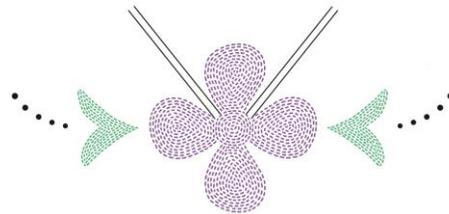


National Inquiry into  
Missing and Murdered  
Indigenous Women and Girls



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 3 Expert & Knowledge-Keeper Panel  
“Human Rights Framework”  
Hôtel Pur, Central Ballroom  
Ville de Québec / Quebec City**



**PUBLIC**

**Part 3 Volume 6**

**Wednesday May 16, 2018**

**Panel 2: “International Human Rights Law as a Foundation  
for the Inquiry's Work and Recommendations”**

**Prof. Brenda Gunn**

**Corey O'Soup**

**Prof. Jean Leclair**

**Dr. Dalee Sambo Dorough**

**INTERNATIONAL REPORTING INC.**

41-5450 Canotek Road, Ottawa, Ontario, K1J 9G2

E-mail: [info@irri.net](mailto:info@irri.net) – Phone: 613-748-6043 – Fax: 613-748-8246

## II - APPEARANCES

Assembly of First Nations (all)	Julie McGregor (Legal Counsel) Stuart Wuttke (Legal Counsel)
Aboriginal Women's Action Network (BC)	MiKenze Jordan (Representative)
Assembly of First Nations Quebec-Labrador (QC)	Wina Sioui (Legal Counsel)
Assembly of Manitoba Chiefs	Joëlle Pastora Sala (Legal Counsel)
Awo Taan Healing Lodge Society	Darrin Blain (Legal Counsel)
Battered Women's Support Services (BC)	Angela Marie McDougall (Representative) Anemki Wedom (Representative)
Canadian Association of Chiefs of Police (National)	Ashley Smith (Legal Counsel)
Concertation des Lutttes contre l'Exploitation Sexuelle (QC)	Diane Matte (Représentative)
Directeur des poursuites criminelles et pénales (QC)	Anny Bernier (Legal Counsel)
Easter Door Indigenous Association (NL, PEI, NB & NS)	Natalie Clifford (Legal Counsel)
Government of Alberta (AB)	Doreen Mueller (Legal Counsel)
Government of British Columbia (BC)	Emily Arthur (Representative)
Government of Canada (All)	Marie-Ève Robillard & Sarah Churchill-Joly (Legal Counsel)
Government of Ontario (ON, National)	Julian Roy (Legal Counsel) Emma Haydon (Legal Counsel)
Government of Manitoba (MB, National)	Kendra Jarvinen (Legal Counsel)
Government of Nova Scotia (NS, National)	Sean Foreman (Legal Counsel)

### III

#### APPEARANCES

Government of Québec (QC, National)	Pascale Labbé (Representative) Andréanne Lesperance (Representative) Mathieu Lainé (Representative) Laurence Bergeron (Legal Counsel) Marie-Hélène Tremblay (Representative)
Government of Saskatchewan (SK, National)	Barbara Mysko (Legal Counsel)
Government of Yukon	Chantal Genier (Representative)
Inuit Tapiriit Kanatami (National)	Elizabeth Zarpa (Legal Counsel)
Iskwewuk Wichiwitochik / Women Walking Together (SK)	Darlene R. Okemaysim-Sicotte (Representative) Myrna Laplante (Representative)
Justice for Families (BC, AB, SK, MB, ON, QC, PEI, National)	Suzan Fraser (Legal Counsel)
Native Women's Association of Canada (All)	Virginia Lomax (Legal Counsel)
Ontario Native Women's Association (ON)	Christina Comacchio (Legal Counsel) Cora-Lee McGuire-Cyrette, Courtney Skye & Cheryl Bagnall (Representatives)
Pauktuutit Inuit Women of Canada, Saturviit Inuit Women's Association, AnanauKatiget Tumingit Regional Inuit Women's Association, Manitoba Inuit Association and Ottawa Inuit Children's Centre, as a collective single party (All)	Beth Symes (Legal Counsel)

**IV**

**APPEARANCES**

Saskatchewan Advocate for  
Children and Youth

Lisa Broda, Marci Macomber &  
Connie Braun (Representatives)  
Gregory Walen, Q.C.  
(Legal Counsel)

Treaty Alliance Northern  
Ontario - Nishnawbe Aski  
Nation/Grand Council Treaty 3  
(ON)

Krystyn Ordyniec  
(Legal Counsel)  
Amanda Byrd (Representative)  
Deputy Grand Chief Anna Betty  
Achneepineskum  
(Representative)

Vancouver Rape Relief and  
Women's Shelter (BC)

Hilla Kerner (Representative)  
Laurel McBride  
(Representative)

West Coast LEAF (BC)

Raji Mangat (Legal Counsel)

Winnipeg Police Service (MB)

Kimberly Carswell (Legal  
Counsel)  
Shari Bell (Representative)

V

TABLE OF CONTENTS

	<b>PAGE</b>
<b>BRENDA GUNN, Affirmed</b>	3
Examination in-Chief by Ms. Big Canoe	3
Questions by Commissaire Audette	64
<b>COREY O' SOUP, Affirmed</b>	81
Examination in-Chief by Ms. Big Canoe	81
Questions by Commissaire Audette	143
Questions by Commissioner Robinson	148
<b>JEAN LECLAIR, Affirmed</b>	153
Examination in-Chief by Ms. Wylde	153
Questions by Commissioner Robinson	216
Questions by Commissaire Audette	222
<b>DALEE SAMBO DOROUGH, Affirmed</b>	235
Examination in-Chief by Ms. Ford	235

**VI**

**LIST OF EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
B1	Curriculum Vitae of Brenda Gunn (eight pages).	8
	Witness: Brenda Gunn; Submitted by: Christa Big Canoe, Commission Counsel	
B2	"Engaging a Human Rights Based Approach to the Murdered and Missing Indigenous Women and Girls Inquiry" by Brenda L. Gunn, published in the Lakehead Law Journal (2017, 2:2) pp. 89-116	24
	Witness: Brenda Gunn; Submitted by : Christa Big Canoe, Commission Counsel	
B3	United Nations Declaration on the Rights of Indigenous Peoples (18 pages)	32
	Witness: Brenda Gunn; Submitted by: Christa Big Canoe, Commission Counsel	
B4	"Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women" United Nations CEDAW/C/OP.8/CAN/1, published March 30, 2015 (58 pages)	33
	Witness: Brenda Gunn; Submitted by: Christa Big Canoe, Commission Counsel	
B5	"Concluding observations on the combined eighth and ninth periodic reports of Canada" United Nations CEDAW/C/CAN/CO/8-9 (19 pages)	34
	Witness: Brenda Gunn; Submitted by: Christa Big Canoe, Commission Counsel	

**VII**  
**LIST OF EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
B6	"Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada" United Nations Committee on the Elimination of Racial Discrimination CERD/C/CAN/CO/21-23 (11 pages)	35
	Witness: Brenda Gunn; Submitted by: Christa Big Canoe, Commission Counsel	
B7	Hardcopy of PowerPoint presentation of Brenda L. Gunn, dated May 16, 2018 (14 pages)	81
	Witness: Brenda Gunn; Submitted by: Christa Big Canoe, Commission Counsel	
B8	Curriculum vitae of Corey O'Soup (seven pages)	86
	Witness: Corey O'Soup; Submitted by: Christa Big Canoe, Commission Counsel	
B9	United Nations Convention of the Rights of the Child (15 pages)	110
	Witness: Corey O'Soup; Submitted by: Christa Big Canoe, Commission Counsel	
B10	"Consideration of reports submitted by States parties under article 44 of the Convention" Convention on the Rights of the Child CRC/C/CAN/CO/3-4 (22 pages)	135
	Witness: Corey O'Soup; Submitted by: Christa Big Canoe, Commission Counsel	
B11	"Shhh...Listen!! We have something to say! Youth Voices from the North" Report of the Saskatchewan Advocate for Children and Youth (52 pages)	136
	Witness: Corey O'Soup; Submitted by: Christa Big Canoe, Commission Counsel	

**VIII**  
**LIST OF EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
B12	"Corey O'Soup's Recommendations for consideration by the National Inquiry into Missing and Murdered Indigenous Women and Girls" (2 pages)	140
	Witness: Corey O'Soup; Submitted by: Christa Big Canoe, Commission Counsel	
B13	"Aboriginal Children and Youth in Canada: Canada Must Do Better" Canadian Council of Provincial Child and Youth Advocates, June 23, 2010 (14 pages)	143
	Witness: Corey O'Soup; Submitted by: Christa Big Canoe, Commission Counsel	
B14	Curriculum Vitae of Jean Leclair in French (24 pages)	158
	Witness: Jean Leclair; Submitted by: Fanny Wylde, Commission Counsel	
B15	Curriculum Vitae of Jean Leclair in English (22 pages)	159
	Witness: Jean Leclair; Submitted by: Fanny Wylde, Commission Counsel	
B16	"Gender and Violence: Drawing on Indigenous Legal Resources" by Emily Snyder, Val Napoleon and John Borrows, UBC Law Review Volume 48:2 pp. 594-654	176
	Witness: Jean Leclair; Submitted by: Fanny Wylde, Commission Counsel	
B17	«Peuples autochtones et droit constitutionnel» Jean Leclair and Michel Morin in JurisClasseur Québec (133 pages)	179
	Witness: Jean Leclair; Submitted by: Fanny Wylde, Commission Counsel	

**IX**

**LIST OF EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
B18	Curriculum Vitae of Dalee Sambo Dorough (11 pages)	244
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B19	International Convention on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966 (No. 14668, Vol. 999) pp. 172-186; 256-305; 321-346 (92 pages)	269
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B20	Convention on the Elimination of All Forms of Discrimination against Women (ten pages)	269
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B21	International Convention on the Elimination of All Forms of Racial Discrimination (nine pages)	269
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B22	End of mission statement by Dubravka Šimonović, United Nations Special Rapporteur on Violence against women, its causes and consequences - Official visit to Canada (11 pages)	292
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B23	"Shifting gender regimes: The complexities of domestic violence among Canada's Inuit", by Janet Mancini Billson in Études/Inuit/ Studies, Volume 30, Issue 1, 2006, p. 69-88	292
Witness: Dalee Sambo Dorough; Submitted by Violet Ford		

**X**

**LIST OF EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
B24	"Understanding and addressing violence against women: Intimate partner violence," publication of the World Health Organization and Pan American Health Organization (12 pages)	293
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B25	"Where Do You Go When It's 40 Below? Domestic Violence Among Rural Alaska Native Women", by Judy Shepherd in Afilia, Volume 16, Issue 4, pp. 488-510, November 1, 2001	295
Witness: Dalee Sambo Dorough; Submitted by: Violet Ford, Commission Counsel		
B26	"Hearing about the Realities of Intimate Partner Violence in the Northwest Territories from Frontline Service Providers, Northwest Territories Research Project Report for Territorial Stakeholders Final Report by Pertice Mofitt and Heather Fikowski, 2017 (63 pages)	295
Witness: Dalee Sambo Dorough		
Submitted by: Violet Ford, Commission Counsel		

XI

ERRATUM

**Registrar's note:** The initial version of this transcript contained an error at page 256 line 15:

"[...] some scholars refer to as a pre-emptory norm of international law [...]"

The term the witness actually uses is "peremptory" and that change was made to the transcript today, April 15<sup>th</sup>, 2019.

1 Quebec City, Quebec

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

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

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

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

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

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

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

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

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

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

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

1 started, sorry.

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

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

9 (INDIGENOUS CHANT)

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

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

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

20 **BRENDA GUNN, AFFIRMED**

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

22 **CHRISTA BIG CANOE :**

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

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

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

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

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

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

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

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

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

1 little bit about that?

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

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

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

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

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

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

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

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

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

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

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

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

1 Indigenous people?

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

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

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

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

1 Association.

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

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

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

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

20 --- EXHIBIT NO./PIÈCE NO. B1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 discriminated against for being Indigenous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19              And so ---

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

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

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

1 So it says:

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

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

1 resources.

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

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

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

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

21 --- **EXHIBIT NO./PIÈCE NO. B2:**

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

1 2:2) pp. 89-116

2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 litigate economic and social rights under the Charter.

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

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

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

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

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

1 to ask questions.

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

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

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

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

14 **--- EXHIBIT NO./PIÈCE NO. B3:**

15 United Nations Declaration on the Rights of  
16 Indigenous Peoples (18 pages)

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

1 CHIEF COMMISSIONER BULLER: Okay.

2 MS. CHRISTA BIG CANOE: No, sorry.

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

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

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

7 -

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

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

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

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

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

18 MS. CHRISTA BIG CANOE: Thank you.

19 --- EXHIBIT NO./PIÈCE NO. B4:

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

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

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

8 **CHIEF COMMISSIONER BULLER:** Report.

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

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

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

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

16 --- **EXHIBIT NO./PIÈCE NO. B5:**

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

20  
21 **MS. CHRISTA BIG CANOE:** And I have one more  
22 please.

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

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

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

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

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

16 --- **EXHIBIT NO./PIÈCE NO. B6:**

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

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

25 And on that fun note, I have another

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And so under this treaty that Canada is a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 I do hope these are helpful.

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

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

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

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

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

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

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

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

25 And related to that is often a failure to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

## Questions (Commissaire Audette)

1 in their Indigenous language.

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

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

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

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

25 Je peux le confirmer pour avoir été témoin à

## Questions (Commissaire Audette)

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

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

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

## Questions (Commissaire Audette)

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

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

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

## Questions (Commissaire Audette)

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

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

## Questions (Commissaire Audette)

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

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

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

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

25 Vous avez, d'ailleurs, dans votre

## Questions (Commissaire Audette)

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

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

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

25 Ma dernière question serait, parce que je

## Questions (Commissaire Audette)

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

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

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

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

14                   **(LAUGHTER/RIRES)**

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

17                   **(LAUGHTER/RIRES)**

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

## Questions (Commissaire Audette)

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

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

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

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

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

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

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

## Questions (Commissaire Audette)

1 don't just start with women.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 --- **EXHIBIT NO./PIÈCE NO. B7:**

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

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

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

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

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

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

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

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

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

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

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

16                   So -- are there any objections? Okay.

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

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

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

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

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

5 (LAUGHTER/RIRES)

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

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

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

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

1 was, that's who she was.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 --- **EXHIBIT NO./PIÈCE NO. B8**

20 Curriculum vitae of Corey O'Soup

21 (seven pages)

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

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

1 your experience, your professional experience and  
2 education?

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And the community asked all of those leaders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Thanks.

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

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

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

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

1 by four priorities.

2 MR. COREY O'SOUP: Yes.

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

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

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

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

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

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

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

25 The second piece that we talk about, which

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

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

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

1 unless you cross that stage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 sample size.

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

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

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

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

1 because they read this report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9

10 --- **EXHIBIT NO./PIÈCE NO. B9:**

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

13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 province."

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

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

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

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

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

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

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

25 I know we're heading down a direction where

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

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

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

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

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

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

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

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

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

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

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

1 compulsory, it has to be within the curriculum.

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

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

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

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

25 But what about the issues in child welfare,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **--- EXHIBIT NO/PIÈCE NO. B10:**

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

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

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

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

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

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

7 **CHIEF COMMISSIONER BULLER:** Yes.

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

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

12 --- **EXHIBIT NO/PIÈCE NO. B11:**

13 "Shhh...Listen!! We have something to say!  
14 Youth Voices from the North" Report of the  
15 Saskatchewan Advocate for Children and Youth  
16 (52 pages)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 --- **EXHIBIT NO./PIÈCE NO. B12:**

25 "Corey O'Soup's Recommendations for

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

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

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

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

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

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

25 Now we all have varying legislations, so

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

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

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

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

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

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

17 --- **EXHIBIT NO./PIÈCE NO. B13:**

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

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

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

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

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

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

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

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

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

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

## Question (Commissaire Audette)

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

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

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

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

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

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

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

1 participant in our meetings.

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

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

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

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

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

## Question (Commissaire Audette)

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

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

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

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

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

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

## Question (Commissaire Audette)

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

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

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

## Question (Commissaire Audette)

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

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

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

**Question (Commissaire Audette)**

1 and things would change at a much quicker pace.

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

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

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

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

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

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

1 they need certain supports.

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

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

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

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

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

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

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

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

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

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

## Question (Commissaire Robinson)

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

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

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

## Question (Commissaire Robinson)

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

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

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

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

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

14 Thank you.

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

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

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

## Question (Commissaire Robinson)

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

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

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

11 Thank you.

12 So we're adjourned till 1:30.

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

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

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

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

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

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

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

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

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

12 **JEAN LECLAIR, Affirmed:**

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

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

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

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

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

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

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

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

1 Montréal, à la Faculté de droit.

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

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

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

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

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

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

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

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

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

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

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

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

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



1 (version française - 24 pages)

2 --- EXHIBIT NO./PIÈCE NO. B15:

3 Curriculum vitae of Me Jean Leclair

4 (English version - 22 pages)

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

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

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

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

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

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

1 extrême­ment complexes.

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

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

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

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

25 **Me FANNY WYLDE:** Parfait.

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

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

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

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

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

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

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

1                                   **CHIEF COMMISSIONER MARION BULLER:**

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

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

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

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

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

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

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

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

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

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

25 On m'a demandé de témoigner sur la question

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

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

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

21 J'aimerais qu'on retienne donc qu'à lui seul  
22 et quoi qu'il puisse être très utile, le droit n'est jamais  
23 beaucoup plus que le reflet de notre volonté d'être  
24 solidaires les uns des autres ou au contraire de notre  
25 volonté d'ériger des barrières entre les uns et les autres.

1                   Le droit, qu'il soit autochtone ou étatique,  
2 n'est jamais neutre. Il traduit toujours un rapport de  
3 force.

4                   Bref, même l'insertion du texte de la  
5 déclaration dans la constitution formelle du Canada  
6 changerait peu de chose si les citoyens canadiens et leurs  
7 représentants politiques persistaient à refuser de  
8 reconnaître la légitimité des revendications autochtones.  
9 Le succès de la déclaration dépend donc plus d'un  
10 changement de mentalité que d'un changement du droit.

11                   Ceci dit, je reconnais que le droit, à  
12 certaines conditions, peut être un vecteur de changement et  
13 c'est ce dont on m'a demandé de parler aujourd'hui.

14                   **Me FANNY WYLDE:** Merci, Maître Leclair.

15                   Pouvez-vous nous exposer maintenant la  
16 manière dont vous avez procédé pour nous l'exposer  
17 justement?

18                   **Me JEAN LECLAIR:** O.k. Bien je vais  
19 procéder de la manière suivante. En guise de préambule, je  
20 dirai un mot au sujet du rôle des peuples autochtones eux-  
21 mêmes dans la mise en œuvre de la déclaration.

22                   Par la suite, je rappellerai que la  
23 déclaration est une norme de droit international qui n'est  
24 pas immédiatement applicable en droit fédéral ou  
25 provincial.

1                   Je distinguerai ensuite entre la  
2                   reconnaissance politique de la déclaration par un  
3                   gouvernement, de son incorporation en droit au moyen d'une  
4                   loi. Et cette distinction, comme on le verra, elle est  
5                   fondamentale car une reconnaissance politique de la  
6                   déclaration, aussi importante soit-elle, n'en portera  
7                   aucune conséquence juridique immédiate alors qu'une fois  
8                   incorporée en droit interne au moyen d'une loi, bien les  
9                   dispositions de la déclaration pourraient être sanctionnées  
10                  par un tribunal.

11                  Cela fait, j'aborderai par la suite la  
12                  question spécifique de la latitude constitutionnelle dont  
13                  disposent les provinces et le fédéral pour incorporer la  
14                  déclaration en droit interne. Et cette question soulève le  
15                  problème du partage des compétences législatives dans le  
16                  fédéralisme canadien. Le Canada est pas un état unitaire,  
17                  c'est une fédération. Y a deux ordres de gouvernement.

18                  Et celui de l'arrimage de la déclaration à  
19                  la doctrine des droits ancestraux développés par les  
20                  tribunaux canadiens depuis l'enchâssement des droits  
21                  ancestraux issus de traités au moment de l'adoption de  
22                  l'article 35 de la Constitution de 1982.

23                  Cette disposition, je vous le rappelle,  
24                  déclare ceci:

25                  "Les droits existants - ancestraux ou

1                   issus de traités - des peuples  
2                   autochtones du Canada sont reconnus et  
3                   confirmés."

4                   Ce même article précise:

5                   "Dans la présente loi, « peuples  
6                   autochtones du Canada » s'entend  
7                   notamment des Indiens [des Premières  
8                   nations], des Inuits et des Métis du  
9                   Canada."

10                  Et dans cette partie-là de mon exposé, je  
11                  tenterai de démontrer que depuis quelques années, la Cour  
12                  suprême a modifié les règles et la dynamique du partage des  
13                  compétences en matière autochtone.

14                  Ayant reconnu le caractère collectif des  
15                  droits constitutionnels reconnus aux peuples autochtones,  
16                  droits qui leur confèrent entre autres le droit d'être  
17                  consultés lorsque leurs intérêts constitutionnellement  
18                  protégés sont menacés, la Cour suprême a été forcée pour  
19                  ainsi dire d'abandonner le point de vue traditionnel selon  
20                  lequel les peuples autochtones étaient des objets de droit  
21                  relevant de la compétence exclusive du gouvernement  
22                  fédéral.

23                  Les droits constitutionnels des peuples  
24                  autochtones les autorisent en quelque sorte aujourd'hui à  
25                  se penser eux-mêmes dans les limites des droits que leur

1 reconnaît la constitution et ces droits se déploient  
2 aujourd'hui bien au-delà des minuscules frontières des  
3 réserves indiennes.

4 En d'autres mots, les peuples autochtones  
5 sont aujourd'hui des sujets de droit et non plus des objets  
6 de droit. Ils ne sont plus de simples communautés  
7 culturelles. Ils se sont élevés au statut de communautés  
8 politiques qui entretiennent des relations non plus  
9 simplement avec le gouvernement fédéral mais également avec  
10 les provinces sur le territoire desquels s'exercent leurs  
11 droits aux territoires.

12 En raison du paragraphe 91(24) de la  
13 Constitution de 1867, sur lequel je reviendrai, le  
14 gouvernement fédéral a toujours été le principal  
15 interlocuteur des peuples autochtones au Canada.

16 Toutefois, parce que le Canada est une  
17 fédération où les pouvoirs sont partagés entre les deux  
18 ordres de gouvernement, les provinces et le fédéral, les  
19 provinces sont elles aussi des interlocutrices des nations  
20 autochtones.

21 En outre, la Cour suprême, on le verra, a  
22 récemment reconnu que dans certaines circonstances, les  
23 provinces étaient en mesure, plus qu'elles ne l'étaient  
24 auparavant, de légiférer sur les questions autochtones.

25 En somme, dans les limites des contraintes

1 imposées par la Constitution de 1867, qui consacre la  
2 nature fédérale de notre pays, et des contraintes imposées  
3 par la Constitution de 1982, qui constitutionalise les  
4 droits ancestraux et issus de traités, les provinces  
5 peuvent, tout comme le parlement fédéral, adopter une ou  
6 des lois visant à mettre en œuvre la déclaration. En fait,  
7 on va le voir, la collaboration des deux ordres de  
8 gouvernements est nécessaire. Brenda l'a évoqué d'ailleurs  
9 ce matin.

10 En vérité, je vais parler beaucoup plus du  
11 rôle des provinces dans la mise en œuvre de la déclaration  
12 parce qu'on pense trop souvent... enfin, le public pense trop  
13 souvent que seul le fédéral a un rôle à jouer en ce  
14 domaine.

15 En réalité, quand on pense à la question de  
16 la violence faite aux femmes autochtones et aux compétences  
17 législatives qui sont sollicitées pour y trouver un remède,  
18 on s'aperçoit vite que plusieurs des compétences les plus  
19 importantes relèvent des provinces, compétences sur la  
20 santé, sur la protection de la jeunesse, sur le droit de la  
21 famille, sur la prévention du crime, sur l'administration  
22 de la justice, la justice criminelle, pour n'en citer que  
23 quelques-unes.

24 En outre, même si le parlement fédéral  
25 pourrait intervenir dans tous ces domaines en vertu du

1 pouvoir accessoire associé à sa compétence sur les peuples  
2 autochtones, ce sont bien souvent les provinces qui ont  
3 développé les connaissances et le savoir-faire spécialisé  
4 dans ces domaines-là.

