



LEGISLATIVE SUMMARY

BILL C-91: AN ACT RESPECTING INDIGENOUS LANGUAGES

Publication No. 42-1-C91-E
31 December 2019

Isabelle Brideau
Brittany Collier
Legal and Social Affairs Division
Parliamentary Information and Research Service

Library of Parliament *Legislative Summaries* summarize bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2020

Legislative Summary of Bill C-91
(Legislative Summary)

Publication No. 42-1-C91-E

Ce document est également publié en français.

CONTENTS

1	BACKGROUND	1
1.1	Overview of Indigenous Languages in Canada	2
1.2	Indigenous Languages in Canada Today	2
1.2.1	Key Reports and Documents	3
1.2.1.1	Report of the Royal Commission on Aboriginal Peoples (1996)	3
1.2.1.2	Report of the Task Force on Aboriginal Languages and Cultures (2005)	4
1.2.1.3	Final Report of the Truth and Reconciliation Commission of Canada (2015)	5
1.2.1.4	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	5
1.2.2	Federal Programs for Indigenous Languages	5
1.2.2.1	Indigenous Languages Component of the Indigenous Languages and Cultures Program	6
1.2.2.2	First Nations and Inuit Cultural Education Centres	6
1.2.3	Indigenous Languages as Official Languages in the Northwest Territories and Nunavut	7
2	DESCRIPTION AND ANALYSIS	8
2.1	Preamble and Purposes (Clause 5)	8
2.2	Interpretation (Clauses 2 to 4)	9
2.3	Rights Related to Indigenous Languages (Clause 6)	9
2.4	Minister's Powers, Duties and Functions (Clauses 7 to 10)	10
2.5	Federal Institutions (Clauses 10.1, 10.2 and 11)	10
2.6	Office of the Commissioner of Indigenous Languages (Clauses 12 to 44)	11
2.6.1	Mandate and Powers, Duties and Functions (Clauses 23 to 30)	11
2.6.2	Financial Management (Clauses 31 to 42)	13
2.6.3	Annual Report (Clauses 43 and 44)	13
2.7	Regulations and Rules (Clauses 45 to 48)	14
2.8	Independent Review (Clause 49)	15

2.9	Parliamentary Review (Clause 49.1).....	15
2.10	Coming into Force (Clause 50).....	15
3	COMMENTARY	15



LEGISLATIVE SUMMARY OF BILL C-91: AN ACT RESPECTING INDIGENOUS LANGUAGES

1 BACKGROUND

Bill C-91, An Act respecting Indigenous languages (short title: Indigenous Languages Act), was introduced in the House of Commons on 5 February 2019 by the Minister of Canadian Heritage and Multiculturalism.¹

Bill C-91 enacts the Indigenous Languages Act, which recognizes Indigenous language rights as Aboriginal rights protected under section 35 of the *Constitution Act, 1982*.² The bill enables the Minister of Canadian Heritage (the Minister) to enter into agreements with provincial and territorial governments, Indigenous governments or other Indigenous governing bodies, and Indigenous organizations with respect to Indigenous languages. It further establishes the discretionary authority of federal institutions to provide interpretation services and translation in Indigenous languages in relation to their activities and documents under their control. The bill also establishes an Office of the Commissioner of Indigenous Languages (the Office) with a mandate to help promote Indigenous languages; to support Indigenous efforts to “reclaim, revitalize, maintain and strengthen Indigenous languages”; to facilitate the resolution of disputes and review complaints; and to promote public awareness and understanding of the diversity and richness of Indigenous languages, among other matters.

Bill C-91 follows a December 2016 announcement by the Prime Minister indicating that the federal government would co-develop legislation with Indigenous peoples to protect, preserve and revitalize Indigenous languages.³ In June 2017, the Department of Canadian Heritage agreed on a collaborative engagement process with three national Indigenous organizations: the Assembly of First Nations (AFN), Inuit Tapiriit Kanatami (ITK) and the Métis National Council.⁴

The bill was referred to the House of Commons Standing Committee on Canadian Heritage (CHPC) on 20 February 2019. On 28 February 2019, a motion adopted in the Senate authorized the Standing Senate Committee on Aboriginal Peoples (APPA) to pre-study the subject matter of Bill C-91.

On 1 April 2019, CHPC reported the bill with amendments, and the House of Commons concurred in that report on 2 May 2019. On 30 April 2019, APPA tabled its report on the subject matter of the bill.

On 27 May 2019, the bill received second reading in the Senate and was referred to APPA. On 13 June 2019, APPA reported the bill with amendments. That same day, the report was concurred in by the Senate, the amended bill was passed, and a

message was sent to the House of Commons. The House of Commons considered the Senate amendments and sent a message back to the Senate on 19 June 2019. Some amendments passed by the Senate were rejected by the House of Commons.

On 20 June 2019, the Senate concurred in the House of Commons amendments and did not insist on the Senate amendments with which the House of Commons disagreed. The amendments adopted by both chambers are reflected below.

Key amendments made by CHPC relate to the purpose of the bill, the Governor in Council's regulation-making powers, the appointment of the Commissioner of Indigenous Languages and directors, research and studies undertaken by the Office and independent and parliamentary reviews of the Indigenous Languages Act. APPA's amendments to the bill include the requirement for the Office to consult and coordinate with the Indigenous, provincial or territorial entities where appropriate; and permitting federal institutions to deliver programs and services in an Indigenous language in areas where the number of speakers warrant.

The bill received Royal Assent on 21 June 2019.

1.1 OVERVIEW OF INDIGENOUS LANGUAGES IN CANADA

Languages are central to Indigenous identity and are deeply connected to Indigenous cultures, laws, values and relationships with the land.⁵ In the past, the Government of Canada implemented policies intended to suppress Indigenous languages and cultures, such as Indian residential schools, which children were forced to attend and where they were forbidden to speak their own languages. The Final Report of the Truth and Reconciliation Commission of Canada (TRC) found that the residential school system contributed to language loss and affected the transmission of Indigenous languages to future generations, as in some cases, parents who attended residential schools were unable or decided not to pass on their first language to their children.⁶ Despite this history, Indigenous languages have endured and continue to be spoken in Canada today.

