Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress

Final report

Commission d'enquête sur les relations entre les Autochtones et certains services publics

Québec

Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress

Final report

NOTE TO READERS

In keeping with the Indigenous languages, the Commission has endeavoured to reconcile the terminology used with the spelling preferred by the Indigenous peoples themselves. As such, the names used to designate the First Nations communities are those used in the Indigenous languages. The same goes for the nations. The unchanging nature of certain Indigenous words (e.g. Inuit) has also been observed.

The term First Nations includes the Abénakis, Anishnabek (Algonquins), Atikamekw Nehirowisiw, Eeyou (Cree), Hurons-Wendat, Innus, Malécites, Mi'gmaq, Mohawks and Naskapis. The expression Indigenous peoples designates First Nations and Inuit collectively.

Also note that translations of quotations are our own, unless otherwise stated.

This publication was drafted following the work of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec : listening, reconciliation and progress.

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A WORD FROM THE COMMISSIONER

I am back from a long journey. To those who enquire how the adventure went, I invariably respond the same way. When I accepted this mandate more than two years ago, I could never have imagined what I would end up discovering. I definitely had a notion of what I thought to be fact. It had been formed from learned images and information conveyed and coloured—I admit—by my own cultural background. After all, no matter who we are or what our roots may be, we embody our culture, but this should not preclude the possibility of being enriched through contact with another culture. My recent experience has once again confirmed this to me.

For quite some time, I searched for an image powerful enough to describe what I had witnessed. And one morning, the voices of all those I had listened to melded to shape what would be my principal finding. Each in their own way, the stories told by Richard, Lucie, Elisapi and the many others depicted how—by building unwarranted bridges, and dams that were deemed necessary and reassuring—public services intruded into territories with no understanding of their true nature. Territories with sensitive issues at stake, including physical and mental health, justice and parent-child relations.

From there, it's hard not to draw a parallel with the past. In fact, what these people had to say wasn't that different from the words of their Elders who, to this day, tell of the decades-long transfiguration of the land as a result of railways, dams and massive clear cutting. Through these observations, it became crystal clear to me that, collectively, we have nothing to gain from repeating past errors. And that by following familiar paths, steered by what we wrongly believe to be the sole solutions to any human problem, the risk of fostering mistrust, injustice and failure is huge.

I am not disputing the goodwill of all those who continuously strive for solutions. Along the way, I met willing, caring and deeply committed individuals. I also came across resilient people who are open to change and convinced that nothing is stronger than when it is woven together, in mutual respect. I seized this idea and decided to build on it.

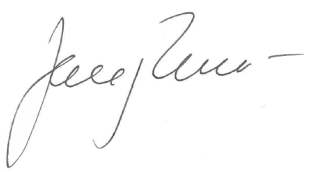
Once this was established, an image sprung to mind that had been conjured by an Atikamekw Nehirowisiw Elder during our work. It was the importance of knowing each person's position in the canoe (tciman), for one's position dictates one's role in maintaining balance. The bowman watches for obstacles, the sternsman steers and propels the canoe, and the passenger lets themself be guided along. Where public services are concerned, we have almost always made Indigenous peoples into "passengers" on their own territory. Yet, realistically, who better than the Indigenous communities themselves to act as bowman and guide the canoe? If we accept the fact that a smooth voyage starts with acknowledging each person's role and contribution, then this path will be—I am certain—the beginning of an answer to something bigger than ourselves, something different that could lead to true reconciliation, like a change of perspective and of position in the canoe!

That the challenge is huge there can be no doubt. Yet the energy emanating from all sides and expressed during our work encourages me to believe that change is possible. And for everything we discovered and learned, and for the renewed perspective this has given me, I will never be able to sufficiently thank the many courageous individuals who shared their life stories with us. I would like to acknowledge them not only for their generous remarks and observations, but also, and most importantly, for believing in the process and for trusting us. To all of you, thank you, wliwni, meegwetch, mikwetc, chiniskuumitin, tiawenhk, tshinashkumitin, nakurmiik, wolimon komac, wela'lin, niá:wen, chiniskumitin.

I would also like to thank the experts we heard as well the public services representatives for their enlightening insights into the issues at hand. The points of view that have been expressed will forever serve as a legacy for future generations.

In this regard, I would also like to express my deepest gratitude to my dedicated and dynamic team, which remained focused on the task and without which it would not have been possible to so poignantly bring to light the wealth of information gathered.

And last, a very special thank you goes to the women of Val-d'Or whose videoed testimonies raised awareness and called all of Québec's attention to the all-too real situation of discrimination and violence. At certain points when the schedule was particularly heavy and energy levels waned, your courage spurred me on. I hope your fortitude will also inspire our decision makers, both Indigenous and non-Indigenous, in terms of the follow-up to be given on the proposed calls for action.



Jacques Viens

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CHAPTER 1

CONTEXT FOR THE COMMISSION'S CREATION

The events justifying the creation of a public inquiry commission play out against a backdrop that we can refer to as the context. In general, the context is characterized by a few events and key players or by a tense social environment that requires action to be taken. The Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec : listening, reconciliation and progress (the Commission) fits into such a context. This chapter outlines the major milestones leading up to the Commission's creation.

1.1. Triggering event

During his first election campaign as leader of the Liberal Party of Canada in the winter of 2015, Justin Trudeau promised to set up a national inquiry into missing and murdered Indigenous women and girls.[1] In a report released a year earlier, the Royal Canadian Mounted Police estimated that 1,181 women had disappeared over a 30-year period.[2] That figure, which would later be considered conservative[3], also included women in Québec.

In Val-d'Or, Sindy Ruperthouse, aged 44, had been reported missing in the spring of 2014. It was her story that first brought the journalists from Radio-Canada's Enquête program to the Abitibi region. Her parents, like many others elsewhere in Canada, criticized the police for their lack of diligence and support in searching for their daughter.[4]

In addition to providing names and putting a face on the phenomenon of missing Indigenous women in Québec, the news story, which was broadcast on October 22, 2015, gave about 10 Indigenous women from the region an opportunity to speak out. They said that they had been subject to abuse by police officers from the Sûreté du Québec (SQ) assigned to Val-d'Or between 2002 and 2015.[5]

As soon as the story was broadcast, Lise Thériault, Minister of Public Security, said that she was concerned and shocked by the allegations of abuse described. She then confirmed that she had been informed about the situation a few months earlier by Édith Cloutier,

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1 ICI Manitoba. (2015, February 12). Justin Trudeau exige une enquête sur la disparition et le meurtre de femmes autochtones. *Ici Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/706584/justin-trudeau-enquete-federale-femmes-autochtones.

2 Royal Canadian Mounted Police. (2014). *Missing and Murdered Aboriginal Women: A National Operational Overview* Retrieved from http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview.

3 ICI Radio-Canada.ca. (2016, February 16). Ottawa croit qu'il y a plus que 1 200 femmes autochtones assassinées ou disparues. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/765527/patricia-hajdu-carolyn-bennett-femmes-autochtones-assassinees-disparues-nombre.

4 Dupuis, J. (journalist) (2015). Abus de la SQ : les femmes brisent le silence [News story]. In E. Marchand (producer), *Enquête.* Montréal, Québec: Société Radio-Canada. Retrieved from http://ici.radio-canada.ca/tele/enquete/2015-2016/episodes/360817/femmes-autochtones-surete-du-Québec-sq.

5 Dupuis (journalist). (2015), *op. cit.*

Executive Director of the Val-d'Or Native Friendship Centre.[6] However, she indicated that she would rely on the inquiry conducted by the SQ's Direction des normes professionnelles and the Directeur des poursuites criminelles et pénales (DPCP) in order to evaluate whether charges should be laid.[7] At that time, 14 files were opened and submitted to the SQ's Direction des normes professionnelles. The eight police officers identified had been interviewed and were under investigation.[8]

The proposed approach was criticized by many observers. During question period on the same day the news story was broadcast, Pierre Karl Péladeau, who was the Leader of the Official Opposition in the National Assembly at that time, demanded that an independent inquiry be held.[9] Stakeholders quickly voiced their opinions in favour of that approach.[10] The Bureau des enquêtes indépendantes (BEI), which was created through legislation in 2013, was considered by many to be the most appropriate organization to conduct the inquiry. However, although the BEI existed on paper, it had not yet started operating when those events occurred. Unlike the situation today, its mandate at that time did not cover sexual misconduct allegations against police officers[11] and allegations against police officers by Indigenous individuals.[12]

The issue of trust raised by many stakeholders concerning the investigation process meant that a decision had to be made. On October 23, 2015, less than 24 hours after the news story was broadcast, at the request of Martin Prud'homme, Director General of the SQ, public

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6 *Six lettres en liasse*, document P-599 (Commission), p. 6.

7 ICI Abitibi-Témiscamingue. (2015, October 22). Policiers soupçonnés d'agressions sexuelles : « Troublant et choquant » dit Lise Thériault. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/745707/policiers-sq-agressions-sexuelles-val-dor-enquete-dpcp-couillard-theriault.

8 Dupuis (journalist). (2015), *op. cit.*

9 National Assembly of Québec. (2015). *Journal des débats* (Hansard) of the National Assembly. Questions et réponses orales. Enquête de la Sûreté du Québec sur certains de ses policiers de Val-d'Or. Pierre Karl Péladeau, 41st Leg., October 2, 2015, 1st session, Vol. 44, Nº 118, p. 7345.

10 Assembly of First Nations Québec-Labrador. (2015, October 23). Le cas d'abus de pouvoir de la SQ : L'APNQL exige la tenue d'une enquête indépendante. [Press release]. Retrieved from https://www.pressegauche.org/Les-cas-d-abus-de-pouvoir-de-la-SQ-L-APNQL-exige-la-tenue-d-une-enquete; Amnesty International. (2015, October 23). Policiers soupçonnés d'agressions sexuelles envers des femmes autochtones à Val-d'Or : Amnistie Internationale demande une commission parlementaire élargie. [Press release]. Retrieved from https://www.newswire.ca/fr/news-releases/policiers-soupconnes-dagressions-sexuelles-envers-les-femmes-autochtones-a-val-dor--amnistie-internationale-demande-une-commission-parlementaire-au-mandat-elargi-536318911.html; Regroupement des Centres d'amitié autochtones du Québec. (2015, October 23). A call for action to eliminate violence and abuse towards Aboriginal women. [Press release]. Retrieved from http://www.rcaaq.info/wp-content/uploads/2018/05/2015-10-23_A-call-for-action-to-eliminate-violence-and-abuse-towards-Aboriginal-women.pdf; Coalition Avenir Québec. (2015, October 23). Situation des femmes autochtones – La CAQ demande une commission d'enquête. [Press release]. Retrieved from https://v2018.lacaq.org/fr/presse/situation-des-femmes-autochtones-la-caq-demande-une-commission-denquete/; Grand Conseil des Cris (Eeyou Istchee). (2015, October 23). Réaction du Grand Conseil des Cris (Eeyou Istchee) faisant suite au reportage-choc d'Enquête de Radio-Canada en matière de sévices à l'endroit de femmes autochtones. [Press release]. Retrieved from https://www.pressegauche.org/Reaction-du-Grand-Conseil-des-Cris-Eeyou-Istchee-Gouvernement-de-la-Nation-crie.

11 Since a legislative amendment was made in December 2017, the BEI has been officially authorized to investigate any allegations concerning an offence of a sexual nature committed by a police officer in the performance of duties.

12 Since a legislative amendment was made in September 2018, the BEI has been officially authorized to investigate any allegations by an Indigenous individual against a police officer.

security minister Lise Thériault announced that the investigation would be transferred to the Service de police de la Ville de Montréal (SPVM, Montréal's police force).[13] On the same day, First Nations representatives demanded that the police officers involved be suspended.[14] Their demands were met and the eight police officers subject to allegations were immediately relieved of their duties for the duration of the investigation.[15]

1.2. Regional tensions

At the local level, tensions were rising. On October 25, while Geoffrey Kelley, Minister responsible for Native Affairs, was making a visit to Val-d'Or[16], representatives from the Eeyou (Cree) nation announced that they would boycott the city's municipal administration and merchants.[17] During the weekend following the broadcast of the *Enquête* news story, officers from the La Vallée-de-l'Or RCM police station refused to work. They claimed that they did not feel supported by their employer and were concerned that the tense atmosphere between them and the population made them unable to do their jobs effectively. They also asked the public security minister to make a formal apology to them.[18] A groundswell of solidarity towards the police officers appeared on social media. To show their support for the police, Facebook users began changing their profile pictures to the 144 avatar identifying the La Vallée-de-l'Or RCM police station.[19] At the same time, Verna Polson, Grand Chief of the Algonquin Anishinabeg Nation Tribal Council, announced that her nation would be joining the boycott.[20]

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13 Ministère de la Sécurité publique. (2015, October 23). Allégations visant des policiers du poste de la MRC de La Vallée-de-l'Or. Le gouvernement ne tolérera aucun écart de conduite des policiers et entend soutenir la population de Val-d'Or. [Press release]. Retrieved from https://www.securitepublique.gouv.qc.ca/ministere/salle-presse/communiques/detail/12710.html.

14 ICI Abitibi-Témiscamingue. (2015, October 23). Les Autochtones pressent Ottawa d'agir sans plus attendre. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/745902/autochtones-allegations-reactions-premieres-nations-enquete-publique.

15 Croteau, M. (2015, October 23). Allégations d'abus sur des femmes autochtones à Val-d'Or : le SPVM enquêtera. *La Presse.ca.* Retrieved from http://www.lapresse.ca/actualites/201510/23/01-4913137-allegations-dabus-sur-des-femmes-autochtones-a-val-dor-le-spvm-enquetera.php.

16 ICI Radio-Canada.ca. (2015, October 25). Le ministre Geoffrey Kelley lance un appel au calme à Val-d'Or. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/746202/ministre-affaires-autochtones-geoffrey-kelley-val-dor.

17 TVA Nouvelles. (2015, October 25). Crise de confiance à Val-d'Or. *TVA Nouvelles.ca.* Retrieved from http://www.tvanouvelles.ca/2015/10/25/crise-de-confiance-a-val-dor.

18 ICI Abitibi-Témiscamingue. (2015, October 26). Colère et solidarité chez les policiers de Val-d'Or. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/746286/policiers-sq-val-dor-petition-facebook-association-des-policiers-provinciaux-du-Québec.

19 ICI Abitibi-Témiscamingue. (2015, October 28). L'élan de solidarité avec les policiers de Val-d'Or s'étend à Rouyn-Noranda. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/746695/autopatrouilles-sq-rouyn-noranda-144-solidarite-val-dor.

20 Chamberland, D. (2015, November 2). Au tour des Algonquins de boycotter Val-d'Or. *La Sentinelle.* Retrieved from http://www.lasentinelle.ca/au-tour-des-algonquins-de-boycotter-val-dor/.

At the national level, the Assembly of First Nations Québec-Labrador claimed that an independent inquiry supervised by Indigenous police officers was necessary and asked for an emergency meeting with Premier Philippe Couillard.[21]

A meeting was initially refused but ultimately took place on November 4, 2015.[22] A series of measures focusing on Indigenous populations in the Val-d'Or region was announced[23] and a tripartite working platform (Québec, Ottawa, Indigenous authorities) was set up to examine the practices of police forces in Québec.[24] The appointment of Me Fannie Lafontaine as independent civil observer was also confirmed for the inquiry being conducted by the SPVM.[25] Drawing on her background as a legal professional and Université Laval professor, her role was to review the inquiry's integrity and impartiality.

Following the meeting, the Indigenous leaders stated that they were not completely satisfied and were still interested in seeing a public inquiry commission held.[26] For his part, Premier Couillard said that he first wanted to review the mandate assigned to the federal inquiry and asked the Trudeau government to include Québec in the inquiry's mandate.[27] When questioned, Carolyn Bennett, federal Minister of Crown-Indigenous Relations and Northern Affairs, replied that Québec would have to conduct its own investigation because the federal government's wideranging inquiry could not zero in on "specific cases".[28] However, Québec's position remained unchanged.[29]

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21 Boutros, M. and Marin, S. (2015, October 27). Le chef Picard somme Couillard de se rendre à Val-d'Or d'ici 24 heures. *L'Actualité*. [Based on content from The Canadian Press] Retrieved from http://lactualite.com/actualites/Québec-canada/2015/10/27/il-ny-a-pas-de-crise-a-val-dor-selon-le-directeur-general-de-la-sq/.

22 ICI Radio-Canada.ca. (2015, November 4). Incidents de Val-d'Or : Philippe Couillard rencontre les chefs autochtones. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/747930/rencontre-philippe-couillard-chefs-autochtones-montreal-femmes-val-or-policiers-surete-Québec.

23 Secrétariat aux Affaires autochtones. (2015, November 4). A Meeting with the Assembly of First Nations of Québec and Labrador: The premier of Québec Philippe Couillard Announces measures to improve the living conditions of Aboriginal women [Press release]. Retrieved from https://www.autochtones.gouv.qc.ca/centre_de_presse/communiques/2015/2015-11-04-en.asp; Chamberland, D. (2015, November 11). Autochtones : Québec injecte 6,1 millions $ à Val-d'Or. *La Sentinelle*. Retrieved from http://www.lasentinelle.ca/autochtones-Québec-injecte-61-m-a-val-dor/; Labbé, F. (2015, December 15). Femmes autochtones : comment les choses ont changé à Val-d'Or? *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/755382/val-dor-reagit-a-la-crise.

24 Secrétariat aux Affaires autochtones. (2015, November 4), *op. cit.*

25 Lessard, D. and Croteau, M. (2015, November 4). Val-d'Or : une spécialiste de droit international choisie comme observatrice. *La Presse.ca*. Retrieved from https://www.lapresse.ca/actualites/justice-et-faits-divers/actualites-judiciaires/201511/04/01-4917150-val-dor-une-specialiste-du-droit-international-choisie-comme-observatrice.php; Secrétariat aux Affaires autochtones. (2015, November 4), *op. cit.*

26 Nadeau, J.-F. (2015, November 5). Femmes autochtones. Une rencontre qui laisse les Premières Nations sur leur faim. *Le Devoir*. Retrieved from https://www.ledevoir.com/politique/Québec/454348/crise-autochtone-une-rencontre-qui-laisse-les-premieres-nation-sur-leur-faim-genre.

27 *Ibid.*

28 Lefebvre, S.-M. (2015, November 11). Québec doit faire sa propre enquête, dit la ministre fédérale. *Le Journal de Montréal*. Retrieved from https://www.journaldemontreal.com/2015/11/10/Québec-doit-faire-sa-propre-enquete-dit-la-ministre-federale.

29 Dutrisac, R. (2015, December 8). Police et Autochtones. Québec écarte la tenue d'une enquête publique. *Le Devoir*. Retrieved from https://www.ledevoir.com/politique/Québec/457361/police-et-autochtones-Québec-ecarte-la-tenue-d-une-enquete-publique.

In the first week of December, wanting to put an end to the tensions tearing apart the community, the Val-d'Or municipal council adopted a unanimous resolution asking the Québec government to set up a public inquiry commission concerning what was commonly referred to as the "Val-d'Or events".[30] Although the resolution did not elicit a response from Québec, it did foster dialogue at the local level. On December 15, 2015, the City of Val-d'Or, the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, Anicinapek Council of Kitcisakik, the Council of the Nation Anishnabe of Lac Simon and the Council of the First Nation of Abitibiwinni (Pikogan) signed the Val-d'Or declaration.[31] By doing so, they hoped to take the first step towards improving relations between Indigenous and non-Indigenous communities. The economic and social boycott was terminated. Various task forces and awareness campaigns were launched in the following weeks and months to relieve the tensions between the region's Indigenous communities and the rest of the population.[32]

1.3. Far-reaching impact

In the preceding months, a number of observers spoke out against the difficult relations between the Indigenous communities and law enforcement. A second news story broadcast by the *Enquête* program on March 30, 2016 supported those views.[33] In that story, other Indigenous women told about police abuse that had occurred in locations such as Maniwaki, Sept-Îles and Schefferville. Various speakers, including a former inspector from the public security ministry, revealed that "starlight tours" had taken place in Québec involving members of Indigenous communities in a vulnerable state who were taken outside the city to isolated locations and left there. The story also stated that the complaint process was inadequate and encouraged a feeling of impunity among police officers.[34] As a result of that report, a phone line administered by the Native ParaJudicial Services of Québec was set up to make it easier for Indigenous women to make complaints about assault.[35] On April

30 Landry, A. (2015, December 9). Une commission d'enquête sur la crise à Val-d'Or est demandée malgré la tenue de l'enquête fédérale. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/754399/commission-enquete-val-dor-demandee.

31 Ville de Val-d'Or. (2015). Déclaration de Val-d'Or. Retrieved from https://ville.valdor.qc.ca/la-ville/democratie/declaration-de-val-d-or; Chamberland, D. (2015, December 18). Un nouveau départ avec la Déclaration de Val-d'Or. *La Sentinelle*. Retrieved from http://www.lasentinelle.ca/un-nouveau-depart-avec-la-declaration-de-val-dor/; Prince, D. (2015, December 16). Val-d'Or s'entend avec les Autochtones. *Le Journal de Montréal*. Retrieved from https://www.journaldemontreal.com/2015/12/15/val-dor-signe-un-traite-de-paix-avec-les-autochtones.

32 ICI Abitibi-Témiscamingue. (2015, December 15). Déclaration de Val-d'Or : les Cris et les Anishnabés mettent fin au boycottage économique. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/755367/declaration-val-dor-cris-anishinabe-boycott; Chamberland, D. (2015, December 18), *op. cit.*; ICI Abitibi-Témiscamingue. (2016, January 15). Le Conseil tribal de la nation algonquine Anishnabeg met fin au boycottage de la Ville de Val-d'Or. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/759939/fin-boycott-val-dor-conseil-nation-anisnabe.

33 Dupuis, J. and Panasuk, A. (journalists). Le silence est brisé. [News story]. In M. Bourdeau and E. Marchand (producers), *Enquête*. Montréal, Québec: Société Radio-Canada. Retrieved from : https://ici.radio-canada.ca/tele/enquete/2015-2016/segments/reportage/6143/enquete-femmes-autochtones-surete-du-Québec-police.

34 *Ibid.*

35 Gagné, L. (2016, April 5). Femmes autochtones : une nouvelle ligne téléphonique pour dénoncer les abus de policiers. *Le Journal de Québec*. Retrieved from http://www.journaldeQuébec.com/2016/04/05/femmes-autochtones-une-nouvelle-ligne-telephonique-pour-denoncer-les-abus-de-policiers.

5, 2016, the SPVM's mandate was expanded to include complaints against any police officer assigned in Québec.[36] Phase 1 of the inquiry focusing solely on Val-d'Or was still underway.

On August 3, 2016, the federal government officially announced that it was setting up the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG).[37] In the weeks that followed, despite further calls by the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government to set up a Québec inquiry[38], the Couillard government adopted an order giving the federal commissioners full powers to conduct an inquiry in Québec.[39]

Then, on October 20, 2016, one year after the first story had been broadcast, police officers assigned to Val-d'Or, supported by the Association des policières et des policiers provinciaux du Québec, launched a defamation lawsuit against Radio-Canada and its journalist Josée Dupuis.[40] According to the police officers, the news story on Indigenous women in Val-d'Or was lacking in terms of thoroughness, accuracy, impartiality and balance.[41] Radio-Canada asked for the lawsuit to be dismissed immediately, calling it "an attempt to muzzle a broadcaster whose mission is the public interest".[42]

Those police officers received support at the national level. In support of their colleagues, 2,500 SQ police officers started wearing a red bracelet bearing the number 144 in reference to the Val d'Or police station and eight stars representing the suspended police officers.[43] Private radio stations and the hosts of call-in talk shows attacked the credibility and reputations of the Indigenous women who had spoken on camera. A radio host from Québec City stated that the Indigenous women were lying. Another host was later reprimanded by the Québec Press Council for making degrading comments about the women.[44]

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36 Croteau, M. (2016, April 5). Policiers et Autochtones : Québec élargit l'enquête à toute la province. *La Presse.ca*. Retrieved from http://www.lapresse.ca/actualites/politique/politique-Québecoise/201604/05/01-4967926-policiers-et-autochtones-Québec-elargit-lenquete-a-toute-la-province.php.

37 The Canadian Press. (2016, August 3). Lancement de la commission d'enquête sur les femmes autochtones tuées ou disparues. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/796026/autochtone-premiere-nation-assassinee-disparue-femme-bennett-commission-enquete-nationale-ottawa.

38 ICI Abitibi-Témiscamingue. (2016, August 18). Val-d'Or : des leaders autochtones réitèrent la demande d'une enquête québécoise. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/798208/autochtone-enquete-inconduite-policiere-province-nationale-femmes-filles-disparues-assassinees.

39 *Order concerning the constitution of the Commission of Inquiry on Missing and Murdered Indigenous Women and Girls in Québec* (2016) 711 G.O.Q. II, p. 4921.

40 Demande introductive d'instance, Cour supérieure du Québec (Chambre civile) district de Montréal, no 500-17-096027-167.

41 Croteau, M., Duchaine, G. (2016, October 20). Reportage à Val-d'Or : 41 policiers poursuivent Radio-Canada. *La Presse.ca*. Retrieved from http://www.lapresse.ca/actualites/justice-et-faits-divers/actualites-judiciaires/201610/20/01-5032333-reportage-a-val-dor-41-policiers-poursuivent-radio-canada.php.

42 *Demande en rejet d'action pour abus, Version revue à la suite de l'ordonnance du juge Bisson du 9 juin 2017*, Cour supérieure (Chambre civile) district de Montréal, no 500-17-096027-167, p. 1.

43 Prince, D. (2016, October 19). Un bracelet en soutien aux policiers de Val-d'Or. *Le Journal de Montréal*. Retrieved from http://www.journaldemontreal.com/2016/10/19/allegations-de-femmes-autochtones-les-policiers-de-val-dor-denoncent-la-suspension-de-huit-collegues.

44 Québec Press Council. (2017, June 16). Adjudication D2016-11-060. Retrieved from https://conseildepresse.qc.ca/decisions/d2016-11-060/.

Against that tense backdrop, Me Fannie Lafontaine tabled her report on November 16, 2016. The independent observer concluded that the SPVM's inquiry had been conducted with integrity and impartiality. However, she stated that it was "necessary to shed some light on the causes underlying those allegations of sexual violence and abuse of power against police officers and the potential existence of a pattern of discriminatory behaviour against members of Indigenous communities indicating that systemic racism against Indigenous communities existed within police forces." In her opinion, "in order to identify measures that would complement the SPVM's criminal investigation by shedding light on more collective, systemic issues, an immediate, official consultation process involving the government, police forces and Indigenous organizations would be required".[45]

1.4. Creation of the Commission

Two days later, the DPCP announced that no charges would be laid in the cases involving the Val-d'Or women.[46] The only charges would be in the case concerning the Schefferville events. The reaction to the announcement among the alleged victims and the Indigenous stakeholders who supported them was very negative.[47]

There was considerable coverage in the media, with many stakeholders reiterating that they wanted a Québec inquiry commission to be appointed.[48] Like his Minister responsible for Native Affairs a year earlier, the Premier initially showed some openness to that possibility[49] and said that he understood the "frustration" and "despair" felt by First Nations. However, not long after that, the idea of creating a commission was once again rejected[50], a decision that was criticized by the Chief of the Assembly of First Nations Québec-Labrador.[51]

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45 *Rapport de l'observatrice civile indépendante. Phase 1. Le 15 novembre 2016*, document P-616 (Commission), p. 11.

46 ICI Radio-Canada. (2016, November 18). Décision du DPCP à Val-d'Or : entre colère et incompréhension. *ICI Radio-Canada.ca*. Retrieved from http://ici.radio-canada.ca/nouvelle/1000753/decision-du-dpcp-a-val-dor-entre-colere-et-incomprehension; Prince, D. (2016, November 15). L'absence d'accusation contre les policiers de la SQ divise Val-d'Or. *Le Journal de Montréal*. Retrieved from http://www.journaldemontreal.com/2016/11/15/allegations-de-femmes-autochtones-agressees--val-dor-divisee-face-a-la-decision-du-dpcp.

47 ICI Radio-Canada. (2016, November 18), *op. cit.*; The Canadian Press. (2016, November 17). Val-d'Or : les femmes autochtones amèrement déçues. *La Presse.ca*. Retrieved from https://www.lapresse.ca/actualites/justice-et-faits-divers/actualites-judiciaires/201611/17/01-5042453-val-dor-les-femmes-autochtones-amerement-decues.php.

48 Saint-Arnaud, P. (2016, November 21). Val-d'Or : les leaders autochtones réclament une enquête judiciaire. *La Presse.ca*. [Based on content from The Canadian Press]. Retrieved from http://www.lapresse.ca/actualites/justice-et-faits-divers/201611/21/01-5043666-val-dor-les-leaders-autochtones-reclament-une-enquete-judiciaire.php.

49 Saint-Arnaud, P. (2016, November 22). Autochtones : Couillard entrouvre la porte à une enquête indépendante. *Le Devoir*. Retrieved from https://www.ledevoir.com/societe/485316/autochtones-couillard-entrouvre-la-porte-a-une-enquete-independante.

50 ICI Radio-Canada.ca. (2016, November 23). Commission d'enquête sur les femmes autochtones : Couillard fait marche arrière. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/1001895/commission-enquete-femmes-autochtones-philippe-couillard-recul-ghislain-picard.

51 *Ibid.*

Then, unexpectedly on December 1, 2016, Premier Couillard, together with Martin Coiteux, Minister of Public Security[52], Geoffrey Kelley, Minister responsible for Native Affairs, and Stéphanie Vallée, Minister of Justice, met with Ghislain Picard, Chief of the Assembly of First Nations Québec-Labrador, Matthew Coon Come, Chief of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, Adrienne Anichinapéo, Anishnabe chief from Kitcisakik, and Adrienne Jérôme, Anishnabe chief from Lac Simon, as well as Édith Cloutier, Executive Director of the Val-d'Or Native Friendship Centre. The Indigenous representatives proposed that an inquiry commission be set up to examine various public services.[53]

Michèle Moreau, acting as Executive Director of the MMIWG inquiry[54], then sent a letter to the Québec government confirming that the Val-d'Or events would not be reviewed by the federal inquiry because they were specific cases.[55] Her action was the final argument for the Couillard government to set up a provincial inquiry commission.[56] The order creating the Commission was passed on December 21, 2016.

As a retired Superior Court of Québec judge, I was appointed that day by the Québec government to act as commissioner. The rest of the story is described in the following chapters.

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52 On October 29, 2015, Lise Thériault announced that she would be taking temporary leave from her duties as Minister of Public Security. She was replaced by Pierre Moreau, who was Minister of Municipal Affairs and Land Occupancy at that time. On January 28, 2016, as part of a cabinet shuffle, Martin Coiteux was appointed Minister of Municipal Affairs and Land Occupancy and Minister of Public Security.

53 Dutrisac, R. (2016, December 1). La demande d'une commission d'enquête publique reste en suspens. *Le Devoir*. Retrieved from http://www.ledevoir.com/non-classe/486061/relations-autochtones-policiers-la-demande-d-une-commission-d-enquete-publique-reste-en-suspens.

54 Ms. Moreau resigned as Executive Director of the MMIWG inquiry on July 21, 2017.

55 ICI Abitibi-Témiscamingue. (2016, December 15). Femmes autochtones : pas d'enquête fédérale approfondie sur Val-d'Or. *ICI Radio-Canada.ca.* Retrieved from http://ici.radio-canada.ca/nouvelle/1006235/val-dor-mandat-enquete-nationale-femmes-autochtones-disparues-assassinees.

56 Gouvernement du Québec. (2016, December 21). Commission d'enquête sur les relations entre les Autochtones et certains services publics. Pour mieux s'écouter, se réconcilier et pour que nos relations progressent. [Press release]. Retrieved from http://www.fil-information.gouv.qc.ca/Pages/Article.aspx?idArticle=2412217946.

2

CHAPTER 2

MANDATE, ORGANIZATION AND OPERATIONAL FRAMEWORK

An inquiry commission takes place within a well-defined regulatory framework. The work required to complete its mandate must not only be carried out in compliance with the *Act respecting public inquiry commissions*[57], but also with the decree that led to its establishment[58] and the Procedural and Operational Rules established by the Commission's team itself.[59]

This chapter describes the mandate assigned to me as well as my interpretation of the mandate as the designated commissioner. This chapter also presents an outline of the work carried out by the Commission's various teams, from the initial contact with the parties concerned to the submission of the final report. Grouped together in this manner, these components allow us to better understand the obligations and constraints inherent to an inquiry commission as well as the efforts required to successfully complete a project of such importance.

2.1. The mandate

2.1.1 Terms of the order

According to the government order, the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (the Commission) was given the following mandate:

> [...] to investigate, ascertain the facts and make analyses with a view to making recommendations as to the concrete, effective and sustainable measures to be implemented by the Gouvernement du Québec and by the Aboriginal authorities to prevent or eliminate, regardless of their origin or cause, any form of violence or discriminatory practices or differential treatments in the provision of the following public services to the Aboriginals of Québec: police services, correctional services, justice services, health and social services and youth protection services.[60]

The order also specifies that the inquiry must cover the last 15 years and that the Commission sits in Val-d'Or. It also opens the door to holding hearings in other regions and communities affected, if deemed necessary.

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57 *Act respecting public inquiry commissions*, CQLR, c. 37.

58 *Order concerning the establishment of the Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec : écoute, réconciliation et progrès*, (2016) 1095 G.O.Q. II. The full text of the order is available in Appendix 1.

59 The Commission's Procedural and Operational Rules can be found in Appendix 2.

60 *Order concerning the establishment of the Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec : écoute, réconciliation et progrès*, (2016) 1095 G.O.Q. II, p. 24. The full text of the order is available in Appendix 1.

The government order also emphasizes the importance of allowing Indigenous citizens and providers of public services to "share their experience and concerns," but also to "voice their opinions with respect to the solutions that could be implemented to improve the provision of public services to Aboriginals." As indicated by the name of the Commission, it's time for listening and reconciliation, with a view to making progress.

2.1.2 Interpretation of the mandate

While the "Val-d'Or events" spurred the creation of the Commission, the Commission's mandate was to shed light on the issues that characterize relations between Indigenous peoples and the providers of certain public services throughout Québec.

In concrete terms, the mandate consisted of assessing whether the treatment of Indigenous peoples in the delivery of public services was marked by violence or discriminatory practices. The underlying question was to determine whether Indigenous peoples were treated differently by public services due to their distinctive characteristics, and whether this generated injustices, particularly with respect to the services provided, and hindered them in exercising their rights. It was also important to establish whether such observations stemmed from isolated acts or were the result of systemic ways of acting and of thinking, i.e. rooted in the organizations and fuelled by their operating logic.

The answer to these questions should enable me to identify the problems observed generally, but also for each of the public services listed in the mandate, i.e. police services, correctional services, justice services, health services, social services and youth protection services.

In addition, the causes of the problems observed needed to be identified before formulating the calls for action deemed essential to improving the situation.

In order to accomplish this in accordance with the government's desire to encourage listening, I deemed it necessary to prioritize the testimonies of both Indigenous citizens and providers of public services. The adopted approach was inclusive and allowed as many women as men to speak at the public hearings. I also listened to stories about other public services if they allowed me to better understand the reality and particular needs of Indigenous peoples.

With a view to reconciliation, I also took special care to respect Indigenous cultures and traditions. This position not only shaped the work of the Commission as a whole, but its organization as well.

2.2. Organization and work carried out

I benefited from a seasoned team of professionals to help me successfully complete my mandate. At the peak of the work, the Commission's team consisted of 89 people[61] spread out over eight work teams, each with well-defined responsibilities.

2.2.1 General Secretariat and administration

The General Secretariat is the administrative arm of a commission. They are responsible for the general administration of the commission, as well as for its financial management and smooth operation. They ensure that the commission has the human and material resources it needs to carry out its mandate. They are also responsible for setting up the offices and coordinating the logistics for holding the public hearings. Julie Camirand served as General Secretary for the entire duration of the Commission's work. Ms. Camirand was supported in her duties by Sylvain Roy, Administrative Officer. She also worked closely with Alain Lauzier, advisor to the Commission.

2.2.2 Legal affairs

All inquiry commissions also have a team consisting of counsel, lawyers and legal research officers at their disposal. This commission was no exception. The Legal Department ensured that evidence pertaining to the mandate was identified and prepared for the hearings. The team prepared witnesses to appear before the Commission, and members of counsel interviewed them at the hearing. Christian Leblanc and Marie-Josée Barry-Gosselin acted as Chief Counsel and Deputy Chief Counsel, respectively, until September 7, 2018, the date on which Suzanne Arpin succeeded them. The Commission was able to successfully complete its work thanks to a team of 13 people, five of whom were counsel.

The Commission held hearings for a total of 38 weeks, between June 5, 2017 and December 14, 2018. A total of 765 witnesses testified at these hearings, 277 of whom were citizen witnesses.[62] A certain number of witnesses also testified via statements filed as evidence (423). The majority of the hearings were held in Val-d'Or. Nevertheless, with the agreement of the Commission's counsel, I deemed it appropriate to organize public hearings in Montréal (4 weeks), Uashat mak Mani-Utenam (3 weeks), Mistissini (2 weeks), Québec City (2 weeks), Kuujjuaq (1 week) and Kuujjuarapik (1 week). The hearings led to 1,367 documents deemed relevant to the inquiry being filed as evidence.[63]

61 The complete list of the individuals who worked for the Commission can be found in Appendix 3.

62 The list of individuals heard during the Commission's hearings is available in Appendix 4.

63 The list of documents filed as evidence before the Commission is available in Appendix 5.

2.2.3 Research and analysis

The Research Department is responsible for the organization, planning and execution of all research work required under the Commission's mandate. In this respect, the department worked on documenting the various issues raised by the mandate and analyzing the testimonies heard during the hearings. It also actively helped in the preparation of expert witnesses, the analysis of briefs and documents collected by counsel, and drafting the report. Directed jointly by Suzy Basile and Frédérique Cornellier, and subsequently by Sébastien Brodeur-Girard as of September 2018, at the peak of the Commission's activities, the department consisted of some 20 people with varying profiles. The majority were working as research officers. Six university researchers, recognized for their expertise in the area of our mandate, were also hired for their analytical services: Céline Bellot, Christiane Guay, Mylène Jaccoud, Carole Lévesque, Marie-Ève Sylvestre and Cyndy Wylde.[64] These experts were used throughout the duration of the Commission. Their work enabled us to take stock of the situation for each of the public services subject to the inquiry and compare the different testimonies given during the public hearings. They also led to the identification of promising initiatives in Québec or elsewhere.[65] All research was carried out in compliance with the First Nations in Québec and Labrador's Research Protocol, which was developed by the Assembly of First Nations Québec-Labrador and published in 2014.[66]

2.2.4 Investigations

The investigation team was responsible for collecting and processing the testimonies of persons who wanted to share their experiences with the Commission.

Led by Annick Larose, this team benefited from the contributions of 10 investigation agents and an investigation office clerk. The investigation agents ensured that the testimonies were collected and that each one was summarized in the form of a statement. Under exceptional circumstances, they could also be called to appear at hearings as reporting witnesses, summing up the events experienced by one or more individuals.

In total, 1,047 testimonies by people from all the nations were collected by the investigation team.[67] A number of them were deemed inadmissible with regard to the Commission's mandate (109), and nearly 20 were more relevant to other government bodies (19), such as the Commission des droits de la personne et des droits de la jeunesse and the Bureau des enquêtes indépendantes. In addition, by the end of the exercise, 190 instances of discontinuance were recorded.

Although a secure telephone line and email address were made available as soon as the work began, the majority (80.0%) of the testimonies were collected in the field, during visits to Indigenous communities and from Indigenous organizations in urban settings across

64 Sébastien Grammond also worked as an expert for the Commission until September 2017, when he was appointed judge of the Federal Court.

65 The promising initiatives identified are presented in Appendix 6.

66 Assembly of First Nations Québec-Labrador. (2014). First Nations in Québec and Labrador's Research Protocol. Québec City, Québec: AFNQL.

67 Refer to Appendix 7 for the number of investigation files opened per nation.

Québec. The work done by the investigation team also enabled eight discussion groups to be established. This alternative mode of collecting testimonies led to the presentation of a number of stories at the hearings.

2.2.5 Community relations

The Commission benefited from an Indigenous relations team to facilitate initial contact. Serving as a link to the communities, the team was made up of 11 people, seven of whom were liaison officers working in the field. Three people were also responsible for coordinating their work and visiting the communities to introduce the Commission and encourage citizen participation: Janet Mark, Sharon Hunter and Lucy Grey, Coordinator and Assistant Coordinators, respectively. One Assistant Coordinator worked with all nations whose second language was English and the others worked in Inuit territory.

Between May 2017 and August 2018, the team met with more than 3,000 people and carried out 234 visits, 87 of which were in an urban setting. The visits began in Anishnabe territory and then gradually extended to all of the other regions. With a view to respecting the wishes of the communities and the special situations of each of the territories, the team made 82 courtesy visits to explain the Commission and invite people to participate in the process. More than 150 official visits (152) were organized following the courtesy visits. By the end of the exercise, all 11 nations had been visited, as well as nearly all First Nations communities and villages in Nunavik.[68]

The Commission also benefited from a coordinator of relations with public services, Michel Michaud, who worked to build bridges with representatives of the various public services. Following the example of what was done in the First Nations communities and villages of Nunavik, presentations were organized for the government bodies directly concerned by the mandate, as well as for the labour unions in the sectors concerned.

2.2.6 Psychosocial support and well-being

I felt it was necessary to have a psychosocial support team available to help with stories about difficult and emotionally challenging experiences. Coordinated by Roch Riendeau, this eight-person team accompanied the investigators and community relations teams on each of their visits in the field. This team was also an integral part of establishing discussion groups. Its mandate was primarily to support those wishing to testify at every step of the process, from collecting the preliminary information to appearing at the hearing. On occasion, the team was also asked to help with preparing the witnesses. In addition, it directed all individuals with inadmissible testimonies to the appropriate resources in their communities. Furthermore, the team ensured systematic follow-up of the witnesses after they appeared at the hearing. The team also provided psychological support to all Commission employees for the duration of the mandate.

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68 An exhaustive list of the visits is available in Appendix 8. The communities of Essipit (Innus), Wolf Lake (Anishnabek/Algonquins) and Kebaowek (Anishnabek/Algonquins) did not receive an official visit. Only courtesy visits were made to the communities of Gespeg (Mi'gmaq) and Waskaganish (Eeyou/Cree), as well as to Malécite territory (Malécites de Viger).

2.2.7 Communications

The public nature of an inquiry commission requires constant interaction with the media and the community. Benoit Bigué-Turcotte acted as the communications coordinator throughout the course of the Commission's work. In addition to media relations, he ensured that all relevant content was posted on the Commission's website and social networking sites when the Commission began its work.

With the help of a communications advisor, he was also in charge of producing all materials needed for the Commission's entertainment activities, particularly when visiting the communities. To encourage citizen participation and take into account the different cultural realities of Indigenous peoples, particularly in terms of language, these tools were made available in both English and French and, in certain cases, Inuktitut. Publicity campaigns encouraging people to come and testify were also carried out, mainly on our social networking sites and on community radio stations.

2.3. Operational framework

Implemented under the *Act respecting public inquiry commissions*, the operational framework was created by the Commission in accordance with the requirements under the Act.

2.3.1 Procedural rules

And so, as provided for by the Act, one of my first tasks was to develop Procedural and Operational Rules.[69] These rules set out the principles applicable to obtaining a standing before the Commission, to applications and motions, to preliminary interviews with witnesses, and to public hearings. They also define the rules of evidence, delineate the questioning process, and describe document management and media coverage. The framework applicable to closed proceedings and to non-disclosure, non-publication and non-distribution orders are also included in these rules.

The Procedural and Operational Rules were published on the Commission's website for the first time in March 2017, and as a revised version in January 2018. They were developed in accordance with the principles of procedural fairness, and have certain similarities to those adopted by other recent inquiry commissions. To respect Indigenous cultures, they stipulate that witnesses may express themselves in English, French or in any Indigenous language present in Québec. They also include the Commission's commitment to providing an interpreter, if need be.

2.3.2 Full participant and limited participant standings

In an inquiry commission, the full participant standing is granted to any individual or organization that has a significant, direct interest with respect to the subject of the inquiry and is likely to be affected by the Commission's report. It also allows the Commission to question a witness on certain specific points of his/her testimony. However, in the context of the Commission, the points questioned had to receive prior approval by me.

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69 The Commission's Procedural and Operational Rules can be found in Appendix 2.

The limited participant standing is reserved for individuals or organizations that have a real interest with respect to the subject of the inquiry or whose perspective, expertise or experience may contribute to the execution of the Commission's mandate.

The full participant standing was granted to the following organizations:

- Assembly of First Nations Québec-Labrador
- Association des policières et policiers provinciaux du Québec
- Association professionnelle des officiers de la Sûreté du Québec
- Cree Board of Health and Social Services of James Bay
- Conseil de la Nation Atikamekw
- Directeur des poursuites criminelles et pénales
- Québec Native Women
- Grand Council of the Crees (Eeyou Istchee) and Cree Nation Government
- Innu Takuaikan Uashat mak Mani-Utenam
- Makivik Corporation
- Attorney-General of Québec
- Regroupement des centres d'amitié autochtones du Québec
- Regroupement Mamit Innuat inc.
- Service de police de la Ville de Montréal
- The Naskapi Nation of Kawawachikamach

Only one organization was granted the limited participant standing:

- Nunavik Regional Board of Health and Social Services

No status applications were rejected or refused.

2.3.3 Public nature of the work

With a view to being transparent, and with the collaboration of the technical staff of the Centre de services partagés du Québec, all of the Commission's hearings were webcast live on the Commission's website. The public was also invited to attend. People who wanted to listen to one of the testimonies (except for *in camera* testimony) again or to read the transcripts could do so in the Archived Hearings section of the website. This content is still available on the site and may be consulted at any time.

As soon as the work began, I also invited the public to participate in the Commission's work by submitting a brief on the phenomena being studied during the public hearings, as well as on possible solutions. The deadline for taking part in this phase of the inquiry was set as October 15, 2018. An information document was made available on the Commission's website to help guide the public in the process. In total, 36 briefs were received.[70] Each brief was analyzed. Only one was deemed inadmissible because its content was not in keeping with the mandate of the Commission. Among the briefs deemed admissible, several were presented at the hearings.

70 The complete list of briefs received by the Commission is available in Appendix 9.

The individuals participating in the work were also allowed to give final presentations. These were added to the evidence and observations collected beforehand as part of the hearings with a view to drafting the final report. Consultations with persons belonging to Indigenous peoples or from one of the public services under investigation were also organized for the preparation of this report.[71]

When the work was done, the Commission's archives were submitted to the Bibliothèque et Archives nationales du Québec. They are now available on request, with the exception of certain documents considered to be confidential.

The work was carried out between December 2016 and September 2019. The original order stipulated that the report was to be submitted by November 30, 2018, at the latest. In the winter of 2017, however, a request for a 10-month extension was submitted to the government, which was authorized by order on February 7, 2018.[72]

71 The list of participants is available in Appendix 10.

72 *Décret concernant la prolongation de la Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec : écoute, réconciliation et progrès,* (2018) 83-2018, G.O.Q. II. The full text of the order is available in Appendix 11.

PART I

BACKGROUND

Investigating requires one to ascertain with as much acuity as possible the realities and characteristics of the players, environments and systems at issue.

And so, mandated to investigate relations between Indigenous peoples and certain public services, I deemed it useful to first revisit the history in order to better understand how these relations were built and the stigmas left behind by certain events. The result of this was a version of history rarely presented in the public sphere, which I endeavoured to keep in mind throughout the course of the Commission's work, for it very much illustrates and helps us understand the complexity of current relations between Indigenous peoples and public services.

It was also impossible for me to assess whether Indigenous peoples are subject to discrimination in the public services due to their distinctive characteristics without first seeking to understand what specifically differentiates them. Consequently, from the outset of the process, the Commission's team went to great lengths to obtain statistical and geopolitical information on Québec's First Nations and Inuit. This exercise allowed us to paint a portrait that, while piecemeal, is, in my opinion, very illuminating as to the disastrous consequences brought about by the colonization and social and economic marginalization of Indigenous peoples over the past few centuries.

With a view to being fair, it was just as crucial to understand how public services work and the framework within which they play their roles. Knowing this information allows us to not only better understand the constraints and demands faced by these systems, but also to measure the gap between theory and reality.

Given the wealth of information collected, it was imperative for me to ensure that it be shared with as many people as possible, which is why I chose to put it in the first part of this report. Chapter 3 deals with the history of relations. Chapter 4 presents an overview of the social, political and economic realities of Indigenous peoples, which the Commission had gleaned by the end of the process. And lastly, Chapter 5 contains an exhaustive portrait of the services that were subject to the Commission's inquiry.

3

CHAPTER 3

THE HISTORY OF RELATIONS WITH INDIGENOUS PEOPLES

Prior to the first contact with Europeans, Indigenous peoples formed organized nations of various cultures adapted to their way of life.[73] They also had their own political systems, firmly established legal traditions and acquired knowledge, especially with respect to health and early childhood.[74] This autonomy to act and to think allowed them to serve their people in ways that are met by public services today.

Far from being non-existent, the social and political organization of First Peoples had its origins in a special bond with the land and between nations.[75] Moreover, for centuries, the French and Indigenous peoples evolved side by side, allies in trade and in war.[76] These partnerships may have survived the arrival of the British, but demographic pressures, the lack of farmland and the rise of the mining and forestry industries radically altered the relationship between Indigenous and non-Indigenous peoples.

Melding the different versions of history is not easy. If the historical facts exist and are documented, they can be interpreted differently according to the adopted points of view. Many people that spoke during the hearing came to state that, until now, Québec's history has given precedence to the non-Indigenous peoples' view of things.[77] By combining the accepted facts and the comments gathered in the course of its work, the Commission opted

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73 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 25–27, lines 23–1; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 19, lines 16–22; *Perspectives historiques autochtones: entrevues*, document PD-16 (Commission), p. 44, 59, 73, 122–124 and 131–132; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 24–25, lines 25-21.

74 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 29–30, lines 23–15; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 43, lines 2–9; testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 77, lines 11–14; *Les relations entre les Autochtones et les services de justice du Québec : une recension des écrits*, document PD-11 (Commission), p. 14–15; testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 14–15, lines 22–24; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 21, lines 14–18; testimony of Valérie Napoléon, stenographic notes taken December 4, 2017, p. 20, lines 11–23; testimony of Hadley Friedland, stenographic notes taken December 4, 2017, p. 28–29, lines 12–16; testimony of Jessyka Boulanger, stenographic notes taken June 14, 2018, p. 26, lines 18–23.

75 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 75, lines 1–10; testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 12–13, lines 20–6 and p. 13, lines 4–6; testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 47, lines 17–18; testimony of Mélissa Mollen Dupuis, stenographic notes taken December 7, 2018, p. 169–170, lines 9–6; *Initial brief of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government*, document P-010 (Commission), p. 8, par. 4142.

76 Testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 176, lines 11–14; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 15, lines 8–25 and p. 19, lines 5–16; document PD-16 (Commission), *op. cit.*, p. 18–22, p. 120 and p. 126; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 37, lines 3–12; testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 21, lines 15–21.

77 Testimony of Serge Bouchard, stenographic notes taken November 25, 2017, p. 142, lines 14–19; testimony of Manon Jeanotte, stenographic notes taken September 15, 2017, p. 20, lines 14–19 and p. 21, lines 12–18; testimony of Konrad Sioui, stenographic notes taken September 28, 2017, p. 14, lines 9–21.

to read events in a different way. Through interviews with people representing the nations, the Commission's team was able to hear first-hand the oral history of these peoples.[78] The events presented occurred between 1850 and 2001, the start of the period targeted by the Commission's inquiry.

3.1. 1850 – 1890 / The imposition of Canadian sovereignty

The first half of the 19th century marks a decisive turning point in the relations between the State and the First Nations of Québec and Canada. At the beginning of the century, they were considered military and economic allies of the British Crown thanks, in particular, to the War of 1812 and the fur trade.[79] The annual payments made by London to Indigenous tribes in accordance with the treaties of co-operation sealed the good relationship.[80] However, changes to the Canadian economy, which was turning to larger-scale forestry and agriculture, disrupted the role of Indigenous peoples in the aspiring new country.[81]

3.1.1 Control of the territory

After Europeans settled the St. Lawrence Valley and around the Great Lakes, the second half of the 19th century was the scene of intense colonization. This was especially the case in Western Canada and Central-Northern Québec, an area that comprises Abitibi-Témiscamingue, Mauricie, Saguenay–Lac-Saint-Jean and Côte-Nord.[82] The occupation of the country's southern lands also accelerated due to the extremely high birth rate and the arrival of many immigrants[83], as evidenced by the increase in the number of townships.[84]This phenomenon initially affected the First Nations of Lower Canada (today's Québec). The autonomous area available to Indigenous peoples as allies of the Crown shrank

78 Document PD-16 (Commission), op. cit., p. 167. The Mi'gmaq First Nation declined to accept the Commission's offer. Furthermore, the Eeyou (Cree) person who had been interviewed preferred to withdraw part-way through the process, at a time when it was no longer possible to schedule a new interview.

79 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 70–71, lines 9–20.

80 Canadian Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples Volume 1. Looking Forward, Looking Back*. Ottawa, Ontario: Canada Communication Group, p. 354 of 1005 (online PDF).

81 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 70–71, lines 9–20.

82 Hamelin, L.-E. (1995). *Nordicité canadienne* (2nd ed.). Montréal, Québec: Hurtubise. Our definition of Central-Northern Québec is based on what Hamelin called the "pre-North"; Gaffield, C. (1994). *Histoire de l'Outaouais*. Québec City, Québec: Presses de l'Université Laval, p. 159; Bousquet, M.-P. (2016). *Les Anicinabek, du bois à l'asphalte : le déracinement des Algonquins du Québec*. Rouyn-Noranda, Québec: *Éditions du Quartz, p. 57; Leroux, J., Chamberland, R., Brazeau, E. and Dubé, C. (2004). Au pays des peaux de chagrin. Occupation et exploitation territoriales à Kitcisakik (Grand-Lac-Victoria) au XXe siècle.* Québec City, Québec: Presses de l'Université Laval, p. 72; Girard, C. and Perron, N. (1995). *Histoire du Saguenay-Lac-Saint-Jean*. Québec City, Québec: Institut québécois de recherche sur la culture, p. 132; Laurin, S. (1989). *Histoire des Laurentides.* Québec City, Québec: Institut québécois de recherche sur la culture, p. 423–458.

83 Beaulieu, A. (2013). La création des réserves indiennes au Québec. In A. Beaulieu, S. Gervais and M. Papillon (ed.), *Les Autochtones et le Québec. Des premiers contacts au Plan Nord* (p. 281–296). Montréal, Québec: Presses de l'Université de Montréal, p. 59.

84 Girard, C. and Brisson, C. (2018). *Reconnaissance et exclusion des peuples autochtones au Québec. Du traité d'alliance de 1603 à nos jours*. Québec City, Québec: Presses de l'Université Laval, p. 240–244.

considerably. Their territory was constantly encroached upon as shown by the many petitions sent by Indigenous communities to the authorities during the first half of the 19th century.[85]

The forested areas exposed to commercial development and colonization saw the game population decline rapidly. Starting in 1870, all of the fauna living in Central-Northern Québec was affected.[86] Due to these changes, an increasing number of Indigenous peoples subsisted on the foodstuffs available at the fur trading posts. As a result, they had to spend more time on activities relating to the fur trade. According to anthropologist Claude Gélinas, between 1850 and 1870, the Atikamekw Nehirowisiw were significantly impacted by this phenomenon and had to cut back on hunting big game to focus instead on trapping.[87] A similar situation affected the Eeyou (Cree) in the 1880s.[88] These changes created an unequal power balance for Indigenous peoples compared with the burgeoning colonial society. Beginning in the 19th century, the authorities began to worry about this and sought, from that point on, to assess what role they had to play given the situation. As early as 1828, Major General Darling chaired a commission of inquiry that concluded that colonization was having dire consequences for Indigenous peoples.[89] Darling's report believed that the Crown had responsibilities with respect to Indigenous peoples and a duty to "civilize" them to help them integrate fully into Canadian society.[90] To achieve this objective, the report considered transferring the Department of Indian Affairs, which, up until that time, had been under military control, to civilian hands.[91] The State's fiduciary role was also asserted by the 1839 proclamation in Upper Canada (today's Ontario) of the *Act for the Protection of the Lands of the Crown*.[92] *The Ordonnance pour pourvoir à la protection des Indiens ou Sauvages [Regulation to provide for the protection of Indians or Savages],* passed in Lower Canada in 1840, followed along the same lines.[93] The Crown, therefore, saw itself as the guardian of

85 Beaulieu. (2013), *op. cit.*, p. 137–139; testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 47–48, lines 6–18; Bouchard, S. and Lévesque, M.-C. (2017). *Le peuple rieur. Hommage à mes amis innus.* Montréal, Québec: Lux Éditeur, p. 234–240; Girard and Brisson. (2018), *op. cit.*, p. 111–112.

86 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 46, lines 2–11; document PD-16 (Commission), *op. cit.*, p. 79.

87 Gélinas, C. (2002). The creation of the Atikamekw reserves in Upper Mauricie (1895–1950), or when the Indian was truly an Indian. *Recherches amérindiennes au Québec*, 40(1–2), p. 32.

88 Leroux, Chamberland, Brazeau and Dubé. (2004), *op. cit.*, p. 22–23.

89 Lavoie, M. and Vaugeois, D. (2010). *L'impasse amérindienne. Trois commissions d'enquête à l'origine d'une politique de tutelle et d'assimilation. 1828–1858.* Québec City, Québec: Éditions du Septentrion, p. 31.

90 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 355 of 1005 (online PDF); testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 22, lines 6–13; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 51, lines 18–22; Lavoie, M. and Vaugeois, D. (2010). *L'impasse amérindienne. Trois commissions d'enquête à l'origine d'une politique de tutelle et d'assimilation. 1828–1858.* Québec City, Québec: Éditions du Septentrion, p. 31.

91 Réthoré, A. (2000). *La fin d'un symbole d'alliance. Les Britanniques et la politique de distribution des présents aux Amérindiens*, 1815-1858 (Mémoire de maîtrise en histoire). Université de Rennes 2/Université du Québec à Montréal, p. 37 and 40–42.

92 *An Act for the Protection of the Lands of the Crown in this Province from trespass and injury* (Upper Canada), 1839, 2 Vict., c. 15.

93 *Ordonnance pour rappeler certaines parties d'une Ordonnance y mentionnée, et pour amender certaines autres parties de la dite Ordonnance et pour pourvoir à la protection ultérieure des Indiens ou Sauvages dans cette Province* (Bas-Canada), 1840, 4 Vict., c. 44.

public lands, including those set aside for Indians, to protect them, on their behalf, from the abuses of colonization.[94]

Over the following years, a number of commissions were launched to determine policy with respect to Indigenous peoples. The Bagot Commission of 1842 and the Pennefather Commission of 1856 both recognized the disastrous effects of colonization.[95] Yet again, the Crown's responsibility toward Indigenous peoples was expressed through its desire to place them under its supervision in order to settle and "civilize" them.[96]

In 1850, *The Act for the better protection of the Lands and Property of the Indians in Lower Canada*[97] (Act of 1850) laid the foundation for the system of Indian reserves in Québec. This system was finalized the following year by *the Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada*[98], which set aside 230,000 acres of land for reserves.[99] The initiative went into effect in 1853 with the creation of several reserves, located in Témiscamingue, Maniwaki (Kitigan Zibi), Bécancour (Wôlinak), the Lower Saint-Lawrence (Malécites de Viger) and Restigouche (Listuguj), on the North Shore (Pessamit) and near Lac-Saint-Jean (Mashteuiatsh), among other locations.[100] The land earmarked for reserves did not always correspond to the affected populations' actual places of habitation, and in most instances their land space was reduced. The decisions made by the Commissioner of Crown Lands primarily served the interests of forestry companies[101] and the Church, which sought to create reserves to educate and "civilize" the Indigenous population.[102] In reality, no matter the issue, the will of the early Canadian colonial government prevailed, as it sought to affirm its sovereignty over the land and those who inhabited it.[103] These reserves were not governed by the Indigenous peoples themselves, but by the State.[104]

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94 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 47, lines 5–17; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 22–23, lines 14–14.

95 Lavoie and Vaugeois. (2010), *op. cit.*, p. 63 and 229; Réthoré. (2000), *op. cit.*, p. 81–82 and 109; Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 358–362 of 1,005 (online PDF).

96 Leslie, J. F. (1985). *Commissions of Inquiry into Indian affairs in the Canadas, 1828–1858: Evolving a corporate memory for the Indian department.* Ottawa, Ontario: Indian and Northern Affairs, p. 185–187; Beaulieu. (2013), *op. cit.*, p. 135–136.

97 *Act for the better protection of the Lands and Property of the Indians in Lower Canada* (Province of Canada), 1850, 13–14 Vict., c. 42.

98 *Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada* (Province of Canada), 1851, 14–15 Vict., c. 106.

99 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 89, lines 18–23; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 23, lines 15–22.

100 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 23–24, lines 23–3. Land obtained in Métabetchouan and Péribonka were exchanged in 1856 for land in Pointe-Bleue, now Mashteuiatsh.

101 Bouchard and Lévesque. (2017), *op. cit.*, p. 241; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 86, lines 3–18.

102 Fortin, G. L. and Frenette, J. (1989). L'acte de 1851 et la création de nouvelles réserves indiennes au Bas-Canada en 1853. *Recherches amérindiennes au Québec*, 19(1), p. 31–37; testimony of Maryse Picard, stenographic notes taken June 20, 2016, p. 24, lines 4–15; document PD-16 (Commission), *op. cit.*, p. 49.

103 Beaulieu. (2013), *op. cit.*, p. 148.

104 *Id.,* p. 144–146; Fortin and Frenette. (1989), *op. cit.*, p. 33–34.

> "The government and clergy at the time, along with the Bishop of Rimouski, tried to bribe the Malécites by giving them land there, as well as seeds for a number of years, so that they would move there and become "good settlers." [...] But that never worked, because they were a nomadic people. [...] For them, agriculture, it was not... it was not the most natural thing. [And] what happened, was that, there were... The settlers that were there at the time started to put pressure on the clergy, saying: "Yes, the land is great, but we're losing it." So the clergy took it all back. With the help of the government."
>
> Dave Jennis, Malécite Nation
> (Document PD-16 (Commission), p. 230)

3.1.2 Administering the First Nations

With the Act of 1850, the Crown undertook to define the Indian status for the first time.[105] The measures outlined in the Act applied first to "all persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants;" secondly to "all persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons;" thirdly to "all persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such;" and lastly to "all persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants".[106]

In the same vein, the government adopted the *Act to Encourage the Gradual Civilization of Indian Tribes in this Province*[107] in 1857. Touted as a path to enfranchisement, this Act established that members of First Nations could not hold the title of citizen and Indian at the same time. To be recognized as a citizen and therefore gain the right to own property and the right to vote, an Indigenous person had to renounce their Indian status.[108] Only men could apply for enfranchisement.[109] They also had to be "not under twenty-one years of age, [...] able to speak, read and write either the english or the french language readily and well, and [...] (be) of good moral character and free from debt" as determined by a committee of "non-Indian" examiners.[110] An enfranchised Indian was allotted 50 acres of land as a life estate[111], taken from the reserve land, along with their share of the annuities receivable by

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105 Grammond, S. (2009). *Identity Captured by Law. Membership in Canada's Indigenous Peoples and Linguistic Minorities.* Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 71; Morin, M. (1997). *L'Usurpation de la souveraineté autochtone. Le cas des peuples de la Nouvelle-France et des colonies anglaises de l'Amérique du Nord.* Montréal, Québec: Boréal, p. 213–214.

106 *Act for the better protection of the Lands and Property of the Indians in Lower Canada, op. cit.*, s. V.

107 *Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians* (Province of Canada), 1857, 20 Vict., c. 26; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 25, lines 3–13.

108 *Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians*, *op. cit.*, s. VII; Morin. (1997), *op. cit.*, p. 215–217; Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 362–362 of 1,005 (online PDF); document PD-16 (Commission), *op. cit.*, p. 118.

109 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 363 of 1,005 (online PDF).

110 *Ibid*; *Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians, op. cit.*, s. III.

111 Use of land for the duration of a person's life.

the band.[112] In other words, whatever an enfranchised Indigenous man gained, his band lost. Consequently, only one person dared make use of this option over a period of nearly 20 years.

The relationship with the Crown also changed. In 1858, London deemed this model too onerous and officially ended the practice of distributing funds to bands on the basis of cooperative treaties.[113] Two years later, under the *Act respecting the Management of the Indian Lands and Property*[114], *the Commissioner of Crown Lands was appointed "Superintendent General of Indian affairs".*[115] By placing Indigenous peoples under the authority of the Canadian government, this Act severed the nation-to-nation relationship with the British Crown.[116]

Then, in 1867, the British colonies of the Province of Canada (now Ontario and Québec), Nova Scotia and New Brunswick were united under the *British North America Act*. This gave rise to the Canadian confederation (*Dominion of Canada*).[117] Formerly in the hands of the colonies[118], the responsibility for Indian affairs was officially transferred to the federal government.[119] The *British North America Act* also gave the Parliament of the Dominion the power to legislate with respect to "Indians, and lands reserved for the Indians".[120]

As was the case under British rule, the new *Dominion of Canada* retained a centralized approach to Indigenous issues. The stated objective was to promote the assimilation of Indigenous peoples into Canadian society.[121]

It was the Secretary of State (also Minister of the Interior as of 1873) who became Superintendent General of Indian Affairs. Then, in 1869, *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, enabled the newly formed Canadian government to impose a new mode of governance—band councils—on Indigenous communities in order to replace the

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112 *Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians*, *op. cit.*, s. VII; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 25, lines 3–13.

113 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 366 of 1,005 (online PDF).

114 *Act respecting the Management of the Indian Lands and Property* (Province of Canada), 1860, 23 Vict., c. 151.

115 Morin. (1997), *op. cit.*, p. 212.

116 Réthoré. (2000), *op. cit.*, p. 73–76; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 25, lines 14–20.

117 *Constitution Act,* 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, Appendix II, No. 5.

118 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 45, lines 6–11; testimony of Maryse Picard, stenographic notes taken June 20, 2016, p. 25, lines 14–20.

119 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 81–82, lines 19–8; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 25, lines 20–25; document PD-11 (Commission), *op. cit.*, p. 16.

120 *British North America Act*, now known as *the Constitution Act,* 1867, *op. cit.*, s. 91(24); Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 367 of 1,005 (online PDF).

121 Document PD-16 (Commission), *op. cit.*, p. 44–45.

traditional systems of chiefs.[122] From that point onward, chiefs could be removed by federal authorities and only men had voting rights.

> "My grandfather used to say: "Well, the chief... the chiefs today aren't like they were before." [...] he said that among the Abenakis, there were three chiefs. One chief for the hunters, one chief for the Elders, and one chief for the women. [...] Before making a final decision, they had to go to their group and tell them. Then, if the group didn't agree, well, he had to go back and discuss it, etc., until an agreement was reached among everyone. [...] [My grandfather] said that [...] it had poisoned the community's life a little bit. The fact that they had imposed a single chief."
>
> Nicole O'Bomsawin, Abenakis Nation
> (Document PD-16 (Commission), p. 17–18)

In addition, for the first time, an Indigenous woman who married a non-Indigenous person would lose their access to reserved lands as well as their Indian status, band membership and residency rights.[123] The same applied to children from that marriage. In Québec, the "Haudenosaunee [Iroquois confederation] in particular would be affected by that change because, in the past, the women from certain clans designated the leaders elected by the councils of those nations".[124]

Those events laid the groundwork for the adoption of the *Indian Act a few years later.*

3.1.3 Tightening conditions: *Indian Act* of 1876

Faced with resistance from Indigenous peoples who were committed to preserving their cultures, the federal authorities, led by Alexander Mackenzie, Canada's second Prime Minister, continued to tighten legislative conditions. Originally introduced as *An Act to amend and consolidate the laws respecting Indians*[125], the *Indian Act of 1876* brought together all previously enacted legislation concerning Indigenous peoples.[126] The government's view was that Indigenous peoples needed to be under the guardianship of Canadian authorities in order to be able to make progress towards civilization and become good British citizens.[127]

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122 *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act*, 31st Victoria, Chapter 42, S.C. 1869, c. 6; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 52–53, lines 15–5; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 30–31, lines 21–25; document PD-16 (Commission), *op. cit.*, p. 18 and 224; *Les relations entre les Autochtones et les services de justice du Québec : une recension des écrits, rapport soumis à la CERP, Marie-Ève Sylvestre et Jessica Caouette, avec la collaboration de Mylène Jaccoud et Céline Bellot*, document PD-11 (Commission), p. 16.

123 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 370 of 1,005 (online PDF); document PD-16 (Commission), *op. cit.*, p. 118.

124 Morin. (1997), *op. cit.*, p. 224.

125 *An Act to amend and consolidate the laws respecting Indians,* S.C. 1876, c. 18.

126 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 30, lines 10–16.

127 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 371 of 1,005 (online PDF); Girard and Brisson. (2018), *op. cit.*, p. 133–135; testimony by Serge Bouchard, stenographic notes taken September 25, 2017, p. 88–90, lines 24–5; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 29–30, lines 20–9 and p. 31, lines 4–11; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 55–56, lines 19–2; document PD-11 (Commission), *op. cit.*, p. 16.

> "The exclusionary movement began when the Canadian federation or Confederation was created and Prime Minister Macdonald declared [that] there was an Indian problem. And they needed to get rid of that problem. […] [A]ll the governments, all the political parties adopted […] that policy, that mindset, that philosophy. So they created legislation concerning "savages," the *Indian Act*, and did not allow us to practice our rituals, practices, traditions and culture. […] In addition, we were treated as children of the Queen. Today, we're still children of the Queen. So it's not surprising that relations are sometimes chaotic."
>
> Richard Kistabish, Anishnabe Nation
> (Document PD-16 (Commission), p. 44)

The *Indian Act* imposed administrative and police control over First Peoples that was not imposed on any other citizens. Amended regularly without consultation, the Act was unpredictable and changed according to what legislators wanted. One thing was constant, however: the considerable discretionary power granted to the Superintendent General of Indian Affairs and his agents.

Under the *Act*, a civil servant in charge of estate settlement could, for example, decide on inheritance issues concerning the land, furniture and belongings of a deceased Indian.[128] The government representative also acted on Indians' behalf if they were expropriated to build a road or railway in their reserve or to carry out public works there.[129]

The Indian status and powers granted to bands were also subject to a number of legislative amendments. For example, in 1884, bands were refused the right to accept or refuse the enfranchisement of a member or the surrender of their personal land.[130] In 1887, the Superintendent General was given the power to determine who was a member of an Indian band.[131] That provision remained in place until 1951.[132]

Moreover, Indian Affairs agents could also preside over trials as justices of the peace wherever they felt it necessary, sometimes even off the reserve.[133] In addition, a new infraction specific to Indigenous peoples was created in 1884, namely, inciting "three or more Indians, non-treaty Indians, or halfbreeds to breach the peace or to make riotous or threatening demands on a civil servant".[134] Selling, trading with, bartering or otherwise supplying "intoxicants," including alcoholic beverages, to Indians was outlawed in 1876 and

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128 *An Act to amend and consolidate the laws respecting Indians, 1876, op. cit.*, s. 9; *An Act to further amend "The Indian Act, 1880,"* S.C. 1884, c. 27, s. 5; Morin. (1997), *op. cit.*, p. 226.

129 Morin. (1997), *op. cit.*, p. 228; *An Act to amend and consolidate the laws respecting Indians,* 1876, *op. cit.*, s. 20.

130 *An Act to further amend "The Indian Act, 1880,"* 1884, *op. cit.*, s. 16 and 17; Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 383–385 of 1,005 (online PDF).

131 *An Act to amend "The Indian Act,"* S.C. 1887, c. 33, s. 1.

132 *Indian Act,* S.C. 1951, c. 29, s. 5–17.

133 *An Act to further amend "The Indian Act, 1880,"* S.C. 1881, c. 17, s. 12; *An Act to further amend "The Indian Act, 1880,"* S.C. 1882, c. 30, s. 3; *An Act to further amend "The Indian Act, 1880,"* 1884, *op. cit.*, s. 22 and 23; Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 387 of 1,005 (online PDF).

134 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 388 of 1,005 (online PDF); *An Act to further amend "The Indian Act, 1880,"* 1884, *op. cit.*, s. 1.

subject to fines. Drunkenness therefore became grounds for imprisonment.[135]

In Western Canada, a pass system was also instituted by Indian Affairs agents. Deemed illegal, the system was abandoned in the following decade. It was never put into practice in Québec.[136] However, even without the pass system, the powers of Indian Affairs agents became so great that they could effectively control the movements of Indigenous peoples through threats and inducements.

Trade and other business was also regulated. For example, in 1881, Indians in Western Canada were forbidden from selling their agricultural produce.[137] In 1884, the Superintendent General also outlawed munitions sales to all Indians in Western Canada[138], a measure that specifically targeted Eeyou (Cree) and Métis who were dissatisfied with federal policy.[139]

Indigenous culture did not escape this suppression. In 1884, potlatches (symbolic gift-giving ceremonies) and tamanawa dances were prohibited.[140] These bans were extended to include many spiritual and cultural practices, which added to the pressures already exerted on Indigenous peoples by missionaries.[141]

These government restrictions and prohibitions were met with a certain amount of resistance. Many ceremonies continued to be held in secret, out of sight of Indian Affairs agents.[142] There was also resistance to the imposition of the band council system. In Saint-Régis (now Akwesasne), where the government appointed chiefs "for life," major demonstrations were held, and one Indigenous individual who resisted arrest was killed.[143]

At the time of Confederation, the Inuit had little contact with the Canadian government. Their territories were part of Rupert's Land, under the jurisdiction of the Hudson's Bay Company until 1869. Contact with missionaries[144], U.S. whalers and other Western parties occurred mostly through Hudson's Bay Company trading posts and stores.[145]

The presence of trading posts also led certain Inuit to partially settle. Though they remained a largely nomadic people, villages began to appear near trading posts. When Great

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135 *An Act to amend and consolidate the laws respecting Indians,* 1876, *op. cit.*, sections 79–85; testimony of Jean O'Bomsawin, stenographic notes taken November 23, 2017, p. 107, lines 2–7.

136 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 398–399 of 1,005 (online PDF).

137 *Id.,* p. 396 of 1,005 (online PDF); *An Act to amend "The Indian Act, 1880,"* 1881, *op. cit.*, s. 1.

138 *An Act to further amend "The Indian Act, 1880,"* 1884, *op. cit.*, s. 2.

139 Dickason, O. P. (1996). *Les Premières Nations du Canada. Depuis les temps les plus lointains jusqu'à nos jours*. Québec, Québec: Éditions du Septentrion, p. 304.

140 *An Act to further amend "The Indian Act, 1880,"* 1884, *op. cit.*, s. 3.

141 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 393–394 of 1,005 (online PDF); testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 13, lines 9–13.

142 Dickason. (1996), *op. cit.*, p. 318.

143 Morin. (1997), *op. cit.*, p. 224.

144 Testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 30–31, lines 24–16.

145 *Id.* p. 27, lines 19–23; *Adjacent Territories Order*, (July 31, 1880), reprinted in R.S.C. 1985, Appendix II, No. 14.

Britain ceded Rupert's Land to Canada in 1870[146], Canada had "no intention of assuming responsibilities for the Indigenous peoples in the North".[147] While it asserted sovereignty over the continent and Arctic islands in an 1880 order,[148] the Canadian government did not consider itself to have any responsibilities to Indigenous peoples who had not signed a treaty. When a police station was opened in the Northern Yukon in 1895, officers were specifically instructed not to encourage the idea that the Inuit could sign a treaty.[149] Following an agreement with the Royal Canadian Mounted Police (RCMP), the Hudson's Bay Company district manager became responsible for conducting certain criminal investigations in Nunavik.[150] It was not until World War II that a sitting government took an interest in the North and its inhabitants.[151]

3.2. 1890 – 1940 / Erasing the Indigenous presence

While the birth of a united Canada presented a threat to Indigenous cultures, the Francophone inhabitants of Québec also faced hardships in the second half of the 19th century. The situation became so critical that elected officials and clergy feared for the survival of the "French fact" in North America, and the values it represented. The result was an unprecedented desire to occupy the territory. The impact on Indigenous peoples was brutal. As the political will to ensure the survival of French-Canadian culture through colonization was asserted, the very existence of Indigenous nations tended to be erased, first from the history books, and then from the territory.

3.2.1 Québec the colonizer

After becoming a minority following the *Act of Union*[152] of 1840, by the late 19th century, Francophones were marginalized economically.[153] A lack of arable land and diminishing economic opportunities in the countryside led hundreds of thousands of French Canadians to flee to cities and New England, which was already heavily industrialized.[154] This urban exodus and attendant social upheaval caused many to fear for the future of the "French-Canadian race," which was associated with a traditionally agricultural life.[155] With the twin aims

146 *Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union,* (June 23, 1870) reprinted in R.S.C. 1985, Appendix II, No. 9.

147 Dickason. (1996), *op. cit.*, p. 366.

148 Indian and Northern Affairs Canada. (2006). *Canada's Relationship with Inuit: A History of Policy and Program Development.* Ottawa, Ontario: Indian and Northern Affairs Canada, p. 20.

149 Dickason. (1996), *op. cit.*, p. 368.

150 Testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 46, lines 7–18.

151 Testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 166, lines 9–19.

152 *Act of Union* (U.K.), 3–4 Vict., c. 35

153 Dickinson, J. A. and Young, B. (2009). *Brève histoire socio-économique du Québec* (4e éd.). Québec, Québec: Éditions du Septentrion, p. 133 and 160.

154 Lavoie, Y. (1981). *L'émigration des Québécois aux États-Unis de 1840 à 1930.* Québec, Québec: Éditeur officiel du Québec; Fortin and Frenette. (1989), *op. cit.*, p. 31.

155 Linteau, P.-A., Durocher, R. and Robert, J.-C. (1989). *Histoire du Québec contemporain. De la Confédération à la crise (1867-1929).* Tome 1. Montréal, Québec: Boréal, p. 349–350; Gélinas, C. (2013). "La représentation des Autochtones depuis le contact." In A. Beaulieu, S. Gervais and M. Papillon (dir.), *Les Autochtones et le Québec : des premiers contacts au Plan Nord.* Montréal, Québec: Presses de l'Université de Montréal, p. 181.

of stemming the tide of massive emigration to the United States and ensuring the survival of French-Canadian and Catholic culture, the clergy asked the government to support colonization. Beginning in the second half of the 19th century[156], the return to the land was seen as a means for anchoring French-Canadian culture, language, religion and traditions.[157]

The survival discourse developed by the intellectuals of the time did not wholly overlook Indigenous peoples. Their presence was invoked to justify the "territorial ownership and economic development envisaged by the French-Canadian nation".[158] Educated people sought to disassociate French Canadians from Indigenous peoples[159] by ascribing all virtues to the former, and all vices to the latter. Indigenous peoples were alternately infantilized (sometimes referred to as "children of the forest") or described as barbarians standing in the way of progress.[160] Both images would remain a fixture in school textbooks well into the 1960s and 1970s.[161]

> « The missionaries, even though they maybe didn't realize their missionizing objectives was to remove, to treat the Inuit as children. So that's an effect of… you know, one of the first things is being treated as we have, as if we had no knowledge. »
>
> Lisa Qiluqqi Koperqualuk, Inuit
> (document PD-16 (Commission), p. 198)

Another trend was for historians to simply excise First Peoples from national history altogether.[162] As late as 1950, Lionel Groulx justified the conquest of North America with the suggestion that Europeans arrived to find an essentially empty landscape: "Canada was a land of vast but nearly empty spaces, sparsely inhabited by Indigenous tribes who were capable of economic cooperation that was insignificant at best".[163] This was the prevailing view of the past at a time in which French Canadians sought to occupy, develop and expand Québec's territory.

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156 Sylvain, P. and Voisine, N. (1991). *Histoire du catholicisme québécois. Tome 2 – Réveil et consolidation (1840-1898).* Montréal, Québec: Boréal, p. 419–428; Lemieux, F. (2000). *Les missionnaires-colonisateurs en Abitibi (1929-1939).* (Thesis for master's degree in history). Université de Sherbrooke. Retrieved from https://savoirs.usherbrooke.ca/handle/11143/2194, p. 19.

157 LeBel, S. (2005). Trois facettes de la coexistence entre les populations autochtones et canadiennes en Mauricie 1870-1910. *Recherches amérindiennes au Québec, 35(1)*, p. 77; Bouchard, G. (2001). *Genèse des nations et culture du Nouveau Monde. Essai d'histoire comparée.* Montréal, Québec: Boréal, p. 136.

158 Gélinas, C. (2007). *Les Autochtones dans le Québec post-confédéral (1867-1960).* Québec, Québec: Éditions du Septentrion, p. 76.

159 Leslie. (1985), *op. cit.*, p. 186.

160 Gélinas, C. (2004). Research note. "L'Amérindien dans la littérature descriptive canadienne-française, 1850–1900." *Recherches amérindiennes au Québec*, 34(1), p. 94; document PD-16 (Commission), *op. cit.*, p. 121.

161 Vincent, S. and Arcand, B. (1979). *L'image de l'Amérindien dans les manuels scolaires du Québec*. Montréal, Québec: Hurtubise HMH.

162 Testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 29, lines 4–24; p. 76, lines 11–15.

163 Groulx, L. (1950–1952). *Histoire du Canada français depuis la découverte* (1re éd., vol. 1). Montréal, Québec: L'Action nationale, p. 28, quoted in Gélinas. (2007), *op. cit.*, p. 59.

At the end of the 19th century, Québec's borders would be redrawn, a reflection of the will to occupy and exploit an ever-larger region. The Abitibi-Témiscamingue territory, as far as the Rupert River, became part of the province of Québec in 1898[164], followed by the banks of the Hudson and Ungava bays in 1912.[165] By 1927, after Labrador was removed to become part of Newfoundland[166], Québec's borders had taken on their present-day shape.[167] The effects of colonization would also be felt in Indigenous communities along the St. Lawrence valley, where unoccupied land was continually shrinking, and in Central-Northern Québec, which was affected by the substantial development of the forestry industry.[168]

Beginning in the early 20th century, the government played an active role in the colonization process, which was viewed as a genuine development strategy. This will be especially true in Abitibi, as evidenced in the Gordon and Vautrin plans implemented in 1932 and 1934[169] by the successive governments of Louis-Alexandre Taschereau and Adélard Godbout. However, it was the clergy, with the support of an influential episcopate, who would play the central role in developing "new" regions as of 1840. From recruiting in villages in the southern part of the province to providing the logistical and moral support required for the establishment of settlers in the north, they were ardent supporters of the colonial enterprise, as demonstrated by their constant demands to the government.[170]

Moreover, the missionaries did not wait for the vast colonization movements to travel to the more remote parts of Québec and meet with Indigenous peoples. However, prior to 1830, these forays were infrequent, and in the mid-19th century, there were very few followers of the Christian faith among the Indigenous peoples in Central-Northern Québec.[171] The situation would quickly change when priests began being sent to the Anishnabe, Atikamekw, Nehirowisiw, Eeyou (Cree) and Innu territories, where they would stay for a few months a year during the summer. In the summer camps of the various communities, they primarily aimed to replace ancestral practices and beliefs, which were viewed as devilish by Christians. In addition to services of a religious nature, the missionaries provided some material support

164 *Act respecting the delimitation of the Northwestern, Northern and Northeastern boundaries of the Province of Québec, S.Q.* 1898, c. 6; *Act respecting the Northwestern, Northern and Northeastern boundaries of the Province of Québec, S.C.* 1898, c. 3.

165 *Act respecting the extension of the Province of Québec by the annexation of Ungava*, S.Q. 1912, c. 7; Québec Boundaries Extension Act, S.C. 1912, c. 45; Girard and Brisson. (2018), *op. cit.*, p. 142; Frenette, J. (2013). Québec Boundaries Extension Acts of 1898 and 1912, James Bay and Northern Québec Agreement, First Nation of Abitibiwinni. *Recherches amérindiennes au Québec*, 43(1), 87–104; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 182–183, lines 19–9; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 14–15, lines 14–2.

166 *Re Labrador Boundary,* [1927] 2 D.L.R. 401 (C.J.P.C.).

167 Linteau, Durocher and Robert. (1989), *op. cit.*, p. 13–14.

168 Beaulieu. (2013), *op. cit.*, p. 136–140.

169 Vincent, O. (2005). *Histoire de l'Abitibi-Témiscamingue.* Québec, Québec: Presses de l'Université Laval, p. 240–244.

170 Lemieux. (2000), *op. cit.*, p. 34 and 48.

171 Inksetter, L. (2017). *Initiatives et adaptations algonquines au XIXe siècle.* Québec, Québec: Éditions du Septentrion, p. 265–275.

as well as medical care to Indigenous peoples.[172] However, the persistence of Indigenous rituals beyond the summer indicates that not all were converted with the same fervour, and they did not necessarily give up their traditional beliefs.[173]

The "civilizing" enterprise orchestrated by the missionaries intensified with the opening of Indian residential schools. Based on a rationale of confessional rivalry, Québec's first two institutions open their doors on the same island, east of James Bay, in Fort George (now Chisasibi). After Anglican missionaries settled there in 1891, Oblates joined them in 1922 out of concern over the Eeyous (Cree) converting to Protestantism rather than Catholicism.[174] The Oblates were the first to build a residential school in 1931. The Anglicans did the same the following year.[175] The interconfessional race to convert Indigenous peoples, which led to the multiplication of residential schools in Western Canada[176], did not catch on right way in Québec. It would take another twenty years for most of them to open here. Their impact on Indigenous peoples was no less significant, however, as is mentioned later in this chapter.

3.2.2 An exploited and regulated territory

The opening of new territories to colonization also paved the way for the exploitation of natural resources by private enterprises, sometimes even on reserved land.[177] For instance, in 1914, the government granted cutting rights on the Wemotaci reserve to Laurentides Co.[178] Forestry operations began there in 1920. Although the company had promised to carry out selective cutting, it did not honour that commitment. In addition, its workers engaged in trapping on the reserve.[179]

The arrival of settlers combined with the existing forestry industry exerted considerable pressure on the semi-nomadic lifestyle of Indigenous peoples.[180] Poaching by newly arrived settlers, at times on a massive scale, limited Indigenous peoples' access to resources that

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172 Gélinas, C. (2003). Les missions catholiques chez les Atikamekw (1837-1940) : manifestations de foi et d'esprit pratique. *Études d'histoire religieuse, 69,* p. 84.

173 *Ibid.*

174 Goulet, H. (2016). *Histoire des pensionnats indiens catholiques au Québec. Le rôle déterminant des pères oblats.* Montréal, Québec: Presses de l'Université de Montréal, p. 59.

175 Truth and Reconciliation Commission of Canada. (2015E). *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada.* Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 394.

176 Miller, J. R. (1992). Denominational Rivalry in Indian Residential Education. *Western Oblate Studies, 2,* p. 145; Goulet. (2016), *op. cit.*, p. 61.

177 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 85, lines 1–13.

178 Basile, S. (2017). *Le rôle et la place des femmes atikamekw dans la gouvernance du territoire et des ressources naturelles* (Thesis in for master's degree in environmental sciences). Université du Québec en Abitibi-Témiscamingue. Retrieved from http://depositum.uqat.ca/703/1/Basile%2C%20Suzy.pdf, p. 105.

179 Gélinas. (2002), *op. cit.*, p. 40.

180 Loiselle, M., Dugré, S., Neveu, L. P., Kistabish, M., Mowatt, J., Mowatt-Gaudreau, M. and Mapachee, T. (2009). *Les impacts de l'arrivée des « wemitikojik » (colons blancs) au début du XX^e siècle sur le mode de vie des Abitibiwinnik (Algonquins) : recueil de récits de vie chez les aînés de la communauté de Pikogan.* Rouyn-Noranda, Québec: Université du Québec en Abitibi-Témiscamingue, p. 27–30; LeBel. (2005), *op. cit.*, p. 69–70; document PD-16 (Commission), *op. cit.*, p. 79; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 85, lines 9–18.

were essential to their survival.[181] The construction of infrastructures, such as railways, also significantly modified the landscape of the regions they crossed.[182] According to Father Guinard, an Oblate missionary in Upper Mauricie in the early 20th century: "The construction of the railway destroyed the forest throughout the region. Everything was burnt over vast areas on either side of the track. The builders […] lit fires here and there to cook their food and keep the flies away. They didn't keep an eye on those fires, and they eventually spread to the forest." In his view: "it was a considerable loss for the [p]rovince of Québec and for the Indians".[183]

At the turn of the 20th century, the switch from an industry centred on softwood lumber to that of pulp and paper production also had major impacts on the lifestyle of Indigenous peoples due to the intensification of logging practices.[184]

In addition to destroying the ecosystems on which Indigenous peoples depended for their survival, clearcutting by lumber companies resulted in river congestion from log driving. Logs sent downstream to plants complicated travel on waterways, the main routes used by Indigenous peoples. This practice would continue until 1995 on the Saint-Maurice River.

Later in the 20th century, ore mining would also have an impact, as evidenced by the settling, then displacement of the Anishnabe band from Long Point (Winneway) to Témiscamingue.[185] Moreover, the first law concerning mines, adopted in 1880[186], rooted Québec's mining regime in the principle of free mining. This principle implies minimal government intervention and gives precedence to mining interests over all others, including those of Indigenous peoples.[187]

The building of dams on rivers and the subsequent creation of reservoirs flooding vast territories were also done without consideration for the Indigenous communities who lived there. For instance, the impoundment of the Gouin reservoir by the Québec government in 1918 did not take into account that 30.0% of the space occupied by the new body of water would flood the hunting territories of the Atikamekw Nehirowisiw of Opitciwan (Obedjiwan).[188] It also failed to consider the newly built village located on the site of an ancestral gathering place.[189] Yet surveyors reassured government authorities in 1917 by stating that "the lands which would be flooded by the establishment of the proposed reservoir [had] little value

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181 Leroux, Chamberland, Brazeau and Dubé. (2004), *op. cit.*, p. 55; Bousquet. (2016), *op. cit.*, p. 83.

182 Basile. (2017), *op. cit.*, p. 77.

183 Leroux, Chamberland, Brazeau and Dubé. (2004), *op. cit.*, p. 53.

184 *Id.,* p. 52–53; Gélinas. (2002), *op. cit.*, p. 41; Basile. (2017), *op. cit.*, p. 73–74.

185 Bousquet. (2016), *op. cit.*, p. 62–63.

186 *Acte général des mines de Québec,* S.Q. 1880, c. 12.

187 Thériault, S. (2006). Repenser les fondements du régime minier québécois au regard de l'obligation de la Couronne de consulter et d'accommoder les peuples autochtones. *McGill International Journal of Sustainable Development Law and Policy/Revue internationale de droit et politique du développement durable de McGill, 6(2),* p. 223–224; document PD-16 (Commission), *op. cit.*, p. 164.

188 Basile. (2017), *op. cit.*, p. 76.

189 Gélinas. (2007), *op. cit.*, p. 105; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 19–20, lines 24–4 and p. 29–30, lines 22–5; testimony of Jean O'Bomwawin, stenographic notes taken November 23, 2017, p. 113–114, lines 15–1; Basile. (2017), *op. cit.*, p. 76.

for lumber or agriculture".[190] The major disruptions caused by this loss of territory and the responsibility of the federal and provincial governments in this regard would be recognized by the Specific Claims Tribunal in 2016.[191]

> "The Elders told a story that the water there turned brown like tea. Tea! So much that all of the wildlife, beavers, […] the trees … They were paddling among the trees, like that. All they saw was water, just water, tree stumps, peninsulas, and they had to … They were looking for a piece of land that wasn't soaked to be able to land, to be able to eat, to be able to sleep. And they were paddling among the bushes like that."
>
> Lucie Basile, Atikamekw Nehirowisiw nation
> (Document PD-16 (Commission), p. 110)

The harnessing of rivers to build dams and hydroelectric facilities affected many regions in Québec in the first half of the 20th century. That was the case during the creation of the Baskatong reservoir (Upper Laurentians and Outaouais) in 1927, the Cabonga reservoir (Outaouais) in 1928–1929 and the Dozois reservoir (Abitibi-Témiscamingue) in 1949. Each time, the developments resulted in the loss of territory, resources and sites of significance for Indigenous peoples, as well as water contamination and forced relocations.[192] History would repeat itself on a grander scale, first in Innu territory, in Saguenay–Lac-Saint-Jean (power stations on the Peribonka River), then on the North Shore (Manic-Outardes project) in the 1950s and 1960s[193], and finally in Eeyou (Cree) territory in the 1970s (James Bay project).[194]

Other legislation and regulations contributed to restricting the freedom of action of Indigenous peoples, particularly the legislative framework surrounding traditional activities such as hunting, fishing and trapping. In 1858, the *Fisheries Act*[195] allowed the government to relinquish fishing rights on salmon rivers to private interests, namely fishing clubs belonging to wealthy foreigners.[196] Despite their continued protests and reassertion of the fact that they had never relinquished their rights[197], Indigenous peoples found themselves "strangers

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190 Gélinas. (2007), *op. cit.*, p. 105.

191 *Atikamekw d'Opitciwan First Nation v. Her Majesty the Queen in Right of Canada,* 2016 SCTC 6.

192 Basile. (2017), *op. cit.*, p. 76 and 105–107; Jérôme, L. and Veilleux, V. (2014). *Witamowikok*, « dire » le territoire atikamekw nehirowisiw aujourd'hui. Territoires de l'oralité et nouveaux médias autochtones. *Recherches amérindiennes au Québec*, 44(1), p. 16.

193 Testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 12, lines 3–14.

194 Desbiens, C. (2015). *Puissance Nord : territoire, identité et culture de l'hydroélectricité au Québec.* Québec, Québec: Presses de l'Université Laval; Gagnon, J. and Desbiens C. (2018). Mapping memories in a flooded landscape: A place reenactment project in Pessamit (Québec). *Emotion, Space and Society, 27,* 39–51; Desbiens, C., Hirt, I. and Boivin H. (Pekuakamiulnuatsh Takuhikan). (2014). Développement industriel et négociations territoriales des Pekuakamiulnuatsh (Québec, Canada) : défis et enjeux d'une nouvelle alliance territoriale. In I. Bellier (dir.), *Terres, territoires, ressources. Politiques, pratiques et droits des peuples autochtones* (p. 191–208). Paris, France: L'Harmattan.

195 Fisheries Act, S.C. 1858, c. 86.

196 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 83–84, lines 22–8.

197 Massicotte, G. (2009). *Rivalités autour de la pêche au saumon sur la rivière Ristigouche : étude de la résistance des Mi'gmaq (1763–1858).* (Thesis for master's degree history). Université du Québec à Montréal. Retrieved from https://archipel.uqam.ca/2036/1/M10789.pdf, p. 171.

on their own rivers" overnight.[198] The 1885 *Act on Hunting and Fishing Clubs*[199] legalized the private club system.[200] These clubs, which thrived and eventually monopolized the use of wildlife in certain territories, without consideration for traditional uses by Indigenous peoples. In subsequent years, hunting legislation in Québec would become even more restrictive. Quotas and seasonal practices were established. Certain traditional hunting practices by Indigenous peoples were also prohibited, something that was vehemently challenged, but which received little attention from the authorities.[201]

> "How can you pass down dignity in... when you now have to ask permission to kill a moose! I would even go as far as saying for permission to feed one's children. [...] That's the reserve. "
>
> Richard Kistabish, Anishnabe Nation
> (Document PD-16 (Commission), p. 66)

When they first came into force, the hunting and fishing regulations were not applied too strictly. Indigenous peoples who hunted off-season or in locations where it was now prohibited, such as provincial parks and the newly founded private clubs, were generally only given warnings. The conciliatory attitude of government agents changed quickly, however, and a harsher application of the laws led to frustration and humiliation.[202] There are numerous stories of conflicts between Indigenous peoples and game wardens. Although some regulations could be bypassed in the event of extreme need—which had to be authorized by an Indian agent or missionary—trade resulting from such "illegal" hunting was not tolerated.[203] Nearly a hundred years later, in his autobiographical narrative, Marcel Pititkwe of Wemotaci remembered the game wardens who came to the house to seize all of the food and escort his father to the police station. He was sentenced to several months in prison for bartering moose meat for flour, milk and sugar.[204] The family not only lost the food that was supposed to get it through the coming winter, it also lost its breadwinner.

The Québec government's creation of beaver reserves in the 1930s in response to a worrisome decline in fur-bearing animals seemed to indicate some openness towards Indigenous

198 Panasuk, A.-M. and Proulx, J.-R. (1981). *La résistance des Montagnais à l'usurpation des rivières à saumon par les euro-canadiens du XVIIe au XXe siècle.* (Thesis for master's degree in science). Université de Montréal, cited by McKenzie, G. and Vincent, T. (2010). La « guerre du saumon » des années 1970–1980. Interview with Pierre Lepage. *Recherches amérindiennes au Québec*, 40(1–2), p. 106; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 84, lines 9–24.

199 Act to facilitate the formation of "Fish and Game Protection Clubs" in the Province, S.Q. 1885, c. 12.

200 Martin, P.-L. (1990). La chasse au Québec. Montréal, Québec: Boréal Express, p. 80–83.

201 Morantz, T. (1995). Provincial Game Laws at the Turn of the Century: Protective or Punitive Measures for the Native Peoples of Québec? In D. H. Pentland (dir.), *Papers of the Twenty-Sixth Algonquian Conference*. Winnipeg, Manitoba: University of Manitoba, p. 277 and 281; Ingram, D. (2014). Wildlife, Conservation, and Conflict in Québec, 1840–1914. Vancouver, BC: UBC Press.

202 Morantz. (1995), *op. cit.*, p. 287; Gélinas. (2007), *op. cit.*, p. 106; testimony of Richard Kistabish, stenographic notes taken November 16, 2017, p. 149–150, lines 13–16.

203 Gélinas. (2007), *op. cit.*, p. 106.

204 Pititkwe, M. (2016). *Nipekiwan*. Je reviens. Rouyn-Noranda, Québec: ABC de l'édition, p. 15–17.

peoples, who now had exclusive trapping rights on these lands.[205] However, the new territorial division did not take traditional occupation practices into account and ultimately resulted in restricting First Nations' mobility and limiting the size of trapping territories.[206]

Certainly, one direct result of the exploitation and regulation of the new territories being colonized was to encourage the creation of reserves.[207] Faced with the invasion of their territories, different communities sometimes resigned themselves to requesting that certain territories be set aside for them.[208] This decision did not always protect them effectively. Gradually, the idea was developed that, in the guise of protection, the true function of reserves was to eliminate the Indigenous presence from a territory in order to promote the exploitation of natural resources.[209]

> "[T]here were also… […] what could be called regulations and policies that kept us from exercising our fundamental rights, from living on the land. We had tremendous difficulty continuing to live that way of life. Hunting, fishing, trapping. And occupying the territory, you know, because, we were occupying the territory, but we were … on forestry company roads, on Hydro-Québec roads, on mining company roads. We had to … be gotten rid of. We had to be excluded."
>
> Richard Kistabish, Anishnabe Nation
> (Document PD-16 (Commission), p. 43–44)

The 1922 *Act respecting lands set apart for Indians*[210] confirmed this impression. While it increased the area of public lands set aside for use by Indians from 230,000 to 330,000 acres, that very law stipulated that new reserves could not be created in spaces for which forestry concessions had already been granted.[211] However, there were very few such spaces left in Central-Northern Québec, limiting the size of new reserves, or confining them to even more isolated and more northerly regions.[212]

3.2.3 Indigenous people's participation in Québec's development

Although the tendency in Québec after 1867 was to erase Indigenous peoples from public discourse, the First Nations and Inuit were still highly present in the territory, and in frequent contact with non-Indigenous people.

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205 Leroux, Chamberland, Brazeau and Dubé. (2004), *op. cit.*, p. 68–69; Gélinas. (2007), *op. cit.*, p. 107; Bousquet. (2016), *op. cit.*, p. 87; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 24–25, lines 14–9.

206 Charest, P. (1996). Les stratégies de chasse des Mamit Innuat. *Anthropologie et Sociétés*, 20(3), p. 110.

207 Fortin and Frenette. (1989), *op. cit.*, p. 34; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 86–87, lines 19–9.

208 Beaulieu. (2013). *op. cit.*, p. 136–140; document PD-16 (Commission), *op. cit.*, p. 50.

209 Beaulieu. (2013), *op. cit.*, p. 138; Fortin and Frenette. (1989), *op. cit.*, p. 33; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 85–86, lines 19–24; document PD-16 (Commission), *op. cit.*, p. 164.

210 *Act respecting lands set apart for Indians,* S.Q. 1922, c. 37.

211 *Id.,* s. 1, para. 6.

212 Gélinas. (2007), *op. cit.*, p. 105–106.

The fur trade long remained the preferred activity for fostering cooperation as well as economic and cultural exchange. Between 1668 and 1970, the Hudson's Bay Company opened over 80 fur-trading posts across Québec.[213] It even had a presence among the Inuit beginning in the 1830s, when the first post was opened at Fort Chimo (Kuujjuaq).[214] Although far from being consistently egalitarian, the economic cooperation between the Indigenous and non-Indigenous peoples required and generated respectful relationships between them[215], which generally benefited both sides. In fact, as long as the fur trade remained viable, it would benefit semi-nomadic Indigenous peoples, who were thus able to maintain their way of life.[216] Among non-Indigenous peoples, trade made it possible to amass large fortunes, which clearly helped Québec and Canada flourish.[217]

Indigenous peoples also participated in Québec's economic development through the exploitation of natural resources, often located on their own land. Because the development of the forestry industry had substantially reduced the opportunity for them to meet their own needs through the fur trade, many Indigenous peoples (such as Anishnabek, Atikamekw Nehirowisiw, Abénakis and Innus) joined logging teams.[218] They also helped build the infrastructures associated with colonization, such as dams and railroads.[219] When the outfitters and private clubs were set up, Indigenous peoples' extensive knowledge of their territory also allowed them to guide the new occupants, to whom the government was ceding vast areas.[220]

> "[T]he Atikamekw were doing a lot of logging in territory. Han! It was their only source of income. […] Big private clubs were coming to the territory, there, in McTavish. So they built for those associations, which included professionals, doctors, lawyers, judges … even a minister […] The people coming to the territory created jobs, they gave them work, cutting the logs, clearing the territory. […] Over the years, the Atikamekw participated in development because it provided job opportunities, and it was in their territory."
>
> Lucie Basile, Atikamekw Nehirowisiw Nation
> (Document PD-16 (Commission), p. 77)

213 Roy, C. (2009). *Le patrimoine archéologique des postes de traite du Québec.* Québec, Québec: Ministère de la Culture, des Communications et de la Condition féminine, p. 77–81.

214 Roy. (2009), *op. cit.*, p. 13.

215 Delâge, D. (2006). Modèles coloniaux, métaphores familiales et changements de régime en Amérique du Nord, XVIIe-XIXe siècles. *Les Cahiers des dix, 60,* p. 23–24.

216 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 129–130, lines 5–6 and stenographic notes taken September 26, 2017, p. 46, lines 13–23.

217 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 74–75, lines 17–13 and p. 76, lines 7–15; document PD-16 (Commission), *op. cit.*, p. 129.

218 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 30, lines 9–25; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 50–51, lines 18–2; document PD-16 (Commission), *op. cit.*, p. 77.

219 Loiselle, Dugré, Neveu, Kistabish, Mowatt, Mowatt-Gaudreau and Mapachee. Loiselle, M., Dugré, S., Neveu, L.P., Kistabish, M., Mowatt, J., Mowatt-Gaudreau, M. and Mapachee, T. (2009), *op. cit.*, p. 22, 24 and 31; testimony of Steeve Mathias, stenographic notes taken September 29, 2017, p. 11–12, lines 19–4; document PD-16 (Commission), *op. cit.*, p. 172.

220 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 30, lines 11–19.

The Indigenous peoples were also there when prospectors went looking for new deposits, sometimes discovering metal in their own basements.[221]

> « I think in exploration and development, [the geologists] would not have been able to go as far as they did without having anybody there that knew the area very well, and [...] sharing certain information....I don't think anybody would have been able to contribute to any sort of exploitation or development in the area, without that expertise, that knowledge. »
>
> Glenda Sandy, Naskapi Nation
> (Document PD-16 (Commission), p. 285–286)

At one time, Indigenous crafts became popular, becoming a major source of revenue for members of certain nations.[222] Others developed specific kinds of expertise, like the Mohawk high steel workers. Since they helped build the Saint-Laurent Railway Bridge[223] across the river to Kahnawà:ke in 1886, these specialized iron workers worked on many U.S. construction sites. For example, they worked on the Québec Bridge in the early 20th century, the Empire State Building in New York City in the 1920s, and the World Trade Center in the late 1960s.[224]

Despite these proven facts, little has been written about relations between Indigenous and non-Indigenous peoples in the context of colonization. Yet the development of certain regions, such as Mauricie and Abitibi-Témiscamingue, led to encounters and relationships, sometimes sustained, between them.[225] The research of historian Sylvie LeBel has shown that there were Indigenous peoples (Atikamekw Nehirowisiw, Abénakis and Anishnabek) in many parishes in Mauricie during the last third of the 19th century, although parish reports say little about it.[226] Memories of contacts between Anishnabek and French Canadians at the start of Abitibi's colonization[227], and the existence of a mixed village on the North Shore[228] (Moisie) also confirm existing relationships and cohabitation.

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221 Kapesh, A. (1976). *Je suis une maudite sauvagesse. Eukuan nin matshimanitu innu-iskueu.* Montréal, Québec: Leméac, p. 37–64; document PD-16 (Commission), *op. cit.*, p. 171–172 and 285–286.

222 Document PD-16 (Commission), *op. cit.*, p. 15 and 119–120.

223 The Saint-Laurent Railway Bridge is a Canadian Pacific (CP) bridge that crosses the St. Lawrence River between the borough of LaSalle and the community of Kahnawà:ke. Located upstream from the Honoré-Mercier bridge, it is still used by Réseau de transport métropolitain commuter trains and CP freight trains.

224 Owen, D. (director). (1965). *High Steel* [documentary]. Canada: National Film Board; Tarbell, R. (director). (2008). *Little Caughnawaga: To Brooklyn and Back* [documentary]. Canada: National Film Board; document PD-16 (Commission), *op. cit.*, p. 258; testimony of Joseph Tokwiro Norton, stenographic notes taken September 28, 2017, p. 194, lines 3–10.

225 LeBel. (2005), *op. cit.*, p. 69–70; Loiselle, Dugré, Neveu, Kistabish, Mowatt, Mowatt-Gaudreau and Mapachee. (2009), *op. cit.*, p. 22–23.

226 LeBel. (2005), *op. cit.*, p. 69–70.

227 Loiselle, Dugré, Neveu, Kistabish, Mowatt, Mowatt-Gaudreau and Mapachee. (2009), *op. cit.*, p. 30–32.

228 Document PD-16 (Commission), *op. cit.*, p. 165–166; Audet, V., Briand-Racine, J., Charest, P., et al. (2012). Collection of interviews: Des tentes aux maisons, Innu/Uashat mak Mani-Utenam section. In ARUC Tetauan, *Projet Des tentes aux maisons - volet Innu. Québec,* Québec: Université Laval, p. 370; document PD-16 (Commission), *op. cit.*, p. 166.

> "Before Mani-Utenam, there was the small village called Moisie, there, on the point. Yeah. We called it Metsheteu. In those days, our parents, our grandparents, before Mani-Utenam, well, that's where they stayed, you know. With the Whites, at the time. […] Then, they say, there were Whites and Innus who lived together. It wasn't a reserve, it was a village people had decided to live in. Because, at the mouth of the Moisie river, there were salmon in the summer, and there was cod, too, and people could go fishing."
>
> Réginald Vollant, Innu Nation
> (Document PD-16 (Commission), p. 165–166)

3.3. 1940 – 1960 / Subjects to administer

Largely ignored by Québec during the previous decades, around the middle of the 20th century, Indigenous peoples became subjects who had to be administered, and often assimilated, to meet the expectations of the State and society.[229] The shift in attitude toward Indigenous peoples coincided with the slow shift toward the welfare state, which aimed to offer an increasingly wide array of services. When the array of public services expanded, the service dispensers (private and public) seemed to become more concerned about First Nations.

3.3.1 Health care

Although the Québec health care system as we know it today began taking shape in the 1960s, its public origins date back to the 1920s. The Service d'assistance publique (1921) and Service provincial d'hygiène (1922), respectively mandated to finance the hospitals and manage preventive services[230], were created at that time. Until the late 1940s, however, the system essentially relied on the initiative of the religious communities who ran the hospitals and other health care establishments.[231] They did so with the support of patrons and doctors, whose profession was then essentially unregulated.[232]

The situation began to change in 1948, with the federal government's national subsidy program giving new momentum to the availability of public services in Québec, in particular by promoting the construction of hospitals and the development of psychiatric services.[233]

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229 Truth and Reconciliation Commission of Canada. (2015b). *Final Report of the Truth and Reconciliation Commission of Canada, Canada's Residential Schools: The History, Part 2: 1939 to 2000*. Volume 1. Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 14; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 127–128, lines 25–18.

230 Desrosiers, G. (1999). Le système de santé au Québec. Bilan historique et perspective d'avenir. *Revue d'histoire de l'Amérique française, 53*(1), p. 9; Ministère de la Santé et des Services sociaux. (2009). *Regards sur le système de santé et de services sociaux du Québec.* Québec, Québec: Ministère de la Santé et des Services sociaux du Québec, p. 38.

231 Desrosiers, G. and Gaumer, B. (2004). Réformes et tentatives de réformes du réseau de la santé du Québec contemporain: une histoire tourmentée. *Ruptures, revue transdisciplinaire en santé, 10*(1), p. 9; Ministère de la Santé et des Services sociaux. (2009), *op. cit.*, p. 38; *Revue de littérature, santé: organisation des services*, document PD-8 (Commission), p. 11.

232 Goulet, D. (2004). Professionnalisation et monopolisation des soins: le Collège des médecins du Québec 1847-1940. *Ruptures, revue transdisciplinaire en santé, 10*(1), p. 47.

233 Fleury, M.-J. and Grenier, G. (2004). Historique et enjeux du système de santé mentale québécois. *Ruptures, revue transdisciplinaire en santé, 10*(1), p. 24–26.

Until the Quiet Revolution, it was the federal government that drove the development of Québec's health care system. This was the case with hospitalization insurance, established by the federal government in 1957; it became official in Québec with the passage of the *Hospital Insurance Act in 1960.*[234]

Prior to that date, the information available regarding the health care services provided to Indigenous peoples remains piecemeal. For many years, employees at Hudson's Bay Company posts and missionaries provided a certain amount of medical care to Indigenous peoples in more remote regions.[235] The missions founded in the wake of colonization were able to provide services to both Indigenous peoples and newcomers, as was the case of the Hôpital de Ville-Marie, founded in Témiscamingue in 1887.[236] Beginning in the 1930s, the Ministère de la Colonisation created several free clinics, mainly in Abitibi-Témiscamingue[237], but also in Saguenay–Lac-Saint-Jean[238], on the North Shore[239] and in Atikamekw Nehirowisiw territory.[240] Nurses and doctors visited Indigenous communities, but there is little knowledge of the impacts of deploying these services. The testimony of a nurse from Abitibi, who was "fairly frequently" called on to work in Eeyou (Cree) and Atikamekw Nehirowisiw communities, suggests that contact with these health care stations was not rare.[241] In Eeyou (Cree) territory, the missionaries and managers of Hudson's Bay Company posts offered curative care[242], sometimes into the 1950s. In 1930, the first private hospital opened, with a free clinic and "canoe ambulance," established by the Fort George Catholic residential school (Chisasibi).[243]

In the 1940s, epidemics of infectious diseases, such as polio and tuberculosis, broke out in First Nations communities and Inuit villages, prompting a proliferation of medical interventions with Indigenous peoples.[244] For example, teams were deployed to Inuit

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234 Ministère de la Santé et des Services sociaux. (2009), *op. cit.*, p. 38–39; *Hospital Insurance Act,* CQLR c. A-28.

235 Document PD-8 (Commission), *op. cit.*, p. 11.

236 Gareau, S. (1982). L'organisation hospitalière dans le nord-ouest québécois. *Sessions d'étude - Société canadienne d'histoire de l'Église catholique, 49,* p. 38.

237 Vincent. (2005), *op. cit.*, p. 361; document PD-16 (Commission), *op. cit.*, p. 75.

238 Girard and Perron. (1995), *op. cit.*, p. 526. However, there had been a federal free clinic at Pointe-Bleue (Mashteuiatsh) since 1876: *Id.,* p. 243–244.

239 Rousseau, N. and Daigle, J. (2013). *Infirmières de colonie. Soins et médicalisation dans les régions du Québec, 1932-1972.* Québec, Québec: Presses de l'Université Laval, p. 19 (also see the table of nursing stations in Appendix 1, p. 422–432).

240 Vitenti, L. (2011). *Couper le fil de la vie: suicide et rituels de mort chez les Atikamekw de Manawan* (doctoral dissertation in anthropology). Université de Montréal. Retrieved from https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/8533/Vitenti_Livia_2012_these.pdf?sequence=2&isAllowed=y, p. 170–171.

241 Turgeon, M. (1998). *Mémoires d'une infirmière de colonie en Abitibi. Un récit de Marguerite Turgeon.* Terrebonne, Québec: Berthiaume, p. 83.

242 Torrie, J., Bobet, E., Kischuk, N. and Webster, A. (2005). *The Evolution of Health Status and Health Determinants in the Cree Region (Eeyou Istchee): Eastmain-1-A Powerhouse and Rupert Diversion Sectoral Report. Volume 2: Detailed Analysis.* Chisasibi, Québec: Cree Board of Health and Social Services of James Bay, p. 173, 178–179 and 184.

243 *Id.,* p. 260; Goulet. (2016), *op. cit.*, p. 60.

244 Canadian Public Health Association. (2017). *TB and Aboriginal people.* Retrieved from https://www.cpha.ca/tb-and-aboriginal-people; Document PD-16 (Commission), *op. cit.*, p. 76 and 188.

villages (now Nunavik) to systematically take lung X-rays, and a hospital ship chartered by the federal government, the C.D. Howe, began visiting Inuit villages in 1950.[245] At the time, many Indigenous patients were evacuated and hospitalized in sanatoriums in the south, particularly in Québec City, Macamic, Roberval and Sainte-Agathe, as well as in Gaspé and Mont-Joli for Innus, and Edmonton, Moose Factory and Hamilton for Inuit, where they were isolated and far from their families.[246] When some died as a result of their illness, loved ones were not necessarily notified.[247] This situation persisted until at least the 1970s, when eight children from the Pakua Shipu community on the North Shore were sent to hospital in Blanc-Sablon for treatment and never returned. Their parents were finally informed of their deaths in 2015, as the result of an investigation by CBC journalist Anne Panasuk.[248]

3.3.2 Indian residential schools in Québec

The 1940s also saw the transformation of Québec's education system. Long opposed to it, Québec clergy now supported the principle of mandatory education decreed by Adélard Godbout's Liberal government in 1943.[249] Québec was the last province in Canada to pass such a law. In the same era, the Missionary Oblates of Mary Immaculate and Québec's bishops clamoured for the construction of residential schools in Québec.[250]

The residential school system was introduced by the federal government in the 1880s.[251] It was then that Duncan Campbell Scott, Superintendent General of Indian Affairs, Canada, provided the clearest indication of the government's long-term goals regarding Indigenous peoples: "Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department".[252] The instruction of Indigenous children became mandatory in 1920 with

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245 Olofsson, E., Holton, T. L. and Partridge, I. J. (2008). Negotiating identities: Inuit tuberculosis evacuees in the 1940s–1950s. *Études/Inuit/Studies*, 32(2), p. 129; Canadian Public Health Association, op. cit.; document PD-8 (Commission), *op. cit.*, p. 12; testimony of Samir Shaheen-Hussain, stenographic notes taken March 21, 2018, p. 219, lines 1–7.

246 Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 82; Torrie, Bobet, Kischuk and Webster. (2005), *op. cit.*, p. 188; testimony of Christopher Fletcher, stenographic notes taken March 21, 2018, p. 317–318, lines 15–3; testimony of Samir Shaheen-Hussain, stenographic notes taken March 21, 2018, p. 218, lines 13–21; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 162–163, lines 23-11; *L'itinérance et les Inuit à Montréal – du Nord du Québec à l'itinérance*, document P-0242 (Commission), p. 9; document PD-16 (Commission), p. 188.

247 Canadian Public Health Association. (2017), *op. cit.*; testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 127, lines 1–10; testimony of Christopher Fletcher, stenographic notes taken March 21, 2018, p. 318, lines 4–12; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 164–165, lines 8–16.

248 Panasuk, A. (journalist). (2015). *Pakuashipi: À la recherche des enfants disparus* [news story]. In L. Tremblay (director), *Enquête*. Montréal, Québec: Société Radio-Canada.

249 *Act making school attendance compulsory*, S.Q. 1943, c. 13; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 57–58, lines 20–4.

250 Goulet. (2016), *op. cit.*, p. 27–28.

251 Miller, J. R. (1996). *Shingwauk's Vision: A History of Native Residential Schools*. Toronto, Ontario: University of Toronto Press, p. 89 ff.

252 Truth and Reconciliation Commission of Canada. (2015b), *op. cit.*, p. 14; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 93–94, lines 23–11; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 58, lines 10–22; document PD-16 (Commission), *op. cit.*, p. 89.

the *Indian Act*, although its implementation came later in Québec, in 1943.[253] However, the model chosen quickly came under fire.

The chronic underfunding problems facing residential schools and their adverse impacts on Indigenous peoples were denounced starting in 1948 before the Special Joint Committee of the Senate and the House of Commons. Tasked with amending the *Indian Act*, the committee then recommended that residential schools be shut down and replaced with day schools.[254]

This proposal was not followed in Québec, as the residential schools in Sept-Îles (Maliotenam), Amos (Saint-Marc-de-Figuery), Pointe-Bleue (Mashteuiatsh) and La Tuque opened in 1952, 1955, 1960 and 1962, respectively, adding to the two residential schools established in the 1930s in Fort George on James Bay.[255] This late appearance has not yet been fully clarified.[256] However, we know that, in Québec, the rivalry between Protestant and Catholic missionaries over converting Indigenous peoples, was not as strong as it was in the rest of Canada, where it quickly fostered a proliferation of competing residential schools.[257] It was therefore only with the growing colonization of Central-Northern Québec to exploit its natural resources that the government began opening residential schools.[258]

Regardless of the era or part of the country, the family separations and cultural ruptures caused by the forced departures of Indigenous children for residential schools is a constant.[259] Survivor testimonies[260] frequently mention the distress experienced by the children, some of whom were as young as 5 or 6, as they got on trains, planes or boats,

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253 *An act to amend the Indian Act,* S.C. 1919–20, c. 50, s. 1; Milloy, J. S. (1999). *A National Crime. The Canadian Government and the Residential School System, 1879 to 1986*. Winnipeg, Manitoba: University of Manitoba Press, p. 70–71; Truth and Reconciliation Commission of Canada. (2015a). *Final Report of the Truth and Reconciliation Commission of Canada, Canada's Residential Schools: History, Part 1, Origins to 1939.* Volume 1. Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 310–312; Bousquet. (2016), *op. cit.*, p. 107; document PD-11 (Commission), *op. cit.*, p. 18; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 57–58, lines 20–4.

254 Truth and Reconciliation Commission of Canada. (2015b), *op. cit.*, p. 16–18 and 26–42; Goulet. (2016), *op. cit.*, p. 50.

255 Six residential schools were set up in Québec, in addition to the non-denominational federal hostels for the Inuit and the hostel in Mistissini. Truth and Reconciliation Commission of Canada. (2015b), *op. cit.*, p. 43–50; Truth and Reconciliation Commission of Canada. (2015d). *Final Report of the Truth and Reconciliation Commission of Canada, Canada's Residential Schools: Missing Children and Unmarked Burials.* Volume 4. Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 163–164; Truth and Reconciliation Commission of Canada. (2015a), *op. cit.*, p. 241; Truth and Reconciliation Commission of Canada. (2015f), *op. cit.*, p. 394–395; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 69, lines 9–23.

256 Bousquet, M.-P. (2016a). L'histoire scolaire des autochtones: un chantier à défricher. *Recherches amérindiennes au Québec, 46*(2-3), 117–123.

257 Miller. (1996), *op. cit.*, p. 132; Goulet. (2016), *op. cit.*, p. 58 and 61; Ottawa, G. (2010). *Les pensionnats indiens au Québec. Un double regard.* Québec, Québec: Cornac, p. 20.

258 Truth and Reconciliation Commission of Canada. (2015b), *op. cit.*, p. 43–44.

259 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 136–137, lines 25–5; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 92–93, lines 18–9; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 57, lines 6–13; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 28–30, lines 25–22; testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 54, lines 1–12; testimony of Pierre Papatie, stenographic notes taken June 7, 2018, p. 277–278, lines 23–2; testimony of Kathleen J. Wootton, stenographic notes taken January 24, 2018, p. 12, lines 19–22; document PD-11 (Commission), *op. cit.*, p. 18–19.

260 All the examples below come from the testimonies of Québec Indigenous survivors.

afraid they might never see their families again.[261] The boarders were given numbers upon admission.[262] Siblings were usually separated if they were not in the same age group or of the same gender, further intensifying the feeling of isolation.[263]

> "When the department came, [they] took all the kids. They had identified all the families who were living in the territories then, that June, the priest, he was the one who told the families, in his sermon, after or... I don't remember, that the children would be going to school. That all the children, it was compulsory [...] And he had the list of all children. Han! [...] They picked up all the kids from age 6, up to adulthood, I mean 17 or 18 years old. The only kids left in the village were babies. 3-year-olds, 2-year-olds, 1-year-olds."
>
> Lucie Basile, Atikamekw Nehirowisiw Nation
> (Document PD-16 (Commission), p. 78)

The parents, for their part, were suddenly stripped of their family responsibilities.[264] Although they might often have seen their children having access to education as a good thing[265], they were still forced to give up their children to strangers. They felt powerless against agents who could threaten to send them to jail if they didn't comply.[266]

> "The families were gutted [...] they were ... in total disarray [...] They didn't talk about it much. [...] But [...] the parents, who had lost their right to be parents. [...] It was their responsibility, and they'd also lost the whole family setting, love, affection. All of that, it didn't just send one person into upheaval, it was catastrophic for all the families. The whole community, and the whole nation. Han!"
>
> Lucie Basile, Atikamekw Nehirowisiw Nation
> (Document PD-16 (Commission), p. 78-79)

Most parents were unaware of how their children were being treated at the residential schools, and could not conceive of the harsh reality that included punitive practices in general and sexual abuse in particular.[267]

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261 Tremblay, D. (2008). *L'éveil des survivants. Récits des abus sexuels dans les pensionnats amérindiens du Québec*. Montréal, Québec: Michel Brûlé, p. 70–71.

262 Testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 69–70, lines 24–1; testimony of Omer St-Onge, stenographic notes taken September 11, 2017, p. 38, lines 20–25 and p. 39, lines 15–18; testimony of Georges Wabanonik, stenographic notes taken September 11, 2017, p. 39, lines 8–9.

263 Loiselle, M., Legault, L., Potvin, M., Mowatt, J., M-Gaudreau, M., Mapachee, T. and Kistabish, C. (2011). *Recueil des récits de vie des aînés de Pikogan et des ex pensionnaires de St-Marc-de-Figuery couvrant la période de 1931 à 1975*. Rouyn-Noranda, Québec: Université du Québec en Abitibi-Témiscamingue (Chaire Desjardins en développement des petites collectivités), p. 29 and 35; Sioui, B., Mowatt-Gaudreau, M. and Mowatt, J. (2018). *Ka Pi Icita8atc. Ce qu'ils ont fait. Parcours de dix-sept élèves du pensionnat autochtone de Saint-Marc-de-Figuery*. Montréal, Québec: Carte blanche, p. 23 and 29; Ottawa. (2010), *op. cit.*, p. 29; testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 138, lines 3–14.

264 Document PD-16 (Commission), *op. cit.*, p. 43; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 99, lines 10–22; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 31–32, lines 13–21; *in camera* testimony HC-55, stenographic notes taken June 8, 2018, p. 222, lines 7–13; testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 94, lines 14–24; *in camera* testimony HC-64, stenographic notes taken Augu[st] 22, 2018, p. 199–200, lines 22–6.

265 Goulet. (2016), *op. cit.*, p. 50; document PD-16 (Commission), *op. cit.*, p. 88.

266 Truth and Reconciliation Commission of Canada. (2015e), *op. cit.*, p. 15–17; testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 54, lines 16–19; document PD-11 (Commission), *op. cit.*, p. 18.

267 *Id.,* p. 26 and 51–52.

Each year, children and parents were separated for the 10 months of the school year, which led to significant loneliness.[268] The distance that separated them was not simply geographical. The breakdown in the communication of values, Indigenous languages (forbidden in residential schools)[269], traditional knowledge and spirituality meant that children were deprived of fundamental elements of their identity, and this created a cultural gap between young people and their parents.[270] When the children returned home, an adjustment period was sometimes required since family members no longer recognized each other.[271] Gilles Ottawa, a self-taught historian who spent time at the Pointe-Bleue residential school, remembers that the children had been separated not only from their "spiritual, religious and linguistics practices" but also from "small day-to-day gestures" because they had not been taught these things.[272] As a result of the "taunts, sarcasm, inappropriate and pejorative remarks" at residential schools, the children understood that the traditions of their ancestors "had no value".[273] In certain cases, the cultural alienation was so extreme that the children no longer wanted to be "Indian,"[274] and did not want to speak their language.[275] "We learned to hate ourselves because we are Indians," explained a survivor of the Amos residential school (Saint-Marc-de-Figuery).[276] Certain children internalized this rejection of their culture and some became ashamed of their roots and their parents.[277]

> "We wanted to be Indians when we were with our parents, but once we got there [the residential school], they showed us movies where Indians were the ones who got beaten, and the Whites always won […] And we couldn't speak our own language. We were punished if we spoke our language, um … they washed our mouths out with soap, um… A lot of things like that went on!"
>
> Lucie Basile, Atikamekw Nehirowisiw Nation
> (Document PD-16 (Commission), p. 88)

268 Ottawa. (2010), *op. cit.*, p. 40–41; document PD-16 (Commission), *op. cit.*, p. 78 and 150; testimony of Richard Kistabish, stenographic notes taken November 16, 2017, p. 148, lines 11–16.

269 Truth and Reconciliation Commission of Canada. (2015e), *op. cit.*, p. 49–63; Loiselle, Legault, Potvin, Mowatt, Gaudreau, Mapachee and Kistabish. (2011), *op. cit.*, p. 6, 7 and 31; document PD-16 (Commission), *op. cit.*, p. 42, 62, 88 and 220; testimony of Roméo Saganash, stenographic notes taken October 27 2017, p. 137, lines 13–22; testimony of Omer St-Onge, stenographic notes taken September 11, 2017, p. 40, lines 4–16; testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 55, lines 3–6; testimony of Evelyne Saint-Onge, stenographic notes taken May 7, 2018, p. 15, lines 3–5.

270 Testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 92–93, lines 18–7; testimony of Clifford Moar, stenographic notes taken November 16, 2017, p. 13–14, lines 20–5; testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 137–136, lines 22–11.

271 Ottawa. (2010), *op. cit.*, p. 40–41 and 97; testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 55, lines 14–20.

272 *Id.*, p. 97; document PD-16 (Commission), *op. cit.*, p. 86.

273 Ottawa. (2010), *op. cit.*, p. 72.

274 Pititkwe. (2016), *op. cit.*, p. 15.

275 Sioui, Mowatt-Gaudreau and Mowatt. (2018), *op. cit.*, p. 65.

276 Loiselle, M. and Roy, C. (2007). *Un portrait. Le pensionnat pour enfants autochtones de Saint-Marc-de-Figuery*. Rouyn-Noranda, Québec: Université du Québec en Abitibi-Témiscamingue, p. 9.

277 Truth and Reconciliation Commission of Canada. (2015e), *op. cit.*, p. 112; testimony of Clifford Moar, stenographic notes taken November 16, 2017, p. 14, lines 6–23; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 38–39, lines 17–19; *in camera* testimony HC-55, stenographic notes taken June 8, 2018, p. 220–221, lines 18–7; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 74, lines 18–25; *in camera* testimony HC-64, stenographic notes taken Augu[st] 22, 2018, p. 189, lines 4–6.

Depending on the time period, location and individuals concerned, Indigenous children's experiences in residential schools varied.[278] Some have fond memories of the games and activities they took part in (e.g. hockey), what they learned, or a nun that was particularly kind.[279]

However, in Québec and elsewhere in Canada, many Indigenous children were the victims of psychological, physical and sexual violence and abuse.[280] Several mentioned the almost military lives they led in residential schools, where breaking the rules was forbidden.[281] Anyone who dared to step out of line was punished by the nuns and supervisors. Punishments ranged from hurtful remarks to slaps with a ruler or strap, being forced to kneel for hours on end, being confined to a shower or locked in a closet or room, sometimes for days at a time, being deprived of meals and forced to eat soap, etc.[282]

> "[I] saw some things going on at the residential school, […] things, experiences that were really difficult, difficult, and I sometimes relive it, you know. I saw young kids being … pow … just beaten up by the priests and nuns, they beat them right in front of us. […] I didn't experience it myself, but […] when you see blood spurting everywhere, well… We were very young then. We were… I don't know how old I was, but we were pretty young. […] [You] sit down and you don't move."
>
> Réginald Vollant, Innu Nation
> (Document PD-16 (Commission), p. 158)

According to the Truth and Reconciliation Commission of Canada (TRC), thousands of children died in residential schools (3,201 deaths recorded). The majority of these deaths took place before 1940 and were, for the most part, outside Québec.[283] That said, 38 deaths were recorded by the TRC in Québec residential schools.[284]

In addition to other forms of trauma, sexual mistreatment filled victims with shame and guilt and plunged some into serious bouts of depression long after the fact.[285] The blind faith

278 Bousquet. (2016a), *op. cit.*, p. 117–123.

279 Ottawa. (2010), *op. cit.*, p. 63–69; Loiselle, Legault, Potvin, Mowatt, Gaudreau, Mapachee and Kistabish. (2011), *op. cit.*,, p. 30, 52–54, 59; document PD-16 (Commission), *op. cit.*, p. 157; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 36–37, lines 10–2; testimony of Evelyne Saint-Onge, stenographic notes taken May 7, 2018, p. 15–16, lines 22–8.

280 Testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 98, lines 13–18 and p. 99, lines 2–7; document PD-16 (Commission), *op. cit.*, p. 102 and 158; Panasuk, A. (journalist). (2018). *Les Oblats : Régner sur les âmes et les corps* [news story]. In Enquête, S. Desmarais (producer). Montréal, Québec: Société Radio-Canada.

281 Ottawa. (2010), *op. cit.*, p. 52–53; Loiselle, Legault, Potvin, Mowatt, Gaudreau, Mapachee and Kistabish. (2011), *op. cit.*, p. 31–32.

282 Loiselle, Legault, Potvin, Mowatt, Gaudreau, Mapachee and Kistabish. (2011), *op. cit.*, p. 32–33; Ottawa. (2010), *op. cit.*, p. 99–100; testimony of Omer St-Onge, stenographic notes taken September 11, 2017, p. 39, lines 1–4 and p. 40, lines 13–16; testimony of Georges Wabanonik, stenographic notes taken September 11, 2017, p. 68–69, lines 23–1; testimony of Normand Papatie, stenographic notes taken April 13, 2018, p. 117–118, lines 5–1; testimony of Kathleen J. Wootton, stenographic notes taken January 24, 2018, p. 13, lines 10–21 and p. 14, lines 15–18.

283 Truth and Reconciliation Commission of Canada. (2015d), *op. cit.*, p. 19.

284 Truth and Reconciliation Commission of Canada. (2015d), *op. cit.*, p. 24.

285 Pititkwe. (2016), *op. cit.*, p. 22–23; Ottawa. (2010), *op. cit.*, p. 101; testimony of Omer St-Onge, stenographic notes taken September 11, 2017, p. 40–43, lines 18–22; testimony of Jerry Anichinapéo, stenographic notes taken April 24, 2018, p. 209–212, lines 22–8; testimony of Normand Papatie, stenographic notes taken April 13, 2018, p. 113–115, lines 20–3.

that parents placed in religious figures of authority and threats made by the abusers made accusations all the more complicated.[286]

> "The nuns didn't believe us. Our parents didn't even believe us. Even… They couldn't […] comprehend that a priest could… "No, he's a man of God! It can't be! He couldn't have done that! No way! Stop saying that! Don't say it!" They didn't believe us!"
>
> Lucie Basile, Atikamekw Nehirowisiw Nation
> (Document PD-16 (Commission), p. 103)

Determining the exact number of victims of sexual abuse is challenging. However, the investigation by journalist Daniel Tremblay revealed at least 20 alleged abusers, the majority of whom were priests in six residential schools in Québec.[287]

Even though residential schools destroyed many lives and families, Indigenous peoples put up considerable resistance. Children in particular were often very daring in order to get through the ordeals they were faced with. Despite not being allowed to speak their languages, many continued to do so.[288] Because they were often hungry, the young girls at the Amos residential school (Saint-Marc-de-Figuery) devised a system that allowed them to go in search of bread at night without being caught by the supervisors.[289] Other children chose to run away from the residential schools or begged their parents not to send them back after the summer vacation.[290] Some families fled their traditional territories in order to avoid having to bring their children back to the residential school.[291]

Most residential schools in Québec were operational for a short period of time, less than 20 years. Those in Sept-Îles, Amos and La Tuque closed in 1971, 1973 and 1978, respectively. The two oldest residential schools in Fort George closed their doors in 1975 and 1978, after over 40 years in operation. Management of the Pointe-Bleue residential school was transferred to Indigenous peoples before its closure in 1991.[292]

Small and large acts of resistance paved the way for the resilience of several survivors of Indian residential schools. Many found courage and perseverance and began to relearn the language and traditions of their parents.[293] Reconnecting with their culture in this way has often been therapeutic. Though certain journeys have been marked by pitfalls and relapses, and there is

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286 Truth and Reconciliation Commission of Canada. (2015e), *op. cit.*, p. 169–170; testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 13–14, lines 17–7.

287 Tremblay. (2008), *op. cit.*, p. 221.

288 Loiselle, Legault, Potvin, Mowatt, Gaudreau, Mapachee and Kistabish. (2011), *op. cit.*, p. 31 and 60; Truth and Reconciliation Commission of Canada. (2015e), *op. cit.*, p. 56–57.

289 Sioui, Mowatt-Gaudreau and Mowatt. (2018), *op. cit.*, p. 71.

290 Goulet. (2016), *op. cit.*, p. 169; Ottawa. (2010), *op. cit.*, p. 101; *in camera* testimony HC-55, stenographic notes taken June 8, 2018, p. 214, lines 2–24.

291 Testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 56–57, lines 10–12.

292 Truth and Reconciliation Commission of Canada. (2015b), *op. cit.*, p. 49–50; Truth and Reconciliation Commission of Canada. (2015f), *op. cit.*, p. 394–395.

293 Ottawa. (2010), *op. cit.*, p. 122; testimony of Suzie Basile, stenographic notes taken Augu[st] 13, 2018, p. 84–85, lines 25–9; testimony of Evelyne Saint-Onge, stenographic notes taken May 7, 2018, p. 17–19, lines 25–8; testimony of André Mowatt, stenographic notes taken April 11, 2018, p. 65–66, lines 18–8.

still much suffering as a result of the past, we must not forget how the survivors have contributed to their communities and to society in general.[294] They have spoken out and denounced the abuse and efforts on the part of the State to erase them as a people, even if this means reliving the pain of the past.[295] The denunciations made during the TRC and in other forums resulted in increased awareness among non-Indigenous people. In some instances, testimonies also allowed the children of survivors to understand how deep the scars of their parents run.[296]

3.3.3 Settling and displacement

The period during which the majority of residential schools were built in Québec coincided with a second wave of creating reserves in the province. Between 1949 and 1963, a dozen or so reserves were created. Most were located on the North Shore, in Abitibi and in Témiscamingue. However, even though the number of reserves increased, this in no way compensated for the losses incurred during the encroachment and other cessions of territory carried out by the federal government since the end of the 19th century.[297] In addition to losing access to their traditional territories, Québec's First Nations have seen the spaces they were allocated become progressively smaller. This situation deprives communities of resources that could ensure their economic independence.[298]

Various interests, which include continuing to exploit natural resources in Central-Northern Québec, have led to the creation of new reserves.[299] Settling is, in part, the result of a wish on the part of Indigenous parents to not be separated from their children who were sent to residential schools.[300] This was the case with certain Abitibiwinni (Pikogan) peoples who, following the opening of the Amos residential school (Saint-Marc-de-Figuery) in 1955, set up their camp on the outskirts of town. A former residential school student remembers that the goal was to: "get a little closer and see them more often".[301]

Many reserves are located in the traditional summer camps of Indigenous peoples. However, certain locations were imposed on Indigenous peoples. This was the case on the North Shore. In the early 1940s, Innus on the territory were, for the most part, semi-nomadic. Certain families from the region still gathered in the summer in the village of

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294 Sioui, Mowatt-Gaudreau and Mowatt. (2018), *op. cit.*, p. 9.

295 Ottawa. (2010), *op. cit.*, p. 108–118; testimony of Judith Morency, stenographic notes taken April 19, 2018, p. 57–58, lines 22–8.

296 Testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 31, lines 1–21.

297 Gélinas. (2007), *op. cit.*, p. 34.

298 *Ibid.*

299 Scott, C. (2013). *Le partage des ressources au Québec : perspectives et stratégies autochtones.* In A. Beaulieu, S. Gervais and M. Papillon (dir.), *Les Autochtones et le Québec. Des premiers contacts au Plan Nord* (p. 363–384). Montréal, Québec: Presses de l'Université de Montréal, p. 366.

300 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 130–131, lines 8–22; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 33–34, lines 9–20; document PD-16 (Commission), *op. cit.*, p. 163.

301 Loiselle, Legault, Potvin, Mowatt, Gaudreau, Mapachee and Kistabish. (2011), *op. cit.*, p. 46; Bousquet. (2016), *op. cit.*, p. 103; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 100, lines 4–17.

Moisie or in Sept-Îles, where there was a reserve (Uashat).[302] A range of different interests served to change the lifestyle of Innus during this period. On the one hand, the federal government wanted to set up a military base in Moisie.[303] On the other hand, Iron Ore, a mining company, claimed more land in Sept-Îles for urban development.[304] Therefore, a decision was to implement a deportation program and force the Innus who had gathered in Moisie and Sept-Îles to relocate to the Mani-Utenam reserve, which was created in 1949. However, most of the families in Sept-Îles (Uashat) refused to be displaced, and the community remained in its original location while the Moisie community relocated to Mani-Utenam (now known as Uashat mak Mani-Utenam).[305]

This process was repeated in the early 1960s when the federal government decided to displace Pakua Shipu Innus to the Unamen Shipu reserve (La Romaine). The August 1961 relocation of 65 Innus in the hold of a cargo ship is still referred to as a deportation in Innu oral tradition.[306] Witness accounts also tell of undue pressure, threats and promises that were never kept. "When we arrived there [Unamen Shipu], we went to the river […], all us young people were together, we sat on the rocks and looked at the river. The river reminded us of the Pakua Shipu river and that made us cry," said Jérôme Mesténapéo, who returned home on foot.[307] In the years following the 1961 deportation, almost all deportees returned to their homes, most of them on foot[308], as the feeling of being uprooted was too much to bear.

3.3.4 The occupation of Northern Québec and the Inuit

Though Southern Québec was appealing to governments in power before World War II, they were only slightly interested in Northern Québec.[309] However, following a series of decisions aimed at affirming Canadian sovereignty, the federal government introduced RCMP foot patrols in 1922 in what is now known as Nunavik. The government also opened

302 Frenette, P. (1996). *Histoire de la Côte-Nord.* Québec, Québec: Institut québécois de recherche sur la culture, p. 423–458.

303 Document PD-16 (Commission), *op. cit*, p. 167.

304 Goulet. (2016), *op. cit.*, p. 95.

305 Frenette. (1996), *op. cit.*, p. 509–510; Truth and Reconciliation Commission of Canada. (2015b), *op. cit.*, p. 45.

306 Jérôme, L. (2011). *Ka Atanakaniht. La « déportation » des Innus de Pakuashipi (Saint-Augustin). Recherches amérindiennes au Québec, 41*(2–3), 175–184.

307 *Id.,* p. 180.

308 *Sensibilisation sur les communautés autochtones du territoire de la Côte-Nord*, document P-576 (Commission), p. 41; testimony of Judith Morency, stenographic notes taken April 19, 2018, p. 68, lines 1–9.

309 Lévesque, F., Jubinville, M. and Rodon, T. (2016). *En compétition pour construire des écoles. L'éducation des Inuits du Nunavik de 1939 à 1976. Recherches amérindiennes au Québec, 46*(2–3), 145–154.; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 166, lines 9–19; testimony of Johnny Peters, stenographic notes taken November 21, 2018, p. 321, lines 4–10; *Parnasimautik Consultation Report. On the Consultations Carried Out with Nunavik Inuit 2013*, document P-202 (Commission), p. 175–176.

the first permanent police station in Port Harrison (Inukjuak) in 1936.[310] This politically motivated government presence was, for the most part, unintrusive.[311]

Indeed, during the 1930s, for financial reasons, both levels of government in turn brushed off the responsibility of providing services to the Inuit. Therefore, following the famine in the early 1930s[312], the federal government came to the aid of the Inuit and assumed that the Québec government would reimburse a portion of the sums incurred.[313] In 1935, the government of Maurice Duplessis refused to do so and appealed to the Supreme Court of Canada, defending the notion that, under the *Constitution Act, 1867,* the Inuit are under the responsibility of the federal government rather than the provincial government.[314] In 1939, a unanimous Supreme Court judgment ruled in favour of Québec.[315] Though the judgment *Reference as to whether "Indians" includes in s. 91 (24) of the B.N.A. includes Eskimo in habitants of the Province of Québec (Re Eskimo)* had little immediate effect on the provision of services in Inuit villages, it put an end to the incessant back and forth between Québec City and Ottawa by clearly establishing the federal government's responsibility.[316]

The interest of other countries in the northern territories and a desire to affirm Canadian sovereignty were the driving forces behind the federal government's interventions until the 1960s.[317] This led to the displacement of over 80 Inuit peoples beyond the Arctic Circle, some 1,500 km north the Ungava Peninsula. During the Cold War, the federal government offered residents of Port Harrison (Inukjuak) on Hudson Bay[318] and Pond Inlet on Baffin Island in 1953 and 1955, respectively, the opportunity to move to the High Arctic. They were promised better living conditions and good hunting grounds, as well as the possibility to

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310 Jaccoud, M. (1995a). L'histoire de l'imposition du processus pénal au Nunavik (Nouveau-Québec inuit). The Journal of Human Justice, 6(2), p. 108; Indian and Northern Affairs Canada. (1985). *The government of Canada and the Inuit, 1900–1967*. Retrieved from http://publications.gc.ca/collections/collection_2017/aanc-inac/R5-407-1985-eng.pdf, p. 30; testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 21, lines 12–15; *Corps de police régional de Kativik PowerPoint presentation (Jean-Pierre Larose)*, document P-1139 (Commission), p .5.

311 Jaccoud. (1995a), *op. cit.*, p. 108.

312 Testimony of Sarah Tuckatuck Bennett, stenographic notes taken November 13, 2018, p. 260, lines 6–12.

313 Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 8; Lévesque, Jubinville and Rodon. (2016), *op. cit.*, p. 145–154; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 173, lines 5–23; testimony of Sarah Tuckatuck Bennett, stenographic notes taken November 13, 2018, p. 260, lines 12–16.

314 Testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 173–174, lines 22–5.

315 *Reference as to whether "Indians" includes in s. 91 (24) of the B.N.A. Act includes Eskimo in habitants of the Province of Québec*, [1939] SCR 104; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 66–67, lines 20–7; document PD-11 (Commission), *op. cit.*, p. 17; *Peuples autochtones et droit constitutionnel*, document P-415 (Commission), p. 66.

316 Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 9; testimony of Charlie Watt, stenographic notes taken November 23, 2018, p. 100–101, lines 19–1.

317 Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 31–35; Jaccoud. (1995a), *op. cit.*, p. 110; Royal Commission on Aboriginal Peoples. (1994). *La réinstallation dans l'Extrême-Arctique. Un rapport sur la réinstallation de 1953-1955*. Ottawa, Ontario: Canada Communication Group, p. 122–140; document P-202 (Commission), *op. cit.*, p. 177; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 157, lines 4–21.

318 Montpetit, C. (May 13, 2014). *Voyage au bout d'un enfer de glace. Le Devoir*. Retrieved from https://www.ledevoir.com/societe/408147/voyage-au-bout-d-un-enfer-de-glace#.

return if their new lives did not suit them.[319] However, none of these promises were kept and, to their astonishment, the exiled families were sent to two different locations (Resolute Bay and Grise Fiord), which further isolated the communities.[320] Markoosie Patsauq was 12 years old when his family stepped off the C.D. Howe icebreaker in Resolute Bay. Several years later, she remembers that the place "looked pretty much like a dead planet".[321]

The exiled families who had been relocated to a hostile environment and an extreme climate suffered from cold and hunger and had to adapt to long months of polar darkness. When families expressed the desire to return to their home communities, the authorities refused or asked them to pay for their relocation, which was impossible for most of them. Those exiled were finally repatriated at the government's expense in 1988[322], but a formal apology was not issued until 2010.[323]

It was not until the mid-1950s that the range of services offered to Inuit people was expanded.[324] Prior to that, the federal government feared that the Inuit would become dependent on public programs and, therefore, provided as little assistance as possible. However, a new crisis linked to a drop in fur prices and the sudden disappearance of caribou forced the government to rethink its approach.[325] Jean Lesage, federal Minister of Northern Affairs and National Resources at the time, maintained that the government had a moral obligation towards the Inuit. According to him: "The most realistic approach involves accepting that, over time, the Eskimo will be increasingly influenced by the South." He added that the government was responsible for "helping them to adjust their lifestyle and way of thinking to deal with the consequences of this new life".[326]

In essence, the aim of the new policy was the integration of the Inuit into Canadian society, and settling them appeared to be an obligatory phase of the integration process.[327] Settling had already begun near Hudson's Bay Company trading posts, but it was partial and often temporary, and the Inuit had maintained their lifestyle on their territory. However, World War II, followed by the Cold War, led to the creation of military installations in Northern Québec,

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319 Royal Commission on Aboriginal Peoples. (1994), *op. cit.*, p. 28–32; Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 33; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 157, lines 10–13.

320 Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 7–8 and 151; document PD-16 (Commission), *op. cit.*, p. 203–204; document P-202 (Commission), *op. cit.*, p. 177.

321 Montpetit, C. (May 13, 2014). *Voyage au bout d'un enfer de glace. Le Devoir.* Retrieved from https://www.ledevoir.com/societe/408147/voyage-au-bout-d-un-enfer-de-glace.

322 Royal Commission on Aboriginal Peoples. (1994), *op. cit.*, p. 8; Lepage, M. (director). (2009). *Martha of the North* [Documentary]. Canada: National Film Board.

323 Government of Canada. (August 18, 2010). Government of Canada Apologizes for Relocation of Inuit Families to the High Arctic. Retrieved from https://www.canada.ca/en/news/archive/2010/08/government-canada-apologizes-relocation-inuit-families-high-arctic.html.

324 Lévesque, F. (2010). *Le contrôle des chiens dans trois communautés du Nunavik au milieu du 20e siècle. Études/Inuit/Studies*, 34(2), 149–166.