5 Mais, on l'a entendu, ça n'empêche pas le  
6 fédéral de dépenser et des fois il ne le fait pas. Comme  
7 on l'a vu, il ne finance pas les services de manière  
8 équivalente aux services qui sont offerts, par exemple, aux  
9 enfants non-autochtones. On l'a entendu ce matin.

10 Et je terminerais ma présentation en  
11 soulevant la question des avantages mais aussi des  
12 inconvénients qui pourraient découler d'une incorporation  
13 en droit provincial ou fédéral de déclaration, parce que  
14 l'incorporation en droit de la déclaration c'est bien sûr  
15 un mécanisme très efficace, mais à partir du moment où on  
16 le fait, c'est la magistrature canadienne et non les  
17 peuples autochtones qui auront le dernier mot sur le sens à  
18 donner aux 46 articles de la déclaration.

19 **Me FANNY WYLDE:** Merci, Maître Leclair.

20 Donc, vous parlez du pouvoir fédéral, du  
21 pouvoir de la province, de ce fédéralisme-là dans cette  
22 implantation de cette déclaration-là. Mais qu'en est-il du  
23 rôle des peuples autochtones?

24 **Me JEAN LECLAIR:** S'il y a une chose qui  
25 s'est imposée en droit international et en droit canadien

1 au cours des dernières décennies c'est bien l'importance de  
2 consulter les peuples autochtones avant d'adopter des  
3 mesures qui auront un impact important sur leur vie  
4 individuelle et collective.

5 L'idée d'incorporer la déclaration en droit  
6 provincial ou fédéral est, selon moi, une très bonne idée.  
7 Le problème, comme on va le voir, c'est de savoir comment  
8 s'y prendre si on veut que cette incorporation emporte des  
9 résultats autres que symboliques ou politiques. Je suis en  
10 train de démontrer que la manière de procéder à cette  
11 intégration en droit interne déterminera le succès ou  
12 l'échec de l'entreprise.

13 Il faut aussi réaliser que cette  
14 incorporation ne se traduira pas uniquement en victoire  
15 autochtone. Il ne fait aucun doute, et il ne faut pas être  
16 devin pour le savoir, que les droits reconnus par la  
17 déclaration devront éventuellement être équilibrés avec les  
18 intérêts de la population non-autochtone.

19 Le paragraphe 46(2) de la déclaration ouvre  
20 d'ailleurs la porte à cette mise en équilibre.

21 Toutefois, ce que je veux souligner c'est  
22 qu'avant de se lancer... puis ça rejoint la question que vous  
23 m'avez posée... c'est qu'avant de se lancer dans la rédaction  
24 d'une loi, le gouvernement fédéral ou le gouvernement d'une  
25 province devrait s'assurer que tel est le désir des

1 premiers peuples concernés.

2 Il semble bien, il faut l'avouer, que tel  
3 soit le vœu d'un grand nombre de représentants autochtones,  
4 d'où le projet de loi dont je parlerai tout à l'heure de  
5 Romeo Saganash. C'est, en tout cas, le vœu exprimé par la  
6 Commission de vérité et de réconciliation et par le Comité  
7 pour l'élimination de la discrimination raciale de l'ONU,  
8 dont Brenda a parlé ce matin. Et le 13 septembre dernier,  
9 on recommandait encore une fois au Canada de mettre en  
10 œuvre la déclaration.

11 La Cour suprême d'ailleurs va rendre  
12 prochainement un jugement très important dans une affaire  
13 où la question qui lui est posée est précisément de savoir  
14 si un gouvernement doit consulter les peuples autochtones  
15 avant même que soit adoptée une loi.

16 Mais que ce soit obligatoire ou non, il sera  
17 toujours politiquement prudent et sage de la part d'un  
18 gouvernement de solliciter l'opinion des peuples  
19 autochtones.

20 Mais toujours sur ce thème du rôle des  
21 nations autochtones, je voudrais insister sur une chose qui  
22 m'apparait essentielle. Les nations autochtones devraient  
23 immédiatement mettre en œuvre la déclaration sans attendre  
24 les gouvernements, en se fondant sur leurs propres  
25 conceptions juridiques des choses. Après tout, comme les

1       peuples autochtones et comme plusieurs membres éminents des  
2       premières nations du Canada, je l'ai dit, ont étroitement  
3       contribué à l'élaboration de la déclaration, il me semble  
4       qu'ils sont en droit de prendre l'initiative.

5                Pour beaucoup d'entre eux, le droit fédéral  
6       et provincial souffre un déficit de légitimité. Mais comme  
7       la déclaration est le fruit de leur propre collaboration,  
8       ils peuvent certainement s'en inspirer. Ils sont des  
9       gouvernements, après tout.

10               Et je ne suis pas sans savoir que les  
11       nations autochtones ont des ressources limitées, mais en  
12       exerçant immédiatement, sans attente, l'autonomie  
13       gouvernementale qu'elle revendique depuis toujours, les  
14       nations autochtones lanceraient un message politique très  
15       puissant. Elles placeraient les gouvernements devant un  
16       fait accompli qu'ils ne pourraient pas aisément balayer du  
17       revers de la main.

18               Prenons quelques exemples, par exemple. Les  
19       Atikamekw, par exemple, ont réussi à mettre sur pied un  
20       programme efficace de protection de la jeunesse que la  
21       province de Québec a officiellement reconnu en janvier  
22       dernier. Ce sont eux qui sont à l'origine d'une  
23       modification de la *Loi sur la protection de la jeunesse*  
24       permettant la mise en place de régimes alternatifs comme le  
25       leur.

1           D'autres nations... je pense aux Squamish... ont  
2 adopté leur propre protocole de consultation en matière  
3 environnementale. De plus en plus de premières nations le  
4 font.

5           D'autres nations, aidées en cela par des  
6 intellectuels autochtones, ont entrepris de réactiver les  
7 traditions juridiques autochtones en s'inspirant de la  
8 tradition orale dans le cadre, par exemple, en Ontario du  
9 *Assessing Justice and Reconciliation Project* et certains de  
10 ces projets portent sur la violence faite aux femmes en  
11 particulier.

12           D'autres exemples d'initiatives autochtones  
13 existent. Quand on lit les journaux, malheureusement, on  
14 l'apprend. Si on pouvait trouver un endroit, on pourrait  
15 trouver toutes ces initiatives-là aisément pour les rendre  
16 accessibles pour d'autres premières nations. Ce serait  
17 extrêmement utile.

18           Et il me semble que c'est là la voie de  
19 l'avenir. Si j'avais une recommandation à faire, c'est  
20 qu'il me semble qu'il faut accompagner les peuples  
21 autochtones dans les projets d'autodétermination qu'ils ont  
22 eux-mêmes élaborés, et ça m'apparaît une des voies royales  
23 de la réconciliation.

24           Certains projets... ces projets pourraient  
25 fort bien, je l'ai dit, être en lien avec l'éradication de

1 la violence faite aux femmes. Après tout, pendant des  
2 milliers d'années, les peuples autochtones ont eu des  
3 ordres juridiques qui fonctionnaient très bien, je vous  
4 remercie. Alors comment ça se fait que depuis 150 ans ils  
5 ne seraient plus capables de le faire.

6 Toutefois, réactiver et renouveler les  
7 traditions juridiques autochtones soulève aussi des  
8 difficultés, particulièrement là où la question de la  
9 violence faite aux femmes est en jeu.

10 En effet, comme le souligne avec courage les  
11 intellectuels autochtones, qui sont John Borrows et Val  
12 Napoleon, il faut éviter de cultiver une conception trop  
13 romantique de ce qu'était le droit autochtone avant  
14 l'arrivée des Européens.

15 Et là-dessus j'ai le texte de..

16 **Me FANNY WYLDE:** Effectivement.

17 Donc, Maître Leclair, Commissaire en chef et  
18 Commissaires, je vous invite à prendre connaissance du  
19 texte « *Gender and Violence: Drawing on Indigenous Legal*  
20 *Resources* », un texte écrit de Emily Snyder, Val Napoleon  
21 et John Borrows. Avant que je vous soumette le tout en  
22 pièce, est-ce que vous pouvez me décrire de façon brève de  
23 quoi ce texte-là s'agit, de quoi il s'agit, en fait?

24 **Me JEAN LECLAIR:** Simplement c'est que c'est  
25 un texte qui rappelle que la violence faite aux femmes

1 n'était pas inconnue même avant le contact avec les  
2 Européens. Cette violence faite aux femmes, en fait, elle  
3 est malheureusement et largement universelle.

4 Ce qui importe, toutefois, comme soulignent  
5 ces auteurs-là c'est que les traditions juridiques  
6 autochtones avaient développé des mécanismes pour  
7 confronter ces problèmes-là et elles peuvent aujourd'hui  
8 encore être la source de modes contemporains autochtones de  
9 résolution de conflits, des modes de résolution de conflits  
10 qui ont plus de chances, qui ont des chances d'avoir plus  
11 de légitimité aux yeux de la population autochtone que les  
12 solutions offertes par le droit étatique.

13 **ME FANNY WYLDE:** Donc à cet effet-là,  
14 Commissaire en chef et Commissaires, j'aimerais déposer en  
15 pièce, pièce numéro 16, le présent texte dont on vient de  
16 souligner. Merci.

17 **CHIEF COMMISSIONER MARION BULLER :** The  
18 article "Gender and Violence: Drawing on Indigenous Legal  
19 Resources" by Snyder and Napoleon and Borrows will be  
20 exhibit 16, please.

21 **--- EXHIBIT NO./PIÈCE NO. B16:**

22 "Gender and Violence: Drawing on Indigenous  
23 Legal Resources" by Emily Snyder, Val  
24 Napoleon and John Borrows, UBC Law Review  
25 Volume 48:2 pp. 594-654

1                   **Me FANNY WYLDE** : Thank you. Bon, juste une  
2 petite question, Maître Leclair. Vous avez mentionné, si  
3 je ne m'abuse, que ces auteurs-là sont des femmes  
4 autochtones elles-mêmes?

5                   **Me JEAN LECLAIR**: John Borrows est en homme,  
6 Val Napoleon c'est aussi, c'est une Cree du Manitoba, John  
7 est un Anishinaabe. C'est une des grandes figures  
8 intellectuelles, et je pense que je fais pas de peine à  
9 personne en disant que Val Napoleon est aussi probablement  
10 la plus grande figure femme intellectuelle autochtone.

11                   Emily Snyder, si je ne me trompe pas, n'est  
12 pas une autochtone, mais c'est une auteure qui travaille  
13 depuis longtemps avec Val et John sur les questions de  
14 féminisme autochtone.

15                   Il y a d'autres grands auteurs actuellement,  
16 il y a Hadley Freeman, aussi, il y a Sarah Morales, qui est  
17 une autochtone récemment embauché à U-Vic. Il y a plein de  
18 jeunes et brillants intellectuels autochtones qui se  
19 prononcent sur ces questions-là.

20                   **Me FANNY WYLDE** : Merci. Je vous invite à  
21 poursuivre.

22                   **Me JEAN LECLAIR** : Ce que souligne ces  
23 auteurs, aussi, et je terminerais là-dessus, c'est que au  
24 même titre que le droit autochtone, et là, je les cite,  
25 « Indigenous Laws can be influenced by sexist ideologies,

1 and can be a site to reproducing power dynamics in ways  
2 that discipline gendered and legal subjects. »

3 Autrement dit, comme je vous le disais, tous  
4 les droits sont susceptibles d'être porteurs... d'idéologie,  
5 bonne ou mauvaise. Alors, bref, les peuples autochtones, à  
6 mon sens, doivent profiter de l'occasion qui se présente  
7 pour mettre eux-mêmes en œuvre la déclaration. Bien sûr,  
8 dans la mesure de leurs moyens, mais peut-être que une des  
9 recommandations qu'on peut faire c'est de financer ces  
10 initiatives-là. Ils devront néanmoins faire en posant un  
11 regard critique sur leurs propres traditions juridiques.

12 Alors, c'est tout ce que je voulais dire sur  
13 le rôle des peuples autochtones, mais il est absolument  
14 capital je pense, on parle trop souvent juste des provinces  
15 du fédéral, puis maintenant, je vas parler du rôle des  
16 provinces et du fédéral.

17 **Me FANNY WYLDE:** Donc, je comprends que  
18 maintenant vous allez parler justement du partage des  
19 compétences. À cet effet, est-ce que vous êtes d'accord si  
20 on procède au dépôt d'un fascicule à lequel vous avez  
21 participé « Les Peuples autochtones et droits  
22 constitutionnels. »

23 Pouvez-vous brièvement me décrire de quoi ce  
24 document-là, de quoi il en retourne?

25 **Me JEAN LECLAIR :** Bien, le document en

1 question, c'est un document qui est assez volumineux, il a  
2 130 pages et il est mis à jour à chaque année par moi et  
3 mon collègue, Michel Morin, qui est aussi un expert,  
4 surtout sur les dimensions historiques du droit autochtone.

5 Et c'est un texte qui est destiné à  
6 introduire les juristes, mais aussi le grand public que ça  
7 intéresse, aux droits ancestraux issus de traités, mais  
8 aussi à la question qui nous importe aujourd'hui : le  
9 partage des compétences à l'intérieur de la fédération  
10 canadienne.

11 Qui peut régler les questions  
12 autochtones, et quels sont les droits que les autochtones,  
13 les droits collectifs que les autochtones peuvent invoquer  
14 à l'intérieur de notre système constitutionnel?

15 **Me FANNY WYLDE** : Donc, merci. Commissaire  
16 en chef et Commissaires, j'aimerais procéder au dépôt de ce  
17 fascicule à titre de pièce 16. Merci.

18 --- **PIÈCE No./EXHIBIT No. B17** :

19 Fascicule 15 : « Peuples autochtones et  
20 droit constitutionnel » by Jean  
21 Leclair and Michel Morin in  
22 JurisClasseur Québec (133 pages)

23 **CHIEF COMMISSIONER MARION BULLER**: Can I have  
24 the title again, please?

25 **Me FANNY WYLDE** : Fascicule 15 : Peuples

1 autochtones et droits constitutionnels.

2 **CHEF COMMISSIONNER MARION BULLER:** That will  
3 be the next exhibit, I think that's 17.

4 **Me FANNY WYLDE :** Merci. Donc, je comprends,  
5 là, on l'a entendu également avec Professeure Gunn ce  
6 matin, comment on peut mettre en œuvre justement un  
7 document international dans une fédération?

8 **Me JEAN LECLAIR :** Il y a plusieurs façons de  
9 le faire, ce que j'aimerais exposer dans ce qui s'en vient,  
10 c'est qu'on peut le faire par une déclaration politique.  
11 On peut le faire en investissant de l'argent, puis on peut  
12 le faire en adoptant des lois, ou une loi. Je vais  
13 regarder ces choses-là, si vous voulez bien.

14 Je l'ai évoqué plus haut, la... et puis Brenda  
15 l'a expliqué ce matin, la déclaration est un instrument  
16 juridique de droit international, qui a été adopté par  
17 l'assemblée générale des Nations Unies le 13 septembre  
18 2007. Pis après, si il a été initialement refusé, il faut  
19 le rappeler, le Canada a finalement adhéré, de manière  
20 hésitante, en novembre 2010, pour enfin l'appuyer sans  
21 réserve, pour prendre l'expression de la ministre, en mai  
22 2016. Mais en droit international, une simple déclaration  
23 par opposition à un traité n'est pas juridiquement  
24 contraignante. Ça veut pas dire que c'est sans importance.

25 Et en outre, on va le voir, mais en droit,

1 un traité ou une déclaration lie le Canada en droit  
2 international, mais il faut encore que ces normes de droit  
3 international elles atterrissent, elles soient introduites  
4 en droit interne, provincial et fédéral. Et donc, la  
5 déclaration, elle n'aura d'impact juridique véritable au  
6 Canada que si elle est incorporée en droit interne.

7 Et en droit constitutionnel canadien, les  
8 normes de droit international, je le répète, que ce soit le  
9 traité ou les déclarations, ne sont pas immédiatement  
10 applicables par un tribunal du seul fait de l'adhésion du  
11 Canada à une déclaration ou à un traité.

12 Il peut y avoir des exceptions, on peut  
13 interpréter la common law, c'est ce que Brenda expliquait,  
14 dans l'esprit de ce au terme des valeurs de droit  
15 international. Mais à cette adhésion par le Canada doit  
16 s'ajouter, généralement, l'adoption de lois par les ordres  
17 de gouvernements compétents, provinces ou fédéral, pour  
18 mettre en œuvre un document international.

19 Et je rappelle que le Canada est une  
20 fédération; les pouvoirs législatifs, ils sont partagés  
21 entre les deux ordres de gouvernement. Alors, le contenu  
22 du traité ou de la déclaration déterminera si ce sont les  
23 provinces ou le fédéral qui peuvent la mettre en œuvre.  
24 Ainsi, si une disposition de la déclaration des Nations  
25 Unies porte sur une matière de compétence fédérale au sens

1 de l'Article 91 de la constitution de 1867, seul le fédéral  
2 pourra le mettre en œuvre.

3 Au contraire, si une disposition de la  
4 déclaration porte sur une matière de compétence  
5 provinciale, au sens de l'Article 92, cette fois, de la loi  
6 constitutionnelle de '67, seule la province pourra le  
7 mettre en œuvre.

8 Enfin, si la déclaration porte à la fois sur  
9 des matières de compétences fédérales et provinciales, ce  
10 qui est le cas, bien, la collaboration des deux ordres de  
11 gouvernement sera nécessaire pour qu'ils puissent, au terme  
12 de leurs compétences respectives, adopter chacun de leur  
13 côté les dispositions législatives nécessaires à la mise en  
14 œuvre de l'entièreté de la déclaration.

15 En somme, si un ordre de gouvernement veut  
16 mettre en œuvre législativement la déclaration, il doit  
17 s'assurer qu'il détient la compétence constitutionnelle  
18 pour le faire, pis il doit s'assurer de l'étendu de cette  
19 compétence-là.

20 Je vais revenir plus loin sur la mise en  
21 œuvre au moyen d'une loi, mais j'aimerais dire un mot sur  
22 ce que certains gouvernements pourraient choisir de faire,  
23 je parle des gouvernements provinciaux, parce que le  
24 fédéral a choisi d'adopter une loi, à savoir procéder à une  
25 reconnaissance purement politique.

1                   Alors, une assemblée législative pourrait  
2                   procéder à une reconnaissance symbolique de la déclaration  
3                   au moyen d'une résolution parlementaire. Ça, c'est quand  
4                   la chambre, une assemblée provinciale, ils adoptent pas une  
5                   loi mais ils adoptent une résolution ou qu'ils approuvent,  
6                   par exemple, la déclaration. Il s'agirait là d'un acte  
7                   purement politique.

8                   Si l'assemblée nationale du Québec, par  
9                   exemple, adoptait une telle résolution afin de reconnaître  
10                  la déclaration-- ce qu'elle n'a pas fait, en passant-- il  
11                  ne fait pas de doute que ce geste comporterait une  
12                  incontestable dimension normative. Parce que cette  
13                  décision politique obligerait peut-être éventuellement le  
14                  Québec à modifier ses lois.

15                  Mais en soit, une telle résolution n'est pas  
16                  juridiquement contraignante; elle ne permettrait pas à un  
17                  justiciable autochtone d'invoquer un droit reconnu par la  
18                  déclaration devant un tribunal québécois. Pour que la  
19                  déclaration puisse être invoquée en droit provincial ou  
20                  fédéral pour contraindre un gouvernement ou un tiers à lui  
21                  obéir, il faudrait une incorporation directe et expresse de  
22                  la déclaration au moyen d'une mesure législative, supposons  
23                  que la question du partage des compétences que j'ai évoqué  
24                  plus haut.

25                  Mais avant d'examiner l'adoption d'une loi,

1 je vous ai dit tout à l'heure en préambule qu'on pouvait le  
2 faire politiquement, je viens d'en parler, au moyen d'une  
3 loi, je vais en parler un peu plus, mais je vais avoir  
4 parlé d'investissements, de dépenses, au fond. C'est qu'il  
5 y a un grand nombre de droits reconnus dans la déclaration  
6 qui pourraient être mis en œuvre par une province ou le  
7 fédéral autrement qu'au moyen d'une loi ou autrement que  
8 simplement politiquement.

9 Pensons à ce que le gouvernement fédéral a  
10 fait, par exemple, qui a créé un groupe de ministres, de  
11 travail de ministres chargés de réviser la législation pour  
12 veiller à sa conformité avec les principes de la  
13 déclaration ou de l'adoption de principes régissant la  
14 relation du Gouvernement du Canada avec les peuples  
15 autochtones. Alors ces deux techniques-là pourraient être  
16 adoptées sans difficulté par les provinces, puis à moins  
17 que je me trompe, le *Path to Reconciliation Act* du Manitoba  
18 est un peu de cette nature-là aussi. On vise à adopter...  
19 ils ressemblent un peu au projet de loi aussi adopté par...  
20 proposé par M. Saganash, mais ça, on est encore dans  
21 l'ordre du politique.

22 Mais si on pense... pensons également à tous  
23 les droits reconnus par la déclaration et qui, pour une  
24 large part, requiert avant tout des investissements plutôt  
25 que des lois.

1           Alors les paragraphes 13(2), 14(2), 14(3)  
2           qui concernent la prise de mesures par les états afin de  
3           protéger le droit des peuples autochtones de transmettre  
4           leur culture aux générations futures. Ça prend de l'argent  
5           ça.

6           L'article 21 concernant l'amélioration des  
7           conditions de vie des peuples autochtones, le paragraphe  
8           24(2) qui concerne la prise de mesures afin d'assurer aux  
9           peuples autochtones leur droit à la santé, l'article 28  
10          concernant le droit à une compensation appropriée pour les  
11          terres qui sont exploitées, article 39 qui concerne  
12          l'assistance financière et technique accordée aux peuples  
13          autochtones afin qu'ils puissent jouir des droits énoncés  
14          dans la déclaration, tout ça exige des investissements.

15          Comme le disait le regretté professeur  
16          Roderick Macdonald de l'Université McGill :

17                                "When governments do not want to spend  
18                                money, they spend law."

19          Lorsque les gouvernements ne veulent pas  
20          dépenser d'argent, ils dépensent du droit. S'ouvrir la  
21          bouche est souvent moins couteux que d'ouvrir son  
22          portefeuille. Il y a donc un risque qu'un gouvernement  
23          préfère adopter une loi qui promet la reconnaissance de  
24          droit plutôt que de dépenser de l'argent. Il faut avoir  
25          cette réalité à l'esprit quand on réfléchit à la question

1 de l'adoption d'une loi ayant pour objet d'incorporer la  
2 déclaration en droit interne provincial ou fédéral. Il  
3 faut se méfier.

4 En passant, l'Assemblée nationale du Québec  
5 semble effrayée de dépenser même des mots car elle n'a pas  
6 encore... elle n'a encore jamais réussi à adopter une  
7 résolution parlementaire en appui à la déclaration. Toutes  
8 les tentatives ont actuellement échoué.

9 **Me FANNY WYLDE:** Donc, Maître Leclair, bon,  
10 cette incorporation-là en droit canadien, je comprends que  
11 ça suscite des préoccupations et des craintes notamment aux  
12 droits ancestraux et de traités.

13 Qu'en est-il, en fait? Est-ce que ça peut  
14 véritablement les perturber, les éteindre, les modifier?

15 **Me JEAN LECLAIR:** Il y a certaines personnes  
16 qui sont inquiètes parce qu'ils se disent qu'est-ce qui va  
17 arriver de la déclaration si... si on adopte la déclaration,  
18 est-ce que ça va perturber la doctrine des droits  
19 ancestraux et issues de traités développées par la Cour.

20 Attendez, je veux juste retrouver mon truc  
21 parce que je ne veux pas me tromper. Bien, je m'en  
22 souviens de toute façon.

23 L'idée c'est qu'on se dit... il y a des gens  
24 qui vont dire, "Ah, ben là, si on adopte la déclaration, la  
25 déclaration va avoir préséance sur la doctrine des droits

1       ancestraux et issues de traités. On va perdre les droits  
2       que la Cour suprême a reconnus." Il faut comprendre que la  
3       déclaration, je vous le répète, elle n'est pas  
4       immédiatement applicable en droit canadien. Alors je vous  
5       l'ai dit, ça prend une loi pour la mettre en œuvre.

6               Alors, je sais que c'est compliqué, mais en  
7       droit constitutionnel, la Constitution c'est la loi  
8       suprême. C'est la loi fondamentale. Et toutes les lois  
9       qui sont en-dessous de la Constitution doivent respecter la  
10      Constitution, ce qui fait qu'actuellement, si on adopte,  
11      par exemple, le projet de loi, bien, le projet de loi de M.  
12      Saganash sur la mise en œuvre de la déclaration, ça  
13      demeurerait une simple loi et cette loi devrait respecter  
14      la Constitution, donc respecter ce que la Cour suprême a  
15      développé au cours des années.

