A REPORT ON ASPECTS OF

LEGAL REPRESENTATION AND COURT PROCESS IN LABRADOR

AS THEY AFFECT PARENTS OF INNU CHILDREN

A Research Report
submitted to
the Inquiry Respecting the Treatment, Experiences and Outcomes
of Innu in the Child Protection System

Prepared by William J. English
Submitted November 24, 2025
Revised April 6, 2026

TABLE OF CONTENTS

EXECUTIVE SUMMARY AND BIOGRAPHICAL DETAILS

PART 1 - SCOPE OF THIS REPORT
1.00 What this Report is About 1
2.00 The Purely Legal Perspective 3
3.00 A Trauma-Informed Approach 6

PART 2 - HOW THE CHILD PROTECTION SYSTEM WORKS IN LABRADOR
4.00 Who Deals with Child Protection Cases in Labrador? 9
- Lawyers 9
- Judges and Courts 15
- Social Workers 19
- How Well Do Court Hearings Work?..... 22

PART 3 - ANALYSIS OF MANDATE 4.1(o) - LEGAL REPRESENTATION
5.00 Availability of Legal Representation: Ready, Willing, and Able?..... 25
6.00 Quality of Legal Representation: How Timely Should Advice Be?..... 29
7.00 Effective Legal Representation: Being on the Case is Not Enough 33
8.00 Difficulties Regarding Interpretation 35

PART 4 - ANALYSIS OF MANDATE 4.1(p) - ACCESS TO JUSTICE, DELAY, AND RELATED ISSUES
9.00 Current time limits in child protection cases are ineffective 39
10.00 Court criticism of complacency about delay 43
11.00 Systemic justice delay is systemic justice denial 45

PART 5 - RECOMMENDATIONS
12.00 Recommendations for Improving Legal Representation and the Court Process for Innu Parents in Child Protection Cases
Recommendation 1: Legal aid eligibility should be expanded for Innu parents in child protection cases, and provision must be made for state-funded counsel to help Innu parents who are unrepresented in appropriate cases 47
Recommendation 2: A thorough study of child protection hearing timelines should be carried out, and alternative timelines considered 52
Recommendation 3: A program for the improvement and professionalization of Innu interpretation services must be established 53
Recommendation 4: Full-time Innu social workers must be trained and recruited for both Innu communities 56
Recommendation 5: Innu parents must be fully seen and heard during court appearances in child protection matters 59
Recommendation 6: Absent full consent of the parents, substantial hearings in child protection matters must be held in their home community 60
Recommendation 7: Dispute resolution methods must be expanded and employed in child protection cases 65

13.00 CONCLUSION 67

ENDNOTES 68

EXECUTIVE SUMMARY

This research report addresses legal issues related to the child protection system as it affects Innu, specifically its effects on Innu parents and their communities in Labrador. As was requested, the report focuses on items 4.1 (o) and (p) of the mandate of the Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System.

After traveling to Labrador to meet with those working in the child protection system and meeting with others in the Province who are involved in the delivery of child protection services in Labrador, I carried out limited research into the background and history of the system. I also reviewed the relevant legislation, both federal and provincial, and case law relevant to child protection, including the *Charter of Rights and Freedoms*. I reviewed some of the videos of testimony before the Inquiry and attended one Inquiry session in Sheshatshiu during my visit.

Although this report is future-oriented and service-oriented, it was necessary to review and analyze current practices in the courts that deal with child protection in Labrador. I was particularly interested in how the people involved, including judges, lawyers, social workers, interpreters, and parents, function in that system, what aids and inhibits their work, how they interact when together, and how they interact from a distance.

Focusing on the two small Innu communities involved, Sheshatshiu and Natuashish, I wanted to examine how the court and the stakeholders are present in those communities in child protection cases. One community is remote - Natuashish - and the other, Sheshatshiu, is close to larger communities. Both are now reserve communities, but each has a long history as village and town. Both have well-known strengths and challenges. Both also have critical governmental infrastructure, including band councils, chiefs, and a Grand Chief, that are key to the working of the communities.

A grounding principle of this report is that Innu must be much more involved in their justice system in general, and in the cause of child protection in particular. Child protection systems need Innu to play more prominent roles in them. There is already a growing leadership role for Innu in those systems. The recommendations made here are intended to build on that development while improving the ways all involved interact with one another to promote the best interests of Innu children.

This report makes seven specific recommendations. They relate to expanding legal aid services for Innu parents, reconsidering timelines for child protection cases, professionalizing Innuaimun interpretation services, adding more full-time social workers in Labrador, improving technology available for hearings, creating hearing spaces in Innu communities for longer hearings, and expanding the range of dispute resolution methods used in child protection cases in Labrador.

I wish to thank those involved for their cooperation in this work. I want to extend particular thanks to the staff of the Inquiry for their support and guidance in my work.

BIOGRAPHICAL DETAILS FOR WILLIAM J. ENGLISH

I worked as a lawyer in Newfoundland and Labrador from 1976 to 1986, and again from 1995-2000. Between those years I practiced law as a licensed attorney in the State of California from 1987 to 1994.

From 1976 to 1979 I worked with the NL Legal Aid Commission as a staff solicitor on criminal and family law cases. There were no legal aid offices in Labrador then. Though based in St. John's, I travelled about 10 weeks per year to Labrador, to court circuits in Nain, Hopedale, and Davis Inlet and to the court centre of Happy Valley-Goose Bay. At each location I worked with clients involved in criminal, child protection and other family law cases.

From 1979 to 1983, as an associate in a private St. John's law firm, my work included criminal and family cases, including cases assigned to me by Legal Aid. From 1983 to 1986 I was a partner in a St. John's law firm, again handling legal aid cases.

In California I was involved in transactional and litigation work, on both plaintiff and defense sides. In 1995 I rejoined Legal Aid until 2000. I helped establish the first conflicts protocol for Legal Aid and was the area director of the first conflicts office. My work involved significant criminal cases, some involving indigenous clients from Labrador, and family law cases throughout the Province, many involving child protection.

In November 2000 I was appointed to the Provincial Court of NL. At my request I was assigned to Labrador, travelling in early years to 13 Labrador circuit locations, including Sheshatshiu and Davis Inlet/Natuashish. I lived and worked in Labrador until May 2014. I then worked part-time with the Court until retirement in 2019.

In 2013 I completed an LL.M. degree program in alternative dispute resolution at Osgoode Professional Development/York University. I am a founding member of non-profit groups promoting family dispute resolution and indigenous justice. I serve on the executive board of the Newfoundland and Labrador Historical Society.

For over 15 years I organized and taught family law issues to new lawyers in the NL Bar Admission Course. As a judge I was education chair for Provincial Court Judges, teaching judges in national and regional programs on criminal and family topics. With colleagues, I currently organize and teach an annual dispute resolution program for new law students in this Province.

PART 1 - SCOPE OF THIS REPORT

1.00 What this Report is About[1]

1.1 I was asked to focus this research project on items 4.1(o) and 4.1(p) of the terms of reference of the Innu CP Inquiry, which address the following issues:

(*o) availability and quality of legal representation for parents of Innu children and youth involved in the child protection system, and barriers to effective legal representation;*

(p) access to court time for Innu child protection cases, the effects of court delays, and difficulties for Innu with the child protection court process and alternative decision-making processes outside of court;

1.02 There have been many investigations, reports, and reviews of Canadian child protection systems.[2] There is a debate as to whether these reports and investigations[3] have resulted in significant improvement.[4] In 2019 this Province's Office of Child and Youth Advocate ("CAYA') published a report entitled "A Long Wait for Change," a comprehensive review of the child protection system as it relates to Inuit children. Only one of its 33 recommendations addressed legal aspects of the child protection system. Recommendation 31, addressed to the Department of Justice and Public Safety, stated:

> *[that] Department of Justice and Public Safety engage justice system service providers to explore ways to improve access and timeliness of*

advice, services and decisions for family law matters in Labrador and ensure appropriate supports to implement the plan. This is particularly urgent where communities are served by circuit courts.

1.03 The mandate of the current Innu Child Protection Inquiry is consistent with this recommendation 31, as it would apply to Innu parents and children. No doubt any change that would benefit Inuit children is likely also to benefit Innu children and their families, as well as the broader community. Recommendation 31 refers to “justice system service providers”, which includes judges, lawyers, and their staff, as well as social workers and other support persons working with or within that system. It emphasizes “timeliness” of “advice, services and decisions”, and “access” to the same. It calls for “appropriate supports“ for all such providers. It makes particular mention of remote, usually indigenous, communities that are not serviced full-time or at all by courts or by service providers.

1.04 In my work leading to this Research Report, I was made aware of systemic changes to child protection since 2019 that have benefitted both Inuit and Innu communities.[5] Many parts of the 2019 CAYA Report have been implemented or are in progress. However, regarding Innu children and families, all the contributors to my research report say the child protection system needs further support and innovation. A mandatory five-year review under section 102 of this Province's *Children, Youth and Families*[6] *Act* ("*CYFA*") is ongoing, with active Innu participation. There will always be debate as to what type of support and innovation is required, for which the present

Inquiry will be a key instrument. My focus is on the legal system that deals with child protection, how it works now, and how it can be improved.

1.05 After a brief introduction discussing legal and therapeutic perspectives, I will describe the legal and procedural context of child protection cases as they currently move through the courts. Following that, I will examine the two mandates - 4.1(o) and 4.1(p) - under these discussion elements:

a) availability of legal representation;

b) quality of legal representation;

c) effective legal representation;

d) barriers to effective legal representation;

e) access to court time;

f) effects of court delay;

g) difficulties that Innu experience with the process; and

h) alternative decision-making processes.

2.00 The Purely Legal Perspective

2.01 From a strictly legal viewpoint, a child protection proceeding is a civil matter, comparable to personal injury claims and divorce cases.[7] The chief distinction is that a child protection case is not a criminal case and does not in itself give rise to criminal charges or penalties. The fact that evidence in a child protection case may allege behavior that could be charged as a criminal offense may increase its emotional impact but does not change the nature of the case.[8] What criminal cases and child

protection cases have in common is a psychological element: in each, the evidence can be very intimate and the stakes are very high.

2.02 A different question is whether the law treats a child protection case as an adversarial process, given the fact that there are clearly adverse interests involved.[9] The consensus is that child protection should be regarded as non-adversarial. That being said, no matter how it is categorized, once a child protection apprehension or removal occurs, the question of the child's future care will often be contested. Many families will ultimately be the subject of a court order after a hearing open to all sides.

2.03 The Supreme Court of Canada (SCC) has held that a child protection case involves basic individual and family interests, and that issues arising under such cases may be affected by the *Charter of Rights and Freedoms [*"the *Charter"]*.[10] The requirement for procedural fairness is one of the principles of fundamental justice developed at common law and engaged under the *Charter*. This fundamental principle will even prevail over the best interests of a child when the two principles are in conflict.[11] The importance of procedural fairness in child protection proceedings under section 7 of the *Charter* was first recognized by the SCC over 25 years ago in a New Brunswick case.[12]

2.04 The requirement that there be a fair hearing allowing the opportunity for parental participation applies to all hearings where governmental authorities seek an order for custody of a child. However, the fair hearing principle does not necessarily

require a full trial or hearing at which *viva voce* evidence (testimony) is presented. In appropriate circumstances, a summary proceeding may be preferable to protect the best interests of the child while ensuring the opportunity for effective parental participation.[13]

2.05 Through government lawyers, the Manager[14] prosecutes the child protection case, and the parents[15] may respond to it, with or without the help of a lawyer. The parents may consent to the application or may contest it. If a parent consents, a court order usually results. If a parent contests, they are, in effect, asserting their right to make decisions about their child's care, and a court hearing is likely to be held.

2.06 The central allegation in the case is that a child is "in need of protective intervention", as defined by law. It is not necessary for the Manager to prove this allegation to a criminal standard, that is, beyond a reasonable doubt. The Manager is held to a lesser standard, which is proof on a balance of probabilities (effectively, more likely than not).[16] On that standard, the Manager must prove there is a risk of harm to the child if no protective order is made by the court.

2.07 At the conclusion of a protective intervention hearing, the court must decide whether the child is in need of protective intervention. If that is found to be the case, the court has some discretion as to what happens to the child and for how long.[17] However, a court must always err on the side of placing the child in a care arrangement

where the child will be protected, regardless of the family situation.[18] If the court finds the child is not “in need of protective intervention”, the court must return the child to the care of the parent(s).

3.00 A Trauma-Informed Approach

3.01 Although child protection systems have been in place for a long time, those systems are much more nuanced than they once were. One modern element is the therapeutic perspective, sometimes called a “trauma-informed approach.”[19]

3.02 In most child protection scenarios, some or all of the parties will show evidence of the effects of trauma. Sometimes the trauma predates or is part of the allegations in the case; often, the trauma continues during and after the case. Symptoms of trauma include high anxiety, low functioning, addictive and acting-out behaviours, and disturbed thinking. The symptoms may be evident in the parents, the children, and their extended families and associates. Practitioners are very familiar with the presence of these factors in most child protection cases. Families may or may not be aware of the trauma element, and parents, as they first become involved in the system, may be largely unaware of it.

3.03 Once a child protection case moves to litigation, more trauma and pain cannot be avoided. It is never a happy process, and there are no true happy endings, or at least no easy ones. For example, when children who have been in care for years

return to their home communities, they often find it very difficult to fit in. Unfortunately, many end up on the criminal court docket due to such issues.

3.04 Thirty-five years ago, in *Trauma and Recovery,*[20] Judith L. Herman examined the links between the conflicts we, as a society, carry about experienced trauma and the conflicts we hold regarding working toward recovery from that trauma. In her 2023 book *Truth and Repair: How Trauma Survivors Envision Justice*, Herman expanded this link to the concept of seeking justice: "*…*the suffering of traumatized people is a matter not only of individual psychology but also, always, of social justice.*"*[21]

3.05 Herman gives the example of Vietnam veterans who, designated as "safe at home" after their active service, felt they were "forever in Vietnam" due to their PTSD.[22] Serious trauma seldom allows those affected to fully escape, although it may allow for recovery. Sadly, society at large does not understand that there are many persistent obstacles to recovery from the effects of trauma.

3.06 In *Truth and Repair*, Herman identifies the link between power, or lack thereof, and trauma and recovery. She states: "If traumatic disorders are afflictions of the powerless, then empowerment must be a central principle of recovery. If trauma shames and isolates, then recovery must occur in community."[23] Child protection cases are a true paradigm of that pattern. Although the wealthy and privileged occasionally fall into the child protection world, the poor, vulnerable, and disadvantaged make up the vast majority of the adults and children within the system.

3.07 Herman and many others have shown that trauma effects flowing from situations of child neglect and abuse, which are the perennial premises for child protection, cannot be separated from the origins of those traumas. To treat the symptoms without identifying the syndrome and its origins is a false and ultimately futile approach.

