

Strengthening the Indigenous Languages Act – Bill C-91

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BILL C-91, AN ACT RESPECTING INDIGENOUS LANGUAGES, was introduced in the House of Commons on February 6, 2019. This is a review of key provisions of the Act.

Unfortunately, it has many flaws and omissions. Among the elements that are absent:

- 1) There is no declaration of Indigenous languages as “Official languages” – this has been advocated for aggressively by Inuit;
- 2) There is no reference to the roles and responsibilities of government departments beyond Heritage Canada in supporting Indigenous language revitalization. This is a break from the supposed “whole-of-government” approach prescribed on other Indigenous law and policy;
- 3) In a neighbouring country, federal departments are required to report regularly on measures being taken to support government priorities. It would be a good practice in this case but does not appear in the legislation; finally,
- 4) There is no reference to support the development of community or nation-based action plans for language recovery/ revitalization.

All this being said, it is not beyond redemption if cabinet or even the Senate is willing to make amendments in the Committee process.

It is important, at minimum, to ensure there is an explicit funding guarantee for language revitalization activities, and to clarify that Indigenous language rights include, but are not limited to, the right to communicate, learn, and be educated in Indigenous languages.

These are fundamental requirements to ensure the Act is useful to support Indigenous language revitalization and to enable Indigenous peoples to hold future governments to account for their responsibilities under the Act.

What follows below is a review of key elements of the legislation that could be strengthened. This table is broken down by Purpose, Rights, Powers of the Minister, Office of the Indigenous Languages Commissioner, and Independent Review. Under each are pertinent sections of the legislation and then “Weaknesses” (left column) as well as “Proposed Amendments” (right column). The proposed amendments many include deleting entire sections, removing or revising specific language in sections.

Bill C-91: An Act respecting Indigenous languages

PURPOSES OF ACT		
SECTION	WEAKNESSES	PROPOSED AMENDMENT
<p>5(c) Purposes: to “establish a framework to facilitate the effective exercise of the rights of Indigenous peoples that relate to Indigenous languages, including by way of agreements or arrangements referred to in sections 8 and 9.”</p>	<p>The “purposes” section is usually an interpretive section. Frameworks are administrative measures that can be dealt with in regulations or as political agreements. When this section is read together with actionable sections of the Act, it appears that the exercise of language rights in the Act is contingent on reaching agreements with the federal government, and, possibly with the provincial government.</p>	<p>Remove the clutter from this section. Clearly state that a purpose of the Act is to “enable the exercise of the language rights of Indigenous Peoples.</p>
<p>5(d) Purposes: to “establish measures to facilitate the provision of adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages”</p>	<p>Mechanisms/measures are administrative issues. The purpose of establishing “measures” is not the same as an explicit commitment to “provide adequate, sustainable and long-term funding...”. It gives future governments an out. Section 7 of the Act merely requires the Minister to “consult” Indigenous governments and organizations about providing funding. Note that it doesn’t say they should consult the people. The Section, as worded, falls short of the obligation to actually provide the funding.</p>	<p>Clearly state that under this Act there is an obligation to “provide Indigenous communities & organizations with adequate, sustainable & long-term funding for the reclamation, revitalization, maintenance & strengthening of Indigenous languages.”</p> <p>Ensure the amended wording from Section 5(d) is copied from the “purpose” section and included as an enforceable, stand-alone Section in the bill.</p>
<p>5(g) Purposes: to “advance the achievement of the objectives of the United Nations Declaration on the Rights of Indigenous Peoples as it relates to Indigenous languages.”</p>	<p>The purpose of advancing “the achievement of the objectives...” is significantly different than a commitment to implement the provisions of UNDRIP. Once again, this section of the bill is focussing on administrative and process issues rather than the deliverables and enforceable outcomes required to support the revitalization of Indigenous languages. Specific UNDRIP provisions should be listed ie. Article 13, 14, 16, and 31. This would be consistent with the federal commitment to implement UNDRIP.</p>	<p>Include the actual wording of UNDRIP Articles 13, 14, 16, and 31 in a stand-alone, enforceable section of the Act. This would be consistent with the commitment of the Government of Canada to implement UNDRIP and to support Bill C-262 “An Act to ensure that the laws of Canada are in harmony with the UNDRIP.”</p>

