

ANASTASIA QUPEE AND DR. MICHAEL DEVINE:

INTRODUCTION

I. Establishing the Inquiry

- [1] The deaths of several Innu children following their return to their home communities after being in the care of the Province spurred Innu leadership to demand a public inquiry into the experiences of Innu children in the child protection system.
- [2] On July 5, 2017, then Premier Dwight Ball, on behalf of the Province of Newfoundland and Labrador (the “**Province**”) entered into a Memorandum of Understanding¹ with the Innu Nation to call an inquiry into the treatment, experiences and outcomes of Innu in the child protection system. At that time, it was anticipated that the Inquiry would be initiated by September 30, 2017.
- [3] It was not until April 27, 2022, that the Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System (the “**Inquiry**”) was initiated under section 16 of the *Public Inquiries Act*, 2006 by Order in Council² (O.C.2022-103), which set out the Terms of Reference (“**Terms of Reference**” or “**TOR**”) for the Inquiry. Order in Council³ (OC2022-104) set out the funding and administrative matters relating to the Inquiry.
- [4] The Inquiry is established in Section 3 of the Terms of Reference, as follows:

Inquiry established

3. (1) There is established an inquiry respecting the treatment, experiences and outcomes of Innu children, youth and families in the child protection system.

(2) The following individuals are appointed to conduct the inquiry established under subsection (1):

- (a) retired Provincial Court Judge James Igloliorte, as chair;
- (b) Anastasia Qupee; and
- (c) Dr. Michael Devine.

¹ [Memorandum of Understanding between Premier and Innu Leadership](#)

² [Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System Order](#) under the *Public Inquiries Act*, 2006 (O.C.2022-103), Newfoundland and Labrador Regulation 27/22

³ [OC2022-104](#)

- [5] The TOR set out the areas of inquiry to be pursued and addressed in the Inquiry's report and recommendations. The TOR dictate that the Inquiry be guided by the Touchstones of Hope process and principles of reconciliation and sets out the powers of the Commissioners to receive evidence, compel the production of testimony and records and to develop the rules of procedure for the Inquiry.
- [6] The TOR specify the format of the report and required it be delivered by October 31, 2023. However, it quickly became clear that this deadline would not permit the Inquiry to be conducted in a trauma-informed manner that would do no further harm. An extension to September 30, 2024 was requested and the Terms of Reference were amended to reflect this deadline.
- [7] On September 27, 2024, the TOR were amended to extend the date for delivery of the Inquiry's report to March 31, 2025.
- [8] Since it was established, the Inquiry has heard from over 100 Innu community members through informal statements at community meetings and sworn/ affirmed testimony at formal hearings. The Inquiry has established its Rules of Procedure (the "**Rules**"), and summonsed thousands of records from various departments and agencies.
- [9] Six families who lost a child and who had experience with the child protection system applied to have the Inquiry investigate. These investigations are underway.
- [10] The Inquiry is guided by the principle "do no further harm" which is enacted through its Rules, processes and the spirit in which the work of the Inquiry is conducted.

II. Resignation of the Chair

- [11] Unfortunately, due to circumstances outside of anyone's control, the Chair, retired Provincial Court Judge James Igloliorte, resigned effective July 16, 2024.
- [12] On July 25, 2024, we, the remaining Commissioners, wrote to the Minister of Justice and Public Safety, the Honourable Bernard Davis, the minister responsible for the Inquiry to request: (i) a further extension; (ii) secure funding (iii) timely provision of human resources and (iv) to discuss impacts of the resignation.
- [13] The letter included a schedule which contemplated formal hearings, with sworn testimony to take place in September 2024 and stressed the importance the department issuing contracts for human resources in advance of those hearing dates.

