

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

SOUS LA PRÉSIDENCE DE
L'HONORABLE JACQUES VIENS, COMMISSAIRE

AUDIENCE TENUE AU
201 AVENUE VIGER OUEST,
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COMPARUTIONS :

POUR LA COMMISSION :

Me CHRISTIAN LEBLANC

Me SÉBASTIEN BRODEUR-GIRARD

POUR LES PARTIES PARTICIPANTES :

Me MARIE-PAULE BOUCHER, pour la
Procureure générale du Québec

Me DENISE ROBILLARD, pour la
Procureure générale du Québec

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1 **OUVERTURE DE LA SÉANCE**

2 **LA GREFFIÈRE :**

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

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

8 Alors, bonjour. En cette deuxième semaine de nos
9 audiences à Val-d'Or, je souhaite la bienvenue aux
10 gens qui se sont joints à nous ici, ainsi qu'à ceux
11 qui vont nous suivre sur le site internet au niveau
12 de la diffusion. Je vais commencer par demander
13 aux procureurs de se présenter.

14 **Me CHRISTIAN LEBLANC,**

15 **PROCUREUR EN CHEF POUR LA COMMISSION :**

16 Alors bonjour Monsieur le Commissaire, Christian
17 Leblanc, procureur en chef de la Commission. Sans
18 vouloir vous corriger, Monsieur le Commissaire,
19 vous avez mentionné qu'on était à Val-d'Or, mais on
20 est bel et bien...

21 **LE COMMISSAIRE :**

22 J'ai dit Val-d'Or? Oh, à Montréal, excusez-moi.

23 **Me CHRISTIAN LEBLANC :**

24 Peut-être pour mettre ça clair avec tout le monde,
25 on est à Montréal, actuellement. Alors bonne

1 journée.

2 **Me SÉBASTIEN BRODEUR-GIRARD,**

3 **PROCUREUR POUR LA COMMISSION :**

4 Alors, Sébastien Brodeur-Girard, procureur pour la
5 Commission.

6 **Me DENISE ROBILLARD,**

7 **PROCUREURE POUR LA PROCUREURE GÉNÉRALE DU QUÉBEC :**

8 Bonjour, Denise Robillard pour la Procureure
9 générale du Québec.

10 **Me MARIE-PAULE BOUCHER,**

11 **PROCUREURE POUR LA PROCUREURE GÉNÉRALE DU QUÉBEC :**

12 Bonjour, Me Marie-Paule Boucher pour la Procureure
13 générale du Québec.

14 **LE COMMISSAIRE :**

15 Alors, bienvenue à vous. And before going on, I
16 will ask Kenneth Deer, from the Mohawk community,
17 to proceed to the prayer for us, at the beginning
18 of this week. And I was told by him that in Mohawk
19 tradition, people are... remain seated during their
20 prayer. It's right?

21 **KENNETH DEER :**

22 That's right

23 **LE COMMISSAIRE :**

24 O.K.

25 **KENNETH DEER :**

1 That's right.

2 **LE COMMISSAIRE:**

3 So I'll let you go.

4 **KENNETH DEER :**

5 Thank you Mr. Commissioner. I thank you for the...
6 honour to open... this meeting. And like you said,
7 we prefer people to sit, just so they can think of
8 the words that... are being spoken.

9 I presume that you've all been welcomed to
10 Mohawk territory already, so I don't think I have
11 to welcome you again, but, we're very happy that
12 you are here.

13 And when you are in our territory, we...
14 in... I'm one of the Haudenosaunee, which... it
15 includes the Mohawk, Oneida, Onondaga, Cayuga,
16 Seneca and Tuscarora, you know, that... which makes
17 up the Six Nations Iroquois Confederacy, what we
18 call the Haudenosaunee.

19 We have a process, we have a tradition of
20 opening all our meetings in the same way, and it's
21 called The Words That Come Before All Others.

22 So in these words, we want you to think about
23 them when you're in deliberations for the rest of
24 this... for the rest of this meeting.

25 So it goes... Again I apologize, this should

1 be done in the Mohawk language, you know. But I
2 don't speak the language, so I'm going to do this
3 in English; and I apologize to the people back
4 home, for having to do it this way. I was educated
5 by Canada, you know, so, that's why I don't...
6 speak my language.

7 So, what we do is we always take into account
8 all of creation, when we... deliberate. And we
9 start at the very beginning with all the plants
10 that are grown on mother Earth, you know, all the
11 trees and the flowers and the... and also the
12 medicines that come from... the ground. And that
13 we always give thanks to the Creator for all of
14 these things that he's given to us, particularly
15 tobacco. Tobacco which we use in our ceremony and
16 which we burn to bring out our words up to the
17 Creator.

18 And also, we give thanks to all the trees that
19 the Creator has given to us, you know, all the ash
20 trees and the hickory, the elders and the... and
21 particularly the maple tree, which we call the
22 grandfather of all trees, which brings us to first
23 prop of the year, which is happening right now in
24 the woods, where the sap of the maple tree is
25 collected by our people and made into syrup. And

1 this is the first crop of the year, of the new
2 year, and we give thanks in particular to the maple
3 tree.

4 And also, then we move on to all of the
5 animals, the small animals that are... part of
6 creation; you know, the squirrels and the rabbits
7 and the fox and the wolves, and all the small
8 animals, that all serve a purpose in the cycle of
9 life.

10 And also we give thanks to the larger animals,
11 like the deer and the moose and the bear, that also
12 give us food and give us bones for tools and are
13 hides for clothing. And we give thanks to the
14 Creator for all of those things that have a role in
15 creation.

16 And also we give thanks to all our feathered
17 friends: all the birds in the air, to the small
18 chickadees to the partridge and to the duck and the
19 geese, that also serve a purpose in creation and
20 supply us with food and also with wonderful songs
21 in the morning. So we give thanks to the Creator
22 for all of those things.

23 And also we give our thanks for all those
24 things that crawl in the water, that swim in the
25 water: all the fish, from the smallest little

1 crawdads to the trout and the salmon and the
2 walleye, and all of these creatures that are...
3 that live in the water and also give us sustenance
4 and are important to our existence. And so we give
5 thanks to the Creator for that.

6 We also give thanks to the Creator for the
7 four (4) winds, that bring us sunshine, that also
8 brings us the clouds that bring us the rain. And
9 the rain that replenishes our streams and rivers
10 and lakes, and that's important for our existence.
11 And also the lightning that purifies the air. So
12 we give thanks to the Creator for all of these
13 things.

14 And we go on and we thank the Creator for the
15 stars at night, that light our way, that guide us
16 at night. And the grandmother moon, that controls
17 the cycle of our women, and we give thanks to the
18 Creator for that.

19 And also we give thanks to the sun. Without
20 the sun there would be no life. And in our minds,
21 represents the Creator. So without the Creator, we
22 would not exist. Without the sun, we would not
23 exist. So we give also our thanks to the...
24 Creator for the sun.

25 And so... now, all these things are in our

1 minds. We all understand the role of creation and
2 life. So we also have to ponder what is our role
3 in creation as human beings that walk on the Earth,
4 that are also here by the grace of the Creator.
5 And what is our role. What is our role in... the
6 continuation on the cycle of life. And so we must
7 take this into consideration in all those things
8 that we are going to talk about in this...
9 Commission.

10 And so when it comes to this Commission now,
11 we have to look at every one of us, look at
12 ourselves, and what role the Creator has given to
13 us and what is our responsibility here, in this
14 Commission, and in these hearings, into the
15 continuation of life in harmony. Harmony in the
16 world and the relationships between all our peoples
17 from the First Peoples and the settlers. What is
18 that relationship and what would the Creator want
19 us to be, and how we want to live together with one
20 another.

21 So with those words, Mister the Commissioner,
22 I open this meeting, and I hope that we have a good
23 outcome to all the discussions that we have over
24 the next few days. Thank you.

25 **LE COMMISSAIRE :**

1 Thank you very much. Meegwetch. Alors,
2 Me Christian Leblanc, maintenant, pouvez-vous nous
3 présenter le programme de la journée?

4 **Me CHRISTIAN LEBLANC :**

5 Oui, Monsieur le Commissaire. Alors, en fait...
6 d'abord, je... Peut-être vous mentionner que c'est
7 mon confrère qui va procéder à la présentation des
8 témoins. On entend ce matin monsieur Jean Leclair
9 et on entendra cet après-midi monsieur Joffe, qui
10 viendra nous parler de la Déclaration des Nations
11 Unies sur les peuples autochtones. Et sans plus
12 tarder, je cède la parole à mon confrère.

13 **LE COMMISSAIRE :**

14 Me Sébastien Brodeur-Girard.

15 **Me SÉBASTIEN BRODEUR-GIRARD :**

16 Merci et...

17 **LE COMMISSAIRE :**

18 Alors, bienvenue.

19 **Me SÉBASTIEN BRODEUR-GIRARD :**

20 Merci beaucoup. Et j'ajouterai que finalement,
21 enfin, en après-midi, nous retrouverons monsieur
22 Deer aussi pour son témoignage qui nous racontera
23 son expérience, entre autres, pour la négociation
24 de la Déclaration des Nations Unies des droits des
25 peuples autochtones. Mais tout d'abord, ce

1 matin...

2 **LE COMMISSAIRE :**

3 I understand Mr. Deer was part of negotiations
4 before the adoption by United Nations of the
5 Declaration?

6 **Me SÉBASTIEN BRODEUR-GIRARD :**

7 Absolutely, for many years.

8 **LE COMMISSAIRE :**

9 (Inaudible) pleasure to be hearing about that.

10 **Me SÉBASTIEN BRODEUR-GIRARD :**

11 Mais pour l'instant, ce matin j'inviterais monsieur
12 Leclair à...

13 **LE COMMISSAIRE :**

14 Professeur Leclair?

15 **Me SÉBASTIEN BRODEUR-GIRARD :**

16 Professeur Leclair, à prendre place. Et donc,
17 professeur Leclair qui est professeur de droit
18 constitutionnel, de droit autochtone et d'histoire
19 du droit à l'Université de Montréal. Qui a
20 travaillé beaucoup sur le... son intérêt sur le
21 fédéralisme l'a, entre autres, amené à rédiger
22 plusieurs études sur la gestion de l'environnement
23 dans la structure fédérale canadienne et sur les
24 fondements constitutionnels du bijuridisme
25 canadien. Et Jean Leclair s'intéresse depuis plus

1 de dix (10) ans à la question de la configuration
2 ou reconfiguration des rapports politiques entre
3 les peuples autochtones et gouvernements, mais
4 également à la reconfiguration au sein même des
5 communautés autochtones. Et donc, il va pouvoir
6 nous parler, ce matin, de la question, justement,
7 des rapports constitutionnels entre les peuples
8 autochtones et l'État, mais aussi plus
9 spécifiquement de la question de la Déclaration des
10 Nations Unies sur les droits des peuples
11 autochtones, donc dans ce contexte constitutionnel
12 là.

13 **LE COMMISSAIRE :**

14 Je comprends que la Déclaration des Nations Unies
15 sur les peuples... sur les droits des peuples
16 autochtones est le centre de nos auditions
17 aujourd'hui, le centre de nos...

18 **Me SÉBASTIEN BRODEUR-GIRARD :**

19 Sera le fil que nous suivrons, oui.

20 **LE COMMISSAIRE :**

21 Très bien. Alors, Professeur Leclair, bienvenue à
22 la Commission.

23 **Pr JEAN LECLAIR :**

24 Merci, bonjour.

25 **LE COMMISSAIRE :**

1 Je vais... Je me suis demandé, est-ce que
2 professeur Leclair est membre du Barreau?

3 **Pr JEAN LECLAIR :**

4 Oui.

5 **LE COMMISSAIRE :**

6 Oui? Alors vous témoignez sur votre serment
7 d'office, tout simplement. Pas nécessaire de vous
8 assermenter. Alors je vous souhaite la bienvenue,
9 nous sommes très heureux de vous accueillir et nous
10 allons vous écouter avec beaucoup d'attention.

11 **Pr JEAN LECLAIR :**

12 Merci, Monsieur le Commissaire.

13 **LE COMMISSAIRE :**

14 Le sujet est d'une importance capitale pour nos
15 travaux.

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1 Jean Leclair
2 Professeur titulaire à l'Université de Montréal
3 Serment d'office
4 -----

5 **Pr JEAN LECLAIR :**

6 Merci beaucoup de me recevoir ici. First, I would
7 like to thank Elder Deer for his thanks giving
8 presentation.

9 Et je voudrais aussi vous remercier de m'avoir
10 invité à témoigner aujourd'hui sur la question
11 spécifique de la latitude constitutionnelle dont
12 disposerait le Québec pour mettre en œuvre la
13 Déclaration des Nations Unies sur les droits des
14 peuples autochtones à laquelle le Canada a adhéré
15 en deux mille dix (2010).

16 Je vous rappelle, comme ça a été fait plus
17 tôt, que la Commission tient aujourd'hui ses
18 audiences sur l'île de Montréal où, bien avant
19 l'établissement des Français, différents peuples
20 autochtones ont interagi les uns avec les autres.
21 Et c'est aussi à Montréal qu'a été signée en dix-
22 sept cent un (1701) la Grande Paix de Montréal,
23 traité de paix fondateur des rapports pacifiques
24 durables entre la France, ses alliés autochtones,
25 la Confédération Haudenosaunee et c'est en gardant

1 en tête l'esprit de fraternité à l'origine de ce
2 traité qu'il nous faut, selon moi, aborder la
3 question de la mise en œuvre de la Déclaration ici,
4 au Québec, au Canada.

5 J'aimerais que mon intervention aujourd'hui
6 constitue une mise en garde contre les attentes
7 démesurées de ce que le Droit à lui seul peut
8 contribuer à la question des rapports entre les
9 peuples autochtones du Québec et la population du
10 Québec, population à laquelle ces peuples
11 autochtones sont, en passant, étroitement
12 imbriqués, que ce soit collectivement ou
13 individuellement.

14 Je voudrais également que mon intervention
15 serve à démentir les affirmations de ceux qui
16 voient dans l'éventuelle mise en œuvre de la
17 Déclaration une transformation radicale, dangereuse
18 et sans précédent de l'ordre politique québécois ou
19 canadien. J'aimerais qu'on retienne qu'à lui seul
20 et quoiqu'il puisse être très utile, le droit n'est
21 jamais beaucoup plus que le reflet de notre volonté
22 d'être solidaires les uns des autres ou, au
23 contraire, de notre volonté d'ériger des barrières
24 entre les uns et les autres. Bref, même
25 l'insertion du texte de la Déclaration dans la

1 Constitution formelle du Canada changerait peu de
2 choses si les citoyens canadiens et leurs
3 représentants politiques persistaient à refuser de
4 reconnaître la légitimité des revendications
5 autochtones. Le succès de la Déclaration dépend
6 donc plus d'un changement de mentalité que d'un
7 changement du droit. Cela dit, je reconnais que le
8 droit, à certaines conditions, peut être un vecteur
9 efficace de changements et c'est donc... c'est ce
10 dont on m'a demandé de parler. Je m'exécute donc.

11 Je procéderai de la manière suivante : en
12 guise de préambule, je dirai un mot au sujet du
13 rôle des peuples autochtones eux-mêmes dans la mise
14 en œuvre de la Déclaration.

15 Par la suite, je rappellerai, pour mémoire,
16 que la Déclaration est une norme de droit
17 international qui n'est pas immédiatement
18 applicable en droit canadien ou québécois.

19 Je distinguerai ensuite la reconnaissance
20 politique de la Déclaration par le gouvernement du
21 Québec, de son incorporation en droit québécois au
22 moyen d'une loi. Cette distinction est
23 fondamentale, car une reconnaissance politique de
24 la Déclaration, aussi importante soit-elle, n'en
25 portera aucune conséquence juridique immédiate,

1 alors qu'une fois incorporées en droit interne, les
2 dispositions de la Déclaration pourraient être
3 sanctionnées par un tribunal canadien ou québécois.

4 Cela fait, j'aborderai par la suite la
5 question spécifique de la latitude
6 constitutionnelle dont dispose le Québec pour
7 incorporer la Déclaration en droit interne
8 québécois. Cette question soulève le problème du
9 partage des compétences législatives dans le
10 fédéralisme canadien et celui de l'arrimage de la
11 Déclaration à la doctrine des droits ancestraux
12 développés par les tribunaux canadiens depuis
13 l'enchâssement des droits ancestraux et issus de
14 traités en mille neuf cent quatre-vingt-deux
15 (1982), au moment de l'adoption de l'article 35 de
16 la Loi constitutionnelle de mille neuf cent quatre-
17 vingt-deux (1982). Cette disposition, je vous le
18 rappelle, déclare, je cite : « Les droits existants
19 ancestraux ou issus de traités des peuples
20 autochtones du Canada sont reconnus et confirmés. »
21 Ce même article définit les peuples autochtones
22 comme suit :

23 « Dans la présente loi, les peuples
24 autochtones du Canada, s'entend
25 notamment des Indiens - au sens de

1 la Loi sur les Indiens - des Métis -
2 dont la définition est assez
3 controversée, je ne m'étendrai pas
4 ici là-dessus - et des Inuits. »

5 Dans cette partie de mon exposé, je tenterai de
6 démontrer que, depuis quelques années, la Cour
7 suprême a modifié les règles et la dynamique du
8 partage des compétences en matière autochtone.
9 Ayant reconnu le caractère collectif des droits
10 constitutionnels reconnus aux peuples autochtones,
11 droits qui leur confèrent, entre autres, le droit
12 d'être consultés lorsque leurs intérêts
13 constitutionnellement protégés sont menacés, la
14 Cour suprême a été forcée, pour ainsi dire,
15 d'abandonner le point de vue traditionnel selon
16 lequel les peuples autochtones étaient des objets
17 de droits relevant de la compétence exclusive du
18 gouvernement fédéral. Les droits constitutionnels
19 des peuples autochtones les autorisent en quelque
20 sorte aujourd'hui à se penser eux-mêmes dans les
21 limites des droits que leur reconnaît la
22 Constitution et ces droits se déploient aujourd'hui
23 bien au-delà des minuscules frontières des réserves
24 indiennes.

25 En d'autres mots, les peuples autochtones sont

1 aujourd'hui des sujets de droit et non plus des
2 objets de droit. Ils ne sont plus de simples
3 communautés culturelles. Ils se sont élevés au
4 statut de communautés politiques qui entretiennent
5 des relations non plus simplement avec le
6 gouvernement fédéral, mais également avec les
7 provinces sur le territoire desquelles s'exercent
8 leurs droits au territoire. La Cour, on le verra,
9 a donc récemment reconnu que, dans certaines
10 circonstances, les provinces étaient en mesure,
11 plus qu'elles ne l'étaient auparavant, de légiférer
12 sur les questions autochtones. En somme, dans les
13 limites des contraintes imposées par la
14 Constitution de dix-huit cent soixante-sept (1867)
15 qui consacre la nature fédérale de notre pays et
16 des contraintes imposées par la Constitution de
17 mille neuf cent quatre-vingt-deux (1982) qui
18 constitutionnalise les droits ancestraux issus de
19 traités, la province peut adopter une ou des lois,
20 selon moi, visant à mettre en œuvre la Déclaration.

21 Je terminerai ma présentation en soulevant la
22 question des avantages, mais aussi des
23 inconvénients qui pourraient découler d'une
24 incorporation en droit québécois de la Déclaration.
25 Inconvénients du point de vue autochtone, je

1 dirais. Ainsi, l'incorporation en droit de la
2 Déclaration est bien sûr un mécanisme efficace,
3 mais à partir du moment où on le fait, c'est la
4 magistrature canadienne qui aura le dernier mot sur
5 le sens à donner aux quarante-six (46) articles de
6 la Déclaration.

7 Donc, premier terme : quoi qu'on fasse,
8 consulter les Autochtones. S'il est une chose qui
9 s'est imposée en droit international comme en droit
10 canadien au cours des dernières années, c'est bien
11 l'importance de consulter les peuples autochtones
12 avant d'adopter des mesures qui auront un impact
13 important sur leur vie collective. L'idée
14 d'incorporer la Déclaration en droit québécois ou
15 canadien est selon moi une très bonne idée. Le
16 problème, comme on le verra, est de savoir comment
17 s'y prendre si on veut que cette incorporation
18 emporte des résultats autres que symboliques. Je
19 suis en train de démontrer que la manière de
20 procéder à cette intégration en droit québécois ou
21 canadien déterminera le succès ou l'échec de
22 l'entreprise. L'idée d'incorporer la Déclaration
23 en droit québécois ou canadien est selon moi une
24 très bonne idée, mais il faut aussi réaliser que
25 cette incorporation ne se traduira pas uniquement

1 en victoires autochtones. Il ne fait aucun doute,
2 et il ne faut pas être devin pour le penser, les
3 droits reconnus par la Déclaration devront
4 éventuellement être équilibrés avec les intérêts de
5 la population non autochtone. Le paragraphe 46.2
6 de la Déclaration ouvre d'ailleurs la porte à cette
7 mise en équilibre. Tout ce que je veux souligner
8 ici c'est que, avant de se lancer dans la rédaction
9 d'une loi, le gouvernement du Québec devrait
10 s'assurer que tel est le désir des premiers peuples
11 du Québec. Ce qui, j'en conviens, semble être le
12 cas. C'est le vœu exprimé par la Commission de
13 vérité et réconciliation, la recommandation 43, je
14 pense, et par le Comité pour l'élimination de la
15 discrimination raciale de l'ONU qui, le treize (13)
16 septembre dernier, recommandait au Canada, je
17 cite, « d'appliquer la Déclaration des Nations
18 Unies sur les droits des peuples autochtones ».

19 Sur ce thème du rôle des peuples autochtones,
20 je voudrais insister sur une chose qui m'apparaît
21 essentielle. Les peuples autochtones du Québec
22 devraient immédiatement mettre en œuvre la
23 Déclaration sans attendre les gouvernements. Je ne
24 suis pas sans savoir qu'ils ont les ressources
25 limitées, mais les Atikamekw, par exemple, ont

1 réussi à mettre sur pied un programme efficace de
2 protection de la jeunesse alors que d'autres
3 nations ont élaboré, chez les Mohawks entre autres,
4 des processus de résolution de conflits pour les
5 délits mineurs, les affaires civiles. D'autres
6 exemples d'initiatives autochtones existent au
7 Canada. Il me semble que c'est là, la voie de
8 l'avenir : accompagner les peuples autochtones dans
9 les projets d'autodétermination qu'ils ont eux-
10 mêmes élaborés m'apparaît une des voies royales de
11 la réconciliation. Après tout, comme les peuples
12 autochtones et plusieurs membres éminents des
13 Premières Nations du Québec, dont monsieur Deer,
14 ont étroitement contribué à l'élaboration de la
15 Déclaration, il me semble qu'ils sont en droit de
16 prendre l'initiative. Il est vrai que, pour
17 beaucoup d'entre eux, le droit canadien et
18 québécois souffre d'un déficit de légitimité. Mais
19 comme la Déclaration est le fruit de leur propre
20 collaboration, ils peuvent certainement s'en
21 inspirer.

22 Deuxième thème : reconnaissance politique de
23 la Déclaration ou incorporation en droit interne
24 québécois. Je l'ai invoqué plus haut, la
25 Déclaration est un instrument juridique de droit

1 international adopté par l'Assemblée générale des
2 Nations Unies le treize (13) septembre deux mille
3 sept (2007). Après s'y être initialement refusé,
4 le Canada y a finalement adhéré de manière
5 hésitante en novembre deux mille dix (2010) pour
6 enfin, je cite, « l'appuyer sans réserve en mai
7 deux mille seize (2016) ».

8 En droit international, une simple déclaration
9 par opposition à un traité n'est pas juridiquement
10 contraignante, ce qui ne l'empêche pas d'avoir une
11 dimension politique et symbolique très importante.
12 Elle n'aura d'impact juridique véritable,
13 cependant, que si elle est incorporée en droit
14 interne. Or, en droit constitutionnel canadien,
15 les normes de droit international que sont les
16 traités ou les déclarations ne sont pas
17 immédiatement applicables par les tribunaux du seul
18 fait de l'adhésion du Canada à une déclaration ou à
19 un traité international. On est un pays dualiste,
20 dit-on. À cette adhésion par le Canada doit
21 s'ajouter l'adoption de lois par les ordres de
22 gouvernement compétents, provinces ou État central.
23 Je rappelle que le Canada étant une fédération, les
24 pouvoirs législatifs y sont partagés entre les deux
25 (2) ordres de gouvernements : province, État

1 central. Le contenu du traité ou de la Déclaration
2 déterminera si ce sont les provinces ou le fédéral
3 qui peuvent... qui peuvent le mettre en œuvre.

4 Bref, si une disposition de la Déclaration
5 porte sur une matière de compétence fédérale au
6 sens de l'article 91 de la Loi constitutionnelle de
7 dix-huit cent soixante-sept (1867), seul le fédéral
8 pourra la mettre en œuvre législativement. Au
9 contraire, si une disposition de la Déclaration
10 porte sur une compétence... une matière de
11 compétence provinciale au sens de l'article 92 de
12 la Loi constitutionnelle de dix-huit cent soixante-
13 sept (1867), seules les provinces pourront la
14 mettre en œuvre législativement. Enfin, si la
15 Déclaration porte – et je pense que c'est le cas –
16 à la fois sur des matières de compétence fédérale
17 et de compétence provinciale, la collaboration des
18 deux (2) ordres de gouvernement sera nécessaire
19 pour qu'ils puissent, au terme de leur compétence
20 respective, adopter chacun de leur côté les
21 dispositions législatives nécessaires à la mise en
22 œuvre de l'entièreté de la Déclaration.

23 En somme, si un ordre de gouvernement veut
24 mettre en œuvre législativement la Déclaration, il
25 doit s'assurer qu'il détient la compétence

1 constitutionnelle pour le faire, et doit s'assurer
2 de l'étendue de celle-ci. Pareil obstacle n'existe
3 pas lorsqu'une assemblée législative procède à une
4 reconnaissance symbolique, au moyen d'une
5 résolution parlementaire, qui est un acte purement
6 politique. Si l'Assemblée nationale adoptait une
7 telle résolution afin de reconnaître la
8 Déclaration, il ne fait pas de doute que ce geste
9 comporterait une incontestable dimension normative
10 en ce que cette décision politique obligerait peut-
11 être éventuellement le Québec à modifier ses lois.
12 Mais en soi, une telle résolution n'est pas
13 juridiquement contraignante. Elle ne permettrait
14 pas à un juriste, un justiciable autochtone,
15 d'invoquer un droit reconnu par la Déclaration
16 devant un tribunal québécois. Pour que la
17 Déclaration puisse être invoquée en droit québécois
18 pour contraindre le gouvernement ou un tiers à y
19 obéir, il faudrait donc une incorporation directe
20 et expresse de la Déclaration au moyen d'une mesure
21 législative. Se pose donc la question de partage
22 des compétences législatives évoquée plus haut.

