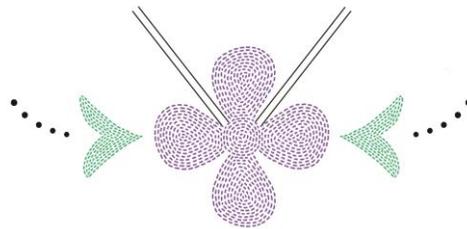


National Inquiry into
Missing and Murdered
Indigenous Women and Girls



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
“Indigenous Laws & Decolonizing Perspectives”
Canadian Human Rights Museum
Winnipeg, Manitoba**



PUBLIC

Part 3 Volume 1

Tuesday August 22, 2017

Day 1: Indigenous Laws & Decolonizing Perspectives

Drs. Val Napoleon & Hadley Friedland

Dr. Tuma Young

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II

APPEARANCES / COMPARUTIONS

Aboriginal Legal Services	No Appearance
Amnesty International Canada	No Appearance
Assembly of First Nations (AFN)	Julie McGregor (Legal counsel)
Assembly of Manitoba Chiefs (AMC)	Joëlle Pastora Sala (Legal counsel)
Canadian Association of Chiefs of Police	No Appearance
Canadian Association of Police Governance and First Nations Police Governance Council	No Appearance
Canadian Feminist Alliance for International Action and Partners – Canada without Poverty and Dr. Pamela Palmater	No Appearance
First Nations Child and Family Caring Society of Canada	No Appearance
Government of Alberta	Doreen Mueller (Legal counsel)
Government of British Columbia	Jean Walters (Legal counsel)
Government of Canada	Anne Turley (Legal counsel) Amber Elliot (Legal counsel)
Government of Manitoba	Heather Leonoff (Legal counsel)
Government of New Brunswick	Heather Hobart (Legal counsel)
Government of Nova Scotia	Sean Foreman (Legal counsel)
Government of Nunavut	Alexandre Blondin (Legal counsel)
Government of Ontario	Kirsten Manley-Casimir (Legal counsel) Catherine Rhineland (Legal counsel)
Government of Saskatchewan	Colleen Matthews (Legal counsel)
Government of Yukon	Chantal Grenier (Legal counsel)
Human Rights Watch	No Appearance
Indigenous Circle Chapter of the Canadian Counselling and Psychotherapy Association	No Appearance

III

APPEARANCES / COMPARUTIONS

Inuit Tapiriitt Kanatami (ITK)	Elizabeth Zarpa (Legal counsel)
Liard Aboriginal Women's Society	No Appearance
Manitoba Keewatinowi Okimakanak (MKO)	Jessica Barlow (Legal counsel) Jared Wheeler (Legal counsel)
Missing and Murdered Women and Girls Coalition Manitoba	Angie Hutchinson (Representative)
Manitoba Moon Voices Inc.	No Appearance
Native Women's Association of Canada (NWAC)	Virginia Lomax (Legal counsel)
Nunatsiavut Government	No Appearance
Pauktuutit Inuit Women of Canada	Beth Symes (Legal counsel)
Quebec Native Women Association	No Appearance
Union of BC Indian Chiefs	No Appearance
Winnipeg Police Service	No Appearance
Women's Legal Education and Action Fund (LEAF)	Mary Eberts (Legal counsel)

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1	Four-page CV of Tuma T.W. Young (EH010201)	226
2	Article by Prof Tuma Young “L’nuwita’simk: A Foundational Worldview for a L’nuwey Justice System” Indigenous Law Journal, Volume 13 issue 1, 2016, pp. 75-102 (EH010202)	226
3	Powerpoint “L’nuwita’simk: A Foundational Worldview for L’nuwey Justice System” comprising 12 slides. (EH010203)	226

1 Winnipeg, Manitoba

2 --- Upon commencing on Tuesday, August 22, 2017 at 8:58

3 a.m./L'audience débute le mardi, 22 août, 2017 à 8h58

4 --- **OPENING CEREMONIES/CÉRÉMONIES D'OUVERTURE**

5 **ELDER BELINDA VANDENBROECK:** All right. I
6 think that's pretty much who is coming in this morning to
7 this event.

8 And I want to thank everybody that is here
9 today. My name is Belinda Vandebroek. MacGillivray is
10 my maiden name. My spirit name is (speaking in Native
11 language). And that's a name that I honour when I say my
12 prayers.

13 And with that, I just want to -- I have to
14 acknowledge that we are on treaty land. I never know how
15 to say that, right, you guys, honestly, you know? We're
16 First Nations. This is our land. Hello. So I do always
17 want to honour, though, when -- in my prayers even -- to
18 honour the 500 Nations that we're here before anybody came
19 here. And those are the people we need to remember today
20 as well. Because of them we are here and we want to
21 acknowledge that and say (speaking in Native language),
22 that we are here because of you.

23 And I think just a reminder that the highest
24 purpose for what we're here for today is the families of
25 the murdered and missing women. And we must always

1 remember their spirit, never to ever forget, always
2 remember.

3 And with that, I am going to ask Thelma
4 Morrisseau to come and say the opening prayer, which will
5 be followed by the honour song of the Northern Eagle Drum
6 Group.

7 So Thelma?

8 **ELDER THELMA MORRISSEAU:** Bonjour.

9 (Greeting in Native language).

10 I know you have a schedule but your -- don't
11 get up yet. I want to say that we're doing things the
12 Indian way. So it may not be on your schedule exactly but
13 it will all work out, trust me.

14 My name is Thelma. The name I was given is
15 (speaking in Native language). I'm Bear Clan and I'm a
16 Fourth Degree Midewiwin. I'm a grandmother and a great-
17 grandmother: grandmother to four and great-grandmother to
18 one.

19 We had a pipe ceremony this morning at The
20 Forks. We had a Sacred Fire. Anishinaabe (inaudible) lit
21 that fire. That is their work. And Anishinaabekwe, we
22 lifted the water. We lifted the water to give thanks for
23 life and never wanting to forget that, giving thanks for
24 all the creation.

25 So I want to tell you a story and I want to

1 tell you a story because it's about women.

2 My teacher's name was No-Che-Kwe (phonetic)
3 ban. No-Che-Kwe (phonetic) passed on to the spirit world.
4 She danced out the western doorway quite a few years ago.
5 I was a helper to her, myself and three other women.

6 And No-Che-Kwe (phonetic) was a beautiful
7 teacher. She was very strict but she was a good teacher.
8 So I'm kind of old-fashioned so I follow her stuff, eh?
9 Like, I have to. That's kind of the way she taught me.

10 I want to tell you this dreams she had and I
11 want to tell you it because it's really important because
12 it talks about women. But it's a teaching that is for
13 Indigenous women. But if you look at all women, this
14 teaching is relevant to all women.

15 No-Che-Kwe (phonetic) said that she had this
16 dream that she was walking on this land. It's called
17 (speaking in Native language). It's Roseau Rapids
18 actually. Where she's from, my niece.

19 She was walking. And this land is
20 ceremonial land. It's sacred land. It's where Midewiwin
21 ceremonies are held a long time and even to this day.

22 And she said as she was walking on this land
23 she could hear something in the distance. She walked
24 towards that sound. And as she got closer and closer --
25 right at the rapids there's a river. There are rapids and

1 they're running and there's an embankment. And as she
2 started to walk north towards that place, she could see
3 something coming up over the horizon -- I mean, over the
4 embankment. And she could hear the water flowing.

5 And she began to walk and she could hear a
6 sound coming. And as she walked closer, she could see this
7 old grandma. It was an old grandma. This grandma did not
8 look at her. This grandma had a shawl placed around her
9 and she was bent over. And she was walking like she was
10 shuffling. I'm going to show you. So she was walking like
11 this. And her skirt was so long that it touched -- the
12 bottom of her skirt touched the top of the grass. There's
13 a teaching in that for women. Her skirt was long enough;
14 it touched the top of the grass that was growing. And it
15 just flowed.

16 And they were coming to each other but this
17 grandmother did not look at No-Che-Kwe(phonetic). But No-
18 Che-Kwe(phonetic) heard a sound coming from her and it was
19 a song. And I'm going to share that some with you.

20 And before I do that I want to tell you
21 sometimes my voice doesn't work. I had cancer in 2011 and
22 I had chemo. So sometimes it doesn't always work right.
23 That's why I have these -- my nieces behind me. They're
24 going to help me sing this song. And I want to sing it
25 because it's a really significant song. And I'll tell you

1 what that song means after we have sung it. So when I say
2 we're Anishinaabe and we're on Indian time, you're just
3 going to have to give me the time to do this because I
4 think it's extremely important given that we are talking
5 about women and we are talking about Anishinaabekwe and we
6 are talking about Indigenous women of all Nations. We're
7 talking about two-spirited people. And so this song is
8 relevant. So just bear with me.

9 Oh, and you know what else she told me? I
10 want to tell you. You know what she told me? She said,
11 "My girl," she said, "(Speaking in Native language), the
12 spirit, always waits to hear our voices in ceremony." If
13 you have a song that is sacred, a ceremonial song, sing it.
14 Don't worry how your voice sounds. To humans it may not
15 sound good, but you know what? When it gets to that fourth
16 level where (speaking in Native language) resides, you
17 sound most beautiful. And so that's why I'm going to sing
18 it regardless of how I sound. *Miigwetch.*

19 --- OPENING PRAYER SONG/CHANSON DE PRIÈRE D'OUVERTURE

20 ELDER THELMA MORRISSEAU: So No-Che-
21 Kwe(phonetic) -- that grandmother gave that song to No-Che-
22 Kwe(phonetic) and she told her, "I want you to take this
23 song and I want you to sing it throughout Turtle Island for
24 Indigenous women, for 'Indian' women." That word was still
25 being used. I want you to sing it to them and I want you

1 to understand -- I want them to understand how beautiful
2 they are, that Anishinaabekwe, Indigenous women, that
3 Indian women are beautiful, that Indian women need to begin
4 to hold their head up. They need to know that as they walk
5 upon our Mother the Earth, Creation, that they are
6 fashioned just like her, just like our mother gives life
7 and so does woman.

8 So when you think about that, you need to
9 think about all of our women who have been murdered, all of
10 our women who have gone missing, how beautiful they were,
11 and for those one who are still here, how beautiful they
12 are.

13 We know that in this country, if we are born
14 female and if we are Indigenous, we are all at risk. We
15 are all at risk. And that's not okay. That's not okay.

16 And so that song -- I think about the
17 families who are here and I honour all the families who are
18 here, those ones who have lived the experience. They are
19 the experts, in my humble opinion, because they are the
20 ones who can tell the story.

21 And so that song -- I want you to take that
22 song and, if you can remember it, to hum it, to think about
23 it, think about your own beauty, think about your own
24 strength. You are that beautiful person.

25 And so I say the same to the Commissioners.

1 With all due respect, I ask again that as you sit here in
2 the next few days in our territory, that you listen with an
3 open, good heart, not so much up here. I know you need
4 this. But know when to stop here and move to here. Unless
5 you can do that, this is not going to work.

6 And I must say that as Indigenous people we
7 are never, ever, in our lifetime, going to have another
8 chance to do this. This is our only chance so we better
9 get it right. We better get it right and we better have
10 solutions for our families. We have to.

11 And so with those words, I say (speaking in
12 Native language). *Miigwetch*.

13 **MS. CHRISTA BIG CANOE:** That's for you and
14 Stan, also to thank you for the amazing opening ceremony
15 that you did for us this morning. *Miigwetch*.

16 **ELDER VANDENBROECK:** Thank you very much,
17 Thelma, for your beautiful words, and that song just wow.
18 It went right into my bones, I think. And I'm sure it did
19 to the family members as well.

20 We're now going to get ready for the honour
21 song by the Northern Eagle Drum Group. North. Okay, I
22 read "Northern". That's what they had on here.

23 Anyway, thank you very much. So we can get
24 started, thank you.

25 --- **HONOUR SONG/CHANSON D'HONNEUR**

1 **CHIEF FRANCINE MEECHES:** (Speaking in Native
2 language).

3 Friends, relatives. Thank you very much.
4 It's a great honour to be here on behalf of the Treaty One
5 people to give you welcome remarks to our traditional
6 territory, (speaking in Native language).

7 I want to thank the organizers, the people
8 that have invited the North Eagle Drum. This drum first
9 was blessed in 1976. It was named after my grandfather,
10 Ben Meeches from Long Plain. And I think it's our fifth
11 generation singers on this drum, particular drum here.

12 But I wanted to acknowledge our singers here
13 today: AFN Regional Chief, Kevin Hart; Sweetpea Star; Mike
14 Meeches; Willy McKenny; and Fern Sutherland.

15 There are a number of singers that grew up
16 on this drum and it has branched out to other drums. So
17 I'm very thankful to be able to grow up on the powwow trail
18 at a very young age to have my grandfathers and
19 grandmothers all know -- understand the language and know
20 the songs and just be able to share that music. And that
21 gift is very, very treasured. Because both my grandfathers
22 were singers, that has given me a very, very important
23 lesson for me.

24 And I wanted to share a song with you also
25 too that -- I also compose music. That song that we sang

1 was sung by our grandfathers. And so we sing a lot of the
2 older songs as we travel throughout our territory. And
3 visiting different Indigenous communities, we always stick
4 to the older songs with this particular drum. So I'm going
5 to share that with you.

6 And I just want to acknowledge friends and
7 family. I know that it has been a difficult journey for
8 our People throughout the years because of different things
9 that have happened, different, you know, social policies of
10 the government. Ever since the signing of the treaties
11 we've been challenged and faced a lot of different
12 struggles in our journey as Indigenous people. And we
13 understand a lot of that trauma that has derived from that
14 history. And our People have never really been full
15 partners in the treaty process. And we've struggled for
16 many years to move forward to gain every foothold every
17 step that we move forward. And I know this is a very
18 important step. I know it's also struggling, but we have
19 to have faith that we'll work towards getting the work that
20 needs to be done. And hopefully that will bring some
21 closure to families.

22 I know in Long Plain we've a big supporter
23 of some of the families in the area such as Bernice
24 Catcheway and Wilfred on the loss of their daughter, the
25 search for their daughter. But also Indigenous men also,

1 too. We have a young man that went missing November -- I
2 think it was November 8th, 2014, Colt Deprat (phonetic),
3 but from home. And so we're still searching for him also
4 too.

5 And I wanted to share a song with you and
6 this is a song I composed. I know (inaudible) on the big
7 drum but I brought a hand drum and I want to share that
8 song also with you because I think it is important. And I
9 want to thank Thelma Morrisseau for sharing the teaching
10 about songs and how that's so important for our People.
11 Because that gives us some comfort, gives us strength, and
12 it's important to carry that teaching onto our children and
13 grandchildren and to share the beautiful teachings of our
14 Anishinaabe people.

15 So I'll share this song with you. And
16 you're more than welcome to record the song if you want. I
17 composed this song a few years back and it's a gift to our
18 families.

19 --- DRUM SONG/CHANSON DE TAMBOUR

20 ELDER BELINDA VANDENBROECK: Thank you very
21 much for that beautiful song, Dennis. And I think there's
22 tobacco being offered to you for your beautiful music. The
23 drum is such a powerful instrument.

24 And just as we're waiting -- you know,
25 sometimes we get so caught up in the system of hierarchy,

1 you know? I just want to remind everyone that we're all
2 equal here, you know? Yeah. Me and you. We're not any
3 better; we're not any less. Like, we're pretty cool,
4 right. We're all cool, yeah. So I want to acknowledge
5 that.

6 I just want to share one little story before
7 we go on, how powerful the drum is.

8 A few years ago we were called Daughters of
9 the Dream Drum Group and there was quite a few of us at
10 that time: Jamie, May, Leslie Spilett (phonetic), Barbara
11 Bruce, myself, Annahani (phonetic) -- oh, my gosh, I'm
12 going to probably forget a few.

13 But anyways, so we were singing. We were
14 invited to come to the United Church gathering that was at
15 the Red River Ex that time. And when you're going to the
16 Red River Ex, there were -- on this side of the -- we were
17 on that side. And if you now the Red River Ex grounds, the
18 children's grounds are, like, way, way, way at the back,
19 way at the back.

20 Anyway, so we were singing and we would talk
21 a little bit and sing some more. And as we were singing,
22 this White lady was coming with a little Indian boy and
23 that little boy was really pulling his mom's hand really
24 hard. Like, he was ahead of her.

25 Anyways, so they came and he went right to

1 the drum. And so we were still singing. So he was
2 standing there just looking, just looking at the drum. We
3 finished singing and he kept standing there looking at the
4 drum. Then one of the ladies offered him the stick and he
5 started to drum. And that lady said, "We were on the
6 grounds over there by the children's area and as soon as he
7 heard the drum, he didn't know where it was coming from but
8 he knew he wanted to go there." So they just followed the
9 sound of the drum and they just came. That little -- I'm
10 telling you; he was pulling his mom. And he was only that
11 high.

12 And so I know how powerful the drum is for
13 us as Indigenous people to this country, because that's
14 where we came from, the heartbeat of our Mother Earth.

15 So I think -- let me see. The next one I am
16 calling up to speak -- I believe I'm supposed to call up
17 Kevin.

18 **MS. CHRISTA BIG CANOE:** No, no. AMC Grand
19 Chief.

20 **ELDER BELINDA VANDENBROECK:** AMC Grand Chief
21 Arlen Dumas. The cool dude that's jigging away up north at
22 Lac Brochet. I saw you.

23 **GRAND CHIEF ARLEN DUMAS:** I retired as the
24 champion jigger at the DOTC Games when I was five years
25 old, jigging champion.

1 (Speaking in Native language).

2 My name is Chief Arlen Dumas. I'm from
3 Pukatawagan, Manitoba. I bring greetings from the Assembly
4 of Manitoba Chiefs. I'm the Grand Chief of the Assembly.
5 And I said that I would speak Cree a little longer because
6 I was pretty sure that their translators couldn't
7 understand what I was saying.

8 I bring greetings as the Grand Chief
9 representing 62 of the 63 First Nations in Manitoba. It is
10 important to acknowledge the lands in what is now known as
11 the Province of Manitoba, which are the ancestral and
12 sovereign territories of the Anishinaabe, Cree, Dakota,
13 Oji-Cree, and Dene Nations.

14 While I am deeply honoured to welcome you
15 all to Treaty One territory here today, the seriousness and
16 the importance of this gathering cannot be understated.

17 First Nations in Manitoba know all too well
18 the heartbreak that comes with the repeated and senseless
19 violence against so many Indigenous women and girls from
20 our families and communities. It is important that this
21 hearing be held here today as the Province of Manitoba is
22 home to some of the highest rates of murders and
23 disappearances of Indigenous women and girls in the
24 country.

25 While Indigenous people only represent 4

1 percent of the Canadian population, Indigenous women and
2 girls represent 16 percent of all homicides. But in
3 Manitoba, Indigenous women and girls represent an alarming
4 50 percent of all homicides.

5 It is for this reason that the Assembly of
6 Manitoba Chiefs has worked alongside individuals, families,
7 and communities impacted by this crisis. While the AMC has
8 always supported nationwide calls for a national inquiry
9 into murdered and missing Indigenous women and girls, I do
10 not here today purport to speak on behalf of any of those
11 individuals or families directly impacted by this crisis.

12 I am here in a supportive capacity to help
13 ensure that the voices of impacted individuals, families,
14 and First Nations in Manitoba are lifted up.

15 The AMC has a long history of working
16 alongside First Nations families and communities to address
17 this crisis, including our unrelenting push for justice
18 after the murder of Helen Betty Osborne, a young Cree woman
19 from northern Manitoba, who was my mother's closest and
20 dearest friend. We called on the province to properly
21 investigate her case and when this didn't happen, we pushed
22 for the 1991 Manitoba Aboriginal Justice Inquiry. The
23 Inquiry's haunting conclusion still rings true today. And
24 I quote:

25 "Aboriginal women and their children

1 suffer tremendously as victims in
2 contemporary Canadian society. They
3 are the victims of racism, of sexism
4 and of unconscionable levels of
5 domestic violence. The justice system
6 has done little to protect them from
7 any of these assaults.”

8 Former Commissioner Alvin Hamilton and
9 Murray Sinclair made numerous recommendations in the
10 Aboriginal Justice Inquiry, including urgent calls to
11 address racism in the justice system; remedy the
12 overrepresentation of First Nations children in foster care
13 and in the over-incarceration of our people in prisons;
14 implement Aboriginal treaty and land title rights; remove
15 gender discrimination from the *Indian Act*; and end violence
16 against Indigenous women and girls.

17 Yet, 25 years later we have another
18 commission of inquiry, also headed by former justice Murray
19 Sinclair, the Truth and Reconciliation Report, which made
20 the very same findings and calls to action, the result of
21 decades of inaction by all levels of government on these
22 and many other justice inquiries, commissions, and report
23 recommendations, and multiple overlapping crises that make
24 the crisis of murdered and missing Indigenous women and
25 girls worse. We can't let this happen again.

1 Knowing this, the AMC, in conjunction with
2 the families, Indigenous women's organizations, and human
3 rights experts, called on both federal and provincial
4 governments for a public inquiry in Manitoba for the last
5 20 years. Our mandate was the same then as it is now: to
6 advocate alongside and to lift the voices of those most
7 directly impacted, in other words, put the voices of
8 Indigenous women, girls, and families first.

9 This led to our 2015 AMC report, "Families
10 First: A Manitoba Indigenous Approach to Addressing the
11 Issues of Missing and Murdered Indigenous Women and Girls",
12 that contains recommendations from families and survivors
13 and includes a proposed approach to ensure families,
14 survivors, nations, and communities are fully included in
15 an Indigenous-led process.

16 First Nations families and survivors in
17 Manitoba continue to inform AMC's position and they in turn
18 inform the AMC's First Nations Women's Council, who had
19 been closely involved in providing oversight and guidance
20 and direction on this very important issue.

21 I want to acknowledge my colleague, Jerry
22 Daniels, from the Southern Chiefs' Organization, and my
23 colleague, Mr. Hart, from the Regional Chiefs Office, as we
24 work very closely with our sister organization at MKO,
25 where Grand Chief Sheila North Wilson stands as a strong

1 leader seeking urgent action to stem this crisis. She has
2 provided a critical link between our work as advocacy
3 organizations and the needs and wishes of impacted
4 individual families and communities.

5 The AMC hopes what is shared here today will
6 inform the commission to make changes to its own inquiry
7 and processes to ensure that it is truly inclusive of
8 Indigenous world views, laws, and legal traditions. This
9 includes the important traditional roles of Indigenous
10 women and leadership, governance, and law making in each of
11 our nations.

12 Applying what is learned this week could
13 help give real meaning and effect to the Commission's
14 stated intent that its work is connected to the land and
15 rooted in the traditions that have kept Indigenous
16 communities strong for thousands of years.

17 First Nations families in Manitoba have
18 already identified the need to deal with Indigenous legal
19 orders and decolonization in our Families First report.

20 Our First Nations elders and knowledge-
21 holders have also done extensive work in the area of
22 Indigenous legal orders and decolonization with the
23 development of "Kihche Othasowewin", "The Great Binding
24 Law".

25 Given the extensive knowledge and experience

1 of First Nations in Manitoba in relation to Indigenous laws
2 and legal orders, I would like to call on the Commissioners
3 to consider a regional expert hearing on Indigenous legal
4 orders in Manitoba that will contribute to the national
5 inquiry.

6 This approach is also consistent with AMC's
7 position that the national inquiry is fully involved and
8 engaged with the unique needs and expertise of First
9 Nations in Manitoba, with the call for the Commissioners to
10 create a regional sub-commission for First Nations in
11 Manitoba.

12 In closing, I hope that we can all find a
13 way to merge our laws, our legal traditions, and governing
14 orders to come together as treaty partners and fulfill the
15 original treaty vision of mutual respect, sharing, and
16 protection. We all have a moral and legal obligation to
17 honour those we have lost to this crisis by taking concrete
18 steps to prevent it from happening in the future.

19 (Speaking in Native language). Thank you.

20 **ELDER BELINDA VANDENBROECK:** (Speaking in
21 Native language), Arlen, for those beautiful words.

22 And again, to remember that all of us have a
23 voice that we can say that is just as important as anyone
24 else's words. We have to remember we are equal in all of
25 this. And I am really grateful for the TRC report because

1 there are so many things happening now that never would
2 have happened if that didn't happen. It's bringing people
3 together. Because if we don't talk to one another, we're
4 not going to get anywhere. If we don't start talking to
5 society, mainstream society, we're not going to get
6 anywhere. Where are we going to expect things to change if
7 we don't talk, right? We have to get to know one another.
8 And I have faith that this inquiry will bring forth all the
9 things that are necessary for us, and mainstream society
10 especially, to know and understand where we're coming from.

11 We didn't want to be on reserves. We didn't
12 want Welfare. Those were systems that were put upon us
13 that we didn't want in the first place. And now we suffer
14 the consequences of all of that. Because who wants to be
15 relegated to a reserve? Nobody. So now we have to live
16 with that the best we know how.

17 But I know one thing. That is a grandmother
18 who loves her two grandchildren to the moon and back, even
19 the eclipse was there yesterday and kind of darkened it a
20 little bit. But I would do anything for them, anything.
21 And it means for me, for the children that are coming into
22 the world today, you've got to teach them who they are.
23 They must know who they are. They must know where they
24 come from and they must know the teachings to save them
25 from having to go out into the world where it is mean and

1 cruel.

2 Our women today are being picked up on the
3 streets, raped, and dumped like they're trash. This is
4 happening in Winnipeg, Manitoba. In the last two months I
5 don't know how many of our women, at least six or seven
6 that I know of.

7 So this is so important for all of us, that
8 we be a part of this. And like Thelma said, I mean, this
9 is it; I don't think we'll ever get another chance, at
10 least not in my lifetime. And I'm 69.

11 Okay. So let me get this right. I am
12 calling on Minister Anita Campbell of the Manitoba -- no,
13 no, no. Here we go. Okay, Regional Chief -- jeeze, those
14 are hard words to say. I don't even know where the word
15 "chief" came from, to tell you the truth. Here, Kevin.

16 **CHIEF KEVIN HART:** (Speaking in Native
17 language). Thank you, Belinda.

18 And I know everybody in the room. I have a
19 big fancy title called the Regional Chief of the Assembly
20 of First Nations from Manitoba, but more people in this
21 room know me affectionately as Kevin. So Belinda and other
22 people, and last night at the coalition, they were calling
23 me Kevin. So I tell people that I'm not big on titles. I
24 said, even back home, I said, everybody just calls me "Kev"
25 or whatever. So thank you everybody this morning.

1 I hold the very important portfolio of
2 missing and murdered Indigenous women and girls at the
3 Assembly of First Nations. Of course you know there's a
4 responsibility to our 634 First Nations across this country
5 when it comes to this national tragedy.

6 And just to go back to give you guys a
7 little bit of history, in December I was recently given
8 this portfolio. So obviously there has been a lot of
9 catching for me to do on this portfolio since that time.

10 But for myself, myself I've been directly
11 impacted. Our families -- there were three homicides of
12 two men and one women in our family so, you know, that's
13 where I come from. And my wife's community is Sagkeeng
14 and, as you know, I live in Sagkeeng right now. You know,
15 there are 14 families that are affected there right now by
16 this national tragedy. And the most recent murder that
17 occurred -- you know, probably from outside, from here to
18 the bike rack where we're looking, is probably where, you
19 know, the late Serena McKay was murdered brutally just
20 outside my father-in-law's place. So you know, that's how
21 far away it was and how it hits home to a lot of it.

22 Because for myself I have two young adult
23 girls who are 21 and 22. It could have been them. I have
24 an eight-year-old girl. She's my life. And I thought
25 about it. Like, if I ever lost a child again that -- you

1 know, how could you bear that? Because for us as parents,
2 you know, I know that main of losing a child as well. So
3 you know, that's the approach that I came from with, you
4 know, the respect to these families that need help, need
5 resources and capacity. And more importantly, they need a
6 voice and advocacy for them.

7 So when I was given the portfolio in
8 December -- I grew up on the Opaskwayak Cree Nation so you
9 all know that the story with Helen Berry Osborne was
10 profound. It was known for us growing up there, going to
11 school. You know, we were involved with the racism, the
12 fighting, the violence, you know, the abuse and everything
13 that occurred during that time that's, you know, still
14 existent to this day.

15 I was given the portfolio and I thought to
16 myself, "Wow." I said, "This is a huge responsibility
17 given that the Manitoba region is one of the most affected
18 regions in this country and that there are so many families
19 out there that have been affected by this national tragedy.
20 I said to myself, "What do I need to do? I need to do
21 something." And you know, like, Elder Thelma this morning
22 -- and I want to thank you for the pipe ceremony and the
23 prayers that you offered up for us this morning because,
24 you know, for myself, as a lodge holder, a pipe carrier,
25 and a sundancer, you know, I hold those profound to my

1 heart as well, those teachings that have come since time
2 immemorial.

3 When I was given the portfolio, I went for a
4 ride out to the pumphouse at Clearwater Lake -- because I
5 grew up in The Pas and OCN. And I went and made offerings
6 right away and put my tobacco down. And I prayed to the
7 spirit of Helen Betty and for the families. And I asked
8 her, I said, "You know, I know so much about you and yet, I
9 don't know you." You know, that's how I felt. Because all
10 of us have been touched and know the story of Helen Betty
11 Osborne and what occurred there.

12 And so I went and made my offerings
13 obviously to ask for guidance, you know, and strength and
14 this. Because this is a huge, huge responsibility, to have
15 this portfolio for 634 First Nations and all the families
16 that are affected across, you know, the settler state of
17 Canada.

18 And with that, I also hold some very
19 important portfolios that you could see there are linkages
20 directly involved when it comes to our missing and murdered
21 Indigenous women and girls -- like housing, water
22 infrastructure. You know, why do our young and men and
23 women leave the communities? Well, for one, in the
24 instance of Helen Betty Osborne, she had to leave her
25 community of Norway House because they had no proper

1 infrastructure in place and there was no schools that went
2 to high school there at the time.

3 And that's still common to this day here in
4 the Manitoba region that we have, you know, many of our
5 First Nations that don't even have schools. Hence, thus,
6 the women and the men have to leave their community to go
7 to urban centres such as The Pas, Winnipeg, and such. And
8 I know that for myself being from Nelson House and Hilda,
9 you're from -- we had to come to Winnipeg or Brandon,
10 right, to come to school when we were young. And I know
11 that a lot of people -- you know, that was all too common
12 for us.

13 And when we come to these centres, such as
14 Winnipeg -- you know, we talk about, "Well, there's lack of
15 housing." You know, "There's a lack of food security.
16 There's no food at home." So for myself, when I was 14 and
17 a half years old, I moved away from OCN because it was one
18 less mouth to feed at home. And I came here to Winnipeg
19 and I grew up homeless on the streets here in Winnipeg for
20 the first little while when I was 15. Because you know,
21 that's just the realities that are facing our people. You
22 know, why do our people leave home? Well, for one, you
23 know, you see your other younger brothers and sisters
24 without food and then if you leave home, you know, that
25 that gives them that much more resources for your family.

1 And that's what I had to do in my case. And I know that's
2 all too common a story that you hear out there with our
3 families, especially our men and our women out there, you
4 know?

5 And then for the Commissioners that are
6 here, you know, for Manitoba we currently have over 13,000
7 kids in care. And you know, 10,000 of those kids are First
8 Nations children. Sixty-five (65) percent of those
9 children lives in homes where English is not even the first
10 language.

11 Now, I ask everybody if you look at the five
12 articles of genocide under the UN Declaration, it all fits
13 into what's happening with the CFS system here in the
14 province. Genocide continues to this day, on our men, on
15 our women, and especially our children.

16 And I went as far as to say to everybody
17 that all the linkages -- when we talk about food security
18 and not proper food in the houses; children being
19 apprehended because of poverty in the home; I know there
20 are direct linkages to health. You know, you have 20
21 people in the home and one person gets sick, everybody gets
22 sick, right? And the wear and tear on housing -- if you
23 have 20 people for a home that's built for 25 years -- it's
24 no wonder that that home only lasts about 5 to 10 years
25 when you have about 20 people in there because just of the

1 overcrowding and such. And then we talk about all the
2 social linkages and conditions that happen when we talk
3 about domestic violence and abuse and everything. If you
4 have 20 people in the same room, in the same -- all the
5 time, 24/7, of course there are going to be emotions that
6 occur; of course there's going to be people that, you know,
7 have a bad day and such like that. You know, those things
8 are reality in our communities. And a lot of times our
9 children, our women are the direct resulting victims of the
10 outlash of what happens there.

11 I'm fighting and advocating adamantly for
12 you as the families. And you know, I just want to let you
13 know that, you know, for myself, I have the portfolio for
14 634 Nations and to date we have zero when it comes to
15 resources for capacity to support any of those families
16 from the 634 First Nations. That's a fact. We're working
17 diligently, though, out there to make sure that we get that
18 support in place. But to date, right now, here in Manitoba
19 and across all the other regions in Canada, there has been
20 little to no capacity or resources in place right now to
21 help these families affected by this national tragedy.

