

Newfoundland and Labrador
Human Rights Commission

**Report for Submission
to the Innu Inquiry
Respecting Treatment,
Experiences, and
Outcomes of Innu in the
Child Protection System**

prepared by



HUMAN RIGHTS COMMISSION
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1. Introduction

“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.”

- Innu Round Table Secretariat, Guide to the Innu Care Approach¹

A. Acknowledgement and Scope

This submission is provided by the Newfoundland and Labrador Human Rights Commission in its role as an independent statutory body with expertise in human rights law and systemic discrimination. It is offered in support of the Inquiry’s mandate to examine the treatment, experiences, and outcomes of Innu children within the child protection system, and to identify structural factors that may give rise to inequality or harm. The Commission’s contribution is intended to assist the Inquiry by situating those experiences within an established human rights framework, with particular attention to systemic and adverse-effects discrimination.

This report is not a determination of individual fault or liability, nor does it make findings of fact based on an evidentiary record. It does not assess the conduct of specific actors or adjudicate disputed evidence. Rather, it undertakes a systemic, legal analysis of patterns of treatment within the child protection system in Newfoundland and Labrador as applied to Innu children and families, assessed through established human rights law principles.

B. Purpose of the Report

The purpose of this report is to examine whether patterns of treatment experienced by Innu children and families within the child protection system in Newfoundland and Labrador raise concerns under human rights law. The analysis focuses on the operation and effects of the child welfare system as a whole, viewed through a human rights lens, rather than on individual cases.

C. Key Findings and High-Level Conclusion

Applying established principles of human rights law to the operation of the child welfare system in Newfoundland and Labrador, this report concludes that there are serious

¹ 2017 Innu Round Table Secretariat Inc, “Guide to the Innu Care Approach” (2017) at 2, online: <<https://www.irtsec.ca/2016/wp-content/uploads/2018/01/A-Guide-to-the-Innu-Care-Approach-Dec-2017.pdf>> [Innu Care Approach].

concerns that Innu children experience discrimination in the provision of child protection services.

Specifically, the analysis identifies the following interrelated bases for this conclusion:

- **Adverse impact on the basis of race and ethnicity:** The structure and operation of the child protection system have disproportionate and harmful effects on Innu children and families, engaging protected grounds under human rights law.
- **Failure to deliver substantive equality:** The system does not adequately account for the distinct historical, cultural, and social circumstances of Innu communities, resulting in outcomes that fall short of substantive equality, despite facially neutral policies or practices.
- **Long-standing awareness of harm without adequate remediation:** There is a sustained and well-documented awareness of the adverse impacts of child protection interventions on Innu children and families, without corresponding systemic reforms sufficient to address or prevent those harms.
- **Structural features that reproduce inequality:** Core features of the child welfare system—its design, decision-making frameworks, and institutional practices—operate in ways that perpetuate and reproduce existing inequalities affecting Innu children.

Taken together, these factors support the conclusion that the treatment of Innu children within the child protection system raises serious human rights concerns and reflects discriminatory effects within the meaning of human rights law.

2. Mandate, Scope, Methodology

A. Mandate and Role of the Commission

The Newfoundland and Labrador Human Rights Commission (“the **Commission**”) is an independent government agency responsible for promoting and protecting human rights in the province.² The Commission carries out this mandate by administering the *Human Rights Act, 2010*,³ investigating and resolving human rights complaints, providing legal information to individuals, organizations, and communities, preventing discrimination through education and training, and working collaboratively with community partners.

² Newfoundland and Labrador Human Rights Commission, online: <<https://thinkhumanrights.ca/>>.

³ *Human Rights Act, 2010*, SNL 2010, c H-13.1.

The Commission's legislative mandate, set out in section 23 of the *Human Rights Act, 2010*, includes:

- promoting the principle that every person is equal in dignity and rights without regard to a prohibited ground of discrimination;
- fostering understanding of and compliance with human rights law;
- conducting research and educational initiatives to eliminate discriminatory practices; and
- advising and assisting government departments and agencies on matters concerning human rights.

The Commission is also authorized to advise the provincial government on human rights-related submissions from organizations and individuals and to consider or investigate human rights matters referred to it by the Lieutenant-Governor in Council or the responsible Minister.⁴

The Commission has been granted standing before the Public Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System pursuant to an Order of the Commissioners dated December 5, 2022. Under that Order, the Commission has the right to make written submissions and, with leave of the Commissioners, an opportunity to make oral submissions, as well as any additional rights of participation that may be granted by the Commissioners.

The Commission's participation in the Inquiry is limited to the exercise of those rights and is consistent with its institutional role and expertise in human rights law. In this report, the Commission does not adjudicate facts, assess credibility, or make determinations of liability. Its submissions are intended to assist the Inquiry by offering an independent analysis of relevant human rights principles, including discrimination and substantive equality, as they may apply to the operation of the child protection system in Newfoundland and Labrador.

B. Scope of Report

This report examines whether patterns of treatment experienced by Innu children and families within Newfoundland and Labrador's child protection system raise concerns under human rights law. Its focus is on systemic features of the child welfare system, rather than on individual cases or decision-makers, and on the effects of policies, practices, and institutional structures as they operate in practice.

The report is structured around several interrelated themes, including:

⁴ *Ibid*, s 23.

- the application of human rights principles to child welfare as a public service;
- adverse impact and systemic discrimination affecting Innu children;
- the role of discretion, bias, and institutional design in producing unequal outcomes; and
- the relevance of substantive equality to the design and delivery of child protection services.

The analysis is grounded in human rights legislation and jurisprudence, including the Newfoundland and Labrador *Human Rights Act, 2010* and the *Canadian Human Rights Act*.⁵ While the report necessarily engages with concepts such as colonialism, systemic racism, and intergenerational harm, it does so through the lens of human rights law. The report does not undertake a Charter analysis and does not assess constitutional compliance, as those matters fall outside the Commission's mandate and expertise.

The report adopts a primarily contemporary focus, with particular attention to the operation of the child protection system in recent decades. Earlier legislative regimes and historical developments are referenced only to the extent necessary to provide context and to illustrate continuity in policy approaches or systemic challenges. In this regard, the report draws on findings and recommendations contained in prior Canadian Human Rights Commission reports relating to Innu communities as evidence of long-standing awareness of risks and harms rather than as historical adjudications.

The Commission acknowledges that contemporary child welfare systems in Canada are rooted in a much longer history of state intervention in the lives of Indigenous children and families, including the impacts of residential schools, the Sixties Scoop, and legislative regimes such as the *Indian Act*.^{6 7} These systems have caused profound and well-documented harm, the effects of which continue to shape the experiences of Indigenous communities today. While this historical context is essential to understanding the broader landscape in which child protection operates, this report does not undertake a comprehensive examination of those historical policies or institutions. References to this history are included for contextual purposes only, in order to situate the present analysis of human rights issues within the child welfare system in Newfoundland and Labrador.

Nothing in this report is intended to supplant or duplicate the Inquiry's own fact-finding mandate. The Commission's analysis is offered in a manner that respects the Inquiry's

⁵ *Canadian Human Rights Act*, RSC 1985, c H-6.

⁶ *Indian Act*, RSC 1985, c I-5.

⁷ Note: The *Indian Act* retains terminology that is now widely recognized as outdated and harmful, including the term "Indian." Except where direct quotation or legal precision requires otherwise, this report uses the term "Indigenous peoples" when referring to persons or communities described by that legislation.

guiding principles, including its commitment to trauma-informed processes, non-discrimination, and the incorporation of Innu perspectives, cultures, and worldviews.

C. Methodology

In preparing this report, the Commission undertook a structured review and synthesis of legal and policy materials relevant to the provision of child protection services and to the assessment of discrimination under human rights law. The methodology included review of:

1. Canadian and Newfoundland and Labrador human rights jurisprudence, with particular emphasis on discrimination, including systemic discrimination, and substantive equality in the context of government services;
2. Newfoundland and Labrador child welfare legislation and publicly available policies governing child protection practices;
3. Reports issued by the Canadian Human Rights Commission concerning Innu communities, including those published in 1993, 2002, and 2021;⁸
4. Materials produced for or by the Inquiry, as well as publicly available reports, academic literature, and secondary sources addressing Indigenous child welfare and systemic discrimination.

The Commission did not conduct interviews, receive testimony, or make findings of fact. It did not assess the evidentiary record before the Inquiry, nor did it attempt to resolve disputed factual issues. The report is an analytical synthesis that applies established human rights principles to information drawn from authoritative public sources, with the aim of assisting the Inquiry in its consideration of systemic human rights implications.

3. Overview of the Child Welfare System in Newfoundland and Labrador

This section provides an overview of the legislative and operational framework governing child welfare in Newfoundland and Labrador, together with a brief account of the evolution of that framework. Its purpose is to situate the analysis that follows by describing how child protection services are structured, how decisions are made, and how Indigenous

⁸ Donald M McRae, *Report on the complaints of the Innu of Labrador to the Canadian Human Rights Commission* (18 August 1993) [*McCrae Report, 1993*]; Constance Backhouse & Donald McRae, *Report to the Canadian Human Rights Commission on the Treatment of the Innu of Labrador by the Government of Canada* (26 March 2002) [*Backhouse & McRae Report, 2002*]; Celeste McKay Consulting Inc & Donald M McRae, *Follow-up report to the Canadian Human Rights Commission on the human rights of the Innu of Labrador* (9 August 2021) [*Follow-up Report 2021*].

considerations have been incorporated into the system over time. The subsequent sections will analyze whether and how this framework creates the conditions that allow for discrimination against Innu children.

A. Current Governing Legislation: The *Children, Youth and Families Act*, SNL 2018, c C-12.3

Child welfare services in Newfoundland and Labrador are currently governed by the *Children, Youth and Families Act* (the “CYFA”).⁹ The Act provides the statutory authority for the provision of child protection, family support, and youth services across the province. Its stated guiding principle is that the best interests of the child or youth are the overriding and paramount consideration in all decisions made under the Act.¹⁰

In determining a child’s or youth’s best interests, the CYFA directs decision-makers to consider a range of factors, including safety, health, emotional and developmental needs, relationships with family and significant persons, the child’s views, and the importance of stability and permanency. Notably, the Act now expressly requires consideration of a child’s identity and cultural and community connections, and specifically recognizes the importance of preserving the unique cultural identity of Indigenous children and youth.¹¹

The current Act includes definitions of “Indigenous child” and “Indigenous youth” and contains provisions intended to acknowledge the cultural, familial, and community contexts of Indigenous children involved with the child welfare system. These provisions reflect legislative amendments introduced beginning in 2019 and refined through subsequent amendments in 2021, following consultation with Indigenous governments and organizations.¹² Some of these amendments addressed:

- identifying specific placement considerations for Indigenous children and youth in care (e.g. placing with family in community first, where possible);
- supporting cultural connections (e.g. requiring a cultural connection plan when an Indigenous child comes into care);
- adding definitions for Indigenous child and Indigenous youth; and

⁹ *Children, Youth and Families Act*, SNL 2018, c C-12.3 [CYFA].

¹⁰ *Ibid*, s 9(1).

¹¹ *Ibid*, s 9(2).

¹² Government of Newfoundland and Labrador, “Review of Children, Youth and Families Act Discussion Guide 2025” online: <<https://www.gov.nl.ca/sswb/review-of-children-youth-and-families-act-discussion-guide-2025/>> [Discussion Guide 2025].

- adding a requirement for Indigenous governments to be served notice of child protection court matters that affect their children, youth and families.¹³

The CYFA also imposes a statutory requirement that the Minister of Families and Affordability (previously the Minister of Children, Seniors and Social Development) review the legislation and its guiding principles every five years. The most recent review process, initiated in 2025, explicitly identifies Indigenous child welfare practice as a key area of focus and seeks input on whether the Act adequately responds to the needs and circumstances of Indigenous children, youth, and families.¹⁴

B. Newfoundland and Labrador Child Protection and Youth Services

The main role of Child Protection and Youth Services (“**CYFS**”) is to protect children from harm. Under the CYFA, the province’s Child Protection and Youth Services is responsible for providing both voluntary and court-mandated protection for children under 16, as well as voluntary residential and support services for youth aged 16–18 in need of protection.

