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ENTRE LES AUTOCHTONES
ET CERTAINS SERVICES PUBLICS

SOUS LA PRÉSIDENCE DE
L'HONORABLE JACQUES VIENS, COMMISSAIRE

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COMPARUTIONS :

POUR LA COMMISSION :

Me MARIE-ANDRÉE DENIS-BOILEAU

POUR LES PARTIES PARTICIPANTES :

Me MARIE-PAULE BOUCHER,
Procureur général du Québec

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OUVERTURE DE LA SÉANCE

LA GREFFIÈRE :

Veillez vous asseoir. You may be seated. La Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec, présidée par l'Honorable Jacques Viens, est maintenant ouverte.

L'HONORABLE JACQUES VIENS (LE COMMISSAIRE) :

Bonjour. Good morning. I understand that we work with Me Marie-Andrée Denis-Boileau for the Commission and Me Marie-Paule Boucher for the Attorney general for Quebec?

Me MARIE-ANDRÉE DENIS-BOILEAU :

Bonjour.

LE COMMISSAIRE :

Welcome. And welcome Dr. Napoleon and Dr. Friedland. I understand we will continue with your presentation on the same oath.

1 **MME HADLEY FRIEDLAND :**

2 Good morning. So, I thought I would start again as
3 we turned and talked about human rights and internal
4 work on... within Indigenous laws, and then also
5 looking at that relationship between communities.

6 So I thought I would start with a story, that
7 is placed here in Quebec.

8 So, yesterday I told a story about in Northern
9 Alberta; a complicated path of calling for the
10 police, when a stranger had broken into an elder's
11 house. So this story is about a child, a 4-year-old
12 Cree child, who is placed out of her Indigenous
13 community into Montreal, for adoption with a non-
14 Indigenous caregiver.

15 So, as time went on, the extended family
16 started to see warning signals of serious concerns.
17 And if you look at the Cree legal traditions report,
18 you would start to recognize some of the steps they
19 took.

20 They observed and listened, they deliberated in
21 small groups and in large groups. They consulted
22 with Elders Council and the Chief. They identified
23 all the complicated issues and reached the decision
24 that they would first try to have a mediative
25 meeting, to listen and to find solutions

1 collaboratively.

2 If their concerns could not be resolved, they
3 decided it would be in the child's best interest to
4 come home. They found a home of healthy safe
5 relatives already known to the child and approved as
6 caregivers. This decision-making process is
7 something you would recognize within the Cree legal
8 traditions' report. It was child-centered
9 principled and caring. It involved consulting with
10 over twenty (20) people and it took approximately
11 ten (10) days over a period of a month... to six (6)
12 weeks.

13 The community then appointed a Band Councillor
14 who was the child's great-aunt - in Cree, great-
15 aunts and great-uncles are grandmas and grandpas -
16 to phone the child's social worker, the Youth
17 Protection. When she did, she was told she had to
18 wait three (3) weeks for a phone appointment. Three
19 (3) weeks later, it took the worker four (4) minutes
20 and nine (9) seconds to say, "I doubt you have any
21 real concerns and I know the whole story." The
22 worker then hung up on the Band Councillor.

23 When the Band Councillor phoned again, she just
24 hung up on her when she introduced herself. The
25 Band Councillor said, "we can only take so much."

1 It made me feel small, helpless, and unimportant,
2 like I can't protect and help my own grand-daughter.

3 So this is a case where, despite everything the
4 Cree family and community did, before and after, to
5 voice their concerns, to do things in a legitimate
6 and principled way, when they reached out and
7 connected, Youth Protection simply proceeded with
8 the adoption, with no meeting and no notice.

9 The little Cree girl is functionally rightless,
10 and so is the Cree family and community.

11 **MME VALERIE NAPOLEON :**

12 So that's... that short story drawn from life
13 experiences intended to help ground our
14 conversations here. And to keep this grounded in
15 the actuality of family life and in community life,
16 and current relationships between Indigenous peoples
17 and the State institutions around them.

18 So, we're going to pick up where we left off
19 yesterday, and where we did leave off was with this
20 proposed analysis.

21 So, what we introduced yesterday was a number
22 of tools having to do with ways, critical,
23 consistent ways into Indigenous legal traditions,
24 analyzing the oral histories and stories, and
25 bringing those together in a framework which can be

1 understood as a body of law that can be taken to,
2 applied to contemporary problems and struggles.

3 And so, this work then, is to ensure that the
4 analysis and the work with Indigenous law is open
5 and for... to a gendered analysis and, here, we have
6 one of the importance... one of the important
7 reasons for using this kind of framework is that, it
8 does provide a framework, it does ensure an in-depth
9 legal analysis, and it does ensure that the work is
10 systematic, so that it builds, rather than being a
11 hit-and-miss kind of process.

12 The other thing, just to speak to why these
13 kinds of tools are important, is that whatever legal
14 traditions we've been educated in, whether it's
15 Common law or Civil law or Cree or [Tsokoutine(ph)],
16 whatever legal traditions we've been educated with,
17 sometimes we stop seeing it, and we take things for
18 granted in it.

19 And when we started working with training law
20 students and graduate students to do this work, like
21 every person that works with us is required to go on
22 a one... through a one-month training program to
23 learn these different tools.

24 And what we realized is that, if we sent a Cree
25 person into a Cree community, sometimes there would

1 be too many things taken for granted and critical
2 questions wouldn't be asked, because people would
3 assume that everybody already knew, whatever.

4 And so, what we started to do was to send...
5 [try] and send people to different legal traditions
6 other than their own.

7 So a Cree or an Anishinaabe students went to
8 Mi'kmaq or they went to Gwich'in, up in the Yukon,
9 or they went to different places. And this was to
10 make sure that we didn't, in the way that we work
11 with communities and the way that we employ the
12 tools, that we don't make assumptions, that we don't
13 miss things. That it would be for us, that we're
14 actually able to listen to the different kinds of
15 stories and understand how they contain law and how
16 they contain obligations and how they contain
17 legitimate legal processes, and not take them for
18 granted.

19 So, with this framework, this requires that we
20 ask questions about again who are the decision
21 makers, how is it gendered, what are the different
22 implications for men and women. And here, like you
23 can see that, if we don't test our own assumptions
24 in asking the questions, we can just accept that
25 things are a certain way for women and a certain way

1 for men, without asking about them. So it really
2 requires that we push against our own assumptions
3 or... and that we have other people, that this be a
4 collaborative process, so that there's more than one
5 mind that's being applied to the work.

6 Just to... we're going to give you a tiny taste
7 of what asking these questions would be. We did a
8 little bit of that yesterday with a Sioux woman, and
9 we're going to continue this with a Sioux woman
10 today. And so... and I put, just making and choose
11 breaking up there, but we won't do that story, we'll
12 just focus on a Sioux woman.

13 So, when... so I'll ask several of these
14 questions, and then Dr. Friedland will respond from
15 the story of a Sioux woman, so that you can see how
16 that... this is being applied.

17 So, the characteristics of legitimate decision-
18 making processes, that requires that we look at who
19 is involved and how it's gendered, and who are the
20 authoritative decision makers. So from a Sioux
21 woman, how would you begin to answer those
22 questions?

23 **MME HADLEY FRIEDLAND :**

24 And I think that's a very short story. But we see
25 that it sounds like the mother. If you recall, the

1 mother saw that something was going on with her
2 daughter and the children were sent away. And then
3 the mother attempted to heal her, and did so. So,
4 there could be decision makers behind the scenes,
5 that the narrator is assuming, but within the story
6 itself, we know that it's a family member, in this
7 case the mother. A woman, the grandmother. It
8 sounds like other people are included because some
9 of the adults stay, some go away. And it does... in
10 this story, it does look like the mother has
11 substantial authority to heal the daughter. It's
12 not clear about... One of the troubling aspects
13 sometimes people raise in this, in this story, is
14 what about any decision-making process around the
15 shaman, the male shaman. It's not discussed, except
16 that he dies in four (4) days.

17 **MME VALERIE NAPOLEON :**

18 Okay. So... So, from that short description, we
19 can see how you would then engage, these questions
20 would one really short story. So the different
21 kinds of responses.

22 Do you think they have different implications
23 for men and women in the story?

24 **MME HADLEY FRIEDLAND :**

25 We would have to read more stories to really

1 understand that. Again, we have a lot of
2 responsibility on a Sioux woman's mother. We have
3 that response of healing and supervision. So we
4 don't know what sort of support Sioux woman's mother
5 has or needs, I mean, what would happen if she
6 didn't have that capability or support.

7 Again, there's a strange silence about men in
8 this story, and whether that's deliberate or not, we
9 don't know. The legal response here doesn't appear
10 to be any supervision of separation of the powerful
11 shaman, except again it was natural consequences at
12 the end.

13 **MME VALERIE NAPOLEON :**

14 Would the story change, do you think, if shaman was
15 a woman and the person suffering... becoming a
16 Witigo was a man?

17 **MME HADLEY FRIEDLAND :**

18 And that's a really important question to ask. So
19 one of the things we've done with communities in a
20 really simple way, to bring out gender dynamics, is
21 ask people to retell the story in their groups,
22 switching the genders.

23 So in this case, if Sioux woman was a young
24 man, and an old Cree woman was a powerful shaman and
25 heard a young man laughing at her, does it change...

1 would it change the outcome?

2 And the other question is, does it change the
3 way we read the story or the way we feel about the
4 whole scene? And whether... if this was a young man
5 and his father was the one healing him. So we can
6 do that thought experiment and switch it, and this
7 would be something really important within
8 communities to ask. What changes, if we reverse the
9 genders here, with people... be saying this would
10 actually never happen? An old woman shaman would
11 never do this? Or would they come up with a
12 different response or would they say no, if this is
13 a case where the exact same thing would happen?

14 **MME VALERIE NAPOLEON :**

15 So we can see some of the rights, based on what
16 you've said so far, but, are there rights that might
17 be overlooked here? Are there things that we missed
18 or potentially missed in it?

19 **MME HADLEY FRIEDLAND :**

20 Uh-hum. And that's again a really good question,
21 because there's a lot happening in this story.
22 Again, we have really an act of violence and abuse
23 of power that starts the story. And it's not clear
24 in this story what are the rights. You know, and
25 rights can be a complicated language and people can

1 debate it, but I think they're here to stay. So
2 it's not clear, are... if we were just looking at
3 this story, and of course we would look at others,
4 we would wonder what are peoples' rights when
5 there's an abuse of power. What expectations does
6 Sioux woman have when this happens.

7 And what about the shaman. It looks like there
8 was not a process, so when you look at substantive
9 rights, it does look like Sioux woman had a
10 substantive right too for safety and bodily and her
11 mind's integrity as well, her spirit's integrity.
12 But the question on procedural rights around the
13 shaman, and corresponding responsibilities and
14 obligations are not clear. They're pretty shrouded
15 in this story, it's left to the spiritual
16 consequences.

17 **MME VALERIE NAPOLEON :**

18 What about overall gender power dynamics? So, is
19 there anything else here, that you think that we
20 should be paying attention in the story? Like, in
21 so far as the roles of men and women and the way
22 they appear in the story?

