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Report

on the

Complaints of the Innu of Labrador

to the

Canadian Human Rights Commission

by

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EXECUTIVE SUMMARY

This report deals with complaints brought to the Canadian Human Rights Commission by the Innu Nation alleging failure by the government of Canada to exercise direct constitutional responsibility in respect of the Innu with a consequent failure to provide them with the level and quality of services received by other aboriginal peoples in Canada and impeding their ability to control their own affairs through self-government and the devolution of programs and services.

The Innu Nation has also claimed that the Mushuau Innu of Davis Inlet have been relocated by governmental action and placed in a situation without adequate housing or services that has led to a high level of social dysfunction. They claim compensation for the failure of the government of Canada to recognize the particular constitutional status of the Innu and for breach of its fiduciary duty. The Innu Nation claims that the action of the governments of Canada and Newfoundland "constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu."

1. Direct Constitutional Responsibility (Complaints No's 1-3)

On the entry of Newfoundland into confederation in 1949, the government of Canada did not apply the Indian Act to the Indian peoples of Labrador. Instead, it entered into an agreement with the government of Newfoundland and Labrador under which the province was to be responsible for Indian and Eskimo peoples of Labrador and the federal government was to provide Newfoundland with some funding for this purpose. On two occasions the federal government has received legal opinions from the Deputy Minister of Justice indicating that it is the federal government that has legislative and executive authority in respect of the Innu and federal officials have had continuing doubts about the legality and appropriateness of their actions. Nevertheless, the federal government has not changed its approach of dealing with the Innu through an agreement with the province of Newfoundland.

The direct consequence of the actions of the federal government in 1949 were that the Innu were not registered under the Indian Act nor did they have the opportunity of having reserves created. Although in more recent years the government of Canada has entered into a number of direct funding arrangements with the Innu, its relationship to the Innu as aboriginal people remains ambiguous.

A request by the Innu in the 1970's to be registered under the Indian Act was not proceeded with by the Department of Indian Affairs, although in the mid-1980's the federal government indicated a willingness to consider registration. The federal government has also sought to imply that the situation of the Innu is the result of their own choice.

The failure of the federal government in 1949 to treat the Innu in the way other Indian peoples in Canada were treated has resulted in the Innu not receiving the range of funding or the level and quality of services that are provided to aboriginal peoples who are registered under the Indian Act and living on a reserve. This discriminatory treatment constitutes a breach by the government of Canada of its "fiduciary obligation" to the Innu as aboriginal people in Canada.

Furthermore, instead of dealing with a single level of government that has developed some expertise in respect of aboriginal peoples, the Innu are dealt with by two levels of government, the primary level being one that has no constitutional mandate in respect of aboriginal peoples and which deals with the Innu as if they were essentially no different than other residents of the province.

The role granted to Newfoundland in respect of the Innu by the federal government has appeared to give Newfoundland an implicit veto over the negotiation of self-government arrangements by the Innu. While negotiations under the federal government's policy on self-government provides for the involvement of the province only with the consent of the parties, the federal government's offer to negotiate self-government with the Innu provides for the "required involvement" of the province of Newfoundland. Thus, the failure of the federal government to deal directly with the Innu as aboriginal peoples in Canada inhibits the negotiation of any self-government arrangement for the Innu and for the devolution to the Innu of programs and services.

2. Relocations of the Mushuau Innu (Complaint No. 4)

In 1948, the Mushuau Innu were moved from Davis Inlet to Nutak some 250 miles to the north. This move was undertaken without any real consultation with the Innu who today still do not understand why they were moved there. The Innu were not happy with this new location, which provided difficult access to traditional caribou hunting areas, and they left of their own volition and moved

back to Davis Inlet. Although the move to Nutak has been said to have been humanitarian in nature and intended to provide the Innu with the prospects of an economic livelihood, there is no evidence of a need that could not be met in Davis Inlet or that a serious comparison was made of the conditions the Innu would face at Nutak and those that existed at Davis Inlet.

There was very little knowledge or understanding of who the Innu were at that time and government officials assumed that they could make decisions for the Innu. In fact, the decision to relocate the Innu appears to have been motivated by the fact that the government depot at Davis Inlet was to be closed and the Moravian Mission at Hopedale would not want the Innu coming to the government depot at Hopedale. Moreover, the underlying assumption of government officials was that they knew what was in the best interests of the Innu; it was to turn them into "white men" and integrate them into the economy through having them engage in fishing.

In 1967, the Mushuau Innu were relocated to the site of their present village on Iluikoyak Island. The site was chosen primarily because it was suitable for a harbour and wharf to sustain the government store. There was no meaningful consultation with Innu and their interests were assumed to be those identified by the priest and government officials who dealt with the Innu. Although other sites were apparently looked at, the assessment of the availability of water at the site on Iluikoyak Island was not based on any engineering studies or reports and no consideration seems to have been given to any future significant expansion in the size of the Mushuau Innu community. The move was also motivated by an interest in directing the Innu to fishing as an economic activity and failed to take account of the traditional Innu practices of going to the country and caribou hunting.

Although the Innu were not opposed to the move to Iluikoyak Island, they had been led to believe that they would have houses built for them at the new site with running water and sewage disposal. In fact, houses were built with bathrooms and flush toilets that presupposed the existence of running water and sewage disposal, but these amenities have never been provided. The intolerable conditions under which the Mushuau Innu live in Davis Inlet have been an important contributor to the poor standard of health in the community and widespread social dysfunction.

Government actions in the case of both relocations do not meet the strict standards of conduct required of a "fiduciary" and the failure of the government of Canada to remedy the living and social conditions of the Mushuau Innu is a breach of the "fiduciary obligation" that the Crown has towards the Mushuau Innu as aboriginal peoples in Canada.

3. Compensation (Complaint No. 5)

Since 1949, the government of Canada has had responsibility in accordance with Section 91(24) for the Innu, and this carries with it the "fiduciary obligation" to act in the best interests of the individuals to whom the obligation is owed. The government of Canada has not fulfilled that obligation. While payment of compensation by the federal government would be appropriate, this would not of itself remedy the wrong suffered by the Innu people.

A real remedy in this case would involve putting the Innu in the position they would have been in if governmental responsibilities had been exercised and appropriate human rights standards met. This would involve ensuring that the Innu have the opportunity and the resources to take responsibility for their own lives and future. It would require the federal government to acknowledge its constitutional responsibility towards the Innu and recognition that Newfoundland has a role in respect of the Innu that is no different from that of any provincial government in respect of aboriginal peoples. It would also involve the abrogation of the Canada-Newfoundland Contribution Agreement in respect of the Innu and a commitment by the federal government to treat the Innu as entitled to all of the funding available to Indian peoples who are registered and on reserve without requiring the Innu to go through a symbolic act of subordination by requiring them to become registered under the Indian Act.

4. Recommendations

That the Government of Canada,

- (i) formally acknowledge its constitutional responsibility towards the Innu;

- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshit and Davis Inlet and enter into direct arrangements with the Innu as aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian peoples in Canada while preserving the unique aspects of existing arrangements such as the outposts program;
- (iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;
- (iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and
- (v) provide the funding necessary to implement these recommendations.

That the Canadian Human Rights Commission review every five years progress made in the implementation of the recommendations in this report.

INTRODUCTION

In June 1992, representatives of the Innu Nation requested that the Canadian Human Rights Commission (CHRC) carry out an investigation into certain aspects of their treatment by the governments of Canada and Newfoundland. The particular allegations were set out in a letter of July 16, 1992 from the President of the Innu Nation to the Commission and in a further letter of July 27, 1992. (See Appendix I). In November 1992, the Commission, with the agreement of the Innu Nation and the Department of Indian Affairs and Northern Development (DIAND), asked me to act as a Special Investigator, "to examine the grievances of the Innu of Labrador against the governments of Canada and Newfoundland and to recommend such corrective measures as may be warranted". (See Terms of Reference, Appendix II).

The particular complaints of the Innu Nation can be summarized as follows:

1. The government of Canada has failed, since 1949, to exercise its constitutional responsibilities in respect of the Innu as aboriginal people in Canada.
2. As a result of the failure of the government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly as aboriginal people, the Innu have not received the level and quality of services received by other aboriginal peoples in Canada.
3. The failure by the government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly as aboriginal people has also denied the Innu the opportunity to control their own affairs through self-government, to have control over the management of such matters as health, housing, welfare, education, and policing, or to control their own infrastructure and other essential programs.
4. The Mushuau Innu have been subjected to three relocations since 1947 which have had disastrous consequences for them. In particular, their present location at Utshimasits does not provide them with adequate housing or services and it impedes their ability to pursue their traditional hunting pursuits, resulting in a high level of social dysfunction. Relocation of the Mushuau Innu to a new community is essential.

5. The Innu should receive compensation for the failure of the government of Canada since 1949 to recognize the particular constitutional status of the Innu and to deal with them directly and the consequent breach of the government's fiduciary duty to the Innu.

An overriding concern of the Innu is that the actions of the governments of Canada and of Newfoundland constitute a failure to recognize them as aboriginal people and that "this constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu".

The Terms of Reference require the Special Investigator:

- to undertake a review of the reports and other documentation collected by the CHRC;
- to interview individuals with direct knowledge of the matters under study including representatives of the governments of Canada and Newfoundland, the Innu Nation and residents of the communities concerned;
- to visit the Innu communities and such other locations as may be relevant to carrying out a full investigation.

In the week of November 30-December 4, 1992, I visited the communities of Sheshatshit and Davis Inlet and interviewed representatives of the Innu Nation and of the Band Council of Davis Inlet and a number of people in the communities. I also sat in on a hearing held by the Royal Commission on Aboriginal Peoples in Davis Inlet. Subsequently I interviewed DIAND officials in Ottawa and also travelled to the Regional Office of DIAND in Amherst, Nova Scotia which has responsibility for program delivery to aboriginal peoples in the Maritimes, including Newfoundland and Labrador, and interviewed officials in that office. I also visited St. John's and interviewed officials of the Government of Newfoundland and Labrador with responsibility for issues relating to the Innu.

In April 1993 I returned to Davis Inlet to interview elders about their further recollections of the 1948 and 1967 relocations. At that time I discussed the complaints further with representatives of the Innu Nation. I have also spoken to

other individuals in Ottawa and St. John's who had particular knowledge of the issues raised by the Innu.

I have reviewed the material provided to me by the CHRC, and the material provided by representatives of the Innu Nation, by officials of DIAND in Ottawa and in Amherst, and by officials of the government of Newfoundland, and a submission from the Assembly of First Nations.¹ I have also reviewed material that I have obtained independently. Some of this material includes reports and documents from the archives of DIAND and from the archives of the Province of Newfoundland and Labrador.

While research for this report was in progress, the suicide attempt by six Davis Inlet children engaged in gas-sniffing took place. That incident attracted wide public attention and has resulted in action from the federal and provincial governments, and an announcement that the Davis Inlet community would be relocated. These actions have not, however, resolved the issues that have been the subject of the complaint brought by the Innu to the CHRC. Indeed, some of the statements made by federal and provincial officials during this incident highlight the concerns that gave rise to this complaint.

SCOPE OF THE REPORT

The mandate of this investigation, as I have understood it, has been to make an assessment of the complaints raised by the Innu Nation in the light of information obtained from interviews with the individuals concerned and from the available documentary material, and then to make recommendations on how these complaints might be addressed. The investigation was not constituted as a formal commission of inquiry and the Special Investigator has been left to make his own judgment on the matters raised. While I feel that I am able to do so, there are certain limiting parameters within which any investigation of this nature must take place.

First, there is the question of the available record. In part the questions raised in this investigation concern issues on which there is only a partial written historical record. Equally, the written record is generally the record of the government (including the police and the government storekeeper) or the church

or, going back further in time, the Hudson's Bay Company. By contrast, the Innu have an oral rather than a written tradition. Their record of events is based on the recollections of those who were there at the time or of those to whom these recollections have been passed on. In looking at the issues in this investigation, I have sought to give proper weight to both forms of record, recognizing that each has its strengths and weaknesses and that whether one is superior to the other on any particular issue may well depend upon the context.

Secondly, anyone assessing events that took place some 25 to 45 years ago must take care not to place interpretations or to assign attitudes or assumptions as if the events took place today. This applies both to the standards one might expect of governments at that time as well as to how the Innu may have understood the intentions of or positions taken by government officials.

Thirdly, there is a question of cultural assumptions. In writing this report I have to reach certain conclusions about the attitudes and approaches of the Innu or about the positions that they have taken. I do this recognizing that I am viewing their perspectives and approaches through the prism of my own cultural assumptions and that this may have a distorting effect.

Finally, this investigation has been concerned only with complaints made by the Innu Nation. To the extent that the report refers to treatment received by other aboriginal peoples in Canada, it does so in order to clarify the situation of the Innu. It does not purport to draw conclusions about the responsibilities of the governments of Canada or Newfoundland in respect of other aboriginal peoples.

THE QUESTION OF STANDARDS

This complaint has been brought to the Canadian Human Rights Commission, not on the basis of a specific violation of the Human Rights Act, but on the ground that the policies of the Canadian and Newfoundland governments regarding the delivery of services to the Innu "constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu."

The specific responsibility of the government of Canada in respect of aboriginal peoples in Canada is now well-recognized as a "fiduciary obligation".

As the Supreme Court of Canada said in R. v. Sparrow,² "... the government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the government and aboriginals is trust-like" Although the precise content of this fiduciary obligation was not articulated in Sparrow, in its earlier decision in Guerin v. The Queen,³ Dickson J. described it as a "strict standard of conduct".

At the very least, such a standard requires observance by the government of Canada of minimal standards for the protection of human rights, and to this extent the category of aboriginal rights and human rights overlap. In this regard there is an undoubted commitment in Canadian public policy to a high standard in the recognition and protection of human rights in respect of all peoples in Canada. That commitment has been articulated in different ways through the involvement of Canada in developing international instruments for the protection of human rights and becoming party to them, and through the enactment of human rights legislation at both the federal and provincial levels.

This commitment, which has evolved over time, has been present in one form or another throughout the period to which these complaints relate. In 1948 Canada voted in favour of the General Assembly resolution adopting the Universal Declaration of Human Rights; in 1961 the government of Canada adopted a bill of rights, indicating again a commitment to the recognition and protection of human rights. Human rights legislation has been adopted provincially and the Charter of Rights and Freedoms symbolizes the present-day commitment of Canada to the protection of rights.

Although the national and international standards for the protection of human rights to which Canada has made both a political and legal commitment provide a basis for the content of the fiduciary obligation of Canada towards its aboriginal peoples, they do not exhaust that content. Other obligations may be imposed upon a fiduciary as well. Moreover, human rights standards may also provide a basis for assessing the conduct of government independently of the fiduciary obligation Canada has towards its aboriginal peoples.⁴

BACKGROUND

1. The Innu of Labrador

The Innu comprise about 1500 people living in two communities in Labrador; Sheshatshit to the south and Davis Inlet (Utshimasits) to the north. Historically, the Labrador Innu were part of the nomadic peoples who roamed Nitassinan, (roughly what is known as the Ungava Peninsula) hunting the caribou. Those to the south, particularly along the north shore of the Gulf of St. Lawrence were known to the early settlers as Montagnais, and those to the north including the Mushuau Innu of Utshimasits (Davis Inlet) as Naskapi. But Montagnais and Naskapi are the same people and they share a common language - Innu-eimun. The boundary between Quebec and Labrador divides the Innu of Quebec from the Innu of Labrador.⁵

Traditionally, the Innu hunted in the interior of Nitassinan and visited the coast only during the summer months.⁶ These visits became associated with the trading posts⁷ to which furs were sold and often coincided with the presence of a priest. Sheshatshit and Davis Inlet were places to which the Innu came.⁸ The invasion of the Innu's traditional hunting grounds by white settlers also drove the Innu to the coast.⁹ A dependency on store food developed and the Innu began to spend more time in their coastal settlements. But furs which provided income were often sparse and poverty and starvation were not infrequent. Government relief was provided to the Innu from the 1920's on through the Hudson's Bay Company representative or the priest.¹⁰

In 1948, the Newfoundland authorities closed the depot at Davis Inlet and moved the Mushuau Innu some 250 miles north to Nutak. The Innu did not take to this new environment and in 1949 they went back to Davis Inlet.¹¹

Thus, at the time that Newfoundland entered confederation, Innu settlements had been long established at Sheshatshit and Davis Inlet (Utshimasits) although they were somewhat of a seasonal nature. The Innu lived in tents, and not all of the inhabitants stayed in the settlement the year round. However, families were discouraged by the priest and by government representatives from going to the country on the ground that education could be provided for their children only if they remained in the settlement.

Housing began to be constructed for the Innu in Sheshatshit in the 1950's. Between 1965 and 1968 housing in Sheshatshit was substantially increased by the building of 51 new units.¹² Housing was also begun in Davis Inlet, but not at the location on the coast where the settlement had existed for many years.¹³ A new settlement was established on Iluikoyak Island some two miles from the existing settlement and the Innu were relocated there.¹⁴

2. The Innu and Government

The Terms of Union under which Newfoundland entered confederation made no reference to the aboriginal peoples of Newfoundland and Labrador, although the matter had been discussed during the negotiations between the representatives of Newfoundland and the representatives of Canada.¹⁵ Following union, the federal government paid costs incurred by Newfoundland in respect of the aboriginal peoples of Newfoundland and Labrador, although the nature and extent of its responsibility or obligation to do so was the subject of substantial internal discussion.¹⁶

In 1954, the government of Canada and the government of Newfoundland entered into an agreement by an exchange of letters,

designed to delimit, on a long-term and more satisfactory basis, the areas of responsibility of the federal and provincial governments with regard to the Indian and Eskimo population of Northern Labrador...¹⁷

The agreement provided that the federal government would assume 66 2/3% of costs in respect of Eskimos and 100% of costs in respect of Indians relating to "agreed capital expenditures ... in the fields of welfare, health and education" and assume the full costs of hospital treatment for Indians and Eskimos of northern Labrador during a ten-year period and "to undertake an aggressive anti-tuberculosis program" during the same period. For its part, the government of Newfoundland was to assume all other "financial and administrative responsibilities for the Indian and Eskimo population of Labrador" excluding such federal benefits as family allowances and old-age pensions.

Ten years later a new agreement was entered into between Canada and Newfoundland, again by an exchange of letters.¹⁸ This agreement renewed the 1954 agreement in respect of medical and hospital costs and the anti-tuberculosis program, but included a new arrangement under which the federal government would "reimburse Newfoundland for 90 per cent of the province's expenditures on Indians and Eskimos" up to a maximum of \$1 million per year.¹⁹ This agreement provided the financial basis for capital developments, particularly housing, in both communities.

The 1964 arrangement, which was to last for 5 years, was extended in 1970 and 1976. In 1981 it was again renewed as two separate agreements, one as the Native Peoples of Labrador Agreement and the other as the Comprehensive Health Agreement. The latter has been renewed on an annual basis, but the Native Peoples Agreement was subsequently divided into two agreements, one relating to the Inuit and the other to the Innu communities of Sheshatshit and Davis Inlet. The Innu agreement was renewed regularly and exists today as the "Contribution Agreement Between the Government of Canada and the Government of Newfoundland and Labrador for the Benefit of the Innu Communities of Labrador, 1991-1996".

This "Contribution Agreement" is designed to provide for services to the Innu communities of Sheshatshit and Davis Inlet, although these are identified as "supplementary programs and services".²⁰ The agreement identifies the amount of funding available,²¹ the purposes for which it can be used and the methods of payment and mechanisms of accountability, and establishes a management committee composed of federal and provincial officials and representatives of the communities of Sheshatshit and Davis Inlet.

Originally the only funding of the Innu by the government of Canada was through the agreements entered into between Canada and Newfoundland. However, in 1984 the federal Cabinet agreed to direct funding contribution agreements between Health and Welfare Canada and aboriginal organizations of Newfoundland and Labrador, including the Naskapi-Montagnais Innu Association.²² In the late 1980's the federal government began to make a number of arrangements directly with the Innu including the provision of post-secondary education costs, and funding for alcohol and drug abuse programs, economic development, and health services.²³ These sources of funding have been made

available either by agreements between the Innu Nation and the Minister of Health and Welfare or simply by the federal government indicating that it will treat the Innu as eligible for certain programs.

In 1976 the Innu made enquiries of the federal government about registration under the Indian Act,²⁴ and in 1977 applied for registration.²⁵ No such registration took place. However, in July 1978, the Innu were recognized as having a land claim based on "traditional use and occupancy of lands in Labrador."²⁶ Some preliminary negotiations have taken place, but the negotiations are currently in abeyance.

In December 1992, the Minister of Indian Affairs and Northern Development wrote to the President of the Innu Nation indicating that "Canada recognizes the Innu people of Labrador as a special group of aboriginal people" and indicated a willingness to negotiate self-government for the Innu and to work with the Innu with a view to their "achieving greater control over the delivery of programs and services which affect them directly through increased devolution of existing programs and services from both federal and provincial governments."²⁷

THE INNU COMPLAINTS

Complaint No. 1

The Government of Canada has failed, since 1949, to exercise its constitutional responsibilities in respect of the Innu as aboriginal people in Canada.

The substance of the Innu complaint is that the federal government has chosen to treat the Innu as if they were the responsibility of the province of Newfoundland and has not dealt with them directly as Indians within the meaning of Section 91(24) of the Constitution Act 1867 and hence within the sole legislative responsibility of the government of Canada.

This complaint will be considered in the light of the negotiations leading to the Terms of Union, the provisions of the Terms of Union itself, and the subsequent practice of the federal and provincial governments.

(a) The Negotiation of the Terms of Union

There is little doubt that prior to the negotiation of the Terms of Union federal and Newfoundland officials believed that Indians and Eskimos in Newfoundland and Labrador were "native peoples" within the meaning of Section 91(24), and were thus the responsibility of the government of Canada. In 1947 when discussing the implications of confederation with Newfoundland officials, federal officials indicated clearly that the native peoples of Newfoundland and Labrador would be subject to federal jurisdiction²⁸ and an allocation was made in the 1949-50 budget estimates of the federal government to cover the costs of native peoples of Newfoundland and Labrador for 1949.²⁹

The Sub-Committee of the Canada-Newfoundland Negotiating Team dealing with Indians and Eskimos reiterated in its report of October 10, 1947 that there would be federal responsibility for Indians and Eskimos, stating that they would be the "sole responsibility" of the federal government and would be "entitled to benefits".³⁰ The first and the third drafts of the Terms of Union in 1947 made specific reference to this responsibility, although the reference in the third draft was "pencilled out".³¹

However, before the Terms of Union were finalized, the idea developed that perhaps the Indian Act should not be applied to the Indians of Newfoundland and Labrador and that they should continue to be administered by Newfoundland. In 1948 there was a discussion in the Department of Mines and Resources (which at that time had responsibility for issues relating to aboriginal peoples) over whether it was appropriate to bring Newfoundland Indians and Eskimos under federal jurisdiction.

This appears to be the genesis of the idea that since the Indians of Newfoundland and Labrador already had the vote, they should not be disenfranchised by placing them under the Indian Act.³² At that time questions were being raised about the appropriateness of the policies under the Indian Act which in any event was in the process of revision. It was felt that perhaps the new province should continue to administer the aboriginal peoples of Newfoundland and Labrador under grants or subsidies from Canada.³³

This position was viewed favourably by K.J. Carter, Newfoundland Secretary for Natural Resources who subsequently convinced Mr. Smallwood of the desirability of continuing to assume responsibility for aboriginal peoples.³⁴ On the Newfoundland side there was some concern that if the federal government took responsibility for the aboriginal peoples of Labrador, this would have a negative impact on the operations of the Northern Labrador Trading Operations.

These discussions took place against a background where little was actually known about the Innu who were the "Indians" referred to in the various discussions.³⁵ This was also the time during which the Mushuau Innu were being relocated to Nutak, and there was even some doubt over whether this group of people really were enfranchised.³⁶ There is no evidence that there was any consultation with the Innu about the implications of confederation.³⁷

(b) The Terms of Union

The Terms of Union made no reference to the Indians and Eskimos of Newfoundland and Labrador. Although it was apparently understood by federal and provincial officials that there would be an arrangement with the province after confederation for Newfoundland administration of Indian and Eskimo peoples,

there was no agreement or other written understanding of this arrangement. Newfoundland was advised that the Indian Act would not be applied to Indians and Eskimos in Newfoundland and Labrador after Union, and the whole question of responsibility for aboriginal peoples was to be left in abeyance until after a provincial government had been elected. The provision in the federal government's budget estimates for special services for Indians and Eskimos was removed.

(c) Post-Union Practice

(i) The 1954 Agreement

In the period after Union a change in thinking seems to have emerged among some federal officials. What started as a reluctance to apply the Indian Act to the aboriginal peoples of Newfoundland and Labrador developed into some confusion over whether the federal government had jurisdiction over such peoples at all. While some still thought that the Indians of Labrador should be brought under the Indian Act, others seemed to consider that this was not possible and there was some confusion over who the Indians in Labrador really were. A preference seemed to emerge in these discussions that federal involvement should be limited to funding certain services rather than taking full responsibility.

In order to clarify matters, a legal opinion was sought in 1950 from the Department of Justice on the "precise legal extent of the federal government's responsibility in so far as Indians and Eskimos residing in Newfoundland and Labrador are concerned". That legal opinion, delivered by the Deputy Minister of Justice on April 14, 1950, was unequivocal. Legislative authority in respect of "Indians, and Lands Reserved for the Indians" was exclusively in the hands of the federal government and that legislative authority carried with it executive authority.³⁸

The opinion went on:

It is the responsibility of the federal government to formulate and carry out all policies that are directed at dealing with Indian[s] or Indian problems. Such policy is to be formulated by Parliament and

the executive. This responsibility carries with it the responsibility of providing money to be devoted to the carrying out of policies in relation to the Indians.

Notwithstanding this advice, federal officials still considered that it was desirable not to assume direct responsibility but rather to enter into an arrangement with Newfoundland under which the province would administer the Indians and Eskimos of Newfoundland and Labrador. The federal government's role was just to be one of funding.

Some of the confusion in the minds of federal officials derived from the fact that the Terms of Union made no reference to Indians and Eskimos and that the earlier references to federal responsibility in the draft Terms of Union had been deleted. This issue was not dealt with directly in the 1950 legal opinion and the view seems to have lingered that since the Terms of Union were silent on the matter, Newfoundland had never relinquished control over aboriginal peoples. Thus, three years after the 1950 legal opinion, federal officials were still saying that the issue of jurisdiction was not settled in the Terms of Union, and that although the federal government had to accept some responsibility in respect of the Indians and Eskimos of Newfoundland and Labrador under the BNA Act, it had made no commitment to do so either orally or in writing.

The most extreme position was perhaps that taken by the federal Minister of Citizenship and Immigration in 1953. In a letter to the Newfoundland Minister of Public Welfare regarding financial contributions in respect of Indians and Eskimos of Labrador, the federal Minister stated "there is no legal requirement for the Federal Government to assume any responsibility whatsoever, either financial or administrative, in regard to the residents of Northern Labrador".³⁹ The public position seemed to be emerging that while the federal government was willing to provide some assistance to the residents of northern Labrador, as a response in part to the high incidence of tuberculosis, this was not to be construed as any recognition of responsibility in respect of the aboriginal peoples there.

Within the federal government, there was no unanimity on this view. Indeed, the federal government's ultimate decision to enter into the 1954 agreement to provide funding for the Indian and Eskimo people of Newfoundland and Labrador was made against a background of internal discussions in which

officials did recognize that there was federal responsibility in this field; some even went so far to say that if Newfoundland went to court to compel the federal government to assume responsibility, the province would win.⁴⁰

The exchange of letters constituting the 1954 agreement stated that it was "designed to delimit on a long-term and more satisfactory basis, the areas of responsibility of the federal and provincial governments with regard to the Indian and Eskimo population of Northern Labrador". In respect of federal government responsibility, the agreement is clear. That responsibility consisted of assuming the costs, up to a stated limit, of capital expenditures in the fields of welfare, health and education and some administrative responsibility in respect of hospitalization. There is no indication in the 1954 agreement of the responsibility "to formulate and carry out all policies" spoken of in the 1950 legal opinion.

(ii) The 1965 Agreement

By 1964, the province of Newfoundland was very concerned about the inadequacy of the funding received under the 1954 agreement and in a letter to Prime Minister Pearson, Premier Smallwood invited the federal government to either assume full responsibility for the Indians and Eskimos of Labrador or to provide funding at a level equivalent to funding received by aboriginal peoples living in other provinces.⁴¹ This request led federal officials again to debate their relationship to the aboriginal peoples of Labrador.

A further legal opinion was requested. Again the opinion was unequivocal. The position taken by the Deputy Minister of Justice in 1950 was endorsed and the issue about the absence of any reference to aboriginal peoples in the Terms of Union was clarified. This meant, the legal opinion stated, that the constitutional position in respect of Indians applicable in the rest of Canada was equally applicable to Newfoundland. Furthermore, "... there is no provision in the Indian Act excluding any portion of Canada from its application".⁴²

Discussions of federal officials at this time indicate that they were aware that the federal government had constitutional responsibility for the Indians of Newfoundland and Labrador, and that there was no justification for treating them less favourably than other aboriginal peoples in Canada were treated.⁴³

Nevertheless, the federal government decided to go ahead and essentially renew the 1954 arrangement. The exchange of letters between Prime Minister Pearson and Premier Smallwood dealt only with financial arrangements; no mention is made of any federal responsibility in respect of the aboriginal peoples of Labrador and it is stated expressly that the federal government did "not wish to disturb the established arrangements for provincial administration of Indian and Eskimo affairs in Newfoundland."

(iii) Subsequent Agreements

Essentially the position has remained unchanged in the subsequent federal-provincial agreements relating to the aboriginal peoples of Newfoundland and Labrador and in the more recent Canada-Newfoundland agreements dealing with the Innu communities of Sheshatshit and Davis Inlet.⁴⁴ The current contribution agreement makes no reference to any specific federal responsibility. It notes the past practice of concluding "special contribution arrangements" and states that "Canada, through the Minister of Indian Affairs and Northern development, maintains a special interest in the social and economic development of the Innu people".

(d) The Continuing Ambiguity of the Federal Government's Position

There are a number of areas where the federal government's actions appear to be guided by recognition that it does have responsibility in respect of the Innu that is not discharged simply by signing a funding agreement with Newfoundland. These include the question of direct consultations with the Innu, the issue of registration under the Indian Act, direct funding from the federal government, and some statements of government officials.

(i) Consultation with the Innu

In a 1965 memorandum to Cabinet on the issue of federal funding for the aboriginal peoples of Labrador, it was noted that unlike other enfranchised Indians, those of Labrador had been given no choice as to their status.⁴⁵ This issue of the

absence of consultation concerned federal officials because consultation had become an important issue in aboriginal communities elsewhere in Canada. Thus, officials did not want to publicize the 1965 agreement for which it was acknowledged there had been no consultation with the aboriginal peoples concerned.

One official went so far as to say that "the concluding part of the agreement was inconsistent with the expressed policy of the federal government to consult with Indians and Eskimos in regard to matters affecting their future welfare."⁴⁶ In effect, the aboriginal peoples of Labrador were being perceived as no different from other aboriginal peoples in Canada, notwithstanding provincial administration of their affairs. However, in 1965 the federal government sought to remedy the failure to consult by placing the responsibility of consultation on the shoulders of the province.⁴⁷

Today consultation is provided for formally through a management committee set up under the Canada-Newfoundland Contribution Agreement. The Committee is composed of eight representatives; two from each of Canada, Newfoundland, Sheshatshit and Davis Inlet. However, the chair is from either Canada or Newfoundland and the committee functions under an agreement to which the Innu are not a party.

(ii) The Issue of Registration

The question of registration has been one of confusion dating back to even before Newfoundland entered confederation. Initially there seems little doubt that the Indians of Labrador were eligible for registration under the Indian Act. The issue was the desirability of registration, not eligibility. And even after confederation there were some federal officials who took the view that registration of the Innu was the more appropriate route to take. At the time of the renewal of the 1954 Health Agreement it was felt that consideration would have to be given to registering Labrador Indians under the Indian Act which, it was recognized, they could demand to have done.⁴⁸ There is no evidence, however, that the option of registration was explained to the Innu or that they were given any chance to decide whether they wished to be registered under the Indian Act or to be subject to the Canada-Newfoundland Agreement.

In the mid-1970's there were discussions between the Innu and federal officials about registration.⁴⁹ In 1977 the President of the Naskapi-Montagnais Innu Association indicated to the federal government that they wished to be registered.⁵⁰ This application was not proceeded with by the federal government. It is unclear why the federal government took no action; an internal memorandum attached to the letter from the Naskapi-Montagnais Innu Association indicates that no reply to the letter was necessary at that time.⁵¹ It has been suggested to me that the federal government was not prepared to proceed with the registration of any aboriginal peoples in Newfoundland and Labrador while they were dealing with an application from the Micmacs of Conne River in Newfoundland. There may also have been some disagreement over whether the Innu should be registered on an individual basis, through genealogical links with the Montagnais and Naskapi in Quebec, or treated as a group in their own right.

In any event, it is clear that the government of Newfoundland and Labrador was opposed to such registration. In a letter to the then Chief of the North West River Band, the Premier of Newfoundland stated that if registered the Innu would lose educational and housing benefits for which they were eligible. In his view, "it would be a step backward for the Indians of Labrador to become registered under the Indian Act".⁵²

In the late 1980's the question of registration again arose. Apparently, by this time the federal government was prepared to register the Innu,⁵³ but for their part the Innu had concluded that they did not wish to place themselves formally under the provisions of the Indian Act. Thus, registration did not take place. Although there does not appear to be any documentary evidence of these events, and some DIAND officials to whom I spoke had no knowledge of them, it was to this, presumably, that the Minister of Indian Affairs and Northern Development was referring when he stated in a letter to the President of the Innu Nation that, "the Innu have chosen not to be registered under the Indian Act".⁵⁴

At the present time, the position appears to be that if the Innu applied for registration under the Indian Act they would be able to be registered, although this is not a view that is unanimously held by federal officials, and there has been no recent large-scale registration project like that of the Micmacs of Conne River.

(iii) Direct Funding

In the late 1980's, the federal government began to enter into some direct funding arrangements with the Innu. Although some of these arrangements are the result of the government simply treating the Innu as eligible for federal programs, as in the case of post-secondary education and uninsured health benefits, others consist of agreements entered into formally with the Innu, generally in the area of health. For example, agreements have been concluded with the Innu Nation Health Commission and the Sheshatshiu Innu Alcohol and Drug Abuse Program. However, none of these agreements gives any indication of the constitutional basis for its conclusion nor do they indicate whether they have any relationship to the Canada-Newfoundland Contribution or Health Agreements.

(iv) Statements of Government Officials

The terms used by governmental representatives to describe the Innu people and their relationship to the federal government have been inconsistent, ambiguous and confusing. In 1975, the Minister of Indian Affairs said that the Innu were "considered by the Department to be Indians for the purposes of the Federal-Provincial Agreement with Newfoundland". In 1978 the Innu were recognized as having a land claim "based on traditional use and occupancy of lands in Labrador".

More recently, in response to the Innu document Canada-Newfoundland Agreements: An Innu Perspective, the Minister of Indian Affairs and Northern Development stated; "Canada recognizes the Innu people of Labrador as a special group of aboriginal people and has agreed to negotiate the Innu claim to aboriginal title in Labrador." Later in the same letter, the Minister refers to Canada's recognition of "the Innu aboriginal status". The letter also indicates that the Innu have chosen not to be registered under the Indian Act.

Following the January 26, 1993, incident involving an attempted suicide by six Davis Inlet children, the Minister of Indian Affairs and Northern Development issued a statement in which he again referred to the choice of the Innu not to be registered under the Indian Act, and then went further and said that the Innu

people "have chosen to remain as unregistered non-status Indian people under the care of the Province of Newfoundland."⁵⁵

(e) Conclusions

Instead of treating the Indian peoples of Labrador as "Indians" under section 91(24) of the BNA Act, at the time Newfoundland entered confederation, the government of Canada chose to treat them as if they were no different than other residents of the province of Newfoundland. This result was reached after consultations with the government of Newfoundland. Implicitly, the government of Canada and the province of Newfoundland agreed at that time not to apply the Indian Act to the Innu (and other Indians) of Newfoundland and Labrador. In effect, the federal government passed its responsibility in respect of the Innu on to the government of Newfoundland.

The federal government has never acknowledged that it has direct responsibility for the Innu as aboriginal peoples of Canada in accordance with Section 91(24). Nevertheless, it has implicitly recognized that it has some responsibility through the various funding arrangements with Newfoundland and with the more recent direct funding arrangements that have been entered into with the Innu. The federal government's actions following the recent crisis in Davis Inlet over the suicide attempt by six children show an increasing tendency to act as if there was direct federal responsibility for the Innu people. Nevertheless, the federal government has still sought to imply that the Innu are the responsibility of the province of Newfoundland and Labrador.⁵⁶

Moreover, the federal government has also sought to imply (and sometimes stated expressly) that the situation of the Innu is the result of their own choice. But to characterize the fact that the Innu are not registered under the Indian Act as a result of a decision by the Innu is simply misleading. There is little doubt that if the federal government had undertaken a process of registration in 1949 the Innu today would all be registered. Equally, if in 1949 Canada had wanted to establish a reserve for the Innu, there is little doubt that a reserve would have been created. Moreover, if the federal government had proceeded with registration as requested by the Innu in the 1970's the Innu today would be registered.

But the Innu were not given any opportunity in the 1940's to decide whether they wished to be registered under the Indian Act and to have a reserve created, and the decision to leave them under the administration of the province of Newfoundland and Labrador was not one on which they were consulted. And when the Innu decided that they did wish to be registered, the federal government did not accede to their wishes. Only in the late 1980's was the federal government apparently prepared to register the Innu. By this time perceptions of the Indian Act, inside and outside of government, had changed, and coming within the Act was viewed by the Innu as detrimental to their status as aboriginal peoples.⁵⁷

In the light of the above, I conclude,

- (i) that in 1949 the Government of Canada failed to acknowledge and assume its constitutional responsibility for the Innu as aboriginal people in Canada;
- (ii) that the direct consequence of this failure was that the Innu were not given the opportunity at that time to become registered under the Indian Act and to have reserves created for the communities of Sheshatshit and Davis Inlet; and
- (iii) that to this day the Government of Canada has not acknowledged in an unequivocal way its direct constitutional responsibility for the Innu as aboriginal people in Canada.

The question of acknowledgement of constitutional responsibilities may appear to be one of form. But it is also a matter of substance. By failing to acknowledge and assume responsibility for the Innu as aboriginal people in Canada, the federal government failed to treat the Innu in the same manner as it has treated other Indian peoples who have been given the opportunity to be registered under the Indian Act and thereby to obtain the benefits that are consequential upon this. In 1947 the government of Canada indicated to Newfoundland that those benefits would include education, health care, family allowances, and conservation projects. The federal government did not provide all of these benefits to the Innu.

The question arises whether in fact the federal government exercised or fulfilled its constitutional responsibilities towards the Innu by other means. In this regard, it is clear that the federal government does not see its responsibilities under Section 91(24) as being fulfilled solely by registration under the Indian Act. The federal government assumes some responsibility for non-status Indians and for Inuit who do not go through a process of registration. Thus, federal officials have suggested that the funding arrangements with Newfoundland could be regarded as proper mechanisms for the fulfilment of federal government responsibilities in respect of the Innu as aboriginal peoples.

However, the result of the way in which the federal government and the government of Newfoundland have chosen to deal with the Innu has led to the impression that Newfoundland has almost a constitutional responsibility in respect of the Innu as aboriginal peoples. This authority is viewed at times by federal officials as tying the hands of the federal government in dealing with the Innu on matters that in respect of other aboriginal peoples in Canada would be undeniably within the jurisdiction of the government of Canada.⁵⁸

This is clearly illustrated by the recent events over the decision to relocate the community of Davis Inlet. On February 9, 1993, the Minister of Indian Affairs and Northern Development announced that the federal government had agreed to the relocation of the Davis Inlet community, but made the decision on where the Mushuau Innu were to go dependent on the province of Newfoundland.⁵⁹ The implication was clear: the province of Newfoundland was going to have a veto on the matter. Subsequent events have reinforced this conclusion.

Regardless of the form in which the federal government has chosen to exercise its responsibilities, the question is whether it has met appropriate standards of conduct applicable in its relations with the Innu. The starting principle for assessing the conduct of the government of Canada towards the Innu is the fiduciary obligation that the government has towards aboriginal people in Canada. The federal government can only argue that it has carried out or fulfilled its constitutional responsibilities in respect of the Innu by its arrangements with the government of Newfoundland if it can show that it has thereby properly executed its fiduciary obligation.

In this regard there is an initial, and quite fundamental, problem. By failing to offer the Innu the opportunity of registration under the Indian Act, the federal government discriminated against the Innu. It treated them differently from other Indian people who had been given that opportunity. It also deprived them of access to benefits and services provided to status Indians.

Whether the Innu were deprived of those benefits in fact, can be determined only in the light of an assessment of the level and quality of services received by the Innu since 1949 and of their treatment by the federal government and the government of Newfoundland. Thus, a final answer to this question will be given after other complaints of the Innu Nation have been considered.

Complaint No. 2

As a result of the failure of the government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly as aboriginal people, the Innu have not received the level and quality of services received by other aboriginal peoples in Canada.

catch up

In the light of the conclusion that the failure of the federal government to acknowledge and assume direct responsibility for the Innu in 1949 had the consequence that the Innu were not brought within the Indian Act, the appropriate measure for determining whether the Innu have received the level and quality of services received by other aboriginal peoples in Canada is to compare their situation with that of other aboriginal peoples who are registered under the Indian Act and who obtain the full benefits that are available from that status -- that is, Indian people who are status and on-reserve.

Such a comparison is not without difficulty and in the view of some federal officials it is practically impossible to make. Each Indian band or community is seen as having its own characteristics and needs, and comparisons between bands across provinces are complicated by the policy of DIAND to provide a level of services to status, on-reserve Indians similar to that available to the non-aboriginal community in the same province. Under such a policy, there will be an inevitable variation between bands on a province-by-province basis, and differences can even occur between localities within provinces. Moreover, in the case of the Innu, the cost of the services they receive cannot easily be segregated from the total cost of the services provided by the Newfoundland government to all residents of northern Labrador.

Notwithstanding these difficulties, some comparisons can be made and some general conclusions can be drawn about the situation of the Innu since 1949.

The question of the level of services will be addressed first, followed by the question of whether the federal government has met its obligations as a "fiduciary".

(a) The Historical Pattern

(i) The Level of Funding

The immediate consequence of the failure to bring the Innu under the Indian Act in 1949 was that while the level of benefits received by status, on-reserve Indians elsewhere in Canada increased significantly from the 1950's on, those benefits did not accrue automatically to the Innu. The consequence of leaving responsibility for the Innu to the Province of Newfoundland and Labrador was that the standard for receiving benefits was the standard provided by the province to all residents of Newfoundland; it was not the standard set by the government of Canada for aboriginal people across the country to whom the Indian Act applied. Any changes to or improvements in the services provided to the aboriginal peoples of Labrador depended upon the renegotiation of the agreement between Canada and Newfoundland.

This deficiency was noted by the Royal Commission on Labrador in 1974. The Commission pointed out that while the standard set in the 1970 Canada-Newfoundland Agreement was that of the level of the benefits received by the aboriginal people of northern Quebec, in fact the federal government had been using 1965 figures and not 1970 figures for northern Quebec in establishing the amount to be paid under the agreement. The conclusion of the Commission was that "the Indian and Eskimo people of Labrador are not now receiving anything like the benefits which would be available to them under Federal Government financing elsewhere in Canada".⁶⁰

However, the Commission pointed out, the lower level of funding received for the aboriginal people of northern Labrador was not just an oversight: "... Ottawa was acknowledging, at least within its own walls, that it was consciously supporting and advocating a policy of discrimination against the native people of Labrador".⁶¹ To compound this, there were consistent allegations that the moneys under the agreement were not being used for the Indian and Eskimo people alone, but were being used by the province for services in northern Labrador that were not limited to aboriginal peoples.

(ii) The Administration of Programs

Another consequence of the funding arrangement adopted by Canada and Newfoundland was that, unlike the case of other aboriginal peoples in Canada, the Innu have had a third-party, the province of Newfoundland, interposed between them (the recipient) and the funder (the federal government). At one level this simply creates a greater administrative burden and provides the opportunity for each level of government to try to shift responsibility for particular issues to the other. This causes difficulty for peoples who are operating without the resources or expertise that has been built up in other sectors of society for dealing with governments.⁶²

Beyond this, there is a more fundamental disadvantage that has been suffered from this tripartite relationship. Newfoundland has no constitutional responsibility for aboriginal peoples. It has responsibility for all of the residents of the province and that has been the historic basis on which it has premised its treatment of the Innu and other aboriginal peoples; the government of Newfoundland has seen as the equal application of its laws to all residents of Newfoundland and Labrador. This has been particularly evident in the application of Newfoundland wildlife laws to the Innu,⁶³ which has led to repeated requests from the Innu to the federal government to intervene with the province.⁶⁴

Equally, the Province of Newfoundland has had no infrastructure of the kind developed by the federal government to deal with the issues of aboriginal peoples, and the federal government has not had the incentive to build up a concentration of expertise with respect to the Innu and their issues. It is only in recent years that responsibility for dealing with the administration of the federal government's relations with the Innu, including the Canada-Newfoundland Contribution Agreement, has been moved to the regional office for the maritime provinces and thus allowing for the development of knowledge, expertise and institutional memory.

(iii) Access to Federal Funds

While the conclusion of direct funding agreements has opened access to funding that had not previously been available, it is not always clear whether the Innu are in fact eligible for certain federal programs or not. The problem is illustrated by the statement by the Minister of Indian Affairs and Northern Development who in 1975 wrote that if the peoples of the communities of Sheshatshit and Davis Inlet formed themselves into an association, they would be eligible for CORE funding from the Secretary of State.⁶⁵ Over a year after the formation of the Naskapi-Montagnais Innu Association, the Association's officers were still writing to the Minister asking why the Secretary of State had in fact refused them funding.⁶⁶

(b) The Situation Today

Without citing concrete comparative figures, many federal officials appear to be of the view that while amounts on specific items may differ, overall the level of support received by the Innu would be comparable to that received by a similar-sized group of aboriginal people elsewhere in Canada. Other officials consider that in certain areas, the Innu probably do not receive an amount comparable to other groups and the area of economic development is sometimes cited as an area where the Innu are disadvantaged.

There is also concern over the actual application of the Canada-Newfoundland Contribution Agreement. Newfoundland's ten percent share is not a cash contribution, and there is scepticism among both the Innu and federal officials over whether that ten percent ever shows up anywhere. For their part, some Newfoundland officials consider that their contribution to the Innu both through the services they provide to all residents of Newfoundland (and hence to the Innu) and through the benefits of the contribution agreement do not put the Innu at a comparative disadvantage. Increasingly, however, Newfoundland officials are questioning why they let themselves get into the position whereby they assumed financial obligations that would have been assumed by the federal government if the Innu had been registered under the Indian Act and on reserve.

While the evidence is not complete, there is strong support for the view that the Innu are in fact seriously disadvantaged financially by the present arrangements. A comparison can be made between the funding received by the Davis Inlet community and the funding received by an equivalent Indian community in Nova Scotia to which the Indian Act applies. On the basis of figures supplied by DIAND, a similar-sized Nova Scotia band received approximately \$4.1 million in funding under a Master Funding Arrangement with DIAND for the 92-93 fiscal year, exclusive of funding for economic development. Of this, approximately \$1.7 million was for education and \$1.6 million for social development. An additional \$60,000 was received for economic development. Comparison

By contrast, figures derived from information provided by the Band Council of Davis Inlet, Newfoundland Social Services and the Innu Nation indicate that the funding received by the Davis Inlet community for 1992-93 is more in the range of \$2.4 million, of which \$824,000 was for education and approximately \$500,000 for social services.⁶⁷ An additional \$40,000 was received for economic development. Moreover, these figures understate the case, for they do not reflect the fact that status residents of a reserve in Nova Scotia enjoy certain tax exemptions not available to the Innu.

Even taking into account any costs that may be hidden in the infrastructure of the government of Newfoundland for the delivery of education and social services, the disparity is substantial. It calls into question both adequacy and equity in the provision of funds to the Innu under existing arrangements.

(c) Conclusions

First, there is no doubt that in the early years of the bilateral agreements between Canada and Newfoundland in respect of the aboriginal peoples of Labrador, the Innu did not receive financial contributions equivalent to what would have been received by other aboriginal groups who were entitled to benefits under the Indian Act. The Royal Commission on Labrador made this point clearly in 1974, and it has not been controverted.

Second, it was not until the late 1980's that the Innu were granted access to a wider range of federal programs, through direct funding arrangements, that would

supplement the resources coming from the Canada-Newfoundland contribution agreement. But still today the Innu are not eligible for all programs that other aboriginal peoples have access to and their eligibility often depends on ad hoc decisions rather than on the consistent application of some principle of eligibility.

Third, the Innu have functioned within the framework of a provincial system that treats them as no different than the other residents of that province. Their special status as aboriginal peoples has not been the basis on which the government of Newfoundland has dealt with them.

Fourth, unlike aboriginal peoples to whom the Indian Act applies who deal directly with the federal government, the Innu have had to deal with the bureaucratic structures of two levels of government, of which the primary level has been Newfoundland. This has led to inefficiency in the organization of their own efforts in dealing with government and confusion over which level to deal with on a number of issues.

Fifth, the denial of a direct relationship with the federal government has deprived the Innu of the opportunity to be dealt with by a bureaucratic and administrative structure that has a mandate to deal specifically with aboriginal peoples as peoples entitled to rights that are different from those to which others in society are entitled. While there may be controversy over the nature of the expertise available in DIAND, it is different from the kind of expertise that can be built up in a provincial administration with no mandate to deal with the particular interests of aboriginal peoples.

In the light of the above, I conclude that the failure of the Government of Canada to acknowledge and assume direct responsibility for the Innu as aboriginal people which resulted in the failure in 1949 to apply the provisions of the Indian Act to them, has meant that the Innu have not received the same level and quality of services as are made available by the federal government to other aboriginal peoples in Canada.

The question arises whether the failure of the federal government since 1949 to provide the Innu with the level and quality of services made available to other aboriginal peoples in Canada constitutes a breach of its fiduciary obligation towards the Innu?

The obligation imposed on the government of Canada by virtue of its fiduciary relationship with the Innu is a strict one. At the very least it involves an obligation not to discriminate. It is an obligation that in 1949 would have required the government of Canada to treat the Innu in the manner that other aboriginal peoples in the same situation were being treated. This would have involved the opportunity to be registered under the Indian Act and to have a reserve created. In this regard the federal government cannot be said to have met the appropriate standard because it did not provide the Innu with the same opportunity in 1949 that it had provided to other Indian peoples and it did not then or in subsequent years provide a level and quality of service that it had made available to other aboriginal peoples in Canada.

But the obligation on the federal government surely goes further than a duty not to discriminate. It involves an obligation to act for the benefit of aboriginal peoples,⁶⁸ and to take whatever measures are appropriate in the light of the particular circumstances of the "trust" and the actual needs to which those circumstances give rise.⁶⁹ What was appropriate in respect of the Innu in 1949 and subsequently depended on their particular needs, including such matters as health, education, spiritual and material well-being, housing, access to water, and sewage facilities. Thus, treatment equivalent to that received by other aboriginal groups may not of itself be sufficient to meet the standard for a "fiduciary" or to meet generally recognized human rights standards that are equally applicable to the relationship of the government of Canada to the Innu.

In any event, it is clear that in the present case the standard of equality with other aboriginal groups was not even met and thus the fiduciary obligation was not met.

In light of the above, I conclude that the failure of the Government of Canada to provide a level or quality of services to the Innu similar to that provided to other aboriginal peoples in Canada constitutes a breach of its "fiduciary obligation" to the Innu as aboriginal people in Canada.

Complaint No. 3

The failure by the Government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly has also denied the Innu the opportunity to control their own affairs through self-government, to have control over the management of matters such as health, housing, welfare, education, and policing, or to control their own infrastructure and other essential programs.

catch up

To a certain extent the problems that have emerged in the access of the Innu to services as a result of the failure of the federal government to acknowledge and assume responsibility for the Innu as aboriginal peoples in Canada, are similar to those that arise in the areas of self-government and control over programs. The concept of self-government has no place in the way in which the province of Newfoundland and Labrador normally organizes the affairs of its residents. This is not to suggest that Newfoundland is presently opposed to the idea of self-government for the Innu.⁷⁰ Rather, the point is that self-government for aboriginal peoples is not a concept that fits readily into a legal system that is based on the premise that all peoples in the system should be treated in exactly the same way.

By contrast, the constitutional recognition of a special responsibility in the federal government for aboriginal peoples has resulted in a longstanding acceptance of the idea that the federal government can establish regimes for aboriginal peoples that are not applicable to the non-aboriginal population of Canada. Self-government is a concept that the government of Canada has recognized for aboriginal peoples and for which policies and negotiating mechanisms have been developed.⁷¹

A similar situation exists with respect to control over such matters as education, housing, health, welfare and policing. The province of Newfoundland provides these services to all residents of the province, including the Innu. The demand of the Innu for control over these services as they apply to them represents a request for treatment different from that accorded to other residents of the province. This is demonstrated by efforts of the Innu to negotiate control over education in Sheshatshit and to have two aboriginal police officers recognized in

Davis Inlet. In each case the Innu have had to negotiate directly with the province.⁷²

By contrast, devolution of services is a logical corollary to the federal government's self-government policy for aboriginal peoples and it is expected that those bands that have established self-government arrangements will have already begun, or will have a framework for, a process by which they will gain control over services or contract for them directly.

It is of course impossible under Canada's constitution to implement self-government arrangements or to provide for the devolution of services to aboriginal peoples, without some involvement by the province in which the aboriginal community is located. Such matters as the designation of lands as a reserve or the utilization of provincial social or educational services have to enter into the discussions. Accordingly, in self-government negotiations in which the federal government is involved elsewhere in Canada, the province is often fully consulted and is frequently at the table.

The particular problem faced by the Innu, as a result of the failure of the federal government to assume direct responsibility for the Innu as aboriginal people, is that the province of Newfoundland has implicitly been given a role in self-government negotiations that is greater than the normal role of a province in any self-government negotiations between the federal government and aboriginal peoples. As mentioned earlier, the effect of the arrangement that has been in place since 1949 has led to an implicit assumption that the province has almost a veto over matters that would otherwise be regarded as within federal jurisdiction.

This situation is illustrated in the letter of the Minister of Indian Affairs and Northern Development advising the Innu Nation of the willingness of the government of Canada to enter into negotiations on self-government. The Minister indicates a preparedness to enter into negotiations on both self-government and the devolution of the delivery of programs and services. However, the letter makes clear that there will be tripartite meetings with the province on the devolution of services and programs, and states further that a copy of the letter will be sent to the Premier of Newfoundland "given the required involvement of the Province of Newfoundland in Innu self-government and in the transition to that goal...."⁷³

The clear implication of this statement is that the province of Newfoundland is an essential partner in self-government negotiations and that in fact the negotiations cannot proceed without the province being at the table. But this position stands in contrast to the policies enunciated by DIAND in respect of Indian Self-Government Community Negotiations. The "Policy Statement on Indian Self-Government in Canada" which describes the objectives of self-government negotiations states:

In some areas it may be necessary to secure the involvement and cooperation of provincial governments. Community negotiations, however, will not alter the division of powers between the federal and provincial governments but will, through practical measures, attempt to accommodate Indian governments within the existing constitutional framework. Hopefully, provincial governments will cooperate in recognizing and making room for strong Indian governments. This would be to the advantage of all levels of government in Canada. The involvement of provincial governments in the negotiation process will only take place with the mutual consent of all concerned.⁷⁴

A parallel statement on the negotiating process provides:

Depending on the issues under discussion, provincial governments may also be required to participate in negotiations. However, provincial involvement would require the mutual consent of all parties.⁷⁵

The difference between the stated policy on provincial involvement in self-government negotiations and the particular position taken with the Innu is manifest.

If the Innu had a direct relationship with the federal government and had been funded directly, the issue of self-government would have been dealt with in direct negotiations between the federal government and representatives of the Innu people. The province would have been involved from time to time as and when necessary, but its presence would not have been required in all negotiations and the involvement of provincial representatives would itself have been the subject of negotiations between the Innu and the federal government.

The "required" involvement of the government of Newfoundland in self-government negotiations, mentioned in the November 23, 1992 letter of Minister Siddon, poses a particular difficulty in view of the history of the relations between the Innu and provincial authorities. The view of the Innu that the province has consistently tried to treat them as residents of the province of Newfoundland with no particular recognition of their special status as aboriginal peoples will make tripartite negotiations on self-government problematic. The point is that there is no reason why such negotiations have to be tripartite in respect of the Innu when they are not so for other aboriginal peoples in Canada.⁷⁶

In the light of the above, I conclude that the failure of the Government of Canada to assume responsibility for the Innu as aboriginal people in Canada has impaired the ability of the Innu to move towards self-government and to obtain control over programs and services that affect them. The existing arrangements will inhibit future negotiations on self-government and devolution of programs and services.

Complaint No. 4

The Mushuau Innu have been subjected to three relocations since 1947 which have had disastrous consequences for them. In particular, their present location at Utshimasits does not provide them with adequate housing or services and it impedes their ability to pursue their traditional hunting pursuits, resulting in a high level of social dysfunction. Relocation of the Mushuau Innu to a new community is essential.

(a) Relocation to Nutak

Early accounts suggest that the Mushuau Innu used to come in the summer to both Davis Inlet and Voisey Bay. However, the regular visits of a priest, Father Edward O'Brien (known to the Innu as Father Whitehead), to Davis Inlet resulted in the Voisey Bay Indians eventually moving to Davis Inlet. In the late 1930's the Newfoundland Ranger responsible for Davis Inlet encouraged some of the Innu at Davis Inlet to move back to Voisey Bay where he said there would be work. In fact there was no work in Voisey Bay and the families had to return to Davis Inlet with little food and in an emaciated condition.⁷⁷

The records of the 1920's and 1930's show that the Mushuau Innu were often in dire circumstances. The diversion of their traditional hunting efforts into fur-trapping for profit had made them particularly vulnerable to seasonal changes in the abundance of wildlife and in the 1920's government relief began to be provided. From time to time a shortage of caribou led to starvation among the Mushuau Innu who were equally vulnerable to disease. Reports also indicate that social problems existed amongst the Innu at that time, often resulting from the use of alcohol.

In 1942 the Newfoundland authorities took over the Hudson's Bay depot at Davis Inlet, which the Company had been unable to run at a profit,⁷⁸ and placed it under the jurisdiction of the newly created Northern Labrador Trading Operations. However, as time went on the Newfoundland authorities also had difficulty running their northern posts profitably. In 1945, the Northern Labrador Trading Operations brought in \$45,000 from the fur trade; in 1948 revenues were only \$3,000.⁷⁹ In 1944 there were discussions about closing the post at Davis

Inlet,³⁰ and in 1946 plans for closing the post during the winter months were articulated.³¹ By the middle of 1947 it appeared that a decision had finally been taken to close the post at Davis Inlet.³²

During this period relief provided to the Innu at Davis Inlet was rising³³ and the view was developing among some Newfoundland officials that the Innu were becoming completely dependent on government relief. It was believed that instead of going hunting in the summer months, the Innu were going a few miles up-river and then waiting until their supplies ran out before returning to Davis Inlet.³⁴ The view developed amongst some officials that the Innu should be treated more like the white population and integrated into the economy, particularly by encouraging them to engage in fishing.³⁵

In 1948 a decision was taken to move the Mushuau Innu north to Nutak. It is not clear when or at what level that decision was made and as late as June 1947 the post manager at Davis Inlet, Max Budgell, did not seem to be aware of any plans to move the Mushuau Innu.³⁶ However, the idea of centralising aboriginal residents who were scattered along the coast goes back at least to the nineteen-thirties.³⁷ Moreover, the implications of the post closure at Davis Inlet for the Mushuau Innu had been in the minds of government officials. Budgell believed that once the post was closed, the Innu would "drift to Hopedale".³⁸ However, the perceived opposition of the Moravian Mission in Hopedale to the Innu moving there was stated as the reason for not closing the post in 1946.³⁹

Father O'Brien was informed of the relocation of the Mushuau Innu by the "Chief", Joe Rich,⁹⁰ who apparently had been taken to Nutak before the relocation to see the area.⁹¹ The actual move was completed by boat (the "Winnifred Lee"). The Innu were placed in the hold with the cargo,⁹² although some managed to pitch tents on deck, and were transported up the coast to Nutak, stopping just outside Nain to allow the Newfoundland Rangers to come on board to arrest one of the Innu whom they had been seeking for some time.⁹³

After their arrival in Nutak the Innu were provided with tents, clothing and food.⁹⁴ However, the area surrounding Nutak was treeless, and some of the Innu lived initially in the shacks that were used for storing firewood for the Inuit for whom the Innu were "put to work cutting timber".⁹⁵ Others pitched their tents using firewood. Within a few weeks they moved to treed areas around the bays,

including Okak Bay, and set up their tents. However, much of the area was barren ground which made hunting difficult. The Innu also engaged in cod fishing and trout fishing with some success according to the Innu and to government reports.

Generally the Innu were not happy at Nutak and so informed Father Cyr when he visited them there.⁹⁶ At the end of their second winter they decided to return to Davis Inlet. Joe Rich in particular had decided that he did not want to stay. His relationship with Max Budgell had apparently deteriorated and he was deeply affected by the drowning of one of his sons.⁹⁷ Although some of the younger Innu were not unhappy at Nutak, the older Innu were dissatisfied with the conditions for hunting and they readily agreed to go back to Davis Inlet. All of the Innu returned to Davis Inlet via Nain by foot, re-establishing themselves at the place they had lived before being moved to Nutak.

To this day the Innu do not know why they were moved to Nutak. They were not consulted in advance, and while government representatives obviously discussed the matter with Joe Rich, there is no indication that Joe Rich either had decision-making authority for the Mushuau Innu or was invited to exercise any judgment about the desirability of the move.⁹⁸ His letter to Father O'Brien, indicated that they hoped to get more "deer" (caribou) than at Davis Inlet, a reason for the move somewhat different from that articulated by government officials.