22 And for me that's wrong. These families
23 should be properly supported. We should have health
24 supports here in place. We should have all the family
25 members here, not just individuals and such. You know,

1 this room -- we should have a bigger room here with all the
2 families that should be here, their children and their
3 extended family. Because we all know when it comes to
4 First Nations people, somebody gets sick in the hospital
5 you're not just going to have one or two people there;
6 you're going to have about 20 people there, you know,
7 looking out for their loved ones and such. And that's
8 something that's common to us.

9 And when we're talking about law today and
10 natural law and everything, there's natural law and seven
11 teachings and principles that have been guiding us since
12 time immemorial that we still have to remember that are
13 guided by. And for myself, you know, natural law is
14 something that simply cannot be changed. It was given to
15 us by the Creator. And you know, with that those sacred
16 teachings are very fundamental in guiding us in all the
17 aspects of what we do in our work.

18 And I ask the Creator to guide you as the
19 Commissioners as well and I welcome you here to Treaty One
20 territory. You heard our chiefs and that speak this
21 morning, as well as the Grand Chief. As well as our guests
22 and our visitors that came from outside the region, I want
23 to welcome you here to (speaking in Native language), to
24 Treaty One territory. And I'd like to let you know that we
25 are presently here with some of the families that have been

1 affected by this national tragedy here in Manitoba, and
2 that they're going to be watching very closely what's
3 happening here.

4 And for myself, I come from a very strong
5 region of chiefs and families and such that are very, very
6 vocal and will speak out very much so if they feel that
7 wrong is being done. So I ask that all of us be respectful
8 over the next couple of days. If you need to approach me,
9 I'm a very approachable person. Come and talk to me and
10 such. It's good to see some very familiar faces in the
11 crowd today, some faces I haven't seen for a while.

12 And again, I welcome our guests that are
13 here this week as well, as well as the staff and everybody.
14 I thank you. From the bottom of my heart, I lift you all
15 up and I honour you this morning for being here. (Speaking
16 in Native language).

17 **ELDER BELINDA VANDENBROECK:** Moving right
18 along. We're a little bit behind but that's how life goes
19 sometimes.

20 Anyway, the next speaker I want to call on
21 is -- jeeze, you know, when you don't have your reading
22 glasses with you -- Minister Anita Campbell, the beautiful,
23 for the Manitoba Métis Federation.

24 **MINISTER ANITA CAMPBELL:** Good morning. I'm
25 not sure if I'm supposed to face that way or that way. I

1 think my preference is to face this way, if that's okay. I
2 don't mean any disrespect but I'll try to move side to
3 side.

4 As I was coming here this morning, I was
5 trying to -- you always try to think of what you're going
6 to say and in anything is going to be memorable in the
7 sense of what you're going to say to people.

8 I don't consider myself a very learned or
9 intelligent person, that things are going to -- I don't
10 have quotes and everything else that people will say and
11 whatnot.

12 I'm very humbled to be here this morning.
13 This is not what I was expecting at all. I've been asked
14 to bring greetings on behalf of President David Chartrand.
15 And I wasn't expecting this. By the title of the event, I
16 had visions of a lot of lawyers and a lot of suits in the
17 room. And that's what I thought I was going to see this
18 morning.

19 As I'm getting older, I need to wear glasses
20 and I have a script. And I'm probably going to sway from
21 the script because that's what I tend to do sometimes.

22 So good morning. On behalf of President
23 David Chartrand, thank you for the invitation to bring
24 greetings and welcome to the Métis Nation homeland.

25 President Chartrand is unable to be here.

1 He sends his sincere regrets as he was called into Ottawa
2 this morning.

3 I want to first thank and give honour to the
4 elder for the prayer. It is our custom as Métis people to
5 pay respects to our elders for the knowledge, the wisdom,
6 and the guidance they pass onto us.

7 I would also like to take this opportunity
8 to acknowledge and welcome the families who have lost and
9 who are still praying for the safe return of their loved
10 ones. My thoughts and prayers are with you always.

11 Given the number of the missing and murdered
12 Indigenous women and girls in Manitoba, I, as spokeswoman
13 for Infinity Women Secretariat, and on behalf of the
14 Manitoba Métis Federation Government, welcome and look
15 forward to working and collaborating on any effective steps
16 proposed by both provincial, federal governments.

17 As Indigenous governments, we must continue
18 to press upon, engage, and ensure the commitments made by
19 both levels of governments are truly followed through.

20 We are challenged with limited resources and
21 limited opportunities. But we must never lose sight of our
22 missing and murdered Indigenous women and girls, our
23 families and our communities, our knowledge of fairness and
24 equity, and our understanding of right and wrong.

25 I encourage each of you to share your vision

1 and ideas and to provide the guidance necessary to move
2 forward that will be beneficial to all our women, girls,
3 and families in our communities. May your next three days
4 be fruitful and may you all have a safe journey home.

5 So one of the things that I wanted to share
6 with you is I come from a Métis community of Duck Bay.
7 It's a small Métis community. But I grew up in the north
8 end of Winnipeg. Half of my life was in the north end of
9 Winnipeg. And half of my other life was in northern
10 Manitoba. I say I really grew up in the north. I love the
11 north. I wish I could go back to the north. But
12 situations in my life have changed.

13 And so when I was growing up and as I hear
14 the stories -- and I've been fortunate to be able to attend
15 two of the events that were held in Winnipeg. And I am not
16 directly affected by a family member that's lost or a
17 family member that has been missing or murdered. I am not
18 directly affected by it. But yet, I am indirectly affected
19 because some of the people -- and I'm sorry; this is hard
20 for me. I can't imagine what you're going through and how
21 many times that you have to talk about it. How many times
22 do you have to keep saying the same stories over and over
23 again before somebody listens to what you want to say? At
24 some point, the talk has to stop and the action has to
25 start. At some point. Because you can't continue. And I

1 say I'm not directly affected but look at me. I can't even
2 imagine -- and what Kevin said. How do you imagine even
3 losing a child, let alone losing a family member? I don't
4 know how you would be able to function and then trying to
5 find those answers.

6 As Métis women -- you know, I sat there and
7 sometimes I feel like I'm the only Métis person in the room
8 because I'm wearing a sash. But if I didn't wear the sash,
9 you wouldn't know I was Métis because I look Aboriginal and
10 I'm always looked Aboriginal. I could never hide it. As a
11 little girl growing up in the north end, I went and slept
12 at a friend's. And I was walking home early in the
13 morning. And every time I think of a missing family member
14 or this is in the news, I always think of what the
15 possibilities were that could have happened to me. Because
16 I got followed and I ran to my house. And that individual,
17 that man, sat in the car waiting for me to see if I can get
18 into the house. And had I not been able to get into the
19 house, had the door not been open, I don't know what would
20 have happened. And that's just one small incident. And I
21 keep wondering at what point do we start putting and making
22 some of the changes.

23 Because you all have the answers. There's
24 nobody that doesn't have the answers on what they want and
25 what they need. The families know what they want. The

1 families know what they need. But until such time as we
2 start taking action and start doing something and changing
3 those policies and changing the systems and changing the
4 way that things are, then it's going to be the same. And
5 you have to ask yourself -- because I ask myself all the
6 time that I see this or I hear of it -- at what point is
7 enough enough? What's that number where we actually start
8 doing something and stop talking about it? Because I'm
9 pretty sure the ones that are directly affected are
10 carrying a lot more weight that are indirectly affected by
11 it.

12 As Métis women, we are limited in our
13 resources to try to help. But I guarantee you that there
14 are things that we are trying to do. And we are open to
15 being supportive. We are open to being part of -- had I
16 known what this was about today -- I wish I would have
17 known because then I could have brought more women. I
18 could have brought them just to even hear the panels that
19 are going to speak today, the people that are going to
20 speak, so that they could at least take those back home to
21 their own communities. But like I said, when I came I
22 thought it was going to be a room of lawyers or room of
23 suits that were going to be here and that's who we were
24 going to talk to. And I didn't understand why.

25 But until you start being involved and being

1 part of the issue, and you keep talking about it -- there's
2 at some point where you have to start putting a plan into
3 action.

4 And so I'm really humbled that you invited -
5 - and I was able to come here. And I was coming here I was
6 thinking -- I'm not sure how many of you have heard
7 President Chartrand speak. He's very passionate and he's
8 very eloquent about his speaking. They said to speak for
9 three minutes and I couldn't imagine President Chartrand
10 speaking for three minutes. He's a very passionate
11 speaker. And so I was trying to make sure that I had my
12 speech down to three minutes and even that was a little bit
13 hard.

14 But I want to thank you again and please
15 know that we are open nationally -- our Women of Métis
16 Nation, (speaking in Native language) -- we are open to
17 being part of this. We want to be part of this. We have
18 asked for standing, too, for the Commissions to present our
19 positions. Because we have no idea how many of our women,
20 our Métis. We know how we want to help; we know how we
21 want to support. But we don't know how many of the women
22 are Métis.

23 And so know that we are open, that we are
24 welcoming, and that anything that we could do to help, that
25 we are always here. And I want to thank you so much for

1 today, and I hope that I've brought greetings on behalf of
2 the Manitoba Métis Federation Government. And I wish you
3 well in your discussions and I look forward to hearing some
4 actions and some positive steps that are going to be moving
5 us forward. So thank you very much for that.

6 **ELDER BELINDA VANDENBROECK:** Thank you very
7 much, Anita. Powerful words. And yes, Dave is a powerful
8 speaker. He's very loud.

9 And we're getting onto -- hang on, where's
10 my paper? Where did it go?

11 **MS. CHRISTA BIG CANOE:** Does she have it?

12 **ELDER BELINDA VANDENBROECK:** I don't know.
13 Maybe she took it. I'll tell you what. If you're
14 expecting anything normal from me, just quash that idea.
15 I'm not normal. No, I am, really, seriously.

16 Anyway -- oh, I'll just tell you a little
17 story. You know how I talk about, always, always talks
18 about how important it is to know who you are -- where am
19 I? Okay. Anyway, when I was born, I was born an Indian,
20 right? I had a treaty number and everything. In 1969 I
21 married my husband. I wasn't an Indian anymore. The
22 government said I wasn't and I'm thinking, "Oh, yeah?"
23 Anyway, just kidding. I didn't. But in 1985 they changed
24 their minds and I'm Indian again. Oh, my God. It's a good
25 thing I know who I am. So that's why our children need to

1 know who they are.

2 Okay. I am now to call up Jason Parenteau
3 from the Sacred Fire Leader. Here he comes. And then
4 we'll take a quick break after that and then we'll go into
5 the ceremony with Fred and the elder.

6 So three minutes.

7 **MR. JASON PARENTEAU:** Oh, yeah. I know.

8 Bonjour. (Speaking in Native language).
9 Three minutes? Well, there are fires over there and you
10 know where to go. Just kidding. But in this way then,
11 just briefly about the fire and our responsibility as men -
12 - and I want to say this to the grandmothers as men -- and
13 that is our responsibility to ensure that that fire is
14 there and we think about that for our families as well.
15 Because sometimes as humans, as relatives, you know, we
16 love each other but sometimes we make each other upset.
17 And these are really upsetting things that we're going to
18 talk about over the next few days, for the Commission as
19 well. And all this work, as Anishinaabe people we don't do
20 this kind of work without the spirit first.

21 So this morning we were there and we had our
22 fire ready. And so for those of us -- that you'll be
23 presented with this (inaudible), this tobacco. You can
24 take that out there after because our grandfather burns at
25 the centre and he's there to help us. So for the next

1 duration of the days and you need to go over there, then
2 you can go over there and be free there and spend time with
3 your medicine and tobacco. Because the other young men
4 from this community here in Winnipeg, the unofficial res --
5 they're waiting for the chiefs to make it official -- just
6 kidding. But in this way, then, when you think about that,
7 our young men too that are out there and are happy to do
8 the work, you know, because this is our women. Our role as
9 men to help our women, support them, to support life.

10 So this morning, then, we were able to do
11 that and happy to have our grandmothers that I haven't seen
12 in a while and to do that and thinking about all of our
13 women. And I hope you have the opportunity to do that and
14 go visit and I'm thankful for all the people that did make
15 it out this morning because that's a really big part of the
16 day. You know, as Anishinaabe people, we're up and ready,
17 and as men, we're supposed to be up and ready before the
18 sun is there, to take care of our families.

19 And sometimes we need to get back to that
20 because things in life are too convenient people. And you
21 want heat and you just turn on the heat somehow with a
22 switch. Well, nowadays there's an app and you can app it
23 on and stuff. You know, this sort of work that we're doing
24 with people and families is -- there's no easy solution.

25 So in this way, our prayers and our words

1 this morning are some steps. You know, these are some
2 steps we hope and encourage are moving forward. But it's
3 going to be some time until things really, really happen.
4 And we pray for the ones that are struggling to this day
5 and the fire is there.

6 So keep them in your prayers today and when
7 you visit them. Because some of them may not be able to
8 make it for whatever reason or they're still not able even
9 to get out of bed or leave their home when they're
10 suffering in that regard. So to help the heaviness and the
11 work that we do and the heaviness that we feel in this way,
12 it's always comforting. As our uncle has always said, it's
13 comforting to go to the fire. And thinking about one of
14 our elder men that always talked about doing this kind of
15 work, he'd always say, "(Speaking in Native language),"
16 like, "Let's work together." We have to work together to
17 do this. And when we work together we can accomplish a lot
18 of things.

19 In this way, then, around the fire we go
20 there and this morning and this morning we see people --
21 everyone working together. So in that spirit, then, this
22 morning we felt -- we'd hoped that we can all carry that
23 and not forget that as we begin to do the work here in each
24 of our own ways. So in that good way we think about that.
25 And it's a tough road that we all might have to do, but we

1 can all contribute our own part in our own ways and in our
2 own communities that we represent.

3 So in a good way I want to speak for that.
4 And the fire, it's open. You're free to go over there. It
5 will be there all day today, tomorrow, and until closing.
6 And again, if you're visiting, we hope that -- we offer our
7 prayers you'll have a safe trip home, and your family as
8 well, when you return as well.

9 So in that much I want to say that much for
10 the fire and it was an honour to support our women that
11 asked to do this. And there was no hesitation on my part
12 to do this to help them in that way. So think about that
13 in a good way, and our grandmothers, you know, and our
14 women, especially our young women. We hope that they can
15 make it to be a grandmother because us men we need our
16 grandmothers. We need more of them, you know? Not to go
17 to bingo or anything. And it's a very special
18 relationship, a grandmother, for us as men. And those of
19 us that are married, we know who the boss is of we want to
20 stay married.

21 So in a good way, for all our relatives, we
22 appreciate your presence and work and hopefully you have
23 some good thoughts and some courage, you know, to keep
24 going, some good life today. And hold onto those things
25 and don't forget to offer your tobacco in the fire. And

1 maybe in your communities the men will make the fire for
2 you, you know, with you. You know, together you can stand
3 there in that good way.

4 So in a good way I just want to say that
5 much for the Sacred Fire and say "miigwetch" to everyone
6 here. And we'll be there again tomorrow morning, bright
7 and early. And you're welcome and I will still be standing
8 there. But not during the day; I do something else. But
9 we have our other men helpers working together to support
10 you and the work that they do over there. And there was no
11 hesitation when we asked different fire keepers from the
12 community. So say "miigwetch" and we're at 2:59 so we're
13 good.

14 **ELDER BELINDA VANDENBROECK:** Thank you very
15 much.

16 Okay, folks, we are going to have a -- we'll
17 come back at -- about 10 minutes?

18 **MS. CHRISTA BIG CANOE:** Fifteen (15)?

19 **ELDER BELINDA VANDENBROECK:** Fifteen (15)
20 minutes. We'll come back at 10:30ish. Like, that's just
21 before 10:30. Okay, bathroom break. Fresh air break, too.

22 --- Upon recessing at 10:15 a.m./

23 L'audience est suspendue à 10h15

24 --- Upon resuming at 10:44 p.m./

25 L'audience est reprise à 10h44

1 **ELDER BELINDA VANDENBROECK:** Hello? Hello?
2 We're back. They're back. If I could ask the people in
3 the hallway, we will be commencing. We will start. Okay,
4 thank you very much.

5 One thing that I learned in my times of
6 doing this, and one great lesson I learned from husband, he
7 said that when you're talking, just remember that the
8 people's brain can only take as much as the rear-end can
9 take. When that gets tired, you'll be like, "Oh, gosh,"
10 discombobulated. And we don't to be discombobulated. We
11 want to be here.

12 So with that, I am going to proceed with our
13 agenda. We're a little bit behind but that's okay: we're
14 following life right now.

15 So I'm going to call on the president of the
16 Inuit Association of Manitoba, President Fred Ford.

17 **MR. FRED FORD:** Thank you very much.

18 Fred Ford, is my name. I'm happy to be here
19 today. (Speaking in Native language).

20 And let me first thank the organizers to
21 have the foresight to invite Inuit in Manitoba, our
22 organization, which is a newly formed organization relative
23 to those other organizations here in the province.

24 I'd like to acknowledge first that we are on
25 treaty land and the homeland of the Manitoba Métis and to

1 thank for those presentations that came before.

2 And I would like to say to the
3 Commissioners, to the chiefs, the leaders, to all of the
4 dignitaries in the room, to the elders, the singers, those
5 that have offered drum songs, to the witnesses, and
6 especially to the families of those missing and murdered
7 Indigenous women, (speaking in Native language). Welcome.
8 And may the Creator guide you in the work that you start
9 here today.

10 The Manitoba Inuit Association was created
11 out of a need. In 2008, a group of Inuit got together and
12 felt that there was a need to create a community for Inuit
13 who were here in the province and living away from home.
14 This is a dynamic within our Inuit community that's
15 happening from coast to coast to coast, Inuit from all area
16 of Nunangat, our northern homelands. It is estimated that
17 as many 20 percent, and shortly as many as 25 percent, of
18 Inuit will be living away from home.

19 Until we have, you know, greater economic
20 opportunities in the north, until we have universities and
21 other post-secondary education institutions that will offer
22 other than nominal vocational courses, Inuit will continue
23 to come south for educational opportunities, looking for
24 economic opportunities. We will continue to come south to
25 have our babies here until we develop more birthing centres

1 and hospitals in the north.

2 Presently, over the course of any given
3 year, we have 15,000 or 20,000 healthcare contacts with the
4 regional health authority here in Manitoba. Our women are
5 away from home for a month at a time, away from their
6 husbands and families, other siblings to stay in a boarding
7 house here on Burnell Avenue. There are 120 beds there
8 that are full every night, overflow. Inuit are not just
9 here to have babies but for other medical appointments or
10 for treatments. When the boarding house is full, they're
11 moved into hotels around the city.

12 Just in Nunavut alone, not counting those
13 other northern territories, in 2,000,000 square miles in
14 Nunavut there is not one single dialysis machine. And with
15 our lifestyles having changed radically since colonization
16 and forest relocations, our diets have changed. This has
17 had a great impact on the health and well-being in our
18 northern communities. As I had mentioned, we were created
19 out of a need to create a community for Inuit here.

20 We have a growing community of students that
21 arrive every year filled with hope to follow their dreams
22 at, you know, Red River College or at University of
23 Winnipeg, University of Manitoba. And we know that we need
24 to be there to support those students and help them achieve
25 those dreams while they're away from home. We know that

1 those students that are supported are the ones that are
2 going to be most likely to succeed and we will do what we
3 can to bring our Inuit communities together.

4 There is a large and growing community of
5 Inuit who are transient throughout all of the provinces and
6 urban areas, even in the north, Inuit looking for other
7 opportunities. And it's not far from those hopes and
8 aspirations or moving here to take a new job if something
9 doesn't work out, that it's a sudden hardship to find that
10 you're not that far from being on the street and not being
11 able to afford a ticket home or having no support systems
12 here in the community to help you.

13 There are a dearth of services. In the
14 north it's not that difficult to find those services for
15 Inuit healthcare services, special services that you might
16 require, student services. But here in the south, there
17 are no Inuit-specific services. And this is something that
18 we're hopeful of changing.

19 In the few years that we've been together,
20 since 2008, we've moved from being, you know, a small
21 group, administrative, you know, board of directors, to a
22 point now since that time where we have an executive
23 director. We're moving this year, hopefully, to attain our
24 charitable status that will allow us to work outside of the
25 very narrow parameters that we're allowed to work with in

1 the province, you know, given the monies that are available
2 for Inuit living away from home. It's difficult to get
3 attention, you know, from governments in the north and have
4 them take responsibility more for Inuit in the south.
5 That's just the dynamic that we live in in this province,
6 you know, with all due respect to First Nations and the
7 great need in those communities and also among Manitoba
8 Métis.

9 But you cannot underestimate, you know, how
10 valuable it is to be able to pick up and phone and talk to
11 somebody on the other end of a line when you're on distress
12 and to be able to talk in your own language about somebody
13 who understands your circumstances, about where you come
14 from, how far you are away from home, and what are the
15 circumstances that lead to the problems that you might be
16 having.

17 This is a dynamic, as I mentioned, which is
18 true for all across Canada, from the western Arctic and the
19 Inuvialuit settlement. Inuit are migrating. They end up
20 often on the west coast or at Edmonton, you know, outside
21 of Yellowknife. Inuit from the Kivalliq Region of Nunavut
22 tend to come this way because we're familiar with Manitoba
23 because we receive our health services here. Inuit from
24 the western parts of Nunavut, you know, who receive health
25 services in Yellowknife, will make their way to Edmonton

1 looking for -- or in the western provinces, looking for
2 economic opportunities. There are growing communities of
3 Inuit all across the country. Those Inuit from Nunavik who
4 receive medical services in Ottawa and other places in
5 Ontario or in Montreal, you know, tend to find their ways
6 into those communities and on the east coast, you know,
7 from Nunatsiavut. Inuit communities are, you know, moving
8 to St. John's, Newfoundland and other urban areas looking
9 for economic opportunities.

10 But we have a growing community all across
11 the country. As I'd mentioned, as many as many as 25
12 percent that are living away from home. We have a
13 responsibility to those Inuit to ensure that, you know,
14 they're not falling through the cracks. And that sadly is
15 the situation. And we as an Inuit association realize the
16 importance of community. We realize how important for us
17 it is to be, you know, visible within our community and to
18 be proactive, and to be a touchstone so Inuit can reach
19 out, you know, to other Inuit for help should that time
20 arise.

21 And here, even within this province, we have
22 Inuit who are well-represented from Baffin Island. There
23 are Inuit in this province from Labrador on the east coast
24 and Inuit here from the far western Arctic as well.

25 And this is a dynamic, as I say, that's

1 happening in Inuit communities all across the north. And
2 until, as I'd mentioned, we build universities or other
3 post-secondary alternatives in the north, that this is a
4 trend that will continue.

5 And as an Inuit advocacy group, we continue
6 to lobby for funds to provide those soft services for Inuit
7 here.

8 But until we build hospitals in the north
9 and treatment centres or more birthing centres in the
10 north, this pattern will continue. And we're concerned
11 that we don't want to get lost in the shuffled, you know,
12 here, and thinking that there are services here that cater
13 for -- that serve the needs of Indigenous people. We need
14 to have services here that serve the needs of Inuit within
15 that community of Indigenous people. There is not a pan-
16 Aboriginal strategy that's going to work for everybody. We
17 need to treat, you know, Inuit, though we're few in
18 numbers, with the same dignity and respect that we treat,
19 you know, all other Indigenous Peoples. You know, no
20 matter how they get here or what their circumstances might
21 be able, we need to be able to listen to them and respond
22 to their needs.

23 I thank you very much for the opportunity to
24 be here today and tell you a little bit about who we are
25 and what it is that we do. And I hope that you see too

1 that we're all here for the same reason, to support our
2 communities and to make a better life, and to try and find
3 a way -- and somebody who had framed it this morning saying
4 we have, you know, one opportunity to look at this and to
5 make some -- you know, to make a difference. And I want
6 you to know we're here fully and wholeheartedly to support
7 you in those endeavours as you go forward with the work of
8 the Commission.

9 So on behalf of Inuit -- not just Inuit here
10 in Manitoba but Inuit everywhere, Inuit from coast to coast
11 in the north, you know, all of those northern communities,
12 Inuit in our northern homelands, Inuit scattered across our
13 southern lands where we've been -- thank you again for the
14 opportunity to be here.

15 And I would like now at this time to
16 introduce an elder from our community and to light here a
17 *qulliq* for us today. And I'll leave it to the elder Annie
18 Bouquette to describe to you what it is that she's doing
19 and the significance of it in lighting the *qulliq*.

20 So I'd ask Annie Bouquette if she'd come
21 here please and also Barbara Sevigny, an Inuk from Iqaluit
22 who is going to assist Annie this morning.

23 And I've been asked to invite other Inuit or
24 other women here who would like to come up here and join --
25 stand behind Annie and others as the lamp is lit in here

1 this morning. Thank you.

2 **ELDER ANNIE BOUQUETTE:** (Speaking in Native
3 language). My name is Annie Bouquette. I live here in
4 Winnipeg. I'm from Pangnirtung, Nunavut, Baffin Island and
5 we've been living here quite a while now. And I'm happy to
6 be here. It was short notice but -- anyway, these people,
7 Inuit people, are going to be around me and support me. I
8 would like Barbara to interpret for me. Thank you.

9 **ELDER ANNIE BOUQUETTE (through interpreter):**
10 First, I would like to share that this *qulliq* -- I remember
11 my mother using the *qulliq*. It reminds her of her mother.

12 At the age of four she was just a small
13 child and she had left her community. When she had
14 tuberculosis she had left her parents. While I was away
15 for medical, I ended up being brought to a residential
16 school in Moose Factory. At the age of five she went to
17 residential school.

18 I vaguely remember my mother using the
19 *qulliq* and I had lost some stories as to how and what the
20 meaning was behind the *qulliq*. For her the *qulliq* has a
21 really big meaning as to who she is, with her identity. As
22 well, it kept her warm, the family warm, the igloo warm.
23 And most of all memories of her mother.

24 When I was in residential school, my parents
25 did not know where I was. They couldn't find me for a very

1 long time. That's something that she will never forget.

2 Many times she has lost herself, her
3 identity over the years, but now grateful that she has
4 survived it all.

5 She shared that the *qulliq* is a very
6 important tool for us. It's not a toy. It's a survivor
7 tool. It's what kept the families alive, kept clothing on
8 them, kept the families warm. The seal skin -- she has
9 brought one here that the *qulliq* is sitting on. Without
10 those it would have been very difficult to survive.

11 Annie she has lost a lot of friends, family
12 members, women freezing outside, freezing to death,
13 wandering about in their communities. The *qulliq* was the
14 only tool that had helped the women survive by keeping them
15 warm. So it's definitely a survival tool.

16 This is something that's always within her
17 and she's very grateful to be able to share today. Because
18 it's very dear to her in the memory of loved ones and
19 friends.

20 She travels a lot and teaching how to make
21 *kamiks*, traditional sealskin *kamiks*. And this is something
22 that she had lost and she had to work very hard to gain
23 that knowledge back and to be able to make traditional
24 *kamiks*. She teaches women how to make traditional *kamiks*
25 while she's travelling.

1 The youth -- she's thinking about the youth
2 as well and the seniors, the elders. There are not too
3 many left that was able to pass on the knowledge. There
4 are not too many elders left that can share that knowledge
5 over to the youth. That's something that she keeps in
6 mind.

7 She's going to share a little bit about the
8 *qulliq* -- she's going to share a little bit about what we
9 call the *amautik* before she lights the *qulliq*.

10 She shared that it may look like she's very
11 warm with the *amautik* on, but going from outside to inside,
12 you don't really heat up because when you're indoors it's
13 cooler indoors than outdoors. So she doesn't get too hot.

14 She'd like to show the beadwork that she has
15 on the *amautik*. Her friend had made the beadwork and she
16 has passed away. She shared that the beadwork -- there was
17 some exchange, some trade happening, and that's how the
18 Inuit came about with the beads. And then the Inuit took
19 that on and got creative with how to use the beds in
20 exchange for some other traditional items from whalers,
21 Scottish whalers. I'm Scottish.

22 Thank you for having her to share about the
23 beautiful beadwork on the *amautik* and now she's going to
24 turn over to the *qulliq*.

25 **MS. BARBARA SEVIGNY:** I wanted to share a

1 little bit about the *qulliq* (sic) too. There's a pouch in
2 the back that we put the babies in, right from newborn, and
3 people wonder, "Well, are they not going to suffocate?"
4 But the infants are actually turned facing the other way so
5 they're not directly facing the back.

6 So it's very warm and you're able to carry
7 on with tasks. We women are quite multi-taskers to begin
8 with, but it gives us extra free hands when you're
9 maintaining the *qulliq* or doing chores outdoors. And it
10 keeps the mother warm and the baby warm. And as they get a
11 little bit older, they're able to -- you know, it's like
12 snuggly but in the back. But it's very warm and
13 comfortable for the kids. Because they also feel the
14 heartbeat from the back too, so it's very soothing for the
15 babies. And we often rock or bounce to soothe the babies.
16 I know as a kid I was made to go out to the neighbour's and
17 put on an *amautik* and go carry babies around. But that was
18 to prevent us from getting into mischief, you know?
19 Learning some life skills or how to do things, parenting
20 skills.

21 If you could maybe turn. This part too is -
22 - the *amautik*, it's the beauty of the woman. It represents
23 the women. It's part of showing the beauty of the woman.
24 And what's also neat too is that when you sit on the snow
25 it protects you from getting cold. But it's more of a

1 fashion for the women, the *amautik*.

2 **ELDER ANNIE BOUQUETTE:** This is a sealskin
3 that we use for clothing and the men hunt for them. And
4 also, this little pouch belonged to my late mother. I
5 decided to make it a few years back to do something with
6 it. And now I use it for wicks, *qulliq* wicks. And we pick
7 these wicks from the land. And one of these -- somebody
8 gave me this for a gift earlier. I don't know who it is.
9 Thank you. Okay, thank you so much. (Speaking in Native
10 language). And this is our *takoteh* (phonetic) to light the
11 flame on the *qulliq*.

12 This *qulliq* is made out of soapstone that
13 men carve or make *qulliq*. And we usually use -- or in our
14 traditional way, we use seal fat. But right now I'm using
15 store-bought oil.

16 --- **LIGHTING OF THE QULLIQ/ÉCLAIRAGE DU QULLIQ**

17 **ELDER LOUISE HAULLI:** I use Arctic cotton
18 and I think she used something else. Same thing? Okay.
19 There's Arctic cotton, also what we call moss. Okay. We
20 have different dialects because we are from different
21 regions. So her style is not the same as my style. I'm
22 from the Baffin region. Also, she's from south Baffin,
23 right? I'm from north Baffin. So there's a difference.
24 Also, our dialects are different.

25 And also, about *qulliq*, my aunt was telling

1 me when I went to see her, "How do you fix *qulliq*?" And
2 she put it on the table and it has a little reservoir, but
3 it seems very small. And I ask her, "How do you fix this?"
4 She said, "Put it on the table." And I did. And she
5 poured some water on it, on the reservoir, and it wasn't
6 level. So she told me, "This is the way, how you fix it."

7 Also, she was telling me about when a man
8 was making the *qulliq*, he would ask his wife, "How do you
9 fix this?" And the woman give instruction about *qulliq*.
10 And that's how a man fix it, by using a woman's
11 instruction. And also, when a man needs clothing, a woman
12 asks some instruction about caribou clothing. So they are
13 very flexible when it comes to *qulliq* and clothing. That's
14 what I wanted to share.

15 **ELDER ANNIE BOUQUETTE:** The wind is coming
16 from -- yeah. I remember my mother used to sew looking at
17 this *qulliq*, working on it, lighting it. My mother used to
18 sew clothing in front of it. That's all we had. There
19 were no other lights.

20 I used to fall asleep when she was still
21 sewing in front of the *qulliq*.

22 **COMMISSIONER QAJAQ ROBINSON:** Just to
23 provide a little context, the *qulliq* will remain lit. As
24 part of the ceremony we've developed at the national
25 inquiry, recognizing that a pan-Indigenous approach does

1 not work and that we need to respect and honour the many
2 teachings and ceremonies, particularly that of the
3 importance of the fire for First Nations, Métis, and the
4 fire for Inuit through the *qulliq*, we have the Sacred Fire
5 burning outside while we hold our hearings. And inside it
6 burns through the *qulliq*. So I just wanted to give a
7 little bit of context.

8 We'll be standing up, those that know how to
9 tend to this. And if you know how to tend to it and you
10 see it flickering, it needs a little bit of help, I welcome
11 you to assist in tending the fire inside. So (speaking in
12 Native language).

13 **ELDER ANNIE BOUQUETTE:** I just want to say
14 thank you very much for all of you and thank you to the
15 wonderful Inuit people to see which -- I don't get a chance
16 to see too many Inuit people in the city here. But it's so
17 wonderful. Thank you to all of you.

18 **ELDER BELINDA VANDENBROECK:** Thank you very
19 much for that beautiful ceremony.

