank you. My apologies, Mr. Walen.

25 **MR. GREGORY WALEN:** That's fine. That's

1 fine.

2 I appear on behalf of the Advocate for  
3 Children and Youth for the Province of Saskatchewan, who  
4 just happens to be an individual that I will be cross-  
5 examining. And I'm in a ---

6 (LAUGHTER/RIRES)

7 **MR. GREGORY WALEN:** --- relatively unique  
8 position in that regard. I do realise that Rule 45 of the  
9 protocol suggest that I'm to restrict my cross-examination  
10 in a -- to non-traumatising questions, so I'll attempt to  
11 stick to that.

12 I will be, of course, addressing Mr. Corey  
13 O'Soup directly and I have no questions for the remainder  
14 of the panel, so you can relax.

15 (LAUGHTER/RIRES)

16 **MR. COREY O'SOUP:** I think you should.

17 **MR. GREGORY WALEN:** Yes. Mr. O'Soup, in --  
18 you filed 15 recommendations in Exhibit 12 during your  
19 examination in-Chief and I wanted to reference. Do you  
20 have that in front of you by any chance?

21 **MR. COREY O'SOUP:** Yes, I do.

22 **MR. GREGORY WALEN:** Great. I'd like to  
23 reference, first of all, recommendation number 12. You  
24 state in recommendation number 12 -- and I'll just read it  
25 out,

1 "To create a statutory National  
2 Children's Commissioner, independent  
3 from the Government of Canada, but  
4 accountable to the Parliament, with  
5 particular emphasis on Indigenous  
6 children and youth and the national  
7 dimension of the work on programs,  
8 evaluations and outcomes." (As read)

9 Is that correct?

10 **MR. COREY O'SOUP:** Yes, that's correct.

11 **MR. GREGORY WALEN:** Okay. Would you agree  
12 that -- I believe your testimony was yesterday that  
13 currently all provinces and territories, with the exception  
14 of Prince Edward Island and the Northwest Territories, have  
15 a sort of a children's advocate in one form or another?

16 **MR. COREY O'SOUP:** Yes, they all do.

17 **MR. GREGORY WALEN:** Some are independent of  
18 the government, like your office.

19 **MR. COREY O'SOUP:** I believe they're all  
20 independent.

21 **MR. GREGORY WALEN:** They're all independent?

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

23 **MR. GREGORY WALEN:** Okay. To what extent,  
24 if any at all, would gaps be filled in by a National  
25 Children's Commissioner in terms of -- why aren't the

1 provinces able to cover off all the things that you want  
2 them to cover off?

3 **MR. COREY O'SOUP:** You know, there's a  
4 number of challenges and we all do have varying degrees of  
5 legislation. Like, for instance, in Saskatchewan I think  
6 I've given testimony as to our responsibilities, then our  
7 legislation allows us to look into places like social  
8 services, which covers child welfare and places like that,  
9 education, health, justice and corrections. That would not  
10 be the same for every province and territory. I think we  
11 need some sort of standards when it comes to that and a  
12 National Commissioner could bring those standards.

13 But I think for the purposes of the National  
14 Inquiry, I believe that the biggest thing that this would  
15 bring for us would be a Commissioner that can attend to the  
16 needs of our Indigenous children and youth. I believe that  
17 even in Saskatchewan and even being an Indigenous person  
18 and even taking the steps that I've taken, my ability to --  
19 I guess to look into the lives of children and youth,  
20 particularly Indigenous children and youth, is challenged  
21 by my legislation.

22 I believe if we empowered a national  
23 Commissioner, and I believe that person -- and I said this  
24 yesterday as well -- should be Indigenous, would be able  
25 to, with proper legislation and proper support, be able to

1 go onto our First Nations and work with our First Nations  
2 and work with our Métis people in a way that we cannot.  
3 Because there are many national issues that I believe  
4 should be addressed that we are limited at our Canadian  
5 Council of Children and Youth Advocates because of our  
6 varying legislations and because of the fact that we have  
7 12 or 11 different people sitting at the table as well.

8 So I think there are opportunities, like  
9 even on the issue of youth suicide, Indigenous youth  
10 suicide. It's not just a northern Saskatchewan Indigenous  
11 youth issue. It's actually a national issue. And it's  
12 something that we should be talking about nationally and we  
13 need a national youth voice on this issue. And the only  
14 way that we're going to be able to do that is if we are  
15 able to bring all of those youth and bring their voice  
16 together in one form or another. And I believe that, you  
17 know, I'm doing that work in Saskatchewan but I can't go do  
18 that work in other provinces or territories.

19 **MR. GREGORY WALLEN:** You would agree with me  
20 that advocates offices across Canada, the ones that do  
21 exist, for the most part are independent, but they are  
22 relegated to simply investigating, reporting and advocating  
23 on behalf of children and youth; is that correct?

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

25 **MR. GREGORY WALLEN:** They have no power of

1 sanction against the government or any government agencies,  
2 would that be correct?

3 **MR. COREY O'SOUP:** Yes. I think that's one  
4 of the challenges that we face, you know, because we do  
5 investigate, we do make recommendations, but our  
6 recommendations are non-binding, and we have to use  
7 different ways to influence and hope and make those  
8 decisions and those recommendations come to fruition. You  
9 know, we hold regular meetings with our ministries, and  
10 they are standing items, those recommendations, but still,  
11 at the end of the day, they can choose to ignore them if  
12 they want. Of course, we go to public opinion, we go to  
13 the media, and we use that as a tool to hold our  
14 governments to account.

15 But, if a national commissioner was ever  
16 appointed, I believe they would need those powers to go  
17 beyond just making recommendations, because that's the same  
18 situation we're in right now. And, you know, if we don't  
19 give this national commissioner those powers of sanction or  
20 those powers to make binding recommendations, then, you  
21 know, I don't think we're any better off than we are right  
22 now.

23 **MR. GREGORY WALEN:** Thank you. You spent  
24 some time yesterday and, indeed, in cross-examination today  
25 talking about the Shhh...LISTEN!! report, and youth



1 Indigenous suicide in the north, the north half of  
2 Saskatchewan. This is an inquiry into murdered and missing  
3 Indigenous women and girls. What's the connect?

4 **MR. COREY O'SOUP:** I believe there's a  
5 direct correlation to the things that the young girls  
6 brought up to us in this report. You know, I mentioned the  
7 six themes earlier. Those are all themes that directly  
8 correlate to our young girls going missing and being  
9 murdered. You know, themes of bullying and cyber bullying,  
10 that directly relates to our young girls running away from  
11 their homes, running away from their foster homes, running  
12 away from those care placements. You know, drugs and  
13 alcohol, those are all things that are contributors to, you  
14 know, what's happening in our report.

15 And, you know, I believe that those are  
16 forms of violence; right? And, that directly correlates  
17 to, I would say, Article 19 within the UNCRC and, of  
18 course, Article 22 within UNDRIP. And, you know, in order  
19 for us to protect our young girls from those forms of  
20 violence, we need to hear what they have to say, and we  
21 have to react to that, and that's what this report does for  
22 us. It brings out all of those situations, all of those  
23 reasons why, and they also give us solutions; right? And,  
24 I think that's even more important than the reasons why,  
25 because I think we have a general understanding as, you

1 know, the Canadian public as to why, but we haven't always  
2 been able to get those solutions from our young people, and  
3 I think that's really important.

4 **MR. GREGORY WALEN:** Thank you. We heard  
5 yesterday from other members of the panel that  
6 international treaties have the same legal obligation, the  
7 same legal obligations exist for the Government of Canada  
8 as if it was a law, essentially. Did you -- would you  
9 agree that the obligations, et cetera, as set forth in the  
10 United Nations Convention on the Rights of a Child should  
11 also impose those same legal obligations on the Government  
12 of Canada?

13 **MR. COREY O'SOUP:** You know, I think unless  
14 we actually do that, we are still in the same position of  
15 advocating, of lobbying, of hoping, you know, that they  
16 will do the right thing until they actually become whatever  
17 the term within the legal ---

18 **MR. GREGORY WALEN:** Legal obligations.

19 **MR. COREY O'SOUP:** With a legal obligation,  
20 yes.

21 **MR. GREGORY WALEN:** Thank you. You  
22 reference in Recommendation 14, and I'll just read  
23 Recommendation 14 out for the record, "That the Federal  
24 Government adopt all necessary measures to ensure the full  
25 inclusion of the optional protocol to the United Nations

1 Convention on the Rights of Children, on the sale of  
2 children, child prostitution, child pornography into its  
3 domestic legal system."

4 Why did you recommend that?

5 **MR. COREY O'SOUP:** Well, you know, this  
6 optional protocol has been, I'll say, mostly accepted by  
7 Canada, but there are some provisions in there that I  
8 believe directly influence the way that we deal with our  
9 young Indigenous women and girls. You know, particularly,  
10 they mention that girl children, to use the language, are  
11 disproportionately, I guess -- disproportionately over  
12 represented in sexual exploitation in the world and in  
13 Canada in general.

14 And, you know, we have these things in place  
15 to protect our children. So, you know, I think we need to  
16 fully adopt that here in Canada, and some of the concerns  
17 that I have with that is it is data collection, again. You  
18 know, we don't know, and if we don't know, then how can we  
19 make properly informed decisions on how to react, how to  
20 implement, how to legislate, how to lobby?

21 The other piece here is the public is not  
22 fully aware of that. So, we need to have public awareness  
23 campaigns. It's not fully budgeted for, you know. And,  
24 one of the other things in there that concerns me probably  
25 the most and why I think that Canada needs to fully adopt

1 and ratify this optional protocol is because with all of  
2 the protections that we have in place, it's still not  
3 illegal to sell a child here in Canada.

4 **MR. GREGORY WALEN:** Thank you. I have no  
5 further questions. That wasn't so bad.

6 **MS. CHRISTA BIG CANOE:** Thank you, Mr.  
7 Walen. Commission counsel will now call upon the last  
8 party with standing to be cross-examining today, and that  
9 will be West Coast LEAF, I believe, Raji Mangat. And, Ms.  
10 Mangat has 20 minutes.

11 **MS. RAJI MANGAT:** Thank you.

12 **MS. CHRISTA BIG CANOE:** She actually hasn't  
13 started yet, so can you reset, please?

14 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS. RAJI**  
15 **MANGAT :**

16 **MS. RAJI MANGAT:** Good afternoon. As Ms.  
17 Big Canoe said, my name is Raji Mangat. I'm here  
18 representing West Coast LEAF, a non-profit organization  
19 working in B.C. on gender equality. I'd like to echo the  
20 thanks offered by others to all who have come together for  
21 these four days of learning.

22 As with the other time I got to cross-  
23 examine, many of the topics I wanted to cover with the  
24 witnesses have already been done so very ably by my  
25 friends. So, I'm going to primarily be directing my

1 questions to Mr. O'Soup, and I apologize in advance if I  
2 jump all over the place. I'm trying to avoid duplicative  
3 questions, but I might not be perfect in doing so.

4 So, when you were giving your presentation,  
5 Mr. O'Soup, you spoke about the barriers to breaking these  
6 cycles, the cycles that seem to perpetuate cycles around  
7 poverty and violence. One of the barriers that we've been  
8 discussing with you over the past day and a half is this  
9 crisis level of Indigenous children in child protection.  
10 And, you know, when we're saying the low end of the  
11 estimated range is 70 percent, to me, that's a crisis.

12 **MR. COREY O'SOUP:** That's more than a  
13 crisis.

14 **MS. RAJI MANGAT:** More than a crisis.  
15 Exactly.

16 **MR. COREY O'SOUP:** It's something we should  
17 definitely be looking at. And, you know, we're actually  
18 not the worst. Somebody said a race to the bottom. You  
19 know, I think Manitoba actually has reports that it's 90  
20 percent that they can verify. So, you know, we're beyond  
21 the crisis level.

22 **MS. RAJI MANGAT:** It's an epidemic.

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

24 **MS. RAJI MANGAT:** Yes. And so, one of the  
25 things you talked about when you were discussing the U.N.

1 Convention on the Rights of the Child is a right of  
2 children to be raised by their parents when it's safe to do  
3 so.

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

5 **MS. RAJI MANGAT:** I'm not super familiar  
6 with that convention. And so, I was wondering if you would  
7 be able to talk a little bit more about that right?

8 **MR. COREY O'SOUP:** Yes. I think for us and  
9 for the convention, I think that they needed to identify  
10 the best place, the most secure place, the most loving  
11 place, the most caring place for our children and our youth  
12 is with their families, you know? And, I think that's why  
13 it was explicitly put in there. I'm not like the doctor  
14 here. I wasn't a part of the writing of the convention  
15 like she was of UNDRIP, but my understanding is that the  
16 best place for our children and youth is to be surrounded  
17 by their family, by those that love them, by those that  
18 trust them, by those that have their best interest at hand.

19 You know, of course, that's not always --  
20 you know, unfortunately, it's not always the case with our  
21 young people. You know, we do deal with cases where the  
22 family have been a part of the problem, you know? But, in  
23 those cases, it's not always, you know, the immediate  
24 family. If it is, there are extended family that we can  
25 look to, you know, to take our children into their homes,

1 and to love them and care for them. I believe those are  
2 the places that we need to go to first, you know? And,  
3 within our communities, within our First Nation  
4 communities, within our Metis communities, within our Inuit  
5 communities, we need to look there first. And I think  
6 often we do not go there first, or you know, our people are  
7 disqualified for simple things that, you know, that they  
8 shouldn't be, right? And then that's something that takes  
9 our kids away from their homes, you know? And we can put  
10 them in these loving, caring environments.

11 **MS. RAJI MANGAT:** Absolutely. And so that  
12 would be like, kinship careers ---

13 **MR. COREY O'SOUP:** Kinship care, yeah.

14 **MS. RAJI MANGAT:** --- I guess, is what  
15 you're talking about.