23 **MME HADLEY FRIEDLAND :**

24 Well, in this particular story, there's two (2)
25 really powerful people. And one is this old Cree

1 man, and this is gendered, he's this man and he's
2 using his power very, very incorrectly, in a very
3 evil way. And then you have this very powerful
4 grandmother, who also has power, and she's using her
5 power in a very healing way.

6 So, there is a question and that would be a
7 question I would ask in community: is this... does
8 this have to do with gender dynamics? Is this...
9 again, if you reverse the roles, you know, does it
10 say implausible how the people react? I would want
11 to be really hesitant and make sure we didn't freeze
12 these roles, we wouldn't want to walk away from this
13 story. This is why it's also important to read many
14 stories. I wouldn't want to walk away from this
15 story and walk away saying, "okay, men with power do
16 bad things, women with power, heal." It could...
17 you could oversimplify that and create these rigid
18 gender roles that, again, not only can people not
19 live up to but we wouldn't want people to live up
20 to, or just assume that power with men is going to
21 lead to bad things, power with women will lead to
22 healing. We'd want to complexify that and talk
23 about the fact that... often, power is referred to
24 as always good, or always bad, and we'd want to say,
25 "well, this story shows both."

1 **MME VALERIE NAPOLEON :**

2 So, in many of the Dene stories and lots of the
3 Cree stories, one of the things that we saw was that
4 an issue, a theme was often abuse of power.
5 Sometimes by men, sometimes by women. There were
6 also... the question of gender often is completely
7 missed, and so the stories are... only include men.
8 So, you know, we'd have to find other ways of
9 analyzing and learning from those materials as well.
10 Yes.

11 **MME HADLEY FRIEDLAND :**

12 Uh-hum.

13 **MME VALERIE NAPOLEON :**

14 Okay. So, what we...

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

16 Sorry, just a question about what you were just
17 talking about. You said that, like, it would, this
18 Sioux story, some questions that you could ask in
19 committee is: would the story change, if the shaman
20 was a woman and the man was a Wetico, does it change
21 the way you feel about the story... does it change
22 the way you see the story? I was... just curious to
23 know, you probably had already some of these
24 discussions in communities, what are the reactions
25 and how do you discuss around these type of

1 situations?

2 **MME VALERIE NAPOLEON :**

3 Yes.

4 **MME HADLEY FRIEDLAND :**

5 We...

6 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

7 Sorry, go ahead.

8 **MME HADLEY FRIEDLAND :**

9 It's a really important question, because it's often
10 can come... become very fraught.

11 One thing that helps is when it's within
12 community and there's small groups. People have a
13 little more freedom. So, at the beginning of
14 yesterday, I talked about this myth of lawlessness
15 and... I think one of the things that... freeze
16 difficult discussions that need to be had about
17 gender and other differences and other
18 vulnerabilities, is that so often when they come up,
19 they're used as a full stop. "Indigenous people
20 don't have laws" or it's... or "all these laws are
21 no good because... here's an imperfection." And
22 imagine again if we did that we Canadian law, we'd
23 be shot down, we'd all go home. I mean, we... you
24 know, if we didn't ever have any of these issues.

25 There's a variety of responses. For the most

1 part, people will engage, and again we encourage
2 them to say, "you're just not powerful enough to
3 hurt these stories", like... and real respect with
4 these stories is to engage, to use them as tools for
5 thinking and the Cree Elder Louis Bird, who has
6 written two beautiful books where he talks about
7 Cree stories, I believe he is from Quebec.

8 **MME VALERIE NAPOLEON :**

9 Uh-hum.

10 **MME HADLEY FRIEDLAND :**

11 Really powerful stories. And he'll say that, he'll
12 say, "stories are tools for thinking. They're there
13 to break the ice, to start these conversations."
14 So, there's a variety of conversations. Sometimes,
15 I've heard or learned things where people do feel
16 very strongly that women would not necessarily ever
17 do something a man does in the story, or vice versa.
18 Sometimes people would say, "well, yes, I've never
19 thought of it that way, but..."...

20 In the other story, we were talking about using
21 truce making and truce breaking. It's a really
22 beautiful story and very shortly, it involves all
23 men. There's no women in this story, that we can
24 find, but there's a war between the Cree and the
25 Blackfoot, and it's gone on for fifty (50) years.

1 And every time there's a truce, they use the term
2 "reckless young men, go and break the truce." They
3 go and steal horses, or they go on a raid, or they
4 get in a fight with somebody and it's both Blackfoot
5 and Cree reckless young men.

6 So immediately, when you ask people to reverse
7 that and imagine reckless young women, sometimes
8 people have... trouble with that. Sometimes people
9 struggle and have a hard time imagining young women
10 going on similar raids.

11 So it's good to just talk that out and ask,
12 "why." "Why does that seem more difficult?" And
13 the stories resolved with... Again, it's something
14 that you wouldn't necessarily see in European
15 stories, where two young men have killed a... two
16 Cree young men have killed a Blackfoot Chief's son
17 in a battle, and they go at daybreak, they put down
18 all their weapons and at daybreak, they walk into
19 his tipi, completely defenseless. And he's just
20 woken up, he's not even dressed yet. And they come
21 into his tipi. And you can imagine many outcomes to
22 this, but there is... but the way the story ends is
23 he says, "Oh! you know, coming this way at daybreak
24 has killed the anger in me. You'll now be my sons."
25 And he gives them his son's clothes and his son's

1 weapons, and adopts them. And there's a peace
2 between the Blackfoot and the Cree for many years
3 because of this action.

4 And then there's a further story that goes on
5 with two great... a great Blackfoot Chief, called
6 Crowfoot, and a great Cree Chief called Pawnmaker,
7 where there's similar thing, there's skirmishes and
8 Crowfoot, who's a Blackfoot Chief, says, "these
9 reckless young men will never stop breaking this
10 truce, I will go be Cree, I will go live with the
11 Cree." And he walks into Pawnmaker's tent and adopts
12 Pawnmaker's... his son, and lives with the Cree. And
13 that story ends, there's... interference with the
14 Canadian jail and Pawnmaker's imprisoned, but in the
15 end, they love each other as father and son their
16 whole lives, and it ends with... when Pawnmaker
17 dies, Crowfoot lays him to rest, in the Blackfoot
18 way, and brings him back to Blackfoot territory and
19 says he was a great-hearted and broken-hearted man.

20 So it's a powerful story and then you start
21 reversing it and saying, "where is the power within
22 the gender, and, if you were imagining women now in
23 these roles, what would change?" And it leads to a
24 lot of interesting discussions about assumptions
25 about men, assumptions about women.

1 Sometimes we get people to retell it completely
2 and they have to... sometimes, they can have a lot
3 of fun with it and it becomes quite humorous, which
4 also helps.

5 **MME VALERIE NAPOLEON :**

6 One of the things that it enables, in the times that
7 we've used the method of opening up space to talk
8 about gender and interpretation, sometimes, what you
9 can get at is: what are the constraints that are
10 going on that... which make it difficult for you to
11 imagine women in different roles, or men in
12 different roles. So what are the constraints that
13 you bring, in your head, to your interpretations;
14 because that's an important piece of it, it's an
15 important part of the conversation.

16 And the other thing is that, it's really
17 important to appreciate what those constraints are
18 in the interpretation.

19 So, for instance, there are stories where,
20 like, Gwich'in stories, or Dene stories or other
21 stories, where women have resisted the constraints
22 in their life - whether it's marriage or whether
23 it's other kinds of constraints - limitations being
24 placed on them. And then sometimes bad things
25 happen to those women, like extreme violence or

1 other kinds of things happen to them.

2 So, you could, if you don't examine how you're
3 analyzing or... and interpreting what happens in
4 that story, you could say, "well, she should have
5 just behaved. She should have stayed within the
6 constraints and then those bad things wouldn't have
7 happened."

8 Or you could say, "if you constrain her and you
9 don't question the constraints, she's going to
10 resist but she's vulnerable." And there are
11 conditions of violence that have been created by the
12 world that's been built around her, and violence
13 happens as a result of the constraints, as opposed
14 to her misbehaviour.

15 So, it's really important to find ways so that
16 you don't just fall short of the kinds of analysis
17 that are required to learn from these stories.
18 These stories are ten (10), twenty thousand (20,000)
19 years old. The details in them are there for a
20 purpose, and we need to think about what those
21 purposes are. Yes.

22 So, we're tying the discussion of human rights
23 together with gender through most of our discussions
24 here. And thinking about Indigenous human rights as
25 a legality within Indigenous legal orders, I want to

1 speak briefly to the Gitxsan example. I wrote a
2 paper, which you have and which was entered into
3 evidence yesterday, called "Ravens garden". And in
4 that paper, I argue that within the Gitxsan legal
5 order, there are distinct human rights that Gitxsan
6 people, each Gitxsan person has.

7 And I argue that the way that those rights are
8 acted on, are within that Kinship system. So,
9 rather than a central state.

10 So, usually today, we have a relationship
11 between individuals and a central state to deal with
12 human rights.

13 But in Gitxsan society, when there's a harm
14 done, it's either the person's lineage, mother's
15 side, mother's house, or the father's side who are
16 responsible. So it's a horizontal system of who's
17 responsible to deal with what's... with injury, with
18 the harm that's happened to a person.

19 And it's not the perfect system, but what it
20 means is that, when there's a human rights
21 infringement or a harm caused by those kinds of
22 behaviours, that there's a right bearer, but there's
23 also, within the system, enforcement and
24 responsibility to act on it. But it's horizontal.
25 Instead of from an individual to a State, it's an

1 individual to the kinship system. And so, part of
2 the work of... with Indigenous legal traditions, you
3 know, as we talked about yesterday, is to understand
4 those structures and dynamics and to see how they've
5 changed, and to think about the consequences of the
6 changes that have taken place.

7 One of the hardest things for people to deal
8 with is where there is sexism within Indigenous
9 legal traditions, as there is in other societies.
10 And Celestine Nyamu is a scholar from Kenya, a legal
11 scholar, she now goes by Celestine Nyamu-Musembi,
12 and she argues that oppressive traditions can be
13 dealt with through a process called "critical
14 pragmatism". And that - I spoke briefly to
15 yesterday - where you have to figure out what the
16 purpose or the goal is, of a particular tradition.
17 And you also have to look around at all of the
18 different ways that that particular tradition has
19 been interpreted, because law is never interpreted
20 exactly the same. You can look at across Canada,
21 the different interpretations of the Canadian
22 Criminal Code for instance.

23 So there's always different ways and different
24 circumstances that people are making sense of things
25 and making decisions.

1 So, she says "look at the variations of
2 interpretations, look at what the process... the
3 purposes are." And then to find ways for people to
4 fulfill their purposes in a way that is not
5 oppressive.

6 That she was talking about land and land
7 allocation based on gender, in Kenya. Very hard
8 issues, very... you know, difficult issues to deal
9 with. And I think that, you know, the kinds of
10 tools that she's offering is another way to move
11 conversations with potentially get stuck when
12 declarations are made about sexist practices as if
13 that it's always been sexist and will always be
14 sexist in the future, in order for people to
15 maintain their indigeneity... their identity can be
16 wound up with the perpetuation of practices. And
17 then the practices themselves are not analyzed in
18 terms of what kind of society or community that
19 people want to be a part of. So, it's creating
20 spaces for those difficult conversations.