16             Et donc à moins qu'on intègre la déclaration  
17      dans la Constitution elle-même, là ça serait différent,  
18      mais vous le savez, c'est pas demain la veille, là,  
19      transformer ça. C'est la loi mettant en œuvre la  
20      déclaration qui va être assujettie à la Constitution et non  
21      l'inverse. C'est pas vrai qu'on va tout bouleverser  
22      l'ordre constitutionnel canadien si on adoptait une loi  
23      provinciale ou fédérale pour mettre en œuvre la  
24      déclaration.

25                   **Me FANNY WYLDE:**   Oui.

1                   **Me JEAN LECLAIR:** Ce que je pourrais peut-  
2 être aborder maintenant c'est la question de  
3 l'incorporation au moyen d'une loi ou de lois. D'accord?

4                   **Me FANNY WYLDE:** En fait...

5                   **Me JEAN LECLAIR:** Oui?

6                   **Me FANNY WYLDE:** Excusez-moi, Maître  
7 Leclair. En fait, je comprends que là vous allez vous  
8 concentrer... est-ce qu'il est préférable de procéder avec  
9 une seule loi ou plutôt des lois?

10                   **Me JEAN LECLAIR:** O.k. Bien, on va voir... je  
11 vais essayer de vous expliquer le plus clairement possible  
12 que selon moi, une loi très générale risque d'avoir peu  
13 d'effet. Je pense que si on veut vraiment recourir... que la  
14 déclaration soit introduite en droit interne, à mon humble  
15 avis, il faudrait qu'on le fasse au moyen de lois  
16 spécifiques qui visent des domaines particuliers où on  
17 consulterait les autochtones pour chacun de ces domaines-là  
18 et la déclaration pourrait servir d'étrier, pourrait servir  
19 de *stepping stone* pour arriver à ça.

20                   Bon, je l'ai dit plus haut, je le rappelle,  
21 juste en guise de préambule, je répète ce que j'ai dit tout  
22 à l'heure. Notre... la déclaration va être mise en œuvre par  
23 l'ordre de gouvernement qui est compétent. Autrement dit,  
24 il faut regarder dans la déclaration les matières sur  
25 lesquelles elle porte et si ces matières-là relèvent du

1 fédéral, c'est le fédéral qui pourra les mettre en œuvre.  
2 Si elles relèvent des provinces, c'est les provinces qui  
3 pourront les mettre en œuvre. Et je le rappelle, il en est  
4 ainsi parce que notre Constitution fédérale de 1867, elle  
5 dresse une liste de compétences pour les provinces et le  
6 fédéral et ces compétences-là sont mutuellement exclusives.  
7 Autrement dit, le parlement ne peut pas poursuivre une  
8 finalité provinciale et les provinces ne peuvent pas  
9 poursuivre une finalité fédérale.

10 Par exemple, aujourd'hui, si une province  
11 adoptait un Code criminel, ce serait inconstitutionnel  
12 parce que la compétence est fédérale.

13 À l'inverse, le fédéral, demain, adopterait  
14 un Code civil ou une loi générale sur les contrats, ce  
15 serait inconstitutionnel parce qu'il n'a pas cette  
16 compétence-là. Il faut s'assurer que chaque ordre  
17 intervient convenablement. Or, le paragraphe 91.24 de la  
18 Constitution de 1867 attribut une compétence exclusive au  
19 parlement fédéral à l'égard des Indiens et des terres  
20 réservées aux Indiens, sauf que la Cour suprême a déclaré  
21 maintenant que les Indiens au sens... dans cette  
22 Constitution-là, ça comprend aussi les Inuits et les Métis.  
23 Dans l'affaire *Daniels* en 2016, on a dit que ça relevait  
24 aussi des Métis.

25 Ça veut dire que les provinces ne pourraient

1 pas adopter des lois qui visent à réglementer dans le  
2 détail toutes les questions relatives aux peuples  
3 autochtones sur leur territoire. Ce serait  
4 inconstitutionnel. On va voir qu'elles peuvent le faire  
5 dans l'exercice de leur compétence.

6 Et ce qui complique les choses aussi au  
7 Canada c'est que si le fédéral dispose d'un pouvoir  
8 législatif à l'égard des peuples autochtones, ce sont les  
9 provinces... et puis je m'excuse si c'est compliqué, là... mais  
10 ce sont les provinces et non le fédéral qui sont  
11 détentrices du domaine public, des terres de la Couronne où  
12 se fait l'exploitation, les terres de la Couronne qui sont  
13 les territoires autochtones.

14 Et conformément à l'article 109 de la  
15 Constitution de 1867, ce sont les provinces et non l'état  
16 central qui ont la plus grande part du domaine public.  
17 Alors exception faite des territoires fédéraux, que sont le  
18 Yukon, les Territoires du Nord-Ouest et le Nunavut,  
19 auxquels il faut ajouter certaines terres fédérales, les  
20 terres de réserves par exemple, tout le domaine public du  
21 Canada, toutes les grandes forêts qu'on voit appartiennent  
22 aux provinces.

23 Et chose capitale à garder en tête, ce sont  
24 sur ces territoires-là que se déroulent les activités  
25 d'extraction des ressources qui font la richesse du Canada

1 et ce sont sur ces territoires-là, au fond.. ce sont ces  
2 territoires-là qui appartenaient aux autochtones et qui,  
3 aujourd'hui, sont formellement propriété des provinces.

4 Ajoutons à ça, pour ajouter encore une  
5 couche de complexité, que ce sont les provinces qui  
6 disposent de la compétence de principe en matière de santé,  
7 d'éducation, de langue, de protection de la jeunesse, de  
8 droit de la famille, d'administration de la justice, de  
9 réglementation et de l'exploitation des ressources  
10 naturelles sur leurs territoires, et vous comprendrez que  
11 de cette complexe répartition de pouvoir législatif puis du  
12 domaine public résulte la nécessité de faire intervenir les  
13 deux ordres de gouvernement à l'occasion de l'élaboration  
14 de tentatives de solution à un problème autochtone.

15 Et la situation était déjà passablement  
16 compliquée mais elle s'est encore plus complexifiée, je  
17 m'excuse, avec la constitutionnalisation des droits  
18 ancestraux et issus de traités des peuples autochtones en  
19 1982.

20 Alors juste pour vous rappeler ce que c'est  
21 les droits ancestraux puis issus des traités, la Cour  
22 suprême a défini les droits ancestraux comme des activités,  
23 la chasse, la pêche, qui étaient fondamentalement  
24 importantes pour un groupe autochtone avant le contact avec  
25 les Européens.

1                   Alors vous voyez, y a une dimension très  
2 folklorisante. C'est uniquement des activités qui étaient  
3 importantes pour les peuples autochtones avant le contact  
4 avec les Européens qui peuvent constituer un droit  
5 ancestral. C'est ce que ça fait quand on a un droit  
6 ancestral.

7                   Mais si j'arrive, si je suis un Autochtone,  
8 j'arrive à faire la démonstration que ma communauté a un  
9 droit ancestral de chasser, je peux utiliser ce droit-là  
10 comme un bouclier à l'encontre des lois fédérales et  
11 provinciales.

12                   La Cour suprême a aussi reconnu un titre  
13 aborigène. Je vous ai dit qu'un droit ancestral c'est une  
14 activité particulière. Le titre c'est un droit au  
15 territoire lui-même. C'est le droit d'exploiter le  
16 territoire.

17                   Et encore là, si on arrive à faire la preuve  
18 d'un titre et c'est extraordinairement difficile et ç'a  
19 couté 40 millions de dollars à la seule nation qui a réussi  
20 à le faire, on peut se servir de ce titre-là comme d'un  
21 bouclier à l'encontre des lois fédérales et provinciales.

22                   Et puis finalement, y a les droits issus de  
23 traités. Les Autochtones ont signé des traités de toute  
24 sorte de nature, de paix et d'amitié, et puis des traités  
25 dits numérotés que tous les Autochtones de l'ouest du pays

1        connaissent fort bien. Et ces traités-là, ben avant 1982,  
2        une loi fédérale pouvait les abroger. Mais depuis 1982,  
3        ils sont élevés dans la constitution. Ils sont enchâssés  
4        dans la constitution. Alors on peut pas y porter atteinte  
5        aisément.

6                    Et donc la question du partage des  
7        compétences s'est complexifiée parce que la Cour suprême a  
8        déclaré que ces droits ancestraux et issus de traités  
9        tombaient dans la compétence exclusive du parlement  
10       fédéral. Mais en même temps dans la même phrase en fait,  
11       elle a affirmé que les provinces, comme Ottawa, pouvaient  
12       adopter des lois qui limitent ces droits-là, qui limitent  
13       la portée de ces droits dans des limites raisonnables.

14                   Parce qu'il faut savoir que la Cour suprême,  
15       oui, elle a reconnu des droits ancestraux, oui, elle a  
16       reconnu des titres aborigènes, oui, elle a reconnu les  
17       droits issus de traités, mais dans une affaire qui  
18       s'appelle l'affaire *Sparrow*, elle a autorisé les  
19       gouvernements et le fédéral à limiter ces droits-là d'une  
20       manière raisonnable.

21                   Et le raisonnement de la Cour lorsqu'elle  
22       l'a énoncé était totalement illogique sur le plan  
23       constitutionnel parce qu'on pouvait pas à la fois dire que  
24       les droits ancestraux relevaient du pouvoir exclusif du  
25       fédéral et que les provinces pouvaient limiter un droit



1 autoriserait le parlement à adopter des lois dans un très  
2 grand nombre de secteurs dans le mesure où elles auraient  
3 pour finalité de régler les peuples autochtones.

4 Par exemple, le fédéral pourrait pas  
5 régler la santé en général. Ça serait  
6 inconstitutionnel, mais il peut régler la santé  
7 autochtone.

8 Toutefois, comme je l'ai dit plus tôt, je  
9 pense pas que le fédéral va se mettre à adopter des lois  
10 qui visent l'ensemble des matières visées par la  
11 déclaration parce que plusieurs de celles-ci relèvent au  
12 premier chef des provinces, santé, éducation,  
13 administration de la justice, territoire, exploitation des  
14 ressources.

15 Pour ce qui est des provinces, la Cour  
16 suprême a beaucoup élargi leur pouvoir d'adopter des  
17 dispositions législatives relatives aux peuples  
18 autochtones. Et puis pour être bien franc, la Cour suprême  
19 a élargi -- assoupli, je m'excuse, les règles du partage  
20 des compétences en matières autochtones parce qu'elle  
21 voulait permettre aux provinces de tirer pleinement partie  
22 du potentiel économique de leur domaine public.

23 Les provinces peuvent donc maintenant  
24 régler les droits ancestraux ou issus de traités qui  
25 grèvent leur territoire dans la mesure où le test de

1 l'atteinte raisonnable développé dans *Sparrow* est respecté.

2 Je pense que la Cour suprême reconnaît aussi  
3 implicitement que dans des domaines comme la santé et  
4 l'éducation ou la protection de la jeunesse, il importe  
5 d'accorder une latitude aux provinces pour accommoder les  
6 intérêts spécifiques des peuples autochtones.

7 L'exclusivité du partage des compétences  
8 n'est pas pour autant abandonnée. Je veux dire une loi  
9 provinciale qui viserait à régler directement un  
10 intérêt régi par la loi sur les Indiens serait  
11 inconstitutionnel.

12 En outre, je pense que dans l'exercice d'une  
13 de ces compétences, une province peut adopter des  
14 dispositions législatives qui se rapportent aux Autochtones  
15 mais uniquement si elles visent à améliorer la situation  
16 des Autochtones.

17 Pensons à des lois provinciales  
18 d'application générale qui portent sur l'éducation, la  
19 santé, la protection de la jeunesse ou les services de  
20 police, qui comporteraient des dispositions visant à  
21 établir un régime particulier pour tenir compte des  
22 spécificités de la clientèle autochtone ou visant à  
23 déléguer des pouvoirs à des organisations autochtones.

24 Pensons à des lois provinciales  
25 d'application générale portant sur l'exploitation des

1 mines, des hydrocarbures, de l'énergie hydroélectrique, qui  
2 comporteraient des dispositions visant à établir un régime  
3 spécifique de consultation des peuples autochtones. À mon  
4 sens, il fait aucun doute que ces lois-là seraient valides.

5 Dans une affaire *Kitkatla* que je vais donner  
6 comme exemple, la Cour suprême a jugé que le *Heritage*  
7 *Conservation Act* de la Colombie-Britannique était une loi  
8 provinciale d'application générale valide malgré qu'elle  
9 comportait des dispositions spécifiques qui parlaient des  
10 Autochtones.

11 La Cour a jugé que le trait dominant de la  
12 loi... en droit constitutionnel en anglais on parle le  
13 "pith and substance" de la loi était, et je cite la Cour:

14 "...de conserver et de protéger toutes  
15 les formes de biens, d'objets et  
16 d'artéfacts culturels qui, en Colombie-  
17 Britannique, ont une valeur  
18 patrimoniale pour l'ensemble de la  
19 province."

20 Toutes des choses en passant qui relèvent de  
21 la compétence des provinces en matière de propriété et  
22 droit civil, les objets, la propriété, et cetera.

23 Mais la loi avait la particularité de  
24 protéger ces artéfacts culturels mais aussi d'en autoriser  
25 la destruction. Or la loi précisait s'appliquer aux

1 artéfacts autochtones et permettait donc au ministre d'en  
2 autoriser aussi bien la protection que la destruction.  
3 Alors les groupes autochtones ont dit, "La loi vise les  
4 Autochtones. Elle est inconstitutionnelle."

5 Et la Cour a jugé les artéfacts en question  
6 avaient une double nature culturelle, étant bien sûr partie  
7 à l'héritage autochtone mais également partie au patrimoine  
8 culturel de tous les Britanno-Colombiens.

9 L'intervention de la province était donc...  
10 était donc pas au premier regard inconstitutionnelle, puis  
11 la Cour a ensuite pris soin de souligner, et je la cite:

12 "...qu'une disposition législative  
13 n'excède pas la compétence de la  
14 province du seul fait qu'on y trouve le  
15 mot 'autochtone'."

16 Alors c'est pas parce qu'une loi provinciale  
17 parle d'Indiens, de Métis ou d'Autochtones qu'elle est  
18 inconstitutionnelle.

19 La Cour a jugé que les dispositions en  
20 litige constituaient pas une atteinte interdite, un  
21 empiètement on dit en droit, parce qu'elles étaient  
22 suffisamment intégrées à une loi d'application générale  
23 valide et qu'elles n'imposaient pas un traitement  
24 défavorable particulier aux Autochtones, garantissant au  
25 contraire aux artéfacts culturels des autochtones une

1 protection dont ils ne bénéficiaient pas avant l'adoption  
2 de la loi.

3 La Cour a jugé en effet que les dispositions  
4 en litige faisaient partie d'un régime soigneusement  
5 équilibré, qui établissait un juste équilibre entre la  
6 nécessité de préserver l'intégrité du patrimoine autochtone  
7 culturel, le patrimoine culturel autochtone et celui de  
8 promouvoir l'exploitation des ressources naturelles de la  
9 province.

10 Bref, ce que je veux montrer, c'est que la  
11 caractère améliorateur, *ameliorated character*, du régime  
12 législatif provincial a beaucoup joué dans la décision d'en  
13 reconnaître la constitutionnalité. Si la loi avait  
14 simplement eu comme objet de prévoir un traitement  
15 particulier qui n'aurait pas eu comme finalité d'établir un  
16 juste équilibre entre les intérêts des autochtones et ceux  
17 de la population de la province, elle aurait fort  
18 probablement été jugée inconstitutionnelle.

19 En somme, s'il est vrai que les peuples  
20 autochtones relèvent de la compétence exclusive fédérale,  
21 ça n'empêche pas, dans l'exercice de leurs compétences  
22 exclusives, les provinces peuvent accessoirement adopter  
23 des mesures législatives permettant non seulement de  
24 limiter raisonnablement les droits reconnus par l'article  
25 35, dans les limites permises dans le test de *Sparrows*,

1        mais également d'accommoder et d'adapter leur régime  
2        législatif à la spécificité autochtone. Bref, si la loi  
3        provinciale poursuit un objet améliorateur, il y a de  
4        fortes chances pour qu'il soit jugé valide.

5                    Je signale que cet assouplissement du  
6        pouvoir des provinces de légiférer à l'égard des peuples  
7        autochtones, c'est une source d'inquiétude pour les peuples  
8        autochtones. Les peuples autochtones ont toujours vu d'un  
9        œil très suspicieux les interventions législatives  
10       provinciales; ils préfèrent négocier avec le fédéral. Leur  
11       interlocuteur favori demeure le gouvernement fédéral.

12                   Mais en revanche, il faut bien admettre que  
13       si cet assouplissement n'avait pas eu lieu, c'est-à-dire  
14       que si on n'avait pas reconnu un pouvoir aux provinces de  
15       légiférer à l'égard des peuples autochtones, elles ne  
16       seraient pas en mesure de mettre en œuvre la Déclaration.  
17       Alors ça, c'est un élément important.

18                   Et après ce long préambule, j'en arrive à la  
19       question qui m'était posée (Rires) : est-ce que c'est mieux  
20       d'avoir une loi générale, qui dit : « on introduit la  
21       Déclaration en droit provincial ou fédéral » ou est-ce  
22       qu'on est mieux d'avoir des lois spécifiques?

23                   Alors... attendez, je ne veux pas me répéter.

24                   **Me FANNY WYLDE:** De toute façon, Me Leclair,  
25       avec la complexité du droit constitutionnel, si vous vous

1 répétez, c'est juste pour notre bénéfice! (Rires)

2 **ME JEAN LECLAIR** : Je vais me répéter juste  
3 un petit peu, ça ne sera pas long!

4 **ME FANNY WYLDE** : Merci!

5 **ME JEAN LECLAIR** : Alors, il y a plusieurs  
6 des articles de la Déclaration, je le répète, plusieurs  
7 articles de la Déclaration qui portent sur des matières qui  
8 relèvent des provinces. Je le répète : la santé,  
9 l'éducation, les relations de travail, l'administration de  
10 la justice, pour n'en nommer que quelques-unes et, bien  
11 sûr, au premier chef, tout le domaine de l'exploitation des  
12 ressources naturelles tiré du domaine public provincial.

13 Il ne fait donc aucun doute que les droits  
14 reconnus par ces dispositions de la Déclaration pourraient  
15 faire l'objet d'une loi, d'une incorporation au moyen de  
16 mesures législatives appropriées, parce qu'elle relève de  
17 la compétence des provinces.

18 Il va de soi, à l'inverse, que les provinces  
19 n'auraient pas la compétence requise pour légiférer sur des  
20 matières qui relèvent du gouvernement fédéral. Pensez par  
21 exemple aux dispositions de la Déclaration qui touchent à  
22 des matières militaires, la défense nationale ou du droit  
23 criminel, par exemple, ou la citoyenneté ; ce sont des  
24 choses que les provinces ne peuvent pas mettre en œuvre.

25 Bref, la mise en œuvre de l'entièreté de la

1 Déclaration requiert l'adoption de lois par les deux ordres  
2 de gouvernements, à moins bien sûr qu'on modifie la  
3 Constitution pour y intégrer, comme je l'ai dit, mais ce  
4 n'est pas demain la veille.

5           Alors, est-ce qu'on doit procéder à une  
6 incorporation ou comment on pourrait... prenons le Québec,  
7 par exemple. Le Québec, je ne me gêne pas pour le dire, n'a  
8 strictement rien fait sur cette question-là, même pas de  
9 résolution parlementaire, rien du tout ; c'est un cancre  
10 dans cette chose-là. Mais imaginons que le Québec décide  
11 d'incorporer la Déclaration ; comment est-ce qu'il pourrait  
12 faire? Soit il procéderait par une loi générale, je vais  
13 donner un exemple, ou il procéderait par des lois  
14 spécifiques.

15           Alors, examinons l'hypothèse d'une courte  
16 loi visant l'incorporation en termes généraux de la  
17 Déclaration. Vous voulez dire quelque chose, Maître?  
18 D'accord. Imaginons une disposition fictive qui dirait  
19 ceci : les droits reconnus au terme de la Déclaration et  
20 qui relèvent de la compétence du Québec en vertu de  
21 l'article 92 de la Constitution de 1867 ont force de loi au  
22 Québec, point à la ligne. Est-ce qu'une loi comme celle-là  
23 serait constitutionnelle ou inconstitutionnelle?

24           Il me semble que comme elle ne se rattache  
25 pas directement à une loi provinciale dont le trait

1 dominant relève de la province, la constitutionnalité d'une  
2 telle loi serait douteuse, parce qu'elle a pour trait  
3 dominant les peuples autochtones du Canada. Ça ne vise que  
4 les peuples autochtones, ce n'est pas une loi, par exemple,  
5 sur la santé, qui vise à introduire une disposition de la  
6 Déclaration.

7 J'ai tendance à croire qu'une loi formulée  
8 comme ça serait probablement inconstitutionnelle. Mais bon,  
9 je dis « peut-être » parce que toute réponse catégorique à  
10 ce sujet-là est un peu...

11 **ME FANNY WYLDE** : Donc, selon vous, quelle  
12 forme devrait épouser, quelle formulation cette loi-là  
13 devrait épouser?

14 **ME JEAN LECLAIR** : Comme on va le voir, je  
15 pense qu'il faudrait qu'elle soit intégrée à une loi... il  
16 faudrait qu'on intègre... je vais juste continuer mon affaire  
17 pour être sûr d'être logique et puis je vais y revenir.

18 Est-ce que je peux tout y répondre, parce  
19 que c'est important? C'est que je pense qu'on ne peut pas  
20 avoir une loi qui viserait exclusivement... qui serait isolée  
21 de toutes les compétences provinciales. Je pense que dans  
22 une loi qui porterait sur l'éducation, une loi qui  
23 porterait sur la santé, une loi qui porterait sur les  
24 évaluations environnementales, sur le développement de  
25 l'hydroélectricité, une loi qui porterait... je ne sais pas,

1 moi, sur l'agriculture, la protection de la jeunesse - puis  
2 la protection de la jeunesse, ça en est un bon exemple. On  
3 a des exemples de ça à travers le Canada de lois  
4 provinciales qui, accessoirement, portent, comme je l'ai  
5 dit, dans une perspective amélioratrice, portent sur une  
6 dimension autochtone.

7 Alors, dans ces lois-là, on pourrait  
8 intégrer l'un des droits qui est reconnu. On pourrait  
9 assurer la mise en œuvre du droit reconnu par la  
10 Déclaration, par ce moyen-là. Le fédéral, lui, il a une  
11 compétence directe sur les peuples autochtones; alors, il  
12 peut adopter une loi comme celle-là, qui dit : on introduit  
13 les droits reconnus au terme de la Déclaration et qui  
14 relèvent du Parlement fédéral, ont force de loi.

15 Et d'ailleurs, en passant, c'est ce qu'on a  
16 avec le projet C-262, dont je pourrais parler. C'est que je  
17 pense que quand on regarde ce projet de loi, je le  
18 rappelle, présenté par le député Roméo Saganash, qui est un  
19 député Cri du Nouveau Parti démocratique - et en passant,  
20 le titre complet du projet de loi s'appelle la *Loi visant à*  
21 *assurer l'harmonie des lois fédérales avec la Déclaration*  
22 *des Nations Unies sur les droits des peuples autochtones.*  
23 C'est une loi qui est assez courte et qui comporte un long  
24 préambule et six articles et je vais juste les examiner,  
25 parce que l'article 3, je pense que... quand je disais, en

1 préambule, que je voulais juste qu'on évite de fonder, des  
2 fois, trop d'espoir sur certaines choses, parce que ce  
3 projet de loi a plein de vertus, mais je pense que  
4 l'article 3, qui dit ceci :

5 « La Déclaration des Nations Unies sur les  
6 droits des peuples autochtones, dont le texte  
7 est reproduit à l'annexe, constitue un  
8 instrument universel garantissant les droits  
9 internationaux de la personne et trouvent  
10 application au Canada. »

11 Alors, cette disposition-là, je pense qu'il  
12 faut la prendre pour ce qu'elle est. C'est une disposition  
13 qui encourage les tribunaux à interpréter les lois  
14 fédérales, conformément aux valeurs de la Déclaration.

