

LA COMMISSION D'ENQUÊTE
SUR LES RELATIONS
ENTRE LES AUTOCHTONES
ET CERTAINS SERVICES PUBLICS

SOUS LA PRÉSIDENCE DE
L'HONORABLE JACQUES VIENS,
PRÉSIDENT

AUDIENCE TENUE AU
201 AVENUE VIGER OUEST,
MONTREAL (QUÉBEC)

LE 15 FÉVRIER 2018

VOLUME 61

Karine Bédard, s.o.
Gabrielle Boyer, s.o.

Sténographes officielles
STENOEXPRESS
201 ch. De l'Horizon,
Saint-Sauveur (Québec) J0R 1R1

COMPARUTIONS :

POUR LA COMMISSION :

Me MARIE-ANDRÉE DENIS-BOILEAU

Me PAUL CRÉPEAU

POUR LES PARTIES PARTICIPANTES :

Me MAXIME LAGANIÈRE, pour le
Directeur des poursuites criminelles
et pénales

Me MARIE-PAULE BOUCHER, pour le
Procureur général du Québec

Me DENISE ROBILLARD, pour le
Procureur général du Québec

Me DAVID CODERRE, pour l'Association
des policières et policiers
provinciaux du Québec

TABLE DES MATIÈRES

Liste des pièces cotées..... 4

Preliminaires..... 5

Témoins :

Kevin Fleishcher, Commissioner of Justice Mohawk Council
of Kahnawà :ke..... 8

Joyce King, Directrice du département de la justice
d'Akwasasne..... 52

Bonnie Cole, Procureure et conseillère juridique,
Tribunal Mohawk D'Akwasasne..... 52

Maya Cousineau-Mollen, Témoin citoyen..... 144

LISTE DES PIÈCES COTÉES

P-365	Présentation PowerPoint	49
P-366	Entente sur l'administration de la justice entre le Québec et Kahnawake du trente (30) mars mille neuf cent quatre-vingt-dix-neuf (1999)	49
P-367	Kahnawake Justice Act	49
P-368	Référence au site Web de l'Alternative Dispute Resolution de Kahnawake	49
P-369	Akwesasne Tekaia'torehthà :ke Kaianerénhsera (Akwesasne Court Law	49
P-370	Rapport annuel 2016-2017 du Tribunal d'Akwesasne	138
P-371	Type of police occurrences in 1992	138
P-372	Mohawk Council of Akwesasne Organization Chart 139	
P-373	Akwesasne Legislative Enactment Regulation Flowchart	138
P-374	Traning Curriculum for the justices of or the Akwesasne Mohawk Court	138
P-375	Akwesasne Community Justice Programme Brochure 139	
P-376	Akwesasne Justice Department Feb 8 2018 Fact Sheet update	138
P-377	Présentation Power point	139
P-378	The value of water and the meaning of water law for the Native Americans known as the Haudenosaunee	142

1 OUVERTURE DE LA SÉANCE

2 **LA GREFFIÈRE-AUDIENCIÈRE :**

3 La Commission d'enquête sur les relations entre les
4 Autochtones et certains services publics du Québec,
5 présidée par l'Honorable Jacques Viens est
6 maintenant ouverte.

7 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

8 Good morning, bonjour. Welcome on this fourth
9 (4th) day of our hearings in Montreal.
10 I will ask first the counsels to introduce
11 themselves.

12 **Me MARIE-ANDRÉE DENIS-BOILEAU**

13 **PROCUREURE EN CHEF :**

14 Marie-Andrée Denis-Boileau pour la Commission
15 d'enquête.

16 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

17 Welcome.

18 **Me DENISE ROBILLARD**

19 **AVOCATE POUR LA PROCUREURE GÉNÉRALE DU QUÉBEC :**

20 Bonjour, Denis Robillard pour la procureure
21 générale du Québec.

22 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

23 Welcome to you, too.

24 **Me MARIE-PAULE BOUCHER**

25 **AVOCATE DU PROCUREUR GÉNÉRAL DU QUÉBEC :**

1 Bonjour, Me Marie-Paule Boucher pour le procureur
2 général du Québec.

3 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

4 Welcome, Me Boucher.

5 **Me MAXIME LAGANIÈRE,**

6 **POUR LE DIRECTEUR DES POURSUITES CRIMINELLES ET PÉNALES**

7 Bonjour, Maxime Laganière pour le Directeur des
8 poursuites criminelles et pénales

9 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

10 Welcome, Me Laganière.

11 Me Denis-Boileau, what's the program of the day?

12 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

13 So this morning, we will be first hearing Kevin
14 Fleischer, who's the Director of the Division of...
15 sorry, the Commission of Justice for the Division
16 of Justice of Kahnawake. And then, we will hear
17 Joyce King, the Director of Justice for the
18 Department of Justice Akwesasne, and Bonnie Cole,
19 who is a counsel at the Akwesasne Court.

20 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

21 Okay. So, we are going on with Mr... Me Kevin.

22 So, I will ask the Clerk to proceed.

23 **LA GREFFIÈRE-AUDIENCIÈRE :**

24 I think he's on...

25 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

1 Oh, oui.

2 **LA GREFFIÈRE-AUDIENCIÈRE :**

3 ... Oath of Office.

4 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

5 On his Oath of Office.

6 **LA GREFFIÈRE-AUDIENCIÈRE :**

7 Yes.

8 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

9 He is a member of the Bar in the Province of
10 Québec?

11 **M. KEVIN FLEISCHER :**

12 Yes, that's right.

13 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

14 Okay, so on your Oath of Office.

15 Maître Boileau?

16 -----

17

18

19

20

21

22

23

24

25

1 Kevin Fleischer
2 Assermenté (serment d'office)

3 -----

4

5 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

6 So, Mr. Fleischer, he will present this morning the
7 Division of Justice of Kahnawake and the Kahnawake
8 Court at the same time, and other programs of
9 justice in Kahnawake.

10 So, Mr. Fleischer, I'll invite you to make us
11 your presentation.

12 **M. KEVIN FLEISCHER :**

13 Thank you. I'd like to first thank you all for
14 inviting me here this morning, I'm very pleased to
15 be here.

16 Today, I'll be discussing with you the Court
17 of Kahnawake, the Kahnawake Justice System, some of
18 the programs that we offer, why it's important that
19 these programs be offered to begin with, and also
20 some of the challenges and obstacles that we face.
21 I'll do my best to answer any questions that anyone
22 might have. So, with that, let's get into it.

23 In the Mohawk territory of Kahnawake, we have
24 our own court, it's called the Court of Kahnawake.
25 It's presided over by a Justice of the Peace. We
26 have two (2) Justices of the Peace right now, and

1 they're appointed pursuant to Section 107 of the
2 Indian Act. And 107 essentially allows for the
3 appointment of individuals to be Justices of the
4 Peace for the purposes of hearing offenses under
5 the Indian Act, and also certain Criminal Code
6 offenses like breaking and entering, vagrancy,
7 cruelty to animals, some assault committed by an
8 Indian, or as it relates to the person or property
9 of an Indian.

10 So, a quick background on the history of this
11 court. Records indicate that Kahnawake began
12 taking over control of justice matters as far back
13 as the 1940s, with the appointment of Justices of
14 the Peace who were Mohawk people. Before that,
15 Indian Agents were automatically appointed as JPs
16 under Section 107. I also understand that even
17 RCMP Officers had been Justices of the Peace at the
18 time.

19 So, as time went on, we began in appointing
20 Mohawk people to be Justices of the Peace. They
21 were hearing mainly traffic offenses. In the late
22 seventies ('70s), early eighties ('80s), the
23 jurisdiction of the court expanded, and the court
24 began gradually hearing matters other than just
25 traffic offenses, including Indian Act by-laws made

1 under Section 81 of the Indian Act, and also
2 gradually hearing certain offenses of a summary
3 nature, summary conviction offenses under Part 27
4 of the Criminal Code.

5 It was around this time that Kahnawake
6 determined that it could simply establish its own
7 actual functioning court. I understand there was a
8 presumption by Canada at the time that these
9 Justices of the Peace would sit in a Provincial
10 Court, but this was neither explicit, nor
11 obligatory.

12 So, Kahnawake said, "Well, these Justices of
13 the Peace are going to sit in the community, in our
14 very own court". So, in terms of Kahnawake
15 retaking control of justice, I guess we could say,
16 we had this new court with an increasing
17 jurisdiction, and in the mid-eighties ('80s), it
18 also created the Justice Committee, which is now
19 the Kahnawake Justice Commission, and was mandated
20 with overseeing the administration of justice in
21 the Mohawk territories of Kahnawake. So, as you
22 can see, even going back thirty (30) plus years,
23 there's a lot of movement in Kahnawake justice. We
24 have the court, we have this justice group that
25 oversaw the administration of justice, we had our

1 Justices of the Peace, we were making our own laws.
2 So, there was a lot of movement and development
3 there.

4 Our last two (2) Justices of the Peace were
5 appointed back in nineteen ninety-three (1993).
6 So, it's been quite some time since we've had any
7 appointments. Operationally, at the present time,
8 the Court of Kahnawake hears...

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 Mr. Fleischer, sorry.

11 **M. KEVIN FLEISCHER :**

12 Yes.

13 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

14 Just a little question about that. Why were the
15 last two (2) appointed in nineteen ninety-three
16 (1993)? Why weren't there any appointments since
17 then?

18 **M. KEVIN FLEISCHER :**

19 I can't say for sure, I wasn't there at the time.
20 My understanding, though, is that when those two
21 (2) individuals were appointed, there were already
22 two (2) other active Justices of the Peace at the
23 time. So, we had four (4) of them. So, I don't
24 think it was that much of a concern at the time,
25 because you had four (4) people, it seemed like it

1 was pretty safe. As we'll see, though, we've run
2 into some issues with appointment and how many of
3 these individuals we have. So, at the present
4 time, the Court of Kahnawake hears summary
5 conviction offenses, contested traffic tickets,
6 there's a Traffic Division, and also most Kahnawake
7 laws. Some of the Kahnawake laws that have been
8 before the court include matters such as our
9 Sanitary Conditions Law, our Election Law,
10 disciplinary measures regulations for complaints
11 against our Elected Chiefs have been before our
12 court. So, it has a pretty wide range of authority
13 right now, I'd say. Some of the common charges
14 that we see at the Court of Kahnawake include
15 assault, mischief, theft, break and entry, assault
16 with a weapon, peace bond requests, breach of
17 probation, breach of peace bond, assault on a
18 Peacekeeper - a Peacekeeper is one of our police
19 officers - obstruction, uttering threats, fraud,
20 resisting arrest. Certain things, though, are not
21 heard at the court. Indictable offenses are sent
22 out to the court in Longueuil, drunk driving
23 offenses are not heard at our court, and summary
24 conviction offenses that might have been the result
25 of, you know, real violence or... not real

1 violence, but, you know, more serious issues are
2 just sometimes sent out of the territory also, by
3 the Prosecutor.

4 So, operationally, the court generated revenue
5 from ticket fines are submitted to the Mohawk
6 Council of Kahnawake's general fund for community
7 benefit. So, it goes back into, you know, the
8 community. We have our own Prosecutor, who sits,
9 much like our Justices of the Peace on a sessional
10 basis. As I said, we have both criminal court and
11 traffic court sessions are held, all our trials are
12 held in English. For anyone not speaking English,
13 an interpreter is provided. In the past, we've
14 provided interpretation services in, I believe,
15 Russian, Italian, and even Mandarin.

16 We have approximately three (3) court sessions
17 per month, and we work with a bailiff firm who
18 serves our summons, subpoenas, executes our
19 warrants.

20 Some of the other services or functions
21 provided by the Court Administration includes the
22 solemnization of marriages. As per our nineteen
23 ninety-nine (1999) agreement between Quebec and
24 Kahnawake on the administration of justice, persons
25 agreed to by both parties may be designated as

1 officers able to solemnize marriages in Kahnawake.
2 And we have four (4) of these designated officiants
3 today, our two (2) active Justices of the Peace and
4 two (2) retired Justices of the Peace, who
5 solemnize several marriages each year. We also
6 have a Compensatory Works Program for people who
7 need to pay fines, who are low-risk and for
8 whatever reason might not be able to pay these
9 ticket fines. Maybe they're students, they're not
10 working, they've hit some hard times, and because
11 they're low-risk, they're non-violent, they're seen
12 as they could request to essentially work off the
13 money they owe the community by working through
14 local non-profits. In the past, some people have
15 done these compensatory works at our local library,
16 at our hospital, at our arena. So, it offers an
17 alternative to incarceration for individuals who
18 don't pose a threat to the community. It
19 essentially provides another recourse for people
20 who can't pay fines.

21 Another service that we offer is we have, in
22 Kahnawake, since nineteen ninety (1990), a Communal
23 Arbitration Procedure. For people who might have
24 private disputes and don't wish to go to a court,
25 they're offered the opportunity to enter into this

1 arbitration process, and resolve their issue in the
2 community in that way. And this is something that
3 the community members aren't charged for, it's a
4 service that's provided. We have a procedure
5 outlining the different steps of how it will work,
6 we have a list of arbitrators that people would
7 select from, and then, you know, a hearing is held,
8 if need be.

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 So, just... So, this Communal Arbitration Procedure
11 is people can go there and ask for this arbitration
12 by themselves?

13 **M. KEVIN FLEISCHER :**

14 Yes, if they have, you know, disputes among
15 individuals. It's also, right now, the appeal
16 mechanism in some of our laws and policies. If you
17 have an issue that you would want to appeal, it's
18 referred to communal arbitration.

19 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

20 What kind of disputes may go through this
21 procedure?

22 **M. KEVIN FLEISCHER :**

23 Right now, private disputes could go through it, if
24 there is, say, an issue between an employer and an
25 employee, that's something suitable for

1 arbitration. Right now, say, in our Alcoholic
2 Beverages Control Law, if someone applies for an
3 alcohol permit and it's denied, communal
4 arbitration is the form of appeal for that
5 decision.

6 But as you'll see, though, as we're developing
7 more forums in our justice system, we're developing
8 another method of recourse for, like, appeals. So,
9 in some instances, people might be best served
10 going through communal arbitration. In others,
11 they may be best served by going through our new
12 Administrative Tribunal that's being worked on.
13 You know, as we implement our Justice Act, we're
14 having more of these different institutions and
15 forums being developed. As we'll see, depending on
16 the nature of the problem, it might be something
17 that is best resolved through mediation, through
18 restorative justice. Or maybe it's something that
19 you should go through arbitration or the
20 Administrative Tribunal, or for real serious
21 matter, maybe they should be going to the Court of
22 Kahnawake, depending on the nature of the, you
23 know, dispute.

24 So, the court has been functioning now for
25 many years, it's been operating very well, I think.

1 I think it has the respect of many community
2 members. But it's not without its challenges and
3 obstacles. You know, nothing is perfect, and we've
4 run into some issues that have led to the creation
5 of our own Justice Act.

6 Some of these problems stem from a Supreme
7 Court of Canada decision, *Ell versus Alberta*, which
8 was decided in two thousand three (2003). And this
9 decision discussed in great detail the nature of
10 Justices of the Peace, the role that they play, the
11 judicial independence of Justices of the Peace, the
12 importance of ensuring that independence, and also
13 the experience and education requirements for
14 someone to be a sitting or presiding Justice of the
15 Peace. The decision says, amongst other things,
16 discusses the importance of these minimum
17 eligibility requirements. And I will paraphrase a
18 little bit, but it gets to the point that there
19 should be minimum education and experience
20 requirements for sitting Justices of the Peace,
21 because of the impact their decisions might have on
22 the rights and liberties of individuals. From what
23 I understand from people who were working in
24 Kahnawake justice at the time, it was after this
25 decision that Canada placed a moratorium of sorts

1 on the appointment of further Justices of the
2 Peace, under Section 107. So, this moratorium or
3 this pause on appointments stemming from this
4 Supreme Court of Canada decision. This created a
5 problem for Kahnawake. If Justices of the Peace
6 were no longer being appointed, what would happen
7 when our sitting Justices of the Peace step down?
8 What would happen when they retired? What if they
9 were sick and they couldn't hear anything? If we
10 didn't have Justices of the Peace at the Court of
11 Kahnawake, we effectively wouldn't have a
12 functioning court, at all, and all our files would
13 have to be sent outside of the territory.

14 There are some band-aid solutions we could,
15 you know, consider. Maybe find someone else who is
16 a Section 107 Justice of the Peace, parachute them
17 in at certain hearings, but that's not a real
18 solution at all, that's an interim measure. So, to
19 ensure the continuation of the Court of Kahnawake,
20 it was decided, "We need our own new justice
21 system, we need our own Justice Act, and we need to
22 be able to appoint our own judges internally in
23 Kahnawake".

24 The Kahnawake Justice Commission, in about two
25 thousand seven (2007) or so, submitted a proposal

1 to what's called the Community Decision-Making
2 Process for the development of a Justice Act. The
3 Community Decision Making Process, also known as
4 the CDMP, is the process by which the community of
5 Kahnawake reaches consensus on community laws.
6 It's effectively the method by which Kahnawake
7 develops and approves laws. It's a form of
8 consensus-based participatory democracy, in which
9 the people decide what the purpose of the law is
10 going to be, what the scope of the law is going to
11 be, what's going to be in the law. And there's
12 hearings, and drafts are reviewed, and meetings are
13 held where people review these laws, and there's
14 proposals, and back and forth in discussion, and
15 community works towards coming to a consensus on
16 the contents of that law. So, it's real community
17 driven. These laws are created by the will of the
18 people. So, the Justice Act was put into this
19 process. It took several years to go through the
20 CDMP process. I think there was thirty (30) plus
21 hearings, community members attending and
22 reviewing, until they actually came up with a final
23 Justice Act product that was approved by the
24 community, ratified by our Council and enacted in
25 twenty fifteen (2015). Just a little bit of

1 background on the CDMP, because I think it's an
2 innovative way of creating laws, because it's the
3 community who determines what's in the law, and
4 works on it, and makes proposals, and discussions,
5 and with back and forth. It was a response for a
6 more culturally relevant and inclusive process for
7 creating laws. The community had a concern or an
8 issue with our elected Council just making laws on
9 their own, that you had our twelve (12) member
10 Council making laws, without much community input
11 into it. And the community wanted to have that
12 input and a say in how this was done, and this led
13 to the creation of this law-making process.
14 Essentially, community creates laws through
15 consensus-based process with ratification by
16 Council, as I said. Some of the hearings had a lot
17 of people attending. One meeting had over two
18 hundred (200) community members in attendance to
19 discuss, you know, the purpose of a law.
20 We say it's a consensus-based process. I have here
21 extract from the procedural manual for this
22 process, which discusses a little bit about what is
23 meant by "consensus".

24 We say:

25 "Consensus is not simply a process of

1 finding the sum of individual viewpoints
2 and tallying up the assents and dissents.
3 The goal is to discern what the best
4 decision is for the group and to take
5 into consideration the needs of the
6 collective”.

7 It goes on to say: “Every participant must
8 have equal access to the process for it to be true
9 consensus decision-making”. “And consensus does
10 not mean unanimity. The group works with and
11 adjusts a proposal until all can consent to its
12 final form. With consensus there may not be a
13 complete agreement in every decision, but there is
14 always complete consent. “So, by the time a law,
15 such as the Justice Act, is developed, it has the
16 backing of the community. A) there has been a
17 consensus decision on this law and it gives it a
18 lot more weight, because it’s not just a council of
19 twelve (12) deciding what the law is, it’s the
20 community members attending, who decide that, “Yes,
21 we want a Justice Act, and this is what we want in
22 our Justice Act”. So, the Justice Act was enacted
23 in twenty fifteen (2015), and it was a great
24 legislative accomplishment, I think, because of all
25 the many meetings and time and effort that went

1 into creating this law. There was multiple
2 meetings of the Drafting Committee, community
3 members attending hearings, taking time out of
4 their lives, because they believed in the idea of
5 having a Justice Act in our own court and our own
6 justice system. And it really, you know, led to an
7 Act a couple of years back, and we're working on
8 implementing this law now.

9 So, the law establishes a Kahnawake justice
10 system, which is said to include administrative,
11 criminal, civil and penal jurisdictions to address,
12 remedy and re-establish harmony. And the stated
13 purpose of the Act is to establish judicial forums
14 to adjudicate and interpret laws applicable to the
15 Mohawk Territory of Kahnawake in order to maintain
16 peace, order and justice. And the institution of
17 these judicial forums was an exercise of the
18 sovereign rights of the people of Kahnawake.
19 Kahnawake did not need permission from anybody to
20 create this law or to say, "We'll have our own
21 court". It's our sovereign right to do so and to
22 decide how best to resolve, you know, disputes
23 concerning laws in Kahnawake. In the fall, you
24 might remember the Grand Chief of my territory came
25 before the Council, Joseph Tokwirot Norton, and he

1 discussed the Two Row Wampum and the two (2)
2 parties, the First Peoples and the visitors to the
3 land, going down the river, each in their
4 respective vessels, the canoe, and he referred to
5 the tall ships, and in each vessel, we had our
6 traditions and our ways, and our customs. And I
7 think that the development of our Justice Act is
8 similar to that. We have our ways of resolving
9 disputes, we have ways how we need to do things.
10 Our friends elsewhere have their own ways, and we
11 need to respect each other and how we go about, you
12 know, interpreting and adjudicating our laws. And
13 at times we could help each other and collaborate,
14 but other times, you know, we need to do what is
15 best for our people in our community. So our
16 Justice Act is, you know, in place is much more
17 tailored to meet the needs of Kahnawake:ronon. The
18 law itself sets out four (4) different, separate
19 forums. It says that there will be, you know, a
20 restorative justice component, which currently
21 exists and has been in existence since two thousand
22 (2000), and this is called Skén:nen Aonsón:ton, and
23 that means "to become peaceful again". It says
24 that there will be an Administrative Tribunal. It
25 says that there will be, of course, the Court of

1 Kahnawake, because in Kahnawake, if we're going to
2 do things, we like to go big. We say, "Well, if
3 we're going to have a court, we're going to have
4 our Court of Appeal for our laws, also".

5 The Court of Kahnawake, as set out in the
6 Justice Act, though, will have much broader
7 authority than the present-day court, which has a
8 relatively limited scope.

9 So the first form outlined in the Justice Act
10 is the Restorative Justice Program Skén:nen
11 Aonsón:ton. It plays a key role in our justice
12 system. Restorative justice is the cornerstone of
13 the Justice Act, and it's also the entry point into
14 our justice system. Ideally, before anybody
15 decides to go to another forum, such as a tribunal
16 or a court, they should first consider resolving
17 their disputes using restorative justice practices.
18 And the prominence of this program is evident when
19 reading the preamble of the Justice Act, because
20 part of the preamble says that: "In keeping with
21 the principles of balance and harmony, the use of
22 Skén:nen Aonsón:ton, restorative justice shall be
23 the first recourse to resolving conflict".

24 If there is an issue, people should first be
25 considering using methods of dispute resolution

1 based on traditional practices. And some of these
2 include things like mediation and facilitated
3 discussions, talking circles.
4 So, Article 6.1 of the Justice Act indicates that:
5 "Skén:nen Aonsón:ton is a process within the
6 Kahnawake justice system that is used to resolve
7 conflict in a peaceful, non-adversarial way. The
8 principles embodied in the process are a holistic
9 approach to address conflict. This approach
10 respects concepts historically used by
11 Kanien'kehá:ka to resolve disputes and conflict".
12 So, this program, this forum, it provides a safe,
13 secure, environment to effectively resolve issues
14 of conflict using traditional restorative justice
15 practices, and through its philosophy and actions,
16 initiates social responsibility and harmony in
17 Kahnawake. There's something we have to consider
18 with having a program like this, is that there is a
19 lot of disputes that maybe aren't well suited for a
20 court. You don't need to go to court and
21 adjudicate certain issues. There's some things
22 where you could better handle it through discussion
23 and coming to a mutually agreeable solution.
24 This is especially important in Kahnawake, which is
25 relatively small, and many people actually do know

1 each other and each other's families. So, at
2 times, it's best to work through issues, try to
3 find a solution that both parties can live with.
4 In terms of... you know, there's traditional
5 components to this process. This process looks at
6 restoring balance and harmony, it looks at ensuring
7 that there's restitution and that responsibility is
8 accepted for wrongdoings that one might have done.
9 This isn't something that we see in courts. If my
10 issues go to court, even if there is a winner, both
11 parties are probably both losers in some way. It
12 doesn't fix the core of the problem, and that's
13 something that this program focuses on, is
14 restoring and repairing those relationships. So,
15 it's very important, like I say, the cornerstone, I
16 think, of our justice system.

