



OFIFC

Ontario Federation of
Indigenous Friendship Centres

A Review of Bill C-91:
An Act Respecting Indigenous Languages

ONTARIO FEDERATION OF INDIGENOUS FRIENDSHIP CENTRES

Founded in 1971, the Ontario Federation of Indigenous Friendship Centres (OFIFC) works to support, advocate for, and build the capacity of member Friendship Centres across Ontario.

Emerging from a nation-wide, grass-roots movement dating back to the 1950's, Friendship Centres are community hubs where Indigenous people living in towns, cities, and urban centres can access culturally-based and culturally-appropriate programs and services every day. Today, Friendship Centres are dynamic hubs of economic and social convergence that create space for Indigenous communities to thrive. Friendship Centres are idea incubators for young Indigenous people attaining their education and employment goals, they are sites of cultural resurgence for Indigenous families who want to raise their children to be proud of who they are, and they are safe havens for Indigenous community members requiring supports.

In Ontario more than 85 per cent of Indigenous people live in urban communities. The OFIFC is the largest urban Indigenous service network in the province supporting this vibrant, diverse, and quickly-growing population through programs and initiatives that span justice, health, family support, long-term care, healing and wellness, employment and training, education, research, and more.

Friendship Centres receive their mandate from their communities, and they are inclusive of all Indigenous people – First Nation, Status/Non-Status, Métis, Inuit, and those who self-identify as Indigenous from Turtle Island.

Learn more about the work the OFIFC does to support Friendship Centres at www.ofifc.org.

INTRODUCTION

On February 5, 2019, the Federal Government introduced Bill C-91 into the House of Commons for first reading.¹ This legislation has been a key commitment of the Liberal Government since taking office in 2016 and part of the mandate of the Ministry of Canadian Heritage and Multiculturalism (MCHM).² In June 2017, the Minister of MCHM and the leaders of the Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis National Council declared their joint intent to collaborate on the legislation.

The draft legislation contains mechanisms which proopt to:

- establish measures for the provision of long-term, sustainable funding of Indigenous languages;
- advance the objectives of the United Nations Declaration on the Rights of Indigenous Peoples;
- support the reclamation, revitalisation, strengthening and maintenance of Indigenous languages in Canada;
- work with provinces, territories, Indigenous representative organisations and Indigenous governments to create effective support for Indigenous languages in Canada through a variety of mechanisms; and,
- establish an Office of the Commissioner of Indigenous Languages.

The Government of Canada pledged to continue to collaborate with the AFN, MNO, and ITK throughout the legislative process. The government has indicated that it aims to pass the legislation prior to June when Parliament will rise and Canada will enter its election cycle.

The OFIFC reached out on multiple occasions to MCHM inviting greater collaboration and consultation with urban Indigenous communities. The OFIFC shared its report *Gidizhigiizhwewinaanan: Our Languages³ with MCHM*, and sent a [letter](#) to the Minister outlining OFIFC's concerns that their three streams approach to consultation discriminates against urban Indigenous communities.

KEY STATISTICS

- In 2016, only 15.6% of Indigenous people could converse in an Indigenous language, compared to 17% of Indigenous people in 2011 and 21% in 2006.
- Of those overall numbers, 21% of First Nations people, 64% of Inuit and 2% of Métis could converse in an Indigenous language.
- In 2016, only 12.5% of Indigenous people declared their mother tongue was an Indigenous language, compared to 14.5% in 2011.

¹ <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-91/first-reading#enH921>

² <https://pm.gc.ca/eng/minister-canadian-heritage-and-multiculturalism-mandate-letter-august-28-2018>

³ <http://research.ofifc.org/sites/default/files/Gidizhigiizhwewinaanan-%20Our%20Languages%20Report.pdf>

- Ontario has the 5th highest share of Indigenous language speakers in Canada, with 12.7% (behind Quebec – 19.3; Manitoba 15.5%; Saskatchewan – 14.5%; and Alberta – 13.8%).⁴
- In 2015-16, 7,795 students were enrolled in Indigenous language programs and courses, marking an 81% increase since 2006-07.⁵
- 2019 was declared the International Year of Indigenous Languages by UNESCO.

URBAN INDIGENOUS LANGUAGE REVITALISATION

Indigenous language revitalisation is an identified priority of urban Indigenous communities in Ontario.⁶ Indigenous language reclamation and revitalisation is imperative to the economic, social and cultural development of urban Indigenous communities and to the free exercise of Indigenous rights in urban Canada.