20 I'm so glad that we're able to share our
21 cultures the way that we do. Because we're not all the
22 same, right? I mean, we have to remember that we all had
23 different ceremonies. When you think that there was 500
24 Nations in this country of North America, that's 500
25 different languages. Isn't that awesome? Yeah. And

1 ceremonies.

2 Anyways, I'm calling up Jade to -- I don't
3 know if this thing is going to fall down.

4 **MS. JADE HARPER:** Okay, *miigwetch, aanii*.
5 (Speaking in Native language).

6 I'm Jade Harper and my spirit name is Water
7 Willow Woman. I'm from Peguis First Nation. I'm from the
8 Eagle Clan and I live here in Winnipeg.

9 And I just want to come and speak to you
10 very quickly. I'm a part of the health team with the
11 national inquiry and I wanted to be here. I want to honour
12 those lives of those women who are missing and those who
13 have been murdered. And I want to honour all the families
14 that are here today.

15 And I wanted to let you know and I wanted to
16 quickly introduce you to our health team, our community
17 relations team, and our grandmothers who are going to be
18 here for the next three days helping us keep this space,
19 along with the space at the Sacred Fire. And that Sacred
20 Fire will be there for three days, that Jason spoke about
21 earlier.

22 So I'm just going to ask our team to stand
23 up, our health team and our community relations team. And
24 just wave to everyone in the room and -- and there's Jodie.
25 She's one of our health managers, off to the side there.

1 Yeah. And we also have Barb, who's a health manager. And
2 we have a few others that I don't see in the room right
3 now. And then we have community relations. We have
4 Maureen Gabriel, who is also here, and Alana. And so we'll
5 be floating around for the next three days.

6 And I just want to ask our grandmothers and
7 the elders in the room to stand up as we've asked many
8 elders and grandmothers and knowledge-carriers to come and
9 share this space with us. And we have Carol Moore, Velma
10 Orvis, Grandma Shingoose, and Belinda Vandenbroeck. Sorry,
11 yeah, and Bernie. Sorry, (inaudible). Yeah. And we have
12 Bernie and Diane and Blue in the front there -- sorry,
13 Louise. Sorry, Louise.

14 I also just want to honour the fact that
15 Thelma Morrissette and Stan LaPierre were doing our
16 ceremonies this morning, and also other knowledge-carriers
17 that are going to be here. And I also want to recognize
18 Sandra Delaronde who is also here and going to be a part of
19 our witnesses. Also participating as elder: Patricia
20 Caribou, Virginia Sanderson, Sherry Copenace, Katherine
21 Whitecloud, Audrey Bone, Diane Linklater, and then of
22 course Jason Parenteau, who was here earlier. And the Bear
23 Clan will be at the Sacred Fire for the next three days as
24 well, keeping that fire and being there for us. And then
25 we also have Pauline Shirt and Gilbert Smith, who will be

1 joining us.

2 So that is our team and I just wanted -- oh,
3 sorry, Pauline Shirt and Gilbert Smith are attending on
4 behalf of the Province of Ontario.

5 So that is some of our team that is here,
6 but definitely our team that will be holding space. And we
7 look forward to spending the next three days listening and
8 supporting and encouraging. *Miigwetch*.

9 **MS. CHRISTA BIG CANOE:** I would just like to
10 take the opportunity to say a (inaudible) *miigwetch* to
11 Belinda, Elder Belinda, who has been our emcee for the
12 morning, and, on behalf of the national inquiry, to provide
13 you a gift and thank you for sharing and helping us welcome
14 others into this space.

15 And at this point I would actually turn
16 attention to our Chief Commissioner, who will be making her
17 opening remarks. And then we will have a short break just
18 to set up to go into the hearing, the public hearings.

19 So welcome, Chief Commissioner.

20 --- **OPENING STATEMENT BY/DÉCLARATION D'OUVERTURE PAR CHIEF**
21 **COMMISSIONER MARION BULLER:**

22 **CHIEF COMMISSIONER MARION BULLER:** Thank
23 you. I'm on the tall side, so could you raise the
24 microphone for me, please? Yeah, that's better. Thank
25 you. Good. Thank you.

1 *Miigwetch.* Merci. Thank you.

2 It's at moments like this that I'm overcome
3 by the gifts that the Creator has given all of us.

4 I want to start by acknowledging the spirits
5 of the missing and murdered Indigenous woman and girls, the
6 trans- and two-spirited who have left us. Thank you.

7 I also want to acknowledge the families and
8 survivors who are here today. Thank you.

9 Okay, Creator, give me poise, give me
10 humour, please, and give me strength. And give me humour.
11 Thank you.

12 We started this morning in a good way: we
13 started in ceremony. We started with the Sacred Fire
14 keepers, elders, and grandmothers. We started with people,
15 members of the Three Fire Midewiwin Lodge. We started in a
16 good way; we started in a proper way. And we have
17 continued today in lighting the *qulliq*. Sorry, I keep
18 misspelling that.

19 I want to also acknowledge that we're on
20 Treaty One land, land of the Anishinaabe People. I want to
21 thank the chiefs and grand chiefs for their welcome this
22 morning and thank you to Minister Campbell as well for
23 welcoming us.

24 Of course we're on the Métis Nation homeland
25 and that's of great significance to me. My grandma was a

1 Métis woman.

2 Thank you also to the drummers and singers
3 and to our leader in ceremony today.

4 We are here on Treaty One land, land of the
5 Anishinaabe People, because we know that too many
6 Indigenous women and girls, trans- and two-spirited people
7 have gone missing or were murdered. They continue to go
8 missing and continue to be murdered because they're
9 Indigenous, because of the beautiful colour of their skin.

10 We know that there are many families here
11 who mourn their lost loved ones, and many survivors who
12 still live with grief and trauma. We will be hearing from
13 them directly on October 16th and the days that follow. We
14 will be here then to hear from the families and survivors
15 because they are our true experts.

16 We are here at the Canadian Museum for Human
17 Rights because this is one of the many places in Canada
18 that needs to hear what will be said in the next three days
19 about Indigenous laws, the importance, and the sheer beauty
20 of Indigenous laws, and the need for decolonization.

21 The continued colonization of Indigenous
22 people in Canada means that the rights of Indigenous people
23 continue to be violated every day. The stories we will
24 hear today and other days, the voices we have already
25 heard, and the voices we will continue to hear, will shine

1 lights of truth and healing where darkness of racism,
2 hatred, and fear continue to exist.

3 I'm going to ask you all to witness a very
4 important part of our process today. As part of our
5 approach of decolonization, we, as Commissioners, have
6 adopted the request of a family member from Whitehorse when
7 we heard from him, Shawn LaDue. He asked us, as
8 Commissioners, to take oaths that we start our work in a
9 good way every day. So I'm going to ask you to witness our
10 ceremony.

11 **MR. SHAWN LaDUE:** Good morning, everybody.
12 Thank you for the welcome.

13 Commissioners, do you solemnly affirm that
14 you will listen to the truths and the stories told today
15 with an opened mind, an opened heart and free from
16 prejudice?

17 Affirmez-vous solennellement d'écouter les
18 vérités et témoignages partagé aujourd'hui avec ouverture
19 d'esprit, avec un cœur ouvert et libre de préjugés?

20 **COMMISSIONERS, AFFIRMED/A AFFIRMÉS (ES)**

21 **MR. SHAWN LaDUE:** Thank you

22 **CHIEF COMMISSIONER MARION BULLER:** Thank you
23 for witnessing that. It's very important to us.

24 **MS. CHRISTA BIG CANOE:** At this time, we're
25 going to take a very short break simply so we can set up

1 for the experts panel. And so I'm going to encourage and
2 ask for only five minutes, if you could, and then we'll be
3 ready to start with our first expert witnesses. Thank you.

4 --- Upon recessing at 11:39 a.m./

5 L'audience est suspendue à 11h39

6 --- Upon resuming at 12:02 p.m./

7 L'audience est reprise à 12h02

8 **MS. CHRISTA BIG CANOE:** And just before we
9 get started into the hearing, I have just a couple of
10 housekeeping announcements. It's understood that people
11 may be taking pictures, and that's fine. But we kindly ask
12 that you turn off a ringer on your phone if you have it on
13 or that you step out to have a conversation if you need to.
14 Thank you kindly.

15 --- IN CHIEF ON QUALIFICATIONS BY MS./INTERROGATOIRE

16 PRINSIPAL SUR QUALIFICATIONS PAR Ms. CHRISTA BIG CANOE:

17 **MS. CHRISTA BIG CANOE:** Chief Commissioner,
18 Commissioners, with your permission I'd like to call the
19 first witnesses, the first expert witnesses in today's
20 hearing.

21 I would like to introduce Dr. Val Napoleon
22 and Dr. Hadley Friedland. And I'm going to start with Dr.
23 Val Napoleon.

24 Dr. Napoleon, can you please spell your
25 name, your last name, for us, please?

1 **DR. VAL NAPOLEON:** Napoleon, N-A-P-O-L-E-O-
2 N.

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

4 Can you describe the type of work you do?

5 **DR. VAL NAPOLEON:** So we work in partnership
6 with Indigenous communities across Canada. And the work
7 that we do is research on questions that are important to
8 that community. And we develop legal resources for the
9 community, drawing from oral histories and from their own
10 histories. And we create resources that they can use as
11 well as we can use at the law school for the Indigenous law
12 degree program. And I also teach Canadian law as well as
13 Indigenous law.

14 **MS. CHRISTA BIG CANOE:** Can you tell us
15 where you work and what your title is?

16 **DR. VAL NAPOLEON:** So I work in the law
17 school at the University of Victoria, and my title is Law
18 Foundation Chair of Aboriginal Justice and Governance. But
19 I'm also the Director of the Indigenous Law Research Unit.

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

21 And so, generally speaking, what are your
22 duties and functions at the university?

23 **DR. VAL NAPOLEON:** So I divide my time
24 between working with the research unit, travelling to
25 communities, working with communities on lands and

1 resources or water or governance or gender, different kinds
2 of projects that are important to them. And then I teach
3 and then I have other administrative responsibilities
4 within the university. So it's dividing the time between
5 those demands.

6 **MS. CHRISTA BIG CANOE:** And you had said
7 that you work with different communities. What communities
8 have you worked with or for?

9 **DR. VAL NAPOLEON:** Over the years, since
10 2012, we've worked with the Mi'kmaq Legal Services Society,
11 with Tsilhqot'in National Government, with the Aseniwuche
12 Winewak, with the Northern Secwepemc and the Southern
13 Secwepemc. We've worked with Coast Salish communities and
14 with Tsimshian communities, with Anishinaabe communities.
15 And each of those different groups has, you know, a number
16 of communities. So for instance, with the Tsilhqot'in,
17 there are five different communities that we worked with in
18 that region of the province.

19 **MS. CHRISTA BIG CANOE:** And I'm going to
20 just show you -- this is your resumé. And can you confirm
21 it's your resumé?

22 **DR. VAL NAPOLEON:** This is definitely my
23 resumé. I apologize for its tiny print.

24 **MS. CHRISTA BIG CANOE:** Thank you. And the
25 resumé, it's fair to say, lays out a large -- it's a number

1 of pages long, talking about your academic and your
2 scholarship and research experience. Is that fair to say?

3 **DR. VAL NAPOLEON:** Yeah. Part of the work
4 is to create resources that are useless for local
5 communities in the way of videos and public education
6 materials, as well as academic materials, which are used by
7 universities and by other institutions.

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

9 So in addition to your academic degrees that
10 you have -- and I understand you're a doctor. So what does
11 that mean?

12 **DR. VAL NAPOLEON:** It means that after I
13 went to law school and started to practice law I turned
14 around and went back to graduate school. Because what I
15 wanted to do was work with not just the practice of law but
16 the ideas of law and the history of law. And I wanted to
17 get the work within the university to be part of
18 communities, to actually go beyond what I saw as the
19 perimeters of Canadian law to articulating law that
20 mattered to us prior to law schools being built.

21 **MS. CHRISTA BIG CANOE:** So what other
22 considerations outside of academic degrees -- so you're a
23 doctorate -- are important in understanding and having
24 knowledge about Indigenous laws and decolonizing
25 perspectives?

1 **DR. VAL NAPOLEON:** So prior to going to law
2 school, I spent about 25 years working as a community
3 activist and advocate. And I worked across northern BC and
4 the Yukon and in different fields of economic development
5 and social justice.

6 And the other thing that was important was
7 seeing the violence in the generations of my family, as
8 well as seeing the beauty and the strength and knowing that
9 we had to find a way to draw on the beauty and the
10 strength. Otherwise, we were going to be consumed by the
11 violence.

12 **MS. CHRISTA BIG CANOE:** Chief Commissioners,
13 Commissioners, based on Dr. Napoleon's description, and as
14 will be evidenced in her resumé when I tender it as an
15 exhibit, I am tendering Dr. Napoleon as a qualified expert
16 witness in Indigenous law and legal theory.

17 **--- RULING ON QUALIFICATIONS BY/DÉCISIONS SUR**

18 **QUALIFICATIONS PAR CHIEF COMMISSIONER MARION BULLER:**

19 **CHIEF COMMISSIONER MARION BULLER:** Dr.
20 Napoleon, welcome. We're very happy that you're able to
21 join us today and we certainly recognize your areas of
22 study and experience. Thank you.

23 **MS. CHRISTA BIG CANOE:** I would ask that Dr.
24 Napoleon now be affirmed as a witness, if the head
25 registrar could please administer that affirmation.

1 DR. VAL NAPOLEON, AFFIRMED/A AFFIRMÉE

2 --- IN CHIEF ON QUALIFICATIONS BY MS./INTERROGATOIRE

3 PRINCIPALE SUR QUALIFICATIONS PAR Ms. CHRISTA BIG CANOE:

4 MS. CHRISTA BIG CANOE: Dr. Hadley

5 Friedland, hi. Can you please spell your last name for us?

6 DR. HADLEY FRIEDLAND: Friedland, F-R-I-E-D-
7 L-A-N-D.

8 MS. CHRISTA BIG CANOE: Can you describe the
9 work you do?

10 DR. HADLEY FRIEDLAND: So from 2012 to 2016,
11 I was the research director in the Indigenous law research
12 unit that Dr. Napoleon referred to. I'm now an assistant
13 professor at the University of Alberta and continue to work
14 with communities, working on revitalizing Indigenous legal
15 traditions.

16 MS. CHRISTA BIG CANOE: And so we heard Dr.
17 Napoleon talk about a number of projects. Have you also
18 worked on some of those projects?

19 DR. HADLEY FRIEDLAND: Yes. In my capacity
20 as research director I worked and coordinated most of those
21 projects.

22 MS. CHRISTA BIG CANOE: So you've also
23 worked with communities or in communities?

24 DR. HADLEY FRIEDLAND: Yes. I've worked
25 with many communities.

1 **MS. CHRISTA BIG CANOE:** And I'm just going
2 to show you your resumé quick as well. And if you can just
3 confirm that it's your resumé?

4 **DR. HADLEY FRIEDLAND:** This is my resumé.

5 **MS. CHRISTA BIG CANOE:** Thank you. And
6 again, I notice there are a number of pages. In fact,
7 there are 14 pages. So it's fair to say that you have a
8 lot of education and that you have worked on a number of
9 projects. Is that true?

10 **DR. HADLEY FRIEDLAND:** Yes, that's true.

11 **MS. CHRISTA BIG CANOE:** And so in addition
12 to your academic degrees -- I'm going to ask you the same
13 question that I asked Dr. Napoleon -- what other
14 considerations outside of you academic or education are
15 important to understanding and having knowledge about
16 Indigenous law and decolonizing perspectives?

17 **DR. HADLEY FRIEDLAND:** I bring some lived
18 experience and some experiences and relationships. So
19 when I was 15 I was taken in by a Cree family in the
20 community of the Aseniwuche Winewak, and I have children
21 who are members of the Aseniwuche Winewak and a partner.
22 I'm a mother, an auntie, a great-auntie. And I lived part-
23 time in the community and part-time in Edmonton for work.
24 And prior to law school, I worked as a youth worker for
25 almost a decade with Indigenous and non-Indigenous families

1 and youth in the inner city of Edmonton.

2 **MS. CHRISTA BIG CANOE:** Chief Commissioners
3 and Commissioners, based on what we've heard Dr. Friedland
4 explain about her background and what's contained in her
5 resumé, I'm asking that she be qualified as an expert
6 witness in methods, engagement with Indigenous law, and
7 public education.

8 **--- RULING ON QUALIFICATIONS BY CHIEF COMMISSIONER MARION**
9 **BULLER::**

10 **CHIEF COMMISSIONER MARION BULLER:** Yes.
11 Yes, certainly. Welcome, Dr. Friedland. And we recognize
12 your areas of study and your experience. Thank you.

13 **MS. CHRISTA BIG CANOE:** If I could ask the
14 head registrar to affirm in Dr. Friedland, please?

15 **DR. HADLEY FRIEDLAND, AFFIRMED/A AFFIRMÉE**

16 **--- EXAMINATION IN CHIEF BY/INTERROGATOIRE PRINCIPAL PAR**
17 **CHRISTA BIG CANOE:**

18 **MS. CHRISTA BIG CANOE:** I have just a couple
19 questions. The first question I want to ask you is about
20 what you'll be talking about today, talking about
21 Indigenous law and Indigenous legal orders and methods and
22 education? Why are these important topics to talk about in
23 the context of missing and murdered Indigenous women and
24 girls?

25 **DR. VAL NAPOLEON:** The issue of missing and

1 murdered Indigenous women and girls is not only a legal
2 issue within Canadian law. It's an issue within our
3 different Indigenous legal orders. And the work of
4 Indigenous law includes that of rebuilding citizenries and
5 rebuilding our lawfulness. And so the kinds of things that
6 we need to think about at the local level as well as at
7 regional and national levels is what are our definitions of
8 rape, of sexual assault, of the other ways that we oppress
9 and create conditions of vulnerabilities in our communities
10 as well as beyond. And so it's taking up that work of
11 rebuilding our unlawfulness and the strength of our
12 citizenries, rebuilding that.

13 So Indigenous law is a necessary part of
14 being lawful together according to the terms of our own
15 legal orders and those aspirations of safety and inclusion
16 and fairness, that both our legal systems are attempting to
17 work toward.

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

19 In your work you've developed a number of
20 Indigenous legal education resources and materials,
21 including videos. Can you tell me a little bit about
22 those?

23 **DR. VAL NAPOLEON:** We've developed 14
24 videos. Four of them are really short. And this is part
25 of trying to create Indigenous legal resources that aren't

1 written in Canadian legaleze, but are written from the
2 experiences and the wisdom of Indigenous legal orders. And
3 so what we did was to find ways to generate conversations
4 and questions and just provoke us to take some time and
5 talk to each other about things that are important.

6 The videos, I'm really proud to say, are
7 used in pretty well every university. They've been used in
8 classes across the spectrum. And we've had something like
9 18,000 or 19,000 hits with those videos because people are
10 rebuilding their lives at the local level and it's a
11 resource which is accessible, along with our other
12 resources, the gender toolkit and things like that. So
13 they're out there and it's a part of ensuring that the
14 research that we do in partnership with communities is
15 given back and shared so that we can continue that
16 rebuilding of Indigenous law and citizenries.

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

18 I understand that there's a video that you
19 would like us to watch?

20 **DR. VAL NAPOLEON:** It's a very short one. I
21 think about six or so minutes. Yeah. It's just an
22 introduction.

23 **MS. CHRISTA BIG CANOE:** If that's possible
24 to have up on the screen, please?

25 --- VIDEO PRESENTATION/PRÉSENTATION VIDÉO

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

2 Was there anything that you wanted to add or
3 say about the video before we move on to the presentation?

4 **DR. VAL NAPOLEON:** It's available on the
5 website. There are longer videos with all of those
6 wonderful people that you saw. And the other videos, short
7 videos, that we have are about -- one is about gender and
8 one is about tough questions within Indigenous law, because
9 there are many issues to work out because it is a thinking
10 process.

11 **MS. CHRISTA BIG CANOE:** And when you said
12 the website, can you tell us which website or what resource
13 you're talking about and how people would be able to access
14 it?

15 **DR. VAL NAPOLEON:** Yes. At the Faculty of
16 Law, if you go to www.uvic/ILRU. Yeah.

17 **MS. CHRISTA BIG CANOE:** So it's the
18 University of Victoria website?

19 **DR. VAL NAPOLEON:** Yeah, the Indigenous Law
20 Research Unit.

21 **MS. CHRISTA BIG CANOE:** Indigenous Law
22 Research Unit?

23 **DR. VAL NAPOLEON:** Yeah.

24 **MS. CHRISTA BIG CANOE:** And that's publicly
25 available?

1 DR. VAL NAPOLEON: Yeah.

2 MS. CHRISTA BIG CANOE: So anyone accessing
3 the internet could actually see some of these resources and
4 learn more about the work that you're doing on the video
5 projects.

6 Was there any other resources or materials
7 that you wanted to talk about as well prior to the
8 presentation?

9 DR. VAL NAPOLEON: No, I think we're good.

10 MS. CHRISTA BIG CANOE: Okay. So what we
11 see on the screen right now is a presentation, a PowerPoint
12 presentation. Did both of you create and make this
13 PowerPoint presentation?

14 DR. VAL NAPOLEON: Yes.

15 DR. HADLEY FRIEDLAND: Yes.

16 MS. CHRISTA BIG CANOE: And would you like
17 to begin doing a presentation as laid out in your
18 PowerPoint ---

19 DR. VAL NAPOLEON: Yes.

20 MS. CHRISTA BIG CANOE: --- for the
21 Commissioners and for the public watching? Thank you.

22 --- PRESENTATION BY/PRÉSENTATION PAR DR. NAPOLEON AND DR.
23 HADLEY FRIEDLAND:

24 DR. VAL NAPOLEON: I want to begin by
25 expressing my gratefulness to these Indigenous lands,

1 Anishinaabe lands, that now have other Indigenous Peoples
2 on them. And I also want to express my gratefulness for
3 the prayers and the work that has been undertaken to get us
4 to this point.

5 So we're at a new time in Canada. We have
6 the legacy and the power of the Truth and Reconciliation
7 Commission and the recommendations. And this Inquiry and
8 all of the work that brought us here, it's built on some of
9 the worst experiences that Indigenous women and girls have
10 had. But it's also borne of the hope and the strength.

11 And it's the result of a public -- a
12 collaborative, imaginary in which this Inquiry would do its
13 work. And for that I'm grateful.

14 So what we'll be talking about through this
15 PowerPoint is we're going to be looking at the role and the
16 potential of Indigenous law. And we're going to be asking
17 questions like "What does Indigenous law look like?"; "What
18 does Indigenous lawfulness mean?"; and "Where and how can
19 we begin learning and teaching Indigenous law in addition
20 to the many ways that communities and those Indigenous law
21 experts in our communities are already doing it?"

22 So from our perspective and the work that
23 we've done over the years with well over 40 communities,
24 we've trained well over 300 community members in this
25 methodology as part of the work. We can see that

1 Indigenous law is possible in the world. It's practicable
2 in the world. And it's capable of doing the kind of
3 rebuilding that's necessary to deal with the failure of
4 law, those spaces where our Indigenous laws were undermined
5 and where there are gaps and where we have to do the
6 rebuilding of Indigenous law. But not just the gaps
7 created by what has happened with Indigenous law, but the
8 lawlessness as well of Canadian law, where it has failed in
9 our communities and where it has failed to deal with the
10 kinds of violences that Indigenous women and girls have
11 experienced.

12 So it's looking at rebuilding that
13 lawfulness, thinking about those aspirations, as well as
14 how to solve real problems. How do we deal with those
15 conditions of violence in the past as well as the
16 conditions that we have to deal with today?

17 So we're drawing on that partnership. We're
18 moving to research; we're moving to the restatement of
19 Indigenous lives; and moving into implementation, depending
20 on the communities that we're working with. Because the
21 reality is, for law to be alive in the world as something
22 that's a part of everybody's life is that we have to not
23 just know what it is. We have to know what to do when that
24 law is broken. And those are some of the challenges. We
25 have to collectively know what the law is; we have to know

1 when it changes and why; and we have to know how to apply
2 it when there's a human problem that has to be dealt with.

3 And so that's what we're going to cover in
4 these points that you see up on the PowerPoint.

5 **DR. HADLEY FRIEDLAND:** I just want to
6 acknowledge being here on this territory and to commit to
7 walking gently while I'm here and doing no harm, and also
8 my gratitude for being here, for all the elders that have
9 worked very hard to teach and to talk, and to all the youth
10 and families and women. And I do my best to listen and
11 honour what they have taught me too.

12 As we talk about what's happening here, one
13 of the things I wanted to start with is saying -- and
14 listening this morning to everybody's words as well -- is
15 that part of a cultural genocide is dismissing and erasing
16 a People's beauty. And part of a cultural genocide is
17 dismissing and erasing people's capacity and thought and
18 brilliance.

19 So truth is important. And some of the
20 truth is about bringing light to harms and how those harms
21 happen, to pain, and to horror. But some of the truth that
22 has been buried is about the strengths, the wisdom, the
23 intelligence, the arguments, the thinking, the generations
24 of people walking in a way through the world.

25 So Judith Herman is a psychiatrist who talks

1 about seeing her work was supporting -- it began supporting
2 veterans, bringing to light their struggles with post-
3 traumatic stress disorder. And she said:

4 "My work is supporting them, restoring
5 dignity to their distress."

6 And I thought, part of our work is
7 supporting Indigenous communities and individuals,
8 restoring dignity to decision-making. Because when you
9 talk and share and think and you're dismissed person after
10 person, generation after generation, you begin to doubt
11 each other and you begin to doubt yourself.

12 And it's important, I think, to say that
13 people are making reasoned, principled decisions every day,
14 sometimes in terrible conditions, sometimes in life-and-
15 death situations.

16 Indigenous women and girls, families, are
17 not intellectual blank slates. We know this. It's not
18 somebody standing there with nothing going on that horrors
19 happen to.

20 But reasoned decisions, principled decisions
21 that are being made every day are not public. They're not
22 always recognized, resourced, and enforced like state laws
23 are -- or state legal decisions are.

24 Sometimes people face hostility,
25 indifference, ridicule, or even punishment. And

1 historically, we know that people faced jail or even death
2 by the Canadian state. And this leaves many people in a
3 situation where they face tragic choices, where rather than
4 being able to make a reasoned decision based on principles
5 passed down, they're having to decide which dangerous or
6 unreasonable option should they choose. This correlates
7 with fatigue, paralysis, and despair, and for perpetrators
8 it creates ideal conditions of silence and impunity.

9 So I do like naming people, but David
10 Finkelhor is a theorist who talks about child
11 victimization. And he argues that in both the United
12 States and Canada, where norms around child abuse were
13 increased, enforcement -- people speaking out publicly and
14 sharing their experiences and peoples saying it was wrong -
15 - it has led to reduced rates of perpetration. And we have
16 to consider the opposite is true, that where people's ways
17 of thinking, reasoning, authority, and enforcement have
18 been systemically dismantled and dismissed, and even
19 criminalized, that this is going to increase the risk of
20 violence and vulnerability.

21 So laws are tools to help us think through
22 human and social issues, effectively, humanely, justly
23 sometimes at our worst moments, sometimes at the most
24 terrible situations.

25 What makes sense to a reasonable Cree

1 person, Anishnawbek, or Inuk person? What's culturally
2 congruent? What societal aspirations are being reached
3 towards? And what makes sense in the reality of each
4 community? What about social context? What about the
5 difference between communities that are isolated and
6 communities that are urban? How do we address that? What
7 about population size? What makes sense if you're a
8 population of 200 people versus a population of 50,000
9 people? These are things Indigenous people have thought
10 through for generations.

11 So for example, laws that are developed
12 based on a society of relationships might just be more
13 effective in a small community of dense, overlapping
14 relationships than laws that are developed based on a
15 society of strangers where the lawmakers are assuming
16 everybody's strangers. So rebuilding Indigenous laws is
17 about rebuilding and strengthening conditions of peace,
18 safety, dignity, and justice. And that's we're going to
19 turn to, is the building blocks of the work, from our
20 perspective.

21 **DR. VAL NAPOLEON:** So we're going to talk
22 about some of the challenges in the work, some of the
23 intellectual kinds of shifts we have to make in order to
24 see Indigenous law in the world.

25 We're going to talk about the sources of

1 Indigenous law, because we weren't centralized hierarchical
2 societies with dedicated bureaucracies of professionals
3 responsible for law. So we had different sources of law.

4 We are also going to talk about the
5 resources that are available to us and to you.

6 We're going to talk about one method that
7 we're employing as well as other methods, just briefly,
8 that are out there.

9 And we're going to talk about
10 implementation. So that's what we're going to cover in the
11 time that we have with you.

12 So some of the challenges. These are things
13 that you're probably already familiar with in the work that
14 you're doing, the first being accessibility. Matthew
15 Fletcher, who's a tribal court judge in the United States,
16 says that Indigenous law has to be accessible; it has to be
17 understandable; and it has to be applicable. It can't just
18 exist in people's talk. It has to be a part of how we
19 manage our behaviour with one another.

20 So it means that knowledge has to be
21 available to us. And when we look at oral histories or we
22 look at stories, the different kinds of oral histories that
23 people had, those formed a public memory. They formed
24 legal precedent from which we can draw on to solve present
25 day problems. And we're going to talk about how we do

1 that.

2 The accessibility to some extent is also
3 formed by our experience with law. There's an amazing
4 scholar -- her name is a Sally Engle Merry -- and what she
5 says -- she has worked with violence against women all over
6 the world. And one of the things that she says is that if
7 women don't understand that they are rights-bearers, if
8 they haven't had experiences with the legal system which is
9 positive, you know, if their experiences with the police or
10 the courts or with anything else is negative, they're not
11 going to understand themselves as rights-bearers, and
12 they're not going to avail themselves to that legal order.

13 And so you think about that and then I think
14 we have to take it further and we to ask the same question
15 of Indigenous laws. We have to make sure that our laws are
16 accessible in this so that all of our members -- women,
17 children, people from different sexual orientations and
18 trans and so on -- that all of us can see ourselves as
19 mattering within that legal order.

20 So one of the things that I mentioned in the
21 short video that you saw was seeing each other as legal
22 agents, seeing ourselves as legal agents, and seeing how
23 the relationships that we have with one another hold those
24 responsibilities and obligations.

25 The second challenge is intelligibility.

1 John Burrows has written about this in one of his books.
2 And this is important because our People didn't just
3 behave. We were intellectual Peoples. We had intellectual
4 resources to draw on, as well as spiritual and emotional
5 and physical ways of being in the world. And so we have to
6 make sure that we're able to teach and create ways of
7 learning and opportunities for people so that the
8 Indigenous laws are intelligible. So the ways of thinking
9 and solving problems, they have to be available to everyone
10 and we have to make them available.

11 And legitimacy. If the decisions haven't
12 been reached in a way that we understand as being
13 legitimate, we're not going to uphold those decisions.
14 Fundamentally, law has to be legitimate and the legal
15 processes have to be legitimate.

16 And so one of the questions that we ask is
17 how people understand it and what are the legitimizing
18 processes that are already in place or that need to be
19 developed.

20 Equality and human rights. There were a
21 number of people this morning that talked about the
22 importance of equality. People did that in different ways.
23 We've taken it to look at human rights within Indigenous
24 laws to ask questions about what are human rights within
25 Indigenous legal orders. And we have materials and

1 different kinds of things that are available. But human
2 rights within our societies is a governance issue. It's
3 something that we need to think about. And we need to
4 think about it particularly as it applies to women and
5 girls, which is a hard way of thinking about violence
6 against women, even within state law and within
7 international law. We have to do the same kind of hard
8 work within Indigenous law.

9 There are a number of distorting, very
10 powerful stereotypes that are out there. Every time we
11 talk to a group of lawyers or judges or community peoples
12 or sometimes students and so on, there are different kinds
13 of very powerful stereotypes that come up. And they can be
14 positive or negative, but they'll short-circuit the
15 thinking that we have to do.

16 There's applicability. The law has to deal
17 with the ways that we live our lives and how we treat one
18 another and how we manage ourselves collectively. It has
19 to matter and it has to be useful in doing the work of law.
20 And sometimes that's really, really hard work.

21 And you know, we'll get into this, but it's
22 also thinking about what are the institutions, Indigenous
23 institutions of law? Because law doesn't interpret itself
24 and it doesn't operate by itself. It operates through the
25 institutions that we build, whether it's a family or a clan

1 or other kinds of ways that we work together.

2 **DR. HADLEY FRIEDLAND:** So one of the
3 important parts about starting with those challenges is
4 just acknowledging that there are challenges. And in
5 Canada, sometimes those challenges are used to say, "We
6 can't implement Indigenous law. We can't recognize
7 Indigenous law because of all these challenges." In the
8 United States in tribal courts where Matt Fletcher is
9 working and studying, he talks about the fact that there
10 are tribal courts; there is jurisdiction. And there are
11 issues around jurisdiction, but he says:

12 "We face these same issues."

