



**BRIEF**

**OF THE**

**DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES OF THE**

**CREE NATION GOVERNMENT**

**TO THE**

**PUBLIC INQUIRY COMMISSION**

**ON RELATIONS BETWEEN INDIGENOUS PEOPLES**

**AND CERTAIN PUBLIC SERVICES IN QUEBEC:**

**LISTENING, RECONCILIATION AND PROGRESS**

**VAL-D'OR**

**SEPTEMBER 15, 2017**

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## **I. INTRODUCTION**

1. On June 14, 2017, former Grand Chief Dr. Matthew Coon Come and Cree representatives presented to this Commission the initial brief of the Grand Council of the Crees (Eeyou Istchee) and Cree Nation Government (“**Initial Brief**”). The Initial Brief presented an introduction to the Cree Nation and provided an overview of Cree governance and of some key Cree entities concerned by this Commission, including the Cree Nation Government Department of Justice and Correctional Services (“**Justice Department**”).
2. The purpose of the present brief of the Justice Department is to present a more specific perspective on certain issues related to justice and correctional services to the Crees. This brief is intended to be read in conjunction with and as a complement to the Initial Brief.
3. This brief begins with an overview of the special context regarding the administration of justice for the Crees in Eeyou Istchee. In this regard, it will be helpful to review some of the key provisions of the *James Bay and Northern Quebec Agreement* (“**JBNQA**”) and to recall the context of the more recent implementation of some of these provisions. The brief presents the Justice Department and describes some of its main programs, activities and achievements to date. It then touches on certain issues which the Justice Department considers to be relevant to the work of this Commission and offers certain observations as a path forward to help address these issues.
4. Finally, the brief describes Cree experience and services provided to Crees by the Crees themselves who speak Cree and know the culture and traditions. It provides examples of collaboration between the justice, social and youth protection services, which could serve as a useful model for addressing some of the issues before this Commission.

## **II. ADMINISTRATION OF JUSTICE FOR THE CREES**

5. In the JBNQA of 1975, the Government of Québec made a commitment to work closely with the Crees and to take into account Cree values and Cree way of life in the administration of justice for the Crees. Unlike many First Nations who maintain virtually exclusive relations with the Federal Government, the Crees of Eeyou Istchee accepted as from the JBNQA of 1975 to work collaboratively with Québec and with the framework of Québec laws and institutions, including in regard to the administration of justice.
6. As explained in the Initial Brief, the JBNQA was signed in 1975. It is the first comprehensive land claims agreement and modern treaty in Canada. The JBNQA is a complex document which addresses a wide range of subjects and which has led to the creation of many institutions and entities operated and controlled by the Crees or in collaboration between the Crees and the Government.
7. The Cree Nation Government has built justice facilities in all Cree communities which host every year over 150 days of regular hearings of the Court of Québec and the Superior Court of Québec. In addition to these regular hearings, approximately 90 days of

hearings are held each year by video conference in cases involving youth protection. The recent installation of video-conferencing facilities helps to reduce costs to the justice system and, in some cases, the need for family members to travel. The provisions of the JBNQA related to the courts read as follows:

**18.0.7** The Minister of Justice of Québec shall designate one or more judges or other persons required to dispense justice in the “judicial district of Abitibi”. The said judges or persons must be cognizant with the usages, customs and psychology of the Crees.

**18.0.8** The persons appointed to dispense justice shall be empowered and have the combined duties of a judge of the Provincial Court, of a judge of the Social Welfare Court, of a judge of the Court of Sessions of the Peace, with powers to hear infractions punishable under the Summary Convictions Act of the Province of Québec, of a magistrate under Part XVI of the Criminal Code, of a magistrate under Part XXIV of the Criminal Code and of a justice of the peace appointed under section 107 of the Indian Act. They may have special or administrative jurisdictions.

[...]

**18.0.12** The Lieutenant-Governor in Council may, by proclamation, authorize the court, tribunals, bodies and commissions whether or not they have been constituted by the Courts of Justice Act, to sit outside the chief place of the “judicial district of Abitibi” in the various Cree communities and Cree permanent establishments of the said district.

**18.0.13** The tribunals are itinerant and the judges mentioned in paragraph 18.0.8, each time as the circumstances permit it, shall hold hearings in the various Cree communities and other Cree permanent establishments of the district.

[Emphasis added]

8. In addition to defining the role and responsibilities in respect of the administration of justice for the Crees, the provisions of Section 18 set out fundamental principles, including collaboration between the Crees and the Government, and provide specific guarantees for the Crees.
9. In 1975, many of these provisions were forward-looking. They would certainly have contributed to addressing some of the issues relevant to the work of this Commission today had they been thoroughly implemented from the outset. They may provide elements of solutions to certain of the issues before the Commission.
10. These are some of the key principles, commitments and guarantees provided in Section 18 of the JBNQA:

**18.0.7** The Minister of Justice of Québec shall designate one or more judges or other persons required to dispense justice in the “judicial district of Abitibi”. The

said judges or persons must be cognizant with the usages, customs and psychology of the Crees.

**18.0.9** Justices of the peace, preferably Crees, are appointed in order to deal with infractions to by-laws adopted by Cree local authorities and other offences contemplated in section 107 of the Indian Act. These appointments are subject to the approval of the interested Cree local authority.

**18.0.15** The rules of practice for the “judicial district of Abitibi” must take into consideration the particular circumstances of the district, the customs, usages and way of life of the Crees in order to facilitate the administration of justice and render justice more accessible to the Crees. [...]

**18.0.29** In accordance with a federal-provincial agreement with respect to costs of the programs of services referred to in this Section, it shall be provided:

[...]

d) that facilities be provided for detention, training and rehabilitation of young Cree offenders under the age of twenty-one (21) years and under the age of sixteen (16) years;

e) that establishments for the temporary detention of persons, public prisons, rehabilitation and reformatory institutions, almshouses, workhouses, refuges for women, reformatory institutions for women and other institutions for training, rehabilitation and readaptation of persons detained be provided for;

f) that special rehabilitation programs be created for the treatment, training and rehabilitation of detained Crees taking into account the age and conditions of the persons detained, as well as their way of life and culture;

g) that special programs, both during detention and after release, be created in order to facilitate the return of the Crees to, and their reintegration into, their families and communities.

**18.0.30** Probation, parole, rehabilitation and aftercare services are provided to Crees, in the Cree language, if possible, taking into account their culture and way of life.

**18.0.32** The presiding judge of the itinerant court of the “judicial district of Abitibi” shall have available, when necessary or when appropriate, probation officers, preferably Crees, trained for and cognizant of the problems in the said judicial district and problems concerning the Crees who live therein.

**18.0.33** In order to ensure that Cree people do not misunderstand the intervention of the judicial authority or of the legal system, Crees will receive special training to act as information officers and be stationed in the Cree communities.

**18.0.34** After consultation with the Cree local authorities or Cree Regional Authority, and when it will be appropriate to do so, Crees will be recruited.

trained and hired in order to assume the greatest number possible of positions in connection with the administration of justice in the “judicial district of Abitibi”.

**18.0.35** Information programs shall be established and financed by Québec to help Crees understand the law, to train court workers and detention liaison officers in order to help Crees obtain legal advice and to assist them in all of the phases of the judicial process and to give the Cree communities information concerning the law. Crees shall be engaged and trained for these purposes as soon as possible after the execution of the Agreement.

**18.0.36** Programs must be provided for non-Native persons engaged in the various aspects of the judicial and legal system of the said district so that such persons be familiar with the language, customs, needs and aspirations of the Crees.