17 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

18 Mr. Fleischer, just a question. So, in this
19 program, you can try to resolve conflicts that
20 would be in criminal matters or civil matters in
21 our Provincial Court?

22 **M. KEVIN FLEISCHER :**

23 There's a program being developed with Quebec
24 Justice, to try to get some cases that go to their
25 court sent back to communities to resolve it in a

1 process like this. It hasn't been fully developed
2 yet, that I'm aware of. In Kahnawake, at least, for
3 some criminal issues, it is possible to transfer
4 files from the Court of Kahnawake into this
5 program. If people request it and think that it's
6 a better way to resolve issues and it's something
7 that doesn't need to be in the court, then,
8 certainly, Skén:nen Aonsón:ton is an option for
9 those individuals. Also, for civil disputes, we see
10 problems between neighbours, line disputes, that
11 sort of thing, that going to court or even
12 arbitration might not be the best way to resolve
13 these types of problems. There's better ways, and
14 this is probably it. If I have an issue with you,
15 we're neighbours and we have a property dispute, we
16 probably won't be well-served by litigating this.
17 We probably need to sit down and talk about it,
18 have someone facilitate it, and really get to the
19 root of the problem, and come to an agreement on
20 that.

21 With that being said, not everything is suitable
22 for this sort of process. There are some things,
23 unfortunately, that need to go into a process
24 that's more adversarial, and that's why the Justice
25 Act has other forms available too, for people who

1 might not want to resolve an issue in a restorative
2 manner, or for something that you really need an
3 impartial decision maker to hand down a decision
4 on. And one of those, which is under develop, you
5 know, presently, is the Administrative Tribunal.
6 The Kahnawake Administrative Tribunal will be an
7 adjudicator or a panel of adjudicators charged with
8 reviewing decisions of the Administrative branch of
9 government, and where appropriate, to correct an
10 error or fault. It will review and determine
11 whether due process was followed, whether laws of
12 Natural Justice were adhered to, ensure absence of
13 bias, ensure the decision was reasonable, determine
14 whether there was absence of jurisdiction, or if
15 there was a mistake of law. There might be some
16 issues, like I said, that aren't suited for
17 restorative justice practices, where you need a
18 decision by an impartial third-party to review the
19 case and make a decision, but such a decision where
20 you don't need to go to the actual court and have a
21 full court process. So, the Administrative
22 Tribunal is sort of an in-between, is sort of like
23 an administrative court, similar to what we would
24 see with the TAQ in Québec City, Tribunaux
25 administratifs du Québec, similar to that.

1 So, in issues of decisions made by the Mohawk
2 Council of Kahnawake or other sort of government
3 bodies, if someone disagrees with a decision, this
4 would be the appropriate body to go to. For
5 example, if someone applies for a land allotment,
6 and their land allotment is rejected, you probably
7 shouldn't be going into a full court process to
8 determine whether that was a reasonable decision,
9 or not. So, you would go into the Administrative
10 Tribunal, which we're expecting to be a more
11 efficient, cost-effective method of, you know,
12 reviewing disputes. You know, not everything needs
13 to go to a court. So, this is another alternative
14 that we're looking at. And, of course, the Court
15 of Kahnawake itself, the third (3rd) forum in the
16 Justice Act, at Article 8.1, we say:

17 "The Court of Kahnawake is the court of
18 original jurisdiction within the
19 territory in all civil, criminal and
20 penal matters".

21 We say that:

22 "It will hear in first instance every
23 matter not assigned exclusively to
24 another Kahnawake court or Administrative
25 Tribunal by Kahnawake Law".

1 So, as we work on implementing the Justice
2 Act, we hope to, and plan to expand the
3 jurisdiction of this court, and essentially to keep
4 as much issues, you know, in Kahnawake as possible.

5 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

6 So, from my understanding, is that now, in the
7 justice system, you're taking indictable offenses,
8 but you would like, by the time you implement this
9 Act, that Kahnawake would take all indictable and
10 summary convictions?

11 **M. KEVIN FLEISCHER :**

12 Ah, I think, we'd like to keep as much as we can at
13 home. Of course, this is something that will take
14 a little bit of time to do, and we'll have to
15 gradually begin hearing more and more types of
16 cases. Maybe, you know, in the near future, we'll
17 start hearing some indictable stuff, we will start
18 hearing different civil matters, which we don't
19 hear right now.

20 What's interesting to note, though, in terms
21 of hearing criminal cases, during the consultation
22 process for the Justice Act, the community did make
23 clear that there were certain laws they didn't want
24 heard in Kahnawake; major crimes, murder, rape,
25 stuff like that.

1 They said,

2 “No, we don’t want that here. That will
3 could continue to go outside of the
4 territory”.

5 I think one (1) of the reasons for that is because
6 it’s a small community and we tend to, like I said,
7 know each other or know each other’s families.

8 We’re also looking at having our own Court of
9 Appeal, to hear appeals in criminal, penal and
10 civil matters. Certain criminal appeals would
11 still go outside, but we’re certainly looking at
12 all Kahnawake laws being appealed to our own appeal
13 body. So, like I said, a part of the impetus for
14 this Justice Act was to ensure we had a continuing,
15 functional court where we can appoint our own
16 judges. And the Justice Act itself, through
17 Regulation number 1 sets out what some of the
18 requirements would be for somebody to be a judge
19 pursuant to our Justice Act.

20 The person would have to have formal legal
21 training, meaning a graduate of a North American
22 law school; a member of a recognized Bar
23 Association in North America; have the requisite
24 knowledge of law applicable to the territory; have
25 a minimum of five (5) years of experience as a

1 practicing attorney; preference will be given to
2 individuals of Onkwehón:we descent. "Onkwehón:we"
3 meaning "the original People of North America".
4 They'll have to have knowledge of Kanien'kehá:ka,
5 Mohawk culture and customs and/or be willing to
6 acquire training to gain that knowledge.

7 We have a selection process of how we are
8 going to name these judges. There will be
9 screening, there'll be a public notice sign for
10 feedback, a community meeting, where community
11 members will be able to ask questions of the people
12 up for a judgeship. And the community will confirm
13 the selection of these judges. As you might see, in
14 Kahnawake, community involvement is very big. The
15 community is involved in the creation of our laws,
16 they'll debate the laws, what should be in it.
17 They'll be involved in the selection and
18 confirmation of our judges, even.

19 We have a very politically active people.

20 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

21 And just how does that work, like how the community
22 who selects has the final say in the judges? Just,
23 in fact, how does it work? How the community
24 participates?

25 **M. KEVIN FLEISCHER :**

1 Well, some of the details are still to be worked
2 out, because this is still, you know, the early
3 days of this new system, but I would expect
4 probably that after screening, the suitable
5 candidates, you know, will be brought forward to
6 the community for a sort of final confirmation or
7 selection. But, again, some of those details will
8 still need to be worked out along the way. But the
9 community will have a say, that's for sure.

10 Some people might wonder, you know, "Why have
11 your own justice system? Why your own court? Why
12 all these programs? There's programs available,
13 you know, in Quebec general. Why our own? What
14 benefits does it serve?", and that's a fair
15 question. And some of the reasons or benefits of
16 having our own justice system is that it will
17 foster dispute resolution using traditional-based
18 or homegrown adjudicative processes tailored to our
19 needs. It's going to forums that take into account
20 our traditions, our needs, where we're at, what we
21 would like to see. An example of that is through
22 our restorative justice program.

23 It's been my experience, also, that there's a
24 strong aversion to petitioning Quebec courts.
25 People regards Quebec courts as applying foreign

1 laws and processes, and they're not our laws, this
2 isn't our court... and, at times, I think there
3 might even be a mistrust of the system. People
4 want to resolve their issues in Kahnawake, using
5 our court, using our rules.

6 And if people have this aversion to going to
7 what we call "external courts", then we have to
8 question, are they able to access justice properly?
9 If they don't trust the outside courts, and there's
10 no way to resolve issues in Kahnawake, then some
11 issues might not be resolved at all.

12 In my experience, I've spoken with people who have
13 come to our court and said, "Well, I'd like to have
14 this issue heard at our court. I have a property
15 issue or a contract issue, I want to hear it at the
16 Court of Kahnawake".

17 And I have to inform them, "We're not there
18 yet. We're not yet able to handle this at our
19 court. We have options, but not our court, not
20 yet". And they get upset, say, "I want to resolve
21 this in Kahnawake". And I think some of them would
22 rather not resolve their issue at all, than to
23 actually go on the outside, where they say, "Ah,
24 forget it, you know, nothing is going to happen",
25 and, you know, for these people, they're not being

1 well served. They need something that they could
2 rely on, that they agree to a forum that they can
3 trust and believe in.

4 Also, as we know, the expense of court
5 proceedings in Quebec courts, or for that matter,
6 maybe most courts, if not all of them, is often
7 cost prohibitive. It can be expensive, it can be
8 time consuming. Some people don't have those types
9 of resources. That's why, you know, we offer
10 alternatives. Maybe they should go to mediation or
11 arbitrate it, other ways to get problems out of the
12 counts. And I think Quebec might be, you know,
13 realizing that now. And we look at the new Code of
14 Civil Procedure, it talks about trying to resolve
15 disputes using private dispute resolution
16 processes, that there's things you don't go to
17 court for, try to mediate it, try to arbitrate it.
18 And this is something we've already been doing for
19 a number of years, and we expect that our justice
20 system and our forums will resolve some of these
21 issues by providing to the community, you know,
22 forums that are fair and partial, efficient, cost
23 effective, specific into the needs of the
24 community, that people will feel comfortable going
25 to and resolving their issues that, otherwise, may

1 not be resolved at all.

2 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

3 So, you're telling me, on the access to justice
4 level, if I might say, so these... the program, the
5 restorative program, mediation program, it's free
6 for the people? It's like they don't have anything
7 to pay, so it's really... they can access justice
8 just like that? They have nothing to pay?

9 **M. KEVIN FLEISCHER :**

10 Yes, that's true. There's no cost for people to
11 access mediation or talking circles, or anything
12 like that. It's a true service, you know, for the
13 people. I think it's a great service. Like I say,
14 there are some things that you don't need to really
15 go to court for, and this is a cost-effective way
16 to repair relationships and stay out of the court,
17 that's open to people to use. And then, that
18 program has been successful also. But, as always,
19 like I said, there's always challenges and
20 obstacles we have to keep in mind. One such
21 problem that we see is in terms of funding. Our
22 Restorative Justice Program receives funding from
23 both Canada and Quebec, which is very helpful, of
24 course. But with Quebec, though, we understand
25 that their funding agreements for programs such as

1 this don't exceed two (2) years, and that this
2 impedes the long-term growth and development of our
3 program. If you could only plan in two (2) year
4 blocks, it's makes it difficult to add new services
5 and to plan long-term. So, that's an issue that we
6 saw there. Another issue, of course, is
7 jurisdiction. You know, we're looking at a court
8 having a very broad jurisdiction, and there might
9 be some overlap with Quebec courts, and we're going
10 to have to work out how exactly this thing is going
11 to operate, how are we going to work together?

12 There's also issues we see with
13 implementation. You know, it's a very big project
14 to create a new justice system and it takes, you
15 know, quite some time. But, you know, we're
16 working on it and we want to get this up and
17 running to benefit our community.

18 So, in general, that's the core of what I have
19 in terms of a presentation. I don't know if anyone
20 has any other questions, or would like me to
21 elaborate on anything else? I'm certainty here to
22 do that.

23 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

24 Maître Denis-Boileau, you have questions?

25 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

1 Yes.Thank you, Mr. Fleischer, for this very
2 interesting presentation. So, you're saying that
3 the funding in Quebec is two (2) years, but in
4 Canada, it's not only two (2) years? You have more
5 time?

6 **M. KEVIN FLEISCHER :**

7 I believe, I might be wrong, I think for this sort
8 of program it might be five (5) years.

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 Okay.

11 **M. KEVIN FLEISCHER :**

12 I think. I might be off on that a little bit.

13 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

14 And where do you get this funding of two (2) years,
15 through what kind of programs?

16 **M. KEVIN FLEISCHER :**

17 Through Justice Canada and Minister de la Justice
18 Québec.

19 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

20 Okay, okay.

21 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

22 I understand you would like to have it implemented
23 for a long time, not as a program.

24 **M. KEVIN FLEISCHER :**

25 Yes.

1 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

2 One that we use.

3 **M. KEVIN FLEISCHER :**

4 Yes, the longer the better, because it's a very
5 valuable service that keeps issues out of the
6 court, but like I say, two (2) year-blocks, it's
7 hard to plan long-term. And the service has been
8 in place for a long time now, you know, since about
9 two thousand (2000), so, you know, we don't hope to
10 see it leave any time soon.

11 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

12 And from what the people are telling you, because I
13 guess you talked to a lot of people who went
14 through this process, what are they saying about
15 it, the process?

16 **M. KEVIN FLEISCHER :**

17 The people who I know of, who went through the
18 Restorative Justice Program, the feedback has been
19 very positive. Of course, because it's a private
20 process, you know, it's not something made public,
21 who's gone through it. Sometimes, you know, I
22 don't know who's gone through it or not. But
23 sometimes people will share and say, "Oh, yeah, it
24 worked really good". You know, getting feedback
25 from the coordinator of the program, though, I hear

1 that, you know, it does its job very well, and, you
2 know, I'm very proud to hear that. You know, and
3 just, you know, in my experiences, both with
4 restorative justice, our Justice Act and our
5 justice system in general, I don't hear anybody
6 come up to me and say, "You know what, I don't
7 believe in this justice system. We shouldn't have
8 this court. We don't want it.

9 I want to go to a Quebec court". You don't
10 hear people saying that, at least not to me.
11 They're saying, "When's it coming? When is it
12 going to be ready?", you know, what's the latest on
13 it. People are interested in it. People want to
14 have these forums in the community.

15 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

16 And so, I read in your act that the judges you want
17 to have, you want to have judges that are Barreau,
18 that have their... like, Barreau of any province,
19 actually, that can be lawyers from any provinces.
20 So, do you have like some people that are... like
21 that you're thinking, that could be appointed
22 judges in the community already?

23 **M. KEVIN FLEISCHER :**

24 We have a number of lawyers in the community, and
25 also there's many... starting to be many Indigenous

1 lawyers in other communities, too. There's a lot
2 who I come across, you know, younger people,
3 they're going to law school.

4 So, I think as the years go on, considering a
5 number of Native lawyers now and those coming up, I
6 mean, they'll be a very big talent pool, you know,
7 to choose from, which is very encouraging. When I
8 was a law student, a little while back now, I
9 didn't find very many Indigenous law students at
10 the time. They weren't a lot of us.

11 At least where I was at, and as time goes on,
12 it seems like that there's more and more, and I'm
13 running into and meeting more of them. And I think
14 that's very great that they're getting into the
15 profession, especially if we have these innovative
16 programs that's going on, creating courts and
17 tribunals and, I mean, that's something that, I
18 think, they could contribute a lot to.

19 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

20 And so, now, the plan is to implement the whole
21 Justice Act? How far... Do you have like a plan
22 with like some delay, or not yet?

23 **M. KEVIN FLEISCHER :**

24 I can never give a real time line on it.
25 Obviously, it depends on how things go with the

1 external authorities.

2 There's work being done on different aspects
3 of it right now. A lot of what I call "behind the
4 scenes work", you know. Because we're going to
5 create a justice system, you have all the rules,
6 you have the procedures, you have everything that
7 goes with it, and it does take some time to
8 develop. But it's been worked on steadily, and I
9 hope in the near future that we have some very big
10 news coming from the work that we've been doing on
11 this.

12 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

13 And how does it go for the jurisdiction discussion
14 you were talking about?

15 **M. KEVIN FLEISCHER :**

16 Oh, we haven't... We signed a mandate with Quebec
17 to begin discussions on, you know, this court and
18 how this thing is going to function together. But,
19 you know, that hasn't yet started yet.

20 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

21 Okay. And just another question I have for you.
22 You were talking about the fact that in the
23 Restorative Justice Program, people have to accept
24 responsibility.

25 Is it something like you cannot go in it, if

1 you don't accept the responsibility for it?

2 **M. KEVIN FLEISCHER :**

3 It's something where, if you don't believe in it or
4 you're not going to take it seriously, it's not
5 going to work. But a part of it through
6 discussions is, you know, someone has done
7 something wrong, I think they need to 'fess up to
8 it, it needs to be acknowledged, and then work
9 through the issue. A benefit to that and having a
10 process where you look at responsibility is that it
11 helps to heal and repair, because someone might
12 say, "You know what, I did do something wrong.
13 Let's work on how we can fix it". And you're not
14 going to see that in a court process. People have
15 their lawyers and everything else, and, you know, I
16 don't think you often see someone saying, "Hey, I
17 made a mistake. What can we do to fix this
18 thing?".

19 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

20 Is it possible for someone to get in the program
21 without still accepting responsibility, but getting
22 through it and, at some point accepting, or you
23 have to accept when you enter?

24 **M. KEVIN FLEISCHER :**

25 I can't... I don't facilitate the sessions,

1 unfortunately.

2 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

3 Yes.

4 **M. KEVIN FLEISCHER :**

5 So, how it actually works in that sort of practice,

6 I'm not in a good position to really say. I'm

7 sorry.

8 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

9 Oh, no, that's okay.

10 I have no more questions, thank you.

11 **M. KEVIN FLEISCHER :**

12 Okay.

13 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

14 Non?

15 Me Boucher, do you have questions? Me Robillard?

16 **Me DENISE ROBILLARD :**

17 I won't have any question. Thank you.

18 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

19 No? Maître Laganière?

20 **Me MAXIME LAGANIÈRE :**

21 I don't have any question, thanks.

22 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

23 Oh. So, it will be the time, I will thank you for

24 having accepted our invitation to present the

25 justice system in Kahnawake.

1 I understand that people in your community would
2 like to settle there, by themselves, summary
3 convictions, penal cases, law from the communities
4 and disputes, some disputes, and leave to other
5 courts more serious cases like murder, rape and
6 everything.

7 **M. KEVIN FLEISCHER :**

8 Yes, as...

9 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

10 Things like that.

11 **M. KEVIN FLEISCHER :**

12 Yes.

13 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

14 Did I understand well?

15 **M. KEVIN FLEISCHER :**

16 Yes, that's pretty much it. You know, we want to
17 work up to hearing as much as we can in Kahnawake,
18 but certain things, they are probably better heard
19 elsewhere.

20 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

21 I also understand that Superior Court does not sit
22 in Kahnawake.

23 **M. KEVIN FLEISCHER :**

24 No...

25 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

1 Or you don't have any jury trials in your
2 community?

3 **M. KEVIN FLEISCHER :**

4 No, no jury trials. We do have occasionally trials
5 at the Court of Kahnawake in criminal matters. It
6 doesn't happen very often. And I understand that
7 approximately maybe eighty (80%) percent of the
8 decisions that come from those trials is really a
9 probation or a peace bond. So, we occasionally
10 have trials.

11 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

12 Is there something else you would like to tell us?

13 **M. KEVIN FLEISCHER :**

14 I guess, in closing, to stress to the Commission,
15 as it pertains to justice services, that sometimes
16 the communities have a better idea of what's best
17 for them, in terms of developing services,
18 courts... whatever it is, and that Quebec should be
19 willing and open to helping these communities and
20 fostering that growth and development, but
21 understanding that there's issues that are best
22 settled back home, so to speak.

23 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

24 I usually hear that in Indigenous communities, they
25 would like to have justice rendered fast, with less

1 cost possible, and leave more serious cases to
2 other courts.

3 **M. KEVIN FLEISCHER :**

4 Yes.

5 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

6 Yes.

7 **M. KEVIN FLEISCHER :**

8 Well, for us, I mean, a lot of what we're looking
9 at, especially with the Administrative Tribunal, is
10 to have a cost-effective method of redress, you
11 know. We don't want things to drag out endlessly
12 and be expensive. No, we want to resolve, where
13 possible, disputes as expeditiously as possible.

14 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

15 And I also understand that you would like that the
16 funding from government of Quebec be for a longer
17 period of time than two (2) years?

18 **M. KEVIN FLEISCHER :**

19 Yes, and top it up a little bit too, would go a
20 long a way towards ensuring the development of new
21 services, also.

22 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

23 Yes, because I guess you feel you're not a program,
24 but essential service.

25 **M. KEVIN FLEISCHER :**

1 Well, for us, like I say, we're the cornerstone of
2 our justice system. So, when I look at Skén:nen
3 Aonsón:ton, I don't see just a program, I see a
4 foundation for a justice system for the people of
5 Kahnawake.

6 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

7 So, thank you very much.

8 Is there... Nothing else? We'll have a break for
9 fifteen (15) minutes, is it enough?

10 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

11 Well...

12 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

13 To get ready for the next witness?

14 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

15 Yes. Yes, we'll get ready for... It was planned at
16 eleven thirty (11:30), the next witness, but we'll
17 see if...

18 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

19 Ah, fifteen (15), twenty (20) minutes, anyways.

20 Yes.

21 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

22 Yes.

23 **LA GREFFIÈRE-AUDIENCIÈRE :**

24 Je m'excuse, Me Boileau, vous avez des pièces à
25 déposer?

1 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

2 Oui, merci Madame la Greffière.

3 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

4 On garde le PowerPoint?

5 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

6 PowerPoint.

7 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

8 And your...

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 Alors on est rendus à quel numéro?

11 **LA GREFFIÈRE-AUDIENCIÈRE :**

12 P-365.

13 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

14 365?

15 **LA GREFFIÈRE-AUDIENCIÈRE :**

16 Oui, 65 : 6-5.

17 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

18 O.K. Sous P-365, la présentation PowerPoint.

19 P-366 : l'entente sur l'administration de la

20 justice entre le Québec et Kahnawake du trente (30)

21 mars mille neuf cent quatre-vingt-dix-neuf (1999).

22 P-367 : Kahnawake Justice Act.

23 Et P-368: une référence au site Web du Alternative

24 Dispute Resolution de Kahnawake.

25 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

1 So, quinze (15), vingt (20) minutes break?

2 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

3 Fifteen (15), I'll just check if the next witness
4 is already there and ready.

5 **L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :**

6 Thank you.

7 **M. KEVIN FLEISCHER :**

8 Ah, thank you.

9 **LA GREFFIÈRE-AUDIENCIÈRE :**

10 Ajournement des audiences pour quinze (15) minutes.

11 (RECESS)

12 **THE COURT:**

13 So, welcome back.

14 We took a little more time, because the next
15 witnesses were scheduled at eleven o'clock (11:00)

16 So, we had to wait a little bit more than fifteen
17 (15) minutes.

18 So, Me Denis-Boileau, you will present the next
19 witnesses.

20 **Me MARIE-ANDRÉE DENIS-BOILEAU:**

21 Yes. So, we have Joyce King, who is the Director
22 of the Department of Justice of Akwasasne. She's
23 also Justice of the Peace. And we have Me Bonnie
24 Cole, who is a counsel at the Mohawk Tribunal of
25 Akwasasne.