21 **MME HADLEY FRIEDLAND :**

22 And if I can add to that, I think this goes back to
23 our fundamental belief that Indigenous laws need to
24 be treated as law, and that's respectful. And if
25 you think about it, within law, we know there's a

1 range of interpretations. We would never question
2 that and it's with great respect that we argue our
3 different interpretations. And it is with great
4 respect, we ask for, an actually expect reasons from
5 each other, and getting to the purpose. And then
6 make principle changes in the law when it... makes
7 sense to do so as other understandings develop. And
8 I think that is a really powerful approach. Again,
9 I think sometimes the fear of talking about these
10 things is about... is the fear of it falling into
11 that primitivistic course that if we reveal any
12 gender inequality or ableism them or... homophobia,
13 anything that is going to cause pain, people will
14 simply say, "we can't have any Indigenous law", so
15 really getting away from that and saying, "no, this
16 is the very work of law is to work that outlaw is
17 living and involving and developing all the time and
18 that's what we need the space to do within
19 Indigenous laws, just as we do within Canadian law.

20 **MME VALERIE NAPOLEON :**

21 Yes. So, from the Gitxsan, last year or a year and
22 a half ago, a woman who is a Wing Chief - the
23 Gitxsan are divided into matrilineal kinship units,
24 and there are Chiefs, there's a High Chief and there
25 are Wing Chiefs, and she was a Wing Chief - and she

1 made a complaint to the Canadian Human Rights
2 Tribunal, because she was treated... she was
3 discriminated against for being a woman in a Gitxsan
4 political organization. And so, her... the Canadian
5 Human Rights Tribunal agreed with her, they agreed
6 that she had been discriminated against on the basis
7 of her gender, and... but she wasn't just only...
8 that's not the only thing she wanted. The other
9 thing she wanted was recognition that the treatment
10 of her as a Wing Chief, as a... within the Gitxsan
11 system... - the governance is also through the
12 names. And so her Chief's name was disrespected by
13 the Chief name that she was given. And when you
14 lose your authority, your [dah'get(ph)], which
15 enables you to be Gitxsan in a way that matters and
16 in a way that has credibility, if you're treated
17 badly and you don't deal with what treated you
18 badly, you lose your (dah'get(ph)) and so she made
19 the case that, within Gitxsan law, there was a loss
20 that should be recognized as a human right, that
21 should be recognized by Canadian law as a human
22 right. And they agreed with her, the Tribunal
23 agreed with her.

24 Now, as a result of that case, what was set out
25 was... there was a settlement - which is

1 confidential - and there was a plan of action that
2 was set out, which would enable the political
3 organization and the people from her house group,
4 her sisters, to deal with this case.

5 And... so the... I don't know the current
6 state, I can't update you on where that is right now
7 in its negotiations, it's not an easy case for
8 people to deal with, but it is an example where
9 people are thinking about not just Gitxsan law in
10 this case but also Canadian law, and thinking about
11 how laws, different laws, can work together, and
12 where there's mutual recognition of the remedies
13 offered by different systems of law.

14 So that's... you know, an example of a current
15 struggle and it's not... there are many other
16 struggles like this across Canada, it's just one.

17 I referred to Sally Engle Merry, yesterday, and
18 she's, as I said, an amazing scholar. And her work
19 is international with human rights. And one of the
20 things that she argues, based on international
21 research, is that, whether people understand that
22 they have human rights depends on what their
23 experience is with the legal order that they're a
24 part of. And so, the institutions of the legal
25 order, you know, she says, are the police, are

1 probation, social work, like all of the different
2 State apparatus.

3 If people's experience with those parts of the
4 State are such that they don't believe that their
5 issues matter, that their problems matter, then
6 they're not going to have what Sally Engle Merry
7 calls "a rights consciousness". They're not going
8 to understand themselves as rights bearers,
9 according to that legal system.

10 And I think that there's a lot that we can
11 learn from her work. And one of the things that I
12 take from it is that, most often, we look at whether
13 people understand themselves as rights bearers
14 according Canadian law, but given our arguments that
15 we have to take Indigenous law seriously as law, we
16 also have to ask these questions about... Indigenous
17 law. So, do what our people's experiences within
18 Indigenous law and do they understand themselves as
19 mattering in Indigenous law. And this is
20 particularly important for women and for girls and
21 for other vulnerable groups, and it is a part of the
22 work that we have to take forward with Indigenous
23 law, as well, is to take that critical perspective
24 in terms of who... who do we understand as being
25 rights bearers, and on what basis do we understand

1 that. So, it's a... those are critical questions.

2 Just the other example that I have up here, and
3 I'll go back to Sally Engle Merry in just a minute
4 but, we took... we developed an Indigenous human
5 rights course that we taught this summer, and there
6 were two (2) case studies that we used; one is the
7 First Nations Caring Society, with the Treatment of
8 First Nations children in Canada, and... which
9 was... Canada in that was found to be in the wrong,
10 according to the Canadian Human Rights Tribunal, and
11 is still in the wrong and has not responded to
12 the... decisions of the case.

13 And then the other is the Missing and Murdered
14 Indigenous Women and Girls Inquiry. So we took
15 those two case studies, and we had people... we had
16 our reports made that, from the work that we've done
17 on Cree, on *Secwepemc* - a third one... - Dene I
18 think, and we had people work through, from those
19 reports, what a human rights response from that
20 legal tradition would be and how they would treat
21 those cases. And it was really important work and
22 that people were able to draw unlaw and treat the
23 law as law, in terms of how... in terms of human
24 rights, in terms of agency, of dignity and...
25 figuring out what those elements are and then how to

1 act on them, how to go forward with them.

2 So within Indigenous law, and this is, you
3 know, part of the analysis, the critical analysis
4 for human rights is asking the question about
5 whether abused women and girls are encouraged and
6 supported by Indigenous law. What are the
7 Indigenous definitions of "assault" or "rape", and
8 do we know this, like, do we know what the
9 Gitxsan... definitions for "assault" is, or "rape".
10 And if we don't know this, why not. Why don't we
11 know that. It has to be a part of... we have to be
12 able to talk about these things.

13 Rape and assault happened ten (10), twenty
14 thousand (20,000) years ago, we know that from the
15 oral histories, and so there were always issues that
16 we... that Indigenous peoples had to deal with and
17 so, we could draw wisdom from those historic
18 processes.

19 And then, we need to think critically about
20 historic and present-day institutions that deal with
21 gender or sexuality issues.

22 **MME HADLEY FRIEDLAND :**

23 And... I was just going to add, and we need to ask
24 these of Canadian law, in Quebec law as well, right,
25 we have to always be thinking of that, of both,

1 because, one of the things Sara Maraulis(ph) writes
2 about is she said, "well, as an Indigenous person, I
3 grew up by cultural... at least, at least by
4 cultural within..." - she grew up in B.C. so -
5 within her whole community and within the B.C.
6 community, right? She's navigated at least two (2)
7 legal orders and polities for her entire life, and I
8 think that's the reality of... when we get to
9 education, we'll talk a little bit about McGill's
10 trans-systemic approach, and that's the reality
11 Indigenous women and men and children are in,
12 walking, walking [places] (mumbling).

13 **MME VALERIE NAPOLEON :**

14 Uh-hum. So, in terms of how do we go forward, how
15 do Indigenous communities, Indigenous governments go
16 forward with acting on responsibilities for human
17 rights? This is... I've drawn on some
18 international instruments that... and we've been
19 looking at these in terms of some practical ways
20 that communities can think about human rights and
21 to... practical ways that people can act on their
22 responsibilities, and so, some of the... one of the
23 ways is that we have to think about the different
24 kinds of obligations that this means insofar as
25 conduct, like, what kind of actions will... can

1 people expect to... insofar as their human rights,
2 and then what are the results of that, what are the
3 kinds of targets that we want to have.

4 And in thinking about the work that's imagined
5 here, as well as elsewhere, it's not just Indigenous
6 governance that have to think about these processes,
7 but where there are potentially collaborative
8 processes between Indigenous communities and non-
9 Indigenous communities, like State processes that...
10 or provincial processes, these kinds of tools are
11 also useful.

12 And what's key, I mean, perhaps one... the
13 thing that's even more important than the actual
14 instruments or tools themselves is the collaboration
15 and the mutual learning in engaging with the tools,
16 to create new ways of working.

17 So, conduct is important, results are
18 important, and the results are in terms of setting
19 the goals for the work.

20 This is just a way to think about what is it
21 that people want to... what kinds of things do
22 people want to look at with human rights. We can
23 have different kind of measurements, we can...
24 there's qualitative processes, there's quantitative
25 processes, there's looking at... you know, using the

1 objective perspective, but... and there's also using
2 the subjective as well. And there are different
3 examples provided here. So, you know, what we're
4 encouraging is that communities take these up and
5 that the sitting down and the figuring out of what
6 kinds of human rights are imagined; how would you
7 measure what you do with those human rights - how do
8 you measure fairness, how do you measure what
9 happens with single mothers or how do you measure
10 what happens with young people - like, all of these
11 different kinds of things, like, what are you
12 looking for, how are you going to define it, and
13 then what are you going to do about it.

14 So there are tools, and this is another piece
15 of that, another one of the... international tools
16 that are used.

17 **MME HADLEY FRIEDLAND :**

18 And part of using international tools is that idea
19 of collaboration, where you can sit and I think as
20 a... the Canadian Human Rights example you gave,
21 Val, with the Gitxsan Wing Chief, is an example of
22 that. Sitting down at the table together to
23 identify what's being measured and how it's being
24 measured, could identify - I can't pronounce that
25 but - could identify...

1 **MME VALERIE NAPOLEON :**

2 (Dah(ph)), get.

3 **MME HADLEY FRIEDLAND :**

4 ... see an eye would be coming to that and... have
5 no idea what that is and need to hear that. But
6 that is something that could be included in a grid
7 like this, right? And as could... how many Wing
8 Chiefs or how many women had been hired in a year
9 compared... you know, other types of measurements
10 and... so coming together to do this with
11 international instrument, that... act of
12 collaboration, on an ongoing basis, but also that
13 idea that... there, you know, that there's parts
14 that might not be totally understandable at first,
15 on either side, and parts that everybody will
16 understand. So, bringing that together and having
17 something comprehensive laid out, I think, is a
18 powerful tool for intersocietal communication.

19 **MME VALERIE NAPOLEON :**

20 Yes. There's definitely an intersocietal aspect to
21 these tools. So, the kinds of indicators. You
22 know, the... how do you... you know, like, to look
23 at what is going on in the field of human rights,
24 there's some that are going to be structural. And
25 so, is there room in the legislation for Indigenous

1 human rights for instance. What kinds of
2 institutions are there. What... and what do they
3 do. What are the different kinds of public reasons
4 like... when people publicly, or governments, talk
5 about their institutions, like, how do they talk
6 about them, what's included in that. Are they
7 understandable, can... are they reliable, are people
8 going to be able to always be able to go to the
9 institutions to receive support, like the people
10 need to be able to rely on things over the long
11 term, in order to build public trust.

