

# **Ensuring the rights of Indigenous children to their language, culture, identity, and quality education**

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**Kontinónhstats – Mohawk Language Custodian  
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**14 A Só:se Onahsakèn:rat**

**Kanehsatà:ke Kanien'kehá:ka Tsi Iohontsá:te**

**Ohontsa'kehró:non**

**(People of the Earth)**

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*Aboriginal languages are irreplaceable cultural resources that require protection and support. **Literacy in aboriginal languages and in one or both official languages are of equal value and importance.***

*Commitment and partnership at all levels of government combined with community leadership are essential to the achievement of literacy in aboriginal languages and official languages.*

**“You Took My Talk, Aboriginal Literacy and Empowerment,” December 1990, House of Commons Standing Committee on Aboriginal Affairs,**

## **Introduction**

According to Statistics Canada (2011) census data on Indigenous languages in Canada, there are:

- There are over 60 Indigenous languages that are identified into 12 distinct language families
  - However, most of these 60 Indigenous languages are critically endangered
- Statistics Canada reported there are 213,400 First Nations, Inuit and Métis who spoke their language at home – Census 2006 reported there were 1.3 million Indigenous peoples in Canada.

UNESCO reports on Indigenous languages and cultures globally – in 1996 it alerted Canada that *“Canada’s Aboriginal languages are among the most endangered in the world.”*

Underfunding Indigenous languages in Canada is on the same level as the underfunding for First Nations education<sup>1</sup> – it is shameful! Meanwhile, French and English minority language education, per student, is often funded at more than three times that of First Nations on reserve pupils and frequently between Anglophone and francophone students.

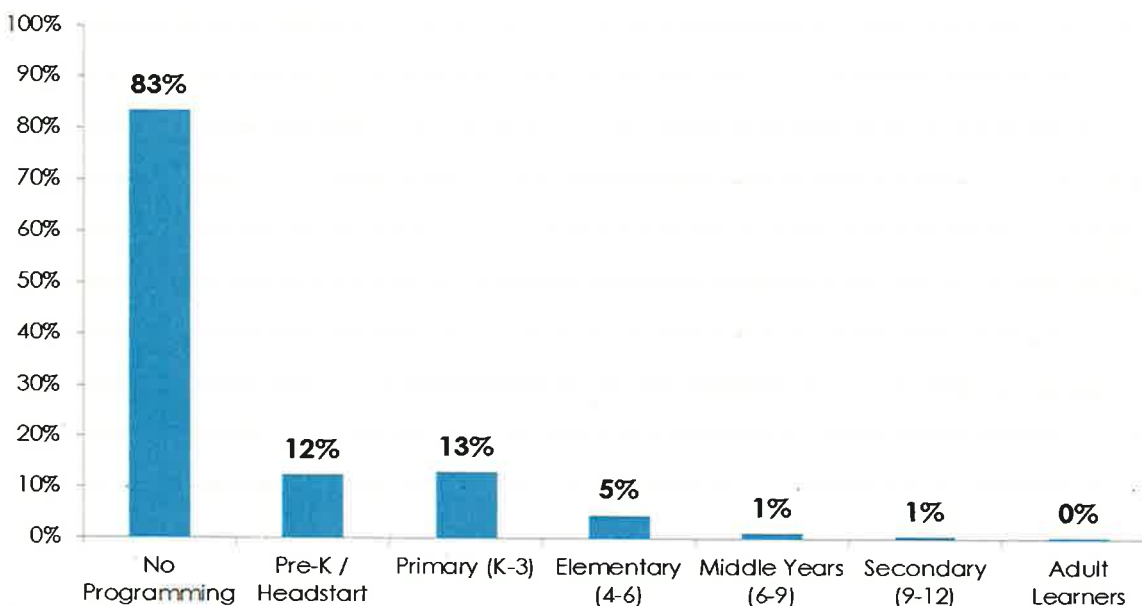
First Nations schools receive by INAC formula, \$215 per student or as in Quebec, \$185 per student for Indigenous language instruction, based on one teacher for 200 students.

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<sup>1</sup> Stolte, Elise. (June 3, 2012). Ottawa is shortchanging First Nations schools in Alberta by \$15 million a year...[edmontonjournal.com](http://edmontonjournal.com)

The following graph is indicative of how inequity of opportunities for learning Indigenous languages plays out in First Nation communities.

**Proportion of schools that offer Indigenous language immersion programming, by grade level Sample = 348 First Nation schools**



Racism and discrimination are central to the continued endangerment of Indigenous languages, cultures and identity in Canada. Similar histories of colonization are emerging from former British colonies such as Australia, the United States and New Zealand. These historical issues must now be addressed in open and honest dialogue with Indigenous educators, leaders, Faithkeepers and Elders, parents and students – with a firm commitment from governments to implement measures to preserve, promote and protect Indigenous languages in Canada.

**1. Human rights of Indigenous children to language, culture, identity, and quality education**

Human rights are governed by the following principles:

1. Universality and inalienability
2. Indivisibility

3. Inter-dependence and Inter-relatedness
4. Equality and Non-discrimination
5. Participation and Inclusion
6. Accountability and Rule of Law

There are a number of international standards and politically, moral and legally binding international conventions, along with national and international obligations that require States to ensure the rights of all children to their language, culture, identity and quality education.

Quality Indigenous education may be defined as:

Education that is well resourced, culturally sensitive, respectful of heritage and that takes into account history, cultural security and integrity, encompasses human rights, community and individual development, and is designed in a way that is implementable...<sup>2</sup>

First Nations lifelong learning is a process of nurturing First Nations learners in linguistically and culturally-appropriate holistic learning environments that meet the individual and collective needs of First Nations and ensures that all First Nations learners have the opportunity to achieve their personal aspirations within comprehensive lifelong learning systems.<sup>3</sup>

The United Nations Human Rights Council requested the Expert Mechanism to prepare a study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples. This 2012 study<sup>4</sup> “outlines the international and regional standards on Indigenous peoples’ rights to language and culture, describes the relationship between Indigenous cultures and languages to their self-determination and rights to their lands, territories and resources and analyses indigenous peoples’ languages and identities and cultures and identities, including challenges faced in the promotion and protection of Indigenous languages and cultural rights...”