1 **THE COURT:**

2 So, welcome to both of you.

3 I will ask the Clerk of the Court to proceed with
4 the Oath.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 -----
2 Joyce King
3 Directrice du département de la justice d'Akwesasne
4 -----
5 Bonnie Cole
6 Procureure de conseillère juridique, tribunaie Mohawk
7 D'Akwesasne
8 -----

9

10 **LA GREFFIÈRE-AUDIENCIÈRE :**

11 Your witnesses.

12 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

13 So, both our witnesses today will present the
14 division of justice... Well, the Justice Dpartment
15 of Akwesasne, and specifically, the Court of
16 Akwesasne, as well.

17 So, Mrs. King and Mrs. Cole, I invite you to
18 do us your presentation.

19 **MME JOYCE KING :**

20 Thank you.

21 **Me BONNIE COLE :**

22 Okay. So, you preempted me by introducing us. Yes.
23 So, as I said, as you've mentioned, Joyce is the
24 Director of our Akwesasne Justice Department.

25 I might also share with the Commission that
26 Joyce is also a very knowledgeable person with the
27 Mohawk Nation, and traditions and customs, although
28 she works for the Council, the Mohawk Council of
29 Akwesasne. A little bit more of myself, I am a

1 counsel, a legal counsel for the Mohawk Council of
2 Akwasasne. I also am the prosecutor in our
3 Akwasasne Court. And part of my work involves
4 working with the Akwasasne Justice Department in
5 the development of their justice system.

6 With that, I'll have Joyce begin, and we'll...
7 We're going to take turns throughout the
8 presentation.

9 **MME JOYCE KING :**

10 (Speaks in Mohawk). Tekahnawaiiks is my Mohawk
11 name, and I want to send greetings. And it's an
12 honour to be here to talk about the Akwasasne
13 Justice Department, the Mohawk Council of
14 Akwasasne, and the Akwasasne justice system.

15 And it's... Again, it's an honour to be here,
16 and it's our opportunity to provide a solution,
17 perhaps, to other First Nations to look at a
18 justice system that might be relevant or start a
19 process of developing one in other territories.

20 With that, I'm going to turn to our map of
21 Akwasasne, and I'm going to walk over to this
22 diorama to explain some of the special systems and
23 jurisdictions within Akwasasne, and why we've had
24 to develop our own justice system.

25 **LE COMMISSAIRE :**

1 M'hm.

2 **MME JOYCE KING :**

3 I'm not sure if you want to come and listen, but
4 here, here's a map of Akwesasne. And if you look
5 at this, this part, if you take this down, this
6 part signifies the Ontario portion of Akwesasne.
7 The green here, the greens are all Akwesasne. So,
8 this... this lighter green is Ontario.

9 And when you put it together, you will see an
10 international border that runs across our
11 territory. This orange part is the international
12 border, and the yellow part is the border between
13 Quebec and Ontario. And we have to look here. So,
14 our... The jurisdiction is quite a problem when you
15 want to go from one territory to another. You
16 cannot go straight to Canada, you have to be able
17 to take your car, if you live in the village of
18 Saint-Regis, go over to the New York State side,
19 and then cross over the bridges, one bridge, a
20 second bridge, and report to CBSA, before you can
21 go into Ontario, Akwesasne. If you do not...

22 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

23 Can you just explain what is CBSA?

24 **MME JOYCE KING :**

25 Oh, I'm sorry.

1 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

2 No problem.

3 **MME JOYCE KING :**

4 Canada Border Service Agency. Thank you for
5 reminding me.

6 So, if you don't, if you happen to go straight
7 across the border, and you want to go straight
8 home, and CBSA hears about it, they confiscate your
9 car. And it's a thousand dollar (\$1,000.00) fine
10 for the first offense, two thousand (\$2,000.00) for
11 the second offense. So, you have to be really
12 careful and conscientious about not going straight
13 home.

14 And as you can see, here in Ontario, there are
15 administration buildings, there's a school here,
16 there's a chronic care system here. So, lots of
17 activity going on. And if you are anywhere in
18 Quebec, in the Quebec portion of Akwesasne, you're
19 not contiguous to mainland Canada. This is all
20 swamp area. So, there is no bridge, no road that
21 goes straight to Quebec. Instead, what you have to
22 do, you have to exit. If you want to go to
23 Valleyfield, to Court, you have to exit, go through
24 the border again in order to get to Valleyfield.
25 And if you happen to have an offense in Cornwall,

1 Ontario, because that's where all our services are,
2 then again, you travel through New York State, and
3 then up, pass Ontario, go report at the Canada
4 Border Service Agencies. And then, you can get
5 your services in Cornwall. So, it's a very
6 complicated system. So, you have Akwesasne, that's
7 Ontario. You have Akwesasne that's in Quebec, and
8 you have Akwesasne that is in New York State. And
9 this is all one (1) territory, but it just so
10 happens that an international border runs through
11 our territory, and a border between two (2)
12 provinces runs through it. So, I'm going to try to
13 tell you why we needed our own justice system.
14 Thank you. We begin by looking at the Royal
15 Commission on Aboriginal People, nineteen ninety-
16 six (1996). They said the current justice system
17 is a failure for Aboriginal people. They said the
18 system is structurally unsound for Aboriginal
19 people, and it's time for a major reform.

20 They also suggested there's no serious
21 jurisdictional impediments to reform, that there is
22 a justice and gender inequality, and that there has
23 to be separate Aboriginal justice systems. The
24 reserve-only reforms are not appropriate, and
25 current initiatives deserve to be documented and

1 analyzed. And the process of the reform has to be
2 consensual. They also said Aboriginal justice
3 initiatives have commenced in different communities
4 across Canada. It would be unrealistic, and indeed
5 counter-productive, to expense these community-
6 based initiatives to give way to a single
7 Aboriginal justice system. It is unlikely that a
8 single community-based initiative would extend
9 across Canada to become a single Aboriginal justice
10 system. There's a report from the U.N. Special
11 Rapporteur. And this was James Anaya, and it was
12 reported by APTN in two thousand and fourteen
13 (2014), where he said: "Human rights problems faced
14 by Indigenous people in Canada have reached crisis
15 proportions. Indigenous leaders have expressed
16 concern that progress towards reconciliation has
17 been undermined by actions of the government that
18 limit or ignore the input of Indigenous governments
19 and representatives." We can make a change. The
20 U.N. also put in the Declaration on the Rights of
21 Indigenous People.

22 I'm not going to go through all the articles,
23 but again, they're stating that we have a right to
24 participate in decision-making, that we have a
25 right to promote and develop our institutional

1 structures that are based on our distinctive
2 customs, and that we have a right to determine the
3 responsibilities of individuals in our communities.
4 And that we have a right to access and promote
5 decision through just and fair procedures for
6 resolution of conflicts and disputes. A Truth and
7 Reconciliation Commission, which came out in two
8 thousand and twelve (2012)... or two thousand
9 sixteen (2016), said that there needs to be
10 strategies for change. Call to Action number 42:
11 "We call upon Federal, Provincial and Territorial
12 governments to commit to the recognition and
13 implementation of Aboriginal justice systems in a
14 manner that is consistent with Treaty and
15 Aboriginal rights of..."... our people, according
16 to the Constitutional Act of nineteen eighty-two
17 (1982).And in there, please take note of Section 25
18 and 35, that reaffirms, we have a right to those
19 inherent principles that were in our community.
20 Now, we're going to get to the Mohawk Council of
21 Akwesasne, the employer I work for. Their Mission
22 Statement is to provide consistent quality services
23 that enhance the quality of life for all
24 Akwesasronon. "Akwesasronon" means "people of
25 Akwesasne". So, it doesn't matter if you're a

1 Native, non-Native, or whatever, it's whoever lives
2 there. And we protect our rights and preserve our
3 resources for the next seven (7) generations.

4 In the vision, we must sustain our inherent
5 rights, facing challenges together to build a
6 strong and healthy future. And as far as the
7 Justice Department is concerned, we say that we
8 strive to provide a comprehensive justice system
9 for the people of Akwesasne, which is equitable,
10 fair, and respectful of individual rights, and
11 respectful of culture and heritage as Mohawks. Now,
12 I will talk about the Aboriginal justice system at
13 Akwesasne. A system includes legislation,
14 adjudication, and enforcement. This is the
15 structure at Akwesasne. You have the community,
16 who elects their representatives, which is the
17 Mohawk Council of Akwesasne, which refers to
18 departments.

19 And with the Mohawk Council of Akwesasne, you
20 have one (1) Grand Chief, twelve (12) District
21 Chiefs, that have a Government Support Manager.
22 And I want to tell you the structure, so that
23 you'll know the resources that we're using within
24 our own system to make a change. We have an
25 Aboriginal Rights and Research Office, we have a

1 Nation Building Program, and we have a
2 Communications Unit. And the departments that we
3 have are broken into nine (9) departments. Is it
4 nine (9) or ten (10)? Executive Services, the
5 Akwesasne Justice Department, Mohawk Board of
6 Education, the Akwesasne Mohawk Police Services,
7 Community and Social Services, the Department of
8 Health, Housing, Department of Tech Services and
9 Tehotienawakon... nine (9). And under Executive
10 Services...

11 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

12 What was the... What was... does the last one mean?

13 **MME JOYCE KING :**

14 It means "We work together".

15 It's a combination of Economic Development and
16 Environment. Because what happens in normal
17 practice, Economic Development wants to use
18 resources, and Environment will say, "No, you have
19 to protect the environment." So, by putting the
20 two (2) of them together, they need to start
21 complementing and work together, so that there is a
22 balance... a balance between what our economic
23 development initiatives are, so that we don't hurt
24 the environment. So, it was a simple solution to
25 combine the two (2) programs, so that there's an

1 equitable fairness in what we're doing as Mohawk
2 people. At the Justice Department, these are the
3 programs that we have. We have the Akwesasne
4 Court, the Akwesasne Community Justice Program,
5 Legal Services, Legislative Services, Probation out
6 of Quebec and Probation out of Ontario. We have
7 parole, which is in Section 84, Early Release
8 Program, out of... from the Correction Canada.

9 And then, Conservation Program, a Compliance
10 Program, and just to let you know, the Conservation
11 and the Compliance Program, they are the ones that
12 enforce our laws and our by-laws at Akwesasne.

13 And then, we have a Native Inmate Liaison
14 Office, and that Inmate Liaison Office works out of
15 the Ottawa Carleton Detention Center. So, a lot of
16 things going on. When you look at Administration of
17 Justice, the underlying principles of any justice
18 system says you want society order, you want
19 standards of conduct, you want protection of your
20 members, and you want to provide stability and
21 certainty. But what is unique to Akwesasne is that
22 we have a real kinship. There's a clan system
23 that's there. We look at our collective rights to
24 supersede the individual rights. We look at
25 principles of peace, of strength, of good mind, and

1 it's non adversarial. And especially, we look at
2 restoration, and sometimes, removal.
3 The foundation of any system rests on its system of
4 justice. Clearly, the Canadian justice system has
5 failed to meet the needs of Aboriginal people and
6 we'll talk about that later.

7 The self-government means not only the right
8 to make your own laws, but the ability to enforce,
9 to interpret, adjudicate issues based on those
10 laws. Most fundamentally, however, it involves the
11 right to have a judicial system that reflects your
12 own values.

13 Values. We use something called "the Good
14 Mind" and that's "Ka'nikonriio". Ka'nikonriio
15 looks at peace, respect, trust, openness and
16 friendship. And people have heard the Two Row
17 Wampum. And we still look at that as a way to work
18 with other governments, so we negotiate in good
19 faith with other governments on the government to
20 government basis. And when we look at the Royal
21 Proclamation that started Canada, then, we want to
22 also look at the protection of inherent right of
23 all Akwesasronon. And that's what we're doing,
24 we're trying to restore our traditional values,
25 we're trying to preserve, protect and advance our

1 language. We're trying to protect our lands and
2 our resources for our future generations. We want
3 to retain those community values as the importance
4 of environment and restoring the peace and the
5 person. We want to restore the person. And we
6 want to protect and exercise the jurisdictions of
7 the Mohawks of Akwesasne, and look at those
8 collective rights taking precedence over individual
9 rights.

10 We also want to protect the integrity of the
11 previous decisions as well as maintain transparency
12 and accountability to the community at Akwesasne.
13 Identified issues.

14 **Me BONNIE COLE :**

15 Okay. So, some of the issues that we currently
16 face arise from the Indian Act. Our history of
17 law-making in the community started with the
18 section 81 of Indian Act which provided that
19 Council of a band may make by-laws.

20 The Indian Act laws and their approval process
21 didn't keep up with the needs of our community.
22 Akwesasne has problems accessing a fair judicial
23 system in the Canadian Courts. Those federal and
24 provincial Courts are time-consuming and costly, to
25 name a few.

1 And Akwesasne Mohawk cultural values are not
2 considered in a "Western-European" judicial system.

3 Now, more particularly, telling about the
4 Indian Act, one of the things, as an example, we
5 can tell you about the Indian Act is that it has
6 the Indian Reserve Traffic Regulations. And that's
7 under the Indian Act. The offenses for a
8 particular offense - and this is any offense -
9 range from a dollar (\$1.00), and not more than
10 fifty dollars (\$50.00). This, to us, is not an
11 effective deterrent preventing, you know, future
12 traffic offenses in our community. Maybe back in
13 the fifties (50s), that might have been an
14 appropriate regulation, but in today's society and
15 in our community, it is not.

16 The Indian Act has also been responsible for
17 creating over hundred and fifty (150) outstanding
18 land and estate files by the application of
19 inappropriate policies and decisions. For example,
20 we have a case where a person was... the family
21 distributed the estate, including the property
22 land, to the family in accordance with their
23 traditional custom, which is at the tenth (10th)
24 day of their... the tenth (10th) day, feast day.
25 Correct me if I'm wrong.

1 **MME JOYCE KING :**

2 That's correct.

3 **Me BONNIE COLE :**

4 And it was distributed to the family according to
5 that custom. INAC, being "Indian and Northern
6 Affairs Canada", in its infinite wisdom, decided
7 that the distribution of the property should go
8 according to the regulations. So, it went to the
9 people who were not, in the community's mind,
10 entitled or deserving of that land. It was... it
11 should have been the family that cared for, took
12 care of the folks house, the custom. It didn't
13 happen. It created a great amount of litigation
14 and to this day, I don't think that particular case
15 was actually solved to...

16 **MME JOYCE KING :**

17 Yes.

18 **Me BONNIE COLE :**

19 ... anyone's satisfaction.

20 Anyway, in response in... to this, the Mohawk
21 Council of Akwesasne began working on legislative
22 development and implementation of decision-making
23 bodies that would look to these issues and, you
24 know, protect all of those interests to the
25 community.

1 I also want to add to the slide, as a piece of
2 history, is that the Council, the Mohawk Council of
3 Akwesasne, did practice sending laws to the Indian
4 Affairs for approval under the Section 81
5 provisions. There were multiple times that laws
6 that were good for the community were rejected by
7 Indian Affairs for different reasons, reasons that
8 made no sense to the community. It didn't address
9 the real... real issues that the community is
10 facing, but instead, got hung up on things like
11 words and jurisdiction, and things that were just
12 not relevant to what the community needed.

13 In the mid-nineties ('90s), what happened was
14 Council stopped sending their laws to INAC, and
15 said, "We're going to pass these under our inherent
16 right as community laws, because these are what is
17 good for our community." So, that's a piece of
18 history in our legislative development.

19 So, in the matter of legislative development,
20 some of the principles that we look at are defined
21 by the territory. They look at treaty rights.
22 Always collective rights are foremost. We're
23 looking at protection of all persons. Legislative
24 development has to be culturally-based, based on
25 culturally-based principles. It has to look at the

1 familial relationships. It has to have some level
2 of trust. There's also some elements of fiduciary
3 responsibility. Importantly, principles of Natural
4 Justice have to be in that legislative development.
5 And we also recognize that there has to be some
6 standardization of law and how it's enacted in the
7 community. Again, it comes down to the matter of
8 certainty.

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 Mrs. Cole, what do you mean by "Natural Justice"?

11 **Me BONNIE COLE :**

12 Well, the basics that everybody can relate to is,
13 you know, the right to be heard, to have a fair
14 hearing, you know, to having an impartial person,
15 you know, make decisions and facilitate... you
16 know, to facilitate resolution to issues and
17 concerns. Those types of things need to be in, you
18 know, in our legislative development.

19 So, for example, I would think that, you know,
20 we developed Court law, which we'll talk about a
21 little more later. That we did recognize that
22 people, you know, have some rights, that they need
23 to be assured that they could have a process to be
24 heard, and that the person that's going to hear it
25 is going to be fair and open, and that they get a

1 chance to have their say. So, when we talk about
2 "Natural Justice", that's the types of things that
3 we mention. Okay.

4 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

5 Just before you go to the next slide, I was seeing
6 on that other slide before that...

7 **Me BONNIE COLE :**

8 Yes.

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 ... you were saying "The Wolf Belt Charter". Can
11 you just explain that?

12 **Me BONNIE COLE :**

13 I'll let Joyce explain that a little bit better
14 than I can.

15 **MME JOYCE KING :**

16 When any community comes together, they develop
17 rules of engagement and how they will be able to
18 live together as a community. And when Akwesasne
19 started having... started working together and
20 becoming a permanent settlement, what they did was
21 put strings of wampum together. Strings of wampum,
22 and it's from the quahog shell. And it's on...
23 What they did was design into a bead, and when you
24 start putting an agreement together, each family
25 contributes a bead to that wampum belt. And you'll

1 see wampum belts, there's a design that you... the
2 Confederacy flag, did you ever see that's purple
3 and white, it has five (5) symbols in there, you
4 know, it's like two (2)... it's two (2) squares and
5 like a spade in the middle. That's an actual
6 wampum belt. So, you string together these beads,
7 and what it is, it represents the collective
8 thought of the entire community. And the Wolf Belt
9 says that we will have two (2) wolves at the end of
10 this wampum, because they will protect our
11 community. And when you look at that, it also
12 means that the Council has to be on the safeguard
13 to ensure that the community is protected. They
14 are those wolves.

15 So, it's a collective thought of bringing this
16 agreement together and how we will live together.
17 That's the short version. And that's how our...
18 that's what our community charter is.

19 And in the... as a confederacy, the community
20 charter is represented with that flag that has the
21 five symbols in it.

22 And I don't think... I'm not sure if we have a
23 picture, maybe at the end. Okay.

24 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

25 Yes, I just wanted to make sure, so that it was

1 like really the community charter you were talking
2 about and not the Canadian charter on that power
3 point.

4 **MME JOYCE KING :**

5 Thank you.

6 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

7 Well, thank you for explaining.

8 **Me BONNIE COLE :**

9 Yes. All right. So, Akwesasne Law Considerations.
10 And one of the important things that you'll see
11 when we develop our laws are these particular
12 clauses that you see on the left-hand side of the
13 slide here. And these are important and
14 fundamental to all laws, and you'll see them all
15 the time in our newer laws. It speaks to the
16 Mohawk... "Whereas the Mohawks of Akwesasne have
17 the existing inherent right of self-determination,
18 which includes the inherent jurisdiction over their
19 lands, peoples and territory."

20 "And whereas the Mohawks of Akwesasne have the
21 aboriginal and treaty rights, and other rights and
22 freedoms that are recognized and affirmed in the
23 Constitution of Canada, which include the inherent
24 right of self-determination and jurisdiction over
25 their lands, peoples and territory." "And whereas

1 the Mohawk Council of Akwesasne is a community
2 government within the territory of Akwesasne, and
3 has inherent jurisdiction to make laws, regulations
4 and policies to meet the needs and concerns of the
5 Mohawks of Akwesasne/""And whereas the Mohawk
6 Council of Akwesasne intends to preserve the
7 cultural, political and economic integrity of the
8 Mohawk territory and community of Akwesasne."

9 These are always going to be our fundamental
10 openings in our preambles. And when we're looking
11 at our... looking at considerations into our laws,
12 we're always checking to be sure that is it
13 consistent with community values? Does the law
14 ensure continuity with past relationships, rights,
15 treaties? Does the law reflects self-determination
16 and jurisdiction? And another yard stick is does
17 it ensure that past principles are preserved?

18 And, of course, does it do right by the
19 community? Does it enhance the community? Does it
20 make it a better place?

21 **MME JOYCE KING :**

22 Earlier, you heard from Kevin Fleischer talking
23 about the community of Kahnawake didn't want those
24 five (5) crimes... five (5) major crimes to be
25 used. That was actually a treaty, an agreement

1 between the Haudenosaunee people, who you call the
2 "Iroquois", and the United States government in
3 Canada, when the colonists came here. They said,
4 "Well, you know, there's five (5) major crimes that
5 we do not want to take care of, and we're handing
6 that over to you." And that was murder, rape,
7 theft, treason, and I don't remember the last one,
8 but five (5) major crimes was the ones that we
9 always said we won't take care of, and that's the
10 past agreement. Even in Court law, we won't
11 take... We will not take jurisdiction over those
12 five (5) major crimes, because we gave that up.

13 And the reason... and some of the reasons
14 behind it was there was not theft in our community.
15 If you wanted something, you just have to ask or
16 you have to say, "I'd like that", and it's yours.
17 You don't have to steal it. And murder was such a
18 big problem, I mean... Well, such a major
19 consideration, that if you murdered something, you
20 were banished. So, if you murdered somebody in the
21 community, then you're banished now to the United
22 States and Canada, and they're going to address
23 you. There was also no rape in our community.
24 That was a learned behaviour. You will see past
25 history books talking exactly about that, that a

1 woman could go throughout any place where there are
2 Native Americans, and they knew that they would not
3 be raped. They could walk by themselves. Back
4 then, that wasn't... that was not known in the
5 European systems. So, rape actually was another
6 form, if you're going to do this, then you're going
7 to be banished out to the United States and Canada.

8 **MME JOYCE KING :**

9 Okay.

10 **Me BONNIE COLE :**

11 So, we talked about or I mentioned earlier that
12 Akwesasne took jurisdiction over its own law
13 making.

14 **MME JOYCE KING :**

15 And here's the Wolf Belt. That is the charter.
16 So, you can see it was designed of beads, purple
17 and white, and that's what the quahog shell is.
18 And you can only find that probably around Cape
19 Cod, where you have the two (2) wolves at the end,
20 and the two (2) people linking hands, meaning "We
21 will be united".

22 **Me BONNIE COLE :**

23 Anyway, as I was mentioning, the law enactment in
24 the nineties (90s), mid nineties (90s), Akwesasne
25 began exercising its right to make its own laws.

1 And at that time, as an ongoing development, it
2 was... there was a movement or a desire by the
3 community to say, "When we enact laws, we want them
4 to be standard and we want them... We want to be
5 able to have a say." So, one of the things that
6 happened is that practice became, I guess,
7 entrenched or written into what we call our Law
8 Enactment Procedural Regulation. And this,
9 basically, is how laws get passed now in our
10 community, how they get developed and how they get
11 passed. And it has a five (5) phase approach.

12 The first one, of course, is law development,
13 the acceptance in principle, and I'll talk a little
14 bit more as I go along. The community
15 consultation, enactment of the law, and
16 ratification and rejection. Those are basically
17 the five (5) phases.

18 For the Phase I, which is law development,
19 there's a couple of ways that a law can become a
20 priority for the community. One is by MCR, which
21 is "Mohawk Council Resolution". It's a resolution
22 passed by our Council to say that, you know, here's
23 a need, here's a law that we need in response to.
24 And examples of that are the couples property law
25 that was passed by the federal government. We

1 passed our own law in response to that.

2 One of the ones that's coming down the pipe
3 and is on everybody's minds and lips these days is
4 the cannabis legislation that's being passed by
5 Canada, and throughout the provinces, and where
6 does that mean to the community of Akwesasne?
7 Council again has passed a resolution to say, "We
8 need a Working Task Group to look at how we're
9 going to handle cannabis in our community."