3.08 Herman also identifies a cultural component to violence and trauma, and the need for culture change.[24] It is well documented that indigenous communities in Canada carry the traumas of many generations on their backs and in their families. Therefore, it is no surprise, as found in previous reports, that "(i)ndigenous children are critically over-represented throughout Canadian child welfare systems"[25]. The roots of indigenous trauma in colonialism, dislocation, poverty, and discrimination are not yet close to being behind us in Canada or in other countries with indigenous peoples.[26]

3.09 In the absence of supports and interventions, the lingering effects of the inter-generational trauma tend to spread within indigenous groups like a communicable disease that infects and disables new generations, even newborns. In Newfoundland and Labrador, it is a sad irony that indigenous communities are having and raising children at a higher rate than any other social group[27], yet so many of those children end up lost to their communities through the child protection process. While governments, including Innu, and private agencies have been working hard to ensure a healthy young population, Innu and other indigenous groups have been losing so many

of their young, especially through child protection removals, addiction, incarceration, and suicide. This remains both a provincial and a national tragedy and shame.

3.10 One of the lessons of the truth and reconciliation process in Canada is that all major challenges for indigenous communities must be addressed through a lens of how the proposed solutions will aid reconciliation. In the Innu child protection world, none of this can be done without Innu taking a leading role. In effect, it is a new way of thinking about how to foster positive change among indigenous peoples. Child protection solutions must involve indigenous communities as equals; those solutions must emerge from a consultative and partnership approach. This research report adopts that approach as a leading principle.

PART 2 - HOW THE CHILD PROTECTION SYSTEM WORKS IN LABRADOR

4.00 Who Deals with Child Protection Cases in Labrador?

Lawyers

4.01 For over fifty years[28] lawyers and others employed by the NL Legal Aid Commission [“Legal Aid”] have had the responsibility of representing Innu and other parents in child protection cases in the Province. Those individuals, with the title of staff solicitors, include resident lawyers attached to the Legal Aid office at Happy Valley-Goose Bay (“HV-GB”), with assistance from the Wabush office and other offices in the Province. The HV-GB office includes a Child and Family Office, comprised of one full-

time staff solicitor, one full-time social worker, and administrative assistants. Those personnel live in the Lake Melville area.

4.02 To be assisted by Legal Aid, a parent must qualify for legal aid under its eligibility rules.[29] An information brochure for parents currently available at the HV-GB office states it succinctly:

> *After completion of a Presentation Hearing, you have 30 days to provide the financial information needed to complete your Legal Aid application. If you qualify financially, your file will remain open. If you do not, your file will be closed.*

4.03 The current approach is that Legal Aid will assist all parents at the initial stages of a case if the parents seek their help. Soon after the presentation hearing, parents must complete and submit a written application to Legal Aid that provides full financial disclosure or risk being rejected by Legal Aid. Once a parent completes the application process, he or she must be assessed for eligibility. If their income exceeds the maximum threshold prescribed, the parent will be rejected for legal assistance. In response to such a determination, a parent can file an administrative appeal with Legal Aid, which may result in a reversal of the earlier denial of eligibility. Once denied Legal Aid, parents have few good options for legal representation.[30]

4.04 It was in 2013-2014 that the Child and Family Office in HV-GB was set up as a separate office within Legal Aid. That office currently employs one full-time staff solicitor who works only with child protection and other family law cases. This is a significant improvement on the previous situation, in which all Labrador legal aid lawyers (usually 6 when all positions are filled) would act as counsel in those cases. Unfortunately, all staff solicitors carry a large criminal caseload and have demanding travel duties. For the past twelve years, Legal Aid has been fortunate to have one specialist lawyer handling child protection cases. That lawyer is supported by a full-time registered social worker, an Innu community worker, and clerical assistance.

4.05 Due to their long service, some of those Legal Aid staff must be described as fully experienced in child protection work. Their training and experience help them cope with a demanding caseload.[31] Other lawyers in the legal aid offices in Labrador and elsewhere act for parents when they need separate counsel. Besides being large in number, child protection cases are known to be very difficult for professionals to deal with, especially in Labrador, for reasons described below.

4.06 A common difficulty for Innu parents and their lawyer in child protection cases is maintaining contact and communication. To address this and related difficulties, Legal Aid has, for over a decade, employed an experienced Innu community worker from one or both Innu communities. They assist Innu parents in initiating and maintaining contact with Legal Aid staff, especially to arrange meetings and

appearances for court dates. They provide parents with language interpretation[32] and guidance, primarily outside the courtroom.

4.07 Child protection cases can be document-heavy. The key document is a formal written application that the Manager's social worker prepares and files with the court, called an application for a protective intervention hearing. Relying on the available legislative grounds for such a proceeding, that application states the Manager's reasons for believing that a child is at risk and therefore in need of protective intervention. The Manager must also file a Plan of Care that sets out the Manager's choices for care of the child, at least in the short term, and eventually in the long term. It also states whether the Manager sees the case as requiring temporary care of the child or a permanent or continuous care arrangement.[33]

4.08 It is often necessary for social workers to remove or apprehend a child from the parents or whoever is caring for the child. In especially urgent circumstances, the Manager may authorize the removal of children from parental care without court authorization and before a court application is filed.[34] However, most removals of children are done pursuant to a court order called a warrant to remove. Before the Manager files with the court an application for protective intervention and a Plan of Care, a social worker will often have prepared and filed a detailed application to a judge seeking the warrant (a judicial authorization) to remove a child from the care of parents. The social worker acts on the authority of the Manager and prepares that warrant application under the supervision of senior social workers.[35]

4.09 Some warrant applications are filed before or soon after the birth of a child and seek the apprehension of the infant, usually before the child leaves the hospital. Social workers file all “warrant to remove” applications without prior notice to the parents.[36] A judge will review those applications “in chambers”, meaning not in open court or on the record. The judge may decline to grant the removal order. If the judge grants the removal order, that order will require that the fuller application for protective intervention be filed forthwith, that dates be set for presentation and protective intervention hearings, and that the parents be served quickly with notice of the order.

4.10 When parents are served with a warrant for the removal of their child, or with an application for a protective intervention hearing, that is often their first notice that they will need legal representation. However, some parents will already have had contact with a lawyer. They may have been previously represented by a lawyer at the Legal Aid office. The parents may also have been working with the social workers and others concerning their children and may be aware that their children could be removed if certain agreed-upon or mandated conditions are not followed.

4.11 However, even after receiving court documents, not all parents will realize they need legal advice. There is a significant language and cultural issue involved. Court documents are detailed and complex; they are written in the English language. They are often served on parents who are in crisis or, if not immediately under the influence of intoxicating substances, under their ongoing or lingering effects. We have already touched on the trauma effects present in many Innu families; these effects may

affect functioning, give rise to psychological conditions, and make dealing with court documents very difficult.

4.12 To complicate matters, many Innu parents are very young, with low levels of formal education. There are high levels of illiteracy and a significant unhoused or insecurely housed population in or near Innu communities. Parents are often in a poor position to grasp the significance and urgency of court documents. Many parents are preoccupied or distracted by other urgent concerns. They may be in the midst of their own addictive behaviours, or those of their family members and associates. Many are away from their community for work, education, family travel, medical treatment, or other reasons. Some are detained or incarcerated for matters that may or may not be part of the grounds for the proceeding. Some are victims of violence and intimidation, often at the hands of the other parent, a partner or ex-partner, or other persons. Finally, neither Legal Aid offices nor their lawyers live in the Innu communities, and transportation to those offices is expensive. All these circumstances tend to delay or prevent parents from promptly seeking and obtaining legal representation.

4.13 Once a parent has contacted Legal Aid, they become entitled to legal advice and representation, subject to later completing the legal aid eligibility process. They can meet with the Legal Aid lawyers and their team. Unless they can prove they are recipients of social assistance income, they must disclose and document their complete income and expenses. Confirming their income and expenses may be a simple exercise or not. The income of a spouse or partner may often be relevant.

Parents may complete an application in their home community with the help of the Innu community worker working with Legal Aid. Sometimes they receive informal help reading, understanding, and completing documents from the staff at Innu Roundtable Secretariat [IRTS].

4.14 Once their legal aid application is complete and delivered to the Legal Aid office, parents may continue to have representation from a Legal Aid lawyer. If there are two parents involved, they may each have a lawyer from within a Labrador Legal Aid office or from other Legal Aid offices. Legal Aid has a protocol that will provide clients with separate lawyers, especially where conflicts of interest exist.

Judges and Courts

4.15 The Provincial Court of Newfoundland and Labrador (NL) has exclusive jurisdiction to hear child protection cases in Labrador.[37] The government of the Province appoints Provincial Court Judges [PCJs]. There are currently three provincial court judges residing in Labrador.[38] The court has permanent judicial centres in HV-GB, which is in central Labrador, and in Wabush, which is in western Labrador. When needed, judges from outside Labrador can assist with the work by presiding in person or virtually (remotely by technology) on Labrador matters. However, the three Labrador judges hear almost all the Labrador child protection cases.

4.16 PCJs in Labrador have had jurisdiction to hear child protection cases for many decades. The salaries, education, and travel expenses of PCJs, the costs of their

support services, and the lawyers on both sides of such cases are a provincial government responsibility. PCJs travel as a circuit court to Labrador coastal communities, including Natuashish, the Innu reserve on the central north coast.[39]

4.17 PCJs have significant advantages in Labrador for child protection work. They travel on regular court circuits to the largest coastal communities, including Natuashish, to deal with criminal and family cases. These circuits make the court more easily accessible for residents to attend court hearings in those communities. Each of those communities is unique. By traveling to the communities, PCJs acquire knowledge of the life and resources in each community. They also get to know the people who live there and the residents who provide resources for parents and children. They also become familiar with the issues and complexities of each community. This valuable local cultural knowledge is an asset that is used when dealing with child protection cases by both courts and lawyers.

4.18 In Labrador the Supreme Court, Trial Division, is the court with superior court jurisdiction.[40] It does not hear child protection cases, except on appeals, which are rare. The Supreme Court is not primarily a circuit court in Labrador but has always had the jurisdiction to travel and convene cases as and where needed. In recent years, Supreme Court judges have made efforts to travel to coastal communities, primarily for criminal cases.[41] Circuit travel can be onerous and expensive; however, regular travel by PCJs to small and remote indigenous communities is well-established and long thought to be necessary and reasonable.

4.19 Lawyers are entitled to appear in Provincial Court and Supreme Court on child protection matters. However, unlike in Provincial Court, unrepresented persons appearing in Supreme Court may feel intimidated by the formal processes and the gowned personnel. The Supreme Court has a long tradition of expecting written applications in almost all matters. This may make it difficult for a layperson to communicate with the court (other than as a witness) in any case. The problem of non-representation is widespread in Canada because there are often gaps in family court representation.[42] There may be ways to mitigate this issue, as will be discussed below.

4.20 The Provincial Court of Newfoundland and Labrador is primarily occupied by its large criminal caseload, as it is the primary court for criminal cases in this Province. As a rule, the Supreme Court is not as burdened as the Provincial Court by criminal work. In recent years, most of the cases heard by the Supreme Court in Labrador have been family and civil cases. Only serious criminal cases fall within the Supreme Court's jurisdiction, and few of those go to full trials in Supreme Court.

4.21 Substantial criminal matters will at times occupy, and even overwhelm, the Supreme Court docket in Labrador. That being said, the absence in Labrador Supreme Court of an everyday criminal calendar is the main practical distinction between the work of the two courts. In Provincial Court, family cases may have to fit in around a large criminal caseload.[43] Criminal cases include not only trials but also sentencing hearings and judicial interim release (bail) hearings, any of which can be lengthy and contested.[44] The Provincial Court also deals with federal and provincial regulatory

cases, such as environmental, fishing and wildlife matters, and traffic violation cases. It is the court where small claims cases are heard. Its family law jurisdiction in Labrador includes cases related to the parenting of children and family support.

4.22 There is a provincial agency called Family Justice Services (FJS) that offers[45] valuable mediation services to parties in family law cases in both the Supreme Court and the Provincial Court. It operates administratively as an arm of the Supreme Court. The courts refer all parties to FJS as soon as they file documents with the courts. FJS does very useful work in resolving such matters, but only those involving child support and child parenting (custody and access).[46]

4.23 PCJs in this province, and elsewhere in Canada, lack one important part of the broad jurisdiction that superior court judges enjoy. In the context of child protection cases, one relevant power that PCJs lack is *parens patriae* authority[47] It has been held that this special jurisdiction at least gives superior courts the power to supervise the exercise of authority over children and other vulnerable persons (if not to strike down legislation).[48] This power carries on the ancient equitable authority of superior courts to make orders related to children as required to promote the children's best interests. Where the Supreme Court deals with child protection and other family cases, that power may be important. That being said, the legislation dealing with child protection operates as a comprehensive code on the subject; it prescribes in detail the powers, duties, and options available to a court hearing child protection cases. There may now be a limited role for *parens patriae* authority in child protection cases. It must

be recalled that this *parens patriae* jurisdiction, like all court powers, operates in the shadow of the *Charter of Rights and Freedoms*, which is paramount and applies to all courts.

Social Workers

4.24 Social workers employed by the Manager are responsible for dealing with individuals being provided services under the *CYFA*. This includes work related to the prevention of neglect and abuse, as well as the investigation of referrals, that is, complaints related to the welfare of children, and the enforcement of the powers granted to social workers under the Act. The Fowler Report (2008) noted the heavy responsibilities of Labrador social workers, and in particular, how difficult it was for social workers to maintain communication with clients due to their workload. This observation is especially relevant in rural and remote Labrador communities.[49]

4.25 As stated in the Turner Inquiry Report[50], “social work is a strict responsibility”. For Innu parents and their children who fall under the Act, social workers have enormous power and influence over their lives, with heavy duties and wide discretion[51] to carry out their role in a fair and humane manner, while at all times maintaining a stance that is protective of children.

4.26 Social workers report to and are supported by the Manager in their district. In Innu communities, social workers also collaborate with IRTS under an innovative protocol established in 2021.[52] The roles of these agencies coincide in that they both

support Innu families within their individual mandates, and to the extent possible, they cooperate in doing so.

4.27 Social workers also appear in court when required for hearings. This may occur at the request of legal counsel for the Manager, or as a result of a subpoena issued by the court (when the social worker is a potential witness), or on their own initiative for purposes related to their duties regarding a case. Social workers will also play a leading role in record-keeping, document disclosure, and case conferences as they are required or scheduled under the Act or on their own initiative. Social workers often help parents obtain services for their personal issues. Innu communities are small villages, so there are many other ways that social workers become involved with parents, children, counsel, caregivers, and community service providers.

4.28 Recruiting social workers for work in remote areas has always been a challenge in Canada. In recent years, it has become more difficult to hire and retain child protection workers as full-time resident employees in Labrador. As a result, many social workers employed by FAMA (formerly CSSD)[53] in Innu communities or on programs have been working on a rotational basis. This means they travel into the Innu communities for periods, such as two-week stays, during which they do their work. Sometimes they travel from outside Labrador.