325 Lévesque, Jubinville and Rodon. (2016), *op. cit.*, p. 145–154.

326 Jaccoud. (1995a), *op. cit.*, p. 111.

327 Lévesque, Jubinville and Rodon. (2016), *op. cit*, p. 145–154; testimony of Tunu Napartuk, stenographic notes taken November 19, 2018, p. 34, lines 3–12.

which included bases in Kuujjuaq, Kuujjuarapik and Iqaluit, where Inuit were not allowed.[328] In a bid to accelerate settlement during the 1950s, the federal government built housing, clinics and federal schools.[329] In 1960, the federal government opened four federal hostels in Northern Québec, in George River (Kangiqsualujjuaq), Port Harrison (Inukjuak), Payne Bay (Kangirsuk) and Grande rivière de la Baleine (Kuujjuarapik).[330] The requirement to send children to school led to the settlement of several families.[331] Several young people were also sent outside the province to federal hostels, such as the Churchill Vocational Centre in Manitoba.[332] The experiences in these hostels were similar to those of other Canadian Inuit who were sent to Indian residential schools[333], in particular when it came to a ban on speaking Inuktitut.[334] The last of these hostels closed its doors in 1971, as the Québec government had developed a provincial educational network in the region in parallel with the federal system.

During this period of rapid settlement, over 1,000 sled dogs were slaughtered in Nunavik by RCMP and Sûreté du Québec (SQ) officers during the 1950s and 1960s. The influx of Inuit to new villages following the construction of schools led to large concentrations of dogs.[335] Following a few unfortunate incidents, the police ordered that all dogs must be tethered.[336] However, this directive was largely unheeded since the Inuit were not used to tethering their animals, primarily so that they could feed themselves. The authorities responded by slaughtering the dogs[337], even those that were tethered.[338]

Epidemics of canine distemper and rabies in various villages served to justify the slaughter of dogs. Some research supports the theory that the police decided to kill the dogs primarily for health and safety reasons, and not as a means of accelerating the settlement and

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328 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 207–208, lines 5–5; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 166, lines 9–19; testimony of Louisa Cookie-Brown, stenographic notes taken November 15, 2018, p. 76, lines 6–16; document P-202 (Commission), *op. cit.*, p. 177.

329 Jaccoud, M. (1995b). *Justice blanche au Nunavik*. Montréal, Québec: Méridien, p. 81–82, document P-412 (Commission); Indian and Northern Affairs Canada. (2006), *op. cit.*, p. 17; Lévesque, Jubinville and Rodon. (2016), *op. cit.*, p. 147; Croteau, J.-J. (2010). *Final Report of the Honorable Jean-Jacques Croteau, Retired Judge of the Superior Court Regarding the Allegations Concerning the Slaughter of Inuit Sled Dogs in Nunavik (1950–1970)*, p. 65 and 117; testimony of Davidee Nivaxie, stenographic notes taken November 12, 2018, p. 54, lines 10–17; testimony of Sarah Tuckatuck Bennett, stenographic notes taken November 13, 2018, p. 260, lines 17–20; document P-202 (Commission), *op. cit.*,*op. cit.*, p. 14–15.

330 Testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 116, lines 14–18.

331 Testimony of Charlie Arngak, stenographic notes taken November 22, 2018, p. 234–235, lines 15–4 and p. 236, lines 13–22; testimony of Davidee Nivaxie, stenographic notes taken November 12, 2018, p. 55–56, lines 20–10.

332 Truth and Reconciliation Commission of Canada. (2015C), *op. cit.*, p. 197; testimony of Louisa Cookie-Brown, stenographic notes taken November 15, 2018, p. 77, lines 4–6 and p. 94–95, lines 23–1; document P-202 (Commission), *op. cit.*, p. 4 and 48.

333 Lévesque, Jubinville and Rodon. (2016), *op. cit.*, p. 145–154; document PD-16 (Commission), *op. cit.*, p. 187–188; document P-202 (Commission), *op. cit.*, p. 47–48; testimony of Tunu Napartuk, stenographic notes taken November 19, 2018, p. 34–35, lines 24–9.

334 Testimony of Charlie Arngak, stenographic notes taken November 22, 2018, p. 237, lines 5–8; document P-202 (Commission), *op. cit.*, p. 15 and 47–48.

335 Croteau. (2010), *op. cit.*, p. 117.

336 Lévesque. (2010), *op. cit.*, p. 149–166.

337 Testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 116, lines 11–13.

338 Testimony of Louisa Cookie-Brown, stenographic notes taken November 15, 2018, p. 117–119, lines 5–7.

assimilation of the Inuit.[339] Regardless of the reasons put forward to justify the slaughter, there is no denying that it had a disastrous effect on the population in Northern Québec.[340] For thousands of years, sled dogs had been essential to the livelihood of the Inuit, who relied on them for hunting and travel.[341] The dogs were shown affection and respect since their relationship was so important to the Inuit.[342] Their disappearance led to "material and spiritual deprivation"[343] for several Inuit who, besides the sadness that was caused, witnessed their identity, independence, way of life and means of livelihood put in grave danger.

> "And then, all of a sudden, someone comes in and says: "Your dogs are dangerous! Kill all of them!" All of a sudden! From one day, from one minute to the next minute. You had dogs that you were caring for, [travelling] with and then, the next minute: they are all gone. All gone! Your means of travel, your means of hunting, your means of going long distance, your means of knowing the land! Ah…! Your ability as an Inuk man has just been completely shot! Threatened. Your identity as an Inuk man who knows your land, who knows how to go out, who relies on the dogs also, to bring [you] back home… All of that: cut!
>
> Lisa Qiluqqi Koperqualuk, Inuit
> (Document PD-16 (Commission), p. 202)

In 2010, an inquiry report on the events described an impasse between the Inuit and the police at the time, particularly since the police deemed that coercion was more effective than negotiation.[344] The report also put forward that the Québec and Canadian governments failed to meet their fiduciary obligations towards the Inuit.[345] Following the report's publication, the Québec government recognized the major impact that the slaughter of sled dogs had on the Inuit of Nunavik and awarded financial compensation.[346] However, the bond of trust between Inuit and the authorities remains tenuous.[347]

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339 Lévesque. (2010), *op. cit.*, p. 149–166; Croteau. (2010), *op. cit.*, p. 4; Royal Canadian Mounted Police. (2006). *Rapport final : Examen par la GRC des allégations relatives aux chiens de traîneau inuits.* Ottawa, Ontario: Royal Canadian Mounted Police.

340 Lévesque. (2010), *op. cit.*, p. 149–166; testimony of Davidee, stenographic notes taken November 12, 2018, p. 56, lines 14–24; *Déclaration statutaire*, document P-1291 (Commission), p. 3.

341 Testimony of Davidee Nivaxie, stenographic notes taken November 12, 2018, p. 56, lines 17–24; testimony of Sarah Tuckatuck Bennett, stenographic notes taken November 13, 2018, p. 277, lines 3–4; testimony of Louisa Cookie-Brown, stenographic notes taken November 15, 2018, p. 116, lines 14–18; testimony of Tunu Napartuk, stenographic notes taken November 19, 2018, p. 33, lines 12–25.

342 Lévesque. (2010), *op. cit.*, p. 149–166; document PD-16, *op. cit.*, p. 202.

343 Lévesque. (2010), *op. cit.*, p. 149–166; testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 93, lines 8–15 and p. 99, lines 5–9; testimony of Louisa Cookie-Brown, stenographic notes taken November 15, 2018, p. 119–120, lines 12–8; testimony of Tunu Napartuk, stenographic notes taken November 19, 2018, p. 34, lines 13–23; testimony of Charlie Arngak, stenographic notes taken November 22, 2018, p. 241–242, lines 20–3.

344 Croteau. (2010), *op. cit.*, p. 111, 119–123 and 133.

345 *Id.*, p. 132–137.

346 Testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 179, lines 13–20.

347 Testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 180, lines 5–14; testimony of Tunu Napartuk, stenographic notes taken November 19, 2018, p. 34, lines 21–23.

3.4. 1960 – 1970 / A period of change

A new world order emerged in the years following World War II, made possible by the creation of the United Nations (UN), whose charter affirmed equality and people's right to self-determination.[348] The era was also marked by the expansion of the global decolonization process and the emergence of the civil rights movement in the United States, which aimed to end racial segregation. This international context was fertile ground for the Indigenous and Québec nations to assert their autonomy and demand independence.

3.4.1 The provincial nation state

After coming to power in 1960, the Québec Liberal Party called an early election to propose nationalizing hydroelectricity to Quebecers. It was during this election that Jean Lesage popularized the slogan "Maîtres chez nous" ("masters in our own house"). While the slogan primarily expressed a will to take control of management of the State, it also asserted an obligation to determine the scope of its authority and the public services being introduced. The ambiguous slogan took hold as the exploitation of natural resources was accelerating in territories in which Indigenous peoples were asserting rights that had never been officially given up.[349] It also coincided with a growing awareness of Northern Québec[350] and its economic and political importance.[351] After serving as federal Minister of Northern Affairs and National Resources from 1953 to 1957, Jean Lesage became Premier of Québec in 1960. One of his objectives was to end the government's neglect of the North and the people who lived there.[352] Lesage's Minister of Natural Resources, René Lévesque, toured northern Québec, helping to formalize this new political awareness.[353]

At the time, French-Canadians' national consciousness was increasingly focused around the State of Québec which, in a way, was replacing the Church as "what secured the people's cultural integrity".[354] It also proved to be a powerful "tool for social transformation and economic promotion".[355] This transition was the core of what would later be known as the Quiet Revolution. Québec's identity was being forged, and the Duplessis-era discourse of provincial autonomy was giving way to that of provincial sovereignty. This discourse recognized the interdependence of the various levels of government and the need for

348 *Charter of the United Nations*, June 26, 1945, art. 1(2).

349 Desbiens. (2015), op.cit., p. 40–49.

350 Gow, J. I. (1986). *Histoire de l'administration publique québécoise, 1867-1970.* Montréal, Québec: Presses de l'Université de Montréal, p. 174; Hamelin. (1995), *op. cit.*, p. 269.

351 Ducharme, E. (2009). L'État québécois et les Autochtones : la construction d'une politique, 1960-1970 (Thesis for master's degree in history). Université du Québec à Montréal. Retrieved from https://archipel.uqam.ca/2008/1/M10774.pdf, p. 53–54.

352 Indigenous and Northern Affairs Canada. (2006), *op. cit.*, p. 13; Lévesque, Jubinville and Rodon. (2016), *op. cit.*, p. 145–154; Lévesque. (2010), *op. cit.*, p. 149–166; Indian and Northern Affairs Canada. (1985), *op. cit.*, p. 107.

353 Godin, P. (1997). *René Lévesque. Héros malgré lui.* Montréal, Québec: Boréal, p. 172–177; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 97–99, lines 18–18.

354 Boismenu, G. (1989). La pensée constitutionnelle de Jean Lesage. In R. Comeau and G. Bourque (dir.), *Jean Lesage et l'éveil d'une nation. Les débuts de la Révolution tranquille* (p. 76–107). Québec, Québec: Presses de l'Université du Québec.

355 Desrosiers. (1999), *op. cit.*, p. 11–12.

cooperation among them, while vigorously opposing the federal government's interference in provincial jurisdictions.[356]

The delivery of public services and the establishment of state sovereignty in the North gave rise to a jurisdictional conflict between the Canadian federal government and the Québec provincial government.[357] This conflict led to a jurisdictional transition, as illustrated by the introduction, in 1963, of a Québec institutional structure: the Direction générale du Nouveau-Québec (DGNQ).[358] Québec's objective was clear: to entrench its sovereignty by replacing the federal government in the territory of Nouveau-Québec.[359] This aim also prompted the Québec to set up the Commission d'étude sur l'intégrité du territoire du Québec.[360] Led by Henri Dorion, the commission's mandate was to conduct studies and make recommendations to the government on means for ensuring the integrity of Québec's territory. The commission looked at the matter from an external perspective, examining the issue of borders, and from an internal perspective, studying such matters as Indigenous land claims.[361] Although it did not adhere to the concept of Indigenous sovereignty[362], the Dorion Commission report recognized that First Peoples had certain rights. Among other things, the commission proposed transferring Québec Indigenous peoples to provincial jurisdiction, creating a framework law for Québec on Indigenous peoples, and recognizing Indigenous titles to the territories they occupied. It also suggested transforming the reserves into municipalities with broader powers, and electing an Indigenous representative to the National Assembly.[363] However, this wide-ranging program did not go forward, with the exception of recognizing commitments made to the Indigenous peoples of the North, which would form the basis of the James Bay and Northern Québec Agreement (JBNQA).[364]

Québec sovereignty over the northern territory was also asserted by bringing in the provincial police force with the aim of replacing the RCMP, which had been there since the turn of the century. A Sûreté du Québec (SQ) station opened in Kuujjuarapik in 1961, followed by another one in Kuujjuaq.[365] This was another example in which the police were mobilized to secure strategic and political interests, this time at the provincial rather than federal level.[366]

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356 Boismenu. (1989), *op. cit.*, p. 76–107.

357 Ducharme. (2009), *op. cit.*, p. 56.

358 *Id.,* p. 61–62.

359 Jaccoud. (1995b), *op. cit.*, p. 85; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 99–100, lines 3–13.

360 Dorion, H. and Lacasse, J.-P. (2011). *Le Québec, territoire incertain.* Québec, Québec: Éditions du Septentrion, p. 17.

361 *Ibid.*

362 Jaccoud. (1995a), *op. cit.*, p. 88.

363 Dorion, H. (1971). *Rapport de la Commission d'étude sur l'intégrité du territoire du Québec. Volume 4 : Le Domaine indien. Québec*, Québec: Éditeur officiel du Québec, recommendations 5, 6, 11, 13 and 31.

364 Desbiens. (2015), *op. cit.*, p 58–59; *James Bay and Northern Québec Agreement, Grand Council of the Crees (of Québec)*, Northern Québec Inuit Association, Government of Canada, Société d'énergie de la Baie James, Société de développement de la Baie James, Hydro-Electric Commission and Québec government, November 11, 1975.

365 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 21, lines 11–20; document P-1139 (Commission), *op. cit.*, p. 5.

366 Jaccoud. (1995b), *op. cit.*, p. 23 and 86; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 99–100, lines 15–13.

This individual jurisdictional conflict was also connected to the broader context of the federal government's policy of disengagement toward Indigenous communities. In fact, in 1960, the RCMP announced that it would no longer be offering police services to First Nations in Ontario and Québec. Some band councils took the opportunity to invest in law enforcement, made possible by the 1951 amendments to the *Indian Act*.[367] Although the Act excluded the Inuit[368], the 1939 *Reference Re Eskimos* decision still entitled them to federal programs in the areas that affected them.[369]

During this time, the desire to make Indigenous peoples equal citizens steadily grew. This meant not simply subjecting them to state sovereignty through policing, but rather making them Canadian and Québec citizens, with all the rights that entailed. After having been extended to the Inuit in 1950, the right to vote without losing Indian status was finally given to First Nations for the 1960 federal election.[370] It would take a few more years in Québec: Indigenous peoples only received the franchise at the end of the decade, in 1969.[371] This made Québec the last province in Canada to recognize this right. The first Indigenous member elected to the National Assembly since then[372] was Alexis Wawanoloath, an Abénakis, who represented the district of Abitibi-Est from 2007 to 2008.[373] No Inuit have been elected to the National Assembly to date.

3.4.2 Building a welfare state

The development of the welfare state also led to federal-provincial competition in the areas of health care and social services. In the late 1950s and throughout the 1960s, the federal government introduced a series of laws to strengthen health care services and make them more accessible across the country.[374] In the face of these measures regarding provincial jurisdiction, Québec launched a broad study of health care delivery, which included the Commission of Inquiry on Health and Social Welfare (Castonguay-Nepveu Commission).[375] Following this exercise, a centralized health care system was established, and a universal

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367 The *Indian Act,* 1951, *op. cit.*, s. 80(c) gave band councils the power to pass by-laws related to maintaining law and order; Aubert, L. and Jaccoud, M. (2009). Genèse et développement des polices autochtones au Québec : sur la voie de l'autodétermination. Criminologie 42(2), document P-401, p. 103.

368 *Indian Act,* 1951, *op. cit.*, s. 4(1).

369 Indigenous and Northern Affairs Canada. (2006), *op. cit.*, p. 9.

370 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 33, lines 1–18; Act to amend the Canada Elections Act, S. C. 1960, c. 7, s. 1.

371 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 61, lines 10–12; Act to amend the Québec Election Act, S.Q. 1969, c. 13, s. 1.

372 Ludger Bastien, a Huron-Wendat, became the first Indigenous member of the National Assembly when he was elected in 1924. However, he had to renounce his Indian status in order to take his seat. On a federal level, James Gladstone was the first Indigenous person appointed to the Senate (1958), while Leonard Marchand was the first member elected to the House of Commons (1968).

373 Testimony of Alexis Wawanoloath, stenographic notes taken December 7, 2018, p. 12, lines 16–21 and p. 38, lines 5–7.

374 Desrosiers. (1999), *op. cit.*, p. 8; Grenier, J., Bourque, M. and St-Amour, N. (2014). *L'évolution des services sociaux du réseau de la santé et des services sociaux du Québec. La NGP ou le démantèlement progressif des services sociaux.* St-Jérôme, Québec: Université du Québec en Outaouais, p. 17–18.

375 Commission of Inquiry on Health and Social Welfare. (1967–1972). *Report of the Commission of Inquiry on Health and Social Welfare.* Québec, Québec: Éditeur officiel du Québec.

health care plan was introduced in 1970.[376] Jurisdictional competition in health care had ramifications for the North as well. On the federal level, the C.D. Howe hospital ship continued to serve Inuit villages until 1968.[377] Provincially, the Fort George (Chisasibi) free clinic, in Eeyou (Cree) territory, became the Québec's first hospital to be subsidized by hospitalization insurance, in 1965.[378] However, the health care services offered in the North remained limited. Inuit only had one doctor residing in Fort-Chimo (Kuujjuaq) as of 1965, and there was still no doctor on the Hudson coast in the early 1970s.[379]

State interventionism also extended to social services, as private charities were no longer sufficient to meet the needs of the most disadvantaged. As government involvement grew, the need to integrate health and social services became increasingly clear. The Ministère de la Santé and the Ministère de la Famille et du Bien-être social were therefore merged to become the Ministère des Affaires sociales in 1970.[380] The network of local community service centres (CLSCs) was created shortly thereafter.[381]

Provincial authorities were also involved in youth protection. After section 87 was added to the *Indian Act in 1951*[382], provincial legislation applied to Indigenous peoples, although they came under federal jurisdiction pursuant to the *Constitution Act, 1867.*[383] To the extent that the Canadian government had no specific legislation covering the protection of Indigenous youth, provincial legislation applied.[384]

The rules that were developed and applied during this period were standardized and did not take into account the specific situations of Indigenous children. In contrast with the residential school system, which aimed to assimilate children into the dominant culture, the goal was now to integrate by simply providing them with the same services available to any other child, in accordance with the principles of universality and neutrality.[385] Although well-intentioned, the effects of the approach were, in many ways, similar to those of residential schools. Among other things, it continued to divide families without considering the specific aspects of Indigenous communities, therefore fostering a loss of cultural reference points

376 Desrosiers. (1999), *op. cit.*, p. 12; Desrosiers and Gaumer. (2004), *op. cit.*, p. 11–12.

377 Beauvais, D. (2017). *Mémoires de glace. Récit autobiographique d'un infirmier en région isolée.* Québec, Québec: Presses de l'Université Laval, p. 72.

378 Beauvais. (2017), *op. cit.*, p. 81–82.

379 *Id.,* p. 77 and 82; Tremblay, N. (2014). *Qingaujaaluk. Médecine et aventures dans le Grand Nord québécois.* Québec, Québec: Éditions GID, p. 72.

380 Desrosiers. (1999), *op. cit.*, p. 13; Desrosiers and Gaumer. (2004), *op. cit.*, p. 13; D'Amours, O. (1986). Survol historique de la protection de l'enfance au Québec, de 1608 à 1977. *Les jeunes et le travail social*, 35(3), p. 400.

381 Desrosiers and Gaumer. (2004), *op. cit.*, p. 14.

382 *Indian Act,* 1951, *op. cit.*, s. 87.

383 *Constitution Act,* 1867, *op. cit.*s. 91(24); Sigouin, E. (2006). *Les mécanismes de protection de la jeunesse autochtone au regard de la théorie libérale de Will Kymlicka* (Thesis for master's degree in law). Université de Montréal. Retrieved from https://papyrus.bib.umontreal.ca/xmlui/handle/1866/2411, p. 23–24; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 105, lines 8–25.

384 Sinha, V. and Kozlowski, A. (2013). The Structure of Aboriginal Child Welfare in Canada. *The International Indigenous Policy Journal*, 4(2), p. 3–4; Sigouin. (2006), *op. cit.*, p. 23–24.

385 Kline, M. (1992). Child Welfare Law, "Best Interests of the Child" Ideology, and First Nations. *Osgoode Hall Law Journal, 30*(2), p. 389; Sigouin. (2006), *op. cit.*, p. 24.

for the children.[386] The transfer of responsibility from the federal to provincial governments was not accompanied by additional funding, creating great disparity between the regions in terms of the quality and quantity of services.[387] The integration policy led to the massive removal of Indigenous children from their communities. Taken into the custody of provincial youth protection agencies, children were placed with non-Indigenous families across Canada, in the United States, and even in Europe.[388]

This trend occurred across Canada, and would come to be called the "sixties scoop," a term that referred to the period when the over-representation of Indigenous children in youth protection began.[389] The phenomenon peaked in the 1970s, but continued even into subsequent decades. An estimated 11,000 Indigenous children were adopted in Canada between 1960 and 1990[390], very often without their parents' consent.[391] At the end of the 1970s, these children represented over 20.0% of the children in the custody of Canadian social services agencies; Indigenous people only represented 2.0% of the population.[392]

In Québec, where residential schools remained open longer, there is much less documentation on the impacts of the "sixties scoop". Shortly after the *Youth Protection Act* (YPA)[393] came into effect in 1979, it was observed that 2.6% of the children taken into custody by the province were Indigenous. At the time, they represented just 0.7% of Québec's children.[394] The rate of over-representation was lower than elsewhere in Canada, but was likely underestimated, given that the residential schools closed at a later date.

3.4.3 Burgeoning Indigenous movements

While the Québec State was taking shape, the ability of Indigenous communities to band together to assert their interests and rights was limited. In the last third of the 19th century, the *Indian Act* played a large role in disrupting the Indigenous political order.[395]

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386 Sigouin. (2006), *op. cit.*, p. 29 and 31; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 65, lines 1–20; Sinha and Kozlowski. (2013), *op. cit.*, p. 3; *in camera* testimony HC-18, stenographic notes taken April 3, 2018, p. 51–52, lines 20–16; *in camera* testimony HC-19, stenographic notes taken April 3, 2018, p. 69, lines 4–12 and p. 101, lines 6–19; testimony of Janette Brazeau, stenographic notes taken April 12, 2018, p. 89–91, lines 10–1; *in camera* testimony HC-32, stenographic notes taken May 10, 2018, p. 180, lines 5–15 and p. 196, lines 1–18.

387 Sigouin. (2006), *op. cit.*,p. 25–26.

388 Sinclair, M., Bala, N., Lilles, H. and Blackstock, C. (2004). Aboriginal Child Welfare. In N. Bala, M. K. Zapf and R. Vogl (dir.), *Canadian Child Welfare Law: Children, Families and the State* (2nd ed.). Toronto, Ontario: Thompson Educational Publishing, p. 206; Sigouin. (2006), *op. cit.*, p. 26 and 28–29.

389 Sigouin. (2006), *op. cit.*, p. 27; testimony of Suzy Basile, stenographic notes taken June 19, 2017, p. 81–82, lines 19–13; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 109–111, lines 15–12; Engagement rapport (Montréal), document P-116 (Commission), p. 19; *Cultural manual for foster and adoptive parents of Aboriginal children*, document P-434, p. 5.

390 Sinha and Kozlowski. (2013), *op. cit.*, p. 6.

391 Kline. (1992), *op. cit.*, p. 381; Sigouin. (2006), *op. cit.*, p. 28; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 110, lines 13–16 and p. 111, lines 3–12.

392 Sigouin. (2006), *op. cit.*, p. 27.

393 *Youth Protection Act*, L.R.Q. 1977, c. 20.

394 Sigouin. (2006), *op. cit.*

395 Moss, W. and Gardner O'Toole, E. (1991). *Aboriginal People: History of Discriminatory Laws*. Ottawa, Ontario: Library of Parliament.

A few associations did emerge in the first half of the 20th century, such as the League of Indians of Canada, founded in 1919 by Mohawk Fred Loft.[396] The initiative was defeated due to active opposition from the Department of Indian Affairs, RCMP surveillance, and the difficulty in uniting Indigenous communities across Canada's vast territory.[397]

Next came the 1923 attempt by Hereditary Chief Deskaheh to convince the League of Nations (the UN's forerunner) to recognize the sovereignty of the Haudenosaunee (Mohawk) people. Canadian and British diplomats opposed his claim vigorously, shutting it down.[398]

The next attempt at affirmation would take shape in the 1940s, when Huron-Wendat Jules Sioui helped restablish the League of Indians of Canada, which soon gave rise to the North American Indian Nation Government.[399] Government opposition once again materialized. Jules Sioui was arrested in 1948 and charged with conspiring to undertake to participate in a rebellion. After a long legal saga, punctuated by a hunger strike, the charges against Sioui were finally dropped.[400]

> "At home, there's a very important figure, a direct or distant cousin of my grandfather's, […] a historical figure called Jules Sioui, who was a very important Indigenous activist in Canada. And […] he argued for the idea of an Amerindian parliament. […] At the time, Mackenzie King deemed him a rebel, and he […] was put in jail. For his political ideas, and for his activism. He went on a hunger strike that lasted 75 days, I think. […][L]ater, he was forgotten. But his ideas came at a time when Indigenous peoples across Canada were starting to get organized politically. Then the first large Indigenous political associations started to appear."
>
> Member of the Huron-Wendat Nation
> (Document PD-16 (Commission), p. 114–115)

It was difficult to unite Indigenous political forces and, in the early 1960s, the community remained the major point of reference in terms of identity for individuals, with its roots on the reserve or ancestral land. However, a growing awareness of the experiences shared by the various Indigenous communities led to the development of Canada-wide political organizations. In 1961, the National Indian Council was established to represent status Indians, Métis and non-status Indians.[401] In 1969, the Council split into the National Indian

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396 Turcotte, Y. (2018). *L'Association des Indiens du Québec (1965-1977) et le militantisme autochtone dans le Québec des années 1960-1970* (Thesis for master's degree in history). Université de Montréal. Retrieved from https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/20154/Turcotte_Yanick_2018_memoire.pdf?sequence=2&isAllowed=y, p. 18.

397 Kulchyski, P. (1988). "A considerable unrest": F.O. Loft and the League of Indians. *Native Studies Review, 4*(1–2), 95–117.

398 Indigenous peoples' centre for documentation, research and information. (2018). Historical Process at the United Nations. Retrieved from https://www.docip.org/en/oral-history-and-memory/historical-process/.

399 Shewell, H. (1999). Jules Sioui and Indian Political Radicalism in Canada, 1943–1944. *Journal of Canadian Studies, 34*(3), 211–242; document PD-16 (Commission), *op. cit.*, p. 114–116.

400 Commission des droits de la personne et des droits de la jeunesse. (2009). *Aboriginal Peoples: Fact and Fiction*. Retrieved from http://www.cdpdj.qc.ca/publications/ArboriginalPeoples.pdf, p. 29; Sioui c. Le Roi, Cour du Banc du Roi (appeal), No. A3661 (Québec, December 13, 1949), [1950] B.R. 79.

401 Miller, J.R. (2000). *Skyscrapers Hide the Heavens. A History of Indian-White Relations in Canada* (3rd ed.). Toronto, Ontario: University of Toronto Press, p. 329.

Brotherhood and the National Indigenous Council, set up in 1971 to represent Métis and Indians not recognized by the *Indian Act*.[402]

In the meantime, the Indians of Québec Association (IQA) was founded in 1965, quickly emerging as the main organization speaking on behalf of Québec's Indigenous nations to government entities.[403] Among other things, the IAQ produced three briefs on the concerns of Indigenous peoples regarding authorities. The first brief addressed the issue of hunting and fishing rights (1967), while the second dealt with tax status (1968) and the third with Indigenous territorial rights (1969).[404] The IQA would also play a leading role in challenging hydroelectric power development in James Bay in the early 1970s.[405]

Major legal battles over equal rights for Indigenous women also took place in the 1960s. As of 1876, an Indigenous woman who married a non-Indigenous man automatically lost her Indian status, whereas the opposite scenario (an Indigenous man marrying a non-Indigenous woman) did not apply.[406] These women and their children were then immediately excluded from their communities, even if the couple had separated. In 1968, Mary Two-Axe Early of Kahnawà:ke started the Equal Rights for Indian Women movement, which would inspire the creation of the Native Women's Association of Canada in 1974.[407]

Québec Native Women was founded the same year[408] and determinedly began to fight the discrimination against women contained in the *Indian Act*.[409] In the late 1970s, the organization also began to look at the adoption of Indigenous children outside of the community, women's experiences in the health care system, and the serious issue of violence against women.[410]

In addition to being political militants, Indigenous women also turned to the courts to assert their rights. In the early 1970s, Jeanette Corbiere Lavell and Yvonne Bédard, two women who had lost their status after marrying non-Indigenous men, went to court to gain recognition of the inequity of their situation. The case went to the Supreme Court of Canada, which dismissed their allegations in order to preserve the legality of the *Indian Act*.[411] It was only

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402 *Id.*, p. 339 and 351.

403 Turcotte. (2018), *op. cit.*, p. 22–23.

404 *Id.*, p. 34

405 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 102–104, lines 10–1.

406 *Act to amend and consolidate the laws respecting Indians*, 1876, *op. cit.*, s. 3(3); Grammond. (2009), *op. cit.*, p. 85–86; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 51–52, lines 23–11; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 29, lines 13–19; testimony of Jean O'Bomsawin, stenographic notes taken November 23, 2017, p. 107, lines 15–25; document PD-16 (Commission), *op. cit.*, p. 118; testimony of Evelyne Saint-Onge, stenographic notes taken May 7, 2018, p. 18, lines 7–12.

407 Document PD-16 (Commission), *op. cit.*, p. 26–27.

408 Testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 43, lines 20–23.

409 Ricci, A. (2016). Guardians of the Nation. Kahnawake Women's Activism in the 1960s, 70s and 80s. *Recherches amérindiennes au Québec, 46*(1), p. 80.

410 *Id.*, p. 80–81.

411 *Attorney General of Canada* [1974] S.C.R. 1349; Grammond. (2009), *op. cit.*, p. 93–96.

when Sandra Lovelace, a Malécite woman who had also lost her status, took the fight to the international level that Canada's political authorities acknowledged the problem. In 1981, the UN Human Rights Committee ruled that Canada had violated its obligations under the *International Covenant on Civil and Political Rights*[412], particularly as the cultural rights of women had been threatened since they could no longer live on a reserve after marriage, in accordance with the *Indian Act*.[413] The federal government finally amended the *Indian Act* in 1985[414], allowing many Indigenous women (and their children) to regain the status that had been stripped from them.[415]

At the time, there was also a growing awareness that First Nations' members were increasingly present in cities.[416] In Québec, to deal with the needs of Indigenous peoples living in urban areas, the first Native Friendship Centre opened its doors in Chibougamau in 1969. Initially serving as places to get together and for cultural mediation, over the years, the friendship centres have developed an array of services that make them true living environments.[417] In 1976, the first centres in Chibougamau (1969), Val-d'Or (1974), La Tuque (1975) and Senneterre (1978) formed the Regroupement des centres d'amitié autochtone, which then expanded into several other cities.[418]

Throughout the 1960s, Indigenous claims and pressure groups to assert them proliferated; the core theme was the right to equality, including the right to difference.[419] In response to the increasingly pressing demands for change, in 1969, Pierre Elliott Trudeau's Liberal government released a *White Paper* proposing to eliminate the special legal status reserved for Indigenous peoples and to incorporate them fully into Canadian society.[420] The government's proposed vision included replacing collective, historic Indigenous rights with the individual civil rights common to all Canadian citizens. Among other things, it would eliminate the protection of reserve lands, the legal status of Indian, and have services to

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412 *International Covenant on Civil and Political Rights*, December 16, 1966, 993 U.N.T.C. 3, ratified by Canada on May 19, 1976.

413 Sandra Lovelace v. Canada, U.N. Doc. CCPR/C/OP/1, July 30, 1981 (UN Human Rights Committee); Grammond. (2009), *op. cit.*, p. 97–99; Ricci. (2016), *op. cit.*, p. 82.

414 *Indian Act,* CQLR, c. I-5, s. 6, also called "Bill C-31."

415 Clatworthy, S. (2009). Modifications apportées en 1985 à la Indian Act: répercussions sur les Premières nations du Québec, *Cahiers québécois de démographie, 38*(2), 253-286; testimony of Jean O'Bomsawin, stenographic notes taken November 23, 2017, p. 107, lines 8–25; document PD-16 (Commission), *op. cit.*, p. 25–29 and 141–142.

416 Cornellier, F. (2013). *Kitakinan. Parce que la ville est aussi autochtone*. Rouyn-Noranda, Québec: Éditions du Quartz, p. 19–20; *La présence autochtone dans les villes du Québec: actions, tendances et enjeux*, document P-117 (Commission), p. 5–6.

417 Lévesque, C. and Cloutier, É. (2013). Les Premiers Peuples dans l'espace urbain au Québec: trajectoires plurielles. In A. Beaulieu, S. Gervais and M. Papillon (dir.), *Les Autochtones et le Québec. Des premiers contacts au Plan Nord* (p. 281–296). Montréal, Québec: Presses de l'Université de Montréal; testimony of Christine Jean, stenographic notes taken June 8, 2017, p. 15, lines 1–8.

418 Testimony of Christine Jean, stenographic notes taken June 8, 2017, p. 12, lines 18–21, p. 13, lines 8–17 and p. 16, lines 9–20; testimony of Philippe Meilleur, stenographic notes taken December 11, 2018, p. 140, lines 4–24.

419 Hot, A. (2010). *L'école des Premières Nations au Québec*. (Cahier DIALOG no 2010-01). Montréal, Québec: DIALOG and INRS.

420 Government of Canada. (1969). *Statement of the Government of Canada on Indian Policy*. Ottawa, Ontario: Indian and Northern Affairs Canada.

Indigenous peoples provided by the provincial governments.[421] The Indigenous backlash was swift: the project was clearly and massively rejected.[422] Alberta Cree leader Harold Cardinal responded with two books: *The Unjust Society: The Tragedy of Canada's Indians* and *Citizen Plus,* also known as the *Red Paper.*[423] In this work, Harold Cardinal asserts: "We don't want the Indian Act retained because it's a good piece of legislation. It isn't. It's discriminatory from start to finish. But it serves as a lever and an embarrassment to the government, as it should be. […]… [W]e would rather continue to live in bondage under the inequitable Indian Act than surrender our sacred rights".[424]

In the face of the outcry, the federal government backed down, quickly abandoning the *White Paper*.[425] However, the *White Paper* served to catalyze Indigenous militancy, which was already burgeoning in the late 1960s across Canada.

3.5. 1970 – 1990 / Time for affirmation

In Québec, it took time for a clear Québec government policy on Indigenous matters to develop.[426] Establishing the DGNQ in the early 1960s was the first step in this direction.[427] The department's creation was followed by the negotiation of the JBNQA and Northeastern Québec Agreement (NEQA) in the 1970s.[428] The signing of these agreements represented a political turning point. For the first time, a Québec policy was the result of direct negotiations with Indigenous peoples, who were acknowledged as having a role to play in their own local government, and in the delivery of public services.[429]

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421 Canadian Royal Commission on Aboriginal Peoples. (1996), *op. cit.*, p. 216–217; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 150–151, lines 21-7; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 59–60, lines 21-1; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 34–35, lines 18-1.

422 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 35, lines 1–8; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 151, lines 18–24.

423 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 152, lines 10–21.

424 Cardinal, H. (1970). *The Unjust Society: The Tragedy of Canada's Indians.* Montréal, Québec: M. G. Hurtig, Ltd.

425 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 60, lines 1–8; document PD-11 (Commission), *op. cit.*, p. 21.

426 Gourdeau, É. (1994). Le Québec et la question autochtone. In A.-G. Gagnon (dir.), Québec: État et société (Volume I, p. 329–355). Montréal, Québec: Québec-Amérique, p. 331.

427 Ducharme. (2009), *op. cit.*, p. 51.

428 *Northeastern Québec Agreement*, Members of the Shefferville Naskapi band, Government of Québec, James Bay Energy Corporation, James Bay Development Corporation, Grand Council of the Crees, Northern Québec Inuit Association and Government of Canada, January 31, 1978.

429 Salée, D. (2003). L'État québécois et la question autochtone. In A.-G. Gagnon (dir.), Québec: État et société (Volume 2, p. 117–147). Montréal, Québec: Éditions Québec Amérique, p. 120–121; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 128, lines 19–25.

3.5.1 Confrontations and negotiations

On April 30, 1971, Québec Premier Robert Bourassa announced what he called the "project of the century": the hydroelectric development of James Bay.[430] This monumental plan sought to build several dams on northern Québec rivers, in order to create jobs while ensuring the province's energy future.[431] Québec expertise in hydropower was well established, particularly with the development of the Manicouagan and Outardes rivers in the North Shore region. The nationalization of electricity in 1963 made it a symbol of the Quiet Revolution and new economic modernity of Francophone Québec.[432] The Bourassa government wanted to make the James Bay development a true societal project. However, at no time were the Indigenous peoples residing within this territory ever consulted.[433] From their point of view, their rights have never been ceded by treaty, as specified in *An Act to extend the Boundaries of the Province of Québec,* 1912.[434] The Québec government claimed instead that the ancestral rights of the province's Indigenous peoples had probably been extinguished implicitly by the French Regime.[435] Thus, the James Bay development created a clash between two opposing views of the territory: those of Indigenous peoples, rooted in an ancestral relationship of reciprocity, and those of non-Indigenous peoples, driven by the development by and for the people in southern Québec.[436] On the Cree side as on the Inuit side, young Indigenous leaders like Billy Diamond and Zebedee Nungak organized the protest of the hydropower project on their lands.[437] Their activism launched a movement of national unity and would soon lay the groundwork for the current political structures in Northern Québec.

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430 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 101, lines 3–12; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 140, lines 20–25; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 94–95, lines 23–6; *Présentation de Martin Papillon : La Convention de la Baie James et du Nord québécois : quel bilan ?*, document P-634 (Commission), p. 7.

431 Savard, S. (2013). *Hydro-Québec et l'État québécois, 1944–2005*. Québec, Québec: Éditions du Septentrion, p. 202 and 244; Desbiens. (2015), *op. cit.*, p. 26–33.

432 Desbiens. (2015), *op. cit.*, p. 33–43; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 140, lines 16–20.

433 Savard. (2013), *op. cit.*, p. 358; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 95, lines 19–24; *Cree Nation Governance / La gouvernance de la Nation crie aujourd'hui*, document P-663 (Commission), p. 12.

434 *An Act to extend the Boundaries of the Province of Québec*, 1912, *op. cit.*, s. 2c) to e); testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 141–142, lines 20–18; testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 156–157, lines 20–3; document P-634 (Commission), *op. cit.*, p. 7.

435 This position, which Indigenous peoples in Québec have always firmly opposed, would be refuted by the Supreme Court of Canada in the 1990s: R. v. Côté, [1996] 3 S.C.R. 139 and R. v. Adams, [1996] 3 S.C.R. 101.

436 Thibault M. (2009). Hydro Development in Québec and Manitoba: Old Relationships or New Social Contract? In M. Thibault and S. M. Hoffman (ed.), *Power Struggles. Hydro Development and First Nations in Manitoba and Québec* (p.19–38). Winnipeg, Manitoba: University of Manitoba Press; Carlson, H. (2004). A Watershed of Words: Litigating and Negotiating Nature in Eastern James Bay, 1971–75. Canadian Historical Review, 85(1), 63–84; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 141, lines 5–20.

437 MacGregor, R. (1989). *Chief: the Fearless Vision of Billy Diamond*. Markham, Ontario: Viking Canada; Nungak, Z. (2017). Wrestling with Colonialism on Steroids: Québec Inuit Fight for their Homeland. Montréal, Québec: Véhicule Press.

In 1972, the Eeyou (Cree) and Inuit, under the auspices of IQA, instituted legal proceedings and asked the Superior Court of Québec to stop work already underway in James Bay.[438] On November 15, 1973, Justice Malouf was sympathetic to their application for an interlocutory injunction and ordered the shutdown of the site as well as the respect for the rights, environment and natural resources of the territory.[439] The Court of Appeal of Québec would quickly reverse the injunction[440] and the work would continue, but the decision of the Superior Court was still a turning point in the relations between Indigenous peoples and the Québec government.[441] Henceforth, the negotiated solution would be encouraged and the rights of Indigenous peoples would no longer be systematically ignored.[442] In the *Calder*[443] case, the ruling rendered by the Supreme Court of Canada in January 1973 already announced a change of course in this regard, while recognizing for the first time the possibility of the existence of Indigenous title on Canadian lands.[444] The next two years would be devoted to intense negotiations, which would see certain gaps in the Indigenous common front. In 1974, the Eeyou (Cree) decided to withdraw from the IQA the mandate to negotiate on their behalf, to take care of the talks themselves.[445] The interests of the Anishnabek, Innus and Atikamekw Nehirowisiw in this territory were no longer being directly defended. As for the Naskapis, they would join the negotiations, but would sign their own agreement, the Northeastern Québec Agreement, in 1978.[446] In final negotiations, three Inuit communities (Puvirnituq, Ivujivik and Salluit) would withdraw from the process.[447] To date, Puvirnituq is still considered an unceded territory by the Inuit.

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438 Deschênes, J.-G. and Vincent, S. (1988). La Convention dans la marche des Autochtones canadiens vers leur autonomie. Éléments de chronologie, 1967–1987. In S. Vincent and G. Bowers (dir.), *Baie-James et Nord québécois : Dix ans après* (p. 215–238). Montréal, Québec: *Recherches amérindiennes au Québec*; Gagnon, A. G. and Rocher, G. (2002). *Reflections of the James Bay and Northern Québec Agreement.* Montréal, Québec: Éditions Québec-Amérique; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 103–104, lines 22–5; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 96, lines 6–9 and p. 97, lines 8–17.

439 *Chief Max "One-Onti" Gros-Louis et al. v. The James Bay Development Corporation et al.,* [1974] R. P. 3, p. 220–221; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 97, lines 12–24; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 163–164, lines 24–16.

440 The Court of Appeal suspended the interlocutory injunction granted by Justice Malouf on November 22, 1973. *The James Bay Development Corp. et al. v. Chief Robert Kanatewat et al. and La Commission Hydro-Electrique du Québec v. Chief Robert Kanatewat et al.,* [1973] C.A. 09-00890-73 and 09-000896-73. Then, the Court of Appeal overturned one year later the decision of the Superior Court and denied the injunction. The James Bay Development Corp. et al. v. Chief Robert Kanatewat et al., [1974] C.A. 166.

441 Blancquaert, L. (2011). *L'impact du jugement Malouf au Québec (1973–1974).* Québec, Québec: Fondation Jean-Charles Bonenfant; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 98, lines 9–15; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 143, lines 6–18; document P-634 (Commission), *op. cit.*, p. 8; document P-663 (Commission), *op. cit.*, p. 13.

442 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 62, lines 4–16.

443 *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313.

444 Testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 97, lines 3–7; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 139, lines 3–24.

445 Turcotte. (2018), *op. cit.*, p. 70; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 104–105, lines 23–5; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 100–101, lines 15–3.

446 *Northeastern Québec Agreement, op. cit.*; testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 14, lines 13–19.

447 S. Vincent, and G. Bowers (1988). *Baie James et Nord québécois : Dix ans après.* Montréal, Québec: *Recherches amérindiennes au Québec*, p. 223–224; document PD-16 (Commission), *op. cit.*, p. 210–211.

> " So, Puvirnituq is not categorized. There's no category of land in Puvirnituq. […] We benefit from the James Bay and Northern Québec Agreement, but we have yet never accepted the provision that says: "We cede and surrender all of our rights in exchange for other rights." We never accepted that provision and we still don't. […] We do not accept that provision: it's our territory! […] And I'm very proud of that. […] We know who we are. Yes. "
>
> Lisa Qiluqqi Koperqualuk, Inuit
> (Document PD-16 (Commission), p. 211)

Finally, after months of arduous discussions, an agreement was signed on November 11, 1975 between the Eeyou (Cree), the Inuit and the governments of Québec and Canada.[448] The JBNQA was the first modern treaty signed in Canada, encompassing all the lands in Québec making up the James Bay and Hudson's Bay watershed.[449] The Eeyou (Cree) and Inuit then obtained monetary compensation in the amount of $225 million[450], in addition to having reserved the use of certain lands for their exclusive development as well as for their traditional hunting, trapping and fishing activities.[451] They also obtained some form of self-government[452], as well as powers in health, social services, education and public safety (police services) and certain rights and privileges with respect to the administration of justice.[453] The Naskapis obtained similar powers from the Northeastern Québec Agreement.[454]

In 1975, Liberal MNA John Ciaccia, who took part in the negotiations, stated that the JBNQA was "a historic event for both the Indigenous peoples and the people of Québec as a whole".[455] However, its implementation would remain a challenge, a source of tension and dissatisfaction over the years[456], paving the way for new confrontations in the 1990s.

The negotiations surrounding the JBNQA were not the only ones to ignite tensions. Management of the salmon rivers on the North Shore and in Gaspésie was also a major

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448 *James Bay and Northern Québec Agreement, op. cit.*

449 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 105–106, lines 24–2; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 125, lines 2–4 and p. 149, lines 22–24; testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 155, lines 15–21.

450 *James Bay and Northern Québec Agreement, op. cit.*, section 25.

451 Testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 158–159, lines 14–15; document P-202, *op. cit.*, p. 27.

452 Testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 151–252, lines 11–7 and p. 165–166, lines 23–8.

453 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 107, lines 7–13; testimony of Abel Bosum, stenographic notes taken June 20, 2018, p. 49–50, lines 23–3; testimony of Donald Nicholls, stenographic notes taken June 20, 2017, p. 78–79, lines 25–12; testimony of Jean-François Arteau, stenographic notes taken February 13, 2018, p. 83–84, lines 7–23; document P-634 (Commission), *op. cit.*, p. 14–15; document P-202 (Commission), *op. cit.*, p. 57–94.

454 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 15, lines 11–18; *Presentation of the Naskapi Nation of Kawawachikamach*, document P-023 (Commission), p. 9–11. They would receive for their part compensation in the amount of $9 million.

455 National Assembly, Commission permanente des richesses naturelles, des terres et forêts, *Journal des débats*, 30th Leg., 3rd session, issue 174, November 5, 1975, (J. Ciaccia).

456 Vincent and Bowers. (1988), *op. cit.*, p. 6–8.

source of confrontation between Indigenous peoples, the government and sport fishers.[457] At the end of the 1970s and the beginning of the 1980s, the situation became explosive and several conflicts erupted on the North Shore.[458] However, it is in Listuguj where the confrontation gained the most momentum. On June 11, 1981, more than 500 police officers and wildlife officers cordoned off the Mi'gmaq community to seize fishing gear, make arrests and suspend band council powers.[459] Many police cases of abuse were reported by the Commission des droits de la personne[460] and the Ligue des droits et libertés.[461] Then, despite a second operation on the Restigouche River on June 20 and the occupation of an outfitting operation in Nutashkuan the following year, tensions gradually subsided. Agreements were signed to allow Indigenous peoples to regain control of their rivers. However, the "salmon war" would leave a lasting mark on the affected Innu and Mi'gmaq communities.

> "There were problems there, with the fishery guardians, the people who were monitoring salmon fishing on the Moisie River. It's clear that there were some altercations, really substantial, you know. Dangerous even, for a while. Between the Innus who wanted to fish with nets and the fishery guardians. […] [T]here was a death, among other things. […] At night, they went net fishing, then the fishery guardians arrived, then there was a gunshot, all of that. People said it was an accident."
>
> Réginald Vollant, Innu Nation
> (Document PD-16, p. 180–181)

3.5.2 The establishment of public services

By the 1960s, against mounting tensions in the field, Québec public services were gradually assuming their current form. Indigenous communities were not forgotten and the government was increasingly concerned with the social problems affecting them.[462] Cultural differences, however, were still viewed as barriers to be overcome to reduce disparities through the introduction of "cultural bridges," such as an Indigenous constabulary and police force or courts that were more open to local realities.[463]

In 1965, the federal Department of Indian and Northern Affairs instituted the first band constable programs whose powers remained limited and subordinate to regular police forces.[464] The

457 Testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 9–10, lines 22–15.

458 McKenzie and Vincent. (2010), *op. cit.*, p. 108–109; Commission d'enquête sur les événements entourant les décès de messieurs Achille Vollant et Moïse Régis survenus en 1977. (1998). Québec, Québec, Québec Official Publisher; testimony of Jean O'Bomsawin, stenographic notes taken November 23, 2017, p. 83–84, lines 25–7; testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 26–27, lines 22–3; testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 113–114, lines 15–15; Brief of the Regroupement Mamit Innuat. (November 30, 2018). Document P-1175 (Commission), brief M-034, p. 8.

459 McKenzie and Vincent. (2010), *op. cit.*, p. 105; testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 11–132, lines 14–14.

460 Today, the Commission des droits de la personne et des droits de la jeunesse.

461 McKenzie and Vincent. (2010), *op. cit.*, p. 104–105; Obomsawin, A. (filmmaker). (1984). *Incident at Restigouche* [Documentary film]. Canada: National Film Board.

462 Jaccoud, M. (1992). Processus pénal et identitaire : le cas des Inuit au Nouveau-Québec. *Sociologie et sociétés, 24*(2), document P-410 (Commission), p. 30.

463 Aubert and Jaccoud. (2009), *op. cit.*, p. 116.

464 *Id.*, p. 104.

release of the Laing Report in 1967, acknowledging the over-representation of Indigenous people in prisons, nevertheless revealed a budding awareness of the limits of the traditional models and the need to make significant changes.[465] These criticisms would be repeated in the decades to follow, with one report after another[466] decrying the lack of "sensitivity to cultural considerations, lack of community input, biased investigations, minimal crime prevention programming, and [...] alienation from the justice system [of] Aboriginal people".[467]

In the early 1970s, a new approach was favoured: the creation of Indigenous quotas integrated within the regular police forces.[468] This opening to cultural diversity, coinciding with the official adoption by the federal government of the multiculturalism policy in 1971[469], was nevertheless not yet consistent with a rationale of empowerment.

In Québec, the Indigenous were little inclined to accept the presence of the SQ in their communities, particularly given the tensions experienced with the Québec government in the JBNQA negotiations.[470] The creation of the Amerindian Police Council, in the late 1970s, however, allowed for the training of Indigenous police officers who would now have full peace officer status.[471] An opening to genuine self-governance was beginning to materialize. The JBNQA, signed in 1975, also provided for the training of special Indigenous constables within the SQ.[472] However, from the start this plan was intended as a transition program at the end of which the Eeyou (Cree) and Naskapi communities, as well as Inuit communities, would have self-administered police forces.[473] In 1979, by way of a band resolution, the Mohawks of Kahnawake, who rejected provincial policing authorities in their community, formed their own police force, the Kahnawake Peacekeepers.[474] It was the first self-administered Indigenous police force in Canada.[475]

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465 Canadian Corrections Association. (1967). *Indians and the Law* (Laing Report). Ottawa, Ontario: Queen's Printer; document PD-11 (Commission), *op. cit.*, p. 21.

466 Task Force on Indian Policing. (1973). *Indian Policing Policy Review: Task Force Report.* Ottawa, Ontario: Department of Indian and Northern Affairs Canada; Griffiths, C. T. and Yerbury, J. C. (1984). Natives and Criminal Justice Policy: The Case of Native Policing. *Canadian Journal of Criminology, 26*(147), 147–160.

467 Public Safety Canada. (2016). *2014–2015 Evaluation of the First Nations Policing Program Final Report.* Retrieved from https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/vltn-frst-ntns-plcng-2015/index-en.aspx, p. 2.

468 Jaccoud, M. (2002). La justice pénale et les Autochtones : D'une justice imposée au transfert de pouvoirs. *Canadian Journal of Law and Society/ Revue Canadienne Droit et Société, 17*(2), document P-404 (Commission), p. 112.

469 House of Commons, Journals, 28th Parl., 2nd Session., October 8, 1971, p. 8540–8548 (P. E. Trudeau).

470 Aubert and Jaccoud. (2009), *op. cit.*, p. 110–111.

471 *Id.*, p. 111.

472 James Bay and Northern *Québec Agreement, op. cit.*, chap. 19 and 21. For the Naskapis, see also the *Northeastern Québec Agreement, op. cit.*, chap. 13; testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 21–22, lines 21–2; testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 28, lines 19–22.

473 The Eeyou-Eenou Police Force for the Eeyou (Cree), the Kativik Regional Police Force (KRPF) for the Inuit and the Naskapi Police Service for the Naskapis. Aubert and Jaccoud. (2009), *op. cit.*, p. 111. The creation of the KRPF in Nunavik stemmed from an extensive consultation on the administration of justice. *Ouvrir la piste vers un meilleur avenir, Rapport final du groupe de travail inuit sur la justice*, document P-1141 (Commission).

474 Mohawk Council of Kahnawà:ke, Resolution No. 44/79–80, June 13, 1979.

475 Aubert and Jaccoud. (2009), *op. cit.*, p. 108 and 112.

Regarding the administration of justice, the report *La justice au-delà du 50e parallèle*[476] triggered some important innovations, with the institution of itinerant courts.[477] These were gradually introduced in the Canadian North during the 1950s.[478] In Québec, it was not until Justice Malouf's 1970 ruling in *Ittoshat*[479], denouncing the delocalization of justice toward the south, that the need to look into adapting the justice system to the specific situation of northern territories was raised.[480] In 1974, the Ministère de la Justice established an itinerant court to serve the Cree communities of James Bay and the Inuit communities in Nunavik.[481] Another circuit was subsequently established to serve the Innu and Naskapi communities of the Lower North Shore and Schefferville region.

The JBNQA also included chapters on the administration of justice.[482] These confirmed the institution of an itinerant court and various measures were provided to adapt the judicial system to Indigenous cultures, notably with respect to rules of practice, the training of Indigenous staff and sentencing. The construction of detention facilities on Indigenous territory was also announced in this agreement. However, most of these accommodation measures would not be put into practice. The outcome was that in the mid-1980s, the track record of the itinerant court since its inception remained mixed, even to some of its key players.[483]

With respect to health and social services, the 1970s and 1980s would also be marked by a new context. The signing of modern treaties by the Eeyou (Cree), Inuit and Naskapis granted them a special status.[484] Under these agreements, the communities in question were responsible for deploying and managing health and social services on their territories.[485] The agreements also called for the Ministère de la Santé et des Services sociaux du Québec to fund the deployment of services and infrastructures required in the communities.[486] This approach would give rise to the Cree Board of Health and Social Services of James

476 Comité d'étude sur l'administration de la justice dans le nord québécois. (1972). *La justice au-delà du 50e parallèle*. Québec, Québec: Éditeur officiel du Québec; document PD-11 (Commission), *op. cit.*, p. 21.

477 Testimony of Nathalie Samson, stenographic notes taken November 13, 2018, p. 18, lines 3–10; document PD–11 (Commission), *op. cit.*, p. 21.

478 Jaccoud. (1995a), *op. cit.*, p. 110.

479 *R.* v. Ittoshat, [1970] 10 C.R.N.S. 385; document PD-11 (Commission), *op. cit.*, p. 21.

480 Testimony of Nathalie Samson, stenographic notes taken November 13, 2018, p. 17–18, lines 17–2; Jaccoud. (1995a), *op. cit.*, p. 117–119. The cases were then heard in Montréal, Québec City or Sept-Îles.

481 Document PD-11 (Commission), *op. cit.*, p. 22.

482 *James Bay and Northern Québec Agreement, op. cit.*, chap. 18 and 20. For the Naskapis, see the *Northeastern Québec Agreement, op. cit.*, chap. 12; document PD-11 (Commission), *op. cit.*, p. 22–23.

483 Working group composed of representatives of the Court of Québec, the Ministère de la Justice, the Directeur des poursuites criminelles et pénales and the Secrétariat aux Affaires autochtones. (2008). *La justice en milieu autochtone : vers une plus grande synergie*. Québec, Québec: Cour du Québec, p. 15; Jaccoud. (1995a), *op. cit.*, p. 119–123.

484 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 82, lines 20–25; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 207, lines 13–21.

485 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 82–83, lines 25–4.

486 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 83, lines 4–7; *Présentation du ministère de la Santé et des Services sociaux*, document P-011 (Commission), p. 7.

Bay[487], the CLSC Naskapi[488] and later to the Nunavik Regional Board of Health and Social Services.[489] A few additional agreements would prove necessary to map out the workings of this new sharing of responsibilities.[490]

By contrast, in communities not covered by an agreement, and still subject to the *Indian Act*, the delivery and funding of health and social services were borne by the federal government.[491] In other words, unless specifically agreed, no basic services were directly provided to the communities by facilities in the Québec public health system.[492] That said, the legislation in force in Québec, including the *Act respecting health services and social services*[493] and the YPA[494] applied and had to be respected.[495] The complexity of the sharing of responsibility among the various levels of government would come with its share of problems, which would last well beyond this period.

3.5.3 Turmoil in the Indigenous world

Mobilization around the James Bay hydroelectric project certainly played a key role in the social, political and cultural turmoil in the Indigenous world throughout the 1970s. This turmoil was also tied to an international environment that was becoming increasingly open to Indigenous matters.

In the United States, the American Indian Movement, founded in 1968, gave unprecedented visibility to Indigenous claims, with the staging of the Trail of Broken Treaties in Washington in 1972 and occupation of the Wounded Knee Massacre site in 1973.[496] That same year, Marlon Brando refused the Oscar he was to receive for his performance in *The Godfather* to denounce the derogatory manner in which Indigenous peoples were being portrayed in American cinema as well as the Wounded Knee events.

Things were happening in Canada as well. During the summer of 1973, the offices of the Department of Indian Affairs in Ottawa were occupied by Indigenous people, as was Anicinabe Park in Kenora, Ontario, the following year. It was after these events that the idea

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487 Testimony of Bella Petawabano, stenographic notes taken September 29, 2017, p. 86–87, lines 4–12; document P-663 (Commission), *op. cit.*, p. 20; *Speaking notes of Grand Chief Dr. Matthew Coon Come for the Grand Council of the Crees (Eeyou Istchee), Cree Nation Government*, document P-009 (Commission), p. 18, para. 86–76.

488 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 27, lines 10–14; document P-023 (Commission), *op. cit.*, p. 23.

489 Testimony of Elisapi Uitangak, stenographic notes taken September 28, 2017, p. 159–160, lines 25–7; testimony of Jobie Tukkiapik, stenographic notes taken June 13, 2017, p. 160, lines 16–20.

490 Document P-009 (Commission), *op. cit.*, p. 19, para. 88; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 174–176, lines 11–5.

491 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 85, lines 1–18.

492 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 86–87, lines 20–1.

493 *Act respecting health services and social services*, R.S.Q. 1971, c. 48.

494 *Youth Protection Act*, *op. cit.*

495 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 85–86, lines 19-8.

496 Deloria, V. J. (1985). *Behind the Trail of Broken Treaties. An Indian Declaration of Independence.* Austin, Texas: University of Texas Press; Smith, P. C. and Warrior, R. A. (1997). *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (2nd ed.). New York, New York: The New Press.

to hold the Native People's Caravan was born in Montréal, departing from Vancouver on September 14, 1974 and ending with a protest on Parliament Hill in Ottawa. The protest was brutally repressed by the police.[497]

In the face of government resistance and police repression, many Indigenous peoples considered taking their cause on the international stage.[498] These deliberations led to the holding of the first international conference on discrimination against Indigenous populations in the Americas in Geneva.[499] The members of the Haudenosaunee delegation travelled there with their own handwritten leather passports as a gesture aimed at asserting their sovereignty.[500] Representations made to the UN in 1982 led to the forming of the Working Group on Indigenous Populations (WGIP), which was tasked with, among other things, developing human rights standards.[501] The WGIP was the first UN institution to fully embrace the participation of the First Peoples.[502] Beginning in 1985, it piloted the draft *United Nations Declaration on the Rights of Indigenous Peoples*, which, after many tribulations, would finally be adopted by the UN General Assembly on September 13, 2007.[503] At the time, Canada was among one of four countries to oppose it.[504]

In Québec during the 1970s and 1980s, many Indigenous organizations and institutions emerged in the political, cultural and social spheres. Weakened by the decision of the Eeyou (Cree) to deal on their own with the government during the JBNQA negotiations, the IQA was dissolved in 1977 to be replaced by the short-lived Confederation of Indians of Québec.[505] It would take until 1985 for a new political organization to bring together all of Québec's First Nations communities. The Assembly of First Nations Québec-Labrador, with ties to the Assembly of First Nations Canada, is still active today.[506]

By the end of the 1970s, political structures specific to each Indigenous nation also emerged, enabling them to negotiate more effectively with governments. The Northern Québec Inuit Association, which would become the Makivik Corporation after the JBNQA was signed,

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497 Harper, V. (1979). *Following the Red Path. The Native People's Caravan.* Toronto, Ontario: NC Press Limited.

498 Daes, E.-I. A. (2013). La contribution du groupe de travail sur les populations autochtones (GTPA) à la genèse et à l'évolution de la Déclaration des Nations unies sur les droits des peuples autochtones. In C. Charters and R. Stavenhagen (dir.), *La Déclaration des droits des peuples autochtones. Genèse, enjeux et perspectives de mise en œuvre* (p. 51–79). Paris, France: L'Harmattan; testimony of Kenneth Deer, stenographic notes taken February 19, 2018, p. 171, lines 13–24.

499 Testimony of Kenneth Deer, stenographic notes taken February 19, 2018, p. 172–174, lines 2–21; *Kenneth Deer Presentation*, document P-418 (Commission), p. 32–33.

500 Testimony of Kenneth Deer, stenographic notes taken February 19, 2018, p. 172–173, lines 12–7.

501 Testimony of Kenneth Deer, stenographic notes taken February 19, 2018, p. 174–175, lines 22–4.

502 Daes. (2013), *op. cit.*; testimony of Paul Joffe, stenographic notes taken February 19, 2018, p. 94, lines 3–10.

503 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, GA Res. 61/295; Charters, C. and Stavenhagen, R. (2013). La Déclaration des Nations Unies sur les droits des peuples autochtones : comment elle devint réalité et ce qu'elle annonce. In C. Charters and R. Stavenhagen (dir.), *La Déclaration des droits des peuples autochtones. Genèse, enjeux et perspectives de mise en œuvre* (p. 13–19). Paris, France: L'Harmattan, p. 13.

504 Testimony of Paul Joffe, stenographic notes taken February 19, 2018, p. 94, lines 18–24.

505 Turcotte. (2018), *op. cit.*, p. 132.

506 Testimony of Ghislain Picard, stenographic notes taken June 6, 2017, p. 14, lines 16–23; Lepage, P. (2017).

was established in 1972.[507] The Grand Council of the Crees was formed in 1974 after the Eeyous (Cree) withdrew from the IQA.[508]

With the signing of the JBNQA and the NEQA, the Eeyous (Cree) and Inuit were able to establish their own governance structures in 1978[509], that is, the Kativik Regional Government (KRG)[510] and the Cree Regional Authority.[511] In 2012, the latter became the Cree Nation Government following the agreement on governance in the Eeyou-Istchee James Bay territory.[512] As for the Naspakis, a seat is reserved for them on the KRG council.[513]

In 1975, the Atikamekw Nehirowisiw and the Innus joined diplomatic forces as the Conseil des Atikamekw et des Montagnais (CAM).[514] Through the years and over the course of negotiations, the Conseil lost some members before being dissolved in 1995. It would be replaced by three associations: the Conseil de la Nation Atikamekw, founded in 1982[515], the Conseil tribal Mamit Innuat[516] in 1988, and the Conseil tribal Mamuitun, founded in 1990.[517] The Abénakis joined the Grand Conseil de la Nation Waban-Aki in 1979[518], and other tribal councils were formed later, during the 1990s and 2000s.[519] Meanwhile, the Malécites would not be recognized as a nation by the government until 1989.[520]

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507 Testimony of Jobie Tukkiapik, stenographic notes taken June 13, 2017, p. 158–159, lines 16–4.

508 Testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 100, lines 15–23.

509 Testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 165–166, lines 23–8. Provincial laws were enacted to recognize their roles. *The Act respecting Northern villages and the Kativik Regional Government*, R.S.Q. 1978, c. V-6.1; *Act respecting the Cree Regional Authority*, R.S.Q. 1978, c. A-6.1.

510 Testimony of Jennifer Munick, stenographic notes taken November 19, 2018, p. 96, lines 12–14; testimony of Jobie Tukkiapik, stenographic notes taken June 13, 2017, p. 160, lines 21–23.

511 Testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 113, lines 7–13.

512 *Agreement on Governance in the Eeyou Istchee James Bay Territory between the Crees of Eeyou Istchee and the Gouvernement du Québec, Gouvernement du Québec, Crees of Eeyou Istchee*, July 24, 2012; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 132–133, lines 21–8.

513 Testimony of Jennifer Munick, stenographic notes taken November 19, 2018, p. 96, lines 10–11.

514 Frenette. (1996), *op. cit.*, p. 544; Desbiens. (2015), *op. cit.*, p. 44–45; *PowerPoint, Regroupement Mamit Innuat, Un regroupement d'avenir, document* P-794 (Commission), p. 2.

515 Testimony of Constat Awashish, stenographic notes taken June 19, 2017, p. 15, lines 18–25.

516 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 31–32, lines 17–12; testimony of Maude Bellefleur, stenographic notes taken September 10, 2018, p. 169, lines 9–24; Nation Innue (presentation), document P-004 (Commission), p. 6; document P-794 (Commission), *op. cit.*, p. 2. This council included the Innu communities of Ekuanitshit (Mingan), Unamen Shipu (La Romaine) and Pakua Shipu. Nutashkuan withdrew in 1998 to offer its own services.

517 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 32, lines 13–18; document P-004 (Commission), *op. cit.*, p. 7. This council included the Innu communities of Mashteuiatsh, Essipit, Pessamit, Uashat mak Mani-Utenam and Matimekush-Lac John.

518 Grand Conseil de la Nation Waban-Aki. (2018). Our mission. Retrieved from https://gcnwa.com/en/our-mission/.

519 Algonquin Anishinabeg Nation Tribal Council (2018). History and mission. Retrieved from http://www.anishinabenation.ca/en/about/; Mi'gmawei Mawiomi Secretariat. (2018). The Mi'gmawei Mawiomi Mission. Retrieved from https://www.migmawei.ca/about-us/.

520 Testimony of Amélie Larouche, stenographic notes taken September 14, 2018, p. 184, lines 15–25.

> "Things happened, you know. At the political level, in the government... [...] The movement leading to a political awareness [...] happened there. [...] The Algonquin, the Anishinabe here, we were the only ones who weren't yet organized or... united. The Cree, it was done; the Atikamekw, it was done; the Innus, it was done; the Mohawk, it was done; the Algonquin... nobody."
>
> Richard Kistabish, Anishnabe Nation
> (Document PD-16 (Commission), p. 58)

Nonetheless, indigenous institutions were not confined to the political arena. The assertion of Indigenous nations was also taking place in education and culture. In 1973, to provide concrete follow-up to the publication of *Indian Control of Indian Education*[521] by the National Indian Brotherhood, Manitou College opened its doors on the former military base in La Macaza, becoming the "first post-secondary institution in Québec designed specifically to instruct Indigenous students".[522] Students came from all corners of Canada. However, the innovative experiment ended abruptly in 1976, mainly due to reduced federal funding. It was not until 2011 that a similar institution saw the light of day in Québec with the opening of the Kiuna College, located in the Abénakis community of Odanak.[523]

In 1978, the CAM also founded the Institut éducatif culturel atikamekw montagnais, which would become the Institut culturel éducatif montagnais in 1990, and then the Institut Tshakapesh in 2009. Today, this organization is still devoted to passing down and promoting Innu culture, be it through the production of instructional material or by supporting Innu artists.[524] Following the creation of the Kativik Regional Government in 1978 in the wake of the JBNQA[525], the Inuit founded the Avataq Cultural Institute to promote their culture.[526] In 1983, the Société de communication Atikamekw-Montagnais was launched, bringing together 11 Innu and three Atikamekw Nehirowisiw communities within a single broadcasting network.[527]

3.5.4 Recognition of Indigenous peoples

In the early 1970s, Canada was a country in political turmoil. Given the rising tide of Québec nationalism, the search for a new constitutional arrangement appeared warranted. However, the negotiations proved to be long and arduous. It wasn't until 1982 that the Constitution was

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521 National Indian Brotherhood. (1972). *Indian Control of Indian Education*. Ottawa, Ontario: National Indian Brotherhood, document P-183 (Commission).

522 Dufour, E. (2017). Du Collège Manitou de La Macaza à l'Institution Kiuna d'Odanak : la genèse des établissements postsecondaires par et pour les Premières Nations au Québec. *Revue d'histoire de l'Amérique française, 70*(4), p. 11 and 15.

523 Testimony of Prudence Hannis, stenographic notes taken October 25, 2017, p. 14–16, lines 17–16.

524 Institut Tshakapesh. (2018). Institut Tshakapesh. Retrieved from https://www.tshakapesh.ca/fr/institut-tshakapesh_14/.

525 Testimony of Jennifer Munick, stenographic notes taken November 19, 2018, p. 96, lines 12–14.

526 Avataq Cultural Institute. (2018). Avataq Cultural Institute. Retrieved from http://www.avataq.qc.ca/en/Accueil.

527 Société de communication Atikamekw. (2018). SOCAM Tipatcimo Tipatshimu. Retrieved from http://www.socam.net/socam.html.

finally repatriated and the *Canadian Charter of Rights and Freedoms*[528] was added, although Québec refused to sign the final agreement. The question of the place of Indigenous peoples within Canada became urgent. Adopted under pressure from Indigenous organizations[529], section 35 of the Charter provides for the constitutional recognition and confirmation of existing rights—ancestral or treaty—of Indigenous peoples, including the First Nations, the Inuit and the Métis.[530] Constitutional conferences were also planned to clarify the content of the rights referred to in section 35.[531] These conferences would take place yearly between 1983 and 1985, then for a last time in 1987, without yielding any meaningful results.[532]

During this period, the Indigenous peoples did not confine themselves to political action. They also made use of the courts.[533] In 1973, the *Calder*[534] ruling by the Supreme Court of Canada and the Malouf judgment[535], which ordered the suspension of work on the James Bay hydroelectric project, obliged governments to recognize the existence of Indigenous titles and rights. For the first time, judges spoke of Indigenous rights stemming from their historical occupation.[536] In reaction, in 1973, the federal government adopted its first policy regarding comprehensive and specific land claims. This was a major policy shift since the publication of the *White Paper* a few years earlier.[537] The Office of Native Claims offered a political alternative to costly and uncertain litigation before the courts. It nonetheless suffered credibility issues because it had little appearance of independence.[538] This legal activism also brought the Québec government to the negotiating table, then led to the JBNQA and the NEQA.

A sign of the new approach being taken by the Québec government, the DGNQ was dissolved in 1978. A new government structure was created within Cabinet : the Secrétariat aux activités gouvernementales en milieu amérindien et inuit.[539] Its mandate was to coordinate the diverse actions of government departments and organizations offering

528 *Canadian Charter of Rights and Freedoms, Part 1 of The Constitution Act, 1982, being Schedule B to the Canada Act 1982* (UK), 1982, c. 11

529 Miller. (2000), *op. cit.*, p. 350.

530 Testimony of Serge Bouchard, stenographic notes taken September 25 2017, p. 168, lines 12–18; testimony of Maryse Picard, stenographic notes taken June 20 2017, p. 41, lines 12–16.

531 *Constitution Act,* 1982, being Schedule B of the Canada Act 1982 (UK), 1982, c. 11, s. 35.1, 37 and 37.1 (sections 35.1 and 37.1 were added under the terms of the *Constitution Amendment Proclamation*, 1983, SI/84–102, and sections 37 and 37.1 are no longer in force); *Peuples autochtones et droit constitutionnel*, document P-415 (Commission), para. 31.

532 Dupuis, R. (1991). *La question indienne au Canada*. Montréal, Québec: Boréal express, p. 89–98.

533 Testimony of Konrad Sioui, stenographic notes taken September 28, 2017, p. 27–30, lines 1–18.

534 *Calder et al. v. Attorney General of British Columbia*, 1973, *op. cit.*

535 *Le chef Max « One Onti » Gros-Louis et autres c. Société de développement de la Baie James et autres*, 1974, *op. cit.*

536 Document P-415 (Commission), *op. cit.*, para. 52.1–62; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 16, lines 19–23; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 96–97, lines 19–24; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 139, lines 2–24.

537 Testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 140, lines 6–15.

538 Miller. (2000), *op. cit.*, p. 265.

539 *Arrêté en conseil concernant la création du secrétariat des activités gouvernementales en milieu amérindien et Inuit*, No. 154-78.

direct services to Indigenous peoples as well as to develop government policies regarding Indigenous peoples.[540] In 1987, the name of this structure changed to the current Secrétariat aux affaires autochtones. Its mandate was also changed to include the negotiation and implementation of agreements between the government, the First Nations and the Inuit.[541]

It was also in 1978 that a "historic" meeting took place in Québec between the provincial government and over 125 Indigenous representatives.[542] This first official meeting exposed the depth of the chasm of misunderstanding between the parties, but also launched the building of new bridges.[543] In November 1982, a group of Indigenous representatives proposed to the Québec government 15 principles for the recognition of their constitutional rights.[544] Cabinet answered with a 15-point statement of principles[545], which has since constituted the "basis for government action with regard to Indigenous".[546] This first official position would be followed by a parliamentary commission of the National Assembly on the rights and needs of Indigenous peoples.[547] The exercise concluded on March 20, 1985, with the adoption of a resolution by the National Assembly of Québec acknowledging the existence of 10 distinct Indigenous nations and their ancestral treaty rights.[548]

3.6. 1990 – 2001 / Toward self-determination

The signature of the JBNQA and the official recognition of Indigenous Nations by the government marked an initial opening of Québec society to Indigenous realities in the 1970s and 1980s. On many issues, the frustrations experienced by Indigenous communities continued. It was in this context that the Oka Crisis broke out in the summer of 1990 and attempts to reintegrate Québec into the Canadian constitutional family came into play. Among Indigenous peoples, the time to stand up had come.

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540 Testimony of Patrick Brunelle, stenographic notes taken June 13, 2017, p. 13, lines 7–22.

541 Testimony of Patrick Brunelle, stenographic notes taken June 13, 2017, p. 16–17, lines 1–24; *Décret concernant le Secrétariat aux affaires autochtones*, No. 17-87.

542 SAGMAI. (1979). *Discours et Ateliers. La rencontre des Amérindiens du Québec et du gouvernement québécois, les 13, 14 et 15 décembre 1978*. Québec, Québec: Éditeur officiel du Québec.

543 Trudel, P. (2010). Lorsque Rémi Savard rédigeait un « Livre blanc ». *Recherches amérindiennes au Québec*, 40(1-2), p. 32.

544 Bernier, C. (1984). La négociation de l'autonomie politique des Autochtones du Québec et le droit international. *Revue québécoise de droit international*, 1, 359–372.

545 SAA, quinze principes adoptés par le Conseil des ministres le 9 février 1983, document P-805-17 (Commission).

546 Secrétariat aux Affaires autochtones. (2018). Mission and orientations of the Secrétariat. Retrieved from http://saa.gouv.qc.ca/secretariat/mission_secretariat_en.htm#principles.

547 Gourdeau. (1994), *op. cit.*

548 National Assembly, *Résolution de l'Assemblée nationale du Québec du 20 mars 1985 sur la reconnaissance des droits des Autochtones, Journal des débats*, 32nd Leg., 5th Session, Vol. 28, No. 39, p. 2570; *Partenariat développement actions : Affaires autochtones / orientations du gouvernement du Québec*, document P-024A (Commission), *op. cit.*, p. 17–18; testimony of Patrick Brunelle, stenographic notes taken June 13, 2017, p. 14, lines 6–18. The National Assembly thereby recognized "the existence in Québec of Abénaquis, Algonquin, Attikamekw, Cri, Huron, Micmaque, Mohawk, Montagnais, Naskapi and Inuit nations." The Malécite Nation was recognized as the 11th Indigenous nation of Québec in 1989. National Assembly, *Résolution du 30 mai 1989 sur la reconnaissance de la nation malécite, Journal des débats*, 33rd Leg., 2nd Session, Vol. 30, No. 117, p. 6079.

3.6.1 Ongoing conflictual relations

The origins of the Oka Crisis dated back to the French Regime, when, in 1721, the Sulpicians invited the Mohawk, Anishnabe and Nipissingue who had converted to Catholicism to relocate to the seigneury of Lac-des-Deux-Montagnes.[549] The status of the community's lands, known as Kanehsatà:ke in the Mohawk language, were problematic from the start. Mohawk oral tradition maintained that the French authorities had granted the seigneury property that fully belonged to the Indigenous peoples, while the Sulpicians held that it belonged to them.[550] The disagreement continued under the British Regime, and starting in 1781, the Mohawk presented several petitions and claims, all without success.[551] The concession of land by the Sulpicians to colonists in order to found the village of Oka only intensified the conflict.

In 1945, the federal government bought unsold land in Oka for the Mohawks. Despite repeated requests by Indigenous authorities, the land in question was not granted reserve status.[552] The refusal to officially recognize Indigenous rights maintained a climate of recurring tension over the years. Ultimately, it was a project to expand a golf course in Oka coupled with a real estate development on the contested land that ignited the powder keg in 1990.[553]

In March, barricades were erected as protest by Kanehsatà:ke community members on a secondary road leading to the land slated for development.[554] Following an injunction granted by the courts[555], the SQ intervened on the site on July 11. A gunfight erupted, resulting in the death of Corporal Marcel Lemay of the SQ. In support of those in Kanehsatà:ke, the Mohawks of Kahnawà:ke blocked the Mercier Bridge, a major access route to the island of Montréal.[556] In Kanehsatà:ke, a long siege of the Mohawk barricade began, first by the SQ, then, starting in August, by the Canadian Army, finally drawing to a close on September 26.[557]

> "It was horrible […] [W]e lived off-reserve and… many of the vigilantes that were causing a lot of the commotion that was going on… […] Throwing, […] and burning effigies… and they knew where we lived. And, one night, we got a knock on the

549 Gabriel, B., and Van den Hende, A. (2010). *At The Woods' Edge: An Anthology of the History of the People of Kanehsatake.* Kanehsatà:ke, Québec: Kanehsatake Education Centre, p. 20–28; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 29, lines 10–22.

550 Lepage, P. (2009). Oka, 20 ans déjà! Les origines lointaines et contemporaines de la crise. *Recherches amérindiennes au Québec, 39*(1-2), p. 120–121.

551 *Id.,* p. 122.

552 *Id.,* p. 123; Chalifoux, E. (2009). Près de trois siècles de revendications territoriales. *Recherches amérindiennes au Québec, 39*(1-2), p. 112.

553 Trudel, P. (2009). La crise d'Oka de 1990 : Retour sur les événements du 11 juillet. *Recherches amérindiennes au Québec, 39*(1-2), p. 130-131.

554 Testimony of Ellen Gabriel Katsisakwas, stenographic notes taken December 8, 2017, p. 167, lines 2–4.

555 *La municipalité d'Oka c. Les membres de la bande autochtone « Six nations traditional hereditary chiefs »*, [1990] J. E. 90-1092 (C.S.).

556 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 22, lines 7–11.

557 York, G. and Pindera, L. (1991). *People of the Pines. The Warriors and the Legacy of Oka*. Toronto, Ontario: Little Brown; Obomsawin, A. (Director) (1993). *Kanehsatake: 270 Years of Resistance* [documentary]. National Film Board.

> door. I was already in bed. My ex-husband went to open the door. I was looking out my bedroom window and when he opened the door, I could see, in big red writing on the door, it said: "Déménage.' Ah… at that point, they were stoning our building. And we lived in a four-plex, there were four families, and those other three families that lived in our building took care of us. Anyways, that night, we called the police, and the police said: "Ah, there's nothing we can do."
>
> Member of the Mohawk Nation
> (Document PD-16 (Commission), p. 256–257)

The length and intensity of the conflict raised the awareness of the public and government authorities of the extent and immediacy of Indigenous claims. The federal government reacted by creating a Royal Commission on Aboriginal Peoples the following year.[558] In 1996, the Commission produced a lengthy final report containing over 400 recommendations proposing a new framework for the relationship with Indigenous peoples based on the recognition and affirmation of self-government.[559]

During this same period, the open political crisis over the unilateral repatriation of the Constitution in 1982 continued. It culminated with the rejection of agreements negotiated to regularize the situation, the Meech Lake Accord of 1990, then the Charlottetown Accord in 1992.[560] Throughout these negotiations, the Indigenous peoples and Québec sought to assert their respective rights on the Canadian stage, causing some degree of friction. The province therefore abandoned its project to develop a general policy on Indigenous peoples that included self-governance, instead undertaking piecemeal negotiations with a number of groups.[561] The Canadian constitutional conflict culminated with the 1995 referendum on Québec independence, in which the Indigenous peoples, uneasy about recognition of their rights, showed little enthusiasm for the sovereignist plan.[562]

In the minds of both the federal and provincial governments, the JBNQA should have settled the claims of the signatory Indigenous nation once and for all. But, some 15 years later, dissatisfaction with its implementation remained very high.[563] Relations between the Eeyou (Cree), the Inuit and the Québec government remained strained, as evidenced by the negotiation of several side agreements to amend and complement the original text of

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558 Testimony of Ellen Gabriel Katsisakwas, stenographic notes taken December 8, 2017, p. 201, lines 9–21.

559 Lavoie, M. (2007). Royal Commission on Aboriginal Peoples *Recherches amérindiennes au Québec*, 37(1).

560 Testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 143, lines 2–9. The Indigenous peoples were unsuccessful in having their inherent right to self-governance constitutionalized in the Meech Lake Accord, pushing Manitoba Cree MLA Elijah Harper to oppose ratification by the Manitoba Legislature, resulting in the Accord's failure. Recognition of the right to Indigenous self-governance was subsequently included in the Charlottetown Accord, but this agreement was rejected by Canadians in a 1992 referendum.

561 Dupuis, R. (1995). *The government of Québec and Aboriginal self-government*. Retrieved from http://publications.gc.ca/site/eng/9.829754/publication.html, p. 68.

562 Salée, D. (1994). L'État québécois et la question autochtone. In A.-G. Gagnon (dir.), *Québec : État et société*, Vol. 2, (p. 68). Montréal, Québec: Éditions Québec Amérique; Trudel, P. (1998). D'une obligation à l'autre. L'indépendance du Québec et le droit des peuples autochtones. *Recherches amérindiennes au Québec*, 28(3), 54–59; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 177, lines 7–12.

563 Testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 118–119, lines 18–14; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 174, lines 4–18; document P-1141, *op. cit.*, p. 7.

the Agreement[564], as well as the increasing number of legal proceedings. At the start of the 1990s, tensions reached new heights over forest conflicts involving the Eeyou (Cree) and their international campaign to block the Great Whale hydroelectric development, a project which would ultimately be abandoned.[565]

Given the difficulties encountered at the political level, the Indigenous peoples did not hesitate to turn again to the courts to have their rights upheld. The year 1990 proved to be pivotal in this regard. Indeed, it was in 1990, with the *R. v. Sparrow*[566], decision that the Supreme Court of Canada spelled out the existence and scope of Indigenous ancestral rights protected under section 35 of the Constitution of 1982.[567] Several judgments also had a specific impact in Québec, especially the Sioui decision[568], which recognized a document signed by the British General Murray and presented to the Hurons-Wendat in 1760 as constituting a treaty.[569] This was the first decision to recognize Indigenous rights on Québec territory, outside the regions covered by the JBNQA.

For the nations with agreements, specifically the Eeyou (Cree), the conflicts were in large part resolved with the negotiation of the *Agreement concerning a new relationship between le Gouvernement du Québec and the Crees of Québec*[570] in 2002. Dubbed the "Peace of the Braves," this agreement launched a new "nation-to-nation" partnership to ensure the economic and social development of James Bay.[571] A similar accord, the Sanarrutik Agreement, would be signed that same year with the Inuit.[572]

3.6.2 Public services offered by the Québec government

A new approach on Indigenous issues gradually began taking shape in some government departments, starting in the early 1990s. Where cultural differences had once been

564 At that time, there were 24 side agreements to the James Bay and Northern Québec Agreement, the last in 2012, and three to the *Northeastern Québec Agreement*; document P-010 (Commission), *op. cit.*, p. 12, para. 56.

565 Testimony of Matthew Coon-Come, stenographic notes taken June 14, 2017, p. 25, lines 2–10; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 122–123, lines 24–22 et p. 121, lines 8–14; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 176, lines 10–17 et p. 225, lines 7–25; document PD-16 (Commission), *op. cit.*, p. 53–56.

566 *R.* v. *Sparrow*, [1990] 1 S.C.R. 1075; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 47, lines 10–23.

567 The Supreme Court subsequently developed its theory of ancestral rights in a series of judgments, particularly: R. v. Van der Peet, [1996] 2 S.C.R. 507; *R.* v. *N.T.C. Smokehouse Ltd.*, [1996] 2 S.C.R. 672; *R.* v. *Gladstone*, [1996] 2 S.C.R. 723; *Delgamuukw* v. British Columbia, [1997] 3 S.C.R. 1010; R. v. *Marshall*, [1999] 3 S.C.R. 533; *Haida Nation* v. British Columbia (Minister of Forests), 2004 SCC 73; *Nation Tsilhqot'in* v. *British Columbia*, 2014 SCC 44.

568 *R.* v. Sioui, [1990] 1 S.C.R. 1025; testimony of Konrad Sioui, stenographic notes taken September 28, 2017, p. 24–29, lines 19–8.

569 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 21–22, lines 22–20.

570 *Agreement concerning a new relationship between le Gouvernement du Québec and the Crees of Québec*, Gouvernement du Québec, Crees of Québec, February 7, 2002.

571 Testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 129, lines 2–22 and p. 124, lines 12–17.

572 *Partnership Agreement on Economic and Community Development in Nunavik (Sanarrutik Agreement)*, Makivik Corporation, Kativik Regional Government and the Gouvernement du Québec, April 9, 2002; testimony of Jobie Tukkiapik, stenographic notes taken June 13, 2017, p. 159, lines 20–25.

perceived as obstacles to be eliminated, it was now considered more important to recognize them and take them into account to make it possible to live side by side.[573] Section 35 of the *Constitution Act, 1982*, which was slow to be implemented, inspired this vision.[574]

The principles of self-government also underpinned the *First Nations Policing Policy* (FNPP) adopted by the federal government in 1991.[575] This policy was put in place to align Indigenous policing programs developed since the 1960s across Canada. It also aimed to address the failure of previous models, which, in particular, were unable to reduce the Indigenous presence in the criminal justice system.[576] Some reports produced in the early 1990s raised the issue of unprofessionalism and discrimination of the regular police forces in their dealings with Indigenous peoples. Issues cited included the negative perceptions of the special constables, their insufficient number and the unfair treatment reserved for them (especially in terms of training and compensation), as well as underuse of the community and preventive approaches.[577] In answer to these criticisms, the FNPP aimed for negotiation of tripartite agreements among the federal, provincial and Indigenous governments. The goal was to establish police departments that would be self-governed by the Indigenous communities or, in the absence of agreements, recourse to the provincial police force (the SQ in Québec's case).[578] Policing would be fully funded by the governments, with the federal government assuming 52.0%, and the provincial 48.0%, all under signed agreements.[579] This system, still in place today, seeks to respond to the criticisms of the former "non-native Western-urban model".[580]

The development of self-administered Indigenous police forces did not necessarily mean radical transformations in police practices. The laws and regulations applied continued to be those proposed by the State, through band councils and governments.[581] Several initiatives were nonetheless introduced in the justice system to take cultural differences into account, including developing awareness among non-Indigenous personnel.

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573 Aubert and Jaccoud. (2009), *op. cit.*, p. 116.

574 *Id.,* p. 113.

575 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 104, lines 2–7.

576 Jaccoud. (2002), *op. cit.*, p. 113.

577 Depew, R. (1986). *Native policing in Canada: a review of current issues.* Ottawa, Ontario: Ministry of the Solicitor General; Head, R. H. D. (1989). Policing for Aboriginal Canadians: the R.C.M.P. Role. Ottawa, Ontario: Royal Canadian Mounted Police; Royal Commission on the Donald Marshall, Jr., Prosecution. (1989). *Digest of findings and recommendations.* Retrieved from https://novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf; Law Reform Commission of Canada. (1991). *Aboriginal peoples and criminal justice: equality, respect and the search for justice.* Ottawa, Ontario.

578 Aubert and Jaccoud. (2009), *op. cit.*, p. 114; testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 99, lines 14–25 and p. 105–106, lines 20–7.

579 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 104, lines 7–11.

580 Depew. (1986), *op. cit.*, p. ix.

581 Jaccoud. (2002), *op. cit.*, p. 113 and 116; testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 102–103, lines 23–4.

In 1981, the organization Native Para-Judicial Services of Québec was launched to offer assistance to Indigenous people involved with the justice system, whether as a victim, witness or accused.[582] Starting in the 1990s, several reflections were also undertaken at the federal and provincial levels to propose improvements or even alternatives to the state justice system in place.[583] In Québec, the Sommet de la Justice, held in 1992, led to the creation of a Comité de consultation sur l'administration de la justice en milieu autochtone, presided over by Justice Jean-Charles Coutu, who issued his report in 1995.[584] It made some 50 recommendations to create an overall strategy for the administration of justice in Indigenous communities in order to improve the state justice system and move toward the gradual assumption of responsibility by Indigenous communities. Many of these ideas were implemented[585], such as appointing Indigenous justices of the peace[586], adapting sentencing practices[587], implementing Indigenous community justice programs (often called justice committees) with the mission of dejudicializing and offering accused parties alternative measures through their community[588], improving itinerant court services and holding legal terminology workshops in Indigenous languages.[589]

582 Testimony of Sharon McBride, stenographic notes taken September 14, 2017, p. 53, lines 11–15 and p. 54, lines 14–16; DG-0204-C, *Les services parajudiciaires autochtones du Québec (SPAQ)*, document P-839-81 (Commission).

583 Document PD-11 (Commission), *op. cit.*, p. 24–26; Justice Canada. (1991). *Aboriginal Justice Initiative*. Ottawa, Ontario: Supply and Services Canada; Groupe de travail sur l'accessibilité à la justice. (1991). *Jalons pour une plus grande accessibilité à la justice*. Québec, Québec: Ministère de la Justice; Justice Canada. (1996). *The Aboriginal Justice Strategy*. Ottawa, Ontario: Supply and Services Canada; Royal Commission on Aboriginal Peoples. (1996). *Bridging the cultural divide: a report on Aboriginal people and criminal justice in Canada*. Ottawa, Ontario: Canada Communication Group; Québec Grand Council of the Crees. (1991). *Justice for the Cree: final report*. Nemaska, Québec: Québec Grand Council of the Crees; document P-1141 (Commission), *op. cit.*

584 Gouvernement du Québec. (1993). *La justice, une responsabilité à partager : les actes du Sommet de la justice tenu à Québec du 17 au 21 février 1992*. Québec, Québec: Ministère de la Justice; Comité de consultation sur l'administration de la justice en milieu autochtone. (1995). *La justice pour et par les Autochtones*. Québec, Québec: Ministère de la Justice; document PD-11 (Commission), *op. cit.*, p. 26.

585 Jaccoud. (2002), *op. cit.*, p. 113–116.

586 In Québec, Indigenous justices of the peace were appointed under section 107 of the Indian Act in the Mohawk (Kahnawà:ke and Akwesasne) and Innu (Mashteuiatsh) communities. In addition, Indigenous justices of the peace with limited powers were appointed in the Eeyou (Cree) and Inuit communities. *Les juges de paix*, document P-839-105 (Commission), p. 4 and 13.

587 At the federal level, this approach is embodied in the 1996 adoption of section 718.2(e) of the *Criminal Code*, R.S.C. 1985, c. C-46 and in the decisions *R.* v. *Gladue*, [1999] 1 S.C.R. 688 and *R.* v. *Ipeelee*, 2012 SCC 13; Denis-Boileau, M.-A. and Sylvestre, M.-E. (2016). *Ipeelee* et *le devoir* de résistance. *Canadian Criminal Law Review, 21*, 73–121, document P-058 (Commission); Jaccoud, M. (1999). Les cercles de guérison et les cercles de sentence autochtones au Canada. Criminologie, 32(1), 79-105, document P-407 (Commission); *Les rapports Gladue*, document P-839-102 (Commission).

588 Les comités de justice, document P-839-103 (Commission); *Alternative Measures Program for adults in Aboriginal communities*, document P-839-104 (Commission); *DG-0024-C, Informations sur les Comités de justice communautaire*, document P-839-11 (Commission), tab 11.1.1, p. 19 of 940 (online PDF).

589 Working group composed of representatives of the Court of Québec, the Ministère de la Justice, the Directeur des poursuites criminelles et pénales and the Secrétariat aux Affaires autochtones. (2008), *op. cit.*, p. 17.

In the area of correctional services, the main initiative in the 1990s was adoption by the federal government of a law proposing services adapted to Indigenous clienteles.[590] However, there were no equivalent measures at the provincial level.

In health and social services, while the public health care system was undergoing major reforms, the organization of services offered to Indigenous peoples remained unchanged. Strictly speaking, funding and services continued to be shared among several levels of government, depending on the nature of the service and the person's place of residence (community under an agreement, community not under an agreement, or outside a community). That said, in its *Politique de la santé et du bien-être*, adopted in 1992, the Québec government for the first time officially acknowledged the harsh circumstances under which the First Nations live and made Indigenous communities a priority target for intervention.[591] To tackle these challenges, the policy proposed a progressive assumption of health and social services by the communities themselves.[592]

Then, at the beginning of the 2000s, came the lesson of little Jordan River, who suffered from a rare neuromuscular disorder. Caught in a jurisdictional squabble between the federal government and the government of Manitoba, where he lived, the boy died without ever being returned to his family home and community.[593] At the heart of this human drama was a fight between the two levels of government over financial responsibility for the homecare the child needed.[594] Several years after the conflict began, the House of Commons passed a motion stipulating that, in case of a jurisdictional dispute, the government that was addressed first should pay for the services required and then, and only then, undertake steps to pursue sharing of costs.[595]

At this same time, a growing number of communities, concerned with their people's state of health, sought special agreements with the government to assume greater responsibility for the service offer. In 2001, the Québec government opened the door in the area of youth protection, changing the law to allow communities to establish their own youth protection program.[596] A number of nations expressed interest, including the Atikamekw Nehirowisiw

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590 *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 79–84.

591 Gouvernement du Québec. (1992). *La politique de la santé et du bien-être*. Québec, Québec: ministère de la Santé et des Services sociaux, p. 164.

592 *Ibid*.

593 Testimony of Cindy Blackstock, stenographic notes taken September 4, 2018, p. 98–100, lines 12–7; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 44, lines 19–25.

594 Testimony of Cindy Blackstock, stenographic notes taken September 4, 2018, p. 99, lines 13–23; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 44, lines 5–19; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 193, lines 9–12.

595 House of Commons of Canada, Journals, 39th Parl., 2nd Session, No. 36, document P-772-4 (Commission); testimony of Cindy Blackstock, stenographic notes taken September 4, 2018, p. 132, lines 10–15; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 45, lines 5–12. A second motion would also be passed in 2016. House of Commons of Canada, Journals, 42nd Parl., 1st Session, No. 102, document P-772-5 (Commission).

596 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 59, lines 10–16; *Youth Protection Act*, CQLR, c. P-34.1, s. 37.5; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 75, lines 12–18.

Nation, which had already implemented an intervention system under Atikamekw authority as a pilot.[597] However, it would be more than 16 years before the first agreement on youth protection was signed.[598] But the time for self-determination had nonetheless come. The message was clear: more than merely being consulted, the nations wanted their own levers of action.

This is the context in which the period under investigation by the Commission begins. The next 15 years would be marked by major events in the area of relations, including the First Nations Socioeconomic Forum in 2006, implementation of the TRC in 2008 and the emergence of the *Idle No More* movement in 2012. Because these events coincide with the testimonies of the witnesses who spoke at the hearings, they have nonetheless been treated as evidence and are mentioned elsewhere in this report, sometimes as elements of the regulatory framework of services under scrutiny, sometimes as contextual and analytical elements.

That said, regardless of the angle from which they are examined, we can confirm without fear of error that relations between Indigenous and non-Indigenous peoples are a complex mosaic of policies, legislative measures and human relationships. Relations that, alas, have all too often been mishandled and that still translate today into a lack of understanding and a feeling of mutual distrust that is fertile ground for racism and systemic discrimination.

597 Testimony of Constant Awashish, stenographic notes taken June 19 2017, p. 41, lines 8–14; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 78, lines 13–15; testimony of Lucie Dubé, stenographic notes taken February 22, 2018, p. 148–150, lines 6–2; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 166–167, lines 12–2.

598 Testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 177–178, lines 17–6; *Entente visant à établir un régime particulier de protection de la jeunesse pour les membres des communautés de Manawan et de Wemotaci*, document P-445 (Commission).

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CHAPTER 4

INDIGENOUS PEOPLES OF QUÉBEC

Québec's Indigenous peoples encompass both First Nations and Inuit. The term First Nations includes the Abénakis, Anishnabek (Algonquins), Atikamekw Nehirowisiw, Eeyou (Cree), Hurons-Wendat, Innus, Malécites, Mi'gmaq, Mohawks and Naskapis. Members of these peoples have settled from east to west and north to south. Some live in First Nations communities[599] or Inuit communities, others in urban areas. All are bearers of their own unique culture based in large part on their traditional and contemporary living environment.

From the outset of the process, the Commission's team went to great lengths to obtain statistical data on Québec's First Nations and Inuit. This proved to be very difficult. Not only did the team regularly come up against a lack of data, but the data available turned out to be piecemeal and posed significant limitations that meant having to handle it with extreme caution.

In my view, the weakness of the data collected is in itself relevant to our inquiry. That is why I still felt it appropriate to assemble the available information to provide a sociodemographic, psychosocial, health, judicial and correctional profile of Indigenous people. Basically quantitative, the content organized as such forms the bulk of this chapter. It is a baseline from which we can collectively measure the progress made in coming years, at least I hope. Although the statistics shed light on real phenomena, they must be interpreted and used considering the historical context of colonization and the economic and social marginalization that Indigenous peoples have faced for centuries.

In addition, since not everything is about statistics, the Commission's team also looked at what characterizes Indigenous people in terms of land, language, governance and economics. The information collected was used to draw the geopolitical portrait presented. Much of the information was gleaned from the evidence gathered by the Commission, both through public hearings and interviews with individuals belonging to one or another group of Indigenous peoples.[600]

This chapter reflects the desire, expressed by several stakeholders, to foster a better understanding of Indigenous peoples. Although it is far from comprehensive, it lays the foundation for what I hope to be the beginnings of reconciliation and a path to progress in the relations established with First Nations and Inuit.

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599 The notion of Indigenous community must be understood here to include both reserves and Indian settlements.

600 *Perspectives historiques autochtones : entrevues*, document PD-16 (Commission).

4.1. Sociodemographic portrait

In Québec, as in Canada's other provinces, population is estimated using information collected through the census conducted every five years by Statistics Canada. Using certain mandatory questions, the five-year survey also paints a picture of ethnic diversity, immigration, education, language and households. The last such exercise established Québec's total population at 8,394,034 in 2017.[601]

However, the population data collected by Statistics Canada do not provide a truly reliable picture of Québec's Indigenous population. In fact, since it was voluntary to self-identify as an Indigenous person for the census, the population data on First Nations and Inuit do not have the same level of probity as the other information gathered. On top of that, some Indigenous communities[602] refused to let the census enumerators on their territory and, by doing so, excluded their populations from the overall portrait created.

For all these reasons, a decision was made to refer to the Indian Register, the Register of Cree and Naskapi Beneficiaries and the Register of Inuit beneficiaries to determine the number of Indigenous people living in Québec, the demographic curve for Indigenous peoples, and the male-to-female ratio.[603]

Despite the gaps identified above, the statistics regarding place of residence, life expectancy, family structure and education, as well as income and employment, are from Statistics Canada. The scarcity, or even lack of, alternative information sources on these subjects with respect to Indigenous peoples made this decision necessary.

4.1.1 Populations

According to the existing registers, Québec has 114,094 people of Indigenous origin (First Nations and Inuit combined), that is, 1.4% of the province's total population.[604] Of that number, more than 100,000 (100,444) belong to a First Nations community.[605] The most populous nations are the Innus, with 23,297 registered individuals, and the Eeyou (Cree), with 21,126 people of all ages.[606] Bringing up the rear are the Naskapis and Malécites, with 1,526 and 1,315 registered individuals, respectively.[607]

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601 Institut de la statistique du Québec. (2018). *Québec Handy Numbers. 2018 Edition*. Québec City, Québec: Institut de la statistique du Québec, p. 10. Based on Statistics Canada data.

602 This was the case for the communities of Kahnawà:ke, Kanehsatà:ke, Akwesasne and Barriere Lake (Lac Rapide) in 2016.

603 For more information on these registers and their methodological limitations, see Appendix 12.

604 *Données populationnelles des Autochtones au Québec*, document PD-13 (Commission). In order to ensure proper representation, those aged 100 and older (2,101 in total) in the registers were excluded from all calculations done from those sources. Because of its unique geographic location, straddling the Canada–US border and the Québec–Ontario border, the Akwesasne community's population was not taken into account either.

605 Document PD-13 (Commission), *op. cit.*, p. 8. Total based on individuals listed in the Indian Register (excluding Inuit, Eeyou (Cree) and Naskapis) and in the Register of Cree and Naskapi Beneficiaries.

606 *Ibid.*

607 *Ibid.* The detailed breakdown of First Nations population by nation as well as by community can be found in Appendix 13. The home nation was based on the home community listed in the Indian Register.

The Inuit register is comprised of 13,650 registrants, which is 11.96% of the total Indigenous population registered in Québec.[608] The four most populated communities are Kuujjuaq (15.9% of the total Inuit population), Inukjuak (13.2%), Puvirnituq (12.5%) and Salluit (11.3%), which alone account for more than half of the Inuit population (52.9%).[609]

4.1.2 Place of residence

In Québec in 2016, over half of First Nations members, namely 55.6%, were living outside the communities, most often in urban areas.[610] However, the situation was much different for the Inuit, because, across Canada, close to three quarters of them (72.8%) were still living in communities north of the 55th parallel.[611]

However, this gap could narrow because, at the time of its last census, Statistics Canada noted the growing numbers of Indigenous people in urban areas, both among First Nations and Inuit.[612] Based on this data, Montréal has the seventh largest First Nations population in urban Canada[613] and the third largest Inuit population.[614] Another important aspect is that, over the course of 10 years, from 2006 to 2016, Québec's Indigenous population[615] more than doubled in three census metropolitan areas, Québec City, Saguenay and Sherbrooke.[616]

The Statistics Canada analysts refuse, however, to see this as a mass movement to the cities. From their standpoint, the urbanization of Indigenous peoples is due to a number of factors: the growing Indigenous population, both inside and outside the communities; the overall mobility of the population; and the increase in the number of people choosing to self-identify as Indigenous during the census.[617]

At a hearing, the Regroupement des centres d'amitié autochtones du Québec indicated that there are three key factors behind the migration of First Nations members and Inuit to urban areas, namely education (35.0%), work (24.0%) and access to housing (11.0%).[618]

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608 *Id.*, p. 11. This number also includes Inuit who have not been living in Nunavik for more than 10 years.

609 *Ibid.* A detailed breakdown of the Inuit population by community can be found in Appendix 14.

610 Institut de recherche et d'informations socioéconomiques. (2018). *Portrait des inégalités socioéconomiques touchant les Autochtones du Québec*. Montréal, Québec: Institut de recherche et d'informations socioéconomiques, p. 4; Lévesque, C., and Cloutier, E. (2013). Les Premiers Peuples dans l'espace urbain au Québec : trajectoires plurielles. In A. Beaulieu, S. Gervais, and M. Papillon (dir.), *Les Autochtones et le Québec. Des premiers contacts au Plan Nord* (p. 281-296). Montréal, Québec: Presses de l'Université de Montréal.

611 Statistics Canada. (2017, October 25). *Aboriginal peoples in Canada: Key results from the 2016 Census*. Ottawa, Ontario: Statistics Canada, p. 6.

612 *Id.*, p. 1.

613 Statistics Canada. (2017, October 25). *Number of First Nations people, Métis and Inuit by selected census metropolitan areas, 2016*. [Research data available online]. Retrieved from https://www150.statcan.gc.ca/n1/daily-quotidien/171025/cg-a005-eng.htm.

614 Statistics Canada. (2017, October 25). *Aboriginal peoples in Canada: Key results from the 2016 Census*, *op. cit.*, p. 9.

615 This figure also includes the Métis.

616 Statistics Canada. (2017, October 25). *Aboriginal peoples in Canada: Key results from the 2016 Census*, *op. cit.*, p. 10.

617 *Id.*, p. 9; Lévesque, C., and Cloutier, E. (2013), *op. cit.*, p. 281-296; testimony of Philippe Meilleur, stenographic notes taken June 8, 2017, p. 22-23, lines 10-1.

618 Testimony of Philippe Meilleur, stenographic notes taken June 8, 2017, p. 22, lines 1-9.

4.1.3 Demographic curve

According to data from the different registers available, the average age of Indigenous people living in Québec is 37.3 years.[619] Specifically, the average age for women belonging to one of Québec's 11 Indigenous nations is 38.5 years, while that for men is 36 years.[620] In comparison, the average age for the population of Québec as a whole is 42.1 years. It stands at 43 years for women and 41.2 years for men.[621]

The Inuit have the lowest average age (28 years), which is on par with the Naskapis (28 years). Not far behind are the Atikamekw Nehirowisiw (30 years) and Eeyou (Cree) (31 years).[622] However, the Inuit and Naskapis stand out from the rest with half of their population under the age of 25.[623] Conversely, the highest average ages were recorded for the Malécites (50 years), Abénakis (49 years), Hurons-Wendat (47 years) and Mohawks (46 years).[624]

According to the Institut de la statistique du Québec, the life expectancy of Quebecers, all cultural affiliations combined, has increased steadily and stands at 82.7 years (80.8 years for men and 84.5 years for women).[625] The Inuit have not seen a similar rise. In fact, life expectancy was estimated at 67 years for the Nunavik population, that is, 65 years for men and 69 years for women.[626] The most recent data available for the Eeyou (Cree) reveal that children born between 1999 and 2003 in Eeyou Istchee (Cree) territory can expect to live to an age of 77.2.[627]

4.1.4 Male-to-female ratio

The proportion of men and women is almost identical in the various nations. In fact, according to the registers available, 50.1% of the Indigenous registrants are women, versus 49.9% being men.[628] The results were similar for Québec as a whole, with 50.3% being women and 49.7% being men.[629]

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619 Document PD-13 (Commission), *op. cit.*, p. 12. This percentage was determined based on birth dates in the registers. Subsequently, individuals who failed to provide a date of birth were excluded from the calculation, as well as those aged 100 or over, which brings the sample to 112,986 people.

620 *Id.,* p. 13. The average age by nation as well as the median for each nation are presented in Appendix 15.

621 Institut de la statistique du Québec. (2017). *Le bilan démographique du Québec*. Édition 2017. Québec, Québec: Institut de la statistique du Québec, p. 26.

622 Document PD-13 (Commission), *op. cit.*, p. 12.

623 *Ibid*.

624 *Ibid*. The results obtained may in fact be considered conservative, since a significant number of deceased persons still appear in the Indian Register.

625 *Id.,* p. 54.

626 Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec. (2015). *Portrait de santé du Nunavik en 2015. Les enjeux chez les jeunes, les adultes et les personnes âgées.* Montréal, Québec: Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec, p. 37.

627 Cree Board of Health and Social Services and the Institut national de santé publique du Québec. (2008). *Enquête de santé auprès des Cris 2003. Canadian Community Health Survey. Cycle 2.1 Iiyiyiu Aschii. État de santé, espérance de vie et limitation des activités.* Montréal, Québec: Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec, p. 5.

628 Document PD-13 (Commission), *op. cit.*, p. 12.

629 Institut de la statistique du Québec. (2017), *op. cit.*, p. 26.

4.1.5 Family

When it comes to family, the profile of Indigenous people differs from Québec's overall population. The first defining feature is that children are clearly more numerous among First Nations couples living in a community (64.1%)[630] and Inuit living in Nunavik (79.6%)[631] than in the general population (40.2%).[632] As a result, the Indigenous population is growing four to five times faster than Québec's non-Indigenous population. The number of children is also three to four times greater among members of First Nations and Inuit than in Québec's overall population.[633]

Nunavik communities also stand out in terms of the proportion of single-parent families. The last census conducted by Statistics Canada found the proportion of single-parent families to be 18.3% among Inuit living north of the 55th parallel.[634] By comparison, single-parent families account for an estimated 12.8% of First Nations families, whereas this figure for Québec as a whole is 16.8%.[635]

Family size also differs. While 29.0% of First Nations families have three or more children, the rate exceeds 35.0% among Inuit families.[636] By contrast, less than one family in six (15.6%) has three or more children when considering Québec as a whole.[637] In absolute numbers, the average family living in a First Nations community has 3.2 members, while the average Inuit family has 3.7.[638] Yet a few communities distinguish themselves with even larger families. Such is the case for all Atikamekw Nehirowisiw communities (3.7 persons)[639] and Eeyou (Cree) communities (3.6 persons)[640], as well as the Inuit communities of Tasiujaq (4 persons), Kangiqsualujjuaq, Quaqtaq, Salluit and Ivujivik (3.9 persons).[641] On the contrary, there are fewer families with only one child among First Nations (42.8%)[642] and Inuit (35.8%)[643] than in Québec as a whole (45.9%).[644] For First Nations, the Hurons-Wendat have the smallest

630 Statistics Canada. (2018). Census Profile, 2016 Census [Research data available online]. Retrieved from https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E. A table presenting data on families in each of Québec's Indigenous communities can be found in Appendix 16.

631 *Ibid.* A table presenting data on families in each Nunavik community can be found in Appendix 17.

632 Institut de la statistique du Québec. (2018). *Panorama des régions du Québec. Édition 2018*. Québec, Québec: Institut de la statistique du Québec, p. 27.

633 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 103, lines 8–14.

634 Statistics Canada. (2018). Census Profile, 2016 Census, *op. cit.*

635 Institut de la statistique du Québec. (2018), *Panorama des régions du Québec*, *op. cit.*, p. 27.

636 Statistics Canada. (2018). Census Profile, 2016 Census, *op. cit.*

637 Institut de la statistique du Québec. (2018), *Panorama des régions du Québec*, *op. cit.*, p. 28.

638 See appendices 16 and 17.

639 Statistics Canada. (2018). Census Profile, 2016 Census, *op. cit.*

640 *Ibid.*

641 *Ibid.*

642 *Ibid.*

643 *Ibid.*

644 Institut de la statistique du Québec. (2018), *Panorama des régions du Québec*, *op. cit.*, p. 28.

families, with around 2.7 persons per family[645], followed closely by the Abénakis, with 2.8 persons per family.[646] The Québec-wide average for family size is 2.3 persons.[647]

4.1.6 Education

According to a report released by the Institut de recherche et d'informations socioéconomiques, and based on the latest data collected by Statistics Canada, the level of education of Québec's Indigenous population is lower than that of its non-Indigenous population. In fact, while 13.0% of non-Indigenous persons aged 24 to 65 have not earned a certificate, diploma or degree, that number swells to 30.5% for members of First Nations and 54.2% for the Inuit population.[648] Furthermore, the school dropout rate for Indigenous persons (First Nations and Inuit) living in urban areas is reportedly 43.0%.[649]

A gap can be found at all educational levels. However, the discrepancy proves to be narrowest with respect to getting a high school diploma or attestation of equivalence.[650] In fact, based on the 2016 census by Statistics Canada, a high school diploma was the highest certificate, diploma or degree obtained by 17.7% of First Nations and 17.1% of Inuit people. This figure stands at 21.6% for non-Indigenous persons.[651] The gap tends to widen, however, at the postsecondary level with a marked difference in the number of people earning certificates and diplomas and bachelor's, master's and doctoral degrees. Indeed, while 20.8% of non-Indigenous persons said they had a university degree in 2016, less than 8.0% (7.9%) of First Nations members and 2.0% of Inuit could say the same.[652] On a more positive note, more First Nations members (22.9%) than non-Indigenous people (19.7%) have earned an apprenticeship certificate or graduated from a trade school.[653]

4.1.7 Employment and income

In Québec, as elsewhere in Canada, there are significant differences between non-Indigenous and Indigenous persons with respect to employment. The most recent Statistics Canada data indicate that the number of employed people (employment rate), all ages combined, is lower for First Nations members (49.5%) than for the non-Indigenous population (59.7%). The same applies to the Inuit (54.6%).[654]

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645 Statistics Canada. (2018). Census Profile, 2016 Census, *op. cit.*

646 *Ibid.*

647 *Ibid.*

648 Institut de recherche et d'informations socioéconomiques. (2018), *op. cit.*, p. 4.

649 Testimony of Tanya Sirois, stenographic notes taken June 8, 2017, p. 61, lines 15–19.

650 Institut de recherche et d'informations socioéconomiques. (2018), *op. cit.*, p. 5.

651 Statistics Canada. (2018, January 16). Highest certificate, diploma or degree, 2016 Census. [Research data available online]. Retrieved from https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&Lang=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=1341679&GK=0&GRP=1&PID=110633&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=123&VID=0&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0

652 *Ibid.*

653 Institut de recherche et d'informations socioéconomiques. (2018), *op. cit.*, p. 4.

654 Statistics Canada. (2018, January 16). Highest certificate, diploma or degree, 2016 Census, *op. cit.*

During the last census, unemployment was twice as high for First Nations, both among men (15.8% vs. 6.8%) and women (9.8% vs. 5.2%).[655] This gap was even more pronounced for Inuit men (18.8% vs. 6.8%) and women (12.7% vs. 5.2%).[656] It was also determined that the proportion of unemployed persons generally increases with geographic remoteness.[657]

The precariousness is also evident in the urban Indigenous population. According to a survey conducted in 2016 and 2017 of more than 1,700 Indigenous persons living in 13 Québec cities, the employment rate of respondents was 35.0%, while 33.0% were unemployed.[658]

It is important nonetheless to emphasize that these data exclude certain self-employment activities such as crafts, making clothing, fishing, trapping, hunting and gathering native plants (medicinal or other).

The differentiation between non-Indigenous and Indigenous also extends to income. In 2016, Statistics Canada estimated that the median after-tax income of a non-Indigenous person in Québec ($29,632) was about $5,000 higher than that of a First Nations member ($24,550) or Inuit ($24,260), all ages combined.[659] The discrepancy is apparently even greater with Indigenous people living in urban areas, as 63.0% of the respondents to the 2016–2017 survey claimed to have an income of under $20,000.[660]

There is also a gap between men and women when it comes to income.[661] The gap of non-Indigenous people is certainly higher than that of First Nations and Inuit people.[662] Of note, the median after-tax income of Inuit women is higher than that of men (+31.3%).[663] Among Indigenous people, as is the case with non-Indigenous people, the average income reported is directly linked to educational attainment.[664]

The economic gap is accentuated in some regions by an extremely high cost of living. This is particularly true in Inuit communities. Based on a study by the Canada Research Chair in Comparative Aboriginal Conditions at Université Laval, food and housing account for a whopping 63.0% of household income in Nunavik.[665] By contrast, these expenses represent 41.3% of total household expenses in Québec. The proportion of expenses reported for food

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655 Institut de recherche et d'informations socioéconomiques. (2018), *op. cit.*, p. 5.

656 *Ibid.*

657 First Nations of Québec and Labrador Health and Social Services Commission. (2017). *First Nations Regional Early Childhood, Education and Employment Survey. Overview of the Unemployed.* 2 Wendake, Québec: FNQLHSSC, p. 5.

658 *Portrait sur l'accessibilité aux services publics en milieu urbain pour les Autochtones*, document P-192 (Commission), p. 13.

659 Institut de recherche et d'informations socioéconomiques. (2018), *op. cit.*, p. 6.

660 Document P-192 (Commission), *op. cit.*, p. 13.

661 Testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 26–27, lines 12–5.

662 Institut de recherche et d'informations socioéconomiques. (2018), *op. cit.*, p. 6–7.

663 *Ibid.*

664 *Id.*, p. 7.

665 Robitaille, J., Guénard, E., Lévesque, S. and Duhaime, G. (2018). *The Cost of Living in Nunavik in 2016. Research Report. Revised and Expanded Version.* Québec, Québec: Canada Research Chair in Comparative Aboriginal Conditions, Université Laval, p. 12.

in Inuit communities, up to double that recorded elsewhere in Québec, explains to a large extent this difference.[666] There are no recent data to help us accurately determine the cost of living in First Nations communities. However, some of the testimonies heard during the hearings confirmed the issues around the transport of food to remote areas and the impact it has on the cost of living.[667]

The socioeconomic and population realities that have been highlighted underlie the difficult living conditions described by a number of people who appeared before the Commission. Those realities also affect the amount and type of requests made to the various public services under investigation.

4.2. Geopolitical portrait

As stated at the beginning of this chapter, First Nations and Inuit have distinct, diverse cultures.[668] With a legacy of traditions thousands of years old, these cultures find their roots in the land and continue to define the essence of Indigenous peoples in Québec. Many witnesses heard as part of the work of the Commission have confirmed this vitality.[669] From a perspective of fairness, all who testified also emphasized the importance of taking into account these cultural characteristics in the public service offer. Four elements that help define the geopolitical reality of the Indigenous nations of Québec caught our attention.

4.2.1 Territory

The notion of territory is inseparable from Indigenous cultures.[670] No matter the Indigenous people, territory is synonymous with way of life, belonging and identity.[671] It is also synonymous with confrontation between two realities.

The first of these realities is that of vast traditional territories, for example, estimated to be 850,000 square kilometres for the Innu[672], and the borders of which are largely unrecognized by the Québec public in general.[673] For centuries, the occupation of each of these territories has been divided between the different families that make up the nations.[674] These families can live there and carry out their traditional activities despite the many past and present disruptions

666 *Ibid.*

667 Testimony of Rodrigue Wapistan, stenographic notes taken June 12, 2017, p. 52–53, lines 17–19.

668 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 69, lines 20–23; p. 70, lines 9–13.

669 *Id.*, p. 71, lines 4–24.

670 *Id.*, p. 70, lines 9–13.

671 Document PD-16 (Commission), *op. cit.*, p. 72; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 18, lines 8–13.

672 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 24, lines 7–9; *Innu Nation (presentation)*, document P-004 (Commission), p. 3.

673 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 70–71, lines 9–20.

674 Document PD-16 (Commission), *op. cit.*, p. 73; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 26, lines 1–23; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 23, lines 13–21.

affecting the territory.[675] Many of these families continue to engage with the land, for hunting, fishing, trapping or gathering. It is important to point out that traditional territories have not been the object of any transfer by Indigenous nations in Québec, contrary to what was done elsewhere in Canada.[676] It is this fundamental argument that enabled the Eeyou (Cree) first, and then the Inuit and Naskapis, to negotiate their land rights and that led to the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement.[677] Furthermore, while no comparable treaty has been signed since in Québec, negotiations continue on these same foundations, particularly with the Innu and Atikamekw Nehirowisiw nations.[678]

The other reality is that of the 41 First Nations communities[679] and 14 Inuit communities[680], the size and sometimes even location is markedly different from the traditional territory. One need only compare the dimensions of the ancestral territories of the Hurons-Wendat[681], Malécites[682] and Abénakis[683] to the size of the current communities[684] or to be aware of the many displacements experienced by the Anishnabe (Algonquin)[685] and Atikamekw Nehirowisiw nations[686] over the decades to be convinced. Others, like the Gespeg Mi'gmaq community[687] and the Anishinabe (Algonquin) communities of Wolf Lake (Hunter's Point), Long Point (Winneway) and Kitcisakik[688] still do not have a reserved territory.

At times located right along Québec's borders—something that is particularly true of the Mohawk community of Akwesasne, which straddles the border of New York State—Indigenous communities also have a different accessibility profile. While some are close neighbours to cities or municipalities, if not practically interwoven from a geographic

675 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 26, lines 11–23; testimony of Mélissa Mollen-Dupuis, stenographic notes taken December 7, 2018, p. 188, lines 8–24.

676 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 138-140, lines 1-12.

677 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 102–107, lines 10–25; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 62, lines 4–16.

678 Testimony of Rodrigue Wapistan, stenographic notes taken June 12, 2017, p. 58–59, lines 20–19; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 16–17, lines 22–6 and p. 18, lines 4–24.

679 Secrétariat aux Affaires autochtones. (2018). Les Autochtones du Québec. Retrieved from http://www.autochtones.gouv.qc.ca/nations/cartes/carte-8x11.pdf.

680 Testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 151, lines 12–22.

681 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 45, lines 16–19.

682 *Première Nation Malécite de Viger. Présentation à la Commission Viens*, document P-838 (Commission), p. 2; document PD-16 (Commission), *op. cit.*, p. 219.

683 Abenaki of Odanak Council. (2018). Territoire Odanak. Le territoire ancestral. Retrieved from https://caodanak.com/territoire-odanak/; document PD-16 (Commission), *op. cit.*, p. 15.

684 Abenaki of Odanak Council. (2018). History. Today. Retrieved from https://caodanak.com/en/histoire/; testimony of Konrad Sioui, stenographic notes taken September 28, 2017, p. 11, lines 2–9 and p. 63, lines 2–5; testimony of Amélie Larouche, stenographic notes taken September 14, 2018, p. 185, lines 1–7.

685 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 110–111, lines 11–6; document PD-16 (Commission), *op. cit.*, p. 3.

686 Document PD-16 (Commission), *op. cit.*, p. 72–74.

687 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 10–11, lines 22–1; *La Nation Micmac de Gespeg*, document P-050 (Commission), p. 3 and 10.

688 Indigenous and Northern Affairs Canada. (2018). The Nations of Québec. Hunter's Point. Retrieved from https://www.aadnc-aandc.gc.ca/Mobile/Nations/profile_wolflake-eng.html.

perspective, as is the case for the Malécites de Viger[689], others are accessible only by plane, boat or train. The Innu communities of Unamen Shipu (La Romaine)[690] and Matimekush-Lac John[691] as well as the Naskapi Nation of Kawawachikamach[692], not to mention all the communities of Nunavik, fall into this category.[693] Some, like the Innu community of Pakua Shipu, are simply inaccessible part of the year by regular modes of travel.[694]

These territorial realities, anchored in the geography of places and steeped in thousand-year-old cultures, influence both the services expected by the population and those that are offered. In fact, regardless of its characteristics, the territory, even limited to the government view, is an anchoring point for which all the chiefs heard as part of the work of the Commission claim the right to define a suitable, culturally relevant service offer.[695] A voice also rises up in nations to ensure that the increasing numbers of Indigenous people who live in urban areas can keep their culture and traditions alive in that setting.[696]

4.2.2 Language

After territory, language is a leading identity factor. As such, I wanted to understand the state of Indigenous languages in Québec. Our analysis of existing data confirmed that a number of Indigenous languages are spoken in the province.[697] According to the most recent Statistics Canada census, in 2016, the Indigenous language spoken by the largest number of people in Québec was Cree, with 17,175 speakers, followed by Inuktitut, spoken by 12,490 people.[698] Innu and Atikamekw are also fairly strong, with 9,850 declared speakers for the Innu and 6,635 among the Atikamekw Nehirowisiw.[699] At the opposite end of the spectrum, the last census could not identify a single Abénaki or Huron-Wendat[700] speaker.

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689 Testimony of Amélie Larouche, stenographic notes taken September 14, 2018, p. 191, lines 2–21.

690 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 20, lines 10–18.

691 *Id.,* p. 22, lines 6–20.

692 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 10–11, lines 25–1; *Presentation of the Naskapi Nation of Kawawachikamach*, document P-023 (Commission), p. 3.

693 Testimony of Denis Mesténapéo, stenographic notes taken January 23, 2018, p. 10, lines 3–10; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 151, line 22.

694 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 22, lines 6-16.

695 Testimony of Verna Polson, stenographic notes taken June 6, 2017, p. 59, lines 3–9; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 43, lines 9–21; testimony of Rodrigue Wapistan, stenographic notes taken June 12, 2017, p. 61–62, lines 14–13; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 39, lines 6–16; testimony of Joseph Tokwiro Norton, stenographic notes taken September 28, 2017, p. 199–200, lines 23–6.

696 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 18, lines 1–13; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 233–235, lines 11–20.

697 A table presenting the number of speakers for each Indigenous language spoken in Québec is available in Appendix 18.

698 In both cases, the total number includes all declensions of the language spoken in Québec. Statistics Canada. (2018, January 16). Knowledge of Aboriginal Languages. 2016 Census. [Research data available online]. Retrieved from https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&LANG=E&A=R&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=01&GL=-1&GID=1341679&GK=1&GRP=1&O=D&PID=110449&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=122&VID=0&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0.

699 *Ibid.*

700 *Ibid.*

Another important factor to consider is that 41,260 people who live in a First Nations community or an Inuit community[701] reported an Indigenous language as their mother tongue in Québec, which is more than three out of four people (77.0%).[702] French follows with 7,280 people (13.6%), while English brings up the rear with 5,020 people (9.4%).[703] A similar proportion (38,210/71.3%) of people speak an Indigenous language at home, whereas 8,115 people report French as the language spoken at home (15.1%) and 7,295 report English (13.6%).[704]

Once again, the Eeyou (Cree) stand out with 14,950 people who have Cree as their mother tongue, and 14,125 people speaking it every day at home.[705] They are closely followed by the Inuit, who have almost as many people reporting Inuktitut as their mother tongue (11,555) or as the language spoken at home (11,350).[706]

4.2.3 Governance

As mentioned in the chapter about the history of relations between Indigenous people and public services, at the turn of the 19th century, the governance of Indigenous nations was profoundly transformed by legislative interventions by the British Crown and the new Government of Canada.[707] The framework imposed by the *Indian Act* and its regulations outlines the operation of communities except for Eeyou (Cree) and Inuit communities that signed the James Bay and Northern Québec Agreement, or the Northeastern Québec Agreement in the case of the Naskapis.

Among nations without an agreement[708], band councils made up of members elected from their population lead each of the communities.[709] The method for electing chiefs, the number of councillors that make up the council and eligibility criteria for these positions are also set out by the Act.[710] However, it is important to point out that a number of nations have their own electoral and band codes, and these codes govern entire swaths of the functioning of Indigenous political organizations, including elections of band council members.[711]

The number of people on the council varies between communities.[712] However, most are in

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701 Statistics Canada. (2018). Census Profile. 2016 Census, *op. cit.*

702 Indian Register, Register of Cree and Naskapi Beneficiaries and Register of Inuit Beneficiaries.

703 A table presenting statistics about mother tongue and language spoken at home in First Nations communities and Inuit communities in Nunavik is available in Appendix 19.

704 Statistics Canada. (2018). Census Profile. 2016 Census, *op. cit.*

705 *Ibid.*

706 *Ibid.*

707 See chapter 3 of this report , p. XXX.

708 Abénakis, Anishnabek, Atikamekw Nehirowisiw, Hurons-Wendat, Innus, Malécites, Mi'gmaq and Mohawks.

709 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 28, lines 16-21.

710 *Indian Act,* R.S.C. (1985), ch. I-5, s. 74–80.

711 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 73–74, lines 19–8; testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 10, lines 18–22, document PD-16 (Commission), op cit.., p. 40 and 237.

712 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 17, lines 12–14; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 13, lines 5–7; testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 73–74, lines 22–1; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 115, lines 6–14.

office for a minimum of three years.[713] The proportion of female councillors on band councils is 29.0%. Women also occupy 9.0% of chief positions.[714] A certain number of nations also have a council of Elders.[715]

The powers of band councils of communities not governed by an agreement are also defined in the *Indian Act*.[716] They are much broader than those granted to a city or municipality. Generally speaking, band councils handle all questions about managing the reserve land, health, education, public safety, public works, housing, culture, social assistance, labour and economic development.[717] The exercise of their powers and responsibilities can lead them to adopt a range of regulations and laws.[718]

Nations under an agreement enjoy certain powers with respect to the police, health, social services, education and justice, in particular regarding the organization of services.[719] The Eeyou (Cree) and the Naskapis also have band councils and councils with a mayor and councillors in Nunavik.

Since the 1970s, five nations have also adopted a tribal council. This is the case for the Anishnabek (Algonquins)[720], the Atikamekw Nehirowisiw[721], the Innus[722], the Mi'gmaq[723] and the Abénakis. These councils are a single entity of representatives from each of the communities in a nation. Their main function is to represent the interests of the nation during negotiations with different levels of government. Land claim cases fall under their responsibility. They can also be delegated responsibility by the communities, in the areas of health, education and culture, for example.[724] The Eeyou (Cree) nation has the Cree Nation Government. This body exercises governance and administrative functions.

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713 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 13, lines 7–8; testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 29, lines 4–6; testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 131, lines 8–11.

714 Lajoie, A. (2015). Le rôle des femmes dans la gouvernance autochtone. *Nuevo Mondo Mundos Nuevos*, Colloques. doi : 10.4000/nuevomundo.68508.

715 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 84, lines 12–16.

716 *Indian Act,* R.S.C. (1985), ch. I-5, s. 81(1).

717 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 29, lines 15–22; testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 11, lines 14–20; testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 74, lines 9–19; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 115–119, lines 24–19; testimony of Adrienne Jérôme, stenographic notes for June 7, 2017, p. 13, lines 16–23; testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 131, lines 4–8 and p. 132, lines 3–20.

718 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 75–76, lines 18–3; *Indian Act,* R.S.C. (1985), ch. I-5, s. 81(1).

719 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 15, lines 11–18 and p. 16, lines 6–16; Brief of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government. *Initial Brief*, document P-010 (Commission), brief M-001, p. 14–15, para. 67–69.

720 Testimony of Verna Polson, stenographic notes taken June 6, 2017, p. 48–50, lines 17–20.

721 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 15–17, lines 18–11.

722 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 31–32, lines 17–12; document P-004 (Commission), *op. cit.*, p. 6.

723 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 12, lines 11–15.

724 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 16, lines 15–21.

Lastly, 10 nations are included in a provincial representation organization: the Assembly of First Nations Québec-Labrador (AFNQL). Founded in 1985, the AFNQL makes representations on legislation, policies or government action plans that could have a negative impact on customs, traditional ways of life and ancestral rights.[725] It speaks for the nations under its umbrella on matters of self-governance and national and international relations, which are also under its purview.[726]

The AFNQL can draw support from the First Nations Education Council[727], the First Nations of Québec and Labrador Health and Social Services Commission[728], the First Nations Human Resources Development Commission of Québec[729], the First Nations of Québec and Labrador Economic Development Commission[730], the First Nations of Québec and Labrador Sustainable Development Institute[731] and the First Nations of Québec and Labrador Youth Network. These entities each act in their respective areas of specialization.[732]

4.2.4 Economy

Beyond a subsistence economy based on hunting, fishing, trapping and gathering berries, Indigenous nations have been active economically, first through nation-to-nation trading, then trading with Europeans and major fur trade companies.[733]

Over the centuries, Indigenous economic activity has, however, diversified. A number of nations now have economic development corporations. This is particularly true of the Mi'gmaq[734] and Innu[735] nations. Some communities also own businesses. Managed by band councils, these companies generate profits that are reinvested in the community, generally in the form of services.[736]

725 Testimony of Ghislain Picard, stenographic notes taken June 6, 2017, p. 16, lines 12–25.

726 *Id.,* lines 25–6.

727 *Id.,* p. 18–19, lines 19–3.

728 *Id.,* p. 20, lines 10–25.

729 *Id.,* p. 22, lines 6-12.

730 *Id.,* p. 23–24, lines 19–11.

731 *Id.,* p. 24-25, lines 12-10.

732 *Id.,* p. 25, lines 11-20.

733 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 21, line 17 and p. 64, lines 11–17; document PD-16 (Commission), *op. cit.*, p. 15; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 74–76, lines 17–24 and p. 78, lines 11–16; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 15–16, lines 16–2.

734 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 12–13, lines 21–3; document P-050 (Commission), *op. cit.*, p. 9.

735 Testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 33, lines 8–24; document P-004 (Commission), *op. cit.*, p. 9.

736 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 12–13, lines 3–10 and p. 63, lines 7–16; testimony of Konrad Sioui, stenographic notes taken September 28, 2017, p. 67–69, lines 14–13.

The First Nations and Inuit are involved in the fishery[737], forestry[738], mining[739], tourism[740] (hospitality, outfitting, adventure tourism), crafts[741], wind power[742], transportation (air, rail, land)[743], manufacturing[744], real estate[745] and construction sectors.[746] Others have created a place for themselves in different economic sectors, such as new technologies.[747]

Beyond merely providing work to members of their communities, Indigenous businesses and organizations employ many non-Indigenous people as well. This is the case in health care, social services and education in particular, but also in private enterprise.[748] These factors confirm the status of Indigenous contributors to the Québec economy, despite the fact that Indigenous peoples have been limited in various ways in their economic development over the years.

4.3. The psychosocial and health profile

In Québec, as elsewhere in industrialized countries, the different aspects of health are some of the most statistically documented areas. As a result, we can create a fairly accurate and comprehensive portrait of the general health of Quebecers, regardless of age or sex.

By contrast, no source provides a comprehensive health overview of Indigenous peoples in the province. While data on Indigenous health exist, the numbers come from many sources. The data were produced at different times, and according to population profiles (age, sex, etc.) using different information-gathering methods. This is why it is difficult to compare data, and their use requires great care.

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737 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 11, lines 2–6; document P-050 (Commission), *op. cit.*, p. 5; testimony of Serge Ashini Goupil, stenographic notes taken June 12, 2017, p. 33–34, lines 25–18; testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 132, lines 20–24; testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 133, lines 15–24.

738 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 11, lines 2–6; document P-050 (Commission), *op. cit.*, p. 5.

739 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 17, lines 4–8.

740 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 63, lines 23–25; testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 11, lines 2–6; document P-050 (Commission), *op. cit.*, p. 5; Abenaki of Odanak Council. (2018). History. Today., *op. cit.*

741 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 66, lines 15–18.

742 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 12–13, lines 21–3; document P-050 (Commission), *op. cit.*, p. 9.

743 Abenaki of Odanak Council (2018). History. Today., *op. cit*; testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 16–17, lines 22–10; testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 132, lines 24–25; testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 133, lines 15–24.

744 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 63, lines 19–23; testimony of Konrad Sioui, stenographic notes taken September 28, 2017, p. 69–70, lines 22–5; Abenaki of Odanak Council (2018). History. Today., *op. cit.*

745 Testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 133, lines 1–4.

746 Testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 72–73, lines 20–6; testimony of Joseph Tokwiro Norton, stenographic notes taken September 28, 2017, p. 194, lines 3–13; testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 133, lines 4–9.

747 Testimony of Joseph Tokwiro Norton, stenographic notes taken September 28, 2017, p. 194–196, lines 13–4.

748 Idem., p. 197–198, lines 18–5, testimony of Kateri Vincent, stenographic notes taken September 28, 2017, p. 64, lines 1–10.

As imperfect as it is, the sum total of these data offers a new perspective on the health of Indigenous peoples in Québec. This is why, as stated at the beginning of this chapter, despite the reservations listed, I still thought it relevant to include it in our report.

The data presented in the pages that follow come from the literature available at the time the Commission was carrying out its work. More recent sources may exist; if they do, the Commission's team was not able to identify or access them.

Data about First Nations come mainly from the First Nations Regional Health Survey which has been conducted in Canada since 1997.[749] It is drawn from the third and final data collection phase done in 2015. Governance, developing the research methodology and coordination are the exclusive responsibility of First Nations authorities. In Québec, the Survey is coordinated by the research sector of the First Nations of Québec and Labrador Health and Social Services Commission (FNQLHSSC). It targets eight nations, excluding the Eeyou (Cree) and the Malécites.[750] Nor does it cover the unique situation of the Inuit.

As a result, the data about the Eeyou (Cree) and Inuit populations presented in this chapter come from other sources. Most has been drawn from surveys carried out over the past 15 years, particularly Statistics Canada's Canadian Community Health Survey, which is conducted in collaboration with the Institut national de santé publique du Québec.[751] Other data come from the Cree Board of Health and Social Services of James Bay and the Nunavik Regional Board of Health and Social Services. Most dates back to 2003 or 2004.

4.3.1 Physical health

According to the FNQLHSSC survey, in 2015, a majority (55.0%) of members of First Nations[752] reported having excellent or good general health.[753]

Despite this perception, between 2002 and 2015, the combined overweight/obesity rate grew from 73.0% to 81.0% among First Nations men and from 71.0% to 78.0% among First Nations women who took part in the survey.[754] In Eeyou (Cree) communities, the most recent data demonstrate that 84.0% of the Eeyou (Cree) population is dealing with weight problems

749 More information about this survey and its methodology can be found at the First Nations of Québec and Labrador Health and Social Services Commission website: http://cssspnql.com/en/areas-of-intervention/research-sector/population-surveys/regional-health-survey.

750 The targeted populations are the Abénakis, Anishnabek (Algonquins), Atikamekw Nehirowisiw, Hurons-Wendat, Innus, Mi'gmaq, Mohawks and Naskapis.

751 The data drawn from this survey concern exclusively the population living in the nine Eeyou (Cree) of James Bay/Eeyou Istchee (health region 18) communities, i.e. Chisasibi, Eastmain, Mistissini, Nemaska, Oujé-Bougoumou, Waskaganish, Waswanipi, Whapmagoostui and Wemindji.

752 The survey results do not take into account Cree communities and the Malécites de Viger community.

753 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *First Nations Regional Health Survey. 2015. Health status and chronic health conditions*. Wendake, Québec: First Nations of Québec and Labrador Health and Social Services Commission, p. 2.

754 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *First Nations Regional Health Survey. 2015. Diabetes and obesity*. Wendake, Québec: First Nations of Québec and Labrador Health and Social Services Commission, p. 3.

(33.0%) and obesity (51.0%).[755] This is clearly higher than the Québec population in general where, in 2015, estimates were that the combined rate of weight problems and obesity was 66.8% among men and 55.5% among women, for an average of 61.3%.[756] However, it should be noted that, according to the most recent statistics, in 2004 the Inuit presented a combined rate of weight problems (30.0%) and obesity (28.0%) of 58.0%.[757]

Similar observations were made with respect to diabetes. In fact, while in 2015 it was estimated that 7.3% of Québec's total population was suffering from diabetes[758], this percentage was 12.0% among First Nations[759] during the same period and 27.8% in 2011 within Eeyou (Cree) populations.[760] The Inuit presented 5.0% of people suffering from the disease in 2004.[761] That said, regardless of nation or era, people aged 65 and over had the highest rate of diabetes. In 2015, the number grew to 4 out of 10 First Nations seniors, or more than double the Elderly population in general.[762]

Furthermore, in 2003, one adult out of two (57.0%) within the Eeyou (Cree) nation reported at least one chronic or long-term health problem.[763] Aside from diabetes, the most commonly reported chronic health problems in this nation were hypertension (17.0%) and allergies other than food allergies (13.0%).[764] Among the Inuit, cardiovascular disease was the most common type of illness in 2006, with 15.0% of the population affected.[765] In comparison, in 2015, the most commonly reported chronic illnesses among First Nations people were allergies (20.0%) and cardiovascular disease (17.0%).[766]

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755 Cree Board of Health and Social Services of James Bay. (2013). *Overview of the Health of the Population of Region 18*, *op. cit.*

756 Statistics Canada. (2019). Health characteristics, annual estimates. [Research data available online]. Retrieved from https://www150.statcan.gc.ca/t1/tbl1/en/cv!recreate-nonTraduit.action?pid=1310009601&-selectedNodeIds=1D6%2C2D1%2C3D1%2C3D2%2C3D3%2C3D2All%2C4D1%2C4D2%2C4D3%2C-4D4%2C4D5%2C4D6%2C4D7%2C4D8%2C4D9%2C4D10%2C4D11%2C4D12%2C4D13%2C4D14%2C-4D16%2C4D15%2C4D17%2C4D18%2C4D19%2C4D20%2C4D21%2C4D22%2C4D23%2C4D24%2C-4D25%2C4D26%2C4D27%2C5D1%2C5D4&checkedLevels=&refPeriods=20160101%2C20170101&dimen-sionLayouts=layout2%2Clayout2%2Clayout2%2Clayout3%2Clayout2%2Clayout2&vectorDisplay=fals&re-quest_locale=en.

757 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 32.

758 Statistics Canada. (2019). Health characteristics, annual estimates, *op. cit.*

759 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *First Nations Regional Health Survey. 2015. Diabetes and obesity*, *op. cit.*, p. 7.

760 Cree Board of Health and Social Services of James Bay. (2013), *op. cit.* Data on the age and sex of members of the Eeyou (Cree) nation were adjusted to make them comparable to those of Québec.

761 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 55.

762 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *First Nations Regional Health Survey. 2015. Diabetes and obesity*, *op. cit.*, p. 7.

763 Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). Cree Health Survey 2003. Health status, life expectancy and limitation of activities, *op. cit.*, p. 7.

764 *Ibid.*

765 Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 56.

766 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *First Nations Regional Health Survey. 2015. Health status and chronic health conditions*, *op. cit.*, p. 3.

4.3.2 Food

In terms of food, one adult in five (22.0%) among the First Nations that took part in the FNQLHSSC survey in 2015 was dealing with a food insecurity problem and, consequently, did not have enough to eat.[767] That proportion was 27.0% among the Eeyou (Cree) in 2003[768] and 24.0% in the Nunavik population in 2008.[769] That is four times higher than in the Québec population as a whole (6.0%) during the same period.[770] The situation is also pressing for adults living with children. The most recent data show that 15.0% of First Nations families face food insecurity.[771] In 2011, this phenomenon affected 3 families of every 10 in Nunavik.[772] This situation is largely explained by the very high cost of food mentioned earlier. According to the FNQLHSSC, 53.1% of unemployed people living in hard-to-access regions suffer from moderate to severe food insecurity.[773]

That said, 61.0% of First Nations members say they frequently consume food derived from hunting, fishing and trapping, and 63.0% consume products derived from gathering.[774] An equal proportion of adult Eeyou (Cree) (57.0%) demonstrate the same food habits.[775] Among the Inuit, traditional foods from hunting and fishing represent 16.0% of total energy intake.[776] This is a decrease of 5.0% compared to the data from the previous survey.[777] The presence of contaminants may explain this change in food habits, as may sedentarization and access to processed foods and fast food.[778]

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767 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Employment, income and food insecurity*, p. 6.

768 Institut national de santé publique du Québec. (2015). *The Diet of Québec First Nations and Inuit Peoples*. Montréal, Québec: Institut de santé publique du Québec, p. 30.

769 Institut national de santé publique du Québec and Nunavik Board of Health and Social Services. (2008). *Nutrition and Food Consumption among the Inuit of Nunavik*. Montréal, Québec: Institut national de santé publique du Québec and Nunavik Board of Health and Social Service, p. 71

770 *Ministère de la Santé et des Services sociaux. (2017). Statistiques de santé et de bien-être selon le sexe. Régions du Québec : Insécurité alimentaire. 2007–2008.* [Data available online]. Retrieved from http://www.msss.gouv.qc.ca/professionnels/statistiques-donnees-sante-bien-etre/statistiques-de-sante-et-de-bien-etre-selon-le-sexe-volet-regional/insecurite-alimentaire/.

771 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Employment, income and food insecurity*, *op. cit.*, p. 6.

772 Institut national de santé publique du Québec. (2015). *The Diet of Québec First Nations and Inuit Peoples*, *op. cit.*, p. 30.

773 First Nations of Québec and Labrador Health and Social Services Commission. (2017). *First Nations Regional Early Childhood, Education and Employment Survey. Overview of the unemployed*, *op. cit.*, p. 8.

774 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Food and Physical Activity*. Wendake, Québec: FNQLHSSC, p. 5.

775 Cree Board of Health and Social Services of James Bay. (2013). *Summary report on the Nituuchischaayihtitaau Aschi. Multi-Community Environment-and-Health Study. Public Health Report Series 4 on the Health of the Population*. Chisasibi, Québec: Cree Board of Health and Social Services of James Bay, p. 11.

776 Institut national de santé publique du Québec. (2015). *The Diet of Québec First Nations and Inuit Peoples*, *op. cit.*, p. 21.

777 *Ibid.*

778 Document PD-16 (Commission), *op. cit.*, p. 207.

4.3.3. Smoking

As has been observed among the population of Québec as a whole, the proportion of occasional and regular smokers is on the decline among the First Nations. The most recent statistical data estimate the percentage at 37.0% in 2015.[779] Among the Eeyou (Cree), in 2003, nearly one person in two (46.0%) stated that they smoked daily.[780] The percentage appears higher among the Inuit, of whom, according to the most recent statistical data (2006), 73.0% of adults said they smoke every day.[781] In Québec as a whole, in 2015, the rate of tobacco use (occasional and regular smokers) was assessed at 18.9%.[782]

4.3.4 Alcohol and drugs

In 2015, 38.0% of First Nations members aged 12 and up who took part in the FNQLHSSC survey reported that they do not drink alcohol.[783] This figure was estimated at 16.6% among the Eeyou (Cree)[784] in 2003, the date of the most recent data available on the matter, and at 23.0%[785] among the Inuit, for the same age group at the same time.

At the other end of the spectrum, however, the percentage of the Indigenous population who admitted to abusing alcohol[786] at least once a month was 39.0% among the Eeyou (Cree)[787] in 2003 and 67.0% among the population of Nunavik.[788] More recently, when measured in 2015, the phenomenon affected 56.0% of First Nations.[789]

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779 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Smoking*. Wendake, Québec: FNQLHSSC, p. 2.

780 Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). *Cree Health Survey 2003. Canadian Community Health Survey. Cycle 2.1. Iiyiyiu Aschii. Cigarette Consumption*. Montréal, Québec: Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec, p. 5.

781 Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 28.

782 Statistics Canada. (2019). Health characteristics, annual estimates, *op. cit.*

783 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Use of alcohol and drugs, cyberaddiction and issues related to gambling*. Wendake, Québec: FNQLHSSC, p. 3.

784 Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). *Cree Health Survey 2003. Canadian Community Health Survey. Cycle 2.1. Iiyiyiu Aschii. Lifestyles related to alcohol consumption, drugs and gambling*. Montréal, Québec: Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec, p. 6.

785 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 33.

786 Abusive consumption of alcohol for a man means drinking five or more glasses of alcohol on the same occasion, at least once a month over the course of a year. Abusive consumption of alcohol for a woman means drinking four or more glasses of alcohol on the same occasion, at least once a month over the course of a year.

787 Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). *Cree Health Survey 2003. Lifestyles related to alcohol consumption, drugs and gambling*, *op. cit.*, p. 8.

788 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 34.

789 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Use of alcohol and drugs, cyberaddiction and issues related to gambling*, *op. cit.*, p. 2.

