



*Podcast: Voices from the Field 25 – Youth Protection, Social Determinants of Health, and Reappropriation of Decision-Making Power: Quebec First Nations Demands – a chapter in the NCCIH’s publication, Introduction to Determinants of First Nations, Inuit, and Métis Peoples’ Health in Canada*

## Bios



FIRST NATIONS OF QUEBEC  
AND LABRADOR HEALTH  
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COMMISSION

First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC): Founded in 1994 by the Chiefs of the Assembly of First Nations Quebec-Labrador (AFNQL), the FNQLHSSC is an organization fostering the defence of First Nations interests in Quebec. It acts as a technical advisor and consultant to fulfill the mandates, emerging needs and priorities it is entrusted with. The FNQLHSSC team also works to support and guide First Nations in achieving greater local and regional autonomy using an integrated, personalized approach.



Marjolaine Sioui is Wendat and she is currently Executive Director of the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC). She also held the positions of Manager of Operations, Manager of the Early Childhood Sector and Communications Officer for this same organization, as well as various positions within federal departments. Following her college studies in administration, she undertook studies in preschool and elementary education, followed by various professional courses in the field of alternative medicine, as well as in the field of communications. In 1993, she founded her own business and in 2013, she completed a 2nd cycle short program in Public Management. In her current functions, she is involved in the development of priorities in health, social services, social development, early childhood, informational resources, and research, thereby contributing to the advancement and defence of the interests of First Nations in Quebec.



Richard Gray is the Social Services Manager at the First Nations of Quebec and Labrador Health and Social Services Commission. He has been holding this position for over ten years and his main mandate is to support First Nations communities in achieving their health, wellness, culture and self-determination goals. Mr. Gray is a Listuguj Mi'gmaq who holds a bachelor's degree in social work. He was the Director of Social Services for the Listuguj Mi'gmaq Government for seven years, and he was also an elected Band Councillor for several years working as the community's chief negotiator for many files.

## Transcript

**Julie Sutherland:** Welcome to *Voices from the Field*, a podcast series produced by the National Collaborating Centre for Indigenous Health. The NCCIH focuses on innovative research and community-based initiatives promoting the health and well-being of First Nations, Inuit, and Métis peoples in Canada.

In 2022, Canadian Scholars' Press published the National Collaborating Centre for Indigenous Health's university-level textbook entitled *Introduction to Determinants of First Nations, Inuit, and Métis Peoples' Health in Canada*. This critical volume offers an overview of the determinants of health for Indigenous Peoples in Canada, while cultivating an understanding of how the presence of coloniality in health care determines First Nations, Inuit, and Métis peoples' health and well-being. Comprising wisdoms from First Nations, Inuit, and Métis leaders, knowledge holders, artists, activists, clinicians, health researchers, students, and youth, this Indigenous-led book offers practical insights and applied knowledge about combating coloniality and transforming health care systems in Canada.

I am Dr. Julie Sutherland, one of the book's editors. Today I am joined by two of its contributors, Marjolaine Sioui and Richard Gray. Marjolaine and Richard work at the First Nations of Quebec and Labrador Health and Social Services Commission, the FNQLHSSC, an organization fostering the defence of First Nations interests in Quebec.

Marjolaine and Richard are two of a team of authors all employed by the FNQLHSSC, who contributed a chapter entitled "Youth Protection, Social Determinants of Health and Reappropriation of Decision-Making Power: Quebec First Nations Demands." The chapter reflects on how social determinants of health can result in neglect or serious risk of neglect of First Nations children, and it highlights the progress of First Nations who are demanding autonomy, including over Child and Family Services as they work toward self-determination. Marjolaine and Richard, thank you so much for joining me today.

Your chapter explains that the Declaration of the Rights of First Nations children states that parents have a fundamental responsibility to provide their children with a safe home and childcare environment, and you assert that for parents to fulfill this responsibility, their communities need to be able to provide youth and family services that are built on First Nations cultures. Could you provide an example of an existing Indigenous-led program in Quebec that has already succeeded in supporting parents to satisfy this obligation?