[14] The letter went on as follows:

Finally, we look forward to the opportunity to discuss Commissioner Igloliorte's resignation with you, and any insight you may be able to share on your Government's intended response(s), which we only surmise would include consideration of identifying and appointing a replacement Commissioner. At this juncture we will only observe that the Inquiry no longer has a Commissioner with legal training and experience, skills we have relied upon over the past two years and expect to require as we move forward through as many as six Investigation Hearings, and six Formal Hearings. At a minimum, we would welcome your thoughts on us convening Inquiry proceedings to collect evidence pursuant to s.7 of the Term of Reference, when the "inquiry panel" as defined in those Terms of Reference includes three named Commissioners.

(Emphasis added)

[15] We did not receive a response to our invitation for the Province to opine on the remaining Commissioners conducting Formal Hearings to receive evidence in the absence of a third Commissioner and Chair.

[16] At the time, we expected that the search for a replacement would take a matter of weeks.

[17] When the date for delivery of the Inquiry report was amended to March 31, 2025, we were advised that this was an interim, stop-gap, measure to allow a replacement Commissioner to be appointed and for the Inquiry to request a further extension of time.

[18] We understand that the Province and the Innu have been working collaboratively and diligently since that time to identify a replacement; however, these efforts over the past six months have not yet borne fruit.

[19] We were first made aware of the Province's concern regarding our jurisdiction and authority to continue with the work of the Inquiry on November 29, 2024, in response to amendments to the Rules of Procedure. The timeline of that process is as follows:

- a. On September 18, 2024, draft amendments to the Rules were circulated to the Parties with a deadline for input of September 27, 2024.
 - i. The Province did not provide a response.

- b. Based upon the input received from other Parties, the amendments were revised and on October 28, we provisionally approved the revised Rules, subject to the Parties having a further opportunity to raise any objections to the revisions.
- c. On November 12, 2024, the revised amended Rules were distributed to the Parties with an opportunity to object by November 22, 2024.
 - i. We received no comments from any Party, including the Province.
- d. As no objections were raised, the amendments to the Rules came into effect the next business day, November 25, 2024.

[20] On November 29, 2024, the Province wrote:

We were advised that, in the interest of advancing the Inquiry process, the Inquiry Panel has tentatively approved the proposed amendments to the Rules of Procedure notwithstanding concerns respecting the vacant Chairperson position on the Inquiry Panel. As our client also supports advancing the Inquiry process, we are providing the following comments as it is important to state our client's position on the record. We reserve the right to revisit the jurisdiction of the Inquiry Panel to amend the Rules of Procedure absent a third panel member and chairperson in the future. We also reserve the right to address the substantive changes after a third panel member and Chairperson is appointed.

III. Process to find a path forward

[21] On October 10, 2024, we instructed interim Lead Inquiry Counsel to identify options for completing the work of the Inquiry and the length of time needed to do so. It was our expectation, at that time, that we would be reviewing these options together with a third Commissioner.

[22] However, by December, nearly five months after Commissioner Igloliorte's resignation, a replacement had not yet been found and Inquiry Counsel proposed that we consider planning to conduct hearings to receive evidence regardless of whether a third Commissioner is appointed.

[23] Inquiry Counsel indicated that to do so would require the following amendment to the Rules:

- 3A. Notwithstanding anything in these Rules, any powers assigned to the Chair or to three Commissioners may, in the case of a vacancy, be exercised by all Commissioners.

[24] Inquiry Counsel further advised that the Province had raised a possible objection to the Commissioners jurisdiction to amend the Rules and as such, it would be appropriate to solicit submissions from all Parties with respect to our powers and authority in the event of a vacancy.

[25] On December 6, 2024, Inquiry Counsel wrote to advise all Parties of her proposal made to the Commissioners to hold hearings pursuant to Section 7 of the TOR in the New Year.

[26] The letter stated: “The Commissioners note that this proposal presupposes that they are empowered to exercise all functions and authorities granted to the “inquiry” and the “inquiry panel” set out in the Terms of Reference” and solicited submissions with respect to same from all Parties.

[27] We have received and reviewed submissions from:

- a. Inquiry Counsel;
- b. Government of Canada;
- c. Innu Representative Organizations;
- d. Government of Newfoundland and Labrador; and
- e. On behalf of five of the investigation families.