12 And looking at processes, what... how do people
13 engage.

14 So, we have lots of examples where the
15 processes themselves end up being obstacles. And
16 so, how do we rethink those processes so that they
17 actually invite people to come with difficulties or
18 struggles, and that there's a mutual commitment to
19 working on those together, in a way that's
20 transparent, in a way that has reasons, not just
21 assumptions, where knowledge is shared and the
22 process itself is accessible. So those are...
23 that's an indicator. If we don't, if we say human
24 rights are important, and we don't have these
25 different kinds of indicators, then we have to ask

1 serious questions about how affective we're going to
2 be with our human rights.

3 Out communicators. How do we know what they've
4 achieved? Are there fewer sexual assaults. Are
5 there fewer physical assaults. Is there less
6 violence. So how do we... Like, these are the
7 questions that we have to ask, if we're going to
8 make a difference, if we're going to know whether we
9 make a difference with the kinds of things that we
10 set out for ourselves.

11 Here's another instrument, again with
12 indicators, and this is just allowing one to become
13 very specific in terms of the kinds of things that
14 people are going to work toward, the kinds of things
15 that people agree are going to be important. And
16 so, for instance you can see, you know, like how
17 valuable it would be if people from government
18 institutions and from Indigenous communities sat
19 down in a way that there was a mutual development of
20 the terms of the indicators, as well as the
21 substance and as well as the methods of evaluating
22 them.

23 So, again, they're very practical, and then I
24 think that the tools... they have to be practical,
25 people have to be able to use them with a larger

1 imagination for it.

2 Some just overall ideas. We've talked about
3 the importance of transparency, of people being able
4 to go to the same sources of information and say,
5 "actually, I have a different interpretation." We
6 have to be accountable and we have to deal with
7 scale. And so, you know, if you think back to the
8 historic and contemporary legal institutions of law,
9 the accountability, historically, at least for the
10 Gitxsan, was between communities, not within the
11 communities; because of the way that marriages were
12 arranged, in a way that the different kinds of
13 relationships were arranged within all of the
14 people, like, all of the seven (7) communities over
15 the Territory. So the accountability was between
16 communities, not within the communities.

17 And so, we're working on the North Coast right
18 now and this is... these are issues that have to be
19 talked through, because the political reorientation
20 that people have experienced with the Indian Act,
21 means that sometimes, when we work with communities
22 they'll say things like, "we only want to look at
23 the oral histories of our community", or "we only
24 want to look at the laws that relate our community."
25 And... but it's the whole [Gitxsan] legal order. It

1 would be like saying, "we're only going to look at
2 the laws of Val-d'Or, not the laws of Canada",
3 right? So it's... you fracture it.

4 And so, we have to do the education to look at
5 how was Gitxsan law, how did it insure
6 accountability before. And it was because of the
7 different relationships of accountability between
8 the communities, which means that we have to think
9 about scale, particularly with issues that have to
10 do with family law, violence, child welfare. We
11 have to think about scale... Because there has to
12 be protections built in, and the only way you do
13 that is by having larger groups of people. If you
14 have a community of two hundred (200) people or six
15 hundred (600) people, it's too small to be able to
16 deal with those issues, it's not viable, it's not a
17 viable model of self-government. And so, these are
18 hard conversations to have, but they're necessary
19 conversations in doing the rebuilding of Indigenous
20 law.

21 There's a lot that we have to do with, just
22 thinking about the language that we use. You know,
23 like, in... what do we mean by "tradition" if we're
24 going to use the language of tradition, what is it
25 that we mean. It's... do we mean that something is

1 historic? If we mean that, then we should use it.
2 Similarly with culture, culture includes law, it
3 includes political orders, it includes social orders
4 and legal orders, but it... the term "cultures" is
5 used all over the place, and often, what people are
6 thinking that culture is, is just practices,
7 specific practices of smudging or doing other kinds
8 of things. And so, rather than use the catch-all
9 language of "culture", part of what's important,
10 again, in doing the work, is if we mean a Cree
11 economic system or a Cree legal order or a Cree
12 political order or a Cree law, then say Cree law,
13 like, don't lop it all in. Like, be specific, as we
14 would have to be in dealing with anything with
15 Canadian law, we have to be clear, we have to be
16 specific, in how we try and convey information, how
17 we break down the kinds of things that we mean.

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

19 Oh, sorry, just a question about the scale you were
20 talking about. How were you able to have discussion
21 about what is that scale? I mean, that's a big
22 question I guess, but...

23 **MME HADLEY FRIEDLAND :**

24 Okay. I was going to sort of speak to that, so it
25 fits. I think the reality is, and I think Val has a

1 sort of overall say, but one of the things I was
2 going to say about small communities is, we know
3 that this is a reality, that there's small
4 communities, there's sometimes real isolation, and
5 the issue of scale was there for accountability and
6 transparency, but also resources, like, let's be
7 honest, like, we can figure out the cost of some of
8 these things, that would be necessary to uphold
9 human rights, or, you know, provide adequate
10 services, and the cost can be astronomical. So,
11 some of the ideas for scale, it's not necessarily...
12 Sometimes I've heard a... a sort of a really strong
13 view that people say, "we'll just move." And that's
14 what my ancestors did, like, people that are in any
15 small communities just move, and there's many, many
16 problems with it. But another way of looking at it
17 is to say, "how can we link arms together here. How
18 can we figure out how small communities can work
19 together.

20 And again, I think we can draw on international
21 experiences, from international relations and
22 international law and say: this does happen. There
23 is strength and, two (2) small communities, maybe
24 one is two hundred (200) people, maybe one is six
25 hundred (600) people, and maybe they are coming

1 together and maybe they're drafting within Canadian
2 law and according to Cree law or Algonquin law, an
3 agreement to work together on, let's say, child
4 welfare, an agreement to work together, let's say on
5 violence against women, and not necessarily
6 everything else.

7 But the things that make sense, doing those
8 collaborative agreements, sometimes we've talked
9 about that regarding violence, perhaps it's
10 delegating some authority or when there's some need
11 for that outside force or help in that way, maybe
12 it's drafting agreements that include dispute
13 resolution processes, that include the limits and
14 the function of those relationships. So, in Cree
15 again, that we would sort of be [woquodoin(ph)]
16 building, building those relationships but...

17 **MME VALERIE NAPOLEON :**

18 Maybe give the example (inaudible).

19 **MME HADLEY FRIEDLAND :**

20 I don't know if I can (inaudible).

21 **MME VALERIE NAPOLEON :**

22 So, in terms of what you're doing, you're working
23 with communities, you keep raising the issues, and
24 there's eventually going to be uptake at different
25 points, and, you know, part of it is, you know,

1 there's been a huge, as I said, political
2 reorientation. And so, that's, in terms of how
3 people understand legitimacy and power and... Canada
4 and the community and all of these things, so it's
5 rethinking that, in a way, is another reorientation.

6 So again, but I... and I don't want to suggest
7 it's about going back in time. It's just about
8 different... developing different ways of looking at
9 law and the functionality of law, the operation of
10 law and what's required for efficacy in that
11 operation of law. When the community is too small,
12 there are distinct problems. In some societies,
13 it's easier to work with those questions than
14 others.

15 For instance, one of the communities on the
16 North Coast, a very small, small (Gitxsan)
17 community. When we look at the number of people
18 living there, a lot of people are married into that
19 community, right? Because there has to be, within
20 all those small communities.

21 And so, we can look at the individuals and we
22 can say, "well, who's responsible for this
23 individual?" And it's a... plan, which is in
24 another community or another two communities, so, in
25 the structure of that particular society, it... we

1 can make those connections, those larger kinds of
2 connections, to expand the way that we're thinking
3 about things. But that has to be done with every
4 society. So, like, how would you think that through
5 is Cree for instance. And there are some examples,
6 but we're not in a position to be able to speak to
7 those examples for Cree right now.

8 **MME HADLEY FRIEDLAND :**

9 I just haven't asked permission...

10 **MME VALERIE NAPOLEON :**

11 Yes.

12 **MME HADLEY FRIEDLAND :**

13 ... to share those, so I don't want to...

14 **MME VALERIE NAPOLEON :**

15 Yes. But there are... it's finding ways in, and
16 it's by doing the homeworks so that we have enough
17 information that we can find those ways in, to the
18 conversations.

19 **MME HADLEY FRIEDLAND :**

20 And some of that is to... is recognizing the
21 strength within small communities. I always... I
22 will speak to this, my partner lives in a small Cree
23 community, as I said, and sometimes I'll give the
24 example - this is very innocent and it's not...
25 we're not touching on law, although we are, but just

1 child raising.

2 I remember, I have a niece, and I always say,
3 she's headstrong, she's smart as a whip. And of
4 course, she can drive us all crazy as adults,
5 because she has... I can remember when she was
6 three (3) years old, and it was too cold for her to
7 go outside, but she had older brothers and they were
8 running around outside, and we turned around and,
9 three (3) minutes she was outside without her coat
10 on, running around in the snow, you know, so we say,
11 one day she'll be Prime minister, if she makes it
12 through... But that's... when people are in a small
13 community and know each other really well, one
14 beautiful thing is, is sometimes, when somebody
15 needs to talk to this young lady and say, perhaps
16 put on some limits or perhaps talk to her about why
17 it might dangerous to run outside without a coat on
18 - she's older know. It's not always her mom. It is
19 sometimes and aunt or an uncle or a great-aunt or
20 uncle, or a grandma or a grandpa, and again, in
21 Cree, those are all nôhkom and kimosoms. There's
22 not a real distinction. Who can relate to her. Who
23 was also headstrong when they were young. Who also
24 has a really lively-mind and is determined to do
25 what they're going to do, and so, sometimes, a

1 parent will reach out and say, "can you talk to her
2 about this, because I've asked her not to do this,
3 or, I told her it's dangerous, but she's continuing
4 because she's so determined."

5 And it's sometimes a very beautiful thing,
6 when people know each other that well, where key
7 relationships can be drawn in these resources to
8 say, "okay, this is a person who can talk to this
9 child", because they really understand, you know...
10 "I'll bring this uncle into show them how to do this
11 work that I'm not as good at".

12 So... so there's also those strengths, it's
13 not that small communities present only problems, so
14 we just want to stress that we're not saying that
15 there's... there's huge untapped,... like,
16 unformalized strengths in those small communities,
17 in those webs of relationships, that can... can be
18 drawn on, we're not saying there's only problems,
19 but, there are problems too. But there's also
20 strengths.

21 **MME VALERIE NAPOLEON :**

22 Yes. So the next thing is just deeply held historic
23 ethics. You know... you know, if you think to
24 Slimaha(ph) and the world that she knew, the
25 historic Gitxsan, legal institutions and law, so

1 there are deeply held ethics that... can cause
2 conflict. And there's work done in Labrador and
3 Australia that take up some of these questions. And
4 so the historic ethic, for instance, is against...
5 against centralization, right? So even if people
6 are not conscious that they're resisting
7 centralization when a centralized government is
8 built, people will resist it, and sometimes it looks
9 like sabotage.

10 Or people, because of again, decentralized
11 legal processes and political processes, will resist
12 the hierarchy. And again, you know, it's not
13 necessarily conscious, but people will sometimes
14 engage in behaviours that create conflict and again,
15 it looks like sabotage.