23 Avant d'examiner plus à fond cette question du
24 partage des compétences, je tiens à rappeler qu'un
25 grand nombre de droits reconnus par la Déclaration

1 pourraient être mis en œuvre par le Québec
2 autrement qu'au moyen d'une loi ou de lois.
3 Pensons à la création d'un groupe de travail de
4 ministres chargés de réviser la législation pour
5 veiller à sa conformité avec les principes de la
6 Déclaration ou l'adoption de principes régissant la
7 relation du gouvernement du Canada avec les peuples
8 autochtones, deux (2) techniques déjà employées par
9 le gouvernement fédéral. Pensons également à tous
10 les droits reconnus par la Déclaration et qui, pour
11 une grande part, requièrent avant tout des
12 investissements plutôt que des lois. Les
13 paragraphe 13.2, 14.2, 14.3, concernant la prise
14 de mesures par les États afin de protéger le droit
15 des peuples autochtones de transmettre leurs
16 cultures aux générations futures. L'article 21
17 concernant l'amélioration des conditions de vie des
18 peuples autochtones : le paragraphe 24.2,
19 concernant la prise de mesures afin d'assurer aux
20 peuples autochtones leur droit à la santé.
21 L'article 28 concernant le droit à une compensation
22 appropriée pour les terres qui sont exploitées.
23 L'article 39 concernant l'assistance financière et
24 technique accordée aux peuples autochtones afin
25 qu'ils puissent jouir des droits énoncés dans la

1 Déclaration. Comme le disait le regretté
2 professeur Roderick Macdonald de l'Université
3 McGill : « When governments do not want to spend
4 money, they spend law ». Lorsque les gouvernements
5 ne veulent pas dépenser d'argent, ils dépensent des
6 mots. S'ouvrir la bouche est souvent moins coûteux
7 que d'ouvrir son portefeuille. Il y a donc risque
8 qu'un gouvernement préfère adopter une loi plutôt
9 que de dépenser de l'argent. Il faut avoir cette
10 réalité politique à l'esprit quand on réfléchit à
11 la question de l'adoption d'une loi ayant pour
12 objet d'incorporer la Déclaration. En passant,
13 l'Assemblée nationale semblait frayer de dépenser
14 même des mots, car elle n'a encore jamais réussi à
15 adopter une résolution parlementaire en appui à la
16 Déclaration. Toutes les tentatives en ce sens ont
17 échoué.

18 Troisième thème : incorporation de la
19 Déclaration au moyen d'une loi, la question du
20 partage des compétences et de la doctrine des
21 droits ancestraux. Je vous préviens, c'est une des
22 questions les plus compliquées en droit
23 constitutionnel canadien que ce rapport entre les
24 Autochtones, les provinces et le fédéral et j'ai
25 essayé de faire quelque chose de plus... le plus

1 *palatable*, le plus facile à comprendre, je vous
2 prie de me suivre.

3 Alors je l'ai dit plus haut, le contenu de la
4 Déclaration déterminera si ce sont les provinces ou
5 le fédéral qui peuvent la mettre en œuvre. Puis je
6 préfère me répéter pour être plus clair : si une
7 disposition de la Déclaration porte sur une matière
8 de compétence fédérale, au sens de l'article 91 de
9 la Loi constitutionnelle de dix-huit cent soixante-
10 sept (1867), seul le fédéral pourra la mettre en
11 œuvre législativement. Au contraire, si une
12 disposition de la Déclaration porte sur une matière
13 de compétence provinciale au sens de l'article 92
14 de la Loi constitutionnelle de soixante-sept ('67),
15 seules les provinces pourront la mettre en œuvre
16 législativement. Enfin, si la Déclaration porte à
17 la fois sur des matières de compétence fédérale et
18 de compétence provinciale, la collaboration des
19 deux (2) ordres de gouvernement sera nécessaire
20 pour qu'ils puissent, au terme de leur compétence
21 respective, adopter chacun de leur côté les
22 dispositions législatives nécessaires à la mise en
23 œuvre de l'entièreté de la Déclaration. Il en est
24 ainsi parce que les articles 91 et 92 de la Loi
25 constitutionnelle de dix-huit cent soixante-sept

1 (1867) dressent une liste de compétences
2 législatives mutuellement exclusives. Autrement
3 dit, le parlement central ne peut poursuivre une
4 finalité législative attribuée en exclusivité aux
5 provinces, et vice versa. Exemple simple : le
6 fédéral ne pourrait pas adopter un code civil, il
7 n'a pas la compétence requise qui appartient aux
8 provinces en matière de propriété de droit civil.
9 À l'inverse, la province ne pourrait pas adopter le
10 Code criminel du Québec, c'est une compétence
11 exclusivement fédérale. Or, le paragraphe 91.24 de
12 la Loi constitutionnelle de dix-huit cent soixante-
13 sept (1867) attribue une compétence exclusive au
14 parlement fédéral sur les Indiens et les terres
15 réservées aux Indiens. Mais il faut comprendre et
16 je n'examinerai pas la jurisprudence devant vous,
17 qu'aujourd'hui, le mot « Indien » dans l'article
18 91.24 inclut tous les peuples autochtones :
19 Indiens, Inuits et Métis. C'est donc dire que les
20 provinces ne pourraient adopter une loi
21 réglementant toutes les questions afférentes aux
22 peuples autochtones sur leurs territoires. Une
23 telle loi serait inconstitutionnelle. La
24 compétence sur les peuples autochtones est
25 exclusivement fédérale. Et c'est ça qui pose

1 problème.

2 Toutefois, et ça complique les choses, si le
3 fédéral dispose d'un pouvoir législatif exclusif à
4 l'égard des peuples autochtones, ce sont les
5 provinces et non le fédéral qui sont détentrices du
6 domaine public, des terres de la Couronne. Le
7 Canada est doté d'un immense territoire.

8 Toutefois, et conformément à l'article 109 de la
9 Loi constitutionnelle de dix-huit cent soixante-
10 sept (1867), ce sont les provinces et non l'État
11 central qui ont la part du lion en matière de
12 domaine public. Exception faite des territoires
13 fédéraux que sont le Yukon, les Territoires du
14 Nord-Ouest et le Nunavut, auxquels il faut ajouter
15 quelques terres, certaines terres fédérales, parcs
16 nationaux, champs de bataille, réserves indiennes
17 et autres terres expropriées par le gouvernement
18 fédéral, tout le domaine public au Canada
19 appartient aux provinces. Et chose capitale à
20 garder en tête, ce sont sur ces territoires que se
21 déroulent les activités d'extraction des ressources
22 naturelles qui font la richesse du Canada et où
23 habitent les peuples autochtones. Ajoutez à cela
24 que ce sont les provinces qui disposent de la
25 compétence de principes en matière de santé,

1 d'éducation, de langue et de réglementation de
2 l'exploitation des ressources naturelles. De cette
3 complexe répartition des pouvoirs législatifs et du
4 domaine public résulte la nécessité de faire
5 intervenir les deux (2) ordres de gouvernement à
6 l'occasion de l'élaboration de tentatives de
7 solutions à un enjeu autochtone.

8 La situation était déjà passablement
9 compliquée, mais elle s'est encore plus
10 complexifiée avec la constitutionnalisation des
11 droits ancestraux et issus de traités des peuples
12 autochtones en mille neuf cent quatre-vingt-deux
13 (1982). Je vais vous résumer en une phrase ou deux
14 la (inaudible) des droits ancestraux et des droits
15 issus de traités. Les droits ancestraux, ce sont
16 les activités et des pratiques qui sont considérées
17 comme fondamentales au mode de vie d'un groupe
18 autochtone avant le contact avec les Européens.
19 D'accord? Ça veut dire que ça renvoie à des
20 activités comme la chasse, la pêche. La preuve en
21 est extraordinairement difficile parce que, les
22 Autochtones étant une tradition orale, prouver une
23 activité importante avant le contact avec les
24 Européens, vous devinez que c'est une tâche
25 herculéenne.

1 La Cour a aussi développé ce qu'on appelle
2 « le titre aborigène ». Le titre aborigène, c'est
3 plus ambitieux. C'est un droit au territoire lui-
4 même, qui n'est pas confiné aux droits pour les
5 Autochtones d'accomplir des activités
6 traditionnelles, mais des activités qu'ils peuvent
7 exécuter sur ce territoire-là ne doivent pas porter
8 atteinte aux intérêts des générations futures, de
9 dire la Cour suprême. Droit plus ambitieux,
10 preuves encore plus complexes à faire. Pour vous
11 donner une idée, dans l'affaire Tsilhqot'in, la
12 première décision où un titre autochtone a été
13 reconnu, une décision de deux mille quatorze
14 (2014), la constitution date de mille neuf cent
15 quatre-vingt-deux (1982), ça a coûté quarante
16 millions de dollars (40 M\$) pour arriver à ça. De
17 l'argent qui pourrait être investi ailleurs, en
18 passant, justement si on mettait en œuvre la
19 Déclaration.

20 Les droits issus de traités renvoient à la
21 fois au traité historique, soit des traités de paix
22 et d'amitié qu'on a signés dans les Maritimes, par
23 exemple, ou aux traités numérotés 1 à 11, qui
24 couvrent une large partie du territoire de
25 l'Ontario jusqu'au nord-est de la Colombie-

1 Britannique. Traité qui avait pour objet
2 d'éteindre les droits autochtones pour les
3 remplacer par, entre autres, l'octroi de minuscules
4 réserves et un droit de chasser sur les terres de
5 la Couronne. Ça renvoie aussi au traité moderne,
6 comme la Convention de la Baie-James, le traité de
7 Nisga'a, toutes les grandes conventions qui visent
8 les Inuits dans le nord du pays, entre autres.
9 Tout ça est nouveau, en mille neuf cent quatre-
10 vingt-deux (1982). La Cour développe ça à partir
11 de mille neuf cent quatre-vingt-seize (1996) dans
12 des affaires célèbres, Pamajiwon, Van der Peet,
13 etc. Et la situation du partage s'est complexifiée
14 parce que la Cour suprême a déclaré deux (2) choses
15 contradictaires. Elle a déclaré que ces droits
16 ancestraux issus de traités tombaient dans la
17 compétence exclusive du parlement fédéral, et du
18 même souffle, elle a cependant affirmé que les
19 provinces, à l'instar d'Ottawa, pourraient adopter
20 des lois limitant la portée de ces droits dans des
21 limites raisonnables. Parce qu'il faut comprendre
22 que, quand la Cour a développé la doctrine des
23 droits ancestraux et des droits issus de traités,
24 elle a aussi créé un test qui permet aux provinces
25 et au fédéral de limiter ces droits ancestraux

1 constitutionnalisés ou ces droits issus de traités
2 constitutionnalisés, de pouvoir les limiter dans
3 des limites raisonnables. Hein, c'est un test qui
4 ressemble aux tests développés dans la charte, mais
5 qui a été adapté, c'est un test de proportionnalité
6 qui a été adapté à la question autochtone.

7 Alors le raisonnement de la Cour lorsqu'elle
8 l'a énoncé en mille neuf cent quatre-vingt-dix-sept
9 (1997) dans l'affaire Delgamuukw qui était
10 totalement illogique sur le plan
11 constitutionnel - avec respect pour le juge en chef
12 Lamer - on ne pouvait pas à la fois dire que les
13 droits ancestraux relevaient du pouvoir exclusif du
14 fédéral, mais que les provinces pouvaient
15 valablement en limiter la portée. Comment une
16 province pouvait-elle limiter un droit ancestral,
17 c'est-à-dire régir une matière exclusivement
18 fédérale, sans pour autant enfreindre le partage
19 des compétences? Une province ne pouvant pas
20 exercer une compétence exclusivement fédérale. Une
21 loi provinciale attentatoire au droit
22 constitutionnel des peuples autochtones, mais
23 comportant des mesures de consultation et
24 d'accommodement, comporterait très certainement des
25 dispositions explicites relatives à ces derniers.

1 Ces décisions seraient-elles... ces dispositions
2 seraient-elles inconstitutionnelles? En effet, on
3 pouvait soutenir que, dans la mesure où elle visait
4 des matières se rapportant au contenu minimal
5 exclusif de la compétence fédérale sur les Indiens,
6 ces dispositions contrevenaient au partage des
7 compétences et donc, qu'elle était inapplicable au
8 terme de ce qu'on appelle, en droit
9 constitutionnel, la doctrine de l'exclusivité des
10 compétences, qui est une chose extrêmement
11 complexe.

12 La Cour suprême, récemment, en deux mille
13 quatorze (2014), dans les affaires Tsilhqot'in et
14 Grassy Narrows, a réglé le problème en déclarant
15 péremptoirement que la doctrine d'exclusivité des
16 compétences ne devait plus s'appliquer en matière
17 de droits ancestraux et issus de traités. Le titre
18 aborigène ainsi que les droits ancestraux et les
19 droits issus de traités ne devaient plus, dit-elle,
20 être appréhendés comme une matière relevant de l'un
21 ou l'autre ordre de gouvernement. Il constituait
22 plutôt, je la cite, « une limite à l'exercice des
23 compétences tant fédérales que provinciales ».

24 Bref, comprenez de tout ce vocabulaire
25 technique que les deux (2) ordres de gouvernement

1 peuvent légiférer relativement aux titres, aux
2 droits ancestraux ou issus de traités, dans
3 l'exercice de leurs compétences respectives et dans
4 le respect du test élaboré dans l'arrêt Sparrow,
5 celui qui a développé le test d'atteinte
6 justifiable. Sans nous perdre dans des détails
7 inutiles, qu'est-ce que cela signifie quant à la
8 latitude des provinces d'adopter des lois touchant
9 les intérêts autochtones? Cela signifie
10 essentiellement que les provinces ont une latitude
11 de pouvoir plus grande qu'auparavant et c'est
12 important pour la question qui nous intéresse
13 aujourd'hui.

14 Si la Cour suprême a assoupli les règles du
15 partage des compétences en matière autochtone,
16 c'est parce qu'elle voulait permettre aux provinces
17 de tirer pleinement parti du potentiel économique
18 de leur domaine public. Les provinces peuvent donc
19 réglementer les droits ancestraux ou issus de
20 traités qui grèvent leur territoire dans la mesure
21 ou ils testent l'atteinte raisonnable développée
22 dans Sparrow est respectée. Autrement dit, on
23 voulait que les provinces puissent adopter des lois
24 sur la foresterie, sur les mines, sur
25 l'hydroélectricité, sur l'aménagement du territoire

1 et, à l'occasion de ces lois-là, adopter des
2 dispositions qui pourraient limiter ou encadrer
3 l'exercice des droits ancestraux sans enfreindre le
4 partage des compétences. L'exclusivité du partage
5 des compétences n'est pas pour autant abandonnée.
6 Une loi provinciale qui viserait à régler un
7 intérêt régi par la Loi sur les Indiens serait
8 inconstitutionnelle. Certaines choses relèvent
9 encore du pouvoir exclusif fédéral. Mais imaginons
10 que, dans l'exercice d'une de ses compétences,
11 comme je viens de le dire, une province adopte des
12 dispositions législatives qui visent à améliorer la
13 situation des Autochtones. Pensons à des lois
14 provinciales d'application générale portant sur
15 l'éducation, la santé, qui comporterait des
16 dispositions visant à établir un régime particulier
17 pour tenir compte des spécificités de la clientèle
18 autochtone ou visant même à déléguer des pouvoirs à
19 des organisations autochtones. Pensons à des lois
20 provinciales d'application générale portant sur
21 l'exploitation des mines, des hydrocarbures, de
22 l'énergie hydroélectrique, qui comporteraient des
23 dispositions visant à établir un régime spécifique
24 de consultation des peuples autochtones. Bien sûr,
25 ces lois-là parleraient des Autochtones,

1 mentionneraient le mot « Autochtone » dans texte de
2 la loi. Bien, il ne fait aucun doute que ces lois
3 seraient aujourd'hui jugées valides.

4 Dans l'arrêt Kitkatla - parce que je vous
5 donne un exemple, ça peut être utile - dans l'arrêt
6 Kitkatla, par exemple, la Cour suprême a jugé que
7 le *Heritage Conservation Act* de la Colombie-
8 Britannique était une loi provinciale d'application
9 générale valide malgré quelle comporta des
10 dispositions spécifiques relatives aux peuples
11 autochtones. Elle a jugé que le trait dominant de
12 cette loi était de conserver et de protéger toutes
13 les formes de biens, d'objets et d'artéfacts
14 culturels qui, en Colombie-Britannique, ont une
15 valeur patrimoniale pour l'ensemble de la province.
16 Toute des choses - des biens, des objets, des
17 artéfacts - toutes des choses qui relèvent de la
18 compétence des provinces relatives à la propriété
19 au droit civil. La loi avait la particularité de
20 protéger ces artéfacts culturels, mais également
21 d'en autoriser la destruction par le ministre. Le
22 ministre pouvait ordonner la destruction de
23 certaines choses s'il fallait construire, je ne
24 sais pas, moi, un barrage ou... Or, la loi
25 précisait s'appliquer aux artéfacts autochtones et

1 permettait donc au ministre d'en autoriser aussi
2 bien la protection que la destruction. Donc on
3 portait atteinte à des droits autochtones. La Cour
4 a jugé que ces artéfacts avaient une double nature
5 culturelle, étant bien sûr partie à l'héritage
6 autochtone, mais également partie au patrimoine
7 culturel de tous les Britanno-Colombiens.
8 L'intervention de la province n'était donc pas au
9 premier regard inconstitutionnel. Elle visait la
10 propriété, le droit civil des artéfacts culturels,
11 des biens sur le territoire de la province. La
12 Cour a ensuite pris soin de souligner qu'une
13 disposition législative, je la cite : « Une
14 disposition législative provinciale n'excède pas la
15 compétence de la province du simple fait qu'on y
16 trouve le mot "autochtone". » C'est ce que je vous
17 disais. Ce n'est pas parce qu'une loi mentionne le
18 mot « autochtone » qu'elle est inconstitutionnelle.
19 Cette prémisse étant établie, la Cour a jugé que
20 les dispositions en litige ne constituaient pas un
21 empiètement interdit parce qu'elles étaient
22 suffisamment intégrées à une loi d'application
23 générale valide et qu'elle n'imposait pas un
24 traitement particulier aux Autochtones,
25 garantissant au contraire aux artéfacts culturels

1 de ces derniers une protection dont ils ne
2 bénéficiaient pas avant l'adoption de la loi. La
3 Cour a jugé en effet que les dispositions en litige
4 faisaient partie d'un régime soigneusement
5 équilibré qui établissait un juste équilibre entre
6 la nécessité de préserver l'intégrité du patrimoine
7 culturel autochtone et celui de promouvoir
8 l'exploitation des ressources naturelles de la
9 province. Bref, la loi était valide entre autres
10 parce que le caractère améliorateur du régime
11 législatif provincial a beaucoup joué dans la
12 décision d'en avaliser la constitutionnalité.
13 Bref, la loi est invalide entre autres parce que le
14 caractère améliorateur du régime législatif
15 provincial a beaucoup joué dans la décision d'en
16 avaliser la constitutionnalité. Autrement dit, la
17 loi cherchait à mieux protéger le patrimoine
18 autochtone qu'il ne l'était. Elle visait à
19 améliorer la situation.

20 En somme, s'il est vrai que les peuples
21 autochtones relèvent de la compétence exclusive
22 fédérale, cela n'empêche pas que l'exercice de
23 leurs compétences exclusives, les provinces peuvent
24 accessoirement adopter des mesures législatives
25 permettant non seulement de limiter ou d'encadrer

1 raisonnablement les droits reconnus par l'article
2 5... 35 dans les limites permises par le test de
3 l'arrêt Sparrow, mais également d'accommoder et
4 d'adapter leur régime législatif à la spécificité
5 autochtone. Bref, si la loi provinciale poursuit
6 un objectif améliorateur, il y a de fortes chances
7 pour qu'elle soit jugée valide.

8 Je signale toute de suite que cet
9 assouplissement du pouvoir des provinces de
10 légiférer à l'égard des peuples autochtones est une
11 source d'inquiétude pour les peuples autochtones,
12 ceux-ci voyant toujours d'un œil suspicieux les
13 interventions législatives provinciales. Beaucoup
14 d'Autochtones ont été déçus de voir la Cour suprême
15 reconnaître cette capacité législative aux
16 provinces. Leur interlocuteur favori demeure le
17 gouvernement fédéral. En revanche, il faut bien
18 admettre que si cet assouplissement n'avait pas eu
19 lieu, le pouvoir des provinces de mettre en œuvre
20 la déclaration serait peut-être inexistant. Et il
21 y a aussi un élément de *real politics* là-dedans.
22 Je pense que la Cour suprême ne voulait pas
23 empêcher les provinces de pouvoir adopter des lois
24 sur la gestion de l'exploitation des ressources
25 naturelles sans être en mesure de pouvoir gérer les

1 droits ancestraux qui étaient de compétence
2 exclusive fédérale.

3 Autre terme, l'incorporation de la déclaration
4 en droit québécois : une loi ou des lois?
5 Plusieurs des articles de la déclaration portent
6 sur des matières relevant de la compétence des
7 provinces : la santé; l'éducation; les relations de
8 travail; l'administration de la justice, pour n'en
9 nommer que quelques-uns. Et bien sûr, au premier
10 chef, je l'ai dit encore, tout le domaine de
11 l'exploitation des ressources naturelles tirées du
12 domaine public provincial, alors toutes les
13 dispositions sur le consentement préalable, par
14 exemple. Ça vise essentiellement les provinces.
15 Il ne fait donc aucun doute que les droits reconnus
16 par ces dispositions de la Déclaration pourraient
17 faire l'objet d'une incorporation au moyen de
18 mesures législatives appropriées parce qu'elle
19 relève de la compétence exclusive de la province.
20 Il va de soi, à l'inverse, que la province n'aurait
21 pas la compétence requise pour légiférer sur des
22 matières figurant dans la Déclaration relevant de
23 la compétence exclusive du parlement fédéral en
24 matière de défense nationale, par exemple.
25 Certaines dispositions portent sur la défense

1 nationale ou de droit criminel, par exemple. Bref,
2 la mise en œuvre de l'entièreté de la Déclaration
3 requiert l'adoption de lois par les deux (2) ordres
4 de gouvernement. À moins bien sûr qu'on modifie la
5 Constitution pour l'y intégrer, et ce n'est pas
6 demain la veille.

7 Avant d'examiner s'il serait préférable
8 d'incorporer la Déclaration en droit interne au
9 moyen d'une loi qui comporterait une clause
10 d'incorporation générale ou plutôt au moyen de
11 dispositions spécifiques insérer dans plusieurs
12 lois visant des domaines circonscrits comme
13 l'éducation, la santé, l'exploitation des
14 ressources naturelles, la loi sur l'environnement,
15 je veux aborder une question qui en inquiète
16 plusieurs. Une loi fédérale ou provinciale, quelle
17 que soit sa forme, incorporant la Déclaration en
18 droit interne fédéral ou provincial aurait-elle
19 pour effet de modifier la doctrine des droits
20 ancestraux et provoquer un bouleversement
21 constitutionnel déstabilisant et dangereux comme
22 certains le prétendent? La réponse est non. Quel
23 que soit le modèle de loi qu'adopterait le Québec
24 ou le fédéral pour mettre en œuvre la Déclaration
25 en l'absence d'une modification de la Constitution,

1 une telle loi devra respecter le dictat de la Loi
2 constitutionnelle de dix-huit cent soixante-sept
3 (1867) et ceux de la Loi constitutionnelle de mille
4 neuf cent quatre-vingt-deux (1982). Une telle loi
5 demeurerait donc hiérarchiquement inférieure dans
6 l'ordre juridique canadien : c'est elle qui devra
7 être conforme à la Constitution et non l'inverse.
8 Il est tout à fait vrai que la Cour suprême
9 pourrait modifier son entendement des droits
10 ancestraux en s'inspirant de la Déclaration, mais
11 elle ne serait pas tenue de le faire par une simple
12 loi mettant en œuvre la Déclaration en droit
13 interne. Même si je suis de ceux qui pensent qu'il
14 serait souhaitable que la Cour suprême modifie
15 certains aspects nettement problématiques de sa
16 jurisprudence en s'inspirant de la Déclaration, il
17 ne fait aucun doute qu'une simple loi ne peut l'y
18 forcer. Cela dit, rien d'empêche un législateur
19 provincial ou fédéral d'accorder au moyen de lois
20 des droits aux justiciables y compris aux
21 justiciables autochtones qui seraient plus généreux
22 que ceux prévus par la Constitution. On peut par
23 simple loi aller au-delà de ce que prévoit la
24 Constitution. Par exemple, notre Charte québécoise
25 qui n'est pas formellement constitutionnelle, bien,

1 comporte un nombre bien plus grand de droits que
2 ceux qui figurent dans la Charte canadienne. Et en
3 plus de ça, elle met en place une commission qui
4 permet à des gens, à peu de frais, de voir leurs
5 droits et libertés protégés. Il n'y a pas de
6 commission avec la Charte canadienne. La Charte
7 canadienne, oui, elle est dans la Constitution,
8 mais on peut par... donc par une simple loi donner
9 plus de droits encore à quelqu'un. Donc on
10 pourrait aller au-delà de la Constitution avec une
11 loi provinciale qui intégrerait la Déclaration.

12 Cela dit, quelle forme devrait épouser une
13 telle loi au Québec? Examinons les hypothèses.
14 Examinons l'hypothèse d'une courte loi visant
15 l'incorporation en termes généraux de la
16 Déclaration, imaginons une loi fictive comportant
17 une disposition formulée comme suit : les droits
18 reconnus aux termes de la Déclaration et qui
19 relèvent de la compétence du Québec en vertu de
20 l'article 92 de la Loi constitutionnelle de dix-
21 huit cent soixante-sept (1867) ont force de loi au
22 Québec. Est-ce qu'une loi comme celle-là serait
23 jugée constitutionnelle? Il me semble que, ne se
24 rattachant pas directement à une loi provinciale
25 dont le trait dominant relève de la province, la

1 constitutionnalité d'une telle loi serait douteuse.
2 En effet, elle a pour trait dominant et principal
3 les peuples autochtones du Canada et non une
4 matière relevant avant tout des provinces. Mais je
5 dis « peut-être », parce que toute réponse
6 catégorique est impossible sur cette question-là.
7 Je répète comment je l'ai formulée, hein. C'est
8 les droits reconnus aux termes de la Déclaration et
9 qui relèvent de la compétence du Québec en vertu de
10 l'article 92 qui ont force de loi au Québec. Ce
11 serait une loi très courte qui ne viserait que ça.
12 Remarquez, qui aurait intérêt à contester une telle
13 loi? Pas les Autochtones, ils seraient contents.
14 Pas le fédéral, parce que si la province s'en
15 occupe, ils sont bien contents, puis si la province
16 l'a adoptée, personne ne la contesterait. Mais une
17 telle disposition risque fort peu d'être adoptée
18 parce qu'elle entraînerait d'innombrables litiges
19 visant à déterminer quelles dispositions de la
20 Déclaration relèvent de la compétence du Québec et
21 donc quelles dispositions sont incorporées en droit
22 québécois. Nul gouvernement n'accepterait de
23 transférer aux tribunaux sans plus de formalité le
24 pouvoir de décider une question d'une telle
25 importance. En outre, telle que rédigée, cette loi

1 fictive ne précise pas dans quelle mesure les
2 dispositions de la Déclaration doivent prévaloir
3 sur les lois existantes. Une disposition analogue
4 à l'article 52 de la Charte québécoise des lois et
5 libertés ou à l'article 2 de la Déclaration
6 canadienne des droits et libertés devrait être
7 prévue pour déterminer si et dans quelle mesure les
8 articles incorporés par la loi ont prépondérance
9 sur les autres lois québécoises. En l'absence
10 d'une telle disposition, les tribunaux hésiteront à
11 donner préséance aux dispositions de la Déclaration
12 incorporée avec d'autres lois... je veux dire, à
13 donner préséance aux dispositions de la Déclaration
14 incompatibles avec d'autres dispositions de lois
15 provinciales.