13 So it's a different approach, saying, "We
14 have the jurisdiction; we have the tribal courts; but how
15 do we face these challenges so we're actually implementing
16 our own laws rather than bringing in state law there."

17 So some of that's about the work and the
18 shifts. And over time we've worked with almost 300
19 community people. We've also worked with lawyers, with
20 judges, with Department of Justice folk. And certain
21 common beliefs often come up about Indigenous laws. And
22 they come from this history; they comes from 300, 400 years
23 of a history where Indigenous laws were talked about a
24 certain way.

25 The first one that's problematic is saying,

1 "Indigenous people were lawless. There was no law here
2 when European people came here." We know that's not true.
3 We don't have a time machine, but it's ridiculous. It's
4 illogical, right? We know that a huge amount is based on
5 that, on that assumption.

6 And we need to turn that and take apart the
7 logic of that and look at what that does both for people
8 that are outside communities and inside communities, to
9 have heard that so often, to be told that "What is law?
10 Law is going to judges; it's going to be police officers
11 looking like this; and law is not necessarily sitting and
12 talking with a group of elders; law is not necessarily the
13 solution the community comes up with to deal with a sex
14 offender." So we need to look at that issue and how strong
15 that still is.

16 Another common belief is that, "Okay, then,
17 we'll just call it 'customary law'." So often when people
18 talk about Indigenous laws they'll talk about customary
19 law. And this is a more subtle form of the same thing. So
20 there's law and then there's custom. And people sort of
21 put it on a different playing field, right? And as Val was
22 saying, the idea that Indigenous Peoples just do, just do
23 things a certain way as opposed to think things through,
24 make decisions, pull from principles, pull from the heart,
25 pull from the spirit to deal with a problem in front of

1 you, right? It's very different. So that's a belief where
2 people can feel stuck seeing it as different.

3 And I think on the other side of the
4 pendulum swing is sometimes, then, it seems like the only
5 way to respond to that denigration, 300 years of dismissal
6 and denigration, is saying, "Well, Indigenous laws are
7 perfect. Everything was perfect before European people
8 came here" or, "All Indigenous laws are scared." And we
9 know there are scared laws and we know that there are
10 sources of sacred. And we're going to talk about that a
11 little bit later.

12 But we want to be cautious and careful
13 because what ends up happening is you start having
14 Indigenous laws set up in a way that no other legal order
15 ever has to face, which is if it's not perfect, it's
16 doesn't exist. Can you imagine that? Like, think about
17 front page news, I don't know, the last time the courts did
18 something that made everyone be stunned in horror. And it
19 was like, "Oh, here's proof that there's no such thing as
20 Canadian law," right? There's no other legal orders that
21 face that. So we want to be really cautious. That's
22 another side of the same coin, where things are either
23 perfect or they don't exist. And we want to say, "No.
24 They're messy and there are good parts and bad parts and
25 wonderful parts and we figure it out," right?

1 So those are just common beliefs that come
2 up as we work through all groups, like within Indigenous
3 communities and with lawyers and judges. We see that
4 through all different types of groups.

5 **DR. VAL NAPOLEON:** So some useful beliefs
6 about Indigenous law.

7 It's tools for social ordering; it's
8 problem-solving; and it's the way that we resolve conflicts
9 and we manage conflicts. And when our legal orders failed
10 or we didn't properly adhere to our own legal orders, we
11 can look at our oral histories and see what happened in our
12 societies during those times.

13 We know that across Canada there are diverse
14 legal orders and that people are adaptable. Like, people -
15 - our ancestors, our relatives -- were pragmatic in terms
16 of ensuring that their children were able to survive in the
17 world. And as Hadley has already said, all law is
18 meaningful; it's messy; and it has to be in practice as
19 well as in theory.

20 So those are some useful ways of thinking
21 about law.

22 Another useful way of thinking about it is
23 that law always operates against a backdrop of disagreement
24 because we're human beings and when we live together
25 there's disagreement. And law is a way of reaching points

1 of agreement against that backdrop of disagreement.

2 We know from our experiences, all of us know
3 this, that our laws didn't go anywhere, but they've also
4 been undermined and there are gaps. And they're not always
5 visible; they're not always evenly functioning across
6 communities or different societies. And we know that
7 they're capable of being revitalized. We know that even
8 after tremendous loss and damage, that communities can
9 rebuild. And we've seen this. And it requires just as
10 much work to work with Indigenous law, to work with
11 Indigenous legal resources and precedent and decision-
12 making as it does with any other system of law. It's not a
13 quick fix. It's something that we undertake together. It
14 requires serious and sustained engagement with Indigenous
15 law to recover it and to learn it and to practice it.

16 **DR. HADLEY FRIEDLAND:** I just wanted to tell
17 a little story, which is just we were working with a
18 community -- and there's no need to name this community
19 because this is an experience that happens. But the young
20 man that was working through their laws -- they wanted to
21 revitalize and write out laws within their community -- was
22 working on it and working on it. And finally he said, "I'm
23 out of time. I don't have any more time." And I said,
24 "I'll take it and work on it a little bit." And I took
25 everything that he had gathered together and wrote up a

1 report to give back to the community, which is what we do.
2 And I sent it to him and said, "Can you have a look and see
3 if this has captured what you found in the stories and the
4 elders."

5 And he read it and he came to see me and he
6 just started weeping and he said, "I didn't see the law.
7 As I was doing this I felt hopeless. I thought we don't
8 have -- it's broken beyond repair in our community." And
9 with the working together in the partnerships and the link,
10 a little bit of outside eyes in that case, he was able to
11 see it in a different way.

12 And that's a hopeful thing to keep in mind
13 because sometimes we do hear that from people, saying,
14 "It's too damaged. It's too destroyed." But we've seen
15 that working together we can make it more visible, right?

16 **DR. VAL NAPOLEON:** The next one's yours.

17 **DR. HADLEY FRIEDLAND:** Okay.

18 So when we're talking about shifts in
19 beliefs, the other thing that comes up often is talking
20 about shifts in our assumptions and questions that we're
21 asking Indigenous laws and that we're approaching this
22 with.

23 So the first shift is shifting assumptions
24 to move past stereotypes. So often both community members
25 and other people are relying on published works from

1 outsiders. They're looking at things from anthropologists
2 or historians who are non-Indigenous. And often there are
3 stereotypes within these materials. So how do you deal
4 with that? How do you navigate that and draw what is
5 useful from that?

6 So this is from John burrows, like, looking
7 at how he deals with that. And the first is saying, "No
8 matter what the author is saying, we know Indigenous
9 Peoples were and are reasoning people with reasonable
10 social and legal orders." If an author from yesterday or
11 today or 100 years ago didn't see that, we need to read
12 their work carefully and listen to them carefully starting
13 from this logical assumption.

14 The other thing is starting with the present
15 tense rather than talking about Indigenous law as something
16 from the past: Indigenous laws "are" helpful, "are" useful,
17 not "were".

18 And the other one is thinking in particular
19 terms. So all law are particular responses to universal
20 human issues. All people, all societies through all time
21 and across the Earth deal with violence and vulnerability.
22 It's part of our human condition. We'll never avoid that.
23 And each Indigenous society, as other societies, have
24 particular responses to those universal human issues, so
25 recognizing the universality of issues and then the

1 particular responses that work within a community, within a
2 society.

3 **DR. VAL NAPOLEON:** One of the ways that it's
4 helpful to get past the assumptions is with different
5 audiences we will suggest that they think about the
6 questions they have of Indigenous law and then to ask
7 themselves would they ask those same questions of Canadian
8 law or American law or South African law. So like, it's a
9 way of getting at some of the assumptions that people may
10 not be aware that they're holding and that they're
11 perpetuating.

12 And the present tense, it's one of the
13 reasons that I avoid the use of the word "traditional". If
14 it's Cree in the past it's still Cree today. If it's
15 Gitxsan in the past, it's Gitxsan today. And the problem
16 with the language of "traditional" is that sometimes it's
17 used to relegate things in the past as if it doesn't exist
18 anymore today. And so it's just paying attention to what
19 are the consequences of the language that we use.

20 And with the third point, it's also the
21 reason that I try and avoid the word "culture". And I use
22 instead the word "society" because our societies were not
23 homogenous. If you look at our oral histories, we took in
24 other people; we took in other language groups. And when
25 we say "culture", it's hard to know what people are

1 including in it. When I think about culture, I'm thinking
2 about legal orders; I'm thinking about political orders and
3 economic orders. And if that's what we mean and what we
4 should mean when we think about culture, then just use
5 "society" because that way we can be sure that we're being
6 understood in the fullness of the terms and not being
7 limited.

8 **DR. HADLEY FRIEDLAND:** I just wanted to say
9 for the Commissioners this is on Tab 2C at page 2 if you
10 want to follow this. And the next slide will be page 3,
11 same tab.

12 **DR. VAL NAPOLEON:** Okay, do you want to take
13 this?

14 **DR. HADLEY FRIEDLAND:** Okay.

15 So the other shifts that we talk about is
16 moving from general to specific. So on the side of the
17 slide that says "From", we're not saying there's anything
18 wrong with what's on the "From" side. We understand that
19 those are the spaces that are allowed and given any space
20 for movement within state justice systems. What we're
21 suggesting is if we're wanting to move to revitalizing
22 Indigenous legal orders outside of those small spaces that
23 the state justice system is allowing time for, we want to
24 switch to get more specific to the two sides. So moving
25 from saying, "What is Aboriginal justice?" -- and I heard

1 that this morning, this pan-Indigenous -- we know there is
2 no such thing as an Aboriginal justice; there are 500
3 societies -- to talking about, "What are legal concepts and
4 categories within this legal tradition?" As Val said,
5 sometimes we do an exercise with students and say, "Can you
6 tell us what Canadian justice is in a page?" Because
7 that's what people sometimes expect from Indigenous justice
8 systems. We need to ask similar questions.

9 Moving from talking about what are cultural
10 values to saying, "What are legal principles?" Rather than
11 just saying, "What are culturally appropriate or
12 traditional dispute-resolution forums," asking, "What are
13 the legitimate procedures for collective decision-making?"
14 If we think about what happened here today this morning,
15 one way of looking at it is you could say, "Oh, this was
16 very culturally appropriate." Or you could say, "There
17 were things that happened this morning that people see as
18 signalling there's something legitimate going on here.
19 There are procedures." And those may mean different things
20 and we need to interrogate them. But we want to be aware
21 of that.

22 So the overall shift is moving from saying,
23 "What are the rules; what are the answers" to, "What are
24 the legal principles and legal processes for reasoning
25 through issues?"

1 When I first started law school, before I
2 had taken anything I really, honestly thought I was going
3 to get a rule book. I had been a youth worker for many
4 years and I came later in life to law school, and they were
5 showing us how to do different things and I kept being
6 like, "This is nice. Like, I get this is like a little
7 exercise, but where is the book of rules?" And it took me
8 most of my first year in law school to realize we weren't
9 getting any book of rules. "And what's the answer? Can we
10 have a little bit -- this is not --" but just asking
11 people, "What's the answer when you ask a lawyer any
12 question about anything?" It depends. That's the answer
13 you get. And people get aggravated at lawyers, but lawyers
14 know there are very rarely straightforward rules or
15 answers, right? It does depend because what lawyers are
16 trained in are the principles and processes to think
17 through the issue. And that's where we need to get to when
18 we're talking about Indigenous laws.

19 **DR. VAL NAPOLEON:** So chapter two of
20 "Canada's Indigenous Constitution" written by John Burrows
21 is about sources of law. And he says there are at least
22 five sources of law. And if we were doing this in a full
23 workshop here, what we would have is descriptions of each
24 of the sources and examples, and then we would have a
25 number of questions that you would consider. So we won't

1 be able to go into quite so much detail, but there are
2 materials provided in the packages at Tab 2C, page 4 and 5.

3 So sacred -- we know that, as Hadley has
4 referred to and others have as well, there are laws we
5 understand as sacred. One of the questions we would ask
6 about that is just to think about how we manage the sacred
7 in the everyday so that we can see that how we negotiate in
8 the world and the different ways that we hold those
9 understandings and that way of being.

10 Natural law is also a source of law and John
11 Burrows gives examples of his mother watching butterflies
12 and milkweed. And she would observe that there would be
13 fewer butterflies if the milkweed -- if the land wasn't
14 being taken care of. So she was drawing lessons about
15 that.

16 And different Gitksan and Wet'suwet'en
17 witnesses in the title court action of *Delgamuukw* talked
18 about a giant grizzly bear that came down the mountain,
19 causing a landslide. And when you look at the oral
20 histories and what people were doing, they were theorizing.
21 They were creating meaning. They were recording
22 significant events that would matter to future generations.
23 And so those are all using nature, learning from nature.
24 And one of the questions we would ask is, "Why is it
25 important to think about that which is ugly in nature as

1 well as that which is beautiful?" So we have to think
2 about the whole range of what goes on in the natural world
3 around us.

4 There's positive law and this is the way
5 that most state law is understood. We see law as coming
6 from an authority that is a legitimate authority. And one
7 of the things that we would ask is, "What's the
8 difference," or, "Can you think of when you adhered to a
9 law either out of fear or out of understanding that law as
10 being legitimately authoritative over your life?"

11 And in our societies we also had positive
12 law. We had different ways of understanding authority and
13 when that authority was legitimate.

14 There are examples of customary law within
15 the common law system in Canada. One of the examples that
16 Hadley liked to give is if you write a contract -- I'm not
17 sure if this is true but she says it is -- if you write a
18 contract on the side of a cow, it's a legitimate contract.

19 **DR. HADLEY FRIEDLAND:** I think that's true.

20 **DR. VAL NAPOLEON:** That's her argument.

21 **DR. HADLEY FRIEDLAND:** Lawyers in the room?

22 **DR. VAL NAPOLEON:** But there's also
23 deliberative law, when we collectively draw on our legal
24 resources and precedent and history and understandings of
25 problems. And we do a lot of this in community work where

1 we'll have people drawing on the precedent in their
2 histories.

3 One of my favourite examples is in a small
4 community in northern BC where a young woman -- sorry -- we
5 were reviewing an oral history. We were looking at an oral
6 history and it involved a kidnapping of a Haida chief. And
7 that chief was in custody when he died. And when he died,
8 the Gitksan people made sure that he was honoured properly
9 as a chief should be honoured and he was buried with all of
10 the protocols that were necessary for his rank.

11 And there was a young woman. She was maybe
12 about, you know, 20 or so and she was in this large group
13 of people, like a room a little smaller than this one. And
14 she was saying, "Wait a minute. I don't get it. So he was
15 kidnapped and then he died and they buried him as a chief.
16 I don't get it. Why is this an important story?" And what
17 happened was that all of the different people in the room
18 started to talk about the different legal principles,
19 started to talk about authority, started to talk about
20 decision-making, started to talk about economic relations
21 with the Haida. So there were all of these different
22 things involving internal legal relations and political
23 relations and economic relations, as well as international
24 relations with other Indigenous Peoples. And what that
25 was, was she was given an opportunity to learn through

1 questioning and people responded to that. And what they
2 were doing was, in those interactions with one another,
3 creating legal knowledge, building on resources from the
4 past but making sure that happened in the present day so
5 that it was capable of dealing with present day kinds of
6 problems.

7 **DR. HADLEY FRIEDLAND:** So I wanted to
8 clarify my contract on a cow statement for customary law.
9 My point is that it's customary to have contracts on paper,
10 and that there's probably nothing that would make the
11 contract unenforceable if it was written on the side of a
12 cow, but it's not custom. So there's things that we
13 consider legitimate, right, that seem to make sense and
14 signal that things make sense.

15 I just needed to clarify that because it's a
16 public record.

17 **DR. VAL NAPOLEON:** So we have a two-minute
18 video.

19 **DR. HADLEY FRIEDLAND:** Yeah. Can I quickly

20 ---

21 **DR. VAL NAPOLEON:** Yeah, go ahead.

22 **DR. HADLEY FRIEDLAND:** Okay. And so when we
23 look at these five sources, the other thing John Borrows
24 does say is, he said,

25 "It's like all other legal systems.

1 There's usually more than one source of
2 law at play."

3 So one way to look at these is how people
4 draw authority, and he's saying there's usually more than
5 one. When you look at almost any decision, you would see -
6 - maybe you would see sacred and natural. Maybe you would
7 see customary and positive together. And we would see that
8 if we broke down Canadian state legal decisions as well.

9 But he also says,

10 "Approximate or nearest source of all
11 law is deliberative."

12 In the end, there are people that interpret
13 that are looking at what's happening and making a decision.
14 So that's an important piece too.

15 **DR. VAL NAPOLEON:** Okay.

16 **MS. CHRISTA BIG CANOE:** Did you want the
17 video before the lunch break or after, and is that a good
18 (inaudible)?

19 **DR. VAL NAPOLEON:** Why don't we do it after?

20 **MS. CHRISTA BIG CANOE:** Okay. Instead of
21 actually having the video prior to the lunch break, I'm
22 going to suggest to the Chief Commissioner and
23 Commissioners that we take a one-hour lunch break, and when
24 we come back in one hour that we start the video and that
25 Dr. Friedland and Dr. Napoleon can contextualize the video.

1 DR. HADLEY FRIEDLAND: Okay.

2 MS. CHRISTA BIG CANOE: Thank you.

3 DR. HADLEY FRIEDLAND: Is it one hour?

4 MS. CHRISTA BIG CANOE: So at 2:10.

5 DR. HADLEY FRIEDLAND: At 2:10?

6 MS. CHRISTA BIG CANOE: Resume at 2:10.

7 Thank you.

8 --- Upon recessing at 1:10 p.m./

9 L'audience est suspendue à 13h10

10 --- Upon resuming at 2:27 p.m./

11 L'audience est reprise à 14h27

12 MS. CHRISTA BIG CANOE: Good afternoon.

13 Good afternoon, Chief Commissioner, Commissioners.

14 Before we actually -- but while it's still
15 on the record, please -- before continue the evidence of
16 Dr. Napoleon and Dr. Friedland, I would like to announce
17 some schedule changes. And that's just to accommodate
18 opportunities for cross-examination.

19 So we are going to continue for the next
20 hour with the two witnesses before us, and then we are
21 going to have Tuma Young, who is another witness, do his
22 examination-in -chief and cross-examination, and that will
23 conclude today at 5:00.

24 And tomorrow morning, we will actually ask
25 to recall both Dr. Napoleon and Dr. Friedland so that the

1 parties withstanding can do their cross-examination and we
2 can provide a reply.

3 Then we will have the Panel as anticipated
4 at 11:30 with Sandra Omik and Kanuk Muk Palu (phonetic).
5 And at 3:30 p.m. we will have Dawnis Kennedy, who was
6 originally scheduled for 9:00 a.m. in the morning.

7 And so I just wanted the record to show the
8 change in schedule just so that we can accommodate the
9 opportunities to have full testimony and cross-examinations
10 as originally planned.

11 **CHIEF COMMISSIONER MARION BULLER:** Those
12 changes are agreeable. Thank you.

13 **MS. CHRISTA BIG CANOE:** One more time,
14 sorry.

15 **UNIDENTIFIED SPEAKER:** Could you repeat it
16 for the record?

17 **CHIEF COMMISSIONER MARION BULLER:** Those
18 changes are agreeable. Thank you.

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

20 And at this point, I would ask that we have
21 the PowerPoint presentation put back up -- oh, the video,
22 sorry, the video. My apologies. And I will ask --- can
23 you please pause? Can you please pause? Sorry, can you
24 please pause and put it back to the beginning?

25 **UNIDENTIFIED SPEAKER:** Yes, sorry.

1 **MS. CHRISTA BIG CANOE:** And sorry, I would
2 ask that one of the two please provide us a description or
3 information about the video we're about to watch.

4 **DR. HADLEY FRIEDLAND:** Thank you.

5 So if you recall, right before lunch we
6 talked about sources of law and we talked about five
7 sources of law. We talked about sacred, natural,
8 customary, positivistic, and deliberative. And we talked
9 about that often there is more than one source of law.

10 So one of the ways we engage with Indigenous
11 law -- and I think both of us were taught how to engage
12 with Cree law by Cree elders in Northern Alberta and BC --
13 was to think it through. So very often, when I would be
14 interviewing, I would be talking and then the elder would
15 turn around on me and say, "Okay, what about this
16 situation? You apply it."

17 So we thought we would bring some of that
18 into our presentation. And we're going to ask you to watch
19 this short video and think through those sources of laws.
20 What sources of law can you identify in this video?

21 Now, this is a video that's public. It's on
22 YouTube. People have chosen to do that, so we're not
23 taking something that is -- that shouldn't be shared.

24 And this is a video deliberately based in
25 the Navaho nation that you might have heard. And one of

1 the reasons for that is, we're assuming -- and we could be
2 wrong -- that nobody here knows Navaho law. And we're not
3 asking you to be experts on Navaho law, but to approach
4 this, thinking about what thinking about sources of law can
5 help for that initial engagement with a legal order I'm
6 going to assume none of us know anything about.

7 So we'll watch it. It's about two minutes.
8 And as you're watching it, think of that question: what
9 sources of law do you see being drawn on in this video?

10 **--- VIDEO PRESENTATION/PRÉSENTATION VIDÉO**

11 **DR. HADLEY FRIEDLAND:** We can put back up
12 the PowerPoint to that sources of law.

13 So issues we're familiar with. But sources
14 of law, not being experts on Navaho law but thinking about
15 those sources, can people identify what sources of law were
16 being drawn on?

17 **UNIDENTIFIED SPEAKER:** Natural law.

18 **DR. HADLEY FRIEDLAND:** Natural laws, yeah.
19 We heard that. The storms were being -- yeah.

20 Any other sources of laws that people saw in
21 that video?

22 **UNIDENTIFIED SPEAKER:** Customary.

23 **DR. HADLEY FRIEDLAND:** Customary? Okay.
24 It's -- this is the way it's always been done. Yeah.

25 **UNIDENTIFIED SPEAKER:** Deliberative.

1 DR. HADLEY FRIEDLAND: Deliberative, yeah.

2 They're discussing they're getting ready for the election.

3 Any other sources of law?

4 UNIDENTIFIED SPEAKER: Positive law.

5 DR. HADLEY FRIEDLAND: Positive.

6 UNIDENTIFIED SPEAKER: (Inaudible) important
7 whether or not (inaudible).

8 DR. HADLEY FRIEDLAND: Yeah, absolutely.

9 MS. CHRISTA BIG CANOE: Sorry, can we just
10 repeat that so it's on the record?

11 DR. VAL NAPOLEON: Okay, repeat it.

12 UNIDENTIFIED SPEAKER: Positive law, in that
13 they were questioning the legitimacy of an authority.

14 DR. VAL NAPOLEON: Yeah, just you repeat it,
15 Hadley.

16 DR. HADLEY FRIEDLAND: I needed to ---

17 MS. CHRISTA BIG CANOE: Just repeat it,
18 yeah.

19 DR. HADLEY FRIEDLAND: I need to repeat it?
20 Oh, sorry. So positive law that they're questioning the
21 authority of the way things are done?

22 DR. VAL NAPOLEON: Yeah.

23 DR. HADLEY FRIEDLAND: And this isn't -- I
24 mean, we're not experts on Navaho law and we're doing this
25 respectfully, right? We're identifying the sources of law

1 that we see.

2 So we see that actually, in that video,
3 almost all the sources of law are being drawn on, right?
4 And so we get to that step where we can say, "We don't know
5 anything about --" now, someone might come up to me
6 afterwards and say, "Actually, I know a lot about Navaho
7 law," and it'll be great to talk to, but just for starters,
8 we can say we can indeed and start to understand a little
9 bit by identifying sources of law that are being drawn on
10 for authority.

11 So here is the second question that we ask
12 you and that we ask when we're doing this in community or
13 when we're doing this for professional development.

14 What other interpretations? Let's take
15 natural law or sacred law, and the elder's statement about
16 the weather indicating something. What other
17 interpretations can you think of, just yourself, of what
18 that weather could mean? Because law does not interpret
19 itself; we interpret it.

20 **UNIDENTIFIED SPEAKER:** It indicates that
21 it's time for (inaudible).

22 **DR. HADLEY FRIEDLAND:** So the storms -- so
23 the storm, sacred and natural sources could be indicating
24 that it's time for a change. That could be an
25 interpretation of that weather.

1 Other ideas?

2 **MS. CHRISTA BIG CANOE:** And if might, just
3 for the record, if we could have the expert who's actually
4 testifying repeat the -- what she's hearing, that that
5 would be helpful because it's also the opinion of the
6 expert that's the evidence and not people's responses. And
7 so if you could reiterate what you're deriving from their
8 responses, that would be helpful.

9 **DR. HADLEY FRIEDLAND:** I can do that,
10 acknowledging I'm not an expert on this law, and I'm not --
11 these are not authoritative interpretations.

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

13 **DR. HADLEY FRIEDLAND:** Okay. So the weather
14 is speaking in this. What other interpretations? We have
15 a couple?

16 **UNIDENTIFIED SPEAKER:** Another way of
17 looking at the rain is that the rain is there to wash out
18 and cleanse the bad things that have been happening in the
19 community.

20 **DR. HADLEY FRIEDLAND:** The storms and the
21 rain could be there to wash out and cleanse what's
22 happening in the community. Yeah, that's a plausible
23 interpretation, right?

24 **UNIDENTIFIED SPEAKER:** Could be entirely
25 unrelated to the election and maybe Mother Nature is

1 saying, "You need to take better care of me."

2 **DR. HADLEY FRIEDLAND:** It could be
3 completely unrelated to the election. It could be Mother
4 Nature is saying, "Take better care of me." In some
5 communities, people have said it could be climate change,
6 it could be like, El Nino. It could be things that are
7 going on that way. That's right.

8 Well, it's not about it being right. It's
9 that it's a reasonable interpretation, right?

10 So -- and the other thing that we saw was
11 the epidemic of violence against women and murder being the
12 third leading cause of death. That's also a plausible
13 interpretation.

14 **DR. VAL NAPOLEON:** And the uranium mining.

15 **DR. HADLEY FRIEDLAND:** And the uranium
16 mining. So these are all -- when we talk about this video
17 in community with -- in professional or community settings,
18 these are all reasonable, plausible interpretations people
19 can come up with.

20 So the first question is, what is the source
21 of law? What's the authority people are drawing on? But
22 again, law does not interpret itself, and we have to keep
23 in mind that people thinking and deliberating is how the
24 hard work of law is done, all law. And so we always need
25 to be thinking of that second step.

1 And sometimes when we talk in communities,
2 we'll say, "So what happens if you walk into a community as
3 an outsider and the elder says what he says and you smile
4 and nod and it's left at that?"

5 What about Belinda Lovejoyce (phonetic)?
6 What's happening with them? And we need to be conscious
7 that we need to hear lots of voices and we need to be
8 having conversations about interpretation when we're
9 engaging with Indigenous laws, just like we engage with all
10 laws.

11 And we can do it respectfully. If we walked
12 in and said, "Oh --" and we've heard this too -- if someone
13 walked in and said, "Oh, the weather, (inaudible)," you
14 know? They don't understand that source of law at all and
15 just dismiss it, we're not going to have a conversation,
16 right? But we can acknowledge that respectfully and then
17 we still need to do that work.

18 **DR. VAL NAPOLEON:** And one of the troubles,
19 of course, is where you leave statements and there's no
20 space for the deliberation and the conversation is that
21 then they become unquestioned truths. And they can become
22 oppressive, like, to the women in the shelter. And so part
23 of the work is making the legal reasoning and the thinking
24 absolutely transparent.

25 And the other thing is saying where you

1 learn something from because what's important is that other
2 people -- if I say, "Well, I learned that from the Wolf
3 Crest (phonetic) story from over on the Nass Valley, other
4 people need to go to that Wolf Crest Story and say,
5 "Actually, I have a different interpretation than you. My
6 experience with that is a little different."

7 And so then we can have a conversation about
8 the different interpretations rather than me simply making
9 a declaration, because law, fundamentally, is
10 collaborative. It's what human beings do together. It's
11 not what one person -- whether -- says it is. It's out, it
12 comes from a process that's legitimate to the people that
13 are participating.

14 And it's time for another lawyer joke. So
15 you know the old saying, if you get two senior lawyers in a
16 room, how many opinions do you have? Five. At least
17 three, but close to five.

18 And we need to start thinking that way in
19 terms of Indigenous law as well. When you have experienced
20 practitioners, it's a -- it makes a lot of sense if you
21 have more than one interpretation of.

22 Yeah. Okay, so we made a shift earlier
23 about the ways of thinking about Indigenous law. And this
24 is another shift. And what we've found was that the way
25 that we thought about gender and sexuality with Indigenous

1 law had to change in order that we -- when we worked with
2 it, we didn't just perpetuate unquestioningly systems or
3 practices which in and of themselves could be understood as
4 gendered or oppressive.

5 And so again, it's moving from general
6 questions to asking specific questions. And so instead of
7 saying, "What are the traditional gender roles?" as if they
8 always have to be that way and always were unchanging in
9 the past, we look at how do our understandings about gender
10 and sexuality today shape the way that we work with law and
11 shape our legal interpretations?

12 And instead of focusing on what are the
13 cultural values -- and again, it's not that these are
14 unimportant, but if you want to get at the deeper
15 understandings of law and have deeper conversations, it's -
16 - we have to go beyond that. And so instead of looking at
17 cultural values about gender or sexuality or sexual
18 orientation, we can look at legal principles and we can
19 look at how they could include fairness or safety or
20 inclusion. So how do the legal principles guide our
21 decisions and the work that we do?

22 Similarly, instead of asking, what are
23 the culturally appropriate definitions, we can, instead of
24 looking at what's culturally appropriate to treat
25 Indigenous women and girls, we look at, what are the

1 assumptions that are being made about Indigenous women and
2 girls? How do -- if we gender the legal subjects into
3 different categories, how does that categorization change
4 or influence how all of us, as legal agents, engage with
5 law?

6 And so it's a way of getting at the
7 assumptions that underlie how we think about gender and
8 sexual orientation and sexuality.

9 There is an overall shift, which is, instead
10 of asking, what are the laws about gender and about
11 sexuality and orientation -- which again, suggests that
12 because the law existed at a certain point in history,
13 they've always been that way and they've never changed;
14 it's a static way of understanding law, which is always
15 changing -- we ask, what are -- how are the Indigenous laws
16 gendered?

17 And so for example, if we ask -- if we look
18 at who are people in a community affected by housing, and
19 we look at women who are single mothers with children, they
20 are going to be affected differently by the housing laws
21 than their male counterparts are.

22 So it's just thinking about how are people
23 going to experience the laws and being cognizant of
24 different kinds of dynamics in our communities? Because
25 just as Canadian law is a part of all of the political

1 dynamics in Canada, Indigenous law is a part of our
2 political dynamics, locally and regionally, provincially,
3 and nationally.

4 So instead of looking at recreating a gender
5 balance by only looking at the practices of the immediate
6 past and looking at restoration, we look at, how can
7 deliberative approaches be used to promote ways that aren't
8 oppressive, ways that are inclusive, and ways that are
9 anti-Colonial?

10 So it's a shift, in terms of how we look at
11 the stories, how we listen, and how we -- the expectations
12 that we have about Indigenous law.

13 And I was reminded to mention that the
14 ravens that are a part of this slide show are painted --
15 that I painted them, that they're Indigenous trickster
16 grandmothers, and we -- I understand the tricksters as
17 being the first law teachers. And so these are old women
18 here, who are performing the work of law, because that's
19 what they do.

20 **DR. HADLEY FRIEDLAND:** And that one on the
21 bottom always me think of Val, Dr. Napoleon.

22 So we're going to turn a bit now and talk of
23 -- go back to when we talked about those challenges and
24 talk about the challenge of accessibility right now. And
25 one of the issues that comes up when people say, "Okay,

1 we're -- we want to implement our own Indigenous legal
2 traditions. We're going to make this happen in our
3 community."

4 Or from the government, someone says, "Okay,
5 we're ready. Let's do this. Just show us a textbook. Get
6 the legal database out so we can understand the law."

7 And that doesn't exist right now. That's
8 not possible. It's not so easy. If you want to learn
9 about the law of contracts in state law, you could go to a
10 library and there would be walls and walls of books about
11 contracts. Or you could look at a legal database. But
12 Indigenous laws, that's not the case.

13 So one of the things that we want to talk
14 about that's distinct from sources -- so sources is the
15 authority where law flows from -- are resources. Where do
16 people turn and -- to learn Indigenous laws? And we have a
17 list here, and also on Tab 2C, page 6, there's another
18 list. And we're not going to go through them except to say
19 that there are many -- as we started going through and
20 saying, "Okay, what are Indigenous legal scholars drawing
21 on? What do people in community draw on?" -- that there
22 are many that are available.

23 **DR. VAL NAPOLEON:** I changed it.

24 **DR. HADLEY FRIEDLAND:** Oh, you changed it?
25 Oh, look at that.