Contemporary government reports suggest that the move to Nutak was designed to provide employment for the Innu. This policy of relocating the Mushuau Innu to Nutak and "teach[ing] them to fish" was described in the October 1949 report to the Newfoundland government of Harold Horwood, M.H.A.⁹⁹ as "monstrous but necessary", and Horwood stated that the "servile labour" of cutting wood for the Inuit at Hebron was "better than the enforced idleness they suffered at Nain and Davis Inlet". The comment encapsulates a contemporary attitude; aboriginal people had to be integrated into some sort of economic activity. As Horwood said earlier in his report, the policy of the Commission of Government was to "make white men" of the Indians and Eskimos. However, he argued in his report, "the effort to make the native a productive producer for the world's markets should be written off as a failure".¹⁰⁰

Was the relocation just a misguided effort to provide the Innu with employment? Was it a humanitarian act designed to assist a people who were in a dire economic condition? Although one of the stated reasons for the move was that the hunting grounds at Davis Inlet were no longer productive, when government representatives spoke of non-productive hunting grounds they were referring to fur-bearing animals.¹⁰¹ They were less concerned with caribou on which the Innu traditionally depended. Caribou hunting was a subsistence, not a profit-making, activity.

And even if there was a concern about caribou-hunting, there is no evidence of the caribou having disappeared from traditional Mushuau Innu hunting grounds. Although the winter of 1948 had apparently been hard and there had been some starvation,¹⁰² the Innu do not recall that there was a particular shortage of animals in their hunting grounds near Davis Inlet or that the situation was dramatically different from previous years. In fact, in 1947 Max Budgell had identified the problem in productivity not to an absence of animals; rather, he said, the Innu would not hunt. In his view the Innu had become dependent on government relief and were reluctant to go into the country.¹⁰³ Moreover, there is no indication of any attempt to assess hunting conditions at Nutak, which in the end turned out not to be as favourable as those near Davis Inlet.

If, on the other hand, the objective was to bring the Mushuau Innu into the fishing economy, which Horwood certainly identified as an objective of relocation, then there was no need to relocate them. There is no evidence that the fishery near Nutak was any better than the Davis Inlet fishery. What was different was that there would be a government depot at Nutak, but none at Davis Inlet once the existing depot was closed. A government depot was essential if the Innu were to be integrated into the fisheries economy, as there had to be somewhere they could sell their fish. The fishery and cutting wood for the Inuit were to provide an economic return for the Innu. In this way the cost of government relief could be reduced.¹⁰⁴

In other words, the decision to relocate the Innu to Nutak was a consequence of the decision to close the government depot at Davis Inlet. It was a decision guided by a belief that the Innu should become economically productive and based on the administrative convenience of the location of the government depot. Moreover, the perception that there would be opposition from the Moravian

Mission to the Innu coming to Hopedale meant that some alternative had to be provided. That alternative was the relocation of the Innu to Nutak where there was a government depot managed by Max Budgell in whom the Innu generally had confidence.

This is not to deny that the government officials involved may have believed that they were acting in the best interests of the Innu. But their assumptions had nothing to do with the Innu's view of the world, nor did they attempt to understand what that view was through discussions with Innu other than Joe Rich or through community meetings or consultations. No-one asked the Innu if they wanted to change from their traditional hunting activities to commercial fishing. No-one asked if they wished to move away from an area with which they had been associated for many years. The perception of government officials of what was in the best interests of the Innu was grounded in an assumption that the Innu had to be made to become "white men", that is integrated into white economic society. And the officials also had a conflicting obligation to do what was best for the Northern Labrador Trading Operations.

Moreover, the lack of consultation with the Innu on what their interests and wishes might be was compounded by a failure to make a serious comparison between the situation at Davis Inlet and the situation at Nutak. Thus, the lack of trees, so necessary for the Innu to put up their tents and live with some degree of comfort, the extensive barrens that made hunting difficult, and the lack of a comparison between the hunting conditions or even the conditions for fishing at Davis Inlet and Nutak, all indicate that the move was not fully thought out. The Innu were dealt with as people who could be moved at will, and changed by government decision from hunters to fishers.

In the light of the above, I conclude,

- (i) that the relocation of the Mushuau Innu to Nutak was undertaken without any real consultation with the Innu and without their consent;
- (ii) that there was very little knowledge or understanding of who the Innu were as people at that time and government officials assumed that they could make decisions for the Innu;

- (iii) that there is no evidence of a serious comparison of the conditions the Innu would face at Nutak with those that existed at Davis Inlet;
- (iv) that the decision to relocate the Mushuau Innu was motivated by the fact that the government depot was to be closed at Davis Inlet and by the belief that the Moravian Mission at Hopedale would be opposed to the Innu coming to the government depot at Hopedale.
- (v) that the decision to relocate the Mushuau Innu was taken against a background of an assumption that white officials knew what was in the interests of the Innu and of a policy that sought to turn the Innu into "white men" and to integrate them into the economy primarily through fishing.

(b) Relocation to Iluikoyak Island

The idea of again relocating the Mushuau Innu, and even of relocating the North West River Innu, had currency throughout the 1950's. In 1951 the Minister of Public Welfare of Newfoundland wrote to Premier Smallwood about moving the Innu of North West River to Schefferville,¹⁰⁵ and a conference on Labrador in 1952 has on its agenda the resettlement and possible amalgamation of Indian groups.

In 1952 the government depot at Davis Inlet was re-opened at its old site across the bay (the "Run") from the Roman Catholic Mission,¹⁰⁶ even though there had been doubts about the adequacy of the harbour and waterfront at the depot site.¹⁰⁷ Contemporary documents indicate that government officials continued to speculate about ways to integrate the Innu into the white economy,¹⁰⁸ but that they did not consider the Davis Inlet area to be a place where this could be done. Suggestions were made to move the Mushuau Innu closer to North West River so that over time the two groups would merge.¹⁰⁹ The theme of merging the Davis Inlet and North West River Innu was repeated by both government and church officials in 1956.¹¹⁰

In a 1957 report, W.G. Rockwood indicated that a decision had already been taken to assist Davis Inlet Innu to move to North West River, but that they were

reluctant to go. The possibility of some of the Mushuau Innu moving to Schefferville was also raised.¹¹¹ In 1959, the Minister of Citizenship and Immigration of the federal government was informed of a project to relocate the Davis Inlet Innu to North West River.¹¹² No such relocation took place, although it has been reported that during the next seven to eight years some seventeen families did move from Davis Inlet to North West River,¹¹³ some for treatment of TB at the hospital there.¹¹⁴

In the early 1960's concern was again expressed about the adequacy of the site for the government store at Davis Inlet and it was suggested that it be moved to a location some 20 miles away.¹¹⁵ In the mid nineteen-sixties a housing program was developed for Davis Inlet, but it was concluded by government officials that the existing townsite was unsatisfactory.¹¹⁶

At this time a difference of view emerged between the representatives of the Roman Catholic Church. The priest in North West River (Father Pirson) supported by the priest in Happy Valley (Father de Harveng) took the view that the Mushuau Innu should be relocated to North West River where there were better opportunities for schooling, health and housing.¹¹⁷ This was opposed by the priest of Davis Inlet, Father Peters, who considered that the Mushuau Innu should stay in the area they regarded as home and in which there was a good supply of food. In Father Peters' view health was better in Davis Inlet than in North West River (by this time there was no TB in the community) and the only benefit from moving to North West River would have been the opportunity for education.¹¹⁸ Father Peters was very much in favour of moving to a new site in Davis Inlet -- a project that has been described by the Mushuau Innu as Father Peters' "new idea".¹¹⁹

This dispute was taken seriously by government officials and the opinion of the Bishop was at least informally sought. In fact, it was not until they learned that the Church officially supported relocation to a new site in Davis Inlet and not to North West River, and would build a mission at the new site, that Newfoundland officials fully committed themselves to the relocation.¹²⁰

The question of whether or not to move to North West River was apparently discussed with the Mushuau Innu and contemporary documents record a vote having been taken among the Innu at a meeting on April 9, 1966.¹²¹ Few Innu

have any recollection of a vote being discussed and none recall participating in any vote. One elder recalls a government official (Max Tiller) telling them that they would have a vote and that if 50% were in favour of going to North West River then they would all be moved there. This elder's recollection was that all of the Innu refused to cast a ballot. In any event, Innu elders recall, most people did not want to move to North West River.

Whether or not a vote took place on relocation to North West River, it is clear that there was no vote on whether to relocate to the new site on Iluikoyak Island nor was there any formal consultation. Some Innu recall a meeting with government officials when they were told that they would have to relocate because the existing site was too small and rocky for building new houses. They were told that a new site was being looked for that had sandy soil and good deep water for a wharf.

The chief, Joe Rich, and the council appointed by the priest, were the only Innu involved in looking for a new site.¹²² The decision on the specific site chosen was made by "mostly the government people" according to a recent Innu account, although one Innu report states that "Mr. Peters and Joe Rich were the ones who picked out the site for Davis Inlet".¹²³ Some Innu claim that no serious attempt was made to look at the mainland,¹²⁴ and that everyone knew that Iluikoyak Island would be chosen (an area with which they were all familiar) because the government officials wanted a place for a wharf.

It is likely that the priest, Father Peters, played a leading role in the choice of the site and relocation. He was a dominant figure, who Innu describe as someone "who did lots of good things for the Innu", and who was always making decisions for the Innu on what he thought was best for them. He apparently dug the well that led to the conclusion that there was sufficient water and he was a strong advocate of the site as early as March 1966.¹²⁵ He has stated that the Innu who inspected the new site were in favour of it and that "the decision to move to the new site was done with the approval of the Innu, but not with a consultative vote".¹²⁶

For their part, the Innu consider that the decision on the site was made essentially by Father Peters, Joe Rich and government officials.¹²⁷ There was no consultation and the question of approval or disapproval by them did not arise.

No one was really opposed to the move,¹²⁸ and as they point out, in the light of what they were led to believe they were going to get at the new site, who could have disagreed with such a move?

Although water supply was obviously an important factor, in fact there was no systematic assessment of the availability of water. An impression was gained, from the existence of a small brook, from the surface water, and from the well dug by Father Peters, that there would be sufficient water but "no testing was done for deep well water supply",¹²⁹ and no-one was looking ahead to an increase in the population of the Mushuau Innu. Perhaps more important at the time was the fact that the site was perceived to have a good deep water capacity for a harbour and wharf and thus would be a good location for the government store. A surveyor was sent to the site, not for the purpose of determining its suitability, but rather to lay out plans for a town, dock and warehouse on a site that had already been chosen.

The fact that the Innu were to be moved to an island and thus cut off from their hunting grounds for not insignificant periods during the year does not seem to have surfaced as an issue. However, the fall and spring freeze-up and break-up had been identified as a problem when the store was located on an island while the Mission and the Innu were on the mainland and given as a reason in support of relocation.¹³⁰ But even if the freeze-up and break-up issue had been considered, it would probably have been discarded, because the notion that the Innu would be encouraged to engage in fishing as an economic activity was very much alive. An attribute of the new site was seen to be that it was "not too far from fishing grounds".¹³¹

A key consideration in the relocation was the expectation of the Innu as to what they would receive at their new site. On this Innu elders are virtually unanimous. Their understanding was that houses would be built for them, that the houses would have basements, running water, sewage, furnaces and some furniture. Whether or not such an expectation was realistic or not in a remote Labrador community in 1967 is beside the point. The fact is that this was the uniform understanding of the Innu at that time, and for that reason they considered that they had no choice but to make the move. That is the sense in which it can be said that they "consented" to the move to the new site on Iluikoyak Island.

How could the Innu have been left with this impression? Some of the Innu recall a meeting when government officials spoke of these things and Father Peters translated. Joachim Nui and Philip Rich were present at a meeting with Ross King, Eric Evans (the storekeeper), Father Peters, Joe Rich, Jerome Rich and David Rich,¹³² when they were told about the houses they would be getting in the new community. At that time they were told what the houses would be like. Others recall hearing Joe Rich speak of the houses on the basis of what he had been told by "government people". Because Joe Rich was the only Innu with access to government officials¹³³ what he said was accepted by the other Innu as representing the government's position.

There is no doubt that running water was in Father Peters' mind at that time. On March 8, 1967, he wrote to R.S. King asking whether it would be possible to have a water supply in each house or a general water supply for the village that would work year round without freezing. He went on: "what will be the hygiene and cleanness in the houses if they have to carry water in a pail...."¹³⁴ In August of the same year, he wrote again to King saying, "We will discuss too a way of keeping pumps from freezing under houses The water is there so we have to find a way of keeping it during the winter."¹³⁵ And the expectation of running water must have been shared by those letting the contracts for the construction of the houses, as bathrooms and toilets were installed.

When Joachim Nui was working with the contractors building the houses, he realized that no basements were being constructed. He drew this to the attention of the foreman who told him that basements were to come later. Philip Rich also asked why basements were not being constructed and was told by the carpenters that water and sewage were going to come later.

The Director of Northern Labrador Services, R.S. King, was obviously aware of an expectation that there would be running water in the houses in Davis Inlet, for he noted in his annual report for 1968 that the problem of installing water in the houses was one of expense because of the problem of freezing in the winter.¹³⁶ While that proposition may not have been astounding in 1968, (particularly when the expected basements had not been constructed) what is incredible is that twenty-five years later the matter has still not been remedied.

The federal government was not unaware of what was happening in the Davis Inlet relocation. In 1965 the federal-provincial committee set up under the renewed Canada-Newfoundland agreement providing financial assistance in respect of the Indians and Eskimos of Labrador was told of the possibility of relocating the Davis Inlet Innu to North West River.¹³⁷ At the third meeting of the Committee, in 1966, the plan for building houses at the new site was discussed and the federal share of the cost mentioned.¹³⁸

At the next meeting, on being advised that the relocation had not yet taken place, the federal representative suggested that perhaps a study should be undertaken which "would be helpful in determining the wisdom of having the Indians move".¹³⁹ It was left to the provincial authorities to decide whether to undertake such a study. Federal officials returned to the idea of this study at the next meeting and expressed concern that relocation was going ahead without such a study being done. The matter was not pursued and the relocation went ahead.¹⁴⁰

Not only did the houses lack the amenities expected by the Innu, but the quality of the buildings was poor. By February 1968, the government representative in Davis Inlet was reporting that houses constructed in the previous summer were leaking at the windows and through the roof.¹⁴¹

Notwithstanding complaints about their housing made by the Innu to the priest and to government officials, the situation was not remedied. Wells have been dug and running water is available in the Mission, the school, the teachers' residences, the nursing clinic, the nurses' residence and in some houses occupied by non-Innu. The Innu houses remain unserved by water and sewage facilities. No-one in the Innu community can understand why the Mission and the nursing clinic can have wells that are productive, but that attempts to dig wells at Philip Rich's adjacent house have not yielded serviceable, uncontaminated water. Frank Peters suggests that cutting down the vegetation at the townsite has lowered the water table.

The problems relating to the health of the Innu since relocation are well-known. Between 1980 and 1984, 43.5% of the cases of TB in Northern Labrador came from Davis Inlet, even though Davis Inlet constituted at that time about 2% of the total population of Northern Labrador.¹⁴² In 1987, a study of the health

situation in Davis Inlet stated: "by any definition, the health of Innu living in Davis Inlet is appalling".¹⁴³ In a 1992 internal memorandum to the Assistant Deputy Minister, Health Services Branch, Health and Welfare Canada,¹⁴⁴ it was stated:

The situation remains critical in Davis Inlet. The lack of health and social services, poor living conditions and jurisdictional confusion has resulted in the existing crisis.

In addition to the physical health of the Mushuau Innu there are the other conditions that have been described graphically in various press reports about Davis Inlet. Chronic levels of alcoholism, gas sniffing, domestic violence and general social dysfunction; living conditions that most Canadians would find totally unacceptable; minimal numbers graduating from secondary-school and even fewer from post-secondary institutions, and excessively high rates of attempted and actual suicide.

For many Mushuau Innu today, relocation to Iluikoyak Island was a major cause of this condition and it is obvious that it has been an important contributing factor. The difficulty of keeping a house and its inhabitants clean when there is no running water, or of providing healthy food for a family, or even being able to provide children with food before school in a house where all of the food freezes overnight are all retold graphically in Gathering Voices and are obvious to visitors to the community. The lack of an adequate water supply in the village has meant that fire-fighting facilities are practically non-existent, as illustrated by a fire in February 1992 in which six children died. This tragedy led to the community consultations that resulted in the publication of Gathering Voices.

There are also problems with the village structure that the Innu confronted on moving to Iluikoyak Island. It placed families in separate houses and turned away from the extended family-based living arrangements that had been their tradition.¹⁴⁵ No thought was given to this in 1967 and it is being addressed only today in the context of the Mushuau Innu's plans for relocation to Sango Bay on the mainland.

In the light of the above I conclude,

- (i) that the Mushuau Innu were relocated to their present site on Iluikoyak Island without any meaningful consultation about the move;
- (ii) that the particular location was chosen primarily because it fulfilled the needs for a harbour and wharf to sustain the government store;
- (iii) that the interests of the Innu were assumed to be those identified by the priest and government officials who dealt with the Innu;
- (iv) the relocation was also motivated by an interest in directing the Innu towards fishing as an economic activity and was not focused on preserving traditional Innu practices such as returning to the country and caribou hunting;
- (v) that although the Innu were not opposed to the move, their views were formed by the understanding that they would be receiving houses that would have running water and sewage disposal and this understanding is supported by records of the time and by the construction of amenities in the houses that presupposed the existence of running water and sewage disposal;
- (vi) that there has been a failure since 1967 either to provide the Innu with the living conditions they understood they were to get when they moved to their present location or to remedy the fundamental deficiencies of the lack of running water or of any sewage disposal system;
- (vii) that the living conditions at Davis Inlet are an important contributor to the standard of health in the community and the widespread social dysfunction that exists there.

(c) Conclusions

A common, fundamental problem with both relocations is that the authorities simply made assumptions about what was in the interests of the Mushuau Innu and acted accordingly. The Innu were not given the opportunity to articulate their needs and interests or to make decisions for themselves. And in each case, the relocation went in the direction of taking the Innu away from their traditional culture and practices, by trying to turn them to fishing, by putting them into communities that ran contrary to their traditional, extended family-based organization of living arrangements, and by making it more difficult to engage in traditional hunting activities by locating them on an island with consequent freeze-up and break-up problems.

This is not to deny that those involved in making decisions for the Innu were acting in accordance with what they perceived to be the Innu's best interests.¹⁴⁶ However, they had not developed a mechanism for understanding the Innu's interests in any real sense, and they viewed the Innu's interests from the optic of their own. But, in any event, intentions are really irrelevant. It is with the consequences of the actions of the authorities that we must contend, and those consequences have played a vital part in the position that the Mushuau Innu find themselves today.

The question arises how the conduct of the authorities in relocating the Mushuau Innu should be viewed in the light of aboriginal rights or human rights. The 1948 relocation to Nutak took place at the time when nations were adopting the Universal Declaration on Human Rights which spoke of the "equal and inalienable rights of all members of the human family". The 1967 relocation took place shortly after the adoption of the International Covenant on Civil and Political Rights, Article 27 of which spoke specifically of the rights of persons belonging to ethnic minorities within a country "to enjoy their own culture", and some eight years after the adoption of the Canadian Bill of Rights. Government officials cannot have been unaware of this context.¹⁴⁷

Did the actions of the authorities in both relocations meet the standards appropriate for a fiduciary? A fiduciary is held to a "strict standard of conduct" and must act for the "benefit" of those to whom the fiduciary obligation is owed, and may be required to take "timely and effective measures" to ensure that the

rights of the beneficiaries of the fiduciary obligation are protected. In the circumstances of these relocations and in the continuing failure to remedy the condition of the Mushuau on Iluikoyak Island, it is difficult to see that these standards have been met.

Although the 1967 relocation was carried out by the government of Newfoundland, the government of Canada, in accordance with its constitutional mandate under section 91(24) and its fiduciary responsibility to aboriginal peoples in Canada still bears ultimate responsibility. That responsibility could not be exercised by watching from afar from a federal-provincial committee and making suggestions for an in-depth study of the matter, but not insisting that it be carried out.

In the light of the above, I conclude

- (i) that the actions of the authorities¹⁴⁸ in relocating the Mushuau Innu to Nutak in 1948 failed to meet the appropriate standard of conduct for a fiduciary;
- (ii) that the relocation of the Innu to Iluikoyak Island in 1967 and the failure to remedy the living and social condition of the Mushuau Innu on Iluikoyak Island since that time are a breach of the fiduciary obligation of the Crown for which the Government of Canada under its constitutional mandate in respect of aboriginal peoples bears responsibility.

Complaint No. 5

The Innu should receive compensation for the failure of the Government of Canada since 1949 to recognize the particular constitutional status of the Innu and to deal with them directly and the consequent breach of the government's fiduciary duty to the Innu.

Although the complaint brought by the Innu refers specifically to compensation, I will address the more general question of an appropriate remedy in this case.

As I have concluded above, the federal government failed in 1949 to exercise its constitutional responsibilities in respect of the Innu as aboriginal peoples in Labrador. Instead of exercising those responsibilities directly by treating the Innu as Indian people eligible to be registered under the Indian Act, the federal government, with the agreement of provincial authorities, left responsibility for the Innu to the Province of Newfoundland and Labrador assuming only the obligation to provide some funding.

The reasons for this action have been dealt with earlier. Some might appear laudable, such as seeking to avoid a perceived disenfranchisement of the Indian and Eskimo people of Labrador; others were less defensible, such as seeking to avoid full financial responsibility. All have to be perceived against a background of practically no real knowledge of who the Innu were (or where they were) or what their wishes were, and a paternalistic view of the need to integrate the Innu into the white society and economy.

Regardless of motivation, the decision of the federal government in 1949 not to exercise direct responsibility for the Innu as aboriginal people was wrong. It neither reflected the constitutional responsibility of the federal government nor created a situation that operated for the benefit of the Innu. And, notwithstanding two legal opinions indicating that the federal government did have responsibility and apprehension among some federal officials about whether they were taking the correct course of action, the matter has never been rectified. Although increasingly the federal government has dealt with the Innu directly, the situation remains unchanged. The events following the crisis involving the suicide attempt by six children at Davis Inlet provide a clear illustration of this.

Equally, the relocations of the Mushuau Innu to Nutak and to their present location on Iluikoyak Island on the basis of the assumption that the government could move them at will without a real understanding of their own interests or aspirations or their consent, cannot be justified. And the failure to remedy the situation in Davis Inlet involves a continuation of that wrong. The 1967 relocation and subsequent events are clearly the responsibility of the government of Canada and it is for the government of Canada to act to remedy the matter.

The causes of the situation the Innu find themselves in today obviously go back further than 1949; indeed, they can be traced back to the time of contact. The Hudson's Bay Company, the Church, the Grenfell Association's medical services, the white settlers, and the pre-confederation authorities in Newfoundland, all bear responsibility for shaping the response of the Innu to the colonized world. However, since 1949 the federal government has had a specific "fiduciary" obligation in respect of the Innu -- it has had both the opportunity and the obligation to act. Regrettably, it has not done so.

This inaction by the government of Canada constitutes a failure by a fiduciary to act in the best interests of the individuals to whom it has an obligation. It is a failure to live up to the standards that most Canadians would expect of their government, and it is a failure to meet the standards required by the international community of states in respect of the protection of basic human rights.

The question arises as to the appropriate remedy. The Innu have claimed compensation. It would be possible, although no doubt difficult, to make a calculation to determine the difference between the amount the Innu would have received since 1949 if they had been registered under the Indian Act and had reserves created at Sheshatshit and Davis Inlet and the amount they have in fact received under the existing arrangements. Such a calculation would have to take into account a quantification of the benefits and services provided by Newfoundland independently of the Canada-Newfoundland agreement, and would have to place some figure on the difficulties that the Innu have faced in dealing with the complications of two levels of government.

The federal government has seen fit to apologize and to provide monetary compensation in other circumstances. If the federal government did decide to take such steps in this case, this might go some way to remedying the failure of the

government of Canada to fulfil its fiduciary obligation towards the Innu. However, to pay compensation and consider that the matter is resolved would be an abdication of responsibility and not a true recognition of it. The full magnitude of what has been lost to the Innu cannot be restored by the payment of compensation. They cannot be "compensated" for the social and cultural loss they have suffered as a people.

A real remedy in the present circumstances would address the actual problems faced by the Innu today. The remedy would be one that ensures that the Innu are able to be in the economic, social and spiritual situation they would have been in if governmental responsibilities had been properly exercised and appropriate human rights standards met.

In considering the ambit of such a remedy, attention must be directed to what has been perceived by aboriginal scholars as fundamental to recognition of the rights of aboriginal peoples. This is that:

... from early colonization until the present time, no government or monarch has ever genuinely recognized Aboriginal peoples as distinct Peoples with cultures different from, but not inferior to, their own. Aboriginal peoples have not been viewed by the dominant culture as peoples whose ways of life should be tolerated or respected except in the most paternalistic and oppressive terms.¹⁴⁹

Failure to recognize that the Innu are peoples with a unique culture of their own that is entitled to recognition and respect lies at the centre of the treatment that the Innu have received from governments. This was referred to frequently in discussions with individual Innu and was recognized by many federal officials. The Innu have not been given the opportunity, the resources, or the freedom, as peoples with a distinct culture of their own, to take responsibility for their own lives. Decisions are made about them on the basis of their perceived best interests.

And the problem persists. In discussions that I had, it appeared that some federal and provincial officials did not think that the Innu really knew what was best for themselves. The controversy over the proposed new relocation of Davis Inlet highlights this. The Mushuau Innu have decided that they wish to relocate

to Sango Bay. The government of Newfoundland is not convinced that Sango Bay is the most appropriate place for them. The debate has the air of history repeating itself -- the best interests of the Innu are being determined by government officials and not by the Innu.¹⁵⁰

It is for this reason that a full understanding and appreciation of what has happened to the Innu, and in particular of the circumstances of the relocations of the Mushuau Innu, cannot be ignored or treated as events of the past that can now be put aside. They have to be recognized by the governments concerned as examples of a standard of treatment -- no matter how well-intentioned it might have been -- that cannot be repeated. They must stand out as a clear lesson for future relations between government and the Innu.

A "remedy" for the Innu Nation cannot, of course, provide a panacea for the problems the Innu face. In this regard, the Innu are acutely aware of the precarious position they are in as a people. They are aware of the "lost" culture of their elders; of the fact that their children have been inundated through television with a southern, white culture; they are aware of the difficulty, if not impossibility, of turning the clock back for their children; they are aware of the impact of losing the cultural values of their traditional ways; they are aware of the fragility, if not non-existence, of the economic base on which their communities presently rest.

It does not help for outsiders to keep reminding the Innu of these things, nor does it help to have governments acting as if the Innu are not able to take responsibility for their own affairs -- of continuing to treat the Innu as children, as Chief Katie Rich has said. The wish of the Innu people is to determine their own future in accordance with their own values, to provide for the education of their children in a way that will permit them to preserve and enhance their unique culture in the light of present-day economic and social realities. They wish to make their own decisions and to take responsibility for them, to break away from a cycle of dependency and subordination that the existing system imposes on them. To a certain extent this is what self-government and control over programs and services can bring them, but to do this there must be a break with the past and the forging of a new relationship with both levels of government.

The portrayal of the Innu community in Davis Inlet by the press after the January 1993 attempted suicide by six children gives an accurate picture of a community in crisis. But there is another side to the Innu people in both Sheshatshit and Davis Inlet. There is a people who without the benefit of formal schooling in their language and culture have proudly maintained that language in an era when indigenous languages are declining.¹⁵¹ There are the people who may seem uncomfortable and out of place in contemporary village society but who are in complete control of themselves and of their lives in the country.¹⁵²

There are the people who feel acutely that they are standing on the edge of two cultures and are desperately trying to ensure that there will be a future for their children as Innu.¹⁵³ And, there are the young leaders who have put aside a youth of alcoholism to try to change the cycle of despair in their communities but who speak with growing frustration of their attempts to get change from governments.¹⁵⁴

What is needed is a dramatic gesture of confidence, a new initiative from the federal government -- an acknowledgement of the constitutional responsibility of the federal government towards the Innu and a commitment to deal with them directly as if they were registered under the Indian Act and on reserve. This would involve replacing the existing Canada-Newfoundland contribution agreement in respect of the Innu with an agreement directly between the government of Canada and the Innu that would provide funding to the Innu from the federal government at a level available to Indian bands that are registered and on-reserve. That funding should ensure the continuation of the unique elements of existing arrangements that reflect the particular needs of the Innu, such as the outposts program that enables them to go to the country.

At the same time, there should be public acknowledgement that the role of the government of Newfoundland in respect of the Innu is no different than the role of any other provincial government in respect of aboriginal peoples who are registered under the Indian Act and on-reserve.

But this should not involve any requirement that the Innu be formally placed under the Indian Act. To require the Innu to be so registered would be to elevate form over substance. It would be nothing more than a symbolic act of subordination -- to legislation that the Canadian Human Rights Commission itself

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has described as "outdated and paternalistic". There is no reason why the federal government could not act directly without imposing the process of registration under the Indian Act on the Innu.¹⁵⁵

In hand with such a gesture of confidence should go a commitment to the expeditious relocation of the Mushuau Innu, in accordance with their own wishes, to a site chosen by them. The federal government has almost gone this far already; it needs to take the further step.

RECOMMENDATIONS

Accordingly, I recommend:

That the Government of Canada,

- (i) formally acknowledge its constitutional responsibility towards the Innu;
- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshit and Davis Inlet and enter into direct arrangements with the Innu as aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian peoples in Canada while preserving the unique aspects of existing arrangements such as the outposts program;
- (iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;
- (iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and
- (v) provide the funding necessary to implement these recommendations.

The third part of this recommendation is similar to the position enunciated by the Minister of Indian Affairs and Northern Development in his November 23, 1992 letter to the President of the Innu Nation. However, it alters the basis for negotiations, for it makes clear that the primary negotiations on self-government are to be between the federal government and the Innu people and that they would not automatically be tripartite negotiations.

The remedy suggested then, is a change in direction by the federal government, with a commitment to making real progress with the Innu people in moving to self-government arrangements where the Innu can take greater responsibility for their people, for their culture and for their future. It requires letting the Innu themselves set the pace and the agenda for the negotiations for these arrangements. And, it requires the allocation of resources that will enable them to do this.

On the part of the Innu it requires some considerable planning and assessment of needs and priorities, of looking at other aboriginal communities for guidance on the process of self government negotiations and the development of an internal infrastructure to manage the outcome of these negotiations. Of course, there is no guarantee that the Innu can overcome in the short, or even the long, term the enormous social and economic problems that they face. What is clear is that they will not do so if things remain the way they are. For this reason the actions of the federal government in recognising and according to the Innu the opportunity to take responsibility themselves for their own future must be unequivocal and decisive.

The action taken by the federal government must result in real progress for the Innu in respect of the relocation of Davis Inlet and the negotiation of self-government and devolution arrangements. For this reason, it would be appropriate for the Canadian Human Rights Commission to review the situation of the Innu people on a regular basis, say every five years, to ensure that steps to remedy the problems identified here are being taken and are effective.

Accordingly, I make the further recommendation:

That the Canadian Human Rights Commission review every five years progress made in the implementation of the recommendations in this report.

- 1 Assembly of First Nations, Violations of Law and Human Rights By the Governments of Canada and Newfoundland in Regard to the Mushuau Innu: A Documentation of Injustice in Utshimasits (Davis Inlet), Submission to the Canadian Human Rights Commission, May 1993.
- 2 (1990) 70 D.L.R. 385, at 408.
- 3 (1984) 13 D.L.R. 321 at 341.
- 4 Both federal and provincial officials with whom I talked had reservations about whether all of the complaints made by the Innu could be treated as human rights questions.
- 5 For background see Georg Henricksen, Hunters in the Barrens, 1973. See also Peter Armitage, Land Use and Occupancy Among the Innu of Utshimassit and Sheshatshit, July 1990, prepared for the Innu Nation.
- 6 Whether the trips to the coast were only as a consequence of the existence of trading posts or whether the Innu came to the coast before contact is unclear. Roche states that a trading post was established at Northwest River as early as the mid-1700's; Resettlement of the Mushuau Innu, 1948: A Summary of Documents, prepared for the Innu Nation, August 1992, p.2. Henricksen links the close identification of the Mushuau Innu with the coast with a change in the migration route of the northern Labrador caribou in 1916; Henricksen, op. cit., 13.
- 7 In the case of Sheshatshit, the trading post was located across the water at North West River, and in the case of Davis Inlet, the trading post was on an island near the coast. The Innu settlement was located on the mainland.
- 8 Voisey Bay, to the north of Davis Inlet, was also a place to which the Innu went. A priest was stationed at North West River and, from the 1920's on, one came every summer to Davis Inlet.
- 9 Armitage, op. cit., supra, 5-6.
- 10 From 1927 on Davis Inlet was visited regularly by Msgr. O'Brien. Records of relief given are found in the "Letters and Papers of Msgr. Edward Joseph O'Brien, 1923-47" which are held in the Newfoundland Room of the Queen Elizabeth Library, Memorial University, St. John's Newfoundland.

11 This incident will be dealt with in more detail later.

12 Armitage, op. cit., supra, 10.

13 At the old Davis Inlet settlement only one Innu family lived in a house. This house had been built by the priest for the family of Joe Rich whom the priest had appointed as the chief of the Mushuau Innu: Henricksen p. 97.

14 The move to the new settlement will be dealt with in more detail later.

15 This question will be dealt with more fully later.

16 Richard Budgel, Canada, Newfoundland, and the Labrador Indians 1949-69, 6 Native Issues No. 1, p. 40 (1984).

17 J.W. Pickersgill to H.L. Pottle, April 12, 1954; Pottle to Pickersgill, April 26, 1954. The agreement was to come into effect on April 1, 1954.

18 L.B. Pearson to J.R. Smallwood, May 25, 1965.

19 The limit under the 1954 agreement had been \$200,000 per year. In the 1965 agreement the federal government also made a back payment to Newfoundland representing 90% of the province's capital expenditure for Indians and Eskimos for the period 1959-1964.

20 The agreement is signed by the federal Minister of Indian Affairs and Northern Development, the Premier of Newfoundland and Labrador as Minister Responsible for Intergovernmental Affairs, and the Newfoundland Minister for Development.

21 The shares are 90% for the federal government and 10% for the province.

22 Letter dated 24 February 1993, from Judith D. Ross, Health and Welfare, Canada, to George Miller, CHRC,

23 It was suggested to me by officials in DIAND that this new activity by the federal government was a consequence of the publicity the Innu were receiving over their opposition to low-level flying.

24 Letter of Penote Antuan to F. Campbell Mackie, ADM, March 22, 1976.

25 Letter of Atwan Penashue to Warren Allmand, Minister of Indian Affairs and Northern Development, March 16, 1977.

26 Letter of J. Hugh Faulkner, Minister of Indian and Northern Affairs to Penote Michel, July 18, 1978.

27 Letter of the Hon. Tom Siddon to Peter Penashue, November 23, 1992.

28 Edward Tompkins, "Pencilled Out: Newfoundland and Labrador's Native People and Canadian Confederation, 1947-1954," March 31, 1988, p. 12; Wendy Moss, "Constitutional Responsibility for the Aboriginal Peoples of Newfoundland", 7 April 1988, p. 2.

29 Moss, ibid., p. 2.

30 Tompkins, ibid., p. 15.

31 Tompkins, ibid., p.17.

32 It is not entirely clear how the Innu became "enfranchised". Certainly it seems unlikely that they had ever voted and it is not clear that they had full rights of citizenship in any event. There had been earlier legislation limiting the sale of alcohol to Indians and limiting their movement out of Labrador; Albert W. Jones, "Emergence of Aboriginal-Governmental Relations in Newfoundland and Labrador", 10-11, (manuscript provided by author).

33 It has been suggested to me that this approach was an experiment in shifting federal responsibility for aboriginal peoples to the provinces which it was intended to apply more generally. While this may be so, I did not find any documentary evidence of such an intention.

34 The chronology of events is dealt with exhaustively in Tompkins, ibid., pp. 17-24. As late as May 1949, Mr. Smallwood was of the view that the aboriginal peoples of Newfoundland and Labrador would come under the jurisdiction of the federal government; telegram of Smallwood to F.W. Peacock, Superintendent, Moravian Mission, Nain, May 1, 1948.

35 For example, it was believed that the Indians were so intermixed through marriage with the white population that perhaps they would not be eligible for registration under the Indian Act.

- 36 Information provided by K.J. Carter to October 1948 meeting with Acting Director federal Department of Mines and Resources: Roche, "Resettlement" op. cit. note 6, p. 12.
- 37 Innu elders that I have spoken to have no knowledge of any discussions about confederation, although there is some recollection of either Newfoundland or federal officials coming to Northwest River to announce that confederation had taken place and that family allowances and pensions would be paid.
- 38 The opinion pointed out that for the purposes of the BNA Act the term "Indians" included Eskimos.
- 39 Letter Harris to Pottle, March 28, 1953.
- 40 Paul Pelletier to J.W. Pickersgill, Secretary of State, 16 March, 1954. See also N.A. Robertson to Paul Martin, Minister of Health and Welfare, June 1950: "The federal government's responsibility in this matter seems to be inescapable, legally and otherwise...."
- 41 Apparently the letter of Premier Smallwood to Prime Minister Pearson was sent in draft form initially so that the Prime Minister could propose changes. Even though that letter asserted federal responsibility for Indians and Eskimos in Labrador, no objection was made to the draft by Prime Minister Pearson: letter Smallwood to Pearson, 23 March 1964.
- 42 Letter of Deputy Attorney-General, dated November 23, 1964.
- 43 Views expressed by Deputy Minister Indian Affairs in interdepartmental meeting, February 25, 1965; letter Laing to Minister of Health and Welfare, April 22, 1965.
- 44 The 1983-84 Canada-Newfoundland-Native Peoples of Labrador Health Agreement notes in the preamble that "Canada ... has a special responsibility in the health care of Native people", thus implying that its agreement with Newfoundland is an exercise of its constitutional responsibility in respect of aboriginal people.
- 45 Memorandum to Cabinet, 23 April 1965: "contrary to enfranchised Indians, the Indians and Eskimos (of Labrador) have been given no choice with respect to their status."

46 Memorandum to Minister of Northern Affairs, 29 June 1965.

47 Although Newfoundland officials advised their federal counterparts that the consultations were taking place, Innu consulted by James Roche had no recollection of this.

48 Minutes of an Interdepartmental Meeting, 25 February 1965. Views of R.F. Battle, Deputy Minister of Indian Affairs.

49 Letter of Penote Antuan to Harry Chapman, DIAND, December 15, 1976.

50 Letter of Atwan Penashue, President, Naskapi Montagnais Innu Association, to Warren Allmand, Minister of Indian Affairs and Northern Development, of March 16, 1977.

51 Departmental Secretariat, Docket SA-3023, May 18, 1977.

52 Letter of Premier Frank Moores to Bart Jack, October 4, 1976. Apparently the Province was equally opposed to the registration of the Conne River Micmacs.

53 It has been suggested to me that in this area too the federal government's position was influenced by the publicity the Innu were receiving over the issue of low-level flying.

54 Siddon to Penashue, November 23, 1992.

55 Communiqué, of Minister of Indian Affairs and Northern Development, February 2, 1993.

56 See Communiqué of February 2, 1993, supra, note 55.

57 Registration under the Indian Act: Implications for the Innu and Consideration of Other Options, Report for the Innu Nation prepared by James Roche, April 1992.

58 This issue came up frequently in discussions with federal officials who ascribed the inability of the government of Canada to take certain measures in respect of the Innu to reluctance or refusal on the part of Newfoundland to act.

59 Ottawa Citizen, February 10, 1993. Referring to the site for relocation chosen by the Innu, the Minister is reported as saying that other sites would be considered only if that was the wish of the Innu or of the Newfoundland government.

60 Report of the Royal Commission on Labrador, February 1974, Vol. VI, p. 1196. In fact, the Commission revealed, the formula for Indians of northern Quebec had been, on a per capita basis, approximately one third of the funding given to Eskimos; ibid, p. 1185.

61 Ibid., p. 1184.

62 The Innu cite frequent occasions when they have been told by federal officials that they have no mandate to act, or they have been told by Newfoundland officials that it is a matter for the federal government.

63 Adrian Tanner, "History and Culture in the Generation of Ethnic Nationalism", manuscript for inclusion in Levin, ed., Aboriginality and Ethnicity, provided by author, ms. pp.19-21.

64 See letter from Atwan Penashue to Warren Allmand, March 16, 1977.

65 Letter of Judd Buchanan to Vicky Santana, 4 December 1975.

66 Letter of Atwan Penashue to Warren Allmand, March 16, 1977.

67 A study of the Innu community of La Romaine in Quebec in 1985, indicates even that at that time the community was receiving from the federal government almost \$1 million for social services. The population of La Romaine then was 635. Centre D'Etudes Nordiques; "Emplois, Revenus et Activités Economiques", October 1985, p. 83.

68 An analogy might be drawn with the obligation placed on states granted mandates over dependent territories by the League of Nations. Article 22 of the League Covenant stated that the mandate formed a "sacred trust of civilization". In 1971 the International Court of Justice stated that "it is self-evident that the 'trust' had to be exercised for the benefit of the people concerned,...": Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, para. 46.

69 The Inter-American Commission on Human Rights has said that "special protection for indigenous populations constitutes a sacred commitment of the states" and concluded that the failure of the government of Brazil to take "timely and effective measures in behalf of the Yanomami Indians", had "resulted in a violation of their rights to life, liberty, personal security, residence, movement, preservation of health, and well-being" under the American Declaration of the Rights and Duties of Man: Case 7615 (Brazil), [1985] Inter-American Yearbook on Human Rights 276 and 278. As Canada is a member of the Organization of American States, this Declaration is relevant to the determination of Canada's international obligations in respect of human rights.

70 However, for a period of time during the 1992 constitutional negotiations Newfoundland opposed the idea of an "inherent" right of aboriginal peoples to self-government.

71 See statement by Prime Minister Mulroney to the House of Commons, 25 September 1990, H.C. Debates, 13321. See also Indian Self-Government Community Negotiations, Indian and Northern Affairs Canada; a collection of background papers and documents, 1988-89.

72 The two aboriginal constables concerned have received training from an institute whose graduates are recognized in many provinces as being able to perform policing duties in aboriginal communities. To the Innu, having their own people to perform full-time policing duties is a much more effective arrangement than regular visits from RCMP officers stationed elsewhere. For the government of Newfoundland this involves recognition of a different set of qualifications for policing from those they are used to, and paying to provide a service for which they have already paid in their contract with the RCMP. At heart, the dispute is over the willingness of the province of Newfoundland to recognize within its jurisdiction a special status for the Innu as aboriginal people. Current discussions apparently involve the Office of the Solicitor-General for Canada.

73 Letter of the Hon. Tom Siddon to Peter Penashue, November 23, 1992.

74 Indian Self-Government Community Negotiations, "Policy", September 1989, p. 2. Emphasis added.

75 Ibid., "Process", May 1989, p. 3. Emphasis added.

76 It appears that the actual practice of provincial government involvement in such negotiations across the country is mixed, relying on pragmatism rather than a uniform approach.

77 This was described in a letter from Father O'Brien to J.C. Puddester, Commissioner for Public Health and Welfare in Newfoundland, November 23, 1938. Apparently the Ranger involved had given the Innu relief only on the condition that they move to Voisey Bay. Father O'Brien was moved to write "... I am heartily sick of these nit wits wearing the symbolic dress of authority".

78 Albert Jones, "Emergence of Aboriginal-Governmental Relations In Newfoundland and Labrador" supra, note 32, p. 14.

79 K.J. Carter Northern Labrador Trading Operations, December 12, 1949.

80 Ralph Parsons to Secretary of Natural Resources, Newfoundland, March 11, 1944.

81 K.J. Carter to Parsons, letter of May 9, 1946.

82 H.M. Budgell to O'Brien, Letter of June 28, 1947 in which he stated that he expected the post to be closed in the Fall.

83 See Budgell to Carter, July 3, 1946.

84 Budgell to O'Brien, June 28, 1947.

85 Budgell to Trade Supervisor, Department of Natural Resources, Newfoundland, June 21, 1947. In 1943, the Commissioner of the Newfoundland Rangers had reported to the Secretary for Natural Resources of Newfoundland, that it was "undesirable" that the Indians remain at the Davis Inlet post for any length of time; "the only alternative is to try to settle them on the coast where they might be given facilities for fishing, as is done in other cases": Report of November 16, 1943.

86 Budgell to O'Brien, June 28, 1947. In a recent communication Frank

Peters, who was the priest at Davis Inlet during the 1960's, wrote of the 1948 relocation:

A survey of the Innu in Davis Inlet at that time reported to the government of Newfoundland conditions that were miserable and unacceptable. The government appointed Mr. Max Budgell to organize them in some way to improve their condition. (Personal communication of April 5, 1993).

However, even though he knew in June 1947 that he was to be posted to Nutak and that the depot at Davis Inlet was to be closed, Budgell did not seem to be aware of any plans to move the Mushuau Innu to Nutak.

87 In a letter to Father O'Brien in August 1933, Ralph Parsons of the Hudson's Bay Company spoke of such a plan by the International Grenfell Mission. Parsons, who noted that the natural occupation of the people was hunting, considered that any plan to take the people away from their present locations would be "disastrous" and that "the people will become demoralized". Letter of August 2, 1933.

88 Budgell to O'Brien, June 28, 1947.

89 Carter to Parsons, May 9, 1946.

90 Letter of August 31, 1948. The letter was apparently written by Max Budgell. Joe Rich had been designated as "Chief" by Father O'Brien.

91 Discussion with Mushuau Innu elders. See also, Evening Telegram, St. John's, June 8, 1949. According to Innu elders Budgell encouraged Joe Rich to support the move to Nutak because Budgell was having an affair with an Innu woman and this would enable her to follow him to Nutak.

92 They were "treated like dogs". one Innu said.

93 This incident has led to the view among a number of Innu that the objective of moving them to Nutak was to isolate the fugitive on board the ship so as to enable his capture. I have seen no written record of this event, and while it seems unlikely that the whole of the relocation was carried out with this as the sole objective, it is not implausible that the opportunity that relocation provided

to capture the individual concerned was in the minds of the Newfoundland Rangers.

94 Report on Northern Labrador Trading Operations, by K.J. Carter, September 12, 1949.

95 Letter Carter to R.J. Gibson 22 September 1949.

96 Recollections of Innu elders. Frank Peters recalls learning the same thing from Father Cyr (who later opened the Mission at Davis Inlet) and from the Mission diary (which apparently does not exist any more). Apparently, the Innu told Father Cyr that they wanted to return to Davis Inlet. Personal communication from Frank Peters, April 5, 1993.

97 A report prepared for the Newfoundland government in October 1949, stated that during the three preceding years, two of which had been spent at Nutak, only seven children survived birth and that during the same period there had been seventy deaths (Report of Harold Horwood, M.H.A. to Newfoundland Government, October 1949, p.6.). That figure is clearly wrong and is accepted as so by the Innu. Another report in December 1949, stated that there had been five deaths since the move to Nutak. Carter, op. cit., and Innu estimates range from three to seven deaths.

98 Elders have indicated that at this time as a group they tended to do what they were told by white authority whether it was government or church. Although the Innu acquiesced in the intermediary role played by Joe Rich without formally consenting to it, they were not unaware of what Joe Rich's role really was. Innu elders, including members of his family, have observed that Joe Rich always did what government officials asked him to do.

99 The report was apparently requested by Premier Smallwood.

100 Horwood, p. 3.

101 An October 13, 1948 memorandum recording a meeting of federal officials with K.J. Carter, states that the reason for the move was that "the fur had been trapped out around Davis Inlet".

102 Letter of Joe Rich to Father O'Brien, August 31, 1948.

103 In fact, such reluctance might well have been contributed to by disease. Throughout the 1940's the Innu had been stricken with influenza.

104 Carter to Gibson, September 28, 1949.

105 Rowe to Smallwood: memorandum of May 6, 1951.

106 The Mission had opened in 1950 after the return of the Innu from Nutak with Father Cyr as a permanent priest.

107 W.G. Rockwood to Deputy Minister, Department of Public Welfare, Newfoundland: memorandum of May 23, 1952.

108 In a lengthy memorandum on "General Policy in Respect to the Indians and Eskimos of Northern Labrador", in 1955, W.G. Rockwood, Director of the Division of Northern Labrador Affairs, wrote:

"Civilization is on the northward march, and for the Eskimo and Indian there is no escape... The only course now open, for there can be no turning back, is to fit him as soon as may be to take his full place as a citizen in our society.... For the fourteen or fifteen hundred Eskimos, Indians and half-breeds of Northern Labrador the days of the primitive hunting economy are numbered, and these minorities, already far along in the transition stage, must be prepared to pass over into the industrial society now ready to burst upon them."

Perhaps the most outlandish suggestion was made in an April 16, 1955, memorandum from the Deputy Minister of Public Welfare of Newfoundland to the Deputy Minister of Natural Resources, that,

"the Indians be organized along military lines into Conservation and Development Corps.... Under this arrangement the able-bodied men of the tribe would be put under the direction of a competent officer who would be assisted by the Chief and other important men of the tribe, acting in the capacity of non-commissioned officers...".

109 Rockwood to Deputy Minister, Public Welfare: memorandum May, 1955.

110 Deputy Minister of Education to Minister of Education: memorandum of May 18, 1956.

111 This is contained in a report of W.G. Rockwood following a visit to Sept-Iles and Schefferville.

112 Letter of March 26 1959, Hefferton to Fairclough.

113 This information was provided by Father Peters, the priest at Davis Inlet, to S.M. Loder of the Division of Northern Labrador Affairs during a visit there in March 1966. Report of S.M. Loder, April 11, 1966. Father Peters apparently noted that eleven of these families had returned to Davis Inlet and the remaining six had stayed in North West River for health reasons.

114 Some Innu doubt that these families went to North West River for treatment of TB, as TB patients were treated at St. Anthony's. The movement of these peoples to North West River is regarded by them as a probable third relocation as set out in the complaint of the Innu Nation. I have not seen any documentary evidence on this issue nor were Innu elders able to throw any light on it.

115 Rockwood to Deputy Minister Public Welfare: letter of November 17, 1961.

116 Report of the Director of Northern Labrador Affairs for 1966, p. 244-245. The Innu report that a few years earlier a government official had come and seen their tents and decided that they should live in houses. As a result some plywood was sent which the Innu used to make sides for their dwellings. The roofs remained canvas.

117 Report of S.M. Loder, April 11, 1966. Personal communication from Frank Peters, April 5, 1993.

118 Report of S.M. Loder, April 11, 1966. Letter of Father Peters to R.S. King. April 13, 1966.

119 Gathering Voices, p.15.

120 On April 12, 1966, R.S. King wrote to the Deputy Minister of Public Welfare in Newfoundland stating that they would not make definite plans for a housing program at Davis Inlet until they knew of the Mission's plans for the Davis Inlet area. On April 21, 1967, King wrote to the Bishop of Labrador's representative, Rev. Gerard Boulanger saying, "We had already decided to go

ahead with our Davis Inlet project, but were waiting until we had heard from you before really committing ourselves". See also Peters to King: letter of August 25, 1966; Peters to King: letter of March 8, 1967.

121 Telegram M.H. Tiller to Director Northern Labrador Services , April 10, 1966. The Innu apparently indicated that if attempts were made to move them south, they would migrate to Voiseys Bay. Frank Peters recalls that the Innu were very much aware of forced relocations from Hebron in 1956 and Nutak in 1959. Personal communication of April 5, 1993.

122 Gathering Voices, p.15.

123 Gathering Voices, p.16.

124 However, the "Annual Report" of the Division of Northern Labrador Affairs for 1966-67, indicates that members of the Division and the priest visited every possible site within a two-mile radius; Newfoundland Department of Public Welfare, Annual Reports, 1952-69, pp. 226-227.

125 In fact government documents indicate that the site was chosen as early as January 1966, even though the "vote" on whether to move to North West River did not take place until April 1966: King to Evans, January 21, 1966; King to Deputy Minister, February 25, 1966. Innu began clearing the site in the summer of 1966.

126 Personal communication of April 5, 1993.

127 Ross King is usually mentioned as one who was centrally involved.

128 Gathering Voices, (p. 16) records one elder as saying that her husband was opposed to the move.

129 Personal communication from Frank Peters, April 5, 1993.

130 Report of Director, Northern Labrador Services, 1968, p.226.

131 Personal communication from Frank Peters, April 5, 1993. Ironically, the Innu claim that the cod fishery near old Davis Inlet was at the time much better than at the new site.

132 The group was apparently chosen because they were not drinking at the time. Innu elders claim that Father Peters always favoured the non-drinkers in the community.

133 Innu elders confirm that government officials generally only spoke to Frank Peters and Joe Rich. When government officials were at Davis Inlet parents were told to keep their children inside away from these officials.

134 Peters to King, March 8, 1967.

135 Peters to King, August 21, 1967.

136 Report for 1968, p. 224.

137 Meeting of July 6-7, 1965.

138 Meeting of June 21, 1966.

139 Meeting of December 13-14, 1966.

140 The primary concern of federal officials may have been the possibility of increased costs to the federal government. In this regard they were assured by Mr. King, representing the province, that "with the favourable conditions at the new site, relocating the Indians would be much more satisfactory and economical." Meeting of June 7, 1967.

141 Evans to King, February 6, 1968.

142 Biakie, "Tuberculosis in Northern Labrador", 1 Grenfell Clinical Quarterly p. 37 (1985).

143 Scott and Conn, "The Failure of Scientific Medicine: Davis Inlet as an Example of Sociopolitical Morbidity", Canadian Family Physician, Vol 33, July 1987 at 1650.

144 Memorandum of April 23, 1992.

145 Georg Henricksen, Hunters in the Barrens, (1973), Chap. 5.

146 The Innu remain to be convinced of this, particularly in the light of statements about the Innu in official documents of the 1950's such as, "in my

opinion it would be more merciful to let them die off quickly than to merely prolong the process with inadequate help", (Deputy Minister, Newfoundland Department of Natural Resources to Deputy Minister Newfoundland Department of Public Welfare, April 16, 1955) and "there is no easy, short-term solution, unless it be the solution found for the aborigines of Newfoundland more than a century ago. They, the Beothucks, have been no bother since June 6, 1829. The writer does not advocate this solution for the Labrador Indians...", (Rockwood, Departmental Organization for the Administration of Labrador, June 1959, p.4). Such comments are viewed as evidence of a callous insensitivity to the Innu that belies a real policy of discrimination if not genocide.

147 The Assembly of First Nations has also argued that the relocations were undertaken without any statutory authority and hence they should be regarded as actions that were illegal; supra, note 1, pp. 34-35.

148 The move to Nutak took place before Newfoundland entered confederation and was thus the action of the Commission of Government of Newfoundland and not that of the government of Canada. It can be argued, nevertheless, that the obligation of the Crown to aboriginal peoples was no different than the obligation of the Crown in Canada.

149 M.E. Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" Canadian Human Rights Yearbook, 1989-1990, 3, at 33 (1990).

150 In fact, the Innu have given considerable thought to the question of relocation and of the structure of their new community. Some of this is illustrated in study of Terpstra and Associates, Davis Inlet (Utshimassit) Service Infrastructure, Socio-Economic Study, October 1992.

151 Transcript Royal Commission on Aboriginal Peoples, Hearing, Davis Inlet, 1 December 1992, pp. 125-126.

152 The phenomenon was described by the anthropologist Georg Henricksen who conducted research among the Innu in the 1960's, Hunters in the Barrens (1973), and was reiterated in the recollections of a doctor who was based in the Labrador coastal communities in the 1960's "Bygone life: A look back at Davis Inlet", Globe and Mail, February 1993.

153 The document Gathering Voices provides a moving illustration of this.

154 Transcript Royal Commission on Aboriginal Peoples, Hearing, Davis Inlet, 1 December 1992, pp. 68-69.

155 One argument against such direct action is that it might create a precedent for other groups. But if there are other groups who can claim a similar disadvantage to the Innu, then their concerns should be addressed as well.

SUMMARY OF CONCLUSIONS

In respect of Complaint No. 1:

- (i) That in 1949 the Government of Canada failed to acknowledge and assume its constitutional responsibility for the Innu as aboriginal people in Canada.
- (ii) That the direct consequence of this failure was that the Innu were not given the opportunity at that time to become registered under the Indian Act and to have reserves created for the communities of Sheshatshit and Davis Inlet.
- (iii) That to this day the Government of Canada has not acknowledged in an unequivocal way its direct constitutional responsibility for the Innu as aboriginal people in Canada.

In respect of Complaint No. 2:

- (iv) That the failure of the Government of Canada to acknowledge and assume direct responsibility for the Innu as aboriginal people which resulted in the failure in 1949 to apply the provisions of the Indian Act to them, has meant that the Innu have not received the same level and quality of services as are made available by the federal government to other aboriginal peoples in Canada.
- (v) That the failure of the Government of Canada to provide a level or quality of services to the Innu similar to that provided to other aboriginal peoples in Canada constitutes a breach of its "fiduciary obligation" to the Innu as aboriginal people in Canada.

In respect of Complaint No.3:

- (vi) That the failure of the Government of Canada to assume responsibility for the Innu as aboriginal people in Canada has impaired the ability of the Innu to move towards self-government and to obtain control over programs and services that affect them. The existing arrangements will inhibit future negotiations on self-government and devolution of programs and services.

In respect of Complaint No. 4:

- (vii) That the relocation of the Mushuau Innu to Nutak was undertaken without any real consultation with the Innu and without their consent.
- (viii) That there was very little knowledge or understanding of who the Innu were as people at that time and government officials assumed that they could make decisions for the Innu.
- (ix) That there is no evidence of a serious comparison of the conditions the Innu would face at Nutak with those that existed at Davis Inlet.
- (x) That the decision to relocate the Mushuau Innu was motivated by the fact that the government depot was to be closed at Davis Inlet and by the belief that the Moravian Mission at Hopedale would be opposed to the Innu coming to the government depot at Hopedale.
- (xi) That the decision to relocate the Mushuau Innu was taken against a background of an assumption that white officials knew what was in the interests of the Innu and of a policy that sought to turn the Innu into "white men" and to integrate them into the economy primarily through fishing.
- (xii) That the Mushuau Innu were relocated to their present site on Iluikoyak Island without any meaningful consultation about the move.

- (xiii) That the particular location was chosen primarily because it fulfilled the needs for a harbour and wharf to sustain the government store.
- (xiv) That the interests of the Innu were assumed to be those identified by the priest and government officials who dealt with the Innu.
- (xv) The relocation was also motivated by an interest in directing the Innu towards fishing as an economic activity and was not focused on preserving traditional Innu practices such as returning to the country and caribou hunting.
- (xvi) That although the Innu were not opposed to the move, their views were formed by the understanding that they would be receiving houses that would have running water and sewage disposal and this understanding is supported by records of the time and by the construction of amenities in the houses that presupposed the existence of running water and sewage disposal.
- (xvii) That there has been a failure since 1967 either to provide the Innu with the living conditions they understood they were to get when they moved to their present location or to remedy the fundamental deficiencies of a lack of running water or of any sewage disposal system.
- (xviii) That the living conditions at Davis Inlet are an important contributor to the standard of health in the community and the widespread social dysfunction that exists there.
- (xix) That the actions of the authorities in relocating the Mushuau Innu to Nutak in 1948 failed to meet the appropriate standard of conduct for a fiduciary.
- (xx) That the relocation of the Innu to Iluikoyak Island in 1967 and the failure to remedy the living and social condition of the Mushuau Innu on Iluikoyak Island since that time are a breach of the fiduciary obligation of the Crown for which the Government of Canada under its constitutional mandate in respect of aboriginal peoples bears responsibility.

SUMMARY OF RECOMMENDATIONS

That the Government of Canada,

- (i) formally acknowledge its constitutional responsibility towards the Innu;
- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshit and Davis Inlet and enter into direct arrangements with the Innu as aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian peoples in Canada while preserving the unique aspects of existing arrangements such as the outposts program;
- (iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;
- (iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and
- (v) provide the funding necessary to implement these recommendations.

That the Canadian Human Rights Commission review every five years progress made in the implementation of the recommendations in this report.

Innu Nation

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Canadian Human Rights Commission
Place de Ville tower A
15th Floor 320 Queen St.
Ottawa, Ontario
K1A 1E1

July 16, 1992

Attn: Max Yalden, Commissioner

Dear Mr. Yalden:

RE: The Innu of Nitassinan

The Innu Nation is pleased that you have agreed to consider our complaint with respect to the discriminatory policies of Canada and Newfoundland. This letter is to outline our complaint. We will be pleased to meet with you to further discuss this matter and give you additional information and material.

The Innu are a distinct aboriginal nation, and have been recognized by the Canadian government as having a valid "comprehensive claim" based upon unextinguished aboriginal title. Nonetheless, the policies of the Canadian and Newfoundland governments regarding the delivery of most services to the Innu does not recognize them as an aboriginal people. We are of the view that this constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu.

The Canadian government, of course, has responsibility, within the framework of the present Canadian Constitution, for aboriginal peoples. In general, it has exercised that responsibility by recognizing a Nation to Nation relationship with various aboriginal nations through treaties, by shielding aboriginal peoples and lands from provincial jurisdiction (albeit by purporting to subject them to federal jurisdiction rather than by recognizing inherent aboriginal jurisdiction), by providing various services to aboriginal communities, and recently, by enabling the management and delivery of these services at the local community level. In some parts of Canada, the Canadian government together with provincial governments is engaged in negotiations about how to implement self-government for First Nations.

With regard to the Innu, however, the Canadian and Newfoundland governments have yet to come to a clear understanding or agreement about the status of the Innu. As a reflection of this

the Canadian government does not provide the services to the Innu that it provides to "status Indians", rather the Newfoundland government provides some of these kinds of services. The federal commitment represents only a commitment to assist and supplement the provincial programs and services. This degree of underlying ambiguity appears to be unique for aboriginal peoples in Canada. As a result of this, the Innu are not able to make the same arrangements for local control of various services that can be made by most other aboriginal communities in Canada. Examples of this kind of service would be education and social assistance. The Innu have not been able to make arrangements with Newfoundland for the same degree of local control over these services that are available to most aboriginal communities by negotiation with the Canadian government. Nor, since the status of the Innu has not been clarified by the Canadian and Newfoundland governments, are the Innu able to enter negotiations for implementing self-government.