As for drug use, the most recent FNQLHSSC survey estimates that 30.0% of the First Nations population had consumed at least one drug in the year preceding the data collection.[790] This is slightly more than among the Eeyou (Cree), where the most recent assessment placed the consumption rate at 25.0%[791], but clearly lower than among the Inuit, where the most recent assessment estimated drug use at 60.0%.[792] In all these cases and in every time period, cannabis is the most frequently consumed drug.[793]

Early introduction to consumption also appears to be a worrisome statistic. In 2008, 20.0% of adult clients in treatment centres funded by the National Native Alcohol and Drug Abuse Program reported having consumed alcohol at age 10 or younger, while for 58.0%, the age of first consumption was between 11 and 15. For the vast majority of the people treated (80.0%), consumption became problematic between the ages of 16 and 20.[794]

In a report published in 2007, the Aboriginal Healing Foundation stated, based on testimony from Indigenous people who attended residential schools, that the profound and cumulative after effects of numerous historical traumas could at least partly explain addictive behaviours among the First Nations and Inuit.[795] Beginning in the 2000s, psychologists working in Indigenous communities adopted the expression "residential school syndrome" to describe this combination of symptoms that seemed to them similar to post-traumatic stress disorder but is, in fact, linked to the direct consequences of the trauma experienced across multiple generations. These impacts include a loss of self-esteem, depression, anxiety, suicide and abusive consumption of alcohol or drugs.[796]

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790 *Id.*, p. 5, Figure 5.

791 Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). *Cree Health Survey 2003. Lifestyles related to alcohol consumption, drugs and gambling*, *op. cit.*, p. 10.

792 Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec. (2004). *Nunavik Inuit Health Survey. Survey Highlights. Alcohol, Drugs and Gambling among the Inuit of Nunavik: Epidemiological Profile.* Montréal, Québec: Institut de la santé publique du Québec and Nunavik Regional Board of Health and Social Services, p. 1.

793 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Use of alcohol and drugs, cyberaddiction and issues related to gambling*, *op. cit.*, p. 5; Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). *Cree Health Survey 2003. Lifestyles related to alcohol consumption, drugs and gambling*, *op. cit.*, p. 10; *Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec. (2004). Nunavik Inuit Health Survey. Survey Highlights. Alcohol, Drugs and Gambling among the Inuit of Nunavik: Epidemiological Profile*, *op. cit.*, p. 1; Institut de la statistique du Québec. (2010). *L'enquête québécoise sur la santé de la population, 2008 : pour en savoir plus sur la santé des Québécois.* Montréal, Québec: Institut de la statistique du Québec, p. 166.

794 Perreault, J. and Beaulieu, A. (2008). *Alcohol, Drugs and Inhalants: Portrait of Users and Consumption Patterns among First Nations in the Québec Region.* Wendake, Québec: First Nations of Québec and Labrador Health and Social Services Commission, p. 275.

795 Chansonneuve, D. (2007). *Addictive Behaviours Among Aboriginal Peoples in Canada.* Ottawa, Ontario: Aboriginal Healing Foundation, p. 25.

796 Menzies, P. (2013). Developing an Aboriginal Healing Model for Intergenerational Trauma. *International Journal of Health Promotion and Education, 46*(2), 41–48.

4.3.5 Mental health

In 2015, 64.0% of First Nations people aged 12 or over assessed their mental health as excellent or good.[797] By comparison, in 2015, in the general population of Québec, 75.3% of people 12 and over deemed their mental health to be very good or excellent.[798]

In contrast, 13.0% of First Nations members presented with a psychological distress indicator ranging from moderate to severe in 2015.[799] Among the mental disorders diagnosed, anxiety disorders were the most often identified.[800]

We have to go back to 2003 among the Eeyou (Cree) to find the equivalent data. At the time, a little more than one person in two (53.0%) deemed their mental health to be excellent or very good.[801] The most common mental health problems were mood disorders (4.7% of the population) and anxiety disorders (2.9%).[802]

As for the Inuit, for whom the most recent data date back to 2004, at that time it was estimated that 13.0% of the population presented with a high rate of psychological distress.[803] The groups most affected were women, youth aged 15 to 29, low-income individuals and victims of sexual or psychological violence.[804]

4.3.6 Housing

Numerous individuals who testified before the Commission raised the important issue of housing in First Nations communities and Inuit villages.[805] According to a report published by the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government in 2015, there was a housing shortage of 2,185 units in Eeyou Istchee (Cree territory).[806] According to the same report, 19.6% of households were overcrowded.[807] At the same time, the FNQLHSSC estimated that 1 in 10 adults who participated in the most recent health survey were living

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797 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *2015 First Nations Regional Health Survey. Individual wellness, mental health and Elder abuse.* Wendake, Québec: FNQLHSSC, p. 2.

798 Statistics Canada. (2019). Health characteristics, annual estimates, *op. cit.*

799 *Id.*, p. 2.

800 *Id., op. cit.*, p. 5.

801 Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec. (2008). *Cree Health Survey 2003. Canadian Community Health Survey. Cycle 2.1. Iiyiyiu Aschii. Mental Health.* Montréal, Québec: Cree Board of Health and Social Services of James Bay and the Institut national de santé publique du Québec, p. 5.

802 *Ibid.*

803 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 39.

804 *Ibid.*

805 Document P-010 (Commission), brief M-001, *op. cit.*, p. 9, para. 45–47; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 10, lines 3–7; testimony of Mathew Coon-Come, stenographic notes taken June 14, 2017, p. 34, lines 8–19; document P-023 (Commission), *op. cit.*, p. 16–17.

806 Cree Nation Government. (2016). Housing in Eeyou Istchee. Chisasibi, Québec: Cree Nation Government. Capital Works and Services. Nemaska, Québec: Cree Nation Government, p. 8.

807 *Id.*, p. 10. In general, research on housing in Canada uses a threshold of more than one person per room to indicate that a household is overcrowded (Source: Statistics Canada).

in overcrowded housing[808], as well as nearly one quarter of children between the ages of 0 and 11 (23.0%). The Eeyou (20.0%)[809] and Atikamekw Nehirowisiw (24.9%)[810] nations are particularly affected by overcrowding. However, the issue is most problematic in Nunavik. The most recent statistics recorded in 2006 indicate that one in two Inuit (49.0%) lives in an overcrowded household.[811]

Aside from accessibility, housing quality also poses a problem. Indeed, the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government estimates that 31.6% of housing on the territory requires major work.[812] This percentage is higher than in other First Nations communities where just over one in five homes require major repairs (21.0%).[813] However, the percentage remains lower than that observed in Inuit communities, where the condition of half of dwellings is considered unacceptable.[814] Housing-related problems are closely linked to other social issues experienced by Indigenous peoples in Québec. Such issues include family and spousal violence, which is why I took an interest in this situation.

4.3.7 Family violence

Unfortunately, there are no recent data on the prevalence of family violence in Indigenous communities in Québec. However, in Canada, the last victimization cycle of the General Social Survey (GSS) conducted by Statistics Canada in 2014 established that Indigenous women (10.0%) experience spousal violence approximately three times more often than non-Indigenous women (3.0%).[815] The survey indicates that the rate of spousal violence among Indigenous peoples has not changed significantly over the past five years.[816] According to the GSS conducted in 2009, injuries resulting from incidents of spousal violence tend to be more severe than violent incidents committed by someone other than the victim's spouse.[817] Moreover, nearly 6 in 10 (59.0%) Indigenous female victims of spousal violence reported having been injured as a result of this violence, compared with approximately

808 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *Québec First Nations Regional Health Survey – 2015: Housing*. Wendake, Québec: FNQLHSSC, p. 6.

809 Document P-010 (Commission), brief M-001, *op. cit.*, p. 9.

810 First Nations of Québec and Labrador Health and Social Services Commission. (2013). *Québec First Nations Regional Health Survey – 2008.* Housing. Wendake, Québec: FNQLHSSC, p. 32.

811 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 20.

812 Cree Nation Government. (2016), *op. cit.*, p. 11.

813 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *Québec First Nations Regional Health Survey – 2015.* Housing, op. cit., p. 7.

814 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 21.

815 *Statistics Canada, Victimization of Aboriginal people in Canada, 2014, release date: June 28, 2018,* document P-833 (Commission), p. 3.

816 *Id.,* p. 17.

817 Statistics Canada. (2011). Violent victimization of Aboriginal women in the Canadian provinces, 2009. Retrieved from https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2011001/article/11439-eng.pdf?st=kBiiWC95, p. 10.

4 in 10 non-Indigenous female victims.[818] Over half (52.0%) of Indigenous women who have been the victims of spousal violence also stated that they feared for their lives.[819]

The 2014 survey indicates that approximately three quarters of victims of violence are emotionally affected, whether or not they are Indigenous. It also mentions that Indigenous people present signs of post-traumatic stress disorder 2.8 times (34.0%) more often than non-Indigenous people (12.0%).[820]

Lastly, the vast majority of Indigenous females who experience violence (spousal or not) are between the ages of 15 and 24 years[821] and have three times the victimization rate of non-Indigenous females of the same age.[822] A survey conducted during the 2006 census established that during a separation, First Peoples women were eight times more likely to be murdered by their ex-partners than non-Indigenous women.[823] Moreover, 54.0% experienced violence that put their life in danger compared with 37.0% of non-Indigenous women.[824]

4.3.8 Sexual violence

Sexual violence was presented by several witnesses as a complex and widespread problem within the Indigenous population. It was described, in particular, as contributing to family violence, substance abuse, mental health and suicide.[825] It is also inseparable from the unfavourable socioeconomic conditions listed above.[826]

A 2005 inquiry revealed that the vast majority of psychosocial workers in Indigenous communities consider that at least 50.0% of community members have been victims of sexual abuse. A large proportion of these workers (42.8%) estimate that the proportion is more like 70.0%.[827] For its part, a survey conducted the following year among the Eeyou (Cree) population indicated that 23.0% of the men and 35.0% of the women surveyed confirmed having been the victims of sexual abuse.[828]

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818 *Id.*, p. 10.

819 *Ibid.*

820 Document P-833 (Commission), *op. cit.*, p. 15.

821 Document P-833 (Commission)., p. 9.

822 *Ibid.*

823 Statistics Canada. (2008). Aboriginal Population Profile. 2006 Census. [Research data available online]. Retrieved from https://www12.statcan.gc.ca/census-recensement/2006/dp-pd/prof/92-594/details/page.cfm?Lang=E&Geo1=CSD&Code1=2491005&Geo2=PR&Code2=24&Data=Count&SearchText=Bouchette&SearchType=Contains&SearchPR=01&B1=All&Custom=.

824 *Ibid.*

825 Briefs: Brief, Government of Québec. (2018, November 29). *Vivre ensemble, faire ensemble*, document P-1170 (Commission), brief M-019, p. 32-34; Amnesty International. (2017, September 29), document P-113 (Commission), brief M-003, p. 12; document P-010 (Commission), p. 9–10; document P-1165 (Commission), document M-024, *op. cit.*, p. 7–9;

826 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 113, lines 1–7.

827 *Revue de littérature, SERVICES SOCIAUX, Thème : La violence en contexte autochtone – manifestations et perspectives – Prepared by Carole Lévesque, Ioana Radu, Nathalie Tran, National Institute of Scientific Research, Urbanisation Culture Société Research Centre,* document PD-10 (Commission), p. 9.

828 Cree Board of Health and Social Services of James Bay. (2013) *Overview of the Health of the Population of Region 18*, *op. cit.*

Women are especially affected. In 2014, Statistics Canada estimated that the rate of sexual assault was three times higher among Indigenous women (115 incidents per 1,000 women) than non-Indigenous women (35 incidents per 1,000 women).[829]

That said, there is a significant gap between the number of actual sexual abuse cases and the number of cases reported. This could be explained by the fear of inaction or the lack of trust in law enforcement[830], the slow pace of procedures[831], the fear of having children taken away by youth protection services[832], and the presence or authoritative position of the aggressor in the victim's living environment.[833] The lack of data collection to indicate Indigenous identity also contributes to this gap.[834]

4.3.9 Youth protection

As for children, the most recent study on youth protection determined that the reporting rate—the starting point of any youth protection intervention—is three and a half times higher for Indigenous children than nonIndigenous children.[835] The management rate, that is the number of times a reported case is deemed justified and leads to actions, is four times higher than in the general population.[836] Indigenous children are also four times more likely to be considered as being in a dangerous situation and five and a half times more likely to be placed in foster care than non-Indigenous children.[837] These are all reasons why the over-representation of Indigenous children in Québec's youth protection service is a recognized fact.[838]

The rate of Indigenous children who were placed in foster care outside of their community (37 for every 1,000 children) was also higher than the rate placed within their community (24 for every 1,000 children).[839]

With regard to reasons for reports, a study conducted by the FNQLHSSC demonstrates that the number of investigations for neglect is 6.7 times higher for First Nations children than non-Indigenous children.[840]

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829 Statistics Canada. (2015). *Criminal victimization in Canada, 2014.* Retrieved from https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2015001/article/14241-eng.pdf?st=wnnH5tTK, p. 17.

830 Mémoire de Femmes autochtones du Québec. (2018, November 30), document P-1172 (Commission), brief M-031, p. 34.

831 Testimony of Danielle St-Onge, stenographic notes taken May 16, 2018, p. 85–86, lines 22–20.

832 Testimony of Béatrice Vaugrante, stenographic notes taken September 29, 2017, lines 7–16.

833 Testimony of Jaëlle Rivard, stenographic notes taken February 23, 2018, p. 72, lines 10–22.

834 Document P-113 (Commission), brief M-003, *op. cit.*, p. 13.

835 Breton, A., Dufour, S. and Lavergne, C. (2012). Les enfants autochtones en protection de la jeunesse au Québec : leur réalité comparée à celle des autres enfants. *Criminologie, 45(2)*, 157–185. doi: https://doi.org/10.7202/1013724ar.

836 *Ibid.*

837 *Ibid.*

838 Sinha, V., Trocmé, N., Fallon, B. and MacLaurin, B. (2013). Understanding the Investigation-Stage Overrepresentation of First Nations Children in the Child Welfare System: An Analysis of the First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect 2008, *Child Abuse & Neglect, 37*(10), 821–831. doi: 10.1016/j.chiabu.2012.11.010.

839 Sinha, V. and Wray, M. (2015). Foster Care Disparity for First Nations Children in 2011. [Information sheet] Retrieved from http://cwrp.ca/sites/default/files/publications/en/166e.pdf.

840 First Nations of Québec and Labrador Health and Social Services Commission. (2016). *Trajectory of First Nations youth subject to the Youth Protection Act. Component 3: Analysis of mainstream youth protection agencies administrative data.* Wendake, Québec: FNQLHSSC, p. 9.

While neglect is the primary reason for intervention by the Direction de la protection de la jeunesse (department of youth protection) in the lives of Indigenous families, some studies indicate that it is followed closely by exposure to family violence, which is considered psychological abuse.[841] In reality, many situations that are handled under the *Youth Protection Act*, involve neglect, spousal violence and the use of psychoactive drugs.[842]

Compared to non-Indigenous children, the percentage of First Nations children placed in alternate care (regular foster care, kinship foster care, extended family, rehabilitation centres or group homes) is nearly eight times higher (7.9).[843] The recidivism rate, meaning the number of times a child's youth protection file will be closed and later reopened, is 9.4 times higher for Indigenous than for non-Indigenous children.[844]

Among the Eeyou (Cree), the situation appears to be even more alarming. According to a report submitted during the Commission's hearings, the rate of children reported to youth protection services was 352 per 1,000 children in 2016–2017; of these reports, 97 per 1,000 were followed up on.[845] Half of these reports concerned negligence.[846] These numbers are, respectively, six and four times higher than the provincial average. The report also mentioned that one child in five in Eeyou Istchee (Cree) territory is monitored by youth protection services. In 2016, 613 children were placed in alternate care under the *Youth Protection Act*, a rate of 94 per 1,000 children.[847]

For Inuit children living on the territory of Nunavik, the absence of statistical data makes it impossible to develop a detailed portrait. It has been established, however, that 2,137 reports were received in 2016, and 374 Inuit children were placed in alternate care in 2015–2016.[848] An inquiry report by the Commission des droits de la personne et des droits de la jeunesse produced in Nunavik in 2007 found that the principal cause of reports was negligence associated with alcohol and drug problems and with spousal violence. The same report found that one in five children in Nunavik had lived with caregivers outside of their family home.[849]

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841 Breton, A. (2011). *Les enfants autochtones en protection de la jeunesse au Québec : leur réalité comparée à celle des autres enfants.* (Master's thesis, Université de Montréal). Retrieved from https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/5522/Breton_Alexandra_2011_memoire.pdf.

842 Breton (2011), *op. cit.*; Department of Justice of Canada. (2008). *Understanding Family Violence and Sexual Assault and First Nations, Métis and Inuit Peoples in the Territories.* Retrieved from https://www.justice.gc.ca/eng/rp-pr/jr/jr15/p6.html.

843 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*

844 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*

845 *Audit on Youth Protection Resources/Report,* document P-110 (Commission), p. 5; *Audit on Youth Protection Resources/Presentation,* document P-111 (Commission), p. 4; testimony of Daniel St-Amour, stenographic notes taken September 29, 2017, p. 120, lines 17–19.

846 Testimony of Robert Auclair, stenographic notes taken June 14, 2017, p. 176, lines 14–17.

847 *Id.,* p. 176, lines 18–22.

848 Rogers, S. (2016, September 12). Nunavik sees more children in need of foster care, but fewer foster homes. Nunatsiaq News. Retrieved from http://nunatsiaq.com/stories/article/65674nunavik_sees_more_children_in_need_of_foster_care_but_fewer_foster_hom/.

849 Commission des droits de la personne et des droits de la jeunesse. (2007). *Enquête portant sur les services de protection de la jeunesse dans la baie d'Ungava et la baie d'Hudson. Nunavik. Rapport, conclusions d'enquête et recommandations.* Montréal, Québec: CDPDJ, p. 40.

4.3.10 Suicide

It is equally impossible to paint a definitive portrait of suicide among First Nations people across Québec. High population growth rates in First Nations communities have made it extremely difficult to accurately determine suicide rates for these populations. The scarcity and even complete lack of data also prevents us from establishing a clear picture of how suicide affects Indigenous people living in urban areas.

Despite these limitations, recent studies have made it possible to determine that suicide rates among First Nations and Inuit people have risen considerably in the last three decades.[850] This situation varies greatly from one nation—indeed, one community—to the next.[851]

For First Nations in territories not under agreement[852], 152 suicides were reported between 2000 and 2011.[853] The available data reveal that most suicide deaths are men (67.8%, vs. 32.2% for women).[854] For all genders, young people are the group most affected by suicide, since nearly 59% of people who commit suicide in territories not under agreement were under 30 years old.[855] It should be noted, however, that for women under 19, the suicide rate (51.0%) is three times higher than for men in the same age group (16.5%).[856] Moreover, for the entire population observed, close to half of suicide deaths (48.0%) were committed by individuals who were under the influence of drugs or alcohol at the time of the act. For 20 to 29-year-olds, this rate was even higher, at 68.1%.[857] For more than one in five people who committed or attempted suicide, the presence of mental health issues, including drug or alcohol addiction, was considered the primary factor leading to the suicide.[858] Also noteworthy is the fact that 8.0% of suicides are committed in supervised facilities such as detention centres, youth centres, hospitals and mental health institutions.[859]

Among the Eeyou (Cree), for whom the most recent data date back to 2010, the suicide rate is considered on par with, or slightly below, the Québec average.[860] With the exception of a wave

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850 Tousignant, M. (2013). Le suicide dans les communautés autochtones du Québec. In Association québécoise de prévention du suicide. (2013). *Regards croisés sur la prévention du suicide.* [A collection of texts created in association with the Grand forum de prévention du suicide, September 2012, Trois-Rivières]. Retrieved from http://regards-croises.aqps.info/le-suicide-dans-les-communautes-autochtones-du-Québec.

851 Chandler, M.J., Lalonde, C.E., Sokol, B.W. and Hallett, D. (2010). *Le suicide chez les jeunes Autochtones et l'effondrement de la continuité personnelle et culturelle.* Québec, Québec: Presses de l'Université Laval.

852 This data excludes the Eeyou (Cree) and Naskapi populations who were not included in the inquiry.

853 *Initiative en prévention du suicide chez les Premières Nations du Québec. Analyse des décès par suicide (2000-2011),* document P-072 (Commission), p. 16. Study completed based on the coroner's reports on people who committed suicide between 2000 and 2011 in Indigenous communities not covered by agreements. This data excludes the Eeyou (Cree) and Naskapi populations who were not included in the inquiry.

854 Document P-072 (Commission), *op. cit.*, p. 8.

855 *Id.,* p. 9.

856 *Ibid.*

857 *Id.,* p. 14.

858 *Id.,* p. 17.

859 *Id.,* p. 12–13.

860 *Suicide in Eeyou Istchee. An overview of the death and hospitalization statistics, 1985–2007,* document P-719 (Commission), p. 1.

of suicides by women between 2004 and 2005, men generally commit suicide more than women.[861] Without regard for gender, people aged 15–24 are most likely to commit suicide.[862]

When it comes to suicide in Québec, no population is as hard hit as the Inuit of Nunavik. Whereas the suicide rate between 2005 and 2009 was 1.1. per 10,000 inhabitants in the province of Québec as a whole, Nunavik registered 11.9 per 10,000 inhabitants, which corresponds to 13 suicides, on average, every year.[863]

Data gathered during the most recent population surveys have further demonstrated that young men are the group with the highest rates of death by suicide in Nunavik.[864] Between 1986 and 1997, 75.0% of men who took their own lives were between the ages of 15 and 24.[865] While Inuit men actually commit suicide more often than women, the rates of suicide ideation and attempted suicide are much higher for women than for men.[866] Specifically, 18.4% of Inuit women report having suicidal thoughts in the 12 months leading up to the inquiry, compared to 10.3% of men.[867] For people aged 15 and up, one out of four women (25.7%) had also tried to end their lives, versus 16.2% of men.[868] Suicide is reported to be three times more common in the communities on Hudson Bay[869] than in those on Ungava Bay.[870]

4.3.11 Homelessness

Lastly, although the subject of homelessness was discussed during Commission hearings, the number of people living in situations of homelessness in a given city at any time is nearly impossible to determine; this includes both Indigenous and non-Indigenous homeless populations.[871] The lack of consensus on a definition of homelessness, and on the rules for calculating homelessness rates in order to quantify it, make this a particularly difficult task. The extreme mobility experienced by the Indigenous homeless population further complicates the matter.[872] One thing seems to be unanimous: the number of Indigenous people living in situations of homelessness is increasing steadily. For Canada as a whole,

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861 *Ibid.*

862 *Id.*, p. 2.

863 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 39.

864 Fraser, S. Geoffroy, D., Chachamovich, E. and Kirmayer, L.J. (2015). Changing rates of suicide ideation and attempts among Inuit youth: A gender-based analysis of risk and protective factors. *Suicide and Life-Threatening Behavior, 45*(2), 141–156.

865 Bujold, L. (2006). *La mort habitée : le suicide chez les jeunes Inuit du Nunavik*. (Doctoral dissertation, Université Laval, Québec). Retrieved from https://books.google.ca/books/about/La_mort_habit%C3%A9e.html?id=iH-4tAEACAAJ&redir_esc=y.

866 Fraser, Geoffroy, Chachamovich, and Kirmayer. (2015), *op. cit.*

867 Nunavik Regional Board of Health and Social Services and Institut national de santé publique du Québec. (2007). *Nunavik Inuit Health Survey 2004. Quanuippitaa? How are we? Mental Health, Social Support and Community Wellness.* p. 10. Québec City and Kuujjuaq, Québec: Nunavik Regional Board of Health and Social Services and Institut national de santé publique du Québec.

868 *Ibid.*

869 Kuujjuarapik, Umiujaq, Inukjuak, Puvirnituq, Akulivik, Ivujivik and Salluit.

870 Institut national de santé publique du Québec. (2008). *Étude contextuelle sur les services de santé mentale au Nunavik*. Montréal, Québec: Institut national de santé publique du Québec, p. 9.

871 *Étude sur l'itinérance autochtone à Montréal*, document P-116 (Commission), p. 78.

872 *Id.*, p. 79.

it is estimated that rates of homelessness are eight times higher for Indigenous than for non-Indigenous people.[873] Recent studies of visible homelessness, such as the 2018 study carried out in 11 of Québec's regions[874], and the 2015 study that focused on Montréal[875], found that over 10.0% of people in situations of homelessness were Indigenous. Inuit people are particularly hard hit by the phenomenon. For example, in Montréal, the 2015 survey found that Inuit represented 40.0% of the Indigenous homeless population, although they only constitute 10.0% of the city's total Indigenous population.[876]

During the Commission, Indigenous homelessness was presented as different from non-Indigenous homelessness, notably because of the intensity and plurality of social problems Indigenous people experience.[877] The desire to recreate a social network and forge a sense of belonging are potential explanations for this phenomenon.[878]

It should be noted that Indigenous women in situations of homelessness, and especially Inuit women, are particularly vulnerable to exploitation and sexual abuse.[879]

4.4. Indigenous people in the justice and correctional systems

In Québec, there are practically no statistics on Indigenous people's experiences with the justice system prior to incarceration such as number of arrests or charges.[880] The Commission's investigation clearly established that no such data is gathered by either the Court of Québec or municipal courts.[881] The Commission has also confirmed that the fragmentary data gathered by the Commission des services juridiques (legal aid) and by

873 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 107, lines 10–13.

874 Ministère de la Santé et des Services sociaux. (2019). *Dénombrement des personnes en situation d'itinérance au Québec le 24 avril 2018*, p. xvi. Retrieved from http://publications.msss.gouv.qc.ca/msss/fichiers/2018/18-846-10W.pdf.

875 Eric Latimer, James McGregor, Christian Méthot and Alison Smith. (2015). *Dénombrement des personnes en situation d'itinérance à Montréal le 24 mars 2015*, p. vi. Retrieved from https://ville.montreal.qc.ca/pls/portal/docs/PAGE/D_SOCIAL_FR/MEDIA/DOCUMENTS/RAPPORT_DENOMBREMENT_PERSONNES_SITUATION_ITINERANCE.PDF.

876 *Brief from Makivik Corporation titled "Itinérance des Inuit du Québec" with letter from the President of Makivik Corporation dated October 17, 2008 sent to MNA Geoffrey Kelley, President of the Commission des Affaires sociales, Gouvernement du Québec*, document P-248 (Commission), p. 2.

877 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 160–161, lines 22–10.

878 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 161–162, lines 20–6, and stenographic notes taken October 17, 2017, p. 84, lines 15–25; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 204–205, lines 19–6.

879 Testimony of Viviane Michel, stenographic notes taken on September 14, 2018, p. 47, lines 15–25; document P-116 (Commission), *op. cit.*, p. 155; *Report of the Inquiry into Missing and Murdered Nunavimmiut*, document P-104 (Commission), p. 16; Testimony of Marie-Claude Lyonais, stenographic notes taken March 21, 2018, p. 276, lines 13–19.

880 *La collecte de données ethno-raciales par les services publics*, document PD-1 (Commission), p. 11.

881 *Ibid.*

Québec's Directeur des poursuites criminelles et pénales is inadequate to paint an accurate picture of the situation.[882]

With respect to correctional services, in 2018 the Ministère de la Sécurité publique produced a document entitled *Profil correctionnel des Autochtones confiés aux services correctionnels en 2015–2016*. All statistics in this section are from that source.

First of all, based on the data reviewed, the average daily population of provincial correctional facilities is 6.5% Indigenous.[883] This number indicates that Indigenous people are in fact overrepresented in the prison system, as it greatly exceeds the First Nations and Inuit percentage of Québec's population, which is 1.4% according to official registers.[884]

The rapid growth of the Indigenous presence in Québec's correctional system in recent years also merits discussion. Comparing data from 2006–2007 with that of 2015–2016 shows an 85.0% increase.[885] This increase has been especially pronounced among Inuit populations (+183.0%) and Eeyou (Cree) populations (+82.0%).[886] For the same period, the growth of the non-Indigenous prison population is estimated at 18.7%.[887] The presence of Indigenous women has also risen sharply, up 320.0% in a little under 10 years (2006–2007 *vs.* 2015–2016).[888]

The ratio of incarcerated individuals is particularly high among the Inuit (64 per 1,000 inhabitants) and Innus (56 : 1,000)[889], rates that are respectively 16 and 14 times higher than the incarceration rate for non-Indigenous people (4 : 1,000). The group formed of the Mi'gmaq, Naskapi, Mohawk, Huron-Wendat, Abénakis, and Malécite nations, along with Indigenous people outside Québec (3 : 1,000) presented a profile similar to that of non-Indigenous people. The Atikamekw Nehirowisiw (5 times higher), Anishnabe (Algonquin/4.25 times higher) and the Eeyou (Cree/2.6 times higher) nations fall between these two extremes.[890]

Incarcerated Indigenous people are predominantly men, in proportions ranging from 76.6% among the Inuit to 91.5% for the Innus; overall, 90.3% of non-Indigenous inmates are men.[891] Proportionally, Indigenous women are incarcerated more frequently than non-Indigenous

882 Document PD-1 (Commission), *op. cit.*, p. 12–13; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 57–59, lines 23–2; testimony of Marie-Chantal Brassard and Annick Murphy, stenographic notes taken on October 19, 2018, p. 346–347, lines 1–19.

883 *Profil des Autochtones confiés aux services correctionnels en 2015-2016*,document P-513 (Commission), p. 19.

884 Indian Register, Register of Cree and Naskapi Beneficiaries and Register of Inuit Beneficiaries.

885 *Recension des écrits. Prestation des services correctionnels auprès de la population autochtone au Québec,* document PD-14 (Commission), p. 32.

886 Document P-513 (Commission), *op. cit.*, p. 29, table 24.

887 Document PD-14 (Commission), p. 27.

888 Document P-513 (Commission), *op. cit.*, p. 29.

889 *Id.,* p. 5.

890 The detailed incarceration profile of each nation is presented in Appendix 20.

891 Document P-513 (Commission), *op. cit.*, p. 4.

women (9.7%).[892] This trend holds for all nations except the Innu (8.5%).[893] For all genders, the average age of incarcerated Indigenous people residing in southern Québec[894] and outside Québec—37.9 years old—is similar to the average for non-Indigenous people (37.2).[895] Inuit, Innu and Atikamekw Nehirowisiw individuals tend to be incarcerated at slightly younger ages.[896]

Indigenous people are often incarcerated in institutions very far from their home communities. For example, Eeyou (Cree) (64.0%) and Anishnabe (Algonquin) (62.1%) inmates are often placed in Amos, which is also home to a high proportion of Inuit inmates (20.9%).[897] The highest proportion of Inuit inmates, however, is in Saint-Jérôme (48.4%).[898] Most Innus are incarcerated in Sept-Îles (59.3%); most Atikamekw Nehirowisiw in Roberval (43.5%).[899]

The average sentence is longer for non-Indigenous (235 days) than Indigenous people.[900] That said, Indigenous people spend more time in detention than non-Indigenous people. After subtracting time spent in custodial remand, the average length of detention is 89 days for the Inuit, and 72 days for nations residing primarily in the south of the province or outside Québec; non-Indigenous people average 55 days, as do Eeyou (Cree) inmates.[901] According to speakers who presented at the Commission's hearings, this discrepancy can be explained in part by the fact that Indigenous people make less use of the parole system than do other populations.[902]

For 2016–2017, only 9.0% of Indigenous individuals eligible for temporary absence in preparation for conditional release (commonly known as "one sixth") requested this privilege, vs. 23.9% of non-Indigenous inmates.[903] This percentage represents 24 out of 261 eligible individuals.[904] Among Indigenous people who did request this measure, 62.5% of requests were denied, a rate inversely proportional to that of non-Indigenous inmates, for whom 65.2% of requests were approved.[905]

The situation is similar for full-fledged parole. In 2016–2017, 180 Indigenous individuals out of 261 chose to renounce this privilege, a rate of 69.0%.[906] The renunciation rate for non-

892 *Ibid.*

893 *Ibid.*

894 Mi'gmaq, Naskapi, Mohawk, Huron-Wendat, Abénaki and Malécite nations.

895 Document P-513 (Commission), *op. cit.*, p. 5.

896 *Ibid.*

897 *Id.,* p. 18.

898 *Ibid.*

899 *Ibid.*

900 *Id.,* p. 12.

901 *Id.,* p. 13.

902 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 132–133, lines 23–22; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 40, lines 6–23.

903 *DG-0019-C, La langue et la formation des Commissaires aux libérations conditionnelles et sur la représentation des Autochtones, des femmes et des hommes issus des onze nations autochtones dans les programmes de libération conditionnelle*, document P-798-1 (Commission), tab 1.1, p. 18–19 out of 53 (online PDF).

904 *Ibid.*

905 *Ibid.*

906 *Id.,* p. 24 out of 53 (online PDF).

Indigenous inmates during the same period was 43.0%.[907] A significant discrepancy between these two groups can also be observed in terms of granting of parole. While Indigenous inmates' applications for parole were denied in 58.0% of cases in 2016–2017, the rate for non-Indigenous inmates was 44.0%.[908]

The proportion of the sentence served is also higher among nations residing primarily in the south of the province and outside Québec (83.6%) and Inuit (76.1%) than for non-Indigenous people (45.7%).[909] The sole exception to this rule are the Innus, who averaged release with 41.0% of time served.[910]

The frequency of use of various sentencing mechanisms varies from nation to nation. Conditional sentencing[911] is more frequent among Indigenous nations residing primarily in the south of the province or outside Québec (25.4%) and the Inuit (22.4%).[912] In comparison, non-Indigenous people are given conditional sentences in only 10.7% of cases.[913] Supervised probation is most frequent among nations residing primarily in the south of the province or outside Québec (54.2%) and non-Indigenous people (54.9%).[914] Otherwise, the rate varies between 49.1% for the Atikamekw Nehirowisiw nation and 41.4% for the Inuit.[915] For community service, it should be noted that Indigenous people residing primarily in the south of the province or outside Québec receive such sentences in 39.0% of cases, while other rates vary between 52.7% for non-Indigenous people and 72.2% for the Eeyou (Cree).[916]

Taken together, the information gathered in this chapter presents the closest thing we have to a portrait of Québec's Indigenous peoples. Thus it provided additional insight into our work and guided my deliberations in developing the calls for action.

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907 *Id.,* p. 26 out of 53 (online PDF).

908 *Id.,* p. 24–26 out of 53 (online PDF).

909 Document P-513 (Commission), *op. cit.*, p. 14.

910 *Ibid.*

911 A *conditional sentence order* is a sentence imposed by the judge as a result of an offence. It is served in the community, provided that all laws and attached conditions are respected. This sentence is subject to mandatory conditions, which are generally restrictive, such as a curfew or house arrest (source: Ministère de la Sécurité publique. (2007). *L'ordonnance d'emprisonnement avec sursis).*

912 Document P-513 (Commission), *op. cit.*, p. 24.

913 *Ibid.*

914 *Ibid.*

915 *Ibid.*

916 *Ibid.*

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CHAPTER 5

SERVICES COVERED BY THE COMMISSION'S MANDATE

Under the order adopted on December 2016, the Commission was intended to focus on five public services: police services, correctional services, justice services, health and social services and youth protection services.

This chapter summarizes the regulatory framework governing each of the services covered by the Commission's inquiry, as well as the way the services are organized and made available to the entire Québec population, as presented by the public service representatives. It also summarizes the specific services developed for Indigenous peoples.

5.1. Police services

5.1.1 Regulatory framework

Federal jurisdiction

The federal government's scope of action with respect to police services in Québec is limited and entails mainly the application of federal legislation (e.g., *Combating Terrorism Act)* by the Royal Canadian Mounted Police (RCMP), as well as collaboration with the Sûreté du Québec (SQ) and municipal police forces in cases involving organized crime or economic crimes.[917]

The federal government also assumes fiduciary responsibility for Indigenous communities in this regard.[918] In Québec, that responsibility takes the form of funding part (52.0%) of the operations of Indigenous police forces that have entered into self-administered policing agreements.[919] The First Nations Policing Policy set up in 1991 governs those agreements under the First Nations Policing Program[920], which is administered by Public Safety Canada.[921]

Provincial jurisdiction

The Québec government is responsible for providing police services throughout the province, including in First Nations communities.[922] This responsibility falls under the

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917 Ministère de la Sécurité publique. (2017). *La desserte policière municipale, provinciale et autochtone au Québec. Profil organisationnel 2015*. Québec, Québec: Ministère de la Sécurité publique, p. 3. Retrieved from https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/statistiques/desserte_policiere/desserte_policiere_2015.pdf, p. 1; Testimony of Richard Coleman, stenographic notes taken March 21, 2018, pp. 18–19, lines 16–19; *Les services policiers autochtones*, document P-491 (Commission), p. 8.

918 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, pp. 101–102, lines 22–1.

919 *Id.,* p. 104, lines 7–11.

920 *Id.,* p. 104, lines 2–7; *First Nations Policing Policy*, document P-492 (Commission).

921 Public Safety Canada. (2019). Policing in Indigenous Communities. First Nations Policing Program. Retrieved from https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/brgnl-plcng/index-en.aspx.

922 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, pp. 101–102, lines 22–1.

authority of the Ministère de la Sécurité publique (MSP) or, more specifically, that ministry's Direction générale des affaires policières.[923] It is basically governed by the *Police Act.*[924]

This Act sets out the requirements for police officer training and the operating framework for the École nationale de police du Québec (ENPQ), which will be outlined later in this chapter.[925] It also specifies the minimum conditions usually required in order to be hired as a police officer in a regular police force: be a Canadian citizen, be of good moral character, not have been found guilty of an offence under the *Criminal Code* and hold a diploma awarded by the ENPQ.[926]

In addition, the Act contains provisions concerning the mission of police forces[927] and the jurisdictions assigned to the SQ[928] and the municipal police forces.[929] These provisions do not apply to Indigenous police forces, however.[930] The legislative text states, instead, that the government and one or more Indigenous communities – each represented by its respective band council – can enter into an agreement to establish or maintain a police force on a specified territory.[931] The details of these agreements will be provided later in this document when we discuss the scope of Indigenous authorities in terms of police services. The same applies to the operating framework for the Naskapi Village Police Force (Kawawachikamach)[932] and the Eeyou Eenou Police Force (Cree territory)[933], which are also established in the *Police Act.* The organization of the Kativik Regional Police Force (KRPF) in Nunavik comes under the *Act respecting Northern Villages and the Kativik Regional Government*[934], as explained on page 138.

Ethics and internal discipline

In addition to police force operations, an entire part of the Act is devoted to police officers' behaviour. For example, it lays the foundations for police ethics and the mission and operations of the Police Ethics Commissioner[935] and the Comité de déontologie policière.[936] The requirements for internal discipline are also set out in that part of the Act[937],

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923 Testimony of Katia Petit, stenographic notes taken June 13, 2017, p. 92, lines 11–23.

924 *Police Act*, CQLR, c. P-13.1; Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 96, lines 18–21.

925 *Police Act*, CQLR, c. P-13.1, ss. 1–27.

926 *Id.,* s. 115-116.

927 *Id.,* ss. 48–49.

928 *Id.,* ss. 50–68.

929 *Id.,* ss. 69–89.

930 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 102, lines 3–8.

931 *Id.,* p. 102, lines 8–13; *Police Act*, CQLR, c. P-13.1, s. 90.

932 *Police Act*, CQLR, c. P-13.1, ss. 94–102.

933 *Id.,* ss. 102.1–102.10.

934 *Act respecting Northern Villages and the Kativik Regional Government*, CQLR, c. V-6.1.

935 *Police Act*, CQLR, c. P-13.1, ss. 128–193.10.

936 *Id.,* ss. 194–255.11.

937 *Id.,* ss. 256–259.

together with the measures to be taken when a police officer is suspected of having committed a crime.[938]

In terms of the framework for police services, Indigenous police forces are subject to the same provisions as the other police forces. As far as ethics are concerned, all police officers working in Québec, including police officers working for an Indigenous police force, must comply with the *Code of ethics of Québec police officers*.[939] That code sets out the police officers' duties and the standards governing conduct in their relations with the public.[940] They are expected to act respectfully towards citizens by not committing acts or using injurious language based on race, ethnic origin, colour, etc.[941] The Code also states that police officers must not use greater force than is necessary in accomplishing their job or make threats, intimidate or harass.[942]

Any citizen may submit an ethics complaint against a police officer.[943] Complaints are submitted to the Police Ethics Commissioner. The process is based on conciliation; an initial meeting between the complainant and the police officer concerned is arranged to settle the dispute.[944] Complainants may object to conciliation if they believe that it is inappropriate.[945] In that case, it is up to the Commissioner to decide whether the complaint should be referred immediately to an investigator.[946] Complaints involving death, serious bodily harm, criminal offences, repeat offences or "situations potentially injurious to the public's confidence in police officers" are usually not dealt with through conciliation.[947]

If conciliation fails, the Commissioner reviews the complaint and determines whether or not to launch an investigation.[948] The Commissioner has complete independence in making these decisions, despite reporting directly to the MSP.[949] The Commissioner is also responsible for deciding whether the matter should be referred to the *Comité de déontologie*

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938 *Id.,* ss. 286–289.

939 Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 14, lines 9–25; *Commissaire à la déontologie policière. Présentation à la CERP par Marc-André Dowd*, document P-188 (Commission), p. 7; *Code of ethics of Québec police officers*, CQLR, c. P-13.1, r.1; *Code de déontologie des policiers du Québec (pamphlet)*, document P-189 (Commission).

940 Document P-189 (Commission), *op. cit.*, s. 1; testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 13, lines 6–11; document P-188 (Commission), *op. cit.*, p. 5.

941 Document P-189 (Commission), *op. cit.*, s. 5(4); Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 15, lines 5–21.

942 Document P-189 (Commission), *op. cit.*, ss. 6(1)–(2); Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 16, lines 1–17.

943 Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, pp. 20–21, lines 4–19.

944 *Police Act*, CQLR, c. P-13.1, s. 147; Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 25, lines 1–4 and lines 11–19; Document P-188 (Commission), *op. cit.*, p. 16.

945 *Police Act*, CQLR, c. P-13.1, s. 147.

946 *Id.,* s. 149.

947 *Id.,* s. 148; Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, pp. 26–27, lines 15–11; Document P-188 (Commission), *op. cit.*, p. 16.

948 Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, pp. 22–23, lines 24–3 and p. 26, lines 7–14; Document P-188 (Commission), *op. cit.*, p. 11.

949 Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 11, lines 13–21.

policière[950], which functions as a tribunal for matters of police ethics.[951] The ethics committee is composed of lawyers who have been members of the Barreau for at least ten years in the case of full-time members, and at least five years in the case of part-time members.[952] It hears evidence, decides on the outcome of the complaint and, if applicable, determines the penalties to be imposed. Its members are appointed by the government for a term not exceeding five years.[953] The Act also requires representatives from Indigenous communities to be appointed as part-time members to act where a complaint relates to an Indigenous police officer. Members' terms may be renewed.[954]

In addition, all police forces are subject to the independent investigation process.[955] If a person other than a police officer dies, sustains a serious injury or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody, the Bureau des enquêtes indépendantes (BEI) is responsible for conducting an investigation to ensure impartiality.[956] The BEI has recently been given responsibility for conducting investigations into offences of a sexual nature involving on-duty police officers.[957] In September 2018, the BEI was also put in charge of investigating any allegations concerning a police officer by an Indigenous complainant.[958] Since that time, an Indigenous liaison officer has been available to facilitate relations between Indigenous communities and the BEI.[959] Although it reports to the MSP for administrative purposes, the BEI is completely independent and operates at arm's length from police forces in Québec.[960]

Moreover, under the *Police Act*, the director of a police force must notify the Minister of Public Security without delay of "any allegation against a police officer [...] concerning a criminal offence, unless the director considers, after consulting the Director of Criminal and Penal Prosecutions (DCPP), that the allegation is frivolous or unfounded".[961]

Lastly, under the *Police Act,* all police forces must have an internal discipline by-law that determines the duties and standards of conduct of police officers "to ensure the

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950 *Id.,* pp. 27–28, lines 12–1.

951 *Id.,* p. 28, lines 19–25.

952 *Police Act*, CQLR, c. P-13.1, s. 198.

953 *Id.,* s. 199.

954 *Ibid.*

955 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 112, lines 2–3.

956 *Id.,* p. 112, lines 4–11; Testimony of Madeleine Giauque, stenographic notes taken October 19, 2018, p. 17, lines 1–7; *PowerPoint Bureau des enquêtes indépendantes*, document P-934 (Commission), p. 5; *Police Act*, CQLR, c. P-13.1, s. 289.1.

957 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 113, lines 6–10; testimony of Madeleine Giauque, stenographic notes taken October 19, 2018, pp. 17–18, lines 20–13; Document P-934 (Commission), *op. cit.*, p. 5.

958 Testimony of Madeleine Giauque, stenographic notes taken October 19, 2018, p. 21, lines 5–9; Document P-934 (Commission), *op. cit.*, p. 7.

959 Testimony of Madeleine Giauque, stenographic notes taken October 19, 2018, p. 26, lines 19–23 and p. 27, lines 9–12; Document P-934 (Commission), *op. cit.*, p. 10.

960 Testimony of Madeleine Giauque, stenographic notes taken October 19, 2018, pp. 22–23, lines 22–2; Document P-934 (Commission), *op. cit.*, p. 8.

961 *Police Act*, CQLR, c. P-13.1, s. 286; testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 112, lines 12–19.

effectiveness and quality of the services provided, and respect for the authorities over them".[962] In the case of Indigenous police forces, that requirement is imposed under the tripartite agreement.[963]

Scope of Indigenous authorities

As we saw earlier, the Indigenous communities' scope of action with respect to policing primarily consists of signing tripartite agreements so that they can create self-administered police forces.

Under the *Police Act*, policing agreements with Indigenous communities must include provisions relating to "the employment status and swearing-in of police officers, the independence of the administration of the police force, civil liability, internal discipline and accountability".[964] These agreements are usually divided into three parts. The first part covers the delivery of police services, police force management and mission, hiring criteria, ethics and internal discipline, measures in the event of criminal allegations against a police officer and the responsibilities of the police force director.[965] The second part covers the facilities required to deliver services, the necessary material and equipment, inventories of firearms and civil liability insurance.[966] The third and final part of the agreement relates to funding and specifies the contributions from each government, as well as the terms of payment and eligible expenses.[967]

With terms of varying length, these agreements usually involve three parties and are signed by the federal government, the Québec government and the Indigenous community concerned.[968] As mentioned earlier, they come under the framework of the federal government's First Nations Policing Policy.[969]

Although there are exceptions, as explained above, funding is shared 52.0% by the federal government and 48.0% by the Québec government.[970] During our hearings, representatives from the MSP said that because of one-time or specific needs in certain communities, bilateral agreements have also been reached over the years to provide additional funding.[971] This was the case of the KRPF, for example.[972] It should also be noted that the provincial government alone assumes the cost of police services in Indigenous communities served by the SQ.[973]

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962 *Id.,* pp. 113–114, lines 22–4; *Police Act*, CQLR, c. P-13.1, ss. 256–258.

963 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 113, lines 22–25.

964 *Police Act*, CQLR, c. P-13.1, s. 91.

965 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, pp. 25–30, lines 5–16.

966 *Id.,* pp. 30–31, lines 16–15.

967 *Id.,* pp. 31–33, lines 15–12.

968 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, pp. 103–104, lines 23–1.

969 Document P-492 (Commission), *op. cit.*

970 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 104, lines 7–11.

971 *Id.,* p. 104, lines 12–17.

972 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, pp. 27–28, lines 12–12; *PowerPoint Corps de police régional Kativik de Jean-Pierre Larose*, document P-1139 (Commission), p. 9.

973 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 105, lines 3–6.

Moreover, under Sections 19 and 21 of the James Bay and Northern Québec Agreement, the Eeyou (Cree) and Inuit authorities were able to establish and maintain a regional police force.[974]

For the Eeyou Eenou Police Force, that power is confirmed in the *Police Act*.[975] The Act also states that the Cree Nation Government has exclusive jurisdiction over certain lands.[976] but shares responsibility with the SQ for others.[977] As part of its mission, which is defined in the amended section 19 of the James Bay and Northern Québec Agreement, the regional police force is in charge of enforcing the legislation and by-laws in effect in the Eeyou Itschee territory.[978]

In the case of the Inuit, the mission of the KRPF is similar to what is set out in the *Police Act* for the other police forces[979], but the police force is organized based on the provisions of the *Act respecting Northern Villages and the Kativik Regional Government*.[980] In particular, the Act specifies that the director is appointed by the Minister of Public Security on the recommendation of the Kativik Regional Government.[981] Police officers are appointed by the Kativik Regional Government but must be approved by the Minister.[982]

Lastly, section 13 of the Northeastern Québec Agreement serves as the primary regulatory framework for the Naskapi Village Police Force[983], supplemented by the *Police Act*. For example, the Act states that the Naskapi village of Kawawachikamach can determine the requirements for hiring members of its police force, submitting the appropriate by-law to the MSP for approval.[984] It also specifies that the Kativik Regional Government has exclusive jurisdiction over all matters related to the Naskapi Village Police Force.[985] In particular, if its police force is unable to provide the necessary police services, the village may enter into agreements with the Kativik Regional Government and the SQ, subject to ministerial approval.[986]

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974 *James Bay and Northern Québec Agreement*, Grand Council of the Crees (of Québec), Northern Québec Inuit Association, Government of Canada, Société d'énergie de la Baie James, Société de développement de la Baie James, Commission hydroélectrique du Québec and Québec government, November 11, 1975, ss. 19.1 and 21.0.1.

975 *Police Act*, CQLR, c. P-13.1, s. 102.1.

976 *Id.,* s. 102.6.

977 *Id.,* s. 102.7.

978 Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 30, lines 4–9; *Presentation by David Bergeron, Eeyou Eenou Police Force Director, to the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress*, document P-633 (Commission), p. 4.

979 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, pp. 20–21, lines 20–3.

980 *Act respecting Northern Villages and the Kativik Regional Government*, CQLR, c. V-6.1, ss. 369–377; Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 102, lines 17–20; testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 22, lines 15–17.

981 *Act respecting Northern Villages and the Kativik Regional Government*, CQLR, c. V-6.1, s. 373.

982 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 23, lines 9–16.

983 *Northeastern Québec Agreement*, Members of the Naskapi Band of Schefferville, Québec government, Société d'énergie de la Baie James, Société de développement de la Baie James, Grand Council of the Crees, Northern Québec Inuit Association and Government of Canada, January 31, 1978, section 13.

984 *Police Act*, CQLR, c. P-13.1, ss. 91 and 95.

985 *Id.,* s. 98.

986 *Id.,* s. 100.

5.1.2 Organization and offer of services for all

In Québec, the organization of police services is defined by the territory to be protected and the size of the population residing on that territory.

In general, agglomerations with fewer than 50,000 residents are served by the SQ.[987] In 2018, that represented 1,042 municipalities spread among 86 regional county municipalities.[988] Some First Nations communities are also served by the SQ but I will come back to that later.[989]

In addition to the SQ, municipal police forces have jurisdiction over the specific territory of their municipality.[990] That is generally the case for cities and municipalities with 50,000 residents or more.[991] In 2018, there were 29 municipal police forces serving 99 municipalities.[992] Those police forces are administered by the municipal or regional authorities of the territory they serve.[993] It should be noted that a police force can serve other municipalities, either through agreements to provide services or through police boards.[994]

The levels of services provided by each police force are determined by the size of the population served and whether the municipality is part of a metropolitan community or a census metropolitan area.[995] The inclusion criterion is based mainly on the municipality's proximity to a major urban centre and the criminal activities that can be connected with it.[996]

There are six service levels. The services associated with each level are defined in the *Regulation respecting the police services that municipal police forces and the Sûreté du Québec must provide according to their level of jurisdiction.*[997] They are broken down into four major categories: policing, investigations, emergency measures and support service.[998]

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987 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 15, lines 8–23; Document P-491 (Commission), *op. cit.*, p. 4.

988 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 17, lines 7–21; Document P-491 (Commission), *op. cit.*, p. 6.

989 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 99, lines 14–16.

990 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 97, lines 8–13; *Présentation du ministère de la Sécurité publique*, document P-007 (Commission), p. 7; *Police Act*, CQLR, c. P-13.1, s. 69.

991 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 15, lines 8–23; Document P-491 (Commission), *op. cit.*, p. 4; *Police Act*, CQLR, c. P-13.1, s. 72.

992 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 18, lines 5–16; Document P-491 (Commission), *op. cit.*, p. 7.

993 *Ibid.*

994 *Ibid.*

995 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 97, lines 16–20; Document P-007 (Commission), *op. cit.*, p. 8; *Police Act*, CQLR, c. P-13.1, s. 70.

996 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 97, lines 20–23.

997 *Id.*, p. 98, lines 3–7; *Regulation respecting the police services that municipal police forces and the Sûreté du Québec must provide according to their level of jurisdiction*, CQLR, c. P-13.1, r. 6.

998 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 98, lines 7–11.

The complexity of police services increases with each service level, and each service level includes any lower levels.[999] The SQ is responsible for taking on the widest range of responsibilities. It becomes involved when a police force is unable to provide one or more services at its own level or is unable to serve its territory.[1000]

In other words, the SQ must enforce law throughout Québec.[1001] It also has jurisdiction to enforce applicable municipal by-laws in the territories of the municipalities it serves.[1002]

5.1.3 Organization and offer of services for Indigenous peoples

In 2017, Québec had 22 Indigenous police forces[1003] serving a total of 44 communities.[1004] These figures include the two largest Indigenous police forces in terms of the number of personnel, the Kativik Regional Police Force and the Eeyou Eenou Police Force of the Cree Nation Government, which were both established after the James Bay and Northern Québec Agreement was signed.[1005]

The KRPF, headquartered in Kuujjuaq, serves the 14 Inuit communities in Nunavik that can be reached only by air.[1006] The services provided by the police force are defined in a tripartite agreement with the federal and provincial governments.[1007] Under that agreement, the police force is made up of a minimum of 58 full-time employees, including the director.[1008] To provide the minimum level of police services required under the agreement, however, the KRPF employs more police officers.[1009] Nevertheless, in most of the communities (10 out of 14), the personnel is limited to three police officers.[1010] The vast majority of the personnel come from the south[1011] and more lower than among the Inuit, where than one year of

999 *Id.,* p. 98, lines 12–14.

1000 *Id.,* p. 99, lines 17–21; testimony of Patrick Marchand, stenographic notes taken October 18, 2018, pp. 13–14, lines 22–6; Document P-007 (Commission), *op. cit.*, p. 9; *Police Act*, CQLR, c. P-13.1, s. 79.

1001 *Police Act*, CQLR, c. P-13.1, s. 50; testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 99, lines 3–7.

1002 *Police Act*, CQLR, c. P-13.1, s. 50; testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 99, lines 7–10.

1003 Testimony of Patrick Marchand, stenographic notes taken September 12, 2017, p. 25, lines 17–20; *Présentation de la Sûreté du Québec*, document P-045 (Commission), p. 19. A detailed map of police services in Indigenous communities can be found in Appendix 21.

1004 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, pp. 33–34, lines 20–17; Document P-491 (Commission), *op. cit.*, p. 16.

1005 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, pp. 21–22, lines 21–2; Document P-1139 (Commission), *op. cit.*, p. 6; testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 28, lines 20–22; Document P-633 (Commission), *op. cit.*, p. 3.

1006 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 20, lines 8–10.

1007 *Id.,* p. 68, lines 11–13; Document P-1139 (Commission), *op. cit.*, pp. 28–29.

1008 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 31, lines 14–17; Document P-1139 (Commission), *op. cit.*, p. 13.

1009 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 31, lines 18–21; Document P-1139 (Commission), *op. cit.*, p. 13.

1010 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 33, lines 6–10.

1011 *Id.,* p. 38, lines 9–15; Document P-1139 (Commission), *op. cit.*, p. 19.

service.[1012] There is also a memorandum of understanding between the KRPF and the SQ.[1013] Under that memorandum, a joint investigative unit made up of investigators from the SQ and the KRPF operates in the territory[1014], focusing mainly on cases involving major crimes or crimes against the person.[1015]

The scope of action of the Eeyou Eenou Police Force extends to the nine communities located in Eeyou Istchee territory. There are nine detachments in the territory, including the headquarters located in Chisasibi.[1016] In general, the services provided are those set out in Schedule G of the *Police Act* for level 1 police services.[1017] Those services were provided by a team of 98 people in 2018[1018], whereas the agreement specifies and allocates funding for a maximum of 72 people.[1019] Slightly more than 40.0% of the personnel are of Eeyou (Cree) origin or are members of a First Nation.[1020] The nation also benefits from a police commission. The mandate of that commission, which was created in 2010 by the Cree Nation Government, is to enhance peace, harmony and justice throughout Eeyou (Cree) territory by ensuring the highest standards of policing and police conduct.[1021] The commission also identifies priorities and defines objectives for the Eeyou Eenou Police Force.[1022] It is composed of 12 members. Nine of them are appointed by the Cree Nation Government on the recommendation of each community. The chair is also designated by the Cree Nation Government.[1023]

According to the MSP, approximately 90.0% of the population residing in First Nations or Inuit communities is currently served by an Indigenous police force.[1024] Although Indigenous police officers were previously given the status of special constable and had to meet less stringent training requirements, almost all of them are now patrollers duly

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1012 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 32, lines 10–12.

1013 *Id.*, p. 68, lines 20–23; Document P-1139 (Commission), *op. cit.*, p. 7.

1014 Testimony of Patrick Marchand, stenographic notes taken October 18, 2018, p. 36, lines 4–10.

1015 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 68, lines 14–25 and p. 70, lines 6–14; Document P-1139 (Commission), *op. cit.*, p. 7.

1016 Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 31, lines 10–13; Document P-633 (Commission), *op. cit.*, p. 6.

1017 *Police Act*, CQLR, c. P-13-1, Schedule G; testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 32, lines 3–19; Document P-633 (Commission), *op. cit.*, p. 8.

1018 Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 31, lines 18–24; Document P-633 (Commission), *op. cit.*, p. 6.

1019 Testimony of Jacques Labrecque, stenographic notes taken September 27, 2018, p. 163, lines 3–10.

1020 Testimony of Nancy Bobbish, stenographic notes taken September 27, 2018, p. 151, lines 14–17.

1021 Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 35, lines 7–11; Document P-633 (Commission), *op. cit.*, p. 11; DG-0278-A, *Vision, hiring, policing practices, funding, community programs and complaint procedures*, document P-871-47 (Commission), tab 47.3.11, p. 169 of 247 (online PDF).

1022 Document P-633 (Commission), *op. cit.*, p. 11.

1023 *Ibid.*; Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 35, lines 18–22.

1024 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, pp. 34–35, lines 17–10; Document P-491 (Commission), *op. cit.*, p. 17.

trained at the École nationale de police du Québec.[1025] Based on the most recent statistics from the MSP, Indigenous police forces have 333 permanent police officers and 35 special constables.[1026] About two thirds of the personnel hold a position related to territory patrol and surveillance.[1027] The MSP also says that in 2015, the average number of police officers in Indigenous police forces was 5.6 police officers per 1,000 inhabitants.[1028] During the same period, the MSP estimated that nearly 42.0% of Indigenous police force personnel had less than six years of experience.[1029]

In 2018, the SQ served eleven Indigenous communities, including four that have never entered into a tripartite agreement: Malécites de Viger (Cacouna/Whitworth), Gespeg, Wolf Lake (Hunter's Point) and Kitcisakik.[1030] Seven other communities formerly served by an Indigenous police force were also served by the SQ in 2018[1031]: Kanehsatà:ke, Unamen Shipu (La Romaine)[1032], Barriere Lake (Lac Rapide), Matimekush-Lac John, Ekuanitshit (Mingan), Nutashkuan and Long Point (Winneway).[1033]

According to the SQ, four major principles govern its activities in Indigenous communities. The first principle is to develop bonds of trust and partnerships recognized by the Indigenous communities.[1034] The second is to provide regular presence in the communities[1035], and the third focuses on efforts to share information within the organization and facilitate operations among units working in Indigenous communities.[1036] The fourth and final principle relates to the importance of maintaining regular communications with Indigenous and non-Indigenous partners.[1037]

1025 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 107, lines 11–16; testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, pp. 23–24, lines 17–2 and pp. 37–38, lines 20–9.

1026 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 106, lines 14–18; Document P-007 (Commission), *op. cit.*, p. 15.

1027 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 106, lines 18–23; Document P-007 (Commission), *op. cit.*, p. 15.

1028 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, pp. 106–107, lines 23–2; Document P-007 (Commission), *op. cit.*, p. 15.

1029 Ministère de la Sécurité publique. (2017). *Profil organisationnel 2015*, *op. cit.*, p. 21. For an overview of the number of years of service of the police officers employed by Indigenous police forces, see Appendix 22.

1030 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 106, lines 2–7; Document P-007 (Commission), *op. cit.*, p. 13.

1031 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, pp. 105–106, lines 20–1.

1032 Service for this community is provided as a special operation. Testimony of Patrick Marchand, stenographic notes taken October 18, 2017, pp. 28–29, lines 20–17; Document P-045 (Commission), *op. cit.*, p. 18.

1033 Document P-045 (Commission), *op. cit.*, p. 18.

1034 Testimony of Patrick Marchand, stenographic notes taken September 12, 2017, pp. 26–27, lines 9–3; Document P-045 (Commission), *op. cit.*, p. 21.

1035 Testimony of Patrick Marchand, stenographic notes taken September 12, 2017, p. 27, lines 4–8; Document P-045 (Commission), *op. cit.*, p. 21.

1036 Testimony of Patrick Marchand, stenographic notes taken September 12, 2017, p. 27, lines 9–18; Document P-045 (Commission), *op. cit.*, p. 21.

1037 Testimony of Patrick Marchand, stenographic notes taken September 12, 2017, p. 27, lines 19–24; Document P-045 (Commission), *op. cit.*, p. 21.

5.1.4 Training and language

Training

There are two training paths to become a police officer in Québec. Step one in the first path is to complete a Diploma of College Studies (DCS) in police techniques.[1038] This program includes 1,665 hours of training and is offered in twelve college institutions in Québec.[1039] It is followed by a 15-week course in police patrolling offered by the ENPQ, after which students may be hired by any police force in Québec.[1040] This program is open to anyone able to meet the requirements imposed by the ENPQ admissions process: hold a DCS in police techniques, be a Canadian citizen and have good results on the medical, situational judgment and psychometrics tests.[1041] On June 30, 2017, 0.8% of police recruits admitted to the police patrolling program were of Indigenous descent.[1042]

The second path begins with a promise to hire made by a police force to a recruit who has not yet completed a DCS in police techniques. This route is targeted to applicants who would be otherwise difficult to recruit and whose personal characteristics (from a cultural community, Indigenous, university profile, etc.) are of particular interest.[1043] Most Indigenous police forces use this option to train Indigenous candidates for the position of police patroller. Every year, 30 spaces are reserved at the ENPQ for applicants with this profile.

Recruits must complete a 30-week, 900-hour Attestation of College Studies (ACS) program.[1044] An ACS was specifically developed to meet the needs of Indigenous police forces.[1045] It is offered by two college-level teaching institutions, one in French, the other in English[1046], and is followed by the 15-week ENPQ police patrolling course.[1047] This is the same course offered to holders of a DCS.[1048] Generally, two cohorts specifically for applicants who will join an Indigenous police force are planned for each year, one in French and one in English.[1049]

1038 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 33, lines 4–6; *Presentation by the École nationale de police du Québec at the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec,* document P-314 (Commission), p. 11.

1039 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, pp. 48–49, lines 24–5 and p. 61, lines 17–22; Document P-314 (Commission), *op. cit.*, pp. 12 and 15.

1040 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 24, lines 2–4; Document P-314 (Commission), *op. cit.*, p. 12.

1041 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 34, lines 2–10.

1042 *Id.,* p. 29, lines 16–19.

1043 *Id.,* pp. 49–50, lines 14–15.

1044 Testimony of Denis Blanchard, stenographic notes taken December 8, 2017, p. 108, lines 7–14.

1045 *DG-003-A, La manière dont les formations de l'École nationale de police du Québec tiennent compte des réalités autochtones (Premières Nations et Inuit),* document P-871-1 (Commission), tab 1.1.32, p. 169 of 362 (online PDF).

1046 Testimony of Denis Blanchard, stenographic notes taken December 8, 2017, p. 108, lines 7–14.

1047 Testimony of Denis Blanchard, stenographic notes taken December 8, 2017, p. 51, lines 1–5.

1048 Testimony of Denis Blanchard, stenographic notes taken December 8, 2017, p. 26, lines 1–3; Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 51, lines 1–5.

1049 Testimony of Denis Blanchard, stenographic notes taken December 8, 2017, p. 26, lines 4–6.

The remaining part of the training, police career development or advancement, is the same for both profiles. Regarding career development, police offers who want to be promoted to the position of investigator must complete a 285-hour university program.[1050] The training is the same for everyone, including applicants from Indigenous police forces. This also applies to professional development courses offered by the ENPQ.[1051] According to the ENPQ representatives heard at a hearing, some content offered both in university and at the ENPQ deals with issues intrinsic to intervention in Indigenous communities[1052], although the content of some courses is not available in English.[1053]

Another factor, this one financial, distinguishes the training path of applicants from Indigenous police forces from that of other police recruits.[1054] Québec police forces have to contribute 1.0% of their payroll to the ENPQ to cover the training costs of future police officers[1055], but the resulting amounts do not cover all the costs incurred to maintain the courses and programs, estimated at a little over $17,000 to train a new police officer.[1056] To make up the difference, police recruits pay about $8,000 in tuition and accommodation fees.[1057] The cost is much higher for Indigenous police recruits, however. In 2018, the ENPQ estimated that amount to be $28,000 per person.[1058] This gap is largely attributable to the fact that Indigenous police forces do not have to contribute 1.0% of their payroll.[1059] In most cases, it is the Indigenous police forces themselves that bear these costs.[1060]

Language

Police forces in Québec are subject to the *Charter of the French Language.* Under the *Charter of Human Rights and Freedoms*, however: "Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention".[1061] The obligation to ensure that the person under arrest is able to understand the nature of their rights is also clearly established in case law.[1062] The courts have also confirmed that an individual under arrest who does not understand the information transmitted to them should be able to benefit from accommodation measures, such as the presence of an interpreter or the translation of appropriate information into their language.[1063]

1050 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 40, lines 13–25.

1051 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 108, lines 15–20.

1052 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, pp. 89–90, lines 5–14 and p. 93, lines 4–21.

1053 Testimony of Denis Blanchard, stenographic notes taken December 8, 2017, pp. 119–120, lines 22–15.

1054 The details of fees charged to non-Ingenious and Ingenious applicants are presented un Appendix 23.

1055 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 96, lines 9–18 and p. 99, lines 1–4.

1056 *Id.,* p. 98, lines 10–13.

1057 *Id.,* p. 100, lines 16–21.

1058 *Id.,* p. 100, lines 21–23.

1059 *Id.,* p. 99, lines 8–13.

1060 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 101, lines 10–15.

1061 *Charter of Human Rights and Freedoms*, CQLR, c. C-12, s. 28.

1062 *R. v. Cullen*, 2015 SKCA 142 and *R. v. McIntosh*, 1990 ABCA 57.

1063 *R. c. Liew and Yu*, 2012 ONSC 2990 and *R. v. Vanstaceghem*, [1987] 36 C.C.C. (3d) 142, 1987 CanLII 6795 (C.A. Ont.).

5.2. Justice services

5.2.1 Regulatory framework

Federal jurisdiction

Under the *Constitution Act, 1867*[1064], the federal Parliament is the only entity in the country that is authorized to table and adopt legislation or regulations in criminal matters. It was under this authority that Parliament adopted the *Criminal Code*[1065] and the *Youth Criminal Justice Act*[1066] often mentioned during the Commission's work.

The federal government also has jurisdiction over regulatory penal law and can enforce and sanction laws it adopts in other areas of jurisdiction[1067], such as in relation to the *Indian Band Election Regulations*[1068] under the *Indian Act.*[1069]

In the administration of justice, it also has the power to appoint the superior court judges for each Canadian province, including the Québec Superior Court and Court of Appeal.[1070] In addition, the federal government is responsible for appointing the judges of the Federal and Supreme Courts of Canada.

Provincial jurisdiction

Provinces have jurisdiction over the administration of justice.[1071] In this capacity, the Québec government appoints judges who officiate in courts of provincial jurisdiction, including the Court of Québec (civil, criminal and penal, and youth divisions), municipal courts and administrative tribunals. It is also responsible for providing the human and material resources necessary for the proper functioning of the entire justice system on its territory, including the Québec Superior Court and Court of Appeal.[1072]

Québec, like all the other provinces, also has full legislative power over all the areas under its jurisdiction, including education and management of the health and social services network.[1073] Provinces also have jurisdiction over regulatory penal law and the authority to determine the penalties for violations of the province's laws on all matters within their areas of jurisdiction.[1074] It is by virtue of these powers that Québec has adopted the *Code*

1064 *Constitution Act,* 1867, (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C., 1985, App. II, No. 5, s. 91(27).

1065 *Criminal Code*, R.S.C. 1985, c. C-46.

1066 *Youth Criminal Justice Act,* S.C. 2002, c. 1.

1067 *Constitution Act, 1867*, *op. cit.*, preamble s. 91.

1068 *Indian Band Election Regulations*, C.R.C., c. 952.

1069 *Indian Act,* R.S.C. 1985, c. I-5.

1070 *Constitution Act,* 1867, *op. cit.*, s. 96.

1071 *Id.,* preamble s. 92(14).

1072 *Ibid.*

1073 *Id.,* ss. 92(7) and 93.

1074 *Id.,* s. 92(15).

of Penal Procedure[1075], the *Highway Safety Code*[1076], the *Act respecting the conservation and development of wildlife*[1077] and the related regulations.

Finally, provinces have jurisdiction over property and civil rights and the administration of civil justice.[1078] In Québec, the justice sector's legal framework is the *Civil Code of Québec*[1079] and the *Code of Civil Procedure*[1080], adopted by the National Assembly. The provinces can also take action in all purely local and private matters, such as municipal law.[1081]

Under authority delegated by the provincial government, the cities and municipalities in Québec also have the authority to adopt by-laws to govern their operation.[1082] The *Municipal Powers Act*[1083] provides that "any local municipality can adopt any regulation for the good rule, peace, welfare of its population".[1084] It is on this basis that the City of Montréal, for example, has adopted the *By-law concerning peace and order on public property*[1085] and the Ville de Val-d'Or, *the Règlement concernant les nuisances, la paix, le bon ordre et les endroits publics*[1086], which have both been mentioned in our work. Some of Québec's larger cities also have charters that grant additional powers to them. *The Charter of Ville de Montréal,* metropolis of Québec, gives Montréal jurisdiction over the police and municipal court, for example.[1087]

The *Municipal Powers Act* does not apply to First Nations and Inuit communities. As outlined below, their powers and responsabilities are defined either by the *Indian Act*[1088] or, for the Inuit, Eeyou (Crees) and Naskapis, through agreements signed with the Québec government.[1089]

Scope of Indigenous authorities

The *Indian Act* authorizes First Nations band councils to adopt administrative by-laws in certain areas, including health, reserve residence, sports, waters, roads, buildings and animal protection.[1090] This power extends to "observance of law and order" and the "prevention of disorderly conduct and nuisances"[1091] on their territory. In this capacity, band councils may

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1075 *Code of Penal Procedure*, CQLR, c. C-25.1.

1076 *Highway Safety Code*, CQLR, c. C-24.2.

1077 *Act respecting the conservation and development of wildlife*, CQLR, c. C-61.1.

1078 *Constitution Act , 1867*, *op. cit.*, ss. 92(13) and 92(14).

1079 *Civil Code of Québec*, CQLR, CCQ-1991.

1080 *Code of Civil Procedure*, CQLR, c. C-25.01.

1081 *Constitution Act,* 1867, *op. cit.*, ss. 92(8) and 92(16).

1082 *Cities and Towns Act*, CQLR, c. C-19.

1083 *Municipal Powers Act*, CQLR, c. C-47.1

1084 *Id.,* s. 85.

1085 *By-law concerning peace and order on public property*, R.B.C.M., c. P-1.

1086 *Règlement 2003-40 ville de Val-d'Or, Règlement concernant les nuisances, la paix, le bon ordre et les endroits publics,* document P-305 (Commission).

1087 *Charter of Ville de Montréal, metropolis of Québec*, CQLR, c. C-11.4, ss. 87(8) and (10).

1088 *Indian Act,* R.S.C. 1985, c. I-5.

1089 *James Bay and Northern Québec Agreement, op. cit.*; *Northeastern Québec Agreement, op. cit.*

1090 *Indian Act,* R.S.C. 1985, c. I-5., ss. 81(1)a), b), f), m), o) and p.1).

1091 *Id.,* ss. 81.(1)c) and d).

provide for a fine not exceeding one thousand dollars or imprisonment not exceeding thirty days in the case of infringement of any of their administrative by-laws.[1092]

Over the years, some Indigenous populations have entered into agreements with governments granting them greater control in matters of justice.

This is the case, for example, for the Inuit, the Eeyou (Cree) and the Naskapis. In 1975, the Northern Québec Inuit Association and the Grand Council of the Crees (Eeyou Istchee) signed the James Bay and Northern Québec Agreement[1093] with the governments of Québec and Canada. Chapters 18 and 20 of this agreement specify that judges and all other persons designated to dispense justice on their territory must be cognizant with the usages and customs of the Eeyou (Cree) and the Inuit, as well as of their way of life.[1094]

The rules of procedure and sentencing used must also take this into account.[1095] The agreement also stipulates that the Minister of Justice of Québec may propose training programs for judges and any other person designated to render justice on Eeyou (Cree) territory.[1096] The agreement must also facilitate access to interpretation and document translation services in both the Eeyou (Cree) language and Inuktitut.[1097]

Three years later, on January 31, 1978, the Naskapis signed the Northeastern Québec Agreement.[1098] Section 12 of this agreement reworked and adapted the provisions of the James Bay Agreement for the Naskapis, in terms of both knowledge and consideration of their usages and customs[1099] and access to interpreters and translated documents.[1100]

5.2.2 Organization and offer of services for all

The Ministère de la Justice du Québec (MJQ) is the hub of justice services in Québec. As specified in its mission, it has the responsibility to provide justice services that are accessible, trustworthy and honest.[1101] As such, it advises the government on the strategies, policies and actions to implement in the area of justice in Québec. The MJQ also supports the government in drafting laws and regulations, as well as in all issues related to the administration of justice.[1102] More specifically, in connection with the Commission's mandate, it is also the MJQ that advises the government on the strategies to adopt to take the particular realities of certain citizens into account, including Indigenous peoples, and to ensure that they have access to justice.[1103]

1092 *Id.,* s. 81.(1)r).

1093 *James Bay and Northern Québec Agreement, op. cit.*

1094 *Id.,* ss. 18.0.7 and 20.0.8.

1095 *Id.,* ss. 18.0.15, 18.0.17, 18.0.19, 18.0.36, 20.0.7, 20.0.12, 20.0.16, 20.0.18 and 20.0.23.

1096 *Id.,* s. 18.0.17.

1097 *Id.,* ss. 18.0.23, 20.0.10 and 20.0.11.

1098 *Northeastern Québec Agreement, op. cit.*

1099 *Id.,* ss. 12.2.1, 12.2.5, 12.8.1 and 12.9.4.

1100 *Id.,* s. 12.3.3.

1101 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 38, lines 4–7; *Présentation du ministère de la Justice*, document P-006 (Commission), p. 5.

1102 Document P-006 (Commission), *op. cit.*, p. 5.

1103 *Id.,* p. 6; Testimony of Yan Paquette, stenographic notes taken June 13, 2017, pp. 38–39, lines 23–6.

Two major branches of the MJQ are directly involved in the service offering to Indigenous peoples. The first is the Direction générale des affaires juridiques, législatives et de l'accès à la justice.[1104] The Bureau des affaires autochtones, considered the Ministère's gateway to the Indigenous communities[1105], is part of this branch. This is also the office that coordinates Indigenous justice files involving more than one player, whether they are branches of the MJQ or other government departments.[1106] According to the MJQ representative who spoke before the Commission, its primary mandate is still to advise the Ministère's authorities on the strategies to adopt to improve justice in Indigenous communities, while respecting their cultural specificities.[1107]

The second branch involved in the service offering for Indigenous people is the Direction générale des services de justice. The main responsibility of this branch is to liaise between the MJQ and the Indigenous communities concerning the services offered, particularly the itinerant court.[1108]

In his appearance before the Commission, the MJQ representative confirmed that, beyond the branches involved, there are three main areas of focus driving the Ministère's actions with regard to Indigenous communities.[1109] The first is the increased participation of these communities, by prioritizing the development and funding of community justice models.[1110] The second is the improvement of the various services connected with the justice system.[1111] And the third is the cooperation and collaboration of various stakeholders in the justice system and in the Indigenous community.[1112] According to the MJQ representative, the goal of these areas of focus is to improve the well-being of Indigenous communities and implement a justice system that reflects their needs, their values and their aspirations.[1113]

The following text presents the roles and responsibilities of each player or entity involved in the justice service offering. It also details the services offered to First Nations communities and to the inhabitants of Inuit communities, according to the representatives of the primary entities concerned.

1104 At the time of these hearings, this branch was called Direction de l'accès à la justice.

1105 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 45, lines 5–7.

1106 *Id.,* p. 45, lines 8–12.

1107 *Id.,* p. 45, lines 21–24; Document P-006 (Commission), *op. cit.*, p. 13.

1108 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 50, lines 12–16; Document P-006 (Commission), *op. cit.*, p. 16.

1109 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 39, lines 7–13; Document P-006 (Commission), *op. cit.*, p. 7.

1110 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 39, lines 10–11; Document P-006 (Commission), *op. cit.*, p. 7.

1111 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 39, lines 14–18; Document P-006 (Commission), *op. cit.*, p. 7.

1112 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 39, lines 18–21; Document P-006 (Commission), *op. cit.*, p. 7.

1113 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 40, lines 5–10; Document P-006 (Commission), *op. cit.*, p. 7.

Prosecution services

In Québec, the responsibility for prosecuting someone for a breach of the *Criminal Code,* the *Youth Criminal Justice Act* or the *Code of Penal Procedure* belongs to the DCPP.[1114] The some 500 prosecuting attorneys who work for the DCPP exercise this discretionary power.[1115] Under the *Act respecting the Director of Criminal and Penal Prosecutions,* the decision of whether or not to prosecute is specifically their responsibility.[1116] It is also up to them to choose what charges to lay.[1117] The DCPP exercises this role independently of the government and the police forces.[1118] It must, however, comply with certain policies issued by the Attorney General, who also serves as the Minister of Justice.[1119] The first and most important of these policies is to provide services throughout the territory of Québec.[1120]

Concretely, the prosecuting attorneys are spread out over 50 points of service throughout the province of Québec.[1121] Service is also offered on an itinerant basis to several Indigenous communities of Québec.[1122] According to information obtained from the DCPP, at points of service and in itinerant mode, several Crown prosecutors have enough proficiency in English to offer services in English.[1123] Bilingualism is an asset that is considered when the position of prosecutor is filled at certain points of service.[1124] Again, based on information provided by the DCPP, the criminal information filed by prosecutors may also be available in English and French.[1125] The same applies to communications when the language of initial contact is English.[1126] As for services offered to unilingual Indigenous clients, the DCPP has confirmed that, when such a situation arises, the prosecutors ask Indigenous police officers or a Crime Victims Assistance Centre (CAVAC) to interpret for the witnesses and victims during meetings.[1127] The organization confirmed that no Indigenous language interpretation

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1114 *Act respecting the Director of Criminal and Penal Prosecutions*, CQLR, c. D-9.1.1, s. 1 and 13 (1)-(2); *L'institution du Directeur des poursuites criminelles et pénales*, document P-022 (Commission), p. 4.

1115 Testimony of Patrick Michel, stenographic notes taken June 15, 2017, p. 170, lines 18–23; Document P-022 (Commission), *op. cit.*, pp. 14 and 18.

1116 Testimony of Patrick Michel, stenographic notes taken June 15, 2017, pp. 170–171, lines 24–3; Document P-022 (Commission), *op. cit.*, p. 19.

1117 *Ibid.*

1118 Testimony of Patrick Michel, stenographic notes taken June 15, 2017, pp. 160–161, lines 15–11.

1119 *Act respecting the Ministère de la Justice*, CQLR, c. M-19, s. 3 c. 1); *Act respecting the Director of Criminal and Penal Prosecutions*, CQLR, c. D-9.1.1, s. 22; *Orientations et mesures du ministre de la Justice en matière d'affaires criminelles et pénales*, RLRQ, c. M-19, r.1.

1120 Testimony of Patrick Michel, stenographic notes taken June 15, 2017, p. 168, lines 9–19; *Orientations et mesures du ministre de la Justice en matières d'affaires criminelles et pénales*, RLRQ, c. M-19, r.1, s. 1.

1121 Testimony of Patrick Michel, stenographic notes taken June 15, 2017, p. 168, lines 3–8; Document P-022 (Commission), *op. cit.*, p. 15.

1122 Document P-022 (Commission), *op. cit.*, p. 16.

1123 *Rapport sur l'offre de services linguistiques par les services publics du Québec dont peuvent bénéficier les Autochtones de la province*, document PD-15 (Commission), p. 105.

1124 *Id.,* p. 107.

1125 *Id.,* p. 106.

1126 *Ibid.*

1127 *Id.,* pp. 105 and 108.

services are officially made available to DCPP prosecutors and employees[1128] and that documents are not translated into Indigenous languages.[1129]

Besides the policies of the Attorney General, the day-to-day work of the prosecutors is guided by 72 instructions issued by the DCPP, itself.[1130] The Commission's work touched on a certain number of these instructions, including the instruction concerning the prosecutor's decision to authorize or not authorize prosecutions based on sufficiency of evidence and factors connected with public interest.[1131] The instruction on the application of non-judicial approaches to certain criminal offences committed by adults was also raised[1132], as was the instruction pertaining to the processing of criminal allegations committed by police officers.[1133] There is also a group of instructions on the treatment of victims by the DCPP.[1134] During the Commission, the DCPP revised its instructions in order to incorporate certain concerns connected with Indigenous issues. These instructions were made public in November 2018.[1135]

The DCPP is not the only body that has the power to prosecute. Under the *Cities and Towns Act,* the municipalities may also institute proceedings, for a breach of this Act, their charter, one of their by-laws or a resolution or order of the council of the municipality.[1136] The municipal courts of several municipalities, including Montréal and Québec City, also have jurisdiction regarding criminal offences punishable by summary conviction.[1137]

Some municipalities have their own prosecution service. The City of Montréal, for example, has a Direction des poursuites pénales et criminelles (DPPC).[1138] Other towns hire lawyers in private practice who serve as prosecutors for municipal proceedings. This was the case until recently for the City of Val-d'Or.

1128 *Id.,* p. 106.

1129 *Ibid.*

1130 Testimony of Patrick Michel, stenographic notes taken June 15, 2017, p. 175, lines 3–10; Document P-022 (Commission), *op. cit.*, p. 22.

1131 Document P-022 (Commission), *op. cit.*, pp. 23–28; *Directives DPCP, annexe à P-022, en liasse*, document P-022A (Commission), directive ACC-3.

1132 Document P-022 (Commission), *op. cit.*, pp. 29–34; document P-022A (Commission), *op. cit.*, directive NOJ-1.

1133 Document P-022 (Commission), *op. cit.*, pp. 35–42; document P-022A (Commission), *op. cit.*, directive POL-1.

1134 Document P-022 (Commission), *op. cit.*, pp. 57–67.

1135 Testimony of Patrick Michel, stenographic notes taken September 19, 2018, pp. 213–217, lines 19–15; Director of Criminal and Penal Prosecutions. (2018). Directive de la directrice et instructions. Retrieved from http://www.dpcp.gouv.qc.ca/documentation/directives-directeurs.aspx.

1136 *Cities and Towns Act*, CQLR, c. C-19, s. 576.

1137 *Criminal Code*, RSC 1985, c. C-46, s. 1. This jurisdiction is exercised under the *Criminal Code*, RSC 1985, c. C-46, Part XXVII, if the municipality has signed a memorandum of understanding with the Attorney General of Québec to this end. Testimony of Nicolas Mercier-Lamarche, stenographic notes taken November 13, 2017, pp. 21–22, lines 14–3.

1138 Testimony of Nicolas Mercier-Lamarche, stenographic notes taken November 13, 2017, pp. 18–22, lines 11–3.

Courts

Like the rest of the Québec population, the Indigenous population can rely on courts of first instance.[1139] In Québec, this function is assumed by the Superior Court, the Court of Québec (Civil Division, Criminal Division, Penal Division and Youth Division), the Municipal Courts and administrative tribunals, such as the Human Rights Tribunal. The court that officiates in a given case will depend on the nature of the offences in question.

For example, in criminal matters, offences such as murder are reserved for the Superior Court and must be heard before judge and jury. That said, the preliminary inquiries pertaining to criminal acts are held in the Court of Québec, even if they may ultimately be judged in Superior Court. Moreover, if the accused is a minor at the time of the alleged offences, the case is heard by the Court of Québec, Youth Division.[1140] This is also the body that handles requests related to youth protection and adoption.[1141]

The municipal courts hear mostly penal cases, i.e., violations of municipal by-laws and the *Highway Safety Code*.[1142] Some municipal courts have jurisdiction to hear summary criminal cases. Many cases involving homeless Indigenous people and municipal courts have been brought to the attention of the Commission. The municipal courts also have jurisdiction over certain civil files, such as claims for unpaid municipal taxes.

Citizens who wish to contest a judgment rendered by a court of first instance may ask for a review by the appellate court. In Québec, it is the Court of Appeals that hears the vast majority of these requests.[1143] Court of Appeals judges have jurisdiction over all cases likely to be appealed.[1144] The Court of Appeals sits in Montréal and Québec City. Only the Supreme Court of Canada has jurisdiction when the judgment of the Court of Appeals is contested.

In Northern Québec and the North Shore, the courts function using the itinerant court model.[1145]

The itinerant court's first circuit is included in the Abitibi judicial district. Based in Amos, the seat of the judicial district, it offers services to the Eeyou (Cree) and Inuit populations of James Bay and Nunavik, which represent 23 communities.[1146] In Eeyou (Cree) territories, the

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1139 Justice services in First Nations and Inuit communities are covered in Appendix 24.

1140 *Courts of Justice Act*, CQLR, c. T-16, ss. 83(1) and 83(3).

1141 *Id.,* ss. 83(2) and 83(4).

1142 *Act respecting municipal courts*, CQLR, c. C-72.01, s. 29; *Highway Safety Code*, CQLR, c. C-24.2, ss. 597–598.

1143 *Courts of Justice Act*, CQLR, c. T-16, s. 9. The Superior Court hears certain appeals under the *Criminal Code* and under provincial penal law, including cases of summary prosecution. It also hears appeals pertaining to rulings or orders issued by the Youth Division in youth protection matters.

1144 *Ibid.*

1145 *La justice en milieu autochtone, vers une plus grande synergie, Rapport groupe de travail composé de représentants de la Cour du Québec, du ministère de la Justice, du DCPP et du SAA. Submitted to the Honourable Guy Gagnon, Chief Justice of the Court of Québec, January 2008*, document P-916 (Commission).

1146 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, pp. 54–55, lines 23–2; Document P-006 (Commission), *op. cit.*, p. 25.

Court sits in the justice centres belonging to the Cree Nation Government.[1147] In Inuit territory, it sits in rented premises in public buildings, except in Kuujjuaq and Puvirnituq, which have permanent facilities.[1148] The Superior Court may also hold trials with judge and jury in Nunavik, specifically in Kuujjuarapik, Kuujjuaq and Puvirnituq, as well as in Eeyou territory in Mistissini, Chisasibi, Oujé-Bougoumou, Waswanipi, Wemindji and Whapmagoostui.[1149] A decree adopted in 2014 also allows the Superior Court to sit in Eastmain and Nemaska.[1150]

The itinerant court's second circuit serves six Indigenous communities and certain isolated non-Indigenous communities on the North Shore, particularly in the Minganie region, the Lower North Shore and the Schefferville region in the Mingan judicial district.[1151] The Court is based in Sept-Îles, the seat of the Mingan judicial district, but sits in three communities: Matimekush-Lac John, Kawawachikamach and Unamen Shipu (La Romaine). Other Innu communities – Ekuanitshit (Mingan), Pakua Shipu and Nutashkuan – have access to the Court in nearby localities.[1152] Further to a government decree, the Superior Court may also hold trials by judge and jury in Fermont, Havre-Saint-Pierre, Natashquan and Schefferville.[1153]

Generally, the itinerant court moves to each region for a period of one week.[1154] It may sit for one or two days in one community and then move to other communities in the same territory.[1155] According to the MJQ, interpreters translate proceedings into the language of those involved, either systematically or at the request of a party.[1156]

It should be noted that the first appearance of a person who has been charged and is in custody does not usually take place in the communities. To determine whether there is any objection to their being released while awaiting trial, accused persons served by the Sept-Îles itinerant court must appear in that city.[1157] For accused persons of the Eeyou

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1147 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 55, lines 14–20; Document P-006 (Commission), *op. cit.*, p. 25.

1148 *Ibid.*

1149 Superior Court of Québec. (2015). *Rapport d'activités 2010-2014 : Une cour au service des citoyens*, Retrieved from http://www.tribunaux.qc.ca/c-superieure/rapportactivites_juillet_2015.pdf, p. 25; *Décret concernant la tenue à Chisasibi, à Mistissini, Oujé-Bougoumou, Waskaganish, Waswanipi, Wemindji et Whapmagoostui dans le district judiciaire d'Abitibi des termes et séances de la Cour supérieure de ce district et de ses juges*, (2012) 437 G.O.Q. II, p. 2571; *Décret concernant la tenue à Puvirnituq dans le district judiciaire d'Abitibi des termes et séances de la Cour supérieure de ce district et de ses juges*, (1996) 1377 G.O.Q. II, p. 6494.

1150 *Décret concernant la tenue à Eastmain et Nemaska dans le district judiciaire d'Abitibi et la tenue à Fermont, Havre-Saint-Pierre, Natashquan et Schefferville dans le district judiciaire de Mingan, des termes et séances de la Cour supérieure de ce district et de ses juges*, (2014) 718 G.O.Q. II, p. 2854.

1151 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 55, lines 3–7; Document P-006 (Commission), *op. cit.*, p. 25.

1152 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 55, lines 7–13; Document P-006 (Commission), *op. cit.*, p. 25.

1153 *Décret concernant la tenue à Eastmain et Nemaska dans le district judiciaire d'Abitibi et la tenue à Fermont, Havre-Saint-Pierre, Natashquan et Schefferville dans le district judiciaire de Mingan, des termes et séances de la Cour supérieure de ce district et de ses juges*, (2014) 718 G.O.Q. II, p. 2854.

1154 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 55, lines 21–24; Document P-006 (Commission), *op. cit.*, p. 26.

1155 Testimony of Carole Lévesque, stenographic notes taken June 13, 2017, p. 56, lines 10–13.

1156 *Id.*, p. 56, lines 14–19.

1157 Testimony of Marie-Chantal Brassard, stenographic notes taken June 15, 2017, p. 227, lines 14–24.

(Cree) and Inuit communities, a telephone appearance system introduced in the late 1990s in some cases eliminates the need to travel to Amos to appear. The conditions and undertakings in connection with the release are then read, signed and returned by fax.[1158] With few exceptions, however, the accused are transferred and appear in Amos for the interim release hearing.[1159]

The services of the itinerant court are provided by judges of the Court of Québec.[1160] For 2016–2017, 13 judges were assigned to cover the Eeyou Istchee territory[1161], 16 for the Inuit territory[1162] and 6 for the Innu, Naskapi, Minganie, Lower North Shore and Schefferville regions.[1163] In Eeyou territory and in Nunavik, the population can count on the presence of 11 prosecuting attorneys based in Amos[1164], and 5 prosecuting attorneys based in Sept-Îles officiate in the itinerant court's second circuit.[1165] Until March 2019, there was also a prosecuting attorney based in Kuujjuaq.[1166]

Under the Québec *Charter of Human Rights and Freedoms,* "every accused person has a right to be assisted free of charge by an interpreter if he does not understand the language used at the hearing or if he is deaf".[1167] The *Charter of the French Language* also provides that "either French or English may be used by any person in, or in any pleading in or process issuing from, any court of Québec".[1168] Every judgment rendered by a court must also be translated into French or English at the request of one of the parties.[1169]

Assistance services for victims

In 1988, the Québec government enacted the *Act respecting assistance for victims of crime.*[1170] This law led to the creation of the Bureau d'aide aux victimes d'actes criminels (BAVAC) and the Crime Victims Assistance Fund (FAVAC).[1171] The BAVAC is attached to

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1158 *Id.,* pp. 229–230, lines 25–9.

1159 *Id.,* p. 230, lines 10–14.

1160 Testimony of Carole Lévesque, stenographic notes taken June 13, 2017, p. 61, lines 7–10. With the exception of trials by judge and jury, which are presided over by Superior Court judges.

1161 *Id.,* p. 57, lines 20–24; Document P-006 (Commission), *op. cit.*, p. 27.

1162 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 58, lines 10–13; Document P-006 (Commission), *op. cit.*, p. 27.

1163 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 58, lines 15–18; Document P-006 (Commission), *op. cit.*, p. 27.

1164 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 57, line 25 and p. 58, lines 10–14.

1165 Testimony of Marie-Chantal Brassard, stenographic notes taken June 15, 2017, p. 227, lines 7–13.

1166 Quinn, E. (2019, February 15). Fermeture du bureau d'aide juridique de Kuujjuaq. *Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/1152359/autochtones-justice-avocats-assistance-nunavik-.

1167 *Charter of Human Rights and Freedoms*, CQLR, c. C-12, s 36.

1168 *Charter of the French Language*, CQLR, c. C-11, s. 7 (4).

1169 *Id.,* s. 9.

1170 *Act respecting assistance for victims of crime*, CQLR, c. A-13.2; Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 208, lines 12–17.

1171 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 208, lines 18–25; *Le Bureau d'aide aux victimes d'actes criminels et l'aide aux personnes victimes autochtones*, document P-840 (Commission), p. 6.

the MJQ.[1172] Its functions include promoting victims' rights, working on the development of victim assistance programs and ensuring cooperation among the various government departments and organizations that provide services to victims.[1173] The BAVAC also advises the Minister of Justice on any matter pertaining to assistance for victims.[1174] Its mandate also includes the development and dissemination of informational, educational and training programs concerning victims' rights and needs.[1175] Lastly, through the FAVAC, its financial arm, the BAVAC funds the implementation and continued provision of services by the Crime Victims Assistance Centres (CAVAC).[1176]

Crime Victims Assistance Centres

CAVACs are non-profit organizations that are also governed by the *Act respecting assistance for victims of crime.*[1177] Their free, confidential services are provided to victims of any crime and their close relations, whether or not the accused has been reported, prosecuted or found guilty.[1178] Witnesses of a crime can also benefit from assistance provided by these organizations.[1179]

Victims of crime can contact CAVACs on their own initiative or be directed to them after filing a complaint with the police through the police referral program, which connects the centres to the province's police forces, including seven Indigenous police forces.[1180] They may at all times decline the assistance offered.[1181]

In practical terms, CAVACs provide post-traumatic and psychosociojudicial interventions.[1182] When a complaint is officially filed and the case goes to court, workers from the CAVACs

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1172 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 214, lines 8–9; Document P-840 (Commission), *op. cit.*, p. 8.

1173 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 215, lines 1–7; Document P-840 (Commission), *op. cit.*, p. 12; *Act respecting assistance for victims of crime*, CQLR, c. A-13.2, s. 9(1).

1174 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 217, lines 21–24; Document P-840 (Commission), *op. cit.*, p. 13; *Act respecting assistance for victims of crime*, CQLR, c. A-13.2, s. 9(2).

1175 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 219, lines 14–19; Document P-840 (Commission), *op. cit.*, p. 16; *Act respecting assistance for victims of crime*, CQLR, c. A-13.2, s. 9(4).

1176 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, pp. 218–219, lines 25–2; Document P-840 (Commission), *op. cit.*, p. 15; *Act respecting assistance for victims of crime*, CQLR, c. A-13.2, s. 9(3).

1177 *Act respecting assistance for victims of crime*, CQLR, c. A-13.2; Testimony of Nancy Bouchard, stenographic notes taken September 24, 2018, p. 231, lines 11–13; *Présentation du Réseau des CAVAC sur les services offerts aux autochtones*, document P-841 (Commission), p. 5.

1178 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 62, lines 6–10; Document P-006 (Commission), *op. cit.*, p. 36; Testimony of Nancy Bouchard, stenographic notes taken September 24, 2018, p. 231, lines 13–21; Document P-841 (Commission), *op. cit.*, p. 5.

1179 Testimony of Carole Lévesque, stenographic notes taken June 13, 2017, p. 62, lines 6–10.

1180 Testimony of Nancy Bouchard, stenographic notes taken September 24, 2018, pp. 250–251, lines 7–2 and p. 252, lines 3–8; Document P-841 (Commission), *op. cit.*, pp. 12–15.

1181 Testimony of Nancy Bouchard, stenographic notes taken September 24, 2018, pp. 231–232, lines 22–17.

1182 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 62, lines 11–15; Document P-006 (Commission), *op. cit.*, p. 36; Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, p. 233, lines 1–13; Document P-841 (Commission), *op. cit.*, p. 8.

accompany victims throughout the legal proceedings and ensure that they are kept informed of progress in the case: interim release awaiting trial, outcome of the proceedings, sentencing and conditional release, etc. They can also provide information on rights and remedies, give technical assistance (for example, filling out forms) and refer people to specialized resources and community or other organizations when needed.[1183] CAVACs occasionally also deploy a crisis cell for a community affected by a tragedy.[1184] An example of this was in 2017 when the CAVAC network intervened in Akulivik after a triple murder in the small community of 600 people.[1185]

Québec has 17 CAVACs spread across all the regions.[1186] Services are provided in 185 points of service (head offices, courthouses, police stations, community organizations), 47 of them specifically in Indigenous communities.[1187] It is also possible to meet with a CAVAC worker during monthly visits made to certain localities or when the itinerant court is in the area.[1188] According to the Ministry, 9 Indigenous communities have a permanent CAVAC[1189], 21 are served when the itinerant court is present and 6 have access to CAVAC services through monthly visits in nearby localities.[1190] The services provided are the same for everyone.[1191] At the hearing, CAVAC representatives stated that workers are sensitive to the realities of the Indigenous clientele and that they do not hesitate to adapt the services accordingly.[1192] The MJQ has also stated that the CAVAC network has 13 Indigenous and 12 non-Indigenous workers who are trained to provide service to people who are First Nations or Inuit.[1193]

Services are provided in English and French.[1194] Services may also be provided in Indigenous languages in five CAVACs: Abitibi-Témiscamingue (Anishnabe), Côte-Nord (Innu and Naskapi), Nunavik (Inuktitut), Eeyou Istchee (Cree) and Outaouais (Anishnabe).[1195] According

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1183 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 62, lines 16–18; Document P-006 (Commission), *op. cit.*, p. 36; Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, p. 233, lines 1–13 and pp. 233–234, lines 17–3; Document P-841 (Commission), *op. cit.*, p. 8.

1184 Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, pp. 234–235, lines 25–10; Document P-841 (Commission), *op. cit.*, p. 8.

1185 Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, pp. 235–236, lines 14–5.

1186 Document P-841 (Commission), *op. cit.*, pp. 3–4.

1187 *Id.*, p. 19; Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, pp. 260–261, lines 21–4.

1188 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 63, lines 12–23; Document P-006 (Commission), *op. cit.*, p. 37.

1189 Opitciwan, Chisasibi, Kuujjuarapik, Inukjuak, Salluit, Waskaganish, Mistissini, Kuujjuaq and Puvirnituq. Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 63, lines 12–17; Document P-006 (Commission), *op. cit.*, p. 37.

1190 Lac Simon, Timiskaming, Pikogan, Wendake, Wemotaci and Manawan. Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 63, lines 18–23; Document P-006 (Commission), *op. cit.*, p. 37.

1191 Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, p. 236, lines 20–23; Document P-841 (Commission), *op. cit.*, p. 9.

1192 Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, pp. 236–237, lines 20–4; Document P-841 (Commission), *op. cit.*, p. 9.

1193 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, pp. 62–63, lines 19–2; Document P-006 (Commission), *op. cit.*, p. 36.

1194 Document PD-15 (Commission), *op. cit.*, p. 97; Document P-841 (Commission), *op. cit.*, p. 28.

1195 Document P-841 (Commission), *op. cit.*, p. 28.

to information supplied by the CAVACs, people may also, on request, have the services of an English-speaking or Indigenous language-speaking interpreter.[1196] Written documentation is not always available in English, however, and rarely in Indigenous languages.[1197] Some general information documents are available on the CAVAC site in French, English, Innu and Atikamekw.[1198]

Crime victims' compensation

Québec also has a mechanism to compensate victims of crime (IVAC). People may apply for compensation if they have been wronged or suffered physical or psychological harm as a result of a crime.[1199] Eligible crimes are set out in the *Crime Victims Compensation Act* and range from dangerous driving to attempted murder.[1200] The crimes must also have been committed in Québec.[1201]

Applications for benefits must be mailed to the Direction de l'IVAC.[1202] IVAC employees determine the eligibility of the applications and decide on the measures and compensation to be offered to the victims.[1203]

Various measures and benefits are offered to beneficiaries of the plan. These may be in the form of income replacement during the period when the person is unable to work, study or carry out their usual activities.[1204] Medical expenses (physiotherapist, occupational therapist, medication, orthotics, etc.) and psychotherapy may also be reimbursed, including travel or childcare costs incurred to obtain the health care.[1205] The *Regulation respecting medical aid* stipulates the care, treatment[1206], technical aids and costs[1207] that a victim of a criminal act may be entitled to.[1208] It should be noted, however, that to be reimbursed, the psychotherapeutic, psychological and neuropsychological care must have been provided

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1196 Document PD-15 (Commission), *op. cit.*, pp. 98–100.

1197 *Ibid.*

1198 Testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, pp. 285–286, lines 23–16.

1199 Testimony of Odette Guertin, stenographic notes taken September 24, 2018, pp. 297–298, lines 23–4; Témoignages devant la CERP, document P-842 (Commission), p. 4.

1200 *Crime Victims Compensation Act*, CQLR, c. I-6, Schedule; testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 298, lines 14–19; Document P-842 (Commission), *op. cit.*, p. 6.

1201 Testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 298, lines 20–23; Document P-842 (Commission), *op. cit.*, p. 7; *Crime Victims Compensation Act*, CQLR, c. I-6, s. 3.

1202 Testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 299, lines 9–12; Document P-842 (Commission), p. 7.

1203 Testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 299, lines 18–24; Document P-842 (Commission), *op. cit.*, p. 8.

1204 Testimony of Diane Bilodeau, stenographic notes taken September 24, 2018, p. 303, lines 9–14; Document P-842 (Commission), *op. cit.*, p. 14.

1205 Testimony of Diane Bilodeau, stenographic notes taken September 24, 2018, pp. 303–304, lines 23–12; Document P-842 (Commission), *op. cit.*, p. 14.

1206 *Regulation respecting medical aid*, CQLR, c. A-3.001, r.1, Division III.

1207 *Id.*, Division IV.

1208 Testimony of Diane Bilodeau, stenographic notes taken September 24, 2018, p. 304, lines 18–21; Document P-842 (Commission), *op. cit.*, p. 15.

by a professional registered with the Ordre des psychologues du Québec.[1209] Mediation therapy sessions attended by the attacker are not recognized by IVAC either.[1210]

According to the representatives heard at the hearings, IVAC's services are available in both English and French.[1211] In the event of difficulty communicating, interpretation services can also be offered[1212], but the interpreter must be a member of the Ordre des traducteurs, des terminologues et des interprètes agréés du Québec.[1213] When IVAC representatives appeared before the Commission in September 2018, however, there were no Indigenous-language interpreters registered with the Ordre.[1214] The administrative rule in effect also prohibited payment for interpretation services provided by a close relation, community resource or Elder.[1215]

All Indigenous citizens are eligible for the services of the Crime Victims Assistance Centres (CAVACs) and the IVAC compensation plan.[1216]

Legal aid

Québec offers free or contributory legal aid to low-income individuals who require a service that is covered under the *Act respecting legal aid and the provision of certain other legal services*.[1217] The financial eligibility criteria are based on annual income and are different for a single person and a person with a spouse and children.[1218] A weighting of 20.0% of the financial eligibility thresholds is also applied for clients living in remote regions, such as north of the 51st parallel and in certain designated communities, including Mistissini, Oujé-Bougoumou, Waswanipi and communities east of Havre-Saint-Pierre.[1219]

According to the Commission des services juridiques, which is responsible for applying the Act, the network is staffed by 11 regional legal aid centres and 112 legal aid bureaus located in 91 cities and towns across Québec.[1220] Applications for legal aid services must be made in person at the nearest bureau.[1221] Services are provided in part by staff lawyers at the legal aid centres and attorneys in private practice.[1222]

1209 *Id.*, p. 304–305, lines 16–16; Document P-842 (Commission), *op. cit.*, p. 15.

1210 *Id.*, p. 306–307, lines 21–19; Document P-842 (Commission), *op. cit.*, p. 18.

1211 *Id.*, p. 327, lines 5–9; Document P-842 (Commission), *op. cit.*, p. 35.

1212 *Id.*, p. 327, lines 10–15; Document P-842 (Commission), *op. cit.*, p. 35.

1213 *Id.*, p. 328, lines 1–5; Document P-842 (Commission), *op. cit.*, p. 36.

1214 *Id.*, p. 328, lines 6–12; Document P-842 (Commission), *op. cit.*, p. 36.

1215 *Ibid.*

1216 Testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 312, lines 8–17; Document P-842 (Commission), *op. cit.*, p. 23.

1217 Act respecting legal aid and the provision of certain other legal services, CQLR, c. A-14, s. 4.

1218 Testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 29, lines 16–18 and p. 31, lines 1–6.

1219 *Id.*, p. 120, lines 12–17.

1220 *Id.*, p. 33, lines 18–20.

1221 *Id.*, p. 128, lines 19–24.

1222 *Id.*, p. 12, lines 7–16.

The Centre communautaire juridique de l'Abitibi-Témiscamingue covers the territory of Northern Québec, and until March 2019, it had a permanent bureau in Kuujjuaq.[1223] When the position became vacant and they could not fill it, however, they had to close the bureau for this territory.[1224] That said, the legal aid services in this region include the work of five lawyers working for the itinerant court who travel to the Indigenous communities of James Bay, Hudson's Bay and Ungava Bay.[1225] The same is true for the Centre communautaire juridique de la Côte-Nord, which, in addition to having three permanent bureaus in Sept-Îles, Forestville and Baie-Comeau, also has three floating bureaus: Les Escoumins and Sacré-Cœur (served by Forestville) and Pessamit (served by Baie-Comeau).[1226] Service is provided by eight staff lawyers who work for the itinerant court.[1227]

According to information obtained by the Commission des services juridiques, legal aid services are offered in English and French.[1228] It is also possible to obtain some services in Indigenous languages in the legal aid bureaus of Sept-Îles and Kuujjuaq.[1229] Interpretation services are also made available to clients when the resources are available.[1230] Written documents are available in English immediately upon request and may be translated into the relevant Indigenous language with some delay.[1231]

5.2.3 Organization and offer of services for Indigenous peoples

Justice committees

Since 1998, it has been possible to create community-based justice programs (often called justice committees) in First Nations and Inuit communities.[1232] The development and operation of these committees is funded by the MJQ and the Department of Justice Canada via the Aboriginal Justice Strategy.[1233] In addition to the coordinator, these committees are made up of five to twelve people residing in the community who are appointed by the local authorities.[1234]

1223 *Id.,* pp. 153–154, lines 22–4; Centre communautaire juridique de l'Abitibi-Témiscamingue. (2018). Offices. Retrieved from http://www.ccjat.qc.ca/; Quinn. (February 2019, 15). Fermeture du bureau d'aide juridique de Kuujjuaq, *op. cit.*

1224 Quinn. (February 2019, 15). Fermeture du bureau d'aide juridique de Kuujjuaq, *op. cit.*

1225 Document P-006 (Commission), *op. cit.*, p. 27.

1226 Centre communautaire juridique de la Côte-Nord. (2018). Nous joindre. Retrieved from http://aidejuridique-cotenord.ca/nous-joindre/; Testimony of Bernard Lynch, stenographic notes taken October 25, 2018, p. 154, lines 19–23.

1227 Document P-006 (Commission), *op. cit.*, p. 27.

1228 Document PD-15 (Commission), *op. cit.*, p. 113; *Lettre du MJQ en réponse à la demande de précision DGP-0246-C de la CERP, reçue le 3 août 2018*, document 839-92 (Commission), tab 92.1, p. 4.

1229 *Ibid.*

1230 Document PD-15 (Commission), *op. cit.*, p. 115; Document 839-92 (Commission), tab 92.1, pp. 4–5.

1231 Document PD-15 (Commission), *op. cit.*, p. 114; Document 839-92 (Commission), *op. cit.*, tab 92.1, pp. 6–7.

1232 Document P-916 (Commission), *op. cit.*, pp. 24–25.

1233 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, pp. 64–65, lines 23–1; *DG-0024-C, Informations sur les Comités de justice communautaire*, document P-839-11 (Commission), tab 11.1, p. 7 of 940 (online PDF); *Le programme de mesures de rechange pour adultes en milieux autochtones et les comités de justice*, document P-839-104 (Commission), pp. 3 and 29–32.

1234 Document P-006 (Commission), *op. cit.*, p. 39.

The roles and responsibilities assigned to a justice committee may vary depending on the needs and priorities of each community[1235], but we can generally confirm that their role is to promote and maintain social peace and harmony in the community. They also provide an alternative or complement to existing justice system structures, particularly via the Alternative Measures Program for adults in Aboriginal communities, which we will discuss further on in this text. Lastly, in keeping with the values of Indigenous judicial traditions, they emphasize reparation and restitution, as well as promoting and encouraging an understanding of and respect for the law and the values and traditions of the community.[1236]

More specifically, justice committees can act in areas as varied as dejudicialization and non-judicialization, the recommendation of sentences, probation and suspended sentences, supervised conditional releases, crime prevention, community support (e.g., through healing circles), offender reintegration and citizen mediation.[1237]

In 2017, Québec had 26 justice committees serving seven Indigenous peoples[1238]:

- Anishnabek (Algonquins): Kitigan Zibi;
- Atikamekw Nehirowisiw: Manawan, Opitciwan (Obedjiwan) and Wemotaci;
- Eeyou (Crees): Chisasibi, Eastmain, Mistissini, Nemaska, Oujé-Bougoumou, Waskaganish, Waswanipi, Wemindji, Whapmagoostui;
- Inuit: Aupaluk, Inukjuak, Kangiqsujuaq, Kangirsuk, Kuujjuaq, Kuujjuarapik, Puvirnituq and Salluit;
- Mi'gmaq: Listuguj;
- Mohawks: Kahnawà:ke and Akwesasne;
- Naskapis: Kawawachikamach;
- Urban areas: First Peoples Justice Centre of Montreal (FPJCM).

It should also be noted that over the past few years, Indigenous authorities have implemented programs or institutions that go beyond the scope of the justice committees. This is the case with the Lac Simon Wigobisan program[1239], the Kahnawà:ke justice model[1240], the

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1235 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, pp. 65–66, lines 6–2; Document P-006 (Commission), *op. cit.*, p. 39; Document P-839-11 (Commission), *op. cit.*, tab 11.1, pp. 5–6 of 940 (online PDF); *Les comités de justice*, document P-839-103 (Commission).

1236 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 66, lines 3–23; Document P-006 (Commission), *op. cit.*, p. 40; *DG-0024-C, Informations sur les Comités de justice communautaire*, document P-839-11 (Commission), *op. cit.*, tab 11.1.1., p. 18 of 940 (online PDF).

1237 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 66, lines 3–23; Document P-006 (Commission), *op. cit.*, p. 40; Document P-839-11 (Commission), *op. cit.*, tab 11.1.1., pp. 19–20 of 940 (online PDF).

1238 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 67, lines 1–18; Document P-006 (Commission), *op. cit.*, p. 40; Document P-839-104 (Commission), *op. cit.*, pp. 18–19.

1239 *Programme Wigobisan Lac Simon*, document P-551 (Commission); testimonies of Adrienne Jérôme, Judith Morency and Lucien Wabononik, stenographic notes taken April 18, 2018, pp. 10–162.

1240 Testimony of Kevin Fleischer, stenographic notes taken February 15, 2018, pp. 8–9, lines 25–9, p. 13, lines 16–19 and pp. 14–15, lines 4–9; *The Court of Kahnawà:ke and Kahnawà:ke Justice System*, document P-365 (Commission), pp. 3, 8–9, 11 and 13–15.

Akwesasne Mohawk Court[1241] and the Saqijuq project in Nunavik.[1242]

Alternative Measures Program for adults in Aboriginal communities

The Alternative Measures Program (AMP) for adults in Aboriginal communities was introduced in 2001 and then revised in 2015.[1243] This program is exclusively for Indigenous people in Québec and gives people who have been accused of a criminal offence an opportunity to take part, if they agree, in a supervised reconciliation and reparation process.[1244]

The objectives of the program are to "promote greater community involvement in the administration of justice" and to "allow communities to re-establish the required traditional intervention practices for their members".[1245] According to the MJQ, the program also aims to:

> offer solutions that will encourage community members to take responsibility for their own conduct, play an active role in repairing the harm they have done and deal with the problems that may have led to their conflict with the law.[1246]

In order to benefit from this program, the community must have established a justice committee and signed a memorandum of understanding with the DCPP.[1247] To date, 24 First Nations communities and Inuit communities have signed a memorandum to implement the program:

- Mohawks: Akwesasne;
- Eeyou (Crees): Chisasibi, Mistissini, Nemaska, Oujé-Bougoumou, Waskaganish, Waswanipi and Whapmagoostui;
- Inuit: Aupaluk, Inukjuak, Kangiqsualujjuaq, Kangiqsujuaq, Kangirsuk, Kuujjuaq, Kuujjuarapik, Puvirnituq, Salluit and Quaqtaq;
- Atikamekw Nehirowisiw: Opitciwan (Obedjiwan), Manawan and Wemotaci;
- Naskapis: Kawawachikamach;
- Mi'gmaq: Listuguj;
- Anishnabek (Algonquins): Kitigan Zibi.[1248]

1241 Testimony of Joyce King, stenographic notes taken February 15, 2018, p. 91, lines 14–20 and pp. 116–117, lines 15–12.

1242 Testimonies of Paulusi Beaulne and Aileen MacKinnon, stenographic notes taken November 19, 2018, pp. 54–89, lines 5–2; *Saqijuq en liasse français, anglais, Inuktitut*, document P-1124 (Commission), pp. 1–3; *Projet de tribunal spécialisé au Nunavik*, document P-387 (Commission); testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, pp. 138–248.

1243 Document P-006 (Commission), *op. cit.*, p. 47; *Criminal Code*, RSC. 1985, c. C-46, s. 717; Document P-839-104 (Commission), *op. cit*, p. 1.

1244 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 70, lines 13–18; Document P-006 (Commission), *op. cit.*, p. 47.

1245 *Ibid.*

1246 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 71, lines 4–10.

1247 *DG-0022-C, Les protocoles d'entente mettant en œuvre un programme de mesure de rechange pour les adultes en milieu autochtone (suivant les articles 716 à 717.4 du Code criminel) signés entre le DPCP et les representatives de comités de justice ou les autorités politiques de milieux autochtones*, document P-839-7 (Commission), tab 7.1., p. 5 of 511 (online PDF).

1248 Document P-839-104 (Commission), *op. cit.*, pp. 16–17; DG-0022-C, document P-839-7 (Commission), *op. cit.*, tab 7.1.1., pp. 8–13 of 511 (online PDF).

Even though it is considered a justice committee, the FPJC in Montréal has not signed a memorandum to implement the AMP for adults in Aboriginal communities. The Kahnawà:ke Restorative Justice Program performs similar functions to those of the AMP, but the Kahnawà:ke program is based on agreements signed locally with the community service centre, the local court and the Peacekeepers, rather than with the DCPP.[1249]

The accused is referred to and monitored by the justice committee once the judicial proceedings are suspended by the DCPP. The justice committee can suggest measures that take the needs of the society, the accused and the victim into account, including community service, compensation for the victim, a letter of apology, treatments or counselling, or any other measures deemed appropriate, except for incarceration.[1250] It is up to the Crown prosecutor to determine whether to accept them. Once the accused has completed the measures, the charges are dismissed.

At the beginning, the program was generally only applied to less serious offences that were punishable by five years of jail time or less, except for certain offences, such as sexual offences.[1251] Then the 2015 revision, carried out due to pressures from certain communities, allowed new offences to be added, including some related to conjugal violence and break-and-entries into a property that was not occupied at the time of the offence.[1252] At the time of completing the report, the expansion of the program had led to the signature of a single memorandum of understanding for the communities of Manawan and Wemotaci.[1253]

Consideration of Indigenous status and Gladue reports

Enacted in 1996, section 718.2e) of the *Criminal Code* was intended to limit recourse to incarceration and encourage the use of alternative sanctions, particularly for Indigenous offenders.[1254]

The Supreme Court of Canada has ruled on this provision on two occasions. The first was in 1999, in the judgment *R. v. Gladue*[1255], the second coming 15 years later, in *R. v. Ipeelee.*[1256] According to these judgments, sentencing judges must take judicial notice of unique systemic and background factors that may have played a part in bringing the accused before the courts, including:

1249 Document P-839-11 (Commission), *op. cit.*, tab 11.1.8, p. 534 of 940 (online PDF).

1250 Testimony of Marie-Chantal Brassard, stenographic notes taken June 15, 2017, p. 235, lines 19–25; Document P-839-104 (Commission), *op. cit.*, p. 6.

1251 Document P-839-104 (Commission), *op. cit.*, pp. 6–8.

1252 Testimony of Marie-Chantal Brassard, stenographic notes taken June 15, 2017, pp. 238–239, lines 7–7; testimony of Jacques Prégent, stenographic notes taken October 3, 2018, pp. 104–106, lines 1–5 and p. 119, lines 4–11; *DGP2-0022-C, Précisions sur le Programme de mesures de rechange pour les adultes en milieu autochtone*, document P-839-9 (Commission), tab 9.1, p. 3 of 48 (online PDF); testimony of Marie-Ève Sylvestre, stenographic notes taken February 22, 2018, pp. 90–91, lines 13–6 and p. 92, lines 2–8.

1253 Document P-839-9 (Commission), *op. cit.*, tab 9.1., p. 3 of 48 (online PDF); *PowerPoint Projet de justice communautaire atikamekw*, document P-904 (Commission), pp. 20–21.

1254 *Criminal Code*, R.S.C. 1985, c. C-46, s. 718.2e).

1255 *R.* v. *Gladue*, [1999] 1 SCR 688.

1256 *R.* v. *Ipeelee*, 2012 SCC 13.

> the history of colonialism, displacement and residential schools, and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and, of course, higher levels of incarceration for Aboriginal peoples.[1257]

More important still, according to the *Gladue* judgment, judges must take into account the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Indigenous heritage or connection.[1258] Thus, the sentencing judge "may and should in appropriate circumstances and where practicable request that witnesses be called who may testify as to reasonable alternatives".[1259]

In 2001, in response to this judgment, the Aboriginal Legal Services of Toronto created what are now known as Gladue reports.[1260] These reports are now used in all Canadian provinces in various ways. In Québec, a structured program for drafting Gladue reports was not set up until 2015.[1261] Production of a Gladue report is ordered by the court at the request of a judge, the DCPP, an attorney for the defence or a justice committee.[1262] Reports may be produced by Les Services parajudiciaires autochtones du Québec (SPAQ), the Makivik Corporation and the Department of Justice and Correctional Services of the Cree Nation Government in their respective territories of jurisdiction.[1263] Justice committee coordinators may at times draft reports themselves. A list of accredited writers has been drawn up and is managed by the MJQ.[1264] As of September 2017, the list contained 56 accredited writers in Québec.[1265] These people, who are not probation officers, must have knowledge of the culture, the setting and the resources available in the community or region where the offender lives.[1266] The MJQ covers the cost of writing Gladue reports, either by directly paying the fees of the designated writer or through funding granted to justice committees for this purpose.[1267]

1257 *Id.*, para. 60.

1258 *R.* v. *Gladue*, [1999] 1 SCR 688, para. 83; Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 75, lines 8–10.

1259 *R.* v. *Gladue*, [1999] 1 SCR 688, para. 84.

1260 Testimony of Jonathan Rudin, stenographic notes taken February 14, 2018, pp. 215–216, lines 22–1.

1261 *DG-0085-C, Informations sur les rapports Gladue préparés au Québec et les Comités de justice communautaire*, document P-839-22 (Commission), tab 22.1, p. 3 of 7 (online PDF).

1262 Testimony of Paul Turmel, stenographic notes taken June 12, 2018, p. 22, lines 19–25.

1263 *DGP-0085-C and DGP-0093-C, Précisions sur les rapports Gladue préparés au Québec*, document P-839-23 (Commission), tab 23.1, pp. 4–8 of 34 (online PDF).

1264 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 75, lines 18–20; Document P-839-23 (Commission), *op. cit.*, tab 23.1.2, pp. 14–15 of 34 (online PDF).

1265 Document P-839-23 (Commission), *op. cit.*, tab 23.1.2, pp. 14–15 of 34 (online PDF).

1266 Document P-006 (Commission), *op. cit.*, p. 50.

1267 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, pp. 75–76, lines 23–5; *Annexe 1 de la réponse du Ministère de la Justice du Québec en réponse à la demande d'information DG-0093-C de la CERP, "Liste des rapports ordonnés et des informations complémentaires,"* document P-839-24 (Commission), tab 24.1.1.

According to figures obtained from the MJQ, in 2016–2017, 117 Gladue reports were ordered by the Court of Québec.[1268]

Services parajudiciaires autochtones du Québec

SPAQ was set up following negotiations between the Québec government, First Nations, Métis and Inuit over 35 years ago.[1269] Counsellors working with the organization provide assistance to Indigenous people in their dealings with the criminal and penal justice system (adult or youth), whether they are the victim, witness or accused.[1270] The counsellors inform and assist their clients to ensure that they receive fair and equitable treatment in judicial proceedings that differ from Indigenous customs.[1271] Their advice covers federal and provincial laws and municipal and band by-laws.[1272] They liaise with DCPP prosecuting attorneys, citizens and their lawyers.[1273] They may also be called on to provide judges with information on the resources available in communities.[1274]

As explained earlier, SPAQ staff may also draft Gladue reports.[1275] They also help train and supervise many paralegal workers on how to draft these reports.[1276]

5.3. Correctional services

5.3.1 Regulatory framework

In Canada, responsibility for correctional services is shared between the federal and the provincial or territorial governments.[1277] While the Correctional Service of Canada is responsible for people sentenced to prison terms of two years or more, the provinces and territories manage prison terms of up to two years less a day and people sentenced to several terms with a total duration of under two years.[1278] Provincial correctional services are also responsible for administering sentences to be served in the community, including

1268 *Id.*, p. 75, lines 21–23; Document P-006 (Commission), *op. cit.*, p. 50; Document P-839-22 (Commission), *op. cit.*, tab 22.1, p. 4 of 7 (online PDF).

1269 Testimony of Sharon McBride, stenographic notes taken September 14, 2017, p. 52, lines 11–17.

1270 *Id.*, p. 53, lines 11–15 and p. 54, lines 14–16.

1271 *Id.*, p. 53, lines 16–20.

1272 *Id.*, p. 53, lines 21–25.

1273 *Id.*, p. 112, lines 13–21.

1274 *Id.*, pp. 112–113, lines 22–4.

1275 *Id.*, pp. 115–116, lines 19–7; Document P-006 (Commission), *op. cit.*, p. 43; DG-0204-C, *Les services parajudiciaires autochtones du Québec (SPAQ)*, document P-839-81 (Commission), tab 81.1.1, p. 6 of 138 (online PDF).

1276 *Les rapports Gladue*, document P-839-102 (Commission), p. 27; Document P-839-23 (Commission), *op. cit.*, tab 23.1.2, pp. 14–15 of 34 (online PDF); Testimony of Sharon McBride, stenographic notes taken September 14, 2017, pp. 114–115, lines 23–2.

1277 *The Constitution Act,* 1867, *op. cit.*, s. 91 preamble, ss. 91(28) and 92(6).

1278 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 119, lines 5–7; Document P-007 (Commission), *op. cit.*, p. 22; *Criminal Code*, R.S.C. 1985, c. C-46, s. 743.1.

probation orders with supervision[1279], conditional sentence orders[1280] and hours of community service.[1281] They also monitor offenders who are granted temporary absence or conditional release.[1282]

In Québec, correctional services are under the authority of the MSP and are governed by the *Act respecting the Québec correctional system*.[1283] The Act stipulates that Correctional Services, in collaboration with the institutions and organizations that share the same mission, "shall endeavour to enlighten the courts and shall be responsible for the care, in the community or in a correctional facility, of the persons committed to their custody and facilitate the reintegration of offenders into the community".[1284]

The Act defines the powers of the government and the Minister of Public Security in this context[1285] and the general principles that must guide the actions of the main stakeholders involved in the correctional system. Reintegration is central to these principles.[1286] The Act also stipulates that the protection of society and compliance with court decisions are "the paramount considerations in the pursuit of the reintegration of offenders into the community".[1287]

The actions of Correctional Services are subject to the Act as regards both community supervision[1288] and the establishment of correctional facilities and community correctional centres.[1289] The Act also allows the Québec government to enter into an agreement with an Indigenous community, a group of communities or any other Indigenous group to entrust it with all or part of the administration of a community correctional centre or with the community supervision of Indigenous offenders.[1290] The organization of the resulting services is covered a little later in this chapter.

1279 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 25. A probation order with supervision is a sentence imposed by the judge following an offence. The offender is subject to mandatory conditions, including the obligation to report to a probation officer and comply with his or her instructions. It also involves specific conditions aimed at fostering reintegration, such as receiving therapy (Source: Ministère de la Sécurité publique, 2007). *Probation order with supervision*. Retrieved from https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/publications/depliants/depliant_ordonnance_probation_surveillance_en.pdf).

1280 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 25. A *conditional sentence order* is imposed by the judge following an offence. It is served in the community as long as the offender abides by the laws and complies with the set conditions. It is subject to mandatory conditions and generally imposes punitive conditions that restrict freedom, such as a curfew or house arrest (Source: Ministère de la Sécurité publique, 2007). *Conditional sentence order*. Retrieved from https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/publications/depliants/depliant_ordonnance_emprisonnement_sursis_en.pdf).

1281 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 119, lines 7–12.

1282 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 25.

1283 *Act respecting the Québec correctional system*, CQLR, c. S-40.1.

1284 *Id.,* s. 3; Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 120, lines 2–12; Document P-007 (Commission), *op. cit.*, p. 24.

1285 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 193–194.

1286 *Id.,* s. 1.

1287 *Id.,* s. 2.

1288 *Id.,* ss. 25–28.

1289 *Id.,* ss. 29–36.

1290 *Id.,* s. 31.

Beyond the intervention context, the normative framework also sets out a number of obligations and rights.

The Act establishes the obligation for Correctional Services to immediately assess anyone entrusted to its custody in a way that is suitable for the length of the sentence, the person's status and the nature of the offence.[1291] In this context, the Act obliges Correctional Services to take all possible steps to obtain the information necessary for the custody and care of the people entrusted to them.[1292] The organizations or people who have this information are required to disclose it to Correctional Services on request.[1293] Ultimately, the content of the file must be shared with the Commission québécoise des libérations conditionnelles (CQLC) to inform its decisions on temporary absences and conditional releases.[1294]

The Act also sets out the responsibilities of all actors in the system, including inmates.[1295] The same is true of procedures and requirements related to applications for temporary absence and conditional release[1296] and the obligations of the same actors towards victims.[1297] In particular, the Act stipulates that the director or president of the CQLC, as the case may be, must take every possible measure to inform victims who have made a request in writing of the date of the offender's eligibility for temporary absence or conditional release and the date of the offender's release at the end of their prison sentence.[1298] Victims of domestic violence, sexual assault or a pedophilic offence must be informed, even if they have not made a request.[1299] When the victims concerned are minors, deceased or unable to receive the information, the information can be communicated to a relative, a spouse or any other person designated to care for the victim.[1300]

The Act also obliges the Minister of Public Security to develop and offer programs and services to encourage offenders to develop an awareness of the consequences of their behaviour and initiate a personal process focusing on developing their sense of accountability.[1301] These programs must also make special allowance for the specific needs of women and Indigenous people.[1302]

The duties and standards of conduct for officers, correctional counsellors and managers are laid down in the *Regulation under the Act respecting the Québec correctional system,*

1291 *Id.,* s. 12; testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 19, lines 8–10.

1292 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 18.

1293 *Ibid.*

1294 *Id.,* s. 19; testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 19, lines 15–20.

1295 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 37–39.

1296 *Id.,* ss. 42–73 and 135–153.

1297 *Id.,* ss. 173–176.

1298 *Id.,* s. 175.

1299 *Ibid.*

1300 *Id.,* s. 174.

1301 *Id.,* s. 21.

1302 *Ibid.*

thereby also establishing the rights of inmates.[1303] The *Regulation* deals with matters related to the inmates' property[1304], hygiene[1305], clothing[1306], physical exercise[1307], health care[1308], release[1309], searches[1310], administrative segregation[1311], mail[1312] and visits.[1313]

In the hearing, Marlène Langlois, associate director general of MSP correctional programs, explained that, under the values set out by the government, offenders are entitled to expect interventions to be carried out:

1. based on the recognition that any person has the potential to progress positively;
2. based on the commitment to have interventions provided by competent, honest personnel, with the clear objective of reducing the risk of repeat offences;
3. with respect for the basic rights of the people entrusted to them, imposing only such limitations as are necessary and required under current legislation;
4. without any form of discrimination and demonstrating neutrality, objectivity and integrity.[1314]

This vision was confirmed by Associate Deputy Minister Jean-François Longtin at the hearing in the fall of 2018. Mr. Longtin stressed the importance of having good knowledge of the clientele, acting on an individualized basis – during both the evaluation and the intervention – and focusing on the continuity of service and partnership, as well as the development of the offenders' accountability.[1315]

5.3.2 The organization and provision of services

In Québec, the organization and provision of correctional services is the responsibility of the MSP's Direction générale des services correctionnels (DGSC), which manages offenders in custody, monitors them in the community and supports their reintegration. Its responsibilities also include supplying pre-sentencing reports to courts, assessing the people entrusted to them and developing and offering programs and services to support the reintegration of offenders. Accused persons in custody awaiting trial or sentencing are also the responsibility of the DGSC.

1303 *Regulation under the Act respecting the Québec correctional system*, c. S-40.1, r. 1.

1304 *Id.*, ss. 4–5.

1305 *Id.*, s. 6.

1306 *Id.*, ss. 7–9.

1307 *Id.*, s. 10.

1308 *Id.*, ss. 11–13.

1309 *Id.*, ss. 14–18.

1310 *Id.*, ss. 19–30 and 45–50.

1311 *Id.*, ss. 31–36.

1312 *Id.*, ss. 51–55.

1313 *Id.*, ss. 56–61.

1314 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 121, lines 2–15; Document P-007 (Commission), *op. cit.*, p. 26.

1315 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, pp. 27–33, lines 10–20.

The province's correctional system is divided into three administrative regions: Montréal, Eastern Québec (from Mauricie to Gaspésie plus the North Shore) and Western Québec (from Estrie to Abitibi plus Northern Québec).[1316] Each of these regions is the responsibility of an assistant director general (DGA) who reports to the associate deputy minister. The role of the DGAs is to ensure good management of detention facilities and services in the community in their territory. They involve the community in the reintegration of offenders and establish partnerships with community resources in their territory.

The system has a total of 18 detention facilities, two of which are reserved for women and one for sex offenders (Percé).[1317] There are also 17 professional correctional services branches (commonly known as probation offices) and about 20 regional points of service.[1318]

Before sentencing

As explained earlier, Correctional Services may be asked to produce pre-sentencing reports. The purpose of these reports, written by a probation officer at the request of a judge, is to provide the judge with any information that will help determine the sentence best suited to the offender.[1319] They contain relevant information about the offender (personal and social situation, background, etc.), known problem issues and the circumstances of the offence for which a guilty plea or conviction has been recorded. They may also focus on a particular aspect raised by the judge in answer to a specific question.[1320] This is known as a specific pre-sentencing report.

To produce this report, probation officers meet with the offender and, if necessary, communicate with parents, spouse, friends, etc.[1321] They also check the offender's criminal record and may talk to the investigator in the case as needed.[1322] If they deem it necessary, they may also, with the person's consent, access other types of information, such as medical records.[1323] Similarly, psychologists, psychiatrists or other specialists may be called on.[1324]

Although the process is the same for all types of offenders, including Indigenous clients[1325], at the hearing, MSP representatives stated that beginning in 2015, pre-sentencing assessment practices have been adapted for Indigenous people.[1326] Based on the principles put forward

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1316 Appendix 25 shows which facilities are in each region.

1317 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 119, lines 16–20; Document P-007 (Commission), *op. cit.*, p. 23.

1318 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 119, lines 21–24; Document P-007 (Commission), *op. cit.*, p. 23.

1319 Ministère de la Sécurité publique. (2007). *Pre-Sentencing Report.* Québec City, Québec: Ministère de la Sécurité publique, p. 3.

1320 *Id.,* p. 2.

1321 *Id.,* p. 3.

1322 *Ibid.*

1323 *Ibid.*

1324 *Ibid.*

1325 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 122, lines 8–10; Document P-007 (Commission), *op. cit.*, p. 28.

1326 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 122, lines 11–12; Document P-007 (Commission), *op. cit.*, p. 28.

in the Gladue judgment, Indigenous pre-sentencing reports now take into consideration the background and systemic factors affecting the reality and culture of the person when analyzing the offence committed, assessing the potential for reintegration and identifying appropriate measures.[1327] They do not, however, include an exhaustive background portrait of the community to which the offender belongs or of the effects of colonialist policies on their social environment.[1328] Nor do they propose alternatives to incarceration: their purpose is, rather, to assess the risk of reoffending and the potential for reintegration.[1329] It should be noted that only a few probation officers have been trained to produce a report of this type.[1330]

After sentencing

What happens to offenders and the services they receive depend on the sentence handed down. Those who must serve their sentence in detention are sent to correctional facilities.

In detention

On entering a detention facility, every person, whether accused or convicted, passes through the same process: admission, assessment of their state of health, screening for suicide risk, and assignment of a classification or living unit.[1331] At the time of admission, a person can declare that they belong to an Indigenous nation.[1332] The declaration is voluntary.[1333] At the hearing, MSP representatives also stated that in some facilities with a high proportion of Indigenous inmates, during classification, placing people of Indigenous origin in the same living unit is encouraged.[1334] This is the case in the Saint-Jérôme, Amos and Sept-Îles facilities.[1335]

A person whose sentence must be served in detention will be assessed to determine their need for supervision and identify the appropriate interventions.[1336] If the prison term exceeds six months, the assessment is used to develop a correctional intervention plan.[1337] Follow-up is provided based on the person's status and needs, as identified in the assessment.[1338]

1327 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 122, lines 13–21; Document P-007 (Commission), *op. cit.*, p. 28.

1328 Testimonies of Jean-François Longtin and Marlène Langlois, stenographic notes taken September 24, 2018, pp. 89–90, lines 25–23; Document P-839-102 (Commission), *op. cit.*, pp. 22–23.

1329 Document P-839-102 (Commission), *op. cit.*, pp. 22–23

1330 Testimony of Marlène Langlois, stenographic notes taken September 24, 2018, p. 91, lines 18–22.

1331 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 122–123, lines 22–4; Document P-007 (Commission), *op. cit.*, p. 29; testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 17, lines 6–9 and pp. 17–18, lines 22–2.

1332 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 17, lines 13–21.

1333 *Id.,* p. 17, lines 17–18.

1334 *Id.,* pp. 18–19, lines 22–2.

1335 *Id.,* p. 18, line 24.

1336 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 123, lines 7–10; Document P-007 (Commission), *op. cit.*, p. 29; testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 18, lines 18–22 and p. 19, lines 3–7.

1337 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 19, lines 21–22.

1338 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 123, lines 19–21; Document P-007 (Commission), *op. cit.*, p. 29.

In practical terms, the result of the assessment is what determines access to the programs and services offered in the facility, and it is taken into account when considering applications for release or temporary absence.[1339]

The risk management assessment tool used until very recently was the LS/CMI (Level of Service/Case Management Inventory).[1340] This is an actuarial tool used to assign a rating based on the presence of certain risk factors, including criminal history, addiction to alcohol or other substances and the quality of family relationships. It was used for all inmates, regardless of their cultural origins. In 2018, the MSP concluded that the tool was not fully suited to the clientele in Québec.[1341] This echoed a recent Supreme Court ruling that described such tools as discriminatory for people of Indigenous origin.[1342] Consequently, a new tool has been developed to analyze the needs of offenders in Québec : the BACPCQ (Besoin et analyse clinique pour personne contrevenante du Québec).[1343] At the time this report was filed, the BACPCQ was being tested in a pilot project. At the hearing, however, the MSP representatives stated that the tool was already being used to assess all Indigenous people entrusted to Correctional Services.[1344]

As provided in the *Act respecting the Québec correctional system,* inmates can also have access to programs and services to foster their reintegration into the community.[1345] All detention facilities provide basic educational and employability services, as well as sociocultural and sports activities.[1346]

In particular, literacy, French and mathematics courses are provided in detention facilities through a partnership between the MSP and the Ministère de l'Éducation et de l'Enseignement supérieur (MEES).[1347] The costs of these pre-secondary and secondary level courses are borne entirely by the MEES. The Fonds locaux de soutien à la réinsertion sociale (FSRSs) contribute to the purchase of educational materials or pay allowances as

1339 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 20, lines 4–6; testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 123–124, lines 22–1; Document P-007 (Commission), *op. cit.*, p. 29.

1340 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 81, lines 17–24.

1341 *Id.,* pp. 81–82, lines 25–13.

1342 *Ewert v. Canada*, 2018 SCC 30.

1343 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 82, lines 14–18.

1344 *Id.,* pp. 84–85, lines 20–2.

1345 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 21 and 22; Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 20, lines 11–14.

1346 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 123–124, lines 22–8; Document P-007 (Commission), *op. cit.*, p. 30.

1347 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 21, lines 19–24.

incentives to students. The income of the FSRS is mainly derived from operating canteens in facilities and from the 10.0% deduction from inmates' pay, as provided for in the Act.[1348]

The Ministère du Travail, de l'Emploi et de la Solidarité sociale also offers workforce development and employment services. A counsellor is present in every facility. During their incarceration, inmates can generally hold paid employment (kitchen, housekeeping, etc.). They may also, on a voluntary basis, engage in activities or have access to services to help them acquire and maintain prosocial values, for example by doing volunteer work for non-profit organizations. Access to workshops is also provided to inmates of correctional facilities.[1349]

Although the programs and services provided are the same for everyone, six detention facilities with a high proportion of Indigenous inmates offer programs specifically geared to this clientele[1350]: the facilities in Amos, Baie-Comeau, Hull, New Carlisle, Saint-Jérôme and Sept-Îles.[1351] In Saint-Jérôme, Inuit clients are also offered a specific welcome and integration session and an education program in Inuktitut, provided by the Kativik School Board.[1352]

Therapeutic programs are also provided in collaboration with Indigenous community organizations. These programs address a variety of subjects, including cultural and personal trauma, self-esteem and resilience, spousal, family and social relationships, and managing emotions.[1353] One example is the program on the use of psychoactive substances, offered in Innu at the Sept-Îles detention facility.[1354] In Saint-Jérôme, occasional workshops on suicide prevention, sexual bullying and parenting skills are also offered in partnership with various stakeholders from Nunavik.[1355]

Moreover, a number of local initiatives enable Elders to make visits.[1356] This is the case in Amos, Hull, Saint-Jérôme and the Leclerc detention facility in Laval.[1357] Workshops in creative art, music and traditional food are also offered.[1358]

Two of the four new detention facilities also provide specific spaces for Indigenous offenders.[1359] In Sept-Îles, the workshops have been adapted. An office is also set aside for the exclusive use of Elders, as well as a circular room that can accommodate 30 people

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1348 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 75; *Regulation respecting programs of activities for offenders*, CQLR, c. S-40-1, r. 3, ss. 4 and 15.

1349 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 124, lines 8–10.

1350 *Id.*, p. 124, lines 10–16; Document P-007 (Commission), *op. cit.*, p. 30.

1351 *Ibid.*

1352 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 125, lines 1–6; Document P-007 (Commission), *op. cit.*, p. 31; Kativik Ilisarniq. (2019). Adult education. Retrieved from https://www.kativik.qc.ca/adult-education/.

1353 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 125, lines 12–19.

1354 *Id.*, p. 125, lines 19–21; Document -007 (Commission), *op. cit.*, p. 31.

1355 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 126–127, lines 24–3.

1356 *Id.*, p. 127, lines 8–11; Document P-007 (Commission), *op. cit.*, p. 32.

1357 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 127, lines 11–12.

1358 *Id.*, p. 127, lines 15–17; Document P-007 (Commission), *op. cit.*, p. 32.

1359 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 127, lines 18–23.

and an outer courtyard where cultural activities can take place.[1360] Arrangements have also been made at the new Amos facility, in addition to separate accommodation areas and videoconferencing equipment for contact with family members living in remote areas.[1361]

If an offender requires a service in English, all the correctional facilities with a high Indigenous population[1362] claim they can respond positively to the need, either by using bilingual officers, as is done at the Rivière-des-Prairies facility and the Laval (Leclerc) institution, or by using interpreter services, as is done at the Baie-Comeau site.[1363] That said, the *Act respecting the Québec correctional system* has no language provisions, either in terms of being able to use services in a language other than French or having access to interpreters in the correctional environment. Furthermore, the Act does not require translated documents to be made available.

Release

Under the *Act respecting the Québec correctional system*, all inmates are eligible for release at different times in their sentence.[1364] The processes and criteria taken into consideration are the same for everyone.[1365]

The institutional warden decides on temporary absences for offenders serving less than six months.[1366] These could be temporary absences for medical purposes[1367], participation in the activities of a reintegration support fund or spiritual activities[1368], humanitarian purposes (birth, death of a loved one, etc.)[1369] or reintegration purposes.[1370] Except for absences for medical purposes, in preparation for conditional release or for a family visit, every temporary absence must be reviewed by the temporary absence examining board found in each of the detention facilities.[1371] The board's finding is conveyed to the warden, who is not, however, bound by the recommendation.[1372]

1360 *Id.,* pp. 127–128, lines 23–8; Document P-007 (Commission), *op. cit.*, p. 33.

1361 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 128, lines 9–14; Document P-007 (Commission), *op. cit.*, p. 33.

1362 Amos, Baie-Comeau, Montréal (Bordeaux), Rivière-des-Prairies, Roberval, Sept-Îles, Saint-Jérôme and Laval (Leclerc).

1363 Document PD-15 (Commission), *op. cit.*, p. 117.

1364 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 128, lines 16–20; Document P-007 (Commission), *op. cit.*, p. 34; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 143–153.

1365 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, pp. 97–98, lines 24–8.

1366 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 128, lines 21–25; Document P-007 (Commission), *op. cit.*, p. 34; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 42–56.

1367 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 42–44.

1368 *Id.,* ss. 45–48.

1369 *Id.,* ss. 49–52.

1370 *Id.,* ss. 53–56.

1371 *Id.,* s. 59.

1372 *Id.,* ss. 61–62.

The Commission québécoise des libérations conditionnelles (CQLC) makes decisions based on three major categories of temporary absences for offenders serving a sentence of six months to two years less a day.[1373] The first category is for temporary absences in preparation for conditional release. Offenders are eligible for this type of temporary absence after serving one sixth of their sentence[1374] and they must submit a written request for it.[1375] The *Act respecting the Québec correctional system* sets out the reasons that qualify for this kind of absence, which range from doing paid work to maintaining or re-establishing family or social ties.[1376]

The second broad category of requests managed by the CQLC is conditional release. Inmates are automatically eligible for this type of temporary absence after serving one third of a sentence of six months or more[1377], but they can renounce it in writing or at an appearance before the CQLC.[1378] Decisions are based on several criteria, such as the person's history, increased awareness, engagement, the release plan and risk management.[1379] In addition, the CQLC can impose all the conditions it deems necessary.[1380]

The final category of request that can be made to the CQLC is temporary absence for a family visit. It can be made at any time in writing by any person following a decision refusing, revoking or terminating their conditional release.[1381] Once again, before a request is accepted, a number of criteria are taken into account, including the risk of reoffending, the nature and seriousness of the offence, the offender's behaviour while in custody and the consent of the family member to be visited.[1382]

1373 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 128–129, lines 25–6; Document P-007 (Commission), *op. cit.*, p. 34; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 119; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 13, lines 16–24.

1374 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 45, lines 2–5; *Commission québécoise des libérations conditionnelles – Présentation à la CERP*, document P-797 (Commission), p. 20; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 135.

1375 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 136; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 45, lines 6–9; Document P-797 (Commission), *op. cit.*, p. 22.

1376 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 136; Document P-797 (Commission), *op. cit.*, p. 21.

1377 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, ss. 145–146; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 54, lines 20–25; Document P-797 (Commission), *op. cit.*, p. 26.

1378 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 143; testimony of David Sultan, stenographic notes taken September 12, 2018, p. 56, lines 3–14; Document P-797 (Commission), *op. cit.*, p. 26.

1379 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 129, lines 7–10; Document P-007 (Commission), *op. cit.*, p. 34; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 53, lines 11–23; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 155; Document P-797 (Commission), *op. cit.*, p. 26.

1380 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 143.

1381 *Id.*, s. 140; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, pp. 60–61, lines 24–3; Document P-797 (Commission), *op. cit.*, p. 28.

1382 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 141; Document P-797 (Commission), *op. cit.*, p. 29.

The CQLC is an integral part of the criminal justice system, but its decisions are made independently. In September 2018, the CQLC consisted of ten full-time members, including a chair and vice-chair.[1383] It also had the benefit of about 15 part-time members and the same number of community members.[1384]

Both full-time and part-time members are appointed by the government for a five-year term.[1385] The terms of community members can be renewable three years terms.[1386] The members come from different administrative regions of Québec and represent the community in which they serve.[1387] There are no cultural criteria in the selection of community members (membership in an Indigenous community, etc.).

Members of the CQLC serve in pairs.[1388] CQLC sessions are usually held in the detention facilities[1389], but some are conducted by videoconference.[1390] Decisions are made immediately in most cases, verbally at first and in writing later.[1391] Decisions must be unanimous.[1392] Offenders can be accompanied or represented by a person of their choosing, such as a lawyer or family member.[1393] The sessions are usually in the language best understood by the inmate. The CQLC can use interpreters in hearings when needed, including Indigenous interpreters.[1394] Requests for reconsideration of decisions can be made.[1395]

Probation services are in charge of following up on the measures imposed by the CQLC. This follow-up may be carried out by employees of the professional correctional services branches (probation offices) or by the staff of community residential centres (CRCs), commonly known as halfway houses. People who have been granted temporary absences or who are on parole can be monitored from their home or housed in a halfway house. These centres offer 24/7 supervision, programs and reintegration support to the residents.[1396] The network has 25 residential centres with a total of 366 housing spaces.[1397]

1383 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 65, lines 2–4.

1384 Document P-797 (Commission), *op. cit.*, p. 9.

1385 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 122.

1386 *Ibid.*; Document P-797 (Commission), *op. cit.*, p. 10.

1387 Document P-797 (Commission), *op. cit.*, p. 10.

1388 *Id.,* p. 32; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 154.

1389 Testimony of Françoise Gauthier and David Sultan, stenographic notes taken September 12, 2018, pp. 72–73, lines 22–15.

1390 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 73, lines 9–21.

1391 *Id.,* p. 76, lines 3–21.

1392 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 154.

1393 *Id.,* s. 156; Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, pp. 86–87, lines 18–10; Document P-797 (Commission), *op. cit.*, p. 33.

1394 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, pp. 23–24, lines 14–7.

1395 *Id.,* p. 63, lines 12–23; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 169.

1396 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 129, lines 11–17; Document P-007 (Commission), *op. cit.*, p. 35.