1 And so the issue with some of these are, at
2 this point in time, at this point in history, after 300
3 years of colonization and violence, we have an issue where
4 there are some resources to learn Indigenous laws that
5 require a really deep inherent knowledge and almost full
6 cultural immersion. These are resources like ceremony,
7 like language, that people begin learning as young children
8 and they're a lifetime. And these are really important
9 resources. And we know that at this point in history,
10 they're the least available and least accessible.

11 So I'm very, very fortunate and full of
12 gratitude to have had 25 years learning from elders, but I
13 don't think for a minute that should mean -- I know how
14 rare that is and I'm aware of so many Indigenous people
15 that do not have that, for reasons that are far beyond
16 anyone's control, right?

17 And so we need to acknowledge that, that
18 it's perceived as the most ideal and legitimate, and it's
19 really worthwhile. And lots of people are doing work to
20 rebuild and broaden those experiences, but it is the least
21 available and accessible.

22 And the next are resources that require some
23 community connection or access. And this is usually
24 considered the next best ideal or legitimate. And again,
25 this is limited availability and accessibility. And there

1 are challenges with this. So listening to oral histories,
2 following around elder and helping them, that's a beautiful
3 way to learn Indigenous laws, but that's not always
4 possible.

5 And we've worked with many Indigenous
6 students that will sit and tell us, "I want to learn about
7 my Indigenous laws," but for many reasons again, beyond
8 their control, they don't have access to a community, or
9 the community is really struggling with lots of issues.

10 And the third are resources that are
11 publicly available, and these are perceived as the least
12 ideal and legitimate, for good reason, but are the most
13 available and accessible. So we don't have law text but we
14 sometimes have textbooks from legal anthropologists or
15 historians, outsiders that have written, and we talked
16 about that a little earlier, navigating through those
17 materials. Sometimes we have collections of stories that
18 are called "folk tales", right, or myths, but we can draw
19 on them.

20 So the issues that we face today that we
21 have to look seriously at if we want to be accessing,
22 understanding, and applying Indigenous laws is this
23 question of, how do we work with this? How do we work with
24 this quandary that -- of availability and legitimacy?

25 **DR. VAL NAPOLEON:** So we have a number of

1 different methods of engagement, and what we're going to be
2 drilling down and spending time with you on is one method
3 of working with oral histories or stories.

4 And so the different kinds of methods, you
5 know, we have Dawnis Kennedy here, for instance, who's
6 worked with art, as well as other people. John Borrows is
7 teaching four land-based Indigenous law courses in -- this
8 September in Ontario. There's looking at law in ceremonies
9 that people have done. There's also learning law through
10 language, and Matthew Fletcher is doing that, as well as
11 Christine Zuni Cruz in the U.S. There's looking at stories
12 as cases.

13 So there's different processes that people
14 have developed in order to learn and share, learn and teach
15 the different ways of working with law.

16 So we look at stories as jurisprudence, and
17 understand that, like, in any community there will be many
18 versions of a story, and so that we have to draw on all of
19 those different versions.

20 And one of my favourite quotes is this one
21 here, which is:

22 "If people nourish a story properly, it
23 tells them useful things about life."

24 And so the question you ask the story is
25 what you're going to learn about for the -- you know, in

1 your research.

2 And it's similar to Canadian law. You don't
3 -- you can ask, you know, the Canadian cases, which are
4 stories; they're just a different way of telling a story.
5 You can ask at different areas of law. *Delgamuukw*, for
6 instance, a title court action, has 30 or more different
7 areas of law within the one case.

8 So you can use the same stories for family
9 law, for governance, for lands. It depends. It depends on
10 the stories. But Indigenous law has the full breadth and
11 scope of any legal order, so it covers all aspects of human
12 life and management.

13 **DR. HADLEY FRIEDLAND:** So we want to talk --
14 we talked about that lots of people are engaging using
15 different methods. And I think our argument is saying,
16 methods for engaging with Indigenous laws need to be
17 transparent and they need to be rigorous, whatever they
18 are.

19 We have -- we say, "Cite your work, show
20 your sources. If it's a dream, if it's an elder, if it's a
21 textbook, we want to know." But they're all legitimate
22 resources.

23 We want to talk -- we're going to go through
24 an example of one method, which is the method we have been
25 using at the Indigenous Law Research Unit. And it's

1 adapting law school methods and simply saying -- John
2 Borrows has this quote here saying,

3 "There's no escaping the need for
4 organization in presenting thought and
5 representing action within Indigenous
6 and linguistic worlds."

7 So saying whatever method and whatever
8 resources people are using, we -- if we're going to apply
9 law, if it's going to be something that communities and
10 societies are going to have their citizens be agents of and
11 be applying to things today -- we need some sort of
12 integration. And I think it's important -- it is important
13 to have transparent and rigorous methods.

14 And when we bring in law school method, it's
15 about supplementing and supporting; it's not about
16 supplanting traditional methods. And in fact, when we
17 worked on the AJR project, which was a national project
18 with seven communities across Canada, all of our students
19 started with a law school method. They worked hard before
20 they went into the community. And once they were in the
21 community, they started learning other -- through other
22 methods. And in fact, they found that it enhanced their
23 learning, that they were coming in with a little bit of
24 knowledge, sort of like law students go into their
25 articling year. They had a little bit and they were able

1 to have the experiences, and things made more sense.

2 And in practice, we're going to -- we want
3 to walk you through an example. And we want to stress that
4 in practice, it is perceived as respectful and hopeful.
5 When we work with communities, the biggest feedback we get
6 is, "be more, do it longer, we want more of this. This is
7 what we need to stand up our laws." On the west coast,
8 that's -- they say "to stand up our laws."

9 And it leads to substantive results. We
10 have reports that are 30 pages, 70 pages, that people are
11 implementing into their governance processes.

12 **DR. VAL NAPOLEON:** Yeah. So it's getting
13 past the "what ifs" or "law by declaration" and looking at
14 law substantively in practice.

15 So the method that we're using, which was
16 largely developed by Hadley, involves working with a
17 community to identify the research question. So we work
18 with water law, we work right across the spectrum. That's
19 the first phase.

20 The second phase is bringing that research
21 question to the available stories or the descriptive
22 accounts. We have interviews, focus groups, different
23 kinds of gatherings of people where there's a legal
24 analysis that is going on. and then for each law report,
25 whether it's lands or whatever; like, Hadley mentioned 70

1 pages. One of -- several reports are closer to 300 pages,
2 which -- because they include a case book. They include
3 the stories that were analyzed. And so we synthesize all
4 the analysis from the stories into a framework, and that
5 framework then is what people can use. That law report,
6 people can use to apply to the questions that they're
7 struggling with, that they're working with, whether it's
8 governance or so.

9 And then the intent is not that the law
10 books stand as law books forever, but that people decide
11 new decisions and then add to the documents and build the
12 legal resources that they have through actual practice.

13 **DR. HADLEY FRIEDLAND:** So we want to just
14 walk you through, quickly, a small example of this. So we
15 have a case brief up here and we want -- we do this with
16 communities, we do this with lawyers, we do this with
17 judges. And I'll just be honest and say the people who are
18 best at this are people from communities. It's always
19 true. They always out-analyze the law students and the
20 lawyers.

21 So -- and if you look on -- okay, Tab 2D, we
22 have the story of Sioux Woman. And I thought I would read
23 out the story of Sioux Woman because this is something --
24 this is a very small taste of how we would start looking at
25 this.

1 And it's actually not unusual. Sometimes
2 we'll tell our students, "If you go into a community -- if
3 you're a lawyer and you get a call, 'Okay, we want to start
4 our justice system' and you go in and sit down to talk to
5 elders, it wouldn't be unusual that an elder might, in
6 response to your question, tell a story like this.

7 But what often happens when, let's say, a
8 lawyer comes in to do that, they hear the story and they're
9 like, "Okay," and they don't know where to go next. So
10 we're sort of moving past that. So I'll read it?

11 **DR. VAL NAPOLEON:** M'hm.

12 **DR. HADLEY FRIEDLAND:** So I'll read this
13 little story. This is -- it's a short little story from a
14 published collection, and it's called "Sioux Woman".

15 "An old Cree man who was a powerful
16 Shaman heard Sioux Woman laughing one
17 day.

18 "He got mad because he thought she was
19 making fun of him. He cursed her, and
20 although she did not hear him, she
21 became 'sick and crazy' before
22 Christmas, and began to turn into a
23 *wetiko*. Her children grew scared of
24 her.

25 "When Sioux Woman's mother saw she was

1 beginning to become a *wetiko*, she
2 attempted to cure her daughter. While
3 she worked to heal her, 'all the
4 children were taken away, and some of
5 the grown people went away too. Only a
6 few stayed there to watch her.' When
7 her daughter is cured 'her
8 grandchildren all came home, and they
9 lived happily after that'. The Shaman
10 died within four days of the Sioux
11 Woman being cured, and everyone was
12 relieved."

13 So there are some people who would have been
14 deeply immersed who could say, "Yeah, I get -- that makes
15 total sense. Let's move from that story or here's another
16 story."

17 But part of this method is to slow things
18 down and think things through. So if we went through this
19 story using a case brief analysis -- and in law, sometimes
20 issue spotting is big, but just for the interest of time,
21 I'll give an issue and then we'll work it through -- so if
22 we say the issue is how is it best to respond to someone
23 becoming dangerous to those who are vulnerable around her?
24 If that's the issue, the main human problem, again,
25 universal human problems, particular responses?

1 Someone want to give it a try? What facts
2 indicate that ---

3 **DR. VAL NAPOLEON:** Why don't you go through
4 the facts and then ask them about the decision?

5 **DR. HADLEY FRIEDLAND:** Okay, so -- well,
6 let's say if we went through the facts -- and remember,
7 we're going to put aside the Shaman right now because we're
8 going to focus on this issue -- and we might say, "Okay, so
9 what facts matter? There was a Shaman that cursed Sioux
10 Woman. Sioux Woman was beginning to act differently; the
11 wording in the story was "sick and crazy". We might
12 decide, because we choose, that we don't want to use those
13 -- that language, but we can assume that she's disturbed.
14 Her mother is becoming worried. People are noticing that,
15 that she might be dangerous to her children."

16 So taking those facts, what is decided?
17 Like, how is that resolved within this story?

18 Her mother attempts to cure her.

19 Sorry, were you going to say something too.

20 **UNIDENTIFIED SPEAKER:** (Inaudible) be
21 involved in her family.

22 **DR. HADLEY FRIEDLAND:** Yeah, the family is
23 involved. The mother attempts to cure her. What else
24 happens?

25 **UNIDENTIFIED SPEAKER:** The children are

1 taken away, but don't know who takes them away, whether
2 that's part of the family's caring or whether it's some
3 other authority.

4 **DR. HADLEY FRIEDLAND:** That's right. So the
5 children are taken away, and we don't know by who or where
6 or for how long, but we know that they are taken away while
7 she's being cured, yeah.

8 **UNIDENTIFIED SPEAKER:** Need to use the mic
9 for the translation for people who are listening in French.

10 **DR. HADLEY FRIEDLAND:** Oh, we need to use
11 the mic. People need to use the mic ---

12 **UNIDENTIFIED SPEAKER:** Translation, yeah.

13 **DR. HADLEY FRIEDLAND:** --- for translation;
14 that makes sense, okay.

15 So again, this is the smallest taste, right,
16 like, just a little taste, but already we can start to see
17 principled responses happening here. The family is
18 involved. Her mother is helping her heal. The children
19 are removed. We -- and we start to have questions for how
20 long, by who.

21 One -- another question sometimes people
22 have is, What happens if the mom didn't know how to heal
23 her? What would happen?

24 So you would start to develop other research
25 questions because this is just one story and you would

1 never say you could understand Canadian law if you just
2 read one case, right? So we can't understand Cree law
3 through one story, but we start to see a little bit more.

4 And the next area is really important, which
5 is, what is the reason behind this decision or resolution?
6 Is there an explanation in the story, or could it be
7 unsaid? So this story was important enough to be passed
8 down and an elder chose to ask somebody to record it. So
9 they saw this as very important.

10 So again, using a humble heart and being
11 okay with being wrong, what could possibly be a reason for
12 those responses?

13 **CHIEF COMMISSIONER MARION BULLER:** I think
14 one of the important -- okay, the important message was the
15 need to get involved, but to get back together.

16 **DR. HADLEY FRIEDLAND:** So people needed to
17 be involved, and can you unpack that a bit more? How did
18 they get involved?

19 **CHIEF COMMISSIONER MARION BULLER:** The
20 different roles.

21 **DR. HADLEY FRIEDLAND:** How did they get
22 involved?

23 **CHIEF COMMISSIONER MARION BULLER:** The
24 different roles.

25 **DR. HADLEY FRIEDLAND:** Okay.

1 **CHIEF COMMISSIONER MARION BULLER:** Some
2 people had to be there. Some people had to go away ---

3 **DR. HADLEY FRIEDLAND:** Yeah.

4 **CHIEF COMMISSIONER MARION BULLER:** ---
5 because that was what was needed for the resolution for the
6 healing.

7 **DR. HADLEY FRIEDLAND:** Okay.

8 **CHIEF COMMISSIONER MARION BULLER:** But that
9 end goal being to get back together.

10 **DR. HADLEY FRIEDLAND:** M'hm. So in order
11 for Sioux Woman to come back together with her children,
12 what needed to happen? What did that involvement need to
13 entail, because were they willing to have her come back
14 together in the state she was in?

15 **COMMISSIONER QAJAQ ROBINSON:** There was a
16 need for change.

17 **DR. HADLEY FRIEDLAND:** Yeah, and safety,
18 right?

19 **COMMISSIONER QAJAQ ROBINSON:** M'hm.

20 **DR. HADLEY FRIEDLAND:** There was a need to
21 make sure the vulnerable were safe.

22 **COMMISSIONER QAJAQ ROBINSON:** Yeah.

23 **DR. HADLEY FRIEDLAND:** Yeah. Okay.

24 **CHIEF COMMISSIONER MARION BULLER:** I think
25 that one of the reasons for what happened was that the

1 mother believed that the Sioux Woman could be cured of her
2 affliction, and it was that hope or that confidence that
3 caused her to start her process.

4 **DR. HADLEY FRIEDLAND:** M'hm. So really
5 important, right? So a plausible reason could be that the
6 mother believed that Sioux Woman could be cured, and
7 believed in her own capacity to help with that healing,
8 yeah.

9 So we could -- and we have -- spent half a
10 day on this story. It's a rich story. I've done this
11 story in a Cree community. People, within five minutes,
12 identified six issues, explained things I had no idea
13 about. So people with expertise can take a story like this
14 and talk to us for three days about it.

15 If we're just learning, if we're just
16 starting to engage, this is one structured way to really
17 respectfully and productively engage, to start pulling out
18 and understanding things that can be applied today.

19 I wanted to just briefly talk about
20 bracketing. One of the things that we do is say, "What do
21 you need to bracket in this case? What may you -- maybe
22 there are some things you don't understand in this story.
23 Maybe there's things you don't agree with." But you can
24 still go ahead and figure the rest out, and what you can
25 end up with is some great research questions.

1 For instance, the question that I said was
2 asked us, "Well, what happens if the mom didn't know how to
3 heal her?", that could become a bracketed question. And as
4 you go through more stories and are talking to elders and
5 are reading interview transcripts, you might say, "Wow."

6 Actually, I -- in fact, I did this research,
7 so I'll just admit it -- as you start to go through it you
8 would say, "Wow. Okay, if a family member can't help, the
9 family member looks to adjoining communities and will bring
10 somebody to someone with medicine or with the power to help
11 them heal. Here's three stories that show that's what
12 happens and here's how an elder explains that happens."

13 So you start to figure that out.

14 You might have a bracket where you say,
15 "Well, I don't know what a Shaman is." Indigenous or non-
16 Indigenous, it's possible, right, that that just doesn't
17 make sense.

18 And you can bracket that and say, "Well, I
19 don't know what that is and I don't know if I believe in
20 cursing, but what I do know is that it caused her to become
21 dangerous."

22 So I can still move ahead with that issue
23 and in a bracket say, respectfully, I would need to know
24 more about that. It doesn't need to be a full stop if you
25 don't understand some of these concepts.

1 People may not know what a *wetiko* is, but we
2 were still able to do the analysis of that story. And
3 there might be many people in here that doesn't know what
4 that term refers to. And again, that could be a bracket
5 where you would say that.

6 So that's the first step. And when we do
7 this with students, we have them -- they've looked at
8 anywhere from 20 to 70 cases or stories and had to do this,
9 because we're asking them to put in the hard work. We're
10 asking them to engage.

11 And communities have done this too. Some of
12 the best work we've had has actually been communities
13 deciding to do this in a really structured way, to develop
14 something.

15 And what comes out of that is once that's
16 been looked at, community researchers or student
17 researchers or law school researchers, in partnership,
18 bring all the stories together. So if you are doing legal
19 research in Canadian state law, you wouldn't walk up and
20 say, "Oh, the Charter, Section 15, equality," and sit back
21 down. You would look at all the case law. You would
22 gather it together and you would synthesize it, you would
23 bring it together in a framework to understand that area
24 before you're going to apply it.

25 So that's the next step. And if you look on

1 Tab 2G, you have an example of a report, which the AJR Cree
2 Legal Principle Summary. So you have an example of, I
3 think that's about a 40-page report, maybe a little longer.
4 So again, it's just the beginning of a case, but you see
5 where it's all put together following through this
6 framework, where you're identifying specific responses, but
7 you're also recognizing that these aren't tiny little one-
8 offs, but you're looking at a complete system, right, that
9 has that breadth and has that flexibility. There's enough
10 flexibility and adaptability in there that you could argue,
11 that reasonable people could disagree, like all law.

12 So what we're going to ask, we're going to
13 sort of speed things, because we're just giving you the
14 tiniest taste of this. But if you look on Tab E -- and we
15 have it up on the screen because we wanted everyone to be
16 able to think this through with us, this is a very, very
17 short one-page summary of three different works engaging
18 with Cree legal traditions that do probably -- I mean,
19 there's probably about 400, 500 pages altogether, and we've
20 narrowed it down to one page.

21 So again, we're not saying, "Oh, this is how
22 simple Cree law is." It's extremely complex and 500 pages
23 is nothing. It's, again, a learner, a drop in the bucket.

24 But just to go back to that story of Sioux
25 Woman -- and if we're looking at these principles, one of

1 the things that, as we work through this, sort of that
2 step-by-step building block, story by story, report by
3 report, we start to be able to identify response
4 principles, and we start to see meta principles. We start
5 to see those overarching principles, like *Wahkohtowin*, the
6 importance of relationality and interdependence. You start
7 to see that woven through story after story, principle
8 after principle, where it makes sense.

9 So you have examples like this. But again,
10 for -- because our time is short, I just want to look at
11 these -- at the eight below and say, "Okay, so these are
12 specific response principles. And it's not just response
13 principles. We have process, right? There's procedure,
14 there's rights, there's obligations.

15 But just talking about responses, if we
16 think of that issue, how to respond to someone who is
17 becoming dangerous to those that are vulnerable, in that
18 little story that's about two paragraphs, did you see the
19 principle of healing? Yeah. What about separation or
20 avoidance; did you see that? Yeah. Supervision? Yeah,
21 they kept an eye on her until, right? Natural and
22 spiritual consequences. So sometimes no human does
23 anything, but someone that has done something wrong seems
24 to -- we saw that in the Shaman, right? Not Sioux Woman
25 but the Shaman dies within four days and no one knows why.

1 Acknowledging responsibility; did we see
2 that in this story? Yeah? So we can see that. The
3 integration, the importance of reintegrating people once
4 they're safe. Yeah. Incapacitation; so in very old
5 stories when people just could not be kept safe for others,
6 there are stories of people being incapacitated, sometimes
7 temporarily and sometimes more permanently. That would
8 never happen today, but sometimes -- think about jail.
9 Sometimes jail is -- people are kept away for a little
10 while, right? And retribution would also be very rare, and
11 it's not something we saw in this story.

12 But so just working this through the tiniest
13 taste, I hope you can see where you can have a story that
14 seems like a little simple small, small little story, but
15 it's actually quite rich and complex, and there's actually
16 a lot of principled decision making happening there.

17 And so sometimes we -- the same thing
18 happens today. So sometimes, when you hear a story like
19 that, sometimes you're in a community -- maybe the Shaman's
20 a meth dealer today, right? Maybe he's encouraging someone
21 to prostitute their children to pay for a habit that he
22 started. There's lots of examples where we know people
23 curse other people in many ways and have the power to
24 create people becoming dangerous and to create very
25 dangerous circumstances for the vulnerable.

1 Could we apply these principles to that
2 issue? Arguably, we can, and we can do it in effective
3 way. And people are, once you start looking -- one of the
4 things that I found is once I started identifying these
5 principles, I started seeing it more. I started realizing
6 wow, okay. Somebody explained what they did and I didn't
7 understand because people don't write out judgements like
8 Canadian court judges do, right? People aren't saying,
9 "Here, let me explain my reasoning for what I did."

10 But I started to see it once I started to do
11 this work. I could say, "Wow, I get that they were doing
12 some separation and supervision here and that was a
13 principled response and it worked." It worked in that
14 context, or if it didn't work, why? What needs to be put
15 into place?

16 **DR. VAL NAPOLEON:** Okay, we have to speed it
17 up.

18 **DR. HADLEY FRIEDLAND:** Yeah, okay. I'm done
19 now.

20 **DR. VAL NAPOLEON:** Okay. So there's a
21 number of examples about implementation. Just a note on
22 what Hadley has just covered; there was a full set of legal
23 responses. Sometimes when Indigenous law -- criminal --
24 Indigenous criminal law is talked about, it's as if the
25 only part of -- the only thing we had was healing.

1 But the reality is, depending on safety and
2 other considerations, there was full response. And one of
3 the questions for all of us is, what is the -- what are the
4 consequences of having incomplete understandings of our
5 legal orders, insofar as the different kinds of -- the
6 range of responses and the work of law in its fullness?

7 So the project, the *Aseniwuche Winewak*
8 project, continued and it's continued into governance and
9 it's continued into a justice project. There's the
10 implementation for the *Secwepemc* work. They've -- moving
11 it into child welfare, into resource management and into
12 governance.

13 And just a point on that: whenever we talk
14 to any communities, whether it's about lands or resources
15 or anything else like that, once we start the work, there's
16 always women who come and say, "There's violence in our
17 communities. There's things we have to deal with. Here's
18 some realities about our experiences behind all of the
19 things that are going on."

20 So it's always a bigger picture and it's
21 always way more complicated than one would first think. So
22 people are moving ahead as best they can and doing a lot of
23 work.

24 This is a gathering. This is people from
25 Gitga'at, Haida, Heiltsuk, Tsawout, Secwepemc, and

1 Xai'xais, and so on. So there's all of these people in BC,
2 meeting, and they're creating plans and reports and it's --
3 there's a hunger and a thirst for all of this kind of work.

4 This is some work that's going on here -- or
5 pardon me, in Ontario by some of the people who are here
6 with the Indigenous Justice Division with the Attorney
7 General of Ontario. And you can see that people from a lot
8 of different perspectives are coming together and trying to
9 figure out a principled way of working -- recognizing
10 working with Indigenous law so that it's more than just
11 tokenism or lip service.

12 There's the court, the Akwesasne Mohawk
13 court, which was organized for very pragmatic reasons of
14 dealing with the mix of jurisdictions that -- which caused
15 more conditions of violence for Mohawk women. So it was a
16 way to address the divisions caused by jurisdictions which
17 increased the danger for those women.

18 This here -- I'll go through it really
19 quickly -- this is -- you know, historically, we had law
20 and we had legal institutions through which the law
21 operated. We had legal authorities through our clans,
22 through our lineages, through our families, and so on. And
23 today, we also have law and we have institutions. And
24 there's sometimes clashes between the two or one gets
25 talked about and the other gets erased.

1 This is a quote by Xhliimlaxha. She's a
2 high chief, Gitksan high chief. Her name in English is
3 Martha Brown. And she says,

4 "‘Why not ask if you can use it?’ I
5 said to them. They said that their
6 grandmother used it.

7 "‘Yes,’ I said. ‘Lots of people have
8 used it, but we own it. If you just
9 ask me, you can use it. I will even
10 tell you where you can set your net.’

11 "By marrying into our house, they had
12 the rights to use it in the past, but
13 those marriage ties died out long ago,
14 and they were told, right in the feast,
15 that they could not use it any more."

16 So this is another one of those paragraphs
17 that's just packed with legal information from the Gitksan
18 legal order. And so we can spend a long time looking at
19 what we can learn from Xhliimlaxha in this little
20 interchange.

21 The thing to keep in mind is that the
22 continual breaking of the laws by younger people who don't
23 know or by industry or by government just continues to
24 undermine the integrity of the Gitksan legal order and any
25 other legal order. So it's about looking at can we today,

1 in today's world, help to rebuild, or do we create
2 institutions that will continue to undermine the different
3 ways that people manage themselves. So it's bringing the
4 best from the past.

5 There are a number of slides here that we're
6 going to -- are going to wrap up on from our part. And
7 this is looking at the historical legal institutions in
8 law. It's looking at specific events in colonial history,
9 and then looking at present-day legal institutions and law.

10 And so it's looking at horizontal
11 authorities, shifting to top-down authorities. It's
12 looking at how leaders behave. It's looking at how there's
13 a different jurisprudence and so on that operate through
14 the historic legal institutions, and today we have new
15 legal institutions, and over time, the changes that have
16 taken place.

17 But here's one of the big things about this.
18 If you look at the relationships that matter historically
19 in a decentralized legal order, the relationships that
20 matter are those with one another. They're internal,
21 whereas now that we're fragmented into small,
22 geographically-pinned communities, bands, the larger legal
23 order is fractured and the relationships that matter, for
24 the most part, are those that are vertical with the
25 Canadian state.

1 So we can look at the extent to which a
2 legal order extends. So I'm not talking about bands. So
3 I'm talking about the Gitksan legal order, for instance, or
4 the Tsimshian legal order, within which there are, you
5 know, a number of bands.

6 So we had publicly (inaudible) institutions.
7 Those are capable of being rebuilt and there are some
8 changes today to those institutions, sources of law. And
9 if you think about Xhliimlaxha and her legal perspective,
10 you can see all the different ways that her understanding
11 and the decisions she is making are made. You can see what
12 informs it. You can also see what's informing the young
13 people.

14 Xhliimlaxha is not no longer with us, and so
15 you can see the different kinds of changes and the
16 different understandings that go on in time. And it's not
17 a matter of those young people are wrong. It's a matter of
18 what else do we have to learn and how else do we have to
19 teach?

20 Hadley?

21 **DR. HADLEY FRIEDLAND:** So I think we just
22 wanted to end on the note, this is one of our favourite
23 things we got to do, which was on the last TRC national
24 event in 2014 with the *Aseniwuche Winewak* Youth Council,
25 where we were asked to come and work with them for the

1 Youth Council and other members of the community to do a
2 presentation about Cree laws related to reconciliation.
3 And we had -- we ended up having 25 people come, and it was
4 quite an amazing event. But this was a really beautiful
5 part of that where all the young women in this photograph
6 made shawls or had their parents help them with shawls
7 until wee hours of the morning even if they can't sew.
8 That's my daughter with the heart on the far right, the
9 tallest. That's my daughter, and these are ---

10 **DR. VAL NAPOLEON:** Oops, sorry, sorry..

11 **DR. HADLEY FRIEDLAND:** That the -- no -- and
12 I mean, these are my nieces and nephews. But it was a
13 really beautiful representation of the principle of safety,
14 of showing how important it was for them to feel safe and
15 valued within their own community and the role that other
16 people had in that community to make that happen. So I
17 thought that was a good note to end on.

18 **DR. VAL NAPOLEON:** Yeah. And the stories of
19 colonialism about Indigenous law, one is that our
20 Indigenous legal orders were somehow fragile. And the
21 second colonial story is that our legal orders were
22 incommensurable and not understandable by those outside our
23 own societies. And we were international people
24 historically, we were educated historically, and we still
25 are today.

1 There's -- the kinds of legal questions that
2 are before this Commission and what people here are
3 concerned about, violence against women, this kind of
4 research can be done with that. The way to end that
5 violence in our communities is by rebuilding our lawfulness
6 from the ground up.

7 So we've walked through this one method, a
8 very small exercise, and we're done.

9 **MS. CHRISTA BIG CANOE:** Thank you. Thank
10 you, Dr. Napoleon and Dr. Friedland.

11 In the interests of time, I'm going to ask
12 that we excuse these witnesses. I do have about five
13 remaining questions, just to clarify some points in
14 relation to it, but if we were beginning at 9:00 a.m.
15 tomorrow, it will still allow for enough time for the
16 cross-examination. So and the five questions are those
17 that we had provided to parties withstanding we anticipated
18 asking, particularly around tender issues and vulnerability
19 of women. But in the interests of time, and having our
20 next witness be able to testify, I ask that we excuse these
21 witnesses until 9:00 a.m. tomorrow morning. Thank you.

22 I also ask that we have a -- just a short
23 break so that we can have the next witness brought to the
24 front and organize the space.

25 **UNIDENTIFIED SPEAKER:** Okay.

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

2 --- Upon recessing at 3:39 p.m./

3 L'audience est suspendue à 15h39

4 --- Upon resuming at 4:04 p.m./

5 L'audience est reprise à 16h04

6 **MS. SUSAN VELLA:** Good afternoon. We're
7 very pleased to introduce to you Professor Tuma Young as
8 our next witness.

9 Professor Young will affirm with the feather
10 please.

11 **TUMA YOUNG, AFFIRMED/A AFFIRMÉ**

12 --- IN CHIEF ON QUALIFICATIONS BY/INTERROGATOIRE PRINCIPAL
13 SUR QUALIFICATIONS PAR MS. SUSAN VELLA:

14 **MS. SUSAN VELLA:** Thank you.

15 Professor Young, I'd like you to start by
16 telling us a little bit about yourself. What community are
17 you from?

18 **DR. TUMA YOUNG:** I just want to make sure
19 this mic is on.

20 **MS. SUSAN VELLA:** It is.

21 **DR. TUMA YOUNG:** Okay. My community is -- I
22 grew up in Malagawatch First Nation, but it's a very small
23 community in the middle of Cape Breton. Nobody really
24 knows where it is. There's about six or seven families
25 that live on it. So I tell people my band is Eskasoni

1 First Nation, which is the largest Mi'kmaq community east
2 of Montreal.

3 **MS. SUSAN VELLA:** And who are your
4 grandparents?

5 **DR. TUMA YOUNG:** Oh, my grandparents was
6 William Young and (Inaudible) Phillips (inaudible), and
7 Elizabeth Bernard (phonetic) and Maleech Tony -- Maleech
8 Johnson (phonetic), and Sylliboy was her maiden name.

9 And my parents are William Fred Young and
10 Veronica Flo Young. I was born into the Squirrel Clan for
11 the Rabbit Clan, you know? And in a way, that -- a little
12 bit about myself is that I grew on a trapline in
13 Malagawatch. My mother hunted, fished, and trapped, and
14 everything like that. My father was a stay-at-home type of
15 thing.

16 And but they realized that I could not hunt
17 or fish, so I had to go to school, and I ended up being a
18 lawyer.

19 **MS. SUSAN VELLA:** Oh dear. And who is your
20 partner?

21 **DR. TUMA YOUNG:** Oh, my partner is Nicolaas
22 Honnegg (phonetic).

23 **MS. SUSAN VELLA:** Oh.

24 **DR. TUMA YOUNG:** Yeah, and we both live in
25 Sydney, Nova Scotia.

1 **MS. SUSAN VELLA:** Thank you.

2 You have produced for us your curriculum
3 vitae at Tab 3A, and does it accurately set out your
4 education, research, teaching experience, legal experience,
5 presentations, publications, and professional affiliations?

6 **DR. TUMA YOUNG:** Yes, it does.

7 **MS. SUSAN VELLA:** Then I'd like to
8 respectfully request that it be marked for the record,
9 please.

10 **CHIEF COMMISSIONER MARION BULLER:** We'll
11 mark all ---

12 **MS. SUSAN VELLA:** Sorry.

13 **CHIEF COMMISSIONER MARION BULLER:** We'll
14 mark all of the CVs at the end of the proceedings today.

15 **MS. SUSAN VELLA:** Thank you. I understand
16 that you received your Master's in Laws in Indigenous
17 Peoples Law and Policy from the James E. Rogers College of
18 Law at the University of Arizona in 2002?

19 **DR. TUMA YOUNG:** Yes, I did.

20 **MS. SUSAN VELLA:** And you are presently
21 enrolled in the JSD program at the same university, and
22 your thesis is "*L'nuwey Tplutaqan: Using Traditional L'nu*
23 *Legal Thought in Creating Contemporary Indigenous*
24 *Governance Institutions*"?

25 **DR. TUMA YOUNG:** Yes. It's *L'nuwey*

1 *Tplutaqan.*

2 **MS. SUSAN VELLA:** Ah, thank you.