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<sup>2</sup> United Nations. Human Rights Council, Twelfth session (31 August 2009). *Study on the Lessons learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education, Report of the Expert Mechanism on the Rights of Indigenous Peoples. A/HR/12/33.*

<sup>3</sup> AFN. (2010). *First Nations Control of First Nations Education: It's Our Vision, It's Our Time*, p. 10.

<sup>4</sup> United Nations. Human Rights Council, Twenty-first session (16 August 2012). *Study of the Expert Mechanism on the Rights of Indigenous Peoples: The Role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples. A/HRC/21/53.*

Chapter 2, Paragraph 9 of this Study refers to the United Nations *Declaration on the Rights of Indigenous Peoples*:

The provisions of the Declaration are consistent with, and elaborate upon, indigenous peoples' rights to their cultures and languages as expressed in a number of other human rights instruments, including the right of all to participate in the cultural life of the community in the **Universal Declaration on Human Rights** and the United Nations human rights treaties.<sup>5</sup>

The International Law Association underscores that the *Declaration* is much more than a simple General Assembly resolution and deserves "utmost respect":

In 1962, the Office of Legal Affairs of the United Nations, upon request by the Commission on Human Rights, clarified that "in United Nations practice, a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected".<sup>6</sup> UNDRIP is such a declaration deserving of utmost respect.<sup>7</sup>

**Free, prior and informed consent** is central to all dealings with Indigenous peoples in Canada.

...the Canadian government has removed any reference to "consent". However, the Supreme Court of Canada has ruled that the Crown's duty to consult includes a wide range of possible requirements. At the high end of the spectrum is "'full consent of [the] aboriginal nation' on very serious issues."<sup>i</sup> On crucial issues of "consent", Canada cannot selectively ignore the ruling of its highest court, as well as international human rights law.<sup>ii, 8</sup>

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<sup>5</sup> *Ibid.*, 4.

<sup>6</sup> *Ibid.* Economic and Social Council, *Report of the Commission on Human Rights* (E/3616/Rev. I), para. 105, 18th session, 19 March – 14 April 1962. [emphasis added]

<sup>7</sup> *Ibid.* International Law Association, "Rights of Indigenous Peoples", Interim Report, The Hague Conference (2010) at 5. ILA explains: "This is confirmed by the words used in the first preambular paragraph of the Declaration, according to which, in adopting it, the General Assembly was "[g]uided by the purposes and principles of the Charter of the United Nations, and good faith in the *fulfilment of the obligations assumed by States in accordance with the Charter*"; this text clearly implies that respect of the UNDRIP represents an essential prerequisite in order for States to comply with some of the obligations provided for by the UN Charter." [emphasis added]

<sup>8</sup> Joint Submission to the United Nations Human Rights Council in regard to the Universal Periodic Review Concerning Canada (Second Cycle). ( October 2012). Paragraph 11.



In Canada as elsewhere in the world, there is a duty to fulfill domestic and international human rights obligations to ensure the rights of all children, including Indigenous children, to their language, culture, identity and quality education. The following International Covenants, Conventions and other human rights instruments compel States to do the right thing.

These are not meant to be “feel good” pomposity but to improve the human condition through politically, moral and legally binding international obligations.

The following are brief overviews of those instruments as they relate to Indigenous children and their rights to their Indigenous languages, cultures, identity, Indigenous knowledge and quality education.

The **International Covenant on Civil and Political Rights**, signed by Canada on 19 May 1976. Article 27 of the Covenant has been interpreted by the Human Rights Committee to reflect the positive duties incumbent on States that protects group as well as individual interests:

- to protect indigenous peoples’ cultural rights, including their rights in relation to their lands, territories and resources as well as in relation to their traditional activities,
- the need to include indigenous peoples in decisions affecting them,
- the requirement to interpret the right to culture consistently with the right to self-determination in the context of indigenous peoples’ issues,
- and, has called on States to adopt measures to support the revival of cultures and languages.

The **International Covenant on Economic, Social and Cultural Rights**, signed by Canada on 19 May 1976, States parties recognize the right of everyone to take part in cultural life.

- the Committee on Economic, Social and Cultural Rights has consistently called upon States parties to protect and promote indigenous peoples’ rights to their cultures and languages.
- in its general comment No. 21 on the right of everyone to take part in cultural life, it recognizes the collective element of indigenous peoples’ right to culture, noting that

- “the strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”
- The Covenant also notes that States’ educational programmes should respect the cultural specificities of indigenous peoples and incorporate them in such programmes.

The **International Convention on the Elimination of All Forms of Racial Discrimination** was signed by Canada on 14 Oct 1970.

### **Article 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to disseminating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

The Committee on the Elimination of Racial Discrimination has called upon States to:

- “recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation”<sup>9</sup>,
- to “provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics”
- to “ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.”
- *It has expressed specific concern about prohibitions on the use of indigenous peoples’ languages.*

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<sup>9</sup> Committee on the Elimination of Racial Discrimination, General Recommendation No. 23 on Indigenous Peoples, 1997, Contained in A/52/18 Annex V.

The **Convention on the Rights of the Child** was signed by Canada on 13 December 1991. The Convention states that indigenous children shall not be denied the right to enjoy their culture, to profess and practise their own religion or to use their language.

In the General Comment No. 11, the Committee on the rights of Children noted:

While all the rights contained in the Convention apply to all children, whether indigenous or not, *the Convention on the Rights of the Child was the first core human rights treaty to include specific references to indigenous children in a number of provisions.*<sup>10</sup>

In its General Comment No. 11 on indigenous children, the Committee on the Rights of the Child also recognized that special measures may be needed to enable indigenous children to enjoy their cultural rights, including positive action on the part of the State.

The Committee noted the “close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights”... specifically noted those rights as being both individual and collective, and the significance of the collectivity to indigenous children’s enjoyment of their cultures; the need to include indigenous peoples in decisions about the best interests of indigenous children, noting the need for cultural sensitivity.

