



Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System

James J. Igloliorte
Commissioner

Dr. Michael Devine
Commissioner

Anastasia Qupee
Commissioner

DECISION: STANDING APPLICATION FOR RUBY TSHAKAPESH AND SIMON TSHAKAPESH

December 23, 2022

Commissioners Igloliorte, Qupee, and Devine:

Background

- [1] The Applicants are Simeon Tshakapesh and Ruby Tshakapesh. Ruby and Simeon Tshakapesh are the parents of Thunderheart Tshakapesh, a youth who experienced time in the child protection system and died by suicide on May 24, 2017. The Commissioners will conduct an investigation into Thunderheart's death pursuant to s. 4(2) of the Terms of Reference. Ruby and Simeon have been granted standing to participate in that investigation.
- [2] In addition, Ruby and Simeon Tshakapesh have applied for General Standing pursuant to s. 5(2) of the *Public Inquiries Act, 2006*, SNL 2006 c. P-38.1 ("the Act") and Part XII of the Amended Rules of Procedure to participate in all other parts of the Inquiry Respecting the Treatment, Experiences, and Outcomes of Innu in the Child Protection System ("the Inquiry").
- [3] Simeon Tshakapesh has been involved in the Innu community in different capacities for many years, including as Chief of the Mushuau Innu First Nation and Deputy Grand Chief of the Innu Nation. He has been involved with programs aimed at improving the life experience of Innu youth and Innu people. Ruby has also been involved in the Innu community including involvement with school programs and the Health Commission, through which she has gained awareness of issues facing Innu in the child protection system.

The Inquiry Process

- [4] The Inquiry will conduct its proceedings in a manner that is open and transparent, balancing a fulsome examination of the issues with protection of privacy and the principle of doing no further harm through the process. The Inquiry's processes will be conducted in the Innu communities and the majority will be open to the public.
- [5] Ceremonies Honouring and Remembering (Commemorations) are intended to provide the members of each Innu community an opportunity to remember and honour the Innu children, youth and adults who have died tragically and also to acknowledge the pain and loss that Innu of Labrador continue to experience as a result. The Commissioners have determined that only the Innu Representative Organizations, the Province of Newfoundland and Labrador and the Government of Canada will be permitted observer status for these events
- [6] Community Meetings will be held in public in each community, providing Innu with an opportunity to share about their experiences and treatment in the child protection system with the Commissioners and the community. The role of counsel at these meeting will be restricted to observer status and will only be granted to the Province of Newfoundland and Labrador, the Government of Canada and the Innu Representative Organizations.
- [7] Formal Hearings will gather experts and witnesses to explain for the Commissioners and the public (i) the history of the Innu and the impacts of racism and colonialism on Innu; (ii) the history of the child protection system and its impact on Innu; and (iii) the current laws, policies, practices in child protection in relation to the Innu.
- [8] At Formal Hearings, people who speak to the Commissioners will have to promise or swear to tell the truth before they speak. These people will be witnesses and they will be asked questions by lawyers. Documents, such as government records, reports and studies will be made public and then given to the Commissioners and witnesses to read and consider.
- [9] Roundtables will be forward looking, drawing together experts and those with lived experience to identify best practices for the future of child protection and setting the foundation for Innu jurisdiction. The Commissioners will, at a later date, determine the subject matter of each Roundtable that the Inquiry will conduct. Once the subject matter of the Roundtables is determined, the Commissioners will invite participants with the experience, expertise and knowledge that is required to present and participate at Roundtables. The role of counsel will be limited at Roundtables.
- [10] All Innu are welcome to participate in the following ways:
- i. Attending ceremonies honouring and remembering the pain and loss that Innu of Labrador continue to experience as a result of the Innu children,

youth and adults who have died tragically and to acknowledge, which will take place in each community.

- ii. Attending community meetings to listen or share about Innu experiences and treatment in the child protection system with the Commissioners and the community;
- iii. Listening to or attending Formal Hearings on the history of the Innu
- iv. Listening to or attending Formal Hearings on the history of child protection in the Innu communities;
- v. Listening to or attending Formal Hearings on the current child protection system;
- vi. Listening to or attending Formal Hearings investigating the deaths of six Innu children and youth;
- vii. Listening to or participating in Roundtables on future directions of child protection in relation to the Innu when invited by the Commissioners.

[11] The above participation is open and does not require an application and approval from the Commissioners.

[12] General Standing means that an individual or organization and their lawyer will receive documents and can add documents to the public record, and they may be allowed to ask questions of witnesses and ask for additional witnesses to be questioned.

[13] To receive General Standing requires an application and the agreement of the Commissioners. Commissioners must be satisfied that the applicants' interests could be negatively impacted by the Inquiry, that they will contribute to the work of the Inquiry or that their participation would increase the openness and fairness of the process.

Decision

[1] The *Act*, sets out the considerations that the Commissioners must take into account in determining standing, as follows:

5. (1) A commission shall give those persons who believe they have an interest in the subject of the inquiry an opportunity to apply to participate.
 - (2) A commission shall determine whether a person may participate in an inquiry, and how he or she may participate, after considering:
 - (a) whether the person's interests may be adversely affected by the findings of the commission;

- (b) whether the person's participation would further the conduct of the inquiry; and
- (c) whether the person's participation would contribute to the openness and fairness of the inquiry.

[14] The factors set out in s. 5(2) can be grouped into two different types of considerations. Firstly, the Commissioners must determine whether the applicants' interests may be adversely affected by the findings of the commission. Secondly, the Commissioners must consider what contribution the applicants may make to the Inquiry, whether it be in furthering its work including increasing the transparency and fairness of the process.

[15] The Commissioners grant Ruby and Simeon Tshakapesh standing to participate in the Inquiry as follows:

- i. Formal Hearings on the history of the Innu;
 - a. Access to relevant documents; and
 - b. Cross examination with leave.
- ii. The Formal Hearings on the history of child protection in relation to the Innu;
 - a. Access to relevant documents; and
 - b. Cross examination with leave.
- iii. The Formal Hearings on legislation, policies and practices of the child protection system in relation to the Innu;
 - a. Access to relevant documents; and
 - b. Cross examination with leave.
- iv. Full rights of participation in the Formal Hearing in relation to the investigation of the death of Thunderheart Tshakapesh to be undertaken pursuant to s. 4(2) of the Terms of Reference.
- v. Written and oral submissions with respect to findings of fact and recommendations at the conclusion of the Inquiry.

[16] The Commissioners have considered the Application of Ruby and Simeon Tshakapesh particularly their resumes. The Commissioners have also considered the submissions of Counsel for Ruby and Simeon Tshakapesh in relation to their role in the establishment of this Inquiry.

[17] The Commissioners have determined that the participation of Ruby and Simeon Tshakapesh in the other five investigations does not satisfy the criteria set out in section 5 of the *Act* and therefore deny their application for standing in those investigations.

Funding

[18] The Commissioners recommend that the Province provide funding to Ruby and Simeon Tshakapesh and to legal counsel to participate in the Formal Hearings in which the Commissioners granted Ruby and Simeon Tshakapesh standing.