15 Mais il ne faudrait pas y voir une loi qui  
16 permettrait de déclarer invalide une loi fédérale qui  
17 contreviendrait à un article de la Déclaration. Pourquoi je  
18 dis ça? Parce que d'une part, l'expression « y trouve  
19 application au Canada », c'est vague, comme expression. Et  
20 la loi ne comporte pas, comme on le voit parfois, un  
21 mécanisme qui assure la prépondérance, qui assure la  
22 primauté de, en l'occurrence, la déclaration. Je vous  
23 donne un exemple.

24 Que ce soit la Charte québécoise ou la  
25 Déclaration canadienne des droits et libertés de 1960, on

1 peut y lire une disposition qui dit à peu près ceci, qui  
2 dit les lois qui sont incompatibles, par exemple, avec la  
3 Charte québécoise, sont inopérantes à moins qu'elles ne  
4 comportent... à moins qu'elles ne précisent s'appliquer  
5 malgré la Charte québécoise.

6 Autrement dit, on a un mécanisme qui, dans  
7 la loi, prévoit la suprématie de la Charte québécoise sur  
8 les autres lois. Or ici on n'a pas rien de semblable dans  
9 la loi fédérale actuelle et je doute que les tribunaux  
10 canadiens lisent dans l'expression et trouve application au  
11 Canada un mandat les autorisant à déclarer inopérantes les  
12 dispositions de lois fédérales irréconciliables avec la  
13 déclaration.

14 Ils vont sûrement y voir une clause  
15 interprétative, c'est sûr, mais je pense pas qu'ils vont  
16 jamais déclarer une loi fédérale invalide sur la base de  
17 cette disposition-là.

18 Une telle clause est loin d'être inutile et  
19 elle peut fort bien permettre d'infléchir l'interprétation  
20 actuellement donnée aux lois fédérales affectant les  
21 intérêts des Autochtones mais il faut pas exagérer son  
22 impact potentiel. L'adoption d'une telle clause pourra  
23 constituer une première étape, un encouragement à  
24 interpréter les lois fédérales dans le respect des droits  
25 reconnus aux termes de la déclaration.

1                   Et de ce qui précède, il me semble qu'une  
2 loi autre que simplement interprétative qui déclarerait  
3 sans plus que les droits reconnus aux termes de la  
4 déclaration et qui relèvent de la compétence du fédéral par  
5 exemple ou des provinces ont force de loi, ben je pense pas  
6 qu'une loi comme celle-là permettrait de réaliser les  
7 espoirs qu'on fonde sur elle si on s'attend à ce qu'elle  
8 autorise un juge à invalider une loi provinciale ou  
9 fédérale qui contreviendrait à un droit reconnu à la  
10 déclaration.

11                   Pourquoi est-ce que les juges prendraient  
12 pas ces mots-là? Pourquoi est-ce qu'ils diraient pas ils  
13 trouvent application au Canada, ça me permet d'utiliser le  
14 projet de loi de Monsieur Saganash pour déclarer telle loi  
15 fédérale est invalide?

16                   Pour comprendre ça, il faut comprendre qu'il  
17 y a des raisons institutionnelles et qui font que, en  
18 l'absence d'un... raisons institutionnelles j'entends par  
19 là, je le dis tout de suite mais je vais le répéter, le  
20 fait que les juges sont pas élus, le fait que les juges ont  
21 une légitimité limitée, ils peuvent pas faire n'importe  
22 quoi, d'accord.

23                   Et donc en l'absence d'un mandat législatif  
24 très clair, les juges vont hésiter à déclarer une loi  
25 inopérante sous prétexte qu'elle est compatible avec une

1 autre loi. Vous savez, quand les tribunaux déclarent une  
2 loi invalide aujourd'hui, c'est parce qu'elle contrevient à  
3 la constitution.

4 Mais là ici on a affaire à une simple loi  
5 fédérale qui incorpore la déclaration et là on demande est-  
6 ce qu'avec une simple loi fédérale on peut déclarer  
7 d'autres lois fédérales invalides? Donc c'est des lois qui  
8 sont sur le même niveau au fond dans la hiérarchie du  
9 droit.

10 Et pour vous donner un exemple de... oui, je  
11 m'excuse, Madame la commissaire, je sais que c'est... mais  
12 c'est que je veux vous expliquer que même dans  
13 l'interprétation de l'article 35 de la constitution, les  
14 juges ont pas été aussi généreux qu'on aurait pu l'espérer  
15 et ça s'explique pour les raisons que je viens d'évoquer.

16 Je veux souligner que pour des raisons qui  
17 tiennent à la fragilité des bases de légitimité de leurs  
18 pouvoirs, les juges, même lorsqu'ils sont autorisés par un  
19 texte constitutionnel, hésitent à donner une interprétation  
20 qui ébranlerait les fondements de l'ordre politique  
21 canadien.

22 Pleins d'espoirs ont été fondés sur  
23 l'article 35. Je sais pas si vous vous souvenez mais on  
24 espérait voir la Cour suprême y trouver le socle d'un droit  
25 à l'autodétermination ou à quelque chose qui ressemblerait

1 à la souveraineté limitée reconnue aux nations autochtones  
2 américaines par exemple.

3 Puis la Cour s'est plutôt repliée sur une  
4 conception, je l'ai expliqué tout à l'heure, très  
5 folklorisante des droits autochtones. Elle a dit au fond,  
6 elle a limité ces droits-là à des activités, à des  
7 pratiques culturelles intimement liées au mode de vie des  
8 Autochtones avant le contact avec les Européens. C'est  
9 hyper sclérosant ça. C'est comme si de dire que l'identité  
10 autochtone a arrêté d'évoluer au moment du contact avec les  
11 Européens.

12 Et puis elle a aussi reconnu, oui, je le  
13 reconnais, des droits plus ambitieux aux territoires comme  
14 le titre aborigène mais c'est d'une complexité et d'un coût  
15 incroyable à prouver.

16 Alors pourquoi est-ce que la Cour a adopté  
17 une approche culturaliste qui fait reposer sur les peuples  
18 autochtones le fardeau de prouver qu'ils occupaient le  
19 territoire avant nous? C'est eux qui doivent prouver  
20 qu'ils étaient là. C'est ça la doctrine des droits  
21 ancestraux.

22 Il fait aucun doute que ça tient au fait que  
23 les juges ont pas estimé avoir la légitimité requise pour  
24 reconnaître une souveraineté politique limitée aux peuples  
25 autochtones du Canada. Je pense qu'ils vont venir à ça.

1       Ils vont en venir à ça mais il y a encore des... il faut  
2       qu'il y ait des choses qui se passent politiquement avant  
3       qu'ils en arrivent à ça.

4                Puis même s'ils interprétaient un texte  
5       constitutionnel et non une simple loi, ils ont jugé ne pas  
6       être en droit de reconnaître d'un coup de baguette magique  
7       judiciaire un troisième ordre de gouvernement parce que ce  
8       troisième ordre de gouvernement, si on connote ça à une  
9       autonomie politique, il serait exercé par qui? Par les 630  
10      bandes, Premières nations? Par les 60 à 80 nations  
11      identifiées par la Commission royale de Dussault et  
12      Erasmus? Qu'est-ce qui arriverait des Métis? Qui  
13      exercerait cette autonomie-là pour les Métis?

14               Ce qui fait que reconnaître judiciairement  
15      des droits politiques par opposition à des droits  
16      simplement culturels, c'est ça que la Cour fait, aurait  
17      constitué une modification majeure de l'ordre politique  
18      canadien. Et au fond, c'est aux politiciens à entreprendre  
19      une telle démarche. C'est ça que la Cour envoie comme  
20      message.

21               Et si les juges ont pas voulu voir dans  
22      l'article 35 de notre constitution, la loi fondamentale du  
23      pays, un tremplin pour assurer la reconnaissance de droits  
24      de nature politique aux peuples autochtones, ben tout ce  
25      que je dis c'est qu'il faut se garder de penser qu'une

1 simple loi fédérale incorporant la déclaration va les  
2 amener à le faire, ce qui veut pas dire, et je vais  
3 l'inciter là-dessus, que ce projet de loi-là a pas son  
4 utilité. Absolument pas, au contraire. Il faut voir les  
5 choses en termes de cheminement.

6 Puis pour vraiment amener les juges à  
7 changer leur approche, les politiciens doivent agir et  
8 adopter, comme je le disais tout à l'heure, explicitement  
9 de manière claire et précise des lois donnant un contenu  
10 concret aux dispositions de la déclaration.

11 Les tribunaux vont aller plus loin  
12 uniquement si leur mandat est clair. Une loi générale  
13 incorporant en bloc la déclaration, sans plus, ne sera  
14 jamais considérée être de cette nature-là, selon moi, selon  
15 mon expérience. On y verra simplement une loi  
16 d'interprétation. L'adoption d'une telle loi peut  
17 constituer une première étape mais en soi, elle comporte  
18 des limites.

19 Si on veut vraiment mettre en œuvre la  
20 déclaration en droit interne provincial ou fédéral, puis là  
21 je vais me concentrer ici sur les provinces, il faudrait  
22 donc selon moi, je l'ai dit tout à l'heure, intégrer les  
23 droits qui y sont énoncés dans des lois provinciales  
24 d'application générale portant sur des secteurs précis  
25 comme l'éducation, la langue, la santé, l'administration de

1 la justice, les ressources naturelles, et cetera.

2 Les dispositions de la déclaration pourront  
3 alors être intégrées efficacement à un régime législatif  
4 précis. Elles pourraient l'être avec le concours des  
5 peuples autochtones qui seraient consultés sur des  
6 questions précises. Leurs initiatives pourraient être  
7 mobilisées. Je reviens à mon exemple des Attikameks. De  
8 telles dispositions précises et bien intégrées aux lois  
9 auront plus de chance d'accomplir leur mission qu'une  
10 incorporation générale et désincarnée de la déclaration en  
11 droits internes.

12 Confrontés à des dispositions précises, les  
13 juges n'hésiteront plus à les mettre en œuvre. Puisque ces  
14 normes vont bénéficier de la légitimité démocratique  
15 découlant de leur approbation par l'assemblée législative  
16 provinciale, si je pense au Québec ou aux provinces, et de  
17 la participation des peuples autochtones à leur  
18 élaboration, ben là les juges auront plus de scrupule à  
19 appliquer les lois.

20 En outre, comme je l'ai dit plus haut, les  
21 dispositions relatives aux peuples autochtones dans de  
22 telles lois provinciales seront greffées à des lois dont le  
23 trait dominant, éducation, langue, et cetera, relèvera  
24 indubitablement de la compétence des provinces. Elles  
25 seront donc jugées constitutionnelles.

1 Est-ce que je suis après dire... parce que  
2 je veux absolument pas laissé cette impression-là... est-ce  
3 que je suis après dire que le projet de loi que Monsieur  
4 Saganash défend avec une incroyable intégrité, lui qui a  
5 passé des années à l'ONU à défendre la déclaration, est-ce  
6 que je dis que ç'a peu de chance de changer les choses  
7 parce que ça procède à une incorporation générale plutôt  
8 que spécifique, absolument pas. Ce serait outrancier, ce  
9 serait disgracieux de ma part de dire ça.

10 Mais ce que je dis c'est que je ne minimise  
11 pas l'impact politique majeur de son adoption, mais je  
12 pense qu'il faut voir l'article 3 pour ce qu'il est, une  
13 disposition qui vise à encourager une interprétation des  
14 lois fédérales qui soient en harmonie avec les principes de  
15 la déclaration et non un mécanisme permettant un contrôle  
16 judiciaire des lois.

17 Et surtout, je pense que la grande force de  
18 ce projet de loi se trouve dans ces autres articles. En  
19 effet, les articles 5 et 6 du projet de loi prévoient la  
20 mise en place d'un mécanisme de mise en œuvre de la  
21 déclaration qui appelle la collaboration des peuples  
22 autochtones.

23 Alors l'article 5 dit ceci :

24 « Le Gouvernement du Canada, en  
25 collaboration et en coopération avec



1                   influenced federal law policy and  
2                   practice for far too long. It would  
3                   require the government to get on with  
4                   the work of respecting the human rights  
5                   of indigenous peoples, develop a  
6                   national action plan with indigenous  
7                   peoples and report annually on  
8                   progress. »

9                   Bref, parce que j'en arriverai à ma  
10                  conclusion...

11                  **Me FANNY WYLDE:** Donc, vous en concluez?

12                  **Me JEAN LECLAIR:** Donc, ce que je dirais  
13                  c'est que le parlement fédéral est constitutionnellement  
14                  autorisé à mettre en œuvre la déclaration dans ses champs  
15                  de compétences. Il en va de même des provinces, dans leurs  
16                  secteurs de compétences. Mais pour que cette incorporation  
17                  aille au-delà d'une injonction à ce que le droit fédéral ou  
18                  provincial soit interprété en harmonie avec la déclaration,  
19                  il est préférable de procéder à la pièce en consultation  
20                  avec les peuples autochtones plutôt qu'au moyen d'une loi  
21                  générale que les tribunaux hésiterons à mettre en œuvre.

22                  Une telle loi a certainement son utilité  
23                  politique si elle inclut la mise en place, comme le fait le  
24                  projet de loi, d'un plan d'action provincial ou national de  
25                  mise en œuvre de la déclaration.

1                   En somme, il faut voir les choses dans la  
2 perspective d'un cheminement. Une loi provinciale ou  
3 fédérale encourageant les tribunaux à interpréter les lois  
4 dans le respect de la déclaration serait un premier pas  
5 important mais qui devrait être suivi d'adoptions plus  
6 spécifiques. Il ne faut pas en rester à la première étape,  
7 sinon les politiciens pourraient s'en servir pour se  
8 dédouaner de leur devoir de mettre véritablement en œuvre  
9 la déclaration.

10                   **Me FANNY WYLDE:** Maître Leclair,  
11 maintenant... merci de votre exposé.

12                   Je vous inviterais... j'aimerais que vous  
13 partagiez avec le Commissaire en chef et les Commissaires  
14 quels seraient les avantages et les désavantages à lier la  
15 déclaration au moyen de loi?

16                   **Me JEAN LECLAIR:** C'est sûr que l'avantage,  
17 comme on l'a vu, c'est que si on a juste une reconnaissance  
18 politique, c'est puissant. On peut s'en servir comme  
19 levier politique. On ne peut pas se présenter devant un  
20 tribunal pour assurer la mise en œuvre.

21                   Alors qu'un loi, ça permet quand même de  
22 forcer la main au gouvernement en se présentant devant les  
23 tribunaux.

24                   Et l'inconvénient, et je conclurai là-  
25 dessus, c'est qu'à mon sens, il va quand même y avoir

1       quelque chose de perdu quand la déclaration va être  
2       incorporée en droit interne fédéral et provincial, parce  
3       qu'actuellement les peuples autochtones peuvent mobiliser  
4       la déclaration comme ils l'entendent dans le débat public.  
5       Ils peuvent tenter de faire prévaloir leur interprétation,  
6       mais à partir du moment où la déclaration sera incorporée  
7       en droit interne, ce seront les tribunaux canadiens qui  
8       auront le dernier mot sur la portée de celle-ci et  
9       l'interprétation qu'ils vont donner à la déclaration sera  
10      peut-être pas en harmonie avec les espoirs des autochtones,  
11      mais c'est un risque à courir parce qu'il faut prendre des  
12      risques. Mais je pense que c'est un risque qui mérite  
13      d'être pris, si on le voit comme une première étape.

14                Mais par exemple, les Cris... comme je suis  
15      du Québec, je connais mieux la situation au Québec... mais  
16      les Cris ont été tellement habiles au chapitre  
17      international dans leur utilisation du droit international,  
18      dans leur *shaming practices* de l'état canadien.

19                Et la déclaration, quand je dis que les  
20      autochtones peuvent se l'approprier, c'est aussi pour en  
21      faire un *shaming mechanism* qui est très puissant.

22                C'est pour ça que je persiste à croire qu'il  
23      est important pour les peuples autochtones de s'approprier  
24      la déclaration pour en faire eux-mêmes quelque chose.

25                Puis je conclurais en disant que ce qui

1 importe le plus à la réconciliation c'est, il me semble, le  
2 développement et le maintien d'un esprit de fraternité. Et  
3 il faut, pour que le droit en arrive à traduire cet esprit  
4 de fraternité, s'inspirer des traditions juridiques  
5 autochtones.

6 En droit autochtone, le droit est envisagé  
7 dans une perspective relationnelle qui exclut le tout ou  
8 rien, qui reconnaît que les choses se transforment dans le  
9 temps, qui admet que le droit n'est pas un point final mais  
10 un jalon sur un chemin, que l'on le veuille ou non, on est  
11 jamais seul.

12 La déclaration est donc un jalon important,  
13 mais ce n'est pas le dernier sur le chemin de la  
14 réconciliation.

15 Merci beaucoup de votre attention.

16 **Me FANNY WYLDE:** Merci beaucoup, Maître  
17 Leclair. Je n'ai pas d'autres questions.

18 J'inviterais maintenant la Commissaire en  
19 chef et les Commissaires, si elles ont des questions à  
20 poser, de procéder à celles-ci.

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

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

24 **COMMISSIONER QAJAQ ROBINSON:** Merci. I'm  
25 hoping you can expand on what you shared with us when it

1 comes to the domestic implementation of the U.N., of UNDRIP  
2 to the territories, more specifically. Under the division  
3 of powers, you were speaking about the federal government  
4 and the provinces. Nunavut, Northwest Territories and the  
5 Yukon are largely Indigenous populations. The  
6 implementation and adherence to the principles of the U.N.  
7 Declaration will have real impacts on that population, as  
8 it does across the country.

9 How do you see this playing out within the  
10 territories when they are, in effect, although there is  
11 some devolution of power and some of them are becoming more  
12 province-like, in a legal sense still creatures of federal  
13 legislation? Do you see the same legislative development  
14 as being necessary for the territories as well?

15 **MR. JEAN LECLAIR:** That's a tough one. I'd  
16 say what makes it even more complicated is that most of the  
17 northern territories are covered by treaties, northern  
18 treaties. And so, it is going to be interesting to see how  
19 the implementation of the Declaration plays out in view of  
20 the constitutional rights enshrined in these modern  
21 treaties.

22 But, to come back to your question, maybe  
23 it's not a convincing answer, but the situation is  
24 different from one territory to the other. But, in  
25 Nunavut, where you have a majority of Inuit, I think that

1 simply by the exercise of their political power, they can  
2 introduce, having the majority, the principles or the  
3 rights recognized under the Declaration in Nunavut  
4 legislation.

5 But then again, they'll have to determine  
6 how Nunavut legislation, if it implements the declaration,  
7 fits in with the Inuit rights under the treaties, as for  
8 other territories where you don't have a majority of  
9 Indigenous peoples. And I think Nunavut is -- I don't  
10 think they have yet, but when I last look at this, they  
11 were very enthusiastic about the signing of the UN  
12 Declaration and they were planning to integrate it in their  
13 own legal order, but I haven't heard of anything yet as to  
14 how they're going to do it.

15 Coming back to territories where you don't  
16 have the -- the Indigenous peoples don't have the political  
17 clout to exercise pressure to introduce a declaration, well  
18 then you -- what will the Northwest Territory legislature,  
19 what will Yukon legislature do? And in Yukon you have  
20 many, many modern treaties also. So, honestly, I'd have to  
21 think about it. But the fact that it's devoluted power  
22 will not, I think, exercise any break on the possibility of  
23 the local legislatures who implement in their areas of  
24 jurisdiction the principle of the declaration. I don't  
25 think that the dynamic will be different.

1 I think that politically, because of a  
2 greater presence of Indigenous peoples, they might play the  
3 role of forerunners of how this could actually change  
4 something into general legislation. That's the best I can  
5 offer.

6 **COMMISSIONER QAJAQ ROBINSON:** Okay. So in  
7 essence, I mean, the reality is it will depend on political  
8 will in every province ---

9 **MR. JEAN LECLAIR:** I think so.

10 **COMMISSIONER QAJAQ ROBINSON:** --- and  
11 federal government, also the territories.

12 **MR. JEAN LECLAIR:** Yeah.

13 **COMMISSIONER QAJAQ ROBINSON:** Okay.

14 **MR. JEAN LECLAIR:** But, you know, if I may?

15 **COMMISSIONER QAJAQ ROBINSON:** Yeah.

16 **MR. JEAN LECLAIR:** Law does not produce  
17 social reality.

18 **COMMISSIONER QAJAQ ROBINSON:** M'hm.

19 **MR. JEAN LECLAIR:** So it can be a brick in  
20 the wall, but -- and it has to be mobilised politically.  
21 And I think the declaration is a humongously powerful tool  
22 in that fashion because it's the only international legal  
23 document written in great part by the Indigenous peoples  
24 themselves. And so this carries a lot of weight.

25 And we were talking about education, and I'm

1 a great believer in education, and I think that we have to  
2 remind people of the importance of this declaration, of the  
3 need to implement it. It will not produce social reality  
4 on its own, but it's a great tool and we should not  
5 diminish its importance, because symbolically it's highly  
6 important for Indigenous peoples and it would be a shame to  
7 diminish its value, its symbolic value because that's very  
8 normative too. These symbols are very powerful and they  
9 can bring change.

10 **COMMISSIONER QAJAQ ROBINSON:** One final  
11 question and it's just so that I understand I suppose why  
12 we're not having the discussion. Other than building the  
13 UN Declaration into the Constitution, to give it that  
14 supremacy, the reason why we're not doing that is because  
15 there isn't the political will to open it up; is that  
16 correct?

17 **MR. JEAN LECLAIR:** Yeah. But ---

18 **COMMISSIONER QAJAQ ROBINSON:** Do you see its  
19 value though? Like if there was the political will, would  
20 it be the most ideal way?

21 **MR. JEAN LECLAIR:** I like the way Indigenous  
22 peoples envisage law in terms of relationship. And I think  
23 that the language of rights is not always very helpful to  
24 create relationships.

25 And so on the first -- on one side I'd say

1       yes. I think UNDRP is a great tool because it's expressed  
2       in terms of rights, a language that non-Indigenous people  
3       understand.

4                   **COMMISSIONER QAJAQ ROBINSON:** And courts  
5       enforce.

6                   **MR. JEAN LECLAIR:** And courts enforce. So,  
7       on the one hand I would agree with you. What I find  
8       disappointing about the language of rights is that creates  
9       a tendency for people to essentialize their identities to  
10      make a point, and essentializing their identities in a way  
11      that sometimes can be unhelpful because it reifies the  
12      complexity of who they are, and the relationships that they  
13      entertain with a lot of people around them, and their  
14      individual complexities, which makes them human.

15                   And so on the one hand I'd say the rights  
16      discourse is very powerful, but we should not invest -- put  
17      all our eggs in that basket. We also have to try and  
18      resort to political solutions in terms of federalism. I  
19      think, in a sense, federalism is the ability, as one says,  
20      to have your cake and eat it. It's a mixture of autonomy,  
21      but also a recognition that your autonomy depends on your  
22      willingness to relate to others and that in some fashion  
23      you also partake of greater things with others.

24                   And so this calls for very subtle  
25      negotiations and we have to put faith in our leaders that

## Questions (Commissioner Robinson)

1 they can -- but also, I'm thinking of the -- of all sorts  
2 of fascinating thing happening in Indigenous civil society.  
3 The Idle No More movement led by women in urban areas.  
4 That's wonderful. That's a new voice. It's no longer just  
5 the -- it creates greater complexity. But then that's the  
6 world we live in and it's -- provides greater richness to  
7 the discourse too.

8 I'm not a big fan of my own discipline, by  
9 the way. I think it complicates matters often, but it's a  
10 useful tool.

11 **COMMISSIONER QAJAQ ROBINSON:** I have more  
12 questions but I'm going to reserve the rest of them until  
13 after cross-examination when all of us can talk.

14 Thank you. Merci.

15 **COMMISSIONER EYOLFSON:** Thank you. I'll  
16 defer as well until after the cross-examination.

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

18 **COMMISSAIRE MICHÈLE AUDETTE:** Pas moi. Je  
19 vais poser quelques questions, évidemment, mais je vais  
20 revenir demain et j'ai beaucoup de difficulté à dire *cross-*  
21 *examination* en français.

22 **ME JEAN LECLAIR:** C'est contre-  
23 interrogatoire.

24 **COMMISSAIRE MICHÈLE AUDETTE:** Je sais, mais  
25 je ne veux même pas le dire, parce que je ne suis pas

1           contre du tout.

2                           **ME JEAN LECLAIR:** Okay!

3                           **COMMISSAIRE MICHÈLE AUDETTE:** Non, c'est  
4           aussi pour faire un clin d'œil... oui, contre-interrogatoire,  
5           c'est comme : « *I am against!* », mais faire un clin d'œil à  
6           la représentante de ONWA, de Ontario Native Women  
7           Association où l'Enquête nationale a aussi un grand respect  
8           sur la diversité des protocoles à travers le Canada. Il y a  
9           eu un bel enseignement, hier, en disant : « Moi, je ne vois  
10          pas ça comme étant un contre-interrogatoire.. » oh, je l'ai  
11          eu, mais comme étant un partage de savoir et d'histoires,  
12          comme on a toujours eu avec la tradition orale. Alors, j'ai  
13          bien aimé.