16 **MR. COREY O'SOUP:** I believe I mentioned  
17 that. That is, you know, for me that's the best place for  
18 our kids, if it's safe to do so.

19 **MS. RAJI MANGAT:** So just sort of stepping  
20 back a little bit, could you describe briefly what the  
21 legal process is in Saskatchewan where a determination has  
22 been made about an Indigenous child needing to be removed  
23 from her home? Where does she go? What happens? Just  
24 very briefly. I'm not sure everyone -- I'm -- in fact lots  
25 of people, I think, don't know how these systems work in

1 our law.

2 **MR. COREY O'SOUP:** Yeah. Well, for us it's  
3 the Ministry of Social Services that does that and makes  
4 that determination. And the complaints can come from  
5 anywhere really, you know. Like, someone can see a child  
6 in a grocery store being yelled at or whatever, or you  
7 know, it happens all too often in our hospitals, you know?  
8 Children are taken away at birth for no reason. But I  
9 believe that, you know, the process is a challenge to me,  
10 right? Because we are imposing, I guess, western ideals,  
11 on our Indigenous Peoples once again. And we aren't using,  
12 and we're not asking our First Nation and our Metis People  
13 to be a part of that situation and a part of that system.

14 So you know, anybody can call. Ministry of  
15 Social Services opens up a file. They go and they do an  
16 investigation. They knock on the door. They could show up  
17 at any time, and if they determine that that child is not  
18 safe for whatever reason that they deem, then they can  
19 remove that child. And once that happens, you have a file  
20 open on you pretty much forever. And you are always kind  
21 of on their radar, and then in order to get your children  
22 back, it's not an easy process either, you know? And  
23 that's a difficult one too. So you know, the legalities of  
24 it lie within our Social Services Ministry.

25 **MS. RAJI MANGAT:** That very much aligns with



1 the experience that I've heard from Indigenous families in  
2 B.C. Often no reason is provided, or at least not in any  
3 kind of reasonable period of time. And so that level of  
4 uncertainty and that scariness of having somebody come into  
5 your home, not tell you why they're removing your child, it  
6 sounds like that's something that's being experienced  
7 across jurisdictions. Is that your -- is that what you've  
8 heard from your counterparts in other provinces?

9 **MR. COREY O'SOUP:** We haven't really gone  
10 into that discussion very deeply, so ---

11 **MS. RAJI MANGAT:** Okay. Fair enough.

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

13 **MS. RAJI MANGAT:** So do you think that there  
14 is any difference in the way that standards are applied  
15 when -- or interpreted, when it comes to removing a child,  
16 an Indigenous child from her home, versus, you know, maybe  
17 from like, where there have been concerns around harm to  
18 that child in foster care? Like, is there -- is the --  
19 does the system approach that child and that child's  
20 circumstance in the same way when it's coming from her  
21 Indigenous home, versus, she's in foster care and there's  
22 some concerns about her treatment in foster care?

23 **MR. COREY O'SOUP:** I would say anecdotally,  
24 I would have concerns about that. We do have policies and  
25 procedures in place to protect our kids, but sometimes

1 those policies are flawed, you know, and we're dealing with  
2 human beings and their own personal judgement. So I would  
3 say that I'm hoping that that's not the case, but I can't  
4 say 100 percent that it is the case -- that they're not  
5 being treated differently.

6 **MS. RAJI MANGAT:** Right. That there aren't  
7 ---

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

9 **MS. RAJI MANGAT:** --- let's say, kind of  
10 racist attitudes, or stereotypes, and gendered ideas about  
11 Indigenous women for instance, that apply in one context  
12 that perhaps don't apply in the other?

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

14 **MS. RAJI MANGAT:** Okay. Thank you. In  
15 B.C.'s legislation -- and I'm not going to go deep into  
16 B.C.'s legislation because I know that's -- you're coming  
17 from Saskatchewan. But I wanted to know if -- in B.C.  
18 there is a responsibility to provide supports to parents to  
19 be able to parent their children. So I think this might be  
20 that least restrictive means kind of concept you were  
21 talking about. Is that something similar in Saskatchewan's  
22 legislation?

23 **MR. COREY O'SOUP:** Yes. We provide  
24 supports, yeah.

25 **MS. RAJI MANGAT:** Okay. So the -- so what

1 I've heard from some women is that because you -- as you  
2 said, there is this idea that once that Ministry opens the  
3 file it can be very difficult to disentangle yourself from  
4 that Ministry, or from the various social workers and other  
5 people that are part of that apparatus. So I've actually  
6 heard from Indigenous women in B.C. that they have a lot of  
7 fear, even when they recognize that they might need  
8 supports for themselves to parent, and there is this  
9 obligation in the legislation to provide that support.  
10 There is a fear on their part that the supports won't be  
11 offered, the child will just be removed, and is that  
12 something that you've heard about or come across in your  
13 work as Saskatchewan's advocate?

14 **MR. COREY O'SOUP:** I feel like I'm getting a  
15 little close to -- to individual cases and ---

16 **MS. RAJI MANGAT:** Okay.

17 **MR. COREY O'SOUP:** --- to respecting the  
18 confidentiality and the anonymity of our families and our  
19 children and youth there.

20 **MS. RAJI MANGAT:** Fair enough and I'm sorry  
21 I ---

22 **MR. COREY O'SOUP:** No, no. That's okay.

23 **MS. RAJI MANGAT:** --- certainly didn't  
24 intend to go that way.

25 **MR. COREY O'SOUP:** No.

1                   **MS. RAJI MANGAT:** Okay. Well, you had said,  
2 I think it was yesterday, you said something, and I'll  
3 paraphrase. That we asked our Indigenous schools to do the  
4 same thing as what the public school system is offering  
5 with less funding and then we blame those schools for not  
6 succeeding. Would you draw a parallel with the child  
7 protection system, or child welfare system? Similarly,  
8 that we -- you know, for these delegated Aboriginal  
9 agencies we are maybe setting them up to fail? We are  
10 putting a lot of obligations but not resourcing properly.

11                   **MR. COREY O'SOUP:** I would say that that's -  
12 - if Cindy Blackstock was here, she could give you the 10-  
13 year fight that she went through. And that's where I would  
14 point to, is the fight that Cindy went through for the last  
15 10 years to get equality of funding for our children and  
16 the child welfare system on reserve. So I believe that  
17 that is the case when it comes to child welfare, similar to  
18 education.

19                   **MS. RAJI MANGAT:** M'hm. So you would draw  
20 that parallel, absolutely.

21                   **MR. COREY O'SOUP:** I would draw that  
22 parallel, yes.

23                   **MS. RAJI MANGAT:** Okay. Yesterday and  
24 earlier today we talked a little bit about the best  
25 interests of the child as a standard. Not only -- like, we

1 know that this is a domestic standard, but in the  
2 Convention on the Rights of the Child it's an international  
3 standard as well. You're familiar with it. I'm ---

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

5 **MS. RAJI MANGAT:** --- very familiar. And  
6 your -- you understand that that standard, best interest of  
7 the child, is a primary consideration in all actions  
8 concerning children, including actions of child welfare  
9 agencies?

10 **MR. COREY O'SOUP:** M'hm.

11 **MS. RAJI MANGAT:** And do you find that that  
12 best interests of the child is being used as this guiding  
13 principle in Saskatchewan, in your experience, when it's  
14 relating to child welfare hearings?

15 **MR. COREY O'SOUP:** You know, it is in our  
16 policies, it's part of our *Act* actually, the best interests  
17 of the child within Saskatchewan. So it's something that  
18 we are well aware of and something that we hold our  
19 government to account to, particularly our Ministry of  
20 Social Services. But I think if I can reflect back to the  
21 numbers, you know, I think the numbers tell the story more  
22 than I could tell the story. You know, if we were truly, I  
23 guess, adopting, and adapting, and receiving that best  
24 interests, we wouldn't have 70 to 90 percent of our kids,  
25 our Indigenous kids, in care, right?

1                   So you know, I would take it back to that  
2                   number. Even though it's in policy and even though we say  
3                   it. I think if we look at the numbers and we look at the  
4                   number of kids that have been taken away and the number of  
5                   them that are Indigenous, I think that tells a different  
6                   story.

7                   **MS. RAJI MANGAT:** Right.

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

9                   **MS. RAJI MANGAT:** And I'd ask this question  
10                  a few days ago and what I'd like -- what I'm trying to do  
11                  is kind of like, this idea of what's in a child's best  
12                  interest with what's in the best interest or -- how do you  
13                  frame that around, sort of, who are the carers in that  
14                  child's life? And that you can't really divorce, in my  
15                  view, best interest from the context in which they're being  
16                  actualized or would be actualized. So would you agree with  
17                  me or with the proposition that the best interests of  
18                  children are inextricably linked to the lived experiences  
19                  of the caregivers in their lives, like their mothers, their  
20                  grandmothers, their aunties, the various people in their  
21                  circle of caring?

22                  **MR. COREY O'SOUP:** I would say in general I  
23                  agree, but I think we need to apply some of the other  
24                  articles, you know, like the non-discrimination, the right  
25                  to life and survival and the right to thrive and the right

1 to have voice knowing -- if all of those foundational  
2 principles from the UNCRC are being applied in those  
3 situations with their mothers and their grandmothers, then  
4 I think that would be -- yes, then I could agree with that.

5 **MS. RAJI MANGAT:** Okay. Do you know if  
6 Indigenous youth in Saskatchewan are primarily cared for by  
7 female caregivers? Like, whether that's moms or other  
8 female caregivers, like kinship carers?

9 **MR. COREY O'SOUP:** Oh, I'm trying to think  
10 of the numbers. I don't think I would ---

11 **MS. RAJI MANGAT:** Okay.

12 **MR. COREY O'SOUP:** --- be able to answer  
13 that question.

14 **MS. RAJI MANGAT:** Okay. Fair enough.  
15 So I think that might be everything with  
16 you.

17 And I just have a couple of -- I noticed I  
18 just have about five minutes and I have a few sort of I  
19 guess sort of housekeepingey [*sic*] things that I'd like to  
20 kind of get onto the record. And I'd like to do that by  
21 directing my inquiry to you, Professor Gunn.

22 You should have been provided with a copy of  
23 a five-page document called Violence Against Indigenous  
24 Women and Girls in Canada, Review of Reports and  
25 Recommendations.

1                   **MS. BRENDA GUNN:** Yes, I have it.

2                   **MS. RAJI MANGAT:** And I understand that this  
3 document was emailed around to counsel for the parties  
4 withstanding. And I have a couple of copies if we need.

5                   **MS. CHRISTA BIG CANOE:** So the violence ---

6                   **MS. RAJI MANGAT:** Yes, that's right.

7                   So I think I'm right in that that was  
8 provided to all parties, withstandings, counsel, as well as  
9 to the Commissioners, and to the witness.

10                  **MS. CHRISTA BIG CANOE:** And there's no  
11 objection, so I'm assuming it's applied -- implied consent.

12                  **MS. RAJI MANGAT:** Okay. Fantastic.

13                  So just taking a look at this document,  
14 Professor Gunn, it says on the first page this was prepared  
15 by Pippa Feinstein and Meghan Pearce, dated February 26,  
16 2015?

17                  **MS. BRENDA GUNN:** Yes.

18                  **MS. RAJI MANGAT:** Are you familiar with this  
19 work or this document?

20                  **MS. BRENDA GUNN:** In a very general sense.  
21 I was able to review it briefly the other evening and I'm  
22 generally aware of the work, the Legal Strategy Coalition.

23                  **MS. RAJI MANGAT:** Okay. Well, I'm not  
24 proposing to ask any questions. I simply wanted to sort of  
25 establish the document on the record and hope to have it



1 marked as an exhibit, if that's okay.

2 **MS. CHRISTA BIG CANOE:** If I might, I don't  
3 think there's going to be a need to mark it as an exhibit.  
4 And the -- and we can stop the time in case she has more  
5 questions. Our interim report points specifically to the  
6 research we've undertaken, which is actually to utilise the  
7 Legal Strategy Coalition's original report. And we  
8 actually, through our research team, have included not just  
9 the 40 in this but now over 90 of the reports using at  
10 least 1 of the same researchers. So our process is  
11 informed not only by the Legal Strategy Coalition but it's  
12 documented within our interim report.

13 So for, you know, reference I think it's  
14 helpful, but if you don't actually have a question for the  
15 ---

16 **MS. RAJI MANGAT:** No, no, that's ---

17 **MS. CHRISTA BIG CANOE:** --- witness in  
18 relation to it, I'm not sure if we need to exhibit it.

19 **MS. RAJI MANGAT:** No, that makes perfect  
20 sense to me. Thank you. I was not aware that it had  
21 already been incorporated.

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

23 **MS. RAJI MANGAT:** The other thing I'd like  
24 to do and ---

25 **MS. CHRISTA BIG CANOE:** You can start time

1           again.

2                           **MS. RAJI MANGAT:** --- again by -- oh.

3                           **MS. CHRISTA BIG CANOE:** Yeah, we can start  
4           time again.

5                           **MS. RAJI MANGAT:** Just similar sort of thing  
6           is earlier counsel for the Native Women's Association of  
7           Canada, Ms. Lomax, had asked questions about international  
8           human rights instruments around two-spirit and LGBTQ  
9           persons, protections from violence and discrimination for  
10          those populations. And there was some question around  
11          whether there are instruments at the international level  
12          dealing with violence and discrimination against those  
13          populations.

14                           I know at the time we weren't sure, but I  
15          understand from counsel for Nova Scotia, Sean Foreman, he  
16          circulated a couple of international human rights documents  
17          that do look at protections for two-spirit and LGBTQ  
18          people. And I just kind of -- I don't have copies. I'm  
19          not proposing to put them in the record.

20                           **MS. CHRISTA BIG CANOE:** So I'm sorry, but  
21          now what you're doing -- we haven't stopped time. I'm not  
22          sure if you're getting to a question and I'm trying to --  
23          this is not a formal objection.