10 So, that's an example. Another way is by
11 petition of members. So, a member can come and
12 say, "Well, I think we need a law" or "We need to
13 change a law." And what they do is they'll get
14 seventy-five (75) members in their district to sign
15 a petition, and they would get... We have three (3)
16 districts. Each district would have to have
17 seventy-five (75) members to sign a petition, and
18 they present it to Council. And they say, "We want
19 this, we want a law to do this." So, that's the
20 people's way of raising the concern and getting
21 that on the agenda.

22 Anyway, once... either by resolution or by
23 accepting a petition, a notice will be sent out to
24 the community members that this is being
25 contemplated. And the... As I said, the Mohawk

1 Council Resolution will establish a Working Task
2 Group and will meet to start drafting the law.

3 A legal review is done, and once they have a
4 draft, then it's given to the Working Task Group to
5 approve of the changes. So, once that's done, and
6 then they'll present it to Council. And at
7 Council, Council will decide at that stage, at the
8 next stage. Maybe we should go to the next slide?

9 **MME JOYCE KING :**

10 Sorry.

11 **Me BONNIE COLE :**

12 Sorry. At the next phase, they'll take a look at
13 this law and they'll either accept it in principle
14 or they will reject it. Or they might send it back
15 for more changes.

16 If they reject it, it's the end of that draft
17 law. And at the end of that draft law, I believe
18 there's no more... there will be no more work or
19 discussion on it for six (6) months...

20 **MME JOYCE KING :**

21 M'hm..

22 **Me BONNIE COLE :**

23 ... if I'm correct?

24 **MME JOYCE KING :**

25 Six (6) months.

1 **Me BONNIE COLE :**

2 The other thing that is... that can happen is if
3 it's accepted, the draft law will move forward to
4 Phase III, to community consultation. At Phase
5 III, there will be public information meetings and
6 they're scheduled in three (3) districts. And the
7 other thing that also happens is that a draft of
8 that law will go to everybody household in the
9 community. Every mailbox that we have, that we
10 know of, and it will also be published in our local
11 paper. We also do radio talk-shows and we do a
12 little bit of advertising there to let people know
13 that this document is out there for their comment.

14 Comments received at our public information
15 sessions, and we also leave the door open for
16 people to make submissions privately in writing.
17 They can Facebook us, they can...

18 **MME JOYCE KING :**

19 M'hm.

20 **Me BONNIE COLE :**

21 ... leave it on our Web site, they can do it
22 through boxes that are left in each of the
23 administration buildings in the districts. So,
24 there's a lot of forms and ways for people to
25 comment, you know, publicly or privately on a law

1 and make their interest known.

2 **MME JOYCE KING :**

3 And at one time, we even have a blog going. When
4 people wanted questions, to ask us questions, we
5 posted it on our Web site and we did a community
6 forum when... where anyone can ask any question of
7 us. So, as it was live time... real time, I guess
8 you call it? People will do the question, and then
9 the Working Task Group would tell... give the
10 answer and post it on the Web site. That's been
11 pretty effective, as far as using electronic
12 sources.

13 **Me BONNIE COLE :**

14 Yes. So, the community consultation phase is
15 something that we take very seriously. As I said,
16 there's information in the three (3) districts, and
17 that's really important in our community. There's
18 three (3) districts of Kawehnoke, which is Cornwall
19 Island; Kanatakon, which is Saint-Regis village in
20 the Quebec portion; and Tsi Snaihne, which is in
21 the... also in the Quebec portion.

22 Those three (3) districts are very cognizant
23 of each other and they insist that they all be
24 treated fairly. So, that's why three (3) districts
25 is important, you know, when we're talking about

1 consultation.

2 Once we have comments, they're tabulated for
3 Council's consideration and a report actually goes
4 to the Council, and they look it over, and they
5 say, "Yay", "Nay", "Naybe" or, you know, they'll
6 look at that and see if it's in keeping with the
7 overall goals.

8 Once those changes are adopted, then they get
9 incorporated into the draft by the Working Task
10 Group, and that's your "WTG" there. The new draft
11 is submitted for legal review, and then, once
12 that's done, there will be a Phase III post-
13 consultation that's submitted to Council for
14 acceptance at the next stage.

15 And our next stage is enactment of the law.
16 Here's the publication, a full text of the proposed
17 laws posted twenty (20) days before a meeting in
18 the newspaper, on the Web site.

19 There's no revisions allowed after the final
20 version is marked "Phase IV for Enactment", because
21 the work is done, the consultation is done, you
22 know. At some point, you have to say, "Okay, we're
23 ready to adopt or not adopt this."

24 And Council also has an option, I guess, and
25 that depends on the level of how much the law will

1 impact a community member, to decide how they're
2 going to have the community vote on it. Whether it
3 will be by a secret ballot at a meeting on members
4 or whether it will be by a referendum, which is,
5 you know, a really intense vote.

6 So, the date... Once they have decided on
7 whether and how it will be done, a date is set and
8 the vote will take place. And we have our Chief
9 Electoral Officer and our Deputy Electoral
10 Officers, they are appointed by Council to oversee
11 not only elections, but a lot of our referendum in
12 our enactment procedures in the community.

13 And if it's passed, whether by referendum or
14 vote, the law will be entered into our Law
15 Registry, which we have... we also have enacted
16 that, as well. And the Law Registry is our public
17 registry, where anybody can download and look at
18 the law. They can request copies of it, and if
19 they want an original copy, then they can come and
20 request that free of charge from our department.

21 **MME JOYCE KING :**

22 And you get a certified...

23 **Me BONNIE COLE :**

24 Yes.

25 **MME JOYCE KING :**

1 ... copy.

2 **Me BONNIE COLE :**

3 All right. So, ratification and rejection of an
4 Akwesasne law. So, an MCR - Mohawk Council
5 Resolution - is passed, accepting the results of
6 the vote. And one of the provisions we put into
7 the procedure and regulation is that failure of
8 Council members to not sign it doesn't invalidate
9 the results. Enactment of the law will come into
10 effect on the date of the vote, as per the
11 resolution. And a public notice of the voting
12 results are relayed to the community within seven
13 (7) days. Again, as I mentioned, a full text of the
14 ratified law is published in the local paper and
15 it's posted on our Web site, and that's
16 "www.akwesasne.ca/laws". And that's a listing of
17 all of our laws. Three (3) originals of the
18 ratified law and the original resolution is entered
19 into the Akwesasne Law Registry. The amendment and
20 repeal of a law. Amendments or repeals are by a
21 Mohawk Council Resolution or by community petition.
22 Again, it's the same threshold of seventy-five (75)
23 per... of eligible members per district to make
24 that, to canvas that change. And an amendment will
25 follow the same process as a new proposed law, with

1 the exception that if we have a law that was made
2 prior to our law enactment process, if that law
3 specifies an amendment process within it already,
4 then we follow what was in that law. So, what
5 was... what's an example is our Election Law.

6 **MME JOYCE KING :**

7 Yes.

8 **Me BONNIE COLE :**

9 Our Election Law was passed before we had this
10 process. So, the Election Law has provision in it
11 that says an amendment will happen in a certain
12 way. So, it has to go by that law, because it was
13 passed at that time. And then any new laws fall
14 under our law enactment process. So, Akwesasne
15 laws... Let me just move ahead here. So, we have
16 some current drafts on the books here, our
17 Conservation Law amendments. We're working with
18 our... on our Water Law.

19 **MME JOYCE KING :**

20 With McGill University.

21 **Me BONNIE COLE :**

22 Yes, we are in partnership with McGill University.
23 And we are fortunate to have established a legal
24 clinic with them to have some of their law students
25 work with us on developing it. It gives them some

1 really good experience and gives us, you know, the
2 benefit of their knowledge and their work. So,
3 we're really... We're really encouraged by that. We
4 have a Financial Administration Law in the works.
5 A Landlord Tenant Act, a Referendum Law, Akwesasne
6 Election Law is currently under amendment. There's
7 a Governance Code in the works, and our Akwesasne
8 Education Law has been drafted and is awaiting the
9 next movement. Some of our existing laws are our
10 Election Law. Again, as I mentioned, because it
11 was before our adoption of our regulation, its
12 amendment follows what's contained in the law,
13 actually. We have our Akwesasne Membership Code.
14 And the Membership Code was passed by the
15 community, and it was an opt out of the Indian Act.
16 So, our Membership Code follows our own community
17 customs and values, and not necessarily what the
18 Indian Act says. So, in our community, we're
19 always cognizant of two (2) things: One is members
20 and one is registered Indians. So, you can be a
21 registered Indian, registered to the Mohawks of
22 Akwesasne on the Register of Indian Affairs, but
23 you may not be a member. And the Membership Code
24 is very clear that, you know, there has to be
25 some... what's the word I'm looking? Family or...

1 **MME JOYCE KING :**

2 Relationship.

3 **Me BONNIE COLE :**

4 ... relationship, you know, to the community, and
5 your ties. So, you know, members... When we talk
6 about members, "members" means somebody on our
7 Membership Code. We have lots of registered
8 persons who are not necessarily as closely tied to
9 the community or even part of the community, that
10 are registered Indians. And that was because
11 Canada changed the rules. First, you had Bill C-31
12 that allowed the women to come back after they were
13 disenfranchised. And I think it was really called
14 enfranchised. And then, you had another law that
15 talked about the double mother, and recently there
16 was a gender equality. So, Indian Affairs is
17 making more Indians, you know. And they have a
18 right to be recognized as Indians. It's just that
19 in our community, they have rules of engagement in
20 how you will become a member. It's different than
21 what Indian Affairs does through... through Court
22 cases. Yes. We passed our Akwesasne Court law.
23 That was done two thousand sixteen (2016).
24 We've... As I mentioned earlier, we have our
25 Couples Property law, and that is in response to

1 the Federal Act on Couples Property. I think they
2 have a funny word for it, "Matrimonial Property on
3 Reserve Act". We have our Tobacco Law, and the
4 Tobacco Law speaks to all matters related to the
5 importation, the manufacture, the selling, the
6 vending, the wholesaling of tobacco on the reserve,
7 in the community. We are... have our Akwesasne
8 Wildlife Conservation Law, our Banishment Law, a
9 Curfew By-Law, and these are older by-laws going
10 into the old days of having by-laws approved by
11 Indian Affairs. The Residency Law, the Ethical
12 Conduct Law. We have Itinerant Vendor Law, a by-
13 law respecting the sale of tax-exempt cigarettes.
14 We have a Waterworks System By-Law, nineteen sixty-
15 four (1964). Our ATV By-Law, Intoxicants By-Law,
16 and Control of Dogs. Now, some of the dates, like,
17 if you look at the dates pre-mid-nineties ('90s),
18 those are mostly by-laws. And if you look at our
19 Web site, you'll notice that. If you look at the
20 dates, you'll see "by-law", "by-law", "by-law", and
21 usually, before two thousand and five (2005), two
22 thousand and six (2006) is when Council stopped
23 asking for permission to have laws in our
24 community, and just decided to just do what is
25 right and fair for our folk.

1 **MME JOYCE KING :**

2 In... I just want to point out the Waterworks
3 System, the By-Law in nineteen sixty-four (1964),
4 the reason why we've had to amend that is because
5 the Canadian government gave jurisdiction to the
6 provinces and they said, "Create your own... you
7 know, match the waters... the water system in the
8 provinces, the water standards, the water quality
9 standards." For us at Akwesasne who have a major
10 water filtration plant in Saint-Régis, Quebec, and
11 one in Cornwall, Ontario. Now, we're looking at
12 two (2) regimes. That's not going to work for us.
13 We're going to have to have our water operators
14 trained two (2) different ways. That's
15 unreasonable. So, we're looking at standards that
16 meet or surpass any provincial system. One water
17 system for both territories, three (3) districts.

18 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

19 You're saying, Mrs. Cole, that in two thousand five
20 (2005), two thousand sixteen (2016), the
21 community... well, Akwesasne stopped making by-laws
22 and started doing laws, because people said, "Well,
23 we don't have to ask permission, we'll do our own
24 laws." What happened at this moment? Is there a
25 specific thing that happened that made this change?

1 **Me BONNIE COLE :**

2 Yes. It was the mid-nineties ('90s), and if I said
3 two thousand and five (2005), I actually mean the
4 mid-nineties ('90s). What was happening is a lot
5 of back and forth with Indian Affairs. It's a
6 process where, you know, you would send the law to
7 Indian Affairs, and they had forty (40) days to
8 reply to it. And if they didn't reply to you in
9 forty (40) days, then... then it was accepted. It
10 was an unspoken acceptance. If they didn't like
11 it, they would send it back to you with comments
12 and saying, "Rejected", you know, and... you know,
13 they would say, "Well, you don't have the
14 jurisdiction." Or, "You can't do this." Or, you
15 know, "It's outside of the scope of eighty-one
16 (81)." And, you know, which is... which is within
17 their right to say so, but it also didn't address
18 what was happening in the community. So, you know,
19 when that happened with several of our laws, and I
20 think one of the bigger ones that... maybe, Joyce,
21 you can comment on, is the Wildlife Conservation
22 Law.

23 **MME JOYCE KING :**

24 Yes. With the Wildlife Conservation Law, we were
25 patrolling the rivers and the river, in particular,

1 was the Saint Lawrence River. Canada said we don't
2 have jurisdiction over that, because it's an
3 international seaway and the Coast Guard has
4 jurisdiction. Well, when is the Coast Guard going
5 to come and protect our fish? When is the Coast
6 Guard going to stop those ships from eroding our
7 territory? That's not going to happen. So, we had
8 to take the law, and we had to use it to protect
9 the fishing that happens, to protect the hunting
10 that happens, to make sure that we have
11 conservation efforts there. Because people
12 generally think, when they go to Akwesasne, "Oh,
13 it's a lawless territory." No, you can see the
14 amount of laws that we have passed in our community
15 to try to protect the rights of not only people,
16 but of resources, of fish, of birds. There was a
17 bird sanctuary that was naturally being... being
18 developed by the birds themselves. We were having
19 night herons there. We had grey herons come. We
20 had all sorts of species. And when we saw that
21 happening, we told the Mohawk Council of Akwesasne,
22 "Trade the land owner of that island with another
23 island, just so that rookery can be established.
24 So, that's protection of the natural world,
25 protection of those birds. And later on, the

1 Cormorants came and took over, but that's nature.
2 So, it's all working together to make sure that we
3 can protect things. And when it was rejected by
4 Indian Affairs several, several times, you'll never
5 see, or rarely see, the Coast Guard coming up that
6 river to protect what they call the jurisdiction
7 under the, you know, Saint Lawrence Seaway. But we
8 have to patrol it to ensure that people have
9 hunting license, make sure that they have their
10 boater safety licence, that they get a fishing
11 permit from Akwesasne to ensure that they don't
12 overcatch our fish, that they don't take eggs, that
13 they don't disturb spawning areas. Important,
14 important things, and that's all we're trying to
15 do. It's not taking jurisdiction, it's doing
16 what's right for the resources, for our future
17 generations, not only of Akwesasne, but of all
18 people living here.

19 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

20 So, you have Akwesasne patrol to control these
21 permits and...

22 **MME JOYCE KING :**

23 Correct.

24 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

25 Okay.

1 **Me BONNIE COLE :**

2 Yes. Okay, where are we now? Okay. An Aboriginal
3 justice system. Do you want to continue? Yes.

4 **MME JOYCE KING :**

5 So, we have... In Mohawk Council, we developed a
6 justice system, and it's based on the principles of
7 traditional values, and we've listed a few of them.
8 You know, make sure it's equitable, it's effective
9 in a complex multi-cultural, multi-jurisdictional
10 world, based on the relevancy to the Mohawks of
11 Akwesasne. As I showed you earlier, we have Quebec
12 here, we have Ontario here, but all of Akwesasne
13 includes Ontario, Quebec and New York State. So,
14 we had to create our own body of law to address the
15 issues that are being faced within our community
16 and reflect our values. And, again, focus less on
17 individual rights and on... We need to look at
18 individual obligations. So, the community tries to
19 take in that complicated legal context and apply
20 them as best as we can to supersede those values
21 and make sure that they're better, that we have a
22 better system here. That if... for example, if the
23 water says, "You can have mercury at one hundred
24 (100) parts per million (1,000,000)"... I'm just
25 saying one number, and I don't know if this is

1 true. We're saying that we want zero (0) mercury
2 in our water. Those are the things that we look
3 at. We don't want an acceptable chemical being
4 spilled into our water, we want a pure water,
5 because we're also responsible to the water. And
6 you will see that. So, our legislative development,
7 we now have... This is the system that we've
8 designed for legislation. We have a Legislative
9 Commission, they work with Working Task Groups.
10 They have to abide by the law enactment procedure
11 regulation, and at the end, they have to post it in
12 accordance with the Akwesasne Law Registry. For
13 adjudication, we have an Akwesasne Review
14 Commission that oversees our justices. We have the
15 Court that adjudicates the laws and the by-laws.
16 We're not taking jurisdiction over what Canada
17 wants or what Quebec wants, or what Ontario wants,
18 we're doing jurisdiction over Akwesasne laws, only
19 on our territory. We're not expanding beyond our
20 territory. And for enforcement, we have the
21 Akwesasne Mohawk Police Commission that oversees
22 the Akwesasne Mohawk police services, and they
23 focus on Criminal Code violations. And at the
24 Justice Department, we have a... we have two (2)
25 Conservation Officers. No, I'm sorry, two (2)

1 Compliance Officers, and one (1) Conservation
2 Officer. And they have to do all the laws that are
3 currently being... that currently exist within the
4 community.

5 **Me BONNIE COLE :**

6 Can I interrupt for a second?

7 **MME JOYCE KING :**

8 Sure. Thank you.

9 **Me BONNIE COLE :**

10 I just wanted to do two (2) comments on laws. In a
11 Conservation Law and our Environment Department, it
12 plays a big role in the preservation of our
13 resources and making sure that as a community, that
14 we're being responsible to all of it... all of
15 Creation, the way we were meant to be. One of the
16 things that we're really proud of is our
17 Environment Department. We do environmental
18 assessments when we're undertaking new projects in
19 the community, new bills or, you know, if there's
20 anything that's coming through from outside
21 sources, such as the bridge corporation or... you
22 know, there's so many... so many players out there
23 that we always have to be vigilant for. So, when
24 we do an environmental assessment, we... it's
25 usually the custom or the way that things go is...

1 Outside government will defer to our environmental
2 assessment process, because it exceeds the
3 environmental standards of Canada. In fact, our
4 manager, or our resource people in Environment...
5 you know, we're so proud of him, is our Dr. Henry
6 Lickers. He is called upon across North America to
7 help people develop their environmental standards,
8 and then environmental issues, and look at...
9 providing his advice and wisdom to those things.
10 Our environmental assessment is based on our
11 Thanksgiving Address, which looks at all of the
12 elements. And maybe you can explain a little bit
13 more about that.

14 **MME JOYCE KING :**

15 Yes. So, when we look at how we're going to
16 protect the environment, we don't look at the
17 sections that most environment people do, where
18 they will categorize things into land, water and
19 air. If you know our Ohenten Kariwatekwen, and
20 that's also referred to as a "Thanksgiving
21 Address", we will start with the people. What does
22 the... What does this effect have on the people?
23 Then, we will address Mother Earth. What effects
24 does this have on Mother Earth? And I'll go...
25 I'll try to remember everything within the

1 Thanksgiving Address. So, it's people, Mother
2 Earth, grasses, the medicines, the sustenance which
3 is the Three (3) Sisters, corn, beans and squash.
4 They'll look at the trees, the birds, the thunders,
5 the air, the moon, the sun... because if you block
6 the sun off, you know, with the pollution, then
7 that's going to be affecting the way we grow our
8 food. And we'll also look at the starts, and then
9 finally, we get to the Creator. So, we look at all
10 those species. Sometimes, all those parts of
11 Creation. Sometimes, it doesn't affect them, and
12 then you just continue. But other times, when you
13 take down trees and there's no more birds there,
14 what is their responsibility? The birds are there
15 to pass seeds around, to bring joy to people with
16 their singing. And once you take that out of the
17 elements, it really effects some people's
18 physiology, because they can no longer hear those
19 birds singing. Or they can no longer hear that
20 snipe in the woods, and mating season when the
21 beautiful robins come out. So, you want to look at
22 all of Creation and that's what the Ohenten
23 Kariwatekwen does, it gives you all the elements of
24 Creation, and you see, once you try to manipulate
25 the environment, what is the effect on it. So,

1 that's the reason why we use the Thanksgiving
2 Address as a body to ensure we're looking at all of
3 Creation, and not just air, water and land.

4 **Me BONNIE COLE :**

5 One of the other things that I wanted to mention as
6 enforcement is that Akwesasne is currently doing a
7 pilot program, a national or a Ontario-wide pilot
8 program...

9 **MME JOYCE KING :**

10 Yes.

11 **Me BONNIE COLE :**

12 ... training Compliance...

13 **MME JOYCE KING :**

14 Canada...

15 **Me BONNIE COLE :**

16 ... Officers. Canada-wide...

17 **MME JOYCE KING :**

18 Canada-wide.

19 **Me BONNIE COLE :**

20 A Canada-wide program. It's in progress right now.

21 We are training new candidates from our community

22 and other communities to be able to go back to

23 their communities and have the foundation and the

24 training, and we are actually, you know, fitness

25 testing to... you know, to perform those functions

1 in their own community, thinking that those
2 communities are also trying to build their
3 capacities to develop their systems.

4 **MME JOYCE KING :**

5 It was a pilot project from Indian Affairs, because
6 we needed more trained Compliance Officers. And in
7 order to train it... train people, we thought,
8 "Well, why don't we open this up to any First
9 Nation who wants compliance officers in their own
10 territory? We'll provide the training, and then
11 you have to be able to employ them." So, we were
12 able to get two (2) people from Kanesatake and one
13 (1) person from the Sagamok Nation. We only had
14 space for ten (10) people, so the rest of the
15 people came from Akwesasne, and we provided lots
16 and lots of training, so they'll look at... They'll
17 look at the Canadian Charter, they'll look at
18 Akwesasne laws and by-laws. They'll look at [drug-
19 wise]. They're going to be certified in both
20 safety, they're going to be certified in driving,
21 they're going to have their CPR. And there was one
22 more certification they were going to get, their
23 PAL. So, that's in order to carry a firearm.
24 Because sometimes, we're asked by Parks Canada to
25 deer... to do a deer herd reduction. There's one

1 island that we... that Parks Canada maintains,
2 where the deer are overpopulating the island, and
3 if you don't do a deer herd reduction, then the
4 deer might starve to death during the winter, or it
5 might overeat everything on that island. So, they
6 ask us to bring our hunters there, and when we take
7 all the deer, half of it goes to the ceremonies
8 during mid-winter, the ceremonies that are in the
9 Long House, the traditional ceremonies. And it
10 provides the meat for those ceremonies. And just
11 to let you know, mid-winter lasts for seven (7)
12 days, so, if you are feeding five hundred (500)
13 people, then you need a lot of deer. So, it works,
14 you know, there's mutual aid, we're working
15 together, and they have to be able to carry their
16 rifles over the boarder in order to do this deer
17 hunt. And so, we cooperate with them and they have
18 to have certification, and it's called a "PAL
19 card". I don't know what the acronym stands for,
20 but it's to carry a long rifle, an unconcealed
21 weapon, basically. So, they're going to be...
22 we're trying to get the training for that.