14                           Tout d'abord, un gros merci. Pour moi, ça a  
15          été toute une aventure, toute une belle expérience et j'ai  
16          beaucoup d'admiration pour mes collègues ici qui ont cette  
17          connaissance-là au niveau du droit ; le droit a plusieurs  
18          facettes, évidemment. Mais je suis très à l'aise de dire  
19          aussi que le bagage ou l'expérience que j'ai depuis les 20  
20          dernières années m'amène peut-être à poser ces questions-  
21          là.

22                           Vous avez mentionné qu'il y avait peut-être  
23          trois façons : reconnaissance politique, mesures  
24          législatives et la troisième serait quoi?

25                           **ME JEAN LECLAIR:** Dépenser de l'argent.

1                   **COMMISSAIRE MICHÈLE AUDETTE:** C'est ça, hein!  
2                   Okay! (Rires) Et s'approprier la Déclaration? Bon, parfait.  
3                   Dans la reconnaissance politique, je comprends qu'une  
4                   motion à l'Assemblée nationale -on va parler pour le Québec  
5                   -ou une motion à la Chambre des communes au niveau fédéral,  
6                   à Ottawa, peut avoir, oui, un impact ou une portée  
7                   politique intéressante pour les groupes de pression.  
8                   Cependant, je vous dirais, avec les 20 ans d'expérience  
9                   dans ce domaine-là, on voit que c'est... je ne sais pas si  
10                  vous êtes d'accord ou peut-être que vous pouvez m'expliquer  
11                  un peu plus, elles ont une durée de vie le temps du parti  
12                  politique au pouvoir.

13                  **ME JEAN LECLAIR:** Non, parce que prenez la  
14                  résolution qui avait été adoptée par Harper pour  
15                  reconnaître la nation du Québec à l'intérieur du Canada. Ça  
16                  demeure une résolution qui va demeurer tant qu'on ne la  
17                  retire pas, tant qu'on ne l'annule pas. Sauf que sa portée,  
18                  simplement, elle est de nature plus politique qu'autre  
19                  chose. Alors, c'est sûr que si on l'oublie (Rires), sa  
20                  portée disparaît, alors qu'une loi, tant qu'elle n'est pas  
21                  abrogée, elle peut être invoquée et présentée devant un  
22                  tribunal. Et même si on l'oublie, si j'arrive avec ma loi,  
23                  j'ai encore... tant qu'on ne l'a pas abrogée, ma loi demeure  
24                  pertinente.

25                  **COMMISSAIRE MICHÈLE AUDETTE :** Une loi... je

1       vais revenir avec ça tout à l'heure, pour les mesures  
2       législatives. Pour revenir encore avec la reconnaissance  
3       politique, on va avoir vu, lu et entendu des assemblées  
4       législatives lire leurs motions, en chambre, il y a des  
5       débats et des fois, elles sont adoptées à l'unanimité. Je  
6       me souviens que l'Assemblée nationale, ici, en 2010, avait  
7       adopté une motion pour appuyer une initiative qui  
8       s'appelait la Marche Amun et la Marche Amun dénonçait la  
9       discrimination découlant de la *Loi sur les Indiens* à  
10      l'égard des femmes et des enfants. Et pour faire suite à un  
11      projet de loi, C-3, qui est aujourd'hui connu sous le nom  
12      de l'arrêt McGiver (phon.).

13                   Et là, à l'unanimité, on a des politiciens  
14      de tous les partis qui disent : il y a une discrimination  
15      qui découle de la loi. Alors, pour les gens qui ne sont pas  
16      en droit, comme moi ou comme d'autres gens, on a  
17      l'impression que quand il y a une reconnaissance politique,  
18      et surtout unanime, qu'il va y avoir, dans les actions  
19      gouvernementales des répercussions intéressantes.

20                   C'est là où je me demande : est-ce que c'est  
21      si important d'aller vers des reconnaissances politiques,  
22      quand on voit qu'il n'y a pas de répercussion dans les  
23      politiques gouvernementales? À moins que vous n'ayez des  
24      exemples?

25                   **ME JEAN LECLAIR** : Non, mais écoutez, ce que

1 je dirais, c'est que je pense qu'il y a une demande de  
2 reconnaissance publique par les autochtones ou par d'autres  
3 groupes, dans d'autres situations. Je pense que la  
4 résolution, si elle est sincère, elle pourrait avoir un  
5 effet important.

6 Mais il n'en reste pas moins que c'est un  
7 instrument politique. Vous savez, plus la norme est  
8 importante, plus on va l'élever dans la hiérarchie des  
9 normes. Par exemple, on a une résolution ; c'est un  
10 instrument politique. On a un règlement municipal ; le  
11 règlement est sous la loi.

12 Quand on trouve ça vraiment important, quand  
13 on estime qu'une norme devient, au fond, le symbole de ce  
14 qu'une communauté politique estime important, ça devient la  
15 Constitution. Et c'est pour ça que c'est à la fois très  
16 difficile de mettre une norme dans la Constitution et très  
17 difficile de la modifier, parce qu'on modifie la communauté  
18 politique. Alors, selon la norme que l'on choisit, ça  
19 témoigne de l'importance qu'on accorde à l'enjeu.

20 Et je répondrais que vous avez raison de  
21 dire qu'il faudrait dire au gouvernement qu'il adopte des  
22 résolutions ; oui, mais encore?

23 **COMMISSAIRE MICHÈLE AUDETTE** : Merci. Et pour  
24 ce qui est, avant d'arriver encore à des mesures  
25 législatives, on voit, à travers le Canada, par la lecture

1 des documents qu'on reçoit et les rapports qu'on a analysés  
2 et qu'on continue d'analyser, qu'il y a eu des initiatives  
3 qui ne sont pas nécessairement attachées à des lois.

4 Et je vais vous donner un exemple avec  
5 lequel je suis très à l'aise, au Québec : en 2004-2007,  
6 premier plan d'action gouvernemental pour lutter contre la  
7 violence faite aux femmes autochtones, un plan d'action au  
8 Québec, où on mobilise plusieurs ministères avec des  
9 mesures concrètes. C'est un plan d'action et, pouf, après  
10 quatre ans, le plan d'action n'existe plus.

11 Donc, pensez-vous que lorsqu'un gouvernement  
12 adopte, par l'influence d'une motion politique ou une  
13 reconnaissance politique, un plan d'action, que ça devrait  
14 être aussi attaché à une mesure législative pour que ça  
15 reste dans la culture du gouvernement?

16 **ME JEAN LECLAIR** : Ça peut être très  
17 compliqué, la question que vous posez.

18 **COMMISSAIRE MICHÈLE AUDETTE** : Mais vous êtes  
19 expert!

20 **ME JEAN LECLAIR** : C'est parce que des fois,  
21 les gouvernements ne peuvent pas adopter des lois dans  
22 certains secteurs, mais ils peuvent dépenser de l'argent  
23 dans le secteur.

24 Alors, pensons au pouvoir fédéral de  
25 dépenser ; le fédéral ne peut pas adopter des lois sur les

1 universités, mais il dépense beaucoup d'argent, d'accord?  
2 Et il se sert de son argent pour faire ce qu'il ne peut pas  
3 faire avec une loi.

4 Alors, je ne connais pas en détail le  
5 programme dont vous me parlez, mais le programme dont vous  
6 me parlez, s'il vise essentiellement la violence faite aux  
7 femmes autochtones, peut-être que le Québec craignait  
8 qu'une loi sur cette question-là soit déclarée  
9 inconstitutionnelle? Mais il n'y a rien qui ne l'empêche de  
10 dépenser son argent dans un secteur qui relève des  
11 compétences fédérales.

12 Mais la question beaucoup plus complexe que  
13 vous posez, c'est : est-ce qu'un gouvernement, une fois  
14 qu'il a commencé à dépenser, peut cesser de dépenser?  
15 Malheureusement, la réponse est oui. Et la Cour suprême l'a  
16 bien dit, par exemple, quand un moment donné, dans les  
17 années 1990, c'était la récession et la Colombie-  
18 Britannique recevait des sommes d'argent au terme du  
19 pouvoir de dépenser fédéral. Et, tout à coup, le fédéral a  
20 adopté une loi et il a dit : dorénavant, la Colombie-  
21 Britannique, elle est assez riche, elle ne recevra plus  
22 l'argent. La Colombie-Britannique est allée jusqu'en Cour  
23 suprême, mais le gouvernement a dit : le Parlement est  
24 souverain, il peut adopter une loi puis changer les choses  
25 puis ce n'est pas parce qu'il a un contrat avec la province

1 que ça change les choses.

2 Alors, pour reprendre votre problème, c'est  
3 un peu le drame, ça; c'est que si on se met à dépenser de  
4 l'argent, les gens s'attendent à des choses et ça a un  
5 impact normatif, ça change le comportement et puis on cesse  
6 de financer. Et ça, c'est un gros problème. Puis un  
7 problème que vous connaissez certainement mieux que moi,  
8 c'est que les deux gouvernements peuvent jouer, des fois ;  
9 on le sait avec le *Jordan principe*. C'est qu'ils disent :  
10 « Ah non, moi, je n'ai pas à financer ça, c'est de la  
11 compétence de l'autre. » Puis l'autre dit : « Non non,  
12 c'est de la compétence de l'autre » puis les autochtones  
13 tombent juste dans le milieu. Ça, c'est aussi une autre  
14 difficulté du système qu'on a.

15 **COMMISSAIRE MICHÈLE AUDETTE** : Oui, en effet.  
16 Juste pour vous dire que les femmes et les hommes qu'on a  
17 entendus lors des audiences communautaires, partout à  
18 travers les territoires qu'on a traversés et caressés, je  
19 dirais qu'il y a quelque chose, a *trend*, comme ils disent,  
20 qui revient toujours, c'est des mesures qui doivent se  
21 faire dans l'immédiat, mais pas à court terme ; ça ne  
22 fonctionne plus, c'est du long terme.

23 Alors, quand on dit que le gouvernement...  
24 votre recommandation, que le gouvernement devrait dépenser,  
25 mes mots seraient d'investir pour les femmes et les filles

1 autochtones, je sens qu'il faut que ça soit à long terme.

2 **ME JEAN LECLAIR** : Comme la protection de  
3 l'environnement, d'ailleurs. C'est le problème des mandats  
4 électoraux très courts.

5 **COMMISSAIRE MICHÈLE AUDETTE** : Vous avez le  
6 droit de le dire, vous!

7 (RIRES/LAUGHTER)

8 Alors, pour terminer, je vous dirais, un  
9 autre aspect, dans votre présentation, où les Premières  
10 Nations, les peuples autochtones, pardon, doivent  
11 s'approprier la Déclaration. Je trouve ça très intéressant  
12 et c'était l'une de mes questions, jusqu'à ce que vous  
13 ajoutiez, parce que j'avais une préoccupation : il faut de  
14 l'argent pour ça. Il faut des sous ; je suis d'accord avec  
15 vous. Il faut... pour faire en sorte que nos nations puissent  
16 justement... elles ont aussi une volonté politique, je veux  
17 juste... Peut-être que vous le savez : l'Assemblée des chefs,  
18 ici, en 2015, avait adopté une déclaration sur les droits  
19 des enfants, ici, au Québec, des Premières Nations. Et tout  
20 récemment, en février 2017, l'Assemblée des chefs a aussi  
21 un réseau de femmes élues, donc on parle de la Table des  
22 femmes élues, qui avaient une déclaration pour la  
23 protection et la sécurité au niveau de la tolérance zéro  
24 auprès des femmes victimes de violence et, évidemment, les  
25 enfants.

1                   Ce sont des vœux politiques, mais en  
2                   réalité, dans les communautés, de s'approprier une  
3                   déclaration, de se faire un plan d'action, de mettre en  
4                   place des mesures, s'il n'y a pas de volonté politique au  
5                   fédéral et qu'il n'y a pas d'argent qui en découle,  
6                   l'investissement dont vous parlez... je pense que ça va être  
7                   difficile?

8                   **ME JEAN LECLAIR** : Oui. Et je pense que... et  
9                   je sais que je m'aventure un peu, mais là aussi, il va y  
10                  avoir une responsabilité des gouvernements autochtones eux-  
11                  mêmes. Par exemple, il y a peut-être des économies  
12                  d'échelle à faire, il y a peut-être moyen de s'assurer que  
13                  sur certaines questions, les bandes puissent créer des  
14                  institutions politiques qui se fédèrent un peu.

15                  En fait, c'est ce que la Commission  
16                  Dussault/Erasmus expliquait. C'est qu'à un moment donné il  
17                  y a certains services qui, si on veut qu'ils soient offerts  
18                  par des gouvernements autochtones, il va falloir qu'il y  
19                  ait des fédérations autochtones où on délègue du pouvoir à  
20                  des institutions plus englobantes.

21                  Puis aussi, ça pose la difficulté de savoir  
22                  est-ce que c'est toujours les chefs des premières nations  
23                  qui sont les mieux placés pour s'occuper de certains  
24                  problèmes. Par exemple, je pense à l'itinérance en milieu  
25                  urbain. Est-ce qu'il n'y a pas d'autres institutions

1 autochtones en milieu urbain qui devraient, elle, être  
2 financées? Parce que là je sais que je m'aventure sur un  
3 sentier.

4 Tout ce que je veux dire par là c'est que  
5 c'est l'occasion pour tout le monde, pour tous les acteurs  
6 intéressés, je pense, de réfléchir à la meilleure façon  
7 d'intervenir.

8 Mais je tombe pas dans le panneau ici de  
9 penser que tous les autochtones sont unanimes et puis qu'ils  
10 s'aiment les uns, les autres. Je sais fort bien qu'il y a  
11 des dissensions. C'est normal. Toutes les communautés  
12 humaines sont comme ça.

13 Mais je pense qu'à un moment donné... je  
14 prends l'exemple des Cris qui sont restés unis, ça les a  
15 aidés. Et donc je parle en termes de *real politics*. Si on  
16 est uni, c'est souvent plus efficace.

17 **COMMISSAIRE MICHÈLE AUDETTE:** Oui. Une  
18 petite parenthèse, cinq enfants à la maison, c'est rare que  
19 j'ai le consensus, juste cinq... imaginez ma communauté.

20 Pour terminer, pouvez-vous me dire ce que  
21 vous vouliez dire par « Law doesn't produce social  
22 reality » ? Est-ce que c'est ce que vous avez dit?

23 **Me JEAN LECLAIR:** Oui. Ce que je veux dire  
24 c'est que souvent les juristes arrivent et puis ils disent,  
25 « Bon, on va adopter telles normes. Ça va tout régler. »

1 Mais je suis désolé. On peut... une norme va fonctionner  
2 dans la mesure où elle est... vous le savez, vous, il y a  
3 plein de communautés autochtones qui n'appliquent pas la  
4 *Loi sur les Indiens* parce qu'ils lui la confèrent aucune  
5 légitimité. On a beau avoir la loi; il ne la mettent pas  
6 en œuvre. Ils ne distribuent pas les certificats de  
7 possession et puis tout ça. Ils créent leurs propres  
8 systèmes en marge de l'état parce que leur norme est la  
9 légitimité.

10 Et donc c'est pas parce que j'arrive avec la  
11 plus belle norme du monde qu'elle va se traduire dans la  
12 réalité par des changements. Ça fait partie de la  
13 dynamique.

14 Mais le droit a une dimension, comme on le  
15 dit en anglais *aspirational*. Ça vise à... c'est un idéal  
16 qu'on poursuit, mais il faut travailler à sa mise en œuvre  
17 par toutes sortes de moyens, par de l'argent, par de  
18 l'éducation.

19 Mais en soi, vous le savez, le Canada a  
20 adopté plein de lois pour régler les problèmes des  
21 autochtones. Ça n'a pas fonctionné. Ça n'a pas produit la  
22 réalité sociale qu'on voulait.

23 **COMMISSAIRE MICHÈLE AUDETTE:** Je comprends  
24 maintenant. J'étais quasiment pas d'accord, mais là je  
25 comprends.

1 Un gros, gros merci et surement à demain  
2 encore.

3 Thank you, Chief Commissioner.

4 **Me FANNY WYLDE:** Merci.

5 Commissaire en chef, Commissaires, je  
6 propose d'ajourner la session et de prendre une pause de 15  
7 minutes?

8 Merci.

9 **MS. CHRISTA BIG CANOE:** Yes, please.

10 **CHIEF COMMISSIONER MARION BULLER:** Okay, 15.

11 --- Upon recessing at 3:33 p.m./

12 l'audience est suspendue à 15h33

13 --- Upon resuming at 3:58 p.m./

14 l'audience est reprise à 15h58

15 **MS. CHRISTA BIG CANOE:** Chief Commissioner,  
16 Commissioners, we'd like to recommence.

17 Commission counsel, Violet Ford, will be  
18 calling our next witness, but I did just want to touch on a  
19 couple of housekeeping issues. Knowing that it's now  
20 almost 4:00, and given the anticipated evidence of our next  
21 witness, as well as potential questions from the  
22 Commissioners, and at the request of a number of the  
23 parties with standing, we're going to ask that we do no  
24 cross-examination this afternoon. So that moving forward,  
25 we know that we'll hear the full testimony of our next

1 witness.

2 And with that, I would ask Commission  
3 counsel, Violet Ford, to call our next witness.

4 **MS. VIOLET FORD:** Thank you.

5 Good afternoon, Commissioner, and we ask to  
6 have the witness affirmed.

7 **CHIEF COMMISSIONER BULLER:** Dr. Dalee Sambo  
8 Dorough, do you solemnly affirm to tell the truth and give  
9 your evidence in a good way?

10 **DR. DALEE SAMBO DOROUGH:** Yes, I do.

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

12 **MS. VIOLET FORD:** Thank you.

13 **DALEE SAMBO DOROUGH, Affirmed:**

14 **EXAMINATION ON QUALIFICATIONS BY/INTERROGATOIRE SUR LES**  
15 **QUALIFICATIONS PAR MS. FORD:**

16 **MS. VIOLET FORD:** Dalee Sambo Dorough, Dalee  
17 Sambo Dorough, can you give us some of your background?

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

19 **MS. VIOLET FORD:** Where you come from?

20 **DR. DALEE SAMBO DOROUGH:** Okay. Qulianup  
21 (phon.).

22 Before doing so, allow me to congratulate  
23 all of the expert witnesses that have spoken before me. I  
24 think that an excellent record of evidence was laid down by  
25 each of the three preceding experts. Also, allow me to

1       thank the Inquiry Commissioners for the opportunity to  
2       share some of my views today.

3               In regard to my background, I began my  
4       career in the work of international Indigenous human rights  
5       when I began my work with the Inuit Circumpolar Council. I  
6       held the portfolio of Human Rights, and in particular, the  
7       work at the United Nations.

8               I started that involvement in 1984, when I  
9       first travelled to Panama City, Panama for the World  
10      Council of Indigenous Peoples Meeting. And at that  
11      meeting, myself and six other Indigenous peoples were  
12      sequestered into a small room and asked to prepare the  
13      first Indigenous People's Declaration in order to deliver  
14      it to the actual Working Group on Indigenous populations in  
15      order to influence the content.

16              And I was selected by the delegates at that  
17      meeting to attend the next session of the Working Group in  
18      1985 in Geneva, Switzerland where the Centre for Human  
19      Rights is within the UN human rights regime, and selected  
20      to introduce that Declaration and request that it be  
21      annexed to the report of the Working Group, with the key  
22      message that this is what Indigenous peoples believe to be  
23      the Declaration on the Rights of Indigenous Peoples.

24              And I made the request for it to be annexed  
25      to the report. It was annexed to the report. And I was

1 struck by the comments of the Jean Leclair about Indigenous  
2 ownership of the UN Declaration, when in fact, oh, yeah, we  
3 owned it, and we still own it. And the idea, as someone  
4 has said already, of breathing life into it, has been my  
5 work consistently from that point on.

6 I participated in the drafting of the  
7 Declaration at every single meeting, every single caucus  
8 session concerning the Declaration from 1984 until it was  
9 finally adopted by the General Assembly on September 13<sup>th</sup>,  
10 2007 on behalf of my own people, the Inuit.

11 **MS. VIOLET FORD:** Thank you for that.

12 Now, I see from your CV that you are doing  
13 other work. Can you describe the work you do now, or what  
14 is your occupation now?

15 **DR. DALEE SAMBO DOROUGH:** At the present  
16 moment, I am a tenured Associate Professor of International  
17 Relations at the University of Alaska, Anchorage. Some of  
18 you may know that Alaska does not have a law school. If  
19 there were an option to teach in a law school in my own  
20 home state, I would.

21 So I teach courses in international  
22 relations, public international law, also courses cross-  
23 listed with Alaska native studies. For example, I teach a  
24 course that I developed called, Comparative Northern  
25 Politics, and I teach a course entitled, Tribes, Nations

1 and Peoples.

2 In addition, I have tried to integrate my  
3 advocacy work with my academic work through various  
4 different fora. I continue to be involved at the  
5 international work at the United Nations. I was at the  
6 recent Permanent Fora on Indigenous Issues.

7 As you may note from my CV, I'm the former  
8 Chairperson of the Permanent Forum on Indigenous Issues,  
9 and also, a former member of what is referred to as the  
10 Voluntary Fund for Indigenous Peoples that was established  
11 by the United Nations in 1985.

12 **MS. VIOLET FORD:** Thank you.

13 What academic degrees do you have, and when  
14 did you obtain them and where?

15 **DR. DALEE SAMBO DOROUGH:** Thank you.

16 I attended undergraduate at University of  
17 Alaska Anchorage, then I took on the completion of a  
18 Master's in law and diplomacy at the Fletcher School of law  
19 and Diplomacy at Tufts University, a joint program between  
20 the Fletcher School and Harvard. That was -- I have to  
21 include the footnote -- the most conservative right-wing  
22 academic institution that I've ever attended in my life.  
23 It did help me to hone my human rights advocacy skills.

24 (LAUGHTER)

25 **DR. DALEE SAMBO DOROUGH:** They do still

1 invite me back on Arctic-related issues because, as many of  
2 you know, the Arctic is becoming a very vogue topic now and  
3 so as an Arctic Indigenous person I get invited back.

4 But thereafter I decided to pursue a PhD in  
5 law and I first thought I'd try to attend Australia  
6 National University, largely because Philip Alston,  
7 essentially the author of the Convention on the Rights of  
8 the Child, was in Australia. But my mother elbowed me and  
9 told me that that's too far away. So I decided to apply to  
10 University of British Columbia where John Burrows was a  
11 visiting professor at the time.

12 As soon as I arrived, he left. But I stayed  
13 and finished off my PhD in law. And my thesis focused  
14 upon, really, the quest for equality, and in particular,  
15 the right of self-determination and its application to  
16 Indigenous peoples as understood in international law. And  
17 that was finished off in 2002.

18 **MS. VIOLET FORD:** Now, Dalee, can I ask you  
19 to highlight some of the other key areas of your CV that  
20 qualifies you in this area?

21 **DR. DALEE SAMBO DOROUGH:** Okay. As I said,  
22 I continue the work in international human rights in favour  
23 of Indigenous peoples. I have published in this area, most  
24 recently and a co-author finished an article for the Oxford  
25 Handbook of Cultural Heritage, focusing on Indigenous

1 cultural rights.

2 My research and interest at the moment are  
3 heavily focused upon Inuit perspectives to all of the  
4 developments within the Arctic region. For example, I  
5 completed a recent chapter on the Indigenous Perspectives  
6 to Arctic Shipping which is of great interest to everybody  
7 in Canada, from what I can tell. And a number of other  
8 contributed chapters.

9 And I'm also presently involved with the  
10 International Law Association's Committee on the  
11 Implementation of the Rights of Indigenous Peoples. Some  
12 of you may be familiar with the International Law  
13 Association. I'm the co-chair of that committee. In  
14 addition, I served on the prior committee which provided an  
15 expert commentary on the U.N. Declaration on the Rights of  
16 Indigenous Peoples, and it was noted as an exceptional  
17 contribution by James Anaya, the former Special Rapporteur  
18 on the rights of Indigenous peoples.

19 **MS. VIOLET FORD:** Thank you.

20 Just before we finish qualifying you with  
21 your work experience, are there any other considerations  
22 that you would like to talk about, as in in your personal  
23 information that you would like to talk about?