24                           **MS. RAJI MANGAT:** No, that's fine.

25                           **MS. CHRISTA BIG CANOE:** But another counsel

1 who has found information that hasn't necessarily been put  
2 to us, even if it's been circulated in this particular  
3 format would not be appropriate because if you're  
4 challenging a question or you want to sort of see, but her  
5 answer to the question ---

6 **MS. RAJI MANGAT:** Sure.

7 **MS. CHRISTA BIG CANOE:** --- so was asked and  
8 previously answered and her answer was she just couldn't  
9 pinpoint without documents and stuff in front of her.

10 **MS. RAJI MANGAT:** M'hm.

11 **MS. CHRISTA BIG CANOE:** So if you want to  
12 put the documents in front of her and then she could verify  
13 it. But if not, then you're -- the question's now been  
14 asked and answered to the best of her ability in this  
15 circumstance so.

16 **MS. RAJI MANGAT:** Okay. Well, but in the  
17 interest of just kind of having complete information for  
18 the work of the Commissioners I thought I might just read  
19 out the titles of these two documents. Would that be okay  
20 to put on the record?

21 **MS. CHRISTA BIG CANOE:** Are you putting it  
22 as a question to one of the experts?

23 **MS. RAJI MANGAT:** I can ask her if she's  
24 familiar with them.

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

1           **MS. RAJI MANGAT:** Professor Gunn, are you  
2 familiar with the 2011 report of the UN High Commissioner  
3 for Human Rights to the General Assembly's Human Rights  
4 Council? I'm sure there were many 2011 reports, but one  
5 that deals particularly with LGBTQ.

6           **MS. CHRISTA BIG CANOE:** We'll have a  
7 subtitle. Do you have the subtitle or the ---

8           **MS. RAJI MANGAT:** I do not have the  
9 subtitle.

10          **MS. CHRISTA BIG CANOE:** --- the number?

11 Okay. So ---

12          **MS. RAJI MANGAT:** Sorry.

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

14          **MS. BRENDA GUNN:** No, I need a UN document  
15 number. I'm aware of many ---

16          **MS. RAJI MANGAT:** Okay.

17          **MS. BRENDA GUNN:** --- 2011 OHCHR ---

18          **MS. RAJI MANGAT:** I'm sure.

19          **MS. BRENDA GUNN:** --- documents including  
20 those produced and that I helped produce for the expert  
21 mechanism on the rights of Indigenous people, which I think  
22 you're not referring to so.

23          **MS. RAJI MANGAT:** No.

24          **MS. BRENDA GUNN:** I think given the ---

25          **MS. RAJI MANGAT:** Okay.

1                   **MS. BRENDA GUNN:** --- wealth of work, if we  
2 don't have a UN it's going to be ---

3                   **MS. RAJI MANGAT:** The second one -- okay,  
4 leaving that one aside -- is a more recent one. It's from  
5 2017 and it's an overview of UN efforts to combat violence  
6 and discrimination against LGBTI peoples. Is that  
7 something that you're familiar with at all or no?

8                   **MS. BRENDA GUNN:** No, I don't believe that  
9 I've specifically read it or at least in a way that has  
10 been incorporated into my memory.

11                   **MS. RAJI MANGAT:** Okay. No, that's fine.  
12 Thank you.

13                   And that's my time.

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

15                   Chief Commissioner, Commissioners, it's now  
16 4:20. I'm going to request a 10-minute break at which  
17 point when we return I will be asking.

18                   So I'm going to formally close the cross-  
19 examination now that we've heard all of the parties. So  
20 Rule 38 as it applies to Commissioner and counsel no longer  
21 is in effect. And I'm going to, after our break, invite  
22 the Commissioner's questions. And I anticipate the need to  
23 use my re-examination. So it's usually the same assignment  
24 as any of the parties, so 20 minutes. I'll try not to use  
25 the whole one but thank you.

1                   So if we can take a 10-minute break?

2           --- Upon recessing at 4:22 p.m./

3           La séance est suspendue à 16h22

4           --- Upon resuming at 4:40 a.m./

5           La séance est reprise à 16h40

6                   **MS. CHRISTA BIG CANOE:** Just for the record  
7 notes before we get going again, the Chief Commissioner has  
8 had to leave. However, there's three presiding  
9 Commissioners. I understand the Chief is undertaking to  
10 review the remaining transcript when it becomes available  
11 and that she's conferred with you in terms of any  
12 outstanding questions.

13                   I see you nodding. I assume that means yes.

14                   Okay. On that basis, if we can recommence.

15 At this point I would like to offer the Commissioners an  
16 opportunity to ask questions. I just want to make sure we  
17 all have -- does everyone have a device that they need?

18 Okay. Perfect.

19                   So at this point I would offer the  
20 Commissioners an opportunity to please ask questions.

21 **QUESTIONS BY/QUESTIONS PAR COMMISSIONER BRIAN EYOLFSON :**

22                   **COMMISSIONER BRIAN EYOLFSON:** Okay. Thank  
23 you very much.

24                   Thank you very much. First of all, I just  
25 want to thank all the panellists for taking the time to

1 spend with us and help us with your guidance and I just  
2 have a few follow-up questions from some of the evidence  
3 that we heard.

4 First of all, Professor Leclair, I just  
5 wanted to ask you about a follow-up question about human  
6 rights treaties that must be implemented through domestic  
7 legislation to have full effect. And could you just  
8 comment or clarify on how Canada gets -- potentially gets  
9 provinces on board where there might be reluctance or what  
10 Canada could do if provinces are reluctant and they're not  
11 on the same --- well, I guess Brenda would be more  
12 competent than me to answer, but usually, if you take these  
13 huge treaties for NAFTA, for instance, the federal  
14 government, in order to have its treaty respected by the  
15 provinces in the areas that fall within provincial  
16 jurisdiction will consult with the provinces. So, that's  
17 basically the way they operate.

18 When a federation signs a treaty without  
19 being sure that the states within the federation will apply  
20 the treaty, they can use what's called a federation clause,  
21 meaning that the state only engages its responsibility  
22 within the limits of what it can apply within the state,  
23 and Brenda will correct me if I'm wrong on this. But,  
24 usually, in Canada, they try to seek the cooperation of the  
25 provinces to make sure that they will do their jobs.

1                   **COMMISSIONER BRIAN EYOLFSON:** Okay, thank  
2 you very much. Do you have anything to add, Professor  
3 Gunn?

4                   **MS. BRENDA GUNN:** The only thing I would add  
5 is I think part of the question included, what can the  
6 federal government do if provinces are reluctant? Did I  
7 hear that correctly? Okay. One of the things that some of  
8 us are maybe holding out a little bit of hope for now is  
9 the renewed, revitalized, return, federal, territorial,  
10 provincial human rights meetings. So, there was one in  
11 December, I believe, of last year.

12                   So, I would say that, I think, a few of us  
13 human rights advocates are hopeful that one of the things  
14 that's going to happen, hopefully, on an ongoing basis is  
15 regular meetings between the provinces and territories and  
16 federal government to discuss human rights' standards, and  
17 that they may have an agenda to address these things so  
18 that if there is reluctance, there is maybe a venue to have  
19 these conversations. And, the negotiations that have to  
20 happen over, you know, if a province is concerned, what is  
21 the concern and what is the hold back? You know, if it's a  
22 monetary issue, you know, how are those things going to be  
23 addressed?

24                   **COMMISSIONER BRIAN EYOLFSON:** Thank you very  
25 much. I have a couple of questions. I think these would



1 probably be best for Dr. Dorrough or Professor Gunn. So,  
2 more than one witness that we've heard from this week has  
3 referred to violence against Indigenous women and girls  
4 being carried out with impunity. And, I'm wondering in  
5 such circumstances if you can comment on the engagement of  
6 international human rights instruments in such  
7 circumstances with a view to government accountability in  
8 Canada?

9 **MS. DALEE SAMBO DOROUGH:** Brenda, would you  
10 like to take it first or...?

11 **MS. BRENDA GUNN:** I would love if you want  
12 to take it.

13 **MS. DALEE SAMBO DOROUGH:** Okay. The way  
14 that I characterized it, again, was in relation to the very  
15 public and stunning murder of Rio de Janeiro council woman,  
16 and the way that the journalists reported it. And, in  
17 regard to this climate of impunity, I think that it is safe  
18 to say that if we look at even the history of this Inquiry  
19 and the numerous reported cases heaping one upon another  
20 suggests that there is a climate of impunity on the part of  
21 the member state that acceded to and ratified numerous both  
22 direct and indirect international human rights treaties  
23 that should serve to protect those Indigenous women and  
24 girls that have suffered from this horrific condition which  
25 in the context of Indigenous youth and Indigenous children,

1 as we've heard from Corey, has achieved crisis level. We  
2 just heard that, but also, epidemic levels.

3 And, as far as recourse, I think that it's  
4 important to recognize that what we've introduced through  
5 our various different interventions as expert witnesses,  
6 that there are an array of important and very powerful  
7 tools that have emerged, and I would urge the Inquiry and  
8 also, indeed, all of the various different respective  
9 representatives, the parties with standing, and others to  
10 pick those tools up and use them in order to change the  
11 climate of impunity. I think that the record is clear in  
12 this regard.

13 **MS. BRENDA GUNN:** Thanks. If I may, if I  
14 think about the value of engaging human rights in a  
15 situation where murdered and missing Indigenous women and  
16 girls has been ongoing for such a long period of time, I  
17 think as Dalee said, words are powerful, right? And, I  
18 think one of the benefits of using international human  
19 rights law are some of the words that we can start to use  
20 to label this crisis. There fails to be a word, I think,  
21 strong enough to describe what we've been hearing and  
22 experiencing.

23 But, you know, one of the things that struck  
24 me when I was doing the research for the paper was a  
25 reference to widespread and systemic instances of enforced

1 disappearance may be a crime against humanity; right? And,  
2 I'm not saying that this has reached that level, and I  
3 haven't done that research, but if research were to  
4 indicate that, if we understood what the standard is and to  
5 look at Canada's actions, and particularly, the failure, I  
6 think terms like that are powerful.

7           Enforced disappearances, again, taking  
8 things that we think are Latin American problems and  
9 realizing that these are the challenges at home, right,  
10 that we have to have that mirror and reflect on the actions  
11 here. I think that can be really important in helping  
12 people come to grips with the situation and to move the  
13 Canadian government to act.

14           The other aspect that I think the human  
15 rights lens can be very helpful on is we talk -- sometimes  
16 we hear the statistics, and I think people think of 600 or  
17 1,000, or 1,200, or 2,000 or whatever the number is of  
18 murdered and missing Indigenous women as 2,000 individual  
19 cases. But, I think what the human rights analysis that  
20 has existed so far has done is stated the way in which  
21 these are part of a systemic problem with the  
22 marginalization and -- the social and economic  
23 marginalization of Indigenous women.

24           And then I think the third aspect that can  
25 be beneficial is that although these individual cases may

1 have been perpetrated by individual private actors, that  
2 this may involve Canada's complicity in the process because  
3 Canada has failed to uphold its standards. So, I think  
4 shifting that focus from individual cases to a systemic  
5 problem that Canada is responsible for can be important  
6 when trying to mobilize responses.

7 **COMMISSIONER BRIAN EYOLFSON:** Thank you.

8 So, I want to thank you for the evidence regarding using a  
9 human rights framework. That's both substantive and -- an  
10 international framework that's substantive and  
11 intersectional in analyzing and in formulating the  
12 recommendations that the National Inquiry creates, but I  
13 want to ask more about around our recommendations  
14 ultimately being implemented.

15 So, you know, given what -- some of the  
16 conversation we've had here the last two days about  
17 international human rights standards not necessarily being  
18 incorporated in Canadian domestic law, and I'm thinking in  
19 particular about social and economic rights, so I'm just  
20 wondering if you have any further thoughts or  
21 recommendations in relation to the recommendation that this  
22 Inquiry is ultimately going to come up with, and how those  
23 can ultimately be implemented in terms of, are there  
24 mechanisms? Are we relying on political will? In terms of  
25 your international expertise.

1           **MS. BRENDA GUNN:** This is always the  
2 struggle, and it's the, I think, hardest question to  
3 answer, you know, what can be done? Again, I go back to  
4 saying I think the benefit of a human-rights-based approach  
5 means that when the recommendations are being made, they're  
6 grounded at least to some extent in legal obligations and  
7 framing them that way. So these aren't sort of things, oh,  
8 Canada should do this or Canada should do this. It's  
9 Canada has legal obligations and has failed to uphold  
10 fundamental human rights, right, so that the language may -  
11 - or engaging an international human rights-based approach  
12 may engage more mandatory language to recommendations  
13 potentially because they are grounding in legal obligations  
14 and I don't know if you have stronger language that leads  
15 to more implementation, I'm not sure.

16                   The other thing that I was really struck by  
17 and really appreciated was Corey's comments earlier about  
18 the different responsibilities, right. And so, you know,  
19 part of ensuring obligations or encouraging people to  
20 follow through with the recommendations may also be that we  
21 think creatively on who's responsible and how to engage all  
22 the different parties.

23                   And as part of that, empowering Indigenous  
24 women to also be involved in this implementation process,  
25 right.

1           What I'm not sure is super successful is,  
2           you know, a stack of recommendations to the governments and  
3           then we sort of all walk away but building in, you know,  
4           the periodic reporting, having recommendations that the  
5           community, including Indigenous women and families of  
6           murdered and missing Indigenous women, also believe in that  
7           they're going to rally behind, right, so that the people  
8           who have been involved in this process and the people who  
9           haven't been involved in this process, when they read them,  
10          they're going to be like, yeah, this is something that  
11          people need to do and they're going to push for them, you  
12          know.