16 So, it's part of the... Part of the work is to
17 make sure that we're cognizant in its... enough, in
18 the different legal traditions that we're working
19 with, that we can recognize those things. And there
20 is scholarship on this. There's a book, edited by
21 Colin Scott, and there are two (2) articles in that
22 book which speak specifically to this issue.

23 Yes. And just back to... I want to go back to
24 these instruments here. What's really important is
25 that there be a symmetrical approach to doing the

1 work of mutually developing what these indicators
2 are.

3 If one... if there hasn't been the work to
4 substantively articulate and restate Cree law, for
5 instance, so that these processes can be informed as
6 fully as possible by Cree law, again, this is an
7 example, then what happens is a... it's the Canadian
8 legal perspective that informs how this is seen and
9 how it is field out. And so, if it's going to be
10 collaborative, it should... the goal should be
11 symmetry, so that it's justice informed by Canadian
12 law, as it is by Cree law or Dene law or whatever
13 other legal tradition, Gitxsan law that we're
14 working with. And the only way to make sure that
15 it's symmetrical is where those communities have the
16 support to do the kind of research and substantive
17 articulation and restatement of law and legal
18 processes. And small communities need support in
19 order to be able to do that.

20 Now, we're going to switch to the next
21 PowerPoint now, the next PowerPoint deck. Yes.

22 **MME HADLEY FRIEDLAND :**

23 So...

24 **MME VALERIE NAPOLEON :**

25 Go ahead.

1 **MME HADLEY FRIEDLAND :**

2 So, we were going to switch and just give some
3 examples of community-lead work and legal education
4 just to see what's happening. But I wanted to pause
5 to make sure if there's any questions like, just to
6 not... jump in case, so.

7 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

8 And I just wanted to ask, you had a video as well
9 that you wanted to show?

10 **MME HADLEY FRIEDLAND :**

11 Well, I'll do that tomorrow.

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

13 Ah, okay.

14 **MME HADLEY FRIEDLAND :**

15 Well...

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

17 Yes.

18 **MME VALERIE NAPOLEON :**

19 Okay. Here we go. We wanted to give some examples
20 of community-lead work that is going on.

21 Sometimes, when we talk about the work that has
22 to get done, it can be overwhelming and that's not
23 our intention. Because people are doing this work,
24 it is possible, it is lots of hard work, but people
25 are doing it and, so that it's very positive, what

1 the different examples are that are going on after,
2 so, here are some examples and...

3 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

4 Uh-hum.

5 **MME VALERIE NAPOLEON :**

6 So we've been working for some years with the
7 Shuswap Nation Tribal Council. That's... one of the
8 reports that I gave you is one of the reports
9 created for this, on resource management, and we're
10 not working with among governance. And so this is,
11 you know, a group of nine (9) communities,
12 there's... and over the years, we've... you know,
13 we've held workshops, we're holding another workshop
14 with them in December, because we're, you know,
15 committed to that idea of learning together, sharing
16 methodologies, making sure that we hear the kinds of
17 questions that communities have. So, there's...
18 it's a... there's a real commitment that has to be
19 made to making sure that we have good working
20 relationships, and it requires time as well as
21 resources.

22 So, this is one of the communities that we
23 partner with. It's a number of years now that we've
24 been working with them on different issues, and in
25 the picture there, there's some folks from their

1 communities as well as a couple of our law students
2 and researchers that you can see.

3 So, this is a really exciting process with a
4 lot of people and, it's not easy, there are issues
5 that come up about gender, there are issues that
6 come up about other things, and, you just have to
7 keep working, with them.

8 **MME HADLEY FRIEDLAND :**

9 And one thing I think with SNTC is the Tribal
10 Director is an amazing woman, and she's a
11 lawyer - educated at UVic, Bonnie Leonard - but
12 there's also that vision and that drive. So even
13 that issue of scale, there's a (inaudible) have
14 addressed that to some extent by working together at
15 the Tribal Council by having these nine (9) bands
16 joined together, right? So they've already address
17 that.

18 And the development, the first time we worked
19 with them was in two thousand and eleven (2011), and
20 they were at that time focused on child welfare, and
21 that was the first work that they did, using the
22 ILRU methodology and partnering with us, and then,
23 they heard very strongly from their Chiefs and from
24 their elders that they wanted to look at landed and
25 resources, and that was another project, again

1 adapting the method to do that and now they're
2 working on our governance. So it also evolved and
3 developed over time, right? Because there's a lot
4 of work to be done and they're doing it well, and
5 they do the... they take the research and bring it
6 back, and it goes through the Elders Council, it
7 goes through the Tribal Council, it's approved and
8 then they decide how they're going to use it, and
9 implement it. So, the book... - I just see it at
10 the bottom there, the Land and Resources book.

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

12 Uh-hum.

13 **MME HADLEY FRIEDLAND :**

14 We didn't... we did not make that book. We worked
15 on the research behind it, the ILRU worked on the
16 research, the team there, but SNTC decided to make
17 that book for their community, so it's just... that
18 process.

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

20 And just... there's some others working on
21 governance's law...

22 **MME HADLEY FRIEDLAND :**

23 Yes.

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

25 ... with your method?

1 **MME HADLEY FRIEDLAND :**

2 Yes.

3 **MME VALERIE NAPOLEON :**

4 Yes.

5 **MME HADLEY FRIEDLAND :**

6 Yes.

7 **MME VALERIE NAPOLEON :**

8 And that's when we were starting with their
9 language, like, so, we're using the terms from their
10 language to inform how we think about citizenship,
11 how we think about government, and so there's... and
12 we're developing a methodology which will enable us
13 to do that work. Because it's not... one
14 methodology doesn't work for everything, it
15 really... we really have to develop new tools in
16 order... for each area of law.

17 **MME HADLEY FRIEDLAND :**

18 This is an example, these are Indigenous Nations on
19 the Coast of B.C. and somewhat inland, who all are
20 working on similar issues.

21 So this is an example again, of smaller
22 communities - some larger, some smaller - they came
23 together, they're doing similar work on lands,
24 waters, resources, and they want to learn from each
25 other. So they're not... it's not like a Tribal

1 Council where they're coming together and saying,
2 "you know, we're going to do these things together."
3 But they're learning and passing on that knowledge,
4 and they're in different stages of different
5 research and have different goal, but they can come
6 together and talk about... this... and this was the
7 gathering of Nations and they had asked for that.
8 So we all came together at Loon Lake, and... just
9 talked about their progress and solutions people had
10 found, problems people were facing, and they were
11 really able to draw on each other as sources of
12 strengths.

13 So, this was a powerful move, because often,
14 what ends up happening... often Indigenous Nations
15 are really encouraged to look outward, to say, like,
16 "okay, all the answers are going to be found and,
17 you know, with non-Indigenous resources or non-
18 Indigenous consultants." And this was really
19 powerful, where these Indigenous Nations said,
20 "let's learn from each other and let's see what
21 we're doing together and build from there." So...
22 just another example.

23 **MME VALERIE NAPOLEON :**

24 Yes. You might recognize some of the names like the
25 Haida, you know, there's... the Haida, the Gitxsan,

1 these are all groups that have been busy in Canadian
2 Courts, on consultation and other kinds of things,
3 so, there... it's lots of activity.

4 West Coast Environmental Law. This is a group
5 of folk... they work only in B.C. but, it's a group
6 that we've been supporting; we trained their
7 lawyers, we... have monthly learning circles with
8 them, where we take up different questions of
9 Indigenous law and work and discuss, create spaces
10 for those critical discussions on different topics.
11 And so they're working with... sometimes the same
12 communities that we are, but they have a slightly
13 different approach, but it's... nonetheless, it's a
14 partnership of a sort, where we work with them and
15 provide them with the kind of support they need in
16 order to be able to keep doing this... They also do
17 other kinds of things. This is just part of what
18 they... the work that they undertake.

19 **MME HADLEY FRIEDLAND :**

20 And West Coast's lawyers, it is a non-profit group,
21 but there are also other lawyers who are now doing
22 parts of this as part of their practice. So, that's
23 the other thing, sometimes First Nations will say,
24 "well, we really want legal council doing this work,
25 because we want to make sure it's done in a way

1 where evidentiary standards are taken into account
2 in case it's challenged" and that's something then
3 we refer them. With the ILRU we say, "well, we're
4 not doing things in a way that... we're not really
5 paying attention to careful evidentiary standards".
6 But there are lawyers now, doing this work, that are
7 paying attention to that and have fought that
8 through in our... saying "okay, here's what we'll do
9 to make sure this stands up if it's challenged", and
10 work on negotiation too.

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

12 These are lawyers who have been trained with the
13 Indigenous Law Research Unit or...?

14 **MME HADLEY FRIEDLAND :**

15 Some of them.

16 **MME VALERIE NAPOLEON :**

17 Some of them are. So, we have now a number of
18 students that... who... law students from UViC who
19 then work with us on our different initiatives and
20 had our training, and who are now in law firms. And
21 then some of them are here. And then those that we
22 didn't train or who didn't graduate from UViC, we
23 also trained them...

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

25 Okay.

1 **MME VALERIE NAPOLEON :**

2 ... in these... for the work in this area that they
3 do.

4 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

5 Okay. Just... because it picked my curiosity as
6 well. So, you're saying, like, this particular...
7 in this particular project, people wanted to make
8 sure that what they would create as law would be
9 like a passed test of Canadian law as well in a way?

10 **MME HADLEY FRIEDLAND :**

11 And that, I think, comes up... it was coming up a
12 lot with land and water, obviously with resource
13 management, where they wanted to have that, and yes,
14 they were prepared to be challenged in Court. That
15 wasn't their first goal, they wanted that internal
16 management, they wanted to make things more explicit
17 and particularly for internal management, but they
18 were taking into account that relationship and they
19 were prepared to be challenged, they had gathered
20 things in a way that met evidentiary standards.

21 This is an example from the Aseniwuche Winewak.
22 They were the community partner with the Cree legal
23 traditions report, and the next summer, the
24 Executive Director said, "okay, let's do something
25 with those legal principles." We want to consider a

1 justice project and that's the chapter 5, creating a
2 justice process using Cree legal principles. That
3 discusses more in details that research, the chapter
4 5 from my dissertation.

5 So they said, "how can you build an Indigenous
6 justice process in contemporary Canadian society?"
7 That's a million dollar question. And we worked
8 through that using the Cree legal traditions report
9 and that has... and it was interesting, so once you
10 were sitting down with Elders and saying, "okay, so,
11 we learned this, and, you taught this, and now what
12 would it look like to apply that in a formal
13 setting?" And we learned more.

14 One of the students... in this case, one of the
15 students came back for the second summer, with the
16 same Elders and the same community, and he said, "I
17 could have written a whole new report, I learned so
18 much more." And I said, "that's law, that's living
19 law, you can always write more after you discuss
20 it."

21 So there was nuance there and an example I
22 would give is, we talked about the Cree legal
23 decision makers, and we said we could identify
24 categories of elders and medicine people and family
25 and sometimes individuals. Some of the people we

1 interview to say, "okay, so if we had a justice
2 process", some of them said, "and we would want a
3 judge. We do want a judge as part of this justice
4 process."