The aims of education, as stated in the Convention on the Rights of the Child, Article 29 (1) are:

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the

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<sup>10</sup> Committee on the Rights of the Child, General Comment No. 11 on Indigenous children and their rights under the Convention, 2009, Contained in CRC/C/GC/11, Paragraph 1.



- country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.

The **United Nations Educational, Scientific and Cultural Organization (UNESCO)** have a number of instruments relevant to endangered cultures and languages, and are an essential part of their mandate. The 2001 **UNESCO Universal Declaration on Cultural Diversity** included specific references to cultural diversity, cultural rights and indigenous peoples.

Article 5: All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

These universal human rights instruments clarify for States, their duty to ensure the rights of all *children* to their language, culture, identity, and quality education. Access to safe and healthy learning environments, with adequate infrastructure and equity of opportunities for Indigenous peoples

**Section 23 – and the MacPherson Report on Tradition and Education:  
*Towards a Vision of our Future*<sup>11</sup>**

In September 1991, James C. Macpherson, Osgoode Hall Law School was hired to review the four-volume study on Indian Education in Canada published by

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<sup>11</sup> Macpherson, J.C. (September 1991). *MacPherson Report on Tradition and Education: Towards a Vision of our Future*. Ottawa: Department of Indian Affairs and Northern Development.

the Assembly of First Nations.<sup>12</sup> The study commissioned by the Department of Indian Affairs and Northern Development and supported by the Department of Justice reviewed the “comprehensive and admirable process of consultation” of the AFN report and in particular, provided a brief assessment of other Indigenous education systems in other countries, discussed the constitutional framework for Indian education in Canada, and identification of reform options.

Specific to this paper on how to ensure the rights of Indigenous children to their language, culture, identity and quality education, MacPherson compared Indian education and French and English minority language education, an individuals’ right that is enshrined in section 23 (1) (2) of the Constitution Act.

MacPherson referenced that the Supreme Court of Canada was required to interpret section 23(b)<sup>13</sup> and the Court accepted the argument, that French parents had the right to the “management and control” of a minority language school. He further asserted that this was,

“...a compelling rationale for providing for a formal role for Indians in a national education law. The reasons for the fragility of minority languages and cultures in Canada, and in the need to protect them through, in part, management and control of education by the minorities themselves, are as valid for Canadian natives across Canada as for francophones in Alberta or anglophones in Quebec.”<sup>14</sup>

Special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools.<sup>15</sup>

However, special consideration must be made for the collective inherent and Treaty rights of Indigenous peoples. Indigenous languages and cultures are both collective and individual rights. The following is an excellent but by no means exhaustive list of how language, culture and identity emerge, merge and are nurtured within a holistic, collective environment:

Indigenous peoples’ cultures include tangible and intangible manifestations of their ways of life, achievements and creativity, are an expression of their self-determination and of their spiritual and physical relationships with their lands, territories and resources. Indigenous

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<sup>12</sup> National Indian Brotherhood, Assembly of First Nations. (1988). *Tradition and Education: Towards a Vision of our Future*, National Review of First Nations Education, Vol 1-4. Ontario: Summerstown.

<sup>13</sup> *Mahé v. Alberta* (1990), 68 D.L.R. (4<sup>th</sup>) 69

<sup>14</sup> MacPherson Report, p. 44.

<sup>15</sup> *Ibid.*, p. 45.

culture is a holistic concept based on common material and spiritual values and includes distinctive manifestations in language, spirituality, membership, arts, literature, traditional knowledge, customs, rituals, ceremonies, methods of production, festive events, music, sports and traditional games, behaviour, habits, tools, shelter, clothing, economic activities, morals, value systems, cosmovisions, laws, and activities such as hunting, fishing, trapping and gathering. Indigenous cultures are influenced by their environment, which impacts on a people's common perspective of the world and underlines its connection with nature. Indigenous cultures shape their views of the world and life.<sup>16</sup>

The *Site for Language Management in Canada* (SLMC), from the University of Ottawa's "Official Languages and Bilingualism Institute" (OLBI)<sup>17</sup> noted the following difference in federal and provincial language laws – a caution to Indigenous *peoples* seeking statutory legislation for Indigenous languages:

The federal legislation grants *personal* rights to all Canadian citizens to communicate in the language of their choice with the federal government and to have their children educated in a minority language. It does not provide *collective rights* as defined by certain laws, for example in New Brunswick and in Quebec.<sup>18</sup>

### **Barriers to Indigenous children's rights to their languages, cultures, identity and quality education**

Colonial amnesia has been fed by cognitive imperialism, also known as cultural racism and "is the imposition of one worldview on a people who have an alternative worldview, with the implication that the imposed worldview is superior to the alternative worldview."<sup>19</sup> Edward Said defined imperialism and colonialism as "both supported and perhaps even impelled by ideology that ...certain territories and people require and beseech domination, infusing

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<sup>16</sup> UN Human Rights Council. 9-13 July 2012. Expert Mechanism on the Rights of Indigenous Peoples: Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, p. 13.

<sup>17</sup> University of Ottawa. Official Languages and Bilingualism Institute, Site for Language Management in Canada. [www.olbi.uOttawa.ca](http://www.olbi.uOttawa.ca)

<sup>18</sup> Ibid. Federal Legislation and Language Rights (1969 et 1988).

<sup>19</sup> Battiste, M. (2002). Maintaining Aboriginal Identity, Language, and Culture in Modern Society. In *Reclaiming Indigenous Voice and Vision*, p. 193. UBC Press: Vancouver.

knowledge...with imperial...words and concepts like “inferior” or “subject races,” “subordinate peoples,” “dependency,” “expansion,” and “authority.”<sup>20</sup>

The following illustrates how 108 years have changed nothing for cognitive imperialists.

Our federation was born of a desire by English – and French-speaking Canadians to share a common future, and it was built on respect for the language and culture of all Canadians. Linguistic duality is a cornerstone of our national identity, and it is a source of immeasurable economic, social, and political benefits for all Canadians.