The cause of this stalemate would appear to be the fact that the Canadian government has yet to clearly and specifically acknowledge that it has jurisdiction, within the bounds of the Canadian Constitution, for the Innu, and more particularly, for recognizing and enabling the inherent jurisdiction of the Innu Nation. This omission on the part of the Canadian government detrimentally affects the ability of the Innu to manifest their culture and peoplehood by means of institutions of self-government.

An additional complaint by the Mushuau Innu at Utshimasits is that they were forcibly resettled at Okkak Bay in 1947. Then, in the period between 1950 and 1965 the government of Newfoundland attempted a second experiment at resettling the Mushuau Innu to North West River. Then again, in 1967 the people were moved to the present site of Davis Inlet.

We hope that the Canadian Human Rights Commission will investigate these complaints and make suitable representations in support of the Innu to the Canadian and Newfoundland governments, or take other appropriate action, after consultation with the Innu.

We look forward to hearing from you.

Yours very truly,



Peter Penashue
President
Innu Nation

Chief Commissioner's Office
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JUL 16 1991
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Innu Nation

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July 27, 1992

Mr Harvey Goldberg
Canadian Human Rights Commission
15th Floor, 320 Queen St.
Ottawa, Ontario
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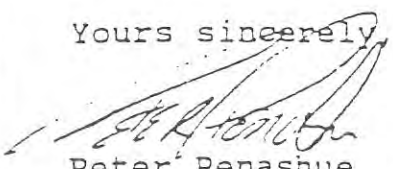
Dear Mr. Goldberg:

On Monday July 20, 1992 we released our study of Canada Newfoundland Agreement and their impact on the Innu People. I have asked that a copy of this report be sent to your office. It is our hope that it will be of assistance to you in examining our complaint with respect to the discriminatory policies of Canada and Newfoundland.

Having completed this report, we are now considering the possibilities of seeking compensation from government for breach of its fiduciary duty and responsibilities since 1949. I would ask that the Commission consider this matter in its study of our complaint.

Should you require any additional material or information, we would be pleased to meet with you again.

Yours sincerely,



Peter Penashue

Innu Nation President

APPENDIX II

TERMS OF REFERENCE

An Independent Assessment of the Allegations Made by the Innu of Labrador

OBJECTIVE

To act as a Special Investigator for the CHRC to examine the grievances of the Innu of Labrador against the governments of Canada and Newfoundland and to recommend such corrective measures as may be warranted.

BACKGROUND

In June 1992, the Innu Nation and the Mushuau Band Council completed a report entitled "Gathering Voices: Finding Strength to Help Our Children". The report analyses the social and cultural malaise which characterises the community of Utshimasits, and presents a number of recommendations to ameliorate conditions there. Paramount among these recommendations is a proposal for self-government.

On June 16, 1992 the Chief Commissioner met with Peter Penashue, President of the Innu Nation, representatives of the Innu people and Grand Chief O. Mercredi. The Innu requested that the Commission carry out an investigation into their allegations. The Chief Commissioner agreed to appoint a Special Investigator.

On July 16, 1992 Mr. Yalden received a letter from Mr. Penashue further outlining the issues the Innu Nation wished the inquiry to examine (copy attached).

ISSUES TO BE INVESTIGATED

The Innu Nation's main concerns are outlined in Mr. Penashue's letter of July 16. The specific issues to be investigated are as follows:

1. Federal Recognition of the Innu

The Innu allege that due to circumstances relating to the nature of Newfoundland's entry into Confederation they do not receive the same level and quality of services as other aboriginal peoples in Canada.

The Innu believe the federal government has abrogated its responsibilities to them by entering into a series of agreements that gives primary responsibility for the delivery of programs and services to the

provincial government. In their view this is tantamount to a refusal by both governments to fully recognize their constitutionally protected status as aboriginal peoples.

The Innu are seeking funding and programs directly from the federal government on a basis comparable to other Inuit and Indian communities.

2. Self-Government

The Innu maintain the current arrangement denies them the opportunity to take control of their own affairs. For example, their attempts to gain control over their local school and policing have been rebuffed.

The Innu are seeking a self-government agreement that would give them control over the management of health, housing, welfare, education, policing, infrastructure and other essential programs. An essential element of such an agreement must be recognition of their inherent right to self-government.

3. Relocation

The Innu allege that three "forced" relocations of the Mushuau Innu since 1947 have had disastrous consequences.

The terrain of their present community at Utshimasits is ill-suited for modern housing. Consequently service levels are minimal. Their location on an island prevents them from pursuing their traditional pursuits for much of the year.

The community is isolated and does not have the resources necessary to help the Innu cope with modern life. On the other hand, they can no longer pursue their traditional ways. This has resulted in high levels of social dysfunction.

The Innu believe that relocation to a new community would enable them to rebuild both socially and physically. A planned community, in a less isolated locale, would facilitate resolving the social problems they face.

4. Compensation

In a July 27, 1992 letter to the Commission the Innu indicate that they are "seeking compensation from government for breach of its fiduciary duty and responsibilities since 1949" and asked the CHRC to consider this matter in the investigation.

REQUIREMENTS

The Contractor shall undertake:

- to submit to the client a proposed workplan and schedule within 10 days of signature of this contract;
- to undertake a review of the reports and other documentation collected by the CHRC;
- to obtain and examine other documents if necessary;
- to interview individuals with direct knowledge of the matters under study including representatives of the governments of Canada and Newfoundland, the Innu Nations and residents of the communities concerned;
- to visit the Innu communities and such other locations as may be relevant to carrying out a full investigation;
- to analyze all available data and incorporate the findings in a final typewritten report;
- to make recommendations for the resolution of the issues identified above.

ASSISTANCE TO BE PROVIDED BY THE CHRC

The Commission will make available all research material and analysis collected to date. Policy and Planning Branch officers will be available to assist the contractor in carrying historic and legal research and analysis.



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TERRE-NEUVE

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Sheshatshiu

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This is Exhibit B

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a surname that appears to be 'Benuen'.

A Commissioner, etc.

Report
to the
Canadian Human Rights Commission

on the
**Treatment of the Innu of Labrador
by the Government of Canada**

by
Professors Constance Backhouse and Donald McRae
Faculty of Law, University of Ottawa

26 March 2002

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EXECUTIVE SUMMARY

The 1993 Report

In 1993, the Canadian Human Rights Commission (the Commission) issued a report, prepared by Professor Donald McRae of the University of Ottawa, on issues relating to the treatment of the Innu of Labrador by the Government of Canada (the Government). The report concluded that the Government had failed in its constitutional responsibilities to the Innu by not recognizing them as status Indians; by failing to provide them with programs and services comparable to those received by other First Nations people; and by relocating the Innu of Davis Inlet to a location that was not suitable to their physical, social, cultural or political well-being.

The 1993 Report made five recommendations to the Government (see box). It also recommended that the Commission monitor the implementation of these recommendations and conduct a follow-up review.

The Current Report

The current report, co-written by Professors Donald McRae and Constance Backhouse, fulfills this latter recommendation. The Terms of Reference for this report were to:

- ! assess progress made by the Government in implementation of the 1993 recommendations;
- ! consider the recommendations of the Royal Commission on Aboriginal Peoples in relation to the implementation of the 1993 recommendations;
- ! examine the situation of the Innu in relation to international human rights commitments to which Canada is a party;
- ! review the situation of the Government's obligation to the Innu in light of its failure to provide treatment equal to that of other First Nations for the period 1949 to 2001; and

That the Government of Canada:

(i) formally acknowledge its constitutional responsibility towards the Innu;

(ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshiu and Davis Inlet and enter into direct arrangements with the Innu as Aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada while preserving the unique aspects of existing arrangements such as the outposts program;

(iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;

(iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and

! make recommendations as appropriate.

Implementation of the 1993 Recommendations

Acknowledgement of federal constitutional responsibility

The 1993 Report found that, due to circumstances relating to Newfoundland's entry into Confederation in 1949, the Government never acknowledged or assumed constitutional responsibility for the Innu of Labrador as provided under section 24(1) of the *Constitution Act, 1867*.

Consequently, the first recommendation of the 1993 Report was that the Government formally acknowledge its constitutional responsibility to the Innu. Our current review found that, through various statements and correspondence between 1994 and 1997, the Government gradually — albeit reluctantly — acknowledged and agreed to assume this responsibility.

CONCLUSION:

The Government has implemented the first recommendation of the 1993 Report that it formally acknowledge its constitutional responsibility to the Innu.

Funding arrangements

As a direct result of the Government's failure to assume its constitutional duty, the Innu were denied funding for programs and services in the same way that other First Nations people received such funding. Rather, program funding was provided through a series of federal-provincial cost-sharing agreements that allowed for very limited Innu input or participation in program delivery and design. As a result, the 1993 Report recommended that the Government abrogate these arrangements and ensure that the Innu communities were provided funding, programs and services on the same basis as other status Indians living on reserve.

The last agreement between the Government of Canada and the Province of Newfoundland and Labrador (the Province) was terminated in 1997. The Government has now put in place direct funding relationships with the Innu. However, our review shows that the Province remains involved in both funding and providing education, health and social services. This is because full federal assumption of funding is dependent on the Innu being registered as status Indians and lands being set aside for them as reserves under the *Indian Act*. The 1993 Report recommended against their registration under the *Indian Act*, suggesting instead that accelerated negotiation of a self-government agreement would

allow the Innu to operate under modern legislation. This option has proved unfeasible in the short term. Rather, the Government and the Innu have agreed to proceed with registration, although this process will take some time to complete.

The consequence of this decision is that, although the Innu receive funding for a wide range of programs and services, the role of the Province prevents them from having the same degree of involvement in and control over these programs that similar communities exercise and that was hoped would be the result of the 1993 recommendation. Moreover, special programs, such as the outposts program, which are designed to enable the Innu to preserve and promote their traditional way of living on the land, have not received adequate funding in recent years. It is our conclusion that, although the funding issue is moving towards the 1993 goal, it remains far from realizing it.

CONCLUSION:

The Government has entered into direct funding arrangements with the Innu. However, the Government has not yet provided the Innu with access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada. The process of registration and the creation of reserves, now belatedly underway, will ensure funding equity for the Innu. The Government has failed to preserve "the unique aspects" of the pre-1993 funding arrangement such as the outposts program.

Self-government

As recommended in the 1993 Report, self-government negotiations were launched in 1994. These broke off in 2000 and have remained in abeyance pending the completion of registration and the creation of reserves. The Innu are concerned that when discussions do recommence the Government will attempt to impose municipal-style government on them, rather than a structure that recognizes the Innu's independence.

CONCLUSION:

The Government did enter into self-government negotiations with the Innu as recommended. However, these negotiations are now in abeyance with no plan for recommencing them. As a result, we conclude that, although the Government appears still committed to negotiations, it has not fulfilled the 1993 recommendation.

Relocation of the Mushuau Innu of Davis Inlet

The 1993 Report recommended the relocation of the Innu of Davis Inlet to a new community, citing the unacceptable living conditions at Davis Inlet. The Royal Commission on Aboriginal Peoples (RCAP) subsequently described the conditions at Davis Inlet as being comparable to those found in the poorest of developing countries. In 1993, the Innu voted in favour of relocation, to which the Government agreed in 1994. Our review indicated that the relocation has been beset by delays and difficulties caused, in part, by the Government's lack of proper management, as noted by the Auditor General. The relocation is now expected to be completed by the summer of 2003.

The physical environment provided the greatest challenge to the relocation project, which is one of the largest of its type ever undertaken in Canada. Environmental factors such as a very short building season and the isolated location resulted in significant delays.

The financing of the project was complicated by inaccurate cost forecasts and the consequent need to repeatedly obtain financial authorization. This in itself resulted in significant project delays, as authorizations often came too late to transport supplies during the short building season.

The management of the project was to be jointly handled by the Innu and the Government. This arrangement was beset by problems often arising as a result of conflict between government requirements and the Innu's own sense of how best to do things. In the end, these difficulties were overcome, albeit at a cost.

Innu involvement in all aspects of the project was to be a guiding principle of the undertaking. This was seen as a means of building skills and developing capacity among the Innu to manage their own community. Although attempts were made to ensure Innu involvement, these were not uniformly successful. We found that Innu often ended up with the least skilled and most undesirable jobs. The Auditor General concluded that inadequate efforts had been made to ensure that the Innu had the ability to successfully manage the transition to the new community and ensure its good management in the future.

Social and economic aspects of relocation constitute another matter that appears to have received inadequate attention. Relocation in itself will not resolve long-standing social and cultural issues such as alcohol and substance abuse by both adults and youth and related high levels of family dysfunction. The development of viable opportunities for economic development and employment is also urgent. The need for an appropriate social and economic plan is apparent, although it seems to have received little government attention or priority to date.

CONCLUSION:

The Government is in the process of implementing its commitment to the relocation of the Mushuau Innu to the site chosen by them as proposed in the fourth recommendation in the 1993 Report. The relocation has been beset by difficulties, many of which might have been avoided if the Government had acted expeditiously.

Funding to implement the recommendations

Funding for the 1993 recommendations has been provided by the Government but, again, there have been problems. Delays in funding approvals and the decision by the Government to place the Innu under third-party financial management have stalled the relocation and other projects. Disputes have also arisen over the allocation of funding. For example, although the Innu strongly favoured continuing the outposts program, they have failed to receive adequate funding from the Government. Compensation for non-existent or inadequate funding from the Government since 1949 is an issue that must yet be addressed.

CONCLUSION:

The Government has gone a significant way towards funding implementation of the 1993 recommendations. However, the issue will remain open until all of the recommendations have been fully implemented.

The Royal Commission on Aboriginal Peoples

Our review of the recommendations of the RCAP indicates that many are relevant to the situation of the Innu, particularly those regarding housing, education, cultural identity and language, health and self-government. The RCAP emphasized that community health and well-being depend on an integrated and comprehensive approach to these issues, which are inter-related and interdependent within the framework of community control.

Housing conditions for the Mushuau Innu will improve significantly as a result of relocation although, as noted above, concerns remain in respect of the overall implementation of the project. Innu education remains under provincial control, with little opportunity for Innu involvement.

The revitalization of Innu-aimun, the Innu language, which is at risk of extinction over the long term, is of particular concern to the Innu. Despite this, it has received little government attention. Another important principle of the RCAP yet to be fully realized within Innu communities is the need for comprehensive strategies for family health and

healing. Self-government is seen by RCAP as the key to progress, yet self-government discussions with the Innu are currently in abeyance.

CONCLUSION:

Actions of the Government since 1993 have gone some way towards implementing key recommendations of the RCAP, especially with regard to the relocation project and certain aspects of health care. However, in many critical areas such as education and self-government, there is little evidence that the recommendations of the Royal Commission have been implemented at all in respect of the Innu.

Land Claims

Land claims negotiations have been in progress since 1991. The Province, which was previously a reluctant participant, is now fully involved. The Government continues to be supportive of resolving the issue and notes that current Innu claims are more realistic than previous positions. All the parties have been motivated by the economic opportunities arising from the Voisey's Bay development.

The already complex land claims process has been further complicated by the suspension of self-government negotiations and the registration and reserve creation process. Notwithstanding a current air of guarded optimism by all parties, after 11 years of negotiations, final resolution still appears to be a long way off.

CONCLUSION:

There is an opportunity for the Government to reach a comprehensive land claims settlement with the Innu. There is momentum on the Innu side, arising out of their new proposals and the opportunities provided by the Voisey's Bay development, that will be lost if the Government does not match that momentum. Progress requires a clear commitment by the Government and the early resumption of self-government negotiations.

International Human Rights Commitments

We found several international human rights instruments whose provisions may be relevant to the Government's relations with the Innu. Both the *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Economic and Cultural Rights* provide that all peoples have the right to self-determination and the right to "freely pursue their economic, social and cultural development." Although the full scope

of this right as it applies to Aboriginal peoples has yet to be determined, self-government of Aboriginal peoples such as the Innu is clearly anticipated. Likewise, the *Draft Declaration on the Rights of Indigenous Peoples* also anticipates self-government of Aboriginal First Nations.

Another instrument relevant to the Innu is the *Convention on the Rights of the Child*, which provides that the "best interests" of the child should always be the first consideration of state parties when they take actions that may affect children.

As outlined above, significant steps have been taken to improve the situation of the Innu. Delays in the negotiation of a self-government regime are, however, an ongoing concern that must be addressed. Unless the Government acts to ensure that self-government is established, the risk remains that Canada may be violating its international obligations.

CONCLUSION:

Unless the Government acts to ensure that the Innu are able to take responsibility for their own affairs and are able to move to self-government, Canada is at risk of violating its international obligations under the *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Economic and Cultural Rights*, and of acting inconsistently with the *Draft Declaration on the Rights of Indigenous Peoples*. Furthermore, in dealing with the children of the Innu communities of Davis Inlet and Sheshatshiu, Canada is under an obligation under the *Convention on the Rights of the Child* to have the well-being and best interests of the children as a primary consideration.

Equity in Treatment

The 1993 Report found that the Innu suffered significant economic and social disadvantages due to the failure of the Government to fund them on the same basis as other Aboriginal communities between 1949 and 1993. The 1993 Report recommended that, rather than redress the inequitable treatment of the Innu through financial compensation, the Government provide them with the resources necessary to place them on an equal footing with other Aboriginal communities. The Government has now taken responsibility for direct funding of the Innu, but the effects of their historic treatment remain, particularly in respect of the application of sales tax.

CONCLUSION:

Funding to the Innu should take account of the fact that they have been disadvantaged by the failure of the Government to exercise its fiduciary obligation to the Innu, and that any remission order in respect of taxes should be dated from 18 August 1993.

2002 Recommendations

Based on the above considerations we recommend the following.

Recognition, Registration and Self-Government

1. That the Government immediately resume self-government negotiations with the Innu, and that it complete such negotiations within the next five years.

Education and Health

2. That the Government enter into negotiations with the Innu with a view to enabling them, following registration, to take responsibility for education and health in their communities. The devolution of such responsibility to the Innu should be completed within two years.

Relocation of the Mushuau Innu

3. That the Government provide full and continuous funding for the outposts program and similar Innu-directed initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture.

The Relationship Between the Innu and the Government

4. That the Government provide funding and training for the Mushuau Innu to enable an effective relocation to Natuashish and to ensure that the new community is able to function into the future.
5. That, if serious progress is not achieved in negotiations on self-government within two years, and serious progress is not achieved in the devolution of responsibility for education and health within one year, a mediator should be appointed to assist the parties.

Follow-Up

6. That the Canadian Human Rights Commission review the progress made in the implementation of the recommendations in the 1993 Report and this Follow-Up Report in five years' time.

**REPORT TO THE CANADIAN HUMAN RIGHTS COMMISSION
ON THE TREATMENT OF THE INNU OF LABRADOR
BY THE GOVERNMENT OF CANADA**

Background

In 1992, the Innu Nation brought a complaint to the Canadian Human Rights Commission (the Commission) alleging that the Government of Canada (the Government) had failed to exercise direct constitutional responsibility in respect of the Innu. Instead, the Innu Nation claimed, the Government had left the Innu to be dealt with by the Province of Newfoundland and Labrador (the Province) under an agreement with the Government. The Innu claimed that the refusal of the Government to recognize its constitutional obligations had resulted in a continuing governmental failure to provide them with the level and quality of services received by other Aboriginal people in Canada. The Innu also complained that the Government had subjected the Mushuau Innu of Davis Inlet to a series of relocations without meaningful consultation. The relocation of the Mushuau Innu to Davis Inlet in 1967 had left them without adequate housing or services, and had resulted in social dysfunction. The Innu sought compensation for the failure of the Government of Canada to recognize their Aboriginal constitutional status, and for breach of fiduciary duty.

The Commission appointed Professor Donald McRae of the University of Ottawa as a Special Investigator "to examine the grievances of the Innu of Labrador against the governments of Canada and Newfoundland and to recommend such corrective measures as may be warranted." The Report, delivered in 1993, concluded that the Government had failed to acknowledge and assume constitutional responsibility for the Innu as Aboriginal people of Canada with a consequent impact on the level and quality of services received by the Innu and on their ability to achieve self-government. It also concluded that the Mushuau Innu had been relocated to the present village site in Davis Inlet without any meaningful consultation.¹ The Report made the following recommendations.

That the Government:

- (i) formally acknowledge its constitutional responsibility towards the Innu;
- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshiu and Davis Inlet and enter into direct arrangements with the Innu as Aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-

¹ The full text of the conclusions of the Report is set out in Annex A.

reserve Indian people in Canada while preserving the unique aspects of existing arrangements such as the outposts program;

(iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;

(iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and

(v) provide the funding necessary to implement these recommendations.

It was also recommended that the Commission review the progress made in the implementation of the Report every five years.

In May 2001, the Commission requested that professors Constance Backhouse and Donald McRae, of the University of Ottawa, conduct a follow-up review of the 1993 Report. The Terms of Reference for the follow-up review were as follows:

1. to review progress made by the Government in the implementation of the recommendations of the 1993 Report...;

2. in relation to 1, to examine (a) the recommendations of the Royal Commission on Aboriginal Peoples, and the Government's response to it (*Gathering Strength*) and the implementation thereof; and (b) land rights claims of the Innu of Labrador;

3. to review the situation of the Innu in relation to international human rights commitments to which Canada is a party, and in particular with regard to:

(a) the *International Covenant on Civil and Political Rights*

(b) the *International Covenant on Economic, Social and Cultural Rights*

(c) the *Convention on the Rights of the Child*

(d) the *Draft Declaration on the Rights of Indigenous Peoples*;

4. to review the situation of Canada's obligation to the Innu in light of its failure to provide treatment equal to that of other First Nations for the period 1949 to 2001; and

5. to make such recommendations as are appropriate based on the findings of the above reviews.

During the course of this follow-up review, we have reviewed documents provided by the Innu Nation, the Department of Indian Affairs and Northern Development (DIAND), the Office of the Auditor General of Canada, and Health Canada. We visited the communities of Sheshatshiu, Davis Inlet and Natuashish in July–August and December 2001, where we met with representatives of the Innu Nation, the band councils and the Mushuau Innu Relocation Committee. We also met with members of the Innu land claims negotiating committee in Ottawa. We interviewed officials from DIAND in Ottawa, Amherst and Goose Bay, from Health Canada in Ottawa and Goose Bay, and from the Office of the Auditor-General of Canada in Ottawa. We also met with the Chief Federal Negotiator for Labrador Innu Files, in Montreal.

The Innu of Labrador

The Innu comprise about 1500 people living in two communities in Labrador: Sheshatshiu to the south and Davis Inlet (Utshimasits) to the north. Historically, the Labrador Innu were part of the nomadic peoples who roamed Nitassinan (roughly what is known as the Ungava Peninsula) hunting caribou. Those to the south, particularly along the north shore of the Gulf of St. Lawrence, were known to the early settlers as Montagnais, and those to the north, including the Mushuau Innu of Davis Inlet as Naskapi. But Montagnais and Naskapi are the same people and they share a common language — Innu-aimun. The boundary between Quebec and Labrador divides the Innu of Quebec from the Innu of Labrador.²

Traditionally, the Innu hunted in the interior of Nitassinan and visited the coast only during the summer months.³ These visits became associated with the trading posts⁴ to which furs were sold and often coincided with the presence of a priest. Sheshatshiu and Davis Inlet were places to which the Innu came.⁵ The invasion of the Innu's traditional

² For background see Georg Henricksen, *Hunters in the Barrens* (1973). See also Peter Armitage, *Land Use and Occupancy Among the Innu of Utshimasits and Sheshatshiu* (prepared for the Innu Nation, July 1990).

³ Whether the trips to the coast were only as a consequence of the existence of trading posts or whether the Innu came to the coast before contact is unclear. Roche states that a trading post was established at North West River as early as the mid-1700s; *Resettlement of the Mushuau Innu, 1948: A Summary of Documents* (prepared for the Innu Nation, August 1992), p.2. Henricksen links the close identification of the Mushuau Innu with the coast with a change in the migration route of the northern Labrador caribou in 1916; Henricksen, *op. cit.*, p. 13.

⁴ In the case of Sheshatshiu, the trading post was located across the water at North West River, and in the case of Davis Inlet, the trading post was on an island near the coast. The Innu settlement was located on the mainland.

⁵ Voisey's Bay, to the north of Davis Inlet, was also a place to which the Innu went. A priest was stationed at North West River and, from the 1920s on, one came every summer to Davis Inlet.

hunting grounds by white settlers also drove the Innu to the coast.⁶ A dependency on store food developed and the Innu began to spend more time in their coastal settlements. But furs, which provided income, were often sparse and poverty and starvation were not infrequent. Government relief was provided to the Innu from the 1920s on through the Hudson's Bay Company representative or the priest.⁷

In 1948, the Newfoundland authorities closed the depot at Davis Inlet and moved the Mushuau Innu some 250 miles north to Nutak. The Innu did not take to this new environment and in 1949 they went back to Davis Inlet.

Thus, at the time that Newfoundland entered Confederation, Innu settlements had been long established at Sheshatshiu and Davis Inlet, although they were of a somewhat seasonal nature. The Innu lived in tents, and not all of the inhabitants stayed in the settlement year round. However, families were discouraged by the priest and by government representatives from going to the country on the grounds that education could be provided for their children only if they remained in the settlement.

Housing began to be constructed for the Innu in Sheshatshiu in the 1950s. Between 1965 and 1968 housing in Sheshatshiu was substantially increased by the building of 51 new units.⁸ Housing was also begun in Davis Inlet, but not at the location on the coast where the settlement had existed for many years.⁹ A new settlement was established on Iluikoyak Island some two miles from the existing settlement and the Innu were relocated there.

The Innu and the Government

The Terms of Union under which Newfoundland entered Confederation made no reference to the Aboriginal people of Newfoundland and Labrador, although the matter had been discussed during the negotiations between the representatives of Newfoundland and the representatives of Canada. Following union, the Government paid costs incurred by Newfoundland in respect of the Aboriginal people of Newfoundland and Labrador, although

⁶ Armitage, *op. cit.*, pp. 5–6.

⁷ From 1927 on Davis Inlet was visited regularly by Mgr. Edward O'Brien. Records of relief given are found in the *Letters and Papers of Msgr. Edward Joseph O'Brien, 1923–47* (held in the Newfoundland Room of the Queen Elizabeth Library, Memorial University, St. John's, Newfoundland).

⁸ Armitage, *op. cit.*, p. 10.

⁹ At the old Davis Inlet settlement only one Innu family lived in a house. This house had been built by the priest for the family of Joe Rich whom the priest had appointed as the chief of the Mushuau Innu; Henricksen, *op. cit.*, p. 97.

the nature and extent of its responsibility or obligation to do so was the subject of substantial internal discussion.¹⁰

In 1954, the Government and the Province entered into an agreement by an exchange of letters:¹¹

designed to delimit, on a long-term and more satisfactory basis, the areas of responsibility of the federal and provincial governments with regard to the Indian and Eskimo population of Northern Labrador...

The agreement provided that the Government would assume 66.7% of costs in respect of Eskimos and 100% of costs in respect of Indians relating to "agreed capital expenditures...in the fields of welfare, health and education," assume the full costs of hospital treatment for Indians and Eskimos of northern Labrador during a 10-year period, and "undertake an aggressive anti-tuberculosis program" during the same period. For its part, the Province was to assume all other "financial and administrative responsibilities for the Indian and Eskimo population of Labrador" excluding such federal benefits as family allowances and old age pensions.

Ten years later a new agreement was entered into between the Government and the Province, again by an exchange of letters.¹² This agreement renewed the 1954 agreement in respect of medical and hospital costs and the anti-tuberculosis program, but included a new arrangement under which the Government would "reimburse Newfoundland for 90 percent of the province's expenditures on Indians and Eskimos" up to a maximum of \$1 million per year.¹³ This agreement provided the financial basis for capital developments, particularly housing, in both communities.

The 1964 arrangement, which was to last for five years, was extended in 1970 and 1976. In 1981 it was again renewed as two separate agreements, one as the Native Peoples of Labrador Agreement and the other as the Comprehensive Health Agreement. The latter has been renewed on an annual basis, but the Native Peoples of Labrador Agreement was subsequently divided into two agreements, one relating to the Inuit and the

¹⁰ Richard Budget, "Canada, Newfoundland, and the Labrador Indians 1949-69," *Native Issues* 6, 1 (1984), p. 40.

¹¹ Letter of J.W. Pickersgill to H.L. Pottle, 12 April 1954; letter of Pottle to Pickersgill, 26 April 1954. The agreement was to come into effect on 1 April 1954.

¹² Letter of L.B. Pearson to J.R. Smallwood, 25 May 1965.

¹³ The limit under the 1954 agreement had been \$200,000 per year. In the 1965 agreement the Government also made a back payment to Newfoundland representing 90% of the Province's capital expenditure for Indians and Eskimos for the period 1959-1964.

other to the Innu communities of Sheshatshiu and Davis Inlet. The Innu agreement was renewed regularly and exists today as the Contribution Agreement Between the Government of Canada and the Government of Newfoundland and Labrador for the Benefit of the Innu Communities of Labrador, 1991–1996.

This contribution agreement is designed to provide for services to the Innu communities of Sheshatshiu and Davis Inlet, although these are identified as “supplementary programs and services.”¹⁴ The agreement identifies the amount of funding available,¹⁵ the purposes for which it can be used, the methods of payment and the mechanisms of accountability, and establishes a management committee composed of federal and provincial officials and representatives of the communities of Sheshatshiu and Davis Inlet.

Originally, the only funding of the Innu by the Government was through the agreements entered into between the Government and the Province. However, in 1984 the federal Cabinet agreed to direct funding contribution agreements between Health and Welfare Canada and Aboriginal organizations of Newfoundland and Labrador, including the Naskapi–Montagnais Innu Association.¹⁶ In the late 1980s the Government began to make a number of arrangements directly with the Innu including the provision of post-secondary education costs, and funding for alcohol and drug abuse programs, economic development and health services.¹⁷ These sources of funding have been made available either by agreements between the Innu Nation and the Minister of Health or simply by the Government indicating that it will treat the Innu as eligible for certain programs.

In 1976, the Innu made enquiries of the Government about registration under the *Indian Act*,¹⁸ and in 1977 applied for registration.¹⁹ No such registration took place.

¹⁴ The agreement is signed by the federal Minister of Indian Affairs and Northern Development, the Premier of Newfoundland and Labrador as Minister Responsible for Intergovernmental Affairs, and the Newfoundland Minister for Development.

¹⁵ The shares are 90% for the Government and 10% for the Province.

¹⁶ Letter of Judith D. Ross, Health and Welfare Canada, to George Miller, Canadian Human Rights Commission, 24 February 1993.

¹⁷ It was suggested by officials in DIAND that this new activity by the Government was a consequence of the publicity the Innu were receiving over their opposition to low-level flying.

¹⁸ Letter of Penote Antuan to F. Campbell Mackie, ADM of Indian Affairs and Northern Development, 22 March 1976.

¹⁹ Letter of Atwan Penashue to Warren Ailmand, Minister of Indian Affairs and Northern Development, 16 March 1977.

However, in July 1978, the Innu were recognized as having a land claim based on "traditional use and occupancy of lands in Labrador."²⁰

In December 1992, the Minister of Indian Affairs and Northern Development wrote to the President of the Innu Nation indicating that "Canada recognizes the Innu people of Labrador as a special group of Aboriginal people" and indicated a willingness to negotiate self-government for the Innu and to work with the Innu with a view to their "achieving greater control over the delivery of programs and services which affect them directly...through increased devolution of existing programs and services from both federal and provincial governments."²¹

I Implementation of the 1993 Recommendations by the Government of Canada

A. The Formal Acknowledgement of the Government's Constitutional Responsibility

The 1993 Report recommended that the Government "formally acknowledge its constitutional responsibility to the Innu."

Despite initial indications that acknowledgement would be forthcoming, in fact the Government has never made a single acknowledgement of its constitutional responsibility to the Innu people. Instead, it has made separate acknowledgements about the status of the Mushuau Innu and the Sheshatshiu Innu.

On 25 February 1994, a Statement of Political Commitments was signed by four federal Cabinet Ministers (the Ministers of Indian Affairs and Northern Development, of Health and of Justice, and the Solicitor General) and the Mushuau Innu. The document included the following statement in its preamble: "Whereas the Government of Canada recognizes Innu as being Indians within the meaning of sub-section 91(24) of the *Constitution Act, 1867*."²² Since the Sheshatshiu Innu were not a party to the Statement of Political Commitments, this was presumably a statement about the Mushuau Innu.

²⁰ Letter of J. Hugh Faulkner, Minister of Indian Affairs and Northern Development, to Penote Michel, 18 July 1978.

²¹ Letter of Tom Siddon to Peter Penashue, 23 November 1992.

²² The document also included a disclaimer: "This Statement of Political Commitments is not a legally binding document. It has been submitted on behalf of the Government of Canada and acknowledged by the Mushuau Innu by their duly authorized representatives."

A similar statement about the Mushuau Innu was made in November 1996, when the Government (as represented by the Minister of Indian Affairs and Northern Development) and the Province (as represented by the Premier) signed the Mushuau Innu Relocation Agreement with the Mushuau Innu Band Council. The preamble included the following statement: "Whereas Canada and Newfoundland and Labrador recognize the Mushuau Innu people are Indians within the meaning of section 91(24) of the *Constitution Act, 1867*."

Finally, on 19 March 1997 federal constitutional responsibility in respect of the Sheshatshiu Innu was acknowledged. An Order in Council that provided authority to treat both Mushuau and Sheshatshiu Innu as status Indians on reserve provided as follows:

Whereas the Government of Canada considers that the Sheshatshiu Innu people are Indians within the meaning of class 24 of section 91 of the *Constitution Act, 1867*...²³

Thus, although one might question the time it took for acknowledgement of federal constitutional responsibility for the Innu, and the rather contingent and episodic way in which it occurred, no one today — the Innu, the Province or the Government — doubts that the Government has in fact acknowledged its constitutional responsibility in respect of the Innu. Further evidence of the commitment of the Government to dealing directly with the Innu was the appointment by the Government, in April 2000, of Eric Maldoff, a lawyer with the firm of Heenan Blaikie in Montreal, as Chief Federal Negotiator for Labrador Innu Files. As Chief Negotiator Mr. Maldoff has overall responsibility for land claims negotiations, registration and all other issues concerning the Government's relationship with the Innu.

CONCLUSION 1:

The Government has implemented the first recommendation of the 1993 Report that it formally acknowledge its constitutional responsibility to the Innu.

- B. The Abrogation of Funding Arrangements with Newfoundland and Labrador, and the Commencement of Direct Arrangements with the Innu

The 1993 Report recommended that the Government:

abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshiu and Davis Inlet and enter into direct arrangements with the Innu as Aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all

²³ P.C. 1997-7/415, 19 March 1997, (T.B. Rec. 825105).

federal funding, programs and services that are available to status, on-reserve Indian people in Canada while preserving the unique aspects of existing arrangements such as the outposts program.

The 1993 Report had found that, although the Government had refused to accept constitutional responsibility for the Innu in the past, it had agreed to pay some of the costs incurred by the Province in respect of Aboriginal people. Agreements to give effect to this were signed (or renewed) by the Government and the Province in 1954, 1964, 1970, 1976 and 1981; and annually thereafter. During the 1980s, the Government also began to make a number of ad hoc arrangements directly with the Innu, including provision for some post-secondary education costs, and funding for alcohol and drug abuse programs, economic development and health services.²⁴ The 1993 Report also found that the Innu historically had not received the level of benefits received by status Indians elsewhere in Canada.

The Canada–Newfoundland Native Agreement, the most recent in the series of Canada–Newfoundland agreements relating to the Innu, was terminated in 1997, and the Government began to enter into direct funding agreements with the band councils in Sheshatshiu and Davis Inlet.

CONCLUSION 2:

The Government has implemented the first part of the second recommendation in the 1993 Report, that it enter into direct funding arrangements with the Innu.

However, the recommendation in 1993 was that the Innu were to have access to all federal funding, programs and services that were available to status, on-reserve Indian people in Canada. Furthermore, the 1993 Report had made clear that this should be accomplished without requiring the Innu to be registered under the *Indian Act*. To require the Innu to be so registered, the Report said, would be “nothing more than a symbolic act of subordination.”²⁵

It appears that the Government may initially have been prepared to carry out this recommendation. The 1997 Order in Council provided as follows:

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, hereby authorizes the Minister of Indian Affairs and Northern Development and other Ministers, as appropriate, to consider the

²⁴ 1993 Report, p.8.

²⁵ 1993 Report, p. 53.

Innu People at the communities of Sheshatshiu and Davis Inlet as if they were Status Indians on reserve land, for the purpose of providing them with programs and services.

However, the reality is much more complicated. There are three matters to be considered. The first relates to the continuing role of the Province. The second is that, contrary to the terms of the 1997 Order in Council, the Government has required that the Innu be registered and on reserve before they can fully receive the benefits to which status Indians on reserve are entitled. The third relates to the actual funding situation.

The Continuing Role of the Province

Although the Canada–Newfoundland Agreement was abrogated, the Province did not disappear from the picture. Nor, in fact, could it. Until the courts determine otherwise, the Government cannot transfer land within the Province without its consent. The Province is involved in the provision of education, health and social services to the Innu, and it funds these at the same level it funds all such services in Newfoundland and Labrador. The Government “tops up” such funding to bring it to a level comparable to that provided to status Indians on reserve. Until the Innu change their status, or attain self-government, such a provincial role has to continue. Moreover, in the meantime, all negotiations affecting these matters also involve the Province.

Even after registration is complete, the Province will continue to be involved. The Government views the Province as continuing to provide education, and possibly other services, with a transfer of federal funds to cover the costs. The Government takes the position that the Innu have yet to develop the capacity to administer such programs on their own. Federal officials claim that substantial “capacity development” is required before the Government will move towards the devolution of such programs directly to the Innu. The long-term goal, concedes the Government, is to have the Innu assume control, but in the interim programs and services have to be provided to them. The Government has begun negotiations with the Province about the post-registration provision of those services. Federal officials advised us that there are parallel negotiations going on: one set of negotiations with the Province about the delivery of services to the Innu and another set of negotiations with the Innu on how services are being delivered and on “capacity development.” This latter set of negotiations appears to be in a very preliminary stage. The Innu have expressed concern that they have been excluded from discussions with the Province.

There is a further way in which a provincial role continues. This relates to the provision of funds. At the time of the abrogation of the federal-provincial funding arrangement, a commitment was made by the then-Premier of Newfoundland and Labrador, Brian Tobin, that the money the Province had historically allocated to the Innu would remain for the benefit of the Innu and not revert to provincial coffers. This money is

generally referred to as the money that has been “left on the table.” This commitment was apparently seen by the Province as necessary to get the Government to agree to end the funding arrangements and take on its constitutional responsibility for the Innu. It was the only way to get the Government to bring an end to its “53-year holiday from its fiduciary responsibilities.”

There is no clear agreement between the Province, the Government and the Innu over how this money is to be spent. The Government would like to see the money used to underwrite some of its costs and the Innu themselves would like to control its expenditure. For its part, the Province takes the view that the money is to be allocated by it for such matters as infrastructure costs, and it has made allocations on a case-by-case basis.

The Issue of Registration

The issue of registration of the Innu under the *Indian Act* has a complex history. The Innu applied for registration in 1977. At that time, the Province opposed the move, and although the reasons are unclear, the Government did not accede to the Innu request.²⁶ In the late 1980s, the Government appears to have been prepared to register the Innu, but at that point the Innu did not wish to be placed under the *Indian Act*. In the early 1990s, the Innu continued to oppose the prospect of registration, and sought instead to obtain “equivalency” to “status” without actually engaging in the registration process. In 1997, the Government withdrew its offer of registration and reserve status prior to signing the relocation agreement with the Davis Inlet Innu.²⁷

The 1993 Report had recommended that the Innu not be required to register as status Indians under the *Indian Act*. The Report suggested that the Government should act directly without imposing a process of registration on the Innu.

When negotiations commenced after the 1993 Report, the Government initially appeared to be in agreement with the approach recommended in the Report. The Order in Council contemplated the provision of services without registration. And this was the position taken by the Deputy Minister of DIAND, who wrote to the Innu on 12 December 1997, stating: “[W]ith self-government currently under negotiation, it appears that registration and reserve creation is an unnecessary step to take and then undo under a self-government regime.”²⁸ In short, the approach appeared to be that the Innu would receive all of the benefits to which status Indians on reserve were entitled, that land claims

²⁶ 1993 Report, p. 17.

²⁷ Letter of Deputy Minister Scott Serson to Chief Paul Rich, 24 September 1997.

²⁸ Letter of Deputy Minister Scott Serson to Chief Paul Rich, 12 December 1997.

and self-government would be negotiated, and that in this way the Government would have fulfilled its constitutional responsibilities.

This position was reiterated on 24 November 1999 in an Agreement in Principle signed by the President of the Innu Nation, the band leaders of Sheshatshiu and of the Mushuau Innu, the Premier of Newfoundland and Labrador, Brian Tobin, and the federal Minister of Indian Affairs and Northern Development, Robert Nault. Under the Agreement in Principle, the Province was to facilitate the transfer of land for the settlement of Innu land claims, the Government and the Province were to work together to transfer control over education programs to the Innu, there was to be an agreement on Aboriginal policing, legal arrangements for Innu governance were to be put in place, and there was a commitment to the "expeditious conclusion" of an Innu land claims and self-government agreement.²⁹ In short, the November 1999 Agreement in Principle contemplated the assumption by the Government of its full constitutional responsibilities towards the Innu and the conclusion of land claims and self-government agreements.

However, it did not work out that way. The Government, it turned out, was not prepared to grant the Innu all of the benefits to which status Indians on reserve were entitled. The sticking point appears to have been tax exempt status, which the Government was not prepared to provide to the Innu. In 1997 Indian Affairs and Northern Development Minister Ron Irwin claimed that there had never been a commitment that equivalency for the Innu would include "taxation."³⁰ The Innu took the view that since they were entitled to be registered and have reserves created, then "equivalency" meant that they were entitled to tax exemption. Tax exemption had implications not only for the Innu as individuals but also for the expenditures made by the Innu Nation and the bands at Sheshatshiu and Davis Inlet. From the Innu point of view, unless they received tax exempt status equivalent to that received by those who were registered under the *Indian Act*, they were not receiving the benefits to which they would be entitled if the Government was properly fulfilling its constitutional responsibilities towards them.

There were other complicating factors arising out of the fact that the Innu were not living on reserves. The "bands" at Sheshatshiu and Davis Inlet are simply incorporated entities under provincial laws. This means that they have been limited in their ability to enact by-laws and to regulate matters within their communities, including access to alcohol. Some felt that these matters could be worked out, and that it might be possible to create new mechanisms and legal vehicles outside the *Indian Act*, to establish equivalencies to those matters that followed automatically from registration under the

²⁹ The Agreement in Principle also provided that DIAND would establish an office in Labrador to assist the Innu in taking on their new responsibilities.

³⁰ Letter of Ron Irwin, Minister of Indian Affairs and Northern Development, to Chiefs Prote Poker and Paul Rich, 9 June 1997.

Indian Act, avoiding the process of registration. On the government side, it was felt that seeking to provide the Innu with equivalency in this latter way was too cumbersome.

In the end, Innu leaders concluded that registration under the *Indian Act* and the creation of reserves were the only ways they could achieve true "equivalency." In March 1999, a referendum was held in Sheshatshiu and Davis Inlet on the following question:

In the interim until Innu rights and Innu government agreements are in place, I am in favour of the leadership of the Innu Nation and of the band councils taking whatever actions they determine as necessary to ensure equivalency of programs and services including taxation exemption. I also agree that as a last resort this mandate includes registration under the *Indian Act* and taking a reserve.

In Sheshatshiu, there was a 49% voter turnout, with 78.5% in favour of registration. In Davis Inlet, there was an 88% voter turnout, with 88.2% in favour of registration.

Notwithstanding these results, there appear to be several differing perspectives on the registration referendum. Some of the Innu concluded that if registration was the only way to get full recognition, programs, services and taxation provisions similar to those of other Aboriginal people, the community should positively support registration under the *Indian Act*. Others were less accepting of the registration process, and felt that the Innu had decided to "hold their noses" and accept the politically offensive route of registration under the Act because their good faith efforts to negotiate alternate avenues and procedures had not met with success. Some continued to resist registration, if only in principle, arguing that moving from being under the jurisdiction of Newfoundland and Labrador to being under the *Indian Act* was "no help" and describing it as a "step sideways."

Nor from the federal side was registration regarded as necessarily a desirable process. Some officials, particularly within DIAND, felt that registration was being driven by a few Innu who wanted the personal benefit of tax exemption, a benefit that officials considered to be of marginal value to many low-income Innu. Others felt that applying the provisions of the *Indian Act* to a further group of Aboriginal people was regressive, and might set a precedent that would be seized upon by other groups wishing to be registered as well. They considered that it was contrary to the general policy of DIAND to create new relationships with Aboriginal people that did not move away from the "outdated and paternalistic" strictures of the *Indian Act*.

As a result of the delays and their concern that the issue of registration was going nowhere, in September 2000 the Innu threatened to march on Ottawa and set up their tents on Parliament Hill. On 8 September 2000, Minister of Indian Affairs and Northern Development Robert Nault offered to discuss the issue of Innu registration and reserve

creation with his Cabinet colleagues before the end of the year. Federal officials say that the Cabinet approval process became complicated by public revelations of the gas sniffing among Innu children in November 2000. The crisis provoked intervention by the Prime Minister and Health Canada, and caused Cabinet to ask for a comprehensive background report prior to issuing approval for the registration and reserve creation.

Thus it was not until June 2001, some two years after the Innu voted in favour of registration, that Cabinet formally approved the registration of the Innu under the *Indian Act*.³¹ In the end, the reluctance within the bureaucracy of DIAND to proceed with registration was overridden by the political decision of Cabinet.

In spite of this political support, the registration process continued to move slowly, and resulted in some degree of tension and acrimony between the Innu and the Government. Federal officials see much of this as inevitable. Registration, in their view, is inherently time consuming and complex. Criteria have to be developed as to who will be defined as "Innu," and the entire community needs to be enumerated. Individuals in Sheshatshiu and Davis Inlet can choose whether to register or not, and community meetings must be called to explain the meaning and implications of registration.

The creation of a reserve is equally complicated. The reserve lands need to be surveyed, title searched and environmentally assessed. Private interests must be bought out. The land has to be turned into provincial Crown land, and subsequently transferred to the Government. Where non-Innu families have built homes adjacent to Innu families, the lines of the new reserve will occasionally have to be drawn in a checkerboard fashion to recognize this. Although this is not an issue for the new Mushuau Innu community of Natuashish, it is a difficulty that faces Sheshatshiu, where non-Innu have been living in the community for many years.

The slowness of the registration process contributed to a good deal of suspicion from the Innu who believe that delays have in part been deliberate, to allow the Government to put pressure on the Innu in respect of other issues under negotiation. In fact, the Innu moved quickly on enumeration and saw delay essentially coming from the federal side. A substantial amount of time was spent determining the budget for the registration process.

By late 2001, the budget for the registration process was approved.³² Lists of those eligible for registration were then prepared, and consultations in the communities were completed in 2002. Although some estimated that the process of registration and reserve

³¹Letter of Robert Nault to Peter Penashue, President, Innu Nation, 8 September 2000.

³² However, the creation by the Government of additional negotiating "side tables" on registration, without an increased budget, raises questions of whether the earlier budget will continue to be adequate.

creation would be completed by June 2002, this has yet to occur. The matter has been referred to the federal Cabinet, and it is unclear when final approval might be anticipated.

The saga leading to registration is an unfortunate one that does not reflect well on the Government. The Innu were offered registration. The offer was subsequently withdrawn and then re-offered. The Innu were told they were getting equivalency without registration, but then told equivalency only applied to programs and services and not to taxation. They were then told they could get taxation exemption if they became registered. When a parallel was drawn with Conne River, the Innu were told that they were different from the Aboriginal inhabitants of Conne River, although an internal government memorandum provided to the Innu under an *Access to Information Act* request appears to indicate that the only real difference between the Innu and the Mik'maqs of Conne River was that whereas the Mik'maqs had sued the Government, the Innu had not.

Thus, for the Innu, registration will be the culmination of a long and tortuous process. In the words of Peter Penashue, "it should have been just so simple. Eight years later [since the 1993 Report] they are starting to do what they should have done in 1949."³³

The Actual Funding Situation

The Government takes the view that, with the exception of tax benefits, it is providing programs and services to the Innu as if they were status Indians under the *Indian Act*. The provincial government continues to provide education and social services, and the Government provides some additional funds "topping up" the provincial funding so that it is comparable to what is provided to Indians on reserves across the country. The Government also argues that since 1997, it has paid to the Innu of Labrador a "very significant capital catch-up," amounting to several million dollars annually.

The Innu concede that they are now getting direct funding from the Government, but many essential services remain with the Province, which continues to fund and control education, policing and social services, a situation that will not change after registration.

CONCLUSION 3:

The Government has not implemented that part of the second recommendation in the 1993 Report under which the Innu were to be provided with access to all federal funding, programs and services that were available to status, on-reserve Indian people in Canada. However, it has implemented part of this recommendation and it has, albeit belatedly, set in motion a process — registration and the

³³ Interview with Peter Penashue, Sheshatshiu, 30 July 2001.

creation of reserves — that will ensure the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada.

The final aspect of the second recommendation in the 1993 Report was that, in providing these services, the Government preserve “the unique aspects of existing arrangements such as the outposts program.” That program covers the air travel expenses of the Innu families who go out to their hunting camps to live on the land for two to three months each fall and spring. The camps are very small, mostly confined to family groups and located many miles from each other. Many Innu see the program as central to the maintenance of traditional Innu culture and as one of the venues in which the elders are able to contribute to the passing down of knowledge and expertise. They repeatedly stress the importance of the outposts program to the retention of the Innu language — Innu-aimun — and to the strength of the community’s education, health and culture.

The 1994 Statement of Political Commitments indicated that the Government was prepared to “provide its share of funding for outpost activities” to assist the Innu to spend time in the country, and was to enter into negotiations “to discuss access to emergency and regular social support programs for Innu families when they are in the country.”³⁴ However, the commitment did not appear to continue in any consistent fashion.

The notion of providing the Innu with programs and services equivalent to those available to status Indians on reserve has come to be a double-edged sword as far as the outposts program is concerned. In 1997, the Deputy Minister of Indian Affairs and Northern Development wrote to Chief Paul Rich saying that the outposts program could not be funded under the direct funding arrangement because it was not a program available to status Indians on reserve.³⁵ Ad hoc funding has been made available and in 1997, approximately \$300,000 in extra funding was provided to Sheshatshiu in the operation and maintenance budget to fund an outposts program. In 2001, the Innu were advised that such funds were no longer available.

In the absence of direct government funding, the band councils of Davis Inlet and Sheshatshiu have attempted to cover outpost costs out of their own funds, and this has contributed to cost overruns. In 2001 no outposts program was conducted by Davis Inlet. Discussions have continued on an ad hoc basis to provide for outposts funding, but the Government does not appear to have any long-term commitment to the continuation of the outposts program.

³⁴ The Statement of Political Commitments indicated that the outposts would be funded up to a total of \$51,000 in fiscal 1994–1995.

³⁵ Letter of Deputy Minister Scott Serson to Chief Paul Rich, 24 September 1997.

CONCLUSION 4:

The Government has not implemented that aspect of the second recommendation in the 1993 Report that called on the Government of Canada to preserve “the unique aspects of existing arrangements such as the outposts program.”

C. Direct Negotiations with the Innu in Respect of Self-Government

The 1993 Report recommended that the Government “enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada.”

The 1994 Statement of Political Commitments indicated that negotiations on self-government would proceed “between the Government of Canada, the Innu Nation and their communities, and, where appropriate, the Government of Newfoundland and Labrador.” In fact, negotiations on self-government did commence, although the negotiations were essentially trilateral between the Government, the Innu and the Province. “Where appropriate,” it turned out, was “all the time.” Nevertheless, progress was made on self-government negotiations.

However, the self-government negotiations that commenced in 1997 came to a halt in October 2000 and have now been postponed indefinitely. Both parties appear to believe that the negotiations halted because the other party was unable to maintain negotiations on so many different tracks (registration, land claims, health issues, relocation). What registration has done, however, is set the Innu on a different track from self-government. The *Indian Act* will now provide the governing structure for the Innu — a structure that any self-government negotiations in the future will have to dismantle.

Placing self-government negotiations in abeyance has implications for land claims negotiations. Land and a financial package are only part of any final settlement. The institutions to give effect to a comprehensive land settlement have to be elaborated through self-government negotiations. This is cause for concern among the Innu, who continue to have reservations about the halting of self-government discussions. In their view, there is no reason why self-government issues cannot be negotiated simultaneously with the other matters under discussion. It is their view that negotiations based on the inherent right to self-government should take place in tandem with registration and reserve creation.

In contrast, federal officials believe they are following the normal process for registration. If registration leading to the granting of status and the creation of reserves is

to occur, then there are certain steps to be taken and things to be done. These must be done as a first step before moving to the further step of self-government. Federal officials take the view that the experience and expertise gained from the creation and operation of the institutions required for status Indians living on reserve will help the Innu build expertise for eventually taking over self-government responsibilities. They also consider that although the Innu appear to have a vision of what they want, it is not clear that they have yet developed a long-term, sustainable plan for self-government.

Thus self-government negotiations appear to be in abeyance, not abandoned. Federal officials consider that the Government has committed itself to negotiating self-government for the Innu. The 1994 Statement of Political Commitments provided that the Government was prepared to negotiate "to devolve existing federal programs and funding delivered to the Innu, and to work with the Province to devolve such programs and funds administered under existing federal-provincial agreements for the provision of services to the Innu in a manner consistent with Canada's current devolution policy..." Although that commitment contemplated all of this being done "prior to the expiration of the present Canada-Newfoundland and Labrador Agreement," the commitment appears to remain.

The Innu express concern that even when negotiations resume, the Government's view of self-government will be far too limited. They consider that to the Government self-government means a status akin to that of a town council, rather than true governance that recognizes the Innu's independence as Innu people within Labrador.

Furthermore, we did not detect any degree of urgency by federal officials to recommence self-government negotiations. In part, they consider it to be up to the Innu to make a request to restart such negotiations. However, it did not seem that any such request would receive a very favourable federal response. Some federal officials take the view that self-government negotiations have to await progress on land claims negotiations. Moreover, the general view we heard from federal officials is that they consider that the Innu need experience operating under the *Indian Act* before embarking on self-government.

CONCLUSION 5:

Although the Government did enter into self-government negotiations with the Innu as proposed in the third recommendation in the 1993 Report, placing those negotiations in abeyance with no plan for recommencing them means that the third recommendation of the 1993 Report has not been implemented.

D. The Relocation of the Mushuau Innu

The 1993 Report recommended that the Government "make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them."

Details of the relocation of the Mushuau Innu in 1967 from the mainland to the site of the present village of Davis Inlet on Iluikoyak Island, the lack of running water and sewage facilities, the substandard conditions of the houses, the isolation from traditional caribou hunting grounds and the associated community dysfunction were set out in the 1993 Report. The conditions were later described in the Report on the Royal Commission on Aboriginal Peoples as akin to conditions in the poorest of developing countries.³⁶ Fatal fires, suicides, substandard living conditions, substance abuse and poor health brought the community to national and international attention and continue to do so.

On 8 June 1993 the Mushuau Innu voted overwhelmingly in favour of relocation to Little Sango Pond (Natuashish), which is located on the mainland of Labrador 15 kilometres from their current island site at Davis Inlet. The 1994 Statement of Political Commitments endorsed relocation, stating that the Government was prepared to "support relocation of the Mushuau Innu to Little Sango Pond."

There were, however, several conditions attached to the Government's commitment. The Innu were to adopt "a long-term social and economic reconstruction plan to address the social pathologies and high unemployment levels in the community, following discussions with and agreement by Canada." Following the adoption of the plan, there was to be "reaffirmation of the new site through completion of a formal ratification process by the Innu people of Utshimasits."

The Innu prepared and submitted the necessary socio-economic and technical studies to DIAND, and by December 1995 brought forward a social reconstruction plan that identified 131 intended initiatives. These included projects on Innu culture, health and social services, education and training, justice, and traditional and non-traditional economies. The requisite ratification vote was held within the Davis Inlet community in the early fall of 1996, and it resulted in an overwhelming 97% vote in support of the relocation to Natuashish.

The Statement of Political Commitments had set out further conditions for relocation. These included the following:

³⁶ See, for example, Report of the Royal Commission on Aboriginal Peoples, vol. 3 (Ottawa: Public Works and Government Services Canada, 1996), pp. 177-178.

Proof through the conduct of technical studies that the relocation site is capable of providing sufficient fresh water and other essential amenities to the community into the future.

Provision of the necessary land by the Government of Newfoundland and Labrador.

Environmental acceptability of the site, as demonstrated by the satisfactory completion of any required environmental assessment processes.

Construction and site development to appropriate federal and provincial government standards.

Reasonable costs that are acceptable to Canada.

By the end of 1996, it appeared that all of these conditions had been met. In November of that year the Mushuau Innu Relocation Agreement (MIRA) was entered into by the Government, the Province and the Mushuau Innu Band Council. The Province agreed to provide the land for the new community site through a 20-year renewable lease, with the potential of a future transfer of land to the Innu. The Government agreed to provide funding for relocation planning, design and construction at an estimated cost of \$82 million. It anticipated that the money would cover the cost of wood frame houses, water and sewer systems, roads, power station, school, nursing station, airport, wharf, post office, band council office, police and fire facilities, moving expenses and the decommissioning of the old Davis Inlet site.

The MIRA contemplated that the construction of the new community would take place over a period of five years and would be completed in the fall of 2001. A Mushuau Innu Relocation Committee was established to provide Innu input into the project. Under the terms of MIRA, the goal was to involve Innu in the construction, and to provide employment and training opportunities.

The community being built at Natuashish is impressive and ambitious. Once it is completed, the Mushuau Innu will have a community that is as modern as any contemporary community in Canada. At the physical level, the difference between the new community of Natuashish and the old community of Davis Inlet is simply overwhelming. However, the project has not met the fall 2001 deadline and current federal estimates are that it will not be completed before December 2002. There are many who have doubts about whether the project will be completed even on this schedule. Some suggest that the year 2003 is more realistic. Others speculate that the community may need to move in stages, with relocation of part of the community initially and the remainder later. At the time of the conclusion of this report, it was still unclear whether there would be any move in 2002.

The project has been beset by difficulties, some relating to the problems associated with construction on that scale in the physical conditions of northern Labrador, and others relating to financing and management of the project, the involvement of Innu in it, and the economic and social aspects of relocation.

The Physical Environment

No relocation or construction of a completely new community on this scale, or under these conditions, has apparently occurred before in Canada. The project is ambitious and the scale of obstacles daunting. The short construction season in northern Labrador, an unavoidable consequence of the harsh environment, poses substantial problems. Crews typically open camp in May or early June, and have to close down in November. Temperatures of -30 degrees and heavy snowfalls that make keeping the roads clear almost a full-time job have combined to hamper productive construction. Equipment and material have to be brought in by barge, and there have been difficulties finding barges to bring the construction material onto the site during the short summer period when water transport is possible. A delay of two months can mean a whole construction season is lost. In these circumstances, there seems to be a general consensus that those working on site have achieved much in the face of the conditions that confront them.

In order to try to complete the project in 2002, work was scheduled to start in March of this year. Sufficient material was brought in during the summer of 2001 to allow work to be commenced, although construction had never begun so early and it was not clear how feasible such an early start would be.

The Financing of the Project

The financing of the project was criticized by the Auditor General in 2000.³⁷ The Government chose to authorize financing only to a maximum of \$82 million although it was aware, even in 1996, that relocation costs might reach \$110 million. In fact, the Government had to move from its original commitment of \$82 million to \$113 million by 1999, and to \$150 million by 2001. DIAND has attributed the overruns to a series of items. These include an increase of 33% in the number of houses to be built, changes in technical standards for sewage lagoons and energy needs, increased costs of telecommunication services, and changes in standards and needs for various municipal and other buildings.

There are other factors. The Government apparently budgeted only \$50,000 per housing unit in the original plan. Federal officials advised the Mushuau Band Council that costs above \$50,000 per house would have to be covered by the Innu. As it turned out,

³⁷ Auditor General of Canada, "Other Audit Observations, Indian Affairs and Northern Development," Chapter 17, October 2000 Audit.

\$50,000 was sufficient to finance the construction only of housing shells, not the construction of the interiors. The full cost of each home would turn out to be approximately \$150,000. Clearly the Mushuau Band Council did not have the funds to cover this and the shortfall became the subject of ongoing negotiations between the Innu and the Government until eventually the Government came up with an arrangement to cover the shortfall.

Delays caused by the lack of funds also became a factor contributing to the escalation of costs. Having to negotiate for money all the way through "complicated and delayed the project." The time required to obtain approval for the additional allocations from DIAND, and then from Treasury Board, often worked to the detriment of the whole project. As one Innu noted, "The cycle in Ottawa doesn't work with the seasonal cycle here [in northern Labrador]." The Auditor General's study acknowledged that it was not unusual for initial cost estimates to be revised but criticized the Government for not having anticipated such items more fully. In the Auditor General's view, the approach taken by the Government in respect of the relocation project was "not consistent with sound project management."

Others have argued that the piecemeal approach to funding was the only way the project could have been accepted by the Government. They claim that a relocation project costing over \$82 million would not have been politically feasible in 1996. The cost of relocation has taken the Innu from being a group neglected by the Government to a group receiving, it is said, more money per capita than is spent on any other reserve in Canada. The Innu suspect that such political factors have intruded on the relocation project. In general, it appears that from the outset the Government was not willing to face the financial reality of the commitment it had made to relocation. Earlier acceptance of this reality might well have expedited the project.

Continuing negotiations over the cost of relocation have at times become intertwined with other negotiations over registration, land claims and self-government. The Innu claim that they have been told that the cost of relocation is a barrier to their being able to get funding on other issues. Relocation was the "bait" used to hook them on other issues. It is a fear of the Innu that once relocation has occurred, the Government will start cutting back on funding because of the amount already spent on relocation. Federal officials, while recognizing the reality of the substantial cost of relocation, deny that there is any intention to make the Innu pay in the future for relocation or that there is a direct connection so that "a dollar spent there will mean a dollar not spent here."