One counsel had not obtained instructions from their client family by the filing deadline.

[28] The respective positions of the Parties are outlined later in our reasons.

[29] We extend our sincere gratitude to all Parties for their submissions and acknowledge that the timeline coincided with the holidays. Due to the nature of the question, it was imperative that a decision be rendered in a timely fashion and we thank you all for your ongoing engagement and commitment to the work of the Inquiry.

RESULT

[30] We reviewed each submission carefully and deliberated at length. We agree that the Parties, the Commissioners and importantly the Innu communities, must have clarity and confidence regarding the legitimacy of this Inquiry over the past six months, and going forward regardless of whether a replacement Chair is appointed.

[31] Further, these reasons contemplate that when a replacement Chair is appointed, there may be instances in the future where the absence of one Commissioner is

unavoidable and clarity is required as to the parameters of how the Inquiry can proceed in such circumstance.

- [32] We have determined that the quorum and vacancy provisions of the *Interpretation Act* apply to this Inquiry and override the Rules of Procedure. Therefore, the Rules shall be amended, as necessary to the following effect: two Commissioners satisfies the requirement for quorum and the vacancy of the Chair or any Commissioner does not impair or constrain the exercise of the powers conferred on the Inquiry Panel.
- [33] We have determined that since the resignation of the Chairperson, we have had and that we will continue to have jurisdiction to exercise all powers conferred on the Inquiry and the Inquiry Panel in the Terms of Reference.
- [34] While it remains our strong preference for a third Commissioner and Chairperson to be appointed, at this juncture, the work of the Inquiry must continue or risk causing harm to the families and Innu communities who have invested time and energy into this process.

ANALYSIS

I. OBJECT – IDENTIFYING THE PURPOSE OF THE TOR

- [35] Throughout our analysis, we will keep the Innu children, families and communities who have spoken to and are participating in this Inquiry in our minds. They have shared their stories and we are responsible for ensuring they are reported on and lead to recommendations for the future.
- [36] We are called upon to assess and determine the object and purpose of the Order in Council (“TOR”) that established this Inquiry. Our interpretation of the TOR must be one that best ensures the attainment of its object without contradicting or circumventing the TOR or the other relevant Acts.
- [37] We understand the object of the TOR to be the establishment of a public and independent inquiry into the treatment, experiences and outcomes of Innu in the child protection system.
- [38] The TOR primarily address the subject matter to be inquired into, the powers and mechanisms of inquiry and the guiding principles. We find that the primary object of the TOR is that an Inquiry be conducted.

- [39] There is a clear intent to appoint an inquiry panel including three members with relevant backgrounds. However, there is no language in the TOR that addresses quorum, nor the impact of a vacancy.
- [40] The Province submits that the definition of the Inquiry panel is determinative of the issue of quorum and vacancy. We do not find this argument compelling.
- [41] Had the Government wanted to direct that the Inquiry required three Commissioners for quorum or that unanimity was required, it could have included provisions on quorum, unanimity, or provided more detailed terms relating to the conduct of hearings or meetings.
- [42] Absent any clear language to that effect, we risk distorting the intention of Government.
- [43] Further, the Province submits that a three-member panel is usually chosen to avoid stalling processes in the event of a tie. This suggests that two panel members would have the authority to act in the face of one dissenting panel member.
- [44] We are alert to the challenges presented by a tie between us and have given considerable thought to different options available to address them as they may arise. However, we cannot simply make no decisions for fear that we may not be able to find consensus on some decisions. We must meet such obstacles we encounter them.
- [45] The Innu people have waited many years for this Inquiry. We have heard powerful, vulnerable, heavy and joyful stories. Our decision must be legally sound and we must ensure that the result of our decision is fair and just, and that we follow a path that does no further harm.

II. Applying the Interpretation Act

- [46] The *Interpretation Act*⁴ (“IA”) is a law used to interpret and understand all other laws in Newfoundland and Labrador. The IA cannot be used to contradict the law being interpreted.