In the province of Ontario, 85 percent of Indigenous people live off-reserve, in cities, towns and rural areas. The Friendship Centres in Ontario support this large and growing contingent of Indigenous people who practice their cultures and exercise their Indigenous rights in an urban context. The trend of increased urbanization of the Indigenous population holds true across Canada. Urban Indigenous communities today are multi-generational in origin and frequently organise themselves in distinct ways that reflect culture-based approaches to governance and their inherent rights to self-determination, as affirmed and recognised in the United Nations Declaration on the Rights of Indigenous People (the Declaration).

For over forty years, Friendship Centres have supported Indigenous people to exercise their right to practice their culture where they live, in urban settings. Friendship Centres are an embodiment of Indigenous peoples' rights to maintain and strengthen their cultural institutions and to revitalise, use, develop and transmit to future generations their cultures, including their histories, languages, oral traditions, philosophies, writing systems and literatures. Despite a scarcity of resources and a patchwork of government programming, Friendship Centres have continuously fought to preserve and revitalise Indigenous languages in urban landscapes at the request of urban Indigenous community members.

Ontario's 28 Friendship Centres are uniquely positioned to efficiently and effectively revitalise Indigenous languages. Only one in six Indigenous people are conversant in an Indigenous language⁷ and fluency in urban communities across Canada is at even greater risk, complicated by heterogenous linguistic practice in urban spaces – diverse

⁴ Statistics Canada. (October 2017). 'Census in Brief: The Aboriginal languages of First Nations people, Métis, and Inuit.' Retrieved from: <http://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016022/98-200-x2016022-eng.cfm>

⁵ Ministry of Education, Strengthening our Learning Journey: Third Progress Report on the Implementation of the Ontario First Nation, Métis and Inuit Education Policy Framework (Toronto: Ministry of Education, 2018), 27.

⁶ 92.5% of respondents in the Urban Aboriginal Task Force study (2007) believed that it is important to speak an indigenous language.

⁷ Statistics Canada. 2011. Census in Brief: Aboriginal Languages in Canada (Ottawa: Minister of Industry).

in both languages spoken and proficiency in language.⁸ Despite antagonistic conditions for Indigenous language in urban centres, research shows that 56% of participants in the OFIFC's Akwe:go program for children between 6-12 can speak an Indigenous language, though fluency levels were considered low.⁹ The viability of Indigenous languages for future generations is contingent upon Indigenous children learning their languages.¹⁰ Urban Indigenous communities and knowledge holders have articulated a necessity to implement immersion programs in the early "pre-verbal ages"¹¹ CAP-C and CPNP are two programs that could effectively deliver language nest or other programming which targets early years learners and their families in Friendship Centres.

Legislation to revitalise Indigenous languages is an important responsibility of the government. Overall this Act is insufficient to meet the needs of urban Indigenous communities. The Act is overly focused on the establishment of bureaucratic functions within the Federal Government that expand its oversight over Indigenous languages. It fails to: establish mechanisms that increase Indigenous control over languages; clearly define Indigenous language rights; establish statutory funding; or create mechanisms to align provincial and federal policy with the goals of Indigenous communities. In the absence of comprehensive provisions that increase urban Indigenous control and responsibility over Indigenous languages in urban areas, Bill C-91 will fail to achieve the revitalisation of Indigenous languages.

Call to Action 14 of the Truth and Reconciliation Commission of Canada report calls on the government to enact federal legislation to revitalise Indigenous languages which recognises that "the preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities."¹² Bill C-91 must embed clear language that safeguards Indigenous control over Indigenous languages, and which recognises the role of urban Indigenous organisations in the management of Indigenous language revitalization in urban areas.

INDIGENOUS LANGUAGE RIGHTS

The proposed legislation fails to define this Aboriginal language right or provide tangible provisions outlining the responsibility of the Crown to protect this right, opening the possibility of costly litigation and placing this burden on individuals to assert their already pre-existing rights. Although Bill C-91 commits to "advancing" the Declaration in

⁸ Mary Jane Norris, *Aboriginal Languages in Selected Cities In Canada: A Decade in Review, 1996 to 2006, Part Two*, *Aboriginal Policy Studies* 1(3), 2011.

⁹ Ontario Federation of Indigenous Friendship Centres. 2014. *Akwe:go Wholistic Longitudinal Study Baseline Report* (Toronto: OFIFC).