At the present time, it appears that sufficient funding has been approved and is in place to complete the project. However, delays beyond 2002 could, according to some estimates, cost another \$5-10 million beyond the amounts currently budgeted.

The Management of the Project

MIRA specified that a "team of Mushuau Innu and non-Mushuau Innu managers, designers and employees" was to be assembled "to deliver the project within a specified budget and time frame and to standards and design criteria agreed to by Canada and Mushuau Innu." DIAND was designated the project leader for the relocation, with authority for all decisions pertaining to Canada's interest in all matters relating to the planning, design and construction of the project. For their part, the Mushuau Innu were required to select a Project Manager in consultation with DIAND. The powers and duties of the Project Manager were to be determined jointly by the Mushuau Innu and DIAND, and were to include implementing the project; reviewing and updating cost estimates; monitoring project cost, quality and progress; and, where appropriate, recommending corrective action to the Mushuau Innu and DIAND.

Although at many levels the relationship of the Innu and the Government over the relocation project has worked effectively, it has not been without difficulties. Initially the Innu felt that although DIAND had been given a central role in the implementation of the relocation, it did not designate sufficient staff to work on the project on the ground. Only three employees from the regional office in Amherst, Nova Scotia, were given responsibility for the day-to-day work. The scope of the work became overwhelming. The Innu expressed surprise that although "this is one of the biggest projects ever in Indian Affairs...they only have three people working on it."

Additional difficulties beset the project almost from the outset. The requirement that the new community be built in accordance with government regulatory specifications sometimes clashed with Innu perspectives regarding traditional cultural and community needs. Redesign was required for some of the facilities, such as the school and the nursing station, when it was determined that they needed to be larger than originally anticipated. There were problems selecting the Project Manager. The original plans had failed to factor in the cost of building an access road and a camp to house the construction crew during the building phase. There was disagreement over tendering practices for construction. There were unanticipated geographic and geological problems.

Ultimately these issues were worked out and there seem to be few problems today surrounding the management of the project.

Innu Involvement in the Project

MIRA contemplated the active involvement of the Mushuau Innu in the planning, design and construction of the new community. This included maximizing "training,

employment and contracting opportunities for [the] Mushuau Innu.”³⁸ Efforts to ensure that the Mushuau Innu are involved in the planning and activities of the relocation have, not surprisingly, rendered the project substantially more complicated.

The objective of ensuring that the Innu were employed as fully as possible in the actual work of constructing the houses and other facilities was an important and critical component. At the outset, certain preferences were given to the Innu. The contracts for the construction of houses were initially let to Innu contractors and the agreement provided that non-Innu contractors employ one Innu for every three other workers. Even if the Innu were not previously trained, the goal was to have them work alongside the trained workers, so that they could learn how to install electricity and plumbing, to construct and repair houses, and to run the water filtration plant, the sewage system, the wharf and the airstrip. According to those working on the site, some of the Innu training was extremely successful, with certain individuals becoming very efficient heavy equipment operators and carpenters.

However, not all of the optimistic objectives were realized. Although 30 houses were initially constructed by Innu contractors, only the shells were completed and the houses were not finished inside. The problem partly related to lack of funding, but it was also due to an inability on the part of the Innu contractors to complete the work on a timely basis. This led to subsequent housing being contracted out to non-Innu contractors. Language difficulties also created substantial barriers, as there were no words in Innu-aimun (the Innu language) for the equipment being used in the project. The time it took to train the Innu caused additional delay in construction, another factor that had not been fully taken into account in the planning. Contractors saw their profits eroding as a consequence of the additional time required to do proper training.

As the time crunch came to the forefront, the employment of Innu trainees was sacrificed. The Innu tended to get left out and in the view of some Innu, the construction of the new community failed to “provide the benefits for the Innu that we had hoped.” Although we received several different reports as to the number of Innu working on the site, it is clear that the total fell short of the goal to maximize Innu opportunities.³⁹ Many of the Innu employees on the construction site chose to live in tents with their families short distances away from the site, rather than to take up residence in the camp.

³⁸ MIRA, article 3.6.

³⁹ The Innu advised that in July 2001, 240 people were employed on the site. Of this number, between 40 and 60 Innu were actually working on the site at any particular time, and up to another 40 people from the Innu community were involved back at Davis Inlet on the administration of the project. DIAND reported that 85 out of 175 workers on site were Innu, and that there were more Innu than non-Innu working at off-peak times. Presumably the latter refers to the non-construction months when the workforce consisted primarily of positions such as caretakers.

The Auditor General's study criticized DIAND for its failure to evaluate "the capacity of the Innu to manage such a large and complex project," and recommended that DIAND become "more actively involved with the project to help ensure success, while supporting the role of the Innu." In response, the Government indicated that since 1999, it had "insisted on increased accountability by Innu leadership for funds provided for construction, healing and social projects." It also advised that it would be creating a new directorate within DIAND's Atlantic Region to manage all the Newfoundland and Labrador files, including the Davis Inlet relocation project. A DIAND office has been opened in Goose Bay to provide more efficient service, and the number of people working directly on the Innu files was expanded. In order to facilitate the coordination of the different government departments involved in the project, a steering committee was set up, composed of representatives from each federal department and the Province.

The Social and Economic Aspects of Relocation

From the outset, it was apparent that social, cultural and economic reconstruction issues were as critical to the relocation of the Mushuau Innu as the physical construction of the community. MIRA gave express recognition to this in article 3.6, which, although dealing with the rating of construction tenders, made some general statements about the "planning, design and construction of the project." This was to be carried out in a manner that respected the culture of the Mushuau Innu; was fully integrated with other healing measures of the Mushuau Innu, including those sponsored by the Innu Nation; and was coordinated with the efforts of Innu and non-Innu agencies and individuals to establish an adequate and sustainable economic base for the Mushuau Innu.

The foundation of the Innu approach to the social, cultural and economic aspects of relocation is contained in the report titled *Gathering Voices: Finding Strength to Help Our Children*, published in June 1992 and based on a comprehensive community inquiry in April of that year. The Innu have prepared many other reports. In addition to the December 1995 social reconstruction plan, the Innu submitted in 1995 a seven-point plan for recovery and healing, entitled *Hearing the Voices*, a follow-up to the earlier *Gathering Voices* report. In November 1998, the Innu submitted an eight-point plan for healing. In January 1999, the Mushuau Innu Healing Strategy was filed.

The Auditor General questioned the adequacy of the Government's response. The October 2000 Report noted the following.

[W]e found little evidence that the Department had adequately assessed the December 1995 Innu social reconstruction plan to determine its potential contribution to an effective remedy. Nor did the Department have an overall action plan to specifically address the reported issues, despite its requirement that the Innu conduct and report such studies to it. The Department indicated in August 2000 that a plan for remediating the health and social ills will be developed in concert with other federal and provincial

departments. The delay in developing a plan is particularly disturbing since the issues have been well known to the Department for many years. We believe that a significant risk remains that the pathologies afflicting the Innu community will simply be transferred to the new location at Little Sango Pond, despite spending some \$113 million.⁴⁰

In response to the Auditor General's Report, the Government undertook to develop "a new plan for remediating the health and social problems" in consultation with the Mushuau Innu and federal and provincial government departments. The Innu, however, were sceptical. They pointed out they had initiated comprehensive healing and recovery plans in consultation with federal, provincial and non-governmental experts at least four times in the past decade. "The plan already exists, we don't need a new one," claimed the Innu. "What we need is federal action."⁴¹

In the past there have been divisions among the Mushuau Innu, as the community has struggled with the question of whether individuals who were abusing alcohol and other substances should be allowed to move to the new community or should be required to stay back in Davis Inlet. When it became clear that all members of the Mushuau Innu would be given the right to move to the new location, some groups who wished to establish a "dry community" considered staying behind and trying to build new homes on the old Davis Inlet site. Referenda were held, and eventually the tensions within the community were resolved. As of the summer of 2001, all of the Mushuau Innu were committed to relocating together and there appeared to be a positive feeling about relocation. Nevertheless, there remains a possibility that when the time for moving comes some Innu will want to stay.

Regardless of whether it is a full or partial move to the new site, the need for an appropriate social and economic plan is clearly apparent. Even on the most basic level, there will be a need to prepare the Innu for the transition to the modern housing development. Most of the Innu have no experience with running water and modern heating systems. They will need to learn how to run and maintain the new homes. From the Innu perspective nothing has been done in this area and they are doubtful if anything will be done in time for relocation. Federal officials say that plans are now in place to train the Innu before the move on matters such as house maintenance, plumbing and garbage disposal. Individuals have apparently been identified to provide elementary courses for Innu moving into new houses.

⁴⁰ Auditor General of Canada, "Other Audit Observations, Indian Affairs and Northern Development," Chapter 17, October 2000 Audit, clauses 17.116 and 17.117.

⁴¹ "Critical of Ottawa's Handling of Davis Inlet; Innu Nation agrees with Auditor General's report," *The Labradorian* (Happy Valley-Goose Bay), 28 October 2000, p.8A.

Beyond this is the question of running a new community with a hydro-electric plant, an airport, a wharf and roads to be maintained. There are few Innu qualified to carry out these tasks, yet after relocation the construction and maintenance crews currently operating on the site will disappear. Nothing has been done to resolve this problem. However, federal officials advise that Public Works and Government Services Canada is contracting a company to manage the community and to train the Innu to take over that role. Although the terms have yet to be worked out, it appears that Newfoundland Hydro will take over and run the generating plant.

As for economic development, there are some preliminary ideas about eco-tourism, hunting and fishing lodges, but no plans have been developed. The Innu consider that there has been little assistance from the Government. On the government side, it appears that this is an issue that has still to be addressed. There is some feeling that if the Voisey's Bay project goes ahead there will be significant economic opportunities for the Mushuau Innu. Negotiations on this issue appear to be ongoing, but no information has been provided on what those opportunities might be.

In contrast, the opportunities for economic development appear greater for the Sheshatshiu Innu. Proximity to Goose Bay and North West River is undoubtedly a positive factor. Business ventures include providing catering services in Churchill Falls and on ferry services between Lewisport and the north coast, joint venturing with provincial airlines on the Mikun-Innu airline and holding a shrimping licence. Although some Mushuau Innu participate in these ventures, proximity provides advantages to Sheshatshiu.

The issue of economic development involves a further complicating factor. Some Innu feel that economic development will take away from traditional Innu culture, to the ultimate detriment of the Innu people and the Innu Nation.

As to evaluate whether the relocation to Natuashish will actually make a positive difference to the lives and future of the Innu, opinions vary. Some Innu point to the considerable material improvements over Davis Inlet. They note that there will be sewers, water in the homes and heating from sources other than wood stoves. They note that there is a lot of money being spent and a lot of work being expended on the relocation by both the Innu community and the Government. They concede that mistakes were made along the way and offer hope that all parties had learned from those mistakes. Some described the relocation as "the last chance."

The delay in relocation has posed an undue burden and hardship on the Mushuau Innu, who continue to live under seriously deteriorating conditions in substandard dwellings in Davis Inlet. With the move looming on the horizon, there has been little interest in maintaining the Davis Inlet buildings or funding to do so. This all helps to make already substandard conditions even worse, something that has been a particular source of frustration to the Mushuau Innu Chief Simeon Tshakapesh. Moreover, the delays have had

a more particular and personal impact. As Cajetan Rich, Director General for the Innu for the relocation project, has said, "Some of the people who were very active in trying to get the project going have now passed away. They never saw the project finished. They're the ones who got hurt in the relocation. We built houses for them over there, but they didn't get to benefit from it."⁴²

Federal officials also have varying opinions about the implications of the relocation. Some complain that the Innu have not done enough to move their own community forward and to prepare for the relocation. Some suggest that the Innu need to "take ownership" of the problems and solutions themselves, and stop "blaming the Government." The situation in Davis Inlet was described by some as "among the worst in Canada" in terms of its historical record, the health of the community, and its isolation, dysfunction and instability. They worry that no move could redress the depth of the problem, that the relocation might ultimately be designated a failure and that future governments will refuse to spend these kinds of exceptional funds on community relocation for other Aboriginal groups who may need similar assistance.

On the other hand, some are cautiously optimistic. There is a view that something is going to happen. There will be a new community, which is the first concrete thing that has happened for a long time for the people of Davis Inlet. There is the view that, despite potential problems, the Government is in for the long haul to work with the community to do what it can to make the relocation a success.

Notwithstanding the delays, complications and difficulties, there is now no doubt that relocation will occur even though the exact date for relocation remains uncertain.

CONCLUSION 6:

The Government is in the process of implementing its commitment to the relocation of the Mushuau Innu to the site chosen by them as proposed in the fourth recommendation in the 1993 Report.

E. The Funding to Implement the Recommendations

The 1993 Report also recommended that the Government "provide the funding necessary to implement [the Report's] recommendations."

The funding to complete the relocation project has apparently been approved by Treasury Board and is now available. Once registration has been completed and reserves created, the Innu will be receiving funding from the Government equivalent to that of status Indians on reserve. However, the funding problems are threefold.

⁴² Interview with Cajetan Rich, Davis Inlet, 31 July 2001.

First, the delays in obtaining funds have contributed to the delay in relocation and its cost. For the Innu, funding negotiations are interminable, complex and bureaucratic. On the government side, officials often see the Innu asking for funds without accountability and proceeding on the assumption that if they just got money their problems would be solved. In addition to the continuous contact across a range of issues, there are clear problems of communication between the Innu and the Government.

The process has been complicated because the Government has placed the funding under third-party management. Concerned about overruns in band council spending and increasing deficits, the Government put the funds granted to the band councils of Davis Inlet and Sheshatshiu under the third-party management of the firm KPMG. Expenditures have to be approved against budgets by the third-party manager. In practice, this appears to have worked without significant friction, since most expenditures are routinely approved. What appears to be missing is training for band councils on financial management, to ensure that they can manage their funds in an accountable way after third-party management has come to an end. Federal officials have said that it is the responsibility of the third-party manager to do this. The Innu say that it has yet to be done. Nor is it clear that either the full implications of relocation or the funding consequences have been thought through. Whether the new community of Natuashish can function on the basis of the funding received by the Mushuau Innu Band Council is an open question.

Second, from the Innu perspective, funding is not necessarily for the right thing. Funding for the outposts program has been a particular source of contention. To many Innu this program is essential for the preservation of their culture and for the education of their children in that culture. But it falls through the gaps and receives funding only on an ad hoc basis. It is fundamentally important that the particular cultural needs of the Innu receive full financial support through the operation of the outposts program as well as other traditional activities.

Third, the Innu retain a long-standing grievance that they have never been properly compensated for the years since 1949 in which they were not acknowledged as Aboriginal people to whom the Government had any constitutional responsibility. In short, they have never received compensation for the breach by the Government of its fiduciary duty towards them. By contrast, there is a feeling among some officials, who focus on recent years and the money allocated for relocation, that the Innu have received far more funding than equivalent Aboriginal communities in Canada.

CONCLUSION 7:

The Government has gone a significant way towards implementing the fifth recommendation in the 1993 Report that it provide the funding necessary to implement the Report's recommendations.

However, the issue will remain open until all of the recommendations have been fully implemented.

II The Implications of the Recommendations of the Royal Commission on Aboriginal Peoples

The Terms of Reference for the follow-up review require us to examine "the recommendations of the Royal Commission on Aboriginal Peoples, and the Government's response to them (*Gathering Strength — Canada's Aboriginal Action Plan*) and the implementation thereof" and to consider them in relation to the recommendations of the 1993 Report.

Many of the Royal Commission's recommendations in Volume 3 of its report are relevant to the Innu as Aboriginal people, and many of the problems faced by the Innu are precisely those discussed in the Royal Commission's report. In the present context, those recommendations relating to housing, education, cultural identity and language, health and self-government are relevant.

In respect of housing, the Royal Commission recommended that the Government ensure adequate housing for Aboriginal people within 10 years. The new community being built for the Mushuau Innu clearly responds to that recommendation. The Royal Commission considered that housing "should be a key part of community healing and of cultural revival and self-definition among Aboriginal peoples." The report noted that "Aboriginal design and environmental technologies could reflect the rich history and the deep environmental sensitivity of communities and regions." It described the Cree community of Oujé-Bougoumou, Quebec, an Aboriginal community that had been moved seven times over five decades to make way for mining developments. By 1986 their living conditions had degenerated to a point described by the Grand Council of the Crees of Quebec as "the worst in the developed world." A new community constructed to house 525 community members was built, taking account of concerns about cultural renewal, economic development, environmental sustainability and social healing. Ultimately designated as a major success, the newly constructed village was chosen by the United Nations as one of 50 exemplary communities around the world, and a vivid example of how traditional values and culture could be combined with modern design and technology.⁴³

The Oujé-Bougoumou example shows what is possible in the regeneration of Aboriginal communities. The architectural design of the new Oujé-Bougoumou Cree village reflected traditional teepee shapes and Cree settlement patterns, with a longhouse-style

⁴³ *Report of the Royal Commission on Aboriginal Peoples*, vol. 3 (Ottawa: Public Works and Government Services Canada, 1996), pp. 419–421.

meeting place, and a school that functioned as a place for learning and recreation, and a centre of village life. The new Mushuau Innu community of Natuashish reflects to some extent Innu cultural and traditional concerns. There has, however, been considerable tension between the desire of the Government to build in accordance with standard specifications and the desire of the Innu to have the community built in a way that would respond to their particular needs. This played itself out in a debate over the design of the school, which ultimately was resolved by compromise.

The challenge for the Mushuau Innu is to adapt their new community to their particular needs, a problem that is made much more complicated by the problems of health and social dysfunction that will be referred to later.

In respect of education, the Royal Commission noted that control over education delivered to Aboriginal people remained primarily in the hands of provincial or territorial governments, with few mechanisms for effective accountability to Aboriginal parents and students. There was insufficient opportunity for Aboriginal people to transmit their linguistic and cultural heritage to the next generation. The report recommended that Aboriginal controlled educational systems be developed and that Aboriginal language be assigned priority in Aboriginal educational systems.

The area of education is one that has become critical in respect of the Innu, and there is little evidence of any progress towards giving effect to either the letter or the substance of the Royal Commission's recommendations.

In respect of the preservation of Aboriginal arts and heritage, the Royal Commission recognized the importance of conserving and revitalizing Aboriginal languages. Innu-aimun continues to function as the language in daily use among the families and households in Sheshatshiu and Davis Inlet. Given the potential extinction of so many other Aboriginal languages, the vibrancy of the Innu-aimun language in Labrador is cause for pride. Yet the language of instruction in the schools is essentially English. Equally, the dominance of television in the communities creates serious concerns about the future of the language. Even more critically, the Innu note that if their community is not able to maintain its traditional connections with life in the country, through programs such as the outposts program, the richness of the language will dissipate. The future of Innu-aimun is at a critical stage. Now is the time to take active steps to ensure that it retain its richness and strength. For a country such as Canada, where the interconnections between language, culture and national identity are central, this ought to rank as a concern of the highest order.

The Royal Commission focused as well on issues relating to family, health and healing. The concerns raised in the report — regarding the elimination of violence against women, children, elders and persons with disabilities; the need to involve women, youth, elders and persons with disabilities in governing councils and decision-making bodies; the

need to transform current programs into more holistic delivery systems in culturally appropriate forms; the importance of the provision of clean water, basic sanitation facilities and safe housing; and the need for the development of Aboriginal healing lodges, controlled by the communities themselves, and reflective of traditional and spiritual values underlying Aboriginal culture — all resonate with the problems faced by the communities of Sheshatshiu and Davis Inlet.

Finally, at the most fundamental level, the Royal Commission saw a key role for Aboriginal self-government as providing “the affirmation and conservation of Aboriginal cultures and identities as fundamental characteristics for Canadian society.”⁴⁴ The vision of self-government set out by the Royal Commission was not, however, the municipal council model that the Innu fear the Government wishes to impose on them. Rather:

It should be understood that self-government does not mean bringing Aboriginal nations into line with predetermined Canadian norms of how people should govern themselves. It is the reinstatement of a nation-to-nation relationship. It is the entrenchment of the Aboriginal right of doing things differently, within the boundaries of a flexible *Canadian Charter of Rights and Freedoms* and international human rights standards.⁴⁵

The issue of self-government remains one of the key outstanding issues to be resolved in the new relationship that is evolving between the Government and the Innu.

CONCLUSION 8:

Although the actions of the Government in respect of the Innu conform to some of the recommendations of the Royal Commission on Aboriginal Peoples, such as the building of the community at Natuashish and in some respects health reform, in many critical areas such as education and self-government there is little evidence that the recommendations of the Royal Commission have been implemented at all in respect of the Innu.

III The Issue of Land Claims

The Terms of Reference require us to examine the “land rights claims of the Innu of Labrador” in light of the 1993 Report.

⁴⁴ *Report of the Royal Commission on Aboriginal Peoples*, vol. 3, p. 665.

⁴⁵ *Report of the Royal Commission on Aboriginal Peoples*, vol. 3, p. 665.

Unlike the self-government negotiations, which have been placed in abeyance, the negotiations on land claims have continued, despite a series of temporary suspensions, since 1991. Negotiations have been undertaken on behalf of the Innu of both communities, Sheshatshiu and Davis Inlet, by the Innu Nation. The Innu, the Government and the Province are all parties. The negotiations are complicated because some of the areas claimed by the Innu are also claimed by the Labrador Inuit, who have separate land claims negotiations with the Government. Moreover, the Voisey's Bay and Lower Churchill projects also have land claims implications. This means that there have been separate negotiations between the Innu and the private interests developing Voisey's Bay and Lower Churchill, as well as discussions on these projects within the land claims negotiations. As a result, land claims negotiations have been divided into parts, with separate discussions centred on reaching mini-agreements on the land issues affecting Voisey's Bay and Lower Churchill. The Labrador Inuit's interest in Voisey's Bay also adds complications. The Innu and the Labrador Inuit negotiated separately on Voisey's Bay with the private companies planning the development.

From the Innu point of view there have been discernible changes in the negotiating process. The Province had historically taken the position that there was nothing to negotiate, that the Innu had no more claim to land than other Newfoundland residents. Today, the Province is going through the process of land claims negotiations seriously.⁴⁶ Indeed, when in 2000 the Government suspended land claims negotiations with the Innu and seriously contemplated abandoning them, the Province played a key role in ensuring that the Government came back to the table. From the Province's point of view, resolution of land claims issues is central to its ability to move ahead on important economic development at Voisey's Bay and Lower Churchill.

Federal officials currently express a firm desire to negotiate the land claims with the Innu, but both the Innu and the Province worry whether the Government will in fact be prepared to resolve the land claims issue. The suspension of the negotiations in 2000 was necessary according to federal officials because the Innu claim was not in their view a serious claim. It was simply made up of the best element of every land claim negotiated by Aboriginal people across the country and was "out of the ball park." In addition to the pressure it exerted by suspending the negotiations, the Government stopped payment of most of the Innu negotiating costs in the winter of 2001, and when negotiations recommenced they were with a reduced negotiating budget.

It is widely accepted that the substantially modified proposal put forward by the Innu in 2000 has provided a boost to the negotiating process. Some now describe the process as well on the way. However, agreement has yet to be reached on the issue of the size of the land embodied in the settlement and the amount of the compensation package.

⁴⁶ In the Agreement in Principle of 24 November 1999, the Province of Newfoundland and Labrador agreed to facilitate the transfer of land that would be necessary to implement any land claims settlement.

Federal officials say that these are commonly the last items to be completed in land claims negotiations.

Some federal officials consider that their suspension of negotiations and cutting off of funds to the Innu negotiators was the impetus for the Innu bringing forward a realistic set of proposals. Some Innu consider that the Government used extortionist tactics to force them into adopting different standards for their claim. In their view, the whole notion of Innu claiming land is backwards. It is their land and they are struggling to have the Government acknowledge this. Others, while sharing these views, see the situation from a somewhat different perspective. They recognize the pressure exerted by the Government in the suspension of negotiations and reduction of funds and in the linkages that are used with other issues, such as registration, relocation and the health crisis in the communities. However, they see the new Innu position as reflecting more an assessment of the needs of their people and the opportunities that they wish to provide for their children. They are trying to be practical and achieve a balance that will maximize the interests of their people rather than stand on principle. It is fundamentally an economic survival issue; in their view, "you can't eat principles."

There is guarded optimism about the process of land claims negotiations, and a belief that an agreement in principle may be very near. All parties recently reached a side agreement on the Voisey's Bay development. However, the ending of self-government negotiations means that a critical part of any comprehensive land claims settlement — the institutions to administer the new land and rights — is in abeyance while registration and the creation of the institutions required under the *Indian Act* proceed. Moreover, some federal officials express concern that the resolution of the land claims may cause more problems than it resolves. They query whether the Innu have the capacity to manage the autonomy they will receive over a substantial land territory or the funds that would come with a compensation package. This type of reservation in part fuels apprehensions that the Government is not really prepared to settle a comprehensive land claim with the Innu. In this regard, some Innu are concerned that the completion of the side agreement on Voisey's Bay, and the prospect of completing one in the future on the Lower Churchill project, will cause the Government to lose interest in completing the full land claims negotiations. The Innu are apparently not prepared to conclude an agreement on Lower Churchill until land claims negotiations are completed.

CONCLUSION 9:

There is an opportunity for the Government to reach a comprehensive land claims settlement with the Innu. There is momentum on the Innu side, arising out of their new proposals and the opportunities provided by the Voisey's Bay development, that will be lost if the Government does not match that momentum. Progress

requires a clear commitment by the Government and the early resumption of self-government negotiations.

IV Canada's International Human Rights Commitments

The Terms of Reference require us to "review the situation of the Innu in relation to international human rights commitments to which Canada is a party, and in particular with regard to:

- (a) the *International Covenant on Civil and Political Rights*
- (b) the *International Covenant on Economic, Social and Cultural Rights*
- (c) the *Convention on the Rights of the Child*
- (d) the *Draft Declaration on the Rights of Indigenous Peoples.*"

Canada is a party to the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*. The *Draft Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities on 26 August 1994, but it has not been transformed into a treaty. Nevertheless, it provides important guidance on the current thinking of states and constitutes part of the broader context for the interpretation of the international covenants.⁴⁷

Rather than deal with each convention separately, we will consider the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* together, along with the *Draft Declaration on the Rights of Indigenous Peoples*, and then turn to the *Convention on the Rights of the Child*.

The provision applicable to the situation of the Innu is found in article 1 of both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Those articles provide in identical terms:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The question of who constitutes a "people" is controversial in international law and the scope of the right to self-determination has never been precisely determined. We see

⁴⁷ Article 31 of the *Vienna Convention on the Law of Treaties* provides that a treaty is to be interpreted in accordance with the ordinary meaning of the terms used, in their context, and in light of the object and purpose of the treaty.

no necessity for the purposes of this report to enter this debate. We simply note that the United Nations Human Rights Committee has viewed article 1 of the *International Covenant on Civil and Political Rights* as covering the cultural rights of groups,⁴⁸ and that the *Draft Declaration on the Rights of Indigenous Peoples* relates the right of self-determination specifically to Aboriginal peoples, adopting essentially the language of the international covenants. Article 3 provides:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In the context of this report, the question, in our view, is whether Canada's treatment of the Innu might be viewed as failing to allow them to "freely pursue their economic, social and cultural development" as contemplated in article 1 of the covenants and article 3 of the Draft Declaration. Some idea of the extent of this right to economic, social and cultural development may be gathered from the provisions of the Draft Declaration, which refer to the right of indigenous peoples "to participate fully, if they so choose, in all levels of decision-making in matters which may affect their rights" (article 19), the right "to maintain and develop their political, economic and social systems" (article 21), and the right to "determine and develop priorities and strategies for exercising their right to development," which includes such matters as "health, housing and other social and economic programmes" (article 23). Furthermore, article 31 recognizes, as an aspect of the right of self-determination, the right to "autonomy or self-government."

In short, the general tenor of the right of indigenous peoples to "freely pursue their economic, social and cultural development" is that indigenous peoples must be given the opportunity to take responsibility for their own affairs. This means some degree of autonomy and control over matters such as education, language, health, housing, economic development and the governance of their own affairs. There is thus an obligation on governments to ensure that indigenous peoples are able to exercise these rights.

It is difficult at the present time to make a definitive determination of whether Canada is in compliance with its international obligations in this regard in respect of the Innu. Much depends on what will happen in the future. Registration is underway and land claims are being negotiated. Whether through these processes the Innu will reach the stage where they will be able to exercise the rights that the international agreements provide remains to be seen. In this regard, there are conflicting indications. The events that are currently occurring could lead eventually to the degree of autonomy and control that Canada's international obligations require. However, the lack of negotiations on self-government, the apparent reluctance of the Government to move toward Innu autonomy in

⁴⁸James Anaya, *Indigenous Peoples in International Law* (1996), p. 157.

respect of education and health matters, and what may be a lack of enthusiasm for a comprehensive land claims settlement on the part of federal authorities cast some doubt on whether there is any real likelihood of compliance with these international obligations.

Suffice it to say, if the process that is underway does not lead to the Innu being able to manage their own affairs in respect of economic, social and cultural development, touching such matters as education, housing, health and development, and if the Innu are unable to move to self-government, then Canada will be in violation of the obligations set out in these human rights instruments.

In the case of the *Convention on the Rights of the Child*, the primary consideration in dealing with children, as set out in article 3 of the Convention, is that of the "best interests of the child." The article also provides that states have an obligation to "ensure the child such protection and care as is necessary for his or her well-being."

The Innu claim that the Government has not lived up to its obligations in this regard. They cite the crisis involving gas sniffing by children in Davis Inlet in November 2000. At the time, they claim, Health Canada made a commitment to reach agreement on an appropriate treatment plan for the affected children and to develop a "culturally appropriate family centred treatment plan for both parents and children." However, they claim that once media attention moved away from the gas sniffing incident, the development of a treatment plan got lost in departmental in-fighting over who was to pay, and in a general reluctance to spend more money on the Innu. The point made by the Innu is that the "best interests" of the Innu children and their "well-being" had simply faded into the background.⁴⁹

It is beyond the mandate of this report to make a full investigation of such allegations. What is clear, however, is that Canada's obligations as a party to the *Convention on the Rights of the Child* represent a standard to which Canada has an international legal obligation to conform. It is also an appropriate standard for judging Canada's conduct in the treatment of Innu children. Thus, Canada's conduct in the treatment of the Innu should be directed to ensuring that it does fall below the standards set out in its international obligations under the *Convention on the Rights of the Child*.

CONCLUSION 10:

Unless the Government acts to ensure that the Innu are able to take responsibility for their own affairs and are able to move to self-government, Canada is at risk of violating its international obligations

⁴⁹ The Innu also cite another incident in which the Director of Child and Family Services of the Health Labrador Corporation refused to comply with an order of the provincial court placing a child under the care of a parent in Davis Inlet, and sought to have the order stayed. The provincial court order had apparently been based on a consideration of the best interests of the child.

under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Draft Declaration on the Rights of Indigenous Peoples*. Furthermore, in dealing with the children of the Innu communities of Davis Inlet and Sheshatshiu, Canada is obliged under the *Convention on the Rights of the Child* to have the well-being and best interests of the children as a primary consideration.

V The Implications of the Government's Failure to Provide the Innu with Treatment Equal to That of Other First Nations for the Period 1949 to 2001

The Terms of Reference require us to "review the situation of Canada's obligation to the Innu in light of its failure to provide treatment equal to that of other First Nations for the period 1949 to 2001."

In 1993, the complaint of the Innu to the Canadian Human Rights Commission had included the request that they be compensated for the failure of the Government to recognize their status since 1949. The 1993 Report had indicated that while the payment of compensation would be appropriate, it would not remedy the wrong that had been suffered by the Innu as a result of the failure of the Government to carry out its fiduciary obligations. Instead, the Report stated that a real remedy in this case would be for the Government to address the problems faced by the Innu today and noted that the remedy had to be one that "ensures that the Innu are able to be in the economic, social and spiritual situation they would have been in if governmental responsibilities had been properly exercised and appropriate human rights standards met."⁵⁰

Measured by that test, although the Government has now engaged in a relationship with the Innu that will lead to their being treated in the same way as other First Nations in Canada, it is a long way from remedying or even addressing issues that are key to the economic, social and spiritual future of the Innu. Indeed, as far as Innu culture is concerned, on key issues such as education in language and culture, and the preservation of unique cultural programs such as the outposts program, there are major deficiencies.

The Innu make further specific complaints. Without claiming that they should be compensated for precisely the amounts they would have received had they been properly recognized by the Government in 1949, they claim that even if they were to receive equivalent funding today, this would not recognize the disadvantage they have suffered from not receiving equivalent funding in the past. The Innu take the position that the federal

⁵⁰ 1993 Report, p. 51.

claim of "general fairness in funding"⁵¹ can only be a reference to recent years and ignores the inequity of the past. Thus, in their view, funding to the Innu from the Government should include an appropriate amount of "catch-up funding." The Innu claim that this is necessary to enable them to get to the level of programs and services that other First Nations have achieved; and to provide for the healing that is necessary after so many years of neglect.

In addition, on the issue of taxation, the Innu point out that they have been paying HST on goods and services. As non-profit organizations, the band councils are entitled to a remission of half of that amount, but that is not available for individuals. Once the registration and status processes have concluded, and reserves have been created, the problem will be solved as far as the future is concerned. But what of the past?

There seems to be no debate that the Innu have been financially disadvantaged in comparison to other First Nations by having to pay HST.⁵² The Government is apparently considering an order under section 23 of the *Financial Administration Act* to remit those taxes for the Innu going back to November 2000, the time at which a commitment was made to register the Innu as status Indians. It is not clear, however, why this date is the appropriate date for the remission order. In the 1994 Statement of Political Commitments the Government began the process of recognizing the Innu as Indians within the meaning of the *Indian Act*. That date seems more appropriate for a remission order. A remission order constitutes recognition that entitlement occurred at an earlier date than the date on which the Innu will obtain future taxation exemption. It could even be argued that entitlement to any benefit that would have flowed from recognition of the Innu as Indians within the meaning of the *Indian Act* should go back to 1949. However, even the Innu accept that there would be major practical difficulties in making taxation benefits retroactive to 1949.

In our view, the most appropriate date for the remission order is the date of the 1993 Report, 18 August 1993. That was the date when the Government was put formally on notice of what it in reality knew all along — that the Innu were Indians within the meaning of the *Indian Act* for whom the Government had fiduciary responsibilities. Any delays since that time in granting the Innu the benefits that flow from that fiduciary responsibility are delays attributable to the Government. Those delays should not disadvantage the Innu.

Moreover, in providing funding to the Innu, the Government cannot ignore the fact that it had a 50-year "holiday" from its obligations in respect of the Innu. This has to be taken into account in future funding provided to the Innu. Funding the Innu today on the basis of equivalency, without reference to the needs that result from the fact that

⁵¹ Letter of James Wheelhouse, Regional Director General, Newfoundland and Labrador Secretariat, Indian Affairs and Northern Development (Atlantic), to Chief Paul Rich, Sheshatshiu Innu Band Council, 30 October 2001.

⁵² This is acknowledged in the letter of James Wheelhouse to Chief Paul Rich, *op. cit.*

equivalency was not provided in the past, does not constitute the remedy contemplated in the 1993 Report of ensuring that the Innu are put in the position they would have been in had government responsibilities been exercised properly in the past.

CONCLUSION 11:

Funding to the Innu should take account of the fact that they have been disadvantaged by the failure of the Government to exercise its fiduciary obligation to the Innu, and any remission order in respect of taxes should be dated from 18 August 1993.

VI Recommendations

The Terms of Reference invite us to "make such recommendations as are appropriate" on the basis of our findings. Our findings and conclusions are set out under each of the preceding sections. We now draw some more general conclusions and make certain recommendations.

A. Recognition, Registration and Self-Government

At the time of the 1993 Report, the Government had not accepted that it had constitutional responsibility for the Innu as Indians within section 91(24) of the *Constitution Act, 1867*. That has now changed. The Government has acknowledged its constitutional responsibility and is acting accordingly. The real question, however, is whether this has made any practical difference to the situation of the Innu.

The first issue relates to the question of equivalency. In reality, this has always been the issue. If in 1949 the Innu had been treated like other Indians in Canada, they would have been treated in the same way as Indians for whom the Government had constitutional responsibility. They would, no doubt, have been granted status and reserves would have been created for them. The Innu would have been funded in the same way that other Indians in Canada are funded. This was the original intention of the Canadian and Newfoundland negotiators in establishing the Terms of Union but, as the 1993 Report pointed out, the relevant provisions were "pencilled out."

Even today that equivalency has yet to be achieved. Although the Government initially seemed prepared to grant equivalency without going through the process of registration, in the end it insisted on a registration process before granting full equivalency, notwithstanding the fact that many, both inside and outside of the Government, considered registration a retrograde step. Within the Government, it appears that the precedent of granting tax benefits to people who were not registered was ultimately regarded as worse than the precedent created by registration.

For the Innu, it seemed that registration was the only option that the Government was prepared to offer to grant them equivalency. In the end, the Innu decided to take that option. While many Innu recognize that there are advantages and disadvantages to being placed under the *Indian Act*, some take the view that registration will allow them to decide on advantages and disadvantages themselves, which they would have been able to do had the Government fulfilled its responsibilities to them in 1949. In short, they are simply getting to where they should have been 50 years ago.

The registration issue appears to be a result of inflexibility and failed imagination. The Government could have taken the administrative, regulatory and (if necessary) legislative steps to grant the Innu equivalency without registration. It chose not to do so.

Instead, it has required the Innu to embark on a process that simply postpones the granting of equivalency and that has had the effect of placing negotiations on self-government on indefinite hold.

There are, of course, issues such as reserve creation and band council powers that will be regularized through registration. But these matters could have been dealt with separately through self-government negotiations. That would appear to have been the position contemplated in the 24 November 1999 Agreement in Principle. A lack of flexibility has placed the Innu on a track that pushes self-government even further into the future. In short, the opportunity to recoup the time that was lost to the Innu during 50 years of federal failure to accept responsibility for the Innu has not been taken.

In terms of giving effect to the recommendations of the 1993 Report, although the Government has not yet granted to the Innu the programs, benefits and services to which status on-reserve Indian people are entitled, there is now a process in place that will result in their getting that equivalency. The cost of doing this is postponement of self-government.

Furthermore, it is not clear that the federal or provincial governments see self-government for the Innu in the foreseeable future. There is a strong sense among some officials that the Innu do not have the capacity to engage in self-government or to manage education or health services. Some consider that a period of operating under the *Indian Act* will be a valuable "capacity-developing" experience for the Innu. Under this view, self-government is postponed even further into the future, perhaps indefinitely.

The move to self-government was a principal recommendation of the 1993 Report. Self-government was recognized by the Royal Commission on Aboriginal Peoples to be a step of vital importance to Aboriginal peoples more generally. Rapid action by the Government towards Innu self-government was a way in which the Government could have made up for its past failure in its fiduciary duty. Unfortunately, this opportunity of forging a new and more creative relationship with the Innu has not been taken.

The pace of self-government negotiations has simply been too slow. Nine years after the release of the 1993 Report, one might have assumed that the process would be complete, or at the very least close to completion. Instead, negotiations have halted and no resolution is in sight. There is no justification for letting another eight years trickle by without results. In our view, a strict time-line is overdue. Given the eight years that have elapsed so far, and that some progress has been made already, a period of five more years would seem more than reasonable to complete self-government negotiations.

RECOMMENDATION 1:

That the Government immediately resume self-government negotiations with the Innu, and that it complete such negotiations within the next five years.

In doing this, the Government should not abandon registration, which is now well underway. Rather, it should adapt the registration process into a self-government process in order to avoid creating institutions for governance under the *Indian Act* that will have to be changed, altered or abolished as a result of self-government.

B. Innu Education and Health

The second issue relates to the question of whether the Government's assumption of its responsibilities has led to any improvement in the lives of the Innu. In 1993, outside the area of health, there were few federal officials dealing with issues affecting the Innu or with any experience of the communities of Sheshatshiu and Davis Inlet. Today the situation is remarkably different. There are officials in Ottawa in DIAND and Health Canada and in the DIAND regional office in Amherst who are dealing directly with Innu issues and who have spent time in the communities. There are DIAND and Health Canada officials located in Goose Bay. There also appears to be a marked change of attitude on the part of many government officials, who appear to be much more knowledgeable about Aboriginal claims, traditions and culture than their predecessors. By comparison with 1993, there is now substantial federal activity on Innu issues. The number of "main tables" and "side tables" for negotiating issues relating to registration, land claims, health and relocation seems to be growing exponentially. Much appears to be happening.

But what does it all lead to? Have things really changed? Two issues will be considered — education and health.

Education

At the time that the 1993 Report was completed the state of education in the Innu communities was little short of disastrous. Attendance at schools was irregular, the drop-out rate was high and few Innu ever completed high school. Today the situation is generally regarded as the same, if not worse. Attendance at the high school level can be as low as 10% — and not always the same 10%. Students who do stay in school suspect that their educational level is not the same as those at the same grade in other schools in Newfoundland and Labrador. Remuneration of teachers in the provincial system is structured in such a way that the Innu schools are unlikely to attract experienced teachers, and once they gain experience, they are likely to leave. Some years, it is difficult even to obtain a full complement of teachers. Recently, the school in Davis Inlet was unable to open at the beginning of the school year because of a lack of teachers.

The schools in both Sheshatshiu and Davis Inlet are in extremely poor physical condition. The school in Davis Inlet has had to be closed on at least one occasion because leaking oil had caused an environmental hazard. There is agreement that it is necessary to construct a new school in Sheshatshiu, but there is no consensus as to who will fund the

construction, nor whether the new school will be built to federal or provincial standards. No one claims that the schools provide any kind of effective mechanism for conserving and revitalizing Innu language and culture. Some Innu parents have lost faith in the capacity of the schools to offer education either in the Innu language and culture or in the basic skills offered under the provincial curriculum. A number of Sheshatshiu parents have responded by sending their children across the bridge to the school in North West River.

Education remains in the hands of the Province, and discussions between the federal and provincial governments appear to contemplate that even after registration the Province will continue to provide education services to the Innu under an agreement with the Government. In short, the financial arrangement will change but there will be no fundamental change in what is being delivered.

The inability to control education in their communities has been an issue for the Innu for many years. They express frustration with the fact they have no control over curriculum and that Innu language and culture, generally provided by teaching assistants and not fully qualified teachers, lose out if anything has to be sacrificed. Given that the preservation of Innu-aimun is at a critical juncture, Innu control over Innu education becomes increasingly urgent. Nor have the schools been sympathetic to Innu who wish to take their children into the country for extended periods. Alternate educational programs initiated by the Innu, one of the most promising of which was conceived in the fall of 2001, tend to fall through complex bureaucratic regulations and priority funding limitations.⁵³

The Innu consider that they should be in a position to manage education, to engage teachers and to have a say in the curriculum. In Innu hands, the schools would give priority to Innu-aimun and would give central focus to culturally appropriate education. At the same time, the Innu are not unrealistic about the growing connections between their community and the outside world. They recognize that their children are being educated in a broader provincial and national context. They wish to offer a curriculum that would make their children's education portable, so they could move to other schools within the Newfoundland and Labrador school system. The situation in Conne River is often cited as an example in which the band is responsible for schooling in accordance with provincial standards.

Paragraph 2 of the 24 November 1999 Agreement in Principle provided that "Canada and the Province will work together with the Innu to transfer control for [education] programs to the Innu." This has not happened. Federal officials say that discussions on

⁵³ Former Mushuau Innu Chief Katie Rich and a group of other Innu women from Davis Inlet formulated the Next Generation Guardians Proposal in the fall of 2001. Concerned about the large number of Innu high school drop-outs, they proposed to develop an alternate and parallel educational program that would focus on this sub-group of students, and concentrate primarily on Innu skills and language. Based in Davis Inlet (and after relocation in Natuashish), the program was designed to operate separately from the provincially operated high school. Attempts to achieve appropriate funding appear to be mired in complex and unwieldy bureaucratic requirements.

devolution of control over education can take place when the Innu come up with a plan, an odd requirement given that there is no alternative governmental plan except to continue a system that patently does not work. In fact, there is a widespread view among federal and provincial officials that the Innu do not have the capacity to manage education in their communities. Some officials suggest that the Innu will not be able to take responsibility for education until they can provide that education themselves. If it is expected that the Innu are to come up with a plan to solve the problems of Innu education — something that the Government and the Province have been unable to do — before they are given responsibility for Innu education, then this is tantamount to a refusal to devolve education to the Innu.

In the immediate term, after the Innu are registered as status Indians, the schools in the Innu communities will continue under the Newfoundland schooling system. Thus, although relocation will provide the Mushuau Innu with excellent physical facilities for schooling, the delivery and content of education will not change in either community as a result of registration.

It is difficult to see how the continuation of a system that clearly does not work will improve education in the Innu communities. And it is difficult to understand why giving the Innu the opportunity to take responsibility for the education of their children could make anything worse.

Health

The situation in respect of health is more complex. There is a longer history of federal involvement in health issues in the two communities. Yet some parallels can be drawn with education. At the time of the 1993 Report there was a crisis of children gas sniffing in Davis Inlet that drew national and international attention. Some children were taken away from the community for treatment and then returned. Later there were reports that several of those children had returned to gas sniffing.

In November 2000, there was a crisis of gas sniffing by children in both Sheshatshiu and Davis Inlet that received national and international attention. Children were removed from both communities and provided with treatment. Subsequently there were reports that children who had received treatment had returned to their communities and had continued gas sniffing.

There are, of course, many differences between these two incidents, but the overall impression remains the same. Notwithstanding the substantial efforts that have been made to deal with health and social issues in the Innu communities, on the surface it appears that fundamentally little has changed.

In fact, much has changed. In the incident in November 2000 it was the Innu leadership in Sheshatshiu that took the initiative and called on the provincial authorities to apprehend the children in that community under relevant child welfare laws. In Davis Inlet the leadership took the matter to Health Canada and the children were dealt with under voluntary care arrangements. The children from Sheshatshiu were treated in Goose Bay and the children from Davis Inlet were sent to Grace Hospital in St. John's.⁵⁴ Some children remain in treatment.

The November 2000 incident demonstrates the jurisdictional nightmare that exists in respect of Innu health. The differing arrangements with the two communities led to serious difficulties over which level of government should be paying for which service. Health is a provincial responsibility, exercised in respect of the Innu through the provincial Health Labrador Corporation. Health Canada nevertheless funds health care programs and DIAND provides funding for health as well. The Innu manage health issues through health commissions in each of the communities. Coordination between these groups is a major problem. Within the Government an interdepartmental committee was established at the behest of the Chief Federal Negotiator for Labrador Innu Files to try to bring some coordination at the federal level. This has resulted in better communication but it has not prevented each department from carrying out its mandate as it sees fit, and friction between DIAND and Health Canada continues. The problem between the two departments is described by officials as a "national problem."

There is no doubt that the resources devoted by the Government to issues of health in the Innu communities are significantly greater today than in 1993. The Innu themselves speak favourably of the role played by Health Canada. Yet there is still the concern that this has not resulted in a corresponding improvement in health in the communities. As Innu Nation President Peter Penashue observed at a circumpolar health conference in 1994: "The arrival of an elaborate health care system among the Innu has coincided with a rapid worsening of Innu health." President Penashue did not see this as a matter of cause and effect. Rather he considered that Innu health and ill-health were determined largely by factors such as social and economic considerations, rather than the health care system itself. He suggested that improvement in Innu health could only occur alongside the development of healthy socio-economic and cultural systems. Under this view, control of the Innu over their own lives becomes critical to Innu health.

The view expressed by President Penashue is widely shared among the Innu, who see experts with experience with problems in other communities, including other Aboriginal communities, being brought in to consider Innu problems. What is lacking, from the Innu perspective, is experience with the Innu themselves. There seems widespread consensus among the Innu that the programs that work best for them are the family healing programs, in which families go to the country and seek to come to terms with alcohol, gas

⁵⁴ In 1992, the children from Davis Inlet were taken to Alberta.

sniffing and other problems of social dysfunction. However, on the return to the communities many of the problems resurface, and at the present there is little to provide the essential in-community follow-up. Proposals to link cultural awareness and health, like the outposts program, tend to fall through the funding gaps.

The Innu also express concern that even after they become registered they will not gain any further autonomy over health care. Discussions between the federal and provincial governments over the role to be assigned to the Health Labrador Corporation after the Innu are registered, and the belief among federal and provincial officials that the Innu do not have the capacity to manage health care, suggest that the Innu are correct in their perception. In November 2001, the DIAND regional office confirmed to the Chiefs of Sheshatshiu and Davis Inlet that the Government would enter into an agreement with the Province and the Health Labrador Corporation for the provision of child and family services to the Innu by the Health Labrador Corporation.⁵⁵ Federal officials also express concern over accountability in the management of funds. As mentioned earlier, Innu finances are currently under third-party management.

As in the case of education, it is difficult to see how the Government can justify continuation of the present arrangements. They are currently managing crises in Innu health but have not been successful in addressing the underlying problems. They are not responding to Innu requests that the Innu be allowed to take more responsibility for their health. This is not to suggest that one should ignore the substantial efforts by both levels of government on matters relating to Innu health or to question the well-meaning intentions of those involved in providing programs and funding. It is simply to say that in light of the history of health in the communities, a point has been reached where the request of the Innu to take responsibility themselves for health care — and to be able to make their own mistakes — becomes compelling.

During our discussions we heard much talk of “capacity building” but saw little evidence of real training, which is what the term “capacity building” denotes. The role of the federal and provincial governments should be to provide training that will allow the Innu to exercise their responsibilities in respect of education and health effectively. The assumption that the Innu do not have the capacity to manage education and health in their communities, and that if they were granted that responsibility they would fail, is easy to make given the educational, health and management experience of the Innu compared with the vast resources of the federal and provincial governments. But, as the Innu point out, the incentive for them not to fail is enormous. It is the education and health of their own people that are at stake. And, at least in the education field, failure is what already exists. The bar for measuring success could hardly be lower.

⁵⁵ Letter of Ian Gray to Chiefs Simeon Tshakapesh and Paul Rich, 30 November 2001.

What is needed, therefore, is a reversal of relationship. Instead of the Government and the Province taking responsibility for education and health in cooperation and consultation with the Innu, the Innu need to take responsibility for education and health in cooperation and consultation with federal and provincial authorities. This is not a fundamental change in direction, but simply a shift in the allocation of control.

Furthermore, as with the need for a time-line on negotiations for self-government, there is a parallel need to impose deadlines on the process of devolution of responsibility for education and health. The Government and the Province have begun to move in the right direction, but nine years after the 1993 Report, there is insufficient progress to show for it. It should take no more than another two years to complete negotiations to devolve responsibility to the Innu.

RECOMMENDATION 2:

That the Government enter into negotiations with the Innu with a view to enabling them, following registration, to take responsibility for education and health in their communities. The devolution of such responsibility to the Innu should be completed within two years.

This responsibility should be exercised in close cooperation with the federal and provincial governments, who should make it a high priority to provide training that will enable the Innu to exercise their responsibilities effectively.

With the successful resolution of self-government and devolution of responsibility for education and health, the Innu will regain control and autonomy over their own affairs. In the interim, as such negotiations proceed, time remains of the essence in terms of the preservation of Innu language, traditional skills and culture.

RECOMMENDATION 3:

That the Government provide full and continuous funding for the outposts program and similar Innu-directed initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture.

C. The Relocation of the Mushuau Innu

There is no doubt that the commitment to the relocation of the Mushuau Innu and the building of the new community of Natuashish is one of the most significant actions taken by the Government for the Innu. Notwithstanding the delays, the cost overruns and the disappointing results in terms of Innu training, relocation offers the Mushuau Innu a substantial opportunity and will provide them with a community and resources that bear practically no comparison whatsoever to their present conditions in Davis Inlet.

Relocation provides an incredible opportunity; it also poses an enormous challenge. It could change the future for the Mushuau Innu or it could fail. This could be an opportunity for the transformation of the community, or it could result in the social dysfunction of Davis Inlet simply being moved to Natuashish. In part, that is a matter for the community itself, as many Innu recognize. The issue of whether the new community will be a "dry" community has been debated. And there is recognition among the leadership that relocation is not a panacea for the substantial social problems that the community faces. Equally, the consequences of relocation rest on the willingness of the Government to continue with the project, and not to relocate the Innu and conclude that the task is done.

Until very recently nothing was being done to prepare the Innu for the relocation.⁵⁶ The Mushuau Innu Relocation Committee had been taking community members to the site each year to familiarize them with the construction and with what the community would be like when it was finished. Individuals have been able to see where their houses were to be built or in some cases see their houses under construction. What must be addressed are the physical and social implications of moving to a new place; of living in new homes that have facilities that did not exist in Davis Inlet; and of moving from pedestrian, ATV and snowmobile transportation to a community with roads that can accommodate cars and trucks, and with distances that require motor vehicle transportation.

What is needed is a commitment to a planning process for the future of the Mushuau Innu after relocation. The Government needs to work with the Innu on this issue, instead of leaving the Innu with the strong impression that nothing is being done. At present, there is a widespread view among the Innu that the Government will show no interest in the Mushuau Innu after relocation.

RECOMMENDATION 4:

That the Government provide funding and training for the Mushuau Innu to enable an effective relocation to Natuashish and to ensure that the new community is able to function into the future.

This training should enable the Innu to adapt to their new location, and to function fully and independently in the new community.

C. The Relationship Between the Innu and the Government

The difference between the amount of contact between the Innu and the Government at the time of the 1993 Report and the amount of contact today is remarkable.

⁵⁶ When we commenced this project, we were told that nothing had been done. In the latter stages of our investigation we were told that these matters were now being planned and that programs were to be put in place.

Yet, notwithstanding this increased, continuing contact, the level of mistrust and the lack of communication between the Innu and the Government is high. On a range of issues Innu and government perceptions vary widely. The Innu feel that significant progress is being made on land claims, but federal officials consider a comprehensive land claims settlement to be a long way off. Federal officials consider that issues relating to education and health are being addressed. The Innu feel that particularly in the area of education, essentially nothing is being done. Federal officials insist that the Innu demonstrate their "capacity" to manage their own affairs by exhibiting facility in complex bureaucratic procedures that require expertise in government terminology, extensive written documentation, and participation in time-consuming, multi-level meetings. The Innu respond that "capacity development" of this sort is not the type of expertise that gets to the heart of the major social, health and spiritual problems that beset their communities, and that participating in these activities displaces time and energy sorely needed to address more fundamental matters.

The Innu claim that the Government brought self-government negotiations to an end because it claimed that it did not have the capacity to negotiate with the Innu on so many fronts. Some federal officials say that it was the Innu lack of capacity to negotiate that led to the termination of self-government negotiations. The Innu suspect that, after the relocation of the Mushuau Innu and completion of the side agreement on Voisey's Bay, the Government will lose interest in the Innu. Federal officials claim that this is not so. Both sides claim that the real issues at stake are the health, education and well-being of the Innu communities, and particularly the future for Innu children. Each side, however, doubts that the other side is seriously interested in these issues.

In part, the differing perceptions of the Innu and the Government are fuelled by the starting assumptions of each side. Federal officials believe they are doing what the Innu have been asking be done. They are treating the Innu as other Indians in Canada by registering the Innu under the *Indian Act*. However, the Innu also want recognition of the fact that they have not been treated properly by the Government for the past 50 years. For them, whatever is done in the future has to be in light of, and cannot ignore, the past. Moreover, some federal officials tend to view who the Innu are and what they might be through an urban lens that seems disconnected from the reality of the coast of northern Labrador.

In the past few years, the Innu have seen a hardening of federal positions, resulting in the relationship becoming more adversarial. Federal officials see the period as one in which they have managed to inject some reality into the negotiations. But to the extent that negotiations between the Innu and the Government are adversarial, it is a relationship in which the cards are held by one side. Whether there are to be negotiations and whether the Innu are to be funded so they can negotiate are matters determined by the Government. It is a negotiation where one side has time, but the other side has everything else.

The lack of communication and mutual understanding has clearly had an impact on negotiations between the Innu and the Government. In fact, this level of mistrust raises serious questions about the prospects for a successful and timely conclusion of negotiations on self-government, land claims, and devolution of responsibility for education and health. The Innu and the Government both need to reflect seriously on how to remould their relationship in more positive directions.

For example, meetings routinely held in Ottawa and Montreal could instead be held in Goose Bay, Sheshatshiu, Davis Inlet or Natuashish in the future. This would both relieve Innu budgets and provide federal officials with a better sense of the reality of Innu lives.

In areas where miscommunication has become endemic, both sides might also consider the appointment of a mediator. Indeed, if no progress is made on self-government negotiations or on the devolution of education and health, the parties should appoint a mediator to deal with these issues.

RECOMMENDATION 5:

That, if serious progress is not achieved in negotiations on self-government within two years, and serious progress is not achieved in the devolution of responsibility for education and health within one year, a mediator should be appointed to assist the parties.

At the same time, both sides also acknowledge that progress is being achieved, and of course such progress is critical. Notwithstanding the difficulties that face the communities, this is perhaps a time of unheralded opportunity. The relocation of the Mushuau Innu, the economic development currently occurring, the potential of projects such as Voisey's Bay and the commitment of the current Innu leadership all provide an opportunity that must not be lost. It is incumbent on the Government not to let this opportunity pass, or to mire progress in another eight years of start-stop-start and change of direction. Implementation of the recommendations made in this report will ensure that progress is maintained.

VII Conclusion

The 1993 Report suggested that what was needed was a dramatic gesture of confidence by the Government — a new initiative from the Government that would acknowledge constitutional responsibility and place relations between the Innu and the Government on a new footing. The acknowledgement of constitutional responsibility that eventually came was neither dramatic nor one to inspire confidence. It came piecemeal, and seemingly grudgingly, and was accompanied by doubts, steps backwards and significant concerns over the financial implications of the new relationship. Moreover,

progress was often the result of political intervention, although from the Innu point of view, political commitments often seemed to be forgotten once the matter returned to the bureaucratic level.

There is no doubt that the Government has responded in terms of funding and in terms of the numbers of people in the federal system now dealing with Innu issues. However, the machinery of the governmental bureaucratic processes does not always seem attuned to responding to Innu needs and problems. On the positive side, relocation of the Mushuau Innu presents a major opportunity. At the same time, ensuring its success represents a major challenge. Equally, the transition to registration and reserve creation, the comprehensive settlement of land claims and the negotiation of self-government arrangements represent both opportunities and challenges for the Innu and the Government.

The future does not lie solely in institutional arrangements, although they play a key role in ensuring that the Innu can take responsibility for their own lives. The test of the relationship between the Innu and the Government over the next five to 10 years has to be measured in terms of the health of Innu children, women, men and families; in terms of the education that Innu children are receiving; and in terms of the preservation of Innu language and culture. Those are the true tests of whether the Government is fulfilling its fiduciary responsibility towards the Innu. Indeed, those issues should be the specific subject of the next review by the Canadian Human Rights Commission of the relationship between the Innu and the Government.

RECOMMENDATION 6:

That the Canadian Human Rights Commission review the progress made in the implementation of the recommendations in the 1993 Report and this Follow-Up Report in five years' time.

Summary of Conclusions

1. The Government has implemented the first recommendation of the 1993 Report that it formally acknowledge its constitutional responsibility to the Innu.
2. The Government has implemented the first part of the second recommendation in the 1993 Report, that it enter into direct funding arrangements with the Innu.
3. The Government has not implemented that part of the second recommendation in the 1993 Report, under which the Innu were to be provided with access to all federal funding, programs and services that were available to status, on-reserve Indian people in Canada. However, it has implemented part of this recommendation and it has, albeit belatedly, set in motion a process — registration and the creation of

reserves — that will ensure the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada.

4. The Government has not implemented that aspect of the second recommendation in the 1993 Report that called on the Government of Canada to preserve “the unique aspects of existing arrangements such as the outposts program.”
5. Although the Government did enter into self-government negotiations with the Innu as proposed in the third recommendation in the 1993 Report, placing those negotiations in abeyance with no plan for recommencing them means that the third recommendation of the 1993 Report has not been implemented.
6. The Government is in the process of implementing its commitment to the relocation of the Mushuau Innu to the site chosen by them as proposed in the fourth recommendation in the 1993 Report.
7. The Government has gone a significant way towards implementing the fifth recommendation in the 1993 Report that it provide the funding necessary to implement the Report's recommendations. However, the issue will remain open until all of the recommendations have been fully implemented.
8. Although the actions of the Government in respect of the Innu conform to some of the recommendations of the Royal Commission on Aboriginal Peoples, such as the building of the community at Natuashish and in some respects health reform, in many critical areas such as education and self-government there is little evidence that the recommendations of the Royal Commission have been implemented at all in respect of the Innu.
9. There is an opportunity for the Government to reach a comprehensive land claims settlement with the Innu. There is momentum on the Innu side, arising out of their new proposals and the opportunities provided by the Voisey's Bay development, that will be lost if the Government does not match that momentum. Progress requires a clear commitment by the Government and the early resumption of self-government negotiations.
10. Unless the Government acts to ensure that the Innu are able to take responsibility for their own affairs and are able to move to self-government, Canada is at risk of violating its international obligations under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Draft Declaration on the Rights of Indigenous Peoples*. Furthermore, in dealing with the children of the Innu communities of Davis Inlet and Sheshatshiu, Canada is obliged under the *Convention on the Rights of the Child* to have the well-being and best interests of the children as a primary consideration.

11. Funding to the Innu should take account of the fact that they have been disadvantaged by the failure of the Government to exercise its fiduciary obligation to the Innu, and any remission order in respect of taxes should be dated from 18 August 1993.

Summary of Recommendations

1. That the Government immediately resume self-government negotiations with the Innu, and that it complete such negotiations within the next five years.
2. That the Government enter into negotiations with the Innu with a view to enabling them, following registration, to take responsibility for education and health in their communities. The devolution of such responsibility to the Innu should be completed within two years.
3. That the Government provide full and continuous funding for the outposts program and similar Innu-directed initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture.
4. That the Government provide funding and training for the Mushuau Innu to enable an effective relocation to Natuashish and to ensure that the new community is able to function into the future.
5. That, if serious progress is not achieved in negotiations on self-government within two years, and serious progress is not achieved in the devolution of responsibility for education and health within one year, a mediator should be appointed to assist the parties.
6. That the Canadian Human Rights Commission review the progress made in the implementation of the recommendations in the 1993 Report and this Follow-Up Report in five years' time.