16 Deuxième hypothèse, si une telle loi formulée
17 en termes généraux enjoignait simplement les juges
18 à interpréter les lois provinciales dans le respect
19 des droits reconnus aux termes de la déclaration,
20 la situation serait différente, cette clause
21 n'étant qu'interprétative. Bien honnêtement, je
22 pense que l'article 3 du projet de loi C-262 de
23 monsieur Roméo Saganash est une disposition de
24 cette nature. Cet article prévoit la Déclaration
25 des Nations Unies sur le droit des peuples

1 autochtones, dont le texte est reproduit à
2 l'annexe, constitue un instrument universel
3 garantissant les droits internationaux de la
4 personne et trouve application au Canada.
5 L'expression « et trouve application au Canada »
6 est on ne peut plus vague. Selon moi, compte tenu
7 du fait que cette loi ne comporte pas une
8 disposition conférant primauté aux articles de la
9 Déclaration sur les autres lois fédérales, comme
10 l'article 52 de la Charte québécoise ou l'article 2
11 de la Déclaration canadienne, je doute que les
12 tribunaux canadiens élisent un mandat les
13 autorisant à déclarer inopérantes les dispositions
14 de lois fédérales irréconciliables avec la
15 Déclaration. Ils y verront tout au plus une clause
16 interprétative, mais une telle clause est loin
17 d'être inutile et peut fort bien permettre
18 d'infléchir l'interprétation actuellement donnée
19 aux lois provinciales affectant les intérêts des
20 Autochtones, mais il ne faut pas exagérer son
21 impact potentiel. Moi, je la verrais comme une
22 première étape essentielle. C'est peut-être la
23 première démarche : introduire la Déclaration à des
24 fins d'interprétation. Il faut voir les choses -
25 comme me disait un juriste éminent - comme un

1 cheminement. C'est une première loi qui pourra
2 être suivie par d'autres lois plus spécifiques. De
3 ce qui précède, il me semble qu'une loi autre que
4 simplement interprétative qui déclarerait sans plus
5 que les droits reconnus aux termes de la
6 Déclaration et qui relèvent de la compétence du
7 Québec ont force de loi au Québec. Je pense qu'une
8 telle loi, dis-je, ne permettrait pas de réaliser
9 les espoirs fondés sur elle si on pense que ça va
10 tout introduire, que ça va changer les
11 comportements des juges.

12 Il faut garder en tête que, pour des raisons
13 institutionnelles, les juges, à moins d'un mandat
14 très très clair, ne vont pas utiliser une simple
15 loi, ce que serait une loi qui introduirait la
16 Déclaration, n'utiliseront pas une loi pouvant
17 déclarer inopérante une autre. Généralement, les
18 juges vont déclarer inopérante une loi quand ils
19 interprètent une disposition constitutionnelle.
20 Parce que, la Constitution, c'est la loi
21 fondamentale du pays. Les juges vont donc plutôt
22 interpréter une loi de la nature du projet de loi
23 fédérale de monsieur Saganash ou d'une loi qui
24 dirait, comme je l'ai dit, que la... les juges
25 doivent interpréter les lois provinciales dans le

1 respect des droits reconnus aux termes de la
2 Déclaration. Ils vont l'interpréter comme ça,
3 comme une disposition interprétative.

4 J'en prends pour exemple... je prends pour
5 exemple de ce comportement des juges, je prends
6 pour exemple l'interprétation que la Cour suprême a
7 donnée à l'article 35 de la Loi constitutionnelle,
8 de la loi de mille neuf cent quatre-vingt-deux
9 (1982). Hein, je l'ai lu tout à l'heure, c'est la
10 disposition qui garantit et reconnaît les droits
11 ancestraux issus de traités. Même là, comme on va
12 le voir, même si c'était une disposition
13 constitutionnelle, les tribunaux lui ont quand même
14 donné une interprétation très restrictive. De
15 nombreux espoirs ont été fondés sur cette
16 disposition, on en attendait beaucoup. Certains
17 espéraient voir la Cour suprême y trouver le socle
18 d'un droit inhérent à l'autodétermination. La
19 Commission royale des peuples autochtones, par
20 exemple, ou à quelque chose qui ressemblait à la
21 souveraineté limitée reconnue aux nations
22 autochtones américaines. La Cour s'est plutôt
23 repliée sur une conception plutôt folklorisante, il
24 faut bien le dire, des droits ancestraux qui, comme
25 je l'ai dit tout à l'heure, limitent ceux-ci aux

1 activités et pratiques culturelles intimement liées
2 au mode de vie du groupe revendicateur avant le
3 contact avec les Européens et qui n'ont pas été le
4 fruit exclusif d'une influence européenne. C'est
5 très restrictif. Des droits plus ambitieux au
6 territoire ont également été reconnus, mais dans
7 tous les cas, la preuve à faire, et c'est une
8 preuve qui doit être faite par les Autochtones pour
9 démontrer ces droits, est extraordinairement
10 onéreuse.

11 Alors pourquoi cette approche culturaliste qui
12 fait reposer sur les peuples autochtones le fardeau
13 de prouver qu'ils occupaient le territoire avant
14 nous? Il ne fait aucun doute que cela tient au
15 fait que les juges n'ont pas jugé avoir la
16 légitimité requise pour reconnaître une
17 souveraineté politique limitée aux peuples
18 autochtones du Canada comme c'est le cas aux États-
19 Unis. Même s'ils interprétaient un texte
20 constitutionnel et non un simple texte de loi, ils
21 ont jugé ne pas être en droit de reconnaître d'un
22 simple coup de baguette magique judiciaire un
23 troisième ordre de gouvernement constitué par...
24 bien c'est ça, constitué par qui au juste? Les
25 quelques six cent trente (630) Premières Nations ou

1 les soixante (60) à quatre-vingts (80) nations
2 reconstituées? Et que dire des Métis? Qui va
3 exercer le droit à l'autonomie gouvernementale des
4 Métis?

5 Reconnaître judiciairement des droits
6 politiques par opposition à des droits culturels
7 aurait constitué une modification majeure de
8 l'ordre canadien... politique canadien. C'est aux
9 politiciens à entreprendre une telle démarche,
10 c'est là, le message envoyé par les juges. Alors
11 si les juges n'ont pas voulu voir dans la
12 Constitution la loi fondamentale du pays un
13 tremplin pour assurer la reconnaissance de droits
14 de nature politique aux peuples autochtones, il
15 faut se garder de penser qu'une simple loi
16 incorporant la Déclaration en droit interne de
17 manière générale les amènerait à changer d'avis.
18 C'est juste ça que je veux dire quand je veux dire
19 qu'il faut se garder de fonder trop d'espoir. Si
20 on a une disposition générale, elle sera
21 interprétative, ce sera important, mais il faut
22 mesurer les limites de ce qu'elle pourra produire
23 auprès de juges qui ne se sentent pas la légitimité
24 de bouleverser leur politique. Pour vraiment
25 amener les juges à changer de point de vue, les

1 politiciens devraient agir et adopter explicitement
2 de manière claire et précise des lois donnant un
3 contenu concret aux dispositions de la Déclaration.
4 Les tribunaux iront plus loin uniquement, je
5 le répète, si un mandat clair leur est confié. Une
6 loi générale incorporant en bloc la Déclaration
7 sans plus ne sera jamais considérée par eux, je
8 crois, être de cette nature. On y verra une loi
9 d'interprétation. Cela peut constituer une
10 première étape, mais qui comporte ses limites. Il
11 faudrait qu'elle soit suivie par autre chose. Si
12 on veut vraiment mettre en œuvre la Déclaration en
13 droit interne québécois, il faudra donc, selon moi,
14 intégrer les lois qui y sont énoncées dans des lois
15 provinciales d'application générale portant sur des
16 secteurs précis comme l'éducation, la langue, la
17 santé, l'administration de la justice, les
18 ressources naturelles, etc. Les dispositions de la
19 Déclaration pourront alors être intégrées
20 efficacement à un régime législatif précis et elles
21 pourront l'être avec le concours des peuples
22 autochtones. De telles dispositions précises et
23 bien intégrées aux lois auront plus de chance
24 d'accomplir leur mission qu'une incorporation
25 générale et désincarnée de la Déclaration en droit

1 interne. Confrontés à des dispositions précises,
2 les juges n'hésiteront plus à les mettre en œuvre
3 puisque ces normes bénéficieront de la légitimité
4 démocratique découlant de leur approbation par
5 l'Assemblée nationale et de la participation
6 autochtone à leur élaboration. Les juges n'auront
7 plus de scrupules à les appliquer. En outre, comme
8 je l'ai dit plus haut, les dispositions relatives
9 aux peuples autochtones dans de telles lois seront
10 greffées à des lois provinciales dont le... le
11 trait dominant : éducation; langue; etc., relèvera
12 indubitablement de la compétence de la province en
13 vertu de l'article 92. Elles seront donc jugées
14 constitutionnelles.

15 Je conclus. Je pense donc qu'il est
16 constitutionnellement possible pour une province de
17 mettre en œuvre les dispositions de la Déclaration
18 qui relèvent de son pouvoir au terme de l'article
19 92 de la Constitution... de la Loi
20 constitutionnelle de dix-huit cent soixante-sept
21 (1867), mais pour que cette incorporation aille au-
22 delà d'une injonction à ce que les juges
23 québécois... que les droits... que le droit
24 québécois, je m'excuse, soit interprété en harmonie
25 avec la Déclaration, il serait nécessaire de

1 procéder à la pièce en consultation avec les
2 Autochtones plutôt qu'au moyen d'une loi générale
3 que les tribunaux hésiteront à mettre en œuvre.

4 Bref, il faut procéder par étape. Il ne faut
5 pas en rester à l'étape 1 qui serait d'adopter -
6 mais c'est une étape importante - d'adopter une loi
7 qui encourage les juges à interpréter les lois
8 provinciales en harmonie avec la Déclaration. Mais
9 si on en reste à l'étape 1, on risque d'être
10 dans... comme je l'ai dit : *spending words instead*
11 *of money*. Il ne faut pas que le gouvernement se
12 dédouane de sa responsabilité de mettre
13 concrètement la Déclaration en œuvre au motif qu'il
14 a adopté une loi d'interprétation. Il y a bien sûr
15 des avantages, hein - je conclurai là-dessus - liés
16 à l'incorporation de la Déclaration en droit
17 interne au moyen de loi, que ce soit une loi
18 interprétative ou des lois particulières. La
19 reconnaissance de la Déclaration n'est alors pas
20 simplement politique et symbolique, elle se traduit
21 par l'adoption de mesures législatives
22 juridiquement contraignantes et cela, j'en
23 conviens, est un avantage certain.

24 Puis je veux simplement souligner, en
25 conclusion, qu'il y aura quelque chose de perdu

1 lorsque la Déclaration sera incorporée en droit
2 interne canadien et québécois. Actuellement, les
3 peuples autochtones peuvent mobiliser la
4 Déclaration comme ils l'entendent dans le débat
5 public. Ils peuvent tenter de faire prévaloir leur
6 interprétation. Mais à partir du moment où la
7 Déclaration sera incorporée en droit interne, ce
8 seront les tribunaux canadiens et québécois qui
9 auront le dernier mot sur la portée de celle-ci et
10 l'interprétation qu'ils lui donneront ne sera peut-
11 être pas au diapason des espoirs des Autochtones.
12 Je persiste à penser qu'il est important pour les
13 peuples autochtones de s'approprier la Déclaration
14 pour en faire quelque chose. Et ce qui importe le
15 plus à la réconciliation tant espérée, c'est comme
16 je le disais au début, le développement et le
17 maintien d'un esprit de fraternité. Je vous
18 remercie beaucoup de votre écoute.

19 **LE COMMISSAIRE :**

20 Merci. Avez-vous des questions?

21 **Me SÉBASTIEN BRODEUR-GIRARD :**

22 Je n'ai pas de grandes questions, en fait, je serais
23 peut-être juste curieux de vous entendre parce que
24 c'est une démarche qui est en cours. En fait, vous
25 avez déjà mentionné un peu qu'est-ce qui se fait au

1 niveau fédéral. Bon, vous avez mentionné le projet
2 de loi C-262 de monsieur Saganash, aussi les
3 différentes initiatives du gouvernement fédéral au
4 niveau des principes qui sont adoptés pour faire
5 respecter la Déclaration et du Comité de ministres
6 qui a été mis en place pour réfléchir à tout ça. On
7 sait que dans d'autres provinces, qu'il y a des
8 choses à ce niveau-là qui sont faites aussi. Et
9 bon, et on peut ajouter aussi, mentionner que la
10 Ville de Montréal et la Ville de Val-d'Or, en tant
11 que municipalités, ont fait des déclarations à ce
12 niveau-là. Donc, ce que j'ai trouvé intéressant,
13 c'est de voir cette variété que vous nous avez
14 exposée de stratégies qui peuvent être utilisées et
15 ce côté évolutif aussi, à travers tout ça, de voir
16 comment il y a une évolution. Alors peut-être, on
17 voyait comme qu'est-ce que la province peut faire,
18 mais dans cet ensemble-là, j'imagine que ça a un
19 impact de voir s'il se passe quelque chose au
20 fédéral. De suivre à ce niveau-là, peut-être vous
21 entendre un peu là-dessus, de voir comment tout ce
22 système-là peut fonctionner ensemble et avoir une
23 influence.

24 **Pr JEAN LECLAIR :**

25 Vous voulez dire si... le projet de loi de monsieur

1 Saganash ou en général?

2

3 **Me SÉBASTIEN BRODEUR-GIRARD :**

4 Oui, entre autres, mais sur ce que... sur ce qui
5 pourrait se développer au niveau du Québec
6 spécifiquement.

7 **Pr JEAN LECLAIR :**

8 O.K. Bien, c'est sûr que le Québec est en retard.
9 Il faut l'admettre, quand qu'on regarde la posture
10 de d'autres provinces, je crois que c'est au
11 Manitoba qu'ils ont un *Path to Reconciliation Act*.
12 Mais remarquez bien que toutes ces lois... toutes
13 ces démarches-là ne vont jamais au-delà, je pense,
14 d'une volonté de... même les lois qui ont été
15 adoptées, si ma mémoire est bonne, visent
16 essentiellement à soit encourager une interprétation
17 favorable à la Déclaration ou à l'établissement de
18 programmes de consultation avec les peuples
19 autochtones pour déterminer comment la Déclaration
20 sera mise en œuvre. Qu'est-ce que ça nous...
21 qu'est-ce que ça nous enseigne, ici? Pourquoi est-
22 ce qu'on n'est plus là? Pourquoi est-ce qu'on n'a
23 même pas été capable d'adopter une résolution
24 politique au Québec? Ça serait trop long à
25 investiguer, puis peut-être qu'il y a des gens plus

1 compétents que moi qui pourraient le faire, mais ce
2 que je dirais, ce que j'observe dans la dynamique
3 autochtone, là, depuis que je m'intéresse à ça, ça
4 fait quelques années maintenant, c'est qu'on est
5 bien plus loin aujourd'hui que là où on était en
6 mille neuf cent quatre-vingt-deux (1982). La
7 question autochtone, elle est... En fait, si vous
8 lisez les journaux anglophones, il n'y a pas une
9 journée, je pense, que les journaux anglophones n'en
10 parlent pas. La Presse en parle aussi beaucoup. La
11 Presse, j'entends le journal La Presse. C'est moins
12 fréquent au Québec qu'on en entend parler, mais les
13 Autochtones sont plus présents et la société civile
14 autochtone est dynamique. Et je pense que, ce qui
15 va se produire, c'est qu'il y a un mouvement. On
16 voit toutes les provinces se positionnent sur ces
17 questions-là, les politiciens ne peuvent plus être
18 indifférents par rapport à ça et je pense que la
19 Cour suprême, dans les limites de ce qu'elle pouvait
20 faire - comme je l'ai dit, dans les limites de ce
21 que les juges pouvaient estimer légitime de faire -
22 la Cour suprême, quand on regarde la jurisprudence,
23 elle ne pouvait pas reconnaître les peuples
24 autochtones comme un troisième ordre de
25 gouvernement, mais elle a développé la doctrine qui

1 est très au diapason de la Déclaration du devoir de
2 consulter les Autochtones. Et même dans l'affaire
3 Tsilhqot'in, elle a... en deux mille quatorze
4 (2014), une affaire très importante, elle a évoqué
5 qu'il fallait commencer par tenter d'obtenir le
6 consentement.

7 Autrement dit, la Cour serre la vis
8 constamment de plus en plus, d'une manière qui est
9 typique des tribunaux de *common law*. On ne fait pas
10 ça par grande révolution, on le fait petit à petit.
11 Et je pense que ce mouvement d'étau dans lequel la
12 Cour suprême est après placer les gouvernements
13 fédéral et provinciaux va contribuer à encourager
14 les... les gouvernements à changer de posture.
15 Prenons ici ce que le discours de... du premier
16 ministre Trudeau la semaine dernière. On lui a
17 reproché de tenir encore un discours purement
18 rhétorique, mais en même temps, vous savez, et
19 monsieur Deer pourra en parler, la Déclaration elle-
20 même a mis trente (30) ans pratiquement à être
21 élaborée. On a vécu dans un régime de colonialisme
22 pendant plusieurs siècles. En même temps, nos vies
23 sont complètement entremêlées avec celles des
24 Autochtones. Ce n'est pas vrai qu'il y a une
25 distance. Et reconstruire cette relation qui n'a

1 pas toujours été brisée, mais qui l'a souvent été,
2 puis ça va être une tâche extrêmement grande. Et
3 pour répondre enfin, le plus intelligemment à votre
4 question, je pense que certaines provinces vont
5 aller plus vite que d'autres, je crois qu'il va y
6 avoir une émulation sur ces questions-là, je pense
7 que les Autochtones eux-mêmes, comme si... comme je
8 l'ai dit en plus, ils s'approprient la Déclaration.
9 S'il y a un mouvement civique en faveur, ça va
10 fonctionner. S'il faut toujours recourir aux
11 tribunaux, bien ça va être malheureux, ça va être
12 long. Et je pense que ce que le premier ministre
13 Trudeau - je terminerai là-dessus, là, je parle un
14 peu trop longtemps - le premier ministre Trudeau
15 envoyait comme idée, puis l'idée est très bonne,
16 c'est changer la mentalité de confrontation. Vous
17 savez, on a des droits ancestraux enchâssés dans la
18 Constitution depuis dix-neuf cent quatre-vingt-deux
19 (1982), mais en cour, les gouvernements luttent au
20 coude à coude pour nier ces droits-là. Alors ces
21 droits-là ont été générés dans un climat d'extrême
22 confrontation. Si on faisait juste basculer la
23 posture pour, par exemple, reconnaître que oui, il y
24 avait des Autochtones, bien, oui, qui chassaient
25 pour se nourrir avant le contact avec les Européens.

1 Est-ce qu'il faut tout... est-ce qu'il faut que
2 toutes les nations du Canada prouvent ça à coup de
3 millions? Bien si on change ça, il va y avoir
4 quelque chose de nouveau.

5 **Me SÉBASTIEN BRODEUR-GIRARD :**

6 Merci. On n'a pas d'autres questions.

7 **LE COMMISSAIRE :**

8 Pas d'autres questions? Me Marie-Paule Boucher, Me
9 Denise Robillard?

10 **Me MARIE-PAULE BOUCHER :**

11 Pas de question, Monsieur le Commissaire, merci.

12 **LE COMMISSAIRE :**

13 Vous n'avez pas de question?

14 **Me MARIE-PAULE BOUCHER :**

15 Non.

16 **LE COMMISSAIRE :**

17 Et bien.

18 **Pr JEAN LECLAIR :**

19 C'est inquiétant.

20 **LE COMMISSAIRE :**

21 Bien oui. On a pourtant quelqu'un qui s'y
22 connaît... qui s'y connaît en matière de
23 constitution. Est-ce que, Professeur Leclair,
24 évidemment, on parle de questions
25 constitutionnelles, ce n'est pas simple, même pour

1 des juristes, ce n'est pas simple. Est-ce que...
2 On a parfois l'impression que, dans la population en
3 général, les réalités autochtones sont méconnues.
4 Je ne dirais pas « pas connues », je vais dire
5 méconnues parce que, bien souvent, c'est préférable
6 de ne pas connaître que de mal connaître. Quant aux
7 questions constitutionnelles, bien, si les juristes
8 eux-mêmes ont de la difficulté avec ça, je pense
9 bien que vous allez être d'accord avec moi que, dans
10 la population en général, c'est un aspect qui est
11 loin... très loin d'être connu. Et quand qu'on
12 arrive avec la Déclaration des Nations Unies sur les
13 droits des peuples autochtones, est-ce que vous avez
14 l'impression que des efforts devraient être faits
15 pour informer la population, pour préparer le
16 terrain, pour semer si on veut récolter un jour? Et
17 comment on pourrait le faire?

18 **Pr JEAN LECLAIR :**

19 Écoutez, c'est comment faire fonctionner une
20 démocratie où les politiciens ont cinq (5) secondes
21 pour s'exprimer aussi, ils sont dans une position
22 très difficile. C'est sûr que c'est des questions
23 complexes et les gens, c'est assez normal, veulent
24 des solutions simples, mais le plus grand danger, en
25 fait, c'est de tomber dans le simplisme, c'est de

1 tomber dans l'essentialisme culturel, c'est de
2 peindre tous les Autochtones comme s'ils étaient
3 identiques les uns des autres. Je connais des
4 Autochtones qui sont sympathiques, d'autres qui ne
5 le sont pas, comme des non-Autochtones, c'est la
6 même chose. En même temps, je pense que ce qu'il
7 faut au moins faire comprendre à la population,
8 c'est que le rapport de pouvoir est défavorable aux
9 Autochtones. Et il est normal pour eux qu'ils se
10 servent des instruments qui sont à leurs
11 dispositions puisque les politiciens ne sont souvent
12 pas à l'écoute. Puis je ne veux pas accuser tous
13 les politiciens, il y en a qui font des efforts, je
14 connais des bureaucrates qui font pleins d'efforts
15 aussi, mais les Autochtones se retrouvent à
16 mobiliser des droits devant les tribunaux et ils
17 donnent l'impression eux-mêmes d'être dans une
18 posture de confrontation. Et il y a aussi, je
19 pense, je vais le dire franchement, je trouve qu'il
20 y a des Autochtones qui réduisent la complexité du
21 problème aussi, ils présentent les choses d'une
22 manière très manichéenne, alors... Et ça, c'est...
23 Vous savez, le discours des droits, c'est un
24 discours qui donne l'impression d'une confrontation.
25 Je pense que ce qui est difficile, les droits du

1 Québec, les droits des Autochtones, etc., et je
2 pense qu'en droit constitutionnel, notre tâche,
3 c'est de faire réaliser aux gens que, derrière les
4 mots droits, derrière les mots souveraineté, il y a
5 essentiellement une relation. Un droit existe dans
6 la mesure où vous tolérez, vous acceptez une
7 distance, vous acceptez mon autonomie. Mon
8 autonomie n'existe que parce qu'elle existe en
9 rapport à vous. La souveraineté, ce n'est pas comme
10 une table, une chose qu'on déplace. La
11 souveraineté, c'est un rapport du gouvernement avec
12 la population. Donc si on réalise qu'on est en
13 relation entre nous même quand on invoque des
14 notions de droit, même quand on invoque des notions
15 de souveraineté, bien, peut-être qu'on va bâtir des
16 ponts. Mais si on réfléchit uniquement dans une
17 logique confrontationnelle où mes droits sont
18 présentés comme un absolu, où ma souveraineté est
19 présentée comme un absolu, bien, on ne s'en sortira
20 pas. Et ça, je pense que les... Si les gens, si
21 nos politiciens faisaient aveu de complexité et
22 disaient : « Écoutez, c'est compliqué, là, puis je
23 ne vous donnerai pas la réponse tout de suite ». Et
24 puis on ne peut pas détricoter en quelques semaines
25 des choses qui sont extrêmement complexes. Je

1 comprends les Autochtones d'être courroucés
2 d'attendre encore, mais je pense qu'eux-mêmes, ils
3 réalisent qu'il faut qu'on ait des discussions,
4 qu'on soit à l'écoute de leur besoin, mais que s'il
5 n'y a pas de discussion, les solutions vont être...
6 vont être maladroites.

7 **LE COMMISSAIRE :**

8 J'ai compris de vos propos que, évidemment, que
9 c'est complexe. J'ai compris que vous parliez
10 d'étapes, qu'il y a des choses qui pouvaient être
11 faites plus facilement que d'autres et de... tout en
12 respectant les ordres de gouvernement. Évidemment,
13 les juridictions de l'article 91, l'article 92, les
14 juridictions qui pourraient s'imbriquer les unes les
15 autres qui demanderaient une collaboration. Dans le
16 fond...

17 **Pr JEAN LECLAIR :**

18 Oui.

19 **LE COMMISSAIRE :**

20 ... on se retrouve à avoir trois (3), si on veut,
21 trois (3) niveaux. J'ai compris que vous parliez
22 d'une adoption ou d'une reconnaissance qui pourrait
23 servir de mesure d'interprétation et non pas de
24 *binding*, que ça serait déjà une étape.

25 **Pr JEAN LECLAIR :**

1 Je... Oui.

2 **LE COMMISSAIRE :**

3 Par la suite, évidemment, chaque ordre de
4 gouvernement dans les domaines qui lui sont
5 spécifiques pourrait agir dans ce sens-là.

6 **Pr JEAN LECLAIR :**

7 Oui. Mais, en fait...

8 **LE COMMISSAIRE :**

9 J'ai trouvé ça intéressant parce que, évidemment,
10 nous sommes tous conscients que personne... En tout
11 cas, je ne connais personne qui est détenteur d'une
12 baguette magique qui peut changer des choses
13 simultanément ou en quelque... en deux temps trois
14 mouvements, mais est-ce que vous pensez... Qu'est-
15 ce que vous pensez que pourrait être la première
16 étape et comment ça pourrait se faire? Évidemment,
17 nous, nous sommes une commission provinciale avec un
18 mandat provincial qui cherchons ce qui se passe en
19 ce qui concerne six (6) services publics, tout en
20 étant conscient qu'il y a un gouvernement qui... et
21 une Assemblée nationale qui chapeautent tous ces
22 services-là, et essayons de voir où sont les
23 difficultés, comment on peut réconcilier ce qui
24 était concilié et qui ne l'est plus ou concilier ce
25 qui ne l'a jamais été dans les relations entre les

1 Autochtones et ces services publics là. Qu'est-ce
2 que vous pourriez voir comme point de départ,
3 toujours dans cet aspect de Déclaration des droits
4 des peuples autochtones, qu'est-ce que qui pourrait
5 être fait, quels pourraient être les premiers pas?

6 **Pr JEAN LECLAIR :**

7 Bien, écoutez, je ne veux pas parler pour les
8 Autochtones, alors c'est pour ça que je voulais vous
9 exposer les moyens qui pourraient être mis en œuvre,
10 mais sans être autochtone. Le peu que j'en connais,
11 ce qu'ils estiment beaucoup c'est l'établissement
12 d'une relation de confiance. Et je pense que quoi
13 que fasse le gouvernement, dans la mesure où ça sera
14 une mesure qui va être sentie, qui va être... qui va
15 témoigner d'un engagement véritable et là je... on a
16 la latitude devant ce qui peut être fait, je pense
17 que c'est ça aussi que les Autochtones cherchent à
18 établir : une relation de confiance véritablement,
19 sur la base de laquelle on pourra, même si c'est
20 long, même si c'est pénible, découvrir des
21 solutions. Je pense aussi qu'il va falloir qu'on
22 sorte d'une perception qui est encore paternaliste à
23 l'égard des Autochtones. Ce que je voulais dire en
24 disant : « Les Autochtones devraient s'approprier la
25 Déclaration ». Ils sont capables de faire des

1 choses et je pense qu'il faut accepter qu'il va y
2 avoir des succès, il faut accepter qu'il va y avoir
3 des échecs. Et c'est normal, comme n'importe
4 quelle... n'importe quelle société, le Québec a
5 fonctionné aussi comme ça, il y a des choses qui ont
6 fonctionné, d'autres pas. Et... Mais je suis un
7 peu mal à l'aise de répondre à vos questions, c'est
8 un peu en dehors de mon domaine.