CYFS operates through four regions with 56 offices across the province. As of 2014, there were no Indigenous-run First Nations Child and Family Services agencies in Newfoundland and Labrador identified in the literature reviewed, and approximately 7,800 Indigenous children under 18 were reported as falling under CYFS jurisdiction.¹⁵

Service delivery to children and youth in need of protection is also guided by the *Protection and In Care Policy and Procedure Manual* (2011). Adoption practices are governed by the *Adoption Act, 2013*¹⁶ and the *Adoptions Policy and Procedures Manual* (2014). Reported allegations of harm to a child or youth are first screened according to the criteria at section 10 in the CYFA:

¹³ *Children, Youth and Families Act*, *supra* note 9.

¹⁴ Discussion Guide 2025, *supra* note 12.

¹⁵ Anne Blumenthal & Vandna Sinha, “Newfoundland and Labrador’s Child Welfare System” (August 2014), Information Sheet #130E, at 1-2, citing 2006 Statistics Canada data, online: Canadian Child Welfare Research Portal <https://cwrp.ca/sites/default/files/publications/NL_final_infosheet_0.pdf> [Blumenthal].

¹⁶ *Adoption Act, 2013*, SNL 2013, c A-3.1.

- 10. (1) A child is in need of protective intervention where the child**
- (a) is being, or is at risk of being, physically harmed by the action or lack of appropriate action by the child's parent;*
 - (b) is being, or is at risk of being, sexually abused or exploited by the child's parent;*
 - (c) is being, or is at risk of being, emotionally harmed by the parent's conduct and there are reasonable grounds to believe that the emotional harm suffered by the child, or that may be suffered by the child, results from the actions, failure to act or pattern of neglect on the part of the child's parent;*
 - (d) is being, or is at risk of being, physically harmed by a person and the child's parent does not protect the child;*
 - (e) is being, or is at risk of being, sexually abused or exploited by a person and the child's parent does not protect the child;*
 - (f) is being, or is at risk of being, emotionally harmed by a person and the child's parent does not protect the child;*
 - (g) is in the custody of a parent who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;*
 - (h) is abandoned;*
 - (i) has no living parent and no adequate provision has been made for the child's care;*
 - (j) has no parent available to care for the child and the parent has not made adequate provision for the child's care;*
 - (k) has no parent able or willing to care for the child;*
 - (l) is living in a situation where there is violence or is living in a situation where there is a risk of violence;*
 - (m) is living with a parent whose actions show a propensity to violence or who has allegedly killed or seriously injured another person;*
 - (n) has a parent who exercises access whose actions show a propensity to violence or who has allegedly killed or seriously injured another person;*
 - (o) has been left without adequate supervision appropriate to the child's developmental level; or*
 - (p) is actually or apparently under 12 years of age and has*
 - (i) allegedly killed or seriously injured another person or has caused serious damage to another person's property, or*
 - (ii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation.*
- (2) For the purposes of paragraphs (1)(c) and (f), the indicators of emotional harm exhibited or demonstrated by a child may include**
- (a) depression;*
 - (b) significant anxiety;*
 - (c) significant withdrawal;*
 - (d) self-destructive behaviour;*
 - (e) aggressive behaviour; or*
 - (f) delayed development.*

Those identified as screened-in are investigated by the intake and assessment team. If allegations are substantiated and the child needs protection, services may be offered

voluntarily, in partnership with the family and community service providers, via a “Family Action Agreement”.¹⁷

When the risk level to a child(ren) is deemed high or if caregivers refuse a voluntary service plan, services can be mandated through Family Court applications and orders. These may include:

- supervisory orders, where the child stays with their primary caregiver under the supervision;
- temporary custody orders, where the child is placed in foster care or with a child protection manager; or
- permanent custody orders, which transfer long-term care and custody to the state.¹⁸

In all cases, CYFS and community agencies can be court-ordered to provide services supporting both parents and children. If parents or caregivers do not show progress in addressing child protection concerns, a permanent care and custody order might be issued, granting the province custody until the child reaches at least age 16.

Temporary custody orders are subject to specific time limits under the CYFA, highlighting the importance of permanency. The initial temporary order can last up to 6 months; for children under 6, a second order may be issued for up to 3 months; for children 6 or older, the second order can be granted for up to 6 months. A third order, in exceptional cases, may be issued after the time limits of the second order.

Services include out-of-home care, case management, and a range of in-home, clinical, and community-based supports. Child, Youth and Family Services (CYFS) provides services to children, youth, and their parents or caregivers through measures such as kinship services and foster care, protective intervention and care agreements, in-care planning and supports, and youth services. Where appropriate, CYFS also works with and refers families to external clinical, cultural, and community-based programs to support child safety and family well-being.

CYFS facilitates referrals to numerous community organizations and non-profits throughout the province. Supervised visitation for children in care with their families is arranged through private companies under contract with CYFS. Out-of-home placements in group care facilities are similarly managed through private agreements. CSSD funds

¹⁷ Sarah Tremblett, Nico Trocmé & Ashleigh Delaye, “Newfoundland and Labrador Child Welfare Service Information Sheet” (August 2021), Information Sheet #217E at 2, online: Canadian Child Welfare Research Portal
<<https://cwrp.ca/sites/default/files/publications/Newfoundland%20and%20Labrador%20Child%20Welfare%20Services%20Information%20Sheet%20August%202021.pdf>> [Tremblett].

¹⁸ *Ibid.*

parenting support and home-visitation programs at educational centers to assist children and families with parenting skills and behavior management. Additionally, CYFS directs children, youth, and families to mental health and addiction services available via regional and provincial health systems, including inpatient and outpatient treatments and family therapy.¹⁹

The Department of Families and Affordability notes on its website that it has collaborated with Indigenous governments in the province to revise or develop policies to improve service delivery to Indigenous children, youth and families, including:

- Discontinuing birth alerts and updating the practice of working with expectant parents;
- Developing distinctions-based cultural connection plans for children/youth in care;
- Expanding the definition of Kin to include members of the child/youth's Indigenous community;
- Revising the foster home approval process; and
- Partnering with Nunatsiavut Government to recruit, assess and support foster parents.²⁰

The Department also writes an annual report, titled “[The Report on Child Welfare Services to Indigenous Children, Youth and Families](#),” which provides an analysis of Indigenous client demographics and an overview of their child welfare involvement.²¹

C. Office of the Child and Youth Advocate

The Office of the Child and Youth Advocate (“**OCYA**”) is an independent statutory office established under the *Child and Youth Advocate Act*²² with a mandate to protect and advance the rights of children and youth in Newfoundland and Labrador through oversight of government programs, investigations and reviews, individual and systemic advocacy, and public education.

¹⁹ Tremblett, *supra* note 17 at 3.

²⁰ Discussion Guide 2025, *supra* note 12.

²¹ Newfoundland & Labrador Department of Child, Youth and Family Services, “Report on Child Welfare Services to Indigenous Children, Youth and Families 2021–2022”, online: <https://www.gov.nl.ca/sswb/files/ReportonChildWelfareServicesToIndigenous2021-2022.pdf> [Child Welfare Report 2021-2022].

²² *Child and Youth Advocate Act*, SNL 2001, c C-12.01.

OCYA states that its approach to child protection, in-care and youth services is guided by the *United Nations Convention on the Rights of the Child* (“**UNCRC**”)²³, which provides a comprehensive human rights framework grounded in the principles of non-discrimination, the best interests of the child, the right to life, survival and development, and children’s participation. In particular, it focuses are certain key UNCRC rights, including children’s rights to safety and protection from harm, family unity where safe, special care when unable to live with family, regular review of placements, cultural identity, recovery from maltreatment, and the overarching responsibility of governments to respect, protect, and fulfill children’s rights.

4. Indigenous Child Welfare and Governance Context

A. Jurisdiction over First Nations Child and Family Services

Under section 91(24) of the *Constitution Act, 1867*, legislative authority over Indigenous peoples, and lands reserved for them, falls within federal jurisdiction.²⁴ Child protection and welfare, on the other hand, are generally understood to be within provincial jurisdiction because these services relate to property, civil rights and matters of a local nature – areas of provincial jurisdiction under the *Constitution Act, 1867*. As a result, the authority and jurisdiction over child protection and welfare for Indigenous children and families is complex and disputes between the federal and provincial governments, particularly over funding, have persisted for decades.

Despite disputes, provincial child welfare laws generally apply to Indigenous children and families, both on and off reserve. The federal government’s more typical involvement in Indigenous child welfare takes the form of funding agreements with provincial governments, or tripartite agreements with provinces and Indigenous governments/entities to establish Indigenous child welfare authorities that deliver services to the local Indigenous population. These authorities operate under provincial child welfare laws but receive at least some federal funding.²⁵

B. Child and Family Services Provided to the Innu of Newfoundland and Labrador

Similar to the rest of the country, child and family services for the Innu in Labrador have historically been provided by the Province of Newfoundland and Labrador, with funding from the Government of Canada through a shared federal–provincial arrangement.

²³ United Nations Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 43, arts 1–54 (entered into force 2 September 1991) [UNCRC].

²⁴ *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, no 5.

²⁵ Jack Woodward, *Aboriginal Law in Canada* (Toronto: Thomson Reuters, 2022) at ch 15, 15:22 [Woodward].

Federal funding is primarily provided through Indigenous Services Canada under the First Nations Child and Family Services Program, which is designed to fund prevention, protection, and culturally appropriate supports for First Nations children and families living on reserve. This arrangement has been the subject of scrutiny across Canada due to concerns about underfunding and culturally inappropriate service delivery, most notably resulting in the landmark decision of the Canadian Human Rights Tribunal, *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2016 CHRT 2 (discussed more in part 5(5.AA) of this report).

In June 2021, the Government of Newfoundland and Labrador, the Sheshatshiu Innu First Nation, and the Mushuau Innu First Nation signed the “INNU-CSSD Protocol”. This is described as a document to guide information-sharing and coordination, and to formalize collaborative relationships among the Department’s child protection authority (CSSD), Innu Prevention Services, and Innu Representative Services.²⁶

While the provincial legislative regime continues to be applied within the Innu communities of Labrador, some service delivery innovations and community-based placement resources have emerged. For example, emergency placement homes were developed in Sheshatshiu and Natuashish in partnership with the Innu First Nations, provincial authorities, and the Government of Canada, with an emphasis on Innu-led service models that reflect local culture, staffing, and care practices.²⁷

As well, the Shushepeshipan Group Home, opened through collaborative funding and planning, is a placement resource operated with local leadership and cultural programming with a goal of reducing out-of-community placements.²⁸

C. Federal Legislative Framework: *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24

Regardless of whether child welfare lies at the core of s 91(24) of the *Constitution Act, 1867*, Parliament has the recognized authority to legislate on child welfare as it relates to First Nation families, particularly on reserve.²⁹ Although it does not exercise this authority directly, in January 2020, Parliament adopted *An Act respecting First Nations, Inuit and Métis children, youth and families*.³⁰ The Act affirms the inherent right of Indigenous

²⁶ Child Welfare Report 2021-2022, *supra* note 21 at 37.

²⁷ Government of Canada, “The Government of Canada announces funding for two emergency placement homes in the Innu communities of Natuashish and Sheshatshiu” (24 August 2019), online: Indigenous Services Canada <<https://www.canada.ca/en/indigenous-services-canada/news/2019/08/the-government-of-canada-announces-funding-for-two-emergency-placement-homes-in-the-innu-communities-of-natuashish-and-sheshatshiu.html>>.

²⁸ Shushepeshipan Ishpitentamun Mitshuap Inc, “Services”, online: <<https://www.siminnu.ca/services>>.

²⁹ Woodward, *supra* note 25 at ch 15, 15:22.