**18.0.37** A judicial advisory committee will be established and financed by Québec after the execution of the Agreement. It will be composed of representatives of Québec, the Crees and other specialists whose participation is deemed necessary. The said committee shall advise on a permanent basis the authorities with respect to the administration of justice respecting Crees in the “judicial district of Abitibi” including the following:

- a) the participation of Crees in all the phases of the judicial, para-judicial or legal process, including the planning and delivery of judicial services which are destined for them;
- b) the studies and research projects required to properly implement the provisions of the present Section;
- c) the courts, officers and staff required;
- d) the buildings and facilities required;
- e) the laws from time to time required or their amendments in order to give effect to the provisions of this Section;
- f) the establishment of more frequent and more systematic communications with the Crees;
- g) the establishment of a system of legal education, information and discussion with the Crees.

[Emphasis added]

### **Path Forward**

11. As a path forward to address some of the issues relevant to the work of this Commission, the Government of Québec should fully implement the provisions of Section 18 of the

JBNQA mentioned above, particularly the obligations that remain outstanding. For example:

- (a) more training on Cree values and way of life must be provided to members of the judiciary (par. 18.0.7), to probation officers (par. 18.0.32) and to any non-Cree persons engaged in the various aspects of the judicial and legal system (par. 18.0.36);
  - (b) probation, parole, rehabilitation and aftercare services should be provided to Crees, in the Cree language and taking into account their culture and way of life (par. 18.0.30 and 18.0.36);
  - (c) Crees should be recruited, trained and hired in order to assume the greatest number possible of positions in connection with the administration of justice (par. 18.0.9, 18.0.32 and 18.0.34).
12. Like many other sections of the JBNQA, Section 18 only began to be more fully implemented relatively recently. Relations between the Crees and Québec were difficult during the 1980's and 1990's, when many disputes arose over implementation of the JBNQA and resource development in Eeyou Istchee. These disputes gave rise to protracted legal proceedings between the Crees and Québec, which were mostly resolved in 2002 with the signing of the *Paix des Braves*, a Nation-to-Nation agreement between the Crees and Québec.
  13. Under the *Paix des Braves*, a commitment had been made to resolve between the Cree Nation and Québec their differences related to the implementation of Section 18 of the JBNQA.<sup>1</sup> This led to the signing by Québec and the Crees on May 30, 2007 of the *Agreement concerning the Administration of Justice for the Crees* (“**Justice Agreement**”).
  14. With the Justice Agreement, Québec confirmed its commitment to work in collaboration with the Crees to ensure the implementation of Section 18 of the JBNQA, including some of the key provisions mentioned above. Through this Agreement, the Crees and Québec reconfirmed their role and responsibilities, in a spirit of collaboration. In 2008, Canada made a similar commitment in respect of certain matters involving Canada in Section 18 of the JBNQA.
  15. Since 2007, the Justice Agreement has finally provided much needed resources to the Cree Nation Government to facilitate and improve the administration of justice for the Crees and in the Cree communities and to ensure greater collaboration between the Crees and the Government in the justice and correctional systems.
  16. In particular, following the signature of the Justice Agreement, Québec and the Cree Nation Government established the Cree-Québec Judicial Advisory Committee contemplated in paragraph 18.0.37 of the JBNQA and each party appointed its respective representatives. Québec's representatives are comprised of officials from the Ministry of

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<sup>1</sup> *Paix des Braves*, s. 9.13.

Justice, the Ministry of Public Security and the Secretariat for Aboriginal Affairs. Representatives of the Cree Nation Government include members from different Cree communities and individuals with knowledge of and interest in the justice and correctional systems.

17. The Cree-Québec Judicial Advisory Committee represents an important forum between Québec and the Cree Nation Government to formulate recommendations on the implementation of Section 18 of the JBNQA, the allocation of resources, the development of priorities and strategies, and the development of programs, services and other initiatives in the areas of justice and corrections for the Crees.
18. The Cree-Québec Judicial Advisory Committee provides an example of collaboration between the Government of Québec and First Nations which could serve as a model for other regions.

### **III. DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES**

19. The Justice Agreement provided the resources for the Cree Nation Government to establish in 2008 a Department of Justice and Correctional Services (Justice Department). When fully staffed, the Department comprises over 50 employees and professionals, including a director, coordinator of programs, coordinator of justice, coordinator of corrections, community justice officers, court liaison officers, justice administrator, corrections administrator, program administrator, prevention program administrator, specialist in detention environment, community reintegration officers, correctional release worker, Cree CAVAC officers, prevention program officers, native parajudicial court workers, primary youth workers, prevention program assistants, administrative assistant, receptionists, coordinator of alternative programs, resource administrator, a department psychologist, and program specialists.
20. Over the years, the Justice Department has established various programs and carried out projects and initiatives in the areas of crime prevention, youth engagement, corrections, rehabilitation, conflict resolution and legal information and training. Examples of such programs and activities include the following:
  - (a) Stop Now and Plan (SNAP);
  - (b) Alternative to School Suspension Program;
  - (c) Mindfulness Martial Arts Program;
  - (d) Tim Horton's Camps and We Days, Take Action Camps, Challenge Days and YMCA's of Quebec programs;
  - (e) Hear Listen and Understand Conference;
  - (f) Crime Prevention Weeks in Eeyou Istchee (in each Cree communities);

- (g) “No Such Thing as a Bad Kid!” workshops;
  - (h) Record Suspension Program;
  - (i) Glossary of Legal Terms in Eeyou Eenou Language;
  - (j) Legal Information Training/Workshops in Cree communities;
  - (k) Preparation of Gladue reports.
21. In addition to its own programs and projects, each year the Justice Department sets aside funds to support local and regional projects and activities through a Crime Prevention Fund, a Corrections Fund and a Youth Engagement Fund. These projects and activities are mostly carried out by the Cree communities, local justice committees or local and regional partners and stakeholders.
  22. The Justice Department has helped the Cree communities establish their own local justice committees. It works with regional partners and government authorities on a wide range of projects and services. For example, the Justice Department is responsible for the Assistance Program for Victims of Crime (*Centre d'aide aux victimes d'actes criminels – CAVAC*) in the Cree communities.
  23. Funding under the Justice Agreement has made possible the construction by the Cree Nation Government of justice facilities in all the Cree communities. These facilities host the Court of Québec and the Superior Court of Québec and allow them to hold more regular sittings and to hear a wide range of cases, including penal, civil and family matters, in the Cree communities.
  24. Finally, the Justice Department recently initiated two key projects that led the Cree Nation Government and the Cree Board of Health and Social Services of James Bay (“**Cree Health Board**”) to work collaboratively for the construction and operation in Eeyou Istchee of two women’s shelters and a youth facility.
  25. Over the years, given the lack of women’s shelters and related programs and services in Eeyou Istchee, a number of Cree women have been obliged to seek shelter outside the Cree communities, including in Val-d’Or and Montreal. The Cree Nation Government commissioned reports, carried out consultation and formed working groups in partnership with regional and governmental stakeholders to take into account best practices. These women’s shelters will provide essential services to Cree women and will reduce the vulnerability of those who would otherwise seek protection and such services outside of Eeyou Istchee. The construction of the women’s shelter in Waswanipi is now completed and will be officially opened shortly. Construction of the women’s shelter in Waskaganish is expected to be completed next year.
  26. The youth facility will be part of a larger plan, which will include a group home, a camp for the bush program, and healing homes. The services to be provided by the youth facility will be adapted to different youth clienteles, including boys, girls, and youth

subject to various measures under the *Youth Protection Act* (Quebec) or the *Youth Criminal Justice Act* (Canada).