Message from the Right Honourable Prime Minister Stephen Harper on the Roadmap for Canada’s Linguistic Duality 2008-2013: Acting for the Future

The basis of Confederation is the duality of races, the duality of languages, guaranteed by the equality of rights. This pact was to put an end to conflict between the races and the Churches, and assure us all, Catholic and protestant, French and English, a perfect equality of rights right across the Canadian Confederation.

Henri BOURASSA, [circa] 1904

[http://www.slmc.uottawa.ca/?q=bnaa\\_linguistic\\_question](http://www.slmc.uottawa.ca/?q=bnaa_linguistic_question)

Citing from the University of Ottawa’s ***Site for Language Management in Canada***, Henri Bourassa strongly advocated for “bilingualism in federal institutions in 1904... particularly since many francophones believed that the Canadian Confederation was a “pact between two nations” or two “founding peoples.”<sup>21</sup>

This skewed mindset permits colonial amnesia to disregard the historical interdependence of Indigenous peoples and colonizers, and the invaluable contributions of the America’s Original Peoples. It permits cultural racism to emerge in education and Indigenous languages and cultural program policies and programs designed to perpetuate assimilation, such as the alignment to the Government of Canada Outcomes of **“Diverse society that promotes linguistic duality and social inclusion.”**

<sup>20</sup> Said, E. (1993). *Culture and Imperialism*, p. 9.

<sup>21</sup> University of Ottawa. Official Languages and Bilingualism Institute, Site for Language Management in Canada, *The Constitution Act of 1867 and the Language Question*. [www.olbi.uOttawa.ca](http://www.olbi.uOttawa.ca)



These Strategic Program Activities include:

- First Nations and Inuit Education and Social Development (Indian Affairs and Northern Development); and
- Engagement and Community Participation (Aboriginal Peoples' Program, Canadian Heritage).

Canada's Apology to Indian Residential School Survivors in 2008 was a clear acknowledgment of wrong doing. However, to continue to promote linguistic duality in these specific programs and services to the detriment of Indigenous languages and cultures is cruel and unjust.

The evidence is overwhelming; the Truth and Reconciliation Commission's Interim Report (2012)<sup>22</sup> found that:

1. Residential schools constituted an assault on Aboriginal children.
2. Residential schools constituted an assault on Aboriginal families.
3. Residential schools constituted an assault on Aboriginal cultures.
4. Residential schools constituted an assault on self-governing and self-sustaining Aboriginal nations.
5. The impacts of the residential school system were immediate, and have been ongoing since the earliest years of the schools.
6. Canadians have been denied a full and proper education as to the nature of Aboriginal societies, and the history of the relationship between Aboriginal and non-Aboriginal peoples.<sup>23</sup>

It is through the work of the Truth and Reconciliation Commission, the Aboriginal Healing Foundation and others that will change the way that the youngest, oldest and new Canadians are taught about the Indigenous history of Canada. This greatly depends on all educators, all learning institutions, and especially all levels of government to acknowledge the profound legacy of residential schools, racism and colonization.

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<sup>22</sup> Truth and Reconciliation Commission of Canada. (2012). *They Came for the Children: Canada, Aboriginal Peoples and Residential Schools*.

<sup>23</sup> *Ibid.*, p. 65.



## **2. Ensuring curriculum is grounded in Indigenous languages, values, traditions, histories, and knowledge.**

Curricula grounded in Indigenous languages, values, traditions, histories and Indigenous knowledge are critical to nurturing healthy, positive self-identities. Those students who are fortunate to learn from their Elders, parents and extended families find a comfortable place in culturally responsive classrooms and schools while students and teachers that lack Indigenous knowledge find a welcoming learning environment. Students and teachers can respond with confidence to Honourable Justice Murray Sinclair, Chair of the Truth and Reconciliation Commission who spoke of the importance of identity:

*In order for any society to function properly, in our view, and to its full capacity, it must raise and educate its children so they can answer what philosophers such as Socrates and Plato and our own Elders call 'The Great Questions of Life.' These questions are:*

*Where do I come from?*

*Where am I going?*

*Why am I here?*

*Who am I?<sup>24</sup>*

How we get to that comfortable, inviting place of learning/teaching has been a growing concern for educators and students. In 2011, the Assembly of First Nations produced an exhaustive study on Cultural Competency.<sup>25</sup> The report provided research addressing legislative and policy directives and best practices in culturally responsive Indigenous learning in the United States, including Hawaii, Australia, and New Zealand.

Culturally responsive Indigenous learning is captured in the AFN report:

*Preference for the term culturally responsive education seems to be the norm in the literature since it implies a dynamic and evolutionary*

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<sup>24</sup> FNEC. November 23, 2012. Keynote Speaker, 18<sup>th</sup> Annual Conference on Aboriginal Education: Reconciliation through Education. Vancouver.

<sup>25</sup> AFN. (2011). *Cultural Competency Report*.

*description of how First Nations education is shaped by culture, language, traditions and identity in a vigorous paradigm embracing change.*<sup>26</sup>

These issues of Indigenous cultural and linguistic inclusion in the curriculum has been identified repeatedly in the numerous reports and studies in Canada and internationally. The 1970-71 Watson Report<sup>27</sup> noted that the language of instruction be of the "...local Indian or Eskimo community" and that decisions related to language of instruction and introduction of a second language "should only be made after consultation with, and clear approval from a majority of parents in the communities concerned."<sup>28</sup>

Indian Control of Indian Education, 1972 declared that "It is generally accepted that pre-school and primary school classes should be taught in the language of the community. Transition to English or French as a second language should be introduced only after the child has a strong grasp of his own language..."

In 1989, Ethel Blondin prepared a Private Members Bill, C-269 but was not introduced to Parliament. The *Act to Establish the Aboriginal Languages Foundation*, would have had board membership representing all Aboriginal languages across Canada. The Bill envisioned that the Foundation would work closely with regional and community levels in developing curricular material, train people to become interpreters in medical and legal terminology, provide training for language teachers in childcare and school and community settings, develop and document historical legends in their languages and much more.