**Marjolaine Sioui:** Sure. For generations, our people have stressed the importance of our traditions and values. The concept of the collective in our First Nation societies is inclusive and also ensures that each person is treated equally. So the knowledge, our ceremonies, our teachings, our environment and territories are part of those key elements for the determinants that need to be considered when we support parents and families in their role. So I don't really want to go into telling about a specific example because there's so many. I think each community is very unique in the way that they approach their families and children in terms of supporting them in that role. So, you know, when we did the adoption of the Declaration in 2015, there was an implementation plan that was developed, and during that implementation plan, we took it in three different components, and many of the proposed measures were inviting, let's say the chiefs and councils of the Assembly of First Nations of Quebec and Labrador to promote customary adoption among First Nations, to promote also the First Nation languages,

traditional values, the practices, and also First Nations customs, to mobilize First Nations youth in the implementation of the Declaration.

So this is the goal that we had from the beginning when adopting that Declaration. But the plan also invited the communities to inform First Nations children of their rights, and also in their rights in terms of their mother tongue, to inform the parents and other members of the communities in their rights of their children, but also to bring round tables, to bring circles of discussions amongst the children, but also with their parents in terms of the development of the child. Also, how to better support the families and also being part of that Declaration in its implementation. This was really something strong that people felt that we need to start by the inner circle to take place, but at the same time, to be part of that movement, to be part of that change. Based on that, communities were really starting to be able to put things in place. So we do have in line with what's going to be discussed this morning, you know, in terms of how do we create that environment where the families and the children feel safe. How do we, as you know, leadership, take that role in supporting those approaches?

So it's really about collective work that we need to do. But at the same time, a lot of communities have mobilized themselves, have done activities in that term, but also what we see, and when we talk about youth protection, you'll see that some of those communities have welcomed the fact to increase their self-determination approaches, but also their leadership in creating their own laws, in creating their own policies.

One of the latest example is that we have four communities, Algonquin communities, that came together, and they started to put an institution that will support the communities in terms of keeping the children within the community, within a safe environment, increasing also the way that we communicate, but also preserving the ceremonies or languages and also the way that we do things and make it into something that will meet our needs, our realities, but also what's so unique about each community.

**Julie Sutherland:** Thank you so much. It's really inspiring to know that there are so many examples of these initiatives and to hear that there are collaborations between leaders and community, and that so many of these programs that are being developed are community-led. As you rightly say, each community is unique, so it needs, the knowledge needs, to come from within each community. So thank you for highlighting that.

**Marjolaine Sioui:** And maybe I can add too, as a regional organization, looking at the collective is where we bring people together. So another aspect that also came from the Declaration is mobilization where we see the interveners and the directions of the different communities coming together and sharing in that circle what's happening, and they can learn from each other. They can share on that. So it's, again, the uniqueness that comes together as a whole and where people can do other things and be inspired.

**Julie Sutherland:** It's amazing what we can achieve when we listen to each other, and listen respectfully. Thank you so much.

Your, your chapter also discusses a 2019 publication called *Portrait of the Criminalization of the First Nations in Quebec*. You explain it reveals that the government's justice system and youth protection systems are discriminatory against First Nations children, adolescents, and families, in a way

perpetuating the effects of residential schools. And I'm just wondering if you could elaborate on that heartbreaking point.

**Marjolaine Sioui:** Yeah. When you look at all the studies from recent decades, we do observe the overrepresentation of our First Nations in the Canadian court system at every stage of the criminal process. When we did analyze the existing data, there were two explanations that came to mind. The first one was of course when we look at colonization and the imposition of colonial laws as one of the main reasons why we're living, you know, that overrepresentation in the justice system. And of course one of the main factors too is also the residential schools, you know, that have been in many ways impacting the condition of our people, and they continue to do so as of today. So those factors have given a significant social and economic problems in our First Nations communities. It's been known to have also disrupted traditional ways of doing, our governance structures, which were really well established in the past. And it was hard to find mechanism to deal with those issues that we saw and with the intergenerational impacts of those residential schools.