4.29 As can be anticipated, notwithstanding the high level of dedication of the social workers involved, this rotational system can give rise to gaps in service. This gap

occurs when the worker assigned to a family is not in Labrador but is employed or on personal time elsewhere. In urgent circumstances when a decision is needed in a case, a resident supervisor or another resident social worker, if any, with responsibility may make that decision. Sometimes the decisions are minor, such as a routine medical appointment for a child, but they still require social worker input and authorization.

4.30 When the responsible social worker familiar to Innu parents and their files is not available, problems can occur. I have been told the situation is sometimes more complex when resident supervisors or social workers are not able or prepared to deal with an issue related to the parents or the children, either because they do not feel it is urgent or they feel only the assigned social worker should make that decision. This is not a novel problem, as any social worker can be absent from their duties for any reason. The Turner Inquiry Report made a recommendation to address this general problem as follows:

> *Recommendation 7.15*
>
> *THAT when a worker responsible for a child … is on leave, or absent for whatever reason, another worker must be assigned and the person responsible for the child's care be informed of the name of that person to ensure constant monitoring of the child's safety and security.*[54]

4.31 If social workers must be regularly absent from Labrador, an obvious response is to recruit more social workers. Doing so would allow social workers with full

authority to be continuously present in Innu communities. A solution is on the way, though not a quick one. I was advised there is a hybrid education program ongoing for Innu social workers in cooperation with an indigenous college in British Columbia.[55] A number of Innu students have completed the first year of this indigenous-centered program. Year two of that program is underway. Students can work towards a Bachelor of Social Work degree over four years. This is a very positive development. The future of child protection and other aspects of social care in Innu families lies in the training of young Innu people to provide professional services such as social work in their own communities.

How Well Do Court Hearings Work?

4.32 It is essential that the court that hears child protection cases is able to conduct them in a manner that allows parents to be fully present by both hearing what is said and being heard. The majority of court appearances in child protection cases are short hearings such as case management, status, and scheduling hearings. The court holds many of those hearings remotely via technology. Remote hearings via technology can work well as long as the technology functions properly, meaning that all are able to hear and see one another clearly. Undoubtedly, the form of hearing should be otherwise fair and reasonably convenient for the parties and their lawyers. Substantial hearings such as presentation hearings and protective intervention hearings may take place on circuit or at the judicial centers, although the court has heard them remotely as well.

4.33 PCJs have a choice whether to hear child protection matters in person or remotely, or by some hybrid of those. The court has access to technology that allows hearings to take place remotely and enables parents and lawyers to appear remotely. That technology includes both teleconferencing, also called web or video conferencing, and telephone.[56] Some Innu parents, though by no means all, have cell phones and/or computers, which allows them to take part remotely, where services allow.

4.34 Courts in Labrador have only used video technology regularly since the mid-2010s. Landline phones have been around for decades, but mobile or cell phones did not come into general use until the late 1990s or early 2000s. Originally, the video conferencing equipment was stationed in RCMP detachments at the initiative of RCMP officers to facilitate criminal appearances by the accused.

4.35 Periodically, there have been breakdowns in the videoconferencing capacity in Labrador that prevent its use for varying lengths of time. Sometimes neither the phone nor the video, though operational, has been working as expected. Nevertheless, the court has come to rely on using technology in this way on a regular basis. This reliance has been more complicated in Innu communities. Court circuit visits to Sheshatshiu stopped around 2010. Court circuits to Natuashish have continued to be regularly scheduled, but in practice are less frequent and less regular than even 10 years ago. The use of technology is not the cause of fewer circuits, but rather one of the results of it. Given the remoteness of Natuashish, there are other reasons why circuits are delayed, shortened, or canceled, such as non-flying weather, unavailability of court

space or other essential services, concerns regarding the availability or quality of accommodations, and the absence of key personnel.

4.36 Parties to a child protection case may agree on which hearing location is reasonable and convenient and which technology is appropriate to use for that hearing, always subject to court approval. The parties and their lawyers may or may not have input in advance on the issue of hearing location, as the court must be pragmatic and adapt to what is available. In that circumstance, all parties participate as best they can.

4.37 When Innu parents take part remotely, this often means they are not present in a court space or even where the judge, lawyers and social workers are. Instead, the parents use a phone or other internet-based device to join the proceedings. This will often mean the parents will not be able to communicate readily with their lawyer during the hearing. In most remote hearings, the proceedings are picked up through a central console in a courtroom that transmits the voices of the judge, counsel, the parties, and witnesses, if any. Depending on where the parents are and the quality of their devices, the clarity of the audio on all ends will vary widely. Parents may be at home, where they are subject to background noise, distractions, and interruptions normal in any home. I was told that Innu parents may at times be at IRTS offices or social workers' offices where a worker is present and can assist them and the court, which helps everyone involved.

4.38 The difficulty for parents when participating in remote hearings is increased as the hearing lengthens or becomes complex. This is especially true when witnesses are testifying and where interpreters are being used. Where the hearing involves numerous witnesses, including social workers, police officers, family members, and interpreters, a remote hearing can be much more difficult for all to even know who is speaking. Parents will often not be able to hear or understand, which can result in their not understanding,which could rise to the level of unfairness and engender resentment at the process. Poor sound can also frustrate courts and lawyers. Such limitations may also complicate or defeat the creation of a record of the proceedings, which is essential for many purposes, including any appeal. Though a hearing with all parties present to the maximum degree possible will nevertheless be difficult for parents for emotional and practical reasons, it will usually be more efficient and fairer to all concerned, especially when it involves a full hearing with witnesses.

PART 3 - ANALYSIS OF MANDATE 4.1(o) - LEGAL REPRESENTATION

5.00 Availability of Legal Representation: Ready, Willing, and Able?

5.01 Legal representation in child protection matters is what the Canadian Bar Association (CBA) calls an “essential legal need”. The CBA describes essential legal needs as ones “that arise from legal problems or situations that put into jeopardy a person’s or their family’s security – including liberty, personal safety and security, health, employment, housing, or ability to meet the basic necessities of life.”[57] Child protection interventions often affect all of these elements for a family. Once the ability of

a family to be together is restricted, the lives of parent and child are fundamentally changed, sometimes forever.

5.02 Legal representation refers to being spoken to, advised, and spoken for by a qualified legal practitioner, who could be a lawyer or a paralegal/legal assistant. In our Province paralegals and legal assistants are not usually lawyers, but rather individuals with legal training and experience who work under the supervision of a lawyer.[58]

Ready, Willing, and Able

5.03 A parent may receive legal services in child protection cases from any legal practitioner. Social workers attached to such legal professionals may provide the parents with ancillary support services. However, child protection is a specialized field requiring familiarity with a wide range of social and legal factors. Basic competency in these areas is essential. The phrase “ready, willing, and able“ comes to mind when one asks what the key qualities of such a legal representative should be.

Readiness

5.04 Readiness connotes availability and accessibility. Those are somewhat addressed by the current legal system. Since 1975 legal services in child protection matters have often been provided through the agency of the NL Legal Aid Commission. Legal Aid is only available to certain members of the public and in limited situations. Many Innu parents in Labrador will, by virtue of a combination of low income and high family and living expenses, qualify to be represented through Legal Aid.

5.05 Legal Aid has provided parents with the help of staff solicitors, paralegals, social workers, and legal assistants when needed. It also has a social worker who assists lawyers in reviewing documents and helps parents with the practical demands of being involved in such a case.

5.06 The primary work of a legal representative comes down to skilled communication. This can be straightforward, but in most child protection cases, it is not. Experience and a degree of specialization make the communication work better. As discussed above, there are many impediments to good two-way communication between lawyers and clients in such matters. Those impediments are further discussed below in relation to barriers to representation.

Willing and Able

5.07 The “willing and able” part is more complex than might be thought. Many Legal Aid lawyers live and work in Labrador and are comfortable doing so. However, based on my long experience in Labrador, many lawyers, most of whom live on the island part of NL, have little knowledge of Labrador and are reluctant or otherwise unavailable to travel to Labrador; some are hesitant to act in child protection matters. That is not unique to Legal Aid lawyers; many private practitioners shy away from the practice of family law in general. This may in large part be due to a lack of training and experience. The family law bar in this Province is quite small. That being said, Legal Aid has the largest contingent of experienced family law practitioners in NL. Yet, most of

them are on the island portion of the Province and some find it difficult to travel to Labrador to act for Innu people in child protection matters.

5.08 Therefore, it can be said that most Legal Aid lawyers are not available to deal with the very cases that most affect Innu families in Labrador. This is not in any way to minimize or disparage the work those lawyers do, or the heroic efforts of the Legal Aid lawyers who either live in Labrador or come there regularly to assist in family and criminal cases. It is merely to point out that those lawyers who regularly handle child protection cases in Labrador are few in number.

5.09 The “able’ part is also more involved than one would think. Almost all lawyers receive some training in child protection matters, if only in the bar admission course that all new lawyers must complete.[59] However, that training is brief and primarily academic, concentrating on the legislative scheme for child protection and certain basic laws. That training should familiarize them with important legislation, rules, and court decisions. It may or may not provide practical experience with child protection clients and cases, whether in office or in court. Therefore, a special effort is required to enable any legal representative who takes on child protection matters to have the relevant basic and continuing legal education and real-life experience in that field, including in the social sciences.

5.10 In summary, legal representatives and their staff who assist Innu parents in their child protection matters need training, preparation, continuing legal education,

guidance, and assistance to be “ready, willing, and able” to do that job consistently and well. Innu parents deserve no less in cases that are crucial to their family life.

6.00 Quality of Legal Representation: How Timely Should Advice Be?

6.01 Having “ready, willing, and able” lawyers does not always ensure that parents get advice when needed. The legal aid office in HV-GB has responsibility for all child protection matters in Labrador. Most of those lawyers deal with a very large criminal law workload, as well as family matters that are not child protection cases. The central question is whether lawyers are available there when needed to advise on legal matters.

6.02 Child protection matters are unique in their demands on lawyers and clients. Firstly, such cases are complex, difficult, and intense. The documents involved include child protection worker case notes, referral records, and other assessments, investigations, and expert reports related to children and their families. The volume of those documents may continue to expand as the case progresses and even after some of the children are no longer minors. Many cases involve multiple children of the same parents and their blended families. Much of the evidence and many of the documents relate to traumatic events that are relevant to behaviours at issue, including difficult-to-hear incidents involving children.

6.03 Secondly, child protection cases may move slowly, requiring legal advice on a protracted basis due to the necessity of follow-up, research, and meetings among

all involved. Parents often need to report developments, ask questions, update lawyers on meetings with social workers and documents sent to them, and arrange for contact with their children. In practice, time spent in court is usually the smallest portion of the work in such cases.

6.04 Thirdly, such cases are subject to frequent court appearances, especially in their early stages. This is because current procedures require early hearings, and courts try to schedule one or two-month follow-ups in the form of case management hearings or status hearings. All appearances occur under the shadow of the legislative timelines for child protection hearings, about which more is said below.

6.05 Fourthly, there may be delays in getting lawyers assigned to a child protection case. Not all those delays are related to the policies and procedures of Legal Aid. Any such delay can have serious consequences. There are actually two stages to such an assignment. However, the substantive part of being assigned comes after the parent has completed the application for a lawyer and the lawyer has been assigned to conduct the case to its conclusion.

6.06 Until a particular lawyer is assigned under Legal Aid procedures, other lawyers may appear in court on behalf of parents. Sometimes the lawyer is acting in a “duty counsel” or interim role. Such interim counsel may have received and reviewed disclosure on a case file.[60] Nevertheless, delays or failures in assigning a lawyer limit

the “quality” of the representation parents receive and may impair the trust parents have in their lawyer(s). To rephrase a familiar saying, advice delayed is often advice denied.

6.07 However, efforts have been made to limit delay through this issue. There is a Legal Aid team that responds as soon as contact is made with them. The Innu community worker is available to meet Innu parents where they live. IRTS is also in the community and helps parents respond to child protection cases in any way they can, short of providing legal advice. These factors have greatly diminished the delays that were previously experienced by Innu parents in child protection cases.

6.08 However, there may still be cases where ultimately no lawyer is responsible to carry the case to conclusion. This can occur when the parent does not complete a Legal Aid application, or when the parent who applies does not qualify under Legal Aid eligibility rules, or when, due to later issues arising, the assigned lawyer ceases to act on behalf of the parent. In such cases, the person may become unrepresented before the court.

6.09 What does the law say about an unrepresented parent who wishes to challenge a child protection authority’s application for a custodial order but is denied legal aid because they are not covered under legal aid policies? There is no legislative answer, nor do local court rules speak to it. The principal court decision is from 1999, the case of *New Brunswick (Minister of Health and Community Services) v. G. (J.)*.[61] In that decision, the SCC held that a provincial government was obligated to provide the

parent with state-funded counsel. The SCC held the parent's section 7 *Charter* right[62] was at stake. On weighing the pros and cons of the New Brunswick legal aid policy that resulted in the parent having no lawyer, the court stated:[63]

> [98] *Assuming without deciding that the policy of not providing state funded counsel to respondents in custody applications was a limit prescribed by law, that the objective of this policy -- controlling legal aid expenditures -- is pressing and substantial, that the policy is rationally connected to that objective, and that it constitutes a minimal impairment of s. 7, the deleterious effects of the policy far outweigh the salutary effects of any potential budgetary savings. …*
>
> *[100] The proposed budgetary savings are minimal and the additional cost of providing state-funded counsel in these circumstances is insufficient to constitute a justification within the meaning of s. 1 of the Charter. Moreover, the government's obligation to provide legal aid to a parent who cannot afford a lawyer only arises in circumstances where the representation of the parent is essential to ensure a fair hearing where the parent's life, liberty, or security is at stake.*

6.10 Despite my enquiries, I am not aware of any application made or granted in Labrador for state-funded counsel, as proposed in this decision. However, the need for a remedy, or at least a process, is clear in cases where a parent wishes to have a

lawyer in a child protection case but is without one after being disqualified from representation under provincial legal aid rules and procedures.

7.00 Effective Legal Representation: Being on the Case is Not Enough

7.01 Competent, available, and timely legal advice is a large element of effective legal representation in child protection. However, much more is required for effective representation of indigenous parents in such cases. Cultural awareness, which includes knowledge of culture, language, family, and community, is essential.[64] Efforts must be made to prepare lawyers and frontline social workers for their work within an indigenous context.

7.02 First of all, the legal representative has to know enough about the life and culture of the parent to be able to ask the right questions and to understand the responses. Innu life is obviously best known to the Innu. The best spokesperson for an Innu parent would be another properly prepared Innu person. The best educator in Innu culture is an Innu person, particularly an elder. For others, experiencing or learning enough of Innu life to feel familiar with its nuances is essential to speaking on behalf of an Innu person.

7.03 Secondly, speaking and understanding Innuaimun are skills that would enhance the experience between the representative and their client. As stated above, communication is key to representation. Having the language as a native or learned fluency will open up meaning and nuance that otherwise can only be guessed at. Using

interpreters is a poor, though often necessary, substitute for fluency, even when interpretation is done properly and with respect for dialect and dignity.