³⁰ *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24.

peoples to self-determination in relation to child and family services, establishes national standards for the delivery of those services, and creates a legislative framework for the exercise of Indigenous jurisdiction. It provides for Indigenous governing bodies to assume legislative and operational authority over child and family services through coordination agreements or Indigenous law-based systems, consistent with the recognition of Indigenous jurisdiction and the rights affirmed by section 35 of the *Constitution Act, 1982*.³¹

While the federal legislation creates a legal pathway for Indigenous communities to exercise jurisdiction over child welfare, the extent and pace of implementation vary across jurisdictions and communities. In Newfoundland and Labrador, although the Innu Nation formally expressed its intention to exercise its legislative authority in relation to child and family services on February 6, 2020, no Innu government has yet assumed full legislative authority over child welfare under the federal Act.³² Child protection services for Innu children continue to be delivered primarily under provincial authority and operational frameworks, with collaborative arrangements intended to improve coordination between provincial child welfare authorities and Innu service providers.³³

5. Historical and Structural Context: Innu Children and State Child Removal

The Innu are an Indigenous people whose traditional territory, Nitassinan, extends from the coast of Labrador into the interior of the Labrador–Quebec peninsula. There are approximately 3,000 Innu in Labrador, living primarily in the two communities of Natuashish and Sheshatshiu.³⁴ The Innu in Labrador are represented by the Innu Nation for certain matters, including comprehensive land rights negotiations with Canada and Newfoundland and Labrador, and by the Mushuau Innu (Natuashish) and Sheshatshiu Innu First Nation governments for local governance, programs, and services.³⁵

The circumstances of the Innu in Newfoundland and Labrador are distinct from those of many other First Nations in Canada and are shaped in significant part by the terms under which Newfoundland and Labrador entered Confederation in 1949. For nearly half a century after joining Canada, the federal government did not recognize the Innu as having the same constitutional status and rights as other First Nations. Until 1997, the Innu were

³¹ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

³² Dr. Ken Barter, “Straight to the Point: A Call for Action in the Interests of the Health, Wellbeing and Protection of Children and Youth In Newfoundland & Labrador (A Report Completed for the Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System)” (2025), at 8, online: <<https://www.inniuna.ca/files/P-438.pdf>> [Barter].

³³ *Discussion Guide 2025*, *supra* note 12.

³⁴ Innu Nation, online: <<https://www.innu.ca/>>.

³⁵ *Ibid.*

denied access to many of the services, benefits, and funding arrangements provided to other First Nations under federal law and policy.³⁶

A. Federal Non-Recognition and Structural Underfunding (1949–1997)

Despite the *Constitution Act*, 1867, which assigned exclusive federal jurisdiction over Indigenous peoples and lands reserved for them, the federal government declined for decades to assume responsibility for the Innu following Newfoundland and Labrador's entry into Confederation. Instead, responsibility for services and programs affecting the Innu was left largely with the provincial government, funded through *ad hoc* and opaque federal-provincial arrangements negotiated without Innu participation.³⁷

The 1993 Report to the Canadian Human Rights Commission (CHRC), authored by Professor Donald McRae, concluded that this refusal to take up constitutional responsibility constituted a violation of the federal government's fiduciary obligations toward the Innu. The Report found that combined federal and provincial funding for Innu communities fell well below levels provided to other First Nations, even before accounting for the significantly higher costs associated with delivering services in remote northern communities.³⁸

This prolonged period of underfunding and jurisdictional neglect created deep structural disadvantage across housing, health, education, and social services, conditions that would later be relied upon by child welfare authorities as indicators of parental "neglect" or "risk".

B. Forced Relocations and State-Imposed Community Design

State-driven relocations have played a central role in the disruption of Innu social, cultural, and family life. The Mushuau Innu traditionally lived a semi-nomadic life centered on the land and seasonal harvesting. In 1948, the year before Confederation, the Newfoundland government closed the trading post at Utshimasits (Davis Inlet) and relocated the Mushuau Innu approximately 400 kilometres north. Within a year, community members returned on foot to Davis Inlet due to the unsuitability of the new settlement.³⁹

In 1967, the provincial government, with the acquiescence of the federal government, again relocated the Mushuau Innu, this time to Iluikoyak Island. The 1993 CHRC Report found that there was no meaningful consultation with the Innu prior to this relocation and that decisions were made based on assumptions about Innu interests by government

³⁶ *Follow-up Report 2021*, *supra* note 8 at 6.

³⁷ *Ibid* at 38.

³⁸ *Ibid* at 39.

³⁹ *Ibid* at 34.

officials and missionaries rather than by the community itself.⁴⁰ Promises regarding housing quality, water, and sewage infrastructure were not kept, resulting in substandard living conditions and chronic water insecurity.⁴¹

The relocation to Iluikoyak Island severed the Mushuau Innu from their hunting territories for much of the year, undermining food security, cultural continuity, and economic self-sufficiency. By the early 1990s, these conditions were widely linked to acute social crises, including youth suicide, substance use, and family disruption.⁴²

Although the subsequent relocation to Natuashish was initiated at the Innu's request, it occurred under intense public pressure and within a rushed planning process that failed to adequately reflect Innu cultural practices and family structures. Housing designs did not accommodate extended family living, food preparation, or land-based activities.⁴³ Population growth has since outpaced federal funding, resulting in renewed overcrowding and a persistent housing crisis.⁴⁴

C. Residential Schools, Day Schools, and Child Removal

Like other Indigenous peoples in Canada, the Innu were subjected to generations of forced child removal through residential schools and, more commonly, Catholic day schools. Compensation for Innu residential school survivors was delayed for nearly a decade following the Indian Residential Schools Settlement Agreement, and the Innu remain excluded from current federal compensation schemes for day school survivors.^{45 46}

These systems disrupted parenting practices, language transmission, and family relationships across generations. Many Elders speak primarily or exclusively Innu-aimun,

⁴⁰ *Ibid* at 35.

⁴¹ *Ibid* at 35.

⁴² *Ibid* at 35.

⁴³ *Ibid* at 36.

⁴⁴ *Ibid* at 36.

⁴⁵ *Ibid* at 40.

⁴⁶ OKT Law and Budden & Associates are representing Innu Nation and 3 of its members in a proposed class action about the schools that operated in the Labrador Innu communities before the Innu took control of their own education system. Between 1949 and 2009, provincial school boards and Catholic-affiliated schools operated in the Innu communities of Sheshatshiu, Davis Inlet and Natuashish. The case was launched in January 2024 against the Government of Canada and the Government of Newfoundland & Labrador.

No compensation is available through this case yet. OKT Law and Budden & Associates, "Innu Day Schools", online: < <https://www.oktlaw.com/services/cases/innu-day-schools/#:~:text=OKT%20Law%20and%20Budden%20%20Associates,available%20through%20this%20case%20yet.&text=If%20you%20would%20like%20to,to%20innudayschools@oktlaw.com.>> >

while younger generations have experienced declining language use, in part due to separation from families and communities through child welfare interventions.⁴⁷

This intergenerational disruption forms a critical part of the context in which contemporary child welfare decision-making occurs and must be understood as a product of historic and ongoing state action rather than individual family failure.

D. Contemporary Child Wellbeing Impacts

The cumulative effects of forced relocation, chronic underfunding, and cultural disruption are acutely reflected in the over-representation of Innu children in state care. The Innu Nation reports that approximately one in ten Innu children are in care at any given time — a rate significantly disproportionate to the population of Newfoundland and Labrador as a whole and higher than that of many other Indigenous communities in Canada.⁴⁸

Many Innu children in care have been placed outside their home communities, often far from their families, language, and culture, and under the care of service providers with limited knowledge of Innu ways of life. In 2019, more than two-thirds of Mushuau Innu children in provincial care were placed outside Natuashish.⁴⁹

Overcrowded housing (itself a consequence of federal funding decisions) is frequently treated by child welfare authorities as evidence of parental incapacity or neglect. At the same time, overcrowding increases the likelihood that households will include individuals with addictions, criminal records, or prior child protection involvement, further elevating perceived “risk” and reinforcing cycles of child removal.⁵⁰

E. Underfunding, Substantive Equality, and Human Rights Findings

The Canadian Human Rights Tribunal’s landmark 2016 decision in *First Nations Child and Family Caring Society* confirmed that federal underfunding of First Nations child and family services constitutes racial discrimination under the *Canadian Human Rights Act*.⁵¹ The Tribunal held that discrimination may arise not only through direct service delivery, but through funding and policy decisions that shape the quality and accessibility of services.⁵²

⁴⁷ *Follow-up Report 2021*, *supra* note 8 at 70.

⁴⁸ *Ibid* at 61.

⁴⁹ *Ibid* at 61; Terry Roberts, “Uprooted: Why so Many of Labrador’s Children are in Foster Care so Far Away From Home” (28 February 2017), online: CBC News <<https://www.cbc.ca/news2/interactives/uprooted/>> [Uprooted].

⁵⁰ *Follow-up Report 2021*, *supra* note 8 at 72.

⁵¹ *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2016 CHRT 2 [*First Nations Child and Family Caring Society*, 2016].

⁵² *Follow-up Report 2021*, *supra* note 8 at 17.

The Tribunal confirmed that substantive equality requires services that meet actual needs and do not perpetuate historic disadvantage. Where government conduct widens the gap between Indigenous communities and the rest of Canadian society, it is discriminatory.⁵³ In subsequent rulings, the Tribunal ordered Canada to fully fund prevention-based services determined by First Nations to be in the best interests of their children.⁵⁴

F. Innu-Led Responses and Ongoing Barriers

In response to these harms, the Innu have developed their own culturally grounded approaches to child and family well-being, including the Innu Care Approach, Innu Prevention Approach and the Innu Healing Strategy. These initiatives emphasize prevention, family unity, land-based learning, and community responsibility for children.⁵⁵

While some progress has been made, such as increased funding following CHRT decisions and the implementation of these Innu-led prevention services, funding remains time-limited, inconsistent, and insufficient to meet actual community needs. In June 2020, the Innu Nation filed a further complaint with the CHRC alleging continued failure to ensure substantive equality in child welfare funding. In 2021, the federal government and the Innu reached an agreement that increased federal funding for Innu services for a two-year period. As a consequence, the Innu complaint was put on hold.⁵⁶

6. Human Rights Legal Framework

A. Applicable Human Rights Legislation and Jurisprudential Context

This report is grounded in established Canadian human rights law, drawing primarily on the *Human Rights Act, 2010* (Newfoundland and Labrador), and the *Canadian Human Rights Act*, as interpreted and applied by human rights tribunals and courts. These legal frameworks govern the provision of public services and prohibit discrimination on enumerated grounds, including race, ethnic origin, ancestry, and related characteristics.

As discussed above, child and family services for the Innu in Newfoundland and Labrador are largely governed by provincial legislation. At the same time, section 91(24) of the *Constitution Act, 1867* grants the federal government jurisdiction over Indigenous peoples

⁵³ *First Nations Child and Family Caring Society*, 2016, *supra* note 51 at para 403.

⁵⁴ *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2018 CHRT 4 at paras 410-411 [*First Nations Child and Family Caring Society*, 2018].

⁵⁵ *Innu Care Approach* *supra* note 1; Child Welfare League of Canada, *Innu Prevention Approach: Presented to the Innu Round Table Secretariat* (2016) at 12, online: Child Welfare League of Canada <<http://www.irtsec.ca/2016/wp-content/uploads/2016/01/Innu-Prevention-Approach-Final-edited-Report-Jan-20-2016.pdf>> [*Innu Prevention Approach*].

⁵⁶ *Follow-up Report 2021*, *supra* note 8 at 64.

and reserve lands. As such, the Federal Government is responsible for funding the costs of provincial child and family services for the Innu. Given this reality, both the provincial and federal human rights regimes would apply in various ways to the provision of child and family services to the Innu of Newfoundland and Labrador.