In December 1990, the House of Commons Standing Committee on Aboriginal Affairs produced a report "**You Took My Talk: Aboriginal Literacy and Empowerment.**"<sup>29</sup> In their Findings and Recommendations, the report states, in part:

*Effective literacy achievement at the national and community level requires that literacy be valued for its own sake in any language. Literacy should be a lifelong experience beginning at home in the pre-school years, and continuing on to the school-age years and beyond into adult life.*<sup>30</sup>

### **Recommendation 1:**

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<sup>26</sup> Ibid. p. 66.

<sup>27</sup> Canada. Annual Reports on the Department of Indian Affairs and Northern Development. Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development, 1970-71.

<sup>28</sup> Ibid., 27:6

<sup>29</sup> House of Commons. (December 1990). You Took My Talk: Aboriginal Literacy and Empowerment, Fourth Report of the Standing Committee on Aboriginal Affairs, Issue No. 43, Second Session of the Thirty-fourth Parliament, 1989-90, Chairman Ken Hughes, M.P.

<sup>30</sup> Ibid., iv.

*The Government of Canada, together with provincial and territorial governments, should support mother tongue literacy, and impress upon the Council of Ministers of Education the necessity and advantage of mother tongue literacy among all aboriginal peoples, whether school age or adults.*

**Recommendation 2:**

*It is recommended that an institution or foundation be established with the goal of promoting the survival, development and use of aboriginal languages. All possible sources of support and activity should be encouraged.*

A specific recommendation to the Department of Indian Affairs and Northern Development (DIAND) that it should “take the initiative with the Council of Ministers of Education to establish a National Task Force on Aboriginal Education to recommend and encourage action regarding:

- (a) The status of curricula at the elementary and secondary level in respect to aboriginal content in all subject areas, and taking into account such factors as quantity, quality, accuracy, stereotyping, etc.;
- (b) The relationship between the use of culturally sensitive curricula and self-esteem among aboriginal students;
- (c) Funding a national conference of aboriginal youth to assess their school experiences, to identify positive initiatives and their cultural strengths and to recommend specific actions to the Council of Ministers;
- (d) The status of aboriginal language instruction;
- (e) Literacy levels among the aboriginal student population at representative grade levels compared to the non-aboriginal population;
- (f) Barriers to the employment of native teachers in all school systems and means of overcoming these barriers;
- (g) Accrediting within the school systems of study of aboriginal languages.<sup>31</sup>

Regarding funding, the report recommended that “continuity and support of native literacy programs” and that the federal government clarify what department had responsibility for the delivery of native literacy services and further:

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<sup>31</sup> Ibid., Recommendation 4, p. v.

*We recommend that the government undertake to clarify this and to establish a “one-window” funding mechanism for native literacy programming.<sup>32</sup>*

In 2005, a Task Force on Aboriginal Languages and Cultures presented a Foundational Report to the Minister of Canadian Heritage.<sup>33</sup> The Task Force was created to advise the Minister of Canadian Heritage following the December 2002 announcement 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. The \$160 million was removed from the 2006 Federal budget – the Centre was never created.

Recommendation 1 of the Task Force report concerned the importance of languages and the land:

*That First Nations, Inuit and Métis governments and the federal, provincial and territorial governments enter into government-to-government agreements or accords on natural resources, environmental sustainability and traditional knowledge. The agreements or accords should recognize the importance for First Nations, Inuit and Métis people of maintaining a close connection to the land in their traditional territories, particularly wilderness areas, heritage and spiritual or sacred sites, and should provide for their meaningful participation in stewardship, management, co-management or co-jurisdiction arrangements.<sup>34</sup>*

Recommendation 2 was the protection of Traditional Knowledge:

*That Canada take a more comprehensive approach to the protection, use and benefits arising from traditional knowledge under the international Convention on Biological Diversity and that greater recognition be accorded to First Nations, Inuit and Métis people, particularly the Elders, in the collaborative planning process under the Convention.*

Funding for language programs, such as immersion programs, language teacher training, language bursaries, summer bursaries or employment programs all recommended that the **programs be funded “at a level equivalent to that provided for the French and English language** through

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<sup>32</sup> Ibid., Recommendation 9, p. vi.

<sup>33</sup> Department of Canadian Heritage. (June 2005). Task Force on Aboriginal Languages and Cultures: Towards a New Beginning, A Foundational Report for a Strategy to Revitalize First Nations, Inuit and Métis Languages and Cultures.

<sup>34</sup> Ibid., p. 113.



the Minority-Language Education” and the Second-Language Learning components of the Development of Official Language Communities Program

Recommendation 16 stated that DIAND provide funding to FNIM institutes of higher learning to create and deliver language teacher training, in particular immersion language teacher training programs.

To date, out of 25 recommendations, the only recommendation that has been followed up on was the Aboriginal Peoples’ Program creating the Innovation Fund from the Critically Endangered Languages funding.

The Royal Commission on Aboriginal Peoples (RCAP, 1996) noted policy recommendations to governments for over 30 years (between 1966 - 1992) and noted the following recommendations that revealed consistency over time:

- Aboriginal control of education
- School courses in Aboriginal studies, including **history, language and culture**
- Training and hiring of more Aboriginal teachers
- Inclusion of Aboriginal parents, elders and educators in the education of Aboriginal children
- Special support programs for Aboriginal students, for example, counselling, substance abuse education, remedial education and retention programs
- Funding of support services for students in post-secondary studies
- The resolution of federal, provincial and territorial jurisdictional conflicts over responsibilities, or recognition by the federal government of its funding responsibility for education
- Training Aboriginal adults for teaching, para-professional and administrative positions in education
- More emphasis on pre-school and kindergarten education.<sup>35</sup>

What is required at this juncture in time is an unequivocal statement from Canada that it does not have an assimilation policy in Indigenous education and a commitment for action through implementation.

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<sup>35</sup> Report on the Royal Commission on Aboriginal Peoples. (1996). Vol. 3, Gathering Strength, Ch. 5, Education.