27. The women's shelters and the youth facility are both contemplated in Section 18 of the JBNQA since 1975. Their construction and operation in Cree communities is now made possible through the efforts of the Justice Department, recommendations of the Cree-Quebec Judicial Advisory Committee, the partnership of the Cree Health Board and Cree First Nations, and resources provided by the Justice Agreement.
28. These examples illustrate the kind of achievements that have been made possible by the partnership between Québec and the Crees in matters related to justice and correctional services and by the recent commitment of Québec to more fully implement Section 18 of the JBNQA.
29. These examples provide a possible model of collaboration both between Québec and First Nations and between the justice sector and the health and social services sector in providing innovative and cross-sector services to Indigenous clients that may be of interest to the Commission.
30. Although progress has been made in certain areas, much more work is required in order to fully address the issues that are under review by the Commission, particularly the prevention and elimination of any form of violence or discrimination in providing public services, including justice and correctional services, to the Indigenous people of Quebec. This will require the continued commitment and support from the Government of Québec as well as collaboration between Indigenous and non-Indigenous agencies involved in providing services to Indigenous people.
31. The Socio-Judicial Forum is an example of recent collaboration between Indigenous and non-Indigenous agencies in looking at ways of improving how certain front-line services are delivered to Indigenous people. The Forum began several years ago as an inter-ministerial committee including representatives of the Ministries of Justice, Public Security and Health and Social Services, as well as representatives from the Québec Court and Superior Court of Québec.
32. The Forum became more inclusive and relevant to Indigenous people when Indigenous stakeholders, including the Justice Department, became involved in it. The Forum is looking at concrete measures to respond more effectively to certain social problems facing Indigenous communities in order to improve the services currently provided. It is also looking at promoting better cooperation and collaboration at all levels, including with Indigenous partners and stakeholders, in the areas of social, police, correctional and judicial services. In 2015, the Forum adopted a Strategic Plan of Action which includes four (4) broad priorities and 39 specific measures that it is now in the process of implementing. It is important to note that not all priorities and specific measures in the Strategic Plan are the same for all Indigenous Nations in Quebec.
33. Further to the Initial Brief presented by the Grand Council of the Crees (Eeyou Istchee) and Cree Nation Government, the Justice Department would like to offer certain

observations as a path forward to help address issues in the following areas which require more support and closer collaboration between the responsible authorities:

- (a) CAVAC Services;
- (b) Investigations of Complaints or Allegations of Misconduct against Police Force Members;
- (c) Violence against Indigenous Women and Sexual Exploitation;
- (d) Services in the Correctional System.

#### **IV. SPECIFIC AREAS AND OBSERVATIONS AS A PATH FORWARD**

##### **A. CAVAC SERVICES**

- 34. The Victims of Crime Assistance Centres (*Centre d'aide aux victimes d'actes criminels – CAVAC's*) are non-profit organizations that operate throughout Québec. They are governed by the *Act respecting assistance for victims of crime*.<sup>2</sup> Their mission is to provide confidential and free of charge, front-line services, including post-trauma and psychosocial interventions, to victims of crime, their immediate families and also to witnesses of crime.
- 35. In many cases, CAVAC workers play a key role for these individuals by serving as their primary “point of contact” following a crime. The importance of CAVAC services is even more significant where trust in the authorities including the police may be an issue.
- 36. In Eeyou Istchee, the Justice Department operates the “Cree CAVAC” to serve primarily Cree individuals in the Cree communities. It strives to do so in a manner adapted to Cree culture and realities. At the moment, services are provided by three (3) CAVAC officers based in three (3) different Cree communities. These officers also travel to the other six (6) Cree communities to meet the needs of victims, their families and witnesses.
- 37. More recently, the Justice Department has received an increasing number of requests for additional types of services, including mental health support and counselling, which are not currently offered by other entities. This matter was raised with the Cree-Québec Judicial Advisory Committee and the Justice Department is working with Québec representatives and regional partners to explore options to meet this increased demand for services.
- 38. The provision of these and other services by Cree CAVAC personnel is particularly important as the needs and circumstances of vulnerable Indigenous persons, including victims, many of whom are women and girls, require particular sensitivity and often a special approach.

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<sup>2</sup> CQLR, c. A-13.2.

39. The Justice Department considers that, given the presence of Indigenous people outside of their communities, particularly in urban centres such as Gatineau, Val-d'Or, Amos and Montreal, all CAVAC's in Québec should be sensitized to the vulnerability of Indigenous victims and be trained to adopt a special approach when dealing with Indigenous people.
40. Following the "Val-d'Or events" in 2015, the Cree CAVAC issued a written statement to the other CAVAC's in Québec, offering recommendations in this regard. These recommendations were intended for all CAVAC's and they propose concrete measures to improve the delivery of CAVAC services to vulnerable Indigenous people wherever they may be.
41. These recommendations are summarized and reiterated below as they are relevant to the mandate of this Commission. The implementation of these recommendations will require the continued support, including technical and financial support, of the Government of Québec.
42. On July 20, 2017 the Québec Minister of Justice announced that an amount of \$23.8 million would be provided in 2017-2018 to support CAVAC's and other agencies that assist victims of crime. An amount of \$21.1 million is to be shared among the 17 CAVAC's in Québec to support their day-to-day operations. With their share of this amount, the CAVAC's of Abitibi-Témiscamingue, Côte-Nord and Outaouais will hire three (3) new resource persons to better meet the needs of the victims from Indigenous communities in these regions.<sup>3</sup> Although this is a step in the right direction, funding should be provided to allow other CAVAC's also to better meet the needs of Indigenous victims in their regions.

### **Path Forward**

- (a) Additional training should be provided to CAVAC workers throughout Québec to increase awareness and sensitivity to the particular circumstances of Indigenous clients.
- (b) CAVAC's should be able to offer services to Indigenous clients **at least** in both French and English, to serve a broader segment of the Indigenous population that may not be at ease in only one of these languages.
- (c) Each CAVAC should ensure that it is able to provide services by a female CAVAC worker, upon request, to promote a safer environment for women to seek support.
- (d) Each CAVAC should identify the resources in its region that can provide additional, complementary assistance to Indigenous clients, such as a Native

Friendship centre. Each CAVAC should begin to form links and relationships with these organizations, in order to be prepared when the need arises.

- (e) A CAVAC working group should be established to identify particular needs and approaches to better serve Indigenous clients. This working group should include Indigenous CAVAC representatives. The Government of Quebec should provide sufficient resources to support this working group, including for French-English translation services.
- (f) Each CAVAC should adopt a protocol to address situations where a client alleges that a criminal offence has been committed by a police officer, to ensure that any criminal complaint is addressed to the appropriate authorities in a timely manner.

## **B. INVESTIGATIONS OF COMPLAINTS OR ALLEGATIONS OF MISCONDUCT AGAINST POLICE FORCE MEMBERS**

43. A critical concern arising from the Val-d'Or events of 2015 relates to the way that the authorities first addressed the allegations of misconduct by certain officers of the Sûreté du Québec ("SQ"). These allegations were initially referred to an internal investigation of the SQ, instead of an outside police force or an independent body.

44. On October 23, 2015, the Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government issued a press release, which stated, in part:

It is not an investigation of the SQ in Val-d'Or by their fraternity in the Montreal Police force that will address this wound. The Cree Nation Government is of the opinion that an investigation by the Royal Canadian Mounted Police ("RCMP") would be the more appropriate response especially in light of the fact that what has come to light in Val-d'Or is a National concern.<sup>4</sup>

45. On the same day, the Ministry of Public Security announced the transfer of the investigation from the SQ to the Service de Police de la Ville de Montréal ("SPVM"), more than five months after being made aware of the allegations.<sup>5</sup>

46. Those responsible for investigating allegations of misconduct by members of a police force must be totally independent from that police force. In other words, the investigating

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<sup>3</sup> Gouvernement du Québec, Information Feed, "Plus de 23 millions de dollars pour venir en aide aux victimes d'actes criminels" (20 July 2017) online : <<http://www.fil-information.gouv.qc.ca/Pages/Article.aspx?aiguillage=ajd&type=1&idArticle=2507206473>>.