Annex A: Summary of Conclusions from the 1993 Report

In respect of Complaint No. 1:

- (i) That in 1949 the Government of Canada failed to acknowledge and assume its constitutional responsibility for the Innu as Aboriginal people in Canada.
- (ii) That the direct consequence of this failure was that the Innu were not given the opportunity at that time to become registered under the *Indian Act* and to have reserves created for the communities of Sheshatshiu and Davis Inlet.
- (iii) That to this day the Government of Canada has not acknowledged in an unequivocal way its direct constitutional responsibility for the Innu as Aboriginal people in Canada.

In respect of Complaint No. 2:

- (iv) That the failure of the Government of Canada to acknowledge and assume direct responsibility for the Innu as Aboriginal people, which resulted in the failure in 1949 to apply the provisions of the *Indian Act* to them, has meant that the Innu have not received the same level and quality of services as are made available by the Government to other Aboriginal people in Canada.
- (v) That the failure of the Government of Canada to provide a level or quality of services to the Innu similar to that provided to other Aboriginal people in Canada constitutes a breach of its "fiduciary obligation" to the Innu as Aboriginal people in Canada.

In respect of Complaint No. 3:

- (vi) That the failure of the Government of Canada to assume responsibility for the Innu as Aboriginal people in Canada has impaired the ability of the Innu to move toward self-government and to obtain control over programs and services that affect them. The existing arrangements will inhibit future negotiations on self-government and devolution of programs and services.

In respect of Complaint No. 4:

- (vii) That the relocation of the Mushuau Innu to Nutak was undertaken without any real consultation with the Innu and without their consent.
- (viii) That there was very little knowledge or understanding of who the Innu were as people at that time and government officials assumed that they could make decisions for the Innu.

(ix) That there is no evidence of a serious comparison of the conditions the Innu would face at Nutak with those that existed at Davis Inlet.

(x) That the decision to relocate the Mushuau Innu was motivated by the fact that the government depot was to be closed at Davis Inlet and by the belief that the Moravian Mission at Hopedale would be opposed to the Innu coming to the government depot at Hopedale.

(xi) That the decision to relocate the Mushuau Innu was taken against a background of an assumption that white officials knew what was in the interests of the Innu and of a policy that sought to turn the Innu into "white men" and to integrate them into the economy primarily through fishing.

(xii) That the Mushuau Innu were relocated to their present site on Iluikoyak Island without any meaningful consultation about the move.

(xiii) That the particular location was chosen primarily because it fulfilled the needs for a harbour and wharf to sustain the government store.

(xiv) That the interests of the Innu were assumed to be those identified by the priest and government officials who dealt with the Innu.

(xv) That the relocation was also motivated by an interest in directing the Innu towards fishing as an economic activity and was not focused on preserving traditional Innu practices such as returning to the country and caribou hunting.

(xvi) That, although the Innu were not opposed to the move, their views were formed by the understanding that they would be receiving houses that would have running water and sewage disposal and this understanding is supported by the records of the time and by the construction of amenities in the houses that presupposed the existence of running water and sewage disposal.

(xvii) That there has been a failure since 1967 either to provide the Innu with the living conditions they understood they were to get when they moved to their present location or to remedy the fundamental deficiencies of the lack of running water or of any sewage disposal system.

(xviii) That the living conditions at Davis Inlet are an important contributor to the standard of health in the community and the widespread social dysfunction that exists there.

(xix) That the actions of the authorities in relocating the Mushuau Innu to Nutak in 1948 failed to meet the appropriate standard of conduct for a fiduciary.

(xx) That the relocation of the Innu to Iluikoyak Island in 1967 and the failure to remedy the living and social condition of the Mushuau Innu on Iluikoyak Island since that time are a breach of the fiduciary obligation of the Crown for which the Government of Canada under its constitutional mandate in respect of Aboriginal people bears responsibility.

Annex B: List of Interviews Conducted for the 2002 Report

Persons interviewed in preparation for writing the 2002 Report included the following:

Gregory Andrew
Leila Andrew
Mary Jane Andrew
Daniel Ashini
Jerome Bertholet
Clara Blake
Patrick Borbey
Brian Doré
Anik Dupont
Sean Dutton
Marie Fortier
Al Garman
Leila Gillis
Ian Gray
Joseph Gregoire
Rose Gregoire
Shirley Guy
Terry Hann
Kathleen Hobbs
Larry Innes

Eric Maldoff
Joe Matire
Joe McKinnon
Ben Michel
Jim Nui
John Nui
Mary Ann Nui
John Olthuis
Bob Pelley
Elizabeth Penashue
Peter Penashue
Sebastian Piwas
Cajetan Rich
Joseph Rich
Katie Rich
Paul Rich
Brian Torrie
Louise Trépanier
Simeon Tshakapesh
Jim White

Annex C: Biographical Notes on the Authors

Constance Backhouse

B.A. (Man.), LL.B. (Osg. Hall), LL.M. (Harvard), of the Ontario Bar, Full Professor, Director of the Human Rights Research and Education Centre

Constance Backhouse is Professor of Law at the University of Ottawa, where she teaches in the areas of criminal law, human rights, and women and the law. She is the Director of the Human Rights Research and Education Centre.

Professor Backhouse is the author of *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999), and *Petticoats and Prejudice: Women and the Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), which was awarded the 1992 Willard Hurst Prize in American Legal History by the (U.S.) Law and Society Association. Another of her books, *Challenging Times: The Women's Movement in Canada and the United States* (Montreal and Kingston: McGill-Queen's University Press), co-edited with David H. Flaherty, was named the 1993 Outstanding Book on the Subject of Human Rights in the United States by the Gustavus Myers Center for the Study of Human Rights in the United States.

From 1988 to 1992, Professor Backhouse served as a member of the Steering Committee for the Complainants' Group in the human rights complaint concerning Mary Jane Mossman, styled as Mary Lou Fassel *et al. v. Osgoode Hall Law School, York University and Harry Arthurs*. Since 1982, she has been a member of the board of directors of the Women's Education and Research Foundation of Ontario, Inc. In 1981, she was awarded the Augusta Stowe-Gullen Affirmative Action Medal by the Southwestern Ontario Association for the Advancement of Learning Opportunities for Women.

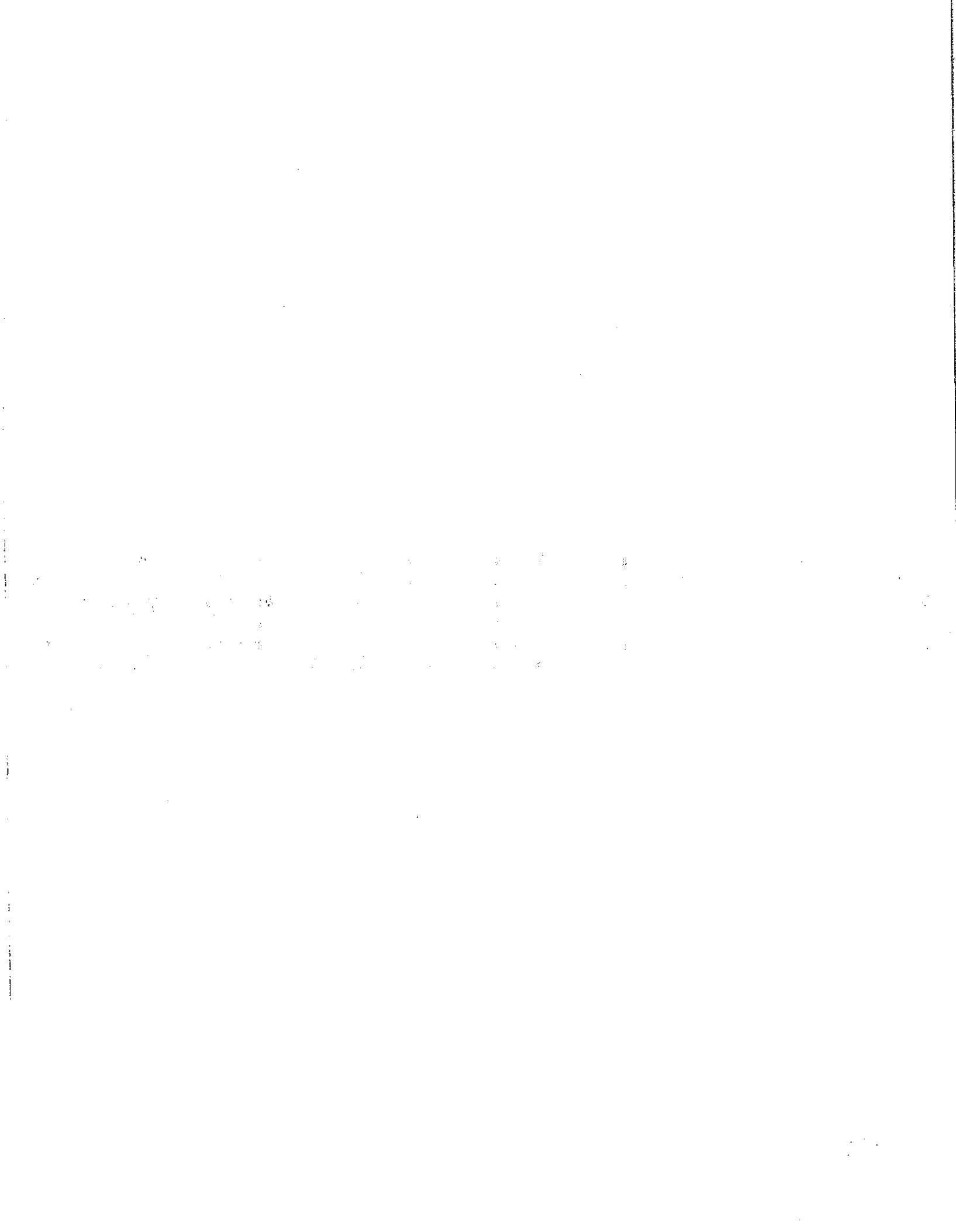
In 1998, she received the Law Society Medal. In 1999, the Bora Laskin Human Rights Fellowship provided funding to enable her to conduct a study of the history of sexual assault law and child custody law in Canada and Australia, a project in which she is currently engaged.

Donald M. McRae

LL.B. (Otago), LL.M. (Otago), Dipl.Int.Law (Cant.), of the Bars of New Zealand and Ontario, Full Professor

Professor McRae holds the Hyman Soloway Chair in Business and Trade Law and is a former Dean of the Common Law Section. He was formerly Professor and Associate Dean at the Faculty of Law at the University of British Columbia. He specializes in the field of international law and has been an Advisor to the Department of External Affairs of the

Government of Canada and Counsel for Canada in several international fisheries and boundary arbitrations. He was Chair of the first dispute settlement panel set up under Chapter 18 of the Canada-U.S. Free Trade Agreement, and sat on subsequent panels under chapters 18 and 19 of the Free Trade Agreement. He was also Chair of the first dispute settlement panel set up under the U.S.–Israel Free Trade Agreement. He is currently on the roster of panellists under Chapter 19 of NAFTA and on the Indicative List of Panellists of the World Trade Organization. In 1998 he was appointed the Chief Negotiator for Canada for the Pacific Salmon Treaty. His publications are principally in the field of international law and he is Editor-in-Chief of the *Canadian Yearbook of International Law*. Professor McRae teaches contracts, international law and international trade law at the University of Ottawa.



This is Exhibit C

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a smaller, more complex signature.

A Commissioner, etc.

Child Welfare League of Canada
Ligue pour le bien-être de l'enfance du Canada

Innu Prevention Approach

Presented to the Innu Round Table Secretariat

January 2016





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Acknowledgements

We at the Child Welfare League of Canada (CWLC) appreciate the opportunity afforded to us by the Innu Round Table Secretariat (IRTS) to conduct this research. Their commitment to strengthening child welfare in Innu communities facilitated the production of this report. The CWLC thanks Steve Joudry for his support and leadership for this study. The CWLC also thanks the Innu leadership for creating a context that encouraged an unimpeded exchange of ideas.

The CWLC also wishes to thank the child welfare workers, supervisors and senior administrators of Newfoundland and Labrador. These professionals provided us with firsthand experiences and their vision for future child protection capacity development. Their feedback was essential to the research process. Without their contributions, collaboration and insight, this report would not have been possible. Our thanks also extend to the communities of Sheshatshiu and Natuashish, who graciously welcomed and assisted the CWLC research team.

In addition, this report would not be possible without the invaluable input of a number of dedicated people. Special thanks are extended to Wendy White for her assistance and support. Finally, we wish to thank the IRTS for shedding light on the issues faced by those involved with children and youth in Sheshatshiu and Natuashish. The investigations and reports completed by the IRTS provided a meaningful foundation for what needs to be done in the best interests of children in these Innu communities.

Gordon Phaneuf

Chief Executive Officer

Abbreviations

Children and Youth Care and Protection Act (The Act)

Child Welfare League of Canada (CWLC)

Child, Youth and Family Services (CYFS)

Enhanced Prevention Focused Approach (EPFA)

Indigenous and Northern Affairs Canada (INAC)

Innu Prevention Approach (IPA)

Innu Round Table Secretariat (IRTS)

Memorandum of Understanding (MOU)

National Health Interview Survey (NHIS)

National Household Survey (NHS)

Prevention, Respect, Intervention, Development and Education (PRIDE)

Social, Technological, Economical, Environmental and Political (STEEP)

Executive Summary

Introduction

The Child Welfare League of Canada (CWLC) was contracted by the Innu Round Table Secretariat (IRTS) to assist in determining the child welfare needs of the children of the Innu communities of Sheshatshiu and Natuashish. Working in conjunction with the IRTS, the CWLC conducted research with the two communities in order to provide insights into how to improve child welfare in the communities. Findings from the research were used to create the Innu Prevention Approach (IPA) framework. The overall goal of the project was to gather the information needed to improve the well-being of the children and families in the communities and to assist in obtaining prevention funding from the Federal Government.

The CWLC understands that it comes to these communities as an invitee and visitor. We recognized that we are not experts about Innu culture and the communities. As such we made sure that the research was done with the full participation of the communities. The involvement of community members, leaders and IRTS staff was an important foundation for the research.

Surveys, interviews and focus groups were used to gather data in both communities. The surveys were designed to collect both broad based data while the interviews and focus groups in-depth were used to gather more in-depth information from participants. This work was conducted from June 22nd to June 26th, 2015. An environmental scan and needs assessment were also completed.

Environmental Scan

IRTS staff provided critically important direction regarding the importance of tailoring healing efforts to the unique needs of the Innu people. This informed the findings of the environmental scan. Data for the scan was based on existing information found in the *Innu Healing Strategy*, staff reports, government statistics, and research papers. Specific firsthand account information from staff, community members, and the Innu leadership was gathered during the CWLC June site visit to supplement and expand upon the existing data. A Social, Technological, Economical, Environmental and Political (STEEP) Analysis was used as the conceptual foundation for the scan.

Needs Assessment

Fifty-five individuals participated in the research. This included IRTS staff, Child, and Youth Family Services staff, community members and members of the Innu leadership. Surveys were collected by the CWLC and aggregated for data purposes. In addition, the CWLC met with community members and Elders who spoke of what they believed to be the most pressing social issues. The following issues were identified:

A. Funding

Participants consistently reiterated that existing social services do not have adequate funding. The provision of increased services to existing programs is necessary to ensure continuity and sustainability.

B. Inconsistent Services

Social programs and projects in both communities tend to be funded on a short-term annual basis. Participants strongly

believe that this type of funding formula creates program instability which in turn contributes to inconsistent services within each community. This is in part due to the difficulty staff has in properly evaluating the long-term benefits that short-term programs bring to the community.

C. Isolation

Both communities are in isolated areas of Labrador. This creates a number of unique challenges that impact the provision of effective services. The cost of transportation and access to proper services limits the functioning of social programs, particularly in Natuashish where only marine and air transportation is available. It also limits the access of program staff to specialized external support and training.

D. Drug and Alcohol Dependencies

The ongoing impact of the historical injustices experienced by the Innu has contributed to substance misuse in both communities. It is such a long-term problem that substance misuse is becoming normalized and becoming ingrained in the lives of many Innu families. One of the outcomes of this misuse is an overrepresentation of Innu children in the provincial child protection system.

E. Infrastructure Conditions

Both communities have core buildings that support most of the community services. Although the buildings need upgrading the overall structures in place currently provide adequate space in the communities. Housing conditions and availability remain key issues in the communities.

G. Capacity Development

A critical need was identified for increased administrative capacity in programs, improved and on-going staff development opportunities, culturally appropriate programs that reflect Innu values, improved transparency and accountability processes and long-term funding based on current needs.

H. Coordination of Services

A need for an integrated service delivery model that reflects the needs and values of the communities was identified as a key issue. This includes access to culturally sensitive services outside the communities when needed. This requires ongoing collaboration between the Innu and the Federal and Provincial Governments.

Prevention Plan

A two-step process for the development and implementation of the prevention plan was identified. This includes:

- A) Building a blueprint of action;
 - B) Building community capacity in order to be able to develop and implement the blueprint. It is recommended that the following has to occur to develop the prevention plan.
1. **Human Resources-** Personnel are required to identify the needs of the communities and act on them. These individuals will develop a reporting structure and provide the supervision, training, and skills development required to build a blueprint of action(s).
 2. **Management Structure-** The leadership team will need to provide the necessary technical and management support to

staff while also identifying what other technical supports are needed.

3. **Community Leadership-** Both elected and professional community leaders will communicate with both communities about implementing the prevention plan while also providing cultural support and guidance to the plan. Leaders will perform an ongoing evaluation of the prevention plan and directly incorporate input from the community.
4. **External Support of Authorities and Experts-** External support of the prevention plan will be provided by contributions and support from the:
 - Department of CYFS
 - Federal Government (INAC)
 - Newfoundland Foster Care Association
 - Advocate for Children and Youth, Newfoundland & Labrador
 - Child Welfare Experts
 - CWLC
 - Mi'kmaq Confederacy
 - Indigenous Child and Family Services Experts

Innu Prevention Approach

The Innu Prevention Approach guided all aspects of the research. The approach led to the development of the implementation plan as well as recommendations to improve child welfare in both Innu communities. The implementation plan is based on six core goals identified by the IRTS and reviewed by CWLC. The goals informed the direction of the needs assessment. In addition, the approach built upon work done by the Mi'kmaq Confederacy child and family services prevention initiative in Prince Edward Island.

The Innu Prevention Approach goals are to:

1. Provide coordinated enhanced prevention services to Innu children, youth, and families.
2. Implement initiatives focused on the prevention of child abuse and neglect, maintaining safe living environments for children and increase family resiliency.
3. Prevent Innu children from being removed from family, community, and culture.
4. Provide Innu children who require temporary and/or permanent care outside the familial home with nurturing placements that are culturally appropriate.
5. Decrease the number of Innu children and youth residing in care and custody placements both outside their respective communities of Sheshatshiu and Natuashish as well as outside their province.
6. Build agency capacity to enhance services and promote best practices to children and families.

Recommendations

The following recommendations are based on both the CWLC's research and other work being undertaken by the IRTS and CYFS. The recommendations serve as a reminder of the work that needs to be done and considered in the short, medium, and long term. The ten recommendations are:

1. Create a coordinated support strategy to bring Innu children and youth home
2. Create a community specific reintegration plan for Innu children and youth
3. Create and fund the necessary infrastructure specific to a prevention approach

4. Develop prevention based support services
5. Conduct strategic training initiatives
6. Utilize a community grounded prevention approach
7. Apply and implement the *Innu Healing Strategy*
8. Develop alternative care services
9. Build community and service capacity
10. Develop the necessary technical expertise to develop, implement and support the services.

Summary

The communities are facing significant challenges in meeting the child welfare needs of their children. The challenges reflect the impact of the historical injustices experienced by the Innu.

The CWLC worked in conjunction with the IRTS and members of the communities and Innu leadership to develop a workable action plan on a prevention approach. This report outlines what is recommended in order to effectively deal with the identified and acknowledged challenges.

Introduction

Decades ago, Innu leadership identified their desire to establish a child and family service agency built upon Innu values. Since that time the Innu Round Table Secretariat (IRTS) has done significant work on the development of a plan for the provision of prevention services for children and families in Sheshatshiu and Natuashish. This has included the development of the FASD Systems Assessment Report (2014) and the *Innu Healing Strategy* (2014). Unfortunately requests for funding under the Enhanced Prevention Focused Approach were rejected by the Federal Government in both 2013-2014 and 2014-2015. In order to gather the information needed for a new funding submission, the Child Welfare League of Canada (CWLC) was invited by the communities to assist in the development of an enhanced plan to be used as the foundation for a new request for the funding of prevention services in the communities. This report builds upon the existing work of the IRTS and the innate knowledge of the Innu to identify a culturally grounded prevention approach of dealing with the ongoing and long standing challenges experienced within the communities.



(Picture: Innu Healing Strategy: www.irtsec.ca)

Description of the Problem

The Department of Child, Youth, and Family Services has reported that, as of March 31, 2015, a total of 175 Innu children are in care of the Province (CYFS, 2015). The Innu population in Sheshatshiu and Natuashish is estimated at 2,200 (*Innu Nation*, 2015). This stands in comparison to the Labrador Inuit, who had a reported 115 children in care of the province and a population of 6,265 (*Nunatsiavut*, 2015). There are a disproportional number of Indigenous children in care and within this number; there are a disproportionate number of Innu children in care compared to other Indigenous groups. Many of these children are removed from the communities and as a result are at danger of becoming disconnected from their families and culture. It is widely accepted that this disconnection can have lifelong consequences. At the very least, many children who have left the communities have returned and faced hardship and difficulties in transitioning back to their families and culture. In response to this problem and acknowledging that in order to be healthy, children need to be connected to their families, communities and culture, the Innu leadership has strongly stated the need for prevention approaches that would provide services to enable Innu children to stay in their communities.

In the long-term, the IRTS seeks to create a new Innu child welfare agency that will deliver child protection services throughout all Innu communities. The provision of prevention services by the communities is a significant first step towards achieving delegated authority from the Province of Newfoundland and Labrador Department of Child, Youth and Family Services for the establishment of an Innu child welfare agency. A child welfare service based upon Innu values will be a major step in the development of healthy children, families, and communities.

Background

The CWLC was contracted by the IRTS to assist in determining the child welfare needs of the children of the Innu communities of Sheshatshiu and Natuashish. Working in conjunction with the IRTS, the CWLC conducted research with the two communities in order to provide insights into how to improve child welfare in the communities. Findings from the research were used to create the Innu Prevention Approach (IPA) framework. The overall goal of the project was to gather the information needed to improve the well-being of the children and families in the communities and to assist in obtaining prevention funding from the Federal Government.

This report builds upon the foundational work already conducted by the IRTS. One of their key initiatives has been the development of the *Innu Healing Strategy* that was completed in 2014. The *Innu Healing Strategy* is a common vision for the future as well as a consensus on the priorities that need to be addressed in the Innu communities of Newfoundland and Labrador. The strategy asserts that healing within Innu communities is a personal and a family responsibility. Healing cannot be forced on people. Instead, people begin their journey towards healing when they are ready and it is the community's collective responsibility to be prepared to support them. Implementing a healing strategy based on this philosophy means that responsibility for preparedness to support the healing

of individuals and families rests with local community resources and services. The research for this report was conducted using these values as a foundation.

Methodology

Participants

Participants were members of the Sheshatshiu and Natuashish communities as well as employees of social services directly and indirectly tied to child welfare social service provisions. Participants included:

- (a) Innu Roundtable Secretariat staff;
- (b) Child, Youth and Family Services staff;
- (c) Community members, and,
- (d) Innu Leadership.

Fifty-five individuals participated in the consultative process. Participants were approached by the IRTS liaison worker and were asked to complete a survey regarding how to enhance prevention initiatives in the communities. In addition, the CWLC met with community members and Elders who outlined what they believed are the most pressing social issues. Participants varied in their social, economic and demographic backgrounds.

Procedures

The main goal for the study was to explore the collective capabilities of Sheshatshiu and Natuashish and determine what is required for both communities to develop and provide prevention services governed by Innu culture and worldviews. Both an environmental scan and a needs assessment were conducted by CWLC in conjunction with the IRTS.

Subsequent to analyzing the findings from the two study elements, a prevention plan was designed outlining a new community-informed Innu Prevention Approach. This Approach is intended to evolve and develop in forthcoming years as the capacities of both communities change and grow.

Phase One – Environmental Scan and Site Visit Assessment

During the first phase of the study, CWLC researchers conducted an environmental scan using the STEEP Analysis framework. All (S)ocial, (T)echnological, (E)conomical, (E)nvironmental and (P)olitical aspects of both communities were analysed to determine what additional supports, funding, and plans that were required to establish a community-led Innu Prevention Approach within the context of the *Innu Healing Strategy* that meets the needs of the children, families and communities.

Phase Two – Surveys, Interviews & Focus Groups

During the second phase of the study, the CWLC conducted surveys, interviews and focus groups from June 22 to June 26, 2015 to explore and expand on the environmental scan.

Data Collection

Surveys, interviews, focus groups and site visits were used to gather data in both communities. The surveys were designed to collect both broad based data while the interviews and focus groups were used to gather more in-depth information from participants. To maintain anonymity and confidentiality, all of the data from the survey questionnaires were aggregated by the CWLC research team in Ottawa. At all stages of the study, participant information was kept confidential. Furthermore, this report anonymizes participant data by removing any means through which participants could be identified.

CWLC researchers and IRTS staff created four distinct surveys to gather quantitative and qualitative data from both communities. Participants completed the relevant survey either electronically or in a hardcopy format. In total there were six focus group meetings in Sheshatshiu and Natuashish, one meeting with the Natuashish leadership in Happy Valley-Goose Bay and one meeting with Sheshatshiu leadership in Sheshatshiu. The site visit assessment obtained specific firsthand information to support data collected during the environmental scan while also capturing practical information pertinent to creating an Innu Prevention Approach.

Themes, sub-themes, and key issues were identified through the comparative analysis of the responses. All survey data were thematically coded during the aggregation process. Relevant codes were developed by dividing data into recurrent themes and sub-themes. This process ensured that the findings were meaningful, having emerged directly from participants' survey responses. The data drawn from the participants tended to confirm previously documented information.

Environmental Scan

The environmental scan was conducted as a means of further identifying the needs of the two communities. A Social, Technological, Economical, Environmental and Political (STEEP) Analysis were used as the conceptual foundation for the scan. This section reports on the outcomes of the scan.

(S)ocietal

Innu of Labrador

Currently there are approximately 2200 Innu living in Sheshatshiu and Natuashish (*Innu Nation, 2015*). The Innu of Newfoundland and Labrador have a long and distinct history. There is general agreement that the historical injustices associated with the forced shift from nomadic hunters to sedentary residents are a cause of many social health issues of the Innu (*Backhouse & McRae, 2002*). The rapid shift of lifestyle from the mid 1950's to the mid 1960's changed the environment of the Innu where they went from being self sufficient by means of living off the land to being dependent on government services and accessing food through grocery stores. Challenges in the transition that face the Innu have been outlined in the First Nations and Inuit Health Branch Health Needs Assessment (2012) and the Impact Evaluation of the Labrador Innu Comprehensive Healing Strategy (2009). The reports identify the following social and health issues as being the most prevalent issues that affect Innu communities:

- 1) The suicide rate in SIFN is 75.7 per 100, 000 people, and Mushuau Innu First Nation is 164.1 per 100,000 people in comparison to the 11.0 per 100, 000 in the general Canadian population.
- 2) The average life expectancy is 48 years in Sheshatshiu Innu First Nation and 47 years in Mushuau Innu First Nation. The average Canadian life expectancy is 81 years.
- 3) Prenatal drug and alcohol use is 4- 6 times greater than reported in the general Canadian population.
- 4) Prenatal smoking rates are 5-6 greater than reported in the general Canadian population.
- 5) Oral health scores are significantly lower (Sheshatshiu Innu First Nation, three times lower) (Mushuau Innu First Nation, five times lower) than the general Canadian population.
- 6) The violent crime rate in 2010 in Sheshatshiu Innu First Nation was 31.31 per 100 people, in Mushuau Innu First Nation it was 23.69 per 100 people in comparison to 1.28 in 100 people in the general Canadian population.

These findings provide a stark reminder of the social issues the Innu face moving forward. The societal and health issues are factors related to decades of colonial policies that are linked to intergenerational trauma. Despite this, it is important to note that the communities have many strengths. The collaborative work done to create the *Innu Healing Strategy (2014)*, which is intended to uphold the core strengths of the Innu culture, is a testament to the ingenuity and sophistication of

these communities. The *Innu Healing Strategy* (2014) is a well-developed plan of action based on traditional Innu knowledge and contemporary public health information. It outlines the following as “Innu Core Values”:

- Respect
- Trust & Honesty
- Cooperation
- Nature
- Patience
- Knowledge
- Culture

The CWLC understands that although both communities have a common culture, there are differences in each community’s economy, location, geography, degree of isolation, and social, technological and physical infrastructure. The objective of this environmental scan is not to compare one community to another. It is the intention to outline the unique needs of each community.

Community of Sheshatshiu

Sheshatshiu is approximately forty kilometres from Happy Valley -Goose Bay which is the largest community in Labrador. The community has access to Happy-Valley-Goose Bay via Highway 520 throughout the year. It sits on the shore of Lake Melville and across from the community of North West River.

The Sheshatshiu Innu School provides education for students from kindergarten to grade twelve. The community also provides early childhood education services for children between the ages of two and five along with an Indigenous Head Start program available for children and their caregivers in the mornings during the school year.

There is no hospital in Sheshatshiu. A community health centre provides some physical and mental health services. Emergency and specialized care is provided outside of the community. The Mary May Healing Centre is an important resource for the community and provides services and programs such as: housing, family support programs, child protection, foster parent support, parent support, Fetal Alcohol Spectrum Disorder (FASD) services, family treatment and wellness, mental health, justice support, and general counselling services.

Community of Natuashish

Natuashish is approximately 300 kilometers from Happy Valley-Goose Bay. It is only accessible by air or marine transport. The Mushuau Innu moved to Natuashish from the former community of Davis Inlet where insufficient water, housing and services led to significant social problems. Inhalant abuse involving children in the community garnered national media attention in the early 1990. In response, the Federal and Provincial Governments and the Mushuau Innu signed the *Mushuau Innu Relocation*

Agreement in 1996, which provided for the relocation of residents of Davis Inlet to the new community of Natuashish on the mainland.

Despite the relocation, Natuashish continues to face serious and ongoing social issues. The number of community members who are addicted to drugs and alcohol is high. This is in spite of an alcohol ban that was instituted by the Band Council in 2010. The community's local RCMP detachment provides policing services and actively enforces this alcohol ban. However, addiction to both drugs and alcohol remains well-entrenched throughout the community.

The Mushuau Innu School provides education for students from kindergarten to grade twelve. The community also provides daycare services during the school year. The community has access to both provincial justice and court services with court proceedings coming to Natuashish on a rotational basis. There is no hospital in Natuashish. Instead, a health centre takes on most of the physical and mental health services. The health centre houses: child protection, foster parent support, and parent support. Emergency and specialized care is done in larger urban areas throughout the province. To access these services, residents of Natuashish must fly out of the community.

(T)echnological

The remoteness of these communities creates technological service challenges. The community of Sheshatshiu has internet and cellular services, Natuashish only has internet that is often unreliable.

The development of technological infrastructure has been slow and is a concern that was consistently raised by study participants during the CWLC's site visits. Basic communications (telephone, emails, teleconference calls) are available but can be inconsistent. Professionals who work in the communities found this to be a significant difficulty.

Professional e-services (web meetings, webinars, and video conferencing) have become an important tool in health and social services delivered in remote communities across Canada. The Federal and Provincial Governments have crucial roles to play in the development of resources in this area. It may be possible that the private sector could play a role in providing services if they are approached with a specific request. There is a major renewable natural resource project currently in place with which the Innu have a working partnership. In instances like this, the project organizers' expertise may be valuable as their operations require highly technical services.

(E)conomic

The economic well-being and viability of these communities is directly tied to the current generation of children. The economic future of the communities depends upon Innu children having a sense of belonging and purpose in their communities. Economic development can play a role in keeping children and youth in their communities as they transition to adulthood by providing employment opportunities.

The economic and employment opportunities in both the communities are limited and are decades-long points of concern. Ensuring good economic development has been an important subject for the Innu leadership. According to the National Household Survey (2011), Sheshatshiu has an unemployment rate of 27% and Natuashish of 25%. Natuashish has a median income of \$19,879 and Sheshatshiu of \$17,269 (NHS, 2011). The Canadian median income in 2011 is \$72, 240. In Newfoundland and Labrador it is \$67, 200 (NHS, 2011). The comparison shows a significant income rate difference between the Labrador Innu when compared to the Canadian average.

A recent agreement between the Innu and the Lower Churchill Falls hydroelectric project provides some economic opportunity for the Innu. This project has benefited residents in both communities but there are still significant unemployment levels. In order for youth and adolescents to obtain employment, they often have to leave their communities. While there is the Advanced Educations and Skills Program, overall there is limited skills and training development in the communities. This is more prevalent in Natuashish than Sheshatshiu.

The move toward social health and recreation services based on traditional Innu culture approaches and knowledge is contributing to the development of capacity that could contribute to employment. The *Innu Healing Strategy* (2014) is an example of capacity development fields being developed by the Innu.

(E)nvironmental

The Department of Child, Youth and Family Services plays a significant role in dealing with current social issues in Sheshatshiu and Natuashish. The IRTS acts as a liaison to represent the views and needs of Innu leadership. The goal of an Innu Prevention Approach is to develop prevention capacity by the IRTS while Child, Youth and Family Services continue to administer the department's child protection mandate. Both the Innu and the Provincial government are committed to working together in order to provide better prevention services for Innu children and youth. Within this context, it is important to understand the role of the Department of Child, Youth and Family Services.

The Department of Child and Youth Family Services

Child protection is currently delivered through the Newfoundland and Labrador Department of Child, Youth and Family Services. The Department is responsible for child protection in Newfoundland and Labrador. This includes establishing policy, delivering programs and services, and administering the Children and Youth Care and Protection Act (The Act). The Act is guided by the objective established at Section 8:

“To promote the safety and well-being of children and youth who are in need of protective intervention”.

The Act does not reference prevention.

Child, Youth and Family Services offices are located in both Natuashish and Sheshatshiu. They provide round-the-clock child protection services. Although Child, Youth and Family Services staff are guided by the same mandate, there are significant differences in the way services are delivered in the two communities. For example, most Child, Youth and Family Services workers in Natuashish do not permanently live in the community or close by the community. They fly-in on a two-week rotation as a team and live in housing, which is provided in the community. In contrast, the Sheshatshiu community is more accessible, some staff live in the community, although most travel from Happy Valley-Goose Bay.

The CWLC met and interviewed Child, Youth and Family Services workers in both communities. Participants acknowledged that most staff were not from the community and had little knowledge of Innu culture. Their intentions were to help, but overall, staff that participated in the study indicated their interventions are restricted by the Act.

Participants agreed that the Department of Child, Youth and Family Services is limited in its ability to adequately provide prevention services. Participants welcomed the opportunity for a strategic prevention initiative in both communities. They also acknowledged that the Innu communities should drive prevention. Overall, Child, Youth and Family Services staffs were enthusiastic about the introduction of an Innu Prevention Approach.

In Newfoundland and Labrador, 11% of the population 19 years of age and younger are Indigenous according to the 2011 National Household Survey (NHS), and 34% of the children and youth in care (17 and younger) are Indigenous as of December 2014. Out of 960 children in care in March of 2015, 320 were Indigenous. Of this, 175 were Innu children. This means that the number of Innu children in care make up approximately 18% of the in-care population. The total population of people living in NL is 514,563 according to the NHS which means the Innu of NL make up around 0.5% of the total NL population. While making up for only 0.5% of the population, 18% of the children in care in NL are Innu (CYFS, 2015).

Detailed data on the demographics of children in care is limited in NL. There are recent initiatives such as “Open Government” which releases basic data. The data does show that Innu children are disproportionately ending up in care of CYFS. In comparison to other Indigenous groups in the province, Innu children are still disproportionately represented in the care of CYFS.

Number of Clients by Service (March 31, 2015) Table # 1

Program	Central East	Metro	Labrador	Western	Provincial Total
Protective Intervention - # of children	1135	2240	850	570	4795
Protective Intervention - # of families	720	1350	535	360	2965
Kinship Services - # of children	140	225	75	65	505

Youth Services Residential Support Services	70	75	20	25	185
In Care/Custody	255	210	250	240	960
Residential - # of Foster homes	155	80	160	175	570

Children/Youth in Care by Indigenous Status (Since March 31, 2015) Table # 2

Status	Central East	Metro	Labrador	Western	Provincial Total
Innu	<5	<5	150	25	175
Inuit	5	<5	75	30	115
Métis	-	-	-	<5	<5
Mi'kmaq	<5	-	-	<5	5
Other Indigenous	10	-	<5	10	20
Total	20	5	225	70	320

(P)olitical

The Innu of Newfoundland and Labrador have a long and distinct history and a strong connection to the land. Each community has a separate Band Council. Overall, the Innu is led by an Executive Council that includes a Grand Chief, Deputy Grand Chief as well as Chiefs from the communities. For an in-depth perspective on the way of life of the Innu people, please refer to the Innu Nation's website for a reference list of publications on their history (*Innu Nation, 2015*). We encourage readers to look at Innu approved material for further information.

The Innu Round Table Secretariat

The eight Innu core values of respect, trust & honesty, cooperation, nature, patience, knowledge and culture are entrenched in the *Innu Healing Strategy*. The IRTS is the coordinating arm of the Innu Round Table tripartite process with the Government of Canada, Province of NL, and Innu. The IRTS is the collective organization of the Innu in regards to mandated services. The IRTS coordinates and administers common Innu priorities, including:

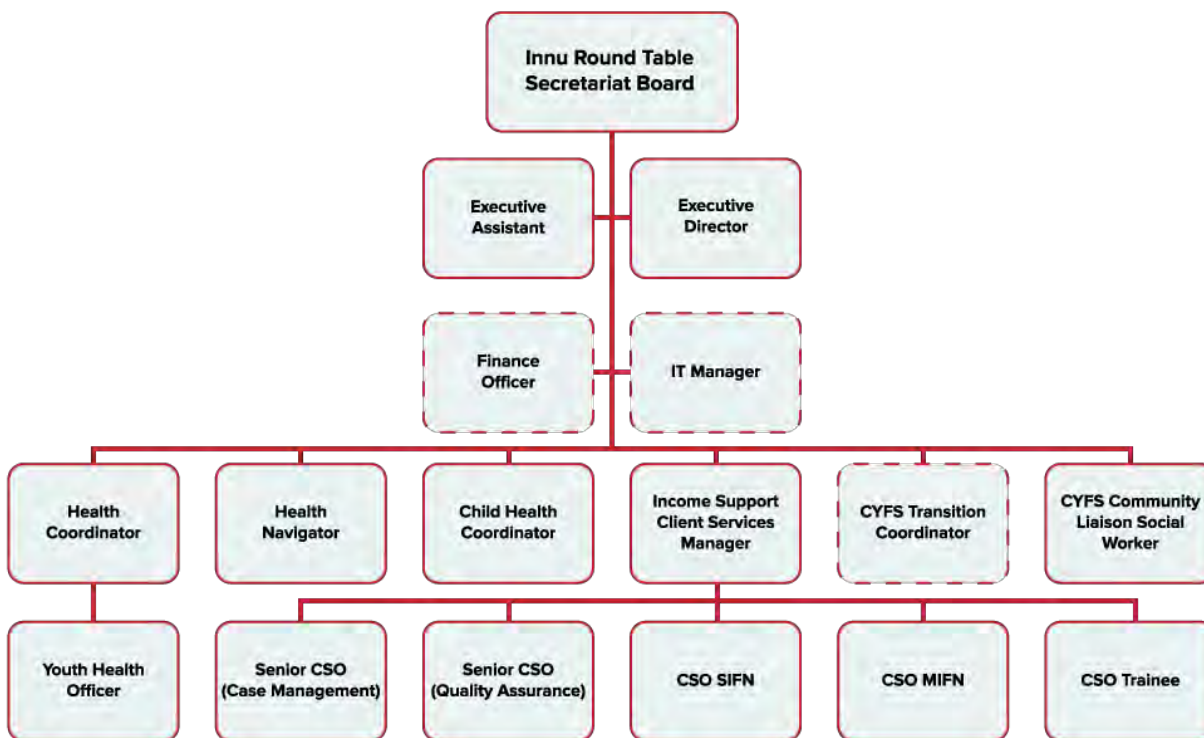
1. Capacity development;
2. Devolution of programs; and,
3. Managing the tripartite process with the Federal Government of Canada and the Province.

The IRTS provides the coordination, support and administration for the tripartite meetings where the three parties (the Innu, the Federal Government, and the Province of Newfoundland and Labrador) are represented. The IRTS also coordinates and oversees the social program devolution planning and the implementation of income support. It provides oversight to the work in the communities of the Newfoundland and Labrador Department of Child, Youth Family and Services. Additionally, the organization acts as the coordinating body for capacity development initiatives (*Retrieved from: www.irtsec.ca/about*).

On September 30, 2015 a historic working relationship agreement was signed by the communities, the IRTS, and the Minister of Child, Youth and Family Services. The agreement outlines the important work that Child, Youth and Family Services and the Innu want to accomplish together. The agreement is based on four components:

1. Out of community review for Innu children placed outside of their home community.
2. Joint committee in each of the communities.
3. A notice and case planning process for ongoing day-to-day contact between Child, Youth and Family Services and the IRTS.
4. Prevention services and engagement with Child, Youth and Family Services.

IRTS Organizational Structure



[\(www.irtsec.ca/about/\)](http://www.irtsec.ca/about/)

National Partners

The IRTS central function captures the uniqueness of the Innu culture through the leadership of their community members and Elders. The CWLC is in full support of the collaborative work done by the IRTS. As such, the CWLC acts as a national partner who works with the IRTS in order to leverage engagement across sectors and the Federal and Provincial Government.

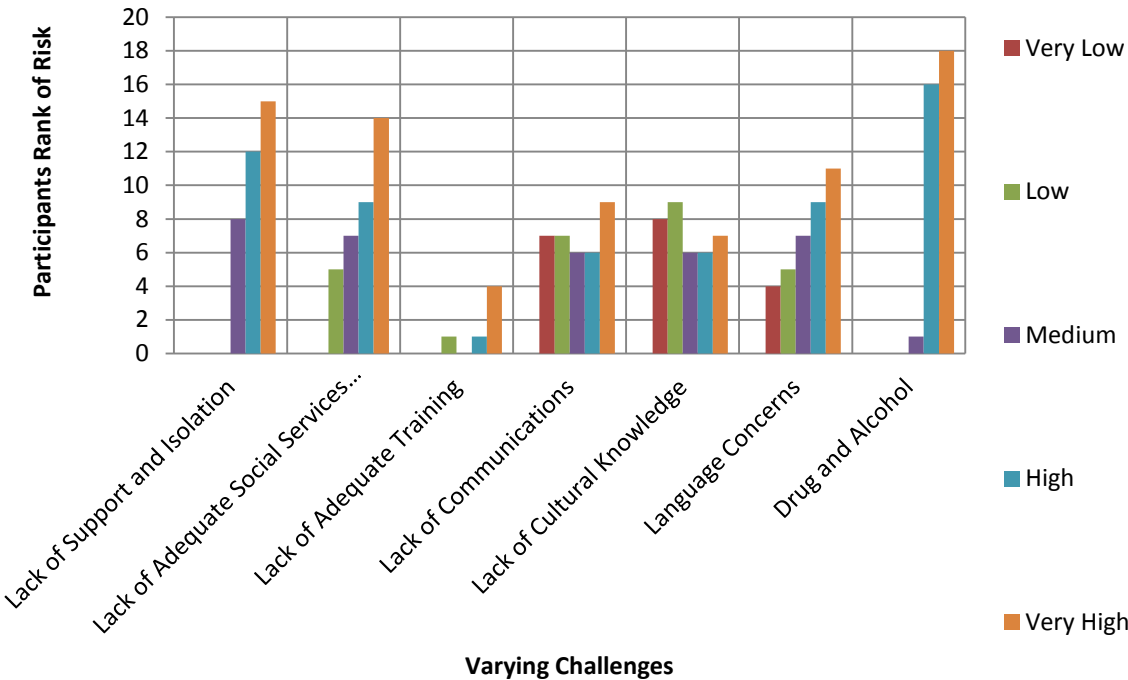
As national leaders in child welfare, the CWLC has both the technical expertise and experience to advocate in partnership with the IRTS for prevention funding. The short to medium term goal is for

the IRTS to implement a prevention approach for the Innu communities. In the long term, the IRTS seeks to create a new Innu child welfare agency that will deliver child protection services throughout all Innu communities. The provision of prevention services is the first step towards working collaboratively with the Department of Child, Youth and Family Services to devolve authority to a new Innu child welfare agency. As such, the creation of “planning circles” and “joint committees” where senior official from the Department and the Innu discuss how to improve enhance service coordination delivery is an important beginning. The provision of enhanced prevention services is a stepping-stone towards making this goal a reality.

Needs Assessment

The needs assessment is a core component of this report. When the IRTS approached the CWLC, the core request was for assistance in conducting a needs assessment that would be used to build a case for prevention funding from the Federal Government. It was important to implement a site visit early in the project in order for CWLC researchers to understand the environment in both Innu communities. The CWLC developed a plan with the IRTS to visit the communities and meet with specific individuals who have an important role to play in any future development of an Innu Prevention Approach. These visits provided the foundation for the development of the assessment. As mentioned, surveys, interviews, focus groups and existing data was used to gather the information needed for the assessment. The CWLC met with staff from the IRTS and Child, Youth and Family Services staff as well as the Innu leadership. The CWLC met with community members and Elders who provided their extensive knowledge of the community and outlined what they believed to be some of the most pressing social issues. These issues are: Funding, Inconsistent Services, Isolation, Drug and Alcohol Dependencies, Infrastructure Conditions, Capacity Development, and Coordination of Services.

Most significant Challenges in the Innu Communities



The table above represents a ranking question that was posed to participants during the site visit. The illustration outlines some of the challenges ranked from a very low to very high risk.

Study participants consistently expressed the need for a flexible approach to child welfare in both communities. The themes identified by participants are strategic areas where the current system can be augmented, rebuilt and /or redesigned to provide the proper support for Innu children and their communities.

To build a sound Innu Prevention Approach, the IRTS and the CWLC analysed the current child welfare system by integrating multiple perspectives and differing sources of information from each of the communities. The plan will continue to develop as it moves forward. The environmental scan provided background knowledge of the communities, social services, and child welfare. The needs assessment followed in order to validate these findings and determine whether other gaps were present in each Innu community's child welfare system. Once each community's needs were understood, the Innu Prevention Approach was designed.

Participants expressed ideas about the current status of services in the community and made suggestions supporting an Innu Prevention Approach in child welfare. The following sections summarize their concerns, experiences and recommendations.

Funding

Limited funding for community social services and resources is an issue consistently raised in both communities. Simply put, the services that currently exist in the communities do not have adequate funding. Furthermore, participants cited that both communities require ongoing long term funding of services for existing programs to ensure continuity and sustainability. According to study participants, funding is not tied to a specific level of government. This can be confusing.

Many different stakeholders are involved in funding services to both the communities. While there is currently a stable relationship between the Federal, Provincial, and Local Governments, participants asserted that a decision made by one level of government significantly impacts all day-to-day services available in the community. In essence, the provision of varying yet related services by many levels of government makes planning programs and services difficult. Ultimately, all stakeholder decisions have a direct impact on frontline services.

Participants communicated that funding is only part of the issue. They asserted that an increase of funds to either community while critical would not, by itself, fix current social issues. Instead, sustainable services with a commitment to training and managerial oversight should be the priority. Participants from both communities believe that funding has historically been reactionary and is often the consequence of crisis-type events, which ultimately reoccur.

To better serve the community over the long-term, participants recommended changing this funding approach to one that is:

1. Motivated by prevention;
2. Designed to be sustainable;

3. Is culturally appropriate; and,
4. Based on preventative Indicators.

Inconsistent Services

Related to the theme of short term and inadequate funding is the issue of inconsistent community services, projects and programs. Participants repeatedly expressed concern that annualized program funding is responsible for inconsistent services. In addition, the adequacy and effectiveness of programs are not evaluated from year-to-year. This is partly because staff is not required to assess the future needs of the community if their program is slated to end in one year. Furthermore, short-term programs are not evaluated to determine what benefits they bring to the community precluding the opportunity for cost-benefit analyses. Instead, services, projects and program funds are based on the previous year's budget irrespective of whether the program provided adequate services in the previous year.

Without the development of a strategic medium to long term approach to sustainable funding that supports the provision of client-centered community services, participants asserted that inconsistent community services, projects and programs would continue. Services, projects and programs participants specifically mentioned include:

1. Child care services;
2. Respite for foster care parents;
3. Summer day care services; and,
4. Safe and positive spaces and programs for children that are available throughout the year.

Isolation

Accessibility throughout Newfoundland and Labrador is not always ideal and can, at times, be difficult. Natuashish, for example, can only be reached by plane or boat making the community geographically isolated. Geographic isolation is a significant factor affecting social services. This impacts service delivery and access to external resources.

Despite the difficulties associated with geographic isolation, the Innu have historically thrived in their environment. This will prove a decided advantage in providing preventative services. Their expertise of the land and traditional knowledge has been outlined as their core strengths in the *Innu Healing Strategy* document.

Drug & Alcohol Dependencies

Substance abuse continues to be a significant problem in the communities. Alcohol and drug abuse is normalized throughout the communities and is ingrained in the lives of Innu families. Inhalant abuse is an issue more predominantly linked to Natuashish, and drug use to Sheshatshiu. The IRTS preliminary prevention approach report (IRTS, 2015) outlined a number of ways of dealing with these issues:

- Create a variety of client-centered drug and alcohol abuse programs that integrate Innu culture and language.
- Introduce addiction prevention at an early age to build resilience in Innu communities.
- Create alternative recreational activities that are open to all ages.
- Develop connections to the large number of Innu role models.
- Provide consistent, regularly-scheduled addiction prevention workshops.
- Provide band staff with ongoing prevention and treatment education to increase awareness of new and emerging trends.
- Introduce an active Drug Abuse Resistance Education (DARE) program.
- Require that drug testing become part of eligibility for band elections and jobs.

Social health officials in Sheshatshiu and Natuashish acknowledge the harm caused by substance misuse and are working on approaches that would target the most harmful dependencies. Harm reduction strategies currently being developed will be essential tool incorporated into the development of an Innu Prevention Approach.

Community Buildings

Both Sheshatshiu and Natuashish have buildings that support most community services. These buildings are central to the service and program functioning and are used regularly by community members. Although some of the buildings are in need of technological upgrades, the overall structures currently in place provide adequate space for the services and programs.

Housing

Housing remains a key issue in both communities. Participants asserted the need for better and more practical safe living space for children and youth. The lack of adequate and safe housing has a direct impact on families and children. Social workers indicated that they could not place a child in the care of kin because there was a lack of living space in the house, or the house presented safety concerns. Foster parents also reiterated the same problems. Many want to provide services but must refuse to do so because of limited kinship or foster parent spaces.

Housing in both communities is a federal responsibility while other social services such as child protection fall under the Provincial mandate. Mutually independent funding schemes amidst differing government jurisdictions compound the lack of communication between various health and social services sectors. A successful Innu prevention Approach would strategically integrate jurisdictional funding so that housing facilities are well maintained in the best interests of children and youth's safety and security.

The working agreement recently signed by the Province, and the Innu leadership outlines the importance of having Innu children and youth stay in their communities. Providing adequate housing may be the difference between children being placed in a secure home versus a facility outside of the community. The provision of safe facilities within the communities may be the difference between children and youth staying in their communities or leaving. Sheshatshiu is in the process of proposing such a facility. The CWLC believes this is a step in the right direction. However, there is still a considerable amount of strategic collaborative work to be done in this area.

The goal of having Innu children and youth stay with their families requires an increased commitment by both the Province and the Federal Government. On-going strategic collaborative work, integrated funding and partnership are required to build the housing infrastructure necessary to adequately house children and youth in the communities. Building more spaces is a relatively straightforward task. Ensuring their sustainability will require buy-in at all levels of government.

Capacity Development

Capacity development refers to the process of individuals, organizations, and communities developing a series of skills to build opportunities for Innu residents' and adolescents' transition into the workforce. Building capacity is not a short term process. Capacity is acquired over the long term and continuously evolves to meet the varying needs of the communities. Capacity development is an integral part of the IRTS mandate and is necessary to ensure the successful long-term provision of an Innu Prevention Approach. The following five factors are examples of capacity development areas discussed by participants during the consultations:

- Increased effectiveness of organizational administration;
- Continue staff development and education;
- Develop culturally driven programs;
- Maintain transparency and accountability; and,
- Garner appropriate and ongoing funding based on current and future needs of the communities.

Both study participants and individuals working in relevant social service organizations consistently referenced the previously cited capacity development areas. As such, the CWLC believes that future prevention approaches should incorporate these areas in their design.

Prevention

The Innu Prevention Approach can build on existing prevention models. PRIDE is an example used by the Mi'kmaq Confederacy of Prince Edward Island who has been successful in obtaining enhanced prevention funding (*Mi'kmaq, 2006*). It is understood that such a project is both doable and achievable. While prevention work in the community is necessary, Child, Youth and Family Services have been very clear that a prevention program is not in their mandate. Even if they support the development of a program, they cannot under current arrangements manage or implement such an approach.

Prevention Plan

Based on findings from this study, the CWLC recommends that the communities of Sheshatshiu and Natuashish design a clear, well-integrated and strategic Innu Prevention Approach. For community services, projects and programs to be consistent, the CWLC recommends that both communities use *the Innu Healing Strategy (2014)* throughout the plan.

Community consultations and survey findings indicate that the following four interrelated items are needed to construct an effective community-driven primary prevention plan:

Human Resources

- Identify possible needs.
- Develop a proper reporting structure.
- Develop the need for supervision, training, and skills development.

Management Structure

- Identify technical ability of management.
- Provide Innu Prevention Approach related jobs inside the community (Auxiliary social workers who are from the community).
- Identify and support Innu Prevention Approach related jobs outside the community (Liaison workers who represent both communities).
- Identify the technical support needed (examples of technical supports CWLC can provide: webinars, forums, internships, training, expert analysis and other forms of knowledge exchanges).

Community Leadership

- Generate enthusiasm for the Innu Prevention Approach.
- Identify community leaders who can have an important role to play in the Innu Prevention Approach.
- Galvanize community support so that individuals contribute to the Innu Prevention Approach.
- Support the Innu Prevention Approach by creating clear guidelines for monitoring and evaluation.

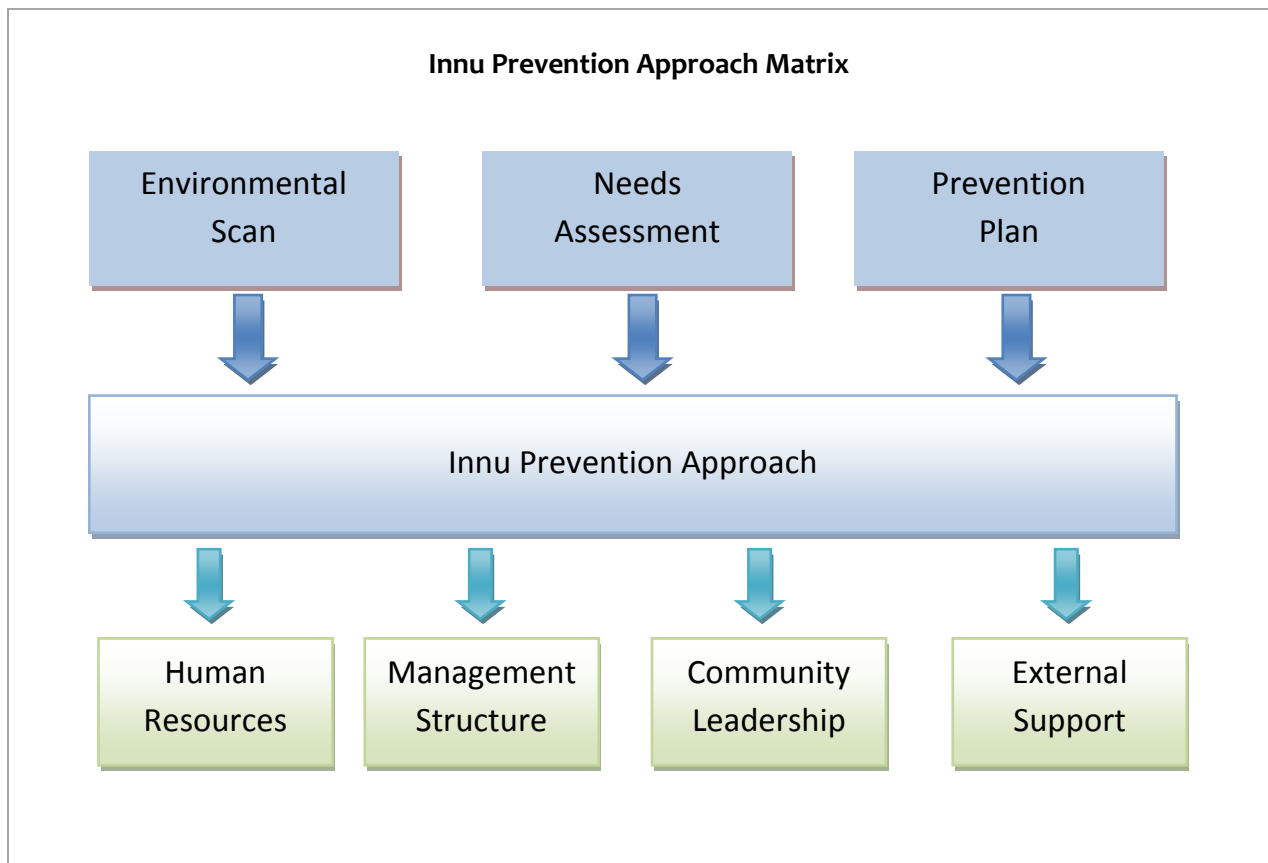
External Support of Authorities and Experts

External support for plan implementation will require contributions and involvement from a number of individuals, organizations and departments outside of both communities including:

- Newfoundland and Labrador Department of Child, Youth and Family Services.
- Indigenous and Northern Affairs Canada (INAC).

- Newfoundland and Labrador Foster Families Association.
- Advocate for Children and Youth, Newfoundland and Labrador.
- Content Specialist from Memorial University.
- Child Welfare League of Canada (CWLC).
- Mi'kmaq Confederacy of Prince Edward Island.
- Indigenous Child Welfare Expertise.

The Innu Prevention Plan will support other services already provided in the community. A detailed map of both communities is provided in (Appendix B).



Innu Prevention Approach

The Innu Prevention Approach is not a program or set of ideas that is determined and outlined by the CWLC. What the CWLC suggests can be taken into consideration, but an Innu Prevention Approach has to be led and managed by the Innu in order for it to be successful. Appendix D of this report provides an outline that includes the key terms to defining types of prevention approaches used by the PEI Mi'kmaq Confederacy PRIDE program. The following outlines the various levels of prevention that can be developed and considered:

Innu Primary Prevention

- Strategies, activities (e.g. outpost) and materials will be developed that focus on the community. The Innu Primary Prevention Approach will promote the physical, mental and spiritual wellness of individuals, families and communities by instilling a sense of cultural pride and positive parenting.
- This approach will recognize the importance of Innu connection to the land. This is a significant part of the Innu link to spirituality and culture that will be highlighted in the Innu Primary Prevention Approach whenever possible.
- The Innu Primary Prevention Approach will provide country-based delivery of prevention programs and services.
- The Innu Primary Prevention Approach will create materials that teach participants how to balance country life and settlement life, as well as modern (evidence informed) and traditional (culturally informed) values.
- The Innu Primary Prevention Approach will increase Innu community consciousness through community-based approaches.
- The Innu Primary Prevention Approach will strengthen and enhance the well-being and health of the entire community while ensuring the safety and security of children.

Innu Secondary Prevention

- The Innu Secondary Prevention Approach will cover a wide range of community issues such as substance abuse, youth at risk of suicide, young mothers/parents.
- The Approach uses strengths-based communication and positive reinforcements.
 - Examples include in-home family support programs, sharing circles for children, adults, and families and recreation and culture-based activities for youth and adolescents.

Innu Tertiary Prevention

- The Innu Tertiary Prevention Approach will attend to children and youth who have been – or are being – abused or neglected.
- The Innu Tertiary Prevention Approach will attend to environments where abuse/neglect is currently happening.

- The Innu Tertiary Prevention Approach would work with CYFS to ensure prevention initiatives are being applied to child protection cases.
- The Innu Tertiary Prevention Approach will attend to the issue of continued abuse.
- The Innu Tertiary Prevention Approach will attend to familial problems.
- The Innu Tertiary Prevention Approach will provide trauma-informed care while addressing the possibility of long-term impacts of abuse and neglect on children.
 - Examples include counselling and social work support practices for children and families, temporary out-of-home care to provide time and space for addressing familial issues thereby preventing the long-term removal of children from their homes.

Together, the Innu primary, secondary, and tertiary approaches will provide inclusive and holistic support and encourage the overall well-being and health of individuals and their families by promoting strength and capacity and by reducing the risk of harm (*Mi'kmaq, 2006*).

Innu Prevention Approach Program Mandate and Description

The Innu vision of a prevention services agency is similar to the one developed by the Mi'kmaq of Prince Edward Island. The PRIDE Program provides prevention services and supports the protection of children. They do not provide protection services, as the legal mandate for all child protection is the responsibility of the Prince Edward Island Department of Child and Family Services (*IRTS, 2015*). PRIDE Program prevention services are voluntary and include the following:

- In home support (home visits);
- Groups (support and educational);
- Connections to community programs and services;
- Immediate support for families when child protection social workers are investigating a referral;
- Family group conferencing;
- Outreach services;
- Designated band representative; and,
- Foster home recruitment.