24 **DR. DALEE SAMBO DOROUGH:** Okay. In addition  
25 to the -- in addition to the U.N. Declaration, I

1 participated in a two-year revision process of the  
2 International Labour Organization's Convention Number 107  
3 that emerged as Convention Number 169 in 1989.

4 In addition I was involved with some of the  
5 early work that resulted in the 2016 adoption of the  
6 American Declaration on the Rights of Indigenous Peoples.

7 More recently, though, I haven't been  
8 engaged within the OAS process but I think it's significant  
9 to say that in 1989 a group of Indigenous peoples were  
10 invited to Mexico City, Mexico, by the government of Mexico  
11 asking what the OAS should do in order to proceed in a good  
12 way in the adoption -- or the drafting and the adoption of  
13 the American Declaration, and we came up with pages and  
14 pages of recommendations, none of which they took into  
15 consideration, which is disappointing. And it's my hope  
16 that throughout all of your collective efforts, that it  
17 results in some concrete action in contrast to how the OAS  
18 handled that particular process.

19 Nevertheless, the OAS and the American  
20 Declaration is a significant international Indigenous human  
21 rights instrument, regardless of what they did in 1989.

22 **MS. VIOLET FORD:** Okay. Moving on to now  
23 what I would like to have Dr. Sambo Dorough's CV entered  
24 into evidence and to be marked as Exhibit A.

25 **CHIEF COMMISSIONER MARION BULLER:** The CV

1 will be Exhibit 18.

2 **MS. VIOLET FORD:** Eighteen (18)?

3 --- **EXHIBIT No./EXHIBIT No. B18:**

4 Curriculum vitae of Dr. Dalee Sambo  
5 Dorough (11 pages)

6 **MS. VIOLET FORD:** Thank you.

7 Dr. Sambo Dorough, would you like to make  
8 some other introductory remarks before we get into the  
9 testimony?

10 **DR. DALEE SAMBO DOROUGH:** Yes, thank you.

11 To be frank ---

12 **MS. VIOLET FORD:** Oh, sorry.

13 **DR. DALEE SAMBO DOROUGH:** Yeah.

14 **MS. VIOLET FORD:** This is only my second  
15 time doing the evidence -- direct examination, and I'm sure  
16 everybody in this room probably figured that out by now.  
17 So thank you, Christa.

18 I have to now qualify based on implied  
19 consent of her qualifications.

20 **MS. CHRISTA BIG CANOE:** Just to check  
21 there's no objections.

22 **MS. VIOLET FORD:** Are there any objections?  
23 Thank you, Christa.

24 **CHIEF COMMISSIONER MARION BULLER:** In what  
25 areas are you seeking to qualify this witness?

1                   **MS. VIOLET FORD:** Yes, correct.

2                   Chief Commissioner and Commissioners, based  
3 on the knowledge, skills, practical experience, training  
4 and education and expertise as described by Dr. Dalee  
5 Sambo, and as evidenced in her curriculum vitae, I would  
6 like to qualify her as a qualified expert witness in the  
7 area of development and evolution in international human  
8 rights standards.

9                   **CHIEF COMMISSIONER MARION BULLER:** Certainly  
10 based on the implied consent, the evidence adduced, this  
11 witness certainly has the requisite knowledge, skills,  
12 experience, training, and expertise to give expert opinion  
13 evidence regarding the development and evolution of  
14 international human rights standards.

15                   **MS. VIOLET FORD:** Thank you.

16                   So Dr. Sambo, do you want to proceed?

17                   **DR. DALEE SAMBO DOROUGH:** I might amend that  
18 because we should be specific to Indigenous human rights --  
19 international Indigenous human rights, otherwise we might  
20 go all over the place here.

21                   **CHIEF COMMISSIONER MARION BULLER:** Okay.  
22 Just for the record, then, we'll change the ruling to  
23 international Indigenous human rights standards.

24                   **DR. DALEE SAMBO DOROUGH:** Thank you very  
25 much.

1           As far as introductory remarks is concerned,  
2           what I would like to emphasize in the testimony that I  
3           share today is the history of the development of  
4           international human rights and standards that are specific  
5           to Indigenous peoples, but moreover to emphasize those that  
6           are particular to Indigenous women and girls and relevant  
7           to the Inquiry and especially their security as human  
8           beings.

9           I also would like to emphasize throughout  
10          the testimony the obligations that the Government of Canada  
11          has in favour of Indigenous women and girls, and  
12          specifically in favour of Inuit women and girls throughout  
13          the Arctic region in Canada. And we'll hopefully  
14          illustrate various different rationale as to why these are  
15          not only important legal imperatives but also very  
16          important moral imperatives in the face of this harrowing  
17          experience that Indigenous women and girls undertake. And  
18          I suppose, to some extent, my principal message is that the  
19          government of Canada has numerous solemn obligations to  
20          Inuit throughout Canada by virtue of their commitments  
21          under international human rights instruments. In my view,  
22          and I think we've already heard it from the other expert  
23          witnesses, is that Canada should urgently and rigorously be  
24          addressing the disproportionately high rates of violence,  
25          sexual violence, sexual assault, disappearances, and

1 discrimination being perpetrated against Inuit women and  
2 girls, as well as other Indigenous women and girls.

3 It is a well-known fact to me, and I'm sure  
4 to many, and especially after we have spent the day  
5 listening to the other expert witnesses, that one of the  
6 major contributing factors to widespread and alarming  
7 statistics and human rights violations amongst Indigenous  
8 Peoples is racial discrimination. I think that it's  
9 important, not only to reference them as far as the legal  
10 effects and the legal impacts, but I think we do need to be  
11 very elementary about the matter of racial discrimination.  
12 And in this way, I want to read the definition of racial  
13 discrimination under the Convention on the Elimination of  
14 All Forms of Racial Discrimination. The Convention states:

15 "...the term "racial discrimination"  
16 shall mean any distinction, exclusion,  
17 restriction or preference based on  
18 race, colour, descent, or national or  
19 ethnic origin which has the purpose  
20 [which has the purpose] or effect of  
21 nullifying or impairing the  
22 recognition, enjoyment or exercise, on  
23 an equal footing, of human rights and  
24 fundamental freedoms in the political,  
25 economic, social, cultural or any other

1 field of public life.”

2 It's a very, very broad definition and I  
3 think we all know what racial discrimination is when we see  
4 it, but it's also important to underline that this is the  
5 wording of the Convention itself.

6 As far as Indigenous women and girls and  
7 missing and murdered Indigenous women and girls, the  
8 diverse legal context in my view, range from the lack of  
9 law enforcement, to the judiciary, to penal institutions,  
10 and to denial of equality, whether it's relative equality  
11 or substantive equality. And for Indigenous women and  
12 girls this has generated not only insecurity of person and  
13 immediate family, but also damaging impacts upon every  
14 dimension of their womanhood as Indigenous women and girls.  
15 Their relations with all others and their relations with  
16 their own peoples, with their lands and territories, and  
17 with society overall.

18 And in this regard, I think it's important  
19 that we all take an intersectional perspective, and others  
20 have already used this term, how one human rights treaty  
21 intersects with another. And scholars have written about  
22 the intersectional perspective of gender and racial  
23 discrimination, for example, that as we've heard -- and I'm  
24 sure that as you've heard in your community hearings, that  
25 an intersectional perspective in the context of Indigenous

1 Peoples means more than gender and racial discrimination.  
2 It impacts everything that happens in the day to day lives  
3 of Indigenous Peoples, of Indigenous women and girls.

4 In this regard, it's essential to understand  
5 the nature of human rights and we heard it this morning  
6 from Brenda Gunn. Like the relations of Inuit women and  
7 girls within their communities, their human rights and  
8 responsibilities are interrelated, interdependent, and  
9 indivisible, and they are tied to their distinct cultural  
10 context. As Brenda also stated, human rights are  
11 universal. They cannot be taken away. It's one thing for  
12 a government to deny or violate your human rights, but they  
13 cannot be taken away. It's one thing for a government to  
14 deny or violate your human rights, but they cannot be taken  
15 away. It's one thing for a government to purportedly  
16 extinguish rights, but as I'll address later,  
17 extinguishment has its own implications and consequences.

18 Essentially, human rights are about human  
19 dignity. And in the most elementary terms, human rights  
20 are about the relationship between people and government.  
21 Human rights not only limit the power of government, human  
22 rights also create a duty and a responsibility for  
23 government to look after the basic needs of the people and  
24 the protection of fundamental freedoms for all. So it has  
25 -- the nature of human rights has diverse elements. And in

1 the case of Indigenous Peoples, their collective human  
2 rights are integral to their survival as distinct peoples  
3 and distinct cultures. So the interrelated, and  
4 interdependent, and indivisible nature of human rights  
5 means that the exercise of a particular right has impacts  
6 upon the exercise and enjoyment of all other rights. For  
7 example, the denial of personal security as a human being  
8 will have immediate impacts upon the right to food, for  
9 example. We could come up with many, may different  
10 scenarios. And of course, the taking of a life is the  
11 worst human rights violation possible.

12 Everyone here is aware of the fact that  
13 Indigenous Peoples individually, and as a whole, have  
14 suffered from the impacts of colonial violence. Such  
15 violence lingers and though the notion of racial  
16 superiority has been soundly denounced, it too lingers.  
17 The history of the subjugation, domination, and  
18 exploitation of Indigenous Peoples is revealed in nearly  
19 every policy adopted by the government of Canada. Specific  
20 and lasting examples include the forced relocation of Inuit  
21 in 1953. Anyone who doesn't know about Indigenous Peoples  
22 being forcibly removed from their lands or other purposes  
23 and intents should look into the forced relocation of Inuit  
24 by the government of Canada.

25 It ranges also to the so-called need for

1       certainty in the comprehensive land claims agreements with  
2       Inuit and the insistence upon purported extinguishment of  
3       Inuit rights. Such violence and vulnerability are further  
4       perpetrated by systemic discrimination. We've heard about  
5       some of that today. As well as Jean Leclair's recently  
6       concluded testimony about racial disparities. On that  
7       note, I just want to point out that as far back as 1979 I  
8       was involved in a study by the Alaska Judicial Council  
9       about racial disparity and sentencing. And the conclusions  
10      and the recommendations of the Alaska Judicial Council in  
11      this regard were very constructive and I would point the  
12      Commissioners to the results. Because for example, in  
13      terms of practical results, they suggested the need for  
14      more Indigenous public defenders, more Indigenous  
15      investigators, more Indigenous Judges, more Indigenous  
16      Prosecutors. You get the picture. The idea was to  
17      saturate the legal system and all of the legal implications  
18      with an Indigenous perspective.

19                In the Arctic, simultaneous with our work to  
20      prepare comprehensive Arctic policy principles, we took  
21      into account the issue of domestic violence. In the early  
22      formulation of the Arctic policy of the Inuit Circumpolar  
23      Council, there was a section on gender equality and also  
24      specifically what was then referred to as conjugal  
25      violence. Our work continued, and we felt it was worth our

1 time to spend money on participating in the work of the UN  
2 Declaration and that this tool could help us, certainly at  
3 the international level. We knew that we needed to take  
4 action at the local level and at the regional level in  
5 terms of Inuit as a circumpolar people that transcend the  
6 borders of the Russian Federation, the United States,  
7 Canada, and Greenland. So we spent money to devote  
8 attention and time to the drafting of the Declaration. We  
9 were suffering quite a lot from the effects of the Cold  
10 War. Our blood relations were divided by the Iron Curtain  
11 between then Soviet Union and the United States.

12 In addition, all kinds of other developments  
13 were taking place in the Arctic at a really fast pace.  
14 And, some of these include the threats to Inuit food  
15 security, namely and specifically through the threats to  
16 Inuit whaling activities by the International Whaling  
17 Commission, prompted by animal rights' groups that believed  
18 that whales have absolute rights, and they were the  
19 spokespersons for those whales.

20 There was a major undertaking to reverse  
21 that and to get the International Whaling Commission to  
22 recognize that Inuit needed a different response in terms  
23 of the international regime. And so, what we have today is  
24 something quite remarkable in terms of management and co-  
25 management in our favour and, really, through the right to

1 self-determination. But, in the background also, the Innu  
2 and others will remember the low-level test flights that  
3 were taking place in the Canadian Arctic.

4 Others are aware of the impacts of the Hydro  
5 Quebec project, and I think significantly, the drowning of  
6 thousands of caribou in Northern Quebec. Disputed, but had  
7 massive impacts on our people. The 1986 Chernobyl  
8 disaster, I mean, not just the whole world community, but  
9 because of the air currents that the settling of  
10 radioactive waste in our homelands. I mean, I could go on-  
11 and-on. The oil and gas lease sales, radioactive waste  
12 being dumped by the Soviet Union into the Arctic Region.

13 So, all of these things were going on at the  
14 same time, but yet again, we felt that it was important to  
15 pay attention to the development of international  
16 Indigenous human rights that, again, would be a useful tool  
17 for us.

18 I think the U.N. Declaration, as has been  
19 discussed in relation to women and girls, and also as  
20 introduced by Corey O'Soup, Indigenous youth, Indigenous  
21 children, and these universal human rights that have now  
22 found a distinct cultural context for Indigenous peoples in  
23 the U.N. Declaration on the Rights of Indigenous Peoples is  
24 very significant. Earlier, there was a question about the  
25 U.N. Declaration reflecting the minimum standards for the

1 survival, dignity and well-being of Indigenous peoples.  
2 That is affirmed in Article 43 of the U.N. Declaration.

3 And, the Declaration also -- I was invited  
4 some time ago by Willy Littlechild, Wilton Littlechild, to  
5 make a contribution to a book that Columbia University  
6 concluded and -- put together and concluded, and he asked  
7 me to write about the U.N. Declaration, and by the time I  
8 was done, it was the access to justice document.

9 So, if one thinks about it, all of the human  
10 rights standards affirmed in the U.N. Declaration, and how  
11 they intersect with other international human rights  
12 treaties, actually does create a pathway towards justice  
13 for Indigenous peoples, that this is one way to guarantee  
14 our access to justice in every possible context, whether  
15 it's land rights, self-government and self-determination,  
16 the right to health, the right to education, gender  
17 equality, non-discrimination, you name it.

18 **MS. VIOLET FORD:** So, you went through the  
19 things leading up to Inuit involvement with the U.N.  
20 Declaration. Can you provide more insights on the legal  
21 status of the U.N. Declaration?

22 **MS. DALEE SAMBO DOROUGH:** I think that --  
23 yes, I can. I think that's a really important question,  
24 especially in the face of those that have tried to diminish  
25 the status of the Declaration, or the nay-sayers, or the

1 people that refer to it as only an aspirational instrument.

2 The first thing I want to say about that,  
3 especially in this context, is that the Government of  
4 Canada was quite active in the drafting and negotiation of  
5 the Declaration. They would send an entire herd of lawyers  
6 to every meeting, and they were very careful. They were  
7 very, very careful about the language.

8 But, I want to underscore the fact that this  
9 was both under Conservative governments as well as Liberal  
10 governments, that the main point is that Canada had a seat  
11 at the table and effectively influenced the outcome of the  
12 language. So, not only Canada, but Australia, New Zealand,  
13 the United States, Indonesia, other governments had active  
14 participation. And, I think that's important to note,  
15 because there shouldn't be any resistance to embracing the  
16 U.N. Declaration in the domestic context, especially if you  
17 had a seat at the table and you, for all intents and  
18 purposes, got what you wanted.

19 Now, of course, on the Indigenous side of  
20 the table, we were making all the arguments against racial  
21 discrimination, and this was -- the pinnacle of this debate  
22 was probably in relation to the right to self-  
23 determination, because governments, including the  
24 Government of Canada, were arguing that, oh no, the right  
25 to self-determination of Indigenous peoples is different

1 than the right to self-determination for whole nation  
2 states. They argued the Blue Water Principle. They argued  
3 all these other principles, and I'll tell you what. The  
4 way that Indigenous peoples won the language of Article 3,  
5 which is, as pointed out by Brenda Gunn earlier, which is  
6 the same article affirmed in Article 1 of the International  
7 Covenants on Civil and Political Rights, Economic, Social  
8 and Cultural Rights, it is the same right.

9 But, the way that we won that argument was  
10 by being intellectually honest about racial discrimination,  
11 that if, in fact, Canada or any other government wanted to  
12 create a different status for Indigenous peoples in this  
13 international human rights instrument, it would be racially  
14 discriminatory, and would violate what some scholars refer  
15 to as a [peremptory] norm of international law, a norm or a  
16 standard of which there shall be no derogation.

17 And, 1996, a few years later, the Government  
18 of Canada made a -- they turned the corner and actually, on  
19 the floor of the then Commission on Human Rights Working  
20 Group on the Declaration, they turned a corner and made a  
21 very important statement about the right of self-  
22 determination applies to all peoples, including Indigenous  
23 peoples. But, you can imagine that on our side of the  
24 table, we're listening very, very carefully to how they  
25 articulated that, because words matter.

1           As far as the legal status is concerned, I  
2           have a number of different quotes, but I'll confine myself  
3           just to a couple of them. In particular, former Special  
4           Rapporteur on the rights of Indigenous peoples, James  
5           Anaya, troubled by the increasing number of states  
6           challenging the legal status of the U.N. Declaration,  
7           stated even though the Declaration itself is not legally  
8           binding in the same way that a treaty is, the Declaration  
9           reflects legal commitments that are related to the *Charter*,  
10          other treaty commitments and customary international law.  
11          The Declaration builds upon the general human rights  
12          obligations of states under the Charter and is grounded in  
13          fundamental human rights principles such as non-  
14          discrimination, self-determination and cultural integrity  
15          that are incorporated into the widely ratified human rights  
16          treaties as evident in the work of the United Nations  
17          treaty bodies. In addition, core principles of the  
18          Declaration can be seen to be generally accepted with  
19          international and state practice. And, hence, to that  
20          extent, the Declaration reflects customary international  
21          law.

22                 I'll just add the footnote that the  
23                 international law association in the review of the U.N.  
24                 Declaration in its expert commentary did echo the status of  
25                 the U.N. Declaration, and in particular, those articles

1 that refer or are regarded as customary international law.

2 And in particular I will just emphasise, as  
3 the International Law Association did, that in the  
4 discourse of customary international law, self-  
5 determination, autonomy or self-government, cultural rights  
6 and identity, land rights, as well as reparation, redress  
7 and remedies constitute customary international law.

8 But they also went on to say, like the  
9 interrelated interdependent and indivisible nature of human  
10 rights, the ILA Committee recognised that it would be  
11 inappropriate to deal with these areas separately, that the  
12 rights just listed are all strictly interrelated, to the  
13 extent that the change of one of its elements affects the  
14 whole. So, therefore, the rights affirmed in the UN  
15 Declaration must be read as a whole.

16 And, in addition, it's significant that the  
17 Government of Canada has pronounced its support for an  
18 implementation of the UN Declaration. I also want to note  
19 that the United Nations General Assembly has expressed its  
20 support for the UN Declaration on no less than eight  
21 different occasions.

22 And we always think about the United Nations  
23 as this big, you know, institution of others. We need to  
24 remember that the United Nations is an organisation of  
25 member states, including Canada, the United States and

1 others, you know. Oh well, let's leave that to the  
2 specialised agencies or organs of the United Nations. But  
3 in this regard, as far as an international Indigenous human  
4 rights instruments, it is governments that have reaffirmed  
5 their support for the UN Declaration.

6 I also want to say that I think that this  
7 constant relationship between the exercise of rights and  
8 the interaction between rights, whether it is the  
9 intersectional perspective that's been spoken of and how  
10 Indigenous peoples have characterised the holistic nature  
11 of their rights and how they express that to the United  
12 Nations, that all of these are definitely relevant to the  
13 inquiry of you, as Commissioners, and the rights and  
14 concerns of Indigenous peoples.

15 I think it's important also just to say  
16 quickly that clearly Article 3, the right to self-  
17 determination, again, as Brenda Gunn stated, it is an  
18 essential foundational right. It has been recognised as --  
19 by legal scholars as a prerequisite to the exercise and  
20 enjoyment of all other rights. So it's required in order  
21 for Indigenous peoples, either individually or  
22 collectively, to benefit from the exercise of the right of  
23 self-determination of Indigenous peoples.

24 So the government should take actions to  
25 respond to all of these matters before you consistent with

1 the right to self-determination and self-government, that  
2 Indigenous peoples, not only through Article 3 and Article  
3 4 of the UN Declaration, but also other articles in the  
4 Declaration that affirm their right to participate in  
5 decision making that affects their rights.

6 I could go further in terms of the range of  
7 different articles that affirm their right to self-  
8 determination, but the final point that I want to make in  
9 regard to Article 3 is that there are important dimensions  
10 in terms of self-identification of Indigenous peoples. And  
11 fortunately here in Canada you don't have that difficulty,  
12 but you can imagine in Africa and Asia and elsewhere there  
13 is a difficulty. But significantly also, the right to  
14 free, prior and informed consent is an important dimension  
15 and element of the right to self-determination.

16 Just quickly, Articles 21 and 22 are  
17 explicitly relevant to the Inquiry. I expect that the  
18 Commissioners are probably already aware that Article 21  
19 affirms that special measures should be taken to improve  
20 social and economic conditions and extra attention should  
21 be paid to the rights and means of Indigenous women and  
22 youth. And also Article 22, which explicitly stresses that  
23 measures should be taken to guarantee the protection of  
24 Indigenous women and children against all forms of violence  
25 and discrimination.

1           There are other provisions that address  
2 freedom from discrimination and the exercise of rights, the  
3 right to life, physical and mental integrity, liberty and  
4 security of person. And security of person is -- I think  
5 is fundamental and has so many different dimensions in the  
6 Indigenous context, as well as, as I've already said, the  
7 right to participate in decision making that would affect  
8 Indigenous rights and all other rights.

9           **MS. VIOLET FORD:** Thank you, Dalee.

10           I know that Professor Gunn went over several  
11 other international instruments and treaties and  
12 conventions, declarations this morning, but can you present  
13 your insights and perspectives on those?

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

15           **MS. VIOLET FORD:** Some of the ones that she  
16 referenced this morning?

17           **DR DALEE SAMBO DOROUGH:** Okay. There are a  
18 number of them and I think that what I'll do is just  
19 confine myself to the fact that the UDHR, the Universal  
20 Declaration of Human Rights is relevant. And each of the  
21 instruments that I'll just quickly list off reflect  
22 provisions that talk about equality, that talk about life,  
23 liberty and security of person, equal protection before the  
24 law, non discrimination.

25           But I think it's important for us to

1 recognise that the Universal Declaration of Human Rights,  
2 of which every one of us in this room as human beings are  
3 beneficiaries of, that that grew out of and was inspired by  
4 victims that demanded -- those survivors demanding that  
5 these brutal regimes that murdered millions do something  
6 about them.

7 And so it's a cornerstone instrument as far  
8 as the International Bill of Rights is concerned. And by  
9 that I mean the Universal Declaration of Human Rights, the  
10 International Covenant on Civil and Political Rights and  
11 the International Covenant on Economic, Social and Cultural  
12 Rights, which have already been underscored, but those  
13 three instruments together are often referred to as the  
14 International Bill of Rights. So each of them is  
15 important, all three of them.

16 As I've already stated and which was  
17 stressed earlier today, Article 1 of the International  
18 Covenants is, in fact, the inspiration and the pedigree for  
19 Article 3 within the UN Declaration itself.

20 In addition, as has already been addressed,  
21 the Convention on the Elimination of All Forms of  
22 Discrimination Against Women, I'll refer to as CEDAW, that  
23 that is regarded as the International Bill of Rights for  
24 Women.

25 And its preamble makes some important

1 recognitions, of which I won't quote now but I would just  
2 like to draw attention to its preamble and the importance  
3 of the equality of rights and respect for human dignity, as  
4 I said earlier, as far as the nature of human rights.

5 It is significant that though the issue of  
6 violence against women is not explicitly addressed in  
7 CEDAW, there are provisions that relate to member state  
8 obligations to address violence against women.

9 And even more relevant is the fact that the  
10 CEDAW committee, which monitors member state compliance  
11 with the provisions of the convention or treaty, has  
12 elaborated upon these state obligations of ending gender-  
13 based violence as part of their human rights obligations in  
14 relation to the convention. And I think that that's quite  
15 significant.

16 In addition, in 1994, due to the alarming  
17 increase of violence against women, a Special Rapporteur on  
18 violence against women was established. And I'm sure that  
19 you are all aware of the recent visit. But this  
20 represents, again, recognition and acknowledgement of the  
21 need for an intersectional perspective when it comes to,  
22 especially in my view, Indigenous women and girls.