1.2 INDIGENOUS LANGUAGES IN CANADA TODAY

This history has contributed to the critical state of the 70 Indigenous languages spoken in Canada today. The state of Indigenous languages varies across the country; for example, some Indigenous languages have only a small number of elderly speakers remaining, while some others are considered “viable” over the long term.⁷ Indigenous languages can be divided into 12 language families, including the Algonquian languages, Athabaskan languages and Siouan languages. In 2016, of 1.67 million people who reported an Indigenous identity, about 15%, or 263,840 people, reported that they could have a conversation in an Indigenous language. Algonquian languages, including Cree and Ojibway, had the most speakers (175,825) followed by Inuktitut (42,065 speakers). While over 60%

of all First Nations languages in Canada are found in British Columbia, many have fewer than 1,500 speakers. Speakers of Michif, a language combining French and Cree that developed among Métis communities, were reported to number 1,170 people who stated that they could speak it well enough to have a conversation.⁸

The urgency of language revitalization has led Indigenous peoples to take different approaches, such as immersion programs, land-based camps and language nests for young children.⁹ The federal government has provided some support for this work through programs such as the Indigenous Languages Component of Canadian Heritage's Indigenous Languages and Cultures Program, which will be discussed below.

In other cases, Indigenous communities with signed comprehensive land claims or self-government agreements can make their own laws about language and culture in their territories. Comprehensive land claims and self-government agreements can address matters such as self-government, ownership of lands, and culture, language and education. For instance, the *Labrador Inuit Final Agreement*,¹⁰ signed in 2005, established the Nunatsiavut Government, which can make laws in relation to Inuit culture and language in Labrador Inuit communities. Today, a division of the Nunatsiavut Government's Department of Culture, Recreation and Tourism is mandated to establish and administer policies, programs and services for the use, development and preservation of Inuktitut, among other matters.¹¹

1.2.1 Key Reports and Documents

According to the AFN, for at least 70 years, Indigenous peoples have stressed the critical state of Indigenous languages and the urgent need for language revitalization and preservation.¹² Several reports have made recommendations on Indigenous languages, including the Report of the Royal Commission on Aboriginal Peoples (1996), the report of the Task Force on Aboriginal Languages and Cultures (2005), and the Final Report of the Truth and Reconciliation Commission of Canada (2015). Several provisions of Bill C-91 relate to some of the TRC's Calls to Action¹³ and the recommendations from the Task Force on Aboriginal Languages and Cultures, such as those establishing a Commissioner of Indigenous Languages.

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), adopted by the United Nations General Assembly in 2007, also affirms rights related to Indigenous languages.¹⁴

1.2.1.1 Report of the Royal Commission on Aboriginal Peoples (1996)

In 1996, the Royal Commission on Aboriginal Peoples released its five-volume, 4,000-page report "centred on a vision of a new relationship founded on the recognition of Aboriginal peoples as self-governing nations with a unique place in

Canada.”¹⁵ The report contained 440 recommendations, several of which related to Indigenous languages. For example, the report recommended that

- federal, provincial and territorial governments recognize that the authority to determine the status of an Indigenous language is a core function of Indigenous self-government, and that Indigenous communities be supported in using, promoting and declaring their languages as official languages in their nations, territories and communities if they choose;¹⁶ and
- the federal government create an Aboriginal Languages Foundation to support Indigenous initiatives “in the conservation, revitalization and documentation of Aboriginal languages.”¹⁷

1.2.1.2 Report of the Task Force on Aboriginal Languages and Cultures (2005)

In December 2002, the Minister of Canadian Heritage announced that Canada would create a centre with a budget of \$160 million over 10 years to help preserve, revitalize and promote Aboriginal languages and cultures.¹⁸

In 2003, the Task Force on Aboriginal Languages and Cultures was established with a mandate to report to the Minister with proposals for a national strategy to preserve and revitalize Indigenous languages and cultures, along with recommendations on the structure and functioning of the proposed Aboriginal languages and culture centre.¹⁹

The task force’s 2005 report, *Towards a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Métis Languages and Cultures*, included 25 recommendations in areas such as funding, language education and a national language strategy. For example, the report recommended that

- Canada enact legislation to recognize, protect and promote Indigenous languages. This legislation would be developed in partnership with Indigenous peoples; establish a First Nation, Inuit, and Métis Language Commissioner; and provide financial resources for the preservation, revitalization, protection and promotion of Indigenous languages, among other matters;
- a National Language Strategy be developed by Indigenous language communities and representative organizations; and
- Canada provide funding for Indigenous languages “which is, at a minimum, at the same level as that provided for the French and English languages.”²⁰

However, the proposed centre was never built. Following the 2006 federal election, the new government did not consider the centre as “the most appropriate means of working towards the revitalization and preservation of First Nation, Inuit and Métis languages.”²¹ Instead, in response to a question on the *Order Paper*, the then- minister noted that in March 2006, the federal government committed an additional \$5 million to extend the Aboriginal Languages Initiative for the 2006–2007 fiscal year.²²

1.2.1.3 Final Report of the Truth and Reconciliation Commission of Canada (2015)

The TRC was established in 2007 with a mandate to document the history and legacy of residential schools, among other matters. Its final report was released in December 2015 and included 94 Calls to Action covering a variety of areas, including health, education and justice. Calls to Action 13 to 17 are related specifically to language and culture. They call on the federal government to, among other things,

- acknowledge that Aboriginal rights include Aboriginal language rights (Call to Action 13);
- enact an Aboriginal Languages Act that enshrines such principles as the federal government's responsibility "to provide sufficient funds for Aboriginal-language revitalization and preservation" (Call to Action 14); and
- consult with Indigenous groups to appoint an Aboriginal Languages Commissioner to "help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives" (Call to Action 15).