We recommend that an Innu Prevention Approach build on PRIDE's tested methodology to build future prevention programs.

Innu Prevention Approach Program Philosophy

The communities of Sheshatshiu and Natuashish are uniquely positioned to provide Innu Prevention Services. They are qualified to provide support for those children and youth who need support through culturally-informed and guided programming. Their knowledge and expertise in Innu culture are strengths that, when appropriately supported, can eliminate the need for child protection intervention. As stated in the first Enhanced Prevention Focused Approach Tripartite Accountability Framework, “building and relying upon [community] expertise is essential for the development and delivery of effective prevention services, to First Nations by First Nations in First Nations communities. Furthermore, [it is important to also] recognize a significant need for proactive programs, services and supports for children and parents to pre-emptively address risks to an Innu child and youth’s health, safety and well-being” (*IRTS Business Plan, 2014*).

Community Involvement

An effective prevention approach integrates community leadership. Community leadership signifies community ownership of the prevention approach prompting shared responsibility and engagement of the community with key stakeholders. This is essential for longstanding success. Collectively, participants agreed that the serious issue of solvent (gas) sniffing by children and youth is the first and foremost prevention target to address in Natuashish and drug related issues are the most critical ones in Sheshatshiu. Any Innu-led prevention approach that does not address these issues will unlikely to be able to implement effective services in either the medium or the long term.

Implementation Plan, Goals and Objectives

The implementation plan is based on the six core goals identified by the IRTS and reviewed by CWLC. These goals integrate findings from the Needs Assessment with community context. In addition, the plan utilizes data and existing reports from the Mi'kmaq Confederacy Child and Family Services Prevention Initiative that are currently implemented in Prince Edward Island. The implementation plan outlines the core business, goals, strategies, outcomes and performance measures of the Innu Prevention Approach.

The core goal is the promotion of the healthy development and well-being of Innu children, youth and families. The following plan reflects the work done by the IRTS Child, Youth and Family Services Transition Coordinator who consulted with Innu leadership, community members, and staff on the development of the following goals:

Goal One:

Provide coordinated prevention services enhanced with an Innu Prevention Approach to Innu children, youth and families.

What it means:

The Innu know that children, youth and families benefit the most from services and resources that are compatible with their cultural beliefs and traditional values. They also recognize the importance of setting the foundations for children, youth and families to learn, grow and reach their full potential.

Strategies:

- Defining, developing and implementing Innu Prevention Approach services by establishing and maintaining partnerships with community and non-community based resources as well as the Provincial and Federal Government.
- Visiting families in their own homes.
- Enhancing parental knowledge, self-esteem, and problem-solving capabilities.
- Working with parents as partners to appreciate the value, role, challenges and satisfactions of parenthood.
- Strengthening protective factors within the family system.
- Working with families to mobilize formal and informal resources to support family development.
- Facilitating access to community and non-community based resources.

Expected Results/Outcomes:

- Healthy parent-child attachment.
- Strengthened social functioning within the family unit.
- Children, youth and families are physically, emotionally, socially, intellectually, culturally and spiritually healthy.

Performance Measure	Target 2014-2015	Target 2015-2016
# Families engaged in home support services	Baseline to be determined	Equal or greater than baseline
# Parents engaged in community support networks (i.e., integrated case management)	Baseline to be determined	Equal or greater than baseline
# Parents engaged in family support networks (i.e., case conferencing, family group conferencing, case plans)	Baseline to be determined	Equal or greater than baseline
# Families who received informal resources designed to support healthy family development (i.e., newsletters, pamphlets, community education/information sessions)	Baseline to be determined	Equal or greater than baseline
# Community activities that promote self-esteem, life skills, parenting, and effective problem-solving	Baseline to be determined	Equal or greater than baseline
# Families who are served by a community resource and indicate positive outcomes	Baseline to be determined	Equal or greater than baseline

Goal Two:

Implement initiatives focused on the prevention of child abuse and neglect, maintaining safe living environments for children and increasing family resiliency.

What it means:

The Innu understand there must be a balance of risk reduction and wellness promotion initiatives focused on protecting children, youth and families and creating safe living environments free of abuse, neglect and family violence.

Strategies:

- Undertaking activities that promote community education and awareness of the impact of child abuse and/or neglect and family violence through collaboration with Newfoundland and Labrador Child, Youth and Family Services staff.

- Providing parent education classes that focus on child development.
- Coordinating provision of life skills training that focuses on personal development skills such as problem solving, stress reduction and communication skills.
- Promoting family and child resiliency (i.e. recognition of strengths, promotion of Innu culture, and recognition of healthy role models, effective communication and practical problem solving skills) through individual and group interventions.
- Linking parents dealing with the effects of child abuse and/or neglect and family violence with supportive counseling.

Expected Results/Outcomes:

- Increased awareness of the serious implications of child abuse and/or neglect and family violence.
- Evidence of increased community responsibility in the prevention and reduction of child abuse and/or neglect and family violence.
- Decreased incidences of child neglect and/or abuse and family violence.

Performance Measure	Target 2016-2017	Target 2016-2017
# Incidents of child abuse and/or neglect	Baseline to be determined	Equal or less than baseline
# Children and youth engaged in group programming that focuses on building resiliency skills, healthy relationships, independent living skills and self-esteem	Baseline to be determined	Equal or less than baseline
# Community events that promote education and awareness of the impact of abuse and/or neglect and family violence	2 per year	2 per year
# Joint training events among service providers	2 per year	2 per year

Goal Three:

Prevent Innu children from being removed from their family, community and culture.

What it means:

Developing appropriate and culturally competent programs and services to improve and enhance family supports and parental capacity.

Strategies:

- Educating the community about the role of the Newfoundland and Labrador Department of Child, Youth and Family Services.

- Assisting families who become involved with Newfoundland and Labrador Department of Child, and Youth Family Services to understand legal processes and procedures.
- Assisting families to obtain the help they need to make necessary changes prior to, during, and subsequent to the involvement with the Newfoundland and Labrador Department of Child, and Youth Family Services.
- Working cooperatively with staff from the Newfoundland and Labrador Department of Child, Youth and Family Services who are involved with Innu children and their families.

Expected Results/Outcomes:

- Strengthened parental, extended family and community capacity to care for Innu children and youth.
- Improved knowledge about the role of the Newfoundland and Labrador Department of Child, Youth and Family Services and the process involved when a child protection referral is received.
- Decrease incidences of children taken into care and custody.

Performance Measures	Target 2016-2017	Target 2016-2017
# Children in protective care and custody	Baseline to be determined	Equal or less than baseline
# Children placed in care within their community	Baseline to be determined	Equal or greater than baseline
# Children placed in care outside their community	Baseline to be determined	Equal or less than baseline
# Case conferences and family group conferences involving CYFS staff, community service providers and families	Baseline to be determined	Equal or greater than baseline

Goal Four:

Provide Innu children with culturally appropriate and nurturing placements when they require temporary/permanent care outside the familial home.

What it means:

Sheshatshiu and Mushuau Innu First Nations will work to ensure that Innu culture and heritage is an integral component of a child's placement and to strengthen linkages within the child's community for children who are currently placed in care and custody away from their communities.

Strategies:

- Undertake an annual foster home recruitment campaign in Innu communities in collaboration with Newfoundland and Labrador Department of Child, Youth and Family Services staff.
- Provide public information sessions to impart information about fostering and the importance of Innu foster homes for Innu children.
- Promote the development of foster care and kinship resources.
- Engage Innu children in care who are currently living away from their communities in community celebrations and cultural events.

Expected Results/Outcomes:

- Increased capacity to place children who require care in culturally appropriate foster homes.
- Increased capacity to place children in kinship care.
- Increased awareness of placement needs of Innu children as it pertains to maintaining and strengthening their cultural and linguistic heritage.
- Increased community involvement in the care of children who can no longer reside with their immediate families.

Performance Measure	Target 2016-2017	Target 2016-2017
Annual foster care recruitment campaign in collaboration with CYFS staff	2	2
# Approved Innu foster kinship homes	Baseline to be determined	Equal or greater than baseline
# Innu children placed in culturally appropriate foster care placements	Baseline to be determined	Equal or greater than baseline
# Innu children in care who are placed outside of their communities participating in community events and celebrations	Baseline to be determined	Equal or greater than baseline

Goal Five:

Decrease the incidences of Innu children and youth in care and custody residing in placements both outside their province and their respective communities of Sheshatshiu and Natuashish.

What it means:

When circumstances require Innu children and youth to be taken into care and custody, the goal is to not only have them remain in their community but to reunite these children and youth with their families and community as soon as possible. Depending on the circumstance, children and youth currently in care and custody may be ready to return home immediately, or when they have completed a structured rehabilitation program.

Strategies:

- Perform case reviews through planning circles on every child and youth currently in care and custody in placements both outside province and their community.
- Develop and implement an after-care and support plan for each child and youth and their family prior to returning to their community.

Expected Results/Outcomes:

- Fewer children placed in care and custody outside of their community and province.
- Children and youth only placed to access services not available in their own community or province and would return to their community once the program is completed.
- The continued strengthening and passage of Innu language and culture.

Performance Measure	Target 2016-2017	Target 2016-2017
# Children in out-of-province placements	Baseline to be determined	Equal or lesser than baseline
# Children in out-of-community placements	Baseline to be determined	Equal or lesser than baseline
# Children, youth and their families involved in an after-care plan	Baseline to be determined	Equal or greater than baseline

Goal Six:

Build agency capacity to enhance services and promote best practices to children and families.

What it means:

Plan and engage agency staff in capacity building initiatives in the present so they can provide effective prevention services in the future. These include record keeping, roles and responsibilities, agency mandate and vision, child development, parenting, confidentiality, Newfoundland and Labrador Department of Child, Youth and Family Services legislation review, at-risk assessment, case management and other skills and core competencies as required or identified.

Strategies:

- Training in skills and competencies, personnel development/recruitment and other organizational needs .

Expected Results/Outcomes:

- Improved staff competencies through training and resource initiatives.
- Identify and improve assessment of risk to children and families.
- Establishment of all program areas within the agency.

- Increased connectivity between the Newfoundland and Labrador Department of Child, Youth and Family Services and Innu Prevention Approach services staff in both Innu communities.

Performance Measure	Target 2016-2017	Target 2016-2017
# Children in out-of-province placements	Baseline to be determined	Equal or lesser than baseline
# Children in out-of-community placements	Baseline to be determined	Equal or lesser than baseline
# Children, youth and their families involved in an after-care plan	Baseline to be determined	Equal or greater than baseline

Several key collaborators are required to effectively manage a long term Innu Prevention Approach program and/or services. Well-trained leadership and a sound management team are necessary to generate widespread community endorsement. The CWLC asserts that Innu leadership, and the IRTS are the best equipped and most oriented to the overall goals of the Innu Prevention Approach program and/or services. They are also the ones most qualified to address community members' current and past trauma.

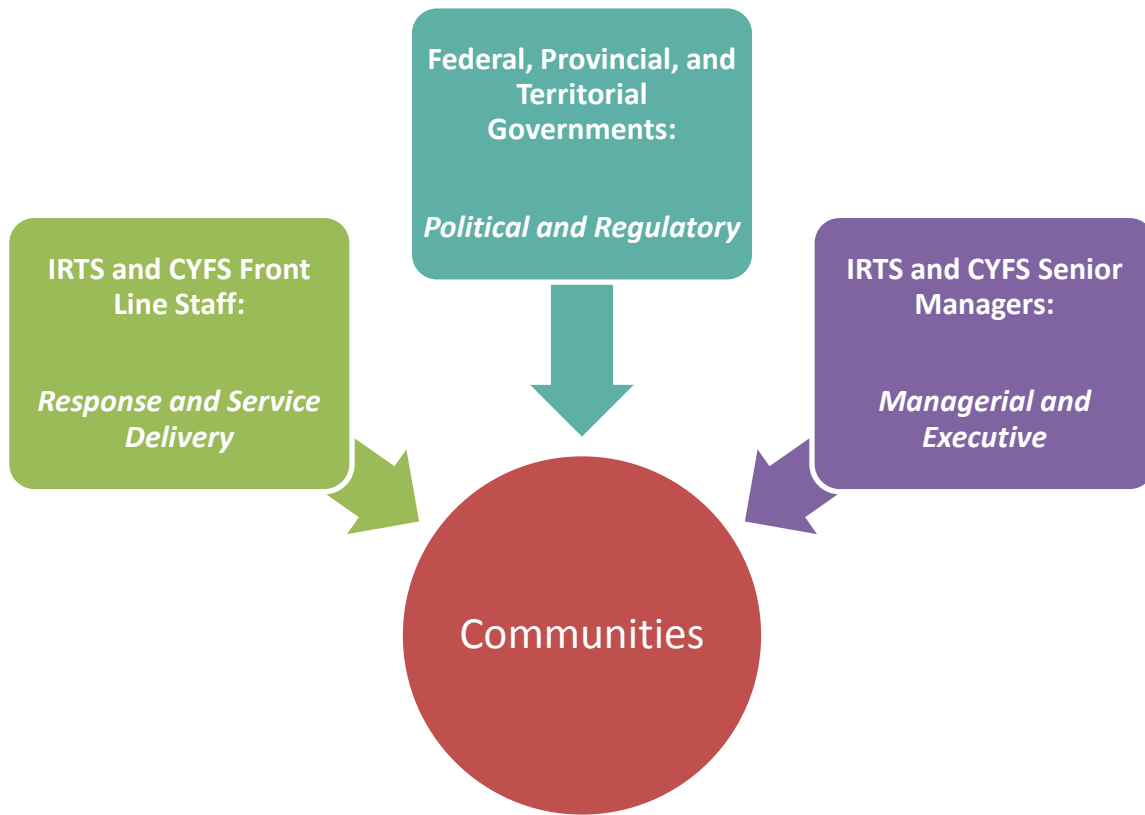
Therefore, the CWLC recommends that Innu leadership and IRTS managers, supervisors, and staff take responsibility for human resource allocation for the Innu Prevention Approach and/or services. With adequate and well-prepared resources, the CWLC believes the Innu Prevention Approach program and/or services will develop and grow throughout both communities. These recommendations are supported in the *Innu Healing Strategy* (2014) report, which outlines the Sheshatshiu and Mushuau Innu First Nations shared vision of a community-led Innu Prevention Approach.

Coordination of Services

Delivery of effective prevention programs is achieved by coordinating the work of all stakeholders, tailoring the programs to the local situation and considering key local demographic information. Service gaps and/or overlaps begin to surface between programs as coordination lapses. Coordination between stakeholders will determine the longevity of the Innu Prevention Approach program and/or services.

The Innu Prevention Approach program and/or services will be geared towards direct service users (community). The tripartite working group provides a model of what the coordination of services could look like under the Innu Prevention Approach. Although day-to-day activities would be managed by the IRTS, three key stakeholders would be involved in the approach. These include: 1) the Federal Government's role in providing funding; 2) the Provincial Government's role in child

protection services; and, 3) the Innu’s role in providing leadership and representation of the Innu people.



The diagram above provides an overview of how varying levels of stakeholder decision-making influences any prevention approach created by the communities of Sheshatshiu or Natuashish. The Innu Prevention Approach program and/or services will have to create its own service coordination model to ensure clear communication with service users.

Human Resources Required

Staffing an Innu Prevention Approach program and/or services will require well-trained individuals in both communities. Currently, IRTS has one dedicated worker considered as a Department of Child, Youth and Family Services “Community Liaison Social Worker”. This staff member is based in Sheshatshiu but supports both communities.

The Innu Prevention Approach program and/or services will require additional staff. Since there is significant geographical distance between the communities, the CWLC recommends the addition of

one worker to support service delivery to each community. The current “Community Liaison Social Worker” would coordinate or manage these two workers. The structure of the positions is based on a similar approach taken by Mi’kmaq Confederacy of Prince Edward Island:

- Child and Family Innu Prevention Approach Coordinator (Sheshatshiu & Natuashish)
- Child and Family Innu Prevention Approach Worker (Sheshatshiu)
- Child and Family Innu Prevention Approach Worker (Natuashish)

Ultimately each of the workers would work under the IRTS and accordingly report to them.

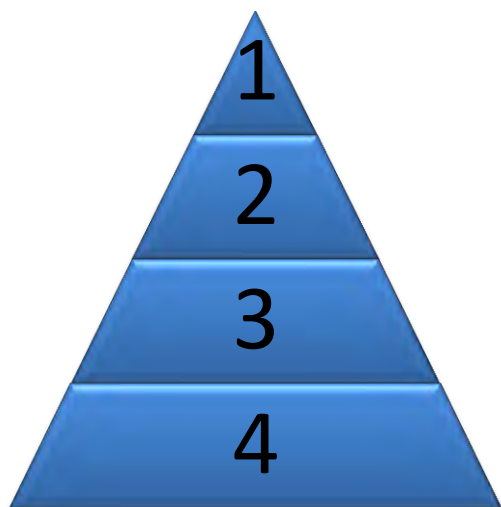
Organizational Knowledge Transfer, Capacity Development & Staff Training

Organizational knowledge transfer is important to maintaining ongoing capacity development. The day-to-day provision of services rooted in good practice frameworks will assist with the transfer of organizational knowledge. The following areas are key in developing organizational knowledge transfer capacity:

- Regulations;
- Best practices;
- Standard templates;
- Information technology;
- Cultural practices; and,
- Prevention strategies.

Cultural plans and coherent strategies about how best to enhance the Innu Prevention Approach that exemplify the strengths of the Innu culture are crucial to developing organizational support of Innu Prevention Approach program and/or services in the communities.

In the community of Sheshatshiu, an existing facility is being converted into a residential centre for youth in need. There are numerous approaches to take into consideration when developing treatment programs. The following diagram is a useful tool in identifying mental health risk levels.



- 1) Children and youth experiencing the most severe, rare, mental health problems;
- 2) Children and youth experiencing *significant* mental health problems;
- 3) Children and youth at-risk of experiencing mental health problem; and,
- 4) All Children, youth, and their families.

(Kinark, 2015)

Ethical Principles

The guiding principle of helping professionals is ensuring the safety, well-being, and dignity of individuals who seek help. The Innu Prevention Approach will need to set ethical guidelines that will serve to direct practice and staff behaviour for the Innu Prevention Approach program and/or services (Mi'kmaq, 2006). The following guidelines are recommended:

- Do not exploit professional relationships.
- Ensure personal problems do not conflict with professional work.
- Inform service users of their right to refuse consent.
- Inform service users of the professional obligations of all staff and personnel.
- All staff and personnel should understand their limitations and know when it is appropriate to terminate their relationship with clients.
- Professionals must practice within their legal mandates.
- Professionals must transfer clients to accredited organizations and/or individuals who provide high quality professional care.
- If the service user is accessing multiple services at the same time, clear boundaries between professionals must be maintained.

Operating Procedures

The Innu continue to work towards the long term devolution of the responsibilities of the Department of Child, Youth and Family Services and the creation of a properly funded Innu child welfare agency. While the Department of Child, Youth and Family Services continues to be bound by provincial law, which does not mandate the inclusion of prevention services for children and youth, the Innu Round Table seeks to create services short of a full agency that includes effective

prevention services, responsive case plans, and practical work with families to reduce risk. Each successful step along this path will result in fewer children going into care, shorter stays in care, and methods for reuniting families. These are goals that all Innu share.

Confidentiality

A well-designed and supported Innu Prevention Approach will support increased planning and collaboration among health and social service professionals in both communities. Confidentiality guidelines are necessary to safeguard the privacy and safety of children, youth, and families. Although prevention programs should not have rigid structures, they must uphold the confidentiality of service users within the cultural context of the community. The sharing of information to other organizations would usually not occur unless the service user provides consent.

It is also essential to consider the issue of informed consent. Consent from a parent or guardian must be obtained using the mode of communication requested. Comprehending that consent is given, and agreeing to consent with written documentation that is properly recorded and stored is a necessary requirement of any prevention program and/or service.

Service users must understand that the Innu Prevention Approach is strictly voluntary and consent can be revoked at any time.

Reporting Requirements

Reporting is an essential component in child protection services. Although the Innu Prevention Approach is focused on prevention, there may be times where a worker will have a duty to report under the Act. Examples where an Innu prevention worker may have a duty to report include when:

- A child or youth is at harm to themselves or others.
- A child or youth is being abused or exploited or severely neglected.
- A child or youth is suicidal, and the danger is imminent and cannot be ignored even if the child or youth has asked that you not contact anyone.
- A child or youth poses a significant threat to an individual, and the Innu Prevention Approach worker is convinced the child or youth will follow through with their threat of harm.

Documentation Management

Structured document management is an essential component in good organizational practice. Innu Prevention Approach workers will work closely with vulnerable children, youth, and families necessitating a high level of professional and organizational accountability. Ensuring the records are well kept, maintained, stored, and secured is crucial to organizational development. Highly systematized and replicable documentation collection can be used over time to identify potential

service user trends and ensure effective monitoring and evaluation of the Innu Prevention Approach program and/or service.

Organizations are constantly evolving. The social services sector can have high staff turnover rates. Good record keeping provides continuity over the long term. Good record keeping provides information for new workers or replacements that will need to get acquainted with a service user's file.

There are additional benefits to maintaining high quality document practices. Good record keeping allows for a continuous collection of data over the years that can provide a window into the needs of a community. Data collection and analysis may provide justification for the development of new community programs and strengthen the organization's policies with strong evidence. Furthermore, funders require this type of information to justify the existence of programs.

There are several types of documentations that may be important in an Innu Prevention Approach program and/or services. The following are some examples of documentations crucial to good record retention:

- Request for service report;
- General case notes;
- Case conferences;
- Case planning;
- Activity report of client meetings (time, location, place);
- Communications log form (telephone calls, emails);
- Organizational report/news; and,
- Public awareness campaign reports.

Monitoring and Evaluating Intervention

It is critical to develop ongoing evaluation mechanisms for all interventions, programs and services to ensure that the needs of the communities are being met. These mechanisms should include a range of measures in order to capture a complete picture of the movement towards the desired outcomes. The successful application of this form of accountability is dependent upon the development of clear and measureable outcome goals. There are a range of types of measures that can be used, but each should be culturally appropriate while also meeting the demands of the funders. The evaluation measures should include:

- Supported evidence based prevention program design;
- Promising prevention program design;
- Emerging prevention program design; and
- Evidence informed prevention program design.

The *Innu Healing Strategy* clearly outlines this process. It states:

“Our conclusion regarding what the measurement framework for the *Innu Healing Strategy* should be comprised of is that two levels of measurement are needed. One level will show the overall impact of the healing strategy by examining whether our efforts are helping to achieve healthy, sustainable, and resilient Innu communities. The other level of measurement will evaluate each major initiative and project within the healing strategy to examine progress made in achieving objectives for change. The first level of measurement to evaluate the overall impact of the healing strategy on achieving healthy, sustainable, and resilient communities – will be best evaluated by using the determinants of health as a framework. The Innu will adopt the description of the social determinants of health provided by the Public Health Agency of Canada (2011) as the overall measurement framework for the strategy” (*Innu Health Strategy, 2014, p. 14*).

Recommendations

The following recommendations are intended to support the development of an Innu Prevention Approach. These recommendations were presented on a provisional basis to the Innu leadership and the IRTS in September 2015. The recommendations serve as a reminder of the work that needs to be considered in the short, medium, and long term. The recommendations are:

Capacity Building

A sustained focus on capacity building is required and will be key to other recommendations. Examples are:

- Focus skill development on professionals and community members who participate in prevention programs.
- Monitor and evaluate programs and practices over the short, medium, and long term.
- Develop a process for planned succession of members of the IRTS. This will develop staff member's capacity to manage and lead prevention programs.
- Provide organizational support and capacity development (monitoring and evaluation).
- Provide strategic training partnerships.
- Implement safeguards and oversight for facilities that host prevention programs.

Technical Expertise

The many changes and improvements required call for technical expertise to ensure their appropriate design, implementation, monitoring, and evaluation. Examples are:

- Build strong partnerships with existing Indigenous prevention programs to assess and learn from their experience and expertise.
- Identify committed allies and partners who will assist and facilitate the implementation of prevention programs by the IRTS.
- Utilize the expertise of committed partners and individuals through various stages of implementation.
- Research consultations on the development of a model of care plan.
- Provide non-specific social services child welfare technical advice.
- Provide strategic advice to Innu leadership and IRTS professional staff.
- Incorporate monitoring and evaluation mechanisms to document current practice and identify future needs.

Graduated Support Strategy for Innu Children and Youth

Ensuring that a proper support strategy is developed through outreach, partnerships, and planning is essential. Examples are:

- Bring Innu children and youth who are in out-of-province care back to their communities by ensuring accessible services in their community or the Province.
- Plan and monitor all cases being considered for reintegration.
- Develop inter-governmental/ inter-organizational capacity to support children and youth coming back to their communities (MOU's, Protocols).

Reintegration Planning for Innu Children and Youth Transitioning to their Communities

Reintegration planning that ensures a gradual, incremental, and a phased approach while ensuring cultural connections are needed. Examples are:

- Coordinate support with out-of-province organizations to ensure proper transitions for children who are in care or transitioning out of care.
- Carefully plan pre-placement visits.
- Create discharge plans of care based on cultural and therapeutic approaches.
- Tailor support to individuals based on programs that are first available in the community.

Infrastructure

Investments in strengthening and developing infrastructure are required to address the importance of safe spaces. Examples are:

- Develop an assessment of need for secure homes and facilities for youth reintegrating into the communities.
- Access recreational facilities, equipments, and training support for children and youth.
- Create a safe cultural space for children and youth to access traditional knowledge and support from Elders and community members.

Prevention

A strategic multiyear incremental approach to prevention is urgently needed in the communities. Examples are:

- Develop wellness promotion initiatives based on existing Innu values.
- Develop culturally informed risk reduction approaches to both health promotion and the protection and safety of children and youth.

- Balance both immediate needs with long-term approaches through carefully planned incremental cycles.

Strategic Training Initiatives

A strategic training initiative is recommended to address immediate, medium, and long term challenges. Examples are:

- Develop and provide consistent training to community workers, foster parents, and other individuals directly involved with children and youth.
- Embed all training in traditional Innu values and child welfare practices.
- Develop incremental training strategies that take place over a period of time with programs that are accessible both in person and remotely.

Community Approach

It is recommended that a culture based community approach be adopted and strengthened in all aspects of the Innu Prevention Approach. Examples are:

- Implement a culturally informed prevention model based on Innu values and traditional knowledge.
- Ensure that the prevention model is supported by both communities as well as other existing Indigenous programs.
- Strive towards a prevention model that will eventually be led and managed by the IRTS.

Application of the Innu Healing Strategy

It is recommended that the *Innu Healing Strategy* be appropriately resourced and applied to the Innu Prevention Approach. Examples are:

- Create a plan that is jointly developed by the Innu of Sheshatshiu and Natuashish, which outlines the importance of Innu community-based health promotion and compliment's child welfare.
- Use the *Innu Healing Strategy* measurement framework and data to inform policy and practice development of the Innu Prevention Approach.

Alternative Care

It is recommended that dedicated support towards the recruitment and retention of Innu caregivers is important to providing appropriate care for vulnerable children and youth should be seen as an integral component of transitioning and reintegration planning. Examples are:

- Recruit Foster families/guardians as they are key supports that provide temporary and permanent care spaces in communities.
- Provide continued training, supervision, resource allocation and respite support for all forms of alternative child and youth care.
- Develop intergovernmental capacity for alternative resources for placement.

Summary

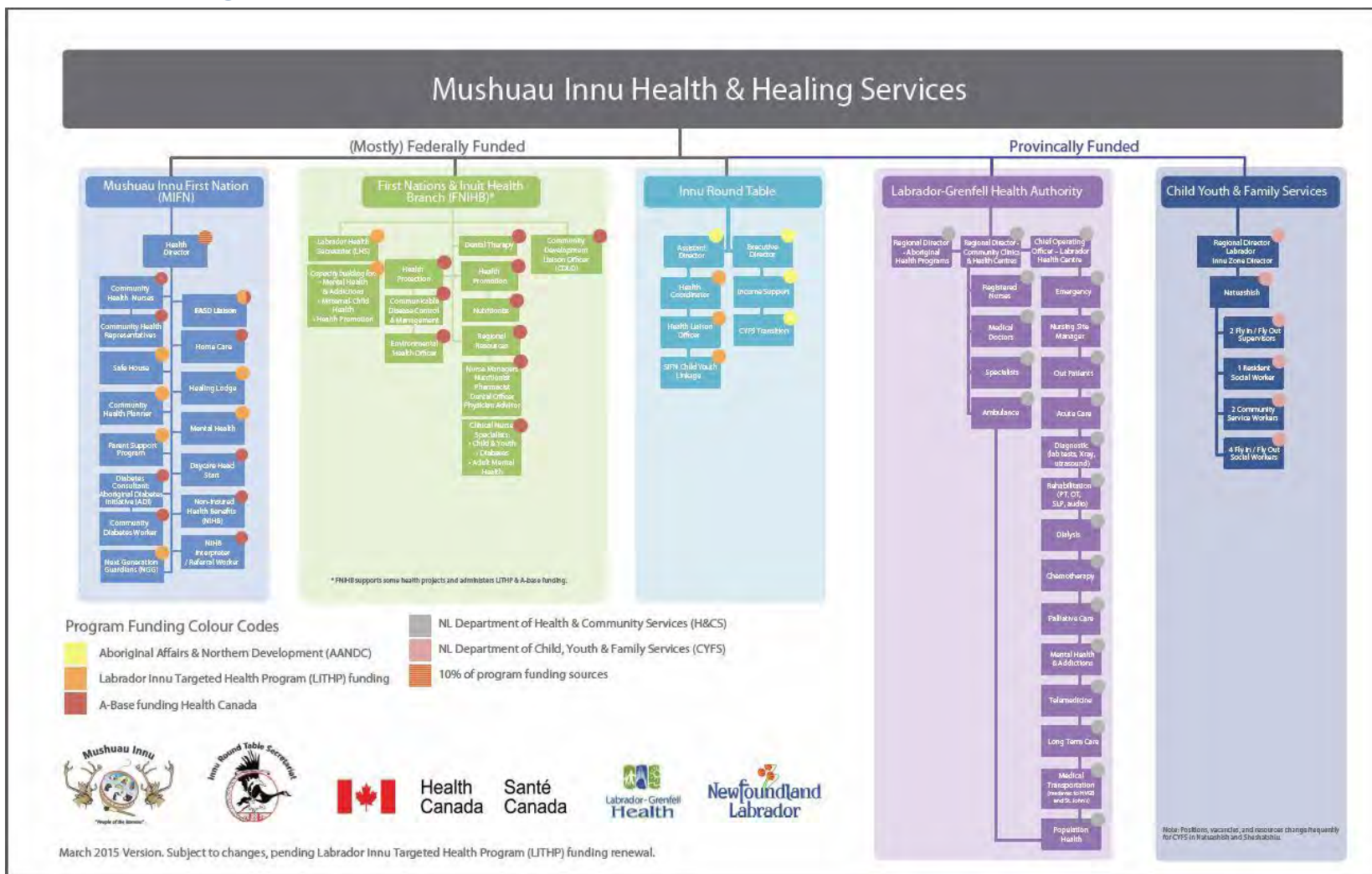
The move towards an Innu Prevention Approach is inevitable. There is a strong commitment and strategic focus from the community, leadership, provincial and federal representatives who support a prevention mandate. There is significant work ahead to be done by the stakeholders involved. The CWLC will continue to support the IRTS as they move forward with concrete plans to manage prevention initiatives in both Innu communities. The recommendations provided are tangible examples of items that can be identified through inputs and outputs in future planning. The CWLC has created a logic framework that outlines some key activities for future considerations.

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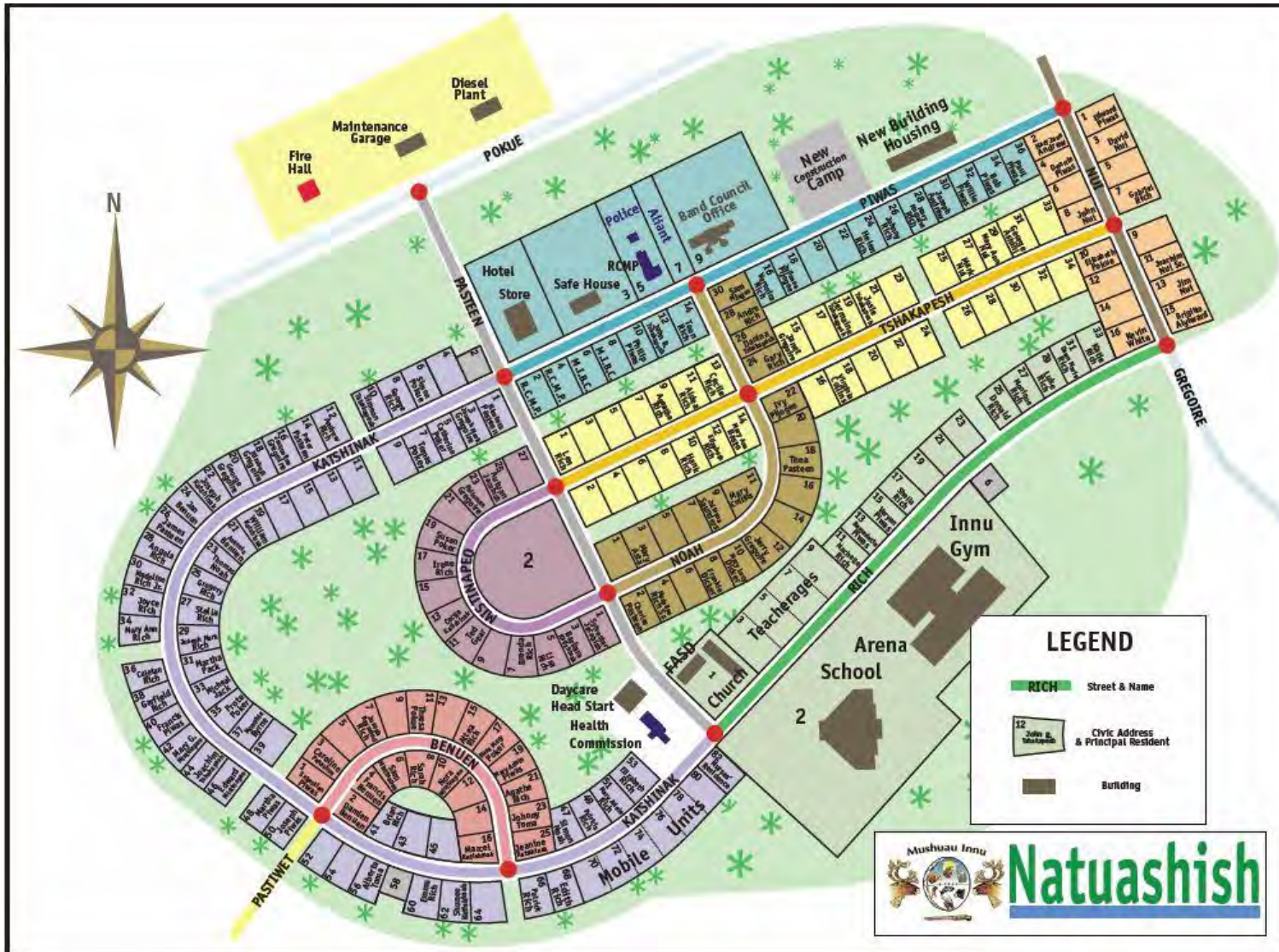
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Appendix A: Organizational Charts



Appendix B: Maps of the Communities

Natuashish Community



Map of Sheshatshiu



Legend

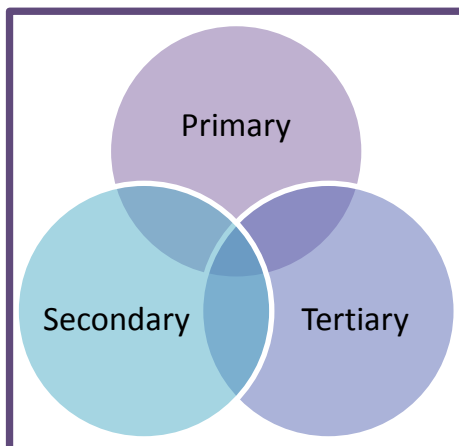
■	Band Council	■	Innu Round Table Secretariat (IRTS)
■	School	■	Day care
■	Group Home and Safe House	■	RCMP
■	Child, Youth and Family Services (CYFS)	■	Charles J
■	Mary May Healing Centre	■	Mani Ashini Clinic

Appendix D: Defining Prevention

“Prevention, or preventative interventions, refers to a range of strategies, activities and materials implemented by individuals, communities, non-government organizations and government departments to target the various social and environmental factors that increase instances of risk. There are a variety of different approaches to prevention that vary in terms of the focus of the intervention, the types of activities that are delivered, and the premise behind how those activities are designed to bring about the desired results” (Mi’kmaq, 2006).

Graph 1 outlines the three categories typically used to classify prevention approaches:

Graph 1 : Defining Types of Prevention Approaches



1. **Primary prevention approaches** aim to stop social ills before they occur.
2. **Secondary prevention approaches** include immediate responses to social ills and attend to short-term outcomes.
3. **Tertiary prevention approaches** are long-term responses to persistently negative outcomes.

When all three approaches are used collectively, preventative interventions have the potential to change individuals, families, and communities (Mi’kmaq, 2006). Prevention approaches are most commonly directed at trying to influence the underlying causes of social and economic ills:

Primary

- The focus is on the community and promotes individual, family, and community wellness, including cultural pride and positive parenting.
- Public consciousness and community-based approaches are principal guidelines.
- Based on strengthening and enhancing the well-being of the entire community to ensure the safety and security of children.

Secondary

- The focus is on the “at-risk” children and families that cover a wide range of community issues such as substance abuse, youth at risk of suicide, young mothers/parents.
- A strength based approach to risk reduction and communication through positive reinforcements.

- Examples include in-home family support programs, sharing circles for children, adults, and families and recreation and culture-based activities for youth and adolescents.

Tertiary

- The focus is on the children and youth who have been abused or neglected and/or environments where abuse/neglect is currently happening.
- The approach is to ensure the prevention of further abuse in addition to preventing familial problems.
- Provide trauma informed practice to address the possibility of long term impacts on children. Example includes traditional counseling and social work for children and their families, out of home care until familial issues have been addressed, the community has changed its approach, and risks have been lowered in order for children to no longer be considered at risk.

Appendix E: Innu Healing Strategy

The Innu Healing Strategy (2014)

The Innu Healing Strategy identifies what the Innu leadership believe are indicators of community-wide healing success. These measures will be used to determine progress towards the achievement of healthy, sustainable, and resilient Innu communities. Success will be measured using two key measurement approaches.

1. **The Determinants of Health:** A number of indicators (see Table 1) will be used to determine community health. Outcomes will be measured against current baseline data found in a number of sources such as the health needs assessment report (FNIHB, 2012) and the Labrador Innu Comprehensive Healing Strategy (LICHS) impact evaluation (INAC, 2009)

Table 1 : Adopted Innu Healing Strategy Indicators

1. Income and Social Status	7. Personal Health Practices & Coping Skills
2. Social Support Networks	8. Healthy Child Development
3. Education and Literacy	9. Health Services
4. Employment/Working Conditions	10. Gender
5. Social Environments	11. Culture
6. Physical Environments	

2. **Project-Based Evaluation:** The progress of all major initiatives and projects within both communities will be evaluated based on whether they:
 - a. Achieve the stated targets and outcomes; and,
 - b. Support the achievement of the specific indicators adopted for measuring the Innu Healing Strategy.

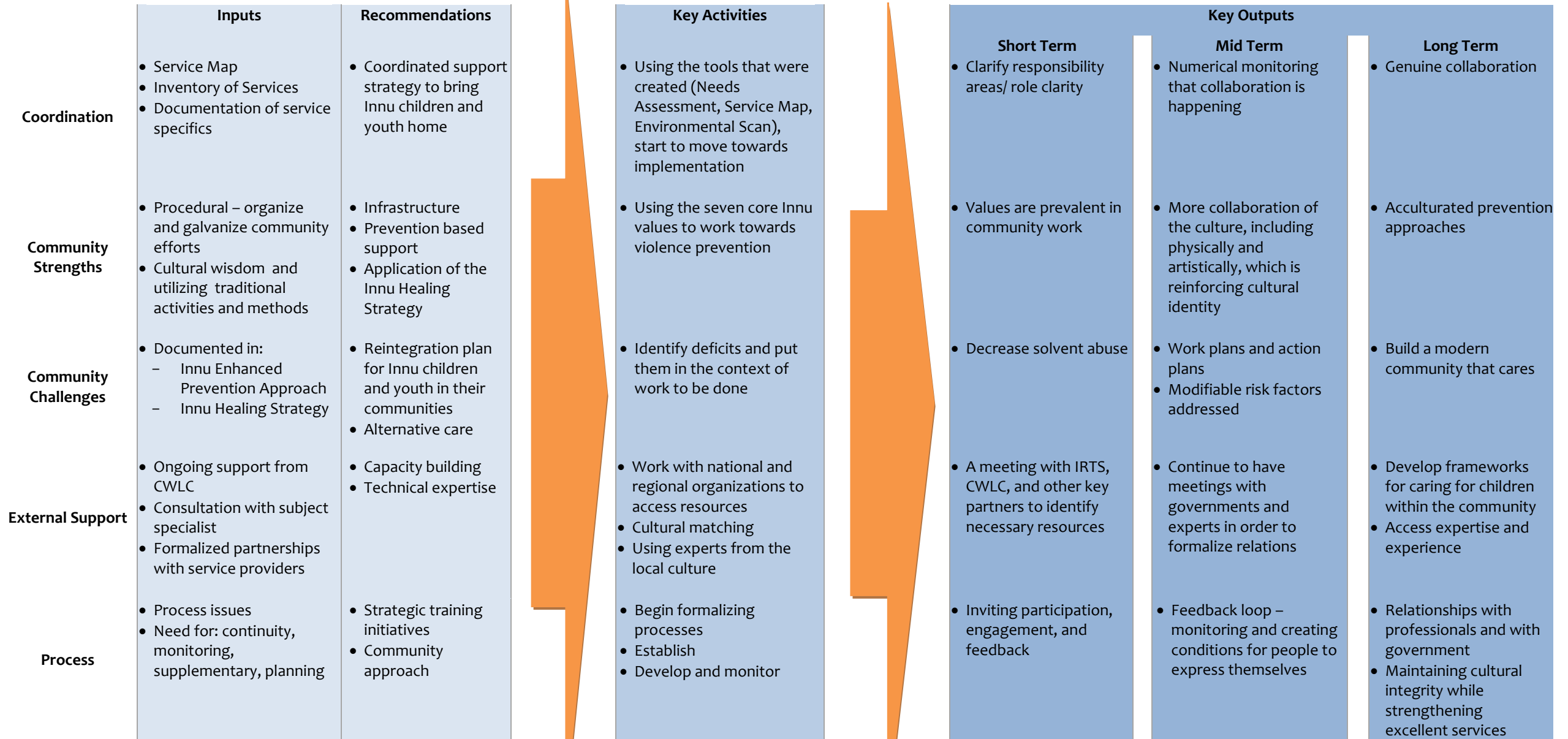
Appendix F: Definitions

The terms strategy, intervention, program, plan, goals, objectives and prevention are used throughout this report. Each term means different things to different people in different contexts. The CWLC outlines definitions here for clarity.

Table 2 : Definitions

Strategy:	A general conceptual approach to preventing a specific issue. The strategy can encompass the broad perspective and move towards the implementation science of the issue.
Intervention:	A specific set of activities and accompanying materials developed to intercede on behalf of a specific issue in the community. For example, an early intervention program for children and youth on drug and alcohol issues.
Program:	A program outlines key aspects of a specified approach that provides a service or services to a specific group of people. A specific prevention strategy may lead to the implementation of a program in the communities.
Plan:	A concrete set of actions in order to achieve a specific goal.
Goals:	A specific target outlined by interested parties, communities, and key stakeholders to achieve.
Objectives:	Objectives clarify the tasks to be done and provide a means of tracking an intervention's progress at achieving goals.
Prevention:	Preventative interventions are a range of strategies, activities and materials implemented by individuals, communities, non-government organizations and government departments to target the various social and environmental factors that increase instances of risk.

Appendix F: Innu Enhanced Prevention Approach Logic Framework



Appendix F: List of Innu Round Table Secretariat Staff

Steven Joudry - Executive Director

Natasha Hurley - Health Coordinator

Bernice Webber - Penashue Income Support, Integrated Case Manager

Stella Rich - Income Support, Senior Client Service Officer

Mary Janet Hill - Health Navigator

Winnie Gregoire - Income Support, Client Service Officer

Lyla Andrew - CYFS Community Liaison Social Worker

Alicia Penashue - Executive Assistant

Kylie Rose - Client Services Manager

Julianna Piwas - Client Services Officer, Natuashish

This is Exhibit D

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, appearing to be 'G. Benuen', written in a cursive style.

A Commissioner, etc.



Mushuau Innu Government Vision Statement

To provide good government, that responds to the needs of the people and fosters unity, understanding and fairness to the Mushuau Innu.

BCR No. 2019 _____
Page 1 of 3

Mushuau Innu First Nation Band Council Resolution (BCR)

Whereas pursuant to our inherent right of self-government as free and self-governing people from time immemorial;

And Whereas as the duly selected government of the Mushuau Innu we have the power and responsibility to administer and govern our Nation within and as a part of Canada;

*And Whereas pursuant to the **Indian Act (R.S., 1985, c.I-5)**, and as designated in Section 3 of the Mushuau Innu First Nation Band Order P.C. 2002-1948, 21 November 2002, wherein we were declared to be a Band for the purposes of the said Indian Act and to be known as the Mushuau Innu First Nation (MIFN), under which we operate as registered Indians;*

*And Whereas pursuant to **Order in Council 2003-1985** dated December 11, 2003, Natuashish Indian Reserve #2 was created as a land base for the Mushuau Innu First Nation Band;*

*And Whereas being recognized by the **Indian Act (R.S., 1985, c.I-5)**, of the duly elected Government of the said body of Indians, we have the power and responsibility to administer and govern Natuashish Indian Reserve #2;*

And Whereas the Council has met in session on July 5, 2019 and constituted a quorum

WHEREAS:

- Innu have, after many years of effort, finally started receiving some federal funding for the provision of Innu child and family prevention services, starting as of 2016-17. However the funding has been essentially frozen for four years and is insufficient to meet community needs.
- As of 2018, based a ruling of the Canadian Human Rights Tribunal in the *Caring Society* decision at, federal funding for First Nations child and family services has become significantly different for "agencies" vs non-agencies, including agencies involved in prevention only and not protection. The Province of Newfoundland & Labrador does not

set criteria for the establishment of child and family services agencies, and has not been involved in prevention services.

- The Innu First Nations have established the Labrador Innu Round Table Secretariat Inc. (“IRT Secretariat”) as a corporation to assist both Innu First Nations with services, “as authorized by” the First Nations. Prevention services to Innu children and families are now being mainly provided by the IRT Secretariat, with our approval, in addition to certain services being provided at the First Nation level if desired.
- We wish to formally authorize the IRT Secretariat to provide prevention services for Innu children and families, and to formally designate the IRT Secretariat as our agency for that purpose.

NOW THEREFORE BE IT RESOLVED THAT:

1. We hereby designate the IRT Secretariat as **our agency** for the purpose of providing prevention services to our children and families. It is a pre-delegated agency, and is not providing protection services under provincial legislation at this time.
2. We **authorize** the IRT Secretariat to provide Innu prevention services and to take all incidental steps required to implement that purpose, including obtaining further funding.
3. Ongoing oversight and direction from our First Nation in these services shall be provided through the Board of the IRT Secretariat. The IRT Secretariat shall remain accountable to our First Nation through the Board and the corporation’s audit and reporting processes.
4. This resolution does not prejudice the ability of our First Nation to provide certain prevention services and other health and wellbeing services directly, complementing the services provided jointly through the IRT Secretariat, if we choose to do so

Moved By Jim

Seconded By Nachelle Piker

Voting in favour of BCR No. 2019-____ Are

John Nui (Chief)

Jim

Len Scott Rich (Deputy Chief)

Len Scott Rich

Angela Pasteen

Angela Pasteen

Mathias Rich

Mathias Rich

Nachelle Piker

Nachelle Piker

Notes: Unless and abstain of nay vote is recorded, those recoded as voting were the majority of those members of the Mushuau Government at the aforesaid meeting of Council. A quorum of the Mushuau government is three members (3) which may include the Utshman (Chief).

Number of members of Council present at the meeting: _____

Unless otherwise noted this BCR comes into effect the date upon which it was voted upon.



Sheshatshiu Innu First Nation

Band Council Resolution BCR

Band Council Resolution # 2019-018

Resolution on IRT Secretariat as Agency for Innu Prevention Services

WHEREAS:

- Innu have, after many years of effort, finally started receiving some federal funding for the provision of Innu child and family prevention services, starting as of 2016-17. However the funding has been essentially frozen for four years and is insufficient to meet community needs.
- As of 2018, based a ruling of the Canadian Human Rights Tribunal in the *Caring Society* decision at, federal funding for First Nations child and family services has become significantly different for “agencies” vs non-agencies, including agencies involved in prevention only and not protection. The Province of Newfoundland & Labrador does not set criteria for the establishment of child and family services agencies, and has not been involved in prevention services.
- The Innu First Nations have established the Labrador Innu Round Table Secretariat Inc. (“IRT Secretariat”) as a corporation to assist both Innu First Nations with services, “as authorized by” the First Nations. Prevention services to Innu children and families are now being mainly provided by the IRT Secretariat, with our approval, in addition to certain services being provided at the First Nation level if desired.
- We wish to formally authorize the IRT Secretariat to provide prevention services for Innu children and families, and to formally designate the IRT Secretariat as our agency for that purpose.

NOW THEREFORE BE IT RESOLVED THAT:

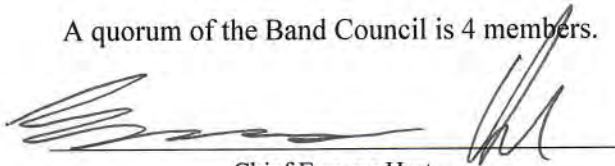
1. We hereby designate the IRT Secretariat as **our agency** for the purpose of providing prevention services to our children and families. It is a pre-delegated agency, and is not providing protection services under provincial legislation at this time.
2. We **authorize** the IRT Secretariat to provide Innu prevention services and to take all incidental steps required to implement that purpose, including obtaining further funding.
3. Ongoing oversight and direction from our First Nation in these services shall be provided through the Board of the IRT Secretariat. The IRT Secretariat shall remain accountable to our First Nation through the Board and the corporation’s audit and reporting processes.

4. This resolution does not prejudice the ability of our First Nation to provide certain prevention services and other health and wellbeing services directly, complementing the services provided jointly through the IRT Secretariat, if we choose to do so.


Adopted by the Council of Sheshatshiu Innu First Nation at a duly convened meeting on June 15, 2019

Those in favour of the resolution:


A quorum of the Band Council is 4 members.

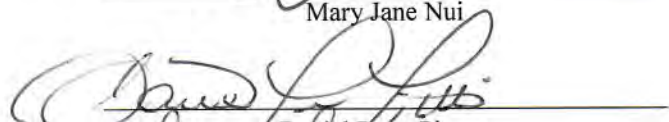

Chief Eugene Hart



Laureen Ashini


Terry Andrew


Karen Penunsi


Mary Jane Nui


Daniel Pone-Pinette


Penute Andrew



PO Box 449
Sheshatshiu, NL A0P 1M0
Ph: (709) 497-3854
Fax: 709-497-3881

Resolution # 2019-003

IRT Secretariat Board Resolution: Innu Prevention Services

Resolved by a quorum of the Board of Directors of the Innu Round Table Secretariat at a duly convened meeting on July 15, 2019.

WHEREAS:

- A. Innu have an urgent need for full access to high-quality, culturally-based prevention services to promote the health and preservation of Innu families and the well-being of their children.
- B. The Articles of Incorporation of the Labrador Innu Round Table Secretariat Inc. ("IRT Secretariat") provide that the purposes of the corporation include, as authorized by Mushuau Innu First Nation ("MIFN") and Sheshatshiu Innu First Nation ("SIFN"),
 - a. "to provide devolution planning and coordination of services of the Child Youth & Family Services program" [1.3(c)],
 - b. "to provide administration, management, and/or delivery of other programs and services" [1.3(d)], and
 - c. "to provide services" to MIFN, SIFN and their members in the areas of "First Nation governance, capacity development, program planning and community planning" [1.3(e)].
- C. IRT Secretariat is currently providing prevention services to Innu children and families with the approval of SIFN and MIFN, since federal funding for those services began in 2016-17. However the funding is not yet sufficient to reach all families in need or provide all needed services.
- D. MIFN and SIFN have, by resolutions, authorized the IRT Secretariat to deliver prevention services to Innu children and families, and have designated the IRT Secretariat as their agency for that purpose.
- E. This resolution is intended to provide further structure and guidance on Innu Prevention Services for purposes of transparency, accountability and clarity.

NOW THEREFORE BE IT RESOLVED THAT:

1. **Agency Status:** The IRT Secretariat accepts its role as the agency of SIFN and MIFN for providing Prevention Services to Innu children and families. It is a pre-delegated agency not undertaking protection services at this time.

2. **Name of the program:** With the approval of the Board, the IRT Secretariat may update the program name from "prevention services" to an Innu-aimun name or other name, if desired. This document will use the term **Prevention Services** for the time being.
3. **Staff lead:** The IRT Secretariat Executive Director shall ensure that the Innu Prevention Services program is led by a qualified full-time employee with experience in Innu child and family services issues. The staff lead shall, in cooperation with the Executive Director, ensure that other appropriate staff are hired and supervised, and ensure that Innu Prevention Services operate in accordance with this resolution, Innu needs, First Nation choices, funding requirements, and IRT Secretariat board directions.
4. **Innu Care Approach:** The service model for Innu Prevention Services is the Innu Care Approach.
- The Innu Care Approach flows from Innu traditions and cannot be fully written. But it may be explained and elaborated in various guides, policies, posters, images, videos or other materials. A *Guide to the Innu Care Approach* has been published by the IRT Secretariat in Dec 2017 and is available on our website:
<http://www.irtsec.ca/2016/wp-content/uploads/2018/01/A-Guide-to-the-Innu-Care-Approach-Dec-2017.pdf>
 - Generally, the Innu Care Approach is the approach used by Innu to care for children in a good way. It focuses not just on the child, but on the supports that surround the child like a strong tent. It is briefly summarized below:

INNU CARE APPROACH

Supports surround the child:

- ❖ Nutshimit
- ❖ Parents
- ❖ Extended Family
- ❖ Community
- ❖ Innu Values
- ❖ Integrated Innu Services
- ❖ Culture & Language
- ❖ Elders



5. **Goals:** The 3 goals of Innu

Prevention Services are to:

- Prevent Innu children from coming into care.
- Help transition Innu children in care back home to their community and/or family.
- Enhance the lives of Innu children and families.

- 6. Coordination & Support:** The IRT Secretariat is committed to the importance of coordination among Innu service providers, and to supporting the growth of services at the First Nation level. A number of services that support children and families are provided at the First Nation level, and we will coordinate with those service providers to create a seamless, integrated network care for Innu children and families. We will support First Nations to continue developing their mix of services in the way that they choose. The delivery of Innu Prevention services will remain flexible according to the choices and needs of each community.
- 7. Activities:** The activities undertaken by Innu Prevention Services will evolve as the program grows. Feedback will be gathered on a regular basis from staff, the First Nations, community members and other partners to continue adjusting and developing programming components. Activities may include but are not limited to the following examples:
- a. contributing to case planning, in interaction with the Province's assigned workers and with Innu Representatives as the representative program develops;
 - b. parent and family support work;
 - c. connecting with and reintegrating children placed out of their community;
 - d. supporting the growth of a full range of culturally appropriate Innu local services;
 - e. promoting awareness and understanding among community members and all service providers; and
 - f. helping to implement Innu restorative justice and diversion from court programs, and linking to court justice systems as needed.

Dated at: Sheshatshin, NL this 15th day of July, 2019.


Eugene Hart


John Nui


Laureen Ashini


Nachele Poker


Etienne Rich

This is Exhibit E

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a surname that appears to be 'Benuen'.

A Commissioner, etc.

Julia Brown

From: Lyla Andrew <lylaandrew@irtsec.ca>
Sent: October 8, 2019 3:35 PM
To: annie.randell@canada.ca
Cc: 'Germaine Benuen'; Judith Rae
Subject: IRT meetings
Attachments: SIFN BCR 2019-018 IRT Secretariat As Agency for Innu Prevention Services.pdf; MIFN BCR re IRT Secretariat As Agency for Innu Prevention Services.pdf; IRT Sec Resolution # 2019-003.pdf

Greetings Annie, further to my email today about the agenda for the sub-committee meeting, I would like to make you aware that in addition to the draft agenda I sent this afternoon, I want to add to the agenda the issue of agency status for Innu prevention services. I'd like to give you a brief update on the significant progress on this issue before the actual meetings next week. To this end I've attached relevant documents, specifically resolutions, to indicate that this summer, both the Sheshatshiu Innu and Mushuau Innu First Nations decided to designate the IRTS as their agency for prevention services. This role has been accepted by the IRTS. This of course reflects the work that the IRT has already started over the last couple of years, but it also provides a clearer structure and framework for that work to move forward. We have consulted with the Province on this and Susan Walsh and Jennifer Barnes have advised that the Province is supportive.

With these positive steps in place, we would like to discuss the following with all three parties:

- Is formal recognition by the Province necessary, and what would that look like? Our understanding is that the federal policy is to defer to provinces about who is an agency for prevention or protection services. However, as you know, Newfoundland and Labrador has not been regulating prevention or providing prevention and it has no system in place for recognition of agencies. So, the Province has responded to us that they are supportive of the Innu taking this step to expand prevention services, but they are unclear how to indicate that support or what Canada may expect in terms of formalities. For example, if the Province provides a letter of support and recognition, would it need any particular language? Etc.
- What are the next steps at that point with ISC in terms of funding? We have heard a bit about the Agency funding guide and multi-year plans, but we would like to open that discussion with you more officially to get started with planning and so we can start to become familiar with how it all works.

As I said, I will add this item to the sub-committee agenda, but I know that Jennifer Barnes will not be present next week. I'm not sure if you'll need Nathalie to be back to work or anyone else involved at your end. Perhaps the follow-up may need to include scheduling a 3 way call where everyone needed to discuss this issue can be involved?

Anyway, just wanted to fill you in and put this on your radar. We're very excited about the increased positive supports this will be able to bring to Innu children and families. Thanks and see you next week. Lyla

Lyla Andrew MSW RSW

CYFS Community Liaison Social Worker

Innu Round Table Secretariat

c/o PO Box 160 Sheshatshit

Labrador, AOP 1M0

497-3855 ext 235, 899-3612

Total Control Panel

[Login](#)

To: jrae@oktlaw.com

[Remove](#) this sender from my allow list

From: lylaandrew@irtsec.ca

You received this message because the sender is on your allow list.

This is Exhibit F

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a smaller, more complex signature.

A Commissioner, etc.



COMPLAINT FORM

YOUR CONTACT INFORMATION (You are the complainant)

Your first name Innu Nation &		Your last name Grand Chief Gregory Rich	
Mailing address PO Box 186			
Town or city Natuashish, Labrador		Province NL	Postal code A0P 1A0
Home phone number (include area code)	Work phone number (include area code) (709) 478-8919	Cell phone number (include area code) (709) 896-1660	Fax number (include area code) (709) 478-8833
At which number(s) can we reach you during the day? Home <input checked="" type="checkbox"/> Work <input checked="" type="checkbox"/> Cell			
Your e-mail address, if any, by which you authorize us to send you personal information related to your complaint: grandchief@innu.ca			
<input type="checkbox"/> Please check here if your phone is a TTY (Text Telephone) If you have any special needs related to a disability that the Commission should know about, such as a specific format for communicating with you, please describe here:			
Please select the box that applies to you (If none of these apply to you, contact the Commission): <input checked="" type="checkbox"/> Canadian citizen <input type="checkbox"/> Permanent resident <input type="checkbox"/> In Canada on a Visa as a visitor, student or temporary foreign worker			

If any of your contact information changes during the complaint process, it is your responsibility to inform us, otherwise your complaint could experience a delay or even be closed.

YOUR ALTERNATE CONTACT INFORMATION

Please provide the contact information of a person that you would like us to contact if the Commission cannot reach you. It could be a family member or friend.

Name of your alternate contact: Deputy Grand Chief Etienne Rich		
Home phone number <i>(include area code)</i>	Work phone number <i>(include area code)</i> (709) 497-8398	Cell phone number <i>(include area code)</i>
E-mail address erich@innu.ca		

YOUR REPRESENTATIVE'S CONTACT INFORMATION

You do not need to hire a lawyer or other representative to file a complaint.

I do not have a representative

If you do choose to hire a lawyer, please provide the following contact information.

Name of your representative Judith Rae	Firm Olthuis Kleer Townshend LLP		
Mailing address 250 University Ave, 8th Floor			
Town or city Toronto		Province ON	Postal code M5H 3E5
Work phone number <i>(include area code)</i> (416) 981-9407	Cell phone number <i>(include area code)</i> (416) 998-0995	Fax number <i>(include area code)</i> (416) 981-9350	
E-mail address jrae@oktlaw.com			

I prefer that information concerning my complaint be sent: *(Select one)*

- only to me;
- only to my representative; or
- to my representative with a copy to me.

TRADE UNION OR EQUIVALENT

Are you a member of a trade union or equivalent? Yes No

I give permission to the Commission to contact my trade union or equivalent regarding my complaint. If **yes**, please provide the following information:

Name of your trade union or equivalent	
Name of your union representative	
Work phone number <i>(include area code)</i>	Cell phone number <i>(include area code)</i>
E-mail address	



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

YOUR COMPLAINT

Your Name: Innu Nation & Grand Chief Gregory Rich

ORGANIZATION YOUR COMPLAINT IS AGAINST

(This is the respondent)

If there is more than one respondent, you must file a separate complaint against each one.