5 Some people said, you know, "we would have
6 Elders first" or "with the judge."

7 But some people at this point said they thought
8 a judge would be very useful. Sometimes all the
9 time to be there, and sometimes they would say "for
10 serious crimes."

11 One thing that came out in this report is this
12 particular community said, "yes, we can deal with
13 serious crimes, we did historically." Part of their
14 history is, there wasn't a lot of contact until
15 about nineteen sixty (1960), so they certainly did
16 deal with the huge range of human behaviour.

17 But people suggested that that, "well maybe
18 with the serious crimes, we would have a judge
19 sitting as well. Maybe with less serious crimes we
20 wouldn't have the judge sitting, but we would say,
21 "this is your last chance" or..."...

22 So it was a very nuanced, sophisticated
23 discussion, imagining how to apply this, so. The
24 work is progressing. And these are just some small
25 examples. Like, there's a lot going on but we

1 thought we would...

2 **MME VALERIE NAPOLEON :**

3 It also should be looked at as works in progress.

4 **MME HADLEY FRIEDLAND :**

5 Yes.

6 **MME VALERIE NAPOLEON :**

7 (Inaudible) rival.

8 **MME HADLEY FRIEDLAND :**

9 So, we also thought we would take some time to talk
10 about legal education initiatives. What is
11 happening. One thing... I realize we don't have it
12 on the PowerPoint, but I just... We mentioned
13 before we've done also a lot of training and we're
14 not the only ones doing the training, continuing
15 legal education. The department of... the federal
16 department of justice, Canada has had seminars about
17 Indigenous laws with senior officials. The law
18 societies. There has been a lot of judicial
19 education, so, figuring out how to start engaging
20 respectfully with Indigenous laws. One of the
21 things that is really striking, this particular
22 point in history is, we're all fairly close to being
23 in the same place. When we're doing judicial
24 education or continuing legal education, we're not
25 doing something terribly different than what we're

1 doing with law students at this point. Or with
2 communities. So there's a strength in that and
3 there's... and it's also interesting to be seeing
4 that.

5 What we do see is people bring their strengths
6 to that - and I'll speak to that a little bit
7 later - but, definitely, we see that, working with
8 judges... judges bring their experiences from the
9 bench and the human beings they've had in front of
10 them, and apply it important... in important ways.
11 You know, law students bring the things they've just
12 learned and their aspirations and apply it. So we
13 get to see the strengths that people bring to this
14 too, it's... Nobody's a blank slate, so.

15 So, simple... probably simplest smallest way
16 law schools are adding Indigenous law content is to
17 add a small edition to an existing course. So, this
18 is an example at UAlberta Law. The power of this is
19 it's an existing course that is a mandatory course
20 for all one else coming in. And it was decided two
21 (2) years ago to implement the KAIROS Blanket
22 Exercise. That was something I rewrote to, first of
23 all, reflect legal research, but also to reflect
24 Indigenous laws. It starts with the foundation of
25 the existence of Indigenous laws, and it goes on to

1 talk about law's role in colonialism; because we
2 know this, it's not just policy, it's not just bad
3 apples, law has played a huge role in getting us to
4 where we are, so, identifying that.

5 It's an interactive activity, it's highly
6 involved, there's... there are a lot of volunteers
7 from the Faculty of Law, and also other Indigenous
8 scholars from other faculties on campus. And then
9 after the Blanket Exercise, which is about two and a
10 half (2½) hours, there was a lunch session where we
11 had guest speakers - our favourite one being
12 Dr. Napoleon,...

13 **MME VALERIE NAPOLEON :**

14 Um.

15 **MME HADLEY FRIEDLAND :**

16 ... when she came one year - to talk about
17 Indigenous laws and the resurgence and what is
18 happening today. So people... So all of the first
19 year law students have that, at least that small
20 taste. And this is something... Dalhousie is doing
21 this as well, for all their first years. Windsor
22 law is doing it as well. Did New Vic did it?

23 **MME VALERIE NAPOLEON :**

24 New Vic has done it, yes.

25 **MME HADLEY FRIEDLAND :**

1 Yes. So... So, just again, a small thing, not a
2 lot of time adding that on, it's one...

3 **MME VALERIE NAPOLEON :**

4 Yes. It's also been adapted for groups working with
5 child welfare, like...

6 **MME HADLEY FRIEDLAND :**

7 Uh-hum.

8 **MME VALERIE NAPOLEON :**

9 ... so that the legislation that they look at is
10 specifically that of child welfare and historical
11 events specific to child welfare. But you can see
12 it's potential in terms of police forces, for
13 instance, like in terms of different agencies using
14 it. And so, you know, with slight adaptations, it's
15 a very effective tool.

16 I heard students, after the first... the one
17 that Dr.Friedland facilitated in Alberta, I heard
18 students say things like, "I had no idea how
19 implicated law was in our history." Which... you
20 know, for people who've already have a law degree
21 and aren't even practicing and so on, it's like a
22 course law has a role. But for people who have not
23 had the opportunity to think about that before, it
24 was an eye-opener, and so, it means a different...
25 kinds of consciousness that then they have for the

1 rest of their legal studies. So it's a very
2 profound learning experience.

3 **MME HADLEY FRIEDLAND :**

4 I was just thinking, we... Koren Lightning-Earle,
5 who works for the Law Society of Alberta and I also
6 did this. Again, the beauty of this is it takes
7 about two (2) or three (3) hours. And when people
8 are busy. So we did it with eighty (80) people from
9 the Law Society of Alberta, and actually very senior
10 practitioners were... quite moved, and incredible
11 conversations arose afterwards, you talk about it,
12 and I was struck by that as well of it, we have
13 really senior practitioners.

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

15 Could you, just before you move on to the next one,
16 just explain a little bit what is the Blanket
17 Exercise? And as well, you said you have made it as
18 well with people from child welfare services, what
19 type of reaction you had in these type of public?

20 **MME VALERIE NAPOLEON :**

21 Uh-hum.

22 **MME HADLEY FRIEDLAND :**

23 So, the KAIROS Blanket Exercise was developed, an
24 exercise developed by KAIROS Canada, which is a
25 multi...

1 **MME VALERIE NAPOLEON :**

2 Denomination.

3 **MME HADLEY FRIEDLAND :**

4 ... denominational organization, focused on
5 reconciliation. And you see... you can see in the
6 picture there's blankets on the floor, and it's an
7 interactive where people are standing, and the land
8 represents... they say "Turtle Island", which would
9 be "North America", and then students start walking
10 around, and there's a script, where you have a
11 narrator and you have someone playing a European,
12 and sometimes you have other people, and they
13 actually talk through in the script, three hundred
14 (300) years of the colonial encounters. So they
15 start with the Europeans... Well, we start with
16 Indigenous laws before Europeans were here, because
17 of course there's thousands of years of that. And
18 then the first meetings and those relationships.
19 And then the progression looking at the change in
20 policy and approach, the BNA Act, moving through
21 history, the Indian Act, the residential schools,
22 certain diseases. So, walking through with this
23 script, three hundred (300) years of history in an
24 hour and a half. So it's a very quick way of...
25 It's interactive, which is powerful, but it's also a

1 powerful way of conveying a lot of information in a
2 very short time.

3 I am mostly done with legal audiences. I'm...
4 with the adapted legal script, because it was just
5 pulling out the case law. So, as a legal scholar,
6 it would just bother me, to hear someone talk about
7 law and not have a citation. It bothers me.

8 So, some of it was finding a citation, the
9 right legislation, fact-checking things and making
10 sure that it was... it could be supported by
11 legal... research. So that's how it was adapted for
12 law.

13 I know Ardith Walkem has one an adaptation...
14 and we have her Wrapping our Ways Around Them as a
15 submission for evidence, because it's one of the
16 best... I would say it's actually one of the best
17 and most comprehensive works on Indigenous child
18 welfare out there, but so she's adapted it to
19 address child welfare.

20 And I know there are different governments that
21 are using it for police recruits, for child welfare
22 workers, I haven't been part of those, so I can't
23 say what their reactions has been. When I read the
24 articles, it seems as if they too are touched,
25 but... = I haven't had enough (inaudible).

1 **MME VALERIE NAPOLEON :**

2 I just have anecdote information about the child
3 welfare initiative with Ardith Walkem and... so I
4 can't speak specifically to that. She's definitely
5 approachable and is working all the time in this
6 area.

7 **MME HADLEY FRIEDLAND :**

8 Yes.

9 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

10 And just another quick question. I don't know if
11 you hear... because you said maybe some police force
12 have been doing it as well.

13 **MME HADLEY FRIEDLAND :**

14 Yes.

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

16 Have you heard about reaction or... not so much?

17 **MME HADLEY FRIEDLAND :**

18 Again, in the media, which... But, in the media, it
19 says they've interviewed people that say that it's
20 positive. I think... overwhelmingly, what I hear
21 again and again, whenever I facilitate it is, "I had
22 no idea." I just... and hearing that actually from
23 not just non-Indigenous people but Indigenous
24 people, being like "I get it." One time, someone
25 said, "you know, when I was younger, it used to

1 bother me so much, when someone would knock on our
2 door, the Elders would tell us all to run and hide,
3 and we would run and hide in bedrooms. And then
4 very, very quietly, an adult would go and check the
5 door - because in this small community, people don't
6 knock, they just walk in, so they knew it would be a
7 non-Indigenous person. And they said, "after this,
8 I understand they thought it was a child welfare
9 worker, and that's why they told us to go hide under
10 the beds and be quiet."

11 So, I think overwhelmingly, what we hear is
12 people just saying, "I didn't know, I didn't
13 realize, it changes some of my opinions or
14 understandings."

15 **MME VALERIE NAPOLEON :**

16 It's an exercise that's... part of its appeal is
17 that there's no judgment...

18 **MME HADLEY FRIEDLAND :**

19 Yes.

20 **MME VALERIE NAPOLEON :**

21 ... of people that come in. You don't have to say
22 what you don't know. You just participate, and from
23 wherever you are, from whatever experience or basis
24 that you have, so there's no... so it's not as
25 though people who don't have a background in history

1 or anything will be exposed in some way. So I think
2 that's part of the appeal of it.

3 **MME HADLEY FRIEDLAND :**

4 Yes. So, another thing that's happening in Seminar
5 Courses. That's a very small example of three (3)
6 hours in an already existing class, at UAlberta and
7 UViC at least, and... Lakehead as well; but just
8 this specific course, *Indigenous Laws, Questions and*
9 *Methods*. We have run (it) as a seminar course. I
10 also taught it at McGill for a spring session. So
11 it's an actual four-credit (4) course, that law
12 students... hate. Hate us at first: we make them
13 read legal theory, we make them read Hart and Fowler
14 and really engage at that level. They read Cree
15 stories, they read law revue articles. They... the
16 methods of engagement that we talk about for half an
17 hour here, they talk about over several classes and
18 really engage and critique and practice them, pull
19 them apart like we do in other classes.

20 And the culmination here is they design and
21 argue a Cree law moot. So we know that a moot, in
22 law school, is a powerful teaching tool. We never
23 forget our moots; I talked to people that have been
24 called to the Bar for fifty years and they can tell
25 you about their first year moot still.