Human rights protections in Newfoundland and Labrador predate the current *Human Rights Act, 2010*. Prior to 2010, human rights protections in the province were set out in the *Human Rights Code*, first introduced in 1969.⁵⁷ While the statutory framework has evolved over time, the core principles animating human rights law, including the prohibition of discrimination in public services and the recognition of systemic and effects-based discrimination, have remained consistent.

The Commission's analysis is also informed by federal human rights jurisprudence, including decisions of the Canadian Human Rights Tribunal, the Federal Court, and the Supreme Court of Canada, particularly where those decisions address discrimination in the delivery of government programs and services affecting Indigenous peoples and children. While Charter jurisprudence is not the focus of this report, section 15 equality jurisprudence has significantly shaped the development of human rights law and informs the interpretation of both federal and provincial human rights legislation.

B. Legal Test for Discrimination

The legal test for discrimination under Canadian human rights law is well established and arises from both statute and jurisprudence. At the provincial level in Newfoundland and Labrador, the *Human Rights Act, 2010* prohibits discrimination in the provision of goods and services customarily available to the public. Section 9(1) enumerates prohibited grounds of discrimination, including race, colour, nationality, ethnic origin, social origin, and family status. Section 11 prohibits the denial of services or adverse differentiation in services on the basis of a prohibited ground. Importantly, section 10 confirms that a contravention of the Act does not require an intention to discriminate.

Similarly, section 5 of the *Canadian Human Rights Act* prohibits the denial of, or adverse differentiation in, goods, services, facilities, or accommodation customarily available to the public on a prohibited ground of discrimination.

Canadian courts and tribunals have articulated a consistent analytical framework for assessing discrimination under these statutory regimes. As confirmed by the Supreme Court of Canada in *Moore v British Columbia (Education)*, 2012 SCC 61 and applied across jurisdictions, a complainant establishes a *prima facie* case of discrimination by demonstrating that:

1. **they possess a characteristic protected from discrimination;**

⁵⁷ *Human Rights Code*, RSNL 1990, c H-14.

2. **they experienced an adverse impact in the provision of a service customarily available to the public; and**
3. **the protected characteristic was a factor in the adverse impact.**

Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. The exemptions to discrimination are set out at section 11(3) of the *Human Rights Act, 2010*. The subsection that could be argued in a child welfare context would be section 11(3)(e), which allows otherwise discriminatory conduct where there is a “good faith reason” for the treatment. The Supreme Court of Canada described this justification as requiring the service provider to show that “it could not have done anything else reasonable or practical to avoid the negative impact on the individual”.⁵⁸ If it cannot be justified, discrimination will be found to occur.⁵⁹

This framework has been repeatedly affirmed in human rights jurisprudence, including by the Canadian Human Rights Tribunal. In *Currie v Bear River First Nation*, 2024 CHRT 82, the Tribunal confirmed that this three-part test governs claims under section 5 of the *Canadian Human Rights Act*, and that discrimination may be established where a prohibited ground is a *factor* in the adverse impact — it need not be the sole or predominant cause.⁶⁰ The Tribunal further emphasized that direct evidence or proof of discriminatory intent is not required, and that discrimination is often subtle, systemic, or unintentional, particularly in cases involving racial discrimination.⁶¹

Human rights law also recognizes that neutral rules, policies, or practices may nonetheless result in discrimination where their effects disproportionately disadvantage individuals or groups protected by the legislation. This principle of adverse-effect discrimination was first articulated by the Supreme Court of Canada in *Ontario (Human Rights Commission) v Simpsons-Sears Ltd.* and continues to inform the interpretation of human rights statutes at both the federal and provincial levels.⁶²

In this report, the Commission draws on this established discrimination framework as an organizing structure for its analysis. The test is used to guide a principled examination of systemic conditions, adverse impacts, and equality considerations relevant to the Inquiry’s mandate, rather than as a determinative legal threshold applied to specific factual findings.

⁵⁸ *Moore v British Columbia (Education)*, 2012 CSC 61 (CanLII) at para 49 [Moore].

⁵⁹ *Ibid* at para 33.

⁶⁰ *Currie v Bear River First Nation*, 2024 CHRT 82 at para 73 [Currie].

⁶¹ *Ibid* at para 74.

⁶² *Ontario (Human Rights Commission) v Simpsons-Sears Ltd.*, [1985] 2 SCR 536 (SCC) [Simpsons-Sears].

C. Substantive Equality and Related Human Rights Principles

A central concept underlying Canadian human rights law is substantive equality. Substantive equality moves beyond formal equality, which treats all individuals the same, and instead focuses on whether laws, policies, and services produce equitable outcomes in practice. The Supreme Court of Canada's decision in *Andrews v Law Society of British Columbia* laid the foundation for this approach by rejecting a purely formal conception of equality and emphasizing the need to examine the real-world effects of legal and institutional arrangements on disadvantaged groups.⁶³

Subsequent decisions have reinforced that governments and service providers must consider how programs operate in practice for different populations. In *Eldridge v British Columbia (Attorney General)*, the Supreme Court confirmed that the failure to take positive steps to ensure meaningful access to public services may itself constitute discrimination. This principle is directly relevant to the assessment of child welfare services, which rely heavily on discretion, professional judgment, and individualized assessments.⁶⁴

Human rights jurisprudence recognizes that discrimination is frequently systemic in nature. Systemic discrimination arises from institutional structures, policies, and practices that, whether intentionally or not, produce disproportionate harm for protected groups. As noted by the Canadian Human Rights Tribunal in cases such as *Polhill v Keeseekoowenin First Nation* and *Currie*, discrimination is rarely explicit and often must be inferred from patterns, outcomes, and broader social context.⁶⁵

In assessing whether a prohibited ground was a factor in an adverse impact, tribunals have emphasized the importance of situating individual experiences within their broader historical, social, and institutional context.⁶⁶ This contextual approach is particularly important in cases involving Indigenous peoples, where the impacts of colonialism, systemic racism, and long-standing state involvement shape contemporary service delivery and outcomes.

Recent decisions, including *First Nations Child and Family Caring Society, 2016* and *Cully v Canada (Attorney General)*, 2025 FC 1132 confirm that equality-based analysis in the context of child welfare must account for the distinct needs, circumstances, and best interests of Indigenous children, and must be applied in a manner that is consistent with substantive equality rather than formal neutrality.⁶⁷

⁶³ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 (SCC) [*Andrews*].

⁶⁴ *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 (SCC) [*Eldridge*].

⁶⁵ *Polhill v Keeseekoowenin First Nation* 2019 CHRT 42; *Currie*, *supra* note 59.

⁶⁶ *Ibid* at para 90.

⁶⁷ *First Nations Child and Family Caring Society, 2016*, *supra* note 51; *Cully v Canada (Attorney General)*, 2025 FC 1132.

7. Application of the Test for Discrimination — Part One: Protected Grounds and Child Welfare as a Service

This section addresses the first two elements of the human rights test for discrimination:

- i. Whether the treatment at issue engages a protected ground under human rights legislation; and
- ii. Whether child welfare constitutes a service customarily available to the public and therefore subject to human rights scrutiny.

A. Innu Identity as a Protected Ground

Human rights legislation in Newfoundland and Labrador, as well as under federal law, expressly prohibits discrimination on grounds that encompass Innu identity, including race, ethnic origin, ancestry, and nationality⁶⁸. There is no dispute in Canadian human rights jurisprudence that Indigenous identity falls squarely within these protected grounds.

In *First Nations Child and Family Caring Society, 2016*, the Canadian Human Rights Tribunal held that distinctions affecting First Nations children in the provision of child and family services constituted discrimination on the basis of race and national or ethnic origin.⁶⁹

Innu children, families, and communities are therefore situated within multiple prohibited grounds of discrimination recognized under both provincial and federal human rights law. For the purposes of the discrimination analysis, the first element of the legal test is clearly satisfied.

B. Child Welfare as a “Service” Customarily Available to the Public

The second element of the discrimination test requires that the impugned conduct arise in the context of a service customarily available to the public. Both the Newfoundland and Labrador *Human Rights Act, 2010* and the *Canadian Human Rights Act* prohibit discrimination in the provision of goods and services, including both the denial of a service and adverse differentiation in access to a service.⁷⁰

⁶⁸ *Human Rights Act, 2010*, s 9(1); *Canadian Human Rights Act*, ss 2, 3.

⁶⁹ *Supra* note 51 at paras 395-398.

⁷⁰ *Human Rights Act, 2010*, s 11; *Canadian Human Rights Act*, ss 5.

Human rights jurisprudence establishes that the concept of a “service” must be interpreted broadly and purposively. It is not limited to direct, front-line interactions, but includes the programs, benefits, funding structures, and policy frameworks through which services are made available and delivered in practice.⁷¹

In *First Nations Child and Family Caring Society of Canada, 2016*, the Canadian Human Rights Tribunal considered whether the federal government was providing a “service” within the meaning of section 5 of the *Canadian Human Rights Act* through its role in funding and administering the First Nations Child and Family Services Program. The federal government argued that it merely funded services delivered by others and therefore did not itself provide a service.

The Tribunal rejected this argument. It held that neither the text nor the purpose of the *Canadian Human Rights Act* supports excluding funding arrangements, program administration, or policy decisions from the scope of “services.” The Tribunal emphasized that the federal program existed specifically to ensure that child and family services were available to First Nations children on reserve, and that without those arrangements, the services would not exist in a meaningful way.⁷²

The Tribunal further found that where government decisions determine the level, quality, scope, and accessibility of services, those decisions form part of the service relationship itself. Human rights protections would be undermined if governments could avoid scrutiny by characterizing discriminatory outcomes as the result of funding or policy choices rather than service delivery.⁷³

The same principle is consistent with *Moore* where the Supreme Court emphasized that the inquiry is whether members of a protected group receive meaningful access to the service in practice. Fiscal pressures, administrative complexity, or generalized policy choices do not by themselves answer whether a service has been delivered on an equal basis.⁷⁴ In the present context, the relevant question is not whether governments devoted some resources to child welfare, but whether Innu children and families received substantively equal child welfare services in fact.

The Tribunal’s analysis in *First Nations Child and Family Caring Society, 2016* demonstrates that human rights law applies to the exercise of statutory authority, including through funding formulas, eligibility criteria, and program design. Where such decisions structure how services are delivered and who benefits from them, they fall within the bounds of human rights legislation.

⁷¹ *First Nations Child and Family Caring Society, 2016*, *supra* note 51 at paras 29-31.

⁷² *Ibid* at paras 29–33, 353–358.

⁷³ *Ibid* at paras 362–369.

⁷⁴ *Moore supra* note 58.

This principle is consistent with broader human rights jurisprudence recognizing that services provided under statutory authority including social assistance, education, and child and family services are subject to human rights scrutiny even where they involve discretion or professional judgment.⁷⁵

C. Application to the Newfoundland and Labrador Child Welfare System

Applying this framework to Newfoundland and Labrador, child welfare services can be classified as services customarily available to the public. They are established and governed by provincial legislation, funded through public resources, and delivered through delegated statutory authority.

Provincial decisions regarding investigation thresholds, removal practices, placement options, preventative supports, and the resourcing of child welfare services directly shape whether and how families receive assistance or experience child apprehension. These structural features determine the real-world accessibility and quality of child welfare services across the province.

Consistent with the reasoning in *First Nations Child and Family Caring Society, 2016*, these features are properly understood as part of the service itself. Human rights law therefore applies not only to individual child protection decisions, but to the design and operation of the child welfare system, including the policies, funding arrangements, and institutional practices that shape outcomes for children and families.

Having established that Innu identity engages protected grounds under human rights legislation, and that child welfare constitutes a public service subject to human rights scrutiny, the analysis now turns to whether the operation of the child welfare system in Newfoundland and Labrador may give rise to adverse impacts connected to those protected grounds, and whether the system delivers substantive equality in practice.

8. Application of the Test for Discrimination — Part Two: Adverse Impact on Innu Children and Families

This section addresses the third element of the human rights discrimination analysis: whether Innu children and families experience adverse impacts in the provision of child welfare services. In particular, this section examines:

⁷⁵ *Simpsons-Sears*, *supra* note 61; *Currie*, *supra* note 59 at paras 58–65.