And when those transfer were made from the federal government to the provinces, we saw the same pattern. To see that when the *Youth Protection Act* was created, at the time, again, it was another, colonial system that was imposed on us. So it was like the continuing things would come back to us and do that and have those same impacts and effects on our communities and our children. Over the years, I think, I don't know how many of those inquiries and public inquiries we need to really make people understand. The TRC, we had the Murdered and Missing Indigenous Women. In Quebec more specifically, we had the Commission Viens, then we had the commission that is called Commission Laurent, the *Youth Protection Act*. So, there's so many recommendations and reports that are showing the impacts of what is continuing and affecting our families and children. And there are many, many studies that also show that children in care are children that are placed outside their communities, that there is an impact on the way that the youth will come at a young age to have some issues with the justice system. And then we have another example, when they turn 18, where often they've been placed outside of their communities. There's been no real cultural link with the families or anything like that. And the impacts continue to have some representation on the numbers that we see in the justice system.

Just to give you an example in our report, we see that the age, the main age where we have those situations are often between the age of 18 and 25. So it just shows you that there, there's a need to change things, to have new strategies that are speaking more to our people in the way where we need to have some approaches that are more culturally based, you know, to support the youth at a young age, but also to support the families and the interveners that work with our families. You can't deal with the issue just by doing it by program or anything like that. It has to be something where the person is central. When we have those approaches that we make sure that we're going to work around the child, around the family, and that we'll be supportive of that system.

**Julie Sutherland:** Thank you so much for taking the time to explain that. The sad point I take from it is that history repeats itself to detrimental effect. But I'm really grateful that you raised some of these inquiries, the 2015 Truth and Reconciliation Commission, and of course the Inquiry into Murdered and Missing Indigenous Women. And it strikes me that these reports are becoming increasingly widely publicized and that they are household names in a way that say the Royal Commission on Aboriginal Peoples wasn't, in 1996.

And this isn't a question that I planned to ask, but I might just throw it out very quickly. Is it your sense that the widespread awareness of these inquiries is having a positive effect on the way that people see the ongoing and harmful effects of the residential schools?

**Marjolaine Sioui:** You know, I haven't said anything about what happened with Joyce Echaquan which brings me to our other explanation that we have about the results of that report, which is about the bias and the racism and systemic discrimination that we see against First Nations. So by becoming more aware of that, it also is something that First Nations have to put forward and to make sure that those reports and those recommendations are known to the public. I know here in Quebec the Assembly of First Nations of Quebec–Labrador has created two years ago a plan of action against racism and discrimination. And this plan was more aiming at mobilizing the society, everybody, to make sure that, you know, what are the reasons, but also the source of, racism and discrimination. So, it is having a positive impact. Of course, we wish that more could be done in terms of the implication with the provincial government, in terms of more consulting. They are doing some things with the different governments and levels of government, but there needs to be a process where First Nations are at the centre of those discussions and at the centre of those decision because they concern them. Everything that we see, if we are part of that, then it's a relationship that we are building because the relationship was broken along the way and we need to re-establish those relationships.

Yes, a lot needs still to be done and the discrimination still exists in many forms, in many ways. And it's not just about when you have a government that denies systemic discrimination exists and says that it's just about racism from people. I think differently on that because we do have examples of that discrimination during the systems and all of that. Just the fact that those policies and laws are still existing and that they're not necessarily listening to First Nations in terms of the changes that need to be made. To me, it's a form of discrimination. So, we need to really tackle, but also to work on many, many aspects to make that change and to be united. And there's so many aspects that unite all First Nations, Métis and Inuit across the country as well. So we have that power to influence. We have that power to change things. And the example of C-92 is a pretty good example where First Nations need to create their own laws, create their own systems so that there are things that are put in place that will serve them better and that will be also respecting their self-determination and governance that they have.

**Julie Sutherland:** Yeah. That these decisions should be Indigenous-led seems so simple and yet seems like a constant, a fight that shouldn't be there.