9 **LE COMMISSAIRE :**

10 (Inaudible), on cherche, on essaie d'explorer ayant
11 à l'esprit quand Roméo Saganash, qui est le parrain
12 du *bill* C-262 est venu témoigner à Val-d'Or, je me
13 souviens très bien qu'à l'issue de son témoignage,
14 il m'avait dit : « Monsieur le Commissaire, je n'ai
15 pas l'intention de vous déposer une pièce à
16 conviction, mais plutôt une pièce à réconciliation »
17 , en déposant son projet de loi.

18 **Pr JEAN LECLAIR :**

19 Mais je pense que c'est ça, il y a la dimension
20 symbolique d'un projet de loi qui est très
21 important, qui est très importante, cette dimension-
22 là, mais quand on utilise le droit... Bien moi, je
23 suis ici comme juriste. Le droit, c'est une
24 discipline. Le droit, qu'on le veuille ou non,
25 quand on choisi une forme juridique plutôt qu'une

1 autre, ça a des conséquences, ça induit des
2 comportements. Parfois ça a une force
3 contraignante, parfois pas. Alors oui, on peut se
4 servir du droit comme symbole de réconciliation,
5 mais en même temps, tout ce que je voulais dire,
6 c'est que le droit est ce qu'il est. Ce n'est pas
7 juste un symbole, il s'inscrit aussi dans une
8 hiérarchie normative, puis une loi, bien ce n'est
9 pas la Constitution. Puis une loi qui ne dit pas
10 qu'elle prévaut sur les autres, bien, elle ne
11 prévaudra pas sur les autres. Puis si les gens
12 s'attendent à ce que le droit produise de la réalité
13 sociale, produise du changement à lui seul, bien je
14 trouverais ça malheureux. C'est pour ça que je
15 voulais être clair ce matin.

16 **LE COMMISSAIRE :**

17 J'ai compris aussi dans vos propos que l'opinion
18 publique, qu'un changement devait s'opérer dans
19 l'opinion publique aussi pour améliorer les
20 relations.

21 **Pr JEAN LECLAIR :**

22 Oui, mais écoutez, Me Sébastien Brodeur-Girard
23 mentionnait la résolution adoptée par le conseil
24 municipal de Val-d'Or...

25 **LE COMMISSAIRE :**

1 Montréal.

2 **Pr JEAN LECLAIR :**

3 C'est des gestes comme ça. Hein, parce que vous
4 savez, il y a tout le discours de discours de nation
5 à nation, je veux bien, mais en même temps, ils sont
6 nos voisins les... T'sais, ce n'est pas le
7 gouverneur général, là, qui est le voisin des
8 Autochtones, c'est quand même les gens qui sont
9 autour. Ça aussi, ça fait partie de la donne. Il
10 faut que tout le monde comprenne ça, Autochtones et
11 non-Autochtones. Et j'en ai assez dit, là.

12 **LE COMMISSAIRE :**

13 Est-ce qu'il y en a qui ont des questions? Non?
14 Alors, ça va m'amener à vous dire merci. Vous
15 remercier d'avoir accepté notre invitation à venir
16 nous expliquer des situations ou un contexte qui est
17 quand même complexe, très complexe, qui ne fait
18 peut-être pas l'unanimité, non plus. Évidemment,
19 toutes les questions de droit constitutionnel, les
20 ordres de gouvernement, les juridictions en vertu de
21 l'acte de dix-huit cent soixante-sept (1867), la Loi
22 constitutionnelle de dix-neuf cent quatre-vingt-deux
23 (1982), les décisions de la Cour suprême, le
24 cheminement. Alors, évidemment, on arrive avec une
25 déclaration adoptée dans un ordre international que

1 plusieurs voudraient voir incorporée ou adoptée,
2 dans un sens, ou reconnue et ensuite incorporée dans
3 notre droit, c'est une complexité qui nécessite d'y
4 penser, mais qui amène peut-être à y réfléchir et
5 peut-être que ceux qui ont à voter les lois, je
6 pense à l'Assemblée nationale, peuvent se pencher
7 sur cette question-là, l'examiner, voir ce qui peut
8 être fait. Et je le vois toujours, moi, dans un
9 aspect de geste de réconciliation. Il y a des
10 signes parfois qui peuvent être donnés et nous, on
11 est concernés par les services publics. Mais les
12 services publics, ils ne sortent pas... l'expression
13 que j'utilise des fois, ça ne sort pas d'une feuille
14 de chou, là : il y a un gouvernement, il y a une
15 Assemblée nationale qui est au-dessus de tout ça.
16 Alors, on peut inviter les gens à réfléchir à ces
17 questions-là.

18 **Pr JEAN LECLAIR :**

19 Mais vous savez, c'est drôle. Excusez-moi. Je vous
20 écoute, puis je me dis : au Québec le mot
21 « fédéralisme », ce n'est pas un mot intéressant.
22 Mais au fond, ce que soulève la question de la mise
23 en œuvre de la Déclaration au Québec : c'est un
24 problème fédéral. Qu'est-ce que c'est, le
25 fédéralisme? C'est de réconcilier l'autonomie des

1 parties avec l'unité du tout. On a onze (11)
2 nations sur le territoire du Québec.

3 **LE COMMISSAIRE :**

4 Cinquante-cinq (55) communautés.

5 **Pr JEAN LECLAIR :**

6 Qui font à la fois partie de la communauté
7 québécoise, puis qui veulent... qui ont un désir
8 d'autonomie, mais il me semble que, comme québécois,
9 on devrait être assez sensible à ça. Et pas
10 nécessairement opposer aux Autochtones l'argument
11 d'égalité formelle que le reste du Canada oppose
12 tout le temps aux revendications du Québec. Je
13 pense que c'est ça, un esprit fédéral. C'est qu'il
14 faudrait aborder ça dans l'idée que les Autochtones
15 désirent une part d'autonomie, pas sur tout comme
16 dans le fédéraliste, mais sur certaines choses et
17 ils veulent participer au tout, exactement comme les
18 provinces le veulent dans l'État canadien.

19 **LE COMMISSAIRE :**

20 Alors, merci beaucoup.

21 **Pr JEAN LECLAIR :**

22 (Inaudible). Merci.

23 **LE COMMISSAIRE :**

24 Est-ce que... Nous allons suspendre, évidemment.

25 Maintenant, est-ce qu'on reprend un peu plus...

1 **Me CHRISTIAN LEBLANC :**

2 (Inaudible).

3 **LE COMMISSAIRE :**

4 ... tard ce matin ou si ça va à cet après-midi?

5 **Me CHRISTIAN LEBLANC :**

6 Ça irait à cet après-midi, mais on a une pièce à
7 déposer.

8 **LE COMMISSAIRE :**

9 Vous avez une pièce à déposer? Alors je vais vous
10 laisser aller.

11 **Me SÉBASTIEN BRODEUR-GIRARD :**

12 Donc, oui. Donc le document écrit par Jean Leclair
13 et Michel Morin intitulé : « Peuples autochtones et
14 droit constitutionnel », publié dans le
15 JurisClasseur du Québec, qui sera déposé devant la
16 Commission.

17 **LA GREFFIÈRE :**

18 Alors ce sera la pièce 415.

19 - PIÈCE COTÉE P-415 -

20 **Pr JEAN LECLAIR :**

21 Me Sébastien Brodeur-Girard, c'est juste pour vous
22 dire qu'il y en a une version un peu plus récente
23 qui vient de sortir, la version de deux mille dix-
24 sept (2017) dans le JurisClasseur. Je ne l'ai pas,
25 mais en tout cas, si jamais... Ce n'est pas... Il

1 n'y a pas des gros changements parce que c'est mis à
2 jour à chaque année, ce texte-là. Alors...

3 **LE COMMISSAIRE :**

4 Alors peut-être pourriez-vous nous le faire
5 parvenir...

6 **Pr JEAN LECLAIR :**

7 Oui, O.K.

8 **LE COMMISSAIRE :**

9 ... et on le remplacera tout simplement sous la même
10 cote.

11 **Pr JEAN LECLAIR :**

12 Désolé.

13 **LE COMMISSAIRE :**

14 Parfait. Ça va? Merci beaucoup, merci encore.

15 **Pr JEAN LECLAIR :**

16 Bien, merci.

17 **LE COMMISSAIRE :**

18 Alors on va ajourner à quoi? Une heure trente
19 (13 h 30)?

20 **Me SÉBASTIEN BRODEUR-GIRARD :**

21 (Inaudible).

22 **LE COMMISSAIRE :**

23 Alors, très bien. Alors je vous souhaite une bonne
24 fin d'avant-midi et à cet après-midi.

25 **LA GREFFIÈRE :**

1 Suspension des audiences jusqu'à une heure trente
2 (13 h 30).
3
4 SUSPENSION
5 -----

1 **LA GREFFIÈRE-AUDIENCIÈRE :**

2 La Commission reprend ses audiences.

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

4 Alors bonjour, bienvenue cet après-midi pour la
5 suite des audiences.

6 Je comprends, Me Leblanc, que vous continuez
7 avec Me Brodeur-Girard cet après-midi?

8 **Me CHRISTIAN LEBLANC**

9 **PROCUREUR EN CHEF :**

10 En fait, oui. C'est Me Brodeur-Girard qui continue
11 et moi qui l'accompagne.

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

13 Ah bon. Alors vous allez nous présenter notre
14 prochain témoin? In French or English? I guess, I
15 understand the next witness will testify in English?

16 **Me PAUL JOFFE :**

17 Speaking French is fine with me.

18 **Me SÉBASTIEN BRODEUR-GIRARD :**

19 Si ça vous dérange pas, je vais faire la
20 présentation en français...

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

22 Oui.

23 **Me SÉBASTIEN BRODEUR-GIRARD :**

24 ... and you can switch in English after that.

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

1 Okay.

2 **Me SÉBASTIEN BRODEUR-GIRARD :**

3 We have no problem.

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

5 Et il sera pas nécessaire de l'assermenter, il est
6 membre du Barreau, il va témoigner sous son serment
7 d'office.

8 **Me SÉBASTIEN BRODEUR-GIRARD :**

9 Donc, Me Paul Joffe est avocat spécialisé en droit
10 constitutionnel et en droit international, avec une
11 riche expérience reliée aux enjeux autochtones. Il
12 a notamment participé aux négociations de la
13 Déclaration des Nations Unies sur les droits des
14 Peuples autochtones dès mille neuf cent quatre-
15 vingt-quatre (1984) et a suivi de près tous les
16 développements, les discussions ainsi que sa mise en
17 œuvre dans plusieurs pays.

18 Il a rédigé plusieurs articles reliés à
19 l'application de la Déclaration au niveau
20 international et canadien, et donc son témoignage va
21 nous parler aujourd'hui, je crois, principalement
22 sur la portée et l'application de la Déclaration
23 justement, au Canada et au Québec.

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

25 Alors Me Joffe, il me fait plaisir de vous

1 accueillir à la Commission. Nous allons vous
2 écouter avec beaucoup d'intérêt.

3 **M. PAUL JOFFE :**

4 Merci.

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1 Me Paul Joffe
2 Assermenté (serment d'office)
3 -----

4 **Me PAUL JOFFE :**

5 I'd like to begin this presentation for... by
6 thanking the Commission for this invitation. And I
7 would like to mention that, in order to be sure to
8 have enough time for a discussion, I've taken out
9 thirteen (13) of the seventy (70) odd slides. So
10 it'll be... But I haven't taken out hopefully
11 anything that's important.

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

13 Ah.

14 **Me PAUL JOFFE :**

15 Or essential. So I'd like to begin with four (4)
16 quotes that are important themes in my presentation:

17 "There are thousands of different cultures
18 and languages in the different regions of
19 the world. However, as a former UN
20 Secretary General, underlying the nineteen
21 ninety-three (1993) Human Rights
22 constitute the common language of
23 humanity."

24 This was the language that was used to discuss
25 and negotiate the UN Declaration at the United

1 Nations for over twenty (20) years.

2 Now in regard to the second quote, we have here
3 the rule or principle of substantive equality, and
4 it affirms that:

5 "Indigenous Peoples are equal to all other
6 peoples, while recognizing their right to
7 be different and to be respected as such."

8 Now the third quote is from the UN Declaration,
9 it's the seventh preambular paragraph and it
10 recognizes that:

11 "Indigenous Peoples' rights are inherent
12 or pre-existing, and they derive from
13 their own institutions, cultures,
14 spirituality, philosophies and lands,
15 territories and resources".

16 In other words, the UN Declaration does not
17 create any new rights, it elaborates on pre-existing
18 rights.

19 And I have a reference to this statement about
20 "no new rights", if you need additional authorities,
21 and it's my article that's in my Table of
22 Authorities at slide 54, and it's entitled "UN
23 Declaration on the Rights of Indigenous Peoples,
24 Canadian Government Positions Are Incompatible with
25 Genuine Reconciliation."

1 And this point about the UN Declaration not
2 creating any new rights is at page 124 of that
3 article, footnote 4. And, in the future I'll just
4 refer to it as my "MJCL article" to keep it shorter.
5 Okay. Thank you.

6 Now, the fourth quote is from the Minister of
7 Indigenous and Northern Affairs that the UN
8 Permanent Forum on Indigenous Issues in New York,
9 and it was in May twenty sixteen (2016), and the
10 Minister talks about reconciliation and she adds:

11 "It's about writing historical wrongs."

12 And the Minister then said:

13 "It's about shedding our colonial past,
14 that once you know the truth, you cannot
15 unknow the truth."

16 So Canada and Quebec, in my view, must
17 repudiate colonialism.

18 And at the bottom of the slide, I refer to the
19 valuable study on judicialization of homelessness in
20 Val-d'Or, and, at page 13, the authors explicitly
21 highlight the effects of colonialism in that
22 context.

23 So here are the topics that I'll address today.

24 The first two (2) topics will provide a context
25 for discussing the significance of the UN

1 Declaration number 3, and also number 4 which is the
2 framework for reconciliation, and that one will
3 relate to the Truth and Reconciliation Commission's:
4 Calls to Action.

5 And then we'll examine briefly examples of
6 implementation of the UN Declaration, and then touch
7 on the situation in Val-d'Or, and related rights and
8 obligations concerning health and well-being.

9 And we'll finish by looking at sustainable
10 development, poverty and human rights, and then
11 consent in Canadian and international law.

12 So, by way of introduction, there are over
13 three hundred and seventy million (370 M) Indigenous
14 People in over seventy (70) countries - and again,
15 that's in my MJCL article, at page 129.

16 Increasingly, Indigenous Peoples represent
17 themselves in international standard setting
18 processes such as at the UN. So one may ask the
19 question: why do Indigenous Peoples go to the United
20 Nations. And I would suggest three (3) key reasons.

21 First: to seek justice and combat
22 discrimination and dispossession in their own
23 countries.

24 Second: to develop new international standards
25 that reflect their own perspectives, values and law.

1 And third: it's to transcend the box of
2 domestic law, which is too often too confining.

3 So today, virtually, every major issue relating
4 to Indigenous Peoples is addressed in some way at
5 the international level. And in my experience it
6 includes human rights, sustainable development, food
7 security, bio-diversity, climate change and
8 intellectual property.

9 So let's begin with the role of international
10 human rights law in Canada.

11 And this is a quote from the two thousand and
12 twelve (2012) - you see it at the bottom of the
13 screen:

14 "Declaration of the High-level Meeting of
15 the General Assembly on the Rule of Law at
16 the National and International Levels".

17 And it says that this Declaration reaffirms
18 that human rights, the rule of law and democracy are
19 interlinked and mutually reinforcing. So when one
20 of these elements are undermined, the other two (2)
21 are also significantly affected.

22 And I just want to mention. At the bottom of
23 the screen, in the reference, it says, "Adopted
24 without vote." And whenever you see that, that
25 means that instrument, internationally was adopted

1 by consensus and there was generally no vote. There
2 still could be a vote and there still could be
3 consensus, but usually that means: no vote.

4 So, the former Chief Justice, Beverly
5 McLaughlin of the Supreme Court of Canada, who
6 recently retired, affirmed, back in two thousand and
7 two (2002):

8 "Aboriginal rights, from the beginning,
9 have been shaped by international
10 concepts. Canada cannot ignore new
11 international norms and Aboriginal rights
12 are an international matter".

13 In two thousand and twelve (2012), the Federal
14 Court of Canada ruled that:

15 "The UN Declaration and other
16 international human rights instruments,
17 such as the Convention on the rights of
18 the child, may be used to interpret
19 domestic human rights law."

20 And you'll see, in that reference, for the
21 first quote, "R. v. Sayers." It's a decision from
22 the Ontario Court of Justice in twenty seventeen
23 (2017), I put it in because there are numerous
24 articles, in the UN Declaration, cited by the Court
25 as having significance, as well as the Truth and

1 Reconciliation Commission: Calls to Action.

2 Now in the bottom quote, this is... was in
3 February two thousand eighteen (2018) - so just
4 earlier this month, I think it was February first
5 (1st) - the Canadian Human Rights Tribunal, that is
6 still dealing with the same case, which involves
7 Indigenous children and discrimination in terms of
8 funding for First Nations' children on Reserve, the
9 Court ruled... the Tribunal ruled of:

10 "(...) particular significance, especially
11 in this case, is the UN Declaration."

12 And I put, for your convenience, in that
13 reference, the paragraphs, in that decision, where
14 numerous articles of the UN Declaration are cited
15 and relied upon by the Court.

16 So we can see from these cases already, that
17 the UN Declaration has legal effect. It is not just
18 aspirational.

19 Now, in this nineteen eighty-seven (1987)
20 decision, the former Chief Justice Bryan Dixon of
21 the Supreme Court of Canada, ruled that:

22 "Declarations and other international
23 human rights instruments are...

24 ... and it's bolted on the screen, "relevant
25 and persuasive sources for interpretation of the

1 Canadian Charter's provisions."

2 So if international declarations are used to
3 interpret human rights in Part 1 of the Constitution
4 Act nineteen eighty-two (1982), then the same must
5 be true for Indigenous Peoples' human rights in Part
6 2, Section 35.

7 Now, another rule of interpretation by the
8 Supreme Court, which is relevant here, is from R. v.
9 [Haypen], two thousand and seven (2007). And the
10 Court said that:

11 "Legislation in Canada will be presumed to
12 conform to international law. Courts will
13 strive to avoid interpretations of
14 domestic law, that would be in violation
15 of Canada's international obligations,
16 unless the wording of the statute clearly
17 compels that result."

18 And as we shall see later, a key international
19 obligation of Canada is to promote and respect the
20 human right of Indigenous Peoples to self-
21 determination.

22 Now, in Reference, [re:] Secession of Québec,
23 the Supreme Court of Canada ruled, in nineteen
24 ninety-eight (1998):

25 "With the adoption of the Canadian Charter...

1 - which is in Part 1 of the Constitution Act,
2 nineteen eighty-two (1982) -...

3 ... the Canadian system of government was
4 transformed to a significant extent from a
5 system of parliamentary supremacy to one
6 of constitutional supremacy. In other
7 words, human rights in the Canadian
8 Charter serve to limit the powers of
9 federal and provincial governments.
10 Similarly, Aboriginal and treaty rights,
11 in Part 2 of the same act, must also limit
12 the powers of federal and provincial
13 governments."

14 Now let's consider the related issue, namely
15 that Indigenous Peoples' collective rights are human
16 rights.

17 In two thousand seven (2007), when the UN Human
18 Rights Council adopted a major reform of the UN
19 Human Rights system, the UN... the Human Rights
20 Council affirmed, in this resolution - which is
21 resolution 5/1 in June two thousand and seven
22 (2007) - that:

23 "The promotion and protection of all human
24 rights includes...

25 - and you see at the bottom of the three (3)

1 dashes -

2 ... the rights of peoples and specific
3 groups, as well as individuals."

4 Thus, the collective rights of Indigenous
5 Peoples are permanently confirmed to be human rights
6 in the UN system.

7 Now, here we have a system-wide action plan, as
8 is mentioned in the reference at the bottom, for
9 implementing the UN Declaration throughout the
10 United Nations. And as indicated at the top of the
11 slide:

12 "Indigenous Peoples issues are addressed
13 through a human rights-based approach."

14 And if we look at the second quotation, they
15 elaborate:

16 "Generally, under a human rights-based
17 approach...

18 - so they're explaining what that would include -
19 ... the plan's policies and processes of
20 development are anchored in a system of
21 rights and corresponding obligations
22 established by international law."

23 This again demonstrates that the UN Declaration
24 is not merely aspirational and has legal effects
25 throughout the United Nations.

1 Now in *Tsilhqot'in Nation v. British Columbia*,
2 the Supreme Court ruled in twenty fourteen (2014),
3 that:

4 "Parts 1 and 2 of the Constitution Act
5 nineteen eighty-two (1982) are sister
6 provisions, both operating to limit
7 government powers, whether federal or
8 provincial."

9 And at the bottom of the slide is article 1 of
10 the UN Declaration, which affirms:

11 "Indigenous Peoples have the right to the
12 full enjoyment, as a collective or as
13 individuals, of all human rights as
14 recognize in the UN Charter and
15 international human rights law."

16 Now in two thousand eight (2008), the Canadian
17 Human Rights Commission highlighted in its report
18 that:

19 "Human rights have a dual nature, both
20 collective and individual human rights
21 must be protected."

22 And the challenge, they say at the end of the
23 quote, is:

24 "To find an appropriate way to ensure
25 respect for both types of rights without

1 diminishing either.”

2 Now in Canada’s twenty thirteen (2013) Court
3 document - they only have Court documents every five
4 (5) years or so, they might change them a little -
5 Court document is... it forms part of Canada’s
6 reports to all UN treaty bodies. So even if you go
7 to a new treaty body, this Court document
8 automatically goes to whatever subject you bring up
9 as a government. And you can see that Aboriginal
10 and treaty rights are included under heading 3(b),
11 which on the slide says:

12 “Legal framework for protecting human
13 rights at the domestic level.”

14 And they underlined explicitly... - or maybe I
15 underlined, probably it was me - the rights, which
16 are collective in nature, called “Aboriginal” and
17 “treaty rights”.

18 Therefore, Canada is officially recognizing
19 that Aboriginal and treaty rights, in Section 35,
20 are part of the domestic legal framework for
21 protecting human rights.

22 So let’s now consider the significance of the
23 UN Declaration.

24 For more than two decades of negotiations - on
25 that point, I just want to highlight again my MJCL

1 article, and it talks about it at page 165, note 250
2 - 2-5-0.

3 And to my knowledge, the UN Declaration is the
4 longest negotiated human rights instrument in UN
5 history. During that time, Canada was an active
6 participant, and for the first time in UN history,
7 the rights holders, namely Indigenous Peoples,
8 participated actively, along with states, in
9 negotiating and crafting the UN Declaration. So
10 that was a big change in the UN system.

11 Now, the Declaration, the original version was
12 adopted by the UN Human Rights Council - and I've
13 given you that reference, under slide 21 - and only
14 two (2) of the forty-seven (47) Human Rights Council
15 members objected to the UN Declaration, and those
16 were Canada and Russia - and that's in my MJCL
17 article at page 126.

18 And you have the amended version of the...
19 which was finally adopted by the General Assembly,
20 and that was on September thirteenth (13th), two
21 thousand seven (2007), and four (4) states objected:
22 Canada, Australia, New Zealand and the United
23 States, and, of course, as I'll mention later, all
24 four (4) have reversed their position. So, we'll
25 continue.

1 Now, the Declaration is the most comprehensive
2 international instrument on Indigenous Peoples'
3 rights - that's in... also in my MJCL article at
4 page 123. But one can see it from the contents of
5 the Declaration itself, it includes: economic,
6 social, cultural, political, environmental and
7 spiritual rights of Indigenous Peoples.

8 Now the UN Declaration affirms collective and
9 individual human rights - and later I'll mention how
10 the Declaration includes balancing provisions that
11 are quite far reaching. But I will mention that
12 seventeen (17) provisions, in the Declaration,
13 address individual rights.

14 Now in terms of urgency, I had mentioned
15 earlier, when we were talking about inherent
16 rights - that's preambular paragraph 7 - it refers
17 to the urgent need to respect and promote the
18 inherent rights of Indigenous Peoples.

19 So the states of the world, now that it's a
20 consensus document, or instrument, recognize that
21 there is an urgency, based on all the violations
22 that take place around the world.

23 And to date - and this is a very important
24 number here - the UN Declaration has been reaffirmed
25 eight (8) times, by the UN General Assembly, by

1 consensus - and that's, of course, in the table of
2 authorities under this slide. And, that, again,
3 strengthens the instrument. It means that there is
4 no state in the world that formally objects to the
5 UN Declaration.

6 Now, I put in this photo, just to give a quick
7 example. That's the president of the UN General
8 Assembly, and it took place on September thirteen
9 (13), two 0 0 seven (2007), when the vote took
10 place. And you can see that it's a sea of green.
11 What happens is that every state presses a button
12 under their desk, and they can leave their vote:
13 green for "yes", red for "no", or yellow for
14 "abstentions", and there was this sea of green. We
15 can't see it here, but there were, the four (4)
16 votes of Canada, Australia, New Zealand and the US,
17 which were red.

18 But this was a very high moment for those who
19 support Indigenous Peoples rights.

20 So, moving on in July two thousand and eight
21 (2008), the UN Secretary General emphasized that:

22 "the Declaration is a visionary step
23 towards addressing the human rights of
24 Indigenous Peoples. It sets out a
25 framework for... to rebuild... to build or

1 rebuild state-indigenous relationships and
2 promote reconciliation and ensure that the
3 past is not repeated.”

4 Now, in twenty fourteen (2014), the UN Expert
5 Mechanism on the rights of Indigenous Peoples, which
6 is a body based in Geneva, concluded that the UN
7 Declaration:

8 “(...) constitutes a principled framework
9 for justice, reconciliation, healing and
10 peace”.

11 And we see at the bottom of the screen,
12 article 43, which affirms that:

13 “The rights recognized constitute the
14 minimum standards for the survival,
15 dignity and well-being of the indigenous
16 peoples of the world.”

17 Now, article 46(3) includes one of the most
18 comprehensive balancing provisions in any
19 international human rights instrument, and actually
20 was negotiated between Indigenous Peoples and their
21 representatives in Canada, with the Canadian
22 government; and then accepted by other governments
23 and slightly modified. But why this is important is
24 it serves to affirm that, “generally, the rights and
25 the declaration are relative”, they’re not absolute,

1 because they have to be balanced by what's in
2 article 43... 46(3). The only exception in the
3 Declaration is the right not to be subjected to
4 genocide, which is absolute in international law,
5 and that's in article 7.2.

6 So it says that:

7 "Every provision in this Declaration must
8 be interpreted in accordance with the
9 principles of justice, democracy, respect
10 for human rights, equality, non-
11 discrimination, good governance and good
12 faith."

13 And these are the same core principle as in the
14 Canadian and international legal systems. These are
15 also the principles that have been denied Indigenous
16 Peoples throughout history.

17 And at the bottom of the slide, we have the
18 Office of the High Commissioner for Human Rights
19 website, and they just explain that:

20 "The true test of "good governance...
21 - which was in article 46(3) -
22 ... is the degree to which it delivers on
23 the promise of human rights."

24 Now in August twenty ten (2010), the former
25 Special Rapporteur in the rights of Indigenous

1 Peoples James Anaya underlined, in his report to the
2 UN General Assembly that:

3 "Even though the UN Declaration itself is
4 not legally binding in the same way that a
5 treaty is, the Declaration reflects legal
6 commitments...

7 - legal commitments -

8 ... that are related to the UN Charter,
9 other treaty commitments and customary
10 international law."