<sup>4</sup> Grand Council of the Crees, Press Release, "Reaction Of Grand Council of the Crees (Eeyou Istchee)/ Cree Nation Government to Radio-Canada Report – Enquête Concerning Abuse Of First Nations Women" (23 October 2015) online: <<http://www.gcc.ca/newsarticle.php?id=423>>.

<sup>5</sup> Ministère de la sécurité publique, Press Release, "Le gouvernement ne tolérera aucun écart de conduite des policiers et entend soutenir la population de Val-d'Or" (23 October 2015) online: <<http://www.securitepublique.gouv.qc.ca/ministere/salle-presse/communiques/detail/12710.html>>.

entity, and its investigators, must be totally separate from the police force whose members are being investigated. This principle is in line with the recommendation of the Poitras Commission, almost twenty years ago, to withdraw the mandate from the SQ to investigate allegations of criminal offences involving its members.<sup>6</sup>

47. The independence of those responsible for investigating allegations of misconduct by members of a police force is essential to the credibility of the investigation itself and in order to maintain the confidence of the victims, Indigenous peoples and the public at large.
48. At the time of the Val-d'Or events, the *Bureau des enquêtes indépendentes* (“BEI”) had already been established under the *Police Act*.<sup>7</sup> However, the BEI was not yet operational. Consequently, an “Independent Observer” was appointed by the Government of Québec to monitor the SPVM investigation into the allegations, in an attempt to promote impartiality in the investigation process.
49. Since then, the BEI has become operational. In regard to the mandate of the BEI, the *Police Act* has provided since 2013 that:

**289.1** An independent investigation must be conducted if a person, other than an on-duty 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.

*[Emphasis added]*

50. The *Police Act* also provides that the Minister of Public Security may, in exceptional cases, charge the BEI with conducting an investigation on any occurrence involving a peace officer and related to the peace officer’s functions, other than an occurrence described in section 289.1 above.<sup>8</sup>
51. The BEI may also conduct any other investigation of allegations of a criminal offence being committed by a police officer, if the Minister orders it.<sup>9</sup>
52. The creation of the BEI and the provisions of the *Police Act* regarding the BEI are a step in the right direction. However, the *Police Act* should go further by providing that all allegations of a criminal offence, at the very least, offences involving physical or sexual assault, being committed by a police officer must be the object of an independent

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<sup>6</sup> Commission d’enquête chargée de faire enquête sur la Sûreté du Québec, *Rapport de la Commission d’enquête chargée de faire enquête sur la Sûreté du Québec : pour une police au service de l’intégrité et de la justice, Sommaire et recommandations*, (Sainte-Foy: Les Publications du Québec, 1999) at 87.

<sup>7</sup> CQLR, c. P-13.1.

<sup>8</sup> *Ibid*, s. 289.3.

<sup>9</sup> *Ibid*, ss. 289, 289.6.

investigation. Such investigation should always be carried out by an independent entity, either by the BEI or by another independent entity established for this purpose.

53. It is also essential that additional measures be put in place to ensure Indigenous representation or participation in any investigation regarding alleged criminal offences against Indigenous persons by police force members. This is required to ensure that the investigation is carried out appropriately, in light of the particular cultural, gender and linguistic context of the Indigenous person.
54. Since April 2016, the Native Para-Judicial Services of Quebec (“SPAQ”) has been working at supporting and accompanying victims who wish to file a complaint against police officers for alleged abuse. SPAQ launched several targeted actions and awareness measures, including the implementation of an “emergency confidential hotline”. According to SPAQ, calls are increasing monthly.<sup>10</sup> This further demonstrates the need for the Government to put in place adequate and permanent mechanisms and structures for Indigenous people to feel safe to file complaints against police officers. In the meantime, actions and measures to assist and accompany Indigenous persons who wish to file a complaint against police officers, such as those initiated by SPAQ must be supported.
55. In the case of investigations regarding allegations involving a police officer and an Indigenous person, there should be proper channels of communication and exchange of information between the concerned Indigenous and Government authorities, subject to measures to protect the confidentiality of individuals, in order to protect the victims and the concerned communities and to restore and maintain the confidence of Indigenous people, particularly Indigenous women, in police services generally, which must serve all members of the community.

### **Path Forward**

- (a) All investigations into allegations of criminal offences involving police force members, including allegations of physical or sexual assault or sexual misconduct by police officers, should be conducted by an independent, impartial investigating entity, either by the BEI or by another independent entity established for this purpose.
- (b) In the case of investigations regarding allegations involving a police officer and an Indigenous person, Indigenous participation or representation in the investigation is essential:

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<sup>10</sup> Native Para-Judicial Services of Quebec, 2016-2017 Annual Report, p. 13.

- (i) This “participation” could be carried out through an Indigenous person working with the investigation team, such as a “civilian” (non-police officer), former police officer, or police officer with an Indigenous police force, such as the Eeyou-Eenou Police Force (EPPF);
  - (ii) This participation is critical to foster collaboration between the investigation team and the Indigenous communities, and would help to build mutual understanding and confidence. It could also serve as a possible means of ensuring liaison with these communities on the status of the investigation.
- (c) Any investigation involving a police officer and an Indigenous person also needs to consider appropriately the particular cultural, gender and linguistic context of the Indigenous person and any Indigenous witnesses:
- (i) “Cultural appropriateness” in the investigation must go beyond “cultural sensitivity” and should include the involvement of appropriate Indigenous individuals with the cultural and linguistic skills required for the investigation, as applicable and as recommended above;
  - (ii) The involvement of women investigators to facilitate the participation of Indigenous women, in particular complainants and witnesses, should be encouraged;
  - (iii) Measures should be put in place to provide a holistic, culturally appropriate and safe setting for Indigenous persons who are involved in the investigations and in order to ensure that investigation practices respect and honour Indigenous cultures.
- (d) The Government of Québec should provide the resources, including technical, financial and human resources, to ensure the implementation of these recommendations as soon as possible.

## **C. VIOLENCE AGAINST INDIGENOUS WOMEN AND SEXUAL EXPLOITATION**

56. In the formulation of its recommendations on remedial measures to prevent or eliminate any forms of discrimination and violence in the delivery of public services to Québec’s Indigenous peoples, the Commission should be aware of and inquire as to the underlying causes of violence, systemic discrimination and different treatment that Indigenous people face. In particular, the Commission should look at the reasons why Indigenous people, especially women, are vulnerable to violence and discrimination.

### ***Statistics on Violence against Indigenous Women and Sexual Exploitation***

57. The likelihood of Indigenous people, particularly Indigenous women, falling victim of violence, sexual exploitation and trafficking is well documented.<sup>11</sup>
58. Indigenous women have an overall rate of violent victimization that is twice as high as for Indigenous males and close to three times that of non-Indigenous females.<sup>12</sup> Between 1997 and 2014, there were 71 female sex worker victims of homicide who were identified as Indigenous, representing one in three (34%) of all female sex worker murder victims.<sup>13</sup>
59. With respect to sexual exploitation, the Justice Department presented a brief in February 2014 to the Québec *Comité interministériel sur l'exploitation sexuelle* entitled "*The Roots and Causes of Sexual Exploitation of Cree Women and Youth and Recommendations*".
60. In this brief, the Justice Department explained that Indigenous women and girls were particularly vulnerable to sexual exploitation and human trafficking.
61. Indigenous women and girls make up the majority of those being subject to domestic sex trafficking in Canada, although Indigenous people only make up approximately 4% of Canada's population.<sup>14</sup> After a police operation in Val-d'Or in 2008, the Sûreté du Québec declared that out of 28 sex workers who were arrested, 21 were Indigenous women.<sup>15</sup>

### ***Reasons for Higher Levels of Violence, Sexual Exploitation and Trafficking***

62. There are various reasons for the higher levels of violence against and sexual exploitation of Indigenous women and girls. Among others, there appears to be a serious lack of recognition and knowledge among service providers, police services, the justice system, and the general public as to why Indigenous people, especially women, are more at risk of sexual exploitation and violence.<sup>16</sup>
63. Many socioeconomic and historical factors have contributed, and continue to contribute today, to the marginalization and vulnerability of Indigenous people.