1.2.1.4 *United Nations Declaration on the Rights of Indigenous Peoples*

UNDRIP²³ affirms a range of collective political, economic, social, cultural and environmental rights for Indigenous peoples, including Indigenous rights to "revitalize, use, develop, and transmit to future generations" their languages and histories (Article 13); create and control education systems and institutions and provide education in Indigenous languages (Article 14); and establish media in Indigenous languages (Article 16). Article 13 also outlines the obligation of states to take "effective measures" to ensure that the rights in that article are protected.

UNDRIP was adopted by the United Nations General Assembly in 2007. While Canada was one of four countries that initially voted against UNDRIP, it formally endorsed it in 2010. In 2016, the Minister of Indigenous and Northern Affairs stated in a speech delivered to the United Nations General Assembly that Canada was "now a full supporter of the Declaration without qualification" and would "adopt and implement the Declaration in accordance with the Canadian Constitution."²⁴

1.2.2 Federal Programs for Indigenous Languages

The federal government offers programs through Canadian Heritage and Indigenous Services Canada (ISC) to support Indigenous languages. The adequacy of federal support for Indigenous languages has been an issue of ongoing concern for Indigenous communities. For example, a report of national engagement sessions on Indigenous languages undertaken by the AFN described how "despite the lack of sufficient funding and multiple institutional obstacles," individuals and communities have developed innovative approaches to revitalize their languages.²⁵ The Task Force on Aboriginal Languages and Cultures also raised concerns about available funding, noting that the

federal government provides “minimal assistance to maintain languages and cultures; language education is extremely limited; and little if any recognition is given to First Nation, Inuit and Métis languages.”²⁶

1.2.2.1 Indigenous Languages Component of the Indigenous Languages and Cultures Program

The Indigenous Languages Component (formerly known as the Aboriginal Languages Initiative) of Canadian Heritage’s Indigenous Languages and Cultures Program, established in 1998, aims to support “the reclamation, revitalization, maintenance, and strengthening of Indigenous languages through community-driven activities.”²⁷ Projects eligible for funding include those that develop and deliver community language training programs or that develop materials to increase Indigenous language use and proficiency. Project funds are allocated based on proposals received from eligible organizations, such as Indigenous governments and Indigenous not-for-profit organizations. Funding for 2020–2021 will be delivered through this program, although the department is working with Indigenous organizations to create a new approach for funding Indigenous languages.²⁸

A 2015 evaluation of the program then known as the Aboriginal Languages Initiative identified a high demand for the program that exceeded available funds. Between 2009–2010 and 2013–2014, 952 applications requested a total of \$68.2 million, although there was less than \$5 million in funding available per year. As a result, the evaluation reported that only 28% of submitted applications received funding through the program.²⁹ The evaluation also identified delays in the release of funds, which left less time for funding recipients to complete projects by the end of the fiscal year.

Budget 2017 proposed to invest \$89.9 million over three years to support Indigenous languages and cultures, including \$69 million to “significantly enhance the Aboriginal Languages Initiative.”³⁰

1.2.2.2 First Nations and Inuit Cultural Education Centres

ISC funds a program that

supports First Nations and Inuit communities in expressing, preserving, developing, revitalizing and promoting their culture, language and heritage, through the creation and operation of First Nations and Inuit cultural education centres.³¹

Funding for this program is often reported as part of ISC funding for education for First Nations students on reserve. While the data is not always sufficiently disaggregated to determine specific funding amounts for the First Nations and Inuit

Cultural Education Centres Program, in 2016–2017, \$9.6 million was provided for this program, although it is unclear whether this was planned or actual spending.³²

1.2.3 Indigenous Languages as Official Languages in the Northwest Territories and Nunavut

Both the Northwest Territories and Nunavut have passed legislation recognizing Indigenous languages as official languages, and both have languages commissioners to advise on, advocate for and protect these rights.

In the Northwest Territories, the *Official Languages Act* was passed in 1988 and designates 11 languages, nine of them Indigenous, as official languages in the territory. Section 5 of that Act states that the “Official Languages of the Territories have equality of status and equal rights and privileges as to their use in all government institutions.”³³ Nunavut passed two pieces of legislation in 2008 relating to Indigenous languages. The *Official Languages Act*³⁴ of Nunavut recognizes the Inuit language (Inuktitut and Inuinnaqtun), English and French as the official languages of the territory. The *Inuit Language Protection Act*³⁵ outlines Inuit language rights and the responsibilities of government and other organizations to ensure these are upheld.

In addition to its Languages Commissioner, the Northwest Territories also has an Official Languages Policy, an Aboriginal Languages Plan and an Aboriginal Languages Revitalization Board. In the Northwest Territories, the Languages Commissioner’s duties are to take all actions and measures necessary within its authority to ensure the “recognition of the rights, status and privileges of each of the Official Languages and compliance with the spirit and intent of this Act in the administration of the affairs of government institutions.”³⁶ In carrying out this duty, the Languages Commissioner may conduct and carry out investigations on the commissioner’s own initiative or following a complaint and may report and make recommendations.³⁷

The Nunavut Languages Commissioner is mandated to take all actions and measures within its authority to “ensure that Official Language rights, status and privileges are recognized, and the duties respecting the Official Languages are performed.”³⁸ The Languages Commissioner, who is appointed for a five-year term, can investigate and report on violations of Nunavut’s *Official Languages Act*.

2 DESCRIPTION AND ANALYSIS

Bill C-91 enacts the Indigenous Languages Act.

2.1 PREAMBLE AND PURPOSES (CLAUSE 5)

The preamble of Bill C-91 makes a number of statements on the fundamental importance of reclaiming, revitalizing, maintaining and strengthening Indigenous languages to further reconciliation between Canada and Indigenous peoples, particularly in light of the TRC's Calls to Action and 2019 being the International Year of Indigenous Languages.³⁹ It also highlights the Government of Canada's commitment to implementing UNDRIP and the rights concerning Indigenous languages that are affirmed therein.