3 **DR. TUMA YOUNG:** Yeah.

4 **MS. SUSAN VELLA:** You've received research
5 grants for several projects, including building a social
6 policy framework for the health and wellbeing of Mi'kmaq
7 communities in Nova Scotia and a two-eyed seeing approach
8 for the Canadian Institute for Health Research?

9 **DR. TUMA YOUNG:** Yes.

10 **MS. SUSAN VELLA:** And also two-spirits
11 identity and cultural ceremonies from the Social Sciences
12 and Human Humanities Research Council?

13 **DR. TUMA YOUNG:** Yes, I have.

14 **MS. SUSAN VELLA:** You are currently an
15 Assistant Professor in the Communities and Connections
16 Department at Cape Breton University?

17 **DR. TUMA YOUNG:** Yes.

18 **MS. SUSAN VELLA:** And prior to that you were
19 Assistant President Professor in Indigenous Studies at Cape
20 Breton University from 2012 to 2016?

21 **DR. TUMA YOUNG:** Yes.

22 **MS. SUSAN VELLA:** You were called to the bar
23 of Nova Scotia in 2001?

24 **DR. TUMA YOUNG:** Yes.

25 **MS. SUSAN VELLA:** And you have several

1 publications to your credit, including "*L'nuwi'tasimk: A*
2 *Foundational Worldview for a L'nuwey Justice System*", in
3 the *Indigenous Law Journal*?

4 **DR. TUMA YOUNG:** Yes.

5 **MS. SUSAN VELLA:** And you are the first
6 *Mi'kmaq*-speaking lawyer in Nova Scotia?

7 **DR. TUMA YOUNG:** Yes, I am.

8 **MS. SUSAN VELLA:** We propose that Professor
9 Young's teachings is -- are recognized and that he be
10 acknowledged as an expert in the *Mi'kmaq* legal principles
11 and systems known as *L'nuwey Tplutaqan* and its development
12 to contemporary Indigenous institutions.

13 --- **RULING ON QUALIFICATIONS BY CHIEF COMMISSIONER MARION**
14 **BULLER:**

15 **CHIEF COMMISSIONER MARION BULLER:** Yes,
16 certainly. Thank you.

17 I extend a very warm welcome to you,
18 Professor Young. Thank you for coming and we certainly
19 recognize your areas of study and expertise today -- not
20 the hunting part, though.

21 **DR. TUMA YOUNG:** There -- as an aside, there
22 is one more area that wasn't mentioned. I'm also a
23 ethnobotanist. I gather traditional medicines for elders.
24 And we just received a grant of -- from CIHR to develop a
25 tropical ointment to be used in eczema and psoriasis, so

1 using birchbark oil.

2 **MS. SUSAN VELLA:** M'hm.

3 **UNIDENTIFIED SPEAKER:** And again, I didn't
4 hear that word you said.

5 **DR. TUMA YOUNG:** Oh, yes. I was just adding
6 to what was in my research project. It's -- I received a
7 grant from CIHR community -- Canadian Institute of Health
8 Research -- to do research on developing a tropical
9 ointment for eczema and psoriasis. And my background
10 (inaudible) to be is in ethnobotany, a study of Mi'kmaq
11 medicines, tradition.

12 **MS. SUSAN VELLA:** Thank you.

13 **DR. TUMA YOUNG:** Yeah.

14 --- EXAMINATION-IN-CHIEF BY/INTERROGATOIRE PRINCIPAL PAR

15 **MS. SUSAN VELLA:**

16 **MS. SUSAN VELLA:** Thank you. Do you have an
17 opinion on whether or not the application of the Mi'kmaq
18 legal principles and model of justice would likely reduce
19 the vulnerability of Mi'kmaq women and girls, trans, and
20 two-spirited people to experiencing violence?

21 **DR. TUMA YOUNG:** Yes, I believe that my
22 opinion, as presented here, will do that.

23 **MS. SUSAN VELLA:** And do you have an opinion
24 as to whether or not the application of the Mi'kmaq legal
25 process would likely return Mi'kmaq women, girls, two-

1 spirited, and trans people to a healthier, safer, and
2 sacred place in society?

3 **DR. TUMA YOUNG:** Yes.

4 **MS. SUSAN VELLA:** Thank you. I understand
5 you also wrote a paper entitled, "L'nuwi'tasimk: A
6 Fundamental Worldview From a L'nuwey Justice System", that
7 was published in Volume 13, issue 1, of the Indigenous Law
8 Journal in 2016; is that correct?

9 **DR. TUMA YOUNG:** Yes, that was (Speaking in
10 Native language).

11 **MS. SUSAN VELLA:** And this is a peer review
12 journal?

13 **DR. TUMA YOUNG:** Yes, it was. Yes, it is, I
14 should say.

15 **MS. SUSAN VELLA:** Does the paper reflect the
16 testimony you propose to give, including your opinions and
17 the basis of your opinions today?

18 **DR. TUMA YOUNG:** Yes, I will try to
19 summarize the paper as best as I could.

20 **MS. SUSAN VELLA:** We'd like to have the
21 paper then acknowledged as an authority and accepted as the
22 next exhibit.

23 **CHIEF COMMISSIONER MARION BULLER:**

24 Certainly.

25 **MS. SUSAN VELLA:** We'll do that later?

1 **CHIEF COMMISSIONER MARION BULLER:** That will
2 be marked at the end of the proceedings today, thank you.

3 **MS. SUSAN VELLA:** Thank you.

4 Now, before you explain your analysis and
5 opinions, there are few concepts underpinning your
6 testimony that I would ask you to explain. And the first
7 concept is "Two-eyed seeing". What is it and how is it
8 relevant to your analysis?

9 **DR. TUMA YOUNG:** Two-eyed seeing is a --
10 actually, it's the English analogy of the word that we use
11 (Speaking in Native language). And it was developed out of
12 two elders out of Cape Breton University, Murdena Marshall
13 and Albert Marshall, her husband, and working in the
14 science and trying to encourage more Mi'kmaq students to go
15 into sciences.

16 And basically what we're (inaudible) saying
17 in that sense is that an issue has to be looked at from two
18 different perspectives: the Western perspective and the
19 Indigenous perspective so that this provides the whole
20 picture for whoever is trying to understand the particular
21 issue.

22 So in this case, what I'm proposing is that
23 the Commission, when we were looking at this issue of
24 violence against women and trans folks and two-spirited
25 folks, and young girls in our communities, we look at it

1 from a two-eyed scene approach, from the dominant Canadian
2 legal system and from the -- our own Indigenous legal
3 system; so in particular, the Mi'kmaq system, you know.
4 That's what we refer to (Speaking in Native language) so
5 that will hopefully give a complete picture to the
6 Commission as to what the whole issue is.

7 **MS. SUSAN VELLA:** And would you also explain
8 the concept of ecology as used in the context of an
9 Indigenous world view?

10 **DR. TUMA YOUNG:** In my paper, there's
11 references to our ecological spaces are sacred. And just
12 to pick up my colleague, Val, who presented here, and they
13 talked about the sources of Indigenous laws. I wrote it in
14 some of the sacred sources and John Borrows operates on
15 that too.

16 I say that in the Mi'kmaq world view, there
17 are different ecological spaces that exist. Some have said
18 there were six, others have there were eight. And some
19 have been referred to as six worlds or lodges. I refer to
20 them as wigwams. We don't have tipis in Mi'kmaq. We have
21 wigwams, you know? And so I refer to them as wigwams, and
22 where different life forces exist.

23 And one of the (Speaking in Native
24 language), the Mi'kmaq laws or legal principles, really, is
25 that you're taught how to manoeuvre between these worlds.

1 For example, the -- you know, the world beneath the sky,
2 world above the sky, the world on the earth, the world in
3 the sky, the spirit world; in each of these worlds have the
4 different life forces and how we, as humans, interact in
5 with all of these worlds contains the rules for living, and
6 how to be respectful to each life force as it forms. And
7 these are the sacred ecological spaces.

8 And in this paper, I propose that that's
9 what was considered, and it is very considered still in the
10 past, and it's still very evident. But today, there's
11 contemporary ecological spaces which we all move in. For
12 example, I'm moving to -- like, I have my camp in
13 Malagawatch but I move in another ecological life space
14 that's in university. And another one is the legal
15 society, the bar counsel, you know, and being a lawyer.
16 Those are different spaces and there's different rules
17 within these ones. And as I move in each one, I have to
18 know what the lessons are in how to behave appropriately in
19 each one of them.

20 **MS. SUSAN VELLA:** M'hm. And would you also
21 explain the theory of flux in Mi'kmaq legal principles?

22 **DR. TUMA YOUNG:** Oh, yes. The theory of
23 flux is that we constantly believe like, all things in our
24 -- the natural world, in our nature, they're always
25 constantly running down as the cycle continues through

1 like, the whole world; like, from summer goes into fall,
2 fall goes into winter, winter goes into spring. And
3 everything kind of needs a bit of renewals, always. And at
4 each stage are renewal ceremonies that have to be done.
5 And this is the theory of flux. Everything is kind of
6 running down, and that relationships also have to be
7 renewed from time to time; relationships between
8 individuals, relationships family members; relationships
9 among all the different life forces in the ecologies.

10 And so there are ceremonies that do these
11 things. And so you're constantly -- some of them are very
12 quick, very fast; like, for example -- I'll give you a good
13 example: when I ran into -- this morning when I walked in
14 and I ran into Val and I haven't seen Val in a long time,
15 since we were both in Guatemala doing work there. And
16 within two seconds, we were just kind of back to what we
17 were, I mean, even though we hadn't seen each other for a
18 while.

19 Others take a longer time. We're
20 approaching a new ceremonial cycle that we're going to be
21 going into with the fall equinox. There's different
22 ceremonies.

23 So all things need constant renewal. And
24 even our treaties are based on those, the Covenant Chain of
25 Treaties, the treaty relationship needs to be renewed on

1 October 1st every year. And so that's to keep the
2 relationship a very good relationship. And that's the
3 theory of flux, that everything's kind of running down and
4 will need constant renewal.

5 **MS. SUSAN VELLA:** Thank you. And I
6 understand that you've prepared a PowerPoint presentation
7 to aid in your testimony today?

8 **DR. TUMA YOUNG:** Yes, I have.

9 **MS. SUSAN VELLA:** And before you start --
10 well, with the benefit of the concepts that you've now
11 explained to us, and before we start, could you please give
12 us a brief overview of what you intend to address through
13 the PowerPoint?

14 **DR. TUMA YOUNG:** Well, I hope to basically
15 summarize a little bit about what the concepts contain in
16 the paper and also present the model that's contained in
17 the (inaudible) and expand upon that using a traditional
18 justice -- what would be an Indigenous or Mi'kmaq justice
19 system that can be restored in our -- in Mi'kmaq territory.
20 That's what I hope to do in this presentation here.

21 **MS. SUSAN VELLA:** And I see with the -- in
22 the cover slide on the PowerPoint there's an image. Can
23 you explain what that image represents?

24 **DR. TUMA YOUNG:** Okay. That image is the
25 eight-pointed star and the eight-pointed star, where I come

1 from, we come from the land of the Wabanaki (Speaking in
2 Native language), and that means "the land of the sun", the
3 rising sun and where the sun rises. And this is our -- and
4 we don't necessarily use the medicine wheel concept or the
5 four directions, you know? We use the eight-pointed star.
6 And these are quite common among the Wabanaki people: we,
7 the Mi'kmaq, Maliseet, Penobscot, Passamaquoddy; all up and
8 down the east coast.

9 And this is a -- what we call a (Speaking in
10 Native language), a petroglyph that's engraved on a rock in
11 Bedford. And this is about the eight-pointed star, and
12 there's a spirit person that's on the outside of it, and
13 it's moving along the star. And these are representative
14 of the ecological spaces and that the spirit person has to
15 find their way in how to interact with the eight-point star
16 (inaudible).

17 **MS. SUSAN VELLA:** Thank you. And with that,
18 I would invite you to use the clicker and please, carry on
19 with your presentation.

20 **DR. TUMA YOUNG:** Okay.

21 **MS. SUSAN VELLA:** Thank you. I'll sit over
22 here.

23 --- **PRESENTATION BY/PRÉSENTATION PAR DR. TUMA YOUNG:**

24 **DR. TUMA YOUNG:** Okay. To the
25 Commissioners, I thank you here and I have to acknowledge

1 that I'm on my -- what I call my cousin's land, the -- to
2 Cree and also to the Metis here, you know? And given that
3 fact that we also belong to the Algonquin linguistic
4 family, some of the words in Cree are kind of familiar, but
5 some of the words are, you know, are like similar in
6 nature.

7 Okay, what we have here is *L'nuwita'simk*.
8 It's what I say, it's a foundational worldview for a
9 *L'nuwey* justice system. And after much thought and much
10 thinking about this for about 10 years, I came to this
11 paper and how we can do this. *L'nuwita'simk* means --
12 literally translated it means, "to think like an L'nu."
13 (Inaudible) for ourselves. Our name for ourselves is L'nu.
14 We're not Mi'kmaq people. That's the name that the
15 (inaudible). But we call ourselves L'nu, which are people
16 of the same tongue.

17 (Inaudible) -- it keeps -- yeah, it just
18 cuts out right here unless I go like this, right? That's
19 (inaudible) let me try and bring this up a little bit.
20 How's that? No? How's that? No?

21 **MS. SUSAN VELLA:** No, (inaudible) be not
22 covered by ---

23 **DR. TUMA YOUNG:** How's that? I can just
24 hold it like this then. How's that? Okay? No, you know
25 what? I'm just -- I'm a little bit like Oprah. I can do

1 this.

2 **MS. SUSAN VELLA:** Okay.

3 **DR. TUMA YOUNG:** Okay. I got a PowerPoint,
4 I got the microphone, I'm good to go to the Commissioners.

5 Okay, well, first of all -- okay. The first
6 question people always ask me is (Speaking in Native
7 language), what is *L'nuwita'simk*? Now, I explained a
8 little bit of the terminology for *Mi'kmaq*. We're *L'nu*,
9 people of the same tongue. Our neighbours across the St.
10 Lawrence River, who used to be known as Montagnais-Naskapi
11 now they're known as Innu, you know, Innu, right? And
12 actually, our language is very similar, you know?

13 And then their neighbours a little bit north
14 to them are the Cree, the James Bay Cree. James Bay Cree
15 don't call themselves Cree. They call themselves Eeyou.
16 And then of course, we have their neighbours up the north
17 of them, which are the Inuit. Oh, this one? (Inaudible).

18 Yeah, okay? Okay then.

19 So anyways, we have the whole thing is
20 (inaudible). So we have in our area *L'nu*, Innu, Eeyou, and
21 Inuit, you know? So people of the same tongue in the way
22 our languages are versed, where you can understand your
23 neighbour to the north and to the south. So we understand
24 the Innu and Wolastoqiyik which are the Maliseet. The
25 Maliseet or Wolastoqiyik understand us, and they understand

1 (inaudible), you know, and so for all the way down to
2 Florida.

3 It's really, *L'nuwita'simk*, it's a
4 particular way of seeing the world, you know? It's how we
5 view the world. It sometimes -- I tell people, it's not
6 correct and it's not wrong, either. It's just is, you
7 know? How we see the world is fundamentally different, you
8 know, from how others see the world. And sometimes you
9 have to take an eagle-eye view. You see -- you fly so high
10 up and that you have to see everything. But occasionally
11 the (Speaking in Native language) has to fly down close to
12 see particular details. And so that's what the
13 *L'nuwita'simk* is; our way of seeing the world, the
14 ecological spaces around us.

15 There are a unique set of rules,
16 regulations, observations, and protocols associated with
17 this world view, you know? And basically, this world view
18 tells us how do you deal with your relatives in the other
19 five or six worlds, you know? They're wigwams, the Deep
20 Earth, Water, Earth, Root, Ghost, Sky, Light, and the
21 Ancestor Lodges.

22 Our *L'nuwey Tplutaqan* are the legal
23 principles that are used to navigate these worlds. So as
24 one person goes through or families go through, that's what
25 you use to, you know, go through these worlds.

1 Where do these legal principles come from?
2 You've heard from my colleague earlier on that there's --
3 our colleague John Borrows says there's five sources.
4 Well, here from the Mi'kmaq world view, we -- our
5 principles come from our stories, our ceremonies, our
6 songs, our languages, and our dances, you know, and that's
7 where our -- most of our legal principles are there.

8 So in the work that you are doing here, and
9 when you are listening to stories that folks will be coming
10 and giving to you, not only will these stories tell you of
11 many things, but they also can -- I fundamentally believe
12 that -- and it's my opinion that these stories will tell
13 you about some of the legal principles that folks have
14 encountered in their moving from one world to another.

15 So some of these songs, like, Ben Christmas
16 -- he was a captain of the Grand Council. We have a Grand
17 Council, and he was born on our old reserve -- he kept the
18 chants alive in living memory. So all -- most of our old
19 chants are fundamentally different from, you know, out west
20 or anything like that. They're chants, really. They're
21 not necessarily songs. They're really chants. And John
22 Newell, who was my great-grandfather, he told us that the
23 songs and our chants come from the *sisipk*, the birds, you
24 know? And he said that's where, you know, we learned all
25 these songs and our chants.

1 Some of them are also borrowed. One of our
2 chants is -- was given to us by the (Speaking in Native
3 language), the Haudenosaunee as part of the peace process
4 that we entered into with them. That's because we kind of
5 won the war with them so they said, "No, we came to a
6 draw," but you know, that's -- but there is now peace with
7 the Haudenosaunees, right, you know? Yeah.

8 Now, one of the things that, you know, we
9 often hear the term "justice as healing" and that's -- in
10 some ways, that's what some of the desires of our
11 Indigenous folks is, that, you know, look at justice as
12 healing. But unfortunately, it hasn't been that for a
13 long, long time.

14 So part of the *Klogowej* -- and the *Klogowej*
15 model of justice that I proposed in the paper, has four --
16 based on the eight-pointed star and it's based on four
17 different principles, which is peace, kindness, sharing,
18 and trust. But in the work we've done, it sounds like very
19 -- you know, sometimes I took (inaudible) -- that sounds
20 very, very -- I don't know want to use the -- but the
21 phrase I'm going to use, that it sounds a little airy-
22 fairy, right? You know, it's not --- you know, it's like a
23 motherhood type of thing or something like that.

24 And I tell them, "No, that's not true. It
25 is a lot of work that's required to get to that point. And

1 as you move from one stage to another, you have
2 facilitators that help you."

3 And so in the work that we did at -- in
4 *Gespe'gewa'gi* in Gaspe, Gaspe Peninsula, with three
5 (Speaking in Native language) and one from New Brunswick,
6 we came up with how you move people through that *Kloqowej*.
7 And the first part of it is, we call it *O'pla'matijik*.
8 There is a disagreement. There is a dispute. Something
9 has happened. There is a break in a relationship, you
10 know, something terrible has happened. A dispute has come.

11 So when you're there, you know, and the
12 facilitators move, then the next stage is (Speaking in
13 Native language) or *Petka'ma'tijik*, the facilitators or the
14 people who help, you know, in this, and they help people
15 move to that next stage. Whether that takes hours or
16 years, its really up to the individual, right, and or how
17 the dispute -- it depends on how severe the dispute was or
18 anything. But *Petka'ma'tijik*, it's almost like a tool to
19 separate the parties.

20 I heard in the last presentation there's a
21 time for healing. The Cree principle was for separation.
22 We do have that also too, *Petka'ma'tijik*. That is to allow
23 a healing time, a healing space to occur, to let all the
24 emotions to die down, to let them just be fully expressed
25 and then so people are, you know, moved from that

1 expression.

2 So *Petka'ma'tijik*, it's almost like a
3 calming-down period, you know. Now again, that can take
4 months or years or even days or it can happen very quickly.
5 It depends, you know?

6 And then we move into the next one,
7 *Apiksikta'tijik*, you know? Now, in some ways, that's --
8 when I say that, people say, "Well, that's -- does this
9 mean forgiveness?"

10 In the Christian concept, yes, that means
11 forgiveness, but not in the *Mi'kmaq* concept. It means you
12 come to an agreement. In our concept of justice, its not
13 really a type of -- you can't really ascribe to it as if it
14 was a criminal base, like, the western (inaudible) base.
15 You have two types, Western -- in the Western system you
16 have criminal and the civil matters. Most of our laws and
17 our principles are rooted in civil, you know, what would be
18 considered civil thing, you know?

19 So *Apiksikta'tijik* means an agreement as to
20 how to resolve the dispute or the disagreement. The
21 parties have come to an agreement. In some cases, this may
22 mean a restitution, a separation, and some of our old
23 concepts is revenge, you know, type of thing. And so --
24 but it's -- a lot of it is -- comes back to, you know,
25 there is a policy of revenge for if a murder had happened,

1 the family would come and -- you know, they would take
2 another life unless proper restitution was made and a
3 proper acceptance of the responsibility, right?

4 And so in a bit of a civil matter -- so but
5 *Apiksikta'tijik* means they've come to an agreement as to
6 how to resolve the dispute. That's where, a lot of times,
7 it's left there. And in the *Kloqowej* principle, they said,
8 "That's not where it stops. We need to take it one step
9 further."

10 And in the two-eyed seeing approach, if you
11 look at it from the Western court system, that's often
12 where they stop too. The person is sentenced or this
13 person is done. The court system is done. People walk out
14 of there, and they don't necessarily feel that justice has
15 been done or it doesn't feel right for them, but that's the
16 end of it. The agreement has been reached. Whether it is
17 satisfactory for everyone, is -- may not be the case but
18 the agreement.

19 And so we tell people that under
20 *L'nuwita'simk* there's another stage that they have to go
21 through. It's *Wek'paltutimk*. A healing ceremony has to
22 come and take place. A restoration of the relationship.

23 Now, in terms of moving through the
24 ecological spaces; for example, if you were to -- if I was
25 to go and -- I'll tell you a little story one time in

1 Malagawatch when I was growing up and we hunted cod -- we
2 fished for cod, we fished for cod.

3 And people say, "Well, you fish for cod,
4 despite the fact that Mi'kmaq don't really like cod,
5 right."

6 Well, we like the liver and we like the
7 stomach, you know, those are delicacies. The rest of the
8 cod, ugh, no, type of thing.

9 But -- so me and my brothers, we went out in
10 the rowboat and we were jigging cod. We must have come
11 across a school, and so we were -- and we were just hauling
12 them up. Holy God, we were like, and we caught a whole
13 boatload full and we brought it in.

14 And we yelled up to our parents and they
15 came down and they said, "Oh, yeah. You did this, you
16 know. Now you have to clean them, you know, make sure you
17 save the (Speaking in Native language) and the (Speaking in
18 Native language), you know, the stomach and the liver,
19 right? And they said, "You have to go and (inaudible)."
20 And my father said, "Now, what are we going to do with
21 them? You're only supposed to catch enough for supper,
22 two."

23 And we said, "But look at us. We caught
24 lots."

25 They said, "We have no electricity. We have

1 no running water here. We're in the camp."

2 So my father had to go to, you know, Port
3 Hawkesbury, buy salt and he was, you know, money was a
4 little bit hard, so he had to buy salt, we had to go and
5 salt. And our *Wek'paltutimk* (speaking in Native language)
6 disagreement, *Wek'paltutimk* was, our punishment was that we
7 had to eat salt cod for breakfast, lunch, and dinner for a
8 whole month because we had violated one of the tenents of
9 (speaking in Native language). You don't take any more
10 than you need. So that's what we did.

11 And so after that, we learned our -- you
12 know, that thing. As young kids, we would never do that
13 again, that's for sure.

14 But *Wek'paltutimk*, in -- often we -- you
15 know, it's a time of helping to restore the good feelings
16 that people had before the relationship broke down in some
17 form or fashion, right? And in small communities, even
18 when things happen that are terrible and all sorts of
19 things, people sometimes have to live with each other,
20 families have to live with each other, and that break
21 impacts far more than the individuals, impacts the whole
22 communities. And so there has to be some sort of a feast
23 or a ceremony coming back.

24 And we have a (inaudible) game that we use
25 sometimes and it's a mathematical teaching tool that we

1 give to kids. It's teaches about fractions, probability
2 theory, algebra, calculus. I will never that Native people
3 did not know their math or we know our math, right? You
4 know, and so we play it, but there's also a lot of teasing,
5 a lot of humour comes up and everything, and that helps to
6 restore the relationship between the parties.

7 And that's -- it will never be the same
8 before the break, but they can live with each other or they
9 can live among each other.

10 It's like, I have a scar on my hand. And
11 when I was a little kid I had an incident where my -- the
12 kids kind of pushed a nail through my hand, you know,
13 because -- well, you know, they were -- there was thing --
14 and I can look at it now and I can touch it and I can say,
15 "Oh yeah, you know, it's there, but it doesn't hurt any
16 more." And it's there, and it's there, and that's who I
17 am. I can talk about it.

18 But the *Wek'paltutimk* is that if my family
19 did not bring the other family over and say that we have to
20 finish it, there would have been -- I could have looking at
21 the scar and say, "I hate that guy who did this to me,"
22 right now, or something like that, and carried on. We're
23 good friends now, and I tease him about that. I'm never
24 going to let him near the other hand, that's for sure, you
25 know.

1 But all of this is -- it's -- it can be used
2 in a small level, and I believe it can also be used at the
3 larger level, you know? We're current -- the Western
4 system currently uses aspects of it, but they don't go and
5 continue the finishing of the cycle. That whole *Kloqowej*
6 is always in a state of flux and needs renewal. Just
7 because you go through it once again doesn't mean that you
8 have to, you know, you cannot stop. You have to keep
9 working at it, because living with each other in small
10 communities in the small situations, and it can be tough,
11 it can be hard, and there's always difficulties that
12 arrive. So these are always in need of state of flux and
13 needs renewal, these renewal ceremonies.

14 So I know I have a few stories, but I can't
15 really think of them right offhand, but anyways, they'll
16 come to me in a second as I go to the next one here.

17 Oh yes, here's the story something. We
18 heard about the importance of stories. Stories -- a lot of
19 our stories in the L'nu community, the Mi'kmaq community,
20 are really teaching stories. They teach you how to behave
21 when you count your other life forces or when you go into
22 another ecological space.

23 And so there's the old ones, the very old
24 sort of creation stories. We have *Kluskap*, you know,
25 *Kluskap* (inaudible) which means it's also you have a

1 trickster face or a lying face. But *Kluskap* is our God,
2 you know, similarly, I guess, in what would be the Cree one
3 here. Is it *Nanabush*, I guess, or Ojibway, is it -- I'm
4 not sure. (Inaudible). That's the little books that I saw
5 when I was a little kid. That's the only books they used.
6 We learned all about *Nanabush*. We never learned about
7 *Kluskap*, right? There was a ---

8 So fishing for cod, we have contact stories.
9 Fishing for cod. When the French first arrived -- and
10 somebody mentioned it was 300 years of contact -- not for
11 the Mi'kmaq. It was over 500 years of contact. Much of
12 our traditional knowledge has been lost because 97 percent
13 of our people were decimated by illness by 1850.

14 In 1610, Grand Chief Membertou was over 100
15 years old and he was quoted as saying there was more
16 Mi'kmaq when he was young than the hair on his head. By
17 1850, the census shows there was only 3,000 of us left. We
18 nearly became extinct.

19 So when one of the stories that they have is
20 that the French constantly fished for cod. Every day, cod,
21 cod, cod. They filled their ships up with cod and we could
22 not understand why. And they would be fishing for and
23 eating cod until they would have to ask the Mi'kmaq, L'nu,
24 for meat.

25 And we said, "We have to go and hunt for

1 them and bring it to them." And they were like, you eat
2 the cod, you know? That's all it is, right?

3 But remember, our fisheries, there was ton
4 of cod. There were stories, just drop the basket and you
5 can catch it, right?

6 Then we also move into everyday stories. In
7 Grade 8, when I was in Grade 8, we had this substitute
8 teacher come. And you know, when you're teenagers and a
9 substitute teacher comes, it gets -- you either have a day,
10 wonderful day doing nothing, or you just go and tease that
11 substitute teacher and trying to make them, you know, run
12 out the classroom or something.

13 So we had this substitute teacher. She was
14 a non-Native. She must have just graduated from the
15 teachers' -- the normal college in Truro and this was her
16 first assignment. They always sent them to the reserves,
17 right?

18 So in Grade 8 she comes and she asks us, all
19 of us, she said, "What is it that you guys want to be? So
20 I'm going to break you guys up in little groups and you're
21 going to tell me. Do you want to be a fireman, do you want
22 to be a lawyer, do you want to be a doctor, do you want to
23 be a nurse, do you want to be an RCMP officer, you know,
24 what is it that you want to be? Do you want to be a
25 teacher?"

1 So we all sat there and everything like
2 that, right? So Baby John, who -- he's a little bit older
3 than me, John, he says to me, "Tuma, you're the smartest
4 one in the class. You're going to be our -- you tell her
5 what we want to be."

6 "Okay," I said, so I was appointed.

7 Now, when it was our turn, I got up and she
8 said, "Well, what did your group say that you want, want to
9 be when you guys grow up?"

10 I said, "We're going to be on Welfare.
11 We're going to be Welfare recipients."

12 And she said, "Oh my God, no, no. No, you
13 can't," you know, "that's -- no, no. Don't you want to be
14 a doctor? Don't you want to be a nurse? Don't you want to
15 be a lawyer?"

16 And I said, "There's no Mi'kmaq lawyers.
17 There's no Mi'kmaq doctors. There's no Mi'kmaq nurses.
18 There's no Mi'kmaq teachers. There's no Mi'kmaq police
19 officers. Our lives, going forward, is that all of us are
20 on Welfare, our families are on Welfare. That's what it's
21 going to be. Don't come here telling us that we have hope,
22 that we're going to be this, you know, when we know that is
23 -- it -- that's worse."

24 And Baby John got up and got mad at her.
25 Said, "That's our future. That's what we're going to be."

1 And you tell us that we can be all these things when we
2 know that's not going to happen."

3 After much work, we now have doctors,
4 (speaking in Native language), we now have lawyer --, you
5 know, first Mi'kmaq lawyer -- we have nurses, we have RCMP
6 officers, we have teachers, and we have professors. And we
7 still have people on Social Assistance too.

8 But there is hope and we want to be able to
9 make sure that whatever we do here, the stories you're
10 going to hear, we may not offer, but we want to come back
11 and use this Indigenous law, and the legal principles it
12 gives, can give us hope. We can make a difference. We can
13 do it.

14 And it's rooted in the -- what my colleagues
15 in the first presentation said, the Indigenous legal
16 principles and in this *Kloqowej* principles. It does give
17 us hope.

18 And when you listen to these stories, you
19 took a note this morning -- I was so -- one of the things I
20 was really impressed upon that this time we call that
21 (speaking in Native language), you know, (speaking in
22 Native language) you are taking a oath or swearing,
23 affirmate that you will listen carefully. And once you --
24 every single story will tell you something. You have to
25 listen for these stories. It's to be an active listener.

1 I did a -- I'm doing a project on reforming
2 Social Assistance in First Nations communities, and when we
3 were in Wagmatcook and we had an elders' meeting there, one
4 of the elders -- and I had two student researchers there,
5 and they were like, diligently taking notes down and
6 everything like that -- one of the elders talked in Mi'kmaq
7 about how she was able to use the flour sacks from the Red
8 Rose Company to make her underclothes, and that she had to
9 sew her underclothes from the flour sacks when she was a
10 young girl.

11 And my researchers were so, "Oh my God,
12 that's terrible. That's -- the property was -- must have
13 been ---"

14 I said, "You're listening wrong. She's
15 telling you that how skilled she was in sewing and in
16 making anything, and that she would be okay if Social
17 Assistance were to disappear. She has the life skills and
18 everything."

19 The young folks do not have those skills,
20 and that's why she told us.

21 I said, "That's -- we can hear all these
22 stories and you can look at them and say, 'that's
23 terrible', but also listen deeply. All of them are
24 teaching stories, and they will teach us different things
25 and different interpretations from every single story, like

1 the Lakota Sioux Woman story.”

2 Different laws have different
3 interpretations.

4 These are all -- often, our stories are
5 journey stories. There's a journey into the unknown.
6 You're going into the deep forest. There's danger there.
7 You need allies. You know, when you -- the worst place to
8 be is in a place of power with no power and no allies.
9 That's why you need to renewal ceremonies. You need
10 allies. You need your family. You need your friends. You
11 need guidance in how to move in this place. And often, we
12 find that our women are in places that are of deep power
13 with no allies and no power of their own.

14 So our return or reclamation of our own
15 Indigenous legal systems may provide -- we're -- not may; I
16 think it will provide being an ally and give our people
17 power, as in when -- as they walk through these ecological
18 life's -- ecological spaces, that in a contemporary time,
19 you may think as they move from a reserve to the city, even
20 from the city to the inner city or in some streets or even
21 among some homes and some houses, whether they make an ally
22 from folks in the friendship centre or the local gang
23 members, you know?