13                 And I think we've seen some of that momentum  
14          coming out the Truth and Reconciliation Commission's Calls  
15          to Action that there's been really large buy-in from  
16          different sectors and different ground -- grassroots  
17          movements and pushes to begin that process. So I think  
18          that helps.

19                 And to use Jean Leclair's ideas of  
20          legitimacy, I also think that when you ground them in human  
21          rights, to certain audiences that may give greater  
22          legitimacy. To others, it may not, right. I do recognize  
23          that sometimes to Indigenous communities, human rights feel  
24          like a very foreigner western concept and so whether or not  
25          that's alienating or how to bring that in but it may also

1 give some of that legitimacy to recommendations.

2 **COMMISSIONER BRIAN EYOLFSON:** Next, Doctor  
3 Dorough.

4 **DR. DALEE SAMBO DOROUGH:** Thank you very  
5 much.

6 I've said repeatedly that the international  
7 human rights standards don't really mean anything in the  
8 halls of the United Nations. They're not relevant at the  
9 U.N. Headquarters in New York. They're really not relevant  
10 in the context of the Centre for Human Rights in Geneva.  
11 Where they are relevant is at the national level. Where  
12 they are relevant is where the human rights violations are  
13 taking place.

14 So I think that in terms of the larger, as  
15 Jean Leclair said, social enterprise of changing the  
16 structural and underlying causes and risks that we can  
17 start through taking, for example, the legal system and  
18 when there is discrimination, call it discrimination.  
19 Don't let anything sit for a moment longer. I mean we  
20 know. We know it when we see it.

21 As individuals, we know it, we see it. You  
22 know, think about the person on the bus when he sees  
23 discriminatory act being taken by someone and to stand up  
24 and say, you know, I'm watching you. This is unacceptable  
25 and intolerable behaviour.

1           So as governments, in particular those  
2           responsible for gaining the resources, whether they're  
3           subsidized by the federal government or the taxes of the  
4           provincial level, supposedly in favour of the people  
5           through social contract, the policing of that system that  
6           is consistent with the basic and fundamental principles of  
7           human rights of non-discrimination, equality and so forth,  
8           but I think also even moreover that the actions taken by  
9           these various different institutions, as I said previously,  
10          from the investigators to the public defenders, the  
11          prosecutors, everybody throughout the system that this is  
12          one area where some change can happen in very practical  
13          terms that are consistent with the international human  
14          rights standards. So you compound that with the  
15          obligations and, again, very, very practical measures out  
16          there and on the ground.

17                 I'll just share quickly, in Alaska, we had  
18          difficulties with our land claims agreement, the  
19          recognition of tribal governments and federally recognized  
20          Indian tribes. And some of this work emerged from Thomas  
21          Berger who the Inuit Circumpolar Council managed to secure  
22          as an independent commissioner of what was referred to then  
23          as the Alaska Native Review Commission.

24                 His report is entitled "Village Journey:  
25          The Report of the Alaska Native Review Commission". He



1 captured the voices of Indigenous peoples in regard to the  
2 problems and impacts of our land claims agreement in  
3 Chapter 7.

4 So the empowerment of people out there and  
5 on the ground was one thing but it took -- it took  
6 engagement with the state government, the equivalent of  
7 provincial or territorial governments here, to really start  
8 that dialogue at the local level and then eventually at the  
9 national level.

10 And one of the important things that came  
11 out of all of this work was what was referred to as the  
12 Millennium Accord wherein our state government sat down  
13 with tribal governments or the First Nations' equivalent in  
14 Alaska and every agency within the state government had to  
15 engage in dialogue with their corresponding peers within  
16 tribal governments.

17 And in particular, Division of Family and  
18 Youth Services had to sit down with those responsible for  
19 implementing the *Indian Child Welfare Act* as a tribal  
20 government and to begin this dialogue about, okay, how do  
21 we make sure -- as Corey cited, how do we make sure we're  
22 not losing children from our communities that get captured  
23 in the system and can have great difficulty in being  
24 returned.

25 And this was just a very practical step of

1 people talking to their counterparts as far as -- as far as  
2 government is concerned. And I think that the U.N.  
3 declaration and other international human rights  
4 instruments can offer these important guidelines for  
5 engaging in that type of discussion at the grassroots level  
6 and where people are being victimized the most.

7 **MS. CHRISTA BIG CANOE:** Sorry to interrupt  
8 your questions. I'm going to ask or request if there's any  
9 further questions for Monsieur Leclair as he will have to  
10 depart and I'm going to ask if you can excuse him from any  
11 questions. So first if you have questions and direct them  
12 into if you can.

13 **COMMISSIONER BRIAN EYOLFSON:** Okay. So I'm  
14 finished with my questions. So I'll pass the mic onto my  
15 colleagues.

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

17 **COMMISSAIRE MICHÈLE AUDETTE:** Parce que  
18 c'est très bref. C'est pour tout le monde.

19 Brièvement, un gros, gros merci, Monsieur  
20 Leclair, avant que vous repreniez la route-là pour  
21 Montréal.

22 Ma première question je vais la retracer  
23 parce que je l'ai écrit en français. Croyez-vous que le  
24 Canada... et ça s'applique pour tous les panelistes en  
25 avant-là, les experts... que le Canada... ou avez-vous

1 l'impression ou avez-vous des preuves que le Canada... je  
2 vais le dire dans mes mots, o.k.

3 Est-ce que le Canada reconnaît que les  
4 causes profondes que les femmes vivent là au niveau de la  
5 violence sont reliées à la violation de leurs droits  
6 économiques, sociaux et culturels?

7 **Me JEAN LECLAIR:** Je sais pas ce que le  
8 Canada, les représentants canadiens en pensent mais quand  
9 on regarde les choses, quand on regarde les dizaines de  
10 commissions qui sont tenues, quand on regarde plus de 1 000  
11 recommandations je pense ont été faites, je pense que ça  
12 crève les yeux qu'il y a un problème très grave qui se  
13 manifeste dans les statistiques qu'on a entendues. Et je  
14 pense que c'est en utilisant toutes les normes qui sont  
15 disponibles, que ce soit des normes de droit international,  
16 soit des normes de droit fédéral, provincial,  
17 constitutionnel, il faut mobiliser ces normes-là pour  
18 exiger du gouvernement qui -- des gouvernements qu'ils  
19 prennent les mesures qui sont nécessaires.

20 **COMMISSAIRE MICHÈLE AUDETTE:** Dans ce cas-là,  
21 parce que les travaux de l'enquête, l'analyse de la preuve,  
22 le rapport et les recommandations, nous le faisons, et  
23 encore une fois je vais le dire dans mes mots, avec une  
24 lentille, avec un esprit-là dans lequel les droits de la  
25 personne font parties de notre grille d'analyse. Que ce

1 soit au niveau du genre, de la culture, ça aussi c'est  
2 important là dans nos travaux.

3 Et on remarque avec des internationaux,  
4 nationaux ou interaméricains que certaines conventions  
5 n'ont pas été ratifiées par le Canada. Et on a entendu  
6 quelques fois de la part de différents panelistes que la  
7 disparition forcée, l'une des conventions-là qui... est-ce  
8 que le Canada devrait ratifier cette convention-là... bien  
9 y en a deux-là, une internationale pour la protection de  
10 toute personne contre les disparitions forcées, est-ce que  
11 le Canada devrait la ratifier?

12 **Me JEAN LECLAIR:** Vous me demandez ça à moi?

13 **COMMISSAIRE MICHÈLE AUDETTE:** Oui.

14 **Me JEAN LECLAIR:** Bien, c'est sûr que...

15 **COMMISSAIRE MICHÈLE AUDETTE:** Pour que les  
16 gens vous entendent à travers le Canada.

17 **Me JEAN LECLAIR:** Je pense que oui. Je crois  
18 que... mais comment répondre à ça? Comment... la réponse, c'est  
19 oui, pour ça ; la question, c'est de savoir pourquoi ces  
20 conventions-là, même si elles sont signées, elles ne sont  
21 pas nécessairement un grand changement. C'est plutôt ça, la  
22 question qui est colossale.

23 **COMMISSAIRE MICHÈLE AUDETTE :** Oui. Ça,  
24 c'était la sous-question.

25 **Me JEAN LECLAIR :** Oui. Écoutez, je suis

1       juste un juriste, je ne suis pas... donc, je m'en tiens à mon  
2       expertise pour répondre à une question comme celle-là.

3               C'est sûr que quand on regarde la  
4       construction de l'État canadien, il s'est construit sur le  
5       dos des peuples autochtones. Je pense qu'il y a des efforts  
6       sincères de réconciliation qui se font. Je pense que la  
7       Cour suprême, dans la limite de ce que peuvent faire des  
8       juges non élus dans une démocratie constitutionnelle, tente  
9       de transformer les choses. Je pense que la Cour suprême -  
10      je n'ai pas le temps d'élaborer, mais je pense qu'elle sert  
11      la vis toujours un peu plus. Mais c'est une institution  
12      humaine, c'est une institution qui ne remettra jamais en  
13      question la souveraineté de l'État canadien, c'est clair.

14             Donc, les tribunaux judiciaires sont limités  
15      dans l'étendue de ce qu'ils peuvent accomplir - ce sont des  
16      outils. Et je vous donne la réponse de Jean Leclair l'être  
17      humain aussi bien que le juriste : je pense que le travail  
18      de cette commission-là, mon espoir, c'est qu'elle  
19      contribue, enfin, à ce que les mentalités se transforment.

20             En même temps, je me dis que le droit  
21      relatif, même aux autochtones, n'était même pas enseigné il  
22      y a 15 ans d'une manière systématique dans les universités.  
23      J'ai eu 180 étudiants cette année ; 75 % d'entre eux sont  
24      des femmes. Il faut voir l'espoir là où il se trouve.

25             **COMMISSAIRE MICHÈLE AUDETTE** : Vous parlez

1 d'espoir et c'est là-dessus que je terminerais et j'invite  
2 tout le monde à répondre, si vous avez des choses à dire.  
3 Moi, je viens d'un milieu très très proche de ma communauté  
4 et c'était ça, mon école. Et quand on nous a mandatés, en  
5 2016, un mandat très très vaste, un pays énorme, qu'on  
6 appelle maintenant le Canada, avec une diversité culturelle  
7 magique, forte et incroyable ou, à certains endroits, plus  
8 difficile de maintenir sa culture, sa langue et ses  
9 traditions. Et on ne nous a pas demandé d'étudier sur un  
10 nombre d'années et des sujets bien précis. On nous a donné  
11 un grand mandat.

12 Et dans ce mandat-là, on nous a aussi donné,  
13 ordonné - j'aime la traduction française que je fais, *we*  
14 *order you*, on nous a mandaté de faire un rapport avec des  
15 recommandations faciles ou, je dirais dans mes mots,  
16 pratiques. Alors, quand on entend parler des conventions  
17 internationales, des pactes, des droits humains, ça peut  
18 paraître très loin dans la survie d'une femme, comme ça a  
19 été mentionné par certains membres de partis intéressés.

20 La question est difficile, mais comment on  
21 peut faire en sorte, dans nos recommandations, qu'on sente  
22 qu'on a pris cette lunette-là, mais qu'on a aussi des  
23 recommandations qui vont faire en sorte que le Canada soit  
24 imputable?

25 **Me JEAN LECLAIR** : Écoutez, je suis bien

1 honnête, je suis venu ici pour *speak in a good way*. Je  
2 pense qu'il faut... je pense que le droit international qui a  
3 été exposé aujourd'hui fait partie de la solution. À la  
4 grande échelle, c'est un discours normatif essentiel qui  
5 peut servir aussi de levier politique.

6 Mais en même temps, je répète ce que j'ai  
7 dit, il me semble que ce qu'il faut... puis c'est vraiment  
8 personnel, ce qui pourrait faire la différence entre cette  
9 commission et d'autres, bien humblement, je me dis que s'il  
10 était possible de recommander que des initiatives  
11 autochtones à petite échelle... parce que le droit  
12 international, c'est la très grande échelle. Mais est-ce  
13 qu'il n'y a pas des initiatives autochtones à petite  
14 échelle qui ont du succès? Ou à moyenne échelle, qui ont du  
15 succès? Je pense aux travaux fait par Cory, avec l'aide,  
16 même, du gouvernement. Essayer de trouver, dans ces succès-  
17 là, même si ce ne sont pas des succès nationaux, ça peut  
18 être des succès régionaux, ça peut être des succès locaux,  
19 ça peut être des succès de petits villages, de petites  
20 communautés, de se servir de ça comme d'un tremplin pour  
21 voir qu'est-ce qui pourrait avoir de la légitimité, qu'est-  
22 ce qui pourrait fonctionner.

23 Parce que souvent, je trouve qu'en droit, en  
24 fonctionne comme si les êtres humains étaient des surhommes  
25 ou des sur-femmes. Il faut fonctionner avec une

1 anthropologie, je dirais, minimale : les gens sont coincés  
2 dans le monde dans lequel ils sont puis que le droit doit  
3 tenir compte de cette fragilité-là. Il y en a qui sont  
4 capables de faire de grandes choses : vous, plein de gens  
5 ici. Mais il y en a d'autres pour qui c'est plus difficile.  
6 Alors, il faut que les solutions soient appropriées pour  
7 tout le monde.

8 **MS PENELOPE GUAY:** So, I am sorry..

9 **Me JEAN LECLAIR:** Je vous remercie beaucoup,  
10 puis je m'excuse, c'est pour des raisons personnelles  
11 importantes que je dois m'absenter. Merci beaucoup du  
12 privilège de m'avoir eu ici.

13 **COMMISSAIRE MICHELE AUDETTE:** Merci.

14 **MS. CHRISTA BIG CANOE:** So, actually, I know  
15 that you are dashing off, M. Leclair, but Pénélope has  
16 something small for you.