## **Cultural Responsiveness is enacted Cultural Competence**

In Australia, the Northern Territory Department of Education defined **Cultural Competency** as:

*The ability to understand, interact and communicate effectively and with sensitivity, with people from different cultural backgrounds. Cultural competence is a personal capability that is not necessarily innate but develops over time. A precondition is a deep awareness of one's own identity since it involves examining one's own biases and prejudices. A culturally competent person is able to empathize with how people from other cultures might perceive, think, interact, behave, and make judgements about their world. Consequently, it has four elements: awareness, attitude, knowledge and skills.”<sup>36</sup>*

Perso noted that “Cultural Responsiveness is **enacted** Cultural Competence,” and that cultural competence is “an on-going activity and journey of growth and development, an individual or an organization is continually developing their cultural competence...” and unless systems, organizations and individuals have the *capacity* to be culturally responsive...they will be unable to deliver a service that is culturally responsive and meet the needs of [Indigenous] people.<sup>37</sup>

So, to successfully implement culturally responsive curricula, we must ensure that school education is culturally competent. Perso quoted Lee et al (2007) that the outcome of cultural competence in education as “equity in access and opportunity for all students,” but - that this outcome can only be achieved if educators deliver actions resulting from their cultural competency.<sup>38</sup>

RCAP (1996) had recommended that “Aboriginal language education be assigned priority in Aboriginal, provincial and territorial education systems to complement and support language preservation efforts in local communities through:

- (a) First-or second-language instruction or immersion programs where parents desire it and numbers warrant;

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<sup>36</sup> Quoted in Perso. T.F. (2012). *Cultural Responsiveness and School Education: With particular focus on Australia's First Peoples: A Review & Synthesis of the Literature*. Menzies School of Health Research, Centre for Child Development and Education, Darwin Northern Territory, p. 18.

<sup>37</sup> Ibid., p. 22.

<sup>38</sup> Ibid., p. 28.

- (b) Recognition of Aboriginal language competence for second-language academic credit whether competence is acquired through classroom or out of school instruction;
- (c) Involving elders and fluent Aboriginal speakers in programs to enhance Aboriginal language acquisition and fluency;
- (d) Developing instructional materials; and
- (e) Encouraging and rewarding language teaching as a career path and language research in lexical elaboration, structural analysis and cultural contexts as professional and academic specializations.

Regarding item (e), there are now universities, such as the University of Victoria that offers a Bachelor and Master's degree programs in teaching Indigenous languages; St. Thomas University in New Brunswick offers a Native Language Immersion Teaching Certificate program; others are developing similar programs but struggle with sustainable funding. These programs can ensure Indigenous children have access to **Culturally Responsive Curricula**.

In partnership with provincial and territorial ministries of education and Indigenous education authorities can:

- jointly develop a sustainable coordination unit of curriculum developers and reviews from each provincial ministry and Indigenous education authorities. Each region would have Indigenous educators and Elders with expertise in the following areas:
  - languages and cultures
  - histories
  - Indigenous knowledge
  - Sacred sites

In addition, to be successful, it will be mandatory that:

- a. These coordinated units of Curriculum developers and reviewers function at every level: K-12, PSE, ECE, Adult – at local, regional levels.
- b. Diversity and unique Indigenous and Treaty perspectives must be reflected in the curriculum.

- c. Implementation of culturally responsive curricula be mandatory in all schools and all levels – data collection, monitoring and reporting annually at local level regional school boards, etc. will ensure compliance.
- d. Indigenous and non-Indigenous teachers, principals, professionals who acquire and practice cultural competency be given adequate support and resources for training and upgrading.
- e. Training for Indigenous language teachers with on-going professional development.
- f. Opportunities to share best practices in curriculum development, and Indigenous language instruction for immersion, bilingual language classes from Language Nests to Adult and post secondary levels.

### **A Lesson Learned – the Nunavut Education Act**

Article 32 of the Nunavut Land Claims Agreement (NLCA), obliges government to integrate Inuit goals and objectives in its social and cultural policies, programs and services by requiring the direct participation of Inuit in the development, design and method of delivery of social policies, including education.

John Bainbridge, former school principal and lawyer, and past Senior Policy Advisor for Nunavut Tunngavik Inc. (NTI) spoke of the lessons learned with the development and design of the Nunavut Education Act.<sup>39</sup>

He noted that Justice Thomas Berger was called in to mediate when the negotiations stalled over the most important issue for the NTI and the Government of Nunavut – increased funding for education and training.

Justice Berger's thorough investigation found "limited availability of Inuit language instruction in the schools, currently only from K-3, not only placed Inuit students at a disadvantage vis-à-vis English speaking students but it diminished the value of the Inuit language and culture in the eyes of Inuit

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<sup>39</sup> The Canadian Centre for Policy Alternatives. (Fall 2009). *Our Schools/ Our Selves Special. The Nunavut Education Act: Lessons Learned*, V. 19, N. 1 (#97).

student leading them to become alienated from schools by the time they reached adolescence. He quotes Berger:

*In Nunavut, [the current education system] reinforces the colonial message of inferiority. The Inuit student mentally withdraws, then leaves altogether...Of course, language is only one element of identity, but it is a huge one...In my judgment, the failure of the school system has occurred most of all because the education system is not one that was set up for a people speaking Inuktitut. It is a bilingual system in name only, one that produces young adults who, by and large, cannot function properly in either English (because they never catch up with the English curriculum) or Inuktitut (because they learn only an immature version of their first language before switching to English).<sup>40</sup>*

Bainbridge further explains that the first draft Education Bill was thrown out of the Legislature for lack of consultation; the Government of Nunavut then established a Joint Steering Committee with NTI to draft the legislation. The Joint Steering Committee drafted several sections when the Government of Nunavut took over the drafting process; a year later, GN produced a finished draft that excluded all of the NTI's "substantive recommendations respecting Inuit culture, language or local control."<sup>41</sup>

NTI's position, as noted by Bainbridge, is that "in common with most jurisdictions in Canada, the Minister's role should be restricted to certification of teachers, establishing curriculum guidelines and ensuring Nunavut-wide standards, allocating block funding to the district education authorities, exercising arms-length supervision over the district education authorities, and providing intellectual and administrative support."