The preamble underlines the significance of Indigenous languages in the development of Canada while acknowledging the history of discrimination that contributed to their decline. It recognizes that "First Nations, the Inuit and the Métis Nation have their own collective identities, cultures and ways of life." It further acknowledges that the status of Indigenous language vitality varies across the country, and that there is an urgent need to support Indigenous peoples' work to "reclaim, revitalize, maintain and strengthen" their languages. Given the diversity of Indigenous histories, identities and cultures, the preamble recognizes the need for a flexible approach that takes into account the unique circumstances of diverse groups of Indigenous peoples, including youth, children and two-spirit persons.

The preamble acknowledges Indigenous peoples' right to self-determination and recognizes that Indigenous peoples are best positioned to take the lead in efforts to revitalize and strengthen their languages. It underscores the federal government's commitment to provide "adequate, sustainable and long-term funding," and the need to provide support to existing entities across the country that promote the use of Indigenous languages and support Indigenous peoples to reclaim, revitalize, maintain and strengthen their languages.

Clause 5 establishes the purposes of the bill, which include supporting and promoting the use of Indigenous languages, including Indigenous sign language, and Indigenous peoples' efforts to reclaim, revitalize, maintain and strengthen them. It also states that the bill aims to increase the number of new speakers of Indigenous languages by supporting Indigenous peoples' efforts to strengthen Indigenous language learning and cultural activities, including language nest, mentorship and immersion programs. Another stated purpose of the bill is to establish measures to facilitate the provision of "adequate, sustainable and long-term funding for the reclamation, revitalization, maintenance and strengthening of Indigenous languages." Clause 5 also states that one of the purposes of the bill is to facilitate cooperation with provinces and

territories, Indigenous governments and other Indigenous governing bodies, Indigenous organizations and other entities. Another purpose of the bill is to facilitate meaningful opportunities for Indigenous governments and other Indigenous governing bodies and Indigenous organizations to collaborate in policy development in relation to the development of the Indigenous Languages Act (clause 5(e.1)). The bill is meant to respond to the TRC's Calls to Action 13 to 15 and to contribute to the implementation of UNDRIP as it relates to Indigenous languages.⁴⁰

2.2 INTERPRETATION (CLAUSES 2 TO 4)

Clause 2 sets out the interpretation provision of the Indigenous Languages Act. Notably, the terms “federal institution,” “Indigenous governing body,” “Indigenous organization” and “Indigenous peoples” are defined as follows:

[F]ederal institution means an entity that is referred to in any of paragraphs (a) to (b) and (d) of the definition *department* in section 2 of the *Financial Administration Act* or a *Crown corporation*, as defined in subsection 83(1) of that Act.

Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Indigenous organization means an Indigenous entity that represents the interests of an Indigenous group and its members or, other than in section 45, that is specialized in Indigenous languages.

Indigenous peoples has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*.

Clause 3 is a non-derogation clause, which states that the legislation shall not be construed as abrogating or derogating from the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. Clause 4 stipulates that treaties and self-government agreements prevail over the Indigenous Languages Act in the event of inconsistency or conflict, to the extent of the inconsistency or conflict.

2.3 RIGHTS RELATED TO INDIGENOUS LANGUAGES (CLAUSE 6)

Clause 6 of Bill C-91 recognizes rights related to Indigenous languages as Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. It does not seek to recognize Indigenous languages as official languages.⁴¹

2.4 MINISTER'S POWERS, DUTIES AND FUNCTIONS (CLAUSES 7 TO 10)

The bill establishes certain powers, duties and functions of the Minister of Canadian Heritage pertaining to Indigenous languages. The bill stipulates that the Minister may cooperate with provincial and territorial governments, Indigenous governments or other Indigenous governing bodies, Indigenous organizations or other entities to coordinate efforts to support Indigenous languages. It also provides the Minister with the authority to enter into agreements or arrangements with provincial and territorial governments, Indigenous governments or other Indigenous governing bodies, Indigenous organizations or other entities for purposes such as providing Indigenous language programs and services related to education, health and the administration of justice (clauses 8 and 9).⁴² Under clause 45(1)(a.1), the Governor in Council has the authority to make regulations on procedures for the negotiation of these agreements or arrangements.⁴³

Clause 10 specifies that these agreements cannot limit the application of existing treaties (land claims agreements or self-government agreements that contain provisions related to Indigenous languages) or prevent an Indigenous government or other Indigenous governing body from entering into a treaty.

Clause 7 requires the Minister to consult with a variety of Indigenous governments and other Indigenous governing bodies and a variety of Indigenous organizations on the provision of “adequate, sustainable and long-term funding” to meet the objectives of the Indigenous Languages Act.

The consultation requirement also applies to several other provisions of the bill, which are discussed in the relevant sections of this Legislative Summary. The bill does not provide consultation parameters or details on how consultations must be undertaken; however, it provides the Governor in Council with the authority to make regulations on procedures for consultations (clause 45(1)(a.1)).

2.5 FEDERAL INSTITUTIONS (CLAUSES 10.1, 10.2 AND 11)

Clause 10.1 of the bill stipulates that a federal institution may provide access to services in an Indigenous language if that federal institution has the capacity to do so and if there is sufficient demand for services in that language. Clause 10.2(1) stipulates that agreements or arrangements can be entered into to that effect, and clause 10.2(2) provides that such an agreement or arrangement prevails over regulations made for the purpose of providing access to services in an Indigenous language (under clause 45(1)(a.2)) in the event of inconsistency or conflict.⁴⁴ Clause 11 establishes the discretionary authority of federal institutions to provide interpretation services or translation in Indigenous languages in relation to their activities and documents under their control.