- the disproportionate removal of Innu children into state care;
- placement practices that separate children from their families, communities, culture, and language;
- the role of housing, overcrowding, and other state-created conditions in triggering or sustaining child welfare intervention;
- risk assessment tools and differential removal outcomes;
- the absence or inadequacy of preventative and family support services; and
- the cumulative and intergenerational effects of these practices in light of the historical and structural context facing the Innu.

A. Legal Framework: Adverse Impact and Effects-Based Analysis

Canadian human rights law recognizes both direct discrimination and adverse impact (also referred to as adverse effect) discrimination. Direct discrimination arises where a rule, policy, or practice explicitly distinguishes on a prohibited ground, for example, a rule that on its face excludes individuals based on race, sex, or religion.⁷⁶

By contrast, adverse impact discrimination occurs where a rule, policy, or practice is neutral on its face and applies uniformly but has the effect of imposing disproportionate burdens or disadvantages on individuals or groups protected under human rights legislation. As the Supreme Court of Canada explained in *Simpsons-Sears*, a neutral rule may nevertheless be discriminatory where it has a discriminatory effect upon a prohibited ground in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on others.⁷⁷

The Court in *Simpsons-Sears* confirmed that intent to discriminate is not required. A rule or standard adopted for legitimate or *bona fide* reasons may still contravene human rights legislation if its effects are discriminatory. The focus of the analysis is therefore on impact, rather than motive or purpose.

The Supreme Court has further clarified that, at this stage of the analysis, a protected ground need only be a factor in the adverse impact experienced; it need not be the sole, dominant, or proximate cause of the harm.⁷⁸ This reflects the reality that discriminatory effects often arise through the interaction of multiple policies, conditions, and decision-making processes.

⁷⁶ *Simpsons-Sears*, *supra* note 61 at para 18.

⁷⁷ *Ibid.*

⁷⁸ *Bombardier Inc v Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2015 SCC 39 at para 44 [*Bombardier*].

In the child welfare context, the Canadian Human Rights Tribunal has emphasized that adverse impact analysis must consider whether state conduct perpetuates or exacerbates existing disadvantage, including whether it “widens the gap” between Indigenous peoples and the rest of Canadian society rather than narrowing it.⁷⁹

This effects-based framework applies equally to the provision of public services. Accordingly, the analysis in this section does not examine whether child welfare policies in Newfoundland and Labrador are explicitly discriminatory. Rather, it assesses whether the operation and effects of the child welfare system may impose disproportionate and harmful impacts on Innu children and families, in light of their historical and structural context.

B. Disproportionate Involvement of Innu Children in Child Welfare

The Innu Nation reports that approximately one in ten Innu children in Labrador is in state care at any given time.⁸⁰ This level of involvement is markedly disproportionate when compared to the general population of Newfoundland and Labrador and exceeds rates observed in many other Indigenous communities across Canada.⁸¹

Provincial data confirms this disparity. A two-proportion Z-test conducted by Newfoundland and Labrador in its *Report on Child Welfare Services to Indigenous Children, Youth and Families 2021–22* found that Indigenous families experience child removal at a rate of 8%, compared to 2% for non-Indigenous families, a difference that was found to be statistically significant.⁸² This statistical evidence demonstrates that Indigenous families are substantially more likely to experience the most intrusive form of child welfare intervention.

National data situates this pattern within a broader context of Indigenous overrepresentation. The First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect (2019) found that First Nations children were 3.6 times more likely to be investigated by child welfare authorities and 17.2 times more likely to be placed in out-of-home care than non-Indigenous children.⁸³ According to the 2021 Census, Indigenous

⁷⁹ *First Nations Child and Family Caring Society*, 2016, *supra* note 51 at para 403.

⁸⁰ *Follow-up Report 2021*, *supra* note 8 at 61; Innu Prevention Approach, *supra* note 55 at 12.

⁸¹ *Ibid.*

⁸² *Child Welfare Report 2021-2022*, *supra* note 21 at 25.

⁸³ Barbara Fallon et al, *Denouncing the Continued Overrepresentation of First Nations Children in Canadian Child Welfare: Findings from the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect-2019* (Ontario: Assembly of First Nations, 2021) at 47, online: <<https://cwrp.ca/publications/denouncing-continued-overrepresentation-first-nations-children-canadian-child-welfare>> [FN/CIS-2019].

children accounted for 53.8% of children in foster care while representing only 7.7% of the child population in Canada.⁸⁴

While national statistics cannot replace community-specific analysis, they reinforce that the disparities observed in Newfoundland and Labrador are not anomalous but consistent with systemic patterns across jurisdictions. These disparities are strong indications that the child welfare system, as structured and operated, produces unequal effects for Innu children and families, regardless of whether policies are framed as neutral or universal.

C. Removal and Placement Outside Innu Communities

The adverse impacts of child welfare intervention are intensified by placement practices that separate Innu children from their families, communities, and cultural supports. In 2019, more than 40 children from the Mushuau Innu First Nation (approximately two-thirds of the children from that community in provincial care) were placed outside Natuashish.⁸⁵ Investigative reporting has documented the emotional, cultural, and developmental impacts of such removals, including loss of identity, barriers to reunification, and isolation from community supports.⁸⁶

Provincial placement data reveals additional disparities. In the 2021/2022 Report of 405 Indigenous children and youth in care, only 53% were placed within their home community. A further 25% were placed on the island portion of the province, and 21% elsewhere in Labrador, limiting access to family and cultural supports.⁸⁷

The Report also found that Indigenous children are far more likely than non-Indigenous children to be placed in regular foster homes (43%) and relative or significant-other foster homes (33%), while non-Indigenous children are significantly more likely to be placed in kinship care (50%).⁸⁸ Kinship care is widely recognized as less disruptive and more supportive of continuity of identity, culture, and relationships. Lower rates of kinship placement for Indigenous children, therefore, constitute a further adverse impact associated with child welfare intervention.

Language loss compounds these harms. Many Innu Elders speak primarily or exclusively Innu-aimun, while declining language use among youth has been linked to separation from family and community through child welfare involvement.⁸⁹ The importance of language

⁸⁴ Canadian Child Welfare Research Portal, “Indigenous child welfare”, online: <<https://cwrp.ca/provinces-territoires/indigenous-child-welfare>>.

⁸⁵ *Follow-up Report 2021*, *supra* note 8 at 61.

⁸⁶ *Uprooted*, *supra* note 49.

⁸⁷ *Child Welfare Report 2021-2022*, *supra* note 21 at 26.

⁸⁸ *Ibid* at 30–31.

⁸⁹ *Follow-up Report 2021*, *supra* note 8 at 70.

access and culturally meaningful socialization to child development has also been recognized in Newfoundland and Labrador human rights jurisprudence. In *Churchill v Newfoundland and Labrador English School District*, the Board of Inquiry found that placing a deaf child in an educational environment where he lacked meaningful access to his primary language and same-language peers impaired both learning and social development.⁹⁰ Although arising in a different context, the reasoning is instructive; where children are removed into settings in which they cannot readily access their language, culture, or meaningful peer connection, developmental harms may foreseeably follow. Research similarly shows that access to Indigenous language, culture, and Elder-led teachings is strongly associated with improved socio-emotional well-being among Indigenous children.⁹¹

The harms of removal are further intensified where families are denied meaningful information, participation, or reunification support. In a narrative included in Lyla Andrew's 1992 report "Changes to the Delivery of Social Services in Sheshatshit and Utshimassit: Whose Life is it Anyway?", one Innu family described children being taken at young ages and later being unable to obtain assistance locating them. The family stated that social services "took away my brother and my daughter," but later "turned their backs" when help was sought to reconnect with separated family members.⁹² This evidence illustrates that the adverse impact of apprehension may extend far beyond the initial removal decision to include long-term family fragmentation and barriers to reunification.

These placement patterns illustrate how child welfare intervention can operate as a mechanism of cultural dislocation, producing adverse impacts that extend well beyond the immediate removal decision.

D. Housing, Overcrowding, and State-Created Risk Factors

Housing conditions in Innu communities form a critical context in which child welfare decisions are made and adverse impacts arise. Following the relocation of the Mushuau Innu from Davis Inlet, the community of Natuashish was intended to provide adequate housing and infrastructure to support long-term community stability. However, the 2021 CHRC Follow-up Report documents that the design and maintenance of the community

⁹⁰ *Churchill v Newfoundland and Labrador English School District*, 2023 CanLII 16071 (NL HRC), online: <<https://canlii.ca/t/jvxrm>> [Churchill].

⁹¹ Madeline Doucette, Carrie A Bove & Sunni Hill, "Healing through Tradition: The Role of Indigenous Elder Support in Child and Youth Mental Health in Canada" (2024) 20:4 *AlterNative: An International Journal of Indigenous Peoples* [Doucette]; Sawayra Owais et al, "Determinants of Socioemotional and Behavioral Well-Being among First Nations Children Living Off-Reserve in Canada: A Cross-Sectional Study" (2024) 95:6 *Child Development* 1879 at 1893, online: <<https://srcd.onlinelibrary.wiley.com/doi/10.1111/cdev.14192>> [Owais].

⁹² Lyla Andrew, *Changes to the Delivery of Social Services in Sheshatshit and Utshimassit: Whose Life is it Anyway?* (April 1992), Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System, Exhibit P-045 [Andrew Report].

have not kept pace with population growth. Since relocation, the population of Natuashish has more than doubled, while federal housing investment has failed to keep pace, resulting in a renewed and severe housing crisis.⁹³

Overcrowding is now widespread and acute. It costs approximately \$450,000 to build a single house in Natuashish, and current needs require the construction of approximately 120 additional homes. Despite this backlog, at the time of the 2021 Follow-up Report only one new house had been built with federal funding over the four years prior.⁹⁴ As a result, it is commonplace for ten or more individuals to live in a three-bedroom home, with some households accommodating 13 to 15 people in the same space.⁹⁵

These conditions are not caused by the child welfare system. However, they become directly relevant to adverse impact analysis because of the way they are interpreted and operationalized within child welfare decision-making. The Follow-up Report documents that overcrowding resulting from government funding decisions is frequently interpreted by child welfare officials as an indicator of parental inability to provide a proper home, and therefore as a ground for child removal or continued apprehension.⁹⁶ Overcrowding also increases the likelihood that someone in the household will have addictions issues, a criminal record, or prior child protection involvement which are factors that may further be relied upon to justify removal, deny reunification, or preclude kinship placement.⁹⁷

From an adverse impact perspective, the significance lies not in the existence of overcrowding itself, but in the child welfare system's reliance on state-created housing conditions as proxies for parental risk, without adequate prevention or differentiation between structural deprivation and caregiving capacity. This reliance transforms historic and ongoing underfunding into current child welfare consequences which disproportionately affects Innu families.

E. Risk Assessment Tools and Differential Removal Outcomes

Child protection decision-making in Newfoundland and Labrador is guided by the Structured Decision Making (SDM®) model, a standardized assessment and case management framework used by the Department of Families and Affordability. Under SDM,

⁹³ *Follow-up Report 2021*, *supra* note 8 at 36.

⁹⁴ *Ibid* at 71.

⁹⁵ *Ibid*.

⁹⁶ *Ibid* at 72.

⁹⁷ *Ibid*.

a child protection referral is screened in where one or more defined maltreatment types are identified.⁹⁸

SDM is designed to promote consistency and objectivity. However, as an actuarial tool, it necessarily operates by weighting factors correlated with risk, many of which are closely associated with poverty, overcrowding, health challenges, and prior system involvement.

Provincial data demonstrates that the application of these tools produces statistically significant differential outcomes. As mentioned above, research done in 2021-2022 (years where the SDM Model was in use) found that Indigenous families experience child removal at a rate of 8%, compared to 2% for non-Indigenous families.⁹⁹

From an adverse impact perspective, this disparity is significant regardless of whether the SDM framework is facially neutral. Where standardized assessment tools incorporate factors shaped by historical and structural disadvantage, and where those tools are applied without sufficient contextual accommodation, the result may be the reinforcement of existing inequalities through standardized decision-making processes.¹⁰⁰ The child welfare system's reliance on such tools, therefore, could contribute to adverse impacts by amplifying the effects of background conditions in removal and placement decisions affecting Innu families.

