

A presentation to the Standing Committee
on Canadian Heritage on
[BILL C-91]
An Act respecting Indigenous languages

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First Peoples' Cultural Council

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FIRST PEOPLES'
CULTURAL COUNCIL

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1. Acknowledgments

We acknowledge the traditional territory of the Algonquin people. We thank the Standing Committee for the invitation to discuss this important bill.

2. Reclaiming, Revitalizing, Maintaining and Strengthening Indigenous Languages

The introduction of Bill C-91 is a concrete act of reconciliation by the Government of Canada towards Indigenous people. This Act is a beginning; it provides good direction but it will require key revisions and strong guidance from Indigenous people on its implementation in order to achieve the reclamation, revitalization, maintenance and strengthening of all Indigenous languages in Canada.

The preamble sets out important principles which were requested by Indigenous people in consultations throughout the co-development process. These are of particular importance:

- The commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- The recognition of the right to self-determination.
- The acknowledgement of the history of discriminatory policies and practices.
- The recognition of the varying status of languages and of the urgent need to support the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen each one of them (regardless of numbers of speakers).
- The commitment of the Government of Canada to provide adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages.

A willingness to work in partnership to implement UNDRIP demands a new way of working with Indigenous peoples. The whole of government has to switch habits of thinking and practice to a new mode where Indigenous people are not treated as wards of the government but rather as full partners in this work. Indigenous people too need to shift away from a colonized mindset. These are substantial tasks, for the Ministry of Canadian Heritage, the Office of the Commissioner of Indigenous Languages and for Indigenous people. In this brief, we highlight several key issues to consider for amending Bill C-91 and we make recommendations that will make the Act more responsive to the needs of Indigenous communities and languages.

(a) Indigenous control of Indigenous languages

The preamble states the following: “Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.” In contradiction to this recognition, the Act specifies that powers, duties and functions resulting from the Act will be carried out by the Minister or the Commissioner. We therefore recommend the establishment of a national Indigenous language organization governed by Indigenous experts and at arm’s length from the Department of Canadian Heritage and the Office of the

Commissioner of Indigenous Languages. This organization will “support the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages” and will develop a national strategy (strategic plan) for Indigenous languages in Canada. In section 3, we delineate the rationale, structure and role of such an organization.

We recommend that the Commissioner be modeled after the Official Languages Commissioner with primary roles of ombudsperson (complaints review), auditing and reporting. While these roles are already specified within the Act, it seems that the Commissioner is also meant to play a role in supporting efforts to reclaim, revitalize, maintain and strengthen Indigenous languages. In order to effectively monitor the work, the Commissioner needs to be independent from those supporting and carrying out the work. The Commissioner should operate independently of government and any of the Indigenous-led political bodies or national or regional language organizations.

(b) Adequate, sustainable and long-term funding

The commitment to provide adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages (Article 7) **is crucial**. However, this article describes a non-specific consultation process to be undertaken by the Minister in order to meet the objective of providing funding. This denies Indigenous self-determination and the process as described will prevent effective and efficient distribution of funding. We recommend: “The Minister must fund a national Indigenous language strategy in order to meet the objective of providing adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of each Indigenous language in Canada.” The proposed national Indigenous language organization could develop the strategy and funding framework; see section 3. It is essential to shift from proposal- or project-based funding to the development of a language investment plan for every language.

There needs to be a clear understanding of what is required for language reclamation, revitalization, maintenance and strengthening. And because of the wide range of status of Indigenous languages, the Government of Canada needs to be skillful in providing the necessary resources, funding and support for each language. The Province of British Columbia provided \$50 million in the 2018 budget for First Nations languages in B.C. (cf. \$2.6 million provided by the Department of Canadian Heritage to B.C. in 2018). This is a good start, but more will be required to truly revitalize, strengthen and maintain languages across Canada. First Peoples’ Cultural Council has developed detailed funding models and this information can be provided to the Standing Committee upon request.

We want to see long-term protection and financial support for our languages. Our Elders, knowledge keepers, speakers, language teachers, learners and those with expertise and commitment need to have access to financial resources. Indigenous communities and organizations must be directly funded to carry out this work. People have different ways of achieving the goals they have for their languages and must be given the opportunity to do so. Languages must be safeguarded from external initiatives that do not contribute to reclamation, revitalization, maintenance and strengthening. Ultimately, the Act needs to guarantee investments that respond to the needs of Indigenous communities and be protected from shifting government interests.