7.04 Thirdly, in the context of child protection, a representative must know or learn a reasonable amount about the five Ws of the client's family connections: who (are they), where (are they), when (is there contact with them), what (do they do in their lives), and why (are they important or not to the life of the parent and child)?

7.05 Lastly, a representative of an Innu parent must know the community in which the parents and their children were born, raised, and live. There may be more than one relevant community; each parent may have their own or more than one. One may be a reserve, but one is equally likely to be a non-reserve village, town, or city. Each provides social context, as well as characteristics that illuminate options for parents and children.

7.06 In brief, speaking on behalf of an Innu parent means appreciating what you know and what you do not know, plus knowing what is familiar and relevant to the parents and their peers. This may appear a daunting task, but it is not an impossible systemic goal if the objective is to speak with confidence and authority on behalf of an Innu parent.

8.00 Difficulties Regarding Interpretation

8.01 As stated above, all legal representation centers around communication skills. Every day in the child protection world, lawyers and clients must talk and exchange documents; lawyers must do so among themselves, and support workers and clients must do the same. All these people routinely prepare and exchange information, formally and otherwise, with courts, and vice versa.

8.02 In my experience, Innu are very good communicators, both among themselves and with others. However, the language of law and the courts in Newfoundland and Labrador is formal English, especially the language used in documents and processes. There are approximately 3200 Innu in the Labrador portion of this Province.[65] The first language of the Innu is Innuaimun. They have been remarkably successful in preserving their native language in everyday use. In Canada, as of 2021 just over 13% of indigenous people conversed in their own language in Canada.[66] Innu communities teach Innuaimun in their schools in Sheshatshiu and Natuashish.[67] It has been one of their central cultural values to preserve and grow their language.[68]

8.03. The distinctions between interpretation and translation are important. In daily practice, judges and lawyers recognize the need for English-to-Innuaimun and Innuaimun-to-English interpretation of what is said during court hearings. However, there is neither a requirement nor a practice of translating court documents, including warrants and court orders, from English to indigenous languages.[69] Although courts

make every effort to have child protection proceedings interpreted from and into Innuaimun, there is no express right by legislation or court rule to have documents translated or proceedings interpreted. In particular, the *CYFA* makes no reference to language rights or interpretation as they relate to court documents or court processes.[70]

8.04 There are no express language rights in the *CYFA* or elsewhere in provincial legislation or regulations. This gap acts as an impediment to the full and fair hearing of child protection cases. This is particularly so as regards court interpretation. The unavailability of interpretation can be a total impediment to hearings proceeding. This happens to Innu parents when no Innu interpreter is available to the court. Sometimes a hearing will start but be interrupted when an interpreter must leave, and other times it never starts at all. This is so despite the best efforts of courts and lawyers to arrange interpretation. However, without a clear statutory right to translation or interpretation, there is no governmental mandate to ensure the infrastructure and resources to ensure either is in place.[71]

8.05 As stated above, child protection cases involving Innu people are heard exclusively in the Provincial Courts in Labrador, primarily at Happy Valley-Goose Bay and Wabush. PCJs can also hear such cases in Natuashish, a court circuit location. If court interpretation is required, the court will usually have to find the interpreter in the community where the hearing occurs, although the use of technology may permit it to be provided remotely.

8.06 Providing court services, including interpretation resources, to Provincial Courts falls within the responsibility of the Province's Department of Justice and Public Safety ["DOJ"]. Judges and court staff have no authority to provide or fund interpretation resources. On the other hand, government responsibility for the expenses of the child protection system rests with a different department, namely, FAMA (formerly CSSD).[72] In effect, the responsibility to provide interpretation services needed for child protection matters may fall on two government departments. This is not to say that department officials do not make efforts to cooperate on this issue. By way of contrast, providing funding for interpretation services in criminal cases in courts in the Province falls squarely within the power and responsibility of the provincial DOJ.

8.07 DOJ is involved in court services for child protection cases, as it is in all matters related to court services. Because only DOJ can authorize funds for hiring and payment of court interpreters in the Province's courts (Supreme and Provincial), DOJ officials and court officials, usually through the Court Services division, regularly communicate about such issues. However, there is no program for training or provision of interpreters in child protection (or indeed in criminal) cases. This is as true for Labrador as it is for the rest of the Province. Interpretation services now provided are *ad hoc*, meaning that, although services are provided, when possible, there is no organized program to ensure quality or availability in child protection or other cases.

8.08 Efforts have been made in the past to mitigate this situation. In 2007 the Province supported an initiative aimed at significantly improving interpretation services

in Labrador for Innu and Inuit. The project involved the creation and publication of legal glossary texts for both Labrador languages. In the foreword to those booklets, the DOJ Minister stated, “One of the key considerations in delivering justice services in Inuit and Innu communities is improving access through the use of appropriate language services.” The program provided training for Innu and Inuit interpreters and interpreter candidates. DOJ provided copies of the glossaries to interpreters, courts, law offices, and others. Training of interpreters occurred over a number of months, generally in week-long intervals, in HV-GB.

8.09 Innu communities responded well to this program. The training program was not inexpensive, given the cost of repeated travel and accommodations for the interpreter-students. Some Innu, including some interpreter trainees, were deeply involved in this effort.[73] However, despite the good work done, this initiative did not continue and has not been repeated.

8.10 Currently there is no program for the training and support of interpreters in Labrador or elsewhere in the Province. This is as true for interpreters needed in child protection matters as it is for those needed in criminal cases. Unfortunately, there are occasions when no interpreter is available despite the diligent efforts of judges, lawyers, and court staff. In those instances, child protection cases scheduled for hearing cannot proceed and must be delayed or rescheduled. This results in delays and potential prejudice to all involved, including children and families awaiting a disposition. Delay for any reason is predictably demoralizing to parents and extended family who wish to have

the cases related to their children completed as soon as possible. Delay because of a lack of interpretation must be especially frustrating to all involved. Solutions must be found to this unfair situation.

8.11 Under Canadian criminal law, courts have had occasion to apply the concept that certain acts and omissions, including decisions, bring the administration of justice into disrepute.[74] That concept has not been adopted in child protection cases.[75] However, a pattern of unacceptable delay or a lack of interpreter services in a child protection case does amount to circumstances that render justice inaccessible to the parties, through no fault of their own. Whether or not it would "bring the administration of justice into disrepute" is debatable, but the situation calls for a systemic remedy for a systemic problem. Some potential remedies are discussed below.

PART 4 - ANALYSIS OF MANDATE 4.1(p) - ACCESS TO JUSTICE, DELAY AND RELATED ISSUES

9.00 Current time limits in child protection cases are ineffective

9.01 The *CYFA* sets out specific time limits within which child protection matters are to be brought forward and heard in court. There are two types of hearings required under that Act. The first in time is a presentation hearing to assess if the child protection matter is substantial enough to go forward. The second is a protective intervention hearing to determine if the allegations that may justify a removal and custody order have been proven.

9.02 The legislation states precise time limits for hearings: (a) authorities have 24 hours after the apprehension of a child to file a child protection application in court; (b) they have 10 days after that filing for the court to start a presentation hearing; and (c) where a child has been removed, they have 30 days after the court filing to file a protective intervention application (section 26). However, there is no time limit for the completion of a protective intervention hearing.[76]

9.03 Unfortunately, none of the courts, the counsel, or the parents are able to comply with these time limits. There are many reasons for this.[77] There are consequences arising from not meeting time limits.[78] For many years, the court, the Manager, the parties, and their counsel have not been able to comply with either of these time limits for reasons further explored below. Perhaps because of this inability, the legislation allows the court to waive these time limits for limited purposes any number of times, up to three months in total.[79] In most cases, after a request from one or both counsel, the court will waive the time limits and adjourn the matter to a new date as necessary.[80] Neither court rules nor court procedures have been able to fully mitigate these timing issues.[81]

9.04 All Innu child protection applications must be filed and heard in one of the two Labrador court centers or on circuit. The Labrador Provincial Court is an extremely busy court. Apart from St. John's, the Labrador PCJs have had the highest total cases per judge when criminal and other matters are included.[82] Although the vast majority of

Labrador cases are criminal in nature, child protection cases continue to be a significant workload.[83]

9.05 Since 2013 the Wabush court has taken over part of the responsibility for child protection cases. Since 2020-21 Wabush has had responsibility for a significant share of those cases. Under this arrangement, all child protection matters, including those in HV-GB and on the Innu reserve of Sheshatshiu, are dealt with through the Wabush court center, usually by telephone or videoconferencing. The Provincial Court in HV-GB hears all HV-GB and Natuashish child protection cases, as well as those originating in most other circuit locations.

9.06 Most of the lawyers who act for Innu parents are attached to the HV-GB office of Legal Aid. Their dedicated specialist staff solicitor acts for parents on most child protection cases, aside from cases where actual or potential conflicts of interest exist. In that case, under the Legal Aid practice, the agency may provide one or more of the parties with counsel from a Legal Aid office (often called “conflict counsel”). Conflict counsel often comes from HV-GB, Wabush or from one of the five Legal Aid offices on the island portion of the Province.

9.07 At this point, the two larger issues I am discussing - legal representation and court process - could in combination result in delays. However, the information I have been given by all parties is that cooperation between experienced counsel and accommodation by the court have substantially eliminated delays from those causes.

This is a considerable improvement over the situation in the previous decade when completing and approving legal aid applications, appointing counsel, and completing disclosure routinely took months.

9.08 Where conflict counsel is required, the wait for representation may be longer. This is because some conflicts[84] take time to be discovered, which usually occurs after the first counsel has met and interviewed the client(s), or when he or she has received and reviewed written disclosure. Legal aid intake workers must request conflict counsel and identify that counsel. Conflict counsel must then review and analyze, at least preliminarily, all relevant case disclosures.[85] Conflict counsel must also meet and speak with the parent, by telephone, by video, or in person, to receive instructions on the case, which may require the use of interpretation.

9.09 During this process, language and cultural gaps may complicate communication. Once selected, conflict counsel must prepare for the next court date and determine whether he or she is able to comply with the schedule set by the court and the statutory time limits. These factors are another reason why there are often waivers of time limits requested by counsel and granted by the court. The result is that there are no effective time limits in Labrador for hearings of indigenous, including Innu, child protection matters.

10.00 Court criticism of complacency about delay

10.01 The Newfoundland and Labrador Court of Appeal has recently made a strong comment on the prevalence of delay and the harm caused by delay in child protection cases. In *L.B. v. Newfoundland and Labrador (Child and Youth Services)*,[86] the appeal court denied an appeal filed by an indigenous parent from a continuous (i.e., permanent) custody order granting care of three children to the Manager. However, the court considered at length the parent's argument that the delay in the case was unduly long and prejudicial to her interests.[87] In her decision, Justice O'Brien expressed the court's sympathy for the parent's complaint about delay. She stated as follows at paragraphs 1 and 6:

> *[1] In this case, the protective intervention hearing occurred 16 months after LB's children were removed from her care instead of within 30 days of their removal as required by section 26 of the [Children, Youth and Families] Act [CYFA]. …*
>
> *[6] These dates are important because when children have been removed, the Act requires that the Manager file an application for a protective intervention hearing within 24 hours of their removal. Once the application is filed, the Act requires a presentation hearing be held within 10 days, and a protective intervention hearing be held within 30 days (Act, s. 26, 27).*

10.02 At para. 35 the Court of Appeal identified the delay in *L.B.* as being due to problems in "court availability, [and] delays by the parties in requesting and providing disclosure." Justice O'Brien reviewed cases dealing with the timeliness issue in other Canadian jurisdictions. At para. 36 the court stated the delay in *L.B.* "was in contravention of the Act and is unacceptable." After reviewing Supreme Court of Canada cases that have highlighted the serious harm that delay does to children, the court pointed out this is a national issue, stating "[y]et, despite widespread recognition of the need to move quickly, child protection systems throughout Canada have fallen into complacency."[88]

10.03 After reviewing a similar comment from another appeal court, the NLCA quoted at para. 42:

> *… the lack of judicial resources or available court dates would not generally fall under the umbrella of acceptable "exceptional circumstances." … this practice should not be tolerated, particularly in the child protection context. Parents and children should not suffer because of the failure of the system to ensure there are sufficient resources, or dates* .

10.04 The Court of Appeal then set out in clear terms at paras. 46-47 the approach that the law requires all the actors in child protection cases to take in future:

> *[46] Where legislation provides timelines for managing child protection proceedings, as the Act does in this province, it is expected that justice system participants will adhere to them. Until those timelines are modified by the legislature, or the statutory framework is otherwise amended to allow for greater flexibility, the timelines apply. All those involved in the child protection system must do their part to minimize delay and promote finality for children.*
>
> *[47] I agree with LB that the delay of almost 16 months between the removal of her children from her care and the protective intervention hearing was in contravention of the Act and unacceptable.* ***The courts, the Manager, and all others involved in child protection in this province must address the problem of delay in child protection proceedings with the urgency that it deserves.*** [emphasis added]

10.05 Despite the discussion about the delay, the Court of Appeal decided that the continuous custody order made at trial was in the best interests of the children involved and did not change the outcome. The Court's call for a coordinated effort to reduce delay wherever and however possible can nevertheless be regarded as the statement[89] in the decision that has the most force.

11.00 Systemic justice delay is systemic justice denial

11.01 Although the court in *L.B.* did not use the word "systemic" to describe the delay in that child protection case, its concern was with delays in "child protection

systems" [para. 40]. Given the court's identification of the causes and frequency of delay, and the system's resistance to change, the adjective "systemic" is appropriate for delay in this context.

11.02 In the criminal law context, Canadian courts have long recognized that systemic delays in prosecution will not be tolerated.[90] In more serious criminal cases, the time limit is 30 months; in less serious cases, it is 18 months. These deadlines are real; the remedies for excess delay can be severe. Judges often grant stays of prosecution when these deadlines for criminal cases are missed. To avoid that outcome, courts and parties take every possible step to move cases forward.

11.03 Why are there effectively no enforceable timelines in child protection cases when there are strict time limits for criminal cases to be heard? A simple answer might be that they are very different kinds of cases. Yet, each has its genuine urgency. Firstly, courts have derived criminal trial timelines from the strength of liberties under the *Charter*, as applied in a series of SCC cases. In effect, those timelines have quasi-constitutional status, and all courts must apply them to criminal cases.[91]

11.04 Secondly, most provincial child protection statutes, like ours, already have explicit timelines, although they may be more honoured in the breach than in the observance. Thirdly, very few child protection cases are reviewed by the SCC,[92] or indeed by appeal courts, especially on the timeliness issue, the recent *L.B.* case in the NLCA being a notable exception.[93]

11.05 Systemic delay can only occur where there is a “system” in play. Child protection is a system with many moving parts. With child protection, as with criminal justice, there are many “cogs in the wheel.” They include, to name several,” social workers, police, judges, legal counsel for the parties, support workers, parents, court staff, and interpreters. All the players are a potential source of expedition or a source of delay in the system.