11 Similarly, James Crawford, in his book on
12 international law, has concluded:

13 "Examples of important "law-making"
14 resolutions..."...

15 Because some resolutions are just maybe
16 principles and not have any legal significance.

17 So...

18 "... important "law-making" resolutions
19 include the UN Declaration."

20 And in the quote at the bottom, the
21 International Law Association, in its two thousand
22 ten (2010) report on the rights of Indigenous
23 Peoples, has quoted:

24 "The UN Office of Legal Affairs...

25 - ... and that's the office that does the legal

1 interpretation for the United Nations - and the
2 Office of Legal Affairs says here, in this quote:

3 "In United Nations practice, a
4 "declaration" is a solemn instrument
5 resorted to only in very rare cases
6 relating to matters of major and lasting
7 importance where maximum compliance is
8 expected."

9 And the ILA says that:

10 "The UN Declaration is such a declaration
11 deserving of utmost respect."

12 So also, in Bruno Simma's authoritative book on
13 the Charter of the United Nations - and I say
14 "authoritative." I have those two (2) volumes,
15 they're about this thick each, and they go through
16 every article of the Charter, and give a very
17 detailed legal explanation.

18 And the two (2) other authors at the bottom at
19 the slide, in this book, indicate that:

20 "The term "declaration" is used by the
21 General Assembly for resolutions which
22 claim to express political or legal
23 principles of particular importance."

24 And the authors then go on to talk about the
25 most important declaration, so those are obviously

1 the ones with legal implications or effect, and they
2 say:

3 “Examples of those declarations which have
4 attained a quasi-legislative function are:
5 the Universal Declaration of Human
6 Rights...

7 - which was back in nineteen forty-eight (1948) -
8 ... and the UN Declaration of September
9 two thousand seven (2007).”

10 In my view, the UN Declaration will be
11 increasingly used by the Supreme Court of Canada to
12 interpret Indigenous Peoples’ rights and related
13 third party obligations.

14 And on this slide, which is slide 33, are two
15 (2) Supreme Court of Canada rulings affirming that:

16 “Canada’s Constitution, including Section
17 35, is interpreted in accordance with the
18 rules of progressive interpretation. The
19 whole Constitution is interpreted
20 according to progressive interpretations,
21 and such rules are often described as the
22 “living tree doctrine”, which I’ll explain
23 in a second.”

24 But such rules... But it says here, in the
25 first one, just to take the first example:

1 “A constitution must be capable of growth
2 and development over time, to meet new
3 social political and historical realities,
4 often unimagined by the ones who first
5 drafted the Constitution.”

6 And the UN Declaration on... saying is... such
7 a new and unimagined reality.

8 And then, in Reference Re Same-Sex Marriage at
9 the bottom of the screen, in two thousand four
10 (2004), the Supreme Court confirmed:

11 “The Canadian Constitution is a living
12 tree, which by way of progressive
13 interpretation accommodates and addresses
14 the realities of modern life.”

15 And the UN Declaration is one of those
16 realities.

17 Therefore, one should use the UN Declaration in
18 a number of ways - and this is, like, my opinion -
19 to interpret Indigenous rights and State
20 obligations, both internationally and domestically,
21 including Section 35 of the Constitution Act
22 nineteen eighty-two (1982).

23 It can also be used to fill in the gaps in
24 treaties and other agreements between Indigenous
25 peoples and States. And treaties, of course, are

1 supposed to remain as dynamic and living agreements,
2 so it's important to use such an instrument which
3 Indigenous Peoples contributed to.

4 Further, it can guide policy development,
5 negotiations and litigation.

6 And as I mentioned earlier, it can be used to
7 transcend the box of domestic law, and finally it
8 can guide Nation-building and strengthen Indigenous
9 communities.

10 So before starting the new section on framework
11 for reconciliation, which deals with the Truth and
12 Reconciliation Commission, I thought I'd put in this
13 photo, with the three (3) commissioners, and on the
14 left, you have now Grand Chief Wilton Littlechild,
15 in the middle you have the Chair of the Commission,
16 which is now Senator Murray Saint-Clair, and the
17 third is Mary Wilson.

18 Now, the TRC - I'll call the Truth and
19 Reconciliation Commission as the "TRC" - issued
20 ninety-four (94) Calls to Action. And on the screen
21 here, we have Call to Action 43. And it
22 indicates... well it calls on the various levels of
23 government, not just federal, but provincial,
24 territorial and municipal, to fully implement the UN
25 Declaration "as the framework for reconciliation."

1 Not "a" framework. "The" framework.

2 And therefore, the UN Declaration and the TRC
3 Calls to Action are inseparably linked, because it
4 is the framework for all the Calls to Action, and
5 there are also sixteen (16) Calls to Action that
6 explicitly refer to the UN Declaration.

7 And therefore, governments and others cannot
8 say, for example, "oh, we fully support the TRC
9 Calls to Action, but not the UN Declaration."

10 And then, at the bottom the screen, we have
11 Call to Action 44. And it calls upon the government
12 of Canada:

13 "To develop a national action plan to
14 achieve the goals of the UN Declaration."

15 And when we discussed Romeo Saganash's bill
16 C-262, that includes a National Action Plan.

17 So, as indicated in the next slide, in two
18 thousand and one (2001), the World Conference
19 Against Racism, which took place in Durban, South
20 Africa, in two thousand and one (2001), declared
21 that:

22 "Indigenous Peoples were victims...
23 - this is all over the world -
24 ... of colonialism and continue to be
25 victims of its consequences."

1 And:

2 "Colonialism...

3 - it says here, at the bottom of the quote -

4 ... must be condemned and its reoccurrence
5 prevented."

6 In two thousand and twelve (2012), the Supreme
7 Court ruled, in R. v. Ipeelee, that:

8 "Courts must take judicial notice of such
9 matters as the history of colonialism,
10 displacement and residential schools"...

11 ... and the diverse adverse impacts that are
12 also on this slide."

13 And again, it shows that the courts are giving
14 a signal that, it's important now, to deal with
15 colonialism, in a meaningful way.

16 Now, here we have an excerpt from a unanimous
17 motion adopted by the Quebec National Assembly in
18 June twenty fifteen (2015), indicating:

19 "Indian residential schools were a tool of
20 genocide, and requesting the governments
21 of Québec and Canada to implement the TRC
22 recommendations..."...

23 - it's a term I used but they mean the Calls to
24 Action.

25 And what they suggest, in my view, is that

1 since the leader of the Quebec government and all
2 other members of the National Assembly, voted
3 unanimously in favour of this resolution, this
4 necessarily implies the Quebec government and the
5 National Assembly agreed to implement the UN
6 Declaration as "the" framework for reconciliation,
7 consistent with Call to Action 43.

8 So let's now examine implementation of the UN
9 Declaration.

10 And there's a Canadian Association of Statutory
11 Human Rights Agencies - most people have never heard
12 of that name - and it's called the CASHRA, and it's
13 calling here - this was in July two thousand twelve
14 (2012) - called on all levels of government across
15 Canada to implement the UN Declaration. And CASHRA
16 includes all existing Human Rights Commissions in
17 Canada, whether their federal, provincial or
18 territorial.

19 Only B.C., British Columbia and Nunavut do not
20 have a Human Rights Commission. So they're not
21 included here. Buy B.C., as we will see, is already
22 preparing to create a commission for the province.

23 Now, it's important to note that the previous
24 government led by Stephen Harper endorsed the UN
25 Declaration in November two thousand and ten (2010),

1 and it's the first quote at the top, and the former
2 government, federal government, declared at that
3 time:

4 "We are now confident that Canada can
5 interpret the principles expressed in the
6 Declaration in a manner that is consistent
7 with our Constitution and legal
8 framework."

9 And I put this in also, because you will see in
10 the ongoing debate, a lot of commentary suggests
11 that this declaration is not consistent with the
12 Canadian Constitution and legal framework, and even
13 the conservative government, which was not much in
14 favour, did make this statement.

15 And then, in... So what we have basically is a
16 situation where both Liberal and Conservative
17 federal governments have assessed the UN Declaration
18 as consistent with Canada's Constitution and legal
19 framework. And the quote at the bottom, in February
20 twenty seventeen (2017), Prime Minister Trudeau
21 announced the working group of ministers to review
22 federal laws and policies related to Indigenous
23 Peoples. So this is a concrete step: how are we
24 going to make the UN Declaration work.

25 And this review, Trudeau says in his... in this

1 quote, is not only "to help ensure the Crown is
2 meeting its constitutional obligations", but he also
3 went further than any Prime Minister has ever gone,
4 and said:

5 "But also to adhere to international human
6 rights standards, including the UN
7 Declaration, and supporting the
8 implementation of the TRC's Calls to
9 Action".

10 So the present government is doing it
11 correctly. If the two (2) were inseparable, both
12 the TRC Calls to Action and the UN Declaration, you
13 have to look at them together.

14 Now, in July twenty seventeen (2017), the newly
15 elected government of British Columbia made clear,
16 as you see on this slide, that:

17 "it will be fully adopting and
18 implementing the UN Declaration and the
19 TRC Calls to Action."

20 So it too is taking both instruments or
21 documents to make this happen.

22 Now, in Manitoba, if you look at the bottom of
23 the slide, they adopted the Path to Reconciliation
24 Act, back in two thousand and sixteen (2016). And
25 it requires a strategy for reconciliation that

1 entails both the TRC Calls to Action and the UN
2 Declaration.

3 So I put in these provincial examples to show
4 that there is an important role, of course, for the
5 province of Quebec.

6 Now, in terms de la Ville de Montréal, in
7 August two seventeen (2017), the Council of the City
8 of Montreal adopted a resolution endorsing the UN
9 Declaration and indicating:

10 "The Declaration will guide the City in
11 its relations with Indigenous Peoples."

12 So this should be happening at all levels and
13 that's pursuing to Call to Action 43.

14 Now, member of parliament Romeo Saganash tabled
15 Bill C-262 in April two sixteen (2016), so as to
16 provide a legislative framework for implementing the
17 UN Declaration. And we'll get back to a legislative
18 framework, its importance. But what I first want to
19 mention is that, elements in the bill, include the
20 following among others - which isn't on the screen.
21 There's the preamble that repudiates colonialism,
22 and there are two (2) collaborative processes that
23 are established, that include collaborating with
24 Indigenous Peoples: one is to ensure the laws of
25 Canada are in harmony with the UN Declaration, so

1 again, this would be a concrete process, is to how
2 we create this consistency, and the second is to
3 “develop and implement a national action plan” which
4 is on the slide, that’s Section 5.

5 Now if we look at Section 3, it affirms that
6 the UN Declaration has “application in Canadian
7 law.”

8 And I want to come back in a second to the word
9 “application”. Such application is of course
10 already taking place through the courts, as we’ve
11 seen the various decisions.

12 The term “application” does not mean that every
13 provision will be immediately adopted as part of
14 Canadian law - otherwise we’d used the word
15 “adopted”.

16 “Application” reflects what’s going on right
17 now through the courts, but there’s no reason why it
18 cannot be done collaboratively as well, between
19 governments at every level and with Indigenous
20 Peoples.

21 And now getting to: why a legislative
22 framework. Why is that important.

23 Well, one of the main reasons for Bill C-262
24 and why it’s so important is that it’s especially
25 important to ensure the process will not be reversed

1 by some future government.

2 Let's say we have one term or two terms of the
3 present government, they're in favour of the
4 Declaration. But then you got a government who just
5 voted all against the UN Declaration when the Bill
6 came up at second reading. So will everything just
7 stop? Will Indigenous Peoples just go backwards?

8 A legislative framework is no guarantee, but it
9 makes it more difficult for another government to
10 come in and explain to Canadians why they are
11 repealing such an important law.

12 So let's now consider the situation of homeless
13 persons in Val-d'Or and rights and obligations
14 regarding to health and well-being.

15 Now as indicated on this slide, Céline Belleau
16 and Marie-Ève Sylvestre highlight the increased
17 number of homeless persons in Val-d'Or and the
18 multiple factors causing this - and you can read on
19 the screen and I'm sure you've seen it before. And,
20 clearly, the judicialization or overcriminalization
21 of homelessness is not and never will be a valid
22 response.

23 And what I've done in the slides that follow,
24 are a number of human rights related issues that can
25 significantly affect Indigenous Peoples and

1 individuals, and so we'll turn to those slides to
2 see how they do relate.

3 So here we have the UN Committee on the
4 Economic, Social and Cultural Rights, which
5 cautioned, in May two thousand (2000), in their
6 General Comment number 14, on the right to the
7 highest attainable standard of health, and they say:

8 "In indigenous communities, the health of
9 the individual is often linked to the
10 health of the society as a whole and has a
11 collective dimension".

12 The two are very much interrelated. And I
13 think we'll see that in a minute.

14 First, as early as nineteen ninety-four (1994),
15 the Canadian Medical Association recognized that
16 Indigenous Peoples exercising their right to self-
17 determination "improves the health of Aboriginal
18 peoples and their communities". It's very
19 important. Instead of internalizing the problems,
20 that Indigenous Peoples and their communities assert
21 their rights. And therefore the CMA says they:

22 "(...) encourage and support Aboriginal
23 peoples in their quest for resolution of
24 self-determination and land use".

25 And most of the time, not always, the issues

1 about Indigenous Peoples, lands and resources.

2 Now, in Article 3 of the UN Declaration, it
3 affirms that:

4 "Indigenous peoples have the right to
5 self-determination...

6 ... and which includes to...

7 ... freely determine their political
8 status and freely pursue their economic,
9 social and cultural development."

10 And I'll discuss this right further, when I
11 address consent in my last part of the presentation
12 in Canadian and international law. But I will point
13 out here, that Article 4 of the UN Declaration
14 indicates specifically that Indigenous Peoples right
15 of self-determination includes self-government, the
16 right of self-government.

17 That's important, because that's a way of
18 expressing self-government - self-determination that
19 can very well contribute to Canada rather than...
20 let's say, something else.

21 So another factor, adversely affecting health
22 and well-being, is when Indigenous Peoples and
23 individuals are, as you see in Article 8:

24 "subjected to forced assimilation or
25 destruction of their culture."

1 Which, of course, would go against Article
2 8(1).

3 And Article 8(2) says:

4 "States must provide effective mechanisms
5 for both prevention of and redress for:

6 a) any action which has the aim of
7 effect...

8 - so you don't have to prove intent -

9 ... of depriving Indigenous Peoples of
10 their integrity as distinct peoples...

11 - not just any peoples but "distinct" people -

12 ... or of their cultural values or
13 identities."

14 And (b) of 8(2) adds:

15 "Any action which has the aim or effect of
16 dispossessing them of their lands,
17 territories and resources."

18 As Indigenous Peoples, I'm sure, have said to
19 this Communication, and it's well-known: if their
20 lands and territories are affected, it's going to
21 affect their cultures.

22 Now, in UN Declaration, Article 7. This is
23 also a very important one. 7(1) talks about:

24 "Indigenous individuals have the rights to
25 security of person."

1 Well that's also in the Canadian Charter.

2 But Article... And it is important.

3 In Article 7(2) indicates that:

4 "Indigenous peoples have the collective
5 right to live in freedom, peace and
6 security...

7 - not just as peoples but... -

8 ... as distinct people."

9 And I'd just like to... And of course, I
10 should mention that the way one reads the UN
11 Declaration is you never read one article in
12 isolation and I'll repeat that again later. You
13 have to read the whole instrument.

14 But if one reads Article 7, security... First
15 of all, I should mention an international law: it's
16 no more just military security, like it was decades
17 ago. Security can be environmental security.

18 So if we combine Article 7(2) with Article 29
19 on the environment in the UN Declaration, we're
20 talking about environmental security.

21 If we combine that with the cultural provisions
22 in Articles 11 and 16 of the UN Declaration, we're
23 talking about "cultural security". And "human
24 security" would be issues like health, so that would
25 be in Article 24 combined with Article 7. And "food

1 security" or "water security" is if you combine it
2 with Article 20, that talks about their means of
3 subsistence, you need both food and water for basic
4 subsistence. So this is a very important article.

5 Now I'd like to mention an article that isn't
6 in this PowerPoint, it's Article 22(2) of the UN
7 Declaration, and it says that:

8 "States shall take measures, in
9 conjunction with indigenous peoples, to
10 ensure that indigenous women and children
11 enjoy the full protection and guarantees
12 against all forms of violence and
13 discrimination."

14 And I mention this especially because we're
15 dealing with the situation in Val-d'Or, or, in the
16 North.

17 Now, in the UN Declaration, Article 21, which
18 is on the... on the PowerPoint:

19 "Indigenous peoples have the right,
20 without discrimination, to the improvement
21 of their economic and social conditions,
22 in such areas as education, employment,
23 housing, sanitation and health."

24 And paragraph 2 of this Article says that:

25 "States shall take effective measures

1 and, where appropriate, special measures
2 to ensure continuing improvement
3 Indigenous Peoples economic and social
4 conditions.”

5 And it mentions explicitly that:

6 “Particular attention shall be paid to the
7 rights and special needs of indigenous
8 elders, women, youth, children and persons
9 with disabilities.”

10 Now, in UN Declaration, Article 20, it affirms
11 the right of Indigenous Peoples:

12 “To maintain and develop their political,
13 economic and social systems or
14 institutions, to be secure in the
15 enjoyment of their own means of
16 subsistence.”

17 So there’s an example where subsistence is
18 mentioned. “Subsistence and development.”

19 What’s often forgotten is that Indigenous
20 Peoples have their own priorities for development.
21 It’s not just outside development, and they too have
22 to be able to survive and thrive.

23 And Article 23 deals with that. It affirms
24 that:

25 “Indigenous peoples have the right to

1 determine and develop priorities and
2 strategies for exercising their right to
3 development”.

4 Now, the UN Committee on the Elimination of
5 Discrimination against Women concluded in its
6 November two thousand sixteen (2016) report on
7 Canada, and it says:

8 “(...)indigenous women continue to suffer
9 from multiple forms of discrimination and
10 continue to live in poverty”.

11 And the Commission... the Committee...
12 - sorry -... noted Canada’s:

13 ... commitment to fully implementing the
14 UN Declaration - but - it remains
15 concerned about the lack of a coherent
16 plan or strategy.”

17 So that’s what we need. Not just commitments,
18 but there’s got to be a coherent strategy and it
19 should be collaborative with Indigenous Peoples,
20 which is what the federal government said it would
21 do. And all of this also goes back to the situation
22 in Val-d’Or, amongst many situations across Canada.

23 Now I would like to share with you key
24 international aspects relating to sustainable
25 development, poverty and human rights, and how they

1 are interrelated.

2 And you see at the bottom at the slide that we
3 have excerpts on the slide, from the General
4 Assembly's detailed resolution called "Transforming
5 Our World: The Twenty Thirty (2030) Agenda for
6 Sustainable Development", and it was adopted by
7 consensus, as you see, by the UN General Assembly in
8 September twenty fifteen (2015).

9 And if we go back to the top part, the first
10 quote, we see the Transforming Our... but I would
11 say that transforming our world is the main
12 international instrument for Sustainable
13 Development.

14 And, I say this because I'm tracking how many
15 times it's being reaffirmed, by consensus, by the
16 General Assembly. I don't have the evidence here
17 today, I found four (4) times already and it was
18 only in two fifteen (2015) that it was created. So
19 I think that it will continue to be the main
20 instrument.

21 And it has a number of key elements as to what
22 sustainable development is, and it says, "We
23 resolve, between now and 2030 - the first element
24 is - to end poverty and hunger everywhere", then "to
25 protect human rights", this is what we've been

1 talking about, so we connect human rights to
2 sustainable development.

3 "Promote gender equality and the
4 empowerment of women and girls, and to
5 ensure the lasting protection of the
6 planet and its natural resources."

7 And then, in the next paragraph, which is
8 paragraph 4 of the same instrument, states:

9 "(...) pledge that no one will be left
10 behind...

11 - and it states:

12 ... we will endeavour to reach the
13 furthest behind first."

14 So this again, would include Indigenous
15 Peoples.

16 Now, this is an international definition of
17 "sustainable development" that was formulated, as
18 you see in the reference, by the World Commission on
19 Environment and Development back in nineteen eighty-
20 seven (1987). And you also see in this reference
21 that that definition is both used by the federal and
22 Quebec governments, in dealing with sustainable
23 development. So they're taking an international
24 perspective as to what "sustainable development"
25 means. It wasn't created in Canada. It exists from

1 the international.

2 And it says:

3 ““Sustainable development” means
4 development that meets the needs of the
5 present without compromising the ability
6 of future generations to meet their own
7 needs.”

8 So again, applying this to Indigenous Peoples
9 in the broader context, this all can contribute to
10 how we can move forward in ways that the world, not
11 only Canada, have agreed to.

12 Now I’ll leave out for now the American
13 Declaration. If you want to raise questions later,
14 I’m happy to discuss it, but for saving time.

15 And the next slide is: in two thousand twelve
16 (2012), the UN General Assembly adopted, by
17 consensus, the Rio+20 outcome document, “The Future
18 We Want”, and, again, this is dealing with the same
19 subject matter.

20 And in regard to eradicating poverty, paragraph
21 2 at the top of the slide, reinforces what was
22 included in the resolution we just saw on
23 “Transforming Our World”, and it says:

24 “Eradicating poverty is the greatest
25 global challenge facing the world today

1 and an indispensable requirement for
2 sustainable development.”

3 And of course, the impoverishment of Indigenous
4 Peoples is not only in Canada but throughout the
5 world.

6 And in paragraph 49 of the “Future We Want”
7 recognizes “the importance of the United Nations
8 Declaration” in terms of “implementation of
9 sustainable development strategies” at every level,
10 from global to local, they say “global, regional,
11 national and subnational.” So it would be important
12 both in the provincial level and the federal level,
13 as well as the international level.

14 So again, it shows the significance of the UN
15 Declaration in some of the most important
16 initiatives taken on by the world and by Canada...
17 and Quebec, because Quebec’s law on sustainable
18 development, in my humble opinion, is one of the
19 best in Canada.

20 Now, in international human rights law, poverty
21 is not simply a word or a social condition. And
22 UNICEF, which is the organization dealing with
23 children, international organization, emphasized in
24 March two thousand (2000) that:

25 “Poverty is a denial of human rights and

1 human dignity”.

2 So, again, we’re linking human rights back to
3 poverty, as well as linking poverty to development.

4 Now, in the January twenty seventeen (2017)
5 report of the Special Rapporteur, whose mandate, and
6 it’s quite a long name, so I’ll just say links human
7 rights obligations to a safe, clean, healthy and
8 sustainable environment, this Special Rapporteur
9 emphasized:

10 “For indigenous peoples who rely directly
11 on nature for their food, fuel and
12 medicine, environmental harm can and often
13 does have disastrous consequences.”

14 Now in this slide, we have an excerpt from a
15 twenty seventeen (2017) study relating to industrial
16 camps located near remote Indigenous communities in
17 British Columbia, and I raise it because, we have
18 remote Indigenous communities in Quebec and other
19 places in Canada, and those are the ones that can be
20 extremely impacted, even more than others, when
21 there is large-scale development. And what this
22 study shows is that:

23 “Indigenous women and girls are subjected
24 to the worst of the negative impacts of
25 resource extraction at every phase.”

1 And this included a wide range of sex and drug
2 related crimes, as illustrated on this slide.

3 So adequate safeguards are needed in all
4 regions of Canada, including Quebec, especially when
5 we're dealing with remote communities, who are much
6 more sensitive.

7 Now, my final topic is one of the easiest:
8 consent. I'm just joking. It's consent in Canadian
9 and international law. And I would like to begin by
10 emphasizing that there is no significant difference
11 between "free, prior and informed" consent in
12 international law, and "consent" in Canadian law.

13 And if we take the three (3) elements, "free,
14 prior and informed", the first one is that: there
15 should be "no coercion or manipulation"; well that's
16 the same in Canadian law, if you have valid consent.
17 Consent must be "obtained in advance of an activity
18 being approved", it doesn't make sense to get the
19 consent after, say, a development has taken place.
20 And of course, the information provided "must not be
21 misleading or inadequate". If you're
22 misrepresenting people or individual, obviously that
23 isn't consent.

24 So without these elements, there would not be
25 valid consent in neither Canadian or international

1 law.

2 So, when you hear of FPIC, what one hears, or
3 one may hear in the future is, FPIC is demonized,
4 like it's something new. But the UN Declaration, as
5 mentioned earlier, does not create new rights. So
6 later we'll look at: where does consent come from?
7 But it wasn't created by the UN Declaration.

8 And in my view, as I have here in the two (2)
9 bullets: FPIC is not the same as "veto". The ones
10 who've demonized love to say, "this is a veto".

11 And the term "veto" is not used in the UN
12 Declaration. And "veto" implies an absolute power
13 that is regardless of the facts in law in any case.
14 You just say "no".

15 Now here we have a paragraph from the September
16 twenty seventeen (2017) report on Canada by the UN
17 Committee on Elimination of Racial Discrimination,
18 and that committee is in Geneva, at the UN, and it
19 mentions that:

20 "(...) environmentally destructive
21 decisions for resource development which
22 affect Indigenous Peoples' lives and
23 territories continue to be undertaken
24 without their free, prior and informed
25 consent, resulting in breaches of treaty

1 obligations and international human rights
2 law.”

3 So you can see that the UN Committee has always
4 addressed Indigenous Peoples’ rights as human
5 rights, both collective and individual.

6 Now in May twenty sixteen (2016), the
7 Indigenous Affairs Minister Caroline Bennett
8 declared that the UN Permanent Forum on Indigenous
9 Issues in New York, that:

10 “By adopting and implementing the
11 Declaration - Canada is - breathing life
12 into Section 35 and recognizing it now as
13 a full box of rights for Indigenous
14 peoples (...) including free, prior and
15 informed consent.”

16 And I think that the reason the Minister
17 referred to it as a “full box of rights”, is that
18 it’s well-known that Section 35 has been... when
19 cases have gone forward on Section 35, the opponents
20 of Indigenous Peoples have always sought to minimize
21 the meaning of it. And... Indigenous Peoples are
22 forced to prove everything.

23 So I won’t get into it, but I think that’s the
24 reason that she says “it’s a full box of rights”.

25 And of course, the UN Declaration suggests that

1 Indigenous Peoples' rights are a full box, because
2 it deals with all those different rights.

3 Now the Vienna Declaration in nineteen ninety-
4 three (1993), which was endorsed by the UN General
5 Assembly, again by consensus, emphasized that:

6 “(...) the lack of development may not be
7 invoked to justify the abridgement of
8 internationally recognized human rights.”

9 And again, if a province or a territory may
10 want a new hydro project and they say, “we really
11 need it”, that may be true, but it doesn't mean
12 that, at the same time, you abridge or seriously
13 undermine Indigenous Peoples' human rights.

14 Now, as highlighted at the very beginning of my
15 presentation, the rights in the UN Declaration are
16 inherent or pre-existing, and that new rights are
17 created.

18 Now a key source of consent - this is where we
19 get to it - is the right of self-determination.

20 In identical Article 1 at the two (2)
21 International Human Rights Covenants identified at
22 the bottom of the slide and those two (2) are, of
23 course, the International Covenant on Civil and
24 Political Rights, and the International Covenant on
25 Economic, Social and Cultural Rights.

1 Now in Article 1(1), it includes the rights of
2 all peoples to “freely pursue their economic, social
3 and cultural development.”

4 And Article 1(2) includes the rights of all
5 peoples to their natural resources. Now, in
6 Article 1(2), they had that sentence again that we
7 saw in Article 20, about their own means of
8 subsistence. It says:

9 “In no case may a people be deprived of
10 its own means of subsistence.”