(c) Omissions

Leading up to the drafting of Bill C-91, First Peoples' Cultural Council held engagement sessions in British Columbia, and the Assembly of First Nations and the Department of Canadian Heritage held a series of engagement sessions across the country. Among the themes that emerged, there are three significant issues that have been omitted or not clearly expressed in Bill C-91.

First, Indigenous languages in Canada include Indigenous sign languages. Sign languages have been marginalized even more than spoken Indigenous languages. They must be given explicit recognition in the Act.

Second, more than 50% of Indigenous people in Canada live away from their home communities. Indigenous people have the right to their language no matter where they reside. This point needs to come across more strongly in the Act. This includes people who reside away from their own communities (whether by choice or not), individuals who are incarcerated, children in the care of social services both adopted and in foster care, adults who have been disconnected from their communities through fostering or adoption, and individuals residing in hospitals or other health care facilities. In addition, all Indigenous people have this right, whether or not they have "status" or other official community membership.

Finally, the ownership and intellectual property rights of each language must be protected. For example, section 24 of the Act discusses research activities that may be undertaken by Statistics Canada or Library and Archives Canada. Indigenous people need to be able to design their own research and be autonomous in taking decisions with respect to language documentation and storage. They must be supported and funded to do this work themselves. No non-Indigenous entity should hold or curate Indigenous knowledge. We recommend that the principles of ownership, control, access and possession with respect to Indigenous languages be clearly outlined in the Act.

3. National Indigenous Languages Organization

In this section, we provide a brief outline of the rationale, structure and role of a national Indigenous languages organization.

Rationale:

- An organization is needed to provide broad, comprehensive management of the implementation of Bill C-91.
- The establishment of a national organization can protect funding and programs into the future if the government changes (e.g., on the model of the Tri-Agency, CBC, Canada Council for the Arts, etc.).
- A national organization will keep the work of Bill C-91 at arm's length from government, political organizations or the Commissioner.
- A national organization can ensure Indigenous direction of the legislation initiatives with decision making via an Indigenous board and advisory committee.
- A national organization can connect and support existing regional organizations. However, in many places regional organizations do not currently exist and will need

support and guidance to be developed; an overarching national organization is best-suited to do this work.

- A national organization can develop a strategic language strategy on a national level and collate reporting from regional and community levels.

Structure: Based on input from consultation sessions, the national structure should be as small and efficient as possible to keep administrative costs at the national level to a minimum. The scope of work could be phased out over time. The organization will develop a national Indigenous languages strategy that will carry out the following roles.

Role:

1. Manage and distribute the annual budget transfer from the government
 - a. Direct transfer to Indigenous communities (nations) and/or a designated language organization per nation
 - b. Direct transfer to regional entities
 - c. Proposal based funding available for knowledge transfer activities (regional and national conferences, sharing of resources and practices)
 - d. Proposal based and/or direct funding available for language programs based in urban areas, off-reserve or not connected to communities or traditional territories
 - e. Proposal based bursaries available to individuals not residing in their home communities or home territories for language learning
2. Provide central repository (clearinghouse)
 - a. Collect and organize resources developed by regional entities and by communities and individuals in order to promote knowledge transfer and reduce duplication of resources and activities
 - b. Maintain state-of-the-art archive for communities who choose to archive language documentation. Provide archiving support to communities who choose to archive their own documentation
 - c. Across all jurisdictions, ensure right of access to language in sign languages, and language for all individuals with disabilities or special abilities.
3. Government & public liaison
 - a. Work with federal government ministries to educate elected officials and staff and provide language infrastructure across all government ministries
 - b. Educate general public on the value of Indigenous languages to Canada and promote their use
 - c. Coordinate translation and interpretation services where required for federal services

In addition to a national organization, there are roles for regional organizations and of course for Indigenous communities and people themselves, including people who do not reside in their home communities. We can provide additional information on the rationale and role of each of these stakeholders upon request.

4. Conclusion

In this brief, we have outlined several key points to consider in the process to amend Bill C-91. In the appendix, we provide recommendations for specific articles of C-91. We also invited feedback on Bill C-91 from Indigenous people, organizations and leadership in British Columbia during the period February 6-15, 2019 and will provide this feedback to the committee.