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<sup>11</sup> Canadian Centre for Justice Statistics, *Victimization of Indigenous people in Canada, 2014* by Jilian Boyce (Ottawa: Juristat, 28 June 2016); Native Women's Association of Canada, *Our spirits are not for sale* (2015).

<sup>12</sup> Victimization of Indigenous people, *supra* note 11 at 3.

<sup>13</sup> Canadian Centre for Justice Statistics, *Prostitution offences in Canada: Statistical Trends* by Christine Rotenberg (Ottawa: Juristat, 10 November 2016) at 13.

<sup>14</sup> *Our spirits are not for sale*, *supra* note 11 at 2.

<sup>15</sup> Conseil du statut de la femme, *La prostitution: il est temps d'agir* (Québec : Conseil du statut de la femme, May 2012) at 48.

<sup>16</sup> *Our spirits are not for sale*, *supra* note 11 at 2.

64. According to the *Report of the Truth and Reconciliation Commission of Canada*, current conditions such as the disproportionate victimization of Indigenous people can be explained in part as a result or legacy of the way that Indigenous children were treated in residential schools and were denied an environment of positive parenting, worthy community leaders, and a positive sense of identity and self-worth.<sup>17</sup>
65. The legacy left by residential schools, combined with centuries of racist policies, have resulted in a toxic cocktail of realities that leave Indigenous children and women particularly vulnerable to violence and sexual exploitation.
66. Some of these realities include: high levels of poverty, racism, loss of cultural identity, family fragmentation, high levels of physical, sexual, emotional and psychological abuse in the home, inter-generational trauma and ‘normalized’ cycles of abuse, higher levels of substance and alcohol abuse, higher rates of fetal alcohol spectrum disorder, higher rates of depression and other psychological disorders, severe overcrowding in homes and lower levels of education.
67. While many paths may lead to prostitution and sexual exploitation, they entrap, first and foremost, the most vulnerable members in society, such as those living in poverty and abusive situations. Perhaps more than any other groups, Indigenous women and youth often find themselves in situations of extreme vulnerability, making them more at risk of falling victim to trafficking and sexual exploitation.
68. For example, the lack of women’s shelters and related programs and services in Indigenous communities has forced Indigenous women to seek shelter outside their communities. Since shelter for them in urban centres is often lacking, this has led to homelessness and greater exposure to violence and abuse in the streets.
69. Violence and sexual exploitation in Indigenous communities are also sociological characteristics of entire communities and not just of certain individuals. This implies that the problem of sexual exploitation of Indigenous women cannot be understood and successfully approached based on the models and assumptions of most research and intervention programs in mainstream society, which do not consider the community dimension.<sup>18</sup>
70. The socioeconomic problems affecting Indigenous communities have much to do with this context of violence and exploitation. As mentioned by the *Conseil du Statut de la*

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<sup>17</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) at 183.

<sup>18</sup> Michael Bopp *et al.*, *Aboriginal Domestic Violence in Canada* (Ottawa: Aboriginal Healing Foundation, 2003) at 9.

*femme*, the fact that the situation has been ignored for so long says a lot about the deep-rooted prejudices confronting Indigenous people.<sup>19</sup>

### ***Housing – Severe Overcrowding and Shortage***

71. The Initial Brief of the Grand Council of the Crees (Eeyou Istchee) and Cree Nation Government identified overcrowded and substandard housing in Indigenous communities as one of the main factors that lead some Indigenous people to leave their communities for urban centres where many are at risk of homelessness, violence and abuse. Overcrowded housing creates tension within the family and breeds conditions ripe for physical and emotional abuse.<sup>20</sup>
72. The housing crisis in Cree communities is addressed throughout the Initial Brief and is best summarized at the outset of the brief as follows:
  2. One of the most urgent needs in Indigenous communities is the critical shortage of social housing. Until this housing shortage is addressed through concrete action, other actions will come to nothing. Until Indigenous people are no longer living 10, 12 and 20 persons in a single house, conditions commonly encountered in Northern Quebec, they will continue to fall victim to violence and abuse.
  3. Until this single issue is resolved, Indigenous people will continue to be forced from their communities to urban centres, where many will be at risk of homelessness and violence. More social workers and shelter beds in the cities are necessary, but not enough. These measures reduce distress on the margin, but they will not solve the real problem.

### ***Working Together to Address the Underlying Causes***

73. Any remedial measures to prevent and eliminate any forms of discrimination and violence in the delivery of public services to Québec's Indigenous people must take into account the underlying factors mentioned above, *i.e.* historical treatment, assimilative policies, socioeconomic conditions, poverty and overcrowded and substandard housing.
74. These measures must take into account the history of abuses related to residential schools, systemic discrimination, and past and present policies and legislation. All of these factors may interfere with the connection between individuals and their community or family support structures.

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<sup>19</sup> Conseil du statut de la femme, *Let's Meet Québec's Aboriginal Women* (Québec : Conseil du statut de la femme, September 2016) at 35.

<sup>20</sup> Initial Brief, par. 2-3, 45-47, 52, 122, 139, 144-147, 157-159.

75. A comprehensive and concerted effort is urgently needed for Governments to work with Indigenous authorities to address all of the factors involved in violence and sexual exploitation of Indigenous women and children, including poverty, racism, lack of housing, alcohol and drug abuse, lack of education or life skills, family fragmentation, loss of cultural identity, sexual/emotional/physical abuse at home, and intergenerational trauma.
76. The *United Nations Declaration on the Rights of Indigenous Peoples* provides that Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person and that they shall not be subject to any act of violence.<sup>21</sup> The Government of Québec has welcomed Canada’s decision to adhere to the Declaration and it must now take the practical, concrete measures to ensure that these principles are respected.<sup>22</sup>
77. In addition, the Government of Québec and the Cree Nation Government must work together on a common vision and set of measures for reducing violence and sexual exploitation of Indigenous people. For example, one of the issues regarding human trafficking is the difficulty to locate individuals when they are gone missing. The story of Lynn Iserhoff is an example of collaborative efforts that led to her finding.
78. In December 2014, Lynn Iserhoff, an 18-year old girl from the Cree community of Mistissini, went missing for three weeks in what became a suspected case of human trafficking. A nationwide missing person’s alert was issued and the SPVM launched an investigation into a suspected network of human trafficking in Montreal. Thanks to the collaboration of the Cree authorities, the SPVM, the Native Friendship Centre and the media, Lynn Iserhoff was found and safely returned to her family in Mistissini.<sup>23</sup>

### **Path Forward**

- (a) There needs to be concerted action for Government to work with Cree authorities to address the housing crisis in Cree communities.
- (b) Service providers working with Indigenous people should be sensitized to Indigenous realities. In particular, front-line interveners (*e.g.* medical doctors,

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<sup>21</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61 Sess, UN Doc A/RES/61/295 (2007), s 7.