11 So, for instance, if a culture is depending on
12 salmon - I’m just picking any example - you can’t
13 say that, “well, this proposed development may
14 destroy or seriously undermine salmon, but go, go
15 fish something else.”

16 It’s their own means of subsistence. It’s what
17 their culture is based on. It’s a relationship with
18 the fish or whatever. And so that becomes very
19 important.

20 Now when we get to Article 1(3), it includes an
21 affirmative obligation of States, including Canada,
22 to “promote and respect the rights of self-
23 determination.”

24 And the right to self-determination, basically
25 includes the right to choose. It’s the right to

1 give or withhold consent, and that's an essential
2 element.

3 And it's important to note that Canada ratified
4 both Covenants in May nineteen seventy-six
5 (1976) - that's over forty (40) years ago - and for
6 over for that year (40) years, self-determination
7 and consent of Indigenous Peoples have not been
8 fairly or fully respected by governments in Canada,
9 including Quebec.

10 Now, in consideration of Article 32(2) - and
11 I've put both 32(1) and (2) on the slide -... it's
12 important especially for 32(2), to emphasize that
13 one should... that no individual provision should be
14 read in isolation. We cannot just take the best
15 components here and say, "oh, this is all there is."
16 No.

17 And rather a provision, any... each of these
18 provisions in the Declaration should be read in the
19 context of the whole Declaration and possibility
20 other international and domestic law. And nor
21 should specific provisions be interpreted in
22 isolation from the facts and law in any given case.
23 Because one provision with different facts or law
24 can lead to very different conclusions.

25 So if we begin with Article 32(1), it says:

1 “Indigenous peoples have the right to
2 determine and develop priorities and
3 strategies for the development or use of
4 their lands or territories and other
5 resources.”.

6 So this right is linked to the right of self-
7 determination, because that too includes a right to
8 economic, social and cultural development.

9 Now, in regard to Article 32(2), where there
10 are direct impacts on Indigenous Peoples’ lives or
11 territories, FPIC - or “Free, Prior and Informed
12 Consent” - may well mean a proposed project is
13 prohibited in the absence of obtaining consent.

14 Now if there were little or no impacts, in
15 other words if the facts were totally different, one
16 could interpret these articles differently. And one
17 should remember that, for the whole Declaration, one
18 always has to interpret it in the context, not only
19 of the whole Declaration but the facts and law in
20 any given case.

21 Now, however, I’ll add this - and this is based
22 on what this presentation has said so far - is that:
23 one still has to look and ask certain questions in
24 terms of coming to how one interprets it. And one
25 can ask, “are Indigenous Peoples’ cultures being

1 protected?" That's one questions.

2 "Are Indigenous Peoples being impoverished
3 likely from the proposed development?" "Are
4 Indigenous Peoples' right to determine their own
5 priorities being set aside or being fully
6 respected?"

7 And, all of these types of questions that we've
8 gone through helped to determine what would be fair
9 in balancing or how you proceed with a development.
10 And my view is: the easiest way to get there always
11 is not through the courts but through collaboration,
12 discussion and being sensitive to all factors in
13 everyone's priorities and rights.

14 So on this slide, we have two (2) paragraphs
15 from the UN Global Compact's "Business Reference
16 Guide" on the UN Declaration, and this is an
17 analysis of over hundred (100) pages, and I did have
18 the privilege to be involved in the development, in
19 a small way, of this "Business Reference Guide".

20 And we see, at page 25, it is indicated that:

21 "Free, prior and informed consent is
22 fundamental to the UN Declaration to
23 ensure that indigenous peoples' rights are
24 protected".

25 And in the bottom quote, at page 26, it adds

1 that:

2 “FPIC should be obtained whenever there is
3 an impact on indigenous peoples’
4 substantive rights, including rights to
5 land, territories, resources and self-
6 determination.”

7 And I should mention that the UN Global
8 Compact, as they say on their website, is the
9 largest corporate responsibility initiative in the
10 world, with over ninety-seven hundred (9700)
11 companies in over a hundred and sixty (160)
12 countries.

13 Now let’s examine briefly “consent” in Canadian
14 law and then we’ll be at the conclusions.

15 In *Tsilhqot’in Nation versus B.C.* in British
16 Columbia, in twenty fourteen (2014), the Supreme
17 Court concluded, in a case relating to Aboriginal
18 title - this was the first case ever decided in
19 Canada where Aboriginal peoples won, that they
20 actually have title, since eighteen sixty-seven
21 (1867) - and the Court said that:

22 “The right to control the land means that
23 governments and others seeking to use
24 Indigenous land must obtain the consent of
25 the Aboriginal title holders.”

1 And by the way, this was a unanimous decision
2 by the Supreme Court.

3 Otherwise the government's only recourse, as it
4 says on the slide:

5 " (...) is to establish that the proposed
6 incursion on the land is justified under
7 section 35 of the Constitution Act,
8 nineteen eighty-two (1982)."

9 Now if we turn to the next slide, we're
10 generally dealing here not just with title cases,
11 but any land or rights cases.

12 And this is Haida Nation versus British
13 Columbia in two thousand and four (2004). So this
14 ruling was rendered by the Supreme Court prior to
15 the adoption of the UN Declaration by the UN General
16 Assembly in two thousand and seven (2007).

17 And so again, things may change if we apply the
18 living tree doctrine, etc. But even going back to
19 this key decision - because it has been relied on a
20 lot by the Supreme Court - it says that... basically
21 it describes the duty of the Crown to consult as
22 spectrum, and at the low-end - as you see from the
23 slide - that would be "a minimum duty to discuss
24 important decisions" where the "breach is less
25 serious or relatively minor". But at the high-end,

1 it requires - and it's at the bottom of the
2 quote - "the full consent of [the] aboriginal
3 nation" on very serious issues."

4 Now, I might be missing something but I've
5 never seen a case, from the Supreme Court of Canada,
6 where it's met, where they've said "it's a very
7 serious issue" and applied consent.

8 I've seen that they say "it's serious" or "very
9 serious", but they've never applied the full
10 spectrum - and again, that may change, with
11 something like the UN Declaration.

12 And it is also worth noting that the minimum
13 standard, in the Declaration, is not consultation.
14 It's consultation and collaboration. And you'll
15 find that in Article 38 of the UN Declaration.

16 And again, it goes to... what I've been trying
17 to promote is that: one has to go beyond just
18 consulting. One has to cooperate or collaborate to
19 really change this context of colonialism.

20 And the word "cooperation", in my view,
21 includes a consensual element, because both sides
22 have to agree to move forward in a certain
23 direction.

24 So in conclusion, I would respectfully
25 emphasize the following, that: this important public

1 enquiry Commission should adopt a human rights-based
2 approach that includes the UN Declaration and other
3 human rights law, in carrying out its crucial
4 mandate. And such an approach is especially
5 important in ensuring sustainable development in
6 Quebec and Canada as a whole.

7 And then to move on, the:

8 "Rights of Indigenous peoples and
9 individuals constitute human rights and
10 must be treated as such by all governments
11 in Canada."

12 Well, to date, if you look at any newspaper, if
13 you hear the news, if you watch tv, you will rarely
14 ever hear Indigenous Peoples' rights referred to as
15 "human rights". And diminishes what we're dealing
16 with, if we do not identify Indigenous Peoples'
17 rights accurately.

18 So, since the human rights quality of
19 Indigenous Peoples has been repeatedly ignored or
20 denied, I'm proposing it would be important for the
21 Commission to consistently refer to "Indigenous
22 Peoples' human right" in diverse contexts.

23 Further, colonialism must be rejected in favour
24 of a contemporary international human rights, and
25 clearly, colonialism is a destructive concept or

1 approach that must be eradicated in Canada and is,
2 of course, a big part of why you have the problems
3 of homelessness in Val-d'Or.

4 Now, ongoing discrimination and violence
5 against Indigenous Peoples and individuals are
6 exacerbated by severe and ongoing systemic
7 discrimination, and I'm aware of that systemic
8 discrimination is part of the Commission's mandate.

9 And I would say that examples include the lack
10 of essential services, and some of this has been
11 already identified.

12 Ongoing impoverishment of Indigenous peoples,
13 the people who don't live in Val-d'Or are going
14 there and they're coming as homeless. So the
15 poverty occurred elsewhere. So there is an
16 impoverishment, which is pretty common throughout
17 the North, as you know.

18 And it's especially the failure to clearly
19 recognize pre-existing rights to lands, territories
20 and resources, because of the effects I mentioned on
21 culture, on their economy, on all aspects of their
22 life, on the fact that, in some cases, like the
23 Innu, where there's an epidemic on suicide, if they
24 had shelters for example, if they had the funds, if
25 there were sufficient infrastructure, maybe those...

1 the women and girls wouldn't have had to feel they
2 had to leave, you know, their community.

3 And it's also, I would say, a failure to
4 recognize, as the Supreme Court said in *Hide of a*
5 *Nation*, in the same case we just dealt with at
6 paragraph 20, that treaty served to reconcile the
7 pre-existing Aboriginal sovereignty with assumed
8 Crown sovereignty. And that's what the Supreme
9 Court is saying, and what hasn't really been
10 addressed: pre-existing Aboriginal sovereignty
11 versus the Crown sovereignty.

12 So if we move on, it is also important to
13 emphasize that, in view of all this discrimination
14 and dispossession in the past and present,
15 Indigenous Peoples in Quebec are highly vulnerable
16 and that calls for special measures being urgently
17 required, not only in relation to Indigenous
18 Peoples, but also Indigenous women, children, youth
19 and persons with disabilities.

20 And the situation in Val-d'Or provides a
21 critical opportunity to address systemic
22 discrimination, ongoing impoverishment and ensure
23 the well-being of all Indigenous Peoples and
24 individuals affected. And this would include taking
25 into account the various human rights related

1 issues that I've highlighted in my presentation.

2 And finally, I believe that the... at the same
3 time, the Public Inquiry Commission can provide a
4 principled approach that serves as a key example for
5 other situations relating to Indigenous peoples in
6 Quebec and other regions of Canada.

7 Thank you.

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

9 Thank you very much. Maybe counsels have questions?

10 **Me SÉBASTIEN BRODEUR-GIRARD :**

11 Yes. I have few questions. An opportunity to maybe
12 explain on some subjects.

13 First,... do you mind if I ask my question in
14 French and you can answer back in English? And...

15 **M. PAUL JOFFE :**

16 Sure.

17 **Me SÉBASTIEN BRODEUR-GIRARD :**

18 I'll [follow.]

19 **M. PAUL JOFFE :**

20 If I don't understand, you let me know.

21 **Me SÉBASTIEN BRODEUR-GIRARD :**

22 Yes, sure. It's just because we talked this morning
23 with professeur Leclair, à propos du fait que...
24 d'adopter plus officiellement la Déclaration, en
25 droit canadien, pouvait causer certains... c'était

1 une mise en garde du fait que c'est les tribunaux
2 canadiens qui allaient détenir, dans une certaine
3 mesure, avoir un certain contrôle sur
4 l'interprétation qui allait... pouvoir en découler
5 par la suite, et j'aurais aimé vous entendre à ce
6 propos, si aviez des idées, des pistes de solution à
7 ce niveau-là. J'imagine que l'article 43 peut peut-
8 être amener une piste de solution mais, I'd just
9 like to hear what you... you have to say about that.

10 **M. PAUL JOFFE :**

11 Yes. Well, that's why in Romeo's bill, it doesn't
12 say "adopted". They're not adopting the whole
13 Declaration. They're not saying, "tomorrow, once
14 it's adopted, all of this becomes rights and
15 everything can lead to contestations, whatever."
16 That's not what it says. It says "application".

17 And of course, as I mentioned, and I can give
18 you many more references that, it's being applied by
19 the courts. So you take specific facts and law, you
20 apply it by the courts.

21 But what Romeo's bill does, is that there are
22 other processes. There's one to look, because it's
23 federal legislation, so it can't interfere in
24 provincial jurisdiction. It says, "we're going to
25 look at the laws, policies, and we'll probably add

1 practices - to use the government's own words - that
2 exist at the federal level, and see how to make it
3 consistent with the UN Declaration."

4 And there, the federal government is offering a
5 collaborative process.

6 Well, if we take the Call to Action 43 of the
7 TRC, they said, "provinces should do the same." So
8 again, there could be this collaboration, to see
9 "how do we get there."

10 And of course, if you don't include Indigenous
11 Peoples in a really effective way, you end up with
12 unilateralism and colonialism once more. So there
13 are ways of doing it.

14 So "application" means what we already have,
15 you can take the UN Declaration to Court tomorrow
16 and the courts will apply it. I don't say what the
17 outcome is, because if the facts and law are poor,
18 you may not get, you know, the result you want. But
19 where it's justified, the court may more and more,
20 you know, advance the law. Because there's nothing
21 inherent in Quebec law or federal law that prevents
22 the UN Declaration from being incorporated.

23 So that would be my answer. We're not using
24 the word "adopted", and it's interesting that you
25 mention that, from Jean Leclair, his presentation,

1 because we track what's being said, and a lot of the
2 detractors of the UN Declaration, right away, jump
3 on Romeo's bill and they say, "ah, this will cause
4 chaos, it's all going to be adopted." But they
5 don't read carefully the words, even though some of
6 them are in the legal profession.

7 **Me SÉBASTIEN BRODEUR-GIRARD :**

8 Thank you. I'd like to hear you also more about...
9 you briefly mentioned the...

10 **M. PAUL JOFFE :**

11 Vous pouvez parler en français.

12 **Me SÉBASTIEN BRODEUR-GIRARD :**

13 Yes, just the American Declaration on the Rights of
14 Indigenous People... - je l'ai juste en anglais,
15 donc...

16 **M. PAUL JOFFE :**

17 O.K. Oui.

18 **Me SÉBASTIEN BRODEUR-GIRARD :**

19 So, yes, so you've been implicated...

20 **M. PAUL JOFFE :**

21 Yes.

22 **Me SÉBASTIEN BRODEUR-GIRARD :**

23 ... it's [development], so.

24 **M. PAUL JOFFE :**

25 So... Yes. The American Declaration on the Rights

1 of Indigenous Peoples was adopted by consensus in
2 June twenty sixteen (2016), at the Organization of
3 American States, which is in Washington. And there
4 were negotiations for seventeen (17) years on that
5 instrument - I was there only the last fourteen
6 (14).

7 And so, that Declaration, some of the
8 provisions on "free, prior and informed consent",
9 the same ones exist now in the American Declaration.
10 And again, it's a consensus instrument.

11 So it goes to show that, it's still is, in the
12 regional context, viewed in this way. And there was
13 a rule in the negotiations, because why have a
14 regional instrument if you already have, at some
15 point, the UN Declaration.

16 And so they said, as a... just a practice in
17 the negotiations, that the UN Declaration would be
18 the bottom line.

19 And so, a regional instrument could go above,
20 but not below. And that's generally the way
21 international instruments in human rights relate to
22 regional human rights instruments.

23 You can take into account the specificities of
24 the region and elaborate in different ways, but you
25 can't undermine international human rights law.

1 So, for example, on sustainable development,
2 the quote that I put in there, in the PowerPoint, if
3 you read it later on your own, it goes beyond the UN
4 Declaration on sustainable development. And that's
5 just an example.

6 Now I did submit to madame Suzie Basile a study
7 I did, on how you use both Declarations, because
8 both apply. Where it applies the American
9 Declaration is: North, South, Central America and
10 the Caribbean. That's called the "Americas", and
11 that's the jurisdiction of the Organization of
12 American States.

13 So if it applies in Canada, then how do you
14 apply both Declarations.

15 In certain issues, one is higher, and in others
16 it's the other instrument.

17 And in the analysis, which I've submitted to
18 the Commission, is that, it's the higher minimum
19 standard, if it's the same issue, when you look at
20 both instruments.

21 So for instance, on sustainable development, if
22 it's a higher standard, minimum... because they both
23 say it's the minimum standard, except the American
24 Declaration says, "it's the minimum standard of the
25 UN Declaration and the American Declaration."

1 So, if it's higher now on that issue in the
2 American Declaration, that would be the new
3 standard. If the American Declaration, for some...
4 in some context is lower, the argument, legal
5 argument would be, "it's the UN Declaration that
6 applies. Because the American Declaration
7 incorporates the UN Declaration in determining the
8 minimum standard.

9 And that's another example of how there's been
10 given legal effect to the UN Declaration. It's now
11 applied in a regional level.

12 So I don't know if that's an adequate answer
13 but, that's how the American Declaration works with
14 the UN Declaration. And if you want to follow up on
15 that line of questioning, I'm happy to try and
16 answer any other question.

17 **Me SÉBASTIEN BRODEUR-GIRARD :**

18 Well, thank you. I don't have any other questions,
19 so.

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

21 No other question? Me Robillard?

22 **Me DENISE ROBILLARD :**

23 Aucune question, merci.

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

25 Me Boucher?

1 **Me MARIE-PAULE BOUCHER :**

2 Aucune question Monsieur le...

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

4 Non?

5 **Me MARIE-PAULE BOUCHER :**

6 ... Commissaire. Merci.

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

8 Non? J'aurais peut-être une question. Je vais...
9 comme vous avez invité Me Brodeur-Girard à le faire,
10 je vais le faire en français.

11 Alors j'imagine que plusieurs qui ont eu des
12 discussions avec d'autres personnes concernant la
13 déclaration des Nations Unies sur les droits des
14 peuples autochtones, en se demandant, "bon, pourquoi
15 c'est pas adopté depuis"... depuis quoi, plus de dix
16 (10) ans maintenant, au Québec.

17 Certains vont dire, "oui, mais, ça fait peur,
18 le... - et je vais prendre l'expression anglaise -
19 "free, prior, informed consent". Est-ce que ça va
20 empêcher le gouvernement ou des entreprises d'aller
21 développer de l'industrie forestière, des mines" ou
22 des choses comme ça. Bon. C'est souvent ce qu'on
23 se fait dire. Probablement que vous vous êtes fait
24 dire ça vous aussi.

25 Alors je m'en vais ensuite à la page 73 de

1 votre PowerPoint.

2 Quand vous dites, et on parle de consentement:

3 « If the Aboriginal group doesn't consent
4 to the use, the government's only recourse
5 is to establish that the proposed
6 incursion on the land is justified under
7 section 35 of the Constitution Act,
8 nineteen eighty-two (1982).”

9 Alors ma question revient à ceci. Alors
10 quelles seraient les... - comment je...- what are
11 the grounds, quels sont les motifs qui pourraient
12 être invoqués pour justifier de mettre de côté le
13 fait qu'il y a un refus en pareilles circonstances?
14 Je sais pas si je me fais bien comprendre.

15 **M. PAUL JOFFE :**

16 Juste... Just the last part, the very last...

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

18 O.K.

19 **M. PAUL JOFFE :**

20 .. nuance.

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

22 Alors en fait, on dit que s'il n'y a pas de
23 consentement...

24 **M. PAUL JOFFE :**

25 Oui.

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

2 ... le gouvernement devra... son seul recours sera
3 d'établir...

4 **M. PAUL JOFFE :**

5 Oui. Um-hum.

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

7 ... que le projet - que ce soit un projet forestier,
8 minier ou peut-être d'autres, pourvoiries ou je ne
9 sais pas quoi - sur un territoire, est justifié,
10 sous l'article 35 de la Loi constitutionnelle.

11 **M. PAUL JOFFE :**

12 Um-hum.

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

14 Bon. Alors ma question: qu'est-ce que vous voyez
15 comme motif qui pourrait être invoqué? Qu'est-ce
16 qui pourrait être le cœur de ce genre de litige?

17 **M. PAUL JOFFE :**

18 Um-hum. Well it depends which side you're on. But
19 I'll just speak to it.

20 First, I just want to mention on "consent".
21 Always go back to Article 46(3), because that was
22 the balancing provision that all the rights in this
23 Declaration shall be subjected to the principles of
24 democracy, justice, equality, etc., good governance,
25 good faith. Because what it means is: the rights

1 are relative. So right away, with free, prior and
2 informed consent, it doesn't just mean the rights to
3 say yes and the right to say no. It is that, but
4 it's relative.

5 Now imagine taking away FPIC. Imagine for
6 the... and I'll get to the other aspects soon.
7 Imagine taking it away. Are we saying that
8 Indigenous Peoples only have the right to say yes
9 and never no? I mean, what society would say that?

10 So, to put FPIC in the context that exists
11 legally, of course they have to have the right to
12 say yes or no, or "yes with conditions", which one
13 gets to if one has an ongoing discussion.

14 So I don't see FPIC as the threat that it is,
15 but most of the time, there isn't even a discussion
16 we're having today. They just assume FPIC is
17 absolute, not relative, and that becomes a threat.

18 Now going back to "there could be another
19 recourse" and if "there could be incursions on the
20 land, justified under Section 35".

21 First of all, I do have to mention that, I'm
22 not in total agreement with the Supreme Court, and
23 I'll mention why.

24 It's not that one cannot have some incursion.
25 But the Supreme Court also says, they say it in

1 Sparrow v. The Queen, which was back in nineteen
2 ninety (1990), and they say it in R. v. Badger,
3 which deals with treaty rights as opposed to
4 Aboriginal rights, in nineteen ninety-five (1995).
5 They said, in Sparrow, that you can infringe
6 Indigenous Peoples rights. Not just "limit", but
7 "infringe" or "deny" were the two words used.

8 Now I did a study, I looked at Canadian
9 Charter. Well, Section 1 talks about limitations,
10 reasonable limitations in a free and democratic
11 society. So in Charter, Canadian Charter, it's
12 "limitations", and in Section 35, when there was no
13 UN Declaration, they said, "well, we can infringe or
14 deny the rights."

15 You know, "you come to court and we'll balance,
16 and we can infringe."

17 And I looked at all these different... a whole
18 list of the main international instruments, and none
19 of them allow infringement.

20 The Canadian Charter, in Section 24, allows for
21 a remedy for infringement.

22 The Canadian Bill of Rights, back in nineteen
23 sixty (1960), does not allow infringement: "you have
24 a remedy."

25 There is one exception where they could, if

1 they explicitly... the parliament sets out a certain
2 law or whatever, take a different route, but that
3 was back in nineteen sixty (1960). And even then it
4 was very limited. Otherwise you're not allowed to
5 infringe. There was a remedy for infringement, even
6 in the Canadian Bill of Rights.

7 So why is it that the Supreme Court feels you
8 can infringe Indigenous Peoples' human rights, when
9 you don't do it under the Charter, when you don't do
10 it under the Canadian Bill of Rights, and I haven't
11 found a single international human rights
12 instruments that allows you to infringe as opposed
13 to limit.

14 So I'm just raising that, because I think one
15 day it will come out. It just seems to me, it's not
16 that I'm biased, but I just... in comparing, if they
17 said in Tsilhqot'in Nation that Part 1 and Part 2
18 are "sister provisions", well, one sister is okay,
19 the other one is in big trouble. You know. There's
20 something wrong here. They're not sister
21 provisions, if you can infringe rights.

22 So maybe the UN Declaration will help that. So
23 depending on incursions, if it means "there's limits
24 on rights", yes, there are limits on rights, because
25 the rights are relative. So you balance the facts

1 and the law in all cases. In some cases you may
2 prevail, in other cases you may lose.

3 But if it means that you can infringe or deny,
4 "deny" means "deny", where does that come from?

5 And all I'm saying is: those cases that were
6 decided before the UN Declaration, I believe, with
7 the living tree doctrine, that that will change one
8 day.

9 Is that a...

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

11 Okay.

12 **M. PAUL JOFFE :**

13 That's okay?

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

15 Yes.

16 **M. PAUL JOFFE :**

17 No?

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

19 I asked this question not because I had the feeling
20 it's a threat, just because I wanted to have your
21 opinion to... the way we can answer to people who
22 feel it's a threat.

23 **M. PAUL JOFFE :**

24 It's a threat, yes.

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

1 Because...

2 **M. PAUL JOFFE :**

3 But keep in mind, if I may say so, Article 46(3),
4 because that's the balancing provision. And if you
5 check any international human rights instrument, I
6 believe you will not find a better one and a more
7 contemporary one than exists in the UN Declaration.

8 For example, the Universal Declaration of Human
9 Rights, part of the limitations related to, well,
10 public security. They brought up security could be
11 a reason for infringing or let's say... not
12 infringing, "limiting" rights.

13 And, again, security has been used in a lot of
14 cases where they do, in fact, infringe on human
15 rights.

16 So I'm just saying some of what was used, that
17 was back in nineteen forty-eight (1948), they don't
18 have that modern clause, like we do in the UN
19 Declaration. And like I say, that was specifically
20 negotiated by Canada, with Indigenous Peoples.
21 That's how it was created.

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

23 Do you have some more questions?

24 **Me SÉBASTIEN BRODEUR-GIRARD :**

25 No.

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

2 No? No? So now it will be time for me to thank you
3 very much for having accepted our invitation to give
4 this presentation on the UN Declaration, which is
5 very important... a framework, like you said, an
6 important one - maybe "the" one, if I remember your
7 words.

8 So I want to thank you again and, if you
9 have... and thank you for your suggestions in your
10 conclusions. It may help a lot.

11 If you have some more, it will be very
12 welcomed, don't hesitate. We need all input that
13 can be given to us, to help us in our mandate to try
14 to reconcile or conciliate relations between
15 Indigenous People and public services in Quebec. So
16 thank you very much.

17 I think we'll take a fifteen... oh, you have
18 some files, documents to file?

19 **Me SÉBASTIEN BRODEUR-GIRARD :**

20 Yes. Yes.

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

22 Okay.

23 **Me SÉBASTIEN BRODEUR-GIRARD :**

24 So, nous avons deux (2) documents: la première... la
25 présentation PowerPoint de Me Joffre, intitulée

1 *Indigenous Peoples in the Context of Canada and*
2 *Québec: Significance of UN Declaration and Other*
3 *International Human Rights Law, qui est la première.*

4 **- PIÈCE COTÉE P-416 -**

5 Et le deuxième qui serait la PowerPoint *Table*
6 *of Authorities* que Me Joffe nous a communiquée
7 aussi.

8 **- PIÈCE COTÉE P-417 -**

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

10 Et maintenant nous allons suspendre quinze (15)
11 minutes pour...

12 **UNE VOIX FÉMININE INCONNUE :**

13 (Inaudible.)

14 **Me CHRISTIAN LEBLANC**

15 Peut-être juste donner les cotes.

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

17 Oh.

18 **LA GREFFIÈRE-AUDIENCIÈRE :**

19 Oui, c'est ça. Il vous en a donné seulement que
20 deux (2)?

21 **Me SÉBASTIEN BRODEUR-GIRARD :**

22 Oui.

23 **LA GREFFIÈRE-AUDIENCIÈRE :**

24 Alors c'est 416 et 417.

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

1 Bon. Ca complète? Alors on suspend une quinzaine
2 de minutes et nous reprenons avec... we'll start
3 again with Mr. Deer?

4 **Me SÉBASTIEN BRODEUR-GIRARD :**

5 Oui.

6 **M. PAUL JOFFE :**

7 Thank you very much.

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

9 You'll be welcomed. Okay.

10 **LA GREFFIÈRE-AUDIENCIÈRE :**

11 Suspension de dix (10) minutes.

12 SUSPENSION

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1 **LA GREFFIÈRE-AUDIENCIÈRE :**

2 La Commission reprend ses audiences.

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

4 So, welcome back. I guess you will present the
5 next witness? Me Leblanc, Me Brodeur-Girard?

6 **Me SÉBASTIEN BRODEUR-GIRARD :**

7 Yes. Our next witness will be Mr. Kenneth Deer.
8 Mr. Deer is a member of the Mohawk community of
9 Kahnawake. The Kanienkehaka community of
10 Kahnawake. He has been active for many years in
11 the area of education, journalism and Indigenous
12 rights. He has attended almost all of the UN
13 working group on the draft declaration of the
14 rights... on the rights of Indigenous people since
15 the beginning of the nineties (90s), if I think, if
16 I'm...