17 (PRESENTATION OF GIFT/REMISE DE CADEAU)

18 **COMMISSIONER QAJAQ ROBINSON:** Mr. Leclair,  
19 before you go, I would just like to give Audrey an  
20 opportunity to explain the gift wrapped in the floral cloth  
21 that has been given to you because this comes with  
22 responsibilities, as I've been taught.

23 So I want to give her the opportunity to  
24 convey this to you.

25 **MS. AUDREY GIRARD:** Thank you for being here



1 and sharing your knowledge, your energy, what we call  
2 medicine, too. And what is in there is the white tail  
3 feather from a bald eagle, as was shared with me in  
4 Edmonton -- Winnipeg; I can't remember. This is the  
5 feather for the warriors.

6 You have allowed yourself or put yourself to  
7 be on the tip of a particular spear and this is --  
8 acknowledge the good that you've done, and also to remind  
9 you how to take care of yourself and take care of others,  
10 not just with the knowledge but also with the energy and  
11 the spirit and to acknowledge the work that you've already  
12 done. So we raise our hands and say haitch'ka (ph).

13 **MS. CHRISTA BIG CANOE:** Commissioner  
14 Robinson, do you have any questions?

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

16 **COMMISSIONER QAJAQ ROBINSON:** I think you  
17 know me well enough by now. I have questions and I have  
18 more questions than we have time for but I'll do my best.

19 I also have some questions that Chief  
20 Commissioner Buller handed to me, and I think I'm going to  
21 start with one of hers. And I'll direct it to you,  
22 Professor Gunn, because it's building off one of your  
23 slides, but I think this is also something that I encourage  
24 any of the panellists to speak to if you feel that you are  
25 compelled.

1           On your slide that speaks to who is  
2 obligated to uphold human rights -- and I'm going to go  
3 back again and preface this.

4           It's really for me, as we do this work,  
5 constantly necessary to connect what we're learning back to  
6 what it means for those living this. So as we talk about  
7 obligations, there's a whole range of people with power  
8 around a woman, around an Indigenous woman and child who,  
9 by virtue of takin this power, have obligations. So I  
10 think it's really important that we talk about these  
11 obligations, what they mean, and who holds them.

12           At the bottom of your slide you indicate  
13 that Indigenous governments hold obligations under  
14 international human rights instruments. Can you elaborate  
15 on that? What do you mean by Indigenous governments?  
16 Particularly in a country where there's been limited agency  
17 or space provided to many Indigenous peoples to structure  
18 themselves and to have that space as a government.

19           **MS. BRENDA GUNN:** Thank you for the  
20 question. My decision to include this was related in part  
21 to some of the conversation that I heard on Tuesday, and I  
22 think came up again here, was concerns about if and when  
23 Indigenous peoples exercise the right to self-government,  
24 will that process lead to a better outcome for Indigenous  
25 woman. And I'm aware in the nineties and earlier there

1 were conversations about whether or not the Charter of  
2 Rights and Freedoms should apply to Indigenous self-  
3 governance.

4 And I guess part of my inclusion there is a  
5 belief that particularly in reference to the U.N.  
6 Declaration where Indigenous peoples were the first  
7 drafters of the very first draft, were involved at every  
8 stage of the articulation of the rights, that the rights  
9 that are encapsulated in the U.N. Declaration really  
10 reflect Indigenous people's own understandings of human  
11 rights. In particular the U.N. Declaration also makes  
12 reference to Indigenous people's own laws, customs,  
13 traditions, and institutions. And so I do believe that you  
14 know, Indigenous peoples aren't just rights holders but  
15 where and when we govern ourselves we have the obligation  
16 to uphold those same international human rights standards.

17 And I would point particularly to the U.N.  
18 Declaration, at a minimum, for example, as one that  
19 Indigenous peoples were involved in negotiating and  
20 identifying the standards and making those connections.  
21 Then, again, I don't see it as being an imposition but in  
22 reference to Indigenous people's own laws, ensuring that  
23 decision-making processes are participatory, right? And  
24 that Indigenous women and children and youth are involved  
25 in decision-making processes. I believe this is part of a

1 real foundational right that exists in international law  
2 and as we continue to govern ourselves and be recognized to  
3 be self-governing, I think these are appropriate standards  
4 to hold ourselves up to.

5 I'm not sure if the question was also hoping  
6 for me to say, like, you know, *Indian Act*, chief and  
7 councils, et cetera, but I do think that this Indigenous  
8 governments it was the shortest bullet point on the slide  
9 and it was sort of in some ways the vaguest because I did  
10 mean it in a very vague and general sense, knowing that at  
11 this point in time in Canada Indigenous peoples are self-  
12 governing in various fashions. There's communities that  
13 still have traditional councils that exist and you know,  
14 the Métis communities in Manitoba at least we're still --  
15 technically the Manitoba Métis Federation is a corporation,  
16 right? So we're still under that corporate structure. But  
17 these are standards that I hold -- I do call that my Métis  
18 government and I do hold them to those same standards.

19 So I mean the term quite broadly but I also  
20 meant to imply it in that sort of ongoing basis of  
21 negotiating for greater recognition of self-governance.  
22 Does that get to the question?

23 **COMMISSIONER QAJAQ ROBINSON:** It does to a  
24 degree and I guess it goes to this question of what is a  
25 government so -- and, you know, what is self-government.

1           **MS. BRENDA GUNN:** And that's what I'm  
2 hedging around.

3           **COMMISSIONER QAJAQ ROBINSON:** We could be in  
4 school for ---

5           **MS. BRENDA GUNN:** Yeah.

6           **COMMISSIONER QAJAQ ROBINSON:** We could do  
7 this for years.

8           **MS. BRENDA GUNN:** but I ---

9           **COMMISSIONER QAJAQ ROBINSON:** Dalee, do you  
10 have a comment?

11           **MS. BRENDA GUNN:** I'll let Dalee -- I'm  
12 sorry.

13           **COMMISSIONER QAJAQ ROBINSON:** It looks like  
14 you have something to say.

15           **DR. DALEE SAMBO DOROUGH:** No, I simply  
16 wanted to say that Brenda's reference to the U.N.  
17 Declaration acknowledging and affirming Indigenous  
18 practices, customs, institutions, self-government and  
19 actions should be taken consistent with those traditions,  
20 customs, and practices, including legal traditions. And I  
21 know that, Qajaq, you're familiar with not only rights but  
22 responsibilities. If we think about many of our -- we call  
23 them Indigenous governments but we know that it's -- that  
24 doesn't translate, actually. You know, things like the  
25 word "sovereignty" and "self-determination," it doesn't

1 translate neatly into Inupiaq or Inuktitut or Siberian  
2 Yup'ik language. But we know what it is. We know what it  
3 is, we feel it. We work in terms of rights and  
4 responsibilities. And I think that, for example, even  
5 Nunavut as a public government but a majority Inuit that -  
6 - to adopt the U.N. Declaration and to begin implementing  
7 it, to some extent, there are areas that are easily  
8 translatable.

9 The other dynamic I wanted to point out is  
10 that there has become an emerging practice on the part of  
11 Indigenous governments or Indigenous political institutions  
12 far and wide, of adopting the -- of formally adopting the  
13 U.N. Declaration, translating it into Indigenous languages,  
14 and looking at how they can incorporate these things into  
15 their own practice and behaviour.

16 One of the best examples that I have is that  
17 the Treble (ph) government in southwest Alaska in Bethel,  
18 Yup'ik people, Yup'ik all the way and what they chose to do  
19 again in relation to child welfare was to begin the  
20 drafting of a new and different Tribal Code. The first  
21 source of their Tribal Code to take care of their own  
22 children is their knowledge, all of their practices on --  
23 and Corey started to describe this as well -- when a child  
24 is orphaned or the practice of the UPIC is the first uncle.  
25 So they used their own knowledge.

1           Then they borrowed the best that there was  
2 available at the national level, which at that point in  
3 time was the *Indian Child Welfare Act*.

4           Then they went to the international level  
5 and they looked at the Convention on the Rights of the  
6 Child and integrated that into their own UPIC Code and  
7 other international human rights instruments that speak to  
8 protection of children, and that became their Code. Most  
9 of it is oral, completely oral, UPIC, but they did take the  
10 effort to translate it into their own language.

11           And so I think the reference that Brenda  
12 made in that particular slide is in likelihood informed by  
13 all of these different developments, but also looking at  
14 rights and responsibilities within our own community, many  
15 of which are not translatable.

16           **COMMISSIONER QAJAQ ROBINSON:** And that  
17 absolutely goes to the crux of what I'm asking about. You  
18 know, in the conventional Euro-Canadian sense, we can look  
19 at these international instruments and human rights  
20 legislation and say, "Okay, well, they ratified it. They  
21 legislated it -- so the feds did -- and then the Province  
22 did, and then the Territories did, and their delegated  
23 authorities did."

24           To connect those dots, it does not go in  
25 terms of the -- whom is legally obliged follows that

1 mechanism that we talked about yesterday.

2 And am I right to say that this does not  
3 automatically then go to Indigenous governments? For  
4 example, the Nunatsiavut government has jurisdiction over  
5 social, family, youth services through their land claims  
6 and self-government agreement. There's different nuances,  
7 mechanisms whereby they are legally bound.

8 What you have both shared with us is more of  
9 responsibility that we have regardless of what the legal  
10 mechanism is. Is that a correct way to characterize it?

11 **MS. BRENDA GUNN:** Yeah, I think so, and  
12 particularly, you know, when we start looking beyond those  
13 specific instruments, the normative standards really do  
14 become clearer, and I think we're fortunate now because we  
15 live in an era where there is the UN Declaration that when  
16 we're speaking of Indigenous People's rights, we have a  
17 really good starting point to figure these things out. So  
18 I am talking -- I think you're right -- more of that  
19 normative and beyond that sort of technical.

20 And at a minimum, I mean, I could have  
21 caveated it a whole bunch of different ways, but I thought  
22 it was worth throwing out there at least as a starting  
23 point for conversations that, you know, there are  
24 responsibilities of governments, and especially if we're  
25 saying the Canadian government needs to hold this standard



1 when engaging with us, it's hard to think about why we  
2 wouldn't hold ourselves to the same standard.

3 **COMMISSIONER QAJAQ ROBINSON:** And we've  
4 heard this week about trepidation and fear that women,  
5 Indigenous women and children have about the switching of  
6 power in that -- in the most simplest sense because it's  
7 the hand of -- it's the power to switching from one  
8 oppressor to another. And we have to acknowledge, and I  
9 have to acknowledge, as someone who has heard this directly  
10 from families and survivors across the country, that that  
11 is the fear. There is huge fear.

12 Would you think, in terms of as our position  
13 it would be a wise recommendation to -- it would be wise  
14 for us to recommend to either Indigenous governments,  
15 Indigenous political organizations, to engage in what you  
16 just described to us of taking those standards and  
17 implementing them and upholding them? As a means of -- I  
18 think there's two positive outcomes there, that -- what's  
19 that word -- just sort of this flagrant normative -- how  
20 violence has become normal, how this reality has become,  
21 you know, just this unspoken just the way life is. The  
22 word is lost to me now, but that doesn't matter.

23 Do you think that this might be an  
24 instrument that can help Indigenous women gain some  
25 confidence when it starts looking at who will the service

1 providers be as self-government becomes actualized as well?

2 **DR. DALEE SAMBO DOROUGH:** If I understood  
3 you correctly, the new norm, the status quo becomes just we  
4 accept this level of violation and insecurity.

5 I think that in answer to your specific  
6 question, my advice and recommendation to you as  
7 Commissioners would be to include such a proposal and First  
8 Nations, Métis and Inuit, will decide on the basis of self-  
9 determination if they want to be responsive.

10 But I get what you're saying about the  
11 trepidation as well and the fear, and we have examples of  
12 that. I think for me anyway, one of the clear examples is  
13 greenling government, where the Inuit are a majority, but  
14 they've taken some steps that are actually in violation of  
15 the rights and interests of communities that could be  
16 severely and adversely impacted by the decisions that the  
17 government has made and undermining the rights of the  
18 people who will be most adversely impacted.

19 So it serves as a warning and also a target  
20 about good governance and the principles of good governance  
21 that should be practised not only by all the governments  
22 and in particular those that ratify or exceed to  
23 international human rights instruments, but good governance  
24 in the context of Indigenous governments as well, including  
25 those where they are majority Inuit.



1 family lives, you know, the best interests, ensuring our  
2 children have a voice, without them even knowing that their  
3 rights are being upheld within that family unit or within  
4 that community unit.

5 And I think for me, if I want to take it  
6 right back to the granular level where it's going to impact  
7 our young girls the most, the people that are going to do  
8 that are their family. You know, it might be the Chief,  
9 but depending on who that Chief is or who that leader is,  
10 they might be the perpetrator.

11 I had one Elder tell me, you know, that our  
12 men need to start being men again. They need to stop doing  
13 the things that they're doing to our young girls and they  
14 need to start being the leaders and they need to start  
15 being men again.

16 So, you know, if we're taking it to the  
17 leadership level, you know, that might even be an issue. I  
18 think we need to go even further down on who's responsible,  
19 even if they don't understand what those international  
20 rights are and that they have. I think that we need to  
21 make recommendations and we need to hold our families, our  
22 communities, we need to hold our men to account when it  
23 comes to these situations.

24 **COMMISSIONER QAJAQ ROBINSON:** Thank you. As  
25 we talk about -- I mean, one of the big hopes for us as

1 Commissioners coming out of this week was really fully  
2 understanding how a human rights analysis, and how framing  
3 recommendations and solutions in this human rights -- and  
4 when I say that I include UNDRIP and Indigenous rights.  
5 And we've -- it's not just you that has brought this out as  
6 something that needs to be the methodology and the approach  
7 that's taken. Setting those benchmarks and standards  
8 against which those with responsibilities and those that  
9 bear the obligations must be measured up against. There's  
10 been some criticism about applying a straight human rights  
11 framework or that which is defined by these instruments, as  
12 it arguably could result in a lack of inclusion of  
13 Indigenous rights and Indigenous views.