We support legislation to recognize and revitalize languages. We respectfully ask that you consider our recommendations to strengthen Bill C-91. There is an urgency to pass this legislation before the end of this parliamentary session. However, the greater urgency concerns Indigenous languages themselves. There is a lot at stake for Indigenous people throughout Canada, but particularly in British Columbia where the minoritization of languages has reached a critical state. Languages urgently need investment and the longer we wait to invest, the higher the costs will be. The need to act is urgent. Nevertheless, in spite of the current status of Indigenous languages, we know that reclaiming, revitalizing, maintaining and strengthening them will be possible, with adequate, sustainable and long-term funding that is held and directed by Indigenous people.

5. About the First Peoples' Cultural Council:

First Peoples' Cultural Council (FPCC) is a First Nations-led provincial Crown corporation with a mandate to support the revitalization of Indigenous languages, arts, cultures and heritage in British Columbia. The organization provides funding, resources and training to communities, monitors the status of First Nations languages, develops policy recommendations for First Nations leadership and government and collaborates with organizations on numerous special projects that raise the profile of arts, languages, cultures and heritage in B.C., Canada and internationally. Visit: www.fpcc.ca

APPENDIX

With reference to the text of Bill C-91, An Act respecting Indigenous languages, we denote potentially problematic articles and provide recommendations for revisions.¹

Definitions

2 The definition of “Indigenous organization” may be more restrictive than intended. For example, FPCC is a provincial crown corporation. Does this count as an “Indigenous organization”? On the other hand, the definition may be too broad. What constitutes an entity “that is specialized in Indigenous languages”?

“Indigenous languages” must be included in the definition section. The definition must refer to the languages originally spoken in what is now Canada and importantly, must include Indigenous sign languages.

Purposes of Act

5 (b) It is not clear which entity (DCH or the Commissioner) is going to “support the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages”. We recommend the establishment of a national Indigenous language organization governed by Indigenous experts and at arm’s length from DCH and the Commissioner. This organization will provide the support described above and will develop a national strategy (strategic plan) for Indigenous languages in Canada.

(b)(iv) Suggested revision: “support Indigenous language learning and cultural activities **to create new speakers**, including language nest and immersion programs,”

(b)(vi) Who will undertake this research? Any research should be led by Indigenous people and organizations not, for example, by universities. There has been a history of data mining and copyright issues. This research should directly benefit communities with resources that will help revitalize language.

(c) What kind of a framework? Isn’t this Act the framework? Suggested revision: “Establish a national Indigenous language strategy to facilitate...”

(d) Who will establish these measures? DCH? Any of the funding projection work carried out through the co-development process was provided by FPCC and by independent contractors hired by the Assembly of First Nations and was not done by DCH. Again, in order to respect the right to self-determination, this work must be led by a national Indigenous language organization. Further, it is not clear anywhere in the Act how this clause will be implemented. This needs to be specified. In addition, rigorous standards of evaluation and accountability are required to determine whether the strategies being undertaken are meeting the goals of the legislation. These standards need to be developed by Indigenous people and quantify impacts, not just activities.

¹ Note the following abbreviations: DCH = Department of Canadian Heritage; FPCC = First Peoples’ Cultural Council

Consultations — adequate, sustainable and long-term funding

7 The commitment to provide adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages is crucial. However, this article denies Indigenous self-determination and the process as described will prevent effective and efficient distribution of funding. We recommend: “The Minister must fund a national Indigenous language strategy in order to meet the objective of providing adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages.” The proposed national Indigenous language organization could develop the strategy and funding models along with an evaluation plan and metrics.

Cooperation to support Indigenous languages

8 This is good. The work needs to be coordinated with other levels of government. Institutions that have been closed to Indigenous peoples and languages will also need to be engaged. Does this cooperation include financial support where required? Indigenous Services Canada (ISC) is responsible for on-reserve education. Therefore, we recommend explicit mention of cooperation with ISC in order to ensure the implementation of immersion education.

Agreements or arrangements — purposes of Act

9 What is required in order to enter into such an agreement or arrangement? At minimum, we recommend the presentation of a strategic plan and a previously demonstrated capacity to successfully carry out language work.

Federal Institutions

Translation and interpretation

11 (a) This is an issue regarding capacity. A focus on translation could detract from revitalization by requiring the limited number of mother tongue speakers to carry out translation work rather than to provide immersion language learning opportunities. Why do federal institutions drive the translation of documents? We recommend that translation requests be put to the national organization who can determine whether capacity for the translation work exists. Translation services and infrastructure for each language can be built over time as part of language-wide plans and be based on a threshold of speakers.