Application of Act

3. (1) This Act extends and applies to every Act and every regulation enacted or made, except where a provision of this Act

⁴ [Interpretation Act](#), RSNL 1990, c I-19

- (a) is inconsistent with the intent or object of the Act or regulation;
- (b) would give to a word, expression, or clause of the Act or regulation an interpretation inconsistent with the context or the interpretation section of the Act or regulation; or
- (c) is by the Act or regulation declared not applicable to it.

[47] The IA directs us to interpret our Terms of Reference in a way that will best achieve their purpose and prohibits an interpretation that is inconsistent with the purpose.

Rule of construction

16. Every Act and every regulation and every provision of an Act or regulation shall be considered remedial and shall receive the liberal construction and interpretation that best ensures the attainment of the objects of the Act, regulation, or provision according to its true meaning.

[48] The IA also contains a provision that directly and explicitly addresses quorum and vacancy, section 23:

Quorum and vacancy

23. (1) Where a board, commission or other body, in this section called a "board", is constituted under an Act, a majority of the board is a quorum and the chairperson of the board has an equal vote with the other members.
- (2) A vacancy in the membership of a board does not invalidate the constitution of a board or impair the right of the members in office to act, where the number of members in office is not less than a quorum.

[49] Inquiry Counsel submits that this provision of the IA governs the Inquiry and fills the gap created by the fact that quorum and the impact of a vacancy is not addressed in the TOR or the *Public Inquiries Act*⁵ ("PIA").

[50] Canada has indicated it is supportive of this position.

[51] The Innu Representative Organizations agree that this provision of the IA applies. They further submit that the permissive "may" in Section 21 (4) of the PIA, which

⁵ [Public Inquiries Act](#), 2006, SNL 2006, c P-38.1

allows, rather than requires, the Government to appoint a replacement supports the position that the Inquiry continues and the capacity of the Commissioners is not impaired by a vacancy.

[52] Counsel for one of the Families involved in the Investigations pursuant to s. 4(2) of the TOR (“**Investigation Families**”) has indicated that their clients support this interpretation of the IA and express their concern regarding the harms of further delays or an interpretation that results in a failure of the Inquiry.

[53] Respective Counsel for four other Investigation Families have confirmed that their clients do not object to the Commissioners proceeding despite the vacancy and have indicated that proceeding as such is preferable to delay.

i. Is the definition of Inquiry Panel in the Terms of Reference inconsistent with quorum and vacancy provisions (s. 23) of the Interpretation Act?

[54] The Province submits that s. 23 of the IA does not apply to this Inquiry. It submits that the definition of Inquiry Panel in the TOR (being the three Commissioners) is inconsistent with that section of the IA and therefore, it cannot apply per s. 3 of the IA.

[55] We disagree. Neither the PIA, nor the TOR address whether or how the Inquiry can act with less than a full panel or during an unfilled vacancy. As a result, nothing in the PIA or TOR is inconsistent with s. 23.

[56] The definition of Inquiry Panel in the TOR can be read together with the resignation and replacement provisions of the PIA and the quorum and vacancy provisions in a way that is coherent and consistent.

[57] There is no language in the TOR that directs the Commissioners on issues of quorum, nor on the impact of a vacancy, specifically whether the remaining Commissioners can act during a vacancy.

[58] Further, while s. 21 of the PIA permits a Commissioner to be terminated, resign, be replaced and for a Chairperson to be appointed, it does not speak to quorum, nor the impact on the validity and powers of an Inquiry upon termination or resignation of a Commissioner.

[59] We favour the proposition put forward by the Innu Representative Organizations that this section (s.21 of the PIA) supports an interpretation that the Inquiry remains valid with the powers conferred on it in the TOR.

[60] The Province submits that:

The TOR do not state that any 2 of the 3 panel members can act as an “inquiry panel”. A plain reading would suggest all three panel members are needed to exercise the powers given under OC2022-103.

[61] However, the TOR is silent on the issue of the number of panel members required to exercise the powers granted.