Adverse impacts may also arise through decision-making structures that appear inclusive while reserving substantive authority elsewhere. The Andrew Report demonstrated that non-Innu staff were regarded as possessing the “legitimate and necessary qualification and training,” which took priority over lived experience and community knowledge.¹⁰¹ This suggests that formal participation by Innu workers did not necessarily translate into meaningful authority over child welfare outcomes.

F. Health, Mental Health, and Addictions as Child Welfare Risk Factors

Much like the issue of overcrowding and housing crises, health and mental health conditions in Innu communities intersect directly with child welfare involvement and

⁹⁸ *Child Welfare Report 2021-2022*, *supra* note 21 at 13; Newfoundland and Labrador Department of Children, Seniors and Social Development, *Policy and Procedures Manual* (updated June 2024), online: <<https://www.gov.nl.ca/sswb/files/NL-Policy-and-Procedures-Manual-1.pdf>> [*Policy and Procedures Manual*].

⁹⁹ *Child Welfare Report 2021-2022*, *supra* note 21 at 25.

¹⁰⁰ Ontario Human Rights Commission, “Under Suspicion: Concern about child welfare” (2017), online: <<https://www3.ohrc.on.ca/en/under-suspicion-concerns-about-child-welfare>> [*Under Suspicion*]; Annie E Casey Foundation, *2025 KIDS COUNT Data Book: State Trends in Child Well-Being* (2025), online: <<https://www.aecf.org/resources/2025-kids-count-data-book>> [*2025 Kids Count*].

¹⁰¹ Andrew Report *supra* note 91 at 10.

contribute to adverse impacts when treated primarily through protection-oriented responses. The 2021 Follow-up Report documents that Innu communities face an acute and ongoing health crisis, including significantly lower life expectancy, high infant mortality, elevated suicide rates, and widespread mental health and addiction challenges.¹⁰² These conditions are linked to forced settlement, loss of land-based life, intergenerational trauma, and chronic underinvestment in services.¹⁰³

Within child welfare processes, mental health and substance use challenges are frequently treated as indicators of risk warranting surveillance or removal. Where culturally grounded, community-based health supports are unavailable or under-resourced, child welfare intervention may become the default response to unmet health needs.

Research demonstrates that Indigenous children benefit most from Elder-led, land-based, and culturally grounded supports, which are associated with improved socio-emotional outcomes and family stability.¹⁰⁴ The limited availability of such supports, therefore, contributes to adverse impacts when child welfare intervention substitutes for health and healing services.

G. Failure to Deliver Substantive Equality

The adverse impacts described in this section reflect a failure to deliver substantive equality in the provision of child welfare services to Innu children and families.

Human rights law requires that services affecting historically disadvantaged groups be designed and delivered in a manner that responds to their distinct needs, circumstances, and lived realities, with the aim of achieving equitable outcomes rather than identical treatment.¹⁰⁵ In the child welfare context, the Canadian Human Rights Tribunal has emphasized that equality is not achieved where government conduct perpetuates historical disadvantage or widens existing gaps between Indigenous peoples and the rest of Canadian society.¹⁰⁶

As demonstrated above, child welfare services in Newfoundland and Labrador have not consistently accounted for Innu-specific realities, including the impacts of forced relocation, chronic housing shortages, intergenerational trauma, remoteness, and the

¹⁰² *Follow-up Report 2021*, *supra* note 8 at 56.

¹⁰³ *Ibid* at 58; Innu Nation, Sheshatshiu Innu First Nation and Mushuau Innu First Nation, *The Innu Healing Strategy* (2014), online: < <https://www.irtsec.ca/2016/wp-content/uploads/2014/08/An-Innu-Healing-Strategy-June-2014-4.pdf> > [*Innu Healing Strategy*]; Institut national de santé publique du Québec, *Indigenous Health Research Monitoring, January 2025* (20 January 2025), online: < <https://www.inspq.qc.ca/en/indigenous-health/research-monitoring/january-2025> >.

¹⁰⁴ *Doucette*; Owais, *supra* note 90.

¹⁰⁵ *Andrews*, *supra* note 62; *Eldridge*, *supra* note 63.

¹⁰⁶ *First Nations Child and Family Caring Society*, 2016, *supra* note 51 at para 403.

centrality of community and land-based caregiving. Where these conditions are treated as indicators of parental risk rather than as factors requiring accommodation and support, the resulting interventions reproduce, rather than mitigate, inequality. The Andrew Report concluded in 1992 that the prevailing social services model was “absolutely foreign to the Innu” and “never designed by them to address their own needs.”¹⁰⁷ Rather than adapting services to distinct cultural, historical, and community realities, the system largely required Innu families to navigate externally imposed frameworks. In this way, the adverse impacts experienced by Innu children are properly understood as manifestations of a systemic failure to deliver substantive equality in child welfare services.

Having discussed the existence of disproportionate and harmful impacts on Innu children and families, the analysis now turns to whether those impacts may be connected to Innu identity as a protected ground under human rights law.

9. Application of the Test for Discrimination — Part Three: Connection Between Protected Ground and Adverse Impact

This section addresses the final element of the human rights discrimination analysis: whether the adverse impacts identified in Part Two are connected to a prohibited ground of discrimination. In this context, the question is whether the disproportionate and harmful outcomes experienced by Innu children and families arise, in part, from systemic features of the child welfare system that interact with race, ethnicity, and related aspects of Innu identity.

Canadian human rights law does not require proof of intention, animus, or overt differential treatment. A connection may be established where a protected ground is one factor among others that helps explain why a service operates differently in practice for a particular group.¹⁰⁸ That connection may be demonstrated through evidence of systemic patterns, institutional design, discretionary decision-making, and sustained outcomes over time.

A. Systemic racism in child welfare systems

In this context, systemic racism refers to the ways in which child welfare laws, policies, professional standards, and institutional practices interact with historical and social

¹⁰⁷ Andrew Report *supra* note 91 at p.14.

¹⁰⁸ *Bombardier*, *supra* note 77 at paras 51-52; *Currie*, *supra* note 59 at para 73.

conditions to produce racially patterned outcomes, even in the absence of overt or intentional discrimination.

Canadian child welfare systems were built within institutions that took Euro-Canadian norms as the “default” for what safe parenting, adequate supervision, and acceptable household conditions look like. One practical consequence is that “neglect” has historically been framed as a parenting failure, even though the underlying drivers are often structural (poverty, inadequate housing, and lack of services). The Canada Research Chair in First Nations Child and Family Services notes that the legal idea of neglect traces back to “19th century colonial concepts of good parenting,” and that even where modern definitions are less moralistic, the concept still tends to centre parenting failures rather than poverty, inadequate housing and a lack of social services.¹⁰⁹

This is relevant to the “connection” step of the discrimination analysis because, when those Euro-Canadian baselines are treated as neutral, they can systematically convert Indigenous families’ social and cultural realities into “risk.” Canadian research on Indigenous child removal describes how Indigenous children have been removed “based upon Eurocentric standards of parenting,” as part of longer patterns of colonial intervention and assimilation.¹¹⁰

The First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect – 2019 (“FN/CIS-2019”) provides a clear empirical picture of how these “neutral” frameworks produce unequal effects in practice. It attributes First Nations overrepresentation in child welfare investigations to “centuries of policies of assimilation, structural inequities, and discrimination that limit the resources needed for First Nations families and communities to thrive.”¹¹¹ The study reports that First Nations children were 3.6 times as likely as non-Indigenous children to be the subject of a maltreatment-related investigation in 2019.¹¹² It also identifies that investigations involving First Nations children were more likely to involve “multiple structural challenges,” specifically “unsafe housing conditions, poverty, and overcrowded housing,” which limit families’ resources to provide for children.¹¹³

¹⁰⁹ Canada Research Chair in First Nations Child and Family Services Implementation 2023-2030, “Loving Our Children Information Sheet #3: What is Child Neglect?” (September 2024) at 1, online: Canadian Child Welfare Research Portal

<<https://cwrp.ca/sites/default/files/publications/What%20is%20Child%20Neglect.pdf>> [What is Child Neglect?].

¹¹⁰ Peter Choate & Christina Tortorelli, “Attachment Theory: A Barrier for Indigenous Children Involved with Child Protection” (2022) 19:14 *Int J Environ Res Public Health* 8754 at 4, online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC9319150/pdf/ijerph-19-08754.pdf>>.

¹¹¹ FN/CIS-2019, *supra* note 82, Historical and Current Context at 6.

¹¹² *Ibid*, Major Findings at 7.

¹¹³ *Ibid*, Housing Conditions at 9.

The FN/CIS-2019 findings show that neglect investigations are a major driver of overrepresentation: neglect was the “primary concern” in 44% of investigations involving First Nations children, and the rate of substantiated neglect investigations was 8.5 times as high compared to investigations involving non-Indigenous children.¹¹⁴ Read alongside the “neglect as a colonial concept” critique above, this supports an inference that where the system uses standards of supervision, household adequacy, and caregiving that are rooted in Euro-Canadian norms, and then applies them in contexts shaped by structural deprivation and distinct Indigenous family forms, Indigenous identity (race/ethnicity) becomes a factor in who gets flagged, investigated, and substantiated, even without overtly racist rules.¹¹⁵

This is the sense in which systemic racism can be “structural”; the rules and concepts (risk/neglect/supervision) are treated as universal, but they map unevenly onto Indigenous families because of (a) colonial histories that produced material disadvantage and service gaps, and (b) cultural and kinship practices that do not always resemble the nuclear-family model embedded in mainstream child welfare assumptions.

B. Racial Profiling, Bias, and Discretion

Child welfare decision-making relies heavily on professional judgment at each stage of intervention, including intake screening, investigation, assessment of risk, removal decisions, placement selection, and others. Concerns about how conscious and unconscious bias can influence discretionary decision-making in public services have been addressed in Canadian human rights jurisprudence, particularly in cases involving race.

In *Turner v Canada Border Services Agency*, the Canadian Human Rights Tribunal described how discrimination commonly operates through subtle and unconscious mechanisms rather than explicit or intentional conduct. The Tribunal held:

“A complainant is not required to prove that the respondent intended to discriminate in order to establish a prima facie case as some discrimination involves multiple factors and is unconscious [...] discrimination is not a practice that would ordinarily be displayed openly or even practiced intentionally [...] the Tribunal must examine all of the circumstances... to determine if there exists what the Tribunal has called the ‘subtle scent of discrimination’.”

¹¹⁴ *Ibid*, Primary Category of Maltreatment at 10–11.

¹¹⁵ *Ibid* at 7–11; *What is Child Neglect?*, *supra* note 108 at 1.

“Racial stereotyping bred by social conditioning [...] can affect decision-making [...] by causing a decision maker [...] however unconsciously, to opt for an easy solution based upon an irrational stereotype instead of a more difficult solution based upon a rational conclusion [...]”¹¹⁶

These observations are relevant in child welfare, where decisions are often made under conditions of uncertainty and involve judgments about risk, supervision, and parental capacity. Such judgments may be influenced by assumptions about family functioning that reflect dominant social norms.