1397 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 129, lines 18–20; Document P-007 (Commission), *op. cit.*, p. 35.

Overall, 10.0% of CRC spaces are reserved for Indigenous people.[1398] Specifically, the CRC Makitautik (14 places) in Kangirsuk, Nunavik serves the Inuit population, while the CRC Kapatakan Gilles-Jourdain (18 places) in Uashat mak Mani-Utenam mainly works with an Innu client base.[1399] Lastly, the Waseskun Healing Centre, in Saint-Alphonse-Rodriguez in Lanaudière, accommodates people from various Indigenous communities (8 places).[1400]

A number of programs have also been put in place in cooperation with agencies from different regions to provide the support needed after incarceration. Three such agencies are L'accueil in Amos; Services parajudiciaires autochtones du Québec, which offers a counselling program for Indigenous offenders, mainly in Opiticiwan (Obedjiwan) and Mashteuiatsh; and Portage, a special addiction treatment program in the Laurentians.[1401] The Gesgapegiag (Mi'gmaq) and Akwesasne (Mohawk) band councils also offer counselling services to clients from their community.[1402]

Sentencing measures in the community

As stated earlier, Correctional Services is also responsible for people who serve their sentence in the community. This could involve a supervision order, a suspended sentence or community service hours.[1403]

In the case of a suspended sentence, Correctional Services is responsible for assessing the offender in order to develop an intervention plan tailored to his or her needs.[1404] They must also support offenders in their process, check that they are fulfilling their conditions and inform the court of any breaches observed.[1405] Monitoring can be done by a probation officer or caseworker.[1406]

The responsibilities are essentially the same for a suspended sentence, but only a Correctional Services employee can do the monitoring.[1407]

Lastly, in terms of community service hours, Correctional Services is responsible for choosing the community resource suited to the offender's abilities, situation and availability.[1408] The

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1398 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 129–130, lines 25–1.

1399 *Id.*, p. 130, lines 1–10; Document P-007 (Commission), *op. cit.*, p. 35.

1400 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 130, lines 11-15; Document P-007 (Commission), *op. cit.*, p. 35.

1401 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, pp. 130–131, lines 20–4; Document P-007 (Commission), *op. cit.*, p. 37.

1402 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 131, lines 19–25; Document P-007 (Commission), *op. cit.*, p. 38.

1403 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 119, lines 7–13.

1404 Ministère de la Sécurité publique. (2007). *Probation Order with Supervision*, *op. cit.*, p. 3.

1405 *Ibid.*

1406 *Id.*, p. 2.

1407 *Id.*, p. 1.

1408 Ministère de la Sécurité publique. (2007). *Community Service*. Retrieved from https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/publications/depliants/depliant_service_communautaire_en.pdf, p. 2.

officers must ensure that the offender is encouraged to make contact with the selected community resource, that a suitable work plan is developed, that the conditions of the order are being followed (especially completion of the community service hours) and that the court is informed of any breaches.[1409]

Most of the resources that provide support after incarceration are also available to offenders serving their sentence in the community.

For Inuit clients, Correctional Services also benefits from the support of Inuit community reintegration officers.[1410] These officers are employed by the Kativik Regional Government and their job is funded through an agreement with the MSP.[1411] The goal of this service is to foster the integration of offenders on probation in their community and family. There are officers working in Kuujjuaq, Kujjuarapik, Puvirnituq and Salluit.

5.4. Health and social services

5.4.1 Regulatory framework

Federal jurisdiction

Under the *Constitution Act, 1867,* health comes under provincial jurisdiction.[1412] The Parliament of Canada's authority to legislate in this area is consequently very narrow and limited to penal and criminal areas and emergency situations.[1413] It is by virtue of this authority that the members of Parliament passed the *Controlled Drugs and Substances Act in 1996,* for example.[1414]

Nonetheless, the federal government has some influence over Canada's health care services. Based on its authority to spend in areas under the jurisdiction of another level of government[1415], Parliament has adopted a framework law on health. Passed in 1985, after the repatriation of the Constitution, the *Canada Health Act* establishes guidelines within which the provinces must organize their delivery of health care and social services if they want to receive financial support from the central government.[1416] It is to this law that we owe the concept of universal health care, i.e., the fact that all Canadians must have access to the same services, no matter where they live in Canada.[1417]

1409 *Id.,* pp. 2 and 3.

1410 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 131, lines 12–15; Document P-007 (Commission), *op. cit.*, p. 38.

1411 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 131, lines 15–18.

1412 *Constitution Act,* 1867, *op. cit.*, ss. 92(7) and 92(16).

1413 First Nations of Québec and Labrador Health and Social Services Commission. (2016). *Processus de gouvernance en santé et en services sociaux des Premières Nations du Québec. Portrait des droits, des lois, des politiques et des ententes sur les services de santé et les services sociaux auprès des Autochtones du Canada.* Wendake, Québec: FNQLHSSC, p. 2.

1414 Controlled Drugs and Substances Act, S. C. 1996, c. 19.

1415 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 3.

1416 *Canada Health Act*, R.S.C. 1985, c. C-6.

1417 *Id.,* s. 10.

In the context of the Commission, it is important to note that the federal government's jurisdiction for anything related to Indigenous issues[1418] gives it primary responsibility for funding health care and social services for Indigenous people living in communities not covered by an agreement.[1419] Pursuant to that jurisdiction, the federal government also provides funding for the Non-Insured Health Benefits Program for First Nation members in the Indian Register and for recognized Inuit living outside their home community.[1420]

Details on the related service organization and delivery are provided later in this chapter. It is important to bear in mind that the complexity caused by the shared jurisdiction, particularly in regard to funding, led the House of Commons to adopt Jordan's Principle in December 2007.[1421]

According to this principle, access to health care services for Indigenous children must take precedence over any conflicts over which level of government pays for the care.[1422] This is now a legal obligation that has been clarified by a series of Canadian Human Rights Tribunal rulings.[1423] For example, a ruling handed down in 2017 recalled that, according to Jordan's Principle, "where a government service is available to all other children, but a jurisdictional dispute regarding services to a First Nations child arises between Canada, a province, a territory, or between government departments, the government department of first contact pays for the service and can seek reimbursement from the other government or department after the child has received the service".[1424]

That ruling also states:

> Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.[1425]
> [...]
> It can address, for example, but is not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.[1426]
> [...]

1418 *Constitution Act,* 1867, *op. cit.*, ss. 91(24) and 92(7).

1419 Except for medical care covered by the Régie de l'assurance maladie du Québec. *Delivery and Funding of Health Services and Social Services for Aboriginal People*, document P-086 (Commission), p. 7.

1420 *Id.,* p. 11.

1421 Chapter 3 of this report goes into the specifics of the event that led to the passing of this motion by the federal government. *House of Commons, 39th Parliament, 2nd Session, December 12, 2007*, document P-772-4 (Commission).

1422 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 45, lines 5–12; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 194, lines 6–15.

1423 *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2*, document P-772-9 (Commission); 2016 CHRT 10, document P-772-10 (Commission); 2016 CHRT 16, document P-772-11 (Commission); 2017 CHRT 14, document P-772-12 (Commission); 2018 CHRT 4, document P-772-14 (Commission).

1424 Document P-772-12 (Commission), *op. cit.*, p. 3, para. 2.

1425 *Id.,* p. 56, para. 135 Bi.

1426 *Id.,* p. 57, para. 135 Bii.

> When a government service, including a service assessment, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child.[1427]

Since the first decision rendered by the Canadian Human Rights Tribunal in 2016, a regional round table has been established in Québec, and local service coordinators have been hired for each community[1428], but the Québec government has not passed any motion in favour of Jordan's Principle.[1429]

Provincial jurisdiction

As mentioned above, health is first and foremost a provincial jurisdiction.[1430] In practice, this responsibility is fulfilled through a range of services available to the entire population. Over the decades, social services have been added to the equation. Together these services are referred to as a "basket of services." Québec is therefore, like the other provinces and territories, a provider of health and social services.

Because of the complexity and scope of the government's involvement in health and social services, approximately 35 laws and almost as many regulations govern the public offering of care and services.[1431] They include the following laws raised during our hearings: the *Hospital Insurance Act*[1432], *the Health Insurance Act*[1433], *the Public Health Act*[1434], *the Act respecting the Sharing of Certain Health Information*[1435] and the *Act to Modify the Organization and Governance of the Health and Social Services Network, in Particular by Abolishing the Regional Agencies.*[1436] I did not feel that it was appropriate to present the actual content of each law here. Instead, I will elaborate on their impact when necessary.

I made an exception for the *Act Respecting Health Services and Social Services*[1437] (ARHSSS), however, as it is the foundation of the health care system. This law defines the objectives of the public health and social services plan and offers guidelines for managing and providing health care and social services in the province.

1427 *Id.*, p. 75, para. 135 Biv.

1428 *Mandat de la table de concertation régionale*, document P-772-3-2 (Commission).

1429 *Lettre concernant l'adoption par le Québec du Principe de Jordan. Ministère de la Santé et des Services Sociaux, (2009)*, document P-772-26 (Commission).

1430 *Constitution Act,* 1867, *op. cit.*, s. 92(7).

1431 The complete list of laws and regulations applicable to health and social services in Québec is provided in Appendix 26.

1432 *Hospital Insurance Act,* CQLR, c. A-28.

1433 *Health Insurance Act*, CQLR, c. A-29.

1434 *Public Health Act*, CQLR, c. S-2.2.

1435 *Act Respecting the Sharing of Certain Health Information*, CQLR, c. P-9.0001.

1436 *Act to Modify the Organization and Governance of the Health and Social Services, in Particular by Abolishing the Regional Agencies*, CQLR, c. O-7.2.

1437 *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2

The ARHSSS stipulates that the public plan is to focus on "acting on health and welfare determining factors"[1438], "fostering the recovery of users' health and welfare"[1439] and "attaining comparable standards of health and welfare in the various strata of the population and in the various regions".[1440]

In order to achieve these objectives, the ARHSSS states that it is essential "to take account of the distinctive geographical, linguistic, sociocultural, ethnocultural and socioeconomic characteristics of each region"[1441] and "to foster, to the extent allowed by the resources, access to health services and social services in their own languages for members of the various cultural communities of Québec".[1442] It also specifies that "the user must be treated, in every intervention, with courtesy, fairness and understanding, and with respect for his dignity, autonomy, needs and safety".[1443]

In addition, an entire section of the Act is devoted to the rights of users, including consent to care[1444], the right to participate in any decision affecting their state of health or welfare[1445], the right to be accompanied and assisted by a person of their choice when they wish to obtain information or take steps related to care[1446], and the right of English-speaking people to receive services in English.[1447]

To protect users' rights, the Act also requires all health and social services institutions to establish a complaint examination procedure[1448] that allows users to make a verbal or written complaint.[1449] A local service quality and complaints commissioner, appointed by the institution's board of directors and serving only in this capacity, is responsible for implementing the procedure.[1450] The complaints commissioner receives and reviews all user complaints[1451] and then draws conclusions and makes suitable recommendations to the board of directors and to the management or person in charge of the department involved in the complaint.[1452]

To support the process, each institution in the network must have a users' committee or an in-patients' committee if the institution offers in-patient services.[1453] The users' committee consists of at least five people elected from among the institution's users and a designated

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1438 *Id.*, s. 1(2).
1439 *Id.*, s. 1(3).
1440 *Id.*, s. 1(7).
1441 *Id.*, s. 2(5).
1442 *Id.*, s. 2(7).
1443 *Id.*, s. 3(3).
1444 *Id.*, s. 9.
1445 *Id.*, s. 10.
1446 *Id.*, s. 11.
1447 *Id.*, s. 15.
1448 *Id.*, s. 29.
1449 *Id.*, s. 34.
1450 *Id.*, s. 30.
1451 *Id.*, s. 33.
1452 *Ibid.*
1453 *Id.*, s. 209.

representative from among the existing in-patients' committees.[1454] Members can serve on the committee for a maximum of three years.[1455] Their role is to inform users of their rights and obligations, defend their rights and interests and support them in the complaint process.[1456]

In closing, we note that the ARHSSS governs services available to all Quebecers, including Indigenous people. As explained later, however, the organization and funding of services differ depending on the place of residence and agreement status of the people in question.

Scope of Indigenous authorities

The *Indian Act* authorizes First Nations band councils "to provide for the health of residents on the reserve".[1457]

Through the federal government's First Nations and Inuit Health Transfer Policy[1458], band councils and tribal councils can also enter into agreements that allow them to take charge of the delivery and management of these services for their people.[1459] Most of Québec's non-agreement communities benefit from this type of agreement.[1460] This is reflected in the organization of services, which will be described later in this chapter.

Furthermore, according to the James Bay and Northern Québec Agreement (JBNQA) and the Northeastern Québec Agreement (NQA), the Eeyou (Cree), Inuit and Naskapis have broader powers in these areas. Specifically, Chapter 14 of the JBNQA has led to the creation of the Cree Board of Health and Social Services of James Bay.[1461] Fully managed by Eeyou (Cree) authorities, this organization is responsible for the administration of health and social services provided to anyone who lives in Eeyou territory (Cree). The measure is combined with the *Act Respecting Health Services and Social Services for Cree Native Persons.*[1462]

Chapter 15 of the JBNQA provides for the creation of a similar organization for Inuit, i.e., the Kativik Health and Social Services Council, whose functions were transferred in 1996 to the Nunavik Regional Board of Health and Social Services (NRBHSS).[1463] The NRBHSS is subject to the ARHSSS.[1464] The same applies for the Naskapi CLSC, created after the signature of the Northeastern Québec Agreement, which is under the jurisdiction of the Québec health and social services network.[1465]

1454 *Id.,* s. 209.

1455 *Id.,* s. 209.1.

1456 *Id.,* s. 212.

1457 *Indian Act,* R.S.C. 1985, c. I-5, s. 81(1) (a).

1458 Health Canada. (2005). Ten Years of Health Transfer First Nation and Inuit Control. Retrieved from https://www.canada.ca/en/indigenous-services-canada/services/first-nations-inuit-health/reports-publications/funding/years-health-transfer-first-nation-inuit-control-health-canada-1999.html.

1459 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 10.

1460 Document P-086 (Commission), *op. cit.*, p. 9.

1461 *James Bay and Northern Québec Agreement, op. cit.*, s. 14.0.2.

1462 *Act Respecting Health Services and Social Services* for Cree Native Persons, CQLR, c. S-5.

1463 Institut national de santé publique du Québec. (2008). Étude contextuelle sur les services de santé mentale au Nunavik. Retrieved from https://www.inspq.qc.ca/pdf/publications/868_SanteMentalNunavik.pdf, p. 3.

1464 *James Bay and Northern Québec Agreement, op. cit.*, s. 15.0.1.

1465 *Northeastern Québec Agreement, op. cit.*, s. 10.1.

5.4.2 Organization and offer of services for all

Since the adoption of the *Act to Modify the Organization and Governance of the Health and Social Services Network, in Particular by Abolishing the Regional Agencies*[1466] in 2015, the health and social services network has been able to count on 34 establishments, including 13 Integrated Health and Social Services Centres (CISSS) and 9 Integrated University Health and Social Services Centres (CIUSSS) across Québec.[1467] In addition to these, there are five establishments that serve Northern and Indigenous populations: the Naskapi CLSC, the Centre régional de santé et de services sociaux de la Baie-James, the Inuulitsivik Health Centre in Hudson's Bay, the Ungava Tulattavik Health Centre and the Cree Board of Health and Social Services of James Bay (CBHSSJB).[1468]

The public health and social services offer is rounded out by seven establishments that are not part of the university mission and that are responsible for offering third-line or highly specialized care to the entire population of Québec.[1469] These include the Montreal Heart Institute, the CHU de Québec-Université Laval and the Centre hospitalier universitaire Sainte-Justine, which specializes in pediatric care.[1470]

Many other organizations gravitate around them, such as family medicine groups and private medical clinics all across the province. The network also relies on social economy enterprises, community organizations and pharmacies, intermediate or family resources (foster families) and private establishments and resources (long-term residential care centres, detox centres, etc.).[1471]

Despite all these stakeholders, the CISSS and CIUSSS serve as the core of Québec's public health and social services network. These establishments are responsible for ensuring that the entire population of the province receives the care and services they need[1472], as well as engaging in prevention work and implementing measures to protect public health and provide social protection for individuals, families and groups.[1473] They are also the architects of regional and inter-regional agreements with other establishments or partners in the

1466 *Act to Modify the Organization and Governance of the Health and Social Services, in Particular by Abolishing the Regional Agencies*, CQLR, c. O-7.2.

1467 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 78, lines 20–22; *Présentation du ministère de la Santé et des Services sociaux*, document P-011 (Commission), p. 5.

1468 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, pp. 78–79, lines 22–3; Document P-011 (Commission), *op. cit.*, p. 5.

1469 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 79, lines 12–18.

1470 Document P-011 (Commission), *op. cit.*, p. 5.

1471 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, pp. 124–125, lines 4–5; *Présentation du ministère de la Santé et des Services sociaux*, document P-012 (Commission), p. 11.

1472 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, pp. 104–105, lines 18-2; Document P-012 (Commission), *op. cit.*, p. 4.

1473 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 105, lines 7–19; Document P-012 (Commission), *op. cit.*, p. 4.

network to meet needs of their clientele[1474], including any of the organizations mentioned above and any public partner: schools, municipalities, daycares, etc.[1475]

It is important to note that the services the CISSS and the CIUSSS offer to the public are generally in line with the five major missions defined by the AHRSSS: community services, hospital services, residential and long-term care, childhood and youth protection services and rehabilitation services.[1476] As such, they may operate a local community service centre (CLSC), a hospital centre (CH), a residential and long-term care centre (CHSLD), a child and youth protection centre (CPEJ) and a rehabilitation centre (CR).

A CLSC's mission is to offer the public common health and psychosocial services, both at home – such as home care after surgery – and at its offices.[1477] The CLSCs are also responsible for some public health activities, including vaccinations.[1478]

The mission of the hospital centres covers actual emergency and hospitalization services, as well as all care and diagnostic services (radiography, medical imaging, medical laboratories, etc.) and specialized interventions such as surgery and oncology, to name just a few.[1479]

Then there are the CHSLDs, whose mission is essentially to offer a temporary or permanent alternative living environment for people whose health prevents them from living at home.[1480]

A CISSS or CIUSSS can also operate one or more rehabilitation centres with the mission to offer adjustment, rehabilitation and social integration services to people with a physical or intellectual disability or an addiction to alcohol, drugs or gambling. The services available include coaching and support for the family or social circle.[1481] The same applies for the mission of child and youth protection, which is detailed in another section of this chapter.[1482]

1474 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 106, lines 4–15; Document P-012 (Commission), *op. cit.*, p. 4.

1475 Document P-012 (Commission), *op. cit.*, p. 11.

1476 *Id.,* p. 5; testimony of Yves Desjardins, stenographic notes taken June 14, 2017, p. 107, lines 3–17; *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2, s. 79.

1477 *Id.,* p. 5; testimony of Yves Desjardins, stenographic notes taken June 14, 2017, pp. 107–108, lines 22–9; Document P-012 (Commission), *op. cit.*, p. 6; *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2, s. 80.

1478 Document P-012 (Commission), *op. cit.*, p. 6; *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2, s. 80.

1479 *Id.,* p. 5; testimony of Yves Desjardins, stenographic notes taken June 14, 2017, pp. 108–109, lines 10–9; Document P-012 (Commission), *op. cit.*, p. 6; *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2, s. 81.

1480 Testimony of Yves Desjardins, stenographic notes taken June 14, 2017, pp. 109–110, lines 10–5; Document P-012 (Commission), op cit., p. 7; *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2, s. 83.

1481 Testimony of Yves Desjardins, stenographic notes taken June 14, 2017, p. 110, lines 6–25; Document P-012 (Commission) op cit., p. 7; *Act Respecting Health Services and Social Services*, CQLR, c. S-4.2, s. 84.

1482 See p. 183.

5.4.3 Organization and offer of services for Indigenous peoples

The organization and funding of services for Indigenous peoples differ based on where they live and their status. That said, regardless of status or place of residence, members of First Nations and Inuit are covered by Québec's health and hospitalization insurance[1483], but not by the Québec prescription drug insurance plan.[1484]

Outside of First Nations and Inuit communities

The health and social services offered to members of First Nations and Inuit who live outside a First Nations or Inuit community are organized in the same way as for the rest of Quebecers. This means that, like all Québec residents, they are served by the 34 public health care establishments across the province and by organizations that have partnerships with these establishments.

The cost of the care and services is absorbed by the province, except with respect to non-insured health benefits (NIHB), which are funded by the federal government.[1485] For people listed in the Indian Register, the NIHBs are added to the basket of basic services and include prescription drugs and pharmaceutical products, dental and vision care, medical equipment and supplies, mental health counselling and medical transport that are not covered by private insurance plans or by public plans and programs in place across the province.[1486] Service providers who are registered with the NIHB program can submit their bills directly, which allows users to avoid paying at the point of service.[1487] They can also pay directly for costs incurred and request a reimbursement.[1488] To be eligible for the reimbursement program, Indigenous people must be listed in the Indian Register or be recognized as Inuit.[1489]

In Québec, administratively speaking, the Direction des affaires autochtones of the Ministère de la Santé et des Services sociaux (MSSS) coordinates files related to Indigenous peoples and ensures that the guidelines and actions for these groups are consistent nationally, regionally and locally.[1490] It serves as a liaison with the branches of the MSSS (social services, rehabilitation, etc.) as well as with outside partners, including other Québec government departments, the federal government and organizations that represent Indigenous peoples.[1491]

1483 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 86, lines 9–19.

1484 Document P-086 (Commission), *op. cit.*, p. 12; *Regulation respecting the basic prescription drug insurance plan*, CQLR, c. A-29.01, r. 4, s. 1.

1485 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 11.

1486 Government of Canada. (2019). Non-insured health benefits for First Nations and Inuit. Retrieved from https://www.canada.ca/en/indigenous-services-canada/services/non-insured-health-benefits-first-nations-inuit.html.

1487 *Id.,* Client reimbursement.

1488 *Ibid.*

1489 *Id.,* Who is eligible.

1490 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 80, lines 3–10; Document P-011 (Commission), *op. cit.*, p. 6.

1491 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, pp. 80–81, lines 11–4; testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, pp. 11–12, lines 11–7.

The MSSS also relies on the network of managers for Indigenous issues in each establishment.[1492] Their duty is to facilitate the exchange of information between the MSSS and the establishments and to share any observations or concerns from establishments with the MSSS.[1493]

Recently, at their own initiative, certain establishments in the health care network have created the position of Indigenous liaison officer, who is responsible for acting as a bridge with the Indigenous peoples in their territory.[1494]

In terms of language, some establishments are designated by order in council as having to offer bilingual services (English/French).[1495] A regional plan for services in English must also be developed for each health and social services region. Its scope is, however, left to the discretion of the CISSS/CIUSSS responsible.[1496] According to the information provided by public services during the investigation, access to services in an Indigenous language may also be possible in non-Indigenous language settings, provided regional access programs permit it.[1497]

Nations not covered by an agreement

The health services available in health care posts or health centres in communities not covered by an agreement are like those offered by CLSCs, such as vaccinations, nursing care, family planning and alcoholism and addiction prevention.[1498] In some more remote communities, emergency services are also available day and night, seven days a week.[1499] Seven drug addiction treatment centres, financed by Health Canada, are also available to communities not covered by an agreement. For adults, these include the Wanaki Centre (Maniwaki), the Gesgapegiag Mawiomi Treatment Services, the Centre de réadaptation Wapan in La Tuque, the Centre de réadaptation Miam Uapukun de Uashat Mak Mani-Utenam and the Onen'tó:kon Healing Lodge in Kanehsatà:ke. Teens can access services at the Gesgapegiag Walgwan Centre.[1500]

The social services available in communities not covered by an agreement are also similar to those available from the CLSCs for children, adults and families.[1501] A number of shelters for women who are victims of violence and their children are also available, as are group

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1492 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 82, lines 10–12.

1493 *Id.,* p. 82, lines 12–17; testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, pp. 49–50, lines 7–1.

1494 Testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, pp. 95–96, lines 23–16.

1495 The list of designated establishments is provided in Appendix 27.

1496 Document PD-15 (Commission), *op. cit.*, p. 24.

1497 *Ibid.*

1498 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 9; Document P-086 (Commission), *op. cit.*, p. 7.

1499 Document P-086 (Commission), *op. cit.*, p. 7.

1500 Indigenous Services Canada. (2019). Treatment of drug addiction for the First Nations and Inuit. Québec treatment centres. Retrieved from https://www.canada.ca/en/indigenous-services-canada/services/addictions-treatment-first-nations-inuit.html.

1501 Document P-086 (Commission), *op. cit.*, p. 8.

homes for youth in difficulty and residential centres for people experiencing a loss of autonomy.[1502]

The development of programs and the organization of health and social services for communities not covered by an agreement are the responsibility of the federal government or Indigenous authorities that are signatories to agreements that grant them this responsibility.[1503] In the absence of such an agreement, the federal government delivers services and Health Canada supervises the personnel on site.[1504]

Generally speaking, "provincial health care establishments do not offer services within the territories of Indigenous communities that are not under an agreement, unless there is an agreement with local authorities (band council or tribal council) or the federal government".[1505]

Specialized care, including care that requires hospitalization or residential and long-term care, is mainly offered outside the communities, by establishments in the Québec network.[1506] In 2014, the communities not covered by an agreement had only seven residential and long-term care centres within their territory and two seniors' homes.[1507]

Funding is the responsibility of the federal government, except for the medical care covered by the Régie de l'assurance maladie du Québec.[1508]

Nations that are not covered by an agreement are not subject to the *Charter of the French Language* within the community territory.[1509] Services can therefore be offered within those territories in the language of their choice.

Nations covered by an agreement

As noted above, the nations that signed the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement, i.e., the Eeyou (Crees), Inuit and Naskapi, have acquired specific powers related to health and social services.[1510] Under these agreements, these nations deliver and manage their own health and social services within their territory.[1511]

These services are offered through establishments that serve the above-mentioned Indigenous populations. Under these agreements, the services are mainly funded by the provincial government, except for certain programs offered by Health Canada, including

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1502 *Ibid.*

1503 *Id.*, p. 7.

1504 *Id.*, p. 9.

1505 *Ibid.*; Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 86, lines 20–24.

1506 Document P-086 (Commission), *op. cit.*, p. 8.

1507 *Mémoire sur les ressources d'hébergement et de soins de longue durée*, document P-065 (Commission), p. 25, Appendix 1.

1508 Document P-086 (Commission), *op. cit.*, p. 7.

1509 Document PD-15 (Commission), *op. cit.*, p. 25.

1510 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 82, lines 20–25.

1511 *Id.*, pp. 82–83, lines 25–7.

the home care program.[1512] Provincial government funding covers the costs of the health and social services offer, as well as the infrastructures required in the communities.[1513] It includes the establishment's operating budget as well as a portion of non-insured health benefits, including coverage for transportation costs to obtain services outside regions and dental and vision care that are not, strictly speaking, included in the basket of basic services in Québec's public health and social services network.[1514] Amounts are also allocated for the development of new services.[1515]

Financing agreements are signed based on the establishments' five-year plans and annual plans that set out the needs related to basic operations and development.[1516]

The health care organizations created under the James Bay and Northern Québec Agreement (the NRBHSS, the CGHSSJB) have the right to use the language of their choice in the territories in question. They are not subject to the *Charter of the French Language* in their activities, but they are required to introduce French in their respective administrations to communicate with the Québec health care network and with people under their administration who are not covered by agreements.[1517]

5.5. Youth protection services

5.5.1 Regulatory framework

Federal jurisdiction

The federal government has jurisdiction for all issues related to Indigenous peoples.[1518] As such, in June 2019, the Parliament of Canada passed *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*.[1519] This new legislative text is a sort of framework law for child and family services, with the purpose to "affirm the inherent right of self-government"[1520] of Indigenous peoples in this area and "set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children".[1521]

The Act sets out three fundamental principles in the service offer to Indigenous children and their families.[1522] The first of these is the interest of the child, from the perspective of cultural identity

1512 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 11; Document P-086 (Commission), *op. cit.*, pp. 10–11.

1513 Testimony of Luc Castonguay, stenographic notes taken June 14, 2017, p. 83, lines 4–7.

1514 *Id.,* p. 83, lines 8–19.

1515 *Id.,* pp. 83–84, lines 19–9.

1516 *Id.,* p. 84, lines 10–25.

1517 Document PD-15 (Commission), *op. cit.*, p. 25.

1518 *The Constitution Act,* 1867, *op. cit.*, ss. 91(24) and 92(7).

1519 *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*, SC, c. 24.

1520 *Id.,* s. 8.

1521 *Ibid.*

1522 *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*, *op. cit.*, ss. 9(1)–9(3).

and its preservation.[1523] The second principle addresses cultural continuity and the importance of ensuring that the services offered do not contribute to the assimilation of the child's group, community or people.[1524] The third and final principle relates to substantive equality and seeks to ensure the rights and needs of Indigenous children are taken into account.[1525]

Beyond these principles, the Act also outlines rules for the placement of Indigenous children. It stipulates that children must be placed, in order of priority, with immediate relatives (father or mother), another member of the family, an adult who belongs to the child's people, an adult who belongs to another Indigenous people and, finally, as a last resort, with any other adult.[1526]

It also confirms the possibility for Indigenous authorities to exercise their jurisdiction in terms of child and family services after notifying the federal minister and the provincial government concerned.[1527] This last part of the Act could strengthen a movement underway in Québec that will be addressed later in the chapter. When this report was being completed, the Act was not yet in force.

Provincial jurisdiction

Independent of this framework law, since 1951, the year the *Indian Act*[1528] was overhauled, provincial laws have applied in matters of youth protection all across the country.[1529]

In Québec, the *Youth Protection Act* (YPA) applies to all children under age 18 whose security or development is or may be considered compromised.[1530] This law covers protection services available to children and parents, both non-Indigenous and Indigenous. It sets out the powers, roles and duties of people authorized by the director of youth protection (DYP) to assume responsibilities. It also sets out the rights of children and parents and the guiding principles of youth protection interventions, whether voluntary or by a decision of the Chambre de la Jeunesse of the Cour du Québec.[1531] It is supported by several regulations, including the *Regulation establishing the Register of Reported Children*[1532] and the *Regulation respecting the review of the situation of a child*[1533], to name just two.

1523 *Id.*, s. 9(1).

1524 *Id.*, s. 9(2).

1525 *Id.*, s. 9(3).

1526 *Id.*, s. 16(1).

1527 *Id.*, s. 20(1).

1528 *Indian Act,* R.S.C. 1985, ch. I-5, s. 88; Document P-086 (Commission), *op. cit.*, p. 6.

1529 Sigouin, E. (2006). *Les mécanismes de protection de la jeunesse autochtone au regard de la théorie libérale de Will Kymlicka* (Master's thesis, Université de Montréal). Retrieved from https://papyrus.bib.umontreal.ca/xmlui/handle/1866/2411, pp. 23–24; Sinha, V. and Kozlowski, A. (2013). The Structure of Aboriginal Child Welfare in Canada. *The International Indigenous Policy Journal*, 4(2), pp. 3–4. DOI: 10.18548/iipj.2013.4.2.2; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 105, lines 8–25; *La protection de la jeunesse et les peuples autochtones*, document P-084 (Commission), p. 5. A bill tabled by the federal government in winter 2019 could change things, particularly by granting new responsibilities to Indigenous communities. At the time the report was being completed, the bill had not been passed.

1530 *Youth Protection Act*, CQLR, c. P-34.1, s. 2.

1531 *Id.*, ss. 2.2 to 11.3.

1532 *Regulation establishing the Register of Reported Children*, c. P-34.1, r. 7.

1533 *Regulation respecting the review of the situation of a child*, c. P-34.1, r. 8.

Powers, roles and duties

In its application, the YPA is meant to protect children whose security or development is or may be considered compromised.[1534] Any intervention by the YPA should seek to put an end to the situation that compromises the security or development of the child and prevent the recurrence of the situation.[1535] That said, it does not cover all situations in which children may need specific help or services.[1536] A youth protection intervention is an intervention by an authority in the lives of children and families.[1537] It is therefore reserved for situations that are deemed serious and exceptional.[1538] It must also target specific goals and take place within a limited time period. This time period is established based on the terms of agreements on voluntary measures or in light of legal rulings.[1539] Six main situations are listed in the Act: those in which the child is "abandoned, neglected, subjected to psychological ill-treatment or sexual or physical abuse, or if the child has serious behavioural disturbances".[1540]

General principles and rights

The YPA is limited by a number of general principles and rights. Section 5 of the Act specifies that "persons having responsibilities regarding a child under this Act must inform him and his parents as fully as possible of their rights under this Act".[1541]

In terms of rights, the Act recognizes the right of children and their parents to receive health, social and education services that are appropriate from a scientific, human and social standpoint.[1542] The text of the Act also stipulates that these services must be offered with continuity and in a personalized manner, taking into account the human, material and financial resources available.[1543]

The Act recognizes the right of children and parents to be informed. It specifies that the child and the parents must be treated with "courtesy, fairness and understanding," ensuring that the explanations and information are understood.[1544]

1534 *Youth Protection Act*, CQLR, c. P-34.1, s. 2; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 18, lines 3–9; testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 113, lines 8–10; *Offre de service, Loi sur la protection de la jeunesse et Loi sur le système de justice pénale pour les adolescents*, document P-014 (Commission), p. 2; *Présentation Loi sur la protection de la jeunesse*, document P-122 (Commission), p. 8.

1535 *Youth Protection Act*, CQLR, c. P-34.1., s. 2.3; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 18, lines 3–9; Document P-122 (Commission), *op. cit.*, p. 9; testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, pp. 113–114, lines 22–1; Document P-014 (Commission), *op. cit.*, p. 4.

1536 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, pp. 17–18, lines 22–2.

1537 Testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 113, lines 10–14.

1538 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 17, lines 8–12; Document P-014 (Commission), *op. cit.*, p. 2.

1539 Testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 113, lines 14–21; Document P-014 (Commission), *op. cit.*, p. 2.

1540 *Youth Protection Act*, CQLR, c. P-34.1, ss. 38–38.3; testimony of Marlene Gallagher, stenographic notes taken October 18, 2017, pp. 37–54, lines 15–21; Document P-122 (Commission), *op. cit.*, pp. 27–32.

1541 *Youth Protection Act*, CQLR, c. P-34.1, s. 5; Document P-122 (Commission), *op. cit.*, p. 19.

1542 *Youth Protection Act*, CQLR, c. P-34.1, s. 8.

1543 *Ibid.*

1544 *Id.,* s. 2.4; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, pp. 20–21, lines 25–9 and pp. 30–31, lines 15–7; Document P-122 (Commission), *op. cit.*, pp. 13 and 19.

The Act also stipulates that children and their parents have the right to be heard and consulted on the orientations to be taken, an important corollary to the right to information.[1545] They also have the right to refuse or contest a measure or decision.[1546] For example, children and parents have the right to contest DYP decisions regarding the reasons for compromise, the conclusions of their evaluation and the orientation concerning them, the extension of an alternative living situation, as well as any measures proposed to end the compromising situation that has been identified. They may also refuse to sign an agreement on voluntary measures proposed by the DYP.[1547] According to the Act, children and parents also have the right to be represented by an attorney[1548] and accompanied or assisted throughout the process by a person of their choice.[1549]

Furthermore, the rights of children and their parents are not extinguished in an alternative living situation (close foster family, foster family, rehabilitation centre). The Act states that when children are placed in an alternative living situation, they have the right to be housed in a place appropriate to their needs and that respects their rights.[1550] It also stipulates that children and their parents have the right to be consulted about a transfer to another living situation[1551] and that children have the right to receive the information and preparation necessary for the transfer.[1552] Finally, children in an alternative living situation have the right to communicate in complete confidentiality with their parents, brothers and sisters, unless the court decides otherwise.[1553]

The DYP also has principles to uphold. The first of these principles is the higher interest of the child and respect for his or her rights.[1554] This assumes that if the right of a parent is in conflict with the right of a child, the child's right takes precedence, given the child's higher interest.[1555] The Act also specifies that the moral, intellectual, emotional and physical needs of the child and their age, health, character, family environment and other aspects of their situation must be taken into account.[1556] The passage of Bill 99 to amend the YPA in October 2017 introduced the need to take into account the preservation of cultural identity in the case of Indigenous children.[1557]

1545 *Youth Protection Act*, CQLR, c. P-34.1, ss. 2.4 and 6; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 21, lines 12–17; Document P-122 (Commission), *op. cit.*, p. 14.

1546 *Youth Protection Act*, CQLR, c. P-34.1, ss. 47, 47.2, 52, 53.1, 74.2, 87, 99–114 and 115–129.

1547 *Id.,* s. 52.

1548 *Id.,* s. 5.

1549 *Id.,* s. 8.

1550 *Id.,* s. 11.1.

1551 *Id.,* s. 7.

1552 *Ibid.*

1553 *Id.,* s. 9.

1554 *Id.,* s. 3; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, pp. 19–20, lines 23–1; Document P-122 (Commission), p. 12; Document P-014 (Commission), p. 6.

1555 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 20, lines 4–7; Document P-122 (Commission), p. 12.

1556 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 16, lines 8–16; Document P-122 (Commission), p. 6.

1557 Bill 99, *An Act to amend the Youth Protection Act and other provisions*, 41st leg. (Qc), 1st sess., 2017, c. 18, s. 3.

Then there is the idea that the responsibility for taking care of, educating and supervising the child lies first with the parents.[1558] This assumes that youth protection workers must first work with the parents to correct problematic situations and, as mentioned above, ensure that they are informed of their rights, that they have understood the situation and that they are consulted on the means taken to remedy it.[1559]

The legislative framework in effect also specifies that any decision made under the YPA must "aim at keeping the child in the family environment".[1560] When this is not possible, the decision made must ensure ongoing care and stable ties with the most significant people in the child's life, including grandparents and other members of the extended family.[1561]

Any intervention must be carried out diligently to avoid recreating an injurious situation or causing irrevocable damage.[1562] For this reason, the Act sets out maximum time frames for placements. Based on these time frames, children under two may be removed from their family environment for a maximum period of 12 months, and the period cannot exceed 18 months for children aged two to five, and 24 months for children aged six and older.[1563]

After that time frame, the DYP must consider a permanent living plan. While the living plan may be outside the extended family or the network of significant people, it must ensure the continuity of care and stability of ties, in addition to ensuring the children have living conditions appropriate to their needs and age. The Act stipulates that the decision must take into account the proximity of the resource selected, the characteristics of cultural communities and the characteristics of Indigenous communities, in particular traditional Indigenous guardianship and adoption.[1564]

Finally, one of the important aspects of the regulatory framework for youth protection is confidentiality in sharing information. Except in the case of a professional, organization or establishment acting under the framework of the YPA, sharing information about children and their families is prohibited unless consent is obtained from the child, if they are over

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1558 *Youth Protection Act*, CQLR, c. P-34.1, s. 2.2; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 20, lines 14–20; Document P-122 (Commission), *op. cit.*, p. 13; Document P-014, (Commission), op cit., p. 7.

1559 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, pp. 20–21, lines 15–11; Document P-014 (Commission), *op. cit.*, pp. 8–9; Document P-122 (Commission), op cit., p. 13.

1560 *Youth Protection Act*, CQLR, c. P-34.1, s. 4; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 22, lines 15–17; Document P-122 (Commission), *op. cit.*, p. 15; Document P-014, (Commission), op cit., p. 10.

1561 *Youth Protection Act*, CQLR, c. P-34.1, s. 4; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 23, lines 4–24; Document P-122 (Commission), *op. cit.*, p. 16; Document P-014, (Commission), op cit., p. 11.

1562 *Youth Protection Act*, CQLR, c. P-34.1, s. 2.4(5); testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, pp. 31–32, lines 22–8; Document P-122 (Commission), *op. cit.*, p. 20; Document P-014, (Commission), op cit., pp. 15–16.

1563 *Youth Protection Act*, CQLR, c. P-34.1, ss. 53.0.1 and 91.1; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 27, lines 13–21; Document P-122 (Commission), *op. cit.*, p. 17; Document P-014, (Commission), op cit., p. 12.

1564 *Youth Protection Act*, CQLR, c. P-34.1, s. 2.4(5); testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 32, lines 9–16; Document P-122 (Commission), *op. cit.*, p. 21; Document P-014, (Commission), op cit., p. 16–18.

14, from one of the parents if the child is under 14 or by court order.[1565] The adoption of Bill 99 to amend the YPA has relaxed matters somewhat, however, by allowing the person responsible for youth protection in an Indigenous community to be informed if there are plans to remove a child from his or her family.[1566]

5.5.2 Organization and offer of services for all

The service offer and interventions for youth protection follow the process set out in the Act.[1567] This process extends from the receipt and processing of a report[1568] to the evaluation of the situation and orientation toward one of the measures set out in the Act, if it is established that the child's security is compromised.[1569] Possible measures include leaving children with or returning them to the family environment with psychosocial support, as well as different forms of placement in alternative living environments: close foster family, foster family, rehabilitation centre (internal or external units), etc. The measures put in place for children and parents may be either voluntary or ordered by the Court of Québec, Youth Division (legal measures). Immediate protection measures can also be taken while awaiting a final decision when the seriousness of the situation so requires.[1570]

At every stage in the process, a certain number of factors are taken into consideration to orient decisions. These are the nature, seriousness, chronicity and frequency of the facts to report, the age and personal characteristics of the child, the parents' ability and will to put an end to the situation that is compromising the child's security or development, as well as resources from the environment that can come to the aid of the child and the parents, from either close family or community services.[1571]

In terms of the organization of services, the powers and responsibilities related to youth protection are not entrusted to establishments or organizations, but rather to people.[1572] These are the directors of youth protection[1573], and there are 19 of them across Québec.[1574] While the DYPs are ultimately responsible for the application of the YPA, strictly speaking,

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1565 *Youth Protection Act*, CQLR, c. P-34.1, s. 72.5.

1566 *Id.*, s. 72.6.0.1; Document P-122 (Commission), *op. cit.*, p. 55.

1567 Document P-122 (Commission), *op. cit.*, p. 36; Document P-012 (Commission), *op. cit.*, p. 9.

1568 *Youth Protection Act*, CQLR, c. P-34.1, ss. 45–45.2; testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, pp. 117–118, lines 22–25.

1569 *Youth Protection Act*, CQLR, c. P-34.1, ss. 49–56; testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, pp. 119–121, lines 1–19; Document P-122 (Commission), *op. cit.*, pp. 37–47.

1570 *Youth Protection Act*, CQLR, c. P-34.1, ss. 46 to 48.1; Document P-122 (Commission), *op. cit.*, p. 42.

1571 Testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 114, lines 1–15; testimony of Philippe Gagné, stenographic notes taken October 18, 2017, p. 68, lines 12–21; Document P-014 (Commission), *op. cit.*, p. 4; *Youth Protection Act*, CQLR, c. P-34.1, s. 38.2.

1572 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 18, lines 18–22; testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 112, lines 20–24; Document P-014 (Commission), *op. cit.*, p. 1; Document P-122 (Commission), op cit., p. 10.

1573 *Youth Protection Act*, CQLR, c. P-34.1, s. 31; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 18, lines 22–25; Document P-014 (Commission), *op. cit.*, p. 1.

1574 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 18, lines 22–25.

the services are provided by child and youth protection centres that are an integral part of the CISSS and CIUSSS across Québec.[1575]

The situation is somewhat different with respect to funding and the youth protection service offer for members of First Nations and Inuit, however.[1576] These responsibilities fall to different levels of government depending on the place of residence of the Indigenous people, that is, in communities not under an agreement, in communities under an agreement and Inuit communities, or outside the community.[1577] The following text provides an account of these differences.

5.5.3 Organization and offer of services for Indigenous people

Nations not covered by an agreement

In terms of youth protection, nations not covered by an agreement receive funding from the federal government (Indigenous Services Canada), through the First Nations Child and Family Services program.[1578] For this purpose, the federal government has adopted rules to determin whether it has to cover the costs incurred for services pursuant to the YPA. The child's Indigenous status (or eligibility for this status) and primary place of residence (the first report must have been made when the family resided in the community) are taken into account.[1579] While the financial responsibility is generally the federal government's by virtue of the division of constitutional powers, all youth protection services must be delivered in a manner that upholds the YPA, regardless of the organization responsible for offering the services. That said, the funding and delivery of youth protection services take different forms depending on the type of agreement.[1580] While some communities not covered by an agreement assume no responsibility for youth protection, a number of them hold shared responsibility. Only the Atikamewk Nehirowisiw nation has an agreement that allows it to assume full responsibility for youth protection within its population.

Full management of services by the public health and social services network

Some non-agreement communities assume no responsibility for service delivery under the YPA. In such cases, trilateral agreements are signed directly between the communities

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1575 Before the establishments were merged by the *Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies* (CQLR, c. O-7.2), the youth centres were responsible for this. Testimony of Yves Desjardins, stenographic notes taken June 14, 2017, p. 107, lines 3–13; testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 12, lines 2–16; *Le réseau de la santé et des services sociaux. Organisation et offres de services à la population autochtone,* document P-013 (Commission), p. 3; Document P-012 (Commission), *op. cit.*, p. 8.

1576 *Another Step Toward Self-Determination and Upholding the Rights of First Nations Children and Families. Consultation Process for the Reform of the First Nations Child and Family Services (FNCFS) Program, June 2017*, document P-075 (Commission).

1577 Document P-086 (Commission), *op. cit.*, p. 6.

1578 Indigenous Services Canada. (2019). First Nations Child and Family Services. Retrieved from https://www.sac-isc.gc.ca/eng/1100100035204/1533307858805.

1579 If children do not have Indian status or live outside the community when the first report is made, the province is financially responsible.

1580 Testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, pp. 115–116, lines 24–6.

covered, the CISSS/CIUSSS and the Indigenous Services Canada.[1581] Services are entirely provided by the CISSS and the CIUSSS, and these communities do not even have a First Nations Child and Family Services agency, as is the case in communities that have shared responsibility.[1582] The provincial establishments bill the federal government directly for services provided under the YPA.[1583]

While certain service providers that report to the CISSS/CIUSSS are based in the communities[1584], others travel to the communities only when meetings are necessary with children and families.[1585]

Foster families and kinship foster families in the community must sign specific agreements with the establishment in their region. She are assessed by provincial establishments and have to deal with the legal and administrative implications of being self-employed, but they do not receive the same compensation as those located outside the community, which are covered by a collective agreement. The federal government compensates them financially for the services rendered.

Eight First Nations communities not under an agreement have no responsibility for youth protection : the Anishnabek communities of Barriere Lake (Rapid Lake), Lac Simon, Kitcisakik, Pikogan, Kebaowek (Kipawa), Long Point (Winneway) and Timiskaming, and the Mohawk community of Kanehsatà :ke.[1586]

Even though the communities of Lac Simon, Kitcisakik and Pikogan do not currently have authorized responsibilities, between 1997 and 2002, they took on certain youth protection services through Minokin Social Services.[1587] Financial, human resource and material difficulties resulted in the closure of that organization[1588], but at the time of drafting this report, these communities were in discussions with the CISSS de l'Abitibi-Témiscamingue and the federal government to negotiate a new agreement.

1581 Document P-086 (Commission), *op. cit.*, p. 10.

1582 Testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 117, lines 5–21.

1583 Document P-086 (Commission), *op. cit.*, p. 10.

1584 This is the case for the communities of Lac Simon and Pikogan. Testimony of Sylvain Plouffe, stenographic notes taken June 14, 2017, p. 117, lines 10–14; Document P-013 (Commission), *op. cit.*, pp. 7–8.

1585 This is the case for Kitcisakik, Timiskaming, Long Point (Winneway) and Kebaowek (Kipawa); Document P-013 (Commission), *op. cit.*, pp. 7–8.

1586 *Recension des écrits secteur Protection de la jeunesse rédigé par Christiane Guay et Lisa Ellington dans le cadre de la CERP*, document PD-5 (Commission), p. 10.

1587 Testimony of Alice Jérôme, stenographic notes taken January 22, 2018, pp. 87–94, lines 11–3; testimony of Adrienne Jérôme, stenographic notes taken April 18, 2018, pp. 137–139, lines 23–12.

1588 *Rapport, conclusions d'enquête et recommandations, janvier 2003. Les services de protection offerts aux enfants algonquins dans les communautés du Lac Simon, de Pikogan et du Grand Lac Victoria*, document P-452 (Commission); Testimony of Alice Jérôme, stenographic notes taken January 22, 2018, pp. 95–110, lines 16–18.

Partial sharing of responsibilities with the communities

In most communities not covered by an agreement, First Nations Child and Family Services agencies partly manage and deliver youth protection services under the YPA[1589], thanks to bilateral agreements signed with the CISSS or the CIUSSS.[1590] These agreements outline the terms agreed on with respect to responsibilities authorized by the YPA and the delivery and funding of services under the YPA, the ARHSSS and the YCJA.[1591] The provincial establishments bill the band councils or tribal councils for services they continue to pay for, including the cost of accommodations.[1592] Until recently, some responsibilities could not be assumed by Indigenous communities as part of these agreements[1593], but amendments to the YPA[1594] may allow interested communities to negotiate additional authorizations, including ruling on the security and development of children and reviewing their situation.[1595] The Atikamekw Nehirowisiw communities of Manawan and Wemotaci and the community of Kahnawà:ke have had such authorizations for a number of years, because they signed "interim" bilateral agreements in anticipation of signing an agreement under section 37.5. I will come back to this later.

Furthermore, most First Nations Child and Family Services agencies manage[1596] foster families and kinship foster families. The vast majority of these foster families are not represented by an association and are not covered by the collective agreements that were signed following the adoption of the *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*[1597] *(ARR)*. Instead, they are compensated under an agreement between the Assembly of First Nations Québec-Labrador and the federal government. Some First Nations Child and Family Services agencies also manage rehabilitation units and group homes: the Gignu Group Home (Listuguj), the Foyer Mamo (managed by the Conseil de la Nation Atikamekw), the Akwesasne Adolescent Group Home (Akwesasne), the Centre de réadaptation Pishimuss and the Centre de réadaptation Mishta-An Auass (Uashat mak Mani-Utenam).[1598]

1589 Document P-075 (Commission), *op. cit.*

1590 Most agreements were signed with youth centres before the merger of the establishments into CISSS and CIUSSS.

1591 Document P-086 (Commission), *op. cit.*, p. 10.

1592 *Ibid.*

1593 Communities that signed bilateral agreements before the amendments to the YPA in 2007 have been able to continue to exercise certain duties, such as orientation and situation review (s. 32 YPA). In fact, before these legislative amendments, these duties were not expressly considered the exclusive responsibility of the DYP. This is the case for the following communities: Opitciwan, Wemotaci, Manawan and Kahnawà:ke.

1594 Bill 99, *An Act to amend the Youth Protection Act and other provisions*, 41st leg. (Qc), 1st sess., 2017, c. 18.

1595 Document PD-5 (Commission), *op. cit.*, p. 7.

1596 This includes recruitment, assessment of applicants, administrative management and monitoring Indigenous children who have been placed.

1597 *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements, CQLR*, c. R-24.0.2.

1598 The details of each of the partial responsibility sharing agreements between Indigenous communities not covered by an agreement and the CISSS/CIUSSS can be found in Appendix 28.

Complete management of services by the communities

In June 2001, in response to repeated requests by First Nations, particularly the Atikamekw Nehirowisiw nation[1599], the Québec government added section 37.5 to the YPA.[1600] This provision allows for the development of specific youth protection systems and gives Indigenous communities, nations and organizations (whether covered by an agreement or not) the opportunity to sign an agreement with the Québec government to take on part or all of the responsibilities normally vested in the YPA.[1601] The objective of these agreements is to enable communities to exercise these responsibilities with full authority (with their own DYP, for example) and allow the interventions to be adapted to Indigenous realities.

The conclusion of these agreements comes with a certain number of conditions. First of all, the grounds for intervention must be the same as those set out in the YPA.[1602] The interventions must also comply with the general principles and rights set out in the Act.[1603] The specific protection systems introduced by Indigenous nations must also respect the jurisdiction of the Commission des droits de la personne et des droits de la jeunesse.[1604] Any agreement between the government and an Indigenous nation to establish a specific protection system must clearly define the beneficiary and the territory in which the services will be organized and offered.[1605] It must also identify the people or authorities that will assume the responsibilities given to the director of youth protection in the Act and agree on provisions for taking back responsibility.[1606]

The provincial government justifies these requirements by asserting that it is still accountable for services offered by signatory communities and that it has the duty and obligation to ensure that all children in Québec, including Indigenous children, receive the services necessary if their security or development is or may be compromised.[1607]

1599 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 41, lines 2–14.

1600 *Youth Protection Act*, CQLR, c. P-34.1, s. 37.5.

1601 *Guidelines for establishing a special youth protection program for Native people*, document P-085 (Commission), p. 1; *Le système d'intervention d'autorité atikamewk (SIAA). Ses origines, son implantation et son fonctionnement*, document P-441 (Commission), p. 39.

1602 Document P-441 (Commission), *op. cit.*, p. 47; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 169, lines 1–12.

1603 *Youth Protection Act*, CQLR, c. P-34.1, s. 37.5; Document P-441 (Commission), *op. cit.*, p. 41 and 46; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 169, lines 13–15 and pp. 171–172, lines 16–6.

1604 *Youth Protection Act*, CQLR, c. P-34.1, s. 37.5; Document P-441 (Commission), *op. cit.*, p. 41; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 169, lines 15–18.

1605 *Youth Protection Act*, CQLR, c. P-34.1, s. 37.5; Document P-441 (Commission), *op. cit.*, pp. 41 and 48; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 169, lines 18–24; *Guide pratique à l'intention des communautés et des organisations des Premières Nations qui souhaitent conclure une entente en vertu de l'article 37.5 de la Loi sur la protection de la jeunesse*, document P-070 (Commission), p. 8.

1606 *Youth Protection Act*, CQLR, c. P-34.1, s. 37.5; Document P-441 (Commission), *op. cit.*, p. 41 and 49; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 169, lines 18–24; Document P-070 (Commission) op cit., p. 9.

1607 Document P-085 (Commission), *op. cit.*, p. 2.

To implement specific youth protection systems, the Indigenous communities, nations or villages must demonstrate that they can:

- provide prior management of basic, front-line social services;[1608]
- establish collaborative mechanisms with community partners;[1609]
- establish collaborative mechanisms with local and regional partners, including integrated centres;[1610]
- offer training and clinical support to youth workers;[1611]
- make provisions regarding the protection of personal information;[1612]
- use a data operating system;[1613]
- provide a complaint handling mechanism;[1614]
- have a mechanism to ensure the clinical autonomy of anyone responsible for child protection;[1615]
- have measures to evaluate the application of the system.[1616]

Since section 37.5 was added to the YPA in 2001, just one agreement has been signed, between the Québec government and the Conseil de la Nation Atikamekw. Signed on January 29, 2018, when our work was still under way, this agreement was signed just over 16 years after the initial pilot project of the Système d'intervention d'autorité atikamekw (SIAA) and 8 years after the negotiations began.[1617]

Under this agreement, the director of social protection of the Conseil de la Nation Atikamekw exercises all the responsibilities normally assigned to the director of youth protection concerning protection, adoption and guardianship[1618] and is also responsible for recruiting

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1608 Document P-085 (Commission) *op. cit.*, p. 20; Document P-070 (Commission), *op. cit.*, p. 4.

1609 Document P-085 (Commission) *op. cit.*, p. 16; Document P-070 (Commission), *op. cit.*, p. 12.

1610 Document P-085 (Commission) *op. cit.*, p. 17; Document P-070 (Commission), *op. cit.*, p. 12.

1611 Document P-085 (Commission) *op. cit.*, p. 19; Document P-070 (Commission), *op. cit.*, p. 14.

1612 Document P-085 (Commission) *op. cit.*, p. 18; Document P-070 (Commission), *op. cit.*, p. 13.

1613 Document P-441 (Commission), *op. cit.*, p. 49; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 175, lines 16–21; Document P-085 (Commission), *op. cit.*, p. 19; Document P-070 (Commission), *op. cit.*, p. 14.

1614 Document P-441 (Commission), *op. cit.*, p. 49; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 188, lines 19–20; Document P-085 (Commission), *op. cit.*, p. 18.

1615 Document P-085 (Commission) *op. cit.*, p. 16; Document P-070 (Commission), *op. cit.*, p. 11.

1616 Document P-441 (Commission), *op. cit.*, p. 49; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 170, lines 3–4; Document P-070 (Commission), *op. cit.*, p. 15.

1617 *Entente visant à établir un régime particulier de protection de la jeunesse pour les membres des communautés des communautés de Manawan et Wemotaci,* document P-445 (Commission); testimony of Marie-Ève Sylvestre, stenographic notes taken February 22, 2018, pp. 11–12, lines 24–10; Document P-441 (Commission), *op. cit.*, p. 53; Testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 177, lines 19–23.

1618 Document P-445 (Commission), *op. cit.*, ss. 10–13; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 184, lines 10–19; Document P-441 (Commission), *op. cit.*, p. 57.

and evaluating foster families and managing all their activities.[1619] With respect to the YCJA, the director of social protection exercises responsibilities related to extrajudicial sanctions, drafting pre-decision reports and probation.[1620] All children and youth who are Atikamekw Nehirowisiw members of the communities of Manawan and Wemotaci can benefit from this agreement, whether they live in or outside these communities.[1621]

Funding for the SIAA is provided by the Québec government for beneficiaries who live within the territory covered by the agreement, even if the parents do not live there.[1622] The government also finances services delivered by foster families off reserve, based on costs recognized in Québec.[1623]

The Mohawk community of Kahnawà:ke has begun negotiations in this direction.[1624] At the time of producing this report, no agreement had been officially struck.

Nations covered by an agreement

With respect to nations covered by an agreement in Québec (Eeyou (Cree), Naskapi and Inuit), the provincial government finances social services, including youth protection. Among the Eeyou (Crees) and Inuit, this has been the situation since the signature of the James Bay and Northern Québec Agreement in 1975.[1625] The same agreement was established with the Naskapi in 1978 under the Northeastern Québec Agreement.[1626] These two treaties are a framework that defines the rights and responsibilities of these three nations. They establish local and regional institutions that are part of the Québec health care network.[1627]

In Nunavik, the management of youth protection services for the 14 Inuit villages is the responsibility of the Nunavik Regional Board of Health and Social Services (NRBHSS). The territory is organized around two youth protection branches : a DYP for Baie d'Ungava (which is covered by the Tulattavik Health Centre, considered a provincial establishment) and a DYP for Hudson Bay (which is covered by the Innulitsivik Health Centre, also considered a provincial establishment). The NRBHSS also administers a regional rehabilitation centre for young people with adjustment difficulties in Salluit, a group home in Puvirnituq and another in Kuujjuaq.[1628]

1619 Document P-445 (CERP), *op. cit.*

1620 *Id.*, s. 12m); Document P-441 (Commission), *op. cit.*, p. 57.

1621 Document P-445 (Commission), *op. cit.*, ss. 2–4; testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 182, lines 13–24; Document P-441 (Commission), *op. cit.*, p. 55.

1622 Document P-445 (Commission), *op. cit.*, art.24a); testimony of Anne Fournier, stenographic notes taken February 22, 2018, pp. 189–190, lines 17–4; Document P-441 (Commission), *op. cit.*, p. 62.

1623 Document P-441 (Commission), *op. cit.*, p. 62.

1624 Testimony of Anne Fournier, stenographic notes taken February 22, 2018, p. 198, lines 6–14.

1625 Document P-086 (Commission), *op. cit.*, pp. 10–11; testimony of Jean-François Arteau, stenographic notes taken September 28, 2017, p. 176, lines 13–18.

1626 Document P-086 (Commission), *op. cit.*, pp. 10–11.

1627 *James Bay and Northern Québec Agreement, op. cit.*

1628 Document PD-5 (Commission), *op. cit.*, p. 13.

In Eeyou Istchee territory (Cree territory), the administration of youth protection services for the nine Eeyou (Cree) communities is provided by the Cree Board of Health and Social Services of James Bay (CBHSSJB).[1629] In each of the communities, the CBHSSJB operates a Community Miyupimaatisiiun Centre (CMC)[1630] which offers medical, paramedical and nursing services, in addition to social services, including youth protection.[1631] Teams of youth protection workers are present locally.[1632] Unlike the rest of the province, which has separate teams to evaluate reports and apply measures, the same workers play both roles in Eeyou Istchee.[1633] The CBHSSJB also operates two group homes: Upaachikush in Mistissini and Weesapou in Chisasibi, as well as a youth rehabilitation centre, Youth Healing Services, in Mistissini.[1634] To inform the Eeyou (Cree) population about the application of the YPA and responsibilities of the DYP, the CBHSSJB adopted a regulation on March 31, 2017[1635], which states that child protection is a collective responsibility and that the DYP must limit its interventions to the grounds for protection listed in section 38 of the YPA and then orient the child and family to other existing services. At the time of the Commission hearings, an action plan for youth protection services was also being developed.[1636]

In Kawawachikamach, youth protection services are provided by the Direction de la protection de la jeunesse du CISSS de la Côte-Nord. The community can also rely on the CLSC Naskapi, which is considered a provincial establishment and reports directly to the MSSS.

Like communities not covered by an agreement, communities under an agreement can sign agreements under section 37.5 of the YPA. On March 21, 2018, the NRBHSS issued a press release indicating its intention to begin efforts to conclude such an agreement, including all Inuit communities and regional organizations in the project.[1637]

1629 For the Eeyou nation (Cree), the *Act respecting health services and social services* for Cree Native persons (CQLR, c. S-5) replaces the *Act respecting health services and social services* (CQLR, c. S-4.2).

1630 *Services de santé et services sociaux : défis et enjeux de leur organisation pour une offre adaptée aux besoins de la clientèle des Terres-Cries-de-la-Baie-James (CCSSSBJ)*, document P-017 (Commission), p. 5; Cree Board of Health and Social Services of James Bay. (2018), 2017–2018 Annual Report. Retrieved from http://www.creehealth.org/sites/default/files/CBHSSJB%20AR%202017-2018%20FINAL%20EN.pdf, p. 6.

1631 (Document P-017 (Commission), p. 5)

1632 *Id.,* p. 19.

1633 *Audit on Youth Protection Resources/Report,* document P-110 (Commission), p. 7.

1634 Cree Board of Health and Social Services of James Bay. (2018), *op. cit.*, p. 32.

1635 Cree Board of Health and Social Services of James Bay. (2017). *Board of directors by-law no. 12: By-Law on youth protection and on the application of the Youth Protection Act (Section 37)*, resolution No. 01-157-17.

1636 Document P-017 (Commission), *op. cit.*, p. 15; testimony of Rober Auclair, stenographic notes taken June 14, 2017, p. 179, lines 9–14.

1637 Nunavik Regional Board of Health and Social Services. (2018). Major Reforms to Youth Services in Nunavik. [Press release]. Retrieved fromhttp://nrbhss.ca/sites/default/files/press_release_youth_services_nunavik_en.pdf.

Outside of First Nations and Inuit communities

Youth protection services offered to Indigenous clients who live outside their home community are the same as for the rest of the Québec population.[1638] They are financed from the MSSS budget, except when the first report is made when the family resided in a community. In such cases, the federal government finances the services. The rights, powers and principles of the YPA apply in their entirety.

The *Youth Protection Act* has no requirement regarding access to services in a language other than French, interpreters or translated documents. That said, the courts consider the need to linguistically adapt the transmission of information to parents covered by the Act to be inherent in the obligation to be understood.[1639] The youth and child protection centres also report to the CISSS and CIUSSS and, as such, must meet the requirements imposed on establishments in the health and social services network.

1638 Document P-086 (Commission), *op. cit.*, p. 11.

1639 *Protection de la jeunesse* — 1884, 2018 QCCQ 248; *Protection de la jeunesse* — 06518, 2006 QCCQ 15081; *Protection de la jeunesse* — 179297, 2017 QCCQ 18852.

PART II

WHAT WE LEARNED FROM OUR PROCEEDINGS

Under the order adopted by the Québec government in December 2016[1640], the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec : listening, reconciliation and progress could not make decisions about anyone's civil, penal or criminal liability. That rule applied to both individuals and organizations. In other words, the Commission could not take over the role of a court of justice or any other regulatory authority.

My role was, rather, to draw conclusions from facts and form opinions but also, and more importantly, to suggest actions to ensure that similar situations would not happen again. The order stipulated "concrete, effective lasting remedial measures".[1641] I also wanted the proposed actions to be realistic and to take into account the political and social environment in which they would have to be implemented.

In addition, inspired by the concepts of listening and reconciliation at the heart of my mandate, I endeavoured to give as much leeway as possible to citizens and public service representatives in expressing their reality. For example, I chose to let the witnesses relate the facts as they had lived or experienced them without applying the usual rules for questioning and cross-examination.[1642] That decision was motivated by the particularly sensitive character of the events that led to the creation of the Commission, their highly emotional nature and the very real risk of further victimizing individuals who were already in an extremely fragile state.

In other words, I used the prerogatives available to me in terms of processes and rules of evidence to make it easier to shed light on certain events and understand their impacts on the people concerned. Like a hand reaching out – which I like to consider to be a premise for reconciliation – this guideline was reflected in the way our inquiry was conducted, in the support offered to the people who came to testify and also in the hearing room. This approach, which was mentioned many times during our proceedings[1643], helped ensure that the stakeholders' various points of view were expressed fairly because it was implemented among Indigenous citizens as well as public service representatives. It was also very

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1640 *Décret concernant la constitution de la Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec : écoute, réconciliation et progrès*, (2016) 1095 G.O.Q. II, art. 24. The full text of the order is available in Appendix 1.

1641 *Ibid*.

1642 See sections 59 to 71 of the Commission's Procedural and Operational Rules, which can be found in Appendix 2.

1643 Testimony of Perty Tookalook, stenographic notes taken November 12, 2018, p. 13, lines 1–3; testimony of Fanny Bacon, stenographic notes taken May 16, 2018, p. 11, lines 8–13; testimony of Marie-Louise Hervieux, stenographic notes taken October 23, 2018, p. 8, lines 16–23; testimony in closed proceedings HC-60, stenographic notes taken June 14, 2018, p. 12, lines 10–15; testimony of Clifford Loon, stenographic notes taken June 13, 2018, p. 7, lines 6–11; testimony in closed proceedings HC-62, stenographic notes taken June 19, 2018, p. 81, lines 6–11; testimony of Cécile Mark and Max Mitchell, stenographic notes taken May 23, 2018, p. 104, lines 6–10; Testimonies in closed proceedings HC-20, stenographic notes taken April 5, 2018, p. 139, lines 22–25; testimony in closed proceedings HC-21, stenographic notes taken April 5, 2018, p. 172, lines 14–18; Testimonies of Florence Dubé, Sylvain Dubé and Nathalie Dubé, stenographic notes taken March 20, 2018, pp. 162–163, lines 23–2; Testimonies of Sipi Flamand and Konik Flamand, stenographic notes taken March 20, 2018, p. 239, lines 11–14.

valuable during the subsequent analysis because of the depth and abundance of the testimonies received and the unique spotlight the stories cast on the prevailing atmosphere.

The following pages present the findings of our proceedings, both at the broadest level and for each of the services examined. The inquiry components documented and presented during the hearings, together with the Commission's research work, form the foundation for the calls for action that were developed. Our calls for action also take into account the work done and conclusions reached by the National Inquiry into Missing and Murdered Indigenous Women and Girls.[1644] I also took into consideration the actions set out in the Government Action Plan for the Social and Cultural Development of the First Nations and Inuit 2017–2022[1645] released on June 28, 2017, as well as the various measures implemented following the inquiries done by the SPVM concerning allegations of disorderly conduct by police officers in dealings with Indigenous persons in Québec. The statements made by certain previous commissions on Indigenous peoples were also instrumental in my analysis, including the Truth and Reconciliation Commission of Canada[1646] and the Royal Commission on Aboriginal Peoples.[1647]

It should be noted here that the term "call for action" has been used rather than recommendation, which is usually associated with traditional government actions, because I am convinced that true change requires collective action.

1644 National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). *Reclaiming Power and Place. Supplementary report: Québec.* Ottawa, Ontario: MMIWG.

1645 *Do More, Do Better. Government Action Plan for the Social and Cultural Development of the First Nations and Inuit 2017-2022*, document P-199 (Commission).

1646 Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future. Summary of the Final Report of the Truth and Reconciliation Commission of Canada.* Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press.

1647 Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples.* Ottawa, Ontario: Canada Communication Group (online PDF).

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CHAPTER 6

GENERAL FINDINGS

I was mandated by the Québec government to assess whether Indigenous peoples have been subject to violence or systemic discriminatory practices in the delivery of public services. At issue was whether Indigenous peoples have been treated differently by public services due to their unique characteristics, and whether that has resulted in service inequalities and an infringement on their ability to exercise their rights. It was also important to establish whether the situation could be attributed to isolated acts or has resulted from systemic ways of acting and thinking embedded within organizations and fuelled by their operational logic.

To answer these questions, it was vital that I first define the concept of discrimination. My many years on the bench naturally led me to the interpretation established by the courts. As Colleen Sheppard, Professor at the McGill University Faculty of Law, so skilfully summed it up during her testimony before the Commission, the courts generally recognize three types of discrimination: direct discrimination, indirect discrimination and systemic discrimination.

Direct discrimination is defined as the negative treatment of a person on the basis of his or her belonging to a particular societal group, and the bias, prejudice or stereotyping that are directed, consciously or unconsciously, toward this group.[1648] Indirect discrimination refers to the inequitable effects that may result from the application of apparently "neutral" laws, policies, norms and institutional practices on a person or group of people.[1649] Systemic discrimination, which combines both of those types of discrimination, is characterized as being widespread and institutionalized in a society's practices, policies and culture. Systemic discrimination can impede individuals throughout their entire lives and its effects can persist over multiple generations.[1650]

That is the definition I kept in mind in analyzing the testimony and evidence submitted during the Commission hearings.

Having completed my analysis, it seems impossible to deny that members of First Nations and Inuit are victims of systemic discrimination in their relations with the public services that are the subject of this inquiry.

While the problems may not always be systemic, the Commission hearings have revealed that our current structures and processes show a clear lack of sensitivity toward the social, geographical and cultural realities of Indigenous peoples. As a result, notwithstanding certain efforts to make changes and despite a clear desire to promote equal opportunities, many

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1648 Testimony of Colleen Shepard, stenographic notes taken June 7, 2018 p. 13, lines 7–17.

1649 *Id.*, p. 14, lines 17–22.

1650 *Id.*, p. 18, lines 2–15.

current institutional practices, standards, laws and policies remain a source of discrimination and inequality, to the point where they significantly taint the quality of services offered to First Nations and Inuit. In some cases this lack of sensitivity manifests as a complete lack of service, which leaves entire populations to their own devices with no ability to remedy their situations. In this way, thousands have enlightening insights been stripped not only of their rights, but of their dignity, as they are forced to live under deplorable conditions, deprived of their own cultural references. In a developed society such as ours this reality is simply unacceptable.

6.1. The causes

To understand how we arrived at this state of affairs, it is important to look back at the events that led us here.

6.1.1 A colonialist heritage

We should begin by studying our history. Just by looking at the major events that have defined the relationship between Indigenous peoples and public services, we can grasp the scope of the disaster unleashed by the colonialist policies of successive provincial and federal governments over the past 150 years.[1651] The losses suffered by First Nations and Inuit have left lasting scars on both their land, with the creation of reserves and settlements, and on their culture, with forced evangelization and education under the residential school system.[1652] It is also impossible to ignore the widely recognized, documented attacks on their identity and on their social, economic and political structures, which several witnesses described in detail.[1653] As witness Charlie Watt stated in reference to that era during his testimony before the Commission, "(the government authorities) wanted the land, but not the people".[1654]

1651 Testimony of Marie-José Thomas, stenographic notes taken September 13, 2018, p. 25, lines 11–19. The major events that forged the relationship between Indigenous peoples and public services are outlined in Chapter 3 of this report.

1652 *Les relations entre les Autochtones et les services de justice du Québec : une recension des écrits*, document PD-11 (Commission), p. 18–19; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 136–137, lines 25–5; testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 47–48, lines 20–7; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 92–93, lines 18–9; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 57, lines 6–13; testimony of Clifford Moar, stenographic notes taken November 16, 2017, p. 13–14, lines 20–5; testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 136–137, lines 21–12; testimony of Maryse Picard, stenographic notes taken June 20, 2016, p. 24, lines 4–15; *Perspectives historiques autochtones : entrevues*, document PD-16 (Commission), p. 49; testimony of Marie-José Thomas, stenographic notes taken September 13, 2018, p. 82, lines 8–16; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017 p. 125, lines 7–24.

1653 Testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 45, lines 2–14; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 78, lines 7–24, p. 89, lines 8–14 and p. 94, lines 12–23; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 32, lines 6–11; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 46, lines 1–11; document PD-16 (Commission), op cit., p. 79; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 37, lines 4–22; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 145–146, lines 23–19, p. 147–148, lines 19–6 and p. 149, lines 9–19; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 58–59, lines 10–3; testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 189, lines 1–6.

1654 Testimony of Charlie Watt, stenographic notes taken November 23, 2018, p. 100, lines 14–18: ("They wanted the land, but not the people").

The conclusion is undeniable. The unequal relationship imposed on Indigenous peoples stripped them of the ability to control their own destiny and fuelled a degree of distrust of public services that has been reinforced even further by certain events of the recent past. Take, for example, the case of residential schools, the last of which was closed in 1991 in Québec[1655], or the massive slaughter of dog teams in the 1950s and 1960s in Nunavik, witnessed by a large number of Inuit who are still alive today and who continue to suffer the consequences[1656], as evidenced by Charlie Arngak's emotional testimony before the Commission:

> My cousin and my other friend were on top of a big house, on the roof, near the shore, and we saw... people bringing dogs to the shore to be killed, and we saw our uncles [...] bring their dogs to the shore to be massacred. We were afraid, so we hid on the roofs... We lay down flat and watched them, and we watched our parents, the people bringing their dogs to the shore and we saw... we saw them being massacred, shot. [...] We went to the shore to see the dogs that had been massacred before they were born. We saw... entire piles of dogs... [...] The police burned them in the evening, on the shore, and after the massacre our lives were changed. They could no longer go hunting; there were no skidoos, no snowmobiles to go hunting with. Their lives were completely changed and they... they turned to alcohol.[1657]

Far from forgotten, these events form part of Indigenous peoples' cultural heritage, with the result that individuals and communities remain in situations of extreme cultural, relational, social and economic vulnerability.[1658] For proof, one need only look at the enormous disparity in living and health conditions between Indigenous peoples and the rest of the population.[1659] The cause-and-effect link has also been underlined in briefs submitted to the

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1655 Truth and Reconciliation Commission of Canada. (2015d). *Final Report of the Truth and Reconciliation Commission of Canada, Canada's Residential Schools: Missing Children and Unmarked Burials*. Volume 4. Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 164.

1656 Testimony of Davidee Nivaxie, stenographic notes taken November 12, 2018, p. 56–57, lines 11–7; Déclaration statutaire PI-274, document P-1291 (Commission), p. 3; testimony of Sarah Tuckatuck Bennett, stenographic notes taken November 13, 2018, p. 277, lines 3–4; testimony of Louisa Cookie-Brown, stenographic notes taken November 15, 2018, p. 116, lines 14–18 and p. 119–120, lines 12–8; testimony of Tunu Napartuk, stenographic notes taken November 19, 2018, p. 33, lines 12–25 and p. 34, lines 13–23; testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 93, lines 8–15 and p. 99, lines 5–9; testimony of Charlie Arngak, stenographic notes taken November 22, 2018, p. 241–242, lines 20–3.

1657 Testimony of Charlie Arngak, stenographic notes taken November 22, 2018, p. 240–241, lines 22–25.

1658 Testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 45, lines 8–16; testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 179–180, lines 20–16; testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 73–74, lines 21–22; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 171–172, lines 14–18; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 104–106, lines 22–8; testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 97–98, lines 25–6 and p. 98–99, lines 20–15; testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 95–96, lines 10–6; testimony of Jesse A. Thistle, stenographic notes taken August 22, 2018, p. 15, lines 13–20; testimony of Mélissa Saganash, stenographic notes taken June 14, 2017, p. 49–50, lines 13–11.

1659 Chapter 4 of this report presents a portrait of the socio-demographic and geopolitical situation of First Nations and Inuit, examining the health, justice, correctional services and youth protection sectors.

Commission by the Syndicat des agents de la paix en services correctionnels au Québec, by directors of Québec's youth protection services and by the Québec government.[1660]

Consequently, it is not surprising that members of First Nations and Inuit should point to these unfortunate episodes of our shared history to explain their distrust of public services.[1661] The Québec government affirmed as much in its own final observations[1662], as did the Association des policières et policiers provinciaux du Québec (APPQ):

> Indigenous peoples were subject to different laws, forcing them to remain on one or more reserves, outlawing traditional dances and religions, forbidding the use of Indigenous languages, banning alcohol consumption, prohibiting or limiting hunting and fishing, etc. The relationship between Indigenous peoples and the police charged with enforcing these laws and punishing offences was therefore built on an extremely negative foundation.
> [...]
> Based on these considerations, and without listing the various measures imposed by the government in its attempt to assimilate First Peoples during that period, the distrust of the latter toward police forces charged with enforcing laws and punishing offences is understandable.[1663]

It should be added that those colonialist policies laid the foundation for systems and organizations dominated by the desire to standardize, which had precious little to do with Indigenous knowledge and traditions.[1664] Not only did this method of building and managing services contribute to the distancing of First Nations and Inuit, it also negated—both socially and politically—their centuries-old practices and knowledge. Like many of the parties (citizens, experts and others) who testified before the Commission[1665], I believe that this lack of sensitivity can be attributed to the widespread ignorance about Indigenous peoples among the general population. In my opinion, this is one of the most important issues to consider in understanding the origin of the systemic discrimination in public services.

1660 Brief of the Québec government. (November 30, 2018). *Vivre ensemble, faire ensemble*, document P-1170 (Commission), brief M-029, p. 2; Brief of the Syndicat des agents de la paix en services correctionnels du Québec. (October 10, 2018), *Réalités autochtones en milieu carcéral québécois : Un système juste et équitable pour toutes et tous ?*, document P-1159 (Commission), brief M-017, p. 16; Brief submitted by directors of Québec Youth Protection services. (November 30, 2018). Document P-1169 (Commission), brief M-028, p. 11–12.

1661 Testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 61, lines 13–22.

1662 Brief of the Québec government. (November 30, 2018), *op. cit.*, p. 29.

1663 Brief of the Association des policières et policiers provinciaux du Québec. (November 30, 2018). Document P-1166 (Commission), brief M-025, p. 9.

1664 Testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 62, lines 13–24; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 65, lines 15–24; testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 130–131, lines 23–2; Brief of the Québec government. (November 30, 2018), *op. cit.*, p. 36.

1665 Testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 27–28, lines 22–13 and p. 111, lines 11–14; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 134–135, lines 22–2 and p. 151–152, lines 22–4; testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 170, lines 3–7; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 59–60, lines 25–2; testimony of Alex Cheezo, stenographic notes taken October 24, 2017, p. 40, lines 8–21; Brief of the Québec government. (November 30, 2018). *Op. cit.*, p. 14; testimony of Marie-José Thomas, stenographic notes taken September 13, 2018, p. 80–81, lines 24–18.

6.1.2 Widespread misconceptions

Worse than ignorance, these misconceptions spread prejudices and stereotypes, which in turn have solidified relations between Indigenous peoples and public services. Carole Lévesque, Professor at the Institut national de la recherche scientifique (INRS) and director of the Indigenous peoples research and knowledge network, DIALOG[1666], testified to the Commission that "too often, in the minds of the general public, Indigenous peoples are seen through a lens of failure, of delayed development, as if they were not comprised of organized social groups and fully formed societies".[1667]

Disorganized, unable to care for their families and children, uninformed, violent, dependent, neglectful of their health and property, privileged due to their exemption from paying taxes—the list of prejudices about First Nations and Inuit extends along a broad continuum, ranging from inferior to entitled. Many of the Indigenous witnesses who shared their personal stories with the Commission affirmed that they have felt judged in this way.[1668] Such is the case for this mother, who testified *in camera* about her relationship with Youth Protection Services:

> [To] the DYP people, [...] right from the start, I'm Indigenous, a drug addict, an alcoholic, maybe even a compulsive gambler, pathological gambler [...] It wasn't even true. I was not even able to defend myself. [...] They told me a support worker would follow up, to see if the baby was safe, to make sure he was being given the development care he needed, and to check if our housing was adequate, whether there was any speed, cocaine, alcohol, or what have you. [...] I was judged as an Indigenous person, as if I was no doubt taking all the drugs in the world. But I was A-1 with respect to my life insurance (requirements). You know, that's not right. I don't do drugs, I don't take anything.[1669]

Whether unfounded or not, these perceptions are evidence of the walls of mutual incomprehension that separate Indigenous peoples from the main providers of public services in Québec.

1666 The DIALOG research and knowledge network addresses issues affecting Indigenous peoples.

1667 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 124, lines 2–6.

1668 Testimony of Pauline Diamond, stenographic notes taken June 8, 2018, p. 145–146, lines 15–3; testimony of Sylvanne Bellefleur via reporter witness, stenographic notes taken October 23, 2018, p. 53, lines 19–21 and p. 54, lines 12–24; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 35–36, lines 25–5 and p. 62, lines 9–14; testimony of Yvette Wabanonik, stenographic notes taken August 23, 2018, p. 145–146, lines 18–2; testimony of Pauline Diamond, stenographic notes taken June 8, 2018, p. 151, lines 18–20, p. 153, lines 21–22 and p. 158, line 19; testimony of Natasia Mukash, stenographic notes taken October 16, 2017, p. 28–29, lines 25–14 and p. 52–53, lines 25–8; testimony *in camera* HC6, stenographic notes taken March 13, 2018, p. 76–77, lines 3–6; testimony *in camera* HC17, stenographic notes taken March 16, 2018, p. 264–265, lines 19-24; testimony *in camera* HC21, stenographic notes taken April 5, 2018, p. 189–190, lines 12–1 and p. 190–191, lines 19–11; testimony *in camera* HC13, stenographic notes taken March 15, 2018, p. 15–16, lines 25–5; testimony *in camera* HC26, stenographic notes taken April 17, 2018, p. 24–26, lines 20–15; testimony *in camera* HC37, stenographic notes taken May 16, 2018, p. 109, lines 4–22, p. 115, lines 5–10, p. 140–141, lines 13–25, p. 149–150, lines 4–20 and p. 152, lines 3–5; testimony of Nakuset, stenographic notes taken February 21, 2018, p. 59–60, lines 12–2; testimony *in camera* HC63, stenographic notes taken August 20, 2018, p. 15–16, lines 25–9 and p. 21, lines 10–17; testimony *in camera* HC75, stenographic notes taken September 13, 2018, p. 215, lines 16–22; testimony *in camera* HC10, stenographic notes taken March 13, 2018, p. 208, lines 14–25; testimony *in camera* HC4, stenographic notes taken February 23, 2018, p. 173–175, lines 1–24.

1669 Testimony *in camera* HC-37, stenographic notes taken May 16, 2018, p. 121–122, lines 16–2 and p. 149, lines 4–17.

More importantly for this Commission, so many testimonies illustrate how this incomprehension can end up limiting access to care and even jeopardizing the life and safety of individuals. A good example is the story of Edmond Moar, who died after a cancer that was diagnosed but left untreated when he refused to be hospitalized due to the difficulties he experienced with staff.[1670] Then there is the tragic story of another cancer patient from Nunavik who died after being treated solely with pain medication for months, because the attending health care workers believed she simply wanted to travel to Montréal at the clinic's expense.[1671]

Although one cannot make generalizations based on individual cases or assume that these kinds of situations are unique to Indigenous peoples, it is reasonable to conclude that such negative experiences will fuel the distrust Indigenous people already feel toward public services. Even more importantly, this distrust leads to an under-use of services among the Indigenous population as a whole worsening and amplifying crises, delaying screening, hindering the provision of care and intervention in cases of domestic violence.

To adequately help vulnerable people and those in need of care (i.e. most of the people who come in contact with public services), one must be able to correctly interpret other peoples' attitudes and behaviours. The current lack of understanding toward First Nations and Inuit makes this a difficult challenge. This view is supported by both the Québec government and the Syndicat des agents de la paix en services correctionnels du Québec in their briefs to the Commission.[1672] A member of the police who has worked in Nunavik also testified to this effect:

> For someone coming from the south, when they travel north of the 55th parallel it is very difficult to grasp the cultural differences, why things work the way they do, why certain things happen. Why there is so much violence and aggression with certain interventions. That's what it's like when you start out as a police officer. There is no manual on how to manage these issues with the Inuit or on the ground.[1673]

It is important to note that the social workers, doctors, nurses, police officers and prosecutors who work in public services rarely have the tools and resources they need to proceed differently.[1674] While our public services may have been built around the concepts of universality and equality for all, they were designed by decision makers far removed from Indigenous realities, issues, pathways and values, and without taking account of the distinct nature and specific needs of First Nations and Inuit.[1675] Referring to the over-prosecution of

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1670 Testimony of Louise Moar and Francine Moar, stenographic notes taken September 7, 2018, p. 12–40, lines 1–3.

1671 Testimony of Élizabeth Williams, reported by Marie-Hélène Francoeur-Malouin, stenographic notes taken November 13, 2018, p. 169–188, lines 1–10.

1672 Brief of the Québec government. (November 30, 2018). *Op. cit.*, p. 14; Brief of the Syndicat des agents de la paix en services correctionnels du Québec. (October 10, 2018). *Op. cit.*, p. 28.

1673 Testimony of Jean-Mathieu Lafleur, stenographic notes taken November 21, 2018, p. 182, lines 12–23.

1674 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 152, lines 5–21.

1675 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 193, lines 10–20.

homeless Indigenous people in Val-d'Or, the APPQ recognized in its brief that "alternatives to ticket issuing, detention or arrest are very limited, almost non-existent".[1676]

In addition, almost everyone involved mentioned a lack of training as a serious hindrance to providing culturally sensitive services.[1677]

In this respect, I cannot hold employers solely responsible. It falls to all of us to deepen our understanding of other people and other cultures, which we can do through different sources and initiatives. In my opinion, the media has a critical role to play in this respect, a responsibility to properly inform the public about the multiple realities of Indigenous peoples, their history, their culture and their initiatives.

6.1.3 A distorted public image

Print and digital media are the primary sources of information about Indigenous peoples for most Quebecers. Depending on their approach, the media can either help reduce misconceptions about Indigenous peoples or reinforce the negative image that has become attached to them.

According to Éric Cardinal, a communications expert and specialist in Indigenous issues who testified before the Commission, the journalists themselves lack knowledge when it comes to Indigenous peoples:

> The majority of journalists are Quebecers who have had little to no opportunity to learn about Indigenous peoples. For many years, what our schools taught about Indigenous people was grossly inadequate. For older journalists, the image of Indigenous people they were taught at school was very negative, basically racist.[1678]

This view was supported by anthropologist Serge Bouchard, who testified that "even journalists, who are strategic conveyors of information, are failing when it comes to portraying Indigenous realities".[1679]

Add to that the complexities of that can stem from certain political and legal issues affecting Indigenous peoples, particularly with respect to ancestral rights, and it is not surprising that there is a lack of understanding in the media, as elsewhere, manifesting "as factual

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1676 Brief of the Association des policières and policiers provinciaux du Québec. (November 30, 2018), *op. cit.*, p. 26.

1677 Brief of the Réseau universitaire intégré de santé McGill. (October 15, 2018). *Portant sur améliorer l'accessibilité, la qualité, la continuité and la sécurisation culturelle des services offerts aux autochtones*, document P-1162 (Commission), brief M-020, p. 5–6; Brief of the Syndicat des agents de la paix en services correctionnels du Québec. (October 10, 2018). *Op. cit.*, p. 29; Brief of the Directeur des poursuites criminelles and pénales. (November 29, 2018); document P-1168 (Commission), brief M-027, p. 11, para. 42; Brief of the Fédération de la santé and des services sociaux. (September 19, 2018). *Défis et perspectives en matière de services sociaux et de santé offerts aux Premières Nations du nord du Québec*, document P-1158 (Commission), brief M-016, p. 21.

1678 Cardinal, Éric. (June 7, 2018). *Les Autochtones dans l'espace médiatique québécois*, document P-618 (Commission), brief M-010, p. 8–9; testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 179–180, lines 12–4.

1679 Testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 60–61, lines 11–19.

errors"[1680], "in the choice of stories reported and even in the way reports are prepared"[1681], as Mr. Cardinal testified.

Beyond errors made in good faith, a number of witnesses pointed to deplorable remarks made by certain columnists and editorial writers. Their polarizing statements, which witnesses unhesitatingly qualified as biased, contain sweeping over-generalizations, showcase racial prejudice and are steeped in sensationalism.[1682]

Although the media's approach to news reporting seems to be improving, the problem lies in the persistence of certain ideological biases, which many believe were reinforced by the events at Oka in the early 1990s.[1683] As proof, one need only recall the comments of certain radio hosts following the events in Val-d'Or and the ensuing decision of the Québec Press Council.

> The Council believes that the comments made by the host were extremely degrading and derogatory, and fuelled prejudice toward First Nations women.
>
> Although they do not constitute a direct incitement to violence, such comments are nevertheless likely to trivialize it, which, in the Council's opinion, is just as deplorable.
>
> The Council believes that the contempt shown is all the more reprehensible given that, on the contrary, the circumstances called for great sensitivity.[1684]

Conversely, positive news stories about Indigenous peoples are rarely published.[1685] According to Éric Cardinal, this is largely due to the inherent nature of the news media:

> When it comes to Indigenous issues or any other subject matter, the media are mainly interested in topics that will hold their audiences' attention. Positive stories do not often make for the best news items. This is true in general, but even more so when it comes to Indigenous people.[1686]

1680 Testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p.175–176, lines 24–4.

1681 Testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 176, lines 13–23.

1682 Cardinal, Éric. (June 7, 2018). *Op. cit.*, p. 15; testimony of Pierre Trudel, stenographic notes taken November 22, 2017, p. 92–93, lines 20–11; testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 186–187, lines 20–19; p. 190, lines 4–18; testimony of Ellen Gabriel Katsisakwas, stenographic notes taken December 8, 2017, p. 207–208, lines 9–2.

1683 *Id.,* p. 13; testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 12, lines 6–16; p.13, lines 10–20 and p. 105–107, lines 10–22; testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 191, lines 14–23.

1684 Québec Press Council. Adjudication D2016-11-060. Retrieved from https://conseildepresse.qc.ca/decisions/d2016-11-060/. To learn more about the media environment surrounding the events in Val-d'Or, see Chapter 1 of this report.

1685 Testimony of Stanley Volant, stenographic notes taken November 17, 2017, p. 72, lines 17–21; testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 201, lines 14–19.

1686 Cardinal, Éric. (June 7, 2018). *Op. cit.*, p. 27.

As a result of this approach, there is very little representation of Indigenous realities in the media outside of crisis times—with the exception of the specialty channel *Espaces Autochtones* on Radio-Canada.ca and the Aboriginal People's Television Network (APTN)—although it is important to note that things are improving.[1687]

The media shapes public opinion by selecting and presenting information deemed to be in the public interest, as well as by commenting on current events through editorials and columns.[1688] The President of Québec Native Women (QNW) also acknowledged in her closing remarks to the Commission that the media is "the best weapon" to denounce and make things happen.[1689] In other words, governments rely on that same public opinion as they develop their policies and design their public services.

In fact, whether we like it or not, given the myriad of needs and government actions a population like that of Québec demands, priorities most often depend on the ability to make oneself heard. Because of the way the media coverage too often depicts them, Indigenous people appear at best at a clear disadvantage, and at worst as desperate cases due to all the negative stories about them.

6.1.4 Piecemeal and unsustainable government actions

This observation leads me to address a fourth and final point that I think might explain the systematic discrimination experienced by Indigenous peoples with regard to public services, namely the absence of sustainable and representative government action for the real needs expressed by Indigenous peoples.

From the very beginning of the work in January 2017 we noted the extent of the discussions that had already taken place on issues relating to Indigenous peoples in Québec and Canada. Through inquiry commissions, parliamentary committees, socio-economic forums or targeted work groups, the services our investigation focused on have all, at one time or another, led to reflections between public service representatives or elected officials and Indigenous authorities. Each time, a plethora of recommendations and avenues of action were outlined to remedy the problems. During her first appearance before the Commission, QNW President Viviane Michel also admitted that she felt a certain saturation about this type of consultation exercise, and called for actual implementation of the proposed recommendations.[1690] She is not alone. As far back as 1992, during the first round of public hearings of the Royal Commission on Aboriginal Peoples, Indigenous leader Elijah Harper expressed the desire that this Commission be the last.[1691] Needless to say, his wish was not fulfilled.

1687 Testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 58–59, lines 17–14.

1688 Testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 174, lines 22–25.

1689 Testimony of Viviane Michel, stenographic notes taken December 14, 2018, p. 119, lines 12–15.

1690 Testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 79, lines 4–12.

1691 Canadian Royal Commission on Aboriginal Peoples. (1992). *Public hearings. Discussion paper 1. The issues involved*. Ottawa, Ontario: Canada Communication Group, p. 13 of 66 (online PDF).

If Ms. Michel, like other representatives of Indigenous communities, is so insistent on the importance of taking action despite all of the previous solutions and action plans, that means any discernible changes in the field have been weak or even non-existent. As evidence of this, many of the issues previously identified were raised again in the course of the Commission's work. Examples include the over-representation of Indigenous people in justice and correctional services, the lack of interpreters and translated documents for most public services, considerable delays in legal cases–particularly in remote areas–repeated transfers to the south for Nunavik offenders, deplorable detention conditions north of the 55th parallel, the lack of local health and psychosocial services for First Nations and Inuit, and youth protection principles being incongruous with Indigenous realities. And the truth is that many other things could be added to this already well-stocked list, all of them preventing trust from being restored between Indigenous people and public services.

The abundance of examples brought before the Commission underscores that point. The record on aero-medical transport of unaccompanied children is a clear illustration of this, although corrective measures have been announced during my mandate.[1692] The same is also true of the lack of an investigation into Indigenous police forces raised by Isabelle Parent, a former inspector at the Ministère de la Sécurité publique[1693]; or even the government's unwillingness to share public health information decried by Marie-Noëlle Caron of the First Nations of Québec and Labrador Health and Social Services Commission.[1694]

In some cases the inaction or lack of government direction has even been confirmed by representatives of the public services themselves. Among them is the issue of training on Indigenous realities given to staff working in the health and social services network, for which no clear guidance was provided to the establishments in the network, according to Martin Rhéaume, Director of Aboriginal Affairs at the Ministère de la Santé et des Services sociaux (MSSS).[1695] The same applies to sharing data and information, for which there has been no request for legislative change although it poses a problem, according to Luc Castonguay, Deputy Minister at the MSSS.[1696]

That said, it would be false to claim that no practical measures have been put forward to smooth relations between Indigenous people and public services over the past fifteen years. In its brief, the Québec government states that more than $11.9 billion has been awarded to organizations providing services to Québec's Indigenous peoples between 2005 and 2015.[1697] In fact, when we look at it more closely, that figure includes the amounts paid to the treaty nations under the various agreements concluded with them, including

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1692 Testimony of Samir Shaheen-Hussain, stenographic notes taken March 21, 2018, p. 182–183, lines 18–2 and p. 229–231, lines 5–25; testimony of Samir Shaheen-Hussain, stenographic notes taken October 18, 2018, p. 289–290, lines 3–6.

1693 Testimony of Isabelle Parent, stenographic notes taken November 20, 2017, p. 42–46, lines 8–18.

1694 Testimony of Marie-Noëlle Caron, stenographic notes taken September 4, 2018, p. 244–245, lines 16–22; *La liste des obstacles depuis 2012 aux démarches de la CSSS PNQL afin d'obtenir des données sur la santé publique sur les Premières Nations*, document P-777 (Commission).

1695 Testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, p. 67, lines 4–15.

1696 Testimony of Luc Castonguay, stenographic notes taken October 22, 2018, p. 129–130, lines 17–9.

1697 Brief of the Québec government. (November 30, 2018). *Op. cit.*, p. 12–13.

the Peace of the Braves and the Sanarrutik Agreement[1698], as well as money related to the award of contracts.[1699] A large part of those amounts is therefore not related to the services covered by the Commission's mandate. That leaves the Government Action Plan for the Social and Cultural Development of the First Nations and Inuit adopted in 2017 and its one hundred measures with a $30 million budget over five years.[1700]

In my opinion, the real problem lies rather in the fact that most of the proposed solutions take the form of pilot projects or programs that depend on funds being made available year after year. That makes it hard to build over the long term, bring about real change, let alone experience its positive effects. The precariousness of the Indigenous police forces, who are obliged to negotiate their existence and budgets with the Ministère de la Sécurité publique and federal government on a regular basis, also perfectly illustrates the limitations of the piecemeal approach. And then there are promising initiatives that have failed due to a lack of resources, such as the Wigobisan project in the Lac Simon community to assist child victims of sexual abuse.[1701]

The slowness with which certain very interesting measures have been implemented also hinders reconciliation and the progress of relations. Consider, in particular, the sixteen years it took for the Atikamekw Nehirowisiw Nation to reach an agreement with the Québec government on the implementation of a special youth protection program provided for in the Act. An expert witness involved in the Commission's work, Sébastien Grammond, now a Judge of the Federal Court, does not hesitate to speak "of the bureaucratic obstacles" as soon as there is a genuine attempt to "put in place something that better reflects the values of the community, its ways of doing things, than those of non-Indigenous peoples".[1702]

In other words, the measures put forward reflect the attitude that the Québec government knows better than the nations themselves what they need or what responsibilities they are capable of assuming.

When asked what was being done and what needed to be done to improve the situation, the public service representatives at the hearing spoke of many obstacles to change, including the limited financial and human resources available to them and the need to respect the division of powers imposed by the Canadian constitutional framework. In my opinion, none of those arguments make it acceptable for successive government actions not to have addressed the needs expressed by Indigenous peoples.

When the resources are limited and there are so many constraints, priorities must be set. However, it must be said that, apart from a few crisis situations, the quality of services

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1698 These agreements were made to clarify and facilitate the implementation of certain aspects of the James Bay and Northern Québec Agreement.

1699 *Id.*, p. 13, note 25.

1700 Document P-199 (Commission), *op. cit.*

1701 Testimony of Adrienne Jérôme, stenographic notes taken April 18, 2018, p. 15–16, lines 1–2; testimony of Judith Morency, stenographic notes taken April 18, 2018, p. 28 lines 8–12 and p. 125–126, lines 3–14.

1702 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 179, lines 10–22.

provided to Indigenous peoples has never really been a priority. Worse, built around a blinkered vision of equality, the existing structures have prevented First Nations and Inuit from acting on their own to adequately address the needs of their populations. In my opinion this is a big mistake that is in urgent need of remedy by putting an end to the status quo and building a new balance of power.

6.2. Key principles for reconciliation

I believe there are four key principles that can lead to reconciliation and the desired progress. They underlie each of the proposed calls for action in this report.

6.2.1 Recognizing the special status of First Nations and Inuit

First Nations and Inuit have distinct and diverse cultures. Because of those cultural characteristics we have to think about differentiating services, or even the relevance of the public services available to them. However, when it comes to proposing solutions that take certain cultural characteristics into account, be they through legislation or the operation of public organizations, the fear of creating a precedent is quickly raised. As a result, public institutions most often call for caution. From what we heard at the hearings, it must be noted that such caution often leads to inaction.

However, although there is a very real possibility that other groups will advocate for greater consideration of their needs, that is no excuse for inaction with respect to First Nations and Inuit. They have been here for a thousand years, so they cannot be compared with any other cultural group in Québec. I wanted to keep this particular historical reality and the trauma of colonization in mind as I drafted my calls to action. As Daniel Salée, professor of Political Science at Concordia University, and Carole Lévesque rightly pointed out when they appeared before the Commission, this is not a quest for equality, but one for fairness and social justice.[1703]

6.2.2 Promoting self-determination

Many of the people who spoke at the Commission hearings presented the right to self-determination as one of the cornerstones of reconciliation with Indigenous peoples. That came not only from Indigenous authorities[1704], but also from a whole range of people in the field.[1705] It is also at the heart of the United Nations Declaration on the Rights of Indigenous

1703 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 201–202, lines 24–5; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 131, lines 10–16 and p. 165–166, lines 16–6.

1704 Testimony of Richard Gray, stenographic notes taken September 21, 2017, p. 62, lines 11–13; testimony of Véronique Larouche, stenographic notes taken November 16, 2017, p. 81–82, lines 1–18; testimony of Lucien Wabanonik, stenographic notes taken October 24, 2017, p. 44–45, lines 25–2.

1705 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 162–174, lines 22–14; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 168–170, lines 18–4; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 98–100, lines 4–7.

Peoples[1706], which has since been ratified by the Canadian government[1707], as well as the fifteen principles adopted by the Québec cabinet in February 1983[1708] and reconfirmed in the National Assembly in 1985.[1709]

When defined by the United Nations, self-determination means the right of Indigenous peoples to "freely pursue their economic, social and cultural development".[1710] Transposed into the Commission's mandate, it means allowing First Nations and Inuit representatives to define how their peoples will be able to benefit from a so-called public service, how it will be organized, and even where it will be provided.

This principle is based on the idea that First Nations and Inuit are in the best position to know the needs of their communities and the best ways of meeting those needs. It opens the door to differentiated services, sometimes provided together with existing public organizations and services, sometimes autonomously, depending on the willingness and resources available to different communities and nations.

Throughout our history with Indigenous peoples, self-determination has made considerable progress. For example, modern treaties signed by the Eeyou (Cree), Naskapi and Inuit have allowed those nations to redefine the organization of health and education services provided to their peoples (to a certain extent) and also to play a lead role in developing their territory. While the approach is not perfect, several witnesses said that it generally offers the advantage of greater cultural safeguards and greater cooperation among nations.[1711] For all these reasons, I have decided to make self-determination one of the underlying principles of my calls to action.

6.2.3 Taking concerted, systemic action

The Commission's work has clearly demonstrated the systemic nature of the discrimination in relations between Indigenous peoples and institutions that provide public services. A systemic problem demands a systemic response. For that reason, I have favoured calls to action that impact these institutions themselves and the values they convey. In other words,

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1706 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, Res. G.A. 61/295.

1707 Government of Canada. (May 10, 2016). *Speech delivered at the United Nations Permanent Forum on Indigenous Issues*, New York. [Speech notes]. Retrieved from https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/speech-delivered-at-the-united-nations-permanent-forum-on-indigenous-issues-new-york-may-10-.html.

1708 *SAA, fifteen principles adopted by the Conseil des ministres on February 9, 1983*, document P-805-17 (Commission).

1709 *Resolution adopted by the National Assembly of Québec on March 20, 1985 on the recognition of Indigenous rights and resolution from 30 May 30, 1989 on the recognition of the Malécite nation*, document P-805-18 (Commission).

1710 *United Nations Declaration on the Rights of Indigenous Peoples*, *op. cit.*, art. 3.

1711 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 104–108, lines 1–20; testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 155–163, lines 10–24; testimony of Donald Nicholls, stenographic notes taken September 15, 2017, p. 78–79, lines 25–25; testimony of Abel Bossum, stenographic notes taken June 20, 2018, p. 41, lines 11–14 and p. 44, lines 18–25; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 56–60, lines 12–2; testimony of Bill Namagoose and John Hurley, stenographic notes taken June 20, 2018, p. 122–165, lines 24–13; testimony of Jobie Tukkiapik, stenographic notes taken June 13, 2017, p. 152–153, lines 16–4; p. 159–160, lines 5–25; p. 162, lines 3–20.

structural reforms that will effect lasting change are preferable to temporary measures of the kind all too often implemented in reaction to unfortunate events, only to be gradually abandoned.

Moreover, driven by a profound desire for openness, our calls to action will encourage concerted action between Indigenous actors and public institutions whenever possible. They will also promote dialogue. It is not a question of providing solutions for Indigenous peoples, but rather of working with them to implement new ways of doing things that are respectful of both individual and ancestral rights.

6.2.4 Acting early

The complexity of the situations that have come to light demands a broad view of the situation. It is futile to design specific measures and expect concrete results if we fail to take the root causes of the problems into account beforehand. On the other hand, I firmly believe in the positive impacts that become possible when we act on the root causes of problems.

I therefore propose going to the source of the issues we face, wherever possible, even when that means pushing the limits of my mandate. The systemic discrimination we have brought to light has deep roots, and I believe it requires a sweeping response.

6.3. Cross-disciplinary calls for action

Building on these principles, our cross-disciplinary calls for action have been designed as a consistent set of measures that will mutually reinforce each other as they are implemented. They have grown out of findings common to all public services studied by the Commission and I consider them a starting point for a process of profound change. This change is broad in scope, ranging from recognizing the distinct nature of Indigenous peoples to introducing practices and measures that respect their distinctness and the knowledge underlying it. The primary aim of the calls for action is to rebuild relationships of trust with Indigenous peoples and make it possible to truly address their needs. They are one part of a larger quest for the social justice that will create truly equal opportunities for all.

6.3.1 Acknowledging our mistakes

In creating the Commission, the government certainly wanted to find out whether Québec's First Nations and Inuit faced discriminatory practices. But, perhaps more importantly, it also wanted to build a foundation for true reconciliation with Indigenous peoples in terms of the provision of public services. Although Quebecers elected a new government in the last election, the Commission's objectives cut across partisan politics and have therefore remained unchanged. One need only consider the devastating effects certain government policies have had—and continue to have—on living conditions for First Nations and Inuit and their rights to understand the importance of sustaining these efforts.

I have said it before and I will say it again: in a great many sectors—physical and mental health, justice, life expectancy, family life, housing, and earnings—the difficulties Québec's Indigenous peoples face are proof positive that the public system has failed to meet their

needs. We all bear the collective responsibility for this failure. At times we let our prejudices and our fear of other cultures get the better of our sense of humanity. At times we chose to look away when confronted with the harmful effects of some of our actions.

When we look at our findings in the field, there is no denying it: on the clock of pressing social issues, it is now one minute to midnight. But when I think of the well-meaning, dedicated people it has been my privilege to meet through the Commission's work, I have reason to believe that change is still possible. Québec's Indigenous peoples have shown unsurpassed resilience in the face of adversity, which opens the doors to a whole world of possibilities. The same goes for the movement of cultural and economic affirmation currently under way among the First Nations and Inuit. But it remains urgent to act, and above all to send a clear message about the nature of our past and future relations with Indigenous peoples.

There can be no reconciliation without first acknowledging the mistakes that have contributed to the gap between perceptions and realities that marks current relations between public service providers and Indigenous peoples. Several witnesses, both laymen and experts, have stressed the importance of acknowledging past wrongs. They feel that the message must come from the highest political authorities in Québec.[1712] I share this view.

I truly believe, as anthropologist Serge Bouchard stated before the Commission, that "human beings are symbolic beings".[1713] Other States have understood that message. For example, in the early 2000s, the Australian government publicly acknowledged that its government policies had substantially contributed and continued to contribute to inequalities between Indigenous people and the rest of the population, particularly in the health sector.[1714] This highly symbolic public gesture paved the way for a profound transformation in public service delivery developed together with Indigenous authorities.[1715] The Commission's findings demonstrate that we must do the same.

I therefore recommend that the government:

CALL FOR ACTION No. 1

Make a public apology to members of First Nations and Québec's Inuit for the harm caused by laws, policies, standards and the practices of public service providers.

1712 Testimony of Paul-Yves Weizineau, stenographic notes taken on June 18, 2018, p. 194–195, 22–12; testimony of Carole Lévesque, stenographic notes taken on June 19, 2017, p. 150–151, lines 20–19 and p. 166, lines 19–22; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 80, lines 7–14; testimony of Armand MacKenzie, stenographic notes taken October 20, 2017, p. 187, lines 5–14; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 143, lines 3–23; testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 189, lines 1–18; testimony of Virginie Michel, stenographic notes taken June 16, 2017, p. 61, lines 10–23; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 238, lines 8–25.

1713 Testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 73–74, lines 14–10.

1714 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 164, lines 6–10.

1715 *Id.*, p. 164, lines 10–14.

6.3.2 Building the foundation for a space for nation-to-nation collaboration

Beyond apologies, there can be no reconciliation without concrete actions. As a first step toward reconciliation, we must recognize cultural differences and existing knowledge.

As affirmed in Chapter 3 of this report, Indigenous peoples relied on their own political systems, established legal traditions and knowledge in such sectors as health and early childhood education for millennia.[1716] Imposing Western governance structures and processes has had the unfortunate effect of eroding this knowledge and those cultural touchstones.[1717]

This is not to suggest that Indigenous societies have remained passive, however. On the contrary, as several speakers noted during Commission hearings, Indigenous peoples gone to great lengths to promote their own development.[1718] We have previously discussed the experience of Québec's Indigenous nations covered by an agreement.[1719] While this approach has not provided solutions to all problems, it has demonstrated that Indigenous communities with greater autonomy in internal governance have better outcomes, at least socioeconomically, than those without.[1720] Experts who spoke at Commission hearings also stressed that Indigenous peoples with greater autonomy develop original support systems that reflect their own values and cultural practices. Such systems are generally more effective, and provide better long-term prospects, than systems imposed from without.[1721]

1716 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 29–30, lines 23–15; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 43, lines 2–9; testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 77, lines 5–14; testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 14–15, lines 22–24; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 21, lines 14–18; testimony of Valérie Napoléon, stenographic notes taken December 4, 2017, p. 20, lines 11–23; testimony of Hadley Friedland, stenographic notes taken December 4, 2017, p. 28–29, lines 12–16; testimony of Jessyka Boulanger, stenographic notes taken June 14, 2018, p. 82, lines 18–23.

1717 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 125, lines 6–14; p. 145–146, lines 23–7 and p. 148–149, lines 24–8; testimony of Prudence Hannis, stenographic notes taken October 25, 2017, p. 41, lines 11–22; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 65, lines 1–20; testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 51–52, lines 20–16; testimony *in camera* HC-19, stenographic notes taken April 3, 2018, p. 69, lines 4–12 and p. 101, lines 6–19; testimony of Jeanette Brazeau, stenographic notes taken April 12, 2018, p. 89–91, lines 10–1; testimony *in camera* HC-32, stenographic notes taken on May 10, 2018, p. 189, lines 5–15 and p. 196, lines 1–18; document P-1166 (Commission), brief M-025, *op. cit.*, p. 9.

1718 Testimony of Marjolaine Sioui, stenographic notes taken September 21, 2017, p. 15–16, lines 19–22; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 136–137, lines 25–10; testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 238, lines 10–15; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 125–126, lines 22–1; testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 98, lines 2–18.

1719 Eeyou (Cree), Inuit and Naskapi nations.

1720 Testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 155–163, lines 10–24; testimony of Donald Nicholls, stenographic notes taken September 15, 2017, p. 78–79, lines 25–25; testimony of Abel Bosum, stenographic notes taken June 20, 2018, p. 41, lines 11–14 and p. 44, lines 18–25; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 56–60, lines 12–2; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 104–108, lines 23–20; testimony of Bill Namagoose and John Hurley, stenographic notes taken June 20, 2018, p. 122–162, lines 40–7; testimony of Jobie Tukkiapik, stenographic notes taken June 13, 2017, p. 152–153, lines 16–4; p. 159, lines 5–25; p. 160, lines 16–25 and p. 162, lines 3–20.

1721 Testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 69–70, lines 24–22; testimony of Mina Beaulne, stenographic notes taken November 21, 2018, p. 64, lines 4–17; testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 165, lines 15–23, p. 168–169, lines 14–4 and p. 171–172, lines 20–7; Blackstock, C., Trocmé, N. and Bennett, M. (2004). "Child Maltreatment Investigations among Aboriginal and Non-Aboriginal Families in Canada," *Violence against women 10* (8), 901–916; Fournier, A. (2016). "De la Loi sur la protection de la jeunesse au Système d'intervention d'autorité atikamekw (SIAA) – La prise en charge d'une nation pour assurer le bien-être de ses enfants" *Enfance, Familles et Générations*, 25 (1), 1–27, document P-171 (Commission).

As mentioned by government departments and agencies in their briefs to the Commission in December 2018, the Québec government has not been insensitive to these arguments over the decades.[1722] The James Bay and Northern Québec Agreement (JBNQA)[1723] and the Northeastern Québec Agreement (NEQA)[1724] ushered in a new approach to acknowledging and protecting the rights of Indigenous peoples in the 1970s.[1725] Considered modern treaties, these agreements gave the Eeyou (Cree) and Naskapi nations and the Inuit specific benefits and a degree of control over the provision of education[1726], health care and social services to their populations.[1727] They also established government responsibilities and provided mechanisms to fund them by sharing the revenues of resource extraction in the territory.

In 1983, in the wake of the repatriation of the Canadian Constitution, the Québec government also adopted fifteen principles meant to guide relations with the First Nations and Inuit.[1728] Two years later those principles inspired a resolution in Québec's National Assembly acknowledging the existence of ten distinct Indigenous nations and their ancestral treaty rights.[1729] The Malécite Nation was recognized as an eleventh Indigenous nation of Québec in 1989.

While all of the above is true, it is well known that the implementation of the agreements posed considerable challenges. To date, 24 complementary agreements have been required to better define certain aspects of the James Bay and Northern Québec Agreement.[1730] Among the best known of these is the 2002 agreement between the Cree Nation and the Québec government known as the "Peace of the Braves".[1731] The Northeastern Québec Agreement has required three complementary agreements.[1732]

1722 Document P-1170 (Commission), brief M-029, *op. cit.*, p. 2–5.

1723 *James Bay and Northern Québec Agreement*, Grand Council of the Crees (of Québec), Northern Québec Inuit Association, Government of Canada, James Bay Energy Corporation, James Bay Development Corporation, Commission hydroélectrique du Québec (now Hydro-Québec), and Government of Québec, November 11, 1975.

1724 *Northeastern Québec Agreement*, Members of the Shefferville Naskapi band, Government of Québec, James Bay Energy Corporation, James Bay Development Corporation, Grand Council of the Crees, Northern Québec Inuit Association and Government of Canada, January 31, 1978.

1725 Testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 128, lines 19–25.

1726 *James Bay and Northern Québec Agreement, op. cit.*, ch. 16 and 17; *Northeastern Québec Agreement, op. cit.*, ch. 11.

1727 *James Bay and Northern Québec Agreement, op. cit.*, chs. 14.0 and 15; *Northeastern Québec Agreement, op. cit.*, ch. 10; Cree Nation Governance Today, document P-663 (Commission), p. 9

1728 Document P-805–17 (Commission), *op. cit.*

1729 Document P-805–18 (Commission), *op. cit.*

1730 Brief of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, (June 14, 2017). *Initial Brief*, document P-010 (Commission), brief M-001, p. 12, para. 56.

1731 *Agreement Respecting a New Relationship Between the Cree Nation and the Government of Québec*, February 7, 2002. Retrieved from http://www.autochtones.gouv.qc.ca/relations_autochtones/ententes/cris/entente_cris_20020207.pdf.

1732 Publications du Québec. (2012). *Convention consolidée et conventions complémentaires*. Retrieved from http://www3.publicationsduQuébec.gouv.qc.ca/produits/conventions/lois/loi1/pages/page1.fr.html.

As for the principles, the government representatives themselves admit in their brief that "these agreements have not yet been fully implemented"[1733] but "still serve as a compass for the Québec government's actions"[1734] and "guide its interventions".[1735]

In other words, the recognition given to Indigenous peoples is barely past the symbolic stage. More often than not—even today—it takes the form of variable, piecemeal actions depending on the times, parties in power, nation status (covered by an agreement or not), and even current events and the sensitivity of public opinion on Indigenous issues.

Adopted in September 2007 by the United Nations General Assembly, the United Nations Declaration on the Rights of Indigenous Peoples takes an entirely different approach.[1736] It proposes concrete and statutory recognition in prevailing legislation of the individual, social, political, economic and cultural rights of the First Nations and Inuit.[1737] Canada announced its full support of the Declaration in May 2016.[1738] A bill to make it effective in Canada was subsequently tabled and passed by the House of Commons in 2018.[1739] Introduced as a "piece of reconciliation" by Member of Parliament for the Abitibi-Baie-James-Nunavik-Eeyou constituency, Roméo Saganash, the bill[1740] died on the order paper in the summer of 2019. Regardless of the fate of the federal bill, the many experts heard during the hearings expressed the view that adopting the Declaration is still necessary as the way forward for Québec.[1741] I agree.

Not only is the Declaration a logical continuation of the principles already adopted by the Québec government, but it also offers a unique opportunity to make them a reality. Above all, applying it will create an enduring collaborative space between nations that will benefit

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1733 Document P-1170 (Commission), brief M-029, *op. cit.*, p. 2.

1734 *Id.,* p. 3.

1735 *Ibid.*

1736 The key events that marked the relationship between public services and Indigenous peoples prior to the adoption of the Declaration are detailed in Chapter 3 of this report.

1737 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, Res. G.A. 61/295; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 171, lines 11–18.

1738 Government of Canada. (May 10, 2016), *op. cit.*

1739 Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, 42nd Parl. (Can.), 1st Session, 2016.

1740 Testimony of Roméo Saganash, stenographic notes taken October 27, 2017, p. 172, lines 3–7.

1741 *Id.,* p. 184, lines 8–11; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 209, lines 13–21; testimony of Paul-Mathieu Grondin, stenographic notes taken April 19, 2018, p. 152, lines 7–14; testimony of Béatrice Vaugrante, stenographic notes taken September 29, 2017, p. 212–213, lines 20–1; testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 57–58, lines 11–9; testimony of Martin Papillon, stenographic notes taken June 11, 2018, p. 211, lines 11–16; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 81, lines 5–11; testimony of Ghislain Picard, stenographic notes taken December 13, 2018, p. 30, lines 5–11; Barreau du Québec brief. (April 19, 2019). *Le système de justice et les peuples autochtones du Québec : des réformes urgentes et nécessaires*, document P-556 (Commission), brief M-008, p. 18–22; brief of Amnistie internationale Canada francophone. (September 29, 2017); document P-113 (Commission), brief M-003, p. 26; brief of the Ligue des droits et libertés. (October 24, 2017); document P-1156 (Commission), brief M-014, p. 6–8; document P-618 (Commission), brief M-010, *op. cit.*, p. 29; brief of the Assembly of First Nations Québec-Labrador. (November 30, 2018); Écoute, réconciliation, progrès?, document P-1171 (Commission), brief M-030, p. 25–27; brief of Québec Native Women. (November 30, 2018); document P-1172 (Commission), brief M-031, p. 39 of 41 (online PDF).

all the Indigenous peoples of Québec regardless of their demographic weight, economic power and representational capacity.

Written in black and white in the Declaration, the right of Indigenous peoples to self-determination and to develop, maintain and strengthen their own political, economic and social institutions raises the dialogue between Indigenous peoples and governments to a new level.

Viewed through the lens of my mandate, the Declaration actually paves the way for Indigenous peoples to have true autonomy in organizing the services offered to their populations. In all the sectors, applying the Declaration would also allow Indigenous peoples to fully participate in developing and implementing laws and public policies on the ground. It would be a way of ensuring sustainable, comprehensive and fair funding for responsive programs and services developed together with the First Nations and Inuit from across Québec.

More simply put, the Declaration gives Indigenous peoples all the latitude they need to work for the benefit of their populations while respecting their culture. It responds to the historical demands of the First Peoples. During his appearance before the Commission, the Grand Chief of the Council of the Atikamewk Nation, Constant Awashish, expressed it eloquently:

> We ask for greater respect for our institutions [...], greater respect for our values and our ways of doing things. We want recognition, be it in social services, the law, health or education, [...] We also want respect of our rights and our inherent right to self-governance with regard to these services.[1742]

The Declaration also responds to the desire stated by government officials in their brief to go beyond discussions on land claims and royalties on natural resources and "place more emphasis on the social and cultural needs of the First Nations and Inuit".[1743]

This is of course a complicated matter that is not without pitfalls. Some people will raise constitutional limits and the fact that any Indigenous issue is the purview of the federal government. Others will insist that Québec, as a province, cannot implement an international declaration. They will also point to the "risk" that such a tool will give Indigenous peoples a veto over all projects planned in Québec.

The truth is that these issues have already been thoroughly analyzed. The answer to the first two is clear. It is true that the tradition in international law is based on the idea that only the federal government has the power to enter into international agreements. However, in 1988 Québec enacted the *Act respecting the Ministère des Relations internationales*, which allows the Minister of International Relations (now the Minister of International Affairs) to negotiate and sign international agreements, provided they fall within Québec's constitutional jurisdiction.[1744] It goes without saying that all the services that were the subject of the

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1742 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 39, lines 6–16.

1743 Document P-1170 (Commission), brief M-029, *op. cit.*, p. 13.

1744 *Act respecting the Ministère des Relations internationales*, CQLR c. M-25.1.1, s. 19.

inquiry entrusted to me are the responsibility of the provincial government. The logic of intervening in the area of Indigenous jurisdiction is the same. Since 1951, when the Indian Act was substantially overhauled, provincial laws apply in all areas of provincial jurisdiction where the Canadian government has not legislated specifically on matters pertaining to Indigenous peoples.[1745]

As for the veto right over development projects, the Canadian authorities expressed the same concerns about certain provisions of the Declaration in 2007, when the time came to vote on its adoption at the United Nations General Assembly.[1746] However, they reversed their position three years later and declared their support for the Declaration in the Speech from the Throne.[1747] In a subsequent statement the government said that, despite some lingering concerns, Canada is confident that it "can interpret the principles of the Declaration in a manner that is consistent with its constitution and legal framework".[1748] Interviewed by the media in June 2019, Roméo Saganash said that consent and veto are two different concepts. "A veto," he said, "is absolute, whereas consent requires that one consider the facts and the law that applies".[1749]

I for one believe in the power of dialogue. That is why I urge the government and the Indigenous authorities to initiate the necessary discussions without further delay in order to resolve any concerns as to the interpretation of the scope of certain sections or concepts in the Declaration. It would be unfortunate if unfounded fears prompt us to squander one of the best opportunities ever to build bridges with Indigenous peoples and improve their living conditions.

I agree with Professor Daniel Salée that:

> If Indigenous peoples do not have control over their communities, and if they cannot govern themselves according to normative and administrative frameworks they themselves establish, it is almost certain that the socio-economic and psychosocial problems that afflict a number of communities will not go away.[1750]

The government representatives themselves state in their brief that "the solution to social problems in large part would begin by reviewing the legal status of Indigenous peoples in

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1745 *Indian Act,* R.S.C. 1985, ch. I-5, s. 88.

1746 UN News. (September 13, 2007). United Nations adopts Declaration on Rights of Indigenous Peoples. Retrieved from http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1at1.xxxvi*Ibid.* xxxviiHouseofCommonsDebates#.Wgr-vdqWzIU.

1747 Government of Canada. (March 3, 2010). Speech from the Throne to open the Third Session, Fortieth Parliament of Canada, Ottawa. [Speech notes]. Retrieved from https://lop.parl.ca/sites/ParlInfo/default/en_CA/Parliament/procedure/throneSpeech/speech403

1748 Government of Canada. (November 12, 2010). Canada's Statement of Support on the *United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from https://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142 .

1749 The Canadian Press (June 21, 2019). Saganash's political legacy dies on the order paper. *La Presse.ca*. Retrieved from https://www.lapresse.ca/actualites/politique/201906/21/01-5231196-lheritage-politique-de-saganash-mort-au-feuilleton.php.

1750 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 174, lines 3–11.

Québec society".[1751] We have a collective responsibility to use all the means at our disposal to do so.

I therefore recommend:

To the National Assembly:

CALL FOR ACTION No. 2

Adopt a motion to recognize and implement the United Nations Declaration on the Rights of Indigenous Peoples in Québec.

To the government:

CALL FOR ACTION No. 3

Working with Indigenous authorities, draft and enact legislation guaranteeing that the provisions of the United Nations Declaration on the Rights of Indigenous Peoples will be taken into account in the body of legislation under its jurisdiction.

6.3.3 Producing a clear portrait of the situation

Whatever new capacity to act is conferred on Indigenous peoples, the stakeholders will need to have a clear picture of Indigenous reality if that new capacity is to be fully realized. At the present time, outlining the main socio-demographic, geopolitical, psychosocial and other indicators related to First Nations and Inuit in Québec is no easy task.

Commited to this quest for information, not only did the team regularly come up against a lack of data, but what data was available turned out to be piecemeal and posed significant limitations.[1752] Based on the information brought to my attention, there are three main reasons for this situation that require action.

The first reason is a lack of ethno-cultural data collection by government services. Mentioning the risks of racial profiling[1753], the public service representatives who testified at the hearing—with the exception of correctional services[1754], youth protection services

1751 Document P-1170 (Commission), brief M-029, *op. cit.*, p. 13.

1752 The data collected and produced during the course of the mandate is presented in Chapter 4. Together, it forms what comes closest to a portrait of the Indigenous peoples of Québec.

1753 Testimony of Marie Rinfret, stenographic notes taken March 14, 2018, p. 11, lines 9–25; testimony of Luc Castonguay, stenographic notes taken October 22, 2018, p. 106, lines 9–21; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 60, lines 9–12; testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, p. 293–294, lines 22–5.

1754 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 17, lines 9–21; *La collecte de données ethnoraciales par les services publics*, document PD-1 (Commission), p. 14, and Appendix M, p. 2; *DG-0172-B, Collecte de données sur l'origine autochtone des personnes desservies par certains services publics*, document P-798-31 (Commission), tab 31.1, p. 5 of 19 (online PDF) and p. 7 of 29 (online PDF).

and some police forces[1755]—confirmed that they did not compile any information that could identify membership in an Indigenous nation.[1756] The fact is that even when collected, the information is difficult to compare and hence cannot be analyzed and made public. Only birth registers and the census contain uniform information on Indigenous identity, although that information is provided on a voluntary basis.[1757]

As a result, despite the extensive client information systems of some services covered by the Commission's inquiry including the health and social services network and youth protection it is still impossible to know exactly how many First Nations or Inuit are being treated for mental health issues or chronic illnesses and how many are in foster care. Not only are there significant regional differences in how data is compiled but the requests submitted to health establishments during the inquiry revealed significant limitations as to the data itself.[1758]

The existing systems and procedures also do not tell us exactly how many Indigenous people have filed complaints about services obtained.[1759] In other words, no decision maker in Québec has all the administrative data needed to make an informed decision about Indigenous peoples.

In a report published in 2011, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) itself recommended that "government departments and institutions concerned adopt standard methods and indicators for collecting data pertaining to the

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1755 Document PD-1 (Commission), *op. cit.*, p. 9–10, Appendix D, p. 1, Appendix E, p. 1 and Appendix F; *DG-0167-A, Les pratiques de la SQ en matière de collecte de données sur l'origine autochtone dans le cadre des interventions de ses agents auprès de la population*, document P-871-28 (Commission), p. 3 of 6 (online PDF); *DG-0166-A, Les pratiques du SPVQ en matière de collecte de données sur l'origine autochtone dans le cadre des interventions de ses agents auprès de la population*, document P-871-27 (Commission), p. 4 of 6 (online PDF); testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 316–317, lines 14–11 and p. 327–328, lines 25–6.

1756 *SAA letter in response to DG-019-A*, document P-805-13-1 (Commission); testimony of Luc Castonguay, stenographic notes taken October 22, 2018, p. 104, lines 7–17; *DG-0171-DE, Collecte de données sur l'origine autochtone des personnes desservies par les services publics*, document P-791-43 (Commission), tab 43.1, p. 4 of 31 (online PDF); testimony of Julie Lahaie, stenographic notes taken January 17, 2018, p. 88, lines 13–20; testimony of Louis-Philippe Mayrand, stenographic notes taken September 27, 2018, p. 292–293, lines 14–8; DG-0006-D, *Plaintes ou signalement concernant une pratique discriminatoire ou un traitement différent à l'égard de personnes ou communautés autochtones*, document P-791-2 (Commission), tab 2.13, p. 32 of 35 (online PDF); testimony of Jacques Prégent, stenographic notes taken October 5, 2018, p. 25, lines 11–20; *DG-0094-C, DGP-0094-C, DGP2-0094-C and DGP3-0094-C, La judiciarisation des personnes autochtones au Québec*, document P-839-25 (Commission), tab 25.5, p. 43 of 62 (online PDF); testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 310–311, lines 22–7; *DG-0100-C, Informations sur les demandes d'indemnisation concernant des victimes autochtones*, document P-839-31 (Commission), tab 31.1, p. 3 of 4 (online PDF); testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 73, lines 15–19; testimony of Marie Rinfret, stenographic notes taken March 14, 2018, p. 11, lines 12–15.

1757 Brief of Faisca Richer. (October 11, 2018), *La surveillance des iniquités de santé au sein des populations autochtones du Québec*, document P-1160 (Commission), brief M-018, p. 3; testimony of Luc Castonguay, stenographic notes taken October 22, 2018, p. 105–106, lines 20–21.

1758 *Portrait des renseignements transmis concernant les ordonnance d'hébergement, les ententes sur mesures volontaires en application de la Loi sur la protection de la jeunesse et les adoptions d'enfants autochtones au Québec entre 2001 et 2017*, in response to E-129 and DG-0111-F, document PD-18 (Commission).

1759 Testimony of Marie Rinfret, stenographic notes taken April 14, 2018, p. 11, lines 15–21; document PD-1 (Commission), *op. cit.*, Appendix P, Appendix R, p. 1 and Appendix U, p. 1.

ethnic origin and colour of their clientele, with a view to detecting possible discriminatory biases".[1760] Other experts at the hearings said that collecting ethno-cultural data is an essential tool in the fight against discrimination and systemic racism.[1761] Asked whether access to data of this nature would help improve services, Québec public service actors echoed the experts' opinion[1762], in particular Jacques Prégent, Director of Aboriginal Affairs of the Ministère de la Justice du Québec:

> [That would] be useful for Indigenous peoples, Indigenous representatives and government parties. It's clear. I don't think this tool should only be used by the department. I think that the Indigenous community also understands the usefulness of such information and its value in making representations to the government authorities on its needs.[1763]

Elsewhere in Canada, including Ontario, the collection of ethno-cultural data is already among the measures to counteract the systematic discrimination to which certain groups of the population may be exposed. The Ontario *Human Rights Code*[1764] and its accompanying data collection guidelines[1765] allow for ethno-cultural data to be collected for certain reasons, including "to monitor and evaluate discrimination, identify and remove systemic barriers, ameliorate disadvantage and promote substantive equality".[1766] The *Anti-Racism Act* was added to this already well defined normative framework in 2017 to allow public services to collect race- or ethnicity-based information.[1767]

Data standards for the identification and monitoring of systemic racism were also established[1768] to define the circumstances that can lead to the collection, use and analysis of data. They also include anonymity protection and data security measures in all public

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1760 Commission des droits de la personne et des droits de la jeunesse. (2011). *Racial profiling and systemic discrimination of racialized youth: Report of the Consultation on Racial Profiling and its Consequences*. Montréal, Québec: CDPDJ, p. 22.

1761 Testimony of Colleen Sheppard, stenographic notes taken June 7, 2018, p. 38, lines 4–6 and p. 40, lines 22–25; testimony of Céline Bellot, stenographic notes taken June 7, 2018, p. 95–96, lines 17–2 and p. 114, lines 4–18; testimony of Shaheen Azmi, stenographic notes taken August 13, 2018, p. 45, lines 5–19, p. 50–51, lines 19–4 and p. 52–54, lines 9–4; testimony of Renée Brassard, stenographic notes taken March 23, 2018, p. 50–52, lines 2–25; testimony of Bertie Wapachee, stenographic notes taken June 14, 2018, p. 169–170, lines 21–17.

1762 Testimony of Jacques Prégent, stenographic notes taken October 5, 2018, p. 41–42, lines 11–1; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 63–64, lines 23–8; testimony of Isabelle Fortin, stenographic notes taken September 24, 2018, p. 293–294, lines 25–5; testimony of Marie Rinfret, stenographic notes taken March 14, 2018, p. 11, lines 9–14; testimony of Caroline Cournoyer, stenographic notes taken December 6, 2018, p. 120–121, lines 16–2; testimony of Louis-Philippe Mayrand, stenographic notes taken September 27, 2018, p. 293, lines 5–25.

1763 Testimony of Jacques Prégent, stenographic notes taken October 5, 2018, p. 41–42, lines 11–1.

1764 *Human Rights Code*, R.S.O. 1990, c. H19.

1765 Ontario Human Rights Commission. (2009). *Guidelines for collecting data on enumerated grounds under the Code.* Retrieved from http://www.ohrc.on.ca/en/guidelines-collecting-data-enumerated-grounds-under-code

1766 *Ibid.*; testimony of Shaheen Azmi, stenographic notes taken August 13, 2018, p. 28–29, lines 24–11; *Ontario Human Rights Commission Presentation to the Québec Inquiry on Relations between Indigenous Peoples and Certain Public Services*, document P-666 (Commission), p. 26, 29, and 33–34.

1767 *Anti-Racism Act, 2017,* S.O. 2017, c. 15.

1768 Government of Ontario. (2018). *Data Standards for the Identification and Monitoring of Systemic Racism.* Retrieved from https://www.ontario.ca/page/anti-racism-data-standards-order-council-8972018

sector organizations. The Information and Privacy Commissioner of Ontario was appointed to oversee the data collection practices used by public sector organizations. In the event of non-compliance with the *Anti-Racism Act, 2017*, its regulations or application standards, the Commissioner can require an offending organization to put an end to the problematic practices. The Commissioner can also suggest that they be changed or replaced by other ways of complying with the existing legislative framework.[1769]

Collection exercises have already begun with Ontario public service clients, particularly in youth protection and the education sector. These steps—and more specifically the normative framework and underlying principles—are in my view very promising courses of action for restoring relationships with Indigenous peoples.

I therefore recommend that the government :

CALL FOR ACTION No. 4

Incorporate ethno-cultural data collection into the operation, reporting and decision making of public sector organizations.

In practice, this means:

- Providing public sector organizations with standards and guidelines for collecting data about care and services; such standards and guidelines should define the grounds on which information can be collected and the ways it can be protected; that will have to be done in cooperation with Indigenous authorities and in compliance with existing research guidelines and protocols[1770] in order to factor in their cultural characteristics.

- Providing the necessary technology tools for public sector organizations to collect ethno-cultural data.

- Tasking the Commission d'accès à l'information du Québec with overseeing the practices of public bodies in collecting ethno-cultural data.

- Requiring public sector organizations to annually draw up and make public an ethno-cultural portrait of the persons served.

- Working with Indigenous peoples and independent experts, producing an analysis of the data collected every five years in order to document discriminatory practices and biases, assess progress and guide future direction and actions.

The second element that emerges from the analysis on data availability is the problem

1769 *Ibid.*

1770 Assembly of First Nations Québec-Labrador. (2014). *First Nations in Québec and Labrador's Research Protocol*. Québec City, Québec: APNQL; Institut nordique du Québec. (2017). Research Guidelines. Québec City, Québec: First Peoples Working Group of the Institut nordique du Québec; Québec Native Women. (2012). *Guidelines for Research with Aboriginal Women*. Kahnawake, Québec: Québec Native Women; First Nations Information Governance Centre. (2019). The First Nations Principles of OCAP. Retrieved from: https://fnigc.ca/en/pcapr.html

Indigenous authorities experience in trying to access databases, particularly in the public health sector. The Commission's work revealed that, unlike the nations that have signed an agreement (Eeyou (Cree), Naskapi and Inuit), Indigenous nations not covered by an agreement do not have access to data compiled by the Ministère de la Santé et des Services sociaux (MSSS). They therefore have no information about Indigenous deaths, still births or hospitalizations.[1771]

Asked to address this subject at the hearing, Dr. Horacio Arruda, Québec's Director of Public Health, began by saying that the MSSS health data files are administrative in nature and not intended for monitoring purposes. He added that there is no data that makes it possible to identify members of Indigenous communities in provincial registries, and that statistical and ethical constraints related to small numbers make it impossible to use the available data for small populations. He continued that access to the information would be blocked due to data privacy concerns.[1772]

The absence of a cultural identifier in the administrative systems of public bodies was indeed confirmed during the Commission's work.[1773] That said, despite this limitation, the fact is that when the existing data was made available to Indigenous authorities, it was possible to document certain aspects of the health of individuals living in First Nations communities. For example, health portraits have been produced by the Eeyou (Cree)[1774] and Inuit[1775] authorities over the years. The exercise therefore seems to be neither meaningless nor impossible. The same is true of the reservations expressed about statistical constraints and the current legislative framework. In a communication subsequently sent to the Commission, the Director of Public Health himself admitted that "these are not insurmountable obstacles" but rather "further issues to consider".[1776]

1771 Testimony of Marie-Noëlle Caron, stenographic notes taken September 4, 2018, p. 244, lines 16–21; *L'information sur la santé des Premières Nations. Document d'information complémentaire du CSSSPNQL*, document P-935 (Commission), p. 4; document P-1160 (Commission), brief M-018, *op. cit.*, p. 3.

1772 Testimony of Horacio Arruda, stenographic notes taken September 12, 2018, p. 272–273, lines 12–7.

1773 Document P-805-13-1 (Commission), *op. cit.*; testimony of Luc Castonguay, stenographic notes taken October 22, 2018, p. 104, lines 7–17; document P-891-43 (Commission), *op. cit.*, tab 43.1, p. 4 of 31 (online PDF); testimony of Julie Lahaie, stenographic notes taken January 17, 2018, p. 88, lines 13–20; testimony of Louis-Philippe Mayrand, stenographic notes taken September 27, 2018, p. 292–293, lines 14–8; document P-791-2 (Commission), *op. cit.*, tab 2.13, p. 32 of 35 (online PDF); testimony of Jacques Prégent, stenographic notes taken October 5, 2018, p. 25, lines 11–20; document P-839-25 (Commission), *op. cit.*, tab 25.5, p. 43 of 62 (online PDF); testimony of Odette Guertin, stenographic notes taken September 24, 2018, p. 310–311, lines 22–7; document P-839-31 (Commission), *op. cit.*, tab 31.1, p. 3 of 4 (online PDF); testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 73, lines 15–19; testimony of Marie Rinfret, stenographic notes taken March 14, 2018, p. 11, lines 12–15.

1774 Cree Board of Health and Social Services of James Bay. (2013). *Overview of the Health of the Population of Region 18.* Retrieved from http://www.creehealth.org/surveillance-data/population-health

1775 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015). *Health Profile of Nunavik 2015. Focus on Youth, Adult and Elders' Populations.* Montréal, Québec: Nunavik Regional Board of Health and Social Services and the Institut national de santé publique du Québec, p. 4.

1776 *Letter dated November 20, 2018 from the Director of Public Health and Assistant Deputy Minister, Horacio Arruda*, document P-1178 (Commission), p. 2.

What is certain, however, is that the limited or non-existent access of Indigenous authorities to data on their own populations makes it extremely difficult for them to plan the services and responses essential to the well-being of their populations.[1777]

I therefore recommend that the government:

CALL FOR ACTION No. 5

Make the necessary administrative and legislative changes to allow Indigenous authorities to access data about their populations at all times, in the health and social services sectors in particular.

The third and final obstacle to obtaining a clear picture of the situation is the scarcity of meaningful population surveys on Indigenous peoples by government bodies.[1778] For example, despite the alarming issues described in the first-ever study on the health of the Nunavik populations, it took a decade before another one was conducted in 2004. Still today, this remains the most recent information available to illustrate the physical and mental health situation north of the 55th parallel.

Although conducted on a continuous basis, surveys by Indigenous organizations such as the First Nations Regional Health Survey of the First Nations of Québec and Labrador Health and Social Services Commission (FNQLHSSC) also do not provide a complete picture of the situation. The refusal of some communities to participate in Statistics Canada surveys, among others, and the absence of data from public services limit the scope of these investigations.[1779] In fact, according to information broadcast by Radio-Canada in April 2019, the major Québec population surveys conducted by the Institut de la statistique du Québec in the past 10 years contain no information on Indigenous realities.[1780]

That said, given the seriousness of some of the issues brought to our attention, including alarming suicide rates, homelessness, over-prosecution and over-representation of Indigenous children in the youth protection system, I recommend that the government:

CALL FOR ACTION No. 6

Make population surveys on Indigenous peoples an ongoing research priority with sustained funding.

1777 Testimony of Marie-Noëlle Caron, stenographic notes taken September 4, 2018, p. 246, lines 4–14; document P-935 (Commission), *op. cit.*, p. 4.

1778 Testimony of Marie-Noëlle Caron, stenographic notes taken September 4, 2018, p. 243–244, lines 24–8.

1779 *Id.,* p. 244–245, lines 22–3.

1780 Deshaies, T. (April 26, 2019). Des dizaines d'enquêtes de l'Institut de la statistique ont exclu les communautés autochtones. *ICI Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/1166366/enquete-institut-statistique-communautes-autochtones?depuisRecherche=true; Agence QMI. (April 27, 2019). Enquête de l'ISQ: des Autochtones pas toujours consultés. *Le Journal de Québec.* Retrieved from https://www.journaldeQuébec.com/2019/04/27/enquete-de-lisq-des-autochtones-pas-toujours-consultes

The information and testimony gathered also tend to confirm that it would be desirable to entrust the conduct of such surveys to Indigenous organizations known for their knowledge and understanding of Indigenous culture. The findings of these surveys should also be broadly disseminated, with the agreement of the representatives of the participating populations.

In order to obtain the most accurate portrait and take into account the distinctive character of each nation, I therefore recommend that Indigenous authorities:

CALL FOR ACTION No. 7

Make all the First Nations band councils and Inuit village councils aware of the importance of participating in surveys of their populations.

6.3.4 Improving living conditions

Despite the limited data on Indigenous peoples and the actions required to remedy the problem, existing statistical analyses show that the living conditions of Québec's First Nations and Inuit are well below those of the rest of the population. This was confirmed by the information gathered[1781] and several testimonies at the Commission's hearings.[1782] One witness, Professor Carole Lévesque, summarized the situation as follows:

> [T]he living conditions of a large segment of the Indigenous population present numerous constraints exacerbated by the serious consequences of colonial assimilation policies. The life expectancy of Indigenous people is 10 years lower than the general population of Canada and Québec and up to 20 years lower in the case of the Inuit. The incidence of chronic disease [is] higher, in particular, diabetes, which is three to five times more prevalent among First Nations people. Malnutrition and food insecurity are a growing problem. Suicide, violence, bullying, sexual abuse and psychological distress afflict many communities, both on the territory and in urban areas, and especially women, youth and children. […]Single parenthood is twice as common and in 95.0% of cases, such families are headed by women. Children aged 14 and under are seven times more likely to be in foster care. The school dropout rate has risen to record highs in many places.[1783]
>
> […]
>
> Unemployment is also higher for Indigenous people in general, regardless of where they live. Income is lower, and child and family poverty greatly affects everyone's quality of life. Indigenous children are two to three times more likely to be living in poverty than their Canadian counterparts.[1784]

1781 Statistics on Québec's Indigenous peoples gathered as part of the Commission's work are presented in Chapter 4.

1782 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 201, lines 4–10; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 104–106, lines 22–1; testimony of Tamara Thermitus, stenographic notes taken June 12, 2017, p. 84–85, lines 19–5; testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 48, lines 19–25.

1783 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 104–105, lines 22–24.

1784 *Id.*, p. 107, lines 1–9.

However, the distinct character of each community makes it difficult to draw a uniform portrait. Remoteness from major centres, job availability and access to quality food at affordable cost are just some of the factors that can influence the current situation in the various living environments. The reality of First Nations and Inuit living in urban areas is also different from life in Indigenous communities and villages. However, one problem transcends all the communities and nations: housing.

From the start of the Commission's work, the serious Indigenous housing crisis has emerged as the epicentre of many of the issues faced by the First Nations and Inuit. This was also confirmed by a number of witnesses.[1785]

Overcrowded conditions among Indigenous nations all exceed the Québec average.[1786] For example, whereas in the general population only 1.0% of Quebecers live in overcrowded housing[1787], the figures are 20.0% for the Eeyou (Cree)[1788] and 24.9% for the Atikamekw Nehirowisiw.[1789]

In fact, according to the most recent data collected by the FNQLHSSC, all nations combined, one in ten First Nations adults live in overcrowded conditions.[1790] The corresponding figure for children aged 0 to 11 is 23.0 %.[1791]

However, the problem is most critical in Nunavik. According to the latest statistics compiled in 2006, one in two Inuit (49.0%) live in overcrowded housing.[1792] And in 2013 the Office municipal d'habitation du Québec reckoned that 900 additional units were needed to meet the needs.[1793]

The situation is not much better for the First Nations. In 2012, to address the problem of overcrowding, the Assembly of First Nations Québec-Labrador determined that 9,433 additional housing units were required. This figure took into account overcrowding,

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1785 Document P-010 (Commission), brief M-001, *op. cit.*, p. 9, para. 45–47; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 10, lines 3–7; testimony of Matthew Coon-Come, stenographic notes taken June 14, 2017, p. 34, lines 8–19; Presentation of the Naskapi Nation of Kawawachikamach, document P-023 (Commission), p. 16–17; testimony of Béatrice Vaugrante, stenographic notes taken September 29, 2017, p. 208, lines 6–14; testimony of Steeve Mathias, stenographic notes taken September 29, 2017, p. 20, lines 11–20, p. 52, lines 1–20, and p. 55–56, lines 1–16; testimony of Lance Haymond, stenographic notes of September 22, 2017, p. 15-16, lines 1–6.

1786 A household is considered overcrowded if there is more than one person per room.

1787 Dutil, D. (2010). La situation du logement et des ménages dans la région administrative du Nord-du-Québec, *Le Bulletin d'information de la Société d'habitation du Québec*, 4(3), p. 5.

1788 Document P-010 (Commission), brief M-001, *op. cit.*, p. 9, para. 46.

1789 First Nations of Québec and Labrador Health and Social Services Commission. (2013). *Québec First Nations Regional Health Survey – 2008. Chapter 2: Housing.* Wendake, FNQLHSSC, p. 32.

1790 First Nations of Québec and Labrador Health and Social Services Commission. (2018). *Québec First Nations Regional Health Survey – 2015. Housing*. Wendake, Québec: FNQLHSSC, p. 6.

1791 *Ibid*.

1792 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 20.

1793 Société d'habitation du Québec. (2013). Le logement dans le Grand-Nord, *Le Bulletin d'information de la Société d'habitation du Québec*, numéro spécial Entretiens sur l'habitat automne 2013, p. 9.

population growth, non-resident migration, replacement of obsolete units, and the relocation or creation of villages.[1794] According to a report by the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, there was a shortage of 2,185 housing units in the Eeyou (Cree) territory alone in 2015.[1795]

Aside from accessibility, housing quality is also an issue. The Grand Council of the Crees (Eeyou Istchee)/Government of the Cree Nation estimates that 31.6% of the dwellings on its territory require repair or major renovations.[1796] This proportion is higher than in other First Nations communities, where it is estimated that just over one in five housing units require major work (21.0%).[1797] But it is not as dire as in the Nunavik villages, where the condition of half the housing units is considered unacceptable.[1798]

The situation is exacerbated by the high cost of living and low incomes, which make owning a home impossible for most of the population, leaving them dependent on social housing. In urban areas, low reported incomes also make access to housing difficult, particularly for single-parent Indigenous women.[1799] Some witnesses also mentioned that the racism expressed by some homeowners is a major obstacle to finding a place to live.[1800]

Beyond the numbers, the work of the Commission has determined that "the lack of housing, both in cities and communities, generates a host of psychosocial and economic issues".[1801] The representative of the Naskapi Nation of Kawawachikamach, Noah Swaapie, listed some of those issues before the Commission:

> The shortage of housing has led to, or exacerbated some situations: overcrowding, mould issues, general housing deterioration, domestic violence, children's exposure to drug and alcohol abuse. There's a lot more that they could mention, but these are just some examples.[1802]

The crying lack of housing in many First Nations and Inuit communities forces extended families to crowd into homes that are often too small to accommodate them.