1 And we actually do have the fledging materials
2 and so, they read that Cree legal traditions report
3 and they're given different roles. And they are
4 expected to argue. So again, that argumentation is
5 such an essential part of law, and we now are
6 starting to have little resources where they can
7 actually take a position and argue different things.

8 So they do that. And then, they also design
9 the process and they... their take-home exam is
10 writing judgment. They're asked to imagine that
11 they're a clerk and they're to... and they have been
12 asked by the decision maker, we talked about it
13 being a Cree legal lodge, based on TRC Call to
14 Action 50, we say, "okay, you're a clerk and you're
15 asked to draft the judgment." And... so they have
16 that whole experience of really engaging with
17 Indigenous laws as laws, and... there's been about
18 six (6) of these now?

19 **MME VALERIE NAPOLEON :**

20 Yes.

21 **MME HADLEY FRIEDLAND :**

22 I think. Always huge enthusiasm from the students.
23 The feedback I've gotten is "I... it's not just that
24 I understand Cree law a little better, I understand
25 all law better."

1 **MME VALERIE NAPOLEON :**

2 Yes.

3 **MME HADLEY FRIEDLAND :**

4 I have a different perspective on all law and so...

5 **MME VALERIE NAPOLEON :**

6 So this is taught every year, for one month, in
7 Victoria, and so it's open to law students, grad
8 students, other students, as well as practicing
9 lawyers. So we have lawyers who come and take it
10 for credit as well. In May.

11 **MME HADLEY FRIEDLAND :**

12 Yes. And I've run it over a semester. So this is a
13 little different dynamic, during the months and...

14 **MME VALERIE NAPOLEON :**

15 Yes.

16 **MME HADLEY FRIEDLAND :**

17 ... over the semester, but I works.

18 So this is an example mandatory courses again,
19 the TRC Call to Action 28 calls for mandatory
20 courses in Indigenous law. In two thousand and
21 seventeen (2017), McGill decided to give this a go.
22 So they have integration week at the beginning of...
23 because McGill does Trans-systemic Teaching, both
24 the civil law and the common law, they have a two-
25 week... two (2) weeks of... what they call

1 "integration week", in the first semester, for all
2 first years, where they really focus and... I hope I
3 don't get this wrong, but, I think one week they
4 really focus on the civil law, and one week they
5 really focus on the common law, but they use a
6 common problem.

7 So, in this particular year, they used the
8 issue of safe consumption sites for drug users, and
9 they looked at it from a civil law perspective, they
10 looked at it from a common law perspective in the
11 first semester. And then we came in on the... in
12 January, we co-taught with Hoi Kong there and we
13 looked at Indigenous legal traditions. And of
14 course, so, two hundred (200) first years for a
15 whole week, there is certainly challenges, but we
16 stayed with that issue, we stayed with the issue of
17 safe consumption sites.

18 We talked about a lot of the things we talked
19 about here. They did exercises, they did practice,
20 they worked with stories. Again, some legal theory,
21 because we love legal theory. We had the huge
22 lecture hall in the afternoons... or in the
23 mornings, and then in the afternoons they have small
24 group work, with upper year fellows that work things
25 through with them.

1 And over all again, like, very, very positive
2 feedback and doable, possible. And I would admit,
3 coming into this, I was wondering, is this really
4 possible? Two hundred (200), it's one thing a small
5 seminar, self-selected, right? But it was and...
6 overwhelmingly positive feedback of, again,
7 understanding it, understanding Indigenous law in a
8 different way, but feeling like they understood all
9 law in a better way.

10 This is unreadable but it's okay, it's... I
11 just put this up there because, again, McGill, but I
12 also thought it is here in Quebec, it's important,
13 but because McGill has... had this Trans-systemic
14 focus for a very long time, McGill has taught
15 classes where they are integrating learning with the
16 Civil Code and the common law, and for a very long
17 time, people there have said "the next step should
18 be Indigenous law, how do we do this." And led by
19 Professor Alana Klein and, I apologize because I
20 can't recall the name of her two colleagues who are
21 also teaching criminal justice, they... last year,
22 we did their syllabus for criminal justice, which is
23 a required course, to include Trans-systemic
24 elements with... and the use of the example Cree
25 law, and they're using this Cree legal traditions

1 report, but throughout the course, for different
2 purposes.

3 So I included this is her evolving reading
4 list, she very kindly agreed to share it and I have
5 sent it, because she did... she said with all the
6 caveats and cautions, this is evolving and
7 developing and imperfect, she was willing to share
8 this as an example. And so my understanding is that
9 all... I think there was...

10 **MME VALERIE NAPOLEON :**

11 There's two (2)...

12 **MME HADLEY FRIEDLAND :**

13 Yes, there's two (2), just to show the different...

14 **MME VALERIE NAPOLEON :**

15 It's a...

16 **MME HADLEY FRIEDLAND :**

17 Yes. You can... I can't see it there, but, she
18 breaks it down and I thought it was a good example
19 of where she's using that Cree legal traditions
20 report, certain sections of it, for a certain topic,
21 and this is seventeen (17) pages, I just included
22 the first four (4), but later on, with another
23 topic, she includes it too.

24 And of course, it's not the only reading,
25 because she's teaching Trans-systemically, she's

1 taught... teaching about law to do with criminal
2 justice coming from various perspectives, so, I just
3 thought an example... My understanding is all three
4 (3) sections of criminal justice is being taught
5 using something very similar or was taught last year
6 this way, so it's happening, it's possible.

7 And this is an example... we talked about land-
8 based learning. Last class and the importance of
9 that, but also the challenge of it not always being
10 accessible to people. So, last year, at the
11 University of Alberta, we, myself and a colleague,
12 Dr. Shalene Jobin from Native Studies, partnered with
13 the Aseniwuche Winewak to look at the principle of
14 wahkohtowin, which we've referred to. Of course, we
15 had Cree language speakers who said they thought
16 wahkohtowin captures something, but another Cree
17 concept, miyo-wîcêhtowin, perhaps captured building
18 good relationships more.

19 So, we developed a course. Again, it was a
20 four-credit (4) course, it was a university course,
21 we had high expectations of reading, of... We had
22 two (2) full classroom-days - it was run over a week
23 in the spring semester. Students were in the class
24 room for two (2) days. We were instructed and
25 guided by elders for Aseniwuche Winewak the whole

1 time and they had told us to do that, they said, “we
2 want you to teach the students for two (2) days
3 before they come up.” And the central pedagogy was
4 tanning a moose hide. It was learning how to tan a
5 moose hide the way elders do that up there.

6 So it was an extremely powerful course where we
7 started with the concept of wahkohtowin; ourselves
8 we’re taught that we needed to understand the
9 concept of miyo-wîcêhtowin at a deeper level.
10 Brought in reading from Indigenous law, brought in
11 reading from Indigenous governance and then, co-...
12 really co-taught this course with community
13 instructors who were much, much more competent than
14 us, to teach how to make the moose hide, and to
15 teach in the way they had been taught growing up.
16 So it was an extremely powerful course for students
17 and I just included pictures, because they’re
18 beautiful. I think I have more...

19 So, this is example of Classroom-based work.
20 We talked about governance structure of Aseniwuche
21 Winewak. Students did some work on identifying
22 wahkohtowin in their own lives. We did an exercise
23 called the “tully” wheel, which is... it’s sort of
24 making connections between small local issues based
25 on the work of James Tully, making those connections

1 with broader global issues that many Indigenous
2 people face. These are just examples of... Sorry.

3 And then they went and I just included these
4 pictures because they're great. I mean, these are
5 university students that came and community teachers
6 that taught them to make a hide, but taught all the
7 things that go along with that; all the governance,
8 all the decision-making. We've talked about that
9 community-embedded learning, where people sometimes
10 will say, when we talk about law they'll say, "well,
11 for us it was just a way of life." They take it for
12 granted. So, the students were really completely
13 immersed in people living their way of life and
14 welcoming them in.

15 And this is a picture... We always say, this
16 is... it kind of captures everything, because you
17 see students, they were required to journal, they
18 were required to do a presentation and a small
19 summary of an article. They wrote a paper at the
20 end of this course, because we expected academic
21 record.

22 And you can see the hide is hanging... if you
23 can see those... the two (2) Elders - Dorothy and I
24 think it's Mabel - who are smoking the hide; that's
25 the last step of making a hide; so they're smoking

1 the hide. You can see the spruce spows on the
2 bottom, which keep things clean and dry with the
3 fire going. And the students are doing, because
4 there's a break while they smoke the hide, the
5 students are working on their journals and writing,
6 so, just the idea that this... it's possible. It
7 was amazing.

8 And Dr. Jobin wrote... - you can see the spiral
9 at the bottom - and she talks about an Indigenous
10 learning framework where she says... "we need to
11 unlearn, there's an unlearning - and that's sort of
12 the Blanket Exercise - we need to unlearn all these
13 myths and bring that down. But we need to be
14 constructing knowledge too and learning the
15 strengths and the principles, and seeing what's
16 being built and what exists in a strong way as well.

17 So it was a really power... and she has... then
18 the next picture is the top down view of that
19 spiral, where she talks about applied learning,
20 cognitive learning, empathic learning and relational
21 learning.

22 Again, if you think about the medicine wheel,
23 very similar, bringing the students whole selves
24 into engaging in this really powerful, immersive
25 experience.

1 **Me MARIE-ANDRÉE DENIS-BOILEAU :**

2 Just before you go on, could you explain a bit the
3 Tully wheel exercise?

4 **MME HADLEY FRIEDLAND :**

5 Yes, can we go back to it? Okay.

6 So, the Tully wheel exercise. One thing that
7 happened for us is... because we were doing so much
8 work with communities, we found that sometimes, when
9 we would want to be talking about Indigenous laws,
10 people would have stories they needed to talk about.
11 Or they would have anger and they would... be
12 wanting to talk about injustices they had
13 experienced. They would be wanting to talk about
14 things that happened in the past or happening in the
15 present to do with Canadian law. And we found that
16 sometimes, we would end up spending a lot of time
17 with people needing to talk about those things. Or
18 you would also sometimes have people accusing each
19 other of doing things wrong.

20 So, James Tully writes about... And we
21 have,... I think we have our paper Accessing Tully,
22 where we talk about... James Tully talks about
23 looking at relations of power and actions of and for
24 freedom.

25 So we wanted to have interactive activity where

1 people could name and place some of their
2 experiences and... that cause so much trauma and
3 pain and ongoing stuckness, but also (it) gives
4 people a way of imagining themselves and each other
5 as active agents that can work cooperatively toward
6 the world they're imagining and wanting.

7 So the Tully Wheel that sat out where the first
8 step is... it's a big white board or something, and
9 the first step is asking people to just write
10 down - so not talk about but just write down -
11 concrete examples of things like injustice, or
12 colonialism or oppression, that happen within and
13 outside their communities, and then we just
14 acknowledge that, and honor that that's people's
15 experience.

16 And then the next step is we talk about Jim
17 Tully's actions of an for freedom, and he talks
18 about acting otherwise, staying within the rules of
19 the game, confrontation and negotiation.