<sup>22</sup> Secrétariat aux affaires autochtones, Press Release, “Le ministre Pierre Corbeil salut l’appui du gouvernement fédéral à la Déclaration des Nations Unies sur les droits des peuples autochtones” (15 November 2010) online:

<sup>23</sup> <[https://www.autochtones.gouv.qc.ca/centre\\_de\\_presse/communiqués/2010/communiqué-20101115.htm](https://www.autochtones.gouv.qc.ca/centre_de_presse/communiqués/2010/communiqué-20101115.htm)>. <http://www.cbc.ca/news/canada/montreal/lynn-iserhoff-s-mother-rejoices-in-return-of-daughter-1.2906873>; <http://www.ctvnews.ca/canada/missing-cree-woman-lynn-esther-iserhoff-found-safe-in-montreal-1.2189834>.

social workers, welfare officers, probation officers, teachers, lawyers and police officers) should be able to identify Indigenous victims of sexual exploitation and violence and take the necessary measures to ensure that these individuals are protected and return to a safe environment.

- (c) Front-line service providers should be able to adapt their services and interventions to meet the needs of the local Indigenous communities they serve. They should tailor the delivery of services in collaboration with the Indigenous people concerned and avoid a “one size fits all” approach.
- (d) Service providers should continually work on developing and maintaining a relation of trust with the Indigenous communities. Trust and mutual respect should be the foundation upon which services are provided to Indigenous people. This requires a genuine collective and individual investment by the service providers to learn about and reach out to the communities they serve.
- (e) Personnel working in daycare and educational services should be made aware of the importance and the means of detecting Indigenous children exposed or subject to sexual exploitation or violence.
- (f) Medical personnel should be supported with tools and information on the needs of Indigenous victims of sexual violence and on the services available for support and protection in order to ensure the early detection of these victims.
- (g) Police officers should receive training in matters related to sexual exploitation of Indigenous women and girls, including with respect to the necessity of taking all complaints seriously and not ignoring any women, especially those in vulnerable circumstances.<sup>24</sup> Special attention should also be given during events such as music festivals, when the number of sexual abuses tends to increase.
- (h) Resources should be dedicated to effective prevention strategies that address the root causes of violence against Indigenous women and sexual exploitation.
- (i) Service providers should face punitive measures when they tolerate or contribute to the perpetuation of discrimination and violence against Indigenous people.
- (j) A prevention and awareness campaign should be implemented to ensure that all forms of discrimination are recognized and identified by service providers and that corrective measures are implemented.
  - (i) For example, the Justice Department provided financial support for the development by the Cree Women of Eeyou Istchee Association of a

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<sup>24</sup> See *Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless*, Globe investigation report, Globe and Mail, 3 February 2017 (<https://beta.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/?ref=http://www.theglobeandmail.com&>), and related stories; <http://www.cbc.ca/news/politics/military-sexual-assault-inquiry-report-1.4137854>; <https://beta.theglobeandmail.com/news/investigations/how-police-missteps-can-derail-sex-assault-cases/article3555702/?ref=http://www.theglobeandmail.com&>.

toolkit for the prevention of violence against Cree women and girls, which includes information such as fact-sheets about violence and safety, community resources and emergency contact numbers;

- (ii) Each public service department working with Indigenous people should create a position for a point person in their organization whose responsibility would be to monitor all forms of discrimination against Indigenous people.
- (k) Tools and policies should be developed within organizations to ensure that women are properly protected and free to report any abuse at the workplace without any risk of being penalized.
- (l) The Government of Québec should continue to support the need for specialized programs, services and facilities, such as women's shelters, for women in Cree communities and in urban centres where Cree women are present.
  - (i) As mentioned in paragraph 24 above, the Cree Nation Government and the Cree Health Board are working collaboratively for the construction and operation in Eeyou Istchee of two women's shelters. The long-term support of the Government of Québec is key to ensure the construction, operation and maintenance of these and other similar facilities and the implementation of related programs and services for Cree women.
  - (ii) Particular attention should be given to the development and implementation of programs, in collaboration with other front-line workers, that seek to offer complementary services to help women and the youth in women shelters and youth facilities develop certain skills that promote their empowerment, such as workshops on self-esteem, to assist in improving their situations for when they leave the shelter or facility.

#### **D. SERVICES IN THE CORRECTIONAL SYSTEM**

##### ***Over-representation of Indigenous Peoples in the Correctional System***

79. In September 1996, Bill C-41, an “*Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*”,<sup>25</sup> came into force and established many of the statutory sentencing provisions found in Part XXIII of the *Criminal Code*. These provisions were intended to clarify the objectives and principles of sentencing and to ensure that just sanctions are imposed on offenders. Among other things, a new remedial provision, paragraph 718.2(e), was introduced in the *Criminal Code* that directs that “*all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders*”.

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<sup>25</sup> S.C. 1995, c. 22.

80. The then-Minister of Justice, Allan Rock commented in the House of Commons at the time that “...*the reason we referred specifically there to Indigenous persons is that they are sadly over-represented in the prison populations of Canada*”.<sup>26</sup>
81. Twenty years after the adoption of this remedial provision, the rate of Indigenous over-representation in the federal correctional system has not diminished. Instead, it has further increased. According to the Office of the Correctional Investigator, 25% of the inmate population in federal penitentiaries is now comprised of Indigenous people. That percentage rises to more than 35% for federally incarcerated Indigenous women. These figures are all the more shocking given that Indigenous people comprise only 4.3% of Canada’s population.<sup>27</sup>
82. Between 2005 and 2015, the federal inmate population grew by 10% while over the same period, the Indigenous inmate population increased by more than 50%.<sup>28</sup>
83. According to the Office of the Correctional Investigator, “[...] a history of disadvantage follows Indigenous peoples of Canada into prison and often defines their outcomes and experiences there. [...] Aboriginal people under federal sentence tend to be younger, less educated, and more likely to present a history of substance abuse, addictions and mental health concerns.”<sup>29</sup>
84. In a separate report published in 2013, the Office of the Correctional Investigator found that the limited understanding and awareness within the correctional system of Indigenous peoples and their cultures, spirituality and approaches to healing represent barriers that inadvertently perpetuate conditions that disadvantage and/or discriminate against Indigenous offenders.<sup>30</sup>
85. The Office of the Correctional Investigator also notes that some of the problems mentioned above and facing Indigenous inmates demand focused and sustained attention and a real commitment to change and reform. Among other things, it recommends the appointment of a Deputy Commissioner for Aboriginal offenders to ensure an Indigenous perspective and presence in correctional decision-making.<sup>31</sup>

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<sup>26</sup> House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs*, No. 62, 1st Sess., 35<sup>th</sup> Parl., November 17, 1994, p. 15.

<sup>27</sup> Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2015-2016* (Ottawa: The Correctional Investigator of Canada, 30 June 2016) at 43.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: The Correctional Investigator, 22 October 2012) at 6.

<sup>31</sup> *Annual Report 2015-2016*, *supra* note 27 at 44.

86. In Québec, the most recent statistics available indicate that Indigenous inmates represent 5.5% of the general inmate population,<sup>32</sup> although Indigenous people only represent approximately 1% of Québec's population.<sup>33</sup> The number of admissions of Indigenous people in detention facilities in Québec has increased by 39% from 2003 to 2013 while general admission only increased by 5%.<sup>34</sup> Four facilities stand out regarding Indigenous over-representation: Amos (47%), Sept-Îles (44%), Roberval (25%) and Saint-Jérôme (20%).<sup>35</sup>
87. In this context, we see accounts emerging of individuals who reconnect with their Indigenous roots and traditions. We also see initiatives that point in the right direction such as the Aboriginal Continuum of Care applied by Correctional Services Canada to ensure access to culturally appropriate interventions for Indigenous offenders. The Continuum of Care is intended to encourage Indigenous offenders to engage in cultural and spiritual interventions as part of their correctional plan. Correctional Services Canada now acknowledges that two major factors contribute to Indigenous offenders' success upon release:
- (a) participation in spiritual and cultural activities and programs (preferably delivered by Indigenous people); and
  - (b) the support they receive from family and community.<sup>36</sup>
88. In 2008, the Ministère de la Sécurité publique published a special report on the correctional profile of Native persons in Québec's correctional systems.<sup>37</sup> The report looks at the over-representation of Indigenous peoples in the Québec correctional system and offers the following observations:

If we want to defuse the criminalization process of Québec Native persons and thereby act on their rates of overrepresentation in penal institutions, it will be imperative to develop measures that will act upstream from the correctional services, like the measures found in current agreements between the Gouvernement du Québec and some Native communities [e.g. the Cree-Québec 2007 Justice Agreement]. We are referring, for example, to the implementation of community prevention programs in the areas of spousal and family violence, abuse of all types and anger management. [...] To that could be added the development of programs to prevent criminality among Native youth or the

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<sup>32</sup> Ministère de la sécurité publique, *Profil de la population correctionnelle 2012-2013*, by Bernard Chéné (2014) at 5.