Name of business, organization or association

Government of Canada

In what city and province (or territory) did the alleged discrimination happen? (If the events took place outside Canada, please contact the Commission)

City or town:

Sheshatshiu & Natuashish

Province or territory:

Newfoundland & Labrador

When did the alleged discrimination take place? (The alleged discrimination has to be less than one year old, but exceptions may apply):

Start date (dd/mm/yyyy):

28/06/2019

Last date (dd/mm/yyyy):

I have a reasonable basis to believe that the respondent discriminated against me based on one or more of the following ground(s) of discrimination (Please check only the ones that apply to your situation):

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex
- Sexual orientation
- Gender identity or expression
- Marital status
- Family status
- Genetic characteristics
- Disability
- A conviction for which a pardon has been granted or a record suspended

Please explain your situation by answering the following questions in the space provided. You may also choose to answer these questions using a separate document (no more than three (3) pages *in total*). If you have any supporting documents, keep them with you. You may be asked for them at a later date during the process.

How and when were you treated differently, based on each ground of discrimination you have identified? Summarize and give the dates of each event.

Please see attached.

Summary (continued)

How did these events have a negative effect on you? Briefly describe the steps you have taken to resolve the situation?

Please see attached.



AGREEMENTS

The legal basis for the following agreements are explained in the Privacy Notice of the *How to file your complaint* document.

I agree that the Commission may use the information provided in my complaint to assist it in researching issues and in addressing human rights issues in Canada. I understand that the Commission will never include my personal or other identifying information in any public report, and that my personal information is still protected by privacy laws. I understand that if I do not agree, the Commission will still process my complaint.

In order for the Commission to process your complaint, you need to check each one of the checkboxes below to show your agreement:

The information in this Complaint Form is true to the best of my knowledge and belief.

I authorize the Commission to collect my personal complaint information (such as the information about me in this complaint form) and use it to process my human rights complaint.

I authorize anyone (such as an employer, service provider, witness) who has information needed to process my complaint to share it with the Commission. The Commission can obtain this information by talking to witnesses or asking for written records. Depending on the nature of the complaint, these records could include personnel files or employer data, medical or hospital records, and financial or taxpayer information.

Please print, sign and date the form before submitting.

Complainant's signature _____

Date June 29, 2020

You can reach the Commission by:

- Mail: Canadian Human Rights Commission, 344 Slater Street, 8th floor, Ottawa, ON K1A 1E1
- Email: Complaint@chrc-ccdp.gc.ca
- Facsimile: 1-613-996-9661
- Telephone: 1-888-214-1090
- TTY: 1-888-643-3304

Complaint to the Canadian Human Rights Commission, June 2020

Complainants: Innu Nation and Grand Chief Gregory Rich

How and when were you treated differently, based on each ground of discrimination you have identified? Summarize and give the dates of each event.

This is a complaint that the Government of Canada ("Canada") is continuing to discriminate against the Innu people of Labrador ("Innu") on the basis of race and ethnic/national origin through the same conduct already found to be discriminatory by the Canadian Human Rights Tribunal ("Tribunal") in *First Nations Child and Family Caring Society v Canada* ("*Caring Society*"). We are aware the *Caring Society* proceeding remains ongoing and long term reform has not been addressed. This complaint does not address long term reform. It addresses 2 matters for which the Tribunal has ordered "immediate relief", namely:

1. Prevention Funding: Canada has refused to extend prevention funding to the Innu on the basis of actual need, as required by 2018 CHRT 4 at paras. 410-411.
2. Innu Representatives Funding: Canada has refused to extend equitable funding to the Innu to support their Innu Representatives program, a legislated service the provincial law refers to as Indigenous Representatives, as required by 2016 CHRT 10 at para. 23, referring to 2016 CHRT 2 at para. 389. The Ontario "band representative" service is now funded at actual costs further to 2018 CHRT 4 at para. 427, but similar services in other provinces and territories are not.

In both cases, Canada is in direct breach of existing rulings of the Tribunal, and such rulings have already established that Canada is engaging in discriminatory practices contrary to s. 5 of the *Canadian Human Rights Act* ("CHRA"). In addition and in the alternative, Canada's actions are discriminatory practices contrary to s. 5 of the CHRA for the reasons considered in *Caring Society* or additional reasons.

WHO IS BRINGING THIS COMPLAINT

This complaint is brought by Innu Nation and by its Grand Chief, Gregory Rich, on behalf of a group of individuals: Innu children and families who are members of, descended from, and/or reside at Sheshatshiu Innu First Nation or Mushuau Innu First Nation. There are about 3,000 Labrador Innu individuals, mainly living on the reserves of Sheshatshiu and Natuashish. Innu Nation represents the Innu people as a nation inclusive of both communities, and is a corporation. Gregory Rich is an Innu individual, resides in Natuashish, and is the Grand Chief of Innu Nation. This complaint has the support of Sheshatshiu Innu First Nation and Mushuau Innu First Nation. It also has the support of the service corporation established by the Innu, called the Labrador Innu Round Table Secretariat ("IRT Secretariat"), that delivers Innu prevention services and operates the Innu Representatives program.

1. PREVENTION FUNDING

Canada is refusing to provide needs-based prevention funding to Innu at the actual cost of those services. The failure to support the provision of needs-based prevention services through adequate funding, particularly in light of Canada's continued provision of unlimited funding to take Innu children away from their homes for child protection purposes, is discriminatory.

In 2016 CHRT 2, one of the main reasons the Tribunal found Canada's practices to be discriminatory was because Canada provided unlimited funding to take First Nations children out of their homes into state care, while providing no or limited funding¹ for prevention/least disruptive measures ("prevention") to keep

¹ Whether no or limited funding was provided depended on the version of the program. Innu received none initially.

First Nations children safely within their families and communities. The Tribunal held that this incentivized the unnecessary apprehension of First Nations children, which it later described as “a worst-case scenario” causing pain and suffering “of the worst kind”.² And yet, this fundamental defect in federal child and family services funding remains firmly in place for Innu.

In 2016-17, Canada started providing Innu limited prevention funding. Previously it had provided none.

In 2018, the Tribunal held that Canada’s small initial increases to prevention funding were inadequate. It ordered Canada “to eliminate that aspect of its funding formulas/models that creates an incentive resulting in the unnecessary apprehension of First Nations children from their families and/or communities” by funding “prevention/least disruptive measures, intake and investigation, legal fees, and building repairs services for First Nations children and families on-reserve and in the Yukon, based on actual needs which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFC agencies to be in the best interests of the child”.³ Canada still has provided needs-based prevention funding to the Innu.

It is discriminatory to deprive Innu families of needs-based prevention services, particularly for reasons that are technicalities, arbitrary, self-serving to Canada, and/or disconnected from any valid child and family services purpose. Nothing in the Tribunal rulings requires or encourages this. The Tribunal did not require an organization to have status as an agency as a pre-condition to receiving needs-based prevention at actual cost; the Tribunal only cites agencies as being in the best place to determine need. The Tribunal told Canada to implement prevention at costs in an “effective and meaningful way”, that “ensures the essential needs of First Nation children are met and discrimination is eliminated”.⁴

By now, the Innu have an agency. On July 15, 2019, the Innu First Nations designated the IRT Secretariat as their agency for prevention services within child and family services.⁵ The Province of Newfoundland and Labrador (“Province”) has informally expressed support for the IRT Secretariat as a prevention agency. The Province provides child protection services to the Innu, pursuant to its legislation and with funding from Canada. The Province does not provide prevention services to Innu. It also does not have legislation on prevention services nor with respect to agencies providing prevention services.

Canada says it has unspecified internal policies that the IRT Secretariat does not meet in order to receive needs-based prevention funding for the Innu people. It says that the Innu agency must provide child *protection* services, or at least be funded for them, in order to receive needs-based *prevention* funding. Canada also says, or said, that the Innu agency must be *provincially delegated*. The Province indicated that provincial delegation was impossible. These restrictions, whether formal policies or not, are discriminatory practices. Among other things, these restrictions are contrary to the Tribunal’s rulings, inconsistent with the purpose and reasons of those rulings, illogical, unduly onerous, arbitrary, not grounded in any *bona fide* reason for compelling child and family services purposes, incompatible with the service and legal landscape in our Province, inconsistent with federal legislation,⁶ and unnecessary.

² See 2019 CHRT 39.

³ 2018 CHRT 4 at para. 410, see also para. 411.

⁴ 2018 CHRT 4 at para. 407.

⁵ This designation took place with Band Council Resolutions issued in June and July 2019 by the two Innu First Nations. The designation was accepted by the Board of IRT Secretariat by resolution on July 15, 2019.

⁶ *Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019 c 24, s. 18(1).

Please note the “start date” on our CHRC form applies to Innu Representatives. Discrimination against Innu in prevention services has been ongoing for a long time as described in *Caring Society*, and remains ongoing. Canada’s failure to remedy that discrimination with respect to Innu is further discrimination.

2. INNU REPRESENTATIVES FUNDING

Another reason the Tribunal found discrimination in 2016 CHRT 2 is because Canada’s funding did not allow First Nations and their agencies to meet applicable legislation and standards. One of the examples it gave was lack of funding for “band representatives”. At that time, discussion of band representatives focused mainly in Ontario, where this had been a statutory role for many years. However the Tribunal’s comments in para. 389 were about the need for funding to adapt to legislation generally, in any province or territory, including band representatives where that service applies.⁷

In April 2016, the Tribunal ordered Canada to address certain deficiencies as a matter of immediate relief, including that funding is “not adapted to provincial/ territorial legislation and standards” and “creates funding deficiencies for such items as... band representatives”.⁸ Canada was thus specifically ordered to ensure equitable band representative funding, wherever that function exists in law, immediately. This order was not specific to any province.

At that time, no such legislated function existed in our Province. On June 28, 2019 that changed. A band representative function called “Indigenous representatives” came into effect in the Province’s new legislation.⁹ The Innu prepared a program accordingly, which we call “Innu Representatives”.

In advance of that date, IRT Secretariat approached ISC to fund the Innu Representatives program. ISC eventually said only partial funding would be available, and that any funding would decrease prevention funding. This is a discriminatory and unacceptable solution to funding Innu Representatives. IRT Secretariat therefore applied to Jordan’s Principle. Jordan’s Principle funded the program in 2019-20. An application is pending for 2020-21. Jordan’s Principle is meant to fill gaps. It has to be applied for each year, with uncertain results. It is an inappropriate way to fill core legislated functions. Canada’s refusal to equitably fund the Innu Representatives program is a discriminatory practice. Canada should be funding the program on the same principles as in Ontario further to the order in 2018 CHRT 4 at para. 427.

How did these events have a negative effect on you? Briefly describe the steps you have taken to resolve the situation?

The effects of these discriminatory practices are well documented in *Caring Society*. Briefly they include, among other things, children been taken away from their homes unnecessarily, children being unnecessarily placed away from family or community, lack of supports to families and children, and delayed family reunification. All of which have devastating impacts.

We have tried for the past year and a half to resolve these matters without success, through direct contact with Indigenous Services Canada as well as through the Innu Round Table tripartite process and related committees, meetings and phone calls. We ask the Commission and Tribunal to help, and to expedite this complaint. In the meantime, Innu children are suffering, and literally dying in care. An Innu youth Wally Rich recently committed suicide while in care in a group home, away from his community and culture. **We call on Canada to end this discrimination now.**

⁷ 2016 CHRT 2 at many points; see for instance para. 389.

⁸ 2016 CHRT 10 at para. 23.

⁹ *Children, Youth and Families Act*, SNL 2018, c C-12.3. See in particular s. 2(1)(p), and references throughout.

This is Exhibit G

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, appearing to be 'G. Benuen', written in a cursive style.

A Commissioner, etc.

Julia Brown

From: Kylie Rose <krose@irtsec.ca>
Sent: June 23, 2020 2:40 PM
To: Levesque3, Nathalie (AADNC/AANDC)
Cc: gbenuen@irtsec.ca; Judith Rae; Lyla Andrew; 'Steven Joudry'; annie.randell@canada.ca
Subject: IRT Prevention Services Proposal 2020-2021
Attachments: IRT - Prevention Services Proposal 2020-2021.zip

Please see the attached proposal and email below on behalf of Germaine Benuen, Executive Director – IRT Secretariat:

Dear Nathalie,

We have reviewed ISC's presentation on prevention funding from the CYFS sub-committee and discussed it with Innu leaders. It does not offer a viable solution.

Trying to negotiate and then manage a service agreement for protection with the Province would waste far too much of our time, resources and attention. There would be no meaningful gain, because the Province still be delivering protection in line with its own laws and policies, which we know is a broken system. We want to focus on delivering needed prevention services, and transitioning when ready to an Innu system that works. The examples in your presentation in which 0-4 children are in care bear no resemblance to the Innu situation with around 165 Innu children in care. Not to mention that there is no indication the Province wants to do this.

We are disappointed that ISC continues to place barriers to our access to needs-based prevention for Innu families. We are nevertheless determined. We firmly maintain the right of Innu families to needs-based prevention.

Please find attached an application for needs-based prevention at actual cost, for 2020-21. This is being submitted by the Innu prevention services agency, IRT Secretariat. We respectfully ask ISC to consider it in the actual cost system. Along with our application, given ISC's position on this issue in the past year, we are including a legal opinion paper explaining the reasons why we believe this should be approved at actual costs.

This proposal is a modest and reasonable proposal for what we can actually deliver in 2020-21, on the basis of needs and the best interests of Innu children.

If ISC Atlantic continues to maintain that we are not eligible to be considered for actual costs, please confirm this decision as soon as possible. Our intention will be to use the internal appeal process available at ISC HQ for actual cost decisions. In that event, we also urge ISC Atlantic to go forward with as much of our requested funding as possible, as soon as possible, on the basis you are able to, while we proceed with our internal appeal.

If you have questions, this can be discussed further on Thursday at the technical CYFS meeting.

Germaine Benuen
Executive Director – Innu Round Table Secretariat
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“Actual Cost” Prevention/Least Disruptive Measures Funding Must Be Provided to the Labrador Innu Round Table Secretariat

June 2020

This legal opinion was prepared by Olthuis Kleer Townshend LLP, on behalf of the IRT Secretariat, for purposes of submission to Indigenous Services Canada.

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“While the necessity to account for public funds is certainly legitimate it becomes troubling when used as an argument to justify the mass removal of children rather than preventing it.

There is a need to shift this right now to cease discrimination.”

Canadian Human Rights Tribunal, February 2018, in *Caring Society* 2018 CHRT 4

Purpose

Our legal opinion is that prevention funding must, by law, be provided to the Labrador Innu Round Table Secretariat Inc. (“IRT”) at “actual costs” on the basis of the actual needs of Innu children as determined by the IRT. This document outlines the legal basis for that opinion.

If you have any questions about the facts or law outlined in this paper, please contact us or IRT before making your funding decision.

Overview

Unlimited federal funding is available to put Innu children and youth in care, taken away from their homes and families. Often, this unlimited funding pays to keep these Innu children and youth away from their extended families, communities, language and culture.

In contrast, for many years, *no* funding was available for prevention/least disruptive measures services within the scope of child, youth and family services (“prevention”) to Innu families. In the last three years, following the 2016 Tribunal ruling described below, that situation has improved such that *some* funding is available for Innu prevention services. But that funding remains *limited* by the amount ISC chooses to set aside for prevention each year, rather than being defined by actual needs.

In 2016, the Canadian Human Rights Tribunal (“Tribunal”) found these kinds of funding models to be discriminatory, primarily because they create perverse incentives to bring First Nations children and youth into care unnecessarily. It ordered Canada to cease that discrimination.

In 2018, the Tribunal further ordered Canada to specifically fund First Nations prevention on the basis of “actual costs”, on the basis of need. It said need should be determined by First Nations child and family service agencies according to the best interests of the children the agency serves. It re-emphasized that providing *unlimited* funding for maintenance of children in care while providing *limited* funding for prevention is a discriminatory funding model. It told Canada, again, that this discrimination must stop. It held this relief must be immediate, as the shift to prevention-focused funding cannot wait.

This ruling did not limit needs-based prevention to children and families served by “agencies”. It held that needs-based prevention must be provided, and that First Nation agencies are appropriate arbiters of that need.

Nevertheless, the Innu have an agency to determine that need. As of July 15, 2019, Sheshatshiu Innu First Nation and Mushuau Innu First Nation designated the IRT as their prevention services agency. No further designation or delegation legally applies to prevention services in Newfoundland & Labrador. Within the scheme of child and family services, the Province of Newfoundland & Labrador regulates and provides child protection services but neither regulates nor provides prevention services.

Nowhere does the Canadian Human Rights Tribunal state that agencies must deliver both protection and prevention services, or receive one comprehensive funding package for both types of services, in order to be entitled to receive or determine “actual cost” funding for

prevention services. And nowhere does the Tribunal state that First Nation agencies delivering prevention services have to be delegated or designated, or pre-delegated or pre-designated, by a provincial authority in order to be entitled to receive or determine “actual cost” funding for prevention services.

On the face of the Tribunal’s rulings, Innu families are entitled to benefit from needs-based prevention services funded at their actual cost, just like maintenance is funded. The IRT Secretariat is an agency for prevention purposes, and entitled to receive and determine needs-based funding for prevention services as a First Nations agency on the basis of actual costs, as ordered by the Tribunal in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 at paragraphs 410-411.¹

Rather than imposing arbitrary limitations on the scope of its ruling, the Tribunal’s ruling in 2018 CHRT 4 specifically told Canada to implement its decision in an “**effective and meaningful way**”, interpreted in line with the reasons in all of its *Caring Society* decisions. In particular, it said Canada must implement the order in way that “**ensures the essential needs of First Nation children are met and discrimination is eliminated**”.²

The discrimination the Tribunal was most worried about throughout the *Caring Society* rulings and in the prevention funding order 2018 CHRT 4 in particular is the way in which Canada’s funding rules provided *unlimited* funding for “maintenance” to take children into care, but provided *limited* funding for “operations” and *no or limited* funding for prevention. It found these funding systems created incentives for the unnecessary apprehension of First Nations children from their families and/or communities,³ which it held is discrimination of the worst kind.⁴

Canada is continuing to fund child and family services for the Innu in exactly this manner – a manner that the Tribunal has already found is discriminatory with devastating human consequences.

¹ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 [“2018 CHRT 4”] at paragraphs 410-411. The suite of *Caring Society* CHRT decisions starting with 2016 CHRT 2 will be referred to as “*Caring Society*”.

² *Ibid.* at para. 407.

³ *Ibid.* at para. 410.

⁴ See e.g. *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 at paras. 13, 245, 247, *inter alia* [“2019 CHRT 39”].

Since the main *Caring Society* decision of 2016, Canada has made the important transition from “no” prevention funding for Innu to “some”. But it continues to keep prevention funding capped arbitrarily, while continuing to offer the Province unlimited funds to take Innu children into care.

This is discriminatory. The Tribunal has already held as much in 2016 CHRT 2. It made this exceedingly clear in 2018 CHRT 4, and we believe Canada’s refusal to extend needs-based prevention funding to Innu is directly contrary to the orders in that ruling.

We urge Canada to consider the IRT’s funding applications for prevention services on the basis of actual costs, as it is legally required to do.

CHRT Decisions on Funding for Prevention Services

In its 2016 *Caring Society* decision on the merits, the Tribunal found:

Under the FNCFS Program, Directive 20-1 has a number of shortcomings and creates incentives to remove children from their homes and communities. Mainly, Directive 20-1 makes assumptions based on population thresholds and children in care to fund the operations budgets of FNCFS Agencies. These assumptions ignore the real child welfare situation in many First Nations’ communities on reserve. Whereas operations budgets are fixed, maintenance budgets for taking children into care are reimbursable at cost. If an FNCFS Agency does not have the funds to provide services through its operations budget, often times the only way to provide the necessary child and family services is to bring the child into care...⁵

The Tribunal made similar findings about a second funding model called the “enhanced prevention funding approach” (EPFA) in which Canada provided some dedicated funding for prevention services, but a limited amount. The Tribunal found:

AANDC incorporated some of the same shortcomings of Directive 20-1 into the EPFA, such as the assumptions about children in care and population levels, along with the fixed streams of funding for operations and prevention. Despite being aware of these shortcomings in Directive 20-1 based on numerous reports, AANDC has not followed the recommendations in those reports and has

⁵ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2016 CHRT 2 [“2016 CHRT 2”] at para. 384 [emphasis added].

perpetuated the main shortcoming of the FNCFS Program: the incentive to take children into care - to remove them from their families.⁶

In the 2018 *Caring Society* decision, the Tribunal re-emphasized that the prevention services funding models described above, in which prevention services funding is not specifically available or is capped while protection services funding to put children in care is provided at actual cost, are discriminatory. It reiterated its finding from the 2016 *Caring Society* decision that such an approach incentivizes the removal of children from their families, and is:

... a broken system that is harming children and removing them from their communities instead of allowing them to remain safely in their homes with the benefit of sufficient culturally appropriate prevention services [.]⁷

The Tribunal stated that:

While the necessity to account for public funds is certainly legitimate **it becomes troubling when used as an argument to justify the mass removal of children rather than preventing it. There is a need to shift this right now to cease discrimination.** The Panel finds the seriousness and emergency of the issue is not grasped with some of Canada's actions and responses. **This is a clear example of a policy that was found discriminatory and that is still perpetuating discrimination.**⁸

These findings resulted in the following order:

The Panel, pursuant to Section 53(2)(a) of the *CHRA*, orders Canada, pending long term reform of its National FNCFS Program funding formulas and models, **to eliminate that aspect of its funding formulas/models that creates an incentive resulting in the unnecessary apprehension of First Nations children from their families and/or communities.** To this effect, and pursuant to Section 53 (2) (a) of the *CHRA*, the Panel orders INAC to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, and building repairs services for First Nations children and families on-reserve and in

⁶ *Ibid.* at para. 386.

⁷ 2018 CHRT 4 at para. 115.

⁸ *Ibid.*, at para. 121 [emphasis added].

the Yukon, based on actual needs which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs, that is, **by fully reimbursing actual costs for these services**, as determined by the FNCFC agencies to be in the best interests of the child...⁹

As noted above, this order did not limit prevention funding to agencies. Needs-based prevention applies to "First Nation families on reserve and in the Yukon", as written above. Agencies are positioned in the order as arbiters of need, not as a barrier to entry.

We believe that the Tribunal's term "FNCFC agencies" means First Nations Child and Family Caring agencies. It did not specifically define this term. The Tribunal did not create any arbitrary parameters in its decisions regarding First Nation agencies. Instead, the Tribunal makes clear that its decisions must be interpreted purposively, in a manner that effectively and meaningfully eliminates discrimination as described throughout its rulings. For example, in the 2018 *Caring Society* decision on "actual costs", the Tribunal stated:

The orders made in this ruling are to be read in concurrence with the findings above, along with the findings and orders in the Decision and previous rulings (2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 7, 2017 CHRT 14 and 2017 CHRT 35). Separating the orders from the reasoning leading to them will not assist in **implementing the orders in an effective and meaningful way that ensures the essential needs of First Nations children are met and discrimination is eliminated.**¹⁰

In particular, the Tribunal did not require that agencies deliver both protection and prevention services to be entitled to receive or determine actual cost funding for prevention services. Nor did it require a single-window flow-through of funding for both protection and prevention in order to qualify to receive or determine such funding.

The Tribunal also did not require that First Nation agencies delivering prevention services have to be delegated or designated, or pre-delegated or pre-designated, by a provincial authority in order to be entitled to "actual cost" funding for prevention services.

Those are technical limitations that we understand Canada has voiced to the Innu as further described below. We speculate that these limitations may serve some purpose that makes things

⁹ *Ibid.*, at para. 410 [emphasis added].

¹⁰ *Ibid.*, at para. 407.

easier for Canada (though the nature of that purpose remains unclear to us), but we have not identified any purpose for these alleged limitations that is connected to “ensur[ing] the essential needs of First Nations children are met and discrimination is eliminated” as per 2018 CHRT 4.

The Tribunal concluded the 2018 *Caring Society* decision with this exhortation:

It is important to look at this case in terms of bringing Justice and not simply the Law, especially with reconciliation as a goal. This country needs healing and reconciliation and the starting point is the children and respecting their rights. If this is not understood in a meaningful way, in the sense that it leads to real and measurable change, then, the TRC and this Panel’s work is trivialized and unfortunately the suffering is born by vulnerable children.¹¹

Prevention Services in Newfoundland and Labrador

The Province of Newfoundland and Labrador does not provide or regulate prevention services within child and family services. Its legislation provides solely for the provision and regulation of protection services.¹²

The Province thus has no legislative authority to designate or delegate the IRT as an agency for the delivery of prevention services. Its legal counsel confirmed this in conference calls with federal and IRT representatives in November 2019.

For years, Innu families did not receive prevention services. Some general community programs assisted with primary or secondary prevention purposes indirectly (e.g. health and healing programs, for instance), but this did not cover most prevention needs. No such services were funded or planned specifically within a child and family services prevention perspective. No tertiary prevention services were available i.e. no targeted support for children, youth and families already receiving provincial protection services or at high risk.¹³

The funding model at that time was or was substantially similar to Directive-21 as described by the Tribunal in 2016 CHRT 2 and quoted in part above. Canada provided the Province with unlimited maintenance costs, and a limited amount for other provincial child protection

¹¹ *Ibid.*, at para. 451.

¹² See the *Children, Youth and Families Act*, SNL 2018, c C-12.3. This was equally true under the former provincial legislation, the *Children and Youth Care and Protection Act*, SNL 2010, c C-12.2.

¹³ For information on what the terms primary, secondary and tertiary prevention typically mean, please refer to 2016 CHRT 2 at para. 116.

operations. No stream for prevention was provided either to the Province or to the Innu. The Province provided no prevention services. The Province continues to provide only protection to this day.

After the 2016 *Caring Society* decision, the government of Canada began providing the Innu with some funding for prevention services later in the fiscal year 2016-17. This brought Innu services into a funding model that was not called “EPFA” but is similar to the EPFA funding model as described by the Tribunal in 2016 CHRT 2 and quoted in part above. Canada has continued providing unlimited maintenance costs to the Province, it has increased its operations costs provided to the Province, and it provides a limited prevention stream to the Innu.

The Innu First Nations asked the IRT to provide and coordinate Innu prevention services. The IRT received the bulk of such funding as has been available and has been providing prevention services to both Innu communities. In addition, Sheshatshiu Innu First Nation (“SIFN”) and Mushuau Innu First Nation (“MIFN”) have received some prevention funds directly from Indigenous Services Canada (“ISC”), but they continue to direct the majority of prevention funding through the IRT.

In June-July 2019, SIFN and MIFN officially designated the IRT as their agency for prevention services. The IRT accepted that designation by resolution dated July 15, 2019. The IRT’s resolution also set out the basic philosophy and practice model for such services, as well as its overall structure, governance and accountability.

Innu prevention services have made a real impact in the last 3 years. But at the same time, prevention services for Innu families remain at an early stage.

For example, a current priority for IRT is trying to ensure that all *new* child protection matters with a child *in care or at imminent risk of removal* are assigned a prevention worker, particularly those cases that are headed to court and are not proceeding with the consent of the family. Full coverage is not yet available to all Innu children and youth in care. Nor is coverage available to most of the Innu children and youth receiving services with the consent of their families, nor the hundreds of Innu children and youth on the “protective intervention program” caseload, i.e. those receiving child protection services but not placed into formal provincial care. Nor to other Innu children and youth who may need primary prevention.

Other forms of prevention and early intervention are still being developed. For example, some of the identified but unmet critical needs include: in-home support to families; culturally-appropriate Innu-aimun addictions treatment services that are stable and properly funded to

serve the Innu communities; repatriation services to assist children and youth in care and to plan exits from care where possible; youth support and transition services; support for Innu foster families and development of additional foster families; more counselling for men and support around the issue of domestic violence; more consistent and intensive support to pregnant mothers and mothers of babies and young children; and more.

As IRT has observed in its first three years of prevention operations, **there remains a huge unmet need in prevention services in the Innu communities.**

Many more Innu children and youth could be prevented from coming into care unnecessarily if those needs were met. Many more Innu children and youth in care could also return more quickly and more successfully to their families and/or communities if those needs were met.

IRT has been working with the First Nations to plan its growth as an agency and better meet prevention needs in the Innu communities. Its 2020-21 workplan and budget are part of those planning efforts, and it is working on completing a multi-year plan. Significant growth in staffing, programming and space will be required.

The prevention services funding received by Innu to date has been through the Government of Canada's Community Well-being and Jurisdiction Initiatives ("CWJI") stream under the First Nations Child and Family Services program ("FNCFS"). In the Atlantic region, this funding is available on an application basis. Allocations for services within each province are created by ISC, based on the amount available within the region which is capped, i.e. it is a fixed pot.

Despite its designation as an agency, and its requests to ISC accordingly, the IRT has still not been funded at actual cost for prevention services. Nor have the Innu First Nations themselves.

Canada's Stated Position and Our Response

Our understanding of Canada's position to date has been that an agency is required to receive actual cost funding, and the IRT does not qualify as an "agency" as that term is used in the Tribunal's 2018 CHRT 4 decision. Its stated rationale is that to qualify as an agency and receive prevention funding at actual cost, the IRT must meet two conditions it does not currently meet:

- (1) It must deliver both prevention and protection services, and
- (2) It must be delegated or designated by the Province.

We note that at the CYFS Sub-Committee meeting on June 2, 2020, ISC presented a new version of restriction #1. This was that it could accept that IRT Secretariat may not *deliver* protection, but

it must nevertheless receive *funding* for protection under a “comprehensive funding approach” that has “[o]ne funding agreement between IRTS and ISC [to] include funding for protection, prevention, and access to the CHRT actuals process.” IRT Secretariat would then need to enter into a secondary agreement with the Province to flow through funds for the Province to continue its delivery of protection services. This would be a time-intensive and extremely complex initiative for IRT to undertake, given the high protection caseload (in the range of 565 children, i.e. about 165 children in care and another 400 not in care), and there is no indication that the Province is interested. This option has a high cost for IRT in terms of time and attention and resources, all of which it wants to spend on prevention, not on a paper change.

It seems from the June 2nd presentation that ISC may have softened its position on delegation by the Province. This is welcome, but as it remains unconfirmed, we have responded to this issue here as well.

In our opinion, neither of these two restrictions, in any form, are valid restrictions on Canada’s implementation of the Tribunal’s order.

More specifically, Canada’s position is invalid since:

- a. Neither restriction is indicated anywhere in the Tribunal’s *Caring Society* decisions.
- b. These restrictions are contrary to the purpose and intent of the Tribunal’s decisions.
- c. Canada must implement the Tribunal’s order in a way that adjusts to differing regional circumstances, particularly those beyond a First Nation’s control.
- d. With respect to delegation (if it remains a criteria), Canada’s position on provincial delegation is inconsistent with its own legislation in the *Act respecting First Nations, Inuit and Métis children, youth and families*.

Each of these points is elaborated on below.

(a) The restrictions are not found in the Tribunal’s decisions

As previously noted, the Tribunal did not require agencies as a threshold eligibility for needs-based prevention. Nor did it require that First Nation agencies must deliver both protection and prevention services in order to receive or determine actual cost funding for prevention services. Nor did it require that agencies flow through funding for both, if delivery is separate. Nor does the Tribunal state that agencies have to be delegated by a province or territory, or be in the process of delegation, particularly in order to deliver prevention.

Canada has come up with these restrictions all on its own. For Canada to say that these restrictions are part of its policies is no answer. Its policies must conform to the rulings of the Tribunal, and must not result in discrimination.

By way of comparison, it took several years of additional compliance rulings on Jordan's Principle for Canada to finally adjust its policies to the "full scope" of Jordan's Principle as intended by the Tribunal. Canada had imposed numerous restrictions on Jordan's Principle which were nowhere to be found in the Tribunal's original decision. We hope Canada will avoid the need for additional compliance proceedings here, and instead bring its policies into line with the Tribunal's decisions and the prevention needs of First Nation children and families.

(b) The restrictions are contrary to the purpose and intent of the Tribunal's decisions

The Tribunal's clear and urgent concern in paras. 410-411 of 2018 CHRT 4 was to ensure that First Nations children receive prevention services on the basis of their needs.

As outlined above, the Tribunal had already found that the system of providing unlimited federal funding to bring First Nations children into care, in comparison with limited prevention funding, was discriminatory. It was distorting child and family services, and bringing children and youth into care in cases where that could have been avoided with proper prevention.¹⁴

Indeed, the Tribunal was so alarmed by that discrimination, that it ordered compensation to the affected children and families, finding that "this case of racial discrimination is one of the worst possible cases warranting the maximum awards."¹⁵ It found the discrimination was wilful and reckless, because Canada knew of it and had still not fixed it. It termed it a "worst-case scenario under our Act".¹⁶

The Tribunal's views about the discrimination that must be addressed, and the serious impacts of that discrimination, could not be more clear. **And yet this discrimination remains ongoing in Labrador.**

Federal funding to the Province of Newfoundland & Labrador remains unlimited to bring Innu children into care. Federal funding to provide prevention services to the Innu remains limited.

¹⁴ See e.g. 2016 CHRT 2 at para. 116.

¹⁵ 2019 CHRT 39 at para. 13.

¹⁶ *Ibid.*, at para. 234.

The distorted funding model excoriated by the Tribunal so thoroughly, and repeatedly, remains in place.

The barriers Canada is putting up do not serve any purpose that helps meet the prevention needs of Innu children and families. Quite the opposite.

Each time another Innu child comes into care, it seems to us that Canada is incurring another \$120,000 of liability to the child and the child's parents in a typical case, according to the Tribunal's compensation ruling. Barring a settlement or further order, the liability runs until "the Panel informed by the parties and the evidence makes a determination that the unnecessary removal of First Nations children from their homes, families and communities as a result of the discrimination found in this case has ceased".¹⁷

We urge Canada to cease that discrimination. At a bare minimum that requires making needs-based prevention funding available to the Innu without further delay or denial.

(c) Canada must adjust to differing regional circumstances

We understand Canada's need for national policies. Nevertheless, it must ensure its policies are sufficiently adaptable not to lead to absurd consequences in specific regions.

In some places, a single First Nations agency provides both protection and prevention, and is delegated under a provincial law. That's fine. But that is simply not the factual or legal reality in Labrador. To hold that against Innu children and families who need help is unfair, particularly since these circumstances are beyond their control.

In the Labrador Innu communities, protection services are provided by the Province. And prevention, since 2016-17, has been provided by the Innu, primarily by the IRT. There is no apparent logical reason why the IRT should be required to take on *protection* as well in order to receive "actual cost" funding *for prevention*. Nor is there a logical purposive reason why funding for protection should have to flow through IRT in order for it to receive actual costs for prevention. As noted, achieving this would be a costly exercise on paper with no change in services, and there is no indication the Province is willing to pursue it.

¹⁷ *Ibid.*, at paras. 245 and 248.

This split in services has been largely beyond Innu control. Protection services to the Innu communities are provided by the Province further to its bilateral funding agreement with Canada. The Innu are not part of that funding agreement. Canada has not required the Province to provide prevention, nor has the Province chosen to do so.

The Innu were advocating for their own prevention services funding for well over a decade before they received any. Throughout that time, the Province's legislative scheme had no way for the Innu (or anyone else) to be delegated to provide protection services. There was no realistic way the Innu could have formed an agency that does both prevention and protection during this time. It was only in June 2019 that the Province's new Act provided even the *possibility* of delegating protection in some form. Even if the Innu had wanted to do both, until just a few months ago this was a total impossibility. .

Similarly, the logical impossibility of having the Province "delegate" prevention to IRT is also beyond Innu control. The choice to leave prevention out of the Province's legislative scheme has been a longstanding choice of the provincial government.

We could see the logic of a federal policy requirement for an agency to comply with applicable laws. So, for instance, if the applicable legislation says that an entity must receive a certain approval in order to provide a certain kind of service, it would make sense for Canada to ensure such criteria are met, so as to refrain from funding illegal activities.

But there must be some intelligent inquiry into what the applicable laws actually are. To require provincial delegation for activities that are not provincially regulated becomes absurd. The IRT Secretariat is providing prevention in compliance with applicable laws. That should be enough.

(d) Canada should act consistently with its own child welfare law

Finally, the provincial delegation requirement seems all the more out of place in view of Canada's *Act respecting First Nations, Inuit and Métis children, youth and families*, which came into force on January 1, 2020.¹⁸

Indigenous Services Canada therefore needs to be alive to the reality that jurisdiction in this sector will increasingly be exercised by Indigenous nations, not just provinces and territories. And yet, its position with respect to Innu prevention services suggests a rote requirement for the

¹⁸ *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24.

Province to specifically delegate or authorize all child and family services activities – even those the Province has specifically chosen not to legislate on, as Newfoundland & Labrador has with respect to prevention.

The Innu are free to design their own prevention services, as they have done. Their jurisdiction to do so, particularly in a manner not inconsistent with any provincial law, is now federally recognized.¹⁹ They might, in the future, choose to regulate those services through their own law. Or they might not. Currently, the IRT corporate documents, SIFN and MIFN Band Council Resolutions, the resolutions and decisions of the IRT Board of Directors, and the Innu Care Approach together provide a solid framework for prevention services that the Innu have chosen under their own inherent jurisdiction. Canada has raised no substantive concerns with this framework, e.g. in terms of its practice model, accountability, or governance. The only issue with it Canada has raised is that it comes from the Innu, rather than from the Province.

Canada’s policies and actions with respect to prevention funding decisions must be consistent with Canada’s own legislative recognition that Indigenous peoples have their own jurisdiction in this subject matter, that may interact with provincial/territorial and federal jurisdiction. In the circumstances of this case, we believe that an insistence on provincial delegation of prevention authority is inconsistent with s. 18 of the *Act respecting First Nations, Inuit and Métis children, youth and families*.

Conclusion

Canada’s policies and actions must comply with its own legislation and the rulings of its Tribunals. The positions that Canada has taken in this matter are discriminatory and inconsistent with s. 5 of the *Canadian Human Rights Act*, including the specific interpretations and orders further to that Act made by the Canadian Human Rights Tribunal.

In light of the foregoing, our opinion is that Canada must consider the IRT’s funding applications for prevention under the “actual costs” stream consistently with 2018 CHRT 4.

Prevention services are crucial to breaking the cycle of removing Indigenous children from their families and communities. As the Tribunal said in its 2018 decision:

¹⁹ *Ibid.* at s. 18. The Act provides an additional mechanism in which Innu jurisdiction can prevail over provincial law. That process has not yet taken place for the Innu. However Indigenous jurisdiction not inconsistent or in conflict with provincial law is recognized under s. 18 of the Act without further barriers to the exercise of that jurisdiction.

[Child and family] services must be prevention oriented rather than removal oriented if Canada wants to reverse the perpetuation of removal of children that is 3 times higher than at the heights of the residential school era.²⁰

The delay or refusal in extending access to needs-based prevention services to Innu is discriminatory, and we urge Canada to change course.

²⁰ 2018 CHRT 4 at para. 167.

ACTUAL COSTS CLAIM FORM FOR REIMBURSEMENT OF ELIGIBLE COSTS
First Nations Child and Family Services Program (FNCFS)

Privacy Act Statement

The collection, use and disclosure of your personal information is required to assess your request for reimbursement and is derived from the Department of Indigenous Services Act. We will collect, use and disclose your personal information in accordance with the Privacy Act. Information we have collected about you will be used to process eligible payments of reimbursements and for audit purposes. For more information, refer to the personal information bank AANDC PPU 210 First Nation Child and Family Services at infosource.gc.ca. You have the right to access personal information that we hold about you and to request correction of erroneous personal information. To notify us about incorrect information email aadnc.atiprequest-airpdemande.aadnc@canada.ca or call 819-997-8277. For more information on privacy issues and the Privacy Act in general, you can consult the Privacy Commissioner at 1-800-282-1376.

By submitting your claim form, we are authorized to disclose the information submitted with this application in accordance with subsection 8(2) of the Privacy Act (for example, pursuant to an order from a court or Tribunal that compels the production of such information).

Province Newfoundland and Labrador, NL	Fiscal Year 2020-2021
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Agency Name
Innu Round Table Secretariat

Funding Recipient Name (Agreement) Innu Round Table Secretariat	Funding Recipient Number
---	---------------------------------

FINANCIAL SUMMARY: Claims for Reimbursement of Actual Costs

FY 20-21

	(A)
Section 2: Prevention / Least Disruptive Measures based on actual costs (Prevention)	[REDACTED]
Section 3A: Intake and Investigations based on actual costs (Operations) - Salaries	[REDACTED]
Section 3B: Intake and Investigation based on actual costs (Operations) - Other costs Other expenditures not captured based on salaries	[REDACTED]
Section 4: Legal Fees based on actual costs (Operations or Prevention)	[REDACTED]
Section 5: Building Repairs based on actual costs (Operations) for health and safety or to ensure the continuity or improvements of FNCFS program delivery activities	[REDACTED]
GRAND TOTAL OF ACTUAL COSTS FOR REIMBURSEMENT	[REDACTED]

Given Name Benuen	Family Name Germaine
-----------------------------	--------------------------------

Title Executive Director	Telephone Number (###-###-####) 709-497-3855 * 232
------------------------------------	--

E-mail address gbenuen@irtsec.ca	Date (YYYY-MM-DD)
---	--------------------------

DECLARATION:
The Information provided is accurate to the best of my knowledge.

Signature of Representative of Agency X	Date (YYYY-MM-DD)
---	--------------------------

Name of Representative (Print)
Germaine Benuen

Title Executive Director	Telephone Number (###-###-####) 709-497-3855 * 232
------------------------------------	--

E-mail address
gbenuen@irtsec.ca

ACTUAL COSTS CLAIM FORM FOR REIMBURSEMENT OF ELIGIBLE COSTS
First Nations Child and Family Services Program (FNCFS)

Privacy Act Statement

The collection, use and disclosure of your personal information is required to assess your request for reimbursement and is derived from the Department of Indigenous Services Act. We will collect, use and disclose your personal information in accordance with the Privacy Act. Information we have collected about you will be used to process eligible payments of reimbursements and for audit purposes. For more information, refer to the personal information bank AANDC PPU 210 First Nation Child and Family Services at infocsource.gc.ca. You have the right to access personal information that we hold about you and to request correction of erroneous personal information. To notify us about incorrect information email aadnc.atiprequest-alprpdemande.aandc@canada.ca or call 819-997-8277. For more information on privacy issues and the Privacy Act in general, you can consult the Privacy Commissioner at 1-800-282-1376.

By submitting your claim form, we are authorized to disclose the information submitted with this application in accordance with subsection 8(2) of the Privacy Act (for example, pursuant to an order from a court or Tribunal that compels the production of such information).

Province Newfoundland and Labrador, NL	Fiscal Year 2020-2021
Agency Name Innu Round Table Secretariat	
Funding Recipient Name (Agreement) Innu Round Table Secretariat	Funding Recipient Number


FINANCIAL SUMMARY: Claims for Reimbursement of Actual Costs

	FY 20-21 (A)
Section 2: Prevention / Least Disruptive Measures based on actual costs (Prevention)	[REDACTED]
Section 3A: Intake and Investigations based on actual costs (Operations) - Salaries	[REDACTED]
Section 3B: Intake and Investigation based on actual costs (Operations) - Other costs Other expenditures not captured based on salaries	[REDACTED]
Section 4: Legal Fees based on actual costs (Operations or Prevention)	[REDACTED]
Section 5: Building Repairs based on actual costs (Operations) for health and safety or to ensure the continuity or improvements of FNCFS program delivery activities	[REDACTED]
GRAND TOTAL OF ACTUAL COSTS FOR REIMBURSEMENT	[REDACTED]

Given Name Benüen	Family Name Germaine
Title Executive Director	Telephone Number (###-###-####) 709-497-3855 * 232
E-mail address gbenuen@irtsec.ca	Date (YYYY-MM-DD)

DECLARATION:

The information provided is accurate to the best of my knowledge.

Signature of Representative of Agency X 	Date (YYYY-MM-DD) 2020-06-23
Name of Representative (Print) Germaine Benüen	
Title Executive Director	Telephone Number (###-###-####) 709-497-3855 * 232
E-mail address gbenuen@irtsec.ca	

Innu Round Table Secretariat Prevention Services Agency: Prevention Funding Submission 2020-2021



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AGENCY PROFILE

The Innu Round Table Secretariat Prevention Services Agency (IRT Prevention Services Agency) serves members of Mushuau Innu First Nation (MIFN) and Sheshatshiu Innu First Nation (SIFN), who together comprise the citizens of the Innu Nation.

The Labrador Innu are the only First Nations in Labrador, and we have a unique history and culture. Innu-aimun is proudly spoken in both our communities. The Innu Nation is a body representing both communities and includes a Grand Chief, Deputy Grand Chief and Board of Directors. Each First Nation has a Chief and Council. There are approximately 3,000 Innu people, mostly living in the reserve communities of Sheshatshiu and Natuashish, and a few living off reserve.

The Province of Newfoundland and Labrador provides child protection services to the Innu according to its legislation and policies, and with federal funding. We continue to have many serious concerns about that system. Among other things, the Province has long been clear that it has no legislative mandate to either provide nor regulate or designate prevention services, and does not provide such services. It provides protection services only.

For many years, we therefore called for our own prevention funding to help us deliver our own prevention services. Efforts on this issue were active, and frustrating. After the landmark decision of the Canadian Human Rights Tribunal in *First Nations Child and Family Caring Society v Canada* in January 2016, Canada finally announced it would extend some prevention funding to the Innu communities.

Prevention funding and services for the Innu began early in 2017. The First Nations have chosen to direct most of that funding and services through our organization the Innu Round Table (IRT). The IRT worked with the Child Welfare League of Canada to help outline the framework for Innu prevention services in 2016, and we published *A Guide to the Innu Care Approach* in 2017.

In the summer of 2019, SIFN and MIFN **formally designated** the IRT Secretariat as their Prevention Services Agency. The IRT Secretariat's Board of Directors accepted that designation by resolution on **July 15, 2019**. That is the date that IRT became a prevention services agency.

Those 3 resolutions (SIFN, MIFN and IRT Board) form the mandate of the IRT Prevention Services Agency. They set out the basic structure and parameters of Innu Prevention Services.

The IRT Prevention Services Agency is operated by a corporation, the Labrador Innu Round Table Secretariat Inc. The IRT Secretariat is a collective organization of the Mushuau Innu First Nation (MIFN), the Sheshatshiu Innu First Nation (SIFN), and the Innu Nation. It was created and incorporated in 2014 for coordinated administration of common priorities including capacity development, devolution of programs, service delivery as specified by the First Nations, and managing the tripartite process known as the Innu Round Table with Canada and the province of Newfoundland & Labrador.

The IRT Secretariat operates at arms length from the Innu governments, remaining accountable to the Innu governments and Innu people through its Board of Directors. Our Board of Directors is composed of the Chief of SIFN, the Chief of MIFN, the Deputy Grand Chief of Innu Nation (chair), and two other directors each appointed by the Council of MIFN and SIFN respectively.

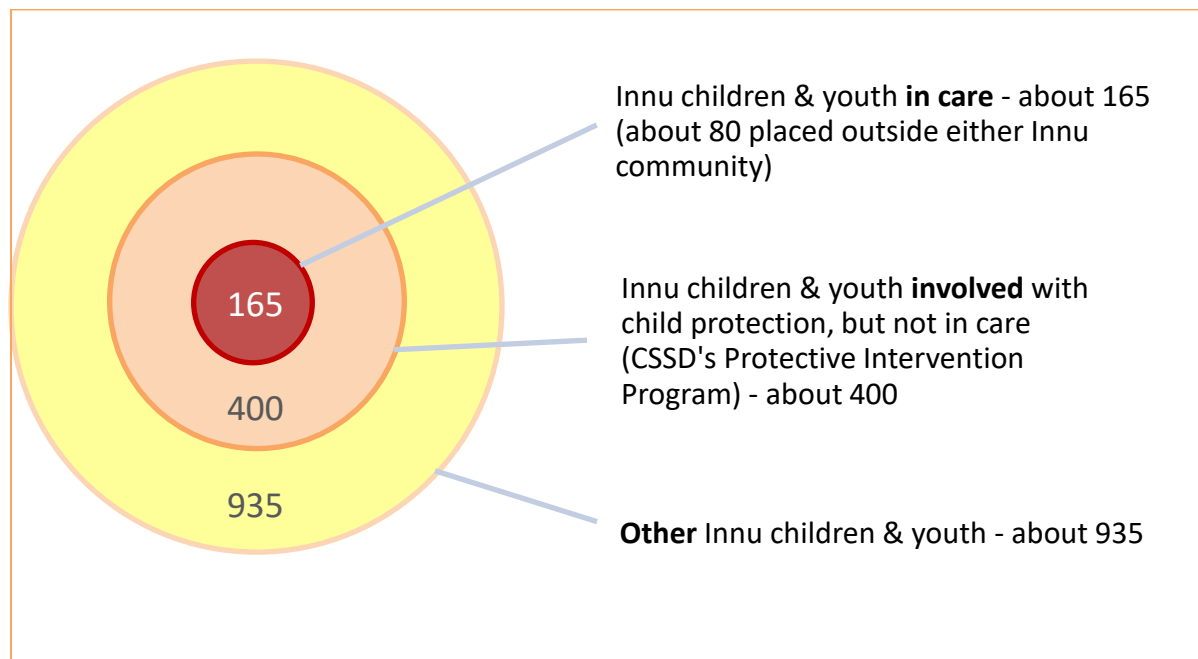
PREVENTION NEEDS

The initial prevention funding started in 2016-2017 has remained fairly stable since then. It has allowed Innu Prevention Services to get started, but it is not sufficient to meet the full scale of Innu child and family services prevention needs.

Prevention is currently less than 10% of the total funding that the government of Canada directs to Innu child welfare. Roughly, about \$11-12 million is paid by Canada to the Province to maintain Innu children and youth in care, and another \$4-5 million is going to the Province for their operational costs.

Prevention needs in the Innu communities are extremely high. There are approximately 1,500 Innu children and youth ages 0-19. Roughly speaking, over 1 in 10 are in care, and over 1 in 3 are involved with child protection in some fashion (either in care or in the Province's Protective Intervention Program).

Children & Youth who need Innu Prevention Services – In Care, Involved, Other



Currently, only a small portion of these Innu children, youth and families are receiving any prevention services.

To date, we have prioritized the Innu children and youth coming into care, i.e. transitioning from the orange zone to red zone. Some, but still limited services have extended to other Innu children & youth in care, i.e. within the red zone. Services remain scarce within the orange zone (protective intervention program), and hardly any services have yet reached the yellow zone, i.e. other Innu children & youth, who may be at risk and where early intervention and help could help prevent worse issues from developing.

Extending the reach of Innu Prevention Services to reach *all* of the families with current involvement (1 in 3 Innu children), *plus* those at risk (i.e. all other Innu families), and to do so with appropriate effective services, will take a lot more growth.

We know we cannot get there all at once.

This proposal is only for 2020-21. This year has been a particular challenging year due to the COVID-19 pandemic. That has delayed this proposal and other planning. Our plan for this fiscal year, as outlined here, reflects modest growth from our current services. It focuses on building the blocks for growth, and continuing work in the most critical and urgent areas.

We have started development of our 3-year multi-year plan as an agency. Work on that plan was delayed due to COVID-19 pandemic. We intend to complete the multi-year plan this year, and have it in place starting in 2021-22.

In due course, we plan to expand our services to meet the full prevention needs of the Labrador Innu population.

PREVENTION SERVICES PLAN FOR 2020-2021

Building Our Team

While it is important to grow our team to continue to expand and deepen the reach of prevention services, we need to grow in a smart and planned way, so overall growth in our staffing profile will be modest this year. Our ability to grow this year has also been restricted by COVID-19, which has created operational challenges as it has for most organizations. It has caused us to re-focus operations and has impacted some service delivery. The pandemic has limited our ability to function as usual. COVID-19 is now going into a less acute phase, which is positive, but we are mindful that second or further waves may occur, and the world is not “back to normal” yet.

For those reasons, this year we will be focusing on (1) strategic planning and (2) strengthening our organizational structure by adding a supervisor and structural positions that will be able to better support the current team, build capacity and sustain future growth in services.

Position	Number (Shesh. + Nat.)	Comments
Prevention Community Workers	5 (3 + 2)	Increase of 1
Prevention Social Workers	5 (3 +3)	Increase of 2 One transferring from SIFN; One additional for Natuashish
Case Work Supervisor	1	New
Administrative Assistant	1	Same as 2019-20
Nutshimit Programming Coordinator	1	New. Will work to develop program growth that is specifically land-based.
Prevention Programming Coordinator	1	New. Will coordinate amongst Innu organizations in prevention-based program development initiatives.
Elders	As Needed	Occasional – honoraria basis
<i>Innu Representatives</i>	<i>8 Reps (5 + 3) plus 2 related support positions</i>	<i>We are applying for separate funding under Jordan’s Principle.</i>
<i>Innu CYFS Law Coordinator</i>	<i>1</i>	<i>We are applying for separate funding to support development of the Innu Law.</i>

Innu CYFS Manager	1	Previously our Manager was funded by NL, but they did not confirm funding for 2020-21.
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Program Priorities

Program priorities for 2020-21 will include:

- Continuing, strengthening and steady expansions of family-based case work. Direct work with children, youth and families is key. Our prevention community workers and prevention social workers will continue this essential work, using the Innu Care Approach. One additional community worker position and one additional social worker will be added. In addition, a Case Work Supervisor will be added to this team to provide leadership, supervision and support, and help coordinate training initiatives.
- The Nutshimit Programming Coordinator will take a lead on land-based programming. Time on the land has been repeatedly identified by Innu and observed within our experience as one of the most effective ways for Innu to heal and restore balance. We were able to do some land-based programming in the past few years sporadically, using Jordan's Principle funding. Having a Nutshimit Programming Coordinator, and related program resources, will help us make this important prevention programming more consistent and more available.
- The Prevention Programming Coordinator will work both internally within IRT and externally among the First Nations and other Innu organizations to support prevention-based program development. Not every prevention service will be provided directly by IRT, some is at the First Nation level or with other organizations, and these choices can be considered case by case. Whoever delivers each services, it is important to identify the most urgent gaps and work to fill them to meet prevention needs. Priority areas of work for this position in 2020-21 will include:
 - (i) Continuing to ensure the Placement Facilities initiative is well supported. Four out of five planned facilities have now opened and are doing well, but continue to need support as they mature. The Natuashish Group Home is the last facility planned and now underway. A separate funding application was approved relating to this capacity building initiative.
 - (ii) Stabilizing and reinforcing Innu addictions treatment at Apenam's House. This is a critical prevention service for Innu parents, which is essential to keeping more Innu families together and helping them reunite. Substance use is a leading driver of child protection involvement for Innu families. Ensuring this program is sustainably funded and succeeding is a priority. At this time it continues to have insufficient core funding. Innu are drawing down on Innu Trust funds to support basic operational costs of this program which is not an acceptable solution.

(iii) Starting a new initiative to develop an In-Home Support program, to support families of origin, as well as kinship families and foster families caring for children and youth within the Innu communities. This will help more families stay safely and successfully together. This initiative will work closely with the Parent Support Workers that is a small program operating within both Innu communities to develop a model for more significant, in-depth prevention-oriented program.

(iv) Supporting additional counselling resources for men. This has been identified as an important gap, particularly following domestic violence. Domestic violence is a frequent driver of child welfare involvement for Innu families and often leads to children coming into care or being unable to return home.

- Strategic planning will be important this year, as we work towards completing our 3-year Multi-Year Plan.
- We plan to purchase and implement case management and information sharing software to raise the efficiency and professionalism of our agency's work.
- Our team will also be supporting the development of the Innu CYFS Law and work related to the Inquiry should the Inquiry occur. These are not part of this budget submission, but they are important initiatives that will by necessity interact with Innu Prevention Services.

Please note that separate budgets are being submitted for CYFS initiatives other than what is clearly prevention, i.e.:

- Innu Placement Facilities Initiative – Capacity Building (approved)
- Innu Law Development – Jurisdiction
- Innu Representatives – a legislated service, being submitted to Jordan's Principle

BUDGET

PREVENTION / LEAST DISRUPTIVE MEASURES

BUDGET	2020/21	Details/Comments
Salaries or staff contracts		
	████████	1 Manager
	████████	5 Prevention Community Workers (3 Sh. + 2 Nt.) (5 @ ██████████) Increase in 1 from previous year.
	████████	6 Prevention Social Workers (3 Sh. + 3 Nt.) (6 @ ██████████) One prevention social worker previously at SIFN will be transitioning to the IRT case work team. An additional social worker will be assigned for Natuashish, to balance the 3 social workers serving locally in Sheshatshiu through SIFN.
	████████	1 Case Work Supervisor
	████████	1 Nutshimit Programming Coordinator
	████████	1 Prevention Programs Coordinator
	████████	1 Administrative Assistant
	████████	██████ MERC on all of above
Elder Guidance	████████	Honoraria and gifts for Elders to provide guidance, to support programming as needed, and advise staff and management
Training Costs	████████	████████/position. Training needs this year may include: case management, computer skills development, trauma-informed care, Innu Care Approach, federal and provincial legislative frameworks, and more.
Meeting Costs	████████	
Direct Program Cost: Nutshimit-based prevention programs	████████	Program costs to facilitate Nutshimit programming, such as travel, food, fuel, other supplies, additional staffing costs, etc. Where possible, we will seek to use existing First Nations resources when available (e.g. vehicles, equipment).

<p>Direct Program Cost: Addictions Treatment</p>	<p>██████████</p>	<p>This is for access to addictions treatment services for prevention purposes, e.g. to help a family stay together or reunite. SIFN recently had to draw ██████████ in funding from the Innu Trust for Apenam's House. The Innu Trust is own source revenue meant for long-term investments or raising standards above basic needs. It should not have to be used to meet the basic operational needs of this essential prevention service for this year. That is not an acceptable funding solution for this program. The ██████████ in this application is a reimbursement of this own source revenue for basic prevention needs, which will be reinvested into the Trust.</p>
<p>Direct Program Cost: Community- Based Prevention Social Workers at SIFN Social Health</p>	<p>██████████</p>	<p>SIFN is continuing to provide certain prevention programming directly. Three social prevention social workers will remain working through SIFN Social Health in community-based prevention programming, while one is planned to integrate into the IRT Prevention case worker team. This amount will go to SIFN, and is ¾ of the ██████████ that SIFN previously received.</p>
<p>Direct Program Cost: Men's Counselling</p>	<p>██████████</p>	<p>Increase access to counselling for Innu men in situations directly connected to prevention (e.g. to help a family stay together or reunite), for example, following domestic violence where children are involved in the household. This programming will likely be delivered collaboratively with SIFN and/or MIFN.</p>
<p>Professional Services: Strategic planning & multi- year plan</p>	<p>██████████</p>	<p>We will be developing plans for our growth as an agency to better meet Innu prevention needs, and writing our multi-year plan.</p>
<p>Professional Services: In-Home Support program development</p>	<p>██████████</p>	<p>Supporting work to develop a major new program focused on supports at home. The need for this program has come up repeatedly in our planning sessions and consultations on unmet needs, and will be critical to prevention.</p>

Professional Services: legal support	██████	Legal support throughout the prevention services program and for strategic planning
Travel/ Accommodations	██████	Meetings; Training Visits to children, youth or families out of community
Rent and Utilities	██████	██████ /month/community
Telephone, Fax, Communications	██████	Internet; work cell phones, office fax; office phones
Case Management Software and related consulting for case record data management	██████	Explore using ShareVision or another system for reliable case management record keeping, purchase of access, set-up, support etc.
Other IT Support	██████	
Office Supplies & Equipment	██████	
Sub-total	██████	
Administration fees	██████ 1	██████ including audit, finance and accounting, HR, governance, etc.
TOTAL:	██████	

APPENDIX 1: AGENCY RESOLUTIONS



PO Box 449
Sheshatshlu, NL A0P 1M0
Ph: (709) 497-3854
Fax: 709-497-3881

Resolution # 2019-003

IRT Secretariat Board Resolution: Innu Prevention Services

Resolved by a quorum of the Board of Directors of the Innu Round Table Secretariat at a duly convened meeting on July 15, 2019.

WHEREAS:

- A. Innu have an urgent need for full access to high-quality, culturally-based prevention services to promote the health and preservation of Innu families and the well-being of their children.
- B. The Articles of Incorporation of the Labrador Innu Round Table Secretariat Inc. ("IRT Secretariat") provide that the purposes of the corporation include, as authorized by Mushuau Innu First Nation ("MIFN") and Sheshatshlu Innu First Nation ("SIFN"),
 - a. "to provide devolution planning and coordination of services of the Child Youth & Family Services program" [1.3(c)],
 - b. "to provide administration, management, and/or delivery of other programs and services" [1.3(d)], and
 - c. "to provide services" to MIFN, SIFN and their members in the areas of "First Nation governance, capacity development, program planning and community planning" [1.3(e)].
- C. IRT Secretariat is currently providing prevention services to Innu children and families with the approval of SIFN and MIFN, since federal funding for those services began in 2016-17. However the funding is not yet sufficient to reach all families in need or provide all needed services.
- D. MIFN and SIFN have, by resolutions, authorized the IRT Secretariat to deliver prevention services to Innu children and families, and have designated the IRT Secretariat as their agency for that purpose.
- E. This resolution is intended to provide further structure and guidance on Innu Prevention Services for purposes of transparency, accountability and clarity.

NOW THEREFORE BE IT RESOLVED THAT:

1. **Agency Status:** The IRT Secretariat accepts its role as the agency of SIFN and MIFN for providing Prevention Services to Innu children and families. It is a pre-delegated agency not undertaking protection services at this time.

2. **Name of the program:** With the approval of the Board, the IRT Secretariat may update the program name from "prevention services" to an Innu-aimun name or other name, if desired. This document will use the term **Prevention Services** for the time being.
3. **Staff lead:** The IRT Secretariat Executive Director shall ensure that the Innu Prevention Services program is led by a qualified full-time employee with experience in Innu child and family services issues. The staff lead shall, in cooperation with the Executive Director, ensure that other appropriate staff are hired and supervised, and ensure that Innu Prevention Services operate in accordance with this resolution, Innu needs, First Nation choices, funding requirements, and IRT Secretariat board directions.
4. **Innu Care Approach:** The service model for Innu Prevention Services is the Innu Care Approach.
- The Innu Care Approach flows from Innu traditions and cannot be fully written. But it may be explained and elaborated in various guides, policies, posters, images, videos or other materials. A *Guide to the Innu Care Approach* has been published by the IRT Secretariat in Dec 2017 and is available on our website:
<http://www.irtsec.ca/2016/wp-content/uploads/2018/01/A-Guide-to-the-Innu-Care-Approach-Dec-2017.pdf>
 - Generally, the Innu Care Approach is the approach used by Innu to care for children in a good way. It focuses not just on the child, but on the supports that surround the child like a strong tent. It is briefly summarized below:

INNU CARE APPROACH

Supports surround the child:

- ❖ Nutshimit
- ❖ Parents
- ❖ Extended Family
- ❖ Community
- ❖ Innu Values
- ❖ Integrated Innu Services
- ❖ Culture & Language
- ❖ Elders



5. **Goals:** The 3 goals of Innu

Prevention Services are to:

- Prevent Innu children from coming into care.
- Help transition Innu children in care back home to their community and/or family.
- Enhance the lives of Innu children and families.