24 So these Indigenous legal principles will
25 tell us and help us in reducing -- I think they will help

1 in reducing the violence in women by providing them with
2 allies and power where there is none.

3 One of the rich sources of our Indigenous
4 legal principles is in our languages. Now, I'm just using
5 L'nu Mi'kmaq language as an example because that's what I
6 know, and as a fluent speaker, I can say that. I presume
7 it's the same or very similar in other languages like Cree
8 or Ojibway or Haudenosaunee or Coast Salish or Inuit, you
9 know? But we also need to do deep research into the
10 languages and what they can tell us, the words, language.

11 I can only -- our language, L'nu, Mi'kmaq,
12 is verb-based. It's based on action. It's not really
13 noun-based. And pronouns are optional. My -- and its
14 purpose of our language is to establish and maintain
15 relationships. Relationships are very important. And it's
16 knowledge-based, or rather, the experience of the event as
17 rather than the nature of it.

18 For example, the example I use in the paper
19 is that I cannot say in L'nu that you walked across the
20 room. I would say you went across the room in a walking
21 way or a crossing way. It focus on the action rather than
22 what's exactly happening. And it use evidential
23 (inaudible) to indicate relationship between life forces.
24 Proto-Algonquian languages in -- are also -- you have the
25 root word, prefixes, suffixes, and endings, (inaudible) and

1 everything like this, so we need to do a bit more deep
2 linguistic research.

3 Unfortunately, that allow -- this does mean
4 that it's -- these legal principles are not easily
5 accessible to the non-speaker. And that's -- we know the
6 importance of languages, and everybody keeps saying that
7 and everything, but they also contain our legal principles
8 in there. So as our languages die off, so do much of our
9 legal principles.

10 And so we came very close to losing our own
11 back in the 1850 when we -- the Mi'kmaq nearly became
12 extinct.

13 So I just pulled out a few words now to
14 bringing all the words that relate to justice or healing in
15 the Mi'kmaq language would be -- oh, we wouldn't -- we
16 don't have enough time here. I know I'm running out of
17 time too here, too, you know. But we wouldn't have enough
18 time. It would take us several years and a whole bunch of
19 old people.

20 But here's some words that I had looked at.
21 *Ilsutekek*. *Ilsutekek* means to make right, to judge
22 correctly, according to -- it basically means to counsel
23 the person back to the right behaviour if they, you know,
24 went off the path, then we may have the right.

25 *Nujo'teket*, we did -- you know, one of the

1 things we did today was, there was a witnessing occurrence
2 here. *Nujo'teket* means to witness a particular event. So
3 as you know, sometimes what happens is that people, they
4 witness and then they have different perspectives on the
5 same thing. As lawyers, we're taught that eye witnesses
6 may not be entirely credible in their -- what they and
7 memory and everything like that, right?

8 But if you have an official witness in the
9 *Klogowej*, when there's a particular event or ceremony
10 happens, we put up official witnesses and their story will
11 become the story of how this history will be repeated from
12 there on. Others may have different versions of it, but
13 that will be the official version.

14 *Anus'tumakwek*, you've caused a pain and now
15 your family has suffered some of your pain. I -- some
16 words and concepts come through very, very quickly. This
17 was done at a sentencing circle that I participated a
18 number of years ago. And when I heard the phrase, I knew
19 exactly what it meant, even though I had never heard the
20 word before. And I was like, whoa, that's a very powerful
21 word.

22 In this sentencing circle, this young woman,
23 she was drinking and driving and she ran over another woman
24 and killed her, it was, and that they were sentencing her
25 and everything like that. While they were at trial and in

1 between the trial and the sentencing, the woman who was the
2 driver, her sister was found also dead, and it was a
3 mystery as to how, what happened. And she's one of the
4 murdered and missing women that we think of now.

5 So in her sentencing of it, her -- the woman
6 who had died in that thing, in the accident, their family,
7 the mother said, "Anus'tumakwek." And she said, "I take no
8 glee in that," she said. "I'm very, very saddened." She
9 said, "The pain that was caused to me by this action and
10 then the relationship and there's a -- and the balance and
11 harmony has been upset. It -- they now, their family is
12 now going through the same thing. So no matter what we do
13 here, no matter what we sentence, there's nothing we can
14 do," they said. "They have paid too, so let's just walk
15 away," they said.

16 And it was a very powerful moment that she
17 said, "Anus'tumakwek." And I -- and that phrase still
18 stuck in my mind as to how it went from *O'pla'matijik* to
19 (speaking in Native language) very quickly in that one
20 minute.

21 And the family forgave and there was
22 agreement and there -- we were -- the families came
23 together in a very, very difficult time.

24 And yeah, I was, you know, that was a very
25 powerful time and I thought to myself, I must think about

1 that word a bit more. Yeah.

2 I don't want to say that it's karma or
3 anything like that. That's not giving it the right
4 context. That's not it, I know. But ---

5 Now, people say, "Well, how does this work,
6 these legal principles and stuff like this, right, you
7 know? There's 500 years of content. Well, there might
8 have been 500 years of contact, but they were still -- we
9 still used them and we still use them today in some form or
10 fashion. Sometimes it went underground or had to be hidden
11 or anything like that. But other times, Ben Christmas -- I
12 mentioned him -- we have marriage customs, and one of the
13 marriage customs I looked at I thought, these may be
14 useful. If we can bring this back, would it reduce the
15 instances of domestic violence?

16 It -- one time ago, you know, if a young man
17 wanted to marry, he had to come and sing a hunting song at
18 a community event, and all the women were standing there
19 and they would, okay, if one of them decided okay, you will
20 become my husband, then they would go off and he had to do
21 broom service for one year.

22 Basically, he had to live with the family of
23 the bride for one year and he had to prove that he was a
24 good hunter. He had to kill a moose during that one year.
25 If he did not kill that moose, the marriage was off. In

1 other words, you had to know how to provide, and so they --
2 after one year, they both came back and they held another
3 feast to the community, and they announced to the community
4 by singing whether the marriage was successful or not.

5 And one -- if it was not successful, they
6 had to sing why. And one of the more famous songs that we
7 have and is played often by the -- is (Singing in Native
8 Language), right?

9 And I -- when I was young, I misheard it. I
10 thought (speaking in Native language), it means to live
11 together and sometimes it's often mean to shack up
12 together, you know, like, for one week or so or something
13 like that til the Family Allowance cheque comes or
14 something like that, anyways.

15 But it does mean that they had to live
16 together during the (speaking in Native language), and
17 (speaking in Native language). And I heard it wrong. And
18 when I heard the original tape, it means (speaking in
19 Native language) now, he is now moping around, you know,
20 and that's what it meant. And he's the one who wanted to
21 get married and now he's moping around, you know, like
22 this, right?

23 So and they're announcing and they put the
24 blame. And it could very easily be on the woman too,
25 right? And so the whole community knew that this was not a

1 good relationship or that -- and so the wife would go back
2 to her family, the husband would go back to his family, and
3 nobody would think any wiser of the thing.

4 The *Indian Act* took that power away and
5 allocated to the federal and the province. And that -- in
6 some ways, it says it's a marriage song, but it's a
7 marriage song, but it's also a divorce song. And I'm like,
8 that's family law right there and then. We controlled it,
9 we had it, we had our own ceremonies, we had our own thing,
10 and we had our own witnessing of it, and everything like
11 this. *BNA Act* of 1867 took that away. Divorce was given
12 to the federal government and solemnization was given to
13 the provinces. Indigenous rights regarding solemnization
14 and divorce were taken away in that instant, but we still
15 did it, you know, in a way.

16 So today I'm now a Justice of the Peace and
17 I can -- I mean, I make sure that they sing at my things,
18 like, you know, when they come. And you come back a year
19 before I sign this off, right? That's how I bring it back,
20 right?

21 But in some ways, you know, we always hear
22 the stats about it starts off with verbal abuse, moves to,
23 you know, a slapping and stuff, then it moves -- in this
24 sense, the community stops it before it gets to that, and
25 that's a whole process was there. So our Indigenous legal

1 principles do have protections, in a way.

2 Now, our challenges: again, its' our desire
3 to have L'nuwey Justice System implement us. And people --
4 sometimes we -- because of the history of colonization and
5 you know, we think what would it look like? What would it
6 be? And sometimes what we want is a reaction.

7 I was at a community. They said, "Well, we
8 want our own L'nu judge, we want our own L'nu prosecutor,
9 we want our own L'nu defendant, we want our own L'nu
10 sheriff, we want our own L'nu jail, we want our own -- you
11 know, type of thing.

12 And I'm like, "But we have tons and
13 inquiries and reports and everything that says, "That
14 doesn't work." All across Canada. We have the Royal --
15 Donald Marshall inquiry in Nova Scotia that changed up the
16 justice system in Nova Scotia and across Canada. We had
17 the Helen Osborne inquiry here. We had the Royal
18 Commission on Aboriginal People. We had the Truth and
19 Reconciliation (inaudible). Throughout it all, we know
20 that there's tremendous problems with the Western justice
21 system. Why would we want to replicate that when our own
22 Indigenous systems are there and that we can reclaim them
23 and bring them back?

24 However, some challenges to understand:
25 where it comes from and how to incorporate in contemporary

1 situations. That marriage song and that divorce song, in
2 the old days, the woman went back to her family, the
3 husband went back to his family, and nobody cared. Today,
4 we have -- we need to consider child support, child
5 custody, division of assets, housing, and all sorts of
6 other contemporary issues that make it a bit more
7 challenging.

8 But lawyers, we love challenges. Policy
9 (inaudible) like me, we love challenges. We can do this.
10 We can work at it. We can -- that's where the hope comes
11 in. We can bring that out.

12 But what we're doing is, we're going into
13 the deep forest now and when we come out, we will be
14 different. And in some ways, that's what I've noticed
15 about other inquiries, like the Truth and Reconciliation
16 (inaudible).

17 And I would just also want to point out to
18 the Commissioners that you, in addition, you really know
19 that the impact of what has happened to all the families is
20 there in (inaudible) for us, but you're now going on this
21 journey. You are going into that deep forest and when you
22 come back, you will show us what we need to be allies and
23 what -- where to get powers in that place where there's no
24 power, and how our women and our young girls and our trans
25 folks and our two-spirited people will obtain that and be

1 safe in that -- in those areas.

2 But you will be changed too. Whether it's
3 good or for bad is not the point. We've seen it in the
4 staff of the Truth and Reconciliation Commission. Some of
5 them are changed dramatically. And that's -- when you go
6 down into this forest, this is what's going to happen.

7 And that also includes the staff, you know,
8 and the folks who we have standing here. As you listen to
9 all these stories that are going to be coming up, you will
10 be changed. When you go on a journey and you come back to
11 your community, you bring that information back. There's -
12 - you are changed, and just to be prepared for that.

13 This is a Savannah Sparrow, (inaudible). My
14 great-grandfather is a (inaudible). My great-grandfather,
15 who told us all the songs and chants come from the birds,
16 and this is -- I look back and I see them. They go on
17 journeys south, north, south, east, west; all over, and
18 they're very, very beautiful and even they're small, and
19 they sing and they offer much solace and hope for
20 everybody.

21 Anyway, so with that in mind, I would like
22 to say *Wela'li'loq*. Thank you. (speaking in Native
23 language).

24 **MS. SUSAN VELLA:** Thank you, Professor. I
25 wonder if I could -- I know that we are short of time, but

1 we are able to stay here past five o'clock, so with your
2 permission, I will ask a couple -- just a couple of
3 questions. Thank you.

4 Just to help us understand a little bit more
5 about the differences between the Canadian justice system
6 and the *L'nuwey Tplutaqan* system, when one *Mi'kmaq* or
7 *L'nuwey* exhibits improper behaviour such as being abusive
8 towards his partner, who bears the responsibility for those
9 actions?

10 **DR. TUMA YOUNG:** One of the things about
11 that is that it's not borne. It's a concept of shared
12 liability. If one person in a family does inappropriate
13 behaviour, the whole family is seen in that sense. There's
14 a shared liability.

15 So in that sense, the *Klogowej* is rooted in
16 the immediate family where in some ways, that -- even if
17 you want to use the Western system, that's where the court
18 lies, within that person's immediate family. And they have
19 a vested interest in making sure proper behaviour is done
20 by all of their members at all times.

21 So as soon as they see somebody step out of
22 line, they bring them back to one of the corrective
23 behaviours that they use, or the corrective concepts. It
24 is a shared liability.

25 **MS. SUSAN VELLA:** M'hm.

1 **DR. TUMA YOUNG:** It may not sound fair, and
2 people will say, "Well, I didn't do that. Why should I be
3 punished (inaudible)?"

4 But the flip side of it is that there's also
5 a shared celebration of the whole -- you know, when one
6 person does good, it -- the whole family is seen as doing
7 good.

8 And to give you a little example of that,
9 when I went to law school and I went to University of
10 British Columbia, I graduated in there in 2000. I
11 graduated there and I didn't get a phone call from my band.
12 No chief called me, congratulations, nobody. And I said,
13 "Okay." I'm like, "What's going on?" I was like, none of
14 my brothers and sisters called or anything like that.

15 So I go home and I walked in my mother's
16 house, and she had all these flowers sent to her. And I'm
17 like, "What's all this? Who died?"

18 She said, "Nobody," she said. "You
19 graduated."

20 And I'm like, "But you got the flowers."

21 The whole family was seen as being lifted
22 up. The whole family was congratulated, you know. One
23 person does good, it's on the (inaudible). And that's the
24 same -- whether it's right or wrong -- it's the same as one
25 person -- when one person does wrong, the whole family is

1 seen as being disgraced. So the vested interest in keeping
2 proper behaviour roots in the family.

3 **MS. SUSAN VELLA:** M'hm. And is it that the
4 social responsibility makes for more effective deterrent or
5 prevention of harmful behaviour since the -- not only the
6 individual is being -- bearing responsibility but also the
7 whole family?

8 **DR. TUMA YOUNG:** It does work as a kind of
9 a preventative model too, because before anybody usually
10 gets to that point, the family -- because they are very
11 much aware and they're interact -- they can quickly see
12 where somebody is moving off track, and they will go and
13 they'll see (speaking in Native language). They'll bring
14 that person, they'll counsel that person back because it's
15 seen as, if we don't do it, it will impact upon all of us,
16 right? So the whole family has to step in and step in and
17 correct the behaviour when it starts.

18 But if -- because of the history of
19 colonization and the impacts, and we basically know what
20 has happened, all that's truths and stuff like this, all
21 the many things that have happened, there's been a
22 separation in that that sometimes we -- our families are
23 non-existent in that sense, or they're unable to carry on
24 that role.

25 And especially if families that have

1 children taken away for whatever reason by the children's
2 agencies or if there's something that happened in the
3 family, if there's a separation there, in accordance with
4 the (speaking in Native language), they may be unable to
5 bring the proper behaviour, or they may be unable to
6 exercise.

7 So support in the family goes a long way in
8 preventing a lot of abuse, you know, making sure that they
9 are correcting the first behaviour.

10 **MS. SUSAN VELLA:** And you spoke earlier
11 about the importance of two-eyed seeing and how that may be
12 a way for the Canadian justice system and the *Kloqowej*
13 system to be complementary with each other. And in the
14 example that you've used, we have an example as a concept
15 of -- as you know, a vicarious liability in the civil law
16 where employers may be responsible for sexual abuse by
17 their (inaudible) numbers of children, which is a form of
18 collective, perhaps, responsibility as well.

19 Is there room for -- how would your theory
20 apply to that scenario?

21 **DR. TUMA YOUNG:** Well, it would -- I think
22 it may -- it probably would very much apply. I mean, you
23 know, vicarious liability would, in some sense, would apply
24 to the entire family for -- like, for example, in an abuse
25 situation, you know? People will be asking, "Why did you

1 not step in? How come you weren't (inaudible). You're
2 just as responsible for stopping it and behaving and stuff
3 like this, right?"

4 It's -- in the modern-day concept, that's --
5 people would say, "Well, that's an unfair determination
6 given to the family, whereas it's the individual." And
7 people can back off on that, right? And they would say
8 that -- like, you know, "We disassociate ourselves from
9 that person," or we -- that person is a kind of a
10 banishment, in a sense, in a form.

11 And I caution people. Banishment in Mi'kmaq
12 culture, the old way, basically means it's like a capital
13 death, you know? You may be able to survive physically,
14 but without the support of your family, your community,
15 your allies, your relationships, you will not be able to
16 live.

17 And so this concept of vicarious liability,
18 if you look at it from the Mi'kmaq perspective, instead of
19 looking at it from how it can be applied this way, how can
20 we take this and apply it in the Western court system?

21 **MS. SUSAN VELLA:** M'hm.

22 **DR. TUMA YOUNG:** You know?

23 **MS. SUSAN VELLA:** How would the *L'nuwey*
24 *Kloqowej* justice system decrease the vulnerability of
25 Indigenous women and girls and trans and two-spirited

1 people to experiencing violence within their own families
2 and communities?

3 **DR. TUMA YOUNG:** Well, the *Kloqowej* system,
4 the *Kloqowej* model would help by bringing together allies
5 and have relationships in there that would help support
6 women and young girls, trans folks, and two-spirited people
7 in a contemporary setting where they would now have allies
8 and supportive people in there and working through the
9 system; and that the whole dispute would be adjudicated in
10 that way.

11 And looking at -- it's not just, you know,
12 trying to adjudicate a particular event, but it's more
13 really focus on prevention rather than -- like, I used to
14 instinctive Children's Aid, in a way, right?

15 **MS. SUSAN VELLA:** M'hm.

16 **DR. TUMA YOUNG:** A lot of the Western system
17 focuses on protection, whereas like, under the *Mi'kmaq*
18 model, it's -- you know, the *Mi'kmaq* standard of child care
19 is to prevent these things from happening in the first
20 place, you know, so that you don't have to go in and take
21 children away in a way -- or, you know?

22 Yes, if there is need for protection, there
23 would be a need for protection and you will bring those
24 supports in there, but you spend the efforts and the
25 resources on prevention, whereas I think it's the complete

1 opposite now, today.

2 Most provincial children's legislative acts
3 are all focused on primarily protection, whereas Indigenous
4 communities, the standards is on prevention. And that's, I
5 think -- that's where the resources needs to be put
6 forward, you know, and that's where the *Kloqowej* model
7 would be a very, very helpful one.

8 And I do have a story on that. I don't know
9 if you want to know.

10 **MS. SUSAN VELLA:** Yeah.

11 **DR. TUMA YOUNG:** A number of years ago I
12 worked doing an evaluation of a particular Children's Aid
13 organization back home. And I had to go and talk to folks
14 about their experiences with Children's Aid.

15 And one woman said to me, she said -- she
16 called me up and she says, "I want to talk to you. I hear
17 you're going to be doing this," she said.

18 I said, "Yes." I said.

19 "Okay, you come to my home and I'll have tea
20 ready for you," and stuff like this.

21 So I said, "Okay, I'll come." So I came.
22 And while we're sitting here -- and she was the mother of a
23 child that had a lot of special needs, in a way. And the
24 child was a bit older; like, 10, 12 years old, and -- but
25 very challenging too. And she was a single mother and

1 everything.

2 And she said, "I needed help and I kept
3 asking for it. I kept calling the agency up and I asked
4 for help. I asked for respite care. I asked for this. I
5 asked for counselling. I asked for support. I asked for
6 many things. They couldn't give me help," she said. "So
7 one day it came to a breaking point," and she said, "I had
8 to sit down and I had to think about what is it that I
9 needed to do to get the help I can?"

10 So she said, "I knew what I had to do, and I
11 did it." She said, "I sat my child down and I slapped my
12 child so hard I left a mark. And then I picked up the
13 phone, I called the agency, and I said, 'I beat my child.'
14 Half an hour later," she said, "I had workers there, I had
15 respite offer, I had counselling, I had everything that I
16 needed." She said, "Why do we have to get to that point
17 before we get the help we need?"

18 And I'm like, "Yes, that's --" and that's --
19 -

20 And she said, "It -- you know, for years,
21 I've asked for the help before," she said, "but none was
22 forthcoming."

23 And I said, "Well, that goes against the
24 complete Mi'kmaq understandings of child care and
25 standards, which is to prevent you from getting to that

1 point."

2 She said, "Yeah."

3 So we have a problem here, you know? And I
4 wrote it in my evaluation and unfortunately, because of the
5 way the legislative system works, it's a -- under the *BNA*
6 *Act*, child care and Social Services is provided by the
7 province or is responsibility for it, and the federal
8 government pays for it, and there's always a dickering
9 about jurisdictional issues. And I think I'm not preaching
10 to the choir here. Everyone here knows about those
11 jurisdictional issues, in a way. What are we going to do
12 about?

13 And I think if we take and reclaim control
14 over our institutions of governance, basically, our child
15 agencies and root them in the foundations of our Indigenous
16 legal principles. And I tell people that if we do that,
17 and it doesn't matter who the workers are.

18 And people say, "Well, all the workers are
19 non-Native in the Children's Aid agency."

20 I said, "It wouldn't matter if they're all
21 non-Native if the standards are L'nu." They'll be -- you
22 know, they'll be carrying our wishes, in a way, or we can
23 have a Children's Aid agency totally staffed with L'nu
24 people, Mi'kmaq people or Indigenous people, and every
25 single one of them, from the Director of the Board of

1 Directors to the secretary will be -- but if the law that
2 they're implementing is Western, it's going to be not --
3 it's very useful for us -- useless, I should say, not
4 useful, because it's not rooted in our own Indigenous legal
5 principles.

6 **MS. SUSAN VELLA:** M'hm.

7 **DR. TUMA YOUNG:** And that's why the *Kloqowej*
8 and other institutions of governance, we need to reclaim
9 these and that will go -- I believe that will go a long way
10 in reducing the violence that's in our communities.

11 Like my colleague Val said this morning, you
12 know, we heard that, "We're not going to eliminate it
13 because the nature of the human condition, we're going --
14 there are always going to be some form of disputes, but we
15 can reduce it tremendously."

16 And that's the concept of -- I think, you
17 know, when we root it back and put it up to self-government
18 and self-determination, where -- yeah, well, the word in
19 Mi'kmaq, we call it (speaking in Native language), we're
20 taking care of our own. We're taking care. We're taking
21 responsibility now. And that's one of the sources of
22 Indigenous law according to Val pointed out to us and that
23 was from John Borrows.

24 **MS. SUSAN VELLA:** Thank you. Thank you for
25 those recommendations and wisdom.

1 The -- my final question is, bearing in mind
2 that this is not just a federal inquiry but provincial
3 inquiries, including for the Province of Nova Scotia, do
4 you have any recommendations or suggestions for the
5 Commissioners on how to empower the local Mi'kmaq
6 communities to revitalize *Kloqowej* so that it can be
7 applied to today's situations and institutions?

8 **DR. TUMA YOUNG:** Look at the Covenant Chain
9 of Treaties. There's a clause in our Treaties that says
10 how the relationship should be between the state, Canadian
11 Western state, and Mi'kmaq people. It's based on peace and
12 friendship, you know, peace and friendship, and some of the
13 Treaty clauses say that any disputes between the settlers
14 or the colonists and the Mi'kmaq will be settled in the
15 courts of civil (inaudible), the civil courts. It says
16 right there, not in the criminal courts.

17 And Treaty interpretation principles, I
18 would, you know, even suggest that if its' not written down
19 in a Treaty, then the Indigenous people retain that right.
20 So any disputes between L'nu and another L'nu should be
21 tried in the *Kloqowej* model.

22 And that's -- that may be a step too far for
23 Canada. But I tell people, "Instead of just -- don't just
24 look at Treaty rights. From those Treaty rights come
25 Treaty obligations. And everyone has a Treaty." And I

1 say, "Nova Scotia, it's not just L'nus that have a Treaty,
2 it's also the non-Native people that have a Treaty. Their
3 -- that Treaty is just as much theirs as it is mine."

4 But we -- and we both have Treaty rights and
5 we both -- but we have larger Treaty obligations. And I
6 think that's where the Commissioners can help in producing
7 recommendations for Nova Scotia. That's where I would
8 start with that.

9 **MS. SUSAN VELLA:** Thank you so much. Those
10 complete my questions, and so we will now proceed the -- to
11 questions by the parties, subject to -- should we go right
12 into that, Chief Commissioner?

13 **CHIEF COMMISSIONER MARION BULLER:** Yes.

14 **MS. SUSAN VELLA:** Yes. Are you okay to
15 answer some questions?

16 **DR. TUMA YOUNG:** Oh, yes.

17 **MS. SUSAN VELLA:** Yeah.

18 **CHIEF COMMISSIONER MARION BULLER:** Would the
19 Witness like a break?

20 **MS. SUSAN VELLA:** Would you like to have a
21 break?

22 **DR. TUMA YOUNG:** No, might as well keep
23 going, because we're -- we don't have a whole lot of time
24 and I have to be home tomorrow. Yeah. So ---

25 **MS. SUSAN VELLA:** All right.

1 DR. TUMA YOUNG: And ---

2 MS. SUSAN VELLA: Please have a seat, or you
3 can stand if you prefer.

4 Are there any parties who wish to ask
5 questions, and if you could identify yourself, please, for
6 the record? There's a podium over there as well, if you
7 prefer. Thank you.

8 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

9 JOËLLE PASTORA SALA:

10 MS. JOËLLE PASTORA SALA: Hello. Good
11 afternoon, elders, knowledge holders, survivors, families,
12 Commissioners. Before I ask my question, I just want to --
13 or my questions -- I just wanted to acknowledge the little
14 boy water drum that was with us in ceremony this morning,
15 as well as the drum that was here earlier and the sacred
16 fires outside and the one that was burning here today.

17 Thank you for your presentation, Mr. Young.

18 I have a few questions for you, so I hope
19 you can bear with me.

20 My name is Joëlle Pastora Sala. I am legal
21 counsel to the Assembly of Manitoba Chiefs.

22 My question for you will primarily focus on
23 the relationship between Mi'kmaq laws and Western laws.
24 And I'm sorry I'm not -- I will be using Mi'kmaq law
25 because I cannot pronounce your names, so I hope you accept

1 that.

2 In the published article that you submitted
3 with your materials, you indicated that Canadian -- the
4 Canadian justice system is unable to see outside its
5 Eurocentric worldview, and that it simply wants to tinker
6 the status quo rather than accommodate the development of a
7 separate Mi'kmaq justice system, correct?

8 **DR. TUMA YOUNG:** Yes.

9 **MS. JOËLLE PASTORA SALA:** And you indicate
10 near the beginning of that same paper that the Canadian
11 justice system has to begin to understand the sources of
12 Mi'kmaq worldviews and laws in order to truly understand
13 the legal tradition; is that correct?

14 **DR. TUMA YOUNG:** Yes.

15 **MS. JOËLLE PASTORA SALA:** And you describe
16 the sources of the Mi'kmaq Indigenous laws as being
17 radically distinct from those of the Canadian justice
18 system; correct?

19 **DR. TUMA YOUNG:** Yes.

20 **MS. JOËLLE PASTORA SALA:** And it would be
21 correct to say that one of the differences between these
22 laws is the role and importance of the sacred gift of your
23 language as a source of Mi'kmaq law?

24 **DR. TUMA YOUNG:** Yes.

25 **MS. JOËLLE PASTORA SALA:** I would like to

1 explore this concept in a little bit more depth with you.
2 Given the radical differences between Mi'kmaq law and
3 Western laws, and you understanding that they must be
4 renewed, how, if at all, do these two systems of laws
5 conflict with one another?

6 **DR. TUMA YOUNG:** Well, first, they conflict
7 in many different ways, and we see that conflict almost on
8 a daily basis, and even within our own people. For
9 example, one of the ways it conflicts is with who gets to
10 hunt moose back home because of the changes in the *Indian*
11 *Act* and the imposition of status and who is and who is not.
12 My great-great grandfather was Gabriel Sylliboy of the 1927
13 case *R. v. Sylliboy*. And he was a Grand Chief of the
14 Mi'kmaq Nation. And he fought for the right to hunt and
15 trap muskrat and everything.

16 He never was asked for a status card, you
17 know, that there was no status cards issued at that time.
18 He had -- his mother was White, you know? And -- but he --
19 so in a way, he would have been half, but he was treated
20 like an Indian, in a way, and that's what we always said,
21 that he was treated like a Native person, Mi'kmaq person,
22 by the non-Native person.

23 Fast forward 60 -- well, 60 -- yeah, 60
24 years later, almost 60 years to the *R. v. Simon* case, which
25 is a Supreme Court case, and that was the same case,

1 another Mi'kmaq man, hunting and fishing the same Treaty,
2 everything. One of the ways he had to prove he was an
3 Indian or a status or First Nation or Mi'kmaq, was he had
4 push -- he had to pull out his status card.

5 In some ways, who we identify and say is a
6 member of the Mi'kmaq community, before that, was left up
7 to the Mi'kmaq community. In 1927, we had our own laws
8 regarding membership, who was and who wasn't. In 1985,
9 that was taken -- you know, that was no longer the case.
10 And that's where one of the laws conflict. That's an
11 example of that.

12 And sometimes we, as individuals, Indigenous
13 people, we react and try to utilize Western law to try and
14 find a solution for a problem that may be better answered
15 by referring to Indigenous law or Mi'kmaq law.

16 For example, there's an announcement -- and
17 I don't -- I never blame chiefs or councils or anything
18 like that -- I mean, they try and do a good job as with the
19 limited resources and with the limited authorities they
20 have and everything like this -- but they just announced
21 that in order to hunt moose in Nova Scotia, you have to
22 have a status card.

23 And I'm like, that goes against everything
24 that we know. But instead of reaching out to what our
25 Indigenous laws are, they reacted by taking what the

1 Western law, Canadian law is, and that's where the
2 conflicts. Even within our own communities, we do that
3 because it's sometimes easier to go that way than it is to
4 do the deep research that's needed to find our own laws and
5 what -- how they can be applied in the contemporary
6 situation. There's many examples of how they conflict that
7 way.

8 **MS. JOËLLE PASTORA SALA:** Thank you. Maybe
9 you could explain your understanding of how we manage that
10 conflict, whether it's by using your examples or others?

11 **DR. TUMA YOUNG:** When I did -- a number of
12 years ago I did a report for the Grand Council and I
13 proposed a legislative scheme based on Mi'kmaq law and I
14 presented it to the Grand Council and stuff. But the Grand
15 Council has no legislative authority any more. They're not
16 recognized in Canadian law and stuff like that. So now,
17 how it's managed is a co-management between the province
18 and the chiefs; which, in a way is rooted in how to get
19 resources. But in getting those resources, just what
20 exactly are we giving up to get there? And that's an
21 issue.

22 And again, I don't blame chief and councils.
23 I have never have because I have seen many good chiefs,
24 many good councillors work within the system and everything
25 like that, and they try and try and try, and this, the

1 structure itself doesn't really work.

2 And so when we look at these laws, we need
3 to do some deep research into it and bring them into
4 creating our own governance institutions. And that's one
5 example of it. And we can -- you know, and there's much
6 work to be done. It's never going to end, I suppose.

7 We -- in Nova Scotia we have taken control
8 over our educational system. We have the law -- we have
9 law-making authority to make laws regarding education in
10 our own communities. We also have a tripartite agreement
11 as to child welfare, you know? And now we're looking at
12 Social Assistance reform and creating our own system of
13 Social Assistance or what we call (speaking in Native
14 language). I mean, there's still a ways to go, but at some
15 point, we looked at it and then we said, "(speaking in
16 Native language), we have to just take control over this
17 and bring it back."

18 And so when we create these contemporary
19 governance institutions that will implement, I hope that
20 they will utilize, as their primary source, Mi'kmaq laws or
21 Mi'kmaq legal principles, I should say, rather than Western
22 ones. But I think what may need to happen is that in the
23 meantime, they may have to be a two-eyed seeing approach to
24 allow that to happen or move us toward that situation.

25 **MS. JOËLLE PASTORA SALA:** As part of the

1 materials that helped us prepare for the hearings, the
2 parties withstanding received last week some academic
3 papers as well as materials. One of them was an article
4 that was written by an Anishinaabe scholar, Aaron Mills
5 from the McGill Law Journal. And the article was entitled,
6 "The Life Worlds of Law on Revitalizing Indigenous Legal
7 Orders Today." Are you familiar with this paper?

8 **DR. TUMA YOUNG:** No.

9 **MS. JOËLLE PASTORA SALA:** For the purposes
10 of my question that I'm going to put to you on this paper,
11 I don't think it's crucial for you to have read the paper,
12 but if you feel like you can't answer my question, please
13 let me know.

14 So in this article, Mr. Mills talks about
15 the fundamental differences between Anishinaabe legal
16 orders and Western laws. And I'm going to paraphrase a
17 little bit and quote from Mr. Mills. According to him,
18 because the differences between the laws are core to each
19 system of law, it's impossible to integrate Indigenous
20 legal orders into Canadian law, or vice-versa. Rather, he
21 says, and I quote:

22 "It's becoming part of the orthodoxy of
23 legal education in Canada that Canadian
24 law needs to relate with Indigenous
25 legal orders. The centre of the

1 dialogue on that relationship is thus
2 now beginning to shift to how they
3 ought to relate with one another.”