I'm interested to hear more about the appeal case for the *Act respecting First Nations Inuit and Métis Children, Youth and Families* that came into force on January 1st, 2020. For our listeners, the Act recognizes Indigenous Peoples' jurisdiction over Child and Family Services. As I understand it, a few days before the Act came into effect, the provincial government appealed it, and then on February 10th, 2022, the Court of Appeal confirmed the validity of this Act with the exceptions of sections 21 and sections 22(3) which were declared unconstitutional.

So I'm curious to learn what these sections were, why they were deemed unconstitutional, and whether you feel there is any validity to such a claim.

**Richard Gray:** Hi Julie. Good morning to you. So I'll take on this question. It's been a challenge thus far in terms of working with Quebec in general regarding implementation of C-92 in the Quebec region. At the

outset you mentioned earlier that Quebec decided that they were going to move forward with a challenge. You know, I recall that day quite vividly to this date. You know, we had three ministers who were meeting with the Quebec regional chief, myself and Marjolaine Sioui, and they gave us a heads up saying that they were going to challenge C-92 to the Quebec Court of Appeal.

**Julie Sutherland:** And Richard, when you reference Bill C-92, that is the *Act respecting First Nations Inuit and Métis Children, Youth and Families*. Is that correct?

**Richard Gray:** Yes, it is. So we, we were very disappointed to hear that news from these ministers. And we knew right away about implementation of C-92 in our region, that it was going to be quite challenging. We didn't anticipate that they were going to actually go to an appeal. So when we went to the meeting, we weren't sure what to expect, but we got that sad news. So it's been a long haul in our region, going through this Court of Appeal process, and we think that the decision that the Court of Appeal finally came up with was a unanimous decision by a five-panel judge that confirmed that C-92 is valid, but sections 21 and 22(3) are deemed unconstitutional, and it's a Quebec region decision. So these provisions still apply outside the Quebec region because it's a Court of Appeal decision for the Quebec region. But it's like a house of cards. Quebec decided to take this appeal, and so did Canada take this appeal, to the Supreme Court of Canada, because, number one, if the Supreme Court of Canada deems that the inherent rights or generic inherent rights that were recognized by the Court of Appeal, but also C-92 in general is deemed unconstitutional, what does generic inherent rights for First Nations mean in general regarding Child and Family Services? Because we as First Nations are self-determining and self-governing since time immemorial and to believe or to think that First Nations did not take care of their kids, take care of their families by custom, by tradition—and if that's not recognized as a section 35 generic inherent rights, I really don't know where this leaves First Nations to go moving forward, because the only hope and faith that we have is that the government, federal government, took the initiative to affirm that this section 35 generic inherent right exists. And we were happy for that. We're happy that the Court of Appeal confirmed this. But if the Supreme Court basically says, no, this generic inherent right doesn't exist, and you have to go through the Van der Peet test to prove your inherent right, it would be a huge disappointment.

So right off the bat we're, if we can, once we get over this hurdle, and this generic inherent right, our generic inherent rights are affirmed in Child and Family Services, I think the vision, the future for First Nations will be so much better because at least we'll have options on the table for our communities, our nations to exercise in terms of creating laws by First Nations for First Nations. And these solutions have to come from First Nations in terms of dealing with our problems that we're faced within our First Nations communities. You talked earlier about these colonial laws that we've been experiencing and living, be it overrepresentation in the justice system, be it overrepresentation in the youth protection system, we're basically living the reality of these colonial laws that don't fit our communities. These standards that these laws impose on our communities don't meet our realities. So, communities, exercising their generic inherent rights and creating their laws will bring good solutions for First Nations communities to address these matters that are based on culture, that are based on traditions, our way of doing things, our governance.

So I'm really looking forward to a positive decision from the Supreme Court of Canada. We're making our arguments on December 7<sup>th</sup> and 8<sup>th</sup>, along with the Quebec government, Canada, and the four intervening provinces as well as the First Nations interveners that have been accepted. So we're

obviously arguing, we're supportive of the Quebec Court of Appeal decision that affirms that generic inherent rights exist and are valid.