RIGHTS RELATED TO INDIGENOUS LANGUAGES

SECTION	WEAKNESSES	PROPOSED AMENDMENT
<p>6 Recognition by Government of Canada: “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.”</p>	<p>This is a significant measure. The Section as written fails to explicitly recognize the right to communicate, to learn, and to be educated in an Indigenous language in Canada. In the current context, what does “related to Indigenous languages” actually mean? After all, governments in Canada have continually taken the position that S. 35 rights are an empty box, undefined, and waiting to be filled by site-specific, negotiated agreements or Court interpretation. It is possible that this section is to be read along with sections 8 and 9 which states that the Minister of Canadian Heritage can enter into agreements with respect to Indigenous languages. This could mean that Indigenous language rights will be contingent on reaching political agreements. There is no guarantee that that courts in Canada will conclude that Indigenous language rights include rights affirmed by UNDRIP, or have similar scope to minority language rights in Canada, unless there is some guidance. There is a danger that a Court could say that if the intent of the government of the day was to recognize Indigenous language rights, they would have said so, rather than a vague statement about “rights related to Indigenous languages.”</p>	<p>Revise Section 6 to state that the Government of Canada recognizes that Section 35 of the Constitution Act, 1982 “includes, among other matters, the right to communicate, to learn, and to be educated in Indigenous languages.”</p>

POWERS, DUTIES AND FUNCTIONS OF MINISTER

SECTION	WEAKNESSES	PROPOSED AMENDMENT
<p>8 Cooperation to support Indigenous Languages: “The Minister may cooperate with provincial governments, Indigenous governments or other Indigenous governing bodies, Indigenous organizations or other entities – including by entering into agreements or arrangements with them – to coordinate efforts to efficiently and effectively support Indigenous languages in Canada in a manner consistent with the powers and jurisdictions of the provinces and of Indigenous governing bodies and the rights of Indigenous peoples recognized and affirmed by Section 35 of the Constitution Act, 1982.”</p>	<p>Why is a law required to state that a Minister may enter into multi-party agreements with provinces and Indigenous peoples? This authority already exists. Is there an additional purpose served by this section? Furthermore, there is no explicit recognition that Indigenous languages are a jurisdiction belonging to Indigenous governments. Without explicit recognition of Indigenous jurisdiction, Indigenous governments may be forced to define the scope their jurisdiction and rights in trilateral agreements in the absence of any other explicit protections in this Act.</p>	<p>Delete this section. It is unnecessary and relies on political commitments by provinces to be actionable. If the intent of this section was to define language rights and make them contingent on negotiated agreements, this provision should be rejected in favour of strengthened recognition of the right to communicate, learn, and be educated in Indigenous languages as being recognized and affirmed by Section 35 of the Constitution of Canada, and the relevant provisions of the UNDRIP.</p> <p>It also seems apparent that these vague agreements will be required in other areas, child welfare jurisdiction and potentially education funding among them. If this is a new approach to Indigenous policy and law, there should be clarity for communities prior to including these provisions in law.</p>
<p>9 Agreements or arrangements – Purposes of Act: “Taking into account the unique circumstances and needs of Indigenous groups, communities and peoples and the research or studies referred to in Section 24 and in a manner consistent with the powers and jurisdictions of the provinces and of Indigenous governing bodies and the rights of Indigenous peoples recognized and affirmed by Section 35 of the Constitution Act, 1982, the Minister and an appropriate Minister may enter into an agreement or arrangement to further the purposes of this Act with a provincial government, an Indigenous government or other Indigenous governing body or an Indigenous organization.”</p>	<p>Section 9 confirms that the “purposes” set out in Section 5 will be enacted through negotiated agreements with Indigenous governments/organizations. See Section 5(c). It is apparent that the issues referenced in Section 5 are not guaranteed at all under the Act unless the negotiating parties come to an agreement. It is critical that in the text of the Act, other than the Purposes section, there is a clear recognition of the obligation to provide adequate funding rather than focussing on administrative measures and processes.</p>	<p>Delete this section. It is unnecessary and relies on political commitments by provinces to be actionable. If the intent of this section was to define language rights and make them contingent on negotiated agreements, this provision, like Section 8 before it, should be rejected in favour of strengthened recognition of the right to communicate, learn, and be educated in Indigenous languages as being recognized and affirmed by Section 35 of the Constitution of Canada, and the relevant provisions of the UNDRIP.</p>