1794 Assembly of First Nations of Québec and Labrador. (2014). *Les besoins en logement des Premières Nations du Québec et du Labrador/The Housing Needs of the First Nations of Québec and Labrador*. Wendake, Québec: APNQL, p. 32.

1795 Cree Nation Government. (2016). Housing in Eeyou Istchee. Retrieved from http://www.creehealth.org/sites/default/files/1%20-%202015%2012%2004%20Presentation%20on%20Housing%20to%20Health%20Conference.pdf, p. 8.

1796 *Id.*, p. 11.

1797 First Nations of Québec and Labrador Health and Social Services Commission. (2018), *op. cit.*, p. 7.

1798 Nunavik Regional Board of Health and Social Services, in collaboration with the Institut national de santé publique du Québec. (2015), *op. cit.*, p. 21.

1799 Document P-113 (Commission), brief M-003, *op. cit.*, p. 10.

1800 Testimony *in camera* HC-19, stenographic notes taken April 3, 2018, p. 90–91, lines 9–12; testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 30–31, lines 4–25, and p. 33, lines 11–14.

1801 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 106, lines 15–18.

1802 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 22–23, lines 22–2.

This overcrowding leads not only to problem situations such as violence and physical and sexual abuse, but also to their recurrence, especially when the aggressors live with the victims.[1803]

Against such a backdrop, Indigenous youngsters, among others, are more at risk of ending up in compromising situations. Nor are these living conditions conducive to their personal growth and academic success, as some witnesses described[1804], including Cree School Board Chair Kathleen J. Wootton and Camil Picard, then Acting Chair of the CDPDJ :

> So, what are the consequences of the overcrowding of houses? Number 1, I guess, would be the risk of security, the lack of secure or safe place for children to study and sleep, security and development of children is compromised, risk of family violence. The lack of space forces children onto the streets, children arrive tired at school and are less able to absorb lessons and to study. As a result of poor academic outcomes, there is a risk of children not being able to reach their full potential, increased tensions which may lead to bullying, physical and verbal abuse, increased risk of pressure, which may lead to alcohol and substance abuse.[1805]

> This [housing] crisis is reflected in the extent of the social problems that have emerged in recent decades in Nunavik. Alcohol abuse, substance abuse and suicide rates have reached epidemic proportions and are observed in all age groups of the population. Poverty adds to the difficulties, and children are often the first to pay the price. Many of them live in conditions that are totally inadequate for their protection and safety. Indeed, a large number of children are victims of physical, psychological and even sexual abuse. Despite their young age, many are struggling with addictions to alcohol, drugs or other substances that leave them with serious physical and mental disorders. The school absenteeism and dropout rates are extremely high, which augurs poorly for the future of these children. The situation is such that many will unfortunately resort to suicide to put an end to their suffering.[1806]

The physical health of individuals can also be affected by overcrowded and dilapidated housing. Connections have been established between the presence of humidity and mould and allergies or respiratory diseases such as asthma.

Overcrowded housing and the resulting cramped living conditions also promote the spread of contagious diseases such as influenza, hepatitis A and tuberculosis.[1807] The greatest number of tuberculosis cases in Québec are found in Nunavik, where the overcrowding is

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1803 Nunavik Health and Social Services perspective, document P-106 (Commission); testimony of Tamara Thermitus, stenographic notes taken June12, 2017, p. 123, lines 3–12.

1804 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 16–17, lines 14–7; testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 149–150, lines 16–5; testimony of Paul-Antoine Martel, stenographic notes taken June 20, 2017, p. 121, lines 1–6; testimony of Tamara Thermitus, stenographic notes taken June 12, 2017, p. 122–123, lines 23–2; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 106, lines 15–22.

1805 Testimony of Kathleen J. Wootton, stenographic notes taken January 24, 2018, p. 38, lines 8–21.

1806 Testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 114–115, lines 1–4; *Investigation into child and youth protection services in Ungava Bay and Hudson Bay*, April 2007, document P-453 (Commission), p. 64.

1807 First Nations of Québec and Labrador Health and Social Services Commission. (2013), *op. cit.*, p. 45.

the worst. From 2012 to 2015 the average annual incidence was 360 cases per 100,000 Inuit residents. The Québec average for the same period was 2.9 cases per 100,000 inhabitants.[1808]

Clear causal links can thus be established between the housing shortage and some of the public service issues investigated by the Commission. Not only do the psychosocial and health problems resulting from overcrowding frequently lead to interventions by public services, they also contribute to increasing pressure and mistrust between Indigenous peoples and public service representatives.

For example, in the youth protection sector, the ministerial safety and space requirements[1809] for housing children mean that many people who would like to become foster families cannot do so. Over and above the criteria, overcrowding is such that it can be difficult to take in another child. As this witness explained:

> It is often said that foster families are hard to find in Indigenous communities. But it's not necessarily just because they don't want to; when you live in an overcrowded house, taking in another child is a major undertaking because you're making the overcrowding even worse. That's also a problem. So there are people who want to help...but simply can't.[1810]

Since it is so hard to recruit foster families in the communities, many Indigenous children have to move away from their lifestyles and cultural environments.[1811]

The housing problem also affects parents whose child or children are in foster care, because the Director of Youth Protection or the Youth Court (Court of Québec) may make a separate dwelling or bedroom a condition for the child's return to the family home.[1812] This requirement can create major and sometimes insurmountable challenges for parents, who are often unable to comply quickly.[1813] The situation becomes particularly worrisome when one considers the time limits for foster care and the fact that a lack of access to housing can lead to long-term placement.[1814]

The increased violence that occurs with overcrowding also has an influence on police actions. Not only are the police called in more often, but they must also interact with vulnerable individuals who have all kinds of problems (mental health, addiction, suicide,

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1808 Ministère de la Santé et des Services sociaux. (2017). *Épidémiologie de la tuberculose au Québec*. Rapport 2012-2015. Retrieved from http://publications.msss.gouv.qc.ca/msss/fichiers/2017/17-266-01W.pdf, p. 1.

1809 Ministère de la Santé et des Services sociaux. (2016). *Document de soutien au Cadre de référence sur les ressources intermédiaires et de type familial quant à la vérification et au maintien de la conformité de certains critères généraux déterminés par le ministre. Direction générale des services sociaux, mars 2016*. Ministère de la santé et des services sociaux du Québec.

1810 Testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 149, lines 6–15.

1811 Testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 21, lines 2–7.

1812 Testimony *in camera* HC-23, stenographic notes taken April 10, 2018, p. 104, lines 13–18.

1813 Testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 30–31, lines 4–25 and p. 33, lines 11–14; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 13–14, lines 20–9 and p. 22, lines 16–24; testimony *in camera* HC-75, stenographic notes taken September 13, 2018, p. 224, lines 4–16 and p. 230, lines 6–13.

1814 Testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 30–31, lines 4–25 and p. 33, lines 11–14.

etc.). The situation is not unrelated to the over-involvement of some individuals in the communities in the legal system. How can release conditions such as a ban on contact with a victim or with alcoholic beverages be met when there is nowhere else to live except an overcrowded dwelling that caused the problem to begin with?

> Child protection services and child welfare is related to family welfare and community welfare in terms of issues of poverty, housing [...] I don't think that you can develop a child protection program in isolation from addressing many of these other public service needs and concerns. [...]That goes to the idea of restructuring how public services are delivered and ensuring communication across different public service delivery institutions, recognizing inter-sectoral connections--for example, the connection between child protection and housing issues, and indeed, some, I think, of the most innovative work around child protection has focused on protecting how to help families, not just how to protect a child in isolation, but how to ensure the well-being of the family as a whole.[1815]

There is no doubt that access to adequate housing is essential to Indigenous peoples' social and economic well-being. The right to safe and secure housing for everyone, including Indigenous peoples, is enshrined in the Universal Declaration of Human Rights[1816] and in the United Nations Declaration on the Rights of Indigenous Peoples.[1817]

From the perspective of the mandate entrusted to me, I believe genuine change to be impossible without taking into account the cause-and-effect relationship between Indigenous peoples' living conditions and their needs with regard to public services. The provincial government does not usually intervene in housing needs, especially for communities not covered by an agreement. The issue is too important, however, to let constraints imposed by federal and provincial power sharing influence our action. Entire populations are now hostages of their own environments and have been so for a long time, and it is time for that to end.

I therefore recommend that the government:

CALL FOR ACTION No. 8

Conclude agreements with the federal government under which both levels of government financially support the development and improvement of housing in all indigenous communities in Québec.

CALL FOR ACTION No. 9

Continue the financial investments to build housing in Nunavik, taking families' actual needs into account.

1815 Testimony of Colleen Sheppard, stenographic notes taken June 7, 2018, p. 58–62, lines 8–4.

1816 *Universal Declaration of Human Rights*, December 10, 1948, United Nations, 1948, Res. 217 A (III), art. 25.

1817 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, Res. A.G. 61/295, art. 21.

CALL FOR ACTION No. 10

Contribute financially to social housing initiatives for Indigenous people in urban environments.

6.3.5 Breaking down language barriers

After the housing shortage and resulting difficult living conditions, access to services is next on the list of problems highlighted by the Commission's work. Even if we ignore the geographic factors, for which there is limited possibility for action, several measures can be introduced to improve relations between public services and Indigenous peoples. The first ones pertain to language.

According to the most recent figures from Statistics Canada, 6.7% of First Nation members and Inuit living in Québec do not speak either English or French.[1818] When added to the fact that 41.1% of Québec's Indigenous population has English as a second language[1819], it is not surprising that language was rapidly identified as a vector for discrimination.[1820]

The first difficulty highlighted by the Commission is the fact that it is very often impossible for First Nation members and Inuit to have access to services in Indigenous languages or English, when those are their first and second languages.[1821]

> Simply put, what we're facing has to do with the availability of health professional who speak English. There are several areas for which our people and other English-speaking people struggle with in receiving services. We're often talking about psychology, clinical social workers, speech therapist, to name a few.[1822]

As the Health and Social Services Director for the Anishnabe community of Kebaowek (Kipawa) pointed out, from an Indigenous person's point of view, the absence of services in a language other than French causes great insecurity. It also restricts an Indigenous person's ability to communicate his or her view of things and understand the information provided, be it in the form of instructions or conditions or the related processes. Several Commission

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1818 The details on languages spoken by Indigenous populations are presented in Appendix 19 to this report. Source: Statistics Canada. (January 16, 2018). Knowledge of Indigenous languages. 2016 census. [Research data available online]. Retrieved from https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016022/98-200-x2016022-eng.cfm

1819 *Ibid.*

1820 Testimony of Viviane Michel, stenographic notes taken September 5, 2017, p. 65–66 lines 25–15; testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 127–129, Lines 16–19; testimony of Janet Mark, stenographic notes taken November 23, 2017, p. 248, lines 9–19; testimony of Laurier Riel, stenographic notes taken September 14, 2017, p. 64–65, lines 22–7.

1821 Testimony of David McLaren, stenographic notes taken September 22, 2017, p. 41–42, lines 25–9 and p. 46, lines 11–18, document P-023 (Commission), op.cit., p. 5 and 31; testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 27–28, lines 25–3; *Déclaration statutaire de PI-60*, document P-901 (Commission), p. 5; testimony *in camera* HC-71, stenographic notes taken September 7, 2018, p. 118, lines 1–10; testimony of Margaret Nossal, stenographic notes taken October 24, 2018, p. 150–151, lines 18–8.

1822 Testimony of David McLaren, stenographic notes taken September 22, 2017, p. 41–42, lines 25–7.

witnesses reiterated this point of view,[1823] particularly regarding youth protection, as shown in the following testimony:

> She was placed in a foster home until adulthood [...] then, my brother, you know, he wanted to, but he couldn't understand all the procedures with the DYP, the court and the lawyer that he called: "OK, what is a word?" My mother neither, she doesn't understand all of that, the procedures with the DYP and child custody.[1824]

The same problem was raised with regard to the legal process.[1825]

In Nunavik, the absence of Inuit police officers also causes significant language comprehension problems for a part of the population, Elders in particular, who only speak Inuktitut. Without the presence of an interpreter, no matter what kind of problems they encounter or how serious they are, it is impossible for Elders to call the police to get the help they need.[1826]

> We have a neighbour who's an old guy, and when... when he was experiencing a drunken man in his home, he... he had to run out over to my place and ask me to call the police for him. (...) Everyone should be entitled to be secure and should have an access to the services that are provided by the Police Force. It's unfair for some people, especially those who don't speak in English or French.[1827]

Several new police officers working for the Kativik Regional Police Force are not fluent in English either, although English is the sole second language for a significant portion of the Inuit population.[1828]

The same security issues are raised in some communities in regard to medical transportation services. The paramedics from Schefferville, for example, who serve the Naskapi community of Kawawachikamach, speak French and often only take emergency calls from CLSC nurses and health workers, resulting in service delays:

> In order to request an ambulance, community members need to call the CLSC and explain the emergency to a nurse who will assess the situation in order to determine whether an ambulance will be called or not. This creates a clear cleavage between Naskapis and other Québec residents, who may directly call 911 in order to request ambulance services.[1829]

1823 Testimony of Martin Scott, stenographic notes taken November 16, 2018, p. 61–62, lines 20–22; testimony of Sharon Tardif Shecanapish, stenographic notes taken May 22, 2018, p. 59–60, lines 19–9; testimony of Laurence de Angelis-Mongrain, stenographic notes taken September 13, 2018, p. 176–177, lines 19–8; testimony of Christine Mianscum, stenographic notes taken September 27, 2018, p. 122, lines 8–15 and p. 122–123, lines 22–3.

1824 Testimony *in camera* HC-71, stenographic notes taken September 7, 2018, p. 118, lines 1–10.

1825 Document P-901 (Commission), *op. cit.*, p. 5.

1826 Testimony of Lucy Kumarluk, stenographic notes taken November 12, 2018, p. 89, lines 10–14.

1827 Testimony of Shaomik Inukpuk, stenographic notes taken November 15, 2018, p. 130–131, lines 23–15.

1828 Testimony of Lizzie Aloupa, stenographic notes taken November 23, 2018, p. 130, lines 8–25.

1829 Memorandum of Naskapi Nation of Kawawachiwamach. (November 30, 2018), document P-1176 (Commission), brief M-035, p. 22–23, para. 85.

There is also the fact that several concepts are difficult to translate into the indigenous languages and important elements may be misinterpreted and lead to decisions that might have been different, as was underscored by Attorney Anne Fournier when she appeared before the Commission:

> The application of the Act [...] is based on a group of concepts, on many nuances and subtle procedures. The various Indigenous mother tongues have no terms for them, and sometimes they don't even correspond to anything in the Indigenous reality or imagination. [...] The word "adoption" as in "customary adoption" or "traditional adoption"; there is no word in the indigenous languages for "adoption." Instead, paraphrases such as "take care of" or "raise a child" are used.[1830]

These linguistic misunderstandings can even jeopardize the exercise of rights, as was explained by some of the Commission's witnesses[1831], including Clara Lafrance-Egervari, an attorney practising criminal law in Northern Québec:

> So first, the client is arrested by the police. If the person does not speak English or French, right now there are Cree police offers in Cree territory, so that's OK, but if the person does not understand his right to an attorney, he says so, I see it in police reports, he says that he doesn't understand, they find a Cree police officer and his rights to an attorney are translated for him. But that is not the case in Inuit territory. [...] And strangely, in the police reports, I rarely see, 'He didn't understand his right to an attorney,' and I wonder, because once I have spoken to the client, I realize that he doesn't understand anything over the phone, either in English or in French. This causes problems with understanding the fundamental rights that are read to him, the rights he has. As for the police officers, depending on where it is, I can't understand how the client can understand what the police officers are telling him.[1832]

The testimony and information gathered during the Commission's work shows that this is partly due to the low numbers of Indigenous people working as public service employees or professionals. The requests for information addressed to the primary services being investigated confirmed that, despite laws promoting employment equity in the public sector[1833], very few Indigenous individuals are government employees.[1834] For 2017 and 2018–except for Sûreté du Québec (Québec Provincial Police) police officers (1.24%) and the Commission des services juridiques (Legal Aid) (1.6%)–less than 1.0% of public service employees were of Indigenous origin.[1835]

1830 Testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 50, lines 11–23.

1831 Testimony of Céline Rousselot, stenographic notes taken May 23, 2018, p. 185, lines 6–11; testimony *in camera* HC-22, stenographic notes taken April 10, 2018, p. 83–84, lines 23–7; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 15, lines 8–21; testimony *in camera* HC-45, stenographic notes taken May 22, 2018, p. 241–242, lines 18–13.

1832 Testimony of Clara Lafrance-Egervari, stenographic notes taken September 6, 2018, p. 11–12, lines 25–19.

1833 Act respecting equal access to employment in public bodies, CQLR c. A-2.01 s. 1; Public Service Act, CQLR c. F-3.1.1, s. 3(1).

1834 *Analyse de la représentativité autochtone dans les services publics*, document PD-12 (Commission).

1835 *Ibid*.

During the hearings, representatives from those services confirmed that they were experiencing difficulties in recruiting Indigenous candidates who met the necessary requirements, including basic academic training.[1836] That is hardly surprising since, according to the most recent figures available, 30.5% of First Nations members and 54.2% of Inuit do not have any certificate, diploma or degree.[1837] That does not make it any less discriminatory.

I refuse, however, to see these figures as an insurmountable hurdle. To me, that would mean accepting the fact that the Québec government has always been and will always be incapable of providing quality education to First Nation members and Inuit or encouraging students to remain in school. No society that claims to be developed can tolerate leaving such a significant portion of its population on its own in such a crucial field. These findings nevertheless lead me to believe that, before any hiring quota is established, we must make massive investments in education: targeted investments corresponding to the needs identified by the Indigenous authorities themselves.

As a result, among the some one hundred measures included in the 2017-2022 Government Action Plan for the Social and Cultural Development of the First Nations and Inuit[1838], I recommend that the government:

CALL FOR ACTION No. 11

Make implementation of student retention and academic success measures for Indigenous students and young people a priority and allocate the amounts required, guided by the needs identified by the Indigenous peoples themselves and complying with their ancestral traditions.

The Commission's work has also shown that language could be an obstacle to recruiting the professionals called upon to work with certain Indigenous communities, in some Inuit villages or those with a high proportion of Indigenous language speakers.[1839]

Québec's professional orders are subject to the *Charter of the French Language*. Before issuing a permit to exercise a profession, the orders must ensure that candidates have a knowledge of the French language "appropriate to the practice of their profession".[1840] A subsequent regulation did provide an exception for "a person who resides or has resided on a reserve, in a settlement in which a native community lives or on Category I and Category I-N lands within the meaning of the *Act respecting the land regime in the James Bay and New*

1836 Testimony of Martin Rhéaume, stenographic notes from October 22, 2018, p. 21–22, lines 24–9; document P-1170 (Commission), brief M-029, *op. cit.*, p. 15.

1837 Institut de recherche et d'informations socioéconomiques. (2018). *Portrait des inégalités socioéconomiques touchant les Autochtones du Québec*. Montréal, Québec: Institut de recherche et d'informations socioéconomiques, p. 4.

1838 Document P-199 (Commission), *op. cit.*

1839 Testimony of Richard Gray, stenographic notes taken September 21, 2017, p. 54, lines 17–24.

1840 *Charter of the French Language*, CQLR c. C-11, s. 35.

Québec".[1841] But professional permits issued under this regulation are valid only within the stipulated territories. Outside those territories, knowledge of French remains a requirement.

In 2016 a working committee reported that the Regulation's residency requirement was difficult to apply in the communities.[1842] Some of the witnesses at the Commission hearings confirmed that statement.[1843] In their view, the professionals who could benefit from this exception often do not wish to move to the community with their families or they face housing shortages that render it impossible.[1844] The result is that professionals who speak a language used in First Nations or Inuit communities covered by this exception and are interested in practising their professions there, cannot be recruited or provide services to the local populations.

> Currently, professional services are infrequently if at all available in users' native languages, because Inuit social workers cannot practise, and are not accredited by the professional orders to do so.[1845]

In a move to remedy this situation in 2016, the same working committee recommended that the government broaden the scope of the exception to cover all professionals exercising their professions within the territories, regardless of where they resided.[1846] Unfortunately, this recommendation has yet to be implemented.

I therefore recommend that the government :

CALL FOR ACTION No. 12

Amend the *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French language* to extend the exception to all professionals exercising their professions on a reserve, in a settlement in which an Indigenous community lives or on Category I and Category I-N lands within the meaning of the *Act respecting the land regime in the James Bay and New Québec*, regardless of where they reside.

In its current form, even if the government implements the above call to action, this exception does not take into account the fact that most members of First Nations and Inuit (54.0%) now live in urban areas and may have difficulty obtaining services in a language that they understand.

1841 *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French language*, CQLR c. C-11, ss. 1–2.

1842 Government of Québec. (2016). *Des solutions adaptées aux communautés des Premières Nations et des Inuit pour soutenir l'application du PL 21 : Rapport du comité d'application du PL 21 au sein des communautés autochtones*. Québec City, Québec: Office des professions du Québec, p. 26.

1843 Testimony of Yoan Girard, stenographic notes taken November 21, 2018, p. 35–38, lines 24–22; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 157–158, lines 8–5; testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 31, lines 13–21.

1844 *Services de santé et services sociaux : défis et enjeux de leur organisation pour une offre adaptée aux besoins de la clientèle des Terres-Cries-de-la-Baie-James*, document P-017 (Commission), p. 13, para. 4.

1845 Testimony of Yoan Girard, stenographic notes taken November 21, 2018, p. 38, lines 3–8.

1846 Government of Québec. (2016), *op. cit.*, p. 26.

One way to address this difficulty is through the use of interpreters, a measure provided for in the legislative framework of the justice system, for example. In the courts, the right to be assisted by an interpreter is enshrined in both the *Canadian Charter of Rights and Freedoms*[1847] and Québec's *Charter of Human Rights and Freedoms*.[1848] The Québec Charter also stipulates that every person arrested or detained has the right to be informed of the grounds of their arrest or detention in a language they understand.[1849] In other sectors such as health care, social services and youth protection, the idea of using an interpreter usually arises out of the obligation to make sure individuals understand why interventions are made, or are able to provide consent for them.[1850] This obligation has been confirmed in multiple court rulings over the years.[1851]

According to testimony heard at Commission hearings and information gathered by providers of public services (including health care, social services and youth protection), institutions hire their own interpreters.[1852] Some, such as the Centre intégré de santé et de services sociaux (CISSS) de l'Abitibi-Témiscamingue, use the Québec government's Banque interrégionale d'interprètes, which provides Québec-wide telephone interpretation.[1853] This service does not, however, employ a single Indigenous-language interpreter.[1854] Exceptionally, institutions can hire Indigenous-language interpreters directly. The CISSS de l'Outaouais is a case in point.[1855] Other institutions have agreements with local Indigenous organizations to provide interpreting services.[1856] As for French-to-English interpreting, it is common practice to rely on multilingual employees.[1857] More rarely, institution liaison officers work on communication.[1858] In other words, there is no single standardized procedure.

In the justice system, according to information provided by public organizations, it is possible, at least in theory, for a party or witness to access interpreting services in English or Indigenous languages.[1859] The costs are borne by the Ministère de la Justice in criminal, penal and youth protection cases.[1860] In civil cases, however, the parties have to pay their own interpretation costs (Court of Québec, Superior Court).[1861] Interpreters are selected from

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1847 *Canadian Charter of Rights and Freedoms, Part 1 of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK),* 1982, c. 11, s. 14.

1848 *Charter of Human Rights and Freedoms*, CQLR c C-12, s. 36.

1849 *Id.,* s. 28.

1850 *Act respecting health services and social services*, CQLR c S-4.2, s. 8; *Code of Ethics of Physicians*, CQLR c. M-9, r. 17, s. 29; *Youth Protection Act*, CQLR c P-34.1, s. 2.4 (3).

1851 Reibl v. Hughes, [1980] 2 S.C.R. 880; Hopp v. Lepp, [1980] 2 S.C.R. 192; Ciarlariello v. Schacter, [1993] 2 S.C.R. 119; *R. v. Cullen*, 2015 SKCA 142 and *R. v. McIntosh*, 1990 ABCA 57.

1852 *Rapport sur l'offre de services linguistiques par les services publics du Québec dont peuvent bénéficier les Autochtones de la province*, document PD-15 (Commission), p. 27.

1853 *Id.,* p. 27 and 34.

1854 *Id.,* p. 34.

1855 *Ibid.*

1856 *Id.,* p. 27.

1857 *Id.,* p. 34–35.

1858 *Id.,* p. 34.

1859 *Id.,* p. 92.

1860 *Id.,* p. 92–93.

1861 *Id.,* p. 93.

the Ministère de la Justice's list. The availability of interpreters in Indigenous languages varies greatly from region to region, however.[1862]

Information gathered by the Commission leads me to the same conclusion with regard to the correctional system.[1863] For incarcerated individuals, even the availability of French-to-English interpreting services varies from region to region. Because legal interpreters are in high demand, wait times for access to qualified interpreters can range from a few hours to several weeks, depending on the region.[1864] As a result, it is not unusual for bilingual correctional officers, liaison officers or even fellow inmates to fill in for interpreters to help individuals understand communications.[1865]

Lastly, for police services, the constitutional obligation to ensure that every person is informed of the grounds for their arrest or detention in a language they understand means that interpreting services tend to be available at short notice and cover a wider range of Indigenous languages (depending on the police service).[1866]

Taken all together, this information establishes beyond any doubt that there is great inequality in the interpreting services available from public organizations; the inequality applies to both the quality of resources and the mere availability of interpreters, as reported by some witnesses.[1867] This finding is especially pronounced for Indigenous languages. The most alarming aspect of this situation, in my view, is the harmful effects it might have on citizens' ability to exercise their rights, and the unequal treatment that will result. One witness who spoke at the hearings made the point succinctly:

> If there were Innu translators, we could all have the same opportunity to make free, informed choices about the treatments they give us at the hospital, and we could give consent before getting treatments, or considering an invasive diagnostic test, or even just a blood test.[1868]

But that involves relying on a network of qualified interpreters, and right now there are multiple coexisting factors that make this an impossibility. Poor remuneration, difficult working conditions and the resulting high turnover were among factors mentioned by a

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1862 A table showing the Indigenous languages spoken by interpreters working in the justice system in various regions of Québec is included in Appendix 29.

1863 Document PD-15 (Commission), *op. cit.*, p. 120–124.

1864 *Ibid.*

1865 *Ibid.*

1866 *Id.,* p. 126–133.

1867 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 127–128, lines 18–1; testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 132, lines 8–14; testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 30–31, lines 22–12; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 239–240, lines 17–10; testimony of Jessica Mitchell, stenographic notes taken May 22, 2018, p. 262, lines 17–22; testimony *in camera* HC-63, stenographic notes taken August 20, 2018, p. 24, lines 8–16; *Déclaration statutaire de PI-55*, document P-892 (Commission), p. 2; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 80–81, lines 15–14 and p. 82–83, lines 25–5; testimony of Mark Tassé, stenographic notes taken November 23, 2018, p. 170, lines 3–13; *Creating an Infrastructure of Good Practice in Child Welfare in the Community of Kawawachikamach*, document P-592 (Commission), p. 49, para. 1.

1868 Testimony of Céline Rousselot, stenographic notes taken May 23, 2018, p. 185, lines 6–11.

number of people who addressed the Commission, including Court of Québec judges, to explain the shortage of interpreters.[1869]

> Court sessions have had to be cancelled because no interpreter was available. That just should not happen, not in 2018. We should have the resources we need to operate, and to operate under conditions that are reasonable for the interpreters as well. We cannot ask them to do four weeks of straight interpretation. We need it to be reasonable, somehow. Unfortunately, we have lost a lot of interpreters, because we asked too much of them.[1870]

Difficult working conditions were also very clearly described by another seasoned Inuit interpreter:

> [I]n the Courtroom, we didn't have space. You know, when you're interpreting homicide or violent situations for the prosecutor or the accused, for the defensive lawyer, and the judge, we're human beings, we have feelings. We needed, after interpreting those heavy situations, we need alone time. That was not provided. We didn't have a place to debrief. People look[ed] down at us. We had fixed salary and it was always questioned.[1871]

They are not the only negative factors for interpreters. For interpreters of Indigenous languages, the requirements of the *Charter of the French Language,* which are mandatory for membership in the Ordre des traducteurs, terminologues et interprètes agréés du Québec, can again stand in the way. Currently, a person who speaks perfect Inuktitut or English, for example, but does not have high-level French skills, would be barred from the profession.

In an environment like Nunavik, where only two interpreters are available for client-attorney meetings in the entire territory, the repercussions of this shortage can be dramatic, as illustrated by Lorraine Loranger in her March 2018 testimony to the Commission:

> Sometimes, there were no interpreters for the women who came, who went to Court. Sometimes, they would meet in the office with a lawyer, five minutes. Not enough time to prepare them to go to court, losing -- they're going to lose their kid. You got to brief them a little more than that. That's unfair.[1872]

From my perspective, we cannot profess to recognize the right of Indigenous peoples to preserve and develop their language (as outlined in the preamble to the *Charter of the French Language)*[1873], while at the same time neglecting to provide the support they need to

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1869 Testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 66, lines 1–15; testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 69–70, lines 17–2; testimony of Armand MacKenzie, stenographic notes taken October 20, 2017, p. 192–193, lines 22–6; testimony of Jacques Mousseau, stenographic notes taken September 14, 2017, p. 78–79, lines 1–2; testimony of Nathalie Pelletier, stenographic notes taken April 19, 2018, p. 163–165, lines 5–20; testimony of Lucie Basile, stenographic notes taken August 13, 2018, p. 86–98, lines 23–17; testimony of Clara Lafrance-Egervari, stenographic notes taken September 6, 2018, p. 11–15, lines 14–3; testimony of Paul-Mathieu Grondin, stenographic notes taken April 19, 2018, p. 156, lines 5–14.

1870 Testimony of Richard Côté, stenographic notes taken December 10, 2018, p. 200, lines 10–21.

1871 Testimony of Sarah Tuckatuk Bennett, stenographic notes taken November 13, 2018, p. 268, lines 15–25.

1872 Testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 224, lines 17–23.

1873 *Charter of the French Language*, CQLR c. C-11, preamble.

help them navigate a public services system dominated by the French language. I therefore recommend that the government:

CALL FOR ACTION No. 13

Expand the scope of the *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French language* to exempt interpreters and translators of Indigenous languages from the French-language knowledge requirements.

CALL FOR ACTION No. 14

Make Indigenous language translation and interpreting services permanently accessible throughout Québec by establishing a centralized database of government-employed interpreters and translators.

These measures would guarantee the resources needed to address other known deficiencies with respect to forms and documents in languages other than French. The public services inquiry has shown that, unless a request is made, not a single document, form or other item is made available in an Indigenous language.[1874] It would also appear that many documents, including victim impact statement forms, are not available in English either.[1875] The same goes for official documents issued following a ruling, as noted by this witness:

> There is minimal contact and communication with the parents. The second language in Barrière Lake is English. All the documents they received, with their reports, their conditions, everything was in French. Everything. They used to have to call me in to read it, translate it, help them to understand what was written on there.[1876]

This problem is reiterated in exchanges between government departments and Indigenous communities and organizations.[1877] Bilingual signage is provided only exceptionally at service points, currently only in establishments and organizations designated to provide health care and social services in both languages.[1878] The rule can be deviated from for health and safety reasons, however.[1879] Here again, the disparity in access to information was cited by several witnesses as harmful to Indigenous citizens[1880] and seems discriminatory in my view. I therefore recommend that the government:

1874 Document PD-15 (Commission), *op. cit.*, p. 25–26, 91–92, 118–119 and 127.

1875 *Ibid.*; testimony of Danielle Côté, stenographic notes taken December 10, 2018, p. 174, lines 3–6; testimony *in camera* 21, Witness 3, stenographic notes taken April 5, 2018, p. 239, lines 5–9.

1876 Testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 36, lines 1–8.

1877 *Charter of the French Language*, CQLR c. C-11, s. 16.

1878 *Id.,* s. 24. The designated establishments are listed in Appendix 27.

1879 *Id.,* s. 22.

1880 Testimony of Jessica Mitchell, stenographic notes taken May 22, 2018, p. 263–264, lines 22–1.

CALL FOR ACTION No. 15

Promote and permit bilingual and trilingual signage in establishments that serve large Indigenous populations who speak a language other than French.

CALL FOR ACTION No. 16

Make forms available in Indigenous language translations at government service centres.

CALL FOR ACTION No. 17

Ensure that all government correspondence with Indigenous authorities is accompanied by either an English or Indigenous language translation, at the choice of the community or organization in question.

Lastly, I would like to draw the government's attention to the testimony of several witnesses who described incidents where Indigenous people were forbidden to speak their language by public service representatives or foster families, particularly in dealing with youth protection services.[1881] Some also spoke of sanctions or consequences imposed on those who defied this ban.[1882] These distressing scenarios hark back to the days of residential schools, where Indigenous children were not allowed to speak their own language.[1883] It is unbelievable that such practices persist today.

Since many of these incidents involved establishments in the health and social services network, the Ministère de la Santé et des Services sociaux was invited to comment. In their response, department authorities affirmed that there is no directive prohibiting the use of an

1881 Testimony *in camera* HC-45, stenographic notes taken May 22, 2018, p. 237, lines 2–17; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 36–37, lines 21–5; testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 18, lines 9–16; testimony of Armand MacKenzie, stenographic notes taken October 20, 2017, p. 214, lines 11–16; testimony *in camera* HC-25, stenographic notes taken April 16, 2018, p. 147–150, lines 20–2 and p. 171–173, lines 17–8; testimony *in camera* HC-36, stenographic notes taken May 15, 2018, p. 199–200, lines 10–5 and p. 200, lines 13–18; testimony *in camera* HC-38, stenographic notes taken May 16, 2018, p. 175–176, lines 25–19; testimony *in camera* HC-39, stenographic notes taken May 16, 2018, p. 188–190, lines 20–12, p. 195, lines 10–18 and p. 197, lines 6–12; Déclaration statutaire de PI-52, document P-882 (Commission), p. 3; testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 16–17, lines 18–5; testimony *in camera* HC-72, stenographic notes taken September 11, 2018, p. 368–369, lines 15–22; testimony *in camera* HC-37, stenographic notes taken May 16, 2018, p. 117–118, lines 13–8.

1882 Testimony *in camera* HC-25, stenographic notes taken April 16, 2018, p. 150, lines 9–17; Déclaration statutaire de PI-22, document P-649 (Commission), *op. cit.*, p. 1; testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 204, lines 6–23 and p. 222–223, lines 7–7; Déclaration statutaire de PI-26, document P-658 (Commission), p. 1–2; testimony of PI-10, reported by Alexandra Ambroise, stenographic notes taken May 18, 2018, p. 105, lines 5–19, p. 106, lines 17–22 and p. 108, lines 13–24.

1883 *L'application de la Loi sur la protection de la jeunesse en milieux autochtones : constats, enjeux et pistes de réflexion*, document P-168 (Commission), p. 4, para. 2.

Indigenous language.[1884] They did point out, however, that the speaking of an Indigenous language may be prohibited to ensure the safety of users.[1885] No evidence submitted to the Commission would lead me to conclude that the safety of users was really at issue during the incidents reported by witnesses. I am, however, convinced that prohibiting the speaking of an Indigenous language goes against the objective of preserving the cultural identify of children as set out in the *Youth Protection Act,* and even the *Charter of Human Rights and Freedoms.*

I therefore recommend that the government:

CALL FOR ACTION No. 18

Issue a directive to establishments in the health and social services network ending the prohibition against speaking an Indigenous language in the context of housing, health care and services.

6.3.6 Improving communications and facilitating relationships with public services

Even as public services become more accessible with respect to language, they nevertheless remain grounded in structures and organizational logic that have little to do with First Nations and Inuit cultural references.

Public services are organized around complex systems, rooted in Western culture and governed by multiple laws and regulations. The many different presentations by public service representatives to the Commission gave ample proof of that.[1886] As things stand now, when a need arises and public services are required, the task of understanding and navigating the system can be daunting.

Several witnesses stressed how hard it is for Indigenous people to navigate public services as they function today and understand how they work.[1887] With little knowledge of the available resources and unaware of their rights, Indigenous peoples' distrust of the system leads many to forgo public services altogether. According to experts (and backed up by the public service representatives themselves), this could partially explain why members of

1884 *DG-0062-F, Informations relatives à l'interdiction ou à la limitation pour les enfants autochtones de s'exprimer dans leur langue autochtone en centre de réadaptation*, document P-791-10 (Commission); testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 324, lines 4–9.

1885 *DG-0080-F, Informations relatives aux pratiques de sécurisation culturelle autochtone, notamment quant aux langues autochtones, aux règles de vie, aux activités traditionnelles, à la nourriture traditionnelle et à la spiritualité grâce au contact avec des figures positives autochtones*, document P-791-22 (Commission), tab 22.1, p. 15 of 20 (online PDF); testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 323–324, lines 14–2.

1886 The regulatory framework and organizational structure of each service studied by the Commission are outlined in Chapter 5 of this report.

1887 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 193, lines 10–25 and p. 197–198, lines 19–2; testimony of Tanya Sirois, stenographic notes taken June 8, 2017, p. 45–46, lines 19–11.

First Nations and Inuit file so few health and social services complaints[1888] and why they are reluctant to seek conditional release measures in the prison sector.[1889]

In some sectors, positions have been created for liaison officers who provide direct contact with Indigenous clients to facilitate communication and help them navigate the public services system. Liaison officers now operate in a number of health and social service establishments, including the North Shore and Abitibi-Témiscamingue CISSS.[1890] The Sûreté du Québec also follows this model in certain communities with large Indigenous populations.[1891] In their appearances before the Commission, correctional services representatives from the Ministère de la Sécurité publique also confirmed that they intend to set up a similar model in detention centres that have a strong Indigenous presence.[1892] The goal is to make First Nations and Inuit feel safer in their interactions with public services, improve relationships and make it easier for them to exercise their rights. These efforts are commendable, and liaison officers are undoubtedly making a real contribution in terms of providing differentiated services for Indigenous populations.[1893]

While he recognizes the added valued of such initiatives, in his testimony to the Commission, Police Ethics Commissioner Marc-André Dowd stressed the importance of providing Indigenous peoples with trusted, impartial advisers when they need to access public services:

> The idea is to select respected "pillars of the community," so to speak, who would be trained on how to file complaints to Québec—and even federal—public bodies. [...] On the one hand, these advisers would provide information and support to complainants, but they could also connect people with service providers in the community, facilitate access to translators if needed, and, above all, help establish a much-needed climate of trust.[1894]

I share his view. Although they may play a critical role, liaison officers on the public service payroll will always be perceived by Indigenous peoples as being on the side of their employers. Their lack of proximity to communities and to First Nations and Inuit cultures will always be an issue.

Conversely, the idea of being able to count on a trustworthy individual directly in the community or in a familiar resource centre (such as Indigenous friendship centres in urban areas), seems quite promising. Under the proposed model, these advisers would be selected and hired by the band council, tribal council or leaders of the Indigenous organization; their job would be to inform First Nations' members and Inuit on available resources and services. They would be present in the community or at the local organization

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1888 Testimony of Louis-Philippe Mayrand, stenographic notes taken September 27, 2018, p. 269–270, lines 25–5 and p. 304, lines 4–14.

1889 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 135, lines 20–25.

1890 Testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, p. 95–96, lines 23–12.

1891 Testimony of Patrick Marchand, stenographic notes taken September 12, 2017, p. 44, lines 5–22.

1892 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 32–33, lines 2–21.

1893 Testimony of Dale Walker, stenographic notes taken June 14, 2017, p. 159, lines 1–14.

1894 Testimony of Marc-André Dowd, stenographic notes taken October 26, 2017, p. 76, lines 7–20.

one or more days per week (based on the needs identified by Indigenous leaders); they could also educate members of the community on how to exercise their rights and what recourses are available, and guide them through the system.

Moreover, in acting as a link between public services and the populations they serve, these advisers would be best positioned to advise public bodies on cultural safeguards, thereby helping to improve services overall. No matter how far they still have to go in terms of self-determination, some specialized health care, such as advanced health care, will always require interactions with public services. That is why it is vital to move forward in the spirit of cooperation and continuous improvement.

To achieve our objectives, we must implement sustainable, long-term measures.

Therefore, to ensure better interactions between stakeholders and promote mutual understanding, I recommend that the government:

CALL FOR ACTION No. 19

Create and fund permanent positions for liaison officers selected by Indigenous authorities to be accessible in the villages of Nunavik, First Nations communities and Indigenous friendship centres in Québec.

6.3.7 Raising public awareness

None of these measures will be effective unless efforts are first made to bridge the existing gaps in perception between Indigenous people and the rest of the population.

The Commission heard testimony from several hundred Indigenous persons. No matter their story or the public service in question, each witness spoke of the wall of incomprehension that separates Indigenous peoples from the service providers, professionals and managers they encounter.

> Youth protection is applied the same way as it is in the south—and the way it is applied is not relevant to Inuit culture. [...] The Quallunaat (non-Inuit) in the south do not understand Inuit family values and they make decisions that are not even relevant to our culture. [...]. As Inuit, family values are very important to us [...] The workers from the south don't know anything about that. They do not necessarily understand the bonds between families, family structures and the codes of ethics... for Inuit.[1895]

This testimony—like many others—points out that the lack of knowledge described above is one of the main sources of the rampant, systemic discrimination against Indigenous peoples in public services.

According to Daniel Salée, "one cannot adequately grasp the difficulties and tensions associated with the delivery of public services to Indigenous peoples without considering

1895 Testimony of Mina Beaulne, stenographic notes taken November 21, 2018, p. 61, lines 7–11, p. 61–62, lines 25–5 and p. 67, lines 2–8.

the historical and socio-political context of their relationship with the government".[1896] As he explained it:

> The people who work in social services or in the police service, health services and the Department of Education—they do their jobs. We can assume they do them well, in general, but they are also ignorant, by and large, of (Indigenous) communities' internal issues and backgrounds, and above all I'd say they are ignorant of the history.[1897]

Driven first by its push for assimilation and then by a conviction that equitable services required a uniform delivery model, the Québec government of the past century, plus a series of social and political events in the province, provided fertile ground for the alienation of Indigenous cultures.

For many years, Indigenous cultures, together with the people and events that shaped them, were essentially erased from our history books and core curriculum. As they were gradually reintroduced, the way Indigenous peoples were presented was enveloped in major historical and social biases.[1898] A number of Commission witnesses condemned the fact that, while our current core curriculum has been improved significantly, it continues to ignore entire chapters of history, presenting an incomplete version of reality to elementary and secondary students throughout Québec[1899], including to Indigenous children themselves.[1900] In this context, it is hard to break the cycle of ignorance and indifference. After all, today's citizens were yesterday's schoolchildren.

This blindness to Indigenous realities is a widespread phenomenon that goes beyond job titles, specific positions or even the public services themselves.[1901] It colours our daily interactions with First Nations and Inuit in the street, the arena, school and everywhere else. For this reason, I believe (as do many of the witnesses heard by the Commission)[1902], that the necessary shift in mindset requires an entire population to be educated, as summarized by Prudence Hannis, Associate Director of Kiuna College:

> And despite our fatigue, we must go through this process of learning about

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1896 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 214–216, lines 21–2.

1897 *Id.,* p. 196, lines 8–16.

1898 Testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 29–31, lines 3–19; testimony of Pierre Trudel, stenographic notes taken November 22, 2017, p. 12–14, lines 4–10; Vincent, S. and Arcand, B. (1979). *L'image de l'Amérindien dans les manuels scolaires du Québec*. Montréal, Québec: Les Éditions Hurtubise HMH.

1899 Testimony of Pierre Trudel, stenographic notes taken November 22, 2017, p. 12–15, lines 6–21; testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 32, lines 7–24; testimony of Prudence Hannis, stenographic notes taken October 25, 2017, p. 47, lines 10–23; testimony of Margaret Nossal, stenographic notes taken October 24, 2018, p. 204, lines 11–23.

1900 Testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 64, lines 16–18; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 57–58, lines 2–10, p. 63–64, lines 1–3 and p. 97–98, lines 20–15.

1901 Testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 93–94, lines 23–4.

1902 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 234–235, lines 21–8 and p. 236, lines 9–18; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 170, lines 5–9; testimony of Janet Mark, stenographic notes taken November 23, 2017, p. 189–190, lines 22–4; testimony of Serge Bouchard, stenographic notes taken September 26, 2017, p. 25–26, lines 23–4.

> our history, understanding the intergenerational impacts of colonization and recognizing their present-day implications. I believe we have no other choice. Anyone who is serious about doing this work has to go through this process. […] This is also necessary to avoid falling prey to stereotypes […] we also need to improve the (general) population's understanding of our First Nations' diversity. So if we want to promote better relations between Indigenous and non-Indigenous people, we must also find a way of educating the general population and making people aware of actual historical events as they took place, which continue to have an impact on our population and interfere in our relationships.[1903]

I have already described the role that the media could play in this process. I will not elaborate further, other than to repeat my desire to see the media become the powerful agent of change it could be.

That said, I believe the government should take advantage of the growing public interest in Indigenous peoples and promote a commitment to reconciliation in the public sphere as soon as possible. Based on the lessons of the past, I recommend that the government:

CALL FOR ACTION No. 20

Carry out a public information campaign on Indigenous peoples, their history, their cultural diversity and the discrimination issues they face, working with Indigenous authorities.

In terms of the public services themselves, the data collected shows that most government players have undergone general training on Indigenous history and realities.[1904] That said, many witnesses are calling for improvements in this area as well.[1905] For example, according to the Association des policières et policiers provinciaux du Québec, training should be provided "more frequently" and its content should "address the realities of each community".[1906]

In reality, the challenges we collectively face require concerted and sustained efforts. The need to break the cycle of ignorance at an early age requires input from many stakeholders. I dream of a Québec in which our citizens start learning about Indigenous peoples' history, contributions, knowledge and cultural diversity as children. A Québec where, once these

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1903 Testimony of Prudence Hannis, stenographic notes taken October 25, 2017, p. 50–51, lines 19–15.

1904 Testimony of Danielle Côté and Lucille Chabot, stenographic notes taken December 10, 2018, p. 182–184, lines 6–13; testimony of Patrick Marchand, stenographic notes taken October 18, 2018, p. 49–50, lines 9–22; *La formation dispensée au personnel*, document P-124 (Commission); testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, p. 15–16, lines 24–16; testimony of Louis Morneau, stenographic notes taken October 15, 2018, p. 50, lines 12–19.

1905 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 112–113, lines 19–3; document P-1171 (Commission), brief M-030, *op. cit.*, p. 24–25; document P-1159 (Commission), brief M-017, *op. cit.*, p. 28–29; testimony of Armand MacKenzie, stenographic notes taken October 20, 2017, p. 192, lines 14–21; testimony of Prudence Hannis, stenographic notes taken October 25, 2017, p. 56–57, lines 2–23; testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 28, lines 4–8; testimony of Darlene Kitty, stenographic notes taken September 29, 2017, p. 154–155, lines 23–4.

1906 Document P-1166 (Commission), brief M-025, *op. cit.*, p. 28.

same students reach adulthood and are ready to make a difference, they have developed an openness to others that makes cohabitation and cooperation possible between nations, with mutual respect for each other's values and cultures. It is an ambitious goal, I admit, and it will no doubt be many years before we see any real change. But the complexity of the challenge should not stop us from trying. The Truth and Reconciliation Commission started us on this journey, exposing one of the darkest eras of Indigenous peoples' history in Canada. The report of the Commission of Inquiry into Missing and Murdered Indigenous Women took us farther down the road. Now, more than ever, people everywhere are expressing their desire to learn more about the cultures of those who have occupied this land since long before we arrived. We must take advantage of this rare window of opportunity.

Therefore, with respect to elementary and secondary education, I recommend that the government:

CALL FOR ACTION No. 21

Further enrich the Québec curriculum by introducing a fair and representative portrait of Québec First Nations and Inuit history, working with Indigenous authorities.

CALL FOR ACTION No. 22

Introduce concepts related to Indigenous history and culture as early as possible in the school curriculum.

With respect to postsecondary and professional education, I recommend that the government:

CALL FOR ACTION No. 23

Include a component on Québec First Nations and Inuit in professional programs at colleges and universities (medicine, social work, law, journalism and other programs), working with Indigenous authorities.

CALL FOR ACTION No. 24

Make the professional orders aware of the importance of including content in their training programs, developed in cooperation with Indigenous authorities, that addresses cultural safeguards and the needs and characteristics of First Nations and Inuit.

Lastly, with respect to the training of government and public sector employees, I recommend that the government:

CALL FOR ACTION No. 25

Make training developed in cooperation with Indigenous authorities that promotes cultural sensitivity, cultural competence and cultural safeguards available to all public service managers, professionals and employees who are likely to interact with Indigenous peoples. Out of respect for the cultural diversity of Indigenous nations, this training must be adapted to the specific Indigenous nation(s) with which the employees interact.

CALL FOR ACTION No. 26

Provide ongoing and recurrent training to all public service managers, professionals and employees who are likely to interact with Indigenous peoples.

This call for action is the final link in the chain of cross-disciplinary measures. The chapters that follow will present findings specific to each service examined by the Commission and the corresponding calls for action.

7

CHAPTER 7

FINDINGS ON POLICE SERVICES

This Commission was established after Indigenous women from Val-d'Or made allegations of misconduct and abuse against Sûreté du Québec (SQ) police officers working in the territory of the La Vallée-de-l'Or RCM. Among all the services that the government identified for inclusion in an inquiry, police services were therefore an unavoidable component of the mandate assigned to me.

Even though the original events took place in an urban environment, it quickly became clear to me that the scope of the inquiry would have to extend beyond that. As a result, I also examined the relations between the police services and Indigenous populations living in any of the First Nations communities. I focused on the services provided through Indigenous police forces as well as those offered by the SQ. The same analysis was carried out for the police services available to the Nunavik population.

Regardless of the zone studied, the inquiry confirmed the extremely difficult nature of the relations between Indigenous peoples and police authorities. At that level, as all other services covered by the inquiry, episodes of racism and direct discrimination were brought to my attention. As dictated by my mandate, however, I chose not to limit myself to individual facts but instead tried to create an overall portrait of the situation. That exercise put a spotlight on the deep feeling of mistrust that Indigenous peoples have towards police services. It also allowed me to realize that, based on how the system currently operates, there is very little that can rebuild their trust. In fact, the indirect discrimination imposed by the legislation, policies and operating rules in force has been confirmed.

In light of all that, we have to proclaim loud and clear that action must be taken. To find out where and how, I took a closer look at the context for police actions, the factors impeding service quality and unadapted police pratices.

7.1. Organization of police services

The organization of police services and the legislation governing those services are described in detail in Chapter 5 of this report.[1907] However, certain points need to be reconfirmed in order to fully understand the environment in which the events brought to my attention occurred.

First, it is important to keep in mind that, according to the Ministère de la Sécurité publique (MSP), approximately 90.0% of the population residing in an Indigenous community or

1907 See pp. 131-140.

village in Québec is currently served by an Indigenous police force.[1908] On the ground, that corresponds to 22 separate police forces operating in 44 First Nations communities and Inuit villages.[1909] Eleven other Indigenous communities do not have their own police force and are therefore served by the SQ.[1910] They are not the only communities relying on the provincial police force to ensure their safety. In general, agglomerations with fewer than 50,000 residents are served by the SQ.[1911] In 2018, that represented 1,042 municipalities spread among 86 regional county municipalities.[1912]

Another important point is that the Indigenous police forces do not have the same status as other police organizations operating in Québec. Unlike municipal police forces and the SQ, whose existence, mission and jurisdictions are defined in the *Police Act*[1913], Indigenous police forces cannot be created unless an agreement is reached among the communities, the federal government and the provincial government.[1914] The only exceptions are for the Kativik Regional Police Force (KRPF) and the Eeyou Eenou Police Force (EEPF) of the Cree Nation Government, which were both set up after the James Bay and Northern Québec Agreement was signed[1915], as well as the Naskapi Village Police Force created after the Northeastern Québec Agreement was signed.[1916]

In addition to their special status, the Indigenous police forces tend to be different in that they are rather small. Based on MSP data from 2015, only five Indigenous police forces have more than 20 police officers.[1917] The police officers in those forces were also younger and less experienced than in the other police forces in Québec. In 2015, the MSP estimated that nearly 42.0% of Indigenous police force personnel had less than six years of experience.[1918]

1908 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 34–35, lines 17–10; *Les services policiers autochtones*, document P-491 (Commission), p. 17.

1909 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 33–34, lines 20–17; document P-491 (Commission), *op. cit.*, p. 16.

1910 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 106, lines 2–7; *Présentation du ministère de la Sécurité publique*, document P-007 (Commission), p. 13.

1911 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 15, lines 8–23; document P-491 (Commission), *op. cit.*, p. 4.

1912 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 17, lines 7–21; document P-491 (Commission), *op. cit.*, p. 6.

1913 *Police Act*, CQLR, c. P-13.1, s. 50–89.

1914 Testimony of Richard Coleman, stenographic notes taken June 13, 2017, p. 102, lines 3–13; *Police Act*, CQLR, c. P-13.1, s. 90.

1915 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 21–22, lines 21–2; *PowerPoint presentation on the Kativik Regional Police Force (Jean-Pierre Larose)*, document P-1139 (Commission), p. 6; testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 28, lines 20–22; Presentation by David Bergeron, Eeyou Eenou Police Force Director, to the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress, document P-633 (Commission), p. 3.

1916 *Northeastern Québec Agreement*, Members of the Naskapi Band of Schefferville, Gouvernement du Québec, Société d'énergie de la Baie James, Société de développement de la Baie James, Grand Council of the Crees, Northern Québec Inuit Association and Government of Canada, January 31, 1978, section 13.

1917 Ministère de la Sécurité publique (2017). La desserte policière au Québec. *Profil organisationnel 2015*. Québec, Québec: Ministère de la Sécurité publique, p. 18.

1918 Ministère de la Sécurité publique. (2017), *op. cit.*, p. 21. For an overview of the number of years of service for police officers employed by Indigenous police forces, see Appendix 22.

A survey of the directors of those police forces conducted by the Commission showed that most of those organizations have taken measures to promote the hiring of officers who are members of their nation or another Indigenous nation.[1919] That choice seems to be reflected on the ground because according to that same survey - and even though the response rate for that question was low - about two thirds (59.6%) of the patrollers in those police forces are Indigenous.[1920]

Moreover, during our hearings, the representatives from Indigenous police forces and communities admitted that, despite the definite advantage in terms of cultural and linguistic security, recruiting officers of Indigenous origin was a huge challenge.

According to the Regroupement Mamit Innuat, the biggest obstacles are the small pool of potential candidates and the fact that young Indigenous people are not interested in the police profession.[1921]

7.2. A past with far-reaching consequences

Because of the historically difficult relations between Indigenous peoples and police forces, the police profession is not highly respected in those communities.[1922] The history of the relations described earlier in this report clarifies the origins of those difficulties.[1923] As explained, during the period when the newly formed dominion of Canada was shaping its identity, the Indigenous peoples' ways of life were being radically transformed. For example, under a wide range of new legislation, First Nations members were confined to reserves, limited in exercising their hunting and fishing rights, forced to renounce their language and spirituality, and cohabit with private companies (forestry, mining, etc.) that gradually made inroads into their territory. In that context, police officers, who had the authority to apply the legislation, quickly became symbols of repression. The rest of the story, including residential schools and police intervention making it possible to forcibly remove children from their families, crystallized that perception and fuelled a profound sense of mistrust. The same can be said of the massive slaughter of sled dogs in Nunavik in the late 1950s by officers from the Royal Canadian Mounted Police (RCMP) and the SQ, which left an entire population without its primary means of transportation and subsistence.[1924]

Over the years, as the Association des policières et policiers provinciaux du Québec very clearly explained in the brief produced for the Commission, "that mistrust and repression generated various crisis situations that further amplified the tensions between Indigenous

1919 *Analyse de Justine Collin-Santerre et Mylène Jaccoud du sondage réalisé par la CERP à l'intention des corps de police autochtones,* document PD-17 (Commission), p. 8.

1920 *Id.,* p. 4.

1921 Brief of the Regroupement Mamit Innuat. (November 30, 2018); document P-1175 (Commission), brief M-034, p. 15.

1922 *Ibid.*

1923 See p. 35 and following.

1924 The details of that event are presented in Chapter 3, pp. 66-67.

peoples and the general population, including police forces.[1925] In particular, there was the "Salmon war" episode in the late 1970s and early 1980s[1926], the Oka Crisis a decade later[1927] and then what the media called the "Val-d'Or events" leading to the creation of this Commission.[1928]

In other words, the relations between Indigenous peoples and police officers are built on foundations that the police themselves qualify as "very unstable and negative".[1929]

7.3. Difficult contexts for police interventions

Still today, there is a complex context in which police actions take place with Indigenous populations. Whether in urban environments or communities, a number of factors impact those relations. The common point for all those interactions, however, remains the historical consequences of colonization and the extent of the resulting social problems.[1930]

7.3.1 Police interventions in urban environments

According to the most recent data from Statistics Canada, over half of First Nations members in Québec, namely 55.6%, live outside the communities, most often in urban areas.[1931] No equivalent data is available for the Inuit in Québec, but it was confirmed in 2016 that Montréal had the third-largest Inuit population in Canada.[1932]

In the opinion of the Regroupement des centres d'amitié autochtones du Québec (RCAAQ), there are three primary motivations for First Nations members or Inuit to move to cities: education (35.0%), work (24.0%) and access to housing (11.0%).[1933]

During the work, however, many witnesses reported the degree to which these aspirations faced substantial difficulties. While presenting the results of a survey conducted among over

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1925 Brief of the Association des policières et policiers provinciaux du Québec. (November 30, 2018); document P-1166 (Commission), brief M-025, p. 9.

1926 The details of that event are presented in Chapter 3, pp. 79-80.

1927 The details of that event are presented in Chapter 3, pp. 88-90.

1928 The events leading up to the creation of the Commission are described in Chapter 1 of this report.

1929 Document P-1166 (Commission), brief M-025, *op. cit.*, p. 10.

1930 Testimony of Pierre Lepage, stenographic notes taken June 15, 2017, p. 45, lines 2–14; testimony of Serge Bouchard, stenographic notes taken September 25, 2017, p. 78, lines 7–24, p. 89, lines 8–14 and p. 94, lines 12–23; testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 32, lines 6–11; testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 46, lines 1–11; *Perspectives historiques autochtones : entrevues*, document PD-16 (Commission), p. 79; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 37, lines 4–22; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 145–149, lines 23–19; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 58–59, lines 10–3; testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 189, lines 1–6.

1931 *Portrait des inégalités socioéconomiques touchant les Autochtones au Québec*, document P-423 (Commission), p. 4; Lévesque, C., and Cloutier, E. (2013). Les Premiers Peuples dans l'espace urbain au Québec: trajectoires plurielles. In A. Beaulieu, S. Gervais, and M. Papillon (dir.), *Les Autochtones et le Québec. Des premiers contacts au Plan Nord* (p. 281–296). Montréal, Québec: Presses de l'Université de Montréal.

1932 Statistics Canada. (October 25, 2017). *Aboriginal peoples in Canada: Key results from the 2016 Census*. Ottawa, Ontario: Statistics Canada, p. 9.

1933 Testimony of Philippe Meilleur, stenographic notes taken June 8, 2017, p. 22, lines 4–9.

1,700 First Nations members and Inuit living in cities, RCAAQ representatives confirmed the precariousness of the situation of Indigenous peoples living away from their communities and villages. According to the study, 33.0% of First Nations members and Inuit living in urban areas are unemployed, and 4.5% of them receive no employment insurance benefits or last resort assistance to meet their needs.[1934] The majority (63.0%) report annual income of less than $20,000.[1935]

Poor and marginalized, partly because of the culture shock experienced when they arrive in the city and lack of knowledge of the rules[1936], Indigenous people are also at greater risk of becoming homeless. The latest snapshots of visible homelessness also indicate that more than 10.0% of homeless persons are Indigenous.[1937] Inuit people seem to be particularly hard hit by the phenomenon. In 2001, in Montréal, they were estimated to represent 40.0% of the Indigenous homeless population, although they only constituted 10.0% of the city's total Indigenous population.[1938]

These poor living situations increase the risk of being a victim of crime, or committing crimes in the hope of escaping the situation.[1939] Nearly one out of three Indigenous people (31.0%) who live in urban areas report having been victims of a crime during their lifetime[1940]; 46.0% have been in contact with the justice system either as a witness, accused or victim.[1941]

Each of these factors increases potential interaction with law and order, and serves to expose them to social control policing, as Daniel Salée, Full Professor at Concordia University, explained to the hearing:

> [A] police officer who is confronted with an Indigenous person on a public street who may be homeless, or perhaps drunk, what the officer may primarily see is a troublemaker, a potential criminal, someone who must be dealt with heavy handedly. The officer will not wonder what to do with that person. He won't ask ... he won't think about the circumstances that led to the person's situation.[1942]

1934 *Portrait sur l'accessibilité aux services publics en milieu urbain pour les autochtones*, document P-192 (Commission), p. 11; testimony of Audrey Pinsonneault, stenographic notes taken December 11, 2018, p. 158, lines 1–3.

1935 Document P-192 (Commission), *op. cit.*, p. 13; testimony of Audrey Pinsonneault, stenographic notes taken December 11, 2018, p. 158, lines 17–20.

1936 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 69, lines 7–19.

1937 Latimer, E., McGregor, J., Méthot, C. and Smith, A. (2015). *I count MTL 2015. Count and Survey of Montreal's Homeless Population on March 24, 2015*. Montréal, Québec: Ville de Montréal, p. vi; Ministère de la Santé et des Services sociaux. (2019). *Dénombrement des personnes en situation d'itinérance au Québec le 24 avril 2018*. Québec, Québec: Ministère de la Santé et des Services sociaux, p. xvi.

1938 Brief by the Makivik Corporation titled *"Itinérance des Inuit du Québec"* with a letter from the President of the Makivik Corporation dated October 17, 2008, sent to MNA Geoffrey Kelley, Chair of the Commission des Affaires sociales, Gouvernement du Québec, document P-248 (Commission), p. 4.c

1939 Monchalin, L. and Marques, O. (2012). *Preventing Crime and Poor Health Among Aboriginal People: The Potential for Preventative Programming.* First People Child & Family Review, 7(2), p. 112–129.

1940 Document P-192 (Commission), *op. cit.*, p. 13; testimony of Audrey Pinsonneault, stenographic notes taken December 11, 2018, p. 161, lines 2–3.

1941 Testimony of Audrey Pinsonneault, stenographic notes taken December 11, 2018, p. 160, lines 21–24.

1942 Testimony of Daniel Salée, stenographic notes taken June 12, 2017, p. 194–195, lines 19–4.

If, in addition, because of their lack of knowledge of Indigenous cultures and realities, the officers are prejudiced, Indigenous people may be subject to increased surveillance, and intervention with this section of the population may increase substantially. Then there is also the pressure from other citizens who want peace, and who thus favour police intervention.

Referring to the creation of the Escouade centre-ville in Val-d'Or in 2014, SQ Captain Jean-Pierre Pelletier acknowledged to the Commission that the lack of safety and discontent expressed by the population fuelled the desire to launch the close patrol project.[1943] As of 2008, numerous infractions of municipal regulations, including loitering, public drunkenness and disturbing the peace, and the resulting annoyances lay at the heart of the recriminations expressed by the public, as shown in the letters sent to the SQ at the time, and filed in evidence before the Commission.[1944] According to a survey, the population felt less safe than before, at 5.57 out of 10.[1945]

In this context, the SQ believed that setting up the Escouade centre-ville was a rapid, effective way to maintain peace and order, and reassure the public. This is how the project was presented in the first operations plan produced on the matter in January 2014 by the La Vallée-de-l'Or RCM central station.[1946] Among other things, the plan states that the Escouade centre-ville operation has three precise objectives:

1. Re-establish a climate of confidence and trust downtown by firming up application of the municipal regulation, *Criminal Code* and *Highway Safety Code.*
2. Foster a partnership between the police, elected representatives, citizens, merchants, organizations, and target individuals.
3. Reduce the workload for relief teams.[1947]

As we will see later in this chapter, more stringent application of regulations and laws resulted in an increase in tickets issued. Moreover, in January 2014, in a note to his superior, Captain Pelletier acknowledged that one of the main challenges facing his team was that police intervention is "not adapted to a homeless clientele" and that "homeless people are regularly detained [...] for minor infractions and because of a dearth of other resources that could receive them".[1948]

1943 Testimony of Jean-Pierre Pelletier, stenographic notes taken October 2, 2018, p. 86–87, lines 15–15.

1944 Tab 19 of the Police document depository library / DGP-0149-A. Appendix A. *Letter from a merchant denouncing prostitution and homelessness in downtown Val-d'Or*, document 871-19 (Commission), p. 7 of 458 (PDF online); Tab 19 of the Police document depository library / DGP-0149-A. Appendix C. Survey of merchants in downtown Val-d'Or, March 2010, document 871-19 (Commission), p. 47–60 of 458 (PDF online); Tab 19 of the Police document depository library / DGP-0149-A. Appendix D. *Letter from a merchant denouncing vagrancy, mischief and violence in downtown Val-d'Or*, document 871-19 (Commission), p. 61 of 458 (PDF online).

1945 Document 871-19 (Commission), Appendix C, *op. cit.*, p. 55 of 458 (PDF online).

1946 Tab 19 of the Police document depository library / DGP-0149-A. Appendix J. *SMEAC- Escouade centre-ville operations plan summer 2014. Poste principal de la MRC de la Vallée-de-l'Or, version 1*, document 871-19 (Commission), p. 85–97 of 458 (PDF online).

1947 Document 871-19 (Commission), Appendix J, *op. cit.*, p. 94 of 458 (PDF online).

1948 Tab 19 of the Police document depository library / DGP-0149-A. Appendix K. *Information note addressed to the Bureau du commande ATNQ – Vallée-de-l'Or RCM central station, picture of homelessness in Val-d'Or*, document 871–19 (Commission), p. 99 of 458 (PDF online).

This perspective worried the region's elected officials. In May 2014, in a letter to the main partners likely to intervene with the homeless clientele, Val-d'Or's mayor, Pierre Corbeil, MP for the riding of Abitibi-Baie-James-Nunavik-Eeyou, Roméo Saganash, and Guy Bourgeois, MNA for Abitibi-Est, called for collaboration and proposed having a community worker ride along with a police officer.[1949] A joint committee was set up shortly thereafter, and the project was deployed that summer in collaboration with Val d'Or's community organizations.[1950]

At the hearing, Officer Jean-Raphaël Drolet from the Escouade centre-ville said that this approach fostered preventive intervention, and effective collaboration with psychosocial workers. However, he acknowledged that, despite its initial success, the project unfortunately led to an increase in the number of arrests. He attributed the situation to the fact that there were insufficient community resources available for much of the project, and the need to ensure the offender's own safety:

> What helped us in the early months [...] was that the resources mobilized around the project. [...] When we saw something was about to happen [...] I would call the La Piaule worker, saying "you should intervene with Jean, because otherwise he's going to generate calls, and then I'll have to intervene" and he took it on, because we didn't get any further calls about that individual. As of the end of the summer of 2014, we didn't have these resources anymore, but the downtown patrol continued.[1951]

> [W]hen I get a call [about] someone who is lying in a store doorway, really intoxicated, [...] for me, that's a social services and health care problem. I call the ambulance, and when he gets to the hospital, the hospital staff say, "Get up. There's the door. You're not sick." The person goes back downtown and, two hours later, we're called back downtown. [...] Then I say, "O.K. What resources do we have now?" The hospital doesn't want to take you in. La Piaule is a day centre that does not accept inebriated people. We tried the Native Friendship Centre, but they don't accept these people because they're inebriated. They would frequently call us to remove these people from their centre. After that, I look at the other organizations, there's nobody who's going to accept this person but if I leave him in the street and he gets hit by a car or gets robbed, I'm responsible for that person. So unfortunately, which happened a lot in those years, we would say, "well, then, we'll detain them. It's the only safe place for them".[1952]

From my perspective, this sequence of events is a perfect illustration of how ill-equipped the police forces are to deal with vulnerable clientele. It also emphasizes the importance of training and highlights the relevance of joint intervention projects to better serve the population. We will return to this later in this chapter.

1949 Tab 19 of the Police document depository library / DGP-0149-A. Appendix S. *Request for collaboration – Homelessness in Val-d'Or*, document 871-19 (Commission), p. 235–239 of 458 (PDF online).

1950 Tab 19 of the Police document depository library / DGP-0149-A. Appendix V. *Information note addressed to the ATNQ command station – Vallée-de-l'Or central station. Follow-up on the homelessness dossier in the La Vallée-de-l'Or RCM,* document 871-19 (Commission), p. 251–253 of 458 (PDF online).

1951 Testimony of Jean-Raphaël Drolet, stenographic notes taken October 2, 2018, p. 83–84, lines 5–4.

1952 *Id.*, p. 81–82, lines 12–19.

7.3.2 Police intervention in Indigenous communities

The situation is no better in Québec's Indigenous communities and villages. The evidence gathered within the framework of the Commission's work has confirmed that there is a high crime rate in these territories, especially the more northern ones.

At the hearing, Dwayne Zacharie, Chief Peacekeeper of Kahnawà:ké and President of the First Nations Chiefs of Police Association, said:

> These First Nations police officers, they work really hard at what they do, especially... it's not me that's saying it, if you look at stats, people understand that violence is higher in First Nations communities, suicide is higher, the rates of addictions are higher, you know and these officers are dealing with violent crimes and they're happening in our communities.[1953]

To illustrate, the Lac Simon Chief of Police confirmed to the Commission that 911 interventions were required between April and December 2017 alone, 43.0% of which were crimes against persons, and 27.0% of which were crimes against property.[1954] The Innu Takuaikan Uashat mak Mani-Utenam organization stated in its brief that the police officers in its territory are working in a context with an overall crime rate that is five times higher than the rest of Québec, and a violent crime severity index that is 14 times higher.[1955] According to the director of the Eeyou Eenou Police Force, David Bergeron, domestic and family violence is also the cause of many police interventions in Eeyou (Cree) territory.[1956]

The situation in Nunavik appears the most critical. According to the KRPF, in 2017 alone there were over 11,000 incidents and criminal infractions in the territory.[1957] The gravity of the incidents is also noteworthy. During the same year, seven murders and thirteen attempted murders were recorded for a population of 13,800.[1958] Also in 2017, KRPF officers had to intervene in 24 suicides and handle 346 cases of alleged sexual abuse, 130 of them involving minors.[1959]

Interventions are made more complex by the fact that the police officers on duty frequently know the aggressor, the victim, and their respective families. They may even be family members. Several witnesses heard in the context of the work, including representatives of police forces, identified this social proximity as a challenge.[1960] Among other things,

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1953 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 20, lines 9–16.

1954 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 84, lines 11–19.

1955 Brief by Innu Takuaikan Uashat Mak Mani-Utenam. (November 30, 2018); document P-1174 (Commission), brief M-033, p. 6.

1956 Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 40, lines 4–8.

1957 Document P-1139 (Commission), *op. cit.*, p. 35.

1958 *Ibid.*

1959 *Ibid.*

1960 Testimony of Sarah Tuckatuck Bennett, November 13, 2018, p. 272, lines 19–24; *Plan organisationnelle [sic] de la sécurité de Pakua Shipu*, document P-352 (Commission), p. 4; testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 52–53, lines 20–6; testimony of David Bergeron, stenographic notes taken September 27, 2018, p. 251, lines 11–23; testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 18–19, lines 15–6.

they stressed the professionalism the officers generally show in such circumstances and deplored the fact that, due to a lack of resources, the public security needs that must be met frequently win out over potential conflicts of interest.[1961]

The truth is that, although proximity between police forces and residents is generally an asset, because it enables culturally adapted intervention, it can create a significant barrier when it comes to family violence if it involves reporting the relative of a police officer, for example. According to Viviane Michel, President of Québec Native Women (QNW), "women's fear of not getting impartial, confidential service from the male and female police officers in their community makes them more vulnerable".[1962] As a result, denouncing an abuser remains a challenge and, given community pressure, many women who institute legal proceedings want to withdraw the charges before the process is completed. Sexual assault victims face the same fears and obstacles in First Nations communities and in the villages in Nunavik.[1963] Telling her own story to the Commission, Constance Vollant clearly described the feelings Indigenous women have when bringing a complaint:

> When you say that three out of four Indigenous women experience abuse, and that 75.0% of them are under the age of 18, and these young people don't talk … Why? Because they're afraid. When you live in a small community and file a complaint, news travels fast. The next day, everybody knows that you filed a complaint, and then when the prosecutor tell you that he isn't accepting your complaint, the news spreads. The other women are afraid, because, after that, everybody judges you. They take you for a liar. […] When I came out of the office, my confidence … in the police system, in the legal system, it plunged again.[1964]

In my opinion, this testimony, like so much other testimony heard within the framework of the Commission's work, expresses the existing system's inability to consider the particular needs of victims of sexual or conjugal violence when a complaint is filed.

In March 2019, in the wake of the #MeToo movement, the Québec government announced that it was setting up an expert committee charged with studying the various potential solutions for improving support for victims of sexual and conjugal violence throughout the various steps of the process.[1965] I celebrate this initiative, particularly since Indigenous people have a representative on the committee.

1961 *Ibid.*

1962 Testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 60, lines 17–20.

1963 Testimony of Constance Vollant, stenographic notes taken September 5, 2018, p. 113–114, lines 25–7; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 50, lines 6–13; La judiciarisation de la violence familiale : l'expérience des Atikamekw, document P-439 (Commission), p. 115.

1964 Testimony of Constance Vollant, stenographic notes taken September 5, 2018, p. 107, lines 4–18 and p. 110, lines 1–4.

1965 Radio-Canada.ca (March 18, 2019). *Québec veut améliorer le traitement judiciaire des agressions sexuelles. Radio-Canada.ca.* Retrieved from https://ici.radio-canada.ca/nouvelle/1159001/Québec-agressions-sexuelles-conjugales-comite-experts-sonia-lebel-moiaussi; Lévesque, L. (March 18, 2019). *Agressions sexuelles et violence conjugale : création d'un comité d'experts. Le Soleil.* Retrieved from https://www.lesoleil.com/actualite/politique/agressions-sexuelles-et-violence-conjugale-creation-dun-comite-dexperts-3b7b5fbc0e5b0b20efe09517a7f630f5.

That being said, aside from this think tank, it would be appropriate for Indigenous police forces and Indigenous authorities to contemplate certain structural measures immediately.

I therefore recommend that Indigenous police forces:

CALL FOR ACTION No. 27

Adopt and implement a conflict of interest policy for the handling of investigative and intervention matters.

In my opinion, pooling resources is also an interesting approach to consider for reducing conflict of interest situations, particularly by allowing police officers to work in communities they do not live in. At the hearing, the Chief of the Anishnabe community of Kebaowek (Kipawa), Lance Haymond, also confirmed the value of this approach in improving community safety.[1966]

I also recommend that Indigenous authorities:

CALL FOR ACTION No. 28

Explore the possibility of setting up regional Indigenous police forces.

Moreover, regardless of how promising they are, these calls for action must coincide with the implementation of support measures for victims, and psychosocial intervention. This will be mentioned later in the chapter on health and social services.[1967]

7.4. Obstacles to quality service

The general findings established earlier in this report shed light on a number of obstacles to the quality of the services offered to Indigenous peoples. Difficulties relating to language, low representation among public service employees, and a lack of knowledge of Indigenous cultures among employees are among the factors that have been flagged as problematic. Solutions have been proposed for each of these issues, including the need to ensure that non-Indigenous police officers are properly trained on the cultural and social realities of First Nations members and Inuit, particularly when they are called upon to intervene in the community. I will not return to these matters here. The arguments put forward are, in my opinion, enough to justify their implementation.

That being said, the Commission's work identified a number of other factors that could hamper the quality of police services offered.

1966 Testimony of Lance Haymond, stenographic notes taken September 22, 2017, p. 47–49, lines 17–13.

1967 See chapter 10, pp. 378-381.

7.4.1 Training

Among other things, this is the case with the training of future Indigenous police officers by the École nationale de police du Québec (ENPQ). The first concern relating to training is financial. The Commission's work has, in fact, confirmed that it costs Indigenous students up to three times more to complete police training than other students.

As explained in chapter 5, the cost of training a future police officer at the ENPQ is just over $17,000.[1968] Québec's police forces pay for much of this, paying the equivalent of 1.0% of their payroll to the ENPQ.[1969] Those studying to be police officers themselves pay about $8,000 in tuition and lodging costs.[1970] However, Indigenous police forces are not required to pay the ENPQ 1.0% of their payroll.[1971] As a result, the bill paid by the candidates they recruit is much higher. In 2018, the ENPQ estimated that it was $28,000 per person.[1972] Aside from the lack of indirect financing through the 1.0% contribution, the accommodation mode selected by Indigenous police forces for recruits, i.e. private rooms rather than dormitory, is responsible for the difference.

In order to train a new generation of police, in the vast majority of cases, the Indigenous police forces bear the costs themselves.[1973] In a brief submitted to the Commission, the Regroupement Mamit Innuat confirmed that it costs the police force in Pakua Shipu, on the Lower North Shore, about $30,000 to train each recruit.[1974] On a broader scale, when she appeared before the hearing, Nancy Bobbish, director of human resources for the Cree Nation Government, estimates the total bill for training 16 officers for the Eeyou Eenou Police Force to be $525,000.[1975]

For Jean-Pierre Larose, Chief of the KRPF, if we also factor in the extremely high turnover rate in Indigenous police forces, the financial issues associated with training grow exponentially. In his opinion, this is particularly true for candidates who accept jobs with an Indigenous police force while waiting to be recruited by the SQ or another police organization in the south. These officers frequently quit their jobs rapidly, leaving the organization with another job to fill and a new training bill to pay.[1976] For example, in Nunavik, almost the entire staff has to be replaced every twelve months.[1977]

To stem the flow, the KRPF recently added a clause to its labour contracts with new police officers, requiring them to remain with the police force for a minimum of three years, or

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1968 Testimony of Pierre St-Antoine, stenographic notes taken December 8, 2017, p. 98, lines 10–13.

1969 *Id.*, p. 96, lines 9–18 and p. 99, lines 1–4.

1970 *Id.*, p. 100, lines 16–21.

1971 *Id.*, p. 99, lines 8–13.

1972 *Id.*, p. 100, lines 21–23.

1973 *Id.*, p. 101, lines 10–15.

1974 Document P-1175 (Commission), brief M-034, *op. cit.*, p. 15–16.

1975 Testimony of Nancy Bobbish, stenographic notes taken September 27, 2018, p. 177, lines 3–7.

1976 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 55–57, lines 22–21; testimony of Lloyd Alcon, stenographic notes taken March 22, 2018, p. 139, lines 1–11.

1977 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 34, lines 17–22.

reimburse the costs incurred for their training.[1978] In its brief filed with the Commission in November 2018, the Cree Nation Government put forward the idea of adding a clause on compliance with contract duration to the labour agreements binding new non-Indigenous police officers.[1979]

In my opinion, despite the creativity they are showing, the current situation unduly weakens Indigenous police forces and must be remedied.

I therefore recommend that the government:

CALL FOR ACTION No. 29

Revise how the training of recruits hired by Indigenous police officers is financed to reduce the cost difference between the various categories of candidates.

Beyond cost, according to the Indigenous representatives, including Dwayne Zacharie, Chief of the Kahnawà:ké Peacekeepers and President of the First Nations Chiefs of Police Association, the fact that certain specialized courses developed by the ENPQ are not offered in English is also an obstacle to developing Indigenous police forces:

> At times, we partner with the École Nationale and the École Nationale provides us training when they can in English, if they can oftentimes, the training is not available. Oftentimes, the story that we get is that the training is being translated, you know? So we wait. We've asked for training, certain types of training for a long time. I'm not talking a couple of months, I'm talking years and years and years we've been asking for training, it hasn't materialized yet.[1980]

Faced with this situation, the police forces themselves may bear the costs of translating course content to ensure their staff can benefit from it, as confirmed by the director of human resources for the Cree Nation Government when she appeared before the Commission:

> Most of the time, the Cree Nation Government has to pay for the translation of these programs. Just to give you also an idea, when it comes to the investigation training, obviously we have investigators, obviously we want to train them. And they do… ENPQ does have a training program. It consists of 285 hours. But, no investigation training has been given to any of our officers because, again, the program is only offered in French. So, we looked at translating the material and it would cost us approximately $56,000, just to translate the material, so we could finally train our officers.[1981]

1978 *Id.*, p. 57–58, lines 23–6.

1979 Brief of Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government and Cree Board of Health and Social Services of James Bay. (November 30, 2018); *Final Brief*, document P-1173 (Commission), brief M-032, p. 57 of 140 (PDF online).

1980 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 54, lines 15–25.

1981 Testimony of Nancy Bobbish, stenographic notes taken September 27, 2018, p. 173–174, lines 21–9.

For David Bergeron, director of the Eeyou Eenou Police Force, the impact of this accessibility issue is felt on the ground. Deprived of specialized training, English-speaking Indigenous police officers are, in his opinion, sometimes unable to intervene in specific situations. The fact that the course on the National Sex Offender Registry is not available in English means, for example, that an SQ liaison officer must be systematically sent out to compensate for lack of knowledge of EEPF officers when dealing with this type of file.[1982]

Asked to comment on the issue at the hearing, Louis Morneau, Assistant Deputy Minister on police matters for the MSP, agreed that there was, in fact, "work to be done".[1983]

It also seems just as clear to me that action is needed in this matter. I therefore recommend that the government:

CALL FOR ACTION No. 30

Inject the funds required to ensure that the offering of regular and continuing education at the École nationale de police du Québec is fully accessible in English and French.

7.4.2 Budgets of Indigenous police forces

Officer training is not the only element affected by budgetary concerns. The underfunding of Indigenous police forces is a major, long-documented problem. In fact, just a few years after the First Nations Policing Policy was adopted in 1991, the Royal Commission on Aboriginal Peoples was already clearly pointing to the difficulties inherent in this issue.[1984] Before this Commission, Indigenous representatives did not hesitate to refer to chronic underfunding[1985], characterizing the situation as a crisis.[1986]

For a number of communities, the underfunding has led to accumulated deficits of up to several million dollars, according to Indigenous representatives heard at the hearings[1987], including Lloyd Alcon, member of the Listuguj Mi'gmaq Band Council:

> We've been paying out of our own pockets for years. I can say just within maybe five years, we accumulated…deficits of over $1.2M. That's coming out of [our] own source revenue. That's coming out of money that we could have put into our communities fort other things, which there are… which we are lacking.[1988]

1982 Testimony of David Bergeron, stenographic notes taken June 11, 2018, p. 39, lines 7–15.

1983 Testimony of Louis Morneau, stenographic notes taken October 15, 2018, p. 81, lines 16–19.

1984 Royal Commission on Aboriginal Peoples (1996). *Bridging the cultural divide: a report on Aboriginal people and criminal justice in Canada.* Ottawa, Ontario: Canada Communication Group.

1985 Testimony of Denis Mesténapéo, stenographic notes taken January 23, 2018, p. 13, lines 15–20; testimony of Lloyd Alcon, stenographic notes taken March 22, 2018, p. 139, lines 13–21; testimony of Simon Vanier, stenographic notes taken November 16, 2017, p. 29, lines 4–10 and p. 53, lines 11–18; document P-1174 (Commission), brief M-033, *op. cit.*, p. 8.

1986 Memorandum of Naskapi Nation of Kawawachikamach. (November 30, 2018); document P-1176 (Commission), brief M-035, p. 6.

1987 Testimony of Simon Vanier, stenographic notes taken November 16, 2017, p. 42–43, lines 18–3.

1988 Testimony of Lloyd Alcon, stenographic notes taken March 22, 2018, p. 46, lines 2–9.

With their backs to the wall, and unable to continue their mandate due to the lack of adequate funding, over the years, seven communities have had to give up their police forces.[1989] This occurred in Ekuanitshit (Mingan), for example: after several calls for help, the community saw its police force dismantled and replaced by the SQ, to the chagrin of the community's chief.[1990]

According to Louis Morneau, Assistant Deputy Minister on police matters for the MSP, some of the communities that had to abandon their police forces did not do so due to financial reasons alone:

> [T]here were all kinds of situations involved, and I won't go into each particular case, naturally, but there were - sometimes - issues in terms of governance. [E]ven with more funding, there are cases in which, I think, there would still have been closures. At a given time, there is also the issue of the will to do it, and the… capacity to do it.[1991]

The MSP representatives heard also clarified that, over the last eight years, there had been no permanent closures of Indigenous police forces[1992] and that only two temporary closures had been recorded.[1993]

However, the situation does not appear reassuring. In a brief produced for the Commission, the Assembly of First Nations Québec-Labrador (AFNQL) did not hesitate to present underfunding as an impediment to improving services, which means First Nations police departments are destined to fail.[1994]

The underfunding is even more problematic because, as explained earlier, officers working in Indigenous communities are dealing with high crime rates and must take on roles that colleagues in other regions do not have, in particular acting as first responders in emergency situations. These functions make their workloads much heavier.[1995]

Staff shortages and working conditions

According to the evidence collected during the Commission's work, because of underfunding, many Indigenous police departments are understaffed. According to the

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1989 These communities were Kanehsatà:ke, Unamen Shipu (La Romaine), Barriere Lake (Lac Rapide), Matimekush-Lac John, Ekuanitshit (Mingan), Nutashkuan and Long Point (Winneway). Presentation by the Sûreté du Québec, document P-045 (Commission), p. 18.

1990 Testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 111–112, lines 19–14.

1991 Testimony of Louis Morneau, stenographic notes taken October 16, 2018, p. 196–197, lines 25–10.

1992 *Id.,* p. 198, lines 7–10.

1993 *Id.,* p. 197, lines 15–17.

1994 Brief of the Assembly of First Nations Québec-Labrador (November 30, 2018). *"Écoute, réconciliation, progrès?"*, document P-1171 (Commission), brief M-030, p. 18 of 56 (PDF online).

1995 Document P-1176 (Commission), brief M-035, *op. cit.*, p. 6; brief from Innu Takuaikan Uashat Mak Mani-Utenam. (May 24, 2018); document P-595 (Commission), brief M-009, p. 10, para. 34.

witnesses heard, this situation affects both the quality of service in the communities involved[1996], and the officers' working conditions.[1997]

Even resources (investigation, prevention) who are specialized in drug addiction or violence, for example, cannot focus solely on the duties for which they trained due to staff shortages.[1998]

Given inadequate budgets, officers in some communities also have to work alone evenings and nights, as Gerry Mapachee, who heads up the Pikogan police department, explained[1999]:

> It's nightmare, it's a nightmare that we have. I used to love being a police officer, but it would make me sick to my stomach, getting ready to go into…to work that job. It's already hard enough to work that job and being a police officer within our communities. But it's even harder to know that you don't have the equipment, or you don't have the safety, or maybe you're isolated or you don't have the back up to come and help you.[2000]

In most Indigenous communities and villages, managing emergency situations is just as complex, given the lack of policing resources and the distances officers have to cover when travelling to back up colleagues. North of the 55th parallel, where additional resources have to be deployed by plane, the weather frequently hampers travel. According to Captain Jean-François Morin of the KRPF's Western Division (Hudson's Bay), in a best case scenario, it takes between one and four hours for help to arrive, "depending on the location and whether a plane is available".[2001]

The situation is no better when the SQ is responsible for intervening. Delays caused by distance – which can be up to 12 hours – mean that the situation on the ground frequently has time to escalate and even lead to death, according to the director of the KRPF and its captain in the Western region.[2002]

The issue is particularly challenging in Nunavik, where police interventions associated with what the locals call "gun calls" are frequent. These are high-risk interventions involving armed people behind barricades, sometimes with hostages, or presumed hostages. The

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1996 Testimony of Shaomik Inukpuk, stenographic notes taken November 15, 2018, p. 133, lines 15–19; testimony of Robert-André Adam, stenographic notes taken December 12, 2018, p. 138, lines 2–5.

1997 Testimony of Robert-André Adam, stenographic notes taken December 12, 2018, p. 137, lines 16–20; testimony of William Mianscum, stenographic notes taken June 13, 2018, p. 95–96, lines 22–5; testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 32–33, lines 15–1.

1998 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 86–87, lines 10–5; testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 16, lines 11–24.

1999 Testimony of Gerry Mapachee, stenographic notes taken March 22, 2018, p. 198–199, lines 10–2.

2000 Testimony of Lloyd Alcon, stenographic notes taken March 22, 2018, p. 53–54, lines 21–4.

2001 Testimony of Jean-François Morin, stenographic notes taken November 22, 2018, p. 154, lines 21–25.

2002 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 116, lines 17–21; testimony of Jean-François Morin, stenographic notes taken November 22, 2018, p. 155, lines 13–16.

evidence has shown that, forced to intervene without backup, officers generally muddle through using the means they have at hand.

> We've had to be creative … in a variety of ways, often. […] You see, the teams are so small that we can't take a chance on missing our opportunity … Otherwise, it gets too out of hand and we lose control of the situation, then that's it. […] Often, it's community members who come to back us up at their own risk, to help us establish a perimeter. […] Then, with other gun calls, it's literally a matter of asking civilians to help us out.[2003]

And as if that's not bad enough, said Jean-François Morin, when additional officers must be deployed to replace exhausted colleagues, it leaves the villages providing the backup unstaffed.[2004]

Moreover, in almost all[2005] of the Indigenous police forces, underfunding creates salary conditions that are significantly below those paid by the province's other police forces. Witnesses at the hearing spoke of a wage gap of up to 40.0% or 50.0%.[2006]

According to the President of the First Nations Chiefs of Police Association, the salaries are lowest in Québec, because colleagues in other provinces are all paid on par with the provincial police forces and RCMP.[2007] A situation that rightfully raises the ire of Québec's Indigenous police authorities.[2008] Many directors of Indigenous police forces confirmed that their staff are underpaid[2009], and that salary conditions hamper both recruitment and retention.[2010]

That being said, according to Nancy Bobbish, beyond salary conditions, police officers also leave Indigenous police organizations because of the limited career advancement offered by the work in the communities[2011]:

> When it comes to retention of non-First Nations officers, that's truly problematic for us. I would say that, they stay with EEPF no more than six months or a year

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2003 Testimony of Jean-Mathieu Lafleur, stenographic notes taken November 21, 2018, p. 196, lines 4–5 and 22–23, p. 199, lines 12–14 and 18–19, p. 200–201, lines 21–1.

2004 Testimony of Jean-François Morin, stenographic notes taken November 22, 2018, p. 157–158, lines 11–9.

2005 At the hearing, the Kativik Regional Police Force confirmed that it was able to offer its officers wages comparable to the SQ's (November 22, 2018, p. 161, lines 15–17).

2006 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 20–21, lines 25–2; testimony of Simon Vanier, stenographic notes taken November 16, 2017, p. 42, lines 14–17.

2007 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 56–57, lines 24–14.

2008 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 79–80, lines 24–12; testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 65–66, lines 13–8; testimony of Ghislain Picard, stenographic notes taken March 22, 2018, p. 28, lines 15–21; testimony of Lloyd Alcon, stenographic notes taken March 22, 2018, p. 39–40, lines 24–5.

2009 Document PD-17 (Commission), *op. cit.*, p. 7.

2010 Testimony of Lance Haymond, stenographic notes taken September 14, 2018, p. 160, lines 6–19, stenographic notes taken September 22, 2017, p. 28, lines 20–25.

2011 *Id.*, p. 161, lines 1–13; testimony of Simon Vanier, stenographic notes taken November 16, 2017, p. 55, lines 2–12 and p. 57, lines 9–25.

> and a half. We understand that every time that… well, we interview someone to come and work for EEPF, we know that they've already applied to go and work with either their municipal police force or the SQ and they're always waiting for a call from them. […] So we understand that EEPF is really a stepping stone from them. So they come and get… gain some work experience, and once they cumulated some work experience, they move on to other opportunities.[2012]

Indigenous police organizations are therefore constantly recruiting and their police departments have an increasing number of non-Indigenous staff who know little about Indigenous realities.

Infrastructure and equipment

Underfunding also affects infrastructure and equipment. In fact, according to witnesses, the vast majority of police departments in Indigenous communities are using equipment – vehicles, bullet-proof vests and technology – that is obsolete or simply inadequate, making their jobs much harder.[2013] The lack of a 911 system for emergency calls and a lack of displays and computers in vehicles is an example. Before the Commission, Indigenous authorities repeatedly emphasized the magnitude of the needs in this area[2014]:

> We're not asking to have ten officers on duty all the time. That wouldn't make sense, since we don't have a million residents. But when my officers go to take someone in crisis to the hospital, that means there are no officers in my territory, no police, our radio doesn't work well, we have no call centre. These are all things that money can fix. These are things that have been shown over the years, that equipment is essential to the safety of my officers, to public safety, and also so we can provide quality service to our population.[2015]

The general condition of the infrastructure (police stations and cells) is also a problem and, in some cases, endangers personal safety[2016], as Lance Haymond, Chief of Kebaowek (Kipawa), stated:

> So last year, the fire marshal comes in, he does an inspection, says, "ew, your windows are no good, your door, it needs to be replaced, there's other health and safety issues", and I have an estimate for $10,000 worth of work. On a building that, if I keep putting $10,000 into it every year, I'm only putting a Band-Aid on a festering sore. What I really need is a new police station.[2017]

2012 Testimony of Nancy Bobbish, stenographic notes taken September 27, 2018, p. 156, lines 4–21.

2013 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 32, lines 3–14.

2014 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 96, lines 10–17; testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 32, lines 4–13; testimony of Ghislain Picard, stenographic notes taken September 14, 2018, p. 141–142, lines 22–12; testimony of Robert-André Adam, stenographic notes taken December 12, 2018, p. 168, lines 14–22.

2015 Testimony of Simon Vanier, stenographic notes taken November 16, 2017, p. 48–49, lines 24–12.

2016 Testimony of Steeve Mathias, stenographic notes taken March 22, 2018, p. 115, lines 12–21; testimony of Gerry Mapachee, stenographic notes taken March 22, 2018, p. 157–158, lines 22–5.

2017 Testimony of Lance Haymond, stenographic notes taken March 22, 2018, p. 180, lines 6–15.

However, building a new police station is not within the department's annual budget. Called on for help, most communities can't pay the high costs of building or redeveloping an obsolete police station. Some band councils may try, but the story rarely ends well, as Régis Flammand, director of the Manawan police department, related when he appeared before the Commission:

> In 2010, we had the opportunity to build a new police station. However, my own Band Council had to extend a loan in order to meet this need. Just as the project was getting off the ground, the federal government indicated they would participate, but later backed out. This means that I have to find money in my annual operating budget to pay the loan back, which puts us in an even bigger deficit. Then, each … At one point, when we were renewing the agreement, [in] 2014-2018, we tried to incorporate these additional amounts into the agreement, and we were turned down.[2018]

Asked to address the issue of funding for police infrastructures at the hearing, the director of the Bureau des relations avec les Autochtones at the MSP, Richard Coleman, said he was waiting for funds promised by the federal government to remedy the situation.

> [W]e're hearing about four billion which would be potentially available for community infrastructures "at large." So we're waiting for the federal government's budget breakdown or orientations, but we have a lot of hope that there will be money available from Ottawa for infrastructure and then, we'll see … how we can be part of the solution.[2019]

From my point of view, the situation requires urgent action. I therefore recommend that the government:

CALL FOR ACTION No. 31

In collaboration with Indigenous authorities, establish a complete status report on the state of the infrastructure and equipment available to Indigenous police forces, the wages and the geographic (distance, road access, etc.) and social (criminality, poverty, etc.) realities of the communities they serve.

On the basis of this status report, I also recommend that the government:

CALL FOR ACTION No. 32

Initiate negotiations with the federal government and Indigenous authorities to agree on a budgetary envelope for upgrading Indigenous police force wages, infrastructure and equipment.

2018 Testimony of Régis Flamand, stenographic notes taken March 22, 2018, p. 158–159, lines 20–10.

2019 Testimony of Richard Coleman, stenographic notes taken March 21, 2018, p. 105–106, lines 14–1.

Furthermore, regardless of future funding, pooling forces seems desirable, in my opinion. As the organization Innu Takuaikan Uashat mak Mani-Utenam outlined in its brief, due to the size of the force and limited budget, Indigenous police services are at a disadvantage when it comes to purchasing equipment. Because they do not purchase a volume comparable to that of the SQ, they cannot benefit from flat-rate pricing and end up having to pay much more for their equipment.[2020]

To mitigate the negative effects of this situation, while exploring the possibility of establishing regional Indigenous police forces, I recommend that Indigenous authorities:

CALL FOR ACTION No. 33

Assess the possibility of implementing joint purchasing policies for all Indigenous police forces in Québec.

7.4.3 Tripartite agreements and negotiation method

However, issues relating to funding for human resources, infrastructure and equipment are only the tip of the iceberg. The dissatisfaction with the First Nations Policing Policy and the resulting tripartite agreements far exceed all the negative factors identified by Indigenous representatives.

The lack of sustainable agreements, renewed every three years or sometimes even annually, has particularly been deplored.[2021] However, it is the sense of dependence and lack of genuine negotiations that top the list of recriminations. Considered "adhesion contracts rather than meaningful contracts"[2022], according to the Indigenous leaders, these agreements "are not negotiated by mutual agreement"[2023]:

> The thing about the agreement is, if you come from a community that has resources, you know, has some funding, is not cash strapped, you have to ability to hold out a little bit longer, it's the truth. Some communities, at the end of the agreement, they have no money, they have nothing. Their employees are not going to get paid, you know? They're forced to sign. If they want to continue to having services in their community, they have to sign the agreement.[2024]

In the opinion of the Indigenous representatives, the paternalism in the process also makes the chiefs feel "bound".[2025] According to them, these agreements perpetuate "a cycle of suffering and dependence that prevents First Nations from aspiring to self-determination".[2026]

2020 Document P-1174 (Commission), brief M-033, *op. cit.*, p. 10 of 275 (online PDF).

2021 Brief of Pekuakamiulnuatsh Takuhikan. (November 1, 2017); document P-222 (Commission), brief M-005, p. 13; testimony of Robert-André Adam, stenographic notes taken December 12, 2018, p. 167–168, lines 17–4.

2022 Brief of Lucien Wabanonik and Alex Cheezo, Conseil de la Nation Anishinabe de Lac-Simon. (October 24, 2017). , document P-179 (Commission), brief M-004, p. 4.

2023 Document P-595 (Commission), brief M-009, *op. cit.*, p. 10.

2024 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 39–40, lines 18–2.

2025 Document P-1171 (Commission), brief M-030, *op. cit.*, p. 15.

2026 *Ibid.*

"It feels too much like your parent is telling you: here's your allowance, take it or leave it," to summarize the situation, said Dwayne Zacharie, President of the First Nations Chiefs of Police Association.[2027]

On the government side, at her hearing, Marie-José Thomas, the Associate General Secretary of the Secrétariat aux affaires autochtones, pleaded good faith, while citing budgetary constraints and the Government's administrative burden as obstacles to the ideal progress of negotiations on police agreements:

> I am aware that the perception of Indigenous peoples can contribute to [...] that we are forcing them to sign these agreements, otherwise, they [w]ould not have any service. Generally speaking, in the Québec government, negotiations are not conducted in that tone and I do not believe that they are conducted in that tone out of malice or bad faith on the part of the Ministère. They are conducted in an economic context that imposes a certain "standard" on us, so to speak, even if that is not pleasant to hear. [...] there may be clumsy persons. But there are no mean intentions. Indigenous peoples are going to tell me, "they really [d]on't have a choice, if they [don't] sign, they [d]on't have a police force." I have to concede to them. But these are not adhesion contracts across the board. There is room for improvement. Ongoing work is possible. We are aware of the needs. We have to get there, but it's going to take time to try to engage people, train them, secure more funding. It's a job that [cannot] be done overnight, unfortunately, but [...] personally, I don't think there's [a]nybody in the Québec government that is working to put ... I don't like the expression, put a gun to Indigenous peoples heads telling them to "take it or leave it".[2028]

On March 23, 2018, in the wake of a request by Indigenous representatives to postpone the negotiations of these agreements[2029] and testimony heard on this matter, I called on government authorities to maintain or even improve existing funding over the course of the negotiations.[2030] I wanted to allow the Indigenous police forces involved to conduct genuine negotiations with the provincial and federal authorities, based on the needs of their respective communities.

This appeal was heard by the Québec government[2031], as confirmed at the hearing by the Assistant Deputy Minister, Police Affairs, for the MSP, Louis Morneau:

> [T]he quickest way to successfully continue payment was to seek blanket authorization for the 22 agreements at the Conseil des ministres [...] to extend funding equivalent to what they had, plus 2.75 percent. And what we also did to help as much as possible was, instead of making payments four times a year,

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2027 Testimony of Dwayne Zacharie, stenographic notes taken June 19, 2018, p. 42, lines 14–16.

2028 Testimony of Marie-José Thomas, stenographic notes taken September 13, 2018, p. 46–47, lines 14–1 and p. 47–48, lines 22–15.

2029 These negotiations were originally set for March 31, 2018.

2030 Commission d'enquête sur les relations entre les Autochtones et certains services publics. (March 23, 2018). [Press release] Retrieved from https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Communiques/Communique_appel_a_l_action_23_mars.pdf

2031 *Lettre du ministère de la Sécurité publique*, document P-921 (Commission).

> we said: "Let's make out one-time payments to us, from Québec, the 48.0%, directly." So, that was done around June, I believe. And here we have, I think, relieved a little bit more of the pressure.[2032]

In the opinion of the main parties concerned, the provisions made have, in fact, breathed life into the process and allowed some to obtain a satisfactory agreement with respect to improving their services.[2033] When they last appeared before the Commission on October 2018, MSP representatives reported that they had signed 18 of 22 agreements, ten of which were for a ten-year period and five for a five-year period.[2034]

Despite the progress made, the Chief of the AFNQL said at the hearing that he is convinced that much of the work remains to be done. "Upgrading is far from being completed and several inequalities persist," he said.[2035] In his opinion, clarifying the criteria for determining the amounts allocated to Indigenous police forces remains an issue, as well as the sustainability of funding for First Nations police forces and the need for a policy forum to discuss these issues with both levels of government. The remarks made by the Innu Chief of Uashat mak Mani-Utenam, Mike McKenzie, when he appeared before the Commission seemed to quite clearly sum up the state of mind of the Indigenous representatives:

> Renewing a program without addressing its inherent flaws and making it permanent is far from being … is far from reflecting the honour of the Crown. Québec is complicit by association by only saying yes to its financial commitment. The chronic underfunding experienced by communities not covered by an agreement will lead to the short to medium-term demise of Indigenous police forces. In doing so, it is notoriously jeopardizing an essential service adapted to the individual environment of each community. Chronic underfunding means that we have to redirect resources that are needed elsewhere to support our police force. (…) Several options for governance, police organizations and delivery services are available. However, there still has to be a real discussion.[2036]

According to the AFNQL, the main issue is the fact that Indigenous policing should be considered as essential services and not just as renewable programs.[2037] This opinion has been expressed numerous times in the course of the Commission's work. Community representatives believe that Indigenous peoples "should be involved in the choice of model that is suited to their community," "should have their say in the level and quality of policing provided to them" and that the actual involvement of First Nations communities in

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2032 Testimony of Louis Morneau, stenographic notes taken October 16, 2018, p. 176–177, lines 22–15.

2033 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 28–29, lines 22–2; testimony of Abel Bosum, stenographic notes taken June 20, 2018, p. 62, lines 7–17; testimony of Ghislain Picard, stenographic notes taken September 14, 2018, p. 134–35, lines 18–21.

2034 Testimony of Louis Morneau, stenographic notes taken October 16, 2018, p. 179, lines 18–20.

2035 Testimony of Ghislain Picard, stenographic notes taken September 14, 2018, p. 139, lines 21–22.

2036 Testimony of Mike McKenzie, stenographic notes taken May 23, 2018, p. 145–146, lines 23–25.

2037 Document P-1171 (Commission), brief M-030, *op. cit.*, p. 5 of 56 (online PDF); testimony of Ghislain Picard, stenographic notes taken March 22, 2018, p. 232, lines 3–8.

negotiating agreements should mean that "all parties share their opinions in a meaningful way at the design stage and can determine the needs and priorities for community policing".[2038]

To do so, the various Indigenous stakeholders reiterated the problem posed by Section 90 of the *Police Act*, which stipulates that the government "may" enter into an agreement with one or more Native communities, rather than making it an obligation, as is the case with other police forces in the province. When asked to comment on this principle at the hearing, the Assistant Deputy Minister, Police Affairs, made the flexibility argument for communities that do not want to have their own police force:

> When the *Police Act* was amended in 2000, we came up with the levels of service that the municipal police forces and Sûreté du Québec had to offer. We came up with a framework, which I would say is quite rigid. Very specific, with a regulation that also addresses the level of service, including the activities that must be provided. [...] I think that the idea behind the Act, at that time, was to retain some flexibility for Indigenous communities, not to restrict them with a level of service. [...] Because it becomes mandatory for Indigenous police forces.[2039]

The truth is that Indigenous police forces already have major obligations, the first of which is to ensure the safety of the people they serve, in addition to taking responsibility for emergency measures, which no other police organization does. The problem lies more in the fact that the majority of them do not have the necessary resources to do so. If it is the case that some communities do not want to assume this responsibility alone, I am personally convinced of their ability to forge the necessary alliances to ensure the protection of their populations, whether through establishing a regional police force or any other model deemed appropriate. However, they still have to be able to decide.

For this reason, in order to end the eternal rounds of negotiations and ensure the essential nature of the services provided by Indigenous police forces, I recommend that the government:

CALL FOR ACTION No. 34

Amend Section 90 of the *Police Act* to readily acknowledge the existence and status of Indigenous police forces as being similar to those of other police organizations in Québec.

CALL FOR ACTION No. 35

Undertake negotiations with the federal government and Indigenous authorities to ensure recurring and sustainable funding for all Indigenous policing.

2038 Document P-222 (Commission), brief M-005, *op. cit.*, p. 12.

2039 Testimony of Louis Morneau, stenographic notes taken October 16, 2018, p. 193, lines 8–22 and p. 195, lines 8–16.

CALL FOR ACTION No. 36

Modify the process for allocating budget resources to police forces to reflect the needs identified by Indigenous authorities in terms of infrastructure, human, financial and logistical resources and the individual realities of the communities or territories.

7.5. Unadapted police practices

Regardless of the challenges faced by police organizations, the evidence gathered over the course of the Commission's work has highlighted a number of unacceptable behaviours and practices by on-duty agents and officers.

Some of the allegations reported were entirely new and had never been the subject of a formal complaint. Others had resulted in an investigation and were decided by the Directeur des poursuites criminelles et pénales (DPCP). Within the limits of my mandate, under no circumstances can I substitute the work of the police and Crown prosecutors (DPCP). Neither have I sought to do so. Instead, the legal team and I made it possible for the complainants or alleged victims who wanted to do so, to be able to recount the events as they had experienced them. The Commission has shown the same openness to public service staff. However, few of them came forward to testify.

The stories we heard tell of experiences that took place in both urban and First Nations communities. Many cases have also been reported in Nunavik. It is also important to emphasize that the incidents that led to the creation of the Commission (Val-d'Or events) were not systematically the subject of the testimonies. The choice of whether or not to revisit the events and come to testify at a hearing was left to the sole discretion of the complainants. In this context, I think it would have been completely inappropriate to compel them to testify. However, with their agreement, in some cases, the facts were reported by the Service de police de la Ville de Montréal (SPVM) investigators assigned to the case in 2016.

In the end, of the 93 cases that the SPVM has been investigating throughout Québec, 15 were presented in detail at the hearing. In my opinion, they are a representative sample of the reality and respectful of the complainants' will to testify. The objective here is not to highlight alleged individual or collective misconduct, but rather to identify the systemic issues at hand by illustrating them using examples.

7.5.1 Disproportionate arrest

Disproportionate arrest was among the problems discussed at length during the work of the Commission with respect to police services. The case of Ville de Val-d'Or proved emblematic of this. After having filed a request to the municipal courts of ten cities in Québec known to have large Indigenous populations[2040], the Commission's team was able to establish that between January 1, 2012, and August 31, 2017, 4,270 statements of

2040 Chibougamau, Joliette, La Tuque, Maniwaki, Québec City, Senneterre, Sept-Îles, Shawinigan, Trois-Rivières and Val-d'Or.

offence were given out in Val-d'Or, mainly to homeless people.[2041] That is the equivalent of 23.1 statements served annually per 1,000 inhabitants.[2042] The study by the Commission's team also revealed that 75.1% of these persons were of Indigenous origin.[2043]

However, the phenomenon is not limited to Val-d'Or. The figures obtained indeed allow one to conclude that the town of Chibougamou and Québec City also delivered a high number of statements of offence during this period. From 2006 to 2017, 31.5 statements per 1,000 inhabitants were served in Chibougamau and 18.5 statements per 1,000 inhabitants in Québec City from 2012 to 2017.[2044] By comparison, 6 statements per 1,000 inhabitants were served in Trois-Rivières from 2014 to 2017.[2045]

During the hearings, several witnesses also deplored the high number of arrests in First Nations communities and Inuit villages, especially involving people released on the condition that they abstain from drinking alcohol. Some witnesses deplored the systematic arrest by the police for violating these conditions, whether they were intoxicated and disrupting public order or simply drinking.[2046] Regardless of the reasons cited for the arrest, some view this as harassment.[2047] On the other hand, others have argued that it was a too rigid application of the law and are calling for greater tolerance[2048]:

> [T]the police, sometimes, if at least they could [sic] say that… let's for instance, "Oh, you have conditions and your curfew is at such a time, so you need to go back home" instead of always arresting them because they are… because they [are] not respecting the curfew. I'd like it if the police helped clients this way, so that they [d]on't always have to go back to court and ultimately to prison. If it isn't a major crime and they don't respect conditions, they could at least just tell them to go home, return to their home.[2049]

Clara Lafrance-Egervari, an attorney who regularly represents an Indigenous clientele, attributed the situation to a lack of experience among most of the officers:

> Those with several years of experience will tell me: "we've seen your client misusing alcohol three times and we took him home. Just warn him that it [must] not happen a fourth time"… this would be alright. But the new police officer who just arrived, he will immediately take him to the station and… open a file. We've

2041 *Étude statistique, descriptive et exploratoire de l'emprisonnement pour non-paiement de constats d'infraction à la réglementation municipale dans 10 villes québécoises*, document PD-2 (Commission), p. 23 of 122 (online PDF).

2042 *Id.*, p. 34 of 122 (online PDF).

2043 *Id.*, p. 45 of 122 (online PDF).

2044 *Id.*, p. 34 of 122 (online PDF).

2045 *Ibid.*

2046 Testimonies of Phoebe Atagotaaluk and Marie-Hannah Angatookalook, stenographic notes taken November 16, 2018, p. 75, lines 9–22.

2047 Testimony of Lise Dominique, stenographic notes taken May 9, 2018, p. 133–134, lines 16–9; statement reported by Jacques Turcot, case No 4/Phase 1 Val-d'Or, stenographic notes taken June 8, 2018, p. 25–26, lines 23–3.

2048 Testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 37, lines 1–24.

2049 Testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 74, lines 2–15.

> seen that happen. But it can also result in tricky situations, things can rapidly deteriorate. […] What I see is an attitude that criminalizes problems, whether the issues involve mental health or health itself. Not being able to stop drinking, I think is what the witness said, is like asking to… it's like asking someone with cancer… to stop having cancer.[2050]

Manifest dissatisfaction was also expressed with regard to police interventions involving suicidal persons. In Nunavik, where the problem has reached an alarming level, police actions in this matter are very frequent. In such situations, the procedure designates social services as first respondents, and when the suicidal person refuses to speak to them, police officers are called to serve as backup. However, they are not trained to effectively respond to people in crisis. At a hearing, a witness who wished to remain anonymous, came to speak about how a family member in suicidal crisis found himself surrounded by three police officers, pointing a firearm at him, which only exacerbated his state of crisis:

> And I had never seen policemen dealing with suicidal person. I don't think it's their job. I think it's social workers' job to deal with suicidal people. […] But the three policemen pointing guns at him, thank goodness, never shot him. […] I was so pleased to have these people behind me, two non-Inuits who would witness three policemen pointing a gun at my nephew. And… because that's what happens a lot. We find quite a few policemen shooting the people who have asked for help.[2051]

From my perspective, beyond the human drama that these represent, these stories highlight the impacts of a lack of community-based psychosocial services.

As SQ officer Jean-Raphaël Drolet suggested when he testified before the Commission, it must be recognized that a lack of crisis or sobering centres geared toward traditional care, where persons arrested could be taken, further narrows the intervention options of police officers.

Because it falls within the scope, first and foremost, of the health and social services network, more will be said about this later in the chapter devoted to these services. That said, with respect to the processing of complaints for sexual or conjugal violence, I believe certain steps can be taken by the police forces themselves to improve the situation.

Some have already begun this process. Indeed, in 2018 the KRPF announced a five-year pilot project aimed at setting up a mixed patrol made up of a social worker and a police officer to respond to calls involving vulnerable persons, particularly with regard to mental health.[2052] The idea is inspired by the Équipe mobile de référence et d'intervention en itinérance [EMRII mobile referral and intervention team for the homeless], which has been operational for a number of years in Montréal.[2053]

2050 Testimony of Clara Lafrance-Egervari, stenographic notes taken September 6, 2018, p. 176–177, lines 4–11.

2051 Testimony from PI-63, stenographic notes taken November 14, 2018, p. 10, lines 18–21 and p. 13, lines 9–21.

2052 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 104–105, lines 23–22.

2053 *Itinérance, judiciarisation et alternatives à l'emprisonnement,* document PD-3 (Commission), p. 23.

A similar project was also set up in Val-d'Or. In October 2015, in the wake of a report broadcast during Radio Canada's *Enquête*, the SQ did indeed set up an Équipe mixte d'intervention (EMIPC), an intervention team made up of a police officer and a community worker.[2054] Designed to reduce judicial processes, according to SQ Chief Inspector Ginette Séguin, this team's objective was to "support the work of patrollers in the field, defuse crisis situations and limit the harm caused by disruptive behaviours".[2055] One year later, the team was merged into the newly established poste de police communautaire mixte autochtone (PPCMA) [First Nations Community Mixed Police Station].[2056] Made up of both social workers and police officers, the task of this station's team is to provide second-line intervention to La Vallée-de-l'Or RCM police officers when a situation involves someone who is vulnerable, intoxicated or homeless. The PPCMA came under attack when it was set up, namely due to a fear of seeing Indigenous police forces deprived of their human resources to the benefit of this new entity. However, one year later, it had produced impressive results. Before the Commission in October 2018, Chief Inspector Séguin indeed spoke of an 81.0% drop in the number of statements of offence issued in connection with nuisance-related regulations and a 43.0% reduction in the number of imprisonments.[2057] In addition, she insists on the shift toward greater trust on the part of vulnerable clienteles toward police officers and a newfound sense of security in the downtown area.[2058] Therefore, the mixed Indigenous community police project appears to have succeeded where the Escouade centre-ville had previously failed.

Given the success, I recommend that authorities, both non-Indigenous and Indigenous and police forces, jointly:

CALL FOR ACTION No. 37

Assess the possibility of setting up mixed intervention patrols (police officers and community workers) for vulnerable persons, both in urban environments and in First Nations communities and Inuit villages.

7.5.2 Excessive force, brutality and abuse

Even though recent events seem to have led to adjusting interventions involving vulnerable persons in La Vallée-de-l'Or RCM, certain disquieting stories involving police officers were nonetheless reported to me during our work. Indeed, several Indigenous witnesses told of situations in which they themselves or one of their loved ones had been brutalized by

2054 Document PD-3 (Commission), p. 26.

2055 Testimony of Ginette Séguin, stenographic notes taken October 2, 2018, p. 210–211, lines 23–3.

2056 *Id.*, p. 230, lines 20–25.

2057 *Id.*, p. 239–240, lines 23–1.

2058 *Id.*, p. 238, lines 15–24.

police officers during the period covered by my term, in different regions of Québec.[2059] This is particularly true in the case of Johnny Anautak, a resident of Nunavik, who testified before the Commission:

> The policeman saw me, just 'cause I had conditions and he… right away, he… he got up to me and started to fight me, for almost an hour, and saying that I should not be there. […] He wanted to charge me 'cause he said I was fighting him. I did not fight him. And while he was fighting me, well he had another partner when he reached, they put… dragged me down… set my face down to the ground, to the sand. […] There was sand through my nostrils, through my mouth. I had almost a mouthful of sand, because they were forcing me too much.[2060]

And what can be said of the no less disturbing story of Conrad André, an Innu, who came to share the story of his arrest and imprisonment at the local police station? After being beaten by three police officers, he was chained to the bed in his cell for almost eight hours before finally being taken to the hospital to receive care.[2061] What can be said about this incident in Val-d'Or involving an Indigenous woman forcibly removed from the vehicle in which she was a passenger, thrown onto the ground and handcuffed by three officers on duty after swearing at them? Her face was in the snow, a boot pressed on her head so forcefully that her earring ended up embedded under her skin.[2062]

In addition to the brutality denounced by many witnesses, there are many other stories where police officers in the line of duty have reportedly displayed excessive force[2063], threats[2064] or non-assistance. Let us take, for example, the story of this woman arrested while drunk and driven to the police station, her hands handcuffed behind her back. Unassisted as she entered the station, she fell face forward onto the ground, which triggered sniggers

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2059 Testimony of Paul-Émile Fontaine, stenographic notes taken May 7, 2018, p. 81–82, lines 12–2; *in camera* testimony HC-45, stenographic notes taken May 22, 2018, p. 235–236, lines 3–17; testimony of Lise Dominique, stenographic notes taken May 9, 2018, p. 128–129, lines 19–13; testimony of Conrad André, stenographic notes taken May 9, 2018, p. 80–98, line 2; testimony of Lucy Sandy, stenographic notes taken May 11, 2018, p. 144–145, lines 14–15; *statement by PI-14*, document P-650 (Commission), p. 4; *in camera* statement, HC-65, PI-24, document P-652 (Commission); *statement by PI-15*, document P-654 (Commission); *statement by PI-16*, document P-656 (v); *statement by PI-17*, document P-660 (Commission); *statement by Jimmy Etapp*, document P-661 (Commission); *statement by Nellie Wapachee*, document P-662 (Commission); testimony of Qalingu Angutuggiq, stenographic notes taken November 15, 2018, p. 12–13, lines 11–3; testimony of Ida Naluiyuk, stenographic notes taken November 13, 2018, p. 295–296, lines 6–20; testimony of Johnny Akpahatak, stenographic notes taken November 20, 2018, p. 252, lines 11–24; testimony of Willie Angutinguak, stenographic notes taken November 21, 2018, p. 260, lines 6–18; testimony of PI-9, stenographic notes taken May 5, 2018, p. 243–247, lines 19–16; testimony of David Pachano by reporter witness, stenographic notes taken August 14, 2018, p. 219–220, lines 10–5; testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 196, lines 13–22.

2060 Testimony of Johnny Anautak, stenographic notes taken November 14, 2018, p. 40–41, lines 14–7.

2061 Testimony of Conrad André, stenographic notes taken May 9, 2018, p. 80–98, lines 2–24.

2062 Statement reported by Jacques Turcot, case No. 4/Phase 1 Val-d'Or, stenographic notes taken June 8, 2018, p. 24–25, lines 10–1.

2063 *In camera* testimony HC-24, stenographic notes taken April 13, 2018, p. 233–234, lines 24–12.

2064 Statement reported by Jacques Turcot, case No. 4/Phase 1 Val-d'Or, stenographic notes taken June 8, 2018, p. 26, lines 4–16; testimony of Lise Dominique, stenographic notes taken May 9, 2018, p. 168–169, lines 2–3.

among the police officers. She was then led to a cell and left without care until her release at noon the following day.[2065]

There were also reports by other witnesses of sexual favours obtained in exchange for money[2066] and even, in the case of Alma Mameanskum-Dominique, of sexual assault[2067]:

> We [were] walking and walking to the reserve, and it was past the -- it's a center, a rec center. And we saw the cars come in our back, and I was looking, and there was a policeman car stopped, and it was the same cop. And he told us, "Get in." I said: "No. We didn't do anything. How come you want to get in the police car?" [...] He was talking us: "You stole something". And we told him that: "If we have stolen something, where is it? We never touched anything."[...] And he took my arms in the back, there, and pushed me in like the door, a door, and I had a scar here. I still have it. And after that, he said: "Get in. We're going to take you home." And he didn't take us home. He went direct to a police station, and he put us inside. [..] He locked us in the garage. It's like a police cage there. [...] And he told me that, "You've got nice hair and you have a nice body." I said: "Don't touch me." And he told me that, "Don't look at me." [...] And he told me the bad things (inaudible). "Don't look my penis," he told me: "Don't look at me." I said: "I'm not looking at you." [...] I was afraid like to rape me. I was afraid of them. [...] After injury from the cops, I went back to school. I couldn't go back, because I had a really hard time on writing, and reading, and concentrating. [...] I was told that probably I had a small injury in front of my lobe -- crane, and probably, the doctor said, that's why my memory was affected.[2068]

There were also accounts of "starlight tour" experiences[2069], such as that of Carolyn Henry and a friend who were driven 25 minutes outside town and left there by two SQ officers upon learning that their spouses were themselves officers[2070], along with a certain number of reports of arrests deemed abusive and discriminatory[2071], including the arrest of this woman who was stopped in Val-d'Or while walking with friends:

> I was crossing the street with two friends when I heard yelling: "Walk straight." I didn't turn my head and once again someone yelled: "What did I just say?

2065 Statement reported by Patrick Parent, case No. 65/Phase 1 Val-d'Or, stenographic notes taken August 15, 2018, p. 22–121, lines 22–25.

2066 Statement reported by Robert Lebrun, case No. 17/Phase 1 Val-d'Or, stenographic notes taken August 16, 2018, p. 40, lines 4–24, p. 46, lines 17–25 and p. 61–62, lines 21–15.

2067 *In camera* testimony HC-68, stenographic notes taken September 5, 2018, p. 88, lines 15–20; testimony of Deborah Einish, stenographic notes taken October 23, 2018, p. 41, lines 1–8 and p. 44, lines 4–22; testimonies of Angèle Petiquay and Lise Dubé, stenographic notes taken January 19, 2018, p. 178–179, lines 14–11.

2068 Testimony of Alma Mameanskum-Dominique, stenographic notes taken May 14, 2018, p. 17–18, lines 7–16, p. 19, lines 5–6 and p. 25, lines 6–25.

2069 This practice consists of driving vulnerable persons outside of town to isolated locations and leaving them there. Testimony of PI-49, reported by Annie Duciaume, stenographic notes taken September 25, 2018, p. 15–18, lines 13–24; testimony of Jerry Anichinapéo, stenographic notes taken August 24, 2018, p. 249–250, lines 13–12.

2070 Testimony of Carolyn Henry, stenographic notes taken August 13, 2018, p. 152–253, lines 1–6.

2071 Testimonies of Daniel Robert and Pauline Diamond, stenographic notes taken June 8, 2018, p. 143, lines 8–10 and p. 145–146, lines 15–3.

> Walk in a straight line." I told them I was walking in a straight line. I turned my head and this is when I saw that police officers were yelling at me. Then the driver [...] got out of his car and ran toward me. I said to him: "Wow, what's going on?" He said that he'd asked me to walk in a straight line and [I] answered that I was walking in a straight line and that I've never drank in my life and that I could give a breath sample. Then he said to me: "You trying to be cocky?" I said: "No." He told me: "Say, yes Sir." I said: "Yeah." He told me it was the third time I'd been cocky and that I was going to get a ticket and he asked for ID. I hand him my health insurance card. Then [...] his partner [...] came next to me. I told him: "You say I'm the one who is being cocky" (because he was very close to me). "Yeah, *fucking* cocky." I turned my back to him while waiting for the ticket. The driver, [...] brought over the ticket to me saying: "Here's your ticket for jay walking. Here's your licence." (It wasn't my licence but that's what he said). Then he said to me: "I'm not doing this for me, I'm doing this for you because there are some drunk drivers behind the wheel at this hour." Then he went off in the police car.[2072]

Apart from one case that occurred in Schefferville, no charges were laid by the DCPP regarding the events investigated by the SPVM. In the report published in November 2016, independent observer Me Fannie Lafontaine concluded that the SPVM's inquiry was conducted with integrity and impartiality.[2073] In response to the disappointment expressed by victims and their families, she also stated that the "decision not to prosecute does not necessarily mean the alleged events did not occur".[2074] In her view, this decision also does not allow us, "to cast doubt on the sincerity and credibility of the victims who met with the SPVM investigators".[2075] Rather, she says it is indicative "of the inherent limitations of the criminal investigation process which pursues goals of its own and does not always meet the expectations of the victims".[2076]

7.5.3 Red bands

Moreover, I cannot report on the relations between police forces and Indigenous peoples without mentioning the wearing of red bands by some 2,500 SQ police officers in support of their colleagues at Val-d'Or Station 44, in the fall of 2016.[2077]

2072 Statement reported by Ann Ménard, case No. 13/Phase 1 Val-d'Or, stenographic notes taken August 21, 2018, p. 14–16, lines 14–12.

2073 *Rapport de l'observatrice civile indépendante. Phase 1. Le 15 novembre 2016*, document P-616 (Commission), p. 65.

2074 *Rapport de l'observatrice civile indépendante. Phase 1. Le 15 novembre 2016*, document P-616 (Commission), p. 33.

2075 *Ibid.*

2076 *Ibid.*

2077 Prince, D. (October 19, 2016). Un bracelet en soutien aux policiers de Val-d'Or. *Le Journal de Montréal.* Retrieved from http://www.journaldemontreal.com/2016/10/19/allegations-de-femmes-autochtones-les-policiers-de-val-dor-denoncent-la-suspension-de-huit-collegues.

From the onset, in a news release picked up by the *Journal de Montréal*, police officers from the Val-d'Or station presented this measure as a union pressure tactic and claimed "that at no time do Val-d'Or police officers want to target the persons who filed complaints at the Service de police de Montréal, nor support or defend any sexual offenders".[2078]

Despite this information, for the vast majority of First Nations members who testified during the hearings, including Jimmy Papatie, this gesture was an affront to the Indigenous peoples and symbolic of the police repression they face:

> It's a symbol reminding us that the police officers were never charged. Not because they didn't do it, because the director of prosecutions was saying there wasn't enough proof to indict them. In Lac Dozois, or anywhere else, each time we see a police officer coming, each time we come across one and we can see their little symbol right here–the 144, the little red ribbon– it only reminds us that this repression continues. It is intimidation, pure and simple.[2079]

Many also view it as an obstacle to reconciliation[2080], especially when it is worn during public Indigenous events.[2081] The media reported on this state of unease the day after National Indigenous Peoples Day in June 2017.[2082]

Asked to clarify her views on the wearing of red bands, QNW President, Viviane Michel, will say when appearing before the Commission in September 2018, that it is associated with intimidation, because "it first appeared after the women's accusations of police brutality".[2083] Suggesting that she understood that perception, during her testimony in October 2018, Chief Inspector Ginette Séguin admitted to having told her police officers, during individual meetings, that she wished to see them remove these bands.[2084]

Law enforcement official, Jean Vicaire, who is the director of the Lac Simon community police force and a former SQ officer who testified at the Commission, also deplored the wearing of the red bands.

> The red band worn by certain police officers, represents for the First Nations, what I would call an affront. An affront because, firstly, we're supposed to remain neutral. [...] The First Nations don't wear anything to bring attention to what went on in this region. So why should we, as law enforcement officials, wear such an

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2078 *Ibid.*

2079 Testimony of Jimmy Papatie, stenographic notes taken April 16, 2018, p. 66–67, lines 23–9.

2080 Testimony of Roxanne Mianscum-Lizotte by reporter witness, stenographic notes taken October 15, 2018, p. 285, lines 4–10; testimony of Jimmy Papatie, stenographic notes taken April 16, 2018, p. 93, lines 14–25.

2081 Testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 75, lines 1–12.

2082 Rivard-Boudreau, E. (June 22, 2017). Malaise en lien avec le port de bracelet en solidarité aux policiers de Val-d'Or lors de la journée nationale des Autochtones. *Radio-Canada.ca. ICI Abitibi-Témiscamingue*. Retrieved from https://ici.radio-canada.ca/nouvelle/1041223/malaise-bracelet-solidarite-policiers-val-dor-journee-nationale-autochtones.

2083 *Id.,* p. 103, lines 2–5.

2084 Testimony of Ginette Séguin, stenographic notes taken October 26, 2018, p. 361–362, lines 25–5 and p. 434–435, lines 9–13.

> item which could harm relations? [...] It does not promote good relations. Instead, it creates a distance that we really don't need.[2085]

What's more, the Kitcisakik community's dissatisfaction with the SQ was formally noted in the SQ rapport annuel de la liaison autochtone [Indigenous liaison annual report] for the period from April 1, 2016, to March 31, 2017.[2086]

Although unfavourable reactions have intensified and the media echoed this sentiment, the MSP did not intervene in this matter. During the hearing, Katia Petit, head of the Direction générale des affaires ministérielles, claimed this was primarily a matter between the SQ and its police officers and that the Ministère never interferes in these cases.[2087]

During the hearings, Martin Prud'homme, director general of the SQ during these events, claimed that in 2016 and until his departure for the SPVM, he was never informed that the communities were troubled by the wearing of the bands.[2088] He primarily emphasized the legal constraints that were recently imposed on police forces to prevent officers from using uniforms as a pressure tactic.[2089]

Officers ceased wearing the red bands in October 2018, one week prior to Mr. Prud'homme's testimony before the Commission and after the settlement reached regarding grievances with the eight police officers targeted by the allegations.[2090] However, due to the agreement's confidential nature, it is impossible to confirm if it was formally part of the negotiations with the police officers.[2091]

In the two preceding years, no one in a position of authority issued a formal order to police officers to remove the bands. In addition, at the time the report was being completed, no apology had yet been addressed to First Nations members, though the Director General had been invited to do so by the QNW's attorney during Commission hearings.[2092]

During the work of the Commission, I repeatedly expressed my indignation at seeing the police officers wearing red bands and stated that this decision would impede reconciliation. To this day, I view the red band as a fitting symbol of the lack of sensitivity and will on the part of certain providers of public services in their relations with Indigenous peoples.

2085 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 70, lines 4–49 and p. 71–72, lines 9–8.

2086 Testimony of Patrick Marchand, stenographic notes taken October 18, 2018, p. 146, lines 1–9.

2087 Testimony of Katia Petit, stenographic notes taken October 16, 2018, p. 234–235, lines 17–10.

2088 Testimony of Martin Prud'homme, stenographic notes taken October 26, 2018, p. 437, lines 17–20.

2089 *Id.,* p. 437–438, lines 25–8.

2090 The Canadian Press. (October 23, 2018). Retrait de bracelets rouges controversés à la SQ. *La Presse.ca*. Retrieved from https://www.lapresse.ca/actualites/201810/23/01-5201440-retrait-de-bracelets-rouges-controverses-a-la-sq.php.

2091 Testimony of Ginette Séguin, stenographic notes taken October 26, 2018, p. 360–363, lines 5–11.

2092 Testimony of Martin Prud'homme, stenographic notes taken October 26, 2018, p. 438–440, lines 25–8.

7.5.4 Processing complaints filed and communication during investigations

Relations between police officers and Indigenous peoples do not appear to be any less difficult when a complaint is filed or during an investigation. Indeed, several witnesses expressed dissatisfaction with how they were being treated.

Among the main frustrations raised by witnesses were the serious gaps in the process following an arrest or investigation.[2093] During hearings, some witnesses mentioned the passing of several years without receiving any information from their local police authorities regarding an investigation that concerned them. This was the case for Mathieu Papatie who, after having filed a complaint for abuse against his foster family in 2001, found out six years later through the local newspaper, that proceedings had been stayed due to police negligence. At the hearing he claimed that, at no time was he informed of the situation regarding his case:

> I was unaware that the case had been stayed until I came across it in the Citoyen de Val-d'Or or the other one, L'Écho Abitibi. It was written "stay of proceedings due to the fact that police officers had lost or destroyed evidence." [...] No one ever came to notify me, no one whatsoever, not even the lawyers, not even the prosecutors, nothing. You could say that they abandoned me. Meaning "he is unimportant, let's move on to ... something else".[2094]

The lack of an in-depth investigation, even the refusal to investigate, was also brought up by certain witnesses.[2095] In Nunavik, several people have said they were outright denied the assistance they requested.[2096] The reasons given for these refusals vary. Alcohol consumption and social status of those requesting the service were among the reasons mentioned.[2097] Though the effects arising from the refusal of these interventions were of varying degrees depending on the circumstances, all instances, however, further undermined the confidence of Indigenous citizens in police forces.

2093 Testimony of Lucy Sandy, stenographic notes taken May 11, 2018, p. 156–157, lines 24–12; testimony of Paul-Émile Fontaine, stenographic notes taken May 7, 2018, p. 82–83, lines 3–23 and p. 85, lines 3–6.

2094 Testimony of Mathieu Papatie, stenographic notes taken January 16, 2018, p. 21–22, lines 25–12.

2095 Testimony of Sandy Einish, stenographic notes taken May 11, 2018, p. 176, lines 20–22 and p. 179–180, lines 25–3; testimony of Lucy Sandy, stenographic notes taken May 11, 2018, p. 153–154, lines 9–23; testimony of Qalingu Angutuggiq, stenographic notes taken November 15, 2018, p. 16, lines 5–16; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 65–66, lines 24–1; *Première Nation Abitibiwinni*, document P-002 (Commission), p. 51 of 61 (online PDF); *in camera* testimony HC-5, stenographic notes taken March 13, 2018, p. 42–43, lines 23–2 and p. 66, lines 7–13.

2096 Testimony of Perty Tookalook, stenographic notes taken November 12, 2018, p. 36, lines 15–21; testimony of Sarah Tuckatuck Bennett, stenographic notes taken November 13, 2018, p. 277, lines 6–11; testimony of Johnny Anautak, stenographic notes taken November 14, 2018, p. 38–39, lines 21–12.

2097 Testimony of Perty Tookalook, stenographic notes taken November 12, 2018, p. 34, lines 2–18.

Trivialization, an unfriendly approach and inappropriate comments when having to interact with a complainant or announce a tragic event were also brought to my attention.[2098]

When asked to comment on these items, law enforcement officials acknowledged the challenges regarding communication during investigations.

In the view of Jean Vicaire, current director of the Lac Simon police department, it is essential for Indigenous police forces to maintain close ties with members of the communities during investigations and ensure they are informed and updated:

> When we deal with situations involving a death, or when something out-of-the-ordinary, major, or worrisome happens that needs ... we need to maintain a close link with the community. It must be something that is done in a normal, customary manner, like a management policy stating: "We keep in touch with the family." It's the minimum. This is the least we should do to make sure that these people are informed. [...] Us, all of our interventions are based in the communities, at the level of the Indigenous police forces, we draw on the Guides de pratiques policières [manuals of police practices] in our daily interventions, adapting these so as to respect the culture and reality of this First Nations community. We definitely do this. This is at the very heart of our philosophy.[2099]

The SQ management policy on information for complainants does not include specific provisions concerning Indigenous peoples when following up on cases. However, as mentioned by Inspector Patrick Marchand during the Commission's hearings, depending on needs, inspectors sometimes meet with members of a community to explain how an investigation is progressing:

> We did just that recently. [...] And we met everyone from the community with the case investigators, managers, communications people and Indigenous liaison officers so we could explain the case. We wouldn't do that or think of doing that in a non-Indigenous community where we limit information to those involved in the case. Here, the people from the community, the family had given us ... had told us they needed it and the investigators responded to that need.[2100]

2098 Testimony of Mélanie Pinette, stenographic notes taken May 18, 2018, p. 16–17, lines 22–23; testimony of Anne-France Pinette, stenographic notes taken May 18, 2018, p. 47–48, lines 6–4; *in camera* testimony HC-11, stenographic notes taken March 13, 2018, p. 277–278, lines 20–7; *Les relations que les policiers et le centre hospitalier de Havre-Saint-Pierre entretiennent avec la communauté Ekuanitshit-Mingan*, document P-031 (Commission), p. 1 of 2 (online PDF); testimony of Marie-Louise Hervieux, stenographic notes taken October 23, 2018, p. 19, lines 6–10; testimony of Sylvanne Bellefleur by reporter witness, stenographic notes taken October 23, 2018, p. 53–54, lines 19–24; *in camera* testimony HC-8, stenographic notes taken March 13, 2018, p. 119, lines 14–25; testimony of Valérie Gabriel, stenographic notes taken March 23, 2018, p. 197–199, lines 9–15.

2099 Testimony of Jean Vicaire, stenographic notes taken August 23, 2018, p. 58–59, lines 25–8 and p. 61, lines 8–16.

2100 Testimony of Patrick Marchand, stenographic notes taken October 18, 2018, p. 110, lines 5–21.

7.6. Inadequate recourse

Citizens who are not satisfied with a police officer's behaviour towards them have access to certain types of recourse. The various methods for filing complaints about police behaviour were described to the Commission. The details of these methods are consolidated in Chapter 5 of this report.[2101]

However, because there is no information about the complainants' cultural origins, it was not possible to determine how many First Nations members or Inuit turned to the Police Ethics Commissioner to file complaints against a police officer between 2001 and 2016.[2102] Before new investigation responsibilities related to Indigenous peoples were added, it was also not possible to determine how many files handled by the Bureau des enquêtes indépendantes (BEI) involved Indigenous individuals. The BEI Director nevertheless confirmed during the hearings that 10.0% of the investigation cases handled by her team were related to violent interventions that caused serious injuries or resulted in deaths in Nunavik.[2103]

That said, as indicated in all the testimonies, Indigenous people are generally not familiar with the existing complaints processes and therefore do not take advantage of them very often.[2104] Moreover, many people do not have faith in government methods for handling complaints and do not believe that they are independent and impartial.[2105]

It seemed to me that filing complaints against police officers working in Indigenous police forces was just as difficult. The individuals who still managed to initiate a formal complaints process against a police officers said that they were concerned about conflicts of interest because of close ties within the communities.[2106] Others stated that they had been judged negatively by members of their community or other police officers after they filed a complaint against a law enforcement official:

> There was a non-Indigenous police officer working in my community and he never spoke to me. He looked at me with disgust. One time I encountered him in the aisle at Walmart and he changed aisles; my husband saw it. That really made me mad and it still makes me mad today. I wondered why he was working in our community. It was better with the other police officers. There was a little uneasiness but they never made me feel I shouldn't be there. [...] All that has to stop. I don't understand why I have to live with retaliation because I condemned the unacceptable behaviour of a police officer. It's 2018. At some point, the police have to evolve.[2107]

2101 See Chapter 5, pp. 132-135.

2102 Documentary evidence submitted to the Commission, "*La collecte de données ethno-raciales par les services publics*," document PD-1 (CERP), p. 24 of 237 (online PDF).

2103 Testimony of Madeleine Giauque, stenographic notes taken October 19, 2018, p. 127–128, lines 12–6.

2104 Testimony of Alfred Tenegan, stenographic notes taken May 10, 2018, p. 131–132, lines 24–15; testimony of Qalingu Angutuggiq, stenographic notes taken November 15, 2018, p. 13, lines 6–12; testimony of Johnny Peters, stenographic notes taken November 21, 2018, p. 303, lines 11–19.

2105 Testimony of Conrad André, stenographic notes taken May 9, 2018, p. 115, lines 2–18; testimony of Lise Dominique, stenographic notes taken May 9, 2018, p. 211, lines 4–17; testimony of Marie-Louise Hervieux, stenographic notes taken October 23, 2018, p. 21–22, lines 13–5.

2106 Testimony of Constance Vollant, stenographic notes taken September 5, 2018, p. 104, lines 5–7 and p. 112, lines 9–12.

2107 Testimony of Roxanne Mianscum-Lizotte by reporter witness, stenographic notes taken October 15, 2018, p. 281–282, lines 5–5.

During the hearings, representatives from police forces and police oversight organizations said that they were aware of the challenges involved in filing complaints against police officers. In Nunavik, the KRPF took various measures to inform citizens about complaints procedures and to facilitate access to them. For example, the forms were translated into Inuktitut and made available at city hall.[2108]

Following the "Val-d'Or events" and the recommendations from previous inquiry reports[2109], the MSP, together with representatives from various Indigenous organizations, also developed a new model for processing complaints against police officers where criminal matters are involved. That model, which has been in effect since September 17, 2018, gives the BEI a greater role in processing criminal allegations made against police officers by Indigenous individuals. That model also includes other measures such as the creation of an Indigenous support and liaison officer position within the BEI and the ongoing role of Native Para-Judicial Services in informing and assisting Indigenous victims during the complaints process.

In terms of ethics, the MSP also indicated during the Commission's hearings that it was looking into the possibility of making legislative changes to extend the time limit for filing complaints.[2110]

In fact, when the allegations of criminal nature are filed against a police officer, the processing time required by the DCPP to analyze each file is sometimes so long that it becomes impossible to take advantage of police ethics mechanisms (which have to be instituted within a year) if the DCPP deems that it cannot proceed with the criminal charges. That constraint leaves many people without any recourse.

I therefore recommend that the government:

CALL FOR ACTION No. 38

Amend the *Police Act* to extend the time limit for filing police ethics complaints to three years.

I think it would also be useful to ensure a better understanding of the existing processes and how they work.

For that reason, I recommend that the government and the Indigenous authorities:

CALL FOR ACTION No. 39

Conduct information campaigns among Indigenous populations concerning the existing complaints processes.

2108 Testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 103, lines 3–13.

2109 Bouchard, M. (2017). *Rapport d'enquête administrative sur la Division des affaires internes du Service de police de la Ville de Montréal, présenté au ministère de la Sécurité publique*. Retrieved from https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/publications/rapport_enquete_administrative_SPVM_1.pdf, p. 94 of 99 (online PDF).

2110 Testimony of Katia Petit, stenographic notes taken October 16, 2018, p. 120, lines 11–24.

8

CHAPTER 8

FINDINGS ON JUSTICE SERVICES

This is not the first time that special attention has been paid to the relationship between Indigenous peoples and the justice system. Several commissions and working groups in Québec and Canada have studied the indigenous peoples relationship with justice system over the past 50 years.[2111]

The in-depth analysis of the evidence that was heard by and submitted to this Commission led, for the most part, to the same basic findings as those of previous inquiries. Despite the many resulting recommendations, the attempts to adapt the justice system to Indigenous realities and cultures has not produced the desired results.

For many of the Indigenous and non-Indigenous witnesses, there is no doubt about it : the justice system has failed in its dealings with Indigenous peoples.[2112] Although this conclusion may appear harsh, I agree with it. Despite the best intentions of everyone involved, we must acknowledge that the justice system as described in the hearings discriminates against Indigenous peoples in a systemic way, whether they are victims or accused.

All is not lost, however. Although the accommodation measures introduced over the years to adapt the system have proven insufficient, little has been done to strengthen Indigenous governance from a justice standpoint. That means a wide range of measures can be put forward. In my opinion, incorporating the expression of Indigenous traditions into the justice system can add enormous value. Consequently, the most important calls for action proposed in this chapter are aimed at supporting the necessary self-determination of First Nations and Inuit peoples when it comes to justice.

8.1. Over-representation of Indigenous peoples in the criminal justice system

The high rate of Indigenous people involved in the justice system and the fact that they are over-represented as victims of criminal acts are, in my opinion, the first indicators of how inefficient the justice system is at managing and resolving social issues that affect Indigenous and Inuit communities in Québec.

2111 *Les relations entre les Autochtones et les services de justice au Québec : une recension des écrits*, Report submitted to the Commission, Marie-Ève Sylvestre and Jessica Gaouette, with the collaboration of Mylène Jaccoud and Céline Bellot, document PD-11 (Commission), p. 20–32.

2112 Testimony of Richard Côté, stenographic notes taken December 10, 2018, p. 225, lines 14–16; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 37, lines 4–7, p. 80, lines 1–11 and p. 132, lines 11–13; testimony of Pierre-Mathieu Grondin, stenographic notes taken April 19, 2018, p. 148, lines 2–21; testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 140–141, lines 23–2; testimony of Philippe Larochelle, stenographic notes taken December 13, 2018, p. 87–88, p. 9–14.

Since the late 1960s, the over-representation of Indigenous peoples in the Canadian justice system has been an accepted fact.[2113] Based on many witness reports during the Commission hearings, that is still the case.[2114]

However, the Commission team encountered major difficulties as it tried to document this phenomenon. As with findings in other fields[2115], data on Indigenous peoples in the Québec legal system is practically non-existent.[2116] Although the database of the Ministère de la Justice du Québec (MJQ) lists all the criminal charges filed in Québec since 1970, it is not possible to determine the cultural origins of individuals with criminal records.[2117]

In order to address this shortcoming, at the Commission's request the MJQ identified files opened between 2001 and 2017 relating to Indigenous offenders who are residents of a Nunavik community. Indigenous files were identified by their postal code or, failing that, by searching for the names of Indigenous communities.[2118]

However, even the MJQ admits that there are significant limits to this way of working.[2119] First, since files are identified by the declared residence address and not by Indigenous status, it is impossible to confirm whether an individual residing in the community where the offence was committed is of Indigenous origin or not.[2120] Nor does this methodology allow us to identify Indigenous persons who are living in an urban setting and have declared a civic address outside of a First Nations or Inuit community.[2121] As a result, although the data has been very enlightening, the results we obtained must be seen as only the tip of the iceberg when it comes to the involvement of Indigenous peoples in Québec's justice system.

2113 Canadian Corrections Association (1967). *Indians and the law* (Laing Report). . Ottawa, Ontario: Queen's Printer.

2114 Testimony of Céline Bellot, stenographic notes taken September 19, 2017, p. 153–154, lines 20–4; testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 19, lines 2–122; testimony of Denis Blanchette, stenographic notes taken September 15, 2017, p. 117, lines 9–25; testimony of Armand MacKenzie, stenographic notes taken October 20, 2017, p. 186, lines 16–22; testimony of Tamara Thermitus, stenographic notes taken June 12, 2017, p. 103–104, lines 15–23; testimony of Jacinthe Poisson, stenographic notes taken November 13, 2017, p. 276–278, lines 10–1; testimony of Rachel Deutsch, stenographic notes taken November 20, 2017, p. 110, lines 22–25; testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 15, lines 7–13; testimony of Robin Aubut-Fréchette, stenographic notes taken March 14, 2018, p. 79, lines 16–21; testimony of Paul-Mathieu Grondin, stenographic notes taken April 19, 2018, p. 148–149, lines 12–6; testimony of Patrick Michel, stenographic notes taken October 19, 2018, p. 228–229, lines 4–19; testimony of Lucille Chabot, stenographic notes taken December 10, 2018, p. 191–192, lines 23–3.

2115 On this subject, see the observations on the lack of relevant data on Indigenous peoples in chapter 6 of this report, pp. 223-229.

2116 Documentary evidence submitted to the Commission, "*La collecte de données ethno-raciale par les services publics*" document PD-1 (Commission), p. 11–14; *Portrait de la judiciarisation autochtone au Québec*, document P-839-115 (Commission), p. 5.

2117 *DG-0094-C, DGP-0094-C, DGP2-0094-C and DGP3-0094- C, La judiciarisation des personnes autochtones au Québec*, document P-839-25 (Commission), tab 25.5, p. 43 of 62 (online PDF).

2118 *Ibid.*

2119 *Id.,* p. 44 of 62 (online PDF). *Lettre du ministère de la Justice du Québec en réponse à la demande d'information DGP3-0094-C de la CERP (méthodologie)*, received May 14, 2018, document P-839-25.5 (Commission), p. 3.

