Follow-up Report to the Canadian Human Rights Commission on the Human Rights of the Innu of Labrador

by

Celeste McKay Consulting Inc. and Professor Donald McRae

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I. Introduction

The Innu are an Indigenous people whose traditional territory, Nitassinan, stretches from the coast of Labrador to the interior of the peninsula where it is divided by the provincial boundary between Newfoundland and Labrador and Quebec. There are approximately 3000 Innu in Labrador, living mainly in the two Innu communities of Natuashish and Sheshatshiu.[1] 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 certain other matters, particularly local programs and services. The two communities each elect their own Chief and Council and the Innu of both First Nations elect the Innu Grand Chief, Deputy Grand Chief and Board of Directors of the Innu Nation.

Historically, the Innu were a semi-nomadic people. The caribou herds that migrate through their traditional territory are central to Innu traditions and worldview. Settlement in the two permanent, year-round villages on the Labrador coast is the consequence of the fur trade, the influence of the Church, and the provincial government's promotion of such settlements. The first year-round homes in Sheshatshiu and Davis Inlet were put up in the 1950s, and most Innu continued spending large portions of the year on the land until the mid-1960s. For the Innu, life in the settlements has been characterized by an ongoing struggle to maintain their ties to the land and their traditions.

Traditional practices of hunting, trapping, fishing, and the gathering of plant medicines and berries are associated with individual good health and with community self-reliance. Anthropologist Georg Henrickson, who had a long association with the Innu, also noted that the roles that women and men played in maintaining a hunting camp were both respected and that this way of life helped sustain healthy relations between genders. In contrast, the Innu and the academics who have worked with them, have identified the establishment of permanent coastal settlements in the mid-20th Century as a source of severe social strain and widespread ill-health among the Innu.[2]

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[1] As of April 2020, Indigenous Services Canada reported that the Mushuau Innu First Nation had a registered membership of 1,081 people, of whom 997 lived in the reserve community. The Sheshatshiu Innu First Nation had a registered membership of 1,819 people, of whom 1612 lived in the reserve community.

[2] Innu Nation, Sheshatshiu Innu First Nation and Mushuau Innu First Nation, *The Innu Healing Strategy* (2014), online: Innu Nation, Sheshatshiu Innu First Nation and Mushuau Innu First Nation <http://www.irtsec.ca/2016/wp-content/uploads/2014/08/An-Innu-Healing-Strategy-June-2014-4.pdf>; Aušra Burns, "Moving and Moving Forward: Mushuau Innu Relocation from Davis Inlet to Natuashis" (2006), Vol. XXXV, No. 2 Spring *Acadiensis;* Colin Samson, "A Colonial Double-Bind: Social and Historical Contexts of Innu Mental Health," in Laurence J. Kirmayer and Gail Guthrie Valaskakis, eds. *Healing Traditions: The Mental Health of Aboriginal Peoples in Canada* (UBC Press, 2009).

The challenges faced by Innu in Newfoundland and Labrador have been compounded by unique hardships arising from the circumstances in which the province entered into Canadian Confederation in 1949. Until 1997, the federal government did not recognize the Innu as having the same status and rights as other First Nations. As consequence, for a period of almost a half century, Innu communities and individuals were denied access to many of the basic services and benefits provided to other First Nations.

In the midst of these challenges, the Innu have long been active – and at times very prominent – proponents of their human rights. For example, their long campaign against NATO low-level flight training over their traditional caribou hunting grounds drew both national and international attention. The Innu engaged actively with the Royal Commission on Aboriginal Peoples and in 1999 were the subject of a report by the international Indigenous rights advocacy organization Survival International.

The Innu strongly assert their right to self-determination, including self-government and control over their lands, territories and resources. They see the ability to make and implement their own decisions as essential in overcoming a history of systemic discrimination, forced settlement and relocation, and inadequate funding and provision of essential services such as healthcare, education, child welfare, language and culture, justice, housing, and social services. This vision of self-determination and self-government is consistent with the progressive evolution of domestic and international human rights norms and standards.

1. The 1993 and 2002 Reports

In 1992, the Innu Nation of Newfoundland and Labrador approached the Canadian Human Rights Commission (CHRC) over concerns about their treatment by the Government of Canada. The CHRC commissioned Professor Donald McRae to conduct a review of those concerns. That report, released in 1993 (the 1993 Report), concluded that the Government of Canada had violated its Constitutional responsibilities toward the Innu.[3]

[3] Donald M. McRae, *Report on the complaints of the Innu of Labrador to the Canadian Human Rights Commission* (18 August 1993).

The report found that the federal government's unilateral and arbitrary decision not to recognize the Innu in Labrador as "Indians" within the constitutional sense, that is, as an Indigenous people to whom it had responsibilities under the Constitution, had a number of serious consequences for the Innu as a Nation and for individual members of that Nation. These included the fact that Innu did not have access to the individual benefits available to those registered under the Indian Act; their two communities in Labrador were not classified as reserves; the level and quality of infrastructure and services fell below that which was made available by the federal government to other First Nations; their Indigenous rights in respect to lands, territories and resources were not recognized or protected; and their ability to move towards self- government was impaired. The 1993 Report looked, in particular, at the dire health and social situation of the Innu community on Iluikoyak Island in Davis Inlet, which the report concluded was largely the consequence of the prior relocation of that community without proper consultation or adequate planning.

Recommendations of the 1993 Report

That the Government of Canada:

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

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

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

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

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

The 1993 Report recommended that the Government of Canada formally acknowledge its constitutional responsibility towards the Innu and enter into direct arrangements with the Innu to ensure they had full access to federal funding, programs and services available to other First Nations in Canada. The Report recommended that the Innu be able to access these benefits without having to go through registration under the *Indian Act*. The Report also called for assurance that any unique supports for Innu culture and traditions established prior to the federal government assuming jurisdiction, such as the provincial outposts programme which provided funding for travel to seasonal hunting camps, would be maintained. The Report recommended that the injustices committed against the Innu be remedied by restoring their ability to make their own decisions about their lives and futures. Consequently, the Report called on the federal government to conclude agreements with the Innu in respect of self-government and the devolution of programs and services. The Report also recommended that the Government of Canada commit to the relocation of the Innu from Davis Inlet, as called for by the Innu themselves. The Report called for the Government of Canada to provide the funding necessary to implement these recommendations. In addition to these specific recommendations to address Innu rights, the 1993 Report recommended that the CHRC remain apprised of the Innu situation and conduct periodic follow up studies.

The first follow-up report, co-authored by Professor Constance Backhouse and Professor Donald McRae, was released in 2002 (the 2002 Report).[4] As this follow-up report noted, significant progress had been made by 2002. The federal government had formally recognized the Innu as First Nations under the *Indian Act* and had begun taking up its responsibilities in that regard. The relocation of the Innu from Iluikoyak Island was imminent, meaning that for the first time the community was being relocated because of its own decision, rather than one imposed by the provincial government, and to a location of its own choosing. The federal government had begun directly funding community infrastructure and services to the Innu, although the report noted that the funding and range of programs and services available to the Innu was still not equivalent to that provided to other First Nations. The Report was critical of the fact that the federal government had required individual registration under the *Indian Act* as the only means by which the Innu could achieve such equity.

In 1996, the federal government had entered into a framework agreement with the Innu to negotiate a Comprehensive Claim Settlement or Modern Treaty recognizing Innu land rights and establishing the terms of the future relationship between the Innu, Canada and Newfoundland and Labrador. However, the 2002 Report found that these negotiations had stalled, with no conclusion in sight. The 2002 Report also pointed out that unless the Innu were supported to take responsibility for their own affairs and move to self-government, Canada was at risk of violating its obligations under various international human rights instruments, including the *International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights,* the *Convention on the Rights of the Child,* and the then draft *United Nations Declaration on the Rights of Indigenous Peoples*.

The 2002 Report followed the release of the landmark 1996 Report of the Royal Commission on Aboriginal Peoples (RCAP). As part of its mandate, the 2002 Report considered whether government actions in respect of the Innu were consistent with RCAP's recommendations. The 2002 Report found that many of the federal government's actions did conform to RCAP's recommendations, particularly in the area of health reform, but there was little evidence of any implementation of RCAP's recommendations in terms of education, language revitalization, and self-government.

[4] Constance Backhouse and 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).

Crucially, the 2002 Report called on the Government of Canada to immediately resume land and self-government negotiations with the Innu and to additionally enter into negotiations with the Innu enabling them to take responsibility for health and education in their communities. In addition, the 2002 Report called on the Government of Canada to provide full and continuous funding for Innu initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture. The 2002 Report also set a time of two years for the achievement of serious progress on self-government, and one year for serious progress on the devolution of responsibility for education and health. The Report suggested the appointment of a mediator if those timeframes were not met.

The conclusions and recommendations of the 1993 and 2002 Reports will be discussed throughout this report.

Recommendations of the 2002 Report

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

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

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

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

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

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

2. The Current Report

This report is the second follow up study after the original 1993 investigation. Discussions on a follow up study began during a meeting between the Chief Commissioner of the CHRC, Marie-Claude Landry, and Innu leadership during their visit to Ottawa in April 2018. Discussions continued during a visit by the Chief Commissioner and Commission officials to Sheshatshiu in March 2019 and at a subsequent meeting with Innu leaders in June 2019, in Charlottetown, during the Canadian Association of Statutory Human Rights Agencies (CASHRA) Conference.

These meetings led to the CHRC commissioning Celeste McKay Consulting Inc.[5] and Professor Donald McRae (author of the 1993 Report, and co-author of the 2002 Report) to carry out follow-up research. The authors were asked to consider the status of the implementation of the 1993 and 2002 Reports and to look at more recent developments and their implications for the human rights of the Innu Nation.

At the request of the Innu Nation, the Chief Commissioner of the CHRC, Marie-Claude Landry, other representatives of the CHRC, and Professor Donald McRae, visited the community of Natuashish in September 2019 and met with Innu leaders, community members and legal representatives. Professor McRae also met with Innu leaders and community members in Sheshatshiu in September 2019, and with Innu leaders, negotiators and legal representatives in St. John's in December 2019. The authors also reviewed recent reports and studies by and about the Innu and their current situation, and correspondence between Innu negotiators and the federal government. The authors spoke with federal and provincial officials in the Spring and Summer of 2020. The authors also reviewed recent important legal and political developments concerning the rights of Indigenous peoples in Canada.

The almost two decades that have passed since the 2002 Report have seen considerable evolution and progress in how the human rights of Indigenous peoples are understood and recognized in Canada and internationally, as well as in commitments made by the Government of Canada. This study begins with a summary of some of the recent developments in law and policy that are particularly relevant to the Innu situation, including Canadian Human Rights Tribunal decisions from 2016 onwards concerning federal funding of First Nations child and family services, the Supreme Court of Canada 2014 decision on Tsilhqot'in land title, and the 2007 global adoption of the *UN Declaration on the Rights of Indigenous Peoples*, and Canada's subsequent endorsement of this international human rights instrument.

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[5] Celeste McKay Consulting Inc. acknowledges the assistance of Craig Benjamin, as well as Yusuf Abdulkareem and Campbell MacLean.

Given these developments, it is particularly striking, and indeed disappointing, that in many respects the Innu situation has changed so little since the 2002 Report. Although progress has been made in the Modern Treaty negotiation, there is still no final agreement. The authors concur with the Innu Nation that the problems largely stem from a series of federal negotiating positions, examined in Section IV below. These negotiating positions are not only an obstacle to the just and timely resolution required of Canada they are, in some instances, fundamentally incompatible with Canada's human rights obligations. In the authors' view, the federal government has lost sight of the ultimate conclusion of the 1993 Report, which was reinforced in the 2002 report, that the Innu are owed a debt of justice for decades-long denial of their human rights.

The long delay in concluding the Modern Treaty negotiations is of major concern. The Innu themselves have pointed out that, as time passes, it may become harder to reach a fair settlement given the likelihood that competing demands for lands and resources in Labrador will only increase. Innu land use is additionally expected to come under increasing pressure from the impacts of climate change.[6]

This report also details significant ongoing concerns over the quality, appropriateness and accessibility of social services available to the Innu, including health, education and policing. The circumstances endured by the Innu would be shocking to most Canadians and are inconsistent with Canada's commitments to ensuring substantive equality for all. The Innu have developed their own detailed strategies and plans to address these concerns, based on their own values and priorities, but have been repeatedly blocked by the reluctance of federal and provincial authorities to devolve authority to the Innu or to provide adequate funding to ensure the success of such initiatives.

The continued gaps in quality of life and access to services is another reason for concern over the slow progress in the Modern Treaty negotiation. During the preparatory meetings for this report, Peter Penashue, one of the Treaty negotiators for the Innu Nation, expressed the Innu Nation's concerns in this way:

> "We don't have the time. We don't have the money. We don't have the resources. The government has the resources to sit at the table for another 30 years. It doesn't matter to them. Everything happens to us."

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[6] Andrew J. Trant, John D. Jacobs & Trudy Sable, "Teaching and learning about climate change with Innu Environmental Guardians" (2012), 35: 3-4 *Polar Geography* pp. 229-244, <DOI: 10.1080/1088937X.2012.682229>

II. The Evolution of Relevant Domestic and International Standards Related to the Human Rights of Indigenous Peoples

Domestic and international standards relating to the rights of Indigenous peoples have evolved considerably since the previous two reports. For the purpose of this update, we have looked at six key landmarks in this evolution that have specific implications for Canada's obligations toward the Innu of Newfoundland and Labrador: the Supreme Court of Canada's findings on Indigenous land title in the Tsilhqot'in decision; the Canadian Human Rights Tribunal's findings of racial discrimination in the underfunding of child and family services to First Nations and their agencies; the findings and Calls to Action of the Truth and Reconciliation Commission of Canada; the findings and Calls for Justice of the National Inquiry on Missing and Murdered Indigenous Women and Girls; the global adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* and Canada's commitment to its full implementation; and the jurisprudence of the Inter-American human rights system on land rights and the right to redress. The report also looks at aspects of the "Principles respecting the Government of Canada's relationship with Indigenous peoples" adopted by the federal government in 2018 in response to some of the above developments.

1. Indigenous Title and the *Tsilhqot'in* Decision

In the 1973 *Calder* decision,[7] the Supreme Court of Canada concluded that Indigenous peoples held land title according to their own laws and traditions prior to the arrival of Europeans. The *Calder* decision led to the federal government creating a framework and process to enable negotiation of new Modern Treaties defining ownership and use of lands, territories and resources where such agreements had not been entered into during previous eras of Treaty-making. For more than forty years, the Modern Treaty process set out by the federal government was the exclusive means by which Indigenous peoples were able to achieve recognition and protection of their title rights. Then in 2014, the Supreme Court made its first – and, so far, only ruling establishing an Indigenous Nation's continued legal ownership of its traditional territories. At the conclusion of a two-decade long court process, the Supreme Court of Canada recognized the Tsilhqot'in people's ongoing title to approximately 1900 km^2 of their traditional territory in the interior of British Columbia.[8] That decision set a number of important directions that are relevant to the Innu situation.

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[7] *Calder v Attorney General of British Columbia,* [1973], SCR 313, [1973] 4 WWR 1.

[8]

First, the *Tsilhqot'in* decision affirms that recognition and protection of Indigenous title is a legal obligation that can potentially be enforced through the courts, albeit through a very long and costly process. Second, the Court was explicit that Indigenous title is a collective right that encompasses both ownership and jurisdiction. As the decision states, title includes the following collective rights: "the right to decide how the land will be used; the right to enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land."[9] Third, the Court concluded that Indigenous title can be differentiated from other forms of land title in that it is "held not only for the present generation but for all succeeding generations."[10] As a consequence, the court concluded that Indigenous title lands cannot be alienated or used in any way "that would substantially deprive future generations of the benefit of the land."[11] Fourth, the court found that as a consequence of the title right of ownership and control, "governments and others" seeking to use lands under Indigenous title "must obtain the consent of the Aboriginal title holders."[12]

[9] *Ibid* at para. 73.
[10] *Ibid* at para. 74.
[11] *Ibid.*
[12] *Ibid* at para. 76.

Finally, while concluding that the balancing or reconciliation of rights may at times justify federal, provincial or territorial governments taking decisions contrary to the wishes of Indigenous title holders, the court both reaffirmed and expanded on the justification test first set out in its earlier decision in the case of *R. v. Sparrow*[13], with the result that the bar for such justification is necessarily very high. As restated in the *Tsilhqot'in* decision, the Sparrow test requires that in order to justify an intrusion on Indigenous rights "government must show: (1) that it discharged its procedural duty to consult and accommodate; (2) that its actions were backed by a compelling and substantial objective; and (3) that the governmental action is consistent with the Crown's fiduciary obligation."[14] In the *Tsilhqot'in* decision, the Court stated the requirement that any action be consistent with the Crown's fiduciary obligation must be considered in light of the distinct nature of Indigenous title. It found that "incursions on Aboriginal title cannot be justified if they would substantially deprive future generations of the benefit of the land."[15] The Court also held that any incursion on Indigenous title rights without consent must further meet the following additional requirements, which are inherent in the duty of reconciliation: "that the incursion is necessary to achieve the government's goal (rational connection); that the government go no further than necessary to achieve it (minimal impairment); and that the benefits that may be expected to flow from that goal are not outweighed by adverse effects on the Aboriginal interest (proportionality of impact)."[16] Critically, the court concluded that this assessment of a compelling and substantive objective must be considered not only from the point of view of the federal, provincial and territorial governments and their policy objectives, but also from the perspective of the affected Indigenous peoples.[17]

While these findings were made in respect to the now established title of the Tsilhqot'in people, the court explicitly warned that decisions taken without consent before title is established could subsequently be overturned for this reason once title is established. The unanimous decision states:

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[13] *R. v. Sparrow*, [1990] 1 S.C.R. 1075.
[14] *Tsilhqot'in Nation*, *supra* note *8*, at para. 77.
[15] *Ibid* at para. 86.
[16] *Ibid* at para. 87.
[17] *Ibid* at para. 81.