14 I'm going to try to formulate this as a  
15 question, because -- to be fair. Do you see this as being  
16 something that we should be cognisant of? Does this human  
17 rights lens or analysis -- situational analysis I think, is  
18 what it's been called. By applying just a human rights  
19 lens, do you see there being some limitations, and  
20 particularly because of that concern that it doesn't  
21 include Indigenous legal frameworks, or Indigenous legal  
22 values? And how can we address those limitations? Again,  
23 to whomever.

24 **MS. BRENDA GUNN:** He and I are just going to  
25 keep passing the ball back and forth, I think. I guess my

1 answer is, depending how you do this. I think if you just  
2 take the sort of, instruments on sort of the words on the  
3 page and just try to use that in an a-contextual approach  
4 there is that worry. But I mean, one of the reasons that I  
5 have -- am so moved and impassioned about implementing the  
6 UN Declaration and using the UN Declaration in connection  
7 with broader human rights, is that I really believe that  
8 the UN Declaration is grounded in Indigenous Peoples' own  
9 laws. And that when we take general human rights standards  
10 and use them to analyse a situation in relation to  
11 Indigenous Peoples, you have to bring in those  
12 understandings and those Indigenous laws.

13 And so, I think that concern can exist if  
14 it's not done in an appropriate contextual approach, right?  
15 So this is where things like the best interest of the child  
16 may look different when we're talking about Indigenous  
17 children. And that's why the Convention on the Rights of  
18 the Children has a general recommendation on Indigenous  
19 children that talks about how the general Convention  
20 applies specifically in relation to Indigenous Peoples,  
21 right? That we look at these things in different ways.

22 The other thing that I would come back to is  
23 part of this foundational aspect, you know, once we say no  
24 discrimination, equality, self-determination, foundation, I  
25 mean, I would say one of the next foundational principles

1 in international human rights law is that Indigenous  
2 Peoples are involved in the process, right? So I mean,  
3 there's then a responsibility of the Indigenous Peoples who  
4 are involved in the process to bring in that perspective  
5 and bring in some of that Indigenous law, so that the space  
6 is made and that it's brought.

7 So I think those are some of the safeguard  
8 that could exist to ensure that the human rights based  
9 approach doesn't just perpetuate western European views.  
10 And I would say that I'm very impressed with the ways in  
11 which international human rights bodies have begun to  
12 understand how general human rights instruments apply in a  
13 specific context. And the Committee on the Elimination of  
14 Racial Discrimination had a general recommendation that  
15 talks about Indigenous People's rights in relation to  
16 racial discrimination. There's lots of those, sort of,  
17 documents that help to start think through how general  
18 human rights apply in a specific context.

19 **MS. DALEE SAMBO DOROUGH:** I'd also like to  
20 say that those human rights treaty bodies that were  
21 following the developments and the negotiation of the UN  
22 Declaration started to actually invoke it, even when it was  
23 a draft declaration. And in fact, some of the recourse  
24 mechanisms that had been previously utilized by Indigenous  
25 Peoples, namely the Inter-American Commission on Human

1 Rights, the Inter-American Court of Human Rights, invoke  
2 the declaration when it was in its draft form. So it meant  
3 something to these various different institutions. And  
4 this is my way of saying that we have to be mindful of the  
5 objective of the Declaration. That the key and primary  
6 parties and the way that it was drafted was to compel the  
7 UN member states to take into account the distinct cultural  
8 context of Indigenous Peoples, no matter where they were.  
9 And that the -- that was the primary objective.

10 And so, when you look at -- when you look at  
11 the preamble, for example, of the Declaration, the final  
12 preambular paragraph before Article 1, solemnly proclaims,  
13 the following United Nations Declaration on the Rights of  
14 Indigenous Peoples as a standard of achievement to be  
15 pursued in a spirit of partnership and mutual respect. And  
16 the partnership in this context is between nation states  
17 and Indigenous Peoples' nations and communities. And I  
18 think that that in addition to how you begin to take the  
19 rights affirmed herein and implement them at ever possible  
20 level, including within Indigenous political institutions,  
21 lends itself to operationalizing these rights.

22 But again, the most important party and the  
23 most important element is the nation states, as Jean  
24 Leclair said, has -- that have built their nations on the  
25 lands and the territories of Indigenous Peoples.



1 Especially throughout the Americas, Africa, and Asia. So I  
2 think it's important for us to be mindful about what its  
3 real objective happens to be.

4 **COMMISSIONER QAJAQ ROBINSON:** Thank you.  
5 very mindful of the time, so I don't want to keep going too  
6 much. So I'm going to leave it to two more questions. Two  
7 more themes, sorry.

8 We've talked about the enforced  
9 disappearance and I think the -- what's the acronym for  
10 that -- sorry. The Convention on the Protection of all  
11 persons from enforced disappearance. And this was one that  
12 was new to me, so I pulled it up and read what the  
13 definition of enforced disappearance was. Brenda, in terms  
14 of -- so this is currently not signed by Canada. What  
15 value do you believe this instrument would add to the  
16 existing legal instruments Canada is a party to? When  
17 looking specifically at the issue of violence against  
18 Indigenous women and girls.

19 **MS. BRENDA GUNN:** A couple things. Yes,  
20 Canada is not a party. I did indicate that there is some  
21 academic writing that the rule against enforced  
22 disappearance is becoming a rule of customary international  
23 law, which then if we accept that or that it's a growing  
24 rule of customary international law, the Convention can  
25 then be seen to have some normative value and directions

1 for what it says.

2 Value -- and I should also reiterate that  
3 I'm not alone in calling for Canada to ratify, that I can't  
4 remember all of the different treaty monitoring bodies that  
5 have reported, but I think, if I'm correct, both CEDAW and  
6 CERD have both called for Canada to ratify this Convention.

7 So I think it has several values. I mean,  
8 Canada has said they're serious about addressing the  
9 situation, so why -- and that we are human rights abiding  
10 state, so why not become party to a convention that  
11 specifically addresses enforced disappearances?

12 The second thing that I think -- or maybe  
13 that was third. I don't know. I can't count anymore. The  
14 next one is that the jurisprudence that's coming out of the  
15 Committee is useful in that it's fleshing out some really  
16 good ideas of what is appropriate and necessary action of  
17 the state.

18 And I'm not sure I can pull up the details  
19 but my article provides a few examples where there are  
20 enforced disappearances in different countries and sort of  
21 -- you know, the Committee found that taking X amount of  
22 days to respond was too long; right? So there's some  
23 really practical information coming out from the Committee  
24 that oversees it.

25 And, yeah, so I think those are some of the

1 examples. And I just think that, at least for me, someone  
2 who, you know, believes in human rights and wants to see  
3 Canada do better, it's really important that if Canada  
4 truly says that they're going to start addressing the  
5 situation that they exceed to a convention that addresses  
6 the issue; right? Like, I just don't understand how  
7 someone can say we're committed to addressing the issue but  
8 we're not willing to be bound by these international  
9 standards that provide protection against this, right, and  
10 that set out these obligations.

11 And so for someone -- in my own mind then  
12 I'm thinking of the rule of law. I don't understand how  
13 one can hold those positions. And so that's why I included  
14 it in my proposals.

15 **DR. DALEE SAMBO DOROUGH:** I just want to  
16 quickly add that I wouldn't be surprised if, in fact, this  
17 intersectional perspective that Pragna Patel and others  
18 have written about in terms of gender and racial  
19 discrimination, that this particular issue arises,  
20 especially if you recognise, for example, on the Convention  
21 Against Torture, that the UN Special Rapporteur on torture  
22 has now been urged to take an anti-torture framework in  
23 relation to gender and violence.

24 And so I think that this is a really  
25 important thing to consider in terms of the potential for a

1 much more expansive role on the part of, for example,  
2 Special Rapporteurs ---

3 **COMMISSIONER QAJAQ ROBINSON:** Okay.

4 **DR. DALEE SAMBO DOROUGH:** --- who are  
5 looking specifically at the issue of violence against women  
6 and specifically violence against Indigenous women and  
7 girls.

8 **COMMISSIONER QAJAQ ROBINSON:** So it's really  
9 the recourse mechanism that this -- the body overseeing the  
10 implementation of this Convention would provide. In  
11 addition to the substantive rights they're recognising it's  
12 that mechanism that's of value.

13 **MS. BRENDA GUNN:** Yeah, I think it's a final  
14 level. It also then provides a recourse or a body. But I  
15 do also just think that some of the conversations that  
16 they're having on what the state needs to do, I think for  
17 an Inquiry like this that is trying to sort of set out what  
18 Canada needs to do, some of the standards that are being  
19 set out can be helpful.

20 **COMMISSIONER QAJAQ ROBINSON:** Thank you.

21 Do you think that in addition to the issues  
22 of disappearances and violence and murders, we also hear a  
23 lot about what I will call state violence and denial of  
24 rights in relation to children, girls in the child welfare  
25 system, youth, female youth in custody, and women in

1 custody. We're hearing about this huge overrepresentation  
2 of women, not only from the families and survivors, but  
3 it's coming out in reports from the Office of the  
4 Correctional Investigator, Statistics Canada's data is  
5 showing this as well and it's an alarming reality.

6 Is this a Convention -- do you think this  
7 Convention will help frame understanding in responding to  
8 that issue of women in custody and girls in the care  
9 system?

10 **MS. BRENDA GUNN:** The International  
11 Convention on ---

12 **COMMISSIONER QAJAQ ROBINSON:** Enforced  
13 Disappearance.

14 **MS. BRENDA GUNN:** --- Enforced  
15 Disappearances we're thinking of specifically? You know  
16 what? I hadn't fully turned my mind to that and how it  
17 would apply ---

18 **COMMISSIONER QAJAQ ROBINSON:** I don't want  
19 to ---

20 **MS. BRENDA GUNN:** --- in those  
21 circumstances.

22 **COMMISSIONER QAJAQ ROBINSON:** --- put you on  
23 the spot.

24 **MS. BRENDA GUNN:** Yeah, I ---

25 **COMMISSIONER QAJAQ ROBINSON:** It's just sort

1 of what I'm thinking ---

2 **MS. BRENDA GUNN:** Sorry, I think at this  
3 point in the day I'm not able to think of exactly how  
4 except, again, for the interconnectedness of them. I mean,  
5 when we're looking at what is causing the enforced  
6 disappearances and state complicity, many of the  
7 international reports have noted the problem with over-  
8 incarceration, the problem with that. I mean, at the  
9 International Human Rights arena they are seeing all these  
10 issues as being related. So just at that general level I  
11 would say yes, but ---

12 **COMMISSIONER QAJAQ ROBINSON:** Okay.

13 **MS. BRENDA GUNN:** --- specifics I can't pull  
14 up in my head.

15 **DR. DALEE SAMBO DOROUGH:** I just quickly  
16 want to say that I think it's even more elementary than  
17 that in terms of just the equal application of the rule of  
18 law. If we look at the disparities that exist within --  
19 for example, Indigenous women in custody, so I think that  
20 it's, again, even -- yeah, basic and fundamental human  
21 right.

22 **COMMISSIONER QAJAQ ROBINSON:** Yeah, by no  
23 means am I suggesting that it's the only instrument.

24 **DR. DALEE SAMBO DOROUGH:** Right.

25 **COMMISSIONER QAJAQ ROBINSON:** I'm trying to

1 understand how as an instrument that Canada isn't a  
2 signatory to it helps supplement the analysis and when  
3 we're looking at the rights and obligations perspectives.

4 We had an extensive presentation yesterday  
5 from Professor Leclair on the domestic implementation of  
6 the UN Declaration on the Rights of Indigenous Peoples.  
7 And I'm aware that Inuit Canada Me has developed their own  
8 views on the domestic implementation as well as looking at  
9 Inuit Tapiriit Kanatami has developed their own views on  
10 the domestic implementation, as well as looking at it  
11 through a comprehensive -- implementation through a  
12 comprehensive legislative framework. And that's where  
13 these two documents, Exhibit 28 and 29 were added.

14 I don't want to get into this too much  
15 because I -- again, it's something that we could speak to  
16 for an incredibly lengthy period of time. But I see that  
17 one of the recommendations, the fourth recommendation  
18 speaks to an Indigenous Human Rights Commission. And I'll  
19 read it,

20 "This Commission would establish --  
21 would be established consistent with  
22 the UN Paris Principles relating to the  
23 competence and responsibilities as well  
24 as status of such a national  
25 institution and those core fundamental

1 -- those core function would be to  
2 promote and protect Indigenous rights  
3 and ensure the harmonization of  
4 national legislation." (As read)

5 We also heard about sort of this type of  
6 idea from Tim ---

7 **MS. CHRISTA BIG CANOE:** Argetsinger.

8 **COMMISSIONER QAJAQ ROBINSON:** ---

9 Argetsinger. When you know people by their first names  
10 it's -- anyway, on our first day. I was hoping, Dalee, if  
11 you want to speak a little bit more on that recommendation?  
12 And first, you've played a role in the drafting of this  
13 position or you've been advising ITK on this position, as I  
14 understand it. Could you expand a little bit on what you  
15 see the value and necessity of this Commission?

16 **DR. DALEE SAMBO DOROUGH:** Quickly, the first  
17 thing that I want to say is that the Paris Principles  
18 establish essential guidelines for the creation of national  
19 human rights institutions, just for those that may not  
20 know.

21 As far as the idea of an Indigenous People's  
22 Human Rights Commission, one could the idea of an  
23 Indigenous Peoples Human Rights Commission, one could, I  
24 think, easily argue that in Canada as well as other  
25 countries across the world with a high concentration of



1 Indigenous Peoples is that this has become a specialized  
2 area of law. Some of it draws upon, in fact, Nations state  
3 customary practices and behaviour toward Indigenous  
4 Peoples, and indeed that's how we argued for the  
5 recognition of the collective rights of Indigenous Peoples  
6 was to point to all the laws, policies, constitutions, et  
7 cetera, that Nation states have put in place to refer to  
8 Indigenous Peoples as Peoples, which is an expression of  
9 customary practice and behaviour, and hence customary  
10 international law.