2120 *Ibid.*

2121 Testimony of Jacques Prégent, stenographic notes taken October 5, 2018, p. 31–32, lines 13–1.

8.1.1 Accused

Concretely, based on statistics obtained from the MJQ between 2001 and 2017, 4.8% of charges filed in Québec involved people who had declared an address in an Indigenous community.[2122] That is significantly higher than the 1.4% of the provincial population that First Nations and Inuit persons comprise.[2123]

The analysis also established that the involvement of Indigenous people in the criminal justice system doubled between 2001 and 2017, increasing from 31.1 out of 1,000 to 62 out of 1,000 in 2017.[2124] In comparison, the involvement of non-Indigenous peoples in the system remained relatively stable over the same time period, increasing from 55.1 per 1,000 residents in 2001 to 55.3 per 1,000 in 2017.[2125]

This affects Inuit communities in particular.[2126] According to the MJQ figures, 43.2% of all charges against Indigenous people between 2001 and 2017 involved residents of Nunavik communities, although they represent only 12.0% of Québec's Indigenous population.[2127] High rates were also observed among residents of Eeyou (Cree) and Innu communities: 16.0% and 15.0% respectively.[2128]

The MJQ also provided data on charges of conjugal violence.[2129] Based on statistical data between 2001 and 2017, an average of 6.7% of charges filed involved residents of Indigenous communities.[2130] This disproportionately high figure affects the Nunavimmiut and Eeyou (Cree) communities in particular: 3.2% and 1.3% respectively.[2131]

The same applies to sexual assault. According to the data provided by the MJQ, 8.2% of all charges were filed against people domiciled in Indigenous communities.[2132] Almost 5.0% of those charges involved people domiciled in Nunavik.[2133]

2122 Document P-839-115 (Commission), *op. cit.*, p. 9. The raw data provided by the MJQ is available: Appendix 1 *Tableau excel en réponse du Ministère de la Justice du Québec en réponse à la demande d'information DG-0094-C de la CERP*, document P-839-25 (Commission), tab 25.7.1. A recent study that painted a portrait of the involvement of First Nations peoples in the justice system for 2016 came to similar conclusions: testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 25, lines 5–19.

2123 *Données populationnelles des Autochtones au Québec*, document PD-13 (Commission).

2124 Document P-839-115 (Commission), *op. cit.*, p. 8.

2125 *Ibid.*

2126 Details of the number of criminal charges filed per nation are available in Appendix 30.

2127 Document P-839-115 (Commission), *op. cit.*, p. 15.

2128 *Ibid.*

2129 The overall statistics are available in Appendix 31.

2130 Appendix 1 *Tableau excel en réponse du ministère de la Justice du Québec en réponse à la demande d'information DG-0094-C de la CERP*, document P-839-25 (Commission), tab 25.7.1; *Violence conjugales, familiales et sexuelles et les services de police et de justice*, document P-839-107 (Commission), p. 21.

2131 Document P-839-25 (Commission), tab 25.7.1, *op. cit.*,; document P-839-107 (Commission), *op. cit.*, p. 22.

2132 Appendix 1 *Tableau Excel du ministère de la Justice du Québec concernant les infractions à caractère sexuel* (dated September 28, 2018), document P-839-25 (Commission), tab 25.9.1; document P-839-107 (Commission), *op. cit.*, p. 23.

2133 Document P-839-25 (Commission), tab 25.9.1, *op. cit.*; document P-839-107 (Commission), *op. cit.*, p. 24.

Asked to react to these statistics, Marie-Chantale Brassard, Chief Prosecutor for the Director of Criminal and Penal Prosecutions (DCPP) Northern Québec office confirmed that she did not have a "rational explanation".[2134]

8.1.2 Victims

Of course, the over-representation of members of First Nations and Inuit communities in the justice system is not limited to the accused. The evidence also revealed that Indigenous women are over-represented among victims of conjugal and sexual violence in Québec.[2135]

This phenomenon has been documented in Canada for some time. Based on Statistics Canada's 2014 General Social Survey on criminal victimization, Indigenous women are three times more at risk of becoming victims of sexual assault in Canada. In absolute numbers, the survey established that 115 out of 1,000 Indigenous women in Canada are victims of sexual assault, compared to 35 out of 1,000 non-Indigenous women.[2136] Once again, there are no specific statistics on violent acts committed against Indigenous women in Québec.[2137] The Bureau d'aide aux victimes d'actes criminels and other crime victims' assistance centres confirmed before the Commission that they do not track data related to ethnic origin.[2138]

Nevertheless, the Commission was able to obtain fragmentary data from the Ministère de la Sécurité publique (MSP) on accusations made by Indigenous people in relation to sexual offences.

Even though the police data is patchy, it implies that Indigenous people report twice as many sexual offences as non-Indigenous people, at a rate of 22.8 charges per 1,000 people compared to 9 charges per 1,000.[2139] However, it should be noted that only the Ville de Montréal, Sûreté du Québec and Service de police de la Ville de Québec police forces and five Indigenous forces (Mashteuiatsh, Listuguj, Pessamit, Wendake and Uashat mak Mani-Utenam) gather ethno-cultural data that allows accusations made by Indigenous peoples to be identified.[2140] It is therefore safe to say that the statistics we obtained underestimate the

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2134 Testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018, p. 38, lines 9–10.

2135 Document P-839-107 (Commission), *op. cit.*, p. 18–21; *Commission des relations avec les citoyens de l'Assemblée nationale, Les conditions de vie des femmes autochtones en lien avec les agressions sexuelles et la violence conjugale (2018)*, document P-927 (Commission), p. 8; FAQ. Projet Ussi-Iniun. Étude sur l'abus sexuel chez les Premières Nations du Québec. Final Report. Prepared by *Aboriginal psychosocial interventions research group (GRIPMA)*, 2005, document P-829 (Commission), p. 8; testimony of Ellen Gabriel Katsisakwas, stenographic notes taken December 8, 2017, p. 169, lines 20–22; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 38–39, lines 12–3; testimony of Constance Vollant, stenographic notes taken September 5, 2018, p. 107, lines 2–8; testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 15–16, lines 19–1; testimony of Fanny Bacon, stenographic notes taken May 16, 2018, p. 49–50, lines 24–5.

2136 *Statistics Canada, Victimization of Aboriginal people in Canada, 2014*, released June 28, 2018, document P-833 (Commission), p. 3, 6, 8 and 15–16; Statistics Canada (2015). *Criminal victimization in Canada, 2014*. Retrieved from https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2015001/article/14241-eng.pdf?st=pibqJ7ms, p. 17.

2137 Document P-839-107 (Commission), *op. cit.*, p. 19.

2138 Testimony of Richard Carbonneau, stenographic notes taken September 24, 2018, p. 222–223, lines 20–3.

2139 *Les infractions à caractère sexuel rapportées par les Autochtones aux services policiers*, document P-839-113 (Commission), p. 10.

2140 Document P-839-113 (Commission), *op. cit.*, p. 5, 14 and 15.

true extent of the phenomenon[2141], even more so if we factor in the mistrust that Indigenous women have expressed about filing a complaint.

8.2. A climate of mistrust

Statistics aside, one of the first Commission findings related to the justice system is that Indigenous people are very mistrustful[2142] of the government system and do not entirely understand how it works.[2143] To Indigenous eyes, the system is defined by a failure to solve issues and support victims.[2144] This is particularly so when it comes to domestic violence and sexual assault.[2145]

According to a certain number of witnesses, even when a violent act is reported and a criminal justice file has been opened the system does not meet needs or provide a sustainable solution.[2146] Worse, the system causes further trauma due to lengthy court

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2141 Document PD-1 (Commission), *op. cit.*, p. 9–10.

2142 Testimony of Janet Mark, stenographic notes taken November 23, 2017, p. 247, lines 7–17; testimony of Hadley Friedland, stenographic notes taken December 6, 2017, p. 39–40, lines 15–5; testimony of Marie Rinfret, stenographic notes taken March 14, 2018, p. 12, lines 21–23; testimony of Kevin Fleischer, stenographic notes taken February 15, 2018, p. 33–34, lines 23–3; testimony of Mara Greene, stenographic notes taken February 16, 2018, p. 34–35, lines 11–22; testimony of Michel Tooktoo, stenographic notes taken February 20, 2018, p. 35, lines 14–23; testimony of Jeannette Pilot, stenographic notes taken May 14, 2018, p. 120, lines 4–5; testimony of Martine Weizineau, stenographic notes taken February 13, 2018, p. 182–183, lines 25–1; testimony of Fanny Bacon, stenographic notes taken May 16, 2018, p. 34, lines 8–9; testimony of Paul-Émile Fontaine, stenographic notes taken May 7, 2018, p. 94, lines 18–19; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 146, lines 8–10; testimony of Constance Vollant, stenographic notes taken September 5, 2018, p. 110, lines 1–5; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 48, lines 11–18; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 60, lines 13–15; testimony of Clara Lafrance-Egervari, stenographic notes taken September 6, 2018, p. 31, lines 3–11; testimony of Rainbow Miller, stenographic notes taken December 14, 2018, p. 111, lines 20–22; testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 52, lines 1–10; testimony of Jacinthe Poisson, stenographic notes taken November 13, 2017, p. 277, lines 2–5; *Analyse des sondages – Justice*, document PD-20 (Commission), p. 13 and 112 of 772 (online PDF).

2143 Testimony of Serge Tremblay, stenographic notes taken February 20, 2018, p. 59, lines 19–24; testimony of Jonathan Rudin, stenographic notes taken February 16, 2018, p. 95, lines 1–9; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 145, lines 20–25; testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 39, lines 5–12; testimony of Robin Aubut-Fréchette, stenographic notes taken March 14, 2018, p. 115, lines 20–23; testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 116–117, lines 22–5; document PD-20 (Commission), *op. cit.*, p. 13, 112, 120, 242 and 417 of 772 (online PDF).

2144 Testimony of Anne Neeposh, stenographic notes taken June 15, 2018, p. 39–40, lines 12–4; document PD-20 (Commission), *op. cit.*, p. 13, 117 and 674 of 772 (online PDF).

2145 Testimony of Renée Brassard, stenographic notes taken March 23, 2018, p. 46–47, lines 16–4; testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 124–125, lines 3–11; testimony of Richard Côté, stenographic notes taken December 10, 2018, p. 215–217, lines 23–4; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 109–111, lines 12–3 and p. 150, lines 1–7; testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 83, lines 2–15; testimony of Mylène Jaccoud, stenographic notes taken February 22, 2018, p. 64–65, lines 3–9 and p. 67, lines 2–9; testimony of Maïtée Labrecque-Saganash, stenographic notes taken June 11, 2018, p. 81–82, lines 22–8; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 157–158, lines 6–2; testimony of Anne Neeposh, stenographic notes taken June 15, 2018, p. 37–38, lines 21–4; testimony of Hadley Friedland, stenographic notes taken December 6, 2017, p. 21, lines 9–24; testimony of Martine Weizineau, stenographic notes taken February 13, 2018, p. 182–183, lines 19–2; testimony of Maïtée Labrecque-Saganash, stenographic notes taken June 11, 2018, p. 82, lines 5–8; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 49–50, lines 14–5.

2146 Testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 200–201, lines 4–24; testimony of Clara Lafrance-Egerveari, stenographic notes taken September 6, 2018, p. 177, lines 5–15; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 59, lines 11–24; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 155, lines 9–16.

delays, several hearing date postponements and geographical distance from services.[2147]

Evidence has shown that the inability to meet needs may, in certain cases, lead to suicide[2148] or extremely stressful and harrowing situations, as Danielle St-Onge, a member of the Uashat mak Mani-Utenam Innu community, testified. Three years elapsed between the time she filed a complaint to the day her aggressor was found guilty. She spent three years waiting, knowing he was walking around free. She was afraid of bumping into him and had no real support services. Ms. St-Onge confided to the Commission that she suffered a great deal during the process and developed suicidal thoughts:

> A few days later, I called a case worker in Uashat-Maliotenam. I couldn't take it anymore. I was tired. I locked myself in my basement. I wanted to take… I wanted to go… I wanted to… That's when they called my father. My father came. I didn't want to live. I couldn't deal with it.[2149]

Members of First Nations and Inuit communities are not the only ones saying that the criminal justice system fails to respond to their needs. People who work in the system agree. Richard Côté, Court of Québec Coordinating Judge for the Bas-Saint-Laurent, Côte-Nord, Gaspésie and Îles-de-la-Madeleine regions, is one such person:

> [My] observations lead me to believe that the way our judicial system operates does not meet the needs of several Indigenous communities, to varying degrees. [You] can't compare Uashat Mani-Utenam to Kawawachikamach. Uashat is close to an urban centre, there are more resources available and … [b]ut it doesn't work in smaller communities of Basse-Côte and Kawawachikamach and Matimekush. We travel there, we unpack our cases and render a few decisions where people have pled guilty, then we leave and most of the case files just fade away. So that's why I am telling you I don't believe we meet their needs. We are…… we probably built our justice system on a rocky foundation and based it on values that are not shared by these communities.[2150]

In his opinion, victims of violent offences do not dare report the incidents and do not feel safe testifying in a system that they do not understand and that is foreign to them:

> Women in general are terrified of testifying in court and telling their story to a group of people who are not members of their community. The result is that, over the past few years, all of us who work in the courts turn up and open files

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2147 Testimony of Mathieu Papatie, stenographic notes taken January 16, 2018, p. 21–24, lines 2–1 and p. 55, lines 6–19; testimony of Angèle Petiquay, stenographic notes taken January 19, 2018, p 166–167, lines 10–9 and p. 200–205, lines 20–24; testimony of Danielle St-Onge, stenographic notes taken May 16, 2018, p. 85–86, lines 22–7; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 112, lines 14–22 and p. 152–155, lines 20–5; testimony of Martine Weizineau, stenographic notes taken February 13, 2018, p. 192–194, lines 22–3; testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 198–201, lines 23–21; testimony of Simeonie Nalukturuk, stenographic notes taken November 15, 2018, p. 49, lines 19–24.

2148 Testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 80, lines 16–24 and p. 160–162, lines 7–5; testimony of Adrienne Jérôme, stenographic notes taken April 18, 2018, p. 16, lines 13–16; testimony of Mary Coon, stenographic notes taken September 5, 2018, p. 13–14, lines 15–2; testimony of Angèle Petiquay, stenographic notes taken January 19, 2018, p. 158–159, lines 11–18, p. 171–172, lines 14–17 and p. 178–180, lines 14–1.

2149 Testimony of Danielle St-Onge, stenographic notes taken May 16, 2018, p. 73–74, lines 21–3.

2150 Testimony of Richard Côté, stenographic notes taken December 10, 2018, p. 219–220, lines 14–7.

> and then close them and postpone hearings to the next session and then, when the accused wants to plead guilty, which happens in 28.0% of violent crime cases, we sentence him. However, if the accused does not want to plead guilty, there will be no hearing. The victims will not come to court.[2151]

Women do not dare report incidents in their communities either. They fear not only a lack of confidentiality, but also being stigmatized by their peers and the possibility of retaliation.[2152]

8.3. Fundamental incompatibility

According to many witnesses, despite the efforts being made, a high level of incompatibility divides the government's justice system and Indigenous communities when it comes to values, objectives, and where and how justice is served.[2153]

Though not all Indigenous peoples have the same concept of justice, the testimonies brought to light a certain number of core values that are central to Indigenous law.[2154]

8.3.1 The sources and normative orders of Indigenous law

In general, the primary defining characteristic of Indigenous law is a holistic approach that focuses on relationships with other people and also with the land and the environment. This approach encompasses reason, emotions and physical, social and spiritual elements[2155] while incorporating economic, political and legal elements at the same time. It is driven by observation and experimentation, and stories are at the heart of its reference systems.[2156] These stories represent much more than simple tales. As Christian Coocoo, cultural services

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2151 *Id.*, p. 217, lines 5–17.

2152 Testimony of Martine Weizineau, stenographic notes taken February 13, 2018, p. 205, lines 6–22; testimony of Rainbow Miller, stenographic notes taken December 14, 2018, p. 104, lines 6–18; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 109–111, lines 12–6.

2153 Testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 25, lines 15–19; testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 16–17, lines 20–4; testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 158–159, lines 7–18; testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 128, lines 10–24 and p. 196, lines 5–9; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 80, lines 1–13 and p. 224–226, lines 22–9; testimony of Kevin Fleischer, stenographic notes taken February 15, 2018, p. 22–23, lines 23–15 and p. 26, lines 5–16; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 36, lines 3–16 and p. 85, lines 21–23; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 97–98, lines 21–25; testimony of Jonathan Rudin, stenographic notes taken February 14, 2018, p. 179, lines 8–18; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 11, lines 9–18 and p. 55–56, lines 15–11; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 166–167, lines 11–6; testimony of Mylène Jaccoud, stenographic notes taken February 22, 2018, p. 68–69, lines 19–12; testimony of Jacinthe Poisson, stenographic notes taken November 13, 2017, p. 277, lines 12–21; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 65, lines 15–19; document PD-20 (Commission), *op. cit.*, p. 263 and 432 of 772 (online PDF).

2154 In this chapter the term "ancestral law" refers to the rights, laws and standards derived from Indigenous communities and not to laws and standards introduced by the government to regulate the treatment of Indigenous peoples. Testimony of Val Napoleon, stenographic notes taken December 4, 2017, p. 21, lines 8–17; testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 12–13, lines 16–2; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 14, lines 14–21 and p. 21, lines 11–18.

2155 Testimony of Paul-Yves Weizineau, stenographic notes taken June 18, 2018, p. 203–210, lines 2–25; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018. p. 36, lines 3–16.

2156 Testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 27, lines 6–13; testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 65, lines 14–21 and p. 103, lines 21–25; testimony of Val Napoleon, stenographic notes taken December 5, 2017, p. 9, lines 13–18.

researcher and coordinator at the Conseil de la Nation Atikamekw Nehirowsiw explained during a hearing, they illustrate and teach laws and how to behave[2157]:

> [T]he *atisokan* (stories) can teach us how to act and react and how to understand situations. […] For us, *atisokan* are also … reference points. [They] all have references, depending on the kind of story, but they can refer to social or historical elements.[2158]

Influenced by stories, Indigenous law is, for the most part, shared through storytelling and are a fundamental part of language and culture.[2159]

8.3.2 Actors and processes

Prevention and education are also at the core of Indigenous legal systems. They are primarily centred on accountability, reparation and healing rather than punishment, which seems to be the thrust of the government's justice system.[2160] Dispute resolution focuses on dialogue, respect, consensus and non-judgement. The family and community members are of critical importance in the process. The intervention must be as much about them as it is about the individuals in question, and they must be involved in the solutions. Elders and healers also play a central role.[2161] Along the same lines, Indigenous law focuses on individual and collective accountability, while State law is concerned only with individual responsibility.

Although shame is a central mechanism in most Indigenous cultures[2162], there is generally no notion of guilt in the legal sense of the term in Indigenous law.[2163] In some cases, isolation

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2157 Testimony of Christian Coocoo, stenographic notes taken February 22, 2018, p. 25–26, lines 21–15; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 44, lines 2–17; testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 16, lines 18–21 and p. 21–22, lines 12–21.

2158 Testimony of Christian Coocoo, stenographic notes taken February 22, 2018, p. 26, lines 3–11.

2159 Testimony of Val Napoleon, stenographic notes taken December 4, 2017, p. 117, lines 2–11; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 105, lines 13–20; testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 41, lines 13–15; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 42, lines 9–13; testimony of Christian Coocoo, stenographic notes taken February 22, 2018, p. 19, lines 14–25; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 15, lines 6–11 and p. 19–20, lines 23–5.

2160 Testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 109-110, lines 22-4; testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 118–119, lines 22–2; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 165, lines 12–24; testimony of Donald Nicholls, stenographic notes taken June, 15 2018, p. 27–29, lines 21–11, p. 50-51, lines 23–6 and p. 56–57, lines 20–8; testimony of Hadley Friedland, stenographic notes taken December 4, 2017, p. 133-136, lines 6–25; testimony of Christian Coocoo, stenographic notes taken February 22, 2018, p. 22, lines 5–9; testimony of Mylène Jaccoud, stenographic notes taken February 22, 2018, p. 56–57, lines 22-9; testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 161, lines 10–20; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 225–226, lines 20-9; testimony of Kevin Fleischer, stenographic notes taken February 15, 2018, p. 24–26, lines 12–16; testimony of Gilbert W. Whiteduck, stenographic notes taken August 24, 2018, p. 171-172, lines 21–4; testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 183, lines 14–22; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 51, lines 4–11.

2161 Testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 159, lines 14–25.

2162 Testimony of Paul John Murdoch, stenographic notes taken August 20, 2018, p. 58, lines 1–10.

2163 Testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 51, lines 5–13; testimony of Mylène Jaccoud, stenographic notes taken February 22, 2018, p. 71, lines 7–18; testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 159–160, lines 18-8; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 62, lines 19–23; testimony of André Mowatt, stenographic notes taken April 11, 2018, p. 63–64, lines 24-3.

and exclusion may nonetheless be employed to ensure the group's safety.[2164]

Hadley Friedland, a law professor at the University of Alberta and a researcher specializing in Indigenous law, also noted that restorative justice or healing processes do not exclude the possibility of coercive interventions when the safety of the victims and the community is at stake.[2165] Historically, punitive sanctions were also used by some nations.[2166]

In fact, as Val Napoleon, law professor and director of the Indigenous Law Research Unit at the University of Victoria pointed out, like in all legal systems, Indigenous rulings seek to settle conflicts and manage violence and vulnerabilities.[2167]

Hadley Friedland thinks some beliefs and theoretical assumptions must be discarded, such as the notion that ancestral law is more a set of customs than a complete legal system. In her opinion, the lack of documentation perpetuates the myth that Indigenous people have no laws:

> If somebody wants to learn about Court law, if somebody wants to learn about criminal law, we can go to a law library and we have endless resources. If somebody wants to learn about how Cree people approach harm and violence, it's not that simple. And that can perpetuate the myth of lawlessness, because we have this appearance of this readily available resources on one side, books and book and databases and information overload, and on the other side, we have sparse tangible resources.[2168]

But many law anthropologists have convincingly shown that the various Indigenous nations of Canada had their own legal systems before the Europeans arrived.[2169] For instance, before the Europeans settled permanently in the territory, the various Indigenous nations had rules for land, marriage, and family life–including filiation and adoption–as well as trade.[2170] Indigenous peoples also had political and legal structures. Many were grouped into

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2164 Testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 58, lines 4-13; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 166–167, lines 19–21; testimony of Christian Coocoo, stenographic notes taken February 22, 2018, p. 45–46, lines 20–20; testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 94, lines 6–11.

2165 *Indigenous Legal Traditions: Roots to Renaissance (In the Oxford Handbook on Criminal Law)*, document P-256 (Commission), p. 238.

2166 Testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 45-46, lines 12–25, p. 50–51, lines 10–12 and p. 93–94, lines 17–5; Department of Justice Canada. (2016). *A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada*. Ottawa, Ontario: Department of Justice Canada, p. 9.

2167 Testimony of Val Napoleon, stenographic notes taken December 4, 2017, p. 61–62, lines 20–5.

2168 Testimony of Hadley Friedland, stenographic notes taken December 4, 2017, p. 31, lines 7–18.

2169 Testimony of Hadley Friendland, stenographic notes taken December 5, 2017, p. 65, lines 14–17; Rouland, N. (1979). *Les modes juridiques de résolution des conflits chez les Inuit. Québec City, Québec: Association Inuksiutjiit Katimajiit; Peuples autochtones et pratiques d'accommodements en matière de justice pénale au Canada et au Québec*, document P-397 (Commission).

2170 Testimony of Michel Morin, stenographic notes taken December 7, 2017, p. 25–27, lines 23–1; Testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 14–15, lines 22-24; Law Commission of Canada. (2006). Justice within: Indigenous legal tradition: Discussion paper. Retrieved from https://dalspace.library.dal.ca/bitstream/handle/10222/10229/ILT%20Discussion%20Paper%20EN.pdf?sequence=1.

confederations[2171], made deals with one another, and developed a complex, sophisticated system of international law.[2172] The existence and continued presence of these legal systems has also been recognized many times by government agencies and commissions of inquiry[2173], as well as Canadian courts.[2174]

The Commission's work has also confirmed the existence and vitality of Indigenous law and legal systems.[2175] The successes of many Indigenous justice programs and institutions, including the justice system of Kahnawà:ke[2176], the Mohawk tribunal of Akwesasne[2177], the Atikamekw Nehirowisiw community justice program[2178] and the Saqijuq project in Nunavik[2179] all explored as part of the Commission's work, are shining examples. And that list does not even touch on interesting projects like Wigobisan[2180] and the circle of kokoms (Elders) at Lac Simon;[2181] the Miroskamin program of Wemotaci;[2182] the Wanaki;[2183] the Kapatakan Gilles

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2171 Fenton, W. N. (1998). The Great Law and the Longhouse: A Political History of the Iroquois Confederation. Oklahoma, MI: University of Oklahoma Press.

2172 Borrows, J. (2005). *Indigenous Legal Traditions*. Washington University Journal of Law & Policy, 19, 167–223.

2173 Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward, Looking Back*. Ottawa, Ontario: Canada Communications Group, p. 120-122 of 1005 (online PDF); Law Commission of Canada (2006), *op. cit.*, p 4-5; *La justice en milieu autochtone : vers une plus grande synergie, Rapport du groupe de travail composé de représentants de la Cour du Québec, du Ministère de la justice, du DPCP et du SAA, Présenté au juge en chef de la Cour du Québec, l'honorable Guy Gagnon, January 2008*, document P-916 (Commission), p. 10.; Truth and Reconciliation Commission of Canada. (2015). *Final Report of the Truth and Reconciliation Commission of Canada, Reconciliation* Volume 6. Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press, p. 59 of 332 (online PDF).

2174 *R.* v. *Van der Peet*, [1996] 2 S.C.R 507, p. 545-547, paras. 40 to 42; *Mitchell* v. *M.R.N.*, [2001] 1 S.C.R. 911, paras. 9-10; *Pastion* v. *Dene Tha' First Nation*, [2018] FC 648, para. 8.

2175 Testimony of Lucie Grey, stenographic notes taken November 23, 2018, p. 15, lines 7-17; testimony of Paul. J. Murdoch, stenographic notes taken June 18, 2018, p. 21, lines 14–18 and p. 26–27, lines 24-24; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 59, lines 5–11.

2176 Testimony of Kevin Fleischer, stenographic notes taken February 15, 2018, p. 8-48, lines 16–5; *The Court of Kahnawà:ke and Kahnawà:ke Justice System*, document P-365 (Commission), p. 3, 8–9, 11 and 13–15.

2177 Testimonies of Joyce King and Bonnie Cole, stenographic notes taken February 15, 2018, p. 52–137, lines 22–12.

2178 Testimonies of Marie-Ève Sylvestre, Mylène Jaccoud and Christian Coocoo, stenographic notes taken February 22, 2018, p. 10–125, lines 14–18; *Renforcer la gouvernance atikamekw*, document P-435 (Commission), p. 1–28.

2179 *Projet de tribunal spécialisé au Nunavik*, document P-387 (Commission); testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 206–218, lines 9–4; testimonies of Paulusi Beaulne and Aileen MacKinnon, stenographic notes taken November 19, 2018, p. 54–89, lines 5–2; *Saqijuq en liasse français, anglais, Inuktitut*, document P-1124 (Commission), p. 1–3.

2180 *Saqijuq en liasse français, anglais, inuktitut*, pièce P-1124, p. 1-3.

2181 Testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 76–80, lines 9–13.

2182 Testimonies of Jessica Vollant and Mary Coon, stenographic notes taken September 5, 2018, p. 13–56, lines 15–8; *Présentation PowerPoint sur le programme Miroskamin Wemotaci*, document P-788 (Commission), p. 1–12.

2183 Testimony of Gilbert W. Whiteduck, stenographic notes taken August 24, 2018, p. 120–153, lines 3–15; *Wanaki Center. A peaceful place of healing. A place to connect to self. A place to be understood*, document P-772 (Commission), p. 1–13.

Jourdain Residential Community Centre;[2184] and all services offered by the First Peoples Justice Centre of Montreal.[2185]

That said, the erosion of Indigenous cultures that resulted from colonialism and the residential school policy did not leave the transmission of legal knowledge untouched.[2186] As stated above, Indigenous law, their scope and the principles and authorities on which they are founded are primarily taught and passed down through oral teachings and stories. This knowledge is passed along by individuals tasked for that purpose, often Elders. When they are gone the knowledge goes with them, which leaves some legal voids in the communities. Lucy Grey spoke about the urgency of acting to fill those voids:

> We need to know how we… what is the Inuit law? And a lot of the knowledge that the… and you know, it's really, really unfortunate because there were amazing, knowledgeable Elders who were Justice Committee members who could have helped. But no resources, no money. It's scary. It's scary to think when Québec and Canada finally open their eyes, we're going to lose these walking encyclopedias. And what are we going to do with the younger generation? How… who's going to guide us?[2187]

Like her, I am concerned by the disappearance of this knowledge and convinced that reactivating it would have a positive outcome for all of Québec society.

Consequently, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, which states that they have the right to "promote, develop and maintain their institutional structures [...], juridical systems or customs"[2188], I recommend that the government:

CALL FOR ACTION No. 40

Fund projects developed and managed by Indigenous authorities that are aimed at documenting and revitalizing Indigenous law in all sectors deemed to be of interest.

2184 Testimonies of Brigitte Lalo Malec, Lise Malec, stenographic notes taken May 17, 2018, p. 52–133, lines 7–25.

2185 Testimonies of Serge Tremblay and Vivien Carli, stenographic notes taken February 20, 2018, p. 54–116, lines 13–14; *Présentation du Centre de justice des Premiers Peuples de Montréal*, document P-424 (Commission), p. 1–23.

2186 Testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 143–144, lines 16–3; testimony of Christian Coocoo, stenographic notes taken February 22, 2018, p. 47–51, lines 8–5.

2187 Testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 30, lines 12-22.

2188 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13. 2007, A/RES/61/295, art. 34.

8.4. Underused diversion and prevention tools

A large number of Commission witnesses have denounced the non-recognition of Indigenous legal systems and knowledge.[2189] Some say these systems are kept in a severe state of subordination, treated as inferior and relegated to folklore.[2190] Several used the witness stand as a platform to loudly proclaim their autonomy.[2191] Actors in the legal field share this view, and testified that they were ready to commit to this course.[2192]

In fact, apart from government actors, the evidence shows a broad consensus on the need to recognize the legal pluralism of Indigenous people. Several witnesses felt that the autonomy of the First Nations and Inuit in matters of justice was essential to the reconciliation process.[2193]

When they gave testimony—in which they mentioned the Canadian constitutional framework as a limit to governmental autonomy[2194]—some government representatives, including Marie-

2189 Testimony of Hadley Friedland, stenographic notes taken December 4, 2017, p. 32, lines 3-14; testimony of Lucien Wabanonik, stenographic notes taken April 18, 2018, p. 106-107, lines 21-9; testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 225-226, lines 13-16; testimony of Jeannette Brazeau, stenographic notes taken April 12, 2018, p. 86, lines 4-15 and p. 87, lines 5-8; testimony of Bonnie Cole, stenographic notes taken February 15, 2018, p. 86–87, lines 19–19; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 215, lines 12–14 and p. 216, lines 19–23.

2190 Testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 184, lines 20–22; testimony of Marie-Ève Sylvestre, stenographic notes taken February 22, 2018, p. 78, lines 7–20.

2191 Testimony of Jean-Paul Lacasse, stenographic notes taken January 19, 2018, p. 63-64, lines 3–11; testimony of Lisa Qiluqqi Koperqualuk, stenographic notes taken January 26, 2018, p. 106, lines 19–21; testimony of Ellen Gabriel Katsisakwas, stenographic notes taken December 8, 2017, p. 208, lines 16–22 and p. 224, lines 18–19; testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 99–100, lines 19–4; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 211, lines 2–7; testimony of Val Napoleon, stenographic notes taken December 5, 2017, p. 48, lines 14–18; testimony of Val Napoleon, stenographic notes taken December 6, 2017, p. 42–43, lines 14–13; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 237, lines 17–24; testimony of Derek Montour, stenographic notes taken March 20, 2018, p. 127–128, lines 25–8 and p. 148, lines 15–21; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 69–70, lines 17–8; testimony of Jonathan Rudin, stenographic notes taken February 14, 2018, p. 277–278, lines 18–10; testimony of Paul John Murdoch, stenographic notes taken June 18, 2018, p. 57–58, lines 20-22; testimony of Bill Namagoose, stenographic notes taken December 14, 2018, p. 52–53, lines 13–6; testimony of Paul-Mathieu Grondin, stenographic notes taken April 19, 2018, p. 157, lines 5–23; testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 203, lines 9–15; testimony of Vivien Carli, stenographic notes taken February 20, 2018, p. 97, lines 11–21; testimony of Paul Turmel, stenographic notes taken June 12, 2018, p. 15–17, lines 16–3; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 85–86, lines 21-8; testimony of Gilbert W. Whiteduck, stenographic notes taken August 24, 2018, p. 138–139, lines 24–3; testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 188, lines 8–15; testimony of Lucien Wabanonik, stenographic notes taken October 24, 2017, p. 28, lines 6–10; testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 39, lines 6–16.

2192 Testimony of Richard Côté, stenographic notes taken December 10, 2018, p. 221, lines 13–25; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 117–118, lines 16–3; testimony of Paul-Mathieu Grondin, stenographic notes taken April 19, 2018, p. 158–159, lines 18–4; brief from the Barreau du Québec. (April 19, 2018). *Le système de justice et les peuples autochtones du Québec : des réformes urgentes et nécessaires*, document P-556 (Commission), brief M-008, p. 33–34.

2193 Testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 237, lines 17–24; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 23, lines 13–24; testimony of Bill Namagoose, stenographic notes taken June 20, 2018, p. 93–94, lines 3-5; testimony of Val Napoleon, stenographic notes taken December 6, 2017, p. 8, lines 2–13; *Indigenous Laws as a Cornerstone for Concrete, Effective and Lasting Reconciliation*, document P-250 (Commission).

2194 Testimony of Marie-José Thomas, stenographic notes taken September 13, 2018, p. 135, lines 18–24.

José Thomas, Associate Secretary General of the Secrétariat aux affaires autochtones, did not conceal their preference for "adapting" the current system to Indigenous needs and realities:

> [At] the risk of upsetting people whom I greatly respect, meaning the Indigenous people, I do not believe in the parallel system at this point. I believe we need to encourage human beings to be trained in the right way to provide the best service. And I still believe that an adequately trained Indigenous person–which is not to say that they aren't, what I mean is that they must be better trained, and more of them need to be trained–who will provide service to Indigenous people [...] that will help us grow and move forward faster.[2195]

I, for one, do not think that having Indigenous peoples adapt to the existing system is the way to go. We have to admit that the accommodations made so far have not really improved anything. The measures to promote crime prevention and get Indigenous people out of the criminal justice system are largely underused, as shown by the figures in the following pages.

8.4.1 Community-based justice programs

It has been possible to create community-based justice programs (often called justice committees) in Indigenous communities since 1998.[2196] The roles and responsibilities of those committees vary with each community's needs and priorities.[2197] In general, it can be said that their goal is to offer an alternative to or complement the structures of the existing justice system. They take care of a number of things, including: diversion, sentencing recommendations, supervised probation, suspended sentences, conditional release, authorized leave, crime prevention and community support—healing circles, offender reintegration and citizen mediation.[2198] Although the justice committees do so much, the resources at their disposal are limited.[2199]

According to the data obtained by the Commission, the total budget allocated by the MJQ to the 26 existing justice committees, not including those of the Eeyou (Cree) Nation, remained unchanged between 2008–2009 and 2014–2015.[2200] It was then reduced slightly before being raised to $734,500 in 2017–2018.[2201]

2195 *Id.*, p. 38-39, lines 17–5.

2196 Document P-916 (Commission), *op. cit.*, p. 24–25.

2197 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 65–66, lines 6–2; *Présentation du ministère de la Justice*, document P-006 (Commission), p. 39; *DG-0024-C, Informations sur les Comités de justice communautaire*, document P-839-11 (Commission), tab 11.1, *op. cit.*, p. 5–6 of 940 (online PDF).

2198 Document P-006 (Commission), *op. cit.*, p. 40; document P-839-11 (Commission), tab 11.1, *op. cit.*, p. 19–20 of 940 (online PDF).

2199 Testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 195, lines 4–7 and p. 216, lines 11–25; testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 103–104, lines 13–20; document PD-20 (Commission), *op. cit.*, p. 110–112 of 772 (online PDF); *Les comités de justice, document de synthèse produit par la CERP en date du 12 décembre 2018*, document P-839-103 (Commission).

2200 There are justice committees in the communities of seven different nations: Kitigan Zibi, Manawan, Opitciwan (Obedjiwan), Wemotaci, Chisasibi, Eastmain, Mistissini, Nemaska, Oujé-Bougoumou, Waskaganish, Waswanipi, Wemindji, Whapmagoostui, Aupaluk, Inukjuak, Kangiqsujuaq, Kangirsuk, Kuujjuaq, Kuujjuarapik, Puvirnituq, Salluit, Listuguj, Kahnawà:ke, Akwesasne, Kawawachikamach as well as the First Peoples Justice Centre of Montreal. *Le programme de mesures de rechange pour adultes en milieu autochtone et les comités de justice, document de synthèse produit par le CERP en date du 12 décembre 2018*, document P-839-104 (Commission), p. 18–19.

2201 The detailed budget for each year is shown in Appendix 32; *Commission PowerPoint presentation prepared for the testimony of the Ministère de la Justice*, document P-839-101 (Commission), p. 9.

The justice committees can also count on an additional budget from the Department of Justice Canada (DJC).[2202] In 2017–2018, the budget allocated by both levels of government totalled $2.4 million. On a smaller scale, 10 justice committees in Nunavik shared a total annual budget of $1.35 million in 2017–2018.[2203] It had to cover the coordinators' salaries and all of the committees' activities.[2204] That amounts to $134,800 per justice committee.[2205]

In the city, the MJQ and the Secrétariat aux affaires autochtones allocated no more than $35,000 and $36,707 respectively to the First Peoples Justice Centre of Montreal in 2018–2019.[2206]

As a result, apart from the coordinators, most justice committee members work on a volunteer basis or for token payment only.[2207] In fact, the use of volunteers or volunteer services was one of the factors that persuaded the MJQ to agree to justice committees when the program started. However, Jacques Prégent, Director of Aboriginal Affairs at the MJQ, confirmed during the hearing that this is no longer the case today and that each community has to decide whether to work with volunteers or not.[2208] The justice committees must now demonstrate their ability to achieve concrete results if they want to receive funding. The fact that the project may have short-term repercussions on the community is taken into account most particularly, as are the outcomes achieved or targeted with respect to reducing delinquency and social problems.[2209]

According to Paul Turmel, the former Director General of Native Para-Judicial Services of Québec, the strict standards imposed hamstring the committees to such an extent that some communities prefer not to use them. In his opinion, the response framework imposed is also unsatisfactory for the communities that want to work with offenders as soon as the crime has been committed so that they can start the healing and rehabilitation process during the legal proceedings.[2210]

During the hearing, the MJQ's Director of Aboriginal Affairs admitted that the administrative rules governing funding and reporting could be a major burden, although he reiterated the need to have them:

> Yes [...] it's a little heavy administratively; there have to be agreements, a financial assistance agreement that actually requires financial reporting, but you have to report what people are doing with public money, so, anyway, it's a necessary exercise, even for them. What I mean is, they don't have the choice of only reporting to their community.[2211]

2202 Document P-839-104, *op. cit.*, p. 20–21.

2203 Document P-839-103 (Commission), *op. cit.*, p. 19–20; document P-839-101 (Commission), *op. cit.* p. 10.

2204 Document P-839-103 (Commission), *op. cit.*, p. 19–20.

2205 The detail budgets allocated to the Nunavik Justice Committees are presented in Appendix 33.

2206 Document P-839-103 (Commission), *op. cit,* p. 3.

2207 Document P-839-103 (Commission), *op. cit,* p. 13.

2208 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 136, lines 17–23.

2209 Document P-839-104 (Commission), *op. cit.*, p. 30.

2210 Testimony of Paul Turmel, stenographic notes taken June 12, 2018, p. 27–28, lines 18–23.

2211 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 62, lines 16–23.

He also denied being aware of the negative consequences that financial and administrative requirements may have on how the committees operate.[2212]

And yet, the justice committees have been reviewed several times by both the DJC and the MJQ. Despite some differences, common issues have been identified, such as the lack of resources and infrastructure (no office or computer), the lack of training, staff turnover, non-recognition within the community, lack of cooperation with the other social partners, and the administrative burden, especially with respect to financial reporting.[2213]

Even though it says it knows little about the difficulties encountered by community-based justice programs, the MJQ has adopted an action plan aimed at increasing support to justice committees by 2020. According to the Ministère, this plan will increase funding to the existing committees or allow new committees to be formed.[2214] That is good news, but it is a one-time increase only, so there are no guarantees for the future. In my opinion, it is time for the government's official commitment to community-based justice programs to be matched by substantial budget envelopes. We will return to this point later.

8.4.2 Alternative Measures Program for adults in Aboriginal communities

The logical follow-up to the introduction of community-based justice programs, Québec's Alternative Measures Program (AMP), created in 2001, is aimed at adults living in Indigenous communities. The goals of the program are to "promote greater community involvement in the administration of justice"[2215] and to "allow communities to re-establish the required traditional intervention practices for their members" to solve social problems.[2216]

At first the program only applied to crimes punishable by imprisonment of five years or less, with the exception of certain crimes, including those of a sexual nature. In 2015, in response to pressure from some Indigenous communities, the scope of the program was expanded to include more crimes.

In addition to crimes for which a minimum sentence is provided, the revised AMP excludes crimes of a sexual nature and crimes involving the abuse of vulnerable persons, certain offences against the administration of justice, crimes involving firearms and all crimes relating to the operation of a motor vehicle, including impaired driving.[2217]

2212 *Id.*, p. 64, lines 4–19.

2213 Document P-839-11 (Commission), tab 11.1, *op. cit.*, p. 6 of 940 (online PDF); *Rapport d'évaluation: programme de justice réparatrice de Kahnawake*, document P-392 (Commission); *Rapport d'évaluation: comité de justice de Kuujjuarapik*, document P-393 (Commission); Rapport d'évaluation: comité de justice de Whapmagoostui, document P-394 (Commission); document P-839-104, *op. cit.*, p. 33–40.

2214 *Letter from the MJQ in response to the Commission's request for information DG-0021C received October 5, 2017*, document P-839-5 (Commission), tab 5.1, p. 5 of 6 (online PDF); document P-839-104, *op. cit.*, p. 19–22.

2215 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 70, lines 13–15; document P-006 (Commission), *op. cit.*, p. 47.

2216 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 70, lines 15–18; document P-006 (Commission), *op. cit.*, p. 47.

2217 *DGP2-0022-C, Précisions sur le Programme de mesures de rechange pour les adultes en milieu autochtone*, document P-839-9 (Commission), tab 9.1.1, p. 8 of 48 (online PDF). As to whether offences against the administration of justice are included in the AMP or not: testimonies of Marie-Chantale Brassard and Patrick Michel, stenographic notes taken September 19, 2018, p. 230–235, lines 10–17.

The issue of determining which crimes are eligible was raised several times during the hearing. Community representatives called for the program to be expanded to include other types of crimes, such as offences against the administration of justice (breach of conditions, probation, etc.).[2218] Others suggested that the AMP should cover all kinds of crimes.[2219]

According to the MJQ and DCPP representatives, both organizations consulted together on the list of crimes.[2220] The MJQ stressed that "the interests of the Indigenous community" were also "considered" when identifying the crimes to be covered by the program.[2221] During the hearing the MJQ's Director of Aboriginal Affairs admitted, however, that Indigenous communities have been calling for the program to be expanded since its inception in 2001.[2222] Cautious as far as the current demands were concerned, he did appear to be open to the possibility.[2223] The DCPP confirmed its intention to quickly include breaches of the conditions imposed by a judge in the AMP[2224], and did not close the door on the idea of expansion. However, it did say that it needed to assess the changes implemented in 2015 before going any further.[2225]

Despite this apparent openness, the AMP remains under the firm control and supervision of the State. In fact, it is the DCPP that decides whether to send an accused to the AMP and whether to accept measures proposed by the justice committee.

An analysis by the Commission also showed that an extremely small number of cases had actually been referred to the AMP, especially considering the total number of charges filed.[2226] For instance, in Nunavik, which has the most justice committees, only 39 cases

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2218 Testimony of Claude Beaudet, stenographic notes taken April 19, 2018, p. 230–231, lines 11–9; testimony of Donald Nicholls, stenographic notes taken June15, 2018, p. 49–51, lines 16–6 and p. 61, lines 3–11; testimony of Martin Scott, stenographic notes taken November 16, 2018, p. 85, lines 10–18 and p. 88, lines 14–19; testimony of Marie-Ève Sylvestre, stenographic notes taken September 12, 2018, p. 43, lines 17–25; testimony of Richard Côté, stenographic notes taken December 10, 2018, p. 221–222, lines 13–7.

2219 Testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 71, lines 8–25; testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 18–19, lines 18–10; testimony of Ruth Masty, stenographic notes taken June15, 2018, p. 80, lines 2–15; document PD-20 (Commission), *op. cit.*, p. 118 and 434 of 772 (online PDF).

2220 Testimony of Patrick Michel, stenographic notes taken October 19, 2018, p. 234, lines 16–21; testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 112, lines 19–21.

2221 *DGP-0024-C, Précisions sur les Programmes de justice communautaire pour Autochtones et sur le Programme de mesures de rechange pour adultes en milieu autochtone*, document P-839-12 (Commission), tab 12.1.1, p. 4 of 47 (online PDF).

2222 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 113, lines 3–14.

2223 *Id.,* p. 106, lines 6–13 and p. 119, lines 5–19 and stenographic notes taken October 5, 2018, p. 155, lines 10–19.

2224 Testimony of Annick Murphy, stenographic notes taken September 19, 2018, p. 232–234, lines 15–4; testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018, p. 49–50, lines 18–7.

2225 Testimony of Annick Murphy, stenographic notes taken October 19, 2018, p. 232–233, lines 7–13 and p. 345, lines 6–19.

2226 Document P-839-101 (Commission), *op. cit.*, p. 12. There was no way of finding out how many charges were referred to the justice committees. Therefore, the number of criminal cases was used in comparison to the number of charges filed.

out of some 13,000 charges filed were steered to the AMP in 2016-2017.[2227] Asked about the limited use of the AMP by the justice system, the MJQ suggested that most cases–including offences against the administration of justice, which are a major issue in Nunavik–could not be taken out of the justice system under the AMP.[2228] The DCPP representatives, meanwhile, said that the figures presented to the Commission underestimate the actual use of the AMP[2229], noting that the level of turnover among justice committee staff and the limited list of crimes that were previously eligible for the AMP could explain why so few referrals were counted.[2230]

However, the implementation of those programs also requires that a memorandum of understanding be signed between the representatives of the Indigenous justice committee or Indigenous political authorities and the DCPP. Before signing such an agreement, "the DCPP must be convinced that the justice committee is committed to playing a significant role in implementing the alternative measures"[2231], which is done most notably by checking that the justice committee is operational and has an administrative infrastructure. That is done in concert with the MJQ. When it comes to domestic violence, "the MJQ and DCPP must also jointly ensure that victim assistance organizations, including those which aid women, are on board".[2232]

To date, 24 communities have an AMP.[2233] Only the communities of Manawan and Wemotaci met all requirements to benefit from the AMP that includes domestic violence. As of this writing, however, discussions had begun with the Eeyou (Cree) and Mohawk.[2234]

Despite the increase in the Indigenous population in the cities, the alternative measures program specific to Indigenous people does not apply to urban areas.[2235] However, while the Commission was doing its work, a pilot project was underway for a general program for adult alternative measures in three cities in Québec (Sherbrooke, Saguenay and Longueuil).[2236] The MJQ's Director of Aboriginal Affairs stated at the hearings that this program was also for Indigenous people in the cities.[2237] When asked whether there would one day be AMPs

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2227 *Id.,* p. 14. A summary table showing the number of cases diverted in each of the communities with an AMP is presented in Appendix 34.

2228 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 130–131, lines 17–18.

2229 Testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018, p. 59–60, lines 6–12; p. 61, lines 12–18.

2230 *Id.,* p. 60–61, lines 30–11.

2231 *DG-0024-C, Community Justice Committees and Information*, document P-839-11 (Commission), tab 11.1.59, p. 940 of 940 (online PDF).

2232 *Id.,* p. 935 of 940 (online PDF).

2233 These communities belong to six nations: Anishnabek, Inuit, Eeyou (Cree), Atikamekw Nehirowisiw, Naskapis and Mi'gmaq. Document P-839-104 (Commission), *op. cit.*, p. 16–17.

2234 *DGP3-0022-C, Les protocoles d'entente mettant en œuvre un programme de mesure de rechange pour les adultes en milieu autochtone (suivant les articles 716 à 717.4 du Code criminel) signés entre le DPCP et les representatives de comités de justice ou les autorités politiques de milieux autochtones*, document P-839-7 (Commission), tab 10.1.1, p. 4 of 4 (online PDF).

2235 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 102-103, lines 25-12.

2236 *Id.,* p. 103, lines 7–12.

2237 *Ibid.*

specific to Indigenous clients in urban areas, he confirmed that this approach had been considered in Montréal, but added that they did not know how it would play out.[2238]

From my perspective, community justice programs are the key to genuine Indigenous governance in justice matters. However, the role they play, the way they interact with the justice system–especially with the DCPP–and the resources at their disposal must all be reviewed.

First, the latitude that communities are given must go beyond the constraints of the current alternative measures program. To achieve this, a real partnership must be established with the DCPP. But due to the issues involved, including access to justice and victim protection, such a partnership must be clearly defined in an agreement. I therefore recommend that the government:

CALL FOR ACTION No. 41

Amend the existing laws, including the *Act respecting the Director of Criminal and Penal Prosecutions*, to allow agreements to be signed to create specific justice administration systems with Indigenous nations, communities or organizations active in urban areas.

Inspired by the specific youth protection systems that have been able to be set up in Indigenous communities since 2001, these agreements would provide for the automatic referral of criminal cases involving Indigenous offenders from the DCPP to Indigenous communities or authorized Indigenous organizations in urban areas. They would also include mechanisms for referring cases to other communities or returning them to the government system, either at the victim's request or in special circumstances such as conflict of interest, lack of resources, or when the community believes that it is not equipped to handle the case. Nor would anything prevent communities from right away listing a series of crimes they do not generally wish to intervene in, such as sexual assaults or murders.

Bold as it may seem at first, this approach seems more promising to me than any further attempt at carving out a place for Indigenous law and its underlying values within existing justice structures. Not only does it encourage autonomy and Indigenous governance in a crucial area, it also has great potential for relieving an overburdened system that is unable to meet the demands placed on it. This would not entail creating a parallel system, but rather adding a feature to improve the existing system for Indigenous peoples.

Given the new urban reality of Indigenous people, the transformation will have to be made possible throughout Québec and supported by substantial funding if it is to succeed.

2238 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 140–143, lines 8–8.

I therefore recommend that the government:

CALL FOR ACTION No. 42

Encourage the introduction of community justice programs and the implementation of alternative measures programs for Indigenous adults in all cities where the Indigenous presence requires it.

CALL FOR ACTION No. 43

Set aside a sustainable budget for Indigenous community justice programs and for the organizations responsible for keeping them up to date, proportionate to the responsibilities assumed and adjusted annually to ensure its stability, factoring in the normal increases in operating costs of such programs.

8.5. State justice in need of improvement

The ultimate goal of the proposed reform is clear. It is to allow communities to handle the majority of crimes involving Indigenous offenders residing in their territories, if they so desire. The regular criminal justice system will still have a role to play in various circumstances and for various reasons. However, the evidence heard and submitted leaves no doubt that some changes are needed to facilitate access to justice and end persistent discrimination problems.

8.5.1 Access problems

Inherent language barriers, limited access to interpreters, and the flagrant ignorance of the main actors in the judicial system as to the history and culture of Indigenous peoples have been identified earlier in this report as major obstacles to the accessibility of services. Practical actions have also been proposed to remedy them.[2239] However, those are not the only obstacles encountered by First Nations members and Inuit in terms of access to justice.

Geographic barriers

The truth is that, for many Indigenous people, the hundreds of kilometres that separate them from the closest courts or legal aid offices are a major barrier to access.

In fact, as many of the witnesses at the hearing noted, people not only need to travel to get to court, they sometimes need to overnight in the community where the court is located.[2240] They also need to cross long distances to meet with their lawyers or probation officers.[2241]

2239 See Chapter 6 of this report.

2240 Testimony of Martin Scott, stenographic notes taken November 16, 2018, p. 63–64, lines 21–21 and p. 71–72, lines 23–6; testimony of Mario Chachai, stenographic notes taken June 18, 2018, p. 115–116, lines 10–12; testimony of Clara Lafrance-Egervari, stenographic notes taken September 6, 2018, p. 189–190, lines 3–19; testimony of Sharon McBride, stenographic notes taken September 14, 2017, p. 83, lines 15–19; testimony of Angèle Petiquay, stenographic notes taken January 19, 2018, p. 164, lines 19–25 and p. 174–175, lines 9–14; testimony of Martine Weizineau, stenographic notes taken February 13, 2018, p. 192–194, lines 22–3; document PD-20 (Commission), *op. cit.*, p. 243 of 772 (online PDF).

2241 Testimony of Sharon McBride, stenographic notes taken September 14, 2017, p. 83–85, lines 19–6; testimony of Laurier Riel, stenographic notes taken September 14, 2017, p. 87–88, lines 16–3.

The fact that there is no permanent legal service in Nunavik makes the situation particularly difficult for the Inuit.[2242] At a hearing, the Chief Prosecutor for Northern Québec confirmed that there has been no criminal prosecutor in Kuujjuaq since 2017, and service is provided from Amos.[2243] The same is true for the legal aid service, provided from Val-d'Or since February 2019.[2244] Other communities isolated from large centres, such as those on the North Shore, are facing the same challenge.[2245] The same applies to the Atikamekw Nehirowisiw of Opitciwan, who have to travel 300 km to appear in court in Roberval.[2246]

Access to a lawyer

Although distance impedes access, the Commission's work has also highlighted some problems related to representation by lawyers. For many First Nations or Inuit people facing the justice system, legal aid is the only way to be represented. According to statistics from the Commission des services juridiques–which administers the legal aid system in Québec–1.2 to 1.6% of requests for legal aid each year come from a First Nations member declaring a band number.[2247] Between 2008 and 2017 that represented 3,486 to 4,406 requests each year.[2248] The Commission President, Yvan Niquette, also stated in a hearing that he felt those figures were "clearly" underestimated, particularly in urban areas, because some applicants may fail to provide information about their band numbers.[2249]

Some discrepancies as to eligibility for legal aid and the quality of the services received were also noted. For instance, the Commission's work established that a large number of applicants declaring a band number were denied requests for legal aid for criminal matters between 2001 and 2017. Although the number of requests by First Nations members for legal aid, all matters combined, has remained relatively stable, the number of denials for criminal cases tripled during that period, rising from 131 denials in 2001 to 378 in 2017.[2250]

2242 Québec Ombudsman. (2016). Detention conditions, administration of justice and crime prevention in Nunavik (Special Report), p. 51. Retrieved from https://protecteurducitoyen.qc.ca/sites/default/files/pdf/rapports_speciaux/2016-02-18_detention-conditions-in-Nunavik.pdf

2243 Testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018, p. 20–23, lines 17–11.

2244 Quinn, E. (February 2019, 15). Fermeture du bureau d'aide juridique de Kuujjuaq. Radio-Canada.ca. Retrieved from https://ici.radio-canada.ca/nouvelle/1152359/autochtones-justice-avocats-assistance-nunavik-.

2245 Testimony of Marie-Chantale Brassard, stenographic notes taken June 15, 2017, p. 227–228, lines 14–6; testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 153, lines 5–24; testimony of Bernard Lynch, stenographic notes taken October 25, 2018, p. 140, lines 6–19.

2246 Testimony of Mario Chachai, stenographic notes taken June 18, 2018, p. 116, lines 9–15.

2247 *DGP-0174-C, Précisions sur l'accessibilité à l'aide juridique pour les personnes Autochtones (Premières Nations et Inuit) en matière criminelle et pénale*, document P-839-65 (Commission), tab 65.1, p. 4–5 of 119 (online PDF).

2248 *Id.,* p. 4 of 119 (online PDF).

2249 Testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p.68–69, lines 25–5.

2250 *DG-0174-C, L'accessibilité à l'aide juridique pour les personnes Autochtones (Premières Nations et Inuit) en matière criminelle et pénale*, document P-839-64 (Commission), tab 64.1.2, p. 10 of 10 (online PDF).

The main grounds for denial are not due to economic ineligibility. Asked to elaborate during a hearing, the Commission President said that the low incomes of Indigenous people often mean the eligibility threshold is not an issue.[2251] According to him, the main reason is the inhability to provide some information. A check of this statement revealed that in 2016 alone, 75.0% of the denials (335 of 445) in criminal cases were for that reason.[2252]

Asked for comments, Mr. Niquette told the Commission it could be explained by the difficulty of building trust with the communities, as well as problems with understanding the requirements as to which documents need to be produced and kept:

> [T]he number of refusals to provide information, that has been verified everywhere, in all legal sectors and in all regions of Québec. It is more pronounced with the indigenous communities, First Nations and Inuit (…) [T]he relationship of trust, the understanding of requirements for accessing services is even more difficult in those communities. Indigenous beneficiaries don't always understand that it is an absolute necessity. And it is often harder to keep documents in those communities, so that when you demand something, you demand it, but as they say, nobody can do the impossible. (…) [I]t means that you end up with […] denials based on refusals to provide information.[2253]

Those statements were confirmed by defence lawyers who work in Indigenous communities surveyed by the Commission. More than half (54.8%) of the survey respondents believe that the process of obtaining legal aid is a problem for Indigenous peoples.[2254] The problems mentioned, yet again, are language, the distance that the potential beneficiary must travel for an eligibility appointment, the exhaustive and hard-to-collect documentation, and often non-existent proof of income.[2255]

Over half (58.3%) of the private practice lawyers who accept legal aid mandates believe that low compensation is an issue, since the cases are complex and require a great deal of involvement.[2256] Several of them were hesitant to take cases in which Indigenous people were accused. Stéphanie Quesnel, access to justice coordinator at the Centre d'amitié autochtone de Val-d'Or (CAAVD), told the Commission that she sometimes needs to devote "about fifty hours" to finding a lawyer interested in taking a case.[2257]

Faced with the same problems, Bernard Lynch, a lawyer at the Centre communautaire juridique de la Côte-Nord, said these difficulties decrease significantly when a court worker is available to support the applicant.[2258]

2251 Testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 124–125, lines 25–11.

2252 Document P-839-64 (Commission), *op. cit.*, p. 10 of 10 (online PDF).

2253 Testimony of Yvan Niquette, stenographic notes taken October 25, 2018, p. 143, lines 4–22.

2254 Document PD-20 (Commission), *op. cit.*, p. 277 of 772 (online PDF).

2255 *Ibid.*

2256 *Ibid.*

2257 Testimony of Stéphanie Quesnel, stenographic notes taken December 10, 2018, p. 61, lines 7-10.

2258 Testimony of Bernard Lynch, stenographic notes taken October 25, 2018, p. 144-145, lines 13-15.

In light of all the testimony, I can only reiterate my desire for liaison officer positions to be instituted in Indigenous communities and in Indigenous organizations headquartered in urban areas. As outlined in the call for cross-disciplinary action in Chapter 6 of this report, such liaison officers would make it easier for members of First Nations and Inuit to navigate the justice system as well as offering them support and guidance.[2259]

It would also be my considered view to factor in the additional time required to provide culturally safe, appropriate service. I therefore recommend that the government:

CALL FOR ACTION no. 44

Amend the *Act respecting legal aid* to introduce special tariffs of fees for cases involving Indigenous people, in both civil and criminal matters.

The Itinerant Court

In order to better serve remote indigenous communities, Québec can also enlist the services of Itinerant Courts. As detailed in Chapter 5 of this report, these courts cover Northern Québec (Eeyou (Cree) and Inuit lands) as well as the Lower North Shore and the region of Schefferville (Innu and Naskapi territories).[2260] However, the model has been subject to repeated criticisms over the years, both in terms of workflow and infrastructure and with regard to its legitimacy.[2261] Although several State institutions grew concerned and the Court of Québec adopted a three-year plan to improve legal services in remote Indigenous areas in 2005, the testimony we heard made it clear that these problems still persist.

The expeditious nature of justice in the North and the heavy caseload seem to be the source of many issues[2262], as described by Lucy Kumarluk, a resident of Umiujaq in Nunavik:

> [W]e have no court service in Umiujaq, so, all the people who have to go to court are sent here on a plane, let us say 40 to 50 people are all come in one day. They have to deal with 40, 45 cases in one day for Umiujaq, Umiujaq files. It is not right. It doesn't lead to justice or it doesn't give us the right… It is not the right outcome, if they are rushing them like that. Like, how can a court deal with 40, 50 cases in one day? And then send them back. They come at 8 o'clock, they are back home by 6 o'clock, all 40 of them postponed or rush, rush court appearance. And, like they said earlier, all the victims and plaintiffs are sent on the same plane, and there is no security. And that is what I hope sometimes, to see security, some authority inside the plane where the victims feel safer.[2263]

2259 See the call for action regarding liaison officers on pp. 245-247.

2260 Testimony of Marie-Chantale Brassard, stenographic notes taken June 15, 2017, p. 227–233, lines 2–13; testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018, p. 14–17, lines 9-4; testimony of Nathalie Samson, stenographic notes taken November 13, 2018, p. 17–20, lines 13–14.

2261 Document P-916 (Commission), *op. cit.*, p. 29–32; Québec Ombudsman. (2016), *op. cit.*, p. 13, 19, 23-28 and 61–66.

2262 Testimony of Marie-Chantale Brassard, stenographic notes taken October 19, 2018, p. 383, lines 6–11; testimony of Nathalie Samson, stenographic notes taken November 13, 2018, p. 30–31, lines 18–20; testimony of Marie-Hannah Angatookalook, stenographic notes taken November 16, 2018, p. 67, lines 4–17; testimony of Martin Scott, stenographic notes taken November 16, 2018, p. 78–80, lines 19–4; document P-556 (Commission), brief M-008, *op. cit.*, p. 5.

2263 Testimony of Lucy Kumarluk, stenographic notes taken November 12, 2018, p. 92–93, lines 23–15.

According to Shaomik Inukpuk, also a resident of Nunavik, the fact that the court is only in session in his community once every three months is also hugely insufficient, because as he says: "this is quite too long when someone is scared".[2264] He believes that it also has the effect of dissuading victims from pressing charges:

> And for this reason, people… some people don't even bother in trying to call for some assistance when some… when… even in violent cases, even if someone beats up another one, they don't sometimes charge… charge people who do that, knowing that the person will be released on a condition and that he'll be free until… for the court dates.[2265]

Asked to comment on the situation, DCPP representatives confirmed that the long travel times often do not allow prosecutors to meet with victims before charges are filed.[2266] However, the institution's existing guidelines on this subject are very clear as to the requirements to be met, particularly in cases involving sexual assault.[2267]

Many witnesses also cited deficient facilities. Yan Paquette, Associate Deputy Minister of Justice, admitted at a hearing that some regions do not have the facilities needed to host the Court.[2268] That is particularly true of the Naskapi community of Kawawachikamach.[2269]

The Court of Québec has reportedly made numerous requests for adequate premises over the years, but they have all been in vain.[2270] Still today, the Court sometimes sits in arenas and the lawyers meet with clients in cloakrooms or even washrooms.[2271] This was described as unacceptable by Judge Danielle Côté, former Associate Chief Judge of the Court of Québec, when she spoke before the Commission:

> It's not about respect for the judge, it's about respect for the community. We hold court under conditions that we would never accept in the south.[2272]

For all of these reasons, lawyer Armand MacKenzie believes the Itinerant Court suffers from a severe credibility deficit:

> The Itinerant Court, the way it's administered now, it's a bit of an assembly line. We do things very quickly. We go into the Indigenous village, we shake everyone up, at first for two or three days. Three days at most, because sometimes there are snowstorms, and we don't feel inclined to stay. We want to leave. There's no Internet. The Internet signal isn't fast. So we want to get it all done quickly

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2264 Testimony of Shaomik Inukpuk, stenographic notes taken November 15, 2018, p. 134, lines 6–7.

2265 *Id.,* lines 7–14.

2266 Testimony of Marie-Chantale Brassard, stenographic notes taken June 15, 2017, p. 240, lines 3–13.

2267 *Directives INF-2 du DPCP*, document P-781 (Commission), p. 1; testimony of Marie-Chantale Brassard, stenographic notes taken June 15, 2017, p. 239–240, lines 17–2.

2268 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 60, lines 1–8.

2269 Testimony of Noah Swappie, stenographic notes taken June 16, 2017, p. 26, lines 11–12.

2270 Testimony of Danielle Côté, stenographic notes taken December 10, 2018, p. 168, lines 14–15.

2271 Testimonies of Danielle Côté and Lucille Chabot, stenographic notes taken December 10 2018, p. 169, lines 2–18.

2272 Testimony of Danielle Côté, stenographic notes taken December 10, 2018, p.168, lines 20–24.

> and we rush through the cases. This is fascinating to the Indigenous people, the locals. We look at the case files, we go through them. They meet separately, then they talk, then come back, with black coats, black robes, they come back. Then another case, hurry up. And it goes on like that. Then we set conditions. And it's not really credible.[2273]

The evidence obtained by the Commission also showed a very high turnover among the DCPP prosecutors assigned to the Itinerant Court. Between 2005 and 2018 alone, 116 prosecutors covered the territory of Northern Québec (Eeyou (Cree) and Inuit lands).[2274] Those prosecutors were on the job for an average of 16.51 months, during which time they would go to the territory just under six times.[2275] During their first trips, the majority of them (58.1%) had also been members of the Barreau for less than five years.[2276]

Given these findings, some witnesses suggested handling all court cases relating to Nunavik in Montréal.[2277] To them, the fact that most Inuit inmates are held in Saint-Jérôme and that there is a sizable Inuit community in Montréal would argue in favour of this approach.[2278] In my own opinion, although this scenario may seem interesting at first, it would not be a good idea.

First of all, I believe that the proposal outlined earlier in this chapter as to the increased role that Indigenous organizations and communities should play in administering justice should considerably reduce the caseload in Itinerant Court sessions. It will also help process files faster and devote more time to each case, mitigating the locals' sense that the system rushes them through. Even more important, it will give the power of managing the system back to the Indigenous communities.

I also believe that transferring cases from Nunavik to Montréal would lead to an unfortunate loss of expertise. Over the decades, judges, criminal and penal prosecutors and legal aid lawyers from the district of Abitibi have developed valuable expertise about Nunavik. If we had to start over with a new team, it would surely take years to reach the same level of understanding. I believe the Inuit people have already suffered enough from gaps in the system without forcing them to take such a huge step backward.

That said, the infrastructure problem remains critical in several places. To remedy it, I recommend that the government:

CALL FOR ACTION No. 45

Invest in developing premises adequate to the exercise of justice in each of the communities where the Itinerant Court sits, as soon as possible.

2273 Testimony of Armand MacKenzie, stenographic notes taken October 20, 2017, p. 207–208, lines 8–1.

2274 *Expérience et rétention des procureurs des poursuites criminelles et pénales de la cour itinérante*, document P-839–110 (Commission), p. 4.

2275 *Id.*, p. 5.

2276 *Id.*, p. 6.

2277 Testimony of Lucy Grey, stenographic notes taken November 23, 2018, p. 19–20, lines 20–23; testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 227–228, lines 5–11.

2278 *Ibid.*

8.5.2 Confirmation of indirect and systemic discrimination

The evidence contains relatively few signs of direct discrimination against First Nations members and Inuit in the justice system.[2279] The data and testimonies collected, however, clearly demonstrate the adverse side effects caused by certain laws, policies, standards and institutional practices rampant within the justice system.[2280] This discrimination, which is widespread enough to be termed systemic, is reflected in various stages of criminal proceedings, as the evidence has shown.

Arrest and prosecution

The phenomenon of excessive arrests and the prosecutions that result has been covered earlier in this report.[2281] The large number of tickets issued in various Québec towns, particularly to the homeless, was mentioned in particular. Since the homeless have very little money, such tickets often result in incarceration for failure to pay fines.[2282] The reported case of Lizzie Puttayuk, an Inuit woman whose legal debts amounted to $25,000 for tickets received from the City of Montréal between 2004 and 2013, is a clear example.[2283] Unfortunately, her story is not unique. In Chibougamau, 95.1% of tickets leading to incarceration were issued to Indigenous people.[2284] In Val-d'Or it was 100.0%.[2285]

But as Stéphanie Quesnel, access to justice coordinator at the Centre d'amitié autochtone de Val-d'Or (CAAVD), testified:

2279 Testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 98–99, lines 18–10; Testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 173, lines 12–17; document PD-20 (Commission), *op. cit.*, p. 272–273 and 439–440 of 772 (online PDF).

2280 Testimony of Sarah Plamondon, stenographic notes taken September 6, 2018, p. 47, lines 1–13; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 28, lines 13–19; testimony of Pierre Rousseau, stenographic notes taken January 25, 2018, p. 83–84, lines 20–19; testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 54, lines 3-9, p. 65, lines 5–10 and p. 99, lines 1–10; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 150–151, lines 25–7; testimony of Marie-Pierre Bousquet, stenographic notes taken April 11, 2018, p. 51, lines 3–9; testimony of Tamara Thermitus, stenographic notes taken June 12, 2017, p. 103–104, lines 15–18; testimony of Jacinthe Poisson, stenographic notes taken November 13, 2017, p. 276–278, lines 10-1; testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 178, lines 7–21, p. 181–182, lines 24–7 and p. 185, lines 5–9; testimony of Paul Turmel, stenographic notes taken June 12, 2018, p. 30–31, lines 15–16; testimony of Constance Vollant, stenographic notes taken September 5, 2018, p. 112, lines 12–20; testimony of Paul John Murdoch, stenographic notes taken August 20, 2018, p. 59, lines 3–13; testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 102, lines 15–21; testimony of Louis-Philippe Mercier, stenographic notes taken August 24, 2018, p. 26–27, lines 24–15, p. 36–38, lines 19–6 and p. 40, lines 2–8; document PD-20 (Commission), *op. cit.*, p. 270–271 of 772 (online PDF).

2281 See the chapter on policing, pp. 277-280.

2282 If passed as is, Bill 32 *(An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to applications for appeal)* tabled by the Québec government in 2019 could have an impact in this regard. As this report was completed, however, it was impossible to tell how much would be changed.

2283 *Portrait de la situation judiciaire de Lizzie Puttayuk à la cour municipale de Montréal*, document P-1148 (Commission).

2284 Document PD-2 (Commission), *op. cit.*, p. 45 of 122 (online PDF).

2285 *Ibid.*

> The consequences of imprisonment on someone who lives in the street are disastrous. These are people who don't have much of a social network, they have just a few people, most of whom don't own much themselves. Then putting them in prison, taking them out of their environment, it makes it worse, it makes the problem worse. Then when they get out, they don't turn around and say to themselves, "Okay then, I was in prison, I don't want to go back, I gotta stop getting ticketed." That's not how it works.[2286]

In September 2017, given the extent of the adverse effects, I asked the Town of Val-d'Or to impose a moratorium on imprisonment for failure to pay fines and set up a justice assistance program for homeless clients inspired by Montréal's Programme d'accompagnement à la justice et d'intervention communautaire (PAJIC).[2287] My calls for action were heeded. A week after I made the request, the Municipal Court of Val-d'Or announced that it would suspend imprisonment for failure to pay fines.[2288]

Alongside this measure–which is still in effect–the Anwatan-PAJIC Val-d'Or program[2289], developed jointly by the Town of Val-d'Or and the CAAVD[2290], was also set up. Heavily inspired by the PAJIC program of Montréal[2291], the approach takes into account the unique situation of indigenous people and provides four areas of response: assistance in court, which ultimately leads to the forgiveness of the debt[2292], customized payment agreements, community service, including cultural or wellness activities[2293], and the temporary suspension of the case for special circumstances such as major health issues.[2294]

When she testified at the hearing, the access to justice coordinator at the CAAVD said she had already seen an improvement in the field:

> The level of stress, when people find out, that there's no… that they won't be facing jail time because there's a moratorium. Phew, the stress level drops. Going off to hide; not wanting to come and see anyone; not talking about it out of fear of being jailed because maybe there's a warrant issued against me; well this falls away and then people become more open to seeking other options and coming to see us, coming to see how they can work things out.[2295]

2286 Testimony of Stéphanie Quesnel, stenographic notes taken December 10, 2018, p. 46–47, lines 19–6.

2287 *Intervention by Commissioner Jacques Viens*, stenographic notes taken September 20, 2017, p. 13–17, lines 6–9.

2288 *DG-0243-C, Le moratoire sur l'emprisonnement pour non-paiement d'amendes et le développement d'un programme PAJIC dans la ville de Val-d'Or*, document P-839–89 (Commission).

2289 *DG-0242-C, La mise en œuvre des deux appels à l'action émis par la Commission concernant la judiciarisation de l'itinérance*, document P-839–88 (Commission), p. 3 of 37 (online PDF).

2290 *Id.* p. 9 of 27 (online PDF).

2291 Document PD-13 (Commission), *op. cit.*, p. 8.

2292 Testimony of Stéphanie Quesnel, stenographic notes taken December 10, 2018, p. 24-25, lignes 5-21.

2293 *Id.*, p. 35, lines 15–17.

2294 *Id.*, p. 41, lines 9–24.

2295 *Id.*, p. 48, lines 6–17.

More concretely, of the five people preparing to join the program in December 2018[2296], four completed it and had their legal debts erased in spring 2019.[2297]

When they testified at the hearing, program initiators took this opportunity to highlight the importance of other towns following suit. Given the very high mobility rates among Indigenous populations, it is not uncommon for Indigenous people to accumulate unpaid fines in several towns.[2298] That can sometimes complicate things when someone decides to join the program. In such situations, Stéphanie Quesnel explained, negotiations need to be held with the collectors from other towns to make arrangements, and from then on "it all depends on the good will of each municipality".[2299]

I believe that, because Indigenous people are migrating to urban areas in increasing numbers, cities can no longer deny responsibility for them. Québec City also set up its own PAJIC program in spring 2018. I am personally convinced of the positive impacts that we can expect from easing the procedures this way.

I therefore recommend that the towns and municipalities of Québec:

CALL FOR ACTION No. 46

Stop incarcerating people who are vulnerable, homeless or at risk of becoming homeless for non-payment of fines for municipal offences.

CALL FOR ACTION No. 47

Set up a PAJIC for people who are vulnerable, homeless or at risk of becoming homeless.

In addition, to ensure the sustainability of such measures, I recommend that the government:

CALL FOR ACTION No. 48

Amend the *Code of Penal Procedure* to stop the incarceration of people who are vulnerable, homeless or at risk of becoming homeless for non-payment of fines for municipal offences.

2296 *Id.*, p. 21, lines 12–16.

2297 Brodeur-Girard, S. (May 31, 2019). Anwatan : les eaux calmes après la tempête. L'indice bohémien. Retrieved from http://www.indicebohemien.org/articles/2019/05/anwatan-les-eaux-calmes-apres-la-tempete#.XSojLrdKjIU.

2298 Testimony of Stéphanie Quesnel, stenographic notes taken December 10, 2018, p. 53-54, lignes 12-14.

2299 *Id.*, p. 55, lines 12–14.

CALL FOR ACTION No. 49

Provide sustainable funding to PAJICs for people who are vulnerable, homeless or at risk of becoming homeless.

Pre-trial detention

The release of an accused pending trial is the rule rather than the exception in Canadian law. Under the Canadian *Charter*, any person charged with an offence has the right "not to be denied reasonable bail without just cause".[2300] The accused should therefore be released without conditions, unless the Crown establishes grounds justifying detention or conditions.[2301] And when an accused is released on conditions, those conditions should be the least restrictive ones.[2302]

However, the data the Commission obtained from the MJQ confirms that Indigenous people are more likely to remain incarcerated at the appearance stage or following a bail hearing. They are also overrepresented in pre-trial detention and generally held for longer before trial.

In this respect, I can only reiterate the importance of applying the law as it now stands. In its recent ruling in *R.* v. *Myers*[2303], the Supreme Court reaffirmed that pre-trial detention should remain the exception, since at this stage, all accused persons always benefit from the presumption of innocence.

However, it is clear—and the figures speak for themselves—that accused people living in First Nations communities are twice as likely as non-Indigenous people to be detained at the time of their appearances (23.2% of Indigenous accused compared to 10.5% of non-Indigenous accused).[2304] The imbalance is even greater among residents of Inuit villages, with a pre-trial detention rate reaching 30.0%.[2305]

The evidence also shed light on the time spent in custody by people who identified themselves as Indigenous to correctional services.[2306] Between 2012-2013 and 2015-2016, the average time spent in pre-trial detention increased for all of the accused. But the increase was much higher (150.0%) among Indigenous accused than among the others (114.5 %), rising from 21.8 days to 32.8 days for that section of the population during that time period.[2307]

2300 *Canadian Charter of Rights and Freedoms*, *op. cit.*, s. 11e).

2301 *Criminal Code*, R.S.C. 1985, c. C-46, s. 515(1), with some exceptions: s. 515(6) and s. 522(1) and (2).

2302 *Id.,* s. 515(2) and s. 515(3).

2303 *R.* v. Myers, 2019 SCC 18.

2304 *Enquêtes sur remise en liberté provisoire des personnes autochtones*, document -839-111 (Commission), p. 5.

2305 *Ibid.* The detailed figures can be found in Appendix 35.

2306 The statistics on the number of stay in pre-trial detention and the duration is available in Appendix 36.

2307 *Les séjours en détention préventive*, document P-839-112 (Commission), p. 4.

This imbalance affects Indigenous women in particular. They represent 7.5% of the number of pretrial detention stays, although they account for only 0.7% of Québec's population.[2308] The Inuit are also overrepresented. While they represent 12.0% of Québec's Indigenous population, they made up 43.1% of the pretrial detention stays recorded among Indigenous people (2,959 out of a total of 6,861).[2309] Inuit men are also held in custody longer than all Indigenous men (an average of 38.7 days compared to 27.8 for other Indigenous men).[2310]

This clear distinction with regard to the Inuit is partly due to the delays inherent in transporting the accused from Nunavik to Amos for bail hearings and the unavoidable trips to Montréal and Saint-Jérôme that this entails.[2311] This situation also affects women, for whom there are fewer detention facilities and who must often be transferred from Nunavik to Amos, then to the Leclerc Institution in Laval.[2312]

When she appeared before the Commission, lawyer Nathalie Pelletier, who headed the Abitibi-Témiscamingue Barreau at the time[2313], considered that it could easily take eight to ten days from the time a person was arrested in Nunavik to the time he or she appeared in court at Amos.[2314] And yet, she added, "the *Criminal Code* says a bail hearing [...] should be held within three days".[2315]

In their appearances before the Commission, Court of Québec judges lambasted this situation and reiterated their commitment to change:

> When they reach Amos, they [the accused] are still unprepared for their bail hearings because they didn't have access to their lawyers during the entire travel time. There are no methods of communication, so seven, eight, nine days can go by before the bail hearing is held. It's been ten years... I was able to go back ten years ago in the coordination files, where they requested that the people arrested in the North continue to be held in the North until their release status is determined.[2316]

Among other things, the judges deplored that the accused are not released in their own communities.[2317] Especially considering that half of the accused who are released at their initial court appearances and a strip search is conducted at every transfer[2318], which means five or six strip searches for an accused who left a village in Nunavik and transited through Dorval and Saint-Jérôme before arriving in Amos.

2308 *Id.*, p. 5.

2309 *Id.*, p. 6.

2310 *Id.*, p. 7.

2311 Testimony of Robin Aubut-Fréchette, stenographic notes taken March 14, 2018, p. 72–75, lines 21–7; testimony of Nathalie Pelletier, stenographic notes taken April 19, 2018, p. 194–195, lines 13–25.

2312 Testimony of Sarah Plamondon, stenographic notes taken September 6, 2018, p. 90–91, lines 1–20.

2313 Ms. Pelletier is now a judge of the Superior Court of Québec.

2314 Testimony of Nathalie Pelletier, stenographic notes taken April 19, 2018, p. 195, lines 22–25.

2315 *Id.*, p. 196, lines 1–4.

2316 Testimony of Lucille Chabot, stenographic notes taken December 10, 2018, p. 195, lines 10–20.

2317 *Id.*, p. 195–196, lines 20–1.

2318 *Id.*, p. 237, lines 6–7; testimony of Sarah Plamondon, stenographic notes taken September 6 , 2018, p. 90, lines 9–25; testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 64–65, lines 24–2.

Court of Québec judges are not the only ones demanding changes. To reduce transit delay problems, many witnesses suggested that bail hearings be held via videoconference.[2319] The DCPP also called for greater use of videoconferences before the initial court appearance, to improve communications with the communities.[2320]

At the hearing, the MJQ was not opposed to the idea. Josée Trottier, Regional Director of the Services judiciaires de l'Abitibi-Témiscamingue et du Nord-du-Québec, refused to make a firm commitment about this, stating that the MJQ is not the only partner who has to issue an opinion before a change is made.[2321]

For Judge Danielle Côté, former Associate Chief Judge of the Court of Québec, it is all a matter of will:

> The answer we get is that it's complicated. It's not complicated: it just needs a decree. It's simple and can be done in no time. But it takes the will from somewhere to do it.[2322]

I find it unacceptable that such an obvious solution, which would bring such a significant improvement for so many people, has not yet been implemented.

I therefore recommend that the government:

CALL FOR ACTION No. 50

Institute the use of videoconferences for bail hearings as soon as possible for accused persons in remote areas, particularly in Nunavik.

As some witnesses rightly pointed out, if this measure is to constitute a real gain and avoid increasing pressure on detention centres that are already overcrowded and in poor condition, it will have to be supported by the appropriate human and physical resources. That goes hand in hand with improving the general conditions of detention, particularly in Nunavik, as will be discussed in Chapter 9 of this report on correctional services.[2323]

2319 Testimony of Yan Paquette, stenographic notes taken June 13, 2017, p. 79–80, lines 23–8; testimony of Robin Aubut-Fréchette, stenographic notes taken March 14, 2018, p. 114, lines 7–16; testimony of Nathalie Pelletier, stenographic notes taken April19, 2018, p. 200, lines 5–8; testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 65-66, lines 4–1; testimonies of Clara Lafrance-Egervari and Sarah Plamondon, stenographic notes taken September??, 2018, p. 101, lines 5–19; testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018 p. 99–102, lines 16–14; testimony of Lucille Chabot, stenographic notes taken December 10, 2018, p. 194–196, lines 21–6; testimony of Jean-Pierre Larose, stenographic notes taken November 22, 2018, p. 88–89, lines 13–15; document P-556 (Commission), brief M-008, *op. cit.*, p. 23–24.

2320 Testimony of Annick Murphy, stenographic notes taken October 19, 2018, p. 386, lines 3–14.

2321 Testimony of Josée Trottier, stenographic notes taken October 5, 2018, p. 120, lines 15–19.

2322 Testimony of Danielle Côté, stenographic notes taken December 10, 2018, p. 235, lines 1–5.

2323 See Chapter 9, pp. 347-348.

Release conditions and breach of conditions

When a person is accused of a criminal offence, the judge may decide to release him or her[2324] pending trial on certain conditions, such as a curfew or a ban on consuming alcohol. If the accused breaches the conditions, he or she may be incarcerated for the rest of the proceedings, charged with another criminal offence or forfeit the money that was posted as bail.

As part of a survey addressed to 120 DCPP prosecutors working with Indigenous populations, 97.0% of the prosecutors who responded said they were not more likely to oppose the release of an Indigenous offender than that of a non-Indigenous offender.[2325] They also stated that their decisions were in "no way" fuelled by racial considerations and that they applied the same criteria to all accused, namely those set out in the *Criminal Code*.[2326]

Nearly half of the defence lawyers who responded to a similar Commission survey believe, however, that the prosecution is more likely to oppose it for Indigenous defendants.[2327] Such opposition would not be motivated by racism or systemic discrimination, but by environmental factors, which are themselves related to historical and systemic factors, as one respondent summed up:

> I don't think the prosecutors object because of racism. But the realities of the Indigenous communities create situations in which the factors to consider are often less conclusive to release. The prosecutors must protect both the community and the victims. Let me explain. Due to multiple social and historical problems (legacy of residential schools, large numbers of youth protection placements, overcrowding in homes, heavy incidence of sexual abuse and domestic violence, alcoholism, poverty) and the lack of services for addressing those problems, an Indigenous person has a greater chance of coming before the courts than a non-Indigenous person. More priors often indicate a higher risk of recidivism, which argues against release. They cannot always respect the conditions, due to a difficult environment (inability to find another place to live, size of community making it impossible to stay far away from the victim, remoteness of treatment centres). This makes for a difficult situation, because even though we have to acknowledge the unfavourable situation that hampers release, we still have to reconcile all of this with the needs of the victims and communities.[2328]

The MJQ database has no information on conditions set upon release.[2329] Only bail conditions are documented. Here, the numbers confirm that slightly more Indigenous people than non-Indigenous people are granted bail (75.1% accepted and 24.4% denied compared to

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2324 *Criminal Code*, R.S.C. 1985, c. C-46, s. 515.

2325 Document PD-20 (Commission), *op. cit.*, p. 422 of 772 (online PDF). Note that 33 prosecutors responded to this question.

2326 *Ibid.* The three criteria for opposing bail are: 1) ensuring that accused persons attend court; 2) protection or safety of the public (including any victim or witness) and the likelihood that the accused will commit a criminal offence if released from custody; 3) maintaining confidence in the administration of justice. *Criminal Code*, R.S.C. 1985, c. C-46, s. 515 (10).

2327 Document PD-20 (Commission), *op. cit.*, p. 250 of 772 (online PDF).

2328 *Id.*, p. 251 of 772 (online PDF).

2329 Document P-839.25 (Commission), tab 25.2, *op. cit.*, p. 13 of 63 (online PDF).

68.0% accepted and 31.0% denied).[2330] However, that is not the case for the Inuit, who are only released in 54.1% of cases (45.7% are denied bail).[2331]

That being said, several witnesses said how unreasonable, even unrealistic, the conditions for release are from an Indigenous perspective.[2332] For example, given how small Indigenous communities are, forbidding the accused to be in the presence of the victim is nearly impossible to respect. The same applies for drug and alcohol consumption criteria and the treatment or therapy obligations that may go with them when no resources are available in the accused's community or even language.[2333] Having no fixed address is an obstacle to conditional release, as Laurier Riel, paralegal adviser and coordinator of the NPJSQ program to assist victims of police misconduct, told the Commission.[2334]

The majority of the prosecutors who responded to the Commission's survey (60.0%) acknowledged these issues. From their point of view, the conditions that generate the most problems are those prohibiting alcohol consumption (100.0%), contact with another person (61.1%), and being in certain places (44.4%).[2335] We heard the same story from the defence lawyers who work with Indigenous populations and responded to the Commission's survey.[2336]

In urban environments, other types of conditions pose particular problems, such as the condition of not disturbing the peace, or prohibiting the accused from being in public places. The fact that people who are homeless or grappling with addiction problems need to access resources that are within a prohibited perimeter makes things more complicated.[2337]

In my opinion, the undifferentiated application of both assessment criteria and release conditions has a substantial discriminatory impact on members of the First Nations and Inuit. Unable to respect the conditions imposed on them, Indigenous offenders repeatedly breach them. This triggers a cascade of events whose main result is to solidify their negative relationship with the justice system.[2338]

2330 Detailed numbers appear in Appendix 37.

2331 Document P-839-111 (Commission), *op. cit.*, p. 7.

2332 Testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 24, lines 3–9 and p. 25–27, lines 12–25; testimony of Clive Weighill, stenographic notes taken October 19, 2017, p. 113–115, lines 22–5.

2333 Testimony of Clara Lafrance-Egervari, stenographic notes taken September 6, 2018, p. 169–171, lines 24–24; testimony of Louis-Philippe Mercier, stenographic notes taken August 24, 2018, p. 41–42, lines 15–4; testimony of Phoebe Atagotaaluk, stenographic notes taken November 16, 2018, p. 73–75, lines 13–16; testimony of Martin Scott, stenographic notes taken November 16, 2018, p. 76–78, lines 1–7.

2334 Testimony of Laurier Riel, stenographic notes taken September 14, 2017, p. 67, lines 17–24.

2335 Document PD-20 (Commission), *op. cit.*, p. 423 of 772 (online PDF).

2336 *Id.,* p. 252–253 of 772 (online PDF).

2337 Testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 22–24, lines 15–20 and p. 44, lines 1–17; testimony of Jacinthe Poisson, stenographic notes taken November 13, 2017, p. 237–238, lines 21–5.

2338 Testimony of Lyne Saint-Louis, stenographic notes taken June 5, 2018, p. 25–26, lines 13–15; testimony of Clara Lafrance-Egevari, stenographic notes taken September 6, 2018, p. 171, lines 3–24; testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 45, lines 3–13; testimony of Armand Mackenzie, stenographic notes taken October 20, 2017, p. 198–199, lines 22–25; testimony of Etuk Kasudluak, stenographic notes taken February 12,2018, p. 31–66, lines 17–19 and p. 74–97, lines 15–7.

The story of John Clarence Kawapit, most of whose clashes with justice are breaches of conditions pertaining to alcohol consumption is one example:

> That's why I have about over a hundred previous convictions. I mean, not previous convictions, breaches that I have not to drink alcohol. Sometimes, when I get one charge, I get five or six conditions not to drink alcohol, like five, six pages. And when I breach one they count six breaches. That's how they -- that's how my file gets piled up, because of my breaches.[2339]

The MJQ's analysis of legal data confirms the heavy prevalence of offences against the administration of justice–including breaches of conditions–among Indigenous people.[2340] For example, in 2016 alone, the MJQ data shows that 4,774 of the 13,705 charges against people domiciled in an Indigenous community dealt with offences against the administration of justice, i.e. 35.0%.[2341] The rate was 39.0% in 2011 (6,169 of 16,000 charges) and 36.0% in 2013 (4,985 of 14,017 charges).[2342]

Breaches of conditions ordered by a judge[2343] and breaches of probation[2344] are among the three offences people residing in Indigenous communities are most frequently charged with.[2345] Such breaches of conditions affect the Inuit in particular (14,742 charges laid between 2001 and 2017), accounting for 52.2% of all charges brought against Indigenous people. Breaches of probation affect the Inuit (28.7% of charges in this category) and Innu (27.3%) almost equally.[2346]

In addition to contributing to the revolving door cycle in the courts[2347], the overprosecution of Indigenous people for minor infractions may have serious consequences for families and communities. Among other things, having a criminal record may be a major obstacle in the area of youth protection, when someone expresses a desire to provide foster care.[2348]

The MJQ acknowledged the problem at the hearing, but had few solutions to offer, preferring to look to Bill C-75, which the federal government passed in June 2019.[2349] Among other things, the bill introduces a principle of restraint into the *Criminal Code* that calls for peace officers, justices and judges to "give primary consideration to the release of the

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2339 Testimony of John Clarence Kawapit, stenographic notes taken April 9, 2018, p. 139, lines 6–15.

2340 For an overview of the number of offences against the administration of justice recorded between 2010 and 2017, see Appendix 38.

2341 Document P-839-101 (Commission), *op. cit.*, p. 26.

2342 *Ibid.*

2343 *Criminal Code*, R.S.C. 1985, c. C-46, s. 145(3): failure to comply with a condition of an undertaking or recognizance entered into before a justice or judge.

2344 *Criminal Code*, R.S.C. 1985, c. C-46, s. 733.1: failure to comply with a probation order.

2345 Document P-839-115, *op. cit.*, p. 16, 18 and 22.

2346 *Id., op. cit.*, p. 23.

2347 Testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 37–38, lines 5–12.

2348 Testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 42, lines 3–18;

2349 Testimony of Jacques Prégent, stenographic notes taken October 5, 2018, p. 152, lines 3–11. The bill received Royal Assent on June 21, 2019.

accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances".[2350] It also invites magistrates to "give particular attention to the circumstances of Aboriginal accused; and accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release".[2351]

In November 2018 the DCPP amended its directive on the decision to initiate and continue prosecutions to include provisions similar to the principles set out in the federal government bill.[2352]

While the passage of Bill C-75 and the revised DCPP directives are welcome initiatives, I believe caution is required. The changes set out in the bill only confirm the law that has been in effect in Canada since 1970, stipulating that judges must release the accused on the least restrictive conditions possible. In my opinion, the real message to be sent to the system is, rather, that the existing law must be applied stringently and diligently. The same finding applies to guilty pleas.

Guilty plea

The guilty plea is a major element of the judicial process in criminal law. It determines whether there has to be a trial in which the DCPP prosecutor will have to prove the charges laid. A plea of guilty means that the right to a trial is waived; the plea is an acknowledgement that the person has done what he or she is accused of, and also that he or she intended to do it. It is the accused's decision alone, and it must be a fully informed decision.

However, according to several Commission witnesses, Indigenous people often feel forced to plead guilty. A number of systemic elements prompt them to act in this way; the leading one being ignorance of their rights, as a witness heard in Nunavik succinctly expressed :

> I think that a lot of people that are incarcerated now, they are there because they don't know their full rights. Because the lawyer will tell them: "Just plead guilty. You will get an easier time if you plead guilty." Without looking into all the facts, you know, know the evidence, the conditions of how and why it happened.[2353]

He is not the only one. At the hearing Brian Mark, leader of the Unamen Shipu (La Romaine) Innu community, also said that members of First Nations "know very little about the justice system," adding that they often believe they have to plead guilty, even when they are not.[2354]

These observations have also been expressed by other inquiries, including the Royal Commission on Aboriginal Peoples. According to that Commission, in some Indigenous

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2350 Bill C-75, *Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 42nd Parl. (Can.), First session, 2015, s. 210.

2351 *Ibid*.

2352 *Accusation - Décision d'intenter et de continuer une poursuite*, Directive ACC-3, Directeur des poursuites criminelles et pénales, revised January 25, 2019, ss. 27, 28 and 29.

2353 Testimony of Perty Tookalook, stenographic notes taken November 12, 2018, p. 42, lines 13–19.

2354 Testimony of Brian Mark, stenographic notes taken January 23, 2018, p.73, lines 6–9.

judicial systems it is in fact necessary to acknowledge one's responsibility, so members of those nations tend to plead guilty even though they may have a valid defence.[2355]

In a recent study, the DJC reached similar conclusions, stating that "three key factors–justice system incentives, social vulnerabilities, and culture and community–interact to contribute to guilty pleas among Indigenous people".[2356]

Lyne St-Louis, director of Taïga Vision, an organization that provides education on Indigenous justice, told the Commission that communication problems between lawyers and clients are also involved.[2357] Martin Scott, director of Tumiapiit Justice Committee in Aupaluk, agreed. From his perspective, communication is a particular problem in the Itinerant Court, given its expeditious terms and the little time allowed for lawyer-client meetings:

> [T]he main point I wanted to make was to the amount of time they have with the lawyers, the ability to understand what options or choices they have. For the lawyers to have enough time to hear their story, to hear their side, I would believe is essential part of justice being done. The accused need to be heard or have their chance to share with their lawyer that they feel they were falsely accused or that the story is not exactly as record is presenting it or, do they have the option to plead not guilty.[2358]

Having to appear as a detainee and having to stay in preventive detention for long periods of time is, according to Mara Greene, the senior justice at Toronto's Gladue Court[2359], and others[2360], a powerful incentive to pleading guilty. Conrad André told the hearing what his reasoning was when he was accused and in detention:

> My lawyer told me: "Say guilty if you want to get out." And I had to pay him, too. So I thought about it, but there were things that didn't happen, things that ... which ... what I was accused of, that wasn't what happened, but I said "guilty," because I'd be there for two months for nothing, which was worse, so I said "guilty." I knew if I said "guilty," I'd be out that day, so I said "guilty." I helped the police out with their misconduct by saying "guilty." That's what happened. That kind of thing, that type of situation, happens a lot in the community [...]. It's always the same thing, we are always treated that way. We're told to say "guilty" even if we didn't do it.[2361]

2355 Canadian Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples. Volume 4: Perspectives and Realities*. Ottawa, Ontario: Canada Communication Group, p. 189 of 911 (online PDF).

2356 Department of Justice Canada. (2017). *Guilty pleas among Indigenous people in Canada*. Ottawa, Ontario: Department of Justice Canada, Research and Statistics Division, p. 5.

2357 Testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 38–39, lines 9–12 and p. 49–50, lines 24–30.

2358 Testimony of Martin Scott, stenographic notes taken November 16, 2018, p. 65, lines 6–17.

2359 Testimony of Mara Greene, stenographic notes taken February 16, 2018, p. 26, lines 3–14 and p. 119–120, lines 14–10.

2360 Testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 94, lines 8–13; testimony of Conrad André, stenographic notes taken May 9, 2018, p. 108, lines 5–24.

2361 Testimony of Conrad André, stenographic notes taken May 9, 2018, p. 108–109, lines 11–24.

The requirement to travel to court and pay travel costs can also prompt people to settle their cases with a guilty plea, even if they could have mounted a valid defence. Gaps in translation can have the same effect in some circumstances, as lawyer Armand MacKenzie told the Commission:

> [T]he accused was asked whether he wants to plead guilty or not guilty. So, after reading the offences my client is charged with, the interpreter translated, told my client: "Did you … Did … Do you say guilty or not guilty?" Then the interpreter said: "Did you do it or did you not do it?" That's classic. […] The poor client said: "Yes, of course. I did it, it's my responsibility, and it's true." I said: "Stop. Wait, Judge," I said: "I have to speak to my client, that's not it." The problem isn't exactly the interpreter, but the way it's interpreted. So I told my client: "Do you want to put up a defence against the offence you're charged with? Because it's up to the police officers, the investigators to show that … you did everything described in the offence and that you had the corresponding intention".[2362]

Regardless of the context, the fact is that several of the witnesses confirmed they had pled guilty on the advice of their lawyers.[2363] The lawyers frequently suggested that things would be easier that way because of their many priors and their weak chances of getting acquitted.[2364]

The MJQ data analyzed by the First Nations of Québec and Labrador Health and Social Services Commission (FNQLHSSC) confirm that there is a high rate of guilty pleas among Indigenous people. Not including the extensive missing data, the FNQLHSSC concludes that people domiciled in First Nations communities pled guilty in 66.0% of the cases involving them in 2016.[2365]

Sentencing

Pretrial procedures and guilty pleas are not the only parts of the judicial trajectory that seem discriminatory toward members of First Nations and Inuit. Many witnesses also referred to problems when the judge is setting a sentence.

In terms of the sentences themselves, the data analyzed by the FNQLHSSC show frequent recourse to imprisonment for people domiciled in First Nations communities. Imprisonment in an institution is ordered in 91.8% of cases.

The majority (53.0%) of prison terms imposed on First Nations members are for 30 days or less, and nearly 15.0% are for a single day.[2366] These statistics show a major difference in the length of short prison terms between First Nations members and the Québec

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2362 Testimony of Armand Mackenzie, stenographic notes taken October 20, 017, p. 196–197, lines 22–20.

2363 Testimony *in camera* HC60, stenographic notes taken June 14, 2018, p. 16–17, lines 19–4; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2018, p. 35, lines 15–23 and p. 65, lines 1–21.

2364 Testimony of John Clarence Kawapit, stenographic notes taken April 9, 2018, p. 137, lines 9–24.

2365 Testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 32–33, lines 15–8; document P-1186 (Commission), *op. cit.*, p. 15. These results do not include the Eeyou (Cree), Inuit and Malécites.

2366 Testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 35, lines 13–9; document P-1186 (Commission), *op. cit.*, p. 18.

correctional population as a whole. According to the Direction de la recherche des services correctionnels du Québec, 36.0% of non-Indigenous people incarcerated in Québec were serving terms of 30 days or less in 2015-2016, and 11.0% were serving a single day.[2367]

But Canadian criminal law views imprisonment as a sentence of last resort. The courts are, in fact, required to examine the possibility of non-restrictive sentences before contemplating the deprivation of liberty.[2368] What is more, the Canadian government added an obligation to the *Criminal Code* in 1996 that required judges to consider, particularly with respect to Indigenous offenders, "all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community".[2369]

As outlined in greater detail in Chapter 5 of this report, the Supreme Court of Canada issued its first ruling on this provision in 1999 in the *R.* v. *Gladue* decision[2370], followed by another ruling 15 years later in *R.* v. *Ipeelee*.[2371] Through these decisions, the country's highest court established that the sentencing judge must pay special attention to distinctive systemic and historic factors that may be one reason the offender is before the courts.[2372] The judge must also consider the types of procedures for determining the sentence and sanctions that may be appropriate due to the offender's Indigenous heritage or connections.[2373]

The specific information on the offender and his or her community of origin can be collected in what is commonly called a "Gladue report." These reports are produced at the request of a judge, the DCPP, a defence lawyer or a justice committee and pursuant to a court order.[2374] They are intended to help justice system participants better understand the circumstances surrounding the accused's life path and his or her clashes with justice.

That being said, twenty years after the Supreme Court decision, Gladue reports are still underused in Québec. Since 2015, when the MJQ set up a structured program for writing Gladue reports, an average of 123 reports have been produced per year for adult offenders.[2375] However, during that same time period, between 2015 and 2018, approximately 13,000 charges were laid each year against people domiciled in Québec Indigenous communities.[2376]

2367 *Profil des Autochtones confiés aux services correctionnels en 2015-2016*, document P-513 (Commission), p. 14; testimony of Marie-Ève Sylvestre, stenographic notes taken December 12, 2018, p. 35–36, lines 20–6; document P-1186 (Commission), *op. cit.*, p. 18.

2368 *Criminal Code*, R.S.C. 1985, c. C-46, s. 718.2d).

2369 *Id.,* s. 718.2e).

2370 *R.* v. *Gladue*, 1999 1 S.C.R. 688.

2371 *R.* v. *Ipeelee*, 2012 SCC 13.

2372 *Id.,* paras. 59, 60 and 72–73; R. v. *Gladue*, [1999] 1 S.C.R. 688, para. 93.

2373 *R.* v. *Ipeelee*, (2012) SCC 13, paras. 59, 60 and 72–75; R. v. *Gladue*, (1999) 1 S.C.R. 688, para. 93.

2374 *Gladue reports*, document P-839-102 (Commission), *op. cit.*, p. 13; testimony of Paul Turmel, stenographic notes taken June 12, 2018, p. 22, lines 19–25.

2375 Document P-839-102 (Commission), *op. cit.*, p. 6.

2376 Appendix 1 *Tableau excel en réponse du ministère de la Justice du Québec en réponse à la demande d'information DG-0094-C de le CERP*, document P-839-25 (Commission), tab 25.7.1; document P-839-101 (Commission), *op. cit.*, p. 14.

To date, most of the Gladue reports have been drafted for people who belong to the Inuit Nation (40.5%), while 19.7% pertained to Eeyou (Cree) and 10.1% to Innu.[2377] Most reports are produced in the Abitibi judicial district (247 reports, or 67.7%), followed by the judicial districts of Baie-Comeau (7.4%), Roberval (5.8%) and Mingan (4.9%).[2378]

When a Gladue report is ordered, the request is sent to the Centre administratif et judiciaire (CAJ), which then relays it to one of the three following organizations: NPJSQ, Makivik Corporation or the Department of Justice and Correctional Services of the Cree Nation Government. The MJQ administers a list of accredited writers. At the time this report was being completed, the list comprised 56 writers.[2379]

In the opinion of several witnesses, the report writing program is underfunded and suffers from a recurring lack of resources, particularly staff.[2380] Training is also apparently inadequate.

Asked about the issue, the MJQ's Director of Aboriginal Affairs confirmed that a Gladue report writer receives a maximum of $1,000 for each report produced, in addition to some travel expenses.[2381] When the writer is a member of a community's justice committee, he or she does not receive any additional payment, as the activity is considered part of the mandate.[2382] Yet, as we saw earlier in this chapter, these organizations themselves suffer from chronic underfunding. The arrangement is the same with the Cree Nation Government. If the writer is a community reinsertion officer in a Cree area, no additional indemnity is provided.[2383]

The MJQ requires writers to take a course before being added to a CAJ list. Five organizations offer the course: NPJSQ, Taïga Vision, Aboriginal Legal Services, Legal Services of B.C. and Justice Institute of B.C. There is no uniform training program.[2384] The MJQ does not review the writers unless it receives complaints, in which case it will check and could remove the writer from the list.[2385]

2377 A snapshot of reports produced per nation appears in Appendix 39.

2378 Document P-839-102 (Commission), *op. cit.*, p. 12.

2379 *DGP-0085-C and DGP-0093-C, Précisions sur les rapports Gladue préparés au Québec*, document P-839-23 (Commission), tab 23.1.2, p. 14-15 of 34 (online PDF).

2380 Testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 203–205, lines 13–12; testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 94, lines 22–24 and p. 104–105, lines 25–15; testimony of Sharon McBride, stenographic notes taken September 14, 2017, p. 117–118, lines 2–7; testimony of Louise Coonishish, stenographic notes taken June 15, 2018, p. 91–92, lines 15–19; testimony of Vivien Carli, stenographic notes taken February 20, 2018, p. 86, lines 12–18; testimony of Danielle Côté, stenographic notes taken December 10, 2018, p. 164, lines 2–24; document PD-20 (Commission), *op. cit.*, p. 438 and 676 of 722 (online PDF).

2381 Testimony of Jacques Prégent, stenographic notes taken October 3, 2018, p. 152–153, lines 25–12.

2382 Document P-839-102 (Commission), *op. cit.*, p. 17.

2383 *Ibid.*; testimony of Louise Coonishish, stenographic notes taken June 15, 2018, p. 98, lines 4–20.

2384 Document P-839-23 (Commission), tab 23.1, p. 6 of 34 (online PDF).

2385 *Id.*, p. 7 of 34 (online PDF).

Whether due to that fact or not, some of the witnesses indicated that there are shortcomings in the Gladue reports.[2386] While the reports generally contain information on historic and systemic factors, they frequently say little about the resources available in the community, especially Indigenous legal systems and the procedures and sanctions that would be appropriate in light of them.[2387] As the Québec Court of Appeal recently stressed: "in the absence of proposals from the parties for alternate sanctions, it is difficult, even impossible for the Court to align the sentence [...] with the principles of corrective justice specific to the Indigenous context".[2388]

One thing is certain, according to information from the MJQ: since it takes between two and four months to produce a report in Québec, a Gladue report is only produced if the prosecution is asking for a prison sentence of four months or more.[2389] If the offender is incarcerated during the proceedings, he or she will have to accept the fact that the time required to produce the Gladue report will lengthen the pre-trial detention. Faced with this reality, many accused are forced to waive the report.[2390]

In other words, Gladue reports are of no use to the vast majority of Indigenous offenders who are repeatedly sentenced for minor offences and are grappling with the revolving-door cycle of prosecution and incarceration.

Note that, to alleviate that problem, Aboriginal Legal Services in Ontario prepares "Gladue letters" when a person is facing less than 90 days of jail. The letters take less time to prepare and focus more specifically on potential alternatives.[2391]

From my perspective, Gladue reports are very interesting tools for supporting the exercise of judicial power. I therefore recommend that the government:

2386 Testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 92–94, lines 8–7 and p. 104–104, lines 25–15; testimony of Annick Murphy, stenographic notes taken October 19, 2018, p. 385–386, lines 17–3; document PD-20 (Commission), *op. cit.*, p. 258, 262 and 428–430 of 772 (online PDF).

2387 Document PD-20 (Commission), *op. cit.*, p. 259–260 of 772 (online PDF).

2388 *R.* v. Denis-Damée, 2018 QCCA 1251, para. 122.

2389 *Échange courriel entre la Commission et le MJQ concernant un document transmis dans le cadre des DG-0085-C and DG-0093-C*, document P-839-96 (Commission), tab 96.2, p. 12 of 13 (online PDF).

2390 Testimony of Marie-Ève Sylvestre, stenographic notes taken September 20, 2017, p. 94, lines 8–15; document PD-20 (Commission), *op. cit.*, p. 260–261 of 772 (online PDF).

2391 Testimony of Jonathan Rudin, stenographic notes taken February 14, 2018, p. 239, lines 18–24.

CALL FOR ACTION No. 51

Set aside a budget envelope earmarked exclusively for the writing of Gladue reports and increase the remuneration for all writers.

CALL FOR ACTION No. 52

Increase the number of writers authorized to produce Gladue reports.

CALL FOR ACTION No. 53

Fund the organizations involved in producing Gladue reports so that they can enhance and standardize the training provided to accredited writers, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 54

Periodically review the quality of work done by Gladue report writers, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 55

Provide for Gladue letters to be written automatically whenever an Indigenous person enters the system, and provide funding therefor.

Marie-Chantale Brassard, Chief Prosecutor for the DCPP in Northern Québec, believes that access to resources for implementing alternate measures is a problem over and above the determination of sentences.[2392] The Barreau du Québec agrees. In its brief to the Commission, the professional order affirms that the lack of resources in Indigenous communities puts them in a discriminatory situation compared to Québec's other citizens. According to the professional order, the fact that a detainee cannot be released because of a lack of housing in some communities is one illustration of that.[2393]

From my perspective, this factor is just one of many illustrations of how the system as it currently operates cannot encompass the realities of Indigenous peoples. It also reinforces the need to act quickly to ensure that the fundamental rights of First Nations members and Inuit with respect to justice are respected.

2392 Testimony of Marie-Chantale Brassard, stenographic notes taken November 13, 2018, p. 43–44, lines 1–14 and p. 64–65, lines 25–22.

2393 Document P-556 (Commission), brief M-008, *op. cit.*, p. 2.

9

CHAPTER 9

FINDINGS ON CORRECTIONAL SERVICES

Responsibility for correctional services is shared between the federal and provincial governments. In keeping with my mandate, the work was limited to the organization and operation of provincial correctional services. The situations that were brought to my attention and analyzed by the Commission's team therefore involved defendants and inmates with prison sentences of two years less a day, several prison terms totalling less than two years or sentences served in the community.

During the Commission's work, a number of cases of racism and direct discrimination against First Nations and Inuit people were drawn to my attention in relation to correctional services. These situations were sometimes initiated by the correctional staff, sometimes by fellow inmates.[2394] I heard about insults from correctional officers, vexatious behaviour and discriminatory treatment of Indigenous vs. non-Indigenous inmates. The comments and actions reported to me are simply unacceptable. Fraught with contempt and violence, they convey the vilest prejudice against Indigenous people, as illustrated in the story of Moses Nutaraluk, detained successively at the Amos, Saint-Jérôme, Rivière-des-Prairies and Bordeaux (Montréal) facilities.

> When they insult me, they always said I'm "Eskimo," "raw meat eater," "glue sniffer," "alcoholic," and they say, "are you lost while you're hunting and you're here?" I'm like, "I'm not here... I'm not hunting, do you think I'm hunting?" And then they start laughing, they say, "Aw, go look for phoques." I'm like, "What does that mean?" They say, "In French it's a seal." I'm like, "F-word is a... seal in your language?" And then they say, "Yes, go look for fucking phoques." I'm like, "Oh, don't insult me like that!"[2395]

Regardless of whether these are isolated cases, there is more than ignorance behind these words, and I believe that such situations should be strongly denounced and that steps need to be taken to avoid recurrences. After all, as Marlène Langlois, Directrice générale adjointe aux programmes, à la sécurité et à l'administration at the MSP, recalled when she initially appeared before us, "Under the values set out by the government, offenders are entitled to expect interventions to be carried out [...] [by correctional services workers] with respect for the basic rights of the people entrusted to them, without any form of discrimination and with neutrality, objectivity and honesty".[2396]

2394 Testimony of Sarah Papialuk, stenographic notes taken February 20, 2018, p. 139–140, lines 17–19; testimony of Johnny Anautak, stenographic notes taken November 14, 2018, p. 30–31, lines 21–8 and p. 32, lines 13–15; testimony of Moses Nutaraaluk, stenographic notes taken March 15, 2018, p. 153, lines 7–12, p. 157–158, lines 25–10, p. 165–166, lines 23–20 and p. 168–169, lines 24–7; testimony of John Clarence Kawapit, stenographic notes taken April 9, 2018, p. 114, lines 6–25; testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 287–288, lines 1–14.

2395 Testimony of Moses Nutaraaluk, stenographic notes taken March 15, 2018, p. 165–166, lines 23–8.

2396 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 121, lines 2–15; *Présentation du ministère de la Sécurité publique*, document P-007 (Commission), p. 26.

In addition to these highly deplorable events, the evidence also confirmed the presence of indirect discrimination, resulting from the laws, policies and practices and tools in place. As Indigenous offenders are usually incarcerated thousands of kilometres away from their family and community and face significant cultural and language barriers and limited programs and services, they appear to be at a huge disadvantage in their relations with correctional services. The negative effects lead me to conclude that the prison system has failed in their rehabilitation. And yet reintegration is at the heart of the principles set out in the *Act respecting the Québec correctional system* for all offenders.[2397]

In light of such findings, it is obvious that major changes are needed to improve the quality of services for First Nations and Inuit people.

9.1. Over-represented populations

A detailed portrait of the Indigenous prison population is presented in Chapter 4 of this report.[2398] To fully understand the scope of the challenges in this sector, a few numbers should be kept in mind, however.

The latest MSP statistics show 2,160 admissions of Indigenous persons to detention centres for 2015–2016 alone.[2399] In that same period, the average daily population of provincial correctional facilities was 6.5% Indigenous.[2400] This number far exceeds the 1.4% of the total population formed by First Nations and Inuit people in Québec, according to the registers.[2401]

The situation is of particular concern for the Inuit. The ratio of Inuit prisoners was 64 per 1,000 residents in 2015–2016, which is 16 times higher than the ratio for the non-Indigenous group (4 per 1,000) during the same period.[2402] The Inuit also accounted for more than half (59.4%) of the average Indigenous daily population in Québec institutions in 2015–2016.[2403]

When she appeared before the Commission, Renée Brassard, full professor of Criminology at Université Laval[2404], also emphasized that the current correctional data point to the end of the historical trend in the distribution of inmates in Québec, which was around 90.0% men and 10.0% women.[2405] Today, among Inuit inmates, the proportion is 23.4% women and 76.6% men.[2406] Among the Eeyou (Cree), Anishnabek (Algonquin) and Atikamekw Nehirowisiw

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2397 *Act respecting the Québec correctional system*, CQLR, c. S-40.1., s. 1.

2398 See pp. 125-128.

2399 *Profil des Autochtones confiés aux services correctionnels en 2015–2016*, document P-513 (Commission), p. 31.

2400 *Id.*, p. 19.

2401 *Données populationnelles des Autochtones au Québec*, document PD-13 (Commission).

2402 *Recension des écrits, Prestation des services correctionnels auprès de la population autochtone au Québec*, document PD-14 (Commission), p. 35.

2403 Document PD-513 (Commission), *op. cit.*, p. 30.

2404 Ms. Brassard is now director of the School of Social Work and Criminology at Université Laval.

2405 Testimony of Renée Brassard, stenographic notes taken March 23, 2018, p. 54, lines 22–25.

2406 Document PD-513 (Commission), *op. cit.*, p. 4.

detainees, 17.0% are women.[2407] The number of Indigenous women admitted to custody has never been so high. The MSP's *Profil des Autochtones confiés aux services correctionnels en 2015–2016* also shows a 320.0% increase in the female Indigenous inmate population in just under 10 years (2006–2007 vs. 2015–2016).[2408]

Despite this over-representation and the fact that it is persistent and increasing over time, the evidence established during the Commission's work showed that the correctional system has been slow to adapt to the needs and realities of Indigenous offenders. From the first point of contact with correctional services and until their release, Indigenous people appear to be at a disadvantage.

9.2. Discrimination in assessments

Services correctionnels is sometimes required to assess an offender's progress several times. The assessment is key because it shapes the offenders' path in various ways, from determination of the sentence to assessment of the risk of reoffending during the application for release, as well as access to the institution's programs and services. Established practices and validated tools are used to conduct the assessments, but the testimonies offered at the hearings nevertheless revealed that those tools and methods display substantial discriminatory bias against First Nations and Inuit people.

9.2.1 Pre-sentencing reports

As explained in Chapter 5 of this report, at the request of a judge, Services correctionnels is sometimes required to assess an offender before sentencing.[2409] In that case, a probation officer prepares a pre-sentencing report. In principle, the report informs the court of the offender's personal and social situation. The circumstances of the offence are explained, as well as the criminal history (if any) and the reintegration potential as assessed at this stage of the process.[2410]

In an effort to take into account the needs and realities of First Nations and Inuit people, Services correctionnels developed a new type of pre-sentencing report in 2015 for Indigenous offenders.[2411] The Indigenous pre-sentencing report (Indigenous PSR) is based on the principles advanced by the Supreme Court in *R. v. Gladue* in 1999[2412] and 15 years later in *R. v. Ipeelee*.[2413] It differs from the regular pre-sentencing report in that the historical and systemic factors specific to the person's culture must be considered, as well as the

2407 *Ibid.*

2408 *Id.*, p. 29.

2409 See Chapter 5, pp. 165-166.

2410 Ministère de la Sécurité Publique. (2007). Le rapport présentenciel. Retrieved from https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/publications/depliants/depliant_rapport_presentenciel.pdf, p. 3.

2411 Testimony of Line Boudreault, stenographic notes taken May 15, 2018, p. 36, lines 14–19.

2412 *R.* v. *Gladue*, 1999 1 S.C.R. 688.

2413 *R.* v. *Ipeelee*, 2012 CSC 13.

influence they may have had on his or her run-ins with the law.[2414] This may, for example, concern attendance at a residential school that marked the person's life path. The analysis is limited to the individual, however, and does not include a full history of the Indigenous home community or the impact of colonialist policies on the person's social environment.[2415]

Although relatively new, this measure appears to have been adopted by members of the First Nations and Inuit. Appearing before the Commission, Line Boudreault, director of professional correctional services for the North Shore, confirmed that for the period from April 1, 2016, to March 31, 2017, of the 114 reports used for Indigenous offenders, 107 were Indigenous PSRs.[2416]

The time devoted to this issue during our hearings also allowed us to learn that, so far, only a handful of officers have been trained to do this kind of analysis and developed the required expertise.[2417] The evidence does not show that requests for Indigenous PSRs have been denied because of a lack of resources. That said, given the ever-growing proportion of First Nations and Inuit people living in urban areas, it would be wrong to believe that Indigenous PSRs will only be required in areas mainly consisting of First Nations or Inuit communities. In her appearance before the Commission, Marlène Langlois, Directrice générale adjointe aux programmes, à la sécurité et à l'administration at the MSP, also recalled that the cultural adaptation of pre-sentencing reports and even regular reports is an objective all across Québec:

> The historical and systemic factors specific to the reality and culture of the person must be considered in pre-sentence reports. These factors will be taken into account when analyzing the delictual situation [...], assessing the potential for reintegration and the risk, and determining the reintegration measures.[2418]

Against this backdrop, I recommend that the government:

CALL FOR ACTION No. 56

Train all Québec probation officers to prepare Indigenous pre-sentencing reports and teach them the reassuring cultural approach for collecting information.

This recommendation is in addition to the desire expressed earlier in this report to see all professionals working in public services trained in the history, realities and cultures of Indigenous people.[2419] In my view, it offers an opportunity to explore the practical application of this knowledge and make a real difference in the path of offenders.

2414 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 122, lines 13–21; document P-007 (Commission), *op. cit.*, p. 28.

2415 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 89–90, lines 25–23.

2416 Testimony of Line Boudreault, stenographic notes taken May 15, 2018, p. 37, lines 1–15.

2417 Testimony of Marlène Langlois, stenographic notes taken September 24, 2018, p. 91, lines 18–22.

2418 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 122, lines 13–21.

2419 See the call for action concerning training on pp. 247-251.

9.2.2 Actuarial assessment tools

As explained earlier, pre-sentencing reports are not the only type of assessment that marks an offender's path. Offenders who serve their sentence in detention are assessed to identify their need for supervision and to identify the most appropriate interventions.[2420] For offenders serving a prison sentence of more than six months, the assessment leads to the development of a correctional intervention plan.[2421] The plan follows the individual for the full course of their sentence, regardless of changes in workers along the way. Monitoring is carried out based on the status and needs evaluated in the assessment.[2422] The results of the assessment determine access to the programs and services available in the institution. The assessment is also taken into consideration when offenders apply for release or temporary absence.[2423]

The assessment exercise relies on tools based on actuarial models, i.e., assessment grids used to assign a rating based on the presence of certain risk factors, including criminal history, addiction to alcohol or other substances and the quality of family relationships. Until recently, the LS/CMI (Level of Service/Case Management Inventory) was used in Québec[2424], but at the hearings, the associate deputy minister with the MSP Direction générale des services correctionnels, Jean-François Longtin, nevertheless stated that after conducting analyses on the potential biases introduced by the tool, the MSP had concluded that the tool was not fully adapted[2425], and steps were taken to develop a new tool. At the end of the exercise, the BACPCQ (for Besoin et analyse clinique pour personne contrevenante du Québec) was developed.[2426]

Like any new tool of this kind, the BACPCQ was subject to a scientific verification. Conducted by the International Centre for Comparative Criminology in April 2017, according to Jean-François Longtin, this exercise concluded that at that stage of the BACPCQ development process, the approach met the standards established in the literature for the development of a tool to assess the risk of criminal recidivism.[2427] The associate deputy minister for correctional services nevertheless stated, in September 2018, that to ensure the BACPCQ fully meets these standards, empirical evidence was still necessary.[2428] A Supreme Court decision rendered in 2018 that qualified the risk assessment tools in use as discriminatory against people of Indigenous origin reinforced this need.[2429]

2420 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 123, lines 7–10; document P-007 (Commission), *op. cit.*, p. 29; testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 18–19, lines 18–7.

2421 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 19, lines 21–22.

2422 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 123, lines 19–21; document P-007 (Commission), *op. cit.*, p. 29.

2423 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 20, lines 4–6; testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 123–124, lines 22–1; document P-007 (Commission), *op. cit.*, p. 29.

2424 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 81, lines 17–24.

2425 *Id.,* p. 81–82, lines 25–13.

2426 *Id.,* p. 82, lines 14–18.

2427 *Id.,* p. 88, lines 7–12.

2428 *Id.,* p. 82–83, lines 24–19.

2429 *Ewert v. Canada*, 2018 SCC 30.

When MSP representatives last appeared before the Commission in the fall of 2018, the tool was being used in a pilot project.[2430] Mr. Longtin was cautious about interpreting the Supreme Court's ruling, stating at the hearing that the tool places special emphasis on assessments conducted by professionals, particularly by allowing them to explain an Indigenous concept, context or reality[2431]:

> Of course, this is not a Gladue report in due form, and that is not [...] our intention, either. It is the Ministère de la Justice that produces the Gladue reports or has its partners produce them. As you know, we also have a PSR, an Indigenous pre-sentencing report, so we are starting from the same principle: how can we improve the analysis that is being provided in our briefing materials to the [parole] board or the decision makers about the Indigenous reality. And here [we] are counteracting somewhat the risk rate or risk rating aspect. We do not produce these with the BACPCQ. Essentially, it is the professional who collects this information, analyzes it using an analysis grid and produces their assessment. If there is a need to adjust – for drug dependence, consumption and background, such as the sociocultural history of the community, for example – they can take it into account at that time, and they can include it in the assessment.[2432]

MSP's objective with the development of this new tool is commendable, and I can only welcome its foresight in this field. That said, although the conclusions of the pilot project were not yet known at the time of this report, I am still concerned that a single tool is being used to assess all offenders. In my opinion, even though the Supreme Court's recent ruling refers to the tools used by Correctional Services Canada, parallels can be drawn with the provincial tools. Yet, the ruling is abundantly clear on the importance of ensuring that assessment practices, as neutral as they may appear, are not discriminatory against Indigenous peoples.[2433] In summary, for the correctional system to function fairly and effectively, we must stop assuming that all offenders can be treated fairly by being treated the same.

A recent study produced by Public Safety Canada tends to confirm my analysis. According to this study, the eight key risk factors used in risk assessments provide lower predictive accuracy for Indigenous offenders than for non-Indigenous offenders.[2434] The authors of this report did not definitively establish the cause of this difference but nevertheless concluded that:

> Given that Indigenous offenders are over-represented at virtually every stage of the criminal justice system and demonstrate elevated risk and need, special consideration of the application of risk tools with this group is not only warranted, it is necessary. Regardless of whether actuarial or [Structured Professional Judgment] tools are being used, it is necessary to validate these tools with Indigenous offenders.[2435]

2430 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 84–85, lines 20–2.

2431 *Id.*, p. 87, lines 9–13.

2432 *Id.*, p. 85–86, lines 18–14.

2433 *Ewert v. Canada*, 2018 SCC 30, para. 54.

2434 Public Safety Canada. (2017). *What We Know and Don't Know About Risk Assessment with Offenders of Indigenous Heritage*. Retrieved from https://www.securitepublique.gc.ca/cnt/rsrcs/pblctns/2017-r009/2017-r009-en.pdf, p. 6.

2435 *Id.*, p. 10.

Therefore, I recommend that the government:

CALL FOR ACTION No. 57

Develop an assessment tool specific to Indigenous offenders with the collaboration of experts from First Nations and Inuit peoples.

To prevent other biases from diminishing the expected positive effects of the development of such a tool, I also believe that it would be wise to involve experts from First Nations and Inuit peoples in its development.

In Québec, there is a good chance that the issue of language will be raised during this exercise. The work performed by the Commission has shown that at this stage of an offender's path, as in all other stages, the language barrier is an obstacle. In her testimony to the Commission, Lyne St-Louis, the director of Taïga Vision, an Indigenous justice advisory and training organization, gave the example of an Inuit offender who answered "I am not sure" to almost every question he was asked. He was then asked questions that required yes or no answers, and since the offender felt that he had no choice, he answered "yes" or "no," whereas his initial response was "I am not sure," which meant that he did not fully understand the question.[2436] Like a number of witnesses, she said she was also convinced that contextualization of information is essential for a better understanding of the inmates' experiences, which means having cultural knowledge about the members of the nations concerned.[2437] Sarah Plamondon, an attorney, shared the same opinion, advising the use of open-ended questions rather than closed-ended questions.[2438] In my opinion, this highlights the importance of developing the new tool in a way that takes into account existing cultural differences among the Indigenous nations.

9.3. Geographic distance with adverse consequences

Indigenous people are often incarcerated in institutions very far from their home communities. For example, almost half of incarcerated Inuit (48.4 %) are at the Saint-Jérôme correctional facility.[2439] As for women, they are systematically incarcerated in Québec City or Laval (Leclerc).[2440] This geographic distance poses numerous problems.

9.3.1. Intermittent imprisonment

The *Criminal Code* and the *Code of Penal Procedure* allow courts to order that the sentence be served intermittently, on weekends, for example.[2441] This approach is seen as especially valuable from a reintegration and rehabilitation perspective, because it allows the person to keep their job, continue attending school, retain custody of their children and continue

2436 Testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 45–47, lines 9–14.

2437 *Id.*, p. 40–42, lines 13–6.

2438 Testimony of Sarah Plamondon, stenographic notes taken September 6, 2018, p. 68–69, lines 15–6.

2439 Document P-513 (Commission), *op. cit.*, p. 18.

2440 Document P-1159 (Commission), brief M-017, *op. cit.*, p. 14.

2441 *Criminal Code*, R.S.C. 1985. c. C-46, s. 732 (1); *Code of Penal Procedure*, CQLR, c. C-25.1, s. 242.

to provide for themselves or maintain family ties, which is particularly important in families with young children.

However, the evidence heard at the hearing established that, in the absence of an adequate facility to serve the sentence, it is almost impossible for Nunavik residents to benefit from this measure.[2442] The residents of some isolated Indigenous communities in the Lower North Shore and Schefferville region, for whom the designated facility is in Sept-Îles, face the same problem.[2443]

The observations made in the course of the Commission's work echo recent rulings by the Québec courts.[2444] In both cases, in a ruling on the case of an Inuit woman who pleaded guilty to an impaired driving offence, the trial judge refused to allow the offender to serve her sentence intermittently due to the lack of a facility in Kuujjuaq.[2445] On appeal to the Superior Court, in both cases, the court found discrimination, since it was impossible for the Nunavimmiut to serve their sentences intermittently, describing the situation as a blatant injustice. The Superior Court then required the MSP to remedy the situation within six months. For reasons other than this particular issue, however, both decisions were overturned by the Québec Court of Appeal.[2446] While these decisions did not resolve this substantive issue, they brought to centre stage the issues raised by the lack of correctional facilities in Nunavik.

I believe that giving Indigenous peoples greater powers over justice and entering into agreements to create distinct justice systems, as suggested in the previous chapter[2447], would reduce the number of cases where an intermittent sentence is imposed. That said, in order to properly process the cases that will remain in the system, it is important to find a solution regarding the availability of resources.

In March 2018, the Québec Ombudsman released a report on the consequences of the increase in intermittent sentences in Québec correctional facilities.[2448] In this report, the Ombudsman recalls that 20 years ago, Justice Canada seemed receptive to the idea of the provinces developing alternatives to imprisonment in a correctional facility for people with intermittent sentences. It was proposed that intermittent sentences could be served in non-custodial community programs.[2449]

2442 Barreau du Québec brief. (April 19, 2018). *Le système de justice et les peuple*s autochtones du Québec : des réformes urgentes et nécessaires, document P-556 (Commission), brief M-008, p. 28, para. 6; testimony of Sarah Plamondon, stenographic notes taken September 6, 2018, p. 116–122, lines 23–14; testimony of Nathalie Samson, stenographic notes taken November 13, 2018, p.74–75, lines 17–3; testimony of Nathalie Pelletier, stenographic notes taken April 19, 2018, p. 224–225, lines 9–3; *Analyse des sondages – Justice*, document PD-20 (Commission), p. 243 of 772 and p. 258 of 772 (online PDF).

2443 Testimony of Denis Mesténapéo, stenographic notes taken January 23, 2018, p. 13, lines 20–23 and p. 25–26, lines 23–13.

2444 *R.* v. *Jonas,* 2018 QCCS 3869; *Sequaluk* v. R., 2018 QCCS 4853.

2445 *R.* v. *Jonas,* 2018 QCCS 3869, para. 16; *Sequaluk* v. R., 2018 QCCS 4853, para. 17.

2446 *R.* v. *Jonas,* 2019 QCCA60; R. v. *Sequaluk*. 2019 QCCA1209.

2447 See call for action no. 41 on this matter, pp. 310-311.

2448 Québec Ombudsman. (2018). *Québec Ombudsman report: The consequences of the increase in intermittent sentences in Québec correctional facilities.* Québec City, Québec: Québec Ombudsman.

2449 *Id.,* p. 28, para. 79.

In the wake of this recommendation, in the early 2000s, some Canadian provinces, including Alberta and Ontario, implemented measures to enable people with intermittent sentences to serve their sentence outside correctional facilities.[2450]

In Québec, nothing comparable has been done to date, although – as the Ombudsman pointed out in its report – the MSP's initial intention was to ensure that intermittent sentences were administered in "lodging in a community resource or other location outside the facility under the supervision of correctional staff".[2451]

In retrospect, the Québec Ombudsman believes that such a practice "could be more effective than a short time in custody in solving the problems that led to these people's criminalization".[2452] I share this view.

Therefore, I recommend that the government:

CALL FOR ACTION No. 58

Implement, as quickly as possible, and in all regions of Québec, alternative measures to incarceration for people sentenced to an intermittent sentence, including sustainable funding.

This approach will obviously have to be carried out in collaboration with Indigenous authorities and will have to focus on reaching agreements with Indigenous community resources in each region.

9.3.2 Transfers

Geographic distance is also synonymous with multiple transfers for inmates. The question was addressed first in the chapter on justice services when discussing bail hearings.[2453] The truth, however, is that in the case of Indigenous inmates, the problem exceeds this single part of the process. According to the figures, it is clear that Indigenous inmates undergo a considerably higher number of transfers from institution to institution than non-Indigenous inmates during the time they are detained.

According to the data published by the MSP, 11.6% of Eeyou (Cree) offenders and 19.3% of Inuit offenders are transferred four or more times during their time within the correctional system.[2454] Among non-Indigenous peoples, only 3.7% of inmates have the same experience.[2455] On the other end of the spectrum, three non-Indigenous inmates out of four (75.0%) are never transferred during their time in detention. That said, the majority of

2450 *Id.*, p. 28, para. 80.

2451 *Id.*, p. 29, para. 81.

2452 *Id.*, p. 30, para. 82.

2453 See chapter 8, pp. 320-322.

2454 Document P-513 (Commission), *op. cit.*, p. 21–22.

2455 *Id.*, p. 22.

Indigenous inmates (68.1%) are not transferred, except for the Inuit, who appear to be at the greatest disadvantage, with only 21.3% of inmates having never been transferred.[2456]

According to the additional information obtained from the MSP, in 2016, Indigenous male inmates were transferred on average 1.37 times per year.[2457] The situation is similar for female Indigenous inmates, with 1.40 transfers in 12 months.[2458] For both men and women, the situation has deteriorated since 2007. In a little less than 10 years, the annual number of transfers has effectively gone from 1.06 to 1.40 transfers for women and 1.08 to 1.37 transfers for men.[2459] For non-Indigenous people, the number of transfers per person per year was approximately 0.57 in 2017, a slight increase of just over 0.1 from 2007.[2460] Overcrowding in correctional facilities is purportedly the cause of many of these transfers.[2461]

It should be recalled that a transfer to another correctional facility entails challenges and difficulties: strip search at the time of leaving the first correctional facility, strip search when entering the second one, transportation in a patrol wagon during which both hands and feet are manacled, high risk of losing personal effects during the move, etc. This is all in addition to the general discomfort of having to adapt to a new place, new correctional personnel, new rules and methods, as well as new cellmates.

In the final brief that it submitted to the Commission, the Québec government asserted that the MSP has deployed several measures to reduce transfers between facilities, specifically for the Inuit. According to the government, the agreement on the organization of correctional services with the Makivik Corporation and the Kativik Regional Government to encourage grouping defendants and inmates from Nunavik in specific establishments (Amos and Saint-Jérôme) is a significant improvement.[2462]

In the government's opinion, the measures set forth in this agreement—combined with the use of videoconferencing for the first appearance—will reduce the number of transfers between correctional facilities for this specific clientele and thus increase accessibility to the various programs offered in correctional facilities.[2463]

Even though the new correctional facility in Amos and the newly concluded agreement represent significant advances, I believe that this question should be closely monitored to assess the effectiveness of the measures implemented over the medium and long term.

2456 *Id.*, p. 21–22.

2457 *DG-0026-B, La détention; les libérations conditionnelles octroyées par les services correctionnels; les programmes correctionnels; la localisation, les transferts, les déplacements et les suivis; la classification des personnes détenues; l'isolement des personnes détenues; les centres résidentiels communautaires et les thérapies pour les délinquants sexuels*, document P-798-5 (Commission), tab 5.2, p. 40 of 1095 (online PDF).

2458 *Ibid.*

2459 *Ibid.*

2460 *Ibid.*; document P-513 (Commission), *op. cit.*, p. 22.

2461 Testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 246–247, lines 15–10.

2462 Brief by the Procureur général du Québec and the Secrétariat aux affaires autochtones. (2018, November 30), *Vivre ensemble, faire ensemble*, document P-1170 (Commission), brief M-029, p. 20, para. 3.

2463 *Ibid.*

Consequently, I recommend that the government:

CALL FOR ACTION No. 59

Measure and report annually on the situation regarding transfers of Indigenous inmates, in collaboration with partner Indigenous organizations.

9.3.3 Maintaining family relationships

Another issue resulting from geographic distance for several Indigenous inmates is the difficulty in maintaining family relationships.

According to the *Regulation under the Act respecting the Québec correctional system* (RAQCS), an inmate is entitled to receive visits from the inmate's spouse or de facto spouse, mother, father, child, brother, sister and attorney.[2464] The inmate may also, if authorized, be visited by another person useful to settle an urgent matter, for social or family reasons or to facilitate the inmate's social reintegration. The cost of these visits is the visitor's responsibility. Because of the long distances separating them from the correctional facilities and the significant costs for travel, however, very few families of Indigenous inmates have the resources required to visit their incarcerated loved ones.

During the hearings, several witnesses expressed the devastating impacts of the resulting lack of contact, not only for the incarcerated individuals, but also for their family members.[2465] Sarah Papialuk, an Inuit from Puvirnituq, incarcerated at the Leclerc correctional facility in Laval, specifically related the frustration, anguish and depression caused by having been isolated from her community and family, because they could not afford a plane ticket to come and visit her.[2466]

Certain inmates who cannot work and do not receive any financial aid from their family members may spend months during their preventive detention and then their detention without any contact with their family.

If they cannot have face-to-face visits, inmates can call their family members using calling cards. The calling cards are particularly expensive. During the hearings, the MSP confirmed that a local call costs $1 per call, no matter how long, while for a long-distance call, it costs $1 for the first minute and $0.40 for each additional minute.[2467]

When invited to comment on this matter during the hearings, the associate deputy minister for correctional services, Jean-François Longtin, stated that some correctional facilities informally provided for "other" phone calls, without having to pay for a calling card, for certain

2464 *Regulation under the Act respecting the Québec correctional system*, CQLR c. S-40.1, r. 1, s. 56.

2465 Testimony of Sarah Papialuk, stenographic notes taken February 20, 2018, p. 139, lines 13–15; testimony of Johnny Anautak, stenographic notes taken November 14, 2018, p. 32, lines 3–8; testimony of Moses Nutaraaluk, stenographic notes taken March 15, 2018, p. 177–178, lines 16–2; testimony of John Clarence Kawapit, stenographic notes taken April 9, 2018, p. 126, lines 6–14.

2466 Testimony of Sarah Papialuk, stenographic notes taken February 20, 2018, p. 139, lines 13–15.

2467 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 62–63, lines 25–11.

inmates from remote regions.[2468] He said he was open to studying the question and admitted that perhaps there should be something more organized or systemic, but also pointed out that inmates can work during their detention and thus earn the money required.[2469]

From my point of view, the problem is rather the fact that non-Indigenous individuals pay less for calls, because they can be incarcerated in their home region, while Indigenous individuals will most likely pay much more for their calls because of the distance separating them, against their will, from their home region.

The findings are even more damaging since, as was very clearly explained by the Assistant Deputy Ombudsman, Citizen and User Services, Robin Aubut-Fréchette, the best social reintegration is through family ties and ties with loved ones.[2470]

To remedy the situation and offer Indigenous inmates an equal chance of rehabilitation, I recommend that the government:

CALL FOR ACTION No. 60

Set up a program to finance family travel when the government has no choice other than to incarcerate an inmate in a provincial establishment far from their residence or home community.

In my opinion, the liaison officers whose presence was the subject of a call for action earlier in this report could be important facilitators in the establishment of this program, specifically by providing guidance to the inmate's loved ones to arrange their trip.

In addition, to compensate for situations where travel is not possible, I recommend that the government:

CALL FOR ACTION No. 61

Allow videoconference communications between inmates and their family members when there is no choice other than to incarcerate an inmate in a provincial establishment far from their residence or home community.

As a result of the unequal access to technology in First Nations and Nunavik communities, to offer a true improvement, this measure will nevertheless have to be accompanied by the requisite investments in information and communications technology.

2468 *Id.*, p. 63–64, lines 16–1.

2469 *Id.*, p. 64, lines 1–8.

2470 Testimony of Robin Aubut-Fréchette, stenographic notes taken March 14, 2018, p. 125–126, lines 22–22.

Thus, since telephone communications are currently the most affordable means to communicate with an inmate, I recommend that the government:

CALL FOR ACTION No. 62

Modify the rules in effect regarding telephone calls so that long-distance calls can be made at the same cost as local calls.

Moreover, the definition of "family" should be modified to take into account the reality of extended families in Indigenous cultures and include aunts, uncles, grandparents and cousins. For example, many Indigenous people live with their grandparents or other relatives while they are growing up. For them, these people are just as significant as the members of their immediate families.

9.4. Dilapidated or unsuitable environment

On another level entirely, the state of Québec's correctional facility infrastructure makes the headlines periodically. Rights groups specifically criticize the dilapidated state of the facilities, their poor health conditions, the presence of mould and contaminated air vents. Indigenous offenders are not the only ones who serve their sentences in these environments, of course, but a certain number of issues that have been brought to my attention deserve particular consideration.

It is impossible to address the question of detention conditions without referring to the special report produced by the Québec Ombudsman in 2016 regarding the current situation in Nunavik.[2471] Not only does the organization criticize conditions that are below the standards in effect, but it states that they do not uphold the inmates' fundamental rights in all circumstances, including their right to dignity.[2472]

From being confined to a cell 24 hours a day, handcuffed in the hallway for several hours or forced to share a cell with several others, the list of problems reported by the Québec Ombudsman is overwhelming. The situations criticized are all completely unacceptable. To remedy the situation, the watchdog organization submitted 30 recommendations to the authorities. In the spring of 2018, after a follow-up, the Québec Ombudsperson, Marie Rinfret, was of the opinion that 16 recommendations had been completed, while 13 had not been completed and were the subject of ongoing monitoring.[2473]

In my opinion, there is no reason that can justify the fact that the Nunavimmiut's most basic rights are being violated. Consequently, I recommend that the government:

2471 *Special Report by the Québec Ombudsman. Detention conditions, administration of justice and crime prevention in Nunavik*, document P-459 (Commission).

2472 *Id.*, p. 8, para. 2.

2473 *Lettre sur le bilan aux ministères concernés*, document P-460 (Commission), p. 2 of 35, para. 2 (online PDF).

CALL FOR ACTION No. 63

Immediately implement all the recommendations set forth by the Québec Ombudsman in its special report on detention conditions, administration of justice and crime prevention in Nunavik.

Although the situation in Nunavik is particularly dramatic, major problems have also been brought to my attention elsewhere in Québec, including at the Leclerc correctional facility in Laval, where most of Québec's female Indigenous inmates are incarcerated. Closed in 2012 by the federal authorities due to its disrepair, the establishment was reopened by Services correctionnels du Québec in 2016. Since then, the Barreau du Québec and human rights defence groups have unceasingly called for changes. In the brief that it filed with the Commission, even the Syndicat des agents de la paix en services correctionnels du Québec criticizes the state of the premises.[2474] The union also states that even though the difficult conditions at the Leclerc correctional facility affect all women incarcerated there, Indigenous women are the most vulnerable:

> The isolation of certain incarcerated Indigenous women is aggravated by the fact that very few of their cellmates speak English, while many Indigenous individuals do not speak French. Furthermore, most Inuit women speak neither English nor French. Unable to communicate in anything but Inuktitut, they experience an immense solitude that weighs heavily on their mental health.[2475]

The correctional officers also mention that there have been more suicidal incidents in three years at the Leclerc facility than in the 25 previous years at Tanguay.[2476] According to them, of the ten incidents that occurred in three years, four or five involved Inuit.[2477] And yet, according to union members, prison is "generally not" an incentive to commit suicide among incarcerated Indigenous individuals.[2478]

The truth established by the proof resulting from the Commission's work is that, starting with their arrest, female Indigenous offenders are particularly disadvantaged. Not only are they more vulnerable in a police intervention situation, but in remote regions, because of the lack of adequate infrastructure after their arrest, it is not unusual for them to be forced to share a cell with men.[2479] Furthermore, as stated by the Syndicat des agents de la paix en services correctionnels itself, there is no separate place to incarcerate women outside Montréal and Québec City.[2480] This is another way of saying that these women are systematically sent thousands of kilometres away from their families and children, with all the heartbreak and solitude that entails.

2474 Document P-1159 (Commission), brief M-017, *op. cit.*, p. 13–15.

2475 *Id.*, p. 25, para. 6.

2476 *Id.*, p. 25, para. 5.

2477 *Ibid.*

2478 *Id.*, p. 24, para. 6.

2479 *Id.*, p. 14, para. 6.

2480 *Ibid.*

Over the last few years, some improvements have been made regarding the correctional facilities reserved for men. Several of these improvements are significant gains for Indigenous offenders. For example, a circular room that can accommodate 30 people and an outer courtyard where cultural activities can take place have been planned at the new Sept-Îles correctional facility.[2481] Arrangements have also been made at the new Amos facility, in addition to separate accommodation areas and videoconferencing equipment for contact with family members living in remote areas.[2482]

Compared to this, the fate reserved for incarcerated women in general and for incarcerated Indigenous women in particular appears to be highly discriminatory. In my opinion, it is urgent to remedy this situation. Consequently, I recommend that the government:

CALL FOR ACTION No. 64

Launch a committee, as soon as possible, in collaboration with Indigenous authorities, on improving detention conditions for Indigenous women, from the time of their arrest until their liberation.

9.5. Rights and obligations curtailed

Detention conditions are not limited to physical facilities. Respect for fundamental rights also affects the quality of the services received.

Inmates' rights and the counterparts to those rights—in other words, the obligations of correctional services—are set forth in the correctional services regulation and must be followed by all correctional services workers and all organizations that work with inmates.[2483]

Throughout the Commission's work, however, multiple breaches in this regard have been brought to my attention. I deem it useful to mention them here and to reiterate how important it is for the correctional authorities to ensure that the Regulation is upheld at all times.

9.5.1. Personal belongings

When a person is admitted to a correctional facility in Québec, correctional services are responsible for the person's personal belongings. Under the Regulation, the incarcerated person's property must be stored "in a secure place and measures must be taken to keep the property in good condition".[2484] In answer to a request submitted to it on the matter, the MSP confirmed the formal instructions provided to its personnel in this regard.[2485]

2481 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 127–128, lines 23–8; document P-007 (Commission), *op. cit.*, p. 33.

2482 *Id.*, p. 128, lines 9–14; document P-007 (Commission), *op. cit.*, p. 33.

2483 See chapter 5, pp. 161-173. *Regulation under the Act respecting the Québec correctional system*, CQLR, c. S-40.1, r. 1, s. 4–61.

2484 *Id.*, s. 4.

2485 *DG-0055-B, Les politiques, les directives et les guides de pratique; la documentation scientifique; les ententes et les positions; les rapports, les recommandations et les plans stratégiques du MSP concernant la détention des personnes autochtones*, document P-798-16 (Commission), tab 16.1.2, p. 57 of 1394 (online PDF).

Despite the answer provided by the MSP, this obligation does not seem to have always been followed, specifically for inmates from Nunavik. During the hearings, Lyne St-Louis stated that personal belongings, including inmates' and accuseds' identity cards, have regularly been lost due to numerous transfers.[2486]

These shortcomings were also mentioned by the Québec Ombudsman in its report on Nunavik in 2016.[2487] Two years later, in its *Assessment of follow-up to the recommendations from the special report by the Québec Ombudsman*, the organization nevertheless stated that the actions undertaken in this regard were satisfactory. It states that, now, "all valuable items are placed in locked metal boxes" and that "other personal belongings are stored in containers or bags bearing the name of the owner".[2488]

In and of itself this is good news, but I cannot insist enough on the fact that it is imperative that correctional authorities maintain their vigilance to prevent similar problems from ever happening again.

9.5.2 Searches

The circumstances authorizing a strip search are listed in the *Regulation under the Act respecting the Québec correctional system* as follows:

- entering or leaving a correctional facility;
- entering or leaving an institutional vehicle;
- entering or leaving a visiting area other than a secure area;
- leaving an area, workshop, activity room or exercise yard in the facility where the inmate may have had access to contraband that the inmate could have hidden on his or her person;
- entering or leaving a solitary, administrative segregation or observation cell;
- there are reasonable grounds to believe that the inmate has in his or her possession an unauthorized item, contraband or evidence relating to a criminal offence and that the search is necessary to find the contraband or evidence;
- an escape or hostage taking is feared, or after a riot;
- a situation is likely to trigger an emergency measure or the presence of contraband constitutes a clear and substantial danger to human life or safety or to the security of the facility.[2489]

In the last three circumstances, the search must be authorized by the manager in charge, except in the case of an emergency.[2490] When a search is carried out without the manager's authorization, it must nevertheless be the subject of a report by the correctional officer who conducted it, justifying its necessity and the reason for the urgency.[2491]

2486 Testimony of Lyne St-Louis, stenographic notes taken June 5, 2018, p. 245, lines 14–25.

2487 Document P-459 (Commission), *op. cit.*, p. 37–38.

2488 Document P-460 (Commission), *op. cit.*, p. 16 of 35 (online PDF).

2489 *Regulation under the Act respecting the Québec correctional system*, c. S-40.1, r. 1, s. 27–28.