*The Education Act became law in September 2008 and the GN explicitly withheld control of education from the Inuit majority. The most disgraceful result of the new Education Act is that it creates a two-tier education system in Nunavut based on ethnic lines. The Act gives the Francophone community control of their system but it does not give control to the Inuit community.*

*Under the Act, the Commission scolaire francophone du Nunavut has power over all issues dealing with the selection of teachers and principals (s. 94), curriculum (s. 168(1)), school program plans (s. 168(8)), expulsion of students*

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<sup>40</sup> Ibid., p. 3.

<sup>41</sup> Bainbridge notes that the first acts of the new GN was to eliminate the regional education boards (known as District Education Committees [DECs] and replace them with powerless District Education Authorities [DEAs], p. 4.



*(s.171), and all staffing issues including, evaluation, dismissal, professional development, etc. (ss. 89,91-94, 97, 105, 106, 108-117). These powers have been transferred to the Commission scolaire francophone du Nunavut.*

*With respect to the Inuit community all those powers are reserved to the Minister.<sup>42</sup>*

Nunavut Tunngavik Inc. (NTI) produced a 2010-2011 Annual Report on the Status of Inuit Children and Youth in Nunavut.<sup>43</sup> and confirms the Bainbridge interview of 2009. They state:

*At no step of the way have Inuit been equal partners with the Government of Canada in guiding this transition, but instead been subjected to European-Canadian colonization...Unequal power relations between Inuit and the GN and Government of Canada make it difficult for Inuit to exercise self-determination by making decisions about issues that impact the health and well-being of our children. Nunavut's education system in particular, remains a flashpoint of contention and mistrust between Inuit parents, communities and the government that has serious health implications for Inuit children and youth.<sup>44</sup>*

*Challenges in Nunavut's K-12 education system are taking place against a backdrop of scarce early childhood education opportunities, and inequitable resourcing for Inuit language medium education.<sup>45</sup>*

*...the majority of teachers, principals, and school operations administrators are non-Inuit and the curricula and pedagogy of classrooms are based on southern models.<sup>46</sup>*

*English is the dominant language of instruction at nearly all grade levels in Nunavut, despite the fact that Inuktitut is the mother tongue of 83 percent of Inuit, and 70 percent of the territory as a whole.<sup>47</sup>*

*We recommend amending section 23 of the Education Act to include definitions of the words "bilingual education" and "language of instruction," where "bilingual education" is defined as the proportional allocation of language of instruction time in K-12 in which the language of instruction is the Inuit language 80 percent of the time, and in either English or French 20 percent of the*

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<sup>42</sup> Ibid., p. 5.

<sup>43</sup> Nunavut Tunngavik Inc. 2010-2011 Annual Report on the State of Inuit Culture and Society: The Status of Inuit Children and Youth in Nunavut.

<sup>44</sup> Ibid., p. 6.

<sup>45</sup> Ibid., p. 11.

<sup>46</sup> Ibid., p. 13.

<sup>47</sup> Ibid., p. 18.



time. “Language of instruction” should be defined as the language in which all communication takes place within a school.<sup>48</sup> Currently the language used in the Nunavut Education Act are not “enforceable rights” to Inuit language of instruction or a curriculum infused with Inuit culture.

Mary Simon, Chair of the National Committee on Inuit Education noted that building trust was identified as central to the success of the 2011 National Strategy on Inuit Education:

*...if we are to restore the trust of parents who have been deeply hurt by their own educational experiences, we must build an education system grounded in the Inuit culture, history and worldview, and with respect for the role of parents.<sup>49</sup>*

### **Implementing the rights of Indigenous children to their languages, cultures, identity, and quality education**

Implementation of any of the myriad recommendations on infusing the curriculum with Indigenous languages, cultures, histories, worldviews would, on the surface, seem a simple task. However, history has shown that prejudice, racial intolerance and discrimination drive the policies of governments when it concerns Indigenous peoples and is far more widespread and serious than generally recognized.

A Special Sub Committee on Indian Education, known as the Kennedy Report (1969)<sup>50</sup>, stated that “in retrospect that the “assimilation by education” policy was primarily a function of the “Indian land” policy:

*A careful review of the historical literature reveals that the dominant policy of the Federal Government toward the American Indian has been one of forced assimilation which has vacillated between the two extremes of coercion and persuasion. At the root of the assimilation policy has been a desire to divest the Indian of his land and resources.*

*The coercive assimilation policy has two primary historical roots:*

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<sup>48</sup> Ibid., p. 20.

<sup>49</sup> Ibid., p. 19.

<sup>50</sup> U.S. Government Printing Office. (1969). *Indian Education: A National Tragedy – A National Challenge*, Special Sub Committee on Indian Education, A Resolution Authorizing an Investigation into the Problems of Education for American Indians, Chairman Edward M. Kennedy.

- A. *A continuous desire to exploit, and expropriate, Indian land and physical resources.*
- B. *A self-righteous intolerance of tribal communities and cultural differences.*<sup>51</sup>

During this time that the United States was investigating the problems of education and seeking solutions for American Indians, Canada was taking another path – termination of the fiduciary obligations to Indians through the White Paper Policy, 1969.

*In the long term, removal of the reference in the constitution would be necessary to end the legal distinction between Indians and other Canadians. In the short term, repeal of the Indian Act and enactment of transitional legislation to ensure the orderly management of Indian land would do much to mitigate the problem.*<sup>52</sup>

In view of recent and proposed legislative activity by the current government regarding Indigenous peoples in areas such as: Matrimonial Property Rights, Health Act, Wills and Estates, National Education Act, Water, Privatization of lands, Taxation and Accountability Act, it is not surprising that that there is a great deal of distrust. Bill S-8, the Safe Drinking Water for First Nations Act, that passes responsibility to Indigenous communities with no provision of resources to meet any standards and tied to provincial standards exacerbates the distrust.