17 **M. KENNETH DEER,**
18 **AÎNÉ, NÉGOCIATEUR DE LA DÉCLARATION DES NATIONS UNIES**
19 **SUR LES DROITS DES PEUPLES AUTOCHTONES :**

20 Eight...

21 **Me SÉBASTIEN BRODEUR-GIRARD :**

22 ... correct.

23 **M. KENNETH DEER :**

24 Eighty-seven ('87).

25 **Me SÉBASTIEN BRODEUR-GIRARD :**

1 So he will talk about the subject of the day, so
2 the United Nation Declaration on the rights of
3 Indigenous People.

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

5 Okay. So I will ask the clerk to... proceed.

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1 Me KENNETH ATSENHAIENTON DEER,
2 AÎNÉ, NÉGOCIATEUR DE LA DÉCLARATION DES NATIONS UNIES
3 SUR LES DROITS DES PEUPLES AUTOCHTONES

4 -----

5 **LA GREFFIÈRE-AUDIENCIÈRE :**

6 Your name, please?

7 **M. KENNETH DEER :**

8 Kenneth Atsenhainton Deer.

9 **LA GREFFIÈRE-AUDIENCIÈRE :**

10 Thank you.

11 **LE COMMISSAIRE :**

12 Welcome Mr. Deer. We're listening very carefully
13 to what you'll have to say. Tell us.

14 **M. KENNETH DEER :**

15 Very well. Thank you. Thank you for inviting me.
16 I'm very honoured to... I'm also very happy that
17 you had the two previous speakers, it makes my job
18 a lot easier, you know. Particularly Paul Joffe,
19 who... I can cut off half of my presentation just
20 because of what Paul shared with you, you know.

21 To go further to the oath that I just swore, I
22 always carry a wampum with me, and it's been given
23 to me by the Oneida Nation Council of Chiefs and so
24 that... I always carry myself in the best way to
25 represent all our people, you know. And by

1 representing the people I must also tell the truth.
2 Because we come from an oral tradition, and in...
3 we don't use written documents or stuff like that.
4 In an oral tradition, you have to tell the truth.
5 Because if you don't tell the truth, then the oral
6 society breaks down, you know? A liar is one of
7 the worst things to... the worst kind of person,
8 the most despised person is a liar. Because it's a
9 breakdown of the... of oral tradition. So in that
10 way, by carrying this wampum, I am bound to tell
11 the truth at all times.

12 So I just like to reinforce that. All right.
13 Thank you.

14 All right. My Elders always tell me to...
15 always start from the beginning, and so I'll...
16 because of Paul Joffe's presentation, I can start
17 earlier.

18 So, on the wall is the seal of the
19 Haudenosaunee and I introduced myself this morning
20 as being Mohawk. We're part of what... in English
21 is called the Six Nations Confederacy. In French,
22 the Iroquois Confederacy. In our language, we call
23 it the Haudenosaunee, or "people of the Longhouse".
24 And it's made up of six (6) Nations: Mohawk,
25 Oneida, Onondaga, Cayuga, Seneca and the

1 Tuscaroras. And we go from East to West from here,
2 the Mohawks furthest in the East to the Seneca in
3 the West, all the way up to... Western New York and
4 into Pennsylvania and Ohio.

5 So, and this is a... and we have a
6 Constitution that binds our people. And this seal
7 represents that Constitution. It's a constitution
8 that predates European contact.

9 In the center is the white pine tree, which
10 means the... is a tree, what we call the tree of
11 peace, and it represents the constitution, where
12 people who follow this constitution will put aside
13 their anger and their hate for one another, and
14 personalities, and use only good words that do not
15 cut or hurt with each other. And they would only
16 use reason and good mind to settle their
17 differences. This is created out of warfare, to
18 prevent warfare, and it's why it's called the great
19 law of peace.

20 And underneath that tree, you'll see there are
21 weapons, a war club and arrow that are buried
22 underneath the tree, so that people who follow this
23 constitution bury their weapons of war between each
24 other. And so therefore we live in peace. And
25 there's four (4) roots that go out from the tree,

1 that bring a message of peace. So, if you want to
2 find peace, you follow those routes and come under
3 the tree, where you bury your weapons and put all
4 your emotions aside and deal with people in a good
5 way.

6 Around the tree are the clans' symbols of the
7 families. Everybody has a clan. We are a
8 matrilineal society, it's the women that carry the
9 clan.

10 With the Mohawks, we have three (3) clans:
11 The Bear, the Wolf and the Turtle. And all the
12 other clans, the Eel and the Snipe and the Heron,
13 the Hawk, the Beaver and Deer clans are on the
14 amongst the other clans with the Oneidas and the
15 Cayugas and the Senecas have these other clans. So
16 this... that represents the people.

17 The... so the figures on the outside holding
18 hands are the fifty (50) Chiefs of the Confederacy.
19 There are nine (9) Mohawk Chiefs there and nine (9)
20 Oneidas and onwards. And there are holding hands
21 and they're protecting the people.

22 And also, it represents the... should the tree
23 fall, should the tree of peace fall, they would
24 have been caught on the arms of the Chiefs and they
25 would re-establish the peace by putting the tree

1 back in place. So that's what it... all that
2 symbolism means.

3 On top of the tree, you'll see an eagle, and
4 the eagle represents vigilance. And if it sees a
5 danger to the peace, it warns the people to protect
6 the peace.

7 Now we bury the weapons between each other.
8 It doesn't mean that we bury the weapons against
9 outside interference into our... for our people.

10 So I want to express this because, it's an
11 important part of our culture. Now what I'm going
12 to explain to you is the Haudenosaunee perspective
13 on the development of the UN declaration, and how
14 we participated and how we engaged at the
15 international level. Because we have a long
16 history of international engagement, including of
17 course treaties, with... Our first treaties are
18 with the Dutch, not with the English or the French
19 but with the Dutch, in sixteen thirty-five (1635).
20 The treaty... they call it "the treaty of Fort
21 Orange" where Albany, New York, is, you know.

22 And later on, we made treaties with the French
23 and the English, the Americans and the British.

24 We don't... we have no treaties with the
25 Canadians, you know, because our treaties are pre-

1 Confederation.

2 I have a lot of stuff on here, so I'm going
3 to... And this is our traditional homeland. A map
4 that shows you where all our homeland is. You'll
5 see Montreal way up in the upper right hand corner,
6 where we are here, and this is, you know, all part
7 of traditional Mohawk territory.

8 I want to... and these are contemporary
9 communities and within the Confederacy. I'm not
10 going to dwell on this too much. This is an image
11 of the peacemaker, the... somebody that was sent to
12 us to teach us the ways of peace, and the
13 constitution which I just described to you came
14 from this gentleman, who was before, way before
15 European contact. And the symbolism of the Six
16 Nations in one Longhouse that we all live together
17 in harmony. And the Mohawks should be the furthest
18 ones on the far... on the far right would be the
19 Mohawks.

20 Of course you've seen this, this belts. This
21 is called "the Hiawatha belt" or "Hiawatha belt" in
22 our languages, and it represents the original Five
23 Nations; the Mohawks, you know, on the right, and
24 the Oneidas, Onondaga, Cayuga Seneca, going from
25 East to West.

1 And of course, that's the flag you'll see
2 flying everywhere. You'll see Haudenosaunee
3 people, that's the flag representing the original
4 Five Nations, the original Haudenosaunee.

5 The Two Row Wampum is how we relate with each
6 other, the... If I don't know, anyway, given their
7 presentation, I'm pretty sure somebody has probably
8 done this by now, but I will very briefly.

9 The Two Row is how we see ourselves with other
10 Nations. And the first one, I guess, that, in
11 history, that we refer to, it is the treaty of Fort
12 Orange with Albany. And the one portrait, it's a
13 white background with two (2) purple rows.

14 One purple row represents the ship with sail,
15 the Dutch with their people, with their religion
16 and their laws and their ship. And the other
17 purple row represents our canoe, with our people.
18 And our laws and our spirituality, in that canoe.
19 And the white, the background stands for the river
20 of life. And that the two (2) vessels, the one
21 with sails and the canoe would go down side by
22 side, by... down the river of life, not interfering
23 with each other's navigation.

24 So this was a recognition that the Europeans
25 aren't going to go back to where they came from,

1 they're going to be here for a while and that we
2 have to learn to live together in harmony.

3 And we recognize that we... each other
4 recognize each right to exist, each right to self-
5 determination. And so, that's why... Yes. So
6 this... to show you the wisdom of our leadership,
7 way back in the sixteen hundreds (1600s), you know.
8 International relations is nothing new to us. We
9 had relations with Europeans and other Indigenous
10 Nations. So we had a very sophisticated way of
11 dealing with one another. So much so that, when
12 the United States separated from Great Britain and
13 wanted to set up its own country, they didn't know
14 how to run a country without a king. So they
15 looked to the... to us, to the Haudenosaunee, "so
16 how do you run a Confederacy of Six Nations without
17 a king?"

18 So we explained to them how we operated. And
19 a lot of the parts of the American Constitution
20 were inspired by the great law of peace that we
21 taught... we taught them.

22 The only part, one of the parts that they
23 didn't live out was the equality of men and women;
24 it's what is left out of the US Constitution.

25 This is the community of Kahnawake. And I'll

1 skip all this part.

2 Now, I want to talk to you, we go closer to
3 the declaration.

4 In Ontario, after the war of American
5 Independence, many Mohawks and others fought on the
6 side of the British as mercenaries. And when the
7 war was over, they rewarded those that fought for
8 the British with a tract called "the Haldimand
9 Deed", a track of land six (6) miles on each side
10 of the Grand River that empties out into Lake Erie;
11 and that's the grey area.

12 Over time, the... that land was sold out from
13 under us, and then all that's left was that red
14 part, and that's called "the Ohsweken" or "the Six
15 Nations Reserve" in Ontario, where reside there
16 Mohawks and Oneidas and Onondagas, Cayugas and
17 Senecas and Tuscaroras. Fifty per cent (50 %) of
18 them though, however, are Mohawks, you know.

19 So, when they started complaining to the
20 government of Canada that, you know, you're
21 violating the agreement for all this land, Canada
22 was uncooperative.

23 So they decided that, well, if we can't get
24 satisfaction with Canada, as a sovereign people,
25 then we should take our complaint to the League of

1 Nations, you know.

2 So, in nineteen twenty-three (1923), they sent
3 a Cayuga Chief, by the name of... his title name
4 was "Deskaheh". Titles go down all the way back to
5 the time of the creation of the Confederacy. The
6 Chiefs that were at that time, their names became
7 titles and they're handed down generation after
8 generation after generation, all the way to the
9 present.

10 Deskaheh's English name was "Levi General".
11 And they decided that's a... if Canada is not going
12 to give them satisfaction, then they're going to
13 take their complaint to the League of Nations,
14 because as sovereign people, that's where we should
15 be taking our complaints.

16 So they sent him to Geneva, and he was... the
17 people sold their horses and cows and other things
18 to help send him there. He also went there on his
19 own tribal documents; he didn't use any kind of
20 Canadian stuff, he used the sovereign authority of
21 the Six Nations Confederacy to send him to Geneva.

22 And then, while he was there, he was quite
23 popular. They had a real red Indian in their
24 midst, and he'd lobbied the States about what their
25 issue and he got many... got support from countries

1 like Persia, Japan... - who else... - I think
2 another one... the Netherlands. I think there's
3 another, I can't remember what.

4 They supported that he should address the
5 League of Nations.

6 However, the... Canada was livid, absolutely
7 livid that they had somebody in Geneva, acting like
8 a sovereign people, and so they were really pissed.
9 So they asked the help of Great Britain, to prevent
10 him from speaking; because Great Britain was still
11 a great... was a great power - still is I suppose -
12 and... but Canada was still a minor power, and so
13 they needed Great Britain's weight and authority
14 to... so, Great Britain, you know, lobbied States
15 to stop them from speaking. Even though there were
16 other... they stopped him from speaking, arguing
17 that he's not a member of the League of Nations.

18 Of course he's not really... I mean, it's
19 partly true that he's not a member, but there are
20 many non-members of the League that were allowed to
21 speak. But they just decided not to let him speak,
22 and he was stopped from speaking.

23 Nevertheless, he was very popular, with the...
24 in Geneva, and he had a lot of support. And
25 there's a little story here about a little boy, at

1 one of these meetings like this, he would tug on
2 his shirt, and the other people would try to chase
3 the boy away. So, but Deskaheh said, "no, never
4 mind, don't bother him, I will talk to him."

5 So he sat down and he talked with that little
6 boy. The boy had a lot of questions. And then
7 when he was satisfied, the little boy was happy and
8 he left. So I'll get back to him later.

9 So, however, Canada was so upset that Deskaheh
10 was in Geneva, at the League of Nations, that
11 they... the Six Nations Reserve was governed by the
12 Great Law of Peace, you know, that Chiefs and Clan
13 Mothers and all that, it was... that was how it was
14 operated.

15 So, in nineteen twenty-four (1924), the
16 Canadian government sent in the RCMP police to
17 padlock the consul house, seize all the wampums and
18 files, and ship them off to Ottawa. And then, they
19 held elections under the Indian Act.

20 So in nineteen twenty-four (1924), that's how
21 the Indian Act came to the Six Nations Reserve.

22 So ever since that time, there's been this...
23 they had conflict in Six Nations, for you had the
24 Elected Council, imposed by the Canadian
25 government, and the traditional Chiefs and Clan

1 Mothers that were there.

2 And up until today, only less than five per
3 cent (5 %) of people vote in Band Council elections
4 in the Six Nations, and that's very similar to all
5 the Iroquoian communities, including Kahnawake
6 where it's around... between twenty (20), twenty-
7 five per cent (25 %) vote in elections.

8 Others this... very... most people are
9 sympathetic to the traditional form of government,
10 because that's their true government, and not the
11 elected councils that are empowered through the
12 Indian Act.

13 So, Deskaheh, by the way, never returned home
14 to Six Nations, because he was in fear of being
15 arrested. You have to understand, in that time,
16 this is the height of the residential schools, you
17 know, the assimilation policies of the... - what do
18 you call those things - ... passes, he needed the
19 permission of the Indian agent to leave the
20 reserve, you know, it was a hard time.

21 Duncan Campbell Scott was king, basically of
22 Indians, under the Canadian... for the Canadian
23 government, and so, he was afraid of being
24 arrested. So he never returned to Canada. And he
25 went to Lewiston, New York, just at Niagara Falls,

1 just across the border on the American side, where
2 the Tuscaroras reside. And that's where... he
3 lived there. He only lived for three (3) more
4 years until nineteen twenty-seven (1927), and he
5 did three (3) years later.

6 Some say of a broken heart, because he felt
7 that, he caused this disruption in his community,
8 you know. His life was totally changed. He went
9 away to Geneva and he came back, and it was a
10 different world. So he did in twenty-seven ('27).

11 So we'll fastforward now, to nineteen seventy-
12 seven (1977).

13 In nineteen seventy-four... nineteen seventy-
14 three (1973), there was another crisis in the
15 United States called "the Wounded Knee". There was
16 a big occupation by the AIM movement, etc.

17 And after that, the Indigenous people met,
18 there was a... I think it was in Eagle [Buick] in
19 the States, where they... a lot of traditional
20 leaders were gathered and they decided that they
21 can't get justice in the American system; or the
22 Canadian system as Deskaheh has indicated.

23 So they decided they'd have to take their
24 plight to the United Nations.

25 So they decided... decide a campaign to do

1 that and they sent emissaries out.

2 And so, in nineteen seventy-seven (1977), at
3 the United Nations in Geneva, there was a meeting
4 called "the NGO conference on racial discrimination
5 against the Indigenous peoples of the Western
6 hemisphere." And there, about two hundred (200)
7 and two hundred and fifty (250) Indigenous people
8 are gathered, to try to convince the United Nations
9 that, the Indigenous peoples have a unique
10 situation and that the United States... the United
11 Nations has to do something about that.

12 The Haudenosaunee - as a small side story -
13 the Haudenosaunee, when we decided, our delegation
14 decided to go to that meeting, they said, "well, if
15 we're going to go to this meeting and we agree on
16 reinforcing our sovereignty, then we're not going
17 to go there as Canadians or Americans, we're going
18 to go there as Haudenosaunee."

19 And so, we made our own passports, you know,
20 Haudenosaunee passports out of a piece of leather
21 and paper, and it's handwritten.

22 And so, they went to Geneva. And when they
23 arrived at the airport, the Swiss authorities
24 didn't know what to do with these strange people
25 with a strange passport, and they held them in the

1 airport. And so there's all kinds of negotiations
2 going on, what to do to get this delegation into
3 Switzerland.

4 The mayor of Geneva heard about this and the
5 mayor intervened and said, "well, I will allow them
6 under my recognition"; you know, mayors in Europe
7 have more power than mayors here in North America.

8 So, the mayor allowed them in, and he wanted
9 to meet them. So he feted them in the city hall in
10 nineteen seventy-seven (1977). And that gentleman
11 there on the left, in the black, is the mayor of
12 Geneva in seventy-seven ('77). And he wanted to
13 meet the Haudenosaunee because, the mayor of Geneva
14 was that little boy that was tugging on Deskaheh's
15 shirt in nineteen twenty-four (1924). And he
16 wanted, he was so grateful to Deskaheh, he wanted
17 to repay Deskaheh's kindness. So he allowed the
18 Haudenosaunee into Geneva.

19 And he says that the Haudenosaunee will always
20 be welcome in Geneva since that time. And still
21 today, we still travel to Geneva. His promise has
22 been repeated by other mayors, you know, in ninety-
23 seven ('97), and recently, in two thousand and
24 thirteen (2013), that promise has been reaffirmed.
25 So we still travel there on our own passport. I

1 can show it to you at some time, if you have time
2 at the end of this discussion.

3 So the Indigenous people are gathered in the
4 United Nations. These are posed pictures on the
5 outside. A lot of Indigenous people, from both
6 Canada and the United States, Central and South
7 America, there was a couple of Maoris I think, from
8 Sami, from Scandinavia, they were also there.

9 There's the mayor, watching a drum group sing
10 a song.

11 And there was... it was a very important time.

12 And one of the things that they wanted to do
13 was to try to impress upon the United Nations that
14 they have a particular situation, that we should be
15 subjects of international law, and not objects, as
16 Mr. Joffe has indicated earlier, that existing
17 international law was not protecting Indigenous
18 people. We were still being dispossessed and
19 disempowered, and there was no protections from
20 the... from the existing international human rights
21 standards.

22 So, at this meeting, the... they impressed
23 enough the United Nations that they... and other
24 things were going on, but they created a working
25 group on Indigenous populations in nineteen eighty-

1 two (1982). I don't have any pictures of them, but
2 in nineteen eighty-two... - where am I... Okay.

3 In nineteen eighty-two (1982), they created
4 the working group on Indigenous populations. And
5 one of the first things that the Indigenous people
6 wanted them to do was to write a declaration that
7 would protect the rights of Indigenous peoples,
8 yes. And they also decided also, (inaudible) to
9 use the word "Indigenous", you know, because there
10 was a lot of discussion on what word to use, you
11 know. We were called "Indians", you know, and
12 there were Aboriginal and Native people and stuff,
13 but the word "Indigenous" is a term that Indigenous
14 peoples themselves decided that this is what we
15 want to be referred to, as Indigenous.

16 Of course, the working group was made up of
17 five (5) human rights experts, none of whom were
18 Indigenous. One from each of the five (5) regions
19 of the world, you know: Africa, Asia, Latin
20 America, Eastern Europe and Western Europe, and
21 other countries, you know. And... - hey, where am
22 I going?

23 Just to fast forward till today, when now,
24 Indigenous people are leading into the United
25 Nations, and this is the General Assembly where

1 Deskaheh, on the lower right-hand corner, does the
2 opening; like I did this morning, but he does it
3 Onondaga, you know. And he's a Chief, what we call
4 a [condole] Chief in the Confederacy. Very
5 important position.

6 So the... so we have come a long way since
7 the... and those words that I presented this
8 morning were not allowed in the UN, and we had to
9 fight for that, for... to get to that point where
10 we could give this invocation. We don't call it "a
11 prayer", you know. We understand it. We don't
12 want religion in the UN, it's fine. But an
13 invocation uttering creation is... we don't
14 consider that a prayer at all, which is a
15 Thanksgiving and a recognition of the reality
16 that's around us.

17 Now, one of the things that we wanted to
18 convince people of the UN is that there's a
19 difference between minority rights and Indigenous
20 rights. Because everybody would say, "well,
21 what's... you know, you're a minority, you know,
22 what do you... you know, you have your language,
23 your culture, what... you know, you should be
24 happy." We have minority rights.

25 And there are similarities between minority

1 rights. People talked to me about that. "Why are
2 you Mohawks? You're just minority." Well, we may
3 be a numeric minority, all right, but we have...
4 our rights are different.

5 There are similarities, you know, each...
6 minority rights, this is... the minority rights are
7 based on the declaration on the rights of
8 minorities, you know. Minorities have a right to
9 language, a right to culture, religion, free from
10 discrimination and they can have their own schools.

11 Indigenous rights are very similar in that
12 way. We have a right to our language, our culture,
13 our spirit... - I'd rather use "spirituality" than
14 "religion"; we consider religion a business. Free
15 from discrimination, and we also can have our own
16 schools and etc., you know, social institutions.
17 But there's... that's where the similarity stops.

18 Indigenous rights also include the right to
19 self-determination, to freely determine our
20 political status and freely pursue our economic,
21 social and cultural development. And we also have
22 the right to land, territory and natural resources,
23 and we exercise our rights collectively. This is
24 what's different between ourselves and minorities.
25 And I always use the Italian minority - I don't

1 know if there's any Italians in the room -, but
2 we... you know, like the Italian minority in
3 Canada, they came after... they can speak Italian
4 if they want to, they can practice their Catholic
5 religion, they can... you know, they can have their
6 own Italian schools, they can do all of these
7 things. Their have their own Italian culture. But
8 they can't exercise the right of self-determination
9 in Canada.

10 The Italians exercise the right of self-
11 determination in Italy. That's where Italians
12 exercise. They can't demand a right of land,
13 territory and natural resources in Canada. They
14 can own property, but they can't demand rights to
15 land territory and natural resources. They do that
16 in Italy. That's where they have a right to land
17 and territory and natural resources, you know.

18 And well, collective rights, of course,
19 minorities... minority rights are individual
20 rights. They're not collective rights. They are
21 individual rights. And we have a big problem with
22 the Western concept of human rights as being
23 individual rights. We believe that our rights are
24 collective. In order to Indigenous people to
25 survive, we had to exercise our rights

1 collectively.

2 Now Mohawks, on the other hand, we can't go to
3 Italy and claim self-determination in Italy. We
4 can't go to Italy and claim rights to land,
5 territory and natural resources.

6 The only place that Mohawks can claim self-
7 determination is right here. Right here on the
8 land that your... this building is sitting on.
9 There's no other place in the world that Mohawks
10 can claim self-determination, it has to be here.
11 There's no other place in the world where we can
12 claim land, territory and natural resources, it's
13 right here. And this is where we exercise our
14 rights collectively. Nobody should tell us how to
15 exercise our rights, you know. You know, we
16 believe that there are such things as individual
17 rights, but we also believe that collective rights
18 are actually vital to the survival of Indigenous
19 people.

20 Reducing our rights to individual rights would
21 eventually erode, you know, the sustainability of
22 Indigenous cultures.

23 So we had to convince the United Nations of
24 this and we were successful at that. And that's
25 why the working group was created. We asked them

1 to... we needed something to protect the
2 collectivity and self-determination of Indigenous
3 peoples. And that working group was created in
4 nineteen eighty-two (1982), and I first went to the
5 working group on Indigenous peoples in nineteen
6 eighty-seven (1987). And when I went, when I
7 arrived there and I met Paul Joffe, there were
8 twelve (12) articles in the draft declaration at
9 that time. And by the time we left Geneva in
10 eighty-seven ('87), there were eighteen (18).

11 So, you know, piece by piece, Indigenous
12 people would draft the... make draft, present draft
13 to the working group, the five (5) experts, and
14 then they would add them to their... we would
15 debate them and then add them to the declaration.

16 And we had Indigenous people from around the
17 world, you know, from... North Americans, of
18 course, were a big part of that, from the United
19 States and Canada, a lot of people; Latin
20 Americans, Indigenous people from Latin America,
21 you know, from Mexico, you know, Central America
22 and South America. Aborigines from Australia,
23 Maoris from New Zealand. We had a Sami from
24 Norway, Finland and Sweden. We had Inuit from
25 Greenland, we had Inuit from the North, you know,

1 Northern Canada and Alaska. And so we... later on,
2 there was... we had more people from Africa and
3 Asia that joined, they came more heavily involved,
4 mostly in the nineties (90s).

5 You know, so, it became, you know, a less... a
6 little United Nations, you know, we have... we'd
7 meet together to debate what kind of rights that
8 people want to have it... what we want to have in
9 this declaration.

10 The working group ended its, you know,
11 debate... deliberations on the declaration in
12 nineteen ninety-three (1993) when all the... we...
13 I guess we had exhausted all our... we had forty-
14 five (45) articles. By nineteen ninety-three
15 (1993), there were forty-five (45) articles in the
16 declaration.

17 And... but still, there was still non
18 consensus by... among the working group about the
19 right to self-determination.

20 Article 3 in the right... in the declaration
21 was something that Indigenous people fought for and
22 was pivotal and important.

23 However, the attitude, in particular when I
24 arrived in the... is that, you know, the Indigenous
25 peoples are not peoples, are not equal to other

1 people. Indigenous people do not have a right to
2 self-determination. That was the attitude that we
3 were facing at that time, including from human
4 rights experts, the legal experts at that time were
5 arguing on this, and we, of course, we have other
6 legal experts are [reading] the opposite, you know.

7 And so, when article 3, Indigenous people have
8 the right to self-determination, was very
9 controversial at the time - still is. And so we...
10 we were still fighting hard to get to the... the
11 working group, the five (5) members of the group to
12 agree to self-determination.

13 So nineteen ninety-three (1993) comes along.
14 Now, nineteen ninety-three (1993), we wanted
15 nineteen ninety-two (1992) to be the year of
16 Indigenous peoples, you know. But Spain said they
17 wanted to celebrate Columbus' discovery - we
18 weren't too keen on that - so, Spain stopped us
19 from getting nineteen ninety-three (1993) (sic) to
20 be the year of Indigenous people. So we got
21 nineteen ninety-three (1993) as a consolation
22 prize.

23 So, since it was the year of nineteen ninety-
24 three (1993), the working group said, "this would
25 be a good year, as a good accomplishment to pass

1 the declaration", you know. So they did.

2 And the last article, the last last last
3 article that was agreed to by the working group was
4 article 3: "Indigenous people have the right to
5 self-determination."

6 So then, from nineteen ninety-three (1993), it
7 went up to the parent body, the sub-commission
8 on... the motion of protection of human rights, and
9 there were twenty-eight (28) human rights experts,
10 and not all of those experts agreed that we have a
11 right to self-determination. And it took some
12 skill of the members of the working group, to make
13 sure that we got the declaration through there
14 without any changes. So they just... they... so
15 they rubber-stamped it, took...

16 So now, after that, they went up the ladder to
17 the Commission on human rights.

18 Now the Commission on human rights is not made
19 up of human rights experts. The Commission on
20 human rights is made up of government diplomats,
21 you know. This is the government body, you know, a
22 high-level government body. And a very difficult
23 arena to operate in. And the States hated the
24 declaration. They didn't like the declaration. So
25 they passed a resolution creating another working

1 group, a working group to elaborate a declaration
2 on the rights of Indigenous people.