[62] We also find this reading to be inconsistent with the suggestion that two Commissioners may exercise power in the face of a dissenting Commissioner.

ii. Is this Inquiry excluded from quorum and vacancy provisions (s. 23 of IA) by virtue of being a Part II (s. 16 of PIA) Inquiry?

[63] The Province submits that s. 23 of the IA does not apply because this Inquiry was constituted pursuant to Part II (s. 16), rather than Part I (s. 3) of the PIA.

[64] We agree and acknowledge that this Inquiry is not a Commission of Inquiry established under Part I of the PIA, but rather a Part II inquiry.

[65] Section 23 of the IA, applies to “a board, commission or other body, [...] constituted under an Act”. The Province has not identified any law or case that would exclude a Part II inquiry from the definition of “other body”.

[66] The Province submits that to apply s. 23 is to rewrite the TOR as though this Inquiry were a Commission.

[67] We note that s. 21 of the PIA, the provisions which the Province submits dictates the impact of a vacancy, applies to both Part I commissions and Part II inquiries.

[68] The Province appears to argue that this Inquiry is not constituted under an Act, but rather is a creation of the Order in Council alone.

[69] We have reviewed and noted the different language employed in s. 3 and s. 16:

Commissions of inquiry

3. (1) The Lieutenant-Governor in Council may by order establish a commission of inquiry to inquire and report on a matter that the Lieutenant-Governor in Council considers to be of public concern.

Order directing inquiry

16. (1) The Lieutenant-Governor in Council may order that there be an inquiry under this Part into a matter that the Lieutenant-Governor in Council considers to be of public concern.

[70] While we acknowledge this distinction, the term “other body” is broad and on plain reading would encompass this Inquiry. Absent something more specific excluding Part II inquiries from the application of the provision, we have determined that a liberal construction that best ensures the attainment of the objects of the TOR dictates that the provision applies.

[71] The application of s. 23 of the IA does not erase the meaningful distinctions in the powers and mandate of this Inquiry as opposed to a Commission of Inquiry. This Inquiry can be captured by the “other body” provision without purporting to be a Commission.

III. Requirement for legal training

[72] Inquiry Counsel submit that there is no legal requirement for one or more of the Commissioners to have legal training or expertise.

[73] Canada submits:

Canada agrees a commissioner is not required to have legal expertise. It is sufficient for the remaining two commissioners to possess expertise in the subject matter that is relevant to this Inquiry.

[74] Counsel for one of the Investigation Families states:

We are satisfied that Commissioners Qupee and Devine are both suitable and competent to proceed with all aspects of the Inquiry mandate, including Formal Hearings.

[75] The Province takes the position that the Inquiry can only proceed with formal hearings with a third Commissioner with legal training and expertise.

[76] It does not identify a section of the PIA or TOR that creates a requirement for one or more Commissioners to have legal training, but rather relies on a hypothetical assertion that Government might have issued different terms of reference if they were appointing the two remaining Commissioners.

- [77] The Government is aware of our intention to proceed. It is their prerogative to amend the TOR. We cannot speculate on this hypothetical.
- [78] Further, none of the TOR, PIA or IA suggest that quorum or vacancy rules might be different depending on which member of the inquiry panel were absent or might have resigned.
- [79] Inquiry Counsel submits that Commissioners without legal training can fill this gap in our knowledge with legal advisors and that it is appropriate for Inquiry Counsel to act in a hybrid capacity as both advocate and advisor.
- [80] Since we expressed it in our letter of July 25, 2024, we have been consistent and clear that we do not have legal training and need legal advice in matters of law. We have explored and are comfortable that there are a number of options available to us.
- [81] We are grateful to the Parties for their submissions which demanded that we grapple with and consider various possible interpretations and issues. The rigour of this process gives us confidence in the decisions made over the past 6 months, and our ability to proceed now and in the event of any future absences.



Anastasia Qupee
Commissioner



Dr. Mike Devine
Commissioner