23 So the Special Rapporteur -- and this is  
24 even more significant in practical terms of the  
25 intersectional perspective of human rights and a need for

1 that, that the Special Rapporteur has the mandate to  
2 monitor issues, not only related to the Convention on  
3 Elimination of Discrimination Against Women, but also to  
4 the Universal Declaration on Human Rights, the Declaration  
5 on the Elimination of Violence Against Women, the Beijing  
6 Platform for Action, and other international human rights  
7 instruments. So it's a very broad mandate.

8 And I think that the closing mission  
9 statement by the Special Rapporteur was, in my view, quite  
10 significant. And I'm sure that everyone in the room is  
11 acutely aware, but I have taken one paragraph from the  
12 mission statement as it was reported in the press, and she  
13 stated:

14 "Indigenous women from First Nations,  
15 Métis and Inuit communities are overtly  
16 disadvantaged within their societies  
17 and in the larger national scheme.  
18 Indigenous women face marginalization,  
19 exclusion and poverty because of  
20 institutional, systemic, multiple,  
21 intersecting forms of discrimination  
22 that has not been addressed adequately  
23 by the State."

24 We could all stop right now and say that's  
25 all that needs to be said, but unfortunately there's more,

1 I think.

2 So that particular convention and the  
3 Special Rapporteur, those statements are quite significant.

4 I'll also say that CERD is relevant. I have  
5 already articulated how Indigenous peoples utilized the  
6 CERD instrument in relation to the right to self-  
7 determination as its reflected in the UN Declaration.

8 There are many, many different dimensions to  
9 this. And as far as this notion of intersectional  
10 perspectives, in my notes there's a scholar, Pragna Patel,  
11 who acknowledged that:

12 "Urgent action needs to [be taken]...at  
13 both the national...and  
14 international...levels, [so government  
15 and the United Nations] to raise  
16 awareness of the multiple nature of  
17 discrimination experienced by  
18 marginalised women, and to mainstream  
19 an intersectional or more holistic  
20 approach to the question of racial and  
21 gender discrimination. It is both the  
22 intersectional and the simultaneous  
23 nature of multiple discrimination that  
24 needs to be understood at a theoretical  
25 level [but to me, more significantly,]

1 and addressed at a practical level."

2 The only thing I want to say about the  
3 Convention Against Torture, which Brenda also made note of,  
4 is that the effects of violence against women are similar  
5 to those who've experienced torture and cruel inhumane or  
6 degrading treatment of punishment. Powerlessness,  
7 posttraumatic stress disorder, physical deformity are just  
8 a few of the outcomes which these two groups actually  
9 share.

10 But if you think about the raging debates  
11 about torture in relation -- well, certainly in the United  
12 States -- maybe less so here in Canada, but in the United  
13 States, the raging debates about torture in the context of  
14 terrorists, and the fact that it's drawn so much attention.  
15 Yet at the same time, when we make the correlation between  
16 torture and inhumane degrading treatment or punishment  
17 against women, and specifically, Indigenous women and  
18 girls, it doesn't attract the same raging debate, when in  
19 fact it really should. It's actually stunning that this  
20 hasn't become a topic of raging debate if we think about  
21 the decades that we've been facing this.

22 The only other thing I want to mention is  
23 that outside of the 12 of the 18 international human rights  
24 instruments that Canada has ratified, though the Government  
25 of Canada hasn't exceeded to the International Labour

1 Organization Convention No. 169 on Indigenous and Tribal  
2 Peoples, it's relevant because the ILO itself, as well as  
3 legal scholars, have affirmed that the ILO Convention  
4 No. 169 and the UN Declaration should be read as  
5 complementary and mutually reinforcing.

6 And though the ILO Convention only  
7 references Indigenous women and sexual harassment in  
8 Article 19, it still would be useful, especially when we  
9 think about an intersectional perspective that the Inquiry  
10 and Commissioners may take with regard to their conclusions  
11 and recommendations.

12 I'll also just point out that the -- of  
13 course, the Interamerican Convention on Prevention,  
14 Punishment and Eradication of Violence Against Women,  
15 Special Protections for Vulnerable Groups is relevant, as  
16 well as the American Declaration on the Rights of  
17 Indigenous Peoples. I think that this American  
18 Declaration, in particular, from 2016, is relevant because  
19 it has some very strong language with regard to the forms  
20 of violence and discrimination, particularly against  
21 Indigenous women and children.

22 There is a specific provision that refers to  
23 the fact that states should:

24 "...take special [measures] and  
25 effective measures in collaboration

1 with indigenous peoples to guarantee  
2 that indigenous women, children...[are]  
3 free from all forms of violence,  
4 especially sexual violence, and [that  
5 states] shall guarantee the right to  
6 access to justice, protection, and  
7 [the] effective reparation for damages  
8 incurred to the victims."

9 So I think that it would be useful to  
10 integrate such language into your work as you go forward.

11 The only other thing that I want to say is  
12 that ---

13 **MS. FANNY WYLDE:** Before -- sorry. I just  
14 have to do a couple of housekeeping ---

15 **DR. DALEE SAMBO DOROUGH:** Okay.

16 **MS. FANNY WYLDE:** --- things.

17 Before we explore the other areas that  
18 you're going to be speaking on, I would like to ask the  
19 Commissioners that I can tender some other exhibits.

20 The first one is the International  
21 Convention on Civil and Political Rights, and it's  
22 indicated as Schedule C. Doro (phon.) in the summary.

23 I'm adding them as a cluster of exhibits.  
24 This is one of the first of the clusters.

25 **CHIEF COMMISSIONER BULLER:** Exhibit 19.

1 --- EXHIBIT NO./PIÈCE NO. B19:

2 International Convention on Civil and  
3 Political Rights, adopted by the General  
4 Assembly of the United Nations on 19  
5 December 1966 (No. 14668, Vol. 999) pp. 172-  
6 346 pp. 172-186; 256-305; 321-346 (92 pages)

7 **MS. FANNY WYLDE:** And the second one is the  
8 International Convention on -- sorry -- the Convention on  
9 the Elimination of all Forms of Discrimination Against  
10 Women attached as Schedule E.

11 **CHIEF COMMISSIONER BULLER:** Exhibit 20,  
12 please.

13 --- EXHIBIT NO./PIÈCE NO. B20:

14 Convention on the Elimination of All Forms  
15 of Discrimination against Women (ten pages)

16  
17 **MS. FANNY WYLDE:** As well as the Convention  
18 on the Elimination of All Forms of Racial Discrimination.

19 **CHIEF COMMISSIONER BULLER:** Exhibit 21.

20 --- EXHIBIT NO./PIÈCE NO. B21:

21 International Convention on the Elimination  
22 of All Forms of Racial Discrimination  
23 (nine pages)

24 **MS. FANNY WYLDE:** Okay. That's it for now.

25 Thank you.

1                   **MS. VIOLET FORD:** Yeah, you can proceed.

2                   **DR. DALEE SAMBO DOROUGH:** Thank you.

3                   The only other comments that I wanted to  
4                   make was in relation to the American Declaration. Like the  
5                   ILO, and the reference that the ILO itself makes with  
6                   regard to the UN Declaration and the ILO Convention being  
7                   complementary and mutually reinforcing, the American  
8                   Declaration on the Rights of Indigenous Peoples explicitly  
9                   provides that the rights recognized in this Declaration and  
10                  the United Nations Declaration on the Rights of Indigenous  
11                  Peoples constitute the minimum standards for the survival  
12                  of dignity and well-being of the Indigenous Peoples of the  
13                  Americas. So it's quite significant that they've tied the  
14                  two instruments together.

15                  And of course, then that triggers the  
16                  question of, okay, well what if there's a better standard  
17                  in the American Declaration in contrast to the UN  
18                  Declaration. And this would take careful analysis to  
19                  determine because as a human rights advocate, as an  
20                  Indigenous person, you would be looking for the strongest  
21                  possible standard.

22                  So it's important to take that into account  
23                  to look at the linkages between all of these different  
24                  international instruments, especially those in favour of  
25                  Indigenous peoples, and of course, see how they are

1 mutually reinforcing and also what may offer the highest  
2 standard, because they are not identical and it did engage  
3 a completely different political arena and fora as far as  
4 the Americas are concerned.

5           The final thing that I'll say is that the  
6 special mandates, some of which have already been  
7 addressed, such as the Permanent Forum on Indigenous  
8 Issues, they recently adopted a recommendation at their 17<sup>th</sup>  
9 session to ask one of their expert members to look at good  
10 practices in curbing violence against Indigenous women and  
11 girls, so that is on the horizon. In addition, the expert  
12 making recommendations on the rights of Indigenous peoples,  
13 other special rapporteurs, and of course, the human rights  
14 treaty bodies are all contributing to emerging  
15 jurisprudence nearly every day.

16           And so, I suppose in that regard we all need  
17 human rights education because these developments are  
18 taking place, especially in response to urgent needs and  
19 hotspots, and urgent issues, and urgent human rights  
20 violations. And, in my estimation, this is a -- this is a  
21 horrific condition when you think about the urgency and the  
22 need for us to turn our attention to the issue in a more  
23 urgent fashion.

24           And, I would point to Article 40 of the U.N.  
25 Declaration as significant, because it indicates that

1 Indigenous peoples should have access to and prompt  
2 decisions through fair procedures and resolution of  
3 conflicts, and I would submit that this is one of those  
4 areas that -- and the state party concerned happens to be  
5 the Government of Canada.

6 I enjoyed the debate that was taking place  
7 about, okay, so you have the national level, you have the  
8 provinces, you have the territories, but let's not forget  
9 that the state party is bound by these international  
10 instruments. And, of course, the desire and the objective  
11 is that societal change that should, in fact, take place.  
12 But, again, it's the member state that participated in the  
13 drafting of these instruments; in fact, all of these  
14 instruments.

15 And, this is their -- this is their context.  
16 All of these instruments came at the hands and are the  
17 product of governments. They established and set their own  
18 expectations, and I think that that's another important  
19 thing we have to remember, is that, sure, in some places we  
20 forced them to do so, like the survivors of millions being  
21 murdered, but at the same time, I think we need to  
22 acknowledge that governments drafted these instruments, and  
23 they established their own expectations through consensus,  
24 decision making, which is the protocol of the United  
25 Nations.

1           I mean, the same happened with the U.N.  
2 Declaration, so I think it's important for us to  
3 acknowledge that here's no gap in the understanding of the  
4 content. You know, yes, you might switch out diplomats  
5 every couple of years, but as far as the government and  
6 those political institutions that are responsible, we have  
7 to be mindful of that as well.

8           **MS. VIOLET FORD:** Dalee, if we could bring  
9 it into, now, a more Canadian focus with the domestic  
10 relevance of international law by looking at some of the  
11 jurisprudence?

12           **MS. DALEE SAMBO DOROUGH:** Okay. I suppose  
13 there are probably a couple of ways of making that  
14 argument. I think that it's not necessary, really, to go  
15 into what Brenda Gunn and others have talked about as far  
16 as the necessity for a human rights framework. I think  
17 that that's probably pretty well established in terms of  
18 the application of these international human rights  
19 instruments within a domestic context, and how the U.N.  
20 Declaration, for example, and other international human  
21 rights instruments can provide us with some guidelines  
22 about the framework going forward.

23           I think that it's important for -- at least  
24 in moving forward as far as the domestic relevance is  
25 concerned that it's pretty clear that the Supreme Court of

1 Canada has acknowledged that international human rights law  
2 instruments are relevant in the domestic context. And, a  
3 number of different cases, I know Brenda Gunn this morning  
4 referenced the *Baker v. Canada* case where the Supreme Court  
5 did indicate that international human rights law is a  
6 critical influence on the interpretation of the scope of  
7 the rights included in the *Charter*. They went further to  
8 indicate that the values reflected in international human  
9 rights law may help inform the contextual approach to  
10 statutory interpretation and judicial review.

11 A number of other cases, the *Tsilhqot'in*  
12 case was already referenced. The *Cape* case also affirmed  
13 that compliance with Canada's obligations as a signatory to  
14 international treaties is relevant, as well as the fact  
15 that they are a member of the international community, and  
16 that in deciding between possible interpretations, that  
17 courts will avoid a construction that would place Canada in  
18 breach of those obligations.

19 The second aspect is that the Legislature is  
20 presumed to comply with the values and principles of  
21 customary and conventional international law, which is  
22 significant in large part because of what I expressed  
23 earlier about the content of the U.N. Declaration.

24 There are a number of other ways in which  
25 domestic law and international human rights law should be

1       shored up, and in my opinion, one thing that hasn't been  
2       mentioned so far, unless I wasn't playing close attention,  
3       is the fiduciary obligation of government, and the  
4       fiduciary obligation of the Government of Canada. I mean,  
5       if you think about it, like the United States, this  
6       construct of a guardian-ward relationship obviously smacks  
7       of colonialism. It chafes against you as an Indigenous  
8       person to think about this.

9                But, it also recalls the Law of Nations and  
10       the fact that nations, First Nations, Indigenous peoples  
11       and their measures for societal control, including  
12       traditional law, that this was one of the -- they were one  
13       of the actors in the development and the foundations of  
14       international law. There's no question that anybody from  
15       the Iroquois Confederacy would disagree with that  
16       interpretation.

17               But, nevertheless, this guardian-ward  
18       relationship emerged, and I think that the fiduciary  
19       obligations, they persist, and they should be invoked in  
20       the context of missing and murdered Indigenous women and  
21       girls. And, the fact that one party has an obligation to  
22       act for the benefit of another, and that obligation carries  
23       with it discretionary power, the party thus empowered  
24       becomes a fiduciary, and equity will then supervise the  
25       relationship by holding him to the fiduciary strict

1 standard of conduct. I think we need to remember this in  
2 relation to all of the questions put before you.

3 In our current administration in the United  
4 States, it's a whole other discussion of reminding them of  
5 this relationship and how it emerged historically. I'm  
6 very fearful and in part, at least within our current  
7 administration in the United States, possibly the best  
8 approach is the less he knows the better. But it's  
9 important also to think about this, at least for myself,  
10 what does the fiduciary obligation of the government of  
11 Canada have to say about Inuit women and girls that have  
12 gone missing, have been murdered, or face domestic  
13 violence, sexual violence, sexual assault and other issues  
14 of concern to the inquiry?

15 And so, when understood in the context of  
16 already marginalized persons and people, urgent action  
17 should be taken, and we know the statistics. It's not  
18 necessary to repeat them. But we have to take into account  
19 the reality of these international human rights  
20 instruments, the source of them, and compound that with the  
21 fiduciary obligation of government to Inuit, Metis, and  
22 First Nations in Canada. We can't -- we can't sweep that  
23 under the -- under the rug.

24 **MS. VIOLET FORD:** You started getting into  
25 the issue around Inuit women and girls specifically. Do

1 you want to expand on the distinct context that Inuit women  
2 and girls find themselves in, in relation -- murdered and  
3 missing Inuit women and girls? The challenges, the  
4 particular challenge we're facing?

5 **DR. DALEE SAMBO DOROUGH:** Yeah. I think  
6 that that's really important to draw attention to the  
7 conditions faced by Inuit in the Arctic region. As you may  
8 have already heard, at the national level, and I'm sure  
9 you're all aware that Inuit are not governed under the  
10 *Indian Act* so the experience with modern day land claims  
11 agreements and a realm of other issues, a broad realm of  
12 other issues, create a really different experience than  
13 Indigenous women and girls, and First Nations or Metis  
14 communities. And in addition, there are other unique  
15 dimensions of the north that require distinct responses to  
16 the reality of conditions faced by Inuit women and girls.

17 We heard about the distinct context of  
18 Saskatchewan and youth there, and every time Corey O'Soup  
19 used the term north, I was thinking, oh, maybe he's going  
20 to actually address the conditions in the Arctic region, in  
21 the Inuit Nunangat, our homelands. But I have to say that  
22 the statistics are not that much different. We could  
23 probably, you know find and replace Indigenous youth in  
24 Saskatchewan with that of Inuit youth throughout Inuit  
25 Nunangat.

1           Nearly 4 million square kilometres of  
2           territory across the whole of the Canadian Arctic. Canada  
3           -- I'm sure somebody that's online could look this up, I  
4           think they're the second or third largest country in terms  
5           of territory, land mass. So if you think about just that  
6           alone in terms of the environment, the extreme expanse, the  
7           whole of Canada, but then if you look at it from the  
8           perspective of someone that works in -- with Inuit in the  
9           Canadian Arctic, it also represents really unique  
10          environmental conditions.

11           Then you have the very small population. I  
12          think ITK presented information -- I wasn't present, but  
13          presume that the presented information about the conditions  
14          there. But approximately 60,000 Inuit across this whole  
15          territory -- and we're talking about very, very small,  
16          remote communities. And so a majority of those 60,000  
17          Inuit in our homelands, Inuit Nunangat, and those that do  
18          gravitate to the south. I have heard estimates that  
19          approximately 16,000 or so Inuit gravitate to urban centres  
20          in the south. Our numbers in Alaska are not very much  
21          different in terms of the territory and the gravitation to  
22          urban areas.

23           Many Inuit women and girls face extreme  
24          vulnerability and they can't afford to escape threatening  
25          and harmful conditions. Their vulnerable conditions are

1 often compounded by their sense of obligation to family and  
2 to their community. And security and personal security  
3 have a distinct cultural and environmental context. Inuit  
4 women experience further challenges throughout remote and  
5 isolated communities in the Arctic, such as lack of housing  
6 and overcrowding, lack of access to services and resources,  
7 food insecurity and other issues. There has been a chronic  
8 lack of basic resources in the north for the whole of the  
9 Inuit population, but significantly there are even fewer  
10 resources to respond to and prevent domestic violence.

11 As has already been stated, there are few,  
12 if any domestic violence shelters with comprehensive  
13 services. I heard the question put to Tim Argetsinger  
14 about the need to vet and identify all of these different  
15 shelters. But the shelters are one thing, but  
16 comprehensive services are a whole other thing and I think  
17 he tried to articulate some of the challenges in that  
18 regard. There's a significant lack of access to healthcare  
19 and medical facilities when physically injured and little  
20 in the way of services or medical care to respond to health  
21 effects of what is referred to as intimate partner  
22 violence.

23 To underscore the urgent message of the  
24 special rapporteur on violence against women, poverty and  
25 the impoverishment of Indigenous Peoples plays a huge role

1 in violence against women and girls. The lack of housing  
2 leads to serious overcrowding which increases the risk of  
3 sexual violence against Inuit women and girls. And this  
4 lack of shelters often drive Indigenous women and girls to  
5 leave their communities and end up in situations leading to  
6 even greater violence, including murder. And that's for  
7 just those who can manage to get out of the community.

8 I wasn't sure about the following statement.  
9 The more I thought about it, the more I realized it is  
10 relevant. And that is, extinguishment of rights can also  
11 lead to heightened poverty and other vulnerabilities, in  
12 particular, the unilateral extinguishment of rights of  
13 Indigenous Peoples has had adverse impacts. For example,  
14 upon Quebec's insistence the Parliament and government of  
15 Canada included such an extinguishment clause in the *James*  
16 *Bay and Northern Quebec Native Claims Settlement Act* that  
17 stated -- listen to this, it's really sweeping language:

18 "All native claims, rights, title and  
19 interests, whatever they may be, in and  
20 to the Territory, of all Indians and  
21 all Inuit, wherever they may be, are  
22 hereby extinguished..."

23 And though this extinguishment took place  
24 over 40 years ago, the impoverishment that resulted has  
25 been reinforced elsewhere and, in my opinion, and it would

1 be an important study to pursue, has resulted in diminished  
2 resources and services such as shelters or counselling, and  
3 increased helplessness in the same way that torture has  
4 created this dynamic of powerlessness.

5 In addition to legal and political impacts,  
6 as noted by scholar Judy Shepard, for Inuit women and girls  
7 in Alaska's northern region -- and here I make the proviso  
8 that the conditions are similar for Inuit throughout Inuit  
9 Nunangat. Environmental and other social infrastructure  
10 factors are also a major contributor to violence and the  
11 limitations of leaving an abusive and threatening  
12 condition. Shepard specifically noted the following:  
13 isolation of communities, severe weather -- oh, by the way,  
14 the title of her piece was "Where do you go when it's 40  
15 below?" So severe weather, lack of adequate law  
16 enforcement, prevalence of alcohol and other drugs,  
17 prevalence of weapons. We're still a hunting and gathering  
18 society. Absence of many of the basic public service, such  
19 as low-income housing and transportation, lack of jobs, and  
20 dependence on public assistance, infrequent visits by  
21 mental health professionals and the lack of treatment  
22 programs for abusers.

23 I would add to this list, in particular  
24 items like post-secondary educational institutions in the  
25 north. Environmental factors also contribute to

1 vulnerability and conditions of risk, including the impacts  
2 of climate change, which contributes to food insecurity;  
3 natural resource development and, in particular, extractive  
4 industries. We started to hear a little bit about that  
5 earlier. I think that we all know there's a dark side to  
6 development.

7 A couple of years ago I was invited by the  
8 Mandan, Hidatsa, and Arikara people in North Dakota; you  
9 know, where all of the oil sands and oil development is  
10 taking place, and they sent me the invitation and it  
11 sounded like it was going to be a conference about economic  
12 development.

13 And, sure enough, it was a conference about  
14 economic development. But what took place was this  
15 lengthy, full-day discussion -- and it was a three-day  
16 conference, a lengthy full-day discussion about the impacts  
17 of development in the way of violence against Mandan,  
18 Hidatsa, and Arikara women and girls.

19 I was there only 72 hours; there were two  
20 Amber Alerts. I think you know what an Amber Alert is,  
21 right? These were young girls, and here we are talking  
22 about it in the middle of the meeting and I'm just -- and  
23 an Amber Alert goes off. That was one day. The next day,  
24 another one went off. The first young girl was found safe.  
25 The second one wasn't by the time that I left.

1           That's the dark side of development that I'm  
2 talking about that we've known about for decades. We've  
3 known about this stuff, that where there's -- especially  
4 resource extraction. We experienced this when the Trans-  
5 Alaska Pipeline was being built in Alaska. The number of  
6 especially Inuit women and girls and other Indigenous women  
7 and girls that went missing, were murdered, and faced other  
8 kinds of sexual assault and violence; some of you may be  
9 familiar with this fellow Hanson. We don't know how many -  
10 - we don't, to this day, know how many women and girls, as  
11 well as Indigenous women and girls, that he raped and  
12 murdered or set free out in the woods only to hunt and  
13 eventually kill and bury. We still, to this day, don't  
14 know anything about those numbers.

15           So as far as extractive industries and the  
16 impacts of these kinds of things within communities is very  
17 significant. So I think it's another area that needs to be  
18 taken into consideration. And as I said, we've known about  
19 this dynamic, and the Mandan, Hidatsa, and Arikara people  
20 were struggling to find out how do we -- how do we keep our  
21 people safe? As an Indigenous government, how do we keep  
22 our women and girls safe; how do we avoid the human  
23 trafficking? Those were their questions to me; when I had  
24 thought that I was going to talk about a comparative  
25 analysis between the Alaska Native Claims Settlement Act

1 and corporate structures and economic development, that was  
2 what they were most concerned about.

3 Another factor in small rural and remote  
4 Inuit communities is the fact that relationships between  
5 the victim and the suspected killer or perpetrator have  
6 very different dimensions.

7 In our small communities many Inuit women  
8 and girls are victims of intimate partner violence, and  
9 there's no fancy definition for it, it is simply what it  
10 is; intimate partner violence.

11 And not only are there issues in relation to  
12 no access to justice and equal application of the rule of  
13 law in corresponding institutions, but within the small  
14 communities there are a host of other issues that present  
15 challenges for an individual woman or girl and her family.

16 And intimate partner violence and other  
17 threats trigger, like torture, other activities such as  
18 substance and alcohol abuse, mental health issues, high  
19 rates of STDs, pregnancy and prematurity, depression and  
20 suicide, non-fatal injuries or self-harm, and also fatal  
21 injuries, intimate partner homicides, and also, overall  
22 cultural instability and cultural poverty. And I'm  
23 borrowing the words of Zebeny Numach (ph) when I talk about  
24 cultural poverty. And often such issues are invisible in  
25 the community unless there are physical scars and

1 deformities. But because they're almost invisible in  
2 community, they're often left unspoken and the response of  
3 the high incidence of intimate partner violence in Inuit  
4 communities has to be tailored, and a distinctive approach  
5 to address this particular challenge has to be tailored in  
6 terms of what Inuit women and girls within communities  
7 wants.

8 I want to point out that some scholars that  
9 we're looking at, the Human Development Index and gender  
10 equality, their assumption was that where you have high  
11 gender equality, that, you know, other indicators would be  
12 -- would correspond. And, you know, it sort of makes sense  
13 that the idea of gender equity and violence against women  
14 and girls, you know, that they would correlate in some way.