2.6 OFFICE OF THE COMMISSIONER OF INDIGENOUS LANGUAGES (CLAUSES 12 TO 44)

Clause 12(1) establishes the Office of the Commissioner of Indigenous Languages (the Office), consisting of a Commissioner of Indigenous Languages and up to three directors. Clauses 13 and 16 stipulate that the Commissioner and directors are appointed by the Governor in Council on the recommendation of the Minister. Clauses 13 and 16 also require the Minister to consult with a variety of Indigenous governments and other Indigenous governing bodies and a variety of Indigenous organizations before making a recommendation to the Governor in Council on the appointment of the Commissioner and the directors. Clause 13.1 stipulates that the Minister may establish a committee to provide advice on the appointment of the Commissioner.⁴⁵ The bill does not, however, provide details on the committee's composition. Before the appointment of directors by the Governor in Council, the Minister is required to seek comments to ensure that the appointed persons have the ability to represent the interests of First Nations, the Inuit and the Métis (clause 16(2)).⁴⁶

Clause 15 provides that, in the event of the Commissioner's absence or inability to act, or if the position is vacant, the Minister may appoint a director to act as Commissioner for a period of up to 90 days. For a longer period, a Governor in Council appointment is required, following a recommendation from the Minister. The Minister must consult with a variety of Indigenous governments and other Indigenous governing bodies and a variety of Indigenous organizations before making that recommendation.

Clause 12(2) specifies that the Office is not an agent of the Crown. Additionally, in contrast with other federal commissioners' offices (such as the Office of the Commissioner of Official Languages and the Canadian Human Rights Commission), the Office is not governed by the *Financial Administration Act*,⁴⁷ and its Commissioner, directors and employees are not part of the federal public administration.⁴⁸ The Office's head office is to be in the National Capital Region, unless otherwise designated by order of the Governor in Council (clause 22).

2.6.1 Mandate and Powers, Duties and Functions (Clauses 23 to 30)

Pursuant to clause 23(1) of the bill, the Office has a five-part mandate, which consists of the following:

- helping promote Indigenous languages;
- supporting the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages;

- facilitating dispute resolutions and review complaints under the Indigenous Languages Act;
- supporting innovative projects and the use of new technologies in Indigenous languages education and revitalization; and
- promoting public awareness and understanding of matters related to Indigenous languages, such as
 - the diversity and richness of Indigenous languages,
 - the significance of Indigenous languages rights,
 - the “inseparable link” between Indigenous languages and Indigenous peoples’ cultures, and
 - the negative impacts of “colonization and discriminatory government policies” on Indigenous languages.

The Office must consult and coordinate with any Indigenous, provincial or territorial entity responsible for the promotion, revitalization or protection of Indigenous languages (clause 23(2)).⁴⁹

Under clause 26, the Office has the discretionary authority to provide dispute resolution services at the request of an Indigenous community, an Indigenous government or other Indigenous governing body, an Indigenous organization or the Government of Canada. Those services, which include mediation or other culturally appropriate services, may be available for disputes related to the following:

- the Government of Canada’s fulfilment of any of its obligations under the Indigenous Languages Act or its implementation of Indigenous languages policies and programs;
- funding provided by the Government of Canada pursuant to an Indigenous languages initiative; and
- the fulfilment by any party of an obligation specific to Indigenous languages under an agreement entered into by the Government of Canada.

Similar to the territorial language commissioners, the Office has the mandate to review complaints. The bill provides that the Office may review complaints respecting any of the above-mentioned matters. It provides the Commissioner with the discretionary authority to conduct a review of complaints that are filed by an Indigenous government, other Indigenous governing body, an Indigenous organization or an Indigenous person, after which the Commissioner must prepare a report with recommendations (clauses 23(c) and 27). The bill does not specify to whom the report must be addressed; rather, this matter may be determined through regulation (as specified in clause 45(1)(a) of the bill).

The bill also provides the Office with the discretionary authority to undertake research or studies in relation to Indigenous languages support funding and the use of Indigenous languages in Canada (clause 24(1)). The Office must make the results of research and studies, including any document used or produced for the research and studies, available to any Indigenous community, Indigenous government or other Indigenous governing body or Indigenous organization that contributed to them. The Office must also authorize those groups to copy or use those results, including any documents used or produced for that purpose, free of charge (clauses 24(3) and 24(4)).⁵⁰

The Office also has the discretion to provide support to Indigenous communities, Indigenous governments or other Indigenous governing bodies in their work to reclaim, revitalize, maintain and strengthen Indigenous languages (clause 25). The efforts supported include

- creating permanent records in various formats of Indigenous languages for maintenance and transmission purposes;
- establishing certification standards for translators and interpreters;
- conducting research and studies and community assessments regarding the use of Indigenous languages;
- developing and implementing plans for reclaiming, revitalizing, maintaining and strengthening Indigenous languages; and
- engaging with the federal government and provincial or territorial governments in the establishment of culturally appropriate teaching and language-learning methods.

2.6.2 Financial Management (Clauses 31 to 42)

Clauses 31 to 42 establish a financial management framework and the obligations of the Office, including requirements in relation to the establishment of a business plan and budget for every fiscal year (clauses 33(1) to 33(3)). Other financial management requirements, such as record-keeping, internal audits, financial statements, the auditor's reports, special examinations and the examiner's reports, are set out in clauses 34 to 37. The bill further authorizes the Office's auditor or examiner to consult the Auditor General of Canada, at any time, on any matter related to audits or special examinations (clause 38).

2.6.3 Annual Report (Clauses 43 and 44)

Clause 43 provides that the Office must submit an annual report to the Minister within four months of the end of the fiscal year. Clause 44 specifies that the Minister must

table a copy of the report in each house of Parliament, within 15 sitting days of it being received by each chamber, after which it is to be referred to the appropriate parliamentary committee of the House of Commons or Senate, or both, for review. According to clauses 43(1) and 43(2), the annual report must contain information on the following:

- the use and vitality of Indigenous languages in Canada;
- the needs of Indigenous groups, communities and peoples and entities specializing in Indigenous languages, and the progress made on reclaiming, revitalizing, maintaining and strengthening Indigenous languages;
- the adequacy of funding provided by the Government of Canada for the purposes of initiatives related to Indigenous languages;
- the implementation of the Indigenous Languages Act; and
- a list of the research and studies undertaken by the Office, the Office's principal activities for the fiscal year (including financial statements), the annual auditor's report and a statement by the Office on the extent to which it has met its objectives for the fiscal year.