11 So the idea is to then build upon that  
12 foundation of what I would again refer to as very  
13 specialized areas of law, to the extent that we're  
14 encouraging instruction in law schools about Indigenous  
15 law, even within universities, just basic general education  
16 requirement to know about Indigenous Peoples.

17 So establishing a Commission that would  
18 monitor the implementation and the compliance of the state  
19 with the norms and standards in the UN Declaration and  
20 other international human rights instruments that apply  
21 specifically to Indigenous Peoples, so a national human  
22 rights institution that is specific to Indigenous Peoples.

23 **MS. CHRISTA BIG CANOE:** Commissioner  
24 Robinson, the Paris principles, the principles relating to  
25 the status of the national institutions was actually

1 potentially ---

2 **COMMISSIONER QAJAQ ROBINSON:** It was an  
3 exhibit filed, I believe, or it was in our material.

4 **MS. CHRISTA BIG CANOE:** Was it, though?

5 **COMMISSIONER QAJAQ ROBINSON:** It wasn't  
6 filed.

7 **MS. CHRISTA BIG CANOE:** It wasn't file. It  
8 was one that was potentially going to be filed, so I'm  
9 going to suggest we file it now.

10 **COMMISSIONER QAJAQ ROBINSON:** Yes, I would  
11 like it filed. Thank you.

12 So that will be Exhibit ---

13 **MS. CHRISTA BIG CANOE:** Thirty-four (34).

14 --- **EXHIBIT NO./PIÈCE No. B34:**

15 "Principles relating to the Status of  
16 National Institutions (The Paris  
17 Principles, adopted by General Assembly  
18 resolution 48/134 of 20 December 1993"  
19 (three pages)

20 **COMMISSIONER QAJAQ ROBINSON:** Thank you.

21 I think those are all my questions, and I'm  
22 really mindful that people are going to have to travel.

23 I want to express -- our grandmothers are  
24 going to do it as well, but I just want to express my  
25 gratitude, our gratitude for the learning and what you've

1           been able to provide us over this week.

2                       Our Terms of Reference ask us to investigate  
3           and report on all forms of violence in its Indigenous  
4           women and girls -- it's incredibly broad -- and to look at  
5           recommendations on how to address it, again incredibly  
6           broad. And we have heard about numerous, numerous,  
7           numerous types of violence that speak to so many different  
8           legal instruments and responsibilities and obligations, and  
9           to understand and to help frame how we look at that has  
10          been tremendously helpful. It, of course, confirmed the  
11          complexity and the further complexity that is revealed  
12          every step of this process.

13                      But I want to, for myself and my colleagues  
14          who are nodding -- I'm assuming they agree -- how helpful  
15          this has been. And I am very hopeful that Canadians have  
16          been listening because it's important that we understand  
17          the realities that the families and survivors have shared  
18          with us is a direct result of the legal, political  
19          realities that we're hearing about and it speaks to what  
20          needs to be done, and I think that we all have to be  
21          engaging in this learning together.

22                      So I'm hopeful that Canadians have been  
23          watching and learning along with us.

24                      **MS. CHRISTA BIG CANOE:** Commissioners,  
25          mindful of the time and the fact that I don't want to take

1 up 20 minutes -- sorry, objection?

2 **MS. SUZAN FRASER:** I'm sorry to rise at this  
3 point.

4 **MS. CHRISTA BIG CANOE:** If we can get her  
5 mic on please?

6 **MS. SUZAN FRASER:** I'm sorry to rise at this  
7 time of the day, Commissioners, but I do rise just to  
8 object, before you close the proceedings, to the departure  
9 of the Chief Commissioner. I understand you have the  
10 authority to sit as three, but with the Commissioner's  
11 departure without an explanation on what has been a very  
12 important day, it gives my clients great concern, and I'm  
13 obliged to bring those concerns to your attention.

14 And I like to operate from a principled  
15 basis to bring my criticism right to you when I have it. I  
16 think this is the place for it. I come here on that basis,  
17 so that you are aware directly of my client's concerns.

18 So I'm sorry to keep the witnesses and  
19 everyone ready, but I just thought I should make that  
20 concern known while we're here.

21 **MS. CHRISTA BIG CANOE:** Noted, and you're  
22 free to respond if you would like. It's noted on the  
23 record and you're free to respond if you'd like.

24 **COMMISSIONER QAJAQ ROBINSON:** Thank you for  
25 raising the objection and raising it directly with us in

1       this moment. I think that's important as well, and we will  
2       share that.

3                   **MS. CHRISTA BIG CANOE:** So, sorry, I was  
4       just about to actually waive my right too -- actually,  
5       yeah, everyone cheer here. This is where you're going to  
6       all love me this week. I was going to raise my right to  
7       re-examine, because I would have been afforded 20 minutes  
8       to clarify, and I do have a whole list of things I could  
9       have clarified, but I do recognize, given the non-  
10      adversarial nature of the work that the National Inquiry  
11      does, that the experts have provided us an abundance and  
12      well more than what we would normally see on any other  
13      record in terms of cross-examination with a number --  
14      including 15 parties and the Commissioners asking them  
15      questions.

16                   So on that basis, I won't, but I do actually  
17      ask if I can just put one proposition to them, and I'm not  
18      asking for a particular specific answer in this moment, but  
19      to put your mind to one thought. We have heard over and  
20      over again across the country people's positions on media.  
21      And I only raise that because we've also heard in the  
22      course of this panel that corporations also have  
23      obligations, not just stakes. A number of media are now  
24      major corporations.

25                   So I'm going to ask if the panel, and it's

1 at their own choice, if they could just put their mind to  
2 sort of the intersection of what obligations does a  
3 corporation like a media have as it relates to the  
4 perpetuation of the stereotypes and harms that are  
5 occurring to women across the country and the way they're  
6 characterizing. And I give an example like Cindy Gladue  
7 where the stigmatization, the racism, all of the human  
8 rights that you'd be afforded against discrimination that  
9 occur from a media corporation.

10 I'm not asking you to answer this now as  
11 this is not re-examination, but because the issues of  
12 corporations having obligations as well has come up, if you  
13 could put your mind to that and reply back to the  
14 Commission, we would share with all parties with Part 3  
15 standing any of the responses.

16 And I do want to -- I'm not re-examining,  
17 but I would like to offer Mr. O'Soup an opportunity to  
18 present something to the Commission and to explain it.

19 **MR. COREY O'SOUP:** I think, first of all,  
20 I'm incredibly grateful for the opportunity -- I didn't  
21 think I was going to well up here -- but for the  
22 opportunity to come speak for children and youth. They are  
23 my passion. They are my heart, especially our young  
24 people, our girls. I have three girls of my own, and two  
25 boys, but you know how dads and their girls are. But I am

1 so appreciative of the opportunity to come and represent  
2 our young people here on this national stage and to bring  
3 their voice, because I believe it's so important and I  
4 believe it's their right to be represented, and I know it's  
5 their right. It's in the international laws and treaties  
6 that we've been talking about here today.

7 I never thought I'd be sitting here probably  
8 even a month ago. You know, I didn't think I'd be in this  
9 chair and having this opportunity to bring their voice to  
10 this table, and I felt that it was so important that we are  
11 here.

12 It's in our office and my own tradition to  
13 bring gifts and to offer things to you for the opportunity,  
14 because I can't stress enough how important it is that our  
15 children have a voice in every step of the way, in  
16 everything we do, and all the decisions that are being made  
17 about them. And this is probably, in the history of our  
18 country, one of the most important things that's going to  
19 affect our young girls in particular. And I just want to  
20 offer my thanks and my gratitude for being allowed voice  
21 and opportunity today and yesterday.

22 So I just wanted to present this to you  
23 guys. This is from a local artist in Saskatchewan, Kevin  
24 Pee-ace. We did have this commissioned for our office. It  
25 is what we do in our office. These are our young people,

1 our young girls reaching for the stars. And the stars are  
2 many different things for many of our youth, and I believe  
3 it's our job as an office, but also as a country, as a  
4 people, to help them reach their biggest potential, to help  
5 them reach their dreams and their goals, and those are  
6 represented by the stars there. So I just wanted to leave  
7 this with you as a gift from our office to you. To all of  
8 you. You can decide on where it goes. So I'd just like to  
9 present this to you.

10 (APPLAUSE)

11 **MS. CHRISTA BIG CANOE:** I understand the  
12 Commissioners also have gifts for the witnesses. So -- so  
13 if I could just formally close the hearing at this point  
14 and call an adjournment on the part three hearings, and  
15 concluding the second hearing of three, of the part three.  
16 So just an adjournment. And I do believe though, however,  
17 we will be having a closing for those that wish to stay.

18 **COMMISSIONER MICHELE AUDETTE:** Okay.  
19 Parfait. Après ça, I need... j'aimerais inviter nos sages,  
20 nos aînés, nos grands-pères... il y en a un en arrière. This  
21 part I'll -- I will try to say it in English and you will  
22 understand why. You talked about a meeting where two Amber  
23 alert was happening. Well, yesterday sad to say, a family  
24 lost a daughter, and I'll say, again. In Winnipeg, Red  
25 River, she was found, April Carpenter. And the family says



1 on the Facebook page, that we should all pray for them.  
2 That we should send love for them because it's very hard.  
3 Like, what we're doing is very hard. But to lose a  
4 daughter, it's unacceptable. So we take this very  
5 seriously and we know that the prayers are also part of our  
6 culture, but it's sending us a message also that we are all  
7 responsible. I don't want them to disappear, none of my  
8 kids, or my friends' kids.

9 So if it's possible for you to join us for a  
10 moment of silence for the Carpenter family. Yeah. She was  
11 -- she went missing on April 26<sup>th</sup> and found yesterday. So -  
12 --

13 **(MOMENT OF SILENCE)**

14 Merci. Merci beaucoup. We're all human  
15 beings. We're also super mum, and fighters, but also very,  
16 very, very dedicated. It is not a job. It is for me, more  
17 than a passion. We're not perfect, but I'm sure together  
18 all of us will make sure that we will be able to say Canada  
19 is a safe place to live, I hope for to the end, the rest of  
20 forever. But in order to get there, we need to finish this  
21 Inquiry. We need to do it right and we need to do it not  
22 for this generation, but for the seventh generation to  
23 come.

24 We will have a song from the warriors, the  
25 women's warriors after my closing remarks. And of course,

1 after our Elder from this beautiful land, Wendake, the  
2 Nuwansu (ph) and we'll finish with your beautiful and  
3 powerful song, grandmothers. I want to say thank you for  
4 the Wendat People for welcoming us, welcoming you. You're  
5 in -- you are in my yard, just so you know. And I'll try  
6 to speak English to you, but it comes from my heart because  
7 I listened to you in French and you have few minutes to  
8 hear a speaker in French, so I hope you understand how I  
9 feel all day, and I laugh later. I'm not weird, I'm  
10 telling you.

11 And I say thank you for the grandmothers for  
12 being there for us everyday, strong warriors, strong  
13 grandmothers. They call them minions, but for me they're  
14 more than minions, they're super grandmothers. But most of  
15 all, I want to say thank you for family members like you,  
16 Maggie, for being here and making sure that we are doing  
17 this. It's not perfect, but we have to do it and I always  
18 take the message or the criticism as a learning thing to  
19 change or improve, and I take hugs too.

20 I have to say thank you also for the  
21 witness, amazing people. We read books about you,  
22 articles, or we heard you at the UN or other event that  
23 brings the international community together. But to have  
24 the privilege to be sitting with you in this capacity and  
25 they're making a chapter in the history of Canada. And

1 that I commend you and I say thank you very much.

2 I say thank you also for the parties for  
3 being here in my yard in Quebec City, in this territory of  
4 the Wendat people. Thank you for coming. Thank you for  
5 adding your expertise, your passion, your knowledge and  
6 representing the voice of the people that you represent.  
7 That was very, very important and I know this journey is  
8 not over. We have other hearings that are coming too fast,  
9 to be frank with you, but this is what we have been given  
10 right now. So from inside there is warriors to say this is  
11 not a healthy way to do things but we have to do it. So  
12 thank you for being here and adding this to this important  
13 journey.

14 We have the duty to do it together, not only  
15 for this Inquiry, but for the people across Canada, the men  
16 and the women, the youth and the elders, the people that we  
17 work for or walk with.

18 But I want to add also for the Canadian what  
19 -- for you too, Canadian. My dad is white, white. He's  
20 pink, I should say.

21 (LAUGHTER/RIRES)

22 **COMMISSIONER MICHÈLE AUDETTE:** But he's the  
23 most beautiful Québécois my dad. So beautiful. And they  
24 are part of the solution. I don't want to blame. I want  
25 them to walk with me and us and say let's change those

1       legislation. Let's change many, many thing for the benefit  
2       of everybody, but most of all women and -- Indigenous women  
3       and girls of course.

4                   And this hearing is one of the next --  
5       there's other hearing that coming, like I said too fast,  
6       but they're coming. There's no extension too fast. I hope  
7       Ottawa you hear me. It help us, it help me to make sure  
8       that we're doing the right thing by adding the human rights  
9       lens, the gender lens, you know, all the cultural --  
10      everything we discuss, change, challenge, wonder and with  
11      your expertise it makes me feel comfortable to continue in  
12      that way. But also, you were able to teach Canada there's  
13      many things to change also or ratify or improve and so on,  
14      so thank you very much.

