

**Standing Committee on Indigenous and Northern Affairs**

**Indigenous Languages Study**

**January 30, 2023**

**Ensuring the Indigenous Languages Act Is Consistent with the United Nations  
Declaration on the Rights of Indigenous Peoples Act**

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Wa'tkwanonweráton,

Karihwakeron Tim Thompson waksennóten. Wakskaréwake ni:i tánon Wáhta Mohawk Territory nitiwaké:non.

Greetings to all,

My name is Karihwakeron Tim Thompson. I am from a bear clan family and I reside in Wáhta Mohawk Territory. My community is located in south-central Ontario, Canada. We are one of several communities in the Kanienkeháka/Mohawk Nation of the Haudenosaunee Confederacy. Our civil and political existence predates European settlement on Turtle Island.

A few years ago, I was involved in a conversation with three elders from my community about how educational institutions were used to stop Indigenous peoples from speaking Indigenous languages. The elders knew how many people in our community were taken away to residential schools where they were forbidden to speak the language of their parents and grand-parents. However, these three individuals were not removed from their home. They were educated at a federally-established school in our community. They told me that when they spoke to each other in Kanienkéha, the teacher would give them the choice of the whip they would receive. The three agreed that the razor whip was worse than the horse whip. In addition to corporeal punishment, shame was also used by the schools to stop Indigenous peoples from speaking ancestral languages. The inter-generational impacts have been devastating.

Wáhta Mohawk Territory is one of the smallest in the Kanienkeháka Nation and the Haudenosaunee Confederacy with approximately 175 people residing in the Territory. There are less than a handful of first language Kanienkéha speakers in our community, the youngest being over eighty years of age. The school-age children attend provincial schools where education occurs in the medium of the English language. There are currently no local alternatives for immersion or mentorship in Kanienkéha.

### **Background**

In 1998, the Assembly of First Nations (AFN) declared a State of Emergency with respect to First Nations languages. Resolution #35/98 called upon the federal government to legally recognize First Nations languages as having official status. The federal response was to create the Aboriginal Languages Initiative (ALI) under the Department of Canadian Heritage. ALI was a proposal-based program with \$5 million available nationally, but divided up for Inuit, Metis, and First Nations peoples, and an annual allocation for languages deemed critically endangered. In the first year in Ontario the proposal selection committee received approximately \$10 million in proposals, but they only had a little more than \$200,000 available to allocate. First Nations communities were forced to lower their expectations in subsequent years.

In 2002, the federal government announced \$172.5 million over 11 years for Indigenous languages. They created the Aboriginal Languages and Cultures Task Force to help identify priorities. The Task Force issued its report in 2005. A federal election occurred in 2006. The new government unilaterally, without consultation, removed the remaining \$160 million from the fiscal framework. These were the words that were used at the time – the money was “removed from the fiscal framework.” First Nations were not placated when the federal government subsequently committed to continuing to provide \$5 million per year nationally to the Aboriginal Languages Initiative for 8 years.

ALI funding has always been inadequate, but First Nations communities depended on what was available to assist even the most modest initiatives. The program parameters have historically been restricted in scope, excluding activities deemed as falling under the education mandate of the Department of Indian Affairs and Northern Development (DIAND). The program is historically proposal-based, subject to limits based on funding availability and the unpredictability of proposal-selection processes. It is also time-limited, historically providing funding for projects for one-year. It is acknowledged that the program recently amended its guidelines to permit the consideration of multi-year projects. The program survives only as long as the government in power wants it to survive. These inadequacies are key characteristics of initiatives provided by a matter of policy rather than provided because of language rights held by Indigenous peoples.

### **The Indigenous Languages Act, 2019**

In 2015, the Truth and Reconciliation Commission of Canada tabled a final report with 94 Calls to Action, including a call for the federal government to enact an Aboriginal Languages Act and an Aboriginal Languages Commissioner.

In 2016, the AFN brought this issue to the attention of the federal government and received a commitment to work cooperatively. The *Indigenous Languages Act* was passed in 2019. The first meaningful line of the Act states:

**“Whereas the recognition and implementation of rights related to Indigenous languages are at the core of reconciliation with Indigenous peoples and are fundamental to shaping the country, particularly in light of the Truth and Reconciliation Commission of Canada’s Calls to Action;”<sup>1</sup>**  
(emphasis mine)

Section 6 states that “The Government of Canada recognizes that the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982 include rights related to Indigenous languages.” The vague wording of this section is problematic. It is open to interpretation, so it doesn’t explicitly confer any obligations on the federal government to support Indigenous language rights.

When the Bill to create the legislation was undergoing final review in the Senate, Senator Murray Sinclair noted, in the presence of the Minister of Canadian Heritage:

*“One of the concerns I have always had about this legislation, just so you know — and I’ll repeat it here, although I have written to you about this, minister — is that this bill does not give and does*

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<sup>1</sup> Indigenous Languages Act, S.C. 2019, c. 23, Assented to 2019-06-21, <https://laws-lois.justice.gc.ca/eng/acts/i-7.85/page-1.html>

*not acknowledge the enforceability of the right to language on the part of individuals. As a result, with the kind of situation that Senator McCallum referred to where there are groups of students who want to learn the language, they have no way of compelling provinces to require that the language of instruction be provided.”<sup>2</sup>*

Senator Sinclair had previously told the Minister:

*“As you know, I have a number of concerns about the legislation and I have communicated many of them to you. I note...that **no reference to the government’s obligation to fund language recovery and revitalization exists in the bill.**”<sup>3</sup> (emphasis mine)*

The Senator further noted:

*“At present, and in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, the government has a legal obligation to make funds available for language revitalization.”<sup>4</sup>*

Despite the existence of the *Indigenous Language Act*, First Nations languages continue to be treated as a program subject to the shifting political winds of Parliament. If a government decides it is time to curtail funding, then First Nations face the same situation that existed in 2006 when the federal government took away \$160 million. This is why it is critical to identify specific rights in the text of the law and confirm the Crown’s commitment to the implementation of Indigenous language rights.