> Once title is established, it may be necessary for the Crown to reassess prior conduct in light of the new reality in order to faithfully discharge its fiduciary duty to the title-holding group going forward. For example, if the Crown begins a project without consent prior to Aboriginal title being established, it may be required to cancel the project upon establishment of the title if continuation of the project would be unjustifiably infringing. Similarly, if legislation was validly enacted before title was established, such legislation may be rendered inapplicable going forward to the extent that it unjustifiably infringes Aboriginal title.[18]

This point is further underlined by the direct advice to government and industry provided in the statement by the Chief Justice, "I add this. Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group."[19]

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[18] *Ibid* at para. 92.
[19] *Ibid* at para. 97.

2. Canadian Human Rights Tribunal Decision on First Nations Child and Family Services

In a January 2016 ruling,[20] the Canadian Human Rights Tribunal (the Tribunal) concluded that the federal government's underfunding of First Nations child and family services on reserve and in the Yukon constituted racial discrimination prohibited by the *Canadian Human Rights Act*. In a subsequent September 2019 decision[21], the Tribunal awarded compensation to affected children and families that is both retroactive (dating back to a 2006 report that established that the federal government was aware of the underfunding and its consequences), and to be applied on an ongoing basis until such time as the Tribunal (which has retained jurisdiction over the case) concludes that the government has addressed the underlying discrimination.

A number of elements of the First Nations child welfare decision are important to highlight in relation to the concerns of this report. First, the Tribunal concluded that the prohibition against discrimination in provision of services in the *Canadian Human Rights Act* must be defined broadly to encompass not only the *direct provision of services*, but also the *exercise of government authority* through funding and policy decisions that determine the level and quality of services provided. Second, the decision affirms that the intended goal of the *Canadian Human Rights Act* is to promote substantive equality rather than mere parity of treatment.

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[20] *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2 (26 January 2016).

[21] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada),* 2019 CHRT 39 (6 September 2019). The Government of Canada has applied for judicial review of this decision, asking the Federal Court of Canada to overturn the compensation award. However, the Federal Court refused to order a stay on the compensation pending resolution of the review, the federal government entered into talks with the parties concerning a possible compensation. As of the date of writing this Report, this matter remains unresolved.

Substantive equality requires taking account of differences of history, circumstances and needs. This also includes regional differences in the cost of providing services and benefits, such as differences in competitive salaries and benefits, cost of living, insurance premiums, travel due to remoteness.[22] The Tribunal stated that if government conduct "widens the gap between First Nations and the rest of Canadian society rather than narrowing it, then it is discriminatory."[23] Regarding First Nations children, the Tribunal concluded that substantive equality requires "that First Nations children on-reserve be provided child and family services of comparable quality and accessibility as those provided to all Canadians off-reserve, including that they be *sufficiently funded to meet the real needs of First Nations children and families and do not perpetuate historical disadvantage* [emphasis added]."[24] In a follow-up ruling, the Tribunal ordered the federal government to "fully" fund the "actual costs" of those preventative programs and services that First Nations child and family service agencies determine "to be in the best interest of the child."[25]

The Tribunal's follow-up ruling on individual compensation also affirmed that redress for racial discrimination may require not only a *change in government policies and action* to end systemic discrimination going forward, but also *restitution* for individuals or communities that have suffered harm, including additional "special compensation" where the government action or inaction can be shown to be "wilful and reckless."[26]

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[22] *First Nations Child and Family Caring Society,* 2016, *supra* note *20,* at para. 389.
[23] *Ibid* at para. 403.
[24] *Ibid* at para. 455.
[25] *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2018 CHRT 4 (February 1, 2018), paras. 410-411.
[26] *First Nations Child and Family Caring Society,* 2019, *supra* note *21,* at paras. 227-244.

3. The Truth and Reconciliation Commission of Canada

The Truth and Reconciliation Commission (the TRC) was created as part of the settlement of a class action suit brought by survivors of the Indian Residential School system.[27] The work of the TRC, culminating in the 2015 release of its final report and its *Calls to Action* and *Principles of Reconciliation*, was a watershed moment in public awareness of Indigenous rights in Canada. The federal government's official response to the TRC included a commitment that it would, "in partnership with Indigenous communities, the provinces, territories, and other vital partners, fully implement the Calls to Action of the Truth and Reconciliation Commission."[28]

The final report of the TRC contextualized the experience of residential school survivors, and the government's intent in taking children from their families and communities, in a wider series of programmes, laws and policies that the TRC concluded were intended "to eliminate Aboriginal people as distinct peoples."[29] The TRC characterized this underlying intent as "cultural genocide".[30] In 2019, the National Inquiry on Missing and Murdered Indigenous Women and Girls (discussed below) similarly described the attacks on Indigenous culture, identity and collective well-being through Canadian law and policy as genocide.[31] The gravity of these finding needs to be borne in mind in considering government obligations to address historic and contemporary wrongs.

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[27] The exclusion of the Innu, and other residential school survivors in Newfoundland and Labrador, from the 2006 Indian Residential School Settlement is addressed in Section III of this report.

[28] Justin Trudeau, *Statement by Prime Minister on release of the Final Report of the Truth and Reconciliation Commission* (15 December 2015), online: Office of the Prime Minister <https://pm.gc.ca/en/news/statements/2015/12/15/statement-prime-minister-release-final-report-truth-and-reconciliation>

[29] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (June 2015), at p. 3, online: National Centre for Truth and Reconciliation <https://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf>

[30] *Ibid* at p. 1.

[31] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Vol. 1a (2019), at pp 50-54, online: National Inquiry on Missing and Murdered Indigenous Women and Girls <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf>

The TRC identifies the *UN Declaration on the Rights of Indigenous Peoples* (discussed below), as "the framework for reconciliation at all levels and across all sectors of Canadian society."[32] Under the heading "Equity for Aboriginal Peoples in the Legal System," the TRC Calls to Action seek fundamental reform to how federal, provincial and territorial governments address Indigenous title, urging that:

1. Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time.

2. Once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation (Call to Action 52).[33]

The Calls to Action also strongly emphasize the importance of cultural knowledge and competency for all institutions engaging with Indigenous peoples. Call to Action 57 specifically calls for education of public servants "on the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, Indigenous law and Aboriginal-Crown relations." Call to Action 57 further notes that this will require "skills-based training in intercultural competency, conflict resolution, human rights and anti-racism."[34]

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[32] Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (2015), online: National Centre for Truth and Reconciliation <https://nctr.ca/assets/reports/Final%20Reports/Principles_English_Web.pdf>

[33] Truth and Reconciliation Commission of Canada, *Calls to Action* (2015), online: National Centre for Truth and Reconciliation <https://nctr.ca/assets/reports/Calls_to_Action_English2.pdf>

[34] *Ibid.*

4. National Inquiry on Missing and Murdered Indigenous Women and Girls

In 2015, after decades of advocacy by Indigenous women, the federal government established a national commission of inquiry mandated to consider and make recommendations to address "the underlying social, economic, cultural, institutional, and historical causes" leading to the greatly disproportionate rates of violence experienced by First Nations, Inuit and Métis women, girls and two spirit persons in Canada. The Inquiry's Final Report, issued in June 2019, sets out more than 230 Calls for Justice covering a wide range of necessary reforms to Canadian law, policy and programmes, such as recognition and implementation of the right to self-government and secure and equitable funding for frontline services.[35] These Calls for Justice state that all "services and solutions must be led by Indigenous governments, organizations, and people" consistent with the rights to self-determination and self-government.[36] The Inquiry also repeatedly calls for a comprehensive, coordinated and integrated holistic response to the needs of Indigenous peoples. For example, the Inquiry defined the right to health "as a holistic state of well-being, which includes physical, mental, emotional, spiritual, and social safety" that is "linked to other fundamental human rights such as access to clean water or adequate infrastructure in Indigenous communities, as well as the right to shelter and food security."[37]

Specific Calls for Justice of particular relevance to this report include:

- Recognition of "Indigenous Peoples' right to self-determination in the pursuit of economic social development" (Call for Justice 4.2);

- "Substantive equality for Indigenous-run health services" (3.6) including "adequate, stable, equitable, and ongoing funding" for health services "that are accessible and culturally appropriate, and meet the health and wellness needs of Indigenous women, girls, and 2SLGBTQQIA people" (3.2) and immediate funding and support for "sustainable, permanent, no-barrier, preventative, accessible, holistic, wraparound services." (3.4);

- Immediate measures to "ensure that Indigenous Peoples have access to safe housing, clean drinking water, and adequate food" (4.1);

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[35] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Vol. 1b (2019), online: National Inquiry on Missing and Murdered Indigenous Women and Girls <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf>

[36] *Ibid* at 171.

[37] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report*, Vol. 1a (2019), *supra* note *31*, at p. 416.

- "Construction of new housing and the provision of repairs for existing housing to meet the housing needs of Indigenous women, girls, and 2SLGBTQQIA people" (4.6) including "low-barrier shelters, safe spaces, transition homes, second-stage housing, and services" (4.7);

- Support for creation and operation of First Nations policing as "an exercise in self-governance and self-determination" (5.4) including adequate resources to ensure that "the quality of policing services is equitable to that provided to non-Indigenous Canadians" (5.5);

- Expansion of Indigenous justice programs (5.11); and

- Concerted action "to transform current child welfare systems fundamentally so that Indigenous communities have control over the design and delivery of services for their families and children" (12.2) with the "focus and objective" of "upholding and protecting the rights of the child through ensuring the health and well-being of children, their families, and communities, and family unification and reunification" (12.3).

Like the Truth and Reconciliation Commission, the Inquiry calls for implementation of the *UN Declaration on the Rights of Indigenous Peoples*. The Inquiry also calls for governments to uphold all other international human rights instruments and to take action on previous reports concerning violence against Indigenous women and girls.

The Inquiry cites two previous reports by international human rights bodies, the UN Committee on the Elimination of Discrimination against Women (CEDAW)[38] and the Inter-American Commission on Human Rights (IACHR).[39] Both had undertaken their own investigations of the causes of violence against Indigenous women and girls. Both had emphasized the standard of "due diligence" which, in international law, requires States and other actors to take all reasonable precautions to prevent discrimination, violence and other violations of basic human rights.[40] While these two bodies acknowledged that Canada has a wide range of programs and initiatives to address gender-based violence, they characterized the response as inadequate to meet the real needs of Indigenous women and girls. CEDAW, in particular, characterized the lack of an adequate, comprehensive, and coordinated response as a "grave" violation of human rights.[41]

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[38] UN Committee on the Elimination of Discrimination Against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* U.N, Doc CEDAW/C/OP.8/CAN/1 (30 March 2015), online: UN Committee on the Elimination of Discrimination Against Women <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf>

[39] Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada.* OEA/Ser.L/V/II. Doc.30/14 (21 December 2014), online: Inter-American Commission on Human Rights <https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>

[40] *Ibid* at pp. 71-81.

[41] UN Committee on the Elimination of Discrimination Against Women, *supra* note *38*, at p. 53.

5. The *United Nations Declaration on the Rights of Indigenous Peoples*

The *Declaration on the Rights of Indigenous Peoples* (the *UN Declaration*), which was adopted by the UN General Assembly on September 13, 2007, sets out "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."[42] The *UN Declaration* consolidates norms and standards that had previously emerged through the work of UN treaty bodies, special rapporteurs and others in their interpretation and application of obligations set out in international and regional human rights conventions and treaties. The *UN Declaration* has unique authority and normative weight, based on its foundations in established human rights norms and standards (many of which are now considered part of customary international law); the unparalleled two-decade long process of its development; and the direct role of rights holders in those negotiations.[43]

A series of consensus resolutions have affirmed the commitment of the UN member states to give the *UN Declaration* life through domestic implementation.[44] The Government of Canada has itself made numerous commitments to implement the *UN Declaration*, including the following statement by Prime Minister Justin Trudeau to the UN General Assembly in September 2017:

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[42] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution 61/295 (13 September 2007), article 43, online: United Nations General Assembly <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>

[43] For example, James Anaya, the former UN Special Rapporteur on the Rights of Indigenous Peoples, wrote that the *UN Declaration*, "represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law." UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people,* S. James Anaya, U.N. Doc A/HRC/9/9 (11 August 2008), paras 85, 86, online: United Nations Human Rights Council <https://www.refworld.org/docid/48c51d632.html>. James Anaya also wrote that, "Implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification." James Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Expert Mechanism on the Rights of Indigenous Peoples* (15 July 2010), online: UN Special Rapporteur on the Rights of Indigenous Peoples <https://unsr.jamesanaya.org/?p=354>.

[44] For example, UN General Assembly, *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples,* U.N Doc A/RES/69/2 (25 September 2014), para 8: "We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration," online: UN General Assembly <https://www.refworld.org/docid/543f7a114.html>.

> "We know that the world expects Canada to *strictly adhere* to international human rights standards – including the United Nations Declaration on the Rights of Indigenous Peoples – and that is what we expect of ourselves, too [emphasis added]."[45]

In the First Nations child welfare decision considered above, the Tribunal applied the *UN Declaration* and other international human rights instruments to the interpretation of domestic human rights obligations, stating, "Canada's statements and commitments, whether expressed on the international scene or at the national level, should not be allowed to remain empty rhetoric."[46]

In June 2021, the federal government passed legislation to provide a framework for national implementation of the *UN Declaration.* The *Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* states that the Government of Canada "is committed to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous peoples, to achieve the objectives of the Declaration."[47] The Act requires the federal government to "take all measures necessary to ensure that the laws of Canada are consistent with the Declaration" and states that implementation "must include concrete measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons."[48]

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[45] Justin Trudeau, *Prime Minister Justin Trudeau's Address to the 72th Session of the United Nations General Assembly* (21 September 2007), online: Office of the Prime Minister <https://pm.gc.ca/en/news/speeches/2017/09/21/prime-minister-justin-trudeaus-address-72th-session-united-nations-general>

[46] *First Nations Child and Family Caring Society*, 2016, *supra* note *20*, at para. 454.

[47] *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, Royal Assent, 21 June 2021, online: Parliament of Canada < https://parl.ca/DocumentViewer/en/43-2/bill/C-15/royal-assent>

[48] *Ibid.*

The *UN Declaration* affirms that the collective and individual rights of Indigenous peoples are human rights. This means that there are corresponding state obligations to avoid violation of these rights, to prevent and punish violations by others, and to take positive action toward the goal of fullest expression and enjoyment of these rights. This is often referred to as the duty to respect, protect, promote and fulfill.[49] Additionally, states have an obligation to ensure effective remedy where human rights have been violated, as discussed in greater detail in Section II.6 below. Furthermore, all human rights are understood to be inherent, inalienable, interdependent and indivisible, meaning that they cannot be given or taken away, nor can any specific right be fully enjoyed in isolation from other rights.

The *UN Declaration* recognizes Indigenous peoples' right to self-determination, including the right to "freely pursue economic, social and cultural development (article 3)." Many of the provisions of the *UN Declaration* can be seen as further elaboration of this right in various contexts. For example, the *UN Declaration* affirms that the rights of Indigenous peoples include the rights to self-government and to "ways and means for financing their autonomous functions" (article 4); to establish and control "their educational systems and institutions" (article 14); to "maintain, control, protect and develop their cultural heritage" (article 31); to "determine and develop priorities and strategies" for the use of their lands, territories and resources (article 32); and to "determine the responsibilities of individuals to their communities" (article 35). Article 23 states that Indigenous peoples have the right "to be actively involved in developing health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."

Consistent with the recognition of the right to self-determination, the *UN Declaration* repeatedly calls on States to act in partnership, cooperation, and "in conjunction" with Indigenous peoples (for example, articles 14, 15, 17, 19, 31, 32, 36 and 38.) The *UN Declaration* further calls on States to first obtain the free, prior and informed consent of Indigenous peoples "before adopting and implementing legislative or administrative measures that may affect them" (article 19).

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[49] "States are obligated not just to respect, but also to protect, promote and fulfil human rights, and this obligation applies with respect to the rights of indigenous peoples." Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive Industries and Indigenous Peoples,* U.N. Doc A/HRC/24/41 (1 July 2013), at para. 44, online: Human Rights Council <https://www.refworld.org/docid/522db2b54.html>

The *UN Declaration* affirms the rights of Indigenous peoples to maintain and strengthen their "distinctive spiritual relationship" with their lands, territories and resources and "to uphold their responsibilities to future generations in this regard" (article 25), as well as to "own, use, develop and control" those lands territories and resources (article 26). The *UN Declaration* calls on States to "give legal recognition and protection to those lands, territories and resources…with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned" (article 26). Article 28 is explicit that confiscation, occupation, use or damage of Indigenous lands, territories and resources without free, prior and informed consent is a violation of Indigenous rights for which redress must be provided. Article 27 calls on States to implement "fair, independent, impartial, open and transparent" processes to adjudicate disputes concerning the land rights of Indigenous peoples.

In addition to its articles on land rights, the *UN Declaration* contains numerous other provisions addressing the social and economic conditions of Indigenous peoples. Article 21 expresses the right of Indigenous peoples "to the improvement of their economic and social conditions" and calls on States to take "effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions." Article 24 states that Indigenous peoples have the right to the "highest attainable standard of physical and mental health" and that States "shall take the necessary steps with a view to achieving progressively the full realization of this right." Additionally, the *UN Declaration* calls on States to take positive measures to "combat prejudice and eliminate discrimination" (article 15).

The significance of the *UN Declaration* is further underlined by the 2016 adoption of the *American Declaration on the Rights of Indigenous Peoples* (the *American Declaration*) by the Organization of American States (OAS).[50] This regional human rights instrument reiterates – often word for word –many of the key provisions of the *UN Declaration.* While Canada has not publicly committed to implement the *American Declaration* in the same way that it has the *UN Declaration*, the *American Declaration* is nonetheless a consensus instrument of the OAS of which Canada is a member.

In some instances, the provisions of the *American Declaration* build on those of the *UN Declaration* and provide greater elaboration of the rights of Indigenous peoples. These provisions in the *American Declaration* should be read alongside the *UN Declaration* as the applicable minimum standards for all OAS member states.