The sections 21 and 22(3) that you talked about—section 21 basically says that when a community law comes into force, their law has the force of federal law. So that section was struck down by the Quebec Court of Appeal. Section 22(3) basically says that if your law conflicts with a provincial law, your law prevails over the conflict or inconsistency with the provincial law. And the reason why the Quebec Court of Appeal did this is because if they wanted to give life to generic inherent rights as a third jurisdiction, section 35 says that those generic inherent rights are protected, and if you want to infringe on them, you have to go through what they call a Sparrow test to prove your justification. So, the Quebec Court of Appeal used this approach to recognize that there were generic inherent rights, and obviously those jurisdictions have to collaborate with one another. But if the federal or provincial jurisdictions want to infringe on the generic inherent rights, you have to go through a Sparrow test, which was a process that allows for provincial or federal infringement on those rights as defined by Supreme Courts previously. So that's basically the process they use to recognize and affirm generic inherent rights. And they're not absolute, so if provinces or the feds feel like they need to infringe on these rights, they have to meet a standard called the Sparrow test, which is really a high bar to prove or justify the infringement. And communities have this protection. Their laws have this protection. The federal government and provincial governments have that high bar that they have to meet if they really want to infringe on their inherent rights. So that's section 21 and 22(3) in a nutshell.

**Julie Sutherland:** That helps very much, and I was going to ask you about the timeline, but you've given it to us already, so it's coming up quite quickly—December 7<sup>th</sup> and 8<sup>th</sup>. And I hear both the frustration and the hope in your voice. And all I can say moving into this next final few weeks before this decision is made, that all our toes and fingers are crossed—but it's going to take more than toes and fingers being crossed to make this happen.

So I think that sort of leads quite nicely into the final question for today's podcast because this has to do with practical action, not just toes crossing and fingers crossing. I was happy to read that while the *Act respecting First Nations Inuit and Métis Children, Youth, and Families* is not perfect, it provides a sound framework for increased governance, and that it broadens First Nations powers and ability to act with consideration for their own social determinants of health. And I'm wondering what, in practical terms, it means for stakeholders involved in this Act to engage and support the new legislation.

**Richard Gray:** I'll repeat again. It's unfortunate that Quebec, which is a real important stakeholder here, is appealing this despite Quebec appealing now to the Supreme Court of Canada. We do have a ruling from the Quebec Court of Appeal that says that C-92 does apply. It's a rule of law ruling. Practically speaking though, on the ground, in terms of looking for their collaboration, their support to help implement C-92, it's, it's not been easy. There are many challenges that we continue to go through because of that denial.

Even on the ground with First Nations communities, there's a lot of confusion within the Quebec ministry side because we hear from First Nations communities that provincial agencies who have these delegation agreements with First Nations communities want to help support the communities, but their hands are tied in terms of being able to say outright that they support and want to implement and want to look at solutions to implement C-92 in terms of finding ways to incorporate the standards that are in C-92. That's the challenge we live on, on a daily basis. Although provincial laws still do apply in terms of

youth protection until the community creates their own law, we try to find some unique ways in terms of supporting the community to work in collaboration with the provincial stakeholders to support the application of the youth protection law, and at the same time, lobby to implement C-92 standards. I think the approach that we've taken in our region that's promoted in C-92, as well coming from the federal government, is helping as well. Since 2009 in our region, we've finally received the funding from the federal government to develop and implement prevention services, or first-line services. Prior to 2009 and 10, the only door First Nations communities had to go through to access social services in general, or child and family services, was through youth protection. You know, that was the only funding the federal government had provided. So hence, there were a lot of cases that were becoming youth protection cases that didn't necessarily need to become youth protection cases to access services. So, we're very happy the Canadian Human Rights Tribunal came up with a decision in 2006 saying that the Child and Family Services program was discriminatory based on the funding discrimination elements.