Rather than wait for a five-year review of the Act, Senator Sinclair indicated more urgency was required. As a result of this intervention, Section 49.1 of the *Indigenous Languages Act* requires the Act to be reviewed by a Parliamentary Committee every three years, with the first review occurring by October 1st, 2023. This provides an opportunity to update the Act to ensure that it contains explicit recognition of Indigenous language rights.

### **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**

The United Nations Declaration on the Rights of Indigenous Peoples is widely recognized as setting minimum standards for the relationship between state governments and Indigenous peoples. The Declaration has several articles which directly support Indigenous languages, particularly Articles 13, 14, 15, and 16. Article 14 (1) states:

*“Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”<sup>5</sup>*

<sup>2</sup> Proceedings of the Standing Senate Committee on Aboriginal Peoples, Issue 55 - Evidence - May 28, 2019, <https://sencanada.ca/en/Content/Sen/Committee/421/APPA/55EV-54815-E>

<sup>3</sup> Proceedings of the Standing Senate Committee on Aboriginal Peoples, Issue 50 - Evidence - March 19, 2019, <https://sencanada.ca/en/Content/Sen/Committee/421/APPA/50EV-54598-E>

<sup>4</sup> Ibid.

<sup>5</sup> United Nations General Assembly, Sixty-first session, Agenda item 68, Resolution 61/295, 2 October 2007, pp. 5 <https://daccess-ods.un.org/tmp/5777534.84249115.html>

Article 14 (3) identifies an obligation for state governments with respect to this right:

*“States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.”<sup>6</sup>*

However, there is currently no content in the *Indigenous Languages Act* to require the implementation of this right. As Senator Sinclair noted, the text of the Indigenous Languages Act fails to explicitly require the federal government to take effective measures such as providing the funding necessary to revitalize Indigenous languages.

Another example is Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples, subsection (1) which states:

*“Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”<sup>7</sup>*

Article 13 (2) imposes an obligation on states *“to take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”<sup>8</sup>*

Again, the operative sections of the Indigenous Languages Act fail to set out specific language rights held by Indigenous peoples, and provide few obligations to legally bind the state.

After existing funding commitments expire, First Nations might conceivably be back in the position of competing against multiple priorities and try to hope that there is political will to provide the support necessary to revitalize Indigenous languages. Political and administrative challenges should not prevent Indigenous people from being able to benefit from Indigenous language rights.

### **UNDRIP Act Provides an Opportunity to Amend the Indigenous Languages Act**

In 2021, the Parliament of Canada passed into law the *United Nations Declaration on the Rights of Indigenous Peoples Act*. It requires that the federal government take all measures necessary to ensure the laws of Canada are consistent with the UNDRIP; and, by June, 2023, to prepare and implement an action plan to achieve the objectives of the Declaration.<sup>9</sup>

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<sup>6</sup> Ibid., pp. 6

<sup>7</sup> Ibid., pp. 5

<sup>8</sup> Ibid., pp. 5

<sup>9</sup> United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14, Assented to 2021-06-21, <https://www.laws-lois.justice.gc.ca/eng/acts/u-2.2/page-1.html> - Article #5 states: “The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.”

It would be a positive step for the government of Canada to amend the *Indigenous Languages Act* by adding specific language rights recognized in the UNDRIP, such as the right to be educated in an Indigenous language. The implementation of such rights should necessitate a whole-of-government approach where the implementation of Indigenous language rights become prioritized by multiple departments.

With the entrenchment of Indigenous language rights in law, the funding for Indigenous language initiatives would become more secure. An additional step should be to ensure that funding for the implementation of Indigenous language rights be allocated as a statutory obligation, set aside as a consequence of law, and be less subject to the political circumstances of the government in power.

These measures are critically important to implement the spirit of a renewed Crown-First Nations relationship and to uphold the honour of the Crown.

### **Conclusion**

Indigenous languages convey thousands of years of lived experience on our homelands. Indigenous languages are spoken in every part of the country, in urban and rural centres and throughout the territories, the lands and waters, where we carry out our traditional practices.

Indigenous languages are the foundation of unique cultural identities connected to particular lands and ecologies, and a means to transmit knowledge from generation to generation. Through story-telling, ceremony, and visiting, Indigenous languages help maintain social cohesion in Indigenous communities and Nations. Studies show that youth who are involved in learning Indigenous languages experience better education outcomes. Research has concluded that youth from communities with a greater prevalence of Indigenous language experience better health outcomes and less suicide than those who come from communities with less prevalence of their Indigenous language.

Amending the *Indigenous Languages Act* to incorporate the sections of the UNDRIP relating to Indigenous languages, particularly sections 13, 14, 15, and 16, not only provides a level of legal recognition and protection, it also serves notice that Indigenous languages are truly valued and will be supported. This action will serve as an important step on the road to addressing past wrongs and strengthening relationships between the Crown and Indigenous peoples.

### **Recommendation**

1. The Standing Committee on Indigenous and Northern Affairs recommend that the *Indigenous Languages Act* be amended by including those sections of the United Nations Declaration on the Rights of Indigenous Peoples which reference Indigenous language rights, including sections 13, 14, 15, and 16.