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[50] OAS General Assembly, *American Declaration on the Rights of Indigenous Peoples*, Resolution AG/RES.2888 (XLVI-O/16) (15 June 2016), online: Organization of American States <https://www.oas.org/en/sare/documents/DecAmIND.pdf>

One example is Article XVII the *American Declaration*, concerning the preservation and protection of Indigenous family systems, which states, "In determining the best interests of the child, courts and other relevant institutions shall take into account the right of every indigenous child, in community with members of his or her people, to enjoy his or her own culture, to profess and practice his or her own religion, and to use his or her own language, and, in that regard, shall take into account the indigenous law of the people concerned …" Article XXII on Indigenous laws and jurisdictions affirms that "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their … juridical systems or customs" and that "Indigenous law and legal systems shall be recognized and respected by national, regional and international legal systems."

6. Regional Jurisprudence on Land Rights and a Right to a Remedy

Recognition that Indigenous peoples have rights in respect of their traditional lands, territories and resources means states also have a corresponding obligation to provide an effective remedy when these rights are violated. In international law, the right to a remedy has several dimensions, including: "equal and effective access to justice," and "adequate, effective and prompt reparation" which includes publicly acknowledging the harm suffered, restoring what has been taken, and preventing further harm.[51] As noted above, the obligation to provide redress for Indigenous lands that are taken or harmed is also affirmed in Article 28 of the *UN Declaration*.

[51] United Nations General Assembly, *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* Resolution 60/147 (16 December 2005), online: United Nations General Assembly <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>.

Since the 1993 and 2002 Reports on the Innu situation, the two principal human rights bodies of the OAS, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, have developed a substantial body of jurisprudence on the right to a remedy in the context of the traditional land rights of Indigenous peoples in the Americas.[52] For example, in the landmark 2005 *Yakye Axa* case, the Inter-American Court ordered the government of Paraguay to identify what lands traditionally belonged to the Indigenous people from the Yakye Axa community, and to return those lands to their ownership and control.[53] In that decision, the Court concluded that the right to an effective remedy for human rights violations is a binding rule of customary international law and "constitutes one of the basic principles of contemporary International Law regarding the responsibility of States."[54]

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[52] The Commission has the mandate to examine the human rights record of all OAS members. As a party to the OAS Charter, Canada has accepted an obligation to fulfill the rights set out in the *American Declaration of the Rights and Duties of Man*. The Court has specific jurisdiction to examine compliance with the *American Convention on Human Rights* for those states that have ratified this regional human rights treaty. Canada has not ratified the *American Convention.* As a consequence, only the Inter-American Commission, and not the Inter-American Court, has jurisdiction to hear cases concerning Canada. However, the Commission has concluded that the *Convention,* and jurisprudence about the *Convention,* can be used to interpret and assess state compliance with the standards of the *American Declaration* because the *Convention* is "an authoritative expression" of the same "fundamental principles." On this basis, the Commission has previously applied the jurisprudence of the Inter-American Court of Human Rights (IACtHR) in interpreting the obligations of states such as Canada that are not parties to the *Convention.* OAS General Assembly Resolution No. 371/78, AG/RES (VIII-O/78) (1 July 1978) (reaffirming Member States' commitment to promote compliance with the American Declaration on the Rights and Duties of Man); General Assembly Resolution No. 370/78, AG/Res. 370 (VIII-O/78) (1 July 1978) (referring to Member States' international commitment to respect the rights recognized in the Declaration); Inter-American Commission of Human Rights (IACHR), *Mary and Carrie Dann v United States*, Report No. 75/02, Case 11.140, Doc. 5 rev. 1 (27 December 2002), at paras 96-98; Inter-American Commission of Human Rights, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, (14 July 1989). (Ser. A), at paras. 37-47.

[53] *Case of the Yakye Axa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights (17 June 2005), at para. 217.

[54] *Ibid* at para. 180. For support for this finding, see, *United Nations Basic Principles and Guidelines*, *supra* note 43, Principle 11; UN Human Rights Committee (HRC), *General Comment No. 31[80], Nature of the General Legal Obligation Imposed on States Parties to the Covenant* U.N. Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004).

Furthermore, the Court found that this "requires, whenever possible, full restitution (*restitutio in integrum*), which consists of re-establishing the situation prior to the violation."[55] Where the land rights of Indigenous peoples have been violated, the Court concludes that restitution will almost always require the restoration and protection of title. If "for objective and well-founded reasons" the original lands cannot be returned, the Court concludes that "the State must grant them alternative land, chosen by means of a consensus with the community, in accordance with its own manner of consultation and decision-making, practices and customs. In either case, the area of land must be sufficient to ensure preservation and development of the community's own manner of life."[56] These conclusions have been affirmed by both the Inter-American Court and Inter-American Commission in numerous other decisions.[57]

The Inter-American Court and Commission have also considered the processes by which disputes over land and title are resolved. Remedial processes must be effective which means they must be capable of restoring title in a fair and timely manner.[58] In a 2007 land rights decision, the Inter-American Court found that "the mere possibility of recognition of rights… is no substitute for the actual recognition of such rights."[59]

The Inter-American Commission has examined specifically the right to remedy in relation to Indigenous land title in Canada. In a 2009 admissibility decision, the Inter-American Commission concluded that the process of negotiating Modern Treaties in Canada was too slow and too onerous to meet international standards for "effective" remedy of violations of Indigenous land rights.[60] The conclusion came in response to a petition filed by First Nations on Vancouver Island engaged in Modern Treaty negotiations with the federal and provincial governments. The petition had been supported by affidavits from numerous other First Nations similarly engaged in negotiations with the federal government.

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[55] *Yakye Axa Indigenous Community*, *supra* note *53*, at para. 181.
[56] *Ibid at* para. 217.
[57] For example, *Sawhoyamaxa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights (29 March 2006); *Mary and Carrie Dann, supra* note *52*.
[58] Inter-American Commission of Human Rights, *Maya Indigenous Communities of the Toledo District, Belize,* Report Nº 40/04, Case 12.053, (12 October 2004), at para. 176.
[59] *Case of the Saramaka People v. Suriname*, Inter-American Court of Human Rights (28 November 2007), at para. 105.
[60] Inter-American Commission of Human Rights, *Hul'qumi'num Treaty Group, Canada,* Petition 592-07, *Report No 105/09* (30 October 2009), at para. 37.

7. The Government of Canada's Ten Principles

In 2018, the federal government issued a set of "Principles respecting the Government of Canada's relationship with Indigenous peoples,"[61] now widely known as the "Ten Principles." The Ten Principles are described as "a starting point to support efforts to end the denial of Indigenous rights that led to disempowerment and assimilationist policies and practices." They explicitly refute the longstanding position of the federal government, often described as the "empty box" approach to Indigenous rights, that the rights affirmed in section 35 of the Constitution must be proven on a case- by- case basis before government responsibilities can be established. The Ten Principles state that section 35 "contains a full box of rights and holds the promise that Indigenous nations will become partners in Confederation on the basis of a fair and just reconciliation between Indigenous peoples and the Crown." The Ten Principles also underline the importance of the UN Declaration, stating that it "requires transformative change in the Government's relationship with Indigenous peoples… and the Government must take an active role in enabling these rights to be exercised."

The Ten Principles set out important directions for government policy that could have significant implications for the Innu. The following are particularly significant in light of the concerns discussed in the rest of this report.

The first of the Ten Principles "recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government." The associated government commentary states that "Canada's constitutional and legal order recognizes the reality that Indigenous peoples' ancestors owned and governed the lands which now constitute Canada prior to the Crown's assertion of sovereignty…It is the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination, including the inherent right of to self-government for Indigenous nations." This commitment is further underlined by Principle 4 which is described as affirming "the inherent right of self-government as an existing Aboriginal right within section 35."

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[61] Department of Justice Canada, *Principles respecting the Government of Canada's relationship with Indigenous Peoples* (2018), online: Department of Justice <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

The government commentary for Principle 5, concerning Treaty-making, states that the federal government "is prepared to enter into innovative and flexible arrangements with Indigenous peoples that will ensure that the relationship accords with the aspirations, needs, and circumstances of the Indigenous-Crown relationship. The Government also acknowledges that the existence of Indigenous rights is not dependent on an agreement and, where agreements are formed, they should be based on the recognition and implementation of rights and not their extinguishment, modification, or surrender." Principle 7 states that any limitation on the inherent rights of Indigenous peoples "must by law meet a high threshold of justification which includes Indigenous perspectives and [which] satisfies the Crown's fiduciary obligations." Principle 8 calls for a new fiscal relationship to be developed collaboratively with Indigenous nations. Principle 9 recognizes that reconciliation is an ongoing process which, as the commentary notes, means that any Treaties or other agreements between Canada and Indigenous peoples "should be capable of evolution over time."

8. Implications for the Situation of the Innu in Labrador

The 1993 Report found that the federal government had wrongly denied the Innu recognition as a First Nation entitled to protection of rights under section 35 of the *Canadian Constitution* and to benefits through the *Indian Act*. The 2002 Report concluded that unnecessary delay in addressing the rights and needs of the Innu through the means preferred by the Innu, the negotiation of a Modern Treaty, risked violating Canada's obligations under international human rights law.

As set out above, there has been significant evolution of domestic and international human rights norms since these two reports. These developments in how State obligations are interpreted and applied are highly significant in the context of the continued hardships faced by the Innu, many of which result directly or indirectly from the continued failure to reach a negotiated settlement of their Treaty.

The following key conclusions from the preceding summary of recent legal and policy developments can be highlighted:

1. The Innu have a right to manage their own affairs, to determine for themselves how their traditional territories are used and to fairly benefit from any such use.

2. The rights of the Innu are human rights protected in domestic and international law. As a consequence, the federal and provincial governments have an obligation to respect, protect and fulfill these rights and provide access to remedy, including redress where they have been violated.

3. The federal and provincial governments also have an obligation to ensure substantive equality in access to basic services and the essentials of life, such as healthcare, housing, education, policing and child and family services, including special measures to address and overcome the legacy of historic wrongs, such as the half century which the Innu were denied access to federal services and benefits under the *Indian Act*.

4. As the National Inquiry on Missing and Murdered Indigenous Women and Girls clearly demonstrated, not only is substantive equality in access to services important and necessary in its own right, it is also essential to protect against further, interrelated harms including increased threat of violence against Indigenous women and girls.

5. In Modern Treaty negotiations and other relations with the Innu, the federal and provincial governments must take action, and give priority to fulfilling their human rights obligations. Human rights in domestic and international law are rarely absolute. Where necessary for objective, substantive and compelling reasons, government obligations may be subject to reasonable limitations. However, failure to ensure substantive equality or failure to provide timely redress because of arbitrary policy reasons, or to favour the interests of others, would be inconsistent with government obligations and, ultimately, discriminatory.

III. The Status of Measures Identified to Address Concerns Set Out in the 1993 and 2002 Reports

Many of the most significant recent changes in the lives of the Innu – such as the relocation from Davis Inlet to Natuashish, and the federal government's acceptance of its Constitutional responsibility for infrastructure, services and benefits to the Innu people –were well underway at the time of the 2002 Report. Additionally, over the last decade, the Innu Nation has also entered into a series of agreements with the provincial government and with industry that provide compensation and benefits for impacts of major resource development projects in their traditional territories. The negotiation of these agreements, which is described in greater detail below, is in part the product of federal recognition of the Innu Nation, and of the desire of both the Innu Nation and the provincial government to avoid the kind of confrontation that had characterized previous eras.

While the significance of these developments should not be underestimated, it is of deep concern that the Modern Treaty negotiations have still not been settled. As set out above, a Modern Treaty process is not simply another negotiation; rather, the timely and just resolution of such a process is essential to fulfilling Canada's human rights obligations under domestic and international law. As discussed below, a closer look at the outstanding issues in the negotiations shows that the failure to reach a settlement is largely the product of federal positions that are themselves often at odds with Canada's human rights obligations and the commitments that Canada has made to Indigenous peoples. There has also been a fundamental failure by the federal government to take proper account of the obligations arising from the fact that for a period of 50 years the federal government denied the Innu the rights to which they were entitled to under the Constitution of Canada and relevant federal laws.

Fortunately, there are positive signs that a settlement may still be in reach. The Ten Principles described above have direct application to the Innu situation. Furthermore, as discussed below, a new federal strategy for negotiating Modern Treaties in British Columbia suggests there is the potential for a new approach to be taken in the Innu negotiations.

1. Status of Relocation – Natuashish

The 1993 Report found that Innu on Iluikoyak Island in Davis Inlet were living in "intolerable conditions," which had contributed to a "poor standard of health" and "widespread social dysfunction."[62] The Mushuau Innu began to establish summer residence in Utshimasits in Davis Inlet in the 1920s and gradually transitioned to living in the community year-round. In 1948, the year before Newfoundland and Labrador joined Canadian Confederation, the Newfoundland government closed the trading post at Utshimasits and relocated the Mushuau Innu approximately 400 km further north. The Innu were unhappy with conditions in the new settlement, particularly because it was far removed from their hunting grounds, and within a year had returned by foot to Davis Inlet. In 1967, the provincial government, with the acquiescence of the federal government, again relocated the Mushuau community, this time to nearby Iluikoyak Island, ostensibly because of the benefits of the wharf on the island.

[62] McRae, *supra* note *3*, at p. iii.

The 1993 Report noted "there was no meaningful consultation with the Innu" prior to the relocation "and their interests were assumed to be those identified by the priest and the government officials who dealt with them."[63] There was also no systematic assessment of the groundwater prior to the relocation and the community was subsequently plagued by an inadequate water supply. A promise to the Innu that houses on Iluikoyak Island would have running water and sewage was not kept and the housing was in fact sub-standard with leaks and other problems.

Critically, the relocation meant that the Mushuau Innu were cut off from hunting and other harvesting activities for a substantial part of the year, impacting their culture, food security and economy. At the time of the 1993 Report, there was widespread media coverage of severe social problems in the community, including attempted youth suicide. Community members attributed these social problems in large part to the poor living conditions resulting from relocation and, more broadly, the impact of permanent settlements and the related erosion of life on the land.

While the 1993 Report was being prepared, the federal government agreed to fund the relocation of the Mushuau Innu. The Report supported the Innu in calling for the relocation to be "expeditious" and to a location chosen by the Mushuau Innu themselves. In June 1993, the Mushuau Innu voted overwhelmingly in favour of relocation to Natuashish on Sango Bay, a site on the mainland coast approximately 15 km from Iluikoyak Island. After developing their own social, cultural, and economic plan for the new community, the Mushuau Innu ratified the relocation in 1996. The 2002 Report noted that "the community being built at Natuashish is impressive and ambitious" and that the difference between the new community and the former community on Iluikoyak Island was "simply overwhelming."[64]

There is no disagreement over the fact that relocation to new houses with running water and other amenities brought about a significant improvement in the quality of life for the Mushuau Innu. At the same time, however, the implementation of the relocation turned out to be plagued with problems.

Delays in release of promised federal funding resulted in cost overruns and pushed back completion of the relocation by more than two years. The first 70 homes were completed at the end of 2002, but the remaining 63 homes in the original plan were not completed until the end of the following year.

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[63] *Ibid.*

[64] Backhouse and McRae, *supra* note *4*, at p. 57.

Aušra Burns, a member of support team established to assist the relocation effort, has also commented that while completion of construction was delayed, the planning process, conducted under the heat of public pressure to improve the situation of the Innu, was rushed.[65] Important Innu concerns were not addressed in the design of the new homes and community. For example, the houses "did not reflect the importance to Innu families of open, multi-purpose living spaces" and were not built to easily accommodate many families' need for a space to butcher game, including the very large caribou.

Furthermore, plans for the community did not take adequate consideration of the rate of population growth. As a consequence, by 2003 the Mushuau Innu already had to negotiate with the federal government for the construction of a further 71 homes.

Today, the Mushuau Innu continue to face considerable hardship from inadequacies in the design and maintenance of the community of Natuashish. The population of the community has doubled since the move from Davis Inlet. Overcrowding continues to be a source of social disruption and creates adverse conditions, especially in relation to youth, who are the largest demographic group in Natuashish. While the Innu were promised that there would be space for everyone in the new community, the population growth has outpaced federal funding, with the result that the community again faces a severe housing crisis, as described in greater detail later in this report.

The relocation budget did not include funds for a daycare, a need that has only grown more critical over time. The daycare building that has since been built with separate funds is inadequate and often closed for repairs. In February 2020, the Mushuau Innu First Nation submitted a full feasibility study for a new daycare building, including conceptual design and capital costs estimates, to Indigenous Services Canada. As of the end of 2020, the latest information received by the Innu is that the feasibility study is being reviewed.

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[65] Burns, *supra* note *2*.

Natuashish is not on the provincial electricity grid and must instead generate power from diesel. While this is the situation for many other communities in Newfoundland and Labrador, Natuashish is the only such community where the provincial utility company maintains and operates the infrastructure on a purely ad hoc basis, without a formal written agreement with the First Nation, without regulatory oversight for the rates charged, and with little long term planning.[66] Natuashish is also unique in that it receives no support from the province to offset the costs of generating electricity from diesel. In 2016, the Innu estimated that Natuashish was paying four times more for electricity than isolated communities that benefit from provincial subsidies.[67] The Innu report that the ad hoc situation, an unresolved aspect of the relocation, is not fully accounted for in the federal support for infrastructure and services at Natuashish. Moreover, the ad hoc arrangement for operating the electrical system in Natuashish creates barriers to transitioning to clean energy, including accessing government funding to do so.

An additional unresolved issue from the relocation is the state of the former village site. The federal government had promised to decommission the previous village, but the work has never been completed, and the site is still dotted with collapsed and collapsing houses. Iluikoyak Island was the Mushuau Innu home for a half century and still has personal, cultural and spiritual significance to the people and a burial ground for parents and grandparents. In addition, the site has a particular and compelling significance to the history of relations between Indigenous peoples and Canada.

The Innu Nation is currently in discussions with the federal government over the future of the site. The Innu want to see some structures maintained as legacy monuments to their experience but as of the time of this Report, there is no final agreement. The TRC noted the importance of commemoration as a means to "transform social attitudes and foster long-term reconciliation."[68] International law recognizes commemoration as one of the means to provide remedy for victims of gross human rights violations.[69]

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[66] Factum of Innu Nation, Mushuau Innu First Nation, Chief Gregory Rich, and Deputy Chief John Nui, in the matter of Section 101 of the Public Utilities Act, RSN 1990 c P-47, and in the matter of a case stated by the Board of Commissioners of Public Utilities to the Court of Appeal for its hearing, consideration and opinion on a question of law affecting the jurisdiction of the Board of Commissioners of Public Utilities, Supreme Court of Newfoundland and Labrador.