<sup>33</sup> Secrétaire aux affaires autochtones, "Profile of the Nations" (24 April 2014) online: <[http://www.autochtones.gouv.qc.ca/relations\\_autochtones/profils\\_nations/profil\\_en.htm](http://www.autochtones.gouv.qc.ca/relations_autochtones/profils_nations/profil_en.htm)>.

<sup>34</sup> *Profil de la population correctionnelle*, supra note 32 at 7.

<sup>35</sup> *Ibid.*, at 5.

<sup>36</sup> Correction Services Canada's (CSC) Approach to Indigenous Corrections: <http://www.csc-scc.gc.ca/publications/005007-3001-eng.shtml>.

<sup>37</sup> *2007-2008 Correctional profile: Native Persons Committed to the Custody of Québec's Correctional Services*, Ministère de la Sécurité publique, 2008.

creation of recreational and educational infrastructures that would meet the objectives described in current agreements signed with the Inuit and the Cree.

[...]

Other measures could also be contemplated inside the correctional services. For example, a program could be provided for correctional staff to increase their awareness of the historical and cultural realities of the Aboriginal peoples, to dispense some correctional services in Native languages, to ensure that Native persons have access to an interpreter (particularly Inuit and Cree persons) and to provide Native spirituality and healing programs inside the correctional institution that receive the largest number of Natives. [Emphasis added]

### *Contributing factors*

89. Many factors contribute to the vulnerability of Indigenous persons and eventually their over-representation in the justice and correctional systems, including social, economic and historical circumstances, poverty, unemployment, lower education levels, family breakdown and the intergenerational effects of residential schools, loss of culture, addictions and alcohol abuse.
90. Some of these factors were identified in the landmark decision of the Supreme Court of Canada in *R. v. Gladue*<sup>38</sup>, which interpreted section 718.2(e) of the *Criminal Code*, introduced in 1996. These factors were restated in 2012 by the Supreme Court of Canada in *R. v. Ipeelee*:

To be clear, courts must take judicial notice of such matters as 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 Indigenous peoples.<sup>39</sup>
91. The Truth and Reconciliation Commission of Canada recently acknowledged the intergenerational legacy of residential schools as a cause of the over-incarceration of Indigenous people: "...it should not be surprising that those who experienced and witnessed serious violence against Indigenous children in residential schools frequently became accustomed to violence later in life."<sup>40</sup>
92. Another significant factor is the lack of cultural services and programs in the correctional system. For example, the Truth and Reconciliation Commission of Canada noted that lack of funding is an obstacle to the successful expansion of healing lodges for Indigenous prisoners.

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<sup>38</sup> *R. v. Gladue*, [1999] 1 S.C.R. 688, par. 68.

<sup>39</sup> *R. v. Ipeelee*, [2012] 1 S.C.R. 433, par. 60.

<sup>40</sup> Honouring the Truth, *supra* note 17 at 218.

93. The Truth and Reconciliation Commission of Canada also noted that prisoners must be classified as “minimum security” to be eligible, while 90% of Indigenous inmates are assigned “medium” or “maximum” security and are therefore ineligible.<sup>41</sup> This classification of Indigenous inmates is often done without an interpreter, which leads to a classification that does not necessarily reflect the actual level of security required for these inmates. This example of systemic misunderstanding of Indigenous realities and the lack of adapted services, which is taken from the federal context of penitentiaries, could just as well be relevant to Québec’s correctional system.
94. Another example of systemic misunderstanding, more specifically in a provincial context, is the development and application of certain regulations, by-laws, policies and other measures that may be well intended for the general population, but that may inadvertently increase the Indigenous presence in the correctional system. This point can be illustrated by a recent report on the judicialization or criminalization of homeless Indigenous people in Val-d’Or.<sup>42</sup>
95. According to this report, 76,2% of all the tickets issued between 2012 and 2015 for violation of the *Règlement concernant les nuisances, la paix, le bon ordre et les endroits publics* (2003-40) were issued to Indigenous people.<sup>43</sup>
96. Among the “over criminalized” individuals who received more than 10 tickets during that period, 95% were Indigenous, and among those who received more than 15 tickets, 100% were Indigenous. If the fines due were not paid, the collector could apply to a judge for an order of imprisonment.<sup>44</sup>
97. The use of incarceration for the non-payment of fines may be intended as a general policy, but in the particular context of Val-d’Or, this led to the judicialization or criminalization of homeless Indigenous people, which in turn, contributed to increasing their over-representation in the correctional system.

#### *Initiatives of the Justice Department*

98. The Justice Department, in collaboration with the Cree-Québec Judicial Advisory Committee, has identified crime prevention as a key element in contributing to reducing the number of Crees coming into contact with the correctional system. As mentioned in paragraphs 20 and 21 above, the Justice Department has established various programs

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<sup>41</sup> *Ibid.*, at 223; Spirit Matters, supra note 30, at 18.

<sup>42</sup> Céline Bellot & Marie-Eve Sylvestre, Observatoire sur les profilages, *Executive Summary – The Judicialization of Homelessness in Val-d’Or* (December 2016).

<sup>43</sup> *Ibid.*, at 3.

<sup>44</sup> *Ibid.*

and carried out projects and initiatives, alone or in collaboration with local and regional partners, in the areas of crime prevention and youth engagement.

99. The Justice Department is involved in the preparation of *Gladue* reports for Cree offenders. These reports contain recommendations to the court as to the appropriate sentence, as well as information about the offender's background, *e.g.* social history, residential schools, abuse, which is to be taken into account in the determination of an appropriate sentence by the court.
100. The Justice Department has developed a "Glossary of Legal Terms in Eeyou Eenu Language" which comprises the terms and concepts most commonly used in the justice and correctional systems. One of the main objectives is to ensure that Cree people better understand the law and become more familiar with all the phases of the judicial process. The Justice Department also considers this Glossary to be an important tool to facilitate communication and understanding between service providers and Cree people who come into contact with the justice and correctional systems.
101. The Justice Department has also taken specific measures and developed programs to help those who are already involved in the correctional system. As mentioned above, paragraphs 18.0.29f) and g) of the JBNQA refer to "*special rehabilitation programs... for the treatment, training and rehabilitation of detained Crees taking into account... their way of life and culture*", and "*special programs, both during detention and after release... in order to facilitate the return of the Crees to, and their reintegration into, their families and communities.*" [Emphasis added]
102. In conformity with these provisions, the Justice Department has sought the collaboration of representatives of the Ministry of Public Security with a view to increasing the visibility and involvement of the Justice Department with Cree detainees in the correctional system.
103. In recent years, the Justice Department has hired and trained many staff to work more closely with Cree detainees during detention and after release from prison. In particular, the Justice Department has hired a psychologist who prepares assessments of Cree offenders in the correctional system in order to determine the risk of reoffending and their potential for reintegration, as well as their need for assistance and support. These assessments are intended to take into account cultural factors and to be more reflective of the realities of Cree offenders. Another example is a Cree Corrections Liaison Officer who assists Crees in detention facilities so that they can get better services and have access to programs that address their needs.
104. The Justice Department has developed various special programs and services for Cree detainees designed specifically to take into account and respect Cree culture and values,

Cree way of life and beliefs about healing and reconciliation, including programs for individuals with a functional level of literacy. One example is the traditional food program which enables Cree detainees to connect with the land, to remind them of their culture and identity and to help them begin their healing journey.