2.7 REGULATIONS AND RULES (CLAUSES 45 TO 48)

The bill provides that regulations may be made by the Governor in Council in relation to the filing and review of complaints, reports on complaints, information to be included in annual reports, and general matters for carrying out the purpose and provisions of the Indigenous Languages Act (clause 45(1)). It further provides, under clause 45(1)(a.1), that the Governor in Council may make regulations respecting procedures for consultations required under the Indigenous Languages Act and the negotiation of agreements or arrangements to advance the purposes of the Indigenous Languages Act, in accordance with clauses 8 and 9.

The Governor in Council may also make regulations relating to federal institutions providing services in an Indigenous language (clause 45(1)(a.2)).⁵¹ For example, regulations can establish which services can be accessible in an Indigenous language (clause 45(1)(a.2)(i)).

Before regulations are made, the bill requires the Minister to consult with the Office and with a variety of Indigenous governments and other Indigenous governing bodies and a variety of Indigenous organizations to consider the unique circumstances and needs of Indigenous groups, communities and peoples (clause 45(1)). The bill also requires the Minister to ensure Indigenous governments and other Indigenous governing bodies and Indigenous organizations have a meaningful opportunity to

collaborate in the policy development leading to the making of these regulations (clause 45.1).⁵²

The Office may make rules with respect to matters related to the meetings and activities of the Office (clause 46), as well as rules pertaining to dispute resolution services and the review of complaints (clause 47). Clause 48 provides that the Office is required to make rules regarding the confidentiality of the information received in exercising its powers and performing its duties and functions.

2.8 INDEPENDENT REVIEW (CLAUSE 49)

The bill requires the Minister to ensure that an independent review is conducted every five years regarding the Indigenous Languages Act, its administration and operation, any agreements in relation to Indigenous languages, as well as the activities of the Office. The review must be conducted by a person or body appointed by the Minister following consultation with the Office (clause 49(1)). This person or body must submit to the Minister a report containing conclusions and recommendations (clause 49(2)). Before submitting a report to the Minister, this person or body must consult with a variety of Indigenous governments and other Indigenous governing bodies and a variety of Indigenous organizations on the conclusions and recommendations that should be included (clause 49(2.1)).⁵³ The Minister must then table a copy of the report in each House of Parliament within 15 sitting days of it being received by each chamber, after which it is to be referred to the appropriate parliamentary committee of the Senate or House of Commons, or both, for review (clause 49(3)).

2.9 PARLIAMENTARY REVIEW (CLAUSE 49.1)

Clause 49.1 provides for a three-year parliamentary review of the Indigenous Languages Act, including its administration and operation, to be undertaken by a parliamentary committee of the Senate or House of Commons, or both.⁵⁴

2.10 COMING INTO FORCE (CLAUSE 50)

The Indigenous Languages Act will come into force on a day to be fixed by order of the Governor in Council.

3 COMMENTARY

Bill C-91 drew an immediate response from Indigenous organizations. AFN National Chief Perry Bellegarde supported the legislation, stating that Bill C-91 “will support First Nations efforts to keep their languages alive, vital and strong.”⁵⁵ The Métis

National Council expressed its support for the bill, which it characterized as a “giant first step” for the preservation, revitalization and promotion of the Michif language.⁵⁶

Several Inuit organizations raised concerns about the co-development process and content of Bill C-91. ITK and the Makivik Corporation expressed disappointment with the bill and raised concerns over the absence of Inuit-specific content in the legislation, considered necessary for the revitalization, maintenance and promotion of Inuktitut.⁵⁷ ITK, along with Nunavut Tunngavik Incorporated (NTI)⁵⁸ president Aluki Kotierk, stated that the bill merely offers “symbolic” recognition of Inuit rights to speak Inuktitut.⁵⁹ In a news release, NTI noted that the bill “simply bypasses practical Inuit priorities,” such as “the use of Inuktitut in the delivery of federal programs and services in Inuit Nunangat.”⁶⁰

Others have insisted on the need to provide long-term funding to implement the provisions of the bill,⁶¹ or suggested that the language used in the bill does not have “any compelling force” and “doesn’t add anything new to the conversation.”⁶² Concerns were also expressed that the bill does not provide Indigenous languages official language status, creating ambiguity as to the scope and meaning of a right to Indigenous languages and how much funding would be required to provide support for Indigenous language initiatives.⁶³

Some of the amendments that were adopted by the Senate were not agreed to by the House of Commons.⁶⁴ One of the rejected amendments would have added a sentence to the preamble recognizing Inuktitut as the first language of Inuit Nunangat and the first language of the majority of Inuit Nunangat residents, as well as committing the Government of Canada to maintain, revitalize and promote Inuktitut. Another rejected amendment would have added a clause providing for a review mechanism on the availability and quality of federal government services provided in Inuktitut in Canada.⁶⁵

Also adopted by the Senate, but rejected by the House of Commons, were amendments listing factors to be balanced when determining “adequate and sustainable funding,”⁶⁶ which the House of Commons stated was “inconsistent with the constitutional principles that govern the allocation of public funds.”⁶⁷

NOTES

1. [Bill C-91, An Act respecting Indigenous languages](#), 1st Session, 42nd Parliament (S.C. 2019, c. 23).
2. “[Rights of the Aboriginal Peoples of Canada](#),” Part II of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35.
3. Justin Trudeau, Prime Minister of Canada, [Prime Minister Justin Trudeau’s Speech to the Assembly of First Nations Special Chiefs Assembly](#), Gatineau, 6 December 2016.
4. Government of Canada, [Working collaboratively to preserve, promote and revitalize Indigenous languages](#).