2490 *Id.*, s. 28.

2491 *Ibid.*

That being so, a troubling testimony clearly demonstrating the use of abusive strip searches during the detention of an offender was shared with me during the hearings. Awakened at night for a strip search without any explanation, the person heard *in camera* reported having undergone a total of six strip searches over the course of three days.[2492] Even though two of them were justified under the Regulation – because the person had been placed in administrative segregation – the same cannot be said for the others. Even more worrisome, although it was not possible for me to verify the facts, the person reported having been treated differently based on her origins:

> Because when I was there, I understood immediately, when I saw how my neighbour was treated and then me. It was two very different things. I could see it and feel it. And I said to myself, "How come?" [...] I even talked to a woman. [...] She was 60 years old and she is still there today because she did some robberies, and it wasn't the first time, but she was never sent to the hole. It was like... I didn't understand at all. I couldn't understand why it was different for me, and even then, I didn't want to believe that it was different because I was Innu.[2493]

If the inmate's impression was founded, it is a serious breach of her fundamental rights. I therefore believe that it is the correctional authorities' responsibility to remind their personnel of the parameters surrounding the use of strip searches and to enforce them.

9.5.3 Administrative segregation

Deemed an exceptional measure, the use of administrative segregation is also governed by the Regulation. It states that if a correctional officer has reasonable grounds to believe that an inmate is in possession of contraband (drugs, weapons, narcotics or medicine not prescribed by a physician or a dentist), the officer may request that the manager in charge confine the inmate in administrative segregation.[2494]

The Regulation also stipulates that the inmate must be given an opportunity to make representations before being confined in administrative segregation.[2495] After this step, if the decision to place the individual in administrative segregation is upheld, the inmate must be given the reasons for the decision in writing as soon as possible.[2496] The manager's decision to place an individual in administrative segregation must also be confirmed or set aside by the facility director as soon as possible.[2497]

Once again, during the Commission's work, I was told stories of non-compliance with these requirements. This was the case of the individual who testified about having undergone six strip searches during her detention in administrative segregation. She stated to the Commission that she was never informed of the grounds justifying her placement in administrative segregation, neither orally nor in writing, and that she was not able to make representations regarding the situation, either.

2492 *In camera* testimony HC76, stenographic notes taken September 13, 2018, p. 270, lines 12–14.

2493 *Id.,* p. 265–266, lines 23–3 and p. 267, lines 12–22.

2494 *Regulation under the Act respecting the Québec correctional system*, c. S-40.1, r. 1, s. 31.

2495 *Id.,* s. 32.

2496 *Ibid.*

2497 *Id.,* s. 34.

Another witness, who had been placed in administrative segregation for two months, described a similar, or even worse, situation in regard to the conditions:

> I was picked up by the guards, and they threw me in – they put me in the hole, and telling me not to – not to say anything. And they kept me almost two months there, just wearing my underwear. And they came and checked on me once in a while, and beat me up. And I was there, and I didn't even have a shower for two whole months.[2498]

Furthermore, another witness implied that administrative segregation was used against him as retaliation.[2499]

From my point of view, the extremely punishing nature of this measure alone demands strict observation of the measures set forth in the Regulation, and it is the correctional authorities' responsibility to enforce them.

9.5.4 Medical care

Access to timely medical care is one of the fundamental rights in our society. This right exists beyond the walls of correctional facilities. Several testimonies heard in the context of the Commission showed serious breaches by provincial correctional services in regard to Indigenous inmates, however.

It is the MSP that manages the health services in the facilities in Québec City, Roberval, Amos, Sept-Îles, Sorel-Tracy and Montréal (Bordeaux).[2500] The Ministère de la Santé et des Services sociaux (MSSS) is responsible for health care in the other facilities.[2501] The MSP has a directive that provides that, at the time of admission, health service personnel must meet any incarcerated individual who so requests within seven days.[2502] It also states that:

> Health care personnel must take the necessary measures to prevent any interruption in taking prescribed drugs when an inmate leaves a facility (transfer, liberation, temporary absence). They must ensure that inmates suffering from AIDS, taking psychiatric medication or being treated with methadone are provided with duly prescribed psychiatric medication for a 48-hour period. As concerns other medication, inmates may obtain a medical prescription if required for their health.[2503]

2498 Testimony of John Clarence Kawapit, stenographic notes taken April 9, 2018, p. 114, lines 6–13.

2499 Testimony of Juanasi Angiyou, reported by Annick Wylde, stenographic notes taken April 12, 2018, p. 133–134, lines 20–2.

2500 *DG-0086-B, Les services de soins de santé physique et mentale offerts aux personnes détenues*, document P-798-23 (Commission), tab 23.1.1, p. 9 of 260 (online PDF).

2501 *Ibid.*

2502 *Demande DS-0165-B Instruction provinciale 43D "Soins de santé,"* document P-587 (Commission), p. 3 (art. 5.1).

2503 *Id.*, p. 4 (art. 5.6).

This directive is addressed only to the health care personnel employed by the MSP, however, not those reporting to the MSSS. There is therefore a real risk of sliding through the cracks. Furthermore, in the opinion of the Syndicat des agents de la paix en services correctionnels du Québec, as a result of the lack of medical services available at all times, or due to a lack of sufficient places in the infirmaries in several correctional facilities, inmates and accuseds are deprived of the essential medical care to which they are entitled.[2504]

The loss of medical reports is another reality that prevents some individuals from having access to the programs offered or even a possible release.

When invited to answer these questions, the MSP stated to the Commission that the medical files are not yet computerized and that they belong exclusively to the infirmary, which prevents them from being transferred from one facility to the next in the case of a transfer, but the medical information as such is sent so that a new file can be created.[2505] Sometimes, however, some information is lost when the new file is established.

In this era of information technology, it seems inconceivable to me that this type of situation exists. Consequently, I recommend that the government:

CALL FOR ACTION No. 65

Extend the obligations regarding health care to all medical personnel working with inmates, by regulation or legislative amendment.

CALL FOR ACTION No. 66

Recognize that inmates' medical files belong to them and computerize these files using Dossier santé Québec.

CALL FOR ACTION No. 67

Permit the inmates' complete medical files to be shared with the competent authorities during transfers or releases, by regulation or legislative amendment.

9.6. Poor access to rehabilitation services and activities

In addition to the obligations imposed by regulation on correctional services workers to uphold fundamental rights, the *Act respecting the Québec correctional system* sets forth the obligation for the MSP to develop and offer programs and services to encourage offenders to develop an awareness of the consequences of their behaviour and initiate a personal

2504 Document P-1159 (Commission), brief M-017, *op. cit.*, p. 20, para. 2.

2505 Document P-798-23 (Commission), *op. cit.*, tab 23.1.1, p. 10 of 260 (online PDF).

process focusing on developing their sense of responsibility.[2506] These programs must also make special allowance for the specific needs of women and Indigenous people.[2507]

An attentive study of the evidence gathered from the MSP tends to confirm, however, that the services offered frequently do not distinguish between Indigenous inmates and others.

9.6.1 During incarceration

Fundamentally, and even based on the statement by the MSP program manager Marlène Langlois, Directrice générale adjointe aux programmes, à la sécurité et à l'administration, the programs and services offered are the same for everyone.[2508] That said, as described earlier in this report, according to the information provided by MSP, six correctional facilities where there is a greater number of Indigenous inmates also offer programs specifically adapted for the Indigenous clientele.[2509] These are the Amos, Baie-Comeau, Gatineau, New Carlisle, Saint-Jérôme and Sept-Îles facilities.[2510] In Saint-Jérôme, the Inuit clientele are also offered a specific intake and integration session and an education program in Inuktitut, provided by the Kativik School Board.[2511]

Therapeutic programs are also provided in collaboration with Indigenous community organizations. These programs address a variety of subjects, including cultural and personal trauma, self-esteem and resilience, spousal, family and social relationships and managing emotions.[2512] An example is the program on the use of psychoactive substances in the Innu language offered at the Sept-Îles detention facility.[2513] In Saint-Jérôme, occasional workshops on suicide prevention, sexual victimization and parenting skills are also offered in partnership with various social services workers from Nunavik.[2514]

Even if these programs do exist, it appears difficult for Indigenous offenders to access them, however. First, 46.4% of Indigenous inmates serve sentences that are less than 30 days long. Another 17.9% are incarcerated for periods from 30 to 60 days, which does not leave much time to benefit from a rehabilitation program. During the hearings, the associate deputy minister for correctional services, Jean-François Longtin, stated that "with an average of 43 days spent incarcerated, it is essential to create bridges with the community and ensure

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2506 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 21, para. 1.

2507 *Id.,* s. 21 para. 2.

2508 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 123–124, lines 22–1.

2509 *Id.,* p. 124, lines 10–16; document P-007 (Commission), *op. cit.*, p. 30; document P-798-5 (Commission), *op. cit.*, tab 5.2.14, p. 890–895 of 1095 (online PDF).

2510 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 124, lines 10–16; document P-007 (Commission), *op. cit.*, p. 30.

2511 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 125, lines 1–6; document P-007 (Commission), *op. cit.*, p. 31; Kativik Ilisarniq. (2019). *Adult education.* Retrieved from https://www.kativik.qc.ca/adult-education/; document P-798-5 (Commission), *op. cit.*, tab 5.2.14, p. 890 of 1095 (online PDF).

2512 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 125, lines 12–19; document P-798-5 (Commission), *op. cit.*, tab 5.2.14, p. 890–895 of 1095 (online PDF).

2513 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 125, lines 19–21; document P-007 (Commission), *op. cit.*, p. 31; document P-798-5 (Commission), *op. cit.*, tab 5.2.14, p. 893 of 1095 (online PDF).

2514 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 126–127, lines 24–3; document P-798-5 (Commission), tab 5.2.14 p. 891–892 of 1095 (online PDF).

that the people come into contact with resources," because very little can be done tangibly within the facilities.[2515]

Because of the previously addressed discriminatory bias created by assessment tools, it is not unusual, either, for Indigenous offenders with longer sentences to be unable to access the programs and services available. The number of offences on their records, declared consumption of alcohol and drugs and the numerous difficulties encountered during their lives (sexual aggression, violence, etc.) mean that a significant number of Indigenous inmates receive unfavourable results during assessment and consequently have limited access to programs and services.

In fact, even when the time spent incarcerated and the intervention plan established allow real commitment to a program, sometimes the limited number of inmates does not allow the programs to be offered. This is particularly true for clients with English or a language other than French as their primary language[2516], as Moses Nutaraluk explained in his testimony before the Commission. He was denied access to rehabilitation services including educational programs because he could not speak French:

> They always tell me that they're in French. "You are not coming, so go back in your sector, just do your time, be quiet, watch television. Then play chess and backgammon." [...] So I just go back and do my time, watch TV.[2517]

In my opinion, the best way to increase the number of people eligible for the programs is to rely on assessment practices and tools that are truly adapted to Indigenous culture and realities. This should allow the level of risk that an Indigenous inmate presents to be adequately measured and, by the same token, facilitate their inclusion in a reinsertion or rehabilitation program. I therefore once again insist on the importance of developing an assessment tool exclusively for them.

With regard to the time factor, while the sentence length limits Indigenous inmates' involvement in the more elaborate programs and services, I am personally convinced of the added value that access to culturally comforting activities represents in the offender's life, such as craft workshops, meals with traditional foods, sharing circles, access to a sweat lodge and spiritual support provided by Elders. As an Elder who has already intervened in a correctional environment, Pierre Papatie confirmed this in his testimony before the Commission:

> These people need help. It's true that they have done something wrong. That's why they are locked up. It's true that when we have a sharing circle with inmates, they don't talk about why they are there, in the circle. It's when we meet them individually that we find out what they are like, why they are incarcerated. Each inmate has a background. We can also easily see the changes in them, when they come to the sharing circle. Sharing circles are very important too. Sweating is very important.[2518]

2515 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 23, lines 11–23; testimony of Jonathan Rudin, stenographic notes taken February 14, 2018, p. 239, lines 12–17.

2516 Testimony of Line Fortin, stenographic notes taken September 24, 2018, p. 121, lines 11–17; testimony of John Clarence Kawapit, stenographic notes taken April 9, 2018, p. 134, lines 2–24.

2517 Testimony of Moses Nutaraaluk, stenographic notes taken March 15, 2018, p. 168, lines 10–18.

2518 Testimony of Pierre Papatie, stenographic notes taken June 7, 2018, p. 255, lines 3–16.

The evidence shed light on issues related to accessing this type of activity, however. These activities are available in fewer facilities than within the Canadian correctional service, and they are offered less frequently and less regularly. Only the correctional facilities in Amos, Saint-Jérôme and Gatineau offer more structured programming in this regard, with visits by Elders organized four times a year, for example. While the effort should be recognized, from my point of view, the services offered are still insufficient.

Asked to comment on this question during the hearings, the associate deputy minister for correctional services was very open to developing these activities:

> The people are there for a fairly short period. Therefore, talking about a holistic healing process, orchestrated using a long-term program on the provincial side, I don't think we can go that far. I do think, however, that we should make spiritual activities with the Elders available and allow them to conduct certain activities. Currently, we have some services, but with the Native Para-Judicial Services of Québec, for example, we ask them to help us with these liaisons with the Elders and allow them to enter. Openly, I heard Mr. Papatie and others who were interested in the provincial system, and I would be very happy to give them access and discuss with them how we can organize the presence of Elders.[2519]

Consequently, I recommend that the government:

CALL FOR ACTION No. 68

Extend to all correctional facilities in Québec the offer of culturally comforting activities for their Indigenous clients, such as craft workshops, meals with traditional foods, sharing circles, access to a sweat lodge and spiritual support provided by Elders.

To facilitate implementation of this type of activity and guarantee their quality, I furthermore recommend that the Indigenous authorities in Québec:

CALL FOR ACTION No. 69

Identify, for each Indigenous people, Elders interested in intervening in correctional environments and register them in a shared bank of resources that the correctional authorities can consult.

These same Elders could also act as an Elder council for the MSP on the development of guidelines for sacred objects, the type of activities to be implemented and the arrangements required from the perspective of cultural comfort.

Holding cultural and spiritual activities for Indigenous inmates would require visitors to be allowed inside correctional facilities with sacred objects, but correctional officers may

2519 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 117–118, lines 18–10.

subject all visitors to a pat search.[2520] Under the federal correctional system, pat searches carried out by correctional officers are governed by rules that respect the sacred nature of certain objects. The evidence did not establish that Québec's correctional services have comparable guidelines in this regard. Therefore, to avoid any untoward problem, I recommend that the government:

CALL FOR ACTION No. 70

Establish guidelines for the security verification of Indigenous sacred objects, in collaboration with Indigenous authorities.

CALL FOR ACTION No. 71

Train correctional officers to recognize Indigenous sacred objects, in collaboration with Indigenous authorities.

9.6.2 In the community

The findings are similar in regard to the services offered outside of correctional facilities. When questioned on this point, the MSP stated that "the offer of services for supervision and guidance matters is the same throughout Québec".[2521] It also stated that the services offered "are defined according to the distribution of the clients, the needs identified and the external resources available to offer the service".[2522]

During the hearings, several problems were raised about the supervision and monitoring of Indigenous offenders within their community. The first issue brought to light was the lack of adapted resources. The comments made by former Associate Chief Justice and current Court of Québec Judge Danielle Côté when she appeared before the Commission are very enlightening on this matter. In her opinion, in certain Indigenous cases, even if a restorative justice approach could be considered or even recommended in light of the information brought to the court's attention, it is not unusual for this approach to be impossible, because the resources are not available.[2523]

In the brief it submitted to the Commission, Innu Takuaikan Uashat mak Mani-Utenam, an organization that represents the Innu communities of Uashat and Man-Utenam, concurs. From the organization's viewpoint, even though the Innu nation benefits from the Kapatakan Gilles Jourdain Residential Community Centre, the number of places is very limited and the admission criteria very selective, restricting access.[2524]

2520 *Regulation under the Act respecting the Québec correctional system*, c. S-40.1, r. 1, s. 24. para. 1.

2521 Document P-798-5 (Commission), *op. cit.*, tab 5.2, p. 48 of 1095 (online PDF).

2522 *Ibid.*

2523 Testimony of Danielle Côté, stenographic notes taken December 10, 2018, p. 212–213, lines 24–1.

2524 Brief by Innu Takuaikan Uashat Mak Mani-Utenam. (November 30, 2018); document P-1174 (Commission), brief M-033, p. 22–23, para. 72–76.

The situation is particularly problematic in big cities, where no residential community centres, commonly called halfway houses, have places reserved for Indigenous clients.[2525] At present, of 366 places in residential community centres, the MSP confirmed during the hearings that 40 places are dedicated to Indigenous clients, in the Kapatakan Gilles Jourdain Centre (18 places) in Mani-Utenam, the Wakeskun Healing Centre in Saint-Alphonse-Rodriguez in Lanaudière (8 places) and the Makitautik residential community centre in Kangirsuk, Nunavik (14 places).[2526] Even though the residential community centre in Amos does not have dedicated places, it regularly welcomes Indigenous clients and offers general programs.

However, with just over one Indigenous person in two now living in an urban environment[2527], there is room for improvement and definitely place for action.

Consequently, I recommend that the government:

CALL FOR ACTION No. 72

Ensure availability in urban environments of places reserved for Indigenous clients in existing residential community centres or, if necessary, conclude an agreement with an Indigenous organization to create this type of resource.

9.7. A difficult return to freedom

The findings regarding the services offered within the community set the tone in regard to the difficulties encountered by Indigenous offenders when they are released.

As was explained previously[2528], under the *Act respecting the Québec correctional system*, all inmates are eligible for conditional release at varying times in their sentence.[2529] The processes and criteria taken into consideration are the same for everyone.[2530]

The director of the correctional facility decides on temporary absences for offenders serving less than six months.[2531] These could be temporary absences for medical purposes[2532],

2525 Testimony of Serge Tremblay and Vivien Carli, stenographic notes taken February 20, 2018, p. 56–57, lines 23–1; p. 87, lines 5–11.

2526 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 130, lines 1–10; document P-007 (Commission), *op. cit.*, p. 35.

2527 Institut de recherche et d'informations socioéconomiques. (2018). *Portrait des inégalités socioéconomiques touchant les Autochtones du Québec*. Montréal, Québec: Institut de recherche et d'informations socioéconomiques, p. 4; Lévesque, C. and Cloutier, E. (2013). Les Premiers Peuples dans l'espace urbain au Québec : trajectoires plurielles. In A. Beaulieu, S. Gervais, and M. Papillon (dir.), *Les Autochtones et le Québec. Des premiers contacts au Plan Nord* (p. 281–296). Montréal, Québec: Presses de l'Université de Montréal.

2528 See the section pertaining to correctional services, chapter 5, p. x.

2529 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 128, lines 16–20; document P-007 (Commission), *op. cit.*, p. 34; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 143–153.

2530 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 97–98, lines 24–8.

2531 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 128, lines 21–25; document P-007 (Commission), *op. cit.*, p. 34; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 42–56.

2532 *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 42–44.

participation in activities of a reintegration support fund or spiritual activities[2533], humanitarian purposes (birth, death of a loved one, etc.)[2534] or reintegration outings.[2535]

The Commission québécoise des libérations conditionnelles (CQLC) makes decisions for three major temporary absence categories for offenders serving a sentence of six months to two years less a day; the categories are temporary absence in preparation for conditional release, conditional release itself ("parole") and family visits.[2536]

The granting of parole and other temporary absences is a major issue for the Indigenous prison population, as was specifically shown by the CQLC's testimony during the hearings.

More specifically, according to the information obtained by the Commission, for 2016–2017, only 9.0% of Indigenous individuals eligible for temporary absence in preparation for conditional release (commonly known as "one sixth") requested this privilege, compared to 23.9% of non-Indigenous inmates.[2537] This represents just 24 of 261 eligible individuals.[2538] Among Indigenous people who did request this measure, 62.5% of requests were denied. This rate is inversely proportional to that of non-Indigenous inmates, for whom 65.2% of requests were approved.[2539]

The situation is similar for full-fledged parole. In 2016–2017, 180 of 261 Indigenous people chose to renounce this privilege, representing about 69.0%.[2540] The renunciation rate for non-Indigenous inmates during the same period was 43.0%.[2541] A significant discrepancy between these two groups can also be observed in terms of the granting of parole. While 42.0% of Indigenous inmates' applications for parole were accepted in 2016–2017, the rate for non-Indigenous inmates was 56.0%.[2542]

Inmates may be accompanied by an attorney and represented during their hearings before the CQLC. The CQLC strongly encourages this practice, deeming that it is in the offender's best interest to be represented by an attorney.[2543] Between 2011 and 2017, however, even though the use of an attorney increased among non-Indigenous inmates (21.0% vs. 36.0%),

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2533 *Id.,* s. 45–48.

2534 *Id.,* s. 49–52.

2535 *Id.,* s. 53–56.

2536 Testimony of Marlène Langlois, stenographic notes taken June 13, 2017, p. 128–129, lines 25–6; document P-007 (Commission), *op. cit.*, p. 34; *Act respecting the Québec correctional system*, CQLR, c. S-40.1, s. 119; testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 13, lines 16–24.

2537 *DG-0019-C, La langue et la formation des Commissaires aux libérations conditionnelles et sur la représentation des Autochtones, des femmes et des hommes issus des onze nations autochtones dans les programmes de libération conditionnelle*, document P-798-1 (Commission), tab 1.1, p. 18–19 of 53 (online PDF).

2538 *Ibid.*

2539 *Ibid.*

2540 *Id.,* p. 24 of 53 (online PDF).

2541 *Id.,* p. 26 of 53 (online PDF).

2542 *Id.,* p. 24–26 (online PDF).

2543 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 31–32, lines 20–7.

it decreased among Indigenous inmates, going from 24.0% to 19.0%. In 2017, the difference between non-Indigenous and Indigenous inmates was therefore 17.0%.[2544]

These figures are alarming. During the Commission hearings, the CQLC identified certain issues that could explain this situation, including a lack of knowledge about the justice system on the part of First Nations and Inuit people and the fact that attorneys are ignorant of Indigenous traditions.[2545]

As to whether or not the CQLC uses the same criteria to evaluate offenders' situations, whether they are Indigenous or non-Indigenous, the answer is yes.[2546] During the hearings, the chair of the CQLC also highlighted the fact that the commissioners "are not specialists on Indigenous matters".[2547] She did add, however, that to compensate for this, since 2016, the commissioners do not make any decisions about Indigenous offenders without a Gladue report, Indigenous pre-sentencing report or another document explaining the Indigenous context surrounding the person whose case is being examined.[2548] This decision was made when a ruling by the Parole Board of Canada was overturned in federal court because it did not take into account the historical and systemic factors that could have influenced an inmate's interactions with the justice system.[2549]

Finally, as expected, the last issue raised relates to the lack of resources in Indigenous communities to provide supervision. During the hearings, the CQLC admitted that the limited community resources pose a significant difficulty for commissioners in their decision-making.[2550] This issue is particularly worrisome for the Inuit from Nunavik because of their life course. Not only are resources very limited within the territory, but the Inuit are more often deemed by the CQLC to present a high or very high risk of recidivism, requiring particularly strict supervision in the parole plan.[2551]

In my opinion, these findings show above all that the parole procedures are ill-adapted to Indigenous realities. During the hearings, the associate deputy minister for correctional services, Jean-François Longtin, acknowledged this situation and said he placed a great deal of hope in the Indigenous inmate assistance program, not only to facilitate the path for incarcerated Indigenous offenders, but also to support them in their applications for temporary absence and parole.[2552]

2544 *DGP-0054-BC, La formation; les fascicules explicatifs adressés aux personnes appelées devant la CQLC; le recours à un avocat et à un interprète devant la CQLC et les rapports, les recommandations et les plans de la CQLC*, document P-798-14 (Commission), tab 14.1, p. 9–10 of 542 (online PDF).

2545 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 135, lines 19–25.

2546 *Id.,* p. 97–98, lines 23–8.

2547 *Id.,* p. 98–99, lines 25–1.

2548 *Id.,* p. 99–100, lines 22–10.

2549 *Twins v. Canada (Attorney General)*, 2016 CF 537.

2550 Testimony of Françoise Gauthier, stenographic notes taken September 12, 2018, p. 98, lines 9–16.

2551 Document P-459 (Commission), *op. cit.*, p. 67–68.

2552 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 133–134, lines 23–24.

In my opinion, even though the measure does seem promising, it must be accompanied by certain changes in the way things are done.

Consequently, I recommend that the government:

CALL FOR ACTION No. 73

Modify the *Act respecting the Québec correctional system* to include different processes and evaluation criteria for Indigenous offenders who address the Commission québécoise des libérations conditionnelles.

These criteria must be defined in collaboration with experts from Indigenous communities and take into account both the realities of the First Nations and Inuit and the historical and systemic factors that could have influenced the Indigenous inmates' interactions with the justice and correctional system.

10

CHAPTER 10

FINDINGS ON HEALTH AND SOCIAL SERVICES

Although jurisdiction in this field is shared with the federal government, health and social services were among the services included in my inquiry mandate. It has been time well spent. The work revealed that, despite the emergence of some promising initiatives, both access to services and the quality of care and interventions available to Indigenous people are problematic on many levels.

Among other things, the adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples would come to confirm the right of First Nations and Inuit to "access, without any discrimination, to all social and health services".[2553] They are also guarantee "an equal right to the enjoyment of the highest attainable standard of physical and mental health".[2554] Above all, the Declaration would make sure that "States shall take the necessary steps with a view to achieving progressively the full realization of this right".[2555]

In Québec, this will require an overhaul of the services used by all First Nations members and Inuit outside of their communities. Under existing agreements[2556], special attention should also be given to the needs and realities of the Indigenous nations covered by an agreement (Eeyou, Naskapi and Inuit), for whom most of the care and services provided in the community are funded through the provincial health and social services budget.

From the perspective of the population-based responsibility enshrined in the *Act respecting health services and social services*[2557], and according to the interpretation it has been given by the Ministère de la Santé et des Services sociaux (MSSS)[2558], I believe that every effort must be made to guarantee access to services to members of First Nations not covered by an agreement. Refusing to consider the needs of this segment of the population on the pretext that communities not covered by an agreement fall under federal jurisdiction would, in my opinion, be tantamount to consciously turning a blind eye. Since interactions with the rest of the health and social services network under provincial jurisdiction are so frequent, we cannot simply ignore the needs and realities of this segment of the population.

2553 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, GA Res. 61/295, art. 24.

2554 *Ibid.*

2555 *Ibid.*

2556 *James Bay and Northern Québec Agreement*, Grand Council of the Crees (of Québec), Northern Québec Inuit Association, Government of Canada, Société d'énergie de la Baie James, Société de développement de la Baie James, Commission hydroélectrique du Québec (now Hydro-Québec) and Government of Québec, November 11, 1975; *Northeastern Québec Agreement*, Members of the Naskapi Band of Schefferville, Government of Québec, Société d'énergie de la Baie James, Société de développement de la Baie James, Grand Council of the Crees, Northern Québec Inuit Association and Government of Canada, January 31, 1978.

2557 *Act respecting health services and social services*, CQLR c. S-4.2, s. 172, para. 3.1.

2558 Ministère de la Santé et des Services sociaux. (2011). *Stratégie de soutien à l'exercice de la responsabilité populationnelle* (Publication No. 11-228-04W). Québec City, Québec: Ministère de la Santé et des Services sociaux, p. 2.

The overall findings and suggestions in this chapter, be they on cultural safeguards, access, dovetailing of federal and provincial powers or human resources, reflect that analysis of the situation. Pursuant to the Commission's terms of reference[2559], the findings specific to youth protection services are not included in this part of the analysis and will be the subject of the next chapter, with the exception of issues pertaining to human resources management which straddle the overall health and social services sector.

10.1. Cultural barriers

One of the first findings in terms of health and social services is the huge gap between the Western view of health conveyed by many administrators, professionals and actors in the public health care system and that of the Indigenous peoples.

Where the public health and social services system relies on biomedical standards and individual initiatives, particularly in the mental health area, the Indigenous peoples seek instead to achieve a state of balance and cohesion, sustained and strengthened by family, friends, the community, and, more broadly, the nation. Emphasizing the distance between those views, Carole Lévesque, a professor at the Institut national de la recherche scientifique and Director General of the DIALOG research network, reminded the Commission that in Indigenous communities, "one speaks of well being, one has a view of health, […] which is much more an overall state of health based on a balance between all aspects of life".[2560] Moreover, while healing methods may vary, all the nations are intent on asserting Indigenous culture as an intervention model.[2561]

It is not surprising, therefore, that several witnesses stated that the methods of care and types of intervention recommended in the health and social services system did not meet their needs; as many people, if not more, said they had had a difficult relationship with the system.[2562]

In light of the testimony from many citizen witnesses, it is clear that prejudice toward Indigenous peoples remains widespread in the interaction between caregivers and patients.[2563] According to Doctor Samir Shaheen-Hussain, an emergency room pediatrician

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2559 *Order concerning the establishment of the Public Inquiry Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec : listening, reconciliation and progress* (2016) 1095 G.O.Q. II, p. 24. The full text of the order is available in Appendix 1.

2560 Testimony of Carole Lévesque, stenographic notes taken October 17, 2017, p. 20–21, lines 23–3.

2561 *Revue de littérature Services sociaux. Thème : la santé mentale en contexte autochtone*, document PD-9 (Commission), p. 6.

2562 Testimony *in camera* HC-34, stenographic notes taken May 14, 2018, p. 95, lines 4–19, p. 98–99, lines 25–11; testimony reported by Benoit Théorêt, stenographic notes taken January 22, 2018, p. 138–139, lines 23–10; testimony *in camera* HC-29, PI-7, stenographic notes taken April 20, 2018, p. 27–28, lines 7–29; testimony of Jessica Mitchell, stenographic notes taken May 22, 2018, p. 285–286, lines 5–15.

2563 Testimony *in camera* HC-6, stenographic notes taken March 13, 2018, p. 76-77, lines 3–6; testimony *in camera* HC-37, stenographic notes taken May 16, 2018, p. 109, lines 4–22, p. 121-122, lines 18–2, p. 140–141, lines 13–25, p. 149–150, lines 4–20 and p. 152, lines 3–5; testimony *in camera* HC-17, stenographic notes taken March 16, 2018, p. 264–265, lines 19–7; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 189–191, lines 12–11; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 15–16, lines 25-5; testimony *in camera* HC-26, stenographic notes taken April 17, 2018, p. 24–26, lines 20–15; testimony of Nakuset, stenographic notes taken February F21, 2018, p. 59–60, lines 12-2; testimony *in camera* HC-63, stenographic notes taken Augu[st] 20, 2018, p. 15–16, lines 25–20 and p. 21, lines 10–17; testimony *in camera* HC-75, stenographic notes taken September 13, 2018, p. 215, lines 16–22; testimony *in camera* HC-14, stenographic notes taken March 15, 2018, p. 78–79, lines 22–21; testimony *in camera* HC-4, stenographic notes taken February 23, 2018, p. 173–174, lines 1–8.

and professor at McGill University's Faculty of Medicine, the situation is such that the patients brace themselves and devise strategies to "decide how to deal with the racism [...] they will encounter when they walk into an emergency room".[2564]

Among the array of prejudices described, those relating to drug or alcohol consumption seem most common, as demonstrated in the following account:

> And I hadn't even seen her yet, she hadn't even looked at me. She hadn't opened the door to look at me. She didn't know who I was. I already felt judged at that point. I felt, like, she was already judging me because I was from Cree Patient Services, that I was Cree, that I was probably drunk or a drug addict, or a bad parent or a bad person, that she had already made that decision about me.[2565]

Unethical addiction-related practices targeting women have also been brought to my attention, such as non-consensual drug tests performed on Indigenous women who have come to give birth.[2566]

These prejudices and discriminatory practices toward Indigenous patients can have dire consequences, ranging from removing a child at birth to delayed diagnoses, refusing medical evacuation, not prescribing exams and tests as needed, or even not prescribing the proper medication. These problems seem to occur both in the communities and in institutions of the health care system. A telling example, related to the Commission by Yvette Wabanonik, was the death of her brother Maurice Wabanonik due to concussion.[2567] So are the stories of Edmond Moar[2568] and of a patient from Nunavik[2569] discussed in Chapter 6 of this report.[2570]

According to some experts and professionals, beyond the immediate impacts on the person who is sick, the insecurity-generating experiences of individuals and families lead to an underuse of services by the entire Indigenous population.[2571] This worsens crises, delays screening and impedes the delivery of care, particularly in cases of chronic, serious or mortal illnesses.[2572] Dr. Stanley Vollant, a doctor of Innu descent, told the Commission that he himself had witnessed blatantly prejudiced practices in hospital settings and their deleterious effects:

> I can tell you that there is systemic racism in the hospital in Baie-Comeau where I worked for nearly ten years. Some nurses and doctors have a lot of prejudices

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2564 Testimony of Samir ShaheenHussain, stenographic notes taken March 21, 2018, p. 217, lines 20–22.

2565 Testimony of Natasia Mukash, stenographic notes taken October 16, 2017, p. 29, lines 4–12.

2566 Testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 31–32, lines 14–8.

2567 Testimony of Yvette Wabanonik, stenographic notes taken Augu[st] 23, 2018, p. 133–155, lines 1–25.

2568 Testimonies of Louise Moar and Francine Moar, stenographic notes taken September 7, 2018, p. 12–40, lines 1–3.

2569 Testimony of Élizabeth Williams, reported by Marie-Hélène Francoeur-Malouin, stenographic notes taken November 13, 2018, p. 169–188, lines 1–10.

2570 See page X of this report.

2571 Testimony of Philippe Meilleur, stenographic notes taken June 8, 2017, p.45–46, lines 19–11.

2572 Testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 184, lines 9–19.

> against the First Nations [...] So, when people from my village have health problems, when they go to Baie-Comeau, they are reluctant to go because they're afraid that when they get to the emergency room at the Baie-Comeau hospital they'll be judged by the triage nurse [...]. They're afraid to go to the hospital.[2573]

Several witnesses also spoke of the "rigid" application of measures, laws and regulations such as the maximum number of visitors at the hospital or access to traditional food, and said these are discriminatory practices and impediments to access.[2574] According to some witnesses, the lack of knowledge of Indigenous realities and the slew of prejudices this generates also lead clinicians and decision makers in the provincial network to fail to respect cultural practices. That would apply particularly to healing practices[2575] and repatriation of the placenta or foetus so that it can be disposed of properly in a way that is culturally safe.[2576]

From my perspective, although it is impossible to generalize, many voices were heard to state that First Nations members and Inuit feel unsafe when they have to entrust their health to public services.

Mindful of these issues, a number of experts and health professionals we heard feel a need to build trust between the users and providers of public services. They said they see it as a way to meet the requirements of the health institutions' population-based responsibility, while at the same time meeting the needs of the Indigenous peoples and guaranteeing their safety.[2577]

According to Professor Carole Lévesque, a comprehensive cultural safeguard approach is needed if we truly want to improve relations between Indigenous peoples and public services:

> The idea is to create secure and welcoming settings for the Indigenous population with respect to health, education, justice, environment and employability. It encourages the deployment of services, practices and initiatives consistent with ways of providing assistance in preventive and curative care, social transactions and understanding of the Indigenous world, ways grounded in Indigenous value and knowledge systems. This movement also reflects a collective and community desire for social transformation and innovation on the part of the Indigenous peoples, since it is aimed at reducing inequalities, is based on the cornerstone principle of social justice, and above all, is part of a clear and legitimate affirmation of identity politics and Indigenous governance.[2578]

2573 Testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 58–59, lines 13–10.

2574 Testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 130–131, lines 23–6; testimony of Alex Cheezo, stenographic notes taken October 24, 2017, p. 40, lines 8–21.

2575 Testimony of Alex Cheezo, stenographic notes taken October 24, 2017, p. 54, lines 21–24; testimony of Judith Morency, stenographic notes taken April 18, 2018, p. 65, lines 20–25 and p. 114, lines 10–18.

2576 Testimony of Constant Awashish, stenographic notes taken June 19, 2017, p. 59–60, lines 19–10.

2577 Testimony of Jacques Boissonneault, stenographic notes taken October 27, 2017, p. 93, lines 3–8; testimony of Yves Desjardins, stenographic notes taken October 27, 2017, p. 35, lines 8–15; testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 89, lines 3–9.

2578 Testimony of Carole Lévesque, stenographic notes taken October 17, 2017, p. 8–9, lines 16–9.

Some initiatives, launched during or before the Commission's work, mirror this approach in the public health care system. Examples are the Clinique Minowé and the Mino Pimatigi8in project by the Centre d'amitié autochtone de Val-d'Or (CAAVD), as well as the Lac Simon Wigobisan program that will be described later in this chapter, the Acokan health clinic set up by the Centre d'amitié autochtone de La Tuque and the Missinak shelter for respite and healing in Québec City.[2579]

Despite the interesting results obtained to date and a promising future, these projects and programs are still sparked by local initiatives, and in most cases fuelled by a handful of players who mean well but lack long-term funding.[2580] As Édith Cloutier, Executive Director of the CAAVD, clearly stated when she appeared before the Commission about the Mino Pimatigi8in project:

> In time, the CAAVD and CISSSAT [Centre intégré de santé et de services sociaux de l'Abitibi-Témiscamingue] would like to obtain recurrent funding from the Ministère de la Santé et des Services sociaux du Québec to ensure the viability and sustainability of this collaboration and the renewed service offer related to it.[2581]

The role of leaders is also key to ensuring a sustainable dialogue over time and space, according to Jacques Boissonneault, the former Director General of the Centre intégré de santé et de services sociaux de l'Abitibi-Témiscamingue (CISSSAT):

> It takes leadership from the top to successfully move forward and build partnerships or service improvement projects for the Indigenous people. The senior officers and boards of directors need to be convinced about what needs to be done. After that, it is the leaders' job to get members of the management team on board and relay the message to the base, otherwise, we are just shooting in the dark.[2582]

In my view, such projects and programs are capable of giving a real impetus to the recognition of Indigenous knowledge and expertise we need for reconciliation and for improving the quality of services provided to Indigenous populations in Québec, especially outside the communities. Achieving this, however, requires clear guidelines and commitment on the part of government authorities in favour of the concept of cultural safeguards.

2579 Appendix 6 of this report contains details on a series of promising initiatives that have been introduced elsewhere in Québec's health and social services sector.

2580 Testimony of Daniel St-Amour, stenographic notes taken September 29, 2017, p. 118, lines 4–12.

2581 *Mino Pimatigi8in – Mieux-être, Santé autochtone : Une réponse novatrice pour renouveler l'offre de soins, services de santé et services sociaux, accroître l'accessibilité à ces services, bâtir le mieux-être et améliorer l'état de santé et les conditions de vie des Autochtones en milieu urbain*, document P-729 (Commission), p. xii.

2582 Testimony of Jacques Boissonneault, stenographic notes taken October 26, 2017, p. 210–211, lines 21–5.

For this reason, I recommend that the government:

CALL FOR ACTION No. 74

Amend the *Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons* to enshrine the concept of cultural safeguards in it, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 75

Encourage the health and social services network institutions to set up services and programs based on cultural safeguard principles developed for Indigenous peoples and in cooperation with them.

CALL FOR ACTION No. 76

Provide sustainable funding for services and programs based on cultural safeguard principles developed for Indigenous peoples.

10.2. Access to service problems

Beyond the system's inability to deal with Indigenous culture, the testimonies and information gathered during the Commission's work revealed major weaknesses in access to services for Indigenous peoples, both in First Nations communities and Inuit villages and in urban settings.

10.2.1 In Indigenous communities or villages

The health and social services in communities, whether covered by an agreement or not, pose considerable challenges. The need for action has become even more pressing for some particular services or social issues, however. The following findings and calls for action address those issues.

Emergency ambulatory services and aero-medical evacuations

The lack of emergency ambulatory services in some communities is not new. Among other things, the Commission's work has highlighted the fact that the Manawan community has been struggling to provide a full-fledged ambulance service for its population for 20 years. The evidence showed that the deficiencies in pre-hospital services have seemingly resulted in the death of at least two people.[2583]

2583 *Pétition pour l'ajout de ressources ambulancière; Assemblée nationale, document P-482 (Commission); Communiqué de presse, Rehaussement des services ambulanciers : le gouvernement oublie encore les besoins dans Lanaudière*, document P-480 (Commission); Bureau du coroner, Rapport d'investigation du coroner sur le décès de David Flamand, document P-476 (Commission); Mémoire du Conseil de la Nation Atikamekw. (November 30, 2018). *Bâtir la confiance « Koski Ocitatan Tapweritcikan »*, document P-1167 (Commission), brief M-026; Mémoire du Conseil des Atikamekw de Manawan. (March 15, 2018). *Problématique concernant l'absence de services ambulanciers à Manawan dans un contexte de racisme systémique*, document P-475 (Commission), brief M-007.

According to the Conseil des Atikamekw de Manawan, although the community has been compensating by way of a first responder service since 2006, it is not on a par with paramedics.[2584] As a result, the Conseil's Chief, Jean-Roch Ottawa, confirmed that, when someone has an emergency, "getting to the hospital can take three or four hours".[2585]

The case of young Jaylia Jacob, who succumbed to drowning after being evacuated by ambulance (86 km on a gravel road) rather than by helicopter, due to cost, is a perfect illustration of the issue and of a likely avoidable loss of life. In the report on the tragedy, the coroner concluded that, although he could not be certain Jaylia would have fared better with faster medical intervention, it took too long and medical evacuation services by helicopter should be considered.[2586]

In March 2018 the MSSS announced it would enhance its ambulance services in the Lanaudière region thanks to an additional investment of over $2 million.[2587] Available as of April 2018, this new funding would allow the service in the Saint-Michel-des-Saints sector (two ambulances) to be boosted to 24/7 coverage, while the Manawan community sector would finally get an on-reserve ambulance service worth a total of $1.2 million.

A few months later, MSSS representatives told the Commission that the deployment of the ambulance had been delayed for various reasons, including a lack of facilities (heated garage), and also a lack of trained and certified paramedics to implement ambulatory operations in the Manawan community.[2588] At the time this report was being completed, despite the Minister's announcements, emergency medical transportation in that territory had not been touched.

The Lanaudière region is not the only deprived territory when it comes to transportation and emergency ambulance services. Remote regions, including Nunavik and the Lower North Shore, are also up against deficient ambulance services. Questioned as to the possibility of funding the deployment of ambulatory services to other Indigenous regions and communities that are currently not serviced, MSSS representatives were unable to commit to resolving the issue in the near future.[2589]

From my perspective, the deficiencies of the emergency ambulance transportation service are incompatible with the population-based responsibility obligations of health institutions. The case of Levy Kumarluk, who died in June 2017 following an almost complete tear in the aorta without benefit of medical evacuation, illustrates the life-and-death impacts of a financially precarious ambulance infrastructure.[2590]

2584 Document P-475 (Commission), brief M-007, *op. cit.*, p. 4.

2585 Testimony of Jean-Roch Ottawa, stenographic notes taken March 19, 2018, p. 34, lines 9–12.

2586 Bureau du Coroner, *Rapport d'investigation du coroner sur le décès de Jaylia Jacob*, document P-477 (Commission), p. 2.

2587 Ministère de la Santé et des Services sociaux (March 2019, 28). *Le ministre Gaétan Barrette annonce plus de 20,5 M$ supplémentaires pour intensifier la couverture ambulancière dans plusieurs régions.* [Press release]. Retrieved from http://www.msss.gouv.qc.ca/ministere/salle-de-presse/communique-1544/.

2588 Testimony of Martin Rhéaume, stenographic notes taken October 22, 2018, p. 179, lines 10–20.

2589 *Id.*, p. 180–181, lines 15–25.

2590 Testimonies of Siasi Kumarluk and Mary Pirti Kumarluk, stenographic notes taken November 13, 2018, p. 190–217, lines 1–25.

Beyond the financial considerations, over the past year, several media outlets, including *La Presse, Le Devoir and Radio-Canada,* have also examined cases of unaccompanied patients (especially young Inuit children) who have been transferred from Nunavik to Montréal on Challenger aircrafts. Many described the experience as traumatizing, not only for the family and children involved, but also for health care workers in the Montréal hospitals.[2591] Because they do not necessarily speak English or French, the Inuit children find themselves adrift in the midst of urgent and sometimes tragic medical situations. In cases like these the health care workers need at least one parent to be present, not only to reassure and comfort the patient, but also to ensure communication for things like meeting basic needs.[2592]

On a clinical level, the absence of parents also sometimes prevents doctors from having timely access to information on past medical or surgical history and allergies. In a letter to the coordinator of the Programme d'évacuations aéromédicales du Québec (ÉVAQ), which was filed as evidence, Dr. Samir Shaheen-Hussain, an emergency room pediatrician at the McGill University Health Centre, and his colleagues clearly expressed their concerns:

> From a clinical care perspective, many [nursing staff and doctors] mentioned that important elements linked to clinical presentation are outright lacking, because the children are often young and only speak Inuktitut (and in some cases, cannot speak yet). The lack of information essential to the care of these children can jeopardize their treatment and threaten their safety. In such situations, we are often forced to perform potentially superfluous and risky medical tests. Absence of parental consent becomes a major issue, especially in terms of surgical diagnoses involving a procedure in the operating room [...]. Our colleagues reported frequent feelings of impotence and indignation as they saw children alone and crying inconsolably, simply because they were afraid and/or in pain and no parent was there to comfort them. These traumas can have long-term negative emotional and psychological effects on children.[2593]

In October 2018 ÉVAQ leaders confirmed to the Commission that emergency medical evacuation by "flying hospital" without parental accompaniment was indeed common practice until very recently.[2594] The reasons they gave to justify refusing family escorts were based on "concerns for safety, intimacy, ethics, and confidentiality for the patients" and also the goal of "optimal availability in case we get another call in the course of the same mission".[2595]

The #TiensMaMain mobilization campaign, orchestrated in early 2018 by the Association des pédiatres du Québec and the Canadian Paediatric Society, nevertheless led to changes by making the public and the media aware of not only how risky that method was but also

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2591 *Letter of December 19, 2017 from Drs. Samir Shaheen-Hussain, Harley Eisman and Saleem Razack of the Montreal Children's Hospital*, document P-502 (Commission), p. 2.

2592 *#TiensMaMain Une campagne en soutien aux enfants et familles autochtones durant les évacuations aéromédicales au Québec*, document P-497 (Commission), p. 24.

2593 *Id.,* p. 1–2.

2594 Testimony of André Lizotte, stenographic notes taken October 24, 2018, p. 37–39, lines 14–17.

2595 *Réponse de Philippe Couillard à Marc-André Dowd datée du 28 septembre 2005*, document P-499 (Commission), p. 1.

how unfair it was.[2596] As a result, the aircraft have been redesigned and some requirements have been changed, so it is now possible for parents to accompany the patients. The new ways of doing things are recorded in a reference framework on parental accompaniment adopted in June 2018.[2597] A handbook for the companions was also developed.[2598] According to ÉVAQ representatives, since these new ways of doing things started, there is no record of a parent being refused permission to accompany a child in Nunavik.[2599]

The evidence showed that parental accompaniment had been permitted since 2006 for patients who used the shuttle service rather than emergency medical evacuation; at first it had to be authorized, and then it became systematic.[2600] Of the 6,000 patients evacuated by air for medical reasons in Québec annually, the situation is not urgent (medical shuttle) for 4,000 of them.[2601] Based on those figures, Sylvie Côté, coordinator of the ÉVAQ program, stated that, due to recent developments, parental accompaniment is 98.0% guaranteed now.[2602]

In my view, the recent improvements to the Programme d'évacuations aéromédicales prove that it is indeed possible to change the way we do things for the benefit of the patients, despite significant constraints.

I therefore recommend that the government :

CALL FOR ACTION No. 77

Take the necessary measures to make emergency medical transportation services by land or by air, depending on the circumstances, available as soon as possible and on an ongoing basis in all communities, despite constraints, in cooperation with Indigenous authorities.

Long-term care and end-of-life care

Care for people with decreasing independence or at the end of their lives is specialized care and is sorely lacking in the communities.[2603] In fact, according to the First Nations of Québec and Labrador Health and Social Services Commission (FNQLHSSC) a mere seven federally

2596 Document P-497 (Commission), *op. cit.*

2597 Ministère de la Santé et des Services sociaux. (2018). *Programme d'évacuations aéromédicales du Québec. Mission d'avion-hôpital. Cadre de référence sur l'accompagnement parental.* Québec, Québec : Ministère de la Santé et des Services sociaux.

2598 Ministère de la Santé et des Services sociaux. (2018). Programme d'évacuations aéromédicales du Québec (ÉVAQ) Missions d'avion-hôpital. Accompagnement parental, Guide de l'accompagnateur. Québec, Québec : Ministère de la Santé et des Services sociaux.

2599 Testimony of Sylvie Côté, stenographic notes taken October 24, 2018, p. 103, lines 1–4.

2600 Testimony of André Lizotte, stenographic notes taken October 24, 2018, p. 62, lines 8–22.

2601 *Id.,* p. 62, lines 3-8.

2602 Testimony of Sylvie Côté, stenographic notes taken October 24, 2018, p. 93, lines 7–22.

2603 Testimony of Verna Polson, stenographic notes taken June 6, 2017, p. 65, lines 8–9; testimony of Daniel St-Amour, stenographic notes taken September 29, 2017, p. 127, lines 4–17.

funded community institutions were available to Indigenous people in 2014, in addition to two seniors' homes, for a total of 181 beds.[2604] Among the challenges the FNQLHSSC identified, we noted the following: limited funding compared to the funding available for residential and long-term care centres (CHSLDs) in Québec; limited access to medical care in these facilities due to a lack of specialized staff; the difficulty of concluding agreements with the public system; and an increase in the number of Indigenous placements in public institutions, especially involving patients with neurological, renal or chronic health problems.[2605]

Since that time, there have been some improvements through agreements with the provincial system, especially in the Abitibi-Témiscamingue region, as described by Annie Vienney, respondent on Indigenous issues for the Centre intégré de santé et de services sociaux de l'Abitibi-Témiscamingue:

> There's a CHSLD for native people at the Timiskaming First Nation called Anishinabe Long Term Care Centre, and it's a centre… a CHSLD, so for people losing their independence, for… people living on reserve. In 2001, […] an agreement was reached so that we could buy three beds in this CHSLD, on reserve, for Indigenous people living off reserve. Why? Because First Nations members don't feel comfortable in our institutions. They want something that's culturally appropriate, that's safe, when they're dying, when they're losing their independence, they want something in their own environment […]. So we have an agreement with the CHSLD, and it's working really well.[2606]

Recently, the Centre régional de santé et de services sociaux de la Baie-James (CRSSSBJ) and the Cree Board of Health and Social Services of James Bay (CBHSSJB) also reached an agreement on a new 32-bed CHSLD to be built in Chibougamau, with spaces reserved for Cree patients. This enhancement will increase the availability of long-term care for Indigenous people. However, efforts must be intensified to make the existing institutions safer for an expanding older Indigenous population.

I therefore recommend that the government:

CALL FOR ACTION No. 78

Encourage the signing of agreements between public health and social services institutions and Indigenous authorities to guarantee spaces and a culturally safe service for aging Indigenous persons and their families.

CALL FOR ACTION No. 79

Financially support the establishment of long-term care services in communities covered by an agreement.

2604 *Mémoire sur les ressources d'hébergement et de soins de longue durée pour les Premières Nations du Québec*, document P-065 (Commission), p. 25.

2605 *Id.*, p. 16–22.

2606 Testimony of Annie Vienney, stenographic notes taken October 23, 2017, p. 173–174, lines 16–15.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 80

Initiate tripartite negotiations with the federal government and Indigenous authorities to develop long-term care services in communities not covered by an agreement.

The lack of accommodation in public hospitals was also criticized in end-of-life situations. The enforcement of rigid rules, especially with regard to the number of visitors in hospitals, is seen as discriminatory against Indigenous patients and their families. Some of the testimonies revealed some unfortunate events that occurred in hospitals. Among other things, family members accompanying or visiting their loved ones in palliative care were apparently told by staff to leave the room or the premises, and were sometimes even escorted out by security staff.[2607] Rodrigue Wapistan, Chief of the Innu community of Nutashkuan, spoke of these incidents, both from the viewpoint of the family and that of the Indigenous leadership:

> When we arrive at a hospital and the people, the nurses, the staff see that there's a gang of us [...] they tell us to go in one at a time or they say that we're not allowed to play the drum. But that's the custom [...]. Whenever someone's dying in a hospital, I have to charter a plane, I have to go with these people. They want to go and see because, sometimes, people manage to survive.[2608]

Some witnesses brought up the possibility of setting aside exclusive spaces in the institutions for end-of-life Indigenous patients and their families, so those kinds of unpleasantness could be avoided.[2609] Others, like Eva Papigatuk, a Nunavik resident, underscored the need to respect the decisions of individuals and their families to return to their communities to die.[2610]

Old age and end of life are times of great vulnerability. It may not take much to ensure that difficult transitions such as these are peaceful. Consequently, and in line with government policies aimed at making CHSLDs full-fledged "living environments"[2611], I recommend that the government:

2607 Testimony of Sylvain Dubé, stenographic notes taken March 20, 2018, p. 167–169, lines 21–16; testimony of Louis-Philippe Mayrand, stenographic notes taken September 27, 2018, p. 269, lines 8–25; testimony of Jacqueline Michel, stenographic notes taken April 16, 2018, p. 13–14, lines 21–17 and p. 21, lines 13–25; *Lettre de remerciements adressée à la Commissaire locale aux plaintes et à la qualité des services, hôpital Hôtel-Dieu de Québec*, May 14, 2013, document P-028 (Commission); testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 121–124, lines 11–15; testimony of Florence Dubé, Sylvain Dubé and Nathalie Dubé, stenographic notes taken March 20, 2018, p. 166–178, lines 17–17.

2608 Testimony of Rodrigue Wapistan, stenographic notes taken June 12, 2017, p. 42–43, lines 24–15.

2609 Testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 124, lines 16–21.

2610 Testimony of Eva Papigatuk, stenographic notes taken September 5, 2018, p. 229–233, lines 23–2.

2611 Ministère de la Santé et des Services sociaux (2003). *Un milieu de vie de qualité pour les personnes hébergées en CHSLD. Orientations ministérielles*. Québec City, Québec: Ministère de la Santé et des Services sociaux.

CALL FOR ACTION No. 81

Make the development of culturally appropriate spaces for Indigenous nations a priority in public health institutions, particularly in regions where there is a substantial Indigenous population.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 82

Initiate tripartite negotiations with the federal government and Indigenous authorities to establish a formal funding mechanism for returning to the communities at the end of life and for the development of palliative care in the communities.

Special needs

As is the case in many fields, there is very little data on the number of people with special needs in Indigenous communities, whether they be specific psychosocial needs (autism spectrum disorder, fetal alcohol spectrum disorder, etc.), or physical or intellectual limitations.

Several witnesses complained, however, about the lack of community resources for those people. Since eligibility for psycho-social intervention programs or rehabilitation programs depends on a clinical diagnosis, it appears that the lack of professionals who are able to make such diagnoses in the communities is a key impediment to access. If we add the fact that waiting lists are very long for this type of service in the public system, the barriers to access are even greater, especially in remote areas.[2612]

In practical terms, the long wait times in the public system mean that virtually all diagnostic services are obtained in the private sector and the communities must cover the costs.[2613] Asked to comment on this state of affairs while appearing before the Commission, Dale Walker, Native Liaison Adviser, CISSS Côte-Nord, confirmed that 100.0% of the requirements in his region are met through the private sector.[2614]

Therefore, notwithstanding Jordan's Principle, which requires that the government department of first contact respond to children's needs despite funding issues[2615], it is clear that access still varies based on the capacity of the community.

2612 Testimony *in camera*, HC-59, stenographic notes taken June 13, 2018, p. 153, lines 20–25; testimony PI-52, statutory declaration, document P-882 (Commission), p. 1–2; testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 83–84, lines 22–17; testimony of Jessica Mitchell, stenographic notes taken March 22, 2018, p. 269–270, lines 24–17.

2613 Testimony of Arna Moar, stenographic notes taken September 26, 2018, p. 110–111, lines 24–9 and p. 113, lines 13–21.

2614 Testimony of Dale Walker, stenographic notes taken September 11, 2018, p. 315–316, lines 11–5.

2615 Details on the application of Jordan's Principle can be found in Chapter 5 of this report, in the section on health and social services, pp. 174-175.

The lack of community services also forces family members to assume a caregiving role. The fact that there are no respite services or programs for caregivers puts an even heavier burden on them. Exhausted and demoralized, they have to consider placing their loved ones permanently in specialized centres in the south, as related by Elizabeth-Mina Bearskin, Chisasibi resident and mother of a child with special needs:

> [W]hat I need is more help, more resources for him that he can benefit from, and to have a better life [...]. We cannot leave him in the gutter. [...]. And I want him to be helped, 'cause I don't have a place... I don't have a place where I could take him, because in Chisasibi where they have a place, it's always the Elders who have priority. They take the acute patients first, [...] but him, he doesn't have any medication to take, so they don't take him. [...] The cases that I am in, where we are up north, that it's not easy. They can't take us down south. It would be a lot better if there was a place up north where they can keep these special needs people in their own communities, up north.[2616]

Many believe that, since home caregivers in the community are not always equipped to deal with the complex needs of patients with special needs, family members have to consider a placement in the south, as Eeyou witness Nellie Bearskin-House told the Commission:

> So, therefore, people they hire to work in the human professions are inadequate or they don't know how to respond to people that are disabled, to people that are sick, to people that their emotional, mental state is very low, especially in-home care. They hire young girls with no training, no - no skills in how to deal with the humanness of people.[2617]

To address these problems, I recommend that the government:

CALL FOR ACTION No. 83

Develop priority diagnostic service corridors for Indigenous clients of all ages through tripartite negotiations with the federal government and Indigenous authorities.

CALL FOR ACTION No. 84

Financially support the development of culturally safe, family-centred respite services in communities covered by an agreement and in urban areas.

2616 Testimony of Elizabeth-Mina Bearskin, stenographic notes taken June 12, 2018, p. 170–171, lines 6–7.

2617 Testimony of Nellie Bearskin-House, stenographic notes taken Augu[st] 14, 2018, p. 203, lines 12–19.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 85

Initiate tripartite negotiations with the federal government and Indigenous authorities to develop culturally safe, family-centred respite services in communities not covered by an agreement.

Sexual and domestic violence

Sexual violence affects a large number of First Nations members and Inuit, and the issue was raised several times during the hearings. The chapters on justice services and police services also address this problem. The testimony and documents filed as evidence reveal the taboo nature of sexual assault, illustrating how it contributes to family violence, exacerbates mental health and addiction problems, and is closely linked with suicide.[2618]

In a document produced for the Regroupement des centres d'amitié autochtone du Québec (RCAAQ), sexual assault and sexual exploitation is shown to affect homeless Indigenous women to a high degree, particularly Inuit women in Montréal:

> The invisibility of these women seems worsened by their reticence to share their problems, which go unrecognized, to the point where it becomes difficult to respond to their needs. A number of service providers from various organizations told us how difficult it is to support these women. They are often subjugated by pimps who block front-line, street intervention efforts so they can keep these women under their influence [...]. It must be stated that the moment they arrive in the city, women are targeted for economic exploitation—more specifically, sexual exploitation.[2619]

As mentioned in the chapter on police services, certain cases—including those involving Indigenous women in Val-d'Or and elsewhere in Québec—were brought to my attention during the hearings.[2620]

2618 Brief of the Assembly of First Nations Québec-Labrador. (November 30, 2018). *"Listening, reconciliation, progress?"* document P-1171 (Commission), brief M-030; brief of Amnistie internationale Canada francophone. (September 29, 2017). document P-113 (Commission), brief M-003; brief of Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government. (June 14, 2017). *Initial Brief*, document P-010 (Commission), brief M-001; brief of the Department of Justice and Correctional Services of the Cree Nation Government. (September 15, 2017). document P-055, brief M-002; brief of Cree Women of Eeyou Istchee Association. (October 1, 2018). *Rapport, Projet de partenariat essentiel*, document P-1165 (Commission), brief M-024.

2619 *La condition itinérante parmi la population autochtone au Québec – Partie 1*, document P-116 (Commission), p. 148.

2620 Statement reported by Robert Lebrun, file No. 17 / Phase 1 Val-d'Or, stenographic notes taken Augu[st] 16, 2018, p. 40, lines 4–24, p. 46, lines 17–25 and p. 61–62, lines 21–15; testimony *in camera* HC-68, stenographic notes taken September 5, 2018, p. 88, lines 15–20; testimony of Deborah Einish, stenographic notes taken October 23, 2018, p. 41, lines 1–8 and p. 44, lines 4–22; testimonies of Angèle Petiquay and Lise Dubé, stenographic notes taken January 19, 2018, p. 178–179, lines 14–11.

Many children also fall victim to sexual and domestic violence. To help combat this problem the Anishnabe community of Lac Simon established the Wigobisan project in 1999.[2621] The program's main objective was not only to assess the children affected, but also to provide individual, family and community services.[2622] The services were offered jointly with partners in the Lac Simon community and the greater region: youth protection, public safety, health, social services, justice, etc.[2623] The program was terminated in 2004 due to lack of funding, however. Community representatives now believe that the program's closing can be tied to the subsequent dramatic rise in suicides in the community.[2624]

Alarmed by these issue, Québec Native Women and FNQLHSSC organized the initial First Nations Forum on Sexual Assault in March 2018. More than 200 Indigenous delegates attended and were inspired to create an action plan. The resulting plan has four objectives[2625]:

> **Accessibility:** All First Nations people have easy, quick, and sustained access to support services in intervention, prevention and post intervention for issues of sexual assault. This includes access to their culturally-based practitioners, and to services that are culturally secure.
>
> **Mobilization:** All First Nations people are sensitized to the problem of sexual assault; they are mobilized to eliminate it and to educate their people on healthy and respectful sexuality.
>
> **Collaboration:** In the full respect of the vision, competencies and practices of First Nations, and on a sustained basis, the local, regional and national partners collaborate with and support First Nations in the implementation of identified solutions and in providing the required resources.
>
> **Sustainability:** The structures, mechanisms, tools and resources to recognize, prevent, reduce and eliminate sexual assault and re-establish a safe space for all, are available on a sustainable basis.

I salute the initiative of these Indigenous authorities and, to support this movement, I recommend that the government:

CALL FOR ACTION No. 86

Initiate tripartite negotiations with the federal government and Indigenous authorities to sustainably fund projects created by Indigenous nations, communities and organizations that seek to identify, reduce, prevent and eliminate sexual assault.

2621 Details of the program outlining promising initiatives in health and social services can be found in Appendix 6.

2622 Testimony of Judith Morency, stenographic notes taken April 18, 2018, p. 38–39, lines 24–9.

2623 Testimony of Judith Morency, stenographic notes taken April 18, 2018, p. 29, lines 10–14.

2624 Testimony of Adrienne Jérôme, stenographic notes taken April 18, 2018, p. 19, lines 19–25.

2625 *First Nations Action Plan Against Sexual Assault, created at the First Nations Forum on Sexual Assault from March 27–29, 2018*, document P-831 (Commission), p. 4.

In line with the objectives outlined in the QNW action plan, I also urge Indigenous authorities to:

CALL FOR ACTION No. 87

Raise awareness among the populations of indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education.

The lack of social support infrastructure for women who are the victims of domestic violence was also raised by a large number of witnesses. Carole Brazeau, National Project Coordinator at the National Aboriginal Circle Against Family Violence, testified that 74.0% of Indigenous communities in Québec do not have women's shelters.[2626] In addition, more than eight Inuit women in ten do not have access to housing resources.[2627] The result, according to Béatrice Vaugrante of Amnistie internationale Canada francophone, is that "for an Indigenous woman who is the victim of violence, the closest place she can possibly find safety is 100 kilometres away".[2628]

To address these shortcomings, CBHSSJB, in collaboration with the Cree Department of Justice and the Cree Nation Government, set up the Piippiichaau Uchishtuun (Robin's Nest) project.[2629] Created by and for the community, the initiative built two women's shelters in the Eeyou Istchee (at Waskaganish and Waswanipi). By prioritizing Eeyou (Cree) culture while providing adequate services, these facilities will offer a safe and culturally relevant environment for Eeyou (Cree) women, according to Bella Petawabano of the Cree Board of Health and Social Services of James Bay:

> Thanks to the shelters [Robin's Nest women's shelter in Waswanipi], we hope that women in vulnerable situations will get the culturally-based care and protection they need in within the Cree territory and in their own language. This is critically important.[2630]

On August 10, 2018 the Québec government launched its own 2018–2023 Government Action Plan on Domestic Violence.[2631] With a budget of $600 million, the government states that the actions contained in the plan "will be carried out for the Québec population as a whole, including members of the First Nations and Inuit communities." Under this plan, the government committed to "implementing a certain number of measures designed to meet

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2626 Testimony of Carole Brazeau, stenographic notes taken September 25, 2017, p. 20, lines 16–18.

2627 *Id.*, p. 20, lines 5-7.

2628 Testimony of Béatrice Vaugrante, stenographic notes taken September 29, 2017, lines 6–9.

2629 Brief of Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government and Cree Board of Health and Social Services of James Bay. (November 30, 2018), *Final Brief*, document P-1173 (Commission), brief M-032, para. 77; *Statement by Grand Chief Dr. Abel Bosum of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government to the Public Inquiry Commission on Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress*, document P-664, para. 10.

2630 Testimony of Bella Petawabano, stenographic notes taken September 29, 2017, p. 90, lines 17–21.

2631 Gouvernement du Québec. (2018). *2018–2023 Government Action Plan on Domestic Violence*. Retrieved from http://www.scf.gouv.qc.ca/fileadmin/Documents/Violences/plan-violence18-23-access_en.pdf

the specific needs of Indigenous populations".[2632] The Action Plan also contains a transitional measure that aims to "support, in partnership with Aboriginal organizations, developmental projects for Aboriginal women in the realm of spousal and family violence." This measure will receive $1 million in funding over three years (2018–2021) and is part of the Government Action Plan for the Social and Cultural Development of the First Nations and Inuit drawn up by the Secrétariat aux affaires autochtones.[2633]

At the hearing of October 17, 2018, the Secrétariat à la condition féminine also clarified that the $14 million announced by the Québec government to deal with domestic violence is being added to the development plan of the Secrétariat aux affaires autochtones and could be used to fund projects specifically aimed at Indigenous populations.[2634]

Inspired by the initiative set up in Eeyou Istchee (Cree territory), I recommend that the government use the available funds to:

CALL FOR ACTION No. 88

Fund the development of a network of Indigenous women's shelters in communities covered by an agreement and in urban centres, working with Indigenous authorities.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 89

Initiate tripartite negotiations with the federal government and Indigenous authorities to develop Indigenous women's shelters in communities not covered by an agreement.

Addiction

The most recent data (presented in Chapter 4 of this report) provides insight into the alcohol and drug addiction problems among First Nations and Inuit. A number of researchers believe that the prevalence and seriousness of the phenomenon is rooted in the traumatic history of Indigenous peoples.

According to Dr. Frédéric Turgeon, family physician at the Centre de santé de Pikogan, the gravity of the situation is exacerbated by the challenges of servicing these communities, particularly in smaller centres where the majority of people know and interact with one another on a daily basis:

2632 *Id.*, p. 14.

2633 *Note by Marie-José Thomas, Associate Secretary General of the Secrétariat aux affaires autochtones dated October 10, 2018*, document P-928 (Commission), p. 2.

2634 Testimony of Catherine Ferembach, stenographic notes taken October 17, 2018, p. 49, lines 10–23.

> I saw a lot of people there who wanted to help their community, who underwent training and came back [...] to work with people in difficulty. [I]t is a small community, they work with them to provide drug addiction services, for example, but then they go home at night and see the same people on the street. It is very hard to deal with. There is a lot of professional burnout, many people have decided to leave the community to find work elsewhere.[2635]

The lack of infrastructure is also glaring. In Québec there are only five federally-funded addiction treatment centres for adults[2636], and Indigenous youngsters aged 12 to 17 have access to only a single resource centre in the entire province. In the view of Louis-Philippe Mercier, a legal aid lawyer from Salaberry-de-Valleyfield, admission to one of the existing treatment centres is long and arduous:

> Not only is there a waiting period and a complicated form to fill out, but applicants have to attend preliminary meetings in order to participate in the federal program. I find it pretty unrealistic to think that people with serious substance abuse problems will be... will be motivated to meet all the pre-admission criteria at a therapy centre.[2637]

Many of Mr. Mercier's clients have also been refused admission to federal treatment centres because their cases were deemed "too complex" or needing "special authorization" due to their history of relapses.[2638]

According to the data we collected[2639], it takes between two and four months to secure a place in an addiction treatment centre in Indigenous communities.[2640] It has been proven that a fast admission process protects family members while providing appropriate care to people the moment they reach out for help. Without quick intervention, however, a person suffering from addiction is likely to disengage and decide not to pursue recovery.

In theory, people in need of treatment could also turn to provincially funded and accredited private centres. In reality, however, the evidence shows that access to these centres is impeded by a number of jurisdictional complications. Mr. Mercier provided an example from his own practice (at the Kanehsatà:ke Centre) to illustrate this type of challenge:

> On February 20, 2018, the Envolée treatment centre came to assess my client and told me he would be refused because he was Indigenous on Indigenous territory, and therefore under federal jurisdiction. I made several attempts to find a treatment centre, including [...] through the public system and also via the network of federal treatment centres. I quickly realized that [...] for incarcerated

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2635 Testimony of Frédéric Turgeon, stenographic notes taken November 17, 2017, p. 170, lines 6–18.

2636 *Information table on therapy centres for the treatment of addictions for Indigenous persons*, document P-764 (Commission).

2637 Testimony of Louis-Philippe Mercier, stenographic notes taken August 24, 2018, p. 25–26, lines 25–9.

2638 *Id.*, p. 23, lines 6–16.

2639 *Information table on therapy centres for the treatment of addictions for Indigenous persons*, document P-764 (Commission).

2640 The average wait times for each treatment centre are shown in Appendix 40.

> individuals, the public system is no help whatsoever, and as for federal centres, more specifically the one in Kanehsatà:ke, I was told that admission could only happen on April 16, 2018 [...] which basically meant two months of detention before being admitted.[2641]

This problem is not unique to male clients. Indigenous women often face extended wait times before they can enter federal treatment centres, since treatment schedules frequently alternate according to gender and the language spoken.

The situation in Nunavik is also far from ideal. In 2018 the region had only one resource serving both coasts: the Isuarsivik Regional Recovery Centre.[2642] This centre is designed exclusively for adults, however, and cannot accommodate the children of participants in treatment. As a result, many Nunavimmiut opt for treatment centres in the south, which are unable to meet their rehabilitation needs in a way that takes their specific cultural characteristics into account.

There are also very few professional services that provide post-treatment support, which obviously increases the risk of relapse. Building on existing initiatives in Nunavik, the Saqijuq project provides youth support programs and various other activities and services (workshops in mechanics, etc.). However, most of its activities are only offered in Puvirnituq, the main site of the pilot project.[2643]

The scope of the collateral damage inflicted by alcohol and drug addiction among First Nations and Inuit makes it essential to provide more resources.

I therefore recommend that the government:

CALL FOR ACTION No. 90

Financially support the establishment of culturally safe addiction treatment centres and detoxification centres in urban areas and in communities covered by an agreement.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 91

Initiate tripartite negotiations with the federal government and Indigenous authorities to increase services for addiction prevention and treatment in Indigenous communities not covered by an agreement.

2641 Testimony of Louis-Philippe Mercier, stenographic notes taken August 24, 2018, p. 13–14, lines 3–8.

2642 *PowerPoint Substance Abuse in Nunavik and Isuarsivik Regional Recovery Centre*, document P-1142 (Commission).

2643 Brief of the Nunavik Regional Board of Health and Social Services. (November 9, 2018). *Une vision intégrée de la sécurisation culturelle du réseau de la santé et des services sociaux du Nunavik*, document P-1137 (Commission), brief M-023, p. 7.

CALL FOR ACTION No. 92

Working with the federal government and Indigenous authorities, draw up less stringent admission rules at addiction treatment centres for off-reserve First Nations members and Inuit.

Suicide prevention

Over the past few years, a number of high-profile suicides and waves of suicides in Indigenous communities have made news headlines. Such was the case in Nunavik in 2018[2644], but also in Uashat mak Mani-Utenam, where five people took their own lives in a nine-month span in 2015.[2645]

Suicide does not affect all Indigenous peoples the same way.[2646] Data collected by the Commission's team (based on information requested from the Coroner's office) provides insight into several waves of suicide in Nunavik.[2647] In the eight communities covered by the data, 83 of the 155 suicides recorded between 2001 and 2016 (i.e. more than half) took place during what could be described as waves of suicides.[2648] Also notable is the young age of the Nunavimmiut—16 on average—who took their own lives.[2649]

These disturbingly high figures confirm that there is still much work to be done. For some Indigenous representatives such as Pauline Bobbish, President of the Eeyou Istchee (Cree) Regional Committee for Suicide Prevention, who testified before the Commission, these numbers increase their sense of having failed the families who end up losing their loved ones too soon:

> I want to say that suicide is a sensitive and complex issue. Sadly, it is an issue we face in our communities. Our Elders always remind us that life is sacred, and

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2644 Plante, C. (October 31, 2018). Suicides au Nunavik : la ministre D'Amours absente d'une réunion d'urgence. *Le Devoir*. Retrieved from https://www.ledevoir.com/politique/Québec/540312/suicides-au-nunavik-la-ministre-d-amours-absente-d-une-reunion-d-urgence; Teisceira-Lessard, P. (octobre 2018, 16). Nouvelle vague de suicides au Nunavik : « Une crise profonde ». La Presse. Repéré à https://www.lapresse.ca/actualites/201810/15/01-5200386-nouvelle-vague-de-suicides-au-nunavik-une-crise-profonde.php; Gravel, A. (October 16, 2018). Vague de suicides au Nunavik : racisme systémique et violence en cause. *Gravel le matin*, ICI Radio-Canada Première. Retrieved from https://ici.radio-canada.ca/premiere/emissions/gravel-le-matin/segments/entrevue/90996/autochtones-nord-nunavik-communautes-michelle-audette.

2645 *Rapport d'enquête du coroner*, document P-557 (Commission).

2646 *État de situation sommaire sur le suicide — Communautés des Premières Nations au Québec. Dans le cadre de l'enquête publique sur les causes probables et les circonstances de cinq suicides survenus en 2015 sur le territoire innu de Uashat mak Mani-Utenam, 2016*, document P-724 (Commission); document PD-9 (Commission), *op. cit.*

2647 These were "obvious" suicides, i.e. deaths identified by the Coroner's office as being directly attributable to suicide. All the data is displayed in Appendix 41.

2648 There is no scientific definition for what constitutes a wave of suicides. For the purposes of the Commission's work, a wave of suicides is defined as a series of suicides in the same municipality over a short period of time. A wave of suicides describes a situation where three or four suicides occur within approximately 12 months, five or six suicides occur within approximately 18 months, or seven to ten suicides occur within approximately two years (*Analyse des rapports d'investigation du Bureau du coroner du Québec — Vagues de suicides*, document P-712-31 (Commission), p. 2).

2649 Document P-712-31 (Commission), *op. cit.*, p. 3.

> that we should take care of it. However, there has also been great suffering, and great personal pain. We have failed some members of our families, and communities, and some have taken their own lives.[2650]

In my opinion, the responsibility to intervene does not fall solely on the managers and service providers who work with Indigenous populations. Like addiction, suicide is rooted in historic and intergenerational trauma. In the wake of the troubling wave of suicides at Uashat mak Mani-Utenam in 2015, FNQLHSSC issued a summary report on suicide in First Nations communities in Québec, listing several structural social issues as contributing risk factors for suicide.[2651] This reflects the complex nature of the personal and social circumstances involved:

> To better understand the social problems that persist in certain communities we need to weigh several risk factors, including poverty and social exclusion, child neglect, cultural and identity loss, overcrowded housing, the residential school legacy, racism, the loss of autonomy, a lack of prospects, social distress and many others. These factors can often spark explosive crisis situations that a community may be more or less prepared to manage. Due to the significant number of factors affecting the psychological, emotional and social health of First Nations, a comprehensive approach of prevention and intervention is required.[2652]

In Nunavik, Lucy Kumarluk described the barriers preventing Indigenous people from finding and accessing social intervention services in the clearest possible terms:

> There have been no counselling or support for the victims, and this—there is no aftercare, and that has led to many families being destroyed by addictions and suicides, homicides, and not diagnosed, and there was family violence and because of addictions that led to poverty. We see that in the communities and it is transferred to the next generation. I'll use sexual abuse victims as becoming the abusers themselves, and then, the victims transfer it to the next generation, so but has led to many problems in the families and the communities, and we don't see any counselling or care [] I have tried counselling with the psychologist over visioconferencing [sic], but it's not very pleasant: you have all the staff or all the other patients listening in the back. So, that didn't work. The psychologist was sent to Inukjuak every six months, and it is always a new counsellor [...] But, before, we had to travel to another community by plane to go see the psychologist.[2653]

She is not the only one. Several witnesses bemoaned the lack of resources for handling crisis situations that exceed the capacity of local services and displace prevention and well-being initiatives.[2654] The majority of communities do not have safe spaces to stabilize

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2650 Testimony of Pauline Bobbish, stenographic notes taken Augu[st] 17, 2018, p. 223–224, lines 23–5.

2651 Document P-724 (Commission), *op. cit.*

2652 *Id.*, p. 4.

2653 Testimony of Lucy Kumarluk, stenographic notes taken November 12, 2018, p. 83–84, lines 2–5 and p. 94, lines 22–24.

2654 Testimony of Barbara Northrup, stenographic notes taken November 13, 2018, p. 231, lines 3–17; testimony of Virginie Michel, stenographic notes taken June 16, 2017, p. 50, lines 17–21.

individuals in crisis. Therefore, as some witnesses told us, it is not uncommon for people to wind up in detention centres or police stations since there are no crisis centres.[2655]

I therefore recommend that the government:

CALL FOR ACTION No. 93

Financially support the development of services for suicide prevention and mental health in communities covered by an agreement and in urban centres, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 94

Draw up a protocol for crisis management in communities covered by an agreement that involves both the public health network and the participation of appropriate Indigenous authorities.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 95

Initiate tripartite negotiations with the federal government and Indigenous authorities to increase services for suicide prevention and mental health in Indigenous communities not covered by an agreement.

Such negotiations should lead to financial support to Indigenous authorities for developing their own healing programs in their communities or territories.

10.2.2 In urban environments

The health and social services provided in urban settings have been a stalking horse of Québec's native friendship centres for many years. For good reason. According to a 2018 study conducted by the RCAAQ, although 70.0% of respondents had gone to the health and social services network for service, 18.0% said they had not got the responses they wanted.[2656] These results tend to confirm the testimony we heard on discriminatory experiences in cities.[2657] For example, a nurse, who wanted to remain anonymous, testified in March 2018 about a Montréal family medicine group refusing to take on new Indigenous

2655 Testimony of Françoise Roy, stenographic notes taken Augu[st] 17, 2018, p. 304–305, lines 17–13.

2656 Regroupement des centres d'amitié autochtones du Québec (2018). *Portrait sur l'accessibilité aux services publics en milieu urbain pour les Autochtones*. Wendake, Québec: Regroupement des centres d'amitié autochtone du Québec, document P-192 (Commission), p. 17.

2657 Testimony of Stanley Vollant, stenographic notes taken November 17, 2017, p. 58–59, lines 13–10; testimony of PI-1, stenographic notes taken March 22, 2018, p. 289–290, lines 25–19; testimony of Jean-Charles Piétacho, stenographic notes taken June 16, 2017, p. 124, lines 11–15.

patients who were judged to have "too many major problems," in terms of the burden on the clinic, they were compared to "psychotic patients".[2658]

In fact, even when they are accessible, the health and social services offered to urban Indigenous populations do not always meet the needs and expectations of First Nations members and Inuit. Approximately 20.0% of RCAAQ study respondents considered that the services offered did not correspond to Indigenous values, or did not meet their needs.[2659]

To cope, the Val d'Or native friendship centre (CAAVD) and CISSSAT set up the Clinique Minowé in 2009.[2660] It was intended to deliver "classic" front-line services (medical clinic, CLSC services, doctor, follow-up, etc.) that were more accessible to the urban Indigenous population, bringing those services into the CAAVD.[2661]

The experiment proved to be so promising that Health Canada decided in 2011 to fund implementation of other, similar projects. The funding made it possible to set up the Clinique de santé Acokan, developed jointly by the La Tuque native friendship centre and the Centre de santé et de services sociaux du Haut-Saint-Maurice.[2662] Drawing on the Minowé model, Clinique Acokan has been dealing with the health needs of urban members of the indigenious peoples on its territory.

In Val-d'Or the success persuaded the partners to undertake another joint project in 2018.[2663] Presented as a "collaboration"[2664] with CISSSAT by the CAAVD's director, Édith Cloutier, the Mino Pimatigi8in project is, in her view, part of "a thrust toward decolonization, to revalue Indigenous knowledge systems and restore [...] relations between Indigenous peoples and public services".[2665]

In practical terms, the project aims to redefine the concept of health from an Indigenous perspective and knowledge and provide traditional healing services. The traditional healing services will follow promising approaches defined by the Aboriginal Healing Foundation.[2666] A five-year plan was drawn up for "completing the phases for development

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2658 Testimony of PI-1, stenographic notes taken March 22, 2018, p. 289–290, lines 25–19.

2659 Document P-192 (Commission), *op. cit.*, p. 18.

2660 *Documents de référence portant sur le modèle Minowé (avant 2016)*, document P-196 (Commission).

2661 Testimony of Édith Cloutier, stenographic notes taken August 20, 2018, p. 79, lines 9–21.

2662 *Documents de référence portant sur le modèle Acokan du CAALT (en liasse)*, document P-194 (Commission).

2663 Document PD-16 (Commission), *op. cit.*

2664 Testimony of Édith Cloutier, stenographic notes taken August 20, 2018, p. 90, lines 1–3.

2665 Testimony of Édith Cloutier, stenographic notes taken August 20, 2018, p. 100–101, lines 18–1; document P-729 (Commission), *op. cit.*

2666 Aboriginal Healing Foundation. (2006). *Promising Healing Practices in Aboriginal Communities. Final Report of the Aboriginal Healing Foundation. Volume III*. Ottawa, Ontario: Aboriginal Healing Foundation. Retrieved from http://www.ahf.ca/downloads/final-report-vol-3.pdf.

and implementation of this new 'collaboration,' including assessment and scientific underpinnings".[2667] The project covers health, psycho-social and community services.

As mentioned earlier, such initiatives seem promising in terms of reconciliation and the revaluing of Indigenous knowledge, particularly in urban environments. I therefore recommend that the government:

CALL FOR ACTION No. 96

Encourage institutions in the health and social services network to set up services inspired by the Clinique Minowé model in urban settings, working with the Indigenous authorities and organizations in their territory.

CALL FOR ACTION No. 97

Provide recurrent, sustainable funding for services that draw on the Clinique Minowé model and are developed in urban settings for Indigenous peoples.

As there are very limited specialized health and social services in the communities, whether covered by an agreement or not, members of First Nations and Inuit must frequently go to the cities, particularly Montréal, to receive such services. Beyond the organizational and financial challenges involved, serious shortfalls have been pointed out in communications and patient follow-up between home communities and urban services. They range from medical information getting lost in the bureaucratic maze—which limits the quality of follow-up[2668]— to some people not returning to their communities or even dying, with their families never being informed.[2669]

Things are no better when it comes to ensuring service continuity in the community after a problem arises in the city. For example, when receiving care after a suicide attempt, Maïtée Labrecque-Saganash would have wanted the institution to take the time to communicate with her home community's mental health and healing services, to check whether culturally safe care could be provided, and to promote a better service continuum. Unfortunately, that did not happen.

> Sometimes, I have a hard time projecting myself in the future, because I'm scared that my mental illnesses will have the best of me. I attempted suicide, and just giving us suicide hotlines does not work. And people have to reach out to us, because when you're suicidal, when you're depressed, sometimes you're not even able to reach out [...] Some trauma, some wounds are so deep, and so fresh [...] And we're isolated, and especially for Indigenous people in the cities, in the urban centres, it's hard, you're far away from home, and when I got sent to an institution after my suicide attempt, I wished, I really wished that the institution

2667 Document P-729 (Commission), *op. cit.*, p. xii.

2668 Testimony of Céline Rousselot, stenographic notes taken May 23, 2018, p. 204–205, lines 19–1.

2669 Testimony of Yoan Girard, stenographic notes taken February 13, 2018, p. 99–100, lines 10–4.

> would have reached out to my community. "Hey! Do you have services? Because we don't really know what she needs." That's something they can do. Reach out to the communities, reach out to the Cree. Or "Do you have services?" Or do you have people she can talk to in the community? Because when my… when I'm away, my community doesn't really know what's happening to me, you know? Because I'm too far. But I think public services should do that.[2670]

I therefore recommend that the government:

CALL FOR ACTION No. 98

Issue a directive to urban health and social service institutions to establish clear service corridors and communication protocols with Indigenous authorities in the communities.

Homelessness

Numerous briefs and documents filed with the Commission report on the problem of homelessness among Indigenous people in Québec.[2671] The evidence shows that the situation for women is among the most alarming in both the communities and the cities, where they are constantly at risk of violence, sexual abuse and incarceration.[2672]

In his testimony in August 2018, Jesse A. Thistle, a researcher with the Canadian Observatory on Homelessness, stressed that, more than any other group, Indigenous women experience forms of domestic violence—stemming from things like overcrowded housing and excess consumption—which lead them to flee their home communities, making them even more vulnerable by putting them at risk of homelessness.[2673] As the women frequently take their children with them, it is not unusual for them to face a service vacuum which ends up exposing First Nations children to greater risks of homelessness.

2670 Testimony of Maïtée Labrecque-Saganash, stenographic notes taken June 11, 2018, p. 80–81, lines 20–22.

2671 *Definition of Indigenous Homelessness in Canada, Fall 2017, Canadian Observatory on Homelessness (French, English appended)*, document P-735 (Commission); *Clinique Droits Devants, Encore du profilage social des personnes en situation d'itinérance*, document P-213 (Commission); *L'itinérance coûte cher aux Canadiens*, document P-219 (Commission); *L'itinérance des Inuit à Montréal — du Nord du Québec à l'itinérance*, document P-242 (Commission); *La condition itinérante au sein de la population autochtone au Québec. Éléments de compréhension et pistes d'analyse*, document P-120 (Commission); *La judiciarisation de l'itinérance à Montréal : les dérives sécuritaires de la gestion pénale de la pauvreté*, document P-060 (Commission); *La judiciarisation de l'itinérance à Val-d'Or/ The Judiciarization of Homelessness in Val-d'Or*, document P-057 (Commission); *Le programme accompagnement Justice itinérance à la cour — PAJIC*, document P-215 (Commission); brief by Stella (October 15, 2018). *Les femmes autochtones en situation d'itinérance ou de précarité en milieu urbain: Surveillance et violence*, document P-1163 (Commission), brief M-021; brief by the Makivik Corporation *"Itinérance des Inuit du Québec" and letter from the President of the Makivik Corporation to Geoff Kelley (October 17, 2008)*. Document P-248; document P-113 (Commission), brief M-003, *op. cit.*; *Plan d'action montréalais en itinérance 2014-2017. Parce que la rue est une impasse*, document P-217 (Commission).

2672 Document PD-1163 (Commission), brief M-021, *op. cit.*, p. 8. See the report on the situation in Chapter 7, which deals with police services, p. X.

2673 Testimony of Jesse A. Thistle, stenographic notes taken Augu[st] 22, 2018, p. 81, lines 12–14.

The situation is even more acute for the Inuit. According to the Makivik Corporation brief to the Commission[2674] and the testimony of Donat Savoie[2675], more Inuit women–described as the "great forgotten"–flee precarious situations in Nunavik and end up in Montréal without a social or family network and even less access to culturally relevant services. At the hearing, the Makivik Corporation identified several "push and pull factors" that contributed to homelessness among Inuit living in urban areas.[2676] "Pull" factors include accompanying a partner or family member, looking for a job, studies, hospital care and the appeal of the city; "push" factors include the high cost of living in Nunavik, physical and sexual violence, the housing shortage and hidden homelessness in Inuit villages. Montréal is the city most frequented by Inuit from Nunavik, and a substantial portion of this population is homeless.

The research report on homelessness in Montréal's Indigenous population produced by Carole Lévesque and Ioana Comat and filed with the Commission confirms these trends and notes the shortage of services for homeless Inuit people.[2677] The report concludes that "the situation of Inuit who are homeless requires immediate, exclusive action," such as "creating a space that is specifically administered, run and reserved for Montreal's Inuit population".[2678]

Makivik Corporation has introduced several initiatives since 2012 to deal with the needs of Inuit who are homeless in Montréal. A collaboration agreement with Projet Autochtones du Québec, a non-profit refuge that only accepts Indigenous people, has made services more accessible by hiring Inuit workers for support, counselling and to increase the availability of activities that are more culturally relevant to the Inuit. Christopher Fletcher, a professor in the Université Laval department of social and preventive medicine, stressed the need to support the work of community organizations and their staff to handle the needs of the Inuit population better:

> [I]t's important to recognize that there is community-building activities happening that are very constructive and very positive and they're actually quite simple, you know, in the sense of the infrastructure and the funding available to do that show is not huge, it's done through McGill's community radio programs and studio.[2679]

Outside Montréal, few testimony before the Commission paid specific attention to this issue from the health and social services angle. Most of the initiatives also have more to do with support in the area of justice. The Val-d'Or Anwatan-PAJIC protocol, discussed in the chapter on recommended actions in the area of justice, is one example.[2680] However, the need for health and social services among these clienteles is no less important.

2674 Document P-248 (Commission), *op. cit.*

2675 Testimony of Donat Savoie, stenographic notes taken November 24, 2017, p. 210–211, lines 25–1.

2676 *Makivik Corporation brief "Itinérance des Inuit du Québec" and letter from the President of the Makivik Corporation to Geoff Kelley (October 17, 2008)*, document P-248, p. 1 and 5 of the PDF online.

2677 Document P-116 (Commission), *op. cit.*

2678 *Id.*, p. 219.

2679 Testimony of Christopher Fletcher, stenographic notes taken March 21, 2018, p. 310, lines 7–14.

2680 See Chapter 8 of this report on the findings on justice services.

I therefore recommend that the government:

CALL FOR ACTION No. 99

Provide sustainable funding for services to homeless Indigenous clienteles in urban areas.

While acknowledging the work done with the Inuit by some community organizations in the city–including the Native Women's Shelter, Open Door and Chez Doris, to name but a few–due to their cultural specificity and substantial presence in Montréal, I also recommend that the government:

CALL FOR ACTION No. 100

Fund the creation of a shelter specifically reserved for homeless Inuit clientele in Montréal.

10.3. A complex shared jurisdiction

Another major issue stressed by most of the witnesses we heard is the complexity created by the shared federal-provincial responsibility and the resulting administrative red tape. In their opinion, this issue makes it hard to navigate within services[2681], creates an environment that is not conducive to cooperation between community services and the provincial network[2682] and, ultimately, hamstrings the ability of Indigenous authorities to serve their members.[2683]

There are many examples of the problems inherent in navigating services. According to Jacinthe Poulin of the RCAAQ, just getting a health card from the Régie de l'assurance maladie du Québec can be a major challenge, both in the communities and in the city:

> [T]here's a lot of moving around between the cities, the communities, and between different cities and [...] sometimes the address entered is not necessarily where they're living, then [...] they don't get their renewal papers, which can lead to a whole slew of consequences, up to them being refused care.[2684]

The health card is the magic key that opens the door to all public services provided by the provincial health network, so some people end up being refused services, even if the family guarantees payment, as this testimony indicates:

2681 Testimony of Virginie Michel, stenographic notes taken June 16, 2017, p. 59, lines 10–12; testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 41–42, lines 25–6; testimony of Céline Bellot, stenographic notes taken September 19, 2017, p. 115, lines 11–16; testimony of Jacques Boissonneault, stenographic notes taken October 27, 2017, p. 90–92, lines 23–17.

2682 Testimony of Annie Vienney, stenographic notes taken October 23, 2017, p. 192, lines 15–20.

2683 Testimony of Maryse Picard, stenographic notes taken June 20, 2017, p. 59–60, lines 22–2.

2684 Testimony of Jacinthe Poulin, stenographic notes taken October 26, 2017, p. 139, lines 4–13.

> [T]hey wouldn't treat my mom because she didn't have a valid health card. They were expecting us to pay before treating her. I told my aunt that it shouldn't be an issue and I just reassured her that I'll pay and that they could contact me about the payment. At the Emergency in Val-d'Or my cousin was there, the waiting was long because the admission wanted to make sure that they were going to get paid so they didn't treat her right away.[2685]

In other words, with no health cards, a large section of the Indigenous population ends up facing a service vacuum.

Getting reimbursement for medication and non-urgent medical transportation covered by the federal Non-Insured Health Benefits (NIHB) program have also been described as particularly challenging issues for Indigenous clientele. The eligibility and management criteria for medical transportation and access to medications generate additional costs for band councils (often not refundable). According to Adrienne Anichinapéo of the Conseil des Anicinapek de Kitcisakik, there is some confusion among certain players in the Québec public health system (doctors, pharmacists, etc.), who are unfamiliar with the federal program:

> [...] A transportation agent often tells me, we can't do that, you can't pay here, because that's what the Ministère said. [...] The rules are applied [.....] to the detriment of our community's needs; we're not happy with these things but we have to do it to show we're good managers, otherwise they'll cut the funding.[2686]

With respect to medications, the list of products covered by the NIHB is different from the Québec prescription drug insurance plan list, and so is the reimbursement process. To be able to serve the Indigenous clientele properly, pharmacists–mostly outside the community–must use program-specific reimbursement forms, be familiar with the list of medications that are not covered, and have a good general knowledge of the program so that they can find their way around.

According to some witnesses, the differentiated access to drug insurance is discriminatory:

> Our First Nations people have to wait several years until a generic drug is available, before we can access it through the Non-Insured Health Benefits Program. This discrepancy causes tremendous problems at the pharmacy level, since doctors are used to seeing mostly non-First Nations clients and they're used to working within the RAMQ system, so, they know if there is a medication through the RAMQ system that needs justification, it's done within minutes. What happens with us is that the physician often doesn't know, off hand, our accepted list, and often they don't have time to learn it.[2687]

The situation is even more critical in addiction treatment centres, where a refusal of coverage for alternative medications (e.g. suboxone or methadone) can create an imminent danger

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2685 Testimony of PI–19, stenographic notes taken June 20, 2018, p. 33–34, lines 20–6.

2686 Testimony of Adrienne Anichinapéo, stenographic notes taken June 7, 2017, p. 122–123, lines 14–1.

2687 Testimony of David McLaren, stenographic notes taken September 22, 2017, p. 60–61, lines 18–5.

to the patient's survival, as Nicolas Bédard, Director General of Centre l'Envolée, explained:

> [W]hen we're discussing replacement therapies, methadone or suboxone, it is unthinkable for the client not to be able to get the medication. A client who can't get his medication has to be hospitalized immediately. [W]e ran into this type of problem, and we had to fight for the person to get his methadone; the pharmacist paid for the medication out of his own pocket and we still had to go to the media to tell the federal government to "do something".[2688]

From this perspective, I also consider that existing standards and policies have a discriminatory impact on Indigenous peoples. I therefore recommend that the government:

CALL FOR ACTION No. 101

Initiate discussions with the federal government to dovetail the provincial prescription drug insurance plan with the Non-Insured Health Benefits program in order to offer the most comprehensive, equitable coverage for members of Indigenous communities.

CALL FOR ACTION No. 102

Encourage the professional orders involved (doctors and pharmacists) to give their members training about the federal Non-Insured Health Benefits program.

The issues associated with non-urgent medical transportation are just as complex. Not only do they involve a major exercise in logistics and represent a heavy financial burden for band councils, they are also a substantial barrier to access for people in both the communities and the cities.

First observation: the quality of services varies substantially from one nation to another and even from one community to another. For example, the CBHSSJB has long had a department (Cree Patient Services) dedicated to transporting and housing beneficiaries, with points of service in several institutions in the public network[2689], but the Mi'gmaq community of Gespeg had to wait until 2016 for the federal government to reimburse medical transportation expenses for its members.[2690]

According to some witnesses, even when it is offered, the current medical transportation model creates difficult situations in some communities. For example, to save money, several patients will be transported in the same vehicle, without considering appointment times. People wait for a long time at the hospital, not only for their own appointments but for the other passengers' appointments as well, because they return as a group.[2691]

2688 Testimony of Nicolas Bédard, stenographic notes taken Augu[st] 24, 2018, p. 91, lines 3–14.

2689 Testimony of Daniel St-Amour, stenographic notes taken September 29, 2017, p. 118, lines 4–12.

2690 Testimony of Manon Jeannotte, stenographic notes taken September 15, 2017, p. 22–23, lines 21–15.

2691 Testimony of Marlene Wabanonik Mitchell, stenographic notes taken April 6, 2018, p. 14–15, lines 21–6.

Depending on the geographic distance, taxi transportation is often used as well, which is not always ideal for the patients' health. This type of transportation also leads to missed appointments. However, the NIHB only reimburses transportation when the patient actually meets the doctor. The story of Paul-Émile Fontaine's granddaughter, who was taken from Baie-Comeau to Sept-Îles by taxi, illustrates the complexity of medical transportation for many First Nations members:

> They [the hospital in Sept-Îles] said the ambulance was too expensive. They said "send her by bus," but she's only ten years old. Then they missed the bus. Then they [the hospital in Baie-Comeau] called Sept-Îles back. They [the hospital in Sept-Îles] said ... they said "take a taxi," and then the child had an epileptic seizure because she was afraid of the taxi driver, then the taxi driver panicked, and if he had known, he would never have taken her on board".[2692]

While this population's socio-economic situation is generally precarious[2693], the lack of public transit in towns in the region, such as La Tuque, Senneterre and Val-d'Or, is an added barrier to service access.[2694] Added to that is the fact that, as expressed by Nancy Rioux, a nurse at Clinique Acokan at the La Tuque native friendship centre, workers in the public network know little about the realities that urban Indigenous people face:

> The logistics are intense [...] someone has an appointment on the twelfth, they have to go there and stay over on the eleventh, stay with a host family, to go to the appointment. Let's say it's a pregnant woman who wants her husband to be there for the ultrasound, well the doctor would have to note that she needs to be accompanied.[2695]

To remedy this situation and lessen the negative impacts of treatment inequity in terms of non-urgent medical transportation, I recommend that the government:

CALL FOR ACTION No. 103

Initiate a strategic planning session on non-urgent medical transportation that includes the federal government, health and social services network institutions and Indigenous authorities.

Moreover, as stated earlier, the lack of clarity surrounding services to Indigenous people hampers cooperation between the provincial health and social services network and the federal government. The issue of funding for care is at the core of the dispute, to the point that, as Sébastien Grammond, subsequently a judge at the Federal Court, told us: "funding

2692 Testimony of Paul-Émile Fontaine, stenographic notes taken May 7, 2018, p. 101–102, lines 17–2.

2693 *Revue de littérature, Santé. Thème: état de santé de la population autochtone au Québec*, document PD-7 (Commission).

2694 *Portrait sur l'accessibilité aux services publics en milieu urbain pour les Autochtones*, document P-192 (Commission).

2695 Testimony of Nancy Rioux, stenographic notes taken October 26, 2017, p. 125–126, lines 23–5.

concerns [...] cause the Québec government to refuse to give certain services to Indigenous people in their territory".[2696]

Several witnesses highlighted the major discrepancies between different types of communities (covered by an agreement, not covered by an agreement, settlement or reserve) in terms of the availability of, access to and quality of services. For example, according to Chief Mike McKenzie of Uashat mak Mani-Utenam:

> [T]he daily experience of First Nations who are not covered by an agreement is one of [...] funding gaps. The funding gaps result in gaps in services, which are assumed by the communities that are able to do so, the communities themselves. If not, the nature, scope, quantity and quality of services are directly impacted.[2697]

For example, the Innu of Pakua Shipu[2698], who live in a very isolated community, receive no federal funding for medical transportation, since it is reserved for communities not covered by agreements and Pakua Shipu is a settlement, not a recognized reserve. Being close to regional urban centres does not necessarily provide greater access. The case of the Anishnabek of Pikogan treated at the hospital of Amos and who do not benefit to the follow-up of the public health network when they return home, unlike the non-Indigenous people residing in the community, is an example of this. In this community only non-Indigenous patients can receive care from CLSC staff; Indigenous patients who live in the same location cannot, as Chief David Kistabish of Abitibiwinni First Nation told the Commission:

> The CLSC people refuse to go and provide home care in the town of Amos if the person comes from Pikogan. They're often referred, "oh, you're from Pikogan, go to your health centre, we're referring you there." Conversely, if there is someone from Amos or Québec City living with us, and there are some in Pikogan, the CLSCs are open to doing home visits for them. It's a double standard.[2699]

For Indigenous decision makers, the unequal power relationships and differentiated access to health services undermine Indigenous authority, governance and autonomy, hamper their own efforts and actions in the area of health, and eliminate all possibility of a complementary, harmonious relationship between Indigenous people and public services.[2700] I share their point of view.

In my opinion, the Jordan Principle[2701] evoked earlier is emblematic of the issues associated with a highly complex organization of services in Indigenous settings, as well as the jurisdictional barriers that impede deployment of an efficient service continuum that is receptive to the needs of the Indigenous population. According to Jessie Messier, NIHB program officer for FNQLHSSC, "the Jordan Principle must be seen as an opportunity for

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2696 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 197, lines 19–23.

2697 Testimony of Mike Mckenzie, stenographic notes taken May 23, 2018, p. 168, lines 3–13.

2698 *Présentation Conseil des Innus d'Unamen Shipu*, document P-339 (Commission).

2699 Testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 125, lines 9–18.

2700 Testimony of Richard Gray, stenographic notes taken September 21, 2017, p. 55, lines 9–18.

2701 The ins and outs of the Jordan Principle are set out in Chapter 5 of this report, pp. 174-175.

each of the actors involved to play an active role, to put safety nets around the First Nations children who are already in vulnerable situations".[2702]

All the provincial departments and institutions have to work together to apply all of the measures covered by the Jordan Principle. Cindy Blackstock, a McGill professor and Director General of the First Nations Child & Family Caring Society, testified that "the province of Québec owes a duty to all of these children, to ensure they're getting equitable treatment [and] if the feds aren't picking up their share, then Québec should step in there, and then do what we did: take the federal government to account".[2703]

But there is still a long way to go. Among the factors brought to my attention, I note, in particular, that the local service coordinators hired in 2017 to promote implementation of the Jordan Principle are not supported by strong guidance or specialized training on the administrative process.[2704]

Another limit raised is that the Jordan Principle only applies to children, leaving adults with specific needs to cope alone.

Accordingly, with a view to population-based responsibility, I recommend that the government:

CALL FOR ACTION No. 104

Initiate discussions with the federal government to extend the Jordan Principle to adults.

CALL FOR ACTION No. 105

Working with the federal government, develop an overall approach for applying the Jordan Principle, coupled with budget forecasts for all First Nations and Inuit.

10.4. A Human resources management issues

The witnesses at the hearing also reported human resources management issues that sap the provision of services to Indigenous people in the areas of physical health, social services and youth protection.

10.4.1 Employee turnover and service disruptions

Several witnesses told us how hard it is to recruit caregivers and professionals to work in isolated regions. Geographic location, remoteness of resources, shortage of staff and inadequate staff training are all factors that affect the delivery of the services. Far too few human resources recognized by professional orders are available to meet the needs. The

2702 Testimony of Jessie Messier, stenographic notes taken September 4, 2018, p. 205, lines 12–17.

2703 Testimony of Cindy Blackstock, stenographic notes taken September 4, 2018, p. 118, lines 5–10.

2704 Testimony of Arna Moar, stenographic notes taken September 26, 2018, p. 108, lines 16–21; testimony of Jessie Messier, stenographic notes taken September 4, 2018, p. 215–216, lines 20–1.

high turnover rate puts further pressure on the delivery, continuity and quality of services, whether they are provided by the CISSS/CIUSSS (integrated health and social services centres/integrated university health and social services centres) or Indigenous entities.[2705]

In Eeyou Istchee (Cree) territory, the difficulties of retaining staff are also reflected in frequent resignations, work stoppages, absenteeism and job transfers. In Eeyou (Cree) territory and elsewhere, there is also turnover among non-Indigenous workers, who leave their positions after a few years to go "back south" because of the distance and difficult working conditions[2706], as a North Shore psycho-social worker, Linda Belzil, explained:

> We often have to deal with workers who stay only a short time. When the workers come from the outside, as a rule, they stay six months or a year, and then leave for various reasons, like working conditions or things like that, not because of any ill will on the part of the organizations that hire them. The reality is often that there isn't enough funding to be able to really respond, offer more attractive working conditions. [...] They come full of good will to work in the North. And maybe with an ideology that doesn't necessarily line up with reality. [T]he first few weeks go well, but at some point they realize that the situation is too much for them. [G]iven the remoteness and the lack of funds, these young people end up making it up as they go.[2707]

The high turnover rate of non-Indigenous staff also related to working conditions. Several Indigenous organizations say that wages are not competitive with what the province pays, and do not take the cost of living or the complexity of the duties into account.[2708] Although it is the Indigenous organizations that set the working conditions as a general rule, they are dependent on the funding they have, which is often insufficient. Remoteness is also a problem for recruiting and retaining staff.[2709] These issues are exacerbated by the shortage of worker housing, and the lack of work spaces in many Indigenous communities.[2710] Worker motivation is also directly affected by the shortage of employees and the work overloads that creates.

2705 Testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 79–80, lines 18–18 and p. 81, lines 7–15; testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 53–54, lines 21–7; testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 103–104, lines 14–19; testimony of Maude Bellefleur, stenographic notes taken September 10, 2018, p. 211, lines 3–9; testimony of Marlene Gallagher, stenographic notes taken September 11, 2018, p. 113–114, lines 18–24; testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 72, lines 20–24; testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 277, lines 9–15; *Les services sociaux aux jeunes autochtones en difficulté et à leurs familles; Une nécessaire appropriation*, document P-170 (Commission), p. 6–7; testimony of Brigitte Lagacé, stenographic notes taken March 12, 2018, p. 39, lines 4-13.

2706 *Audit on Youth Protection Resources, report*, 2017, document P-110 (Commission), p. 14–15.

2707 Testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 43–45, lines 9–4.

2708 *Another Step Toward Self-Determination and Upholding the Rights of First Nations Children and Families: Consultation Process for the Reform of the First Nations Child and Family Services (FNCFS) Program, June 2017*, document P-075 (Commission), p. 51; *National Engagement Process on Early Learning and Child Care, document P076 (Commission); Services de santé et services sociaux : défis et enjeux de leur organisation pour une offre adaptée aux besoins de la clientèle des Terres-cries-de-la-Baie-James (CBHSSJB)*, document P-017 (Commission).

2709 *Bring Hope and Restore Peace. A Study Report on the Life and Concerns of Inuit Women of Nunavik*, document P105 (Commission), p. 93; *Parnasimautik Consultation Report. On the Consultations Carried Out with Nunavik Inuit 2013*, document P-202 (Commission); document P-017 (Commission), *op. cit.*, p. 14.

2710 Document P-075 (Commission), *op. cit.*; document P-076 (Commission), *op. cit.*; document P-017, (Commission), *op. cit.*

Many witnesses told us that the extent of the turnover also greatly affects the trust between the staff and the population.[2711]

10.4.2 Difficulties of recruiting Indigenous staff

Although it may be considered a solution to the problem of cultural safeguards, recruiting Indigenous staff is also a challenge, because few of them complete the university studies leading to a professional designation. MSSS standards require a university degree for some jobs; for other jobs, employees are required to belong to professional orders. According to several witnesses, this is a major challenge, because it assumes that non-Indigenous workers will be brought in to do the job, regardless of the level of service governance.

Many witnesses told us that the difficulties of recruiting Indigenous staff had been exacerbated by the *Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations (Bill 21)*.[2712] Passed in 2009 and implemented in 2012, the Act's purpose was to ensure that "highly vulnerable people receive [...] guarantees of competence, integrity and accountability when using the services of professionals who belong of an order".[2713] The implementation of that Act in Indigenous territory quickly became problematic, so much so that, prompted by Indigenous authorities, the provincial government set up the Comité sur l'application du PL-21 au sein des communautés autochtones. That Committee's report[2714] notes several issues, including:

- the lack of First Nations and Inuit professional resources, or lack of professional resources with the cultural skills;
- difficulties in accessing the training to become a member of a professional order;
- a decrease in the number of workers with acquired rights (many of whom were Indigenous);
- difficulties accessing professional development;
- difficulties recruiting and retaining non-Indigenous professionals and their lack of preparation and cultural skills.

The report also noted the problems unilingual Anglophone professionals had entering the professions, mentioned previously in this report.[2715]

2711 Document P-202 (Commission), *op. cit.*, p. 71; testimony of Marlene Gallagher, stenographic notes taken October 18, 2017, p. 153, lines 3–17; testimony *in camera* HC-2, stenographic notes taken January 22, 2018, p. 25, lines 17–25; testimony *in camera* HC-24, stenographic notes taken April 13, 2018, p. 251, lines 1–5; testimony *in camera* HC-26, stenographic notes taken April 17, 2018, p. 43, lines 9–13; testimony *in camera* HC-31, stenographic notes taken April 20, 2018, p. 88–89, lines 23–5; testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 45, lines 8–23; testimony *in camera* HC-52, stenographic notes taken May 25, 2018, p. 12–13, lines 19–11; testimony *in camera* HC-72, stenographic notes taken September 11, 2018, p. 348, lines 16–25.

2712 *An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations*, S.Q. 2009, c. 28.

2713 Rapport présenté aux ministres Charlebois et Kelly par le Groupe de travail intitulé Des solutions adaptées aux communautés des Premières Nations et des Inuit pour soutenir l'application du projet de loi 21, document P-077 (Commission), p. 2.

2714 Document P-077 (Commission), *op. cit.*, p. 16–18.

2715 See Chapter 6, pp. 238-239.

The findings of the Nunavik Regional Board of Health and Social Services (NRBHSS) are in line with the conclusions of the Comité sur l'application du PL-21[2716]:

> [T]he application of Bill 21 created many problems in terms of … the cultural approach of workers within our services, including youth protection and social services, which greatly dampened our power to act in terms of cultural approach. […] Currently, few to no professional services are dispensed in beneficiaries' mother tongues, of course, because our Inuit social workers cannot intervene and are not accredited to do so by the professional orders. Give little to no consideration to culture, do not enable cultural safeguards, which are underdeveloped and still too unrecognized by all professionals.[2717]

According to Jean-Étienne Bégin, Director of Human Resources at NRBHSS, what happens when the measures are applied generally, with no Indigenous input into their design or consultation before implementation, is that it both highlights the lack of cooperation by the levels of government and confirms the Indigenous sense of systemic, operationalized discrimination within society:

> For us, the impact of Bill 21 in Nunavik is an example of a law that is imposed on different Nations without prior consultation. For the Inuit population, the culture reflects the history, the oral stories, songs, language, spiritual practices, traditions and roles within the community. It also includes the role of Elders and a holistic concept of health. Professional skills on a cultural level are especially important in the areas of mental health and human relations. Given that the therapeutic relationship and social intervention are essentially based on language and culture, language barriers can cause harm to members of Indigenous communities.[2718]

The NRBHSS also deplores the fact that no specific measures were established for the Inuit under the James Bay and Northern Québec Agreement, and considers the obstacles to recruiting created by Bill 21 as "discriminatory toward Inuit workers." According to Minnie Grey, Director General of the NRBHSS, changes are always long in coming:

> Unfortunately in the last two years we have been discussing this file and we have made many propositions, many proposals, and many recommendations on how to move forward on this file. Unfortunately, we are coming up to a wall, for some reason… So we have stressed to the department of Aboriginal Affairs of the ministry that we need to move forward in this file. As we have alluded to in our presentation, the fact that our locally hired Inuit do not receive incentives or benefits in order to retain them and to attract Inuit into the workforce of the health sector. As I said we have … we were not privy to see the legal opinion of the … on this file but we have heard that there is no discrimination. That's the word that we have received from them. We disagree. We disagree because we … our work is based on Chapter 15 of the James Bay and Northern Québec Agreement and we believe there is discriminations.[2719]

2716 *L'application du PL-21 au Nunavik*, document P-1134 (Commission).

2717 Testimony of Yoan Girard, stenographic notes taken November 21, 2018, p. 35–38, lines 25–12.

2718 Testimony of Jean-Étienne Bégin, stenographic notes taken February 13, 2018, p. 60–61, lines 25–15.

2719 Testimony of Minnie Grey, stenographic notes taken November 21, 2018, p. 89-90, lines 18-19.

It is clear that these piecemeal negotiations risk undermining the implementation of social interventions that are culturally reassuring and go against the recommendations made by the Comité sur l'application du PL-21 for Indigenous communities.

I therefore recommend that the government:

CALL FOR ACTION No. 106

Rapidly implement the recommendations of the Comité sur l'application du PL-21 in First Nations communities and Inuit villages.

That should make it possible to, as the Committee intended:

- Create custom measures for qualifying training, recognition and skills enhancement for First Nations and Inuit professionals so that they can carry out reserved activities under Bill 21.
- Set up regulatory mechanisms to enable professional orders to recognize skills and gradually authorize the exercise of reserved activities.
- Set up incentives for terms of employment.
- Set up attraction and retention measures for professionals who are members of an order.
- Recognize the achievements and skills of peoples who are already working in First Nations and Inuit communities.
- List intervention and assessment tools customized for the First Nations and Inuit context.
- Create a steering committee to monitor the implementation.
- Create a multi-year fund to implement the recommendations.

10.4.3 Inequities between non-Indigenous and Indigenous staff

Some witnesses also made a connection between the difficulty of recruiting Indigenous staff and the unequal working conditions they are given.[2720] As calculated by the NRBHSS Human Resources Director, Jean-Étienne Bégin, if we consider that the average turnover rate in Nunavik is 18 months (for an outside candidate) and that a nurse's career lasts 35 years, it will cost the Board $750,000 more to hire an employee from outside than a local Inuit candidate, including the costs of training.[2721] The NRBHSS managers also have to deal with tensions among the staff, because there are still serious inequities in working conditions between Inuit and non-Inuit employees.

2720 Testimony of Elisapi Uitangak, stenographic notes taken September 28, 2017, p. 177–178, lines 3–16; testimony of Eva Gunn, stenographic notes taken September 28, 2017, p. 181, lines 6–14; testimony of Robert Auclair, stenographic notes taken June 14, 2017, p. 171, lines 11–14; testimony of Minnie Grey, stenographic notes taken November 21, 2018, p. 80–81, lines 18–11.

2721 Testimony of Jean-Étienne Bégin, stenographic notes taken February 13, 2018, p. 22, lines 12–18.

In terms of benefits, local Inuit workers (hired within 50 km) are disadvantaged compared with workers from the south (hired from more than 50 km away). Outside candidates have benefits (annual trips, accommodation, moving costs, etc.) worth almost four times more in financial terms than those of their Inuit colleagues: $40,171 compared with $10,809 annually.[2722]

According to the Board's Director of Human Resources, this inequity saps the morale of Inuit employees and generates tensions in the institution:

> Jennifer is Inuk and has been a social aid worker in the Nunavik health and social services network for six years […] Since she was hired in her community–less than 50 kilometres–she does not have the benefits of non-Indigenous workers, such as a house, plane tickets, storage for her possessions, moving costs and vehicle transport. Being Inuk, [Jennifer] provides a tremendous advantage to the Nunavik health and social services network because she is able to provide services culturally suited to young people: language, culture and way of life. I ask you: how do you think Jennifer perceives non-Indigenous people who remain on average 18 months, who have all of these benefits because they were hired from over 50 km away, and who are not familiar with Inuit culture or language? How can Jennifer bond with non-Indigenous workers under such circumstances? Let's take that one step further. What do you think the community's perception of this situation is? It stands to reason that this discrimination in working conditions causes racial tensions between Inuit and non-Inuit people.[2723]

In 2014 the *Parnasimautik Consultation Report* argued that the lack of stability, particularly with respect to employee retention, had a number of negative consequences, including barriers to access, quality and continuity of care:

> The lack of stability of employees in the region's health and social services network is unanimously decried as constituting a significant obstacle to service accessibility, quality and continuity. An overly large percentage of the workforce comes from outside of the region, which has the effect of reducing the cultural relevance and availability of the services offered. Employees hailing from the South should mandatorily be further educated as to the region's linguistic, social, cultural and political reality.[2724]

The MSSS is aware of the situation.[2725] The Board has proposed improvements to the working conditions in an effort to develop partnerships and promote care in the North that respects Inuit cultures and traditions. At the same time, it hopes to calm tensions between different employee groups, reduce operating costs and attract and retain new Inuit employees. However, the Board says it is coming up against "bad faith" on the part of the MSSS:

2722 *Politique et pratique d'embauche des travailleurs de la Régie régionale de la santé et des services sociaux du Nunavik*, document P-347 (Commission), p. 10. A comparison of NRBHSS terms is displayed in Appendix 42.

2723 Testimony of Jean-Étienne Bégin, stenographic notes taken February 13, 2018, p. 19–20, lines 21–25.

2724 Document P-202 (Commission), *op. cit.*, p. 77.

2725 *Ibid.*

> The solution in the North is not money. If it were money, the problems would have been solved long ago. We have money; writing a cheque is easy, but good will, respect, listening, innovation, and creativity are a lot scarier than signing a cheque for $12 million (12,000,000). So I think we are at that point; I think it's time for action. Studies have been done, problems have been raised, we know the ins and outs and outcomes of practically all the cases, but I think the time has come for things to move, to move for the better.[2726]

The brief entitled *Une vision intégrée de la sécurisation culturelle du réseau de la santé et des services sociaux du Nunavik* reports on the viability of the public health and services network in Nunavik in these terms:

> We believe that the organization of the Nunavik health and social services network has a viability problem. Viability, because the network is predominantly based on non-Inuit professionals offering front-line care in Nunavik. Viability, because the network still sends huge numbers of Inuit users to receive second- and third-line care in Montréal. Clearly there are serious consequences in both cases on the efficiency of and access to care, resulting in a growing gap between the health care system and Inuit users.[2727]

I therefore recommend that the government:

CALL FOR ACTION No 107

Follow up as quickly as possible on proposals to improve working conditions from the Nunavik Regional Board of Health and Social Services.

10.5. A Failing complaint system

As related in Chapter 5 of this report, the *Act respecting Health Services and Social Services* ensures "users the safe provision of health services and social services".[2728] The Act also sets out the procedure for analyzing complaints and measures to protect the rights of users in this process. Institutions must have a local complaints and service quality commissioner and "take steps to preserve at all times the independence of the local service quality and complaints commissioner".[2729]

This legislative framework was intended to mitigate the impact of the situations described earlier and use corrective measures to improve not only intervention practices but relations between caregivers and patients. In truth, the testimony, including that of Pascale Laneuville from the Saturviit Inuit Women's Association of Nunavik, has shown instead that the users' loss of trust in the health care system also extends to the complaints process:

2726 Testimony of Jean-François Arteau, stenographic notes taken December 11, 2018, p. 208–209, lines 23–18.

2727 Document P-1137 (Commission), brief M-023, *op. cit.*, p. 1.

2728 *Act respecting Health Services and Social Services*, CQLR c. S-4.2, s. 2, (8.1).

2729 *Id.*, s. 31, first para.

> [T]he conflictual relationship and mistrust have made the services of poorer quality and less accessible. There will be reluctance to get help, make accusations, confide in others. That means that the Inuit have a harder time taking advantage of services and can even become victims of the service.[2730]

According to witnesses, the complaint analysis system is underused because Indigenous people do not understand the procedures and measures available to them[2731] and because those who have made complaints obtained less than satisfactory results.[2732] Some people report filing complaints and noting that no corrective measures were taken, that the information in files did not reflect the incidents the complaints addressed, or that little information about the follow-up on corrective measures was communicated[2733]:

> I have lodged several -- I believe it's 3 or 4 complaints against the hospital, at the hospital. You know where they have these little forms that say, "If you have any complaints, fill this out and we'll get back to you"? I did that four times. Nobody called me back, nobody responded, and I never heard from them.[2734]

The fear among Indigenous people that there would be reprisals when they lodged complaints against a professional was also raised.[2735] This fear can lead patients to opt for measures that are dangerous to their health, as an *in camera* witness explained:

> I was so afraid she [the gynaecologist] would deliver my baby. I took the names of doctors who were on duty in the weeks before my delivery date, and she was there a week before. That week when she was on duty, a few days before I gave birth, I didn't move at all. I didn't go outside. I didn't do anything at home. To be sure not to provoke anything, I sat on my sofa for a week, until she had finished her week on duty. The rotation was done on Sunday, so when I finally moved, my water broke that day, but I wasn't worried any more because she was no longer on duty.[2736]

That seems to be equally the case in communities not covered by an agreement and among the Naskapi and Inuit. The one exception came from Daniel St-Amour, Director General of the CBHSSJB, who reported that the feedback system of the CBHSSJB commissioner of complaints has led to "a great deal of improvement." He did say that the improvements are recent, however. They occurred after a regional commissioner for Eeyou (Cree) complaints was hired who speaks the language, which "has made all the difference".[2737]

2730 Testimony of Pascale Laneuville, stenographic notes taken September 28, 2017, p. 112, lines 17–24.

2731 Testimony of Minnie Grey, stenographic notes taken November 21, 2018, p. 95, lines 16–24.

2732 Testimony of Elizabeth Williams, stenographic notes taken November 13, 2018, p. 178, lines 11–18.

2733 Testimony of Jeanned'Arc Petiquay, stenographic notes taken June 19, 2018, p. 173–174, lines 5–1; testimony of Francine Moar, stenographic notes taken September 7, 2018, p. 29, lines 9–21; testimony of Kelly Weizineau, stenographic notes taken June 15, 2018, p. 123–125, lines 5–1.

2734 Testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 26, lines 7–13.

2735 Testimony of Ida Naluiyuk, stenographic notes taken November 13, 2018, p. 298–299, lines 15–1; testimony of PI50, stenographic notes taken September 25, 2018, p. 33, lines 14–23.

2736 Testimony PI-50, stenographic notes taken September 25, 2018, p. 34–35, lines 11–2.

2737 Testimony of Daniel St-Amour, stenographic notes taken September 27, 2018, p. 115, lines 12–13.

This experience reminds us of the importance of trust and cultural safeguards in a context as sensitive as a complaints process. That is why it is essential to reiterate the importance of going ahead with creating liaison officer positions, as suggested earlier in this report.[2738]

2738 See call to action No. 19 on pp. 245-247.

11

CHAPTER 11

FINDINGS ON YOUTH PROTECTION SERVICES

When drawing up this Commission's terms of reference in December 2016, the government expressed the desire to devote an entire portion of the inquiry to youth protection services. I was therefore asked to look beyond the structures of the health and social services network and investigate how the legislative framework for youth protection is applied in an Indigenous context. Ample evidence has been collected; in fact, of all the services studied by this inquiry, youth protection gave rise to the greatest number of testimonies and statements from members of First Nations and Inuit.

While many voices were heard, they all point to the same conclusions: the current youth protection system has been imposed on Indigenous peoples from the outside, taking into account neither their cultures nor their concepts of family. Even worse, many believe the youth protection system perpetuates the negative effects of the residential school system, in that it removes a significant number of children from their families and communities each year to place them with non-Indigenous foster families. This speaks to the sensitive nature of this issue and the major challenges involved.

On the following pages I present the issues raised during the Commission hearings as well as a number of calls to action to help resolve them. These proposals seek to increase the autonomy of First Nations and Inuit with respect to youth protection, which is also the intent of the *Act respecting First Nations, Inuit and Métis children, youth and families* passed by the Parliament of Canada in June 2019.[2739] The calls to action are also aligned with the United Nations Declaration on the Rights of Indigenous Peoples, which states that Indigenous peoples have "the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions".[2740]

Because they fall under the wider purview of the health and social services network, issues related to human resources management and the division of powers between federal and provincial governments have been covered in another chapter devoted to those services.[2741]

2739 *An Act respecting First Nations, Inuit and Métis children, youth and families*, L.C. 2019, c. 24.

2740 *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, GA Res. 61/295, art. 23.

2741 See Chapter 10 of this report.

11.1. Principles that result in discrimination

Notwithstanding the negative portrait of youth protection services that emerged during the Commission's hearings, many experts and Indigenous leaders voiced their support for the duty to protect children enshrined in the *Youth Protection Act* (YPA).[2742] Clearly, it is not the fundamental goal of the YPA that is the problem, but rather some of its principles.[2743] Based on the evidence presented, these principles put the youth protection system at odds with Indigenous cultural values, which then leads to discrimination.[2744]

11.1.1 Attachment theory

Attachment theory, which places high importance on the initial bonds formed by developing children, has played a significant role in the crafting of youth protection policies and services in Québec for a number of years now.[2745] Based on this theory, the YPA includes maximum time periods for foster care.[2746] The Court of Québec, Youth Division also takes this theory into account and applies it to Indigenous and non-Indigenous children alike.[2747]

Nonetheless, according to several witnesses who testified before the Commission, attachment theory is not appropriate in an Indigenous context. This appears to stem mainly from the fact that it fails to factor in the "child's multiple attachments" formed with several of the prominent adults in its life[2748], as explained by Federal Court Judge Sébastien Grammond in his testimony to the Commission:

> Attachment theory has not necessarily been tested with Indigenous children. It was, I believe, primarily developed in the United States and the question should be asked whether it truly applies in a society where the extended family plays such an important role. Is it really harmful to the child [...] at a certain point in its childhood to move from its parents' home to the home of its uncle or aunt, or its grandmother's home? Sometimes, all these individuals are living under the same roof, due to the housing crisis. In a society where the extended family has a great deal of influence, one might question the validity of attachment theory.[2749]

2742 Testimony *in camera* HC72, stenographic notes taken September 11, 2018, p. 373, lines 21–25 and p. 374, lines 9–11; *Nunavimmi Ilagiit Papatauvinga*, document P-1136 (Commission), p. 9; testimony of Maggie Emudluk, stenographic notes taken November 23, 2018, p. 199, lines 8–11.

2743 *Youth Protection Act*, CQLR c. P-34.1, chapter II

2744 Testimony of Mina Beaulne, stenographic notes taken November 21, 2018, p. 61–62, lines 7–5; testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 128–129, lines 18–1.

2745 *Protéger les enfants à l'aide des durées maximales d'hébergement : qu'en pensent les acteurs des centres jeunesse*, document P156 (Commission), p. 5 of 20 (online PDF).

2746 *Youth Protection Act*, CQLR c. P-34.1, s. 53.0.1. and s. 91.1

2747 Abdel Ghaly, M. (2013). *Perspective de femmes autochtones en milieu urbain sur les délais de placement maximaux*. (Master's thesis, Université Laval). Retrieved from https://corpus.ulaval.ca/jspui/bitstream/20.500.11794/24711/1/29540.pdf, p. 35.

2748 Testimony of Sébastien Grammond, stenographic notes taken 22 September 2017, p. 153–154, lines 3–5; testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 83, lines 13–24.

2749 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 153–154, lines 12–3.

Anne Fournier, lawyer for the Conseil de la Nation Atikamekw, gets to the core of the issue in a discussion paper submitted to the Commission:

> Not only do all members of the family play a role with the child, but other members of the community can as well. Although the child forms attachments with several individuals, it builds a more significant bond with the person who provides it with daily care. The fact that the child forms multiple attachments does not necessarily mean that it suffers from instability or that it is forming an insecure attachment. That may happen in certain situations, but the simple fact that a child forms multiple attachments does not mean that it is being neglected by its parents. Furthermore, in Indigenous communities, it is normal for children to freely move around and even enter different homes. It would be a mistake to necessarily see that as a sign of parental negligence.[2750]

Compounding the problem is the fact that maximum periods for living environments do not take into account the culture and realities of Indigenous families. Evidence presented at the hearings seems to confirm that Indigenous peoples' concept of time, the extent of the difficulties faced by Indigenous families and the lack of intensive and preventive services at their disposal mean that a large number of Inuit and First Nations parents are unable to adjust and meet the deadlines imposed by the YPA.[2751]

In theory, the Act does provide some flexibility in the matter. It is possible to extend deadlines if there are plans to return the child to its family home, if it is in the child's best interest or for serious grounds, such as in cases where a required service has not been provided.[2752] In such situations an application for extension must be submitted to the judge by one of the parties (Youth Protection, one of the parents or the child's attorney). The Directors of Youth Protection (DYP) who testified before us[2753] seemed reluctant to proceed with this kind of request, due to their strong belief in attachment theory and the principle of stability it espouses. The testimony of the DYP from Abitibi-Témiscamingue, Philippe Gagné, illustrates this perfectly:

> Me, I believe that maximum periods for placements must be applied in Indigenous contexts. Clearly, that's where I stand. The notion of time, for a child, and attachment are all reasons for maintaining the principles of maximum placement periods. Now, the challenge lies in offering a complementary service that is culturally sensitive. I reiterate that, in my opinion, communities should provide increased support when a child is under a maximum placement period [...] Do we have a large enough basket of services? I don't think so. Should a

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2750 *L'application de la LPJ : constats, enjeux et pistes de réflexion*, document P168 (Commission), p. 8–9.

2751 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 121, lines 10–21; testimony of Lucie Dubé, stenographic notes taken February 22, 2018, p. 145–146, lines 20–3; testimony of Trishia Hazelwood, stenographic notes taken April 20, 2018, p. 141, lines 15–19; testimony of Viviane Michel, stenographic notes taken September 14, 2018, p. 30, lines 15–22; *Statutory declaration of PI-56*, document P894 (Commission); testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 194, lines 11–21; document P156 (Commission), *op. cit.*, p. 6 of 20 (online PDF).

2752 *Youth Protection Act*, CQLR c. P-34.1, s. 91.1

2753 Testimony of Assunta Gallo, stenographic notes taken September 10, 2018, p. 35–36, lines 22–24; testimony of Maryse Olivier, stenographic notes taken September 28, 2018, p. 47, lines 15–21; testimony of Marlene Gallagher, stenographic notes taken September 11, 2018, p. 28–29, lines 21–8 and p. 85, lines 15–24.

> child pay the price for the consequences of extending the maximum placement period? Displacement, instability... putting down roots somewhere and making a life—a child needs that. And maximum placement periods ensure this; (the child) feels rooted somewhere, able to make its own life, independent of whether the parents are troubled, affected by problems that prevent them from assuming their parental responsibilities. So yes, I believe that maximum placement periods should be maintained in Indigenous contexts.[2754]

The "increased support" from local services, as suggested by Mr. Gagné, does not come without challenges. Recent decisions of the Canadian Human Rights Tribunal have confirmed that these services are currently underfunded, particularly in Indigenous communities not covered by agreements.[2755] Considering the (federal) funding available, there is a significant gap between DYP expectations and the support that communities can realistically provide. In other words, the proposed solution would impose a responsibility on communities for which they have insufficient resources.

In my opinion, Indigenous children should by no means pay the price of cultural uprooting simply because local services are not up to par. I therefore recommend that the government:

CALL FOR ACTION No. 108

Amend the *Youth Protection Act* to exempt Indigenous children from the application of maximum periods for alternative living environments as stipulated in sections 53.0.1 and 91.1.

11.1.2 Primacy of parental responsibility

The primacy of the parents' responsibility for their children is another concept that has been central to the youth protection decision-making process. This was referred to by a number of witnesses and demonstrated in evidence presented to the Commission.[2756]

Several experts and Indigenous community representatives testified that, similar to the attachment theory mentioned above, this principle is based on a concept of "family" that differs from the one followed by many Indigenous nations. According to them, the fixation on individualism in the YPA and the judicial system ignores the dynamic of many

2754 Testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 69–70, lines 15–18.

2755 *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2*, document P7729 (Commission); *First Nations Child and Family Caring Society of Canada et al.* v. *Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada), 2017 CHRT 35, document P77213 (Commission); *First Nations Child and Family Caring Society of Canada et al.* v. *Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2018 CHRT 4*, document P77214 (Commission).

2756 Testimony of Michelyne Gagné, stenographic notes taken October18, 2017, p. 20, lines 15–20; *Offre de service. Loi sur la protection de la jeunesse et Loi sur le système de justice pénale pour les adolescents*, document P-014 (Commission), p. 12; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 49, lines 6–12; testimony of Assunta Gallo, stenographic notes taken September 10, 2018, p. 34, lines 15–21.

Indigenous families, which is defined by mutual support, solidarity and communal living.[2757] Others asserted that, instead of fighting against these values, the system could benefit from embracing the sense of collective responsibility that is embedded in Indigenous ways of life.[2758]

Québec would not be the first province to do so. Ontario has included a provision for "customary care" in its *Child, Youth and Family Services Act* since 1985.[2759] This provision is based on the idea that "the care and safety of children is a collective responsibility that extends beyond the immediate and extended family to the community as a whole" and that Indigenous peoples must have "a voice in how they want their children to be cared for, how long, and with whom".[2760] This position is outlined in the preamble of the *Act,* which states:

> First Nations, Inuit and Métis children should be happy, healthy, resilient, grounded in their cultures and languages and thriving as individuals and as members of their families, communities and nations.
>
> Honouring the connection between First Nations, Inuit and Métis children and their distinct political and cultural communities is essential to helping them thrive and fostering their well-being.[2761]

There is nothing comparable in Québec's *Youth Protection Act,* but I believe this approach helps recognize the distinct character of Indigenous nations and their ability to take responsibility for the safety and well-being of their children.

I therefore recommend that the government:

CALL FOR ACTION No. 109

Amend the *Youth Protection Act* to include a provision on care that is consistent with Indigenous traditions, drawing on Ontario's *Child, Youth and Family Services Act, 2017.*[2762]

2757 Testimony of Renée Brassard, stenographic notes taken March 23, 2018, p. 46–47, lines 19–9; testimony of Adrienne Jérôme, stenographic notes taken April 18, 2018, p. 21, lines 3–10; testimony of Judith Morency, stenographic notes taken April 19, 2018, p. 19, lines 17–25; *Statutory declaration of PI-52*, document P-882 (Commission); testimony *in camera* HC21, stenographic notes taken April 5, 2018, p. 215–216, lines 22–6; *Renforcer la gouvernance atikamekw : vers un modèle atikamekw de prise en charge des conflits et problèmes liés à la violence conjugale et à la protection de la jeunesse*, document P-436 (Commission), p. 9 and 16.

2758 Testimony of Marie-Ève Sylvestre, stenographic notes taken February 22, 2018, p. 68–69, lines 15–6; testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 98, lines 14–19.

2759 *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, ss. 71 and 80.

2760 Ministry of Children and Youth Services. (2013). *Formal Customary Care:* A Practice Guide to Principles, Processes and Best Practices. Toronto, Ontario: Ministry of Children and Youth Services, pp. 18 and 23.

2761 *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Preamble.

2762 *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14.

11.1.3 Confidentiality

The principle of confidentiality at the heart of the YPA and its consequences, including the limited sharing of information with extended family or the community, also go against the values of Indigenous peoples, as lawyer Anne Fournier told the Commission:

> The government intervenes with the nuclear family, and it is the members of the nuclear family who are designated by the Act as the parties to all proceedings; parents, children and, of course, the DYP. The DYP has no obligation to involve members of the child's immediate or extended family or community members; that likely would be foreign to how the workers proceed, as they are bound by rules on the confidentiality of information. The DYP is not authorized to discuss the child's situation with the grandparents, for example. […] I have heard several Atikamekw grandparents and workers denounce this situation, because they were learning that a grandchild had been placed with a foster family. […] They said that if they had known about the situation, if they had known it was so serious, they would have stepped in, offered assistance and support, to keep the child from being placed outside the community. In short, the grandparents and other family members were faced with a *fait accompli*: the child was no longer there.[2763]

Many of the witnesses affirmed that they saw this as a type of discrimination toward families and a lack of confidence in Indigenous organizations and stakeholders. They also deplored the fact that the principle of confidentiality prevented a concerted, multidisciplinary approach.[2764]

Much testimony, including testimony from workers in First Nations communities and Inuit villages, in fact tends to confirm that the DYPs work in silos and rarely consult them before making decisions.[2765] The testimony of one worker heard *in camera* speaks volumes on this matter:

> This happens fairly regularly, where the DYP has opted not to have an office [in the community] for some reason I'm not aware of – it's the [community] office that picks them up, in crisis, without having all the information, all the data, because they don't have access to the intervention plan or PIJ [youth integration project] information system that the DYP can access. So we only have fragmentary information about what's going on in the foster family, what the child is experiencing. We don't even get the reports when the child goes to court. […] They don't give us direct information, sometimes we have to get it from the child or parent, and sometimes it's all wrong.[2766]

2763 Testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 53–54, lines 11–23.

2764 Testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 84, lines 9–18; testimony *in camera* HC–25, stenographic notes taken April 16, 2018, p. 159, lines 2–14 and p. 161–162, lines 20–1; testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 41, lines 7–15.

2765 Testimony of David Kistabish, stenographic notes taken June 6, 2017, p. 127, lines 19–24; testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 33, lines 10–14; testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 120, lines 15–18; testimony of Cécile Mark, stenographic notes taken May 23, 2018, p. 114–115, lines 22–6; testimony of Hilda Snowball, stenographic notes taken November 23, 2018, p. 201–202, lines 24–9; testimony *in camera* HC-53, stenographic notes taken May 25, 2018, p. 79–80, lines 19–5.

2766 Testimony *in camera* HC-25, stenographic notes taken April 16, 2018, p. 157–158, lines 4–6.

Clearly, this attitude does not promote cooperation between community workers (or local workers) and youth protection workers.[2767] The lack of cooperation and partnership was also emphasized in an inquiry conducted by the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) on the North Shore in 2013.[2768]

The same applies to the control of administrative information by provincial youth protection establishments. For example, Nadine Vollant, an Indigenous youth protection social worker, told the Commission that some of the directives adopted by the Centre intégré de santé et de services sociaux (CISSS) de la Côte-Nord in 2012 were only forwarded to the community of Uashat mak Mani-Utenam where she works four years later:

> I work with my provincial partners and I must apply the same law. So how is that transmitted in practice? What actually happens? We don't always get information right away. It's like a time lag. In any case, we should find out right away, to make sure we're following the standards just as soon as we're sent those very directives or standards. I'm going to talk to you about directives we received. These are directives we were sent on May 21, 2016 [...] In these documents, we've got directives from April 16, 2012. April 16, 2012, September 1, 2013, September 2, 2015, [...] and I'm skipping quite a few. [...] How are we supposed to be able to do our work properly when we always have to go beg for documents and directives from our partners?[2769]

The "expert" attitude that non-Indigenous youth protection workers often take toward Indigenous families has also been criticized.[2770] This attitude is sometimes perceived as paternalistic, even disdainful.[2771] Many witnesses have a clear impression that workers do not take the time to become part of the community and become familiar with the culture. From their perspective, they also do not seem to want to acknowledge culturally different ways of intervening or taking care of children.[2772]

Responding to a request for information, the Ministère de la Santé et des Services sociaux (MSSS) itself admitted to the Commission that current practices are not adapted:

> Current youth protection practices have not been adapted to the specific needs and cultural realities of Indigenous children. Interventions with Indigenous children and families in difficulty require a strong ability to adapt and constant efforts to provide culturally suitable and safe services.[2773]

2767 Testimony of Laurence de Angelis-Mongrain, stenographic notes taken September 13, 2018, p. 196–197, lines 7–21; testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 95–96, lines 20–19.

2768 *Enquête sur l'application de la Loi sur la protection de la jeunesse par le Centre de protection et de réadaptation de la Côte-Nord*, document P-455 (Commission), p. 99.

2769 Testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 97–98, lines 8–6 and p. 105, lines 12–15.

2770 Testimony of Alex Cheezo, stenographic notes taken October 24, 2017, p. 51, lines 3–11.

2771 Testimony of Pascale Laneuville, stenographic notes taken September 28, 2017, p. 113–114, lines 18–4; testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 116, lines 19–21 and p. 118, lines 10–13.

2772 Testimony of Anne Fournier, stenographic notes taken October 23, 2017, p. 57–59, lines 11–23.

2773 *DG-0170-ABCDEFG, Précisions sur le contenu, les objectifs et les orientations du Plan d'action gouvernemental pour le développement social et culturel des Premières Nations et des Inuit 2017-2022*, document P-791-42 (Commission), p. 105 of 135 (online PDF).

Conversely, in the brief filed with the Commission, the Québec government asserts that the problem is not a lack of adaptation or a lack of knowledge by non-Indigenous workers of Indigenous realities. Rather, it speaks of the Indigenous clientele's lack of knowledge of the YPA. According to the government, professionals in the public service are routinely required, in the course of their duties, "to take actions or make decisions that non-specialists, let alone users, have a hard time explaining, which may trigger mistrust, suspicion, indignation and even anger. Such actions are not necessarily discriminatory".[2774]

The government also asserts that: "the delivery of public services is dependent on a large number of different technical, operational and strategic issues that are often unrelated to the users themselves, Indigenous or not"[2775], and that "it can sometimes be difficult for non-insiders to grasp this reality".[2776] It concludes that "the difficulties that Indigenous people sometimes have in obtaining the services they are entitled to, and the frustrations they feel about the real or alleged deficiencies in the Québec public service network cannot always be attributed to discrimination, or to differential, even racist treatment".[2777]

From my perspective, the magnitude of the constraints public service workers must deal with in no way lessens the need to recognize the negative perceptions that Indigenous people have of the system, and try to remedy them. The knowledge development and worker training mentioned in Chapter 6 as part of a call for cross-disciplinary action would be a step in the right direction.[2778]

That said, it would be unrealistic to think that mandatory training on cultural realities will be enough to build culturally reassuring practices for Indigenous children and families in the youth protection context. Other practical actions must be taken to consider the cultural specificities of First Nations and Inuit when applying the YPA. At this time, given how the system works, some witnesses believe that, even though they mean well, non-Indigenous workers can harm the needs of Indigenous children.[2779]

In this context it is not surprising that witnesses have emphasized the importance of making profound changes based on greater recognition of Indigenous expertise and the ability of Indigenous people to define both the problems and the appropriate responses.[2780] I share their point of view. That said, such openness does not necessarily mean that everything should be disclosed without the consent of those involved. It only means that it is important to rethink how information is shared, based on the roles and responsibilities of extended family members with respect to the children.

2774 Brief by the Attorney General of Québec and the Secrétariat aux affaires autochtones. (November 30, 2018), *Vivre ensemble, faire ensemble*, document P-1170 (Commission), brief M-029, p. 11–12.

2775 *Id.,* p. 12.

2776 *Ibid.*

2777 *Ibid.*

2778 See pp. 247-251. of this report.

2779 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 126–128, lines 11–8; testimony of Jacques Boissonneault, stenographic notes taken October 27, 2017, p. 96, lines 3–9.

2780 Testimony of Tamara Thermitus, stenographic notes taken June 12, 2017, p. 107, lines 3–9; testimony of Carole Lévesque, stenographic notes taken October 17, 2017, p. 41, lines 8–21.

I therefore recommend that the government:

CALL FOR ACTION No. 110

Enshrine in the *Youth Protection Act* a requirement that a family council be set up as soon as an Indigenous child is involved in a youth protection intervention, whether or not the child is at risk of being placed.

CALL FOR ACTION No. 111

Provide professionals working in Indigenous communities with access to provincial information management systems (such as the PIJ).

CALL FOR ACTION No. 112

Share the new directives and standards that apply in youth protection with all professionals responsible for such cases in Indigenous communities in real time.

11.1.4 Interest of the child

The difference between the interest of the child in an Indigenous context and the definition provided by the YPA is also major. Although the Act recognizes the child as a subject of law and asserts that the child's interests take precedence over the parents' rights[2781], it does not necessarily consider the interests of the family, and rarely if ever considers the interests of the community.[2782]

This way of interpreting the concept of the child's interests contributes to the lack of recognition of the specificities of Indigenous peoples and goes against the family foundations and values of Indigenous peoples. The definition provided by the Assembly of First Nations in its *Declaration of the Rights of First Nations Children* is persuasive here:

> The interest of the child and respecting the child's needs and rights includes the interest of the family, of the community and of the Nation, and particularly emphasizes the protection of identity, culture, traditional activities and language.[2783]

Witnesses and documents filed in evidence emphasized the fact that, in an Indigenous context, the interest of the child is seen as an overarching, holistic concept that cannot

2781 *Youth Protection Act*, op. cit., s. 3.

2782 Testimony of Assunta Gallo, stenographic notes taken September 10, 2018, p. 68, lines 6–13.

2783 *Declaration of the Rights of First Nations Children*, Assembly of First Nations Québec-Labrador, June 10, 2016, s. 12.

be dissociated from the interest of the extended family and community.[2784] In Indigenous cultures, the concept also underlies a quest for balance and harmony.[2785]

For example, in Nunavik, the interest of the child systematically includes the connection with language, culture and territory. The Nunavik Life Plan Committee follows those criteria in selecting a life plan for children, based on the assumption that they will be kept in the region to the extent possible, and that any placement outside Nunavik is a last-resort option.[2786]

In communities not covered by an agreement, where the Nations have less latitude in the area of youth protection, the refusal to acknowledge the existence of different concepts of the child's interest creates resistance by Indigenous parents to certain interventions.

The resistance expressed also illustrates just how much the ideological differences between the Indigenous and non-Indigenous ways of conceptualizing education, parenthood, care and social intervention practices and the transmission of cultural values contribute to substantial misunderstandings in youth protection situations.[2787]

To mitigate these differences, the YPA calls for anyone making decisions or having responsibility for a child to consider "the characteristics of Native communities, including Aboriginal customary tutorship and adoption".[2788] These factors should also be reflected in files drawn up for judges at the Court of Québec, Youth Division. However, as stated earlier, the DYPs show little interest in a differentiated application of the Act, and the statements we have heard suggest that they are also disinclined to provide comprehensive information on the characteristics of Indigenous communities, or on how those characteristics have been taken into account throughout the judicial process. Nor is it clear whether Indigenous parents who appear before the court are able to provide such information.

2784 *Tragic Choices and the Division of Sorrow: Speaking about Race, Culture and Community Traumatization in the Lives of Children*, document P-278 (Commission); testimony of Hilda Snowball, stenographic notes taken November 23, 2018, p. 205, lines 13–16.

2785 Document P-641 (Commission), *op. cit.*, p. 9 of 35 (PDF online); testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 82, lines 5–23 and p. 158–159, lines 25–10; document P-436 (Commission), *op. cit.*, p. 9; *in camera* testimony HC-22, stenographic notes taken April 10, 2018, p. 84, lines 17–23; testimony *in camera* HC-58, stenographic notes taken Jun 13, 2018, p. 121, lines 10–12; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 170–171, lines 21–8; document P-1136 (Commission), *op. cit.*, p. 13.

2786 *Nunavik Life Plan Committee*, document P-1135 (Commission), p. 4.

2787 Cheah, C. S. L. and Chirkov, V. (2008). Parents' Personal and Cultural Beliefs Regarding Young Children. A Cross-Cultural Study of Aboriginal and Euro-Canadian Mothers, *Journal of Cross-Cultural Psychology, 39*(4), p. 402–423.

2788 *Youth Protection Act*, *op. cit.*, s. 2.4.5c).

I therefore recommend that the government:

CALL FOR ACTION No. 113

Make youth protection evaluations and decisions in a way that takes the historical, social and cultural factors related to First Nations and Inuit into account.