Office of Commissioner of Indigenous Languages

Establishment

Appointment of Commissioner

13 This article is vague. With which “diverse Indigenous governments and other Indigenous governing bodies and diverse Indigenous organizations” is the Minister consulting? We recommend an open application process that closely follows the process for the Commissioner of Official Languages. A term of five years is acceptable provided there are clear guidelines regarding removal for cause.

Appointment of directors

16 We recommend that directors be appointed every two years to a maximum of six years. Because Canada is so large, it’s important that individuals from different nations have the opportunity to

apply. Appointment decisions should follow standards of good governance such as consideration of diversity of gender and geography.

Head office

22 The National Capital Region is not necessarily the best place for an Indigenous languages Commissioner. The majority of Indigenous languages in Canada are spoken in British Columbia. Therefore, we recommend that the office be located in British Columbia or in a more central location such as Manitoba.

Mandate and Powers, Duties and Functions

Mandate

23 (b) What does “support” mean? What kind of work is the Office meant to undertake in order to support the work of Indigenous peoples? We recommend the Commissioner’s role be limited primarily to monitoring and related roles. The supporting work should be carried out by national and regional organizations. In order to effectively monitor the work, the Commissioner needs to be independent from those supporting the work. Is there is a potential conflict of interest here? This also applies to all of the support roles delineated in article 25 below.

(d) Promoting public awareness could be carried out by a national organization. Or, this should be a limited part of the Commissioner’s role.

(d)(iii) Suggest adding wording that access to languages is a human right (cf. UNDRIP).

(e) Why are “innovative projects and new technologies” mentioned so specifically? “Innovative projects” is vague and “new technologies” don’t create fluent speakers. Suggested revision: **“Support immersion** in Indigenous language education and revitalization, in cooperation with Indigenous governments and other Indigenous governing bodies, Indigenous organizations, the Government of Canada and provincial governments, **and organizations serving Indigenous people not residing in their home territories.”** Indigenous language technologies created and curated by Indigenous people and organizations already exist and should be supported.

Research or studies

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Community assessments

(2) Funding must be provided for the community assessment work carried out by communities.

Statistics Canada and Library and Archives Canada

(3) We have concerns about the role of Library and Archives Canada in the research referred to in 24(1). We recommend such research be led and conducted by Indigenous people. The role of Statistics Canada should be limited to research conducted through the census; this can supplement primary research carried out by Indigenous people. Further, no non-Indigenous entity nor government agency should curate Indigenous knowledge or data.

Dispute resolution services

26 Suggested revision: "...the Office may provide services **designed to support and empower people**, including..."

Review of complaints

27 (1) The Commissioner should investigate complaints from anyone, not just from Indigenous people, cf. the Commissioner of Official Languages (COL): "A complaint may be made to the Commissioner by any person or group of persons, whether or not they speak, or represent a group speaking, the official language the status or use of which is at issue."² It is unclear what kind of investigative powers the Commissioner has in conducting a review; this should be explicitly stated, cf. the duties of the COL.

Financial Management

The sections detailing financial management of this office (§31-42) are excessive – a continuation of Canada's wardlike relationship with Indigenous people. We recommend that the Commissioner be subject to the same requirements as the Commissioner of Official Languages.

Business plan and budget

33 (1) We recommend a 5 or 10 year plan that can be operationalized on an annual basis.

Annual Report

Contents

43 (1) We recommend that the Office report directly to parliament rather than to the Minister.

(a) Producing an annual report on the use and vitality of Indigenous languages in Canada will be challenging. In British Columbia, FPCC publishes a language status report every four years and we recommend the same at a national level. Regional infrastructure and capacity will be needed in order to collect this information.

(c) Suggest replacing "the adequacy of funding provided by the Government of Canada for the purposes of initiatives related to Indigenous languages." with "the implementation of a national strategy."

Regulations and Rules

Regulation-making powers

45 Extensive consultations have already taken place in the co-development of this legislation. This Act should empower Indigenous experts to make regulations.

² Government of Canada. (2017, September 21). Consolidated federal laws of Canada, Official Languages Act. Retrieved February 14, 2019, from <https://laws-lois.justice.gc.ca/eng/acts/O-3.01/page-6.html?txthl=act>