¹⁰ Norris, Mary Jane, "Aboriginal Languages in Canada: Trends and Perspectives on Maintenance and Revitalization" (2006). *Aboriginal Policy Research Consortium International* 122

¹¹ Ontario Federation of Indigenous Friendship Centres. 2014. *Gidizhigiizhwewinaan: Our Languages: Language Transfer Practices in Urban Indigenous Communities* (Toronto: OFIFC).

¹² Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: TRC, 2015).

its preamble, it does not entrench the Declaration within its statutes or specify key individual Articles the legislation will implement. The Declaration makes key provisions to protect and revitalise Indigenous languages:

- Article 13 1. Indigenous peoples have the right to revitalise, 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.
- 2. States shall 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.
- Article 14 1. 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.
- 3. 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.

As the National Association of Friendship Centres states: “These Articles direct nation-states to entrench Indigenous language rights into legal and Constitutional frameworks, and in doing so hand over the power to govern the enactment of Indigenous language education to Indigenous peoples themselves.”¹³ The current language of Bill C-91 does not meet the intent of these articles, but instead defers the defining of Aboriginal language rights to the drafting of an Indigenous languages framework.

It is recommended that Bill C-91 adopt specific language to define Aboriginal language rights and clarify responsibilities of all levels of government to protect these rights for Indigenous people and communities across traditional territories of Indigenous people and in collaboration with a broad range of Indigenous community organisations including Friendship Centres and the OFIFC.

NATION-TO-NATION

Section 6 of Bill C-91, a provision specifically responding to the Truth and Reconciliation Commission’s Call to Action 13, recognises Indigenous language rights as Aboriginal rights under Section 35 of the Constitution Act, 1982.¹⁴ This constructive step is accompanied by the government’s places near exclusive emphasis on the intra-governmental relationship implicit in a “nation-to nation” approach, which only involves chiefs elected under the *Indian Act*. Thus, large swaths of Canada’s Indigenous

¹³ <https://nafc.ca/wp-content/uploads/2018/11/NAFC-Indigenous-Languages-Discussion-Paper-EN-New-Website.pdf>

¹⁴ It should also be noted that non-Status Indians continue to face a lack of clarity around their Section 35 rights, which begs the question of whether non-Status Indians have language rights as per Section 6 of the Act.

communities are cut out of critical discussions on topics, such as Indigenous language reclamation and revitalization, which are not only highly relevant to the lived realities of, and legitimate claims by, these communities, but about which they have a high level of experience and expertise. Overall, this approach ignores a vital aspect of the Indigenous landscape, namely its heterogeneity, and seeks to streamline the discourse in a simplistic way, which disingenuously perpetuates colonial power structures created by federal legislation in 1876 with the creation of the *Indian Act*.

The proposed legislation appears to seek to address this significant issue by containing within itself an inconsistency between the nation-to-nation approach the federal government employed to draft Bill C-91 and the inclusive language contained within the proposed legislation. The development of Bill C-91 took an exclusively nation-to-nation approach, which omitted Friendship Centre representation, and the Canadian Government has since affirmed its commitment to work closely with the AFN, MNO and ITK throughout the legislative process. The lack of acknowledgment of urban Indigenous language rights at the very least sows' uncertainty around the language rights of off-reserve Indigenous people and may be used to limit the functions of urban Indigenous organisations in language revitalisation. The effect of this will be a diminished impact of any efforts at language reclamation and revitalisation as the majority of Indigenous people do not live on reserve. Indeed, in Ontario 85.5% of Indigenous people live off-reserve.¹⁵

Specifically, the Canadian Government's distinctions-based approach to policy development excludes numerous Indigenous community members who fall out of the scope of the *Indian Act*. As a result, the free and full expression of the rights of Indigenous people living in urban communities is undermined. The federal government's approach to consultation and the language in the proposed legislation must align to acknowledge the practical expertise, the program and service delivery role, and the constitutional interest of urban Indigenous community organisations in the clarification and in the exercise of Indigenous rights.

Positively, Bill C-91 moves away from explicit use of the three streams language (First Nation, Metis and Inuit) instead opting to use three terms to categorise Indigenous representative bodies with whom the legislation will interact: "Indigenous government" "Indigenous governing body" and "Indigenous organisation." The new terminology must be read as inclusive, recognising Indigenous organisations, like Friendship Centres, as critical to consultation, design, development, delivery and evaluation of Indigenous language programming alongside Indigenous governments and governing bodies This reflects the fact that Friendship Centres have long taken up the responsibility for serving Indigenous people, including in the area of language.