[67] *Ibid* at para. 22.

[68] Truth and Reconciliation Commission of Canada, *Honouring the Truth*, *supra* note *29*, at p. 209.

[69] *United Nations Basic Principles and Guidelines*, *supra* note *51*.

The Innu Nation is presently in initial discussions with Indigenous Services on a seven-year plan to complete the decommissioning program stipulated under the Mushuau Innu Relocation Agreement. Initial discussions on the drafting of a detailed plan and the appointment of a Project Manager were halted because of the COVID-19 pandemic but hopefully will soon resume.

The 2002 Report noted that relocation of the Mushuau Innu might lead to "transformation of the community, or it could result in the social dysfunction of Davis Inlet simply being moved to Natuashish."[70] Relocation gave the Innu access to improved, although still not entirely adequate, community infrastructure and brought them back closer to their traditional hunting territory. However, relocation in itself could not resolve the strains associated with loss of culture, tradition and self-sufficiency or the challenges of living in region characterized by a high cost of living and limited employment opportunities. These factors, which are shared in common with the community of Sheshatshiu are considered in Section V below.

2. Federal Responsibility for Programmes, Services and Benefits

Under Canada's Constitutional division of powers, the federal government has unique responsibility for what the *Constitution Act of 1867* terms "Indians, and lands reserved for the Indians." In practice, this has meant that infrastructure, housing, and services in First Nations communities, as well as a range of benefits for First Nations individuals registered under the *Indian Act*, are funded by the federal government and in some instances directly delivered by federal departments and agencies. However, for a period of more than 50 years following Newfoundland and Labrador entering Confederation, the Innu were denied access to these services and benefits provided to other First Nations in Canada. Despite the explicit Constitutional division of powers and responsibilities, the federal government chose not to take direct responsibility for services, programmes and benefits to the Innu. Instead, these remained the responsibility of the provincial government, with funding provided through a variety of arrangements negotiated between the federal and provincial governments without the participation of the Innu.

[70] Backhouse and McRae, *supra* note *4*, at 57.

Overall, however, this unique jurisdictional arrangement between the federal and provincial governments was a source of hardship for the Innu. The 1993 Report found that combined federal and provincial funding for services to the Innu fell well below that provided to other First Nations. For example, in the Report, a comparison of funding figures provided by the federal government found that a First Nation in Nova Scotia with a similar population size received almost double the total funding provided to the Innu community at Iluikoyak Island. The impacts of per capita underfunding relative to other First Nations would have been further compounded by the considerably higher cost of infrastructure and services in a more isolated northern community.

The federal and provincial governments had long been aware of the underfunding of the Innu communities and its consequences for their well-being. For example, the 1974 Royal Commission on Labrador noted both the unfairness of the federal government providing only partial support for infrastructure and services to Indigenous peoples in Labrador, as well as the higher costs faced by their communities.[71]

Furthermore, the federal government's refusal to accept its constitutional responsibilities toward the Innu meant that Innu individuals were not eligible for the specific benefits provided to persons registered under the *Indian Act*, including access to the federal First Nations and Inuit Non-Insured Health Benefits programme which funds medical services not covered by provincial health plans, such as vision care and dentistry. The Innu were also denied the income tax and sales tax exemptions provided under the *Indian Act*. An overall very low income meant that income tax was a not a significant issue for most. However, sales tax had a much greater impact on communities that had become increasingly reliant on expensive goods such as trucks, snowmobiles, motorboats and rifles as essentials of life in the North.

The Innu leadership believe that their unique situation was the result of the assimilationist policies of the federal government when Newfoundland entered Confederation: that the federal government anticipated that the distinct rights and benefits of all First Nations would eventually be abolished, and jurisdiction devolved to the provinces. The 1993 Report concludes that the federal government's arbitrary refusal to take up direct responsibility for services and benefits for the Innu was a violation of the government's fiduciary duty toward Indigenous peoples.

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[71] Maura Hanrahan, "The Lasting Breach: The Omission of Aboriginal People From the Terms of Union Between Newfoundland and Canada and its Ongoing Impacts*"* (March 2003) at p. 237, *Royal Commission on Renewing and Strengthening Our Place in Canada*, online: Government of Newfoundland and Labrador https://www.gov.nl.ca/publicat/royalcomm/research/Hanrahan.pdf

The federal government only began the process of recognizing the Innu in 1994. In March 1997, the federal government passed an Order in Council for the first time formally recognizing the Innu as an "Indian people" within the meaning of the Constitution. This did not immediately establish parity with other First Nations. The federal government considered that some services and benefits were dependent on the registration of community members under the Indian Act. The Innu were reluctant to place themselves under the *Indian Act*, which they saw as colonialist, paternalistic and outdated. Nonetheless, the Innu agreed to registration as at least a temporary measure to eliminate disadvantages relative to other First Nations. Mushuau Innu entered into an interim agreement and reserve status for Natuashish was granted in 2002. Sheshatshiu Innu entered into an interim agreement and reserve status was granted in 2006.

The 1993 and 2002 Reports noted the importance of a unique programme called the Outpost Programme. Under that programme, funding was provided for Innu families to travel to their hunting camps in fall and spring. The programme was seen as playing an invaluable role in maintaining Innu culture, traditional knowledge, and language. Although the 2002 Report noted concerns about whether the federal government would maintain the programme when it assumed responsibilities for services to the Innu, the programme has been maintained: the federal government currently provides $100,000 in outpost funding to each Innu First Nation annually and the First Nations add to that funding from their own source revenue.

Even after the 1994 federal recognition of the Innu, there has been continued disparity in quality and accessibility of essential services in significant areas such as education, as discussed in section V. There are also examples where the federal government has continued to treat the Innu differently and worse than other First Nations as a direct consequence of their unique situation following the entry of Newfoundland and Labrador into Canadian Confederation.

Like other Indigenous peoples in Canada, the Innu in Labrador were subjected to generations of forced removal of children to attend residential boarding schools as well as, more commonly for the Innu, placement of children in Catholic day schools. Compensation to Innu residential school survivors was the subject of litigation for almost ten years after the national Indian Residential Schools Settlement Agreement. To this day, the Innu remain excluded from settlements now being made by the federal government for day school survivors.

The first residential schools in the region were established prior to Newfoundland joining Confederation. The last to remain open, the Yale School at Northwest River, next to Sheshatshiu, was not closed until 1980. Although these schools followed the model of the Indian residential and day school system, and received federal funding after Newfoundland joined Confederation, the schools were run under the sole jurisdiction of the province. When the landmark 2007 Indian Residential Schools Settlement Agreement was negotiated, Canada refused to include survivors in Newfoundland and Labrador arguing that it did not have any legal responsibility for schools operated under provincial jurisdiction.

In effect, the federal government was trying to use the fact that it had failed to exercise its constitutional responsibilities towards the Innu in the past as justification for excluding Innu residential school survivors from redress. It was almost ten years before the federal government entered into a compensation and commemoration agreement for residential school survivors in Newfoundland and Labrador, and then only after class action suits against the government went to trial. In November 2017, Prime Minister Trudeau made a formal apology to survivors of Newfoundland and Labrador residential schools and their families. The Innu Nation rejected this apology, stating that their elders were not prepared to accept an apology that only acknowledged one part of the harm done to their people.[72]

Compensation to Innu day school survivors remains unresolved. Most Innu who were children between 1967 and 2009 attended schools in their communities that were federally funded, but operated through a Catholic school board under provincial jurisdiction. Innu children suffered cultural, emotional, physical and sexual abuse in these day schools. However, because the schools were not administered under the federal *Indian Act* – a direct consequence of the federal government's lack of recognition of the Innu – the federal government takes the position that Innu do not qualify for the national day schools settlement.

Finally, the 2002 Report also noted that even if parity in services and benefits were achieved, that alone could not alleviate the impacts of a half century of disadvantage resulting from the denial of federal responsibility toward the Innu. Nor would parity alone achieve the goal of restoring the Innu to the situation they would have enjoy if their rights had not been denied all along. The provincial government had initially indicated that it would maintain its funding contribution to the Innu as a means of compensation. This did not happen. No specific compensation has ever been provided to the Innu for the disparity in funding, services and benefits between 1949 and 2001.

3. Innu Land Title and Self-Government (Modern Treaty) Negotiations

For the Innu, equity in federal funding of services is only one part of the solution. A negotiated settlement recognizing Innu title over lands, territories and resources, and restoring meaningful decision-making authority to the Innu Nation, is seen as key to overcoming the injustices of the past and building healthy and thriving communities for the future.

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[72] CBC News, "Innu Nation Won't Accept Trudeau's Apology For Residential Schools in N.L." (23 November 2017), online: CBC News <https://www.cbc.ca/news/canada/newfoundland-labrador/innu-nation-reject-apology-1.4416966>

The Labrador Innu first initiated the process to negotiate a Modern Treaty in 1991. As noted in the 2002 Report, the conclusion of an initial framework agreement in 1995, and its ratification by a vote of the Innu in 1996, initially led to cautious optimism that a final agreement would soon be reached. By 2002, however, it was already clear that momentum toward settlement from the Innu side had not been matched by the federal and provincial governments. Today, almost 26 years since the framework agreement was reached, the Labrador Innu still do not have a Treaty with Canada.

An Agreement in Principle reached in 2011 sets out those lands where exclusive ownership will be recognized in the Treaty as well as those other lands where the Innu would have shared use rights, including rights to economic benefits. The Agreement in Principle states that development on exclusive Innu lands requires the consent of the Innu which can be given through an Impact Benefit Agreement (IBA) with the project proponent. Agreements are also required where the Innu have non-exclusive rights, but the requirements are different. The Agreement in Principle states that if the proponent cannot reach agreement with the Innu concerning areas of non-exclusive use, the outstanding issues will be settled by binding arbitration. The Treaty will include a list of considerations that must be taken into account by the arbitrator in such a process.

These provisions are an example of important progress that has been made. However, Innu leaders report that while there is agreement with their federal and provincial counterparts on most issues, final settlement has been blocked by a series of federal negotiating positions that are considered unacceptable by the Innu. As discussed below, these same conditions have been deemed unacceptable to a great many other First Nations also facing lengthy, still unresolved Modern Treaty negotiations. These concerns are considered in greater detail in Section IV below.

The 2002 Report noted that the continued failure to reach a fair and timely resolution of the negotiations on Innu title and self-government risked putting Canada in violation of its international human rights obligations. In fact, in subsequent years, United Nations and OAS human rights monitoring bodies and mechanisms have sharply criticized Canada over negotiating processes that are adversarial and contrary to internationally accepted norms. The 2002 Report recommended appointment of a mediator if significant progress toward resolution was not reached by 2005. It is now apparent, however, that mediation alone will not resolve the impasse so long as the federal negotiation policies remain unchanged.

This continuing delay in concluding a Modern Treaty has important consequences for the Innu. The longer it takes to achieve a land claims settlement, the more complicated the negotiations for a settlement become. The growing popularity of Labrador for recreational property clearly has the potential to impinge on Innu rights where the Innu would have non-exclusive rights. Moreover, in September 2019, the federal government announced a Memorandum of Understanding with Nunatukavut Community Council (NCC) as a preparatory step in negotiation of a land claim on behalf of Inuit in south and central Labrador. The claim that has been brought forward by NCC overlaps with the territory that is the subject of the unresolved Innu Treaty negotiations.[73]

Fortunately, there are signs that change in the position of the federal government in negotiations with the Innu is possible. In addition to the federal government's adoption of the Ten Principles, Prime Minister Trudeau has given explicit direction to "modernize" the federal government's own structures and approaches "so that First Nations, Inuit and Métis Peoples can build capacity that supports implementation of their vision of self-determination."[74] In more concrete terms, the federal government has worked collaboratively with First Nations in British Columbia and the provincial government to adopt a dramatically revised framework for Modern Treaty negotiations.[75] Key elements of that new framework include underlying recognition of inherent rights, including the right to self- government; a commitment to respect those rights rather than negotiate for their extinguishment; and a commitment to reaching flexible agreements that can be revised on a mutually agreed basis to respond to changes and developments.

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[73] The Innu Nation subsequently launched a legal action seeking to have the agreement between the federal government and NunatuKavut Community Council quashed. Jacob Barker, "Innu Nation Asks Federal Court to Quash NunatuKavut Agreement with Federal Government" (8 October 2019), online: CBC News <https://www.cbc.ca/news/canada/newfoundland-labrador/innu-nation-court-filing-nunatukavut-mou-1.5313083>

[74] Prime Minister Justin Trudeau, *Minister of Crown-Indigenous Relations Mandate Letter* (Ottawa: Office of the Prime Minister, 13 December 2019), online: Office of the Prime Minister <https://pm.gc.ca/en/mandate-letters/2019/12/13/minister-crown-indigenous-relations-mandate-letter>

[75] First Nations Summit, Government of British Columbia and Government of Canada, *Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia (*4 September 2019), *online: Government of British Columbia* <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/recognition_and_reconciliation_of_rights_policy_for_treaty_negotiations_in_bc_aug_28_002.pdf>

4. Innu Land Rights, Impact Benefit Agreements, and Own Source Revenue

Despite the current stalemate on the Modern Treaty negotiations, the Innu have entered into a number of significant benefit-sharing and compensation agreements related to large-scale resource development on their traditional territory. In June 2002, the Innu agreed by popular vote to enter into an Impact Benefit Agreement with Inco (now Vale Inco) over a nickel mine at Voisey's Bay, Labrador. The agreement included provisions for sharing of profits and priority access to employment and business contracts related to the project as well as other benefits.[76] In 2011, the Innu entered into two interrelated agreements concerning hydro-electric development on the Churchill River. An Impact Benefit Agreement over the Muskrat Falls Dam provides the Innu Nation with an annual income of $5 million, which will transition to a percentage of profits once the project is completed and begins to generate profits. As a condition for entering into that agreement, the Innu were also able to negotiate compensation for an earlier hydro-electric project on the Upper Churchill River, which provides $2 million in annual revenue until 2041, after which the agreement will provide a share of any profits received by the province.

These agreements are consistent with provisions in the 2011 Agreement in Principle. They are a sign of progress that stands in sharp contrast to the earlier history of conflict over Innu lands and demonstrates the viability and benefits of a more collaborative approach to decision-making.

Innu leaders have stated that revenue from existing Impact Benefits Agreements and the potential for future revenue generation through such agreements, will greatly exceed the levels of federal compensation currently being discussed as part of the Treaty negotiations. As described in Section V below, persistent federal underfunding has led to wide gaps in access to basic services and quality of life in the Innu communities. The Innu have used revenue generated through Impact Benefit Agreements to help offset some of those gaps and improve the quality of services available to their communities. The Innu are concerned by the fact that in the fiscal chapter of the Treaty, Canada is insisting that the Innu agree that future federal funding to Innu services can be reduced as own source revenue rises and that the rate of any such "clawback" will be determined by federal policy rather than by consent of the Innu.

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[76] Isabella Pain and Tom Paddon, "Negotiating Agreements: Indigenous and Company Experiences: Presentation of The Voisey's Bay Case Study From Canada*"* (Paper presented to the International Seminar on Natural Resource Companies, Indigenous Peoples and Human Rights: Setting A Framework For Consultation, Benefit-Sharing and Dispute Resolution, Moscow, 3-4 December 2008), online: Office of the High Commissioner for Human Rights <https://www.ohchr.org/Documents/Issues/IPeoples/Seminars/Vale_Inco_Canada_Voiseys_Bay_case_Moscow_Workshop.pdf>

Any clawback of own source revenue is potentially discriminatory in its impact. Diverting income from Impact Benefit Agreements into maintaining current levels of services and benefits, would deprive Innu communities of opportunities to develop and to grow and thus close the gap between them and other First Nations and other communities in Canada. Instead of prospering, the Innu would be stuck with the status quo. This is particularly concerning given that the Innu were already deprived of funding and services available to other First Nations for 50 years before the federal government began to exercise it constitutional responsibilities with respect to the Innu.

Reduction in federal funding would also risk creating a dependency on the revenue from Impact Benefit Agreements that would make it harder for the Innu to negotiate for other objectives, such as protections for traditional land use and ecological values. Innu leaders also point out that impact benefit agreements are an additional cost to industry, on top of the taxes or royalties paid to the federal and provincial governments. Dependence on Impact Benefit Agreements to fund essential services could further reduce the options for the Innu to negotiate agreements on terms that can attract desirable investment in their territory. Innu leaders say that just as Canada seeks certainty through the Treaty settlement, the Innu require certainty from Canada about how Innu government functions and services will be resourced in the future.

IV. Underlying Problems with the Negotiation of Modern Treaties

The concerns raised by the Innu over the federal negotiation positions in the Modern Treaty process are a consequence of the federal government's approach to negotiations with Indigenous peoples as framed by a number of policy documents including the 1986 Comprehensive Land Claims Policy,[77] the 1993 Federal Policy for the Settlement of Native Claims,[78] the 1995 Self-Government Policy,[79] the 2014 Interim Policy,[80] the 2015 Statement of Principles on the Federal Approach to Modern Treaty Implementation[81] and the 2017 Cabinet Directive on the Federal Approach to Modern Treaty Implementation.[82] These various documents emphasize the benefits of Treaty-making for Indigenous peoples and for Canada as a whole. For example, the 2015 Statement of Principles states that Modern Treaties are "a key component of Canadian nation-building," "promote strong and sustainable Aboriginal communities," and "create enduring intergovernmental relationships between treaty partners." However, despite referring to the Constitutional imperative of reconciling "the prior occupation of North America by Aboriginal peoples with the assertion of Crown sovereignty," Canada's framework for negotiation does not explicitly acknowledge Canada's obligation to respect, protect, promote, and fulfil the inherent rights of Indigenous peoples nor does it refer to providing redress for past violations of those rights.

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[77] Indian Affairs and Northern Development Canada, *Comprehensive Land Claims Policy* (1986), online: Assembly of First Nations <https://www.afn.ca/uploads/files/sc/comp_-_1987_comprehensive_land_claims_policy.pdf>

[78] Indian and Northern Affairs Canada, *Federal Policy for the Settlement of Native Claims* (1993).