3 And not only did they didn't like the term
4 "Indigenous peoples", they called it... the working
5 group on resolution 9532, because they didn't have
6 the word "Indigenous peoples" in it. That's...
7 there was so much resistance to the term "peoples"
8 with a "s" on it, because if you used the term
9 "peoples" with an "s", it implies that we were
10 peoples with a right to self-determination.

11 If you look at the year of Indigenous,
12 nineteen ninety-three (1993), the year of
13 Indigenous people, there's no "s" on it. Because
14 the year of the Indigenous people seal, as if all
15 Indigenous people were the same around the world,
16 that we're all one people. That's how... that's
17 the resistance that Indigenous peoples were getting
18 to the UN declaration, and particularly the term
19 "peoples" and the right to self-determination.
20 It's so engrained, it was really really tough, you
21 know.

22 So they created this working group, 9532, and
23 it was a working group though, that was... came out
24 of the sub-commission, and therefore had to run
25 by... Excuse me. Came out of the Commission of

1 Human Rights, and therefore had to run by the rules
2 of the Commission, which means State... it's a
3 State run body, and it's... and you know that the
4 United Nations is a private club of States, of
5 governments, and they are very jealous of their
6 power, and they don't like anybody interfering with
7 that power, you know. And they tolerate NGOs, you
8 know, but they certainly don't give NGOs any power.
9 So they're not going to give Indigenous peoples any
10 powers.

11 So it was a very difficult room we were in
12 there. They... the chairman was a mister...
13 Ambassador Urrutia from Peru; big tall guy, about
14 six foot four (6'4"); and he ran the meeting in a
15 very strict way. And he wouldn't allow us to
16 speak. We would talk a bit, but we... States got
17 all the time, and if there's time left over, we got
18 a chance to speak, you know. And we were really
19 really in danger of... that the States are going to
20 gut the declaration and there is going to take
21 every... all the rights out, in particular self-
22 determination.

23 So in nineteen ninety-six (1996), at that...
24 in that meeting, a very pivotal meeting in nineteen
25 ninety-six (1996), when the chairman wouldn't

1 recognize us, we would raise our hands to speak.

2 And this infuriated our people.

3 So we met, we have a... an indigenous caucus,
4 but it was an important part of our strategy, we...
5 Indigenous peoples, we would meet alone, like an
6 Indigenous UN, you know. And we would meet for...
7 to discuss strategy, and we decided that, we can't
8 let this go on. And if he doesn't recognize us
9 from speaking, we're going to walk out.

10 So, in nineteen ninety-six (1996), in a
11 particular meeting, when he wouldn't recognize our
12 speakers, we all got up and we left the room.
13 And... not all of us. Ninety per cent (90 %) of
14 us. You know, some people got scared that the
15 States would continue to elaborate a declaration
16 without us.

17 However, we walked out, and one of the things
18 that... about that resolution 9532 that was so
19 pivotal, it said that "to elaborate a declaration
20 with the participation of Indigenous peoples, or
21 Indigenous participation."

22 So we had that... it was our only leverage.
23 The only leverage we had was they could not
24 elaborate a declaration without us in the room.
25 They... you know. So we're not in the room, then

1 they can't do anything. And there weren't enough
2 Indigenous people in there to really... to justify
3 their continuing their work.

4 So we... it resulted in three (3) days of
5 frantic negotiations between the UN and us, to get
6 us in to... and I was the chair of the caucus. And
7 yes, so I'm here and I'm talking with the chair,
8 and we're having all kinds of ideas. People were
9 popping up with ideas like, "why don't we have an
10 Indigenous coach here?" And they said, "no, it's
11 against the rules." -How about an Indigenous
12 [rapportors]? -No, that's against the rules. You
13 know. We would look... The phone lines were
14 burning up between Geneva and the legal office in
15 New York, you know, about how do we solve this
16 situation.

17 After three (3) days, the chairman gave us
18 this proposal. He says, "you know, in these... in
19 the working group where you're debating, you know,
20 declaration, or anything, ninety-nine per cent
21 (99 %) of the meetings is informal. The meetings
22 are informal. And only when all the States come to
23 a consensus, then they move into a formal and
24 ratify the... what they agreed to, you know.

25 So what he says that, in the informal

1 sessions, I will... the Indigenous people will be
2 part of the consensus, so that the States, in the
3 room, and the Indigenous people have to come to a
4 consensus on the text of the declaration. And that
5 was a tremendous victory at that time - still is.

6 And so, we were able to be part of the
7 consensus, and, on top of that, we had a strategy
8 of no changes. Because we didn't want the States
9 to water down the declaration. We know that if we
10 gave up one word, this is going to open the
11 floodgates to a whole bunch of others.

12 So we held our ground, for years, from
13 nineteen ninety-five (1995), ninety-six ('96),
14 ninety-seven ('97), ninety-eight ('98), ninety-nine
15 ('99), two thousand (2000), two thousand one
16 (2001), two thousand two (2002), two thousand and
17 three (2003). We held our ground, we... didn't
18 allow any changes, we... And in fact, in those
19 debates, we... all those years, we debated self-
20 determination for two (2) or three (3) days at a
21 time. We debate all the different rights:
22 education, health, you know, economic development.
23 All those rights that are... all those articles,
24 forty-five (45) articles, we debated.

25 And while we were debating and while we were

1 holding ground, we educated States. We educated
2 States about those rights and made them see the
3 reason why those rights exist, why they're on the
4 declaration. And we were very successful at doing
5 that.

6 However, States were looking a little pissed
7 at us, and so they really really wanted to have
8 changes, and Canada... Canada was the sponsor of
9 the working group on the... for this resolution.
10 And Canada was hot and cold, you know. Sometimes
11 they were really [for us], sometimes not.

12 Sometimes they supported self-determination,
13 sometimes they didn't, you know. It was like
14 negotiating with a marshmallow, you know. They...
15 And also, because we didn't want changes, there was
16 a bit of a gap between us and Canada over the
17 years.

18 And then... and another thing that helped us
19 was that two (2) countries - Guatemala and
20 Denmark - were ready to accept the declaration just
21 the way it is written, without any changes. So
22 that divided States. The States were divided. As
23 long as States were divided, then we had a chance,
24 you know.

25 But then, as time went on, there was more and

1 more pressure for change. The United States were
2 getting impatient and the United States are flexing
3 his muscles and saying they're not going to approve
4 the funding for the working group. So the working
5 group will stop and therefore, kill the
6 declaration, you know.

7 And so that got a lot of people... and
8 Guatemala and Denmark also said, "look - telling
9 us, they say - you know, we can't hold back the
10 States any longer, you know. You're going to have
11 to agree to changes or else, we'll... something is
12 going to happen. You know. It's not going to be
13 nice."

14 So, to make a long story short, there's a lot
15 more stuff to that, but in nineteen... in two
16 thousand and four (2004), the chairman said that
17 we'll start, you know, talking about specific word
18 changes. And so that's when... negotiations, hard
19 negotiations started placed on each and every
20 single article, every paragraph, every sentence,
21 every clause, every word was debated. And plus,
22 they divided us in half, they had one working group
23 dealing... group articles, and another group
24 dealing with different articles. And so, our
25 delegations were split, you know. Our... and we

1 had small delegations. States can bring, you know,
2 Canada can bring ten (10) people to the working
3 group, so they can spread their people out, you
4 know. Whereas us, we don't... we didn't have that
5 capability, you know.

6 So they started to negotiate. And we still
7 did pretty well, you know, in those. And they
8 also... that's where article 46 was added, you
9 know. Article 46 was added at that time, you know.

10 So, even still, there was no consensus on
11 article 3, there was no consensus on article 21 at
12 the time, or all the articles 25 to 30 on land and
13 territory. But mostly, all the other articles were
14 agreed to by consensus with some word changes. So
15 we're doing all right. But then we hit a wall,
16 and... - let's see, were are we...

17 So, what happened was, the Commission on the
18 rights of humans... the Commission on Human Rights
19 was dissolved in two thousand and six (2006),
20 because of... it was too political. They decided
21 to get rid of it, and they create a Human Rights
22 Council. And since the working was created by the
23 Commission, and also other areas, we said, let's...
24 the Chairman decided we're going to finish...
25 After eleven (11) years, we had enough negotiations

1 now, and that's it.

2 So in two thousand and six (2006), the
3 Chairman took all the articles that we agreed to by
4 consensus and all those that weren't agreed to, he
5 was going to decide what the text was going to be.
6 So it became a chairman's text. It was no longer a
7 text of... by consensus, it became the Chairman's
8 text.

9 And one of those articles was article 3.

10 Article 3 was not by... agreed to by
11 consensus, the States were resisting it, but the
12 Chairman said, "I'm going to leave article in just
13 the way it is."

14 And he moved article 31 to article 4, about
15 autonomy and self-government. And he agreed to all
16 the text in... basically all the text in articles
17 25 to 30, on lands and territories and natural
18 resources. And that's why it's worded the way it
19 is.

20 And so, he told the States, "take it or leave
21 it." And the States took it. And they... and the
22 first meeting of the Human Rights Council in June
23 of two thousand and six (2006), the declaration
24 came to... came to a vote.

25 I want to tell you a little story, a side

1 story about Canada.

2 Canada... by the way, when we were in the...
3 two thousand three (2003) to six (6), three (3) of
4 five (5), Paul Martin was Prime Minister. And Paul
5 Martin gave instructions to get this declaration
6 through. At that point in time, Foreign Affairs
7 became more supportive of the declaration, and they
8 help convince States that there are such things as
9 collective rights, and that self-determination does
10 not mean independence and that States will break
11 up, it's a concept, you know.

12 And so Canada was very helpful on that one,
13 convince countries like the UK and France, and the
14 United States that collective... because they're
15 very hard on individual rights, human rights or
16 individual right.

17 So they convinced States to go along with
18 the... on collective rights. They would say that
19 collective rights are not human rights, but they
20 agreed that there are collective rights, you know.
21 We... of course, we don't agree, but anyway, they
22 were able to go along with collective rights. And
23 they were able to go along with self-determination
24 as well, because it doesn't necessarily mean
25 independence, it means... it's anything.

1 And so, Canada calmed States down and got them
2 to support the declaration. However, as you know,
3 there was an election, I think, late two thousand
4 five (2005), two thousand... early... so Canada
5 went silent in two thousand and six (2006). So
6 when the vote came at the Human Rights Council in
7 June of two thousand six (2006), when the vote
8 came, Canada voted against it, along with Russia.
9 And when Russia voted against it, it was a roll
10 call vote, I should tell you.

11 How much time do we have? I don't even got a
12 watch.

13 Usually, when they push the button to say, you
14 know, "green" means "yes", "red" means "no",
15 "yellow" means "abstain". Well, the buttons didn't
16 work. So they had to have a roll call vote, and
17 they had a bag with the names of the countries,
18 they pull out Cuba. So, Cuba hold it first and
19 they go alphabetically, they go around. So Cuba's
20 at "C", and then they go around, you know. "Yes",
21 "yes", "abstain", you know.

22 Then when Russia, it came to Russia, Russia
23 said no. They came back around and they came back
24 to Canada. And it said, the Chairman says,
25 "Canada." And there's silence, you know. So he

1 goes again, he says "Canada". And a little voice,
2 they say no. And there's a lot of groaning in the
3 room, an absolute groan when Canada said no,
4 because Canada... was convincing States not to be
5 afraid of the declaration. And then they go ahead
6 and they vote against it. They were livid, you
7 know. Two (2) countries I can think of were
8 calling... off the record, calling Canada
9 "disingenuous", for convincing them that... to
10 support the declaration, and then voting against
11 it, you know. It was an amazing time. It was a
12 dark time, let's say, put it that way. Little
13 brighter now, I hope.

14 So anyway, the... so the declaration was
15 passed with only two (2) people voting against it.
16 And then, normally, it will go to New York to the
17 General Assembly and be rubber-stamped by the
18 General Assembly. It's not what happened.

19 Canada, because of a plan in Africa at the
20 time, started to convince... I mean, was
21 convinced... lobbying African States, saying, "hey,
22 look at that declaration", you know. "Look at
23 self-determination, it's dangerous, it might break
24 up your countries."

25 So, when the declaration went to the third

1 committee in New York in September of what, two
2 thousand and six (2006), the African States said
3 they wanted to have more study. And which is code
4 for "we want changes in the declaration." And
5 these were the same States that voted in favour of
6 it in two... in Geneva, you know.

7 Something was, you kno..., something happened
8 between June of two thousand six (2006) and
9 September of two thousand six (2006), to get the
10 African States to be... all of a sudden have big
11 problems with the declaration.

12 So now, a third series of negotiations started
13 on the declaration, and this one was between
14 representatives of Africa and Guatemala, Mexico
15 and, I think a little bit of Peru to negotiate.
16 Because African States wanted like forty-two (42)
17 or forty-three (43) changes; in a declaration that
18 had forty-six (46) paragraphs, you know.

19 Of course, some change... many, you know,
20 multiple changes in some paragraphs.

21 Anyway, with the help of Indigenous people who
22 went to New York and the States, we weren't allowed
23 in the room, it was, you know, like bilaterals.
24 And we were trying to influence the... as much as
25 possible.

1 And we got the African governments to agree
2 to, I think, nine (9) changes. And that's where
3 territorial integrity came in article 6. It was
4 the African governments. We managed to keep
5 territorial integrity out of the declaration all
6 those years. We said it wasn't necessary to have
7 territorial integrity in the declaration, because
8 it was implied in the Charter, and the Charter is
9 in the first paragraph of the... preamble. So, 2.2
10 of the Charter of the United Nations refers to
11 territorial integrity. So it wasn't necessary to
12 have... that's why all those years, we fought to
13 keep territorial integrity out of the declaration.
14 But African governments managed to get it in at the
15 last minute, you know, to...

16 Now, people say, "but why don't you just...
17 take the declaration and let the African
18 governments vote against it and we'll still win."
19 That's not the way the UN works. The UN doesn't...
20 that makes sense. New York is very political, it's
21 not about human rights. So, if African governments
22 let it be known that they're against the
23 declaration, other States - Asian States, Russia -
24 will vote against the declaration to support
25 Africa. So we had a risk of losing the declaration

1 or winning at a very narrow margin. We don't want
2 that. We want it to be a universal declaration.
3 So that's why they had... Africans had to be
4 appeased at the time.

5 So the Africans... the negotiations went on
6 and they made these... agreed to these. One of
7 those changes was positive, [two of them were
8 truly]... the rest, damaged the declaration. I
9 don't know what they are anymore, I don't care,
10 that's old news.

11 And so the... then it went to adoption on
12 September thirteen (13), two thousand and seven
13 (2007), you know. And that's how... So that's the
14 ladder on that Chart. All the way to working group
15 on Indigenous populations. The lowest place it can
16 get to in the UN, at the time, and it had to climb
17 up all those steps to get to the General Assembly.
18 That's how... that's twenty-five (25) years right
19 there, from about nineteen eighty-two (1982) and
20 the creation of the working group on Indigenous
21 populations, to two thousand and seven (2007), it's
22 twenty-five (25) years to get it that far.

23 Thirty (30) years if you count the reading
24 into seventy-seven ('77) on Indigenous people first
25 met to (inaudible - mumbling) to the UN. So that's

1 the journey.

2 This is the room 77, it looks like this is
3 where a lot of our... the negotiations took place
4 in Geneva. Governments sat on the front and we sat
5 in the back, you know. And this is a picture of
6 Indigenous people in... this is the purple form.
7 It's the only picture I could find. I can't find
8 any picture from the working groups.

9 This is the picture of the Indigenous caucus
10 at the World Council of Churches building in
11 Geneva, where we would... where a lot of strategy
12 and planning and stuff was decided.

13 This is the Indigenous caucus in New York, you
14 know, where we gather when we're... to prepare for
15 the permanent forum.

16 This is... just some pictures. There's a
17 young guy in blue there, at the bottom, I don't
18 know who he is. (laughter) Well, this is the...

19 By the way, when Canada voted against the
20 declaration, I mean, when they voted to get...
21 Australia was the first government to change their
22 vote on the declaration in two thousand and ten
23 (2010). It was a political issue. And during
24 their elections, when the party won, on the day
25 they took power, they announced that they were

1 going to endorse the declaration. So that was the
2 first country to change their vote.

3 And then, we were coming up to the permanent
4 forum in New York and I... You know, those four
5 (4) countries by the way - Canada, the United
6 States, Australia and New Zealand - form a block
7 called "CANZUS", you know, for the acronyms. And
8 so, when Australia... so they talk to each other.
9 So and Australia endorsed it. Canada was talking
10 to New Zealand and the United States, so, Canada
11 knew that something was happening, because you
12 know, the Harper government was really against the
13 declaration.

14 So, we understand that the US was considering
15 changing their position, but we weren't sure.
16 Anyway, the Harper government was so against the
17 declaration and a little bit embarrassed by the
18 position, so they put out a press release on...
19 late on a Friday afternoon or early Friday evening,
20 saying that they're going to endorse the
21 declaration. After the [meeting] they had all gone
22 home for the week, you know. So [they wanted] to
23 hide it.

24 So, when the permanent forum came up in two
25 thousand and ten (2010), at the opening session,

1 New Zealand had the podium, and New Zealand
2 announced that they were going to endorse the
3 declaration.

4
5 Huge standing ovation, you know. And the
6 Maoris, on the top picture, had a chant after that,
7 and they were... and the Hawaiians answered from
8 the crowd; because Hawaiians and the Maoris have
9 the same language, you know, as long as... and also
10 the people from Easter Island, it's all the same
11 language. They answered.

12 And then, when the United States spoke, the
13 United States, Susan Rice - who was the US
14 ambassador to the UN - first time the US ambassador
15 would ever come to a permanent forum, and she
16 announced that the US government is going to
17 reconsider their position on their... they review
18 their position on the declaration. That got a huge
19 round of applause.

20 Later on, on a panel, Canada was on the front
21 and Canada announced that they were going to
22 endorse the declaration. Total silence. Nobody
23 applauded, because we already knew, they put out a
24 press release, you know, two (2) weeks before. The
25 fact of the matter is people were still pissed at

1 Canada for voting against it, they didn't get any
2 applause whatsoever, you know. It was really... I
3 felt bad for the guy, because he was waiting for
4 the applause and it didn't happen. Anyway, that
5 was... it's a little story about Canada and...

6 **LE COMMISSAIRE :**

7 (laughter).

8 **M. KENNETH DEER :**

9 And now, it's like a hundred and eighty degrees
10 (180°) when you have the current Prime Minister's
11 position, you know. It's like... it's unbelievable
12 the difference from way back then into... in terms
13 of the declaration.

14 So anyway, that's the journey. What time is
15 it?

16 **Me CHRISTIAN LEBLANC**

17 It's four o'clock (4:00 p.m.).

18 **M. KENNETH DEER :**

19 Four o'clock (4:00 p.m.). I... since Paul Joffe
20 talked about the declaration, I'd like to compare
21 the declaration to the Charter, you have that in
22 print anyway, so you don't... but I want to... one
23 of them, I want to refer to you here. Where is
24 it...

25 "40. Indigenous peoples have a right to

1 access to prompt decision through just
2 and fair procedures for the resolution of
3 conflicts and disputes with States and
4 other parties.”

5 And that's, you know, and that's the part,
6 that's article 3 at the Covenant on Civil and
7 Political Rights:

8 “(...) to ensure any person whose right
9 to... rights of freedoms as herein
10 recognized are violated shall have
11 effective remedy, notwithstanding...”
12 ... etc., etc.

13 And I just want to point out that that... what
14 this Commission is.

15 This Commission is an exercise of the Covenant
16 on Civil Political rights, article 3. That's what
17 this is. This is a way to [haul]... to have
18 effective remedies when rights are violated. And
19 that's an obligation of Canada, and that's what
20 this is, you know, whether they realize it or not,
21 but this is what that is. And that's article 40 in
22 the declaration.

23 So, article 40 is just a way... a map of how
24 to apply the Covenant on Civil and Political
25 Rights.

1 So I just wanted to point that out, that this
2 process that we're going through is an obligation
3 by Canada. And you're fulfilling that obligation.
4 And the declaration tells you how to do that. I
5 only want to point that out.

6 So I'll end here, if you have any questions.

7 **LE COMMISSAIRE :**

8 Do you have questions?

9 **Me SÉBASTIEN BRODEUR-GIRARD :**

10 I'm just... curious. I'd be interested to hear you
11 about... was there a lot of conciliation between the
12 Indigenous groups from Canada and for Quebec in
13 particular? How did it work in-between the
14 different delegations?

15 **M. KENNETH DEER :**

16 There was a tremendous amount of solidarity between
17 all... it was amazing. When you think about it,
18 it's absolutely amazing, because you have...
19 Indigenous people are all around the world, you know
20 - North America, Latin America, you know, Africa,
21 Asia. We all have different experiences, you know.
22 But we all have the same problem, we all have been
23 disempowered and we all have been dispossessed, all
24 been decolonized.

25 All the West have, all these... we're all

1 familiar with one another, we all suffered the same
2 thing.

3 So that it was very easy, in most cases, to
4 get... to call "come together", and work in
5 consensus.

6 Oh, and yes, there were battles, you know,
7 there were difference of opinions and arguments and
8 stuff like that, and... But for the most part, we
9 held together. There were some cracks in our
10 positions, but, it's a good question that you ask,
11 because after we... after the declaration was
12 passed, other NGOs - I shouldn't say "other NGOs",
13 because we're not NGOs, but - NGOs analyzed the
14 success of Indigenous people to get the
15 declaration, and they attribute the success to the
16 Indigenous caucus; by organizing, by sending us
17 else apart, and getting and all the differences
18 settled, before they went into the room, you know,
19 and came across with a solid front.

20 Because most other movements didn't work that
21 way. You had, you know, the North American
22 movement, and then you had the Latin American
23 movement, and they're all going into the UN
24 separately, and they didn't always agree. But the
25 Indigenous caucus was very, very solid, very good.

1 Not perfect, there are... there's always outliers,
2 there's always rebels or somebody who feel that,
3 you know, nobody is going to tell them what to do
4 and they're going to say whatever they're going to
5 say, you know. But the Chairman and States usually
6 held their... you know, they recognized the
7 authority and the credibility that the caucus had,
8 you know. So the caucus had a lot of influence on
9 States and the Chairman.

10 The Chairman worked very closely with the...
11 because I had to, you know, as Chairman, I
12 coordinated a caucus many many... at many meetings,
13 one on one or with small groups, with a Chairman,
14 to hammer out our differences, how the processes
15 and... sometimes things go wrong and we're all mad,
16 and then, so, we meet with him and he was open to
17 the discussion.

18 And I want to emphasize so much to you the
19 importance of the working group on the Declaration,
20 that Indigenous peoples and States were part of the
21 consensus. That has never happened before, and it
22 hasn't happened since. And that, to me, was just a
23 very important part of the success of the
24 Declaration. The strong... the strength and the
25 language in there, was because of that. And that's

1 a model, that States and other authorities should
2 take into consideration, about the balance between
3 Indigenous people and States.

4 And we're talking about the legal system, you
5 know, the Supreme Court and all that kind of stuff.
6 There's no balance in the Supreme Court; the
7 Supreme Court is five (5) White people, you know.
8 And there's no Indigenous part of Supreme Court or
9 the Court of Appeal or Federal Court, you know.
10 It's... there's not... it's not a Tribunal, it's
11 not a place where we are... have an equal voice,
12 you know. And we rely on hoping that those judges
13 - no offense, the judges are open and reasonable
14 and what... still, you know, they don't... they
15 don't think, might not think like us and... or feel
16 what we feel, you know.

17 And, you know, so that's why I have a... you
18 know, I have a problem, with having the Supreme
19 Court making decisions about us. Even though some
20 of them have been quite positive recently, they
21 haven't been positive in the past, and even those
22 that are positive could be stronger, you know. It
23 could be better.

24 So I'm trying to make a point here about
25 balance. And we are still fighting battles in

1 balance.

2 **Me SÉBASTIEN BRODEUR-GIRARD :**

3 Thank you.

4 **LE COMMISSAIRE :**

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

6 **Me MARIE-PAULE BOUCHER :**

7 J'ai aucune question.

8 **LE COMMISSAIRE :**

9 Non?

10 **Me DENISE ROBILLARD :**

11 Aucune question Monsieur le Commissaire.

12 **LE COMMISSAIRE :**

13 So, I think it will be the time for me to thank you
14 again for your presence here today, opening
15 comments, the representation this morning, and to
16 help, to ask help for us in our works, and your
17 presentation this afternoon.

18 I understand, and listening to you, we
19 understand that it was really not easy for
20 Indigenous people to fight back for rights since a
21 long time, and specially with the UN declaration
22 decades of meetings, representations, to finally
23 have a vote in two 0 0 seven (2007) - except four
24 (4) countries. I understand that all of them
25 changed since.

1 And now, we... our mandate to try to
2 understand what's going... - I will say - wrong, in
3 the relations between Indigenous people and public
4 services in Quebec, to understand why it is the way
5 it is.

6 I have the feeling that we have to look at
7 what happened many, many years before, to understand
8 what's going on now. We can't put this aside. And
9 the fight you had to do, to finally have a
10 declaration at the United Nations. Now you... I
11 understand there's a fight in the country, like
12 Romeo Saganash in Ottawa. People asking us... many
13 people ask us, since the beginning of hearings in
14 June last year, to Call for Action, [who want to]
15 recommend, I will say, they ask us to Call for
16 Action concerning this declaration. I'm listening
17 to that. I try to understand.

18 We have our research people at that Commission
19 working on that, listening to people like you, like
20 Professor Joffe, Leclair and others. And we are
21 thinking of that.

22 And we understand that, it may be a good sign
23 of reconciliation, but not after a fight, but with a
24 voice, unique voice, to say we recognize those
25 rights. I hope so, one day, we'll have that.

1 So thank you very much again, and if you have
2 any idea to help us, you know, how to join
3 Me Brodeur-Girard, he will be happy to have your
4 comments, and make sure I know all what's going on
5 in the Commission telling to me.

6 So thanks again. And I think that it will be
7 all for today? Do you have some documents to file?

8 **Me SÉBASTIEN BRODEUR-GIRARD :**

9 Oui. Je vais simplement déposer la présentation
10 PowerPoint de monsieur Deer comme document.

11 **LA GREFFIÈRE-AUDIENCIÈRE :**

12 O.K. Le PowerPoint sera la pièce 418.

13 - PIÈCE COTÉE P-418 -

14 **Me SÉBASTIEN BRODEUR-GIRARD :**

15 Merci.

16 **LE COMMISSAIRE :**

17 Et on ajourne demain, neuf heures trente (9 h 30)?

18 **Me SÉBASTIEN BRODEUR-GIRARD :**

19 Demain, neuf heures trente (9 h 30).

20 **LE COMMISSAIRE :**

21 Neuf heures trente (9 h 30)?

22 **Me SÉBASTIEN BRODEUR-GIRARD :**

23 Oui.

24 **LE COMMISSAIRE :**

25 So I thank you again.

1 **M. KENNETH DEER :**

2 Thank you.

3 **LA GREFFIÈRE-AUDIENCIÈRE :**

4 La Commission ajourne jusqu'à demain matin, neuf
5 heures trente (9 h 30).

6 -----

7

8

9 Nous, soussignées, **Gabrielle Boyer** et **Ann Montpetit**,
10 sténographes officielles, certifions que les pages
11 qui précèdent sont et contiennent la transcription
12 exacte et fidèle des notes recueillies au moyen de
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15 enregistrement, le tout conformément à la loi;

16

17 Et nous avons signé :

18

19

20



Gabrielle Boyer, s.o.

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Ann Montpetit, s.o.b.