23 And it's just... It's not a good time to take
24 them out on the river, but we are going to set them
25 up with student placements in the compliance

1 programs on the American side, on the Canadian
2 side, with the police services on the American
3 side, with the police services on the Canadian
4 side. Okay. Visioning. When we put this justice
5 system together, and when we were putting
6 especially the Akwesasne Court Law together, we
7 were looking... We were working with a lawyer and,
8 you know, it went... when I got there, there wasn't
9 a Court Law, and we... and I knew we needed a
10 foundation. And everyone knew we needed a
11 foundation, but we didn't have a law per se to base
12 our adjudication on, our Court on. So, what we did
13 was work... We worked with a lawyer, and he put
14 together a Court Law, and he says, "Oh, this is
15 really, really good", he says, "It's ready to go to
16 Council." And I said, "No, not yet." And he come
17 back a couple of months and he goes, "Is it ready
18 yet?" I said, "No, not yet, wait. We need time
19 out. So, let's have a time out." And what we did
20 was we hired somebody from the community who has a
21 BA. She went through all those reports within our
22 community. We wanted to know what the community
23 was saying. We... So, we had a visioning session.
24 She went through all those reports, and this is one
25 of them, nineteen ninety-five (1995), this was a

1 study done by the Department of Justice Canada at
2 Akwesasne, and it was called "Justice needs in the
3 Mohawk community". And this is what the community
4 was saying: We need a system that is feasible. We
5 need a justice system that helps everyone: the
6 offender, the victim, the family of the victim, the
7 family of the offender and the community. We need
8 to involve all parts of the community: the justice,
9 the police, social services, education, the elders,
10 victims, family members, and the community. We
11 need strong leadership. So, we need a system that
12 is feasible, that combines traditional and present
13 system. It has to be overseen by an independent
14 body that's separate from the justice system, or
15 its staff. We need an all-native Court. We need
16 those community-driven sentences and sanctions, as
17 well as the strong leadership. We have to have our
18 own justice system for everything, and that the
19 Mohawks have to develop our own laws. We have to
20 have more programs that deal with offenders. We
21 have to have the rights of the community and
22 individuals to be protected equally. And the
23 Mohawk Council or justice system should deal with
24 civil issues. We need to address core issues
25 within our community and reduce the severity and

1 frequency of what you see. That was one of the
2 studies. The other study that happened was a case
3 study through the Native Nations Institute in two
4 thousand and seven (2007). That they said, "We
5 need to work on law-making, implementation and
6 enforcement. Addressing the process of disputes.
7 We need to look at resolution, redress and
8 restoration." "Our challenges", they pointed out,
9 "is integration, expansion of services,
10 indigenization."

11 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

12 What do you mean, "integration"?

13 **MME JOYCE KING :**

14 Integration.

15 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

16 What do you mean by that?

17 **MME JOYCE KING :**

18 To make sure that when we... when we put a law
19 together that involves not only everyone, but all
20 the programs that we have. We need to make sure
21 that it can be used every day, but we also have a
22 problem with funding, and we also have to consider
23 that international border that runs through our
24 territory. And as you see, in the adjudication
25 part, Canada does not want us to have Criminal Law

1 Jurisdiction, and that the justice system has to be
2 analogous to provinces and territories. And the
3 sanctions should not exceed summary conviction.
4 It's a penal system and it's offender focused. But
5 we say, in our system, that we have to be mindful
6 of restorative justice. Our remediation, which is
7 part of it, have to look at fines and penalties,
8 and not locking people up in jail. We have to get
9 our people to accept responsibility for their
10 actions, and we're going to look at the restoration
11 to maintain balance in the community. So, if you
12 have done something wrong, how will you correct it?
13 And sometimes, you have to go to restitution,
14 restitution of the damage you have created. So,
15 the orders must be consistent with restorative
16 justice. And that's how we got our Akwesasne Court
17 Law. And when we put this out together in the
18 Akwesasne Court Law, and we told the lawyer, I
19 said, "This is it." And he goes, "Wow! This is
20 even better!" And I said, "Yes, because it comes
21 from our community. It's our community's voice
22 that is coming through this Court Law." So, the
23 Court Law is not a Joyce King law, it's not a
24 Bonnie Cole law, it's a community law. And when
25 people start saying, "Oh, you know, I... you know,

1 this law is wrong", I said, "You're the one who
2 told us what to put in there, so it's your
3 responsibility to have presented that voice." Maybe
4 in the future, we will make changes, but the Court
5 Law was passed in two thousand sixteen (2016), and
6 it became the first Court Law that was not
7 associated with the laws in Canada or the laws in
8 the provinces, but we know that we have to make
9 sure that our justice system has judicial
10 independence, that it's a fair process, that it's
11 affordable and it's accesable to the community.

12 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

13 So, I understand you take in charge every crime,
14 except those five (5) that you named before?

15 **MME JOYCE KING :**

16 We are not, right now, going to take any criminal
17 Court offenses, but we are looking... and this is
18 from one of our Chiefs, maybe it's time to
19 decriminalize the Criminal Code.

20 **Me BONNIE COLE :**

21 Okay. So, our Court Law... basically, what our
22 Court Law has done is we've... as Joyce has
23 mentioned, is we've kind of put it into... put into
24 writing what we've been doing for the past, I don't
25 know how long, thirty (30) years, forty (40) years

1 the Court has been in existence. Our Court Law
2 talks about these particular things here that you
3 see up on the slide, but I want to talk a little
4 bit more about our Court. Our Court Law
5 establishes for us our justices, and who can be a
6 justice in our community, who's qualified to be a
7 justice, and what are we looking for in those
8 candidates. And, you know, what are their terms of
9 office, and all of those questions that would arise
10 that we would have about a person sitting as a
11 justice in our community. And our development of
12 that recognized that unlike many other places, that
13 our justices don't necessarily have to be lawyers.
14 They don't have to have ten (10) years at the Bar.
15 And our justices, we use that term a little
16 differently than maybe Canada or Ontario or Quebec
17 might. Our justice is the person hearing the
18 matter, so they're not just like the justice, the
19 lay justice in Ontario or, you know, a justice in
20 Quebec or... you know, the ten (10) year thing.

21 It's a person that the community has put their
22 faith and trust in to hear the matter, that they
23 have the integrity and the background, and the
24 knowledge, and the values to make a decision based
25 on what our laws and our customs and values would

1 be. So, that's our Akwesasne Court Law. And one of
2 the things that we also know is that, you know,
3 somebody has to be in charge, and there has to be a
4 mechanism to... you know, to address concerns with
5 justices, should they arise, and, you know, look at
6 all that maintenance of ensuring justices are
7 appointed and kept accountable. What the Court Law
8 has put into place are Akwesasne Review Commission.
9 And we mentioned it earlier, what the Akwesasne
10 Review Commission does is they oversee our
11 justices. They... again, they're chosen from the
12 community. They're people that we have faith and
13 trust, and background that would be able to oversee
14 our justices. They set standards for our justices
15 and our decision-making bodies. They also oversee
16 all of our administrative bodies. We have several
17 of them in our community that oversee different
18 things. We have our Election Appeal Board. We
19 have our Membership Board. We have our Council of
20 Elders. These are all administrative bodies. And
21 the conduct of those members on those bodies is
22 overseen by our Review Commission. So, they're
23 accountable to the community. And they are also
24 answerable for their conduct. And the point of the
25 Review Commission is to resolve conflict without

1 interference from government, interest groups or
2 others. And the Review Commission follows the same
3 principles of Kanikonriio, "respect and fairness".
4 And our Court Law also follows along those same
5 principles. Those... If you look at our Court Law
6 and it's on the Web site, you'll see that those are
7 fundamental principles in our Court Law, the good
8 mind, the respect and the fairness. And they call
9 it "strength", and it's not physical strength, but
10 it's strength of mind, strength of conviction,
11 strength that you're on the right path and doing
12 the right thing. Those are fundamental principles
13 to our Court Law.

14 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

15 And I see... I see that the Akwesasne Review
16 Commission, it's in your Akwesasne Court Law.
17 Is... there's also some provision about conflict of
18 interest if...

19 **Me BONNIE COLE :**

20 Yes.

21 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

22 ... this arises?

23 **Me BONNIE COLE :**

24 Yes.

25 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

1 For a judge?

2 **Me BONNIE COLE :**

3 Exactly. So, there's provisions in there where a
4 judge... justice would find themselves in a
5 position or didn't recuse themselves, and there's
6 mechanisms in there for addressing potential
7 conflict of interest situations.

8 **MME JOYCE KING :**

9 So, the Review Commission is also... We already
10 have a Judicial Code of Conduct, but they are also
11 updating that at the same time.

12 **Me BONNIE COLE :**

13 Okay. So, in terms of the Review Commission, their
14 function is to look at the judicial independence,
15 and they establish a level of pay, honorarium and
16 benefits for a justice and other decision-making
17 body members, in accordance with that law or
18 charter.

19 So, we have several boards and commissions,
20 and bodies overseeing, you know, different aspects
21 of our services in the community. For example, we
22 have a Police Commission, we have a Membership
23 Board, you know, I mentioned a couple of others.
24 They do have roles on conflict of interest. And
25 the Review Commission has a responsibility to

1 receive, investigate and decide whether a complaint
2 about the conduct of members of those boards or the
3 justices, if a complaint is valid, move forward,
4 and then there's a procedure set up for that. I
5 mentioned the principles. In our Court Law, we've
6 established that there is parties. Of course, the
7 justices. There's provision for a prosecutor,
8 there's provision for a defence counsel, and
9 there's a provision for advocate. And the reason
10 we put "advocate" there is that we wanted it to not
11 be solely a... like a Western model of justice. A
12 person might have somebody else that would
13 represent them and would speak on their behalf, and
14 it's not necessarily a lawyer, and it's not
15 necessarily anybody else. And that's there for
16 them to bring their advocate forth. It could be
17 their Clan Mother, it could be a friend, it could
18 be anybody. So, there's room for that, to have them
19 be able to appear with that person and support them
20 through, you know, presenting their matter before
21 the Court. The other thing that is established is
22 we have a Court Clerk and we have a Court
23 Administrator, and we have... let me see what else
24 we've got. We do all of these things, but the...
25 What's important about the Court Law is it gives

1 the justices what I call a tool box of different
2 ways and means that they can look at an individual
3 before them, and look at the situation, and what is
4 it that they are charged with or appearing to you..
5 before you with, and make creative solutions, you
6 know, settle things creatively. They can do
7 anything and the Court Law gives them that
8 flexibility. And it's our muscle that we have to
9 start practicing more and exercising more, because
10 we do do it, but it's kind of, like, where the
11 Court Law is only a few years old, so we're kind of
12 finding our way through and trying to see where it
13 goes, and flex it. When we... In Court, and as a
14 prosecutor, you know, it's always a recommendation
15 to say, "Well, why don't we look at, instead of
16 giving this one person a... you know, a big fine
17 of, you know, totalling two thousand dollars
18 (\$2,000.00) for all the offenses he's got before
19 him, perhaps we should look at why he did what he
20 did." And when they look at what he did, one of
21 the examples is that they found out that the fellow
22 was... you know, had suffered some trauma earlier,
23 a year earlier, had, up until that point in time,
24 been, you know, been a sober person, a family man,
25 and then this terrible thing happened, and it went

1 downhill. And these charges appeared as a result.
2 So, the issue was not so much, like, "How do we
3 wallop him with a two thousand dollars (\$2,000.00)
4 fine, but let's look at what happened to him, and
5 let's see what we can do to make him whole again,"
6 inasmuch as we could. So, the recommendation was
7 more for him to, you know, seek help with his
8 problems, you know, see some counselling. And, you
9 know, make attempts to get his licence back. And
10 that was our recommendations rather than, you know,
11 hit him with a big fine.

12 **MME JOYCE KING :**

13 Another instance that happened when I sat on the
14 Bench, a person was coming before me, and he kept
15 being fined for or charged for not having a
16 licence. And on the third time, I said, "Why
17 aren't you getting your licence? What's stopping
18 you?" And he said, "I can't read." So, I asked...
19 The Probation officer was there, and I said... I
20 put an order in, and I wanted that Probation
21 Officer to go and read the test, which you're
22 allowed to do. Because you can identify signs, you
23 don't necessarily have to read them. So, he
24 actually got his partner to go in. And one of the
25 things I said to the person in front of me was,

1 "Listen, you can either pay me a hundred dollars
2 (\$100.00) in a fine, or else you can go and pay the
3 Licence Bureau a hundred dollars (\$100.00) to get
4 your license. What do you want?" And he says,
5 "I'll make the effort." So, we called him back in
6 two (2) months. Lo and behold, he had a permit.
7 And I left my bench, and I went down into the
8 audience and congratulated him, because that's what
9 we want. We're looking at the safety of the
10 community, and if he can remember those rules of
11 the road with... you know, without having to read,
12 because that was his disability, then that's
13 what... that's what we're looking at for our
14 community, to bring balance, to restore safety, to
15 make sure that he now has... is able to drive on
16 the road and not be hindered, because everyone knew
17 he didn't have a license. And everyone would, you
18 know... The police will say, "Oh, he doesn't have
19 a licence, I'm going to take his car away" or "I'm
20 going to stop him from driving." So, now, he can
21 do the things that he needs to do as a role... as a
22 person that needs to be respectful and think of...
23 thinking of safety within the community. That's
24 what it's all about.

25 **Me BONNIE COLE :**

1 Yes. Yes, so, we also... In addition to the
2 justices having those tools at their disposal, one
3 of the other things that we also do with the Court
4 is we work on and take advantage of some of our
5 other programs in the justice system. One of them
6 is our [Ka'nikonriio] Council, which is our... good
7 mind, good ways? Always?

8 **MME JOYCE KING :**

9 No.

10 **Me BONNIE COLE :**

11 No.

12 **MME JOYCE KING :**

13 Good mind.

14 **Me BONNIE COLE :**

15 Good mind. You'd have a good mind. And that
16 Council itself is a community body. It's a
17 community members, again choosen because of their
18 backgrounds and their knowledge, and their standing
19 in the community...

20 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

21 Just...

22 **Me BONNIE COLE :**

23 ... and...

24 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

25 ... to make sure, is that the Akwesasne Community

1 Jus tice Program? Or...

2 **Me BONNIE COLE :**

3 Yes.

4 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

5 Is it, so...

6 **Me BONNIE COLE :**

7 Yes. It is under our Akwesasne Community Justice
8 Program, which is a program within our department.
9 And that mechanism or that body, we use it a lot
10 for diversion. Automatically, I will divert youth
11 to it. And when we do meet with them and we talk
12 with them about it, you know, I'll say, "Look, you
13 have this opportunity. The point is, is that I
14 don't want to see you back here again with any
15 other issues, you know, so this is your chance to
16 make right what happened." And some of them, you
17 know, are mostly in the area of traffic, or there
18 might be other types of public mischief offenses
19 under our by-laws. And we're usually looking at
20 trying to make them right again before they start
21 down a path where, you know, it just becomes fine
22 after fine piling on top, one on top of the other.

23 We also use it as a diversion for some of our
24 other... our adults. For example, we've had one
25 individual who came to Court having fines related

1 to leaving the scene of an accident. He actually
2 bumped somebody with his car, but didn't stop, so,
3 he got tickets for it, you know. So, here is this
4 hurt and harm going on in the community, this
5 person has done this. And you have a person who
6 thankfully wasn't, you know, severely hurt, but
7 was, you know, impacted by his car. And, you know,
8 they're angry. You've got an angry family out
9 there about what happened. So, the idea is that we
10 would send him to [Ka'nikonriio] to take
11 responsibility, which he was willing to do for
12 his... for his actions. Also, it gave that family
13 and victim a chance, and this is their opportunity
14 to come and have their say, and see what can be
15 done to make this right again, because these are
16 people, they live in the same... in the same
17 community, you know. They're actually probably
18 close neighbours, you know, and here's this thing
19 that happened, that needed to be restored and
20 fixed. So, those are the kind of decisions that you
21 make, you know, when you're in the Court and not
22 only as a prosecutor can... do I do that, but the
23 justices can do that too, you know. It doesn't
24 always... they can override anything I say at any
25 time, of course. And I'm trying to encourage them,

1 because the Court Law is something like, you know,
2 "Can we do this?" And it's, "Yes, you can. You
3 know, yes, you can, because we put that together so
4 you could do this based on these principles." You
5 can do things like, you know, order a person to
6 teach kids, if it's a young person, you know. They
7 can go out and teach lacrosse to kids, you know, if
8 that's their skill. They look at what they're good
9 at and what they can share and give back to their
10 community, you know, to pay their debt and restore
11 themselves, to feel good about themselves, and also
12 do a community service.

13 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

14 Yes. So, that is actually in your law, the... like
15 it's in... written in the values of the law, that
16 in the remedies... Well, it has to engage the...
17 the person has to be engaged in the remedies that
18 you will order, and it has to reinforce their gift
19 and skills, and in the values of the Court Law,
20 every person is unique and processes unique gifts
21 and skills, it's in the fundamental values of the
22 Court?

23 **Me BONNIE COLE :**

24 Yes.

25 **ME JOYCE KING :**

1 That is actually within our traditional values,
2 because when you go into the Long House, you will
3 hear words of encouragement, and they said that
4 "The Creator gave you a gift. What is your gift?"
5 Some people are good at speaking, some people are
6 good at lacrosse, some people are good at writing.
7 So, using that gift... and I use the example of a
8 lacrosse player. Say, you know, he's about fifteen
9 (15), sixteen (16), trying to exercise, you know,
10 his authority, and he thinks that it's funny to put
11 graffiti on a school wall. Well, if he comes
12 before the justice - I'm just giving you a scenario
13 - if he comes before the justice, the justice can
14 probably order him to go and teach those young
15 elementary students lacrosse. And when he walks
16 across that wall, hopefully, he's going to realize
17 what he has done to those children. If the
18 children don't say something, then,
19 psychologically, he's going to see that and he's
20 going to think, "What am I actually doing to these
21 kids?" He's building a relationship, showing them
22 the lacrosse skills. And as he builds that
23 relationship, he's going to think, "Maybe I
24 shouldn't have done this." And, hopefully, that
25 mind can be set on a good path. And it's

1 restoring, again, that balance back into the
2 community. And that's what we want to ensure, that
3 when a justice looks at the person, they're looking
4 at what's really wrong with this person, what
5 happened, and can we use his gift for the
6 betterment of this society? And that's the
7 important issue here.

8 **Me BONNIE COLE :**

9 Yes.

10 **MME JOYCE KING :**

11 We also have mediation services.

12 **Me BONNIE COLE :**

13 Yes.

14 **MME JOYCE KING :**

15 Mediation service, and that's through the Court.
16 If a person has a conflict and he's no longer with
17 the mom of his baby, and they're going through
18 custody, we say, "Try... try mediation first.
19 Let's see if we can do it." And it's at a very low
20 cost. So, it's like it'll be thirty-five dollars
21 (\$35.00), compared to what we pay the mediator. We
22 pay the mediator a hundred dollars (\$100.00),
23 because we value their services. And, hopefully,
24 this gets resolved in... They come out agreeing to
25 something that they would normally fight with in

1 Court, and bog down in Court, and take a year
2 before custody happens. It does take a year. I've
3 seen it happen. So, we offer these services to the
4 community, so that they can resolve their issues at
5 home, and we have trained mediators. We don't have
6 mediators that Quebec realizes as trained, because
7 in Quebec, you either have to be a lawyer or you
8 have to have mediation through family law. But we
9 have mediators that have always done this in the
10 community, and we actually have people that we
11 train them through a mediator, a lawyer who's a
12 mediator out of New York State. So, we use
13 different services. It doesn't matter where, as
14 long as they have the skills and as long as they're
15 confident and we're confident that they can do this
16 for the community. So, it doesn't matter what the
17 jurisdiction is. We need to do what's correct for
18 our people.

19 **Me BONNIE COLE :**

20 Yes, I think sometimes it gets difficult and we're
21 always cognizant of the fact that we're dealing
22 with so many jurisdictions. And it's interesting,
23 because after a while, we don't even think about it
24 anymore, because you're so used to doing what you
25 need to do to get things done in your community.

1 And then, when you go sit at a table with Ontario
2 or, you know, with government somewhere, and
3 then... and then all these questions come up.
4 “Well, that's out of jurisdiction”, and it's
5 like... And it's like you look at them and you say,
6 “Huh?”, you know, like, “Wait a minute, we're doing
7 this because we have to, there's no other way
8 around it.” We have to do what's best for our
9 community, and that's exactly what we're doing.
10 One of the principles that we put forth is that any
11 solutions to Mohawk issues have to come from the
12 Mohawk people, and it can't be, you know, anybody
13 else's. One of the other things that I wanted to
14 mention about the Court Law is that there's room in
15 there for counsel to... I mean, the Mohawk Council
16 of Akwesasne or the Court to enter into agreements
17 with the Saint-Regis Mohawk tribe, which is the
18 other part of Akwesasne you see on the diorama
19 there. They have their Tribal Court, and they are
20 moving ahead with their laws as well, over there,
21 in the issues of... particular more on family law,
22 I'm noticing, and lands in the States, and civil
23 remedies. So, you know, here's an opportunity for
24 us to, you know, make an agreement with them on how
25 we'll recognize each other, you know, enforce

1 orders in each other's jurisdictions, you know. It
2 could be matters of garnishment, it could be
3 matters of child custody matters, it can be child
4 support matters. Yes. So, that's what the Court
5 Law has given authority for, for those types of
6 agreements. One of the other thoughts that we had
7 when the Court Law was being developed was that all
8 of the ways and means to resolve disputes doesn't
9 necessarily have to be in our Court, it can also be
10 by people in the community who feel that there's...
11 they're more comfortable with, say, having their
12 Clan Mother or somebody, you know, that they
13 recognize to settle their dispute for them. So,
14 there's room for that. The Court would be more
15 concerned with what the result is, you know. If
16 they want to do that and we have that protocol in
17 place, there's no reason why they can't go to
18 traditional practices in ways of getting that done,
19 again looking at restoration and based on community
20 principles and values. So, you know, a lot of
21 thought went into... went into developing this
22 Court Law and establishing the authorities, and the
23 hows and the wheres of how things can be.

24 So...

25 **MME JOYCE KING :**

1 And looking at where Akwesasne is, and protection
2 of community members, if you took a woman who is a
3 victim of domestic violence, and she lives in
4 Quebec, she has to go to Cornwall to the hospital.
5 If she wants a protection order, she has to leave
6 Saint-Regis, Quebec, go to... through New York
7 State, travel through the Dundee border to get to
8 Valleyfield, to get a Court order. When she does
9 that, it takes her probably a day, a lot of time
10 getting out of work. But she can take that
11 protection order, but once she crosses back over to
12 New York State, she's not protected. Once she
13 crosses over to Cornwall to go to the hospital or
14 any of the clinics, she's not protected. She can
15 take that protection order and get it endorsed in
16 Cornwall, taking time out, going through New York
17 State, getting to Cornwall, Ontario, to get that
18 order enforced. She's still not protected in New
19 York State. Now, if she is harassed or if she goes
20 to New York State and says, "Endorse this order",
21 New York State will say, "Nothing happened to you."
22 And she'll say, "Yes, I got beat up in Quebec."
23 And they say, "We cannot see that. We cannot take
24 your information that happened in a different
25 country, and apply it in the United States." So,

1 she has to wait until she gets beat up again in New
2 York State, before they'll do a restraining order.
3 It's important that we design a justice system that
4 protects our community members, no matter where
5 they live, because of the international border,
6 because of the multi-jurisdiction problems that we
7 have. And what we did was design the Akwesasne
8 justice system. RCAP said to do it, the United
9 Nations on the... on Aboriginal people said to do
10 it. Truth and Reconciliation said to do it. "You
11 want it? You got it, here it is." So, here is a
12 model we hope that other First Nations might want
13 to design their system after. I'm not saying that
14 we have the solution for everything, but at least
15 we have a model and we can relay this to other
16 First Nations. If they want it, they can design it
17 that way.