[79] Indian and Northern Affairs Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (1995).

[80] Aboriginal Affairs and Northern Development, *Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights (Interim Policy)* (September 2014), online: Crown-Indigenous Relations and Northern Affairs Canada <https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-TAG/STAGING/texte-text/ldc_ccl_renewing_land_claims_policy_2014_1408643594856_eng.pdf>.

[81] Crown-Indigenous Relations and Northern Affairs Canada, "Statement of Principles on the Federal Approach to Modern Treaty Implementation" (13 July 2015), online: Crown-Indigenous Relations and Northern Affairs Canada <https://www.rcaanc-cirnac.gc.ca/eng/1436288286602/1539696550968>

[82] Crown-Indigenous Relations and Northern Affairs Canada, "Cabinet Directive on the Federal Approach to Modern Treaty Implementation" (13 July 2015), online: Crown-Indigenous Relations and Northern Affairs Canada <https://www.rcaanc-cirnac.gc.ca/eng/1436450503766/1544714947616>

In fact, the central theme of these various policies and statements is the perceived need to protect non-Indigenous interests by pursuing agreements that will close the door to any further claims by Indigenous peoples. The 1986 Comprehensive Land Claims Policy states that "final settlements must… result in certainty and predictability with respect to the use and disposition of the lands affected by the settlement."[83] The 2015 Statement of Principles similarly states that Modern Treaties "establish certainty with respect to the ownership and management of lands and resources, create a stable climate for investment, and promote broader economic and policy objectives to the benefit of all Canadians."[84]

As detailed below, this pursuit of certainty for the "benefit of all Canadians" has led to federal policies that seek to limit or even to eliminate the inherent rights of Indigenous peoples. At the same time, the federal government has sought to negotiate agreements that leave the door open to unspecified future limitation or infringement of rights specified in the Treaty – thus denying Indigenous peoples the certainty sought for other Canadians. This adversarial approach to the human rights of Indigenous peoples has been widely criticized by international rights bodies and mechanisms as contrary to Canada's obligation to respect, protect and fulfill human rights without discrimination.[85]

Many of the concerns raised by the Innu are not unique. In fact, the Innu often engage with the federal government as part of a coalition of dozens of other First Nations across Canada who are currently in similarly stalled Modern Treaty negotiations. Nonetheless, the Innu and other First Nations have clearly expressed that despite the similarities in experiences and concerns, and the value of "collective dialogue" on these issues, it is crucial that the "primary relationship" in respect to Treaties "must continue to be between the federal government and each Indigenous nation" with the goal of addressing "the specific circumstances and interests" of each First Nation.[86]

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[83] *Comprehensive Land Claims Policy*, *supra* note *77*, at p. 9.
[84] *Statement of Principles on the Federal Approach*, *supra* note *81*, at no. 1.
[85] UN Commission on Human Rights, *Human rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada*, U.N. Doc. E/CN.4/2005/88/Add.3 (2 December 2004), at para 91. See also Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, U.N. Doc E/C.12/1/Add.31 (10 December 1998), at para.18; UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, U.N. Doc CCPR/C/79/Add.105, (7 April 1999), at para. 8; UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, U.N. Doc CERD/C/CAN/CO/18 (25 May 2007), at para. 22.
[86] Indigenous Groups in the Process of Negotiating Treaties and/or Self-Government Agreements. *Engagement on Self-Governing Indigenous Governments' Access to Tax Revenues*, Report to the Minister of Finance (September 2017).

For the Innu, these policies have been a barrier to the timely redress of historic violation of the rights of the Innu and thus have had a direct impact on the quality of life enjoyed by the Innu. This is of particular concern given the fifty years in which the federal government failed to exercise its Constitutional responsibilities towards the Innu. Federal officials told the authors that negotiations of Modern Treaties are place-based, meaning that the government is responsive to the specific circumstances and needs of each negotiating Nation. However, if this were truly the case, the federal government would give greater priority to removing obstacles to the fair and timely resolution of the Innu Nation negotiations. Furthermore, the federal approach to such negotiations would be informed by its duty to remedy its fifty-year abdication of responsibility toward the Innu Nation.

Furthermore, the federal government must ensure, at the very least, that federal policies as applied to the Innu are updated to be consistent with the *UN Declaration on the Rights of Indigenous Peoples* and Canada's other human rights obligations. This has to be the starting point in respect of all the issues that are dealt with in the following pages of this Report.

1. Extinguishment

A constant theme throughout Canada's various policies on Modern Treaties is the insistence on the final settlement providing "certainty" to the State and third parties. The federal government has pursued certainty by making settlement conditional on Indigenous peoples agreeing not to assert or pursue future claims in respect to any rights not explicitly set out in the final agreement. The federal government has previously required the inclusion of clauses that explicitly "extinguished" all inherent rights other than those set out in the agreement. The 1986 policy offered the "alternative" of including clauses by which Indigenous peoples would agree to "cede and surrender" their rights and claims.

Provisions attempting to limit an Indigenous people to only those rights explicitly set out in a Modern Treaty have potentially far-reaching implications. The Canadian Constitution is understood to be a "living tree." In other words, its interpretation and application will continue to change in keeping with the times. All rights set out under the Constitution and Charter have evolved but none so significantly as the rights of Indigenous peoples. As noted by the Innu leadership in the preparation of this report, "certainty" clauses in Modern Treaties would effectively "freeze" Innu rights, isolating the Innu from the continued evolution of interpretation and application of their rights in light of unforeseeable future developments, putting them at a disadvantage relative to First Nations that have not entered into such agreements.

A 2017 letter to the federal government on behalf of the Innu, and a number of other First Nations currently engaged in comprehensive claims negotiations, stated that variations on extinguishment or surrender are "a most unfortunate repetition of past mistakes…. neither necessary, constructive, nor consistent with the spirit of reconciliation."[87]

The UN Human Rights Committee has condemned Canada's efforts to seek extinguishment of inherent rights. During a 2006 periodic review of Canada, the Committee specifically sought more information about the status of the Innu Comprehensive Claim, and also expressed concern that the "alternatives" offered in federal policy "may in practice amount to extinguishment of aboriginal rights."[88]

The Human Rights Committee's concern arises from the fact that efforts to extinguish rights are incompatible with the fundamental principle that human rights are inherent and inalienable. For a State to actively pursue extinguishment or other limitations on rights as a condition of redress may also be incompatible with the obligation to promote the fullest realization of the rights of all members of society, without discrimination.

A related human rights concern is the impact of extinguishment and similar provisions on the rights of neighbouring Indigenous peoples. Historically, it was not uncommon for neighbouring Indigenous nations to share use or even control of portions of their traditional territories, subject to agreements and protocols developed between them. The federal government has taken the position that regardless of such histories, Indigenous peoples cannot claim rights or redress in respect to any territories covered by Treaties entered into by neighbouring Indigenous peoples. The James Bay and Northern Quebec Agreement, for example, rather infamously asserts to extinguish the rights of Innu in the region covered by that Treaty, even though the Innu were not a party to the settlement. Innu in Quebec have expressed concerns whether a Modern Treaty with the Innu Nation in Labrador could extinguish or diminish their own rights in respect to lands in Labrador which they consider part of the shared homeland of all Innu people.[89] In addition, as noted above, the Innu Nation has raised concerns over the federal government's intention to negotiate a settlement with the Nunatukavut Community Council and the implication that this could have for Innu rights in respect to lands included the NCC statement of claim.

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[87] The Honourable Bob Rae, *Letter to Ministers Regarding the Innu and other negotiating First Nations* (12 May 2017).

[88] UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, U.N. Doc CCPR/C/CAN/CO/5 (20 April 2006), online: Office of the High Commissioner of Human Rights <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CAN/CO/5>

[89] Elizabeth Cassell, "Some Reflections on Hydroelectric Development and the Land Rights of the Innu Who Live in Quebec and Those Who Live in Labrador" (2013) 1:1 *Journal of Human Rights in the Commonwealth*, 3–17.

In September 2019, the federal government announced a new Treaty negotiation policy, specific to the province of British Columbia and co-developed with Indigenous peoples and the provincial government, that explicitly rejects any requirement for extinguishment "in form or result."[90] Instead, the policy proposes to support agreements that are able "to evolve over time based on the co-existence of Crown and Indigenous governments and the ongoing process of reconciliation of pre-existing Indigenous sovereignty with assumed Crown sovereignty." Applying such approaches to negotiations with the Innu is not only appropriate, it is required by Canada's human rights obligations.

2. Infringement

Innu negotiators report that while the federal government has sought to include terms in the Treaty that would limit the Innu people to exercising only those rights explicitly set out in the in the final settlement, the federal government has also sought to give itself (and other governments) the power to further limit even those rights on a unilateral basis. Innu negotiators further say the federal government has been unwilling to enter into any agreement that does not explicitly include such terms.

While most human rights are subject to limitations to allow competing or conflicting rights to be appropriately balanced, the state's authority to do so is not unlimited or open ended As set out above, the Supreme Court of Canada's decision in the *Tsilhqot'in* case, as well as the *UN Declaration*, require that any limitations on the exercise of Indigenous rights must be subject to a rigorous justification test and that such justification must be considered from the perspective of the affected Indigenous peoples. In the case of a negotiated Modern Treaty, it is appropriate that clear terms for any such limitations be negotiated as part of the Treaty.

The Innu have proposed Treaty provisions specifying that, apart from emergency situations, any future changes to Treaty obligations sought by Canada or Newfoundland and Labrador must be negotiated with the Innu who would commit not to unreasonably withhold consent. The Innu have also proposed inclusion of a binding arbitration mechanism to resolve disputes such as whether the Innu have unreasonably withheld consent.

While the federal government has previously rejected the approach proposed by the Innu, it is notable that the recently revised B.C. negotiations policy explicitly includes the possibility of mediation. That policy states:

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[90] *Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia*, *supra* note *75*.

> Canada and British Columbia, with the full and effective participation of participating Indigenous Nations, will seek to support just, equitable and effective mechanisms and procedures for the prompt resolution of conflicts, disputes and impasses, giving due consideration to the customs, traditions, norms or legal systems of the participating Indigenous Nations concerned. Where impasses cannot be resolved, Canada and British Columbia will be open to third-party facilitation and mediation. Canada, British Columbia and participating Indigenous Nations may wish to develop a pre-approved list of facilitators and mediators to minimize delays.[91]

This indicates that there may be possibility of revisiting these issues in the Innu negotiations. What is critical is that any dispute resolution mechanism be through a mutually agreed process in which the Innu would be full participants.

3. Contingent Rights

Federal representatives acknowledge that the Innu have the inherent right to self-government. However, the federal government's position at the negotiation table is that the exercise of this right in any area of jurisdiction requires an agreement with Canada and/or Newfoundland and Labrador setting the terms and conditions on the exercise of the right. The Innu argue that such a provision would, in effect, give the federal and provincial governments a "veto" over any exercise of self-government, making it a "contingent right."

The Innu have proposed instead that the Treaty would list areas of where it would be acknowledged that the Innu have the inherent right to pass their own laws. While the Innu state that they are prepared to negotiate agreements to coordinate their exercise of these self-governing rights with the federal and provincial governments, the inherent right to exercise such powers should not be contingent on such an agreement being reached.

The Innu cite as an example that could be followed federal legislation passed in 2019. The *Act respecting First Nations, Inuit and Métis children, youth and families* acknowledges the inherent right of Indigenous peoples to pass their own child welfare laws. While the *Act* includes the option to enter Coordination Agreements with federal, provincial and territorial governments, the *Act* includes explicit provisions for Indigenous authorities to proceed with their own laws when such an agreement cannot be reached.

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[91] *Ibid.*

4. Fiscal Policy

A crucial component of any Modern Treaty settlement is an agreement on future funding arrangements. Because the Innu negotiations include self-government, any settlement agreement must address not only the level of funding that will be provided for infrastructure, services and benefits currently under federal jurisdiction, but also how the Innu will be supported to take up this jurisdiction themselves, by developing, passing and administering their own laws. This is a crucial area where federal policies have failed to provide "certainty" for Indigenous peoples.

A 2018 letter to the federal government written on behalf of the Innu and 78 other First Nations[92] – referred to in the letter as the Indigenous Negotiating Nations – says that resolution of many Modern Treaty negotiations has been blocked by what is described as a "policy void" on fiscal matters. According to the letter, the First Nations negotiation of specific fiscal arrangements is effectively on hold pending the finalization of a new federal policy, a process that has been underway since 2010. However, the latest draft policy brought forward by the federal government lacks specifics and does not address the costs of self-government and other significant issues raised by First Nations.

The letter also raises concerns that the draft policy is asking First Nations to enter into final agreements with fiscal chapters that would give the federal government carte blanche to revise future funding levels without First Nations consent. The Innu say this would create an unacceptable level of fiscal uncertainty which, combined with the federal proposal to clawback own source revenue, as described in Section III. 4 above, could jeopardize the future functioning of Innu governments.

The Innu have said that unless recognition of their inherent jurisdiction is combined with meaningful and certain fiscal commitments, the Innu could be forced into the position of "administering poverty." The 2018 letter proposes that the federal government adopt a set of basic principles to determine future funding levels, which would include a commitment to substantive equality and ensuring that Indigenous governments "have sufficient fiscal resources to close the socio-economic gap and ensure that the social well-being of its citizens is the same as that of other Canadians."[93]

Although the proposal was submitted to the federal government in April 2018, Innu negotiators report that to date they have not received a response from the federal government.

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[92] The Honourable Robert Rae, *Letter to Minister Carolyn Bennett on behalf of the Indigenous Negotiating Nations* (20 April 2018).

[93] Indigenous Negotiating Nations, *Draft Self-Government Fiscal Policy Proposal for Federal Review, Collaborative Fiscal Policy Development Process* (10 April 2018).

5. Taxation

A final, related point of disagreement preventing resolution of the Innu Modern Treaty negotiations is the federal position on taxation. As noted earlier, Innu have been able to benefit from tax exemptions under section 87 of the *Indian Act* for less than two decades. For more than 50 years following Newfoundland and Labrador's entry into Confederation, the Innu were denied this benefit because the federal government chose not to recognize them.

As a condition for entering into a comprehensive claim settlement, the federal government currently requires First Nations to give up these tax exemptions. In the Innu case, the federal position is that sales tax exemption will end 8 years after the settlement date and that the personal income tax exemption would end 12 years after the settlement date.

The federal taxation policy disadvantages First Nations that have entered into modern Treaties in relation to the much larger number of First Nations that have not (and therefore retain their tax-exempt status). The policy is also arbitrary and inconsistent. The first Modern Treaty, the James Bay and Northern Quebec Agreement, did not alter the James Bay Cree eligibility for tax exemption, but other First Nations have subsequently been required to give up tax exempt status as a condition for entering into a Modern Treaty. Standalone self-government agreements, negotiated outside the context of a large land claim settlement, have also been negotiated with a requirement to give up tax exempt status.

The federal government takes the position that the requirement will ultimately benefit First Nations that enter into a Modern Treaty. Removing tax exemptions under the Indian Act would help open the door for the Innu to develop their taxation system. However, the Innu question why they would not be given a choice. There is no similar deadline imposed for the exercise of other self-government powers. Instead, standard Treaty provisions would allow the Innu to "draw down" these powers if and when they chose to exercise them.

In fact, the power to collect income tax likely offers little benefit for Innu governments since their membership is small and the average income is low. At the same time, removing the sales tax exemption could result in considerable hardship for the Innu. Sales tax disproportionately affects remote and northern communities where the costs of most goods and services is significantly higher. The impact is even greater for the Innu for whom high price goods such as trucks, motorboats, snowmobiles, and rifles are a necessity of life and indispensable to the exercise of their harvesting rights.

Additionally, it is particularly unjust that the Innu be asked now to give up the very same tax exemptions that were unilaterally denied to them for a half century. Again, it is an example of the federal government seeking to benefit from the 50-year failure to exercise its Constitutional responsibilities in respect of the Innu, rather than providing redress for that wrong.

V. Gaps Analysis of the Current Situation of the Innu Nation and its Citizens

The 1993 and 2002 Reports documented a number of underlying systemic factors – arising out of the history of the federal government's failure to exercise its Constitutional responsibilities with respect to the Innu – that have had a dramatic impact on the quality of life for Innu. The first of these systemic factors is the longstanding underfunding of infrastructure, services, and benefits to the Innu people relative to other First Nations and ultimately in relation to the real needs of their communities. The second is the resistance of the federal and provincial governments to fully break with their long history of imposing decisions on the Innu people without adequate knowledge of their culture and needs. The third is the failure to conclude a Modern Treaty settlement that would formalize recognition of Innu powers of self-government and fully restore control of the design and delivery of services to the Innu people.

These underlying systemic issues persist today. This section of the report looks at the consequences in seven crucial areas of government services: health, child and family services, education, language and culture, housing, policing and the justice system, and overall economic well-being. First, however, this section touches on the additional systemic issue of racism and discrimination. Issues of racism and discrimination were not directly addressed in the 1993 and 2002 Reports. However, these issues have been emphatically raised by Innu leaders and representatives during preparation of this report.

1. Racism and Discrimination

In the course of preparing this report, two incidents that made headlines in Newfoundland and Labrador served to highlight the persistence of racist attitudes toward Indigenous peoples. In one incident, two workers at the Churchill Falls power project were fired after making racist comments about an Inuk man during a flight from their job site.[94] A former Innu leader was present on the flight and commented publicly on what happened. In the other incident, a Minister resigned from the provincial cabinet after inadvertently leaving a recording of disparaging comments about Innu on the answering machine of an Innu Nation employee.[95]

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[94] CBC News, "2 Men Fired, Contractor Turfed as Fallout From Racist Incident on Labrador Flight Continues" (11 December 2019), online: CBC News <https://www.cbc.ca/news/canada/newfoundland-labrador/nalcor-bans-men-churchill-falls-1.5392181>

[95] CBC News, "Minister Resigns From N.L. Cabinet After 'Hurt' Caused by Comments That Shocked Innu Nation" (13 September 2019), online: CBC News <https://www.cbc.ca/news/canada/newfoundland-labrador/innu-nation-perry-trimper-reaction-1.5282187>

Innu leaders have also raised numerous examples of other, even more serious, incidents affecting Innu people, including community members being refused urgently needed medical attention by hospital staff who dismissed their concerns or jumped to the conclusion that they were intoxicated. For example, in a July 2020 CBC News report, Innu Nation Land Rights negotiator Peter Penashue described an incident in which an Innu man died of a heart attack in a hospital washroom after reportedly being denied medical assistance. In the article, Mr. Penashue is quoted as saying:

> …it's so unfortunate that many people working these systems say, 'Oh, this is an Innu person, he's probably drunk, you know, he'll be here the next couple of hours then he'll leave.' It's that kind of attitude.[96]

In late 2019, the Innu and the provincial government agreed to establish a working group to address systemic racism in health care and other services.[97] As of July 2021, preliminary steps toward this process had taken place but the working group had not yet met.