11.06 In the context of Innu child protection, other important factors are the Innu community or communities, their available human and material resources, and the extended families of the parents and the child. The *CYFA*[94] expressly recognizes the role of community, family, and culture when it refers to children. There are also important, though indirect, roles for child carers, including those providing foster care for children.

PART 5 - RECOMMENDATIONS

12.00 Recommendations for Improving Legal Representation and the Court Process for Innu Parents in Child Protection Cases

Recommendation 1: **Legal aid eligibility should be expanded for Innu parents in child protection cases, and provision must be made for state-funded counsel to help Innu parents who are unrepresented in appropriate cases.**

12.01 In the last ten years, there has been much improvement in the provision by Legal Aid in Labrador of legal advice and representation for parents in child protection cases. Legal advice is available sooner, and communication works better through the staff social worker and the Innu community worker. Parents have lawyers to speak for them on initial court appearances, without the need for an application to be processed or for legal aid eligibility to be confirmed. Disclosure of documents is more efficient because the system of preparing, vetting, and delivering documents has been streamlined province-wide. Courts have adjusted their assignments and procedures to make hearings available earlier, once the parties are ready.[95] All parts of the legal system have contributed to these positive changes.

12.02 Early advice is essential to minimizing and resolving child protection disputes. This is because clients under stress need guidance regarding their own roles in resolving the issues. For example, if the client is a parent with active addiction issues, meeting early with the lawyer and the social worker can avoid behaviours that heighten tensions and complicate existing arrangements. It can also help facilitate communication between the client-parent and social workers that may have deteriorated. Sometimes, merely preventing miscommunications makes a large difference. Lastly, legal and social work advice can direct the parent to essential health and other services that may support them in addressing their challenges.

12.03 Once eligibility for legal aid is confirmed, there is usually no reason why representation cannot continue. Legal Aid gives the client help from the lawyer and

social worker with family case conferencing. It also facilitates the client's awareness of key facts and allegations from court documents and disclosure documents. Once these steps are ongoing, lawyers can start negotiating details such as child care placements, parental and family visitation with children, information flow between social workers, parents, and extended family, and arrangements for parents to obtain access to addiction and mental health care.

12.04 On the other hand, serious difficulties can arise when parents who have legal representation cease to be eligible for it. I have been told that lawyers and courts may not be aware of such instances. An unrepresented parent often becomes invisible in the system because they have no voice and no representative, as their case continues without them in court. In a sense, unrepresented parents fall off a legal cliff. They face hearings for which they have no idea how to prepare. They deal with social workers without advice and assistance from legal advisers. They negotiate key issues alone.[96] They must make decisions as to whether or not to contest the Manager's application and whether to ask for a full protective intervention hearing. Although they have the right to seek new lawyers, in practice very few Innu parents will be able to afford what it costs to retain a lawyer privately for longer hearings. Some will abandon the matter and not be seen or heard from.

12.05 If only one such unrepresented parent abandons their case, it is a breach of basic procedural fairness. As discussed above, the SCC has said a parent is entitled by law to ask the court to appoint a lawyer for them in a child protection case. However,

once eligibility has ended, Legal Aid may, under present rules, be prohibited from helping parents seek that remedy. More importantly, most parents would not know they have an option to apply to the court. Who will advise them of it? Legal Aid could notify them of that right, concurrent with providing the client with a written rejection. Indeed, it is arguable Law Society rules and ethical standards require such advice.[97] An application to court for state-funded counsel must be made in writing, with financial disclosure and an explanation of personal circumstances relevant to the application. Very few Innu parents on their own are likely to be able to prepare that application.

12.06 Once rejected for Legal Aid, many parents will feel isolated and fearful of going forward on their own. They might reasonably conclude their situation is hopeless or beyond their capacity. For most parents, rejection by Legal Aid would be an impetus to consenting to whatever the Manager wants. Only the bravest and most able would push forward on their own. Although a consent agreement under those circumstances would be insincere and arguably coerced, it could result in the parents losing custody of and contact with the children. When language limitations are considered, the outcome of having no lawyer is predictably unfair to that parent.

12.07 Given these difficulties, a fairer approach must be found. Here are four options:

(1) One option would be to extend Legal Aid eligibility to allow full representation of all Innu parents in all child protection cases, if that can be negotiated under current Legal Aid funding conditions.

(2) A second, but limited, option would be to extend Legal Aid eligibility to cover advising and assisting the parent on the application for state-funded counsel. This option will arguably allow legal aid staff solicitors to avoid any appearance of not fulfilling their ethical duty to not prejudice their clients on termination of their representation.

(3) A third option would be to take steps, including an application to the appropriate court, to compel the responsible provincial authorities to establish a funding mechanism to fill this gap in service.

(4) A fourth option would be to establish a funding mechanism to be administered through an Innu agency such as IRTS to pay for new counsel once all Legal Aid options have been exhausted and the parent has no means to hire counsel in child protection cases.[98]

12.08 Any of these options would reduce the possibility that an Innu parent will be in the situation where they must navigate the court process alone. Any of the options would better protect the interests of the parent and the Innu community than the status quo. The parents' family life is crucially involved; the community's interest in the future cultural life of the child is at stake. The faith of Innu communities in the fairness of the child protection system is also at risk. None of this discussion is meant to prejudge the outcome of any application for state-funded counsel, or indeed the outcome of any child protection case, which will turn on the merits of the matter. Rather, the dignity of parents and their community is at stake, as well as the integrity of a legal system that must respond to such situations with fairness and non-discrimination. I am confident all

system participants, none of whom will wish to see a parent unrepresented in such a case, would support a solution.

Recommendation 2: A thorough review of child protection hearing timelines should be carried out, and alternative timelines considered.

12.09 I have discussed how the current statutory timelines for child protection hearings are not effective, have little or no consequence in practice, and have little or no effect on how efficiently such cases move forward. By all accounts, the timelines, especially those for protective intervention hearings, are routinely waived, almost always at the request of counsel. Courts should have discretion to adjourn hearings upon a proper request. On the other hand, the current timelines are not responsible for any of the delays that do occur. I have outlined in the above discussion other circumstances that do result in delays, and each of those has potential remedies set out in these recommendations.

12.10 Several questions must be explored. Do timelines of this kind serve any useful purpose, and if so, what are their purposes?[99] Would it be more useful to have timelines that cap the time period within which matters must be completed? Should there be consequences for failing to meet any timelines that are put in place, as there are for delays in criminal prosecutions in Canada? Those consequences could range from expediting the final hearing within a short period to the final dismissal of an application. All these options are complex and must be carefully considered.

12.11 A statutory five-year review of the *CYFA* is ongoing. I am aware some Innu agencies have had input into that review. A thorough study of the timelines should be carried out in the context of that review. Innu leaders should be consulted on that issue. A review could be conducted as a separate research project for this Inquiry. However, this issue must also be closely considered in the current governmental review of the legislation as a whole. That would likely be the best context for it to be done together with a review of other process and resource issues.

Recommendation 3: A program for the improvement and professionalization of Innu interpretation services must be established

12.12 In the overall delivery of the Labrador justice system, there is not enough involvement of Innu people. It has been a long time since a serious effort was made to support Innu people in such involvement.[100] Given the importance of their language as the main cultural asset and the regular need for interpreters, the lack of Innu interpreters in Labrador is a fundamental problem in child protection cases and, indeed, in other cases. Although the interpretation issue is present in Inuit communities as well, and it extends to criminal cases in both Supreme Court and Provincial Court, any delay in criminal cases resulting from a lack of interpreters may be dealt with through the application of the *Jordan* lines of cases.[101] No such remedy exists in child protection cases for delays due to a lack of interpretation.

12.13 In 2007 the provincial government made a serious effort to address this issue in Labrador.[102] It provided training and resources on a short-term basis. However,

no continuing solution was established. Many who lived through that effort realized its benefits would be short-lived unless there was a permanent program, which, unfortunately, has yet to be put in place.

12.14 It is necessary to work toward the professionalization of interpreter services in Labrador. For Innu, the need is most urgent in child protection cases. Now that the PCJs, legal counsel, and social workers have taken real steps to eliminate many historical causes for delay, it would be regrettable if necessary hearings were delayed for lack of ready and qualified interpretation. A side benefit of interpreter training in child protection cases would be less delay and a fairer process in the numerous Labrador criminal cases.[103]

12.15 The creation of a new interpretation system for Innu in Labrador is a larger task than one may think. It cannot be only a government initiative. It will require the active involvement of all professionals and both Innu communities. It is possible that the 2007 initiatives, needed as they were and well-intentioned as they were, tried to do too much in too short a time. A better-planned, long-term approach is likely to have more sustained success. It would also be a model for improving court interpretation generally in Labrador and throughout this Province.

12.16 I recommend that immediate priority be given to a pilot project for the training and preparation of Innu interpreters in child protection cases involving Innu parents in Sheshatshiu, Natuashish, and HV-GB courts. Limiting efforts to that initial

scope and locality will better focus the effort and deliver outcomes sooner. It will be easier to marshal resources within the Innu communities where one language (albeit with two dialects)[104] will be the focus. A targeted pilot project would also enable a shorter timeline. Eventually, a broader initiative, possibly involving Inuit communities, will provide wider benefits.

12.17 I prefer the creation of an agency for the purposes of this pilot project that will be operated by Innu for the Innu. Considering that IRTS has wide involvement already in helping Innu involved in child protection cases, IRTS should be considered to lead the effort if it is willing. Some of the Innu leaders of the 2007 interpreters training program are still available in Innu communities; some are still working as interpreters. They could be involved in this project.

12.18 Interpretation is an access-to-justice issue. Improving it will reduce delays in hearings. It will support and dignify the participation of Innu parents who must navigate court processes. If a coercive process is required to protect children, it should be a humane and transparent one. More fundamentally, improving the skills of Innu interpreters will be a recognition of the cultural value of Innu maintaining and growing their language. For indigenous people, language is culture. Can there be a better way to support that culture than to allow the use of Innuaimun language to assist parents when their families' futures are at stake?

Recommendation 4: Full-time Innu social workers must be recruited and trained for both Innu communities.

12.19 The skills of social workers are directly beneficial to the legal system for child protection. Case workers help minimize risks for children, thereby reducing the need for intervention, particularly the removal of children. Doing so is consistent with the recent heightened emphasis on prevention strategies. Social workers provide early intervention and support to families, which is recognized as essential for protecting children and avoiding complicated, adversarial, and difficult litigation regarding children's care arrangements. Preventing removals does not eliminate the difficult work involved in ensuring appropriate care for children inside or outside their families. However, it can mitigate the pain and shame of airing family problems in great detail at court hearings. Having social workers more available will reduce the risk of substantial delays, the stress of uncertainty for all, and the transitions for children that can occur in the course of litigation.

12.20 Reducing the number of child protection cases that go to court and remain there will lessen the burden on all parts of the legal and social care systems. It will leave more time and resources for those cases that, despite all the good work being done toward prevention and resolution, must be decided after a court hearing. All these steps are also likely to reduce the expenses of the social care system and the legal system.

12.21 Community social workers are the trained facilitators of care for children at risk. They are in a position to determine what services the family needs, if only because

they have close and regular dealings with them, their extended families, and their communities. They know what services the community can provide and what external services can be sourced for children and parents. Making caseworkers accessible to parents enables them to help when and how the family needs them.

12.22 Viewed from the perspective of Innu parents, it is essential to have present in your community a social worker you are familiar with, if you wish to resolve personal issues that affect the ability to care for children. For example, if a family wants to visit with their children in care, it may require approval, facilitation, and funding authorized by the caseworker. Access to their caseworker by phone or in person is the best way, and sometimes the only way, for that to happen.

12.23 When rotational social workers are outside the area and off duty, as happens now, important opportunities are lost to address parent and child needs such as mental health difficulties, addiction treatment, and child care. This observation does not in any way reflect negatively on the diligence of the social workers who currently agree to travel as rotational workers and provide regular service to their clients. They are to be commended for their dedication. However, it is not the norm in this Province for social work services to be intermittent, remote, or rotational. There is no reason why that should be accepted as the norm for Innu or other communities in Labrador. Acknowledging that the needs in Labrador are no less urgent per family than they are in St. John's or Port Saunders, and could be fairly regarded as greater, there is a need to move as soon as possible towards permanent resident social worker hires. Admittedly,

some recruitment incentives may be required to do that, but that is a small price to pay for accessible services for children. Staffing must ensure no gaps in care or service.

12.24 I commend Innu authorities and their funding agencies for adopting an indigenous-centered program to educate Innu for social work roles in their communities.[105] Their approach is pragmatic but humane: it allows young Innu to receive professional training without having to leave their community at the risk of disrupting their personal and family lives. In the child protection world, this is a breakthrough model for improving the system by training personnel whose knowledge, credentials, and language abilities are likely to ensure better communication with clients and lead to better retention of social workers. This initiative deserves full support and expansion.

12.25 The child protection system in Labrador will benefit from having Innu social work professionals in place. Governments as funders and Innu leaders should continue to expand and advance these and similar educational opportunities. The future of Labrador child protection, especially prevention and treatment programs, will require dedicated Innu professionals to provide support services to Innu parents and children in their own communities. Ultimately, with experience, it is preferable, once Innu deem themselves prepared, that they design and staff their own system for helping their own families.

Recommendation 5: Innu parents must be fully seen and heard during court appearances in child protection matters.

12.26 The Court's ability to hold a fair hearing is subject to compromise without a proper video or phone connection and acceptable control of the sound and background environment for the court, the parents, and the counsel. One of the reasons we have courthouses is to ensure the judicial environment is controlled for the good of all. Innu parents have the least control over being seen and heard because they do not control any of the systems used for those purposes. Many have no adequate phone or video devices, and even if they do, they often have no quiet and safe place to use them for hearings.

12.27 It appears that hearings by technology may be here to stay. That may not be ideal for indigenous communities because it could distance the court from the lives of the communities. However, the key corrective is to make the technology work not only better but with maximum accessibility. There is a need for all governments - federal, provincial, and Innu - to work together to create what I will call Innu "Hearing Spaces." In both communities, these will be spaces that are equipped to allow Innu parents to participate in hearings from their communities in modern locations that are clean, dry, and safe. Such locations need not be exclusively available to the court; they can be multi-use spaces. They need to be in secure locations, if only to protect the valuable equipment that is required.

12.28 Although I have suggested intergovernmental cooperation in this effort, the ultimate responsibility for courts rests on the government of the Province. If no other agency can or will assist in funding this initiative, the Province of Newfoundland and Labrador is the appropriate agency to carry it forward and to fund it. Government will need to consult in depth with Innu band councils, leaders, and elders to designate a suitable design and location, preferably on or near Innu reserve lands, but I see no reason to expect Innu cooperation would not be forthcoming.

Recommendation 6: Absent full consent of the parents, substantial hearings in child protection matters must be held in their home community.