18 **LE COMMISSAIRE :**

19 M'hm.

20 **MME JOYCE KING :**

21 Thank you.

22 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

23 Thank you.

24 **LE COMMISSAIRE :**

25 Does... Do you have questions?

1 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

2 Yes.

3 **LE COMMISSAIRE :**

4 Yes?

5 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

6 I was wondering, so you're saying that you're not
7 taking in charge any criminal offenses?

8 **MME JOYCE KING :**

9 M'hm.

10 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

11 And given all these, well, jurisdiction border
12 problems, was there... is there a plan for
13 Akwesasne to eventually take in charge some? Or
14 it's not something Akwesasne wants to do?

15 **MME JOYCE KING :**

16 It's going to depend on the community, what the
17 community wants. If they say, "Right now, we can
18 have protection orders." They're really called
19 "peace orders", "skana orders", and those are
20 protection orders. And when we develop our
21 agreements with the New York State, the Tribal
22 Council Court, which is Akwesasne and New York,
23 when we develop that agreement, then we'll make
24 sure that we can be able to endorse our orders, no
25 matter where they are.

1 **LE COMMISSAIRE :**

2 M'hm.

3 **MME JOYCE KING :**

4 And that's from one part of Akwesasne to the other
5 part of Akwesasne. And if Canada or the provinces
6 don't want to recognize, at least we know they'll
7 be protected in our territory, no matter where they
8 live.

9 **LE COMMISSAIRE :**

10 I just want to make sure I understood well. I
11 heard you were... at one time, you were taking care
12 of summary convictions?

13 **MME JOYCE KING :**

14 Yes.

15 **LE COMMISSAIRE :**

16 This is in the Criminal Code, but not matters of
17 the Criminal Code? I want to make sure, I
18 understand that you're taking care of summary
19 convictions...

20 **MME JOYCE KING :**

21 In...

22 **LE COMMISSAIRE :**

23 ... matters?

24 **MME JOYCE KING :**

25 Under the Indian Act, if you design a law, it has

1 to match a summary conviction requirements. So, we
2 can make our laws that have the elements of the
3 summary conviction, but not necessarily under the
4 Criminal Code.

5 **LE COMMISSAIRE :**

6 Okay.

7 **MME JOYCE KING :**

8 So, we will have a Trespass Law that will meet the
9 standards of a summary conviction, but it will be
10 in accordance to the law that is designed at
11 Akwesasne.

12 **LE COMMISSAIRE :**

13 So, for instance, in the Criminal Code, you have
14 some matters that can be sued as a criminal act or
15 summary convictions. Will you take care of summary
16 convictions?

17 **Me BONNIE COLE :**

18 We can.

19 **LE COMMISSAIRE :**

20 You can?

21 **Me BONNIE COLE :**

22 Yes. And... but we haven't gotten to the big ones,
23 the indictables. The history of the Court is that
24 back in... when we first got justices appointed
25 under the Indian Act under Section 107, they heard

1 and decided summary conviction matters, but only
2 those matters that were under the Indian Act, if
3 I'm correct.

4 **MME JOYCE KING :**

5 Yes.

6 **LE COMMISSAIRE :**

7 M'hm.

8 **Me BONNIE COLE :**

9 Yes. One of the pieces of history that has
10 happened and it has a significant impact on us, is
11 that we no longer are able to have justices
12 appointed under Section 107, even if we wanted
13 that. And over time, the summary convictions, you
14 know, that call for a fine or jail time... Well, we
15 don't do jail time. And one of the things that
16 happened, as well, is that when our justices... our
17 107s used to issue an order and said, "Well, three
18 (3) days in jail", they would take that fellow over
19 to Cornwall and, you know, put him in jail. And
20 that went on for a while. And then, one day,
21 somebody in their infinite wisdom over at
22 Cornwall... at Cornwall, Ontario, said, "Hey, how
23 come we're taking in all these people from the
24 reserve, and we're not getting paid for it?" So,
25 they stopped accepting our justices orders for

1 imprisonment, at that time. Now, recognize that
2 this was a time in history when that was the way
3 things were done. After that, the... they stopped
4 taking people that had those orders, and the other
5 thing that happened is the jail closed. So, when
6 you talk about a summary conviction, yes, you're
7 really talking about just a fine. Have they heard
8 those matters, they haven't, and I don't really
9 know the reason why our justices haven't done it,
10 but it's not that they can't, they can. In our
11 Court Law, they can.

12 **LE COMMISSAIRE :**

13 M'hm.

14 **Me BONNIE COLE :**

15 Right now, our expertise and, I guess, our teeth-
16 cutting exercises are on our by-laws and our
17 Akwasasne laws, mostly. That's not to say that we
18 won't get there, and I think in this point in
19 history, is that as we're flexing our muscles here
20 and figuring out how the system works, and, you
21 know, incorporating our best practices, we're kind
22 of taking incremental steps over time. I think one
23 day, we will be there, not just summary, but some
24 of the indictables, because ultimately, we want to
25 address the issue around, you know, the over-

1 incarceration of Aboriginal people in our
2 justice... in our prisons, right? And the way that
3 they are dealt with in the Criminal Courts. We
4 want to get there one day. We recognize that
5 that's a fundamental problem, but we also know that
6 that... to be there and to be able to handle it, we
7 are trying to grow and make our systems so that it
8 can support all of that, because there will be a
9 day where I believe that there won't be any of our
10 folks in the Canadian justice system, we will have
11 our own tier of system here, and that's where we
12 need to go. One of the things that has bothered me,
13 and it bothers a lot of people I know, is that the
14 issue about the young man in Saskatchewan, Colten
15 Boushie, you know, and the level of justice or not-
16 justice, as you see it, that was served there, is
17 just indicative of why a justice system is
18 something that First Nations communities have to
19 move forth with, you know. And if it takes us baby
20 steps and it takes us seven (7) generations to get
21 there, then that's what we have to do.

22 **LE COMMISSAIRE :**

23 I have the feeling that many First Nations
24 communities would like to have a system like yours,
25 are maybe listening to you.

1 **Me BONNIE COLE :**

2 M'hm.

3 **LE COMMISSAIRE :**

4 Trying to understand how it works. I'm pretty sure
5 Inuit communities or villages of Nunavik...

6 **Me BONNIE COLE :**

7 Yes.

8 **LE COMMISSAIRE :**

9 ... are really interested in having something like
10 this. I heard nothing about the funding of your
11 system. Maybe they would like to know how they can
12 fund, if they are interested to move on like this.

13 **MME JOYCE KING :**

14 In...

15 **LE COMMISSAIRE :**

16 We may have some word about that?

17 **MME JOYCE KING :**

18 It's true, funding. That is probably the thing
19 that doesn't allow us to expand. The Mohawk
20 Council of Akwesasne has funded the Akwesasne Court
21 entirely. It takes... We only have two (2) staff
22 people, one (1) Court Administrator and one (1)
23 Court Clerk who have to try to handle everything,
24 and we only have two (2) part-time justices. We
25 really do need a full-time justice to take care of

1 all the issues at Akwesasne, but we're... we just
2 don't have the funding. The Court can... they have
3 twenty thousand dollars (\$20,000.00) a year in
4 fines for... and they look over... they look at
5 over seven hundred (700) offenses a year, and that
6 doesn't include the ones that they send for
7 diversion. The ones that are worked out before it
8 comes to Court. So, it really hinders what we're
9 able to do. And we're saying to Canada and to the
10 provinces that instead of jailing somebody and
11 costing...

12 **LE COMMISSAIRE :**

13 M'hm.

14 **MME JOYCE KING :**

15 ... the Canadian system a hundred thousand dollars
16 (\$100,000.00) to put him in jail for a year, we...
17 If we keep them out, give us half of that money and
18 we'll do a better job. We look at recidivism rates
19 through the Akwesasne community justice, and it's
20 twenty percent (20%) roughly, as she was saying,
21 but you know, that's... you know, there's still
22 eighty (80) people that were able to get out of...
23 keep out of jail, and this was through a Crown
24 protocol, and a diversion system with our community
25 justice program, which is the diversion and the

1 circle sentencing. So, if we can keep eighty (80)
2 people out of jail, how much are we saving? We're
3 saving that hundred thousand dollars (\$100,000.00)
4 it would cost to keep them in a provincial system,
5 and even more in a federal system.

6 **LE COMMISSAIRE :**

7 But do you receive funding from governments,
8 whether...

9 **MME JOYCE KING :**

10 No, for...

11 **LE COMMISSAIRE :**

12 ... provincial or federal?

13 **MME JOYCE KING :**

14 ... not for the Court.

15 **LE COMMISSAIRE :**

16 No?

17 **MME JOYCE KING :**

18 We only receive a little bit of funding for the
19 Akwesasne community justice program, that provides
20 a Native Court worker to people who have criminal
21 offenses in Ontario and Quebec. It funds a little
22 bit of a youth worker. It will fund the program
23 manager that keeps the community justice program
24 going. And that's it, but they're separate from
25 the Akwesasne Court.

1 **LE COMMISSAIRE :**

2 Do you have questions, Me Denis-Boileau?

3 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

4 Yes, two (2) questions, actually. So, about this
5 Akwesasne community justice program that you just
6 talked about, just to make sure of everything it's
7 doing, so I understand it's a diversion with the
8 Crown, but also people can go there, as well, if
9 they want to help to resolve any matters. So, if
10 I... like, if there was a battle between two (2)
11 people, and it's not taken upon by police officers,
12 or like no one actually saw it, can people go by
13 themselves to this justice program and get help
14 into solving their problems, as well? Or it has to
15 go through a protocol or to the Akwesasne Court?

16 **MME JOYCE KING :**

17 No, it doesn't have to always go through the
18 protocol. They will deal with... they will refer
19 them to Legal Aid or to a victim services, or to
20 the Court managed mediation services that we have.
21 So, yes, it doesn't have to be a criminal charge,
22 but their funding comes from a Crown protocol...

23 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

24 M'hm.

25 **MME JOYCE KING :**

1 ... for people who are criminally charged.

2 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

3 Okay.

4 **MME JOYCE KING :**

5 Okay?

6 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

7 Okay, thank you. And just one last question. In
8 the Akwesasne Court, I talked to you about it right
9 before. There's... On the jurisdictional part,
10 it's saying that the Akwesasne Court may rely on
11 lots of laws, so Akwesasne laws, Criminal Code,
12 Canadian Charter of Rights, Common Law, other
13 laws... other applicable laws. So, it names all
14 that. And is there some situation that you rely...
15 you take some tools out of the Criminal Code of
16 Canada, still now, even if you're not taking, like,
17 the Criminal Code infractions on?

18 **Me BONNIE COLE :**

19 Yes. I guess one of the better examples I can
20 think of is we've had a... A person in the Court
21 had a substantial speeding fine, for example, it's
22 a traffic. So, he was taken into our Court. He
23 also, at the same time, arising from the same
24 incident, had other criminal charges; impaired
25 driving, dangerous driving, a couple of other

1 things. Those were dealt with in the Superior
2 Court in Cornwall. What is interesting, though, is
3 that you will find that you will have to draw on
4 other laws and other sources of laws. So, one of
5 the things that was raised by his counsel, this
6 individual's counsel is that the application of
7 what they call a "Kienapple principle", where, you
8 know, a person shouldn't be charged with or
9 convicted of offenses for which he was already
10 served or charged and convicted of. So, you know,
11 it's looking at that and saying, "Okay, well,
12 here's our Court and here's what we would do." But
13 we also have these other matters, so, we recognize
14 we don't operate in a total vacuum, so we had to
15 take a look at that and see if that, as a
16 fundamental principle, we had to uphold. And it
17 turned out that, yes, we did, we would have to
18 respect that principle. So, we ended up
19 withdrawing that charge off him, because he had
20 already been served, he he'd already been
21 convicted, he had already been given the same, if
22 not similar type of fine. It was a financial fine
23 and probation, and same as what we would do to
24 restore him would be to, you know, to seek some
25 help with his... Well, if he had an alcohol

1 problem, well...So, it's kind of working, as well,
2 with the other systems that are out there. So,
3 yes, we do have to do that.

4 **MME JOYCE KING :**

5 The...

6 **LE COMMISSAIRE :**

7 Okay, it's... Oh, just... sorry. It's almost one
8 o'clock (1:00), and I...

9 **MME JOYCE KING :**

10 Okay.

11 **LE COMMISSAIRE :**

12 ... see on the schedule, you are scheduled at one
13 thirty (1:30), also?

14 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

15 Oh, I think it was...

16 **LE COMMISSAIRE :**

17 Yes. Are we...

18 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

19 Yes, maybe...

20 **LE COMMISSAIRE :**

21 Will we have something else this afternoon with...

22 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

23 I think, well...

24 **LE COMMISSAIRE :**

25 ... with them?

1 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

2 No, I think the presentation is quite ended now.

3 So, maybe we can finish now with...

4 **LE COMMISSAIRE :**

5 Okay.

6 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

7 ... with these guys.

8 **LE COMMISSAIRE :**

9 So, we will continue. I was just wondering to...

10 if it was not more useful to let you go for lunch,

11 and coming back after? But this is... It will be

12 the end of the presentation. After the questions,

13 I will let you go and...

14 **Me BONNIE COLE :**

15 Okay, that's fine.

16 **MME JOYCE KING :**

17 Just one more thing.

18 **Me BONNIE COLE :**

19 M'hm.

20 **MME JOYCE KING :**

21 Sometimes, in our Court procedures, we know we

22 don't cover everything. And what we have stated

23 was that if, for some reason, we can't think of

24 everything, then we will go to the Ontario civil

25 procedures to find a process that we're going to

1 use. We actually adopted that. So, we have to
2 borrow, just like mutual aid in our treaties, we
3 offer mutual aid to other Nations. Then sometimes,
4 we have to get that reciprocity and we have to
5 borrow from you. So, it's not unusual that we do
6 use other laws if we have the ability to do so
7 within our own law.

8 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

9 Okay. Thank you.

10 **LE COMMISSAIRE :**

11 Me Robillard? Me Laganière? Do you have
12 questions?

13 **Me DENISE ROBILLARD :**

14 J'ai aucune question, Monsieur le Juge. Euh,
15 Monsieur le Commissaire, excusez-moi.

16 **Me MAXIME LAGANIÈRE :**

17 I don't have... I don't have no questions. Thanks.

18 **LE COMMISSAIRE :**

19 Perhaps in my other life. So, if... Do you have
20 something you would like to add?

21 **Me BONNIE COLE :**

22 Okay.

23 **LE COMMISSAIRE :**

24 I'm here to listen.

25 **MME JOYCE KING :**

1 Just to reinforce that, if we can start... If we
2 can take somebody and not send them to prison, or
3 not send them to a facility, you know, we could
4 expand our services to take more, to incorporate
5 more people into our system and rehabilitate them
6 or restore that balance in the community. And I
7 think we can do a better job than what is out
8 there. And as Bonnie was talking about with the
9 Boushie case, maybe things like this won't happen.
10 I'm sure it still won't happen, but I think we have
11 proven to our community, at least, that we can make
12 a difference.

13 **LE COMMISSAIRE :**

14 So, thank you very, very much. I'm pretty sure
15 that, as I said earlier, people in other
16 communities will be interested to find a way to...
17 for resolution of conflict, rely to what they are,
18 who they are, and their way of life. And I hope it
19 will help them to express what they would like to
20 have as a system.

21 And I want to thank you very much.

22 **MME JOYCE KING :**

23 Thank you.

24 **LE COMMISSAIRE :**

25 For us, it will help, and for them also.

1 **Me BONNIE COLE :**

2 Good.

3 **LE COMMISSAIRE :**

4 So... Oh, you have some documents to file?

5 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

6 Yes, I have.

7 **LE COMMISSAIRE :**

8 Okay.

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 On est à quel numéro, madame la greffière?

11 **LA GREFFIÈRE-AUDIENCIÈRE :**

12 P-369.

13 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

14 Alors, sous P-369, la Akwesasne Court Law. P-370,
15 le Rapport annuel deux mille seize (2016)-deux
16 mille dix-sept (2017) du Tribunal d'Akwesasne. P-
17 371, Type of police occurrences in nineteen ninety-
18 two (1992). P-372, Mohawk Council of Akwesasne
19 Organization chart. P-373, Akwesasne Legislative
20 Enactment Regulation flowchart. P-374, Training
21 Curriculum for the justices of the Akwesasne Mohawk
22 Court. P-375, Akwesasne Community Justice Program
23 brochure. Et P-376... non, il en reste un autre
24 après. P-376, Akwesasne Justice Department Fact
25 Sheet of date du huit (8) février deux mille dix-

1 huit (2018). Et finalement, P-377, la présentation
2 PowerPoint.

3 **LE COMMISSAIRE :**

4 Okay. Thank you.

5 So, as witnesses who will have been here at one
6 thirty (1:30) have already testified, we'll have
7 our break until two thirty (2:30). for the next
8 witness. Okay. Have a good lunch.

9 And thank you again for...

10 **MME JOYCE KING :**

11 Thank you.

12 **Me BONNIE COLE :**

13 Thank you.

14 **LE COMMISSAIRE :**

15 ... your presence.

16 **LA GREFFIÈRE-AUDIENCIÈRE :**

17 Ajournement des audiences à quatorze heures trente
18 (14 h 30).

19 -----

20 SUSPENSION

21

22

23

24

25

1 REPRISE

2 -----

3

4 **LA GREFFIÈRE :**

5 La Commission reprend ses audiences.

6 **LE COMMISSAIRE :**

7 Alors bonjour, bienvenue cet après-midi, l'après-
8 midi de la quatrième journée d'audience à Montréal.

9 Alors, Me Crépeau, je comprends que vous prenez la
10 suite de Me Denis-Boileau?

11 **Me PAUL CRÉPEAU :**

12 Oui, pour l'après-midi, Monsieur le Commissaire,
13 et...

14 **LE COMMISSAIRE :**

15 Et nos procureurs, Me Robillard, Me Boucher, Me
16 Laganière, et nous avons Me Coderre qui se joint à
17 nous.

18 **Me DAVID CODERRE :**

19 Absolument, bon après-midi tout le monde.

20 **LA GREFFIÈRE :**

21 Et Me Boucher se joindra à nous un peu plus tard,
22 elle est retenue ailleurs.

23 **LE COMMISSAIRE :**

24 Très bien.

25

1 **LA GREFFIÈRE :**

2 Elle s'en excuse, d'ailleurs, Monsieur le
3 Commissaire.

4 **LE COMMISSAIRE :**

5 On peut lui pardonner bien des choses. Alors, Me
6 Crépeau, quel est le programme de l'après-midi?

7 **Me PAUL CRÉPEAU :**

8 Alors, tout à l'heure nous entendrons pour le reste
9 de l'après-midi madame Maya Cousineau-Mollen, qui
10 va nous conter des choses intéressantes. Je vous
11 l'introduirai tout à l'heure, peut-être pour vous
12 donner une perspective du témoignage qui s'en
13 vient, mais juste avant ça, on m'a laissé... on m'a
14 demandé de déposer une pièce qui n'a pas été
15 déposée ce matin. Peut-être, Madame la Greffière,
16 je vous... j'aimerais déposer, à ce moment-ci...
17 Ça va avec le témoignage qui a eu lieu ce matin, le
18 dernier.

19 **LE COMMISSAIRE :**

20 Oui, avec les témoignages de madame Joyce King et
21 Bonnie Cole.

22 **LA GREFFIÈRE :**

23 Donc sous P...

24 **Me PAUL CRÉPEAU :**

25 Alors, le *Cornell Journal of Law and Public Policy*,

1 le volume 16, de l'été deux mille sept (2007),
2 numéro 3.

3 **LA GREFFIÈRE :**

4 Donc sous P-378.

5 *** PIÈCE P-378 ***

6 **Me PAUL CRÉPEAU :**

7 Merci, je vous le remettrai tout à l'heure.

8 **LA GREFFIÈRE :**

9 Merci.

10 **Me PAUL CRÉPEAU :**

11 Monsieur le Commissaire, madame Cousineau-Mollen
12 est ici et pour l'avoir rencontrée - évidemment, on
13 a préparé le témoignage - madame Cousineau-Mollen a
14 un parcours particulier qui va donner toute une
15 perspective différente à un petit événement qu'elle
16 va nous conter aussi dans son témoignage. Alors je
17 vais inviter madame Cousineau-Mollen tout à l'heure
18 à se présenter, ce qui vous permettra de mieux
19 comprendre le sens de son témoignage puis des
20 événements qui se sont produits au mois de juillet
21 deux mille seize (2016) à Québec. Donc on peut
22 l'assermenter.

23 **LE COMMISSAIRE :**

24 Alors je vous écoute, Madame Mollen.

25

1 **LA GREFFIÈRE :**

2 Alors, Madame, vous...

3 **LE COMMISSAIRE :**

4 Ah, on va l'assermenter avant, excusez-moi.

5 -----

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Mme Maya Cousineau-Mollen
2 Témoin citoyen
3 Assermentée
4 -----

5

6 **LE COMMISSAIRE :**

7 Alors, bienvenue, je vous écoute.

8 **Mme MAYA COUSINEAU-MOLLEN :**

9 O.K. C'est sûr que j'ai...

10 **Me PAUL CRÉPEAU :**

11 Alors, bonjour Madame.

12 **Mme MAYA COUSINEAU-MOLLEN :**

13 Bonjour, *Kuei*.

14 **Me PAUL CRÉPEAU :**

15 Alors, Madame Cousineau-Mollen, je vais peut-être
16 vous demander, d'entrée de jeu, peut-être de vous
17 présenter et de nous expliquer un peu votre
18 parcours. Et par la suite, on parlera des
19 événements qui se sont produits à l'été deux mille
20 seize (2016) à Québec.

21 **Mme MAYA COUSINEAU-MOLLEN :**

22 Parfait. C'est sûr qu'on a toujours peur d'oublier
23 des détails, donc j'ai pris des notes que je vais
24 peut-être, des fois, donner l'impression de lire.
25 Je veux être sûre de tout ramener ce qui, selon

1 moi, est important.

2 Maya Cousineau-Mollen, de la nation innue
3 montagnaise de la communauté de Mingan Ekuanitshit
4 sur la Côte-Nord. J'ai été adoptée de manière
5 traditionnelle. Ma mère, Anne (inaudible) a choisi
6 ma famille. Je précise ici que ma famille innue a
7 été très affectée par la colonisation. Mes parents
8 ont été dans les pensionnats. Nous vivons encore
9 le traumatisme intergénérationnel. Il faut aussi
10 noter que ma communauté a eu son statut de réserve
11 indienne autour de mille neuf cent soixante-
12 trois (1963). Donc notre sédentarisation est si
13 jeune, même pas cent (100) ans. Elle a choisi une
14 famille québécoise. À cette époque, cela semblait
15 le meilleur choix pour elle. Tout cela s'est fait
16 sans DPJ, sans travailleur social. Mes parents
17 québécois, Gracia Maloney et Pierre Cousineau, dans
18 un geste préventif et d'avant-garde pour l'époque,
19 donc les années mille neuf cent soixante-
20 quinze (1975), car nous n'étions... oui, excusez-
21 moi, car nous n'étions pas aussi informés que
22 maintenant sur la Loi sur les Indiens, ne m'ont
23 jamais adoptée légalement. Ils avaient peur que je
24 perde mon statut et mes droits. Ma mère disait
25 souvent : « Je ne voulais pas te couper des tiens

1 et de ta culture ». Ils ont voulu m'envoyer dans
2 l'école de la communauté pour que je sois avec les
3 miens, que j'apprenne ma langue. Cependant, la vie
4 ne m'a pas permis de prendre ce chemin. Elle a
5 ensuite souhaité que je reste en contact avec ma
6 famille innue. Mes *nukum*, en innu « grand-mère »,
7 ma mère, pour qu'au moins j'apprenne la langue,
8 mais cela aussi fut difficile. Je trouve important
9 de préciser que mes parents m'ont élevée de façon à
10 ne jamais me sentir inférieure, que ce soit en tant
11 que femme ou membre des Premières Nations. Je
12 trouve peut-être ironique d'être ici, en cette
13 commission. Ma mère innue a elle-même témoigné à
14 la Commission vérité et réconciliation sur la
15 réalité des pensionnats. Et moi, je me retrouve
16 ici, avec vous. J'espère que mes neveux et nièces
17 n'auront pas à venir s'asseoir devant un micro pour
18 témoigner. C'est un héritage qu'on ne souhaite pas
19 transmettre de génération en génération. Je les
20 veux heureux et fiers de leur nation et de leur
21 histoire.