Investigation of specific incidents of racism and discrimination is beyond the scope of the present report. We are convinced, however, that Innu concerns about systemic racism are based on the reality of their lived experience and must be addressed.

The Innu have a right to access government services in a respectful, non-discriminatory and culturally safe environment. This is another reason why greater Innu control over the design and delivery of services, consistent with their right to self-determination, is so crucial.

Innu leaders point to the example of income assistance. The Innu assumed management of income assistance programs in their communities in 2016. Since then, the number of community members accessing services has increased fourfold. This is not because needs have increased dramatically. Performance reviews have consistently verified that eligibility rules are being followed. What has changed is that the system has become much more accessible.

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[96] Ariana Kelland, "Hateful Words, Diminished Services: How Racism Rears its Head for N.L.'s Indigenous People" (20 July 2020), online: CBC News <https://www.cbc.ca/news/canada/newfoundland-labrador/racism-indigenous-hill-evans-penashue-jeddore-1.5638885>

[97] Ariana Kelland, "What's in a word? 'Systemic racism' a roadblock in wake of Perry Trimper incident" (13 July 2020), online: CBC News <https://www.cbc.ca/news/canada/newfoundland-labrador/premier-systemtic-racism-trimper-1.5644736>

When income assistance was administered by the province, applications were only accepted in English, originally by filling out a lengthy written form and later by calling an English-only call center. Many Innu felt that they were not being heard or understood in the system and simply gave up trying. During that period, many Innu families turned to the Innu Nation and the Innu Band Councils for financial support to meet basic needs, presenting the Innu governments with significant cumulative expenses they could ill afford.

The Innu Nation describe the Innu-managed income assistance program as a "quiet success," helping families in severe need access services to which they are entitled. On the basis of this success, the Innu are moving incrementally toward true self-government in the area of income assistance, having passed their own Income Support Law in 2020 that adjusts provincial standards to better address Innu needs.

In the sections below, this report considers a number of other areas where the Innu have already assumed control of service delivery or are seeking greater control moving forward. We note, in this context, the legitimate concern of the Innu that the same discriminatory attitudes that they face in daily life may also negatively impact efforts to obtain support from federal and provincial officials. A persistent theme in the sections that follow is the concern that federal and provincial governments may be resisting or undermining Innu-led initiatives because many of their officials do not trust the Innu to manage their own affairs. As former Innu Nation Grand Chief Gregory Rich asked during the preparation of this report, "How are we going to move forward if we're facing these kinds of attitudes?"

2. Healthcare

The Innu in Labrador face an acute health crisis. Overall, the health of the Innu communities is significantly worse than most other communities in Canada. A 2012 community health needs assessment found that the average age of death among the Innu is between 47 and 48 years as compared to a Newfoundland average of 74 years.[98] A significant factor in the very low average age of death is the high infant mortality rate among Innu. In the two Labrador Innu First Nations the mortality rate is approximately three times the Canada-wide First Nations average.[99] An additional significant factor is the continued high rate of suicide in the two Labrador Innu communities.

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[98] *The Innu Healing Strategy*, *supra* note *2*, at p. 7.
[99] *Ibid* at p. 8.

As recently as October 2019, a suicide crisis was declared in Sheshatshiu after ten suicide attempts were recorded in less than a week following a series of deaths from natural causes.[100] In the wake of this crisis, the provincial government sent additional support workers into the community, but the overall situation suggests the need for better, longer-term solutions that are grounded in Innu culture.[101]

This was only the most recent instance of what has been a decades-long crisis. A study published in the *American Journal of Public Health* found that, of 128 suicide deaths in Labrador (and of 617 in the province overall) during the period of 1992 to 2009, 28 occurred in the two Innu communities.[102] Overall, the study found that while the suicide rate in Labrador as a whole was nearly three times higher than the national rate in Canada, the suicide rates in the Innu communities was ten times higher the national rate.[103] The Innu Nation reports that although suicide rates have declined since the relocation from Davis Inlet, the incidence of suicide is still disproportionately high.

The Innu Round Table Secretariat is responsible for coordinating prevention services within the two Innu communities in Labrador with initiatives including parenting programs, land-based programming, and direct advocacy and support work for individuals and families.[104] The Innu Round Table Secretariat notes the severity of a number of other mental health issues in the community, including addictions, which they believe are increasing due to increased access to illegal drugs. Over a four-year period, one third of patients admitted to the Emergency Department of the Labrador Health Centre were Innu. Almost half of emergency room visits involved alcohol and one-third involved drugs. More than one-in-five admissions involved attempted suicide.[105] The band council in Natuashish has banned alcohol but faces significant challenges in enforcement, as discussed later in this report.[106]

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[100] The Canadian Press, "Sheshatshiu: Innu First Nation in Labrador Declares Suicide Crisis" (30 October 2019), online: Global News <https://globalnews.ca/news/6102033/suicide-crisis-innu-first-nation/>

[101] *Ibid.*

[102] Nathaniel Pollock, Shree Mulay, James Valcour, and Michael Jong, "Suicide Rates in Aboriginal Communities in Labrador, Canada" (2016) 106:7 *American Journal of Public Health*, 1309-1315.

[103] *Ibid* at p. 1311. The report found comparable suicide rates for Inuit men.

[104] Innu Round Table Secretariat, "Prevention Services," (n.d.), online: Innu Roundtable Secretariat <http://www.irtsec.ca/cyfs/>

[105] Nathaniel Pollock, "Suicide in Indigenous communities in Labrador: A research summary," PowerPoint presentation shared by the author.

[106] Child Welfare League of Canada, *Innu Prevention Approach: Presented to the Innu Round Table Secretariat* (2016) at p. 17, 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>.

The Innu Round Table Secretariat attributes the mental and physical health crisis among the Innu in part to the rapid transition of the Innu way of life from semi-nomadic to settled.[107] In addition, the lack of comprehensive health resources in their communities, and their remoteness from services that may be available in larger communities, have also had a direct impact on Innu health, including mental health and addictions issues.[108] The Innu Care Approach states that "separation and displacement from traditional lands, life and culture, as well as decades of negligence by the Canadian government" have led to "severe challenges" for the Innu.[109] A 2014 Innu-led health consultation in Natuashish and Sheshatshiu identified a series of health issues that the community felt have not been adequately addressed, including lack of access to healthy food, physical, emotional and sexual abuse and inadequate health infrastructure.[110] These issues were also raised by Innu leaders during the research for this report.

The province's regional health authority, the Labrador-Grenfell Regional Health Authority, retains responsibility for health provision to all residents of Labrador, including citizens of the Innu Nation. The Innu Nation and the Band Councils of Sheshatshiu and Natuashish are increasingly involved in the administration of healthcare and in developing health care strategies.[111] However, ultimate authority for funding levels and priorities rests with the CEO of the regional health authority. There are currently no Innu sitting on the health authority board and no "set aside" seats for Innu or any other Indigenous representatives.

The Innu Round Table Secretariat is supporting the Innu First Nations in implementing the Innu Healing Strategy, first announced in 2014. This approach focuses on Innu values and addresses individual health in a larger community context that includes parents, extended family, community, culture and language, and Elders. The Secretariat is tracking a broad range of health indicators over medium-to-long-term, including income and social status, physical and social environments, child development, improved health services, and improved personal health practices and coping skills.

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[107] *Ibid* at p. 5.
[108] *Ibid.*
[109] Innu Round Table Secretariat, "A Guide to the Innu Care Approach" (2017) at p. 2, online: Innu Round Table Secretariat <http://www.irtsec.ca/2016/wp-content/uploads/2018/01/A-Guide-to-the-Innu-Care-Approach-Dec-2017.pdf>. The study in the American Journal of Public Health similarly noted that "Increasingly, research has linked suicide in Aboriginal contexts to social distress and historical trauma, which have their origins in persistent and systemic inequality." Pollock, Mulay, Valcour and Jong, *supra* note *102*, at p. 1312.
[110] *The Innu Healing Strategy*, *supra* note *2*.
[111] Advocate for Children and Youth Newfoundland and Labrador, *A Tragedy Waiting to Happen* (2015) at p. 114, online: Canadian Child Welfare Research Portal <https://cwrp.ca/publications/tragedy-waiting-happen>; *The Innu Healing Strategy*, *supra* note *2*, at p. 3.

The Innu community of Sheshatshiu has two health centres. The Mani Ashini Community Clinic provides a range of routine medical services, including physician access three days a week, support to pregnant women, a dental clinic (one week per month), and home care and respite care for community members. The Mary May Healing Centre provides some physical and mental health services, as well as support with respect to housing, parenting, family conflicts, child protection, and Fetal Alcohol Syndrome.

Natuashish has a community health centre that also houses additional support services. However, the centre is widely seen as being too small and understaffed to meet the needs of the community. It is staffed with three full time nurse practitioners. A doctor is provided for five days each month. There are no mental health and addiction counsellors at the centre. In addition to this community centre, Natuashish has a healing lodge, the Mushuau Healing Lodge, that provides a range of counselling and treatment services, as well as referrals.

The Innu Nation itself funds care for Elders in the community. The federal government has refused to cover these costs as the Innu Nation has been unable to hire caregivers who meet government certification requirements.

Natuashish and Sheshatshiu both have short-term emergency shelters for Innu women and children that are funded partly by the federal and provincial governments and partly funded through charitable donations. The shelters are always at maximum occupancy or greater and are frequently short-staffed. With such a high demand, the shelter can rarely accommodate women for more than two weeks at a time, although staff noted that women almost always need access to emergency shelter for longer than this. There is no transition housing in the Innu communities and the situation of extreme overcrowding makes it very difficult for women to find a safe space once they leave the shelter.

Programming at the Natuashish and Sheshatshiu shelters is specifically designed to reflect Innu culture and values. However, staff report that underfunding creates significant challenges in providing adequate support for various mental health needs, including substance dependencies.

They also noted that the provincially-funded shelter in Happy Valley-Goose Bay provides shelter for up to six weeks and is able to offer transition programming. While Innu women can access the services in Happy Valley-Goose Bay it may be difficult for them to get there and doing so would further isolate them.

Significantly, the Innu shelters are not able to provide salaries that are even close to those paid by the provincially funded shelter in Happy Valley-Goose Bay and this contributes to the ongoing staffing challenge. It has been reported that shelter workers in Sheshatshiu receive less than half the pay provided to workers in the shelter serving the general population in Happy Valley-Goose Bay.[112]

A Sheshatshiu organization called the Innu Ishkueut Healing Journey has received provincial funding, through its Indigenous Violence Prevention Grants Program, to host anti-violence workshops and weekly talking groups that educate local women and youth about domestic violence. The Healing Journey also works with Elders to teach Innu women about their culture, traditions and language. The Innu Ishkueut Gathering, also based in Sheshatshiu, has received provincial funding to host a gathering on the land for Innu women to discuss ongoing violence against women and children, as well as to help cope with the high rates of suicide in their communities.[113]

For residents of both Sheshatshiu and Natuashish, serious health needs require travel outside the community. Sheshatshiu is approximately 40 km from Happy Valley-Goose Bay and has year-round road access to the hospital and other services in that community. Natuashish is considerably more isolated. Natuashish is 300 km from Happy Valley-Goose Bay and is only accessible by air or marine transport.

Dependence on distant health facilities has additional implications for pregnant women. Newfoundland and Labrador has a very limited regulatory system for midwives, currently operational only in Gander, Newfoundland. This means that there is not an option for Innu women to give birth at home. Innu women have to go to Happy Valley-Goose Bay to deliver their babies, and for women from Natuashish, this can mean six to eight weeks away from home. While the federal government provides for the transportation of the mother and one escort, the Innu Nation has provided additional funds so that mothers are not separated from their other children while they are away.

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[112] National Aboriginal Circle Against Family Violence & Quebec Native Women Inc., “Alternative Report to the U.N. Committee on the Elimination of Racial Discrimination, 93rd Session” (6 July 2017), online: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_28176_E.pdf >

[113] Executive Council, Government of Newfoundland and Labrador, “Provincial Government Announces Recipient of Indigenous Violence Prevention Grants Program” (9 February 2018), online: Government of Newfoundland and Labrador <https://www.gov.nl.ca/releases/2018/exec/0209n04/>

Innu leaders and community members believe that they do not have access to the same quality of care as non-Indigenous people when they go to Happy Valley-Goose Bay. There were many accounts of late diagnosis of disease stemming from the failure of health practitioners to listen to Innu patients. Community members report that it is hard to get referrals for treatment and that there are often extended waiting times for medical assistance. Women report being pressured at the hospital to not have more babies, to have a tubal ligation or other procedures. Innu Nation members say they have so little confidence in the local healthcare system that they ask to go to other provinces to receive health services.

3. Child and Family Services

The Innu Nation reports that approximately one in ten children from their communities are in state care at any given time. This is greatly disproportionate in comparison to the population of Newfoundland and Labrador as a whole and is also greater than for many other Indigenous communities in Canada.[114]

Many Innu children in care have been placed outside their own communities, disconnected from Innu culture and language and under the care of staff with little or no knowledge of Innu ways of life.[115] This has begun to change, but remains a critical issue. In 2019, for example, more than 40 children from the Mushuau Innu First Nation, representing approximately two-thirds of the children in provincial care from that community, were in care outside Natuashish.[116] The Innu say that provincial counterparts are still oriented to removing children from the communities and have not prioritized either preventative programming or the reintegration of those children who have been taken away.

As noted earlier, the Canadian Human Rights Tribunal has concluded that federal funding for First Nations child and family services has systematically fallen significantly short of comparable programmes for children and families under provincial and territorial jurisdiction and has been inadequate to meet the real needs of these families.[117] Furthermore, the Tribunal found that this systematic underfunding has distorted the delivery of child and family services such that, in the absence of properly funded interventions to support families, First Nations children are being placed into state care at a dramatically disproportionate rate.

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[114] Child Welfare League of Canada, *supra* note *106*, at p. 12.
[115] 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/>
[116] Indigenous Services Canada, "The Government of Canada announces funding for two emergency placement homes in the Innu Communities of Natuashish and Sheshatshiu" (24 August 2019), online: Government of 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>
[117]

Since 2001, the federal government has assumed responsibility for funding Innu child and family services. However, as for other First Nations, services are provided according to provincial law and policy. Child protection services continue to be provided exclusively by the province under its mainstream system.

In 2012, the Mushuau and Sheshatshiu Innu signed a memorandum of understanding with the provincial government intended to improve delivery of child, youth and family services.[118] This MOU evolved into a Working Relationship Agreement in 2015, which provides for consultation with Innu on decision-making about child welfare.[119] This agreement provides for a mutual notification and planning process, Innu-led prevention work addressing the safety and well-being of newborns, joint review of out-of-community placement decisions, and joint committees for planning and decision-making.[120]

The Innu Round Table Secretariat has also begun implementing its own model of child and family services, known as the Innu Care Approach, first announced in 2014. The Innu Care Approach emphasizes the importance of keeping families together and fostering children's connections to their communities and the land from which they come.

Innu-led prevention services began in 2017. These are dedicated services for supporting families involved with the child protection system or at risk of such involvement, delivered through the Innu Round Table Secretariat. There are workers in both Innu communities and the services are federally funded.

A new agreement with the province government, called the Innu - Children, Seniors and Social Development (CSSD) Protocol, was signed in June 2021. The new agreement provides for enhanced information sharing and collaboration between provincial protection services and Innu prevention services.

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[118] The Innu Healing Strategy, *supra* note *2*, at p. 18.

[119] Her Majesty in Right of Newfoundland and Labrador, and Sheshatshiu First Nation and Mushuau First Nation and Innu Nation Roundtable Secretariat, "Working Relationship Agreement" (30 September 2015), online: Innu Roundtable Secretariat <http://www.irtsec.ca/2016/wp-content/uploads/2015/10/CYFS-NL-Innu-Working-Relationship-Agreement-Signed-Sept-30_2015.pdf>

[120] Innu Round Table Secretariat, "New Initiative to help Sheshatshiu and Mushuau Innu First Nation Members with CYFS concerns" (2016), online: Innu Round Table Secretariat <http://www.irtsec.ca/2016/wp-content/uploads/2016/01/WRA-New-CYFS-Project-for-Change.pdf>

A wide variety of broader support services in the community help in this effort. For example, the Charles J. Andrew Treatment Centre in Sheshatshiu provides preventative programming that includes counselling services for family and youth in crisis, community outreach and education services, and holistic healing program that helps parents work towards regaining custody of their children. It also offers the "Nutshimit" program that focuses on land-based learning for youth.[121]

The Innu have now established homes in their communities to provide emergency placement, and thus reduce the numbers being placed in care outside the community, and to support successful transition for those children returning to the community from care. The Shushepeshipan Group Home in Sheshatshiu, two emergency placement homes in Sheshatshiu, and an emergency placement home in Natuashish are locally administered, provincially licenced, and run according to the Innu Care Approach which incorporates traditional cultural activities. An additional group home is in the works for Natuashish.

Despite these positive developments, funding remains a critical issue. For many years, the provincial child welfare model in Newfoundland and Labrador excluded preventative programs. As a consequence, core federal funding for Innu child and family services, based on provincial laws and policies, has for years excluded preventative programming critical to keeping Innu children with their families and in their communities.

In 2017, following the Canadian Human Rights Tribunal decision which emphasizes the crucial importance of preventative programming, the federal government announced additional funding of $965,000 for delivering prevention-based programming in Sheshatshiu and Natuashish.[122] In 2019, the federal and provincial governments provided one-time funding of $3.73 million to the Sheshatshiu and Mushuau Innu First Nations for the purposes of capacity building "for the development of children and youth placement services [that] integrate the Innu care approach into staffing, management and service delivery practices."[123] The capacity building funds assisted in the development of the group home and emergency placement homes mentioned above.