OFFICE OF COMMISSIONER OF INDIGENOUS LANGUAGES

¹⁵ StatsCan, 2016.

Bill C-91 establishes the Office of Commissioner of Indigenous Languages (Commission). However, the Act does not provide clear definitions for key functions of the Commission. The Act refers to multiple roles of the Commission including funding, oversight, reporting, and even refers to supporting efforts to revitalise Indigenous languages. It is important that the Commission has a clear role that does not interfere with Indigenous self-determination.

At best, the primary function of the Commission should be limited to that of Ombudsperson – the identification and mediation of issues that prevent Indigenous communities from fully exercising their language rights. A key barrier, however, is that the Commission lacks authority to make binding decisions. For example, annual reports will be tabled, and studies may be conducted, however, there are no requirements for government to implement recommendations and no binding actions resulting from clear dispute resolution mechanisms. Without official status, the Commission lacks a clear role as Ombudsperson to enforce the types of changes that Indigenous communities have called for to protect and resurge Indigenous languages.

If the role of the commission is to simply extend or expand the federal government's management of Indigenous languages, then the Commission diverges with specific TRC Calls to Action,¹⁶ violates several UNDRIP provisions recognizing Indigenous rights to establish and control their own cultural institutions,¹⁷ and contradicts the Act's own recognition of Indigenous self-determination. As mentioned, many Indigenous organisations were not consulted and have not consented to the establishment of a government Commission to manage their languages. Further, the Commissioners and Directors are appointed by government effectively filtering Indigenous voices and widening the distance between Indigenous people and decision-making processes.

It is recommended that the role of the Commission be limited to that of an Ombudsperson, and that the management of languages is placed under the jurisdiction of Indigenous communities. The OFIFC recommends adopting a model that places control for the management of Indigenous languages within Indigenous communities themselves through Indigenous institutional development and federal funding allocations based on a four streams approach that recognizes the constitutional interest of off-reserve Indigenous organisations

INDIGENOUS LANGUAGE FUNDING

The proposed legislation empowers the Minister to establish funding levels and mechanisms. It further outlines a role for the Commission to make funding recommendations to the Minister, in consultation with Indigenous organisations.

¹⁶ The TRC Calls to Action clearly recognise that “the preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.”

¹⁷ Article 18, for example, states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”

However, the funding model is ambiguous in the Act and clarity is needed to define the consultative process, funding levels, types of funding agreements, and decision-making on funding recipients. On all accounts to date, the government states there is funding available through the legislation.¹⁸ However, there is no statutory guarantee of funding for Indigenous language revitalisation within the Act.

Funding decisions cannot be left to the goodwill of whichever political party forms government. Without guaranteed, long-term funding, Indigenous language revitalisation will not succeed.¹⁹ The OFIFC recommends that the Act clearly define a funding model that provides sustainable funding to Indigenous communities. All federal funding allocations must be based on a four streams approach that recognises the role, responsibilities, expertise, and constitutional interest of off-reserve Indigenous organisations. There must be a carve out for Friendship Centres distributed to OFIFC for allocation of funding to Friendship Centres based on community need. Funding must be allocated as core support for operations rather than project-based funding, which is notoriously unreliable and does not create sustainable language programming.

PROVINCIAL COORDINATION

There is a provision in the proposed legislation according to which the Minister will coordinate efforts and enter into agreements where appropriate with provincial governments in order to meet Indigenous language needs. Coordination with provincial governments is imperative to meet the objectives of language revitalisation because provinces have jurisdiction over key public services, like education systems, which have the power to expand or limit Indigenous linguistic spaces in the public education system.

The Act, however, does not create a mechanism to align provincial policy with Indigenous language rights. Without a mechanism to encourage or compel provincial policy alignment, the implementation of Indigenous language rights is at the goodwill of each government, each of whom may afford a different political weight to upholding Indigenous language rights. It is recommended that the federal government work with provinces and incentivise the entrenchment of Indigenous language rights in provincial human rights codes. All provincial human rights bodies must then work with Indigenous communities in the development of specific mechanisms to hold government, public and private institutions accountable to upholding Indigenous language rights.