22 Donc je suis devenue quelqu'un qui a des
23 valeurs de respect et d'ouverture, mais qui s'est
24 toujours sentie protégée, sans doute par la
25 présence de parents forts qui me répétaient de

1 terminer mes études, de finir mon université pour
2 revenir aider les miens. J'ai un baccalauréat
3 multidisciplinaire en science politique et étude
4 amérindienne. Quand je suis rentrée à l'Université
5 Laval, j'ai commencé en histoire, car j'espérais en
6 apprendre plus sur les Inuits et Premières Nations.
7 Mais après un (1) an, et d'avoir appris sous bien
8 des aspects l'histoire du Québec, je me suis tannée
9 et je suis partie dans d'autres domaines, soit la
10 science politique et l'anthropologie. J'ai trouvé
11 certaines réponses. Des fois des belles ouvertures
12 et des professeurs - des professeurs, excusez-
13 moi - et même un cours d'innu donné par monsieur
14 Gerry McNulty. Et une fois... Et je me souviens,
15 une fois, j'ai expliqué le système de
16 représentation politique de nos nations à un
17 professeur qui nous a traités de communistes. Ce
18 ne sont pas ces petits incidents qui m'ont fait
19 reculer. Même mes années universitaires ont été
20 fructueuses, pour moi. Ils m'ont construit...
21 m'ont permis de construire de belles choses.

22 Donc, j'ai toujours vécu, jusqu'au mois de
23 juillet deux mille seize (2016), protégée de
24 certains préjugés. Même si j'ai vécu du racisme
25 depuis mon plus jeune âge, je suis restée une

1 personne curieuse et respectueuse. L'histoire m'a
2 rattrapée. C'est ici que je me permettrai de
3 revenir sur les événements.

4 À la lumière d'une conversation de ce matin,
5 je me sens obligée de revenir sur la plainte en
6 général parce que je trouve qu'il y a du flou et je
7 veux être le plus précis possible, si ça ne vous
8 dérange pas.

9 **LE COMMISSAIRE :**

10 Ça ne dérange pas, on est ici pour écouter, Madame.

11 **Mme MAYA COUSINEAU-MOLLEN :**

12 Parfait.

13 **LE COMMISSAIRE :**

14 Soyez bien à l'aise.

15 **Mme MAYA COUSINEAU-MOLLEN :**

16 O.K. Samedi le neuf (9) juillet deux mille seize
17 (2016), vers la nuit du dimanche dix (10) juillet.
18 Je suis sortie avec madame Sabrina Fontaine. Nous
19 sommes arrivées vers deux heures (2 h) du matin à
20 un certain bar à Sainte-Foy. Nous sommes entrées
21 et il y avait deux (2) ou trois (3) personnes, des
22 clients, dans l'entrée du vestiaire, et la jeune
23 femme qui s'occupait des vestiaires. Madame
24 Fontaine était vêtue d'une robe rouge, de souliers
25 noirs et d'un chapeau noir très féminin. Arrivée à

1 l'entrée, moi, je me suis accotée à côté du
2 vestiaire pour attendre mon amie. Elle est arrivée
3 et on lui a demandé d'un ton ferme d'enlever son
4 chapeau. Madame Fontaine a demandé pourquoi. La
5 jeune fille du vestiaire a répété sa demande, et
6 madame Fontaine a répété sa question. La jeune
7 fille a redit sa demande sur un ton plus fort et
8 moins convivial. Madame Fontaine a enlevé son
9 chapeau, mais a demandé pourquoi, car elle
10 souhaitait comprendre. La jeune fille a dit sur un
11 ton dur : « Je ne te le répéterai pas cent
12 cinquante (150) fois, tu vas devoir enlever ton
13 chapeau ». J'ai signalé à la jeune fille du
14 vestiaire que son ton était... était bête, entre
15 elles, et elle a signalé que c'était pour le code
16 vestimentaire. Madame Fontaine a demandé pourquoi
17 et, dans un geste naturel et non menaçant, a touché
18 le bras de la jeune fille. Je la décris, mais je
19 pense que ce n'est pas pertinent vu que vous avez
20 déjà les documents. Deux (2) hommes habillés en
21 noir, l'un plus ou moins six pieds deux (6 pi 2),
22 brun, jeune, cheveux rasés sur le côté, et l'autre,
23 même grandeur environ, sont arrivés vers mon amie.
24 Ils l'ont apostrophée en lui demandant de quitter
25 les lieux. Ils parlaient fort, sur un ton

1 agressif. Ils sacraient beaucoup. Elle leur a
2 redemandé pourquoi, car elle acceptait d'enlever
3 son chapeau. Ils l'ont fait reculer et ont
4 continué de lui parler sur un ton agressif. J'ai
5 observé la scène, et j'étais très surprise de leur
6 attitude. J'ai entendu les gens sacrer - les gars
7 sacrer, excusez-moi - et j'ai demandé sur le ton de
8 la question pourquoi ils agissaient ainsi.
9 Ensuite, était-ce parce que nous étions
10 amérindiennes? Et finalement, est-ce que c'était
11 du racisme? Le plus jeune des portiers s'est
12 reviré vers moi et m'a dit : « Moi aussi, je suis
13 amérindien, hein ». Il s'est approché de moi et
14 m'a dit, entre parenthèses, de « *décriquer* » et de
15 *criquer* mon camp. Il m'a touché et me poussait
16 rudement. Je lui ai demandé de quelle place il
17 venait, mais je n'ai pas compris sa réponse. La
18 musique était très forte. Il a continué de me
19 pousser et m'a fait reculer sur un poteau, métal ou
20 aluminium dur, je ne le sais pas, qui balise
21 l'entrée. Il m'a poussée et cela m'a
22 déséquilibrée, je suis tombée sur le poteau, sur le
23 dos. J'étais en robe. Il n'a fait aucun geste
24 pour empêcher ma chute ou pour m'aider à me
25 relever. Dans un réflexe de peur, que j'avais peur

1 qu'il me donne un coup de pied, je l'ai repoussé de
2 mon pied droit. Je me suis relevée, et je lui ai
3 demandé son nom. Il a continué de me repousser.
4 Je ne voulais pas lui tourner le dos, car son
5 agressivité me faisait peur. Il ne répondait pas à
6 mes questions. J'ai perdu mon portefeuille et le
7 gérant est venu me voir dehors pour me le redonner.
8 J'étais assommée par cet événement. Mes souvenirs,
9 à ce moment-là, sont vagues, mais je sais que j'ai
10 dit que j'avais dans la quarantaine et que je
11 n'avais pas à être traitée comme ça.

12 Le gérant et un autre homme sont venus nous
13 voir et m'ont dit qu'ils allaient voir la vidéo de
14 l'événement. On les a suivis et soudain, le gérant
15 s'est reviré pour me dire : « Vous ne rentrez pas,
16 il y a de l'argent ». Je me demandais pour quoi ce
17 commentaire. Ils sont restés entre cinq et dix
18 minutes (5-10 min). Le gérant a dit que mes
19 lésions sur mes pieds ont été causées par le
20 poteau. Mais le poteau n'est pas venu à moi. Le
21 gérant ne m'a pas reproché de gestes violents ou
22 provocateurs. Il a dit que mes lésions ont été
23 causées par le poteau et non par le fait que j'ai
24 été poussée. Madame Fontaine a voulu exprimer un
25 point de vue lorsque l'homme qui accompagnait le

1 gérant, environ six pieds trois (6 pi 3), un
2 caucasien musclé, yeux bruns, cheveux rasés, a
3 interrompu mon amie pour également dire son point
4 de vue. Il a parlé très fort. On était dans
5 l'entrée du centre d'achat. Il était en colère et
6 agressif. On lui a demandé de baisser le ton, et
7 d'être plus respectueux. Il a continué de sacrer
8 et chialer, et ils sont partis, le gérant et lui,
9 en nous *garrochant* de porter plainte. Il nous...
10 il m'a balancé un nom, mais il l'a dit tellement
11 vite que je n'ai pas été en mesure de le saisir.
12 Mon amie a fondu en larmes. Après nous avons
13 discuté, et moi, je me suis donné un temps avant de
14 porter plainte. J'avais peur de ne pas être prise
15 au sérieux. J'ai consulté quelques personnes de
16 référence afin de savoir qu'est-ce que je devais
17 faire. Elles ont *tous* été unanimes, je devais
18 porter plainte. Donc ça, c'est ce qui s'est passé
19 cette soirée-là.

20 Par la suite, dans la semaine suivant ça, j'ai
21 été au poste de police chercher des formulaires
22 pour déposer ma plainte. On m'avait conseillé
23 d'être généreuse dans les détails et d'être précise
24 dans les heures. C'est ce que j'ai fait.

25 **Me PAUL CRÉPEAU :**

1 Si je comprends bien, peut-être juste une question,
2 mais...

3 **Mme MAYA COUSINEAU-MOLLEN :**

4 Oui?

5 **Me PAUL CRÉPEAU :**

6 Vous venez de lire vos notes. Est-ce que je
7 comprends que c'est... c'est le texte que vous avez
8 préparé pour le poste de police... service de
9 police de Québec?

10 **Mme MAYA COUSINEAU-MOLLEN :**

11 Oui, à quelques petites modifications près, là,
12 pour éviter...

13 **Me PAUL CRÉPEAU :**

14 Mais vous avez pris soin d'y mettre tous les
15 détails, toute l'histoire, c'était votre version.

16 **Mme MAYA COUSINEAU-MOLLEN :**

17 Oui, exactement.

18 **Me PAUL CRÉPEAU :**

19 Êtes-vous... Vous souvenez-vous, même, de combien
20 de temps après l'événement - vous disiez, tout à
21 l'heure, c'est dans la nuit du neuf (9) au dix (10)
22 juillet - alors combien de temps après vous portez
23 votre plainte au service de police?

24 **Mme MAYA COUSINEAU-MOLLEN :**

25 Je dirais peut-être un délai de quatre (4) à cinq

1 (5) jours, dans mon souvenir.

2 **Me PAUL CRÉPEAU :**

3 O.K.

4 **Mme MAYA COUSINEAU-MOLLEN :**

5 Oui, à peu près ça. Oui. Donc le temps a passé...

6 Ah oui, quand j'ai été porté ma plainte, le

7 policier qui était à l'accueil a pris mes

8 documents, il dit : « Bien là, je vais devoir te

9 poser une question, on va te la poser - il dit -

10 est-ce que tu étais en débit de boisson? ». J'ai

11 dit : « Oui, - j'ai dit - je les ai pris en note ».

12 Il dit : « O.K., c'est beau ». J'avais... Je lui

13 ai résumé un petit peu ce que j'avais pris dans ma

14 soirée et je ne l'ai pas vu prendre de notes, à ma

15 connaissance, mais ça a resté comme ça.

16 Par la suite, en octobre... Oui, autour du

17 quatre (4) octobre, un peu avant que je parte en

18 vacances, j'ai reçu un appel d'un enquêteur de la

19 police, au travail, j'étais au travail. La façon

20 que les bureaux sont placés, au travail, c'est

21 comme trois (3) bureaux, un (1) en arrière de

22 l'autre, dans des aires très ouvertes où tout le

23 monde entend, donc je n'étais pas à l'aise de

24 recevoir l'appel là. J'ai reçu un appel d'un

25 enquêteur qui s'est identifié. Il a commencé sur

1 un ton, bon : « Bonjour Madame, comment ça va?
2 Monsieur X, du bureau de police, - il dit - comment
3 ça va la santé? ». J'ai dit : « Bien ». Il dit :
4 « Vous avez été voir un médecin? ». J'ai dit :
5 « Non, j'ai été voir un chiro ». « Ah, bien de
6 toute façon - il dit - c'était des petits bobos ». C'est sûr que là, c'est de souvenir, de mémoire.
7 J'ai dit : « Oui, c'était des bobos, mais - j'ai
8 dit - est-ce que vous avez vu la bande vidéo? ». Il m'a répondu d'un ton un peu désinvolte : « Elles
9 ont sûrement été effacées ». Par la suite, il a
10 avancé que j'étais en état d'ébriété et que, pour
11 lui, c'était deux (2) individus d'une soirée
12 arrosée qui ont causé du grabuge. Je lui ai
13 demandé s'il ne sautait pas aux conclusions à cause
14 de mon origine. J'ai dit : « Vous comprenez que,
15 avec ce qui se passe en ce moment à Val-d'Or, je
16 suis à même de me poser ces questions ». Il dit...
17 il m'a répondu : « Non, non, non, ce n'est pas ça
18 ». Il dit... il a dit que je l'avais accusé
19 d'être raciste. Je n'ai jamais mentionné ce nom...
20 je ne lui ai jamais dit qu'il était lui même
21 raciste. J'ai dit : « Non, je ne vous ai jamais
22 dit ça ». Il dit : « Oui, tu l'as dit ». J'ai
23 dit : « Non, je ne vous ai jamais dit ça ». Et
24 dit : « Non, je ne vous ai jamais dit ça ». Et
25

1 j'avais une collègue qui écoutait, qui a commencé à
2 écouter ce que je disais quand elle a vu que le ton
3 commençait à monter. Et... Excusez, j'ai un blanc
4 de mémoire.

5 **PERSONNE NON IDENTIFIÉE :**

6 (Inaudible).

7 **Mme MAYA COUSINEAU-MOLLEN :**

8 Oui. Oui, c'est juste que, tout d'un coup, j'avais
9 quelque chose que je voulais avancer, puis je l'ai
10 complètement perdu, mais ce n'est pas grave. Oui,
11 je lui ai demandé, j'ai dit : « En fait, vous
12 m'appellez sur mon... sur mes heures de
13 travail - j'ai dit - est-il possible de se parler à
14 un autre moment? ». Bien, il dit : « Moi aussi, je
15 travaille ». Donc je sentais qu'il n'y avait pas
16 place à la conciliation. Donc je lui ai demandé :
17 « Pourquoi vous n'avez pas été chercher les bandes
18 vidéo et attendu trois (3) mois avant de me
19 contacter? ». Et je lui ai demandé aussi,
20 également : « Est-ce que... Vous avez l'air de
21 vouloir à ce que j'abandonne ma plainte », puis
22 après ça, il m'a posé la question sur ma
23 consommation d'alcool. J'ai dit... j'ai répondu
24 que cette question avait été posée par l'agent qui
25 avait accueilli ma plainte. Il me demande, il

1 dit : « Pourquoi que ce n'est pas dans le rapport?
2 ». J'ai dit : « Vérifiez avec votre collègue,
3 faites vos suivis, ce n'est pas à moi de le faire
4 ». Là, il m'a demandé des coordonnées de madame
5 Fontaine pour discuter avec elle. Je lui ai donné
6 un numéro de téléphone que j'avais à ce moment-là.
7 Entre-temps, de ce que j'ai compris de madame
8 Fontaine, elle avait perdu son cellulaire, donc
9 tout changé son numéro, donc je ne sais pas s'ils
10 s'étaient parlés par la suite. Déjà, durant
11 l'appel, je peux vous dire que oui, j'ai été
12 ébranlée par... par le ton, puis comment je me
13 sentais jugée vite. Et qu'est-ce que je voulais
14 rajouter là-dessus? Attendez, je ne veux pas trop
15 me perdre. Il y a ça, ici. En gros, pour cet
16 événement-là, c'est mon souvenir. Il y a peut-être
17 des petites choses que j'ai oubliées, mais...

18 **Me PAUL CRÉPEAU :**

19 Je comprends que (inaudible). Excusez-moi, vous...
20 Alors, c'est... Est-ce que c'est le seul contact
21 que vous avez eu avec cet enquêteur-là?

22 **Mme MAYA COUSINEAU-MOLLEN :**

23 Oui, c'est le seul contact que moi, j'ai eu. Je
24 lui avais dit qu'on se rappellerait après mon
25 retour de vacances, j'étais partie une dizaine de

1 jours à l'extérieur du pays, mais j'étais tellement
2 ébranlée que, en chemin pour prendre l'avion,
3 j'avais appelé une personne qui... à qui j'ai pu
4 confier ça, puis lui confier mon désarroi parce que
5 déjà je commençais à perdre confiance dans le
6 système et j'ai trouvé ça difficile. Je le
7 trouvais même un peu agressif dans sa manière de
8 m'aborder. T'sais, sans prendre le temps de me
9 connaître ou de manifester de l'empathie. Je me
10 sentais déjà comme jugée, là, j'étais... À ce
11 moment-là, je me suis sentie comme une Indienne
12 soûle.

13 **Me PAUL CRÉPEAU :**

14 Comme une Indienne soûle...

15 **Mme MAYA COUSINEAU-MOLLEN :**

16 Oui.

17 **Me PAUL CRÉPEAU :**

18 ... c'est l'expression que vous en avez, là. Puis,
19 je vous la pose, la question : ce soir-là, le
20 policier a semblé avoir dit... il parlait de deux
21 (2) individus en état d'ébriété qui ont fait du
22 grabuge dans un bar. Vous dites : « Je me sentais
23 comme une Indienne soûle », étiez-vous une Indienne
24 soûle ce soir-là, dans les faits?

25 **Mme MAYA COUSINEAU-MOLLEN :**

1 J'étais une personne qui avait pris de l'alcool à
2 différentes heures de la soirée. Je ne me
3 considérais pas en état d'ébriété avancé parce que
4 j'étais en maîtrise de moi-même au moment des
5 événements. Je n'avais pas agi de façon impulsive
6 quand l'événement est arrivé à mon amie et j'avais,
7 par exemple, pour les besoins de la plainte,
8 j'avais pris en note ma consommation d'alcool aux
9 heures que j'avais pris un verre, qu'est-ce que
10 j'avais pris, qu'est-ce que j'avais fait entre
11 temps, et j'avais été vérifier sur Educ'alcool pour
12 vérifier si j'étais l'Indienne soûle que l'on
13 disait.

14 **Me PAUL CRÉPEAU :**

15 O.K.

16 **Mme MAYA COUSINEAU-MOLLEN :**

17 Voilà.

18 **Me PAUL CRÉPEAU :**

19 Maintenant, vous vous êtes questionnée ou vous avez
20 senti ça. Êtes-vous capable de... Alors il y a
21 évidemment les commentaires que le policier vous
22 fait, est-ce qu'il y a quoi que ce soit d'autre qui
23 vous a amenée à vous questionner sur ce...
24 justement, sur votre comportement, pour vous faire
25 des reproches là-dessus?

1 **Mme MAYA COUSINEAU-MOLLEN :**

2 C'est venu vraiment de façon inconsciente, comme un
3 comportement déjà intégré en nous, de se sentir
4 coupable d'être. T'sais, je vais toujours vivre un
5 questionnement identitaire, je suis toujours entre
6 deux (2) mondes... entre deux (2) mondes, puis
7 cela, ça va être ma réalité jusqu'à ma mort. Ça,
8 j'en suis très consciente. Cet événement-là m'a
9 fait mal parce que, malgré tous mes
10 accomplissements, il n'est pas normal de se sentir
11 ainsi réduite, de se sentir jugée, sans avoir eu de
12 l'empathie ou même de la curiosité. Je me
13 considère comme une bonne personne, car oui, les
14 études universitaires et venir d'une famille forte
15 m'ont donné un sens de la répartie bien aiguisé, et
16 ma mère adoptive m'a souvent encouragée à tenir
17 tête et me battre pour les bonnes causes. Donc je
18 me suis posé la question, à ce moment-là aussi.
19 Une femme ou un homme des Premières Nations ou
20 inuit n'ayant pas mon bagage - et attention, ici je
21 ne dis pas que ma situation est supérieure ou
22 meilleure, c'est ma situation - mais qui n'ont pas
23 mon bagage et mon assurance, il fait comment?
24 Comment peuvent-ils penser à persévérer face à tout
25 ça? J'ai cru voir dans les témoignages qu'il y en

1 a qui l'ont fait puis je leur lève vraiment mon
2 chapeau, là, de s'être rendus aussi, ici. Mais
3 oui, ça... j'ai remis en doute ma valeur, j'ai
4 remis en doute ce que j'étais comme femme des
5 Premières Nations, de ma carrière, tout ça. C'est
6 de se sentir remis dans une case de préjugés pas
7 intéressante à occuper. Je ne suis pas une
8 personne connue pour des problèmes d'alcool non
9 plus, et ça, je l'affirme fièrement. Et de me
10 sentir remettre là, oui, ça m'a ébranlée dans
11 mes... dans mes positions.

12 **Me PAUL CRÉPEAU :**

13 Si... Je prends peut-être quelques minutes pour
14 faire... apporter quelques précisions. Vous avez
15 parlé de votre amie Sabrina qui vous accompagnait
16 ce soir-là. Elle-même, est-elle innue comme vous?

17 **Mme MAYA COUSINEAU-MOLLEN :**

18 Oui.

19 **Me PAUL CRÉPEAU :**

20 O.K. Alors, vous étiez deux (2) filles qui sortiez
21 ensemble pour avoir une soirée de plaisir
22 ordinaire, là...

23 **Mme MAYA COUSINEAU-MOLLEN :**

24 Deux (2) êtres humains, oui...

25

1 **Me PAUL CRÉPEAU :**

2 C'est ça.

3 **Mme MAYA COUSINEAU-MOLLEN :**

4 ... qui voulaient s'amuser.

5 **Me PAUL CRÉPEAU :**

6 Et les... Je vous la pose, la question, vous
7 l'avez abordée brièvement, vous dites : « Je vis
8 dans les deux (2) mondes ». Vous habitez ici, la
9 grande région de Montréal, et vous travaillez
10 ici...

11 **Mme MAYA COUSINEAU-MOLLEN :**

12 Oui.

13 **Me PAUL CRÉPEAU :**

14 ... dans le milieu, avec des communautés
15 autochtones, entre autres.

16 **Mme MAYA COUSINEAU-MOLLEN :**

17 Oui, exactement.

18 **Me PAUL CRÉPEAU :**

19 O.K. Et, en général, avez-vous des problèmes, soit
20 avec la communauté blanche ou avec les communautés
21 autochtones avec qui vous travaillez? Avez-vous
22 des troubles avec ces gens-là?

23 **Mme MAYA COUSINEAU-MOLLEN :**

24 Non, non, je n'ai aucun problème. Je suis même...
25 entre les deux (2) mondes, je navigue très bien.

1 **Me PAUL CRÉPEAU :**

2 O.K.

3 **Mme MAYA COUSINEAU-MOLLEN :**

4 Puis c'est sûr que, avec l'âge, t'sais, rendue à
5 quarante-trois (43) ans, on acquiert une expérience
6 qu'on aime faire profiter aux autres. J'ai vingt
7 (20) ans d'expérience dans le monde des Premières
8 Nations, donc j'ai une grande sensibilité aux deux
9 (2) réalités, ce qui fait que je ne serai jamais
10 une personne qui va cristalliser sa position dans
11 les extrêmes. Je vais toujours avoir une ouverture
12 envers les deux (2) mondes, envers les deux (2)
13 univers qui s'entrecroisent souvent, oui.

14 **Me PAUL CRÉPEAU :**

15 Mais cet événement-là dont vous venez de nous
16 parler, et je ne vous parle pas de ce qui s'est
17 passé dans un établissement privé en soi...