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[121] Charles J. Andrew Youth & Family Treatment Centre, "Programs" (n.d.), online: Charles J. Andrew Youth & Family Treatment Centre <http://www.cjay.org/home/home.htm>

[122] Children, Seniors and Social Development Executive Council, Government of Newfoundland and Labrador, "Supporting Aboriginal Communities through Prevention Initiatives" (13 February 2017), online: Government of Newfoundland and Labrador <https://www.releases.gov.nl.ca/releases/2017/exec/0213n04.aspx>

[123] Indigenous Services Canada, *supra* note *116*.

In June 2020, the Innu Nation filed a complaint with the Canadian Human Rights Commission alleging that the federal government is violating the requirement, set out in the Tribunal's 2016 First Nations Child and Family Services decision, of ensuring substantive equality for Innu children.[124] The complaint characterizes the funding levels for preventative services as arbitrary and inadequate to meet the actual costs of delivering necessary services of Innu children and families. In 2021, the federal government and the Innu reached an agreement that increases federal funding for Innu services for a two-year period. As a consequence, the Innu complaint is on hold at the time of this report.

Innu leaders say that every positive development in the child welfare system has required an enormous struggle to reach agreement with the federal and provincial governments. This may soon change. New Indigenous child and family services legislation passed by the federal government in 2019 provides a framework for the Innu to now assume full control over all aspects of child and family services, including adopting their laws governing such services. In January 2020, the Innu Nation notified the federal and provincial government of its intention to exercise jurisdiction over Innu child and family services. Their work on developing their own law is now underway.

The Innu are also working toward launching a joint Innu and provincial inquiry into the situation of Innu children in care and more generally how Innu have been affected by the provincial child protection system. The Government of Newfoundland and Labrador announced plans for the inquiry in 2017. The inquiry was originally intended to begin that year. However, the launch of the inquiry was delayed by the reluctance of the federal government to participate, as well as a search for appropriate commissioners. In 2018, the federal government announced that it would be a "full participant" in the inquiry, but not a co-convenor. On June 10, 2021, the province and the Innu Nation announced commissioners for the inquiry, namely retired judge James Igloliorte, former Innu leader Anastasia Qupee, and retired professor of social work Dr. Mike Devine.[125]

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[124] Innu Nation and Chief Gregory Rich, "Complaint to the Canadian Human Rights Commission" (29 June 2020). Shared with the authors by the Innu Nation.

[125] Province of Newfoundland & Labrador, Executive Council, "Commissioners Appointed for the Inquiry into the Treatment, Experiences and Outcomes of Innu in the Child Protection System", https://www.gov.nl.ca/releases/2021/exec/0610n03/.

The Innu Nation had renewed its calls for an inquiry after the suicide of a 15-year-old Innu youth at a provincially run group home in May 2020. In a public statement, the Innu Nation said, "Our communities have a right to know whether other Innu children have died in care, had attempted suicide while in care or died by suicide following release from provincial institutions. We fear that Wally Rich's death is the tip of the iceberg."[126]

4. Education

Innu children in Labrador are able to attend all grades of public school, from Kindergarten to Grade 12, in their own communities. The Innu have long been concerned about the rate of high school completion which has been significantly lower than the provincial average or the average of Indigenous students living in other parts of the country.[127]

In Natuashish, children are reported to begin dropping out of school as early as after completion of Grade 6, while students in Sheshatshiu often begin to drop out of school around Grade 9.[128] The low rate of high school completion has been attributed to a variety of academic and non-academic factors. Many students drop out, particularly at the high school level, because they have not acquired the academic foundations needed to be successful. Non-academic reasons for early school leaving include overcrowding in the schools, bullying and peer pressure, teen pregnancy, and substance abuse.[129]

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[126] Innu Nation, "Innu Child (15) Dies in Provincial Care Facility – Innu Nation Seeks Answers" (4 June 2020), online: *First Nations Drum* <http://www.firstnationsdrum.com/2020/06/innu-child-15-dies-in-provincial-care-facility-innu-nation-seeks-answers/>

[127] Indian and Northern Affairs Canada, *Impact Evaluation of the Labrador Innu Comprehensive Healing Strategy: Final Evaluation Report* (7 December 2009), at p. 42, online: Crown-Indigenous Relations and Northern Affairs Canada < https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-AEV/STAGING/texte-text/aev_pubs_ev_lichs_1328287772839_eng.pdf> See also David Philpott and W.C. Nesbit, "Approaching Educational Empowerment: Guidelines from a Collaborative Study with the Innu of Labrador" (2010) 1:1 *International Indigenous Policy Journal*, online: *International Indigenous Policy Journal* <http://ir.lib.uwo.ca/iipj/vol1/iss1/6>

[128] Camille FOUILLARD, *Mishishtiani: When I grow up - Schooling in Sheshatshiu and Natuashish: A report on community consultations*. Mamu Tshishkutamashuhtau Innu Education School Board (2013), at p. 1, online: Mamu Tshishkutamashuhtau <https://www.innueducation.ca/uploads/2/9/4/1/29417707/community_consult_report_final_2013.pdf>

[129] *Ibid*.

In 2009, the Innu Nation established an Innu school board, Mamu Tshishkutamashutau – Innu Education, giving the Innu increased control over programming in their schools.[130] The Innu school board has published a variety of Innu language resources for children and youth residing in the Innu Nation, including language guides and children's storybooks.[131] The school board has also worked to lower the ratio of students to teachers so that there is more opportunity for individual attention. These efforts have included teacher training for community members. Innu schools now also offer home study, where students come in twice weekly to have their homework reviewed and receive next lessons. This has enabled students with childcare or babysitting obligations to continue their studies.

Mamu Tshishkutamashutau has reported that, as a result of these efforts, Innu high school completion has begun to increase. Prior to 2009, about five students graduated from high school each year in two Innu communities. [132] In 2014, 19 students graduated high school.[133] The school board stated "there have been more Innu high school graduates [in its first five years of operation] than there [had been] in the previous fifty years when the Government of Newfoundland and Labrador provided education services to the Innu."[134]

Offering practical vocational courses has proven to be a huge asset to student retention. However, the level of funding provided for Innu high schools only enables them to offer a restricted number of courses. Funding to expand both the scope and variety of vocational course offerings would make a very significant contribution to student retention.

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[130] *The Innu Healing Strategy*, *supra* note *2*, at pp. 16-17.
[131] See Laurel Anne Harler, Marguerite Mackenzie, and Camille Fouillard, "Innu Resources" (October 2016), online: Mamu Tshishkutamashutu-Innu Education Inc https://www.innueducation.ca/uploads/2/9/4/1/29417707/innu-resources-2016-for-web-lower-quality.pdf.
[132] Innu Round Table Secretariat. "Capacity Development," (2019).
[133] *The Innu Healing Strategy*, *supra* note *2*, at p. 17
[134] *Ibid.*

The challenging "school climate" is also seen as responsible for causing stress, burnout, depression and addiction in the school staff itself, [135] leading to problems in recruiting and retaining qualified teachers. In 2019, 13 of 26 teaching positions at the Natuashish school were vacant. Innu have requested that teachers in the Innu schools be included in the Newfoundland and Labrador Teachers' Pension Plan. This would create a significant incentive for teacher retention, as has already proven to be the case in Ontario where teachers in First Nations schools have been able to join the provincial teachers' pension plan. Another significant impact on recruitment and retention, in Natuashish particularly, is teacher accommodation. It is virtually impossible for any teacher with a family to be accommodated. Teachers are forced to live with two or three others making privacy an issue.

A community consultation identified a series of priorities for children, youth, and their families in Sheshatshiu and Natuashish, including better support for students with mental health needs and other special needs. A crucial factor for many is the inadequate reflection of Innu language and culture in schools.[136] The Sheshatshiu and Mushuau Innu First Nations have long emphasized the importance of an education that "protects and promotes" their distinctive language and culture.[137] This is seen as critical not only as an end in itself, but also as a means of ensuring there are skilled Innu language speakers available to the Innu Nation.

According to the Innu Round Table Secretariat, education has been an area of successful capacity development for the Innu people, with significant growth in the number of Innu staff and the amount of external expertise available to the Innu educational system.[138] That being said, there remain significant problems.

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[135] *Ibid*.
[136] *Ibid* at p. 3.
[137] The Government of Newfoundland and Labrador, *The Future of Our Land, A Future for Our Children: A Northern Strategic Plan for Labrador* (20 April 2007) at p. 65, online: Christian Aboriginal Infrastructure Developments <http://caid.ca/NorStrPlaNorLab2007.pdf>
[138] Innu Round Table Secretariat, "Capacity Development" (n.d.), online: Innu Round Table Secretariat <http://www.irtsec.ca/capacity-development/>

The Innu school board still operates within laws and policies established by the province.[139] This has meant that despite the identified priority of increasing the presence of the Innu language in the schools, the Innu have faced a persistent problem in hiring teachers who are both fluent in Innu-aimun and able to meet provincially-established certification standards. In Sheshatshiu there are a few qualified Innu teachers and several Innu teacher aides taking summer courses to become certified teachers. Currently, except for the vice-principal, none of the certified teachers in Natuashish is Innu. High school students receive 40 minutes of classroom instruction in Innu-aimun each day, but only when they have a teacher or assistant who can provide the instruction. Neither community is able to offer Innu-aimun as a language of instruction – rather than a subject area only. There are also limited Innu-aimun materials and few if any sources for Innu-aimun curriculum development.

Funding for the Innu schools is provided through the federal government. The federal government has agreed that funding for First Nations schools should be comparable to provincial funding for all other schools. However, as in other matters, the Innu are an exception.

When the federal government introduced a comparability-based funding formula in 2018, there was a disagreement over how to calculate provincial funding levels in Newfoundland and Labrador. The federal government chose to use figures from New Brunswick as a temporary "proxy." Based on provincial funding levels in New Brunswick, the federal government determined that its allocations for the two Innu schools was already sufficient to meet the standard of comparability and that no new funding was required.

There are a number of problems with this approach. First, the provincial government in New Brunswick does not operate schools in remote and isolated locations that incur costs comparable to those facing schools in Labrador. The comparator is unlikely to be meaningful. Second, the conclusion that no further funds are needed to ensure comparability ignores direct evidence of a widening gap between funding of Innu schools and the funds available to other schools in Newfoundland and Labrador.

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[139] Memorandum of Understanding Between Sheshatshiu Innu First Nation, Mushuau Innu First Nation, Mamu Tshishkutamashutau – Innu Education Inc., the Government of Newfoundland and Labrador and the Government of Canada (2015), online: Government of Canada <https://www.sac-isc.gc.ca/eng/1456244973055/1531400247136>

Prior to 2009, funding to the Innu schools was determined by the Government of Newfoundland and Labrador based on the same formula applied to other schools in Labrador. When the Innu established their own school board, the federal government effectively froze funding at 2009 levels. In the decade since, provincial funding to other schools in Labrador increased by an average of two percent each year. In the same time, enrollment in the Innu schools grew by more than 15 percent while provincial enrollment declined.[140] What these figures suggest is that far from being comparable, there has been a significant gap in per student funding that has grown year after year. Mamu Tshishkutamashutau Innu Education estimates that the gap in core funding for the Innu schools exceeds $9 million.

The Innu Nation has used revenue from resource development projects and other sources to increase the Innu school board budget approximately ten percent beyond federal funding levels.[141]

The Innu say that the federal funding formula does not take adequate account of the unique needs of their communities, including the need to provide competitive teacher salaries to retain teachers in small and remote communities. The Innu also say that federal funds have not kept pace with changing values in education, including, particularly, the growing recognition of the need for programming matched to students with special needs.

In 2013, the Innu school board reported that 131 students (18.4 percent of all students) in Innu communities were in need in of a special education teacher. Federal funding contributions included $120,000 in special education funding, equivalent to $916 per student with special needs.[142] The Innu Nation used its own revenue sources to provide an additional $184,000 in funding for students with special needs.

Years of chronic underfunding of Innu education has also created a significant system wide achievement gap. Students completing Grade 8 for example, often have no more than Grade 4 or 5 numeracy and literacy levels. Additional funding above provincial equivalency levels is required to address this gap, or it will continue to exist going forward.

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[140] Mamu Tshishkutamashutau Innu Education, "Innu Education Funding Compared with Provincial Practices and Data," Letter to the federal government (30 April 2019).

[141] Mamu Tshishkutamashutau Innu Education, *Annual Report 2012-13: Celebrating Achievements and Growth* (March 31, 2013) at p. 28, online: Mamu Tshishkutamashutau Innu Education <http://www.innueducation.ca/uploads/2/9/4/1/29417707/innu_annual_report_2013.pdf>

[142] Mamu Tshishkutamashutau Innu Education, *Annual Report 2012-13: Celebrating Achievements and Growth – Annex: Independent Auditor's Report*, at p. 5, online: Mamu Tshishkutamashutau Innu Education <http://www.innueducation.ca/uploads/2/9/4/1/29417707/innu_annual_report_2013.pdf>

The federal government also does not supply any funding for adult education needs specific to the Innu communities. Sheshatshiu has partnered with Academy Canada, a private, accredited technical college, to provide training on site in the community as well through an education facility in North West River (immediately adjacent to their community). In Natuashish, adult education opportunities are primarily available online.

5. Language and Culture

The Innu are justifiably proud of their success in maintaining their language, Innu-aimun, in a time when most Indigenous languages in Canada and around the world have declined. In the 2016 census, more than 1500 people in Newfoundland and Labrador identified themselves as Innu speakers, including 1200 reporting that Innu-aimun was the language most often spoken at home.[143]

Today, however, there is an emerging generational divide. Many Elders speak primarily or exclusively Innu-aimun, which creates challenges in dealing with police, social workers, teachers and other service providers from outside the Innu community, particularly as there are only limited interpretation services available. In contrast, regular use of Innu-aimun is now declining among young people for a variety of reasons, including the large numbers of young people who have been separated from their families and culture through the interventions of the child welfare system.

As noted above, there is only limited use of Innu-aimun in the schools. The situation in the schools is reflective of other aspects service delivery in the Innu communities. Persistent funding shortfalls, dependence on outside service providers, and restrictions imposed by provincial standards and certification, have all combined to make English rather than Innu-aimun the language of public life in Natuashish and Sheshatshiu.

Current threats to the Innu language parallel and are interconnected with other threats to their culture, spirituality, and traditions. The traditional practice of spending part of the year out on the land in small family camps is a crucial factor in the transmission of Innu-aimun from one generation to the next. Even at their most isolated, when the Mushuau Innu were living in Davis Inlet, they were able to access provincial funds through the outpost programme to cover the cost of travel to these hunting camps. As noted above, despite promises, access to this programme has not been maintained. An increasing number of Innu families now report that they can no longer afford the tradition of going out on the land.

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[143] Statistics Canada, "Census Profile, 2016 Census: Newfoundland and Labrador" (n.d.), online: Statistics Canada <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=PR&Code1=10&Geo2=PR&Code2=01&SearchText=Canada&SearchType=Begins&SearchPR=01&B1=Language&TABID=1&type=0>

The Innu way of life has suffered another significant blow with the decline in local caribou herds. The caribou hunt has long been central to Innu culture, spiritual practices and life on the land. In 2013, the provincial government imposed a hunting ban on the greatly diminished George River caribou herd, which is the herd hunted by Innu in Sheshatshiu. The Innu Nation is challenging the constitutionality of that ban in court. The Innu have proposed to balance conservation interests and the exercise of their hunting rights through a limited ceremonial hunt.

6. Housing

The Innu communities face a severe housing crisis, largely as a consequence of federal funding not keeping up with the rapid growth in population and the rising cost to build houses in these communities. Section II.1 above noted that although the relocation from Davis Inlet to Natuashish brought about many improvements in quality of life, planning for the community failed to take proper account of the pace at which housing needs would grow. In addition to the pressing need for more housing, a recent study commissioned by Indigenous Services Canada also found that there is a need for extensive renovations to existing housing.

Innu leaders say that the federal response to this need has gotten worse rather than better over time. It costs $450,000 to build a house in Natuashish. The current waitlist to meet the community's housing needs requires the construction of 120 houses. Despite this backlog, only one new house has been built with federal funding in the last four years.

The consequence of the housing shortage is an unhealthy and stressful degree of overcrowding. It is commonplace for ten or more people to live in a three-bedroom house, while in some instances as many as 13 to 15 people are crowded into the same space.

Overcrowding has been linked to family violence. Not only does overcrowding create and exacerbate stress, it means that women are much less likely to have another place to go when tensions arise. It is a lot harder to stay overnight at the house of a friend or family member if their home is also overcrowded.

The dangers of overcrowding were further highlighted by the COVID-19 pandemic. At the time of writing, the Innu in Labrador have been fortunate not to have had any confirmed cases of COVID-19. In an open letter to the federal and provincial governments on April 3, 2020, the Innu Nation expressed concern about the vulnerability of the Innu if a person infected with the coronavirus were to enter one of their communities. The Innu Nation wrote, "Self-isolation is virtually impossible for most of us."[144]

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[144] Innu Nation, "Open Letter to Prime Minister Justin Trudeau from Innu Nation" (3 April 2020), online: *First Nations Drum* <http://www.firstnationsdrum.com/2020/04/dear-premier-ball-prime-minster-trudeau-and-minister-miller/>

Overcrowding also has significant impacts on the ability of Innu to keep children out of the child welfare system. Overcrowding resulting from government funding decisions can be interpreted by child welfare officials as an indication of the parents' inability to provide a proper home and therefore grounds for child removal. Furthermore, forcing large numbers of people under the same roof increases the likelihood that one will have addictions problems or a criminal record or a prior child protection record, which can also be grounds for a child removed or not returned, or not placed within the home as a kinship or foster care placement.

7. Policing and the Justice System

The Royal Canadian Mounted Police (RCMP) maintains small detachments in both Sheshatshiu and Natuashish. The role, responsibilities and funding of the RCMP detachments are part of an agreement between the federal and provincial governments for policing in the province more broadly. The Innu are not a party to this agreement.