### **Sceptical Optimism?**

Languages and cultures are the lifeblood of Indigenous peoples. They nurture, they caress and feed the spirit. But this has been said before; by the Saami, Maori, Hawaiians, Mi'kmaq, Dene, Blood, Cree, Navajo, Hopi, Cherokee, Lakota and hundreds of other Indigenous nations in the Americas. How to proceed with ensuring Indigenous peoples have equity of opportunity and access to live and learn their languages and cultures?

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<sup>51</sup> Ibid., p. 21.

<sup>52</sup> Canada. Statement of the Government of Canada on Indian Policy, 1969. (The White Paper, 1969). Jean Chrétien, Minister of Indian Affairs and Northern Development.

## Recommendations to the AFN Languages Initiative - 2017

It is with great hesitancy that the following ideas be considered – with the understanding that this is not an exhaustive list, and has not been vetted with other Indigenous stakeholders:

With timely, ongoing and meaningful consultation and consent of Indigenous peoples, including Indigenous educators, Elders and language experts, legal advisors, leadership, parents and other identified stakeholders as may be required, it is suggested to begin any discussion of developing an Indigenous Languages Law with:

- the affirmation and recognition of existing inherent aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*;
  - self- determination without termination – of inherent and Treaty rights that include Indigenous language and cultural rights.
- Implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- Include any and all contemplated law reform, at all levels of government so all laws and policies are fully compatible with the Convention on the Rights of the Child, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, and guided by the UN Declaration on the Rights of Indigenous Peoples.
- Comprehensive multi-year funding be provided immediately for Indigenous children and youth to have access to full Indigenous language nests, immersion schools and cultural camps and survival schools for youth, young adults and community programs for adults.
- Child rights impact assessment – all policy development processes provide a systematic process to assess the potential impacts of decisions on Indigenous children, youth, and their rights, and to promote policy coherence.
- review Macpherson Report related to the following:

- The Constitution Act, 1867 notes the federal government has constitutional authority in three areas of responsibility:
  - Section 91(24) Indians, and lands reserved for Indians; Sections 91(3), 91(1A) and 106 spending power; Treaties 1 to 11.<sup>53</sup>
- “To be specific, it is my view that section 91(24) of the Constitution Act, 1867 would permit a comprehensive national law dealing with the subject matter of Indian education, that this law could cover any and all aspects of Indian education, including academic and vocational and from pre-school to university...I do not feel a need to qualify or limit this opinion; in my view, the wording and interpretation of section 91(24) of the Constitution Act, 1867 would easily support a comprehensive national law dealing with Indian education.<sup>54,55</sup> Indigenous legal advisors must provide legal opinion - if and how this would impact existing aboriginal and treaty rights.
- Review of Section 23 and the inclusion of language rights for Indigenous lifelong learning education – Macpherson Report, 1991. Indigenous legal advisors must provide legal opinion – if and how this would impact existing aboriginal and treaty rights
- Review of existing Indigenous language laws; such as the U.S. “Esther Martinez Native American Languages Preservation Act of 2006,” currently reviewed by the Senate for Reauthorization of Native American Languages for 2013 to 2017 (Public Law 109-394 –Dec. 14, 2016). The program was reauthorized through FY2022.
  - Briefly, the Esther Martinez Native American Languages Preservation Act provides 3-year grant funding for:
    - Language nests; classes for parents of students enrolled in Language nests and Indigenous languages are the dominant medium of instruction (minimum enrolment was reduced).

<sup>53</sup> Macpherson, J.A. (1991), p. 7.

<sup>54</sup> Macpherson, J.A. (1991), p. 23-24.

<sup>55</sup> 17 February 2012. The Australian Government set up an Expert Panel to consider the best way to make changes to their Constitution to reflect Aboriginal and Torres Strait Islander peoples, such as a referendum. One such change considered is the recognition of Aboriginal and Torres Strait Islander languages as the original Australian languages and the prior occupation of their peoples, their unique and significant contribution to the life of Australia. <http://reconciliation.org.au/nsw/recent-issues/constitutional-recognition/>



- Native American language survival schools providing at least 500 hours of instruction (minimum enrolment was reduced).
- Development of instructional courses and materials for learning Indigenous languages and for instruction with a goal that all students achieve Indigenous language fluency and academic proficiency in math, language arts and science
- Native American language restoration programs in each community – that also provide training programs for teachers of Indigenous languages and develop instructional materials for the programs. This includes books, audio and visual tools, interactive media programs – i.e. Online community language programs, online dictionaries, like the *“100 Maori words every New Zealander should know.”*
- Funding can be used for language immersion programs, language and culture camps, master-apprentice models for learning languages, Professional Development Training for Indigenous Language and Cultural Teachers.

**Specifics Questions related to an Indigenous Language Act:**

- 1. What role will FNCCEC – Cultural Centers programs play in an Indigenous Language Act?**
- 2. What are the lessons learned from the failure of the First Nations Education Act?**
  - **How to ensure that Indigenous communities receive equitable distribution of funding from government(s)?**
    - **Option: Indigenous Language Commission to FNCCEC to Indigenous communities?**

**Suggestions:**

- **Indigenous Language Commissioner will serve one 5-year mandate. Mandate is developed in conjunction with Language & Cultural Centers, Elders, Language teachers...**
- **Indigenous Language Commissioner will be chosen/nominated through a mechanism developed by Indigenous peoples to reflect each regions unique challenges and circumstances – rural, small, IT**



**connectivity issues, loss of fluent speakers, etc. This Commissioner to be chosen from a different region every 5 years.**

- **Protection for Intellectual Property and full copywrite ownership of all Indigenous materials belongs with the Indigenous source of such materials - guaranteeing each Indigenous nation's right to define and develop protective mechanisms for their specific Indigenous knowledge.**
  - **Review, analyze and share the work that WINHEC Language Revitalization Committee, Maori, Hawaiian, Sammi, existing laws in the U.S., Europe, Brazil and work others have done.**
-