It is unclear if the Act will allow for transfer payment agreements with provinces that would transfer Indigenous language funding to provinces for regional disbursement or to supplement Indigenous languages in the public education system. It is recommended that there are no federal-provincial transfer agreements, and that all monies earmarked

¹⁸ In Second Reading, MP Arif Virani, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, stated that Bill C-91 enacts a funding model that allows for five-year agreements. There is no such provision discernable in the Act. Clarification is required in the Act to explicitly define the funding model.

¹⁹ It should be noted that the AFN submitted a preliminary 10-year costing of Indigenous language revitalization for First Nations to the Federal Government, which the estimate at 6.5B over the first 10 years.

for Indigenous language revitalisation be controlled by Indigenous governments, governing bodies and Indigenous organisations. A federal-provincial transfer would lead to an additional layer of government control over Indigenous languages in contravention of Indigenous self-determination.

OFFICIAL LANGUAGES

The Act does not grant official or special status to Indigenous languages, which could enhance accountability at all levels of government; create public space for Indigenous languages and establish statutory funding, among other measures. In the absence of defining language rights or establishing official/special language status, this Act does very little to increase the use of Indigenous languages in media, services, and in the public domain.²⁰ Because we know that languages must be used to survive, this Act must promote public use of Indigenous languages by creating official or special status for Indigenous languages.

INDEPENDENT REVIEW

The proposed Act requires the Minister to conduct an independent review after every five years of the Act's implementation. However, there is nothing in the Act that stipulates the Minister shall consult or engage with Indigenous groups on what the review should include and who should undertake the review itself. The Act allows the Minister to appoint a person or body and only requires consultation with the Commission. This consultation differs from the approach taken on other key consultative areas in the proposed legislation. It is recommended that Bill C-91 consistently incorporate the full participation of Indigenous organisations in all decisions that impact their language rights. Additionally, in the interest of transparency and accountability to Indigenous communities, the report needs to be made a public document upon its completion, as it currently is not required as per the proposed Act.

RECOMMENDATIONS FOR IMPLEMENTATION AND CONCLUSION

In summary, to improve *Bill C-91: an Act respecting Indigenous languages*, the OFIFC recommends that:

1. The federal government adopt a model that places control for the management of Indigenous languages within Indigenous communities themselves through Indigenous institutional development and federal funding allocations based on a four streams approach that recognizes the constitutional interest of off-reserve Indigenous organisations. This will include:

²⁰ Although, it should be noted that translation services will be a requirement to allow Indigenous people to use their language in certain public forums.

- a. Adopting specific language to define Indigenous language rights and clarify responsibilities of all levels of government to protect these rights for Indigenous people and communities across traditional territories of Indigenous people and in collaboration with a broad range of Indigenous community organisations including Friendship Centres and the OFIFC.
 - b. Providing specific recognition of urban Indigenous rights, including language rights and acknowledge the practical expertise, the program and service delivery role, and the constitutional interest of urban Indigenous community organisations in the clarification and in the exercise of Indigenous rights.
 - c. Consistently incorporating the full participation of Indigenous organisations in all decisions that impact their Indigenous rights, including language rights.
 - d. Limiting the role of the Office of Commissioner of Indigenous Languages to that of Ombudsperson.
 - e. Providing statutory funding that directly supports urban Indigenous organisations. This must include a carve out for Friendship Centres distributed to OFIFC for allocation of funding to Friendship Centres based on community need. Funding must be allocated as core support for operations rather than project-based funding.
 - f. Supporting the expansion of Indigenous prenatal and children's programming by urban Indigenous organizations and their incorporation of language learning.
 - g. Ensuring all language reporting, including the independent review, is transparent and publicly available.
2. The federal government establish official or special status for Indigenous languages in order to widely promote the use of Indigenous languages across Canada.
 3. The federal government coordinate with provincial governments to:
 - a. Incentivise the entrenchment of Indigenous language rights in provincial human rights codes; and
 - b. Ensure all monies earmarked for Indigenous language revitalisation are controlled by Indigenous governments, governing bodies and Indigenous organisations.

For the federal government to contribute constructively to the Indigenous languages landscape, it is critical to implement approaches that are responsive, inclusive,

participatory and broad-based at all decision-making levels, which must include recognition of the role of urban Indigenous services providers such as Friendship Centres in supporting the reclamation and revitalisation of Indigenous languages. We believe implementing the recommendations outlined above, will increase the federal government's effectiveness, accountability and transparency vis-à-vis Indigenous communities and Indigenous language reclamation and revitalization and ultimately have a much greater impact on the safeguarding of Indigenous languages across Canada.