15                   And to conclude I'll say this, we said to  
16      the federal government we will do our best when we got that  
17      call. We knew two years it was too short. We knew it, but  
18      we wanted to prove that building a canoe, well, we have to  
19      pagayer at the same time in that canoe was going to be a  
20      hard, hard journey. And I'm not afraid to say today, I'm  
21      not afraid -- I'll be a little bit free moccasin for a  
22      moment, that it is important the Inquiry gets the  
23      extension, for the families, for the survivor who share  
24      their truth to us, to Canada, to the governments, because  
25      the expectation is so high. But it's also important to

1 honour the 500 women and men who registered and still want  
2 to share their truth in this process.

3 And right now it breaks my heart to see it's  
4 not feasible if we don't have that extension. But we're  
5 fighting inside to try and find solution to make sure that  
6 we honour that, but it's in the heart, hand and brain of  
7 the government right now. This is how I see it.

8 In 10 days we're in Calgary. In 20 days  
9 after that we are in Toronto and then we will be in Regina.  
10 All that in every two weeks. Back to back. We say en  
11 français, back-à-back, I don't know in English. But I  
12 think you understand that it's going very fast. The canoe  
13 is in big, big rapide. I don't know how you say rapide en  
14 anglais. Rapids.

15 (LAUGHTER/RIRES)

16 **COMMISSIONER MICHÈLE AUDETTE:** Et voilà.

17 It's too rapids those rapids. See. We want to do it right  
18 because this is, for the first time for me, being involved  
19 for the past 20 years on women issue, giving my love for  
20 the Indigenous women's issue, that we have 13 government  
21 who sign -- 14, sorry -- thank you Qayaq, my translator --  
22 that agree to work with us or to sit here and respond to  
23 our question. So we need to do it right. And right now  
24 for me four inquiries or hearings, it's not enough so mon  
25 message est clair. So we can do it together.

1 I wish you a beautiful, beautiful, beautiful  
2 journée, fin de journée. Now to switch in French just for  
3 that part. And we will not going to give up. We will  
4 continue and we will make sure that in 10 days we will hug  
5 you again, welcome you and receive your objection,  
6 question, comment because for me this is democracy. C'est  
7 important. Vraiment important. So je vous aime et je vous  
8 souhaite une belle fin de journée. Thank you so much.  
9 Parfait.

10 **M. MARCEL GOUBOUT** : Alors, je vous disais  
11 quelques mots dans ma langue, je me nommais encore une  
12 fois, c'est la façon de faire chez nous. On parlait de la  
13 culture, que c'était important pour nous de faire partie de  
14 ce monde-là, que notre culture soit présente, même à  
15 travers les (problèmes de son) de qui nous sommes puis de  
16 parler à travers notre façon de voir l'univers, notre  
17 culture, notre propre culture. Donc, pour nous, dans notre  
18 (problème de son 18:20:50 à 18:21:03) chez les Wendats, que  
19 la femme est au centre de notre société et nous en sommes  
20 fiers. Et c'est par ma mère que j'ai mon clan, donc mon nom  
21 de famille traditionnel.

22 Donc, on parle souvent de l'importance des  
23 femmes; c'est une façon de leur rendre honneur aussi, en  
24 parlant de notre... en exerçant notre culture et aussi en  
25 mettant la femme au centre de notre société.

1                   Donc, le chant que je vais vous interpréter,  
2                   le chant de notre communauté, c'est une danse ronde.  
3                   Pourquoi j'ai choisi ce chant-là? C'est parce que comme  
4                   dans ce processus-là, qui est une forme de processus de  
5                   guérison pour nous tous, on a besoin de tout le monde.  
6                   Donc, une danse ronde, c'est que tout le monde se donne la  
7                   main dans cette danse-là et les hommes, les femmes, peu  
8                   importe l'âge que nous avons, même les gens plus âgés, les  
9                   plus jeunes participent à cette danse-là et nous ne formons  
10                  qu'un. On dit souvent, dans notre langue, (Langue  
11                  autochtone parlée), c'est qu'on forme un seul esprit.

12                  Alors, c'est un peu... c'est ce que... c'est la  
13                  raison pour laquelle je souhaite vous partager ce chant-là  
14                  de mes ancêtres et de notre nation, qu'on se joigne au  
15                  grand cercle pour les femmes qui sont disparues et pour ces  
16                  jeunes filles aussi qui vivent toutes sortes de choses  
17                  difficiles. Mais aussi de penser à un meilleur avenir ;  
18                  c'est sûr que pour bâtir, il faut parler du passé, il faut  
19                  parler du présent, mais il faut penser aussi à qu'est-ce  
20                  qu'on doit faire pour avoir un meilleur monde. Donc, cette  
21                  danse ronde là se veut être un encouragement pour nous tous  
22                  à participer à ce grand cercle-là, pour faire en sorte que  
23                  ce que l'on fasse ensemble, on a besoin de tout le monde.  
24                  Il n'y a personne de plus important qu'un autre dans un  
25                  cercle, tout le monde doit apporter sa part, apporter son

1 essence, qui il est et apporter du mieux qu'il peut ce  
2 qu'il est, aux autres.

3 Donc, c'est la raison de ce chant-là, donc  
4 une danse ronde. (Langue autochtone parlée)

5 (DANSE / Langue autochtone parlée.)

6 Alors, je vous souhaite une bonne journée à  
7 tous puis à ceux... je sais que ce n'est pas terminé, mais à  
8 ceux qui doivent quitter, que les Créateurs sont (langue  
9 autochtone parlée) vous protègent dans votre retour, pour  
10 retourner dans un monde que nous avons à construire pour  
11 nos enfants, pas juste les femmes, mais les filles, mais  
12 pour tous ceux qui ont besoin de paix, d'amour et de mieux-  
13 être, surtout, pour toute notre société. (Langue autochtone  
14 parlée)

15 **COMMISSAIRE MICHÈLE AUDETTE** : Merci  
16 beaucoup, merci. Micro numéro 8? Veux-tu faire la prière?  
17 (Langue autochtone parlée)

18 **MS REBECCA VEVEE**: Comme tu veux. (Langue  
19 autochtone parlée) Merci beaucoup tout le monde. J'aime ça,  
20 moi, travailler avec mes collègues et (inaudible), merci.  
21 Merci mon amie, merci tout le monde.

22 Aujourd'hui, on a pleuré ; lundi, on a  
23 beaucoup pleuré, toujours, because my cœur cassé, because  
24 my cousins, my deux cousins sont partis, Mary and Louis.  
25 Encore, encore, my cousin and (inaudible). Si la vie



1 (inaudible)... merci beaucoup, merci beaucoup tout le monde.

2 And fini! [Rires] Merci! Oh, j'ai compris

3 (inaudible)... si la vie? Okay, merci!

4 **MS PENELOPE GUAY** : Je suis attristée  
5 d'apprendre la nouvelle pour cette jeune fille. Ça nous  
6 rappelle qu'il faut faire encore beaucoup d'efforts,  
7 beaucoup de rassemblements, beaucoup de guérisons. Ce que  
8 j'ai entendu pendant ces quatre jours, ça donne de  
9 l'espérance, de l'espoir.

10 Puis j'aimais aussi quand... je ne me souviens  
11 plus du nom, mais qu'il faut agir maintenant, parce que  
12 c'est important. J'ai des petits-enfants... je n'aimerais pas  
13 ça que ça lui arrive. Je prie à tous les jours pour que...  
14 puis je lui embrasse ses petits pieds en lui disant qu'il  
15 va avoir un bon chemin.

16 Je vous remercie beaucoup d'avoir écouté,  
17 d'avoir senti, d'avoir ouvert votre cœur. Je remercie les  
18 commissaires, les experts. Je vous remercie parce que ça  
19 m'a donné le goût de retourner à l'université en droit.  
20 J'ai appelé mon prof, Renée Brassard, puis je lui ai dit :  
21 « Là, il faut que tu m'apprennes autre chose. » Elle est  
22 prête! Je pense qu'il ne faut pas lâcher ; l'éducation,  
23 c'est très important, parce qu'un peuple éduqué, c'est un  
24 peuple qui sort de ses oppressions.

25 Je vous remercie de me laisser prendre la

1 parole comme grand-mère. Merci. Bon retour à la maison en  
2 toute sécurité et que le Créateur vous accompagne.

3 **COMMISSAIRE MICHÈLE AUDETTE** : Merci beaucoup  
4 Penelope. Merci beaucoup Rebecca.

5 Now I would like to ask our beautiful  
6 Barbara, she's a mentor and also a member of the NFAC, so  
7 the National Family Advisory Circle. Very important to me  
8 -- to us.

9 **MS. BARBARA MANITOWABI**: Thank you. I'm  
10 going to put that down for a second.

11 Okay. My name is Barb Manitowabi. I'm a  
12 survivor and I have anxiety, so public speaking is --  
13 you're all naked right now.

14 (LAUGHTER/RIRES)

15 **MS. BARBARA MANITOWABI**: I'm a survivor of  
16 family violence, sexual violence, sexual abuse. And four  
17 years ago I started to stand up. Before that I was leading  
18 a very colonized life.

19 I didn't have my culture. I didn't -- I had  
20 no culture and I was dying inside.

21 A traumatic event happened and it led me to  
22 become homeless with my three beautiful adopt -- adopt  
23 children and it ripped us apart. And I met Gladys Radek  
24 who is my mother of the heart now and she took me under her  
25 wing and we started working together and she encouraged me

1 to craft.

2 The grassroots level doesn't have a lot of  
3 money to throw around. We have no money. So any gifts,  
4 any banners, we have to make it by hand and you can't buy  
5 this stuff at Walmart and these women, this movement has  
6 encouraged and nurtured this to come out of me. I didn't  
7 know it was there before.

8 Our drums are our voice and it's that that  
9 I'm trying to protect. It's that I'm trying to elevate.  
10 It's those women I'm trying to help their voice. I'm  
11 trying to raise that voice of Gladys Radek. I'm trying to  
12 raise that voice and protect that drum.

13 In doing that, we started gifting families  
14 that were sharing their stories. I'm just going to grab  
15 one. Very elaborate now but they were just a simple fabric  
16 and part of our culture, Ojibway culture that I started to  
17 relearn and try to put back in my family. This was part of  
18 it.

19 So our guests and our panel, our Elders,  
20 this is what I've been creating for them. It's a little  
21 baby smudge kit. Everything you need to do a smudge is in  
22 there, seven matches, a shell, our medicines, and I made  
23 this for everyone. And we're going to ask you not to open  
24 it right away because there might be someone in your circle  
25 that needs it more than you. People keep them in the dash

1 of their car but it's meant as a beacon of hope or to help  
2 in that healing.

3 And what we're doing in these last four  
4 days, I'm blown away by how hard everyone is working and  
5 how we're looking and working together and talking, trying  
6 to find solutions and trying to get Canadians to listen and  
7 connect those dots for yourself too.

8 So I think I'm okay. I'm done now but we're  
9 going to sing and I want to thank you really. We need to  
10 bring it back to its simple -- the problem is simple. We  
11 need to love. We need Canada to love its Indigenous  
12 people. We need to make them fall in love with us and we  
13 need to start working together. Okay.

14 Oh, yes, we're making these and sending them  
15 out to April's family and if I haven't made enough, write  
16 your name down and your address and I'll get it to you.

17 Are we ready?

18 **MS. AUDREY:** Some of us will be wearing  
19 beautiful drum bags that Barb also makes. So if anybody is  
20 interested in ordering anything to support not just a  
21 frontline worker but a rising woman warrior, check out the  
22 bags and please feel free to, if Barb is comfortable, to  
23 talk to her or we could get her contact info to you.

24 Maybe we'll do more than one song but we're  
25 going to start with something -- the song that we started

1 with yesterday to finish with something soft and gentle and  
2 beautiful so that you leave gently, so that you leave  
3 hopefully with lighter hearts than you came, and that you  
4 remember to tread gently because everywhere you go across  
5 this land known as Canada which is Turtle Island, you're  
6 walking on someone's ancestors. You're walking on  
7 someone's home. You're walking on lives and people that  
8 mattered without which Canada could not have existed.

9 So we sing this for all, especially the  
10 women warriors. We sing this for the mothers and daughters  
11 and grandmothers. We sing this for April and all who love  
12 her. She is loved, she matters and she is missed. No more  
13 stolen sisters.

14 We sing this because we have pain and anger  
15 that need to come out and we won't rage against the machine  
16 that's still killing us. Instead, like Barb said, we will  
17 make them love us. We have our songs. We have each other.  
18 We have still this land. It's not all destroyed yet.

19 So we are here to share a song that is from  
20 my lands, from the West Coast. It's called the Prayer Song  
21 by Chief Dan George. It's an anthem some will call it but  
22 when I close -- I have close my eyes when I sing it because  
23 I see -- I see land forming and feel how much that man  
24 loves his land.

25 And I'm lucky I have the privilege of

1 knowing what land I come from. I know where my ancestors  
2 are. I get to put my feet on the earth where they are. I  
3 call on them and they come through me. How many people  
4 don't have that? How many people who call themselves a  
5 Canadian don't know where their people come from? Not just  
6 ground people, people who crossed oceans like my dad's  
7 family for a better life. So we sing this for the land  
8 too, for the mother, for all of the mothers.

9 So I raise my hands and I say estzaka  
10 (phon.) to each of you for being here, for sharing your  
11 medicine, for staying. They've been long days and thank  
12 you for letting us make sure that you lead in a good way.

13 **(CLOSING SONGS)**

14 --- Upon adjourning at 6:46 p.m.  
15 La séance est ajournée à 18h46

17 **LEGAL DICTA-TYPIST'S CERTIFICATE**

18  
19 I, Nadia Rainville, Court Transcriber, hereby certify that  
20 I have transcribed the foregoing and it is a true and  
21 accurate transcript of the digital audio provided in this  
22 matter.

23  
24 *Nadia Rainville*  
25 \_\_\_\_\_

1        Nadia Rainville

2        May 17, 2018