Concerns about racial profiling and differential scrutiny in child welfare have also been documented by oversight bodies. In its report *Under Suspicion: Concerns about Child Welfare*, the Ontario Human Rights Commission describes patterns of heightened surveillance and reporting affecting Indigenous and racialized families, noting concerns that family circumstances may be interpreted through racialized lenses rather than assessed in their full social and structural context.¹¹⁷

National child welfare data provides additional context. The First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect–2019 found that First Nations children were substantially more likely than non-Indigenous children to be investigated for neglect-related concerns, including in cases where maltreatment was not substantiated.¹¹⁸ The study notes that these investigations frequently involve conditions associated with poverty, overcrowding, and caregiver stress, which raises questions about how thresholds for intervention are applied across different populations.¹¹⁹

The Canadian Human Rights Tribunal’s decision in *Currie v Bear River First Nation* supports this analytical approach. In *Currie*, the Tribunal accepted that discrimination may be inferred from patterns of treatment and outcomes where decision-making occurs within unequal social contexts, even in the absence of overt bias or discriminatory intent.¹²⁰

In the child welfare context, where Indigenous families are more likely to be reported, investigated, and assessed through discretionary frameworks that rely on judgments about risk and caregiving, these sources support a connection between Innu identity and the adverse impacts described in Section 7. While much of the research on racial bias and profiling in child welfare is national in scope, the structural features through which bias operates are also present in Newfoundland and Labrador. Provincial child protection

¹¹⁶ *Turner v Canada Border Services Agency*, 2020 CHRT 1 at paras 48–49.

¹¹⁷ *Under Suspicion*, *supra* note 99.

¹¹⁸ FN/CIS-2019, *supra* note 82 at 8–11.

¹¹⁹ *Ibid* at 9–11.

¹²⁰ *Currie*, *supra* note 59 at paras 48–49, 74–75, 90.

decision-making relies on professional judgment in areas such as intake screening, interpretation of neglect, assessment of supervision, and determinations about removal and placement.

As documented in provincial reporting, Indigenous families in Newfoundland and Labrador experience significantly higher rates of child removal than non-Indigenous families, including during periods when standardized assessment tools such as the Structured Decision Making model were in use.¹²¹ These outcome disparities do not, on their own, establish discriminatory intent. They do, however, align with concerns identified in the human rights and child welfare literature regarding how bias—conscious or unconscious—can shape discretionary judgments in systems that assess risk through social and cultural norms not grounded in Indigenous lived realities.

C. Colonial Legislative Frameworks and Worldviews

Child welfare decision-making in Newfoundland and Labrador operates within legislative and professional frameworks rooted in Euro-Canadian concepts of family structure, caregiving, supervision, and risk. These frameworks emphasize nuclear family models, individualized parental responsibility, material household conditions, and constant adult supervision as indicators of child safety and parental capacity. While often treated as neutral standards, these concepts reflect particular cultural and legal assumptions rather than universal norms.

In contrast, Innu caregiving practices are grounded in extended kinship networks, collective responsibility for children, land-based life, and the central role of community, language, and Elders in child development. Innu children are traditionally raised within interconnected family and community systems in which caregiving responsibilities are shared and where time on the land is integral to learning, identity, and well-being.¹²²

These principles are articulated through Innu-led frameworks, including the Innu Care Approach and the Innu Healing Strategy, which emphasize prevention, family unity, cultural continuity, and community-based responses to child and family needs. These approaches identify separation from family, culture, and land as sources of harm, and position healing and support as the primary means of promoting child well-being, rather than removal.¹²³

Statutory authority over child protection in Newfoundland and Labrador, however, remains vested primarily in provincial institutions operating under the *Children, Youth and Families*

¹²¹ *Child Welfare Report 2021-2022*, *supra* note 21 at 25.

¹²² *Innu Care Approach* *supra* note 1; *Innu Prevention Approach*, *supra* note 55 at 5–7.

¹²³ *Innu Care Approach*, *supra* note 1 at 2; *Innu Healing Strategy*, *supra* note 102; *Follow-up Report 2021*, *supra* note 8 at 58–63.

Act. While collaboration with Innu-led services has increased in recent years, including through the 2021 Innu–CSSD Protocol, provincial child protection services retain primary authority over intake decisions, investigations, removal, and placement, and continue to apply provincially defined standards and assessment frameworks.¹²⁴

The 2021 CHRC Follow-up Report is the first of the Commission’s Innu reports to directly examine child and family services. It documents that, despite improvements in coordination and the expansion of Innu-led prevention services, provincial child welfare processes continue to operate in ways that insufficiently account for Innu caregiving norms, collective family structures, and culturally grounded responses to trauma and family stress.¹²⁵

Earlier CHRC reports (1993 and 2002), while not focused on child welfare, establish a broader and relevant structural context. They document a longstanding pattern in which decisions affecting the Innu were made through external governmental frameworks, with limited recognition of Innu authority, legal orders, or social systems. These reports found that services were imposed without adequate understanding of Innu culture and needs, and that the Innu were consistently excluded from meaningful control over programs and services affecting their communities.¹²⁶

Within the child welfare context, this structural imbalance manifests in the continued subordination of Innu legal and caregiving frameworks to provincial standards. Innu norms are treated as contextual considerations rather than as authoritative standards governing child welfare decision-making. This imbalance likely contributes to outcomes documented elsewhere in this report, including higher rates of removal, lower rates of kinship placement, out-of-community placements, and prolonged separation from family, language, and culture.¹²⁷

In this way, the adverse impacts experienced by Innu children are connected to their Indigenous identity not through overt exclusion, but through the continued application of child welfare frameworks that do not recognize Innu caregiving systems as equally authoritative. The protected ground of race and Indigenous identity is therefore a relevant

¹²⁴ *Follow-up Report 2021*, *supra* note 8 at 62; *Child Welfare Report 2021-2022*, *supra* note 21 at 13; following the Canadian Human Rights Tribunal’s child welfare decisions recognizing Indigenous jurisdiction over the design and delivery of child and family services, the Innu Nation provided formal notice on February 6, 2020 of its intention to exercise legislative authority in relation to child and family services, *Barter*, *supra* note 32 at 14. This has yet to happen officially through an agreement, but with the development of several Innu initiatives with respect to child and family services, with support and increased capacity this could become reality in the coming years.

¹²⁵ *Follow-up Report 2021*, *supra* note 8 at 61–63.

¹²⁶ *McRae Report*, 1993, *supra* note 8 at 34–39; *Backhouse & McRae Report*, 2002, *supra* note 8 at 63–64.

¹²⁷ *Follow-up Report 2021*, *supra* note 8 at 61–63; *Child Welfare Report 2021-2022*, *supra* note 21 at 26–31.

factor in explaining why ostensibly neutral child welfare processes produce disproportionate and harmful effects for Innu children and families.

D. Intersectionality and Compounded Disadvantage

The connection between Innu identity and adverse child welfare outcomes must be understood in light of how multiple, intersecting factors shape both exposure to child welfare intervention and the severity of its effects. For Innu children and families, child welfare involvement commonly occurs at the intersection of Indigenous identity, child status, and gender, with poverty, housing insecurity, remoteness, and health and addictions, many of which arise from longstanding state policies and funding decisions.¹²⁸

Housing conditions provide a clear example of how these intersections operate in practice. As documented earlier, extreme overcrowding in Innu communities is the result of high construction costs, population growth, and inadequate federal housing investment after forced relocation. These conditions are not created by the child welfare system, but they are routinely assessed within child protection processes as indicators of parental risk or incapacity, increasing the likelihood of apprehension or delaying reunification.¹²⁹ In this way, structural deprivation interacts with child welfare decision-making to produce adverse effects that disproportionately affect Innu families.

Intersectionality is also relevant in understanding gendered considerations and how child welfare scrutiny is distributed within families. The Ontario Human Rights Commission's discussion of racial profiling in child welfare records concerns that profiling "targets mothers for over-scrutiny most often," particularly affecting Indigenous families.¹³⁰ The National Inquiry into Missing and Murdered Indigenous Women and Girls likewise calls for an immediate end to "targeting and apprehending infants (hospital alerts or birth alerts) from Indigenous mothers right after they give birth".¹³¹ A policy-focused literature scan on birth alerts describes the practice as hospital notification aimed at newborns believed to be at risk and notes disproportionate impacts on Indigenous families in Canada, which raises deep concerns about surveillance and early apprehension pathways.¹³²

¹²⁸ *Follow-up Report 2021*, *supra* note 8 at 36, 56, 71–72; *2025 Kids Count*, *supra* note 99 at 3–4.

¹²⁹ *Follow-up Report 2021*, *supra* note 8 at 71–72.

¹³⁰ *Under Suspicion*, *supra* note 99.

¹³¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Re-claiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019), vols 1a, 1b & 1c, Call for Justice 12.8, online: <https://www.mmiwg-ffada.ca/final-report/>.

¹³² M Sistovaris et al, *The Efficacy of Birth Alerts: Literature Scan* (Toronto, Ontario: Policy Bench, Fraser Mustard Institute of Human Development, University of Toronto, 2021), online: <https://socialwork.utoronto.ca/wp-content/uploads/2022/08/Lit-Scan-Efficacy-of-Birth-Alerts-Jan12-1.pdf>

Innu families and parents are also at risk of heightened child welfare interventions because of the realities of their geography and remoteness. Innu communities, like many First Nations across Canada, face significantly higher costs of living for transportation, food, clothing, and basic household goods. Similarly, limited availability of licensed childcare, health services, and specialized supports means parents may need to travel long distances at considerable expense to access services. When child welfare authorities apply their standardized assessment model without adjusting for these systemic and geographic constraints, they again risk conflating poverty and remoteness with parental unfitness, leading to disproportionate intervention and family separation.

These intersecting conditions help explain how Indigenous identity operates as a factor in adverse child welfare outcomes. Where Innu families are more likely to experience poverty, overcrowding, remoteness, and heightened surveillance, and where those conditions are assessed through standardized child welfare frameworks, Innu identity becomes linked to increased intervention and more disruptive outcomes. The resulting adverse impacts are therefore not incidental, but arise through the interaction of race, structural disadvantage, and child welfare decision-making processes.

E. Longstanding Harms and Failure to Remedy

The relevance of longstanding knowledge in this analysis lies in the consistency of concerns identified by the Innu themselves over time. As early as 1993, Innu community members formally documented in detail the impacts of forced settlement, inadequate housing, disrupted family and caregiving practices, and the growing involvement of state institutions in the lives of Innu children.¹³³ Those concerns were subsequently echoed and expanded upon in formal reports to the Canadian Human Rights Commission in 1993 and 2002, and again in the 2021 Follow-up Report. The persistence of these conditions, despite decades of documentation and recommendations, forms part of the context in which current child welfare outcomes affecting Innu children must be understood.

The constancy of these concerns over decades also supports an inference of systemic failure to remedy known harms. In 1992, Andrew recommended that Innu communities exercise authority over family and children's services and that staffing, placements, and programming be reorganized around community control.¹³⁴ Years later, a 2006 email from Andrew proposed the creation of local placement committees because authorities continued to "take more children into care" while lacking sufficient Innu homes for children

¹³³ Innu Nation Community Research Project, *Gathering Our Voices: Discovering Our Past, Present and Future in Nitassinan* (Nitassinan: Innu Nation, November 1993) [*Gathering Our Voices*].

¹³⁴ Andrew Report, *supra* note 91.

needing return to their communities.¹³⁵ The continuity between the concerns identified in 1992 and those raised again in 2006 suggests that core structural problems were well known yet insufficiently resolved.

In 1993, following a complaint brought by the Innu Nation, the Canadian Human Rights Commission released Report on the Complaints of the Innu of Labrador to the Canadian Human Rights Commission, authored by Professor Donald McRae.¹³⁶ That report concluded that the Government of Canada had failed to meet its constitutional and fiduciary responsibilities toward the Innu, identifying severe deficiencies in housing, health, education, and social services, and emphasizing the cumulative effects of forced settlement, chronic underfunding, and the absence of meaningful consultation.¹³⁷ While the report did not focus specifically on child welfare, it identified the broader social and structural conditions that place Innu children and families at heightened risk of state intervention.

A first follow-up report, co-authored by Professor Constance Backhouse and Professor McRae, was released in 2002.¹³⁸ That report acknowledged some improvements following federal recognition of the Innu as First Nations under the *Indian Act*, but concluded that the funding and range of services available to the Innu remained inequitable when compared to other First Nations. It also warned that the failure to support Innu self-determination and to conclude governance and land agreements risked continued violations of Canada's domestic and international human rights obligations.¹³⁹ The report emphasized that parity in services alone would not be sufficient to remedy the effects of decades of denial of federal responsibility.