105. The Justice Department has supported programs developed and implemented in collaboration with the Cree Health Board which provide for youth offenders in detention to spend up to six weeks on the land to strengthen family bonding and self-esteem, and to reconnect with the land, their family and Cree values as a step towards rehabilitation. This is another example of effective collaboration between front-line service providers.
106. The Justice Department has hired and trained Cree Community Reintegration Officers in all Cree communities. In collaboration with the Department psychologist and Québec probation officers, these Cree Community Reintegration Officers meet with Cree detainees and help assess their readiness to return to their community. When offenders return to their community, Cree Community Reintegration Officers can refer them to appropriate resources and help them succeed in their reintegration. They are also present in urban areas and they provide services to homeless individuals.
107. In recent years, the Justice Department has held discussions with representatives of the Ministry of Public Security to develop a protocol, or memorandum of understanding, aimed at further increasing collaboration between the Ministry and the Justice Department. In particular, the Justice Department would expect this protocol to define the participation of personnel of the Justice Department, alongside Québec personnel, in the various steps of the correctional process (*i.e.* (i) preparation of pre-sentencing report, (ii) assessment and correctional intervention plan, (iii) custody, and (iv) community supervision).
108. For the Justice Department, this approach would be consistent with paragraph 18.0.34 of the JBNQA which provides that, “...when it will be appropriate to do so, Crees will be recruited, trained and hired in order to assume the greatest number possible of positions in connection with the administration of justice in the judicial district of Abitibi.” This approach would see Cree personnel, such as Community Reintegration Officers and Specialists in Detention Environment, work side by side in the correctional system with Québec probation officers and correctional officers. It would ensure better access to Cree detainees by Cree personnel and the delivery of programs and services to them in a way that better takes into account the Cree way of life and culture. Moreover, the formal recognition of Cree personnel in each of the steps of the correctional process would increase their authority and legitimacy in the eyes of Cree detainees and this would facilitate their supervision and follow-ups with them.

109. Representatives of the Ministry of Public Security have pointed out that this approach would likely require modifications to the legislative framework that governs the correctional services in Québec,<sup>45</sup> given that the law at the moment only recognizes Québec personnel (*e.g.* probation officers and correctional officers). Consequently, they have initially proposed a much narrower approach focussing exclusively on assisting Québec probation officers in the community supervision of offenders, something that they claim to be feasible in the current legal framework. The Justice Department is confident that a more ambitious approach can be adopted and it remains committed to working with Québec representatives on a protocol along the lines described in paragraphs 107 and 108 above.

### **Path Forward**

- (a) In accordance with paragraph 18.0.36 of the JBNQA, programs should be provided for non-Cree persons engaged in the various aspects of the judicial and legal system, particularly Québec personnel working in the correctional system, *e.g.* probation officers and correctional officers, to ensure that they are familiar with the language, customs, needs and aspirations of the Crees. Training should be provided to these persons to raise their awareness of Cree culture, realities and approaches to healing, as well as the challenges faced by the Crees in order to eliminate misconceptions and discriminatory practices.
- (b) In conformity with section 21 of the *An Act respecting the Québec Correctional System* and paragraph 18.0.29 of the JBNQA, special programs and services that take into account the Cree way of life and culture should be further developed, implemented and expanded within the correctional system, including:
  - (i) Expansion of the traditional food program to enable Cree detainees to connect with the land, to remind them of their culture and identity and to help them begin their healing journey;
  - (ii) Programs to facilitate and encourage visits of Elders from Indigenous communities so that they can meet with Indigenous detainees;
  - (iii) Programs that take into account and respect Indigenous beliefs about healing and reconciliation, including traditional healing ceremonies and Indigenous spiritual practices.
- (c) Ideally, in cases of detention outside the Cree communities, Cree detainees should be kept in the same detention facilities, preferably in Amos, for proximity to their

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<sup>45</sup> *Act respecting the Québec Correctional System*, CQLR, c. S-40.1.

families and communities, and in order to facilitate the development and delivery of programs as well as culturally appropriate services to them by Cree and non-Cree personnel.

- (d) The Ministry of Public Security should ensure that appropriate measures are in place to facilitate the implementation of special programs and services for Cree detainees, including by Cree personnel of the Justice Department. This could be part of a protocol along the lines described in paragraphs 107 and 108 above.
- (e) The Government of Québec should ensure that appropriate measures, including interpreters, are put in place to enable Indigenous detainees to communicate effectively their needs and realities, given that discriminatory practices may sometimes be the result of misconceptions and misunderstandings between service providers and Indigenous detainees, including due to language barriers.
  - (i) For example, it would be unacceptable for an Indigenous detainee to be denied access to the required health care simply because he or she is unable to effectively communicate his or her needs due to language barriers;
  - (ii) Effective and clear communication is also crucial for the initial assessment of an Indigenous detainee, as this will determine his or her correctional plan, including appropriate programs that may be available to him or her.
- (f) Measures should be in place to eliminate the use of incarceration of Indigenous persons for non-payment of fines.
  - (i) For example, resources should be provided and allocated for the development of culturally appropriate “compensatory work programs” in Indigenous communities and in municipalities with a sizable Indigenous population (*e.g.* Val-d’Or, Amos), so that Indigenous offenders who are unable to pay their fines have the opportunity to do community or voluntary work instead in a culturally appropriate setting.
  - (ii) Such measures should be in addition to those mentioned in the Initial Brief and the report *Judicialization of Homelessness in Val-d’Or*, including avoiding ticketing in the first place, avoiding over-reliance on police officers as front-line social workers, deploying more and better trained street social workers, providing shelter spaces for homeless people, and above all, tackling the root problem of overcrowded housing in communities that drives Indigenous people into cities.

- (g) The Government of Québec should provide financial resources for these recommendations, including meaningful support to Indigenous communities to develop, enhance and implement crime prevention programs, alternative sentencing and rehabilitation treatment and reintegration programs.

## V. CONCLUSION

- 110. As with the issues and observations in the Initial Brief of the Grand Council of the Crees (Eeyou Istchee) and Cree Nation Government, those mentioned here are by no means exhaustive. They are primarily intended to provide to the Commission concrete examples and, in some cases, symptomatic illustrations of much more complex issues that require the examination of factors and elements that overlap with the mandate of justice and correctional services. They are also intended to offer avenues to explore for solutions.
- 111. In 1975, the parties to the JBNQA had the foresight to negotiate in this first modern Treaty the provisions of Section 18 dealing with the administration of justice for the Crees. These provisions and the entire Section 18 lay the foundation of reconciliation between Cree values and traditions on the one hand and the Canadian model of justice and laws on the other hand. They also lay the foundation of a true collaboration between the Crees and the Government in the administration of justice for the Crees.
- 112. As mentioned earlier, it took some time (and legal proceedings and, eventually, the *Paix des Braves*) for the Government of Quebec to begin to more fully implement the provisions of Section 18, “Administration of Justice – Crees”. The Justice Agreement (2007), the renewed commitment from Québec and the greater collaboration between the Crees and the Government in the justice and correctional systems all point in the right direction. The commitment of Québec to work with the Crees to fully implement the provisions of the JBNQA will contribute to addressing some of the issues relevant to the work of this Commission. And collaboration between Québec and the Crees to address some of the underlying causes identified in this brief, in particular, the lack of adequate social housing, will have an even more significant impact on these issues.

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