20 And then he also talks about this idea some
21 Indigenous communities have chosen to turn
22 away - and so Glenn [Coldheart(ph)] writes about
23 this thing - "you know, let's stop fighting for
24 recognition all the time, engaging with non-
25 Indigenous people that give us crumbs and we'll...

1 let's turn away and just rebuild and, you know,
2 create things ourselves and focus our energy on
3 that.

4 So we ask people to think of actions they've
5 taken, in their lives, over the last five (5) years,
6 to work towards any of those things, and they
7 place... again, they write them down and they place
8 them. And then we talk about, we often use a Haida
9 as an example - until we work with a Haida, then it
10 was great, we said, "can we have your permission to
11 continue using you as an example?" And they agreed
12 and told us they give us more information, of just
13 how using different actions strategically and
14 cooperatively can be powerful.

15 Because it does happen. And I've told you two
16 (2) stories about processes going on within
17 communities and then the reaching out and being shut
18 down so fast and so completely. And when that
19 happens, it's... people turn... those are very
20 small... two very small examples, right, when that
21 happens people turn... can turn on each other,
22 right? People can turn and blame each other and be
23 frustrated, because even when everything went
24 according to Cree legal procedures or Algonquin
25 legal procedures, it didn't work... or the

1 consequences are horrible when they reach out. So,
2 it's also encouraging people to recognize the source
3 of some of that pain and trauma, and to recognize
4 the hard work people are actually doing. It's a
5 long-winded explanation.

6 **MME VALERIE NAPOLEON :**

7 Okay.

8 **MME HADLEY FRIEDLAND :**

9 So this is just... Dr.Napoleon talked earlier about
10 the Federation of Law Societies asking us, "what
11 does a lawyer need to know about Indigenous law,
12 what do we need to add." And one of the things we
13 did was go through the national competency
14 requirements and say, "well, what is already there
15 that legal education engaging with Indigenous laws
16 builds on, needs?" Like, what do we need people to
17 be able to do in order to do this work. And also
18 what does having seminars and having mandatory
19 courses give. What does it contribute to a well-
20 rounded lawyer.

21 And so, these are just examples from problem-
22 solving legal research and professionalism and
23 ethics that we could identify to say, "these are all
24 already existing competencies and we can continue to
25 build them." And they are useful for engaging with

1 Indigenous laws. People are not coming empty-handed
2 to this work, from the legal profession.

3 And finally, just talking a little bit with
4 legal education of some of the lessons learned.

5 As legal education and professional development
6 increase, it's kind of three (3) main categories,
7 talking about the importance of people, the
8 importance of resources and the importance of
9 emotional and cultural safety, in classrooms, in
10 seminars, in continuing legal education or judicial
11 education.

12 So, to give a couple examples - I mean I won't
13 go through these all, but just... - a challenges.
14 The TRC is calling for Indigenous laws to be taught
15 to all students and what does that look like. How
16 can you make that possible.

17 There are limited people with expertise, so we
18 talked about going to McGill and helping McGill
19 teach. Obviously, there's many law schools and the
20 solution cannot be that we fly around all the time
21 and teach these courses.

22 So, that's (why) we're so happy to see Alana
23 Klein's criminal justice, and the work other people
24 are doing - other people are doing amazing work.

25 Just looking at the issue of resources, that's

1 obviously an issue too, the limited resources, but
2 also, what professors need to implement this. We
3 have... we did... we've done training with UVic and
4 with the UOttawa civil law and common law sections
5 on some of this training and... so that's a training
6 we're aware of. Other people may have done
7 different training, but professors are also in the
8 process of learning.

9 And I think some of it... again that medicine
10 wheel, we don't like to talk about emotion in law
11 school but it's important, and sometimes I take into
12 account... and I had a Cree student share, because
13 we we're looking at Cree law, and she said, "it's
14 harder, it's harder for me because there's a lot
15 going on for me to be learning Cree law and talking
16 about Cree law. There's things I want to know that
17 I don't know. There's things I'm worried about that
18 the non-Indigenous students in the class aren't
19 worried about." So there's a heavier burden on
20 Indigenous students. It's also powerful and I've
21 heard a lot of positive, but just acknowledging that
22 there's a challenge there and sometimes, really
23 strong emotional responses from non-Indigenous
24 students, about being worried about being perceived
25 as racists, being worried of saying the wrong thing

1 or just having really strong opinions, having these
2 iconic stories that they've heard from someone in
3 their life that really significantly affects their
4 perceptions and approach.

5 **MME VALERIE NAPOLEON :**

6 At the University of Victoria, we have a proposal
7 that we hope to be able to begin in September two
8 thousand and eighteen (2018). It's a joint degree
9 or dual... a law degree between common law and
10 Indigenous law. So it's a professional degree
11 program. It's the first of its kind in the world.
12 Oups! So it's... the inspiration came from the
13 Trans-systemic teaching at McGill. John Burrows has
14 been key in developing this initiative and so, we
15 also have a very strong graduate program which...
16 where people from Canada and elsewhere are engaged
17 in Indigenous law.

18 So we've had a number of amazing graduates who
19 are now teaching in other law schools, from the
20 basis that they had at the University of Victoria.

21 So, right now, ten per cent (10 %) of our
22 students are Indigenous. We, the University of
23 Victoria also delivered the first Akitsiraq program,
24 and we learned a lot from that experience. In
25 addition to the Indigenous law degree program, like

1 the... there's other things, like the national
2 consortium on Indigenous economic development,
3 that's between law and business. And then the
4 Indigenous Law Research Unit, which develops
5 materials which are useful for communities, but then
6 are also useful as the basis of curricula for the
7 Indigenous Law Degree Program.

8 So the program itself, we're looking at... it's
9 four (4) years. We're imagining twenty-four (24)
10 students a year, and it's comparatively teaching
11 Indigenous law and Canadian common law.

12 So, for instance, we could have Gitxsan or
13 [Chimsian(ph)] property law, and Canadian property
14 law, Anishinabek constitutional law and Canadian
15 constitutional law, perhaps the Cree criminal law,
16 as well as Canadian criminal law, perhaps Dene torts
17 and Canadian torts, so... And because students
18 would be... have more that they're learning, because
19 learning from different legal traditions, that's why
20 the program is four (4) years instead of three (3).

21 So it's... the intent is to have students to be
22 able to work fluidly between different legal orders,
23 being able to draw on... the resources from
24 different legal orders in order to solve problems.

25 And so, there's... there are differences

1 between the McGill initiative and what we're
2 imagining here, like, for instance we're working
3 with multiple legal orders, rather than the two
4 legal traditions.

5 The other thing that will be different is, we
6 want to have two (2) summers with, like, we... two
7 (2) field schools, so the students are out of the
8 university for set periods of time, and we will work
9 with communities in very... on different kinds of
10 initiatives that are important to those communities.

11 And so, the students will... it's a full
12 educational program, with all of the demands that
13 any law degree program will have. It'll just have
14 other legal perspectives and laws to work with.

15 This is going to... some of the courses at the
16 upper years will be transferrable between the
17 Indigenous Law Degree Program as well as in the JD,
18 the Juris Doctorate. And, so there's finding ways
19 to... that different legal orders can complement
20 each other and building skills that are transferable
21 between the different legal orders.

22 We have widespread support for Indigenous
23 communities for this initiative, like national as
24 well as local Indigenous communities support this.
25 And it's... we imagine it as being foundational to

1 governance for communities as well as business for
2 communities, and working on the relationships
3 between Canada... the different areas were
4 relationships between Canada and the Indigenous
5 communities are critical. So there's a lot that's
6 involved with it. We are ready to go in September
7 of two thousand and eighteen (2018), pending final
8 words on funding. So this is an initiative, and
9 once this goes, I mean, there are other law schools
10 that are, you know, doing smaller initiatives, but
11 getting at this idea, so there's a real appetite, in
12 the academic as well as in the public realm, for
13 this kind of education. And there's a lot of
14 interest internationally for what we're doing at
15 UVic as well.

16 So, I mean, in thinking about this, much of the
17 relationship between Canada and Indigenous peoples,
18 it's mitigated through the Courts, it's through
19 difference of government negotiations, it's through
20 different legal processes that require consultation
21 and accommodation for instance, and so, there's...
22 none of this is going to disappear. All of these
23 kinds of demands are going to continue for Canadian
24 law and for Canadian governments and for Indigenous
25 people. So, people have to be prepared in order to

1 be able to deal with these kinds of demands, which
2 are complicated and they're enormous.

3 So, we're acting on the Truth and
4 Reconciliation Calls to Action, and we're also
5 acting on the understanding that Indigenous peoples
6 do have considerable control over lands and
7 resources, and economic strategies as well as legal
8 strategies require collaboration.

9 So, Dr. Shalene Jobin for instance, from the
10 University of Alberta, has taken parts of our
11 methodology and applied that to economic development
12 for instance.

13 Dr. Emily Snyder, now at the University of
14 Saskatchewan, has taken part of our methodology and
15 applied that to development of the gender tools.
16 So, there's the methodology then, that enables other
17 kind of work to go on, and so they're big issues and
18 they're here to stay, as the Supreme Court has said.
19 And there's different things that the university
20 needs in order to do it.

21 So, in the... you know, there's... as I said,
22 that there's a lot going on with legal education,
23 there's community-led education, there's
24 increasing demand and those are increasing for...
25 from different communities. There's different

1 models and there's hope, like, people are positive
2 about building new possibilities and creating new
3 imaginations for how all of this can go forward.
4 So, all of this work is born on that hope and that
5 optimism, that things are going to be different for
6 the little children that Hadley has... Dr.Friedland
7 has referred to, and my four (4) grandsons and
8 others. Oups. We're done.

9 **MME HADLEY FRIEDLAND :**

10 That's...

11 **LE COMMISSAIRE :**

12 So now I understand you have a speaker's luncheon at
13 UQAP at twelve (12)? And we will see you tomorrow
14 morning?

15 **MME HADLEY FRIEDLAND :**

16 Yes.

17 **LE COMMISSAIRE :**

18 Okay. So, we'll adjourn until tomorrow morning,
19 nine thirty (9 h 30). And I wish you a good
20 afternoon.

21 **MME HADLEY FRIEDLAND :**

22 Thank you.

23 **LE COMMISSAIRE :**

24 Good luncheon.

25 **MME VALERIE NAPOLEON :**

1 Thank you.

2 **LE COMMISSAIRE :**

3 See you later.

4 **LA GREFFIÈRE :**

5 Veuillez vous lever. Ajournement de l'audition
6 demain, le six (6) décembre à neuf heures trente
7 (9 h 30).

8 -----

9
10 Je soussignée, **Ann Montpetit**, sténographe officielle
11 bilingue, certifiée sous mon serment d'office que les
12 pages qui précèdent sont et contiennent la
13 transcription exacte et fidèle des notes recueillies
14 au moyen de l'enregistrement mécanique, le tout hors
15 de mon contrôle et au meilleur de la qualité dudit
16 enregistrement, le tout conformément à la loi.

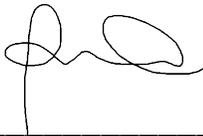
17
18 Et j'ai signé :

19

20

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22



Ann Montpetit, s.o.b.