18 **Mme MAYA COUSINEAU-MOLLEN :**

19 Oui.

20 **Me PAUL CRÉPEAU :**

21 ... puisque ce n'est pas le sujet de la Commission,
22 mais votre relation que vous avez eue avec le
23 service de police, à ce moment-là, qu'est-ce que...
24 En fait, quel est l'élément déclencheur là-dedans
25 qui... quels reproches vous auriez à faire - si

1 vous pouviez améliorer les choses - quels reproches
2 vous auriez à faire au service de police de la
3 Ville de Québec? Qu'est-ce qui n'a pas marché dans
4 la relation qu'ils ont eue avec vous? Les
5 éléments, vous les avez dit tout à l'heure, peut-
6 être les résumer, à ce moment-ci?

7 **Mme MAYA COUSINEAU-MOLLEN :**

8 C'est dans leur premier contact. Quand l'enquêteur
9 nous contacte, il devrait peut-être se présenter en
10 personne, au moins, essayer d'établir la confiance.
11 Bon, je comprends qu'ils doivent, en théorie, avoir
12 une impartialité. Mais aussi, de ne plus avoir
13 l'attitude de nous faire sentir coupable. Je ne
14 sais pas si c'est à cause de mon origine, je pose
15 la question.

16 **Me PAUL CRÉPEAU :**

17 Vous... vous posez la question.

18 **Mme MAYA COUSINEAU-MOLLEN :**

19 Oui, je pose la question. Je ne veux pas...
20 t'sais, je ne veux pas admettre ça parce que se
21 l'admettre, c'est déjà effrayant en soi de dire que
22 j'ai été jugée à cause de mon origine, même si ça
23 m'est arrivé tellement de fois avant. Parce que
24 c'est comme... Je révisais mes notes et, cette
25 semaine, j'allais m'entraîner dans un gym où est-ce

1 qu'il y a beaucoup d'intervenants 911, donc que ce
2 soit des agents correctionnels, des policiers, des
3 ambulanciers, des pompiers. Donc, je réalisais que
4 je m'entraînais beaucoup avec des policiers. Et,
5 t'sais, je ne suis pas quelqu'un qui va mettre tout
6 le monde dans le même paquet, mais cet enquêteur-
7 là, c'est sûr que cette journée-là, je ne l'ai pas
8 trouvé... je ne l'ai pas trouvé intéressant comme
9 personne. Puis j'ai trouvé ça triste qu'il ne soit
10 pas plus curieux parce que je sentais dans ses
11 propos, peut-être une méconnaissance à combler, je
12 dirais. Je ne sais pas comment il approcherait une
13 personne non autochtone, car je ne serai jamais une
14 personne non autochtone. J'ai mon origine écrit
15 dans la figure, donc je ne pourrai jamais prétendre
16 que je suis non autochtone. Mais c'est une...
17 oui, c'est une question que je me suis posée.

18 **Me PAUL CRÉPEAU :**

19 O.K. Vous venez juste de glisser dans votre
20 réponse qu'il vous est arrivé plusieurs fois dans
21 votre vie d'avoir vécu différents événements de
22 racisme?

23 **Mme MAYA COUSINEAU-MOLLEN :**

24 Hum, hum.

25 **Me PAUL CRÉPEAU :**

1 Est-ce que vous en avez un en tête, là, puis je...
2 puis pour en avoir peut-être discuté avec vous, là,
3 est-ce qu'il y en a un (1) en particulier où vous
4 avez trouvé une façon de vous défaire de cette
5 tâche de racisme là qu'on vous attribuait?

6 **Mme MAYA COUSINEAU-MOLLEN :**

7 J'en ai deux (2) que je pourrais ramener. Il y en
8 a un (1), j'étais... je travaillais au Secrétariat
9 aux affaires autochtones dans le temps du Sommet du
10 Québec et de la jeunesse - ça ne me rajeunit
11 pas - mais... et je venais d'être nommée
12 représentante jeune pour une organisation
13 autochtone. Donc mon contrat avec le SAA s'est
14 terminé. Et moi, en tant que représentante
15 politique pour cette organisation jeunesse là, je
16 pouvais faire partie de la délégation des jeunes
17 autochtones et rentrer dans la salle de réunion du
18 Sommet du Québec et de la jeunesse.

19 Malheureusement, il y a eu deux (2) fonctionnaires
20 qui nous accompagnaient tout le temps - je ne me
21 rappelle pas de leur nom et c'est parfait comme
22 ça - dont un (1) qui m'a vraiment empoigné le bras,
23 il dit : « Maya, là, faut que tu choisisses : c'est
24 le Québec ou les femmes autochtones ». Ça... Ma
25 réponse a fusé immédiatement : « Mais, les femmes

1 autochtones ». T'sais, je ne peux pas nier ce que
2 je suis : je suis une femme et autochtone. Donc,
3 t'sais, je ne comprenais pas qu'à cette époque-là
4 qu'on me demande de choisir entre une province et
5 mon origine. Ça, c'est... Pour moi, ça a été un
6 événement qui reste encore dans ma mémoire, que je
7 trouve un peu triste. Mais moi, je suis quelqu'un
8 qui est optimiste quand même et je trouve quand
9 même que les choses s'améliorent.

10 L'autre événement, c'est un... c'est une
11 discothèque qui est fermée, heureusement, à Sept-
12 îles. C'est arrivé à Sept-Îles et, excusez-moi, je
13 vais utiliser des termes vulgaires pour le décrire.
14 Je dis à mon ami : « Viens me conduire à cet
15 endroit-là, j'aimerais rentrer puis aller voir des
16 amis ». Il dit : « Oui, - il dit - tu vas avoir de
17 la misère à rentrer, tu es Indienne - il dit - ils
18 ne laissent pas rentrer les Indiens ». Il dit : «
19 Dis que tu es une autre race ». O.K. Mais
20 j'arrive, je rentre dans le bar puis il y a un
21 grand *bouncer* qui arrive puis il dit, ouvrez les
22 guillemets : « Toi, *tabarnak*, tu es une Indienne tu
23 ne rentres pas ». J'ai répondu sur le même
24 ton - ma mère va avoir honte - j'ai dit : « Va
25 chier *câlisse*, je suis japonaise ». Ah, il dit :

1 « Bonne soirée, mademoiselle » et je suis rentrée.
2 Donc, et par la suite, cette discothèque-là a
3 fermé quand d'autres personnes ont poursuivi leurs
4 plaintes aux Droits de la personne.

5 **Me PAUL CRÉPEAU :**

6 Mais japonaise, ça passait.

7 **Mme MAYA COUSINEAU-MOLLEN :**

8 Oui, japonaise, ça passait.

9 **Me PAUL CRÉPEAU :**

10 O.K. Les... Je voulais juste terminer, là,
11 vous... pour faire le tour un peu du dossier, mais
12 suite à votre plainte au service de police de la
13 Ville de Québec, mais juste pour compléter, je
14 comprends que, par la suite, vous avez reçu une
15 information à l'effet...

16 **Mme MAYA COUSINEAU-MOLLEN :**

17 Oui.

18 **Me PAUL CRÉPEAU :**

19 ... qu'il n'y aurait pas de poursuite de la Ville
20 de Québec?

21 **Mme MAYA COUSINEAU-MOLLEN :**

22 Oui. C'est sûr que moi, de mon bord, je n'ai pas
23 poussé parce que j'étais découragée. Je disais...
24 j'avais écrit ici, t'sais, que j'avais perdu foi
25 dans le système de justice et que j'aurais dû

1 pousser, j'aurais dû insister plus, mais j'étais...
2 j'étais fatiguée, également, et j'ai préféré comme
3 abandonner parce que, dans ma tête, je me disais :
4 « Ça ne donnerait rien ». C'est ce qui est arrivé,
5 selon moi, à ce moment-là, quand j'ai reçu
6 l'abandon de la plainte. Ça m'a fait un... ça m'a
7 donné un autre sentiment, un peu de rejet et un peu
8 d'injustice, parce que j'aurais aimé ça savoir s'il
9 avait... si le policier avait quand même fait son
10 travail. Et donc... donc voilà.

11 Mais moi, je crois que de me retrouver ici,
12 même avec tout le stress que ça m'a apporté, ça
13 peut peut-être me permettre de dire que le système
14 que nous avons en place doit s'adapter à notre
15 réalité autochtone, et je crois qu'on s'en est
16 rendu compte aujourd'hui : on a plusieurs réalités,
17 on n'a pas juste un portrait fixe. On a plusieurs
18 réalités : on peut être adopté, on peut être...
19 avoir grandi dans sa communauté, on peut avoir
20 grandi en milieu urbain. Mais on a plusieurs
21 réalités puis... mais ce qu'on partage, cependant,
22 c'est une histoire commune, avec des grands
23 chapitres communs, que ce soit les pensionnats, les
24 *Sixties Scoop*, un exemple, ce sont des choses que
25 nous, en tant que Premières Nations, on partage et

1 que je trouve impérativement, la province et le
2 pays ont besoin d'avoir dans leur cursus
3 d'enseignement. Vraiment. C'est... Parce que, je
4 me dis que, dans une autre réalité, peut-être que
5 si ce genre de choses là étaient arrivées, peut-
6 être qu'on aurait été traitées différemment. Si
7 l'enseignement avait été, aussi, différent. C'est
8 du moins ma pensée là-dessus.

9 **Me PAUL CRÉPEAU :**

10 Merci. Je termine peut-être avec les questions et
11 dernière... En fait, vous venez d'y répondre, là,
12 mais si vous aviez des choses à suggérer à Monsieur
13 le Commissaire, peut-être au niveau des
14 améliorations qu'on pourrait amener dans nos
15 systèmes de... dans nos relations avec les
16 communautés autochtones à l'égard de la police, de
17 l'éducation - vous venez d'en parler - de la
18 formation, système de santé. Qu'est-ce qu'on
19 pourrait faire de mieux, là, les choses que vous
20 voyez?

21 **Mme MAYA COUSINEAU-MOLLEN :**

22 C'est de persévérer dans les formations, que ce
23 soit la formation sur les couvertures, que j'ai
24 entendu parler, pour avoir participé à une (1),
25 poursuivre la formation dans les académies de

1 police, à Nicolet ou tout autre endroit. Insister
2 sur les modèles positifs, je crois. J'ai une
3 pensée pour ce jeune policier qui est mort au Lac-
4 Simon qui était, à mon souvenir, il participait à
5 une table de concertation pour avenir d'enfants et
6 la communauté du Lac-Simon. Je crois qu'il était
7 un de ces participants-là.

8 **LE COMMISSAIRE :**

9 Vous parlez de Thierry Leroux?

10 **Mme MAYA COUSINEAU-MOLLEN :**

11 Oui. Et de voir la résilience de son père, c'est
12 des exemples qu'on a besoin. Peut-être pas à ce
13 prix-là, par exemple, ça j'en conviens, mais de
14 favoriser aussi les bonnes nouvelles, de favoriser
15 les bons modèles, de ne pas abandonner les
16 formations. Parce que je sais qu'il y en a qui en
17 donnent depuis des années et qui s'épuisent à le
18 faire, mais de ne pas abandonner parce que, ayant
19 connu la crise d'Oka à l'adolescence et d'avoir
20 quand même continué à grandir et dans des milieux
21 différents avec des gens différents, mais de voir
22 toujours quand même le désir et la volonté de mieux
23 connaître et de s'améliorer comme personne, moi, je
24 trouve qu'il ne faut pas abandonner. C'est sûr
25 que, du pas beau, il y en a partout. Des gens avec

1 des craintes ou des préjugés, il va toujours en
2 avoir. Mais t'sais, je ne veux pas me faire
3 arrêter par ça, puis je crois qu'il faut aussi
4 amener ce sentiment de positivisme à la population
5 en général, qu'elle soit autochtone ou non
6 autochtone. Parce que sans ça, je ne pourrais pas
7 continuer ce que je fais en ce moment.

8 Me permettez-vous de citer une amie? Je sais
9 qu'elle m'écoute en ce moment puis je suis sûre que
10 je vais lui amener une petite larme, mais... C'est
11 la chronique d'Isabelle Picard, qui est sortie
12 aujourd'hui, qui s'appelle : *La justice, les*
13 *apparences et le sentiment*. Elle terminait sa
14 chronique : « Mon regard se tourne vers le plafond
15 et, au passage, j'aperçois mon petit paquet de beau
16 sur sa tablette. Il me sourit, plein d'espoir. Il
17 sait qu'il se rapproche du moment où le moins beau,
18 le triste, prendra sa place sur l'étagère, tout en
19 haut dans le coin, ce moment où il y aura tant de
20 belles histoires à raconter, qu'elles feront de
21 l'ombrage au laid. » Bien moi, je suis privilégiée
22 d'être où je suis en ce moment, d'être ici avec
23 vous, mais aussi de travailler dans un milieu qui
24 est positif, qui accepte les gens des Premières
25 Nations, qui ont... C'est des gens qui ont une

1 belle curiosité et qui construisent du positif, qui
2 travaillent avec les gens des communautés pour les
3 encourager à concrétiser leurs visions. Donc ça,
4 moi, c'est des choses qui me gardent... qui me
5 gardent en vie, et puis qui me donnent le goût de
6 continuer puis de trouver le courage même de venir
7 ici. Parce que ça ne me tentait pas. Ça ne me
8 tentait pas d'être filmée, d'être jugée, d'être
9 critiquée. Parce que quand on vient à des... le
10 visage à découvert, on endosse tout ce qu'on dit,
11 puis je le sais que, en ce moment, aussi, peut-être
12 mes nièces me regardent, mes nièces innues, puis je
13 veux leur donner le courage de pouvoir croire que,
14 oui, il y a du beau puis il n'y a pas juste des
15 préjugés, ici. Voilà.

16 **Me PAUL CRÉPEAU :**

17 Ça...

18 **LE COMMISSAIRE :**

19 Des questions, Me Crépeau?

20 **Me PAUL CRÉPEAU :**

21 Non...

22 **LE COMMISSAIRE :**

23 Non?

24 **Me PAUL CRÉPEAU :**

25 Ça fait le tour, merci.

1 **LE COMMISSAIRE :**

2 Me Robillard?

3 **Me DENISE ROBILLARD :**

4 Aucune question.

5 **LE COMMISSAIRE :**

6 Me Laganière?

7 **Me MAXIME LAGANIÈRE :**

8 Je n'aurai aucune question, Monsieur le

9 Commissaire.

10 **LE COMMISSAIRE :**

11 Me Coderre?

12 **Me DAVID CODERRE :**

13 Moi non plus, merci.

14 **LE COMMISSAIRE :**

15 Bon. Alors, écoutez, c'est à mon tour. Je vais
16 vous remercier d'être venue, d'avoir eu le courage
17 de le faire. Vous l'avez dit, ce n'est pas facile,
18 ça ne vous tentait pas, si je reprends vos mots,
19 mais ce qu'il faut comprendre, c'est que c'est le
20 courage de femmes comme vous qui s'expriment, qui
21 osent le dire, qui vont faire que d'autres vont le
22 dire, puis on va multiplier les gens qui le disent
23 puis finalement, bien, ceux qui n'ont pas compris
24 finiront par comprendre, hein?

25 **Mme MAYA COUSINEAU-MOLLEN :**

1 Hum, hum.

2 **LE COMMISSAIRE :**

3 Et c'est une façon de faire de l'éducation. Il y a
4 beaucoup de choses à rattraper. Vous avez parlé
5 d'éducation, moi je vais dire : éducation,
6 éducation, éducation. J'espère qu'on sera
7 entendus.

8 **Mme MAYA COUSINEAU-MOLLEN :**

9 Oui.

10 **LE COMMISSAIRE :**

11 On va l'écrire, en tout cas. Il y a aussi :
12 formation. Puis je vais le répéter trois (3),
13 quatre (4) fois aussi. C'est important. Il faut
14 que ça commence jeune, l'éducation, à l'école, les
15 histoires des mythes et réalités - je pense à
16 Pierre Lepage, *Mythes et réalités autochtones*.
17 Bien, les réalités autochtones, bien les gens
18 doivent en être informés. Et je me répète, mais je
19 pense que c'est important de le faire. C'est
20 important que les gens sachent ce qui s'est passé.
21 La situation qui existe et le mandat de notre
22 Commission, ça concerne les quinze (15) dernières
23 années des relations des Autochtones avec les
24 services publics. Et l'histoire n'a pas commencé
25 il y a quinze (15) ans. Comment c'est? Cent

1 cinquante (150), deux cents (200) ans avant? Même
2 avant, mais ce qui fait... ce qui fait la réalité
3 d'aujourd'hui, c'est le résultat des pensionnats,
4 des *Sixties Scoop*, des réserves, de la Loi sur les
5 Indiens, l'infantilisation des Autochtones.

6 **Mme MAYA COUSINEAU-MOLLEN :**

7 Oui.

8 **LE COMMISSAIRE :**

9 Probablement pas beaucoup de gens qui savent que, à
10 une certaine époque, les Autochtones ne pouvaient
11 même pas quitter la réserve sans la permission de
12 l'Agence des affaires indiennes.

13 **Mme MAYA COUSINEAU-MOLLEN :**

14 Mon grand-père du côté adoptif était agent des
15 Indiens.

16 **LE COMMISSAIRE :**

17 Ah bon.

18 **Mme MAYA COUSINEAU-MOLLEN :**

19 Mais ça en était un bon.

20 **LE COMMISSAIRE :**

21 Ah, c'est lui qui... c'est lui qui donnait la
22 permission? J'espère qu'il était généreux dans ses
23 permissions.

24 **Mme MAYA COUSINEAU-MOLLEN :**

25 Il parlait... il parlait innu, il pouvait l'écrire

1 et le lire. Il parlait à mon grand-père innu, qui
2 était chef, à l'époque.

3 **LE COMMISSAIRE :**

4 Bon.

5 **Mme MAYA COUSINEAU-MOLLEN**

6 Ils discutaient ensemble.

7 **LE COMMISSAIRE :**

8 Alors toutes ces choses-là, les gens doivent le
9 savoir, puis parce que ça permet de comprendre ce
10 qui se passe. Le surpeuplement des maisons dans
11 les communautés autochtones. Les gens... le fait
12 que les gens se pilent sur les pieds, le sous-
13 financement.

14 **Mme MAYA COUSINEAU-MOLLEN :**

15 Oui.

16 **LE COMMISSAIRE :**

17 Les difficultés, ceux qui essaient d'établir des
18 corps de police dans leur municipalité qui n'ont
19 pas le financement nécessaire, qui abandonnent.
20 Puis dans certains cas, on est venu nous dire ce
21 que ça pouvait coûter quand c'est assumé par
22 d'autres corps de police alors qu'eux n'ont pas le
23 financement.

24 **Mme MAYA COUSINEAU-MOLLEN :**

25 Hum, hum.

1 **LE COMMISSAIRE :**

2 Je pense à Gerry Mapachee qui est chef de Pikogan,
3 qui mentionnait il n'y a pas tellement longtemps
4 lorsqu'il était question du renouvellement du
5 financement, à la fin mars deux mille dix-huit
6 (2018), qui dit : « Je ne suis pas un programme,
7 moi, je suis un service essentiel », alors qu'il
8 est financé comme si c'était un programme : ça fini
9 puis on recommence. Écoutez, je pourrais aller
10 loin, j'en ai entendu beaucoup...

11 **Mme MAYA COUSINEAU-MOLLEN :**

12 Oui.

13 **LE COMMISSAIRE :**

14 ... Madame Mollen, depuis... depuis le cinq (5)
15 juin. Puis je vous félicite, je vous remercie
16 d'avoir eu le courage de venir nous parler, de
17 venir nous raconter un événement qui... puis deux
18 (2) autres, évidemment, qui ont précédés, mais un
19 événement qui... on va le dire, ça choque.

20 **Mme MAYA COUSINEAU-MOLLEN :**

21 Hum, hum.

22 **LE COMMISSAIRE :**

23 Puis les deux (2) autres avant aussi, ça choque,
24 aussi, t'sais, d'entendre ça.

25 **Mme MAYA COUSINEAU-MOLLEN :**

1 Oui.

2 **LE COMMISSAIRE :**

3 Puis si on peut faire en sorte que ça s'élimine,
4 t'sais, ce n'est quand même pas des farces être
5 obligé de dire qu'on est japonais pour pouvoir
6 entrer dans l'établissement. C'est...

7 **Mme MAYA COUSINEAU-MOLLEN :**

8 Peut-être que de les partager ici est une forme de
9 guérison. C'est ce que je me dis.

10 **LE COMMISSAIRE :**

11 J'espère que ça vous a fait du bien...

12 **Mme MAYA COUSINEAU-MOLLEN :**

13 Oui.

14 **LE COMMISSAIRE :**

15 ... que vous ne regrettez pas d'être venue nous
16 voir.

17 **Mme MAYA COUSINEAU-MOLLEN :**

18 Non, ça va.

19 **LE COMMISSAIRE :**

20 Nous, on ne le regrette pas, on est contents que
21 vous soyez venue. Puis ça va sans doute donner le
22 courage à d'autres de le faire. Parce qu'il faut,
23 il faut répéter, il faut le dire, c'est important.
24 Il ne faut pas que ça reste caché puis que les gens
25 aient peur de s'exprimer.

1 **Mme MAYA COUSINEAU-MOLLEN :**

2 Non, c'est vrai.

3 **LE COMMISSAIRE :**

4 Puis c'est en répétant qu'on va finir par arriver à
5 quelque chose qui va améliorer le sort de tout le
6 monde. Évidemment, bien, quand je parlais
7 d'éducation tout à l'heure, il y a la formation
8 aussi, les gens des services publics. Que ce soit
9 des policiers, des infirmières, des médecins, des
10 avocats, des juges. Bon, les services publics
11 couverts par l'enquête oui, mais il faut aller bien
12 au-delà de ça. Il y a d'autres sortes de monde,
13 là. Les gens des services publics couverts par
14 l'enquête, ils ne sortent pas d'une feuille de
15 chou, là, ils viennent de la population en général.
16 Il faut que la population en général connaisse ces
17 choses-là.

18 **Mme MAYA COUSINEAU-MOLLEN :**

19 Oui.

20 **LE COMMISSAIRE :**

21 Il faut répéter. Puis nous, bien, tant que la
22 Commission va durer, on va essayer de le faire.
23 Alors je vous remercie encore, je vous souhaite une
24 bonne journée. Puis je comprends que c'est votre
25 dernier témoin pour aujourd'hui, Me Crépeau?

1 **Me PAUL CRÉPEAU :**

2 (Inaudible)

3 **LE COMMISSAIRE :**

4 Ce qui va faire que je vais ajourner à demain, neuf
5 heures trente (09 h 30)?

6 **Me PAUL CRÉPEAU :**

7 S'il vous plaît, parce qu'on a épuisé le rôle.

8 **LE COMMISSAIRE :**

9 Ah bon. Et bien, alors moi, j'ai... je vais tout
10 simplement ajourner à neuf heures trente (09 h 30),
11 demain matin.

12 **Mme MAYA COUSINEAU-MOLLEN :**

13 *Tshinashkumitin.*

14 **LE COMMISSAIRE :**

15 Souhaiter une bonne journée à tous et merci encore,
16 Madame Mollen. Ça va?

17 **LA GREFFIÈRE :**

18 La Commission ajourne à demain matin, neuf heures
19 trente (09 h 30).

20 FIN DE LA TRANSCRIPTION.

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11

Nous, soussignées, **Anita Auza** et **Gabrielle Boyer**,
sténographes officielles, certifions que les pages
qui précèdent sont et contiennent la transcription
exacte et fidèle des notes recueillies au moyen de
l'enregistrement mécanique, le tout hors de notre
contrôle et au meilleur de la qualité dudit
enregistrement, le tout conformément à la loi;

Et nous avons signé :



ANITA AUZA, Official Court Reporter

12
13
14
15



Gabrielle Boyer, s.o.