5. Elder Claudette Commanda explained during her appearance before the Standing Senate Committee on Aboriginal Peoples [APPA]:

Language is life. Our languages are living, and if our languages die, we die spiritually and culturally. Our languages contain our laws, our ceremonies and our ways of life, which you call culture. Our languages contain our identity as First People.

Senate, APPA, [Evidence](#), 1st Session, 42nd Parliament, 27 September 2017 (Claudette Commanda, Executive Director, First Nations Confederacy of Cultural Education Centres).
6. Truth and Reconciliation Commission of Canada [TRC], [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#), 2015, p. 84.
7. Statistics Canada, [Census in Brief: The Aboriginal languages of First Nations people, Métis and Inuit](#), 25 October 2017.
8. Ibid.; Thomas Anderson, “[Results from the 2016 Census: Aboriginal languages and the role of second-language acquisition](#),” *Insights on Canadian Society*, Statistics Canada, Cat. No. 75-006-X, 7 December 2018; and Indigenous and Northern Affairs Canada, [About British Columbia First Nations](#).
9. The First Peoples’ Cultural Council has a Language Nest Program that aims to create new language speakers through immersion for pre-school children and their parents. “In Language Nests, young children are immersed in the language, parents are encouraged to participate, and staff, volunteers and Elders carry out daily activities in the language with the children.” First Peoples’ Cultural Council, [Language Nest Program](#). For examples of such programs, see Piruvik Centre, [Inuit Wellbeing Language and Culture](#); “[Nimkii Aazhibikong](#),” *Onaman Collective*; Métis Nation of Alberta, [Michif](#); and Chief Atahm School, “Announcements,” [Chief Atahm School](#).
10. “Part 17.8: Powers of the Nunatsiavut Government in Relation to Culture and Language,” [Land Claims Agreement between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty the Queen in Right of Canada](#), 2005, pp. 255–256.
11. Government of Nunatsiavut, [Cultural Division: Ensuring the future of our language and culture](#).
12. Assembly of First Nations [AFN], Assembly of First Nations Engagement Sessions, Indigenous Languages Initiative, [National Engagement Sessions Report](#), 5 December 2017.
13. TRC, [Truth and Reconciliation Commission of Canada: Calls to Action](#), 2015.
14. United Nations [UN], General Assembly, [United Nations Declaration on the Rights of Indigenous Peoples](#) [UNDRIP], A/RES/61/295, adopted 13 September 2007, 2 October 2007.
15. Royal Commission on Aboriginal Peoples, [Report of the Royal Commission on Aboriginal Peoples](#), Final Report, October 1996. See also Mary C. Hurley and Jill Wherrett, [The Report of the Royal Commission on Aboriginal Peoples](#), Publication no. 1999-24E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2 August 2000.
16. Royal Commission on Aboriginal Peoples (1996), Vol. 3: [Gathering Strength](#), Recommendation 3.6.8, p. 577.
17. Ibid., Recommendation 3.6.10, p. 579.
18. Task Force on Aboriginal Languages and Cultures, [Towards a New Beginning: A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Métis Languages and Cultures](#), Report to the Minister of Canadian Heritage, June 2005, p. i.
19. Ibid.
20. Ibid., “Part IX: Thematic Summary of Recommendations and Concluding Comments,” Recommendation 4, p. 113.
21. See House of Commons, [Debates](#), 1st Session, 39th Parliament, No. 75, 2 November 2006 1010 (Honourable Bev Oda, Minister of Canadian Heritage and Status of Women).
22. Ibid.
23. Unlike treaties, international declarations “are not always legally binding”; rather, the term may be chosen “to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations.” See UN, United Nations Treaty Collection, “[Declarations](#),” *Glossary: Glossary of terms relating to Treaty actions*.

24. Indigenous and Northern Affairs Canada, "[Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples](#)," News release, 10 May 2016.
25. AFN (2017), p. 10.
26. Task Force on Aboriginal Languages and Cultures (2005), pp. 74–75.
27. Canadian Heritage, [Indigenous Languages Component – Indigenous Languages and Cultures Program](#).
28. Ibid.
29. Canadian Heritage, Evaluation Services Directorate, [Evaluation of the Aboriginal Languages Initiative, 2009–10 to 2013–14](#), 8 June 2015.
30. Department of Finance Canada, [Building a Strong Middle Class](#), Budget 2017, 22 March 2017, p. 167.
31. Government of Canada, [First Nations and Inuit Cultural Education Centres Program](#).
32. Government of Canada, [Past Funding for First Nations kindergarten to grade 12 education](#).
33. [Official Languages Act](#), R.S.N.W.T. 1988, c. O-1.
34. [Consolidation of Official Languages Act](#), S.Nu. 2008, c. 10.
35. [Consolidation of Inuit Language Protection Act](#), S.Nu. 2008, c. 17 (CanLII).
36. *Official Languages Act*, s. 20(1).
37. Ibid., s. 20(2).
38. *Consolidation of Official Languages Act*, s. 22(1).
39. The General Assembly of the United Nations proclaimed 2019 as the International Year of Indigenous Languages, based on a recommendation by the Permanent Forum on Indigenous Issues. See [2019 International Year of Indigenous Languages](#).
40. During committee stage, the House of Commons Standing Committee on Canadian Heritage [CHPC] made several amendments to clause 5. It specified that the use of Indigenous languages includes Indigenous sign language, and that the bill's purposes include supporting Indigenous language learning and cultural activities to increase the number of new speakers of Indigenous languages. CHPC also added mentorship programs to the Indigenous language learning and cultural activities outlined in clause 5. Furthermore, it replaced the term "advance the achievement of the objectives" with "contribute to the implementation" of UNDRIP as it relates to Indigenous languages. CHPC further added clause 5(e.1) which provides that one of the purposes of the bill is to facilitate opportunities for Indigenous governments and other Indigenous governing bodies and Indigenous organizations to collaborate in policy development in relation to the implementation of the Indigenous Languages Act.
41. The federal *Official Languages Act*, enacted in 1969 and in 1988 (new version), then revised in 2005, establishes English and French as the official languages of Canada and recognizes their equal status, including the rights and privileges regarding their use in all institutions of Parliament and the Government of Canada. See [Official Languages Act](#), R.S.C. 1985, c. 31 (4th Supp.). Official languages are also addressed in sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*. See [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
42. During committee stage, APPA specified that the purposes of those agreements, under clause 8, include providing Indigenous language programs and services in areas related to education, health and the administration of justice.
43. During committee stage, CHPC added clause 45(1)(a.1), which provides the Governor in Council with regulation-making powers in relation to procedures for consultations and for the negotiation of agreements and arrangements under clauses 8 and 9.
44. Clauses 10.1 and 10.2 were added by APPA at committee stage.
45. CHPC added clause 13.1 during committee stage.
46. CHPC added clause 16(2) during committee stage.
47. [Financial Administration Act](#), R.S.C. 1985, c. F-11.