OFFICE OF THE COMMISSIONER OF INDIGENOUS LANGUAGES

SECTION	WEAKNESSES	PROPOSED AMENDMENT
<p>25 Support offered by Office: "At the request of an Indigenous community or an Indigenous government or other Indigenous governing body, the Office may provide support to the community or the Indigenous government or other Indigenous governing body in its efforts to reclaim, revitalize, maintain and strengthen an Indigenous language, including its efforts to</p> <ul style="list-style-type: none"> (a) create permanent records of the language, including audio and video recordings and written materials such as dictionaries, lexicons and grammars of the language, for the purposes of, among other things, its maintenance and transmission; (b) establish certification standards for translators and interpreters; (c) conduct community assessments in respect of the use of the language; (d) develop and implement plans for reclaiming, revitalizing, maintaining and strengthening the language; or (e) engage with the Government of Canada or provincial governments to establish culturally appropriate methods of teaching and learning the language. 	<p>Section 25 sets out capacities the Office of the Commissioner may be able to provide to Indigenous communities or organizations. Many Nations might view these authorities as competing with their own jurisdiction, however these capacities may be helpful to smaller language families. Anything that looks like non-Indigenous authorities developing standards, plans, or methods with respect to Indigenous languages without an explicit requirement to obtain the free, prior, and informed consent of Indigenous peoples should be viewed with concern.</p>	<p>Add an ending to Section 25 which assures that none of the foregoing measures will be implemented without the free, prior, and informed consent of Indigenous peoples. This is a measure within the UNDRIP.</p>
<h3>INDEPENDENT REVIEW</h3>		
<p>49 (1) Five-year Review: "Within five years after the day on which this section comes into force and every five years after that, the Minister must cause to be conducted an independent review of this Act, of its administration and operation, of any agreements or arrangements made under section 9 and of the activities of the Office. The review must be conducted by a person or body appointed by the Minister in consultation with the Office."</p>	<p>There is no scope or framework specified for the review.</p>	<p>After the word "Office," add "for the purposes of making recommendations to ensure the Act is meeting the stated purposes of enabling Indigenous peoples to "reclaim, revitalize, maintain and strengthen Indigenous languages."</p>

Additional and specific weaknesses of Section 23, Mandate of the Office of the Indigenous Languages Commissioner:

MANDATE AND POWERS, DUTIES AND FUNCTIONS	
SECTION	WEAKNESSES
<p>23 Mandate: "The mandate of the Office is to:</p> <ul style="list-style-type: none"> (a) help promote Indigenous languages; (b) support the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages; (c) facilitate the resolution of disputes and review complaints to the extent provided by this Act; (d) promote public awareness and understanding in respect of <ul style="list-style-type: none"> (i) the diversity and richness of Indigenous languages, (ii) the inseparable link between Indigenous languages and the cultures of Indigenous peoples, (iii) the rights of Indigenous peoples related to Indigenous languages, (iv) the significance of those rights for Indigenous peoples, as well as for the general public, (v) the negative impact of colonization and discriminatory government policies on Indigenous languages and the exercise of those rights, and (vi) the importance of working toward and contributing to reconciliation with Indigenous peoples; and (e) support innovative projects and the use of new technologies 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. <p>Research or Studies 24(1) The Office may undertake research or studies, or cause research or studies to be undertaken, in respect of</p> <ul style="list-style-type: none"> (a) the provision of funding for the purposes of supporting Indigenous languages; or (b) the use of Indigenous languages in Canada, including for the purposes of measuring the vitality of those languages or identifying measures to restore and maintain fluency in those languages. 	<ul style="list-style-type: none"> • Unlike the Commissioner for Official Languages, the proposed Commissioner is not accountable to Parliament. The Commissioner and up to three directors are appointed by the Governor in Council upon the advice of the Minister. • There are no provisions requiring other Departments of the Federal Government to implement measures to support the revitalization of Indigenous languages. • No oversight or monitoring authority ie. to ensure the federal government is living up to their commitments under the Act, or that the Act is fulfilling its purposes. • Authorities to "help promote," "support efforts," and "promote public understanding," are not without merit however there is no content to specifically support the development of community/nation language revitalization plans. Section 23 (b) offers unspecified support for "efforts." • The authority to conduct research on the provision of funding and the vitality of Indigenous languages may be useful in serving the Section 23 mandate to provide support and public education.