So since 2009 and 10, we've been implementing prevention services in our First Nations communities. Communities had received funding envelopes based on five-year streams, and had to develop action plans to describe how these programs and services they were going to develop in their action plans would meet the needs of the population. So basically do your programs and services prevent problems from becoming youth protection problems? So if you had First Nations communities who had delegation agreements with youth protection services, they now had, as part of their repertoire of services, prevention services, and could use these prevention services to work with families instead of using the youth protection door or option. It's been a challenge to get Quebec to also recognize those prevention services as key and vital because of a number of reasons. Could be collaborations between the community and the provincial agency aren't that great, but the time has changed from Quebec in this regard because Quebec has made some recent changes too into their youth protection law now that recognize these prevention services in the *Quebec Youth Protection Act* and says that protection services have to collaborate with them. And this was something that was reinforced in the commission report that Marjolaine had mentioned earlier, the Commission Laurent Report. But it was also something that was stressed as well in the Commission Viens report that prevention services are key. So when C-92 came around and really used, really promoted, prevention approaches to stop kids from coming into care, we were well under our way in terms of implementing and developing those prevention services in our region. So we were really using this approach already in our region prior to C-92 coming in. So it was really nice to see C-92 adopting this kind of prevention approach, which is what we were using in our region already.

And we were glad to see that the feds were now getting involved as stakeholders to support prevention services even more, and a substantial amount of investment that First Nations communities had received, this year on April 1<sup>th</sup>, in our region, we got three times the prevention funding that we were getting previously. So we were really, really happy about that. And the federal government really recognizes self-governance and self-determination by First Nations. It's the First Nations that approve their action plans, and, the federal government, they do a review of their action plans. They do no approval at all, but they review their action plans to make sure that the funding elements fall within the CFS program, terms and conditions. That's something that interesting and unique in our region as well, is that there's no approval by the federal government on these action plans. It's all by First Nations, for First Nations and respects their autonomy and jurisdiction and is in keeping with C-92 in terms of recognizing First Nations authorities and, you know, respects that approach too—that solutions have to



come from First Nations—solutions by First Nations for First Nations. And, we’re the drivers when it comes to implementing these prevention services.

The provinces, as well, are supportive of First Nations communities, you know, in their law, now that’s been amended, but also seeing too themselves, in terms of what the Commission Laurent had pointed out, within the Quebec regime itself. They had a testimony at the Commission Laurent from some research experts like McGill professor, Dr. Nico Trocmé, who showed by way of research that based on 100% cases of the youth protection cases that were coming forward, 85% were dealing with negligence or risk of negligence. And if you look at resources like prevention services, those kinds of cases are made for prevention services—like prevention services could deal with those pretty easily at the outset rather than using youth protection. So that’s something I think that that resonated in terms of what the Commission Laurent had heard.

We also heard Quebec Public Health Services promoting these prevention services approaches and confirm that public health approaches through prevention services to support children and families are better approaches than youth protection. So Quebec, I think, heard that message and they’ve made these changes in their law in general for themselves. But you know, they also recognize now that these prevention services exist in First Nations communities and have committed to working with First Nations until they create their own laws to put their own programs and services based on their community laws in place. So that’s what’s happening both at the federal level and at the provincial level. And we have organizations like ourselves and the AFNQL—the Assembly of First Nations Quebec–Labrador—that are supporting communities in terms of making sure that the levels of government, be it federal, provincial, respect the community’s autonomy and will continue defending First Nations rights in that regard.

**Julie Sutherland:** Thanks, Richard. You started with a reference to denial, a lot of denial. And that’s mind boggling and heartbreaking. But then you moved into a lot of hopeful discussion about federal government and different provinces listening, funding coming in, more implementation of protection services in communities since 2010. So I hear the hope as well, and I certainly commend the FNQLHSSC for its tireless work, which you’re showing even here, spending an hour with me on this podcast. And we’re very grateful for the time you’ve taken to do this. So thank you Marjolaine and Richard for taking the time to speak with me today.

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