12.29 This recommendation is directly related to the previous one. For many years, courts have lacked suitable facilities for hearings in both Natuashish and Sheshatshiu. Provincial Court has continued to travel on circuit to Natuashish, but poor weather, lack of suitable hotel accommodations, and other circumstances often prevent, delay, or shorten those circuits. For the past fifteen years, government policies have meant the court does not travel to Sheshatshiu for court hearings.[106] The net effect is that almost all child protection hearings[107] take place remotely, either from the Wabush court to HV-GB or from HV-GB court to Natuashish, except for cases that can be heard in-person in HV-GB court. Even that last option requires Innu parents from Sheshatshiu to travel for each appearance 100 kilometers round trip by vehicle, if one is available to them, or by taxi at considerable expense.

12.30 The future of child protection resolution is in the Innu communities with Innu support staff involved to the maximum extent possible. Innu communities need a place for important hearings. My conversations have convinced me the communities are aware of this and know they have to become prepared for that future. Even if that future is a few years away, the current situation is not sustainable because it lacks basic fairness. The court must be present in the two Innu communities in a way that allows Innu parents to be fully present and heard.

12.31 This need for a hearing place is related to the interpretation issue. Initiatives on each front should address the need to deliver a secure and dignified environment for hearings. At present, that is not available in Sheshatshiu or in Natuashish. In Sheshatshiu there has been no hearing space since 2010. From time to time, the Mushua Innu Band Council in Natuashish has made buildings available to the court; however, there is constant uncertainty about their continued availability. The facilities on offer do not contain the technology now required for remote appearances by the court, lawyers, parties, or witnesses.[108]

12.32 What is needed is a space where Innu parents and others can attend for court hearings securely and comfortably. The space need not be overly large. Child protection cases are restricted as to who can be present.[109] In most cases, the parents, the lawyers, and at least one social worker must take part, in addition to the judge and a court clerk. A large boardroom in a suitable building would be sufficient for most hearings. For longer ones, a larger space where witnesses can wait is also required.

12.33 For reference purposes, I will refer to these full court spaces as “Justice Rooms.” If such a space is located in an Innu-owned building, then the Innu community should be consulted regarding its name and design. These can be multi-purpose rooms, so they will receive maximum use by the communities. What is crucial is that they be equipped with the technology and other equipment and facilities needed by the court and attendees. This includes a modern video conference and phone setup with reliable telephone and internet connections to outside areas. It also includes basic health and sanitation facilities. These elements will allow lawyers and court officials to conduct shorter hearings remotely, subject to approval by the court. Innu parents and their social workers should no longer be required to leave their community to attend minor hearings. The entire proceedings, including the words spoken by all, should be heard, interpreted, and recorded accurately and fully. The intent is to ensure all participants will be seen and heard by each other.

12.34 Once a Justice Room is available in the community, no hearing involving witness testimony should be held remotely, except in an unusual situation where all parties agree that it is in the best interests of justice. Occasionally, a witness could be heard remotely by technology in legal proceedings. However, in hearings where their rights can be finally determined, the norm is for parties to be present where the court is. No hearing is more significant than a child protection hearing. It is important for all parties to see and hear, not to mention confront the witnesses in a room that has all the benefits of a courtroom. It is equally crucial for the judge to have all parties, witnesses,

and counsel before them. The functions of the court, not to mention its dignity, demands it, and the parties, who are speaking for themselves and their children, deserve it.

12.35 This proposal does not require the building of a courthouse. It requires only a suitable space and the facilities to make it work efficiently for hearings. The ownership is also not determinative. Labrador courts have, for decades, been sitting on circuit in indigenous communities in the best available space the community can offer. Not all have been ideal, but parties have been present and heard.[110] This proposal builds on that collaborative history between the Provincial Court and the community. However, this recommendation does depend on arrangements for the Provincial Court to hold major hearings, that is, those involving witness testimony, in both Innu communities.

12.36 I suggest this new approach be implemented as a pilot project after consultation involving the provincial and federal governments, the Provincial Court, and the Innu. The logical place for such a pilot project is Sheshatshiu. It is located close to HV-GB, where most lawyers and the Court are centered and reside. The travel distance is fifty kilometers, a 30-to-40-minute drive each way on a good paved road, at small cost. Public food services are available in the community. No overnight accommodation is required. The offices of IRTS and departmental social workers, who support parents and the Court, are based in Sheshatshiu. Those agencies and governments have recently forged other cooperative arrangements to advance child protection. The federal government could have a substantial role in this effort, if only because the Innu

community is an Indian reserve, and further because the space would likely be suitable for court hearings under the Criminal Code and other federal laws. There is no reason why the pilot project could not be conducted in an Innu building, in accordance with a clearly defined protocol for its use by the Court and others.

12.37 This proposal may require some rearrangement of the judicial assignments for certain child protection hearings. That occurs routinely in criminal cases and other legal contexts, such as small claims matters, in which, for example, a judge who presides over a settlement conference will not hear a trial of the same matter. *CYFA* does not require one judge to hear all parts of a child protection case; however, once a judge starts to hear evidence in a presentation hearing or a protective intervention hearing, that judge must complete it. An adequate Justice Room may even open up a location for brief child protection hearings in certain matters to be heard remotely, when necessary, by Provincial Court judges residing outside the Lake Melville area.

12.38 One advantage of moving towards community-based hearings is that it will serve as a foundation for deeper involvement over time of Innu professionals who live in those communities or travel there for that purpose. That is the broad future of justice in Innu communities, and this is one important step in that direction.

Recommendation 7: Dispute resolution methods must be expanded and employed in child protection cases.

12.39 While the *CYFA* and court rules encourage the use of dispute resolution, it is not clear that they are being used often. The family group conference under section 13 *CYFA*[111] has been used, but not often. Given the current workload of the lawyers and social workers, this is not surprising. It requires all to meet together with enough time to make progress. However, I have been told that those involved value those meetings and believe they reduce friction and misunderstandings. A way should be found to hold them regularly in appropriate cases. The Justice Room referred to above may provide a suitable space for that to occur.

12.40 The *CYFA* provides for other types of meetings. The judicial case conference (JCC) is available under section 34 *CYFA.* However, I understand that Labrador courts seldom use it.[112] Lawyers have pointed out that a judicial case conference may bring to a case what is often called “the power of the sash,” which refers to the influence the presence of and feedback from a judge can have on counsel and parties hoping to resolve a matter.[113] Although the judicial case conference is not a settlement conference *per se*[114], it could result in a resolution or a narrowing of issues in an appropriate case. The JCC is appropriate for use in Labrador. It can be held remotely, with parents in a court or a suitable hearing space, as discussed under recommendations 5 and 6 above. As there are three PCJs in Labrador, one of them could preside at the JCC, leaving the other two judges free to preside at a hearing in the

same case if one is needed. A JCC could result in a consent agreement, which can later be considered for issuance as a consent court order.

12.41 The *CYFA* encourages "other dispute resolution methods". The dispute resolution format most commonly used in Canadian family law is mediation.[115] Mediation is inherently a voluntary process and requires a neutral, trained mediator. Although some court rules allow the court to order mediation, in practice, such an order is more correctly characterized as requiring the parties to make contact with the mediator. In addition, there must be a fund for payment of the mediators' reasonable fees. I recommend there be discussion among all stakeholders on the merits of a pilot project of this kind. If that is agreed, a roster of mediators can be established.

12.42 There are trained and accredited mediators available in the Province[116] who would be qualified to meet with the parties and their counsel[117] in an appropriate case to help them resolve or narrow their issues. For example, when parents accept they cannot care for their children but do not agree with the Manager on placement or care arrangements for the children, a suitable mediator would be able to sit with the parties and explore what lies behind their disagreement and where there is room for compromise. Counsel should play an active role in such mediation.[118] A successful mediation would usually result in a memorandum of agreement signed by the mediator, counsel, and the parties. The memorandum would be subject to consideration by the court at a hearing and will, if confirmed, become the basis for an order under the *CYFA*.

12.43 There are no limits to the dispute resolution processes that can be used in child protection cases. In Innu communities, the processes that work best will be the ones that best respect the role of Innu parents and children and incorporate the resources of the community to assist in resolution. For example, there could be a role for elders in the community who are willing and able to be involved, so long as the parents agree. The mediation participants could be expanded, with consent, to include immediate or other key family members who can help provide solutions. Circle processes, similar to sentencing circles in criminal cases, are worth exploring.

13.00 CONCLUSION

13.01 The above findings and recommendations are submitted for their information and consideration to the Commissioners of the Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System. It is humbling for this author to play a small role in this monumental and historic effort to address the complex world of indigenous child protection. Innu communities have many strengths. For Innu families and those who are committed to helping them, my hope is that the Inquiry process is rewarding in the sense that a new system, with new hope for the future, will emerge from the Inquiry's work.

ENDNOTES:

[1] The prior reports include: the 1992 Hughes Inquiry (related to issues surrounding Mount Cashel Orphanage); the 2001 Jenny Reid Report for Legal Aid's Aboriginal Justice Project, related to Legal Aid operations in Labrador; the 2006 Turner Inquiry related to events leading to the death of a child; the 2008 Fowler Report "Children in Care in NL" related to indigenous child welfare; and the 2017 report "A Long Wait for Change" published by the NL Office of the Child and Youth Advocate. Aside from the Jenny Reid Report, these reports did not focus primarily on legal representation and process issues.

[2] In 2008 considerable work was done in Labrador on what was then called the "Innu Healing Path Court" model. I have had access to a preliminary report discussing this innovative model. It was primarily focused on criminal cases. Among other things, it proposed the Provincial Court assume a remedial purpose in Innu communities, become more integrated into Innu communities, and be provided upgraded services and resources that would assist the court and the Innu who appeared before the Court.

[3] In 2014 the Assembly of Manitoba Chiefs issued a strong report on child welfare, entitled "Bringing Our Children Home". It contained a recommendation, #10, to "revolutionize justice system practices". That report stated, at page 17, as follows: "The child welfare system is endorsed by the justice system. The formal legal system is part of the structure but disconnected from the purpose - to minimize any negative impact on a child being removed from their home. Communities are left out of the process and children do not have a voice at hearings. There needs to be a decision-making process in which the community is empowered to develop alternative case plans and care for the child." See https://manitobachiefs.com/wp-content/uploads/2017/11/Bringing-Our-Children-Home-Final-Report-June-2014.pdf: retrieved online on October 26, 2025

[4] See Dr. Ken Barter's recent strong commentary opining that such reports have resulted in little effective change in Newfoundland and Labrador: https://www.cbc.ca/news/canada/newfoundland-labrador/ken-barter-child-protection-humby-escott-1.7395572: retrieved online on November 6, 2025.

[5] Those changes include new arrangements for cooperation between community agencies and child protection officials, and new infrastructure to facilitate the exchange of information and the disclosure of documents.

[6] There is a very inclusive definition of "family" in the Act respecting First Nations, Inuit and Metis children, youth and families, Statutes of Canada 2019, Chapter 24. See https://laws.justice.gc.ca/eng/acts/F-11.73/page-1.html : "*family*" includes a person whom a child considers to be a close relative or whom the Indigenous group, community or people to which

the child belongs considers, in accordance with the customs, traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child." There is no definition of "family" in the CYFA, although it contains other definitions that hint at a broad understanding of the family. See endnote 15 below.

[7] S. 48 *CYFA*; Rule 37.1, Rules of the Supreme Court - “as informal as possible”.

[8] There is an established difference between criminal procedure and the less restrictive procedures in cases where the issue is the safety and well-being of children (s.8 *CYFA*). See *S.H. v. Newfoundland and Labrador (Child and Youth Services)*, 2025 NLCA 27, paras. 42, 50:
“[42] So, while procedural fairness is required, child protection hearings have greater procedural flexibility than do criminal trials, for example. As noted by the Supreme Court of Canada in Winnipeg Child and Family Services v. K.L.W., 2000 SCC 48, [2000] 2 S.C.R. 519, at para. 98, the state’s protective purpose in apprehending a child is clearly distinguishable from the state’s punitive purpose in the criminal context, namely that of seeing that justice is done with respect to a criminal act. These distinctions should make courts reluctant to import procedural protections developed in the criminal context into the child protection context.
[50] As noted, the purpose of the Act is to promote the safety and well-being of children. …”

[9] See Protection and In Care Policy and Procedures Manual, published by NL government at https://www.gov.nl.ca/cssd/files/publications-pdf-childcare-protection-care-policy-manual.pdf Retrieved online on October 27, 2025. In its discussion of court proceedings, it states:
“Proceedings under the Act are considered to be civil actions and not intended to be of an adversarial nature.”

[10] *Charter of Rights and Freedoms,* enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982.

[11] In *Canadian Foundation for Children, Youth and the Law v. Attorney General in Right of Canada*, [2004] 1 S.C.R. 76, at para. 7, McLachlin, J. stated: “While ‘the best interests of the child’ is a recognized legal principle, this legal principle is not a principle of fundamental justice” [in contrast to procedural fairness].”

[12] In *T.R. v. Manager CYFS,* 2014 NLCA 19, at paras. 21, 22-23, the Newfoundland and Labrador Court of Appeal applied *New Brunswick (Minister of Health and Community Services) v. G. (J.),* 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46, to the *CYFA* as to the need for procedural fairness under the *Charter* in the context of child protection.

[13] There are key procedural safeguards, as stated in *T.R., supra,* at para. 25: “In a protective intervention hearing those procedural safeguards are met by Rule 56A.75 of the Rules of the Supreme Court, 1986, SNL 1986, c. 42 Sch. D, which is inapplicable to a presentation hearing.

However, in a presentation hearing the above procedural safeguards apply as a matter of common law. In assessing whether these procedural safeguards have been observed, prime regard must be had to the substance, not the form, of the steps taken to ensure a fair hearing."

[14] The Manager is the official who is designated to act for the Provincial Director of Child Protection and in Care, under section 4(3) of the *CYFA*.
[15] Section 2(1)(x) of the *CYFA* includes an extremely broad definition of "parent".

[16] A synopsis of the current process can be found at the NL Supreme Court's website: https://www.court.nl.ca/supreme/family-division/info-common-legal-issues/child-protection/.

[17] The options for the court's order are set out in *CYFA* section 32.

[18] The court does not usually define the care arrangement, but decides who makes that arrangement - the parents or the Manager. See *CYFA* sections 31 and 32.

[19] This approach is helpful on the levels of policy, legislation and practice. See https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html . For a description of a Quebec-based approach, see https://www.mcgill.ca/crcf/files/crcf/collinvezina_mcnamee_crcf2018_0.pdf?TSPD_101_R0=08278c8957ab2000f2caf4b9948b49f9232a91f970e0649b192ab481f2ef3dbd3e26e06cc1e6a77f08b4530bab1430008c5e7e17d754e47f58bb8c7867b7d7f807bfda816dc4b0598e1e6f7c5f56eb1781c55ce42bbdf37a3c5d801c351f9f3e.

[20] Judith L. Herman. *Trauma and Recovery: The Aftermath of Violence - From Domestic Abuse to Political Terror.* 1992. Basic Books: New York.