Innu leaders have expressed concern that officers come to their communities with little knowledge of Innu language, culture and values and are often transferred to other detachments before they can develop this knowledge or even build good relations with the community. The RCMP Detachment Commander in Happy Valley-Goose Bay indicated that the RCMP generally prefers that Indigenous communities develop and deliver their cultural competency training for officers. However, the Innu Nation says that it does not have the capacity or support to do so.

According to the Innu leadership, the gulf in understanding between RCMP officers and the Innu communities they serve is contributing to the over-incarceration of community members. Innu leaders report that the RCMP do not have the sufficient knowledge of the communities or sufficient understanding the culture and language of the Innu necessary to resolve situations in any way except by laying charges. This has a domino effect. Once community members are in the justice system, the outcome is almost always the same. They do not have the resources to fight the charges, so they plead guilty. This goes on their record and they are excluded from the better jobs that might be available, resulting in their further marginalization.

At the same time, community members say that they do not feel safe. The staff levels of the RCMP are not proportionate to the serious needs created by the addictions crisis and economic marginalization of the communities. On a practical, day to day level, they say that there is simply no confidence that police will respond if called.

Language is another critical concern around policing. Many Innu adults speak very little English. While there is potential to arrange translation, the fact that the police officers do not speak the Innu language is a problem in fast developing or crisis situations.

A central concern that was repeatedly raised by Innu leadership is the challenge of enforcing community safety by-laws passed by the Natuashish and Sheshatshiu Band Councils. The RCMP take the position that the enforcement of Band Council by-laws is outside their mandate, rendering many of these by-laws ineffective. For example, the Natuashish Band Council has prohibited alcohol in the community in an effort to help stem the addictions crisis. However, the RCMP will not search incoming planes or seize alcohol as called for in the by-law.

With support from the federal government, the Innu have hired and trained community safety officers to conduct patrols, identify potential safety issues and help de-escalate conflict situations. These officers are also mandated by the Innu First Nations to enforce their by-laws.

The community safety officer program is a good start, but it remains fairly new, and longer-term funding is not clear. It also cannot on its own address the larger issue of policing and the role of the RCMP.

In conversation with the CHRC, the RCMP reported that there have been significant cuts to their overall operations budget in Labrador – roughly 6 to 8 percent – and this will impact their ability to deliver services that they see as being outside of their core mandate. One example given was responding to “mental health” concerns. The RCMP had advised in summer 2021 that they would be moving to a fly-in/fly-out model in Natuashish, with officers coming in and out on two-week rotations rather than staying longer term. Innu leadership have raised some reservations. The concern is that this could further diminish the potential for officers to develop the knowledge and trust needed to provide effective policing. The issue was not resolved at time of writing.

The Innu have long expressed a desire to assume control of policing in their own communities so that policing would be more responsive to Innu values and needs. In the past, the Innu Nation has attempted to negotiate a tripartite agreement with the federal and provincial governments, similar to those negotiated by many First Nations in other regions, to establish their own police service. With the help of police services from other First Nations, the Innu also began training future police officers. However, these negotiations eventually stalled, and the Innu police service has yet to be created.

The Innu believe that the federal and provincial governments, as well as the RCMP itself, have been resistant to the idea of an Innu police service. The Innu believe that this resistance stems from the fact that removing Sheshatshiu and Natuashish from RCMP responsibilities would have implications for the cost effectiveness of the RCMP contract for services in Labrador. The RCMP have recently been replaced by the Royal Newfoundland Constabulary in Labrador City and Wabush. Losing Sheshatshiu and Natuashish would further diminish the RCMP’s presence in Labrador.

Renewed Innu efforts to establish an Innu police service have been recently advanced through the Innu Round Table Secretariat, and federal and provincial government Ministers have indicated an openness to discussing it. However, concrete support for the initiative has yet to materialize.

Modern Treaties and self-government agreements generally do not include specific provisions for Indigenous peoples to establish their own police forces or assume control of aspects of the justice system, but rather establish the possibility that these matters can be addressed through subsequent negotiations. The Innu have sought a different approach of having policing and the justice system included within the current self-government negotiations but there has been no agreement with the federal and provincial governments on this approach.

When individuals in Natuashish are charged they may have the opportunity for their case to be addressed in the court circuit that travels to the community a few times per year. The circuit court no longer travels to Sheshatshui. When individuals do not have access to the circuit court, they generally come before the court in Happy Valley-Goose Bay. They are frequently held for long periods on "remand" awaiting trial. Innu women may be held at the provincial jail for women, which is in Newfoundland, while Innu men may be held at the Labrador Correctional Centre in Happy Valley-Goose Bay. A report for the John Howard Society found that Correctional Centre, built in the mid-1980s to accommodate 38 people, was being used to hold 61 inmates in 2019.[145] Two-thirds were on remand and the majority were Indigenous.[146]

Sometimes, a person arrested in Natuashish or Sheshatshiu may be held first in the RCMP detachment "holding cells" before being transferred. As many as three or four people might be held in the same small cell, with no opportunity for exercise and no guards immediately available in the event of violence. Innu leaders have raised concerns about the length and conditions of detention in RCMP holding cells, including cases in which prisoners were said to have been held for months. In 2018, the province and the RCMP adjusted their policies on holding cells, requiring that prisoners be transferred to provincial facilities as soon as possible. However, overcrowding at the Labrador Correctional Centre, as well as insufficient spaces for women prisoners, still often lead to delays in transfer.

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[145] Goss Gilroy Inc. *Service Needs in Labrador Relevant to the Justice System – Final Report, Prepared for the John Howard Society of Newfoundland and Labrador* (April 2019), at p. 49.
[146] *Ibid.*

The Innu estimate that 60 percent of people facing trial in Labrador are Innu. Whether held at the RCMP detachment or in a provincial facility, Innu charged with crimes are often separated from their community and culture for an extended time, regardless of the outcome of the proceeding. There are no Innu judges or trial lawyers. In the unlikely event of a jury trial, a jury would not include members of the Innu community or anyone familiar with Innu culture. The prospect of lengthy separation from home, the alien nature of the court system, and the likelihood that few people involved in the process will demonstrate much understanding of Innu culture, all create additional pressures for individuals to enter guilty pleas.

Alongside their efforts to establish their own police force, the Innu have also pursued the creation of Innu courts or sentencing circles, at least comparable to those now operating in a number of other First Nations, so that some charges might be resolved within the community. As early as 1993 the Innu informed the federal and provincial governments that the justice system was not working for them and the people of Davis Inlet banned the provincial court from the community. The 1994 Statement of Political Commitments between the federal government and the Innu provided $100,000 for the Innu to develop a Justice Diversion Program. The Innu held a series of community consultations, considered other diversion models including those of the First Nations of Hollow Water and Shubenacadie, and prepared a detailed 100 page justice diversion proposal with an Innu Healing Circle as the centrepiece. The Innu proposal was based on 13 principles developed in community consultations including the following principles:

1. The Canadian Justice System is alien to the Innu people who do not share the emphasis on judgement, punishment and taking the “offender” away from the community.

2. Wherever possible offenders should stay in the community so there can be a return to balance for the persons(s) involved which can best be accomplished through a process of accountability that includes support from the community through teaching and healing.

3. “Healing” should not be separated from “justice.” The Innu need a holistic approach to personal and community healing.

Despite lack of ongoing funding, the Innu did hold several successful sentencing circles in the 1990s. However, no sustained funding commitment to the program was made at that time.

Here again, the Innu report that they have over many years proposed many variants of this approach to the federal and provincial governments and the RCMP without success. Frustration over the justice system issues remains high, unsurprisingly so given how little has changed on the ground since the 1993 Report.

8. Economic Well-Being

While overall labour market participation rates in Labrador have increased over time, the Innu continue to experience much higher unemployment and lower average income than the general population.[147] According to the census, Sheshatshiu's unemployment rate in 2015 was 23.1 percent for women and 29.4 percent for men. The unemployment rate in Natuashish in 2015 was 19.4 percent for women and 29.7 percent for men. This is in comparison to provincial unemployment rates of 12.5 percent for women and 18.6 percent for men. Innu women in Natuashish recorded a slightly higher average income than other women in the province in 2015, but Innu men in Natuashish and Innu women and men in Sheshatshiu recorded a much lower annual income than others in the province. According to the census, the average individual income in Sheshatshiu in 2015 was $24,448 for women and $31,680 for men. In Natuashish, the average individual income for women in was $38,154 and average annual income for men was $38,507. This compares to provincial averages of $34,259 for women and $56,724 for men.[148]

Through the Impact Benefit Agreement negotiated by the Innu Nation, the Lower Churchill Falls project has employed a number of Innu community members. However, lower levels of educational attainment and the lack of on-site training create barriers to Innu accessing the jobs that are available. Most Innu must leave their communities to gain needed skills.[149] The lack of access to skills training is said to be particularly more acute in Natuashish due to its remoteness.[150] The government of Newfoundland and Labrador has recently begun a series of Indigenous job skills and work experience initiatives, including the $23.6 million commitment to providing training to 400 Indigenous participants to work at the Vale mine site at Voisey's Bay.[151]

Inadequate access to daycare significantly impacts the ability of Innu women to participate in the workforce or to return to school. Sheshatshiu has only a small daycare while Natuashish has none. Sheshatshiu is developing a new initiative to support home childcare options, but overall, options are limited.

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[147] *The Future of Our Land, A Future for Our Children*, supra note *136*, at p. 21.
[148] Statistics Canada, *Census Profile, 2016 Census, Natuashish* and *Census Profile, 2016 Census, Sheshatshiu.*
[149] *Ibid.*
[150] *Ibid*, note 146.
[151] Executive Council, Government of Newfoundland and Labrador, "Helping Indigenous People in Labrador get Vital Job Skills and Work Experience" (June 26, 2018), online: Government of Newfoundland and Labrador <https://www.gov.nl.ca/releases/2018/exec/0626n05/>

VI. Conclusion

The 1993 Report was written against the background of the failure of the federal government to assume its constitutional responsibilities in respect of the Innu since Newfoundland joined Confederation. The recommendations in that Report related to the federal government recognizing the Innu of Labrador as "Indians" within the meaning of the *Indian Act* with rights and entitlement to services and benefits on basis comparable to other First Nations. The Innu, it was said, should be put in a position where they could make their own choices about their future and be able to break from a past where decisions about the Innu were made by others. It was also essential that the Mushuau Innu be relocated from Illiukoyak Island to Sango Bay which they had chosen as the site for a new village.

The 2002 Report noted that progress had been made on some of these key issues. The federal government had recognized the Innu as a First Nation and the negotiation of land claims and self-government had begun. The community at Natuashish was under construction and relocation was imminent. Yet notwithstanding these developments, the Report noted that major problems remained in terms of adequacy of funding, education, and health. Moreover, negotiations on self-government had come to an impasse.

What is the situation today, twenty-eight years since the 1993 Report and twenty-six years since negotiations on land claims and self-government began?

Progress has definitely been made in some areas. The Mushuau Innu community at Natuashish is well-established, the schools in both Natuashish and Sheshatshiu are graduating more students since the Innu established their own school board, and the Innu have assumed more greater control over a range of social services, including health care. The devolution of income support from the provincial government to the Innu is also an example of this progress, as are the creation of Innu child and family prevention services and the new Protocol agreement between the Innu and the Province in that sector, described above. Moreover, there is an ongoing and continuous relationship with the federal and provincial governments. Relations with the Province of Newfoundland and Labrador have improved now that areas of responsibility have been changed and clarified from pre-1993 days. In one sense, then, much has changed from 1993.

Yet in another sense, things have not changed. The concerns of the Innu in terms of education, health, policing, language and culture, access to the outposts program, set out above, are remarkably similar to those heard when the 1993 Report was being prepared. And the treatment the Innu are receiving at all levels, from Innu being cursorily treated or being turned away when seeking health care, to interactions with the police and government officials – issues of racism and discrimination - are matters of serious importance. They have to be considered as a priority by both federal and provincial governments in their relations with the Innu.

Furthermore, and shockingly, after 26 years of negotiations there is still no agreement on land title and self-government; even though there is agreement on many matters, no comprehensive Treaty has been concluded. Earlier, it was pointed out that this is in part due to policies and positions of the federal government that are unacceptable to the Innu, are not in conformity with Canada's human rights obligations, and have impeded resolution of Modern Treaty negotiations with the Innu and other First Nations. Here, at least, there are positive signs that the federal government may be willing to adopt new policies that would allow a Treaty to be concluded with the Innu.

When the Innu first requested that the CHRC carry out an investigation into their situation, Innu leadership requested compensation for the 50-year period following the entry of Newfoundland into Confederation in which they did not have access to the same services and benefits as other First Nations. The 1993 Report did not recommend such compensation, arguing instead that a real remedy would involve the federal government addressing the actual, present-day problems facing the Innu. Such a remedy would ensure that the Innu had the opportunity, the resources and the freedom to take control over their own lives. This required genuine efforts to negotiate land title and self-government, as well as proper financing to enable all this to happen. It did not mean simply registering the Innu under the Indian Act, creating reserves and saying the job is done. It did not mean spending 26 years negotiating land title and self-government with no immediate end in sight.

In short, we see the federal government as having chosen to ignore the history of the Innu. The cynical actions of the federal government are detailed in this report, such as the refusal to include Innu residential school survivors in the national settlement and its efforts to negotiate away access to benefits (such as section 87 taxation benefits only recently extended to the Innu), as a condition of exercising the right to self-government. These are not the actions of a government committed to remedying a past wrong.

It is no answer to say, as federal officials told us, that since the federal government engages in "place-based" negotiations with Indigenous peoples, the particularities of each Nation can be taken into account. That misses the fundamental point. The issue is not whether the Innu have distinctive needs. They obviously do. The outposts program is such an example. The point is much more than that. It is that the Innu were subjected to a specific form of discrimination for 50 years when the federal government refused to recognize them as "Indians" under the Indian Act. That is more than a particularity.

The federal government's treatment of the Innu reflects a persistent failure to properly address the critical human rights violations identified in the 1993 Report. This is demonstrated, for example, by the adversarial position taken by the federal government in respect to the compensation for Innu residential school survivors and refusal to grant access to section 87 taxation benefits post-Treaty resolution, as examined above. As the 1993 Report pointed out, in 1949 the Innu were "pencilled out" of the terms under which Newfoundland came into Confederation. Now, after registering the Innu under the Indian Act and creating reserves, the federal government is, in effect, "pencilling them out" again, ignoring their history and who they are all over again.

The duty of justice, fairness and equality requires the federal government to make a concerted effort to fully remedy the harms to the Innu. This must include acknowledging the half century of denial of services to the Innu and ensuring that this history informs current policies and approaches towards the Innu, including positions taken in Treaty negotiations. This is not what is happening today.

This ignoring of Innu history is having a serious impact on the way the Innu are currently being treated and it requires positive action by the federal government to redress the matter. The 1993 report said that what was needed was a gesture of confidence by the federal government to restore the ability of the Innu to exercise the rights they had been denied. The federal government has done this only in part.

What is needed now is a new gesture by the federal government to be taken at the highest level that will constitute a commitment to mandate an accelerated negotiation on a Modern Treaty that will resolve Innu land title, provide for self-government, and close the gaps in access to education, healthcare and policing and other issues that have been identified in this Report. This commitment has to be reflected in the actual positions taken in negotiations. It has to be an effective reset of the negotiating process. Only if such an action can be taken could it be said that the federal government has started to make up for its 50-year evasion of constitutional responsibilities with respect to the Innu. Only then will Canada be able to say that it is starting to live up to its human rights obligations.

The 2002 Report concluded that a resolution of the Modern Treaty negotiations could be achieved within two years. That relied on the assumption that the goodwill of the federal government would allow a just resolution to be reached. It was not to be. But matters have advanced much more since then and the outstanding issues in negotiations could be resolved under the new mandate contemplated here, within a relatively short period of time. The target for completion of a comprehensive agreement on land claims and self-government should be no more than three years.

VII. Recommendations

Based on the above analysis, we make the following recommendations:

1) The federal government should make a new commitment to the conclusion of the Modern Treaty negotiations with the Innu in accordance with its human rights obligations.

    a) Such a commitment must ensure that the negotiations will result in remedying the wrong done to the Innu by the failure of the federal government to exercise its constitutional responsibilities to them for a period of 50 years.

    b) This commitment must include abandoning the negotiating positions on issues such as: own source revenue, section 87 taxation benefits, extinguishment and non-contingent rights of self-government that currently stand in the way of a just resolution of the Modern Treaty negotiations.

    c) In respect to the future fiscal relationship between Canada and the Innu, Canada should put into Treaty form a clear commitment to achieving substantive equality in areas such as child and family services, protection from violence, healthcare, housing, education, policing and the justice system, language and culture, and economic well-being.

    d) Canada should aim to resolve negotiations for the conclusion of a Modern Treaty within three years of this Report.

2) Pending resolution of the Modern Treaty negotiations, the federal government should take immediate action in collaboration with the Innu to resolve critical gaps in services. Such action must be consistent with its obligation to ensure substantive equality.

    a) The federal government should resolve the Innu complaint now before the Canadian Human Rights Commission by agreeing to fully fund, at actual costs, those preventative measures deemed necessary and appropriate by Innu child and family service providers.

    b) The federal government should work with Mamu Tshishkutamashutau, the Innu school board, to determine appropriate comparators that will enable the federal government to live up to its commitment to provide funding that is, at a minimum, comparable to that provided to provincially-funded schools in Newfoundland and Labrador.

c) The federal and provincial governments should move quickly to address the immediate and critical needs identified by the Innu Round Table Secretariat, including those related to health, violence against Innu women and girls, housing, language and culture, policing and the justice system.

3) The federal government should move quickly to complete negotiations on the decommissioning of the old village site on Iluikoyak Island, including the appointment of a project manager and providing adequate funding to allow the site to be adapted by the Innu according to their own priorities and values. This should be achieved with one year of this Report.

4) The federal government should support anti-racism measures to address the systemic racism facing the Innu. The province of Newfoundland and Labrador should give high priority to advancing the work of the anti-racism working group.

5) The provincial and federal governments must act to ensure the timely launch of the promised inquiry into the treatment of Innu children in provincial care.