4 Is this explanation consistent with your
5 understanding of the relationship between Mi'kmaq law and
6 Western law?

7 **DR. TUMA YOUNG:** I don't -- I really think I
8 need to read the article thoroughly to be able to
9 thoroughly answer that question, because as -- you know, in
10 -- lawyers, we have to be very careful as to we don't step
11 into a place where we don't give advice or provide in --
12 that's what I'm doing here, and without reading into it.

13 That's -- however, I remember my own -- and
14 I'll tell you a little story about my own experience in law
15 school. I went to the University of British Columbia which
16 had a lot of Aboriginal law courses there, and I really
17 wanted to take these courses and I took them. And one of
18 my instructors from the first year was John Borrows, and
19 loved it and everything like this.

20 But as I moved on, I realized that what I
21 had learned in law school -- and this is primarily for
22 everyone -- is that I learned that Aboriginal law, as
23 taught in law school, is really Canadian law as it applies
24 to Indigenous people. It is not Indigenous law.

25 I don't -- I realized that I cannot go to

1 law school to learn about L'nu law. That has to learn
2 outside of the law school, and that's with the sources
3 finding it out. But I still became a very good lawyer, you
4 know, and applying Canadian law to stuff like that.

5 But that's sometimes an expectation that I
6 notice some of my students, they get in there and they want
7 to be -- change the world. And I'm like, "I have to temper
8 your expectation down right off the bat. You're not going
9 to be learning Mi'kmaq law. You're going to be learning
10 Canadian law as it applies to Mi'kmaq people."

11 **MS. JOËLLE PASTORA SALA:** I guess, building
12 on that, I do have one final question. So you spoke today
13 of the challenges of incorporating Mi'kmaq law in
14 contemporary situations.

15 **DR. TUMA YOUNG:** M'hm.

16 **MS. JOËLLE PASTORA SALA:** What are your --
17 what are the implications of those challenges and what is
18 your understanding of what a decolonize process to address
19 missing and murdered Indigenous women and girls would look
20 like?

21 **DR. TUMA YOUNG:** I can summarize. To me, my
22 understanding of a decolonize process is that there's, in
23 some ways -- and I know from my own conceptual
24 understanding there's four things. One is that we
25 remember. We must remember what happened. We cannot never

1 forget that. We remember that.

2 And then we enter into a state or what I
3 call a mourning ceremony. We mourn our losses.

4 And then we dream. In order to move to a
5 decolonize process, we dream about what our communities are
6 going to be like or what they can be like or what they were
7 like, and how we can restore them to where they can be.

8 But I haven't seen us taking the action
9 step. The next step is to take the action, implement what
10 needs to be done, and we're not quite there yet. We
11 remember, we have mourned, and we are dreaming about our
12 communities, what they can be; a vibrant, healthy,
13 wonderful community. And we have all the recommendations.

14 And I would -- I think my advice to the
15 Commission would be -- or recommendation would be, help us
16 take that next step from dreaming to taking the action.
17 How do we implement all these steps that we need to
18 implement in our communities?

19 And that's my concept of decolonized
20 approach to this. We are there. I mean, I think we need
21 to take the action. We, you know, begin by pulling out to
22 find out what the Indigenous laws are in particular tribes,
23 find out how they will work, how they can be used, and use
24 them. That's the action step. And I think that to me,
25 that's the last step in the decolonize process is, you

1 know, we remember, we mourn, we dream, and then we take
2 action to make that dream a reality.

3 **MS. JOËLLE PASTORA SALA:** Thank you, Mr.
4 Young, for your answers to your questions.

5 Thank you, Chief Commissioner and
6 Commissioners for allowing me to ask my questions.

7 **DR. TUMA YOUNG:** (speaking in Native
8 language). Thank you.

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

10 **ANGIE HUTCHINSON:**

11 **MS. ANGIE HUTCHINSON:** (speaking in Native
12 language). My name is Angie Hutchinson. I'm a
13 representative of the Missing and Murdered Indigenous Women
14 Coalition here in Manitoba. I am not a lawyer. I am here
15 practicing decolonization actively and with agency.

16 I just have some follow-up questions similar
17 to the lines of Joëlle around the practical application of
18 some of the concepts that you spoke of, specifically as it
19 relates to our families who have lost loved ones.

20 I just want to acknowledge when you spoke of
21 the stories and how stories carry principles of justice,
22 and I took -- I completely agree with you with that
23 statement. I listened to many of our families and their
24 experiences and sharing the stories and the loss of their
25 loved ones. A common theme that's throughout many of the

1 stories is a shared experience around a reduced sentence or
2 a sentence that families don't feel does justice to their
3 loved ones.

4 And so when you speak of the concepts of
5 accepting responsibility, perpetrators of violence
6 accepting their responsibility and restoration for
7 families, what lessons or recommendations can you offer
8 this inquiry to ensure that families who have lost a loved
9 one really feel that this Indigenous practice is being
10 followed through and that they're -- the perpetrators of
11 violence are receiving appropriate sentences, and that
12 families feel that that justice is being served and that
13 restitution is being honoured to the families?

14 **DR. TUMA YOUNG:** My recommendation would be
15 that in where I come from, we're going to be looking at
16 Mi'kmaq law, and here in Manitoba there's different tribes.
17 Look at what the tribal traditional law -- or not
18 traditional, but what their Indigenous laws are and what
19 their dispute resolution processes are. It could be
20 entirely different and probably is. And it may be utilized
21 different for different types of relationship breakdowns.

22 For example, you can easily use a *Kloqowej*
23 for many things; like, for example, a civil matter between
24 somebody owing money or anything like that, where it
25 becomes more difficult. It -- how would it work when

1 there's been a serious crime like a murder or a rape or an
2 assault has taken place? And you want to make sure that
3 you're being fair to everyone, including and primarily to
4 the folks who have experienced this breakdown.

5 Whereas the Western system has failed us is
6 that it hasn't allowed us to go through that cycle, you
7 know, whereas the families, they haven't come to the
8 agreement, but the cycle has gone on without them. And
9 that's where they're still in -- they may be still at the
10 (speaking in Native language) stage and they have to -- you
11 know, we have to help folks come to an agreement as to what
12 would be an appropriate sentence be for folks, you know?

13 What is that agreement as to how to either
14 restore the balance and the harmony, or even look at
15 justice as a healing? And in some communities, like, some
16 tribes like myself, the L'nu, we do have a concept of
17 revenge, but that's tempered down by restitution.

18 **MS. ANGIE HUTCHINSON:** Okay.

19 **DR. TUMA YOUNG:** The challenges is that do
20 those apply in a contemporary society? And then we also
21 have to have the larger discussion as to what are -- when
22 we dream about our communities, what will they look like
23 including our justice systems?

24 **MS. ANGIE HUTCHINSON:** Thank you. Just to
25 kind of ask a follow-up question to that, a lot of these

1 principles that you're speaking of are within communities
2 and within relationships between Indigenous people and
3 Indigenous people. But what happens with the interplay
4 between Indigenous and non-Indigenous Canadians?

5 And we know that many of the perpetrators of
6 violence against Indigenous women and girls are non-
7 Indigenous men, and so how can we apply these principles
8 when dealing with the non-Indigenous community and not
9 stereotyping Indigenous men as always being the
10 perpetrators of violence against our women?

11 **DR. TUMA YOUNG:** Well, there's -- the first
12 step to, you know, in our situation is that we look to the
13 Treaties. The Treaties clearly outline how disputes are to
14 be handled between non-Indigenous people and Indigenous
15 people; L'nus and non-L'nus, in this case.

16 We can bring those up, you know? Today, all
17 -- whenever we talk Treaties, it's all about hunting of
18 fishing or anything like that. But it's never about
19 disputes. The underlying foundation of these is about land
20 and ownership and extinguishment or certainly, what -- how
21 they want to deal with the land and (inaudible).

22 But there's other clauses in these Treaties
23 that relate. And I keep telling folks, "There's a clause
24 there that governs how this relationship should be when
25 there's a dispute breakdown."

1 And that's a kind of a middle ground, where
2 it is possible that in this middle ground, where the
3 (inaudible) two circles and they intersect. They intersect
4 and where they intersect, you can have a space, an
5 ecological space, where Indigenous law does not apply, nor
6 Western apply, but a negotiated agreement of what
7 situations may happen, you know, that you can bring in
8 Indigenous law into that space and you can bring in Western
9 law into that space. But it's based on a negotiated space
10 or on negotiated agreement as to how this was going to
11 happen.

12 **MS. ANGIE HUTCHINSON:** So ---

13 **DR. TUMA YOUNG:** And I'm not so sure that
14 I'm making myself a little bit clear, but it's -- I have
15 any -- sometimes it happens with academics like myself; we
16 think too hard and it's clear in my head, but when it
17 starts to come out, it's not very clear.

18 But it -- I call it the middle ground, you
19 know, and in dispute between non-Native and Native people,
20 the Treaties out East were very clear on that. Those are
21 to be tried in the King's civil (inaudible) courts.

22 **MS. ANGIE HUTCHINSON:** So are you saying
23 that that middle ground offers some framework as to matters
24 dealing to criminal law, in particular, to violence
25 perpetrated against Indigenous women by non-Indigenous

1 people?

2 **DR. TUMA YOUNG:** It could, and it could also
3 include more than that, not just the criminal matters; it
4 can also include civil matters tool.

5 **MS. ANGIE HUTCHINSON:** I'm speaking more
6 specifically to criminal matters in relation to the loved
7 ones who have gone missing or who have been murdered; in
8 particular, to what we are speaking about for -- and what
9 we're trying to gain for this inquiry.

10 **DR. TUMA YOUNG:** In that middle ground, it
11 would be whatever the parties negotiate and bring into it.
12 And the parameters can be whatever they want. And that's -
13 - I think that's a -- it's a space where both Indigenous
14 and most Western can come in, you know, but not the
15 totality of both.

16 **MS. ANGIE HUTCHINSON:** Thank you.

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

18 **KRISTEN MANLEY-CASIMIR:**

19 **MS. KRISTEN MANLEY-CASIMIR:** Hi. I'm
20 Kristen Manley-Casimir. I have the honour of working with
21 Kim Murray and my colleagues from the Indigenous Justice
22 Division in Ontario. And I just wanted to acknowledge the
23 ceremonies this morning, the elders in the room, and all
24 the families that are here today.

25 I have a couple of questions and I just

1 wanted to ask you about providing some context for
2 everyone in the room about the way in which assimilative
3 government laws and policies have negatively -- including
4 the residential school legacy -- have negatively impacted
5 the transmission of Indigenous languages and Indigenous
6 legal systems within communities.

7 **DR. TUMA YOUNG:** That's a really good
8 question, and I'll give you a good example of it. And this
9 is -- it's a story about my great-grandfather and the one I
10 referred to, Gabriel Sylliboy.

11 Before he became Grand Chief, it was Grand
12 Chief John Denny, and before his father. And John Denny,
13 he was the Grand Chief, and in Membertou was living in the
14 reserve and the community was on the shores of Sydney.
15 There was an order to move Membertou, the community, up to
16 Alexander Street, where they are at now. Grand Chief
17 protested that. He said no, but he died before he can
18 finish his work.

19 And so when Grand Chief Gabriel Sylliboy
20 came in, he also protested that. It failed. They moved
21 Membertou up to that. And then he went to court to fight
22 for (inaudible) Treaty rights. And that -- actually, he
23 was given a lawyer hired by Indian Affairs. They were very
24 clear that they wanted to -- this court to go up and it
25 did. And that set a precedent. And he lost that case.

1 And then shortly after, we had the history
2 of centralization in Nova Scotia, where all the Mi'kmaq
3 communities were moved. They were small little communities
4 all over the regions and they were primarily self-
5 sufficient. And they were moved to two communities,
6 Eskasoni and Shubenacadie.

7 And they convinced the Grand Chief, my
8 grandfather, to agree to that. And he said this was going
9 to be good. They promised houses, jobs, good future. They
10 got there, there was no houses, there was no jobs, there
11 was -- and the land was salted when they went back.

12 And then in 1950, the *Indian Act* band
13 councils were put into place. In the span of 50 years, the
14 traditional leadership, the Grand Council, were -- went
15 from exercising and trying to defend our Aboriginal Treaty
16 rights and their authority over the Mi'kmaq to all of their
17 authority was taken away to what was left was only
18 spiritual authority.

19 By the time our Grand Chief died in 1963,
20 the only thing he was allowed to do was pray at funerals.
21 He wasn't allowed to do anything else. He had no
22 legislative powers. And the people also stopped listening.

23 And the sign of a leader in our community is
24 that you are a good orator and you can convince people to
25 do it. You don't use force, you don't use, you know, a

1 punishment model or anything like that to get people to
2 follow you; you -- by your orator skills. And when he made
3 -- and he was trying to do the stuff, but the Canadian
4 government went in; he lost his base. And that's a huge
5 impact, you know, about how the Canadian government used
6 its powers to take away the powers of our people.

7 And I think that also happened in all across
8 Canada, in a way, you know? And that still, in a way,
9 happens in some communities. I'm thinking about the
10 Algonquins in -- just outside Ottawa. There's a dispute
11 over who's the traditional chief or who's the chief in
12 (inaudible). Indian Affairs says you have to have a, you
13 know, council. They're not allowed to let their own
14 government come up or choose their own government.

15 And so that's how it's impacted severely.
16 And in some ways, that has ruined or hidden our Indigenous
17 laws and made them more difficult to pull out, you know?
18 And that's one example of what happened back home with us.
19 And I don't think there's a much more clear example about -
20 - in a span of 50 years, our leadership was just cut and
21 cut and cut to nothing was left and then it was replaced by
22 another type of leadership.

23 **MS. KRISTEN MANLEY-CASIMIR:** Thank you. In
24 your presentation, you shared that much of the *L'nuwey* --
25 just, am I saying that right?

1 DR. TUMA YOUNG: *L'nuwey*.

2 MS. KRISTEN MANLEY-CASIMIR: *L'nuwey* law is
3 contained within the *L'nuwey* language. In your view, is
4 there a need for revitalization works in the context of
5 both Indigenous languages and Indigenous legal systems?

6 DR. TUMA YOUNG: Yes. It's very well
7 connected. You can pull out Indigenous -- *L'nuwey* legal
8 principles from other aspects like songs and ceremonies and
9 dances and chants. But unless you understand the language,
10 that's going to be very, very tough, you know?

11 Even among fluent speakers -- like, I
12 mentioned that the song, the marriage and the divorce song
13 that was handed to us, I had heard it differently. It's
14 not the one that when I went back to the source and then I
15 really realized what it was that I found, okay, this is --
16 we had control and authority over both the solemnization
17 and divorce in a community. What happened to it, right?

18 If I didn't understand the language, I could
19 have said it an abstract way, but this is -- you know, this
20 provides concrete evidence that we have that authority and
21 we never gave it up. It's just up to us to take it back
22 and start doing it again, you know?

23 And that's -- I think we've heard from all
24 of the inquiries and the commissions that have gone on
25 before us, language is a very, very important part. And

1 it's also an important part of knowing who you are, who we
2 are as L'nu people and being -- and one of the interesting
3 things is that if we get our children to speak the
4 language, they will be very confident in who they are.

5 I mean, I don't think I'm saying anything
6 that nobody else has ever said before. We've heard this
7 over and over again. That's the remembering, the mourning,
8 the dreaming, but now we have to take the action. What is
9 it that we need to do in order to save our Indigenous
10 languages from going extinct?

11 **MS. KRISTEN MANLEY-CASIMIR:** Thank you.
12 Given the history of government laws and policies that have
13 taken children away for generations from their families and
14 from knowledge keepers and elders within community that
15 hold the knowledge of language and of Indigenous law, is
16 there any urgency, in your view, to the work of
17 revitalization of both Indigenous languages and Indigenous
18 law?

19 **DR. TUMA YOUNG:** There is a tremendous
20 urgency. One of the things I think about is that I guess
21 there's about -- somebody asked me today, "How many L'nu
22 speakers are left?"

23 And I said, "Well, there's about 6 or 7,000
24 of us."

25 And, "Oh," he said, "that's quite a number."

1 I said, "No, there's about 60,000 Mi'kmaq; 1
2 out of 10, and most folks are my age and up."

3 We do have immersion schools and everything.
4 We do have the legislative power to implement laws or
5 create laws that relate to the teaching of the language,
6 and that's our dream, but we -- somehow, we haven't gotten
7 to that action.

8 We have it, you know, in our education
9 authority, but not one community has passed a law saying
10 that all education in our communities from Kindergarten to
11 Grade 12 will be taught in Mi'kmaq, yet they have the power
12 to do that.

13 But sometimes we think that doing that will
14 reduce or diminish our educational system. And I'm like,
15 "No, it makes it much more higher. It's a higher
16 standard."

17 And I give the example of like, in the
18 province -- provincial system, somebody can drop out at
19 Grade -- at 16. There's nothing to stop Mi'kmaq
20 communities from saying, "You're not allowed to drop out
21 until you're 18." We do have that law.

22 Or if you are a child in the Children's Aid
23 system, that children's agency has the obligation or they
24 can pass a law saying that the Children's Aid agency has to
25 provide for support for education purposes until up to 24.

1 In the family law context, in a case of
2 divorcing parents outside, if the child is still going to
3 school, there has to be support provided that child until
4 their first -- until they're 24 or they're reach their
5 first degree. Mind you, if you go get a Master's degree,
6 that's a different story. Now you're not responsible any
7 more, but your first degree.

8 Why can't our Children's Aid societies be
9 held to that same standard instead of aging them out and
10 just dropping them? Now, we have -- we can pass a law,
11 based on our traditional legal system, saying, "You're --
12 if you're going to be taking children into care and there's
13 a valid reason for it -- and well, there may be very valid
14 reasons for it -- you know, each situation is different --
15 you're going to be held responsible for teaching that child
16 Cree, Mi'kmaq, Inuktitut, and provide them with a
17 Bachelor's degree or a trade.

18 And I'm like, "We can do this." And that's
19 taking our educational legal principles and applying them
20 in a contemporary sense. That's my dream, you know? Now
21 we're going to get to that action. And I hope we'll find
22 some -- the Commissioners can help us do that.

23 But we shouldn't also wait for the
24 Commissioners to do that. If you can do that in your own
25 communities, do it. Don't wait til the report happens. If

1 you know that we can do some things, take that action.

2 **MS. KRISTEN MANLEY-CASIMIR:** Thank you. And
3 the final question, in your view, do you think that the
4 revitalization of Indigenous languages and laws would
5 create hope and conditions for healthier communities and
6 more safety for Indigenous women and girls within
7 communities?

8 **DR. TUMA YOUNG:** It would make -- I -- it
9 would make children be very much aware of who they are and
10 create a strong confidence in their culture and everything.
11 And it would also, by that very nature, it would make them
12 able to resist some of the things that are going on in our
13 communities. And that's where I think those intersections
14 need to be explored more and more.

15 **MS. KRISTEN MANLEY-CASIMIR:** Thank you very
16 much, and thank you to the Commissioners for letting me ask
17 my questions.

18 **DR. TUMA YOUNG:** Okay. (speaking in Native
19 language).

20 **UNIDENTIFIED SPEAKER:** We agreed that this
21 would be 45 minutes for cross-examination, so as -- is
22 there anyone else who has a question? Of course, the
23 Commission's ---

24 All right, so 10 minutes each, please?

25 **UNIDENTIFIED SPEAKER:** Yes.

1 **UNIDENTIFIED SPEAKER:** Thank you. There'll
2 be two more parties, 10 minutes each.

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

4 **JULIE MCGREGOR:**

5 **MS. JULIE MCGREGOR:** I had -- my name is
6 Julie McGregor. I am legal counsel for the Assembly of
7 First Nations, and I had two questions, but I'll just ask
8 one for the sake of time.

9 And I'd like to thank the Commissioners for
10 allowing me to ask this question.

11 Mr. Young, in listening to your testimony
12 today, there was one phrase you said, and you're going to
13 have to correct me if I'm wrong, but I heard you say this
14 phrase: "The worst situation to be in is to be in a
15 position of power with no friends." Is that correct?

16 **DR. TUMA YOUNG:** No, the worst situation to
17 be in is be in a place of power with no power and no
18 allies.

19 **MS. JULIE MCGREGOR:** Yes. So that intrigued
20 me because I think that that's an important teaching that
21 we often hear, and I think it was key to our people's
22 survival.

23 And you spoke a little bit about prevention
24 in response to a Commission counsel's question, and making
25 sure that there's a building up of supports for Indigenous

1 women so that they have allies when they find themselves in
2 those positions.

3 And I just wanted you -- was hoping you
4 could expand a bit on that; like, the building up of
5 supports for Indigenous women so that they're not in
6 situations where they have no allies.

7 **DR. TUMA YOUNG:** Well, one of the -- one of
8 my past work experiences was, I worked as a street outreach
9 counsellor a number of years ago. And one of the things we
10 did, it was in regards to HIV/AIDS prevention in streets,
11 and we worked with folks who were on the streets. And one
12 of the things we implemented right off the bat was what we
13 considered a user-directed approach. The folks who used
14 our services told us what they needed and how best to
15 provide it. Instead of us going in there and trying to
16 think about what they needed or what they would need or how
17 to -- I don't know how to -- how to "save them", we asked
18 them, "What is it that you need from us and how best to
19 survive?" And we implemented that in our organization.

20 And you know, they said, "Well, how far
21 would you take it? Would you want somebody to come in and
22 --- "

23 I said, "Well, I can -- I have skills in
24 typing." You know, I went and took typing in high school,
25 type of thing, but I said, "I can teach about typing and a

1 person can learn skills about how to be a receptionist or
2 something like that."

3 And they said, "How far would you take
4 that?"

5 I said, "I would take them all the way up to
6 the Board of Directors, I said. And that's, you know,
7 user-directed. The folks that need the services direct the
8 services that are needed and tell us. And I think that's
9 where we need to go in that sense.

10 **MS. JULIE MCGREGOR:** Thank you very much.
11 Just for the record, I did have more questions, but for the
12 sake of time, I'm going to end with this. Thank you.

13 **DR. TUMA YOUNG:** And I do like to thank
14 everybody. You had one more question? Okay.

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

16 **VIRGINIA LOMAX:**

17 **MS. VIRGINIA LOMAX:** First, I'd like to take
18 some time to thank all of the families who have stayed this
19 long and to the Commissioners for allowing more time.

20 My name is Virginia Lomax. I'm legal
21 counsel to the Native Women's Association of Canada. For
22 the record, I also had a great deal more questions, but for
23 the sake of time, I'm going to ask the three that I feel
24 would be the most important and that maybe haven't been as
25 answered in detail, I suppose.

1 So I'll start by asking you, according to
2 the legal system that you gave evidence on today, what is
3 the best way, within this legal system, to treat the
4 bereaved and victims and survivors of violence, within the
5 legal processes?

6 **DR. TUMA YOUNG:** Can you just repeat at the
7 end?

8 **MS. VIRGINIA LOMAX:** Yes. Within the legal
9 systems in which you have expertise -- maybe I'll rephrase
10 -- is there a specific way that is best to treat the
11 bereaved in an issue of conflict or to treat victims and
12 survivors of violence?

13 **DR. TUMA YOUNG:** Oh, yes. In the *Klogowej*,
14 there's facilitators, what we -- or and people that help
15 and stand by everyone who's in -- who's a party in that
16 process. And they move them from one stage to another, and
17 they stay with them for ever how long they need to be.

18 Yeah, there is -- there's no real -- like,
19 there's no real judge or jury or type of thing. They're
20 community members who work and help. And basically, they
21 stand with everyone in the community, because it's a shared
22 liability and a shared responsibility too.

23 **MS. VIRGINIA LOMAX:** Thank you. Do you have
24 any suggestions or strategies or examples of how the
25 inquiry can employ -- and I'm very sorry if I mispronounce

1 -- but the concept of *Anus'tumakwek* to inspire sincere
2 sympathy and empathy with the stories that the families
3 have and will share with the inquiry, and how this inquiry
4 can achieve *Anus'tumakwek*?

5 **DR. TUMA YOUNG:** It's -- well, the
6 Commissioners basically need to take active listening
7 skills and just listen very carefully, and from several
8 different perspectives, you know? They -- there's a number
9 of them here, and then -- I mean, instead of listening for
10 the same thing, you know, they can all listen and say,
11 "This is what I heard. This is the version of what I heard
12 and this is what I heard."

13 And together, they can bring -- and that
14 will allow for the whole picture to come out, you know? I
15 don't think I can have any more recommendations other than
16 when you hear the stories, you basically have to listen
17 very carefully and with active listening, is what they
18 usually call it right now.

19 I just don't want -- and when I say "active
20 listening", I don't want people to think like, you know, in
21 just concept of social work right; you know, you nod your
22 head and you say, "Oh, yes indeed." You repeat back. No,
23 no. You listen very carefully, like what we did with that
24 elder who told us about how she sewed. And what I heard
25 was her skill in sewing. What my researchers heard was how

1 poor she was. That's the key in that, to me.

2 **MS. VIRGINIA LOMAX:** And my final question
3 is that we speak a lot about inclusion in the inquiry, and
4 in different legal systems we always speak about inclusion.
5 But in your expertise in both the Canadian justice system
6 and *L'nuwey* system, can you identify anyone who may be
7 specifically at risk of exclusion?

8 **DR. TUMA YOUNG:** Trans women, trans women of
9 colour.

10 **MS. VIRGINIA LOMAX:** Okay.

11 **DR. TUMA YOUNG:** And that's -- you know, I
12 think we were -- we -- there's a lot of exclusion happening
13 there, and often our own colonized approaches to that make
14 trans women of colour -- in particular, Indigenous women
15 are particularly susceptible to exclusion, even from our
16 own organizations. So I would certainly hope that that
17 would not happen here, but to keep an eye out for that.
18 And if it is, please tell me.

19 **MS. VIRGINIA LOMAX:** I will. *Miigwetch*.

20 Merci ---

21 **DR. TUMA YOUNG:** Thank you.

22 **MS. VIRGINIA LOMAX:** --- and thank you to
23 you and to everyone who has been here today.

24 **MS. SUSAN VELLA:** Thank you very much. That
25 concludes -- subject to any questions that the

1 Commissioners may have -- are there questions from the
2 Commissioners?

3 --- QUESTIONS BY THE COMMISSIONERS/QUESTIONS PAR LES
4 COMMISSAIRES:

5 COMMISSIONER QAJAQ ROBINSON: Thank you very
6 much for all of your testimony today and the answers to the
7 questions. One of the areas that you've touched on a
8 number of times has been on the disempowerment of
9 Indigenous peoples and nations, and the inability to make
10 laws, to the absence of that authority. Is that a sort of
11 fair characterization or the stripping of that agency?

12 DR. TUMA YOUNG: The stripping of it is
13 probably more accurate.

14 COMMISSIONER QAJAQ ROBINSON: Thank you. I
15 want to make sure I articulated that properly.

16 In the course of this inquiry, as we gather
17 information on how to address these issues and as we
18 develop recommendations, part -- a big part of our work is
19 looking at the systems as respond to the violence. And
20 that's policing, that's Child and Family Services, two big
21 players. Those are under the *BNA Act*, the *British North*
22 *America Act*, as you described, under a different
23 jurisdiction. The federal government has power in some
24 parts of the country, provinces and territories have power
25 or authority or jurisdiction in other areas.

1 How can governments; provincial, federal,
2 territorial -- you've identified the need to assist in the
3 revitalization, but what is needed from those governments
4 to allow for remedying that stripping? You talked about
5 the impact of the *British North America Act*. Do you have
6 thoughts on how Canada needs to change at that level to
7 ensure that there is a place for Indigenous laws in this
8 country?

9 **DR. TUMA YOUNG:** A colleague of mine from
10 University of Saskatchewan once -- and I think he was the
11 one who originally suggested that we would have a third
12 head of power under the *Constitution Act*, and that this
13 would be Section 35, and that this would be an area where
14 the listing of legislative authorities that Indigenous
15 nations can exercise.

16 Like, you would have Section 91, which is
17 the federal heads of powers; Section 92, which is the
18 provincial head of powers; and you can Section 35, heads of
19 powers. And that could be where these could be located.
20 And that would be -- I don't think that has gained much
21 traction, but I think it might be worthwhile for the
22 Commission to re-look at that again.

23 **COMMISSIONER QAJAQ ROBINSON:** Do you have
24 specific thoughts on that that you'd like to share with us?

25 **DR. TUMA YOUNG:** Yeah, I think it would be

1 Section 35, head of power, but before we get there, I think
2 we would need to think about engage -- having the Canadian
3 and the provincial government engage in a decolonize
4 approach prior to listing that authorities.

5 I just don't want them to give -- say,
6 "Well, we'll let you have solemnization of marriage, but
7 divorce, no, because we don't think you're capable of doing
8 that." That would just smack in the face, right?

9 But if they were to -- if we were to sit
10 down and think about well, under this -- you know, in a
11 Section 35 listing of powers, what do we, as First Nations
12 and Indigenous communities, what do we want to legislate
13 on? And some things we may, and some things we may not.
14 And then we come to it.

15 And but again, I just don't want both
16 provinces and federal -- and any time when you're talking
17 about the transfer of authority, they fight it. Basically,
18 they'll fight it. Even if you were to ask for
19 solemnization of marriage, which seems like a small little
20 thing, you know, the provinces are going to say, "Well,
21 that's our jurisdiction and you know, you have to open up
22 the Constitution and try to move this, and then we get all
23 sorts of other stuff in there."

24 Well, you know, let's do it. Well, because
25 we need to offer our communities hope, like, what we said

1 in that Grade 8 students. We have that hope and we can
2 make our own -- incorporate and bring in our Indigenous
3 legal orders into a Section 35 heads of authorities, and
4 then that will be the basis for our own legislative
5 systems. And each tribe can be different.

6 And I remember -- I don't know whether it
7 was -- I think it's either -- it was first approached back
8 in 1980s after the Constitution conferences, and a few
9 Indigenous academics who were legal academics at the time,
10 they proposed it and said -- they called it post-colonial
11 order -- but the reaction was that we're not in a post-
12 colonial order, and we're not there yet, and we won't be
13 there.

14 And so maybe it's time to think about the --
15 rethink about that now, and that -- let's not wait for to
16 get to a post-colonial order, you know, that we just
17 exercise these powers within the thing. Yeah.

18 **CHIEF COMMISSIONER MARION BULLER:** Well,
19 Counsel, does that bring us to a close of the testimony for
20 today?

21 **UNIDENTIFIED SPEAKER:** That brings us to a
22 close, thank you.

23 **CHIEF COMMISSIONER MARION BULLER:** Okay,
24 before we adjourn for the day, Professor Young's CV will be
25 Exhibit 1, and his paper will be Exhibit 2, please.

1 --- EXHIBIT NO./PIÈCE No. 1:

2 Four-page CV of Tuma T.W. Young
3 (EH010201)

4 --- EXHIBIT NO./PIÈCE No. 2:

5 Article by Prof Tuma Young
6 "L'nuwita'simk: A Foundational
7 Worldview for a L'nuwey Justice System"
8 Indigenous Law Journal, Volume 13 issue
9 1, 2016, pp. 75-102 (EH010202)

10 **CHIEF COMMISSIONER MARION BULLER:**

11 Professor, thank you.

12 **UNIDENTIFIED SPEAKER:** May I respectfully
13 request that the PowerPoint be Exhibit 3, please?

14 **CHIEF COMMISSIONER MARION BULLER:** Thank
15 you, and the PowerPoint - Mr. Registrar, the PowerPoint
16 will be Exhibit 3, please. Thank you.

17 --- EXHIBIT NO./PIÈCE No. 3:

18 Powerpoint "L'nuwita'simk: A
19 Foundational Worldview for L'nuwey
20 Justice System" comprising 12 slides.
21 (EH010203)

22 **CHIEF COMMISSIONER MARION BULLER:** Have a
23 seat with me. Would you like to sit with me?

24 **UNIDENTIFIED SPEAKER:** We're going to close?

25 **CHIEF COMMISSIONER MARION BULLER:** Yes,

1 we're going to close, if that's okay, or we can (inaudible)
2 if you like.

3 **UNIDENTIFIED SPEAKER:** Are we adjourned?

4 **CHIEF COMMISSIONER MARION BULLER:** I believe
5 we're going to do a closing ---

6 **ELDER BLU WATERS:** So if we can ---

7 **CHIEF COMMISSIONER MARION BULLER:** --- and
8 then we're adjourning.

9 **ELDER BLU WATERS:** So if we can close off
10 today with a prayer. We started today with a prayer and
11 we'd like to close off.

12 --- CLOSING PRAYER/PRIÈRE DE CLÔTURE

13 --- Upon adjourning at 6:15 p.m/

14 L'audience est ajournée à 18h15

LEGAL DICTA-TYPIST'S CERTIFICATE

I, Karen Noganosh, 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.



Karen Noganosh

September 4, 2017