[21] Judith L. Herman. *Truth and Repair: How Trauma Survivors Envision Justice*. 2023. Basic Books: New York, at p. 7.

[22] Herman, 2023, at p. 7.

[23] *Ibid*.

[24] Herman, 2023, at p. 16.

[25] *A Long Wait for Change*, page vii, (Office of the Child and Youth Advocate), quoting National Collaborative Centre for Aboriginal Health, 2017.

[26] For example, there is a long history of intergenerational trauma among indigenous peoples in Australia and Torres Strait Islands: https://cbpatsisp.com.au/wp-content/uploads/2023/09/Fact-Sheet-4-2023-Version.pdf.

[27] 2021 Census Canada figures show that in Sheshatshiu the median age of residents was 27 years, the average age was 29.6 years, and the percentage of the residents between ages 1 and 14 was 30.3%: Retrieved online on October 27, 2025 at https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&SearchText=Sheshatshiu&DGUIDlist=2021A00051010802&GENDERlist=1,2,3&STATISTIClist=1,4&HEADERlist=0 . The same census shows the median age of residents in Natuashish was 21.2 years, the average age was 25.1 years, and the percentage of the residents between ages 1 and 14 was 37.2%. Retrieved online on October 27, 2025 at: https://www12.statcan.gc.ca/census-recensement/2021/dppd/prof/details/page.cfm?Lang=E&SearchText=Natuashish&DGUIDlist=2021A00051010801&GENDERlist=1,2,3&STATISTIClist=1,4&HEADERlist=0. By way of contrast, the numbers in the same census for all of the Province show 13.4% were aged from 1 to 14 years, the median age was 48.4 years, and the average age was about the same. Government of NL statistics for 2025 extrapolate that the population between the ages 1 and 14 years is 8.1% of the entire population. Retrieved online on October 27, 2025 https://stats.gov.nl.ca/Statistics/Topics/population/PDF/PopAgeSex_BS.PDF.

[28] Legal aid in this Province began in the 1960s-70s as a service provided through a committee of the Law Society of Newfoundland (as it was then known). That committee was superseded by the Newfoundland Legal Aid Commission (now the Newfoundland and Labrador Legal Aid Commission) in June, 1975, when *The Legal Aid Act, 1975* (now the *Legal Aid Act*) was passed. I was fortunate to join that entity in December 1976 as one of two early staff solicitors. For many years, the work of Legal Aid was assigned under a certificate system to lawyers on a roster until it moved in the 1980-90s to providing services through a staff solicitor system.

[29] The rules set up by federal and provincial governments for funding legal aid control the availability of legal aid for many purposes. Those rules are from time to time amended. Initially, federal funding provided the bulk of the money for legal aid; however, over time, the provincial sources of the funding have become the larger portion, and is now the only source of funding for civil and family cases. A comprehensive analysis of the legal aid funding arrangements, and the resulting differences across Canada, can be found in this Canadian Bar Association synopsis: https://cba.org/resources/reconciliation-equality-and-diversity/reaching-equal-justice-advocacy-guide/providing-legal-services/: retrieved online on November 1, 2025.

[30] For those who have no lawyer, there is a Lawyer Referral Service which is currently administered through the Public Legal Information Association of Newfoundland and Labrador (PLIAN). PLIAN has a Labrador office. However, there are very few private (non-Legal Aid)

lawyers in Labrador. A small number of private lawyers travel to and from Labrador when required, but few are likely to act as counsel in a child protection case. The Lawyer Referral Service is not a pro bono system The Province has no formal *pro bono* system under which lawyers will make themselves available for such cases at little or no cost to parents. Moreover, a lawyer's travel expenses, such as air travel and accommodations, would be well beyond the capacity of most parents to pay.

[31] It was beyond the scope of my report to ascertain child protection case numbers. I have been told that new child protection case numbers tend to be fewer than a few years ago. On November 30, 2024 a spokesperson for FAMA (formerly CSSD) was quoted as follows: "… the number of children in care has decreased by 11per cent, from 1,035 to 920 in the last eight years, a decrease that happened while the number of complex cases and families presenting issues increased [and] … the number of Indigenous children and youth in care decreased by 20 percent since 2019, from 380 to 305." https://www.cbc.ca/news/canada/newfoundland-labrador/ken-barter-child-protection-humby-escott-1.7395572. It appears there have been continuing reductions in the numbers of indigenous children in care in this Province. As of April 1, 2025 the provincial government released these figures for the first quarter (January 1-March 31) of 2025: of 3,170 children in care provincewide, 240 in total were identified as Labrador indigenous and 120 of those were identified as Innu, as shown in the chart below. See https://www.gov.nl.ca/cssd/files/Public-Stats-Q4-Mar-31-2025-Protection-and-In-Care.pdf: retrieved online on November 6, 2025.

Children/Youth In-Care from Labrador by Indigenous Status and Current Placement Location

Indigenous Status	Home Community	Labrador	Island	Out of Province	Total
Innu	70	30	15	..	**120**
Innu/Inuit	..	5	5	0	**15**
Inuit	45	20	40	0	**105**
Innu/Metis	..	0	0	0	**..**
Inuit/Metis	..	0	0	0	**..**
Metis	0	0	0	0	**0**
Mi'kmaq	..	0	0	0	**..**
Other Indigenous	0	0	0	0	**0**
Total Children/Youth	**125**	**55**	**60**	..	**240**

In total there are 0 indigenous children/youth in adoption placement for which placement cannot be disclosed.
In addition to this less than 5 children came from Interprovincial Placement Agreements.

[32] Although Innuaimun is one language, there are two "significantly different dialects": one being the Natuashish dialect and the other being the Sheshatshiu dialect. They have "differences in pronunciation, grammar, and vocabulary". See *Innu-aimun Legal Terms (Criminal Law)*, Department of Justice: St. John's, 2007, at page vi. See also discussions above at paras. 8.01 to 8.10 re interpretation challenges, and Recommendation 3 re possible solutions.

[33] The Manager may change the request from temporary to continuous custody, or vice versa, as the case develops. There are time limits for temporary orders, and limits on the number of temporary orders that can be made, as set out in *CYFA* section 33.

[34] At times children are brought to social workers for them to arrange care for the children, in circumstances where the parents or some other person is of the opinion the parents cannot care for the children with safety. An investigation ensues, and such circumstances may result in a child protection proceeding.

[35] There is a published manual of policies and procedures for social workers regarding their work with children in care for this Province: https://www.gov.nl.ca/cssd/files/NL-Policy-and-Procedures-Manual-1.pdf.

[36] *CYFA* s. 21 authorizes removal of a child. *CYFA* s. 22 allows removal to be applied for and authorized by telewarrant.

[37] This is the result of the combination of the *CYFA* definition of "court" and the statutes and court rules that define the jurisdiction of the Supreme Court. Within their designated territorial responsibility, the Supreme Court, Trial Division and Family Division, have original jurisdiction over child protection cases. The Court of Appeal, as well as the Supreme Court, Trial Division, can hear appeals of certain lower court decisions in child protection cases.

[38] Although numbers of Labrador judges have varied, there was one PCJ in Labrador in most years until late 2000, when a second was appointed, both based in HV-GB. There have been three resident PCJs in Labrador after the Wabush Court was re-established with a full-time judge in June 2007.

[39] The Provincial Court traveled for one week per month as a court circuit to Sheshatshiu when government policy resulted in the termination of that circuit. Sheshatshiu became a reserve in 2006 under the federal Indian Act. However, due to government policies, since 2010 the court no longer travels to the Sheshatshiu and no hearings have been held there on criminal or family cases, including child protection matters.

[40] The Supreme Court, Family Division, holds jurisdiction over family cases, including child protection, in St. John's, central and western Newfoundland. An expansion of jurisdiction to Labrador has been long anticipated, but has not yet occurred. It would likely require at least one additional federally-appointed judge, a federal responsibility, and additional staff, a provincial expense. A crucial component of any court is its court staff and sheriff's officers, all of require provincial expenditure.

[41] In contrast, some other federally-appointed judges in Canada do travel on regular court circuits, such as in Nunavut and the other northern territories, where they hear both criminal and family cases, including child protection cases. At times judges travel from other parts of Canada for such circuits. Some of those courts are unified courts. "The Nunavut Court of Justice, which is Canada's only single-level trial court, combines the power of the superior court and the territorial court so that the same judges can hear all cases that arise in the territory." See https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/02.html: retrieved online on November 1, 2025.

[42] Although estimates vary, it is likely 50-80% of family law parties are unrepresented in court. See https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html. Retrieved online on October 26, 2025. No more recent statistics are available.

[43] In 2021-2022, the most recent year for which statistics are reported, the following cases were initiated in Provincial Court: 22,485 adult cases, 1,075 youth cases, 929 small claims cases, and 597 family cases. That means 2.4% of Provincial Court cases were family law cases, of which child protection matters would be a very small number. See https://www.court.nl.ca/provincial/files/ProvCourtAnnReport21-22.pdf. Retrieved online on October 26, 2025.

[44] Recent federal proposals to restrict or deny release on criminal charges and to increase sentences are likely to result in more frequent and longer bail and sentencing hearings in both Provincial and Supreme Courts. However, the impact on the workload in Provincial Court will be significant because the bulk of criminal cases in Canada are dealt with in provincial courts. See https://www.canada.ca/en/department-justice/news/2025/10/canada-introduces-sweeping-reforms-to-make-bail-laws-stricter-and-toughen-sentencing-laws.html : retrieved online on October 28, 2025. See also https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2025/proposed-bail-reforms-will-imprison-innocent-people: retrieved online on October 28, 2025.

[45] The courts in this Province refer litigants to FJS, and, at the end of the process, FJS sends a report back to the court on whether and to what extent the referral has been successful. When mediation leads to an agreement, the mediator will send the court a consent order signed by the parties and witnessed by the mediator, which the court will review and usually sign. However, the mediation process remains voluntary because parties can choose to ignore the referral or to limit their cooperation. In recognition of the voluntary nature of the process, there are no significant consequences for the parties if they do not cooperate with mediation.

[46] FJS has no role in child protection matters. FJS is "a division of the Supreme Court," under Rule F22 of the *Rules of the Supreme Court* but FJS services are also made available to litigants in the Provincial Court. FJS provides information and mediation services to litigants. However, FJS cannot mediate issues related to property, marital or otherwise, or related to spousal and partner support. Provincial Court in Labrador does hear spousal and partner support applications,

but only the Supreme Court can deal with divorce and property ownership and division. This divided jurisdiction and the limited scope of FJS mediation can cause confusion for the public.

[47] The Crown's right to intervene on behalf of children and other vulnerable persons was originally exercised through the Court of Chancery in England and has been part of our Supreme Court's jurisdiction. Even though child and adult welfare legislation has been around for centuries, the *parens patriae* power has not been repealed in this Province. See Raymond Gushue and David C. Day, *Family Law in Newfoundland,* Dalhousie University, Faculty of Law, Committee of Faculty, St. John's, NL: s.n., 1973, at pp. 51ff. See also discussion at paras. 14-15, 30, 33, 46, 49, in *J.T. v Newfoundland and Labrador (Child, Youth and Family Services)*, 2015 NLCA 55 (Can Lii): https://canlii.ca/t/gm943, retrieved online on October 20, 2025. See also *J.R. v Nunavut (Family Services)*, 2025 NLCA 11 (CanLII), at https://www.canlii.org/en/nl/nlca/doc/2025/2025nlca11, retrieved online on October 28, 2025.

[48] See endnote 46 re *J.T. v Newfoundland and Labrador (Child, Youth and Family Services)*.

[49] Ken Fowler, Ph.D. *Children in Care in Newfoundland and Labrador: A Review of Issues and Trends with Recommendations for Programs and Services,* September, 2008, at p.8. See https://cwrp.ca/sites/default/files/publications/NFLD_ChildreninCare_Review_of_Issues_Fowler.pdf, retrieved online on October 26, 2025.

[50] Peter H. Markesteyn and David C. Day. *Turner Review and Investigation.* St. John's, NL: Government of NL. September 2006. Vol. II, at page 102. See https://cwrp.ca/publications/turner-review-and-investigation-volume-2, retrieved online on October 21, 2025

[51] See endnote number 32.

[52] The Annual Report of the NL Minister on Child Welfare Services to Indigenous Children, Youth and Families, 2021-22, states at page 37: "In August 2021, CSSD, the Sheshatshiu Innu First Nation (SIFN) and the Mushuau Innu First Nation (MIFN) implemented a new Innu-CSSD Protocol, which guides the information sharing, collaboration and coordination of services between CSSD and Innu Prevention Services and Innu Representative Services. The Protocol replaced the former Working Relationship Agreement signed in 2015 and represents significant, positive changes in how we collaborate with SIFN and MIFN to support Innu children, youth and families. The Protocol is used in conjunction with existing CSSD policies and reflects the legislative authority, priorities and responsibilities outlined in the Children, Youth and Families Act and an Act respecting First Nations, Inuit and Metis children, youth and families [Statutes of Canada 2019, Chapter 24]. The implementation of the Protocol has contributed to a strengthened partnership between Innu Prevention Services and CSSD involving many ongoing collaborations to address barriers and identify solutions needed regarding service delivery to Innu children,

youth and families." See https://www.gov.nl.ca/sswb/files/ReportonChild WelfareServicesto Indigenous2021-2022.pdf: retrieved online on November 6, 2025.

[53] "FAMA" stands for the Department of Families and Affordability, the provincial department that operates child welfare programs in the Province, including child protection. FAMA was previously called Children, Seniors, and Social Development (CSSD). The agency's name and departmental responsibility for child protection are subject to change after elections.

[54] See endnote 44, referring to Volume II, pages 451-452.

[55] The college is Nicola Valley Institute of Technology (NVIT). See https://www.nvit.ca. NVIT offers to the Innu communities a 1-year certificate program and a 2-year diploma program in social care, with an option to complete a Bachelor of Social Work degree over 4 years, including the first two. Innu in Labrador are able to take courses, including local instruction, via a hybrid system, with work experience in Labrador.

[56] CourtCall is a for-profit facility that has been used in Provincial Court for short appearances in criminal and family cases for many years. Lawyers who use CourtCall must pay a fee per use. It appears CourtCall is being used less in recent years.

[57] See https://cba.org/resources/reconciliation-equality-and-diversity/reaching-equal-justice-advocacy-guide/providing-legal-services/ : retrieved online on October 21, 2025.

[58] *Law Society Act, 1999*, SNL 1999, Chapter L-9.1, section 2(2) defines "the practice of law" broadly.

[59] Because of inter-jurisdictional mobility rules, some lawyers transferring into this Province from other jurisdictions may or may not have received such training. The Law Society NL may mandate additional training for some junior lawyers on their transfer from other jurisdictions.

[60] In the past as a lawyer and a judge, I saw cases where no continuing counsel was assigned for months. Where this happened, parents did not know who their lawyer was, could not obtain early advice that is based on knowledge of their file, and could not talk to a lawyer who knows their case. Fortunately, this type of delay seldom happens now.