The most recent Follow-up Report to the Canadian Human Rights Commission, released in 2021, found that many of the core issues identified in 1993 and 2002 persist. The authors documented ongoing housing shortages, extreme overcrowding, inadequate infrastructure, poor health outcomes, and insufficient access to culturally appropriate services in Innu communities. They noted that these conditions are directly linked to a half-century during which the Innu were denied access to federal programs and benefits provided to other First Nations following Newfoundland and Labrador's entry into Confederation.¹⁴⁰

¹³⁵ Email from Lyla Andrew regarding Innu placement committee proposal (2006), Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System, Exhibit P-051 [Andrew Email].

¹³⁶ *McRae Report, 1993, supra* note 8.

¹³⁷ *Ibid.*

¹³⁸ *Backhouse & McRae Report, 2002, supra* note 8.

¹³⁹ *Ibid.*

¹⁴⁰ *Follow-up Report 2021, supra* note 8 12–13, 36, 56.

Importantly for the purposes of this Inquiry, the 2021 Follow-up Report also documented the continuing impacts of these conditions on children and families, including the overrepresentation of Innu children in state care, the ongoing use of out-of-community placements, and barriers to prevention and reunification linked to housing shortages and service gaps.¹⁴¹ The authors concluded that the Innu are owed a “debt of justice” for the prolonged denial of their rights, and that incremental or short-term measures have not addressed the underlying causes of harm.¹⁴²

This pattern of repeated findings over nearly three decades establishes that governments have long been aware that the conditions facing Innu communities heighten the likelihood of child welfare involvement and exacerbate its impacts. The continued presence of those conditions, despite sustained documentation and recommendations, provides important context for understanding how adverse child welfare outcomes affecting Innu children have been allowed to persist. In this way, the connection between Innu identity and the adverse impacts described in this report is reinforced by present-day outcomes, as well as by the history of knowledge and delayed structural response that has shaped the current child welfare landscape.

Part 3 of Test for Discrimination is Satisfied

The circumstances reviewed in this section demonstrate a connection between Innu identity and the adverse impacts experienced by Innu children and families within the child welfare system. The impacts described arise through the interaction of child welfare policies and practices with longstanding structural conditions that disproportionately affect Innu communities and have been repeatedly documented. As a result, Indigenous identity is likely a factor in the adverse impact Innu children and families experience, both in their exposure to child welfare intervention and the severity of its consequences.

10. Recommendations and Conclusion

A. Synthesis of Human Rights Analysis

This report has applied established human rights principles to the operation of the child welfare system as it affects Innu children and families in Newfoundland and Labrador. Using an effects-based framework grounded in the *Human Rights Act, 2010*, the *Canadian Human Rights Act*, and Canadian jurisprudence, including *Moore v British Columbia (Education)* and *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, the report examined:

¹⁴¹ *Ibid* at 61–63, 71–72.

¹⁴² *Ibid* at 12, 41.

- i. whether Innu identity engages protected grounds;
- ii. whether child welfare services constitute a service customarily available to the public; and
- iii. whether the adverse impacts experienced by Innu children and families are connected to those protected grounds.

As noted throughout, this report is not an adjudication of disputed facts and does not purport to determine liability. Its purpose is to assist the Inquiry by applying established human rights analysis to authoritative public sources, prior reports, legislative materials, and documentary evidence.

Viewed cumulatively, the material reviewed supports a strong basis for concern that Innu children and families have experienced adverse and unequal treatment within the child welfare system. The evidence summarized in this report includes longstanding overrepresentation of Innu children in care; frequent placement outside family, community, language, and culture; the use of overcrowding, poverty, addictions, and service gaps as markers of parental risk despite their structural origins; and decades of governmental awareness of these conditions without adequate systemic correction.

These patterns are not readily explained as isolated or incidental outcomes. Rather, they reflect the interaction of facially neutral child welfare laws, standards, and decision-making processes with the distinct historical and contemporary realities of Innu communities, including forced relocations, federal non-recognition, chronic underfunding, housing shortages, language disruption, and intergenerational trauma documented in the Canadian Human Rights Commission reports of 1993, 2002, and 2021.

Under established human rights law, discrimination may arise where neutral systems impose disproportionate burdens on protected groups or perpetuate historic disadvantage. On the record reviewed, the treatment of Innu children and families raises serious and sustained concerns of adverse-effect discrimination and a failure to deliver substantive equality in the provision of child welfare services.

Substantive equality required more than applying the same child protection framework to all families. It required services responsive to the distinct linguistic, cultural, geographic, and socio-economic realities of the Innu, and designed to narrow—rather than widen—the gap between Innu children and other children in Newfoundland and Labrador. The evidence reviewed suggests that this standard has too often not been met.

B. Key Observations

The Commission respectfully highlights the following observations arising from the material reviewed:

- Innu children have been drawn into the child welfare system at disproportionately high rates for many years, and available reporting indicates they experience state care, apprehension, and placement disruption at rates significantly exceeding those of non-Indigenous children in Newfoundland and Labrador. This disparity is substantial, persistent, and cannot be viewed as random or isolated.
- Child welfare involvement affecting Innu families occurs within a broader structural context shaped by forced relocations, federal non-recognition, chronic housing shortages, inadequate infrastructure, service gaps, poverty, and intergenerational trauma. These conditions have been repeatedly documented over decades and form an essential part of any fair assessment of present-day outcomes.
- Indicators commonly relied upon in standardized assessment tools and discretionary decision-making processes—including overcrowding, inconsistent school attendance, unmet medical needs, parental stress, addictions, and household instability—may reflect structural deprivation rather than only individual caregiving capacity. Where systemic hardship is treated as parental failure, differential child welfare outcomes are likely to follow.
- The removal of Innu children carries distinct harms extending beyond the immediate separation from parents. Placement outside community can disrupt connection to extended kinship networks, Innu-aimun language transmission, land-based relationships, cultural identity, and belonging. The material reviewed indicates these losses may have lasting implications for child development and wellbeing.
- Language continuity is a matter of child wellbeing, not merely cultural preference. Many Elders speak primarily or exclusively Innu-aimun, and the declining use of the language among younger generations has been linked to historical separation and institutional intervention. Where children are placed in environments without meaningful access to language and community, developmental and identity-based harms may foreseeably arise.
- Documentary evidence demonstrates that concerns regarding externally controlled systems and lack of Innu authority are longstanding. The 1992 Andrew Report described social services affecting Innu children as “absolutely foreign to the Innu” and recommended community control, while later materials continued to identify shortages of local placements and the need for Innu-led solutions.¹⁴³
- The recurrence of materially similar concerns across multiple decades, from early Canadian Human Rights Commission reporting to Innu community reports, to more recent provincial and federal initiatives, suggests that many core harms have long been known to public authorities. Continued disparity despite longstanding notice is a significant human rights concern.

¹⁴³ Andrew Report, *supra* note 91 at p. 14; Andrew Email, *supra* note 134.

- The material reviewed supports concern that formally neutral child welfare laws, standards, and practices may operate unequally in effect when applied without adequate regard to the distinct realities of Innu communities. Equal treatment in form does not ensure equality in outcome.
- The record also demonstrates that meaningful solutions already exist. Innu-led initiatives, including the Innu Healing Strategy, Innu Prevention Approach, Innu Care Approach, and longstanding calls for greater jurisdiction and culturally grounded prevention services, provide practical foundations for reform.
- Lasting improvement will likely depend not only on changes within child protection systems, but on coordinated action respecting housing, health, addictions, education, language revitalization, community authority, and sustained equitable resourcing. The drivers of disparity are broader than the child welfare system alone.

C. Forward-Looking Considerations

In light of the Inquiry's mandate to examine underlying causes and pathways forward, the Commission identifies the following considerations for future reform with a view to eliminating present and future discrimination in the delivery of child welfare services to Innu children and families in Newfoundland and Labrador:

- The importance of designing child welfare services in a manner that delivers substantive equality, rather than formal equality, for Innu children and families;
- The importance of sufficient, protected, long-term and stable funding;
- The need to distinguish between structural deprivation and parental risk within child welfare assessments;
- The benefit of providing anti-bias training to all child welfare workers to ensure they understand and can properly integrate into their assessments Innu approaches to child and family wellness and how to distinguish between structural deprivation and parental risk;
- The central role of Innu-led, culturally grounded, and community-based approaches to child and family wellness;
- The importance of supporting, expanding, and sustaining existing Innu-led initiatives, including prevention, healing, and family support programs developed by Innu communities;
- The relevance of Indigenous jurisdiction and self-determination in the design and delivery of child and family services, including the need for capacity-building to support the Innu Nation in assuming full responsibility for child and family services; and
- The importance of accountability mechanisms that respond meaningfully to longstanding knowledge of harm.

It is clear that there are meaningful solutions coming from the Innu themselves. The recommendations listed in p.ii.-iii. of the *Kamamuetimak: Tshentusentimak Nte Steniunu Utat, Nitshish, Kie Nte Nikan* (Gathering Voices: Discovering our Past, Present and Future) Nitassinan, November 1993 report have been acted on and continue to guide Innu approaches to improving Innu child and family wellness including the Innu Healing Strategy, Innu Prevention Approach, and Innu Care Approach.¹⁴⁴ To eliminate and protect against future discrimination, these efforts and initiatives must be held up and supported by the federal and provincial governments to help address the harm that has been caused by state services and ensure that the disparity in outcomes for Innu children is ameliorated.

In March 2026, the Canadian Human Rights Tribunal approved the Ontario Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program, a negotiated agreement arising from the *First Nations Child and Family Caring Society* proceedings.¹⁴⁵ The Agreement is notable because it incorporates several of the same themes discussed throughout this report, including stable long-term funding, prevention-focused and culturally grounded services, and greater First Nations authority over the design and delivery of child and family services. Although the circumstances of Ontario First Nations differ from those of the Innu in Newfoundland and Labrador, the Agreement provides a recent example of governments responding to findings of discrimination through commitments to Indigenous-led solutions, funding certainty, and community-based supports.

The Ontario Final Agreement focuses on structural reform. Human rights law also responds to discrimination by recognizing and compensating personal harms caused by discriminatory treatment. In *Churchill*, the Board of Inquiry noted that compensation for discrimination is assessed having regard to factors such as loss of dignity, self-esteem and confidence, experiences of victimization and vulnerability, and the seriousness, frequency, and duration of the treatment.¹⁴⁶ Many of the impacts described throughout this report, including language loss, cultural disconnection, separation from family and community, and diminished opportunities for children to participate meaningfully in decisions affecting their lives, align closely with the types of harms that human rights tribunals treat as serious consequences of discrimination, and compensate accordingly.

The material reviewed for this report demonstrates that the disparities experienced by Innu children and families are neither new nor unforeseen. For decades, Innu communities, researchers, advocates, and public bodies have identified many of the same concerns and

¹⁴⁴ *Gathering Our Voices*, *supra* note 132; *Innu Healing Strategy*, *supra* note 102; *Innu Prevention Approach*, *supra* note 55; *Innu Care Approach*, *supra* note 1.

¹⁴⁵ Indigenous Services Canada, “Ontario Final Agreement to Reform the First Nations Child and Family Services Program in Ontario” (2026), online: < <https://www.sac-isc.gc.ca/eng/1779276746474/1779276777997> >

¹⁴⁶ *Churchill* *supra* note 89 at para 343.

proposed many of the same solutions. The evidence also demonstrates that meaningful pathways forward already exist. Human rights principles require more than the absence of discriminatory intent; they require services that are substantively equal in their design, delivery, and outcomes. Achieving that objective will require sustained commitment to Innu-led approaches, equitable and stable resourcing, and meaningful support for Innu self-determination in child and family services. The Commission respectfully submits that these considerations may assist the Inquiry in identifying reforms capable of addressing past harms and helping to ensure that future generations of Innu children are able to thrive within their families, communities, language, and culture.