CALL FOR ACTION No. 114

Provide judges presiding in the Court of Québec, Youth Division, with reports similar to the Gladue reports used in the criminal justice system for cases involving Indigenous children.

11.2. Ethnocentric, abusive interventions

In my opinion the divergences between the principles of the YPA and Indigenous values clearly attest to the urgent need to choose intervention and decision-making methods that provide cultural safeguards. Cultural safeguards must be overarching and inclusive. They involve not only a full recognition of the historical, social and cultural specificities of Indigenous peoples, but also an approach based on an understanding of the inequalities inherent in the delivery of health and social services to these peoples.[2789]

The DYPs who testified before the Commission do not share this view. According to them, "regardless of the community or culture [...] the decisions must be based on the same factors" and "adaptation is involved in the approach and services that are offered subsequently".[2790]

From my perspective, this discourse on adapting services and equal treatment poses a problem at two levels.

First, "adapting" to the culture presupposes that the workers know that culture. Yet public service workers' lack of knowledge about Indigenous peoples has been recognized and admitted by a large number of witnesses during the hearings, including representatives of the public services themselves.[2791]

2789 Health Council of Canada. (2012). *Empathy, Dignity and Respect: Creating Cultural Safety For Aboriginal People In Urban Health Care*. Retrieved from http://publications.gc.ca/collections/collection_2013/ccs-hcc/H174-39-2012-eng.pdf.

2790 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 33, lines 5–10.

2791 Testimony of Pierre Picard, stenographic notes taken November 21, 2017, p. 27–28, lines 22–13 and p. 111, lines 11–14; testimony of Carole Lévesque, stenographic notes taken June 19, 2017, p. 134–135, lines 22–2 and p. 151–152, lines 22–4; testimony of Éric Cardinal, stenographic notes taken June 7, 2018, p. 170, lines 3–7; testimony of Viviane Michel, stenographic notes taken June 5, 2017, p. 59–60, lines 25–2; testimony of Alex Cheezo, stenographic notes taken October 24, 2017, p. 40, lines 8–21; document P-1170 (Commission), brief M-029, *op. cit.*, p. 14; testimony of Marie-José Thomas, stenographic notes taken September 13, 2018, p. 80–81, lines 24–18.

Second, from all appearances, the actors in the youth protection system have a purely formal concept of equality. This concept assumes that equality is achieved if a uniform rule or treatment is applied to everyone. We now recognize, however, that uniform treatment can generate discriminatory effects, as Sébastien Grammond told the Commission:

> [I]t is not enough to treat all individuals equally; we also have to ask whether applying a single rule has discriminatory effects. In other words, if the individuals' situations are so different that applying the same rule produces different results.[2792]

For this reason, in Justice Grammond's opinion, instead of seeking formal equality, substantive equality requires differential treatment.[2793] An order issued by Judge Bonin in 2002, which reiterates a 1992 finding of a working group reviewing the *Youth Protection Act*[2794] is consistent with this, noting that:

> Intervention in Indigenous communities [...] whose values and family systems may be very different from those of most Québec citizens, and whose perception of government intervention may frequently be negative, calls for adaptations in how the *Youth Protection Act* is applied. [...] [M]any Indigenous people are victims of direct or systemic discrimination, many suffer from the after effects of relocation, and many are in disadvantaged economic and social situations. [...] [T]he analysis must be holistic.[2795]

11.2.1 Unadapted assessment and intervention tools

In other words, the principle of substantive equality requires all youth protection interventions, including evaluations, to take Indigenous specificities into account.

Youth protection workers have an array of clinical tools to support them in clinical analysis and decision making.[2796] In most cases the tools have been clinically validated. In fact, the use of validated evaluation tools is one of the quality standards favoured by the MSSS.[2797] That does not necessarily mean that these tools have been validated with culturally diverse clienteles, let alone with Indigenous populations.

2792 Testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 182, lines 17–24.

2793 *Id.*, p. 186, lines 11–21.

2794 Ministère de la Santé et des Services sociaux. (1992). *La protection de la jeunesse plus qu'une loi. Rapport du groupe de travail sur l'évaluation de la Loi sur la protection de la jeunesse*. Québec City, Québec: Ministère de la Santé et des Services sociaux and Ministère de la Justice.

2795 X, Re, 2002 QCCQ 38040, paras. 33 and 36.

2796 The tools are: Système de soutien à la pratique (SSP) [practice support system], Inventaire concernant le bien-être de l'enfant en relation avec l'exercice des responsabilités parentales (ICBE) [inventory of child well-being in relation to the risk of abandonment], Grille de dépistage du risque d'abandon [abandonment risk screening checklist], Grille abrégée de Steinhauer [Steinhauer abridged checklist], Child Development Assessment Scale (CDAS), Grille de dépistage du risque d'instabilité ou de discontinuité [instability and discontinuity risk screening checklist] and Child Abuse Potential Inventory (CAPI).

2797 Turcotte, G.and Pilote, C. (2012). *Inventaire des outils cliniques en négligence: Final Report. Prepared for the Ministère de la Santé et des Services sociaux du Québec*. Québec City, Québec: Ministère de la Santé et des Services sociaux du Québec.

In fact, in response to an information request from the Commission team, the CISSS and integrated university health and social services centres (CIUSSS) that we approached confirmed that, at first glance, none of the tools used took Indigenous realities into account.[2798] Of course, as stated in the document submitted by the CISSS de Chaudière-Appalaches, the SSP (Système de soutien à la pratique) tool does consider Indigenous realities in the section on child and parent identification.[2799] However, this section is merely descriptive, so very limited attention is paid to Indigenous realities when decisions are made.

Only the DYP at CIUSSS de l'Ouest-de-l'Île-de-Montréal, Assunta Gallo, told us that she made an effort to adapt clinical tools to the Indigenous clientele, for example, by noting cultural identity or adding a genogram to show the links between the generations.[2800] Here again, however, the information recorded does not affect the decisions made during the evaluation of an Indigenous child's situation, but is instead used to support practice.

In my opinion the use of standardized tools that have not been validated with Indigenous peoples, combined with the lack of understanding and misinterpretation of cultural differences, may decrease the ability of social workers and the DYP to "make equitable, informed judgements about families and their situations".[2801] Some witnesses stressed the great subjectivity that underlies the decisions made in youth protection assessments. They also underscored the need to assess situations differently in Indigenous contexts, as appears from the testimony of former youth protection worker Mylène Sénéchal:

> [It] would be simplistic to believe that our practice, no matter how complex it is, gets enough guidance from the Act to clearly indicate the possibilities for intervention. Everything is a question of interpretation and analysis grids. The situation on the ground is very different. Application of the law should depend on the worker's professional judgement. Internal policies and the manager's level of tolerance are what guide practice; each manager works with his or her own capacity to handle risk and proposes it to the worker, suggesting professional actions that may frequently defy all logic in an Indigenous context. Understanding Indigenous reality would make it possible to manage risk very differently. It's not a question of adapting our interventions to the Indigenous context; we simply have to do things differently.[2802]

Doing things differently requires a consideration of the historic, social and cultural factors that are specific to Indigenous peoples. At this time, however, the methods and tools surrounding the youth protection evaluation processes, including intervention plans and

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2798 *Transmission record of documents from Martin Rhéaume, DAA at MSSS, in response to DG-0284-DEF from the Commission, received September 7, 2018*, document P-791-92 (Commission), tab 92.1, p. 1–5; testimony of Maryse Olivier, stenographic notes taken September 28, 2018, p. 46, lines 16–23.

2799 Document P-791-92 (Commission), tab 92.1, *op. cit.*, p. 4.

2800 Testimony of Assunta Gallo, stenographic notes taken September 10, 2018, p. 55–56, lines 14–1. A genogram is a graphic representation of a genealogical tree which displays detailed data on the relationships between individuals. It goes beyond traditional genealogical trees, allowing users to analyze family trends and psychological factors that affect the relationships.

2801 *Les adaptations à la culture et aux traditions autochtones*, document P-126 (Commission), p. 2.

2802 Testimony of Mylène Sénéchal, stenographic notes taken January 22, 2018, p. 73–74, lines 10–3.

individualized service plans, are not designed to take these different factors into account. In fact, although the Québec government added the obligation to preserve cultural identity to the YPA in 2017, Pascale Lemay, Director of Youth and Family Services at the MSSS, herself acknowledged that she did not know how this obligation was currently being expressed in the intervention plans:

> [T]he preservation of the child's cultural identity is part of the *Youth Protection Act*. It is a very clear provision. It means that all interventions must strive to preserve that child's cultural identity. How does this work in the intervention? I could not tell you whether it is being expressed in the intervention plan.[2803]

The cultural unsuitability of the assessment and intervention tools used in the Québec youth protection system is reminiscent of a similar problem seen in the prison system. As stated in Chapter 9 of this report on correctional services, the Ministère de la Sécurité publique opted to remedy that problem by overhauling the assessment tools, with the declared aim of eliminating discriminatory biases.[2804] Although it is too soon to measure the results, the approach seems promising. I therefore recommend that the government:

CALL FOR ACTION No. 115

Validate the evaluation tools used in youth protection with Indigenous clinical experts.

CALL FOR ACTION No. 116

Overhaul the clinical evaluation tools used in youth protection whose effects are deemed to be discriminatory toward Indigenous peoples, in cooperation with experts from the First Nations and Inuit peoples.

CALL FOR ACTION No. 117

Amend the *Act respecting health services and social services* to include a provision requiring workers to record objectives and methods for preserving cultural identity in the intervention plans and individualized service plans of all children who identify as First Nation or Inuit and are placed outside their family environments.

11.2.2 Deadlines

Lastly, according to certain witnesses, the methods and procedures surrounding youth protection decisions leave the workers very little time to study complex situations. They must meet the deadlines set out in the *Manuel de référence sur la protection de la*

2803 Testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 329, lines 5–16.

2804 Testimony of Jean-François Longtin, stenographic notes taken September 24, 2018, p. 81–82, lines 25–13.

jeunesse.[2805] Compliance with legal and administrative deadlines leaves little room for a relationship of help, support and assistance, encourages standardization of interventions, and substantially restricts the ability to consider the historical, cultural and systemic factors that affect Indigenous children and families.[2806]

These compliance requirements can also result in cases being thrust into the justice system unnecessarily. At Commission hearings, Céline Bellot, Professor in the school of social work at Université de Montréal, summarized the results of a survey of DYP employees by explaining that it was far simpler—and faster—for them to bring cases into the justice system than to build collaborative relationships of trust with a view to signing voluntary measures, which is a more time-consuming process.[2807]

This view was confirmed by a former DYP employee:

> Although I explained how opening a legal file would impact the family and their willingness to cooperate, the organization's position was to accept the provisional agreement merely as a temporary measure, while the case on the merits would be handled by the justice system, without adapting the approach for this Algonquin family in any way. From a clinical standpoint, that was a poor decision: it was traumatic for the mother to return to court, and forced her to relive her own childhood trauma and repeat her experience with her other, older children. The parents did not understand why we were able to draw up a voluntary safety plan, yet still had to trigger the legal process. By making this poorly thought through decision, we confirmed to the family and the community that they were right to distrust the youth protection services.[2808]

The data gathered and analyzed by the Commission on the judicialization of cases involving Indigenous children tends to support these statements. Our analysis showed that in the Saguenay–Lac-Saint-Jean region, rates of court-ordered placement were 3.2 times higher for Indigenous than for non-Indigenous children between 2001 and 2017.[2809] During the same time period, placement orders in the Abitibi-Témiscamingue region were 10.8 times more frequent for Indigenous children living in communities than for non-Indigenous children.[2810] The rates of court-ordered child placement for Indigenous children were particularly high in Lac Simon and Kitcisakik (13.4 and 13.2 times higher, respectively, than for non-Indigenous children).

2805 *Youth Protection Act*, CQLR c. P-34.1, s. 32; Ministère de la Santé et des Services sociaux. (2010). *Manuel de référence sur la protection de la jeunesse*. Québec City, Québec: Ministère de la Santé et des Services sociaux.

2806 Testimony of Laurence de Angelis-Mongrain, stenographic notes taken September 13, 2018, p. 177–178, lines 20–20; testimony of Mylène Sénéchal, stenographic notes taken January 22, 2018, p. 65, lines 6–20; testimony of Céline Bellot, stenographic notes taken September 20, 2017, p. 123–124, lines 18–9 and p. 126, lines 1–10; testimony of Mark Tassé, stenographic notes taken November 23, 2018, p. 165, lines 11–24.

2807 Testimony of Céline Bellot, stenographic notes taken September 20, 2017, p. 127, lines 10–21.

2808 Testimony of Mylène Sénéchal, stenographic notes taken January 22, 2018, p. 70–71, lines 21–14.

2809 *Portrait des renseignements transmis concernant les ordonnance d'hébergement, les ententes sur mesures volontaires en application de la Loi sur la protection de la jeunesse et les adoptions d'enfants autochtones au Québec entre 2001 et 2017, en réponse à l'E-129 et à la DG-0111-F*, document PD-18 (Commission), p. 22.

2810 *Id.*, p. 41–42.

Asked to comment on these figures, Philippe Gagné, Director of Youth Protection for the Abitibi-Témiscamingue region, attributed the over-representation of judicial measures to the widespread refusal of Indigenous parents to cooperate:

> When we conduct an assessment and conclude that the child's safety is at risk, we explain the grounds for our decision to the parents. We explain the aim of the Youth Protection intervention. We then invite the parents to help us determine the most appropriate measures to correct the situation. Once all that has been done, and we propose a voluntary measure, the general consensus in the community is that it is best not to cooperate with Youth Protection. What we hear people say, in everyday language, is "No way, the Council doesn't want us to sign anything with you." [...] And that's too bad, because, within my own mandate, I try to promote consensual approaches. So this makes it harder to achieve that objective.[2811]

Marlene Gallagher, Director of Youth Protection for the North Shore, noted that data should be interpreted with caution:

> We have a standard of practice [...] that says that the normal time period for Youth Protection to take charge of a child should be around 24 months. On the North Shore, the average case is active for around 36 months. [...] [I]n the Youth Protection Act, after two voluntary measures, we are required to bring the child's situation to the attention of the judge. So, since my cases last longer than average, it comes as no surprise that we also have a little more judicial involvement. [...] The fact of the matter is, you know, we have a low volume of activity, which means that all it takes is ten more children involved in judicial proceedings to throw off our percentages. What that means is, when we talk about percentages on the North Shore, I'm always careful, and try to translate the numbers into a rate per 1,000 people, because otherwise it will give an impression of the situation that isn't really accurate.[2812]

In truth, our analysis shows that, even when expressed as a rate per 1,000 individuals, the rate of court-ordered placements for children in Indigenous communities on the North Shore is 3.4 times higher than the rate for non-Indigenous children.[2813] This discrepancy is especially pronounced for children in Matimekush-Lac John, who are subject to court-ordered measures at a rate 4.9 times higher than non-Indigenous children in the region[2814], and for children in Uashat mak Mani-Utenam and Ekuanitshit, for whom the rate is 4.3 times higher.[2815]

Indigenous children are also over-represented in rates of (court-ordered) placement orders in the Lanaudière region, where the rate is 3.4 times higher than for non-Indigenous children.[2816]

2811 Testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 63, lines 1–15 and p. 64, lines 15–18.

2812 Testimony of Marlene Gallagher, stenographic notes taken September 11, 2018, p. 55–56, lines 20–6 and p. 56–57, lines 25–9.

2813 Document PD-18 (Commission), *op. cit.*, p. 49.

2814 *Ibid.*

2815 *Ibid.*

2816 *Id.*, p. 61.

In summary, the data for all these regions demonstrates that Indigenous children are over-represented in terms of both placement under voluntary measures and court-ordered placement. While this situation is alarming in the Saguenay–Lac-Saint-Jean, Lanaudière and North Shore regions, it is particularly striking in Abitibi-Témiscamingue, even more so in the light of the fact stated by the CDPDJ in its report on the systemic nature of youth protection investigations in the region: "sending cases to the justice system […] runs counter to the Indigenous approach, which seeks to promote voluntary action in the provision of services".[2817]

The issue of deadlines and the pressure on youth protection workers to process their files has made the headlines in recent months. This issue goes far beyond the negative impacts on Indigenous peoples. Regardless of the situation or history of the children and families concerned, there appears to be an urgent need to review the way intervention works in order to improve the quality of the services, and that applies all across Québec. This finding far exceeds the scope of my mandate, however. I will therefore leave it to the new Special Commission on the Rights of the Child and Youth Protection, launched by the Québec government in May 2019, to zero in on this issue, taking the specificities of Indigenous peoples into account.

11.2.3 Prejudices and perceptions of abuse of power

The limitations on interventions described above become doubly problematic when compounded by prejudice. Several parents who testified before the Commission reported that they frequently felt they had to "prove their innocence" because initial impressions of them were so negative. For some, including one mother who testified *in camera,* this feeling was a serious obstacle to cooperation:

> [W]hen the youth protection worker called my spouse she was very bossy and authoritarian […]. With the DYP, you know… you're guilty until you can prove the opposite. You know, you start out with two strikes against you […]. What's the point of trying to be cooperative when you know that you've already been accused, and that they're already saying… that you're not a good mother, you aren't good parents, so we're going to take your children away.[2818]

Unfortunately, we can only conclude that this story is far from an isolated incident. A substantial number of the testimonies we heard made it clear that the DYP has refused to consider the parents' version of the facts in many situations, even when supported by credible evidence.[2819] One such case involved a mother forced to take multiple measures to prove she did not have an alcohol problem after being reported by an ex-spouse:

2817 *Rapport, conclusions d'enquête et recommandations, janvier 2003. Les services de protection offerts aux enfants algonquins du Lac Simon, de Pikogan et du Grand Lac Victoria (Kitcisakik)*, document P-452 (Commission), p. 38–39.

2818 Testimony *in camera* HC-37, stenographic notes taken May 16, 2018, p. 109, lines 4–22 and p. 115, lines 5–10.

2819 Testimony *in camera* HC-14, stenographic notes taken March 15, 2018, p. 78, lines 22–24 and p. 79, lines 6–21; testimony *in camera* HC-4, stenographic notes taken February 23, 2018, p. 173, lines 1–15 and p. 175, lines 7–24.

> They asked me to meet with an alcohol abuse specialist, which I did, and even the specialist, you know, asked me: "Why are you here? Clearly, you don't have a problem." I'm not an alcoholic, I've never taken drugs, but they were able to treat me this way just because I'm Inuk, information they found in a report the child's father had clearly talked to them about, and probably after the 30-day deadline, I must be the first Inuit to ever get her children back in 30 days, because I clearly didn't have a problem. But they justified everything by saying that, despite all of this, I still had an alcohol problem and had to get follow-up treatment for my alcohol and anger issues. […] they saw me as a "drunken Indian," and—even in the report they submitted to the judge, the first two sentences were: "The father works full-time" and "The mother stays home, drinks alcohol and smokes weed all day".[2820]

In a similar vein, several witnesses noted that they had to "fight" against the system and "prove their innocence" by taking multiple measures to prove they were capable parents, rather than seeing the intervention as a source of support, help and assistance.[2821]

The fact that several witnesses had a strong sense of being presumed guilty from the outset is directly related to their sense of being victims of abuse of power at the hands of the youth protection system. The Commission heard a many testimonies to that effect[2822], such as this one *in camera:*

> [I]t hurt so bad inside when they accused me of sexually abusing my son. But they only did it to show that they had the power to do it, and I had to fight in court. I had to fight so hard to convince them that it wasn't true. […] there were no signs of sexual abuse, and that was when I realized: it's true, there's a problem. Of course I still think about it… but still, it was… it was abuse of power. It was an abuse of authority, you could say. She abused her power as a DYP employee. [The DYP worker] had a whole lot of options that she could have used, instead of accusing me […] And I, I said what I had to say to the judge, we were in court, and the judge made a recommendation: "O.K., leave the child with his parents, they'll go to the hospital in Montreal to make a report[…]." After the assessments and all the reports, the conclusion was that there was no sexual abuse, no violence and no physical abuse, and we took the report, and took it back to court, and then we picked up our child and took him home.[2823]

2820 Testimony *in camera* HC-17, stenographic notes taken March 16, 2018, p. 264–265, lines 19–7 and p. 265, lines 20–24.

2821 *Id.,* p. 265, lines 15–19; testimony *in camera* HC-31, stenographic notes taken April 20, 2018, p. 66, lines 6–20; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 217, lines 17–21, p. 218, lines 6 and 20–23, and p. 219, lines 7–10; testimony *in camera* HC-26, stenographic notes taken April 17, 2018, p. 38, lines 2–10 and 15–21 and p. 39 lines 1–2.

2822 Testimony of Laurier Riel, stenographic notes taken September 14, 2017, p. 92, lines 10–14; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 26, lines 16–23; testimony of Kathleen Deschenes-Cayer, stenographic notes taken September 14, 2017, p. 34, lines 4–7; testimony *in camera* HC-22, stenographic notes taken April 10, 2018, p. 84, lines 10–13; testimony of Isabelle Picard, stenographic notes taken June 18, 2018, p. 153, lines 4–19; testimony *in camera* HC-14, stenographic notes taken March 15, 2018, p. 65–66, lines 24–2, and p. 75, lines 16–21; testimony *in camera* HC-2, stenographic notes taken January 22, 2018, p. 17, lines 12–15, p. 17–18, lines 18–2, and p. 19, lines 8–12; testimony *in camera* HC-4, stenographic notes taken February 23, 2018, p. 169, lines 7–23, and p. 194, lines 14–19; *Statutory declaration by PI-60*, document P-901 (Commission), p. 6–7; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 13, lines 3–8 and p. 17, lines 17–19; testimony *in camera* HC-24, stenographic notes taken April 13, 2018, p. 251, lines 13–17; testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 231, lines 17–23.

2823 Testimony *in camera* HC-48, stenographic notes taken May 23, 2018, p. 77, lines 9–14 and p. 78, lines 17–23; testimony *in camera* HC-4, stenographic notes taken February 23, 2018, p. 81, lines 11–15 and p. 81, lines 20–1.

Witnesses at the hearing also commented on the attitude of certain workers who would leave the court satisfied that they had "won," which reinforced the frustrations experienced by families and communities:

> One parent told me that when they left the court, the worker yelled out: "Yay!" As if they had won, you know. But, it's… they won … What did they win? All they did was break up a family. They won by making a child suffer, a child who was placed with a non-Indigenous family. That's what they won, at the end of the day. Destroyed a person, and maybe a family too. That's what I took away from it.[2824]

These experiences seriously affect parents' self-esteem. Several witnesses stated that they felt denigrated and humiliated by DYP interventions that focused exclusively on their weaknesses while ignoring their strengths. This mother's *in camera* testimony is another example.[2825]

> They told me it was always my fault. I ended up believing it was my fault. Every little thing I did with my children was always wrong, according to Youth Protection. If I called him at his foster family, that was wrong. If the foster family didn't hear from me, that was wrong too. They complained that I didn't call my children at the foster family. I mean, "which is it?" When I call them, it's bad; when I don't call them, it's bad. What game are you playing here? When I was sad, that was no good either. But when I was happy for them… they said I was faking it.[2826]

One former DYP worker gave a similar reading of the situation, saying that social workers tended to focus on parents' shortcomings to justify their decisions to keep children in foster care:

> For sure two years isn't a long time. They say… that's something they say to parents often. "O.K., Two years have gone by now. It's time to make this a permanent placement. You can file a motion with the court any time you want." But the message they're sending, it seems to me more like "you could do that, but good luck…" You know? Because… It's a massive, confusing system, eh? You know, you have parents whose children were taken away from them because of issues, and then they go to court, and the social worker has to give some justification for what they're asking for, so let's just say the parents' strengths aren't always; mentioned in the report, eh? Then, when the parent reads it, they're like, "my god, what is this…" You know? It makes them feel almost like monsters, you know? Because we absolutely put all the emphasis on all their difficulties, all their problems, everything they've done wrong, and then we drive the nail home, you know? To make sure our request is approved.[2827]

2824 Testimony of Alex Cheezo, stenographic notes taken October 24, 2017, p. 51–52, lines 25–9.

2825 Testimony *in camera* HC-9, stenographic notes taken March 13, 2018, p. 162, lines 13–15, and p. 165, lines 19–23; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 211, lines 16–23, and p. 217, lines 8–12; testimony *in camera* HC-24, stenographic notes taken April 13, 2018, p. 232, lines 10–17 and p. 247–249, lines 7–1; testimony *in camera* HC-31, stenographic notes taken April 20, 2018, p. 66–67, lines 20–17, p. 75–76, lines 18–4, p. 78, lines 18–23 and p. 83, lines 4–6; testimony *in camera* HC-32, stenographic notes taken May 10, 2018, p. 213, lines 4–9; testimony *in camera* HC-51, stenographic notes taken May 24, 2018, p. 62, lines 7–15; testimony *in camera* HC-2, stenographic notes taken January 22, 2018, p. 25–26, lines 12–13; testimony *in camera* HC-58, stenographic notes taken June 13, 2018, p. 119–120, lines 3–8 and p. 122–123, lines 22–21; testimony *in camera* HC-65, stenographic notes taken August 23, 2018, p. 165, lines 8–21; testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 199–200, lines 24–7; testimony *in camera* HC-19, stenographic notes taken April 3, 2018, p. 96, lines 10–19.

2826 Testimony *in camera* HC-28, stenographic notes taken April 17, 2018, p. 102–103, lines 18–7.

2827 Testimony of Laurence de Angelis-Mongrain, stenographic notes taken September 13, 2018, p. 198–199, lines 11-.6.

The DYP practice of using the police to support their interventions further contributes to Indigenous families' perceptions of abuse of power, fear and mistrust.[2828]

> There were four DYP workers who turned up at my house with two police officers. It seemed like overkill to me [...] And then the police officer, I don't know how many times he asked me the question, he just kept repeating the same question, but using different words. Because the police officer just wanted to hear that I had hit my son. That's all he wanted to hear. I said "no, you're not going to... you're not going to make me say I did something I didn't do. And then he just wouldn't let it go, he wanted to hear it so badly. He wouldn't let it go. [...] You know, I didn't even feel respected when he came to see me.[2829]

In some cases police officers even intervene when a woman is in the foster home with her children, although the children are in a safe environment. This instills a sense of fear and panic that could be avoided, according to the director of the Native Women's Shelter of Montréal:

> [S]ometimes there's a report while they're here at the shelter. The women come here with their children, and then we learn that there's a social worker who wants to take the children away. So when social workers come to an Indigenous women's shelter, they often bring five (5) police officers with them to seize the child, which is pointless, and creates a climate of terror in the whole shelter, and scares the child. The police are incredibly rude to our staff. It doesn't accomplish anything. So that's the kind of problems we face most often. And we have to choose between just taking it, accepting the situation as it is, or fighting back. So we've chosen to fight back. And to fight back, we have made agreements with Batshaw.[2830]

11.3. Rights unknown and infringed upon

Whether or not they are caused by the discriminatory biases discussed above, the evidence gathered by the Commission highlights several instances where the rights of Indigenous families involved with youth protection have been infringed upon, or where principles and even laws governing youth protection interventions have not been followed.

2828 Testimony of Tanya Sirois, stenographic notes taken June8, 2017, p. 53, lines 20–25; testimony *in camera* HC-4, February 23, 2018, p. 167–168, lines 7–9; testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 228–229, lines 13–5; testimony *in camera* HC-5, stenographic notes taken March 13, 2018, p. 28, lines 3–8; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 12, lines 4–20; testimony *in camera* HC-51, stenographic notes taken May 24, 2018, p. 47, lines 11–18; testimony *in camera* HC-58, stenographic notes taken June 13, 2018, p. 117, lines 11–24; *Statutory declaration of PI-23*, document P-651 (CERP), p. 6; testimony *in camera* HC-65, stenographic notes taken August 23, 2018, p. 172, lines 1–22; testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 26, lines 3–13.

2829 Testimony *in camera* HC-26, stenographic notes taken April 17, 2018, p. 23, lines 4–7, p. 46, lines 14–21, and p. 47, lines 18–24.

2830 Testimony of Nakuset, stenographic notes taken February 21, 2018, p. 54–55, lines 18–7.

11.3.1 Keeping the child in the family environment

A fundamental YPA principle is that all decisions must aim to keep the child in the family environment.[2831] The case law on this matter is clear.[2832] Yet several witnesses had the impression that returning children to the family environment is not a priority of youth protection agencies. Most witnesses, in fact, felt that the children's relationships with their foster parents were prioritized to the detriment of their family relationships.[2833]

For example, a number of witnesses deplored the wholly inadequate amount of time they were granted to visit their children who had been placed in alternative care.[2834] Several also felt that no conditions had been provided for maintaining a meaningful relationship with their children. In many cases children are placed far from their home communities, and parents lack access to transportation and the financial means to visit them. However, parents are responsible for maintaining the parent-child relationship. While this responsibility may be easily satisfied when children are placed nearby, it becomes very difficult when they are placed over 400 km away. Asked to comment on these situations, DYPs, including Marlene Gallagher, acknowledged that the situation is difficult:

> It goes without saying that when you have a child from, say, Sept-Îles, and that child has to be placed, just for example again, at the Pavillon Richelieu in Baie-Comeau, that's 250 km away. We have very big challenges in terms of maintaining contact with parents, given these distances and the overall situations as well.[2835]

The situation is no easier in Nunavik, according to the DYP of the CIUSSS de l'Ouest-de-l'Île-de-Montréal, Assunta Gallo:

> [W]hen we have young people who come [...] from the North, and find themselves in the city, it gets difficult because if the parents... one parent who stays up North, and another who lives in the city. There's no question that the parent who lives in the city will be more involved. For dealing with [...] people from the North, we make greater use of technology, to maintain a connection with the parent and make sure the child can at least see the parents on a screen. It's not ideal.[2836]

While technology can sometimes bridge certain contact gaps between adolescents and their parents, it is totally ill suited for maintaining contact and developing meaningful

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2831 *Youth Protection Act*, CQLR c. P-34.1, s. 4; testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 22, lines 15–17; *Présentation Loi sur la protection de la jeunesse*, document P-122 (Commission), p. 15; document P-014 (Commission), *op. cit.*, p. 10.

2832 Protection de la jeunesse, 2008 QCCQ 5742, reproduced in Protection de la jeunesse, 2016 QCCQ 16481, paras. 27–28 and 30.

2833 Testimony of Benoit Théorêt, stenographic notes taken January 22, 2018, p. 190, lines 2–6 and p. 191, lines 12–14; testimony *in camera* HC-22, stenographic notes taken April 10, 2018, p. 53–54, lines 22–15; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 206, lines 9–15.

2834 Testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 40–41, lines 4–12; testimony *in camera* HC-19, stenographic notes taken April 3, 2018, p. 86–87, lines 25–10; testimony of Trishia Hazelwood, stenographic notes taken April 20, 2018, p. 139, lines 9–15; testimony of Deborah Einish, stenographic notes taken October 23, 2018, p. 46, lines 1–6.

2835 Testimony of Marlene Gallagher, stenographic notes taken September 11, 2018, p. 63, lines 3–10.

2836 Testimony of Assunta Gallo, stenographic notes taken September 10, 2018, p. 34–35, lines 25–10.

relationships with young children. Further, many testimonies heard by the Commission demonstrated that the current system makes it very difficult for children to maintain their relationships with their families, communities, languages and cultures. The system also penalizes parents' attempts to preserve their relationships with their children. Against that backdrop, there is a high risk that the DYP can claim that there is no attachment between parent and child, or that the parent has ceased to make efforts (due to lack of contact), whereas the actual problem is the lack of resources needed to maintain the relationship between the child and the birth family; this was clearly explained to the Commission by Anne Fournier, a lawyer representing the Atikamekw nation:

> To take the example of Obedjiwan [Opticiwan] children, they are placed in a rehabilitation centre in Trois-Rivières, although it is over 450 km from their family home. Under circumstances like that, what can be done to maintain the parent-child relationship? When we speak to the workers [...], they insist that maintaining contact between parents and children is of course the parents' responsibility. That makes logical sense. It works in the city. But for many Indigenous families it's more complicated, because the parents don't necessarily have a phone or a vehicle. And if they do have a vehicle, or can borrow one, they might not have the resources to travel hundreds of kilometres and pay for food and lodging to visit a child who is over 450 km away.[2837]

Several other citizen witnesses made similar observations.[2838]

Great distances between the residences of parents and children can also have negative repercussions on the children and adolescents placed in alternative care. That happened to Sarah Papialuk, who testified before the Commission. While she was placed in a Montréal rehabilitation centre, her parents were unable to visit her because travel from their Inuit village was too costly. Years later, she speaks eloquently about how terrified she was during that time, especially since she had never lived among non-Inuit people.

> Throughout this period, I was suffering, I was hurt, I felt an incredible amount of rage, I didn't know where I was going, or how I was going to survive, while I was at Batshaw. Most of the time, we spoke English, and I wasn't allowed visitors, I couldn't bring my family to visit, because they complained that it cost too much to come to Montréal, to come [...].The situation got so bad that I began to hate all of this, to hate the way the system worked, and the fact that I had to be away from my family for so long. In Inuit culture and tradition, the Inuit always stick together, no matter where they are. [...] When this cycle was broken, it affected me a great deal. [...] A lot of children I know have been driven to suicide by situations like these, when they end up in the south, or in a group home, far away from their families.[2839]

2837 Testimony of Assunta Gallo, stenographic notes taken October 23, 2017, p. 52–53, lines 1-6.

2838 Testimony *in camera* HC-4, stenographic notes taken February 23, 2018, p. 173, lines 16–21; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 18–19, lines 25–17; testimony *in camera* HC-51, stenographic notes taken May 24, 2018, p. 59, lines 6–10; testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 200–201, lines 23–11.

2839 Testimony of Sarah Papialuk, stenographic notes taken February 20, 2018, p. 127, lines 7–14, p. 128–129, lines 25–10, and p. 132, lines 21–25.

Although the YPA stipulates that the characteristics of Indigenous communities[2840] must be considered, and placements must be made with a view to returning children to their parents[2841], the problem of transportation and its attendant financial hardships is very real. This situation is even more alarming because the expenses caused by placing children far from their biological families are not reimbursed. For the obligation of keeping children in their family environment or returning them home to be meaningful in practice, adequate financial resources must be available to improve the situation of the family environment. One DYP noted that when children are placed, social workers must provide "intensive assistance […] so that […] the child can remain outside the community for the shortest possible time".[2842]

According to the DYP for Abitibi-Témiscamingue, the services have been modelled on what goes on in the non-Indigenous community:

> The old-style Youth Centres […] were mandated to continue providing youth protection services. I was inspired by their standards of what was being done in Indigenous communities, and the services and structure of what other children in the region received—things like service intensity levels and worker-child ratios. So, we set up a structure that was similar to what we saw in other sectors.[2843]

I understand from this testimony that the services are based on provincial standards for caseworker-child ratios. However, Indigenous families often have needs and living conditions that require a greater level of services. Several parents and youth protection workers also confirmed that the current level of services is inadequate.[2844]

The availability of services and the availability of conditions conducive to maintaining contact are even more important when an Indigenous child, especially a very young one, is placed with a non-Indigenous foster family. Otherwise, many of the people we heard believe that the children will not be able to preserve their cultural identities and languages and may therefore experience significant psychological or identity challenges.[2845] The tragic consequences of this approach were also raised in a Coroner's Investigation:

2840 *Youth Protection Act*, CQLR c. P–34.1, s. 2.4 (5).

2841 *Id.,* ss.4 and 57.

2842 Testimony of Michelyne Gagné, stenographic notes taken October 18, 2017, p. 24, lines 9, 11 and 16–17.

2843 Testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 28–29, lines 17–4.

2844 Testimony of Laurence de Angelis-Mongrain, stenographic notes taken September 13, 2018, p. 173-175, lines 9-2; testimony *in camera* HC-2, stenographic notes taken January 22, 2018, p. 20-21, lines 15-2; testimony *in camera* HC-51, stenographic notes May 24, 2018, p. 75, lines 6-17; testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 28-29, lines 18-4; testimony *in camera* HC-26, stenographic notes taken April 17, 2018, p. 40, lines 16-22; testimony *in camera* HC-27, stenographic notes taken April 17, 2018, p. 62, lines 4-7; testimony *in camera* HC-28, stenographic notes taken April 17, 2018, p. 110, lines 24-25; testimony *in camera* HC-55, stenographic notes taken June 8, 2018, p. 230, lines 11-25.

2845 Testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 71-72, lines 20-17; testimony of Trishia Hazelwood, stenographic notes taken April 20, 2018, p. 145-146, lines 17-6; brief of the Regroupement Mamit Innuat. (November 30, 2018), document P-1175 (Commission), brief M-034, p. 55-56, paras. 195-197.

> Most of the suicide victims in Uashat/Maliotenam communities since 1994 had been placed in foster care, making a significant attachment tenuous and accelerating cultural loss. Over the past several years in Québec, the application of the YPA to Indigenous communities has been heavily criticized because it is not adapted to Indigenous realities and does not take into account the significant losses suffered by some children, such as the loss of the Innu-aimun language and contact with extended family.[2846]

From my point of view, this illustrates above all the fundamental importance of helping parents with the child's support or return to the family environment as quickly as possible.

I therefore recommend that the government:

CALL FOR ACTION No. 118

Fund the development of intensive support services in urban environments and Indigenous communities covered by an agreement for parents of Indigenous children who have been placed in foster care.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 119

Initiate tripartite negotiations with the federal government and Indigenous authorities to finance the development of intensive support services in communities not covered by an agreement for parents of Indigenous children who have been placed in care.

11.3.2 The obligation to prioritize placement with significant people

When children cannot remain in their family environments the law is clear: the DYP must make a decision that ensures, "insofar as possible with the persons most important to the child, in particular the grandparents or other members of the extended family, the continuity of those relationships and stability of those relationships".[2847] In her testimony, the Director of Youth and Family Services at the MSSS mentioned the various protective circles that must be considered before placing an Indigenous child with a non-Indigenous family:

> We will always opt for, when a child has to be removed from the family environment, we will first and foremost favour keeping the child with its parents, with the extended or immediate family, with a person who is significant. Otherwise, close to the community or even a member of the same nation. We will always go to the child's protective circle, i.e. we will try to find someone who has a connection that can help preserve the child's cultural identity. But when

2846 *Public Coroner's Investigation in Sept-Îles, brief submitted by Danielle Descent, psychologist, June 9, 2016*, document P-558 (Commission), p. 3.

2847 *Youth Protection Act*, CQLR c. P-34.1, s. 4.

> that is not possible, unfortunately, we sometimes have to put an Indigenous child in a non-Indigenous foster home.[2848]

Furthermore, when the maximum period of foster care is reached, the courts have established that it is up to the DYP to demonstrate that the child's return to the family environment or a significant person cannot be considered.[2849] However, in light of the testimony heard and the documents filed, it seems that these principles are not always followed. Members of extended families[2850] heard by the Commission explained that they were either never consulted or not considered when they stated their intentions of caring for a child:

> The girl was placed in the care of a non-Indigenous woman and an Indigenous man in the community. My problem is that, as family, [we were never] asked for our advice, we were not asked whether we would consider taking in our niece during that time. […] They have never contacted me, nor did they contact the grandmother. [Today], the attachment is definitely … That is what the court is saying and that is the opinion of the youth protection service. That's their only argument, i.e. the child has been in foster care, [and] has gotten used to it and they don't want to disrupt the child's development. Our argument is: this child's development was disrupted a long time ago and it is even more disrupted today because she is not with her biological family. It is more harmful than anything else.[2851]

According to the testimony of a community youth protection worker, there are also times when placement cannot be avoided, notwithstanding community involvement:

> When there is a conflict between the couple, for instance. The gentleman calls us and says, "I would like to get the little ones. That does [not] bother me. I'll take care of them." […] I explained all that [to the Court] and that we had supported them in terms of paperwork as well as social assistance, tax benefits, family allowances and housing certificates because housing was needed. […] we had filed an application for a substantial grant to support children with special needs […] At the same time, when I spoke to the judge, well, it turns out that the little girl would fit into our application as well. We had all the solutions. I think we had all let our emotions out. So then … to be told at the end, "well, no. We are going to place the little girl." At one point, I said, "but do you really want to place her?" At one point, I said, "are you … are you working for the family or for your foster families?" That was my question.[2852]

2848 Testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 269-270, lines 14-3.

2849 *Protection de la jeunesse*, 2016 QCCQ 16481, para. 25.

2850 Testimony *in camera* HC-72, stenographic notes taken September 11, 2018, p. 325-327, lines 23-19, p. 330, lines 8-14 and p. 341-342, lines 10-24; testimony *in camera* HC-50, stenographic notes taken May 23, 2018, p. 237, lines 18-23 and p. 239, lines 3-25; testimony *in camera* HC-51, stenographic notes taken May 24, 2018, p. 62-66, lines 16-11; testimony *in camera* HC-71, stenographic notes taken September 7, 2018, p. 130, lines 19-24 and p. 135-136, lines 24-17.

2851 Document P-894 (Commission), *op. cit.*, p. 1-2 of 12 (online PDF).

2852 Testimony *in camera* HC-75, stenographic notes taken September 13, 2018, p. 219, lines 20-25, p. 223-224, lines 23-4 and p. 227, lines 6-8, and 14-25.

A 2016 ruling states that "the DYP must make every effort to find a foster family in the child's community when the child is Indigenous. Without being an obligation of result, the DYP's responsibility in this regard is very high, and all reasonable means must be used".[2853] Other rulings[2854] also indicate that efforts to find Indigenous foster families are not always made at the beginning of a placement; placements in recognized (non-Indigenous) foster families are preferred from the outset. In one specific case, the CDPDJ recognized that efforts to find an Indigenous foster family had not been sufficient:

> The parents objected to having their children stay with a foster family outside the community, and the case worker testified to being unable to find an Algonquin foster family in the community. The Court noted: "that the evidence of being unable to find an Algonquin family for both young children is not convincing and instead tends to reveal an approach that comes down to asking a community caseworker if an Algonquin family is available. And it seems that a negative response is taken as an impossibility".[2855]

However, even if it is not possible to place children with significant people or families from their communities or nations, it is possible to require the alternate environment to make additional efforts to ensure that the children remain in contact with their cultures, languages and communities of origin.

In my opinion, it is important not only to make a real and considerable effort to find foster families in the Indigenous children's home communities, but also to acknowledge the specific issues I have just outlined. Otherwise, there is a high risk in keeping Indigenous children in non-Indigenous foster families when they could have benefited from placement in an Indigenous environment.

Although the *Act to amend the Youth Protection Act and other provisions* makes preservation of the child's cultural identity a priority[2856], other provinces such as Alberta and Nova Scotia have gone much further by introducing Cultural Connection Plans. These cultural plans are usually drawn up jointly by youth protection services and the child's community, and they encourage foster families to take an active role in the child's cultural learning.

I therefore recommend that the government:

CALL FOR ACTION No. 120

Working with Indigenous authorities, draw up a placement policy specific to members of First Nations and Inuit that provides that Indigenous children be first placed with their immediate or extended families and, if that is not possible, with members of their communities or nations.

2853 Protection de la jeunesse, 2016 QCCQ 10941, para. 14.

2854 Protection de la jeunesse, 2017 QCCQ 10171.

2855 *Rapport d'enquête sur les services de protection de la jeunesse en Abitibi-Témiscamingue, October 2001*, document P-451 (Commission), p. 39.

2856 Bill no 99, *An Act to amend the Youth Protection Act and other provisions*, 41st leg. (QC), 1st sess., 2017, c. 18, s. 3.

CALL FOR ACTION No. 121

Make sure that a cultural intervention plan is produced and implemented whenever an Indigenous child must be placed in a non-Indigenous alternative environment.

11.3.3 The right to information

Whether the child is placed or not, s. 2.4 of the YPA emphasizes that the parents and child should be treated with courtesy, fairness and understanding, while ensuring that they fully understand the explanations and information furnished to them.

However, the views expressed by parents who testified before the Commission told a different tale. Many witnesses said they were not sufficiently informed, particularly about the grounds for reporting and the situation of their children[2857], as well as the placement details for their children, such as the location and length of the placement.[2858] Some also said that they had been cut off from contact with their children without any explanation as to why the decision was made.[2859] Others reported that they were misinformed about proceedings and hearing dates, resulting in them missing court dates.[2860] Kathleen Deschesne-Cayer, a representative of the Anishnabe Nation of Barriere Lake (Lac Rapide), related the difficult situations encountered by parents involved in proceedings with youth protection:

> Very little information was shared with parents once the children had been removed. You know, the mother cries and says: "Where are you taking my child?" And they tell her: "Oh, we can't tell you, for the safety of the children" [...] The parents were not informed of their rights or court dates until the last minute, and they knew full well that these people would have difficulty getting to court. This is another problem that occurred: they were missing their hearings, the judges were making decisions without hearing from the parents, and they were responsible for not being there. Because they were informed at quarter to four in the afternoon, telling them: "You need to be there tomorrow morning at 9 a.m." Which is impossible. That proved impossible on many occasions.[2861]

In similar testimonies, other parents said that they had signed documents without being told what they were signing and what the consequences would be[2862]:

2857 Testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 12-13, lines 12-1; document P-651 (Commission), *op. cit.*, p. 5; testimony *in camera* HC-20, stenographic notes taken April 5, 2018, p. 146, lines 18-24 and p. 155, lines 13-16.

2858 Testimony *in camera* HC-37, stenographic notes taken May 16, 2018, p. 140-141, lines 21-4 and p. 145, lines 13-20; testimony *in camera* HC-26, stenographic notes taken April 17, 2018, p. 27, lines 9-19, p 29-30, lines 10-3; testimony *in camera* HC-28, stenographic notes taken April 17, 2018, p. 118, lines 10-17.

2859 Testimony *in camera* HC-31, stenographic notes taken April 20, 2018, p. 62, lines 2-16.

2860 Testimony of Jessica Mitchell, stenographic notes taken May 22, 2018, p. 263, lines 7-16; testimony *in camera* HC-48, stenographic notes taken May 23, 2018, p. 79, lines 6-24; testimony *in camera* HC-5, stenographic notes taken March 13, 2018, p. 30, lines 3-7; testimony *in camera* HC-57, stenographic notes taken June 13, 2018, p. 45, lines 7-24.

2861 Testimony of Kathleen Deschesne-Cayer, stenographic notes taken September 14, 2017, p. 36, lines 9-13 and p. 41-42, lines 16-2.

2862 Testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 197, lines 3-21 and p. 198, lines 10-17; testimony of Hilda Snowball, stenographic notes taken November 23, 2018, p. 202, lines 6-18; testimony of Mark Tassé, stenographic notes taken November 23, 2018, p. 159-160, lines 18-12; testimony *in camera* HC-13, stenographic notes taken March 15, 2018, p. 13, lines 11-16.

> Neither their mom nor I knew that they were going to be adopted. […] We went to court for our daughters, and the social worker asked us to sign a paper for the well-being of our daughters. The social worker did not tell us that it was for adoption. […] Quick, quick, quick. We had to sign quickly. […] The treatment centre took all the steps so that I could call [the youth centre] to schedule a meeting, and that's when I learned that they had been adopted. The workers told me that I had signed for that. I told them: "No, I did not sign." They told me that both I and the mother had signed. After that, I gave up, and I left the treatment centre.[2863]

Similarly, an Indigenous worker who had accompanied many parents to meetings with youth protection workers told the hearing that maximum stay lengths are almost never explained to the families. Parents are therefore not aware that they have to follow tight schedules for their healing, recovery or learning processes:

> But there were things parents remained unaware of, such as … […], if the child is placed, depending on the child's age, the parent has a certain amount of time to get back on his or her feet and into a good way of living. [T]his was not mentioned any time I accompanied the parents. But I knew it, so I would say it because, you know, I accompanied them with their tests, but I also followed up for myself … one on one with the parents, so I would say it. I took all the info on the family, siblings, and then I told the parents how much time they had, and it wasn't, let's say, there was a one-year placement, you can't […] start changing things at the nine-month mark, improving your situation, it is right now, because the youth centre needs to see improvement and then stability in the changes.[2864]

The many testimonies on problems with the transmission of information by the DYP staff seem to indicate that these are not isolated incidents. Dozens of parents do not feel that they were sufficiently informed, or did not understand the procedures at all, whereas it is the DYP's responsibility to ensure "that the parents have understood the information or explanations that must be furnished to them".[2865]

The right to information also involves preparing the various foster care settings and the child when the child has to be moved from one setting to another.[2866] However, several foster families said they were up against a substantial lack of information when they were taking in children.[2867] In some cases, the consequences for the children in placement can be major. The case of an Inuit child who was bounced from foster family to foster family because insufficient information on his health was provided is a patent example of this, as Sophie Papillon, legal adviser for the CDPDJ, related when she appeared before the Commission:

2863 Testimony reported by Emmanuel Morin, stenographic notes taken March 13, 2018, p. 87, lines 21-23, p. 89, lines 19-25, p. 92, lines 7-9 and p. 91, lines 8-19.

2864 Testimony of Christine Mianscum, stenographic notes taken September 27, 2018, p. 123–124, lines 25–20.

2865 *Youth Protection Act*, CQLR c. P-34. 1, s. 2.4 (3).

2866 *Id.*, s. 7.

2867 Testimony *in camera* HC-32, stenographic notes taken May 10, 2018, p. 195, lines 9–13; testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 93, lines 1–9; testimony *in camera* HC-42, stenographic notes taken May 18, 2018, p. 138, lines 7–9, p. 144, lines 17–21 and p. 146–147, lines 14–2.

> [T]his child had been adopted traditionally by a friend of the biological mother just a few days after he was born. But what we found out is that the adoptive mother kept the child for only a few weeks before taking him to the DYP office because he cried a lot and was difficult. […] Unfortunately, after that, we found out that the newborn had had eleven different foster families in just one month. The child had a heart problem, and cried a lot. So it was difficult for these families to take care of him. Finally, at the age of two months, the child was taken to a city farther south and placed with a non-Indigenous foster family. What we learn from reading the judgement is that the worker gave the baby to the foster family at the airport and left ten minutes later. And at that time no information on the baby's health problem was given to the foster family. This was a placement that should initially have lasted 30 days, but lasted for years.[2868]

Once again I conclude from the evidence that this was, unfortunately, not an isolated case. A number of other, similar stories have been brought to my attention, many of them concerning Inuit children.[2869]

Information not being provided, combined with multiple moves, puts many children at risk, both physically and psychologically. Starting from that point, it does not take much to assert that youth protection services are not able to ensure the protection and optimal development of Indigenous children.

11.3.4 The right to be represented by a lawyer and participate in legal proceedings

Several testimonies also highlighted a problem with access to justice in youth protection. Whether it is due to the complexity of the proceedings, remoteness, or difficulty getting a lawyer, the situation seems critical for Indigenous children and parents. According to some witnesses, even though it is stipulated in the *Charter of Human Rights and Freedoms*[2870] and the YPA[2871], parents do not always seem to know that they can be represented by a lawyer, or else do not understand the relevance of being represented or even of asserting their rights.

One DYP worker also deplored the fact that lawyer-client meetings are often too brief to ensure a complete understanding and legal representation for Inuit parents living in Nunavik villages:

2868 Testimony of Sophie Papillon, stenographic notes taken March 12, 2018, p. 58, lines 11–18 and p. 59, lines 1–18.

2869 Testimony of Xavier Moushoom, stenographic notes taken April 4, 2018, p. 10–34, lines 20–15; testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 84–85, lines 23–4; testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 215–217, lines 13–1; testimony of PI-1, stenographic notes taken March 22, 2018, p. 299–300, lines 18–17.

2870 Testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 34, lines 8–10; testimony of Céline Bellot, stenographic notes taken September 20, 2017, p. 130, lines 10–24; testimony reported by Emmanuel Morin, stenographic notes taken March 13, 2018, p. 79, lines 13–18.

2871 *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, s. 34; *Youth Protection Act*, *op. cit.*, s. 5.

> They sometimes met for five minutes in the office, with a lawyer. Not enough time to prepare them to appear in court, to lose – they will lose their child. They must absolutely be better informed than that. It is unjust.[2872]

In addition, the shortage of lawyers appears to be a major issue in several regions, particularly remote communities.[2873] Because of the frequent conflicts of interest that arise due to the small number of lawyers, they can quickly find themselves unable to act in a given mandate.[2874]

The lawyers also raise the lack of courtworkers in youth protection, saying that they are not properly able to understand the realities the parents experience because they do not live in the communities and do not speak the Indigenous languages. From the perspective of Nathalie Pelletier, then head of the Barreau for Abitibi-Témiscamingue[2875], this means that the parent does not receive the representation he or she is entitled to receive:

> [T]he issue with not having access to them is also that it makes it difficult for a defence lawyer to prepare the case properly before [going to court]. […]The goal is, when we get to court, we can move ahead on the cases. But I can't get courtworkers, I can't get an interpreter who is dedicated just to the defence or youth protection […] So this lack of courtworkers still affects people's basic rights, because how are we supposed to ensure that this person was able to mount a full defence? That is fundamental.[2876]

Some Indigenous leaders also emphasized how infrequently Court of Québec Youth Division hearings are held in remote regions. As a result, parents and children have to travel to attend hearings, which they cannot always afford to do. The issue of transportation, which has been addressed repeatedly in the course of the Commission's work, once again means that the parents are unable to get proper representation.[2877] To remedy the situation some band council have opted to pay the costs so that parents can attend and participate in the legal proceedings, despite the fact that it is not an eligible expense. However, that creates a problem when they are making their accounts to the federal government.[2878]

In my opinion, deprived of equitable access to justice due to factors beyond their control, Indigenous youngsters and parents risk having their rights to a hearing infringed. The fact that they are struggling to assert their rights in general has immediate, often permanent consequences for how their youth protection cases unfold. As mentioned earlier, this situation also undermines parents' confidence in the administration of justice and lessens

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2872 Testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 224, lines 19–23.

2873 Testimony *in camera* HC-34, stenographic notes taken May 14, 2018, p. 92, lines 18–23.

2874 Testimony *in camera* HC-19, stenographic notes taken April 3, 2018, p. 82, lines 5–15; testimony *in camera* HC–72, stenographic notes taken September 11, 2018, p. 382–383, lines 18–2.

2875 Ms. Pelletier has since been appointed a judge of the Superior Court.

2876 Testimony of Nathalie Pelletier, stenographic notes taken April 19, 2018, p. 178–179, lines 18–20.

2877 Testimony of Jessica Mitchell, stenographic notes taken May 22, 2018, p. 262–263, lines 25–6.

2878 Testimony of Maude Bellefleur, stenographic notes taken September 10, 2018, p. 207, lines 10–20.

their involvement in the youth protection process, because they feel that they have no power over the situation. It is therefore not surprising to hear statements such as these:

> Do not be so naive as to believe that the judge, who generally comes from the system, will protect our rights, because he generally shows that he is complicit with the system in the aim of violating our rights in that court, where you are considered guilty until proven otherwise.[2879]

Personally, I see this testimony as confirming an urgent need for action to rebuild confidence in the legal system that is often invoked in the context of youth protection. I also recommend that the government:

CALL FOR ACTION No. 122

Assign additional resources to remote Indigenous communities where access to lawyers is limited.

CALL FOR ACTION No. 123

Provide financial support for hiring courtworkers and promote the use of paralegal services to support and accompany parents and children who are subject to the *Youth Protection Act*.

CALL FOR ACTION No. 124

Initiate tripartite negotiations with the federal government and Indigenous authorities, as applicable, to agree on a budget to provide for Indigenous parents or guardians to attend hearings at the Court of Québec, Youth Division (transportation, meals and lodging costs).

11.3.5 The right to contest or refuse decisions

Parents are also entitled to contest decisions made by the DYP on whether or not the child's security or development is in danger, the directing of the child's situation, whether or not to extend a voluntary or ordered stay, and agreements on voluntary measures.[2880] However, several parents seem to be unaware of this right, just as they are unaware that they can be represented by lawyers:

> Some people come to court unaware […] that they are entitled to say that they disagree with the reports issued, that there are things that … that they don't think are true, and that they want to contest those reports. And people, sometimes, it's scary when they get to court. "Oh, he says, no, no, I won't contest." […] "Well, look, there's no point in asserting my rights. I won't be heard, I won't be listened

2879 Testimony *in camera* HC-5, stenographic notes taken March 13, 2018, p. 63, lines 15–20.

2880 *Youth Protection Act*, CQLR c. P-34.1, s. 74.2.

> to anyway." So I think it is extremely important for these people to have the opportunity to get that information, for ... them to know what their rights are, have them explained to them in their own language.[2881]

Some tactics used by workers which result in compromising the free and informed nature of parental consent have also been brought to my attention, either when measures are being proposed or when documents are being signed. That is particularly true of agreements on the so-called "voluntary" measures set out in s. 52 of the YPA. Although the provision explicitly stipulates that the parents have a right to refuse to sign such agreements, and that the DYP must encourage active participation by both the child and his or her parents[2882], witnesses point out that workers often give parents an ultimatum: sign the agreement or end up in court or, worse: sign the agreement or your children will be placed:

> I've witnessed situations where parents have called me and told me: "Listen, Nadine, they're telling us to sign a paper, or my child will be placed. I know that you will tell me the truth. Do I have to sign it?" I said: "Do you agree with it?" If you don't agree, don't sign anything." Is this normal? [...] How do I help parents in a situation like that? I give them as much information as I can on their rights but, as I said earlier, most of the time these are not parents who defend themselves.[2883]

Other testimonies have shown that some of these agreements are not actually negotiated, and that workers make little effort to explain their content.[2884]

Investigations carried out by the CDPDJ confirm that many Indigenous parents sign agreements on voluntary measures or other documents without acknowledging some of the facts they contain or some of the problems they describe. This tends to demonstrate, as Louise Sirois, an investigator with the Direction de la protection et de la promotion des droits de la jeunesse for the CDPDJ told us, that the consent given to such measures is not always free and informed:

> There are a lot of voluntary measures where there is no admission. Under the *Youth Protection Act*, there can only be an agreement with parents on the best way to end the danger to a child if [...] has to be some recognition: "As a parent, this is what I have to correct." One of the most frequent complaints is that there are voluntary measures but no acknowledgement. So, of course, with no recognition, there is no treatment of the parents. So the situation does not change.[2885]

When parents are not informed that legal proceedings have been instituted they cannot prepare for court properly.[2886]

2881 Testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 34–35, lines 8–5.

2882 *Youth Protection Act*, CQLR c. P-34.1, ss. 51 and 52.

2883 Testimony of Nadine Vollant, stenographic notes taken October 20, 2017, p. 88, lines 10–25.

2884 Testimony *in camera* HC-4, stenographic notes taken February 23, 2018, p. 168, lines 16–21; testimony *in camera* HC-18, stenographic notes taken April 3, 2018, p. 27–28, lines 22–6; testimony *in camera* HC-5, stenographic notes taken March 13, 2018, p. 61–62, lines 14–5.

2885 Testimony of Louise Sirois, stenographic notes taken March 12, 2018, p. 80–81, lines 19–7.

2886 Testimony *in camera* HC-19, stenographic notes taken April 3, 2018, p. 83–84, lines 20–23.

All of these testimonies show that several parents fail to understand their rights to contest or refuse decisions made by the DYP. Since they do not understand these rights and the ability to express their points of view on decisions about their children, they do not have the opportunity to be heard.

These testimonies also illustrate the DYP's inadequate way of informing Indigenous parents of their "right… to refuse the application of voluntary measures"[2887], because many of them see the courts as a threat rather than an alternative place to voice their opinions when they disagree.

This conclusion points again to the importance of trust and cultural safeguards in a context as sensitive as a youth protection intervention process. That is why I believe it is essential to reiterate the importance of moving ahead with creating liaison officer positions as suggested earlier in this report.[2888]

11.3.6 The right to propose alternatives to solutions suggested by the DYP

The support of a liaison officer could be helpful when parents propose alternatives to solutions suggested by the DYP. Three DYPs confirmed to us that parents were consulted about directions to take, in particular by participating in orientation tables. For Philippe Gagné, DYP at the CISSS de l'Abitibi-Témiscamingue, this is an opportunity for the parents:

> It is the time to innovate; it is the time to get creative; and it is the time to propose a number of avenues to the DYP to correct a danger situation. There may be culturally relevant ways of doing things.[2889]

Unfortunately, the testimonies did not reveal such openness to creativity. On the contrary: some of the witnesses pointed out that the cultural alternatives proposed by Indigenous parents to end situations of danger, such as healing in the forest or more spiritual therapies, are not recognized as valid solutions by the DYP or the courts.[2890]

> That is not necessarily supported by authorities; it is not necessarily recognized, because, for example, someone can go into traditional therapy and have a hard time having the DYP recognize that as a valid effort. Or a worker who is unfamiliar with it, and who is unable to attest to its value, may say "well I don't know what you are talking about, it's no good; I want you to show me you went to that centre, with this program that I am familiar with and I think you need." That's still where we're at today.[2891]

2887 *Youth Protection Act*, CQLR c. P-34.1, s. 52.

2888 See call to action No. X on page X.

2889 Testimony of Philippe Gagné, stenographic notes takenOctober 18, 2017, p. 77, lines 3–9.

2890 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 45–46, lines 20–19; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 188–189, lines 23–1 and p. 201–202, lines 20–15; testimony of Lucien Wabanonik, stenographic notes taken April 18, 2018, p. 106–107, lines 25–7; testimony *in camera* HC-31, stenographic notes taken April 20, 2018, p. 57–58, lines 19–22.

2891 Testimony of Judith Morency, stenographic notes taken April 18, 2018, p. 65–66, lines 20–7.

However, the benefits of such approaches to healing, like therapeutic stays in the forest, have been written about and their relevance and effectiveness have been demonstrated.[2892]

I therefore recommend that the government:

CALL FOR ACTION No. 125

Recognize and financially support cultural healing approaches when proposed by families subject to the *Youth Protection Act*.

11.3.7 The right to safety during placements

Lastly, although the YPA's main mission is to protect children, to end situations that endanger their safety or development and prevent such situations from recurring[2893], in many situations brought to my attention, the intervention of the youth protection system seems to have endangered the safety of Indigenous children rather than protecting them. Such is the case of the physical or sexual abuse that allegedly occurred when Indigenous children were placed with certain foster families.

During public or *in camera* hearings, a number of witnesses recounted psychological, physical or sexual abuse apparently suffered by Indigenous children when placed in foster families (both non-Indigenous and Indigenous). While it is not part of my mandate to determine whether any of those events really happened, their number nevertheless raises important questions.[2894] The testimony of a parent heard in camera summarizes the feelings of Indigenous families about this:

> According to what my son said about… He was 10 at the time. He stayed there three years, until he was around 13. He saw his little brother locked in a closet for hours at a time. He had to try to help him. […] I can blame, yes, the DYP, that they put

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2892 *Régler ses conflits dans un cadre spirituel: pouvoir, réparation et systèmes religieux chez les Anicinabek du Québec*, document P-537 (Commission); Carroll, M. (2016). *Les séjours thérapeutiques sur le territoire: regards d'intervenants sociaux inuit* (Master's thesis, Université du Québec en Outaouais, Gatineau). Retrieved from http://di.uqo.ca/821/; Clément, S. (2007). *Guérison communautaire en milieu atikamekw: l'expérience du Cercle Mikisiw pour l'espoir à Manawan* (Master's thesis, Université Laval). Retrieved from https://corpus.ulaval.ca/jspui/handle/20.500.11794/19523; St-Arnaud, P. and Bélanger, P. (2005). Co-création d'un espace-temps de guérison en territoire ancestral par et pour les membres d'une communauté autochtone au Québec: appréciation clinique d'une approche émergente et culturellement adaptée. *Drogues, santé et société, 4*(2).

2893 *Youth Protection Act*, CQLR c. P-34.1, s. 2.

2894 Testimony of Kathleen Dechesne-Cayer, stenographic notes taken September 14. 2017, p. 37, lines 20–23; testimony reported by Benoit Théorêt, stenographic notes taken January 22, 2018, p. 191–192, lines 24–4 and p. 192–193, lines 22–7; testimony *in camera* HC-1, stenographic notes taken January 18, 2018, p. 40, lines 14–22; testimony of Lorraine Loranger, stenographic notes taken March 16, 2018, p. 209, lines 15–25, p. 210, lines 3–6 and p. 210–211, lines 19–1; testimony *in camera* HC-21, stenographic notes taken April 5, 2018, p. 207, lines 2–7; testimony *in camera* HC-17, stenographic notes taken March 16, 2018, p. 274, lines 3–10; testimony *in camera* HC-28, stenographic notes taken April 17, 2018, p. 99, lines 21–23, p. 100, lines 3–16 and p. 102, lines 2–12; testimony *in camera* HC-31, stenographic notes taken April 20, 2018, p. 60, lines 1–3, p. 61, lines 3–22 and p. 63–64, lines 24–6; testimony *in camera* HC-53, stenographic notes taken May 25, 2018, p. 76–77, lines 22–11 and p. 83, lines 3–10; testimony *in camera* HC-59, stenographic notes taken June 13, 2018, p. 144-145, lines 15-1 and p. 157-159, lines 17–4; document P–882 (Commission), *op. cit.*, p. 4; testimony *in camera* HC-5, stenographic notes taken March 13, 2018, p. 38–39, lines 6–22; testimony *in camera* HC-12, stenographic notes taken March 14, 2018, p. 214, lines 14–21.

> him in that family rather than another. You know, they didn't know either, and they didn't want to hear what we were saying, that he felt bad, that he didn't want to be there. They didn't listen to us at all. [...] They didn't believe my children. It took time before they believed it. [...] there were complaints about the... the family in question. Because those weren't the first children who suffered psychological violence.[2895]

In another situation reported during an *in camera* hearing, a mother said that the DYP worker asked her to choose whether to place her child in a foster family or with the child's grandparents. With only those two options, she agreed to have her daughter placed with her parents. Without putting all the blame on the DYP worker, she noted that no background check was done on her parents, even though she herself had been placed because of mistreatment:

> I don't want to blame social services too much, but they didn't even check the grandparents' background. Deep down, I really didn't want her to be placed with the grandfather, because I had bad experiences with my father and mother. They didn't evaluate the environment to make sure it was appropriate, but I didn't want her to be placed with a foster family either. I didn't know what to decide. I was in a tough spot.[2896]

The mother's fears were confirmed when she went to Court and was able to spend a moment alone with her daughter.

> My parents were a little way away with the social worker, and my daughter told me: [name of grandfather] has been touching me. I asked her: Where? And after that, she told me: When he hurts me, I'm afraid. I repeated: Where? And she indicated her stomach, her back, her private parts, and her thighs. I didn't know how to react. [...] My daughter had just said that my father was touching her, and he was hurting her, and that she was afraid when he hurt her. The social worker looked at me like I was making it up. I couldn't believe what I saw in her face. She didn't want to believe me. I asked her: Why aren't you doing anything? You have to do something. But she left. [...] She told me to report it, which I did, with reasons I didn't invent, but nothing ever happened.[2897]

A legal adviser at the CDPDJ also told us of a worrisome situation about how foster families were evaluated that had led to investigations between 2016 and 2018. Most of the complaints were about Inuit children in the Nunavik region.

> For example, the DYP didn't refer a case to the court in a timely manner; the child was left in a foster family that had not been evaluated, and no one visited the home for years. This is a failure to abide by important, central provisions of the Youth Protection Act [...]. This was a placement that was initially supposed to be for 30 days, but that went on for years. No evaluation of the foster family was done, despite the fact that the foster family was receiving benefits. No measures were taken by the DYP, nor were there any Court decisions, between April 2011 and September 2017.[2898]

2895 Testimony *in camera* HC-27, stenographic notes taken April 17, 2018, p. 68–69, lines 23–3 and p. 66–68, lines 21–2.

2896 Testimony reported by Emmanuel Morin, stenographic notes taken March 13, 2018, p. 110, lines 7–21.

2897 *Id.*, p. 116–117, lines 17–3, p. 118, lines 12–23 and p. 119, lines 2–6.

2898 Testimony of Sophie Papillon, stenographic notes taken March 12, 2018, p. 53, lines 13–20 and p. 59, lines 16–24.

The CDPDJ analysis of the situation of 62 children from Ungava Bay and 77 children from Hudson Bay between 2002 and 2005[2899] also concluded that there were "problems providing services at all stages of the application of the Act"[2900], that foster families had not been evaluated even though they presented serious difficulties[2901], and that children were placed in environments with an adult abuser.[2902] So this is not a new problem.

11.4. Persistent over-representation

Like infringements of rights, the over-representation of Indigenous children in the youth protection system has been confirmed by a number of recent studies.[2903]

The reporting rate, the point of departure for any youth protection intervention, is three and a half times higher for Indigenous children than for non-Indigenous children.[2904] The rate for taking charge, i.e. the number of times a reported case is deemed justified and leads to actions, is four times higher than in the general population.[2905] First Nations children also have a rate of placement in an alternative environment (regular foster family, rehabilitation centre, etc.) nearly eight times higher (7.9) than the Québec average.[2906]

Wanting to learn more about this situation, the Commission's team talked to the institutions operating in the 18 health regions of Québec to obtain data about the placement (under voluntary measures or court-ordered) and full adoptions of Indigenous children for the period covered by my mandate: 2001 to 2017.[2907]

The answers reveal serious flaws in the data collection methods of public agencies. Not only is the data not uniform and does not cover the entire period, but there are also major regional differences in how data about children who have been placed is compiled. In Abitibi-Témiscamingue, for example, it is the CISSS that assumes all responsibility for youth protection. Children who have been placed, whether Indigenous or not, are therefore recorded in the Projet Intégration jeunesse (PIJ) computer system and the Système d'information sur les ressources intermédiaires et de type familial (SIRTF) used by the provincial institution.

2899 *Enquête portant sur les services de protection de la jeunesse dans la baie d'Ungava et la baie d'Hudson – Avril 2007*, document P-453 (Commission).

2900 Testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 110, lines 19–20.

2901 *Id.,* p. 112, lines 1–2.

2902 *Id.,* p. 112, lines 3–5.

2903 Sinha, V., Trocmé, N., Fallon, B. et MacLaurin, B. (2013). Understanding the Investigation-Stage Overrepresentation of First Nations Children in the Child Welfare System: An Analysis of the First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect 2008, *Child Abuse & Neglect, 37*(10), 821-831; Breton, A., Dufour, S. et Lavergne, C. (2012). Les enfants autochtones en protection de la jeunesse au Québec : leur réalité comparée à celle des autres enfants. *Criminologie, 45(2)*, 157-185First Nations of Québec and Labrador Health and Social Services Commission. (2016). *Analysis of the Trajectory of Young First Nations Subject to the Youth Protection Act. Component 3: Analysis of mainstream youth protection agencies administrative data*. Wendake, Québec: FNQLHSSC, p. 911.

2904 Breton, Dufour and Lavergne. (2012), *op. cit.*, p. 159.

2905 *Ibid.*

2906 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 14.

2907 Document PD-18 (Commission), *op. cit.*, p. 6–8.

In other regions, such as the North Shore, the situation is quite different: the Indigenous organizations manage the foster families and monitor the children placed in care. In addition, because the Indigenous foster families are not represented by associations in that region and are not subject to the *Act respecting the representation of family-type resources and certain intermediate resources*[2908], the data on Indigenous children placed in care is not included in the Système d'information sur les ressources intermédiaires et de type familial (SIRTF). As a result, the available data may underestimate the exact number of Indigenous children placed in care for communities that have responsibilities under *the Act respecting health services and social services* or the YPA. The same applies for Indigenous organizations that do not use the PIJ system to compile data on children covered by the YPA. Those figures are found in other systems (e.g. YAM used in Eeyou Istchee) and they are difficult to cross reference against data compiled by the MSSS.

The available data does not help us determine whether the people taking in Indigenous children (either as foster families or adoptive parents) are themselves Indigenous and members of the same Indigenous nations as the children. Nor does the data indicate whether the placements are temporary (e.g. 6 months) or permanent (e.g. until adulthood). However, that information is extremely important when it comes to preserving the cultural identity of Indigenous children when they are placed.

Based on the data, the same child may be counted multiple times. For example, an 8-year-old placed in care in 2004 until adulthood will appear in the data for the following 10 years until age 18. Lastly, it should be noted that when statistics are compiled in the various IT systems, the child's ethno-cultural profile is determined according to the information available. When that profile is unknown, the child is listed in the system as non-Indigenous by default. That is most likely to occur in the case of Indigenous children living in urban environments.[2909]

That said, despite the significant limitations we have described, an analysis of the information obtained tends to confirm that Indigenous children are over-represented in the youth protection system in at least four health regions, namely, Saguenay–Lac-Saint-Jean, Abitibi-Témiscamingue, North Shore and Lanaudière.

Based on the data obtained for the period from 2001 to 2017, for instance, the Commission's team determined that the placement rate for Indigenous children in Mashteuiatsh was 3.7 times higher than it was for non-Indigenous children in the Saguenay–Lac-Saint-Jean health region where the community is located.[2910]

The difference is even greater in Abitibi-Témiscamingue because the information obtained for the period from 2001 to 2017 shows that the placement rate for Indigenous children living in communities was 9.2 times higher than it was for non-Indigenous children living in that region.[2911]

2908 *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*, CQLR c. R-24.0.2.

2909 First Nations of Québec and Labrador Health and Social Services Commission. (2016), *op. cit.*, p. 162.

2910 Document PD-18 (Commission), *op. cit.*, p. 22.

2911 *Id.*, p. 41–42.

During the same time period, the placement rate for Indigenous children living in North Shore communities was 3.1 times higher than it was for non-Indigenous children in that region.[2912] An overview of youth protection living arrangements in the North Shore region prepared by the territory's CISSS in October 2017 also highlighted the fact that Indigenous children (whether covered by an agreement or not, and whether in or outside a community) made up 63.7% of the total stays (rehabilitation centre, foster family or extended family).[2913] Other figures from the research team's analysis showed that the adoption rate for Indigenous children (per 1,000 inhabitants) was 3.1 times higher than it was for non-Indigenous children in that region.[2914] The adoption rates were especially high in Ekuanitshit (Mingan) (5.4 times higher) and Uashat mak Mani-Utenam (3.7 times higher).[2915]

In the Lanaudière region, based on the data for the period from 2010 to 2016, the placement rate for Indigenous children in Manawan was estimated to be 3.3 times higher than it was for non-Indigenous children.[2916]

For Eeyou (Cree) living on Eeyou Istchee territory, the available reference material indicated that the average placement rates varied between 23 and 37 children per 1,000 from 2014 to 2017.[2917] However, those figures are different from the other statistics in a report prepared for the Cree Board of Health and Social Services of James Bay to estimate the resources (financial, human and material) needed to meet the actual youth protection needs. That report states that 613 Eeyou (Cree) children were placed in care under the YPA in 2016, representing a rate of 94 children per 1,000.[2918] The brief filed by the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government stated that one child out of five had been reported, most of them for neglect.

> One in 5 children is signalled to youth protection each year (over 1,000 cases per year), of which about 85.0% of cases are retained, mostly related to negligence (64%), behavioural problems (30.0%), physical and sexual abuse (5.0%), and abandonment (1.0%). There are a growing number of urban Aboriginal persons, many of whom lack clean and safe living conditions, and do not have enough to eat.[2919]

Lastly, few statistics are available concerning Inuit children living in Nunavik territory because they are not factored into most of the youth protection searches in Québec. That is a major limitation, making it impossible to get a similarly detailed picture of the situation for those children. That said, very large differences can be observed between the data compiled by

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2912 *Id.*, p. 50.

2913 *Portrait au 5 octobre 2017 de l'hébergement en protection de la jeunesse - région de la Côte-Nord*, document P-127 (Commission).

2914 Document PD-18 (Commission), *op. cit.*, p. 50.

2915 *Ibid.*

2916 *Id.*, p. 61.

2917 *Id.*, p. 73.

2918 *Audit on Youth Protection Resources/Report,* document P-110 (Commission), p. 13.

2919 Brief of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government. (June 14, 2017), *Initial Brief*, document P-010 (Commission), brief M-001, p. 10, para. 49.

the MSSS and that from the institutions working in the territory. The figures on children's living arrangements in the annual reports of the Inuulitsivik Health Centre are actually much higher than those provided by the MSSS during the Commission's work. For example, while the Inuulitsivik Health Centre reported 302 children in foster families in 2016-2017[2920], the information provided by the MSSS indicated that only 33 Inuit children were living in foster families during that same time period.[2921] That difference seems to indicate a substantial under-evaluation in the data compiled by the MSSS and a misunderstanding of the real situation of Inuit children placed in care under the YPA in Nunavik.

According to the data obtained from the MSSS, 474 Inuit children aged 0 to 17 were placed in care between 2012 and 2017. However, another document filed by the two DYPs in Nunavik indicated instead that 544 children had been placed in foster families (by the Inuulitsivik and Tulattavik health centres) for the 2017-2018 year alone.[2922] Data submitted during the hearings also showed a major increase in the number of Inuit children placed in care outside Nunavik after maximum stay periods were introduced. Whereas that situation applied to 4 children from 2001 to 2007, it affected 95 children between 2008 and 2018.[2923]

That said, despite the findings, it is clear that, once again, the major shortcomings of data collection limit the ability of provincial institutions to get a clear picture of the actual situation concerning the over-representation of Indigenous children in the various stages of youth protection intervention (cases reported and accepted, evaluations justified, voluntary and court-ordered measures, children monitored after the application of measures, number of children placed in care or adopted, etc.). It therefore becomes difficult or even impossible to assess the effectiveness and efficiency of the services for Inuit and First Nations children.

Faced with the same problem, the Manitoba government opted for a unique data gathering approach. The Manitoba Population Research Data Repository (MPRDR) is a database that consolidates administrative data, surveys, records and figures from a variety of fields including youth protection, health and social services, and justice.[2924] Through data linkage, the database makes connections among figures originating from different sources; it might combine data for health and youth protection, for example. Four studies that have the potential to influence public policy are funded every year. Those studies must be made public and, even though the participants' privacy is protected, the government cannot keep any sensitive information confidential. The data can also be accessed by researchers to guide their research into the concerns of the partner Indigenous communities and organizations.[2925]

2920 Inuulitsivik Health Centre. (2017). Annual Report 2016-17. Retrieved from https://www.inuulitsivik.ca/wp-content/uploads/2019/05/Rapport-annuel-2016-2017-english-version.pdf, p. 68.

2921 Document PD-18 (Commission), *op. cit.*, p. 68.

2922 *PowerPoint presentation to the Commission. DPJDP*, document P-1128 (Commission), p. 19 and 22.

2923 *Id.*, p. 25.

2924 *La collecte de données ethnoraciales par les services publics*, document PD-1 (Commission), p. 43.

2925 *Id.*, p. 44.

The Manitoba experience shows that it is feasible to obtain an accurate picture of the situation for the purpose of making informed decisions. I therefore recommend that the government:

CALL FOR ACTION No. 126

Working with Indigenous authorities, make an annual calculation of the number of Indigenous children subject to the *Youth Protection Act* and obtain any other data deemed relevant under the Act in order to accurately assess the presence of Indigenous children in the system and how they are treated.

This call for action is directly in line with the need expressed earlier in this report for an accurate picture of Indigenous peoples in Québec, their needs and the relationships they have with public services.[2926]

11.5. Insufficient services

The over-representation of Indigenous children in the system is even more of a concern because the First Nations and Inuit in Québec are dealing with serious issues when it comes to accessing child and family services.

11.5.1 Gap in terms of local social services

The high rates for reporting, taking in charge and placement involving Indigenous children especially highlight the fact that preventive social services are insufficient or even unavailable in a number of communities. Funding is the core of the problem.

For instance, a number of communities not covered by an agreement did not receive any funding to develop local social services before 2009. According to the Abitibi-Témiscamingue DYP, the delay in providing funding meant that youth protection services were the primary gateway for receiving services:

> [In] Lac Simon, there are eight professionals delivering front-line services. Two are assigned to children and families. In my view, if we want to reduce the over-representation of Indigenous children in protection services and improve the living conditions for those people who are, in my opinion, the source of that over-representation, we will need to tip the scales and offer more services earlier in the life paths of those children. [We need] many more front-line services to meet the crying needs when it comes to negligence, mental health and addiction. Those are all problems that, if we addressed them sooner, could have an impact on the number of cases reported over the course of a year.[2927]

Even though the federal government now funds services focusing on prevention through the First Nations Child and Family Services (FNCFS) Program in communities not covered by an agreement, the Canadian Human Rights Tribunal delivered a

2926 See pp. 223-229 of this report.

2927 Testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 41–42, lines 13–8.

historic judgement on that topic in January 2016. As various witnesses told us[2928], the judgement is very clear in highlighting the fact that the programs set up by the federal government for Indigenous peoples are inadequate, insufficient and discriminatory:

> The evidence in this case not only indicates various adverse effects on First Nations children and families by the application of AANDC's [Aboriginal Affairs and Northern Development Canada's] FNCFS Program, corresponding funding formulas and other related provincial/territorial agreements, but also that these adverse effects perpetuate historical disadvantages suffered by Aboriginal peoples, mainly as a result of the Residential Schools system.[2929]

The lack of funding for culturally safe preventive services is also an issue in communities covered by an agreement.[2930] The Eeyou (Cree) and Naskapi have been saying since 2012 that the funding formula for that type of service was outdated and no longer met their needs.[2931] The same goes for Nunavik. The Parnasimautik report released in 2014 discussed the major difficulties experienced by Inuit families and the substantial investments needed in terms of prevention, community support and specialized services. The report also pointed out that the funding parameters do not usually take essential factors such as the geographic, climate and social realities, including population growth, into account.[2932] For some people, including Nunavik former resident Barbara Northup, even the investments made in response to the CDPDJ's systemic investigation in Nunavik in 2015 did not focus on prevention:

> The example that comes to mind for me is the reaction to the Human Rights Commission report on Youth Protection of several years ago. There was a lot of money invested in Nunavik, there was a lot of money invested in Youth Protection. There were vehicles purchased because the workers needed to transport children, they needed to be able to get around. There was money for housing so that social workers could be hired and have a place to live. There was money to hire [...] social workers. [...] but it was only after the fact that people kind of stopped, and said – well, gee, wait a minute, that's like, second line and in the meantime, where's the first line services? Where are the people who are going to try to prevent situations becoming Youth Protection situations? [...] We got... put the cart before the horse and that in the desperation of wanting to do good, and wanting to do good and trying to do good and spending money to do good, we ended up creating situations that didn't really fix the problems that were identified in the Human Rights Commission report and more importantly, did not really address the needs of families and kids in Nunavik.[2933]

2928 Testimony of Colleen Sheppard, stenographic notes taken June 7, 2018, p. 56–58, lines 14–11; testimony of Sébastien Grammond, stenographic notes taken September 22, 2017, p. 187–190, lines 19–22.

2929 *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (Representing the Minister of Indian Affairs and Northern Development Canada)*, 2016 CHRT 2 1340/7008, para. 404.

2930 Eeyou (Cree), Inuit and Naskapi nations.

2931 Cree Naskapi Commission. (2012). *List of Recommendations Made by the Cree Naskapi Commission from its Biennial Reports of 1986 to 2012.* Retrieved from http://www.creenaskapicommission.net/Discussion/List%20of%20recommendations.htm.

2932 *Parnasimautik Consultation Report. On the Consultations Carried Out with Nunavik Inuit in 2013,* document P-202 (Commission).

2933 Testimony of Barbara Northup, stenographic notes taken November 13, 2018, p. 232–233, lines 13–20.

In addition to highlighting the inconsistencies of the system, this testimony illustrates the importance of taking the real needs of children and their families into account. As stated earlier, living conditions continue to be difficult in Québec's Indigenous communities.[2934] Those conditions have impacts on the children's development in terms of education and health. Among them are children who are therefore at higher risk of falling under the YPA.

The lack of preventive or specialized services is an aggravating factor for this problem. The story of a mother who came to testify *in camera* provides an eloquent illustration. After making multiple requests, first to the community where she was living, then to the territory's CISSS and even her own original community, she finally reported her family situation to the DYP herself because it had become "unbearable" for her and her son.[2935] It took the DYP two years to take action. During the hearings, that mother gave an emotional account of the events:

> [T]hey got going [...] when at one point [...] I flew off the handle, I lost control of myself and I beat up my son. [T]wo weeks before that, I'd called the DYP, I'd gone out of the house, I was shaking [...], I said: "Come and pick him up, otherwise next time, I'm sure of it, I know myself, [...] I'm going to tackle him." I said: "Come and get him, I need him to leave the house, we need a break." I said: "We need help [...] because he's starting to destroy the walls," you know, he was making holes in the walls and was hitting them, he was also very violent at that point. Nothing was done [...] And then, I... I tackled him. I... I beat him, and when I say beat, I mean I beat him up then I grabbed him and then I jumped on him.[2936]

Still today, she says she is convinced that the events could have been avoided if she and her son had been able to benefit from local services as soon as she had expressed the need. Other stories told during the Commission's work confirm that this interpretation of reality is well founded.

The problem is even more pressing in remote communities where the lack of services often makes it impossible to implement the recommendations of reviewers or judges or to comply with the obligations entered on orders, as corroborated by this social worker:

> [L]et's say the requirement was that the mother could see her children only during supervised visits. [...] In Ekuanitshit it was possible because the road goes there but in La Romaine... A supervised visit means there has to be an assigned worker who has to be present at all times for the entire duration of the visit. That means we have to take a worker from here [in Sept-Îles] [...]. It's like a recommendation or judgement would come in, and it would say that [...] the parent needs to have psychological follow-up for two years. We couldn't comply with that recommendation or that part of the judgement because we didn't have those kinds of resources there.[2937]

2934 See Chapter 6 on the general findings from the Commission's work.

2935 Testimony *in camera* HC-36, stenographic notes taken May 15, 2018, p. 187, lines 8–13.

2936 *Id.*, p. 188–189, lines 14–23.

2937 Testimony of Linda Belzil, stenographic notes taken May 11, 2018, p. 54, lines 6–21 and p. 55–56, lines 24–9.

I therefore recommend that the government:

CALL FOR ACTION No. 127

Increase availability and funding for local services intended for Indigenous children and their families, including crisis management services, in communities covered by an agreement and in urban environments.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 128

Initiate tripartite negotiations with the federal government and Indigenous authorities to increase the availability of local services intended for Indigenous children and their families, including crisis management services, in communities not covered by an agreement.

11.5.2 Foster families

Youth protection prevention services are not the only services that are lacking in the communities. It is also important to note that there are few Indigenous foster families that are able to meet the evaluation criteria set by the MSSS. Grandparents have been denied foster family status for their grandchildren because they did not meet the necessary health or age criteria:

> She came to see me and she said that since I couldn't look after my granddaughter [...] she would be going to a foster family. I couldn't take my granddaughter because of my... because they considered me a kokom [grandmother] who wasn't able to take care of her grandchildren. They never asked me for a medical certificate to confirm all that [...].[2938]

Since then, the Ministère has reviewed its evaluation criteria. However, according to the testimonies we heard, there are still a number of negative factors when it comes to putting children in the care of significant people. One of those is obtaining home insurance. Even though the MSSS reference framework specifies that the criterion may be analyzed on a case-by-case basis for Indigenous foster families (with the possibility of an exception), according to the testimony of a social work intern during the Commission's hearings, the use of the exception clause is complicated:

> While I was working on the case, I noticed that it was taking a long time for the kinship foster family to provide confirmation of civil liability coverage under their home insurance. [...] The insurer's rejection came immediately after the application and gave two reasons: first, because the grandfather had previously stopped paying a car insurance policy, and second, because one of the other occupants

2938 Testimony *in camera* HC-1, stenographic notes taken January 18, 2018, p. 23, lines 18–21, p. 31, lines 7–12 and p. 32, lines 6–9.

> of the home had previously been found guilty of breaking and entering involving theft. […] It seemed clear to me that those rules constituted discrimination based both on that family's socio-economic status and its past history. […] I therefore took the initiative of reading the reference framework more closely and I saw that the Ministère de la Santé et des Services sociaux was aware of those difficulties. […] When I saw that exception clause, I immediately sent an email to the person in charge of reviewing youth protection cases, asking him to use the clause for that kinship foster family so that we could avoid further discrimination by preventing them from earning income that could have helped them and been useful in keeping the child in a culturally safe family environment. I never received a reply from the reviewer.[2939]

Failing to provide support for kinship foster families on the pretext that they are already compensated also has a negative impact on recruitment. For example, even when the families are exhausted, they do not have access to any respite. As explained to the Commission by a family representative, exhaustion and lack of support can mean that children are switched to non-Indigenous foster families hundreds of kilometres away from the community.

> [I] was really exhausted. The children were still in diapers. […] I asked for some relief and the social services [worker] told me that since I was considered a foster family, I was in charge of taking care of the children and paying for a babysitter or finding the help I needed for support. I understood that, but I asked her what would happen if I wasn't able to take care of the children any more. She told me that if I didn't want to take care of them any more, social services would come and pick them up and put them in foster care in the Montréal region and I wouldn't be able to see them again. I took that as a threat and I felt guilty.[2940]

The lack of support and assistance for filling out forms and completing the necessary procedures is also an issue.[2941]

The evidence also highlighted a significant disparity in how Indigenous foster families are treated financially. Jurisdictional conflicts between the federal and provincial governments are partly to blame for this situation, at least for nations not covered by an agreement.

A number of foster families said it is not clear how responsibilities are shared between Indigenous communities (which manage their own foster families) and the CISSSs, and that the confusion leads to unjustified stop payments. One witness said she had phoned the youth centre and was told that the community was responsible for paying the foster families in that territory. However, when she asked the community representatives, they said that the youth centre was responsible. After being shuffled from one organization to another and not getting paid between February 2017 and November 2017, she finally turned

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2939 Testimony reported by Annie Duciaume, stenographic notes taken June 8, 2018, p. 199, lines 5–9, p. 199–200, lines 17–14, p. 202, lines 15–25 and p. 203–204, lines 1–1.

2940 *Statutory declaration of PI-64*, document P-652 (Commission), p. 4.

2941 Testimony of Jessica Mitchell, stenographic notes taken May 22, 2018, p. 265, lines 11–20 and p. 284–285, lines 24–4; testimony *in camera* HC-20, stenographic notes taken April 5, 2018, p. 144, lines 19–22 and p. 162–163, lines 23–3.

to a lawyer to collect the amounts owed to her.[2942] The foster families in those situations did receive retroactive payments, but the ambiguity made it more difficult to meet the children's needs (food, clothing, etc.) for a long time.

Minnie Grey, Director General of the Nunavik Regional Board of Health and Social Services, explained that even though Inuit foster families are better protected against federal-provincial jurisdictional conflicts because of the James Bay and Northern Québec Agreement (JBNQA), they are also clearly at a disadvantage from a financial standpoint[2943]:

> [...] a foster family who is fostering in Salluit, let's say it's a Qallunaat family who's fostering a child for years and years, and for different reasons has to move down. For sure the child will stay with that family because of different reasons, but they were paying forty-five dollars ($45) up North in Salluit and as soon they will touch the Southern territory Montreal, they will receive more than seventy bucks ($70) [...] For the same child. It's just because they moved down South. It should be the contrary like.[2944]

The fact that they are not represented by an association appears to be the reason those foster families receive much less than foster families located in other administrative regions.

The federal government offers a standardized rate to financially compensate foster families in communities not covered by an agreement[2945], but that is not the case for the Inuit, Cree (Eeyou) and Naskapi because that financial responsibility falls to the provincial government. Since they are not represented by an association and are not eligible for the federal government's standardized rate, those foster families are discriminated against financially. As a result, they may have trouble meeting the needs of the children they are caring for, particularly since the cost of living is much higher in the North.

The role of foster families, especially kinship foster families, is crucial in the youth protection system. I therefore recommend that the government:

CALL FOR ACTION No. 129

Clarify and change the eligibility criteria for Indigenous foster families, including the criteria for the physical environment and the follow-up done with foster families, so that those families can access the services they need to provide the best possible environment for the children.

2942 Testimony *in camera* HC-3, stenographic notes taken February 21, 2018, p. 147–155, lines 22–24.

2943 Testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 184, lines 12–25; testimony of Minnie Grey, stenographic notes taken November 21, 2018, p. 135–136, lines 24–15.

2944 Testimony of Yoan Girard, stenographic notes taken November 21, 2018, p. 138, lines 1–22.

2945 Except for Mashteuiatsh.

CALL FOR ACTION No. 130

Ensure that families and significant people who are not represented by an association and who foster Indigenous children receive financial compensation equivalent to family-type resources under the *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreement.*[2946]

11.5.3 Rehabilitation centres at full capacity

In Nunavik, due to the difficulties of recruiting foster families, a higher number of children are placed in living units in rehabilitation centres. The system is under such pressure that the occupancy rate in the area's centres—up to 136.0% at some units in 2017–2018—exceeds the number of spaces available.[2947]

This excessive occupancy rate has many consequences for young Inuit in the system. As one of the DYPs in Nunavik said, children do not receive the attention they deserve, and some of them are placed "wherever there is a bed, with little consideration as to where their needs would best be met".[2948] The shortage of workers and educators at these centres also means that the focus shifts from healing intervention to management and control. According to the Interim Director of regional rehabilitation services for young persons with adjustment problems at the Ungava Tulattavik Health Centre, rehabilitation centre employees regularly work overtime, which compromises their ability to effectively supervise children[2949] and may put the youngsters at risk.

A lack of security measures at these rehabilitation centres was also mentioned by witnesses and in documents filed as evidence, with references to suicides and suicide attempts by young people placed in these centres.[2950] One mother testified *in camera* of her daughter's suicide attempt after she had been placed in a rehabilitation centre:

> [I] called her often (to find out) how she was doing, and I sensed a lot of sadness, hopelessness. [S]he told me she was tired, so I called the team leader of the unit and asked her: do you think my daughter should be taken to the hospital? She is not doing well, she does not feel well. The only thing she said to me, the team leader was: your daughter is manipulating you. [...] She ended up going to do some activities with her group, she took a rope and hanged herself in the gym washroom. They did not even call me to tell me she was being taken to the hospital, and that she had wanted to hang herself.[2951]

2946 *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*, CQLR c. R-24.0.2.

2947 The occupancy rate of each unit is displayed in Appendix 43 of this report.

2948 *PowerPoint presentation to the Commission by Leigh Johnston, Interim Director, Direction of regional rehabilitation services for young persons with adjustment problems*, document P1129 (Commission), p. 9.

2949 *Ibid.*

2950 *Implementing good practice in suicide prevention in Nunavik: Recommendations based on analysis of information from coroners' report from 2000 to 2013*, 2016, document P726 (Commission), p. 9.

2951 Testimony *in camera* HC28, stenographic notes taken April 17, 2018, p. 112–113, lines 20–3 and p. 113, lines 11–16.

I find these kinds of situations unacceptable. I therefore recommend that the government:

CALL FOR ACTION No. 131

Invest to increase the number of available spaces where needed at youth rehabilitation centres in Indigenous communities covered by an agreement.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 132

Initiate tripartite negotiations with the federal government and Indigenous authorities to increase the number of available spaces where needed at youth rehabilitation centres in Indigenous communities not covered by an agreement.

11.5.4 Non-existent or insufficient post-placement services

Another observation with respect to youth protection services has to do with the number of Indigenous youngsters who find themselves without access to help once they have aged out of the foster system. Parents and young people are essentially left to their own devices, usually without any preparation[2952], as this mother described in her *in camera* testimony:

> Toward the end of 2007 she had turned 18, and [...] she still wanted help from the social worker. She wanted to ask her if she could, if the social worker could find a treatment centre for her. I was really surprised, because the social worker, she did not want to help her any longer... the door was completely closed. [W]hile she was a teenager, she was closely supervised, but as soon as she turned 18, she was abandoned.[2953]

Scientific studies have shown that young people who have gone through the youth protection system are particularly at risk of experiencing challenges with socio-professional integration, major social problems and run-ins with the law.[2954] It is therefore crucial to

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2952 Testimony *in camera* HC20, stenographic notes taken April 5, 2018, p. 147, lines 3–9; testimony *in camera* HC17, stenographic notes taken March 16, 2018, p. 287, lines 15–18; testimony *in camera* HC51, stenographic notes taken May 24, 2018, p. 71, lines 6–10 and p. 72, lines 8–14; testimony of Xavier Moushoom, stenographic notes taken April 4, 2018, p. 26–28, lines 17–11 and p. 41, lines 15–20; testimony *in camera* HC19, stenographic notes taken April 3, 2018, p. 70, lines 9–20; testimony *in camera* HC55, stenographic notes taken June 8, 2018, p. 241–242, lines 15–17; document P882 (Commission), *op. cit.*, p. 2; testimony *in camera* HC72, stenographic notes taken September 11, 2018, p. 376–377, lines 14–11; testimony *in camera* HC52, stenographic notes taken May 25, 2018, p. 16–17, lines 3–15.

2953 Testimony *in camera* HC-10, stenographic notes taken March 13, 2018, p. 250–251, lines 25–15.

2954 Goyette, M. and Frechon, I. (2013). Comprendre le devenir des jeunes placés : la nécessité d'une observation longitudinale et représentative tenant compte des contextes socioculturels et politiques, Revue française des affaires sociales, 2013(1–2), 164–180; Goyette, M., Pontbriand, A., Turcotte, M.E., Mann-Feder, V., Turcotte, D., Grenier, S. and El-Hadji Sawaliho, B. (2012). *Parcours d'entrée dans la vie adulte et stratégies d'autonomisation des jeunes autochtones suivis ou placés en protection de la jeunesse*. Montréal, Québec: CREVAJ, École nationale d'administration publique.

prepare them for independent living and support them post-placement, in order to reduce the likelihood of criminalization and victimization.[2955]

This is even more important for Indigenous children. Being placed outside their villages and communities creates additional challenges for young First Nations members and Inuit. Although many of them decide to relocate close to their families once they turn 18, they have often lost their language and culture. That makes reintegration much more difficult.[2956] They also have very little access to resources for help with this process.

I therefore recommend that the government:

CALL FOR ACTION No. 133

Increase the level of and funding for post-placement services for indigenous children in communities covered by an agreement and in urban centres.

With a view to population-based responsibility, I also recommend that the government:

CALL FOR ACTION No. 134

Initiate tripartite negotiations with the federal government and Indigenous authorities to increase the level of and funding for post-placement services in Indigenous communities not covered by an agreement.

11.6. A system that repeats history

Some would say (correctly) that the problems raised before the Commission are not exclusive to members of First Nations and Inuit who are subject to the YPA. It is important to understand, however, that the consequences are different in an Indigenous context. Not only are parents and children separated very quickly, but placing them in non-Indigenous foster homes makes it hard to preserve children's culture and maternal language, as many of the testimonies demonstrate.

For some witnesses, the current approach to child placement is just part of a continuum of disappearance: like the residential school system and the illegal adoptions known as the "sixties scoop," it contributes to the erasure and weakening of the Indigenous communities' social fabric.[2957] Others went so far as to say that the youth protection system, with its high

2955 *Ibid.*

2956 *Martin Scott, Report to the Commission d'enquête*, document P954 (Commission), p. 10.

2957 Testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 123–124, lines 21–7; testimony *in camera* HC10, stenographic notes taken March 13, 2018, p. 240, lines 6–14; testimony *in camera* HC15, stenographic notes taken March 15, 2018, p. 103, lines 13–17; testimony *in camera* HC17, stenographic notes taken March 16, 2018, p. 288, lines 1–6; testimony *in camera* HC32, stenographic notes taken May 10, 2018, p. 186–187, lines 24–3 and p. 188–190, lines 19–5.

rate of placement among Indigenous children, is "the new residential school experience".[2958] It should come as no surprise that, in this context, Indigenous communities believe the DYPs are there to "remove" children.[2959] In some Indigenous languages (such as Anishnabe), the term "director of youth protection" is translated as "he or she who removes or takes children."

This mother's heartfelt *in camera* testimony sums up the view of Indigenous peoples toward youth protection services:

> My grandmother went through the residential school system. My mother was in foster care. We were in foster care. My child is in foster care. This has gone on for four generations. It has to stop.[2960]

Because they distrust the youth protection services so much, some women do not dare ask for help or report violence they have experienced, for fear that their children will be taken away. This fear sometimes keeps them in situations that compromise their own safety, as explained by Andrienne Jérôme, Chief of the Lac Simon Anishnabe community, during hearings in June, 2017.[2961] Other witnesses said the same thing.[2962]

The current climate of suspicion leads parents to invent and expand their own protection strategies: they film or record social workers during interactions[2963], prohibit social workers from entering the home, do not go to their appointments[2964], build barriers to prevent DYP workers from entering the community[2965], and more. In my opinion, while these actions may seem extreme, they should be taken for what they are, i.e. makeshift measures to protect what these people hold most dear: their children. Would any of us act any differently if we were convinced our children were in danger, as so many Indigenous people are?

2958 *Presentation of Makivik Corporation and Nunavik Inuit*, document P008 (Commission), p. 23.

2959 Testimony of Tanya Sirois, stenographic notes taken June 8, 2017, p. 52, lines 9–13; testimony of Annie Baron, stenographic notes taken September 28, 2017, p. 114, lines 22–23 and p. 123, lines 10–17; testimony *in camera* HC32, stenographic notes taken May 10, 2018, p. 208, lines 13–22; testimony *in camera* HC65, stenographic notes taken August 23, 2018, p. 166, lines 8–17.

2960 Testimony *in camera* HC19, stenographic notes taken April 3, 2018, p. 100, lines 2–7.

2961 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 33, lines 4–19.

2962 Testimony of Béatrice Vaugrante, stenographic notes taken September 29. 2017, p. 225, lines 10–15; Notes personnelles de Lorraine Loranger, document P-474 (Commission), p. 2 and 3 (online PDF).

2963 225 Testimony of Adrienne Jérôme, stenographic notes taken June 7, 2017, p. 62, lines 4–14.

2964 Testimony of Annie Pisuktie, stenographic notes taken March 21, 2018, p. 262, lines 9–16.

2965 Testimony *in camera* HC-22, stenographic notes taken April 10, 2018, p. 47–49, lines 22–2.

11.7. Redefining governance

I have no doubt that, for Indigenous peoples, the youth protection system has reached its limit. The government's attempts to improve the situation over the years by amending the YPA, with provisions allowing Indigenous communities to assume certain duties associated with youth protection, is a sign of awareness.

For example, s. 37.7 of the Act allows some duties normally assigned to DYPs to be assumed by social workers in Indigenous communities not covered by an agreement. As outlined in Chapter 5 of this report, most Québec communities not covered by an agreement have availed themselves of that option and made bilateral agreements with the CISSS or CIUSSS on their territories.[2966]

Although this approach may be popular, the evidence reveals that the current agreements are becoming obsolete. Many bilateral agreements have not been renegotiated in years. Such is the case for the agreement between the Centre de protection de l'enfance et de la jeunesse de la Côte-Nord (known today as CISSS de la Côte-Nord) and the Pessamit community, signed in 2003[2967], the 2005 agreement with Essipit[2968], the 2005 agreement with Regroupement Mamit Innuat[2969], and the 2010 agreement with Uashat mak Mani-Utenam.[2970] Needless to say, these communities have undergone significant transformations in the years since those agreements were signed, and their needs may have changed.

In addition, many sections of those agreements are no longer applicable because of changes made since the passing of the *Act to Modify the Organization and Governance of the Health And Social Services Network, in Particular by Abolishing the Regional Agencies*.[2971] That Act, which precipitated a major transformation in the way health and social services are organized, has shifted the responsibility for certifying foster families (who are key to the application of the YPA).[2972] Lastly, because there is no framework governing the content of such agreements, their elements and level of detail vary significantly from one to the next.[2973]

Although these kinds of agreements seem promising on paper, they should not be seen as granting autonomy to Indigenous communities. In reality, those communities remain entirely subject to Québec standards and remain under the control of DYPs or the MSSS.

DYPs who spoke at the hearings said the existing situation was justified because they remain accountable for the actions and interventions of their staff members and also of

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2966 See chapter 5, p. 191.

2967 *Appendix 5 of the MSSS response to the DG0095DEF*, document P79124 (Commission), tab 24.1.5.

2968 *Appendix 6 of the MSSS response to the DG0095DEF*, document P79124 (Commission), tab 24.1.6.

2969 *Appendix 7 of the MSSS response to the DG0095DEF*, document P79124 (Commission), tab 24.1.7.

2970 *Appendix 1 of the response to the DG-0095-DEF*, document P79124 (Commission), tab 24.1.1.

2971 *Act to Modify the Organization and Governance of the Health and Social Services, in Particular by Abolishing the Regional Agencies*, CQLR c. O-7.2.

2972 Document P79124 (Commission), *op. cit.*

2973 *Ibid.*

the organizations to which they delegate powers.[2974] Questioned about how the system operates, North Shore DYP Marlene Gallagher said she could at any time, "decide to take all the responsibilities back temporarily or permanently, in an arbitrary or discretionary fashion, depending which side you are on".[2975] In line with this vision, the province's DYPs describe their function in their brief as being "the pillar of social intervention for children who need protection".[2976] While the Act grants the Director of Youth Protection and his or her staff exclusive responsibilities for children who need protection[2977], it also opens the door to shared responsibility with Indigenous authorities.[2978] From the perspective of reconciliation, this is the aspect of the Act I believe it is important to promote.

I therefore recommend that the government:

CALL FOR ACTION No. 135

Provide communities that want to update their agreements or to take over youth protection services under s. 37.7 of the *Youth Protection Act* with financial support and immediate and unrestricted guidance.

The conclusion of agreements under s. 37.5 of the YPA is another example of provisions that allow Indigenous communities to assume some youth protection responsibilities.

In practical terms, s. 37.5 has enabled Indigenous organizations or communities to conclude agreements with the government for setting up their own youth protection systems since 2000.[2979] Such systems must comply with the general principles of the Act and all MSSS requirements.[2980] I believe this significantly limits the implementation of separate systems or programs that better match the values and cultural practices of Indigenous peoples.

Some representatives told us the requirements imposed are hard–even impossible–for the communities to meet. For example, a community that wants to enter into such an agreement must already be providing effective social services. But, as previously explained, such services have only been funded since 2009. In other words, there were almost ten years when the Indigenous communities did not have the financial resources to deliver services before making delegation agreements.

2974 Document P-122 (Commission), *op. cit.*, p. 10.

2975 Testimony of Marlene Gallagher, stenographic notes taken September 11, 2018, p. 95, lines 19–23.

2976 Brief from the Directors of Youth Protection of Québec. (November 30, 2018); document P-1169 (Commission), brief M-028, p. 5.

2977 *Youth Protection Act*, *op. cit.*, s. 32.

2978 *Youth Protection Act*, *op. cit.*, s. 37.7.

2979 Such agreements can also be made with an Indigenous nation, a group of communities or an Indigenous group.

2980 *Lignes directrices permettant d'établir un régime particulier de protection de la jeunesse pour les Autochtones*, document P-085 (Commission).

The MSSS also relies on the DYP's evaluation of the Indigenous organization's ability to take over responsibilities, as the MSSS's director of youth and family services, Pascale Lemay, clearly explained:

> Obviously, in the process, the opinion of the Director [DYP] is still important. It is the DYP's responsibility; he or she has to be comfortable or reassured as to the quality of services to be delivered [...] If a DYP gives us an opinion, gives us an unfavourable opinion because he or she is worried about the quality of services to be rendered, obviously, you understand, that opinion is important.[2981]

When they appeared before the Commission, the DYPs expressed significant reservations about this support in principle. With varying degrees of directness–although they said they were in favour of greater autonomy for communities–each of them raised the inability of a number of communities to offer quality short- or medium- term youth protection services.[2982] According to Camil Picard, former interim president of the CDPDJ, that view is widespread.[2983] In his opinion, in addition to demonstrating a flagrant lack of trust in the ability of Indigenous people to assume youth protection responsibilities, the determination of government representatives to impose absolute compliance with the principles of the Act and Québec standards is an obstacle to negotiating agreements under s. 37.5 of the YPA:

> What we have observed is that, since this youth protection provision came into effect, the process to enable a community to care for its children has been extremely slow, and there was always a comma in the wrong place so they could say it didn't quite respect the letter of the Youth Protection Act. We at the Commission witnessed high-level meetings where there was always: "Oh, yes, but that sentence in the preamble, does it really respect the values of the Act..." We can't... You know, the implementation of 37.5, it's not translating the Youth Protection Act into Innu or Cree, it is adapting methods and processes so that communities can look after their own children [...] it takes an open mind and a non-paternalistic attitude by non-Indigenous people to say: "It's not exactly like it's written in the Youth Protection Act, but the spirit of the Act is there".[2984]

Given the context, it is not surprising that only the Atikamekw Nehirowisiw–after sustained effort–have managed to sign an agreement with the government in almost 20 years.

The situation is barely better for communities covered by an agreement, despite the fact that Eeyou (Cree) communities and Inuit villages can create local or regional institutions responsible for youth protection services under the JBNQA.[2985] Treating those institutions as

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2981 Testimony of Pascale Lemay, stenographic notes taken October 22, 2018, p. 286, lines 11–15 and 20–25.

2982 Testimony of Philippe Gagné, stenographic notes taken October 1, 2018, p. 30, lines 19–21 and p. 122, lines 8–21; testimony of Maryse Olivier, stenographic notes taken September 28, 2018, p. 51–52, lines 19–2; document P-1169 (Commission), brief M-028, *op. cit.*, p. 10.

2983 Testimony of Camil Picard, stenographic notes taken March 12, 2018, p. 174–175, lines 22–3.

2984 *Id.,* p. 179, lines 6–23 and p. 180, lines 5–9.

2985 *James Bay and Northern Québec Agreement*, Grand Council of the Crees (of Québec), Northern Québec Inuit Association, Government of Canada, James Bay Energy Corporation, James Bay Development Corporation, Commission hydroélectrique du Québec (now Hydro-Québec), and the Government of Québec, November 11, 1975.

an integral part of the health and social services network generates particular governance challenges. In its brief, the Nunavik Regional Board of Health and Social Services (NRBHSS) also says:

> While integration into the provincial network offers many advantages, decision making is insufficiently decentralized and often leads to the drafting of laws or regulations that cannot be applied to the situation in Nunavik. So the NRBHSS and regional organizations are always having to prove the inadequacy of these regulations or how they conflict with administrative provisions of the JBNQA.[2986]

For all these reasons, it is necessary and urgent to reduce the control exercised by government officials. I believe that, by continuing to impose or develop policies that ignore the will of Indigenous people, the government is helping to keep communities fragile and merely delaying an internal transformation that is already well under way.

A number of experts also described research and field experiments supporting the idea that social services for Indigenous people must be directly controlled by local communities.[2987]

I therefore recommend that the government:

CALL FOR ACTION No. 136

Encourage the conclusion of agreements under s. 37.5 of the *Youth Protection Act* by relaxing criteria and simplifying the process that leads to the conclusion of such agreements.

CALL FOR ACTION No. 137

Provide communities that want to take over youth protection services under s. 37.5 of the *Youth Protection Act* with financial support and immediate and unrestricted guidance.

2986 Brief of the Nunavik Regional Board of Health and Social Services. (November 9, 2018), *Une vision intégrée de la sécurisation culturelle du réseau de la santé et des services sociaux du Nunavik*, document P-1137 (Commission), brief M-023, p. 5.

2987 Testimony of Mylène Sénéchal, stenographic notes taken January 22, 2018, p. 107, lines 17–21; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 58, lines 2–5; testimony of Mina Beaulne, stenographic notes taken November 21, 2018, p. 64, lines 4 to 17.

12

CHAPTER 12

MOVING FORWARD

The realities experienced by the First Nations and Inuit have been examined during various consultation and inquiry exercises at both the provincial and federal levels in recent decades. The most recognizable of them are without question the Royal Commission on Aboriginal Peoples[2988] and the Truth and Reconciliation Commission of Canada.[2989]

Even though the reports coming out of those exercises were well received, the vast majority of the proposed recommendations or calls for action have never been acted upon, even years after the reports were issued.[2990] According to the experts who have looked into those matters, the situation is attributable to a number of factors. These factors range from unfavourable political conditions to unresponsive public services, along with the minor role given to Indigenous authorities in implementing the recommendations. There is, however, a common denominator: the lack or ineffectiveness of follow-up measures to assess the application of the proposed recommendations.

As early as the Commission's first hearings, some of the witnesses lamented this situation and asked for a follow-up mechanism to ensure that the calls for action proposed in this report would be implemented effectively.[2991] The government itself recognized that need, even indicating in the order creating the Commission that it wanted to "implement a mechanism to assess and follow up on the recommendations made by the inquiry commission".[2992]

12.1. Formal follow-up mechanism

After reviewing the challenges facing us, I personally came to the conclusion that the solution comes in the form of a follow-up mechanism that is independent from the parties involved.

2988 Canadian Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples*. Ottawa, Ontario: Canada Communication Group.

2989 Truth and Reconciliation Commission of Canada. (2015). *Final Report of the Truth and Reconciliation Commission of Canada* Montréal, Québec and Kingston, Ontario: McGill-Queen's University Press.

2990 Darnell, R. (2000). Canadian Anthropologists, the First Nations and Canada's Self-Image at the Millennium. *Anthropologia*, 42(2), 165–174; Frideres, J., Gadacz, R. (2012). *Aboriginal Peoples in Canada (9th edition)*. Toronto, Ontario: Pearson; Hedican, E. J. (2013). *Ipperwash: The Tragic Failure of Canada's Aboriginal Policy*. Toronto, Ontario: University of Toronto Press; McMillan, L. J. (2014). Still Seeking Justice: The Marshall Inquiry Narratives. *UBC Law Review*, 47(3), 927–990.

2991 Testimony of Hadley Friedland, stenographic notes taken December 6, 2017, p. 50, lines 2–22; testimony of Pierre Trudel, stenographic notes taken November 22, 2017, p. 41, lines 2–14; testimony of Aimée Craft, stenographic notes taken January 15, 2018, p. 213–214, lines 17–6; testimony of Mylène Jaccoud, stenographic notes taken February 16, 2018, p. 224–225, lines 23–23; testimony of Vivien Carli, stenographic notes taken February 20, 2018, p. 102, lines 4–24.

2992 *Order concerning the establishment of the Commission d'enquête sur les relations entre les Autochtones et certains services publics* (2016) 1095 G.O.Q. II, p. 24. The full text of the order is available in Appendix 1.

The choices made by my predecessors working on other commissions led me to that conclusion. As I looked at previous Canadian commissions, I noted that most of the post-commission assessments were done by follow-up committees consisting largely of a government contingent.[2993] For certain commissions, the assessment data were also generated and analyzed by the government departments targeted in the inquiry, which, from the Indigenous perspective, raised doubts about the impartiality of the process. That was particularly the case in Nova Scotia, where the Royal Commission on the Donald Marshall Jr. Prosecution gave the Department of the Attorney General and the Department of the Solicitor General (equivalent of ministère de la Justice du Québec) responsibility for evaluating the application of the recommendations that concerned them.[2994] Moreover, the follow-up was very often limited to a few of the proposed solutions and was very rarely done again later. The outcome convinced me to avoid that model. Not only were the actual improvements not measured adequately and the changes still not implemented, but subsequent commissions were needed in order to revisit the abandoned recommendations.

Too often in the past, the work done by the commissions was transformed into a wave of major disappointment when the time came to take action. Over time, the resulting status quo did nothing except further erode the already fragile trust between Indigenous peoples and public services. All of that has to stop.

The proposed changes are bold and require us to rethink many approaches. Consequently, it would be beneficial to put some distance between the organizations affected by these changes and those that will be assessing how the changes are deployed on the ground.

The proposed follow-up mechanism must have to include real power in terms of influencing or even compelling the services concerned. He must also rely on recognized experience to both analyzing public policies and programs and taking into consideration the Indigenous culture and realities. Lastly, in addition to those considerations and given that action is urgently needed in a number of areas, the solution identified has to be deployable quickly and easily.

All these elements were pointing in the direction of using an existing entity. My attention was naturally drawn to the Québec Ombudsman because it already handles issues that are closely related to the Commission's mandate.

The current mandate of the Québec Ombudsman is to assure that the rights of citizens are upheld in their dealings with public services. Under its constituent act, the Québec Ombudsman can intervene whenever it has "reasonable cause to believe that a person or group of persons has suffered or may very likely suffer prejudice as the result of an act or omission of a public body, its chief executive officer, its members or a person holding an

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2993 For example: Manitoba's Aboriginal Justice Implementation Commission in 2001. Retrieved from http://www.ajic.mb.ca/.

2994 Royal Commission on the Donald Marshall Jr. Prosecution. (1989). *Royal Commission on the Donald Marshall Jr. Prosecution. Digest of Findings and Recommendations.* Retrieved from https://novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf, p. 16.

office, employment or position accountable to the chief executive officer".[2995] In this case, public body refers to a ministry or agency of the Québec government or an institution within the health and social services network.[2996] The Ombudsman can also "intervene on its own initiative and conduct investigations regarding major issues [in order to] improve the quality of public services." It is also authorized to "propose amendments to bills and draft regulations or to administrative directives or policies".[2997]

This impartial, independent ombudsman has already demonstrated an ability to handle Indigenous issues in connection with relations with public services. The report on detention conditions, administration of justice and crime prevention in Nunavik, which was released in 2016[2998], substantiates this. The same applies with respect to the observations made more recently about the cultural identity of First Nations children in a youth protection context.[2999]

Those reports were well received by Indigenous authorities and have already led to concrete actions, which confirms that public services are open to recommendations from the Québec Ombudsman. Moreover, even though the Québec Ombudsman has no authority to enforce its recommendations, it estimates that more than 98.0% of them are approved.[3000]

The fact that the Québec Ombudsman already has a structure in place and an assigned budget and that it reports directly to the National Assembly are further reasons to choose it. Not only are its existence and financial independence assured, but it also benefits from operating a healthy distance away from the political and administrative personnel working in the government ministries and agencies targeted by my calls for action.

It should also be noted that the Québec Ombudsman's credibility and neutrality are well established, as demonstrated by the special mandates it has been given in the past. Since May 1, 2017, the Québec Ombudsman has been empowered to handle the disclosure of wrongdoings concerning public bodies and reprisal complaints stemming from these disclosures.[3001] It also acts as Québec's Correctional Ombudsman for detainees in the correctional facilities that report to the Ministère de la Sécurité publique[3002] and as Health and Social Services Ombudsman.[3003]

2995 *Public Protector Act*, CQLR, c. P-32, s. 13.

2996 *Id.*, s. 14–15.

2997 Québec Ombudsman. (2019). Role and mandates. Retrieved from https://protecteurducitoyen.qc.ca/en/about-us/role-and-mandates.

2998 *Special Report by the Québec Ombudsman. Detention conditions, administration of justice and crime prevention in Nunavik*, document P-459 (Commission).

2999 Québec Ombudsman. (2016). 2017–2018 *Annual Report*. Retrieved from https://protecteurducitoyen.qc.ca/sites/default/files/pdf/rapports_annuels/annual-report-2017-2018-qo.pdf, p. 67–68.

3000 Québec Ombudsman. (2019). Roles and mandates, *op. cit.*

3001 *Act to facilitate the disclosure of wrongdoings relating to public bodies*, CQLR, c. D-11.1.

3002 Québec Ombudsman. (2019). Roles and mandates, *op. cit.*

3003 *Act respecting the Health and Social Services Ombudsman*, CQLR, c. P-31.1.

I therefore recommend that the government:

CALL FOR ACTION No. 138

Give the Québec Ombudsman the mandate to assess and follow up on the implementation of all the calls for action proposed in this report until such time as they have been fully executed.

To fulfill that mission, the Québec Ombudsman will likely require additional financial and human resources. I therefore also recommend that the National Assembly:

CALL FOR ACTION No. 139

Ensure that the budget granted to the Québec Ombudsman is adjusted to take into account the new responsibilities that it has been given.

With a view to being transparent, I also consider it essential that the Québec Ombudsman's conclusions be made public on a regular basis. For that reason, I recommend that the government:

CALL FOR ACTION No. 140

Include in the *Public Protector Act* the obligation for the Québec Ombudsman to produce and make public each year a progress report on the implementation of the Commission's calls for action until such time as they are fully executed.

12.2. Citizen monitoring

In addition to the proposed formal follow-up mechanism, citizen monitoring is another way to help ensure that the calls for action are implemented in concrete terms. The Comité public de suivi des recommandations de la commission Charbonneau, formed by a group of academics and citizens after the Charbonneau commission's report was released, is a good example of that. Year after year, the public report issued by that group of citizens makes it possible to track the extent to which the recommendations have been executed.[3004] It also serves as a reminder to elected officials that they should not lose sight of the findings and the corrective actions identified.

During our work, many of the Indigenous representatives said that they wanted to very closely monitor the implementation of the calls for action that would be proposed by the Commission. A number of them also indicated that they would like the report itself to be distributed as widely as possible in their communities. They hope that this will not only allow the First Nations members and the Inuit to be informed about the conclusions

3004 The Canadian Press. (2018, December 4). Bilan mitigé trois ans après le dépôt du rapport de la commission Charbonneau. *ICI Radio-Canada.ca*. Retrieved from https://ici.radio-canada.ca/nouvelle/1139755/commission-charbonneau-recommandations-application-rapport-enquete-comite-suivi.

reached, but also result in a certain level of citizen monitoring of the implementation of the proposed solutions.

However, given that the format of a public inquiry commission's report is more formal than straightforward and is certainly very far removed from the oral traditions of Indigenous peoples, the report can be a major obstacle for First Nations members and the Inuit who want to take a critical look at how the proposed calls for action are being implemented. From the Indigenous perspective, if we take into account the findings concerning language, especially as a barrier to access and self-determination, distributing the report in French and English only also seems to be insufficient.

When it comes to reconciliation and true collaboration between one nation and another, I believe that it is essential for First Nations members and the Inuit of Québec to be able to make the content of this report their own. I therefore recommend that the government:

CALL FOR ACTION No. 141

In cooperation with the representatives of the Indigenous peoples of Québec, translate this Commission's summary report as soon as possible into all Indigenous languages used in written form in Québec and distribute it.

Out of respect for the oral traditions of those peoples, I also recommend that the government:

CALL FOR ACTION No. 142

Ensure that the content of this Commission's summary report is distributed as soon as possible by means of alternative oral distribution methods identified by the Indigenous authorities themselves based on their peoples' needs and realities.

In addition, it should be noted that all the items filed as evidence and the documents produced during the Commission's work will be available at the Archives et Bibliothèque nationale du Québec after this report is released, with the exception of certain confidential documents.

CONCLUSION

Over a period of 24 months starting in Val-d'Or, the epicentre of the events that led to the creation of this Commission, my team and I went to meet with the Indigenous peoples of Québec. From Kuujjuaq to Kuujjuarapik, from Chisasibi to Mistissini, from Pikogan to Wemotaci, from Wendake to Pakua Shipu and from Akwesasne to Gespeg, as well as in Montréal and Québec City, voices were raised everywhere to express the injustice experienced and, most importantly, the deep desire to end the indifference.

This story is not new. Time and time again in the past, the First Nations and Inuit of Québec made appeals to our humanity in order to put an end to their peoples' deafening pain and make a fresh start in our relations. The problems, like the solutions identified for solving them, are known. The time has come to take action.

As I have repeated many times, the challenges are immense. To successfully meet the challenge of reconciliation, we will have to learn to operate in a free zone, unencumbered by our respective preconceived notions and the mistrust that often springs from them. On both sides, we will have to move beyond cynicism and demonstrate our openness and creativity. Even more importantly, we will need the courage to collectively reinvent ourselves to allow collaborative spaces that are more egalitarian and respectful towards everyone to emerge.

My mandate gave me a unique vantage point where I observed a new desire for affirmation and change. I think it would be wise to build on that desire. In that respect, this report is not the final step but rather an invitation to all Québec citizens to take on the role of agents of change. After all, looking beyond the structures, among many other things, the quality of our relations with Indigenous peoples is built one day at a time in the individual and collective interactions that occur in our schools, workplaces, streets and elsewhere. That is what weaves a society's social fabric, whereby certain acts that were unfortunately tolerated quite recently are no longer acceptable today.

And, while events play out and the media coverage continues, when we are given the opportunity to test our new forms of solidarity, I hope we will remember. Remember their presence here before we arrived and the harms that we have caused them, and also remember the shared knowledge and our joint role in building the Québec of today. Above all else, I hope we will have the wisdom to continue the dialogue.

Personally, as we close the books, I will always remember very well the fathers, mothers, Elders and Chiefs who came to tell me about their desire to offer their children and their communities a better life. I will remember that all true progress comes from listening and respect because, in reality, beyond the outstretched hands, the future will be built side by side.

SUMMARY OF CALLS FOR ACTION

SUMMARY OF CALLS FOR ACTION

CALL FOR ACTION No. 1
Make a public apology to members of First Nations and Québec's Inuit for the harm caused by laws, policies, standards and the practices of public service providers.

CALL FOR ACTION No. 2 – To National Assembly
Adopt a motion to recognize and implement the United Nations Declaration on the Rights of Indigenous Peoples in Québec.

CALL FOR ACTION No. 3
Working with Indigenous authorities, draft and enact legislation guaranteeing that the provisions of the United Nations Declaration on the Rights of Indigenous Peoples will be taken into account in the body of legislation under its jurisdiction.

CALL FOR ACTION No. 4
Incorporate ethno-cultural data collection into the operation, reporting and decision making of public sector organizations.

In practice, this means:

- Providing public sector organizations with standards and guidelines for collecting data about care and services; such standards and guidelines should define the grounds on which information can be collected and the ways it can be protected; that will have to be done in cooperation with Indigenous authorities and in compliance with existing research guidelines and protocols in order to factor in their cultural characteristics.
- Providing the necessary technology tools for public sector organizations to collect ethno-cultural data.
- Tasking the Commission d'accès à l'information du Québec with overseeing the practices of public bodies in collecting ethno-cultural data.
- Requiring public sector organizations to annually draw up and make public an ethno-cultural portrait of the persons served.
- Working with Indigenous peoples and independent experts, producing an analysis of the data collected every five years in order to document discriminatory practices and biases, assess progress and guide future direction and actions.

CALL FOR ACTION No. 5
Make the necessary administrative and legislative changes to allow Indigenous authorities to access data about their populations at all times, in the health and social services sectors in particular.

CALL FOR ACTION No. 6
Make population surveys on Indigenous peoples an ongoing research priority with sustained funding.

CALL FOR ACTION No. 7 – To Indigenous authorities
Make all the First Nations band councils and Inuit village councils aware of the importance of participating in surveys of their populations.

CALL FOR ACTION No. 8
Conclude agreements with the federal government under which both levels of government financially support the development and improvement of housing in all indigenous communities in Québec.

CALL FOR ACTION No. 9
Continue the financial investments to build housing in Nunavik, taking families' actual needs into account.

CALL FOR ACTION No. 10
Contribute financially to social housing initiatives for Indigenous people in urban environments.

CALL FOR ACTION No. 11
Make implementation of student retention and academic success measures for Indigenous students and young people a priority and allocate the amounts required, guided by the needs identified by the Indigenous peoples themselves and complying with their ancestral traditions.

CALL FOR ACTION No. 12
Amend the *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French language* to extend the exception to all professionals exercising their professions on a reserve, in a settlement in which an Indigenous community lives or on Category I and Category I-N lands within the meaning of the *Act respecting the land regime in the James Bay and New Québec,* regardless of where they reside.

CALL FOR ACTION No. 13
Expand the scope of the *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French language* to exempt interpreters and translators of Indigenous languages from the French-language knowledge requirements.

CALL FOR ACTION No. 14
Make Indigenous language translation and interpreting services permanently accessible throughout Québec by establishing a centralized database of government-employed interpreters and translators.

CALL FOR ACTION No. 15
Promote and permit bilingual and trilingual signage in establishments that serve large Indigenous populations who speak a language other than French.

CALL FOR ACTION No. 16
Make forms available in Indigenous language translations at government service centres.

CALL FOR ACTION No. 17
Ensure that all government correspondence with Indigenous authorities is accompanied by either an English or Indigenous language translation, at the choice of the community or organization in question.

CALL FOR ACTION No. 18
Issue a directive to establishments in the health and social services network ending the prohibition against speaking an Indigenous language in the context of housing, health care and services.

CALL FOR ACTION No. 19
Create and fund permanent positions for liaison officers selected by Indigenous authorities to be accessible in the villages of Nunavik, First Nations communities and Indigenous friendship centres in Québec.

CALL FOR ACTION No. 20
Carry out a public information campaign on Indigenous peoples, their history, their cultural diversity and the discrimination issues they face, working with Indigenous authorities.

CALL FOR ACTION No. 21
Further enrich the Québec curriculum by introducing a fair and representative portrait of Québec First Nations and Inuit history, working with Indigenous authorities.

CALL FOR ACTION No. 22
Introduce concepts related to Indigenous history and culture as early as possible in the school curriculum.

CALL FOR ACTION No. 23
Include a component on Québec First Nations and Inuit in professional programs at colleges and universities (medicine, social work, law, journalism and other programs), working with Indigenous authorities.

CALL FOR ACTION No. 24
Make the professional orders aware of the importance of including content in their training programs, developed in cooperation with Indigenous authorities, that addresses cultural safeguards and the needs

CALL FOR ACTION No. 25
Make training developed in cooperation with Indigenous authorities that promotes cultural sensitivity, cultural competence and cultural safeguards available to all public service managers, professionals and employees who are likely to interact with Indigenous peoples. Out of respect for the cultural diversity of Indigenous nations, this training must be adapted to the specific Indigenous nation(s) with which the employees interact.

CALL FOR ACTION No. 26
Provide ongoing and recurrent training to all public service managers, professionals and employees who are likely to interact with Indigenous peoples.

Police services

CALL FOR ACTION No. 27 – To Indigenous police forces
Adopt and implement a conflict of interest policy for the handling of investigative and intervention matters.

CALL FOR ACTION No. 28 – To Indigenous authorities
Explore the possibility of setting up regional Indigenous police forces.

CALL FOR ACTION No. 29
Revise how the training of recruits hired by Indigenous police officers is financed to reduce the cost difference between the various categories of candidates.

CALL FOR ACTION No. 30
Inject the funds required to ensure that the offering of regular and continuing education at the École nationale de police du Québec is fully accessible in English and French.

CALL FOR ACTION No. 31
In collaboration with Indigenous authorities, establish a complete status report on the state of the infrastructure and equipment available to Indigenous police forces, the wages and the geographic (distance, road access, etc.) and social (criminality, poverty, etc.) realities of the communities they serve.

CALL FOR ACTION No. 32
Initiate negotiations with the federal government and Indigenous authorities to agree on a budgetary envelope for upgrading Indigenous police force wages, infrastructure and equipment.

CALL FOR ACTION No. 33 – To Indigenous authorities
Assess the possibility of implementing joint purchasing policies for all Indigenous police forces in Québec.

CALL FOR ACTION No. 34
Amend Section 90 of the *Police Act* to readily acknowledge the existence and status of Indigenous police forces as being similar to those of other police organizations in Québec.

CALL FOR ACTION No. 35
Undertake negotiations with the federal government and Indigenous authorities to ensure recurring and sustainable funding for all Indigenous policing.

CALL FOR ACTION No. 36
Modify the process for allocating budget resources to police forces to reflect the needs identified by Indigenous authorities in terms of infrastructure, human, financial and logistical resources and the individual realities of the communities or territories.

CALL FOR ACTION No. 37
Assess the possibility of setting up mixed intervention patrols (police officers and community workers) for vulnerable persons, both in urban environments and in First Nations communities and Inuit villages.

CALL FOR ACTION No. 38
Amend the *Police Act* to extend the time limit for filing police ethics complaints to three years.

CALL FOR ACTION No. 39
Conduct information campaigns among Indigenous populations concerning the existing complaints processes.

Justice services

CALL FOR ACTION No. 40
Fund projects developed and managed by Indigenous authorities that are aimed at documenting and revitalizing Indigenous law in all sectors deemed to be of interest.

CALL FOR ACTION No. 41
Amend the existing laws, including the *Act respecting the Director of Criminal and Penal Prosecutions*, to allow agreements to be signed to create specific justice administration systems with Indigenous nations, communities or organizations active in urban areas.

CALL FOR ACTION No. 42
Encourage the introduction of community justice programs and the implementation of alternative measures programs for Indigenous adults in all cities where the Indigenous presence requires it.

CALL FOR ACTION No. 43
Set aside a sustainable budget for Indigenous community justice programs and for the organizations responsible for keeping them up to date, proportionate to the responsibilities assumed and adjusted annually to ensure its stability, factoring in the normal increases in operating costs of such programs.

CALL FOR ACTION No. 44
Amend the *Act respecting legal aid* to introduce special tariffs of fees for cases involving Indigenous people, in both civil and criminal matters.

CALL FOR ACTION No. 45
Invest in developing premises adequate to the exercise of justice in each of the communities where the Itinerant Court sits, as soon as possible.

CALL FOR ACTION No. 46 - To towns and municipalities of Québec
Stop incarcerating people who are vulnerable, homeless or at risk of becoming homeless for non-payment of fines for municipal offences.

CALL FOR ACTION No. 47 - To towns and municipalities of Québec
Set up a PAJIC for people who are vulnerable, homeless or at risk of becoming homeless.

CALL FOR ACTION No. 48
Amend the *Code of Penal Procedure* to stop the incarceration of people who are vulnerable, homeless or at risk of becoming homeless for non-payment of fines for municipal offences.

CALL FOR ACTION No. 49
Provide sustainable funding to PAJICs for people who are vulnerable, homeless or at risk of becoming homeless.

CALL FOR ACTION No. 50
Institute the use of videoconferences for bail hearings as soon as possible for accused persons in remote areas, particularly in Nunavik.

CALL FOR ACTION No. 51
Set aside a budget envelope earmarked exclusively for the writing of Gladue reports and increase the remuneration for all writers.

CALL FOR ACTION No. 52
Increase the number of writers authorized to produce Gladue reports.

CALL FOR ACTION No. 53
Fund the organizations involved in producing Gladue reports so that they can enhance and standardize the training provided to accredited writers, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 54
Periodically review the quality of work done by Gladue report writers, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 55
Provide for Gladue letters to be written automatically whenever an Indigenous person enters the system, and provide funding therefor.

Correctional services

CALL FOR ACTION No. 56
Train all Québec probation officers to prepare Indigenous pre-sentencing reports and teach them the reassuring cultural approach for collecting information.

CALL FOR ACTION No. 57
Develop an assessment tool specific to Indigenous offenders with the collaboration of experts from First Nations and Inuit peoples.

CALL FOR ACTION No. 58
Implement, as quickly as possible, and in all regions of Québec, alternative measures to incarceration for people sentenced to an intermittent sentence, including sustainable funding.

CALL FOR ACTION No. 59
Measure and report annually on the situation regarding transfers of Indigenous inmates, in collaboration with partner Indigenous organizations.

CALL FOR ACTION No. 60
Set up a program to finance family travel when the government has no choice other than to incarcerate an inmate in a provincial establishment far from their residence or home community.

CALL FOR ACTION No. 61
Allow videoconference communications between inmates and their family members when there is no choice other than to incarcerate an inmate in a provincial establishment far from their residence or home community.

CALL FOR ACTION No. 62
Modify the rules in effect regarding telephone calls so that long-distance calls can be made at the same cost as local calls.

CALL FOR ACTION No. 63
Immediately implement all the recommendations set forth by the Québec Ombudsman in its special report on detention conditions, administration of justice and crime prevention in Nunavik.

CALL FOR ACTION No. 64
Launch a committee, as soon as possible, in collaboration with Indigenous authorities, on improving detention conditions for Indigenous women, from the time of their arrest until their liberation.

CALL FOR ACTION No. 65
Extend the obligations regarding health care to all medical personnel working with inmates, by regulation or legislative amendment.

CALL FOR ACTION No. 66
Recognize that inmates' medical files belong to them and computerize these files using Dossier santé Québec.

CALL FOR ACTION No. 67
Permit the inmates' complete medical files to be shared with the competent authorities during transfers or releases, by regulation or legislative amendment.

CALL FOR ACTION No. 68
Extend to all correctional facilities in Québec the offer of culturally comforting activities for their Indigenous clients, such as craft workshops, meals with traditional foods, sharing circles, access to a sweat lodge and spiritual support provided by Elders.

CALL FOR ACTION No. 69 – To Indigenous authorities
Identify, for each Indigenous people, Elders interested in intervening in correctional environments and register them in a shared bank of resources that the correctional authorities can consult.

CALL FOR ACTION No. 70
Establish guidelines for the security verification of Indigenous sacred objects, in collaboration with Indigenous authorities.

CALL FOR ACTION No. 71
Train correctional officers to recognize Indigenous sacred objects, in collaboration with Indigenous authorities.

CALL FOR ACTION No. 72
Ensure availability in urban environments of places reserved for Indigenous clients in existing residential community centres or, if necessary, conclude an agreement with an Indigenous organization to create this type of resource.

CALL FOR ACTION No. 73
Modify the *Act respecting the Québec correctional system* to include different processes and evaluation criteria for Indigenous offenders who address the Commission québécoise des libérations conditionnelles.

Health and social services

CALL FOR ACTION No. 74
Amend the *Act respecting health services and social services* and the *Act respecting health services and social services for Cree Native persons* to enshrine the concept of cultural safeguards in it, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 75
Encourage the health and social services network institutions to set up services and programs based on cultural safeguard principles developed for Indigenous peoples and in cooperation with them.

CALL FOR ACTION No. 76
Provide sustainable funding for services and programs based on cultural safeguard principles developed for Indigenous peoples.

CALL FOR ACTION No. 77
Take the necessary measures to make emergency medical transportation services by land or by air, depending on the circumstances, available as soon as possible and on an ongoing basis in all communities, despite constraints, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 78
Encourage the signing of agreements between public health and social services institutions and Indigenous authorities to guarantee spaces and a culturally safe service for aging Indigenous persons and their families.

CALL FOR ACTION No. 79
Financially support the establishment of long-term care services in communities covered by an agreement.

CALL FOR ACTION No. 80
Initiate tripartite negotiations with the federal government and Indigenous authorities to develop long-term care services in communities not covered by an agreement.

CALL FOR ACTION No. 81
Make the development of culturally appropriate spaces for Indigenous nations a priority in public health institutions, particularly in regions where there is a substantial Indigenous population.

CALL FOR ACTION No. 82
Initiate tripartite negotiations with the federal government and Indigenous authorities to establish a formal funding mechanism for returning to the communities at the end of life and for the development of palliative care in the communities.

CALL FOR ACTION No. 83
Develop priority diagnostic service corridors for Indigenous clients of all ages through tripartite negotiations with the federal government and Indigenous authorities.

CALL FOR ACTION No. 84
Financially support the development of culturally safe, family-centred respite services in communities covered by an agreement and in urban areas.

CALL FOR ACTION No. 85
Initiate tripartite negotiations with the federal government and Indigenous authorities to develop culturally safe, family-centred respite services in communities not covered by an agreement.

CALL FOR ACTION No. 86
Initiate tripartite negotiations with the federal government and Indigenous authorities to sustainably fund projects created by Indigenous nations, communities and organizations that seek to identify, reduce, prevent and eliminate sexual assault.

CALL FOR ACTION No. 87 – To Indigenous authorities
Raise awareness among the populations of indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education.

CALL FOR ACTION No. 88
Fund the development of a network of Indigenous women's shelters in communities covered by an agreement and in urban centres, working with Indigenous authorities.

CALL FOR ACTION No. 89
Initiate tripartite negotiations with the federal government and Indigenous authorities to develop Indigenous women's shelters in communities not covered by an agreement.

CALL FOR ACTION No. 90
Financially support the establishment of culturally safe addiction treatment centres and detoxification centres in urban areas and in communities covered by an agreement.

CALL FOR ACTION No. 91
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase services for addiction prevention and treatment in Indigenous communities not covered by an agreement.

CALL FOR ACTION No. 92
Working with the federal government and Indigenous authorities, draw up less stringent admission rules at addiction treatment centres for off-reserve First Nations members and Inuit.

CALL FOR ACTION No. 93
Financially support the development of services for suicide prevention and mental health in communities covered by an agreement and in urban centres, in cooperation with Indigenous authorities.

CALL FOR ACTION No. 94
Draw up a protocol for crisis management in communities covered by an agreement that involves both the public health network and the participation of appropriate Indigenous authorities.

CALL FOR ACTION No. 95
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase services for suicide prevention and mental health in Indigenous communities not covered by an agreement.

CALL FOR ACTION No. 96
Encourage institutions in the health and social services network to set up services inspired by the Clinique Minowé model in urban settings, working with the Indigenous authorities and organizations in their territory.

CALL FOR ACTION No. 97
Provide recurrent, sustainable funding for services that draw on the Clinique Minowé model and are developed in urban settings for Indigenous peoples.

CALL FOR ACTION No. 98
Issue a directive to urban health and social service institutions to establish clear service corridors and communication protocols with Indigenous authorities in the communities.

CALL FOR ACTION No. 99
Provide sustainable funding for services to homeless Indigenous clienteles in urban areas.

CALL FOR ACTION No. 100
Fund the creation of a shelter specifically reserved for homeless Inuit clientele in Montréal.

CALL FOR ACTION No. 101
Initiate discussions with the federal government to dovetail the provincial prescription drug insurance plan with the Non-Insured Health Benefits program in order to offer the most comprehensive, equitable coverage for members of Indigenous communities.

CALL FOR ACTION No. 102
Encourage the professional orders involved (doctors and pharmacists) to give their members training about the federal Non-Insured Health Benefits program.

CALL FOR ACTION No. 103
Initiate a strategic planning session on non-urgent medical transportation that includes the federal government, health and social services network institutions and Indigenous authorities.

CALL FOR ACTION No. 104
Initiate discussions with the federal government to extend the Jordan Principle to adults.

CALL FOR ACTION No. 105
Working with the federal government, develop an overall approach for applying the Jordan Principle, coupled with budget forecasts for all First Nations and Inuit.

CALL FOR ACTION No. 106
Rapidly implement the recommendations of the Comité sur l'application du PL-21 in First Nations communities and Inuit villages.

CALL FOR ACTION No. 107
Follow up as quickly as possible on proposals to improve working conditions from the Nunavik Regional Board of Health and Social Services.

Youth protection services

CALL FOR ACTION No. 108
Amend the *Youth Protection Act* to exempt Indigenous children from the application of maximum periods for alternative living environments as stipulated in sections 53.0.1 and 91.1.

CALL FOR ACTION No. 109
Amend the *Youth Protection Act* to include a provision on care that is consistent with Indigenous traditions, drawing on Ontario's *Child, Youth and Family Services Act, 2017*.

CALL FOR ACTION No. 110
Enshrine in the *Youth Protection Act* a requirement that a family council be set up as soon as an Indigenous child is involved in a youth protection intervention, whether or not the child is at risk of being placed.

CALL FOR ACTION No. 111
Provide professionals working in Indigenous communities with access to provincial information management systems (such as the PIJ).

CALL FOR ACTION No. 112
Share the new directives and standards that apply in youth protection with all professionals responsible for such cases in Indigenous communities in real time.

CALL FOR ACTION No. 113
Make youth protection evaluations and decisions in a way that takes the historical, social and cultural factors related to First Nations and Inuit into account.

CALL FOR ACTION No. 114
Provide judges presiding in the Court of Québec, Youth Division, with reports similar to the Gladue reports used in the criminal justice system for cases involving Indigenous children.

CALL FOR ACTION No. 115
Validate the evaluation tools used in youth protection with Indigenous clinical experts.

CALL FOR ACTION No. 116
Overhaul the clinical evaluation tools used in youth protection whose effects are deemed to be discriminatory toward Indigenous peoples, in cooperation with experts from the First Nations and Inuit peoples.

CALL FOR ACTION No. 117
Amend the *Act respecting health services and social services* to include a provision requiring workers to record objectives and methods for preserving cultural identity in the intervention plans and individualized service plans of all children who identify as First Nation or Inuit and are placed outside their family environments.

CALL FOR ACTION No. 118
Fund the development of intensive support services in urban environments and Indigenous communities covered by an agreement for parents of Indigenous children who have been placed in foster care.

CALL FOR ACTION No. 119
Initiate tripartite negotiations with the federal government and Indigenous authorities to finance the development of intensive support services in communities not covered by an agreement for parents of Indigenous children who have been placed in care.

CALL FOR ACTION No. 120
Working with Indigenous authorities, draw up a placement policy specific to members of First Nations and Inuit that provides that Indigenous children be first placed with their immediate or extended families and, if that is not possible, with members of their communities or nations.

CALL FOR ACTION No. 121
Make sure that a cultural intervention plan is produced and implemented whenever an Indigenous child must be placed in a non-Indigenous alternative environment.

CALL FOR ACTION No. 122
Assign additional resources to remote Indigenous communities where access to lawyers is limited.

CALL FOR ACTION No. 123
Provide financial support for hiring courtworkers and promote the use of paralegal services to support and accompany parents and children who are subject to the *Youth Protection Act.*

CALL FOR ACTION No. 124
Initiate tripartite negotiations with the federal government and Indigenous authorities, as applicable, to agree on a budget to provide for Indigenous parents or guardians to attend hearings at the Court of Québec, Youth Division (transportation, meals and lodging costs).

CALL FOR ACTION No. 125
Recognize and financially support cultural healing approaches when proposed by families subject to the *Youth Protection Act.*

CALL FOR ACTION No. 126
Working with Indigenous authorities, make an annual calculation of the number of Indigenous children subject to the *Youth Protection Act* and obtain any other data deemed relevant under the Act in order to accurately assess the presence of Indigenous children in the system and how they are treated.

CALL FOR ACTION No. 127
Increase availability and funding for local services intended for Indigenous children and their families, including crisis management services, in communities covered by an agreement and in urban environments.

CALL FOR ACTION No. 128
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase the availability of local services intended for Indigenous children and their families, including crisis management services, in communities not covered by an agreement.

CALL FOR ACTION No. 129
Clarify and change the eligibility criteria for Indigenous foster families, including the criteria for the physical environment and the follow-up done with foster families, so that those families can access the services they need to provide the best possible environment for the children.

CALL FOR ACTION No. 130
Ensure that families and significant people who are not represented by an association and who foster Indigenous children receive financial compensation equivalent to family-type resources under the *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreement.*

CALL FOR ACTION No. 131
Invest to increase the number of available spaces where needed at youth rehabilitation centres in Indigenous communities covered by an agreement.

CALL FOR ACTION No. 132
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase the number of available spaces where needed at youth rehabilitation centres in Indigenous communities not covered by an agreement.

CALL FOR ACTION No. 133
Increase the level of and funding for post-placement services for indigenous children in communities covered by an agreement and in urban centres.

CALL FOR ACTION No. 134
Initiate tripartite negotiations with the federal government and Indigenous authorities to increase the level of and funding for post-placement services in Indigenous communities not covered by an agreement.

CALL FOR ACTION No. 135
Provide communities that want to update their agreements or to take over youth protection services under s. 37.7 of the *Youth Protection Act* with financial support and immediate and unrestricted guidance.

CALL FOR ACTION No. 136
Encourage the conclusion of agreements under s. 37.5 of the *Youth Protection Act* by relaxing criteria and simplifying the process that leads to the conclusion of such agreements.

CALL FOR ACTION No. 137
Provide communities that want to take over youth protection services under s. 37.5 of the *Youth Protection Act* with financial support and immediate and unrestricted guidance.

Tracking mechanism

CALL FOR ACTION No. 138
Give the Québec Ombudsman the mandate to assess and follow up on the implementation of all the calls for action proposed in this report until such time as they have been fully executed.

CALL FOR ACTION No. 139 – To National Assembly
Ensure that the budget granted to the Québec Ombudsman is adjusted to take into account the new responsibilities that it has been given.

CALL FOR ACTION No. 140
Include in the *Public Protector Act* the obligation for the Québec Ombudsman to produce and make public each year a progress report on the implementation of the Commission's calls for action until such time as they are fully executed.

CALL FOR ACTION No. 141
In cooperation with the representatives of the Indigenous peoples of Québec, translate this Commission's summary report as soon as possible into all Indigenous languages used in written form in Québec and distribute it.

CALL FOR ACTION No. 142
Ensure that the content of this Commission's summary report is distributed as soon as possible by means of alternative oral distribution methods identified by the Indigenous authorities themselves based on their peoples' needs and realities.

Québec