[61] 1999 CanLII 653 (SCC), [1999] 3 SCR 46.

[62] Section 7 of the *Charter* reads: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[63] At paras. 98 and 100.

[64] See Child and Youth Advocate's 2019 report, *A Long Wait for Change* discussion on culturally responsive services/cultural competence -https://www.childandyouthadvocate.nl.ca/files/CulturallyResponsiveServicesReport2017.pdf. See also Fowler Review, 2008, p. 85, (as per footnote 43): "In addition to developing policies and programs that are culturally sensitive, there also seems to be a requirement for Aboriginal awareness training among frontline practitioners."

[65] https://www.innu.ca.

[66] Statistics Canada, Indigenous Languages across Canada, Retrieved online October 22, 2025: https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-x/2021012/98-200-x2021012-eng.cfm.

[67] https://innueducation.ca/innu-curriculum-resources/.

[68] The Truth and Reconciliation Commission's Calls to Action 13 to 17 are relevant. Call to Action 13 states: "We call upon the federal government to acknowledge that Aboriginal Rights include Aboriginal language rights." See https://www.rcaanc cirnac.gc.ca/eng/1524495846286/1557513199083: retrieved online on October 22, 2025.

[69] I am aware Judge John Joy, retired Provincial Court Judge in Labrador, made considerable efforts to have standard court forms, such as judicial interim release documents, translated into Innuaimun between 2008 and 2018, although they were not formally adopted.

[70] *CYFA* does mandate consideration of cultural and language values in the placement of children. See *CYFA* sections 2(1)(f), 9(2)(e) and (f), 29(2)(e)(iv), and 65(3)(a) and (b). Section 2(1)(f) defines a "cultural connection plan" for children in detailed terms.

[71] This gap is in contrast with language rights under the *Charter of Rights and Freedoms*, which incorporates the right to interpretation among "legal rights". Section 14 of the *Charter* provides: "A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter." See also detailed discussions in *R. v. Tran*, 1994 CanLII 56 (SCC), [1994] 2 SCR 951 and *R. v. Sidhu* (2005), CanLII 42491 (ONSC), 203 CCC (3d) 17.

[72] Although the lawyers who act for the Manager on child protection cases are employed by DOJ, those lawyers have no executive authority or bureaucratic function. They could not, for instance, be expected to arrange a court space, interpretation for the courts, or other similar logistics.

[73] The glossary acknowledged several Innu collaborators, including Damien Benuen, George Gregoire, Sebastian Piwas, Thomas Poker, and Bernadette Rich.

[74] This is the standard under section 24(2) of the *Charter of Rights and Freedoms* for on reviews of rulings on exclusion of evidence and sentencings. In R. *v Anthony-Cook,* 2016 SCC 43, 2 SCR 204, at paras. 5, 33, the SCC equated this standard with "a break down in the proper functioning of the criminal justice system. The SCC in *Anthony-Cook* relied in part on two decisions of the NLCA. One was *R. v. Druken*, 2006 NLCA 67, 261 Nfld. & P.E.I.R. 271, where the NLCA stated a sentencing decision will reach the level of causing "disrepute" if it so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". The NLCA stated in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission on sentence, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

[75] Nor was the *Charter* relied on in the *L.B*. decision, discussed below at section 10. However, in *M.K. and R.P. v. Newfoundland and Labrador (Child and Youth Services)*, 2018 NLCA 34, a child protection case, the court had considered the right under *Charter* section 14 to a right to interpretation and to accommodations for the deaf. The NLCA decided that the hearing problems of the appellant, who claimed to have had poor hearing during the proceeding, did not rise to the level required by *Charter* section 14. Nevertheless, the Court of Appeal did not reject the potential applicability of section 14 rights to child protection matters in NL.

[76] *CYFA* section 31 has a one-day time limit to complete the presentation hearing, but that limit can be extended.

[77] Among many causes of delay, there is the frequent need for parents to have time to explore and obtain help for addiction, mental health, housing and other personal issues usually related to poverty, trauma and discrimination. Courts often grant requests for postponements or reschedulings of child protection cases for this reason.

[78] *CYFA* Section 35 provides options for the Court if the time limits for hearings under section 33 expire. Those options give considerable discretion to the Court.

[79] *CYFA* Section 34.
[80] See the discussion of delay in child protection cases, and the *L.B.* decision, at paras. 10.01 to 10.05 above.

[81] Rule F20.01 of the *Supreme Court Family Rules* states: "[Responsibilities of parties to engage in dispute resolution.] The parties are responsible for actively working towards the resolution of

their proceeding in a timely and cost-effective way that reduces the adversarial nature of the proceeding." Rule F20 elaborates what those responsibilities include. Rule F20 would apply to child protection matters in Supreme Court. The *Provincial Court Family Rules, 2007*, as amended, do not contain an equivalent provision. However, Rule 1.04 states: "The *Rules of the Supreme Court, 1986* apply at the discretion of the court when no provision under these rules is made."

[82] See endnote 43 above.

[83] Province-wide, family law has been a diminishing part of the Provincial Court's workload for many years. In 2022 a total of 142 family cases were initiated in the two judicial centers in Labrador. In 2021-22 family cases made up only 2.4% of all Provincial Court cases for all judicial centers. Provincial Court in St. John's, Stephenville and Grand Falls-Windsor do not hear family law cases of any kind. Provincial Court is also the court responsible for original applications, hearings, and reviews under the *Family Violence Protection Act,* SNL 2005, c. F-3.1, as amended, per section 2(d).

[84] The current policy for Legal Aid is to appoint separate counsel for each of the two parents, at least for purposes of the presentation hearing. After that, representation depends on eligibility.

[85] Initial disclosure can be incomplete, or out-of-date, and rarely is the final word on the current status of the family. Updated disclosure will often be requested and sent as the case progresses.

[86] 2024 NLCA 36 (issued November 13, 2024). See discussion above at paras. 10 and 11.

[87] In light of the discussion above at section 6.00 about the potential for parents being unrepresented in child protection cases, it is noteworthy that the indigenous parent in *L.B.* was unrepresented on appeal.

[88] In a long series of cases evolving from *R. v. Jordan*, [2016] 1 S.C.R. 631, the SCC has repeatedly pointed to a pervasive culture of complacency regarding delay in criminal cases. Those cases are all based on section 11(b) of the *Charter of Rights and Freedoms*, which requires a person charged with criminal offences to have a trial "within a reasonable time".

[89] The discussion of delay would likely be treated as *obiter dictum*, which means something "said in passing, … a judge's statement that is based on some established facts, but does not affect the judgement": Black's Law Dictionary, 2nd Ed: retrieved online on October 25, 2025 at https://thelawdictionary.org/obiter-dictum/.

[90] The word "complacency" occurs eight times in the R. v. *Jordan (2016)* decision.

[91] No line of cases has yet applied the *Charter* into timelines for child protection cases, as has happened in criminal cases. It appears the appellant mother in *L.B.* did raise the *Charter* in her argument, and the court of appeal did refer to it at para. 19; however, no argument under the *Charter* was developed in the decision. This may be due to the mother not being represented and therefore limited in her ability to enlarge that issue before the court.

[92] In *Beson v. Director of Child Welfare* [1982] 2 SCR 716 (a case originating in this Province), the SCC applied the power of *parens patriae* in an adoption dispute, because there was a gap or deficiency in the applicable legislation. However, the rulings in *Beson* and *L.B.* were not expressly based on *Charter* rights.

[93] The result in *L.B.* hinged on the finding that the trial outcome was in the best interests of the children, which is the paramount issue in child protection cases. However, in a criminal case the ultimate issue is guilt or innocence, yet the *Jordan* line of cases has resulted in charges being fully dismissed. One wonders if delay in a child protection case could rise to the point of justifying similar relief under the *Charter* section 7 right to "liberty and security of the person". The cases do not yet go that far.

[94] See para. 3.08 above re cultural aspects of trauma.

[95] Presentation hearings are usually heard on the first date set, if at all possible.

[96] One very experienced person in the system told me that a common refrain heard from parents during their child protection cases is that they feel "alone" and "unsupported"

[97] *Code of Professional Conduct* (NL) Rule 3.7 sets out what lawyers must do when they withdraw from representation of a client. See https://lsnl.ca/wp-content/uploads/2024/06/NL_Code-of-conduct_2024Jun07_PDF.pdf: retrieved online on October 28, 2025. A Legal Aid lawyer whose client becomes no longer eligible for Legal Aid may be obliged to withdraw from the representation. Rules 3-7-8 to 3-7-9 (manner of withdrawal) are relevant. Rule 3-7-8 states: "When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer." However, it may be that, in order to "avoid prejudice to the client", the withdrawing lawyer should advise them of their right to apply for state-funded counsel. I note these rules do not explicitly address the situation where the former client may have a right to apply to the court for new counsel.

[98] I am advised that in a few cases counsel has been provided to Innu parents in child protection cases, through local resources. Whether these were cases where the parent previously had legal aid or other counsel, I am not aware.

[99] In previous decades there was a priority placed on adoption of all children in care where those children were in the permanent custody of the Manager/Director. This past practice may explain why very short timelines were enacted for child protection cases. Adoptions were arranged for many indigenous children in care. However, I have been told there has been a defined turn away from the adoption option, although it can still occur, and where adoption is considered, there is a major effort to place children in indigenous homes, especially in kinship homes. The objective of family reunification is now emphasized, as is the recovery of parents to good mental and physical health, where that does not conflict with the best interests of the children.

[100] In the mid-1970s Labrador Legal Services (LLS) was set up in Labrador to train Innu and Inuit in court processes and procedures. They were referred to as "courtworkers". They had a lawyer, Veryan Haysom, leading them in their work. Mr. Haysom also acted as counsel in court matters through LLS. See The Daily News, May 12, 1977 at p. 13: https://collections.mun.ca/digital/collection/dailynews/id/332370/rec/9: retrieved online on November 2, 2025.

[101] See discussion at endnote 78.

[102] See discussion at paras. 8.08 and 8.09 above.

[103] There are many instances where the individuals are involved simultaneously in child protection and criminal cases. When delay in criminal cases overlaps with delay in child protection cases, both become more complex. A lack of interpreters will contribute to delay for in both types of

[104] See endnote 32 above.

[105] See discussion of Innu social worker education program at para. 4.30, and endnote 49 above.

[106] It must be noted that courts have no funding ability and do not alone determine where they will go on circuit or their circuit schedules. Doing so is regarded as an administrative responsibility because of funding considerations. Funding is entirely a governmental function. While there will be consultations between courts and government, the ultimate funding decisions are government's.

[107] Criminal hearings generally take place in Natuashish when the court travels on circuit to the community. However, there are still fewer circuits than 10 years ago, with the result that cases must be called and dealt with remotely at times from one of the Labrador court centres..

[108] Periodically, since at least 2010, the Provincial Court has been held at the local Mushuau Innu School for hearings in Natuashish. This can only happen from the end of the school day, that is,

after 3 p.m., and into the evenings. There are often children in or near the building (though not in the court space) when court is ongoing, including when prisoners arrive or depart. It also means persons required to attend court do so when their families are at home and presumably need them. I can say from personal experience it is very difficult for all involved to work in this space and on this schedule for the four full days that constitute a regular court circuit. I understand this is currently the only available arrangement for the Court to hold hearings in Natuashish, including in child protection matters.

[109] *CYFA* Section 51(1)(a) states that child protection hearings "shall be held in private, unless otherwise ordered by the judge.

[110] It is interesting that recently in Natuashish living facilities have been provided for rotational social workers which gives them personal space and a workplace. Though they are unlikely to be lavish, those facilities are one answer to the question of how to provide needed accomodations and services in a remote Labrador community.

[111] *13. (1) A manager or social worker may use a family group conference, mediation or another form of alternate dispute resolution to establish, replace or amend the plan referred to section 12.*

(2) Where a family group conference, mediation or another form of alternate dispute resolution is agreed upon, the parties shall enter into a written agreement to participate in the process.

(3) An issue with respect to a plan referred to in section 12 may be included in a family group conference, mediation or another form of alternate dispute resolution, other than the determination by a manager or social worker that the child is in need of protective intervention and the factors that led to that determination.

[112] *34. (1) A judge may adjourn a proceeding under this Act one or more times, for a total period of up to 3 months, to allow*

(a) a judicial case conference, family group conference, mediation or another form of alternate dispute resolution to proceed; or

(b) an assessment to be completed, where that assessment is considered necessary by a judge, manager or social worker.

(2) Where a proceeding is adjourned under subsection (1) a time limit applicable to the proceeding is suspended.

(3) Where, as a result of a family group conference or mediation, a written agreement is made, a manager or social worker shall file the agreement with the court.

[113] A 2013 report entitled "A Different 'Day in Court': The Role of the Judiciary in Facilitating Settlements", published by the Ontario Bar Association, Judicial Mediation Taskforce, stated at page 16: "The judicial sash has its advantages for achieving settlement. A judge's suggestions on settlement weigh heavily even if they are not couched in evaluative language. The presence of a judge is also a physical reminder of what lies ahead if settlement is not reached – he or she wears, however subtly, the implications of the adjudicative process.: See https://www.oba.org/ON/media/web/PDFs/PublicPolicy/Submissions/2013/ADifferentDayInCourt7122013.pdf: retrieved online on October 29, 2025.

[114] Settlement conferences are available in Supreme Court under Rule F25 of the *Supreme Court Family Rules*, as amended. See https://www.assembly.nl.ca/legislation/sr/regulations/RulesSC/Rc86PartIV.htm#25: retrieved online on October 29, 2025. Rule 11.03 of the *Provincial Court Family Rules, 2007* provides for settlement conferences. Rule 11.02 provides for case conferences, which also involve a judge.

[115] A 2016 survey of legal professionals in Canada reported: "The services that lawyers were most likely to report that they refer clients to often or almost always are mediation (70.2%), maintenance enforcement programs (70.1%), parenting education programs (63.2%), individual counselling (56.7%), and marriage or relationship counselling (44.4%). See https://www.justice.gc.ca/eng/rp-pr/jr/nflp-cndf/index.html: retrieved online on October 29, 2025.

[116] A roster of accredited mediators for a court-connected mediation program can be put in place, and it may include experienced mediators from this Province and others. I would suggest all mediators be familiar with Labrador circumstances and, if dealing with an Innu family, familiar with one or both Innu communities.

[117] Such a mediation session with two counsel, both parties, and a mediator is often called a "five-way meeting."

[118] Contrary to what is often understood, mediation does not exclude lawyers. Indeed, proper legal advice helps ensure fairness and understanding of the process. As stated in a very useful Government of Canada discussion of mediation, "Counsel can play as active a role in a mediation as their client is willing to grant them. It must be determined by the disputing parties at the outset of the mediation whether counsel are present at the mediation session and whether they will be permitted to participate actively. In general, counsel can and should act as legal advisors to their clients, both during a mediation and at the completion of the process. Counsel can and should review a proposed agreement to determine if it serves the client's interests." See

https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/04.html: retrieved online on November 1, 2025.