48. In that regard, the status of the Office of the Commissioner of Indigenous Languages [the Office] is similar to that of the Canadian Securities Regulation Regime Transition Office (dissolved in 2012 by Order in Council), whose purpose was to provide assistance in the establishment of a Canadian securities regulation regime and a Canadian regulatory authority. Section 3(2) of the *Canadian Securities Regulation Regime Transition Office Act* stipulates that

[t]he Transition Office is not an agent of Her Majesty nor is it an entity governed by the *Financial Administration Act*, and its president, officers, employees, agents and mandataries, advisers and experts and the members of the Advisory Committee are not part of the federal public administration.

[*Canadian Securities Regulation Regime Transition Office Act*](#), S.C. 2009, c. 2, s. 297.
49. Clause 23(2) was added by APPA during committee stage.
50. These requirements were added by CHPC during committee stage to ensure that Indigenous groups that contribute to research and studies undertaken by the Office have access to, and have authorization to copy or use, that research and those studies, and any document used in or produced for that purpose.
51. Clause 45(1)(a.2) was added by APPA during committee stage.
52. Clause 45.1 was added by CHPC during committee stage.
53. CHPC included this consultation requirement by adding clause 49(2.1) during committee stage.
54. During committee stage, CHPC added clause 49.1 to provide for a five-year parliamentary review. During committee stage, APPA amended clause 49.1 to provide for a three-year parliamentary review instead of five years.
55. AFN, "[AFN National Chief Perry Bellegarde Welcomes Tabling of Federal Legislation to Revitalize Indigenous Languages. Says the Bill Deserves Support from All Canadians and Parliamentarians](#)," News release, 5 February 2019.
56. Métis Nation, "[Métis Nation Supports Indigenous Languages Act](#)," 5 February 2019.
57. Inuit Tapiriit Kanatami [ITK], "[Inuit Express Disappointment With National Indigenous Languages Bill](#)," *Announcements*, 5 February 2019; and Makivik Corporation, "[Makivik Says New Indigenous Language Legislation Far From Perfect But Will Continue to Seek Inuit Specific Legislation to Protect Inuktitut](#)," News release, 6 February 2019. (The Makivik Corporation represents the Inuit of Nunavik [northern Québec].)

In October 2018, ITK President Natan Obed had said that federal legislation on Indigenous languages should build on the already existing language protections for Inuktitut in the territories. Despite the vitality of Inuktitut, the Inuit language has been gradually declining, and Inuit have been pushing for standalone language legislation that protects Inuktitut. See Anna Desmarais, "[Inuit will not support 'symbolic' language law: Obed](#)," *iPolitics*, 29 October 2018; Jim Bell, "[Inuktitut language decline in Nunavut spiralling into free fall: report](#)," *Nunatsiaq News*, 9 March 2017; and Office of the Commissioner of Official Languages, "[The languages of Nunavut: A delicate balance](#)," 5 April 2013.
58. Nunavut Tunngavik Incorporated [NTI] is the organization that oversees the implementation of the *Nunavut Land Claims Agreement* and works to advance and protect Inuit rights and interests.
59. ITK (2019); and NTI, "[Nunavut Inuit Say Federal Indigenous Languages Bill Needs Significant Changes in Order to Meet Inuit Needs and Reflect Inuit Realities](#)," News release, 5 February 2019.
60. NTI (2019). "Inuit Nunangat" is a term used to refer to the Inuit homeland, comprising four regions: Inuvialuit (the Northwest Territories), Nunavut, Nunavik (northern Québec), and Nunatsiavut (Labrador).
61. "[Language advocates have funding questions about Ottawa's new Indigenous Languages Act](#)," *CBC News*, 5 February 2019.
62. Ibid.
63. Ibid.; "[Les défenseurs des langues autochtones optimistes par rapport au projet de loi fédéral](#)," *Radio-Canada*, 5 February 2019; and Justin Brake and Martha Troian, "[Canada unveils Indigenous Languages bill to fanfare, criticism](#)," *APTN National News*, 5 February 2019.
64. This publication does not describe all of the amendments that were agreed to by the Senate and that were subsequently rejected by the House of Commons. For a full list of Senate amendments that were rejected by the House of Commons, see Senate of Canada, "Messages from the House of Commons," [Journals](#), 1st Session, 42nd Parliament, No. 307, 20 June 2019.

- 65. House of Commons, "Messages from the Senate," [Journals](#), 1st Session, 42nd Parliament, No. 434, 14 June 2019, amendments 1 and 15.
- 66. Ibid., amendment 6(b)(2).
- 67. House of Commons, "Motions Respecting Senate Amendments to Bills," [Order Paper and Notice Paper](#), 1st Session, 42nd Parliament, No. 437, 19 June 2019.