6. Coordination & Support: The IRT Secretariat is committed to the importance of coordination among Innu service providers, and to supporting the growth of services at the First Nation level. A number of services that support children and families are provided at the First Nation level, and we will coordinate with those service providers to create a seamless, integrated network care for Innu children and families. We will support First Nations to continue developing their mix of services in the way that they choose. The delivery of Innu Prevention services will remain flexible according to the choices and needs of each community.

7. Activities: The activities undertaken by Innu Prevention Services will evolve as the program grows. Feedback will be gathered on a regular basis from staff, the First Nations, community members and other partners to continue adjusting and developing programming components. Activities may include but are not limited to the following examples:

- a. contributing to case planning, in interaction with the Province's assigned workers and with Innu Representatives as the representative program develops;
- b. parent and family support work;
- c. connecting with and reintegrating children placed out of their community;
- d. supporting the growth of a full range of culturally appropriate Innu local services;
- e. promoting awareness and understanding among community members and all service providers; and
- f. helping to implement Innu restorative justice and diversion from court programs, and linking to court justice systems as needed.

Dated at: Sheshatshin, NL this 15th day of July, 2019.


Eugene Hart


John Nui


Laureen Ashini


Nachele Poker


Etienne Rich



Mushuau Innu Government Vision Statement

To provide good government, that responds to the needs of the people and fosters unity, understanding and fairness to the Mushuau Innu.

BCR No. 2019 _____
Page 1 of 3

Mushuau Innu First Nation Band Council Resolution (BCR)

Whereas pursuant to our inherent right of self-government as free and self-governing people from time immemorial;

And Whereas as the duly selected government of the Mushuau Innu we have the power and responsibility to administer and govern our Nation within and as a part of Canada;

*And Whereas pursuant to the **Indian Act (R.S., 1985, c.I-5)**, and as designated in Section 3 of the Mushuau Innu First Nation Band Order P.C. 2002-1948, 21 November 2002, wherein we were declared to be a Band for the purposes of the said Indian Act and to be known as the Mushuau Innu First Nation (MIFN), under which we operate as registered Indians;*

*And Whereas pursuant to **Order in Council 2003-1985** dated December 11, 2003, Natuashish Indian Reserve #2 was created as a land base for the Mushuau Innu First Nation Band;*

*And Whereas being recognized by the **Indian Act (R.S., 1985, c.I-5)**, of the duly elected Government of the said body of Indians, we have the power and responsibility to administer and govern Natuashish Indian Reserve #2;*

And Whereas the Council has met in session on July 5, 2019 and constituted a quorum

WHEREAS:

- Innu have, after many years of effort, finally started receiving some federal funding for the provision of Innu child and family prevention services, starting as of 2016-17. However the funding has been essentially frozen for four years and is insufficient to meet community needs.
- As of 2018, based a ruling of the Canadian Human Rights Tribunal in the *Caring Society* decision at, federal funding for First Nations child and family services has become significantly different for "agencies" vs non-agencies, including agencies involved in prevention only and not protection. The Province of Newfoundland & Labrador does not

set criteria for the establishment of child and family services agencies, and has not been involved in prevention services.

- The Innu First Nations have established the Labrador Innu Round Table Secretariat Inc. (“IRT Secretariat”) as a corporation to assist both Innu First Nations with services, “as authorized by” the First Nations. Prevention services to Innu children and families are now being mainly provided by the IRT Secretariat, with our approval, in addition to certain services being provided at the First Nation level if desired.
- We wish to formally authorize the IRT Secretariat to provide prevention services for Innu children and families, and to formally designate the IRT Secretariat as our agency for that purpose.

NOW THEREFORE BE IT RESOLVED THAT:

1. We hereby designate the IRT Secretariat as **our agency** for the purpose of providing prevention services to our children and families. It is a pre-delegated agency, and is not providing protection services under provincial legislation at this time.
2. We **authorize** the IRT Secretariat to provide Innu prevention services and to take all incidental steps required to implement that purpose, including obtaining further funding.
3. Ongoing oversight and direction from our First Nation in these services shall be provided through the Board of the IRT Secretariat. The IRT Secretariat shall remain accountable to our First Nation through the Board and the corporation’s audit and reporting processes.
4. This resolution does not prejudice the ability of our First Nation to provide certain prevention services and other health and wellbeing services directly, complementing the services provided jointly through the IRT Secretariat, if we choose to do so

Moved By *Jim*

Seconded By *Nachelle Piker*

Voting in favour of BCR No. 2019-____ Are

John Nui (Chief)

Jim

Len Scott Rich (Deputy Chief)

Len Scott Rich

Angela Pasteen

Angela Pasteen

Mathias Rich

Mathias Rich

Nachelle Piker

Nachelle Piker

Notes: Unless and abstain of nay vote is recorded, those recoded as voting were the majority of those members of the Mushuau Government at the aforesaid meeting of Council. A quorum of the Mushuau government is three members (3) which may include the Utshman (Chief).

Number of members of Council present at the meeting: _____

Unless otherwise noted this BCR comes into effect the date upon which it was voted upon.



Sheshatshiu Innu First Nation

Band Council Resolution BCR

Band Council Resolution # 2019-018

Resolution on IRT Secretariat as Agency for Innu Prevention Services

WHEREAS:

- Innu have, after many years of effort, finally started receiving some federal funding for the provision of Innu child and family prevention services, starting as of 2016-17. However the funding has been essentially frozen for four years and is insufficient to meet community needs.
- As of 2018, based a ruling of the Canadian Human Rights Tribunal in the *Caring Society* decision at, federal funding for First Nations child and family services has become significantly different for “agencies” vs non-agencies, including agencies involved in prevention only and not protection. The Province of Newfoundland & Labrador does not set criteria for the establishment of child and family services agencies, and has not been involved in prevention services.
- The Innu First Nations have established the Labrador Innu Round Table Secretariat Inc. (“IRT Secretariat”) as a corporation to assist both Innu First Nations with services, “as authorized by” the First Nations. Prevention services to Innu children and families are now being mainly provided by the IRT Secretariat, with our approval, in addition to certain services being provided at the First Nation level if desired.
- We wish to formally authorize the IRT Secretariat to provide prevention services for Innu children and families, and to formally designate the IRT Secretariat as our agency for that purpose.

NOW THEREFORE BE IT RESOLVED THAT:

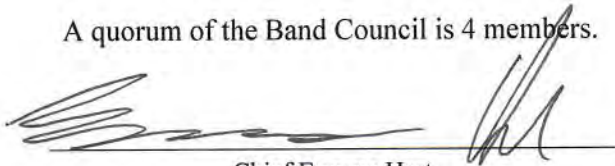
1. We hereby designate the IRT Secretariat as **our agency** for the purpose of providing prevention services to our children and families. It is a pre-delegated agency, and is not providing protection services under provincial legislation at this time.
2. We **authorize** the IRT Secretariat to provide Innu prevention services and to take all incidental steps required to implement that purpose, including obtaining further funding.
3. Ongoing oversight and direction from our First Nation in these services shall be provided through the Board of the IRT Secretariat. The IRT Secretariat shall remain accountable to our First Nation through the Board and the corporation’s audit and reporting processes.

4. This resolution does not prejudice the ability of our First Nation to provide certain prevention services and other health and wellbeing services directly, complementing the services provided jointly through the IRT Secretariat, if we choose to do so.


Adopted by the Council of Sheshatshiu Innu First Nation at a duly convened meeting on June 15, 2019

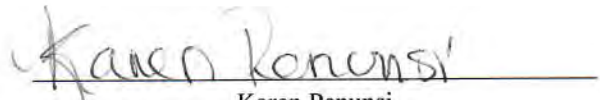
Those in favour of the resolution:


A quorum of the Band Council is 4 members.

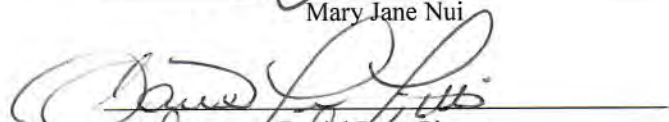

Chief Eugene Hart



Laureen Ashini


Terry Andrew


Karen Penunsi


Mary Jane Nui


Daniel Pone-Pinette


Penute Andrew

APPENDIX 2: A GUIDE TO THE INNU CARE APPROACH

A GUIDE TO
THE INNU CARE
APPROACH



Innu Round Table Secretariat

www.irtsec.ca

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In this Guide, the word “children” is often used in a broad sense to include both children and youth of all ages.

Introduction



The Innu Healing Strategy (2014) clearly outlines the need for healing in Innu communities, and also what is needed to achieve it. The impacts of separation and displacement from traditional lands, life and culture, as well as decades of negligence from the Canadian government, have led to severe challenges for the Innu to surmount. Today, far too many Innu families are struggling, and suffering. It is also clear that the effective ways to face and overcome these challenges come from the strength and resilience of Innu culture and relationships.

Even when assuming the best of intentions, the interventions of non-Innu governments in Innu communities have suffered from a lack of expertise in Innu culture. The true experts in Innu culture, *Innu-aitun*, are the Innu. Innu children, families and communities have an enormous wealth of knowledge and skills that must be valued and engaged with in order to rebuild the circles of support that keep all Innu healthy and strong.

The life of a community is its children. Children have the capacity to bring out the best in all people, with their laughter, their curiosity, and unconditional love. Providing love and support to all children is the basis for a healthy future, anywhere in the world.

However, families and communities that have been impacted by trauma face greater challenges in providing the necessary support for growing children. In that context, bringing the best of our qualities together is even more important. For Innu, this includes our respect for one another, our capacity to work together in the best interests of our children, our ability to trust and depend on one another, our love and value for family, and our timeless relationship to Nutshimit, the source of all our health and wellbeing.

The elements of Innu life that come together around our children in order to safeguard them and support them are like the poles of a *tshuap* (home on the land). Each one can only do so much on its own. But working together, in ways we have understood for millennia, we can provide the kind of environment that nourishes and sustains resilience in our children, families, and communities for generations to come.

Parents, Extended Family, Community, Innu Services, Culture & Language, and Elders are like *tshuap* poles building this caring environment around our children, standing on Nutshimit and woven together by the Innu Healing Values. In this supportive environment, our children are encouraged to grow strong in all aspects of life. This is the Innu Care Approach.

Innu and non-Innu alike who work together for the wellbeing of our Innu children need to be guided by a vision of health and wellness that moves beyond reacting to crisis and maintaining the status quo. We need to be inspired by the creativity and resilience of our children and bring about the changes we wish to see in our communities. This approach must inform our practice so that instead of tearing families apart, our interventions help to recognize and build upon the many strengths present in our communities, and bring support networks together so that our families and the children within them will thrive.

That is the purpose of this *Guide*. Based on Innu Healing Values and consistent with the *Innu Healing Strategy*, it sets out an Innu approach to helping Innu children and their families: **the Innu Care Approach**. The Innu Care Approach is introduced here to provide guidance to Innu services, including our new Innu child welfare prevention services. We also hope that non-Innu services serving our communities will take guidance from this wisdom.

The Innu Care Approach explained in this document is not really new. It has been practiced by Innu for generations through *Innu-aitun* in daily life. And it still practiced in healthy Innu families today. Many Innu service providers already use it in their work.

The development of this *Guide* came from drawing upon this expertise within our communities. Jack Penashue, an Innu social worker, developed the core image and concepts of the Innu Care Approach based on his deep knowledge of Innu traditions as applied today. Using that base, the Innu Round Table Secretariat collaborated with others to help expand on these ideas and write them down. In 2015, 55 people, including Innu staff, Innu community members, Innu leadership, and Provincial child protection staff, participated in interviews, focus groups and surveys led by the Child Welfare League of Canada. In 2016, we integrated that information into the main ideas of the Innu Care Approach. In 2017, social work student Nico Contreras worked with staff and community members in both Innu communities to put together this document.

Over time, we know the Innu Care Approach will continue to grow. More tools, images and guides may be developed as Innu programs and services grow, to help use the approach in particular contexts. This *Guide* sets out the practice framework of the Innu Care Approach; it provides an initial resource and essential foundation on its main concepts.

With healthy, strong supports around them, we know our children can grow up healthy and strong too.

The Innu Care Approach – Built on Innu Healing Values



The Innu Healing Values are described in *The Innu Healing Strategy (2014)*.

They are essential to the practice of supporting Innu children, youth and families.

The Innu Healing Values inform the Innu Care Approach in order to ensure that work with Innu communities will consistently follow best practices from our culture.

Below are the Innu Healing Values, along with some brief commentary on their use in the Innu Care Approach:



Respect

Innu value each other and all our surroundings and treat everything with respect as we recognize that we need each other, the land, and the animals to survive.

Anyone working to support Innu communities must be willing understand and respect each other as individuals, as well as our culture, traditions, and the land we live on. Innu will be the leaders of our own healing, and our needs and concerns must be heard and addressed every step of the way.

Trust & Honesty

Trust has always been a key value for the Innu as our very survival as a People, has always been dependent upon our need to rely upon one another and trust that we would all fulfill our role and make decisions that are best for the collective. For trust to exist, honesty must also exist.

We need to be able to rely on each other for healing to reach entire communities. Commitments made to Innu communities, especially to children, must be honoured. When our thoughts, words and actions are in harmony, our relationships can be strong and resilient.

Cooperation

Innu work with each other to support the advancement of the People.

There are many inside and outside of our communities who have the strength to bring healing to Innu children and families. We need to work together, to communicate freely and integrate our approaches so that we can be an interwoven network of support.

Family

Togetherness and connection to family is important to Innu.

Innu families have provided the support necessary to continue our way of life for millennia. The family is sacred, and all efforts to help bring families closer together must be made in order to keep our communities strong. Every member of the family brings their own gifts to the table, and in this way we embrace the many kinds of diversity present in our communities.

Nature

Nature has been integral to the existence of the Innu as it has provided for both our physical and spiritual needs since our creation, and will do so into the future.

Nutshimit is the foundation of Innu life, and the life of all beings. Our relationship to the land must be safeguarded, as well as the health of the land itself. Our children need to have access to the land, as well as to the knowledge of our elders, so that we always remember who we are through our connection to nature.

The Innu Care Approach – Supports Surrounding a Child

The Innu Care Approach starts with our knowledge that the wellbeing of Innu children depends on the wellbeing of the supports around them:

Parents

Extended Family

Community

Innu Services

Culture & Language

Elders



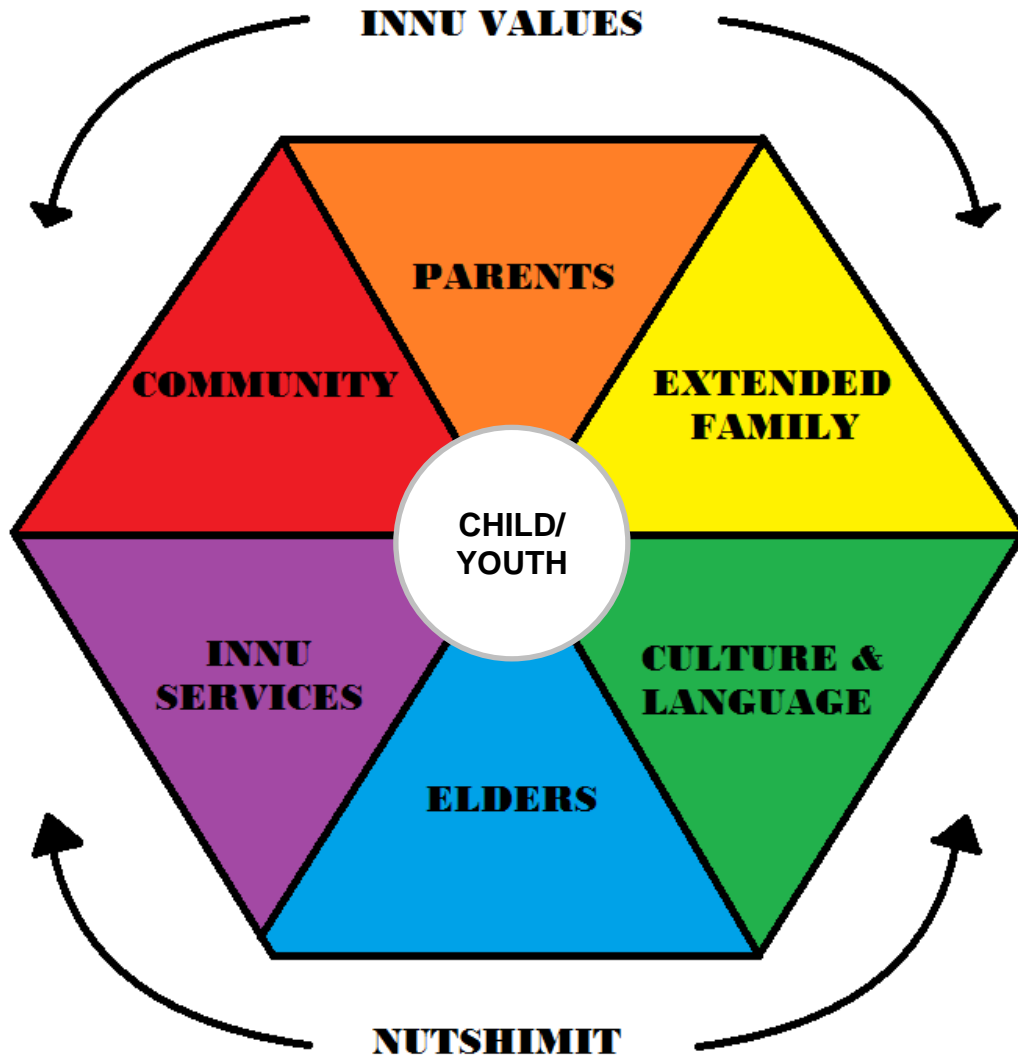
These supports are like *tshuap* poles that support a caring environment around our children. They stand strongly on the ground of Nutshimit which is inseparable from Innu culture. The Innu Healing Values wrap around this support structure, protecting the Innu way of life.

Two Kinds of *Tshuap*

Over time, Innu people have used different kinds of *tshuap* (home/tent/dwelling) when living on the land. In older times, a tipi was often used. Later, the more modern canvas style began to be used; it has now been in common use among Innu for many years. In this Guide, images of both types of *tshuap* are used to discuss the concepts of the Innu Care Approach.

There are different ways to visualize the Innu Care Approach. The image on the previous page shows a whole picture in a natural context, using the older, tipi-style *tshuap*.

The image below is like a diagram of the Innu Care Approach; picture it as a tipi *tshuap* as seen from above. This format can be helpful for developing evaluation and planning tools that can be worked through and filled in with notes and other content when staff are working with children, youth, and families, or when leaders and staff are designing or improving services.



The poster on the next two pages can help people learn about the Innu Care Approach with both visual images and written summaries.

After the poster, the following pages provide some additional explanation about the meaning of each of these supports surrounding the child.



ELDERS: Knowledge Keepers

What role do elders play in the life of the child, family and community? In what ways can relationships to elders be engaged, and the connection to culture and Nutshimit be strengthened through their knowledge?

CULTURE & LANGUAGE: Foundations of Wellbeing

How can Innu culture be preserved while adapting to rapidly shifting circumstances? How can the available tools be harnessed to offer youth new ways of engaging with their linguistic and cultural heritage? How can the relationship to Nutshimit, the foundation of Innu cultural identity, be strengthened and reaffirmed with each generation?

INNU SERVICES: Integrating Care

What Innu-led services are in place to support the child and family? How can they access and engage with services? What services need to be formed to address gaps in support? How do these supports communicate with one another?



PARENTS: Primary Caregivers

What kind of support is most needed in order to help strengthen that parent-child bond? What supports exist within the community or need to exist so that parents can thrive?

EXTENDED FAMILY: Circle of Support

What can be learned from the extended family to best support the child? What are the strategies already in place from the extended family, and how can they be strengthened?

COMMUNITY: Resilient Relationships

What community members participate actively in the life of the child and family? What relationships help to strengthen child and family, and how can these relationships best be supported?

First *Tshuap* Pole: Parents

Parental involvement is of central importance to the development of happy and healthy children. This is the primary *tshuap* pole, the life-giving support of the child from even before their birth.

The role of parent though, can be flexible, understanding that all parents need some form of help in order to be as healthy and supportive as they can be. Sometimes a child's primary caregiver may be another closely-related, caring adult. As long as there is at least one attentive and loving adult actively present in a stable way in a child's life, this *tshuap* pole can stay strong, and the child will learn a number of important social and emotional skills from this person or people by example.

Work in Innu communities needs to understand the bonds of trust and support between adults in parental roles. Sometimes, children who may seem to be on their own could indeed be under the watchful eye of a supportive friend or family member.

Parenting can also look quite different in the community and in Nutshimit.

In the village settlement, children may spend more time alone or with peers (for example, in school) as is more conventional in non-Innu society, but the parent-child relationship remains crucial.

In Nutshimit, children have the opportunity to participate in all aspects of life in an extended family environment, learning through play and storytelling as well as through direct observation of the adults around them, including parents.



For today's Innu, becoming strong parents in both contexts is important. This integrated circle of care is fundamental to the well-being and growth of Innu children.

Practice Points: When helping a child or youth, we ask how to strengthen this primary source of support. What is most needed in order to help strengthen that parent-child bond? What do the parents have or need within the community so that they can thrive?

If a child's relationship with their parents has broken down, or risks damage when a child needs more help or must come into care, steps need to be taken immediately to rebuild that relationship and to support the parents' success for the long term.

Second *Tshuap* Pole: Extended Family

Grandparents, aunts, uncles, cousins, older siblings – these can often be caregivers invested in not only the well-being of children, but also as primary supporters of the child’s parents. This is why the full extended family is the second pole: it not only helps the child, it helps keep the first support (parents) strong and stable as well.

Innu culture values the relationships of family across generations. The wisdom of children, parents, grandparents and others can come together to support one another in their growth.



Throughout history and to the present day, the physical, emotional, intellectual and spiritual needs of Innu children are met by a number of family members.

They witness the child’s growth and development over time, provide love and care, and gain extremely valuable insight into the child’s individual strengths, and their struggles as well.

Work with Innu children needs to recognize the importance of extended family connections, and draw upon their vast knowledge about each child.

Practice Points: When helping a child or youth, we ask: What can be learned from the extended family to best support the child? What are the strategies already in place from the extended family to support the child and the parents, and how can they be strengthened?

If parents need more support or can no longer provide primary care for their child, we turn to the child’s extended family to provide more help. If a child must come into care, extended family should become the caregivers in most cases.

In other cases, if a child must go elsewhere, the child’s connections with their extended family members need to be maintained with regular contact and involvement. If these connections are lost or damaged, they should be supported and re-established.

Third Tshuap Pole: Community

The Innu people have survived and thrived through countless generations, in part due to a resilient network of relationships that hold families together as communities. The old saying, “it takes a village to raise a child” is true the world over, and certainly is so for the Innu.

Innu life and culture relies on the knowledge and skills of many different community members working together, and this applies to child rearing as well. Community, in the Innu world, is not entirely separate from family, but rather, an extension of it. Relationships exist on a continuum. The bonds that hold these relationships together might be blood, marriage, or shared experience, but they are fundamental to the way of Innu life, and they help to hold families and children together as well.



Gatherings, large and small, are important times for child, family and community, as they help to commemorate those relationships that keep Innu culture and society vibrant and strong. The nomadic history of the Innu has shifted significantly in recent generations, which leaves many questions as to how communities can best live and work together under current circumstances, or how those circumstances must change in order to cultivate resilient communities.

Work with Innu communities must maintain an awareness of these cultural and historical transitions, and the importance of relationships far beyond the immediate family circle.

Practice Points: When helping a child or youth, we ask: What community members participate actively in the life of the child and family? What community relationships or dynamics help to strengthen this child and family, and how can they best be supported?

All Innu children have the right to remain integrated and participate within their community. Innu children should remain placed within their own community to the greatest extent possible, and service gaps should be addressed to allow for this.

If a child must be placed outside their community, a significant effort must be taken to help the child remain connected with normal life in their community.

Fourth *Tshuap* Pole: Innu Services



Innu self-determination involves the capacity to identify and respond to the evolving challenges and needs of the community, families, and individuals. It must be remembered that the only experts on Innu life are the Innu themselves.

Those working within the community to deliver both formal and informal Innu-led programs in health and healing, education, justice, housing, employment, recreation, culture and more, are extremely valuable resources to the community. Innu services act as an extension of the collective commitment to ensure the well-being of all Innu.

In 2016, Innu first began receiving funding for prevention services to help avoid the need for child protection intervention and mitigate its impacts. The addition of prevention services is of vital importance to the well-being of the community as a whole. Over time, as it grows, this service can help to address family challenges before they escalate into crises, help de-escalate crises underway, and to develop the strength and resilience of children and families. Other Innu services in addition to “prevention” services are also essential to prevention. A full scope of services in all subject areas is needed to help Innu families heal and stay strong.

Working within the Innu Care Approach means respecting the knowledge, expertise, and relationships formed by many Innu service providers, and working collaboratively. Innu services continue to evolve. Our leadership and staff have shown a lasting, multigenerational commitment to providing services both designed for and guided by the Innu people.

Practice Points: When helping a child or youth, or planning services generally, we ask: What Innu services, formal or informal, may already be in place in support of this child and family, or Innu children and families generally? How can a child and family access and engage with services that they haven't yet? What services need to be formed to address gaps in support? And, how do these service providers communicate with one another to deliver integrated support to the entire community?

When a child and family needs help, Innu-directed prevention services and other Innu services must be available at all stages. Innu services can help support a family to maintain its integrity and minimize the need for intervention. If a child must come into care, the child, placement family, and family of origin should all receive services. If an appropriate family placement is not available, an Innu-run facility should be used. After time in care, Innu services should help with transitions and family reintegration.

Fifth Tshuap Pole: Culture and Language

Cultural self-knowledge is fundamental to health and well-being for Innu. Our unique relationship to Nutshimit and to each other must be safeguarded. Innu have been nomadic stewards of the land for countless generations, and the recent history of settled life has impacted the culture of the Innu in many ways.

Culture and language is what binds community together. It must inform the delivery of any services for the Innu people.

The language of Innu-aimun is an extension of Innu culture and worldview. For services and programs to meet the health and wellness needs of our community, they need to speak with us in our language, and promote our language as it enriches us and sustains the community's cultural heritage. Innu children have the right to learn Innu-aimun, and this knowledge helps them develop understanding and pride in who they are.

The presence of modern informational technology in almost all aspects of life has the capacity to erode Innu language and culture, or to support it, particularly for youth who have grown up accustomed to these new methods of communication. Work within Innu communities must include an awareness of the historical and present cultural context while working towards a future that brings together the best of many worlds.



Added to that, in a child welfare context, children who go into care run the risk of being placed outside Innu communities, where they are very vulnerable to loss of language and culture. This can create stress and long-term risks.

Practice Points: When helping a child or youth, we ask: How can Innu culture be preserved while adapting to rapidly shifting circumstances? How can new and existing tools be harnessed to offer young people ways of engaging with their linguistic and cultural heritage? How can the relationship to Nutshimit, the foundation of Innu cultural identity, be strengthened and reaffirmed with each generation?

Innu children and their families need to receive services from trained Innu speaking staff who speak their language and know their culture – in prevention services, in protection services, and in the care homes and support services that they may access. No matter where they live, Innu children have the right to learn and participate in their language and their culture. Access to Innu-aimun and to land-based time in Nutshimit must be ensured, and should be done in a way that is consistent with normal community practices and seasonal activities.

Sixth *Tshuap* Pole: Elders

“Elders tie everything together. It’s important that they are seen as more than just a nuisance or a burden.” Jack Penashue



The final *tshuap* pole is the Elders of the community, from which all the other poles gain strength and support. Innu Elders are keepers of a precious cultural connection to Nutshimit and to the spiritual practices of the Innu, embodying knowledge from a time before the incursion of euro-centric worldviews into Innu life. We are fortunate to have living knowledge-keepers who can offer a sense of perspective over time and an awareness of the path where the Innu come from and where we are headed.

The relationship of Innu Elders to Innu young people is of great value, especially for those youth that are struggling to understand themselves and their role in the community and the world at large. Work in Innu communities must consult and respect the advice of Elders, and strengthen the connections between Elders and youth, who will grow to be leaders in the community and someday Elders themselves.

Elders need the opportunity to share their knowledge and their stories, rather than being excluded from daily life as is the norm across much of North America. For Innu, Elders play a central role in the support and development of children into caring and self-aware Innu adults. Elders rely in turn upon parents, and other adults within their extended family and community to offer them care and support as well, and to value the gifts they have to offer their people.

Practice Points: When helping a child or youth, we ask: What role do Elders play in the life of the child, family and community? In what ways can relationships to Elders be engaged, and the connection to culture and Nutshimit be strengthened through the knowledge of Elders?

Contact with Elders is important for children in the context of their daily life. If a child and family needs extra help, or a child must come into care, the involvement of Elders should be integrated into plans, services, and alternate placements. If a child must be taken outside their community, additional effort is required to ensure the child and those around the child will still benefit from the wisdom, foundational knowledge and perspective of their Elders.

Re-building Circles of Support, Connected to the Land



These six *tshuap* poles surround the child with their supports. They stand firmly on the ground of Nutshimit, the source of Innu culture and spirituality, and connect together.

The image above shows a modern Innu canvas *tshuap*; the Innu Care Approach can be pictured that way too. If any of the poles is not strong, the structure of support around a child can become unstable. For an Innu child to succeed to their fullest, they need each of their support systems to be strong.

The central aspect that gives life, love and meaning to this structure is the life of the child in the center. Children bring light and hope into our lives. When a child is removed it causes darkness and despair. When that happens, the circle of support begins to disintegrate. And, children who return to the community after having been starved of their own connection to Innu life can struggle to reintegrate, especially if the circle of care has been weakened by trauma.

Re-building resilient circles of care is a multigenerational process. Innu are dedicated to doing so, recognizing the incredible strengths and gifts inherent in Innu people, life and culture. Innu and non-Innu alike, who work together to cultivate the health and wellness of Innu children, families and communities, also need to be supported and cared for, in order to be able to do this work over time.

The Innu way values the gifts of each individual as they are woven together, holding the *tshuap* strong through all seasons. Together, we can give all Innu children a chance to grow and thrive knowing they are loved and cared for by all around them.

Conclusion

The principles laid out in this document are not an instruction manual, nor a series of boxes to check off. They are also not linear, to be addressed one at a time, but circular, working together as a whole. As is the way of nature, the healing process is different for every individual, family and community, and takes place through cycles over time. Our focus may shift to one aspect of our healing at times, but we must be flexible, ready to adapt to changing circumstances and build networks of support rather than work in isolation.

The process of healing is one that will continue over generations. Much work has already been done, and much work yet needs doing. We are perfectly placed in time to learn the lessons of our ancestors and to enrich the lives of the generations to come. In order to grow and thrive, we need a strong belief in ourselves and our vision of healthy, strong Innu children, youth, adults and Elders connected by love for each other our culture and the land we live on.

Our love for our children has the capacity to bring us closer together, to respect our differences and to celebrate our common hopes and dreams. People around the world wish to live in peace, happiness and freedom. The Innu are no different in this regard. Innu and non-Innu alike can work together to ensure that Innu children grow strong and healthy, connected to their families, their communities, to their culture and to Nutshimit.

The Innu have a talent for storytelling. Our stories are woven through our lives, and shape the way we see the world. The Innu will continue to tell our stories in the future to come, in our own language, in our own way. We will continue to chart our own path across the land, the water, and through time. We will pass our stories on from generation to generation, create and learn many new ones along the way, from our elders and from our children, hand in hand.



Acknowledgements

Many Innu and non-Innu provided support in one way or another in the development of this document. We extend our thanks to all of them, including:

Jack Penashue and the SIFN Social Health Department

Kathleen Benuen and the MIFN Health Commission

Innu leadership at Innu Nation, Sheshatshiu Innu First Nation, and Mushuau Innu First Nation

The Innu Round Table Secretariat and their staff

Nico Contreras, MSW practicum student at the Indigenous Trauma & Resiliency program at the University of Toronto Faculty of Social Work, and Olthuis Kleer Townshend LLP

The Child Welfare League of Canada

Indigenous and Northern Affairs Canada

Province of Newfoundland & Labrador, department of Children, Seniors and Social Development and the former department of Child, Youth and Family Services

A Guide to the Innu Care Approach

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This is Exhibit H

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a surname that appears to be 'Benuen'.

A Commissioner, etc.

Julia Brown

From: Kylie Rose <krose@irtsec.ca>
Sent: July 18, 2020 8:35 AM
To: Judith Rae
Subject: Fwd: First Nations Child and Family Services, CHRT Claim payment on Actuals: Innu Round Table Secretariat (IRTS) - Case Number: CFS-ATL-003
Attachments: FNCFS INTERIM APPEAL CHECKLIST AND NOTICE OF APPEAL FORMENG.DOCX; FNCFS INTERIM APPEAL CHECKLIST AND NOTICE OF APPEAL FORMFR.DOCX

Sent from my iPhone

Begin forwarded message:

From: "SEFPN / FNCFS (AADNC/AANDC)"
Date: July 17, 2020 at 6:51:04 PM ADT
To: "Krose@irtsec.ca" , "gbenuen@irtsec.ca"
Cc: Lyla Andrew , "SEFPN / FNCFS (AADNC/AANDC)" , Steven Joudry , "Levesque3, Nathalie (AADNC/AANDC)" , "Atkinson, Sherry (AADNC/AANDC)" , "Randell, Annie (AADNC/AANDC)" , "Basque, Dany (AADNC/AANDC)"
Subject: **First Nations Child and Family Services, CHRT Claim payment on Actuals: Innu Round Table Secretariat (IRTS) - Case Number: CFS-ATL-003**

Dear Ms. Benuen:

This email is in response to the 2020-21 funding request submitted by the Innu Round Table Secretariat (IRTS) on June 23, 2020, for an advance payment on actual costs under the Canadian Human Rights Tribunal (CHRT) Order 411 for Prevention/Least Disruptive Measures.

Following the submission of the advance request in the amount of [REDACTED], an email was sent to inform the IRTS of the status of the request and that the fifteen (15) day timeline had been paused to review the submission.

The Department has now finalized its review and the amount of [REDACTED] is considered ineligible given that the CHRT Order and the current First Nation Child and Family Services (FNCFS) program authorities extend the reimbursement of actuals costs only to delegated First Nations agencies.

Information on the February 1, 2018, Canadian Human Rights Tribunal decision relating to the reimbursement of actual costs can be found at:

<https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/308639/index.do?q=first+nation+child+and+family>.

Although Indigenous Services Canada (ISC) is not in a position to approve the funding request submitted by the IRTS on June 23, 2020, the Department has already allocated funding in the amount of [REDACTED] to the IRTS and the Sheshatshiu First Nation under the Community Well-being and Jurisdiction Initiatives (CWJI) for family-based care work activities and costs identified in the submission.

In addition, funding is also already allocated to the Innu by the First Nations and Inuit Health Branch for mental wellness and capacity building, which could be used to support the Apenam's House addiction treatment centre included in the funding request for an amount of [REDACTED]. We understand that discussions on using this available funding have already started.

ISC would be happy to engage with IRTS to explore potential funding options that could be available through other sources, including additional CWJI and Jordan's Principle for the balance of the proposal funding in the amount of [REDACTED]. Daniel Kumpf, Regional Director General for the Atlantic Region will be in contact with the IRTS and the Innu leaders to pursue these discussions for potential longer-term funding that would support the Innu leadership's vision for a prevention agency as it begins the work to assert its jurisdiction over child welfare matters through an *Act respecting First Nations, Inuit and Métis children, youth and families*.

Please note that funding recipients have the right to appeal a decision within 90 days. Attached are the documents for an appeal request, which can be sent to the FNCFS generic email account: aadnc.sefpn-fncfs.aandc@canada.ca.

If you have any questions regarding this process, or in the interim would like to discuss the potential funding alternatives mentioned above, please contact Nathalie Levesque, Director, Child and Family Services Reform, Atlantic Region at 506-871-5185 or by email at Nathalie.Levesque3@canada.ca.

Thank you

This is Exhibit I

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a smaller, more complex signature.

A Commissioner, etc.

Julia Brown

From: Judith Rae
Sent: August 10, 2020 5:16 PM
To: aadnc.sefnp-fncfs.aandc@canada.ca
Cc: Germaine Benuen (gbenuen@irtsec.ca)
Subject: Appeal of funding denial in CFS-ATL-003 (FNCFS PROGRAM APPEAL)
Attachments: Appeal by IRT Secretariat, August 10, 2020.pdf; Fwd: First Nations Child and Family Services, CHRT Claim payment on Actuals: Innu Round Table Secretariat (IRTS) - Case Number: CFS-ATL-003; IRT Prevention Services Proposal 2020-2021

Hello,

Please find attached an appeal filed by the Innu Round Table Secretariat. I am legal counsel. If you have any questions, please contact me.

Your,
Judith Rae

Judith Rae
Olthuis Kler Townshend LLP
250 University Ave, 8th floor, Toronto, ON, M5H 3E5
T: 416-981-9407 C: 416-998-0995 F: 416-981-9350
jrae@oktlaw.com
www.oktlaw.com

Child and Family Services Program Denied Claim for Payment of Actual Costs – Interim Appeal Process

An appeal can be initiated by a First Nations child and family services (FNCFS) agency funding recipient or other requester (e.g., Band for Band Representative funds) once a claim for reimbursement or advance funding for actuals has been denied or partially denied by the Assistant Deputy Minister, Children and Family Services Reform, Indigenous Services Canada, pursuant to the escalation protocol.

*Appeals will be reviewed by two Assistant Deputy Ministers from Indigenous Services Canada. A decision will be communicated within 15 business days of the Department having received the appeal.**

How to send an Appeal

- Please fill out the attached Notice of Appeal and deliver it by email to: aadnc.sefpn-fncfs.aandc@canada.ca or mail to: 10 Rue Wellington, Gatineau, Québec, K1A 0J9 **ATTN:** FNCFS PROGRAM APPEAL
- Appeals must be made within **90 days** of the date of the decision.*
- An acknowledgement of receipt of the Notice of Appeal will be sent by email/mail.

The following factors will be considered in the appeal review process

In rendering a determination on appeal, the following factors may be considered:

- Substantive equality and the provision of culturally appropriate services, including the distinct needs and circumstances of children and families living on reserve (e.g., cultural, historical, and geographical needs and circumstances);
- The best interests of the children;
- Whether the cost, if retroactive, was actually incurred before the claim for reimbursement was submitted;
- Whether the cost has been covered by another government or funder;
- Whether the cost is eligible for reimbursement (e.g., whether the request can be authorized under the existing Terms and Conditions of the program); and
- Whether the claimant is eligible for funding, as per the existing Terms and Conditions.

Checklist – Information to be included in the Notice of Appeal

- Date initial claim submitted
- Total dollar amount requested in the initial claim
- A copy of the denial email
- Rationale for appealing the decision

* Note: Any recipient denied funding or partially denied funding prior to the interim appeals process being in place is eligible to complete a Notice of Appeal within 90 days of the policy implementation.

**Child and Family Services Program
Notice of Appeal**

Name of FNCFS Delegated Agency or Band	
Labrador Innu Round Table Secretariat Inc. ("IRT")	
Contact Person (name, title, phone number)	
Germaine Benuen Executive Director 709-497-3855 x 232	Judith Rae Legal Counsel 416-981-9407
Contact Information	
Email: gbenuen@irtsec.ca; jrae@oktlaw.com	
Denial Case Number	
CFS-ATL-003	
Initial Claim Date Submitted	
June 23, 2020	
Total Dollar Amount Requested in the Initial Claim	
██████████	
Copy of the Denial Email	
Please see attached.	
Rationale for Appealing the Denial Decision	
Please see the attached documents.	

**LABRADOR INNU ROUND TABLE SECRETARIAT
APPEAL OF ISC DENIAL OF ACTUAL COSTS PREVENTION FUNDING, 2020-21**

INTRODUCTION

On June 23, 2020, the Labrador Innu Round Table Secretariat (“IRT Secretariat”) submitted a funding application to Indigenous Services Canada (“ISC”) for prevention funding at “actual costs” on the basis of the actual needs of Innu children as determined by the IRT Secretariat. IRT Secretariat enclosed with its funding application Olthuis Kleer Townshend LLP’s legal opinion stating that IRT Secretariat is entitled to prevention funding at actual costs on the basis of the decision in 2018 CHRT 4 or otherwise on the basis of substantive equality in funding. This legal opinion outlined and responded to ISC’s position that because IRT Secretariat is not a “delegated” First Nations agency, it is not entitled to prevention funding at-cost. A copy of the June 23, 2020 submission including the proposal and legal opinion is attached as Appendix “A.”

On July 17, 2020, ISC responded to IRT’s funding application, advising IRT Secretariat that “...the amount of ██████████ is considered ineligible given that the CHRT Order and the current First Nation Child and Family Services (FNCFS) program authorities extend the reimbursement of actuals costs only to delegated First Nations agencies.” A copy of the denial email is attached as Appendix “B”.

Confirming Unfunded Amount

The submission sought funding of ██████████ for prevention purposes at actual costs and outlined the needs it would serve. The July 17th denial email is correct that “the Department has already allocated funding in the amount of ██████████ to the IRTS and the Sheshatshiu First Nation under the Community Well-being and Jurisdiction Initiatives (CWJI) for family-based care work activities and costs identified in the submission.”

The denial email is not correct that the ██████████ for addictions treatment services at Apenam’s House has been otherwise covered. This is an essential need for prevention purposes that remains unfunded at this time.

The unfunded shortfall in the application for this fiscal year is therefore ██████████

Summary of Grounds for Appeal

IRT Secretariat appeals ISC’s decision on the following grounds:

1. ISC has misapplied and misinterpreted the Canadian Human Rights Tribunal’s (“CHRT” or the “Tribunal”) decisions in the *Caring Society* cases. These decisions do not limit access to prevention funding at actuals to First Nations children served by “agencies” and furthermore do not limit the definition of agencies to those that are provincially “delegated”.
2. ISC has ignored information concerning the circumstances present in Newfoundland and Labrador.
3. ISC has failed to recognize IRT Secretariat’s existing designation as a prevention agency by the First Nations communities it services, such designation being fully consistent with all applicable provincial and federal legislation.

4. Separately from the *Caring Society* decisions, approval of the application is required as a matter of substantive equality and to avoid discrimination under the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.

LEGAL FRAMEWORK

Caring Society Decisions on Prevention Funding at Actual Costs

In 2016, the Canadian Human Rights Tribunal found that Canada’s existing funding model, which provided unlimited funding for child protection, but limited funding for prevention services, was discriminatory. The Tribunal found that the model created perverse incentives to bring First Nations children and youth into care unnecessarily.¹ In particular, these perverse incentives included providing unlimited funding to remove children and “maintain” them in out-of-home placements, but providing only limited funding for prevention and least disruptive measures (together referred to in this appeal and related documents as “prevention”). The Tribunal ordered Canada to cease its discrimination.²

In 2018, the Tribunal reiterated that the funding model in which prevention services funding is not specifically available or is capped, while protection services “maintenance” funding to put children in care is provided at actual cost, is discriminatory. It repeated its finding from the 2016 *Caring Society* decision that such an approach incentivizes the removal of children from their families, is discriminatory, and is:

... a broken system that is harming children and removing them from their communities instead of allowing them to remain safely in their homes with the benefit of sufficient culturally appropriate prevention services³

The Tribunal stated that:

... There is a need to shift this right now to cease discrimination. The Panel finds the seriousness and emergency of the issue is not grasped with some of Canada’s actions and responses. This is a clear example of a policy that was found discriminatory and that is still perpetuating discrimination.⁴

The Tribunal ordered that Canada address the urgent need to end its discriminatory funding practices and that it specifically fund First Nations prevention on the basis of “actual costs”, on the basis of need:

The Panel, pursuant to Section 53(2)(a) of the *CHRA*, **orders Canada**, pending long term reform of its National FNCFS

¹ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2016 CHRT 2 [“2016 CHRT 2”] at paras. 349, 384, 386, 458, 481.

² *Ibid.*, at para. 481. See also 2016 CHRT 10 at paras. 20, 23; 2016 CHRT 16 at para. 36.

³ 2018 CHRT 4 at para. 115.

⁴ *Ibid.*, at para. 121.

Program funding formulas and models, **to eliminate** that aspect of its funding formulas/models that creates an incentive resulting in the **unnecessary apprehension of First Nations children from their families and/or communities**. To this effect, and pursuant to Section 53 (2) (a) of the *CHRA*, the Panel orders INAC to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, and building repairs services **for First Nations children and families on-reserve and in the Yukon**, based on actual needs which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFC agencies to be in the best interests of the child...⁵

Canada is obliged, under the Tribunal's Orders and rulings, to provide "actual costs" funding for prevention services to **"for First Nations children and families on-reserve and in the Yukon, based on actual needs"**, in order to **"eliminate"** this perverse incentive.

This must be made absolutely clear:

- The Tribunal did not order Canada to exclude First Nations children not served by "agencies". The reference to agencies is in relation to determining need. The *funding* for services is for the benefit of children and families, not agencies. The scope of this order clearly and on plain reading includes *all* "First Nations children and families on-reserve and in the Yukon".
- The Tribunal did not order Canada to exclude Innu children living on reserve in Labrador. Nothing in this order suggests that Canada is being told to eliminate its toxic, discriminatory funding model in some places, but allow it to remain in others. Nothing suggests Canada should eliminate it for some children, but allow other children to continue to suffer.

Rather, the Tribunal told Canada to "eliminate" this discrimination immediately, by funding these core services at their actual cost for **all** First Nations children on reserve and in the Yukon.

The Role of Agencies

The CHRT order in 2018 CHRT 4 paras. 410-411 does not limit actual cost funding to "agencies".

The end of the order does refer to agencies. This reference is in relation to who is best placed to determine need. It says that the needs forming the basis of actual costs should be determined by "FNCFC agencies". This term is not defined anywhere in the ruling, but likely means First Nations Child and Family Caring agencies.

⁵ *Ibid.*, at para. 410. See also para. 411.

This term does not limit such agencies in any particular way, other than that they are agencies authorized by and designed to serve First Nations. No Tribunal decision says that FNCFC agencies must be provincially delegated, or must provide both prevention and protection services within the same entity. Nor does it say that agencies are the only eligible recipients of funding.

The applicant IRT Secretariat is an agency. As detailed further in the legal opinion attached to the original funding submission, it was delegated by the Innu First Nations in 2019 to provide prevention services. No provincial delegation or other approval applies to such services. Federal legislation does not govern the delegation of child welfare agencies in any way, and moreover recognizes First Nations' jurisdiction in child and family services. The IRT Secretariat is a First Nations prevention services agency operating on-reserve consistently with all applicable laws.

GROUNDINGS FOR APPEAL

1. ISC Misinterpretation and Misapplication of *Caring Society* Decisions

In its denial of funding, ISC stated that IRT Secretariat was ineligible for at cost prevention services funding because the reimbursement of actual costs extends only to *delegated* First Nations agencies. It takes the position that IRT Secretariat is not a delegated First Nations agency. ISC has previously advised IRT Secretariat that it is of the view that to be considered a delegated First Nations agency by ISC, agencies must deliver both protection and prevention services and must be delegated to do so by the province.

IRT Secretariat has two responses to ISC's position: first, this requirement is an incorrect interpretation of the Tribunal's decision and Order, as outlined here in part 1 of these submissions. Second, IRT Secretariat is in fact a delegated or eligible agency for the reasons outlined in the parts 2 and 3 of these submissions, below.

In its 2016 and 2018 *Caring Society* decisions, cited above, the Tribunal did not limit its decisions regarding prevention funding to First Nations Child and Family Caring agencies. The Tribunal's 2018 Order makes clear that needs-based prevention funding must be provided to "First Nation families on reserve and in the Yukon".⁶ First Nation agencies are positioned in the Order as appropriate arbiters of the need for prevention/least disruptive measures services, not as the sole recipients eligible for actual cost funding. Funding is for services to benefit First Nations children families on reserve and in the Yukon, since these are the parties found to be experiencing discrimination as a result of ISC's approach.

In adopting the position that only "agencies" are entitled to at-cost prevention funding, ISC has misinterpreted the CHRT's Order. The Tribunal did not exclude from this crucial remedy all the First Nation children and families on reserve that are not served by First Nations agencies.

Furthermore, while the Tribunal uses the phrase "FNCFC agencies" at the end of its 2018 Order, likely meaning First Nations Child and Family Caring agencies, the Tribunal does not define this phrase. There is nothing in the Tribunal's *Caring Society* decisions placing any kind of restrictive interpretation on what constitutes an "FNCFC agency." Rather, the Tribunal makes clear throughout its decisions that its rulings must be interpreted purposively, in a manner that

⁶ *Ibid.*

effectively and meaningfully eliminates discrimination as described throughout its rulings. For example, in the 2018 *Caring Society* decision on “actual costs”, the Tribunal stated:

The orders made in this ruling are to be read in concurrence with the findings above, along with the findings and orders in the Decision and previous rulings (2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 7, 2017 CHRT 14 and 2017 CHRT 35). Separating the orders from the reasoning leading to them will not assist in implementing the orders in an effective and meaningful way that ensures the essential needs of First Nations children are met and discrimination is eliminated.⁷

The Tribunal further stated that:

The Panel has always believed that specific needs and culturally appropriate services will vary from one Nation to another and the agencies and communities are best placed to indicate what those services should look like...

As stated above, the *CHRA*'s objectives under sections 2 and 53 are not only to eradicate discrimination but also to prevent the practice from re-occurring. If the Panel finds that some of the same behaviours and patterns that led to systemic discrimination are still occurring, it has to intervene. This is the case here.

It is important to remind ourselves that this is about children experiencing significant negative impacts on their lives. **It is also urgent to address the underlying causes that promote removal rather than least disruptive measures** (see the Decision at paras. 341-347).⁸

Nowhere in its decisions does the Tribunal require that First Nation agencies delivering prevention services be provincially delegated or designated, or pre-delegated or pre-designated by a provincial authority, in order to be entitled to “actual cost” funding for prevention services.

Moreover, nowhere in its decisions has the Tribunal suggested that in order for a First Nations agency to be entitled to at cost prevention funding, the same agency or entity is required to deliver both protection and prevention services.

ISC has arbitrarily added these requirements regarding what constitutes a First Nation agency to narrow the Tribunal Order's application. In so doing, ISC has created parameters that are nowhere to be found in the Tribunal's decisions. ISC has misinterpreted the Tribunal's rulings and Orders, and its misinterpretation has led it to misapply the Tribunal's rulings and Orders to exclude Innu children and families on reserve in Labrador.

⁷ *Ibid.*, at para. 407.

⁸ *Ibid.*, at paras. 163-166 [emphasis added].

ISC's interpretation and application of the *Caring Society* decisions are therefore incorrect. They are contrary to the Tribunal's clear guidance that its Order and decisions are meant to eliminate discriminatory underfunding of prevention services. They are a repetition of the conduct by ISC that led the Tribunal to observe that:

... no satisfactory response was provided by Canada to prevent Canada from funding now all actual costs for prevention services ... There is a real need to make further orders on this crucial issue to stop the mass removal of Indigenous children, and to assist Nations to keep their children safe within their own communities.⁹

They are also contrary to the Tribunal's guidance that:

It is important to look at this case in terms of bringing Justice and not simply the Law, especially with reconciliation as a goal. This country needs healing and reconciliation and the starting point is the children and respecting their rights. If this is not understood in a meaningful way, in the sense that it leads to real and measurable change, then, the TRC and this Panel's work is trivialized and unfortunately the suffering is born by vulnerable children.¹⁰

2. ISC Ignoring Regional Circumstances in Newfoundland and Labrador

As outlined above, ISC's position that to be considered a delegated First Nations agency by ISC, agencies must deliver both protection and prevention services and must be delegated to do so by the province is contrary to the CHRT's *Caring Society* decisions. The arbitrary, ill-founded nature of ISC's delegation requirements is demonstrated by the absurd outcome resulting from ISC's position in Newfoundland and Labrador.

The Province of Newfoundland and Labrador does not provide nor regulate prevention services within child and family services. Its legislation provides solely for the provision and regulation of protection services, which the Province provides itself.¹¹

The Province thus has no legislative authority to designate or delegate the IRT Secretariat as an agency for the delivery of prevention services. This was confirmed in the IRT Secretariat's discussions with the Province last year, during which ISC and its legal representative were present. As such, there cannot be provincially delegated or designated prevention services providers in Newfoundland and Labrador.

The consequence of ISC's current stated position on delegation is that no agency or other entity in Newfoundland and Labrador can be eligible for at-cost prevention funding to serve Innu children and families. **The missing gap in funding is a missing gap in services.** These services, required in the best interests of children and for substantive equality, are not being provided.

⁹ *Ibid.* at para. 133.

¹⁰ *Ibid.*, at para. 451.

¹¹ See the *Children, Youth and Families Act*, SNL 2018, c C-12.3. This was equally true under the former provincial legislation, the *Children and Youth Care and Protection Act*, SNL 2010, c C-12.2.

This is an absurd and discriminatory outcome. The Tribunal explicitly states that its rulings and Orders are intended to end Canada's discriminatory prevention services funding policies and to ensure that the essential needs of First Nations children are met. It did not and would not have intended to arbitrarily exclude some First Nations or some regions or provinces.

The restrictions and requirements that ISC has read into the Tribunal's rulings are at odds with both the language and the intent of the Tribunal's *Caring Society* decisions.

To date, ISC has failed to engage with the information provided to it by IRT Secretariat concerning the impossibility of being a "delegated agency", as ISC has defined it, in Labrador, for prevention services.

3. ISC's Position is Inconsistent with Canada's Federal Child Welfare Legislation

ISC's position also fails to take into account that:

- Canada's position on provincial delegation is inconsistent with its own legislation in the *Act respecting First Nations, Inuit and Métis children, youth and families*; and
- Sheshatshiu Innu First Nation ("SIFN") and Mushuau Innu First Nation ("MIFN") have already officially designated the IRT Secretariat as their agency for prevention services.

Canada's *Act respecting First Nations, Inuit and Métis children, youth and families*, which came into force on January 1, 2020, recognizes the jurisdiction of Indigenous peoples in child and family services.¹²

In 2019, SIFN and MIFN officially designated the IRT Secretariat as their agency for prevention services. The IRT Secretariat accepted that designation by resolution dated July 15, 2019. The IRT Secretariat's resolution also set out the basic philosophy and practice model for such services, as well as its overall structure, governance and accountability.

IRT Secretariat is, therefore, designated and/or delegated as a prevention services agency – by the First Nations that it serves. This designation/delegation is fully consistent with provincial law, which does not address this subject matter.

The federal *Act respecting First Nations, Inuit and Métis children, youth and families* recognizes First Nations jurisdiction in child and family services in s. 18. It provides an additional optional process through which a First Nations law may, after certain steps, "also have" the force of federal law and override provincial laws as well as some federal laws. The Innu have not taken such steps, but there is nothing in Innu governance of prevention services that needs to override any provincial or federal law. Innu actions in this matter are fully consistent with all current provincial and federal laws, and should be respected as valid and legitimate.

Canada's failure to recognize SIFN and MIFN's designation and insist on provincial delegation (which, for prevention purposes, is impossible, as set out in part 2 of these submissions above) is inconsistent with Canada's own legislative recognition that Indigenous peoples have their own

¹² *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 at s. 18.

jurisdiction in this subject matter, that may interact with and co-exist peacefully with provincial/territorial and federal jurisdiction. In the circumstances of this case, we believe that an insistence on provincial delegation of prevention authority is inconsistent with s. 18 of the *Act respecting First Nations, Inuit and Métis children, youth and families*.

4. ISC's Decision Results in Discrimination

We believe this case falls squarely within the CHRT's *Caring Society* decisions and Order, as outlined above. However, even if the *Caring Society* cases were not to apply, Canada's obligation not to discriminate in its provision of child welfare funding to the Innu of Labrador remains.

Section 5 of the *Canadian Human Right Act* provides:

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual,

*on a prohibited ground of discrimination.*¹³

The *Caring Society* decisions confirm that ISC's provision of funding for First Nations child welfare is a "service" within the scope of section 5.¹⁴

By denying the Labrador Innu's prevention services agency, IRT Secretariat, access to at-cost funding to meet actual prevention needs Canada is adversely differentiating Labrador Innu from other First Nations and discriminating against Innu children and families on prohibited grounds, namely race or national or ethnic origin.

Children and families bear the impact of this decision. It means that children are coming into care unnecessarily and families are being broken up unnecessarily. There are a hugely disproportionate number of Innu children in care, and this broken funding model and lack of sufficient prevention services is part of the reason for that result.

Canada's use of arbitrary parameters to determine which "FNCFCA agencies" are eligible for at cost prevention funding has the result of excluding Innu children in Labrador from the prevention services they need consistent with substantive equality. And moreover, Canada is denying Labrador Innu children these services despite Canada providing such services through its funding to benefit other First Nations children in other regions.

As noted above, ISC requires that agencies must deliver both protection and prevention services and must be delegated to do so by the province in order to be eligible for at-cost prevention

¹³ *Canadian Human Rights Act*, RSC 1985, c H-6, s. 5 [CHRA].

¹⁴ See e.g. 2016 CHRT 2 at paras. 35; 111-113.

funding. In Newfoundland and Labrador, the province provides protection services directly. It would not be eligible for at-cost funding for prevention services, not only because it is not an agency and certainly not a First Nation's agency, but first and foremost because it does not provide prevention services, and states it has not mandate to do so.

Canada's denial of actual cost prevention funding to IRT Secretariat means that **no entity** is receiving funding for prevention for Innu children and families on the basis of actual needs. Innu children and families are being left without the prevention services they need because of this denial.

And yet, Canada continues, to this day, to provide actual cost "maintenance" funding to the Province of Newfoundland and Labrador to take as many Innu children and youth into care as the Province may choose. The funding Canada provides for this purpose is unlimited. Our last information is that such costs are in the range of \$12-13 million per year, plus additional funding for the Province's operational costs for protection services.

Canada is required under the *CHRA* and under s. 15 of the *Canadian Charter of Rights and Freedoms* to ensure substantive equality for Innu children, and between Innu and other children.¹⁵ Innu children are historically disadvantaged and come from communities rebuilding after decades of colonialism-induced loss and trauma. Innu children continue to be taken into protection at an alarmingly high rate because of the legacy of discrimination and trauma to which the Innu have been subject, and because of Canada's discriminatory funding policies. Canada has an obligation to ensure that Innu children are not discriminated against, by ensuring substantive equality. This means ensuring that Innu children have access to the at-cost prevention funding needed to keep them in their homes and home communities.

CONCLUSION

IRT Secretariat urges ISC to reconsider its incorrect interpretation and application of the Tribunal's *Caring Society* decisions concerning prevention services actual costs funding. Its position is not supported by case law or legislation and perpetuates discrimination against Innu children by failing adequately to fund prevention services in Innu communities. ISC must live up to the obligations the Tribunal has reminded it of in its 2016 and 2018 decisions and provide the actual costs prevention funding to which Innu children and families are entitled.

Please note that on June 29, 2020 Innu Nation filed a human rights complaint with the Canadian Human Rights Commission that speaks to the issue in this appeal along with an additional issue. A copy of this human rights complaint is attached as Appendix "C". The complaint number assigned by the Commission is CHRC-20200734.

¹⁵ *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. See e.g. 2016 CHRT 2 at paras. 399-404; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624 at para. 78.

This is Exhibit J

to the affidavit of Germaine Benuen

sworn/affirmed on [October 30, 2020](#).

A handwritten signature in black ink, appearing to be 'G Benuen', written in a cursive style.

A Commissioner, etc.

Julia Brown

From: SEFPN / FNCFS (AADNC/AANDC)

Sent: August 25, 2020 9:54 AM

To: Germaine Benuen (gbenuen@irtsec.ca)

Cc: Judith Rae ; Levesque3, Nathalie (AADNC/AANDC) ; SEFPN / FNCFS (AADNC/AANDC)

Subject: First Nations Child and Family Services CHRT Claim payment on actuals: Appeal Decision on Innu Roundtable Secretariat - Case Number CFS-ATL-003

Dear Ms. Benuen:

This message is in response to the request for appeal submitted on August 10, 2020, by the Innu Roundtable Secretariat, in relation to Indigenous Services Canada's (ISC) decision to deny funding on actual costs pursuant to the order of the Canadian Human Rights Tribunal (CHRT) in decision 2018 CHRT 4, for Prevention/Least Disruptive Measures in the amount of [REDACTED] (case number CFS-ATL-003).

The Department's First Nation Child and Family Services (FNCFS) Interim Board of Appeals met on August 21, 2020, to review the appeal request.

Based on the information provided by the Innu Roundtable Secretariat, information provided by departmental officials, and the parameters of the CHRT decision 2018 CHRT 4, the Interim Board of Appeals is upholding the initial decision to deny the claim. The Interim Board of Appeals has concurred that the Innu Roundtable Secretariat is not an eligible recipient for agency funding as per the Terms and Conditions of the FNCFS Program and is not eligible for funding through the actuals process as ordered by the CHRT in 2018 CHRT 4, given that the Innu Roundtable Secretariat does not qualify as an agency.

As mentioned in our correspondence to you on July 17, 2020, ISC is happy to engage with IRTS to explore potential funding options. It is our understanding that discussions are ongoing with Nathalie Lévesque from ISC Atlantic Region about such potential funding.

If you have any questions regarding this process, please continue to contact Nathalie Lévesque at 506-871-5185 or by email at nathalie.lévesque3@canada.ca.

Thank you.