15 And Canada arose in some of their tables and  
16 so forth, and despite gender equality, and also a very --  
17 from an American perspective, a better healthcare system,  
18 that Canada ranked really high in terms of intimate partner  
19 violence. So it didn't -- they didn't add up in terms of  
20 the theory and the assumption of these particular scholars.

21 I have some comments with regard to legal  
22 recourse. Should I continue?

23 **MS. VIOLET FORD:** Sure.

24 **DR. DALEE SAMBO DOROUGH:** All right.

25 As noted by a journalist that covered the

1 murder of Rio de Janeiro councilwoman Marielle Franco just  
2 this past March, he stated, "It takes a lot of confidence  
3 that there will be no justice, to murder someone." You  
4 know? And especially a prominent individual; a  
5 councilwoman in a major city.

6 He emphasized that there is an overall  
7 climate of impunity in Brazil. And if you think about it,  
8 and the astounding number of Indigenous women and girls  
9 that are murdered and missing in Canada, how far are we  
10 away from that climate of impunity?

11 And that climate dramatically increases not  
12 just the risk but the reality of murdered and missing  
13 Indigenous women and girls. And that if perpetrators  
14 believe that nothing will be done, that they can get away  
15 with this; nothing will be done by the state or legal  
16 mechanisms, then they'll behave in an unfettered fashion  
17 and a climate of impunity emerges.

18 And I think this is really why this Inquiry  
19 exists, right? If you think about B.C., and I just  
20 monitored it from a distance, you know, this stretch of  
21 highway where, you know, these numbers kept coming and  
22 coming and coming. That suggests that there is a climate  
23 of impunity that, yeah, they do have confidence that no  
24 justice will emerge.

25 So unsurprisingly within legal structures

1 and institutions, Inuit generally, and Inuit women and  
2 girls specifically, are met with ineffective law  
3 enforcement responses. As I stated earlier about the  
4 Alaska Judicial Council's Report on Racial Disparity in  
5 Sentencing; that ranges from prosecutors to public  
6 defenders, probation officers, and other support agencies  
7 and services, there's also often uneven or discriminatory  
8 approaches taken in relation to the duty to investigate  
9 that ultimately breeds and perpetuates racial  
10 discrimination. And that such racism and discrimination  
11 has been identified as systemic throughout legal systems.

12 And additional barriers include lack of  
13 legal knowledge, in both civil and criminal proceedings, as  
14 well as financial barriers, physical barriers, and  
15 emotional barriers.

16 Both in the north and in the south, all of  
17 these dynamics are compounded by the increased change of  
18 Inuit women and girls being profiled by police and other  
19 services in such a way as to minimize the chance that a  
20 crime will actually be investigated, regardless of the duty  
21 to investigate.

22 And so for those 16,000 Inuit, and of that  
23 number the women and girls, the systemic discrimination  
24 may, in fact, worsen for them if they've -- especially  
25 those that may have attempted to leave because of intimate

1 partner violence. So law enforcement, courts, prisons,  
2 there needs to be an entire structural change.

3 All of these economic, social, cultural and  
4 political realities contribute to the tragedy of missing  
5 and murdered Indigenous women and girls that are  
6 experienced here in Canada, and across the globe for  
7 Indigenous women and girls, and absolutely affects their  
8 collective security, but also their individual security.  
9 And a host of effective measures and social infrastructures  
10 to address these conditions are lacking, and we've heard  
11 about all of them.

12 The right to self-determination and self-  
13 government has implications and may also create uneven  
14 jurisdiction or authority to address and prevent domestic  
15 violence that may escalate to homicide or other harm. I  
16 don't know the details of this. I can't substantiate this,  
17 but I presume that this is the case.

18 And, again, without greater and fully  
19 decentralised local control, it's difficult, if not  
20 impossible, for Inuit communities to respond to the reality  
21 of Inuit missing and murdered women and girls, or intimate  
22 partner violence, domestic violence, sexual violence,  
23 sexual assault, discrimination.

24 Of course, as I said earlier, as far as  
25 self-determination is concerned and operationalising it in

1 an effective and meaningful way throughout Inuit  
2 communities, Inuit have to be participants from the ground  
3 up.

4 I want to just briefly mention the  
5 sustainable development goals, of which Canada has agreed  
6 to at the international level. And I think that they're  
7 urgent and crucial as well in relation to the health and  
8 welfare of the Inuit and, in particular, Inuit women and  
9 girls.

10 The SDGs and the indicators relate to  
11 inequalities, poverty, food, health, education, water,  
12 sanitation, energy, environment, resources, climate policy,  
13 work, economic growth, industry, innovation, infrastructure  
14 and institutions of governance, and access to justice. All  
15 of these are acutely impacting Inuit communities and have  
16 direct implications for Inuit women and girls.

17 Fortunately, UN Women has tried to integrate  
18 the perspectives of women in the so-called UN system-wide  
19 action plan, which was -- which emerged out of the so-  
20 called World Conference of Indigenous Peoples. And  
21 they've, you know -- they're working and working, my guess  
22 is, directly with the permanent forum on Indigenous issues  
23 and their members.

24 There was talk of a national plan here in  
25 Canada I think ditto -- and echo the approach of, for

1 example, UN Women to ensure that Indigenous peoples,  
2 Indigenous women and girls are engaged in the discussion,  
3 especially as Canada goes forward. If -- well, I don't  
4 know the status of it. I'll be frank with you. I don't  
5 know the status of how serious Canada is taking the need  
6 for developing sustainable development goals and  
7 indicators.

8 I would echo what Brenda Gunn said about the  
9 need for disaggregated data in regard to Inuit, Métis and  
10 First Nations.

11 So when we think about the sustainable  
12 development goals and the rights and concerns and interests  
13 of Inuit as well as their status as distinct Indigenous  
14 peoples, will they be left behind, you know? Is this --  
15 the mantra is I leave no one behind. Okay. Well, how is  
16 that going to happen? You know, the next time around that  
17 Canada reports to the UN what they're actively and  
18 concretely doing with regard to the sustainable development  
19 goals.

20 And in regard to all of this, I continue to  
21 think that we cannot wait for evolutionary change; right?  
22 I mean, it's almost as though that's what's taking place,  
23 but we can't do that. We can't wait for the gradual  
24 development of something that looks like concrete action.  
25 We have to do something on an urgent basis. And I think

1 that there are ways in which we can do -- take action on an  
2 urgent basis.

3 You know, the Special Rapporteur on violence  
4 against women, that was a pretty compelling statement that,  
5 okay, I've been here. I made my country visit and I took a  
6 look around and these -- my recommendation is that  
7 something be done right now, even before the work -- your  
8 work, our collective work is done. And that was a pretty  
9 compelling message on her part.

10 I had a note about a really horrific story  
11 but I don't want to share it now. It was just to  
12 underscore the message that it really is urgent.

13 **MS. VIOLET FORD:** Thank you.

14 Just a couple more housekeeping things and  
15 more documents to be entered into exhibits as listed in the  
16 summary.

17 The first one is Violence -- end of the  
18 mission statement by Dubravka -- how do you pronounce her  
19 name -- Šimonović?

20 **DR. DALEE SAMBO DOROUGH:** Yeah, it's close.

21 **MS. VIOLET FORD:** Šimonović, United Nations  
22 Special Rapporteur.

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

24 **MS. VIOLET FORD:** Yeah, thank you.

25 **CHIEF COMMISSIONER BULLER:** Exhibit 22.



1 document you just referred to again, please? Could I have  
2 the title?

3 **MS. VIOLET FORD:** Yeah, it's Understanding  
4 and Addressing Violence Against Women.

5 **CHIEF COMMISSIONER BULLER:** Okay. That's  
6 Exhibit 24.

7 **---EXHIBIT NO./PIÈCE NO. B24:**

8 "Understanding and addressing violence  
9 against women: Intimate partner  
10 violence," publication of the World  
11 Health Organization and Pan American  
12 Health Organization (12 pages)

13 **MS. VIOLET FORD:** Yeah. And then ---

14 **MS. CHRISTA BIG CANOE:** Sorry, that was 2  
15 number 24, so I'm going to guess the next one is 25?

16 **MS. VIOLET FORD:** Did you say 24?

17 **MS. CHRISTA BIG CANOE:** So, yeah. I'm  
18 sorry. I just want to make sure. If we could check with  
19 Madam Clerk?

20 **MADAM CLERK:** I show 22 as Schedule H.

21 **MS. VIOLET FORD:** Yeah.

22 **MS. CHRISTA BIG CANOE:** Yeah.

23 **MADAM CLERK:** Twenty-three (23) as Schedule  
24 J.

25 **MS. VIOLET FORD:** No.

1           **MS. CHRISTA BIG CANOE:** What's the title? I  
2 just want to ensure we have the right ---

3           **MADAM CLERK:** It was Shifting Genders.

4           **MS. CHRISTA BIG CANOE:** Shifting genders is  
5 number 24?

6           **MADAM CLERK:** I have that as 23 and 24 I  
7 have a document titled Understanding.

8           **MS. CHRISTA BIG CANOE:** So the Shifting  
9 Gender Regimes was 23.

10          **MADAM CLERK:** Correct.

11          **MS. CHRISTA BIG CANOE:** Understanding and  
12 Addressing Violence Against Women, was that 24?

13          **MADAM CLERK:** Yes.

14          **MS. CHRISTA BIG CANOE:** And then -- so then  
15 the next one should be 25, yeah.

16          **MS. VIOLET FORD:** So just to be clear,  
17 number 25 is Understanding and Addressing Violence Against  
18 Women.

19          **MS. CHRISTA BIG CANOE:** No, that's 24.  
20 That's 24.

21          **MS. VIOLET FORD:** Twenty-four (24). Okay.

22          **MADAM CLERK:** What schedule is that?

23          **MS. CHRISTA BIG CANOE:** Sorry, the reference  
24 is from the schedule for the witness and I believe there  
25 was one that was hopped over, so it's not.

1                   **MS. VIOLET FORD:** M'hm. That's to confuse  
2 them.

3                   As well as Judy Shepherd, Where Do You Go  
4 When It's 40 Below? It's listed as Schedule K.

5                   **CHIEF COMMISSIONER BULLER:** Twenty-five  
6 (25).

7 **--- EXHIBIT NO./PIÈCE NO. B25:**

8                   "Where Do You Go When It's 40 Below?  
9 Domestic Violence Among Rural Alaska  
10 Native Women", by Judy Shepherd in  
11 Afilia, Volume 16, Issue 4, pp. 488-  
12 510, November 1, 2001

13                   **MS. VIOLET FORD:** Twenty-five (25).

14                   And the last one is Intimate Partner  
15 Violence Hearings about the Realities of Intimate Partner  
16 Violence in the Northwest Territories.

17                   **CHIEF COMMISSIONER BULLER:** Twenty-six (26).

18 **--- EXHIBIT NO./PIÈCE NO. B26:**

19                   "Hearing about the Realities of  
20 Intimate Partner Violence in the  
21 Northwest Territories from Frontline  
22 Service Providers, Northwest  
23 Territories Research Project Report for  
24 Territorial Stakeholders Final Report  
25 by Pertice Mofitt and Heather Fikowski,

1 2017 (63 pages)

2 **MS. VIOLET FORD:** Okay. Thank you.

3 So I guess we're wrapping things up a  
4 little. Do you have any recommendations for the  
5 Commission?

6 **MS. DALEE SAMBO DOROUGH:** Yes, thank you.

7 I have several of them, but I won't go into  
8 each of them. I think that, in particular, it would be  
9 repetitive in regard to Brenda Gunn's recommendations  
10 earlier about a human-rights-based approach and a human  
11 rights framework. But, I suppose I would only add to that,  
12 what I spoke about earlier, the need for a very  
13 comprehensive intersectional perspective in the context of  
14 Indigenous women and girls, and Inuit women and girls that,  
15 yes, we have a human-rights-based approach, but we add that  
16 -- yes. Yes, exactly. Her body language said it all.

17 Drill through everything, capture every  
18 ounce you can. I don't know how one actually substantively  
19 addresses the structural and underlying causes and risk  
20 factors that will help to prevent violence against Inuit  
21 women and girls, and I think that that requires additional  
22 study. But, one thing that I have thought of and have been  
23 in dialogue with other Inuit in the past, not just here in  
24 Canada but elsewhere, and maybe -- I don't know. Maybe Tim  
25 Argetsinger raised this, but the potential for an

1 Indigenous human rights monitoring mechanism.

2 We've heard about, and Jean LeClair  
3 referenced Romeo Saganash's bill regarding implementation  
4 of the U.N. Declaration, but national human rights  
5 institutions have been gaining currency in places where  
6 we've seen little in the way of democratic principles.  
7 But, in a country where democratic principles are soundly  
8 affirmed that a distinct and specific Indigenous human  
9 rights monitoring mechanism may find juice.

10 I would argue that it is a *sui generis* area  
11 of law like intellectual property or other areas of law  
12 that -- and it's actually fairly well developed here in  
13 Canada. I'm not an expert at it, but if you review the  
14 decisions of the Supreme Court of Canada, other work that  
15 has attempted to advance the status and the rights of Inuit  
16 and Métis and First Nations, that it might be something for  
17 consideration.

18 I would also say that like our Article 40 of  
19 the U.N. Declaration, that you really do need to tailor the  
20 recommendations and make a distinctions-based approach to  
21 the recommendations. I think that in the Canadian Arctic  
22 and for Inuit women and girls as a distinct culture and  
23 distinct peoples with distinct rights that, again, a  
24 distinctions-based approach would be really important.

25 Obviously, self-determination would really

1 assist in nurturing and bringing forward self-sufficiency  
2 that through self-determination, Inuit communities can be  
3 more self-reliant, and identify the problems as well as the  
4 solutions in order to address this particular issue of  
5 missing and murdered Inuit women and girls, and that just,  
6 again, to restate that self-determination is a foundational  
7 right, a prerequisite.

8 Just another cluster of suggestions, and  
9 we've heard it, but -- we've already heard it, but I think  
10 it's important to state again. In my past, I was involved  
11 in a construction company, and it was so clear that  
12 construction of infrastructure anywhere in the Arctic cost  
13 at least 40 percent more, bar none, across the board.

14 So, in terms of social infrastructure for  
15 Inuit communities in favour of Inuit women and girls that,  
16 yes, resources, but it has to be done on the basis of the  
17 actual need, and equitable like equality, substantive and  
18 relative to the actual conditions. You can just look at  
19 food prices alone and know that you have to take a  
20 completely different approach.

21 I won't get into all of my other  
22 recommendations, because I think they've been stated and  
23 restated in terms of legal institutions and legal systems,  
24 measures for recourse and redress, except to underscore  
25 that as far as customary international law is concerned,

1 again, any measures for recourse, reparations and redress  
2 are considered within the neighbourhood of customary  
3 international law, and would, therefore, expand upon the  
4 provisions within the U.N. Declaration and other  
5 international human rights treaties that discuss recourse,  
6 reparations and so forth.

7 I think maybe the only other final thing  
8 that I would say included in my couple of -- 12 to 14, 16  
9 recommendations, is that for those perpetrators within an  
10 Inuit community, especially when they're small communities,  
11 that measures of restorative justice and other means need  
12 to take place in order to effectively rehabilitate and  
13 provide healing resources.

14 And, when I mention this, I mention it in  
15 the context of Inuit men and the reality of intimate  
16 partner violence and domestic violence, which is rarely  
17 spoken of, I suppose. Maybe, maybe not. Maybe I'm wrong  
18 about that, but I think in this regard and in the context  
19 of Inuit that this is an important area that we need to  
20 look at as well.

21 Traditionally, when things of this nature  
22 have happened, our people have banished individuals from a  
23 community. Now that we have -- you know, if you think  
24 about the individual rights, and as a human rights  
25 advocate, they're equally important. So, you have to take

1 that into account.

2 One final thing that I do want to say is  
3 that -- and it was in part because of Brenda Gunn's  
4 comments about the U.N. Declaration and individual rights  
5 and collective rights. I actually co-chaired the meeting  
6 of the Indigenous Peoples Caucus in 1985 the week before  
7 the working group on Indigenous Populations met to discuss  
8 the U.N. Declaration, and the week before, I was going to  
9 offer our annex to the working group. So, I chaired the  
10 meeting.

11 The biggest issue of contention in that  
12 meeting was whether or not Indigenous peoples should  
13 advance the position that the Declaration should only refer  
14 to the collective rights of Indigenous peoples, that we  
15 have an entire human rights regime that guarantees our  
16 individual rights: the convention against torture,  
17 elimination of racial discrimination, the rights of women,  
18 on and on.

19 The most compelling argument made to ensure  
20 that the U.N. Declaration on the Rights of Indigenous  
21 Peoples created a balance between individual rights and  
22 collective rights was the voice of Indigenous women. They  
23 took the floor and cited cases like *Lovelace* and other  
24 cases. Pueblo women talked about it, *Santa Clara Pueblo*  
25 case. That was the most compelling argument, that the U.N.

1 Declaration on the Rights of Indigenous Peoples has to  
2 create a balance between individual rights of women,  
3 Indigenous women, and the collective rights of Indigenous  
4 peoples.

5 And, in the end of the day, that's the  
6 argument that won, and I think that it's important -- it's  
7 an important moment in history that Indigenous women, based  
8 upon all of the experiences that they've had until that  
9 moment, compelled them to raise their voices against a  
10 pretty overwhelming and strong argument that we need our  
11 collective rights protected. And, I think that, to me  
12 through that act alone as well as the overall Indigenous  
13 movement to gain and own and refer to and invoke the UN  
14 Declaration on the Rights of Indigenous Peoples, that  
15 Indigenous peoples have made an extraordinary contribution  
16 to the entire human rights regime internationally,  
17 nationally, regionally and locally. And more important,  
18 Indigenous women ensured that significant balance. And  
19 there's a lot of power in that, and I'm grateful it was  
20 expressed. Qujannamiik.

21 **MS. VIOLET FORD:** Thank you, Dalee, for your  
22 very powerful statements throughout this presentation.  
23 Thank you for making it to Quebec City and changing all of  
24 your schedules. We all appreciate it.

25 So I guess to the Commissioners and

1 Chief Commissioner, and the Commissioners that -- are there  
2 any questions that you have for Dalee?

3 **CHIEF COMMISSIONER BULLER:** I will have  
4 questions tomorrow. Thank you.

5 **COMMISSIONER AUDETTE:** I'll have more --  
6 I'll speak English. My brain think in English now.

7 **(LAUGHTER/RIRES)**

8 **COMMISSIONER AUDETTE:** I might dream in  
9 English also. I may not.

10 I just wanted to say thank you, because we -  
11 - I try to respect the rule that I don't engage with the  
12 witness, but she was on the elevator. So I didn't tell her  
13 who I was and ---

14 **UNIDENTIFIED SPEAKER:** She might have seen  
15 you on TV.

16 **COMMISSIONER AUDETTE:** Maybe not. I have  
17 glasses, that's why.

18 And I knew who you were because we Googled  
19 you.

20 **(LAUGHTER/RIRES)**

21 **COMMISSIONER AUDETTE:** And because we saw  
22 you also at the UN many years, to be frank with you.

23 So I just want to say tomorrow the question  
24 will be my time for questions, but I wanted to take this  
25 opportunity to say thank you because you come from a long,

1 long way now, that was very far. And I admire that. Thank  
2 you. And I admire also the acknowledgement that you just  
3 did for the women who fought to make sure that the --  
4 within the UNDRIP, we are there, and I remember that day.  
5 So thank you.

6 **DR. DALEE SAMBO DOROUGH:** Qujannamiik.

7 **COMMISSIONER ROBINSON:** I'll have questions  
8 tomorrow as well, but I just wanted to express,  
9 qujannamiik.

10 **COMMISSIONER EYOLFSON:** As well, I just want  
11 to say thank you, and I will wait until tomorrow for any  
12 questions. Thanks very much.

13 **DR. DALEE SAMBO DOROUGH:** Qujannamiik.

14 **MS. CHRISTA BIG CANOE:** At this point,  
15 Chief Commissioner and Commissioners, we would ask to  
16 adjourn until tomorrow. I am going to kindly ask counsel  
17 to stay, once we're off the official record, just for a  
18 couple of housekeeping notes. But can we please adjourn  
19 until 8:30 a.m.

20 And before we formally close, I just want to  
21 adjourn the hearing, I understand that the Elders will be  
22 doing a prayer.

23 **COMMISSIONER AUDETTE:** Housekeeping, same  
24 thing here. We need this room. We're having a meeting.

25 **MS. CHRISTA BIG CANOE:** I was just -- it's

1 going to be like two announcements. I just -- they don't -  
2 - it doesn't need to be on the public record.

3 **COMMISSIONER AUDETTE:** Okay. No. No. If  
4 the announcement could be -- no, you need the mic to do  
5 that. You're sure it's not going to be forever? We need  
6 the room.

7 **MS. CHRISTA BIG CANOE:** No, it's just two  
8 announcements.

9 **COMMISSIONER AUDETTE:** Okay. Merci,  
10 beaucoup. Okay. Thank you.

11 **MS. CHRISTA BIG CANOE:** So I'm not certain  
12 if the grandmothers will be doing a closing, but for the  
13 purposes of just closing the hearing for today, can we seek  
14 an adjournment until -- to begin commencing cross-  
15 examination at 8:30 sharp tomorrow morning?

16 **(CLOSING COMMENTS AND PRAYER)**

17 **MS. PENELOPE GUAY:** (Problème avec le son) ...  
18 remettre sur pied, leur donnant de l'amour, de l'espérance,  
19 de l'espoir. J'aurais aimé qu'il soit ici aujourd'hui,  
20 parce que justement, c'est ça que j'ai entendu : de  
21 l'espoir, du changement, tous ensemble.

22 Alors, c'est ça que je vais dire aux femmes,  
23 ce que j'ai vécu ici, puis aux hommes aussi, parce que nous  
24 travaillons avec les hommes aussi. Ils font partie aussi de  
25 la solution ; il faut qu'ils entendent ce qu'on dit, il

1        faut qu'ils voient ce qu'on fait. Il faut qu'eux aussi se  
2        tiennent debout. Il faut leur dire de ne plus être  
3        violents. Ça, c'est important.

4                    Je vous remercie d'avoir témoigné. Merci,  
5        les commissaires, tous les jours. Merci, le monde dans le  
6        milieu (Rires), qui sont venus écouter; je trouve ça  
7        important. Merci les experts ; je ne sais plus si ce sont  
8        les experts ou les alliances, mais c'est important que vous  
9        soyez ici et qu'on trouve des solutions ensemble.

10                    Je vous remercie. Je vais aller rejoindre ma  
11        sœur inuite! (Rires)

12                    **MS. LAUREEN WATERS:** Thank you everyone. We  
13        now are aware more of what -- from what we have learned  
14        today. Ensure that we keep these to ourselves to respect  
15        the experts and the communities. Those who are not here,  
16        the Qulliq, the oil lamp is lit.

17                    Creator, you are our only reliance. People  
18        here have strong minds. We know you have to support them  
19        in words, in mind and spirit. The day is over, and we wish  
20        that things will improve, in Jesus's name. Amen.

21                    **MS. PENELOPE GUAY:** Un chant, est-ce que  
22        c'est ça? Oui. Tu peux l'éteindre. Est-ce qu'il y a un  
23        chant? Je ne le sais pas, mais je pense que c'est important  
24        de finir avec un chant.

25                    **UNIDENTIFIED SPEAKER:** Many thanks to our

1 Elders, our grandmothers our knowledge keepers for closing  
2 us today. We'd like to sing the women's warrior song in  
3 honour and recognition of all of our women that are gone,  
4 those that are standing around us in circle, those that are  
5 with us.

6                   And we'd like to ask if you'd like to come  
7 up to join as well. Not to be nervous. There is no  
8 judgements. It's an opportunity for us to share, to stand  
9 as women, as men to sing together, to honour. So please,  
10 if you would like, sing where you're or come up and join  
11 our circle or welcome with open arms and also, many thanks  
12 for sharing your knowledge and your heart and your passion  
13 today, to those knowledge-keepers that spoke to remind us  
14 all and all of Canada of the realities of our people, and  
15 many thanks for continuing your work and your courage in  
16 that work.

17                   (MUSICAL PRESENTATION)

18 --- Upon adjourning at 17:58

19

20

21

LEGAL DICTA-TYPIST'S CERTIFICATE

I, Nadia Rainville, Court Transcriber, hereby certify that I have transcribed the foregoing and it is a true and accurate transcript of the digital audio provided in this matter.

A handwritten signature in cursive script that reads "Nadia Rainville".

---

Nadia Rainville

May 16, 2018